



American Planning Association  
**California Chapter**

*Making Great Communities Happen*

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MEMO TO: SENATE GOVERNANCE & FINANCE COMMITTEE

FROM: AMERICAN PLANNING ASSOCIATION

DATE: JUNE 25, 2018

SUBJECT: **AB 2923 (CHIU) – NOTICE OF OPPOSITION**  
OVERRIDING LOCAL ZONING ON BART PROPERTY  
IN SENATE GOVERNANCE & FINANCE COMMITTEE  
WEDNESDAY, JUNE 27TH

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The American Planning Association, California Chapter (APA California) must respectfully continue to oppose AB 2923 as proposed to be amended. APA understands that the bill will be significantly amended soon. **However, even as to be amended, this bill would take away local land use authority over BART station properties from cities and counties and hand it over to the BART Board. The bill gives every incentive for BART to maximize its land value regardless of the impacts on surrounding properties.**

The sponsors of the bill believe that this major departure from historical land use law is warranted because the BART Board is an elected board. However, there are thousands of elected boards for all kinds of special districts and other entities throughout California. AB 2923 will set up the Legislature to be the arbiter in the future over which boards should be given a city's or county's land use authority. **Apparently, several special districts are already interested in the same land use authority that this bill gives to BART. The state should not be advocating for competing planning entities subject to totally different rules.**

The sponsors also believe that cities and counties that currently have land use authority over BART's non-transit development have not done enough to increase affordable housing, density, and mixed-use development on these properties. In reviewing the city and county TOD plans for these BART stations however, that does not appear to be the reality – in fact the density and height allowances in several TOD plans covering BART property would allow higher density, taller structures, and more affordable housing than is in BART's current guidelines. To the extent there are jurisdictions that have not updated their TOD plans or completed a station plan, **rather than just handing over land use authority, APA suggests that the Legislature amend the TOD and Station Plan statutes. These statutes could be amended to require TOD updates that include minimum standards applicable to BART as well as other fixed rail stations around the state and require the updates with those new minimum standards to be completed by the city or county within the next few years.**

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Specifically, as proposed to be amended, the bill would require that the BART Board adopt by ordinance new transit-oriented development (TOD) zoning standards that establish minimum local zoning requirements for BART-owned land within ½ mile of an existing or planned BART station entrance. **It would then require the affected local jurisdictions to adopt a local zoning ordinance that conforms to the TOD zoning standards – exactly as adopted by BART - within 2 years of the date the zoning standards are adopted by the BART Board.** It designates that the BART Board would be the lead agency under CEQA for the zoning standards.

**The new amendments also include provisions that are incredibly difficult to understand and are not consistent with normal local planning terms or structure:**

- It requires the new zoning ordinance standards to be adopted by July 1, 2020, but then allows BART to avoid completing the standards indefinitely putting the BART Guidelines in place instead. The Guidelines are not zoning standards, are very long, detailed and confusing and will be difficult for cities and counties to adopt in an ordinance.
- It requires a temporary FAR to be calculated for each station type by multiplying the number in a column in the Guidelines titled “residential target height” by 0.6.
- It ties the requirement for cities and counties to conform with the new zoning ordinance standards or presumably the Guidelines on whether district ridership is below 200,000 daily weekday riders on average for at least three consecutive calendar years.
- It requires cities and counties to conform their zoning standards to the BART standards, or the Guidelines, in 2 years, but then says local zoning will remain in place unless the district determines that it is inconsistent with the standards or the Guidelines.
- It then says a jurisdiction may update zoning to comply with the standards or Guidelines until such time that the district enters into an exclusive negotiating agreement with a developer for TOD. Then what?
- It uses terms applicable to the requirements and interactions with BART for cities and counties such as “in the midst of a CEQA review”, “if it is clear what the preferred zoning standards are”, “follow the spirit of the local jurisdiction’s proposed zoning standards”, and zoning standards that “do not resolve inconsistencies”.
- It sets up a hybrid, confusing alternative to SB 35 for BART projects, and allows the district to “waive any requirement that it finds to be inconsistent” with SB 35’s objective planning standards.
- It changes CEQA law for BART TOD projects.

APA California believes the approach in AB 2923 will set a troubling precedent for further diminishing of local land use planning in future legislation. This bill would override local planning efforts including longstanding General Plan land use plans in built out communities, Housing Elements certified by HCD, Sustainable Communities Strategies, development agreements, specific plans, and Transit Oriented Developments. And it does not require BART to meet the same standards for communication and consultation, management of contextual issues arising with surrounding properties, and environmental controls that cities and counties are required to implement.

APA California understands and supports the goal of increasing the number of new multifamily housing units around transit stops – it is one of APA’s principles to support

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density, affordability and inclusive communities near transit and throughout the community. APA California is willing to work with the author and sponsors to craft legislation to increase density around BART transit stops using approaches like minimum density and affordability standards or Station Area plans as suggested. **However, APA cannot support a bill that begins to eliminate or otherwise diminishes local land use planning through an arbitrary and inflexible zoning standard made up by BART, and applicable to its own properties.**

If you have any questions, please contact our lobbyist, Sande George, with Stefan/George Associates, [sgeorge@stefangeorge.com](mailto:sgeorge@stefangeorge.com), 916-443-5301.

cc: Governor's Office  
Senate Governance & Finance Committee  
OPR  
Republican Caucus

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