



JPB Board of Directors  
Meeting of February 6, 2020

Correspondence as of January 22, 2020

| # | <u>Subject</u>      | <u>Quantity</u> |
|---|---------------------|-----------------|
| 1 | Proposed TOD Policy | 2               |

**From:** [Board \(@caltrain.com\)](mailto:Board (@caltrain.com))  
**To:** [Jonathan Erwin-Frank; Board \(@caltrain.com\)](mailto:Jonathan Erwin-Frank; Board (@caltrain.com))  
**Cc:** [Stone, Charles \[cstone@belmont.gov\]; Brinkman, Cheryl \[cheryl.brinkman@gmail.com\]; Chavez, Cindy \[cindy.chavez@bos.sccgov.org\]; assemblymember.mullin@assembly.ca.gov; connie.chan@asm.ca.gov; assemblymember.berman@assembly.ca.gov; ruth.ferguson@asm.ca.gov; senator.hill@sen.ca.gov; alex.kobayashi@sen.ca.gov; assemblymember.ting@assembly.ca.gov; alex.walker@asm.ca.gov; Fitzpatrick, Brian; Epstein, Jessica; Mike Rawson](mailto:Stone, Charles [cstone@belmont.gov]; Brinkman, Cheryl [cheryl.brinkman@gmail.com]; Chavez, Cindy [cindy.chavez@bos.sccgov.org]; assemblymember.mullin@assembly.ca.gov; connie.chan@asm.ca.gov; assemblymember.berman@assembly.ca.gov; ruth.ferguson@asm.ca.gov; senator.hill@sen.ca.gov; alex.kobayashi@sen.ca.gov; assemblymember.ting@assembly.ca.gov; alex.walker@asm.ca.gov; Fitzpatrick, Brian; Epstein, Jessica; Mike Rawson)  
**Subject:** RE: For 1.22.20 WPLP Committee Meeting - Comment Letter Re Proposed TOD Policy  
**Date:** Wednesday, January 22, 2020 1:37:14 PM  
**Attachments:** [JPB TOD Policy-5-BWF-recd and posted 01.22.2020, 1.30 pm.pdf](#)

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Dear Mr. Erwin-Frank, et al – this is to confirm receipt of your letter and to notify all that we have now posted the TOD policy which was mistakenly not added into the 1-22-2020 WPLP agenda packet. We will also post a copy of your correspondence to the Board very soon as well. Hardcopies will be provided at the meeting and at the public counter.

My apologies for any inconvenience.

Sincerely,  
Dora Seamans  
Executive Officer/Board Secretary

**From:** Jonathan Erwin-Frank <jerwin-frank@clsepa.org>  
**Sent:** Wednesday, January 22, 2020 12:20 PM  
**To:** Board (@caltrain.com) <BoardCaltrain@samtrans.com>  
**Cc:** Stone, Charles [cstone@belmont.gov] <cstone@belmont.gov>; Brinkman, Cheryl [cheryl.brinkman@gmail.com] <cheryl.brinkman@gmail.com>; Chavez, Cindy [cindy.chavez@bos.sccgov.org] <cindy.chavez@bos.sccgov.org>; assemblymember.mullin@assembly.ca.gov; connie.chan@asm.ca.gov; assemblymember.berman@assembly.ca.gov; ruth.ferguson@asm.ca.gov; senator.hill@sen.ca.gov; alex.kobayashi@sen.ca.gov; assemblymember.ting@assembly.ca.gov; alex.walker@asm.ca.gov; Fitzpatrick, Brian <fitzpatrickb@samtrans.com>; Epstein, Jessica <EpsteinJ@samtrans.com>; Mike Rawson <mrawson@pilpca.org>  
**Subject:** For 1.22.20 WPLP Committee Meeting - Comment Letter Re Proposed TOD Policy

**Dear members of the Peninsula Corridor Joint Powers Board of Directors, members of the Caltrain Work Program-Legislative Committee, Caltrain staff, and to whom it may concern,**

**Attached please find a comment letter regarding the proposed transit oriented development policy, signed by attorneys representing Community Legal Services in East Palo Alto and the Public Interest Law Project.**

**I will provide printed copies of this comment for committee members and staff at the meeting this afternoon.**

**Thank you for your consideration,**

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**JONATHAN ERWIN-FRANK, ESQ. | HOUSING ATTORNEY**

**Community Legal Services in East Palo Alto**

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January 22, 2019

Peninsula Corridor Joint Powers Board  
[board@caltrain.com](mailto:board@caltrain.com)

**VIA ELECTRONIC MAIL**

**Re: Proposed Transit Orient Development Policy and the Surplus Lands Act**

Dear Members of the Peninsula Corridor Joint Powers Board of Directors,

We write to support the adoption of a transit oriented development (“TOD”) policy that fully complies with, and expands upon the Surplus Land Act (“SLA”), a state law that applies to projects contemplated by the policy, and to all sale or leasing of land for projects that do not serve Caltrain’s primary purpose of moving people throughout the peninsula.

State legislators representing cities and counties served by Caltrain were prominent advocates for and supporters of 2019 amendments clarifying and strengthening the Surplus Land Act. Recognizing that scarcity of land has been a key factor preventing the development of new affordable housing, the state reaffirmed its commitment to the principle of public land for public good. As a public agency with a mission to serve all residents in its area, Caltrain should embrace the letter and spirit of the law, rather than seeking exemption through alleged legal technicalities. Caltrain should set an example in prioritizing affordable housing needed for the teachers, care workers, and others who make our communities thrive.

**A. The Surplus Land Act applies to all projects contemplated by the TOD policy, and should be a baseline for a stronger policy to confront the housing crisis.**

California’s Surplus Land Act requires every “local agency,” including Caltrain, to prioritize affordable housing when disposing of surplus land. (Gov. Code § 54222; *see generally* §§ 54220 et seq.) While the definition of “local agency” always included Caltrain, the 2019 amendments strengthening the Act made this unambiguous. The law now states that a local agency means “every . . . joint powers authority . . . or other political subdivision of this state and any instrumentality thereof that is empowered to acquire and hold real property.” (Gov. Code § 54221(a)(1).)

To accomplish this mandate, the Act sets forth detailed requirements that agencies must follow when selling or leasing land that is “not necessary for the agency’s use.” (*Id.* § 54221(b)(1).)

Specifically, the agency must send a written offer to local affordable housing organizations for the purpose of selling or leasing the land to develop low- and moderate-income housing (Gov. Code § 54222(a)); give first priority to, and enter into good-faith negotiations with, entities that propose to make at least 25 percent of the total number of units developed on the parcel affordable to lower-income households (*Id.* § 54222.5, 542227); and give priority to the entity that proposes to provide the greatest number of affordable units at the deepest levels of affordability (*Id.* § 54227(a).)<sup>1</sup>

Even prior to the 2019 amendments, “not necessary for the agency’s use” was properly construed to mean land that is no longer directly controlled by the local agency and no longer serving the primary goal of the agency. To find otherwise would render the Surplus Land Act all but toothless. A city could, for example, declare that raising revenue is a city goal, and that commercial development serves that purpose; therefore, it can lease empty land for commercial-only development without complying with the Act. Here again the 2019 amendments made clear the state’s intent to limit exemptions and to apply the law to the broadest possible range of developments on public land. The law now states:

“Agency’s use” shall not include commercial or industrial uses or activities . . . Property disposed of for the sole purpose of investment or generation of revenue shall not be considered necessary for the agency’s use.

(Gov. Code § 54221(c)(2)(A).) It has been claimed that land identified in the Rail Corridor Use Policy (“RCUP”) and Covered by the TOD policy are exempt from the Surplus Lands Act because they “provide[] a form of access to the train.” This is precisely the kind of argument contemplated by the Act, and plainly prohibited by the 2019 amendments. If a transportation agency can define market-rate housing or retail as necessary for the agency’s use merely because it entails people living or shopping in some proximity to its trains, then any local agency can evade the act through rhetorical gamesmanship. In order to prevent this kind of evasion, the amendments established new procedural requirements. Notably, in order to sell or lease land, a local agency must declare the land either “surplus land” or “exempt surplus” land with supporting written findings. (Gov. Code § 54221(b)(1).)

Where land no longer serves the primary purpose of the local agency, but will instead be used for housing, commercial development, or any other ancillary purpose, local government and affordable housing providers must be presented with an opportunity to maximize the quantity of affordable housing. To find otherwise would undermine the legislative policy codified in the Act:

(a) The Legislature reaffirms its declaration that housing is of vital statewide importance to the health, safety, and welfare of the residents of this state and that provision of a decent

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<sup>1</sup> Even if a mutually agreeable proposal is not reached after 90 days of good-faith negotiations, any development on the site containing ten or more housing units must still include at least 15 percent of those units as affordable to lower-income households. (*Id.* § 54223; § 54233.) In either case, the units must remain affordable for at least 55 years. (*Id.* § 54222.5; § 54233.)

home and a suitable living environment for every Californian is a priority of the highest order. The Legislature further declares that there is a shortage of sites available for housing for persons and families of low and moderate income and that surplus government land, prior to disposition, should be made available for that purpose.

(Gov. Code § 54220(a).) This does not mean that a local agency such as Caltrain cannot lease land as part of a transportation-oriented project, for purposes that are integral to the *transportation* mission, or necessary for the public to access the core transportation service provided. For example, the Board could lease land to provide electrical or safety infrastructure, or to a bus operator to ensure access. Such use serves the primary goal of the agency. The Board cannot however, escape the affordability requirements of the Act by defining residential, commercial, or industrial development as integral to its transportation mission.

Caltrain similarly cannot evade affordability requirements by defining land as more or less suitable for development, or as falling into any particular category it has created. The Surplus Land Act provides overriding regulation as to land that is exempt from its requirements because of physical limitations. These include land that is “less than 5,000 square feet in area,” and land that is “less than the minimum residential building lot size for the jurisdiction in which the parcel is located[.]” (Gov. Code § 54221(f)(1)(B).) The law makes clear that these parcels, presumably not suitable for development, may be sold to an owner of contiguous land. If they are not, then the Act applies and the agency must prioritize affordable housing. (Gov. Code § 54221(f)(1)(B).)

Since the undersigned first raised the issue of application of the SLA to the Hayward Park station project in August of 2018, Caltrain has provided other unconvincing, technical legal defenses while declining to address the pressing moral concern for affordable housing in the region.

Caltrain has asserted that the Surplus Land Act does not apply to ground leases, arguing that the requirements apply “prior to disposing” of land, where disposing means to get rid of, and therefore includes selling but excludes leasing. (*See* Gov. Code § 54222(a).) This argument relies on an unduly narrow reading of “disposing” and is contradicted by the plain text of the statute. The declaration of legislative policy states that “the sale *or lease*” of surplus land . . . is consistent with goals and objectives to achieve optimal transportation use.” (Gov. Code § 54220(c), *emphasis added*.) The Act further references “The entity or association desiring to purchase *or lease* the surplus land[.]” (Gov. Code § 54222(e), *emphasis added*.) The 2019 law that included the SLA amendments added Section 65400.1 of the Government Code, which discusses “sites . . . that have been sold, leased *or otherwise disposed* of in the prior year.” (*emphasis added*.) Moreover, such a loophole would clearly contravene the purpose of the Act, permitting total evasion of its requirements through long-term leases.

Caltrain has further asserted that developments subject to the Joint Development Regulations of the Federal Transit Administration, rules that apply where land was acquired using certain federal funds, are exempt from the requirements of the SLA. This claim is equally unpersuasive. The Surplus Land Act and the federal regulations can readily be harmonized; the regulations

nowhere state they override this kind of state law. Their clear purpose is to preserve the transportation purpose of a property while permitting development. They do not establish any particular or exclusive development regime.

**B. As a public agency with a mission to serve the whole public, Caltrain should be a leader in promoting affordable housing that will increase lower income ridership**

The undersigned appreciate that Caltrain sees the need for affordable housing and for a systemic approach in the form of an affordable housing policy. Yet as a public agency with a mission to serve the whole public, in a region that has seen an escalating crisis of displacement, Caltrain should set an example with its affordable housing policy. The housing crisis has forced many lifelong residents to leave the area entirely, often enduring hours-long commutes that worsen traffic and pollution. Building affordable housing would not only help to mitigate the housing crisis, but would contribute to a diverse ridership that would not need to rely on more environmentally costly forms of transportation.

As noted, California’s lawmakers have reaffirmed their commitment to public land for public good by clarifying and strengthening to state mandate of the Surplus Land Act. In her letter to you dated December 2, 2019, Congresswoman Jackie Speier stated her belief that “public lands should be used to create as much affordable housing as possible given all constraints on the agency.” She went on to call for a “public-agency/nonprofits-first” policy for developments on Caltrain property. State and federal lawmakers are recognizing that public lands must play a key role in providing desperately needed affordable housing that the market cannot provide.

Caltrain does not appear to have publicly released the current draft of the proposed TOD policy with the WPLP Agenda Packet for the meeting today, January 22, 2020. The summary of the current policy does not indicate substantial revisions to the core tenets as laid out in the December 19, 2019 draft, in spite of concerns raised regarding the overemphasis of possible costs and lack of emphasis on the benefits of affordable housing.

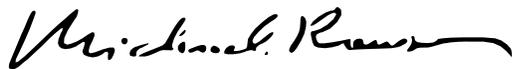
Caltrain should view the requirements of the Surplus Land Act as a baseline, and adopt a stronger policy, including:

- A 25% minimum affordability requirement, with 12.5% restricted at no more than 50% of AMI, 6.25% restricted at no more than 35% of AMI, and 6.25% restricted at no more than 80% of AMI.
- A district-wide target of at least 35% affordable units
- As recommended by Congresswoman Speier, a “public-agency/nonprofit-first policy.” This should be a right of first refusal for affordable developers.
- A policy of prioritizing projects producing the most affordable units at the deepest level of affordability
- A policy of proactively seeking creative means of developing affordable housing on oddly-shaped or small-sized parcels.
- A recognition of state, local, and regional funding sources for affordable housing

If you have any questions, or wish to discuss further our position in this matter, you can reach us directly at (650) 391-0360.



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Michael Rawson  
Director  
Public Interest Law Project

cc: Caltrain Work Program-Legislative-Planning Committee  
cc: Caltrain Staff  
cc: Assembly Speaker Pro Tem Kevin Mullin  
cc: Assemblymember Marc Berman  
cc: Senator Jerry Hill  
cc: Assemblymember Phil Ting  
cc: California Department of Housing and Community Development

# Caltrain Transit-Oriented Development (TOD) Policy

## PURPOSE

This TOD Policy expresses the Peninsula Corridor Joint Powers Board's (JPB) goals and strategic objectives for TOD projects. These goals and objectives will form the policy basis of the Joint Development Guidelines, an administrative document which will provide additional details about the process and requirements for property asset management, including strategic development and, in some cases, acquisition of new properties for development.

While the TOD Policy and the Joint Development Guidelines set forth JPB's goals and objectives for such development, each actual development project and its terms will be negotiated by staff and every transaction will be subject to final approval by the Peninsula Corridor Joint Powers Board of Directors, at their sole and complete discretion.

## BACKGROUND

The JPB's primary roles are to operate Caltrain passenger rail service and manage the Caltrain corridor and assets to support current and future rail operations. As defined by the Caltrain Rail Corridor Use Policy (RCUP), a subset of the real estate assets that the JPB owns and manages have been identified as not being required for current or future railroad uses and therefore have the potential to be developed as TOD projects.

In contrast with many other rail transit agencies, the JPB owns a limited number of properties that are suitable and available for development. First, Caltrain is a legacy system that has operated on the Peninsula since 1863. This means the available properties in station areas, particularly parking lots, tend to be smaller in scale than those of other Bay Area transit systems that were developed more recently and were designed to accommodate large park-and-ride facilities. Additionally, when JPB purchased the Caltrain right of way from Southern Pacific Railroad (SP) in 1991, the transaction included only the basic property required to operate the railroad due to funding constraints. SP held onto a number of the best development sites and other wider areas of the right of way. Further, Caltrain's recently-adopted Long-Term Service Vision, developed through the Caltrain Business Plan process, envisions a substantially expanded and different service pattern than exists today, requiring many infrastructure improvements that, either temporarily or permanently, will consume space on JPB property that might otherwise be used for TOD. Over time, it is possible that additional sites may be identified as available for TOD, through the RCUP process, as individual capital projects are planned, designed and delivered.

The TOD Policy applies to properties that are owned by the JPB in fee simple and are available for development independent from a capital project as identified by RCUP.

## TOD GOALS

In advancing TOD, the JPB seeks to achieve the following overarching goals:

- **Sustainable Transportation.** Promote Caltrain ridership and sustainable transportation modes.

- **Value Creation.** Create value for the JPB, consistent with the JPB's overall business strategy, which can be reinvested into the railroad's core mission of providing rail transportation service.
- **Equity.** Provide an appropriate balance of land uses, equity in access, and other benefits that align with the priorities of the local community.
- **Complete Communities.** Establish station areas as complete communities in partnership with other stakeholders.

## STRATEGIC OBJECTIVES

Below are strategic objectives for private-public TOD projects on JPB properties. Under each objective is a list of strategies that may be used to advance that objective.

### Encourage transit-supportive development

1. **Include transit-supportive uses.** TOD on JPB property should encourage transit ridership and enable daily activities that do not require a car. Parking to serve private development should be limited to discourage vehicle trips in favor of other modes, including walking, biking and transit.
2. **Maximize density of development.** TOD should seek the maximum possible density (as measured in floor area or number of dwelling units) in keeping with station area plans and/or community objectives, provided that such plans recognize and reflect the scarcity and value of land in immediate proximity to high capacity transit and are consistent with promotion of transit ridership.

### Generate revenue streams to offset operating costs

1. **Favor long-term ground leases.** The JPB favors long-term ground leases for joint development, with terms of 55 to 75 years. Sale of property may be considered in exceptional situations where TOD goals are best served, such as when assembling JPB property with adjacent properties not owned by the JPB or when properties are not large enough to warrant a ground lease.
2. **Receive fair market value for land.** In general, business terms should ensure JPB receives compensation that reflects the fair market value of land.
3. **Participate in project revenues.** JPB should participate in the success of development through participation rents, typically by collecting a percentage of gross revenues generated by the project each year, with a base ground rent as the floor. JPB should also participate in the refinance or sale of TOD projects.
4. **Solicit development proposals using a competitive process.** JPB favors a request for qualifications process to solicit competitive proposals for development. Unsolicited offers may be considered only in special cases to meet specific JPB objectives. For example, if a site is too small, has limited access, or is unable to be developed independently, a competitive process may not be availing. In such cases, staff will evaluate unsolicited offers to determine if an unsolicited approach is warranted and if the proposed project is consistent with JPB's objectives as set forth in this policy.
5. **Secure business terms that protect JPB investment.** Standard business terms for TOD ground leases should ensure that fee ownership and base rent are not subordinated. Leases should also include provisions that limit the JPB's risk exposure, such as performance benchmarks, indemnity and insurance protections, completion guarantees, quality assurances and operating covenants.

## **Leverage capital projects land acquisition for future TOD**

1. **Pursue strategic land acquisition in conjunction with capital projects.** Where capital projects require the temporary use of property (for staging construction equipment, for example), the JPB, where appropriate, should seek to acquire, rather than lease, the property if it will have potential as a TOD opportunity site once it is no longer needed for the capital project. Additionally, if acquisition of a portion of a property leaves the remainder as an uneconomic remnant to the owner, the JPB may offer to purchase the entire site.

## **Contribute to complete communities in station areas**

1. **TOD should complement uses in the surrounding area.** Development should consider the site context and complement other uses in the surrounding area, including a mix of uses where appropriate and financially feasible, provided that such plans are consistent with promotion of transit ridership.
2. **Seek community participation.** Development proposals should consider station area plans and community preferences for use provided that such plans are consistent with promotion of transit ridership. Creation of solicitation documents and the developer selection process should include participation by the local jurisdiction.
3. **Implement high quality, context-sensitive urban design standards.** The JPB will seek developments with high-quality urban design that facilitate station access and the use of other sustainable transportation modes that are complementary to Caltrain operations and station needs.

## **Support environmental sustainability and alternatives to private vehicle travel**

1. **Ensure development projects are environmentally sound and energy efficient.** JPB encourages infrastructure and urban design solutions that minimize the environmental footprint of the construction and operation of the development. JPB should favor development proposals that will achieve high standards of energy efficiency and environmental sensitivity, such as LEED<sup>1</sup> certification.
2. **Limit onsite parking for private development.** In general, TOD on JPB property should discourage vehicle trips by providing limited parking for the private development. JPB encourages creative parking strategies with TOD projects such as unbundled parking, shared parking facilities, and/or transportation demand management, as consistent with community and Caltrain objectives.
3. **Include a balance of station access options at each site, as consistent with Caltrain's access plans and policies.** The extent to which TOD will include new parking facilities to replace existing Caltrain transit patron parking will be studied for each site and determined on a case-by-case basis. The amount of replacement patron parking will balance Caltrain station parking needs with objectives to facilitate non-vehicular access modes and generate TOD density and revenue. The JPB will seek to partner with other transit and transportation providers to provide a variety of access options, with focus on pedestrian and bicycle access.

## **Provide affordable housing**

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<sup>1</sup> Leadership in Energy and Environmental Design

1. **Require residential TOD to provide affordable housing onsite.** Residential development will be required offer at least 20 percent of units onsite at below market rents. At least 10 percent of units will be targeted to households with incomes of no more than 80 percent of Area Median Income (AMI) and at least 10 percent of units will be targeted to households with incomes of no more than 50 percent of AMI.
2. **Partner with developers to leverage other sources of affordable housing funds.** Where possible, the JPB will encourage the use of outside sources of funding and financing to deliver affordable housing, such as Low Income Housing Tax Credits.
3. **Explore creative ways to utilize smaller opportunity sites for affordable housing.** JPB will explore ways to utilize small or irregularly-shaped parcels for affordable housing, particularly sites that offer limited opportunity for commercially viable market rate housing development.

#### **Encourage high labor standards and contribute to workforce development**

1. **Require prevailing wage for labor.** JPB requires prevailing wage compliance for all TOD projects.
2. **Encourage project labor agreements.**