



JPB Board of Directors
Meeting of October 3, 2019

Correspondence as of September 13, 2019 (24 pages)

1. Email subject: 25th Avenue Project
2. Email subject: Redwood trees along San Carlos Caltrain Platform
3. Letter from re: Compliance with the Surplus Land Act in Hayward Park Station Development
4. Email subject: Building Integrated Solar
5. Email subject: Bikes on Caltrain comment
6. Email subject: Railroad Crossing
7. Email subject: Request for Confirmation of DCAA POC

From: [Board \(@caltrain.com\)](mailto:Board (@caltrain.com))
To: rwcp11@aol.com
Cc: [Board \(@caltrain.com\)](mailto:Board (@caltrain.com))
Subject: RE: 25th ave project
Date: Friday, September 13, 2019 8:41:01 AM

Dear Ms. Lind,

Thank you for your email. Caltrain is committed to safety on the railroad, including all intersections that allow pedestrians, bikes and vehicles to cross the tracks. The 25th Avenue intersection is under construction with the Grade Separation Project and is subject to configuration changes throughout the construction process. Caltrain understands that this changing environment can confuse drivers when vehicles are travelling over the railroad crossings at 25th Avenue. This can be an extremely congested intersection during commute times.

Throughout this project, Caltrain staff will continually assess and implement improvements at this crossing to improve and maintain safety for traffic through the crossing. The ultimate solution is to complete the project which would allow car, bike and pedestrian traffic to be separated from trains.

Kind Regards,

Dora Seamans, MPA, CMC
Executive Officer/District Secretary
SamTrans, Executive Administration
1250 San Carlos Ave
San Carlos, CA 94070
Tel: 650-508-6242
Seamansd@samtrans.com

-----Original Message-----

From: rwcp11@aol.com <rwcp11@aol.com>
Sent: Saturday, September 7, 2019 7:27 PM
To: [Board \(@caltrain.com\)](mailto:Board (@caltrain.com)) <BoardCaltrain@samtrans.com>
Subject: 25th ave project

I had a terrifying incident at the San Mateo 25th Ave crossing project. It occurred on Thursday, Sept 5, at about 5:45pm. As I approached the tracks going east, the railroad crossing signals started to sound but I could not see them. I was confused about where to stop and ended up in front of the crossing gate with the gate coming down on my car trunk. I was under the new train over-crossing and just feet from the tracks as a commuter train went speeding by. I was so alarmed and upset.

I went the same route the next day and could see that the railroad crossing signal is behind the new structure and not easily visible. This is a traffic hazard at the very least and needs to be addressed - especially since this is such a long term project. I understand that just a day later a car was struck by a train at that location.

I want to know what you are planning to do to improve safety at this crossing. I have talked to other drivers who have also experienced confusion at this same place.

Patricia Lind
Sent from my iPhone

From: [Seamans, Dora](#)
To: patoflaherty@gmail.com
Cc: [Board \(@caltrain.com\)](#)
Subject: Redwood trees along San Carlos Caltrain Platform
Date: Wednesday, September 11, 2019 10:11:19 AM
Attachments: [Pat O'Flaherty Ltr. recd. 09.09.19.pdf](#)

Dear Pat O'Flaherty,

Thank you for your letter expressing concern for the redwood trees along the San Carlos Caltrain platform. In response to your letter dated September 5, 2019 to the Peninsula Corridor Joint Powers Board (attached), please note the following:

While the trees were here before the San Carlos Station area was developed, JPB staff will have the TASI's (Transit American Services Inc.) arborist look at the trees to evaluate their condition.

Meanwhile, staff will investigate further to determine who is responsible for their maintenance and should have an answer by the end of September.

Thank you,

Dora Seamans

Dora Seamans, MPA, CMC
Executive Officer/District Secretary
SamTrans, Executive Administration
1250 San Carlos Ave
San Carlos, CA 94070
Tel: 650-508-6242
Seamansd@samtrans.com

September 5th, 2019

09/09/19 PM 2:51 EXEC

To: Peninsula Corridor Joint Powers Board

From: Pat O'Flaherty, Resident of San Carlos, patoflaherty@gmail.com

Subject: Redwood Trees along San Carlos Caltrain Platform are diseased and dying.

Dear Board Members:

There seems to be white fungi growing on many of the Redwood Trees that are next to the San Carlos Caltrain railroad tracks.

I have seen this White Fungi growing on the redwood tree branches, while waiting for the train on the southbound platform of the San Carlos Caltrain station for the past several years.

I have written several letters like this one to the City Manager of San Carlos, however the Redwood Tree situation is getting worse.

Many of the branches and new growth leaves are covered with a white chalky substance, and if left too long, kill the leaves on the branches by turning them brown.

See pictures.

I believe these trees are diseased and need to be treated with something to stop this disease from continuing to spread.

Perhaps an Arborist can evaluate these trees and suggest a remedy.

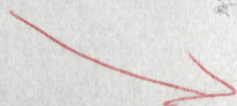
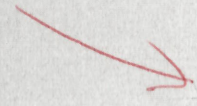
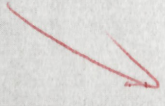
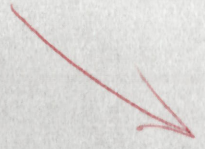
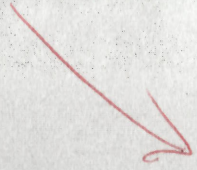
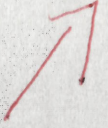
Please go see the all the Redwood Trees on the south side platform at the San Carlos Caltrain station when you have time.

I would like these trees to be saved in the City of Good Living.

Thank You



These trees
are dying
and they
have
fungi on them





From: [Seamans, Dora](#)
To: [Board \(@caltrain.com\)](#)
Cc: [Gumpal, Cindy](#)
Subject: FW: Letter re compliance with the Surplus Land Act in Hayward Park Station development - For September 10 Study Session
Date: Friday, September 13, 2019 2:38:27 PM
Attachments: [Response to 8-17-18 Letter re Hayward Park Station Development.pdf](#)
[8-17-18 HLCSMC LTO JPB Board re Hayward Park Station Development.pdf](#)
Importance: High

Dear JPB Board Members,

Please note that the attached letter from the Housing Advocates on the Hayward Park TOD project is the same letter that was sent to the Caltrain Board last August of 2018. We have attached Legal Counsel's response to that letter dated August 30, 2018, advising the Housing Advocates that Caltrain is in full compliance with the Surplus Lands Act.

Kind Regards,

Dora Seamans

From: Jonathan Erwin-Frank [<mailto:jerwin-frank@clsepa.org>]
Sent: Friday, September 06, 2019 11:50 AM
To: PlanningCommission@cityofsanmateo.org; pbrennan@cityofsanmateo.org
Cc: Board (@caltrain.com); mtaboard@sfmta.com; Pine, Dave [dpine@smcgov.org]; board.secretary@vta.org; Suzanne.Moser@hcd.ca.gov; Collins, Ron [rcollins@cityofsancarlos.org]; KBusch@srgnc.com; Daniel Saver; Mike Rawson
Subject: Letter re compliance with the Surplus Land Act in Hayward Park Station development - For September 10 Study Session

Dear City of San Mateo Planning Commissioners,

Attached please find a letter regarding the Hayward Park Train Station Parking Lot Development Application and Caltrain's ongoing violation of the state Surplus Land Act, for consideration at the Planning Commission Study Session on Tuesday, September 10, 2019, and thereafter. Please also find a copy of the letter referenced therein, sent to Caltrain on August 17, 2018.

This letter is signed by representatives of Community Legal Services in East Palo Alto and the Public Interest Law Project.

Sincerely,

--

JONATHAN ERWIN-FRANK, ESQ. | HOUSING ATTORNEY

Community Legal Services in East Palo Alto

www.clsepa.org

Phone: [\(650\) 391-0360](tel:(650)391-0360) | Fax: [\(866\) 688-5204](tel:(866)688-5204)

JOAN L. CASSMAN
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August 31, 2018

Rene Alejandro Ortega, Esq.
Senior Housing Attorney
Community Legal Services in East Palo Alto
1861 Bay Road
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Evelyn Stivers, Executive Director
Housing Leadership Council of San Mateo County
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Victoria Fierce, Executive Director
California Renters Legal Advocacy and Education
Fund
1260 Mission Street
San Francisco, CA 94103-2706

Michael Rawson, Director
The Public Interest Law Project
449 15th Street, Suite 301
Oakland, CA 94612

Subject: Hayward Park Station Development

Dear Messrs. Ortega, Erwin-Frank, Rawson and Mss. Stivers and Fierce:

Caltrain is in receipt of your letter of August 17, 2018 regarding the proposed development at the Hayward Park Caltrain Station. I am the General Counsel for Caltrain and because your letter presents legal arguments alleging Caltrain's failure to follow state law, Jim Hartnett, the Executive Director of Caltrain, has requested that I respond.

First of all, let me assure you that Caltrain shares your goal of encouraging the construction of affordable housing adjacent to the Caltrain line, including housing at Hayward Park. In addition, and central to our mission, Caltrain is committed to the goal of delivering a real estate development program that promotes our transportation services as well as generates an income stream to support the operation, improvement, and maintenance of Caltrain service into the future.

We take issue, however, with your interpretation of the Surplus Land Act (Government Code Section 54220 et seq.) ("SLA") and your insistence that Caltrain was remiss in not following the procedures of Section 54222 of the SLA in connection with the Hayward Park Station development transaction. We also part ways as to the best strategy to achieve a successful

project that provides both market-rate and affordable housing in an expeditious manner to meet the housing demand on the Peninsula.¹

Your letter goes to great lengths to describe the provisions of the SLA, but fails to consider a very basic question: whether the SLA statutory scheme is intended to apply to the subject development that involves a long-term ground lease on property that is not in fact surplus to the needs of Caltrain.

As your letter indicates, the SLA applies to the "disposal" of "surplus property." It is our view that the parcel at the Hayward Park Caltrain Station is not surplus, nor is Caltrain disposing of it. Regarding the foundational issue of what is surplus property, the SLA defines "surplus land" as "land owned by any local agency, that is determined to be no longer necessary for the agency's use." Caltrain has not made such a determination. In fact, the proposed development at the Hayward Park station is integral to and an extension of the Caltrain commuter rail system. As proposed, the development will facilitate seamless connections for all mobility modes, bicycle, pedestrian, vehicular drop offs and the like, to access the station boarding area. In addition, the development will be a ready source of new and regular passengers on the system, increasing ridership on Caltrain with residents of the development and thereby reducing traffic and greenhouse gas emissions. As such, the property is not surplus to the mission of Caltrain and its continued use will be designed in a manner to enhance the Caltrain system.

The fact that the property for the Hayward Park Station development is not surplus is dispositive of the inapplicability of the SLA to this transaction, but we turn to the second important and related issue of what constitutes "disposal," as this analysis provides further evidence that Caltrain's actions are aligned with the law. Although the SLA does not contain a definition of "disposal," it clearly states that the procedures in Section 54222 must be followed by an agency "prior to disposing" of land. The dictionary definition of "dispose" is to "get rid of something" by throwing it away or by selling or giving it to someone else. Thus, the word "disposal" denotes a sale, rather than a lease, of property.

A review of the legislative history of the SLA supports this interpretation. From its first version in 1968, the SLA was intended to apply only to disposal of surplus property by sale. Since initial enactment, amendments to the SLA, which have introduced the word "lease" in this statutory scheme, are designed to require the agency to offer the property for sale or lease to certain entities for certain purposes only after the agency has determined the property to be surplus and intends to get rid of it.

There is one court case that addresses the SLA and distinguishes a ground lease from a sale of surplus land. *City of Cerritos v. Cerritos Taxpayers Assn.* ((2010) 183 Cal.App.4th 1417, 1445), while not strictly analogous to the situation at hand due to interceding provisions in the Education Code, suggests that a school district was not required to follow the SLA for a ground lease of real property, as such a transaction was not a disposal. This case is also instructive because the court pointed out that the legislature's intention under the SLA is not to elevate form over substance. Failure to apply the provisions of Section 54222, even if it was applicable,

¹ Back in 2015, Caltrain had responded directly to one member of your coalition, the Housing Leadership Council (HLC), explaining our position that the SLA didn't apply to this transaction. (See attached letter to Joshua S. Hugg, Program Manager at HLC, dated October 2, 2015.) There was no further discussion of this issue. Now, three years later, as Caltrain is poised to enter into a final agreement with the developer, we are presented with the same issues, as well as a request to restart the development process from the beginning, all after Caltrain has spent considerable time and effort negotiating final business terms with the developer.

does not operate to invalidate the transaction. In the *City of Cerritos* case, as is also true in the Hayward Park Station development, the court observed that the proposed development sufficiently accomplished the objectives of the SLA in any event.

We also note that a recent bill, AB 2065, which failed to get out of the Assembly during this year's legislative session, sought to add a definition of "dispose" in the SLA that would have expressly included ground lease transactions. On this proposed amendment, a bill analysis report of the Assembly Committee on Local Government commented that:

The new definition of 'disposal' is problematic for public agencies that have valid reasons to lease or otherwise protect land they own (for instance, conservation easements may be sold or granted for sensitive species protection or as mitigation, or property held for future facility needs may be leased out until the property is sold). The coalition asks the author to consider amending the definition to apply only to the sale of surplus land; (*Emphasis added.*)

In considering all of these factors: (1) the plain meaning of the word "disposal," (2) the legislative history of the SLA, (3) the case law interpretation that indicates that the SLA is directed at the sale of property, and (4) the unsuccessful recent attempt to amend the statute to include a lease within the definition of disposal, the conclusion is clear: current state law contemplates a disposal as the agency getting rid of the property; a lease is not a disposal of land under the SLA. Accordingly, the SLA requirements and the procedures in Section 54222 do not apply to this transaction because Caltrain is not disposing of surplus land at the Hayward Park Station.

Federal laws and regulations are also implicated in this transaction and provide further support for the fact that Caltrain is not disposing of surplus property as a result of this development. The Caltrain Hayward Park Station property was acquired from Southern Pacific Railroad by the California Department of Transportation, using grant funds from the Federal Transit Administration (FTA). It was transferred to Caltrain in 1997. Property that is acquired using FTA funds must be "acquired, managed, and used" in accordance with that agency's regulations. Significantly, when the FTA provides funds for the acquisition of real estate, it retains a continuing federal interest in the property. If that property is no longer needed for authorized grant purposes (i.e. if it is "surplus"), it must be "disposed of" in accordance with federal rules.²

In order to encourage the joint development of such properties, however, the FTA allows its grantees to enter into "joint development" agreements provided that the agency retains what the FTA terms "satisfactory continuing control" over the property in order to preserve the federal interest. Such transactions are not "dispositions" according to the FTA, as the federal interest in the property remains. This required "continuing control" of the property is most easily achieved by means of the terms of a ground lease, which can ensure that the property is used for the intended purpose. Such continuing control also enables Caltrain to preserve access to the site to facilitate maintenance of its transit facilities and to guarantee enhanced access to the site for bicycles, pedestrians, and kiss-and-ride drop-offs, at all times. In addition, the development represents a shift in the mode of access, from automobile parking to residential occupancy and

² In many cases, such disposition requires that the percentage contribution of federal funds towards the property be repaid. In the case of Hayward Park, the property was acquired using 75% federal funds. If Caltrain disposes of the property, it is required to repay to the FTA 75% of the fair market value of the property.

provides a readily available ridership base for Caltrain service. It should not be surprising that, upon checking with a number of other transit agencies that undertake transit-oriented development projects, we have found that their position and approach to the application of the SLA in the context of ground leases mirrors our own.

In summation, as contemplated by the applicable federal regulations, Caltrain will retain ownership of the property as part of its transit program. The joint development of transit property is a continuing use of the land, not a disposition. Similarly, Caltrain's continuing need for and ownership and use of the Hayward Park Station property also makes state law under the SLA inapplicable.

Finally, it is important to consider the timing of the actions here. Caltrain first issued a Request for Qualifications regarding the development of the Hayward Park Station in 2014, before the new AB 2135 requirements in the SLA, which you are vigorously trying to apply to this development, went into effect. As we have demonstrated, Caltrain would not be required to apply the SLA to a development of this nature even today, but Caltrain could not have anticipated these requirements during the early years of this development. Nevertheless, Caltrain has worked diligently with the developer to address challenges at the site and has even renegotiated the size of the development to take advantage of the San Mateo Corridor Plan, which permitted greater density, increasing the number of new units to be constructed on the site. Now Caltrain is working with the developer to maximize the amount of affordable units in the project. Your demand that Caltrain should terminate negotiations with the developer and re-start the proposal process would only serve to delay the implementation of any project by a matter of years. Such an outcome does not serve the best interests of housing or transportation on the Peninsula.

We commend your commitment to promoting more affordable housing and we submit that with this development Caltrain is advancing this goal. We would appreciate your support as Caltrain takes this development through the entitlement process and seeks to get a project with substantial affordability into the ground and open for occupancy at the Caltrain Hayward Park Station as soon as we can.

Sincerely,



Joan L. Cassman
General Counsel
Peninsula Corridor Joint Powers Board

cc: Members, Peninsula Corridor Joint Powers Board
Jim Hartnett, Executive Director, Peninsula Corridor Joint Powers Board
Carter Mau, Deputy GM/CEO, San Mateo County Transit District
Michelle Bouchard, Chief Operating Officer, Rail
Seamus Murphy, Chief Communications Officer
April Chan, Chief Officer, Planning, Grants, Transportation Authority
Brian Fitzpatrick, Director, Real Estate and Development
California Department of Housing and Community Development



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EXECUTIVE DIRECTOR

October 2, 2015

Mr. Joshua S. Hugg, Program Manager
Housing Leadership Council of San Mateo County
139 Mitchell Ave, Suite 108
South San Francisco, CA 94080

Re: AB 2135, Surplus Land & Affordable Housing

Dear Mr. Hugg:

Thank you for your inquiry regarding the pending transaction involving certain property at the Hayward Park Caltrain Station (the "Property") and whether it is subject to the requirements of AB 2135 (2014) and the related provisions of the Government Code pertaining to the disposal of surplus property. We have investigated your question and concluded that the law does not apply to this transaction for a number of reasons which we explain below.

AB 2135 amends Article 8 of Chapter 5 of Part 1 of Division 2 of Title 5 of the California Government Code. Article 8 is entitled "Surplus Land" and sets forth a process that "local agencies" are required to follow in the event they decide to "dispose" of real property that is "surplus" (i.e. determined to be no longer necessary for the local agency's use). With regard to the property in question, the JPB has not made any such determination. In fact, the JPB views the creation of housing on its property as an important means of improving ridership and meeting its policy goals of providing efficient access to our transit system. Creation of housing on this site will enable patrons to walk from their homes to Caltrain. The agency will also retain 50 parking spaces on the development site.

The transaction involving the Property is a ground lease, under which the JPB will retain fee simple title to the Property. Under the terms of the proposed ground lease, the JPB will reserve the right to use the land as needed upon expiration of the ground lease. As a result, the Project does not fall under the provisions of AB 2135 since the JPB is not "disposing" of the Property.

The decision to lease the property was intentional and was driven, in part, by the fact that the Property was acquired with federal grant funds and, therefore, must be managed in compliance with applicable grant requirements. Those regulations require the JPB to follow a prescribed disposal procedure should it decide to dispose of property. Such procedures would likely require the agency to repay the federal government a substantial portion of the proceeds from any such sale.

Mr. Joshua S. Hugg
October 2, 2015
Page Two

The FTA regulations also allow the JPB to enter into a ground lease for the Property, provided it receives full market value for the property rights conferred and maintains "satisfactory continuing control" of the Property to ensure that the real property remains available for its originally authorized grant purposes. In addition, JPB will retain rights to maintain certain facilities on the Property, including bike lockers, at least 50 parking spaces and bus loading facilities. All of these factors indicate that this transaction is not a "disposal."

It is also important to note that the JPB issued a Request for Proposals for this project over three years ago, long before AB 2135 was passed, and has been working closely with the chosen developer and the City of San Mateo to promote this exciting project that will provide a substantial amount of affordable housing at the station site. As part of that process, the City of San Mateo is requiring the developer to set aside 15% of the units for affordable housing. As a result, despite being exempt from the law, the proposed transaction comports with the intent of the statute by promoting the development of a substantial number of affordable housing units.

We hope this information is helpful. If you have any questions, please feel free to contact me at 650.508.7781 or via email at fitzpatrickb@samtrans.com.

Cordially,



Brian Fitzpatrick
Manager, Real Estate & Property Development

cc: Seamus Murphy
Shweta Bhatnagar
Gary Cardona



**COMMUNITY
LEGAL SERVICES**
IN EAST PALO ALTO



**PUBLIC INTEREST
LAW PROJECT**



August 17, 2018

Jim Hartnett, General Manager and CEO of Caltrain
 Members of the Peninsula Corridor Joint Powers Board of Directors
 Cheryl Brinkman, Peninsula Corridor Joint Powers Board Member
 Gillian Gillett, Peninsula Corridor Joint Powers Board Member
 Monique Zmuda, Peninsula Corridor Joint Powers Board Member
 Charles Stone, Peninsula Corridor Joint Powers Board Member
 Jeff Gee, Peninsula Corridor Joint Powers Board Member
 Dave Pine, Peninsula Corridor Joint Powers Board Member
 Jeannie Bruins, Peninsula Corridor Joint Powers Board Member
 Cindy Chavez, Peninsula Corridor Joint Powers Board Member
 Devora “Dev” Davis, Peninsula Corridor Joint Powers Board Member

VIA MAIL AND ELECTRONIC MAIL

Re: Hayward Park Station Development

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

We write to request full compliance with the California Surplus Land Act and with federal and state fair housing laws in Caltrain’s proposed residential development on the site of its Hayward Park Station in San Mateo. Compliance with these laws will require exceeding the minimal affordable housing targets of the City of San Mateo’s Below Market Rate Housing Program.

In particular, we ask that Caltrain withdraw from exclusive negotiations with a private developer—negotiations that Caltrain entered into without soliciting proposals to build at least 25 percent affordable housing units as required by the Surplus Land Act. Any disposition of this land must comply with the requirements of that Act and other applicable laws as set forth below.

California and the Bay Area are experiencing an unprecedented housing crisis that threatens our communities. Teachers, health care workers, and other people who serve our communities cannot afford to live in them. From 2010 to 2015, 72,800 jobs were created in San Mateo County, while just 3,844 new homes were built—one home for every 19 new jobs.¹ This imbalance is causing mass displacement of lower-income residents, who are forced to make

¹ California Economic Development Department (EDD). U.S. Census, American Community Survey 2010-2015. See <http://homeforallsmc.com/challenge>.

08/21/18 AM10:19 EXEC

ever-longer commutes, adding to the traffic that chokes our region. Since 2010, congestion-related delays in the Bay Area have gotten 80 percent longer.²

Even in today's booming high-tech economy, 49 percent of all workers in San Mateo County earn less than \$50,000 per year. Yet to afford the average two-bedroom apartment, a family would need an income of \$118,800. The County desperately needs more transit-accessible housing that is affordable to its lower-income workers.³ It is in this context that Caltrain, as a government agency, must honor its legal responsibilities to use its public land for public good.

A. The California Surplus Land Act Governs Caltrain's Disposition of Surplus Land

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.) To accomplish this mandate, the Act sets forth detailed requirements that agencies must follow when selling or leasing land that is "no longer necessary for the agency's use." (*Id.* § 54221(b).)

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); 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).) 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.)

The written offer must be sent to the local city and county, to any local government agency involved in housing development, and to other housing developers that have requested notice. (Gov. Code § 54222(a).) The San Mateo County Department of Housing has published a list of organizations that must be contacted pursuant to the Surplus Land Act, and it has distributed that list to local agencies including Caltrain. San Mateo County Department of Housing included that list in a letter to the San Mateo Transit District, dated April 26, 2016. The letter stated forthrightly, "We request that prior to disposing of any surplus land, your agency provide these contacts with a written offer to sell or lease that land . . . as provided for by the California Surplus Land Act[.]" A copy of that letter is included herein. As noted in the letter, the list is available online at <https://housing.smcgov.org/ah-developers>.

² Metropolitan Transportation Commission, Vital Signs Report (September 2017), available at <https://mtc.ca.gov/whats-happening/news/bay-area-vital-signs-freeway-congestion-hits-new-record-0>.

³ TransForm and Housing Leadership Council of San Mateo County, "Moving San Mateo County Forward: Housing and Transit at a Crossroads," (June 2018), available at <http://hlscmc.org/wp-content/uploads/2018/06/HLC2018-MovingReport-v7web-1.pdf>.

As amended in 2014, the Surplus Land Act serves the express purpose of promoting affordable housing in the form of transit-oriented development:

The Legislature reaffirms its declaration of the importance of appropriate planning and development near transit stations, to encourage the clustering of housing and commercial development around such stations. . . . The sale or lease of surplus land at less than fair market value to facilitate the creation of affordable housing near transit is consistent with goals and objectives to achieve optimal transportation use. The Legislature also notes that the Federal Transit Administration gives priority for funding of rail transit proposals to areas that are implementing higher-density, mixed-use, and affordable development near major transit stations.” (Gov. Code § 54220(c).)

As the Legislature explained, “[s]tudies of transit ridership in California indicate that a higher percentage of persons who live or work within walking distance of major transit stations utilize the transit system more than those living elsewhere, and that *lower income households are more likely to use transit when living near a major transit station than higher income households.*” (*Id.*, emphasis added.)

In line with this goal, the Act empowers local agencies to “sell or lease surplus land at fair market value or at less than fair market value, and any such sale or lease at or less than fair market value . . . shall not be construed as inconsistent with an agency’s purpose.” (Gov. Code § 54226.) Reimbursement from the state may be available if this results in increased costs to the agency: “If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made” in accordance with state law. (A.B. 2135, § 8, as adopted.)

B. The Proposed Development Materially Conflicts with the Surplus Land Act

In recent months, local news publications have reported that Caltrain is negotiating with for-profit developer Sares Regis to build more than 180 housing units on a 2.7-acre parking lot site at the Hayward Park Caltrain Station.

One article about the planned development quoted a Caltrain board member as saying that “board members understand the importance of building more affordable housing along transit corridors.”⁴ The board member said he expected Caltrain to adopt a transit-oriented development policy requiring “10 to 20 percent” of housing units to be affordable for moderate-income families. In another news report, a transit official referred to the Hayward Park Station site as “low-hanging fruit” for the purpose of transit-oriented housing development, because it contains more than enough land for both housing and future railway use.⁵

⁴ “Caltrain Looks to Housing,” *San Mateo Daily Journal* (April 17, 2018) (https://www.smdailyjournal.com/news/local/caltrain-looks-to-housing/article_b1561a68-41f4-11e8-a29c-539edeb77316.html).

⁵ “Will Caltrain Finally Push for Housing Around Its Stations?” *San Francisco Business Times* (July 10, 2018) (<https://www.bizjournals.com/sanfrancisco/news/2018/07/10/caltrain-housing-around-stations-tod-peninsula.html>).

It is commendable for Caltrain to support the goal of developing affordable housing in proximity to transit stations, and compliance with the Surplus Land Act is wholly consistent with that goal. Caltrain's determination to make land it no longer needs for railway use available for housing means the land is clearly "no longer necessary for [Caltrain's] use" and is therefore surplus under the Surplus Land Act. (Gov. Code § 54221(b).)

Legislative history confirms that the Surplus Land Act applies to projects such as Caltrain's planned housing development at the Hayward Park Transit Station. According to the legislator who authored the 2014 amendments to the Act, the "right of first refusal" to organizations that propose including at least 25 percent affordable units was "especially critical in light of state and local priorities for transit oriented development. . . , [which] will provide valuable opportunities to create new affordable housing options within sustainable communities." (A.B. 2135, Assembly Floor Analysis (2014).)

Accordingly, any real estate that Caltrain elects to sell or lease for non-railway use is subject to the requirements of the Surplus Land Act. Caltrain is not at liberty to define its own affordability standards in consultation with a private developer of its choosing. Rather, it must follow the Surplus Land Act's formal procedures—requesting bids from developers that plan to include at least 25 percent affordable units, negotiating with them in good faith, and giving priority to the developer that proposes to build the greatest number of affordable units at the deepest level of affordability, even if that means leasing the land at a rate below fair market value.

These entities must be notified before Caltrain moves to dispose of any surplus land. The organizations identified by the county have not been contacted with an offer to propose affordable housing development on the Hayward Park site. Instead, Caltrain has entered into exclusive negotiations with Sares Regis without following any of the procedures that the Surplus Land Act requires. By failing to notify and enter into good-faith negotiations with affordable housing developers, Caltrain has breached its duties under the Surplus Land Act.

C. The Proposed Development Must Comply with Federal and State Fair Housing Law

Any housing development that Caltrain authorizes for the Hayward Park Station site must also comply with the federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968),⁶ California's Fair Employment and Housing Act (Gov. Code §§ 12900 et seq.),⁷ and California law prohibiting discrimination against affordable housing (*Id.* § 65008(b).) The failure to comply with the Surplus Lands Act results in a violation of each of these.

⁶ The federal Fair Housing Act prohibits any practice that "actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns. . . ." Department of Housing and Urban Development (HUD), Implementation of the Fair Housing Act's Discriminatory Effects Standard, 24 CFR 100.500(a).

⁷ California's Fair Employment and Housing Act (FEHA) makes it "unlawful . . . to discriminate through public or private land use practices, decisions, and authorizations" that have "the effect, regardless of intent, of unlawfully discriminating on the basis of [a] protected class." (Gov. Code § 12955.8(b).)

Renters in San Mateo County are disproportionately racial and ethnic minorities.⁸ Among lower-income renters in the county (those earning at or below the area median income), 84 percent are cost burdened, meaning they pay more than 30 percent of household income for rent. And 56% are severely cost burdened, paying more than 50 percent of household income for rent.⁹ They and other lower-income, disproportionately minority households are in desperate need of affordable housing in San Mateo County.

Any new housing development that does not include a percentage of affordable units as mandated by the Surplus Lands Act will reduce the amount of housing that would otherwise be available for lower-income households and therefore will likely have a disparate impact on people of color and individuals with disabilities, violating state and federal fair housing law.

In addition, by failing to prioritize affordable housing as required by the Surplus Land Act, Caltrain is in violation of California's law prohibiting public agencies from discriminating in housing decisions based on "[t]he method of financing of any residential development" or "[t]he intended occupancy of any residential development by persons or families of very low, low, moderate, or middle income." (Gov. Code § 65008.)

D. The Proposed Development Must Exceed the City of San Mateo's Below-Market-Rate Housing Program

In order to obtain planning approval in the City of San Mateo, any residential housing development of eleven or more units must reserve at least ten percent of the units as affordable for low- or moderate-income households. (City of San Mateo, Below Market Rate (Inclusionary) Program, § 3(a-b).)¹⁰ But because the Surplus Land Act clearly applies to Caltrain's planned development at Hayward Park Station, that Act's more stringent requirements must govern the total percentage of units that will be affordable for at least 55 years. Even if negotiations with a priority affordable developer are not successful, the Surplus Land Act requires that fifteen percent of the units be affordable. As a public agency with a stated goal of promoting affordable housing, Caltrain should aspire to provide even more than the legal minimum number of affordable units. In light of the housing and congestion crisis, fifteen percent is inadequate.

The inclusionary policy is designed to regulate market-rate development on private land. This may be one of the last sizeable areas adjacent to a station. It is publicly owned, and therefore there is an obligation to meet more than the minimum standard. Affordable homes are not abundant in San Mateo, and this site is ideal for affordable housing.

⁸ For example, while just 33% of white households are renters, 64% of Hispanic households and 65% of black households in San Mateo County are renters. U.S. Census Bureau, 2016 American Community Survey 5-Year Estimates, available at www.factfinder.census.gov.

⁹ HUD CHAS data, 2009–2013, available at https://www.huduser.gov/portal/datasets/cp/CHAS/data_querytool_chas.html.

¹⁰ Available at <https://www.cityofsanmateo.org/DocumentCenter/View/1808/Below-Market-Rate-Units-Inclusionary-Program>.

Peninsula Corridor Joint Powers Board of Directors
August 17, 2018


Page 6 of 7

E. Request for Compliance

We request that the Board of Directors act immediately to ensure that Caltrain is in full compliance with these laws as it pursues redevelopment of the Hayward Park Station site. Specifically, the Board should: 1) withdraw from exclusive negotiations with Sares Regis and 2) fully comply with the Surplus Land Act, state and federal fair housing law, and local affordable housing requirements when soliciting proposals and adopting plans for development of the site. If the Board adopts a policy in conflict with state, federal, or local law, we may be forced to seek appropriate relief in court.¹¹

By complying with these legal requirements, the Board will also demonstrate responsible stewardship of public land and promote a vision for Caltrain that supports inclusion and diversity as part of its approach toward sustainable, transit-oriented development. If you have any questions, or wish to discuss further our position in this matter, you can reach us directly at (650) 391-0375. We look forward to a timely resolution of this matter without resort to litigation.

Sincerely,

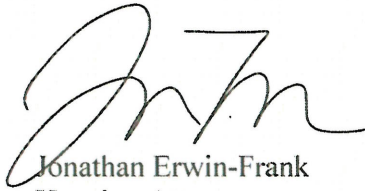


Rene Alejandro Ortega, Esq.
Senior Housing Attorney
Community Legal Services in East Palo Alto
1861 Bay Road
East Palo Alto, CA 94303
rortega@clsepa.org
(650) 391-0375

¹¹ Public agencies have faced high-profile lawsuits to compel compliance with the Surplus Land Act. In San Jose, residents and nonprofit housing organizations sued the city over its policy of promoting mostly luxury housing development in contravention of the Surplus Land Act. See "Housing Groups Sue San Jose, Saying Policy Shift 'Undercuts' State Affordable Housing Law," *Silicon Valley Business Journal* (July 22, 2016) (<https://www.bizjournals.com/sanjose/news/2016/07/22/housing-groups-sue-san-jose-saying-policy-shift.html>). In Inglewood, a coalition of residents has sued to challenge the city's entry into an exclusive negotiating agreement to construct a sports stadium on public land without following the Surplus Land Act's procedures. See "Inglewood Residents Sue to Block Clippers Arena," *Curbed Los Angeles* (June 20, 2018) (<https://la.curbed.com/2018/6/19/17480328/inglewood-lawsuit-clippers-arena-housing>). And the city of Oakland responded to public pressure by withdrawing a planned sale of public land for market-rate housing development, instead complying with the Surplus Land Act by soliciting proposals from developers of affordable housing. See "City of Oakland Finally Obeys Law; Offers Publicly Owned East 12th St. Land to Affordable Housing Developers," *East Bay Express* (July 16, 2015) (<https://www.eastbayexpress.com/SevenDays/archives/2015/07/16/breaking-news-oakland-finally-obeyes-law-offers-publicly-owned-east-12th-st-land-to-affordable-housing-developers>).

Peninsula Corridor Joint Powers Board of Directors
August 17, 2018

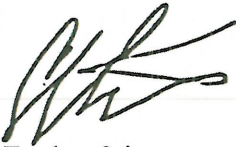
Page 7 of 7



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Michael Rawson
Director
Public Interest Law Project



Evelyn Stivers
Executive Director
Housing Leadership Council of San Mateo County



Victoria Fierce
Executive Director
California Renters Legal Advocacy and Education Fund

cc: San Mateo County Transit District
cc: California Department of Housing and Community Development

From: [Board \(@caltrain.com\)](mailto:Board (@caltrain.com))
To: derek.weber
Cc: [Board \(@caltrain.com\)](mailto:Board (@caltrain.com))
Subject: RE: Building Integrated Solar
Date: Friday, September 13, 2019 8:10:30 AM

Hello – thank you for the input, staff will review and contact you should there be any interest.

Regards,

Dora Seamans, MPA, CMC
Executive Officer/District Secretary
SamTrans, Executive Administration
1250 San Carlos Ave
San Carlos, CA 94070
Tel: 650-508-6242
Seamansd@samtrans.com

From: derek weber <derekweber@hanergyamerica.com>
Sent: Wednesday, September 11, 2019 8:22 AM
To: Board (@caltrain.com) <BoardCaltrain@samtrans.com>
Subject: Building Integrated Solar

To whom it may concern on the Board,

For a while I have noticed the architecture of the Millbrae station canopy roof and it has really stuck out to me. Recently, I have moved into a company that manufactures solar that is unique to traditional solar panels. Thin-film would be a perfect fit for much of the roof structures of the Millbrae station. The narrow and sleek panels can be adhered directly to the canopy portion of the roof and the steel roof covers on the perimeter of the property can be utilized for thin-film as well. Not sure if BART still owns the property, but this would be a great way to cut utility costs. Please let me know if interested if you can help point me in the right direction.

I've attached a brochure so you can see how our thin-film is unlike most solar technology. It becomes integrated with the roof and does not stand out as an eyesore.

Thank you,

Derek Weber – Sales Manager



Hanergy Thin Film Power America Inc.
1350 Bayshore Hwy Ste. 825, Burlingame, CA

From: [Caltrain_Bac \(@caltrain.com\)](mailto:Caltrain_Bac (@caltrain.com))
To: "Paul MacRory"; Nabong, Sarah
Cc: bikesonboard@sfbike.org; janice@sfbike.org; [Board \(@caltrain.com\)](mailto:Board (@caltrain.com)); Bartholomew_Tasha; [cacsecretary \(@caltrain.com\)](mailto:cacsecretary (@caltrain.com)); [Caltrain_Bac \(@caltrain.com\)](mailto:Caltrain_Bac (@caltrain.com))
Subject: RE: Bikes on Caltrain Comment
Date: Thursday, September 12, 2019 3:34:30 PM

Hi Paul,

Thanks for letting us know, and for the compliment on the site! We contacted the SF Bike Coalition and the link is now working. Caltrain values cyclists and supports bikes as an excellent first and last mile solution. With the most extensive onboard bicycle program among passenger railroads in the nation, Caltrain is continuously trying to improve service to all its riders. Again, we thank you for taking the time to contact us!

Best,
Lori

From: Paul MacRory [mailto:pmacro@icloud.com]
Sent: Wednesday, July 24, 2019 5:05 PM
To: Nabong, Sarah
Cc: bikesonboard@sfbike.org; janice@sfbike.org; [Board \(@caltrain.com\)](mailto:Board (@caltrain.com)); Bartholomew_Tasha; [cacsecretary \(@caltrain.com\)](mailto:cacsecretary (@caltrain.com)); [Caltrain_Bac \(@caltrain.com\)](mailto:Caltrain_Bac (@caltrain.com))
Subject: Bikes on Caltrain Comment

Hi,

Just wanted to report that the link to the Caltrain bike rules is broken: http://www.caltrain.com/riderinfo/Bicycles/Bicycle_General_Info.html

This is linked from: <https://sfbike.org/resources/bikes-transit/>

Thanks for an otherwise great site!

Thanks,
Paul

From: Wendy Storer
To: [Board \(@caltrain.com\)](mailto:Board@caltrain.com)
Subject: Re: 25th rr crossing
Date: Friday, September 13, 2019 9:16:59 AM

Thank you for your response. I will continue to stop and look prior to crossing until construction complete.

> On Sep 13, 2019, at 10:39 AM, Board (@caltrain.com) <BoardCaltrain@samtrans.com> wrote:

>

> Dear Ms. Storer,

>

> Thank you for your email. Caltrain is committed to safety on the railroad, including all intersections that allow pedestrians, bikes and vehicles to cross the tracks. The 25th Avenue intersection is under construction with the Grade Separation Project and is subject to configuration changes throughout the construction process. Caltrain understands that this changing environment can confuse drivers when vehicles are travelling over the railroad crossings at 25th Avenue. This can be an extremely congested intersection during commute times.

>

> Throughout this project, Caltrain staff will continually assess and implement improvements at this crossing to improve and maintain safety for traffic through the crossing. The ultimate solution is to complete the project which would allow car, bike and pedestrian traffic to be separated from trains.

>

> Kind Regards,

>

> Dora Seamans, MPA, CMC

> Executive Officer/District Secretary

> SamTrans, Executive Administration

> 1250 San Carlos Ave

> San Carlos, CA 94070

> Tel: 650-508-6242

> Seamansd@samtrans.com

>

>

> -----Original Message-----

> From: Wendy Storer <wendystorer@comcast.net>

> Sent: Sunday, September 8, 2019 11:37 AM

> To: Board (@caltrain.com) <BoardCaltrain@samtrans.com>

> Subject: 25th rr crossing

>

> The other night I sat thru 2 different railings down and lights on for 5 minutes each and no train! Then the next night someone gets hit by train?? Are they working properly? It's very confusing where to stop and then you get close and you have this bright construction light shining on you that looks like train light. Hopefully you all can fix so no one gets killed!! According to next door it happens a lot along tracks in San Mateo. I now stop and look before I go because I don't trust it and that's the feeling of a lot of neighbors. Thanks for listening

>

From: [Board \(@caltrain.com\)](mailto:Board (@caltrain.com))
To: Miller, Christopher, Mr, DCAA
Cc: [Board \(@caltrain.com\)](mailto:Board (@caltrain.com))
Subject: RE: Request for Confirmation of DCAA POC
Date: Friday, September 13, 2019 8:34:48 AM

Dear Mr. Miller,

This is to confirm receipt of your email to the Board and advise that our organization does not have any defense contracts.

Regards,

Dora Seamans, MPA, CMC
Executive Officer/District Secretary
SamTrans, Executive Administration
1250 San Carlos Ave
San Carlos, CA 94070
Tel: 650-508-6242
Seamansd@samtrans.com

-----Original Message-----

From: Miller, Christopher, Mr, DCAA <Christopher.Miller@dcaa.mil>
Sent: Friday, September 13, 2019 7:49 AM
To: Board (@caltrain.com) <BoardCaltrain@samtrans.com>
Subject: Request for Confirmation of DCAA POC

Hello. I am a Financial Liaison Advisor with DCAA, specializing in non-DoD Governmental agencies. The latest information we have is there is no primary person with Caltrain to contact for DCAA audit participation invitations. The purpose of this correspondence is to establish a good POC for this reason.

Please let me know who is the best person for that.

Thanx, in advance, for your help.

Chris Miller
Financial Liaison Advisor
Defense Contract Audit Agency
DLA Land & Maritime, DFAS - Columbus Ohio, DOE, and NASA
Phone: (614) 692-1635 VOIP: (571) 448-4170

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