



JPB Board of Directors  
(Board Meeting of February 6, 2020)

Correspondence as of January 24, 2020

#	<u>Subject</u>	#
1	Proposed TOD Policy	1
2	Invitation to Sea Level Rise State Assembly Hearing	2

**From:** Jonathan Erwin-Frank  
**To:** [Board \(@caltrain.com\)](mailto:Board (@caltrain.com))  
**Cc:** [Stone, Charles \[cstone@belmont.gov\]](mailto:Stone.Charles [cstone@belmont.gov]); [Brinkman, Cheryl \[cheryl.brinkman@gmail.com\]](mailto:Brinkman.Cheryl [cheryl.brinkman@gmail.com]); [Chavez, Cindy \[cindy.chavez@bos.sccgov.org\]](mailto:Chavez.Cindy [cindy.chavez@bos.sccgov.org]); [assemblymember.mullin@assembly.ca.gov](mailto:assemblymember.mullin@assembly.ca.gov); [connie.chan@asm.ca.gov](mailto:connie.chan@asm.ca.gov); [assemblymember.berman@assembly.ca.gov](mailto:assemblymember.berman@assembly.ca.gov); [ruth.ferguson@asm.ca.gov](mailto:ruth.ferguson@asm.ca.gov); [senator.hill@sen.ca.gov](mailto:senator.hill@sen.ca.gov); [alex.kobayashi@sen.ca.gov](mailto:alex.kobayashi@sen.ca.gov); [assemblymember.ting@assembly.ca.gov](mailto:assemblymember.ting@assembly.ca.gov); [alex.walker@asm.ca.gov](mailto:alex.walker@asm.ca.gov); [Fitzpatrick, Brian](#); [Epstein, Jessica](#); [Mike Rawson](#)  
**Subject:** For 1.22.20 WPLP Committee Meeting - Comment Letter Re Proposed TOD Policy  
**Date:** Wednesday, January 22, 2020 12:20:27 PM  
**Attachments:** [CLSEPA, PILP Comment Letter re Proposed TOD Policy 1.22.20.pdf](#)

---

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,

--

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

**Community Legal Services in East Palo Alto**

[www.clsepa.org](http://www.clsepa.org)

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

1861 Bay Road | East Palo Alto, CA 94303



COMMUNITY  
LEGAL SERVICES  
IN EAST PALO ALTO



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

---

<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.

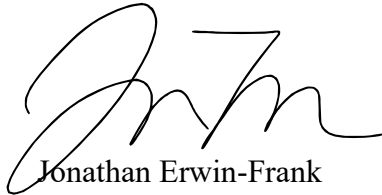
As noted, California’s lawmakers have reaffirmed their commitment to public land for public good by clarifying and strengthening to state mandate of the Surplus Land Act. In her letter to you dated December 2, 2019, Congresswoman Jackie Speier stated her belief that “public lands should be used to create 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.

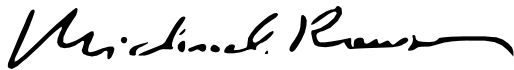
Caltrain should view the requirements of the Surplus Land Act as a baseline, and adopt a stronger policy, including:

- 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.



Jonathan Erwin-Frank  
Housing Attorney  
Community Legal Services in East Palo Alto  
1861 Bay Road  
East Palo Alto, CA  
94303 [Jonathan.Erwin-Frank@clsepa.org](mailto:Jonathan.Erwin-Frank@clsepa.org) (650)  
391-0360



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

**From:** Ong, Carol  
**To:** [Board \(@caltrain.com\)](mailto:Board@caltrain.com)  
**Subject:** Invitation to Sea Level Rise State Assembly Hearing in Foster City, Feb. 7, 2020  
**Date:** Thursday, January 23, 2020 2:34:09 PM  
**Attachments:** [oledata.mso](#)

---

Dear Friend:

Assemblymembers Kevin Mullin and Tasha Boerner Horvath cordially invite you to attend an informational hearing on sea level rise and its impacts on coastal cities on **Friday, February 7, 2020 at the Foster City Council Chambers, 610 Foster City Boulevard from 1:30 to 3:30 pm.**

The Assembly Select Committee on Sea Level Rise & the California Economy chaired by Assemblymember Horvath is interested in learning about the regional, social, economic, and environmental challenges your local communities are experiencing with sea level rise.

California is already feeling the impacts of climate change. Coastal communities across the state are experiencing the effects of sea-level rise, including high tides, strong storm surges, coastal flooding, sand erosion, and bluff collapses. California's coastline could experience as much as 7 feet of sea-level rise by 2100, which will have extensive and expensive impacts on the state's residents, economy, and natural resources. Most responsibility for preparing for and responding to these threats lies with local coastal communities. Yet despite the significant threats and compelling reasons to take action now, many coastal communities still are only in the early stages of preparing for sea-level rise.

**Please RSVP to [Carol.Ong@asm.ca.gov](mailto:Carol.Ong@asm.ca.gov) by Wednesday, February 5, 2020 by 5 pm.**

Sincerely,

Carol Ong  
*Office of Assembly Speaker pro Tempore, Kevin Mullin*  
1528 S. El Camino Real, Suite 302  
San Mateo, CA 94402  
(650) 349-2200  
(650) 341-4676 fax  
[Carol.Ong@asm.ca.gov](mailto:Carol.Ong@asm.ca.gov)





**TASHA** ASSEMBLY  
MEMBER  
District 76  
**Boerner Horvath**



*Assemblymember Tasha Boerner Horvath, Chair of the  
Select Committee on Sea Level Rise and the California Economy and  
Assemblymember Kevin Mullin cordially invite you to attend an  
informational hearing on*

**SEA LEVEL RISE AND ITS IMPACTS ON COASTAL CITIES**

*Friday, February 7, 2020*

*Foster City Council Chambers*

*610 Foster City Boulevard*

*1:30 to 3:30 pm*

For more information about the hearing, or to RSVP, please contact Assemblymember Mullin's District Office in San Mateo at (650) 349-2200.

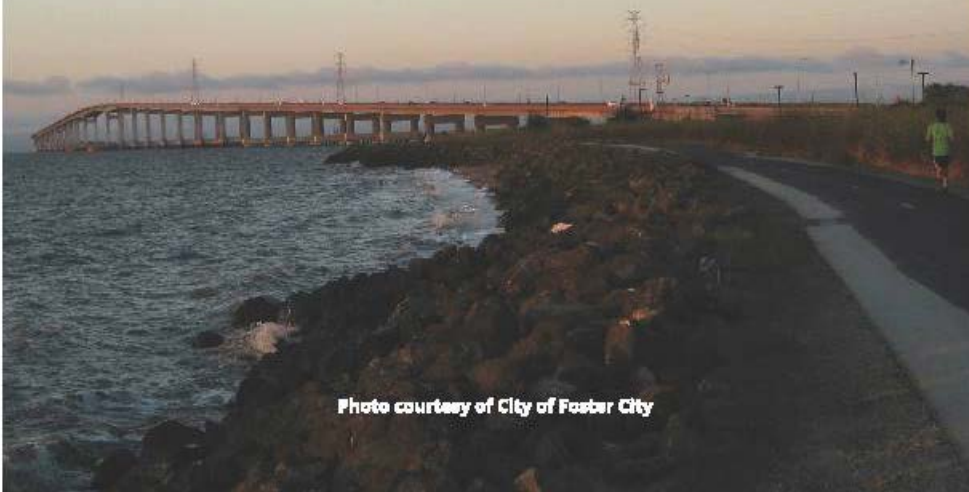


Photo courtesy of City of Foster City