Assembly Bill 2923 Development Principles

PURPOSE

To request that the Board of Directors adopt a set of guiding principles for BART’s transit-oriented development (TOD) activities in light of changes to land use law as a result of the passage of Assembly Bill 2923 (2018, Chiu/Grayson).

DISCUSSION

On September 30, 2018, Governor Jerry Brown signed Assembly Bill 2923 (AB 2923), which added Sections 29010.1, 29010.6, 29010.7, 29010.8, 29010.9, 29010.10, 29010.11, and 29010.12 to the Public Utilities Code (PUC). These statutes require local jurisdictions to rezone certain BART-owned properties in Alameda, Contra Costa, and San Francisco counties to support transit-oriented development (TOD). The statutes enacted by AB 2923 also requires the BART Board of Directors to adopt travel demand management (TDM) requirements as well as a parking replacement policy. Other provisions of State law, including planning and zoning provisions in the Government Code, enable developers, including some of BART’s developer partners, to pursue streamlining of their development proposals if they meet certain labor, land use, and affordability conditions.

PUC Section 29010.6 directs the BART Board of Directors to adopt zoning standards establishing minimum zoning requirements for height, density, parking and floor area ratio. The law provides that if the new standards are not adopted by July 1, 2020, Table 1 and Figure 1 of the BART TOD Guidelines (2017) shall serve as the TOD zoning standards. At
the June 13, 2019 meeting of the BART Board, staff recommended that the Board not adopt new zoning standards, but instead allow Table 1 and Figure 1 to become the zoning standards.

Since the AB 2923 legislation was signed by the governor in 2018, BART Staff have conducted extensive analysis of the law, engaged with staff from 22 jurisdictions affected in some way by BART’s TOD program, and have given presentations to City Councils upon their request. Staff have also met with regional and community advocacy groups in the land use, environmental, affordable housing, and community development fields. All these stakeholders were invited to participate in three stakeholder working groups over the last year, and BART has hosted public webinars at each key milestone in the process. The BART Board discussed implementation of AB 2923 four times during its regular meetings. This engagement and analysis culminated in BART’s release of two draft documents: A Technical Guide to Zoning for AB 2923 Conformance, and BART’s Transit-Oriented Development Work Plan.

This engagement and analysis illuminated four key areas where additional policy direction is needed from the BART Board of Directors:

A. When and how BART will prioritize sites for development;
B. How to balance regional housing and climate goals with local interests;
C. How to address building design in situations where AB 2923 overrides local design requirements; and
D. Required policy direction from the Board under AB 2923 on TDM and parking.

The attached draft AB 2923 Development Principles (Principles) are intended to address these areas of concern, while also complementing existing Board-adopted policies that affect TOD, including the TOD Policy, Affordable Housing Policy, Project Stabilization Agreement Policy, and Station Access Policy. The TOD and Station Access Policy are also attached.

The other referenced policies are available online at https://www.bart.gov/about/business/tod/guidelines.

Staff presented a draft of these Principles at the July 23, 2020 Board meeting, and have made modifications to the Principles based on feedback received at this meeting. A redlined draft of this document is attached to more easily illustrate the changes made since July 23.

**FISCAL IMPACT**

There is no direct anticipated fiscal impact resulting from adoption of the Principles. The Principles will guide how BART makes use of currently allocated resources supporting its Transit-Oriented Development program. However, some elements of the Principles guide BART’s long term willingness to invest in projects requiring major capital investments, which has an impact on the types of TOD projects BART will advance.
ALTERNATIVES

1. Do not adopt the AB 2923 Development Principles.
2. Adopt a modified version of the AB 2923 Development Principles.

RECOMMENDATION

Adopt the attached AB 2923 Development Principles.

MOTION:

The BART Board hereby adopts the Principles.
Assembly Bill 2923 Development Principles

The following guidance from the BART Board of Directors supplements existing Board-adopted policies guiding transit-oriented development, and focuses on key areas of concern that have emerged through BART’s implementation of Section 29010 of the California Public Utilities Code (i.e. Assembly Bill 2923 – Chiu/Grayson, 2018).

A. Prioritize TOD projects that cost effectively implement BART’s Transit-Oriented Development (TOD) related policies.

A1. BART will prioritize projects that best meet BART’s adopted policies and performance standards

BART will favor projects that cost-effectively deliver on its six TOD policy goals and associated performance targets. BART will not prioritize projects requiring major infrastructure costs - such as major structural work to protect the BART system, high levels of on-site parking replacement, or substantial station modernization - if those costs cannot be paid for through the development deal or available external resources.

A2. BART’s TOD projects will address the regional jobs-housing imbalance

Creating more jobs near BART in the East Bay will alleviate regional congestion and create a more balanced, sustainable ridership pattern for BART. BART will strategically reserve TOD sites that demonstrate long-term economic competitiveness for job-generating uses with adequate land reserved to meet its 2040 goal of building 4.5 million square feet of commercial space, at a minimum. Staff will develop a proactive strategy to encourage creation of high quality, career-ladder jobs on these properties. This strategy will consider potential incentives to encourage nonresidential construction.

B. Work in partnership with local jurisdictions and communities to deliver regionally impactful TOD projects.

B1. BART will focus on TOD projects in jurisdictions demonstrating support for development

BART will only initiate TOD projects in jurisdictions interested in transit-oriented development on BART property. Once initiated, projects will be seen through to completion barring uncontrollable financial or economic fluctuations. That BART’s TOD projects will conform to locally adopted goals and objectives for TOD identified in local specific plans or other efforts, so long as zoning of BART property allows for densities and heights that are the highest possible under local economic and funding conditions, and are consistent with Plan Bay Area and the Regional Housing Needs Allocation. BART staff will work with jurisdictions to ensure BART-owned property is only included in local housing elements if the jurisdiction has expressed intent to support BART in its development during the term of that housing element.

B2. BART’s TOD projects will involve meaningful engagement with local communities

BART is committed to meaningful and sustained engagement with all local communities in planning and delivering its TOD projects – especially low-income communities of color. BART will build income-
diverse, transit-rich neighborhoods that protect and serve vulnerable low-income neighbors and reflect the diverse cultural fabric of the Bay Area.

C. BART will work with jurisdictions to incorporate local design standards that result in TOD projects that follow global best practices in design, access and scale.

C1. BART’s TOD projects will honor local design requirements, so long as those requirements support world class TOD

AB 2923 may, in some cases, diminish the requirement for developers to adhere to certain local design requirements. If a jurisdiction shares BART’s commitment to regional climate, housing, and equity goals - as evidenced by zoning BART property for the highest feasible density, use and height - BART commits to encouraging consistency with that jurisdiction’s objective design standards in its development agreements, to deliver feasible, high quality, context-appropriate design.

C2. BART will foster safe, engaging and vibrant public spaces on and beyond BART property

BART will strive to anchor its TOD projects with inviting, vibrant civic spaces that provide flexible areas for a range of activities and instill a sense of pride and belonging for diverse communities. These spaces will be activated by locally owned businesses and community-based anchors. Safe, universally accessible streets that prioritize walking and biking will seamlessly connect people to BART stations as well as other key destinations and neighborhood amenities.

D. Encourage sustainable mobility for residents, workers, visitors and BART customers

D1. Developers will adhere to BART’s travel demand management (TDM) requirements

BART’s travel demand management (TDM) requirements will encourage reduction of drive-alone trips from TOD projects, in favor of walking, bicycling, transit, and/or carpooling/vanpooling. TDM requirements will encourage developer participation in district-based strategies to support enhancements in the surrounding area such as transit connectivity to BART. Developers will regularly monitor compliance with BART’s TDM requirements and participate in travel behavior reporting.

D2. BART patron parking replacement will be guided by BART’s Board-adopted transit-oriented development and station access policies and the station access typology.

Decisions about parking replacement levels will be made through a robust station access study, as often required by AB 2923, and will adhere to the station access typology and investment framework developed for the 2016 Board-adopted Station Access policy.
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A1. BART will prioritize projects that best meet BART’s adopted policies and performance standards.

BART will favor projects that cost-effectively deliver on its six TOD policy goals and associated performance targets. BART will not prioritize projects requiring major infrastructure costs. Exceptions will only be made if the benefits - such as major structural work to protect the BART system, high levels of on-site parking replacement, or substantial station modernization - if those costs cannot be paid for through the District and region are significant, and if outside investment or development deal or available to address these additional costs. external resources.

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diverse, transit-rich neighborhoods that protect and serve vulnerable low-income neighbors, and reflect the diverse cultural fabric of the Bay Area.

**C. BART will work with jurisdictions to incorporate local design standards in order to create vibrant, safe, well-designed TOD Projects that result in TOD projects that follow global best practices in design, access and scale.**

C1. BART’s TOD projects will honor local design requirements and local context, so long as those requirements support world class TOD

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D2. BART patron parking replacement will be guided by BART’s Board-adopted transit-oriented development and station access policies and the station access typology.

Decisions about parking replacement levels will be made through a robust station access study, as often required by AB 2923, and will be informed by adhering to the station access typology and investment framework developed for the 2016 Board-adopted Station Access policy. BART will publish a framework offering clarity on BART’s approach to accommodating BART access in TOD projects from all modes of transportation.
VISION

The San Francisco Bay Area Rapid Transit District (BART) is a steward of a large scale public investment. This includes real estate assets essential to BART’s transit operations, and real estate assets that can be used to catalyze transit-oriented development in furtherance of BART’s purpose and goals. BART leverages these opportunities by working in partnership with the communities it serves in order to implement the regional land use vision and achieve local and regional economic development goals. Strengthening the connections between people, places, and services enhances BART’s value as a regional resource.

GOALS

A. **Complete Communities.** Partner to ensure BART contributes to neighborhood/district vitality, creating places offering a mix of uses and incomes.

B. **Sustainable Communities Strategy.** Lead in the delivery of the region’s land use and transportation vision to achieve quality of life, economic, and greenhouse gas reduction goals.

C. **Ridership.** Increase BART ridership, particularly in locations and times when the system has capacity to grow.

D. **Value Creation and Value Capture.** Enhance the stability of BART’s financial base by capturing the value of transit, and reinvesting in the program to maximize TOD goals.

E. **Transportation Choice.** Leverage land use and urban design to encourage non-auto transportation choices both on and off BART property, through enhanced walkability and bikeability, and seamless transit connectivity.

F. **Affordability.** Serve households of all income levels by linking housing affordability with access to opportunity.

STRATEGIES

A. **Manage Resources Strategically to Support Transit-Oriented Development**

1. Develop a 4-Year Work Plan to assess how staff and financial activities toward TOD will be most fruitful. Identify BART staffing priorities and assignments to promote TOD on and around District property, including contributions to efforts such as planning and development, community engagement, funding and financing strategies.

2. Favor long-term ground leases of no more than 66 years, rather than sale of property, as the standard disposition strategy for joint development projects, except in cases where alternative approaches are required to achieve specific development objectives (e.g., Low Income Housing Tax Credit-funded affordable housing, requiring a ground lease term of no less than 75 years), or where other strategies would generate greater financial return to the District.

3. Solicit proposals for transit-oriented development in localities that have an adopted plan allowing for transit-supportive land uses as defined in the TOD Guidelines. Utilize a competitive selection process but ensure the solicitation process considers property assembly with adjacent land owners for optimal TOD.
4. Develop a procedure that will allow BART to respond to unsolicited proposals for property development on BART-owned land. Although BART does not encourage unsolicited proposals, they can be a valuable means for BART to partner with local communities and/or the development community to produce innovative or unique developments that deliver benefits in excess of what is typically provided by the market.

5. Revisit the Transit-Oriented Development Policy every 10 years.

B. Support Transit-Oriented Districts
   1. Proactively support local jurisdictions in creating station area plans and land use policies that: a) encourage transit-supportive, mixed-use development on and around station properties, b) enhance the value of BART land, and c) enhance the performance of the BART system as a whole.

   2. Form partnerships with public agencies, developers and landowners, community development organizations, finance entities, and consider strategic land acquisition to help build TOD both on and off BART property.

   3. For BART system expansion, ensure that transit-oriented development and value capture opportunities are explicitly accounted for in major investments such as the location of new station sites, design and construction of station facilities, and acquisition of new properties.

C. Increase Sustainable Transportation Choices using Best Practices in Land Use and Urban Design
   1. Utilize BART’s TOD Guidelines to ensure future development and investments seamlessly connect BART stations with surrounding communities.

   2. Ensure that combined TOD/parking/access improvements on and around each BART station encourage net new BART ridership, utilizing corridor-level, shared, and off-site approaches to parking replacement as appropriate. Following the aspirational Station Access Policy place types, use the following guidelines to replace current BART parking as follows when developing BART property with TOD: strive for no or limited parking replacement at “Urban with Parking” Stations; and use the access model to maximize revenue to BART from development and ridership when determining a parking replacement strategy at all station types.

   3. Utilize strategies including mixed-use development, transportation demand management, and pedestrian-friendly urban design to encourage reverse-commute, off-peak, and non-work trips on BART and other modes of non-auto transportation, thereby reducing greenhouse gas emissions.

D. Enhance Benefits of TOD through Investment in the Program
   1. Evaluate the financial performance of proposed projects based on sound financial parameters and the ability to generate transit ridership, fare revenue, lease payments, parking revenues, grant resources, other financial participation, and/or cost savings. Consider the opportunity cost to the District of delaying or accelerating development opportunities.

   2. Use a variety of financing and governance mechanisms, including joint powers authorities, assessment districts, improvement districts, and lease credits to achieve station area TOD objectives.

   3. As appropriate, and in consideration of District-wide financial needs, reinvest revenues from the sale and lease of BART land into the TOD Program, informed by the priorities identified in the 4-Year Work Plan.
E. Invest Equitably

1. Increase scale of development at and near BART stations through catalytic investments in TOD, to help address the regional shortfall in meeting housing and other sustainable growth needs.

2. Implement BART’s adopted Affordable Housing Policy and aim for a District-wide target of 35 percent of all units to be affordable, with a priority to very low (<50% AMI), low (51-80% AMI) and/or transit-dependent populations. To aid in achieving BART’s 35% affordability goal, provide up to a 60 percent discount in ground lease for projects with at least 35% affordable housing (30% for projects with a high rise). Establish a framework for varying the eligible project discount based on the depth of affordability of the deed-restricted housing units, the demonstrated need for discounted ground rent, and efforts to benefit BART in other ways.

3. Pursue state, regional, and philanthropic partnerships that alleviate and prevent homelessness through production of affordable housing. BART’s property will be offered at a greater discount if matched with regional-scale, external funding commitments for housing and homelessness.

4. Ensure the 4-Year Work Plan addresses how BART will achieve its affordable housing goals.