COMMUNITY LEGAL SERVICES IN EAST PALO ALTO

HOUSING LEADERSHIP COUNCIL

PUBLIC INTEREST LAW PROJECT

CaRLA

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.

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://hlcsmc.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.

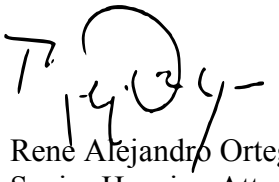
[10] Available at https://www.cityofsanmateo.org/DocumentCenter/View/1808/Below-Market-Rate-Units-Inclusionary-Program.

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.

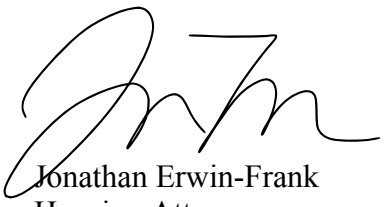
Sincerely,



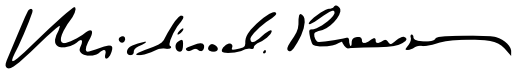
Rene Alejandro Ortega, Esq.
Senior Housing Attorney
Community Legal Services in East Palo Alto
1861 Bay Road
East Palo Alto, CA 94303
rortega@clsepa.org
(650) 391-0375

---

[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-obeys-law-offers-publicly-owned-east-12th-st-land-to-affordable-housing-developers).



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



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