



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL:		DocuSigned by: <i>Michael Jones</i> 47000790F2D7463...	GENERAL MANAGER ACTION REQ'D: N/A		
DATE: 4/13/2026		4/16/2026	BOARD INITIATED ITEM: No		
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Amend TOD Policy to Establish SLA Portfolio and Make Declaration of Exempt Surplus Land.

PURPOSE:

To amend the BART Transit Oriented Development Policy to add language establishing a Surplus Land Act portfolio that complies with statutory requirements, and to declare the land in the portfolio to be exempt surplus land.

DISCUSSION:

California’s Surplus Lands Act (“SLA”) is intended to increase the supply of land that is available for development of affordable housing by imposing a process on public agencies, including transit, for the disposition of public land that is no longer necessary for agency use.

Under the SLA, if a local agency intends to “dispose” of real property, either by sale or by a lease with a term of fifteen or more years, then the agency must declare the land to be either “surplus land” or “exempt surplus land” prior to taking action to lease or sell the land. The disposition of “surplus land” triggers a number of potentially burdensome requirements, including issuing a detailed “notice of availability,” engaging in good faith negotiations with any housing sponsors interested in the land, and obtaining approval from California Department of Housing and Community Development (“HCD”). By contrast, disposal of “exempt surplus land” does not trigger the foregoing requirements. Legislation adopted in 2023 amended the SLA to include a pathway for transportation agencies to adopt a policy applying to a portfolio of land it owns that will be disposed in compliance with certain requirements as detailed below, and to declare the land within that portfolio to be exempt surplus land. This “Portfolio Exemption” continues to commit a transit agency to developing affordable housing, while allowing the agency to develop a portion of the land in the



portfolio for commercial or industrial uses for the purposes of generating revenue, if the agency meets certain conditions.

By pursuing a Portfolio Exemption, BART would benefit in two ways:

- Streamlined compliance: Instead of bringing individual projects to the BART Board to declare them exempt surplus property, the Board would take a single action that declares the land in the portfolio to be exempt surplus property.
- Future flexibility with regard to uses: The Portfolio Exemption would allow BART to develop land for non-residential uses for the purposes of generating revenue, if the agency meets certain conditions relating to affordable housing. While non-residential uses are not currently a viable use for most of BART's developable land, conditions are likely to change over time. A portfolio exemption would give BART the flexibility to pursue non-residential transit-oriented uses when they become viable.

The following conditions must be met in order for a transportation agency to utilize the portfolio exemption:

1. 50% of the land covered by the policy must be utilized for residential purposes. Additionally, the policy must require the development of at least 300 residential units, or at least 10 residential units per gross acre, across all land covered by the policy, whichever is greater.

The vast majority of BART's TOD development has been residential, with 4,232 residential units to date. BART's portfolio will exceed the minimums established in the legislation. The pipeline of BART's active project includes 3,859 new homes. While BART may pursue non-residential development in the future at select sites where and when there is a market for such uses, the anticipation is that the majority of BART's TOD production will be residential. Additionally, BART's TOD Guidelines set minimum allowable density at 75 dwelling units per acre across the District.

2. The policy must require that a minimum of 25% of all residential units to be developed on land covered by the policy be for lower-income households for a minimum of 55 years for rental housing or 45 years for ownership housing at affordable price or rent. The terms must be contained in a covenant or restriction recorded against the land.

BART's Affordable Housing Policy requires that 20% of the units in residential transit-oriented development projects be affordable to lower-income households. The Affordable Housing Policy also sets a portfolio-wide target of 35% affordable housing production. BART's current policy exceeds the SLA portfolio threshold of 25% affordable across the portfolio. BART's ground lease terms exceed the 55 years identified in the statute.

3. Land disposed of for residential purposes must be disposed of pursuant to a competitive solicitation process. All local public entities having jurisdiction over the property, as well as all interested Housing Sponsors (defined in Section 50074 of the Health and Safety Code) must be invited to participate.

BART's current TOD Policy requires a competitive selection process to select developers for TOD sites.

4. Prior to entering into an agreement for non-residential development uses, the agency, since January 1, 2020, must have entered into agreement(s) to dispose of at least 25% of the land designated for affordable housing as set forth in item 2 above.

To ensure compliance with the statutory requirements for the Portfolio Exemption, the Board is being asked to approve an amendment to the current Transit-Oriented Development Policy ("TOD Policy"), which was originally adopted in June, 2016, and amended in April, 2020. The amendment would establish a portfolio of properties, and require that disposition of those properties be conducted in a manner that complies with the above-listed requirements. A redline of the TOD Policy, highlighting the changes discussed above, is attached to this EDD as Attachment 1.

FISCAL IMPACT:

While the action itself has no revenue impact, the long-term flexibility to pursue non-residential land uses on BART land provides the potential revenue benefits to BART. Additionally, time savings from this streamlined approach provide modest cost savings for BART.

ALTERNATIVES:

Do not amend the TOD Policy to incorporate Surplus Lands Act compliance language; instead, continue to take action on certification for each project or site.

RECOMMENDATION:

It is recommended that the Board approve the following motions.

MOTION:

1. The BART Board of Directors hereby adopts the Amended Transit-Oriented Development Policy in the form shown in Attachment 2, which shall supersede the previously adopted Transit-Oriented Development Policy.

2. The BART Board of Directors hereby finds that disposition of the property included in the portfolio established by Strategy F.1 of the Transit-Oriented Development Policy in accordance with the provisions of Strategy F.2 will comply with the requirements of Government Code section 54221(f)(1)(S), and hereby declares the property included within that portfolio to be exempt surplus land pursuant to Government Code Section 54221(b).