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July 13, 2020

6 pages via email to:
tepamendment@alamedactc.org
and vlee@alamedactc.org

Hon. Pauline Russo Cutter, Chair, and Members
Alameda County Transportation Commission (ACTC)
1111 Broadway, Suite 800
Oakland, CA 94607

RE: Sierra Club Comments in Opposition to Proposed ACTC TEP Amendment and Actions regarding "Valley Link" Rail

Dear Chair Cutter and Commissioners:

Based on the reasons outlined in this letter and in our previous correspondence and public comments, the Sierra Club opposes the actions proposed by the Alameda County Transportation Commission (hereinafter ACTC or Commission) at your meeting of May 28, 2020, regarding the "Valley Link" rail project. We further recommend that no action be taken on these matters for the foreseeable future, at least until after completion of a full Environmental Impact Report (EIR) process and other related documentation, and until there is a return to financial stability for Measure BB sales tax funds.

Given the dearth of substantive information on the proposed project itself, and the uncertainty regarding local, regional, and state financial revenues, the Sierra Club does not currently express a position regarding the actual project, since that would be objectively premature pending much more documentation and analysis for both decisionmakers and the public. We urge the Commission to follow this example. In the meantime, on behalf of our more than 13,500 members in Alameda County, we offer the questions and concerns below.

How can there be a "comment period" without published public notice, especially given the critical information that ACTC has omitted from sharing with its Commissioners?

Implementing Guideline #4 of the 2014 Transportation Expenditure Plan (TEP) for Measure BB states in part "All jurisdictions within the county will be given a minimum of 45 days to comment on any proposed Plan amendment." We understand that

information regarding the proposed amendments and process was sent to Alameda County jurisdictions, but we have been unable to find any notice, anywhere on the ACTC website, notifying the public of this voter-approved opportunity, or of its parameters. How are members of the public supposed to know how to communicate with their elected representatives so that timely and informed comments by the jurisdictions can be submitted?"

This appears to be a serious breach of the intent of proper government procedure, even during the current pandemic circumstances. Such an apparent opposition to public transparency is not likely to engender taxpayer support for any future requests by ACTC to voters. We have tried in this letter to identify several key issues that are not addressed adequately, if at all, in the ACTC correspondence, so that Commissioners can have a more informed basis for their consideration when they are requested to act.

Further, we request that all comments by jurisdictions be posted on the ACTC website by the end of July 2020, so that the public can communicate on this matter with their elected officials.

What is the potential/expected impact on other transit recipients in Alameda County if Valley Link is approved as a new agency that is eligible for Measure BB funds, including for operations?

We have previously asked this question, but received no response. It must be answered with regard to the "Direct Local Distribution" (DLD) formula, as well as for the capital request. Director Joel Young of the AC Transit Board asked a similar question during an ACTC presentation to their agency, but unfortunately, a direct response was not provided then either. Does the selective omission of Valley Link in the "redlined" Appendix C of the May 28 materials mean that Valley Link will <u>not</u> be an eligible recipient under the Category of "Transit: Operations, Maintenance, and Safety Program"? Please respond directly to this question.

The entire package of proposed actions is premature before completion of a full Environmental Review process, which is necessary to determine the viability, appropriateness, and environmental impact of the proposed project.

This essential analysis is already a year delayed in its schedule, so neither the public nor regulatory agencies can identify the potential impacts of the proposed project, any mitigations needed, or any potential benefits or harms.

The 2019 "Feasibility Report" required by AB 758 (Eggman/Baker) was little more than a compilation of previous presentations to the Valley Link Board, with no independent analysis, and seriously lacking in objectivity. <u>The "Feasibility Report" is not a "Viability Report</u>." We note that current financial reports and projections for two of the most recent new rail systems in the country (SMART and Sound Transit), which were implemented with assistance of Valley Link's consultants, have identified significant shortfalls into the foreseeable future. What reason is there to believe that Valley Link will fare any differently?

There is no valid reason for ACTC Commissioners to rush into the proposed actions until the project is better understood and documented for the County's voters, and for ACTC itself.

Current financial projections and analyses identify significant shortfalls in sales tax revenues at all levels for the foreseeable future – How can ACTC responsibly commit $400 million under these circumstances?

ACTC's Finance and Administration Committee most recently met on May 11th, with sales tax revenue data as of March and thereby not reflecting coronavirus and related "shutdown" conditions and impacts. Presentation materials from that meeting project only modest reductions in sales tax revenues, and clearly need updating.

Please identify your responses below both with, and without, the impact of ACTC approval of the proposed Valley Link actions:

- What are the current estimates and projections for Measures B and BB revenues (for at least the next 5 years), and as compared to previous actuals?
- How will these changes in revenues affect DLD formulas, as well as other anticipated payments to jurisdictions and/or projects or programs?

Recently "60 Minutes" reported that the non-partisan Congressional Budget Office is predicting that it will take up to 9 years for a full recovery from the financial effects of the Coronavirus pandemic. MTC staff reports are a bit more optimistic, but still do not predict financial recovery until approximately 2024 or 2025. Any current revenue predictions are speculative at best. If ACTC finds itself short of funds, how will decisions be made, and what will be cut? Please identify how impacts on social equity will be addressed.

What is the rush to commit $400 million in hypothetical revenues from the public trust? This is more than a rhetorical question – Why now, given the magnitude of current revenue uncertainties?

There is no "entitlement" for Measure BB funds from the cancelled "BART to Livermore" project for either the Tri-Valley planning area or even for a rail project, and the voters who actually approved Measure BB, with the "BART to Livermore" project, were, in large part, not primarily from the Tri-Valley. There should be an open, full and fair competitive assessment to determine any re-programming of that project's successor.

Documentation from ACTC has notably failed to mention even the existence of Implementing Guideline #22 from the TEP:

> **22. Fund Allocations**: Should a planned project become undeliverable, infeasible, or unfundable due to circumstances unforeseen at the time this Plan was created, or should a project not require all funds programmed for that project or have excess funding, funding for that project will be allocated to another project or program of the same type, such as Transit, Streets,

> Highways, Community Development Investments, or Bicycle and Pedestrian Safety, at the discretion of Alameda CTC.

This policy clearly identifies that there is no entitlement or guarantee, for either a rail project or for the Tri-Valley area, of the money that is no longer needed for BART-to-Livermore. Rather the money can – when it is actually available – be used for any transit project anywhere throughout the County. Why not act as responsible stewards of the public trust, and study what might be the highest and best use of the funds? Examples might include funding BART faregates and the enclosing of cross-paid-area elevators throughout Alameda County stations, and/or providing a strong down-payment for vehicles and infrastructure for a large portion of the CARB-required Zero Emission Bus fleets for all of the public transit bus systems in the County. Another option would be to help backfill the loss of fare revenues for all transit agencies. How might BART "development" projects on their property help to achieve other ACTC and Sierra Club goals, such as enhancing success of Priority Development Areas (PDAs) for Plan Bay Area?

Valley Link violates the "inter-regional commuting" policy of SB 375 and Plan Bay Area.

According to MTC's *Frequently Asked Questions | Plan Bay Area:*

> "Regions also must demonstrate that their plans accommodate all future projected households <u>without further growth in in-commuting</u>, or the amount of people traveling from neighboring areas to the region (i.e. from outside of the Bay Area to the Bay Area)." *(emphasis added)4*

Not only does Valley Link violate the premise of discouraging inter-regional commutes – and reliance on a "Mega-Region" is not relevant or applicable under current law -- but the public descriptions indicate that Valley Link would disadvantage Alameda County residents, taxpayers, and transit riders to the benefit of inter-regional travelers from San Joaquin County. In a return to pre-pandemic BART service and ridership, trains arriving at Bayfair station on the Blue Line are often full already – will local passengers have any chance of a seat after Valley Link passengers get first choice? ACTC officials should not approve such a disservice to your constituents without much more explanation.

ACTC should not act until there is at least a matching financial commitment from San Joaquin County.

The proposed resolution provided by Valley Link does not present adequate commitment from San Joaquin County as a funding partner for this potentially massive proposal to benefit their commuters. It merely states that

> "SJCOG: In April 2020, the SJCOG Board approved an amendment to its 2018 Regional Transportation Plan to include the Valley Link project, including identification of $163.9 million for the project in the plan from ***future*** measures

and state funds." ***(emphasis added)***

Any ACTC action should be conditioned on a firm commitment of adequate funds for both capital and continuing operations for this multi-county project. A one-sided "leveraging" of funds is not prudent public policy.

The "technical amendment" to the Valley Link project description is disingenuous if not misleading, and changes the conditions approved by voters.

The ACTC meeting materials from May 28th show the proposed project description only as it would be amended, without including the carefully negotiated original terms – approved by the voters – that are proposed for omission or change now. The excerpt below tries to more transparently and concurrently portray the full language under consideration (with additions underlined and deletions ~~crossed out~~). Commissioners are urged to please seriously consider what is intended by the changes, and what might be unintended consequences.

> "~~BART to Livermore ($400 M)~~
> Valley Link rail in Alameda County ($400 M)
>
> This project funds the first phase of a ~~BART Extension within the I-580 Corridor freeway alignment to the vicinity of the I-580/Isabel Avenue interchange~~ Valley Link rail extension from the existing Dublin/ Pleasanton BART station within the Tri-Valley and Altamont Pass in Alameda County using the most effective and efficient technology.
>
> Funds are for construction for any element of this first phase project and shall not be used until full funding commitments are identified and approved for the initial operating segment that most effectively meets the adopted project goals, and a project-specific environmental clearance is obtained. The project-specific environmental process will include an ~~detailed~~ alternative assessment of ~~all~~ fundable and feasible alternatives, and be consistent with mandates, policies and guidance of federal, state, and regional agencies that have jurisdiction over the environmental and project development process."

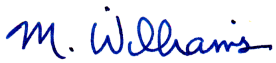
Among other questions, what difference does the "initial operating segment" make to the proposal's potential draw on Alameda County funds? What criteria will be used to assess whether the initial operating segment "most effectively meets" the adopted project goals, and which agency will make that determination? When will "full funding commitments" be identified and approved for the full project? Please also explain why the references to "detailed" analysis and "all" alternatives are being deleted.

In conclusion --

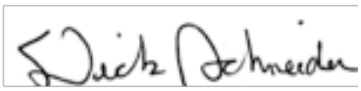
For these reasons, the Sierra Club strongly opposes all of the proposed actions laid out in your Commission materials of May 28, 2020. We further urge no further consideration on these matters until our concerns have been resolved.

If you have any questions regarding these comments, or wish further information, please do not hesitate to contact Matt Williams at mwillia@mac.com .

Sincerely,



Matt Williams
Chair, Chapter Transportation and Compact Growth Committee



Dick Schneider
Chair, Chapter Tri–Valley Group Executive Committee

Volunteer Leader, Mother Lode Chapter

cc: San Francisco Bay Chapter Executive Committee Chair Bolotina
San Francisco Bay Chapter Director Berbeco
Sierra Club California
Mother Lode Chapter
Metropolitan Transportation Commission (MTC)
California Air Resources Board (CARB)