

Executive Director Lengyel, Clerk Lee, Chair Cutter

Alameda County Transportation Commission (ACTC)

December 2<sup>nd</sup>, 2020

Dear Ms. Lengyel, Ms. Lee and Ms. Cutter:

This letter is to call your attention to what I believe was a series of two substantial violations of a central provision of the Ralph M. Brown Act and of Article I, Section 3 of the California Constitution, which may jeopardize the finality of the actions taken

1. by the Alameda County Transportation Commission (ACTC) on November 19<sup>th</sup>, 2020 in Agenda Item 9.1 “Approve I-880 Mission Blvd East-West Connector Project (PN 1177000) Commitment of 1986 Measure B Funding (Resolution No. 20-013)” and
2. by the ACTC Programs and Projects Committee (PPC) on November 9<sup>th</sup>, 2020 in Agenda Item 5.2 “Approve Allocations for the Plans Specifications and Estimate Phase of East West Connector Project”.

The nature of the violations is as follows:

1. Knowing that the Quarry Lakes Parkway was going to be on the agenda of upcoming meetings of the ACTC Commission and of the ACTC Programs and Projects Committee (PPC), Commissioner Dutra-Vernaci contacted at least five members of the ACTC PPC on September 21<sup>st</sup>, 2020 to promote the Quarry Lakes Parkway project (also known as East-West Connector project). The known contacted committee members were Bauters, Saltzman, Haubert, Mei, and Cutter. Including Commissioner Dutra-Vernaci, who is also the Chair of the PPC, this serial meeting included six members of the 11-member PPC, which is more than half of the PPC. This serial meeting was a violation of Sections 54952.2(b)(1) and 54953 of the Brown Act and therefore may invalidate the actions taken by the ACTC Programs and Projects Committee (PPC) on November 9<sup>th</sup>, 2020 in Agenda Item 5.2. As a result, the item should not have advanced to the Commission meeting on November 19<sup>th</sup>, 2020.
2. On September 21<sup>st</sup>, 2020, Commissioner Dutra-Vernaci also contacted Commissioner Haliday to discuss and promote the Quarry Lakes Parkway. On October 21<sup>st</sup>, 2020, Commissioner Dutra-Vernaci then contacted at least eight additional members of the ACTC Commission to promote the Quarry Lakes Parkway. These eight additional members were Commissioners Marchand, McBain, Valle, Ortiz, Ashcraft, Haggerty, Cox and Pilch. Including Dutra, this serial meeting included 15 members of the 22-member Alameda County Transportation Commission, which is more than half of the Commission. This serial meeting was a violation of Sections 54952.2(b)(1) and 54953 of the Brown



Act and therefore may invalidate the actions taken by the ACTC Commission on November 19<sup>th</sup>, 2020 in Agenda Item 9.1.

The actions taken in Agenda Item 5.2 of the November 9<sup>th</sup>, 2020 PPC meeting and the actions taken in Agenda Item 9.1 of the November 19<sup>th</sup>, 2020 ACTC Commission meeting were not in compliance with the Brown Act and Article I, Section 3 of the California Constitution because they occurred as the culmination of discussions in serial meetings of a matter which the Act does not permit to be discussed in closed session and there was no adequate notice to the public.

The discussions that took place in private were part of the deliberative process by which members reach their decisions and occurred outside the public eye. The public only witnessed a shorthand version of the deliberative process and its ability to monitor and contribute to the decision-making process was curtailed. The subject matters discussed in the private serial meetings and the lack of substantive discussions in the actual public meetings that followed on November 9<sup>th</sup> and 19<sup>th</sup>, indicate that concurrence was sought prior to the public meetings and that a majority of the commission members entered the public meetings with prejudice.

In the event it appears to you that the conduct in the serial meetings did not amount to the taking of action, I call your attention to Government Code Section 54952.6, which defines "action taken" for purposes of the Act very expansively.

As you are aware, the Brown Act allows the legal remedy of judicial invalidation of illegally taken action. Pursuant to Government Code Section 54960.1, I demand that the Alameda County Transportation Commission cure or correct the illegally taken actions as follows.

1. Declare null and void all actions taken in Agenda Item 5.2 of the Nov. 9<sup>th</sup>, 2020 PPC meeting.
2. Declare null and void all actions taken in Agenda Item 9.1 of the Nov. 19<sup>th</sup>, 2020 Commission meeting.
3. Convene a public and properly noticed ACTC Commission meeting in which
  - a. Commissioner Dutra-Vernaci shall disclose a complete list of commissioners with whom she has discussed the Quarry Lakes Parkway or East-West Connector project outside properly noticed meetings since March 22<sup>nd</sup>, 2018. This shall include, but not be limited to the commissioners she spoke with in July 2019, when Commissioner Dutra-Vernaci promoted the Quarry Lakes Parkway to at least one additional commission member, Commissioner McQuaid. These additional, non-disclosed private meetings indicate that Commissioner Dutra-Vernaci worked over a long time period to reach concurrence and prejudice prior to the public votes on the Quarry Lakes Parkway project, while the public was excluded from this process. It also shows that the statements that were made by Legal Counsel Wasserman and

Commissioner Dutra-Vernaci on November 19<sup>th</sup>, 2020 were incomplete and therefore not sufficient as pre-emptive remedy.

- b. Commissioner Dutra-Vernaci shall disclose a complete list of items and information that were discussed in all of these non-public meetings since March 22, 2018. This list shall identify other projects that were discussed in the same meeting as the Quarry Lakes Parkway.
- c. All other commissioners shall be asked to provide corrections and/or additions to the statements made by Commissioner Dutra-Vernaci or to otherwise confirm the accuracy and completeness of her statements.
- d. All material discussed and disclosed during all of these private serial meetings shall be documented and made public.
- e. All participants of the described serial meetings shall issue a formal and explicit withdrawal from any commitments that were made during these serial meetings.
- f. The commission shall discuss and vote on whether Commissioner Dutra-Vernaci shall relinquish her role as Alameda county cities representative on the Metropolitan Transportation Commission (MTC). One, but not the only reason, to consider her removal is that her role as MTC representative empowers her to retaliate against other Mayors. This in turn inhibits a fair discussion of the violations and proper consequences. Commissioner Dutra-Vernaci shall recuse herself from this discussion and vote.
- g. The commission shall discuss and vote on whether Commissioner Dutra-Vernaci shall relinquish her role as Chair of the Programs and Projects Committee (PPC). Commissioner Dutra-Vernaci shall recuse herself from this discussion and vote.
- h. The commission shall issue an unconditional commitment to cease, desist from and not repeat serial meetings in the future. For the case that another violation occurs, the Commission shall commit to not proceed with a vote in the same meeting in which a relevant violation is first publicly disclosed.

As provided by Section 54960.1, you have 30 days from the receipt of this demand to either cure or correct the challenged action, or inform me of your decision not to do so. If you fail to cure or correct as demanded, I am entitled to seek judicial invalidation of the action pursuant to Section 54960.1, in which case I would seek the award of court costs and reasonable attorney fees pursuant to Section 54960.5.

