



Alameda CTC Commission Special Meeting Agenda

Monday, December 28, 2020 10:00 a.m.

Due to the statewide stay at home order and the Alameda County Shelter in Place Order, and pursuant to the Executive Order issued by Governor Gavin Newsom (Executive Order N-29-20), the Commission will not be convening at its Commission Room but will instead move to a remote meeting.

Members of the public wishing to submit a public comment may do so by emailing the Clerk of the Commission at vee@alamedactc.org by 5:00 p.m. the day before the scheduled meeting. Submitted comments will be read aloud to the Commission and those listening telephonically or electronically; if the comments are more than three minutes in length the comments will be summarized. Members of the public may also make comments during the meeting by using Zoom's "Raise Hand" feature on their phone, tablet or other device during the relevant agenda item, and waiting to be recognized by the Chair. If calling into the meeting from a telephone, you can use "Star (*) 9" to raise/ lower your hand. Comments will generally be limited to three minutes in length.

Chair:	Pauline Russo Cutter, Mayor City of San Leandro	Executive Director:	Tess Lengyel
Vice Chair:	John Bauters, Councilmember City of Emeryville	Clerk of the Commission:	Vanessa Lee

Location Information:

Virtual Meeting Information: <https://zoom.us/j/94440663599?pwd=RVpBek92RmEwMWZlYmNxeVZ2cEVnUT09>
Webinar ID: 944 4066 3599
Password: 798997

For Public Access Dial-in Information: 1 (669) 900 6833
Webinar ID: 944 4066 3599
Password: 798997

To request accommodation or assistance to participate in this meeting, please contact Vanessa Lee, the Clerk of the Commission, at least 48 hours prior to the meeting date at: vee@alamedactc.org

Meeting Agenda

1. Call to Order

2. Roll Call

3. Public Comment

4. Closed Session	Page/Action
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4.1. Pursuant to Government Code Section 54956.9 (e)(2): Potential Litigation related to the occurrence of serial meetings regarding the I-880 to Mission Boulevard East-West Connector/Quarry Lakes Project	I
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4.2. Report on Closed Session	I
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5. Open Session

5.1. Address and Cure recently identified Brown Act Violation related to the I-880 to Mission Boulevard East-West Connector/Quarry Lakes Project and approve unconditional commitment to Flavio Poehlmann not to conduct such violation in the future.	1	A
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6. Commission Member Reports

7. Adjournment

Next Meeting: January 28, 2021

Notes:

- All items on the agenda are subject to action and/or change by the Commission.
- To comment on an item not on the agenda, submit an email to the clerk or use the Raise Hand feature or if you are calling by telephone press *9 prior to or during the Public Comment section of the agenda. Generally public comments will be limited to 3 minutes.
- Call 510.208.7450 (Voice) or 1.800.855.7100 (TTY) five days in advance to request a sign-language interpreter.
- If information is needed in another language, contact 510.208.7400.
- Call 510.208.7400 48 hours in advance to request accommodation or assistance at this meeting.
- Meeting agendas and staff reports are available on the [website calendar](#).



Alameda CTC Schedule of Upcoming Meetings January 2021

Commission and Committee Meetings

Time	Description	Date
9:00 a.m.	Multi-Modal Committee (MMC)	January 11, 2021
10:00 a.m.	Programs and Projects Committee (PPC)	
11:30 a.m.	Planning, Policy and Legislation Committee (PPLC)	
2:00 p.m.	Alameda CTC Commission Meeting	January 28, 2021

Advisory Committee Meetings

5:30 p.m.	Independent Watchdog Committee (IWC)	January 11, 2021
9:30 a.m.	Paratransit Technical Advisory Committee (ParaTAC)	January 12, 2021

Due to the statewide stay at home order and the Alameda County Shelter in Place Order, and pursuant to the Executive Order issued by Governor Gavin Newsom (Executive Order N-29-20), the Commission will not be convening at its Commission Room but will instead move to a remote meeting.

Meeting materials, directions and parking information are all available on the [Alameda CTC website](http://www.AlamedaCTC.org). Meetings subject to change.

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MEMORANDUM

December 21, 2020

TO: Alameda County Transportation Commission

FROM: R. Zachary Wasserman

RE: [REDACTED]

As I believe you know, Flavio Poehlmann has written a Cease and Desist Letter to the Commission regarding certain conversations instigated by Commissioner Carol Dutra-Vernaci regarding the East West Connector/Quarry Lakes Parkway Project (EWC/QLP). A copy of that letter is attached to this memo.

The cure for the violations asserted by Mr. Poehlmann is to report the violation on the record and to unconditionally commit to not repeating this type of violation in the future. The first part of this cure took place at the Commission meeting on November 19th. The action before the Commission at the Special Meeting on December 28th is to take the second step to complete this cure which is to approve a letter to Mr. Poehlmann and make an unconditional commitment not to violate the Brown Act in the future. This step could not be taken on November 19th because it was not listed as an action on the agenda. A copy of the form of the letter is attached to this Memo. This action is required by and satisfies the conditions of Government Code Section 54690.2.

Mr. Poehlmann has additionally requested that the action taken by the Committee at the November meeting regarding the EWC/QLP should be declared null and void. This action is not necessary and is really moot at this time since the Commission has already taken final action on the EWC/QLP after recognizing the Commission's Brown Act violation on the record and unconditionally committing to not make this type of violation in the future, and the Commission is and was entitled to act on the EWC/QLP under the Commission's Administrative Code without a recommendation from the Committee.

Mr. Poehlmann also asks for a number of other remedies. None of those remedies are required by the Brown Act and many of them are beyond the authority and scope of the Alameda CTC.

We recommend that the Commission approve the unconditional commitment contained in the letter attached to this memo and that the letter be sent to Mr. Poehlmann

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Executive Director Lengyel, Clerk Lee, Chair Cutter

Alameda County Transportation Commission (ACTC)

December 2nd, 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 19th, 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 9th, 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 21st, 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 9th, 2020 in Agenda Item 5.2. As a result, the item should not have advanced to the Commission meeting on November 19th, 2020.
2. On September 21st, 2020, Commissioner Dutra-Vernaci also contacted Commissioner Haliday to discuss and promote the Quarry Lakes Parkway. On October 21st, 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 19th, 2020 in Agenda Item 9.1.

The actions taken in Agenda Item 5.2 of the November 9th, 2020 PPC meeting and the actions taken in Agenda Item 9.1 of the November 19th, 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 9th and 19th, 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.

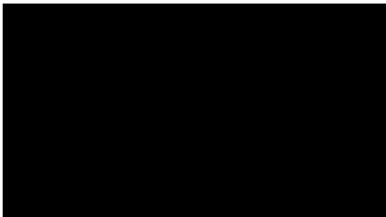
As you are aware, the Brown Act allows the legal remedy of judicial invalidation of illegally taken action. Pursuant to Government Code Section 54960.1, I demand that the Alameda County Transportation Commission cure or correct the illegally taken actions as follows.

1. Declare null and void all actions taken in Agenda Item 5.2 of the Nov. 9th, 2020 PPC meeting.
2. Declare null and void all actions taken in Agenda Item 9.1 of the Nov. 19th, 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 22nd, 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 19th, 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.



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[REDACTED]

The Alameda County Transportation Commission has received your cease and desist letter dated December 2, 2020, alleging that the following described past action of the Commission violated the Ralph M. Brown Act:

"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 21st, 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 9th, 2020 in Agenda Item 5.2.

On September 21st, 2020, Commissioner Dutra-Vernaci also contacted Commissioner Haliday to discuss and promote the Quarry Lakes Parkway. On October 21st, 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 19th, 2020 in Agenda Item 9.1."

In order to avoid unnecessary litigation and without admitting any violation of the Ralph M. Brown Act, the Commission hereby unconditionally commits that it will cease, desist from, and not repeat the challenged past action as described above.

The Commission may rescind this commitment only by a majority vote of its membership taken in open session at a regular meeting and noticed on its posted agenda as "Rescission of Brown Act Commitment." You will be provided with written notice, sent by any means or media you provide in response to this message, to whatever address or addresses you specify, of any intention to consider rescinding this commitment at least 30 days before any such regular meeting.

In the event that this commitment is rescinded, you will have the right to commence legal action pursuant to subdivision (a) of Section 54960 of the Government Code. That notice will be delivered to you by the same means as this commitment, or may be mailed to an address that you have designated in writing.

Very truly yours

Pauline Russo Cutter
Chair of the Alameda County Transportation Commission