

FOR IMMEDIATE RELEASE

Community Venture Partners and Livable California prevail in challenge to BART's illegal endorsement of SB 50

San Francisco – May 6, 2019: On Friday, April 12, 2019, Community Venture Partners, Inc., and Livable California filed a cease and desist demand letter with the San Francisco Bay Area Rapid Transit Board of Directors (BART) to “cure or correct Brown Act violations” at the BART Board’s March 14, 2019 special meeting to endorse Senate Bill 50 (Wiener, San Francisco).

In their letter, the complainants alleged that the BART Board took part in substantial violations of central provisions of the Ralph M. Brown Act and Article I, Section 3 of the California Constitution, because BART failed to provide adequate notice to the public, and there was no finding of fact by the BART Board to support their decision to call for a special meeting.

In response, on Friday May 3rd, Matt Burrows, general counsel for BART, issued a letter to the BART Board recommending to the Board that “the action taken under item 3 of the Board’s Special Meeting agenda of March 14, 2019” [the board’s endorsement of SB-50] be “vacated.” Mr. Burrows noted that “Generally, the Act bars a lawsuit if the Board cures the complained of act by providing notice of a new meeting in public session within 30 days of notice of a complaint. The Act expressly provides that taking such action shall not constitute an admission of wrongdoing.”

While this is technically correct, as detailed at length in our complaint to the BART Board, CVP and Livable California continue to maintain that “wrongdoing” did in fact occur and that the lack of public notice and more importantly a lack of transparency and good faith dealings are apparent in the record and the other documents and evidence we have received under a separate Public Records Act request. For example, a text reveals that BART Board President Bevan Dufty informed Senator Wiener’s staff of the special BART meeting, even before notifying his fellow BART Board members.

In his memorandum to the BART Board, General Counsel Burrows is recommending that the BART Board cure its violation, then “takes a position of Support on Senate Bill 50 (Wiener)” at their upcoming May 9th hearing.

In response, attorney Jason Bezis commented, “BART held an illegal, rushed meeting at the behest of the powerful special interests behind SB 50, which threatens to tear apart neighborhoods across California. While we are pleased that BART is rescinding its unlawful action, we question whether BART is truly committed to its duties under California’s open meetings laws to ensure robust public participation in government decisions, particularly those that imperil our communities. Before reconsidering SB 50. BART should explain publicly what led to its misconduct.”

Senate Bill 50 is the most serious challenge by the State Legislature to locally elected government control of planning and zoning in California’s history. And although recent amendments and “compromises” among state senators have watered down some of its provisions, the precedent it sets undermines the very foundations of the sovereignty of locally elected government and the sanctity of the General Plans of local government, which are protected in our State’s Constitution.

The successful actions taken by CVP and Livable CA have now provided the public another chance to express its concerns about SB 50 and to oppose its endorsement by BART. In addition to challenging BART’s illegal decision, CVP and Livable California took their action to remind

BART that they are *not* in the housing or real estate development business. BART was founded as a *community-serving transportation* agency. As their website proudly proclaims, "For more than 45 years BART has provided fast, reliable transportation to downtown offices, shopping centers, tourist attractions, entertainment venues, universities and other destinations for Bay Area residents and visitors alike."

Last December, BART admitted to the state Fair Political Practices Commission (FPPC) that it unlawfully spent public funds to create and distribute propaganda supporting its \$3.5 billion bond election in 2016. The FPPC took the extraordinary act of publicly recommending that the California Attorney General and Bay Area district attorneys open criminal investigations concerning BART's external affairs. As such, BART has no place getting involved in politics or regional housing planning, particularly in supporting a state mandate that usurps locally elected government's authority over local zoning and planning.

It should also be noted that at present, BART already has the authority to build housing on its surplus land and in fact, in many locations its unused land is already zoned for housing and zoned in existing general plan documents for housing and mixed-use development. Therefore, there is no necessity for the BART Board to endorse SB 50 or any similar legislation. Let's also bear in mind that many of the duly elected bodies, who are responsible for planning and zoning, such as The San Francisco Board of Supervisors, which voted 9-2 to oppose SB 50 at its April 9th meeting.

CVP and Livable CA recommend that SF Bay Area residents make their voices heard and contact the BART Board to express their opposition to SB 50. E-mails should be submitted before May 9th to this address: boardofdirectors@bart.gov and also to the individual BART e-mail address of the BART director who serves the writer's area, if available. There are nine BART directors, listed on this BART webpage: <https://www.bart.gov/about/bod>

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Livable California, Inc., a San Francisco-based California nonprofit corporation, is a statewide coalition of elected officials and community leaders who work together to educate, network and advocate for community interests around land use, zoning, transportation, and housing issues. Its mission is: (1) to empower communities to take action to support local community planning and decision making with the goal of an equitable and sustainable future for California; and (2) to grow and sustain communities that meet the needs of individuals and families, governed by locally elected City Councils and Boards of Supervisors, in collaboration with regional agencies, and free from undue influence of big business and Sacramento.

Community Venture Partners, Inc. is a Bay Area-based California nonprofit organization that facilitates and assists community-based projects, programs and initiatives that demonstrate the highest principles of economic, social and environmental sustainability. CVP is committed to the need for a transparent, "bottom-up" public process that incorporates under-served community voices into government decision-making. The projects, events, programs, and services offered by Community Venture Partners address a variety of community, local and regional issues related to city, county and regional planning, community involvement, affordable housing, sustainable development, and social and environmental impacts of development.

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