

From: [Trish Spencer](#)
To: [Lara Weisiger](#)
Subject: Fwd: Comment for upcoming City Council Meeting RE CEQA Compliance.
Date: Tuesday, December 19, 2023 12:23:38 AM

Hi Lara,

Please attach to 7-B.

Thanks,

Trish

From: Shelby S <sheehan.shelby@gmail.com>
Sent: Monday, December 18, 2023 1:56:46 PM
To: Trish Spencer <tspencer@alamedaca.gov>; Tony Daysog <tdaysog@alamedaca.gov>; Malia Vella <mvelle@alamedaca.gov>; tjensen@alamedaca.gov <tjensen@alamedaca.gov>; City Clerk <clerk@alamedaca.gov>; Historical Board <historicalboard@alamedaca.gov>
Subject: [EXTERNAL] Comment for upcoming City Council Meeting RE CEQA Compliance.

Councilmembers-

This comment regarding CEQA compliance is relevant to many of the Items to be heard at the recent and upcoming City Council meetings.

Pursuant to the Sunshine Ordinance and per the City Attorneys duties to:1) know the law, (2) explain the law, (3) provide information to the public, and 4) provide the public a check on City actions: This email serves as my formal request to the City Attorneys to provide a written briefing for the public prior to the City Council meeting--or a verbal briefing on the matter the at the City Council meeting--as a "response to statements made or questions posed by persons exercising their public testimony rights for factual information..."

Failure to respond will be construed as a violation of the Sunshine Ordinance, a breach of statutory duties, and a violation of the State Bar Code of Ethics.

CEQA COMPLIANCE ISSUES

As the City Attorneys know, CEQA requires environmental review for all

discretionary land use applications before they receive planning approvals.

Compliance with CEQA must be well-documented and publicly available (CEQA Sections 15063, 15201). Before a Project can be approved, the lead agency must publicly-disclose the CEQA Determination documentation of the “substantial evidence” used to support of their “Determination”, so the public has the opportunity to scrutinize the findings.

CEQA Section 15384 explicitly rebukes “Unsubstantiated opinion, or evidence which is clearly erroneous or inaccurate that does not constitute substantial evidence”.

Despite these regulatory requirements for disclosure and transparency, Planning staff have not been required to provide this documentation to either the Council or the public, resulting in egregious violations of the CEQA review process. These violations effectively avoid proper environmental review for City projects at Alameda Point.

Erroneous and Unsubstantiated CEQA Determinations

Specifically, a review of the records reveals what I believe are repeated and ongoing misuse of unsubstantiated and erroneous CEQA Determinations for Projects at Alameda Point. That review revealed that-- no matter what the Project --the overwhelmingly consistent default finding is “no additional environmental review is required”, usually relying on “Categorical Exemptions” per CEQA Sections 15061, 15303-15333” and/or “full Streamlining” per CEQA Section 15183.

However, ***none of these CEQA Determinations are valid for Projects at Alameda Point***—which would explain why staff offered none of the required documentation.

- Categorical Exemptions are barred per the “exemption exceptions” in CEQA Sections 15300.2(b), (c), (f)
- Full Streamlining is barred due to the above and/or PRC § 21157.6.
- All Determinations must have publicly-available documented “substantial evidence” with their findings.

Unfortunately, City Council has recklessly accepted Planning Staff’s determinations at face value, resulting in approval of discretionary projects that obviously violate the public interest protections of local and state land use regulations—for example, Projects that reduce the views and vistas at Alameda Point, Projects without

Certificates of Approval, and inaccurate city-published materials.

The lack of accountability and of transparency is unconscionable. Planning Staff's CEQA Determinations must comply with the law, and City Council must hold City staff, the City Attorneys--and yourselves—accountable.

Accordingly, per CEQA Section 15300.2 and consistent with the Alameda Point Programmatic EIR and AMC Section 30-4.24---every single discretionary Project (i.e., needs a use permit/design review/approval from City Council) at Alameda Point must undergo further environmental review per CEQA Section 15201 and others per Sections 15000-15387.

Additionally, the “CEQA Determination” must comply with the Noticing and documentation requirements per CEQA Section 15384 and other Sections therein, must be made available to the public (and Council) in a timely manner—and must be filed with the State Clearinghouse.

Requirements For CEQA Determinations

Consistent with the CEQA regulations, the 2014 Alameda Point Programmatic EIR requires each individual new development Project to undergo environmental “Project level” review for potential significant impacts, cumulative impacts, and impacts to Historical Resources.

City Council's Duty to the Public and to Protect the Environment

City Council must require all CEQA Determinations include the proper documentation prior to the Item being heard and available to the public. At a minimum, the Determination must include the Notice, the completed written evaluation procedure (e.g., a checklist) and the materials that provide “substantial evidence” in support of their CEQA determination (CEQA Sections 15000-15387).

All Councilmembers have a fiduciary duty to the public to ensure their votes are consistent with all applicable land use regulations. The two Councilmembers, who are also attorneys, have additional fiduciary duties due to their profession, and they are ethically bound to investigate and ensure their votes for Projects are consistent with the land use regulations and other applicable laws.

An even higher duty is assigned to the City Attorneys, who are supposed to protect the public interest and ensure approved Projects conform to the applicable land

use regulations.

However, it appears the City Attorney has condoned the continued abuse of the CEQA process at Alameda Point, which has resulted in numerous erroneous approvals of projects that violate the applicable development regulations. This ongoing abuse of process has in turn led to a significant and ongoing iterative degradation to the historical integrity and value of the character-defining features of Alameda Point.

Regardless, City Council should not and cannot rely on the City Attorney to provide accurate legal advice, It is your duty to educate yourselves and evaluate Projects with independent knowledge of Projects and pursuant to the applicable laws.

To that end, I request you avail yourselves of [CCR Title 14, Chapter 3 CEQA Regulations](#), so that you may evaluate my assessment about CEQA violations yourselves. I also reiterate my request above for a briefing from the City Attorney.

Please see links below to the applicable regulations for your ease of access.

REGULATIONS

[CEQA Sections 15000-15387](#) Chapter 3 -California Environmental Quality Act Regulations

[CEQA Section 15060](#) Preliminary Review Process

[CEQA Section 15061](#) Review for Exemption

Section 15061(b)(2) Prohibition on Exemptions in Section 15300.2

[CEQA Section 15062\(e\)](#) Noticing Requirements

[CEQA CEQA Section 15063](#) Initial Study

Section 15063 (a)(2) Assessment requirements

Section 15063(a)(3) Substantial evidence

Section 15063(b) Results: Tiered Streamlining

Section 15063 (d)(3). Contents, documentation

Section 15063(f) Format / Recommended forms

[CEQA Section 15064](#). Determination of Significant Impacts

Section 15064(b)(2). Thresholds of Significance

Section 15064(d)(1).Evaluation of Significance

Section 15064(f). Substantial Evidence Required

Section 15064(h). Cumulative Impacts

Section 15064.5 Historical Resources

[CEQA Section 15065](#). Mandatory Findings of Significance

Section 15065(a)(1). Historical Significance

Section 15065(a)(2). Short term over long term gains (*like the O Club parking lot*)

Section 15065(a)(3). Cumulative Impacts

[CEQA Section 15168](#). Programmatic EIRs

Section 15168(c)(4): Checklist

Section 15168(e)(2)??

[CEQA Section 15183.3](#) Streamlining for Infill Projects

Section 15183.3(b). Eligibility for Streamlining

Section 15183.3(b)(2) Appendix M, N exceptions

Section 15183.3(d). Evidence, Documentation, and Noticing procedures

[CEQA Section 15201](#). Public Participation

[CEQA Sections 15300-15333](#). Categorical Exemptions –all barred by Section 15300.2

[Sections 15300.2](#). Barring Exceptions

Sections 15300.2(b) if Significant

Sections 15300.2(c) if Cumulative

Sections 15300.2 (f) if Historical

~~Section 15301. Class 1 Categorical Exemption- Existing Facilities~~

~~Section 15303. Class 3 Categorical Exemption- New Construction of small buildings~~

~~Section 15312. Class 12 Categorical Exemption- Surplus Govt Property Sales~~

~~Section 15327. Class 27 Categorical Exemption- Leasing New Facilities~~

~~Section 15332 Class 32 Categorical Exemption- In-fill Development Projects~~

~~Class 32(d)-also prohibits significant effects relating to traffic, noise, air quality, or water quality.~~

[CEQA Section 15384](#). Substantial Evidence Definition

[AMC Section 30-4.24.b.5. Alameda Point District](#)

[Public Resources Codes](#)

Section 21157. Master Reports-Permits limited Streamlining

PRC § 21157.6. Exceptions to use of Master Report

Section 21158. Focused/Project-specific EIR

Section 21158.1 Lead agency prohibited from relying on section 21080.5(a)

Section 21161. Notice of Completion

From: [Shelby S](#)
To: [City Clerk](#)
Subject: [EXTERNAL] Fwd: Request CEQA determination for Radium Project Use Permit
Date: Monday, December 18, 2023 8:31:25 PM

Please add as comment for Radium Item at tomorrow's City Council.

----- Forwarded message -----

From: **Shelby S** <sheehan.shelby@gmail.com>
Date: Mon, Dec 18, 2023 at 1:03 PM
Subject: Request CEQA determination for Radium Project Use Permit
To: ANDREW THOMAS <ATHOMAS@alamedaca.gov>

Mr Thomas, I am reviewing permit #PLN23-0106, and I see the following confusing note regarding the CEQA determination for Radium as follows:

CEQA Determination: The Alameda Point Final EIR (State Clearinghouse No. 201312043) evaluated the environmental impacts and reuse of the lands at Alameda Point. No further review is required for this project.

I'm confused because I can't tell what the "determination" was--i.e., is it a Negative Declaration? or something else? Is this the Streamlining that the upcoming Item references?

It is my understanding that all CEQA determinations must have supporting documentation; the determination must be submitted to the County.

Can you provide me with the CEQA documentation you have for the Permit? Also all materials submitted to the County?

It is also my understanding that this same documentation for the "proposed" CEQA determination RE the upcoming Radium Council Item should be made public prior to the Council meeting and I believe the CEQA determination is also a matter subject to public review. Therefore this materials and should be part of the agenda materials.

Can you provide those materials before the Council meeting?

Also, I don't see the permit application on file for 23PLN23-0106 in Acella. Is that an error? I would like to see it.

Thanks, Shelby

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Shelby
510-435-9263

--

Shelby
510-435-9263

From: [Shelby S](#)
To: [Andrew Thomas](#)
Cc: [Abby Thorne-Lyman](#); [Trish Spencer](#); [Malia Vella](#); [Tony Daysog](#); [City Clerk](#); [Jennifer Ott](#); [Christopher Seiwald](#); [Keith McCoy](#); [Rachel de Ivanov](#)
Subject: Re: [EXTERNAL] RE today's CC Item 7F--Radium infill--what about the Specific Plan? Doesnt anyone read it?
Date: Tuesday, December 5, 2023 1:27:34 PM
Attachments: [image001.png](#)

Andrew, I'm not trying to bicker, but dont you usually put "This is not a project according to CEQA"? But this IS a project, even if it is discussions about a project, its a "project", right?

Anyway, THIS is what the Staff Report says, and it looks like a CEQA review to me--just sayin'.--Shelby

ENVIRONMENTAL REVIEW

Pursuant to the streamlining provision of Section 15183 of the CEQA Guidelines, no further environmental review is required because the project is consistent with the General Plan and Zoning Regulations for the land. The environmental impacts of the development of the area were considered in the Alameda Point Project (APP) Final Environmental Impact Report (FEIR) adopted by the City Council on February 4, 2014, in compliance with the California Environmental Quality Act (CEQA) and in the General Plan Update EIR adopted by the City Council on November 30, 2021. The proposed project to continue temporary use of the site for temporary events would not result in significant impacts that: (1) are peculiar to the project or project site; (2) were not already identified as significant effects, cumulative effects, or off-site effects in the FEIR; or (3) were previously identified as significant effects but are determined to be substantially more severe than discussed in the EIR. Approval of the Ground Lease/Purchase Option and/or approval of a Development Plan for the site will be subject to additional environmental review, once the specifics of the project are more fully known.

On Tue, Dec 5, 2023 at 12:02 PM Andrew Thomas <athomas@alamedaca.gov> wrote:

Hello Shelby: We are representing that the Agreement to talk is in compliance with CEQA. -- Andrew

From: Shelby S [mailto:sheehan.shelby@gmail.com]

Sent: Tuesday, December 5, 2023 11:57 AM

To: Andrew Thomas <athomas@alamedaca.gov>

Cc: Abby Thorne-Lyman <athornelyman@alamedaca.gov>; Trish Spencer <tspencer@alamedaca.gov>; Malia Vella <MVella@alamedaca.gov>; Tony Daysog <TDaysog@alamedaca.gov>; City Clerk <CLERK@alamedaca.gov>; Jennifer Ott <jott@alamedaca.gov>; Christopher Seiwald <christopher@seiwald.com>; Keith McCoy <keith@urbanmixdevelopment.com>; Rachel de Ivanov <Rcampos@alumni.haas.org>

Subject: Re: [EXTERNAL] RE today's CC Item 7F--Radium infill--what about the Specific Plan? Doesnt anyone read it?

Hi Andrew--

Thanks for the reply. By presenting the RFP and representing it complies with CEQA, it seems like you are recommending it. --Shelby

On Tue, Dec 5, 2023 at 11:10 AM Andrew Thomas <athomas@alamedaca.gov> wrote:

Hello Shelby: Yes we do read these documents. We wrote most of them and recommended their adoption, so we are very aware of their contents.

As described in the staff report, we are recommending that the city enter into a 12 month negotiating agreement with radium presents to design a future facility. We are NOT recommending approval of any design at this time. We are recommending that we START a process to design a facility

As described in the staff report, the designers will be presenting concepts to the Planning Board and the Historical

Advisory Board over the next year and before the city makes any final decisions about a design. At those future meetings, the public and the boards and commissions can review a future design and decide how it does or does not comply with adopted standards in our General Plan, Waterfront Specific Plan, Zoning Code, etc.

I hope this email clears up any further confusion you have about tonight's agenda item.

Andrew Thomas,
510-774-5361 (c)

On Dec 5, 2023, at 10:15 AM, Shelby S <sheehan.shelby@gmail.com> wrote:

Hi there-

Does anyone else bother to read the Town Center and Waterfront Specific Plan when they make these projects?

--> this proposed "pavilion" is blocking over 50% of the "centerline view" from Building 77 that is supposed to be maximized. This is a discretionary project, and the City Council doesn't have to approve anything here. PLEASE STOP RUINING THE VIEWS.

This area should have a "flexible, park-like design" (Specific Plan p. 92). Like this:



That flat area in front of the museum is the perfect place to have outdoor festivals, and a great place for small vendors to get known and make money. People love strolling along the open vista of the Lagoon while drinking, eating and listening to music in front of the Museum.

I enjoy having Radium out there, but even having those containers out there blocks the public's enjoyment of the view--when not in use they should be stored farther west from Pan Am. There is no need for development here at this time at all.

Now this proposal is a huge out of scale permanent building that violates the land use plans and is a view megablocker. BUT WHY?

So, let's take a look at some "relevant excerpts" from the Specific Plan, shall we?

1. CULTURAL LANDSCAPE GUIDELINES (p.136)

Landscape:

All new construction and modifications to existing buildings within the NAS Alameda Historic District should be consistent with the Guide to Preserving the Character of the Naval Air Station Alameda Historic District, as amended, and AMC Section 13-21(Preservation of Historical and Cultural Resources). The Specific Plan provides further guidelines for development in front of Building 77, as follows:

2. Building 77: Height 42 feet

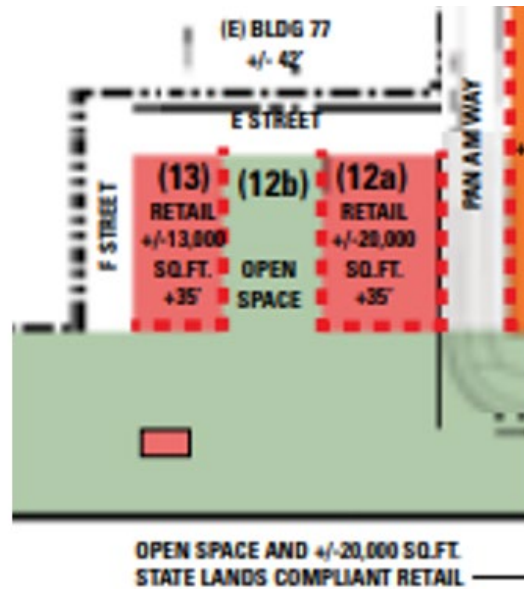
"To maintain this historic seaplane passenger terminal's visual relationship to the Seaplane lagoon the plan recommends that a view corridor of a minimum of 120 feet in width be maintained on the centerline of the building. This "Historic Easement" /view corridor should be developed as a public park or plaza, and may contain (not "shall contain--we could leave it open) small one story pavilions or landscaping that will support public use and enjoyment of the space while allowing the visual connection between the Building 77 and the water to be maintained." (p.136)

3. Blocks 12 and 13: MAXIMUM 35 feet

New development in the Historic District should always be subordinate to the existing structures. Within the **Taxiway subarea** new structures "shall be consistent with the scale and massing of the existing Hangar buildings"...adjacent to the Seaplane Lagoon Park.(p.124)

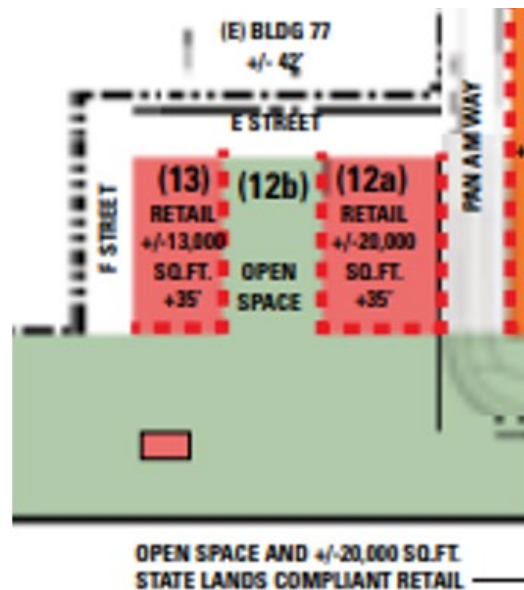
Here are some illustrations for reference:

1. The Project rendering looks like this:



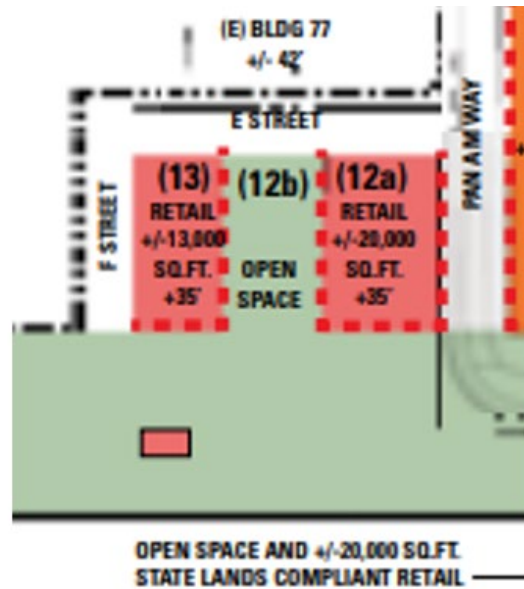
Can you even find Building 77?

2. Heres a corner snippet I found that shows the proper scaling in front of Building 77 (p. 126)--does the above rendering look like it complies?:



3. Per the RFP response (p11, referencing the Site A Development Plan)--The height limit for new buildings in front of Building 77 is **MAXIMUM 35 feet.**

You can also see the "Historic Easement" is encroached with this Plan.



The information above by itself should be enough information to "pause" this Project... but...

WHAT ABOUT CEQA?

Where's the CEQA documentation?

Its all well and good that Andrew Thomas, claims the Radium development proposal is exempt "from further review" as an infill project conforming with the land use plan--But" to claim it, you have to show it. "Requires No Further Review" means there has already been a preliminary CEQA review to determine if the project is "Eligible" for Streamlining. If eligible, then the Section 15183.3 procedure requires completion of a specific document to show conformance with the regulations ("because Andrew Thomas said so " is not legally-defensible, even if he's right). ([CEQA Section 15183 Exemption Regulations](#)).

This Project potentially affects "Cultural Resources" the Analysis has to conform with CEQA Appendix M, and include CEQA Appendix N (Andrew Thomas knows what Im talking about). -->*All of these are public documents that should be part of this agenda package--if we dont have it, then it is a violation of the Brown Act if you talk about it.*

In my opinion, this Project does not conform to the Historic Guidelines OR the Land Use Plan, so...??? ---> How do we settle this?

It can be settled by providing the CEQA review to the public.

This project isnt ready, and there is no need to rush it. Love Radium--love pop ups. That works for now.

Thanks

--> And by the way, no fences are allowed that block the view either, despite the mumblings of City staff and Officials. None of them out there are permitted and they were not there when the Navy was operating the parcel. The Historic landscape is characterized by large setbacks and open space, and those ugly chainlink construction fences are there illegally, and so is the outdoor storage that blocks the view and public access. In addition, Natel is violating the USFWS ban on structures over 8 feet, and it looks like a garbage dump.

I submitted a very (very) detailed and well-referenced report about illegal fences during the Pyka lease review.--if you don't want to read the governing documents, you can read that if you like. Please feel free to contact me and I will provide it to you.

--

Shelby
510-435-9263

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Shelby
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From: [Shelby S](#)
To: [Abby Thorne-Lyman](#); [Andrew Thomas](#); [Trish Spencer](#); [Malia Vella](#); [Tony Daysog](#); [City Clerk](#)
Subject: [EXTERNAL] RE today's CC Item 7F--Radium infill--what about the Specific Plan? Doesnt anyone read it?
Date: Tuesday, December 5, 2023 10:15:51 AM
Attachments: [image.png](#)
[image.png](#)
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SEAPLANE PLAZA CONCEPT ILLUSTRATION



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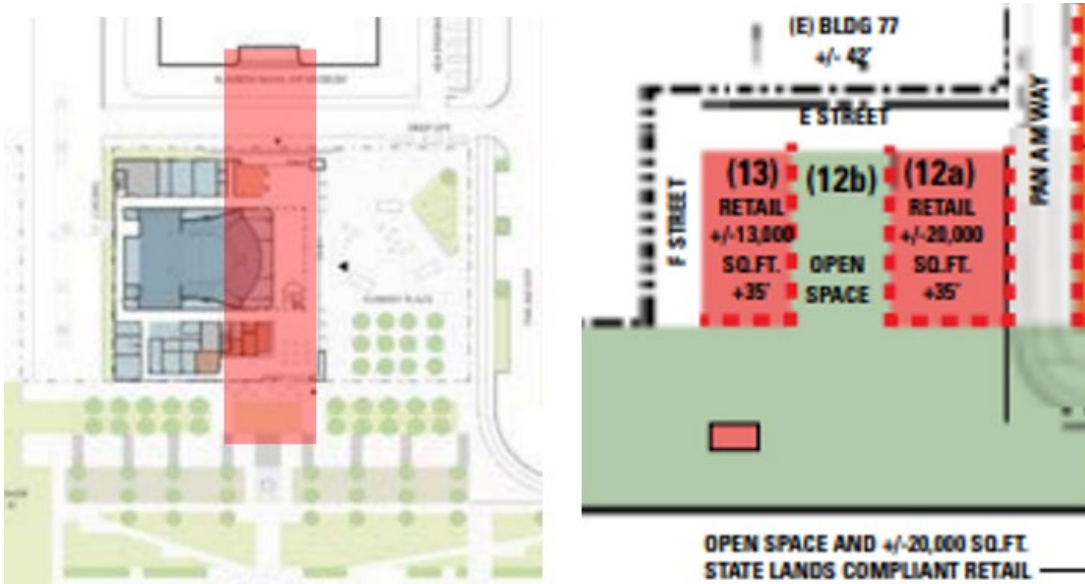


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From: [Williams, Jennifer](#)
To: [Lara Weisiger](#)
Subject: [EXTERNAL] Fwd: Radium Presents Agenda Item (Item 7-F)
Date: Tuesday, December 5, 2023 4:43:20 AM
Attachments: [signed Letter of Support for Radium Presents Community Based Performing Arts Center \(1\).pdf](#)

Good morning, Laura. FYI.

Jenn

From: Williams, Jennifer <jennwilliams@alamedaunified.org>
Sent: Monday, December 4, 2023 4:54 PM
To: Marilyn Ezzy Ashcraft <MEzzyAshcraft@alamedaca.gov>; mvella@alamedaca.gov <mvella@alamedaca.gov>; tjensen@alamedaca <tjensen@alamedaca>; tdaysog@alamedaca.gov <tdaysog@alamedaca.gov>; tspencer@alamedaca <tspencer@alamedaca>
Cc: Christopher Seiwald <christopher@seiwald.com>; Scuderi, Pasquale <pscuderi@alamedaunified.org>; Little, Heather <hlittle@alamedaunified.org>
Subject: Radium Presents Agenda Item (Item 7-F)

Good evening Mayor Ashcraft and City Council Members:

I am writing on behalf of the AUSD Board of Education to ask that you approve item 7-F on your regular agenda tomorrow regarding the adoption of a 12-month exclusive negotiating agreement with Radium for the development of property at Alameda Point for a performing arts center, and for the temporary use of the property for performing arts and special events.

On April 25, 2023, the Board of Education presented a letter of interest to support Radium Presents and its efforts to establish a 500-seat performing arts center at Alameda Point. This initiative is consistent with AUSD's strategic plan and its express goal to "support and sustain a modernized and engaging visual and performing arts program through the school district." Student access to the proposed performing arts center would support fulfilling this objective, particularly for Alameda's West End students who are educated close to the proposed development. As our letter of interest indicates, arts education and exposure to programming and potential internships facilitates understanding across diverse cultures and, among other things, creates a sense of belonging to our diverse student population. Moreover, access to a local performing arts center hosting professional artists could be a resource for Alameda students through field trips and educational programs. The AUSD Board of Education supports this proposal and respectfully urges the City Council to approve this item tomorrow night.

I am attaching AUSD's letter of interest to this email for your review and will hopefully join you tomorrow night in support of this item.

Thank you,

Jennifer Williams, Esq.
Vice President
AUSD Board of Education

From: [Little, Heather](#)
To: [Marilyn Ezzy Ashcraft](#); [Trish Spencer](#); [Malia Vella](#); [Tony Daysog](#); [Tracy Jensen](#)
Cc: [Loneragan, Kerri](#); [City Clerk](#)
Subject: [EXTERNAL] Support for Radium Presents
Date: Monday, December 4, 2023 11:40:56 AM
Attachments: [signed Letter of Support for Radium Presents Community Based Performing Arts Center.pdf](#)

Good morning Mayor Ashcraft and Council Members,

I am writing to you in support of the Radium Presents agenda item that will come before you tomorrow evening. Should this venue be realized, it will provide much needed rehearsal and performance space for our city, and in particular for our West End students and families. As I'm sure you're aware, arts education and exposure to programming supports the understanding and appreciation of diverse cultures, fosters communication, and creates a sense of belonging. Please support this incredible opportunity.

I've attached AUSD's letter of support submitted to the City on behalf of Radium Presents this past April, for your reference. Thank you so much for the consideration.

Thank you,
Heather Little
AUSD Board of Education

April 25, 2023

City of Alameda
2263 Santa Clara Ave.
Alameda, CA 94501

Re: Radium Presents – 500-seat performing arts center located at Alameda Point

Dear Chris and Rachel,

Alameda Unified School District is pleased to provide this letter of interest to support Radium Presents, the effort to establish a 500-seat performing arts center at Alameda Point. In July 2022, the District adopted a new strategic plan, including an initiative to “support and sustain a modernized and engaging visual and performing arts program throughout the school district.” Access to the performing arts center for performance space, programming, and educational opportunities would support fulfilling this objective.

The District has identified the need for more rehearsal and performance space, particularly for West End students. Encinal Jr. and Sr. High theater programs currently perform in the school cafeteria. Radium and the new performing arts center would support our efforts to meet the needs of our visual and performing arts educators with this new inspiring venue and professionally equipped theater.

Arts education and exposure to programming facilitates understanding across diverse cultures, fosters communication, and creates a sense of belonging – all are important to our increasingly diverse student population. Local access to a performing arts center hosting professional and touring artists will be a resource for students through field trips and educational programs.

Finally, as the District works to expose students to a broad range of career paths, Radium has the potential to provide a valuable resource with internships and volunteer programs educating them about career opportunities in the arts.

We are excited to share this letter of support and look forward to furthering the partnership as the project advances.

Sincerely,



Heather Little
President, Board of Education



Pasquale Scuderi
Superintendent of Schools

NB: This letter is not a commitment and should only be used to demonstrate preliminary interest in exploring an opportunity.