

July 31, 2023

Sheehan RESPONSE TO City RE 07/10/2023 Sunshine Complaint

### **Introduction**

This document is submitted subsequent to the City's Position Statement regarding my Sunshine Complaint of 07/11/2023.

Transparency and accountability are necessary for instilling public trust in City officials and to ensure projects adhere to applicable land-use regulations. Missing and inaccurate records can lead to continued approvals of potentially non-compliant projects. A true and accurate and complete record that is easily accessible to the public will ensure compliant development and instill public trust.

### **Issues**

The overarching issues are (1) Project compliance with applicable land use plans and (2) the process by which it was conducted.

The South of West Midway Projects collectively consist of the RESHAP/Collaborative Partners Site and the West Midway Market-Rate (WM M-R) Site. These Projects have been in development as part of Alameda Point for almost ten years. RFQs were issued over 5 years ago: a RESHAP DDA was approved in 2018, and a non-binding ENA was issued for WM in 2020.

Beginning late 2021, a process was started that significantly changed the land use density, intensity and types previously approved that appear to be inconsistent with the superseding authority of the Main Street Neighborhood Specific Plan and the Project as approved by the AP Programmatic EIR. As a result, the 2023 Projects as approved at the July City Council meeting are significantly different from earlier versions.

Importantly, and as I described in my complaint, the process by which these changes and approvals occurred is insufficiently documented and was not transparent--and potentially resulted in inappropriate approvals of a Project that is out of compliance with the AP EIR and applicable land use plans and policies (per my time-intensive review).

### **Summary of Compliant**

My Complaint described the extreme difficulty locating the relevant records for the rapidly-changing and recent rapid-fire approvals for the **West Midway/RESHAP Project (South of West Midway or SWM Project)**, with respect to the importance of public access to ALL materials for meaningful public participation in the decision-making process.

The Complaint asserts that the inaccessibility of complete and accurate information of **all** the South of West Midway Project (SWM or the Projects) materials significantly impeded public participation in the decision-making process for this very large Project.

Further, public official accountability was lacking as it appears that reported information was not properly vetted, allowing errors and omissions in the current public materials, therefore the lack of access to the complete record impeded accountability.

Therefore, the public cannot be assured that there was a transparent, complete, accurate and impartial decision-making process, thereby violating the Sunshine Ordinance.

### **Response to City's Position Statement**

The City's Position Statement falsely claims "...**ALL documents** relevant to the RESHAP and West Midway Project were "publicly-available" prior to the July 18, 2023 Council Meeting.

The City's Position Statement is not responsive to:

1. Evidence and facts raised in my Complaint (rcd July 11 2023)
2. Sunshine Ordinance spirit, intent, and/or purpose and actual text of the Ordinance
3. A understanding of the concept of "accessibility" and "on the "City's website"

Therefore, my complaint cannot be determined "unfounded". Even Andrew Thomas apparently doesn't believe my complaint is "unfounded" because he wrote me a personal email asking that I rescind my complaint--not because it is unfounded—but ostensibly to save the City "public tax dollars".  
(07/13/2023)

### **Timeliness**

This complaint is timely because the City Council reviewed the Project at their July 18, 2023 regular meeting.

### **Desired Outcome**

This Complaint seeks (1) documentation that the Project complies with applicable land use plans and policies, and (2) compliance with the Sunshine Ordinance for adequate public access and participation, and (3) the City Attorney perform their statutory duty to "certify" information put in the public domain.

### **Upcoming Hearing**

For the upcoming hearing, at a minimum, at least the following should be provided by the City Attorney:

1. The City Staff Report Summary Report (CC July 2023) states the SWM Project is in compliance with applicable land use plans and environmental review. However, they provided no specific citations, excerpts, citations, or references to relevant sections of those plans or Zoning Codes.

The MSSP specifically lays out the relevant local state and federal regulations and explicitly states its **superceding regulatory authority over all local plans and policies in its enforcement authority regarding appropriate land use types and intensity and the "relevant provisions of the Alameda Municipal Code (AMC) as they currently exist or may be amended in the future"**.

→Based on my review, the 2023 Project changes from less than 500 to at least 800 total residential units is substantially out of compliance with the walkable mixed use Project as codified in the MSSP to minimize the M-R housing only to the extent the RESHAP Parcel infrastructure is included. The allowed residential density is also substantially out of compliance with the AP EIR-approved Project.

**→The City Attorney should provide specific citations, excerpts, and references that demonstrate compliance with applicable regulatory documents.**

2. The original 10.3 acre RESHAP site was vetted and codified in the MSSP to be protected from unreasonable changes or degradation. The 2-year stakeholder process provided a comprehensive and transparent review that described the targeted project benefits of the "preferred " location, including infrastructure, design, 200 unit density, and achieving project goals.

→ Based on my review, the "new" 8-acre site with 330 units (and counting) is prohibited by the MSSP. The new location is significantly inferior to the original location and is incapable of providing equivalent benefits of the original site. Further, the City has provided no documentation verify any sufficient evaluation. Further, the unsubstantiated reported reasons for doing so—even on their

face--show that the relocation is ill-advised, ill-planned, and is significantly detrimental to the Supportive Housing Collaborators, solely to the benefit of the M-R Site.

- **The City Attorney should provide all evaluation methods and results with verifiable documentation of a comparison with the original RESHAP location. This evaluation should show the benefits to the RESHAP population of the new location. It should also include verification of all statements made by City staff regarding the supposed benefits of the relocation of the RESHAP parcel and reduction in acres. Infrastructure costs should be included, but should not be not considered a benefit for the RESHAP population.**

**The City Attorney should also provide evidence of veracity and timely public access to the above.**