

**From:** [Shelby S](#)  
**To:** [City Clerk](#)  
**Subject:** [EXTERNAL] Public Comment for 5M 07/15/25: Yet another illegal CEQA Exemption--this time for hazardous waste. Consent 5M #2025-5160 – UST Closure Project  
**Date:** Monday, July 14, 2025 11:53:27 AM

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**\*\*Please add to public comment on the agenda item\*\***

Dear City Councilmembers:

This comment concerns Consent Calendar Item #2025-5160, which asserts an improper and undocumented CEQA exemption for a \$2.27 million hazardous materials project that is subject to extensive regulation and multiple permitting requirements under CEQA, RCRA Subtitle I, Health & Safety Code § 25292.05, and Title 23 of the California Code of Regulations.

The proposal includes:

- Closure and abandonment of three underground fuel storage tanks (USTs);
- Excavation and replacement of a 6,000-gallon diesel UST;
- Installation of new fuel system infrastructure and related site work;
- Construction activity at the Maintenance Service Center and Alameda Police Department.

Despite this scope, the project is being treated as exempt from CEQA under Guidelines §§ 15301 and 15302, which apply only to minor alterations and replacement of existing structures. These exemptions are expressly inapplicable to hazardous materials projects under § 15300.2(a). No environmental review has been performed, no permits have been issued, and no documentation has been disclosed to justify exemption or compliance.

This item presents significant legal and procedural deficiencies that obscure the project's true scope, regulatory posture, and readiness. The problems include:

**1. The project is framed to obscure its regulatory status and exceptional nature.**

The framing of this item—shaped by the City Manager's office and the authorship of the summary report—presents a version of the project that conceals unresolved permitting obligations and downplays the exceptional nature of the proposed action. The result is a decision-making environment in which critical regulatory steps appear settled when they are not, and an extraordinary project is treated as routine. Proceeding under this framing distorts the basis for decision-making and undermines the Council's legislative authority.

**2. The staff report asserts an inapplicable exemption under CEQA.**

The cited exemptions (Guidelines §§ 15301 and 15302) apply only to minor alterations or replacement of existing structures and do not apply to hazardous materials projects, which are specifically excluded under § 15300.2(a). The City's assertion of these exemptions is unfounded and unsupported by the project's scope or record.

**3. The project lacks required documentation for environmental compliance.**

A project involving hazardous materials and USTs requires:

- Phase I or II Environmental Site Assessments;
- Soil or groundwater testing data;
- UST closure or removal permits;

- CEQA Initial Study, Negative Declaration, or equivalent;
- Records of communication with regulatory agencies.  
None of this documentation has been provided.

**4. The project description is inconsistent with the executed contract.**

The summary report claims that regulatory approvals have already been obtained, while the construction contract explicitly requires the contractor to secure all permits prior to work. This inconsistency leaves it unclear what is actually being approved, and misrepresents the legal posture of the project.

**5. Abandonment-in-place is an extraordinary remedy that has not been justified.**

Under CCR Title 23 § 2672, abandonment-in-place may only be approved if physical removal is infeasible. This determination must be supported by structural analysis and agency approval—neither of which has been provided. The summary report treats abandonment-in-place as presumptively authorized.

**6. The regulatory deadline is used to manufacture false urgency.**

Health & Safety Code § 25292.05 sets a deadline of December 31, 2025 for closure of single-walled USTs through proper permitting. The statute does not eliminate CEQA review or allow premature approval. The summary's invocation of this deadline skews Council's understanding and pressures expedited action.

**7. Undisclosed Levine Act violations.**

The Levine Act (Gov. Code § 84308) requires disclosure and recusal if any party to the contract contributed \$250 or more to a Councilmember in the past 12 months. No such disclosures appear in the record, and no confirmation has been provided that conflicts do not exist.

**8. Councilmembers with conflicts of interest must recuse themselves.**

- Councilmember Greg Boller is employed by the Alameda County District Attorney's Office, which has CEQA enforcement authority under PRC § 21167.7.
- Councilmember Tony Daysog is employed by BCDC, the Bay Conservation and Development Commission, a regional agency with oversight over shoreline development, hazardous materials, and public trust resources in the Bay Area. His position at BCDC places him in direct conflict with the regulatory posture of this project, especially given the potential environmental implications and the unresolved permitting status.
- The City Manager, Jennifer Ott, both authored the staff report and is responsible for enforcing local environmental compliance. Her dual role as the architect and approver of the project further compromises the procedural neutrality of this item.

**Action required:**

This item should not be placed on the consent calendar for the first time. It involves hazardous materials, unresolved regulatory approvals, and CEQA exemption claims that lack factual and legal support. The City must:

1. Remove Item #2025-5160 from the consent calendar;
2. Direct staff to disclose all environmental documentation, permitting status, and agency correspondence;
3. Require recusal of any Councilmember with a financial, institutional, or enforcement conflict;

4. Postpone consideration of the contract until CEQA review is completed and all required permits have been secured.

Unsurprisingly, this action is yet another example of the City's ongoing misconduct—suppressing documentation, distorting regulatory obligations, and using CEQA exemptions to bypass lawful oversight. The pattern reflects a broader failure to uphold environmental law and administrative integrity and requires immediate correction by higher authorities.

Submitted for the record.

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*"The righteousness of the oppressed will not go unheard."*