

From: Shelby S <sheehan.shelby@gmail.com>

Sent: Tuesday, August 20, 2024 5:12 PM

To: Planning <Planning@alamedaca.gov>; Historical Board <historicalboard@alamedaca.gov>;
City Clerk <CLERK@alamedaca.gov>

Cc: Sunny Tsou <stsou@alamedaca.gov>; Hanson Hom <hhom@alamedaca.gov>; Asheshh Saheba <asaheba@alamedaca.gov>; Teresa Ruiz <truiz@alamedaca.gov>; Diana Ariza <dariza@alamedaca.gov>; Xiomara Cisneros <xcisneros@alamedaca.gov>; Andy Wang <awang@alamedaca.gov>; Jennifer Ott <jott@alamedaca.gov>; Trish Spencer <tspencer@alamedaca.gov>; Tracy Jensen <tjensen@alamedaca.gov>; Tony Daysog <TDaysog@alamedaca.gov>; Malia Vella <MVella@alamedaca.gov>; Marilyn Ezzy Ashcraft <MEzzyAshcraft@alamedaca.gov>; Tod Hickman <tod@building43winery.com>

Subject: [EXTERNAL] NOI for CEQA challenge to PB approval of the Food Bank Project

Clerk-

Attached is the NOI to challenge the Planning Board CEQA determination for the Food Bank Project.

The NOI also includes a copy of our Brown Act complaint RE the Food Bank CEQA determination for which we are still awaiting a response from the Planning Board.

Please add this to the next Planning Board and Historical Advisory Board meeting for non-agenda items.

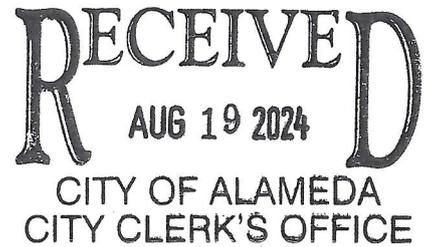
Thanks,

Shelby

--

Shelby

510-435-9263



NOTICE TO AGENCY

August 19, 2024

Via Filing with City Clerk & E-MAIL

City Clerk
City of Alameda
2263 Santa Clara Ave
Alameda, CA 94501
clerk@alamedaca.gov

RE: Notice of Intent to File California Environmental Quality Act Petition challenging the CEQA determination and approval of the amended "Design Review" for the Food Bank (Item 2024-4227) on July 22, 2024.

Dear City Clerk et al,

PLEASE TAKE NOTICE that as required under California Public Resources Code Section 21167.5, Alamedans Tod Hickman and Shelby Sheehan ("Petitioners"), well-documented and vocal objectors to the City's wrongful CEQA Determinations and CEQA violations for the aforementioned project and others at Alameda Point, hereby provide notice of their intent to file a verified petition for a writ of mandate under the California Environmental Quality Act ("CEQA") against the City of Alameda Planning Board in Alameda County Superior Court. (See Pub. Res. Code §21000, *et seq.*)

Petitioners seek to challenge the City of Alameda Planning Board's July 22, 2024, approval and CEQA determination of the Food Bank's "Design Review" for construction of a:

"10,000 square foot pre-engineered metal warehouse attached to an existing building. The project will provide new on-site landscaping, including a landscape buffer between the public sidewalk and redesigned parking lot and planters with shade trees in the parking lot".

Brown Act Cure and Correct Letter 08/06/24

By approving the Project design review, the Planning Board violated the Brown Act by also "approved" the CEQA determination for the Project without itemizing and voting on it separately.

The harm for noncompliance is significant because the Project does not comply with CEQA, the Alameda Point EIR, the State and local Historic Preservation Act, the Alameda Zoning Code; and in particular, it does not comply with the *Secretary of Interiors Rehabilitation Standards for Historic Properties* and will cause irreversible degradation to the Historic District resource value.

By violating CEQA and Brown Act procedures, insufficient notice and insufficient opportunity was given to the public. Due to the subordinating of the CEQA determination within the Design Review approval, the City did not allow a full discussion of the improper Section 15183 CEQA Exemption. This, in turn, prevented public disclosure of the reasons why individual Planning Board members believed the CEQA Exemption was proper.

Therefore, pursuant to the Brown Act, because the July 22, 2024, Agenda did not notice and/or separately agendize the CEQA determination, *the CEQA determination "approval" is null and void.* (GS Section 54954.2)

Petitioners sent a "Cure and Correct" Notice to the Planning Board on August 6, 2024 (see attached), and Petitioners are still awaiting a proper response from an appropriate citizen representative of the Planning Board, due no later than September 6, 2024.

NOE filed on 08/06/2024

Petitioners are noticing the City of our intent to challenge the CEQA determination because an NOE for the Project was filed with the State Clearinghouse immediately after our Brown Act Complaint was submitted.

It needs to be noted that CEQA is based on the WHOLE project, and further Project approvals are required, including one for the upcoming Building Permit application. Therefore the NOE is improper or is otherwise invalid procedurally and the timeline for the statute of limitations is not relevant.

At this time, the City could properly take this opportunity to separately agendize the Project's CEQA Determination as a cure and correct to our Brown Act violation notice and the information in this Notice of Intent. By doing so, it is our hope that a proper CEQA review will bring this Project into compliance with the applicable land use laws.

Nonetheless, Petitioners desire to alert other parties, sooner rather than later and in good faith, that we intend to challenge the improper CEQA finding unless the City notifies us of the above cure and correct immediately.

CEQA Challenge

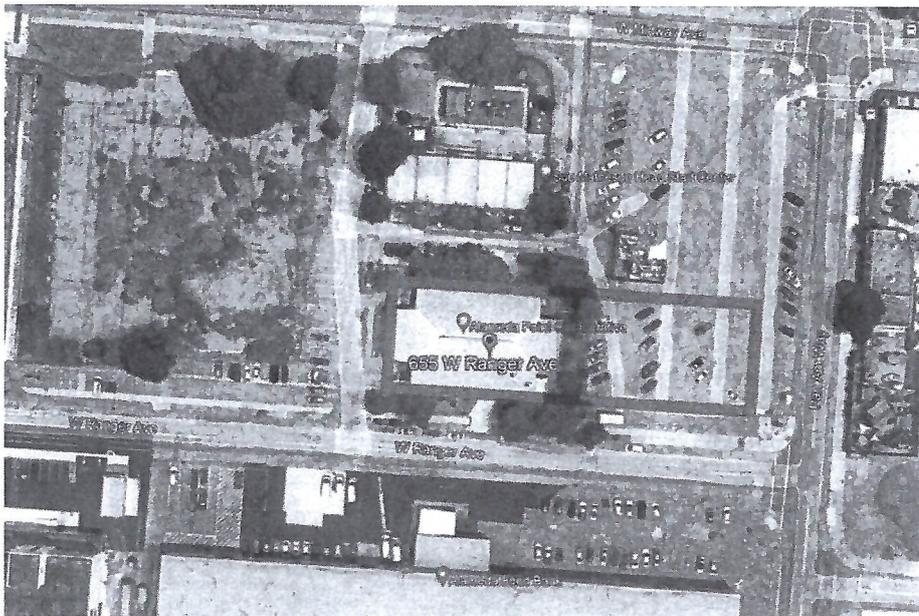
Petitioners will file this CEQA challenge within the statutory deadline based on improper use of the Streamlining provisions of CEQA, as well as failure to adequately disclose and evaluate the

Project's significant adverse environmental impacts. Petitioners have alerted the Planning Board of the proper guidelines for evaluations of Projects ad nauseum.

Because the approval of this Project is inconsistent with the guidelines in the Zoning Code, this Project will cause severe irreversible degradation of the Historic District because the new building is inconsistent with the infill requirements for character-defining elements of the Shops Area Historic District. These inconsistencies include: inconsistency with retaining spatial relationships, circulation patterns, and landscape-architecture integration features of vistas/viewsheds, open spaces, streetscapes, and other landscape elements. We must also note the requirement to keep existing parking lots as historically intended. This Project also needs a Certificate of Approval, which is lacking as well.

“Design Review”

It is unclear how the “Design” of this project was approved without proper protocol. Aside from the lack of Certificate of Approval, it appears this faulty approval can be attributed, in large part, to the fact that the renderings in the permit applications do not show the surrounding historic vicinity. This, to a certain degree, explains why this issue was glossed over during the approval process. See aerial view rendering below for a better perspective of this point. Note, however, this concept still does not excuse the Planning Board from performing their duties to understand and legally administer the Zoning Code requirements.



In addition to the above alternatives that should have been considered (i.e., expanding into the unused square footage of the building they are presently occupying, or erecting the new building on the vacant lot immediately to the west), several superior plans could be utilized on the Pan Am Way side, including making the east side of the project more park-like and/or well landscaped as a wide slow-driving promenade, while routing Food Bank traffic and parking to the west.

These alternatives would improve the area, lower the cost of the Project, and avoid impacting the other uses, while retaining the historic character of the Shops Area. This would be consistent with historic and existing uses, and likely CEQA compliant if designed and reviewed properly.

Additionally, why none of these options were considered and/or presented to the public is very suspicious to Petitioners. Given that SRMERNST is assisting with the Food Bank application; it gives the appearance SRMERNST may have an agenda for those other areas and is pushing this project to improperly preserve their interests in the other areas.

Abuse of Process

In any case, it is clear to Petitioners that this Project approval constitutes an abuse of process and that Planning Department staff willfully and knowingly violated applicable State, Regional, and local land use regulation, and other City goals, plans, policies, and regulations.

In large part, this abuse of process is due to the fact that the City has not adopted the Public Agency Implementing Procedures required pursuant to CEQA Section 15022. It is also notable that none of the Planning Department staff have any substantial background in CEQA and refuses to allow public participation in the process. Additionally, since the Planning Board has thus far refused to independently evaluate Planning staffs' CEQA determinations, there are no checks and balances, which can only lead to improper CEQA determinations for all proposed Projects.

Relief Requested

Among other relief, Petitioner will request that the Court issue a Writ of Mandate ordering the City of Alameda to vacate and set aside the approval(s) of the Project and to cease and desist any further progress on the Project pursuant to the Court's jurisdiction.

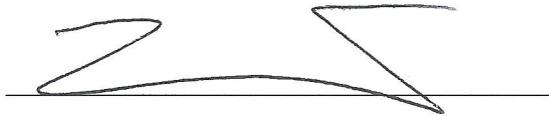
Additionally, Petitioner will seek costs and attorneys' fees. (See Cal. Civ. Proc. § 1021.5.)

Based on the reasons outlined above, Respondents should immediately agendize the Food Bank CEQA findings and Planning Board members should be prepared to disclose the "Substantial Facts" that they reviewed as the basis of their approval/vote.

An appropriate CEQA review process will include an adequate evaluation of impacts and appropriate mitigation that shall include avoidance measures and other mitigation to reduce impacts to less than significant, and an evaluation of alternatives, AND will include a Certificate of Approval from the Historical Advisory Board. The appropriate process will provide the appropriate documentation for the public to review and comment.

Legitimate approval shall not be granted unless all impacts have been reduced to less than significant and all legal processes and documentation have been made available to the Public.

Respectfully,



TOD HICKMAN
tod@building43winery.com
510 872-1710



SHELBY SHEEHAN
sheehan.shelby@gmail.com
510 435-9263

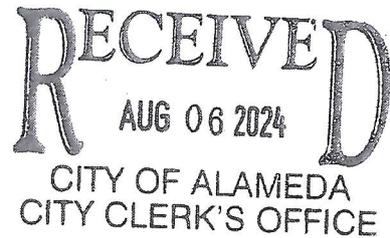
--

August 6, 2024

President of the Planning Board and
Planning Board Members
City of Alameda

City Attorney Yibin Shen

Nancy McPeak Executive Assistant to PB (nmcpeak@alamedaca.gov)



RE: Brown Act violation Planning Board 7/22/24 PB Item 2024-4227 677 West Ranger (Food Bank construction)

Dear Planning Board,

This letter is to call your attention to what appears to be a substantial violation of the open and public meeting provisions and the notice requirements of the Ralph M. Brown Act, one which may jeopardize the finality of the action taken by the Planning Board.

We, the undersigned, hereby notify the City and Planning Board of our "Cure and Correct" demand.

In its Planning Board meeting of 07/22/2024, agenda item 2024-4227 was described therein as a "Public hearing to consider Design Review" of the Food Bank's addition and site plan.

The Planning Board took action as defined in Govt. Code 54952.6, by approving the "Design Review" for construction of a "10,000 square foot pre-engineered metal warehouse attached to an existing building. The project will provide new on-site landscaping, including a landscape buffer between the public sidewalk and redesigned parking lot and planters with shade trees in the parking lot".

By approving the Project design review, the Planning Board also included the CEQA determination for the Project as follows: "No further environmental review of the Design Review is required under the California Environmental Quality Act (CEQA) pursuant to the streamlining provisions of CEQA Guidelines Section 15183".

As you know, the Brown Act creates specific agenda obligations for notifying the public with a "brief description" of each item to be discussed or acted upon.

In addition to the Brown Act stating that "no action or discussion shall be undertaken on any item not appearing on the posted agenda", it also creates a legal remedy for illegally taken actions — namely, the judicial invalidation of them upon proper findings of fact and conclusions of law.

The Planning Board's action ***violated the Brown Act because the CEQA determination was not agendized as a separate item from the Design Review item voted on by the Planning Board.***

Pursuant to San Joaquin Raptor Rescue Center v. County of Merced, CEQA determinations are not a component of an item for "Project" approval because the CEQA determination "involves a separate action or determination..." and "concerns discrete, significant issues of CEQA compliance and the project's environmental impacts".

Under *San Joaquin Raptor*, local agencies, tasked with preparing legislative body meeting agendas in compliance with the Brown Act, must briefly describe a proposed CEQA "action or determination" that is " a separate item of business" from the legislative body's consideration of the proposed project.

The injury for noncompliance is significant because we believe the Project does not comply with CEQA, the AP EIR, the Historic Preservation ACT, and the Alameda Zoning Code, and will cause irreversible degradation to the Historic District.

Because the July 22, 2024 Agenda did not notice or separately agendize the CEQA determination, the CEQA determination "approval" is null and void. (GS Section 54954.2)

When local agencies fail to comply with the Brown Act, the statute allows " any interested person [to] commence an action for mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter . . . or to determine the applicability of this chapter to ongoing actions or threatened future actions . . . or to determine the applicability of this chapter to past actions" (GC Section 54960(a).

When an agency omits an item of business from its agenda, even substantial compliance does not apply (See *Hernandez v. Town of Apple Valley*)

Pursuant to provision (Government Code Section 54960.1), we demand that the Planning Board cure and correct the illegally taken action and properly agendize a public review of the Project's CEQA determination as a single and separate item in a future meeting in order to provide the public the awareness and opportunity to comment on the improper CEQA determination.

Pursuant to CEQA, the City staff CEQA "discussion" should include a disclosure at a subsequent meeting of why individual members of the Planning Board voted as they did to approve the CEQA determination, accompanied by the full opportunity for informed comment by members of the public at the same meeting, notice of which is properly included on the posted agenda.

Informed comment might in certain circumstances include the provision of any and all documents in the possession of the City of Alameda related to the action taken, with copies available to the public on request at the offices of the City and also at the meeting at which reconsideration of the matter is to occur.

As provided by Section 54960.1, you have 30 days from the receipt of this demand letter to either cure or correct the challenged action or inform us of your decision not to do so. If you fail to cure or correct as demanded, such inaction may leave us with no recourse but to seek a judicial invalidation of the challenged action pursuant to Section 54960.1, in which case we would also ask the court to order you to pay our court costs and reasonable attorney fees in this matter, pursuant to Section 54960.5.

We would also like to point out that a recurring and prevalent theme is becoming clear regarding the City's apparent violation of numerous matters involving CEQA and the Brown Act.

Respectfully yours,

Tod Hickman (tod@building43winery.com)

Sheby Sheehan (sheehan.sheby@gmail.com)

