

San Francisco Bay Conservation and Development Commission

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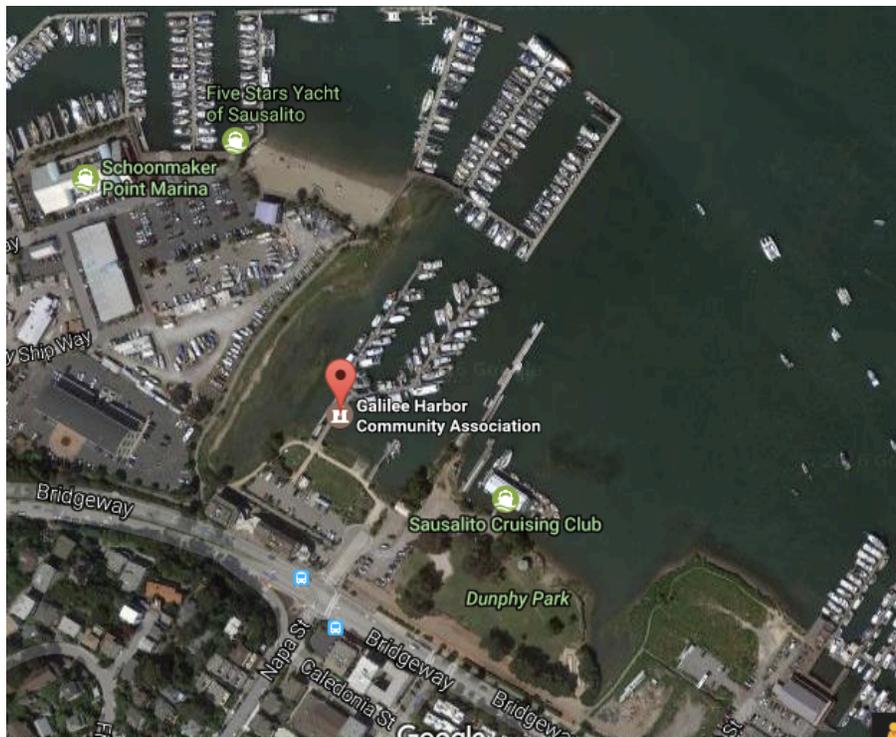
TO: Commissioners and Alternates
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SUBJECT: **Galilee Harbor Settlement Agreement Second Amendment**
(For Commission consideration on January 19, 2017)

Summary

Parties: San Francisco Bay Conservation and Development Commission (“the Commission”) and Galilee Harbor Community Association (“GHCA”).

Location: 300 Napa Street in the City of Sausalito, Marin County.



Background and Summary

This report summarizes the proposed Galilee Harbor Settlement Agreement Second Amendment (“Second Amendment”) between the Commission and GHCA, which would authorize continued residential use of the Galilee Harbor marina for one additional 20-year term, approve certain modifications to the Galilee Harbor Marine Service Harbor Project requested by GHCA, and authorize termination of the surety bond previously provided by GHCA pursuant to the Galilee Harbor Settlement Agreement (“Settlement Agreement”).

On or about June 24, 1996, the Commission and GHCA entered into the Settlement Agreement to resolve litigation between the parties. The original dispute arose due to a disagreement between the Commission and GHCA concerning whether a BCDC permit was required to authorize the community of 34 residential live-aboard boats and four houseboats located in the City of Sausalito along the shore of Richardson Bay, east of Bridgeway Boulevard between Dunphy Park and Schoonmaker Point. GHCA contended that the community pre-existed the Commission, and therefore no permit was required for the development and activities associated with the community. The Commission filed an action in state court contending that the community was established after the enactment of the McAteer-Petris Act and the adoption of the San Francisco Bay Plan, and that the community of live-aboard boats and houseboats raised issues of consistency with the Bay Plan. The Settlement Agreement resolved the dispute, with the Commission dismissing its complaint against GHCA and the Commission agreeing that GHCA could proceed with a project known as the “Galilee Marine Service Harbor Project” as specified in the Settlement Agreement. The project involved constructing modernized facilities for the live-aboard boats and houseboats, restoring wetlands along the shoreline, installing new public access to and along the shoreline, installing parking for residents of the GHCA and the public, and establishing a “live-work” space with workshops in the upland areas of the site.

The Settlement Agreement authorized residential use of the marina for a 20-year term, at the end of which the Commission would reauthorize the continued residential use of the marina for one additional 20 year term if, after a public hearing, the Commission determined that: (1) there is no foreseeable need for the property in the Bay to be used for water-oriented and public trust uses within the next 20 years, and (2) GHCA has fully complied with specified conditions of the agreement.

In January 2015, as part of its request to reauthorize the term, GHCA submitted a draft “Public Trust Needs Report” examining the need for the parcel in the Bay (“Parcel 2”) to be used for water-oriented and public trust purposes within the next 20 years. Commission staff provided comments on the draft report, requesting GHCA review additional information including the relevant population growth data and information about planned or possible expansions to public water-oriented facilities in Sausalito. On January 31, 2016, GHCA submitted a revised, final “Public Trust Needs Report” (“Report”) including additional information requested by Commission staff.

The Report examined potential public trust needs for the site related to marine commerce, navigation, fishing, protection of marine ecology, and public recreation. The Report reviewed public trust priority uses throughout the Bay Area, in Richardson Bay, in the City of Sausalito,

and at the site itself, using authorities including the McAteer-Petris Act, the San Francisco Bay Plan, the Richardson Bay Special Area Plan, the City of Sausalito's Marinship Specific Plan, which is part of the City's General Plan and covers the area of the site. GHCA provides for existing public trust needs by maintaining tidal marsh, providing a pump-out and dinghy dock, a shoreline path, access to the docks and viewing platform, an ADA-compliant ramp, a bikeway connecting to existing bikeways to the north and south, and an access connection to and from Dunphy Park – all open to the public. GHCA supports recreational boating public trust needs throughout the City of Sausalito and the Bay Area by providing marine services to the boating community as a "live-work marina."

The site is small, and unlikely to be needed for public trust needs in the future outside of the uses that already take place at Galilee Harbor. The Report examined future public trust needs, including population projections and current development trends. According to the Report, Sausalito provides for 20% of the recreational boat facilities in the Bay Area, and at the time of the Report recreational boat marinas in Sausalito reported an approximate vacancy rate of 14%. Furthermore, the Report examined other future potential recreational public trust needs, including planned future improvements to existing parks and public areas along the Sausalito waterfront. Based on the analysis provided in the Report, there is no foreseeable need for Parcel 2 to accommodate an increase in the City of Sausalito for recreational boat berths or recreational public waterfront parks in the next 20 years.

Based on results of study, there is no foreseeable need for Parcel 2 to be used for water-oriented and public trust purposes within the next 20 years.

The Second Amendment proposed by GHCA and Commission staff would authorize the additional 20-year term of residential use of the marina based on findings of no foreseeable need for Parcel 2 to be used for water-oriented and public trust purposes within the next 20 years and that GHCA has complied with all applicable conditions of the Settlement Agreement, including completing wetland restoration and installing all required public access amenities, except as modified by the Second Amendment.

In requesting authorization for continued residential use of the marina for one additional 20-year term, GHCA has also requested, based on GHCA's experience in implementing the project and/or changed circumstances, that the Commission approve certain modifications to the project. These include the removal of phasing restrictions for construction of non-public access development, modification of certain requirements that pertain to rehabilitation of the boatways, and changes to the design of the proposed Marine Services Building, which would be used as a workspace for residents and tenants, and to the open work area authorized by the original Settlement Agreement. In addition, the Second Amendment would modify required public access by removing a required public access pathway along the spit south of the development for public safety reasons (while retaining the spit as open space accessible to the public under certain conditions), providing the majority of the lawn area originally proposed for a work space as public open space, and providing additional public access in the vicinity of the Marine Services Building.

Additionally, GHCA has requested that the Commission authorize termination of the \$75,000 surety bond previously provided by GHCA pursuant to Paragraph IV.F.6.a of the Settlement Agreement. Given that the Commission has had no occasion during the 20-year period since the effective date of the Settlement Agreement to consider potentially issuing a fill removal order under the Settlement Agreement and is unlikely to do so in the future, and given that GHCA has complied with all conditions of the Settlement Agreement, except as modified in the Second Amendment, Commission staff proposes the termination of the surety bond.

The Second Amendment proposed by Commission Staff and GHCA would: (1) approve GHCA's requested modifications to the project; (2) terminate the surety bond, subject to the terms and conditions of the Second Amendment; and (3) authorizes the extension of the 20-year term for residential use of the Galilee Harbor marina based on the findings required in the original Settlement Agreement.

Exhibits

A. Galilee Harbor Settlement Agreement Second Amendment

Recommendation

Staff recommends that the Commission approve and authorize the Executive Director to execute the Galilee Harbor Settlement Agreement Second Amendment.