

San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

February 24, 2017

TO: Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
Marc Zeppetello, Chief Counsel (415/352-3655; marc.zeppetello@bcdc.ca.gov)
Jhon Arbelaez-Novak, Coastal Program Analyst (415/352-3649; jhon.arbelaez@bcdc.ca.gov)

SUBJECT: Staff Recommendation for Proposed Findings to Support Denial of Application for BCDC Permit Application No. 2016.003.00
(For Commission consideration on March 2, 2017)

Staff Recommendation: Findings to Support Denial of Application for BCDC Permit Application No. 2016.003.00

The staff recommends that the Commission adopt the following findings:

1. In 1984, the San Francisco Bay Conservation and Development Commission (Commission) and Harbor Bay Isle Associates (HBIA)—the main developer for Harbor Bay Island— entered into an agreement to resolve a disagreement between the Commission and HBIA over the Commission’s jurisdiction under the McAteer-Petris Act over development at Bay Farm Island in the City of Alameda. Since that time, the island, which includes the 1.51-acre project site, has been governed by the provisions of this agreement in which HBIA agreed to define the nature and extent of public access provided at the island in conjunction with development, and the Commission agreed, with the exception of the ferry terminal, not to require a permit of HBIA for private development, uses, and associated facilities within its 100-foot shoreline band jurisdiction, while work in the Bay continues to require a Commission permit. As originally written, the agreement designated the project site for a ferry terminal.
2. On several occasions, the agreement has been amended to reflect revised development plans at the project site, at the ferry terminal, and for public access. On November 13, 1990, the Commission and HBIA entered into the *Second Amendment to the Third Supplementary Agreement (TSA)*, which allowed the ferry terminal site designation to be moved from the subject property to a location further northwest and, in turn, for the subject property to be designated for a restaurant development. The Second Amendment to the TSA, provided for an on-site 0.20-acre (8,712-square-foot) easement for a shoreline pedestrian pathway, a 0.14-acre (6,098-square-foot) easement at Harbor Bay Parkway for a sidewalk and bicycle path, and ten public parking spaces within the

grounds of the adjacent East Meadow Park, owned and operated by the City of Alameda. The restaurant project was never realized. On March 15, 2013, the *Third Amendment to the TSA* was issued, which changed the land use designation for the subject property to “restaurant/commercial office” instead of only “restaurant.” This amendment included the same conditions regarding public access and public parking that were contained in the Second Amendment to the TSA.

3. In 2014, HBIA sold the subject project site to Ms. Daxa Patel, who proposed a five-story hotel at the site. The Commission staff subsequently informed Ms. Patel that a Commission permit was needed for construction because a hotel was not consistent with the use, noted above, for the site as specified in the Third Amendment to the TSA.
4. On May 9, 2016, the originally-proposed public access design was reviewed by the Commission’s Design Review Board (DRB). At that meeting, the DRB advised the project proponent and Commission staff that the overall massing and layout of the project dominated the relatively small site. The DRB advised the project proponent to:
 - a) remove parking spaces and relocate the hotel farther from the shoreline in the direction of Harbor Bay Parkway;
 - b) move the bike path to the shoreline area;
 - c) make the site more welcoming for the public;
 - d) relocate an enclosed public pathway at the south side of the building; and
 - e) return to the DRB for further review.
5. On August 4, 2016, the Commission opened and closed a public hearing on the project, and concerns were raised about whether the project would provide maximum feasible public access consistent with the project. On August 10, 2016, the applicant temporarily withdrew the permit application from Commission consideration, and extended the time under the Permit Streamlining Act in which the Commission could act on the application through February 27, 2017.
6. At the time of the August 4, 2016 meeting, the staff did not believe the project would provide maximum feasible public access consistent with the project. The staff believed that it was feasible to move additional parking off-site, provide better public access areas and amenities to make the areas more inviting to the public, and reduce the height of the building to provide a less intimidating experience. Following discussions with the City of Alameda regarding their building and parking requirements, it was confirmed that all changes recommended by staff were feasible.
7. On January 27, 2017, the applicant requested that its application, as revised, be reinstated for active consideration by the Commission. Due to the limited time available prior to the February 27, 2017 deadline for the Commission to act on the application, it was not possible to return to DRB for review of the revised application.
8. Due to the amount of time that had transpired since the public hearing, and the revisions to the project, the Commission re-opened the public hearing on the permit application on February 16, 2017.
9. After considering the revised project application summary, the staff recommendation, and the comments of the applicant’s representative and members of the public, the Commission took a roll call vote. There were eleven affirmative votes, six negative votes,

and one abstention---less than the necessary 13 required affirmative votes for approval of the permit application, as required by Section 66632(f) of the McAteer-Petris Act. The Commissioners who voted to approve the BCDC permit application were Commissioners Addiego, Scharff, Gibbs, Lucchesi, McGrath, Nelson, McElhinney, Vasquez, Techel, Wagenknecht, and Acting Chair Halsted. The Commissioners who voted to deny the application were Commissioners Butt, Gilmore, Gorin, Kim, Sears, and Showalter. Commissioner DeLaRosa abstained from voting on the application.

10. The Commission **denies** BCDC Application No. 2016.003.00 on the following grounds:

- a. The project fails to provide maximum feasible public access, consistent with the project, to the Bay and its shoreline, as required by Sections 66602 and 66632.4 of the McAteer-Petris Act.
- b. The project does not provide sufficient Bay-related activities and amenities to enhance the pleasure of the public to use and view the Bay, and fails to provide variety, interest and attraction to the adjacent shoreline public access areas, as required by the San Francisco Bay Plan (Bay Plan) Policy No. 2 on Appearance, Design, and Scenic Views, which states, in part, “[a]ll bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay,” and Bay Plan Policy No. 7 on Public Access, which states, in part, “public access improvements...should be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline.”
- c. The building’s proximity to the shoreline, within the shoreline band, does not visually complement the Bay, the height and massing of the building will significantly obstruct views of the water, and the vertical separation between the proposed hotel lobby and the adjacent public access area would preclude desirable, beneficial activation of the shoreline, as required by Bay Plan Policy No. 4 on Appearance, Design, and Scenic Views, which states, in part, “structures and facilities that do not take advantage of or visually complement the Bay should be located and designed so as not to impact visually on the Bay and shoreline.”
- d. The building design and its proximity to the shoreline, within the shoreline band, will create an intimidating presence for the public, making the shoreline and the public access provided within the shoreline band unwelcoming. A welcoming public access area is a guiding principle for all public access areas in the Bay, as stated in the Commission’s Public Access Design Guidelines, which state, in part, “public access areas must be designed in a manner that feels public....” The Guidelines should be used when designing public access areas, as required by Bay Plan Policy No. 12 on Public Access, which states, in part, “[t]he Public Access Design Guidelines should be used as a guide to siting and designing public access consistent with a proposed project.”