

LARA WEISIGER

From: Erin S Geiman <Erin.T.Sugiyama@kp.org>
Sent: Tuesday, February 05, 2019 4:05 PM
To: LARA WEISIGER
Subject: City Council Agenda Item 2019-6448 (Marriot Appeals)

Hi Laura,

I'm writing in support of the appeals to the proposed Marriot hotel for Harbor Bay. The proposed hotel is a terrible GREED DRIVEN decision which hurts Alameda and its families.

The proposed site surrounds a quiet residential neighborhood. The originally proposed commercial development approved by the planning board was not a 24/7 operation that threatened the safety of our children. Children cross Mecartney Road every school day. My children have almost been hit by cars crossing the intersection of Mecartney and Sharon Rd headed to Bay Farm Island school in the morning by distracted drivers in a hurry to catch the ferry. The increase of traffic expected by ferry riders and hotel guests threatens the safety of my family. The increased crime from a 24/7 hotel threatens the safety of the neighborhood. Please consider an alternative location for this awful hotel which does not fit on the proposed current location.

IF this hotel is approved, PLEASE IMPLEMENT lighted pedestrian crossings before someone is hit. This request is for both Mecartney and Aughinbaugh as well as Mecartney and Sharon Rd as both are commonly used routes for children going to Bay Farm Island school. If someone is hit without safety measures being put in place, this weighs on you. Don't we have enough car vs pedestrian deaths in Alameda already?

Thank you,

Erin Sugiyama

NOTICE TO RECIPIENT: If you are not the intended recipient of this e-mail, you are prohibited from sharing, copying, or otherwise using or disclosing its contents. If you have received this e-mail in error, please notify the sender immediately by reply e-mail and permanently delete this e-mail and any attachments without reading, forwarding or saving them. Thank you.

LARA WEISIGER

From: Patricia Lamborn <patricia.lamborn@aol.com>
Sent: Tuesday, February 05, 2019 3:37 PM
To: Marilyn Ezzy Ashcraft; John Knox White; Malia Vella; Jim Oddie; Tony Daysog
Cc: LARA WEISIGER
Subject: Save the Bay Letter : Marriott Hotel- BCDC Permit -
Attachments: BCDC Alameda Marriott.pdf

Dear Mayor Ashcraft, Vice Mayor Knox White, and Council Members Vella, Oddie and Daysog,

I am forwarding the letter I received, communicating the Save the Bay support for a BCDC (Bay Conservation and Development Commission) permit process for the Marriott Residence Inn proposed at 2900 Harbor Bay Parkway, Alameda. BCDC has agendaized a discussion and decision on requiring a permit of the project Thursday Feb. 7, 2019.

Sincerely,

Patricia Lamborn
patricia.lamborn@aol.com



February 4, 2019

The Honorable R. Zachary Wasserman
San Francisco Bay Conservation and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102

RE: February 7, 2019, Item #11 - Marriott Hotel Project, 2900 Harbor Bay Parkway, Alameda

Dear Mr. Chairman and Commissioners:

We urge the Commission not to approve staff's recommendation to waive permit requirements for the proposed project.

Since we worked to establish BCDC five decades ago, and throughout the Commission's history, Save The Bay has advocated for protection not only of San Francisco Bay, but of the Commission's mandate, jurisdiction and regulatory authority. When individuals, organizations, legislators or governors have tried to erode BCDC's authority, we have fought to protect the Commission. And when the Commission has considered inappropriately or unwisely ceding its own authority, we have opposed that as well.

We disagree with the staff's recommendation to not require a permit for the proposed Marriott Hotel Project at 2900 Harbor Bay Parkway in Alameda. The developer of this project should be required to apply for and obtain a permit, per the Commission's regulations and statutory authority. This proposed five-story hotel falls within BCDC's shoreline jurisdiction on property adjacent to the Shoreline Park bike and pedestrian trails.

Although BCDC made previous agreements with a prior owner to exempt it from the Commission's permitting process, the successor owner is not entitled to that exemption. The proposed hotel is planned to be larger than any building in Harbor Bay and its impacts to the Bay and Bay Trail deserve the full scrutiny and analysis that BCDC's permitting process affords, including opportunities for thorough review of impacts and alternatives by the public and Commissioners.

We encourage the Commission to retain its full authority to review, regulate and permit any project at this shoreline site.

Thank you very much for your consideration.

Sincerely,

David Lewis
Executive Director

LARA WEISIGER

From: Patricia Lamborn <patricia.lamborn@aol.com>
Sent: Tuesday, February 05, 2019 2:52 PM
To: Marilyn Ezzy Ashcraft; John Knox White; Malia Vella; Jim Oddie; Tony Daysog
Cc: LARA WEISIGER
Subject: Sierra Club Letter to BCDC - support Permit Process
Attachments: Alameda Hotel - BCDC - Sierra Club Letter - Permit.pdf

Dear Mayor Ashcraft, Vice Mayor Knox White, and Council Members Vella, Oddie and Daysog,

I am forwarding the letter I received, communicating the Sierra Club (Northern Alameda County Group) support for a BCDC (Bay Conservation and Development Commission) permit process for the Marriott Residence Inn proposed at 2900 Harbor Bay Parkway, Alameda. BCDC has agendaized a discussion and decision on requiring a permit of the project Thursday Feb. 7, 2019.

Sincerely,

Patricia Lamborn
patricia.lamborn@aol.com



NORTHERN ALAMEDA COUNTY GROUP

Alameda Albany Berkeley Emeryville

Oakland Piedmont San Leandro

2530 San Pablo Avenue, Suite I

Berkeley, California 94702

510-848-0800

February 1, 2019

Commissioner R. Zachary Wasserman, Chair
Commissioner Anne Halsted, Vice Chair
Commissioner Wilma Chan, Alameda County
Larry Goldzband, Executive Director
All BCDC Commissioners
San Francisco Bay Conservation and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102-7019

Subject: BCDC Permit Process for Proposed Marriott Hotel, 2900 Harbor Bay Parkway, Alameda, CA.

Dear Commission Members and Staff,

The Sierra club respectfully requests that the Bay Conservation and Development Commission (BCDC) require the developer of the Marriott Hotel, Harbor Bay Isle Hospitality, LLC (HBIA) obtain a BCDC permit, pursuant to the McAteer-Petris Act. This discussion and decision will come before the Commission on February 7, 2019.

The project falls well within your jurisdiction and appropriate law. The proposed project is a five story hotel set on the shoreline of the San Francisco Bay with a setback from the shoreline of only 35 feet from their property line adjacent to the Shoreline Park bike and pedestrian trails. The McAteer-Petris Act expressly mandates that "Any person or governmental agency wishing to place fill, to extract materials, or to make any substantial change in use of any water, land or structure, within the area of the commission's jurisdiction shall secure a permit from the commission."

Past BCDC agreements with HBIA exempted HBIA from the permitting process. However, this site has been owned by a successor owner for several years. All past agreements between BCDC and HBIA, including the most recent 3rd Amendment to the 3rd supplementary Agreement, state **"This ... Agreement does not constitute modification or application of BCDC jurisdiction or controls as to any other party than HBIA."**

Rather than offer HBIA the choice of entering into a contract with BCDC or following the normal permitting process, the Sierra Club urges BCDC to fulfill its mission in the manner prescribed by State Law and follow BCDC policies and procedures. This impactful project should be required to follow the normal BCDC permitting process, which insures transparency, public hearings, and the protection of public access on the San Francisco Bay.

Sincerely,

A handwritten signature in green ink that reads "Sophie Hahn". The script is fluid and cursive, with the first letters of "Sophie" and "Hahn" being capitalized and prominent.

Sophie Hahn

Chair, Sierra Club Bay Chapter Northern Alameda County Group

LARA WEISIGER

From: Mike Ballerini <mvballerini@gmail.com>
Sent: Tuesday, February 05, 2019 2:08 PM
To: Marilyn Ezzy Ashcraft; John Knox White; Malia Vella; Jim Oddie; Tony Daysog; Dave Rudat; ANDREW THOMAS; Henry Dong; LARA WEISIGER; becca@voxpathulpr.net
Subject: Tonight - Uphold Planning Board's Unanimous Approval of Marriott Harbor Bay

Dear Mayor and City Council:

Tonight, you have an opportunity to uphold your planning board's unanimous decision to deliver a quality, modern hotel and restaurant to Alameda's waterfront at Harbor Bay. Staff has concluded the appellants failed to demonstrate that the Planning Board's actions, including findings and conclusions under CEQA, were not supported by substantial evidence.

Instead, these are clearly attempts to block an opportunity to bring significant revenue to the city, provide shoreline restoration, open space, and amenities to the public, create union jobs, and fill a void in high-end lodging on the island.

Time is now overdue to create a quality project on this long-languishing property.

Please vote tonight to affirm planning board's approval of the Marriott Residence Inn at Harbor Bay.

Thank you,
Mike Ballerini
1825 Fremont Dr.
Alameda, Ca. 94501

Sent from my iPad

LARA WEISIGER

From: Gregory Leslie <gregorytleslie@hotmail.com>
Sent: Tuesday, February 05, 2019 1:27 PM
To: Marilyn Ezzy Ashcraft; John Knox White; Malia Vella; Jim Oddie; Tony Daysog; Dave Rudat; ANDREW THOMAS; Henry Dong; LARA WEISIGER; becca@voxpathulpr.net
Subject: Tonight - Uphold Planning Board's Unanimous Approval of Marriott Harbor Bay

Dear Mayor and City Council:

Tonight, you have an opportunity to uphold your planning board's unanimous decision to deliver a quality, modern hotel and restaurant to Alameda's waterfront at Harbor Bay. Staff has concluded the appellants failed to demonstrate that the Planning Board's actions, including findings and conclusions under CEQA, were not supported by substantial evidence.

Instead, these are clearly attempts to block an opportunity to bring significant revenue to the city, provide shoreline restoration, open space, and amenities to the public, create union jobs, and fill a void in high-end lodging on the island.

Time is now overdue to create a quality project on this long-languishing property.

Please vote tonight to affirm planning board's approval of the Marriott Residence Inn at Harbor Bay.

Thank you...

Best,
Gregory & Denise Leslie
Harbor Bay Residents

LARA WEISIGER

From: Adrienne <homerun.teacher@comcast.net>
Sent: Tuesday, February 05, 2019 12:47 PM
To: Marilyn Ezzy Ashcraft; John Knox White; Malia Vella; Jim Oddie; Tony Daysog; Dave Rudat; ANDREW THOMAS; Henry Dong; LARA WEISIGER; Becca Perata
Subject: Tonight - Uphold Planning Board's Unanimous Approval of Marriott Harbor Bay

Dear Mayor and City Council:

As 25 year residents of Harbor Bay and life long Alameda residents, we are in full support of the the Marriott Inn.

Tonight, you have an opportunity to uphold your planning board's **unanimous** decision to deliver a quality, modern hotel and restaurant to Alameda's waterfront at Harbor Bay. Staff has concluded the appellants failed to demonstrate that the Planning Board's actions, including findings and conclusions under CEQA, were not supported by substantial evidence.

Instead, these are clearly attempts to block an opportunity to bring significant revenue to the city, provide shoreline restoration, open space, and amenities to the public, create union jobs, and fill a void in high-end lodging on the island.

Time is now overdue to create a quality project on this long-languishing property.

Please vote tonight to affirm planning board's approval of the Marriott Residence Inn at Harbor Bay.

Thank you,

Roger and Adrienne Chaix-Alexander



2600 Capitol Avenue
Suite 200
Sacramento, CA 95816
916.564.4500 **phone**
916.564.4501 **fax**

www.esassoc.com

memorandum

date February 4, 2019

to Henry Dong, Planner
Planning, Building, and Transportation Department
City of Alameda
2263 Santa Clara Avenue, Room 190
Alameda, CA 94501
hdong@alamedaca.gov

from Luke Evans, Senior Managing Associate
Environmental Science Associates

subject Memorandum in Response to Supplemental Appeal Letter from Laborers International Union of North America (LIUNA), Local Union 304 Regarding the Harbor Bay Business Park Hotel Facility (2018-6292)

Laborers International Union of North America (LIUNA), Local Union 304 submitted an appeal to the City of Alameda on December 19, 2018 concerning the Alameda Planning Board's December 10, 2018 decision concerning the proposed Harbor Bay Business Park Hotel Facility. ESA prepared a response memorandum to the LIUNA appeal and submitted the response to the City on January 24, 2019. LIUNA has reviewed the response memo and has offered additional comments in a letter dated February 1, 2019. The memorandum being presented here is in response to this latest LIUNA letter.

Response to LIUNA's Supplemental Letter

In general, we find the latest LIUNA letter to be largely repetitive of what was previously submitted, with no new information or a substantially supported legal reasoning that would lead us to believe that our original response should be revisited in a detailed manner. Our January 24, 2019 response was sufficiently detailed to refute the ultimately specious claims made by LIUNA in its original appeal, and we continue to stand by our original response. We have, however, provided additional detail below to respond to LIUNA's latest missive, and ask that this supplemental response be entered into the record. As before, we have summarized the principal issues raised in the LIUNA letter, followed by a response.

- A. The City's 1989 Development Agreement Does Not Relieve the City of Fully Complying with CEQA's Requirements.** It is not the City's intent to preclude subsequent CEQA analysis based on the terms of the Development Agreement. The City's determination that a subsequent EIR need not be prepared for the project is based solely on its determination that the proposed project would not present any *new significant effects* beyond those identified in the 1974 EIR and subsequent CEQA determinations. On this matter, CEQA is quite clear in its direction that "no subsequent EIR shall be prepared" unless the criteria established in CEQA Guidelines Section 15162 are triggered. As explained in our January 24, 2019

response, the City has undertaken an evaluation of the project's effects, and has determined that the proposed project would trigger none of the Section 15162 criteria. Therefore, the City's determination that a subsequent EIR is not required is based not on the Development Agreement, but rather on the requirements of CEQA.

- B. The Hotel Project Was Not Addressed in the 1974 EIR and is a Separate Project from the Project Addressed in the 1974 EIR.** The points raised here in LIUNA's February 1, 2019 supplemental letter are largely repetitive of what was offered in their original appeal. We provided a detailed response on this issue in Response II.A or our original January 24, 2019 memorandum, and will not repeat those responses here. We will simply state again that the ultimate development vision for the Harbor Bay Business Park has remained consistent for nearly 45 years, and has been reaffirmed through multiple rounds of CEQA review and approval actions during that time. Regardless, the ultimate requirement that would trigger preparation of a subsequent EIR is whether or not the proposed project would present any *new significant effects* beyond those identified in the 1974 EIR and subsequent CEQA determinations. As stated in our original response, the answer to that question is "no." As such, a subsequent EIR is not required.
- C. The City Must Abide by CEQA's Tiering Requirements and Prepare a New EIR for the Proposed Hotel.** As stated above, the City has determined that the proposed project is within the scope of the 1974 EIR and the subsequent CEQA determinations that have been carried out since that time. As such, the City must make a determination of whether or not the proposed project would present any *new significant effects* beyond those identified in the 1974 EIR and subsequent CEQA determinations. The subsequent review provisions of CEQA (Public Resources Code Section 21166 and implementing CEQA Guidelines) apply regardless of whether the subject EIR is labeled "program" or "project," and assertions of a "tiering" scenario are misplaced. Again, the City has determined that the proposed project *would not* result in any new significant effects that have not already been considered, and has therefore determined that a subsequent EIR is not required.
- D. Because the Project is Inconsistent with the Development Plan addressed in the 1974 EIR, the City Cannot Tier the Hotel Project's Environmental Analysis from the 1974 EIR and Must Prepare a Full EIR for the Project.** As explained in Response II.A of our original January 24, 2019 memorandum, the proposed project is consistent with the current Development Agreement and applicable approvals for the project site, including the Esplanade Development Plan and subsequent approval actions, and closely follows the vision for the area as outlined in the City's current General Plan and evaluated in the General Plan's EIR. The proposed project would not present any new significant effects that have not already been considered in previous CEQA determinations. As such, a subsequent EIR is not required.
- E. Whether Tiering to the 1974 EIR is Available to the City or a Stand Alone CEQA Document Must Be Prepared for the Project, the Record Contains Substantial Evidence of Several Fair Arguments That the Project May Have Significant Environmental Impacts, Requiring the Preparation of an EIR.** The points raised here in LIUNA's February 1, 2019 supplemental letter are largely repetitive of what was offered in their original appeal. We provided a detailed response on this issue in Response II.A of our original January 24, 2019 memorandum, and will only provide a brief response here.

With respect to indoor formaldehyde emissions, we refer the reader to Response II.B.1 in our original January 24, 2019 memorandum, wherein we provide evidence that the petitioner's reliance upon the Bay

Area Air Quality Management District's (BAAQMD) thresholds for criteria pollutants is immaterial to the consideration of worker exposure to indoor formaldehyde emissions. The argument being offered by LIUNA and its expert witness relies solely on a BAAQMD threshold that is simply not applicable to the question at hand. As such, the analysis and conclusion provided is fundamentally flawed and therefore cannot constitute substantial evidence.

With respect to avian impacts, the petitioner has offered an opinion concerning the efficacy of the City's recently-adopted Bird-Safe Building Ordinance. We note that the opinion offers no definition or threshold of what would constitute a significant impact, or how the project would surpass such a threshold. The entire discussion, therefore, is highly speculative and without substantive merit. With respect to impacts to sensitive species that could result from the proposed project, we again note the lack of suitable habitat on the project site. As stated in Response II.B.3 of our original January 24, 2019 memorandum, sensitive species habitat is not present on the site, given its urban nature, the fact that it is disked and/or mowed at least once per year for weed abatement purposes, is relatively small in extent, and is subjected to regular disturbance from encroachment by humans and dogs and other disturbances associated with the adjacent roadways, walkways, commercial properties, and the active Harbor Bay Ferry Terminal that surround the site. Based on this lack of habitat, there would be no impact to sensitive species. The petitioner has again failed to provide substantive evidence that would suggest otherwise.

Concerning GHG emissions, the petitioner has misstated the definition of baseline for determining effects. Pursuant to CEQA's requirements for subsequent environmental review (see, e.g., CEQA Guidelines Sections 15162 and 15164), the analysis in the City's record evaluated the proposed project modifications to determine whether the changes to the approved project would result in new or more severe significant environmental impacts. (Public Resources Code Section 21166; *Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065, 1079 [CEQA's subsequent review provisions are concerned only with the increment of impact resulting from project revisions]; *Benton v. Board of Supervisors* (1991) 226 Cal.App.3d 1467, 1482 [agency is to consider only the incremental differences between the original project and the modification when evaluating whether the modifications to the original proposal would result in any significant environmental impacts]; *American Canyon Community United for Responsible Growth v. City of American Canyon* (2006) 145 Cal.App.4th 1062, 1073 [same]; *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 542 [same].) The law on this point is clear. The City's approach to assessing the impacts of project changes is not a "baseline" error; rather, it is a fully compliant approach to CEQA for proposed modifications to project that has undergone environmental review. (Public Resources Code Section 21166; *Bowman, supra*, 185 Cal.App.3d at p. 1079.)

F. Alternatively, Assuming Staff is Right That the Hotel Project is the Same Project Addressed by the 1974 EIR, New Information and New Circumstances Have Arisen in the Interim 44-years That Require Significant Revisions to the 1974 EIR. The points raised here in LIUNA's February 1, 2019 supplemental letter are largely repetitive of what was offered in their original appeal. Rather than repeat our response here, we refer the reader to Response II.C of our original January 24, 2019 memorandum. The proposed project is consistent with the applicable approvals for the project site that have occurred over the last 45 years, including the Esplanade Development Plan and subsequent approval actions, and follows the vision for the area as outlined in the City's current General Plan. The proposed project would not present any new significant effects that have not already been considered in previous CEQA determinations. As such, a subsequent EIR is not required.

Conclusion

Based upon substantial evidence in light of the whole record, and as summarized above and in the previous responses provided in our original January 24, 2019 memorandum, we again affirm that neither of the project appeals have presented any new information to indicate that the Planning Board's actions, findings, and conclusions were not supported by substantial evidence, were not consistent with General Plan policy, or were inconsistent with the purposes and standards of the Zoning Ordinance. Furthermore, the appellants have not demonstrated that the proposed project would introduce any new significant environmental effects that would trigger preparation of a subsequent EIR, as specified in Public Resources Code Section 21166 and CEQA Guidelines Section 15162. (See also CEQA Guidelines Sections 15164 and 15168.) The City has satisfied the requirements of CEQA, and further environmental analysis or documentation for the proposed project is not warranted.

LARA WEISIGER

From: Alan Pryor <alanrpryor@gmail.com>
Sent: Tuesday, February 05, 2019 8:43 AM
To: Marilyn Ezzy Ashcraft; John Knox White; Malia Vella; Jim Oddie; Tony Daysog; Dave Rudat; ANDREW THOMAS; Henry Dong; LARA WEISIGER; becca@voxpathulpr.net
Subject: Tonight - Uphold Planning Board's Unanimous Approval of Marriott Harbor Bay

Dear Mayor and City Council:

Tonight, you have an opportunity to uphold your planning board's unanimous decision to deliver a quality, modern hotel and restaurant to Alameda's waterfront at Harbor Bay. Staff has concluded the appellants failed to demonstrate that the Planning Board's actions, including findings and conclusions under CEQA, were not supported by substantial evidence.

Instead, these are clearly attempts to block an opportunity to bring significant revenue to the city, provide shoreline restoration, open space, and amenities to the public, create union jobs, and fill a void in high-end lodging on the island.

Time is now overdue to create a quality project on this long-languishing property.

Please vote tonight to affirm planning board's approval of the Marriott Residence Inn at Harbor Bay.

Thank you,

Alan Pryor
Ps.

It would be nice to have more options for our of town family members to have a place to stay nearby when visiting. This being near the ferry makes it a "win win"

LARA WEISIGER

From: Patricia Lamborn <patricia.lamborn@aol.com>
Sent: Tuesday, February 05, 2019 9:25 AM
To: Marilyn Ezzy Ashcraft; Malia Vella; Jim Oddie; Tony Daysog; John Knox White
Cc: LARA WEISIGER
Subject: Statement concerning Marriott Residence Inn- Hearing Tonite
Attachments: Bay View Esplanade 2900 HB Parkway.jpg; Feb 5th City Council statement.docx

Feb. 5, 2019

Dear Mayor Ashcraft, Vice Mayor Knox White, Council Members Vella, Oddie, and Daysog

RE: Marriott Residence Inn, 2900 Harbor Bay Parkway, Approval of Final Development Plan Design Review - Application No. PLN18-0381

I am writing to ask that you **NOT** approve the Final Development Plan and Design Review that includes 275 parking spaces, and a 35 foot setback for this 5 story, 172 Room Hotel sitting directly on the Shoreline Park Paths on the Bay. Please Vote **No** on the Resolution asking you to do so. Send the hotel project back to the Planning Board for serious revision.

I am asking that you require an updated Environmental Impact Report for this project. Council Members Vella, Oddie, and Knox White were endorsed by the Sierra Club in your recent election to the Alameda City Council. Voters would expect that you would carefully consider current environmental realities, protection of wildlife and public access on the shoreline. Your approval would communicate that you agree that " Nothing has changed since 1974 " which the memo from ESA (Environmental Science Associates) states repeatedly. The ESA 31 page memo also states : "As outlined in the various responses throughout this memorandum, there would be no *new significant* effects that would result from the proposed project, and this is true for each of the issue areas called out by the two petitioners, most notably those related to **aesthetics**, air quality, **biological resources**, GHG emissions, **land use**, noise, and traffic." (emphasis added)

ESA was hired by the City of Oakland to perform an environmental report in the dispute regarding the transport of coal to the Oakland Port Terminal. The issue came before federal court in the case Oakland Bulk & Oversized Terminal v. City of Oakland. Unfortunately the City of Oakland lost their suit in federal court as the court cited inaccuracies, erroneous assumptions and faulty analyses by ESA in their decision. Lawsuits continue.

The City of Alameda has contracted an extensive Climate Action and Resiliency Report by ERG, (Eastern Research Group) released in Dec.11, 2018. The report reviews the tremendous impacts on shoreline public access and the preservation of wildlife, particularly migratory birds with a 36 " sea level rise, anticipated by 2060. Those impacts include :

Crown Beach : large portions of the beach are inundated at a total water level of 36 "
Elsie Rhoemer Bird Sanctuary , located at the eastern boundary of Crown Beach could be lost.

The workshops convened by ERG and attended by City Council members, City staff, and the community identified responses to these impacts which included **retreating, not advancing development right to the edge of the bay.**

Requiring an updated EIR for the Marriott hotel project and sending it for serious design revision at the Planning Board with Community Input- does not mean no new hotels will be developed in Alameda. There are two hotel developments currently proposed in locations that satisfy economic and environmental objectives. These projects respond to the demand for hotel rooms, generation of City tax income, (TOT) and job creation.

1. The **Hilton Garden Inn** , with **211 rooms** proposed at Ron Cowan Parkway and Harbor Bay Parkway would be located in the Harbor Bay Business Park , next to office buildings rather than the shoreline and residences. The Hilton Garden Inn proposal includes changing the required parking spaces from 1.25 per room to .72 spaces for that project. That exemplifies the Council's votes and stance on changes in required parking. At the public hearing on Oct. 22, 2018, Alameda Planning staff pointed out that the Planning Board has previously granted parking reductions for hotels in the Harbor Bay Business Park and Webster Street.

2. The **Holiday Inn proposed for** Park Street and Clement St. **96 rooms**, would be located near transit, restaurants and a vibrant downtown area generating not only TOT but sales tax revenue as well.

Mayor Ashcraft and Vice Mayor John Knox White have been advocates of limiting required parking for housing developments and reliance on biking and public transit- -to get to public transit (ie: BART and the Ferry) Approving 275 parking spaces, the maximum required parking spaces for the Marriott Residence Inn and a restaurant- right on the Bay- moves in the opposite direction of your own previous votes and environmental organizations in the Bay Area, including the Sierra Club.

Sincerely,
Pat Lamborn
Alameda Resident 28 years



LARA WEISIGER

From: John <myobarr@gmail.com>
Sent: Tuesday, February 05, 2019 9:14 AM
To: LARA WEISIGER
Subject: Harbor Bay Hotel - Esplanade

As a resident on Harbor Bay, many of us are concerned about the construction of a new hotel on the Esplanade site. If there was one change in the proposed development that could alleviate a lot our concerns, it would be the height of the hotel, which is proposed to be 5 stories. Can we recommend that the developer change the height to 3 or 4 stories? After all, I saw the the proposed hotel for Park/Clement Street has gone through a number of revisions before being approved by the City Council. The proposed height in this design is a real concern by the community should be thoughtfully considered. There is no other building of that height in Harbor Bay park, other than the telecommunications tower on the Raiders Practice Field.

Respectfully, John Myovich

LARA WEISIGER

From: Myra Lim <myl8898@yahoo.com>
Sent: Tuesday, February 05, 2019 8:10 AM
To: LARA WEISIGER; ANDREW THOMAS; NANCY McPeak; Marilyn Ezzy Ashcraft
Subject: re: Opposition to proposed Marriott Hotel

Dear Members of the City Council,

It has come to my attention that the Marriott plans to build a 5 story hotel adjacent to the Harbor Bay Ferry. I strongly oppose this hotel project as it is out of scale with the neighborhood, would bring increased traffic congestion and noise to our community

This massive hotel should not be located right next to a residential areas, with limited access on a narrow road. This is a traffic, safety and noise concern for the entire area. The roadway is narrow, a traffic nightmare, but also a dangerous safety issue should there be an emergency and an evacuation necessary. Traffic to and from the hotel would not solely use Harbor Bay Parkway as the developer has stated, but utilize the city streets to access restaurant and grocery services on our island. There will be traffic from hotel staff, deliveries, maintenance, uber drivers, hotel guests and conference attendees.

Lights and noise from the hotel 24/7 would affect not only the nearby residents and citizens of Alameda but the marine life and the peaceful serene area along the shoreline. On the Residence Inn website, it states that there will be a bright atrium lobby. This lobby will be lite all day and all night, it will shine brightly even at night. I have seen huge flocks of pelicans feeding in the area, should the massive hotel be built, these animals would no longer feed in this area.

The proposed 5 story hotel is so out of scale to anything other building in Harbor Bay, it will drastically alter the skyline and beautiful coastline of Alameda and the Bay Area. There is no other building over 3 stories in Harbor Bay.

We do not want this massive structure mar the beauty of Alameda. Please vote NO! on approving this project.

Alameda Resident,
Myra Lim

LARA WEISIGER

From: Olav Hovde <olav_hovde@yahoo.com>
Sent: Tuesday, February 05, 2019 4:01 AM
To: Marilyn Ezzy Ashcraft; John Knox White; Malia Vella; Jim Oddie; Tony Daysog
Cc: LARA WEISIGER
Subject: Re. Marriott Hotel on the Shoreline near Ferry Terminal in Harbor Bay

Dear City Council Members,

My name is Olav Hovde, a resident of the Bay Colony and with this note, i would like to express my grave concern and my great deal of anxiety since when we with little notice found out about the intention to approve the construction of a 5 story hotel with 172 rooms and 275 parking spaces right on the shoreline and within a residential area.

During the open meeting at the Alameda City Development Board, which i attended, we were told there was no other option than approving this construction, that the 1974 developer's agreement bound/forced the city/county to approve any proposal not exceeding 100th in height and that BCDC had "no leg to stand on" in regards to this development. Much have changed along the bay in regards to environmental situation, attitudes and regulations since 1974 but in this case the city/county and developer have decided to ignore these new realities.

If we look at the proposed construction; the 5 story building - this is completely out of the norm for the Harbor Bay business park where the maximum height today is 3 stories. The 5 story building was pitched as an improvement because it would offer "viewing corridors" to the bay. This pitch is ignoring the fact that the hotel completely blocks any other view than the hotel itself even with these narrow "viewing corridors" which will be dwarfed by the hotel. Your eyes will inevitable to be drawn to the sheer size of the hotel. A few trees along the front of the hotel won't change this fact and we all have seen what happened to the trees in the current ferry terminal parking lot; chopped down as they failed to grow due to the winds coming through the GG into the parking lot.

Furthermore, we were told this 4 1/2 star hotel (as claimed by developer but Residence Inns tend to be 3 stars at most and most often 1 star down from Hampton Inns which already looks faded, tired and worn) would be "an elegant addition" to the area with its "beautiful design". This is a pre-fab design, box/container like construction which offer very little in the sense of elegance and beauty but will rather make it look cheap and hurried, which will quickly become an eyesore on the bay for both residents, commuters and visitors alike.

Allowing this construction so close to the bay will create a worrisome precedent for the whole of the Bay Area shoreline which will quickly lead to other cities and counties approving similar construction on the bay "because Alameda did so and got it approved (by BCDC, be it implicitly or directly approved)". Just to add to this, the smaller Fairfield hotel, which would have been of the same style, albeit smaller, was rejected by the BCDC even though it was about the same distance from the bay and it was having less of an impact on the residential area, being further away "inside" the business park itself. This distance of the set-back, 35ft, we were told that was only because the developer so graciously took upon himself to do as the 1974 agreement allowed them to build right on the Bay if they wanted to do so.

In the Development council's business case and justification for this proposal, it was mentioned up to \$1M in tax revenues annually but none of the costs associated with increased traffic, road maintenance, policing etc were taking into consideration, no new traffic study commissioned. They also suggested that the new "destination restaurant" would be an "upscale restaurant" and a "great upside". But, we know how hard it is to run restaurants outside "downtown" Alameda (Park Street and Webster) and this, "a destination restaurant" will be even harder to operate successfully.

Harbor Bay/Bay Farm ferry terminal is not a place where people will hang out for coffee and burgers, this is a place to "park and run" before work to reach the ferry and after work to get home. (has anyone on the council ever visited the ferry terminal in the morning and/or in the afternoon???) This restaurant building will be empty in a short time and end up being dilapidated within 3-5 years, windows taped over with "for rent" signs. Don't just create business cases based on the inflow and upside, use the time to look at and add cash outflows/costs and do some sensitivity analysis and apply critical judgment too.

It was also suggested that the hotel would have excess parking that could be used (for a fee) by the commuters. But, if this hotel were to be the success that the council and developer (hard to distinguish the two entities in their glee and excitement about the project) claim, then it would be easy to see how hotel guests, conference/meeting attendees etc would soon encroach on the parking spaces at the ferry terminal, causing further pain to the commuters. But, on the other hand, the new Home2 Suites that is being built next to Hampton Inn (both by Hilton brands) should alleviate the need for hotel rooms in the area and with Raiders and VF/North Face moving out, the business case will change dramatically as the occupancy rate will change.

I understand the desires of the businesses in the area, such as Penumbra and Exilixis, to have adequate hotels and facilities for business travelers, meetings etc, but there are areas within the business park, away from the residential area, better suited for this purpose such as the soon to be available Raiders facilities and the area across from the FritoLay Distribution Center.

In sum, this seems to be a short-sighted, over-hyped, under-planned project that will create some (small) short term benefits followed by long term pain inflicted upon the residents in the area as well as the city of Alameda.

Please do not accept this as a fait accompli but dig in, think twice, use your critical judgment, think about the long term consequences to the bay, to the city and to the residents, and you will see this is not a thoughtful, winning prospect for anyone but the developer who will be out of there as soon as the hotel is developed and the operations have changed hands. If we want to develop and maintain a sustainable Bay with a quality of life for our residents (voters.....) and tax payers, we have to consider our residents too and not just accommodate the business interests.

Please do not move forward with this proposal, it will cost more than it will bring in, be it in \$\$\$ or in regards to the quality of life for the Bay Farm and the Alameda residents.

Cheers,

Olav Hovde
165 Bannister Way,
Alameda, CA 94502
olav_hovde@yahoo.com
(415)420-1905

LARA WEISIGER

From: D Learn <dlearn1@gmail.com>
Sent: Monday, February 04, 2019 9:37 PM
To: Marilyn Ezzy Ashcraft; Malia Vella; John Knox White; Tony Daysog; Jim Oddie
Cc: LARA WEISIGER; larry.goldzband@bcdh.ca.gov; wilma.chan@acgov.org
Subject: Reconsider Marriott Residence Inn @ 2900 Harbor Bay Parkway

Dear Mayor and City Council Members:

We live on Harbor Bay Isle in the Cantamar development that abuts the Harbor Bay Business Park. When I moved into my home in 1997, I was well aware that the Harbor Bay Business Park and the Oakland Airport were my neighbors. Having lived in Alameda since 1985, I marveled at the positive growth and appeal many new projects have brought to our community. I have supported much of the growth immediately surrounding me until most recently.

This is only the second letter I've sent to the Mayor and City Council in 33 years of living in our community, and both have been to voice my concern and disagreement with decisions our City's Planning Board have made regarding the development of new hotels. I am pleased to say that one such project's approval was ultimately overturned. I am hopeful with your thoughtful consideration of the objections to the newly approved plans to build a Marriott Residence Inn at 2900 Harbor Bay Parkway, next to the Harbor Bay Ferry Terminal, your actions will result in overturning the Planning Board's decision to allow this type of building at this location.

Our objections may be consistent with others you have undoubtedly heard, but bare repeating:

*** Hotels bring crime - all you have to do is read the weekly police report in our local newspaper to see that there are numerous vehicle thefts and other illegal acts occurring at the existing hotels in Alameda. The proposed location of the Marriott Hotel is a desirable residential neighborhood which will quickly become less desirable when the hotel is built and crime increases in the area. This will result in lower home values.**

*** A five story building is out of proportion to the surrounding residential structures, and those in the Business Park (with the exception of the high-rise addition that has been allowed at the existing Hampton Inn, on Harbor Bay Parkway.)**

*** A five story building in the path of hundreds of airplanes daily is a security risk. Not only for the residents of such a hotel, should a plane misjudge its path or have an emergency, but also for the airplane and it's passengers who could be in even more danger from someone in the hotel taking aim at the plane, whether it be with a laser, drone or weapon - all of which could bring an airplane down.**

*** The proposed setback for this oversized project is not in accordance with maintaining our beautiful coastline and access for all. We live near one of the few remaining areas of the bay where open space meets the bay and people can enjoy nature. The proposed building setback of only 35 feet will cut off**

easy Bay access and quickly become absorbed as part of the hotel property, much as has happened at the existing nearby hotels.

*** Added traffic, parking and congestion.** As a daily commuter off of Harbor Bay Island, I can assure you 175 more hotel residents will only make our roads more congested. Traffic already backs up the whole length of Island Drive in peak commuting times - can you image just how long it will take to get off island with hundreds more vehicles? Similarity, parking for the Harbor Bay Ferry already spills out onto city streets and residential neighborhoods. I believe there will be inadequate parking for both commuters and the proposed hotel.

*** Outdated Environmental Impact Statement.** How can such a substantial project not impact the environment. It is imperative that a current EIS be conducted so those impacts be evaluated, and not rely on a severely outdated EIS.

*** Is there really a need for more hotel rooms?** We do not believe Alameda itself has such a high demand for hotel rooms that our community needs to develop yet another hotel. Just this week the Alameda Sun highlighted yet another hotel plan on Park Street that is up for review. The Hampton Inn on Harbor Bay Parkway is currently building an addition that looks to double it's capacity. There are already several exiting hotels both on Harbor Bay and on the main island.

I would ask you to seriously consider challenging this current hotel proposal and all future high-rise development that is not in the community's best interest.

Thank you,

**Karen Armes & Donna Learn
Duarte Court
Harbor Bay Island, Alameda**

File No. 099999

February 4, 2019

VIA E-MAIL

Honorable Commissioners
Bay Conservation and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102-7019

Re: Marriott Hotel and Restaurant Project, 2900 Harbor Bay Parkway, Alameda

Dear Chair Wasserman and Honorable Commissioners:

On behalf of Harbor Bay Hospitality, LLC (“HBH”), the owner and developer of the Marriott Hotel and Restaurant Project (“Marriott Project”) located at 2900 Harbor Bay Parkway in Alameda, California, we write to concur with BCDC’s staff that BCDC cannot require this Project to obtain a permit under the McAteer Petris Act (“Act”). This is because the Project is covered by a settlement agreement (known as the Third Supplementary Agreement or “TSA”) that expressly exempts development covered by the agreement from the permitting process under the Act and establishes an alternative development and public review process. Consistent with the TSA, the Project consulted with staff on the project’s design, made changes requested by staff and was thereafter determined to be consistent with the TSA.

We urge the Commission to adhere to its obligations under the TSA, just as the Project has. A well-established course of conduct over many years supports the conclusion that the TSA was intended to function as a covenant running with the land. Under the TSA, BCDC has a clear **legal obligation** to exempt the Marriott Project from the Act’s permitting requirements. Should the Commission nonetheless attempt to impose a permit requirement on the Marriott Project, HBH would consider this to be a breach of the TSA. If litigated, we are confident a court would independently interpret the agreement, using standard rules for contract interpretation. Based on the nature of the contract, the language, and BCDC’s well-established course of conduct, we are also confident a court would find that the Marriott Project is covered by the TSA and thus exempt.

The Commission has already received several analyses about why this project is exempt under the TSA. The first is your staff’s thoughtful analysis dated December 21, 2018. Daniel Reidy, counsel for Harbor Bay Isle Associates (“HBIA”) submitted another analysis dated January 11, 2019. Mr. Reidy’s contemporaneous knowledge of the original intent of the TSA and the reasons for the various amendments over the years compellingly supports your staff’s conclusion that this Project is exempt. We will not repeat those points but instead explain

further why the Marriott Project cannot, without its consent, be the only development within the Harbor Bay Business Park not afforded the contractual rights granted under the TSA.

The main conclusions of this letter are:

- A. The TSA is an agreement about the use and development of *land*, not about the identity of the owners of that land. It expressed BCDC's "final determination of public access and development" on the land covered by the agreement and was recorded as a covenant on title to that land. As such, it was intended to, and does, "run with the land," providing benefits (and burdens) to HBIA's successors in interest. Section 19 of the Second Amendment to the TSA (the "Second Amendment") expressly says the TSA applies to future owners.
- B. Course of conduct is persuasive evidence of the parties' intent in interpreting a contract. For years, BCDC has been exempting projects covered by the TSA from permitting requirements no matter who owns the land.
- C. Mr. Sack (counsel to certain neighbors who oppose the Project) attempts to show that the TSA does not cover the land but only covers the land if it is developed *by HBIA*. These arguments run counter to standard rules of contract interpretation.
 1. Rules of contract interpretation call for harmonization between various sections of an agreement. Mr. Sack's interpretation of Sections 5 and 19 *creates* conflict between these sections when none exists. A harmonized reading of Sections 5 and 19 supports the conclusion that the term "HBIA" in Section 5 includes HBIA's successors because Section 19 expressly references "future owners."
 2. Mr. Sack's reliance on revisions to section 19 in the Third Amendment to the TSA (the "Third Amendment") is misplaced.
 - As explained further below, the Third Amendment (in which revisions to Section 19 on which Mr. Sack relies were made) does not apply to the property on which the Marriott is proposed. Because the Third Amendment applies only to the Shoreline Restaurant/Office parcel, the Third Amendment (and any revisions it made to the Second Amendment) are not relevant here.

- Even if the Third Amendment to the TSA did apply (which it cannot as a matter of law), the revision of the language in Section 19 was only intended to reflect that the TSA had been recorded against the property subject to the TSA; not to negate the applicability of the agreement to future owners.

D. If litigated, we are confident a court would apply independent judgment to the contract. It would not defer to the Commission's interpretation.

A. Read as a Whole, the TSA Applies to Development of Land, Not To Any Particular Owner of That Land.

A review of the language of the TSA supports the conclusion that the intent of the agreement was to govern development of land within Phase III of the Business Park, regardless of ownership.

- Recital B to the Second Amendment explains that the TSA sought to resolve was whether “HBI” [*Harbor Bay Isle*] – a geographic area -- is “exempt from BCDC controls and jurisdictions.” It does not talk about whether HBIA, as an entity was individually exempt from BCDC jurisdiction. Instead, the stated purpose of the TSA was to “define the nature and extent of public access for the remaining area along the shoreline at HBI” The subject of the TSA is “the shoreline at HBI,” a defined *land* area.
- Recital E helps cement the conclusion that the agreement was about land, not particular entities. This Recital states that “BCDC in no way waives any rights to controls or jurisdiction over the nature and extent of public access in the Shoreline Band for the remaining portion of the BFI [*Bay Farm Island*].” In other words, the TSA only addresses jurisdiction over the Phase III area and not areas of the BFI not subject to a supplementary agreement.
- Section 1 includes the mandate that BCDC “shall” rely on the TSA to ensure public access within Phase III. Again, this mandate applies to land, and does not terminate if the identity of the owner Phase III changes.
- Section 3 states that “the terms of the agreements concerning BCDC jurisdiction herein are *final determinations by these parties as to public access and private development and uses inland of Elevation 103 at the Project*. The Parties agree that any work, construction or uses in areas of the Project bayward of Elevation 103 contour line will require a BCDC permit.” Section 3 likewise establishes that the agreement governs the need for a permit with respect to certain land areas, not just for HBIA.

- Section 4 is entitled “Applies to Project Area Only,” meaning that lands within the BFI but outside of Phase III are not exempt from BCDC’s permitting requirements under the TSA.
- Section 19 of the Second Amendment to the TSA requires that the agreement be recorded so that it would be “a binding agreement affecting general duties and obligations of present and future property owners of Parcels in the Project area within the Shoreline Band.” *Section 19 expressly states that the TSA was intended to apply to future owners—i.e. run with the land.*

In summary, the plain language of the TSA strongly supports the conclusion that the TSA was intended to reflect the final determination of public access within Harbor Bay Business Park – Phase III and that this determination “runs with the land.”

B. Course of Conduct Provides Persuasive Evidence of the Intent of the Parties.

“The acts of the parties done under a contract afford one of the most reliable means of arriving at their intention.” *Skousen v. Herz* (1933) 135 Cal.App. 116, 120–121. Here, the parties course of action overwhelmingly supports the conclusion that BCDC intended the TSA to run with the land to HBIA’s successors-in-interest, a course of conduct on which the Project has reasonably relied:

- Other Supplementary Agreements. BCDC has exempted private development subject to other supplementary agreements from its permitting requirements for years and years regardless of whether HBIA was the owner of such development. This includes homes built in Residential Villages Three and Four of HBI subject to the First Supplementary Agreement and in Residential Village Five subject to the Fourth Supplementary Agreement. There is no indication in the recitals to the TSA that the same approach would not be applied to Phase III.
- Stacey-Witbeck Building. In 2011, BCDC agreed this project could proceed under the TSA even though owned by a party other than HBIA.
- McQuire & Hester Building. In 2016, BCDC agreed this project could proceed under the TSA even though owned by a party other than HBIA.
- Westmont Living Senior Residential Facility. In 2016, BCDC agreed this project could proceed under the TSA even though owned by a party other than HBIA.
- Marriott Hotel. BCDC has already taken several actions consistent with the interpretation of the TSA supported by staff:

- Staff Correspondence. Through email correspondence and a letter dated September 25, 2018, BCDC staff confirms in writing that the Marriott project could proceed under the TSA.
- Project Plans. Staff also requested the project plans be revised to reflect the 103' contour line established under the TSA to ensure the setbacks required under the TSA were complied with. The Project complied with this request.
- Draft Assumption Agreement. BCDC legal counsel requested that HBH and HBIA execute a new agreement stating that "HBH has recognized and acknowledges that the Subject Property is subject to the provisions of the [TSA]" and that the Marriott project is generally consistent with the TSA. The draft agreement also contemplates the termination of the exemption going forward, such that project revisions would be subject to the Commission's regular permitting jurisdiction in the future. If the Project were not currently exempt, there would be no need for a prospective termination of the exemption.
- Staff Report. BCDC's Executive Director and Staff Counsel issued a staff report on December 21, 2018 recommending that "that the Commission not require a permit of HBH to develop the project in question."

Mr. Sack argues that because (in his view), there is no ambiguity on the face of contract, BCDC's course of conduct is irrelevant. This is incorrect. Whether evidence is admissible to construe an ambiguity is not based on whether the contract language is plain and unambiguous on its face, but instead on whether the evidence presented is relevant to prove a meaning to which the language is reasonably susceptible. *PG&E v G.W. Thomas Drayage & Rigging Co., Inc.* (1968) 69 Cal.2d 33 (Where the meaning of the words used in a contract is disputed, the trial court must provisionally receive any proffered extrinsic evidence which is relevant to show whether the contract is reasonably susceptible of a particular meaning). Thus, "[a]n ambiguity exists when a party can identify an alternative, semantically reasonable, candidate of meaning of a writing." *Solis v Kirkwood Resort Co.* (2001) 94 Cal.App.4th 354, 360. Here, BCDC's course of conduct provides evidence which is relevant to the question of whether the TSA is reasonably susceptible of being interpreted as running with the land.

C. Opponent's Arguments About the Interpretation of the TSA Run Counter To Standard Rules of Contract Interpretation.

Mr. Sack advances two primary arguments for why BCDC should deviate from its long standing interpretation of the TSA: (i) A conflict exists between Section 5 and Section 19 of the TSA and Section 5 should control; and (ii) the revisions to Section 19 in the Third

Amendment evidence an intent that the TSA should not run with the land. Both arguments are unavailing.

1. Mr. Sack's interpretation makes no attempt to harmonize the contract as required by rules of contract interpretation.

- An interpretation which gives effect to all provisions of the contract is preferred to one which renders part of the writing superfluous, useless or inexplicable. *Carson v. Mercury Ins. Co.* (2012) 210 Cal.App.4th 409, 420; *see also* Civil Code § 1643 (contract should “receive such interpretation as will make it . . . operative . . . and capable of being carried into effect, if it can be done without violating the intention of the parties”).
- Instead of harmonizing the agreement, Mr. Sack attempts to manufacture a conflict between Section 5 and Section 19 in order to deny HBH the benefits of the TSA. No such conflict exists. Section 5 grants exemptions from BCDC permitting requirements to “HBIA.” Section 19 extends those benefits to HBIA’s successor in interest within the Phase III. The purported conflict can be avoided by interpreting the term “HBIA” to include HBIA’s successors as supported by Section 19 and the contract as a whole.
- Mr. Sack’s interpretation would read the statement in Section 19 that the TSA binds future owners completely out of the agreement. BCDC Staff, Mr. Reidy, and HBH’s interpretation would give effect to both Section 5 and Section 19 and is therefore the preferred interpretation under standard rules of contract interpretation requiring harmonization.

2. Reliance on revisions made to Section 19 by the Third Amendment is misplaced.

Mr. Sack makes much of revisions to Section 19 made in the Third Amendment to the TSA. These revisions fail to support Mr. Sack’s interpretation for the following reasons:

- The Third Amendment has no relevance to HBH’s rights under the TSA because it was made after HBIA had already conveyed the Marriott Project parcel to a third-party. The Third Amendment was executed without the Marriott Project parcel owner’s involvement or consent and in all events was recorded against a different property altogether and not the Marriott Project parcel.
 - The Third Amendment is only recorded against the Shoreline Restaurant/Office Site and not the Marriott Project site. *See* Third

Amendment -- Legal Description for Shoreline Restaurant/Office Site. On its face, the Third Amendment doesn't apply to Marriott Project site.

- The Third Amendment was executed by HBIA and BCDC in 2013, approximately nine years after HBIA no longer had title to the Marriott Project site. For the Third Amendment to have applied to the new owners of Marriott Project parcel, those new owners would have had to consent to the Third Amendment. Since HBH's predecessor in interest was neither a party to the Third Amendment nor was it recorded against their land, ***the TSA covenants applicable to the Marriott Project land are those in the Second Amendment to the TSA, not the Third Amendment.*** Section 19 in the Second Amendment remains unamended and is clear that the agreement binds future owners.
- In any event, even if applicable, the Third Amendment did not “*delete*” Section 19, contrary to Mr. Sack's assertion. As explained by Mr. Reidy, the revision merely confirmed that HBIA had undertaken all actions necessary to make the Second Amendment “a binding agreement affecting general duties and obligations of present and future property owners of Parcels in the Project area within the Shoreline Band.”
- The Third Amendment's references to satisfaction of the Second Amendment's recordation obligation cannot reasonably be interpreted to reflect an intent to have the Second Amendment no longer run with the land. There is no language in either the Third Amendment's recitals or revisions that support such a dramatic change that would deny future property owners of the benefits of *already constructed and dedicated public access*.
- The recitals to the Third Amendment reveal that BCDC was well aware that parties other than HBIA would be potential developers within the Project subject to the TSA. Introductory Recital G is clear that since 1990, HBIA contemplated a new owner developing the Shoreline Restaurant/Office Site. This Recital is inconsistent with Mr. Sack's position that the parties intended that HBIA alone should benefit from the TSA.

For all of the above reasons, the contract should be interpreted as applying to future owners. If BCDC attempts to strip HBH of the benefits of the TSA to appease project opponents, it will be in breach of its clear legal obligations.

D. A Court Would Give No Deference to BCDC in a Breach of Contract Claim.

HBH would like to avoid litigation but is prepared to protect its rights if BCDC veers from its contractual obligations. If there were litigation related to the meaning of the TSA, we are confident a court would apply its own independent judgment as to the intent of the parties and would grant the Commission no deference as to what it thinks the contracts means. See *Mammoth Lakes Land Acquisition, LLC v. Town of Mammoth Lakes* (2010) 191 Cal.App.4th 435, 461 (in action between city and developer over the meaning of a Development Agreement, court owed city no deference as to its interpretation of the agreement). Thus, the Commission would be on an equal footing with HBH in any contract dispute and would need to explain why BCDC's multi-year course of action should not be considered persuasive evidence of the parties' intent. *C.f. Vermeer Manufacturing Company v. RDO Equipment Company* (Cal. Ct. App., Feb. 27, 2018, No. B280400) 2018 WL 1062684, at *4-5 ("there is no evidence to suggest or reason to believe that their understanding in 2015 about their 2012 agreement was any different than their understanding at the time they entered into the earlier agreement").

###

For the forgoing reasons, HBH respectfully requests that the Commission honor HBH's rights under the Second Amendment and to not request staff attempt to require HBH to obtain a BCDC permit for the Marriott Project.

Sincerely,



Anne E. Mudge and
Christian H. Cebrian

AEM/CHC/mlh

cc: City Council, City of Alameda
Celena Chen, Asst. City Attorney

099999\10376778v5

LARA WEISIGER

From: bassnjenn@aol.com
Sent: Monday, February 04, 2019 8:31 PM
To: Marilyn Ezzy Ashcraft; John Knox White; Malia Vella; Tony Daysog; Jim Oddie
Cc: LARA WEISIGER
Subject: Harbor Bay Parkway proposed hotel, item 6A on 2/5/19 City Council agenda

Dear Mayor Ezzy Ashcraft, Vice Mayor Knox White, and Councilmembers Vella, Daysog, and Oddie:

I am writing in support of the proposed Marriott Harbor Bay hotel that you will consider as an appeal at your Council meeting tomorrow evening. I have lived on Harbor Bay since 2001. Our first home was located in Bay Colony (7 Rutland Court), directly behind the ferry terminal parking lot. When we purchased the home, I recall inquiring what the zoning requirements were regarding the space around the ferry parking lot. We knew then there was the potential for a commercial property to be built along the water where this hotel is seeking approval to build. Almost two decades later, I am glad to see that we have a responsible and reasonable developer willing to add a much-needed hotel, restaurant, and coffee shop to our community.

As our family grew, we moved a few blocks away into a larger property but still within walking distance to the ferry terminal so that my husband and I could continue to utilize the ferry as transportation to our professional work in San Francisco. Over the past five years, the traffic on the Harbor Bay ferry has significantly increased, both into San Francisco for work and from San Francisco into the Harbor Bay Business Park for work. The business park continues to grow into a vibrant business community with great access to the Oakland airport and to San Francisco via the ferry. At public comment during the Planning Board meeting for this item, business owners from the Harbor Bay Business Park spoke of their growing need for hotel space for business conducted with out of town guests in Alameda. A new restaurant and coffee shop in the proposed area is greatly needed given the new growth the area has experienced and will experience in the future. The revenue and jobs that this new hotel will create is a huge opportunity for Alameda that I hope you support.

A new hotel will also serve existing Alamedans in new and exciting ways. I am the former PTA President at Bay Farm School on Harbor Bay and we struggled to book school functions off Harbor Bay because there was no space to hold events in our neighborhood. This hotel will change that with its plan for community space that the many nearby schools could access. It will also provide much needed hotel accommodations for not just the business community but for friends and family as well. My father is in a wheelchair now and the few ADA-accessible rooms at neighboring hotels on Harbor Bay are usually booked. I was thrilled to learn of the ADA-accessible space and multiple rooms that are incorporated into the plans for the Marriott Harbor Bay. This project is a win-win for our community members and visitors with disabilities.

The developer of this hotel has met every demand that the City has placed on this development. He has held numerous community meetings to talk with community members and to address their concerns. He has been reasonable and thoughtful in designing this space and I believe it will thrive in this proposed location. Please support this great addition to our waterfront. Thank you for considering my letter.

Sincerely,

Jennifer Williams

**LAW OFFICES OF DANIEL F. REIDY
A PROFESSIONAL CORPORATION**

3701 Sacramento Street, # 386

San Francisco, CA 94118

Telephone (415) 750-4210

dfreidy@pacbell.net

February 5, 2019

TO: Honorable Mayor and Members of the Alameda City Council

RE: **Appeals on 2900 Harbor Bay Parkway Marriott Hotel and Restaurant Project**

This Memorandum presents some facts about the City's prior actions under CEQA regarding the buildout of Harbor Bay Isle with relevance for the Appeals brought against the Planning Board's recommended approval of the Marriott Hotel and Restaurant development project at 2900 Harbor Bay Parkway.

The 1974 EIR for the initial Master Plan for Harbor Bay Isle identified a number of significant environmental impacts, and the City Council adopted a Statement of Overriding Considerations as permitted under CEQA Guidelines section 15093, finding that the economic and social benefits of the proposed project outweighed its environmental effects.

In late 1981 and early 1982, the City approved Planned Development PD-81-2 and Tentative Map 4500 for the build-out of residential neighborhoods in Village 5 and the Harbor Bay Business Park.

In 1985, HBIA processed a Revised Master Plan for the Harbor Bay Business Park prepared by SOM and approved by the City as Planned Development Amendment PDA 85-4 in Planning Board Resolution No. 1533 passed on September 11, 1985. Findings included: "With the imposed conditions, the project will not result in increased or more intense environmental effects than the project approved as PD 81-2."

In 1989, the City approved a revision of the approved plans for Village 5 to reduce the number of approved homes by 200 units and to allow larger homes in Village 5 with a better street layout.

The April, 1989 Addendum to the Final EIR for Harbor Bay Isle updated and supplemented the original EIR. It contains 73 pages of copies of the City's incremental environmental determinations that identified a number of significant adverse environmental effects of the ultimate projected buildout of Harbor Bay Isle and confirmed the original Statement of Overriding Considerations, detailing that changes to the original proposed project, such as reducing the number of residential units from 4,950 to 3,000 and eliminating the proposed commercial marina out at the point of the peninsula, did not amount to having any new environmental impacts not covered by the HBI EIR as supplemented by the Addendum to the EIR.

This Addendum was also relied on by the City for CEQA compliance for approval of the Development Agreement with the Harbor Bay Isle developers on the same date in April 1989. Section 1.10 of the Development Agreement is 3 pages long and details why no further environmental review is required under CEQA for approval of and implementation of the Development Agreement. Exhibit O of the Development Agreement charts the anticipated buildout of the entire 315 acres of the Business Park.

The City's General Plan adopted in February, 1991 with input from HBIA had its own EIR to comply with CEQA. The General Plan allowed for the buildout of the Business Park of 5.2 Million square feet of commercial buildings. See the section on the Harbor Bay Business Park on page 36: "Harbor Bay Business Park: The approved development plan will add 4.1 million square feet of office and research and development space, including a conference hotel and retail space site. . . . [T]he ultimate 5.2 million square feet will house 17,300 or more employees. High-rise buildings, 100 feet of right and 156 feet subject to discretionary review, can be built in the business park."

This City Council should rely on these documents and the environmental determinations of prior City Councils to deny the Appeals and instead approve the proposed development of the Marriott Hotel and Restaurant development project.

/Daniel F. Reidy/

Daniel F. Reidy, Attorney for Harbor Bay Business Park Association

LARA WEISIGER

From: Ron Kamangar <ronkamangar@hotmail.com>
Sent: Monday, February 04, 2019 3:17 PM
To: Marilyn Ezzy Ashcraft; John Knox White; Malia Vella; Jim Oddie; Tony Daysog
Cc: LARA WEISIGER
Subject: We strongly oppose the newly proposed HB (Bay Farm) Hotel!

Importance: High

Hello,

As a 20+ year Harbor Bay residents of Alameda, our family strongly opposes the newly proposed HB Hotel. It is too large, and does not fit this community. The 24 hour light and vehicle noise pollution, as well as the proposed large parking lot, which will attract undesirable elements to our quiet neighborhood. Please do not allow this monstrosity in our backyard. Build it in the Business/office complex area of the HB instead.

Best,
Ron Kaman

LARA WEISIGER

From: Emma Kung <esheely@mail.com>
Sent: Monday, February 04, 2019 3:28 PM
To: LARA WEISIGER
Subject: Marriott Hotel Harbor Bay

Emma Kung

12 Britt Ct.
Alameda, CA 94502
650-787-3868
esheely@mail.com

February 1, 2019

Alameda City Council

Dear Council Members,

I am writing to express my opposition to the proposed Marriott Hotel on the shoreline near the ferry terminal in Harbor Bay. I have many concerns about this project that is not appropriate for our residential area.

For many years, we residents were misled to believe this land would be developed as two story office buildings with view corridors. It was a shock to most of us that a massive five story building with cars, shuttles, Ubers, delivery trucks coming and going 24 hours a day would even be considered. This huge unsightly building will generate traffic through our residential neighborhood 24 hours a day. Residents across the lagoon from the hotel will lose all privacy of their backyards and back windows. We feel betrayed that after years of paying very high property taxes, the neighborhood we thought we bought into will be ruined and our property values will decrease. I understand the city wants the hotel tax revenue, but it should not be at the expense of the nearby residents.

This project is unsuitable for our public shoreline trail. This very large building will be very close to the trail, with outdoor dining, outdoor cafe and patio seating and pool. It will create an awkward situation where people using the trail will feel they are trespassing on hotel property. Visitors of the hotel and public trail users alike will feel on display of each other. Diners may complain about loud children playing and local fishermen. I predict the hotel will eventually chase off the local people who enjoy fishing in that area in front of the hotel.

As a resident I am concerned about the safety and environmental impact of this project. Is this landfill parcel safe for such a large building? What happens when sea levels begin to rise? There are no traffic studies to show what impact this will have on the residential areas and safety of children walking and biking. The traffic studies for Harbor Bay Parkway and Ron Cowan are not reassuring and indicate there will be problems. Hotel guests and delivery trucks will be using residential streets.

We already have, or have in construction, several hotels nearby. Do we need another? The developers believe the ferry boat will be a draw to their hotel, but when the guests see how limited the schedule is, they will be driving through our residential streets to get to the Main Street terminal. Harbor Bay already has a lack of amenities. We should focus on improving this, rather than building more unneeded hotels that will have guests driving through our neighborhoods to get to the main island for decent restaurants, groceries, shopping and usable ferry schedule.

I ask you to please think very carefully about this beautiful piece of property in such a sensitive area. A huge three star commuter hotel is unneeded and wrong for this area. Alameda is our beloved city, not a Monopoly board. We need careful planning to maximize tax revenue and enhance the beauty and utility of the city. This decision will affect the city for many generations. Please do not approve this project.

Sincerely yours,

Emma Kung

Sent from my iPad

LARA WEISIGER

From: Diane Molter <diane.molter2@gmail.com>
Sent: Monday, February 04, 2019 3:08 PM
To: Marilyn Ezzy Ashcraft; John Knox White; Jim Oddie; Tony Daysog; Malia Vella; LARA WEISIGER
Subject: City Council Appeal for Marriott Hotel project at Harbor Bay Business Park - Tuesday, February 5, 2019 City Council Meeting
Importance: High

Dear Honorable Mayor Marilyn Ezzy Ashcraft and
Honorable City Council Members John Knox White, Jim Oddie, Tony Daysog and Malia Vella:

I understand that the Alameda City Council will hear an appeal to the proposed Marriott Hotel project proposed for Harbor Bay Business Park at its meeting on Tuesday, February 5 (Agenda Item 6A). I have resided on Bay Farm Island for 36 years and would strongly encourage you to vote against this project as proposed.

First, the five-story hotel is way out of proportion for the area. The developer's photographs show an imposing structure from across the water which dwarfs all else. It is clearly the main building visible. The other business park structures are only two to three stories and can barely be seen next to the hotel.

Second, the traffic studies indicate that hotel guests will come from the Oakland Airport and use the Harbor Bay Parkway to enter and exit the hotel structure. This appears to not take into account that once the guests are at the Marriott Hotel, they will most likely want to enter into Alameda and will likely use the exit from the Harbor Bay Ferry parking lot side next to the hotel, which exits onto Mecartney Road into the residential neighborhoods. Hotel guests would take Mecartney Road to Island Drive to cross the Bay Farm Bridge at the corner of Island Drive and Doolittle Drive. Special events held at the hotel would also add to the traffic problems through the neighborhood. During commute hours, there is already heavy traffic congestion on Island Drive caused by people going to/from work or to the Amelia Earhart School on the corner of Robert Davey Jr. Drive and Island Drive. Additionally, there is the safety concern of children who may be walking to/from school. Since Island Drive is a main way to enter or exit Bay Farm Island and the Harbor Bay area, we should also consider the event that a medical emergency might occur requiring an ambulance or fire emergency vehicle to access and transport someone to a hospital. There is no question that a hotel at the proposed site would cause additional traffic and make an already difficult commute traffic situation a nightmare.

Third, also of consideration should be the impact the proposed hotel would have on the wildlife at the site. Dating back to 1973 and years prior to the building of the Harbor Bay Business Park, the area was an impressive site with one of the greatest concentrations of shorebirds in the world. Since the construction of the Harbor Bay Business Park the bird habitat has been reduced, meaning that each undeveloped parcel has become even more important to the bird species of the area. A five-story hotel would present the following problems for birds: bird collisions with the building windows causing many bird fatalities and the artificial building light impact on the birds and other wildlife.

Please do not allow the proposed Marriott Hotel to be constructed in this neighborhood. It seems that the Planning Board in its eagerness to find a revenue source for the City of Alameda was too quick to approve this project, in spite of the disapproval of the neighborhood residents and the Harbor Bay Isle Owners' Association and other home owners associations. The Marriott Hotel is not appropriate for the neighborhood. There should be a responsibility to be respectful stewards of the environment.

Respectfully yours,

Diane M. Molter
1095 Jost Lane
Alameda, CA 94502-7064
diane.molter2@gmail.com
Resident of Bay Farm Island since 1982

LARA WEISIGER

From: Susan <sue13dives@comcast.net>
Sent: Monday, February 04, 2019 1:22 PM
To: Marilyn Ezzy Ashcraft
Cc: LARA WEISIGER
Subject: 5 story hotel on Harbor Bay

Dear Mayor Ashcraft,

I not only live in Harbor Bay and take the ferry every day to work but I also own a home that will be directly behind this hotel. So not only will this monolithic 5 story building block the sun but every time the homeowners along the lagoon are in our yards or look out a window it's just BOOM in the way. It's all we will see. It's a giant wall.

We will also have to deal with the additional noise and emissions from increased traffic on the access road that is between the lagoon and the proposed hotel.

This includes headlights that shine right into our homes from those cars as well as those lighting up the building and parking lot.

The quality of life my neighbors and I have will be greatly diminished from this hotel as it's currently designed.

We implore you to demand current environmental impact studies for this project. This includes traffic studies with a better than passing grade for all areas of egress.

So far only 1 study has been done and in only 1 direction- between the airport and the lot.

However if anyone staying there wants to go into Alameda, San Francisco or any points east or north they will have to travel through our neighborhood and on city streets to get to the freeway.

That is a reality that can't be ignored.

This study should include all delivery trucks too. The developer makes promises that these trucks will only come at certain times of the day and only from the airport side.

They can't control that once the project is up and running.

It's just another false promise made to get the project put through. How can he possibly dictate what happens 6 months after completion and occupancy?

There are already several big hotels in the area. There is one going up on Park street and I believe another proposed out by Ballena Bay and another giant one on or near the naval base.

I think we are putting up too many too fast and then what?

This is irreparable.

They build a giant 5 story hotel and it fails?

What is that building now going to be converted to?

What contingencies are in place for that and for how long?

The land it's on and the bay will be forever changed and ruined in my opinion.

Please demand the proper permitting process and help us stop this project.

Or at the very least let's get it down to a reasonable scale that is in line with the other buildings in the area (2 story).

The hotel is not only going to be all I see from my home but I walk to & from the ferry every day. I walk my dog twice a day along the bay edge right where this project is slated to be.

There will be no avoiding it. No coexisting. There has not been any compromise made in the favor of the homeowners. It's just too big!

It is forever ruining the last bit of untouched coastline we have.

Please help.

Thank you,
Susan Natt
318 McDonnel Rd
Alameda

LARA WEISIGER

From: Cathy Leong <gocathyl@gmail.com>
Sent: Monday, February 04, 2019 11:41 AM
To: Marilyn Ezzy Ashcraft; Malia Vella; Jim Oddie; Tony Daysog; John Knox White
Cc: LARA WEISIGER
Subject: Alameda City Council:

Honorable Councilmembers,

I strongly recommend your review & vote:

- (a) To entirely rescind the Planning Board Approval on 12-10-18 of this project
- (b) To rescind until we hear from BCDC on their Feb 7th vote on their full BCDC permit review as the BCDC has agendized this issue of whether this Marriott Hotel requires a BCDC permit.
- (c) Rescind and return the project to the Planning Board for incorporation of sorely needed design mitigation measures to make this project more acceptable to not only the residents but also further from the Bay shoreline. Truly in need of Community input.

As it stands, the developer and City staff have not made true effort to address resident's concerns regarding the scale and size of the project, traffic concerns as this has obviously changed over these many years. Most of the changes made by the developer have not done anything to address this major concern. Strongly recommend this focus of concern to determine how you, our City Council, can reconciled this.

These points of contention are non-starters and need to be reviewed/changed:

- 1.Design- it's a pre-fab modular box
- 2. Height- 5 stories, 72 feet high right on the Bay (WAY too large)
- 3. Setback- only 35 foot setback from Shoreline Park Trails- the same as a two story office building and this is SO much larger.
- 4. Inadequate traffic/parking studies (my how things have changed since 1987).
- 5. No new Environmental Impact Report (EIR) approval relied on an EIR from 1974, last updated in 1987.

Of concern also is how is it allowed to build this massive a structure when (example) Ascend Communications was built it was NOT ALLOWED to go more that TWO STORIES due to earthquake concerns. Living on Bay Farm/Harbor Bay during the 1989 quake, we witnessed serious liquefaction then. What happens now?

It would seem, design mitigation to the structure and surroundings can help minimize, to the extent possible, these major impacts to our shoreline as well as to the neighboring commercial and residential properties. Involving the community and a responsible, ethical local architect in the project design is a must because we know what works best for cohesiveness in Alameda. To date, community "involvement" in the design has been presentation by the developer of the project design at public meetings - with NO modifications to the project design entertained by either the developer or the City to help integrate the structure into the environment. Also, the developer has stated that he would seek community input on project landscaping - but to date, no invitation has been extended to the community.

Understand a vast majority see this as the saving grace to save our City with the taxes which purportedly will come from this venture. But as citizens, we all need to be considered, that is how thoughtful government works. Besides, once this is built, there is no going back...what little open space left in Alameda will be gone. Sad legacy...

Submitted respectfully, Cathy Leong Harbor Bay Resident and Active Community Supporter.

LARA WEISIGER

From: Blair <skellieb@aol.com>
Sent: Monday, February 04, 2019 10:54 AM
To: LARA WEISIGER
Subject: Marriott Hotel

Dear Mayor and City Council Members,

I do not support the proposed Marriott Hotel.

I clearly understand that the City needs more tax revenues and that a hotel can generate significant revenues.

But I question the need for another hotel in this area. If there is indeed demand, the hotel belongs at the other end of the Parkway where the businesses are. I don't believe I have ever seen a big hotel like this be placed right next to a residential area.

This very large standard looking hotel will definitely impact the residential area near it as well as the many people who enjoy the use of the trail. There aren't even any 5 story hotels at the other end of the Parkway.

The hotel will impact our property values and will affect our wonderful quality of life because of the increase in crime, traffic and noise.

I am not a NIMBY and was fine with the nursing home going in on this property.

Please rescind the Planning Board approval for this project.

Blair Skellie
432 McDonnell Rd

LARA WEISIGER

From: liu_helen@yahoo.com
Sent: Saturday, February 02, 2019 10:50 PM
To: LARA WEISIGER
Subject: Issues re New Marriott Hotel

Dear Ms. Weisiger,

Hello. My name is Helen Liu, and I live on Bay Farm in the Costa Brava housing development. I wanted to share my concerns with you about the new Marriott Hotel that the planning board has approved. I am not against the building of a hotel in the proposed area; however, I have a few concerns. My issues are as follows:

- 1) I understand that an adequate traffic study has not yet been conducted. As a mother of two kids who will likely bike alone to Alameda Martial Arts located in that vicinity, I am concerned about additional traffic, particularly Uber/Lyft/taxi drivers since it's a hotel. It's no secret that Uber and Lyft drivers are not courteous and are blind to children on bikes.
- 2) I do not think an environmental impact report from 1974 is sufficient to know if we may be doing harm to the existing ecosystem present in that area today. I think conducting an EIR for 2019 is not too much to ask for given the scope of this project.
- 3) I feel that a five story building will affect the peaceful vibe that area currently embodies. A two or even three story building would be more consistent with the current landscape.

Thanks for your consideration.

Sincerely,
Helen

LARA WEISIGER

From: Edward Sing <singtam168@att.net>
Sent: Saturday, February 02, 2019 2:00 PM
To: Marilyn Ezzy Ashcraft; John Knox White; Malia Vella; Jim Oddie; Tony Daysog; LARA WEISIGER
Cc: Wilma Chan; Brown, Dave, BOS Dist 3; Zachary Wasserman; Reyla Graber; Dana Sack; Brian Tremper; Kelly Gail Gordon; Donna Fletcher; Patricia Lamborn; Cathy Leong; Gary Lym; Charleshodgkins; Chad Otten; Vachang
Subject: Feb 5th City Council Appeal of Proposed Marriott Hotel on Bay Farm Island

To the Alameda City Council:

I urge you to vote to:

- (a) Rescind the Planning Board Approval of this project,
- (b) Rescind until we hear from BCDC on their Feb 7th vote of a full BCDC permit review, or
- (c) Rescind and Return the project to the Planning Board for incorporation of needed design mitigation measures to make this project more contextual ("friendly") to the Bay shoreline, Business Park and residential environs with input from the Community.

At their Dec 10th meeting, both City staff and the Planning Board appeared to approach this project as a *fait accompli*, citing the owner, due to the C-M-P zoning of the property, has the *right to build an up to 100 foot high hotel at this location*. Despite score of comments on this project noting that the proposed structure is so out of scale and character to its environs, neither the project developer nor the City staff entertained any modifications to mitigate, through minor design changes, these concerns. This, in spite of Alameda zoning ordinances which *require* harmonious transitions between different development types and ensuring minimum requirements for the *general welfare of all involved*.

My objections to this project are not solely based on lost view of the shoreline by the residents. Its also how this structure does not integrate into the shoreline environs. Its also about the repeated statements of city

officials and some locals about the \$1 million in tax money this project will generate - *without due consideration to the expense of our shoreline.*

Have you visited the proposed project site? Please do so! It is a tranquil stretch of the Bay, rich with aquatic and sea animals and birds, 6 foot wide "natural" (asphalt) trail and views to the hills. - soon to be replaced by a massive wall (will this wall generate wind vortices?) and *a 12 foot wide concrete sidewalk* (totally unnatural, too wide, and *does not match* the shoreline trail both to the North and South!!!

Are you aware that PB Resolution 1203 limits the height of residential buildings adjacent to the project to only 1.5 stories to preserve views for all and solar efficacy. This is a great disparity when compared to the 100 foot high possible building in the adjacent commercial property. *Why?? This disparity, again, conflicts with zoning ordinances which require harmonious transitions!*

Some simple design mitigation measures to the structure and surroundings can help minimize, to the extent possible, these major impacts to our shoreline as well as to the neighboring commercial and residential properties. Involving the community and a local architect in the project design is a must because we know what fits Alameda best. *Such an action is being a good neighbor, right?!* To date, community "involvement" in the design has been presentation by the developer of the project design at public meetings - with NO modifications to the project design entertained by either the developer or the City to help integrate the structure into its environs. Also, the developer has stated that he would seek community input on project landscaping - but to date, *no invitation has been extended to the community.*

IT is the role of government to protect the property owner's rights (granted), BUT also ensure that other people's rights are not violated. This involves both government, community and developer involvement in ensuring a suitable project for all involved. It is NOT saying here is a five story structure, this is it, we're going to build it

*because we have the right. IT does not mean a zoning ordinance allowing high development supercedes other applicable ordinances, policies, laws, property rights and **common sense**.*

*Therefore,
I urge you to vote to:*

*(a) Rescind the Planning Board Approval of this project,
(b) Rescind until we hear from BCDC on their Feb 7th vote of a full BCDC permit review, or
(c) Rescind and Return the project to the Planning Board for incorporation of needed design mitigation measures to make this project more contextual ("friendly") to the Bay shoreline, Business Park and residential environs with input from the Community.*

Respectfully,

Ed Sing
Bay Farm Resident

LARA WEISIGER

From: Michael Lozeau <michael@lozeaudrury.com>
Sent: Friday, February 01, 2019 6:09 PM
To: Marilyn Ezzy Ashcraft; John Knox White; Malia Vella; Jim Oddie; Tony Daysog; City Clerk; ANDREW THOMAS; Henry Dong
Cc: Hannah Hughes
Subject: LIUNA Local 304 Appeal of 2900 Harbor Bay Parkway - February 5, 2019 City Council Meeting, Agenda Item 6-A, File #2019-6448
Attachments: 2019.02.01 LIUNA City Council Comment re 2900 Harbor Bay - Final.pdf

Dear Mayor Ashcraft, Council Members and Messrs. Thomas and Dong,

Attached please find comments submitted on behalf of Appellant LIUNA Local 304 in support of the above-referenced appeal that is scheduled to be heard by the Council this Tuesday evening, February 5.

Thank you for considering LIUNA's comments.

Sincerely,

Michael R. Lozeau
Lozeau | Drury LLP
410 12th Street, Suite 250
Oakland, California 94607
(510) 836-4200
(510) 836-4205 (fax)
michael@lozeaudrury.com

This message contains information which may be confidential and privileged. Unless you are the addressee (or authorized to receive for the addressee), you may not use, copy or disclose to anyone the message or any information contained in the message. If you have received the message in error, please advise the sender by reply e-mail Michael@lozeaudrury.com, and delete the message.



T 510.836.4200
F 510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
michael@lozeaudrury.com

February 1, 2019

Via E-mail

Mayor Marilyn Ezzy Ashcraft
mezzyashcraft@alamedaca.gov
Vice Mayor John Knox White
jknoxwhite@alamedaca.gov
Councilmember Malia Vella
mvella@alamedaca.gov
Councilmember Jim Oddie
joddie@alamedaca.gov
Councilmember Tony Daysog
tdaysog@alamedaca.gov

City Clerk's Office
2263 Santa Clara Avenue, Room 380
Alameda, CA 94501
clerk@alamedaca.gov

Andrew Thomas, Acting Director of
Planning and Building Department
Henry Dong, Planner II
City of Alameda
2263 Santa Clara Avenue, Room 190
Alameda, CA 94501
athomas@alamedaca.gov
hdong@alamedaca.gov

Re: LIUNA Local 304 Appeal of 2900 Harbor Bay Parkway - PLN18-0381, Harbor Bay Hospitality, LLC (February 5, 2019 City Council Meeting, Agenda Item 6-A, File #2019-6448)

Dear Mayor Ashcraft, Council Members and Messrs. Thomas and Dong:

I am writing on behalf of the Laborers International Union of North America, Local Union 304 and its members living in and around the City of Alameda ("LIUNA") in support of LIUNA's appeal of the above-referenced hotel project proposed for the parcel located at 2900 Harbor Bay Parkway along the shore of San Francisco Bay in Alameda. The proposed project includes the construction and operation of a 63-foot tall, 5-story, 172-room hotel on the 5.5 acre parcel. The City's Planning Department staff claims that the potential environmental effects of the Project already have been fully addressed by the City's Harbor Bay Isle Environmental Impact Report certified in April 1974 ("1974 EIR"). We are in receipt of a memorandum prepared for staff by Luke Evans of ESA Associates ("ESA") attempting to respond to LIUNA's previous comments. The following explains the shortcomings in Mr. Evans arguments.

///
///
///

A. The City's 1989 Development Agreement Does Not Relieve The City of Fully Complying With CEQA's Requirements.

Initially, it is important for the Council to avoid a serious legal error made by the Planning Board. The Planning Board appears to have made its decision approving the Project based in part on the erroneous belief that the 1989 Development Agreement for the Harbor Bay area precludes the City from requiring a new supplemental or subsequent EIR (or even a negative declaration) based on the Agreement's provision that states:

Under Settlement Agreement II, City has reflected its understanding and agreement that City shall require no new, subsequent or supplemental environmental impact report or other environmental review for the development of the Properties as described in this Agreement.

1989 Development Agreement, ¶ 1.10. As one Planning Board member stated at the hearing:

In this case, the development agreement is the master agreement. It says that we cannot ask for an additional EIR. We can't ask for amendments to the EIR. We can't ask for additional stuff.

Statements of Planning Board Member, Dec. 9, 2018 Meeting Video at 2:44:12 (http://alameda.granicus.com/player/clip/2298?view_id=6). No such limitation is or can legally be imputed to the 1989 Development Agreement or whatever settlement is being referenced in the Agreement. The City has no authority to enter into a private agreement that purports to exempt the City from complying with all of CEQA's requirements, including whether a tiered CEQA analysis is needed for a current hotel project because that project was not a project evaluated at all in the 1974 EIR or, alternatively, a subsequent EIR is required to address new significant information and changes that require major revisions of that dated EIR. The fact that at least one and possibly many of the Planning Board members thought their hands were tied on doing anything in addition under CEQA is an error of law that undermined the Board's consideration of the evidence presented by LIUNA. LIUNA respectfully requests that the Council give full consideration to the requirements of CEQA and their comments, including the expert comments submitted by expert biologist Dr. Shawn Smallwood and Certified Industrial Hygienist Bud Offermann to the Planning Board.

B. The Hotel Project Was Not Addressed in the 1974 EIR and is a Separate Project From the Project Addressed in the 1974 EIR.

As LIUNA has previously pointed out, fundamentally, the proposed hotel is an entirely different project than the overall development plan reviewed in the 1974 EIR. See LIUNA Dec.7, 2018 Comment, pp. 3-7. This is because the 1974 EIR has no informational value to the proposed hotel and is irrelevant to analyzing its environmental

impacts. See *Friends of Coll. of San Mateo Gardens v. San Mateo Cty. Cmty. Coll. Dist.* (2016) 1 Cal.5th 937, 952-953. In response, ESA argues that:

the City of Alameda, acting as lead agency, determined that the 1974 Harbor Bay Isle EIR and the subsequent environmental determinations that have been based from that EIR retained informational value that was applicable to the proposed project. This determination was made on the basis that the 1974 EIR evaluated the entire Harbor Bay Isle project and determined the resultant impacts using defined development intensities for the various land uses that were proposed.

ESA Memo, pp. 12-13. ESA's analysis is flawed and does not identify any substantial evidence that the City could rely on to conclude that the project considered in the 1974 EIR included the proposed hotel. Indeed, there is no evidence that the 1974 EIR addressed the existing office park in any meaningful way that would have any informational value for an environmental review of the proposed hotel project.

First, ESA incorrectly attempts to include "subsequent environmental determinations" to the review of the 1974 EIR. All of these determinations were addenda to the 1974 EIR. None of these addenda were subject to public review, comment or a hearing pursuant to CEQA. Nothing in CEQA or the Supreme Court's *Friends of Coll. of San Mateo Gardens* ruling suggests that Section 21166 or 14 Cal. Admin. Code § 15162 looks to addenda to determine whether a prior **EIR** or **negative declaration** addressed a newly proposed project.

As the Supreme Court explains, "[a] decision to proceed under CEQA's subsequent review provisions must thus necessarily rest on a determination — whether implicit or explicit — that the **original environmental document** retains some informational value." *Friends of Coll. of San Mateo Gardens*, 1 Cal.5th at 951 (emphasis added). Only if the original environmental document retains some informational value despite the proposed changes, changes in circumstances or new substantial information does the agency proceed to decide under CEQA's subsequent review provisions whether such changes or substantial new information will require major revisions to the original environmental document because of the involvement of new, previously unconsidered significant environmental effects. 1 Cal.5th at 952.

The only document that is relevant to whether Section 21166 applies is the original 1974 EIR. No other EIR or negative declaration has ever been prepared for the Harbor Bay project. Reviewing that EIR, the City cannot reasonably claim that it addresses, *i.e.*, provides some informational value regarding the potential environmental impacts of the proposed hotel project. Indeed, there is no substantial evidence apparent from that EIR or the development plan presented at that time that the EIR provides any such informational value regarding any specific development plan for the office park. At best, all of the evidence indicates that the 1974 EIR was limited to a

few impacts of changing the zoning of the 51-acre area to C-M-PD and conceptually envisioning an office park consisting of “Administrative/Professional Offices.”

Contrary to ESA’s assertion that “the 1974 EIR evaluated the entire Harbor Bay Isle project and determined the resultant impacts using defined development intensities for the various land uses that were proposed,” no such development densities were addressed for the conceptual office park mentioned for the identified C-M-PD zoning area. The only densities discussed in the EIR are residential housing densities. See 1974 EIR, p. II-10. As pointed out in our previous comments, a specific development project is not the same as an area plan or a conceptual design. The development plan reviewed by the 1974 EIR consisted of an area plan identifying zoning areas for the Harbor Bay development and a specific proposal to build out one of five residential villages envisioned by the development. See 1974 EIR, p. I-1 – I-2. The only portion of the entire development that was presented in any detail was the first of five residential areas to be developed – Village 1. See *id.*, p. II-1. Any development within the area to be zoned commercial was only conceptual at the time of the 1974 EIR:

The plan submitted to the City of Alameda by HBI Associates is for 640 acres of the 908.7-acre site and provides for a residential community with associated commercial, educational, and recreational activities, including a 51-acre site intended by the developer for professional administrative office activities.

1974 EIR, p. II-4. Indeed, the 1974 EIR expressly states that any projects within the office park area were conceptual and not yet proposed:

The 51 acres immediately northwest along the bay are proposed for development as an administrative-professional office park. It is presently zoned for residential use but the developer has requested a zoning change to C-M-PD. ***Plans for the development of this office park are not yet complete, but the concept is for structures of moderate density in a landscape setting.***

1974 EIR, p. II-19 (emphasis added). Likewise, in addressing the zoning change, the 1974 EIR could only surmise at the scope of office park development that might take place.

The project also proposes to place 51 acres in an administrative and professional office park. It is estimated that the site could accommodate roughly 567,000 square feet of building area, of which about 450,000 would be usable office space. The ***intention appears to be*** to provide office space for small businesses and for professionals, such as dentists, doctors, lawyers, and others who would derive their trade primarily from residents in the development and in nearby areas. Demand for other types of office uses is not apparent.

1974 EIR, p. IV-48 (emphasis added). Indeed, the 1974 EIR notes the lack of any office demand in the Bay Farm area at the time and uses that fact to downplay any potential impacts from the rezoning of the business park area from residential to commercial. *Id.* (“If the land were not marketable as the developer intends, there would not, however, be any substantial adverse or other impacts on adjacent land in the project or on Alameda”). Thus, it is evident from the 1974 EIR, that the project reviewed in that document was Village 1 plus the zoning changes for the remainder of the site. It did not include any proposed office development, never mind any hotel projects on Bay Farm Island. Accordingly, ESA’s memorandum does not provide staff or the City with any substantial evidence demonstrating that any information of any value regarding the potential environmental impacts of the proposed hotel were provided 44-years ago in the EIR prepared for Village 1 and the zoning changes.

A thorough review of the 1974 EIR confirms that no mention is made of any hotel project in the Harbor Bay footprint. As a result, none of the EIR’s discussion provides any information that would assist the City in determining the potential environmental impacts of the recently proposed large hotel. First, many of the impacts discussed in the 1974 EIR would no longer even qualify as impacts under CEQA. Thus, the 1974 EIR’s long analyses of potential demographic, economic, fiscal, land use and social impacts, by and large, do not even touch on environmental impacts. These non-environmental impact analyses do not provide any informational value regarding environmental impacts of the proposed hotel. Nor do these discussions even mention the office park, never mind a proposed hotel. See, e.g. 1974 EIR, p. IV-15 (population impacts solely based on residential); *id.*, pp. IV-24, 26, Table IV-15, IV-29 (economic effects of construction only look at residential construction and retail commercial uses); *Id.*, p. IV-34 (land use evaluation only addresses whether development of industrial uses on Bay Farm would affect the location or viability of existing industrial uses along the estuary with no mention of any office park in the analysis); *Id.*, p. IV-46 (discussion of effects on densities limited to residential densities); *Id.*, pp. IV-81 – IV-87 (social impacts not environmental impacts and no mention of office park); *Id.*, p. IV-65 (fiscal impact on City does mention the office park but this information has no relevance to any environmental impact).

The 1974 EIR discussion of land use impacts mentions the office park. However, the discussion is not of an environmental impact but whether an office park generally would affect similar office land uses elsewhere in Alameda. 1974 EIR, p. IV-48 – 49. That discussion conveys no information regarding any potential environmental impacts. Indeed, the conclusion is that, at the time, there was no apparent market demand for the conceptual office park and, if that was the case, it would have no impact on that type of land use elsewhere on the island. *Id.*, p. IV-48. The office park, as vague as it was at the time, only conceptualized local professional offices and there was no contemplation or information included in the 1974 EIR regarding any potential impacts of a proposed hotel within the office park area. *Id.* That discussion precludes any conceivable notion that a hotel was addressed in the 1974 EIR. *Id.*

Even the few portions of the 1974 EIR that address what we would now regard as environmental impacts do not address impacts of a hotel or even mention the area zoned for office park. For example, the noise discussion makes no mention of the office park use, instead focusing on residences. See IV-131 -IV-141. Only residential sources are mentioned in the EIR's air quality discussion. See EIR, p. IV-144.

The 1974 EIR discussion of traffic does attribute 2,600 trip ends to 36.6 acres of office park use. See 1974 EIR, p. IV-152 (office park estimated to generate 2,600 trip ends – 71 trip ends per acre - for office park use). No hotel projects are included in the estimate. And obviously the acreage is less than the 51 acres of office park. And, as noted elsewhere in the EIR, conceptually the office park was limited at the time to 450,000 square feet.

No other mentions of an office park are found in the EIR. More importantly, no mention of a hotel project is found in the EIR. As a result, there is no information of any value in the 1974 EIR regarding the environmental impacts of a large hotel proposed for the shoreline of San Francisco Bay. "[T]he subsequent review provisions [PRC § 21166 and 14 Cal. Admin. Code § 15162] can apply only if the project has been subject to initial review; they can have no application if the agency has proposed a new project that has not previously been subject to review." *Friends of Coll. of San Mateo Gardens*, 1 Cal.5th at 950. Section 21166 and its accompanying implementing regulation 14 Cal. Admin. Code § 15162 do not apply to the newly proposed hotel project.

Notably, at several points in its memo, ESA emphatically agrees with LIUNA that the Hotel Project is a distinct project from that considered in 1974. For example, as ESA states, "[w]ith respect to the petitioner's assertion that the previously-infeasible mitigation measure requiring the applicant to provide electric vehicles to 'each house sold' is now feasible, that measure is irrelevant to the currently proposed project." ESA Memo, p. 26. ESA then reasons that mitigation only applies to "residential areas of the Harbor Bay Isle project, and "[i]t is therefore not applicable to the currently proposed project and is not relevant to this discussion." *Id.* However, in order for the City to be able to claim the 1974 EIR addresses the hotel Project, it has to be the same project as was considered in 1974. The City cannot have it both ways.

C. The City Must Abide by CEQA's Tiering Requirements and Prepare a New EIR for the Proposed Hotel.

CEQA's many provisions addressing zoning designations and specific plans as separate projects, albeit related projects, to subsequent specific development projects, underscore that the proposed hotel construction and operation is a separate and distinct project from the prior 1974 project changing the 51-acre area's zoning from residential to C-M-PD. As discussed at length in our initial comments to the Planning Board, "[a]gencies are encouraged to tier the environmental analyses which they prepare for **separate** but related projects including general plans, zoning changes, and

development projects.” 14 Cal. Admin. Code § 15152(b). Just because tiering is appropriate does not mean that a specific development project is deemed to be the same project as the prior approved area plan or general plan:

Where an EIR has been prepared and certified for a program, plan, policy, or ordinance consistent with the requirements of this section, any lead agency for **a later project pursuant to or consistent with** the program, plan, policy, or ordinance should limit the EIR or negative declaration on the **later project** to effects which:

- (1) Were not examined as significant effects on the environment in the prior EIR; or
- (2) Are susceptible to substantial reduction or avoidance by the choice of specific revisions in the project, by the imposition of conditions, or other means.

14 Cal. Admin. Code § § 15152(d) (emphasis added). Thus, the tiering provision expressly treats a later site specific development project as a separate project from the planning level decisions. Staff’s and the Planning Board’s effort to unreasonably expand the project actually considered by the 1974 EIR renders the tiering provisions of CEQA meaningless.

ESA’s memo admits that the tiering provisions of CEQA are the relevant provisions that should be applied to the hotel project. As ESA emphasizes, “[o]f further relevance to this discussion is the fact that the 1974 [EIR] was presented as a *Program* EIR, as defined in CEQA Guidelines Section 15168.” ESA Memo, p. 17. LIUNA agrees. There is no doubt that the development plan for the first village of Harbor Bay as well as the zoning changes for the remainder of the anticipated development could be characterized at the time as “one large project.” However, as noted above, the 1974 program EIR did not address any hotel project. Hence, the hotel is not within the scope of the project covered by 1974 program EIR and neither Pub. Res. Code § 21166, nor 14 CCR 15162, nor 14 15168(c)(2) apply. Nor did the 1974 EIR even address a specifically proposed office park proposal. It only addressed at the most conceptual level a zoning change that would allow a future, to-be-disclosed office park. As a result, ESA cannot and does not try to explain how the City could make the finding required by 14 CCR § 15168(e):

Notice With Later Activities. When a law other than CEQA requires public notice when the agency later proposes to carry out or approve an activity within the program and to rely on the program EIR for CEQA compliance, the notice for the activity shall include a statement that:

- (1) This activity is within the scope of the program approved earlier, and
- (2) The **program EIR adequately describes the activity for the purposes of CEQA.**

14 CCR § 15168(e) (emphasis added). As described above, the proposed hotel is not within the scope of the program evaluated in the 1974 EIR and no reasonable person could claim that the 1974 EIR describes a proposed hotel for purposes of CEQA.

ESA also ignores that specific development projects which tier from a programmatic plan-level EIR are treated as separate projects by the tiering regulations. 14 Cal. Admin. Code § 15152(b); 14 Cal. Admin. Code § 15152(d). Lastly, ESA ignores that, when tiering from a programmatic EIR, the City must employ the fair argument standard. 14 Cal. Admin. Code §§ 15152(f), 15070.

Because the project considered by the 1974 EIR only included a zoning change for the 51-acres where the office park was contemplated, the City cannot treat the mere zone change as being the same as a subsequent development project consistent with that zoning. ESA, staff, and the Planning Board's efforts to do so are inconsistent with yet another provision of CEQA, Pub. Res. Code §21083.3. *See also* 14 CCR § 15183.3. This provision establishes a partial statutory exemption for certain projects that are consistent with all applicable general plan, specific plan, and zoning designations. *See Id.*; *Gentry v. Murietta* (1995) 36 Cal.App.4th 1359, 1374. Under this partial exemption, the project must be "consistent" with the applicable plan and land use designations. Pub. Res. Code §21083.3(a), (b); 14 Cal. Code Regs. §15183(a), (d). This means "that the density of the proposed project is the same or less than the standard expressed for the involved parcel in the general plan, community plan or zoning action for which an EIR has been certified, and that the project complies with the density-related standards contained in that plan or zoning." 14 Cal. Code Regs. §15183(i)(2). Otherwise, further CEQA review is required. 14 Cal. Code Regs. §15183(a). Additional CEQA review is also required when a proposed project has (1) environmental effects "peculiar to the project or the parcel on which the project would be located," (2) environmental effects that were not analyzed in a prior EIR, (3) potentially significant off-site impacts or cumulative impacts that were not discussed in a prior EIR, or (4) previously identified significant impacts that "substantial new information" shows have a more severe adverse impact than discussed in a prior EIR. 14 Cal. Code Regs. §15183(b). Because the legislature has provided a specific provision addressing a later project's consistency with a zoning regulation, the City cannot attempt to create its own exemption from any subsequent review just because it changed the zoning for the office park area back in 1974.

Assuming the City were to apply Section 15183 to the hotel project, LIUNA has submitted substantial evidence by wildlife expert Dr. Shawn Smallwood and certified industrial hygienist Francis "Bud" Offermann that the hotel project will have environmental effects peculiar to the project, or environmental effects that were not analyzed in a prior EIR, or potentially significant cumulative impacts that were not discussed in a prior EIR. Any one of these precludes the project from using Section 15183's partial exemption. *See* LIUNA Dec. 7, 2018 Comments and exhibits. These impacts include effects on birds colliding with the Project's many windows and the Project's health risks to workers posed by its emission of formaldehyde to indoor air. As

discussed further below, none of these expert comments are substantively refuted by staff, the applicant or ESA. In addition, LIUNA has submitted evidence of GHG impacts. LIUNA Dec. 7, 2018 Comments, pp. 16-17. ESA admits that the Project's GHG effects were not addressed in the 1974 EIR. ESA Memo, p. 22 ("[i]mpacts from greenhouse gas (GHG) emissions were not analyzed in the 1974 Harbor Bay Isle EIR").

D. Because the Project is Inconsistent with the Development Plan addressed in the 1974 EIR, the City Cannot Tier the Hotel Project's Environmental Analysis from the 1974 EIR and Must Prepare a full EIR for the Project.

Under CEQA, a project's environmental review cannot rely on tiering "when the later project is inconsistent with the program, plan, policy, or ordinance for which a prior EIR was prepared." Where a project is inconsistent with the project reviewed in the prior EIR it is outside the scope of the prior review. See *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307. See also Kostka & Zischke, Practice Under the California Environmental Quality Act, ¶ 10.7. As noted in our previous comments, the project is inconsistent with the development plan addressed in the 1974 EIR which states unequivocally that "[b]uildings will not ... be closer than 100 feet from the shore." 1974 EIR, p. IV-232. According to hotel design drawings, the front of the hotel facing the Bay will be significantly less than 100 feet from the Bay shore. See Project Plans, Sheet A8. Likewise, the 1974 EIR only mentions a total of 450,000 square feet of office space in the area zoned for business park. See 1974 EIR, p. IV-48. The square footage is at least at 1.2 million square feet and climbing and, hence, entirely inconsistent with the amount identified in the 1974 EIR. Thus, not even tiering is allowed to review the hotel project as proposed. As a result, the hotel project must be reviewed as a separate project pursuant to CEQA.

E. Whether Tiering to the 1974 EIR is Available to the City or a Stand Alone CEQA Document Must be Prepared for the Project, the Record Contains Substantial Evidence of Several Fair Arguments That the Project May Have Significant Environmental Impacts, Requiring the Preparation of an EIR

Applying CEQA's tiering provisions, LIUNA's prior submissions have included substantial evidence of a fair argument that the Project may have a significant effect on the environment. Dr. Smallwood's and Mr. Offermann's expert comments are substantial evidence of a fair argument that the hotel project may have a significant impact on the environment. LIUNA Dec. 7, 2018 Comments and exhibits. Likewise, the applicant has now corroborated the significant GHG emissions pointed out by LIUNA in its prior comments. See ESA Memo, p. 24 (proposed hotel will emit 1,532 metric tons per year of CO₂e, exceeding BAAQMD's 1,100 metric ton significance threshold). Attempting to subtract GHG emissions from previously approved but never built buildings, as ESA purports to do in its memo, does not eliminate the fair argument that the project will have significant GHG impacts. See *id.*

1. Pointing to other regulations does not address the substantial evidence that the Project will have significant adverse health impacts on future workers breathing formaldehyde at levels that exceed BAAQMD's cancer threshold of significance

ESA's effort to avoid addressing the Project's formaldehyde emissions is based solely on an effort to find other regulations that affect this pollution emission and claim those regulations somehow supersede CEQA's mandate to address all potential significant environmental impacts. There is no exception in CEQA that a lead agency need not address emissions of pollution to air that happens to be indoors, as suggested by ESA. ESA Memo, p. 26. Air pollution is air pollution whether the air occurs outside or inside. Cancer risks accrue whether you breathe in toxic air contaminants in air inside or outside a building. ESA also ignores that mere compliance with another agency's regulations is not, by itself, sufficient to either disclose a potential impact or to obviate the need to mitigate a significant impact. See ESA Memo, pp. 26-27. Unlike ESA, Mr. Offermann has provided his curriculum vitae confirming his expertise in the field of indoor air pollution and formaldehyde risks. See LIUNA Dec. 7, 2018 Comment, Exhibit A. Mr. Offermann's analysis assumes that materials used for the project will comply with the California Air Resources Board's formaldehyde regulations. Offermann Comment, p. 4. Contrary to ESA's response, BAAQMD does establish a health risk threshold of significance for CEQA of 10 cancers in a million, which Mr. Offermann applies in his comments. *Id.*, pp. 3-4.

Merely stating a project will comply with another agency's regulations is not sufficient to satisfy CEQA's disclosure and analysis requirements. See *Kings Co v. Hanford* (1990)221 CA3d 692, 712-718 (agency erred by "wrongly assuming that, simply because the smokestack emissions would comply with applicable regulations from other agencies regulating air quality, the overall project would not cause significant effects to air quality."); *Citizens for Non-Toxic Pest Control v. Dept. Food & Agr.* (1986) 187 CA3d 1575, 1587-88 (state agency may not rely on registration status of pesticide to avoid CEQA review); *Sundstrom v. Cty. of Mendocino* (1988) 202 Cal.App.3d 296, 309 ("Having no 'relevant data' pointing to a solution of the sludge disposal problem, the County evaded its duty to engage in a comprehensive environmental review by approving the use permit subject to a condition requiring future regulatory compliance"); See *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 442 n. 8 (lead agency cannot refrain from considering means of exercising its own regulatory power simply because another agency has general authority over the impacted natural resource). Especially where, as here, an expert comment indicates that significant health risks may be posed even if a Project's materials comply with the CARB regulations, the City is obligated to address these potential impacts in an EIR, not in a non-expert response to comments submitted without notice on an appeal to the City Council.

Mr. Offermann's analysis is the only substantial evidence in the record discussing the Project's formaldehyde emissions and resulting health risks. That expert evidence is substantial evidence that the Project may have a significant health impact on future workers at the facility.

2. Even with the City's recent adoption of the Bird-Safe Building Ordinance, Dr. Smallwood's expert comments are substantial evidence of a fair argument that the Project may have significant impact on wildlife.

Shortly after the Planning Board's approval of the Project, on December 18, 2019, the City Council adopted the Bird-Safe Building Ordinance. ESA's discussion of various design criteria it states will be required for the Project fails to address the City's failure to disclose the Project's potential bird impacts in an appropriate CEQA document and to subject both that discussion and any proposed mitigations to public review and comment. Moreover, Dr. Smallwood reviewed the City's bird safety guidelines prior to their adoption and has commented that, although the steps set forth in the ordinance are positive, they would not eliminate the likelihood of bird collisions with the Project to the point of insignificance. As he explains,

[The design criteria] assume that glazed windows are safe, but I have not seen sufficient evidence to confirm this assumption. Also, the minimum window size standard ought to be reduced or eliminated, and so should the minimum percentage of façade composed of glass. Another needed modification would be the addition of fatality monitoring provisions requiring at least one year of scientific monitoring by qualified biologists and public reporting of results.

Smallwood Comments, p. 22 (Dec. 7, 2018). Lighting impacts identified by Dr. Smallwood also have not been addressed in the prior EIR or any EIR or MND prepared for the project. Other evidence submitted by Dr. Smallwood is also overlooked by ESA's response. Rather than mere common species, Dr. Smallwood provides evidence of other special status species that have been observed on-site and are listed by USF&WS as Bird Species of Conservation Concern (see <https://www.fws.gov/birds/management/managed-species/birds-of-conservation-concern.php>), that are identified as California Bird Species of Special Concern (see <http://data.prbo.org/apps/bssc/index.php?page=about>), listed on the Taxa to Watch List or protected birds of prey and migratory birds. See <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109406>. Each of these categories of species indicates a "special status species" impacts to which may be significant.

///
///
///
///

3. The City cannot apply an improper baseline to avoid addressing the substantial evidence of a fair argument that the Project may have significant GHG impacts.

Subsequent to the Planning board's consideration of the Project and in response to LIUNA's comments, ESA has now confirmed that the Project will emit 1,532 metric tons per year of CO₂e, exceeding BAAQMD's 1,100 metric ton significance threshold. ESA Memo, p. 24. Undaunted, ESA then attempts to spin the Project's GHG assessment by crediting the hotel Project with GHG emissions with a previously approved but never built project which was processed with only an addendum under CEQA. *Id.* That analysis is illegal under CEQA because it applies an incorrect baseline to the assessment of the Project's GHG emissions. ESA makes believe that the previously approved 7 buildings were already constructed and their emission of 818 metric tons per year of CO₂e was already being emitted at the site and is now being replaced by the hotel. All of this belated effort to explain away the hotel's obvious exceedance of the BAAQMD threshold runs afoul of CEQA's baseline requirements. In order to assess the significance of the Project's GHG emissions, the City must compare those emissions to the existing environment, not some potential future baseline merely authorized by the City. See *Save Our Peninsula Committee v. County of Monterey* (2001) 87 Cal.App.4th 99, 121-23 ("*Save Our Peninsula*") ("the impacts of the project must be measured against the 'real conditions on the ground,'" and not against hypothetical permitted levels). Using such a skewed baseline "mislead(s) the public" and "draws a red herring across the path of public input." *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 656; *Woodward Park Homeowners v. City of Fresno* (2007) 150 Cal.App.4th 683, 708-711.

All in all, the City has no evidence to show that any of the Project's environmental impacts discussed above and in LIUNA's prior comments were considered by the 1974 EIR. As a result the only legal option available to use the outdated 1974 EIR is through CEQA's tiering provisions. Because the project may have significant environmental impacts, the City must prepare an EIR for the hotel project. *Id.*

F. Alternatively, Assuming Staff is Right That the Hotel Project is the Same Project Addressed by the 1974 EIR, New Information and New Circumstances Have Arisen in the Interim 44-years That Require Significant Revisions to the 1974 EIR.

Even assuming that the zoning change reviewed by the 1974 EIR somehow equates to reviewing a hotel project, numerous substantial changes in the development plans have occurred, new information of substantial importance has arisen, and substantial changes in circumstances have taken place that require a wholesale revision of that dated EIR.

When changes to a project's circumstances or new substantial information comes to light subsequent to the certification of an EIR for a project, the agency must

prepare a subsequent or supplemental EIR if the changes are “[s]ubstantial” and require “major revisions” of the previous EIR. *Friends of Coll. of San Mateo Gardens v. San Mateo Cty. Cmty. Coll. Dist.* (2016) 1 Cal.5th 937, 943. “[W]hen there is a change in plans, circumstances, or available information after a project has received initial approval, the agency’s environmental review obligations “turn[] on the value of the new information to the still pending decisionmaking process.” *Id.*, 1 Cal.5th at 951–52. The agency must “decide under CEQA’s subsequent review provisions whether project changes will require major revisions to the original environmental document because of the involvement of new, previously unconsidered significant environmental effects.” *Id.*, 1 Cal.5th at 952. Section 21166 and CEQA Guidelines § 15162 “do[] not permit agencies to avoid their obligation to prepare subsequent or supplemental EIRs to address new, and previously unstudied, potentially significant environmental effects.” *Id.*, 1 Cal.5th at 958.

Section 15162 provides, in relevant part,

(a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

(b) If changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, the lead agency shall prepare a subsequent EIR if required under subdivision (a).

14 Cal. Admin. Code § 15162(a)-(b). All of the evidence indicates that the project considered by the 1974 EIR has undergone significant changes to the project and its circumstances requiring substantial revisions to that 44-year old EIR and, not surprisingly, that new information and mitigations are now available that must be considered in an EIR.

1. Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects (Guidelines Section 15162(a)(1)).

As LIUNA previously commented in December, assuming the proposed hotel is the same project as was considered in 1974, it is a substantial change to that project. As discussed above, the only project that was considered regarding the 51-acre office park was to rezone the area from residential to commercial. The use of the area as an office park was mentioned as a conceptual possibility. No specific proposal setting forth a number or size of buildings, how much office space, locations, or specific uses was identified. All of the maps of the business park area are simple outlines with no proposal to fill in the blank on the zoning map. The only mention of size beyond the land footprint zoned commercial, is an estimate that the newly zoned area “could accommodate roughly 567,000 square feet of building area, of which about 450,000 would be usable office space.” 1974 EIR, p. IV-48. The hotel alone would contain 113,000 square feet of hotel space – about one-fourth of the entire square footage of office space estimated in the 1974 EIR. That amount of additional space when compared to the 1974 EIR is substantial. Given that the office space within the business park is now greater than 1.2 million square feet, a further increase to 1.3 million square, more than doubling any office park anticipated by the 1974 EIR also is a substantial change.

Significant revisions are necessary for the 1974 EIR to address the individual and cumulative impacts of this massively expanded development beyond that estimated generally in the 1974 EIR. Revisions are necessary to address for the first time, significant impacts of destroying what was, as of 1973, “[o]ne of the greatest concentrations of shorebirds in the world” and developing mitigations for that impact. See Smallwood Comments, p. 7. Likewise, Dr. Smallwood discusses the substantial incremental impact of that additional development on wildlife access to open areas in this portion of Bay Farm adjacent to the Bay. *Id.*, pp. 8-9. The additional visual, air pollution, traffic and noise impacts of the greatly expanded business park would require entirely new discussions and analyses to be added to the 1974 EIR. The fact that workers throughout this large expanse of office parks are being exposed to cancer-causing levels of formaldehyde would require a new discussion and new mitigation

within the EIR. See Offermann Comments. Similarly, an entirely new analysis and disclosure of GHG emissions must be added to the EIR to address the development beyond anything envisioned in the 1974 EIR.

ESA attempts to respond to this substantial change by ignoring the project conceptually identified in the 1974 EIR. No other subsequent addenda are relevant to applying Section 15162(a)(1). The only question is whether there has been a substantial change requiring major revision of the “previous EIR....” The fact that the 1974 EIR rezoned the 51-acre site as C-M-PD does not respond to the fact that at the time the only office park envisioned conceptually was 450,000 square feet in size. Besides that anticipated size, the office park is not described at all in the 1974 EIR. No hotel use is considered at all in the 1974 EIR. ESA’s response makes no effort to explain how a 1.2 million square feet office park, now proposed to expand to 1.3 million square feet office park, is not a substantial change from 450,000 square feet. Nor does ESA attempt to grapple with how a single building amounting to 25 percent of the entire office park anticipated conceptually by the 1974 EIR is not a substantial change given the current office parks exceedance of the square footage envisioned in the 1974 EIR.

ESA also fails to understand the Supreme Court’s directive in its *San Mateo Gardens* ruling. The Supreme Court stated that Section 21166 and CEQA Guidelines § 15162 “do[] not permit agencies to avoid their obligation to prepare subsequent or supplemental EIRs to address new, and previously unstudied, ***potentially significant environmental effects***.” *Id.*, 1 Cal.5th at 958 (emphasis added). Thus, a potential of significant effects must be addressed in any subsequent EIR or negative declaration. Plaintiffs in that case had argued that CEQA Guidelines § 15162 should be voided in part because its language would create a loophole around CEQA’s fair argument standard. The Court put aside this concern by explaining that Section 15162 did not change the application of the fair argument standard to issues that had not previously been addressed in a negative declaration or EIR:

Plaintiff’s argument would have force if the Guidelines did, in fact, create such a loophole. But the substantial evidence test referred to in the Guidelines does not, as plaintiff supposes, refer to substantial evidence that the project, as modified, will necessarily have significant environmental effects. It instead refers to substantial evidence that the proposed modifications will involve “[s]ubstantial changes” that “require major revisions of the previous EIR or negative declaration due to the involvement” of new or significantly more severe environmental effects. (CEQA Guidelines, § 15162, subd. (a); see *id.*, § 15384 [defining “substantial evidence”].) The distinction is important here, because whether “major revisions” will be required as a result of project changes necessarily depends on the nature of the original environmental document. A negative declaration is permitted when “there is no substantial evidence that the project or any of its aspects *may* cause a significant effect on the environment” (CEQA Guidelines, § 15063, subd.

(b)(2), italics added; see also Pub. Resources Code, §§ 21151, 21064.5), whereas an EIR is required when a project and project alternatives may have significant effects (*id.*, § 21002.1, subd. (a)). When there is a proposal to modify a project originally approved through EIR, no “major revision” to the initial EIR is required if the initial EIR already adequately addresses any additional environmental effects that may be caused by the proposed modification. In contrast, when a project is initially approved by negative declaration, a “major revision” to the initial negative declaration will necessarily be required if the proposed modification *may* produce a significant environmental effect that had not previously been studied. (CEQA Guidelines, § 15162.) Indeed, if the project modification introduces previously unstudied and potentially significant environmental effects that cannot be avoided or mitigated through further revisions to the project plans, then the appropriate environmental document would no longer be a negative declaration at all, but an EIR.

Friends of Coll. of San Mateo Gardens, 1 Cal.5th at 957–58. The Court further emphasizes that:

In short, the substantial evidence standard prescribed by CEQA Guidelines section 15162 requires an agency to prepare an EIR whenever there is substantial evidence that the changes to a project for which a negative declaration was previously approved might have a significant environmental impact not previously considered in connection with the project as originally approved, and courts must enforce that standard. (See *Friends of “B” Street v. City of Hayward*, *supra*, 106 Cal.App.3d at p. 1002, 165 Cal.Rptr. 514.) ***It therefore does not permit agencies to avoid their obligation to prepare subsequent or supplemental EIRs to address new, and previously unstudied, potentially significant environmental effects.*** So understood, CEQA Guidelines section 15162 constitutes a valid gap-filling measure as applied to projects initially approved via negative declaration, including the project at issue in this case.

Friends of Coll. of San Mateo Gardens, 1 Cal.5th 937, 959 (emphasis added). Although the previous environmental document addressed in *Friends of Coll. of San Mateo Gardens* was a negative declaration, the Court’s reasoning that, once it is determined that substantial changes must be made to a prior environmental document, the fair argument standard continues to apply to any issues not previously addressed, whether or not the previous document was an EIR or negative declaration. Indeed, the operative language of section 15162 interpreted by the Supreme Court applies to situations with either a prior EIR or prior negative declaration. See CEQA Guidelines § 15162.

ESA misrepresents the reasoning explained by the Supreme Court and fails to acknowledge the Court’s interpretation of CEQA Guidelines § 15162, claiming that, “[a]t

the heart of this discussion, however, is not whether or not a proposed project has changed from what was originally proposed, but whether or not the project would create “new significant environmental effects or a substantial increase in the severity of previously identified significant effects.” ESA Memo, pp. 7, 13, 14. ESA fails to acknowledge the Supreme Court’s affirmative preservation of the fair argument standard when applying CEQA Guidelines § 15162 to changes or new information involving significant effects that have not been evaluated in a prior EIR or negative declaration.

2. Substantial changes have occurred with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects (Guidelines Section 15162(a)(2)).

In our previous comments, LIUNA identified several dramatic changes in circumstances that have occurred at the Harbor Bay project which require major revisions to the 1974 EIR pursuant to CEQA Guidelines Section 15162(a)(2). These include drastically altered circumstances relating to burrowing owls and traffic impacts.

In regard to burrowing owls, the owls were quite common at the Harbor Bay site in 1974. As we noted, Appendix F of the 1974 EIR states “[t]he only other owl known to be in the vicinity is the small, fairly common, burrowing owl.” 1974 EIR, p. F-2. As Dr. Smallwood has pointed out, compared to the abundance present in 1974, there are no more than 1 to 2 successful breeding pairs of burrowing owls left in western Alameda County. Smallwood Comments, p. 10. Also important to the circumstance of the burrowing owl is the lack of success of relocating owls from the Harbor Bay area nearer to Oakland Airport. *Id.* LIUNA December 7, 2018 Comment, pp. 19-20. There can be no doubt that the once common burrowing owls’ plummet from being common to almost non-existent in western Alameda County is a substantial change in circumstances for that species which requires major revisions to a 44-year old EIR that did not address that species except to say it was common to the project area. Obviously, Harbor Bay has played some significant role in extirpating burrowing owls from the Bay Farm area. Substantial revisions to the 1974 EIR revisiting appropriate mitigation measures for the overall project must occur that, even at this late date, could explore additional mitigations for the Harbor Bay project to preserve and help expand the remaining dwindling population of this iconic species.

ESA, forgetting that the whole premise of the City’s environmental analysis is that the hotel project is the same project that was considered by the 1974 EIR, claims that the change in circumstance of the owl is not relevant because there are none left at the site presently. ESA Memo, p. 30. ESA’s point only confirms the substantial change in circumstances for the owl that have occurred. Under § 15162(a)(2), the key question is whether the owl’s circumstances have changed substantially since the baseline

addressed by the 1974 EIR. The answer to that is obvious – a bird species going from common in the County and on the Harbor Bay project site in 1974 to a few breeding pairs and possibly no presence on Harbor Bay is a substantial change in circumstances. ESA has no response to that clear change or how it does not involve a potentially new significant effect not addressed at all in the 1974 EIR.

The traffic circumstances on Bay Farm also have dramatically changed since 1974. Indeed, the 1974 EIR only addressed traffic for the Harbor Bay project through 1995. Traffic Engineer Dan Smith Comments, p. 2. The EIR fails to address the changes in traffic that have occurred over the last 23 years. Given the numerous intersections on Bay Farm Island with a LOS F, those traffic circumstances have grown to significant levels of impact. Major revisions to the EIR must be made to bring the traffic impact analysis up to date and reflect the much larger office park that exists than was imagined in 1974.

In regard to traffic, ESA makes the same mistake of only looking at the currently proposed hotel Project and overlooking the City's main premise that the proposed hotel is the same project as was considered by the 1974 EIR. ESA Memo, p. 28. However, the relevant question posed by Section 15162 regarding traffic is whether traffic circumstances for the entire Harbor Bay area have changed substantially requiring a supplemental EIR to the 1974 EIR to address those changed circumstances.

3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence in 1974, shows that the project will have one or more significant impacts that were not considered or are more severe (Guidelines Section 15162(a)(3)(A)).

ESA's response to the new information of substantial evidence submitted by LIUNA regarding health risks posed by formaldehyde emissions from not only the proposed hotel and other commercial facilities within the Harbor Bay project but also the thousands of residences focuses solely on the existence of other regulations by other agencies attempting to address cancer risks posed by formaldehyde. However, as noted above, a project's compliance with another agency's regulations is not sufficient to satisfy CEQA's disclosure and analysis requirements and is not dispositive of expert evidence indicating a substantial impact may or will nevertheless occur. See *Kings Co* 221 Cal.App. 3d at 712-718; *supra*, p. 10.

As discussed above and in LIUNA's previous comments, the hotel Project will have significant impacts on air quality and health risks by emitting cancer-causing levels of formaldehyde into the air that will expose workers to cancer risks well in excess of BAAQMD's threshold of significance. ESA does not dispute that the health risks from formaldehyde emissions is new information that was not available in 1974. See LIUNA Dec. 9, 2018 Comments, pp. 20-21; Offermann Comments, pp. 2-3.

ESA also again ignores the City's basic premise that the hotel Project is the same project considered by the 1974 EIR and then fails to address this new information in regards to the thousands of residences included within the Project. Given the seriousness of the health impacts posed by emissions of formaldehyde and the fact that people living at the Harbor Bay Project likely continue to be exposed to formaldehyde emissions from the project, there can be no reasonable dispute that this information is substantial. As a result, Section 15162(a)(3)(A) requires major revisions to the 1974 EIR to disclose these likely health impacts and consider appropriate mitigation measures that could mitigate the impacts even now. As LIUNA noted previously to the Planning Board, formaldehyde continues to emit from building materials many decades after its initial installation. As a result, mitigations are still available to long-time residents, including air filters or potentially retrofitting flooring or other sources. Initially however, CEQA requires the City to react to this new information, disclose it in a revised EIR, and determine the appropriate mitigations that should be implemented.

LIUNA also pointed out significant new information regarding bird collisions at the Harbor Bay project. As LIUNA documented with the assistance of Dr. Smallwood, the bird strike issue did not arise until after 1974. Smallwood Comments, pp. 13-15; LIUNA Dec. 7 Comments, p. 21. The 1974 EIR must be supplemented to address this new information, disclose the impacts of bird strikes with residences at Harbor Bay as well as the office park, other facilities and traffic. ESA's memo fails to respond to these comments, focusing solely on the proposed hotel building. As noted above, even that response does not address the impacts to birds and wildlife posed by the hotel Project.

4. Mitigation measures previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project (Guidelines Section 15162(a)(3)(C)).

ESA's argument that the electric vehicle mitigation established by the 1974 EIR is not relevant to the currently proposed project again ignores the entire premise of the City's theory of CEQA compliance for the hotel – that the hotel is the same project that was considered in the 1974 EIR. ESA Memo, p. 26. Indeed, the only reason Section 15162 is discussed and applied by the City's staff is to show that the 1974 project has not changed or new information become available since then triggering a supplemental EIR. For Section 15162(a)(3)(C), nothing in its language limits its application to a currently proposed piece of an earlier project. On the contrary, if a mitigation measure found to be infeasible in 1974 is now feasible, the express terms of Section 15162(a)(3)(C) require a supplemental EIR to review whether the mitigation measure be applied to reduce impacts of the original 1974 project, *i.e.*, the entire Harbor Bay development. Given that the 1974 EIR concludes that air quality, traffic and noise impacts from the Harbor Bay development would be significant, there can be no doubt that the 1974 EIR's requirement that electric vehicles be provided to each house would dramatically reduce emissions from cars within the development. See 1974 EIR, p. I-18

("The impact upon air quality will be significant"); IV-138 (traffic noise impacts); IV-163 (traffic impact).

For the ease of reading by the Council members, the following restates LIUNA's prior comment on this issue. The 1974 EIR includes as a mitigation measure for the project that "[e]lectric vehicles will be provided each house for internal trips." 1974 EIR, p. I-12. This mitigation was to address air pollution, traffic and noise. See *id.*, p. I-20 (noise analysis calls for "[a] maximum use of electrically powered vehicles in the project area"); pp. IV-146-147 (modest mitigation for air quality); p. IV-233 ("special electric cars which will be available to all residents"). For traffic, the 1974 EIR states:

The major negative impacts associated with the project area will be the extensive traffic generation the project will produce in a location least able to absorb such traffic. The developer, in response to this factor, has instigated an extensive system of alternative transportation systems including pedestrian pathways, bicycle pathways, and **electrically powered vehicles available with each home** as an alternative to the second car.

1974 EIR, p. I-21 (emphasis added). Each unit of the residential portion of the project was to provide an enclosed parking space for the electric vehicle. See 1974 EIR, p. II-10 ("In addition to these resident parking spaces there will be guest parking and one enclosed parking space per unit for an electric car"); *Id.*, p. II-19.

According to the 1989 Addendum addressing Village V, the City purportedly modified this mitigation measure when the number of residents to be built for the overall project was reduced in number from 4,950 units to 3,200 units. See 1989 Addendum, p. 5-6. However, there is no mention of any modification of the EIR analyzing the impacts of eliminating that mitigation measure relied upon in the 1974 EIR. Nevertheless, the 1989 Addendum modifying Village V carries forward this mitigation, though purporting to add a feasibility condition that was not present in the 1974 EIR. The mitigation for Village V in the 1989 Addendum provides that:

In the event such technology becomes feasible, applicant should provide an electric car for each house sold in Village V as proposed in the HBI Master Plan for local Alameda trips, to mitigate air and noise impacts of traffic and reduce use of gasoline.

1989 Addendum, p. 4-23. The 1989 Addendum then concludes that, at the time, "[w]hile the technology of electric-powered vehicles has improved and has become somewhat less costly than in 1976, providing electric cars for the new homes in Village 5 would not be a viable mitigation measure at this time." *Id.*, p. 5-6.

Of course, given the current ready availability of electric vehicles, especially the smaller, local vehicles envisioned by the 1974 EIR and the 1989 Addendum, electric

vehicles are now entirely feasible. Alameda Municipal Power acknowledges their feasibility, offering rebates and otherwise encouraging the use of electric vehicles. See <https://www.alamedamp.com/environment/electric-vehicles>. There is a wide assortment of smaller electric vehicles consistent with those included in the 1974 EIR and the 1989 Addendum. See, e.g. <http://motoelectricvehicles.com/neighborhood-electric-vehicle>. The feasibility and availability of smaller electric vehicles cannot reasonably be questioned. Pursuant to Guidelines Section 15162(a)(3)(C), because electric vehicles are now plainly feasible, implementing this long-stated mitigation measure must be assessed and described in a supplemental EIR.

5. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment (Guidelines Section 15162(a)(3)(D)).

Lastly, numerous mitigation measures addressing the above issues have been identified by the expert comments submitted by LIUNA requiring the preparation of a new, supplemental EIR pursuant to Section 15162(a)(3)(D). None of these measures were addressed in the 1974 EIR. Every identified mitigation measure is significant new information that post-dates the 1974 EIR. In addition, the Project's GHG emissions can be reduced by requiring solar panels, electric shuttles, and other GHG reducing measures that were not available and not considered in the 1974 EIR. A new EIR should be prepared to provide a process consistent with CEQA that would ensure that the 44-year old review of the Harbor Bay project is brought up to current environmental standards and all impacts and mitigations be addressed and disclosed to the public for review and comment. ESA's only response to this comment is to ignore the project and mitigations evaluated in the 1974 EIR and make believe the hotel Project is the only piece one looks at the implement Section 15162(a)(3)(D).

G. CONCLUSION

In light of the above comments and our previous comments, the Planning Board's decision to rely on the 44-year old EIR should be withdrawn, a relevant and updated EIR for the hotel project as well as the entire Bay Harbor project should be prepared, and that EIR should be circulated for public review and comment in accordance with CEQA. Thank you for considering these comments.

Sincerely,



Michael R. Lozeau
Lozeau | Drury LLP

LARA WEISIGER

From: Skip Hutchison <skipperhutchison@gmail.com>
Sent: Friday, February 01, 2019 4:27 PM
To: LARA WEISIGER; wilma.chan@acgov.org
Subject: Proposed Marriott Hotel at the Harbor Ferry Terminal

Hi Lara and Wilma

I am writing concerning the proposed Marriott monstrosity to be built at the Harbor Bay Ferry terminal. I have lived on Bay Farm since 1991. I don't understand the need for a mammoth hotel next to the ferry terminal. I don't see the need for even a two story hotel in that location. There is already a Hampton Inn 1.2 miles south of the ferry terminal. It appears to be 3 stories tall and has 105 rooms, and they are building more in front of it.

I think there is not much doubt that the proposed hotel will have a negative effect on parking for the Harbor Bay Ferry where parking is already not adequate for the riders. The two office buildings 400 yards south of the ferry terminal (McGuire and Hester and Stacy & Witbeck) are reasonable two story buildings. From an aesthetic point of view the proposed hotel is way out of scale. It would feel like a big wall placed right in front of the bay. It just doesn't fit or belong near the ferry terminal. I don't think it is right to put money over the natural beauty of that location. There is plenty of open space to build a 5 story hotel in the business park south of the ferry terminal. At 5 stories high it could still have a great view of the bay.

The only type of building that would make sense to me built near the ferry terminal would be a restaurant no more than 2 stories tall with plenty of parking (probably not economically feasible, but it would be a good spot to eat and drink.

I am hoping that this hotel proposal is not approved. It is just not a good fit for the location.

Thank you,

Skip Hutchison

LARA WEISIGER

From: Josephine Sam <samjosephine12@gmail.com>
Sent: Friday, February 01, 2019 12:22 PM
To: LARA WEISIGER; wilma.chan@acgov.org
Cc: Josephine Sam
Subject: Marriot harbor bay concerns

To whom it may concern

I am a resident of harbor bay . My concerns on the Marriott project are :

1) traffic congestion's going in and out of the proposed lot . The street should be widen !! It is not clear if the road will be widened. Congestion's will split traffic to the narrow streets towards Ratto street and to the other end of the parking lot entrance towards ma Author Street (where the fire stations is on). We do need parking structure for the ferry commuters, but the traffic flow requires planning and managing before the project is launched

2) recommend to reduce the height of the hotel to 2 at most 3 stories to match the neighboring offices structure or reduce the size of the hotel rooms . 5 stories is too high and become the tallest (?) building on the island !!

If you want to build a 5 stories marriot hotel with 172 room facility , I think it will be better the building be constructed towards the Hamilton Inn direction/ near the business park , away fm the immediate residential area...

Thank you for the team on the hard work to resolve the issues raised by all the bay farm resident.

Best
Josephine sam

Sent from my iPhone

LARA WEISIGER

From: Emma Kung <esheely@mail.com>
Sent: Friday, February 01, 2019 11:01 AM
To: LARA WEISIGER
Subject: Marriott Hotel Harbor Bay

Emma Kung

12 Britt Ct.
Alameda, CA 94502
650-787-3868
esheely@mail.com

February 1, 2019

Alameda City Council
City Clerk Lara Weisiger

Dear Council Members,

I am writing to express my opposition to the proposed Marriott Hotel on the shoreline near the ferry terminal in Harbor Bay. I have many concerns about this project that is not appropriate for our residential area.

For many years, we residents were misled to believe this land would be developed as two story office buildings with view corridors. It was a shock to most of us that a massive five story building with cars, shuttles, Ubers, delivery trucks coming and going 24 hours a day would even be considered. This huge unsightly building will generate traffic through our residential neighborhood 24 hours a day. Residents across the lagoon from the hotel will lose all privacy of their backyards and back windows. We feel betrayed that after years of paying very high property taxes, the neighborhood we thought we bought into will be ruined and our property values will decrease. I understand the city wants the hotel tax revenue, but it should not be at the expense of the nearby residents.

This project is unsuitable for our public shoreline trail. This very large building will be very close to the trail, with outdoor dining, outdoor cafe and patio seating and pool. It will create an awkward situation where people using the trail will feel they are trespassing on hotel property. Visitors of the hotel and public trail users alike will feel on display of each other. Diners may complain about loud children playing and local fishermen. I predict the hotel will eventually chase off the local people who enjoy fishing in that area in front of the hotel.

As a resident I am concerned about the safety and environmental impact of this project. Is this landfill parcel safe for such a large building? What happens when sea levels begin to rise? There are no traffic studies to show what impact this will have on the residential areas and safety of children walking and biking. The traffic studies for Harbor Bay Parkway and Ron Cowan are not reassuring and indicate there will be problems. Hotel guests and delivery trucks will be using residential streets.

We already have, or have in construction, several hotels nearby. Do we need another? The developers believe the ferry boat will be a draw to their hotel, but when the guests see how limited the schedule is, they will be driving through our residential streets to get to the Main Street terminal. Harbor Bay already has a lack of amenities. We should focus on improving this, rather than building more unneeded hotels that will have guests driving through our neighborhoods to get to the main island for decent restaurants, groceries, shopping and usable ferry schedule.

I ask you to please think very carefully about this beautiful piece of property in such a sensitive area. A huge three star commuter hotel is unneeded and wrong for this area. Alameda is our beloved city, not a Monopoly board. We need careful planning to maximize tax revenue and enhance the beauty and utility of the city. This decision will affect the city for many generations. Please do not approve this project.

Sincerely yours,

Emma Kung

LARA WEISIGER

From: Sheila Mc Mullen <sheilajmcmullen@gmail.com>
Sent: Thursday, January 31, 2019 6:23 PM
To: John Knox White; LARA WEISIGER; Tony Daysog
Subject: Marriott Multinational Corporation

Dear Councilmembers,
I'm heartbroken to see the decline of our quality of life in Alameda since the rise in development.
Please protect the interests of your constituents over the profits of developers like the multinational, Marriott.

Sincerely,
Sheila McMullen

LARA WEISIGER

From: Brittney <brittneybridges@comcast.net>
Sent: Thursday, January 31, 2019 1:12 PM
To: Tony Daysog; John Knox White; LARA WEISIGER; wilma.chan@acgov.org;
larry.goldzband@bcdca.gov; Marilyn Ezzy Ashcraft; Jim Oddie
Subject: Marriott Hotel Support

We are Bay Farm Island residents who fully support building a Marriott hotel nearby. It fits the zoning requirements therefore it should be allowed. We know many people like ourselves who are happy about the new hotel and all it has to offer our community but who have not attended meetings to make our support public. Thought it was worth writing an email to let you know we are looking forward to the Marriott coming to our area.

Brittney and Greg Bridges
77 Basinside Way
510-749-4919

LARA WEISIGER

From: Patricia Baer <2baers@att.net>
Sent: Thursday, January 31, 2019 11:04 AM
To: LARA WEISIGER
Subject: Marriott Hotel

City Council Members,

I would like to register my opinion on the proposed hotel which I find out of scale for a residential neighborhood. Other than its negative aesthetic, it is too close to the shoreline.

Most importantly though, an ancient EIR is being used as a guideline for this project.

Please rescind the Planning Board approval,

Patsy Baer

LARA WEISIGER

From: Vicki Sedlack <vsedlack@gmail.com>
Sent: Thursday, January 31, 2019 11:03 AM
To: Dave Rudat; Jim Oddie; Tony Daysog; Marilyn Ezzy Ashcraft; Malia Vella; John Knox White; LARA WEISIGER; ANDREW THOMAS; Henry Dong; Becca Perata-Rosati
Subject: Uphold Planning Board's Unanimous Approval of Marriott Harbor Bay

Dear Mayor and City Council:

On Tuesday, you have an opportunity to uphold your planning board's unanimous decision to deliver a quality, modern hotel and restaurant to Alameda's waterfront at Harbor Bay. Staff has concluded the appellants failed to demonstrate that the Planning Board's actions, including findings and conclusions under CEQA, were not supported by substantial evidence.

Instead, these are clearly attempts to block an opportunity to bring significant revenue to the city, provide shoreline restoration, open space, and amenities to the public, create union jobs, and fill a void in high-end lodging on the island. As a Harbor Bay resident, I particularly look forward to the amenities this project will bring.

Time is now overdue to create a quality project on this long-languishing property.

Please vote Tuesday night to affirm planning board's approval of the Marriott Residence Inn at Harbor Bay.

Thank you,

Vicki Sedlack

--

Vicki Sedlack
vsedlack@gmail.com

LARA WEISIGER

From: Jennifer Jeffers <jennifer.r.jeffers@gmail.com>
Sent: Thursday, January 31, 2019 9:36 AM
To: Dave Rudat; Jim Oddie; Tony Daysog; Marilyn Ezzy Ashcraft; Malia Vella; John Knox White; LARA WEISIGER; ANDREW THOMAS; Henry Dong; becca@voxpoplupr.net
Subject: Uphold Planning Board's Unanimous Approval of Marriott Harbor Bay

Dear Mayor and City Council:

On Tuesday, you have an opportunity to uphold your planning board's unanimous decision to deliver a quality, modern hotel and restaurant to Alameda's waterfront at Harbor Bay. Staff has concluded the appellants failed to demonstrate that the Planning Board's actions, including findings and conclusions under CEQA, were not supported by substantial evidence.

Instead, these are clearly attempts to block an opportunity to bring significant revenue to the city, provide shoreline restoration, open space, and amenities to the public, create union jobs, and fill a void in high-end lodging on the island.

Time is now overdue to create a quality project on this long-languishing property.

Please vote Tuesday night to affirm planning board's approval of the Marriott Residence Inn at Harbor Bay.

Thank you,
Jennifer Jeffers

LARA WEISIGER

From: Gabrielle Dolphin <musyoka2004@gmail.com>
Sent: Thursday, January 31, 2019 7:41 AM
To: Dave Rudat; Jim Oddie; Tony Daysog; Marilyn Ezzy Ashcraft; Malia Vella; John Knox White; LARA WEISIGER; ANDREW THOMAS; Henry Dong; Becca Perata
Subject: Uphold Planning Board's Unanimous Approval of Marriott Harbor Bay

Dear Mayor and City Council:

On Tuesday, you have an opportunity to uphold your planning board's unanimous decision to deliver a quality, modern hotel and restaurant to Alameda's waterfront at Harbor Bay. Staff has concluded the appellants failed to demonstrate that the Planning Board's actions, including findings and conclusions under CEQA, were not supported by substantial evidence.

Instead, these are clearly attempts to block an opportunity to bring significant revenue to the city, provide shoreline restoration, open space, and amenities to the public, create union jobs, and fill a void in high-end lodging on the island.

Time is now overdue to create a quality project on this long-languishing property.

Please vote Tuesday night to affirm planning board's approval of the Marriott Residence Inn at Harbor Bay.

Thank you,

Gaby Dolphin

LARA WEISIGER

From: Megan Marshall <megan@sanmanproductions.com>
Sent: Wednesday, January 30, 2019 8:17 PM
To: Dave Rudat; Jim Oddie; Tony Daysog; Marilyn Ezzy Ashcraft; Malia Vella; John Knox White; LARA WEISIGER; ANDREW THOMAS; Henry Dong; becca@voxpathulpr.net
Subject: Uphold Planning Board's Unanimous Approval of Marriott Harbor Bay

Dear Mayor and City Council:

On Tuesday, you have an opportunity to uphold your planning board's unanimous decision to deliver a quality, modern hotel and restaurant to Alameda's waterfront at Harbor Bay. Staff has concluded the appellants failed to demonstrate that the Planning Board's actions, including findings and conclusions under CEQA, were not supported by substantial evidence.

Instead, these are clearly attempts to block an opportunity to bring significant revenue to the city, provide shoreline restoration, open space, and amenities to the public, create union jobs, and fill a void in high-end lodging on the island.

Time is now overdue to create a quality project on this long-languishing property.

Please vote Tuesday night to affirm planning board's approval of the Marriott Residence Inn at Harbor Bay.

Thank you,
Megan Marshall
VP of Operations

The logo for SanMan PRODUCTIONS features the name "SanMan" in a stylized, handwritten-style font, with "PRODUCTIONS" in a smaller, sans-serif font below it. Below the company name is the tagline "CONNECTING PEOPLE THROUGH EVENTS" in a very small, all-caps font.

510-522-9333 ph/fax

LARA WEISIGER

From: Kathleen C. Woulfe <kathleencwoulfe@gmail.com>
Sent: Wednesday, January 30, 2019 11:38 PM
To: Dave Rudat; Jim Oddie; Tony Daysog; Marilyn Ezzy Ashcraft; Malia Vella; John Knox White; LARA WEISIGER; ANDREW THOMAS; Henry Dong; becca@voxpathulpr.net
Cc: kathleencwoulfe@gmail.c
Subject: Uphold Planning Board's Unanimous Approval of Marriott Harbor Bay — Alameda

Dear Mayor and City Council:

February 5, 2019 — City Council Meeting

I am in FAVOR of Item 6-A to approve the draft resolution denying the appeals and affirming the Planning Board's decision to approve construction of a 172-room hotel and restaurant at [2900 Harbor Bay Parkway](#).

Please consider voting to affirm the Planning Board's approval of the Marriott Residence Inn at Harbor Bay, Alameda.

Thank you, Kathie

Kathleen C. Woulfe
Non-Profit, Government & Community Relations
510.846.5000

LARA WEISIGER

From: William Gibbs <wdgibbsii@aol.com>
Sent: Wednesday, January 30, 2019 5:23 PM
To: Dave Rudat; Jim Oddie; Tony Daysog; Marilyn Ezzy Ashcraft; Malia Vella; John Knox White; LARA WEISIGER; ANDREW THOMAS; Henry Dong; becca@voxpathulpr.net
Subject: Uphold Planning Board's Unanimous Approval of Marriott Harbor Bay

Dear Mayor and City Council:

On Tuesday, you have an opportunity to uphold your planning board's unanimous decision to deliver a quality, modern hotel and restaurant to Alameda's waterfront at Harbor Bay. Staff has concluded the appellants failed to demonstrate that the Planning Board's actions, including findings and conclusions under CEQA, were not supported by substantial evidence.

Instead, these are clearly attempts to block an opportunity to bring significant revenue to the city, provide shoreline restoration, open space, and amenities to the public, create union jobs, and fill a void in high-end lodging on the island.

Time is now overdue to create a quality project on this long-languishing property.

Please vote Tuesday night to affirm planning board's approval of the Marriott Residence Inn at Harbor Bay.

Thank you,
W.D. Gibbs, Alameda resident

LARA WEISIGER

From: Nan Rideout <nanrideout@aol.com>
Sent: Wednesday, January 30, 2019 5:15 PM
To: Dave Rudat; Jim Oddie; Tony Daysog; Marilyn Ezzy Ashcraft; Malia Vella; John Knox White; LARA WEISIGER; ANDREW THOMAS; Henry Dong; becca@voxpoplupr.net
Subject: Uphold Planning Board's Unanimous Approval of Marriott Harbor Bay

Dear Mayor and City Council:

On Tuesday, you have an opportunity to uphold your planning board's unanimous decision to deliver a quality, modern hotel and restaurant to Alameda's waterfront at Harbor Bay. Staff has concluded the appellants failed to demonstrate that the Planning Board's actions, including findings and conclusions under CEQA, were not supported by substantial evidence.

Instead, these are clearly attempts to block an opportunity to bring significant revenue to the city, provide shoreline restoration, open space, and amenities to the public, create union jobs, and fill a void in high-end lodging on the island.

Time is now overdue to create a quality project on this long-languishing property.

Please vote Tuesday night to affirm planning board's approval of the Marriott Residence Inn at Harbor Bay.

Thank you,
Nan Rideout

Sent from my iPhone

Nan Rideout
64 Steuben Bay
Alameda, CA 94502

Cell.. 919-349-0372
Nwr2@cornell.edu

Permanent Mailbox:
9650 Strickland Rd
Ste 103-139
Raleigh, NC 27615

LARA WEISIGER

From: Scott Daley <daleyscott@gmail.com>
Sent: Wednesday, January 30, 2019 4:43 PM
To: Henry Dong; ANDREW THOMAS; LARA WEISIGER; Marilyn Ezzy Ashcraft; Tony Daysog; John Knox White; Malia Vella
Subject: Please Uphold Planning Board's Unanimous Approval of Marriott Harbor Bay

Dear Mayor and City Council:

Please vote next Tuesday night to affirm our planning board's approval of the Marriott Residence Inn at Harbor Bay. I am a long time Bay Farm resident in support of this project because:

- 1) Alameda needs more hotel / lodging options.
- 2) The current proposal adds ferry parking supply that is sorely needed.
- 3) The location next to the Ferry Terminal and still within walking distance of the business park makes great sense for out of town guests.
- 4) Taxes and jobs.
- 5) My understanding is that the current proposal meets all the zoning requirements and has already been approved by the planning commission and staff.

Thank you,
Scott Daley

120 Norwich Rd, Alameda, CA 94502 - 13 year Alameda Bay Farm Resident who walks along the shore every day in support of this project!

LARA WEISIGER

From: moconnor O'Connor <moconnor@michaeloconnor.com>
Sent: Wednesday, January 30, 2019 4:18 PM
To: Dave Rudat; Jim Oddie; Tony Daysog; Marilyn Ezzy Ashcraft; Malia Vella; John Knox White; LARA WEISIGER; ANDREW THOMAS; Henry Dong; becca@voxpulpr.net
Subject: Uphold Planning Board's Unanimous Approval of Marriott Harbor Bay

Dear Mayor and City Council:

On Tuesday, you have an opportunity to uphold your planning board's unanimous decision to deliver a quality, modern hotel and restaurant to Alameda's waterfront at Harbor Bay. Staff has concluded the appellants failed to demonstrate that the Planning Board's actions, including findings and conclusions under CEQA, were not supported by substantial evidence.

Instead, these are clearly attempts to block an opportunity to bring significant revenue to the city, provide shoreline restoration, open space, and amenities to the public, create union jobs, and fill a void in high-end lodging on the island.

Time is now overdue to create a quality project on this long-languishing property.

Please vote Tuesday night to affirm planning board's approval of the Marriott Residence Inn at Harbor Bay.

Thank you,

Best,

M

Michael O'Connor
Michael O'Connor & Company
P: [415.250.0060](tel:415.250.0060)
License No: 00860413
moconnor@michaeloconnor.com
<http://linkedin.com/in/michael-o-connor-23ba887>

CONFIDENTIALITY NOTICE: This email message including attachments, if any, is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. If you are the intended recipient but do not wish to receive communications through this medium, please so advise the sender immediately.

IRS CIRCULAR 230 DISCLOSURE: Pursuant to Treasury Regulations, any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used or relied

upon by you or any other person, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any tax advice addressed herein.

From: [Patricia Gannon](#)
To: [John Knox White](#); [Jim Oddie](#); [Marilyn Ezzy Ashcraft](#)
Subject: Marriott Residence Inn
Date: Wednesday, January 30, 2019 4:11:01 PM

Honorable Marilyn Ezzy Ashcraft
Mayor of Alameda
Honorable Members of the Alameda City Council

Dear Mayor Ashcraft and City Council Members:

On February 5th your Council will hear public comments regarding the appeals of the Planning Board's approval of the hotel on December 10, 2018. I strongly urge the Council to rescind the Planning Board's approval of this hotel or send it back to the Planning Board for serious revision.

This massive hotel is totally out of scale for this residential neighborhood. It is a 5 story structure up to 72 feet high right on the bay. It allows only a 35-foot setback from the bay and the shoreline trail, the same as a 2 story office building. The parking study is totally inadequate; it presumes that all traffic to and from the hotel will utilize Harbor Bay Parkway. If hotel guests wish to go into town for dinner or a movie, they will travel via Island Drive, furthering cluttering up our streets and neighborhoods.

The approval of the hotel relies on a 1974 EIR. A project this size adjacent to the shoreline trail and our beautiful bay demands a new EIR.

The citizens of Alameda flock to Shoreline Park for birding, walking, biking, etc. and just enjoying the beauty and serenity of this unique site. The addition of this massive hotel would be a travesty. It would dominate the area and drastically diminish public access and enjoyment of the shoreline.

In closing, please either rescind the Planning Board's approval of this project or at the very least send it back to the Planning Board for a complete makeover.

Thank you.

Patricia M. Gannon
1019 Tobago Lane - 94502
pg3187@gmail.com

From: [Chuck](#)
To: [T Krysiak](#); [Marilyn Ezzy Ashcraft](#); [John Knox White](#); [Tony Daysog](#); [Malia Vella](#); [Jim Oddie](#)
Cc: [LARA WEISIGER](#)
Subject: Re: Marriott Hotel at The Esplanade-Vote No.
Date: Wednesday, January 30, 2019 8:05:49 AM

I and all my neighbors on Creedon Circle in HBI agree this is the wrong property to be built on that location.

Please, please vote NO!

Chuck Thompson
Creedon Circle

On Wednesday, January 30, 2019 7:40 AM, T Krysiak <tsitjk@gmail.com> wrote:

Dear Mayor Ashcraft and Members of the Alameda City Council:

I am one of hundreds of HBI residents who were outraged to learn that the City's Planning Board approved construction of a huge five story Marriott hotel near the Harbor Bay Ferry.

Several local meetings were held with many of my neighbors in attendance who adamantly voiced their opposition. We were incensed because the developer seemed to "game" the local neighborhood by tightly limiting distribution of the building plan announcement but our alarmed community quickly assembled and demanded that our HOA leadership send an urgent letter to the City leaders opposing the hotel's construction. That letter is attached.

Your decision is critical. Many of us will be harmed by this project. Our property values will suffer. The Freeport HOA president who is a law enforcement professional stated during the HBI board meeting that crime will undoubtedly increase. Traffic, student safety and after hours noise concerns repeatedly were raised by the frightened neighborhood residents.

It is known that the City council will have a final chance to deliberate and deny the project permit on February 5. You must take this hotel permit denial seriously. This is a project that will noticeably detract from our community's quality of life. Please stand with us and vote NO on The Esplanade Marriott Hotel Project. Thank you.

Sincerely,

Tom Krysiak

Sweet Road

Sent from my iPhone

From: [T Krysiak](#)
To: [Marilyn Ezzy Ashcraft](#); [John Knox White](#); [Tony Daysog](#); [Malia Vella](#); [Jim Oddie](#)
Cc: [LARA WEISIGER](#)
Subject: Marriott Hotel at The Esplanade-Vote No.
Date: Wednesday, January 30, 2019 7:40:46 AM
Attachments: [CHBIOA Resolution Opposing Proposed Marriott Hotel.pdf](#)

Dear Mayor Ashcraft and Members of the Alameda City Council:

I am one of hundreds of HBI residents who were outraged to learn that the City's Planning Board approved construction of a huge five story Marriott hotel near the Harbor Bay Ferry.

Several local meetings were held with many of my neighbors in attendance who adamantly voiced their opposition. We were incensed because the developer seemed to "game" the local neighborhood by tightly limiting distribution of the building plan announcement but our alarmed community quickly assembled and demanded that our HOA leadership send an urgent letter to the City leaders opposing the hotel's construction. That letter is attached.

Your decision is critical. Many of us will be harmed by this project. Our property values will suffer. The Freeport HOA president who is a law enforcement professional stated during the HBI board meeting that crime will undoubtedly increase. Traffic, student safety and after hours noise concerns repeatedly were raised by the frightened neighborhood residents.

It is known that the City council will have a final chance to deliberate and deny the project permit on February 5. You must take this hotel permit denial seriously. This is a project that will noticeably detract from our community's quality of life. Please stand with us and vote NO on The Esplanade Marriott Hotel Project. Thank you.

Sincerely,

Tom Krysiak
Sweet Road

Sent from my iPhone

From: [Diane Livia](#)
To: [LARA WEISIGER](#)
Subject: Marriott Hotel -- Not on our Shoreline!
Date: Tuesday, January 29, 2019 2:08:47 PM

I urge City Council members to preserve our Alameda shoreline for the sake of the wildlife -
- as well as quality of life for us humans.

Diane Livia
510-290-5295

From: [Christine Lok](#)
To: [LARA WEISIGER](#); [Marilyn Ezzy Ashcraft](#); [Jim Oddie](#); [Malia Vella](#); [Tony Daysog](#); [John Knox White](#)
Subject: I Support the Proposal for Marriott Residence Inn at Harbor Bay
Date: Tuesday, January 29, 2019 1:58:19 PM

Dear Mayor Ashcraft and City Council Members:

I hope this email finds you doing well. I understand that on February 5, you will be hearing public comments regarding the proposed Marriott Hotel at Harbor Bay that was approved by the Planning Board in December. I write to voice my support for the proposed Marriott Hotel, chiefly because of the shared parking benefits for ferry commuters. As you may know, commuting via Harbor Bay ferry terminal is very difficult and frustrating. It has been for many years. In August 2018, Harbor Bay ferries saw over 30,000 total passengers. Please see [October 2018 WETA Board Minutes at Attachment A](#). But while ridership continues to climb year over year, the extremely limited parking and bus service have a direct negative impact on ferry commuters and their families. More broadly, these limitations have a ripple effect that negatively impacts traffic congestion on the island, crossing the estuary and into San Francisco as folks scramble to engage with alternative commutes to work rather than accessing the option closest to them at Harbor Bay terminal. This needs to be fixed. We should be making transportation to San Francisco easier, not more difficult.

Marriott Hotel at Harbor Bay offers a creative way to lessen some of the parking demands at the terminal while offering services and amenities that benefit so many others at the same time. It is a great use of the space that is specifically zoned for this.

I understand that you have and will hear from many Harbor Bay HOA community members who oppose the Hotel. But, I strongly hope you take into account ferry commuters and others (whose numbers are many times greater) that would benefit from this project as well.

Thank you for your time!

--Christine Lok, Alameda Resident and Ferry Commuter