

San Francisco Bay Conservation and Development Commission

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February 10, 2017

TO: Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
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SUBJECT: Staff Recommendation of Conditional Approval of BCDC Permit Application No. 2016.003.00, Fairfield Inn, Bay Farm Island, City of Alameda
(For Commission consideration on February 16, 2017)

Recommendation Summary

Background. On August 4, 2016, the Commission held a public hearing on BCDC Permit Application No. 2016.003.00 for the proposed construction of a hotel and associated public access within the Commission's 100-foot shoreline band jurisdiction, at 2350 Harbor Bay Parkway, in the City of Alameda, Alameda County. In response to comments and concerns raised at the public hearing, the applicant, Daxa Patel, temporarily withdrew the application on August 10, 2016 from Commission consideration to allow the development team to evaluate possible revisions to the proposed project, and extended the time by which the Commission could act on the application through February 27, 2017, which is the maximum allowable period of time pursuant to the state Permit Streamlining Act. Given that the Commission is holding a single meeting in February 2017, the Commission must act on the application at its February 16, 2017 meeting.

Revised Project. The development team recently revised the site plan to increase the amount and quality of proposed public access at the site, lowered the building height, and changed the building massing to improve the shoreline experience for visitors. Specifically, the originally-proposed building footprint was reduced by approximately 5,450 square feet, the building height was lowered to 48 feet from 58 feet (to four stories from five), approximately 17 parking spaces were moved from the site, the building was relocated approximately ten feet farther from the shoreline, and the shoreline access was redesigned to make the area feel more welcoming to the public.

The revised proposal includes:

1. A four-story (48-foot-high), approximately 15,850-square-foot, 98-room hotel;
2. A 30-vehicle hotel parking lot, totaling approximately 9,000 square feet;
3. An approximately 10,050-square-foot (0.23-acre) shoreline public access area, improved with landscaping, paving, benches, lighting, signs, and a fire pit;
4. A sidewalk and bike path located within approximately 4,900-square-foot (0.11 acres) public easement at Harbor Bay Parkway;

5. Two public paths connecting the sidewalk at Harbor Bay Parkway to the shoreline, totaling approximately 1,700 square feet (0.04 acres); and
6. Ten vehicle parking spaces designated for general public use at Harbor Bay Parkway, east of the proposed hotel site.

In summary, when compared to the originally-proposed project, the revised project includes a lower, wider building, a more spacious shoreline access area, bicycle and pedestrian improvements along Harbor Bay Parkway, and dedicated public shoreline parking. A total of approximately 16,750 square feet (0.38 acres) of public access area maintained by the applicant is proposed (Exhibit A).

Original Project. At the public hearing on August 4, 2016, the Commissioners requested additional information to better understand the project. The following information is provided in response to that request:

1. **What was the development footprint and elevation of the previously authorized restaurant/office building allowed pursuant to the Settlement Agreement between BCDC and Harbor Bay Isle Associates (HBIA), the entity that previously owned the project site?**

Staff Response: The Third Amendment to Third Supplementary Agreement (Settlement Agreement), signed on March 15, 2013, does not specify a footprint, size, or elevation of development at the site. Rather, the Settlement Agreement identifies allowable land uses and a certain amount public access: specifically, a restaurant/office building, 0.20 acres for a shoreline pedestrian path, and a 0.14-acre easement along Harbor Bay Parkway for a sidewalk and bike path. The hotel project, as originally proposed, included approximately 0.23 acres of public access area, while the revised project provides approximately 0.38 acres of public access area.

2. **Are there examples of projects denied by the Commission for the reason that the project failed to provide maximum feasible public access consistent with the project?**

Staff Response: The Commission staff records indicate that the Commission has not denied a permit application for that reason.

3. **Provide site plans for the proposed project illustrating the Commission's 100-foot shoreline band jurisdiction, and a site plan showing the area allowed for development pursuant to the Settlement Agreement.**

Staff Response: These two plans are provided as Figures 1 and 2, and are for informational purposes only. Any permit resulting from this Staff Recommendation would not include these figures.

4. Provide information on local zoning for the project site.

Staff Response: The City of Alameda's (City) zoning code states that a project at the site must be consistent with the above-referenced Settlement Agreement between HBIA and the Commission. The Settlement Agreement identifies an office/restaurant at the project site, not a hotel. If the Commission were to issue a permit for the hotel project, the Commission, HBIA, and the permittee would enter into an amendment to the Settlement Agreement to reflect the project authorized and conditioned in the Commission permit.

5. What project issues were identified by the Commission's Design Review Board (DRB)?

Staff Response: When the DRB reviewed the originally-proposed project at its meeting of May 9, 2016, its members advised the project proponent to: (a) explore design solutions to move the hotel and parking building away from the shoreline toward Harbor Bay Parkway, and minimize on-site parking because the plan appeared too tight for the project site; (b) make the site more welcoming to the public, including opening hotel areas, such as the lobby, conference rooms, and terraces; (c) open the enclosed pathway between the hotel and parking structure, and minimize view impacts by parked vehicles; (d) move the bicycle path away from Harbor Bay Parkway closer to the shoreline—possibly achieved by moving the buildings towards the Parkway; (e) tie the design of landscaping with adjacent shoreline areas to provide design continuity; and (f) return to the DRB with a revised design for further advice—a suggestion that the project proponent chose not to follow.

6. Has local discretionary approval been received for the originally-proposed project?

Staff Response: On September 2, 2015, the City of Alameda approved the original project design. If the Commission permits the revised project and, subsequently, the Settlement Agreement is amended to mirror its permit, the City could modify zoning code language to reflect an amended Settlement Agreement and provide discretionary approval for the new project design, if needed. To date, the City has not determined whether the revised project would require additional local discretionary approval.

7. Would the public shoreline path be stable in light of expected flooding? What differential settlement is expected under those conditions?

Staff Response: Because the project does not involve Bay fill, a formal soil analysis for the site was not prepared by or required of the applicant. The general area of Bay Farm Island was originally constructed mostly of imported fill and, therefore, it is possible that settlement along the project site shoreline could occur under future flood conditions. However, in the absence of a formal soil analysis, Commission staff is not able to know definitively if this type of differential settlement would occur.

8. Provide information on comparable sites previously authorized by the Commission:

*Staff Response: See Table 1, below, which shows comparable previously approved projects except for the first project (**in bold**), which is the revised subject project.*

BCDC Permit	Year Approved	Authorized	Building Distance from Shoreline and Building Height	Required Public Access	Lot size
Permit Application No. 2016.003.00 (Daxa Patel, Harbor Bay Hotel)	2016 (proposed only, not approved)	One building totaling approximately 15,850 square feet, partly in the 100-foot shoreline band.	Approximately 40 feet 4 stories/48 feet	16,737-square-foot public access area, including a shoreline path, two pathways, a sidewalk, bike path and associated landscaping and amenities.	1.51 acres
Permit No. 2003.006.00 (Gray and Reynolds, Estuary Cove)	2003	One office/café building totaling 8,314 square feet, partly in the 100-foot shoreline band.	Approximately 55 feet 3 stories/30 feet	15,729-square-foot public access area, including paths, patios, landscaping, and a 12-foot-wide view corridor.	~ 1 acre
Permit No. 1097.003.02 (Hilton Garden Inn SFO)	1997	One 132-room, six-story hotel building, totaling approximately 14,000 square feet, partly in the 100-foot shoreline band.	Approximately 63 feet 6 stories/60 feet	3,966 square feet of public access, and 16,370 square feet of landscaping, seating areas, and other amenities.	~ 1.9 acres
Permit No. 1987.017.02 (Port of Oakland, Executive Inn and Suites)	1988	One 3-story, 150-room hotel totaling approximately 33,000 square feet, partly in the 100-foot shoreline band.	Approximately 55 feet 3 stories (30 feet)	8-foot-wide, 590-foot-long public access path and connections, 28,330 square feet of landscaping, enhancement of 8,500 square feet of park adjacent to project site.	~ 3 acres
Permit No. 1999.013.00 (Hawthorn Suites Hotel)	2000	Two hotel buildings totaling 10,560 square feet, partly in the shoreline band.	Approximately 55 feet 3 stories/30 feet	46,501-square-foot public access area, including approximately 9,300 square feet of pathways, a 595-linear foot, 10-foot-wide trail, landscaping, and other amenities.	3.6 acres
Permit No. 1978.12.08 (Shelterpoint Equities, Ltd., Acqua Hotel)	1978	Two-story retail and office building totaling 4,200 square feet; three-story retail and office building totaling 11,000 square feet; two-story retail and office building totaling 7,000 square feet; one-story office building totaling 5,600 square feet; and two-story office building and restaurant over parking totaling 17,250 square feet, partly in the shoreline band.	Approximately 78 feet 3 stories/30 feet	12,000-square-foot park, 8-foot-wide, approximately 1,400 linear foot (totaling approximately 11,200 square feet) pedestrian/bicycle path, public parking, landscaping, and other amenities	5 acres

BCDC Permit	Year Approved	Authorized	Building Distance from Shoreline and Building Height	Required Public Access	Lot size
Permit No. 1998.006.02 (Marriot International Inc. and Bay West Cove, LLC, Oyster Point)	1998	One 4-story hotel building totaling approximately 40,000 square feet, and one 4-story hotel totaling approximately 37,000 square feet, partly in the shoreline band.	Approximately 75 feet and 43 feet 4 stories/40 feet	25,850 square feet public access area, 55,314-square-foot landscaped area, seating, and other amenities.	~ 6.5 acres
Permit No. 1982.019.08 (HMC SFO LLC, Marriot SFO)	1982	100-foot high hotel and 65-foot high convention center totaling approximately 40,500 square feet with underground parking, partly in the shoreline band.	Approximately 72 feet 10 stories/100 feet	127,295-square-foot public access area, landscaping, and other amenities	~ 8 acres
Permit No. 1983.006.07 (Felcor/CSS Holdings, L.P., Embassy Suites Burlingame)	1983	One 51,634-square-foot hotel, and one 9,000-square-foot restaurant/public services building, partly in the 100-foot shoreline band.	Approximately 85 feet / 9 stories/90 feet	171,056 square feet of public access, and 54,050 square feet of landscaping along the Anza Lagoon	~ 8 acres

Table 1: Comparable Projects Approved by the Commission. Note: “~” denotes approximate measurements.

Staff Recommendation

The staff recommends that the Commission adopt the following resolution:

I. Authorization

- A. **Authorized Project.** Within the Commission’s 100-foot shoreline band jurisdiction, subject to the conditions stated below, the permittee, Daxa Patel, is authorized to implement the following activities at a 1.51-acre site located at 2350 Harbor Bay Parkway, in the City of Alameda, Alameda County:

Within the 100-foot Shoreline Band:

1. Fill and grade the hotel building construction site to achieve a site elevation that is approximately five feet above existing grade;
2. Construct, use, and maintain in-kind a 9,400-square-foot portion of a 15,850-square-foot, four-story (48-foot-high), 98-room hotel;
3. Construct, use, and maintain in-kind an approximately 3,000-square-foot portion of a 9,000-square-foot, 30-space parking lot;
4. Construct, use, and maintain in-kind an approximately 10,050-square-foot (0.23-acre) public shoreline area, including: a 345-foot-long paved shoreline trail ranging in width from 12 feet to 24 feet; an adjoining paved and landscaped area between the shoreline trail and the hotel building, ranging in width from 8 feet to 26 feet ; 17 benches; 16 pathway lights; public access signs; and a fire pit.

5. Construct, use, and maintain in-kind an approximately 635-square-foot portion of an approximately 1,700-square-foot area comprised of two public pathways (8-foot-wide and 6.5-foot-wide) connecting the Harbor Bay Parkway sidewalk to the shoreline. An approximately 70-foot-long section of the southern pathway will be located entirely under the upper hotel stories, while an approximately 70-foot-long of the northern pathway will be partly covered by the upper cantilevered stories of the hotel.
- B. **Application Date.** This authority is generally pursuant to and limited by the application dated March 1, 2016, and the revised materials submitted on January 27, 2017, including all subsequently accompanying exhibits, correspondence, and all conditions of this permit.
 - C. **Deadlines for Commencement and Completion of Authorized Work.** Work authorized herein must commence prior to July 1, 2020, or this permit will lapse and become null and void. Such work must also be diligently pursued to completion and must be completed within two years of commencement or by July 1, 2022, whichever is earlier, unless an extension of time is granted through an amendment of the permit. All in-kind maintenance work described in Section I.A (above) is allowed as long as the uses and facilities authorized herein remain in place.

II. Special Conditions

The authorization made herein shall be subject to the following special conditions, in addition to the standard conditions in Part IV:

- A. **Settlement Agreement.** No later than 60 days following issuance of this permit, and prior to commencement of construction authorized herein, including outside of the Commission's jurisdiction, Harbor Bay Isle Associates (HBIA), the permittee and the Executive Director, acting on behalf of the Commission, shall execute an amendment to the *Third Supplementary Agreement, Harbor Bay Isle Shoreline Park, Harbor Bay Business Park – Phase III, Alameda, California* (Settlement Agreement) between BCDC and HBIA, to include, as an approved land use at the site, the hotel project and required public access authorized herein. As a party to the amended Settlement Agreement, the permittee shall be bound by the terms of the Settlement Agreement insofar as it establishes standards related to the use of the project site. Within 30 days after execution of the amendment, the permittee shall record the amended Settlement Agreement on all parcels affected by this instrument and shall provide evidence of recording to the Commission.
- B. **Construction Documents.** The improvements authorized herein shall be built generally in conformance with the document entitled: "Site Plan, BCDC PERMIT NO. 2016.003.00," which is a preliminary plan prepared by Architectural Dimensions, and dated February 6, 2017. The permittee is responsible for assuring that all forthcoming construction documents accurately and fully reflect the terms and conditions of this permit and any legal

instruments submitted pursuant to this authorization. No substantial changes shall be made to these documents without prior review and written approval by or on behalf of the Commission through plan review or a permit amendment.

- C. **Construction Documents Review and Approval.** No work whatsoever shall commence pursuant to this permit until final construction documents regarding all authorized activities are submitted to the Commission staff. All documents will be reviewed, and if all conditions contained herein are met, approved in writing by or on behalf of the Commission within 45 days of receipt. To save time, preliminary documents may be submitted prior to the submittal of final documents. If final construction document review is not completed by or on behalf of the Commission within the 45-day period, the permittee may commence work as authorized herein in a manner consistent with project plans, but the Commission staff's inability to complete its review does not relieve the permittee of the responsibility to meet all conditions required herein.
1. **Document Details.** All construction documents shall be labeled with: the Mean High Water line and the tidal datum reference (NAVD88); the corresponding 100-foot shoreline band; property lines; the location, types, and dimensions of materials, structures, and project phases authorized herein; grading limits; and the boundaries of public access areas required herein.
 2. **Conformity with Final Approved Documents.** All authorized improvements and uses shall conform to the final documents. Prior to use of the facilities authorized herein, the appropriate professional(s) of record shall certify in writing that the work covered by the authorization has been performed in accordance with the approved criteria and in substantial conformance with the approved documents.
 3. **Discrepancies Between Approved Plans and Special Conditions.** In case of a discrepancy between final approved documents and the special conditions of this permit or legal instruments, the special condition shall prevail.
 4. **Changes to Approved Plans.** After final plans are approved, no changes shall be made to plans without first obtaining written approval of changes by or on behalf of the Commission. Approval or disapproval shall be made within 45 days after the proposed changes have been submitted for review and approval, and a determination is made that such changes will not detrimentally affect public access.
- D. **Certificate of Foundation Layout.** Prior to construction of any building forms at the project site, the permittee shall request in writing a Commission staff inspection of the foundation layout as it has been surveyed and staked in the field relative to the Mean High Water line and to all public access area required herein. Within 10 working days of receipt of a written request for an inspection, the Commission staff will inspect the layout. The permittee shall not commence construction of the forms or pour the foundation until the staff confirms that the layout is consistent with the terms and conditions of the permit and provides the permittee with a *Certificate of Foundation Layout Inspection*. If Commission staff is unable to perform the inspection within the 10-day

period, the permittee may commence work, but the inability to complete the inspection does not relieve the permittee of the responsibility to provide public access required herein.

E. **Public Access**

1. **Area.** The permittee shall make available exclusively and unrestricted for general public use, including for walking, bicycling, sitting, viewing, fishing, picnicking, and related purposes, the following:
 - a. An area totaling approximately 16,750 square feet (0.38 acres), which is comprised of an approximately 10,050-square-foot (0.23-acre) area along the shoreline, an approximately 4,900-square-foot (0.11-acre) easement along Harbor Bay Parkway, an approximately 1,700-square-foot (0.04-acre) pair (2) of access paths extending from the Harbor Bay Parkway sidewalk to the shoreline, and ten public access parking spaces along Harbor Bay Parkway, adjacent to Eat Meadow Park, as generally shown on Exhibit A; and
 - b. If the permittee wishes to use any of this area for purposes other than public access, it must first obtain written review and approval by or on behalf of the Commission.
2. **Permanent Guarantee.** Prior to the commencement of any grading or construction activity authorized herein, the permittee shall, by instrument or instruments acceptable to counsel for the Commission, dedicate to a public agency or otherwise permanently guarantee such rights for public use of the following: a 10,059-square-foot (0.23-acre) shoreline area and an 4,893-square-foot (0.11-acre) easement at Harbor Bay Parkway—an area totaling approximately 15,037 square feet (0.34 acres).

The instrument(s) shall create rights in favor of the public, which shall commence no later than after completion of construction of any public access improvements required by this authorization and prior to the use of any structures authorized herein. Such instrument shall be in a form that meets recordation requirements of Alameda County and shall include a legal description of the property being restricted and a map that clearly shows the shoreline (Mean High Water Line), the property being restricted for public access, the legal description of the property and of the area being restricted for public access, and other appropriate landmarks and topographic features of the site, such as the location and elevation of the top of bank of any levees, any significant elevation changes, and the location of the nearest public street and adjacent public access areas. Approval or disapproval of the instrument shall occur within 30 days after submittal for approval and shall be based on the following: (a) sufficiency of the instrument to create legally enforceable rights and duties to provide the public access area required by this authorization; (b) inclusion of an exhibit to the instrument that clearly shows the area to be reserved with a

legally sufficient description of the boundaries of such area; and (c) sufficiency of the instrument to create legal rights in favor of the public for public access that will run with the land and be binding on any subsequent purchasers, licensees, and users.

3. **Recordation of the Instrument.** Within 30 days after approval of the instrument, the permittee shall record the instrument on all parcels affected by this instrument and shall provide evidence of recording to the Commission. No changes shall be made to the instrument after approval without the express written consent by or on behalf of the Commission.
4. **Improvements Within the Total Public Access Area.** Prior to the use of any structure authorized herein, the permittee shall install the following barrier-free improvements, as generally shown on Exhibit A:
 - (a) An approximately 345-foot-long paved shoreline trail ranging in width from 12 to 24 feet;
 - (b) An approximately 345-foot-long landscaped (with native or drought tolerant vegetation) and hardscaped area located between the shoreline trail and the hotel building measuring from eight to 26 feet wide;
 - (c) An approximately eight-foot-wide, 120-foot-long pathway located at the northern boundary of the hotel building and partly in the hotel parking lot connecting the Harbor Bay Parkway sidewalk to the shoreline;
 - (d) An approximately 6.5-foot-wide, 128-foot-long pathway, including a 70-foot-long section located within a 19-foot-wide landscaped area, located between the southern boundary of the hotel building and the enclosed parking structure, connecting the Harbor Bay Parkway sidewalk to the shoreline;
 - (e) A five-foot-wide sidewalk and an eight-foot-wide bicycle path along Harbor Bay Parkway within an approximately 350-foot-long, 17.5-foot-wide public access area;
 - (f) 17 public benches, 16 pathway lighting, and one fire pit along the shoreline trail;
 - (g) A minimum of six bicycle parking stalls or spaces at the public access area required herein;
 - (h) A minimum of four public access and, and where appropriate, San Francisco Bay Trail signs located at the four corners of the public access pathways to identify the public access areas required herein; and
 - (i) Ten vehicle parking spaces at Harbor Bay Parkway available for the exclusive use of the general public (i.e., not hotel guests or visitors or hotel event attendees) and signed to identify intended use and hours of spaces.

The above-referenced improvements shall be consistent with construction drawings reviewed and approved pursuant to Special Condition II.C of this permit.

5. **Maintenance.** The areas and improvements within the total 16,750-square-foot public area required herein shall be permanently maintained by and at the expense of the permittee or its assignees. Such maintenance shall include, but is not limited to, repairs to all path surfaces, including any damage resulting from future flooding at the site; replacement of any vegetation that dies or becomes unkempt; repairs or replacement as needed of any public access amenities such as signs, benches, and lights; periodic cleanup of litter and other materials deposited within the access areas; and removal of any encroachments into the access areas. Within 30 days after notification by staff, the permittee shall correct any maintenance deficiency noted in a staff inspection of the site. The permittee shall transfer maintenance responsibility to a public agency or another party acceptable to the Commission at such time as the property transfers to a different party in interest but only provided that the transferee agrees in writing, acceptable to counsel for the Commission, to be bound by all terms and conditions of this permit.
 6. **Reasonable Rules and Restrictions.** The permittee may impose reasonable rules and restrictions for the use of the public access areas to correct particular problems that may arise. Such limitations, rules, and restrictions shall have first been approved by or on behalf of the Commission upon a finding that the proposed rules would not significantly affect the public nature of the area, would not unduly interfere with reasonable public use of the public access areas, and would tend to correct a specific problem that the permittee has both identified and substantiated. Rules may include restricting hours of use and delineating appropriate behavior.
- F. **Sea Level Rise, Flood Reporting, and Adaptation.** If any portion of the completed public access required herein is subject to flooding that requires a closure of public access, the permittee shall submit a report documenting the date, location, recorded tide level, rainfall (amount and duration), other potential sources of flooding (e.g., stormwater system backup), the duration of flooding, any resulting damage or maintenance, and photographs of event accompanied by date, time, location, and orientation of flooding. The report must be submitted within 45 days of such a public access closure.

Within 30 days of report receipt, the Commission staff will review the report, taking into account, among other things, recent state and federal guidance on sea level rise and Commission policies, and notify the permittee as to whether: (1) the Commission accepts the report and recommends no changes to the permittee's approach to flooding management at the required public access area; (2) the Commission recommends revisions to the report on the basis that it is found incomplete; or (3) the permittee is required to implement strategies (to be approved by or on behalf of the Commission) to improve protection and use of the required public access area from flooding and/or sea level rise.

Any adaptation strategies, which are an appropriate course of action, should not significantly impact the public's physical and visual access to, along, or of the Bay. Any changes to the public access areas authorized herein are not allowed without first obtaining the review and approval in writing by or on behalf of the Commission. Should the public access areas not remain viable with the inclusion of adaptation strategies, the permittee shall provide equivalent public access consistent with the project nearby."

III. Findings and Declarations

This permit is issued based on the Commission's findings and declaration that the authorized work is consistent with the McAteer-Petris Act, the *San Francisco Bay Plan (Bay Plan)*, the California Environmental Quality Act (CEQA), and, pursuant to the Coastal Zone Management Act, the Commission's amended management program for the San Francisco Bay segment of the California coastal zone for the following reasons:

- A. **Site Use.** The project site is not located in a priority use area, as designated by the Bay Plan. Although originally separated from the mainland, Bay Farm Island is a peninsula and part of the City of Alameda, located west of the Oakland International Airport. In the 1920's, the island was expanded through the placement of fill and, since that time, office, retail, residential, and open space projects have been developed. In 1984, an Agreement between BCDC and Harbor Bay Isle Associates (HBIA)—the island's main developer—was created to resolve a disagreement between the Commission and HBIA over the Commission's jurisdiction at the site, pursuant to the McAteer-Petris Act. Since that time, the island, which includes the 1.51-acre project site, has been governed by the provisions of this Agreement in which HBIA agreed to define the nature and extent of public access provided at the island in conjunction with development, and the Commission agreed, with the exception of the ferry terminal, to not require a permit of HBIA for private development, uses, and associated facilities within its 100-foot shoreline band jurisdiction, while work in the Bay continues to require a Commission permit.

On several occasions, the Agreement has been amended to reflect revised development plans at the project site, at the ferry terminal, and for public access. On November 13, 1990, the *Second Amendment to the Third Supplementary Agreement* was issued, which allowed the ferry terminal site designation to be moved from the subject property to a location northwest and, in turn, for the subject property to be designated for a restaurant development. The restaurant project was never realized. On March 15, 2013, the *Third Amendment to the Third Supplementary Agreement* was issued, which changed the land use designation for the subject property to "restaurant/commercial office" instead of only "restaurant." This amendment included the same conditions regarding public access and public parking that were contained in the Second Amendment to the Agreement, including an on-site 0.20-acre (8,712-square-foot) easement for a shoreline pedestrian pathway, a 0.14-acre (6,098-square-foot) easement at Harbor Bay Parkway for a sidewalk and bicycle path, and ten public parking spaces within the grounds of the adjacent East Meadow Park, owned and operated by the City of Alameda.

In 2014, HBIA sold the subject project site to Ms. Daxa Patel who proposed a five-story hotel at the site. The Commission staff subsequently informed Ms. Patel that a Commission permit was needed for construction because a hotel would change the intensity of use at the site, placing a greater burden on the shoreline and on public access than would result from the construction of a restaurant/office use. As required in Special Condition II.A, the Settlement Agreement is required to be amended prior to the start of construction to reflect the hotel land use and associated public access amenities, and include the permittee as a signatory to that Agreement.

The Commission finds that the site use is consistent with the policies of the McAteer-Petris Act and the *San Francisco Bay Plan*.

- B. **Public Access.** Section 66602 of the McAteer-Petris Act states, in part, that existing public access to the shoreline and waters of the Bay is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided. In addition, the Bay Plan Public Access Policy 2 states, in part, "...maximum feasible public access to and along the waterfront...should be provided in and through every new development in the Bay or on the shoreline...." Policy 7 states, in part, "public access improvements...should be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline, should permit barrier free access for persons with disabilities to the maximum feasible extent, should include an ongoing maintenance program, and should be identified with appropriate signs." Policy 9 states, in part, "access to and along the waterfront should be provided by walkways, trails, or other appropriate means and connect to the nearest public thoroughfare where convenient parking or public transportation may be available." Policy 12 states, "[t]he Public Access Design Guidelines should be used as a guide to siting and designing public access consistent with a proposed project. The Design Review Board (DRB) should advise the Commission regarding the adequacy of the public access proposed." The Public Access Design Guidelines state, in part, that "public access areas must be designed in a manner that 'feels public,' should provide, maintain, and enhance visual access to the Bay, and provide connections and continuity along the shoreline." Regarding future sea level rise and flooding, the Bay Plan Public Access Policy 5 states, "public access should be sited, designed, managed and maintained to avoid significant adverse impacts from sea level rise and shoreline flooding." Further, Policy 6 states, in part, "whenever public access to the Bay is provided as a condition of development, on fill or on the shoreline, the access should be permanently guaranteed.... Any public access provided as a condition of development should either be required to remain viable in the event of future sea level rise or flooding, or equivalent access consistent with the project should be provided nearby."

The existing 1.51-acre site is currently undeveloped, although the public regularly uses an existing informal path along the shoreline for walking and enjoying views of the Bay. This path connects to more formalized developed public sections to the north and south of the project site. The public access amenities developed in relationship to the overall hotel project include: (1) an approximately 10,050-square-foot (0.23-acre) permanently-

dedicated public shoreline area with paved and landscaped features, benches, lighting, signs, and a fire pit; (2) an approximately 4,900-square-foot (0.11 acres) public easement on Harbor Bay Parkway, which includes a sidewalk and bike path and is located outside of the Commission's jurisdiction; (3) two required public paths connecting a sidewalk at Harbor Bay Parkway to the shoreline, totaling approximately 1,700 square feet (0.04 acres); and (4) ten required vehicle parking spaces designated for general public use at Harbor Bay Parkway east of the hotel site and directly adjacent to East Meadow Park.

All public access facilities will comply with the Americans with Disabilities Act (ADA) standards and, thus, be barrier free. The permittee will maintain all public access amenities. The shoreline path will be part of the San Francisco Bay Trail. Special Condition II.E requires, among other things, that the permittee permanently dedicate certain sections of these public access areas and be responsible for maintenance of all the public areas. Special Condition II.B requires the permittee to construct all project components in accordance with the plans submitted prior to Commission approval. Further, Special Condition II.C requires the permittee to submit final plans for approval by Commission staff, and Special Condition II.D requires Commission staff to inspect the building foundation layout to ensure the building will not be constructed in areas designated as public access.

On May 9, 2016, the originally-proposed public access design was reviewed by the Commission's Design Review Board (DRB). At that meeting, the DRB advised the project proponent and Commission staff that the overall massing and layout of the project dominated the relatively small site. The DRB advised the project proponent to: remove parking spaces and relocate the hotel farther from the shoreline in the direction of Harbor Bay Parkway; move the bike path to the shoreline area—a concept not supported by the general public; make the site more welcoming for the public; relocate an enclosed public pathway at the south side of the building; and return to the DRB for further review—advice the project proponent chose not to follow.

On August 4, 2016, the Commission held a public hearing on the project as originally-proposed and designed, and concerns were raised about whether the project would provide maximum feasible public access consistent with the project. On August 10, 2016, the applicant temporarily withdrew the permit application from Commission consideration, and extended the time in which the Commission could act on the application through February 27, 2017. During that time, the hotel project was redesigned to improve the public access area, in part by reducing the overall massing of the building, reducing the height of the building, moving on-site parking to an off-site location, moving the building farther away from the shoreline resulting in a wider shoreline public area, providing dedicated public parking at Harbor Bay Parkway, and extending the existing bicycle path along Harbor Bay Parkway. Although the project proponent did not return to the Commission's DRB for further review, the revised plan responds to much of the DRB's advice.

Although the previously-referenced Settlement Agreement specifies that development at the project site should include ten public parking spaces within the adjacent East Meadow Park, such activity would replace existing passive open space at East Meadow Park that will be needed for increased recreational use generated by the hotel. Special Condition II.E requires ten parking spaces at Harbor Bay Parkway immediately east of the park. The public access required herein exceeds the public access requirements of the Settlement Agreement, as amended to date (and which will be amended at a later date to reflect the project authorized herein). Special Condition II.A requires that the Agreement be amended prior to the start of construction to reflect current land uses and public access requirements, and include the permittee as a signatory to the Agreement.

The expected life of the project will extend beyond 2100. Because the project does not involve work in the Commissions' Bay jurisdiction, the Bay Plan policies on Climate Change do not apply and, thus, a formal risk assessment was not developed. However, information on the risk of future flooding at the site was provided. The Federal Emergency Management Agency (FEMA) flood map (2009) shows that the 100-year flood elevation at the site is 9.54 feet NAVD88. The crest elevation of the existing shoreline protection system composed of rock riprap material at the site is 14.25 feet NAVD88.

The location where the hotel structure and shoreline access paths will be built sits at an approximate elevation of 12 feet NAVD88. The project proponent will raise the elevation of this area to +17 feet NAVD88, while the elevation of the hotel exterior parking lot and the public access areas, will not be changed and, thus, remain at 14.25 feet NAVD88.

In consideration of future mid- and end-of-century sea level rise projections—1.3 feet by 2050 and 4.5 feet by 2100—by 2050, flood elevations will be 10.87 feet NAVD88 and, by 2100, 14.12 feet NAVD88, not accounting for wave action. Under such conditions, the required public access areas will remain protected from flooding by the existing shoreline protection system. However, the negligible amount of freeboard between 14.12 feet NAVD88 and 14.25 feet NAVD88, estimated as 0.13 feet, could leave the public access vulnerable to temporary flooding especially in light of wave and wind action at the site, or if sea level rise is higher than currently projected. The project does not currently include specific strategies for adapting to future flooding at the shoreline. Special Condition II.E, however, does require the permittee to repair public access areas in the event that a flooding event resulted in damage at such areas.

Further, Special Condition II.F requires the project proponent to monitor future potential flooding events within access areas at the site, and report the information to the Commission, including any closures of access areas due to flooding, the source of the flooding, and resulting damage and maintenance. If warranted, the Commission staff

will recommend changes to the permittee's approach to flooding management. If the public access areas do not remain viable over time, the permittee is also required to provide equivalent public access consistent with the project nearby.

Since 1978, the Commission has authorized hotel projects around the Bay, on smaller and larger sites than the subject project site. These earlier projects were approved in part because they provided maximum feasible public access consistent with the project. Some projects are depicted in Table 2 below. As is evident from the information provided, projects with similar lots, buildings, and/or number of hotel rooms have provided public access roughly comparable in size to the subject access to be required herein. Additionally, in most cases, the distance of authorized buildings from the shoreline was maximized.

BCDC Permit	Year Approved	Authorized	Building Distance from Shoreline and Building Height	Required Public Access	Lot size
Permit No. 2003.006.00 (Gray and Reynolds, Estuary Cove)	2003	One office/café building totaling 8,314 square feet, partly in the 100-foot shoreline band.	Approximately 55 feet 3 stories/30 feet	15,729-square-foot public access area, including paths, patios, landscaping, and a 12-foot-wide view corridor.	~ 1 acre
Permit No. 1097.003.02 (Hilton Garden Inn SFO)	1997	One 132-room, six-story hotel building, totaling approximately 14,000 square feet, partly in the 100-foot shoreline band.	Approximately 63 feet 6 stories/60 feet	3,966 square feet of public access, and 16,370 square feet of landscaping, seating areas, and other amenities.	~ 1.9 acres
Permit No. 1987.017.02 (Port of Oakland, Executive Inn and Suites)	1988	One 3-story, 150-room hotel totaling approximately 33,000 square feet, partly in the 100-foot shoreline band.	Approximately 55 feet 3 stories (30 feet)	8-foot-wide, 590-foot-long public access path and connections, 28,330 square feet of landscaping, enhancement of 8,500 square feet of park adjacent to project site.	~ 3 acres
Permit No. 1999.013.00 (Hawthorn Suites Hotel)	2000	Two hotel buildings totaling 10,560 square feet, partly in the shoreline band.	Approximately 55 feet 3 stories/30 feet	46,501-square-foot public access area, including approximately 9,300 square feet of pathways, a 595-linear foot, 10-foot-wide trail, landscaping, and other amenities.	3.6 acres
Permit No. 1978.12.08 (Shelterpoint Equities, Ltd., Acqua Hotel)	1978	Two-story retail and office building totaling 4,200 square feet; three-story retail and office building totaling 11,000 square feet; two-story retail and office building totaling 7,000 square feet; one-story office building totaling 5,600 square feet; and two-story office building and restaurant over parking totaling 17,250 square feet, partly in the shoreline band.	Approximately 78 feet 3 stories/30 feet	12,000-square-foot park, 8-foot wide, approximately 1,400 linear foot (totaling approximately 11,200 square feet) pedestrian/bicycle path, public parking, landscaping, and other amenities	5 acres

BCDC Permit	Year Approved	Authorized	Building Distance from Shoreline and Building Height	Required Public Access	Lot size
Permit No. 1998.006.02 (Marriot International Inc. and Bay West Cove, LLC, Oyster Point)	1998	One 4-story hotel building totaling approximately 40,000 square feet, and one 4-story hotel totaling approximately 37,000 square feet, partly in the shoreline band.	Approximately 75 feet and 43 feet 4 stories/40 feet	25,850 square feet public access area, 55,314-square-foot landscaped area, seating, and other amenities.	~ 6.5 acres
Permit No. 1982.019.08 (HMC SFO LLC, Marriot SFO)	1982	100-foot high hotel and 65-foot high convention center totaling approximately 40,500 square feet with underground parking, partly in the shoreline band.	Approximately 72 feet 10 stories/100 feet	127,295-square-foot public access area, landscaping, and other amenities	~ 8 acres
Permit No. 1983.006.07 (Felcor/CSS Holdings, L.P., Embassy Suites Burlingame)	1983	One 51,634 square-foot hotel, and one 9,000-square-foot restaurant/public services building, partly in the 100-foot shoreline band.	Approximately 85 feet / 9 stories/90 feet	171,056 square feet of public access, and 54,050 square feet of landscaping along the Anza Lagoon	~ 8 acres

Table 2: Comparable Projects Approved by the Commission. Note: “~” denotes approximate measurements.

As conditioned herein, and demonstrated through its requirements for previously-approved projects, the Commission finds that the hotel project provides the maximum feasible consistent with the project and, among other things, appropriately addresses future sea level rise and flooding at the site in relation to public access required herein.

- C. **Appearance, Design, and Scenic Views.** The *Bay Plan* Appearance, Design, and Scenic Views Policy 2 states, in part, “[a]ll bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay.” Policy 4 states, in part, “structures and facilities that do not take advantage of or visually complement the Bay should be located and designed so as not to impact visually on the Bay and shoreline. In particular, parking areas should be located away from the shoreline.”

Presently, the undeveloped project site offers uninterrupted views of the Bay at the informal pedestrian shoreline path and from Harbor Bay Parkway towards San Francisco and San Mateo Counties, including towards the San Francisco-Oakland Bay Bridge and the San Mateo Bridge. In 1989, the Commission’s DRB reviewed the HBIA master plan and proposed public access concept for a section of Bay Farm Island including the project site, and recognized an area immediately north of the project site for its outstanding views of the Bay and, in fact, referred to it as “The Corniche,” similar to such areas located in Europe.

As revised, the hotel project minimizes building height and overall massing, thereby creating a more open and welcoming atmosphere for the public. The building, which has been redesigned to be four instead of five stories, creates a less intimidating presence on the shoreline, when viewed from nearby public spaces. The wider shoreline access

area with amenities, including seating and a fire pit—as required in Special Condition II.E—will provide visitors an opportunity to pause at the Bay’s edge and enjoy views of the water, including on cooler nights. The earlier plan to maximize parking at the site was revised to move much of those spaces to an off-site location, thereby allowing for additional public space.

The project will improve the shoreline area for the general public, allowing for greater enjoyment of the shoreline and views of the water. As conditioned, the Commission finds that the project is consistent with its Bay Plan policies on Appearance, Design, and Scenic Views.

D. Review Boards

1. **Engineering Criteria Review Board.** The Commission’s Engineering Criteria Review Board did not review the project since it does not involve fill in the Bay.
2. **Design Review Board.** As stated previously, on May 9, 2016, the Commission’s DRB reviewed the originally-proposed project which, as revised and authorized herein, addresses many/all of the DRB’s advice provided at that meeting.

E. **Coastal Zone Management Act.** The Commission further finds, declares, and certifies that the activity or activities authorized herein are consistent with the Commission's Amended Management Program for San Francisco Bay, as approved by the Department of Commerce under the Federal Coastal Zone Management Act of 1972, as amended.

F. **Environmental Review.** Pursuant to the California Environmental Quality Act (CEQA), Section 15332, the City of Alameda found that the project is exempt from the preparation of environmental impact report on September 2, 2015. The City found that the project met all requirements for infill exemptions, including applicability of local zoning designation and regulations, occupation of a site not exceeding five acres and with no value for endangered, rare, or threatened species habitat, no significant environmental impacts, and adequately served by utilities and public services.

G. **Conclusion.** For all of the above reasons, the project is consistent with the *Bay Plan*, the McAteer-Petris Act, CEQA, and the Commission’s amended management program for the San Francisco Bay segment of the California coastal zone. Further, as conditioned, the project authorized herein provides maximum feasible public access to the Bay and shoreline consistent with the project.

IV. Standard Conditions

- A. **Permit Execution.** This permit shall not take effect unless the permittee executes the original of this permit and returns it to the Commission within ten days after the date of the issuance of the permit. No work shall be done until the acknowledgment is duly executed and returned to the Commission.
- B. **Permit Recording.** The permittee shall record this permit or a notice referring to this permit with Alameda County within 30 days after execution of this permit, and provide evidence of the recording to the Commission.

- C. **Certification of Contractor Review.** Prior to commencing any grading, demolition, or construction, the general contractor or contractors in charge of that portion of the work shall submit written certification that s/he has reviewed and understands the requirements of the permit and the final BCDC-approved plans, particularly as they pertain to any public access or open space required herein, or environmentally sensitive areas.
- D. **Notice of Completion.** The attached Notice of Completion and Declaration of Compliance form shall be returned to the Commission within 30 days following completion of the work.
- E. **Certificate of Occupancy or Use.** Within 14 working days prior to occupancy or use of any of the structures authorized herein, the permittee shall request in writing an inspection of the project site by Commission staff. Within 30 days of receipt of this request, the Commission staff will inspect the site to identify any deficiencies of or compliance issues with the project. The permittee shall not occupy or make use of site improvements until a Commission *Certificate of Occupancy or Use* is received. Failure by the Commission staff to perform an inspection and provide the above-referenced Certificate shall not deem the project to be in compliance with this permit.
- F. **Permit Assignment.** The rights, duties, and obligations contained in this permit are assignable. When the permittee transfer any interest in any property either on which the activity is authorized to occur or which is necessary to achieve full compliance of one or more conditions to this permit, the permittee/transferees and the transferees shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignees execute and the Executive Director receives an acknowledgment that the assignees have read and understand the permit and agree to be bound by the terms and conditions of the permit, and the assignees are accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the permit.
- G. **Permit Runs With the Land.** Unless otherwise provided in this permit, the terms and conditions of this permit shall bind all future owners and future possessors of any legal interest in the land and shall run with the land.
- H. **Other Government Approvals.** All required permissions from governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city or county in which the work is to be performed, whenever any of these may be required. This permit does not relieve the permittee of any obligations imposed by State or Federal law, either statutory or otherwise.

- I. **Built Project Must Be Consistent with Application.** Work must be performed in the precise manner and at the precise locations indicated in your application, as such may have been modified by the terms of the permit and any plans approved in writing by or on behalf of the Commission.
- J. **Life of Authorization.** Unless otherwise provided in this permit, all the terms and conditions of this permit shall remain effective for so long as the permit remains in effect or for so long as any use or construction authorized by this permit exists, whichever is longer.
- K. **Commission Jurisdiction.** Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act at the time the permit is granted or thereafter shall remain subject to that jurisdiction notwithstanding the placement of any fill or the implementation of any substantial change in use authorized by this permit. Any area not subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission that becomes, as a result of any work or project authorized in this permit, subject to tidal action shall become subject to the Commission's "Bay" jurisdiction.
- L. **Changes to the Commission's Jurisdiction as a Result of Natural Processes.** This permit reflects the location of the shoreline of San Francisco Bay when the permit was issued. Over time, erosion, avulsion, accretion, subsidence, relative sea level change, and other factors may change the location of the shoreline, which may, in turn, change the extent of the Commission's regulatory jurisdiction. Therefore, the issuance of this permit does not guarantee that the Commission's jurisdiction will not change in the future.
- M. **Should Permit Conditions Be Found to be Illegal or Unenforceable.** Unless the Commission directs otherwise, this permit shall become null and void if any term, standard condition, or special condition of this permit shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this permit becomes null and void, any fill or structures placed in reliance on this permit shall be subject to removal by the permittee or their assignees if the permit has been assigned to the extent that the Commission determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the Commission determines that such uses should be terminated.
- N. **Permission to Conduct Site Visit.** The permittee shall grant permission to any member of the Commission's staff to conduct a site visit at the subject property during and after construction to verify that the project is being and has been constructed in compliance with the authorization and conditions contained herein. Site visits may occur during business hours without prior notice and after business hours with 24-hour notice.

- O. **Abandonment.** If, at any time, the Commission determines that the improvements in its jurisdiction authorized herein have been abandoned for a period of two years or more, or have deteriorated to the point that public health, safety or welfare is adversely affected, the Commission may require that the improvements be removed by the permittee, their assignees or successors in interest, or by the owner of the improvements, within 60 days or such other reasonable time as the Commission may direct.
- P. **Debris Removal.** All construction debris shall be removed to an authorized location outside the jurisdiction of the Commission. In the event that any such material is placed in any area within the Commission's jurisdiction, the permittee, their assignees, or successors in interest, or the owner of the improvements, shall remove such material, at their expense, within ten days after they have been notified by the Executive Director of such placement.
- Q. **Construction Operations.** All construction operations shall be performed to prevent construction materials from falling, washing or blowing into the Bay. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, the permittee shall immediately retrieve and remove such material at their expense.
- R. **In-Kind Repairs and Maintenance.** Any in-kind repair and maintenance work authorized herein shall not result in an enlargement of the authorized structural footprint and shall only involve construction materials approved for use in San Francisco Bay.
- S. **Violation of Permit May Lead to Permit Revocation.** Except as otherwise noted, violation of any of the terms of this permit shall be grounds for revocation. The Commission may revoke any permit for such violation after a public hearing held on reasonable notice to the permittee or their assignees if the permit has been effectively assigned. If the permit is revoked, the Commission may determine, if it deems appropriate, that all or part of any fill or structure placed pursuant to this permit shall be removed by the permittee or their assignees if the permit has been assigned.
- T. **Enforcement Program and Civil Penalties.** The Commission has an enforcement program that reviews its permits for compliance. The Commission may issue cease and desist and civil penalty orders if violations are discovered. The McAteer-Petris Act provides for the imposition of administrative civil penalties ranging from \$10 to \$2,000 per day up to a maximum of \$30,000 per violation. The Act also provides for the imposition of court-imposed civil penalties of up to \$30,000 in addition to any other penalties, penalties for negligent violations of between \$50 and \$5,000 per day, knowing and intentional penalties of between \$100 and \$10,000 per day, and exemplary penalties, which are supplemental penalties, in an amount necessary to deter future violations. In addition, anyone who places fill, extracts materials, or makes any substantial change in use of any water, land, or structure within the area of the Commission's jurisdiction without securing a permit from the Commission is guilty of a misdemeanor.