San Francisco Bay Conservation and Development Commission
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July 22, 2016

Application Summary
(For Commission consideration on August 4, 2016)

Application Number: BCDC Permit Application No. 2016.003.00
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Staff: Jhon Arbelaez-Novak (415/352-3649; jhon.arbelaez@bcdc.ca.gov)

Summary

Applicant: Daxa Patel

Location: An approximately 1.51-acre site located at 2350 Harbor Bay Parkway on Bay Farm Island, in the City of Alameda, Alameda County. The site is bounded by the San Francisco Bay to the west, the City of Alameda (City) East Meadow Park to the south, and a City-owned landscaped area to the north.

PROJECT SITE MAP

Project: The proposed project involves the construction of a 99-room hotel and associated facilities, including an approximately 17,211-square-foot, 63-foot-high (five-story) building, a two-story parking structure with 28 stacked vehicle spaces, an at-grade parking lot for 51 vehicles, public access, landscaping, and supporting infrastructure. In addition, the project includes raising the site five feet above existing grade. The proposed hotel has an expected guest occupancy of 90 people. Proposed public access improvements include: an 18.5-foot-wide paved shoreline path along the 345-foot-long site with an adjoining public landscaped area; a sidewalk on Harbor Bay Parkway; pedestrian, bicycle, and wheelchair site entry points at Harbor Bay parkway, which lead to the shoreline; bicycle racks, benches and lighting; and landscape improvements at the adjacent East Meadow Park and at a City-owned landscaped area located north of the site.

Approximately 12,710 square feet of the proposed developed area, including the hotel, the enclosed parking structure, and the surface parking lot, would be located within the Commission's 100-foot shoreline band jurisdiction (Exhibit B).

Issues Raised: The staff believes that the application raises two primary issues on the proposed project's consistency with the Commission's McAteer-Petris Act and San Francisco Bay Plan (Bay Plan) for the Commission to consider: (1) whether the project would provide maximum feasible public access consistent with the project, including whether the public access is designed and would be managed to avoid impacts from sea level rise and flooding; and (2) whether the project proposal maximizes public views to the Bay and shoreline.

Background on Settlement Agreement

The project site is comprised of two parcels totaling approximately 65,796 square feet, approximately 12,710 square feet of which is located within the Commission's 100-foot shoreline band jurisdiction. The proposed hotel, parking facilities, and landscaping would be located on Parcel 1. The public shoreline improvements would be located on Parcel 4 (Exhibit A).

Since 1984, the project site has been governed by the provisions of a Settlement Agreement between BCDC and Harbor Bay Isle Associates (HBIA), which was prepared to resolve disagreements over Commission jurisdiction under the McAteer-Petris Act. Pursuant to that agreement, HBIA agreed to define the nature and extent of public access to be provided at Bay Farm Island in conjunction with any development, and BCDC agreed that, with the exception of the ferry terminal, it would not require a permit of HBIA for the private development, private uses, and associated facilities within the Commission's 100-foot shoreline band jurisdiction. Any work in the Bay would require a BCDC permit.

Over the years, the Settlement Agreement has been revised on several occasions, mainly to address revised plans and schedules for development along the shoreline, public access improvements, and the development of ferry terminal facilities. When the ferry terminal site was moved to a location north of the proposed project site, the Second Amendment to the Settlement Agreement, signed on November 13, 1990, re-designated the project site as restaurant space. On March 15, 2013, the Third Amendment to the Third Supplementary Agreement between HBIA and BCDC was issued, which allowed the project site to be developed for a restaurant/office building (not a hotel), with conditions regarding public access and public parking that had remained in the Agreement since 1989, including a 0.20-acre shoreline easement for a pedestrian pathway and a 0.14-acre easement with a public sidewalk and a bicycle pathway located adjacent to Harbor Bay Parkway. The Agreement also specifies that development of the site shall include ten public parking spaces at the City's adjacent East Meadow Park.

In 2014, the project site was purchased by the project proponent, Daxa Patel. After several discussions, the project proponent was informed that a BCDC permit would be needed for development of this site because of the substantial change of the proposed land use. The Commission staff believes that a 63-foot-tall, 99-room hotel would place a different burden on the shoreline and impact the public access in a significantly different manner than a restaurant or a restaurant/office building allowed when the original Settlement Agreement was amended in 1990 and 2013. If a BCDC permit were to be issued by the Commission for the proposed hotel project, the Settlement Agreement would be amended by the BCDC staff to mirror the Commission's authorization in its permit.

Project Description

Project Details: The applicant, Daxa Patel, proposes the following project:

Within the Commission's 100-foot shoreline band:

1. Construct, use, and maintain in-kind an approximately 17,211-square-foot footprint, 63-foot-high, 99-room hotel building;
2. Construct, use, and maintain in-kind an approximately 4,059-square-foot, 15-foot-high parking structure with a total of 28 vehicle parking spaces;
3. Construct, use, and maintain in-kind an approximately 17,493-square-foot surface parking lot for 51 vehicles;
4. Construct, use, and maintain in-kind an approximately 9,315-square-foot public shoreline area, including a 18.5-foot-wide, 345-foot-long concrete shoreline trail, and an adjoining 8.5-foot-wide landscaped area, with seven benches and 12 lighting features;
5. Construct, use, and maintain in-kind two pathways leading from Harbor Bay Parkway to the shoreline, including a 7.5-foot-wide, 127.5-foot-long pathway within an approximately 23-foot-wide corridor at the northern boundary of the hotel, and a 7.5-foot-wide, 130-foot-long covered pathway within an approximately 19-foot-wide corridor located at the southern boundary of the hotel adjacent to the parking structure;
6. Construct, use, and maintain in-kind a 5-foot-wide, 345-foot-long public sidewalk located adjacent to Harbor Bay Parkway, and four bicycle parking spots to be located in the vicinity of the hotel site's main vehicle entrance at Harbor Bay Parkway; and
7. Install landscape improvements within an approximately 6,000-square-foot area in the City of Alameda's East Meadow Park located at the south of the hotel site, and within an approximately 7,100-square-foot area at the City-owned area located adjacent to and north of the hotel site.

Schedule and Cost: The proposed construction schedule is August 2016 to May 2017, and the estimated total project cost is approximately $10,000,000.

Public Access: As proposed, the project would result in the following public access improvements: within an area totaling 6,383 square feet, a 27-foot-wide, 345-foot-long paved pedestrian pathway, and an adjoining landscaped area with seating and lighting; two perpendicular pathways connecting Harbor Bay Parkway to the shoreline; a sidewalk at Harbor Bay Parkway; and bicycle parking. The total area considered as new public access is 9,824.5 square feet *(0.23 acres)*. All proposed new public access facilities would be permanently guaranteed and maintained by the permit applicant (Exhibit C).

Additionally, the applicant would implement landscaping improvements at adjacent City-owned park areas located north and south of the project site. These areas are already publicly-accessible, and, therefore, would not result in new dedicated public areas.

Commission Staff Analysis

A. **Issues Raised**: The staff believes that the application raises two primary issues on the proposed project's consistency with the Commission's McAteer-Petris Act, and Bay Plan. The Commission should consider whether the proposed project: (1) would provide maximum feasible public access consistent with the project, including whether the public access is designed and would be managed to avoid impacts from sea level rise and flooding; and (2) maximizes public views to the Bay and shoreline.

1. **Public Access**

   a. **Commission Law and Policies.** 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…." 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." 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." 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 Commis sion 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."

   b. **Existing Public Access.** An unpaved trail used by the public is located adjacent to the shoreline at the project site. This informal trail connects a larger developed system of paths at Bay Farm Island associated with other development undertaken pursuant to other settlement agreements between BCDC and HBIA. Pursuant to the provisions of the Agreement between HBIA and BCDC, dated March 15, 2013, the proposed project site is designated for a shoreline restaurant/office building contingent on providing a 0.20-acre shoreline easement with a pedestrian path, a 0.14-acre easement adjacent to Harbor Bay Parkway with a pedestrian sidewalk and a bike path, and ten public parking spaces to be located at the City's adjacent East Meadow Park.

c. **Proposed Public Access.** The proposed public access should be considered in relation to the overall hotel project. The project involves the construction of: an approximately 17,211-square-foot, 63-foot-high (five-story), 99-room hotel; a two-story parking structure with 28 vehicle spaces; a surface parking lot for 51 vehicles; public access spaces; and landscaping. In addition, the project would involve raising the site five-feet above existing grade. The proposed hotel has an expected guest occupancy of 90 people.

The applicant proposes to permanently guarantee approximately 9,824.5 square feet of on-site public access area, including the following improvements:

(1) A 345-foot-long, 18.5-foot-wide shoreline path;

(2) Pathways oriented perpendicular to Harbor Bay Parkway leading to the shoreline including, a 7.5-foot-wide, 127.5-foot-long path at the hotel's northern boundary, and a 7.5-foot, 130-foot-long path, partly covered by a cantilevered section of the building's second story;

(3) Seating nooks along the shoreline path; and

(4) A sidewalk located adjacent to Harbor Bay Parkway (Exhibit C).

Additionally, the applicant proposes to improve landscaping at existing City-owned properties located north and south of the proposed property site. Because these areas are already available to the general public, the proposed use and improvements would not result in newly-dedicated public area.

During its May 9, 2016 review, the Commission's Design Review Board agreed that the overall massing and layout of the proposed project dominates the small project site. The Board recommended that the project applicant should consider removing some parking spaces, relocating the building farther from the shoreline, and relocating the bike path to the shoreline. Following the Design Review Board meeting, the Commission staff recommended that the applicant make adjustments to the proposed design to maximize the public access area and improve the public's use and enjoyment of the shoreline.

In response to the Design Review Board and BCDC staff comments, the applicant made several changes to the site plan, including relocating the bicycle path, reducing the size of the hotel, widening the shoreline path, widening the access corridors from the adjacent street, and removing three parking spaces and one hotel room.

The hotel building was reduced in length by approximately 30 feet to provide additional space on three sides of the hotel. This results in an access corridor on the north side of the building that increased to approximately 23 feet from 7 feet, and an access corridor on the south side of the hotel that increased to approximately 19 feet from 7.5 feet. The previous design of the southern access pathway, which is partially covered, offered minimal public views of the Bay and shoreline. Although the space will still be constrained, the revised, wider design includes landscaping and other improvements to make the covered space more inviting and welcoming to the public.

Additionally, the building was moved two feet farther from the shoreline and the design of the building was changed to provide sheltered seating nooks within the building footprint, where a fire pit and other amenities would serve the public and hotel guests. The shoreline path was widened to approximately 18.5 feet, which is six feet wider than the previous design width. However, even with these improvements, the building would be located approximately 27 feet from the shoreline edge. In considering the adequacy of the public access areas, the Commission should consider the impact of the hotel guest usage of the public spaces, especially given the building's close proximity to the shoreline edge.

The proposal includes no signage directing the public to the proposed public access areas and pathways.

The Settlement Agreement between BCDC and HBIA, described above, specifies that development of the project site shall include ten public parking spaces at the City's adjacent East Meadow Park. The City of Alameda staff stated that parking should not be allowed within the existing landscaped park. Currently, public parking along Harbor Bay Parkway is mostly prohibited. Limited sections allow public parking, however, these spaces tend to be occupied on weekdays by customers of the nearby Alameda ferry terminal. Because public transportation to this area of Bay Farm Island is limited, public access parking is important and necessary to allow the public to visit the shoreline. The project proposal does not include public parking at or near the project site.

Similar Permitted Projects. In evaluating whether the proposed public access would be the maximum feasible consistent with the project, the Commission should consider, in part, its actions on comparable projects—two of which are summarized in Table 1 below.

BCDC Permit/BCDC Permit Application	Authorized/Proposed Project	Required/Proposed Public Access
Hawthorn Suites Hotel/Permit No. 1999.013.00	Two hotel buildings totaling 10,560 square feet, partly in the 100-foot shoreline band.	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.
Estuary Cove/Permit No. 2003.006.00	One office/café building totaling 8,314 square feet, partly in the 100-foot shoreline band.	15,729-square-foot public access area, including paths, patios, landscaping, and a 12-foot wide view corridor.
Daxa Patel/Permit Application No. 2016.003.00	**Two buildings totaling 17,211 square feet, partly in the 100-foot shoreline band.**	**9,824.5-square-foot public access area, including a shoreline path, two pathways, a sidewalk, and associated landscaping and amenities.**

Table 1. Summary of BCDC-Approved Projects and the Proposed Project (shown in bold)

In comparison to the two projects listed in Table 1 above, the proposed hotel project includes a 9,824.5-square-foot public access area, with an approximately 345-foot-long shoreline trail, two shoreline access pathways, seven benches, twelve lighting features, a 345-foot-long sidewalk, and four bicycle parking spots. No dedicated view corridors are proposed. The proposed project would result in a larger building than the other two projects with less public access area.

e. **Sea Level Rise and Flooding.** Due to the small size of the building parcel for the proposed hotel, the hotel would be located approximately 27 feet from the top of the shoreline bank. The expected life of the proposed project is beyond 2100. Because the project does not involve Bay fill, the Commission's Bay Plan policies on Climate Change do not apply and, thus, a formal risk assessment was not prepared by the applicant.

The applicant provided information on the risk of future potential flooding at the site. The Federal Emergency Management Agency (FEMA) flood map (2009) shows that the 100-year flood elevation at the site at 9.54 feet NAVD88. Bayward of the site, an existing shoreline protection system partly composed of riprap material and a berm has a top elevation of 14.25 feet NAVD88. Currently, the project site is approximately three-feet below the elevation of the shoreline protection system.

Where the proposed hotel and enclosed parking structure would be built, the at-grade elevation would be raised to a height of 17 feet NAVD88. The at-grade elevation of other proposed improvements, including the 48-vehicle parking lot and the public access, would remain unchanged. Using a sea level rise projection of 1.3 feet (by 2050), and 4.5 feet (by 2100), the projected 100-year flood elevation at site is 10.87 feet NAVD88 by 2050, and 14.12 feet NAVD88 by 2100. Under these conditions—which do not account for wave action—the shoreline area, including public access, would remain protected by the shoreline protection system and, thus, the applicant is not proposing strategies for adapting the proposed public access areas to future potential flooding conditions. However, the negligible amount of freeboard (less than two inches) could potentially leave the site vulnerable to temporary flooding due to wave and wind action, or if sea level rises higher than currently estimated (Exhibit D).

In consideration of applicable provisions of the law and policies, and of past actions on similar projects, the Commission should determine whether the applicant proposes the maximum feasible public access consistent with the proposed hotel and associated facilities and, further, whether the access is designed and would be managed to avoid impacts from sea level rise and flooding.

2. **Appearance, Design, and Scenic Views**

a. **Commission Law and Policies.** The Commission's 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."

Policy 14 states, in part, "[v]iews of the Bay from roads should be maintained by appropriate arrangements and heights of all developments and landscaping between the view areas and the water. In this regard, particular attention should be given to all waterfront locations, areas below vista points, and areas along roads that provide good views of the Bay for travelers…."

Currently, the project site is undeveloped, and offers uninterrupted public views of the Bay from Harbor Bay Parkway across to San Francisco and San Mateo Counties, including towards the San Francisco-Oakland Bay Bridge in the north to the San Mateo Bridge in the south. In 1989, following a review of the HBIA master plan and the proposed public access areas, the DRB recognized an area immediately north of the proposed project site as providing outstanding views of the Bay. The area was named "The Corniche," after areas of similar character in Europe. The proposed project site offers similar views of the Bay and shoreline. An existing informal path at the site allows the public to walk along the shoreline and enjoy this view of San Francisco Bay.

As proposed, the heights of the hotel and the adjacent enclosed parking structure are 63 feet and 15 feet, respectively. Together, the proposed hotel and parking structure are 66 feet wide and 255.5 feet long. The length of the shoreline at the project site is 345 feet. An 18.5-foot-wide pathway and landscaping would separate the hotel and parking structure, but because the area would be covered by the second floor of the hotel building, the two buildings would appear as one continuous structure. The applicant proposes to use glass paneling and an interior design of the hotel's first floor to maximize public views through the building. A 57-foot-wide area at the northern section of the project site is proposed as a surface parking lot. No dedicated view corridors through the site are proposed. When vehicles are present within the parking lot, it is likely that views of the Bay from the road would not be maintained. Although a 22.5-foot-wide pathway and associated landscaping would provide view access to the Bay, the applicant does not propose this area as dedicated view corridor. By comparison, the Estuary Cove project in Oakland (referenced in Table 1, above) provided a 12-foot-wide dedicated view corridor to the Bay through a similarly sized parking lot.

The Commission should determine whether the proposed project would maximize public views of the Bay and shoreline from Harbor Bay Parkway.

B. **Review Boards**

1. **Engineering Criteria Review Board.** The Commission's Engineering Criteria Review Board did not review the project because no Bay fill is proposed.
2. **Design Review Board.** On May 9, 2016, the Commission's DRB reviewed the proposed project, which resulted in the following input and advice:
   (a) The DRB expressed concern that the proposed design appeared too tight for the project site, and asked the applicant to explore solutions to allow the buildings to move away from the shoreline toward Harbor Bay Parkway, and also to minimize the area devoted to parking;

(b) The DRB encouraged the applicant to make the site more welcoming to the public, including opening some hotel areas, such as the lobby, conference rooms, and terraces, for public use;

(c) The DRB recommended that the enclosed pathway located between the hotel and the parking structure be opened possibly by relocating the pathway, and that views not blocked by parked vehicles be provided;

(d) The DRB recommended that the applicant move the bicycle path away from Harbor Bay Parkway closer to the shoreline—possibly achieved by moving the buildings towards the Parkway;

(e) The DRB stressed the need to tie the design of landscaping with adjacent shoreline areas to provide design continuity; and

(f) The DRB recommended that a potentially revised project return for its additional review and advice.

The applicant chose to not return to the DRB for further review and advice.

Following conversations with Commission Staff, and recommendations from the DRB, the applicant made revisions to the design of the proposed project, which is described in this application summary.

C. **Local Discretionary Approval and Environmental Review.** On September 2, 2015, by a vote of 3 affirmative, 1 negative, and 1 abstention, the City of Alameda approved Resolution No. 15082, authorizing the original project design. The original design included a larger footprint hotel building with additional parking and rooms. The resolution found the project is an efficient use of the site, relates favorably to the general plan, will not have substantial deleterious effects on the surrounding areas, is compatible with land uses, and will be served by adequate transportation facilities. Approval is not contingent on additional regulatory approvals. The project was revised, and new plans were submitted to BCDC on July 15, 2016. The current proposed project is described on this application summary.

Pursuant to the California Environmental Quality Act (CEQA), Section 15332, the City of Alameda issued an exemption from environmental review on September 2, 2015. The City found that the project meets all requirements for infill exemptions, including applicability with local zoning designation and regulations, occupying a site no more than five acres and with no value for endangered, rare, or threatened species habitat, not resulting in any significant environmental impacts, and being adequately served by all required utilities and public services.

The applicant has yet to verify whether the City's existing discretionary approval and CEQA exemption covers the proposal as revised on July 15, 2016, and submitted to BCDC.

D. **Relevant Portions of the McAteer-Petris Act**

1. Section 66602

2. Section 66632

E. **Relevant Portions of the San Francisco Bay Plan**

1. *San Francisco Bay Plan* Policies on Public Access
2. *San Francisco Bay Plan* Policies on Appearance, Design and Scenic Views

Exhibits

A. **Project Information**

B. **Site Plan**

C. **Site Public Access Plan**

D. **Enlarged Section**