

San Francisco Bay Conservation and Development Commission

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August 25, 2017

Application Summary

(For Commission consideration on September 7, 2017)

Number: BCDC Permit Application No. 2017.002.00
Date Filed: July 21, 2017
90th Day: October 19, 2017
Staff Assigned: Ethan Lavine (415/352-3618; ethan.lavine@bcdc.ca.gov)

Summary

Applicant: Hercules Development Partners, LP

Location: The approximately 2.2-acre project site is located within the Hercules Waterfront District, in the City of Hercules, Contra Costa County. The triangular-shaped site is bound by Bayfront Boulevard to the northwest, John Muir Parkway to the southeast, and Refugio Creek to the south (Figure 1).

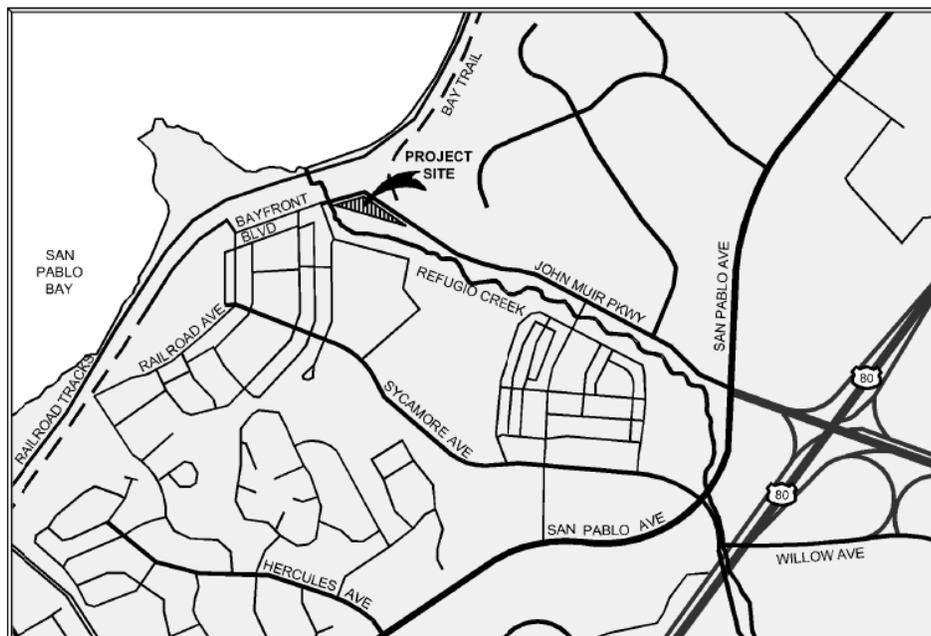


Figure 1. Vicinity Map

Project: The proposed Hercules Bayfront Creekside Apartments project involves developing a vacant site (called the “Block N” lot) as the first private development within the planned 42-acre Hercules Bayfront Project (Exhibit A). The proposed project includes five residential buildings with 162 apartments and ground-floor commercial/retail space, and ten townhomes. The mixed-use project would house approximately 240 residents and contain approximately 6,200 square feet of commercial space. The project also includes approximately 215 underground vehicle parking spaces, and private and public hardscape and landscaped areas.

An approximately 42,330-square-foot portion of the Block N lot is located within the Commission’s shoreline band jurisdiction, which extends 100 feet inland from the shoreline of the tidally-influenced Refugio Creek (Exhibit B). The public Creekside Trail, constructed by the City of Hercules (City) in 2016, is located between Refugio Creek and the southern boundary of the project site.

As proposed, the project would create approximately 19,400 square feet of public access area and associated improvements, or approximately 45 percent of the project area within the 100-foot shoreline band, consisting of approximately 11,400 square feet of hardscape areas (plazas and walkways), and approximately 8,000 square feet of landscaped areas. The existing 14-foot-wide Creekside Trail would be widened to 15 feet and, parallel to the trail, an elevated 6-foot-wide public walkway would be constructed. In addition, four public plazas, trailside seating areas, a public restroom, and associated amenities would be developed (Exhibits D through G).

**Issues
Raised:**

The Commission staff believes that the primary issue raised by the subject permit application is whether the proposed public access within the Commission’s 100-foot shoreline band jurisdiction is the maximum feasible consistent with the project, and consistent with related Bay Plan policies on Public Access, including those related to future sea level rise, and Appearance, Design and Scenic Views.

Background

Hercules Waterfront District Master Plan and Hercules Bayfront Project. The subject lot, Block N, is located within the City of Hercules' Waterfront District. Development within the 167-acre district is guided by the Hercules Waterfront District Master Plan (HWDMP), adopted as part of the City's General Plan and zoning ordinance in July 2000. The objective of the HWDMP is to realize a transit-oriented, mixed-use community with high-quality public spaces. To implement these objectives, the HWDMP includes a form-based development code that provides detailed development and design standards for building form, architectural styles, civic spaces, and circulation and street design.

The HWDMP has been amended on several occasions, including by the Waterfront Now Initiative ballot measure, passed by voters and adopted by the City Council in 2008. The 2008 Initiative established the Hercules Bayfront Project, involving the development of a 42-acre portion of the Waterfront District as planned mixed-use community (Exhibit A). The proposed project at Block N would be the first private development undertaken as part of the larger Hercules Bayfront Project.

Through an amendment to the HWDMP, the 2008 Initiative also outlined a framework and implementation strategy for the creation or preservation of 23 acres of parks and open space within and around the Hercules Bayfront Project (Exhibit C).

Form-Based Development Code. The amended HWDMP's form-based development code establishes a maximum development program for the site that is the subject of this permit application (i.e., the maximum allowable area of commercial space and number of residential units), as well as development standards guiding the proposed project's design in terms of its architectural style, lot coverage, and building massing.

The amended HWDMP's Civic Space Regulating Plan requires development of a pocket plaza and neighborhood park within Block N (Exhibit C). These requirements would be satisfied by the inclusion of the proposed Eastern Plaza/Moorish Garden (pocket plaza) and the Central Courtyard and the adjacent open-air private enclosed residential space (neighborhood park). An additional pocket park, the West End Trailhead Plaza, is also proposed (Exhibits D through G).

The relationship between the proposed residential and mixed-use buildings and the public space is shaped in part by the amended HWDMP's standards, including those established for the Creekside Trail. These standards encourage residential units to front onto the trail, as is proposed for the ten townhouse units along the elevated walkway. The standards also require one side of the trail to be tree-lined which, as proposed, would be accomplished by incorporating a row of trees into the retaining wall.

Refugio Creek Restoration and Creekside Trail. BCDC Permit No. 2012.024.00, issued on April 22, 2016, authorized the City to restore tidal conditions and marsh along Refugio Creek, which is located adjacent to the project site, and construct a vehicular bridge over the creek at Bayfront Boulevard. The Refugio Creek was channelized in the early 1900s, and several culverts installed near its mouth at San Pablo Bay cut off tidal influence to upstream portions of the creek. The 2016 permitted restoration work removed a culvert, reintroducing tidal action to the creek. The creek's floodplain was also widened to allow the reestablishment of a meandering natural channel. The authorized work thus resulted in an upstream extension and widening of the Commission's jurisdiction. Exhibit B shows the Commission's jurisdiction prior to the restoration work at Refugio Creek and the Commission's jurisdiction as it exists today. Prior to the restoration work, Block N and the adjacent Refugio Creek were located outside of the Commission's jurisdiction.

BCDC Permit No. 2012.024.00 also authorized the City to construct the Creekside Trail that runs along Block N's southern property line. The 10-foot-wide asphalt trail with 2-foot-wide decomposed granite shoulders provides continuous shoreline (creekside) public access along the southern boundary of the proposed project site.

Project Description

Project

Details: The applicant, Hercules Development Partners, LP, describes the proposed project as follows:

Within the Commission's 100-foot shoreline band jurisdiction:

1. **Mixed-Use Development.** Construct, use, and maintain in-kind an approximately 22,930-square-foot portion of a mixed-use development, including portions of four residential buildings, one with ground-floor retail/commercial, ranging from approximately 40- to 65-feet high, and underground parking, driveways, and sidewalks; and
2. **Public Access.** Construct, use, and maintain in-kind an approximately 19,400-square-foot public access area, including six hardscape plazas and paved seating areas (totaling approximately 7,950 square feet), a 6-foot-wide elevated walkway (approximately 2,660 square feet), a 1-foot-wide extension to the existing Creekside Trail (approximately 500 square feet), landscaped areas (approximately 8,000 square feet), and public access improvements, including a public restroom, seating, trash receptacles, and interpretive signage.

Public

Access: The project site is undeveloped and currently provides no public access improvements (Exhibit A). However, in 2016, the City developed a Creekside Trail directly adjacent to the project site at its southern boundary, which connects to public sidewalks at Bayfront Boulevard and John Muir Parkway.

The proposed project would result in approximately 19,400 square feet (0.45 acres) of new public access at the southern perimeter of the project site, adjacent to the existing Creekside Trail and extending 26 to 90 feet back from the existing trail edge. Proposed improvements consist of an extension of the existing Creekside Trail (widening by one foot), new trailside seating areas, four public plazas, an elevated 6-foot-wide pedestrian walkway running the length of the project site, and other amenities, including a public restroom, trash receptacles, seating, and interpretive signage.

Table 1. Proposed New Public Access Areas

Type	Area in Square Feet
Hardscape	11,400
Landscape	8,000
Total	19,400 (0.45 acres)¹

Schedule

and Cost: As proposed, construction is scheduled to commence in October 2017 and be completed in April 2019. The estimated total project cost is approximately \$25,000,000.

Staff Analysis

I. **Issues Raised:** The staff believes that the primary issue raised by the application is whether the proposed public access is the maximum feasible consistent with the project, and consistent with the Bay Plan policies on Public Access, including those related to sea level rise, and Appearance, Design and Scenic Views.

A. Public Access

1. **Maximum Feasible 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." Section 66632.4 of the McAteer-Petris Act states, in part, "[w]ithin any portion or portions of the shoreline band that are located outside the boundaries of water-oriented priority land uses...the Commission may deny an application for a permit for a proposed project only on the grounds that the project fails to provide maximum feasible public access, consistent with the proposed project, to the bay and its shoreline."

The Bay Plan policies on Public Access state, in part, that "a proposed fill project should increase public access to the Bay to the maximum extent feasible..." and that "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." Bay Plan Public Access Policy 7 states, in part, that "the improvements should be designed and built to

¹ Approximately 20 square feet of the public access area is located outside of the Commission's jurisdiction.

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.” Bay Plan Public Access Policy 8 states, “[a]ccess 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. Diverse and interesting public access experiences should be provided which would encourage users to remain in the designated access areas to avoid or minimize potential adverse effects on wildlife and their habitat.”

- a. **Existing and Planned Future Public Access.** The project site is undeveloped and provides no public access improvements. An existing City-owned 10-foot-wide asphalt Creekside Trail with 2-foot-wide decomposed granite shoulders provides continuous shoreline (creekside) public access along the southern boundary of the project site and connects to the public sidewalk at Bayfront Boulevard and John Muir Parkway. The existing Creekside Trail is part of a planned network of trails in the City.

A 2008 amendment to the HWDMP’s form-based code outlines plans for approximately 23 acres of open space within and adjacent to the Hercules Bayfront Project. The most significant open space located near the project site would be the Creekside Park planned within Block K, located alongside Refugio Creek directly north of the project site. The future Creekside Park is to be constructed by the City, and while no minimum size is proposed by the form-based code, the park is required to have a minimum width of 25 feet and a maximum width of 200 feet. Farther from the project site, an above-grade crossing over the Union Pacific Rail Road (UPRR) tracks is planned to connect the Waterfront District to 11 acres of open space at Hercules Point (Exhibit C).

- b. **Proposed Public Access.** The proposed project would result in the creation of 172 residential units and 6,200 square feet of commercial/retail space. The applicant states that the approximately 240 residents are expected to live within the development, and approximately 430 employees and patrons would work or utilize the commercial/retail space daily. The proposed project includes approximately 19,400 square feet of public access, which is approximately 20 percent of the total area of the project site and 45 percent of the project area within the 100-foot shoreline band.

Roughly 60 percent of the proposed access areas are improved hardscape areas (i.e., trails, walkways, and plazas, totaling 11,400 square feet), and the remaining roughly 40 percent (8,000 square feet) are planted or landscaped areas. The following public access improvements are proposed, as shown on Exhibits D through G:

- i. **Creekside Trail Edge Extension.** The existing City-owned Creekside Trail would be widened by 1 foot (from 14- to 15-feet-wide), and 10 “seatwalls,” seating areas built into 120 nonconsecutive feet of the adjacent retaining wall, would be built.
- ii. **Trailside Seating Areas.** Two paved seating areas would be provided directly adjacent to and flush with the widened Creekside Trail, at the eastern and western ends of the project site. The approximately 236-square-foot western seating area includes a 12-foot seatwall and one trash receptacle (Exhibit E). The approximately 496-square-foot eastern seating area includes one bench, one trash receptacle, and one bike rack (Exhibit G). (One additional bike rack would be provided within the 100-foot shoreline band at the sidewalk along John Muir Parkway.)
- iii. **Public Plazas.** Public plazas totaling approximately 7,220 square feet would be provided, including the approximately 623-square-foot “West End Trailhead Plaza” (Exhibit E), the approximately 2,049-square-foot “Central Courtyard” (Exhibit F), the approximately 1,914-square-foot “Moorish Garden Plaza,” and the approximately 2,635-square-foot “Eastern Plaza” (Exhibit G). The following improvements would be provided within the plaza areas: one interpretive sign, one drinking fountain and dog-watering station, two trash receptacles, four benches, seatwalls (totaling approximately 428 feet), and a decorative planting urn feature. Within the Eastern Plaza, which faces onto ground-floor retail/commercial, an unspecified number of movable tables with chairs would be provided, likely by a café tenant. Within the ground-floor retail/commercial space located at the Eastern Plaza, a public restroom with a dedicated entryway would be provided.
- iv. **Elevated Walkway.** An approximately 420-foot-long, six-foot-wide public walkway adjacent to the front entryway of the proposed townhouses would be provided to connect the public plazas. The elevated walkway would be located approximately 4 to 5 feet above the Creekside Trail, separated by a terraced retaining wall with plantings and trees. The walkway would mirror the path of the Creekside Trail, but at the elevation of the plazas and residential units (+19 NAVD88 at the walkway versus +14 NAVD88 at the lower points along the Creekside Trail), to provide an additional public connection running the length of the site. Stairs and at-grade connections would link the elevated walkway and Creekside Trail. The at-grade connections and accessible slope of the elevated walkway would allow for barrier-free connections to the public access areas on the site.

Additional open space would be located within the interior of the project site, but restricted to use by residents and not open to the public. Locking gates along the perimeter of the site would restrict access to the private interior space. No free public access parking is proposed as part of the project, though up to 66 street parking spaces are available along Bayfront Boulevard

and John Muir Parkway. The project site is located approximately 300 feet from the Bay Trail, which can be accessed from John Muir Parkway, and in the future via a planned connection from the Creekside Trail.

- c. **Anticipated Public Access Demand.** In determining whether the project would provide the “maximum feasible public access consistent with the project,” the Commission considers a number of factors, including the demand on existing public access areas and the need for additional public access generated by the proposed project.

The proposed project is the first private development within the larger Hercules Bayfront Project. According to the project’s Final Environmental Impact Report (EIR) certified in October 2011, at buildout the total Hercules Bayfront Project (42 acres) would provide up to 1,392 residential units, 90,000 square feet of retail space, 115,000 square feet of office space, and 134,000 square feet of flex space, which may be developed as residential live/work or retail space. As described in its application, the proposed project at Block N would provide 172 residential units and approximately 6,200 square feet of commercial space, with the capacity to house 240 residents and bring 430 employees and patrons to the project site daily.

The employment, housing and population growth associated with the proposed project and the larger Hercules Bayfront Project is expected to generate a greater demand for public access along Refugio Creek and the San Pablo Bay shoreline. Because the UPRR rail tracks run along the San Pablo Bay, there is and, into the future, will continue to be limited public access to the shoreline (though the planned future connection to Hercules Point would greatly enhance this access). The growth associated with these projects is also expected to place more demand on the project site’s Creekside Trail, and a block north of the site, the San Francisco Bay Trail.

- d. **Comparable Projects Approved by the Commission.** The Commission considers its previous actions on comparable projects to help inform a decision about whether the proposed public access improvements represent the maximum feasible scope and type consistent with the mixed-use project.

The proposed project would provide 19,400 square feet (0.45 acres) of public access mostly within the Commission’s 100-foot shoreline band jurisdiction, equivalent to approximately 20 percent of the total 2.2-acre project area and 45 percent of the project area within the 100-foot shoreline band. Lateral shoreline access (i.e., access parallel to or along the shoreline) is currently provided by the 14-foot-wide Creekside Trail owned and maintained by the City of Hercules. With the addition of the proposed public improvements, public access would be provided within an area extending approximately 40 feet upland from the shoreline at its narrowest point, and approximately 100 feet upland at its widest point.

The Commission has, in the past, considered comparable projects that dedicated roughly the same overall proportion of their total project site to public access (Table 2). The Signature at the Estuary 100-unit condominium residential development project in the City of Oakland, Alameda County (BCDC Permit No. 2003.003.01, originally issued June 3, 2003 and amended through June 3, 2004), provided 1.31 acres of public access at a 4.17-acre site, or 31 percent of its total project area. An 8,826-square-foot area of the total public access was provided as a permanently guaranteed open-water area, with the remaining 1.04 acres (25 percent of the total project area) provided as dedicated public access within the 100-foot shoreline band. The Blu Harbor Residential Development (BCDC Permit No. 2014.004.00, issued November 24, 2014 to RWC Harbor Communities, LLC), a 411-unit residential development at the confluence of Smith Slough and Redwood Creek, in the City of Redwood City, San Mateo County, provided public access improvements on areas totaling approximately 2.55 acres of a 13.81-acre project site, or 18 percent of the project site.

In terms of the total area of proposed public access, given the proposed project's physical footprint and the anticipated demand for public access associated with the residential and commercial uses at the project site, the access area proposed by the applicant (0.45 acres) is not comparable to most other projects approved by the Commission in recent years. However, the Commission has, in the past, approved projects at constrained sites along the shoreline that provided relatively less public access area but more significant public access benefits (Table 2).

An application for a 41-unit residential building in the City of Oakland, Alameda County (BCDC Permit No. 2013.002.01, originally issued on September 27, 2013, and amended through March 24, 2016) provided 4,526 square feet (0.1 acre) of shoreline public access on a 29,119-square-foot (0.67 acre) site. The project also involved the rehabilitation of a 1,234-square-foot portion of a pile-supported pier to provide over-water public access. The Commission found that while the project provided less square footage in permanent public access than adjacent sites, the public access proposal was enhanced by the unique public experience provided at the pier. An application for an 81-room hotel expansion in the City of Oakland (Amendment No. Four to BCDC Permit No. 1987.017, issued on September 20, 2001) increased the total square footage of public access at the site by 33,830 square feet. Because of the narrowness of the public space between the hotel and the shoreline (averaging 45 feet), the Commission's determination that the project achieved maximum feasible public access was based on the inclusion of "the expensive construction of a public access pier, enhancements to an existing public access cove, and a wider 'entrance' to the public access area." The Commission found that "[w]ithout these added benefits, [it] would not have accepted the narrow width of the public access along the shoreline."

Table 2. Public Access Provided in Comparable BCDC-Approved Projects

Project Name and BCDC Permit No.	Total Project Area	Public Access Area	Public Access as a Percentage of Total Project Area	Projected Intensity of Use
Blu Harbor Residential Development, BCDC Permit No. 2014.004.00	601,546 sf (13.81 acres)	110,939 sf (2.55 acres)	18%	411 residential units
Signature at the Estuary Residential Development, BCDC Permit No. 2003.003.01	182,078 sf (4.17 acres)	57,171 sf (1.31 acres)*	30%*	100 residential units
Phoenix Commons Senior Co-Housing Development, BCDC Permit No. 2013.002.01 [†]	29,119 sf (0.67 acres)	6,012 sf (0.14 acres)*	21%	41 residential units
Executive Inn Hotel Expansion, BCDC Permit No. 1987.017.04 [†]	33,830 sf (0.78 acres)	78,647 sf (1.81 acres)*	43%	81 hotel room expansion
Proposed Hercules Bayfront Creekside Apartments, BCDC Permit Application No. 2017.002.00	95,832 sf (2.2 acres)	19,400 sf (0.45 acres)*	20%	172 residential units, 6,200 sf commercial

* A portion of the public access area is located over water or outside of the 100-foot shoreline band.

[†] Project approved upon a finding by the Commission that certain public access amenities allowed the project to achieve "maximum feasible public access" in an instance where the public access area provided was otherwise inadequate.

Commission staff and the applicant for the proposed project discussed additional alternative public access benefits that might be provided at or near the project site. Among the options considered were construction of a pedestrian bridge across Refugio Creek and an overlook structure at the Creekside Trail. A pedestrian bridge was determined by staff and the applicant to be of relatively limited public benefit given the project site's proximity to the Bayshore Avenue bridge, and infeasible due to cost. The applicant explored the possibility of constructing an overlook structure, but determined that the potential for adverse habitat impacts existed and that obtaining necessary regulatory approvals (from other agencies) would likely delay the start of construction.

The public access proposed by the applicant has evolved as the design of the proposed project has been refined. As initially proposed, the amount of public access totaled 12,465 square feet (0.27 acres) compared to the 19,400 square feet

(0.45 acres) currently proposed. That design differed in that it did not provide public access at the Central Courtyard Plaza, which previously was designed with a locked gate to prevent access by the general public. An earlier design also included a narrower, four-foot-wide elevated public walkway. That walkway has since been widened to six feet, in part by the applicant eliminating fenced-in patios at the entrances to the townhomes located adjacent to the trail. Finally, the design of the plaza spaces and the amenities provided within have been refined with input from staff and the Commission's Design Review Board, as discussed below. Among the additional public access amenities proposed by the applicant since the original application was submitted is a public restroom.

2. **Sea Level Rise and Flooding.** Regarding the potential effects of sea level rise on public access, the Bay Plan includes Public Access Policy No. 4, which states in part: "Public access should be sited, designed, managed, and maintained to avoid significant adverse impacts from sea level rise and shoreline flooding." Further, Public Access Policy 7 states, in part: "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."

Within its 100-foot shoreline band jurisdiction, the Commission may deny an application for a permit only on the grounds that the project fails to provide maximum feasible public access, consistent with the proposed project, to the Bay and shoreline. Therefore, the Commission has limited authority regarding sea level rise over most shoreline development. For example, for this and other proposed projects, the Commission does not have the authority to review the developed areas, such as buildings and other private areas, for issues related to seismic safety or potential impacts from future sea level rise. Sea level rise resilience and adaptation requirements imposed by the Commission must pertain to the public access areas. To ensure maximum feasible public access is provided as part of the project, proposed public access must remain safe, available for use, resilient, and if warranted, be adapted as sea level rises over the life of the project.

- a. **Vulnerability of Project Site.** The subject permit application includes a memorandum prepared by BKF Engineers, dated May 24, 2017, which evaluates the potential for flooding of Refugio Creek at the project site: today, at mid-century (2050), and through the end of century (2100), and assuming future sea level rise. Under no scenario considered would a 100-year storm have the potential to inundate the ground-floor of the residential structures or the elevated walkway, at +18.67 feet NAVD88. However, public access improvements provided at the elevation of the Creekside Trail (+14 to +18 feet NAVD88) would be subject to storm-driven inundation under certain projected scenarios.

The current Base Flood Elevation (BFE) at the project site is +17.67 feet NAVD88. BFE is the elevation to which flood waters are anticipated to rise during a 100-year flood event, which has a 1 percent chance of occurrence in any given year.

The potential therefore exists for the proposed Creekside Trail and the public access improvements directly adjacent to the trail to be inundated with flood waters today, though this would only occur during an extreme flood event (Exhibit H).

A unique condition exists in the vicinity of and at the project site, in that flood risk is exacerbated by the presence of a culvert that remains in place downstream (bayward) of the project site, near where Refugio Creek passes under existing UPRR railroad tracks. The culvert and the "L"-shaped channel (also known as a "dogleg") act as a dam during a flood event, trapping upstream stormwater flows and creating a back-up with the potential to inundate the project site during extreme storms. Any tidally-driven flooding from the Bay that would be expected during a major storm event would have no impact on the project site while the culvert and dogleg formation remain in place. Therefore, even at 2100, the risk of flooding would be driven by upstream stormwater, and the BFE would remain +17.67 feet NAVD88.

However, the City of Hercules plans to continue restoration activities on Refugio Creek, possibly within the next several years as funding allows. This restoration work would include removal of the culvert and the dogleg formation, creating more natural hydrological conditions for the creek. The effect of such work would be to eliminate the current condition where upstream storm waters back-up at and overtop the culvert, thus greatly reducing the potential for storm-event flooding at the project site. With the culvert and dogleg formation removed, the potential for storm-driven floods at the project site would be reduced. The current BFE under this condition would be +13.08 feet NAVD88, more than four feet below the BFE as it exists today. With the culvert and dogleg removed, as sea levels rise over time, the effect of tidally driven flood events would present increasing risk of coastal flooding at the project site. As projected by the applicant's consultants, the BFE at the project site would be +13.17 feet NAVD88 in 2050 and +15.09 feet NAVD88 in 2100. Therefore, while flood risk is projected to exist at the project site during an extreme (1 percent annual chance of occurrence) storm event at the end of century, when occasional overtopping of the Creekside Trail could occur, the flood risk presented by a fully-restored Refugio Creek would be less than it is at the site today.

- b. **Project Resiliency and Proposed Adaptation Response.** The proposed public access improvements at risk from occasional extreme flooding (i.e., the Creekside Trail, seating areas, trash receptacles, etc.) are anticipated to be resilient to occasional inundation. In such an event, the parallel elevated walkway is available to the public as an alternative to the Creekside Trail and would allow the public to transverse the site and avoid the temporarily flooded portions of the trail.

The applicant has identified two strategies to allow future adaptation in the event that flooding should become regular enough to warrant such a response. The first strategy would be to widen the elevated pathway from six to ten feet in width, increasing the area that could be used by pedestrians and bicyclists should the Creekside Trail be unpassable. The second strategy would be to raise the elevation of the Creekside Trail, which would require coordination with the City as only the proposed 1-foot-extension of the trail falls within the applicant's property. The applicant has not proposed a threshold event that would result in implementation of one of these responses, either of which would require BCDC review and approval.

3. **Appearance, Design, and Scenic Views.** The Bay Plan policies on Appearance, Design, and Scenic Views state, in part: "All Bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay. Maximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas, from the Bay itself, and from the opposite shore." These policies also state, in part: "Shoreline developments should be built in clusters, leaving open area around them to permit more frequent views of the Bay. Developments along the shores of tributary waterways should be Bay-related and should be designed to preserve and enhance views along the waterway, so as to provide maximum visual contact with the Bay."
 - a. **Existing Scenic Views.** The undeveloped site provides uninterrupted views of Refugio Creek and San Pablo Bay, including across the Bay to Napa, Sonoma, and Solano Counties.
 - b. **Proposed Public Views.** The project does not propose dedicated public view corridors through the project site from the nearest public thoroughfare to Refugio Creek. The proposed elevated walkway and other shared public spaces make use of low walls, fences, and railings, and landscaping to maintain views of the creek and the Bay.

II. Review Boards

- A. **Design Review Board.** The Design Review Board (Board) reviewed the proposed project at its June 5, 2017 meeting. The Board advised that: (1) the sense of welcome to the public could be improved at the edges of the project site; (2) the proposed width of the elevated trail is too narrow; (3) lighting should be incorporated along the trail between the staircases; (4) landings should be incorporated into the staircases; (5) the flooding risk should continue to be studied; and (6) the fence enclosing the Central Courtyard should be moved back from the stairs to create public access to the plaza.

In response to the Board's comments, the project design was refined, including by the following modifications: (1) the plazas at the eastern and western edges of the project site were redesigned to enhance the sense of public welcome and to provide additional seating and amenities; (2) the width of the elevated pathway was increased to six-feet in width; (3) the applicant proposed lighting options along the elevated portion of the

retaining wall and on the public staircases to provide sufficient ambient light to users of the trail; (4) the staircases were redesigned somewhat, creating more space for the public to sit and congregate; (5) the applicant provided a more thorough analysis of the potential for flooding at the project site; and (6) the gate restricting access to the Central Courtyard area, formerly located at the stairs, was moved back to create an open public plaza.

III. **Environmental Review.** In October 2011, the City of Hercules certified the Final EIR for the larger Hercules Bayfront Project, which allows for 1,392 residential units, 115,000 square feet of office uses, 90,000 square feet of retail uses, and 134,000 square feet of flex space on the Hercules Bayfront Project site, and includes Block N lot, the site of the proposed project. In January 2012, the City updated the maximum buildout allowed within different development blocks, including by increasing the density allowed at the Block N lot, but determined that no subsequent amendment to the 2011 certified EIR was required because the overall development potential did not exceed what was originally analyzed. The City of Hercules Planning Commission determined on May 1, 2017 that no subsequent EIR or negative declaration would be prepared as the proposed project does not include any substantial changes to the project described in the 2011 certified EIR that would require major revisions to the EIR, and filed a Notice of Determination that the project is in compliance with Section 21152 of the Public Resources Code.

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

1. Section 66602
2. Section 66632

V. **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. Vicinity Map, Hercules Bayfront Project Master Plan, and Existing Site Photos
- B. BCDC Jurisdiction, 2016 versus Current
- C. Hercules Waterfront District Master Plan Civic Space Regulating Plan
- D. Overall Site Plan
- E. Western Trailhead Plaza Site Plan
- F. Central Courtyard Site Plan and Section View
- G. Eastern Plaza Site Plan
- H. Section View, Projected Flood Risk
- I. Architectural Renderings