San Francisco Bay Conservation and Development Commission
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TO: Commissioners and Alternates

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SUBJECT: **Staff Recommendation on Hercules Development Partners, LP's BCDC Permit Application No. 2017.002.00 for Hercules Bayfront Creekside Apartments**
(For Commission consideration on September 7, 2017)

Recommendation Summary

The staff recommends approval of BCDC Permit Application No. 2017.002.00 to Hercules Development Partners, LP for the development of Hercules Bayfront Creekside Apartments and associated public access amenities, which, as conditioned, will authorize the following activities within the Commission's 100-foot shoreline band jurisdiction:

1. Construction of 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. Construction of an approximately 19,380-square-foot public access area, including four hardscape plazas (totaling approximately 7,950 square feet), a 6-foot-wide elevated walkway (approximately 2,660 square feet and 240 linear feet), a 1-foot-wide extension of an existing shoreline trail ("Creekside Trail") (approximately 500 square feet and 725 linear feet), landscaped areas (approximately 8,000 square feet), and various public amenities, including a restroom, seating, trash receptacles, bicycle racks, and interpretive signage.

Project development is scheduled to commence in October 2017 and proceed over an 18-month period, until approximately April 2019. The project, as conditioned, will result in approximately 19,400 square feet of dedicated public access (approximately 20 square feet of which will be located outside BCDC's 100-foot shoreline band jurisdiction) along the Refugio Creek shoreline, in the City of Hercules, Contra Costa County.

Staff Recommendation

The staff recommends that the Commission adopt the following resolution:

I. Authorization

A. Subject to the conditions stated below, the permittee, Hercules Development Partners, LP, is granted permission to do the following at the lot bound by Bayfront Boulevard to the northwest, John Muir Parkway to the southeast, and Refugio Creek to the south, in the City of Hercules, Contra Costa County.

1. **Within the 100-foot shoreline band:**

a. **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

b. **Public Access.** Construct, use, and maintain in-kind an approximately 19,380-square-foot public access area, including four hardscape plazas and two paved seating areas (totaling approximately 7,950 square feet), a 6-foot-wide elevated walkway (approximately 2,660 square feet, and 420 linear feet), a 1-foot-wide extension to the existing Creekside Trail (approximately 500 square feet, and 725 linear feet), landscaped areas (approximately 8,000 square feet), and public access amenities, including a publicly accessible restroom, seating, trash receptacles, bicycle racks, and interpretive signage.

B. **Permit Application Date.** This authority is generally pursuant to and limited by the application dated January 27, 2017, including all accompanying and subsequently submitted correspondence and exhibits, subject to the modifications required by conditions hereto.

C. **Deadlines for Commencement and Completion of Authorized Activities.** Work authorized herein must commence prior to October 1, 2019, or this permit will lapse and become null and void. All work must be diligently pursued to completion and must be completed within two years of commencement or by October 1, 2021, whichever is earlier, unless an extension of time is granted by amendment of the permit. Ongoing in-kind repair and maintenance of the facilities authorized herein is allowed as long as these facilities remain in place and for the uses described herein.

D. **Public Access.** The project results in public access improvements within an approximately 19,400-square-foot (0.45 acre) area within and outside the Commission's jurisdiction as identified on Exhibit A and further described in Special Condition II.B, below.

Table 1. Required Public Access Area (not including all amenities)

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

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

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. **Specific Plans and Plan Review**

1. **Construction Documents.** The improvements authorized herein shall be built generally in conformance with the following documents:

   "Site Plan," "Building Sections, Sectors A & B," "Building Sections, Sectors B, C & D," "Layout Plan-Key Plan," "Layout Plan-Enlrg 1," and "Layout Plan-Enlrg 2," prepared by GGLO Design (Architect) and WRT Planning and Design (Landscape Architect), dated July 24, 2017.

   The permittee is responsible for assuring that all 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.

2. **Construction Documents Review and Approval.** No work whatsoever shall commence pursuant to this permit until final construction documents regarding authorized activities are approved in writing by or on behalf of the Commission. All documents are reviewed 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 carry out the project authorized herein in a manner consistent with the plans referred to in Special Condition II.A.1 of this permit.

a. **Document Details.** All construction documents shall be labeled with: Mean High Water line or the upland extent of marsh vegetation no higher than +5 feet above Mean Sea Level and the tidal datum reference (NAVD88 or, if appropriate, Mean Lower Low Water (MLLW)); 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;

b. **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 implemented in accordance with the approved criteria and in substantial conformance with the approved documents. 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. **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;

d. **Reconsideration of Plan Review.** The permittee may request reconsideration of a plan review action taken pursuant to this special condition within 30 days of a plan review action by submitting a written request for reconsideration to the Commission's Executive Director. Following the Executive Director's receipt of such a request, the Executive Director shall respond to the permittee with a determination on whether the plan review action in question shall remain unchanged or an additional review and/or action shall be performed by or on behalf of the Commission, including, but not limited to, an amendment to the permit and/or consultation with the Commission's Design Review Board; and

e. **Construction.** The final plans submitted pursuant to this condition shall generally conform to Exhibit A to this permit. Final plans for the construction of the structures authorized herein shall be prepared and submitted for Commission review as described below. No changes to the design of the project shall be made without the prior written approval of the Commission staff.

3. **Foundation Layout Inspection**

a. **Written Request.** Prior to constructing any building forms for any structure that will be located in or adjacent to BCDC's 100-foot-wide shoreline band or required public access or open space area, the permittee shall request in writing an inspection by the Commission staff of the foundation layout as it has been surveyed and staked in the field relative to Mean High Water (MHW) or 5 feet mean sea level in marshland;

b. **Certificate of Foundation Layout Inspection.** Within five working days of receipt of the written request for an inspection, the Commission's staff will inspect the foundation layout as it has been surveyed and staked in the field for any structure that will be located in or adjacent to BCDC's 100-foot-wide shoreline band or required public access or open space area. The permittee shall not commence construction of the forms or pour the foundation until the staff has confirmed in writing that the foundation layout is consistent with the terms and conditions of the permit by providing the permittee with a Certificate of Foundation Layout Inspection; and

c. **Responsibility of Permittee.** If the staff is unable to perform this inspection within the 5-day period, the permittee may commence such work, but the staff's inability to complete such an inspection does not relieve the permittee of the responsibility to provide public access areas and build any structures (the project) in accord with the approved plans.

B. **Public Access**

1. **Area.** The approximately 19,400-square-foot area (0.45 acres) along approximately 440 linear feet of shoreline, as generally shown on Exhibits A through D, shall be made available exclusively to the public for unrestricted public access for walking, bicycling, sitting, viewing, picnicking, and related purposes. If the permittee wishes to use the public access area for other than public access purposes, it must obtain prior written approval by or on behalf of the Commission. The overall proposal for public access for this project includes (approximately):

   New public access in the shoreline band: 19,380 square feet

   New public access outside of the shoreline band: 20 square feet

2. **Permanent Guarantee**. Prior to the commencement of any grading or construction activity, 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 the public to the 19,400-square-foot public access area. 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 Contra Costa County and shall include a legal description of the property being restricted and a map that clearly shows the shoreline (Mean High Water Line or 5 feet above Mean Sea Level if marsh is present), 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 improvements, as generally shown on attached Exhibit A and described herein:

a. An approximately 1-foot-wide expansion of the northern edge of the existing Creekside Trail in the area between the sidewalk at Bayfront Boulevard and the sidewalk at John Muir Parkway, totaling approximately 500 square feet and resulting in widening the trail from approximately 14- to 15-foot-wide, and lighting;

b. An approximately 420-foot-long and no less than 6-foot-wide universally accessible elevated path with at-grade connections to the Creekside Trail, extending from the eastern seating area along the Creekside Trail to approximatley 10 feet north of the western seating area along the Creekside Trail, with two stair connections to the Creekside Trail, and lighting;

c. Hardscaped areas totaling 7,950 square feet, including an approximately 623-square-foot “West End Trailhead Plaza,” an approximately 2,049-square-foot “Central Courtyard,” an approximately 1,914-square-foot “Moorish Garden Plaza,” an approximately 2,635-square-foot “Eastern Plaza,” an approximately 496-square-foot paved seating area adjacent to the Creekside Trail, and an approxmiately 236-square-foot paved seating area adjacent to the Creekside Trail;

d. Landscaped areas totaling approximately 8,000 square feet;

e. At minimum, 755 linear feet of seatwalls, four bike racks, three trash receptacles, one drinking fountain/dog watering station, one dog bag dispenser, one interpretive sign, and two movable tables with chairs which shall be free of branding or logos;

f. At the Eastern Plaza in the general location of the movable tables with chairs, at least one “Public Seating” sign;

g. At least six “Public Shore” public access signs, inlcuding at least one each at the West End Trailhead Plaza, Central Courtyard, Moorish Garden Plaza, Eastern Plaza, western Creekside Trail seating area, and eastern Creekside Trail seating area.

No later than five years after the date of occupancy of the project’s first residential unit, the permittee shall install the following improvements, as generally shown on attached Exhibit A and described herein:

h. One publicly accessible restroom at the ground floor of the eastern-most building of the project, with a dedicated entryway (i.e., separate from the main entrance to any commercial establishment), to be open daily from 9 a.m. to sunset.

i. At least one “Public Restroom” sign at the entrance to the publicly accessible restroom indicating the presence of the restroom and its hours of operation.

Such improvements shall be consistent with the plans approved pursuant to Condition II.A of this authorization and substantially conform to the plans entitled “BCDC Permit 2017.002.00,” dated August 21, 2017, prepared by GGLO Design.

5. **Maintenance**. The areas and improvements within the total 19,400-square-foot area 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; replacement of any trees or other plant materials that die or become unkempt; repairs or replacement as needed of any public access amenities such as signs, benches, drinking fountains, trash containers and lights; periodic cleanup of litter and other materials deposited within the access areas; removal of any encroachments into the access areas; and assuring that the public access signs remain in place and visible. Within 30 days after notification by staff, the permittee shall correct any maintenance deficiency noted in a staff inspection of the site.

6. **Assignment.** 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 new 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.

7. **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.

8. **Construction Operations and Staging.** Staging areas for construction shall not occur within the Creekside Trail corridor. All work areas visible from the public trail shall be appropriately screened and fenced and any construction equipment shall be operated in a manner to ensure that impacts to public access areas are minimized. The permittee shall place appropriate signage on either side of construction areas, as needed, to alert the public of the work, advising caution and potential delays.

   In the event that closure of the Creekside Trail is required for a limited period to allow for work authorized herein to expand the width of the trail, the permittee shall coordinate with the City of Hercules and place signage indicating when public access areas may be closed and re-opened, and indicate the location of alternative routes around the construction.

9. **Sea Level Rise Adaptation Planning and Implementation.** No later than such time as the Mean Higher High Water (MHHW) elevation of Refugio Creek located adjacent to the project site reaches +11.04 feet NAVD88 (55 inches higher than the current MHHW elevation of +6.46 feet NAVD88), the permittee or its assignees shall apply to the Commission for an amendment to this permit (or other appropriate authorization) to conduct development associated with implementation of an adaptation strategy identified in the "Project Description," dated July 21, 2017, submitted as part of its application (e.g., raising the grade of the Creekside Trail or expanding the elevated walkway) or to conduct development associated with implementation of an alternative plan that results in the provision of a public access, which is equivalent in area and/or scope than that required in the originally-permitted project.

III. Findings and Declarations

This authorization is given on the basis of the Commission's findings and declarations that the work authorized herein is consistent with the McAteer-Petris Act, the *San Francisco Bay Plan* (Bay Plan), the California Environmental Quality Act (CEQA), and the Commission's amended coastal zone management program for San Francisco Bay for the following reasons:

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 No. 6 requires that access provided as a condition of development be permanently guaranteed. Bay Plan Public Access Policy No. 7 states, in part, that "the 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." Bay Plan Public Access Policy No. 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 ten-foot-wide asphalt "Creekside Trail" (with 2-foot-wide decomposed granite shoulders), which is owned and maintained by the City of Hercules ("City"), provides continuous shoreline public access along the southern boundary of the project site and connects to the public sidewalk at Bayfront Boulevard and John Muir Parkway. Creekside Trail is part of a planned network of trails throughout the City.

   A 2008 amendment to the Hercules Waterfront District Master Plan ("HWDMP") form-based code outlines plans for approximately 23 acres of open space within and adjacent to the Hercules Bayfront Project, which will be developed in conjunction with various phases of the larger Hercules Bayfront Project. The most significant open space planned as a part of that effort and located in the vicinity of the project site is "Creekside Park" planned for development at Block K adjacent to Refugio Creek, north of the project site. The future Creekside Park will be constructed by the City and, while no minimum area is necessarily proposed by the form-based code, the park dimensions are required to be 25 feet wide (minimum) and 200 feet wide (maximum). West of the project site and adjacent to the Bay, an above-grade crossing over the Union Pacific Rail Road (UPRR) tracks is planned to be built that will connect a planned Waterfront District to 11 acres of open space planned for development at Hercules Point.

b. **Required Public Access.** The subject project will result in the development of 172 residential units for approximately 240 residents, and 6,200 square feet of commercial/retail space. The project includes approximately 19,400 square feet of publicly-accessible area and amenities, 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 public access area will be improved with hardscaped elements (i.e., trails, walkways, and plazas, totaling 11,400 square feet), and the remaining roughly 40 percent (8,000 square feet) will be planted or landscaped. The following public access improvements are required, as shown on Exhibits A through D:

i. **Creekside Trail Edge Extension and Seating.** The existing Creekside Trail will be widened by 1 foot (from 14 to 15 feet), and 10 seatwalls will be built into 120 non-consecutive feet of the trail's adjoining retaining wall.

ii. **Trailside Seating Areas.** Two paved seating areas will be provided directly adjacent to and flush with the widened Creekside Trail, at the eastern and western ends of the site. The approximately 236-square-foot western seating area will include a 12-foot-long seatwall and one trash receptacle (Exhibit B). The approximately 496-square-foot eastern seating area will include one bench, one trash receptacle, and one bike rack (Exhibit D).

iii. **Public Plazas.** Public plazas totaling approximately 7,220 square feet will be provided, including: the approximately 623-square-foot "West End Trailhead Plaza" (Exhibit B); the approximately 2,049-square-foot "Central Courtyard" (Exhibit C); the approximately 1,914-square-foot "Moorish Garden Plaza;" and the approximately 2,635-square-foot "Eastern Plaza" (Exhibit D). Within the various plazas the following improvements will be provided: 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.

At the Eastern Plaza, which faces onto ground-floor retail/commercial, moveable tables with chairs will be provided. Special Condition II.B.4 requires that a minimum of two movable tables and chairs are provided, free of logos or branding associated with a retail establishment, and that at least one "Public Seating" sign is prominently posted. These measures are necessary to ensure the seating, if placed adjacent to a retail operation such as a café, feels open and accessible to all users. At the Eastern Plaza's ground-floor retail/commercial space, a publicly accessible restroom with a dedicated entryway will also be provided. The exact location of the publicly accessible restroom will be determined when the actual floor plans for the retail tenants are completed. The permittee envisions that the moveable chairs and restroom will be provided by a retail tenant. However, if there is no tenant at any given time, the permittee is responsible for ensuring that

these improvements are provided at all times (from at least from 9 a.m. to sunset daily), as required by Special Condition II.B.4. The restroom is required to have a separate, signed entryway from the main entryway to any retail establishment to ensure the public can discern that it is open to all, not only patrons of the retailer.

iv. **Elevated Walkway.** An approximately 420-foot-long, six-foot-wide public walkway adjacent to the front entryway of the ten townhouses will connect the public plazas. The elevated walkway will be located approximately 4 to 5 feet above the Creekside Trail, separated by a terraced landscaped retaining wall. The walkway will run parallel to the Creekside Trail, but at a higher elevation: +19 feet (NAVD88) versus +14 feet (NAVD88) at the Creekside Trail's lowest points. The walkway will provide an additional and elevated alternative public connection running the length of the site. Stairs and at-grade connections will link the elevated walkway and Creekside Trail. The at-grade connections and accessible slope of the elevated walkway will allow for barrier-free connections to the public access areas on the site.

Additional open space will 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 will restrict access to the private interior space. No free public access parking is provided 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.

As stated above, Bay Plan Public Access Policy No. 6 requires that access provided as a condition of development be permanently guaranteed. Special Conditions II.B.2 and II.B.3 require the recordation of an instrument to provide for the permanent dedication of the public access areas and create legal rights in favor of the public for public access.

The project is required to include the public access areas and improvements as described above and in Special Conditions II.B.1 and II.B.4. The requirements of Special Condition II.A are included to ensure that public access is constructed in a manner consistent with the BCDC Application and the authorization and requirements of this permit. All of the public access improvements shall be subject to final plan review approval by BCDC staff, pursuant to Special Condition II.A.2. Special Condition II.B.5 requires maintenance of the public access amenities to ensure maximum feasible public access for the life of the project, including by future assignees of the permit as required by Special Condition II.B.6. Special Condition II.B.7 allows for the establishment of limited rules and restrictions for the public access required by this permit, subject to approval by or on behalf of the Commission.

Because the project will require development activities directly adjacent to the City's existing Creekside Trail, Special Condition II.B.8 requires the permittee to avoid and minimize potential adverse impacts to the existing public access, including by providing a signed detour for trail users in the event that limited closure of the trail is required.

c. **Anticipated Public Access Demand.** In determining whether the project will 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 project.

The subject project is the first private development within the larger Hercules Bayfront Project. According to the Hercules Bayfront Project's Final Environmental Impact Report (EIR) certified in October 2011, at full buildout, the total Hercules Bayfront Project (42 acres) is programmed to 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 the subject permit application, the project at Block N will provide 172 of those residential units, with the capacity to house 240 residents, and approximately 6,200 square feet of the total commercial space.

The employment, housing and population growth associated with the 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 adjacent to 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 is planned to greatly enhance this access). The growth associated with these projects is also expected to place higher demand on the project site's Creekside Trail and, one 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 public access improvements provided represent the maximum feasible scope and type consistent with the subject mixed-use project.

This project will 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., 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 required public improvements, public access will 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 the 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 required public access, given the subject 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 required of the permittee (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 Phoenix Commons, 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 expansion to the Executive Inn hotel 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 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 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
Hercules Bayfront Creekside Apartments, BCDC Permit 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 permittee 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 permittee to be of relatively limited public benefit given the project site's proximity to the Bayfront Avenue bridge, and infeasible due to cost. The permittee 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 required public access included as part of this project evolved as the design of the project was 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) required herein. 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. The gate separating the public and private spaces will designed to provide visual connections between the two spaces. 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 elimination of fenced-in patios

originally proposed 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 provided as part of the project since the original application was submitted are a publically accessible restroom and the Moorish Garden Plaza.

e. **Conclusion.** The Hercules Waterfront District Master Plan (HWDMP) envisions a network of open spaces, including shoreline parks, that, once complete, will greatly enhance the experience of the public at the Hercules Waterfront, including along Refugio Creek. Significantly, the HWDMP requires future development of a Creekside Park on the lot directly north of the subject project, a significant public access amenity, which can be expected to complement the public improvements provided by the subject project. However, the Commission may only consider the subject project, and not anticipated future improvements, in making its determination about whether the maximum feasible public access is provided consistent with the project.

The Commission finds that the public access provided for the subject project is less in terms of its total area than most comparable shoreline projects approved by the Commission given the intensity of the development and the demands its residents, employees, and patrons will place on the shoreline. However, given the public access improvements that exist on the shoreline directly adjacent to the subject project, namely the Creekside Trail, a significant public need has already been met by the City of Hercules.

The existing City-owned Creekside Trail, completed in 2016, is a significant shoreline improvement in good condition that provides essential and uninterrupted public access along the shoreline of Refugio Creek. The public access provided by the subject project complements and enhances the existing shoreline access along Refugio Creek by expanding the width of the existing trail, and adding seating areas, interpretive signage, a secondary elevated path, well-designed public plazas, and a guaranteed publicly accessible restroom.

Under different circumstances, if an existing shoreline trail were not already in place, and if the subject project's improvements did not provide the degree of public benefit that is achieved through amenities such as well-designed plazas and a publicly accessible restroom, the Commission would not have accepted the relatively small area and, in places, the narrow 40-foot-width of the public access along the shoreline. However, the access provided by the subject project enhances the existing Creekside Trail by addressing unmet public needs. The subject project adds a significant amount of public seating and several distinct and well-designed public plaza

areas. The plazas provide a destination for trail users, a place to rest or engage in less active forms of recreation, and an elevated vantage point from which to view Refugio Creek. The inclusion of a guaranteed publicly accessible restroom is an important public amenity in short supply on the Bay shoreline that will enhance the experience of users of the Creekside Trail and nearby Bay Trail.

Therefore, as conditioned, the Commission finds that the public access provided is the maximum feasible consistent with the project, including in terms of the scope and type of public access it provides.

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. 5, 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 No. 6 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 application materials for this permit included a memorandum prepared by BKF Engineers, dated May 24, 2017, which evaluated the potential for flooding of Refugio Creek at the project site: today, at mid-century (2050), 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) will 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 at 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 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.

A unique condition exists in the vicinity of and at the project site, in that flood risk is magnified by the presence of a culvert that exists 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 is 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 plans to continue restoration activities on Refugio Creek, possibly within the next several years as funding allows. This restoration work includes removal of the culvert and the dogleg formation, creating more natural hydrological conditions for the creek. The effect of such work will 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 will present increasing risk of coastal flooding at the project site. As projected by the permittee'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 exists 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 occurs, the flood risk presented by a fully-restored Refugio Creek would be less than it is at the site today.

b. **Project Resiliency and Adaptation Response.** The required public access improvements at risk from occasional extreme flooding (i.e., the Creekside Trail extension, 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 will allow the public to transverse the site and avoid the temporarily flooded portions of the

trail. In the event that occasional flooding of any portion of the required public access area does occur, Special Condition II.B.5 requires that the permittee or its assignees correct any resultant damage or maintenance deficiencies.

The permittee identified two strategies to allow future adaptation in the event that flooding should become regular enough to warrant such a response. The first strategy is 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 is to raise the grade of the Creekside Trail, which will require coordination with the City as only the 1-foot-extension of the trail falls within the permittee's property.

Should the City of Hercules undertake planned work to further restore Refugio Creek, as discussed above, the risk of flooding at the site, even accounting for sea level rise, is anticipated by the permittee to be less at the end of the century than it is today. However, if sea levels rise more quickly than is anticipated, the proposed sea level rise adaptation strategies or another equivalent approach may need to be implemented to assure maximum feasible public access prior to the end of the century. Special Condition II.B.9 requires that when average annual sea level rise of 55 inches compared to 2000 levels has occurred, and the MHHW elevation of Refugio Creek reaches +11.04 feet NAVD88, the permittee or its assignees shall submit an application to the Commission for an amendment to this permit or approval to conduct any development necessary to implement its chosen sea level rise adaptation strategy.

c. **Conclusion.** The project provides public access areas that are anticipated to be resilient to and remain safe in the event of occasional flooding today and in the future. In addition, if significant adverse impacts from sea level rise and shoreline flooding cannot be avoided during the project's lifetime, the permittee shall implement one of its chosen adaptation responses or an alternative acceptable to the Commission if necessary to ensure that the required public access remains viable, or that equivalent access is otherwise provided. The Commission therefore finds the project, as conditioned, consistent with Bay Plan policies on Public Access related to sea level rise and flooding.

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. **Resulting Public Views.** The permittee did not propose to establish dedicated public view corridors through the project site from the nearest public thoroughfare to Refugio Creek, however the views of the Creek from the existing Creekside Trail will not be affected by the project. The elevated walkway and other shared public spaces required by this project make use of low walls, fences, and railings, and landscaping to maintain views of the creek and the Bay.

c. **Conclusion.** The project has been designed to preserve views along the shoreline as much as possible given the location of the residential buildings, and enhances views through the addition of the elevated walkway and other public access areas that provide new improved locations from which to view Refugio Creek. The Commission finds the project is consistent with Bay Plan policies on Appearance, Design, and Scenic Views.

B. **Review Boards**

1. **Design Review Board.** The Design Review Board (Board) reviewed the 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 permittee 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 permittee 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.

C. **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 subject 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 subject 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.

D. **Conclusion**. For all the above reasons, the Commission finds, declares, and certifies that, subject to the Special Conditions stated herein, the project authorized herein is consistent with the McAteer-Petris Act, the *San Francisco Bay Plan*, the Commission's Regulations, the California Environmental Quality Act, and the Commission's Amended Management Program for the San Francisco Bay segment of the California coastal zone.

IV. Standard Conditions

A. **Permit Execution**. This permit shall not take effect unless the permittee executes the original of this permit and return 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. **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.

C. **Permit Assignment**. The rights, duties, and obligations contained in this permit are assignable. When the permittee transfers 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/transferor and the transferee shall execute and submit to the Commission a permit assignment form acceptable to the Executive Director. An assignment shall not be effective until the assignee executes and the Executive Director receives an acknowledgment that the assignee has read and understands the permit and agrees to be bound by the terms and conditions of the permit, and the assignee is accepted by the Executive Director as being reasonably capable of complying with the terms and conditions of the permit.

D. **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.

E. **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.

F. **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.

G. **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.

H. **Commission Jurisdiction**. Any area subject to the jurisdiction of the San Francisco Bay Conservation and Development Commission under either the McAteer-Petris Act or the Suisun Marsh Preservation 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.

I. **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.

J. **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 its assignee 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 its assignee if the permit has been assigned.

K. **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 its assignee 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.

L. **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.