

**RESOLUTION #19-03  
FOR APRIL 1, 2019, PLANNING COMMISSION**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HERCULES APPROVING DESIGN REVIEW PERMIT #DRP 19-01 FOR BAYFRONT BLOCKS M-P & O (AKA “THE WAREHOUSE” AND “THE ANNEX” RESPECTIVELY) CONTAINING A TOTAL OF 476 UNITS LOCATED WITHIN PARCELS 21, 27, AND 28 OF THE HERCULES WATERFRONT VESTING TENTATIVE MAP, WITHIN A PORTION OF ASSESSOR’S PARCEL NUMBER 404-730-005-0, BOUNDED ON THE WEST BY JOHN MUIR PARKWAY, ON THE SOUTH BY BAYFRONT BLOCKS Q & R, ON THE EAST BY BIO-RAD LABORATORIES AND THE NORTHSORE BUSINESS PARK, AND ON THE NORTH BY SAN PABLO BAY. BLOCKS M-P CONSISTS OF 325 MULTI-FAMILY RESIDENCES (15 OF WHICH ARE AFFORDABLE) IN TWO MULTI-STORY STRUCTURES ON A 3.29-ACRE SITE WHILE BLOCK O CONSISTS OF 151 MULTI-FAMILY RESIDENTIAL UNITS (10 OF WHICH ARE AFFORDABLE) IN A SINGLE, FOUR-STORY BUILDING. THE PROJECT INCLUDES INDOOR AND OUTDOOR RESIDENTIAL AMENITIES (WHICH HAVE SOME CONVERTIBILITY) WITH AN ADJOINING NEIGHBORHOOD PARK, NEIGHBORHOOD SQUARE, AND PASEOS AND A TOTAL OF 552 ON-SITE STRUCTURED PARKING SPACES.**

**WHEREAS**, in 2000 the City adopted the “Waterfront District Master Plan” (WDMP) and amended it in September 2001. In 2008 the “Waterfront Now Initiative” was presented to the City Council, and the Council adopted without alteration the language of the ballot initiative by adding “Section 4” to the original WDMP (often called the Bayfront Waterfront Plan, or the Initiative Plan, or in this approval the HWDMP) via Initiative Ordinance 440 on July 22, 2008; and

**WHEREAS**, the Hercules Bayfront Draft and Final EIR documents (collectively, the “EIR”) were certified by the City Council through Resolution No. 11-140 on December 13, 2011. The EIR evaluated development of the HWDMP area in accordance with a development proposal known as the Bayfront Project. The Bayfront Project divided the HWDMP area into three Sub-Areas, referred to as The Bowl (containing Blocks A, B, and C), Bayfront Boulevard (containing Blocks D–J), and The Village (containing Blocks K–R), which together allow for a total of 1,392 residential units, 115,000 square feet of non-flex office space, 90,000 square feet of non-flex retail space, and an additional 134,000 square feet of flex space (which can convert to 134 units of residential use); and

**WHEREAS**, further amendments to the Initiative, General Plan Amendment, updates to exhibits, and refinements to the HWDMP document were adopted through Council Ordinance 464 on January 10, 2012, to conform the HWDMP to the EIR documents; and

**WHEREAS**, on March 13, 2012, the City Council approved a Vesting Tentative Map, a Vesting Development Agreement, and an [Implementing Development Agreement](#) (which was recorded June 15, 2012) covering the entire Bayfront area of the Waterfront District and establishing various rights and obligations between the owner and the City regarding development of the area; and

**WHEREAS**, the last minor amendment to the HWDMP was initiated by the City and approved by the owner by a Council Action taken on May 10, 2016, through Ordinance 494 to include the already developed Railroad Avenue Live–Work block for the sole purpose of using the T5-MST land use table to simplify the implementation of use permits; and

**WHEREAS**, Exhibit K of the Implementing Development Agreement outlines a Streamlined Design Review and Building Permit Process available to the project to be processed within certain time frames so long as the specific site proposal is consistent with the larger Bayfront Project Approvals, does not require a General Plan, Zoning Ordinance, or HWDMP amendment, is in conformity with the existing

environmental documents, and a Design Review process is carried out in line with Chapter 42 of the City Zoning Ordinance; and

**WHEREAS**, Exhibit A to this resolution contains Exhibit L from the Implementing Development Agreement which contains a complete list of Conditions of Approval that are applicable to the larger Bayfront Project that the developer is responsible for, with each condition applicable to this Blocks M”, “P” and “O” project identified with an asterisk; and

**WHEREAS**, Exhibit G of the Implementing Development Agreement (which is not contained herein) shows the City Public Improvements required to be carried out by the City as part of the larger Bayfront Project, with many of the public improvements already completed by the City; and

**WHEREAS**, on January 10, 2019, Ledcor Properties, Inc. (applicant) submitted to the City an application for design review approval of the proposed project to be constructed on Blocks “M,” “O,” and “P,” consisting of a total 476 residential apartment units (of which 30 are affordable), along with approximately 19,740 square feet of interior residential amenity space, 41,100 square feet of exterior on-site courtyard landscape and hardscape areas and 552 off street structured parking spaces, plus about 4,044 square feet of Neighborhood Square, 6,247 square feet of Paseo and 19,160 square feet of Neighborhood Park (with these exterior neighborhood spaces totaling 29,451 square feet of which 11,684 serve as EVA), all on a combined 4.47 net acres of private property land; and

**WHEREAS**, the proposed project is located within the Transit Village (a.k.a., “The Village”) planning subarea of the larger Hercules Waterfront District Master Plan (HWDMP), which consists of eight city blocks (Blocks K, L, M, N, O, P, Q & R) ; and

**WHEREAS**, in accordance with the California Environmental Quality Act (CEQA), City staff reviewed the EIR to determine whether the development proposal for Blocks M, O, and P is within the scope of the development program evaluated in the EIR, and staff’s analysis and findings are contained in the attached Exhibit C; and

**WHEREAS**, the Planning Commission held a duly noticed public hearing on April 1, 2019, to consider Design Review of the proposed project on Blocks M, O, and P, and after considering input from City staff, the applicant, and the public, the Planning Commission reviewed the project plans, evaluated the project’s conformance with various City codes, and considered the certified EIR and the required findings of the Design Review process; and

**WHEREAS**, the Planning Commission in reviewing this material finds that the proposed project will not result in any new, significant impacts that were not examined in the 2011 Certified EIR, and that none of the circumstances that would require preparation of an addendum or a subsequent or supplemental EIR under CEQA exists; and

**WHEREAS**, the Planning Commission Staff Report, dated April 1, 2019, incorporated herein by reference, describes and analyzes the subject application for Design Review Permit #DRP 19-01, and the Planning Commission concurs with staff’s analysis and findings regarding how the project meets the five required Design Review Findings that are contained in the attached Exhibit D; and

**WHEREAS**, the Planning Commission has received oral and written comments from the general public, property owners, and interested parties, and has thoroughly considered all above referenced reports, recommendations, and testimony, and used its independent judgment before making a decision or taking any action on the Project.

**NOW, THEREFORE BE IT RESOLVED THAT THE CITY OF HERCULES PLANNING COMMISSION FINDS:**

- The foregoing recitals are true and correct and made a part of this resolution by this reference.
- After due study, deliberation, and public hearing, the Planning Commission makes specific findings and determinations below which are supported by facts stated in the Planning Commission staff report of April 1, 2019, which are incorporated herein by reference, and the attached Exhibit D.
- The proposal would not be detrimental to the health, safety, welfare, and public interest of the City so long as the applicant adheres to the below Conditions of Approval and those listed in Exhibit A from previous Project Approvals and the attached approved drawings.
- The proposal is internally consistent and does not conflict with the purposes, regulations, and required findings of the Zoning Ordinance so long as the applicant adheres to the below Special Conditions of Approval and those contained herein as Exhibit A from previous Project Approvals and the attached approved drawings in Exhibit B.
- The Planning Commission finds that all elements, requirements, and below conditions for the 476-unit apartment complexes proposed on Blocks M, O, and P within the Bayfront “Village” subarea are a reasonable and appropriate manner of preserving, protecting, providing for, and fostering the health, safety, and welfare of the citizenry in general and the persons who work or visit or live in this development based on the Findings with Facts attached in Exhibit D supporting the five Design Review-related Findings, as well as information contained in the April 1, 2019, Planning Commission staff report.
- General underground utility considerations—including the location, type, and size—are not included in this approval. Review of exact locations, type, and size will be performed by Engineering as part of the final project design.
- Applicant agrees with the necessity of, and accepts all elements, requirements, and below conditions for the 476-unit apartment projects on Blocks M, O, and P (of which 25 units will be affordable with proportional unit mix) as reasonable and appropriate to preserve, protect, provide for, and foster the health, safety, and welfare of the citizenry in general and the persons who work or visit or live in this development in particular, based on the Findings with Facts attached in Exhibit D supporting the five Design Review-related Findings, as well as information contained in the April 1, 2019, Planning Commission staff reports.

**BE IT FURTHER RESOLVED THAT THE PLANNING COMMISSION MAKES THE FOLLOWING FINDINGS REGARDING THE PROPOSED DESIGN REVIEW PERMIT #DRP 19-01 FOR BLOCKS M, O, AND P IN ACCORDANCE WITH CHAPTER 42 OF THE ZONING ORDINANCE, SO LONG AS THE CONDITIONS OF APPROVAL AND THE DETAILS IN THE APPROVED DRAWINGS CONTAINED WITHIN THIS RESOLUTION ARE CARRIED OUT:**

- The approval of the design review plan complies with all provisions of Chapter 42, Design Review section of the City of Hercules Zoning Ordinance (Municipal Code Section 13-42), as well as other pertinent provisions of the Zoning Ordinance and applicable zoning and land use regulations, including, but not limited to, the Hercules General Plan as amended and any specific plan, such as the Hercules Waterfront District Master Plan (HWDMP).
- The approval of the design review plan is in the best interest of the public health, safety, and general welfare.
- General site considerations, including site layout, open space and topography, orientation and location of buildings, vehicular access, circulation and parking, setbacks, heights, walls, fences,

public safety, and similar elements have been designed to provide a desirable environment for the development.

- General architectural considerations, including the character, scale and quality of design, the architectural relationship with the site and other buildings, building materials, colors, screening of exterior appurtenances, exterior lighting and signing, and similar elements have been incorporated in order to ensure the compatibility of this development with its design concept and the character of adjacent buildings.
- General preliminary landscape considerations, including the location, type, size, color, texture and coverage of plant materials at the time of planting and after a five-year growth period, provision for irrigation, maintenance and protection of landscaped areas and similar elements have been considered to ensure visual relief, to complement buildings and structures, and to provide an attractive environment for the enjoyment of the public.

**BE IT FURTHER RESOLVED THAT THE PLANNING COMMISSION APPROVES DESIGN REVIEW PERMIT #DRP 19-01 FOR THE PROJECT SITES KNOWN AS BLOCKS M AND P FOR THE PROPOSED 325-UNIT APARTMENT COMPLEX AND FOR THE PROJECT SITE KNOWN AS BLOCK O FOR THE PROPOSED 151-UNIT APARTMENT COMPLEX, SUBJECT TO THE FOLLOWING PROJECT SPECIFIC CONDITIONS OF APPROVAL, PLUS THOSE CONDITIONS RESTATED FROM THE HERCULES BAYFRONT IMPLEMENTING DEVELOPMENT AGREEMENT, EXHIBIT L, ATTACHED HEREIN AS EXHIBIT A, IN CONFORMITY WITH THE DRAWINGS CONTAINED IN EXHIBIT B (DATED FEBRUARY 27, 2019).**

**LEGEND:**

DEPARTMENT with primary responsibility for implementing the listed conditions of approval:

(B) = Building; (CA) = City Attorney; (F) = Fire District; (PD) = Police Dept.; (PL) = Planning; (PW) = Public Works, (MMRP) = Mitigation Monitoring Report Program from 2011 certified EIR

- 1. Minor Modifications:** The project being built will substantially comply with the attached plans (dated February 27, 2019) for the Bayfront Blocks M–P & O Project as submitted for the April 1, 2019, Planning Commission meeting, with any changes approved by the Planning Commission, unless otherwise amended by action of the City Council. Minor modifications to the project may be requested by the Applicant/Owner and approved administratively by the City, in the reasonable discretion of the Planning Director. The decision on amendments must be based on the standards that applied to the original project approval, and a minor change can only be approved or conditionally approved if the Planning Director determines that the minor change is consistent with the spirit and intent of the original project approval and does not substantially change the effects of the approval on surrounding property. Minor modifications shall only be approved consistent with the provisions of the City of Hercules Zoning Ordinance, Contained within the Hercules Municipal Code Title 13, Chapter 46, “Minor Modifications.” (PL)(B)
- 2. Approval Period.** The approvals referred herein are each valid for two (2) years so long as site grading has commenced by that time. However, if site grading has not commenced by that time, these approvals shall be null and void. The approval period may be extended for one (1) additional year at the discretion of the Planning Commission by submitting a written request and paying the applicable fee for extension to the Planning Department prior to the expiration date, so long as it can be determined that the applicant has diligently pursued development of the proposed project. (PL)

- 3. Indemnity Requirement:** Failure by the Applicant/Grantee to object to any of the terms, conditions, requirements and obligations set forth in this Design Review Permit prior to the expiration of the appeal period (which is 10 business days of the mailing or posting of the approving resolution) shall constitute acceptance of all of the conditions and obligations imposed by the City on this permit. The Applicant/Grantee by said acceptance waives any challenges as to the validity of these conditions. Applicant/Grantee agrees to indemnify and defend the City, its agents, officers and employees, at Applicant/Grantee's own expense, against and from any claim, action or proceeding brought by any third party arising from or relating to the City's processing of Applicant/Grantee's development applications, the City's issuance of any of the approvals described in these conditions, and the Applicant/Grantee's implementation of and operations under the Design Review Permit, including but not limited to any claim, action or proceeding brought to attack, set aside, void or annul any of the City approvals described in these conditions, and any claim, action or proceeding brought against the City arising from or relating to Applicant/Grantee's development and operation of the project that is the subject of such City approvals. City shall promptly notify Applicant/Grantee of any such claim, action or proceeding of which City receives notice, and City will fully cooperate with Applicant/Grantee in the defense thereof. Applicant/Grantee's obligations under this condition shall include the obligation to reimburse the City for any court costs, reasonable attorney's fees and damage awards which the City may be required to pay as a result of any such action. City may, in its sole discretion, participate in the defense of any such claim, action or proceeding and may elect to be represented by counsel of the City's choosing at Applicant/Grantees' expense, and such participation shall not relieve the Applicant/Grantee of any of the obligations of this condition. This condition shall apply as written unless the Applicant's/Grantee's development proposal for Blocks M, P, and O is determined to be consistent with and to conform to the Hercules Waterfront District Master Plan such that the indemnity requirement contemplated hereby is specifically controlled by the Implementing Development Agreement.
- 4. Master Sign Program:** Prior to ordering or constructing any permanent signage, the property owner shall submit and receive Planning Director approval for an Administrative Design Review permit for signage.
- 5. Bio-Rad Hillslope Easement:** Developer shall reference the recorded quit claim deed document(s) extinguishing the hillslope easement area on the Final Map for Blocks M-P or O. With the construction of the large retaining walls between Bio-Rad and Blocks M-P, the design needs to account for the weight of mature redwood trees as they may impose a significant load on the retaining wall given the amount of water they take and their mature size.
- 6. Connection of EVA to Linus Pauling Drive:** In accordance with the Overall Bayfront Conditions #1 and #11, the Developer shall use best efforts to the reasonable satisfaction of the City Engineer to secure the necessary easements from the property owner to the north of the site (Bio Rad) in order to allow emergency vehicle access (EVA) from the modified terminus of Linus Pauling Drive to the Project's north property line, thereby linking a 75,000 lb. capacity EVA, as required by the Fire District, to Bayfront Loop (as generally shown on Exhibit B-Sheet C-2.00, and as previously approved for Bayfront Blocks Q & R, Sheets C-200 and C-201, included herein as Exhibit B5, to be refined with construction drawings to meet City Engineer and Fire District standards). The Developer shall pay for the full cost of constructing this "off-site" portion of the EVA, as well as the cost of reconfiguring Linus Pauling Drive, demolishing portions of the street, and potential modifications to grades in coordination and to the specifications required by the City Engineer. A 20-foot-wide "EVA easement" between the project and Linus Pauling shall be recorded prior to Certificate of Occupancy. If Developer is unsuccessful in obtaining the easement in the location shown, then the developer shall construct the connection to the proposed EVA from the terminus of Linus Pauling Drive, subject to inspection and approval by the City, which construction shall be completed prior to issuance of a Certificate of Occupancy for the Project.

- 7. Architecture Related - Exterior Materials:** Actual building material samples showing material and finish of key elements on the buildings shall be reviewed and approved by the Planning Director prior to building permit issuance. Material and color samples shall include—at a minimum—paint palette, brick veneer(s), painted stucco, smooth trowel plaster, cement board siding, metal storefront, lap siding, shingles, adhered tile, and roof shingles.
- 8. Location/Screening of Plumbing Vents:** Plumbing vents will exit the roof in zones relating to the plumbing stacks and plumbing walls. Where Block O buildings have gable roof forms, plumbing vents and other mechanical vents will not be on the street-facing side of the gable roof. Plumbing vents will be screened by the building parapets to the extent possible and subject to review and approval of Planning Director.
- 9. Bicycle & Motorcycle Parking:** Consistent with the City’s General Plan Circulation Element (Policy 1.D – Parking Requirements), the project being a transit-oriented developments shall provide 10% on-street bike racks and 20% onsite secured bike storage, based on total residential unit count. Thus, Blocks M–P shall provide secure onsite bike storage for at least 65 bikes and provide at least 33 on-street bike racks; Block O shall provide secure onsite bike storage for at least 30 bikes and provide at least 15 on-street bike racks. The specific type and location of ground level and parking structure/building level bike parking shall be subject to the review and approval of the Planning Director, with the exact location and specific type of bicycle parking depicted on drawings included with the Building Permit submittal. Additionally, 1% of all on-site vehicle parking shall be for motorcycles, which equates to 4 spaces in Blocks M-P and 2 spaces in Block O. (PL)
- 10. Parking:**

Security gates shall have fail safe features to allow egress should the system fail, meet fire and building code standards, and their locations shall be flexible in their design to not preclude the accommodation of potential shared parking in different layouts over time once the Parking District is formed by the City.

  - a. Public/Visitor & Guest Parking– 48 Spaces @ Blocks M-P (Level 1 Parking) and 16 Spaces @ Block O (Level P Parking):** The location of the vehicle gate(s) controlling access to the resident-only areas of the parking garages shall be located within the parking structure in such a manner so as to create a separate parking area containing a minimum of 48 visitor spaces at Blocks M–P and 16 spaces at Block O designated as “Public/Visitor Parking” that shall be accessible from 6:00 A.M. to 10:00 P.M. to the general public.
  - b. Resident/Guest Parking Allocation:** All spaces beyond the gated area shall be available to residents and their guests as allowed under the “Residential Parking Requirements” section of the HWDMP. As required by the Hercules Waterfront District Master Plan, specific parking space(s) may not be allocated to a specific residential unit or resident. Instead, tenants will be issued a parking pass that will allow them to park in on-site spaces not designated for public/visitor parking.
  - c. Pedestrian Safety at Driveway Entrances to Parking Garages:** Prior to occupancy, appropriate automatic warning devices, such as flashing lights installed on the pavement and at eye level, or alternate means as determined by the City, shall be installed at the vehicular entry/exit points for parking structures at Blocks M–P and Block O, to make pedestrians aware of the presence of vehicles entering/exiting the site. In addition, to the extent feasible, buildings located at the entry/exit points shall be designed to enhance site distance between vehicles entering/exiting the parking structures and pedestrians crossing those entry/exit points.

- d. **On-Street Parking:** The duration of parking allowed on any street parking spaces located on John Muir Parkway, Bayfront Loop, and on the EVA/private road between Blocks P and R shall be determined by the City, with all related signage, striping, and potentially parking meters funded by the applicant.
  - e. **Public Parking District:** Applicant shall work collaboratively with the City toward the formation of a Public Parking District that complies with all relevant provisions of the IDA. That process has commenced with the City's commissioning of a study, as envisioned in Exhibit H of the IDA (Parking Study). The Parking Study shall consider shared parking strategies and opportunities, with particular focus on utilizing a portion of the spaces in planned public and private parking structures and lots for shared parking, proximity to the Regional Intermodal Transportation Center (RITC), and the types of private developments that will participate in shared parking (e.g., single-family attached vs. multi-family residential vs. commercial/retail) in determining which portions of the overall development are most appropriate for shared parking. The City shall consult in good faith with the Applicant in the preparation of the Parking Study, provided that the City's obligation to consult with the Applicant shall not diminish or impair City's or Applicant's rights under the IDA. Applicant shall record an instrument against Blocks M-P and O prior to certificate of occupancy on any of these blocks that requires that those properties participate in the Public Parking District once it is formed. The Applicant understands and agrees that, with regard to the formation of a Public Parking District, the City retains its discretion to impose the same or a different condition, both retroactively with respect to Blocks M-P and O and in connection with the approval of future phases of the Applicant's development, in the event that the parties have not reached an agreement on the formation of a Public Parking District, so long as such discretion is exercised in a manner consistent with the IDA, the WDMP, and all other applicable laws and regulations. (PL)
  - f. **Electric Vehicle (EV) Parking:** The number of EV parking spaces in the garages shall be as required by 2016 CALGreen Code, currently required to be a minimum of 3% of the parking spaces within both parking structures at Blocks M-P and Block O. Thus, Blocks M-P shall provide at least 12 EV parking spaces, and Block O shall provide at least five (5) EV parking spaces. To the extent practical, parking spaces with EV plugs should be located away from high traffic areas, with the exact location and distribution of such spaces subject to the discretion of the Planning Director. EV parking spaces shall be shown on drawings included with the Building Permit submittal. (PL)
11. **Storm Water Basin "Fair Share":** Applicant has paid their fair-share contribution for the existing regional stormwater treatment facilities as part of the recently formed Community Facility District installed during the "Path To Transit" project, City Project Number 63001D, which serves multiple private parcels including the Hercules Waterfront District Transit Village area, in conformance with the Implementing Development Agreement and Vesting Tentative Map. Furthermore:
- a. Only untreated stormwater runoff shall be conveyed into the shared stormwater treatment basin and said flow shall not exceed the Developer's allotted portion of the basin. (PW)
  - b. On-site stormwater which has been treated in accordance with the Contra Costa Clean Water Program may be discharged into a City storm drain pipe if there is adequate capacity or water bodies if permits are obtained from the regulatory agencies and the design is approved by the City. (PW)
12. **Easement for Storm Drainage Maintenance:** Applicant shall provide an easement for City maintenance of storm drainage facilities, where applicable and as determined by the City, before building permit issuance. (PW)

- 13. Utility Pipe Sizes:** Utility pipe sizes to be shown and signed off by City Public Works Director as adequate before building permit issuance. (PW)
- 14. Sewer Cleanout:** A sewer cleanout shall be added in the Public Right of Way at the entrance to the private driveway between Blocks R and P. (PW)
- 15. Street Repair:** Should the developer cut into the newly constructed City streets, the Developer shall restore such streets to their condition prior to developers work and shall slurry seal and stripe (with thermoplastic) the adjacent streets in coordination with the City Engineer and Public Works when the project is completed. (PW)
- 16. Required Public Improvements:** The Developer is required to fund and construct all public improvements as depicted on the project plans, including Bayfront Loop road and any changes and/or repairs needed to the John Muir Parkway frontage in accordance with City of Hercules Design Standards and subject to the approval of the City Engineer. (PW)
- 17. Security Plan:** Security plans shall be prepared for the project that depict, among other things, the location, type, and orientation of security cameras to be located on the property, subject to City review and approval. Special attention shall be provided where the emergency vehicle access borders the Bio-Rad Laboratories property line. The security plan shall be reviewed and approved by City staff coordinating with the Police Department. (PD)
- 18. Pedestrian Access:** An accessible pedestrian route shall be provided between each primary building entrance and the public sidewalk, and between each primary building entrance and the disabled parking stalls designated to serve that building. The accessible route and all ramps shall comply with all current applicable ADA access requirements and City Standards. (PW)
- 19. Pedestrian Bulb-Outs:** Pedestrian bulb-outs shall be removed and replaced with crosswalks at each corner of Bayfront Loop to the extent allowed by Engineering in consultation with the Fire Department. (PW / F)
- 20. Refuse/Trash Collection:** A refuse collection plan shall be formulated, working with the refuse collection provider, Republic Services, to provide for efficient and effective trash/refuse collection and to ensure the project's future capacity to collect green/compost waste. On-street concrete aprons for servicing 4-yard front-loading trash & recycling containers shall be provided adjacent to the trash collection area for each apartment complex. The refuse collection plan shall be subject to Planning Director review and approval. (PW)
- 21. Graffiti Prevention and Control:** The Applicant/Developer shall maintain the site free of graffiti. Graffiti applied to any surface of the subject property shall be removed within forty-eight (48) hours of the Applicant/Developer being notified by the City. The City may remove the graffiti if the Applicant/Developer fails to remove the graffiti within forty-eight (48); the Applicant/Developer shall reimburse the City for the graffiti-removal work. (PL)
- 22. Participation in Street Lighting/Landscape District:** Developer shall either continue participation in the existing Lighting and Landscaping Assessment District No. 83-2 for the "Developed Property" rate or form another financing district acceptable to the City to finance the operation, maintenance, servicing and capital replacement costs associated with the landscaping and lighting in public right-of-way unless maintenance is provided by other means. (PW)



**23. Good Faith Coordination to Plan for Funding of City Infrastructure:** The parties shall in good faith coordinate with one another in an effort to plan for additional funds for development of City Infrastructure through the following non-exhaustive list of potential funding mechanisms:

- a) Use of financing provided by the California Infrastructure and Economic Development Bank (“CIEDB”), to the extent that any or all of the proposed infrastructure and parking costs are eligible and the City can qualify for such financing.
- b) Use of Industrial Development Bond (“IDB”) financing through the CIEDB, to the extent that any or all of the proposed infrastructure and parking costs are eligible and the City can qualify for such financing.
- c) Pledge of Transient Occupancy Tax should the development include hotels.
- d) Possible Creation of Community Service Districts if needed to meet operating costs.
- e) Possible creation of Community Facilities District.
- f) Formation of an Infrastructure Financing District, if that becomes feasible and, for some reason, tax increment is no longer available to the Agency.
- g) Such other new modes of financing which fits the needs of the Project which may emerge over the financing life of the Project.

**24. On-Site Maintenance:** The property owner or Homeowners Association (if and when formed) shall be responsible for the operation, maintenance, servicing, and capital replacement of all areas not operated and/or maintained by individual property owners. This includes all parking (but does not include those in public streets), landscaping, open space, streetlights, alleys, pedestrian paseos, and non-public areas held in common by the association, required for property maintenance. The property owner or association shall be responsible for enforcement of any recorded Covenants, Conditions, and Restrictions (CC&R) related to property maintenance.

**25. Move-in Plan.** A Move-in Plan shall be formulated and approved by the City to provide for efficient move-ins for residents that will not unduly block traffic on the Loop Road or John Muir Parkway and subject to Planning Director and City Engineer review and approval.

**26. Landscape on Podiums.** Courtyard landscaping over podium parking garages shall have enough space and depth in landscape planters to allow the growth and maintenance of healthy plants and trees, as determined by the City.

**27. Impervious Surfaces / Stormwater Treatment:** Prior to beginning construction of any impervious surfacing, permanent stormwater treatment facilities shall be constructed and in service.

**28. Construction Damage to Roadways:** Once building construction has been completed in the vicinity, applicant shall repair and restore damage to John Muir Parkway and Bayfront Boulevard caused by construction within the Bayfront Project limits. As needed, restoration shall include but is not limited to repairs to all damaged curbs and gutters, replacement of damaged landscaping, irrigation repairs, grinding, asphalt concrete overlay, and striping of said streets. Developer shall also repair any damage caused by truck traffic to John Muir Parkway from Bayfront Boulevard to San Pablo Boulevard. Repairs may include but are not limited to patching, slurry sealing, striping, grinding, and asphalt concrete overlay, as needed.

**29. Fire District Requirements:** Applicant/Developer shall conform to the applicable requirements of the Hercules–Rodeo Fire District in accordance with the provisions of the CA Fire Code (CFC), Building Code (CBC), local ordinances, and adopted standards. (F)

- a. Fire Department access roads shall be provided to within 150 feet path-of-travel distance of all portions of first floor exterior walls of all structures and hazardous materials use or storage areas. Access roads shall be designed to current Fire Department standards: 20 feet wide minimum for structures two-stories or less in height, and 26 feet wide minimum (with Aerial Apparatus Access compliance) for structures more than 30 feet in height. Turning radius 25 feet inside and 45 feet outside. Dead-end private access roads more than 150 feet in length shall have an apparatus turn-around per current Fire Department standards. (CFC 503)

*The issues below require resolution during the Building Permit review.*

- b. A Fire Flow Analysis including proposed building areas, type of construction, and calculated available fire flow at the proposed fire hydrants shall be provided to the Fire Department for review and approval concurrent with submittal of grading plans. Minimum adjusted (50% sprinkler credit) Fire Flow for this commercial project is estimated at 4,000 gallons per minute with 20 residual psi in the water main. Applicant shall contact East Bay Municipal Utilities District to have a flow test performed for the nearest existing hydrant to be used for the hydraulic design prior to submitting the Fire Flow Analysis. The project does not incorporate “fire walls” without openings, therefore the calculation floor area is uncontained and this creates the large fire flow. (CFC 507)
- c. Hydrant spacing for this commercial project shall comply with current Fire District standards of CA Fire Code Chapter 9 and Appendix C, and three (3) copies of the final site plan shall be submitted for approval of hydrant locations. Location of Fire Department Connections (FDCs) for the required automatic fire sprinkler system and standpipe system are a deferred item but shall be on the street side of all three buildings of the development. Placement and distance from hydrants will be in accordance with the CA Fire Code. (CFC Appendix C)
- d. Private Underground Fire Mains (a.k.a., on-site mains behind the detector check) require a separate Fire Department permit. Public or private fire mains are expressly prohibited from running under buildings. (CFC 507)
- e. The Rodeo–Hercules Fire Protection District has adopted a local ordinance which requires automatic fire sprinkler systems in certain type/size of new construction. All structures shall be protected with automatic fire sprinkler systems in accordance with CA Fire Code Chapter 9 as adopted by the Fire District. (CFC 903)
- f. Project is required to provide a Class 1 standpipe system throughout. System shall be in-service prior to any construction occurring at or beyond 40 feet. (CFC 905 & 3313)
- g. The project is served by Fire Station 76 (1680 Refugio Valley Road, Hercules). Currently, units are dispatched from Fire Station 76, Fire Station 75 (326 Third Street, Rodeo), and automatic aid from the Pinole Fire Department Fire Station 73 (880 Tennent Avenue, Pinole), the Contra Costa Fire Protection District Station 69 (4640 Appian Way, Pinole), and the all-volunteer Crockett–Carquinez Fire Department (736 Loring Avenue, Crockett). Budgetary constraints have subjected Fire Station 74 (Pinole Valley Road, Pinole) to a closure 100% of

the time (brown-out), significantly affecting response time and weight of fire attack. The arrival of the 1<sup>st</sup> alarm assignment that permits interior firefighting is delayed due to these conditions and the Fire District does not satisfy the Hercules General Plan Safety Element (VI.II.D.1) Fire Service Response Time Standard (5-minute response 90% of the time). This property is underserved related to fire protection capability. The present Fire Service Development Impact Fee will not (by itself) overcome the cumulative impact of this project. This project and proposed adjacent developments will further erode emergency response times and fire protection delivery. The Fire District is evaluating long term mitigations to overcome this issue; however the District will be requesting this developer to mitigate the impact of this development as an offset to the demand this development is creating.

- h. The Applicant shall implement a smoke exhaust system with fan switches at the Fire Alarm Control Panel located in each building as a means to provide a form of smoke exhaust removal to provide a more tenable environment during firefighting in the below-grade windowless parking garages. All 36" door assemblies along the fire access route will be increased to 48". (CBC 910)
- i. An exit analysis shall be submitted with the Building permit set. Areas of Refuge or Areas of Assisted Rescue shall be identified and provided with a two-way communication system per CFC 1009. Door swing on residential amenity spaces shall swing in the direction of exit travel. (CFC 1003)
- j. The height of the buildings located on Blocks M, P, and O exceed the maximum reach of the RHFD ladder truck. As mitigation for delays in establishing rescue and fire attack aloft, the District will be evaluating built-in fire protection enhancements.
- k. As mitigation for delays in response time, traffic signal pre-emption (Opticom or compatible) shall be provided on traffic signals lacking same. Locations within the response route to be identified by the District.
- l. Review of the Environmental Site Assessment, re-use of the site and implementation of the construction program shall be approved by Certified Unified Program Agency (CUPA), Contra Costa Hazardous Materials Programs, 4585 Pacheco Blvd. Suite 100, Martinez, CA 94553, ccchazmat@hsd.cccounty.us (925-335-3200).
- m. Site address signage per current Fire Department Standards shall be established and maintained during and after any combustible construction or intensification of site use. A complex directory shall be provided at the main entrances. (CFC 505)
- n. Elevators shall accommodate a medical stretcher. The fire resistive smoke assembly used for the elevator must be operable from the elevator cab by first responders. (CBC 607)
- o. Required Fire Department access roads shall be signed "No Parking-Fire Lane" per current Fire Department standards and the CA Vehicle Code. (CFC 503)
- p. Traffic calming measures or controls (speed bumps, humps, undulations, gates, etc.) are not approved as a part of this review and require specific approval from the Fire Department. (CFC 503.4)
- q. Structures and lockable gates limiting vehicle access to commercial facilities shall be equipped

with a Fire Department approved locking device or Fire Department approved key system ("Knox" lock or "Knox" keyed lock). Access controls on fire department response routes shall be electrically operated, equipped with pre-emption and Knox-key override (gates, barriers, retracting bollards, etc.). (CFC 506)

- r. A bi-directional public safety emergency responder radio system, designed and installed per current Fire Department standards, is required in all new structures. System can be building specific or a campus-wide system can be provided. Upon completion the system will be tested by an authorized testing firm and results made available to the Fire District. (CFC 510)
- s. Rooftop Solar Photovoltaic Systems shall comply with the CA Fire Code and CA State Fire Marshal Guideline. (CFC 605)
- t. Required Fire Department permits that are eligible for deferred submittal: **Construction;** Underground Fire Main, Automatic Fire Sprinkler System, Fire Standpipe System, Fire Alarm System, Sprinkler Alarm Supervisor Service (water-flow monitoring), Fixed Extinguishing System (if cooking facilities), High Pile Combustible Storage (if >8' in retail or 12' in storage), Fire pump, Generator Fuel Storage (if proposed). **Operation;** Apartment Building, Bi-Directional Repeater System. (CFC 105)
- u. The developer shall remit the Development Impact Fee with the Building Permit submittal.
- v. The developer shall remit the Rodeo-Hercules Fire District Review Fee 2.1 for the planning review.
- w. The developer shall submit a "Fire Safety During Construction" plan to the Fire District at the time of Building Permit submittal. (CFC 3308)
- x. Emergency Evacuation Guide and signage (entrances, stairwells, elevator lobbies) and Stairwell identification signage shall be provided and submitted to the RHFD for review to ensure all required information is provided in the plan and on the floor plans. (CFC 403 & 1023)
- y. Storage or use of any hazardous materials at the site (such as diesel fuel for the on-site generator or acid for batteries) will require a Hazardous Materials Business Plan be submitted to the CUPA. (CFC 5001)
- z. Access roads and water supplies for fire protection shall be installed and made serviceable prior to storage or construction of any combustible materials. (CFC 3312)
- aa. Proposed gating within parking structure may require additional pedestrian exits and shall be added to meet Fire Department requirements.

**30. Final Map/Public Access/Rights of Way:** Prior to the issuance of Building Permits, a Final Map shall be recorded, subject to City approval, that covers the geographic area occupied by Blocks M, O, and P, including the segment of the “Bayfront Loop” road as shown in the project plans, and including the area of the Emergency Vehicle Access (EVA) proposed between Blocks “P” and “R” and tied in to Linus Pauling as depicted in the project plans.

- a. The Final Map shall include an offer for dedication to the City for the 66-feet of right-of-way for the segment of the Bayfront Loop road depicted in the project plans.
- b. Grading/Hillslope easements shall be removed between the developer and the beneficiary to not include the Project Area and reflected on a clean title report with document number reference on Final Map.
- c. The Final Map shall include a “reciprocal access/parking easement and joint maintenance agreement” between Blocks P & R, extending from the Loop Road to the Bio-Rad property line, to include the 26-foot-wide section clear driving area plus the two 8-foot-wide parking lanes (for a total of 42 feet) to access the project’s parking structure and adjacent EVA lanes around the buildings and tied into Linus Paul Drive (as shown in the Vesting Tentative Map).
- d. The Final Map shall include an “EVA easement” and “access easement” to the 20 to 26-foot-wide EVAs that extends around the east, north, and south sides of the Blocks M and P as generally shown on page C2.00 of the attached project drawings for Blocks M-P and approved by the City Engineer and Fire District.
- e. Developer shall enter into an agreement with the City to maintain any improvements, including an emergency vehicle access (EVA) and any park improvements, constructed in the Bay Trail right-of-way and indemnifying the City. An easement shall be recorded for these improvements and an encroachment permit from the Engineering Division will be required to construct said improvements. Maintenance shall include restoration of EVA should the future relocation of the utilities associated with the Regional Intermodal Transportation Center be placed within the EVA.
- f. The Final Map shall include a “public access easement” for the entirety of the Neighborhood Park, Paseo, and Neighborhood Square at Block M.
- g. An easement over landscaping areas in the public right of way shall be recorded to allow the applicant/owner to perform maintenance.
- h. An “encroachment easement and agreement” shall be identified on the final map and concurrently recorded with the final map granting the property owner an easement and right to install and maintain overhead structures such as awnings and building arcade(s) in or over the City right-of-way prior to issuance of building permit.

**31. Affordable Housing:** The Project shall contain a minimum of 30 affordable housing units out of the 476 total units proposed, with 20 affordable housing units at Blocks M–P and 10 affordable housing units at Block O. Affordable housing shall be dispersed throughout the complex and not concentrated in any one area. Affordable housing unit types shall be proportional to the overall mix of unit type for each apartment complex. Thus, of the 20 affordable housing units at Blocks M–P: at least four (4) of the units shall be studios; 12 units shall be one-bedroom; and four (4) of the units shall be two-bedroom. Similarly, of the 10 affordable housing units at Block O: five (5) shall be studios, and the other five (5) shall be one-bedroom. All affordable housing units shall be affordable to residents with income levels at or below 60% of the County median income level; provided, however, that this affordability requirement may be modified in accordance with Section II.A of Exhibit “E” of the IDA. The Property Owner shall record covenants on the property requiring specific units to be maintained as permanently affordable with an annual report provided to the City to submit with its annual report to the State.

- 32. Project Fencing:** The details and location of all proposed project fencing, including material samples if needed, shall be submitted for staff review and approval prior to the issuance of building permits. Any fencing visible from the public rights of way, including trails, shall be of a decorative material as determined by the City.
- 33. Screening of Above Ground Utilities:** All above ground utilities visible from public rights of way shall be screened with landscaping, decorative materials, berming, or other means as determined by the City.
- 34. Potential Future Commercial Use:** In the future, all or portions of the ground-floor residential amenity spaces (may be converted to commercial use as well as some residences converted into live-work uses in the “Use Overlay” cross hatched sections of the Building Form Regulating Plan in conformance with the Hercules Waterfront District Masterplan (HWDMP) use table and zone districts. Projects in the T5-MST zone (which is the frontage of Block O along John Muir Parkway) are to be designed to allow flexible spaces that can evolve to accommodate future commercial uses over time, and therefore project plans need to utilize the type of construction that could accommodate commercial conversion in the future. Additionally, four residential units along the Paseo closest to the Neighborhood Square allow conversion to live-work overtime and shall be designed to have ADA compliant entries along the Paseo and should incorporate mezzanines into their design.
- 35. Fees Required:** Applicant shall pay their fair share costs of traffic mitigation fees as identified in the Traffic Assessment Report as part of the 2011 Bayfront Plan EIR in addition to Parks and Recreation Facilities, General Public Facilities, Police Facilities, Fire Facilities, Sewer Facilities, Community Development Tax, West County Sub-regional Transportation Mitigations Fee (STMP), all other fees that are applicable to the project under both applicable regulations and the Implementing Development Agreement (IDA), and all other applicable building permit fees imposed by the City in the Master User Fee list and other public and regulatory agencies (provided that such fees are authorized under the IDA), and all applicable processing charges, prior to the issuance of building permits. For Blocks M–P and Block O: (a) the Applicant shall pay the full Public Benefit Fee as set forth in Exhibit I to the IDA (so long as the condition to such payment as set forth in Section 3.1 of the IDA has been satisfied), and if applicant pays the full Public Benefit Fee, it shall not be required to pay the sewer connection fee; provided, however, that if the applicant does not pay the full Public Benefit Fee, both the City and the Applicant reserve their rights regarding the payment or non-payment of the sewer connection fee.
- 36. Applicable Conditions of Implementing Development Agreement:** In addition to the foregoing conditions, the project shall be subject to the applicable Conditions of Approval contained in the Implementing Development Agreement attached herein as Exhibit A which includes general conditions as well as mitigations measures to be carried out by the Owner with the items applicable to this project being asterisked.

**BE IT FURTHER RESOLVED** that if there is any conflict between the attached Approved Development Review Submittal Plans (Exhibits B1–B4) and or the conditions of approval, the Planning Director shall reasonably resolve the issues based on the general intent discussed in the staff reports, environmental documents and City policy.

The foregoing Resolution was duly and regularly adopted at a regular meeting of the Planning Commission of the City of Hercules held on the \_\_\_\_ day of \_\_\_\_\_ 2019, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

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Irena Galieva, Chairperson of Planning Commission

ATTEST:

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Holly Smyth, Planning Director & Secretary to the Planning Commission

**Exhibits**

- A. Applicable Conditions of Approval from the Implementing Development Agreement (IDA) for the Hercules Bayfront Project (Exhibit L therein, with applicable items asterisked)
- B. Development Review Submittal (includes General Information, Architectural, Civil, and Landscape Plans)
- C. CEQA Findings Concerning the Approval of the Bayfront Blocks M-O-P Project
- D. Design Review Permit #DRP 19-01 Findings with Facts

**Any determination or decision made by the Planning Commission may be appealed to or by the City Council, as stated in Chapter 44 of the Hercules Zoning Ordinance, by filing a written appeal with the Planning Director within 10 business days of the mailing or posting of the notice of decision.**

## **Exhibit A**

### **Applicable Conditions of Approval from the Implementing Development Agreement for the Hercules Bayfront Project (with applicable items asterisked)**



**Exhibit B**  
**See Development Review Submittal dated February 27, 2019**  
**(includes General Information, Architectural, Civil, and Landscape Plans)**  
**plus Linus Pauling Extension Plans (Bayfront Blocks Q & R – Sheets C-200 and C-201)**

**Exhibit C:**

**See CEQA Findings Concerning the Approval of the Bayfront Blocks M-O-P Project**

**Exhibit D:**

**See Design Review Permit #19-01 Findings with Facts**