



U.S. Department
of Transportation
**Federal Transit
Administration**

REGION IX
Arizona, California,
Hawaii, Nevada, Guam
American Samoa,
Northern Mariana Islands

201 Mission Street
Suite 1650
San Francisco, CA 94105-1839
415-744-3133
415-744-2726 (fax)

Honorable Dan Romero
Mayor, City of Hercules
111 Civic Drive
Hercules, California 94547

JUN 14 2012

Re: Record of Decision for the Hercules
Intermodal Transit Center Project

Dear Mayor Romero:

The Federal Transit Administration (FTA) has completed its review of the public and interagency comments on the Final Environmental Impact Statement (FEIS) for the Hercules Intermodal Transit Center Project. In compliance with the National Environmental Policy Act (NEPA), the FTA has issued the enclosed Record of Decision (ROD) for the Project. As stated in the ROD, the Project must incorporate all the mitigations of adverse effects presented in the FEIS and the ROD. These mitigation actions include, but are not limited to all commitments to further consultation on specific issues.

If the City of Hercules contemplates any change to the Project, the City must notify the FTA immediately and refrain from taking any action related to the proposed change until the FTA has determined what, if any, additional environmental analysis is necessary, and that analysis has been completed and approved by the FTA. For example, if the City wishes to make a change to the mitigation measures in the FEIS, the ROD, or a change to the Project that would cause new or changed environmental or community impacts not presented in the FEIS, then the City must notify the FTA in writing of the desire to make a change.

Any such change will be reviewed in accordance with FTA environmental procedures (23 C.F.R. 771.130) on supplemental documentation. The FTA will determine the appropriate level of environmental review for this or any other proposed change (i.e., a written re-evaluation of the FEIS, an environmental assessment of the change, or a supplemental environmental impact statement), and the NEPA process for this supplemental environmental review will conclude with a separate NEPA determination, or, if necessary, with an amendment to this ROD.

Upon the FTA's issuance of the ROD, the City of Hercules is authorized to take the following Project actions without prejudice to the FTA's future financial assistance for these actions:

- the acquisition of any real property or real property rights identified in the FEIS or ROD as needed for the Project;
- the relocation of persons and businesses on that property; and,
- the relocation of utilities affected by the Project.

This pre-award authorization is not a real or implied commitment by the FTA to provide any funding for the Project or any element of the Project. However, if the FTA were to provide grant funding for the Project, the cost of the actions listed above, performed after the ROD issuance, would be eligible expenses. No other Project action has pre-award authorization at this time. To maintain the Project's eligibility for Federal assistance, all real property acquisitions, and the relocation of persons and businesses thereon, must be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act and its implementing regulation (49 CFR Part 24) and any other applicable Federal law or regulation.

Please make the ROD and supporting documentation available to affected government agencies and the public. Availability of the ROD should be published in local newspapers and should be posted on the Project website. The ROD also should be provided directly to affected government agencies, including the State Inter-governmental Review contact established under Executive Order 12372.

We look forward to continuing to work with you to bring this important Project to fruition. Should you have any questions on the ROD, please contact Paul Page at (415) 744-2734.

Sincerely,


For Leslie T. Rogers
Regional Administrator

cc (by e-mail): Charlie Anderson, WCCTA

RECORD OF DECISION
on the
Hercules Intermodal Transit Center
in
Contra Costa County, California
by the
Federal Transit Administration

Decision

The Federal Transit Administration (FTA), pursuant to 23 CFR Parts 771 and 774 and 40 CFR Parts 1500 through 1508, has determined that the requirements of the National Environmental Policy Act (NEPA) have been met for the Hercules Intermodal Transit Center (the Project) located in Contra Costa County, California.

This environmental Record of Decision (ROD) applies to the preferred alternative consisting of a new passenger train station on the existing Capitol Corridor line, a transit bus terminal, access roadways, trails and parking facilities. Additionally, the facility would be designed to accommodate potential future ferry service. The Hercules Intermodal Transit Center (ITC) will be located on the southeastern shoreline of San Pablo Bay (a part of San Francisco Bay), approximately one mile northwest of Interstate 80 (I-80) in Contra Costa County. The Hercules ITC is within the City of Hercules' Waterfront District, which is planned for mixed-use development. The preferred alternative is evaluated in the Hercules ITC Final Environmental Impact Statement (FEIS) published by FTA in April, 2012. The Project sponsor, the City of Hercules, seeks financial assistance from FTA for the Project. If FTA provides financial assistance for the final design or construction of the Project, FTA will require that the City of Hercules design and build it as presented in the FEIS and this ROD. Any proposed change by the City of Hercules will be evaluated in accordance with 23 CFR Part 771.130 and must be approved by FTA in writing before the agency requesting the change can proceed with the change. Neither the FEIS nor this ROD constitutes an FTA commitment to provide financial assistance for construction of the Hercules ITC Project.

Background

The Project is to develop an ITC along the Union Pacific Railroad (UPRR) tracks on the City of Hercules' San Francisco Bay waterfront. The Project will include construction of a new passenger train station on the existing Capitol Corridor line, a transit bus terminal, access roadways, and parking facilities. The proposed train station and passenger platform requires the realignment of existing tracks and relocation of existing utilities within the UPRR right of way.

As the project sponsor and potential recipient of FTA financial assistance for the Project, the City of Hercules served as a co-lead agency with FTA in conducting the environmental review process.

Planning for the Project

The purpose of the proposed Hercules ITC Project is to increase local and regional mobility and transportation options by constructing a new transit facility with multi-modal connections that would encourage use of public transit. The Hercules ITC would provide bus-to-train connections and provide car commuters with access to new transit options that would divert traffic from I-80, the most congested corridor in the San Francisco Bay Area for the past six years.

Pursuant to City of Hercules General Plan Programs 8A.2 and 8A.3, on July 25, 2000, the Hercules City Council approved a 167-acre Waterfront Development Master Plan (WDMP), including the proposed Hercules ITC site. The WDMP established five Planning Sub-Districts, including a 23-acre Transit Village as proposed by the WDMP. Development of the sub-districts have been and will continue to be implemented as separate projects by private interests and would consist of a mix of residential and commercial uses focused on a commuter railroad station. Two of the five planning sub-districts have already been developed. On July 22, 2008, the Hercules City Council adopted the Waterfront Development Master Plan Initiative (WDMP Initiative). The purpose of the WDMP Initiative was to modify the General Plan, Zoning Ordinance, and WDMP in order to facilitate completion of the Waterfront Area as a transit-oriented neighborhood mixed-use project. Among the goals and objectives of the WDMP Initiative, is the provision “for the location of a Multi-Modal Transit System linking together rail service via Capitol Corridor Joint Powers Authority (CCJPA), a connection to downtown San Francisco via a ferry terminal, and bus service via Western Contra Costa Transit Authority (WestCAT), making Hercules home to the first train, ferry, and transit center in California.”

On November 18, 2009, the City participated in an interagency meeting at the U.S. Army Corps of Engineers office in San Francisco and presented an overview of the Hercules ITC and invited agency comments on the Project. The City of Hercules and the FTA initiated preparation of a joint Draft Environmental Impact Report (EIR)/ Environmental Impact Statement (EIS) to satisfy the California Environmental Quality Act (CEQA) and NEPA requirements, respectively. The scoping period and public meeting accompanying scoping were announced by publishing a Notice of Intent in the Federal Register on November 20, 2009, as required under NEPA. To meet CEQA requirements, a Notice of Preparation containing the scoping information was submitted to the State Clearinghouse and distributed to appropriate state, regional, and local agencies on November 24, 2009. A scoping meeting was held on December 8, 2009 in the City of Hercules.

The Notice of Availability (NOA) of the Draft EIR/EIS was published in the Federal Register on September 17, 2010, commencing a 45-day formal review and comment period that concluded on November 1, 2010. The comment period was later extended to November 15, 2010. The Draft EIR/EIS was published and circulated for review. It was made available electronically on the City of Hercules' website and hard copies were available for review at the City of Hercules Office of the City Clerk, City of Hercules Planning Department, and the Hercules Library. Two public hearings were held on October 18, 2010 at 3:00 pm and 7:00 pm at Hercules City Hall. Agencies and the general public had the opportunity to review and comment on the Draft EIR/EIS during the comment period and at the public hearings.

A total of 18 written comment letters or emails were received during the written comment period for the Draft EIR/EIS. An additional verbal comment was received at the Public Hearing for the Draft EIR/EIS. At the end of the comment period, public and agency comments were recorded and categorized, and responses to the comments were prepared. The City of Hercules and FTA reviewed the information in the Draft EIR/EIS and the comments received, and selected a preferred alternative. The Final EIR for the Hercules ITC Project was prepared in June 2011 and approved by the City of Hercules on August 8, 2011; a Notice of Determination was filed with the Contra Costa County Clerk on August 10, 2011 to complete the CEQA review process. The FEIS was published on April 27, 2012.

FTA has considered the information contained in the FEIS, regulatory and resource agency coordination, public hearing and public meeting comments, and agency review comments on the environmental documents. In addition to a summary of the Hercules ITC Project and the alternatives under consideration in the EIS, this ROD summarizes FTA's decisions regarding compliance with relevant environmental requirements and describes the mitigation measures to be included in the Project.

Alternatives Considered

A No-Action and two Action Alternatives were considered in the FEIS for the Hercules ITC. The two Action Alternatives differ in the location of the transit center – either west (Alternative 1) or east (Alternative 2) of Refugio Creek. In addition, two track options were evaluated: Track Option A constructs a double-track shoofly and Track Option B constructs dedicated station and passing tracks. Based on the analyses documented in the Draft EIR/EIS, September 2010, Alternative 1 with Track Option B was identified as the environmentally preferred and the locally preferred alternative.

Alternative 1

The Hercules ITC includes pedestrian access to the existing UPRR line and a newly constructed passenger platform. Passenger train service would be available throughout most of the day with

the Hercules ITC serving passengers traveling throughout the San Francisco Bay Area making connections with Bay Area Rapid Transit (BART), local mass transit systems, and interconnecting trains going as far south as Los Angeles, and as far north as Sacramento and Oregon. Train passengers would be able to walk from nearby residential units, bike along the multi-use path connection that is part of the proposed Project, or park their motor vehicles in the parking lot that is part of the proposed Project. Transit center patrons would also be able to access the site via public bus service that will be extended to the proposed Hercules ITC as part of this Project. The proposed Project includes development of a small café to serve commuters, nearby residents, and workers. The Water Emergency Transportation Authority is considering the construction of a ferry terminal in the City of Hercules; the proposed Hercules ITC would accommodate a connection to the potential future City of Hercules ferry terminal. That prospective ferry terminal is considered under the cumulative effect analysis in this document.

Because the site is currently undeveloped, nearby roadways would need to be extended to access the site. The John Muir Parkway would be extended as part of the Project and two new bridges would be built over Refugio Creek to provide access to and circulation through the site. A temporary surface parking lot would be constructed immediately as part of the Project and a three-story park structure is included in the Project as a future proposed action. The Project would also include relocation of existing utility pipelines, including a natural gas line.

Additionally, in order to improve operation of the rail line, the UPRR track would be realigned to the east (away from San Pablo Bay) and a new railroad bridge would be constructed over Refugio Creek. Refugio Creek would also be realigned and the creek channel into San Pablo Bay would be dredged to improve flow during heavy rain events and high tides.

Potential transit center sites were first limited to sites along the existing UPRR line. Locating a new rail line would not be efficient or practicable; therefore, the intermodal transit center had to be located adjacent to an existing line. The proposed Hercules ITC site was selected based on projected ridership and safety. Other sites in the area would have fewer projected riders or are on curved stretches of track that have inadequate visibility for safe train operation.

Alternative 2

The FEIS considered a second alternative (east of Refugio Creek) that would provide equal access to public transit, but this alternative would reduce the functionality of the adjacent properties and would require the use of condemnation to acquire the site from a private party. This alternative was not selected as the preferred alternative for these reasons.

Track Options A and B

In addition, two track options were considered. Track Option A consists of the construction of a new center platform, realigning the existing UPRR main to the inland side of the platform, relocating and shortening an existing industry siding track, relocating an existing crossover to the east, and constructing a double-track shoofly. Track Option A would result in increased trip times that cannot be mitigated and would also result in substantial temporary operational impacts during the construction of the Project. Track Option B consists of the construction of a new 7,800-foot long station track, a new center platform, and construction of a new crossover at the east end of the station track. The existing industrial siding will remain in place and the existing crossover within the limits of the station platform would be removed. While providing operation benefits due to the new station track, Track Option B improves the overall reliability of passenger operations on the line and mitigates the increased trip times associated with Track Option A. Improved operational reliability would also offset potential ridership losses due to increased trip times. Moreover, implementation of Track Option B reduces construction time by six months. As a result, Track Option B was selected as the preferred track option.

Basis for Decision

FTA has determined that the Project meets the Purpose and Need of the proposed action. Increased train and transit services provided by the Project provide expanded commute capacity and choice while avoiding corresponding increases in traffic congestion. The Project provides a transportation option for a growing population and employment base in the City of Hercules.

Measures to Minimize Harm and Mitigate the Adverse Effects of the Project

The City of Hercules will design and incorporate into the Project all mitigation measures included in the FEIS for the Preferred Alternative, Alternative 1 with Track Option B. FTA will require in any future funding agreement on the Project and as a condition of any future grant or Letter of No Prejudice for the Project, that all committed mitigation be implemented in accordance with the FEIS. FTA will require that the City of Hercules periodically submit written reports on its progress in implementing the mitigation commitments. FTA will monitor this progress through quarterly review of final engineering and design, land acquisition for the Project, and construction of the Project. The measures to minimize harm are fully described in the FEIS and are summarized in Attachment A to this document.

Public Involvement and Outreach

The Hercules ITC Project was developed through a collaborative public involvement process. This included more than a dozen public meetings and workshops, both City-wide and with the

immediate Bayfront neighborhood, between 2007 and 2010. These events provided the public with input on the transit facility configuration, access by all modes, local and regional trail connectivity, and public spaces adjacent to the Project. The engineering and architectural designs were refined in an iterative process to reflect the public input received by the City of Hercules and its design team.

Attachment B contains a single comment letter from the U.S. Environmental Protection Agency (EPA) on the FEIS requested additional information on the limits of dredging. The City of Hercules responded with plans that depict the limits of dredging and provided this information to the EPA.

Attachment C contains a letter, dated January 21, 2011, that was received after the Draft EIR/EIS comment period closed and that was submitted on behalf of Hercules Bayfront, LLC. A second letter, dated March 13, 2012, from Hercules Bayfront, LLC indicated that concerns about the NEPA process had been resolved.

Determinations and Findings

Section 106 of the National Historic Preservation Act

FTA has been participating in ongoing consultation with the California State Historic Preservation Officer (SHPO) in accordance with Section 106 of the National Historic Preservation Act. FTA submitted to the SHPO a Cultural Resources Survey Report on September 21, 2011 with a request for concurrence of no adverse effect to historic properties. The SHPO reviewed the Cultural Resources Survey Report and provided comments requesting additional clarification to FTA on November 9, 2011. In response, the City of Hercules and FTA prepared an Addendum to the Report and submitted the Addendum to the SHPO on March 8, 2012. On April 13, 2012, the SHPO concurred that the undertaking will have no adverse effects on historic properties.

Air Quality Conformity

In accordance with 40 CFR Part 93, a conformity determination is required as part of the NEPA process for FTA and FHWA projects. Conformity involves demonstrating that the Project is consistent with the purpose of the approved air quality State Implementation Plans (SIP), which is to eliminate or reduce the severity and number of violations of the National Ambient Air Quality Standards.

The Project is included in the regional emissions analysis prepared for the *Transportation 2035 Plan: Change in Motion* (Transportation 2035 Plan), adopted by the Metropolitan Transportation

Commission (MTC) in April 2009 and the *2011 Transportation Improvement Program* (2011 TIP and current), adopted by the MTC in October 2010. Through consultation with the MTC regarding conformity with PM_{2.5}, it was determined that both the Transportation 2035 Plan and the 2011 TIP are consistent with and conform to the intent of the SIP, as demonstrated in the Transportation-Air Quality Conformity Analysis for the Transportation 2035 Plan and the 2011 TIP, dated October 27, 2010.

The City of Hercules coordinated with the MTC to determine if the Project is a Project of Air Quality Concern (POAQC) and to evaluate the draft qualitative hot-spot analysis prepared for the Hercules ITC. In December 2010, EPA released final modeling guidance for performing quantitative PM_{2.5} and PM₁₀ hot-spot analyses at the project level for transportation projects, and established a two-year grace period for the implementation of the new guidelines. Quantitative hot-spot analyses will not be required for Transportation Conformity under 40 CFR Part 93.123(b)(4) until the end of the implementation grace period in December 2012. During the grace period, transportation projects that are within nonattainment or maintenance areas for particulate matter and are not exempt require a qualitative analysis that “must document that no new local PM_{2.5} violations will be created and the severity or number of existing violations will not be increased as a result of the project” (FHWA 2006). After release of the Draft EIR/EIS, a qualitative PM_{2.5} hot-spot analysis was conducted for the proposed Project using a comparison approach. Nine transit stations along the Capitol Corridor line and eight PM_{2.5} air quality monitoring stations were included in the comparison. The analysis concluded that the proposed Project would have the anticipated net effect of reducing the regional impacts on air quality from those that would occur if the proposed Hercules ITC Project was not completed.

The Federal Transportation Conformity Rules (40 CFR Part 93.126) require that projects determined to be non-exempt conduct a project-level review and an interagency consultation with the Air Quality Conformity Task Force (AQCTF). The AQCTF consists of members from the EPA, FHWA, the California Department of Transportation, and other agencies and serves to determine if construction of a project will result in negative air quality impacts of fine particulate matter in the project area. The MTC, as the San Francisco Bay Area region’s Metropolitan Planning Organization, handles the project level review and the interagency consultation in the City of Hercules area. The City of Hercules initiated consultation with the AQCTF using the streamlining process in April 2011 and sought concurrence on the POAQC determination and review of the qualitative hot-spot analysis. At an AQCTF meeting on May 26, 2011, the AQCTF concurred that the Project is a POAQC but the Project does not substantially cause or contribute to PM_{2.5} exceedance. The MTC sent the City of Hercules a letter of project-level conformity completion on June 21, 2011, included in Appendix C of the FEIS.

Section 4(f) of the Department of Transportation Act

The project will not result in the direct, temporary, or constructive use of any Section 4(f) resources as identified in the study area for either construction or operation of the Project. Because the operations of the Project would not require the permanent acquisition of land designated as a Section 4(f) resource, the Project would not result in a direct use of Section 4(f) resources. Construction activities associated with the proposed Hercules ITC may have the potential to temporarily impair small portions of the existing Bay Trail segments adjacent to the Project and Railroad Park. During the periods of construction in which the potential may exist for intrusion into these two Section 4(f) resources, the recreational functions and features and activities associated with the facilities would not change. The minimal encroachment would encompass a small percentage of each resource, and the resources would be fully restored upon completion of the construction activities adjacent to the resource. Therefore, the proposed Project would not result in a temporary occupancy of Section 4(f) resources during Project construction. With the Project, none of the Section 4(f) resources would be impaired. The activities, features, and attributes of the existing parks and Bay Trail near the Hercules ITC Project would not be affected. Therefore, the proposed Project will not result in a constructive use of Section 4(f) resources.

Section 7 of the Endangered Species Act

Consultations with the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) in accordance with Section 7 of the Endangered Species Act continued from the release of the Draft EIR/EIS through preparation of the FEIS. USFWS staff visited the site in April 2010 and provided comments recommending the initiation of formal consultation in July 2010. Biological Assessments were prepared and submitted to the USFWS and the NMFS in February 2011, with the requests to initiate formal consultation. The USFWS requested additional clarifications in the fall of 2011 and issued the Biological Opinion on December 30, 2011. The NMFS conducted a visit to the site on March 22, 2011. Coordination with NMFS continued through 2011 and additional information was provided to NMFS on July 26, October 31, 2011 and January 26, 2012. NMFS issued the Letter of Concurrence for Endangered Species Act compliance as well as Essential Fish Habitat provisions of the Magnuson Stevens Fishery Conservation and Management Act on January 30, 2012. While FTA and the City of Hercules will continue regular coordination with the USFWS and NMFS, the Biological Opinion and Letter of Concurrence conclude the necessary consultations with the USFWS and NMFS as required under Section 7 of the Endangered Species Act.

Section 404 of the Clean Water Act (CWA)

A pre-application meeting was held with the regulatory agencies at the U.S. Army Corps of Engineers (USACE) office in San Francisco on November 18, 2009, which included

representatives from FTA, the City of Hercules, the USACE, the EPA, the San Francisco Regional Water Quality Control Board (SFRWQCB), and USFWS. Site visits were conducted with the USFWS on April 27, 2010, with the USACE on November 16, 2010, and with the SFRWQCB on December 7, 2010. Results of this coordination are included in the FEIS.

A delineation of waters of the United States was submitted to the USACE and a verification visit was conducted on November 16, 2010. Revisions to the delineation requested during the verification site visit were completed and the revised delineation submitted to the USACE on March 7 2011. The USACE issued the verified wetland delineation and jurisdictional determination (JD) on July 6, 2011. All impacts presented in the FEIS are based on the verified delineation data. Upon completion of NEPA with issuance of this ROD, the City of Hercules will coordinate with the USACE to secure necessary permits with the USACE as required under Section 404 of the CWA.

Impacts to surface water from erosion are expected to be minimal during construction. Erosion will be controlled in accordance with an approved Erosion Control Plan. Construction activities will be performed in accordance with the California National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activities, 2009-0009-DWQ (effective July 1, 2010), requiring the implementation of Best Management Practices (BMP) to control sediment and other pollutants mobilized from construction activities. The BMPs included as part of the Project shall be developed and implemented in compliance with the SFRWQCB.

Executive Order 11988: Floodplain Management

With the development of Project improvements, the flood flow capacity of the lower reach of Refugio Creek would be increased, and flood risks would be reduced. The Project would thus have beneficial impacts related to flooding.

Portions of the Project site are within the 100-year floodplain boundary, including the railroad tracks and the location of the proposed parking structure. Presently, the existing railroad bridge and culverts act as barriers to flood water flow, creating the potential for local flooding during major storms. Railroad bridge replacement under the UPRR embankment will improve the current potential flooding condition. New facilities will be designed to minimize flooding through the use of retaining wall, levees, and/or construction on fill. Flood hazard warnings will be posted and flood evacuation plans will be developed. Construction and design will also account for the maximum flood level so that facilities are built above the mark.

Executive Order 12898: Environmental Justice

According to U.S. Census American Community Survey data (5-year estimates, 2005-2009) and the definition of minority and low-income populations in FTA Circular 4702.1A, *Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients*, the Project Study Area is comprised of minority populations of concern, but not low-income populations. In the northeastern portion of the Project study area, where populations of concern reside, these populations would not experience disproportionately adverse impacts with the proposed Project. The improvements planned for this portion of the alignment will be minor and constructed within the railroad right-of-way. Also, the Hercules ITC Project does not result in adverse environmental impacts within the entire Study Area for all populations. Moreover, the Project would result in improved mobility and access to all residents, including the populations of concern. Because of the absence of significant environmental effects with mitigation, there would be no disproportionately adverse impacts to any environmental justice populations with the Hercules ITC Project.

Environmental Finding Required by Federal Transit Law [49 U.S.C. 5324(b)]

The environmental record for the Project consists of all technical analyses, the Draft EIR/EIS (September 2010), FEIS (April 2012), and this ROD, which includes the mitigation monitoring program (Attachment A). These documents represent the detailed analysis and findings required by 49 U.S.C. §5324(b) and by §14 of the Urban Mass Transportation Act (UMT) Act.

The environmental record for the Project includes: the environmental impacts of the Project; and irreversible adverse environmental impacts that cannot be avoided; alternatives to the Project; and irreversible and irretrievable impacts on the environment. FTA has reviewed the public and agency comments on the Draft EIR/EIS and FEIS and the transcripts of the hearings submitted under 49 U.S.C. Section 5323(b). Attachments B and C to this ROD includes and responds to public and agency comments received on the FEIS since the circulation of the FEIS. There were no comments relating to new environmental issues that had not been previously addressed and resolved in the FEIS.

FTA finds that an adequate opportunity to present views was given to all parties having a significant economic, social, or environmental interest in the Project. FTA finds that the preservation and enhancement of the environment and the interest of the community in which the Project is located were considered. FTA finds that, with the execution of the mitigation monitoring program in Attachment A, all reasonable steps are being taken to minimize the adverse environmental effects of the Project, and where adverse environmental effects remain, no feasible and prudent alternative to such effects exists.

ATTACHMENT A

Attachment A

Summary of Environmental Impacts and Proposed Mitigation Measures for the Preferred Alternative

Environmental Area/Impact	Impact	Mitigation
Traffic and Transportation Systems <i>TRANS-5</i>	Construction of the project will introduce additional large (haul) trucks and other related traffic that could result in potentially adverse safety impacts to pedestrians.	Contractor will develop and implement traffic safety plan in coordination with the City.
Cultural Resources <i>CULT-1a</i>	The project may adversely affect unidentified archaeological resources during construction	Prior to construction, project crews will be briefed on the identification of cultural materials. If cultural materials are encountered, construction within 100 feet will stop, the City will be notified and a qualified archaeologist will examine and document the materials. The archaeologist will coordinate with responsible agencies as appropriate to develop mitigation measures prior to resuming construction in the area of the discovery. The archeologist will oversee implementation of the procedures once they have been determined.
Cultural Resources <i>CULT-1b</i>	The project has the potential to affect previously identified archaeological site P-07-002570 during construction.	To ensure successful avoidance, both an archaeological and tribal monitor will be present during construction within 100 feet of the known location of the archaeological deposit. In the event intact archaeological deposits are exposed, construction at the find location will be stopped and new measures will be designed and implemented in consultation with the SHPO and tribes.
Cultural Resources <i>CULT-2</i>	Construction of the project may adversely affect unidentified human remains.	Prior to construction, project crews will be briefed on the potential to identify human remains. If remains are encountered, construction within 100 feet will stop. The City will be notified. The Contra Costa County Coroner will be contacted to evaluate the find. If the Coroner determines that the remains are Native American, the City will coordinate with the Native American Heritage Commission.
Cultural Resources <i>CULT-3</i>	Construction of the project may adversely affect unidentified paleontological resources	Prior to construction, project crews will be briefed on the potential to identify paleontological resources. If materials are encountered, construction within 100 feet will stop and the City will be notified. A qualified paleontologist will examine, document and evaluate the find. The paleontologist will coordinate with the responsible agencies regarding the development of appropriate mitigation measures. The paleontologist will oversee implementation of the procedures once they have been determined.
Visual and Aesthetic Resources <i>VAR-3</i>	Implementation of the project would create new sources of substantial light and glare and would result in significant adversely affected day and nighttime views in the area.	Prior to the approval of the final project design plans, the project applicant shall submit a Final Lighting Plan for review and approval by the City Planning Commission. The Final Lighting Plan shall be in compliance with the General Plan, the WDMP, and all other applicable City codes, as required by the City Planning authorities. The Final Lighting Plan shall specify reasonable measures to minimize light spillover and glare from the completed facility, such as screened/hooding lighting, automatic dimmers, or strategically placed landscaping.

Environmental Area/Impact	Impact	Mitigation
Visual and Aesthetic Resources VAR Cumulative Impacts	The eventual build-out of the Hercules Bayfront project to the east and west of the Hercules ITC and the existing residential and commercial development to the south and west would add to the incremental effects of the light and glare emanating from the Hercules ITC and ferry terminal area, and would result in additional light and glare in combination with approved development projects scattered throughout the study area. Cumulative development in the study area would obstruct and alter views looking west over the Bay. Cumulative visual impacts are anticipated to be unavoidable.	Prior to the approval of the final project design plans, the project applicant shall submit a Final Lighting Plan for review and approval by the City Planning Commission. The Final Lighting Plan shall be in compliance with the General Plan, the WDMP, and all other applicable City codes, as required by City Planning authorities. The Final Lighting Plan shall specify reasonable measures to minimize light spillover and glare from the completed facility, such as screened / hooding lighting, automatic dimmers, or strategically placed landscaping.
Air Quality AIR-1	Construction of the proposed project would create emissions of fugitive dust from excavation and grading, and emissions of criteria pollutants from construction equipment exhaust.	During construction, construction contractors will be required to implement fugitive dust control measures and reduce emissions.
Noise and Vibration NOI-3	Noise-generating construction activities are anticipated to exceed noise level standards and be at least 5 dBA above the ambient noise environment at adjacent noise-sensitive land uses.	The proposed project shall implement best-available construction noise control measures.
Biological Resources BIO-1	Construction of the proposed project could potentially result in "take" through harm or harassment of individual California red-legged frogs (CRLF)	Preconstruction surveys for CRLF would be conducted in the project site approximately two weeks prior to the initiation of construction activities to ensure that CRLF is not actively using the project site as a dispersal corridor. Surveys will not commence until approval is received by USFWS. Relocation and exclusion of CRLF will be implemented as indicated in the USFWS Biological Opinion (BO). Construction personnel would participate in a USFWS-approved worker environmental awareness program. A biological monitor would be present during all construction activities within Refugio Creek. FTA has consulted with the USFWS and determined that the project is not likely to jeopardize the continued existence of CRLF
Biological Resources BIO-2	Construction of the proposed project is not likely to adversely affect vernal pool fairy shrimp (VPFS).	Marginal habitat is present in the freshwater wetlands on-site. Two complete sets of wet season presence/absence surveys have been completed and no vernal pool fairy shrimp were found. FTA has consulted with the USFWS and determined that the project is not likely to adversely affect or result in take of vernal pool fairy shrimp. If construction begins during the breeding season (January 15 to April 15), a USFWS approved biologist will conduct a preconstruction survey of California cordgrass tidal marsh habitat for California clapper rail prior to any construction activities occurring within 500 feet of those habitats.
Biological Resources BIO-3	Construction of the proposed project is not likely to adversely affect California clapper rail.	No construction work will occur within 700 feet of any active nests. On-site biological monitors will stop work if any rail species is detected in the work area. FTA has consulted with the USFWS and determined that the project may affect, but is not likely to adversely affect the California clapper rail

Environmental Area/Impact	Impact	Mitigation
Biological Resources <i>BIO-4</i>	Construction of the proposed project is not likely to adversely affect salt marsh harvest mouse.	<p>A USFWS approved biologist will conduct a preconstruction survey of the northern coastal salt marsh habitat in the project site prior to any construction activities occurring within 500 feet of those habitats.</p> <p>A USFWS approved biological monitor will be present during construction activities within and immediately adjacent to the northern coastal salt marsh habitat.</p> <p>Construction personnel would participate in a USFWS-approved worker environmental awareness program.</p> <p>Nonmechanized hand tools to remove pickleweed or vegetation would be used within 50 feet of pickleweed habitat.</p> <p>Fencing would be installed between areas of salt marsh harvest mouse habitat and work sites</p> <p>FTA has consulted with the USFWS and determined that the project may affect, but is not likely to adversely affect the salt marsh harvest mouse.</p>
Biological Resources <i>BIO-5</i>	Construction of the proposed project could potentially result in "take" through harm or harassment of California black rail.	If construction begins during the breeding season (February 1 to August 31), a CDFG approved biologist will conduct a preconstruction survey of pickleweed tidal marsh habitat for California black rail prior to any construction activities occurring within 500 feet of those habitats.
Biological Resources <i>BIO-6</i>	Construction of the proposed project could potentially result in disturbance of sensitive bat species, including pallid bat and hoary bat.	Preconstruction bat surveys shall be conducted to inspect inside culverts under the railroad tracks and trees within the willow riparian habitat.
Biological Resources <i>BIO-7</i>	Construction of the proposed project could potentially impact San Pablo vole and/or salt marsh wandering shrew.	Preconstruction surveys for San Pablo vole and salt marsh wandering shrew will be conducted simultaneously with salt marsh harvest mouse surveys. If these species are detected, CDFG will be contacted regarding appropriate measures to relocate them out of the work area or protect occupied habitat in conjunction with salt marsh harvest mouse avoidance measures. Exclusionary fencing installed for salt marsh harvest mouse would also prevent these species from entering the project site.
Biological Resources <i>BIO-8</i>	Construction of the proposed project could potentially result in disturbance to other sensitive bird species (Cooper's hawk, tricolored blackbird, northern harrier, white-tailed kite, saltmarsh common yellowthroat, San Pablo song sparrow, burrowing owl) and migratory birds during the nesting season.	If feasible, ground disturbing activities (e.g., clearing and grubbing) in and within 500 feet of suitable nesting habitat for these species should commence outside of the breeding season (September 1 to January 14). If birds began nesting in and within 500 feet of the project site after construction commenced, it could be assumed that they were not disturbed by construction activities.
Biological Resources <i>BIO-9</i>	Construction of the proposed project would result in impacts to northern coastal salt marsh habitat, coastal brackish marsh habitat and brackish stream habitat.	Prior to commencement of construction activities that have the potential to impact the Northern Coastal Salt Marsh and Coastal Brackish Marsh, a permit will be obtained from the USACE and the BCDC for fill and/or disturbance of this habitat. All permit conditions will be followed. Suitable compensatory mitigation for impacts to Northern Coastal Salt Marsh and Coastal Brackish Marsh will be determined in conjunction with the USACE and BCDC and implemented to ensure no net loss of Northern Coastal Salt Marsh occurs.
Biological Resources <i>BIO-10</i>	Construction of the proposed project could potentially result in loss of eelgrass and/or widgeongrass beds.	A valid preconstruction eelgrass survey will be completed during the period of active growth of eelgrass (typically March through October). The preconstruction survey will be completed prior to the beginning of construction and shall be valid until the next period of active growth. If any eelgrass is identified in the project area, post-construction eelgrass surveys will be conducted to determine if any eelgrass was adversely impacted. The survey will be prepared in consultation with CDFG and/or NMFS.

Environmental Area/Impact	Impact	Mitigation
Biological Resources BIO-11	Construction of the proposed project could potentially result in loss of intertidal mudflats.	A permit will be obtained from the USACE and the BCDC prior to impacting the intertidal mudflats. All permit conditions will be followed. Suitable compensatory mitigation will be determined in conjunction with the USACE and BCDC and implemented in order to replace and/or enhance the functions and values lost due to impacting special aquatic sites during implementation of the proposed project.
Biological Resources BIO-12	Construction of the proposed project could potentially result in the spread of invasive species.	The contractor will ensure that construction equipment is clean of potential noxious or invasive species prior to utilization of equipment on the site. Implementation of Mitigation Measure WR-1 and the following measures will be followed during dredging in San Pablo Bay to reduce turbidity. <ul style="list-style-type: none"> In-water construction and dredging activities will occur during the window of June through November, to minimize effects on listed species and their habitat. Sampling and testing for contaminants will be conducted in potential dredging locations in San Pablo Bay prior to the onset of dredging activities (per USEPA and USACE requirements). If sediments to be dredged are contaminated such that their resuspension may adversely affect listed species or their habitat, NMFS and CDFG will be consulted. Bankward slopes of the dredged area will be slanted to acceptable side slopes (e.g., 3:1) to prevent sloughing.
Biological Resources BIO-13	Dredging activities could impact marine mammals.	
Biological Resources BIO-14	Construction and dredging activities could result in the modification or disturbance of special aquatic sites including eelgrass beds, mudflats, and tidal marshes that provide fish habitat.	Any tidal marsh habitat that is degraded or lost due to the movement of relocating the mouth of Refugio Creek will be mitigated for by planting tidal marsh vegetation (i.e., cordgrass) in San Pablo Bay, in the vicinity of where Refugio Creek currently flows out into San Pablo Bay. Tidal marsh habitat will be monitored over time to ensure no net loss in tidal marsh habitat. Wetland restoration will be coordinated with the responsible agencies as part of the wetland permitting required under Section 404 of the CWA. Although eelgrass surveys within the ESL and vicinity were completed in 2007, and no eelgrass was found (VWR 2007b), valid preconstruction eelgrass surveys will be completed (see Mitigation Measure #BIO-10).
Biological Resources BIO-15	Construction and dredging activities may temporarily increase sedimentation and turbidity in Refugio Creek and San Pablo Bay.	Implementation of Mitigation Measures BIO-13, WR-1, and WR-2 will reduce potential impacts to fish and other aquatic species to less than significant. No additional measures will be required.
Biological Resources BIO-16	Construction activities may potentially result in a chemical spill in Refugio Creek or San Pablo Bay.	Implementation of a Spill Prevention and Response Plan designed to minimize the potential for chemical spills and seepage, would reduce the potential impact to a less than significant level.
Biological Resources BIO-17	Dredging activities could result in the entrainment of special-status fish and aquatic species.	Dredging activities in San Pablo Bay will be conducted during the work window of June through November to minimize potentially significant impacts to anadromous salmonids and longfin smelt. This work window also will minimize potential impacts to other fish and aquatic species by minimizing the timing of dredging to June through November.
Biological Resources BIO-18	Vibration and pressure waves resulting from pile driving could impact special-status fish and aquatic species and marine mammals.	Pile driving will be conducted "in the dry," (within a cofferdam or during low tide) minimizing any potential impacts to fishes and marine mammals to less than significant levels.

Environmental Area/Impact	Impact	Mitigation
Biological Resources <i>BIO-19</i>	Dredging activities could result in re-suspension of contaminants.	<p>Sampling and testing for contaminants will be conducted in potential construction/dredging locations in San Pablo Bay prior to the onset of dredging activities.</p> <p>Dredging activities in San Pablo Bay will be conducted during the work window of June through November to minimize potentially significant impacts to anadromous salmonids and longfin smelt. This work window also will minimize potential impacts to other fish and aquatic species by minimizing the time period of dredging to June through November.</p>
Biological Resources <i>BIO-20</i>	Construction and dredging activities could result in increased predation risk of special-status fish and aquatic species.	In-water construction activities in San Pablo Bay and dredging activities in San Pablo Bay will be conducted during the work window of June through November to minimize potentially significant impacts to anadromous salmonids and longfin smelt.
Biological Resources <i>BIO-23</i>	Dredging activities could impact phytoplankton production.	Temporary impacts to phytoplankton production due to increases in turbidity would be avoided/minimized through the use of construction BMPs to reduce the potential for increases in turbidity (e.g., use of silt curtains or methods to protect from disturbance).
Biological Resources <i>BIO-24</i>	Dredging activities could impact Pacific herring spawning.	Dredging activities will only occur during the window of June through November, minimizing potential impacts on herring spawning activities.
Biological Resources <i>BIO-25</i>	Construction of the proposed project would result in impacts to wetlands and other waters of the U.S.	<p>Prior to commencement of construction activities that have the potential to impact the wetlands or other waters of the U.S., a permit will be obtained from the USACE and BCDC for fill and/or disturbance of this habitat. All permit conditions will be followed. Suitable compensatory mitigation for impacts to wetlands and other waters of the U.S. will be determined in conjunction with the USACE and implemented to ensure no net loss of wetlands occurs.</p> <p>If contaminated sediment is encountered, further sediment characterization and a sediment removal plan (including upland disposal or beneficial reuse) will be required to protect water quality. If impacted sediments are to be dredged in Refugio Creek and/or San Pablo Bay, impacts to water quality could be minimized through the use of the following BMPs:</p> <ul style="list-style-type: none"> • Use of silt curtains, which prevent suspended sediment from migrating out of the immediate project area; • Dredging only on low or incoming tide; • Hydraulic or closed clamshell dredging to reduce the generation of suspended sediments; • Shunting, which involves pumping of the free water in a sediment holding barge to the bottom of the water body, which reduces turbidity; • Employment of an independent, certified, on-board dredging inspector to ensure compliance with permit conditions; and • Monitoring will be conducted during dredging to allow for: measurement of the efficiency of contaminated sediment removal; determination dredged volumes; measurement of sediment re-suspension at the dredge site; and checking performance of barriers and other controls.
Water Resources <i>WR-1</i>	Dredging of Refugio Creek and San Pablo Bay could potentially adversely impact water quality through mobilization of contaminated sediment.	<ul style="list-style-type: none"> • Erosion will be controlled in accordance with an approved Erosion Control Plan. In addition, all construction activities will be performed in accordance with the California NPDES General Permit for Storm Water Discharges Associated with Construction Activities, 2009-009-DWQ, requiring the implementation of BMPs to control sediment and other pollutants mobilized from construction activities
Water Resources <i>WR-2</i>	Construction of project could degrade water.	

Environmental Area/Impact	Impact	Mitigation
Water Resources WR-3	The project could alter the existing drainage pattern of the site or area, which would result in substantial erosion or siltation on or off-site.	Erosion will be controlled in accordance with an approved Erosion Control Plan. In addition, all construction activities will be performed in accordance with the California NPDES General Permit for Storm Water Discharges Associated with Construction Activities, 2009-009-DWQ, requiring the implementation of BMPs to control sediment and other pollutants mobilized from construction activities
Water Resources WR-4	The project could potentially adversely impact the existing drainage pattern of the site or area, which could result in flooding on or offsite.	Erosion will be controlled in accordance with an approved Erosion Control Plan. In addition, all construction activities will be performed in accordance with the California NPDES General Permit for Storm Water Discharges Associated with Construction Activities, 2009-009-DWQ, requiring the implementation of BMPs to control sediment and other pollutants mobilized from construction activities
Water Resources WR-5	Operations in a floodplain could constitute hazards and may adversely impact human safety and property.	New facilities will be designed to minimize flooding through the use of retaining wall, levees, and/or construction on fill. Flood hazard warnings will be posted and flood evacuation plans will be developed. Construction and design will account for the maximum flood level so that facilities are built above the mark.
Water Resources WR-6	Stormwater runoff from the Hercules ITC site and parking may adversely impact water quality.	Operation of the Hercules ITC will be in conformance with the California NPDES General Permit for Storm Water Discharges Associated with Industrial Activities.
Geology and Soils GEO-1	Seismic activity could damage facilities and/or injure people.	A site-specific geotechnical investigation shall be required for this project. The project will conform to provisions of current building codes and to the recommendations of the required geotechnical investigations.
Geology and Soils GEO-2	The proposed project could result in soil erosion of topsoil.	Prior to construction, the City will develop an erosion control plan and stormwater pollution prevention plan. Best management practices will be incorporated into the project to avoid and minimize potential erosion. The project will be constructed in conformance with the NPDES Construction Stormwater Permit.
Geology and Soils GEO-3	Liquefaction, landslides, or lateral spreading could damage facilities and/or injure people and structures.	Design-level analyses of the liquefaction hazard shall be required for the project. Specifically, a program of site-specific exploratory borings and accompanying laboratory testing will be required to delineate any potentially liquefiable materials underneath proposed facilities. These geotechnical investigations will also be required for consideration prior to foundation design.
Geology and Soils GEO-4	Subsidence could damage facilities.	Project design will incorporate mitigation measures to avoid or minimize the potential for subsidence including driving piles to support structures, surcharging, and grading design considerations.
Hazards and Hazardous Materials HAZ-1	The proposed project could create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials or through the accidental upset or release of hazardous materials.	<p>The construction contractor shall develop a project-specific Health and Safety Plan that includes a project-specific contingency plan for hazardous materials and waste operations.</p> <p>If affected or potentially affected soil and/or sediments are encountered during construction activities (grading and excavation), these materials would be excavated, stockpiled, and characterized to evaluate appropriate reuse or disposal alternatives.</p> <p>The construction contractor shall develop a Spill Prevention and Response Plan and provide copies to all contractors working on the proposed project.</p> <p>Construction contractors and employees shall immediately control the source of any leak and contain any spill using appropriate spill containment and countermeasures. In addition, all precautions required by the RWQCB for the project's NPDES General Permit for Stormwater Discharges Associated with Construction Activity would be taken to ensure that no hazardous materials enter the nearby waterways.</p>

Environmental Area/Impact	Impact	Mitigation
Public Services <i>PUB SVC-1</i>	Construction traffic and other activities have the potential to adversely disrupt police and fire department emergency response times in the project area.	Prior to the start of construction activities, the City shall consult with the emergency service providers who have jurisdiction in the immediate vicinity of the Hercules ITC site to develop a Construction Emergency Response Access Plan that would identify appropriate routes and access points that would be available to police and fire services to use during the construction phase.

ATTACHMENT B



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

RECEIVED
JUN 1 2012

May 29, 2012

Mr. Paul Page
Federal Transit Administration, Region IX
201 Mission Street, Suite 1650
San Francisco, CA 94105

Subject: Final Environmental Impact Statement for the Hercules Intermodal Transit Center,
Hercules, California (CEQ #20120125)

Dear Mr. Page:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508) and Section 309 of the Clean Air Act.

EPA provided comments on the Draft Environmental Impact Statement (DEIS) for this project in a November 15, 2010 letter. We rated the DEIS as Environmental Concerns – Insufficient Information (EC-2). Our review of the Final Environmental Impact Statement (FEIS) finds that most of our concerns have been addressed. We have a remaining question about the extent of dredging. The Response to Comment 2.3 states that Figure 4.9-1 shows the limits of dredging for the new channel area, but that figure does not appear to include that information. Other figures in the FEIS, such as 4.10-1, show the project boundary extending into San Pablo Bay, but none appear to explicitly show the area of proposed dredging. Please send information identifying the exact location of proposed dredging for this project to Melissa Scianni of EPA's Wetlands Office. Melissa can be contacted at 415-972-3821 or scianni.melissa@epa.gov.

We understand that continued coordination with the Capital Corridor Joint Powers Authority (CCJPA), Amtrak, and Union Pacific Railroad will be required to finalize a full funding plan and travel time mitigation plan, in order to determine station stop approval from the CCJPA board.

We again commend the Federal Transit Administration and the City of Hercules for seeking to increase access to and connectivity of public transportation services, and for the inclusion of pedestrian, bicycle, and multi-use trail improvements and amenities, and the incorporation of renewable energy elements, with the goal of achieving LEED certification, in the project.

We appreciate the opportunity to review this FEIS. When the Record of Decision is signed, please send one copy to the address above (mail code: CED-2). If you have any questions, please contact Carolyn Mulvihill (415-947-3554 or mulvihill.carolyn@epa.gov) of my staff.

Sincerely,



Connell Dunning, Transportation Team Supervisor
Environmental Review Office
Communities and Ecosystems Division

cc: Lisa Hammon, Assistant City Manager, City of Hercules
Ian Liffman, U.S. Army Corps of Engineers
John Cleckler, U.S. Fish and Wildlife Service
Kathryn Hart, San Francisco Bay Regional Water Quality Control Board
Lindy Lowe, Bay Conservation and Development Commission



CITY OF HERCULES
111 CIVIC DRIVE, HERCULES CA 94547
PHONE: (510) 799-8200

May 30, 2012

Leslie Rogers
Regional Administrator
Federal Transit Administration, Region IX
201 Mission Street
Suite 1650
San Francisco, CA 94105-1839

RE: Final Environmental Impact Statement, EIS No. 20120125
Hercules Intermodal Transit Center, Hercules, California

Dear Mr. Rogers:

The Notice of Availability for the Final Environmental Impact Statement ("FEIS") for the Hercules Intermodal Transit Center Project ("Project") was listed in the Federal Register on April 27, 2012 as EIS No. 20120125 with an indication that the review period ends on May 29, 2012. This letter is to notify you that only one letter was received on the FEIS following the Notice of Availability in the Federal Register.

The letter from the United States Environmental Protection Agency (EPA) was received May 29, 2012 and requested additional clarification on one of their earlier comments regarding the limits of dredging for the new channel area. HDR Engineering, Inc. followed up with EPA today to direct their attention to, and provide an additional copy of, Appendix G of the FEIS: Intermodal Transit Center, Refugio Creek Restoration, Draft Permit Set Sheet L-4. We believe this provides the clarification EPA is seeking.

Following the close of the comment period on the Draft Environmental Impact Report / Environmental Impact Statement in November 2010, the City of Hercules received a letter dated January 21, 2011 ("Letter") from Bingham McCutchen, LLP on behalf of Hercules Bayfront, LLC ("HBL"). HBL owns most of the land upon which the Project is proposed to be built and is the project sponsor for the adjacent Hercules Bayfront Project.

To update you regarding this matter, attached is a copy of a letter from HBL that was presented to the City Council on March 13th, 2012 by Jim Anderson, HBL's Managing Member. The letter and corresponding presentation to the City Council included some

clarifications to the February 28, 2012 presentation by City Staff on both projects, but more importantly it was presented both to signify that:

1. HBL affirmed that their concerns regarding the NEPA process had been resolved
2. HBL formally recognized their support for the Project

Additionally, during preparation of the FEIS, the City's consultant, HDR Engineering, Inc. worked closely with FTA's staff to address areas of concern that were raised in the Letter.

This project continues to be the City's highest priority and has strong community support. The guidance and assistance provided by your staff in finalizing the NEPA process is very much appreciated and we look forward to a strong collaborative relationship as we move forward to Implement the Project.

Sincerely,



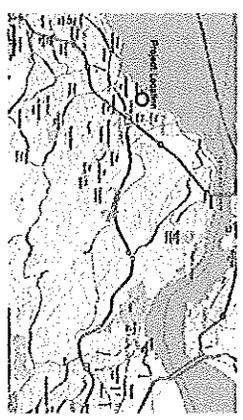
Steven Duran
City Manager

Enclosures

Cc: Renee Marler, Federal Transit Administration, Region IX
Ray Sukys, Federal Transit Administration, Region IX
Paul Page, Federal Transit Administration, Region IX
Ross Chittenden, Contra Costa Transportation Authority
Jim Townsend, East Bay Regional Park District
William Silva, d'Oro Construction Management
Terry Bowen, Gray-Bowen
Serge Stanich, HDR Engineering

INTERMODAL TRANSIT CENTER REFUGIO CREEK RESTORATION

CITY OF HERCULES
DRAFT
PERMIT SET
FEBRUARY 14, 2012



Sheet Number	Sheet Title
T-1	Cover
L-1	Demolition
L-2	Grading
L-3	Sections
L-4	Creek Mouth
L-5	Profile
L-6	Revegetation
L-7.1	Channel Details
L-7.2	Planting Details

REVISIONS	
No.	Description

INTERMODAL TRANSIT CENTER
REFUGIO CREEK RESTORATION
CITY OF HERCULES

PERMIT SET



Professional Engineer
State of Louisiana
No. 12345
Exp. 12/31/2015

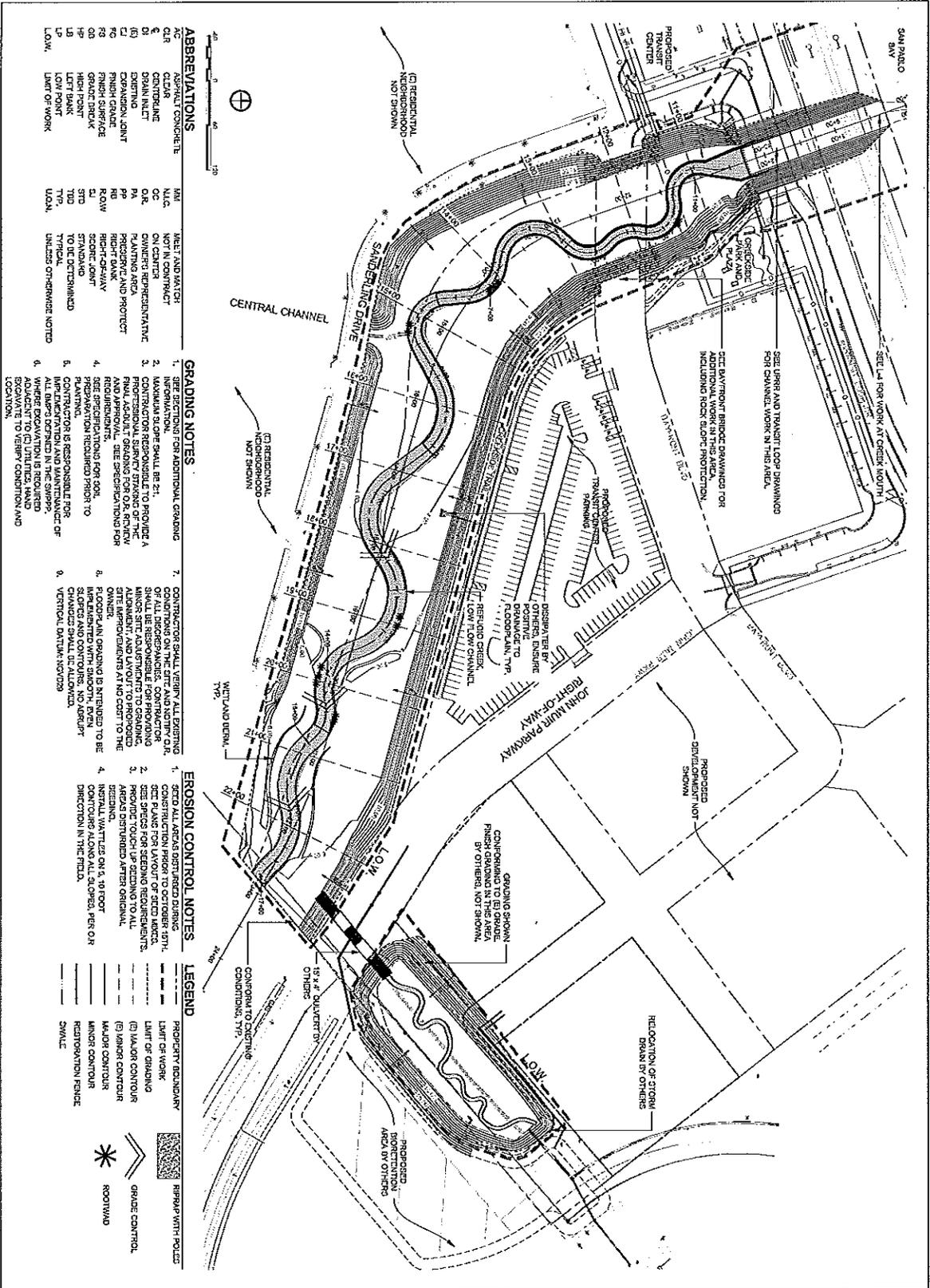
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DATE
 FEBRUARY 14, 2012

PROJECT
 COVER

HEET
T-1

NOT FOR CONSTRUCTION
OF 09



ABBREVIATIONS

AC	APPROXIMATE CONCRETE	ML	METAL AND WOOD
CLR	CLEAR	NLC	NOT IN CONTRACT
CL	CENTRAL LINE	OC	OWNER REPRESENTATIVE
D1	DRAIN INLET	OR	OWNER REPRESENTATIVE
D2	DRAIN INLET	PR	PREPARED AND PROJECT
D3	DRAINAGE JOINT	RB	RIGHT-BANK
F3	FINISH GRADE	SL	SECONDARY
F4	FINISH SURFACE	STD	STANDARD
G1	GRADE DECK	TR	TYPICAL
H1	HIGH POINT	UNL	UNLESS OTHERWISE NOTED
L1	LOW POINT		
LD	LIMIT OF WORK		

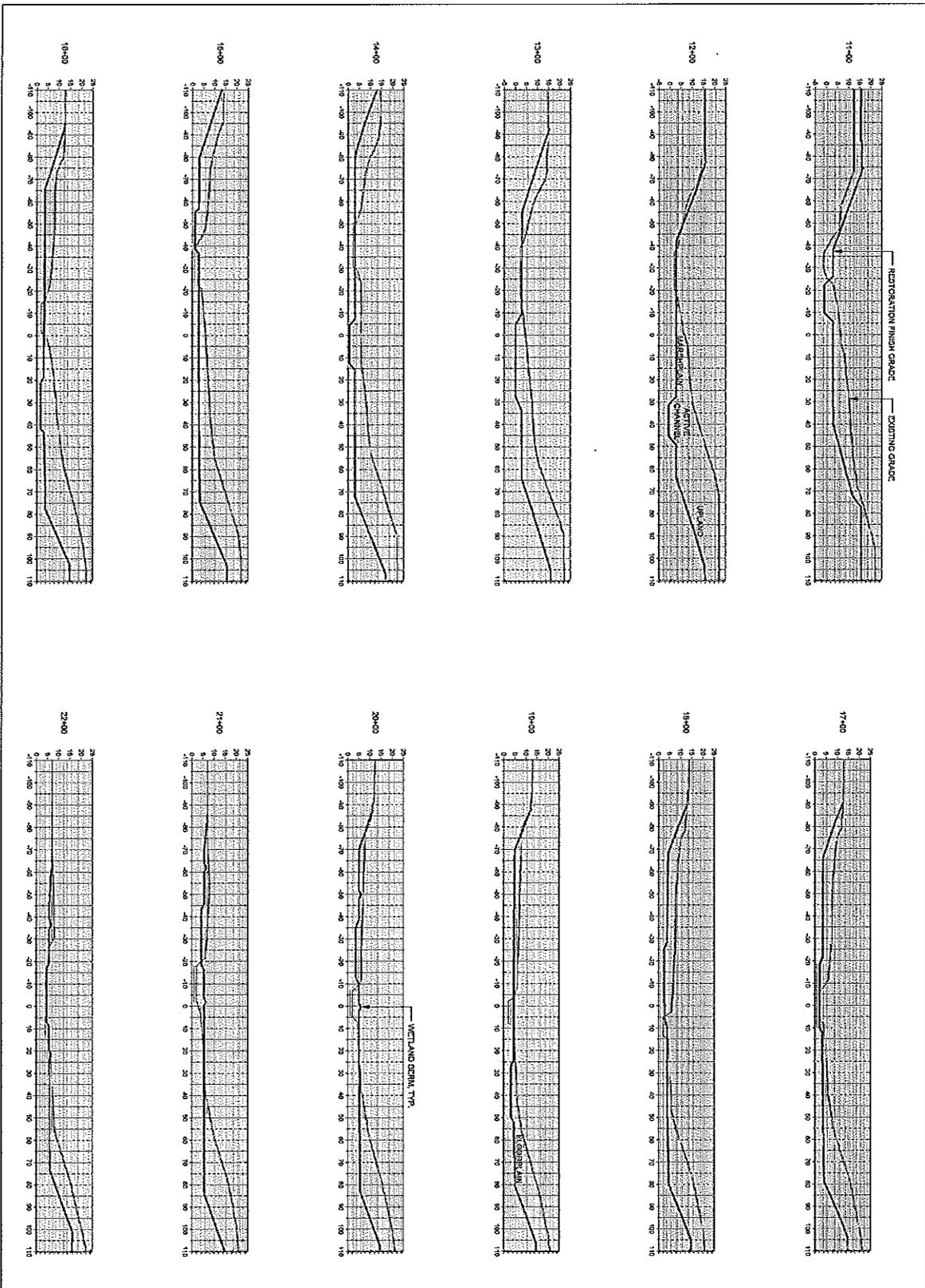
- GRADING NOTES**
- SEE SECTIONS FOR ADDITIONAL GRADING INFORMATION.
 - MINIMUM SLOPE SHALL BE 2%.
 - CONTRACTOR RESPONSIBLE FOR PREPARE A FINAL AS-BUILT GRADING FOR O.R. REVIEW AND APPROVAL. SEE SPECIFICATIONS FOR REVISIONS.
 - PREPARATION REQUIRED PRIOR TO PLANTING.
 - CONTRACTOR IS RESPONSIBLE FOR ALL DAP'S DEFINED IN THE SHEET, ADVISORY TO (C) UTILITIES, HAWK SECTION.
 - CONTRACTOR SHALL VERIFY ALL EXISTING CONDITIONS ON THE SITE AND NOTIFY O.R. OF ALL DISCREPANCIES. CONTRACTOR SHALL ADVISORILY NOTIFY O.R. OF ANY MINOR SITE ADJUSTMENTS TO GRADING, ALIGNMENT AND LAYOUT TO PREVENT SITE IMPROVEMENTS AT NO COST TO THE FLOODPLAIN GRADING IS INTENDED TO BE IMPLEMENTED WITH SMOOTH, EVEN SLOPES AND CONTOURS, NO ABRUPT VERTICAL DATUMS, NO DAPS.

- EROSION CONTROL NOTES**
- SEE ALL AREAS IDENTIFIED DURING CONSTRUCTION PRIOR TO OCTOBER 31ST. SEE PLANS FOR LAYOUT OF SEED MIXES, SEE SHEETS FOR SEEDING REQUIREMENTS, PROVIDE STABILIZATION AFTER GRADING.
 - INSTALL WALLS ON 4, 10 FOOT CONTOURS ALONG ALL SLOPES, PER O.R. DIRECTION IN THE FIELD.

LEGEND

--- (Dashed line)	PROPERTY BOUNDARY
--- (Dotted line)	LIMIT OF WORK
--- (Long dashed line)	GRADE CONTROL
--- (Short dashed line)	MAJOR CONTOUR
--- (Medium dashed line)	MINOR CONTOUR
--- (Thin dashed line)	RECONSTRUCTION FENCE
--- (Thick dashed line)	SWALE
--- (Dotted line with cross-hatch)	RIPPRAP WITH HOLES
--- (Dotted line with asterisk)	GRADE CONTROL
--- (Dotted line with triangle)	ROOTWAD

<p>PERMIT SET</p> <p>Grading</p> <p>DRAFT</p> <p>L-2</p> <p>NOT FOR CONSTRUCTION</p>		<p>DATE: FEBRUARY 14, 2012</p> <p>SCALE: 1" = 60'</p>	<p>PROJECT: INTERMODAL TRANSIT CENTER REFUGIO CREEK RESTORATION</p> <p>CITY OF HERCULES</p>	<p>REVISIONS</p> <table border="1"> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </table>	NO.	DATE	DESCRIPTION									
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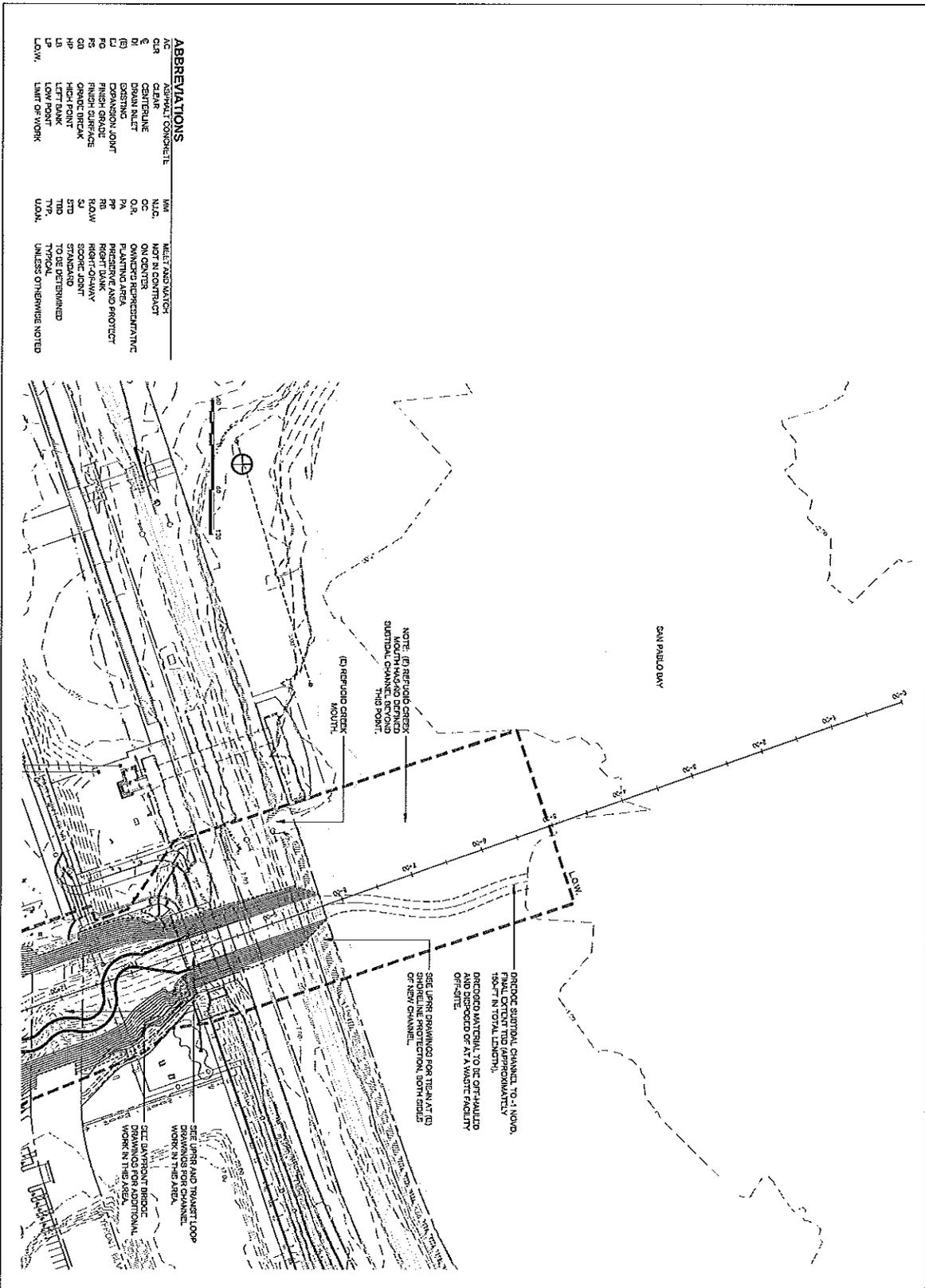


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NO.	DATE
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2	1/14/2012
3	1/14/2012
4	1/14/2012
5	1/14/2012
6	1/14/2012
7	1/14/2012
8	1/14/2012
9	1/14/2012
10	1/14/2012
11	1/14/2012
12	1/14/2012

INTERMODAL TRANSIT CENTER REFUGIO CREEK RESTORATION CITY OF HERCULES

PERMIT SET

PROJECT: **INTERMODAL TRANSIT CENTER**
 LOCATION: **REFUGIO CREEK RESTORATION**
 DATE: **FEBRUARY 14, 2012**
 SCALE: **1" = 20'**
 SHEET: **L-3**
 DRAWN BY: **DR**
 CHECKED BY: **RL**
 NOT FOR CONSTRUCTION
 OF 13

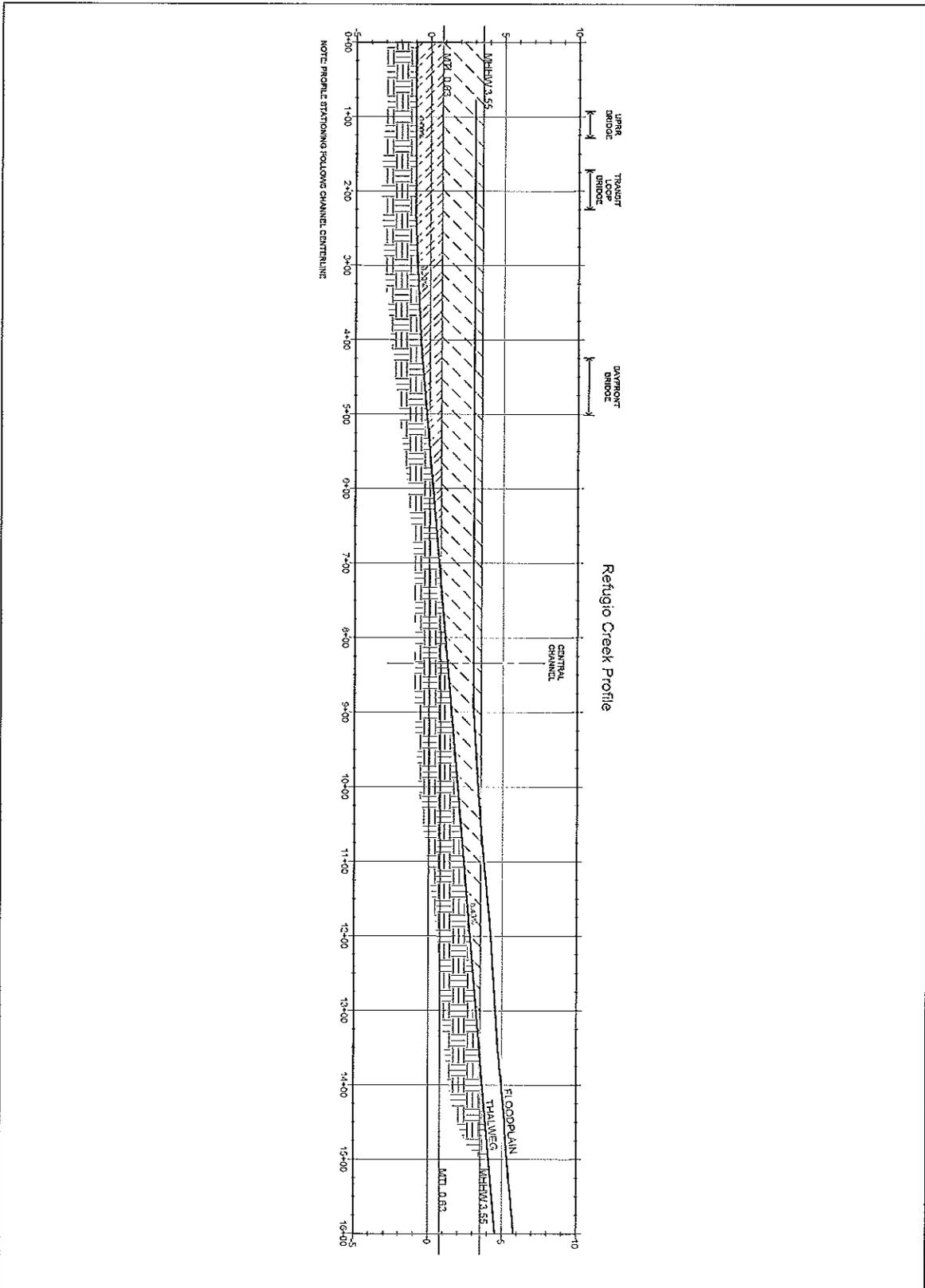


REVISIONS	
NO.	DATE

INTERMODAL TRANSIT CENTER REFUGIO CREEK RESTORATION CITY OF HERCULES

PERMIT SET

ESJ / RL	ESJ / RL
ESJ / PR	RL
1" = 60'	
FEBRUARY 14, 2012	
Creek Mouth	
SHEET DRAFT	
L-4	
NOT FOR CONSTRUCTION	



NOTE: PROFILE STATIONING FOLLOWS CHANNEL CENTERLINE

**INTERMODAL TRANSIT CENTER
REFUGIO CREEK RESTORATION
CITY OF HERCULES**

REVISIONS	
NO.	DESCRIPTION

PERMIT SET

City of Hercules, Ohio
 Department of Public Works
 1000 Hercules Blvd.
 Hercules, Ohio 44641

PROJECT: ES / RL
 DESIGNED: ES / PR
 DRAWN: RL

DATE: FEBRUARY 14, 2012

Profile

SHEET DRAFT
L-5
 NOT FOR CONSTRUCTION
 OF '09

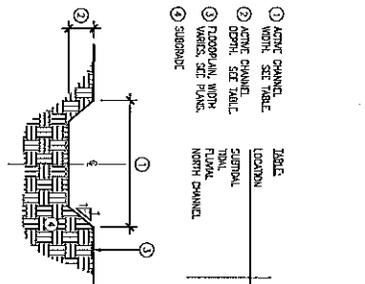
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NO.	DESCRIPTION

**INTERMODAL TRANSIT CENTER
REFUGIO CREEK RESTORATION
CITY OF HERCULES**

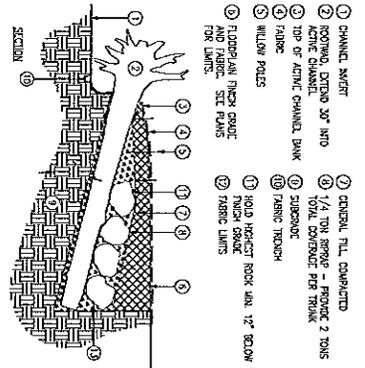
**PERMIT
SET**


 City of Hercules
 Department of Public Works
 1000 Main Street
 Hercules, MO 64709
 Phone: (660) 866-2200
 Fax: (660) 866-2201
 Email: info@cityofhercules.com

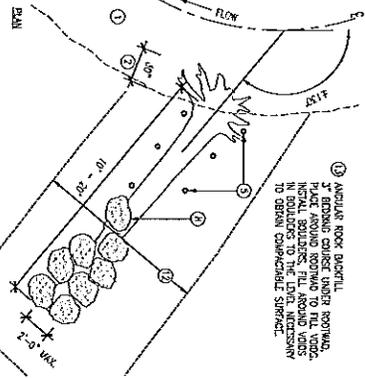
DATE: FEBRUARY 14, 2012
 PROJECT: Channel Details
 DRAWN: RL
 CHECKED: ES / PR
 SCALE: ES / RL
 SHEET: DRAFT
L-7.1
 NOT FOR CONSTRUCTION



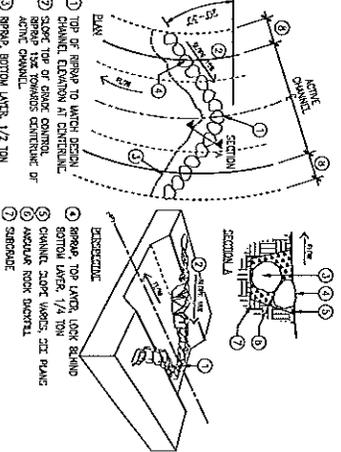
1 ACTIVE CHANNEL
SCALE: 1/8" = 1'-0"



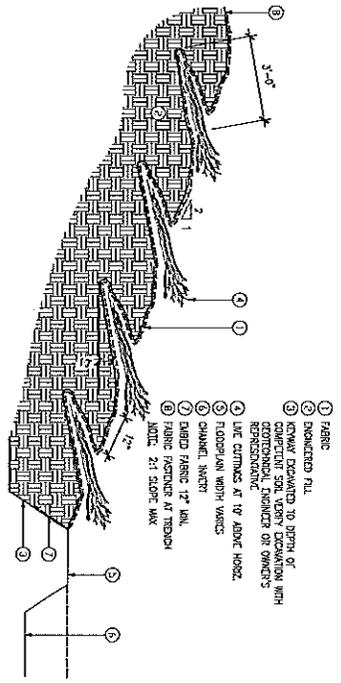
2 ROOT WAD
SCALE: 1/8" = 1'-0"



DESCRIPTION	LOCATION	WIDTH	DEPTH
1 ACTIVE CHANNEL	CENTRAL TRAIL	20'-0"	2'-0"
2 1/2-TON AGGREGATE	TRAIL	20'-0"	4.5"
3 FABRIC	TRAIL	22'-0"	2"
4 1/4-TON AGGREGATE	TRAIL	12'-0"	2"



3 GRADE CONTROL
SCALE: 1/8" = 1'-0"



4 BRUSH LAYERING
SCALE: 1/8" = 1'-0"

NOT FOR CONSTRUCTION

ATTACHMENT C

ANDERSON PACIFIC, LLC



March 13, 2012

Mayor and Members of the City Council of the
City of Hercules
111 Civic Drive
Hercules, CA 94547

via: Email and US Mail

Re: Hercules Bayfront Project

Dear Mayor and Members of the City Council:

This letter is provided to you by Hercules Bayfront LLC (“HBL”) in connection with your consideration of the following items on your March 13, 2012 agenda, (i) the second reading and adoption of the ordinances approving the Implementing Development Agreement (“IDA”) and Vesting Development Agreement (“VDA”) between the City and HBL, and (ii) Vesting Tentative Map 9290 for the Hercules Bayfront project (“VTM”). The purpose of this letter is to clarify and correct some isolated statements that were made during the staff presentation of this matter at the February 28, 2012 City Council meeting, and to clarify and update HBL’s position with regard to its prior comments on the National Environmental Policy Act (“NEPA”) compliance issues associated with the City’s processing of its Intermodal Transit Center (“ITC”) Project.

As an initial matter, we offer the following clarifications for inclusion in the administrative record on this matter:

- During the February 28, 2012 staff presentation, your staff characterized the HBL’s private development project (“HBL Project”) and the ITC Project as “inseparable.” While HBL is fully supportive of the ITC Project, we believe that the HBL Project has independent merit and value to your City and the broader community. For that reason, we do not view the two projects as inseparable.
- During the February 28, 2012 staff presentation, your staff indicated that some of the property to be conveyed through the two purchase and sale agreements (“PSAs”) that are attached to the IDA would “normally be dedicated to the City.” As you are aware, the negotiations over the IDA were long and complicated, and both parties made accommodations to the other in order to achieve an infrastructure plan that met the needs of both the ITC Project and the HBL Project. In that context, the parties agreed that a “public use value” would be assigned to the right of way properties. That valuation approach yielded land costs that are *less* than would have been required through a “highest and best use” valuation approach, which would have been required if the City acquired the right of way property for the benefit of the ITC Project alone.

Mayor and Members of the City Council of the City of Hercules

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- During the February 28, 2012 staff presentation, your staff referred to portions of the land to be conveyed to the City under the PSAs as “contaminated land.” HBL is not aware of any land that can fairly be characterized as “contaminated.” Further, the PSAs include comprehensive procedures through which the City is permitted to complete its due diligence on the property to be conveyed before closing escrow.
- During the February 28, 2012 staff presentation, your staff characterized the development impact fees to be paid by HBL as “reduced” fees. To be clear on the point, the fees to be paid by HBL during the first few years after the approval of the development agreement will be *those that are currently applicable to all development* throughout the City pursuant to Resolution 11-132 (adopted by the City Council on November 8, 2011). While a development agreement would normally “lock in” those fees for the term of the agreement, in this case HBL has agreed to waive that vested right beginning on the later of (i) five years after the IDA becomes effective, and (ii) three years after the City completes the “City Phase I” infrastructure improvements identified in the IDA.

With regard to NEPA issues, as you are aware HBL submitted a letter to you, through its counsel Bingham McCutcheon, outlining a variety of concerns with the Draft EIR/EIS for the ITC Project. That letter is dated January 21, 2011. The primary purpose of the letter was to ensure that mitigation costs were equitably divided as between the City and HBL. Through the negotiation, approval, and effectiveness of the IDA, VDA, and through the City’s approval of the VTM, HBL’s concerns regarding the NEPA process have been resolved.

In closing, we want to thank you for your attention and perseverance in pursuing this matter to its successful conclusion. We look forward to a collaborative, strong, and productive relationship with the City as we move forward to the development stage of the HBL Project, and as the City proceeds with the development of the ITC Project.

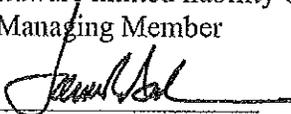
Mayor and Members of the City Council of the City of Hercules
March 13, 2012
Page 3

Best Regards,

Hercules Bayfront, LLC
a Delaware limited liability Company

By: APL-Hercules, LLC
a Delaware limited liability Company
Its: Manager

By: Anderson Pacific, LLC
a Delaware limited liability Company
Its: Managing Member

By: 
James R. Anderson
Managing Member

cc: Steve Duran (via email)
Patrick Tang (via email)
Charlie Long (via email)
Patricia Curtin (via email)
Edgar Pankey (via email)
Steven Crooke (via email)
Lila Pankey Ray (via email)
Jeff Melching (via email)

BINGHAM

Marie A. Cooper
Direct Phone: 415.393.2625
Direct Fax: 415.262.9236
marie.cooper@bingham.com
Our File No.: 324090

January 21, 2011

Via Email

Fred Deltorchio
Interim City Manager
City of Hercules
111 Civic Drive
Hercules, CA 94547
fdeltorchio@ci.hercules.ca.us

Paul Page
Office of Planning & Program Management
Federal Transit Administration, Region IX
201 Mission Street, Suite 1650
San Francisco, CA 94105
Paul.Page@dot.gov

Re: Draft EIR/EIS for the Hercules Intermodal Transit Center

Dear Messrs. Deltorchio and Page:

I submit these comments concerning the Draft EIR/EIS for the Hercules Intermodal Transit Center on behalf of Hercules Bayfront, LLC (HBL). HBL owns most of the land upon which the ITC project is proposed to be built, and is the project sponsor for the adjacent Hercules Bayfront project. HBL is concerned that the EIR/EIS for the ITC project does not address issues adequately.

We understand that the comment period closed on November 15, 2010. However, neither the EIR nor the EIS has been completed, and the deficiencies we identify are worthy of your attention. We also submit these comments for inclusion in the record of proceedings.

1. Inconsistency With Initiative.

The EIR/EIS states that the ITC project is consistent with the City's General Plan, and that Alternative 1 is consistent with the Waterfront District Master Plan adopted by the Waterfront Initiative. (DEIR/DEIS Pages 4-25 and 4-26) These statements are not correct. The City has repeatedly insisted that amendments to the Initiative's Master Plan are needed to accommodate the ITC project, and in fact has requested HBL's cooperation in that regard. The City cannot now take the opposite position and claim that no amendments are necessary.

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Santa Monica
Silicon Valley
Tokyo
Washington

Bingham McCutchen LLP
Three Embarcadero Center
San Francisco, CA
94111-4067

+1.415.393.2000
+1.415.393.2286
bingham.com

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Paul Page
January 21, 2011
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The applications (including the subsequent revisions) HBL submitted in accordance with the City's wishes to amend the initiative set forth in detail the numerous ways in which the Master Plan approved by the Initiative is inconsistent with, and must be modified to accommodate, the ITC project. Copies are provided with this letter.¹ The more important inconsistencies are the following.

- Alternatives 1 and 2 include a Point Pedestrian Bridge. The Initiative does not allow a second raised crossing. It envisions an at-grade crossing, at a location different than the Point Pedestrian Bridge proposed in Alternatives 1 and 2. See Section 7 of program 1a.1 of the General Plan Open Space Element; the Hercules Point Standards at page 3-6 of the Master Plan, and the Street and Circulation Regulating Plan at page 4-3 of the Master Plan.
- The inclusion of the Pedestrian Point Bridge necessitates a ramp that extends into Block D, eliminating some of the square footage of development envisioned by the Initiative, and intruding into the building setback area imposed by the Initiative for Block D.
- The ITC project also includes an expanded Transit Plaza to accommodate the Pedestrian Point Bridge that occupies much of what the Initiative described as Block E, again eliminating some of the square footage of development envisioned by the Initiative and intruding into the building setback area imposed by the Initiative for Block E.
- Blocks E, G and I also must be reconfigured from the layout proposed in the Initiative to accommodate the configuration of the ITC project.
- The ITC project proposes parking in Block N, in an area zoned Neighborhood General. Parking lots are not listed as uses allowed in the Neighborhood General zone.
- Alternatives 1 and 2 include a lengthy emergency evacuation route crossing the tracks. Only a short, direct emergency route across the tracks to the Hercules Point open space area is allowed by the Street and Circulation Regulating Plan within the Master Plan (page 4-3).
- Figure 2.2-2 in the EIR/EIS includes a bay trail and retaining wall that are located *outside* of the right of way. Within the Master Plan, the Civic Space

¹ The applications are large and are being transmitted to you via our FTP site, in an accompanying email.

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Regulating Plan (page 3-3) and Street and Circulation Regulating Plan (page 4-3) clearly show these features located *inside* the railroad right-of-way.

- Compared to the Initiative, the ITC project includes a realignment of the segment of John Muir Parkway seaward of Bayfront Boulevard, moving it towards the northeast to accommodate additional transit parking located on Block K the City requested. This, in turn, requires a reconfiguration of the building and blocks surrounding that segment of John Muir Parkway.

The project description accordingly fails to mention amendments to the General Plan and Master Plan that would be required to implement the ITC project, and fails to evaluate the impact of those amendments. The project description should be corrected, and the City should acknowledge the existing inconsistencies and factor them into the environmental analysis.² The EIR/EIS should also discuss whether an alternative that is consistent with the current General Plan and Master Plan would create fewer impacts.

Because the inclusion of these required analyses will substantially change the EIR/EIS, especially with respect to the description and study of the No Action and No Project alternatives, recirculation will likely be required.

2. Traffic Is Understated.

The stated purpose of the ITC project is to address the “ongoing and steadily increasing problem” of traffic congestion in the Bay Area. (DEIR/DEIS, Page 1-5). The City and other agencies are supposedly interested in investing \$80 million or more in this project,³ in order to make a significant difference in traffic congestion. The City has repeatedly promised that it is “dedicated” to working to “ensure the Intermodal Transit Center is truly a destination.”⁴

² The discussion of superseded land use designations as the “land use designations within the project area” (Page 3-19) also requires correction. We also note that because HBL has vested rights under its development agreement, the inconsistencies cannot be eliminated without the consent of HBL.

³ Included in the materials being provided to you via our FTP site is a budget the City prepared for an agreement between the City and HBL. The budget outlines the sources and uses of funds for the ITC project, not including the purchase price for the land to be conveyed or the rental/license fees for the land to be used for construction disturbance, staging or parking.

⁴ E.g., <http://www.ci.hercules.ca.us/Modules/ShowDocument.aspx?documentid=2779>

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The EIR/EIS, in contrast, states that the ITC will have almost no noticeable effect on traffic. It concludes that the project will remove very few trips from I-80 and will generate few, if any, trips itself.

These positions are contradictory. Either the project – and its \$80 million+ price tag – are worth pursuing because the City believes the project will make a difference in relieving congestion in Hercules and in the region; or the project will have little, if any, effect on traffic in the area.

We believe the EIR/EIS is wrong, and that the City and other agencies are justly interested in this project precisely because it will provide significant changes to the transportation network. However, a project that achieves this goal is not addressed in the EIR/EIS, and the true transportation impacts of the ITC project have not been addressed.

The EIR/EIS's conclusion that the project will generate only a few trips is troubling also because it indicates that the City contends that almost all trips in the area would be generated by the Hercules Bayfront project instead of the ITC project, and the City will seek to require HBL to pay for the necessary improvements. For the reasons stated below, the EIR/EIS falls short of establishing any nexus with the Hercules Bayfront project, and specifically fails to establish adequately that the ITC project cannot be held accountable for needed traffic improvements.

The methodology and rationale for concluding that the ITC project would attract few, if any, trips is not clearly explained.⁵ Page 4-7 of the EIR/EIS states that the railroad will attract 232 passengers in the morning, and that 157 automobile trips will transport the bulk of these passengers to the facility. During the afternoon hours, there would be 292 boardings, using 196 automobile trips. The EIR/EIS then explains that *none* of these trips will be generated by the ITC project: "Because the proposed intermodal transit center would not generate substantial new employment or draw people to the site, it is assumed that the intermodal transit center would provide transit services to existing commuters and not generate new trips. Rather these trips would come from the regional roadway and transit network and be diverted to the intermodal transit center." (Pages 4-7 to 4-8) An environmental analysis cannot lawfully be based on circular speculation that because the transit center would not draw people to the site, it will not attract trips to or from the

⁵ The DKS traffic study in Appendix E (pages 22 and 23) states only that the trip generation numbers were based on other studies, but those other studies are not included in the EIR/EIS.

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site. What evidence is there that the presence of the ITC will not entice people to live, shop or work in the area?⁶

Moreover, a few sentences later, the EIR/EIS contradicts itself by stating that “. . . the proposed project is expected to generate 40 morning peak hour trips and 71 evening peak hour trips.” (Page 4-8) The EIR/EIS then explains that these trips would merely be re-routed from I-80 on to the local network. (Page 4-8)

What evidence is there supporting the conclusion that so few drivers would substitute rail transit for automobile commutes? Why is there such a discrepancy between morning and evening trips? These issues must be clarified. Please also confirm and document that the EIR/EIS assesses the impacts on the local network of *all* re-routed trips and *all* newly-generated trips.

The EIR/EIS also indicates that varying numbers of parking spaces, up to 425, would be required.⁷ The EIR/EIS never reconciles the large number of parking spaces with the low number of trips. The EIR/EIS also repeatedly assumes that all commuters will arrive in the am and leave in the pm, which makes discrepancies between am and pm peak trips not credible.

Please explain the assumption that only 25 percent of the am period trips (6am to 10am) would occur during the peak hour. It seems unlikely that trips would be evenly distributed. Additional data, such as the number of trains and arrival/departure times, should be used to substantiate the arrival patterns of riders during the peak period and peak hour. Moreover, the number of trains and arrival/departure times used in the analysis should be those necessary to accommodate the total number of train passengers the trains will accommodate after the ITC project is built, not just the number of trains and cars that accommodate current passengers.

Additionally, the EIR/EIS states that 23 percent of the train passengers are expected to be dropped-off or picked-up by other drivers. However, the project trip assignment figure

⁶ The statement that the ITC project will not draw people to the site is contradicted by the statements that the small café will serve nearby residents (page ES-1), that Alternative 2 includes a banquet/conference facility (page 2-62), and that the project includes viewing platforms, trails and other amenities that presumably are intended to be enjoyed by local residents and visitors. (E.g., Page 2-43 [describing Hercules Point Bridge and Land Side Ramp] and 2-41 [describing creekside park, plaza and footpath, and Railroad Plaza as a “destination” for views of the bay and ultimately a connection the Hercules Point Park and open space]). These statements must be reconciled.

⁷ See section 5 of this letter, below.

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indicates that all am peak hour trips are inbound and all pm peak hour trips are outbound. This indicates that the outbound am and inbound pm trips of these other drivers were not accounted for in the analysis.

The EIR/EIS states that a significant impact would occur only if the addition of project traffic causes a location operating at an acceptable service level to degrade to an unacceptable service level. It apparently fails to consider whether traffic added to an already deficient intersection (such as San Pablo Avenue/John Muir Parkway and San Pablo Avenue/Sycamore Avenue) could be significant or whether exacerbation of existing deficiencies constitutes a cumulatively considerable contribution to the problem. We understand that 0.1 is the commonly-used threshold applied to intersections already projected to operate at deficient levels when analyzing traffic under the Contra Costa Transportation Authority Level of Service method. It appears that some project-related traffic would cause an increase in V/C ratio of more than 0.1, yet these impacts are left unidentified and unmitigated.

The EIR/EIS should explain what threshold it applies for every intersection, and whether that threshold is consistent with the thresholds the City used for other recent projects, and in the EIR the City is preparing for the Hercules Bayfront project. If the same thresholds are not used in the same manner, the analysis for the ITC project should be revised using thresholds that are consistent with those the City uses for other EIRs.

The EIR/EIS uses baseline counts apparently taken in 2006, which should be updated to correlate to the 2009 baseline date. It also appears that the cumulative baseline does not include the traffic associated with the Bayfront development, thereby understating the future levels of congestion.

Please address all these issues. The transportation analysis affects not only transportation-related impacts but also the noise, greenhouse gas and air quality analyses.

3. Train Ridership

The EIR/EIS fails to disclose and discuss how the trains will accommodate the additional passengers. Accordingly, it does not disclose impacts of those activities.

The EIR/EIS also does not disclose why it concludes the facility will attract only seven bus-to-train riders per day during peak hours in 2035. (Page 4-15)

4. Ferry Phase of Project.

The EIR/EIS repeatedly refers to the ferry terminal as a future "phase" of this project. The EIR/EIS also acknowledges that "WETA has an active proposal to develop a ferry terminal adjacent to the Hercules ITC." (Page 3-12). The City has repeatedly referred publicly to the ITC project as including a ferry terminal. These factors make it inappropriate to separate out the ferry terminal from the rest of the project, under the

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standards enunciated in *Laurel Heights Improvement Ass'n v. Regents of Univ. of Calif.*, 47 Cal. 3d 376 (1988).

5. Parking.

The EIR/EIS concludes that the parking to be provided in the temporary surface lot will not be sufficient, and then simply proposes Mitigation Measure TRANS-3, which requires the City to find more parking. This defers the mitigation, and piecemeals the project. Where will the parking be? What will its impacts be? Will creation of additional parking surfaces affect drainage?

Also, because the ITC project and the Hercules Bayfront project are separate projects, the EIR/EIS must evaluate the ITC project as a standalone project, without the parking building that is proposed as part of the Hercules Bayfront project. This means that the temporary surface parking solution should be studied as a permanent solution, or alternate parking should be proposed and studied as part of the ITC project.

The parking facilities are inconsistently described in the EIR/EIS. Page 2-61 states there will be about 400 parking spaces under Alternative 2. Page 4-16 states that Alternative 2 would provide 385 parking spaces within a proposed parking structure. Page 4-29 states that for both Alternatives 1 and 2, there will be future parking spaces for up to 425 automobiles. Most important, the descriptions of the parking structure do not clearly reflect the fact that approximately 100 to 125 of the parking spaces will be devoted to the residential units surrounding the parking deck, leaving only the remaining spaces available for transit use. The EIR/EIS thus contains an unstable project description. This affects not only the parking analysis, but raises questions as to what facilities are included that would generate a demand for this amount of parking, and what the impacts of those facilities will be.

Finally, in calculating parking demand, the EIR/EIS appears to take into account only the demand generated by peak afternoon trips. It apparently does not account for parking needs of train riders at other times, such as those who arrive mid-day. The EIR/EIS should calculate the parking demand for the whole of the project, and identify and study the impacts of construction and operation of enough parking spaces to satisfy that entire demand.

6. Condemnation of Private Property.

The EIR/EIS discounts the feasibility of Alternative 2 (east of Refugio Creek alternative) by noting that it would require the threat of condemnation to acquire the site from a private party. (Page ES-2) However, the EIR/EIS does not acknowledge that the City must acquire HBL's private property to implement any aspect of any alternative or variant of the project. It fails to note that the City may act by condemnation, which is especially relevant given the City's refusal to adopt a resolution stating that it will not use the power of condemnation. The EIR/EIS never assesses the feasibility of acquiring the

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property, and never compares the feasibility of doing so with the feasibility of acquiring the property needed for Alternative 2.

7. Banquet & Conference Center.

The EIR/EIS indicates that a banquet and conference center would be included in Alternative 2 – the east of Refugio Creek alternative – but not in the project. This banquet facility is never described in sufficient detail to allow the reader to understand the entirety of the project being proposed. Instead, the EIR/EIS notes only that it “presumes” the banquet/conference facility will be used only intermittently and employ temporary personnel. (Page 4-57) It does not explain or support this presumption. The EIR/EIS does not assign any additional trips or other activity to the banquet/conference facility. It presumes that construction activity would be the same with and without the banquet/conference facility. These omissions affect the entire spectrum of environmental impacts.

8. Greenhouse Gas Analysis.

The EIR/EIS relies upon “draft BAAQMD guidance” and ignores the final CEQA guidelines and protocols BAAQMD adopted. It states the conclusions of its greenhouse gas analysis, but does not disclose the data or analysis that went into those conclusions. For example, it states that the calculations include adjustments for some gasses, but does not allow the reader to assess the accuracy of the adjustments. It never allows the reader the chance to ascertain whether all relevant factors were included in the analysis. Again, the reader is left without an ability to judge the rationality of the analysis.

9. Deferred Mitigation of Biological Impacts.

Some of the biology mitigation measures direct only that suitable mitigation be developed later, without setting performance standards or demonstrating that mitigation is feasible and likely to be effective. The mitigation measures that suffer from this defect are as follows:

BIO-2 (notify USFWS and implement “appropriate avoidance and/or mitigation measures” if vernal pool fairy shrimp are discovered).

BIO-3 (to mitigate potential clapper rail impacts, consult USFWS “regarding appropriate avoidance measures” and obtain permission from USFWS to commence work).

BIO-4 (complete consultation with USFWS if salt marsh harvest mice are found, and “receive instruction regarding reporting requirements”).

BIO-5 (if California black rail is found, consult CDFG “regarding appropriate avoidance measures” and obtain permit to commence work from CDFG).

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BIO-7 (contact CDFG "regarding appropriate measures to relocate them out of the work area or protect occupied habitat" if San Pablo vole or salt marsh wandering shrew are found).

BIO-8 (determine "appropriate avoidance measures" in consultation with CDFG to protect nesting birds during construction).

BIO-9 (this measure requires no net loss of Northern Coastal Salt Marsh, but no standard for loss of Coastal Brackish Marsh habitat; it also requires "suitable compensatory mitigation" for both, and contains no demonstration that the no net loss standard can feasibly be achieved).

BIO-10 (mitigation for eelgrass "in consultation with CDFG and/or NMFS (e.g., at a ratio of 1.2:1)").

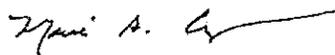
BIO-13 (if contamination is found in dredge locations, "NMFS and CDFG will be consulted").

Several other biology mitigation measures set a performance standard of "no net loss" but do not explain whether that standard can feasibly be attained, or what type and length of monitoring would be required to determine that the standard has been obtained.

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Thank you for your attention to these matters.

Very truly yours,



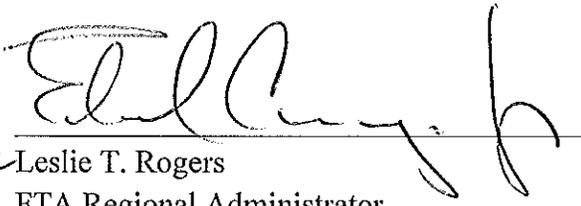
Marie A. Cooper

cc: Rachel Falsetti, Division Chief, Caltrans Division of Transp. Planning
(rachel_falsetti@dot.ca.gov)
Craig Goldblatt, FHWA Funding, Metropolitan Transportation Commission
(cgoldblatt@mtc.ca.gov)
Ross Chittenden, Deputy Executive Director, Projects, Contra Costa
Transportation Authority (rchittenden@ccta.net)
Martin R. Engelmann, Deputy Executive Director, Planning, Contra Costa
Transportation Authority (mre@ccta.net)
James R. Anderson (via email)
Ethan Sischo (via email)
Edgar Pankey (via email)

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Steven C. Crooko (via email)
Lila Pankey Ray (via email)
Cecily Talbert Barclay (via email)

On the basis of the environmental record for this proceeding, the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. §4332); Federal Transit Laws (49 U.S.C. §5301(e), §5323(b) and §5324 (b)); the Clean Air Act of 1970, as amended; 49 U.S.C. §303 (formerly Department of Transportation Act of 1966, §4(f)); National Historic Preservation Act of 1966, §106 (16 U.S.C. §470f); Executive Order 12898 (Environmental Justice); and other applicable legal and program requirements have been satisfied for the Hercules Intermodal Transit Center in the City of Hercules, Contra Costa County, California.


For Leslie T. Rogers
FTA Regional Administrator
Region IX


Date

- Attachment A: Summary of Environmental Impacts and Proposed Mitigation Measures
for the Preferred Alternative
- Attachment B: Comments on the FEIS and Responses
- Attachment C: Relevant Correspondence