



MEMORANDUM

DATE: December 20, 2010

TO: Mayor Ed Balico and City Council Members
City Employees
Members of the public

FROM: Nelson Oliva, City Manager

SUBJECT: City Manager's Weekly Report

Overview of Report: The following topics are included in this week's update:

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Holiday Schedule: As indicated in last weeks' CM Report, several city facilities will operate under a modified holiday schedule starting next week. Please contact the facilities that deliver services you use to verify their holiday schedule.

The City Council took action at the meeting of the 14th to cancel the regular second meeting of December as part of the holidays.

Incoming Council Sworn-in/ Council re-organizes: On Tuesday, December 14, the two newly elected Council members, John Delgado and Myrna de Vera, were sworn into office. Prior to the new Council members coming on board, members Valstad and McDonald were recognized for their contributions by several organizations. The new council moved to the business of re-organizing rather quickly. Member Balico and Ward were nominated to serve as Mayor and Vice Mayor respectfully. The nomination was approved on a 4 to 1 vote with member De Vera opposing the motion.

All other business on the agenda was continued to a special meeting this coming Tuesday the 21st. The [full agenda](#) for the meeting of the 21st is available for your review.

Commission Vacancies: As a result of the swearing in of Member Myrna de Vera to the City Council, the Planning Commission will have a vacancy. A complete recruitment for all city Commission will begin in January upon council direction. However council will consider an interim commission appointment to the Planning Commission between now and March, when the commission's normal term expires.

Financial Audit: Council gave direction to staff to prepare a "scope of work" for a financial / performance audit on fiscal matters of the City, Redevelopment Agency and the Public Finance Authority. The Council will determine the scope they wish to have provided and have indicated that they would like a community advisory committee to assist the Council and the selected firm with the process. Several good recommendations were also provided at the meeting of the 14th which can be helpful in the process.

Bayfront / Waterfront Development/Anderson Pacific: Council will also discuss the Bayfront Development and the most recent materials submitted by Jim Anderson on the developer's request to structure the partnership between the City/Agency and Private Developer. The materials submitted this Thursday to members of the City Council include the following items:

ITEM A:

Bayfront Public Private Cooperation Principles (To be Incorporated into a Memorandum of Understanding and Submitted to the City Council for Approval on December 14, 2010)

Draft of December 8, 2010

- 1) **ITC Funding:** The City of Hercules/Hercules Redevelopment Agency ("City/Agency") is committed to obtaining financing for the entire Intermodal Transit Center ("ITC"), for which the preliminary scope, costs and committed funding is summarized in the attached [Exhibit A](#). The City/Agency and Hercules Bayfront, LLC

(“Bayfront”) agree costs associated with the ITC, not limited to those included in Exhibit A, will be borne by the City/Agency, and will not be borne by the Bayfront project.

- 2) **Public private joint-venture:** The City/Agency and Bayfront are committed to crafting agreements such as an Owner Participation Agreement, Development Agreement, Cooperation Agreement and Purchase and Sale Agreement (the “Implementing Agreements”) recognizing that both public and private investment and development components are vital to achieving the goal of creating a great and special place. City/Agency and Bayfront acknowledge that while either project will be entitled to proceed independently of the other, each project will be enhanced if the other is also successfully funded and developed.
- 3) **Funding gaps:** Both the ITC and Bayfront projects have funding gaps that need to be overcome by generating resources through the joint-venture, including funding from state, federal, regional and redevelopment sources. The City/Agency and Bayfront will identify the funding gaps for both the ITC and the Bayfront projects and will commit both parties to strategies that address how to close these gaps. The parties shall split any costs of outside consultants to validate the market value and costs of development to quantify the funding gaps. The analysis shall include a mutually agreed upon minimum land residual amount and shall suggest methods of insuring that the property owners’ interest in long term value is respected. This analysis shall specifically address the financial viability of early phases of development and identify what assistance may be needed to achieve financial viability. The analysis shall also address the strategies that will contribute to financial viability for the entire development plan. The analysis shall be considered in arriving at business terms in the Implementing Agreements to assist the private development and in suggesting additional approaches to achieving financial viability.

It is unlikely that the “gap analysis” and the subsequent Implementing Agreements will identify all the funding for the financial gaps before the start construction; however, the Implementing Agreements will commit the parties to strategies for cooperatively pursuing outside funding for both the ITC and private project components, including funding from state, federal and regional sources.

- 4) In negotiating the Implementing Agreements, the parties shall consider the applicability and availability of the following tools as possible approaches to addressing funding gaps:
 - a) Deferring or providing land secured financing for City Development Impact Fees.
 - b) The application of tax increment redevelopment revenues generated by the project as gap funding provided to the developer or as the basis of Redevelopment Agency issuing bonds to assist with the funding gap.

- c) The application of tax increment redevelopment revenues from other parts of the redevelopment project areas.
 - d) The use of lease-lease back financing for private development parcels as a means of increasing the financing leverage for private development.
 - e) The use of land secured financing for parking and other public improvements that would be the responsibility of the private development.
- 5) **Completion of entitlement:** The ability to secure funding from outside sources depends on project momentum. Completing the environmental analysis, design and entitlement for both the public and private projects is key to maintaining momentum.
- 6) **Development phasing:** Initial private development may include lower cost product types in combination with strategic catalyst components in response to market conditions that may not support more expensive product types during the early phases of development, according to the current approved zoning and form-based code.
- 7) **Catalytic development strategy:** The City/Agency and Bayfront will address cooperative efforts to secure catalytic development in the early stages, including securing unique uses and value-added development approaches. Such development catalysts might include the sale or lease of land to the City for fee-development of a Community Center/City Hall, a master leasing program for the Administration Building/Clubhouse, or the immediate development of Bayfront Boulevard properties. The City/Agency and Bayfront will seek out and respond to other catalytic development opportunities for the projects as they arise.
- 8) **Conveyance/Temporary Uses of Land for ITC:** Terms for conveying and permitting temporary use of the land needed for the ITC must be fair to both parties and must be just one part of the overall public private joint-venture agreement addressing how the private and public investments synergize to create a great place. The land to be conveyed includes 13 acres of “landward” property, 26.52 acres of submerged land for dredging, 10.96 acres of Hercules Point (shown in 17 parcels on pending tentative map application), for a total of just over 50 acres. The land to be temporarily used for the ITC for disturbance, staging areas and temporary parking is approximately 13.9 acres. Bayfront will provide preliminary title reports and will negotiate the Implementing Agreements in good faith, in an effort to approve and execute the Implementing Agreements as soon as reasonably possible, consistent with the public private cooperation principles described herein. The request by the City/Agency for additional license agreements will be negotiated as needed.
- 9) **Hercules Point:** Hercules Point provides the only opportunity within the City for direct access and interaction with the Bay, a vital element for both the City and region. The City/Agency’s development and use of Hercules Point as an important regional open space and recreation asset will require the cooperation of various regulatory agencies with jurisdiction over the land, including the USFWS, NOAA, NMFS, USACE, DTSC, BCDC, CDFG, RWQCB, and CCCFC. The City/Agency

and Bayfront will engage consultants and work together to develop the necessary information to identify the applicable regulations and use requirements so that the vision for Hercules Point as a City and regional open space and recreational asset can be realized.

- 10) **Open space and recreation requirements:** The Bayfront project, as configured in the initiative land use plan, will not be responsible for meeting additional open space, parks or recreation requirements beyond paying the City's development impact fees, which as a cost of development will be considered as part of the financial gap analysis in crafting the Implementing Agreements.
- 11) **Parking:** The current joint development program involves the development of parking spaces to serve the needs of both the ITC, recreational users of Hercules Point and of commercial development at Bayfront. These spaces will be financed and built as development occurs. The Implementing Agreements will address the phasing and financing plan for this parking, which will include the sharing of land and construction costs between the public and private sectors.

The parties have designated Block N of the private development plan for temporary use as a surface parking lot for the users of the ITC until permanent parking structures can be financed and built as parts of Blocks K, D, E and G. The Implementing Agreements shall provide that the City/Agency shall lease Block N at a market rate and may provide that the property owner share in parking fees as generated by parking and other uses at this site.

- 12) **Affordable Housing.** The Bayfront project is subject to the City's inclusionary housing requirement that it develop 15% of its residential units as affordable to families of moderate and very low income, with 40% of these units provided to families of very low income. The Implementing Agreements will identify means for applying the Redevelopment Agency Housing Set Aside tax increment generated by the project to assist with innovative means for the private development to meet its affordable housing requirement, which may include alternative means of compliance consistent with the City's Inclusionary Housing Regulations.
- 13) **Project Labor.** Bayfront will endeavor to identify components of the Bayfront project that are private and not subject to prevailing wage and to ensure that public funds or subsidy are not used to support that private development. Components of the Bayfront project that receive public subsidy will be subject to prevailing wage.
- 14) **Agreement Not to Condemn Bayfront Property For Specified Period.** In consideration of Bayfront's agreement to negotiate the Implementing Agreements in good faith, to encourage and facilitate the public private cooperation principles described above and to encourage and facilitate the approval and execution of the Implementing Agreements by all parties as soon as reasonably possible, the City and Agency agree not to take any further steps to pursue condemnation of the Property for 180 days, and the City/Agency will provide 30 days' written notice to Bayfront of the

last public hearing concerning certification of the ITC EIS/EIR, during such 180 day period.

15) **Project Management.** City Manager Nelson Oliva and Bayfront Managing Member Jim Anderson will be the lead negotiators and project managers to implement the public private joint-venture until the parties agree otherwise. They each will be assisted by staff and consultants as needed at their own expense.

16) **Schedule/Milestones.** The City/Agency and Bayfront to work cooperatively and in good faith to diligently pursue the milestones and timing described on the attached Exhibit B.

Exhibit A

¹ITC Costs and Funding

Costs

ITC Component	Estimated Cost (000)
1 Lift station removal*	\$1,500
2 Bayfront Bridge	\$2,125
3 John Muir Parkway/Refugio Creek	\$2,900
4 Bay Trail/Retaining Walls	\$14,000
5 Utility Relocation	\$5,100
6 Railroad Bridge (north section)	\$1,000
7 Track/Platform/RR Bridge	\$19,000
8 UP Signal	\$1,000
9 Station Structure	\$19,400
10 Transit Loop	\$6,900
11 Café/Civic Plaza	\$2,700
12 <u>Soft costs</u>	
a Design*	\$1,900
b Environmental/Permitting*	\$400
c Project management*	\$285
d Construction management	\$2,500
e Legal*	\$200
f Other	
Total City/Agency Costs	\$80,910
*Incurred	

Funding

Committed Funding		
1	<u>State</u>	
a	TCRP construction	\$700
b	STIP-RIP	\$8,000
c	STIP-TE	\$775
d	STIP-TE	\$1,097
e	STIP-TE	\$862
2	<u>Federal</u>	
a	HPP Authorization design/envir	\$913
b	HPP Authorization construction	\$339
3	<u>Regional</u>	
a	Measure J Sales Tax	\$5,891
b	Measure WW bond issue	\$900
c	Measure AA bond issue	\$1,400
d	Measure WW bond issue	\$367
e	ABAG Grant	\$198
f	STMP	\$1,000
4	<u>Local</u>	
a	Wastewater utility	\$1,500
	Agency funding through November	
b	2010	\$1,872
	Total Secured funding	\$25,814
	Additional funding to be obtained by City/Agency	\$55,096
	Pending additional funding applications	\$27,000

¹ **COSTS** do not include the purchase price for the land to be conveyed or the rental/license fees for the land to be temporarily used for construction disturbance, staging or parking for the ITC.

Exhibit B - Milestone Schedule

- | | |
|--|---------------|
| 1. Public Private Cooperation Principles endorsed by City Council through an MOU | December 2010 |
| 2. Bayfront DEIR Circulated | December 2010 |
| 3. HBL Grants Due Diligence License to City/Agency | December 2011 |
| 4. HBL Gives Preliminary Title Reports to City/Agency | December 2011 |
| 5. First Drafts DA/OPA/PSA Exchanged | January 2011 |
| 6. Public Hearing/Comments Due on DEIR | March 2011 |
| 7. FEIR Complete | March 2011 |
| 8. Nelson Oliva/Jim Anderson endorse final DA/OPA/PSA | March 2011 |
| 9. Planning Commission Hearing on FEIR, DA/OPA/PSA | March 2011 |
| 10. City Council/Agency Hearing on FEIR, DA/OPA/PSA | April 2011 |
| 11. D/OPA Effective | May 2011 |
| 12. Final Map for ITC Parcels | May 2011 |

Closing of ITC Property

ITEM B:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERCULES, CALIFORNIA PROHIBITING THE USE OF EMINENT DOMAIN TO ACQUIRE FEE, EASEMENT, OR OTHER INTERESTS IN REAL PROPERTY IN THAT CERTAIN DEFINED REAL PROPERTY COMMONLY KNOWN AS THE HERCULES BAYFRONT PROPERTY

WHEREAS, the City of Hercules is a municipal corporation and general law city of the State of California (“City”); and

WHEREAS, the City has certain powers including the power to acquire interests in real property through the use of the power of eminent domain subject to procedures required by law; and

WHEREAS, the City also has the power to restrict its authority to acquire interests in real property by the exercise of the power of eminent domain, including prohibiting altogether the use of eminent domain with respect to specifically identified real property; and

WHEREAS, a large and important tract of real property, known as the Hercules Bayfront property, exists in the City and is owned by a private party or parties; and

WHEREAS, the City Council, by adoption of this Resolution, has determined that in order for public improvements to be installed on, abutting, or adjacent to the Hercules Bayfront property in an effective manner, it is necessary for the City to work cooperatively with the property owner to define and determine real property required for such public improvements and to do so without a threat by the City to acquire portions of the Hercules Bayfront property through the exercise of City's power of eminent domain or condemnation;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hercules as follows:

Section 1. The foregoing Recitals are true and correct and are incorporated herein.

Section 2. The City Council hereby finds, determines, and declares that the City and all City-affiliated entities are prohibited from acquiring fee, easement, or other interests in the real property legally defined in Exhibit "A" attached hereto and by this reference made a part hereof, through the exercise of the City's power of eminent domain. If any portion of the real property legally defined in Exhibit "A" is conveyed or otherwise transferred by the owner of such portion to a governmental entity, the portion so conveyed or transferred shall not be included in the prohibition set forth in this Section 2. As used herein, the term "City-affiliated entities" means any entity possessing the power of eminent domain the governing board of which is composed solely of the members of City Council of the City or which is composed solely of members appointed by the City Council of the City. The owner of a parcel within the real property legally defined in Exhibit "A" may, in its sole and absolute discretion, waive in writing the prohibition set forth in this Section 2 so as to consent to the City's acquisition of such parcel or portion of such parcel through the exercise of the City's power of eminent domain. Nothing in this Section 2 shall affect the rights of the City and any property owner to convey or transfer any real property through a negotiated conveyance or transfer.

Section 3. No repeal or modification or amendment to this Resolution shall be made unless there has been a hearing before the City Council on such repeal, modification, or amendment, with all property owners of the property defined in Exhibit "A" having been given not less than thirty (30) days prior written notice of such hearing.

PASSED, APPROVED, AND ADOPTED this 21st day of December, 2010.

ITEM C:

A RESOLUTION OF THE HERCULES REDEVELOPMENT AGENCY PROHIBITING THE USE OF EMINENT DOMAIN TO ACQUIRE FEE, EASEMENT, OR OTHER INTERESTS IN REAL PROPERTY IN THAT CERTAIN DEFINED REAL PROPERTY COMMONLY KNOWN AS THE HERCULES BAYFRONT PROPERTY

WHEREAS, the Hercules Redevelopment Agency is a public body, corporate and politic (“Agency”), organized and existing under the Community Redevelopment Law of the State of California (Health & Safety Code §33000 *et seq.*) (“CRL”); and

WHEREAS, the Agency has, to the extent authorized by the CRL, other law, and the applicable redevelopment plan, certain powers including the power to acquire interests in real property through the use of the power of eminent domain subject to procedures required by law; and

WHEREAS, the Agency also has the power to restrict its authority to acquire interests in real property by the exercise of the power of eminent domain, including prohibiting altogether the use of eminent domain with respect to specifically identified real property; and

WHEREAS, a large and important tract of real property, known as the Hercules Bayfront property, exists in the City and within a redevelopment project area of the Agency and is owned by a private party or parties; and

WHEREAS, the Agency Board, by adoption of this Resolution, has determined that in order for public improvements to be installed on, abutting, or adjacent to the Hercules Bayfront property in an effective manner, it is necessary for the Agency to work cooperatively with the property owner to define and determine real property required for such public improvements and to do so without a threat by the Agency to acquire portions of the Hercules Bayfront property through the exercise of Agency power of eminent domain or condemnation;

NOW, THEREFORE, BE IT RESOLVED by the Redevelopment Agency of the City of Hercules as follows:

Section 1. The foregoing Recitals are true and correct and are incorporated herein.

Section 2. The Agency finds, determines, and declares that the Agency and all Agency-affiliated entities are prohibited from acquiring fee, easement, or other interests in the real property legally defined in Exhibit “A” attached hereto and by this reference made a part hereof, through the exercise of the Agency’s power of eminent domain. If any portion of the real property legally defined in Exhibit “A” is conveyed or otherwise transferred by the owner of such portion to a governmental entity, the portion so conveyed or transferred shall not be included in the prohibition set forth in this Section 2. As used herein, the term “Agency-affiliated entities” means any entity possessing the power of eminent domain the governing board of which is composed solely of the members of Agency Board or which is composed solely of members appointed by the Agency Board. The owner of a parcel within the real property legally defined in Exhibit “A” may, in its sole and absolute discretion, waive in writing the prohibition set forth in this Section 2 so as to consent to the Agency’s acquisition of such parcel or portion of such parcel through the exercise of the Agency’s power of eminent domain. Nothing in

this Section 2 shall affect the rights of the Agency and any property owner to convey or transfer any real property through a negotiated conveyance or transfer.

Section 3. No repeal or modification or amendment to this Resolution shall be made unless there has been a hearing before the Agency Board on such repeal, modification, or amendment, with all property owners of the property defined in Exhibit “A” having been given not less than thirty (30) days prior written notice of such hearing.

PASSED, APPROVED, AND ADOPTED this 21st day of December, 2010.

Purchase of Property for Transit Center: The Redevelopment Agency provided a copy of the appraisal for the property needed to develop the Transit Center to Jim Anderson via his legal counsel toward the end of October. The appraisal provides the agency’s appraisers opinion of fair market value for the property. The agency/city is ready to move forth on the purchase of property based on a fair market value approach. The property owners have several options 1) they can engage their own appraisers to provide their opinion of value, 2) work with the agency/city to engage an agreed upon appraiser to provide an opinion of value, 3) accept the agency/city appraisal and sell the property.

Environmental Report for Bayfront: The city, as lead agency, is ready to release the environmental document upon approval being given by the developer. The developer has requested that the city allow them an opportunity to review the document and address any issues with third parties on the findings of the report. In the spirit of cooperation the city has honored this request and will await the developers go ahead.

Status Update on Various Engineering Projects:

1) Sycamore Avenue Utility Relocation – Sanitary Sewers: We reported last week that bids were opened on Dec. 7 with excellent results. There was a low bid of \$888,000, which includes the removal and disposal of the existing lines. However, the lowest bidder has asked that their bid be withdrawn due to the fact that they failed to include the disposal of hazardous material in their bid. The second lowest bid was about \$40,000 higher, but still under the engineering estimate. The item will be presented to council to consider the award of contract at the January 11 meeting.

2) Hercules Sewer Plant Closure: Rains have delayed the project but we are hoping for the best to be able to complete the closure of the old waste water treatment plant. The plant was decommissioned in the mid 1980’s. The demolition was on hold for proper funding.

3) Intermodal Transit Center:

- In preparation for final project approval the design team reviewed station building materials with City Design Review Committee
- The design team met with Kinder Morgan and Shell Pipeline on December 14th to confirm utility rearrangement design.

- Design team met with UPRR on December 13th to review detailed railroad bridge stage construction plans.
- City staff reviewed construction lay-down, access and easement requirements with Bio-Rad on December 16th.
- Submitted a follow-up response to BCDC which outlined the results of additional SLR hydraulic analysis performed.

Duck Pond Park: The project has been impacted by bad weather which will ultimately lead to more delays. The asphalt parking lot was completed this week. The majority of the concrete works has been completed. The largest obstacles now appear to be the weather conditions. The Project Managers are hopeful of delivering both phases of the park by mid January (weather permitting).

Housing Element: Responded to inquiries from State Dept. Housing & Community Development (HCD) clarifying City's Design Review Permit processing, development of affordable housing units for selected projects. Consultant will edit, and submit to State HCD.

Affordable Housing: Planning staff will be starting preparations to take over the Affordable Housing Program. Consultants are preparing a transition plan to assist city staff in addressing the program services and delivery of said services.

Hercules Fitness: Staff members did a walkthrough with the existing tenant of Hercules Fitness to listen to their concerns and discuss possible solutions regarding some flooding areas, windscreens, and a future plan to address additional parking issues. Nothing has been finalized at this time.

Sycamore North: Staff is in the process of reviewing alternative strategies on product delivery that are in line with current market demands. Market value reports will play a key part in this process. We anticipate having a full presentation to council and the community in mid January.

Police Operations:

Possession of Stolen Property/Warrant Arrest: On December 9th at about 2:01 pm, an officer stopped a vehicle at the westbound Hercules off ramp to Highway 80 and contacted the driver, resident of Oakland, who initially used a false name to identify himself. The driver was arrested on three "no bail" warrants for burglary issued in Alameda County. The officer discovered stolen property in the vehicle, which included: 50 inch flat screen LG TV, a 32 inch Visio TV, a Gateway laptop computer, a jewelry box containing several items of jewelry, a Wii game console, a XBox game console, a GameCube game console, various game CD's and controllers, suitcases, and backpacks. The property was taken in three burglaries which occurred in Sacramento and Roseville. The victims were contacted and identified their property. The driver was booked into the Martinez detention Facility for the three warrants, possession of stolen property, giving a false name to officers and driving without a license. His vehicle was towed.

Vehicle Pursuit: On December 15th at about 1:10 am, CHP and Martinez PD units pursued a vehicle which exited Willow Avenue at Highway 4. The driver ran from the vehicle and after a lengthy foot pursuit through Foxboro, the driver, from Fairfield, was arrested for possession of stolen property and evading police. Tasers were used to subdue the driver, who was taken to the county hospital for examination and then to the Martinez Detention Facility.

Threatening and Assaulting Peace Officers: also on December 15th, at about 11:17 am, one of the School Resource Officers requested assistance breaking up a fight at Hercules Middle High School. A 17 year old female student combatant head butted the School Resource Officer in the face and attempted to head butt a second officer. The student was subdued, arrested and taken to Juvenile Hall. Two officers were injured arresting the suspect.

Fundraiser: City employees donated \$1,291.00 to the Madeline Cashion Fund this week. Madeline is the daughter of Walnut Creek Police Sergeant Tom Cashion and suffers from life threatening illness. The donations will help the Cashion family with their considerable medical expenses.

Cost cutting measures: The department will no longer authorize overtime for officers to participate in the county wide Vehicle Theft Enforcement Team (VSET) Sweeps. We will participate only if regular time staff can be scheduled to participate.

Suspects arrested for non-violent misdemeanor offenses will not be booked into the Martinez Detention Facility unless circumstances require such action. This will reduce "jail access fees" charged by the county.

Administrative staff is reviewing all service contracts and attempting to negotiate reductions. Today one of our sergeants persuaded a vendor providing service to a GPS tracker to reduce their cost from \$99.00 to \$50.00 per month. Similar attempts will follow with other vendors.

Next Week's Report: due to the holiday schedule the CM Report will not be presented next week. On behalf of the city council and staff we wish you happy holidays and a prosperous 2011!