

HERITAGE COMMERCE CORP
Form S-4/A
April 26, 2007

As filed with the Securities and Exchange Commission on April 26, 2007

Registration No. 333-142035

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Amendment No. 1 to Form S-4

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

Heritage Commerce Corp

(Exact name of registrant as specified in its charter)

California
(State or other jurisdiction
of incorporation)

6021
(Primary Standard Industrial
Classification Code Number)

77-0469558
(I.R.S. Employer
Identification No.)

Heritage Commerce Corp
150 Almaden Boulevard
San Jose, California 95113
(408) 947-6900

(Address, including Zip Code, and Telephone Number,
including Area Code, of Registrant's Principal Executive Offices)

Lawrence D. McGovern,
Executive Vice President and Chief Financial Officer
Heritage Commerce Corp
150 Almaden Boulevard
San Jose, California 95113
(408) 947-6900

(Name, Address, including Zip Code, and Telephone Number,
including Area Code, of Agent for Service)

With copies to:

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Approximate date of commencement of the proposed sale of the securities to the public: As soon as practicable after this Registration Statement becomes effective and upon completion of the merger described in the enclosed document.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act of 1933, as amended, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement shall become effective on such dates as the Commission, acting pursuant to said Section 8(a), may determine.

PRELIMINARY SUBJECT TO COMPLETION DATED APRIL 26, 2007

The information in this proxy statement/prospectus is not complete and may be changed. We may not sell the securities offered by this proxy statement/prospectus until the registration statement filed with the Securities and Exchange Commission is effective. This proxy statement/prospectus does not constitute an offer to sell or a solicitation of an offer to buy any securities in any jurisdiction where an offer or solicitation is not permitted.

MERGER PROPOSED YOUR VOTE IS VERY IMPORTANT

Dear Shareholder,

On February 8, 2007, Diablo Valley Bank entered into an agreement and plan of merger with Heritage Commerce Corp and Heritage Bank of Commerce pursuant to which Diablo Valley Bank will merge with and into Heritage Bank of Commerce, with Heritage Bank of Commerce as the surviving corporation in the merger. You are cordially invited to attend a special meeting of the shareholders of Diablo Valley Bank on [*] at 5:30 p.m., local time, at 387 Diablo Road, Danville, California 94526 to vote on approval of the merger. We are sending you this proxy statement/prospectus to ask you to vote on the approval of the merger at the special meeting.

If the merger is completed, Diablo Valley Bank common stock shareholders may elect to receive cash or Heritage Commerce Corp common stock in exchange for their shares of Diablo Valley Bank common stock, subject to certain limitations described in this document. The value you receive in exchange for your Diablo Valley Bank common stock is dependent on the *per share consideration*. The *per share consideration* is calculated by reference to the Heritage Commerce Corp common stock average closing price over a 20 day trading period that ends on the 5th business day before the effective date of the merger. The *per share consideration*, however, will never be less than \$23.00, and depending on the average trading price of the Heritage Commerce Corp common stock, the *per share consideration* could be higher than \$23.00. Based on the Heritage Commerce Corp closing sale price on [*], 2007 (the last practicable date before this document was mailed) of \$[*], you would receive \$[*] in value for each share of Diablo Valley Bank common stock. The *per share consideration* will float within a band of \$23.00 to \$25.00 if the average closing price is between \$24.55 and \$27.44. If the average closing price is above \$27.44, the *per share consideration* will be increased to reflect one-third of the increase in the average closing price above \$27.44. If the average closing price is below \$24.55, the aggregate amount of cash paid in the merger will be increased to an amount necessary to maintain a minimum *per share consideration* of \$23.00. If the average closing price falls below \$23.50, Heritage Commerce Corp has the right to terminate the merger.

Subject to the allocation provisions of the merger agreement, you may elect to receive all cash or all Heritage Commerce Corp common stock for the Diablo Valley Bank shares you own.

- If you elect cash, the amount you receive per share will be equal to the *per share consideration*.
- If you elect Heritage Commerce Corp common stock, the number of shares that you will receive will be equal to the number of your Diablo Valley Bank shares multiplied by an *exchange ratio*. The *exchange ratio* will be calculated by dividing the *per share consideration* by the *average closing price*. To the extent that the formula results in a fraction of a share, such fraction will not be issued but you will receive cash in lieu of such fractional interest.

The market prices of Heritage Commerce Corp common stock and Diablo Valley Bank common stock will fluctuate before the merger. You should obtain current stock price quotations for Heritage Commerce Corp common stock and Diablo Valley Bank common stock. Heritage Commerce Corp common stock is quoted on the NASDAQ Global Select Market under the symbol HTBK. Diablo Valley Bank common stock is quoted on the Over-the-Counter Bulletin Board under the symbol DBVB.

We expect that the merger will generally be tax-free to you as to shares of Heritage Commerce Corp common stock you receive in the merger and generally taxable to you as to the cash you receive.

It is a condition to the merger that the holders of Diablo Valley Bank's series A preferred stock will have their shares of series A preferred stock redeemed by Diablo Valley Bank for \$32.00 per share in cash prior to the merger.

We cannot complete the merger unless Diablo Valley Bank's common shareholders and holders of the series A preferred stock approve the merger. In order for the merger to be approved, the holders of at least a majority of Diablo Valley Bank's outstanding common shares and series A preferred shares, each voting as a separate class, must vote in favor of the merger. The members of the Board of Directors of Diablo Valley Bank, who in the aggregate have the power to vote approximately 17% of the outstanding shares of Diablo Valley Bank common stock (excluding the effect of exercisable options) and 19% of the outstanding series A preferred stock, have each executed voting agreements with Heritage Commerce Corp pursuant to which they have agreed to vote their shares of Diablo Valley Bank common stock in favor of the merger and against any competing business combination transaction. Regardless of whether you plan to attend the special shareholders' meeting, please take the time to vote your shares in accordance with the instructions contained in this document. Failing to vote will have the same effect as voting against the merger. The Diablo Valley Bank Board of Directors recommends that Diablo Valley Bank shareholders vote **FOR** approval of the merger.

Also enclosed is an election form and instructions for electing your preferred form of merger consideration and exchanging your shares of Diablo Valley Bank common stock for shares of Heritage Commerce Corp and any cash payments you may be entitled to receive. Please complete and return your election form together with your Diablo stock certificates in the separate BLUE envelope that is provided for that purpose. If you hold your shares in street name through a bank or broker, you should follow instructions from your bank or broker to vote your shares, complete the required election and transmittal materials and submit your shares in exchange for the merger consideration.

This document describes the special meeting, the merger, the documents related to the merger and other related matters. Please carefully read this entire document, including the Risk Factors section beginning on page 20 for a discussion of the risks relating to the proposed merger. You also can obtain information about Heritage Commerce Corp from documents that it has filed with the Securities and Exchange Commission.

John J. Hounslow

*Chairman of the Board
Diablo Valley Bank*

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved the Heritage Commerce Corp common stock to be issued under this document or determined if this document is accurate or adequate. Any representation to the contrary is a criminal offense.

The date of this document is [*], 2007, and it is first being mailed or otherwise delivered to Diablo Valley Bank shareholders on or about May 14.

DIABLO VALLEY BANK
387 Diablo Road
Danville, California 94526

NOTICE OF SPECIAL MEETING OF SHAREHOLDERS

Diablo Valley Bank will hold a special meeting of shareholders at 387 Diablo Road, Danville, California 94526 at 5:30p.m., local time on June 13, 2007 to consider and vote upon the following proposals:

- to approve the merger of Diablo Valley Bank with and into Heritage Bank of Commerce, a wholly-owned subsidiary of Heritage Commerce Corp, on the terms set forth in the Agreement and Plan of Merger, dated as of February 8, 2007, by and between Heritage Commerce Corp, Heritage Bank of Commerce and Diablo Valley Bank, as it may be amended from time to time; and
- to approve the adjournment of the special meeting, if necessary, to solicit additional proxies, in the event that there are not sufficient votes at the time of the special meeting to approve the proposal to approve the merger.

The Diablo Valley Bank Board of Directors has fixed the close of business on April 27, 2007 as the record date for the special meeting. Only holders of Diablo Valley Bank common stock and series A preferred stock of record at that time are entitled to notice of, and to vote at, the special meeting or any adjournment or postponement of the special meeting.

In order for the merger to be approved, the holders of at least a majority of the Diablo Valley Bank common stock and of the series A preferred stock outstanding and entitled to vote thereon must vote in favor of approval of the merger.

Regardless of whether you plan to attend the special meeting, please submit your proxy with voting instructions. Please vote as soon as possible. If you hold stock in your name as a shareholder of record, please complete, sign, date and return the accompanying proxy card in the enclosed WHITE self-addressed, stamped envelope (or vote by telephone or internet in accordance with instructions on your proxy card). If you hold your stock in street name through a bank or broker, please direct your bank or broker to vote in accordance with the instructions you have received from your bank or broker. This will not prevent you from voting in person, but it will help to secure a quorum and avoid added solicitation costs. Any holder of Diablo Valley Bank common stock or series A preferred stock who is present at the special meeting may vote in person instead of by proxy, thereby canceling any previous proxy. In any event, a proxy may be revoked in writing at any time before the special meeting in the manner described in the accompanying document.

Holders of Diablo Valley Bank common stock who do not vote in favor of approving the merger agreement and who otherwise comply with the requirements of California law will be entitled to appraisal rights. A summary of the applicable California law provision, including the requirements a Diablo Valley Bank shareholder must follow in order to exercise his or her appraisal rights, is contained in the accompanying proxy statement/prospectus. A copy of the California law provision relating to appraisal rights is attached as Appendix C to the proxy statement/prospectus.

The Diablo Valley Bank Board of Directors has approved the merger and the merger agreement and recommends that Diablo Valley Bank shareholders vote FOR approval of the merger.

YOUR VOTE IS IMPORTANT. PLEASE VOTE YOUR SHARES PROMPTLY, REGARDLESS OF WHETHER YOU PLAN TO ATTEND THE SPECIAL MEETING. YOU CAN FIND INSTRUCTIONS FOR VOTING ON THE ENCLOSED PROXY CARD.

BY ORDER OF THE BOARD OF DIRECTORS,

Alfred D. McKelvy, Jr., Corporate Secretary
[*], 2007

REFERENCES TO ADDITIONAL INFORMATION

This document, which is sometimes referred to as this proxy statement/prospectus, constitutes a proxy statement of Diablo Valley Bank to Diablo Valley Bank shareholders with respect to the solicitation of proxies for the special meeting described within and a prospectus of Heritage Commerce Corp for the shares of Heritage Commerce Corp common stock that Heritage Commerce Corp will issue to Diablo Valley Bank shareholders in the merger. This document incorporates important business and financial information about Heritage Commerce Corp from documents filed with the Securities and Exchange Commission (the SEC) that are not included in or delivered with this document. You may obtain copies of these documents, without charge, from the web site maintained by the SEC at www.sec.gov, as well as other sources. See

Where You Can Find More Information beginning on page 94. You can also obtain documents incorporated by reference in this document, other than certain exhibits to those documents, by requesting them in writing or by telephone from Heritage Commerce Corp at the following address:

Heritage Commerce Corp
150 Almaden Boulevard
San Jose, California 95113
Attention: Corporate Secretary
(408) 947-6900

You will not be charged for any of these documents that you request. Diablo Valley Bank shareholders requesting documents should do so by May 31, 2007 in order to receive them before the special meeting.

See Where You Can Find More Information on page 94.

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QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING

The questions and answers below highlight only selected procedural information from this document. They do not contain all of the information that may be important to you. You should read carefully the entire document and the additional documents incorporated by reference into this document to fully understand the voting procedures for the special meeting.

Q: What is the proposed transaction for which I am being asked to vote?

A: You are being asked to vote to adopt an Agreement and Plan of Merger, dated as of February 8, 2007, by and between Heritage Commerce Corp, Heritage Bank of Commerce and Diablo Valley Bank. Subject to the terms and conditions of the merger agreement, Diablo Valley Bank would merge with and into Heritage Bank of Commerce, a wholly-owned subsidiary of Heritage Commerce Corp, as the surviving corporation in the merger.

You are also being asked to give the proxyholders the authority to approve an adjournment of the special meeting, if necessary, to solicit additional proxies in the event there are not sufficient votes at the time of the special meeting to approve the proposed merger.

Q: When and where is the special meeting?

A: The special meeting is scheduled to take place at 387 Diablo Road, Danville, California 94526 at 5:30p.m., local time on June 13, 2007.

Q: What do I need to do now?

A: After you have carefully read this document and have decided how you wish to vote your shares, please vote your shares promptly. If you hold stock in your name as a shareholder of record, you must complete, sign, date and mail your proxy card in the enclosed postage paid return **WHITE** envelope as soon as possible (or vote by telephone or internet in accordance with instructions on your proxy card). If you hold your stock in street name through a bank or broker, you must direct your bank or broker to vote in accordance with the instructions you have received from your bank or broker. Submitting your proxy card or directing your bank or broker to vote your shares will ensure that your shares are represented and voted at the special meeting.

You should also complete the election form and transmittal materials that accompany this proxy statement/prospectus to specify the merger consideration you prefer (or provide instructions to your broker if you hold your shares in street name) and mail and enclose the election form and transmittal materials in the **BLUE** envelope. To submit your Diablo Valley Bank share certificates for exchange, you should follow the instructions in the election form and transmittal materials.

Q: What vote is required to approve the merger agreement?

A: The merger agreement must be approved by the holders of a majority of the outstanding shares of Diablo Valley Bank common stock entitled to vote at the special meeting and by the holders of a majority of the series A preferred stock, each voting as a separate class. This means that if either the common stock shareholders as a class do not vote to approve the merger or the series A preferred shareholders as a class do not vote to approve the merger then the merger will not go forward. The Diablo Valley Bank Board of Directors recommends that you vote **FOR** approval of the merger. The members of the Board of Directors of Diablo Valley Bank, who in the aggregate have the power to vote approximately 17% of the outstanding shares of Diablo Valley Bank common stock (excluding the effect of exercisable options) and 19% of the outstanding shares of series A preferred stock, have each executed voting agreements with Heritage Commerce Corp pursuant to which they have agreed to vote their shares of Diablo Valley Bank common stock in favor of the merger and against any competing business combination transaction.

Q: If my shares of common stock are held in street name by my broker, will my broker automatically vote my shares for me?

A: No. Your broker cannot vote your shares without instructions from you. You should instruct your broker as to how to vote your shares, following the directions your broker provides to you. Please check the voting form used by your broker.

Q: What if I fail to instruct my broker?

A: If you do not provide your broker with instructions, your broker generally will not be permitted to vote your shares on the merger proposal being presented at the special meeting. Because the approval of the merger requires the affirmative vote of the holders of a majority of the outstanding shares of Diablo Valley Bank common stock and the series A preferred stock, a failure to provide your broker instructions will have the same effect as a vote against the merger.

Q: Can I attend the special meeting and vote my shares in person?

A: Yes. All shareholders, including shareholders of record and shareholders who hold their shares through banks, brokers, nominees or any other holder of record, are invited to attend the special meeting. Holders of record of Diablo Valley Bank common stock or series A preferred stock can vote in person at the special meeting. If you are not a shareholder of record, you must obtain a proxy, executed in your favor, from the record holder of your shares, such as a broker, bank or other nominee, to be able to vote in person at the special meeting. If you plan to attend the special meeting, you must hold your shares in your own name or have a letter from the record holder of your shares confirming your ownership and you must bring a form of personal photo identification with you in order to be admitted.

Q: Can I change my vote?

A: Yes. You may revoke any proxy at any time before it is voted by (1) signing and returning a proxy card with a later date, (2) delivering a written revocation letter to the Secretary of Diablo Valley Bank, or (3) attending the special meeting in person, notifying the Secretary and voting by ballot at the special meeting. The Diablo Valley Bank Secretary's mailing address is 387 Diablo Road, Danville, California, 94526.

Any shareholder entitled to vote in person at the special meeting may vote in person regardless of whether a proxy has been previously given, and such vote will revoke any previous proxy but the mere presence (without notifying the Secretary of Diablo Valley Bank) of a shareholder at the special meeting will not constitute revocation of a previously given proxy.

Q: Am I certain to receive the form of merger consideration that I elect for my common stock?

A: No. The merger agreement provides that the total Diablo Valley Bank shares of common stock outstanding immediately prior to completion of the merger will be converted into total of \$15,012,876 cash and 1,732,298 shares of Heritage Commerce Corp common stock, (subject to adjustment based on the average closing price of the Heritage Commerce Corp common stock over the 20 trading days ending on the fifth trading day immediately before the effective date of the merger). As a result, if more common stock shareholders elect to receive either form of consideration than is available under the merger agreement, shareholders electing the over-subscribed form of consideration will have their elections proportionately reduced and will receive a portion of their consideration in the other form of consideration, despite their election. This mechanism is more fully described in this proxy statement/prospectus under the caption "The Merger Agreement Merger Consideration" beginning on page 42.

Q: If I own series A preferred stock will I participate in the merger consideration?

A: No. It is a condition to the merger that holders of series A preferred stock will have their shares repurchased by Diablo Valley Bank for \$32.00 cash prior to the merger.

Q: What do I need to do to receive the merger consideration for my common stock?

A: You will need to sign, date and complete the election form and transmittal materials that accompany this proxy statement/prospectus and submit them in the enclosed **BLUE** envelope to the exchange agent, U.S. Stock Transfer Corporation, at the address given in the materials, together with the certificates representing your shares of Diablo Valley Bank common stock prior to the election deadline. The election deadline will be 5:00 p.m. San Francisco, California time one business day immediately preceding the date of the special meeting, and will be separately announced at least five business days, and not more than fifteen business days, prior to the deadline. If you do not submit an election prior to the election deadline, you will be allocated Heritage Commerce Corp common stock and/or cash pursuant to the procedures described under The Merger Agreement Merger Consideration beginning on page 42. If your shares are held in street name you will have to provide instructions to your broker to make an election. If you do not make an election, you will receive separate instructions for submitting your Diablo Valley Bank common stock certificates in exchange for the merger consideration following completion of the merger.

Q: What do I need to do to receive my cash for my series A preferred stock?

A: Diablo Valley Bank will send a notice of redemption of preferred stock at least 30 days before the redemption date. The notice will include instructions for surrendering your shares for redemption.

Q: What must I do if I want to seek appraisal rights because I do not want to receive the merger consideration?

A: Holders of Diablo Valley Bank common stock will have appraisal rights as a result of the proposed merger. If you are a holder of Diablo Valley Bank common stock and wish to dissent from the merger and seek an appraisal of the value of your Diablo Valley Bank common shares you must follow the procedures established under California law, including:

- not voting in favor of the merger,
- delivery of notice of demand for appraisal within 30 days after Diablo Valley Bank mails notice of approval of the merger after the special shareholder meeting, and
- delivery of your common shares to Diablo Valley Bank stock within 30 days after Diablo Valley Bank mails notice of approval of the merger.

These procedures are described in Appendix C of this document and are summarized on pages C-1 to C-3. Failure to follow the applicable procedures will result in the loss of appraisal rights.

Q: Can I change my election after I submit my certificates?

A: Yes. You can revoke your election and submit new election materials prior to the election deadline. You may do so by submitting a written notice to the exchange agent that is received prior to the election deadline. The revocation must specify the account name and such other information as the exchange agent may request; revocations may not be made in part. New elections must be submitted in accordance with the election procedures described in

this proxy statement/prospectus. If you instructed a broker to submit an election for your shares, you must follow your broker's directions for changing those instructions.

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Q: When do you expect to complete the merger?

A: We expect to complete the merger in the second or third quarter of 2007. However, we cannot assure you when or if the merger will occur. We must first obtain the approval of Diablo Valley Bank shareholders at the special meeting and the necessary regulatory approvals.

Q: Will I be able to sell the shares of Heritage Commerce Corp common stock that I receive in the merger?

A: Yes, in most cases. The shares of Heritage Commerce Corp common stock to be issued in the merger will be registered under the Securities Act of 1933, as amended (which we refer to as the Securities Act), and listed on the NASDAQ Global Select Market. However, certain shareholders who are deemed to be affiliates of Heritage Commerce Corp or Diablo Valley Bank under the Securities Act (generally, directors, executive officers and shareholders of Heritage Commerce Corp or Diablo Valley Bank holding more than 10% of the outstanding shares of common stock) must abide by certain transfer restrictions under the Securities Act.

Q: What if I do not vote or I abstain from voting?

A: If you do not vote or you abstain from voting, your failure to vote or abstention will have the effect of a vote against the items being considered.

Q: What happens if I sell my shares of Diablo Valley Bank common stock before the special meeting?