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*Sent Via E-mail:*

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## **Re: Public Market Parcel B – Response to Appeal**

Dear Mr. Guina, Ms. Visveshwara, Mr. Bryant and Ms. Desai:

As you know, our firm represents AG-CCRP Public Market, L.P. in its application for a Final Development Permit (FDP) for the proposed office/research and development use on Parcel B of the Marketplace/Public Market project. We have received a copy of the appeal of the Planning Commission approval of the Parcel B FDP, sent by Wareham Development on February 8, 2019 (PC Appeal Letter). After reviewing the PC Appeal Letter, we have prepared a response that shows the appeal does not have merit. We provide our responses to you all as a courtesy for your consideration. We thank you for your substantial time and energy spent reviewing this proposal.

## **Background**

At the outset, we note that Wareham has already had ample opportunity to comment on the Marketplace project and Parcel B FDP. There has been careful consideration of development on Parcel B for over a decade. The Marketplace Final EIR, certified on July 15, 2008, included analysis of the “Reduced Main Street Alternative.” The Reduced Main Street Alternative

included the realignment of Shellmound St. to allow the construction of 120,000 GSF office, 29,150 GSF commercial and parking on Parcel B. Mitigation measures were further modified to address the Reduced Main Street Alternative.

We note that Wareham already commented on the scope and scale of the development in 2007 before the EIR was certified. (See, e.g., Final EIR, Comment B5) Wareham's comments back in 2007 included many of the same comments about massing and design they are making again more than a decade later in 2019. These comments were addressed in the Final EIR, and, as noted above, the City Council certified the Marketplace EIR in July 2008 and approved the Preliminary Development Plan (PDP) in August 2008. With full and complete notice of the Marketplace project, Wareham proceeded with its development plan for the Emery Station West office/laboratory project, which we understand was later approved in 2010. And now, Wareham continues to raise comments on features already approved in the context of the EIR and PDP to slow the processing of this office/R&D project. As represented by the Public Market Food Hall vendors at the January 24, 2019 Planning Commission hearing, the Parcel B office/R&D project will complete the vision of the Marketplace project and activate the project's mixed uses to ensure its overall success.

Careful consideration of the current Parcel B FDP's conformance to the PDP and potential environmental impacts has occurred. Specifically, the Environmental Checklist Public Market Proposed Final Development Plan Project (attached to the January 24, 2019 Planning Commission staff report) demonstrates that there have been no substantial changes in the proposed project, or to the circumstances under which the project will be undertaken, and no new information of substantial importance exists which would require preparation of a subsequent EIR. More specifically, the following responds to each specific comment raised in the PC Appeal Letter.

## **Response to Comments**

### **Comment 1:**

- 1) Requirement AES 1 calls for the final designs to "create a vital streetscape that enhances the pedestrian experience, avoid blank walls or box-like forms".

The project's design, extremely close to the equally tall and boxy existing Marketplace Tower to its west, will create a stark and dark cavern between them which will make the retail at their bases very uninviting public spaces. The proposed design indeed could not be more boxy,

antithetical and contrary to this requirement. The original 2008 approval indeed included large buildings along the railroad tracks. However, in that original approval they have varying and modulated heights and facade, with several important openings and livable gaps between different building masses.

### **Response 1:**

As previously discussed in our January response letter to the Planning Commission (see letter from M. Stefan, dated January 22, 2019), the proposed Parcel B design fulfills the original vision of the PDP approved in 2008. The current plan — Parcels A and B — presents less visual

impacts than the original PDP. The approved PDP allowed a height of 120 feet on Parcel B. The proposed Parcel B building is 112 feet. As shown in the attached Exhibit A – PDP Conformance, the original PDP contemplated a much taller tower on Parcel A up to 175 feet. The approved Parcel A allows a height of up to 86 feet on the northern portion of the building and a height of up to 50 feet on the southern portion of the building structure. Altogether, Parcels A and B will allow for a less monumental sightline.

Much thought has gone into the Parcel B design with articulation in the massing at the two ends of the building and in the middle, resulting in more interesting retail corners and pedestrian spaces. The East wall design has been carefully designed as well. The proposed building design is intended to act as a four-sided building, a building with fronts on all sides and no back. The East and West facades of the building are similar and share in their size, proportion, and quality of windows, wall systems, expressed frame system, articulation of roofscape elements, open parking level design and expression, and generally limited articulation in the massing – a design strategy that was embraced by the Planning Commission at the December 13, 2018 Study Session and January 24, 2019 hearing where the plan was unanimously approved.

Further, the Public Market Art Plan has recently been approved, which will result in world class art throughout the project, including an installation on the East side of Parcel B. An example of the art that may be installed on the East side of Parcel B is shown in Exhibit B – Parcel B Artwork. The artwork will be visible by pedestrians from Amtrak passengers, the pedestrian bridge, and from the office buildings on the East side of the railroad.

While it is not part of the current consideration, the approved Parcel A plans include a bridge walk with at a “grand staircase” – as envisioned in the PDP – and elevator with access directly to Shellmound Street. Public art has also been focused in this area, with examples shown in Exhibit C – Parcel A Stairwell Plaza Art.

## **Comment 2:**

- 2) Requirement WIND 1 calls for a wind study to review the winds that will exist on the pedestrian bridge. No such wind study was presented.

It certainly seems that the current design, with only the narrowest of gaps between buildings, will create a wind tunnel here and that those conditions deserve extra study.

## **Response 2:**

WIND 1 requires a wind analysis of “roof deck terraces” and within the “fourth floor breezeway between the Amtrak pedestrian bridge to the west side of the building.” The requirement applied to Parcel A, which is not currently under consideration. The proposed Parcel B building does not include any roofdeck or pedestrian breezeway.

While not mentioned by the appellant, we note that WIND 1 (Main Street and Reduced Main Street alternatives) requires design review for the Shellmound and UA theater buildings, which were designed to be taller than the Parcel B building, at 175 feet on the site now known as Parcel A, and 150 feet on the site now known as Parcel D.

For the purpose of additional disclosure, a wind analysis was conducted of the proposed Parcel B design. Donald Ballanti, a certified meteorologist, who previously prepared a Wind Analysis Memorandum evaluating the PDP (see Draft EIR, Appendix F) more recently prepared a report evaluating the current Parcel B FDP, attached as Exhibit D – Wind Analysis. The analysis concludes the following:

*In summary, the proposed Parcel B building is somewhat exposed to prevailing wind directions and is aligned across the important west wind direction. However, the presence of naturally-ventilated parking garage space in the bottom half of the structure means that any upwind and downwind pressure differences generated at the top floors of the building would result in airflow through the parking garage floors and not wind accelerations at ground level. Based on the exposure, massing and orientation of the proposed building it would not have the potential to adversely affect ground-level winds near its base, at proposed landscaped open spaces areas at the north and south ends of the site, within adjacent Parcel A to the south, or at properties east of the site on the far side of the UPRR train tracks.*

Accordingly, due to the inherent design of Parcel B with the naturally ventilated parking levels, there will little to no wind impacts from the project.

**Comment 3:**

- 3) WIND -1 also specifically says that any Final Design should “avoid narrow gaps between buildings where winds could be accelerated”. The current design does exactly the opposite.

The prior approved design for Parcel B had a roughly 170 foot gap between it and the approved Parcel A building. The most recent approved design reduced the gap by almost half, to only less than 80 feet. This narrow gap eliminates any real visual connection between the eastern side of the railroad station and EmeryStation campus and the Marketplace, while increasing negative wind patterns. This is not to mention the fact that the prior wider gap was filled with a single-story retail pad building, possibly a restaurant, which would be an attractive area of activity. The current narrow gap only houses the dumpster that will serve the new building.

**Response 3:**

Please see Response 2 above regarding the wind analysis which concluded that due to the inherent design of Parcel B with the naturally ventilated parking levels, there will little to no wind impacts from the project. Moreover, because the inherent design of the Parcel B building will not cause wind impacts, it will not result in a wind patterns in the area between Parcel A and B.

Further, the appellant references a previously approved 170 foot gap between Parcel B and the approved Parcel A building. This references the previously approved Parcel B FDP allowing retail and parking. It has been determined that the prior Parcel B FDP is not economically feasible. The proposed Parcel B FDP proposes a gap similar to that in the relevant PDP, as shown in the attached Exhibit E – East Elevation Comparison.

**Comment 4:**

- 4) Requirement TRAF 1-b states that the Applicant will submit a Transportation Demand Management Plan to the City for review and approval prior to completion of the FDP. This did not occur as far as we can tell.

The traffic timing and impacts of the proposed office use are very different than those of retail. Office use primarily creates heavy commute-time trips while retail trips are much more dispersed throughout the day. The fact that the staff report says that total traffic counts are slightly less than the prior approval disregards the very real timing impact of those trips. The change of uses proposed with the latest Parcel B proposal deserves such detailed analysis.

**Response 4:**

A Transportation Demand Management Plan has been prepared and has been updated regularly. In 2014, Kimley Horn previously prepared a Public Market Transportation Demand Management Plan for the Public Market mixed use district. It includes several measures in each of the following categories: Employee/Visitor Elements, Carpools/Vanpool Elements, Car Share Elements, Transit Elements, Transit Elements. Measures that apply include:

- Provide a transportation alternatives information package to all new employee tenants.
- Preferred parking spaces will be reserved for carpool/vanpool/car share vehicles.
- Employee (long-term) parking spaces will be located in non-preferred areas of the parking facilities.

The plan is overseen by an on-site Transportation Coordinator. The plan was updated in December of 2017 to reflect a recommendation from the Fehr & Peers Transportation Assessment (dated May 6, 2015) to incorporate additional measures into the final TDM plan for the mixed use district. These measures include providing valet parking during periods of peak parking demand, imposing time limits on commercial parking, monitoring site parking demand and surveying site residents in annual commute and parking surveys. An updated figure depicting the planned TDM measures for Parcel B is included as Exhibit F – Parcel B TDM Plan. Specifically, the Parcel B TDM Plan shows preferential carpool/vanpool parking and car share vehicle hubs as well as how the Parcel B facilitates the multi-modal features of the mixed use district.

With respect to vehicular traffic, Kimley Horn recently prepared a trip generation evaluation that considered the proposed Parcel B proposal to that assumed in the PDP. This evaluation was included in the January 24, 2019 Planning Commission hearing staff report packet. The Kimley Horn analysis found that the land uses in Parcel B are expected to generate 36 fewer AM peak hour trips and 54 fewer PM peak hour trips when compared to the EIR use in 2008. In addition, the total Public Market trip generation with the proposed Parcel B project would result in 171 fewer AM peak hour trips and 468 fewer PM peak hour trips when compared to the approved PDP in 2008.

Kimley Horn further responded to the comment in the PC Appeal Letter that office uses generate trips at different times than retail uses, attached as Exhibit G - Kimley Horn Response). The response explains:

*[The commenter is] correct that the vehicle trips for an office use occur at different times than for a retail use. However, the trip generation analysis that was conducted in the Emeryville Public Market Parcel B – Trip Generation Evaluation Final Letter, dated December 12, 2018 (Attachment A) accounts for these differences. While only focusing on the peak hour of traffic in the AM and PM periods, the previous 2008 EIR (which includes 120,000 sf of office and 29,150 sf of retail) and the proposed Parcel B (which includes 181,100 sf of research and development center and 14,100 sf of retail) were compared using trip generation rates from the industry standard Institute of Transportation Engineers (ITE) Trip Generation Manual. The trip generation rates are developed based on surveys collecting traffic counts during the AM and PM periods of adjacent street traffic at various sites throughout the country based on the square footage and land use. This evaluation concluded that the proposed Parcel B project would generate fewer AM and PM peak hour trips.*

The above response confirms that the proposed Parcel B FDF would generate fewer trips than under the PDP.

#### **Comment 5:**

- 5) We have been told that the City's "tower separation ordinance", which requires certain distances between buildings over 100 feet tall, does not apply in this case because the three buildings in question all were approved prior to the ordinance. Even if that is technically correct, the ordinance was put in place as the policy of the City for important planning and aesthetic reasons that matter regardless of some technicality. Built right out to the limits of its property lines, the new project is closer to our new EmeryStation West project than the ordinance guidelines allow, and is much, much closer to the existing Marketplace Tower than the ordinance allows.

We are not against the density nor uses proposed in this project, but are most concerned about how they are massed on the site. With no modulation, nor relief or separation, the proposed mass becomes a wall. A taller, narrower, building, with more separation that allows air, space, sunlight, would certainly be a greater improvement.

#### **Response 5:**

As previously discussed in our January response letter, the statement that Parcel B violates the tower separation ordinance is not accurate. The Zoning Code recognizes the Marketplace PDP and provides that uses and development regulations shall be governed by the PDP and not later enacted regulations in the Zoning Code. (Zoning Code, Section 9-3.310) Accordingly, the tower separation provision of the Code is not applicable since it was adopted after the adoption of the PDP.

Further, Zoning Code Section 9-4.202(f) provides that in the “one hundred plus (100+) height district, buildings over one hundred feet (100') in height shall be separated from each other by a minimum horizontal distance equal to no less than the height of the taller building.” Since the Parcel A building is less than 100 feet, this section of the Code does not apply.

Finally, we understand that the City is considering whether to amend the tower separation requirement. At a Study Session on December 13, 2018, the Planning Commission voted to recommend eliminating the tower separation requirement and replace it with a requirement that a finding is made that towers over 100 feet tall are adequately separated. On February 5, 2019, the City Council made a similar recommendation at a Study Session. This indicates that the City has currently considered the tower separation ordinance and found that site specific analysis of tower separation is appropriate as a matter of policy.

### **Conclusion**

The above discussion and related attachments support the Planning Commission’s determination that the approved Parcel B FDP approved by the Planning Commission conforms with the PDP.

We thank staff for the careful consideration of the Parcel B FDP and request denial of the appeal so that AG-CCRP may move forward to implement the final piece of the PDP to fulfill the vision that has been more than a decade in the making.

Sincerely yours,

**HOLLAND & KNIGHT LLP**



**Chelsea Maclean**

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Attachments:

- Attachment A – PDP Conformance
- Attachment B – Parcel B Artwork
- Attachment C – Parcel A Stairwell Plaza Art
- Attachment D – Wind Analysis Report
- Attachment E – East Elevation Comparison
- Attachment F – Parcel B TDM Plan
- Attachment G – Kimley Horn Response Letter