

City Council October 1, 2019 Meeting

Marketplace Final Development Plan - Parcel B (Office and Garage)

Appellant: Wareham Development

Applicant: AG-CCRP Public Market LP

Architect: Hart / Howerton

PROCEDURE

- Staff Presentation
- Appellant Presentation (limited to 15 minutes)
- Applicant Presentation (limited to 15 minutes)
- Public Hearing (limited to 3 minutes per speaker)
- Rebuttal by Appellant (limited to 5 minutes)
- Rebuttal by Applicant (limited to 5 minutes)
- City Council deliberation, including questions to applicant and/or appellant
- Council vote



COUNCIL ACTION

The City Council should consider the evidence and adopt take one of the following actions:

- (1) Affirm the Planning Commission decision and dismiss the appeal based on a determination that the facts ascertainable from the record do not warrant further hearing;
- (2) Set a date for a public hearing on the appeal; or
- (3) Remand the matter to the Commission to reconsider the application, identifying issues that the Commission is directed to consider and specifying whether or not the Commission shall hold a new public hearing.



PROJECT BACKGROUND

On August 5, 2008 the City Council approved the Marketplace PUD/PDP

This approval laid out the site plan, mix of uses, heights of individual buildings and general massing.

Between February 2015 and June 2016 Commission approved Final Development Plans for 4 new buildings, an expanded and renovated park and realignment of Shellmound Street and creation of 62nd and 63rd Streets.

Parcel C-1: Grocery Store (built)

Parcel C-2: 66-units wrapping the grocery store (under construction)

Parcel D: 234 residential units (under construction)

Parcel E: Christie Avenue Park Expansion and Renovation (built)

Parcel B: Ground floor retail, Parking and Office

Parcel A: Residential building (185 units) (construction not started)



PROPOSED FDP BUILD OUT



City of Emeryville

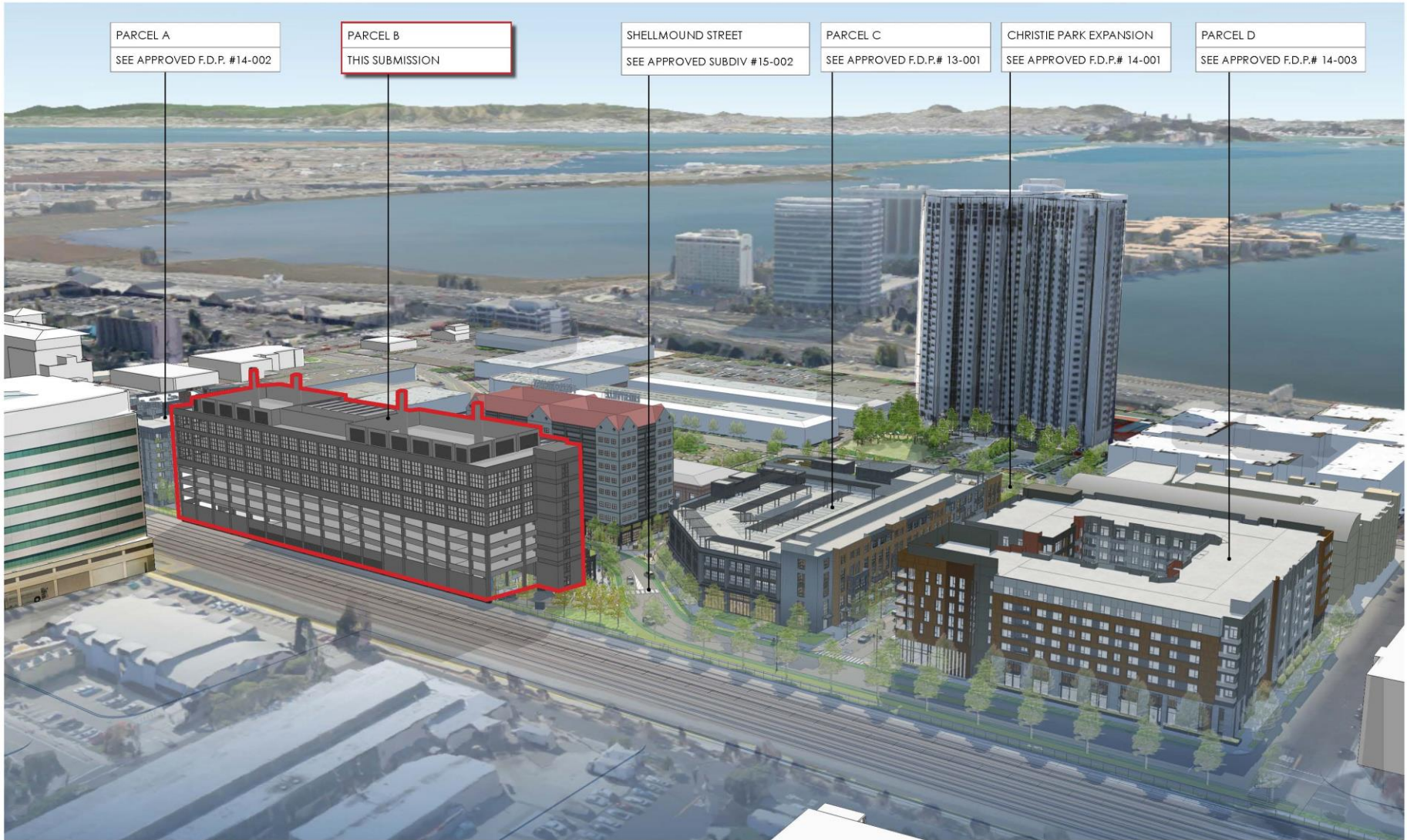
Marketplace Parcel B

AR3125

PARCEL B CHRONOLOGY

- Parcel B FDP was approved on June 23rd, 2016 accommodates parking with ground floor retail. The garage would provide parking for existing commercial uses that have been served by previous surface parking lot (Parcel C) and are being served by existing parking lot (Parcel A).
- City Center wished to modify the proposal for Parcel B to accommodate office space.
- 113-feet tall, 8 story building that includes:
 - 15,800 square feet of ground floor retail
 - 4 levels of structured parking (560 spaces)
 - 150,000 square feet of office space on top 3 levels
- Parcel B Office FDP was approved by the PC on January 2019
- The approval was appealed by Wareham
- City Council Remanded the Appeal to the PC on March 19, 2019
- PC reviewed the appeal and unanimously approved the project on May 14, 2019
- This approval has been again appealed by Wareham





CONTENTS OF APPEAL LETTER

- (1) Wareham's Interest
- (2) Brief Background
- (3) The FDP is inconsistent with the governing PDP and thus may not be approved
- (4) The FDP does not comply with Conditions of Approval Mitigation Measures and thus cannot be approved
- (5) The FDP is inconsistent with the City's General Plan and cannot be approved
- (6) The FDP cannot be approved without further CEQA review
- (7) Viable Design Alternatives are available for Parcel B



CONTENTS OF APPEAL

(1) The FDP is inconsistent with the governing PDP and thus may not be approved

Contention: Project is not consistent with the PDP because the project is larger in square footage and massing allowed by the PDP.

Staff Response:

The PUD/PDP calls for a building up to 120,000 sq. ft. for office, 29,510 sq. ft. for commercial, 518 spaces , and height not to exceed 120 feet.

These parameters for the building may be modified so long as the floor area ratio (FAR) does not exceed 2.0 in the aggregate, and the height and general massing does not exceed that in the approved PDP. The FAR of the PUD/PDP with the proposed Parcel B building is 1.84 and the height is 113 feet.

Use	PDP	FDPs	Difference
Residential	674 units	649 units	-25 units
Retail	180,000 sq. ft.	59,800 sq. ft.	-120,200 sq. ft.
Office	120,000 sq. ft.	150,000 sq. ft.	+30,000 sq. ft.
Parking	2,082 spaces	1,559 spaces	-523 spaces



CONTENTS OF APPEAL

(2) The FDP is inconsistent with the governing PDP and thus may not be approved

Contention: Project is not consistent with the PDP because the project is larger in square footage and massing allowed by the PDP.

Staff Response:

PDP plans do NOT include any renderings and instead, consist of site plans for different phases, axonometric figures showing massing of various buildings, a shadow study, a parking table and a plan for pedestrian, transit and bicycle improvements at completion.

There are no physical designs of buildings in the approved plans because designs of the buildings are determined through the FDP process and not the PUD/PDP process.

The goal of an approved PUD/PDP is to set certain parameters regarding mix of uses, height, density and floor area ration. The idea is to allow flexibility in a setting where key parameter have been approved.

Therefore, the finding to be made is that of “substantial conformance”. It is in this context that the Commission found the project to be consistent with the PDP.



CONTENTS OF APPEAL

(2) The FDP is does not comply with Conditions of Approval (cont.)

Contention: Project is with conditions regarding aesthetics and wind impacts.

Aesthetics related conditions that are under review are:

“Proposed structures shall adequately reference and be visually compatible with surrounding industrial buildings;

“Create streetscape vitality and enhance pedestrian experience through detailed treatment of building facades including entryways, fenestration, and signage, vertical walls broken up with architectural detailing, protruded and recessed tower elements, stepped-back upper floors to provide appropriate height transitions to adjacent buildings, and through use of carefully chosen building material, texture and color”.

“Design of building facades shall include sufficient articulation and detail to avoid appearance of blank walls and box-like forms”

“Exterior materials utilized in construction of new buildings, as well as site and landscape improvements, shall be high quality and shall be selected for both their enduring aesthetic quality and for their long-term durability, and their compatibility with design motif of surrounding buildings.

“All proposed new buildings shall be shown in detail.... Towers and buildings along the railroad tracks shall be articulated with treatment such as variations in building planes, color and materials, balconies and trellises to ensure that no visual wall is created along the railroad right of way.



CONTENTS OF APPEAL

Staff Response:

Design related conditions are not discrete and compliance with them is not a “yes” or “no” answer.

It is up to the decision-making body to make findings of compliance. These have been made by the Planning Commission twice.

Based on the record the Commission has found that the proposed project provides a modern design that speaks to the industrial vernacular and that employs high quality materials and makes use of public art to provided additional interest and articulation.

Staff report outlines in detail how the project complies with the highlighted conditions of approval.

The issue for the City Council is to consider whether the Planning Commission’s actions are supported by its findings, and whether those findings are supported by substantial evidence in the record.



CONTENTS OF APPEAL

(2) The FDP is does not comply with Conditions of Approval (cont.)

Contention: Project is with conditions regarding aesthetics and wind impacts.

Wind related conditions that are under review are:

“Prior to the issuance of the FDP for the Shellmound building site, the applicant shall submit a review of the design [by a] qualified wind consultant. The design review shall evaluate the architect’s employment of one or more of the following design guidelines to reduce wind impacts: west or southeasterly building faces shall be articulated and modulated through the use of architectural devices such as surface articulation, variation, variation of planes, wall surfaces and heights, as well as the placement of step-backs and other features. Utilize properly-located landscaping to mitigate winds. Porous materials offer superior wind shelter compared to a solid surface.”



CONTENTS OF APPEAL

Staff Response:

This issue was brought up by Wareham in its first appeal. The applicant submitted a wind analysis study that concluded that “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 at the north and the south end of the site, within adjacent Parcel A to the south, or at the properties east of the site on the far side of the UPRR train tracks. (RWDI Report)

Appellant’s wind consultant, CPP’s report summarizes that the FDP will result in “uncomfortable” wind conditions in the corridor between Parcels A and B, whereas the original PDP building configuration will not. However, at no time, does the CPP’s Wind Study conclude that the project will cause wind levels to exceed 36 mph – threshold for significant impact.

RWDI reviewed CPP’s study and concludes at CPP’s considers only the wind results at a few locations between Parcels A and B and does not compare to baseline conditions.



CONTENTS OF APPEAL

Staff Response (cont.)

The distinction between the two experts is that the applicant's expert compares the project's impacts to baseline conditions, whereas the appellant's expert compares the project's impacts to the PDP design.

Since the condition of approval is to implement a mitigation measure, and CEQA requires the analysis of the project's impacts to be analyzed against wind conditions that exist before the building is constructed, the issue to consider is whether the project creates a significant wind impact when compared to the baseline conditions.

When baseline conditions are taken into account and wind conditions analyzed RWDI concludes that the addition of the project reduces the impacts from the existing wind across the site. If a project reduces wind speeds when compared to the baseline conditions, then it cannot be considered a significant impact under CEQA.



CONTENTS OF APPEAL

(3) The FDP is inconsistent with the General Plan

Contention: Project is inconsistent with several General Plan policies.

Staff Response:

Whether the project is consistent with the current General Plan policies is irrelevant.

This is because in approving a FDP, the Commission is only required to make findings as it related to consistency with the PDP and satisfaction of conditions of approval imposed on the PDP> If the Commission's findings are based on substantial evidence, then the project is presumed to be consistent with General Plan in effect at the time the PUD/PDP was approved.

The General Plan policies cited in appellant's letter are from the current General Plan which was adopted after the PUD/PDP was approved.

None the less, the staff report outlines how the project is consistent with policies of the current General Plan that are highlighted in the appellant's letter.



CONTENTS OF APPEAL

(4) The project requires further CEQA review

Contention: Marketplace Environmental Checklist is inadequate as it relates to its consideration of the following mitigation measures: AES-1, AES-2a, AES-2b, WIND-1a, WIND1b, WIND-1, and SHADE-A.

Staff Response:

AES-1 mitigation measure was incorporated as a condition of approval which has been discussed earlier in the presentation.

AES-2 : The specific reflective properties of the project building materials shall be assessed by the City during review of the FDP plans for the project. FDP review shall ensure that the use of reflective exterior materials is minimized and that proposed reflective material would not create additional daytime or nighttime glare.

Building's primary finish materials are metal panels, concrete block, plaster and glass. Metal surfaces have a non-reflective matte finish; concrete block and plaster have rough surfaces that are generally non-reflective. Glass covers about 20 to 30 per cent of exterior surface area and is composed of "divided light" window units, at upper office/lab floors and at ground floor mixed use areas, to break up the size of glass surfaces to avoid creating additional daytime or nighttime glare. At the parking level, light fixtures are "full cut-off" to avoid creating additional daytime or nighttime glare visible to surrounding neighbors.



CONTENTS OF APPEAL

(4) The project requires further CEQA review (cont.)

Contention: Marketplace Environmental Checklist is inadequate as it relates to its consideration of the following mitigation measures: AES-1, AES-2a, AES-2b, WIND-1a, WIND-1b, WIND-1, and SHADE-A.

Staff Response:

AES-2b: Specific lighting proposals shall be submitted and reviewed as part of each FDP plan for each new building on the project site and approved by the City prior to the issuance of building permit.

Conditions of Approval Numbers V.A.7, VI.A.3, VII.A.1, VIIA.8 and VII.C.5 ensure that the City will be reviewing the proposed lighting prior to the issuance of the building permit.

WIND-1a, WIND-1b and WIND-1: These are mitigation measures that were incorporated as conditions of approval and have been discussed under “Compliance with Conditions of Approval” section earlier in the presentation.

SHADE-1: No mitigation measure is available to reduce this impact to less-than-significant level.

The City Council in approving the PUD/PDP acknowledged that this impact could not be mitigated and found overriding considerations to allow the project to go forward.



CONTENTS OF APPEAL

(5) Viable Design Alternatives are available for Parcel B

Contention: Appellant proposes two alternative designs for the project that allegedly provide the same rentable area as the current project.

Staff Response:

The first option has less parking than the current project. This is problematic because the project's parking serves not only uses on Parcel B but also the existing commercial uses in the PUD, and the retail uses on the ground floor to be built on Parcel A.

The second option includes underground parking. Constructing underground parking west of the railroad is particularly challenging because of the high water table, which often substantially drives up the costs for waterproofing.

In addition, both options have lower ceiling heights for the office/lab space than the FDP building, which could be problematic.



CONCLUSION

The City Council should consider the evidence and adopt take one of the following actions:

- (1) Affirm the Planning Commission decision and dismiss the appeal based on a determination that the facts ascertainable from the record do not warrant further hearing;
- (2) Set a date for a public hearing on the appeal; or
- (3) Remand the matter to the Commission to reconsider the application, identifying issues that the Commission is directed to consider and specifying whether or not the Commission shall hold a new public hearing.







ISSUES IN THE APPEAL LETTER

(1) Requirement AES1 calls for the final designs to create a “vital streetscape that enhances the pedestrian experience, avoid blank walls or box-like forms.” The original 2008 approval indeed included large buildings along the railroad tracks. However, in the original approval they have varying and modulated heights and façade, with several important openings and livable gaps between different building gaps.

	PUD/PDP	FDP
Parcel A	175 feet	86 feet – northern end 50 feet – southern end
Parcel B	120 feet	112 feet



NO PART OF THIS DOCUMENT MAY BE USED OR COPIED IN WHOLE OR IN PART WITHOUT THE PRIOR WRITTEN CONSENT OF HELLER MANUS



Page 5

EMERYVILLE, CA

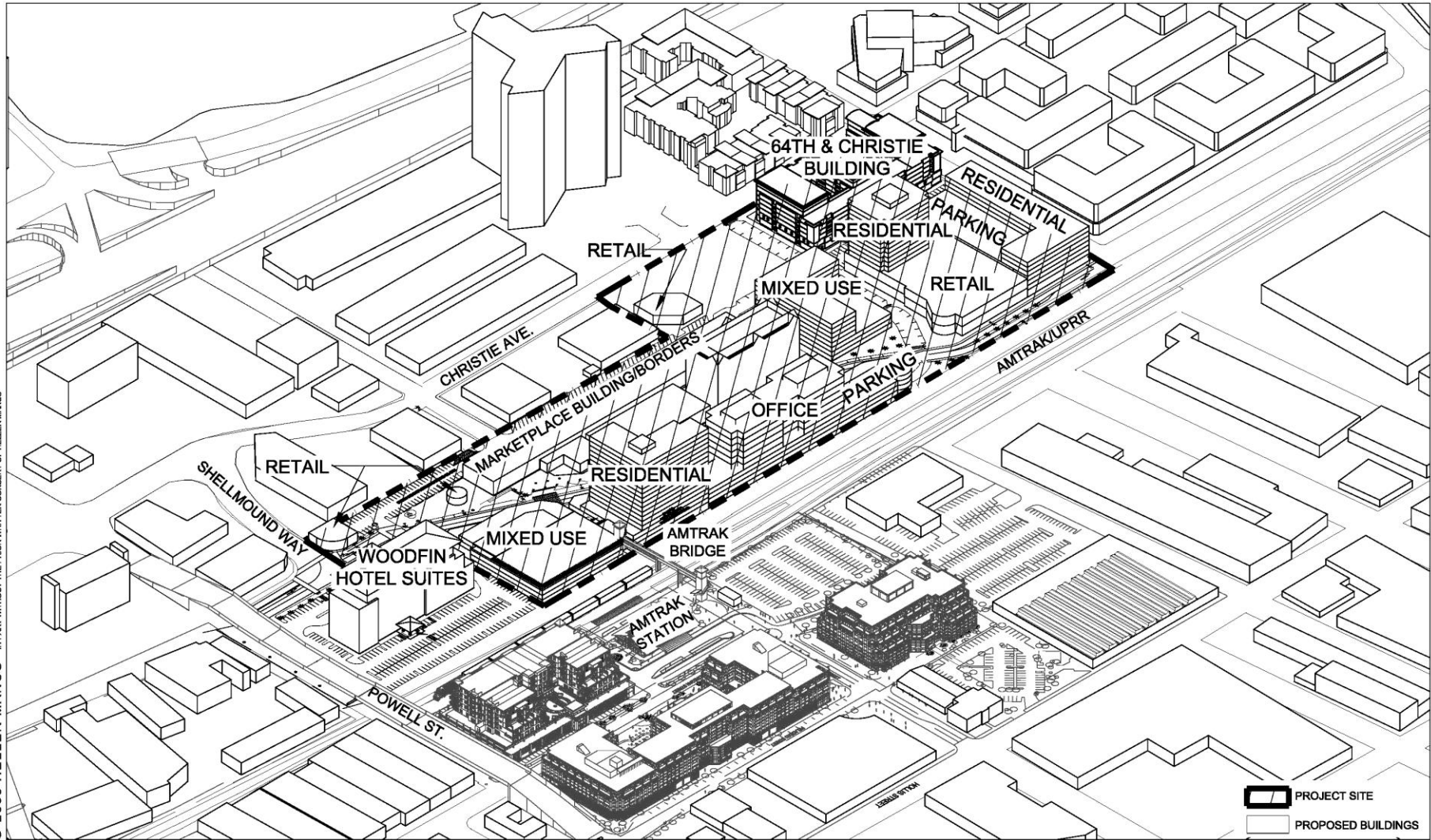
HELLER MANUS ARCHITECTS **HM**
APRIL 16, 2008

AR3144

APPROVED PUD/PDP

NO PART OF THIS DOCUMENT MAY BE USED OR COPIED IN WHOLE OR
IN PART WITHOUT THE PRIOR WRITTEN CONSENT OF HELLER MANUS

© 2008 HELLER MANUS

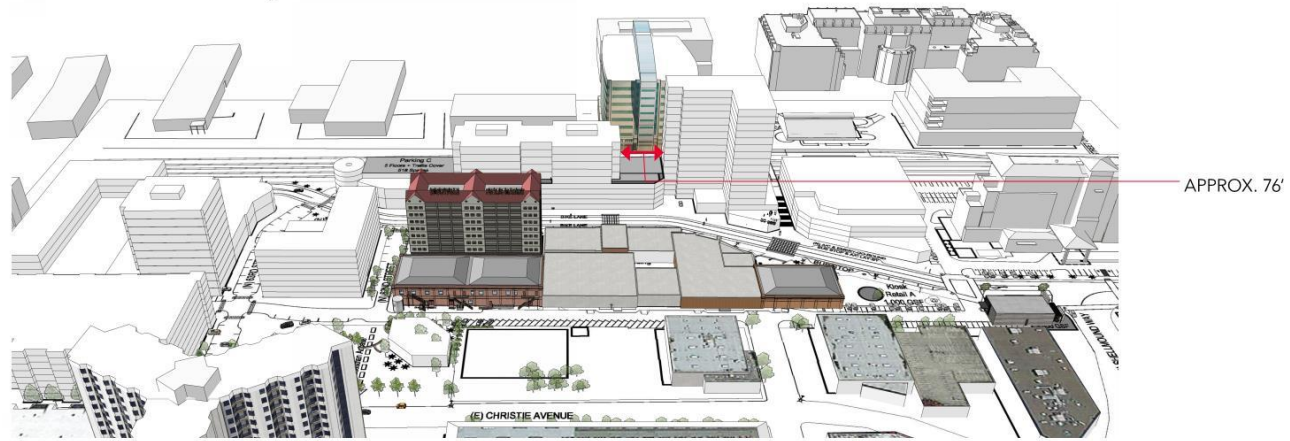


SCALE: NONE

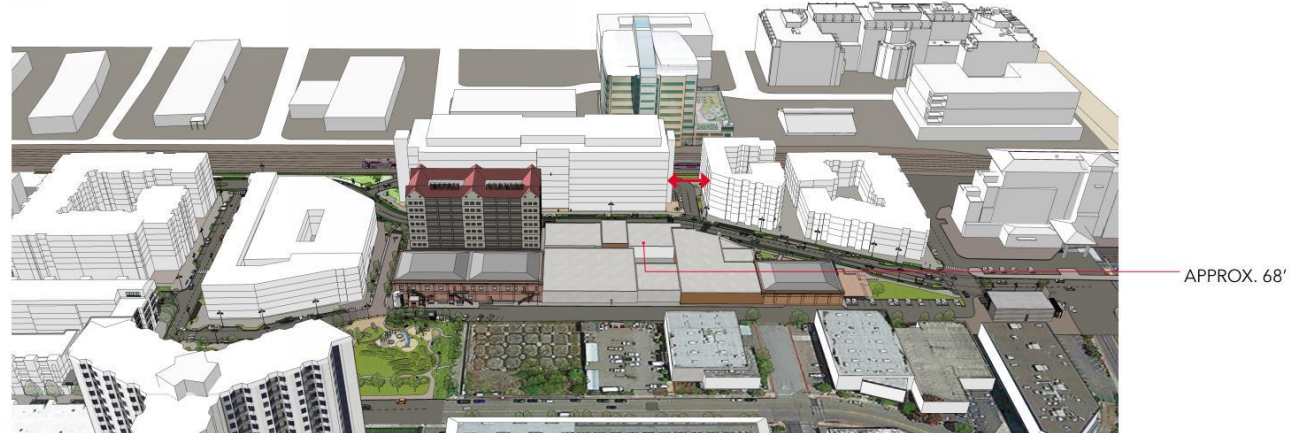
MARKETPLACE REDEVELOPMENT

ILLUSTRATIVE BIRD'S EYE VIEW OF SITE

Figure 1: PDP 2008 and FDP 2019 FDP Massing Studies from West and South-East



2008 PDP



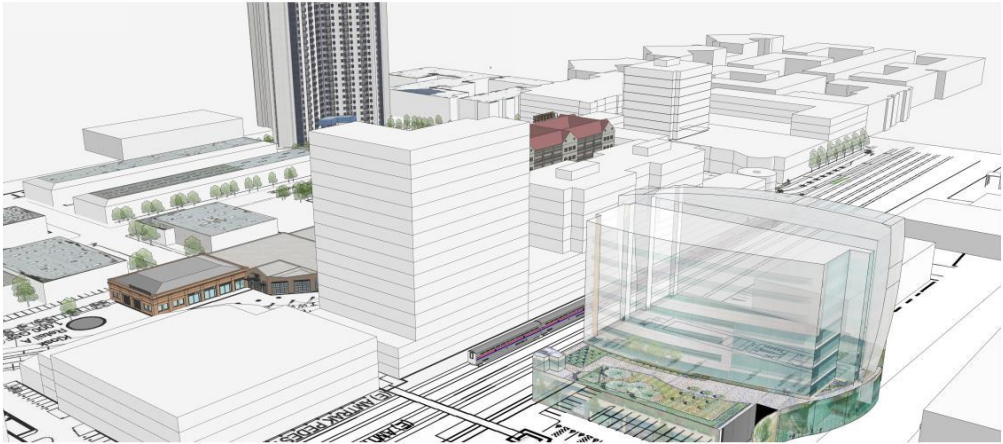
2014-2019 FDP'S

Site: 2008 PDP vs. 2019 FDP | Comparison of Massing from West

HART HOWERTON



Figure 1: PDP 2008 and FDP 2019 FDP Massing Studies from West and South-East



2008 PDP



2014-2019 FDP'S

Site: 2008 PDP vs. 2019 FDP | Comparison of Massing from Southeast

HART HOWERTON



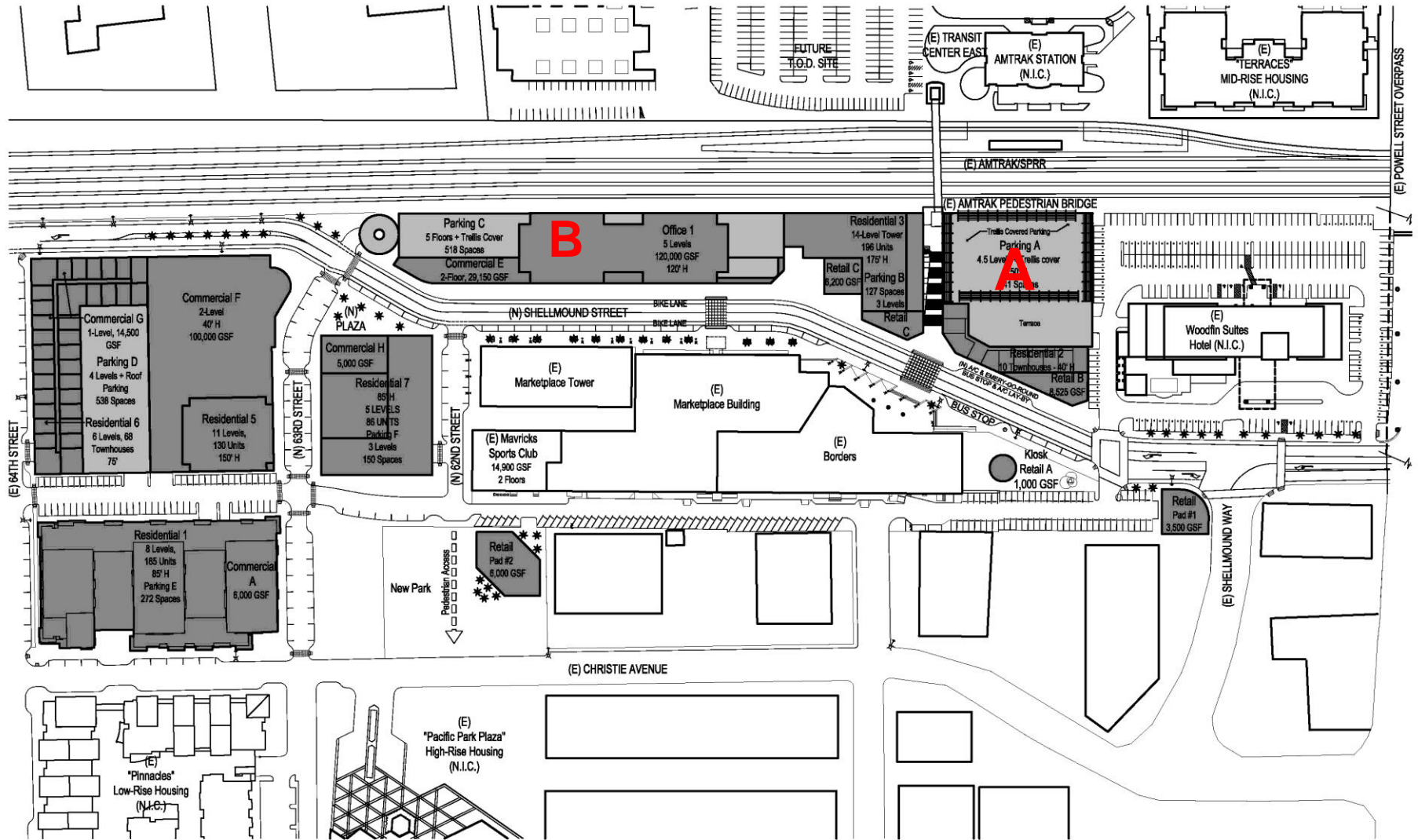
ISSUES IN THE APPEAL LETTER (cont.)

(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 gaps between buildings, will create a wind tunnel here and that those conditions deserve extra study.

This mitigation measure is directed at the pedestrian bridge connection over the railroad and calls for a wind analysis “to ensure that roof areas that would be used by site patrons or residents would be designed such that wind acceleration would be reduced to less than significant levels.



APPROVED PUD/PDP



MARKETPLACE REDEVELOPMENT - PHASE III

EMERYVILLE, CA

HELLER MANUS
ARCHITECTS
APRIL 16, 2008

AR3149

ISSUES IN THE APPEAL LETTER (cont.)

- There are no proposed usable roof areas on Parcel B
- The environmental document does note that the project has “the potential to increase ground level winds.”
- A wind analysis study has been submitted that concludes that “based on the exposure, massing and orientation of the building, it would not have the potential to adversely affect ground level winds near its base in any direction.



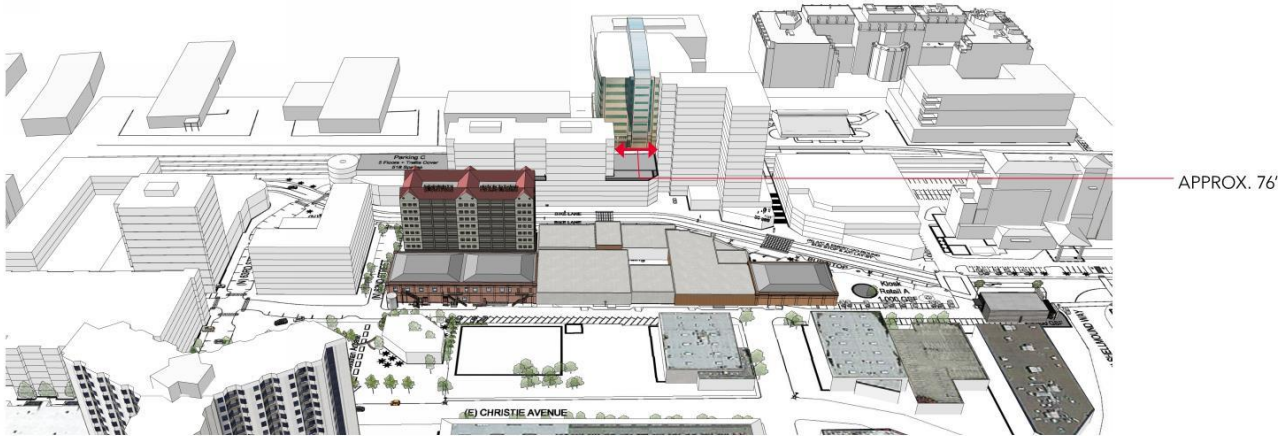
ISSUES IN THE APPEAL LETTER (cont.)

(3) WIND 1 also specifically says that any Final Design should “avoid narrow gaps between the buildings where winds could be accelerated.” The current design does the exactly the opposite. The prior approved design for Parcel B has roughly 170-foot gap between it and the approved Parcel A.

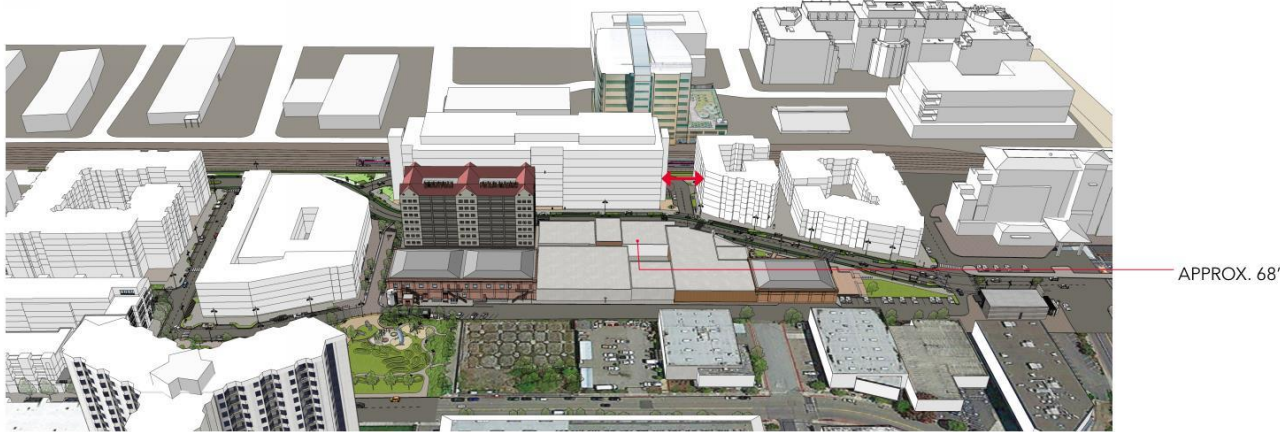
- The Commission needs to make a finding that a FDP is consistent with the PUD/PDP; and not that the proposal is consistent with a previously approved project.



Figure 1: PDP 2008 and FDP 2019 FDP Massing Studies from West and South-East



2008 PDP



2014-2019 FDP'S

Site: 2008 PDP vs. 2019 FDP | Comparison of Massing from West

HART HOWERTON



ISSUES IN THE APPEAL LETTER (cont.)

(4) Requirement TRAF-1b 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.

Traffic timing and impacts of proposed office use are very different than those of retail.

- TDM vs Traffic Analysis
- A detailed traffic analysis was included in the EIR and a building specific traffic analysis has been done for each FDP. Kimley Horn prepared a Trip Generation Evaluation in December prior to the January approval that concluded that proposed office, retail and parking would result in fewer AM and PM peak hour trips when compared to the approved 2008 PDP.
- A TDM pan has been prepared and has been updated regularly.



ISSUES IN THE APPEAL LETTER (cont.)

(5) We have been told that the City's "tower separation ordinance", which requires certain distances between the buildings over 100 feet tall, does not apply in this case because the three buildings in question were all 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.

- PUD/PDPs are issued for large development projects phased over relatively long time period to allow developers to propose a phased project with the confidence that the applicable development standards will not change with updates in the City's General Plan and Planning Regulations.
- Therefore, it is not simply a question of technicality but ensures that the City is in compliance with its own rules and provides confidence to all developers that their permit conditions will not be modified as a result of citizen objection.





APPROVED BUILD OUT



HART HOWERTON

EMERYVILLE MARKET PLACE
Emeryville, California

SITE PLAN AT FULL BUILD-OUT | G004
PARCEL B | MAY 13, 2016



City of Emeryville

Marketplace FDP

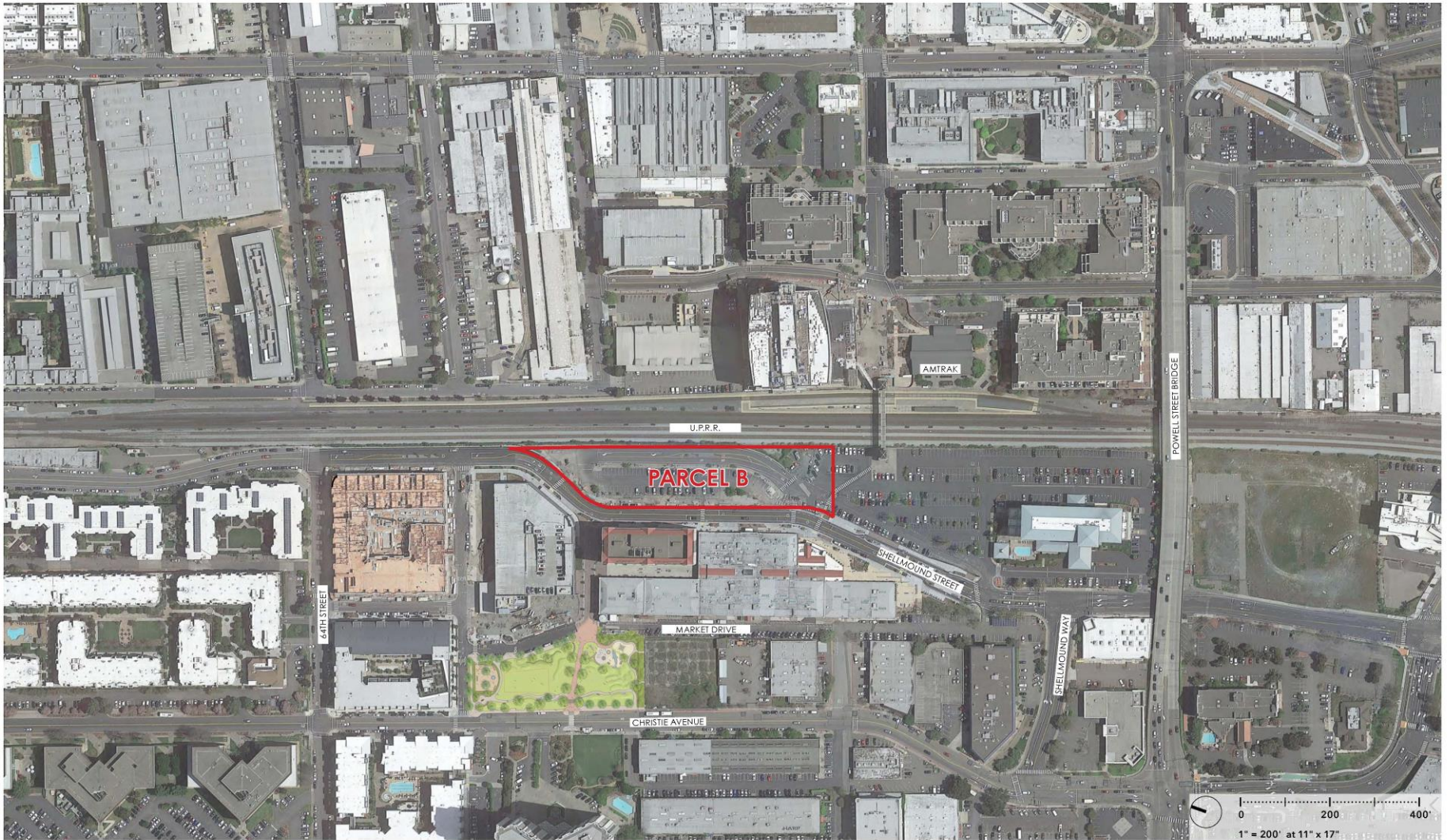
AR3158

SUMMARY OF CHANGES TO STUDY SESSION PLANS

- Increase in retail area from 14,000 sq. ft. to 15,800 sq. ft.
- Solar/PV panels included.
- Primary servicing to the retail area are now provided from the back
- EV Parking spaces included and identified
- North and south elevations have been further developed and refined, including adding windows to the stairs
- Location of some servicing areas have been revised
- Bike room has been moved north, with better access from lobby
- Landscape Plan has further developed





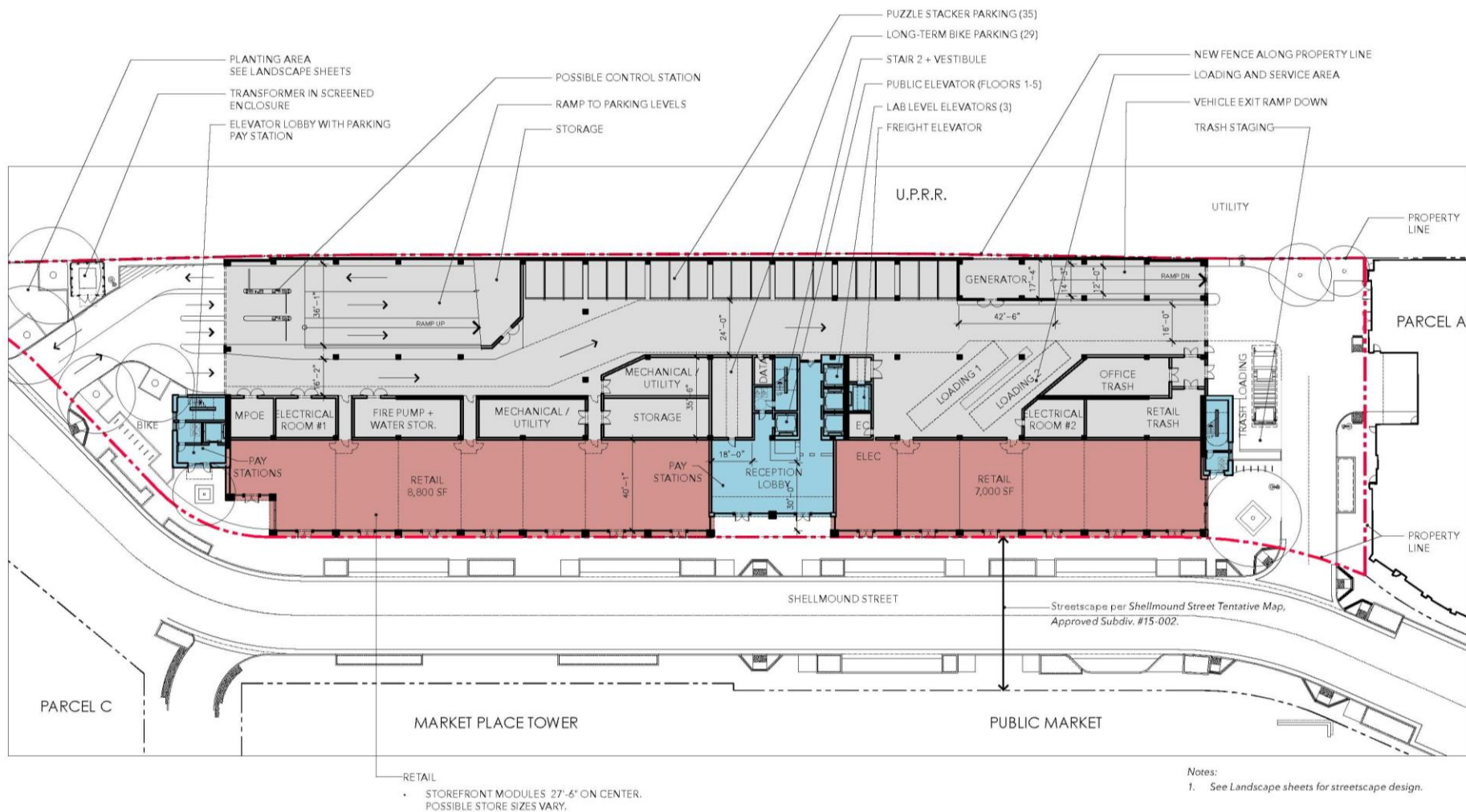


City of Emeryville

Marketplace Parcel B

AR3161

SITE PLAN – GROUND FLOOR

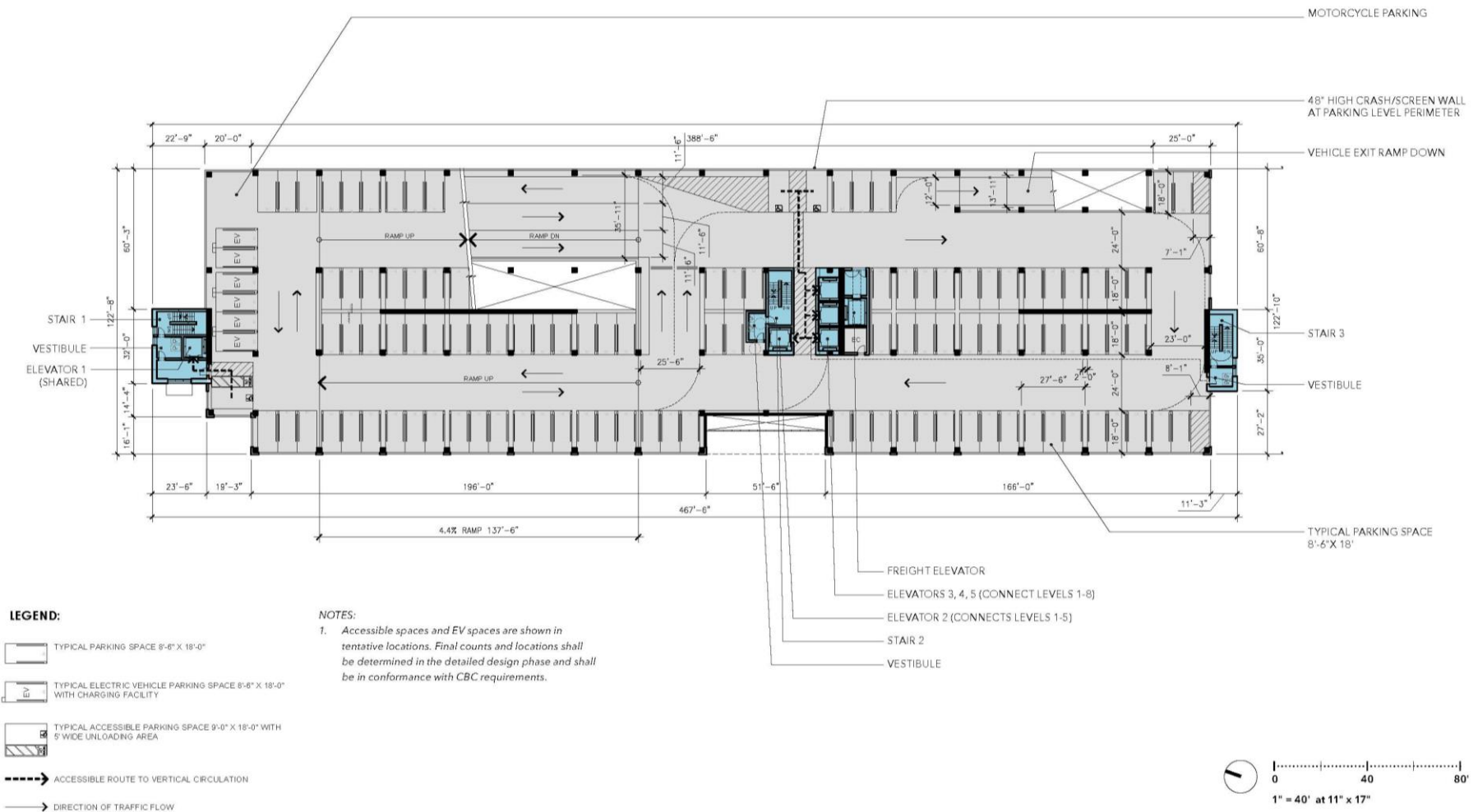


City of Emeryville

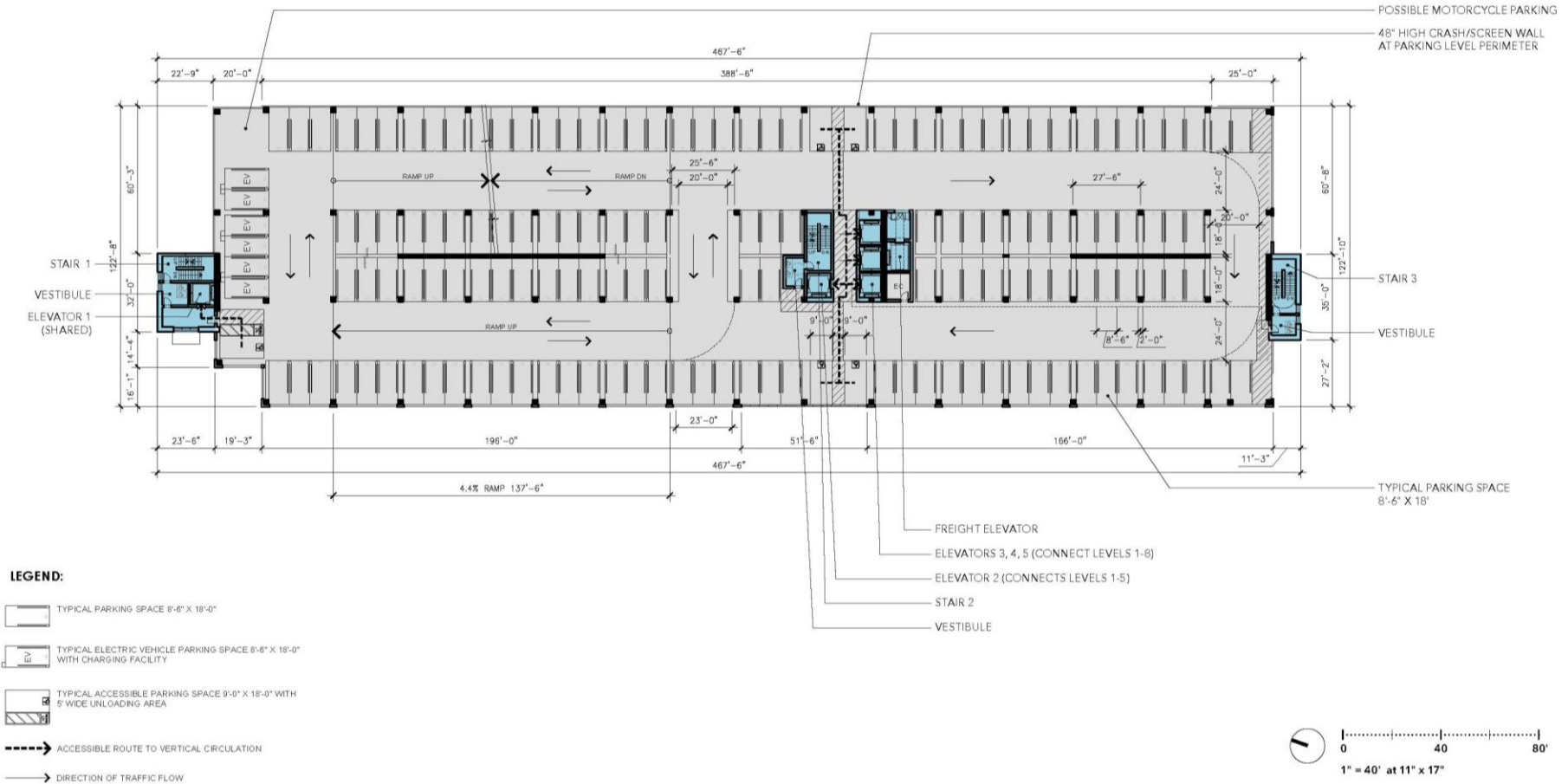
Marketplace Parcel B

AR3162

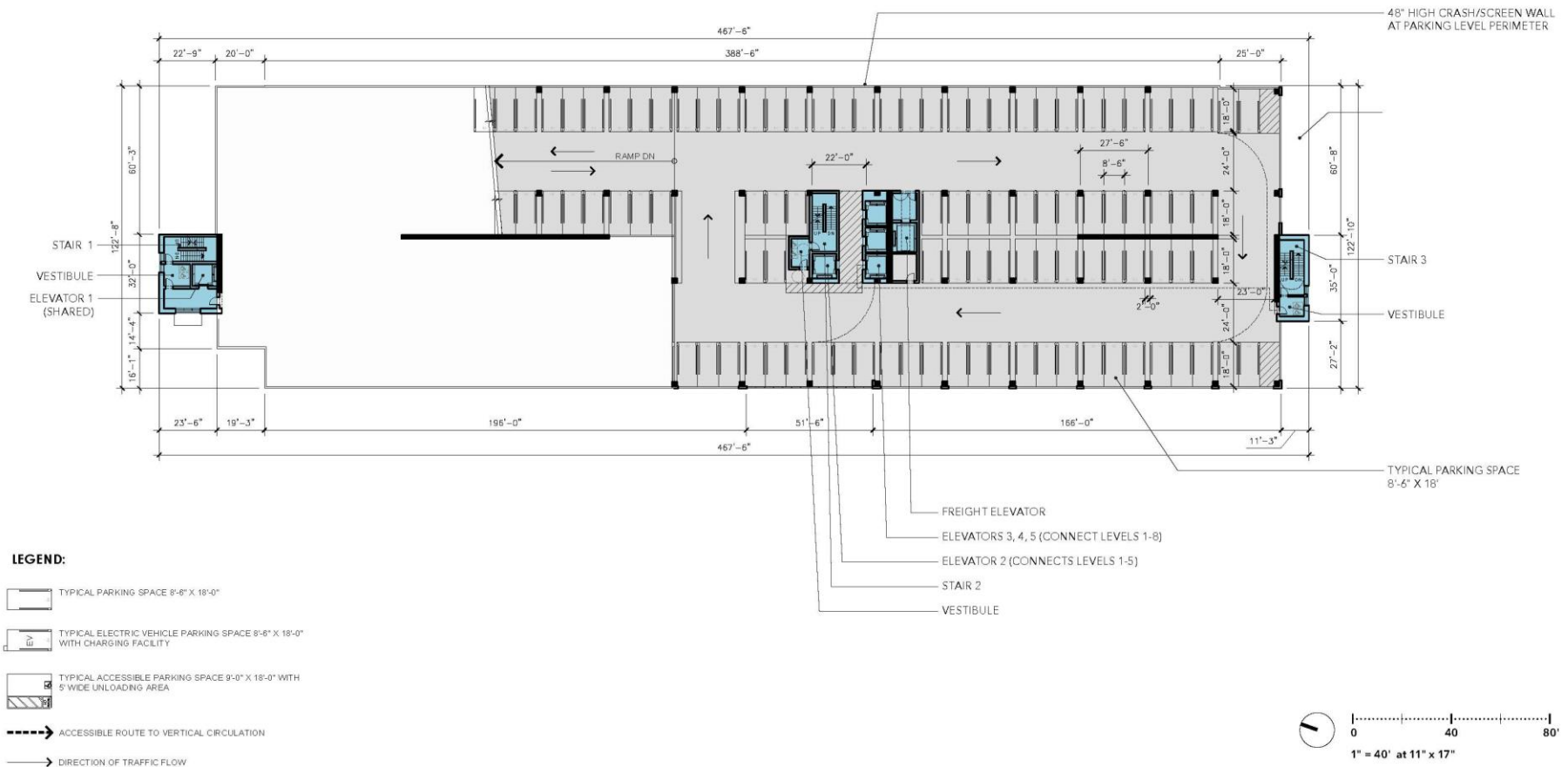
PARKING LEVEL – 2



PARKING LEVELS – 3 AND 4



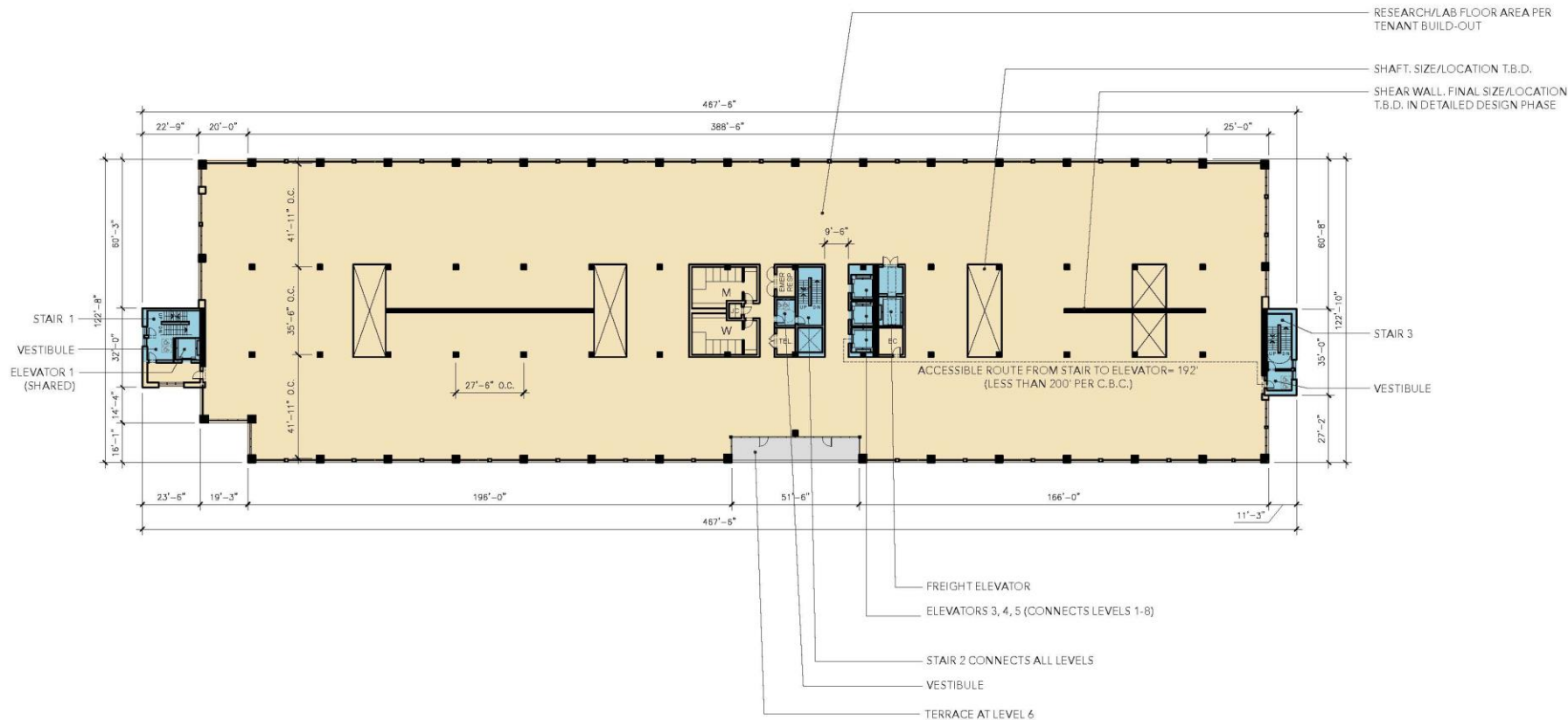
PARKING LEVEL – 5



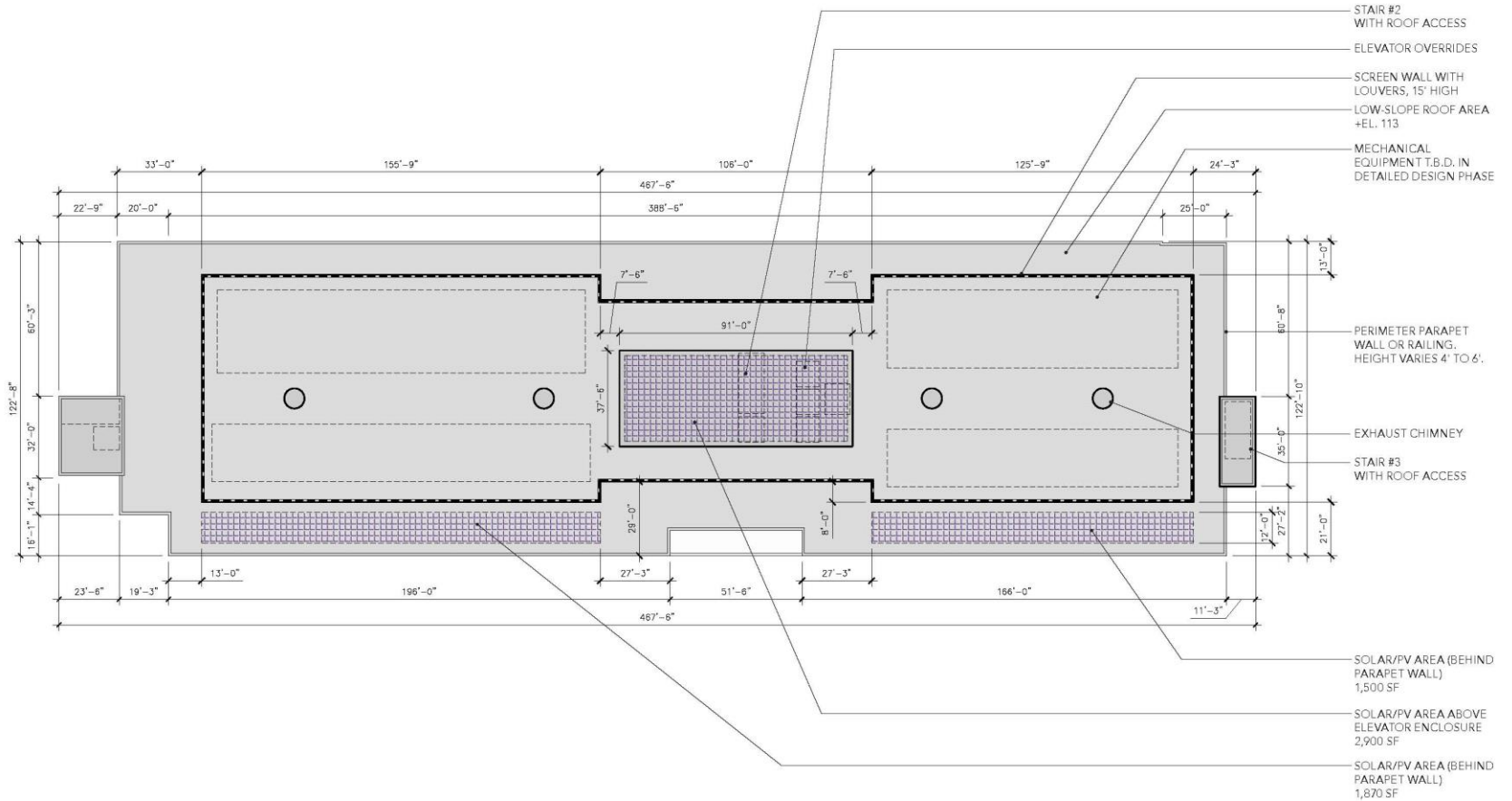
OFFICE LEVELS – 6, 7 AND 8

Notes:

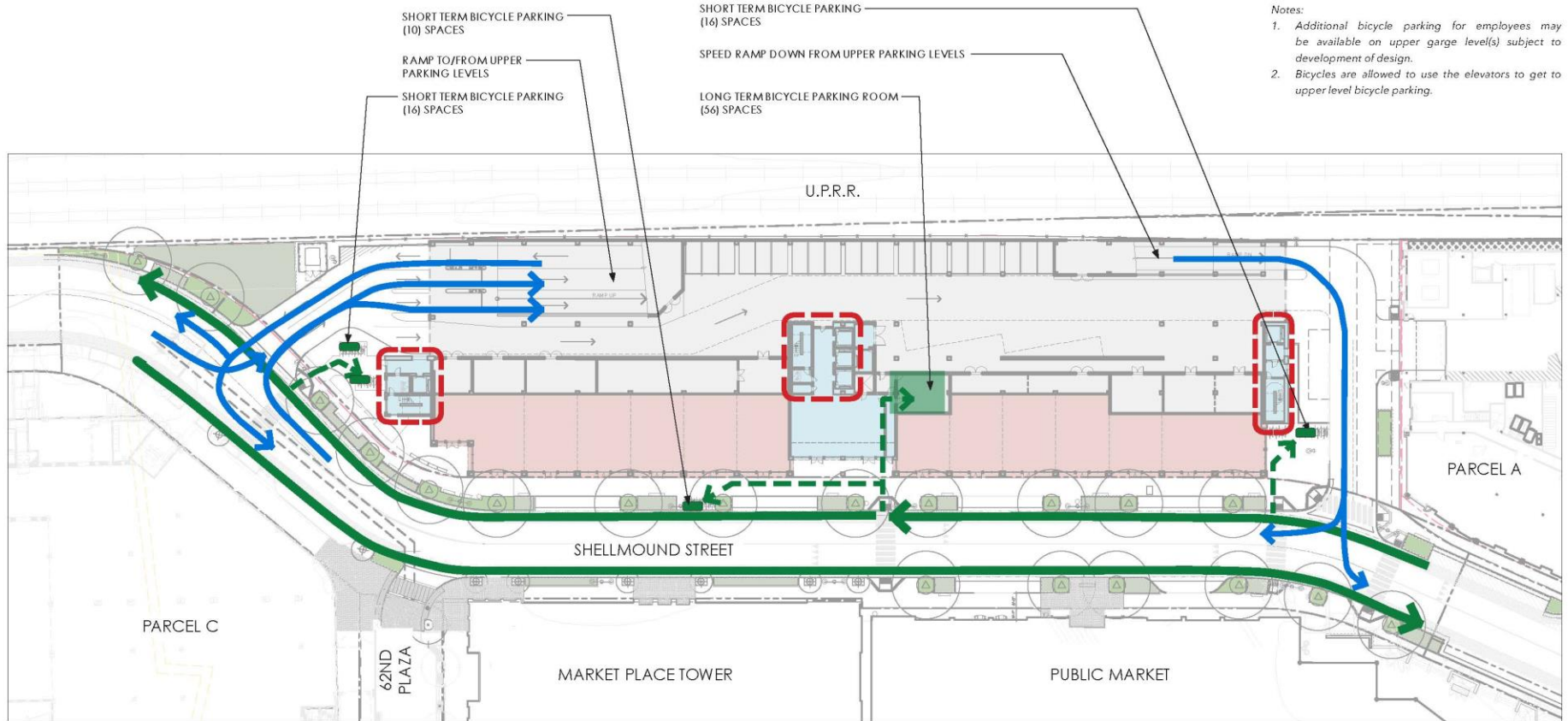
1. Levels 6-8 could have any number of tenants. For example, 1 tenant could occupy all three levels, or each level could have 4 or more tenants.



ROOF LEVEL



VEHICLE AND BIKE CIRCULATION



LEGEND:

- ← BIKE CIRCULATION
- ← RIDER-BESIDE-BIKE CIRCULATION
- BIKE PARKING
- SECURE EMPLOYEE BIKE PARKING

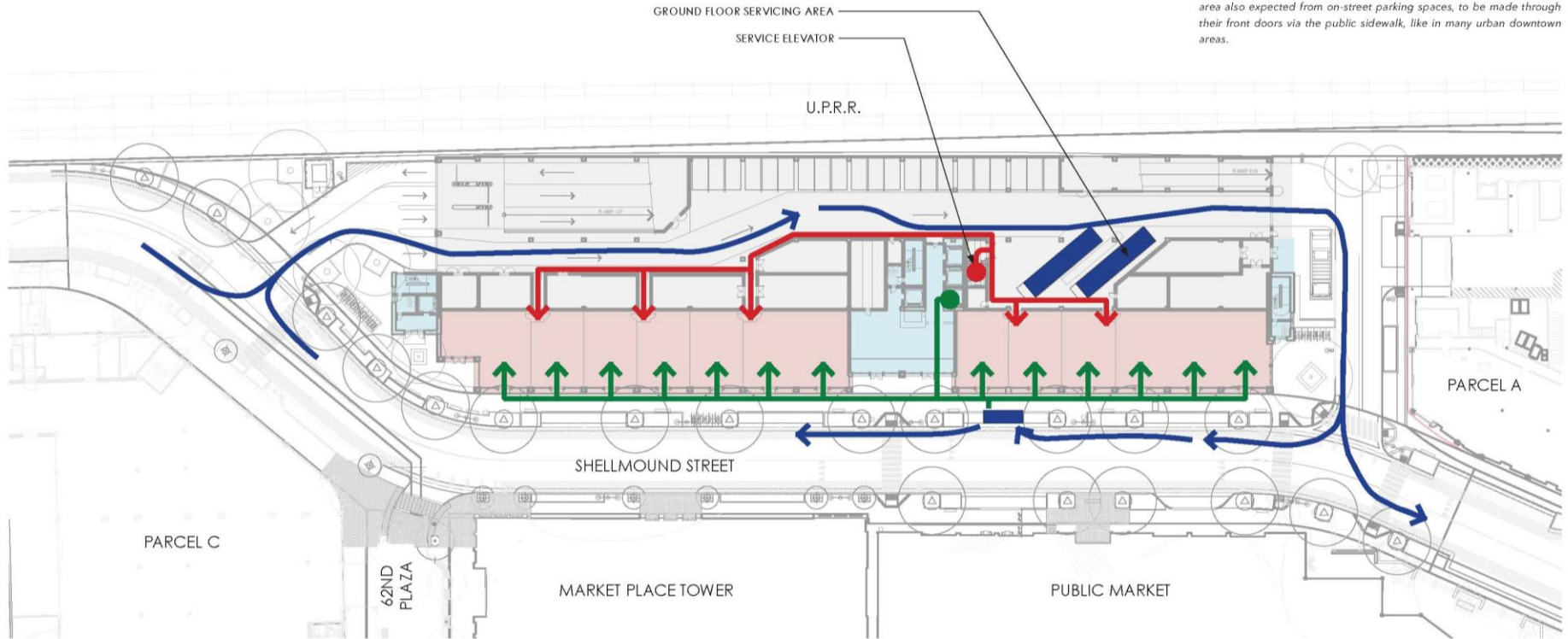
- ← VEHICLE CIRCULATION
- VERTICAL CIRCULATION TO/FROM PARKING LEVELS



SERVICING PLAN

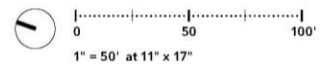
Notes:

1. Deliveries to the upper floors: Delivery vehicles will park in the Ground Floor service area and deliver materials via the service elevator.
2. Deliveries to the ground floor mixed uses will be made by service vehicles primarily parked in the Ground Floor service area. Some retail deliveries are also expected from on-street parking spaces, to be made through their front doors via the public sidewalk, like in many urban downtown areas.



LEGEND:

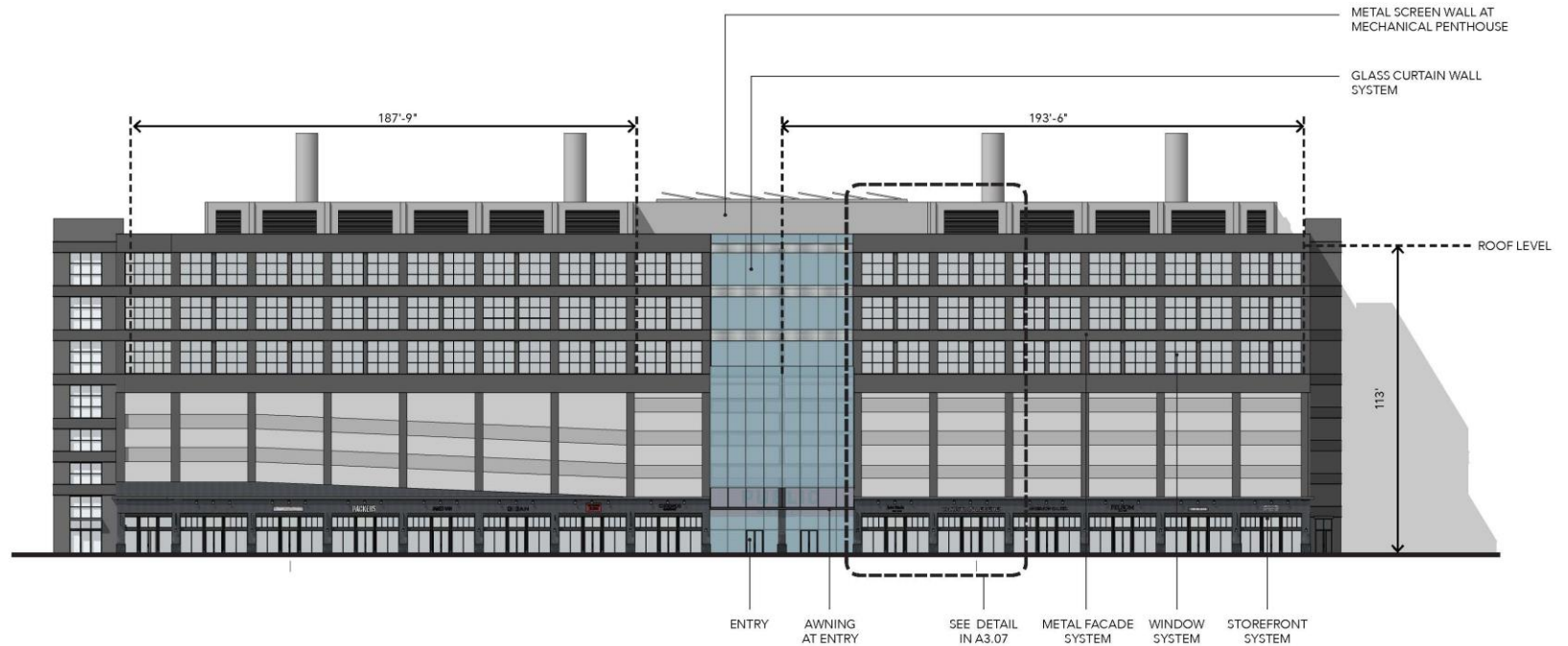
- DELIVERY VEHICLE SPACES
- VEHICLE ROUTE
- PRIMARY DELIVERY ROUTE INTO STORE
- SECONDARY DELIVERY ROUTE INTO STORE



WEST ELEVATION – SHELLMOUND STREET

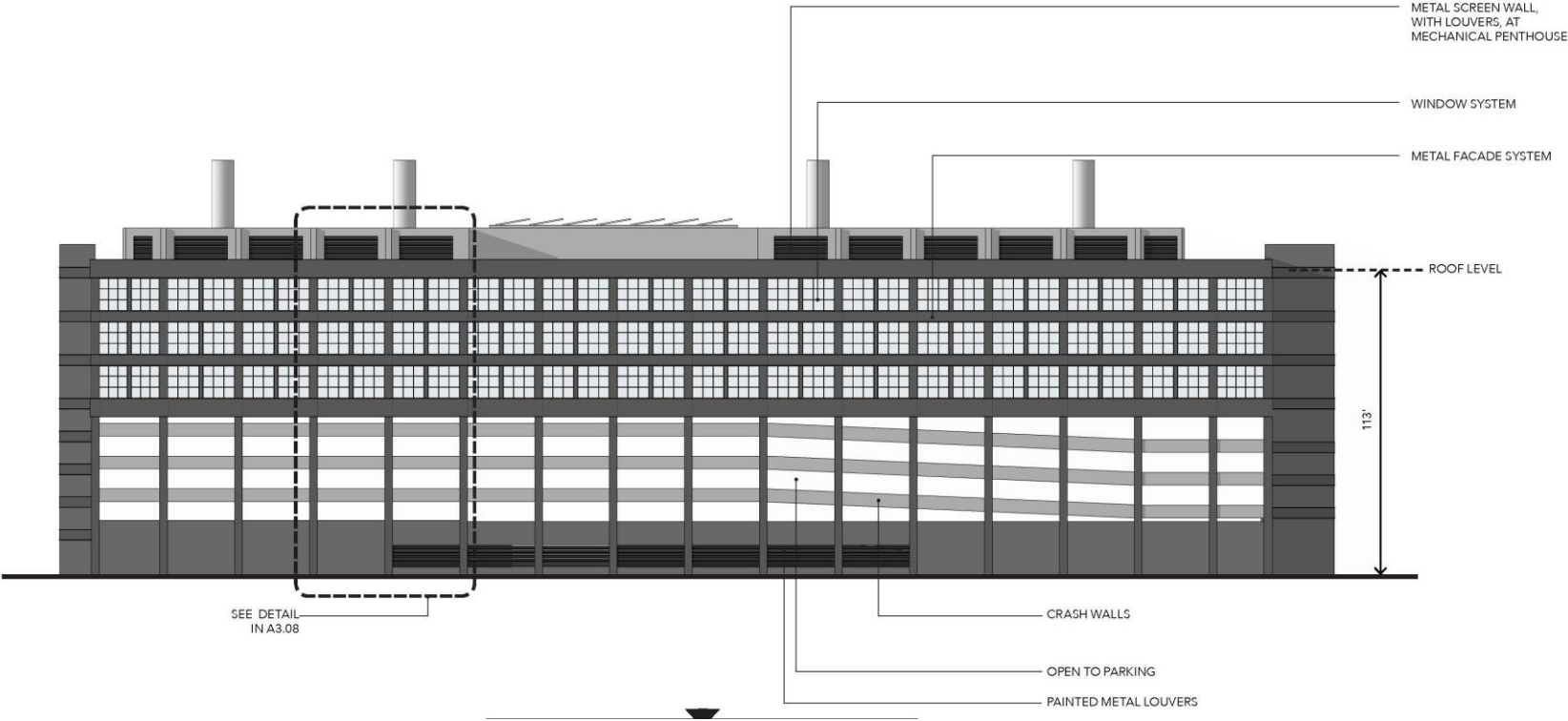
Notes:

1. Street trees and furnishings omitted for clarity.
2. See A7.00 for Art concept.



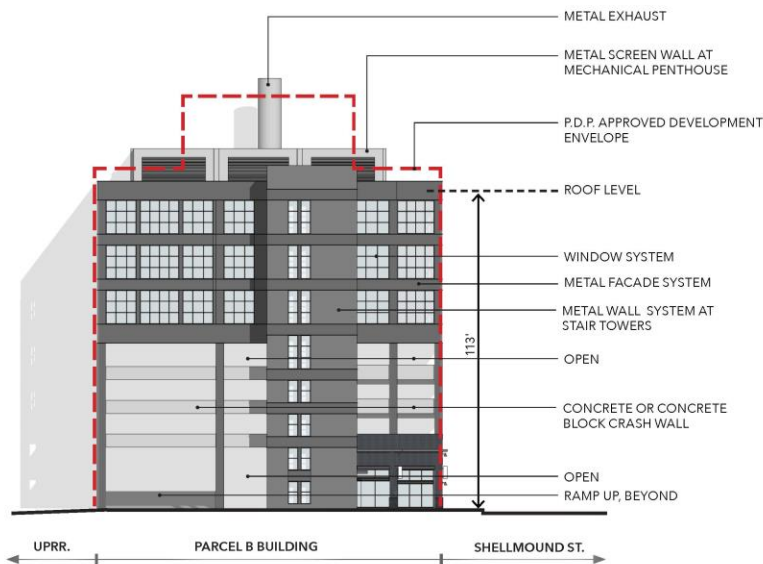
EAST ELEVATION - RAILROAD

- Notes:
- 1. Street trees and furnishings omitted for clarity.
 - 2. See A7.00 for Art concept.

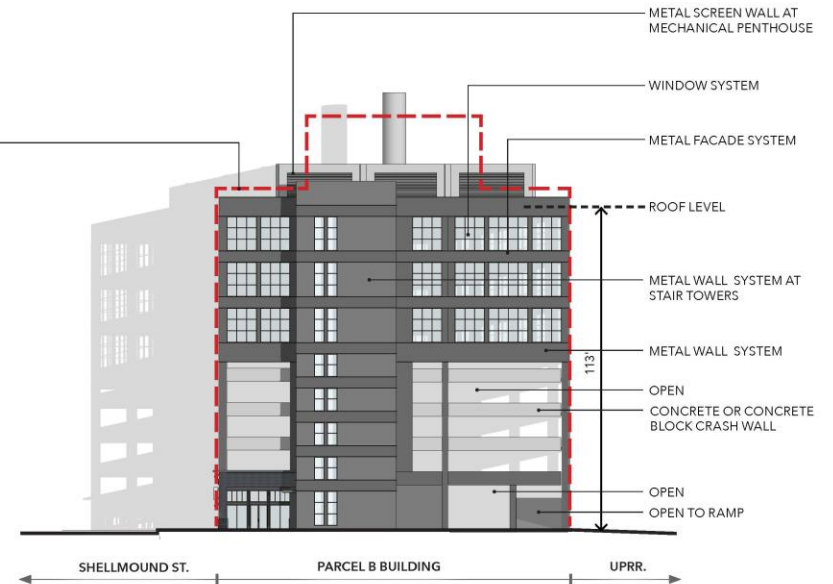


NORTH AND SOUTH ELEVATIONS

Notes:
Street trees and furnishings omitted for clarity.



C. NORTH ELEVATION



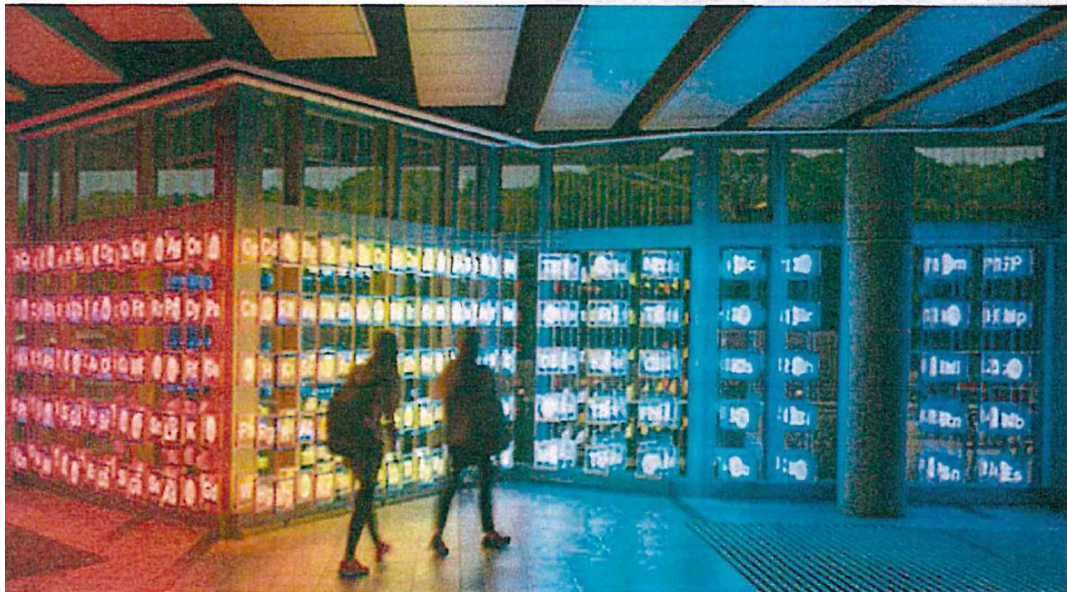
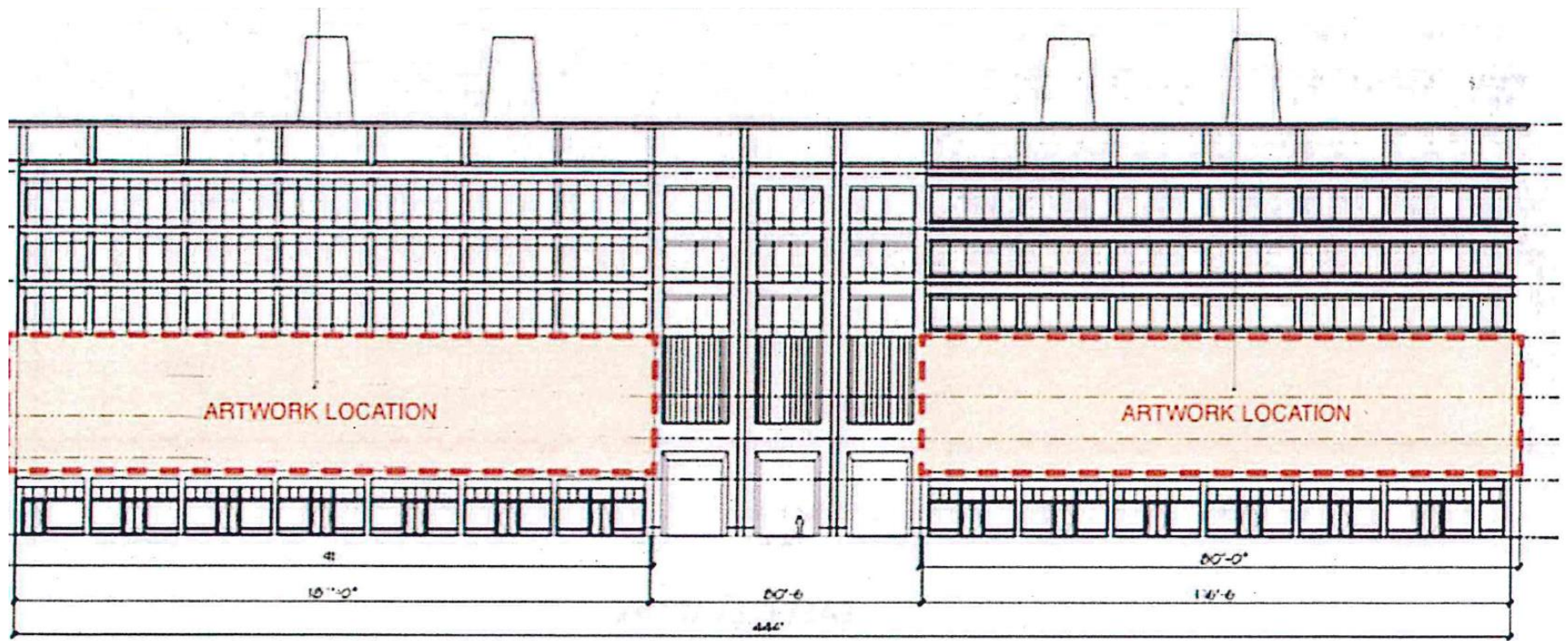
D. SOUTH ELEVATION

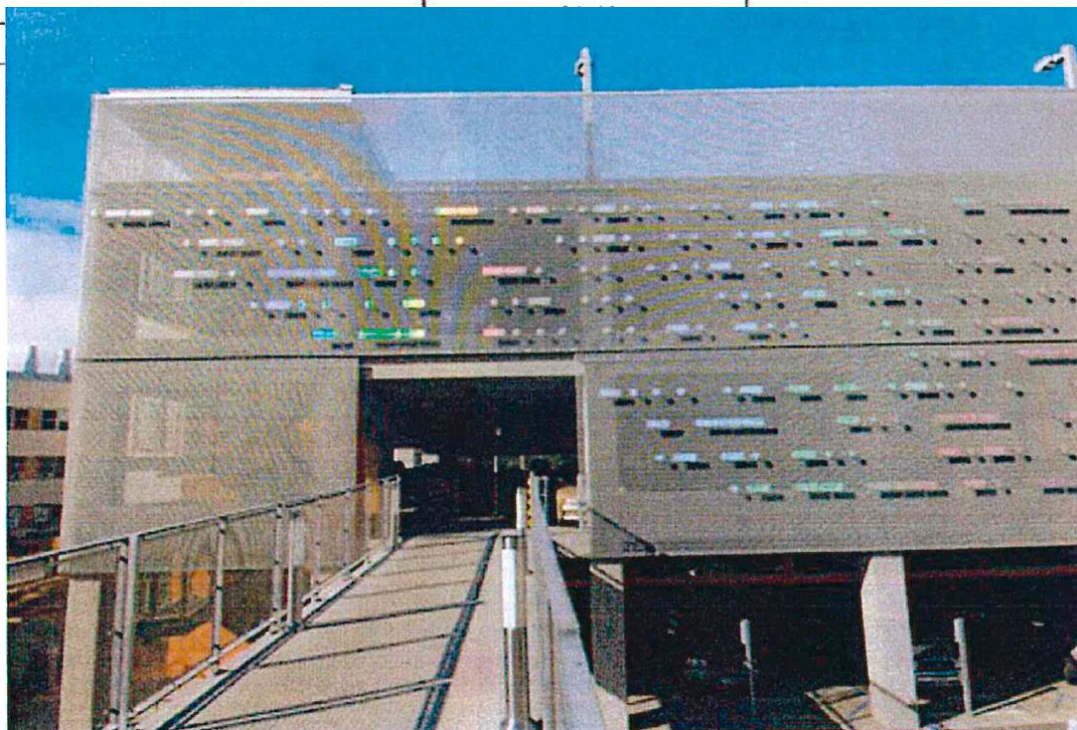
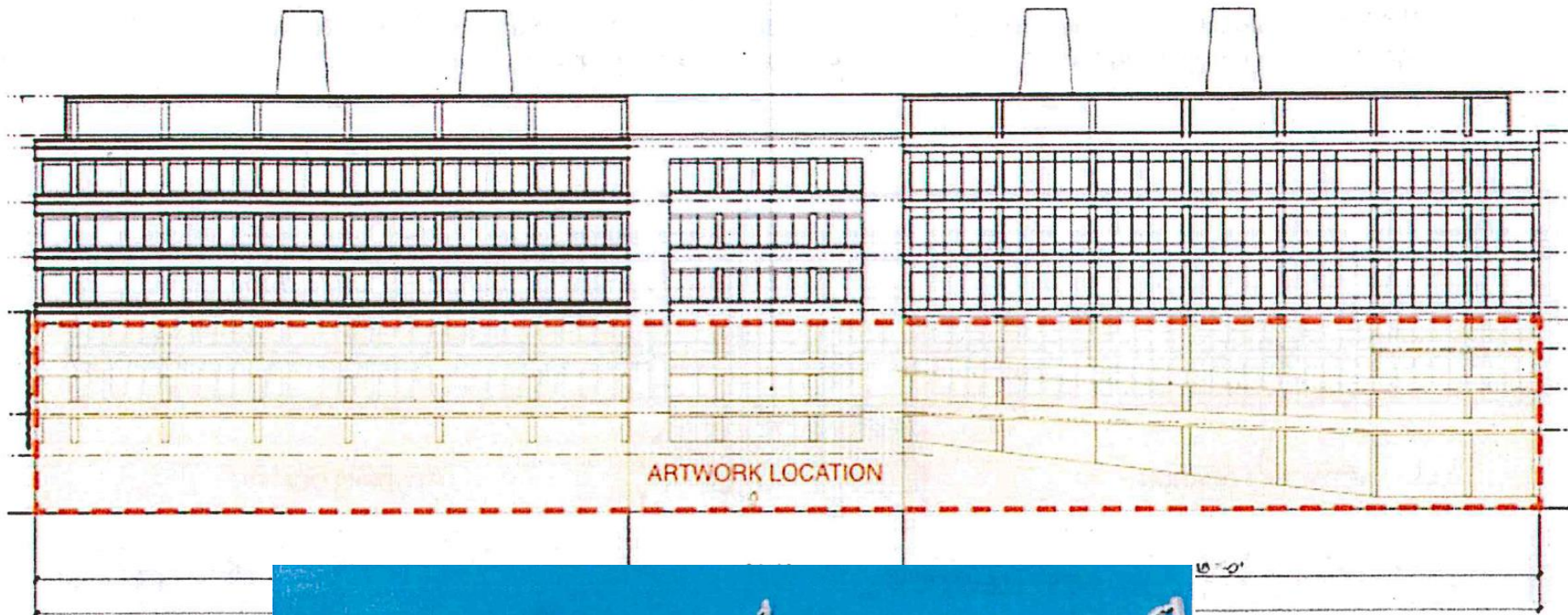


PUBLIC ART

- Development Agreement allows the use of public art funds for building elevations
- The applicant is proposing use of public art for its west and east elevations
- Public Art Committee recommended approval of the Public Market Public Art Final Plan that allocates \$750,000 for west elevation and \$250,000 for east elevation. The Plan also identifies artists that will work on each elevation







CONFORMITY TO THE GENERAL PLAN AND CONSISTENCY WITH THE APPROVED PUD/PDP

- General Plan designation is Mixed Use with Residential MUR where residential, office, retail uses and associated parking are permitted.

Use	PDP	FDPs	Difference
Residential	674 units	649 units	-25 units
Retail	180,000 sq. ft.	59,800 sq. ft.	-120,200 sq. ft.
Office	120,000 sq. ft.	150,000 sq. ft.	+30,000 sq. ft.
Parking	2,082 spaces	1,559 spaces	-523 spaces

-- Building height of 120 feet is consistent with approved PDP height

-- Compared to Approved PDP, there will be 90,200 square feet of less commercial space



CONFORMITY WITH SHELLMOUND STREETSCAPE DESIGN GUIDELINES

- These Guidelines outline sidewalk widths, paving materials, streetscape furniture, and design of facilities such as bus stops
- The plans are consistent with the Tentative Map approval that was previously determined to be consistent with the Guidelines

ENVIRONMENTAL REVIEW

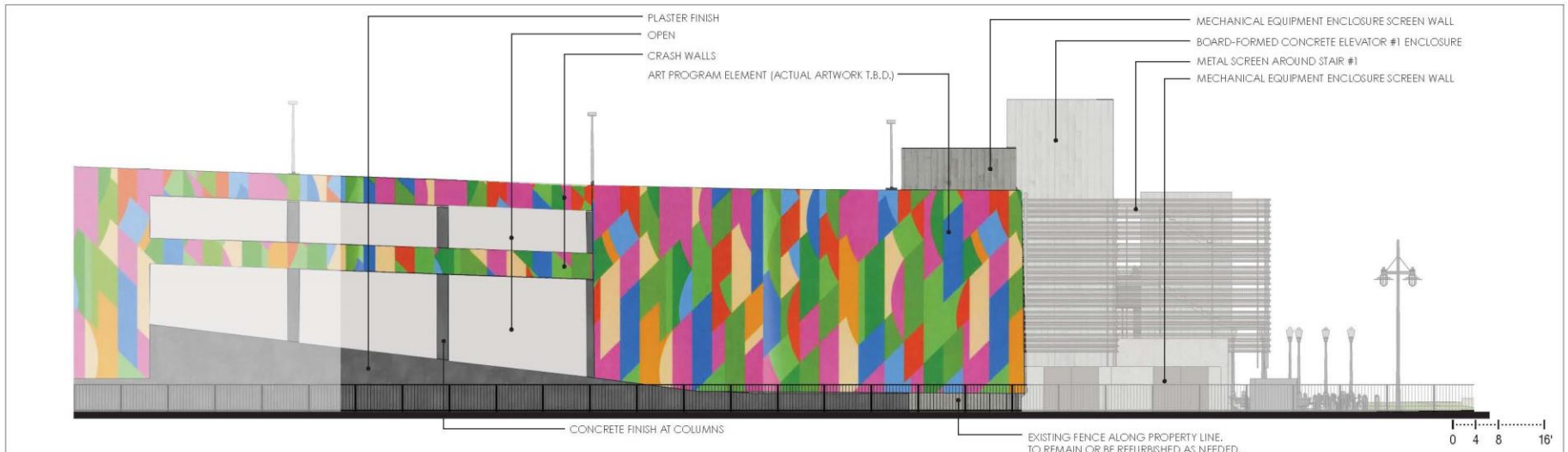
Environmental Impact Report (EIR) for Marketplace PUD certified by City Council applies to the proposed FDP. An Environmental Checklist attached to the staff report confirms that there have been no substantial changes in the proposed project or to the circumstances under which project will be undertaken, and no new information of substantial importance exists which would require preparation of a subsequent EIR



STAFF COMMENT AND PUBLIC COMMENT LETTERS

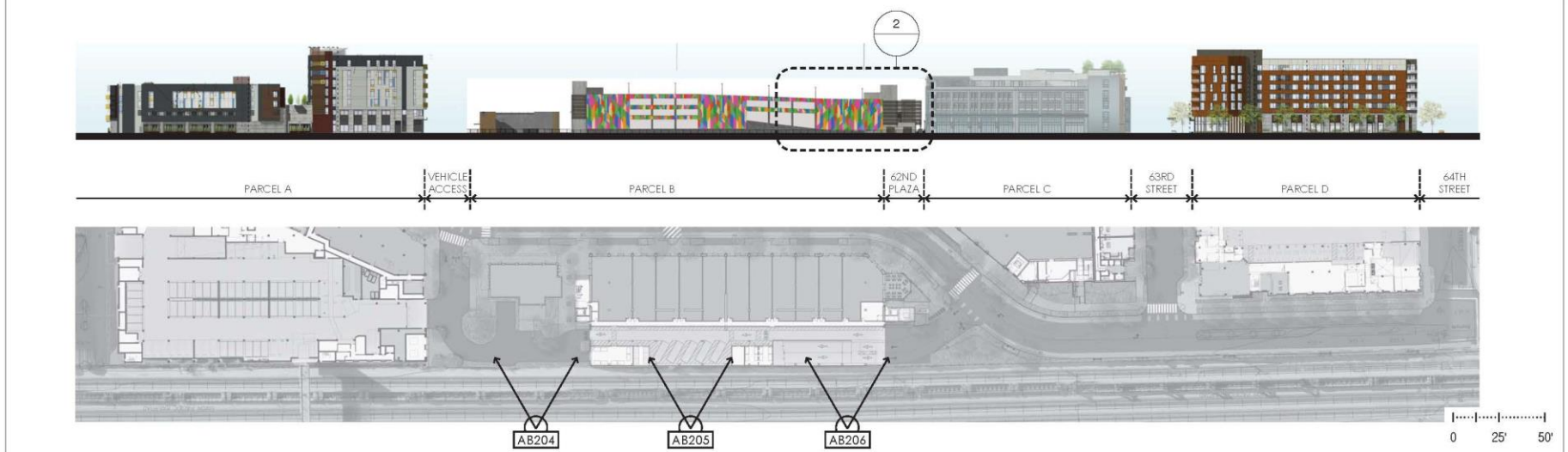
- Additional conditions of approval from Fire Department
- Changes in resolution to change the applicant name from City Center
- Realty to AG-CCRP Public Market LP
- Two comment letters from Wareham
- Mark Stephan's response letter
- Two letters of support
- Three letters from Lozeau Drury LLP and one response letter from Holland and Knight





2. EAST ELEVATION - FACING TRAIN TRACKS - NORTH PORTION

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



1. SITE ELEVATION AND KEY PLAN

SCALE: 1" = 50'

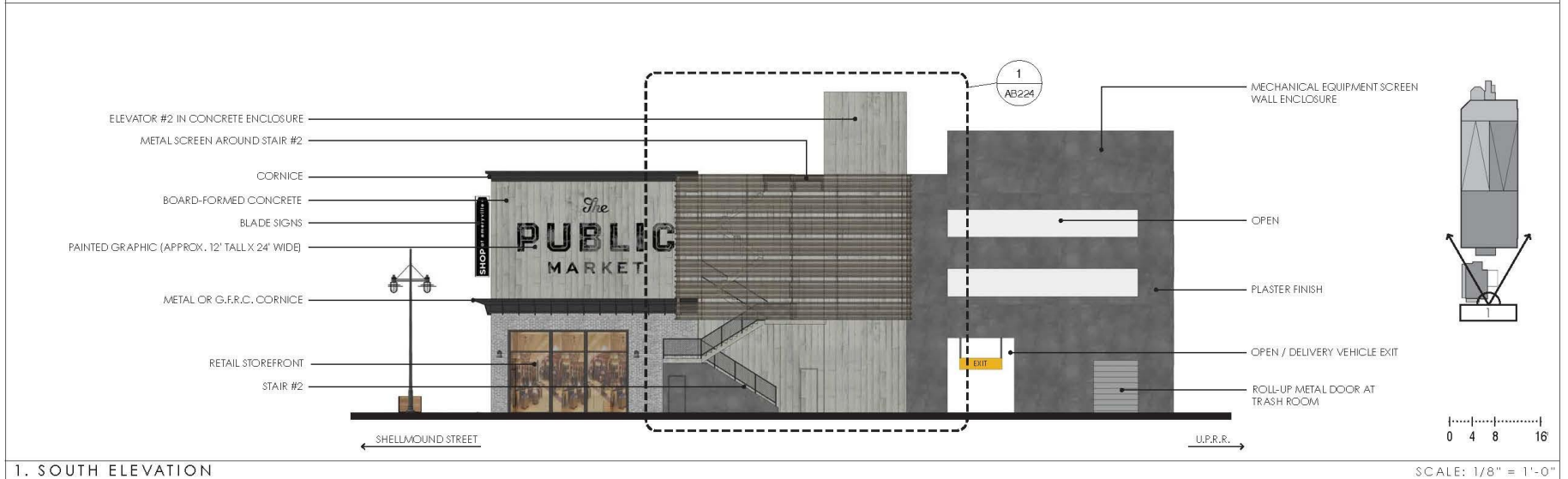


City of Emeryville

Marketplace Parcel B

AR3181

APPROVED NORTH AND SOUTH ELEVATIONS

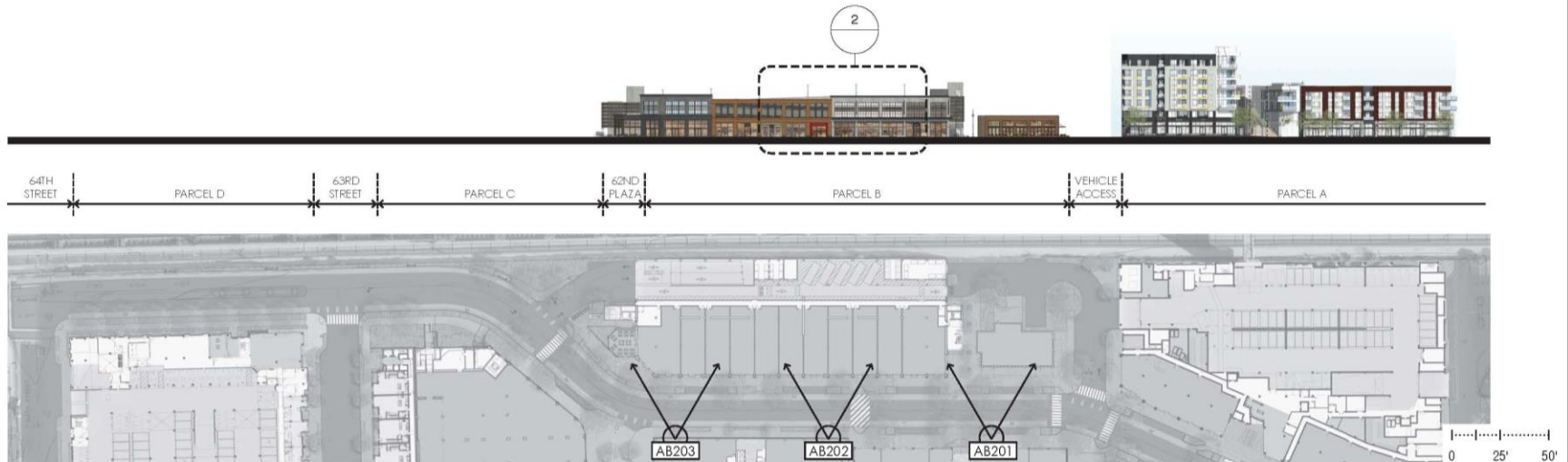


APPROVED SHELLMOUND ELEVATION



2. WEST ELEVATION - FACING SHELLMOUND- MIDDLE PORTION

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



City of Emeryville

Marketplace Parcel B

AR3183













AR3189