City of Emeryville
CALIFORNIA

MEMORANDUM

DATE: November 5, 2019

TO: Christine Daniel, City Manager

FROM: Charles S. Bryant, Community Development Director

SUBJECT: **Appeal By Wareham Development Of Resolution No. FDP18-001R, "A Resolution Of The Planning Commission Of The City Of Emeryville Approving A Final Development Plan (FDP) For APN 49-1556-16 ("Parcel B") Of The Marketplace Redevelopment Project Planned Unit Development (PUD04-02) For An Eight-Story Building With Approximately 15,800 Square Feet Of Rentable Retail Space, 150,000 Square Feet Of Rentable Office/Lab Space, And 560 Parking Spaces And Rescinding Resolution No. FDP15-001 Previously Adopted By The Planning Commission On June 23, 2016"**

ACTION REQUESTED

This public hearing item relates to the appeal by Wareham Development ("**Appellant**") and the City Council's call for review of the Planning Commission's adoption of Resolution No. FDP18-001R on May 14, 2019. That resolution approved the application of AG-CCRP Public Market LP ("**Applicant"**) for a Final Development Plan for the property commonly referred to as "Parcel B", and that is encompassed by the Marketplace Redevelopment Project Planned Unit Development/Preliminary Development Plan, approved by the City Council by Ordinance No. 08-004 on August 5, 2008. At its meeting on October 1, 2019, the City Council voted to hold a public hearing on November 5, 2019, to consider the appeal.

Staff recommends that the City Council open the public hearing, take testimony, close the public hearing, and then provide direction to staff to prepare a resolution, pursuant to Section 9-7.1405(d) of the Planning Regulations, to either:

(a) approve the Commission's action upon finding that all applicable findings have been correctly made and all provisions of [the Planning Regulations] have been complied with;

(b) approve the Commission's action but impose additional conditions and/or guarantees as it deems necessary to fulfill the purposes of [the Planning Regulations]; or

(c) disapprove the Commission's action upon finding that all applicable findings have not been made or all provisions of [the Planning Regulations] have not been complied with.

Pursuant to Planning Regulations Section 9-7.1405(d), the Council may also continue the hearing and request a supplemental report from the Planning Commission.

BACKGROUND

On January 15, 2008, via Resolution No. 08-09[1], the City Council certified the Marketplace Redevelopment Project Environmental Impact Report (**"EIR"**)[2] for the Marketplace Redevelopment Project Planned Unit Development (**"Marketplace Project"**). Subsequently, on July 15, 2008, the Council adopted Resolution No. 08-126[3], which applied the EIR to the Planned Unit Development (**"PUD"**), adopted mitigation measures, and adopted a statement of overriding consideration for the project as considered in the EIR. On August 5, 2008, the City Council adopted Ordinance No. 08-004[4], approving the Marketplace Redevelopment Project Planned Unit Development/Preliminary Development Plan (**"PDP"**) (referred to together as the **"PUD/PDP"**). The Ordinance included two exhibits, Exhibit A: Conditions of Approval[5], and Exhibit B: Preliminary Development Plan dated April 16, 2008[6].

The PUD/PDP involved redevelopment of the existing Marketplace site (including the parcel now referred to as "Parcel B" or APN 49-1556-16) with a phased development consisting of 674 multi-family residential units, 180,000 square feet of retail, and 120,000 square feet of office. The PUD/PDP contemplated the 15-acre Marketplace site to be substantially redeveloped by replacement of surface level parking, realignment of Shellmound Street directly in front of the existing Marketplace Tower and Public Market buildings, addition of three new street segments with on-street parking (62nd and 63rd Streets and Market Drive), and addition of seven new buildings within the site and an enlarged City park.

Detailed background information about the Parcel B Project (defined below) is provided in the October 1, 2019 City Council staff report[7]. In summary:

The Planning Commission approved a new Final Development Plan ("**FDP"**) for Parcel B of the Marketplace Redevelopment Project Planned Unit Development (PUD04-02) for a 113-foot tall, 8 story building that included 14,000 square feet of retail space, 150,000 square feet of office/lab space, and 565 parking spaces ("**Project**") at its January 24,

[1] AR0001-AR0003
[2] AR0004-AR0951
[3] AR0952-AR1021
[4] AR1026-AR1032
[5] AR1033-AR1092
[6] AR1093-AR1108
[7] AR3076-AR3097

2019 meeting. This approval rescinded a previously approved FDP (FDP15-001) for Parcel B that did not include office space. The Planning Commission decision was appealed by Appellant to the City Council on February 8, 2019.

The Council remanded the appeal to the Planning Commission on March 19, 2019 (Resolution No. 19-29) and directed the Commission to consider the issues raised in the appeal letter from Appellant and to hold a new public hearing on the Project. The Planning Commission considered the Project at its regular meeting on April 25, 2019 and continued deliberation to May 14, 2019, when it unanimously re-approved the Project (Resolution No. FDP18-001R). This decision was called for review by the City Council on May 21, 2019 and appealed by Appellant on May 29, 2019[8].

At its regular meeting on October 1, 2019, the City Council considered the appeal and then voted 4-1 (Council Member Donahue voted "No") to set November 5, 2019 as the date for a public hearing on the appeal (Resolution No. 19-141[9]). During City Council deliberations on October 1, 2019, staff identified the Council's main points of concern were related to the wind analysis and aesthetics (i.e. building design, including articulation and public art). The Council also questioned whether the 120-foot height for Parcel B applied to the entire parcel or only to a portion of it. These issues are included in the discussion below.

DISCUSSION

1. Project Description

For reference, the Project plans approved by the Planning Commission on May 14, 2019 are included in the administrative record as AR1515-AR1564, and the Planning Commission's conditions of approval are included in the administrative record as AR2156-AR2197.

The Project is a 113-foot tall, 8 story building that includes 14,000 square feet of ground floor rentable retail space, structured parking on four levels accommodating 565 parking spaces, and office/laboratory space totaling 150,000 rentable square feet on the top three levels (See Sheets A2.00 - A2.05[10] of the Project plans approved by the Planning Commission).

Circulation, Loading and Servicing Pattern. Vehicles will enter the building from the north end only, while exiting will be accommodated at both the north and south ends (Sheet A2.11[11]). Sheet A2.11[12] shows bicycle circulation and about 1,000 square feet is designated for secured, internal employee bicycle storage. Pedestrian circulation is

[8] AR2217-AR2369
[9] AR3110-AR3112
[10] AR1522-AR1527
[11] AR1530
[12] AR1530

shown on Sheet A2.12[13]. Vertical circulation for pedestrians to and from parking levels occurs at the north and south ends and central lobby via staircases, and at the north end and central lobby via elevators.

Short term deliveries and trash areas are located along the eastern side of the building with delivery and trash vehicles entering from the north end and exiting from the south end (See Sheets A2.14, A2.20 and A2.21[14]).

The Applicant is also proposing a valet parking program that initially will involve a "valet assist" strategy where drivers drive up into the garage to the upper two levels and drop off their cars with an attendant. This is planned primarily for busy lunch hours. Sheet A2.13[15] also shows the option of on-street drop off spaces along Shellmound Street if operations warrant this service. Under this option, valeted vehicles would enter the garage from the north end and would be returned to an off-street pick-up point at the south end. The Applicant anticipates a management company to be contracted as needed to operate the valet service.

Design: This is a rectangular building with a glass curtain wall entry in the middle. A 17-foot first floor ceiling clearance is maintained to accommodate retail storefronts. The four levels of concrete parking structure will each be 12 feet in height and will be articulated by using art panels on the east and west elevations[16]. Sheet A7.00 shows work examples of seven artists that have been short-listed to do this work.

The top four levels of office/laboratory will each be 16 feet in height and are articulated using an industrial type window grid system. The overall building height will be 113 feet from grade to the roof. Roof top equipment is also proposed, with stacks visible behind a screen at the mechanical penthouse level. The screen would extend an additional 15 feet above the roof, and the stacks would extend an unspecified distance above the screen. (Sheets A3.01-A3.03[17]). East and west elevation details are provided on Sheets A3.07 and A3.08[18]. Ground level storefront details are outlined on Sheets A3.09, A3.10 and A3.11[19]. Renderings are provided on Sheets A6.01 to A6.04[20]. Sheets A3.04 to A3.06[21] provide three cross sections of the proposed building.

[13] AR1531
[14] AR1533, AR1535, and AR1536
[15] AR1532
[16] AR2174 - Planning Commission Condition of Approval VII.A.10 requires that "the open parking on the north and south elevations shall be screened with an aesthetically pleasing treatment that is compatible with that of the east and west elevations."
[17] AR1540-AR1542
[18] AR1546-AR1547
[19] AR1548-AR1550
[20] AR1551-AR1554
[21] AR1543-AR1545

Materials include three shades of stone, glass curtain wall, metal and glass window system, and structural concrete (as opposed to board formed). Sheet A8.01[22] provides materials and colors for the proposed project.

Landscaping: Sheets L1.01 and L1.02[23] illustrate the existing streetscape planting to remain along Shellmound Street and a stormwater catchment area at the north end of the site, which is consistent with the landscape plan for Shellmound Street that was approved as part of the Tentative Map. Sheet L2.01[24] provides a plant palette.

2. Standard of Review/Findings

EMC 9-7.1405(d) outlines the parameters for City Council action on appeals and calls for review.[25] This section states that, within 60 days after closing the public hearing, the City Council shall either:

"(1) Continue the hearing and request a supplemental report from the Planning Commission, in which event the Council may extend the time for rendering the decision an additional 30 days;

(2) Approve the Commission's action upon finding that all applicable findings have been correctly made and all provisions of this Title[26] have been complied with;

(3) Approve the Commission's action but impose additional conditions and/or guarantees as it deems necessary to fulfill the purposes of this Title; or

(4) Disapprove the Commission's action upon finding that all applicable findings have not been made or all provisions of this Title have not been complied with."

Under EMC § 9-7.1407, when reviewing a decision on appeal, the City Council uses the same standards of review as the Planning Commission when considering whether to approve, approve with modifications, or deny the Project. Accordingly, as required by EMC §§ 9-7.1011 and 9-7.1004(b), in order to approve or conditionally approve the Project following the new public hearing, the City Council is required make the following findings:

"(1) The final development plan substantially conforms to the preliminary development plan.

[22] AR1557
[23] AR1558-AR1559
[24] AR1560
[25] See also EMC § 9-7.1406, which stipulates that the same procedure shall be used for City Council calls for review.
[26] "This Title" means Title 9 of the Emeryville Municipal Code; i.e. the Planning Regulations.

(2) Changes and conditions of approval specified by the City Council in its approval of the preliminary development plan have been met."

These findings must be based on substantial evidence in light of the whole record.[27] Under EMC § 9-7.1405(d)(3), the City Council may impose additional conditions as it deems necessary in approving the Project. Alternatively, if the City Council were to disapprove the Project, the Council should articulate why it could not make such findings based on the record. If the Project were to be denied, then the Applicant would be entitled to construct the garage only on Parcel B as approved by Planning Commission Resolution No. FDP15-001.

a. Substantial Conformance with PDP

Based on the evidence in the record, staff believes the Project is consistent with the PDP because the Project is consistent with the major components of the PDP as set forth for in PUD Condition of Approval, I.A.3.[28] The PUD/PDP calls for a building up to 120,000 square feet for office, 29,150 square feet for commercial, 518 parking spaces, and height not to exceed 120 feet.[29] These parameters may be modified so long as the floor area ratio[30] (**"FAR"**) does not exceed 2.0 in the aggregate, and the height and general massing does not exceed that in the approved PDP.[31] The FAR, with the inclusion of the Project, is 1.84, and therefore, does not exceed 2.0, as indicated in the table below.[32] The Project's height is at 113 feet[33], and therefore, does not exceed the height in the PDP.

[27] See Civil Procedure Code § 1094.5(b), (c).
[28] AR2152-AR2153 (Resolution No. FDP18-001R) ; see also, e.g., AR 1093-AR1109 (Approved PDP Plans); AR1365 (Planning Commission Staff Report 12/13/18), AR1372-AR1373 (Planning Commission Staff Report 1/24/19), AR1383 (Final Art Plan), AR1391-AR1392 (Art of Parcel B), AR1815 (Planning Commission Staff Report 4/25/19); AR1905-AR1954 (Final Parcel B FDP Plans); AR2037 (Staff Power Point ("**PPT**") 4/25/19), AR2057 (Applicant PPT 4/25/19).
[29] AR1034-AR1035 (Ord. No. 08-04, Conditions of Approval ("**COA**", I.A.3).
[30] EMC § 9-8.206 defines "floor area ratio" as a measure of building intensity equal to the ratio of the total gross floor area of all buildings on a lot or building site to the area of the lot or building site. Building site is defined as "a parcel or group of contiguous parcels that is in a single ownership or under unified control and is occupied or is proposed to be occupied by development in accordance with the provisions of these Planning Regulations." (EMC § 9-802; 9-8.219.)
[31] AR1034-AR1035 (Ord. No. 08-04, COA, I.A.3).
[32] The FAR is based off of the total square footage of the buildings to be built as part of the PUD, divided by 15 acres.
[33] AR1372 (Planning Commission Staff Report 1/24/19); AR1931-AR1932 (Final Parcel B FDP Plans, Sheets A3.01-A3.02).

Site	Address	Assessor Parcel Number(s)	Site Area[34]	Building Area[35]	FAR
Existing Office Tower Existing Retail	6001 Shellmound Street [Varies]	049 -1556-022-00 049 -1556-023-00 049 -1556-024-00	172,443	219,000	1.27
Emme Apartments	6350 Christie Avenue	049 -1556-005-00	52,841	180,017	3.41
Parcel A	5900 Shellmound Street	049 -1556-015-00	79,426	218,091	2.75
Parcel B	6000 Shellmound Street	049 -1556-016-00	71,385	179,180	2.51
Parcel C	6201 Shellmound Street 6251 Shellmound Street	049 -1556-007-00 049 -1556-008-00 049 -1556-006-03	74,615	129,626	1.74
Parcel D	6301 Shellmound Street	049 -1556-009-00 049 -1556-006-04	78,408	274,613	3.50
Parcel E	[No address yet]	049 -1556-017-00	7,863	3,500	0.45
Christie Park Expansion	6202 Christie Avenue	049 -1556-010-00	19,210	0	0.00
63rd Street and Market Drive	[None]	049 -1556-006-05	39,447	0	0.00
Hyatt House Parking	[None]	049 -1556-019-00	16,528	0	0.00
Other Site Area (Sidewalks, Roadway, etc.)		[None]	41,234	0	0.00
		TOTAL	**653,400**	**1,204,027**	**1.84**
		Acres	15.00		

With respect to the square footage of the building, while the Project would contain 30,000 square feet more office space than the PDP calls for[36], the overall intensity of the PUD buildout would still be less than allowed by the PDP. The total amount of commercial space in the PUD, including both office and retail space, will be 209,800 square feet under the various approved and proposed FDPs (150,000 square feet of office plus 59,800 square feet of retail), while the PDP allows for up to 300,000 square feet of commercial space (120,000 square feet of office plus 180,000 square feet of retail), so in all there will be 90,200 square feet less total commercial space (office and retail) than allowed by the PDP, as indicated in the table below.

Use	PDP	FDPs	Difference
Residential	674 units	649 units	-25 units
Commercial (Total)	300,000 sq. ft.	209,800 sq. ft.	-90,200 sq. ft.
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

[34] Site area based on Alameda County Assessor data.
[35] Building area based on approved FDPs, or on PUD if no approved FDPs.
[36] The PUD allows for up to 120,000 square feet of office. The Project is proposing 150,000 square feet.

With respect to building height, the Appellant contends that the 120 feet height should not apply to the entire area of the Parcel B building because the approved PUD/PDP plans show a gray polygon with the notation "120' H", which Appellant asserts should be interpreted as the only portion of the site where the building is allowed to extend up to 120 feet.[37] However, an approved PUD/PDP sets certain parameters including the general mix of uses, height, density and floor area ratio. The purpose behind a PUD/PDP is to allow flexibility in final design in a setting where key parameters have been approved. Therefore, there are no physical designs of buildings in the approved preliminary development plans because the designs of the buildings are determined through the FDP process and not the PUD/PDP process.[38] This allows opportunities for developers and designers to develop a master plan for large parcels that would then be built over a long period of time. It is in this context that, in deciding whether to approve the Project, the City Council must consider whether the Project is consistent with the PDP based on the evidence in the record. Therefore, the finding to be made is that of "substantial conformance" to the approved PDP.

None of the approved Marketplace FDPs match exactly with the approved schematic PUD/PDP plans. For example, the PUD/PDP plans include a notation of "40' H" for the southeast portion of the site that is now referred to as "Parcel D",[39] whereas the approved FDP for Parcel D includes a height of 80 feet on the same portion of the site[40]. With respect to analyzing the massing of the Project, the approved PDP plans do not include any renderings and, instead, consist of site plans for different phases, axonometric figures showing illustrative massing of various buildings, a shadow study, a parking table and a plan for pedestrian, transit and bicycle improvements at completion.[41] Instead, the PUD Conditions of Approval provide for any fixed parameters, as discussed above. Staff therefore believes there is substantial evidence in the record to support a finding by the City Council that the Project substantially conforms to the PDP.

Staff also notes that Appellant's design alternatives[42] propose extending the 120-foot height of the building well beyond the gray polygon noted as "120' H" in the PUD/PDP plans. If it were the case that the 120 foot height cannot extend beyond this polygon, then the design alternatives that the Appellant offered would not be viable.

b. Satisfaction of Conditions of Approval

The Conditions of Approval adopted by the City Council for the Marketplace Redevelopment Planned Unit Development/Preliminary Development Plan (PUD/PDP) are included in the administrative record as AR1033-AR1092. These conditions include

[37] AR2886-2887
[38] AR1093-AR1109 (Approved PDP Plans).
[39] AR1098, site plan for Marketplace Redevelopment – Phase III on page 5 of approved PDP plans.
[40] http://www.ci.emeryville.ca.us/DocumentCenter/View/10201/10---Marketplace-Parcel-D-FDP-approved-plans-06-15-15 (Accessed on October 18, 2019.)
[41] AR1093-AR1109 (Approved PDP Plans).
[42] AR2360-AR2369 (Appellant's "Building Planning Options")

standard City conditions such as indemnification and application to successors in interest, EIR mitigation measures, and conditions applying to each phase of development of the PUD/PDP.

As discussed in more detail below, the City Council may find the Project is consistent with the conditions of approval of the Marketplace Redevelopment Project Preliminary Development Plan (PUD04-02). Specifically, the City Council may find the Project complies with PUD Conditions of Approval II.E and III.A.3.d (regarding Design), and II.K.1 (regarding Traffic), as follows:

i. Design

Condition of Approval II.E includes "Design Related" conditions, which incorporates EIR mitigation measure AES 1. The Project complies with these conditions as follows. (Articulation and public art are addressed separately following this "Design" section).

> *PUD Condition of Approval, II.E.1: "Proposed structures shall adequately reference and be visually compatible with and not detract from the surrounding industrial buildings[43]"*

The buildings on Parcels A, C and D are not industrial buildings, and therefore, are not relevant to this condition. The only existing surrounding industrial building is the Public Market building, Parcel G.[44] The Public Market building is a 1-2 story masonry industrial adaptive re-use project that sets a precedent for the type of reference that is appropriate for the area.[45] The Project's "smoke stack" features and divided glass and metal window system are signature industrial type design that reference the surrounding industrial buildings.[46]

> *PUD Condition of Approval II.E.1, "Create streetscape vitality and enhance the 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 the use of carefully chosen building material, texture and color[47]"*

This condition of approval requires that streetscape vitality and enhanced pedestrian experience be created; it does not require stepped-back upper floors. As shown in the

[43] AR1041
[44] AR1910 (Final Parcel B FDP Plans, Sheet A1.01); AR1263-AR1267 (Staff PowerPoint presentation 12/13/18), AR1643, AR1671-AR1673 (Staff PowerPoint presentation 1/24/19), AR2054 (Applicant PowerPoint presentation 4/25/19).
[45] AR1910 (Final Parcel B FDP Plans, Sheet A1.01).
[46] AR1931-AR1922, AR1943, AR1945 (Final Parcel B FDP Plans, A3.01-A3.03, A6.02, A6.04).
[47] AR1041

Final Parcel B FDP Plans, there is substantial evidence in the record to support a finding that this condition requiring streetscape vitality and an enhanced pedestrian experience has been satisfied.[48] For example, see the Car and Bike Circulation plan on Sheet A2.11[49], the Pedestrian Circulation plan on Sheet A2.12[50], the Storefront Details on Sheets A3.09-A3.11[51], and Perspective Views 1 and 2 on Sheets A6.02-A6.03[52]. In addition, "tower elements" referenced in the condition are not applicable as the "tower" refers to a 175-feet tall residential building allowed by the PDP on Parcel A (see PDP plans, which identify a "14-Level Tower" on the northern portion of what is now referred to as Parcel A[53]. The FDP-approved height of the entitled (but not built) Parcel A building is 86 feet and 50 feet.[54] However, when Parcel B and Parcel A heights are viewed together from the street, there is a height transition from the proposed height of 113 feet for Parcel B, transitioning to the approved 85 feet for the north end of Parcel A and 50 feet of the south end of Parcel A.[55] In addition, proposed materials of stone and metal for the Project provide appropriate transition from the brick base for retail uses on the ground level of Parcel A and fiber cement panels for upper residential units.[56] The Project is a rectangular building, utilizing both material and texture with a glass curtain wall entry in the middle of the west elevation to break up the frontage.[57] In addition, a 17-foot first floor ceiling clearance is maintained to accommodate retail storefronts.[58] The building base and storefront design provides a coherent, consistent framework with a reasonable and refined front wall onto the street. It is anticipated that a variety of tenants will occupy the storefront spaces, thereby providing additional unique signage and potentially revised storefront wall designs.[59] All these features create a vital streetscape that enhances the pedestrian experience.[60]

[48] See, e.g., AR1939-AR1941, AR1943-AR1945 (Final Parcel B FDP Plans, Sheets A3.09-A3.11, A6.02-A6.03).
[49] AR1921
[50] AR1922
[51] AR1939-AR1941
[52] AR1943-AR1944
[53] AR1094-AR1098
[54] AR1098-AR1099 (PDP Plans, pp. 5-6).
[55] AR1942 (Final Parcel B FDP Plans, Sheet A6.01).
[56] AR2846
[57] AR1372 (Planning Commission Staff Report 1/24/19), AR1948 (Final Parcel B FDP Plans, Sheet A8.01).
[58] AR1372 (Planning Commission Staff Report 1/24/19).
[59] AR1944 (Final Parcel B FDP Plans, Sheet A6.03).
[60] AR1939-AR1941, AR1943-AR1945 (Final Parcel B FDP Plans, Sheets A3.09-A3.11, A6.02-A6.04).

> *PUD Condition of Approval, II.E.1, "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 the design motif of surrounding buildings.[61]"*

The building's dark gray color is consistent with the dark brick base of the adjacent Parcel A building that has been entitled but not yet constructed.[62] In addition, the dark gray of the Project provides an appropriate contrast to the red brick of the original Marketplace buildings across Shellmound Street.[63] With respect to the durability of painted materials, staff's research indicates that painted metal (aluminum) panels are naturally resistant to rusting or blistering, making it one of the most commonly used contemporary materials. These panels are often backed with a 30-year warranty by manufacturers.[64]

> *PUD Condition of Approval, II.E. 2, "All proposed new buildings shall be shown in detail including building materials, colors, skin, and fenestration. Towers and buildings along the railroad tracks shall be articulated with treatment such as variations in building planes, colors and materials, balconies and trellises to ensure that no visual wall is created along the railroad right of way. Visible exteriors of the structures shall be designed to blend in with the urban fabric of the neighborhood.[65]"*

The Project's plans include specific sheets showing architectural details for each elevation as well details for ground floor retail.[66] Sheet A8.01 provides for building materials and colors. In addition, Sheet A.7.0 provides articulation in the form of art panels that will be installed along the railroad right of way.[67] (See further discussion below.) Balconies and trellises are typically used for residential type buildings and therefore are not applicable here. Sheets A6.01 and A6.02 provide good illustrations of how the building fits and blends with the surrounding urban fabric.[68]

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[61] AR1042
[62] AR2831, AR2846
[63] AR1943 (Final Parcel B FDP Plans, Sheet A6.02).
[64] https://wadearch.com/blog/architectural-metal-panels-balance/ (last visited on September 6, 2019); https://architizer.com/blog/practice/details/behind-the-design-metal-cladding/ (last visited on September 6, 2019).
[65] AR1042
[66] AR1931-AR1933, AR1939-AR1941, AR1943, AR1945 (Final Parcel B FDP Plans, Sheets A3.01-A3.03, A3.09-A3.11, A6.02, A6.04).
[67] AR1947
[68] AR1943-AR1944

PUD Condition of Approval, II.E. 5 "Building heights shall not exceed the heights shown in the Preliminary Development Plan.[69]"

The Project is within the height limits approved by the PUD/PDP.[70] The PUD/PDP calls for a height of 120 feet for this building. The overall building height is 113 feet from grade to the roof.[71] The PDP does not prescribe what proportion of the building may extend to a height of 120 feet, and therefore the proposed building height (113 feet) conforms to the height shown in PDP (120 feet). (See further discussion above under "Building Height".)

1. Articulation and Public Art

PUD Condition of Approval, II.E.1 "Design of building facades shall include sufficient articulation and detail to avoid appearance of blank walls and box-like forms.[72]"

Articulation. The term "articulation" is not defined in the Planning Regulations. However, the term does appear in several places in the Planning Regulations, from which its meaning can generally be inferred as a variation in wall plane that creates visual interest. Features that create shadow lines and reduce the appearance of an unbroken flat wall may be considered articulation. For example, in the Section of the Planning Regulations that designates Significant Structures (Section 9-5.1210), the term "articulated" is used to describe the significant features of five of the 85 buildings on the list. These include Jellybean Square at 6450 Hollis Street, Public Market West at 6005 Shellmound Street, Artist Coop North at 1420 45th Street, Peet's Coffee and Tea at 1400 Park Avenue, and Icon at 1401 Park Avenue. The pictures that illustrate these buildings in the Planning Regulations, and the descriptions of their significant features, were included in an email sent by the Community Development Director to the City Council on September 27, 2019[73].

As discussed above, the Project's building base and storefront design provides articulation with the use of stone, metal, and glass at the ground level. The Project's approved plans demonstrate the architectural details of the building façade, which include accent stone, metal trims, metal faced beam, stone column and tile surfaces, glass window and doors, blade signs and mounted lighting at the first level.[74] The rendering on Sheet A6.03 illustrates the additional articulation that is created with storefronts.[75]

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[69] AR1053
[70] AR2224 (Appeal II, ("*While the highest level of the proposed FDP structure does not exceed the approved height for the building….*") (emphasis in original)).
[71] AR1372 (Planning Commission Staff Report 1/24/19, AR1931-AR1932 (Final Parcel B FDP Plans, Sheets A3.01-A3.02).
[72] AR1042
[73] AR3062-AR3065
[74] AR1939-AR1941 (Final Parcel B FDP Plans, Sheet A3.09-A3.11).
[75] AR1944

The top four levels of office/laboratory will each be 16 feet in height, and are articulated using an industrial type window grid system.[76] Design details of elevations are shown on Sheets A3.07 and A3.08 that illustrate the glass curtain wall entryway that extends from the ground to the top floor and divided glass industrial type window system for the top levels of office.[77]

Public Art. The Project's four levels of concrete parking structure will each be 12 feet in height and are articulated by art panels on the east and west elevations.[78] Sheet A7.00 shows work examples of seven artists that have been short listed to do this work.[79] In addition, the Planning Commission conditions of approval require that "the open parking on the north and south elevations shall be screened with an aesthetically pleasing treatment that is compatible with that of the east and west elevations."[80]

Article 4 of Chapter 2 of Title 3 of the Emeryville Municipal Code sets out the requirements of the "Contribution for Art in Public Places Program"[81]. This program requires developers of certain private nonresidential buildings to devote an amount not less than one percent of development costs for acquisition and installation of publicly accessible art on the development site. Resolution No. 90-115[82], adopted by the City Council on December 18, 1990, establishes guidelines for the implementation of the program, including that selection of the artist/artwork will be the responsibility of the private developer. The Development Agreement[83] (**"DA"**) for the Marketplace Redevelopment Project, approved by the City Council by Ordinance No. 15-010 on December 1, 2015, provides for modifications to this program for the Marketplace Project. Rather than requiring public art to be provided on each individual FDP site, the DA calls for the creation of an Art Escrow Account into which the art funds for each FDP shall be deposited, to be used throughout the Marketplace Project site pursuant to a Public Market Project Art Master Plan (**"Art Master Plan"**). The DA requires the Art Master Plan to be reviewed by the Public Art Committee (**"PAC"**) on no less than three occasions, and to be approved by the Community Development Director. The PAC recommended approved of the Art Master Plan[84] on January 10, 2019; its approval by the Community Development Director is pending the outcome of the Parcel B project appeal.

The DA specifies that "the treatment of the east wall of the Parcel B structure may satisfy the public art obligation applicable to Parcel B pursuant to Article 4 of Chapter 2 of Title

[76] AR1372 (Planning Commission Staff Report 1/24/19).
[77] AR1937-AR1938
[78] AR1372 (Planning Commission Staff Report 1/24/19).
[79] AR1947
[80] AR2156-AR2197, Condition of Approval VII.A.10
[81] http://www.ci.emeryville.ca.us/DocumentCenter/View/149/Public-Art-Muni-Code?bidId= (Accessed October 18, 2019.)
[82] http://www.ci.emeryville.ca.us/DocumentCenter/View/154/Resolution-90-115?bidId= (Accessed October 18, 2019.)
[83] AR2580-AR2756
[84] AR1380-AR1396

3 of the EMC," and the Art Master Plan recommended for approval by the PAC identifies $750,000 to be spent towards public art on the west elevation of Parcel B building and $250,000 towards the eastern elevation. The Art Master Plan also identifies the artists that will be selected to do the work.

To the extent that the treatment of the east and west elevations are intended to satisfy the public art requirement, they are not subject to City approval because, as noted above, the guidelines for the Contribution for Art in Public Places Program stipulate that selection of the artist/artwork is the responsibility of the private developer[85]; any other façade treatment that is not intended to satisfy the requirements of the Contribution for Art in Public Places Program is subject to City review and approval. Since the Applicant is proposing to use public art to satisfy a planning condition of approval, the City Council could add a condition of approval to the FDP requiring that the public art to be applied to the building be approved by the City Council prior to issuance of a building permit, to confirm that the public art adds sufficient articulation to satisfy the requirements of PUD Condition of Approval II.E.1.

ii. Wind Analysis

> *PUD Condition of Approval III.A.3.d: "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 (vegetation, hedges, screens, latticework, perforated or expanded metal) offer superior wind shelter compared to a solid surface[86]."*

It should be noted that the "Shellmound building" cited in the EIR and the above condition of approval referred to what is now known as Parcel A; it did not include Parcel B[87]. At Appellant's request and at Council's direction, the Applicant nonetheless conducted a wind study to determine whether the current project presented any wind impacts. This study, conducted by Certified Consulting Meteorologist Donald Ballanti and dated March 22, 2019[88], concludes 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 the 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

[85] http://www.ci.emeryville.ca.us/DocumentCenter/View/154/Resolution-90-115?bidId= (Accessed October 18, 2019.)
[86] AR1062
[87] See, for example, "Shellmound Building: Illustrative Site Plan Detail" in Figure III-6 of the EIR (AR0058)
[88] AR1826-AR1830

far side of the UPRR train tracks." The preparation and submission of the wind study satisfies this PUD condition of approval.

iii. Traffic

PUD Condition of Approval, II.K.1: Transportation Management Plan (TDM). Prior to the issuance of each FDP, the applicant shall submit a TDM Plan.[89]

A TDM Plan identifies ways to reduce trip generation by promoting alternative means of transportation and other measures. The conditions of approval for the PDP stipulate that the applicant shall submit a TDM plan for each FDP prior to approval of the FDP. The Applicant has submitted a TDM plan which has been updated regularly. The last update occurred on March 5, 2019[90] and was attached to Applicant's response letter of March 25, 2019[91]. Accordingly, this condition has been satisfied.

3. Conformity with Shellmound Streetscape Design Guidelines

The Shellmound Streetscape Design Guidelines[92], approved by the City Council by Resolution No. 12-145 on August 7, 2012, outline sidewalk widths, paving materials, pedestrian amenities, streetscape furniture, landscaping, and design of multi-modal facilities such as bus stops within a "project area" that extends along the Shellmound Street corridor between Christie Avenue at Bay Street, and 64th Street to the north. Parcel B is within this project area. The Guidelines stipulate, on page 5 under "Implementation and Development Context", that "the City will review each proposed plan within the project area for conformance to these guidelines to the extent feasible." The Guidelines call for a minimum sidewalk width of 12 feet with a typical width of 16 feet. In cases where a parking lane is proposed, a clear width of 8 feet is required. The Project plans are consistent with the Tentative Map[93] approval that was previously determined to be consistent with the Shellmound Streetscape Design Guidelines. (The Planning Commission approved the Tentative Map on October 22, 2015. The Phase I Final Map (Tract 8327) was recorded on August 23, 2016, and the Phase 2 Final Map (Tract 8334) was recorded February 9, 2017.)

4. Conformity with General Plan

All development project approvals by the Planning Commission and City Council must be consistent with the General Plan. In the case of an FDP, this refers to the General Plan

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[89] AR1057
[90] AR1785
[91] AR1768-AR1774
[92] http://www.ci.emeryville.ca.us/DocumentCenter/View/1893/Emeryville-Powell-Shellmound-Report_Final?bidId= (Accessed on October 18, 2019.)
[93] AR2526-AR2579

that was in effect when the PUP/PDP was approved. Planning Regulations Section 9-3.310(a) stipulates that "PUDs established prior to the adoption of these Regulations are not subject to these Regulations, but are subject to the regulations that were in effect at the time of their establishment, except that minor exterior changes and signs may be approved pursuant to the procedures for Minor Design Review in Article 4 of Chapter 7, and final development plans shall be processed in accordance with the PUD procedures in Article 10 of Chapter 7[94]." Section 9-3.310(a)(6) lists "Marketplace Redevelopment Project, created by Ordinance No. 08-004 passed on August 5, 2008" as one such PUD that was established prior to the adoption of the current Planning Regulations. Thus, the Project is subject to the regulations and General Plan that were in effect in August 2008. Because the current Planning Regulations were adopted in February 2013, and the current General Plan was adopted in October 2009, both following approval of the Marketplace Redevelopment Project PUD, the Project is subject to the prior Zoning Ordinance and General Plan and not the current Planning Regulations and General Plan.

Ordinance No. 08-004[95] approving the Marketplace Redevelopment Project PUD on August 5, 2008 includes the following:

> "The City Council of the City of Emeryville makes the following findings pursuant to Emeryville Municipal Code Section 9-4.85.5[96]:
>
> 1. The Marketplace Redevelopment project is consistent with and conforms to the goals, objectives and policies of the City of Emeryville General Plan, and helps to implement several of the general goals of the General Plan relating to the development of a variety of uses in a compatible way, redevelopment of an underutilized and underdeveloped area with an aesthetically pleasing "downtown" grid pattern development, complementing and enhancing the surrounding neighborhood. The proposed development will strengthen the City's tax base while respecting the natural, scenic and historic resources of the City and it will provide increased opportunities for cultural entertainment, services and facilities to the citizens of the City. The project also fulfills the General Plan objectives to promote development of new housing and to create mixed use opportunities in area currently underutilized as surface parking lots and warehouse buildings."

Notably, the required findings for approving an FDP contained in Planning Regulations Section 9-7.1004(b) do not include a finding that the FDP is consistent with the General Plan. This is because the key finding for approving an FDP is that it "substantially conforms to the preliminary development plan", and a PDP is required to conform to the General Plan in effect when it was approved. Therefore, by logical extension, an FDP is required to conform to the General Plan in effect when the PDP was approved, which is

[94] i.e., Final Development Plans now require Planning Commission rather than City Council approval.
[95] AR1026-AR1032
[96] This refers to the Section of the previous Zoning Ordinance containing the required findings for PUDs.

not necessarily the current General Plan. This means that polices and goals that are included in the current General Plan, but that were not in the General Plan when the PDP was approved, do not apply to the proposed FDP. Consequently, the Appellant's contention that the Project is inconsistent with General Plan Urban Design Element goals and policies, including goal UD-G-11 and policies UD-P-33, UD-P-36, and UD-P-38, is moot because these goals and policies were not part of the General Plan that was in effect when the PDP was approved, and therefore do not apply to the Project.

5. Environmental Status

On July 15, 2008, the City Council certified the Environmental Impact Report for the Marketplace Redevelopment project as adequate under the California Environmental Quality Act ("**CEQA**"), following the Planning Commission's recommendation on May 22, 2008 (Resolution Number 08-126[97]). The EIR was applied to the Project as part of the City's actions and in doing so, the City adopted Findings of Fact Regarding Impacts and Mitigation Measures[98], a Mitigation Monitoring and Reporting Program[99] for the project, Findings of Fact Concerning Alternatives[100], and a Statement of Overriding Considerations[101]. The impacts that could not be mitigated to a less than significant level related to traffic and air quality were deem ed acceptable because the project would advance local plans for the City, create jobs, and generate revenue.

Public Resources Code Section 21166 and its corresponding CEQA Guidelines Section 15162 provide that once an EIR has been prepared, no subsequent or supplemental EIR shall be required by the lead agency unless:

(1) substantial changes are proposed in the project which will require major revisions to the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, shows any of the following:

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[97] AR0952-AR0953
[98] AR0954-AR0987
[99] AR0988-AR1009
[100] AR1010-AR1015
[101] AR1016-AR1021

(A) The project will have one or more significant effects not discussed in the previous EIR or Negative Declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

CEQA Guidelines Section 15164(e) provides that a brief explanation of the decision not to prepare a subsequent EIR pursuant to CEQA Guidelines Section 15162 should be included in an addendum to an EIR, the lead agency's findings on the project, or elsewhere in the record.

The Marketplace EIR applies to the Project. An Environmental Checklist for the Public Market Parcel B Final Development Plan ("**Marketplace Checklist**") was prepared[102] which more particularly discusses whether there have been substantial changes in the proposed Project, or to the circumstances under which the Project will be undertaken, or whether new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the EIR was certified as complete, exists and thus preparation of a subsequent EIR is required pursuant to CEQA Guidelines Section 15162. As detailed in the Marketplace Checklist, 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.

In addition, a detailed traffic analysis was included in the EIR[103] for the Project, and a building-specific traffic analysis has been done for each subsequent FDP. In particular, as required by TRAF-1b, the Applicant has submitted a traffic study prepared by Kimley Horn[104] that concludes that the proposed Project will not result in trip generation and traffic impacts that were not analyzed in the EIR. Concerning traffic analysis for Parcel B, Kimley Horn prepared a Trip Generation Evaluation dated December 12, 2018[105] prior to the approval of the FDP that concluded that the proposed office, retail and parking uses

[102] AR1403-AR1468
[103] AR0004-AR0951
[104] AR1396-AR1402
[105] AR1397-AR1402

would result in fewer AM and PM peak hour trips when compared to the approved 2008 PDP.

The Applicant response letter also includes an update by Kimley Horn entitled "Traffic Response to Appeal Letter"[106] that concludes 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 accounts for these differences. While only focusing on the peak hour of traffic in the AM and PM periods, the previous 2008 EIR and the proposed Parcel B 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 Project would generate fewer AM and PM peak hour trips."

With respect to wind, the analysis by both Applicant and Appellant show that the Project would not yield any wind impacts. The EIR points out that the CEQA Guidelines do not include any specific criterion for the evaluation of a project's wind effects, and neither the State of California nor the City of Emeryville have established criteria or standards for judging the effects of development projects on wind. For the purposes of evaluating the Marketplace Project, the EIR considered wind to have a potentially significant impact if:

> The *exposure, orientation* and *massing* of a proposed structure can be expected to substantially increase ground-level winds in pedestrian corridors or public spaces near the project site. Since the ambient wind (undistributed by buildings) in Emeryville seldom exceeds 36 mph, a project must substantially increase winds for this threshold to be exceeded.[107]

In other words, if the Project creates ground-level winds that exceed 36 mph, then the Project has a significant impact.

The EIR concludes that implementation of two mitigation measures, WIND-1a and WIND-1b, would reduce any potential impact to a less-than-significant level. Generally, these mitigation measures required certain types of landscaping and building structures to be incorporated into the building designs of Parcel A. WIND-1b required an examination of the fourth floor breezeway between the Amtrak pedestrian bridge and the proposed Parcel A building to ensure that winds did not exceed 36 mph. Specifically, these mitigation measures state as follows:

[106] AR1786-AR1791
[107] AR0345 (EIR (emphasis in original)).

> *WIND-1a: Final design of the roof deck open space terraces on the Shellmound building shall be heavily landscaped to reduce wind and improve usability and shall incorporate porous materials or structures (e.g., vegetation, hedges, screens, latticework, perforated or expanded metal) which offer superior wind shelter compared to solid surfaces. Outdoor furnishings, such as tables, shall either be weighted or attached to the deck.*[108]
>
> *WIND-1b: Scale model wind tunnel or computerized computational fluid dynamics testing shall be conducted to determine how strong winds will be through the fourth floor breezeway between the Amtrak pedestrian bridge to the west side of the building. If winds through the breezeway exceed 36 mph, the breezeways design shall be altered to reduce wind speeds below this threshold. Alternatively, to avoid testing, the design of the breezeway could be altered with the addition of glazing at the west side opening. Testing or design modifications would reduce this impact to a less-than-significant-level.*[109]

Neither of these mitigation measures are worded broadly to apply to the entire PDP; rather, they specifically apply to the Parcel A breezeway area as described in the EIR, not to development on Parcel B. Therefore, the wind mitigation measures do not specifically apply to the Project on Parcel B. (The 167-unit residential project proposed for Parcel A has previously been approved by the Planning Commission and was not appealed, so its approval is final and the EIR mitigation measures for it are not at issue.)

The Applicant nonetheless conducted a wind study to determine whether the current Project presented any wind impacts. This study, conducted by Certified Consulting Meteorologist Donald Ballanti and dated March 22, 2019[110], concludes 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 the 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."

Applicant then prepared and submitted a Pedestrian Wind Study conducted by RWDI, dated May 13, 2019[111]. The Pedestrian Wind Study was based on the construction of a scale replica of the Parcel B site and surroundings which were tested in a wind tunnel to simulate the winds approaching and interacting with the Project site. The study concluded that, of the 45 locations analyzed, in the Existing Configuration[112], 24 locations currently have wind levels exceeding 11 miles per hour ten percent of the time, which is identified

[108] AR0046, AR0347
[109] AR0046, AR0347
[110] AR1826-AR1830
[111] AR2074-AR2096
[112] "Existing Configuration" includes the existing Marketplace retail and office buildings and the Marketplace Parcels A, C, and D buildings (AR2077)

in the study as the comfort criterion. With the Existing plus Project Configuration[113], the number of locations will be reduced to 15; and with the Project plus Cumulative Configuration[114], the number of locations will be 18. Concerning the significance threshold identified in the EIR of winds exceeding 36 miles per hour, under the Existing Configuration there is one location that meets this condition: location number 44 on the east side of the railroad near the pedestrian bridge tower adjacent to the EmeryStation West building, which has a wind speed of 40 miles per hour. In both the Existing plus Project and the Project plus Cumulative Configurations, no locations exceed 36 miles per hour, and location number 44 is reduced from 40 miles per hour without the Project to 28 miles per hour in both the Existing plus Project and the Project plus Cumulative Configurations. Thus, the wind tunnel analysis concludes that, overall, the Project will improve pedestrian wind comfort conditions, and will not exceed the thresholds of significance identified in the EIR.

The Appellant then submitted a competing wind study conducted by CPP Wind Engineering and Air Quality Consultants (CPP), dated May 29, 2019[115], addressing the findings of the RWDI wind tunnel assessment. The CPP study 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. (This is no "corridor" between Parcel A and B in the PDP because the buildings are shown as being connected.[116]) However, at no time does the CPP Wind Study conclude that the Project will cause wind levels to exceed 36 mph. The Applicant has submitted a response letter that includes a review of CPP's study by RWDI[117]. The RWDI review of the CPP study notes that CPP considers only the wind results at a few locations between Parcels A and B and does not compare to baseline conditions.

Regarding traffic and wind impacts, 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 or supplemental EIR. Both the Applicant's and the Appellant's wind studies conclude that the Project will not meet the significance threshold of winds exceeding 36 miles per hour. The Applicant has complied with the condition of approval and the Council's request for a wind study demonstrating that this Project does not have wind impacts. Applicant has also prepared a traffic analysis showing the Project will generate fewer traffic impacts when compared to the PDP.

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[113] "Existing plus Project Configuration" includes the Existing Configuration plus the Marketplace Parcel B building (AR2078)
[114] "Project plus Cumulative Configuration" includes the Existing + Project Configuration plus the proposed buildings at Marketplace Parcel F and 5850 Shellmound Way (AR2079)
[115] AR2336-AR2350
[116] See approved PDP plans, including site plan on page 5 (AR1098) and Illustrative Bird's Eye View of Site on page 7 (AR1100).
[117] AR2445-AR2450

All other impact areas are evaluated in the Environmental Checklist and, as noted, 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. Compliance with relevant EIR mitigation measures AES 1 is discussed above under "Compliance with Conditions of Approval".

FISCAL IMPACT

As the Project is funded by a private developer, it will have no fiscal impact on the City budget.

STAFF COMMUNICATION WITH PUBLIC

Written notifications of each Planning Commission study session and public hearing for the Marketplace Parcel B FDP project, as well as the October 1, 2019 City Council meeting and the November 5, 2019 City Council public hearing, were sent to both owners and tenants of buildings within 300 feet of the project site, and notices were also published in the Oakland Tribune. In addition, staff has communicated with both the Applicant and the Appellant on this appeal.

CONCLUSION

Staff recommends that, after holding a public hearing, the City Council provide direction to staff to prepare a resolution to either:

(1) approve the Planning Commission's action upon finding that all applicable findings have been correctly made and all provisions of the Planning Regulations have been complied with;

(2) approve the Planning Commission's action but impose additional conditions and/or guarantees as it deems necessary to fulfill the purposes of the Planning Regulations; or

(3) disapprove the Planning Commission's action upon finding that all applicable findings have not been made or all provisions of the Planning Regulations have not been complied with.

This resolution will be brought back to the Council for action at a future meeting. Pursuant to Planning Regulations Section 9-7.1405(d), the Council may also continue the hearing and request a supplemental report from the Planning Commission.

PREPARED BY: Miroo Desai, Senior Planner

APPROVED AND FORWARDED TO THE CITY COUNCIL OF THE CITY OF EMERYVILLE:

Christine Daniel, City Manager