

RESOLUTION NO. FDP18-001A

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF EMERYVILLE PROVIDING A SUPPLEMENTAL REPORT IN THE APPEAL BY WAREHAM DEVELOPMENT OF RESOLUTION NO. FDP18-001R AS REQUESTED BY CITY COUNCIL ACTION ON NOVEMBER 5, 2019, PURSUANT TO EMERYVILLE MUNICIPAL CODE SECTION 9-7.1405(d)

WHEREAS, on January 15, 2008, via Resolution No. 08-09, the City Council certified the Marketplace Redevelopment Project Environmental Impact Report (EIR) for the Marketplace Redevelopment Project Planned Unit Development ("Marketplace Project"); and

WHEREAS, on July 15, 2008, the Council adopted Resolution No. 08-126 which applied the EIR to the Planned Unit Development ("PUD"), adopted mitigation measures, and adopted a Statement of Overriding Considerations for the Marketplace Project; and

WHEREAS, on August 5, 2008, the City Council adopted Ordinance No. 08-004, approving the Marketplace Redevelopment Project Planned Unit Development/Preliminary Development Plan ("PUD/PDP"), which included conditions of approval and a Preliminary Development Plan dated April 16, 2008; and

WHEREAS, 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 and contemplated that the 15-acre Marketplace site would be substantially redeveloped by replacement of surface level parking, realignment of Shellmound Street directly in front of the Marketplace Tower and Public Market buildings, the addition of three new street segments with on-street parking (62nd and 63rd Streets and Market Drive), and the addition of seven new buildings within the site and an enlarged City park; and

WHEREAS, on September 25, 2013, AG- CCRP Public Market LP ("Applicant") filed a Final Development Plan application for construction of a parking garage with ground floor retail on Parcel B, and filed an updated application on November 17, 2015; and

WHEREAS, on December 1, 2015, the City Council adopted Ordinance No. 15-010, approving a Development Agreement among the City of Emeryville, Applicant, and AvalonBay Communities, Inc ("Development Agreement"), with the ordinance effective on January 1, 2016, and the Development Agreement effective on January 13, 2016; and

WHEREAS, on June 23, 2016, at a duly held and properly noticed public hearing, the Planning Commission adopted Resolution No. FDP15-001, approving Final Development Plan 15-001 for Parcel B that included a four-story building with approximately 20,000 square feet of ground floor retail space and 300 parking spaces, and a stand-alone single story, 2,280 square foot commercial pavilion with a plaza between the garage building and the pavilion ("FDP15-001"); and

WHEREAS, building permits B2017-0029 and B2017-0030 for the FDP15-001 Project ("Building Permits") were issued on January 12, 2018; however, no work was done under these

permits, and Applicant submitted a letter withdrawing the building permits on October 10, 2018, and voluntarily relinquished their rights under the Building Permits and Resolution No. FDP15-001; and

WHEREAS, on November 28, 2018, Applicant filed a new Final Development Plan application for construction of a 113-foot tall, 8-story building with 14,000 square feet of rentable retail space, 150,000 square feet of rentable office/laboratory space, and a parking garage with 565 spaces ("Original Project"); and

WHEREAS, the Planning Commission reviewed the Original Project at study session on December 13, 2018; and

WHEREAS, the Planning Commission held a duly and properly noticed public hearing on January 24, 2019, and adopted CPC Resolution No. FDP18-001, approving the Original Project; and

WHEREAS, in a letter dated February 8, 2019, Wareham Development appealed CPC Resolution No. FDP18-001 to the City Council ("February Appeal"); and

WHEREAS, on March 19, 2019, pursuant to Emeryville Municipal Code section 9-7.1405(b)(3), the City Council reviewed the February Appeal, and staff report with attachments, and remanded the appeal to the Planning Commission with instructions to consider the issues raised in the February Appeal and to hold a new public hearing on the Original Project (Resolution No. 19-29); and

WHEREAS, on April 25, 2019, at approximately 4:30 p.m., Wareham Development submitted a letter dated April 24, 2019, with several attachments, which included drawings and suggestions of how the Original Project should be redesigned; and

WHEREAS, the Planning Commission held a duly and properly noticed public hearing on April 25, 2019 to solicit public comments to reconsider the Original Project pursuant to the City Council's direction, and heard testimony from both Applicant and Wareham Development; and

WHEREAS, the Planning Commission closed the public hearing held on April 25, 2019 and continued deliberation to May 14, 2019 to allow the Planning Commission time to fully consider all evidence received on the Original Project, including evidence contained in the February Appeal and the letter dated April 24, 2019 from Wareham Development; and

WHEREAS, the Planning Commission held a duly and properly noticed public hearing on May 14, 2019 to solicit public comments to reconsider the Original Project pursuant to the City Council's direction, heard testimony from both Applicant and Wareham Development, and unanimously approved the Original Project again ("Appealed Project"); and

WHEREAS, the Planning Commission's May 14, 2019 decision was called for review by the City Council on May 21, 2019 and also appealed by Wareham Development on May 29, 2019 (collectively, the "May Appeal"); and

WHEREAS, on October 1, 2019, the City Council considered the May Appeal and then voted 4-1 (Council Member Donahue voted no) to set November 5, 2019 as the date for public hearing on the May Appeal (Resolution No. 19-141); and

WHEREAS, at the November 5, 2019 City Council meeting, the Applicant submitted an alternative design to the Appealed Project (referred to herein as the "Project"), which consists of a nine-story building with approximately 15,800 square feet of rentable retail space, 150,000 square feet of office/laboratory space, and 500 parking spaces; and

WHEREAS, after the public hearing at the November 5, 2019 City Council meeting, pursuant to Emeryville Municipal Code Section 9-7.1405(d), the City Council directed the Planning Commission to render a supplemental report to the City Council regarding the Project; and

WHEREAS, the Planning Commission held a duly and properly noticed public hearing on December 12, 2019 to solicit public comments to consider the Project; and

WHEREAS, the Planning Commission has reviewed and considered the staff report, and attachments thereto, all public testimony both written and oral, relevant portions of the administrative record submitted to the City Council pursuant to Emeryville Municipal Code Section 9-7-1405(a) and the applicable provisions of the Emeryville Planning Regulations ("the Administrative Record"); now, therefore, be it

RESOLVED, that the Planning Commission hereby finds that the Marketplace Redevelopment Project Environmental Impact Report (EIR) certified by the City Council on January 15, 2008 (Resolution No. 08-09) applies to this Project, and the proposed Conditions of Approval, attached hereto as Exhibit A, and incorporated by reference, include applicable mitigation measures; and be it further

RESOLVED, that the Environmental Checklist prepared for the Appealed Project and updated for the Project, which evaluates all impact areas under the California Environmental Quality Act (CEQA), confirms that there have been no substantial changes to the project identified in the EIR, no substantial changes to the circumstances under which the project will be undertaken, and no new information of substantial importance, which would require further preparation of a subsequent EIR under CEQA section 21166 and corresponding CEQA Guidelines section 15162; and be it further

RESOLVED, that a traffic memo prepared by Kimley Horn concludes that the Project will not result in trip generation and traffic impacts that were not analyzed in the EIR and that, based on the review of actual and projected traffic volumes, the baseline conditions presented in the EIR have not significantly changed; and be it further

RESOLVED, that the Planning Commission finds there is substantial evidence in the Administrative Record to support the following findings required by Emeryville Municipal Code Section 9-7.1004(b):

1. The final development plan substantially conforms to the preliminary development plan.

The approved PUD/PDP calls for a building up to 120 feet tall on Parcel B, containing 120,000 square feet of office space, 29,150 square feet of commercial (retail) space, and 518 parking spaces. Compared to the approved PUD/PDP, the proposed building will have approximately 13,350 square feet less commercial space (15,800 square feet versus 29,150 square feet), 30,000 square feet more office space (150,000 versus 120,000 square feet), and 18 less parking spaces (500 spaces versus 518 spaces). The building height of 120 feet is consistent with the approved PUD/PDP height of 120 feet.

While the Project would contain 30,000 square feet more office space than proposed by the PDP, the overall intensity of the PUD buildout would be consistent with the intensity proposed 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 total there will be 90,200 square feet less commercial space (office and retail) than proposed by the PDP. Further, the Project results in buildout that is smaller in terms of Floor Area Ratio than that approved by the PUD/PDP, so the Project conforms to the Floor Area Ratio parameters set forth in the PUD/PDP. Therefore, the Project conforms to and is consistent with the approved PUD/PDP.

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

The Project has met the applicable conditions of approval for the PUD/PDP as approved by the City Council and listed in the Administrative Record at AR1033-13. Specifically, the Project has met PUD/PDP Condition of Approval II.E, II.A.3.d, and II.K.1, as well as EIR Mitigation Measures AES-1, WIND-1, and TRAF-1b, to the extent that those mitigation measures apply to the Project follows:

PUD/PDP Condition of Approval II.E and Mitigation Measure AES-1: The Project design Parcel B is in conformance with the PDP as it stands 120 feet tall which is the prescribed height in the PUD/PDP and the massing of the building along the railroad tracks is shown on Sheets 8 and 10 of the Project plans dated December 3, 2019 entitled "Emeryville Public Market Parcel B Revised Development Plan" dated January 9, 2019. Please also see Sheets 30 to 35 for elevations showing architectural details and break up of massing;

and Sheet 46 for use of public art treatment to provide articulation and interest to both the west as well as the east elevations.

PUD/PDP Condition of Approval III.A.3.d and Mitigation Measure WIND-1: The Applicant and Wareham Development have submitted a variety of wind analysis studies. None of these studies demonstrate that the Project will have any significant wind impacts, either compared to the impacts contemplated by the EIR or otherwise. The Project has therefore satisfied this Condition of Approval and Mitigation Measure, to the extent that they apply. The wind studies and substantial evidence demonstrating that the Project will not have any significant wind impacts can be found at AR 1780 – Tab 62; AR 2074 – Tab 87; AR2417 – Tab10 and 112; and AR3242 – Tab 148.

PUD/PDP Condition of Approval II.K.1 and Mitigation Measure TRAF-1b: Kimley Horn study dated February 21, 2019 entitled “Emeryville Public Market Parcel B - Traffic Response to Appeal Letter” (found at AR1851 - Tab 73) 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 (found at AR 1831 – Tab 73). 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 Parcel B project would generate fewer AM and PM peak hour trips.”

APPROVED by the Planning Commission of the City of Emeryville at a regular meeting held on Thursday, December 12, 2019 by the following votes:

AYES: (5) Donaldson, Guerrero, Keller, Thomson, Young

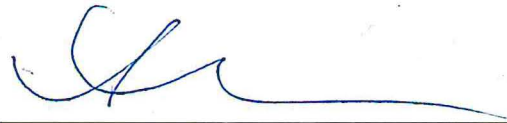
NOES: ABSTAINED:

EXCUSED: (2) Barrera, Sohane ABSENT:


CHAIRPERSON

APPROVED AS TO FORM:


RECORDING SECRETARY


ASSISTANT CITY ATTORNEY