

ORDINANCE NO. 22--__

Ordinance Of The City Council Of The City Of Emeryville Adopting An Amendment To The Marketplace Redevelopment Project Planned Unit Development/Preliminary Development Plan (PUD/PDP) To Transfer The Requirement For 10 Townhome Units From Parcel A (Referred To As The "Shellmound Building" In The Approved PUD/PDP) To Parcel F (Referred To As "Retail Pad #1" In The Approved PUD/PDP) And To Change The Maximum Height On Parcel B From 120 Feet To 175 Feet (APN Nos. 49-1556-15; -16; And -17) (CEQA Determination: Environmental Impact Report For Marketplace Redevelopment Project Certified By City Council on January 15, 2008)

WHEREAS, on January 15, 2008, the City Council adopted Resolution No. 08-09, certifying the Environmental Impact Report (EIR) for the Marketplace Redevelopment Project as adequate under the California Environmental Quality Act (CEQA), and, on July 15, 2008, the City Council adopted Resolution No. 08-126, applying the EIR to the Marketplace Redevelopment Project, and

WHEREAS, on August 5, 2008, the City Council passed Ordinance No. 08-004 approving the Marketplace Redevelopment Project Planned Unit Development/Preliminary Development Plan (PUD/PDP); and

WHEREAS, between February 2015 and June 2016, the Planning Commission approved a number of Final Development Plans (FDPs) and a subdivision map to allow for a grocery store (Parcel C1); realignment of Shellmound Street; creation of 62nd Street, 63rd Street, and Market Drive; construction of three residential buildings (Parcel A, Parcel C2, and Parcel D); a parking structure with ground floor retail (Parcel B); and the redevelopment and expansion of Christie Park (Parcel E); and

WHEREAS, construction of the grocery store building (Parcel C1) and the realignment of Shellmound Street and creation of 62nd and 63rd Streets and Market Drive, two residential buildings (Parcel C2 and Parcel D), and Christie Park (Parcel E) are now complete; and

WHEREAS, the first FDP (FDP5-001) for Parcel B was originally approved on June 23, 2016, which accommodated parking with ground floor retail. This parking garage was to provide parking for existing commercial uses that have been served by previous surface parking lots (Parcel C) and are being served by existing surface parking lots (Parcel A); and

WHEREAS, subsequently, the applicant proposed to replace this FDP for Parcel B with a new FDP to accommodate 150,000 square feet of Research and Development (office/lab) space in addition to ground floor retail space and 565 parking spaces (FDP18-001). This was approved by the Planning Commission on January 24, 2019, thereby rescinding FDP15-001; and

WHEREAS, the Planning Commission decision was appealed by Wareham Development. On January 21, 2020, after a year of project modifications and hearings,

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the City Council approved a slightly different proposal accommodating the same amount of office/lab space; and

WHEREAS, the Marketplace PUD/PDP was sold to New York-based Oxford Properties in the spring of 2021 who, on April 9, 2021, applied for a new FDP to replace the existing entitlements on Parcels A and B and provide for development on Parcel F; and

WHEREAS, the new FDP was subsequently modified, and, as currently proposed, is to construct three buildings comprised of a ten-level approximately 421,000 square foot Research and Development building, a pavilion building of about 3,000 square feet of ground floor retail space, and a six-level parking garage accommodating 711 parking spaces.; and

WHEREAS, the new FDP proposal (FDP21-001) requires two amendments to the Planned Unit Development/Preliminary Development Plan (PUD04-02) Conditions of Approval, which are attached and incorporated herein as Exhibit A; and

WHEREAS, the first PUD/PDP Amendment involves a change to Condition of Approval Number III.A.1(d) that requires construction of ten townhomes on Parcel A (referred to as the “Shellmound Building” in the PUD/PDP). The amendment changes this condition such that it transfers the requirement of ten townhomes to Parcel F (referred to as Retail Pad #1 in the PUD/PDP); and

WHEREAS, the second PUD/PDP amendment involves a change to Condition of Approval Number I.A.3 to clarify and change the maximum allowable height of Parcel B. The PDP Build-Out Plan indicates the maximum height on Parcel B (roughly identified “Office 1” on the PDP Build-Out Plan) to be 120 feet and the maximum height of the adjacent building on Parcel A (roughly identified as “Residential 3”) to be 175 feet. The proposed height of the R & D building is 162 feet. The second amendment modifies Condition I.A.3 to change the height of the building identified as “Office 1” from 120 feet to 175 feet; and

WHEREAS, an environmental checklist has been prepared for the new proposal that confirms that there have been no substantial changes in the proposed project, or to the circumstances under which the project will be undertaken, and no new information of substantial importance exists which would require preparation of a subsequent EIR pursuant to State CEQA Guidelines Section 15162; and

WHEREAS, the Emeryville Planning Commission held a duly and properly noticed public hearing on the proposed PUD/PDP amendments on August 25, 2022 to solicit public comments and review and consider the proposed amendments, and then voted to recommend that the City Council approve the proposed amendments; and

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WHEREAS, the City Council held a duly and properly noticed public hearing on the proposed PUD/PDP Amendment on September 20, 2022; and

WHEREAS, the City Council has reviewed and considered the staff report and attachments thereto, the plans, all public comments, and the proposed amendment to the Marketplace PUD/PDP, subject to the conditions and requirements set forth in Exhibit A attached to this Ordinance and the applicable standards of the Emeryville Planning Regulations (“the Record”);

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EMERYVILLE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE. PURPOSE AND INTENT

The purpose and intent of this Ordinance is to adopt an amendment to the approved Marketplace Redevelopment Project Planned Unit Development/Preliminary Development Plan (PUD/PDP) to transfer the requirement for 10 townhome units from Parcel A (referred to as the “Shellmound Building” in the approved PUD/PDP) to Parcel F (referred to as “Retail Pad #1” in the approved PUD/PDP), and to change the maximum height on Parcel B from 120 feet to 175 feet.

SECTION TWO. REQUIRED FINDINGS FOR ADOPTING ORDINANCE

In approving the proposed amendment to the Marketplace PUD/PDP, as required by Section 9-7.1004(a) of the Planning Regulations, the City Council finds that the findings set forth in Ordinance No. 08-004 are still applicable to the PDP/PUD as modified by the proposed amendment, and makes the following additional findings:

- (1) The proposed planned unit development conforms to the adopted General Plan and any other applicable plans.

The proposed transfer of construction of ten townhome units from Parcel A (referred to as the “Shellmound Building” in the PUD) to Parcel F (referred to as “Retail Pad #1” in the PUD) conforms to the General Plan Land Use designation of Mixed Use with Residential that encourages housing development. The amendment simply transfers the location of the townhouse units. Additionally, the change in height from 120 feet to 175 feet is also within the height limits of the General Plan Maximum Building Height Map that designates no maximum height at this location.

- (2) The proposed planned unit development will provide for a cohesive, integrated, well-planned development which will contribute to the general well-being of the surrounding neighborhood or community.

The proposed amendments to the PUD will not change the mixed-use character of the Marketplace PUD and will continue to provide a vibrant urban environment for pedestrians, residents, and the general citizenry.

- (3) The project site is suitable for the uses permitted in the planned unit development in terms of access, size of parcel and relationship to similar or related uses.

The proposed amendments will have no impact on the suitability of the PUD in terms of access, size of parcel or the relationship to the other uses within the project site or project vicinity.

- (4) The location, size, coverage, density, design and operating characteristics of the proposed planned unit development will be compatible with, and will not adversely affect, the surrounding area, including neighborhood character, street design and capacity, safety, noise, and lighting.

The proposed height amendment is within the range of height limits in the original PUD and the transfer of construction of townhomes within the PUD site will not materially impact neighborhood character, availability of civic facilities, capacity of streets, physical safety or the amount of light falling on adjacent buildings and open space.

- (5) The subject property will be developed with due regard for aesthetic quality and landscaping so as to reduce, to the extent feasible, significant negative impacts on the environmental quality, value, or stability of the site or the environmental quality or value of improved or unimproved property in the area.

The proposed amendments will not have any impact on the aesthetic quality because the change in height is not substantial and transfer of construction of townhomes to a different location does not involve aesthetic considerations. Furthermore, the Final Development Plan approval process for all new proposed buildings will ensure that new construction complies with the City's Design Guidelines.

- (6) The proposed planned unit development will be developed to allow originality which does not have significant adverse impacts on the environmental quality or value of improved or unimproved property or prevent appropriate development and use of such areas.

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The proposed amendments involving a minor change in height and relocation of some housing units will not adversely impact environmental quality or the value of surrounding properties.

- (7) The proposed planned unit development has been designed to include open space, parking areas; pedestrian walks, signs, illumination and landscaping (including irrigation) to enhance the environmental quality of the site.

The proposed amendments do not have any impact on open space, parking, pedestrian walks, signs, illumination or landscaping.

SECTION THREE: ADOPTION OF AMENDMENT TO THE APPROVED PRELIMINARY DEVELOPMENT PLAN

Based on the findings set forth in this Ordinance, and the evidence in the record, the City Council hereby approves the amendment to the Marketplace Redevelopment Project Preliminary Development Plan (PDP) Conditions of Approval Number III.A.1(d) and Number I.A.3 that transfer construction of townhomes to "Retail Pad # 1" (Parcel F) and change the maximum height of "Office 1" on the "Shellmound Site" (Parcel B) from 120 feet to 175 feet, as set forth in the revised Conditions of Approvals, attached as Exhibit A and incorporated into this Ordinance by this reference..

SECTION FOUR: CEQA DETERMINATION

The project is covered by the Marketplace Redevelopment Project Environmental Impact Report (EIR) certified by the City Council on January 15, 2008 (Resolution No.08-09), which applies to the proposed PUD/PDP amendments. As detailed in the Environmental Checklist for Marketplace Parcels A, B and F, which evaluates all impact areas under the California Environmental Quality Act (CEQA), and is included in the Record, 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 under State CEQA Guidelines Section 15162.

SECTION FIVE. SEVERABILITY

The City Council hereby declares that every section, paragraph, clause and phrase of this Ordinance is severable. If, for any reason, any section, paragraph, clause or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, clauses or phrases.

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SECTION SIX. CODIFICATION.

This Ordinance shall not be codified in the Emeryville Municipal Code.

SECTION SEVEN. EFFECTIVE DATE AND POSTING.

This Ordinance shall take effect 30 days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by California Government Code Section 33693.

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting held on Tuesday, September 20, 2022, and **PASSED AND ADOPTED** by the City Council at a regular meeting held on Tuesday, October 4, 2022, by the following vote:

| | | |
|----------|--------------------------|--------------------------|
| AYES: | <input type="checkbox"/> | <input type="checkbox"/> |
| NOES: | <input type="checkbox"/> | <input type="checkbox"/> |
| ABSTAIN: | <input type="checkbox"/> | <input type="checkbox"/> |
| ABSENT: | <input type="checkbox"/> | <input type="checkbox"/> |

MAYOR

ATTEST:

APPROVED AS TO FORM:

DocuSigned by:

John Kennedy

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CITY CLERK

CITY ATTORNEY

Attachment:

Exhibit A - Conditions of Approval

CONDITIONS OF APPROVAL

**Marketplace Redevelopment Project
Planned Unit Development/Preliminary Development Plan
Shellmound Street; 6340 & 6390 Christie Avenue
File Number: PUD 04-02
Exhibit A. Conditions of Approval
August 5, 2008
City Council Ordinance No. 08-004
Amended October 4, 2022
*City Council Ordinance No. 22-__***

As approved by the City Council pursuant to Ordinance No. 08-004 on August 5, 2008 (“An Ordinance of the City Council of the City of Emeryville approving and establishing a Planned Unit Development-Mixed Use Zoning Designation for Marketplace site and approving and adopting a Preliminary Development Plan on a 15-acre site bounded by 64th Street to the north, Powell Street to the South, the Amtrak/Union Pacific railroad tracks to the east, and Christie Avenue to the west.”)

“Applicant” in these Conditions of Approval shall mean an applicant for any Preliminary Development Plan (PDP) or Final Development Plan (FDP) approval for this project unless otherwise expressly limited to an applicant for a particular FDP approval.

I. COMPLIANCE WITH APPROVALS

A. **PROJECT APPROVALS.** All phases of the project shall be constructed and operated in accordance with the following actions by the City Council and Redevelopment Agency:

1. Amendment to the General Plan to change the building intensity, Floor Area Ratio (FAR) from 1.5 to 2.0 for parcels constituting the Marketplace Redevelopment project area identified by Assessor’s Parcel Numbers 49-1492-10-2 and 11.
2. Rescind Use Permit UP88-7 and Approval of Preliminary Development Plan (PDP) for the project including a rezoning of the Marketplace Redevelopment area identified by Assessor’s Parcel Numbers 49-1492-6-1, 8, 10-2 and 11; 49-1493-1, 9-2, 9-3, 10-2, 10-3, 13, 14, and

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15 from Mixed Use (M-U) to Planned Unit Development (PUD) Mixed Use, and amendment of the Building Height Map for the Marketplace Redevelopment Area identified by Assessor's Parcel Numbers 49-1492-6-1, 8, 10 and 11; 49-1493-9-2, 9-3, 10-2, 10-3, 13, 14, 15 and 16 from 40 feet and 95-feet to PUD Mixed Use. The existing uses authorized under Use Permit UP8-87 shall be considered legally conforming uses.

3. Approval of Preliminary Development Plan (PDP) with the following major components, as may be modified in accordance with these Conditions of Approvals so long as do not exceed FAR of 2.0, in the aggregate, the height, or general massing shown on the approved PDP (defined below):

Phase I:

(1) 64th and Christie Site: Removal of existing warehouse buildings and construction of:

Residential 1:185 residential units
Parking E : 272 parking spaces
Commercial A : 6000 sq. ft. of retail space
Height: 8 levels with a maximum height of 85 feet

(2) Shellmound site: Construction of:

Northern Portion:

Residential 3: 196 units
Retail C: 6,200 sq. ft.
Parking B: 127 spaces
Height: 14-level tower with a maximum height of 175 feet

Southern Portion:

Residential 2: 10 townhouses
Retail B: 8,525 sq. ft.
Parking A: 541 spaces
Height: 4.5 levels with maximum height of 50 feet

Eastern portion:

Retail A (kiosk): 1,000 sq. ft. (one level)
Retail Pad # 1: 3,500 sq. ft. (ground level)
Height: 1 level

Phase II A (Option 1):

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Shellmound Site: Construction of:

Office 1: 120,000 sq. ft. (5 floors over 5 floors of parking)

Commercial E: 29,150 sq. ft. (2 floors)

Parking C: 518 spaces (5 floors)

Height: Maximum height not to exceed ~~120~~ 175 feet

Relocation of Shellmound Street

Phase II A (Option 2):

United Theaters (UA) site: Removal of UA Theaters and construction of:

Residential 5: 130 units (11 levels; 150 feet)

Residential 6: 68 townhouses (6 levels; 75 feet)

Retail F: 100,000 sq. ft. (2 levels – 40 feet)

Commercial G: 14,500 sq. ft. (one level)

Parking D: 538 spaces (4 levels with roof parking)

Relocation of Shellmound Street

Phase II B:

Shellmound Site: Construction of:

Office 1: 120,000 sq. ft. (5 floors over 5 floors of parking)

Commercial E: 29,150 sq. ft. (2 floors)

Parking C: 518 spaces (5 floors)

Height: Maximum height not to exceed ~~120~~ 175 feet

United Theaters (UA) site: Removal of UA Theaters and construction of:

Residential 5: 130 units (11 levels; 150 feet)

Residential 6: 68 townhouses (6 levels; 75 feet)

Retail F: 100,000 sq. ft. (2 levels – 40 feet)

Commercial G: 14,500 sq. ft. (one level)

Parking D: 538 spaces (4 levels with roof parking)

New Park and Retail Pad # 2: 6000 sq. ft.

Construction of 63rd Street

Phase III:

Residential 7: 86 units (5 levels)

Retail H: 5,000 sq. ft.

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Parking F: 150 spaces (3 levels)
Height: Maximum height of 85 feet

Construction of 62nd Street

- B. APPROVED PLANS. The future Final Development Plans for each phase of the project, shall substantially comply with the plans PDP plans dated April 16, 2008, entitled "Marketplace Redevelopment" prepared by Heller Manus Architects, pages 1 to 15 except that the construction of the park shall be completed prior to the issuance of any temporary certificate of occupancy of any building in Phase II.
- C. APPROVAL EFFECTIVENESS AND DURATION. The term of the approval of the PUD/PDP permit shall automatically expire if the following events do not occur as outlined below from the date of this approval. Time extensions may be requested by applying to the City Council for such an extension period prior to the expiration dates indicated below:
- Phase I:**
- The first FDP shall be submitted within 3 years of the approval of the PUD/PDP.
 - The first building permit shall be issued within 4 years of the approval of the PUD/PDP.
 - The last FDP shall be submitted within 4 years of approval of the PUD/PDP.
 - Phase I shall be completely constructed within 8 years of approval of the PUD/PDP.
- Phase II:**
- The first FDP shall be submitted within 15 years of the approval of PUD/PDP.
 - The first building permit shall be submitted within 17 years of the approval of PUD/PDP.
 - Phase II shall be completely constructed within 20 years of the approval of PUD/PDP
- Phase III:**
- The first FDP shall be submitted within 3 years after the approval of the first FDP of Phase II.
 - The first building permit shall be submitted 2 years after the approval of the first FDP of Phase III.
 - Phase III shall be completely constructed within 25 years of the approval of the PUD/PDP.
- D. INSTALLATION AND MAINTENANCE OF IMPROVEMENTS. All improvements shall be constructed and installed in accordance with these approvals and applicable provisions of the Emeryville Municipal Code. Once constructed or installed, all improvements shall be maintained as approved.

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Minor changes may be approved by the Planning Director. The applicant may submit improvement plans for interim parking lot re-striping, landscaping modifications, and/or signage related to any existing use within Emeryville Marketplace prior to submission of an FDP.

- E. COMPLIANCE WITH THE MUNICIPAL CODE AND GENERAL PLAN. No part of this approval shall be construed to be a violation of the Emeryville Municipal Code or the General Plan. Operations on this site shall be conducted in a manner that does not create a public or private nuisance or otherwise violate the Emeryville Municipal Code and shall comply with all provisions of the Code.
- F. FAILURE TO COMPLY WITH CONDITIONS OF APPROVAL. If Applicant constructs buildings or makes improvements in accordance with these approvals, but fails to comply with any of the conditions of approval or limitations set forth in these Conditions of Approval and does not cure any such failure within a reasonable time after notice from the City of Emeryville ("City"), then such failure shall be cause for nonissuance of a certificate of occupancy, revocation or modification of these approvals or any other remedies available to the City.
- G. APPLICATION TO SUCCESSORS IN INTEREST. These Conditions of Approval shall apply to any successor in interest in the property and Applicant shall be responsible for assuring that the successor in interest is informed of the terms and conditions of this zoning approval.

II. GENERAL CONDITIONS

- A. INDEMNIFICATION. Applicant, its assignees, and successors-in-interest shall defend, hold harmless, and indemnify the City of Emeryville, the City of Emeryville Redevelopment Agency, the Bay Cities Joint Powers Insurance Authority and their respective officials, officers, agents and employees (the Indemnified Parties) against all claims, demands, and judgments or other forms of legal and or equitable relief, which may or shall result from: 1) any legal challenge or referendum filed and prosecuted to overturn, set-aside, stay or otherwise rescind any or all final project or zoning approvals, analysis under the California Environmental Quality Act or granting of any permit issued in accordance with the Project; or 2) Applicant's design, construction and/or maintenance of the public improvements set forth in the final building plans. Applicant shall pay for all direct and indirect costs associated with any action herein. Direct and indirect costs as used herein shall mean but not be limited to attorney's fees, expert witness fees, and court costs including, without limitation, City Attorney time and overhead costs and other City Staff overhead costs and normal day-to-day business expenses incurred by the City including, but not limited to, any and all costs which may be incurred by the City in conducting an election as a result of a referendum filed to challenge the project approvals. The Indemnified Parties shall promptly notify the Applicant, its assignees, and

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successors-in-interest of any claim, demand, or legal actions that may create a claim for indemnification under this section and shall fully cooperate with Applicant, its assignees and successors-in-interest. **[City Attorney]**

- B. MITIGATION MEASURES. All mitigation measures except, as modified below, identified in the Final Environmental Impact Report prepared for the project are attached and incorporated by reference into this document. Overall monitoring compliance with the mitigation measures will be the responsibility of the Planning Director. Mitigation Measure are also included in the conditions of approval for easy reference and modified where applicable.
- C. STREET CHANGES. The Final EIR identified a number of street changes that are a result of cumulative changes and may be constructed over time. Therefore, the following conditions apply for this project:

1. The City shall update its Traffic Impact Fee Impact fee to include the street improvements identified below and the applicant shall pay their fair share cost of the improvement based on the updated Traffic Impact Fee.

The street changes identified in the EIR are (TRAF1a, TRAF-2a, TRAF-3, TRAF-5, TRAF-6, TRAF-7, TRAF-8, TRAF-9, TRAF-11, TRAF-12, TRAF-13, TRAF-15, TRAF-16, TRAF-18, TRAF-19, TRAF-20, TRAF-21, TRAFF-22, TRAF-25, and TRAF-26):

(i) *I-80 Ramps/Powell Street Intersection*. Reconstruct the off-ramp to provide dual left-turn and dual right-turn lanes. The additional lane should be about 900 feet. Reconstruct the southeast corner of the Powell Street/I-80 Eastbound Ramps intersection improving the curb radii to 40 feet. Relocate the north side of Powell Street 12 to 14 feet between Christie Avenue and Eastbound I-80 Ramps to align westbound Powell Street through lanes across the intersection with Eastbound I-80 Ramps. This improvement will also allow the widening of the eastbound right-turn lane at the Powell Street/Christie Avenue intersection to 14 feet and construction of a pedestrian median refuge on the west side of the Powell Street/Christie Avenue intersection.

(ii) *Powell Street/Christie Avenue Intersection*. Reconstruct the westbound approach to provide a second left turn lane. The resulting two left turn lanes should be 250 feet in length. The south side of the Powell Street bridge would need to be widened by about 12 feet to accommodate the second left turn lane. Reconstruct the southbound approach to provide a southbound left-turn lane (in addition to the shared left-through lane and a central median). The lane would extend from Powell Street back to Shellmound Way. This change would require widening the west side of Christie Avenue by about 20 feet. This change requires right-of-way along the west side of Christie Avenue. Re-time the Powell/Christie

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Loop signalized intersections to coordinate the critical movements through the intersection.

These above street changes shall be considered as a component of a comprehensive streetscape design for the area to be undertaken by the City where travel by all modes (e.g., pedestrian, bicycle, public transit, private automobile) is optimized. If the comprehensive streetscape design approved by the City for the area makes all or a portion of the aforementioned street changes infeasible, then the City shall not undertake the implementation of nor include such street changes in the update of its Traffic Facilities Impact Fee Program.

(iii) *Powell Street/Hollis Street Intersection*. Implement protected-permitted signal phasing for the north/south left turn movements.

(iv) *Shellmound Street/65th Street and the Overland Street/65th Street Intersections*. Modify signal operations to provide protected/permitted left turns on the southbound Shellmound Street approach.

(v) *40th Street/Hollis Street Intersection*. Retime the traffic signals on the 40th Street corridor to improve traffic flow and minimize delay and queuing.

(vi) *65th Street/Hollis Street Intersection*. Retime this traffic signal to improve traffic flow and minimize delay and queuing.

(vii) *40th Street/Horton Street Intersection*. Change the phasing of the northbound and southbound approaches from split phasing to simultaneous north/south left turn phasing. A turn lane should be added by removing on-street parking. Design should include bike lanes.

(viii) *40th Street/Emery Street Intersection*. Change the phasing of the northbound and southbound approaches from split phasing to phasing that allows for protected north/south lag/lead left turns with a lagging northbound left turn and a leading southbound left-turn. A turn lane should be added by removing on-street parking. Design should include bike lanes.

(ix) *40th Street/San Pablo Ave Intersection*. Provide an exclusive eastbound right turn lane. Install this improvement with a right turn overlap phase and retiming of the signals on the 40th Street and San Pablo Avenue corridors, taking into account BRT operation. The design shall accommodate cyclists.

(x) *Mandela Parkway/Horton Street Intersection*. Install a traffic signal and construct an exclusive southbound right-turn lane with overlap phasing. The final design must include Bay Trail alignment (i.e., bike lanes and sidewalks).

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2. Ashby Ave/San Pablo Ave. The applicant shall pay a fee based on its fair share of the project's anticipated growth in traffic to the intersection toward the cost of constructing a dual northbound left turn lanes similar to the northbound left-turn lane design on San Pablo Avenue at 40th Street when traffic conditions warrant. Construction of this improvement would require elimination of on-street parking along San Pablo Avenue approaching the intersection. Relocation of the bus stop for buses operating along San Palo Avenue would also be required. The payment shall be made to the City of Emeryville, for the benefit of the City of Berkeley. This improvement will occur only with the agreement of City of Berkeley and Caltrans and would be designed such that the impacts to transit, pedestrians and cyclists are minimized. (TRAF-4)

D. FIRE AND POLICE DEPARTMENT CONDITIONS

1. Installation of all water mains in Shellmound Street, in the new extension of 63rd Street, as well as upgrades to the existing private water main that serves the existing Public Market shall be public water mains. The applicant shall coordinate with the City Fire Department and Public Works Department and EBMUD to determine the acceptable size and design of the water main. No dead-end mains shall be permitted. Fire hydrants (public) shall be provided so as not to exceed 250 feet between hydrants.
2. All roadways shall have a minimum clear width of 20 feet with no parking on either side of the roadway. If parking is provided, then the roadways shall be a minimum of 28 feet (with parking on one side of the roadway) or 36 feet (parking on both sides).
3. Any and all new buildings shall be provided with full coverage automatic fire sprinkler systems designed to the current NFPA-13 Standard; in addition, any and all new buildings shall be provided with a full coverage automatic fire alarm / detection system designed to the current NFPA-72 Standard. Additional requirements shall be made for specific buildings as they are submitted for review and approval.
4. All FDPs applications for buildings that contain commercial, retail and public parking areas shall include a surveillance camera plan or other equivalent security measure acceptable to the Police Chief. This plan shall be designed to the satisfaction of the Emeryville Police Chief.

E. DESIGN RELATED:

1. Each of the following five measures shall be incorporated into the final project design (AES-1):
 - The proposed structures shall adequately reference and be visually compatible with and not detract from the surrounding industrial buildings.

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- 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 building height transitions to adjacent buildings, and through the use of carefully chosen building materials, texture, and color.
 - Design of building facades shall include sufficient articulation and detail to avoid the appearance of blank walls or 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 the design motif of surrounding buildings.
 - Detailed designs for the public plazas shall be developed. The plaza designs shall emphasize the public nature of the space and pedestrian comfort and sun/shade patterns during mid-day hours throughout the year. The plaza designs shall be sensitively integrated with the streetscape.
2. All proposed new buildings shall be shown in detail including building materials, colors, skin, and fenestration. Towers and buildings along the rail road 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.
 3. Ground floor elevations of structures fronting on a public street shall contain active land uses that create a lively pedestrian experience including a variety of commercial uses such as retail, personal and business services, design and crafts services, professional offices, building lobbies, live-work spaces, galleries, museums, day care, or residential uses, gyms and fitness facilities and similar uses. Where residential uses occupy ground floor, stoops and/or attractive building lobbies must be included in the design.
 4. Large expanses of flat roof area and all roof deck parking shall be treated to maximize the functional use, improve aesthetics, stormwater treatment, provide habitat and reduce Heat Island effect. The options for achieving these goals may be any combination of one or more of the following,

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where appropriate, taking into account size, wind, design and location: (a) screening through use of appropriate materials, (b) planting surfaces and/or planted “green screens” (c) being designed to accommodate solar or alternative energy facilities, and/or (d) serving as locations for recreational amenities such as tennis courts, pools, courtyards, planted areas, and passive open space areas, where appropriate.

5. Building heights shall not exceed the heights shown in the Preliminary Development Plan.
6. The parking requirements established by the Preliminary Development Plan may be reduced below the requirements established in the Preliminary Development Plan for future phases of the project. The Applicant shall submit a parking demand survey of existing and proposed parking facilities with each Final Development Plan. The City Council may reduce the parking requirements if the Council finds that, based on the survey data, demand for parking is reduced due to the adequacy of Transportation Management Plan (TMP) measures of the project and changes in transportation patterns.

F. AIR-QUALITY AND NOISE RELATED

1. Consistent with guidance from the BAAQMD, the following actions shall be required of construction contracts and specifications for the project.
Demolition. The following controls shall be implemented during demolition: Water during demolition of structures and break-up of pavement to control dust generation; cover all trucks hauling demolition debris from the site; and use dust-proof chutes to load debris into trucks whenever feasible.

Construction. The following controls shall be implemented at all construction sites: Water all active construction areas at least twice daily and more often during windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers to control dust; cover all trucks hauling soil, sand, and other loose materials; pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites; sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction sites; water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality; sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets; apply non-toxic soil stabilizers to inactive construction areas; enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.); limit traffic speeds on unpaved roads to 15 mph; leaving the site; and

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suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 mph; Install sandbags or other erosion control measures to prevent silt runoff to public roadways; replant vegetation in disturbed areas as quickly as possible; install baserock at entryways for all exiting trucks, and wash off the tires or tracks of all trucks and equipment in designated areas before leaving the site. (AIR-1)

2. Mechanical ventilation, such as air conditioning systems or passive ventilation, shall be included in the design for all units in the Shellmound building and units of the mixed use 64th & Christie building that face 64th Street or Christie Avenue to ensure that windows can remain closed for prolonged periods of time to meet the interior noise standard and Uniform Building Code Requirements. (NOISE-1, NOISE-2a)
3. Windows with a minimum rating of STC-32 shall be installed for all units within the Shellmound building directly exposed to the railroad tracks at all heights. The proposed project could expose future residents of the Shellmound building to excessive ground-borne vibration levels. (NOISE-2b)
4. An acoustical engineer shall prepare a detailed ground-borne noise assessment for the proposed project. The assessment shall include an analysis of the vibration isolation provided in the proposed construction design and provide future calculations for the vibration levels on each of the floors to be used for residential dwellings. The assessment shall include recommendations if necessary to reduce vibration levels to 72 VdB or less. Any vibration isolation and reduction design features provided by the acoustical engineer shall be incorporated in the final engineering plans for the project. The assessment shall be submitted and accepted by the City prior to the issuance of building permits for the Shellmound building. (NOISE-3).
5. The project construction contractors shall comply with the following noise reduction measures:
 - All heavy construction equipment used on the project site shall be maintained in good operating condition, with all internal combustion, engine-driven equipment equipped with intake and exhaust mufflers that are in good condition. All stationary noise-generating equipment shall be located as far away as possible from neighboring property lines, especially residential uses.
 - Prohibit and post signs prohibiting unnecessary idling of internal combustion engines.
 - Designate a “noise disturbance coordinator” who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator would determine the cause of the noise complaints (e.g., beginning work too early, bad muffler) and institute reasonable

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measures warranted to correct the problem. A telephone number for the disturbance coordinator would be conspicuously posted at the construction site.

- Utilize “quiet” models of air compressors and other stationary noise sources where such technology exists. To further reduce potential pile driving and/or other extreme noise generating construction impacts greater than 90dBA, as many additional noise-attenuating technologies, such as the following, shall be implemented as feasible:
- Erect temporary plywood noise barriers around the construction site, particularly in areas adjacent to residential buildings;
- Implement “quiet” pile driving technology (such as pre-drilling of piles or the use of more than one pile driver to shorten the total pile driving duration), where feasible, in consideration of geotechnical and structural requirements and conditions;
- Evaluate the feasibility of noise control at the receivers by temporarily improving the noise reduction capability of adjacent buildings by the use of sound blankets for example; and

Monitor the effectiveness of noise attenuation measures by taking noise measurements. (NOISE-4)

6. Based on the construction vibration damage criteria for specific building categories established by the Federal Transit Administration as shown in the project applicant shall prepare a vibration impact assessment to determine potential vibration impacts to structures located within 75 feet of new construction based on the types of construction activities proposed on the project site. Recommendations shall be made for impacts that exceed the vibration damage criteria for adjacent building types to ensure construction activities would not damage adjacent buildings. All recommendations in the impact assessment shall be incorporated into construction plans for the project. (NOISE-5)
7. Prior to issuance of a final development plan for any residential development adjacent to the railroad tracks, applicant shall submit an indoor air quality study that identifies measures (other than closing windows) to reduce the level of exposure within a residential unit to emissions from operations within the railroad right of way, such that the extent of any negative influence of external air quality on the internal air quality of residential units adjacent to the railroad right of way is not significantly greater than the extent of any negative influence of external air quality on the internal air quality of residential units not adjoining the railroad right of way. Any such measures shall be identified and imposed as conditions of approval of any final development plan for residential development adjacent to the railroad right of way.
8. Prior to issuance of a building permit for any residential development adjacent to the railroad right of way, the applicant shall submit an analysis

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by a qualified acoustical professional as part of the design phase in accordance with the requirements of the California Building Code, Appendix Chapter 12, Section 1208 or any successor provision. Noise insulation features to be included in the design of such residential development along the railroad right of way may include double stud or staggered-stud exterior wall construction, special sound rated windows and doors, reducing the total wall area comprised of windows and doors, avoiding sliding-glass doors in bedrooms with line-of-site to the railroad right of way, and the incorporation of forced-air mechanical ventilation systems to allow occupants to maintain the windows closed. The applicant shall provide sufficient information for the Planning Director and Building Official to confirm that such residential development complies with the standards and criteria set forth in the Emeryville Municipal Code and General Plan.

G. HAZARDOUS MATERIALS RELATED

1. Prior to any excavation or subsurface work in the areas subject to the two Covenants to Restrict Use of Property for the Emeryville Marketplace and the Bay Street Extension, the property owner/developer shall submit to DTSC a site health and safety plan in accordance with the requirements of the covenants. The owner shall address all DTSC requirements in the preparation of the plan. In addition to these requirements, the health and safety plan shall include health and safety procedures for workers to follow during potential contact with dewatered groundwater and exposure to methane gas. The health and safety plan shall be prepared by a qualified environmental professional and approved by DTSC prior to implementation. For areas not within the covenant areas (i.e., Retail Pad 1 and 2, 64th & Christie building), a health and safety plan shall also be prepared, as described above with regulatory agency oversight and implemented during excavation or subsurface work at these locations. The plan(s) shall be provided to agencies and contractors who would direct others or assign their personnel to construct infrastructure on the project site in areas subject to the requirements of the health and safety plan. (HAZ-1a)
2. A soil management plan shall be developed by the property owner/developer and approved by the City Engineer and DTSC for the proposed project (including the proposed location of the 64th & Christie building). The plan shall be submitted prior to issuance of demolition, grading, or building permits by the City. The plan shall include provisions for management of potentially contaminated excavated soil and dewatered groundwater, requirements for clean imported fill material, inspection of areas for gross contamination prior to backfilling by a qualified environmental professional, and requirements for immediate reporting to

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DTSC and the City Engineer in the event that previously unidentified contamination is encountered during construction/redevelopment activities. The soil management plan shall also include a contingency plan for sampling and analysis of previously unknown hazardous substances contamination in coordination with, and with oversight from, DTSC (See also Mitigation Measure HYD-2 from the Hydrology and Storm Drainage section). For areas not within the covenant areas (i.e., Retail Pads 1 and 2, and 64th & Christie building), a soil management plan shall also be prepared, as described above, with approval by the City Engineer. The soil management plan(s), including any requirements for remediation, shall be provided to agencies and contractors who would direct others or assign their personnel to construct infrastructure on the project site in areas subject to the plans. These plans shall include of an emergency response plan for safe and effective responses to emergencies, including the necessary personal protective equipment and other equipment, and spill containment procedures (HAZ-1b and HAZ-3c).

3. The property owner/developer shall satisfy all requirements of the Alameda County Department of Environmental Health to obtain closure for the former leaking underground storage tank located at 6340 Christie Avenue. The requirements shall be satisfied prior to issuance of demolition, grading or building permits by the City for this property. If a deed restriction is required as a condition of closure, the restriction shall be recorded in Alameda County and all conditions of the deed restriction shall be met during and following construction by the property owner/developer. (HAZ-1c).
4. The property owner/developer shall ensure that appropriate design elements are incorporated into the building design for proposed on-site structures to address the potential for methane gas venting (e.g., installation of a vapor barrier, passive soil venting system or active soil venting systems). The design shall comply with California Title 27 Section 20919 et seq, including the requirement that the concentration of methane in facility structures not exceed 25 percent of the lower explosive limit for methane in facility structures (excluding gas control or recovery system components). The design shall be submitted to the City Engineer, Emeryville Fire Department, and DTSC for review. The Emeryville Fire Department, the local enforcement agency for methane, shall provide final approval of the methane mitigation design prior to issuance of building permits and shall inspect the system(s) implemented annually or as otherwise required. (HAZ-1d)
5. All cracks/cap damage in the existing capped areas of the Emeryville Marketplace site shall be sealed at the time of site redevelopment activities by the contractor(s) in accordance with DTSC's recommendations in the

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five-year review. All existing and areas proposed for capping under the proposed project shall also be maintained by the site owner/developer to prevent exposures to contaminants in soil and groundwater. (HAZ-1e).

6. Prior to the issuance a demolition permits for the buildings located at 6340 and 6390 Christie Avenue, a lead-based paint and asbestos survey shall be performed by a qualified environmental professional. Based on the findings of the survey, all loose and peeling lead-based paint and identified asbestos hazards shall be abated by a certified contractor in accordance with local, state, and federal requirements, including the requirements of the Bay Area Air Quality Management District (Regulation 11, Rule 2). The findings of the survey shall be documented by the qualified environmental professional and submitted to the City. (HAZ-2a).
7. Hazardous materials and wastes generated during demolition activities, such as fluorescent light tubes and mercury switches, shall be managed and disposed of by the demolition contractor(s) in accordance with applicable universal and hazardous waste regulations. Federal, State and local worker health and safety regulations shall apply to demolition activities and required worker health and safety procedures shall be incorporated into the contractor's specifications for the project. (HAZ-2b)
8. The Storm Water Pollution Prevention Plan (SWPPP) required for the project shall include emergency procedures for incidental hazardous materials releases. (HAZ-3a).
9. Best Management Practices for the project include requirements for hazardous materials storage during construction to minimize the potential for releases to occur. All use, storage, transport, and disposal of hazardous materials during construction activities shall be performed in accordance with existing local, state, and federal hazardous materials regulations. (HAZ-3b).
10. The property owner/developer shall work with the City and DTSC to determine whether contaminants in soil vapor or other media in the area north of the Marketplace Tower and Public Market present an unacceptable risk to future residents. Environmental samples shall be collected and analyzed to determine whether chemicals present in environmental media, including vapors in air, are present in concentrations that would potentially harm future residents. If sample concentrations exceed California Human Health Screening Levels (CHHSLs), risk management measures that would prevent harm to future residents and that are acceptable to the DTSC shall be implemented. HAZ-1 (Main Street and Reduced Main Street alternatives).

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H. CONSTRUCTION RELATED

1. Prior to the issuance of any site-specific grading or building permits, a design-level geotechnical investigation shall be prepared and submitted to the City of Emeryville Planning and Building Department for review and confirmation that the proposed development fully complies with the California Building Code (Seismic Zone 4). The report shall determine the project site's geotechnical conditions and address potential seismic hazards such as liquefaction. The report shall identify building techniques appropriate to minimize seismic damage. In addition, the geotechnical investigation shall conform to the California Division of Mines and Geology (CDMG) recommendations presented in the *Guidelines for Evaluating Seismic Hazards in California*, CDMG Special Publication 117. (GEO-1)
2. In locations underlain by expansive soils and/or non-engineered fill, the designers of building foundations and other improvements (including sidewalks, roads, and underground utilities) shall consider these conditions. The design-level geotechnical investigation, to be prepared by licensed professionals and approved by the Emeryville Planning and Building Department, shall include measures to ensure potential damages related to expansive soils and non-uniformly compacted fill are minimized. Mitigation options may range from removal of the problematic soils and replacement, as needed, with properly conditioned and compacted fill to design and construction of improvements to withstand the forces exerted during the expected shrink-swell cycles and settlements. All mitigation measures, design criteria, and specifications set forth in the geotechnical investigation shall be followed to reduce impacts associated with shrink-swell soils and settlement to a less-than-significant level. (GEO-2)
3. Prior to issuance of a grading permit, a site-specific grading plan shall be prepared by a licensed professional and submitted to the Emeryville Planning and Building Department for review and approval. The plan shall include specific recommendations for mitigating potential differential settlement associated with Bay Mud, fill placement and areas of different fill thickness. (GEO-3)
4. The Emeryville Planning and Building Department shall approve all final design and engineering plans. Project design and construction shall be in conformance with current best standards for earthquake resistant construction in accordance with the California Building Code (Seismic Zone 4), applicable local codes and in accordance with the generally accepted standard of geotechnical practice for seismic design in Northern

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California. The design-level geotechnical investigation shall include measures to minimize that potential damage related to liquefaction. (GEO-4).

5. The project contractor shall comply with the City of Emeryville Municipal Code relating to grading projects and erosion control (Section 6-13.204): *Any person engaged in activities which will or may result in pollutants entering the City storm sewer system shall undertake all practicable measures to reduce such pollutants. Best Management Practices for New Developments and Redevelopments. Any construction contractor performing work in the City shall endeavor, whenever possible, to provide filter materials at the catchbasin to retain any debris and dirt flowing into the City's storm sewer system. The Director of Public Works may establish controls on the volume and rate of storm water runoff from new developments and redevelopments as may be appropriate to minimize the discharge and transport of pollutants.*

In addition, the project proponent shall prepare a SWPPP designed to reduce potential impacts to surface water quality through the construction period of the project. The SWPPP must be maintained on-site and made available to City inspectors and/or RWQCB staff upon request. The SWPPP shall include specific and detailed BMPs designed to mitigate construction-related pollutants. At a minimum, BMPs shall include practices to minimize the contact of construction materials, equipment, and maintenance supplies (e.g., fuels, lubricants, paints, solvents, adhesives) with storm water. The SWPPP shall specify properly designed centralized storage areas that keep these materials out of the rain. BMPs designed to reduce erosion of exposed soil may include, but are not limited to: soil stabilization controls, watering for dust control, perimeter silt fences, placement of hay bales, and sediment basins. The potential for erosion is generally increased if grading is performed during the rainy season as disturbed soil can be exposed to rainfall and storm runoff. If grading must be conducted during the rainy season, the primary BMPs selected shall focus on erosion control that is, keeping sediment on the site. End-of-pipe sediment control measures (e.g., basins and traps) shall be used only as secondary measures. Entry and egress from the construction site shall be carefully controlled to minimize off-site tracking of sediment. Vehicle and equipment wash-down facilities shall be designed to be accessible and functional during both dry and wet conditions. (HYD-1)

6. The construction-period SWPPP shall include provisions for the proper management of construction-period dewatering effluent. At minimum, all dewatering effluent shall be contained prior to discharge to allow the sediment to settle out, and filtered, if necessary, to ensure that only clear

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water is discharged to the storm or sanitary sewer system, as appropriate. In areas of suspected groundwater contamination (i.e., underlain by fill or near sites where chemical releases are known or suspected to have occurred), groundwater shall be analyzed by a State-certified laboratory for the suspected pollutants prior to discharge. Based on the results of the analytical testing, the project proponent shall acquire the appropriate permit(s) prior to discharge of the effluent. Discharge of the dewatering effluent would require a permit from the RWQCB (for discharge to the storm sewer system or to San Francisco Bay) and/or East Bay Municipal Utility District (EBMUD) (for discharge to the sanitary sewer system). (HYD-2)

7. The applicant shall submit a drainage plan prior to the issuance of a grading or building permit that meets all the requirements of the current Countywide NPDES Permit (NPDES Permit No. CAS0029831). The drainage plan shall include features and operational Best Management Practices to reduce potential impacts to surface water quality associated with operation of the project. These features shall be included in the project drainage plan and final development drawings. Specifically, the final design shall include measures designed to mitigate potential water quality degradation of runoff from all applicable portions of the completed development. In general, "passive," low-maintenance BMPs (e.g., storm water planters, rain gardens, grassy swales, porous pavements) are preferred over active filtering or treatment systems. As required by the City of Emeryville's 2005 *Storm Water Guidelines for Green, Dense Redevelopment*.

An operations and maintenance plan shall be developed and implemented to inspect and maintain BMPs in perpetuity. If paved surfaces within covered parking areas are washed with water, this water shall not be directed to the storm drainage system. This wash water effluent shall either be directed to the sanitary sewer or contained and transported off-site for proper disposal.

The final design team for the project shall review and incorporate as many concepts as practicable from *Start at the Source, Design Guidance Manual for Storm water Quality Protection* and the California Storm water Quality Association's *Storm water Best Management Practice Handbook, Development and Redevelopment*, the City of Emeryville 2005 *Storm Water Guidelines for Green, Dense Redevelopment*, and forthcoming Alameda County Clean Water Program (ACCWP) technical guidelines. The City Public Works Department shall review and approve the drainage plan prior to approval of the grading plan. (HYD-3)

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8. Prior to the issuance of any building permit, a qualified professional archaeologist shall prepare a monitoring plan to address potentially significant cultural resources encountered during construction. Preparing the plan may require subsurface examination to determine the presence, nature, extent, and potential significance of archaeological deposits that may be encountered by project activities. At a minimum, the monitoring plan should (1) refine the understanding of the project site's archaeological sensitivity; (2) determine the likelihood that archaeological deposits have retained integrity; (3) identify the types of artifacts and features that may be encountered during project construction; (4) determine during which phases of construction subsurface deposits may be encountered; and (5) provide guidelines for in-field assessment of archaeological deposits identified during monitoring. Based on the information noted above, the monitoring plan should determine the appropriate level of construction monitoring necessary to avoid significant impacts to archaeological resources and provide guidance for the implementation of such monitoring. (CULT-1a)

I. ARCHAEOLOGICALLY RELATED

1. Prior to the issuance of any building permit, a qualified professional archaeologist shall prepare a monitoring plan to address potentially significant cultural resources encountered during construction. Preparing the plan may require subsurface examination to determine the presence, nature, extent, and potential significance of archaeological deposits that may be encountered by project activities. At a minimum, the monitoring plan should (1) refine the understanding of the project site's archaeological sensitivity; (2) determine the likelihood that archaeological deposits have retained integrity; (3) identify the types of artifacts and features that may be encountered during project construction; (4) determine during which phases of construction subsurface deposits may be encountered; and (5) provide guidelines for in-field assessment of archaeological deposits identified during monitoring. Based on the information noted above, the monitoring plan should determine the appropriate level of construction monitoring necessary to avoid significant impacts to archaeological resources and provide guidance for the implementation of such monitoring. (CULT-1a)
2. A qualified professional archaeologist shall monitor all ground-disturbing activities that occur at depths within the project area determined to be archaeologically sensitive in the archaeological monitoring plan. Monitoring shall continue until the archaeologist determines that impacts to archaeological deposits are unlikely to occur. In the event that archaeological deposits are identified during monitoring, the monitor must be empowered to redirect all work within 25 feet of the

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find. Any such archaeological deposits identified during monitoring shall be recorded and, if possible, avoided by project activities. If avoidance is not feasible, as determined by the City after consultation with the project engineer, these deposits shall be evaluated by a qualified archaeologist to determine their eligibility for listing on the California Register. If the deposits are not eligible for the California Register, then no further study or protection is necessary. If the deposits are eligible for the California Register, they shall be avoided by project activities. If avoidance is not feasible, project impacts shall be mitigated in a manner consistent with CEQA Guidelines PRC Section 15126.4 (b)(3)(C) and the recommendations of the evaluating archaeologist. Human remains shall be handled in accordance with Health and Safety Code Section 70505.5. Following the completion of the archaeological monitoring, a report shall be prepared to document the methods and findings of the monitoring archaeologist. The report shall be submitted to the City, the project applicant, and the Northwest Information Center (NWIC) at Sonoma State University in Rohnert Park, California. (CULT-1b)

3. In the event that archaeological deposits are identified during project activities not monitored by an archaeologist, it is recommended that project impacts to such deposits be avoided. If impact avoidance is not feasible, work within 25 feet of the finds shall be redirected and a qualified professional archaeologist shall be contracted to record the find and evaluate its California Register eligibility. If the deposits are not eligible for the California Register, then no further study or protection is necessary. If the deposits are eligible for the California Register, they shall be avoided by project activities. If avoidance is not feasible, project impacts shall be mitigated in a manner consistent with CEQA Guidelines PRC Section 15126.4 (b)(3)(C) and treatment of human remains in accordance with Health and Safety Code Section 70505. Following the completion of the archaeological monitoring, a report shall be prepared to document the methods and findings of the monitoring archaeologist. The report shall be submitted to the City, the project applicant, and the NWIC. Prehistoric materials can include flaked-stone tools (e.g., projectile points, knives, choppers) or obsidian, chert, basalt, or quartzite tool making debris; bone tools; culturally darkened soil (i.e., midden soil often containing heat-affected rock, ash and charcoal, shellfish remains, faunal bones, and cultural materials); and stone milling equipment (e.g., mortars, pestles, handstones). Prehistoric archaeological sites often contain human remains. Historical materials can include wood, stone, concrete, or adobe footings, walls and other structural remains; debris-filled wells or privies; and deposits of wood, glass, ceramics, metal, and other refuse. (CULT-1c)
4. If human remains are encountered, work within 25 feet of the discovery shall be redirected, and the County Coroner shall be notified immediately.

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At the same time, an archaeologist shall be contacted to assess the situation. If the human remains are of Native American origin, the Coroner must notify the Native American Heritage Commission within 24 hours of this identification. The Native American Heritage Commission will identify a Most Likely Descendant (MLD) to inspect the site and provide recommendations for the proper treatment of the remains and associated grave goods. Upon completion of the assessment, the archaeologist shall prepare a report documenting the methods and results and provide recommendations for the treatment of the human remains and any associated cultural materials, as appropriate and in coordination with the recommendations of the MLD. The report shall be submitted to the City, the project applicant, and the NWIC. (CULT-2)

5. A qualified paleontologist shall be present during initial project ground-disturbance at or below 5 feet from original ground surface. The paleontologist will then determine if further monitoring, periodic site inspections, or if no further monitoring is necessary. Prior to project ground-disturbing construction, pre-field preparation by a qualified paleontologist shall take into account specific details of project construction plans for the project area, as well as information from available paleontological, geological, and geotechnical studies. Limited subsurface investigations may be appropriate for defining areas of paleontological sensitivity prior to ground disturbance. (CULT-3a)
6. A qualified paleontologist shall monitor ground-disturbing activities at and below 5 feet from the original ground surface in accordance with the initial monitoring needs assessment. The monitoring shall continue until the paleontologist determines that impacts to paleontological resources are unlikely to occur. If paleontological resources are encountered during project activities, all work within 25 feet of the discovery shall be redirected until the paleontological monitor can evaluate the resources and make recommendations. If paleontological deposits are identified, it is recommended that such deposits be avoided by project activities. Paleontological monitors must be empowered to halt construction activities within 25 feet of the discovery to review the possible paleontological material and to protect the resource while it is being evaluated. If avoidance is not feasible, as determined by the City after consultation with the project engineer, adverse effects to such resources shall be mitigated in accordance with the recommendations of a qualified paleontologist. At a minimum, mitigation shall include data recovery and analysis, preparation of a data recovery report or other reports as appropriate, and accessioning fossil material recovered to an accredited paleontological repository, such as the University of California Museum of Paleontology (UCMP). Upon project completion, a report shall be prepared documenting the methods and results of monitoring, and copies

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of this report shall be submitted to the City, project applicant, and to the repository at which any fossils are accessioned. (CULT-3b)

7. In the event that paleontological resources are identified in the soil layer for which paleontological monitoring is *not* recommended, all work within 25 feet of the discovery shall be redirected until a qualified paleontologist has evaluated the discoveries, prepared a fossil locality form documenting the discovery and made recommendations regarding the treatment of the resources. If the paleontological resources are found to be significant, adverse effects to such resources shall be avoided by project activities. If project activities cannot avoid the resources, adverse effects should be mitigated. At a minimum, mitigation shall include data recovery and analysis, preparation of a data recovery report or other reports, as appropriate, and accessioning fossil material recovered to an accredited paleontological repository, such as the University of California Museum of Paleontology (UCMP). Upon completion of project activities, a report that documents the methods and findings of the mitigation shall be prepared and copies submitted to the City, project applicant, and to the repository at which any fossils are accessioned. (CULT-3c)

J. PUBLIC SERVICES RELATED

1. The project applicant shall recycle 75 percent of the waste materials generated by project construction. The applicant shall submit a pre-construction recycling management plan to the City Public Works Department for review and approval prior to the issuance of a grading permit. Prior to issuance of the Certificate of Occupancy, the project applicant shall post a construction report with weight tags stating where construction materials were recycled and demonstrating that the 75 percent recycling rate of Measure D has been achieved. (PS-1)
2. The project applicant shall install an internal system designed to increase recycling and composting. The recycling and composting system shall include dedicated chutes for garbage, recycling and green waste (including food scraps). Final design plans shall include areas for the storage and loading of recycling materials and containers in accordance with Emeryville Municipal Code Title 6, Chapter 4, Collection of Solid Waste and Recyclables and Title 6, Chapter 14, Food Service Waste Reduction. (PS-2).
3. Prior to the issuance of every FDP, the Emeryville Police and Fire Departments shall review proposed development plans to determine whether existing police and fire facilities would be able to accommodate increased demand for emergency services. If existing facilities would be inadequate, the project sponsor shall contribute a pro rata share of the cost

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to construct new facilities. (PS-1 (Main Street and Reduced Main Street alternative)))

4. Prior to the issuance of the first FDP for each phase of the project a, the applicant shall prepare a Water Supply Assessment shall be prepared If the Water Supply Assessment shows that existing water supplies would be inadequate to serve the proposed alternative, the alternative shall be modified to reduce water demand (e.g., through the reduction of water-intensive commercial or residential uses, water conservation measures, and/or recycling of rain and graywater) such that existing water entitlements would be adequate to serve the site. (PS- 2 (Main Street and Reduced Main Street alternative)))
5. Prior to the issuance of the first FDP for each phase, the applicant shall prepare a sewer capacity study to determine if there is adequate sanitary sewer conveyance capacity to accommodate the proposed project. If it is determined that there is inadequate capacity for additional flows, either of the following actions shall occur:

(i) The utility plan shall be designed to convey all sewage flows on the site to the 30-inch TC pipe in the northern portion of the site. If the topography of the site is such that sanitary sewer flows would not be able to gravity feed into the 30-inch TC pipe.

(ii) The project applicant shall design and fund its fair share of construction of additional downstream improvements to accommodate the increased flows from the project in the southern system which drains to the EBMUD interceptor via the existing system in Powell Street. If downstream improvements to the existing system in Powell Street are required to accommodate additional flows draining to the south, additional environmental review may be required if construction would occur outside of the existing right-of-way or involve construction beyond the scope of standard construction methods evaluated in this EIR. New connections to the existing sanitary sewer main on Shellmound Street north of Powell Street shall not be permitted due to the heavy flow of grease from the Public Market. (PS-3 (Main Street and Reduced Main Street alternative))

K. TRAFFIC RELATED

1. Transportation Management Plan (TDM). Prior to the issuance of each FDP, the applicant shall submit a TDM that includes, at the following elements as applicable (TRAF-1b and 2b; AIR-1- Main Street and Reduced Main Street Alternatives):

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- Provision of transit amenities and facilities, including bus pull-outs, benches, shelters, transit information and ticket kiosks, and discounted transit passes for employees and residents.
- Carpool/vanpool support, including preferential parking spaces and ride-matching programs.
- Carshare support, including free parking spaces, on-site information and advertising, and discounted rates/long-term contracts.
- Provide bicycle amenities, including secure and conveniently located bicycle parking racks, pilot bicycle rental program, new bicycle paths connected to community-wide network, and shower/locker facilities.
- Provide sidewalks and/or paths, connected to adjacent land uses, transit stops, and/or community-wide network.
- In addition, the TDM plan should discourage automobile use by incorporating the following elements:
 - Residential parking spaces should be unbundled from the units.
 - All non-residential parking should be paid parking.
 - Monthly parking permits should not be provided for employees.
 - Provision of car sharing facilities on-site.

In addition, the TDM plan shall conduct a parking demand study that takes into account the potential of the TDM to reduce parking demand; shall implement measures for improved provision of parking on-site and on-line to reduce cruising for an open space and to help people to choose their mode of travel before beginning their trip; consider provision of “Ecopass” or similar program that provide build discount on monthly (or annual basis);

TDM plan for the subsequent FDPs shall include results of implementation of the TDM measures outlined for the previous FDPs and evaluate adequacy of proposed parking within the parameters of 1.5 spaces for residential development and 3 per 1000 square feet for non-residential development with a 10 per cent reduction for shared parking.

L. STORMWATER RELATED

1. The applicant shall pay for installation and on-going maintenance of trash collection systems in stormwater infrastructure for new roads, parking lots and driveways in the project area as described in the March 2008 draft Municipal Regional Permit from the San Francisco Regional Water Quality Control Board. The purpose of this condition of approval shall be

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for the applicant to assist the City in meeting trash collection requirements in the new regulations are adopted.

III. CONDITIONS APPLYING TO EACH PHASE OF DEVELOPMENT

A. PHASE I AND EXISTING BUILDINGS

1. USES PERMITTED

- a. The permitted uses in all proposed structures labeled “Retail” in Phase I will include retail uses and/or similar active uses consistent with requirements of Condition II.E(3).
- b. Multi-family residential use shall be the primary use in all proposed structures labeled “Residential” in Phase I. Uses accessory to the primary use such as small deli, convenience store, hair salon etc. are also permitted.
- c. The table below lists uses permitted in existing structures in Marketplace and structures to be built as part of Phase I and labeled as “Commercial” or “Office” in the Preliminary Development Plan.

Table I: Uses Permitted in Existing Buildings and Proposed “Commercial: or “Office” Buildings in the PDP.

Any uses not explicitly listed are not permitted.

| Civic Uses | Commercial Uses |
|-------------------------------|--|
| Administrative Services | Administrative & Business Offices |
| Community Education | Animal Sales and Services: Grooming & Pet Stores Veterinary |
| Community Recreation | Automotive & Equipment: Automotive Rentals |
| Convalescent Services | Commercial Recreation: Amusement Center Indoor Entertainment Indoor Sports & Recreation |
| Cultural and Library Services | Construction Sales & Services |
| Day Care Services | Convenience Sales & Services |
| Public Parking Services | Eating & Drinking Establishments Convenience |

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| | |
|--------------------|---|
| | Full Service |
| Religious Assembly | Financial Services |
| | Food and Beverage Retail Sales (excluding alcohol beverages) |
| | Lodging Services |
| | Medical Services |
| | Personal Services |
| | Professional Services |
| | Research Services |
| | Retail Sales |
| | Transportation Services |
| | Custom Manufacturing |

All permitted uses shall be subject to the Conditions of Approval for the Marketplace PUD/PDP as well as conditions of approval of applicable Final Development Plan (FDP).

Uses on the ground floor of all buildings, except buildings designated as residential, shall be consistent with Condition II.E(3), or similar “active” uses approved by the Planning Director. The FDP Conditions of Approval shall further refine uses permitted.

- d. The intent of the PDP is to achieve a vibrant, mixed-use neighborhood. The Final Development Plan may allow any use, including multi-family residential and any use allowed on Table 1 above; provided however, that if any allowed use other than the allowed use designated on the Preliminary Development Plan, or any increase in the square footage or number of units is proposed in any building designated as residential in the Preliminary Development Plan, the Applicant shall submit a traffic study and the City shall require appropriate compliance with the California Environmental Quality Act prior to approval.

If the Shellmound Building tower is not residential, ~~then FDP shall include at a minimum 10 townhomes shall be included on Retail Pad #1 above the retail in the general location shown on the Plans.~~ The applicant shall maximize unit count of townhomes to the extent possible. Non-residential buildings should be (i) developed primarily as a build-to-suit to ensure a high level of quality and (ii) shall be of high-quality design and materials eligible for green building certification under the USGBC LEED program.

2. GENERAL:

- a. The applicant shall submit a FDP application for approval prior to submission of any building permit. The applicant may submit no more than one FDP application for each building. The applicant must provide a phasing plan for Phase I prior to the issuance of the first FDP. The phasing plan shall include a timeline for processing of FDP and building permits

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and actual construction time. This plan shall also include a plan for parking arrangements for existing tenants and/or residents during the construction period for Phase I.

- b. Prior to the issuance of the building permit of the Shellmound building, the applicant shall submit an offer to dedicate easement that shall allow public access at all times for the connection between the pedestrian bridge and Shellmound Street.

3. DESIGN RELATED:

- a. The FDP plans for the Shellmound building shall provide details of the connection with the pedestrian bridge. The pedestrian connection shall be designed to provide a usable and attractive walkway that ends in an enhanced plaza that has a significant presence on Shellmound Street.
- b. Prior to the issuance of the FDP for the Shellmound building, the applicant shall conduct 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. The results of the test shall be submitted to the Planning Director prior to the issuance of the FDP. 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. (WIND-2)
- c. 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 either weighted or attached to the deck. (WIND-1).

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- d. Prior to the issuance of the FDP for the Shellmound building site, the applicant shall submit a review of the design by a 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. (WIND-1, Main Street and Reduced Main Street Alternative).
- e. A Phase I FDP for the park expansion and Retail Pad #2 shall be submitted at the same as the FDP that includes the Shellmound Building. Prior to the submission of the FDP for a new park, the applicant shall solicit community input on the park design. The design of the Retail Pad #2 shall be well integrated with the design of the park, and the park design shall be suitable for informal multi-function recreational open space. The park shall also be designated on the Tentative Map for the Emeryville Marketplace and shall be offered to the City in an "as is" condition as to subsurface conditions. If the City does not accept fee title to the park, the applicant shall retain ownership and offer the improvements to the City through a park easement. The FDP shall include all of the following:
 - i. design plans for new park, including reconsolidation of existing and expanded park land, hardscape and planting areas, landscape plans, and planting palette."
 - ii. a description of the proposed dedication mechanism to the City.
 - iii. environmental testing results and a proposal to remediate, if feasible.
 - iv. proposed replacement parking for adjacent existing parking spaces to be removed for the expansion of the park.

The applicant should construct the park in conjunction with the construction of the Shellmound Building in accordance with the schedule and terms negotiated in the Owner Participation Agreement (OPA). The construction of the park shall be complete prior to the issuance of any temporary certificate of occupancy of any building in Phase II.

- f. In the Phase I FDP that includes the Shellmound Building, the applicant shall include a study of the potential for a future bicycle

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path connecting east and west Emeryville across the railroad tracks and its impact, if any, of the building and site design.

4. TRAFFIC AND PUBLIC IMPROVEMENTS.

- a. Circulation. The application for the FDP that includes the Shellmound Building shall include plans that contain sufficient detail of the internal circulation of surface parking west of Shellmound Street in front of the existing Public Market to demonstrate, to the satisfaction of the Public Works Director, that there are no conflicts with the garage entrance for the Shellmound Building. The internal circulation shall be reconfigured, if necessary, to coordinate internal circulation of both the surface parking with the Shellmound Building garage.
- b. Pedestrian Signal. Install a pedestrian signal at the pedestrian crossing on Shellmound Street. Through design treatments, such as landscaping, consolidate pedestrian activity from the Shellmound Street/Woodfin Hotel/Marketplace Driveway and the Shellmound Street/Marketplace Driveway/Shellmound Garage driveway to the pedestrian crossing. The pedestrian signal shall be interconnected and coordinated with the signal at the Shellmound Street/Shellmound Way intersection and the Shellmound Street/Marketplace Driveway/ Shellmound Garage intersection. Each of these improvements to be implemented by the applicant shall be detailed in the Final Development Plans for Phase I and approved prior to issuance of building permit. (TRAF-28)
- c. Emery Go-Round: The project applicant shall continue contributions to the Emery Go Round system, as currently performed under the Property based Business Improvement District (PBID). Contributions are based on building square footage. (Recommendation TRAF-1)
- d. AC Transit Route 57: The applicant shall work with AC Transit to reorient Route 57 through the project area in conjunction with providing a formal layover with bathroom facilities for AC Transit drivers. The applicant shall provide a bus layover on the south side of 64th Street, with bathroom access provided to AC Transit drivers at the proposed retail portion of the 64th and Shellmound building. The applicant shall provide a bus stop with a pullout on

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the east side of Shellmound Street, north of the pedestrian crossing, for northbound buses. The applicant shall provide a southbound bus stop on the west side of Shellmound Street, south of the Shellmound Street Marketplace driveway.
(Recommendation TRAF-2)

- e. Pedestrian Crossing: Concentrate pedestrian crossing movements through design treatments to the mid-block crossing on Shellmound Street. Construct sidewalks on Shellmound Street to a minimum of 12 feet wide and provide appropriate landscaping along Shellmound Street to maintain pedestrian visibility and sight distance. (Recommendation TRAF-3)
- f. Elevators: The Shellmound Building elevators proposed to serve the Amtrak pedestrian bridge should be large enough to accommodate bicyclists. (Recommendation TRAF-4)
- g. Bicycle Parking: For each building, the applicant shall provide three types of bicycles: (i) secured bicycle lockers on the upper levels of the garage reserved for resident use only; (ii) secured bicycle lockers on the lower levels of the garage for employee parking; and (iii) bicycle parking on the ground floor reserved for retail patrons. (Recommendation TRAF-5)
- h. Shellmound Garage: The parking area serving the new land uses on the Shellmound site shall be designed to orient the majority of outbound traffic, about 80 percent, away from the shared driveway. The Final Development Plan submittal shall include a report for a licensed traffic engineer that confirms that the design of the garage accomplishes the above. (TRAF-27)

The applicant shall install a parking space counting system at the Shellmound building garage to minimize excessive circulation within the site. (Recommendation TRAF-7)

- i. Traffic Signal: The applicant shall redesign the northern driveway of the Shellmound building to align with existing surface parking across Shellmound Street. In addition, the applicant shall install a traffic signal that will be interconnected with the new pedestrian signal required above in Condition of Approval III.A.4(b).

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- j. Delivery Vehicles: Prior to the issuance of any FDP the applicant shall provide on outline for working of delivery vehicle access to the building. This outline will be reviewed by the Public Works Director, who can request the applicant to submit a review from a licensed traffic engineer. (Recommendation TRAF-6)
- k. Traffic Signal at 64th Street and Shellmound Street: Prior to the occupancy of the last building of Phase I phase, the applicant shall provide a traffic report prepared by a licensed traffic engineer to determine whether conditions warrant a traffic signal at the intersection of 64th Street and Shellmound Street. (TRAF-6)
- l. 64th and Christie Site Public Improvements: The FDP for the 64th Street and Christie Avenue building shall include traffic and public improvements directly adjacent to the 64th Street and Christie Avenue site.
- 5. OTHER
 - a. Lot Line Adjustment: Prior to issuance of the first building permit on the 64th & Christie Site, the Applicant shall submit an application for Lot Line Adjustment for the 64th & Christie Building, or other subdivision application required by the Director of Public Works.
 - b. Tentative Map: Prior to the issuance of the FDP for the Shellmound building, the applicant shall submit a Tentative Map for the entire project site.

B. PHASE II A AND PHASE II B

- 1. USES PERMITTED
 - a. The permitted uses in all proposed structures labeled “Retail” in Phase II will include retail uses and/or similar active uses consistent with Condition II E (3).
 - b. Multi-family residential use shall be the primary use in all proposed structures labeled “Residential” in Phase I. Uses accessory to the primary use such as small deli, convenience store, hair salon etc. are also permitted.

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- c. The table below lists uses permitted in existing structures in Marketplace and structures to be built as part of Phase I and labeled as “Commercial” or “Office” in the Preliminary Development Plan.

Table 2: Uses Permitted in Existing Buildings and Proposed
“Commercial: or “Office” Buildings in Phase IIA and IIB

Any uses not explicitly listed are not permitted.

| Civic Uses | Commercial Uses |
|-------------------------------|--|
| Administrative Services | Administrative & Business Offices |
| Community Education | Animal Sales and Services: Grooming & Pet Stores Veterinary |
| Community Recreation | Automotive & Equipment: Automotive Rentals |
| Convalescent Services | Commercial Recreation: Amusement Center Indoor Entertainment Indoor Sports & Recreation |
| Cultural and Library Services | Construction Sales & Services |
| Day Care Services | Convenience Sales & Services |
| Public Parking Services | Eating & Drinking Establishments Convenience Full Service |
| Religious Assembly | Financial Services |
| | Food and Beverage Retail Sales (excluding alcohol beverages) |
| | Lodging Services |
| | Medical Services |
| | Personal Services |
| | Professional Services |
| | Research Services |
| | Retail Sales |
| | Transportation Services |
| | Custom Manufacturing |

All permitted uses shall be subject to the Conditions of Approval for the Marketplace PUD/PDP as well as conditions of approval of applicable Final Development Plan (FDP).

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Uses on the ground floor of all buildings, except buildings designated as residential, shall be consistent with Condition II.E(3), or similar “active” uses approved by the Planning Director. The FDP Conditions of Approval shall further refine uses permitted.

- d. The Final Development Plan may allow any use, including multi-family residential and any use allowed on Table 2 above provided that at the end of Phase II, at least 50 per cent of the square footage of the development not including parking in Phase I and Phase II is residential; provided however, that at the end of Phase II, that if any allowed use other than the allowed use designated on the Preliminary Development Plan, or any increase in the square footage or number of units is proposed in any building designated as residential in the Preliminary Development Plan, then the Applicant shall submit a traffic study and the City shall require appropriate compliance with the California Environmental Quality Act prior to approval.
- e. The project site shall not include any single retail user over 100,000 square feet.

2. GENERAL:

- a. The applicant shall submit a FDP application for approval prior to submission of any building permit. The applicant may not submit more than one FDP for each building. The applicant must provide a phasing plan prior to the issuance of the first FDP. The phasing plan shall include a timeline for processing of FDP and building permits and actual construction time. This plan shall also include a plan for parking arrangements for existing tenants and/or residents during the construction period.
- b. The construction of the park shall be complete prior to the issuance of any temporary certificate of occupancy for any building in Phase II.

3. DESIGN RELATED:

- a. Streets shall be designed to encourage pedestrian use and sense of livable neighborhood, with entrances to commercial and residential uses lining the frontages to activate the sidewalk and ground level of structures. Pedestrian access and safety shall be a priority over vehicle movement, although appropriate vehicle circulation shall be maintained.
- b. Shellmound Street right-of-way shall be designed to accommodate a future separated 2-way bike path on the East side of Shellmound to allow for future connection points along Shellmound to the north and south of the project site, so long as this design can be accomplished safely and

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eventually connects to future bike paths to the north and south. In the interim, Shellmound Street shall be designed to have Class II bike lanes on both sides of the street, and on-street parking on the West side of Shellmound only.

- c. Prior to the issuance of the FDP for the United Theaters (UA) 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. (WIND-1, Main Street and Reduced Main Street Alterative).

4. TRAFFIC AND PUBLIC IMPROVEMENTS.

- a. Traffic Report. Prior to the issuance of the first FDP, a traffic report shall be prepared for the project area and the project impacts assessed with current traffic counts. The City shall be responsible for the preparation of the report and the costs of the report shall be borne by the applicant.
- b. Circulation Plan. Prior to the issuance of the any FDP, the applicant shall prepare a detailed circulation plan that clearly depicts vehicle, pedestrian, and bicycle access and associated routes that will be reviewed for adequacy based on applicable pedestrian, bicycle, and parking safety standards by a licensed traffic engineer. (TRAF-29a).
- c. Traffic Signals: 64th Street and Shellmound Street Intersection and 63rd Street and Christie Avenue: Prior to the issuance of first FDP for Phase II A or IIB or prior to the occupancy of Phase I (whichever comes first), the applicant shall prepared provide a traffic study prepared by licensed traffic engineer to determine whether conditions warrant a traffic signal at this intersection. The applicant shall install the traffic signals when required as

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determined by the traffic (TRAF-6; TRAF-17; Recommendation TRAF-8).

- d. Pacific Park Plaza (PPP) Driveway: After the installation of traffic signal at 63rd Street and Christie Avenue, the applicant shall provide a feasibility study that will assess reorientation of the PPP driveway to align with 63rd Street. If the City determines that such a reorientation is necessary and desirable, then the applicant shall pay for all the costs of this driveway reorientation (Recommendation TRAF-9).
- e. Garage Circulation: To minimize vehicle circulation on Shellmound Street an internal connection between the two garages on the east side of Shellmound Street shall be made. Internal signage in the garage shall direct vehicles to exit from the driveway aligned with 63rd Street. A parking space counting system at the garage shall also be installed. (TRAF-27)
- f. Delivery Vehicles: Prior to the issuance of any FDP the applicant shall provide an outline for working of delivery vehicle access to the building. This outline will be reviewed by the Public Works Director, who can request the applicant to submit a review from a licensed traffic engineer.
- g. Traffic Signal at 64th Street and Shellmound Street: Prior to the occupancy of the last building of Phase II phase, the applicant shall provide a traffic report prepared by a licensed traffic engineer to determine whether conditions warrant a traffic signal at the intersection of 64th Street and Shellmound Street. (TRAF-6)

C. PHASE III

1. USES PERMITTED

- a. The permitted uses in all proposed structures labeled “Retail” in Phase III will include retail uses and/or similar active uses.
- b. Multi-family residential use shall be the primary use in all proposed structures labeled “Residential” in Phase I. Uses accessory to the primary use such as small delis, convenience stores, hair salons etc. are also permitted.

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- c. The table below lists uses permitted in existing structures in Marketplace and structures to be built as part of Phase I and labeled as “Commercial” or “Office” in the Preliminary Development Plan.

Table 3: Uses Permitted in Existing Buildings and Proposed
“Commercial: or “Office” Buildings in

Any uses not explicitly listed are not permitted.

| Civic Uses | Commercial Uses |
|-------------------------------|--|
| Administrative Services | Administrative & Business Offices |
| Community Education | Animal Sales and Services: Grooming & Pet Stores Veterinary |
| Community Recreation | Automotive & Equipment: Automotive Rentals |
| Convalescent Services | Commercial Recreation: Amusement Center Indoor Entertainment Indoor Sports & Recreation |
| Cultural and Library Services | Construction Sales & Services |
| Day Care Services | Convenience Sales & Services |
| Public Parking Services | Eating & Drinking Establishments Convenience Full Service |
| Religious Assembly | Financial Services |
| | Food and Beverage Retail Sales (excluding alcohol beverages) |
| | Lodging Services |
| | Medical Services |
| | Personal Services |
| | Professional Services |
| | Research Services |
| | Retail Sales |
| | Transportation Services |
| | Custom Manufacturing |

All permitted uses shall be subject to the Conditions of Approval for the Marketplace PUD/PDP as well as conditions of approval of applicable Final Development Plan (FDP).

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Uses on the ground floor of all buildings, except buildings designated as residential, shall be consistent with Condition II.E(3), or similar "active" uses approved by the Planning Director. The FDP Conditions of Approval shall further refine uses permitted.

- b. The Final Development Plan may allow any use, including multi-family residential and any use allowed on Table 3 above; provided however, that if any allowed use other than the allowed use designated on the Preliminary Development Plan, or any increase in the square footage or number of units is proposed in any building designated as residential in the Preliminary Development Plan, the Applicant shall submit a traffic study and the City shall require appropriate compliance with the California Environmental Quality Act prior to approval.

2. GENERAL:

- a. The applicant shall submit a FDP application for approval prior to submission of any building permit. The applicant may not submit more than one FDP for each building. The applicant must provide a phasing plan prior to the issuance of the first FDP. The phasing plan shall include a timeline for processing of FDP and building permits and actual construction time. This plan shall also include a plan for parking arrangements for existing tenants and/or residents during the construction period for Phase III.

3. DESIGN RELATED:

- a. Streets shall be designed to encourage pedestrian use and sense of livable neighborhood, with entrances to commercial and residential uses lining the frontages to activate the sidewalk and ground level of structures. Pedestrian access and safety shall be a priority over vehicle movement, although appropriate vehicle circulation shall be maintained.
- b. The Final Development Plan shall establish 62nd street as a pedestrian/bicycle priority street where it crosses City Park to enhance the usability and safety of the park if can be demonstrated through a focused traffic study that the elimination or reduction in automobile traffic on this portion of 62nd street does not result in any new significant traffic impacts that were not addressed in the project's Environmental Impact Report.

4. TRAFFIC AND PUBLIC IMPROVEMENTS.

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- a. Traffic Report: Prior to the issuance of the first FDP for Phase III, the applicant shall submit a traffic report shall be prepared for the project area that provides capacity analysis of the neighboring streets and provides recommendations to improve both vehicular and non-vehicular movement. The report shall include viability of the following measures: relocation of 64th Street driveway into Parking Area D to improve driveway spacing; installation of pedestrian signals on Shellmound Avenue at the major crossing points; necessity of extension of 62nd Street to Christie Avenue to provide a grid network of streets; and construction of a high visibility crosswalk across Christie Avenue at 62nd Street. Current traffic counts shall be utilized for the report. The City shall be responsible for the preparation of the report and the costs of the report shall be borne by the applicant (Recommendation TRAF-11, 12, 14 and 15).
- b. Circulation Plan. Prior to the issuance of the any FDP, the applicant shall prepare a detailed circulation plan that clearly depicts vehicle, pedestrian, and bicycle access and associated routes that will be reviewed for adequacy based on applicable pedestrian, bicycle, and parking safety standards by a licensed traffic engineer. (TRAF-29a).
- c. Delivery Vehicles: Prior to the issuance of any FDP the applicant shall provide on outline for working of delivery vehicle access to the building. This outline will be reviewed by the Public Works Director, who can request the applicant to submit a review from a licensed traffic engineer.
- d. Traffic Signal at 64th Street and Shellmound Street: Prior to the occupancy of the last building of Phase II phase, the applicant shall provide a traffic report prepared by a licensed traffic engineer to determine whether conditions warrant a traffic signal at the intersection of 64th Street and Shellmound Street. (TRAF-6).

IV. CONDITIONS APPLYING TO ALL PHASES OF DEVELOPMENT (NEW BUILDINGS AND SITE DEVELOPMENT)

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A. GENERAL CONDITIONS

To the extent that any of the following general conditions are duplicative or inconsistent with the preceding Conditions and/or Mitigation Measures, the preceding Conditions and/or Mitigation measures shall control.

1. Prior To Issuance Of A Building Permit
 - a. Subdivision Approval. Prior to the issuance of a building permit, the Public Works Director shall confirm that the Applicant has received subdivision approval for the project through a parcel map or tentative/final map procedure and has applied for the reapportionment of the Bay-Shellmound Assessment as applicable. **[Public Works]**
 - b. Housing Set-Aside Program. Prior to the issuance of a building permit, the Director of Economic Development and Housing shall confirm that Applicant has entered into agreements with the City and approved by the City Council to be recorded against the property which satisfy the requirements of the City of Emeryville's Affordable Housing Set-Aside Program, as set forth in Section 9-4.621 et seq. of the Emeryville Municipal Code. **[Economic Development]**
 - c. Public Art Program. Prior to the issuance of a foundation permit, Applicant shall submit evidence of compliance with the Art in Public Places Ordinance (Article 4 of Title 3 of the Emeryville Municipal Code) by showing a signed contract to commission or purchase and to install the artwork on the development site, or by payment of the full amount of the in-lieu public art fee. If Applicant intends to install on-site art rather than pay the in-lieu public art fee, but has not supplied the above-specified information prior to the issuance of the foundation permit, payment of the in-lieu public art fee will be required and will be repaid to Applicant only at such time the above-specified information is provided to City. In addition, Redevelopment-Agency supported projects may have further requirements as set forth in the applicable agreements with the Agency. **[Economic Development]**
 - d. Fees, Dedications and Exactions. Conditions of Approval set forth herein include certain fees, dedication requirements, reservation requirements and other exactions Pursuant to Government Code Section 66020(d)(1), this set of Conditions of Approval constitutes written notice of a statement

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of the amount of such fees and a description of the dedications, reservations and other exactions. Applicant is hereby further notified that the 90-day approval period in which these fees, dedications, reservations and other exactions may be protested, pursuant to Government Code Section 66020(a) will begin upon approval of the aforementioned project approvals by the City of Emeryville Planning Commission. If Applicant fails to file a protest within this 90-day period complying with all of the requirements of Section 66020, Applicant will be legally barred from challenging such exactions.

Prior to the issuance of a building permit, the Building Official shall confirm that all applicable fees due at the issuance of a building permit have been paid. **[Building]**

- e. Cost Recovery Planning Fees. Prior to the issuance of a building permit, the Planning Director shall confirm that all cost recovery planning fees have been paid to date. **[Planning]**

2. PRIOR TO THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY

- a. Notice to Tenants and Future Owners. Prior to the issuance of a certificate of occupancy, Applicant shall provide to the Planning Director a notice in all lease and sales documents to all prospective tenants and future purchasers of the property on the site, in a form acceptable to the City Attorney, addressing: 1) the existence of nearby industrial and commercial uses which have the potential to emit noise at levels and during hours of the day that persons may find disturbing; 2) nearby commercial and manufacturing/industrial uses which may generate odors; 3) existence of truck traffic; 4) existence of a nearby mainline railroad that operates 24 hours per day seven days per week with associated train horns and other sounds and vibration; 5) the possibility of future nearby development that may block views; and 6) site has contained hazardous materials and that measures have been undertaken to remediate any potential health risks associated with the hazardous materials and documents related to this effort are on file with the property owner, the City of Emeryville Planning Department **[City Attorney/Planning]**
- b. Fees, Dedications and Exactions. Prior to the issuance of a certificate of occupancy, the Building Official shall confirm that all applicable fees due at the issuance of a certificate of occupancy have been paid. **[Building]**

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- c. Cost Recovery Planning Fees. Prior to the issuance of a certificate of occupancy, the Planning Director shall confirm that all cost recovery planning fees have been paid in full. **[Planning]**
- d. Bay-Shellmound Contingent Assessment. Prior to the issuance of a certificate of occupancy, the Building Official shall confirm that the Bay-Shellmound Contingent Assessment has been paid. **[Building]**
- e. Housing Set-Aside Program. Prior to the issuance of a certificate of occupancy, the Director of Economic Development and Housing shall inspect and approve the project for compliance with the requirements of the Agreement on Affordable Units. **[Economic Development]**
- f. Condominium Plan. Any subdivision or condominium map review for purposes of dividing the residential portion of the property for sales as individual units shall include, as required, legal documentation pertaining to dedication or reservation of group or common open spaces, for the creation of a non-profit homeowners' association, for the long-term maintenance of the landscaped and common areas of the project and for performance bonds, pursuant to Emeryville Municipal Code Section 9-4.85.11 (c)(7). The map or condominium plan shall be filed prior to the issuance of a certificate of occupancy for the residential component. The map/plan and the CC&Rs for the homeowners' association shall include a condition that residential parking shall not be used for storage in lieu of needed parking. **[City Attorney's Office]**
- g. Public Art Program. Prior to the issuance of a certificate of occupancy, Applicant shall notify the Economic Development and Housing Department Public Art Projects Coordinator to verify Applicant's installation of the on-site public art. If City determines that public art has not been installed, Applicant shall be required to pay the in-lieu public art fee in full. **[Economic Development]**

B. BUILDING AND CONSTRUCTION REQUIREMENTS

1. PRIOR TO ISSUANCE OF A BUILDING PERMIT

- a. Plans. Prior to the issuance of a building permit, the Building Official shall verify that the title sheet for the building permit drawings contains the following: **[Building]**

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- a. Permit number.
 - b. Zoning district.
 - c. FAR (density per acre for residential).
 - d. Lot area in square feet.
 - e. Total number of parking spaces with parking spaces numbered on plans in a consecutive manner and consistent with the parking summary on the title page.
 - f. Building heights with height of any appurtenances noted.
 - g. Number and type of residential units (e.g. live/work, apartment, condo).
 - h. Detailed breakdown of floor areas.
 - i. Number of floors.
 - j. Existing building information (if applicable).
 - k. Total Impervious Surface area in square feet (from the "Impervious Surface and Stormwater Treatment Measures Form" provided by the City of Emeryville).
 - l. The Applicant shall prepare a scorecard based on either: Build-It-Green (Green Point Rated) or the United States Green Building Council (LEED) of the green measures that are to be incorporated into the residential or commercial sections of the project and the total score for the project (with electronic version to be submitted to the Emeryville Public Works Department with notes on claimed points).
- b. Compliance with Applicable Codes. Prior to the issuance of a building permit, the Building Official shall confirm that the building permit plans, specifications and other related information conform to the California Codes in effect at the time, and all other applicable local ordinances. Compliance with the California Codes and local ordinances shall include, but not be limited to, seismic and geotechnical requirements for Seismic Zone 4, and Title 24 energy conservation and disabled access requirements. **[Building]**
- c. Utility Service. Prior to the issuance of a building permit, the Building Official shall confirm that the building permit plans, specifications and information include detailed plans for providing water, electrical, gas, telephone, and other like utilities services to the site, including a review of the existing services to the site and measures or improvements on-site that will be required to adequately serve the site, including the location and design of transformers (if above ground and if required) and all connections. All new and existing on-site electrical and communication

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lines shall be placed underground. All transformers shall be placed underground unless prior permission is granted by the City to place them above ground, in which case they shall be screened from public view by fencing, dense landscaping, or other acceptable means. **[Building]**

- d. Traffic and Parking Management Plan during Construction. Prior to issuance of a building permit for any portion of the project, Applicant shall submit a traffic and parking management plan for review and approval by the Public Works Director. The plan shall include any City restrictions and limitations on using certain local streets for construction traffic, proposed truck delivery and haul routes, parking arrangements for construction personnel, ingress and egress, noise, efforts to address street debris and dust control and proposed on-site staging and equipment/material storage areas. **[Public Works]**
- e. Construction Sign. Prior to the issuance of a building permit, Applicant shall submit a construction sign for approval by the Planning Director in accordance with the prototype provided. The sign shall be made of a permanent material with professional lettering. The sign shall be at least 3 feet by 4 feet with a minimum letter size of 3 inches. The sign shall include this information: the project name; name of the owner/developer; the name and phone number of a contact person, available at all times to address complaints and with the authority to control construction activity on the site; name and phone number of the contractor; and the approved hours of construction. The contact person should be the Noise Disturbance Coordinator listed below in Condition III.B.1.c.

The sign shall be posted at the time of placing temporary fencing and start of construction activity. At least one sign shall be placed along each public street frontage of the site in a location facing the street where the information can be easily read. Street frontages exceeding 300 feet in length shall have one sign per each 300-foot segment or fraction thereof. **[Planning]**

- f. Fencing. Prior to the issuance of a building permit, Applicant shall install temporary construction fence around the perimeter of the site that provides for continued pedestrian traffic meeting the standards of the Americans with Disabilities Act as approved by the Public Works Director. **[Public Works]**

- g. Approval of Regulatory Agencies. Prior to the issuance of a building permit, Applicant shall submit to the Building Official copies of all other permits necessary from the applicable regulatory agencies. **[Building]**
 - h. Approval of Hazardous Material Regulatory Agencies. Prior to issuance of a building or grading permit, Applicant shall submit to the Planning Director confirmation that the proposed use of the site is acceptable to the appropriate regulatory agency (e.g. Regional Water Quality Control Board, Alameda County Department of Health or Department of Toxic Substances Control) and that any conditions prior to such use have been met. If a Risk Management Plan, Health and Safety Plan or similar document is required, then Applicant shall have such plan approved by the regulatory agency; shall submit copies to the Planning Director and Public Works Director; and shall comply with all provisions of such plan. **[Planning and Public Works]**
 - i. Lead and Asbestos. Prior to the issuance of a demolition or building permit, the Building Official shall confirm that a survey of lead-based paint (LBP) and asbestos-containing materials (ACMs) shall be completed, and all identified ACMs and any loose or peeling LBP must be abated. If intact LBP is present on the site and not abated, demolition and construction activities must comply with the State=s construction lead standard (Title 8, California Code of Regulations, Section 1532.1). **[Building]**
- DURING CONSTRUCTION. Violations of the following conditions and any other applicable conditions may result in a stop work notice being issued or any other measures that the City deems necessary.
- a. Construction Noise.
 - i. *Hours.* Unless the City Council grants a waiver allowing different construction hours pursuant to Section 5-13.06 of the Emeryville Municipal Code, construction hours shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday, and pile driving activity shall be limited to 8:00 a.m. to 5:00 p.m., Monday through Friday. In an urgent situation, the City Manager, Planning and Building Director, or Public Works Director may approve weekend or night work pursuant to Section 5-13.05(e) of the Emeryville Municipal Code.

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- ii. *Equipment.* All heavy construction equipment used on the project shall be maintained in good operating condition, with all internal combustion, engine-driven equipment equipped with intake and exhaust mufflers that are in good condition and as deemed to be practically feasible. All non-impact tools shall meet a maximum noise level of no more than 85 dB when measured at a distance of 50 feet. All stationary noise-generating equipment shall be located as far away as possible from neighboring property lines especially residential uses.
 - iii. *Noise Disturbance Coordinator.* Applicant shall designate a “Noise Disturbance Coordinator” who shall be responsible for responding to any complaints about construction noise. The Noise Disturbance Coordinator shall determine the cause of the noise complaint and shall require that reasonable measures warranted to correct the problem be implemented. Applicant shall conspicuously post a telephone number for the Noise Disturbance Coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule. The Noise Disturbance Coordinator shall be the contact person listed on the construction sign required by Condition III.A.5 above.
- b. Traffic Measures. Applicant, through its contractor, shall implement comprehensive traffic control measures as set forth in the approved Traffic and Parking Management Plan, including scheduling of major truck trips and deliveries to avoid peak hours (normally 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m.).
 - c. Street Debris. All mud, dirt and construction debris carried off the construction site onto adjacent streets shall be removed and cleaned daily. Failure to adequately sweep the streets may result in the City undertaking the effort at Applicant=s cost.
 - d. Dust Control Measures. Dust control measures to minimize air quality impacts shall be implemented including:
 - i. Cover stockpiles of debris, soil, sand or other materials that can be blown by the wind.
 - ii. Cover all trucks hauling soil, sand, and other loose materials.

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- iii. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at site.
 - iv. Limit traffic speeds on unpaved roads to 5 mph.
 - v. Install, maintain and replace sandbags or other erosion control measures to prevent silt runoff to public roadways.
 - vi. Minimize removal and replant vegetation in disturbed areas as quickly as possible.
 - vii. No grading between October 1st and April 15th unless the Public Works Director has approved an erosion and sedimentation control plan.
- e. Archeological Resources. If archeological resources are encountered during construction, then Applicant shall: cease all construction activity in the vicinity; notify the Planning Director; have the significance of the items determined by a qualified archeologist or cultural consultant; and take any further appropriate measures under the California Environmental Quality Act and other applicable laws with the Planning Director's approval. If human remains are encountered, state law requires that the County Coroner be called immediately. All work must be halted in the vicinity of the discovery until the Coroner's approval to continue has been received.

C. PUBLIC IMPROVEMENTS

1. PRIOR TO ISSUANCE OF A BUILDING PERMIT

- a. Street Improvements. Prior to the issuance of a building permit, the Public Works Director shall confirm that the building permit plans, specifications and information include detailed improvements for all street frontages of the project as indicated elsewhere in this document including, but not limited to, construction or reconstruction of the curbs, gutters, sidewalks, driveways, curb cuts, street lights and street trees in conformance with the City of Emeryville standards and the Americans with Disabilities Act and implementing regulations and California accessibility regulations, unless the Public Works Director determines that the curb, gutter and sidewalk are already in conformance and in good

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condition. There shall be an effective width of at least 4 feet between obstacles (light poles, street signs, pedestrian seating, building frontages, landscaping, curb, etc.). **[Public Works]**

- b. Site Grading and Storm Drainage. Development that contributes additional stormwater to an existing off-site drainage facility shall be required to perform a hydraulic review of the off-site drainage systems and shall be required to make improvements to the system as may be necessary to accommodate the additional stormwater flow **[Public Works]**
- c. Sanitary Sewer. Prior to the issuance of a building permit, the Public Works Director shall confirm that the building permit plans, specifications and information include detailed plans and design calculations for providing sewer service to the site. If an existing sanitary sewer lateral is to be reused, it shall comply with the City Sanitary Sewer Infiltration/Inflow Reduction Standards. As requested by the Public Works Director, Applicant shall be required to review the existing public sanitary sewer main to determine if there is sufficient capacity to serve the proposed project and shall be responsible to perform any off-site improvements that may be necessary to serve the proposed project. **[Public Works]**
- d. Underground Utility Lines. All new and existing on-site electrical and communication lines shall be placed underground.
- e. Improvement Agreement. Prior to the issuance of a building permit and as deemed appropriate by the Public Works Director, Applicant shall enter into an Improvement Agreement with the City of Emeryville to ensure the faithful performance of the design, construction, inspection and installation of all public improvements secured by good and sufficient surety bond or cash deposit adequate to cover all of the costs, inspections and administrative expenses of completing such improvement in the event of a default. **[City Attorney/Public Works]**

2. PRIOR TO BEGINNING CONSTRUCTION IN THE PUBLIC RIGHT OF WAY

- a. Encroachment Permit. Prior to beginning construction in the public right of way, Applicant shall apply for and receive an encroachment permit for

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all work and improvements within the City=s right of way or City easements. As required by the Public Works Director, Applicant shall post the required security and provide evidence of liability insurance as part of the encroachment permit process. Applicant shall pay for all inspection fees associated with work within the City=s right of way.
[Public Works]

3. PRIOR TO ISSUANCE OF A CERTIFICATE OF OCCUPANCY

- a. Completion of Public Improvements. Prior to issuance of a certificate of occupancy, the Public Works Director shall confirm that all off-site and on-site public improvements are completed in accordance with the final building permit and improvement plans or that other arrangements acceptable to the Public Works Director have been made for ensuring that the work is completed, such as an irrevocable standby letter of credit.
[Public Works]

4. ONGOING

1. Damage to Public Facilities. Applicant shall be deemed responsible for any damage to public improvements that occurs during construction and shall repair such damage at its expense and to the satisfaction of the Public Works Director, including but not limited to sidewalk repair, street slurry seal or street reconstruction.

D. PUBLIC SAFETY REQUIREMENTS

1. PRIOR TO ISSUANCE OF A BUILDING PERMIT

- a. Fire Department Standards. Prior to the issuance of a building permit, the Fire Department shall confirm that the final building plans include all fire and emergency safety measures as required by the Department, including access requirements, premises identification, key boxes, hydrants, fire protection systems and equipment and exiting and emergency illumination.
- b. Site Security Management Plan. Prior the issuance of a building permit, the Police department shall confirm that the plan meets all the department=s standard specifications including requirement of knox-boxes where applicable.

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2. PRIOR TO ISSUANCE OF A CERTIFICATE OF OCCUPANCY

- a. Site Security Management Plan. Prior to the issuance of a certificate of occupancy, Applicant shall submit a Site Security Management Plan for approval by the Police Department, including requirement knox-boxes which shall address **[Police]**
- b. Fire Department Standards. Prior to the issuance of a certificate of occupancy, the Fire Chief shall confirm compliance with the applicable Fire Department standards. **[Fire]**

3. ONGOING

- a. Compliance with Site Security Management Plan. Applicant shall comply with the approved Site Security Management Plan during operations. **[Police]**
- b. Compliance with Fire Department Standards. Applicant shall comply with the Fire Department Standards during operations. **[Fire]**

E. DESIGN CONDITIONS AND SITE STANDARDS

1. PRIOR TO ISSUANCE OF A BUILDING PERMIT

- a. Elevations/Colors/Materials/Site Plan. **[As applicable]** Prior to the issuance of a building permit, Applicant shall submit a color scheme, samples and details of all exterior elevations and building materials of sufficient size to the Planning Director for review and approval. Materials to be submitted shall include, but not be limited to, all perimeter gates and fences, window treatments, storefront windows and doors, awnings, outdoor furniture, paving and lighting fixtures. **[Planning]**
- b. Landscaping Plans.
 - i. Prior to the issuance of a building permit, Applicant shall submit a detailed on-site landscaping and irrigation plan for the approval of the Planning Director. The plans shall conform to Article 54 of Chapter 4 of Title 9 of the Municipal Code and Section B of the attached Stormwater Pollution Prevention and Source Control

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Measures. The plans shall include species, number of plantings, size of plantings and specifications for the irrigation system. Minimum plant sizes are flats or 1-gallon containers for ground cover, 5-gallon containers for shrubs and 24-inch box containers for trees, or as otherwise may be approved by the Planning Director. **[Planning]**

- ii. Prior to the issuance of a building permit, Applicant shall submit a detailed off-site landscaping and irrigation plan for the approval of the Public Works Director. The plans shall conform to Article 54 of Chapter 4 of Title 9 of the Emeryville Municipal Code and Section B of the attached Stormwater Pollution Prevention and Source Control Measures. The plans shall include species, number of plantings, size of plantings and specifications for the irrigation system. Minimum plant sizes are flats or 1-gallon containers for ground cover, 5-gallon containers for shrubs and 24-inch box containers for trees. Alternative minimum sizes may be approved by the Public Works Director. Street trees, or other landscaping (such as vines or shrubs) to achieve the canopy and shading goals of street trees, but which can survive and thrive in the site's high saline water table conditions over time and are appropriate to the soil conditions, salinity and water table in each location, shall be of a species approved by the Public Works Director and shall be spaced no farther than 25 feet on center or as approved by the Director. As part of the encroachment permit fees, the applicant will pay to have the City Consulting Arborist perform soil and drainage tests in the public right of way areas that will have tree plantings, or alternative landscaping. The City also requires the applicant to pay for the installation of structural soil or other such measures, as per City standards and in consultation with the arborist, under sidewalk areas, to provide adequate rootable soil volume areas for healthy street trees, where feasible given the local water table, salinity and soil conditions, or alternative landscaping. The report shall also discuss proper drainage that shall be provided for all street trees or alternative landscaping. All imported soils shall be tested, and the results provided to the City for approval before import. Import soil shall be amended with compost per city standards in place of other soil amendments. Street trees, or alternative landscaping, may require tree grates and an automatic sprinkler system with a "weather smart" controller per EBMUD's definition.

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Removal of any existing street trees shall comply with the provisions of Chapter 10 of Title 7 of the Emeryville Municipal Code, including, but not limited to, providing replacement trees of equal or cumulative diameter and/or payment of a replacement value fee as determined by a certified arborist, or combination thereof. The replacement trees shall be provided off-site but within the vicinity of the project site. **[Public Works]**

Note: The on-site and off-site landscaping and irrigation plans required by conditions (a) and (b) above may be combined into a single landscaping and irrigation plan showing both on-site and off-site improvements.

- c. Recycled Water. Prior to the issuance of a building permit, Applicant shall submit plans for the approval of the Planning Director showing the design of a plumbing system to serve nonpotable uses in common areas including, but not limited to, landscaped areas and planters, if recycled water is available at the project site at a reasonable cost, is of adequate quality, will not be detrimental to public health, and will not adversely affect downstream water rights, degrade water quality or injure plants, fish and wildlife. In addition, Applicant shall submit a letter from the recycled water provider (East Bay Municipal Utility District) stating requirements for recycled water plumbing, prior to issuance of building permit. If Applicant is not complying with the requirements of the recycled water provider, Applicant shall provide a written explanation of its actions. **[Planning]**
- d. Trash and Recycling Facilities. Prior to the issuance of a building permit, the Public Works Director shall review and approve the design and siting of trash and recycling facilities including the following elements:

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- **Maintenance and Service:** Trash storage and recycling areas shall include adequate space for the maintenance and servicing of containers for recyclable materials that are provided by local disposal and recycling companies. Sewer drains, fire sprinklers, enclosures, and roofing (if outdoors) shall be provided as per city standards.
- **Adequate Space for Trash and Recyclables:** The amount of space provided for the collection and storage of recyclable materials shall be at least as large as the amount of space provided for the collection and storage of trash materials and shall reflect the estimated volumes of trash and recyclable and compostable materials to be generated providing for the separate and dedicated containers for those materials with the goal of 25% or less of the total materials generated going to a landfill. An appropriately sized and designed area for wastes banned from regular trash containers such as electronics, fluorescent lamps and batteries shall be designated. Residential properties will also provide area for bulky item collection such as mattresses, furniture, tires and white goods.

- **Convenience and Accessibility:** The recycling area shall be at least as accessible and convenient for tenants and collection vehicles as the trash collection and storage area. If chutes are planned then separate, properly labeled (as per City Standards) and dedicated chutes must be provided for each and every collected stream of materials - not just for trash (non-recyclable and non-compostable materials.) The trash and recycling room(s) or areas shall be located on an exterior wall of the building (if indoors) with adequately sized door or gate access to the street through the wall so as to minimize distance for the collection vehicle personnel and eliminate temporary outdoor storage of containers on collection days. If the storage area is located outside, then it must be easily accessible by the collection vehicles. If the day-to-day-use trash and recycling area(s) cannot be located adjacent to the street, then service-day locations easily accessible by the collection vehicle staff, must be provided in an area on-site as per city standards in enclosures completely screened and covered from off-site view by a solid fence or masonry wall at least six feet high and in harmony with the architecture of the building(s) The applicant shall provide a diagram with the site and how vehicles will access and empty the various discarded material containers. **[Public Works]**

- e. **Development Sign.** The project is allowed one development sign indicating developer, architect, contractor, etc. during construction that shall not exceed twelve square feet. Other development/marketing signs may be approved administratively by the Planning Director provided that

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they are removed prior to issuance of a final certificate of occupancy.
[Planning]

- f. Exterior Lighting. Prior to issuance of a building permit, Applicant shall provide sufficient information for the Planning Director to confirm that exterior lighting for the project complies with the following standards and criteria: **[Planning]**
 - i. Parking area illumination shall conform to the requirements of Article 55 of Chapter 4 of Title 9 of the Emeryville Municipal Code.
 - ii. Light fixtures attached to buildings shall be designed as an integral part of the building facades to highlight building forms and architectural details.
- g. Noise. Prior to the issuance of a building permit, the Building Official shall confirm that the project is designed in order to limit noise exposure to those levels set forth in the Emeryville Municipal Code and General Plan. **[Building]**

2. PRIOR TO ISSUANCE OF A CERTIFICATE OF OCCUPANCY

- a. Sign Permit. Applicant shall apply for a sign permit for any proposed signs not included in this approval, in accordance with the Sign Regulations at Article 61 of Chapter 4 of Title 9 of the Emeryville Municipal Code. **[Planning]**
- b. Master Sign Program. Applicant shall apply for a master sign program in accordance with the Section 9-4.61.3(e)(3) of the Emeryville Municipal Code. The master sign program shall be reviewed and approved by the Planning Commission prior to implementation. Applicant shall submit to the Planning Director an overall tenant sign handbook, detailing sign requirements, restrictions, dimensions, colors, materials, approval procedures, prohibited signs, a protocol for temporary signs and other specifications for the long-term operations of the sign program. When a specific sign design is submitted to the Planning Department for approval, the sign application shall indicate how the sign is consistent with the approved master sign program. **[Planning]**

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c. Completion of Landscaping.

- i. Prior to issuance of a certificate of occupancy, the project landscape architect shall confirm to the Planning Director that all on-site landscaping is completed and in accordance with the final building permit and improvement plans, including off-site and public improvements, or that other acceptable arrangements acceptable have been made for ensuring that the work is completed, such as an irrevocable standby letter of credit to cover all costs of the unfinished work plus 25 percent. **[Planning]**
- ii. Prior to issuance of a certificate of occupancy, the project landscape architect shall confirm to the Public Works Director that all off-site landscaping is completed and in accordance with the final building permit and improvement plans, including off-site and public improvements, or that other acceptable arrangements acceptable have been made for ensuring that the work is completed, such as an irrevocable standby letter of credit to cover all costs of the unfinished work plus 25 percent. **[Public Works]**

d. Equipment/Storage. Prior to issuance of a certificate of occupancy, the Planning Director shall confirm that: **[Planning]**

- i. All mechanical equipment, including electrical and gas meters, heating/air conditioning or ventilation units, radio/TV antennas or satellite dishes shall be appropriately screened from off-site view, and electrical transformers shall be either placed underground or appropriately screened.
- ii. All trash enclosures shall be completely screened and covered from off-site view by a solid fence or masonry wall at least six feet high and in harmony with the architecture of the building(s). Alternatively, the trash facilities may be placed within the building.
- iii. All visible vents, gutters, down spouts, flashings, and the like shall match the color of adjacent surfaces or shall be incorporated into the overall exterior color and materials scheme for the building.

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3. ONGOING

- a. Landscaping. All landscaping improvements shall be maintained in a healthy, growing condition at all times. The landscaped areas shall be irrigated by an automatic sprinkler system designed to reduce water usage. Applicant shall replace all landscaping that dies with the exact living species, or substitutes approved by the Planning Director.
- b. No Outside Storage. There shall be no outside storage of any type in parking areas. Those areas shall be kept free of obstruction and available for their designated use at all times. Boats, trailers, camper tops, inoperable vehicles and the like shall not be parked or stored on the parking areas.
- c. Maintenance and Graffiti Removal. The site and improvements shall be well maintained and kept free of litter, debris, weeds and graffiti. Any graffiti shall be removed within 72 hours of discovery in a manner which retains the existing color and texture of the original wall or fence as most practically feasible.
- d. Noise. The project shall operate in order to limit noise exposure to those levels set forth in the Emeryville Municipal Code and General Plan.
- e. Exterior Lighting. Exterior lighting shall provide adequate illumination for on-site security and display purposes for the building, parking lots and pedestrian accessways while limiting off-site spillover of light through shielding. No light shall create a hazard for auto drivers.
- f. Real Estate Signs in Public Right-of-Way. Pursuant to Section 9-4.61.3(f) of the Emeryville Municipal Code, temporary directional real-estate signs indicating that a residential dwelling is open for public inspection, containing primarily the words "open house," the address of the property and the name of the firm to contact, on an "A" frame sign with no more than four square feet of sign area on each of two sides, may be placed off-site on public property on Saturdays and Sundays between the hours of 12:00 noon and 6:00 p.m., and are exempt from design review permits. Such signs are not allowed on public property, on-site, or elsewhere at any other time.

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F. STORMWATER

1. GENERAL.

- a. Design, Construction, Operation, and Maintenance. The project shall be designed, constructed, operated, and maintained in conformance with the attached “Stormwater Pollution Prevention and Source Control Measures” (“Stormwater Measures”) and the City’s “Stormwater Guidelines for Green Dense Redevelopment” (“Stormwater Guidelines”).
- b. Cost Recovery. The applicant shall pay cost recovery fees related to the verification of permanent stormwater treatment drainage facilities planned and implemented on the site. Fees will be charged for plan check and engineering analysis of stormwater treatment system, inspection during construction of stormwater treatment facilities, and inspection before the issuance of the certificate of occupancy to verify that the stormwater treatment systems are properly functioning. Applicant shall also permit city representatives to perform inspection of said treatment facilities to enter the property during and after construction to perform said duties **[Public Works]**

2. PRIOR TO ISSUANCE OF A BUILDING PERMIT.

- a. Compliance with Stormwater Measures. Prior to the issuance of a building permit, the applicant shall submit plans as part of the building permit package, showing how the project complies with the attached Stormwater Measures, in particular with the provision C.3 requirements of the City’s NPDES Stormwater Permit and with plans and calculations showing how the project meets the numeric hydraulic sizing requirements as described in Section A of the attached Stormwater Measures. The applicant shall also provide calculations showing the percentage of percentage of on-site stormwater treatment through mechanical means and percentage of on-site treatment through vegetative means. If a portion of on-site stormwater treatment is through mechanical means, then the applicant shall provide justification as to why all on-site treatment by vegetative means is not feasible. **[Public Works]**
- b. Site Grading and Storm Drainage. Prior to the issuance of a building permit, the Public Works Director shall confirm that the building permit plans, specifications and information include detailed site drainage, grading plans and hydraulic calculations in conformance with the City=s

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stormwater runoff requirements and specifications. All runoff from the site shall be intercepted at the project boundary and shall be collected and conducted via an approved drainage system through the project site to an approved public storm drain facility. Roof drainage from the structure shall be collected via a closed pipe facility to an approved drainage facility. No concentrated drainage of surface flow across sidewalks shall be permitted. Grading and drainage plans shall conform to Section A of the attached Stormwater Measures. **[Public Works]**

- c. Site Plan. The site plan shall conform to Section B of the attached Stormwater Measures. **[Public Works]**
- d. Operations and Maintenance Agreement. Prior to the issuance of a building permit, Applicant shall enter into a Stormwater Treatment Measures Operation and Maintenance Agreement with the City of Emeryville to ensure the faithful performance of the design, construction, operation, and maintenance of the stormwater treatment systems. **[City Attorney/Public Works]**
- 3. DURING CONSTRUCTION. Applicant and contractor shall comply with Section C of the attached Stormwater Measures. **[Public Works]**
- 4. PRIOR TO THE ISSUANCE OF CERTIFICATE OF OCCUPANCY
 - a. Commitment to the Stormwater Pollution Prevention Practices. Prior to the issuance of a certificate of occupancy, Applicant shall submit evidence of commitment to the stormwater pollution prevention practices, as detailed in Section D of the attached Stormwater Measures. **[Public Works]**
 - b. Completion of Construction of Stormwater Treatment Systems. Prior to issuance of a certificate of occupancy, the Public Works Director shall confirm that the stormwater treatment systems are properly installed and functioning. **[Public Works]**
 - c. ONGOING. The owner/operator of the facility shall permit, in perpetuity, allow city representatives to enter the property during and after construction in order to perform periodic inspection of stormwater treatment facilities.

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G. FUTURE LAND USE APPROVAL PROCEDURES

1. BUSINESS LICENSE REQUIREMENT. Land use approvals do not abrogate the City's requirement for any business operating within the City to have a business tax certificate ("business license"), nor for a specific operator to obtain a cabaret or dance hall license issued through the Police and Finance Departments and approved by the City Council.
2. ACTIVITIES OUTSIDE OF BUILDING. No sales of merchandise or services, nor any business activity related to any retail or commercial space, shall take place outside of the building or in any retail kiosk without prior approval of the Director of Planning and Building.