



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** March 21, 2017

**TO:** Carolyn Lehr, City Manager

**FROM:** Charles S. Bryant, Community Development Director

**SUBJECT:** Resolution Of The City Council Of The City Of Emeryville Approving A Transportation Facility Impact Fee Credit Of \$500,000 To Wareham Property Group, On Behalf Of ES West Associates, LLC, For The EmeryStation West/Transit Center Project

## RECOMMENDATION

Staff recommends that the City Council grant to Wareham Property Group, on behalf of ES West Associates, LLC, a Transportation Facility Impact Fee credit of \$500,000 for the EmeryStation West/Transit Center Project. Alternatively, the Council may wish to consider granting a credit of the entire impact fee of \$728,633.13, or some other amount up to \$728,633.13.

## DISCUSSION

At its January 17, 2017 meeting, the City Council directed staff to develop options for the Council to consider, and to make a recommendation. In addition, the Council directed staff to provide a legal analysis of the validity of the fee credit request in light of the fact that the project was approved under prior regulations, and further information on staff's discussions with Wareham on fees for the project. Staff also felt that it would be helpful to provide a brief history of this complex project. These issues are summarized below, with further information and elaboration contained in the attachments. The staff report and attachments from the January 17, 2017 meeting are included for reference as Attachment 1. Wareham's recent letter requesting a refund of \$500,000 is contained in Attachment 2, and current estimated site remediation costs are shown in Attachment 3. A legal analysis is included in Attachment 4, discussions with Wareham are described in Attachment 5, and a history of the project is included as Attachment 6.

## Options and Recommendation

Staff has identified the following three options for the City Council to consider in response to this request for a credit and refund of the Transportation Facility Impact Fee:

1. Approve a fee credit and refund of \$500,000 as requested by Wareham.
2. Approve a fee credit and refund of the full amount of \$728,633.13.
3. Approve a fee credit and refund of some other amount up to \$728,633.13.

The three options are discussed below. Staff recommends Option 1.

Option 1. Approve a Credit and Refund for \$500,000. Wareham has submitted a letter dated March 1, 2017 requesting a fee credit/refund of \$500,000 (see Attachment 2). Staff feels that this request can be justified based on the following analysis:

As noted in the January 17, 2017 staff report, the Transit Center Plaza and Platform Extension includes a developer contribution of \$208,420. In addition, while the \$4.2 million cost of the Public Parking and Bus Bays at Transit Center is 100% grant-funded in the Capital Improvement Program (CIP), its construction valuation, as estimated by the Building Division, is about \$5.9 million with the additional \$1.7 million funded by Wareham. However, it should be noted that, in addition to providing public parking and bus bays, the podium also includes approximately 23 private parking spaces, trash and other services areas, and the lobby for the Research & Development building above, as well as serving as the foundation for the R&D tower, and so is built to a higher standard than if it were a stand-alone structure. Thus, it could be argued that Wareham's estimated contribution of approximately \$1.7 million to the podium structure is entirely to serve their own development, and not to serve the public parking and bus bays. However, it may be assumed that at least a portion of this \$1.7 million Wareham contribution is to cover the increased cost of the public parking and bus bays since the cost estimates for the project were originally developed.

In addition, the cost of site remediation has increased since the original estimates were developed. According to the CIP, the cost of site remediation is \$4,230,952, to be funded by the Redevelopment Agency. However, the most recent estimate submitted by Wareham is \$9,281,801, an increase of 119% (see Attachment 3). While CBS (successor to Westinghouse, the original property owner) is funding one-third of the clean-up costs, Wareham is ultimately obligated to pay CBS back. Thus, it could be argued that these increased clean-up costs are entirely Wareham's responsibility. Wareham has noted that, even if the Public Parking and Bus Bays project were a stand-alone building without a research and development tower on top of it, the site would still have to be remediated at the same cost. In addition, the Platform Extension required Wareham, at their own expense, to modify the underground bentonite wall that serves as a groundwater barrier between the Mound Site and the railroad. Thus, Wareham has incurred substantial costs for site remediation that can be directly attributed to the two public facilities associated with the project that are eligible for funding from the Transportation Facility Impact Fee.

Attributing \$291,580 of these costs to the requested credit/refund, in combination with the \$208,420 developer contribution for the Transit Center Plaza and Platform Extension facility, would justify the requested credit/refund of \$500,000.

Option 2. Approve a Credit and Refund for the Full Amount of \$728,633.13. This option assumes that Wareham's \$1.7 million contribution to the podium structure and increased site remediation costs includes at least \$520,213.13 that benefited the Public Parking and Bus Bays facility, with the other \$208,420.00 attributable to the Transit Center Plaza and Platform Extension facility developer contribution.

Option 3. Approve a Credit and Refund of Some Other Amount Up to \$728,633.13. If the Council wishes to grant a credit and refund for some other amount up to \$728,633.13, it could be assumed that a portion of Wareham's contributions to the podium structure and increased site remediation costs benefited the Public Parking and Bus Bays facility, but in a lesser amount than identified in Option 2.

Staff recommends the first option. Analysis shows that Wareham has spent well over \$500,000 on expenses that would otherwise be eligible for funding by the Transportation Facilities Impact Fee. A resolution to this effect is attached; however, the dollar amount in the resolution can be modified depending on the Council's decision.

### **Legal Analysis**

The legal analysis involves consideration of several related provisions of the Planning Regulations, as well as the project conditions of approval. In essence, the regulations say that projects approved under prior regulations are still valid and subject to their conditions of approval. The conditions of approval of the EmeryStation West/Transit Center project include estimated fees to be paid at the time of building permit issuance, with a caveat that the fees will be recalculated when they are due. The Article on Development Impact Fees in the current Planning Regulations stipulates that a project is obligated to pay the impact fees unless the project is granted a fee credit, and that the fees must be paid upon the issuance of the project's building permit. Taking all of these factors together, and exercising his responsibility to interpret the Planning Regulations, the Community Development Director has determined that the EmeryStation West/Transit Center project is subject to the current regulations pertaining to Development Impact Fees, including the provision for a potential fee credit. Please see attachment 4 for a detailed analysis of the legality of the refund/credit request.

### **Discussions with Wareham**

Since the summer of 2015, staff has had ongoing discussions with Wareham about the fees for the EmeryStation West/Transit Center Project, including the potential for a credit of the Transportation Facility Impact Fee. This included three meetings between Wareham and the City Manager and Community Development Director, the first on August 24, 2015, the second on October 11, 2016, and the third on February 22, 2017, following the Council's initial deliberations on this issue on January 17, 2017. At the first meeting, staff provided updated fee estimates for the project and information on a potential credit of the Transportation Facility Impact Fee. The Wareham representatives all assert that the Community Development Director said at that meeting that the project would get a fee credit and would not have to pay the Transportation Facility Impact Fee. The City Manager and Community Development Director recall that information was provided to Wareham about how they could go about applying for a fee credit, but not that they were told that would not have to pay the fee. This information was clarified at the second meeting, at which Wareham indicated that they would wait to see the final fee calculations before deciding whether to pursue a fee credit request from the City Council. On November 2, 2016, Wareham paid all of the building permit fees for the project,

including a Transportation Facility Impact Fee of \$728,633.13, and submitted a letter requesting that staff pursue a fee credit request for this amount with the City Council. At the third meeting on February 22, 2017, Wareham indicated that they would be submitting a formal request for a refund of \$500,000, and offered additional information regarding their costs associated with site cleanup, which justify a refund of this amount. Staff's discussions with Wareham are explained in detail in Attachment 5.

### **History of Project and Cost Increases**

The Emeryville Amtrak station was built in 1990, and, in the early 2000s, the City began planning for a "Transit Center" on the adjacent surface parking lot, called the Mound Site, to include public parking and bus facilities. In 2003, the Planning Commission considered a proposal for a parking garage with bus facilities and rejected the idea as not being intense enough for the site. The City then embarked on studies of possible mixed-used projects, including housing or commercial space. In 2004, the City Council selected Wareham to develop a mixed use project on the site. A number of iterations were developed by Wareham and considered by the Planning Commission and City Council over the next several years, ultimately resulting in a 250,000 square foot office/lab building over a two-level parking podium with bus bays on the Mound Site, and a 675-space, 7-level garage diagonally across Horton Street on the Heritage Square parking lot site. This project was approved by the City Council on February 16, 2010. Following lengthy delays related to funding for the project and site remediation, clean-up of the site began in May 2015, and building permits for the two new structures were issued in 2016. Both are now under construction. Since the project was approved in 2010, the cost of site remediation more than doubled, as discussed above under "Options and Recommendations", and development impact fees went from about \$195,000 to about \$2.5 million, an increase of 1,183%. Please see Attachment 6 for further details about the history of the project and associated cost increases.

### **FISCAL IMPACT**

As noted in the January 17, 2017 staff report, granting a Transportation Facility Impact Fee credit to this project will result in a refund of fees already paid, and will reduce the balance in the Transportation Impact Fee Fund (Fund 250) by the refunded amount. However, there will still be sufficient funds available for the 12 other CIP projects that are funded by the Transportation Facility Impact Fee, although the remaining balance in the fund will be reduced from a little over \$1 million to about \$290,000 if the full credit and refund is granted. If a lesser amount is credited and refunded, the remaining balance in the fund will be more.

### **LEGAL CONSIDERATIONS**

The City Attorney has reviewed this report and accompanying resolution.

## CONCLUSION

Staff recommends that the City Council choose Option 1 above and grant to Wareham Property Group, on Behalf of ES West Associates, LLC, a credit and refund of \$500,000 of the \$728,633.13 Transportation Facility Impact Fee already paid for the EmeryStation West/Transit Center project. Alternatively, the Council may wish to consider granting a credit of the entire impact fee of \$728,633.13, or some other amount up to \$728,633.13. The attached resolution can be modified if the Council decides on an amount other than the recommended \$500,000.

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



Carolyn Lehr, City Manager

## Attachments:

### Draft Resolution

1. Staff Report and Attachments from January 17, 2017
2. Request Letter from Wareham dated March 1, 2017
3. Site Remediation Cost Summary dated December 27, 2016
4. Legal Analysis of Application
5. Discussions with Wareham
6. History of Project and Cost Increases