

**RESOLUTION NO. 17-\_\_\_\_**

**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**

**WHEREAS**, the EmeryStation West/Transit Center project was approved by the City Council of the City of Emeryville by Resolution No. 10-33 on February 16, 2010, which included a development bonus for building height over 100 feet; and

**WHEREAS**, a building permit was issued for the project on November 4, 2016 upon the payment of \$4,338,014.30 in fees by Wareham Property Group, on behalf of ES West Associates, LLC ("Wareham"), which included a Transportation Facility Impact Fee of \$728,633.13; and

**WHEREAS**, concurrently on November 4, 2016, Wareham submitted a letter requesting a credit and refund of the Transportation Facility Impact Fee of \$728,633.13; and

**WHEREAS**, on March 1, 2017, Wareham submitted a letter requesting a reduced credit and refund of the Transportation Facility Impact Fee of \$500,000; and

**WHEREAS**, the EmeryStation West/Transit Center project provides two public facilities that are eligible for funding by the Transportation Facility Impact Fee, namely (1) Transit Center Plaza and Platform Extension, for which \$208,420 is included in the Transportation Facility Impact Fee, and (2) Public Parking and Bus Bays at Transit Center for which \$4,200,048 is included in the Transportation Facility Impact Fee; and

**WHEREAS**, these public facilities are not being funded by the Transportation Facility Impact Fee, but are being partially funded by Wareham in the amount of approximately \$208,420 for the Transit Center Plaza and Platform Extension, and approximately \$291,580 for the Public Parking and Bus Bays; and

**WHEREAS**, Section 9-5.1911 of the Emeryville Municipal Code, entitled "Application for Potential Credit" provides that an applicant may request that the City Council approve a development impact fee credit for a development project that includes the construction of public facilities that would otherwise be eligible for funding by the impact fee, but that an applicant is not entitled to a fee credit if a development bonus was received for providing the same public facilities for which a fee credit is claimed; and

**WHEREAS**, although the development bonus awarded to the project was partly based on the plaza, platform extension, and public parking that are eligible for funding by the Transportation Facility Impact Fee, it was also based on other public benefits in the areas of Public Open Space, Public Right-of-Way Improvements, Alternative Energy, and Transportation Demand Management, which are not eligible for funding by the

Transportation Facility Impact Fee, and which alone would have been sufficient to make the project eligible for a development bonus for building height over 100 feet, and the project is therefore not precluded from receiving a development impact fee credit pursuant to Emeryville Municipal Code Section 9-5.1911; now, therefore be it

**RESOLVED**, that the City Council of the City of Emeryville hereby finds that it is in the City's best interest to allow the applicant to provide the proposed specified public facilities, and that the applicant is therefore entitled to credit against fees otherwise owed; and be it further

**RESOLVED**, that the City Council of the City of Emeryville hereby approves a credit against the Transportation Facility Impact Fee in the amount of \$500,000 for the EmeryStation West/Transit Center project and directs that a refund in that amount be provided to Wareham Property Group on behalf of ES West Associates, LLC.

**ADOPTED** by the City Council of the City of Emeryville at a regular meeting held Tuesday, March 21, 2017, by the following vote:

AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_  
ABSENT: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

APPROVED AS TO FORM:



\_\_\_\_\_  
CITY ATTORNEY