

**WAREHAM**  
PROPERTY GROUP

BY GOLDEN STATE OVERNIGHT

September 26, 2016

Mr. Charles Bryant  
Planning Director  
City of Emeryville  
1333 Park Avenue  
Emeryville, CA 94608

Re: EmeryStation West/Transit Center

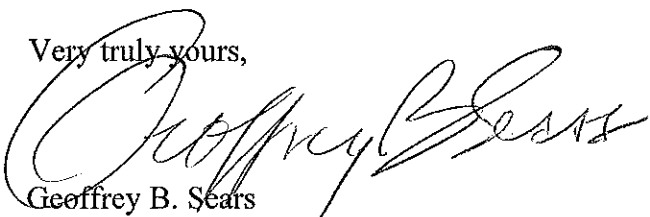
Dear Charlie:

Some time ago you met with me, Rich Robbins and then City Manager, Sabrina Landreth, in Sabrina's offices, to discuss the permitting fees for our new project EmeryStation West. We were concerned at the extent of City fee increases that had occurred since the project had been approved in 2010. The dismantling of Redevelopment and the lawsuit between City and State Department of Finance had materially delayed key public funding assistance for the project. During this delay period City fees had raised many-fold, which cost increase itself hurt the project's feasibility and likelihood of actually happening.

At that meeting you very helpfully pointed out that under Section 9-5.1911 of the Emeryville Planning Regulations, because our project was supported by public funds and included public benefit components beyond normal requirements (refer to Finding #2 in Section 4 of the attached Resolution #10-33), our project would qualify for a credit back of the normally-accessible Transportation Facility Fee. All of the attachments were documents you highlighted in yellow and gave us in that meeting. At the time, the latest estimate of that fee was \$682,825 per the August 24, 2015 preliminary fee estimate created by your department (copy attached).

We are finalizing the actual permit fee calculation with Giyan and the Building Department right now, hoping to bring in a sizeable check and pull our permit in the near future. We have mentioned this fee credit to Giyan, but know he will need it confirmed by you. Please let me know if there are any questions or concerns.

Very truly yours,



Geoffrey B. Sears

WAREHAM PROPERTY GROUP  
On behalf of EmeryStation West, LLC

Enclosures

cc: Rich Robbins

**Exhibit A to  
Attachment 5**

#### **9-5.1911 Application For Potential Credit.**

An applicant may be eligible for a credit against impact fees otherwise owed, in return for providing a specified public facility to the City, only if the applicant submits a written application to the Director which establishes compliance with all of the following requirements to the satisfaction of the City Council:

- (a) Describe the specified public facilities (or portion thereof) proposed to be provided by the applicant, with a cross-reference to the description of the specified public facilities in the relevant implementing resolution.
- (b) Identify the estimated cost of providing the specified public facilities (including construction, design, and/or land acquisition) for which the applicant is requesting credit.
- (c) Describe the project or projects to which the fee credit is requested to apply. The description shall be limited to all or a portion of the project for which specified public facilities are a condition of approval.
- (d) Document that either: (1) the applicant is required, as a condition of approval for the project, to construct the specified public facilities; or (2) the applicant requests to build one or more specified public facilities which benefit the project, and the City Council determines by resolution prior to the commencement of construction that it is in the City's best interests for the specified public facilities to be built by the applicant.

- (e) To the extent that credit for land acquisition costs are requested, document that: (1) the location of the land is advantageous to the public facility needs of the City; and (2) the amount of credit for the land acquisition is equal to a reasonable estimate of the fair market value of the land based upon either: (A) documentation provided by the applicant to the City, or (B) in the event that the City determines that the documentation provided by the applicant does not provide a reasonable basis for determining the fair market value of the land, the applicant shall pay for the costs of a property appraisal by an expert selected by the City which is qualified to express an opinion as to the value of the property (pursuant to [Cal. Civ. Proc. Code § 1255.010](#)).
- (f) Notwithstanding the foregoing, no credit shall be provided against impact fees otherwise owed if an applicant has received a development bonus in accordance with [Section 9-4.204](#) of these Planning Regulations for providing the specified public facility.

#### **9-5.1912 Timing of Application For Potential Credit.**

The application for credit shall be submitted by the applicant to the Director in accordance with the following timing requirements: (a) to the extent that the applicant requests credit for design or construction, the application shall be submitted concurrently with the submittal of improvement plans; (b) to the extent that the applicant requests credit for land dedication, the application shall be submitted prior to the recordation of a final map or parcel map for the project. The applicant may submit a late application only if the applicant establishes, to the satisfaction of the City, that, in light of new or changed circumstances, it is in the City's best interests to allow the late application.

#### **9-5.1913 Amount of Potential Credit.**

In the event that the City determines that the applicant has submitted a timely application in compliance with [Section 9-5.1912](#), and it is in the City's best interest to allow the applicant to provide the proposed specified public facility, the applicant shall be entitled to credit against fees otherwise owed in accordance with this Article; provided, that the applicant enters into a public improvement agreement with the City approved by resolution of the City Council which includes the following essential terms:

- (a) The design of the specified public facility is approved by the City.
- (b) The applicant agrees to provide the specified public facilities in return for the credit to be allocated in accordance with the terms of the public improvement agreement and this Article.
- (c) The amount of credit available to the applicant shall not exceed the lesser of: (1) the applicant's actual cost of providing the specified public facility, to be evidenced by the submittal of written documentation to the satisfaction of the City, and (2) the estimated cost of providing the specified public facility, as identified in the implementing resolution.
- (d) The amount of credit available to the applicant for land dedication shall be equal to the amount identified in [Section 9-5.1911\(e\)](#).
- (e) The land to be dedicated to the City shall not contain hazardous substances, waste or materials, as defined by state or federal law, including petroleum, crude oil or any



fraction thereof, or shall otherwise be remediated in accordance with a cleanup plan approved by the City and applicable state or federal regulatory agencies to a level suitable for the intended use. Further, the applicant shall agree to thereafter defend, indemnify, and hold the City harmless from all demands, claims, orders, costs, expenses, fees, penalties, and causes of action related to hazardous substances, waste or materials, as defined by state or federal law, including petroleum, crude oil or any fraction thereof, located on or emanating from the property.

- (f) The applicant provides improvement security in a form and amount acceptable to the City.
- (g) The applicant agrees to pay prevailing wages for all public works as defined in the California Labor Code related to the specified public facility. The requirement for payment of prevailing wages shall be limited to the construction of the specified public facility for which a fee credit is granted, unless an exception to prevailing wage requirements applies under the California Labor Code, in which case the requirement for prevailing wages shall not apply.
- (h) The applicant identifies the project to which the credit will be applied.
- (i) The credit may only be applied to fees which would otherwise be owed for the public facility category relevant to the specified public facility.

## PROJECT

EmeryStation West / Transit Center - 5959 Horton

## PRELIMINARY FEE CALCULATIONS

Valuation

\$ 64,151,866.98

Print Date: August 24, 2015

From Christie Bryant

SUMMARY OF ALL FEES	FEES	PAYMENT DATE	AMOUNT PAID	AMOUNT DUE	NOTES
Building Permit Fee	\$ 641,518.67			\$ 641,518.67	*Assumed multiple permits
Plan Review Fee	\$ 416,987.14			\$ 416,987.14	*Added 25% Permit Fees
Energy Review Fee	\$ 80,189.83			\$ 80,189.83	*for Phased Permits
Electrical Permit Fee	\$ 128,303.73			\$ 128,303.73	*
Plumbing Permit Fee	\$ 115,473.36			\$ 115,473.36	*
Mechanical Permit Fee	\$ 109,058.17			\$ 109,058.17	*
S.M.I.P.	\$ 17,962.52			\$ 17,962.52	
Microfiche	\$ 6,415.19			\$ 6,415.19	*
Fire Department Fees	\$ 224,531.53			\$ 224,531.53	*
Fire Suppression Fees	\$ -			\$ -	Under separate permit
Sewer Connection Fees	\$ -			\$ -	Not enough info - @\$249/trap
Bay-Shell-Mound Contingent Fees				\$ -	Cat VI to VI - No Fees
Transportation Facility	\$ 682,825.00			\$ 682,825.00	FY 15-16 R&D @ \$2.75/sq ft
School Fees	\$ 116,701.00			\$ 116,701.00	
Art In Public Places	\$ 641,518.67			\$ 641,518.67	
Technology Fee	\$ 64,151.87			\$ 64,151.87	
Building Standards Commission Fee	\$ 2,567.00			\$ 2,567.00	
General Plan Maintenance Fee	\$ 320,759.33			\$ 320,759.33	
Affordable Housing Fee	\$ 1,018,030.00			\$ 1,018,030.00	FY 15-16 R&D @ \$4.10/sq ft
Parks and Recreation Fee	\$ 640,614.00			\$ 640,614.00	FY 15-16 R&D @ \$2.58/sq ft
<b>TOTAL:</b>	<b>\$ 5,227,607.02</b>		<b>\$ -</b>	<b>\$ 5,227,607.02</b>	<b>5,227,607.02</b>

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## FEES TO BE PAID AT PLAN CHECK SUBMITTAL:

Plan Review Fee	\$ 416,987.14		\$ -	\$ 416,987.14
Energy Review Fee	\$ 80,189.83		\$ -	\$ 80,189.83
Other Fees	**			
<b>Sub Total:</b>	<b>\$ 497,176.97</b>		<b>\$ -</b>	<b>\$ 497,176.97</b>

## FEES TO BE PAID AT PERMIT ISSUANCE:

Building Permit Fee	\$ 641,518.67		\$ -	\$ 641,518.67
Electrical Permit Fee	\$ 128,303.73		\$ -	\$ 128,303.73
Plumbing Permit Fee	\$ 115,473.36		\$ -	\$ 115,473.36
Mechanical Permit Fee	\$ 109,058.17		\$ -	\$ 109,058.17
S.M.I.P.	\$ 17,962.52		\$ -	\$ 17,962.52
Microfiche	\$ 6,415.19		\$ -	\$ 6,415.19
Fire Department Fees	\$ 224,531.53		\$ -	\$ 224,531.53
Fire Suppression Fees	\$ -		\$ -	\$ -
Sewer Connection Fees	\$ -		\$ -	\$ -
Bay-Shell-Mound Contingent Fees	\$ -		\$ -	\$ -
Transportation Facility	\$ 682,825.00		\$ -	\$ 682,825.00
School Fees	\$ 116,701.00		\$ -	\$ 116,701.00
Art In Public Places	\$ 641,518.67		\$ -	\$ 641,518.67
Technology Fee	\$ 64,151.87		\$ -	\$ 64,151.87
Building Standards Commission Fee	\$ 2,567.00		\$ -	\$ 2,567.00
General Plan Maintenance Fee	\$ 320,759.33		\$ -	\$ 320,759.33
Affordable Housing Fee	\$ 1,018,030.00		\$ -	\$ 1,018,030.00
Parks and Recreation Fee	\$ 640,614.00		\$ -	\$ 640,614.00
<b>Sub Total:</b>	<b>\$ 4,730,430.05</b>		<b>\$ -</b>	<b>\$ 4,730,430.05</b>

See note(s) below

Encroachment, Stormwater &amp; PSL Fees See separate Fee Chart by Public Works for additional fees

{Calculated By Public Works}

Notes: This is a PRELIMINARY fee calculation for estimating purposes only. Fees will be recalculated at the time of submittal, prior to permit issuance and at any time when the scope of work is revised (including: type of construction, # of stories, floor area, declared valuation, and use).



# **CITY OF EMERYVILLE CALCULATION OF BUILDING FEES:**

**PROJECT:** EmeryStation West / Transit Center - 5959 Horton St      **PRELIMINARY FEE CALCULATIONS**  
**DATE:** August 24, 2015  
**PREPARED BY:** Courtney & Giyan (Revised Development Impact Fees)

**FEES ARE BASED UPON THE VALUATION OF THE PROJECT. "VALUATION OF A BUILDING SHALL BE THE ESTIMATED COST TO REPLACE THE BUILDING AND STRUCTURE IN KIND, BASED ON CURRENT COSTS .... "**

**This fee calculation is based upon the information submitted to the Building Department.**

<b>FEES BASED ON VALUATION OF:</b>			<b>\$</b>	<b>64,151,866.98</b>
<b>TYPE OF PERMIT OR FEE</b>			<b>AMOUNT</b>	
BUILDING PERMIT FEE (See calculation below)			\$	641,518.67
PLAN REVIEW FEE (65% of Building Permit Fee / 50% for Residential < )			\$	416,987.14
ENERGY CONSERVATION REVIEW FEE (12.5% of Building Permit Fee)			\$	80,189.83
ELECTRICAL PERMIT FEE (20% of Building Permit Fee)			\$	128,303.73
PLUMBING PERMIT FEE (18% of Building Permit Fee)			\$	115,473.36
MECHANICAL PERMIT FEE (17% of Building Permit Fee)			\$	109,058.17
S.M.I.P. ( Res. <= 3 story = 0.00013 or 0.00028 of the Valu.)			\$	17,962.52
MICROFICHE	Valuation < \$ 100,000 = \$ 1.00/ Page.	# of Pages		
	Valuation > \$ 100,000 = 1% of Bldg. Permit Fee	Bldg.. Permit Fee * 1%	\$	6,415.19
FIRE DEPARTMENT FEES ( New Construction, T.I's - 35% of Building Permit Fee)			\$	224,531.53
FIRE SUPPRESSION FEES - Separate Submittal - (See calculation below)				
SEWER CONNECTION FEE * \$249.00 per Trap or \$1244.00 per Dwelling Unit	New traps - traps removed		\$	-
	Number of Dwelling Units			
BAY SHELLMOUND FEES			\$	-
TRANSPORTATION (effective July 1, 2015)			\$	682,825.00
EMERY UNIFIED SCHOOL DISTRICT FACILITIES DEVELOPMENT FEE (See calculation below)			\$	116,701.00
ART IN PUBLIC PLACES (Commercial Projects > \$300k valu. Artwork or in-lieu fee -1% of valu.)			\$	641,518.67
TECHNOLOGY FEE (Effective February 3, 2010 - 0.1% of Valuation)			\$	64,151.87
BUILDING STANDARDS COMMISSION FEE (\$ 1.00 per \$ 25k Valuation)			\$	2,567.00
GENERAL PLAN MAINTENANCE FEE (Effective May 20, 2004 - 0.5% of Valuation)			\$	320,759.33
AFFORDABLE HOUSING (effective July 1, 2015)			\$	1,018,030.00
PARKS AND RECREATION (effective July 1, 2015)			\$	640,614.00
<b>TOTAL</b>			<b>\$</b>	<b>5,227,607.02</b>

\* Unable to determine the sewer connection fees at this time with the information provided.

FEES ARE BASED ON THE USE, GROSS FLOOR AREA, TYPE OF CONSTRUCTION, NUMBER OF STORIES, AND NUMBER OF PLUMBING TRAPS. IF ANY OF THESE FACTORS CHANGE, THE FEES WILL CHANGE.

**FEE PAYMENT SCHEDULE:****AT SUBMITTAL OF INITIAL BUILDING PERMIT APPLICATION AND PLANS:**

- 1 Plan Review Fee for the Entire Project .
- 2 Energy Conservation Review Fee.

**AT ISSUANCE OF FIRST BUILDING PERMIT**

(All of the following fees shall be paid with the issuance of the first permit for phased permits.)

- 1 Building Permit Fee. ( Plumbing, Electrical & Mechanical permits may be taken out by the General Contractor or by the subs. These permits may not be divided into phases. The entire sewer connection fee shall be paid with the plumbing permit.)
- 2 S.M.I.P and Building Standards Commission Fees
- 3 Microfiche Fee
- 4 Bay/Shellmound Contingent Assessment (N.A for residential projects)
- 5 School District Facilities Impact Fee
- 6 General Plan Maintenance and Technology Fees
- 7 Art in Public Places: For residential projects exceeding 19 units 0.5% of the project valuation is required for Art in Public Places.
- 8 Development Impact Fees (including Traffic Impact, Affordable Housing and Park & Rec)
- 9 Business Licenses: City of Emeryville Business Licenses are required from the contractor.

**PRIOR TO OCCUPANCY OF THE BUILDING AND RELEASE OF THE FINAL UTILITY METER:**

- 1 If public art is to be installed it shall be in place.
- 2 Any and all outstanding fees; including charges for review of changes to approved plans or increased fees due to increased project valuation.
- 3 Final business license fees will be calculated by the finance department for all projects with a valuation in excess of 1,000,000.00 (one million) dollars. These fees must be paid prior to building occupancy.

**VALUATION CALCULATIONS:**

Type of Const.	Use	Number of Floors	Gross Floor Area	Square Foot Cost	Sprinklers + \$4.85	Air Cond. + 7.84/6.53	Modifier x 1.00	Story > 3, +5% ea.	Total Valuation
			(sq.ft.)	(\$)	\$4.85	\$7.84	1	(\$)	(\$)
I	R&D	9	248,300	\$ 199.23	\$ 204.08	\$ 211.92	\$211.92	\$ 218.28	\$ 54,198,328.08
I	Garage	9	93,000	\$ 91.22	\$ 96.07	\$ 103.91	\$103.91	\$ 107.03	\$ 9,953,538.90
					\$ 4.85	\$ 12.69	\$12.69	\$ 13.07	\$ -
					\$ 4.85	\$ 12.69	\$12.69	\$ 13.07	\$ -
					\$ 4.85	\$ 12.69	\$12.69	\$ 13.07	\$ -
<b>Totals</b>		9	341,300						\$ 64,151,866.98
<b>Exist. Bldg. Adjustment - 80% ( No credit for existing sprinklers or HVAC)</b>									
	W'House				\$ 2.40	\$ 2.40	\$ 2.40		\$ -
<b>T.I. ONLY Adjustment * 20%</b>									
				\$ -	\$ 0.97	\$ 2.54	\$ 2.87		\$ -
<b>DECLARED VALUATION</b>									\$ 48,745,000.00
								<b>TOTAL</b>	\$ 64,151,866.98



**BUILDING PERMIT FEE CALCULATIONS:** (Valuation is the replacement cost of the project once it is completed.) Grading, Demolition and Fire Sprinkler Permits are calculated in the same way except that the contract price may be used instead of the valuation.

<b>TOTAL VALUATION</b>		\$ 64,151,866.98	
<b>VALUATION BASIS</b>	<b>AMOUNT</b>	<b>PERCENTAGE</b>	<b>TOTAL</b>
\$ 1.00 - \$ 50,000.00	\$ 50,000.00	0.80%	\$ 500.00
\$ 50,000.00 - \$ 250,000.00	\$ 200,000.00	0.80%	\$ 2,000.00
Over \$ 250,000.00	\$ 63,901,866.98	0.80%	\$ 639,018.67
<b>BUILDING PERMIT FEE:</b>			\$ 641,518.67

**SPRINKLER PERMIT FEE CALCULATIONS:** Valuation is the replacement cost of the project once it is completed. fire Sprinkler Permits are calculated in the same way except that the contract price may be used instead of the valuation.

<b>TOTAL VALUATION</b>		\$ 1,655,305.00	
<b>VALUATION BASIS</b>	<b>AMOUNT</b>	<b>PERCENTAGE</b>	<b>TOTAL</b>
\$ 1.00 - \$ 50,000.00	\$ 50,000.00	1.00%	\$ 500.00
\$ 50,000.00 - \$ 250,000.00	\$ 200,000.00	0.75%	\$ 1,500.00
Over \$ 250,000.00	\$ 1,405,305.00	0.50%	\$ 7,026.53
<b>SPRINKLER PERMIT FEE:</b>			\$ 9,026.53
<b>SPRINKLER PLAN CHECK FEE:</b>			\$ 5,867.24
<b>TOTAL FEE:</b>			\$ 14,893.77

<b>EMERY UNIFIED SCHOOL FACILITIES DEVELOPMENT FEE CALCULATION: (D78)</b>			
<b>TYPE OF PROJECT</b>	<b>AREA</b>	<b>FEE/SQ.FT.</b>	<b>TOTAL FEE</b>
Commercial	248,300	\$ 0.47	\$ 116,701.00
Live/work		\$ 1.72	\$ -
Residential		\$ 2.97	\$ -
Existing Building Credit		\$ 2.97	\$ -
Low Income Housing Credit			\$ -
<b>SCHOOL DISTRICT FEE:</b>			\$ 116,701.00

(School fees reflect the new fees effective May 29, 2007)

**School Facilities Development Fees are due and payable at the Building Division at the time of issuance of the first building permit for the project. An applicant who believes the fee is not justified shall pay the fee and appeal directly to the Emery School District.**



**RESOLUTION NO. 10- 33**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EMERYVILLE  
GRANTING THE APPEAL OF THE PLANNING COMMISSION DECISION  
AND APPROVING A CONDITIONAL USE PERMIT AND DESIGN  
REVIEW FOR AN OFFICE/LABORATORY BUILDING, EMERY STATION  
WEST AND A PARKING GARAGE, HERITAGE SQUARE GARAGE  
LOCATED IN THE 5900 AND 6100 BLOCKS OF HORTON STREET (APN:  
49-1489-15; -13-3; 49-1325-1-2; -2; -4).**

**WHEREAS**, on June 6, 2009 Wareham Development submitted an application for a Conditional Use Permit and Design Review for a proposal to remove two surface parking lots in the 5900 and 6100 blocks of Horton Street and construct two separate buildings: an office/laboratory building and a parking garage. The Emery Station West building, adjacent to the Amtrak Station, is a seven story, 165 foot tall office building accommodating approximately 248,300 gross square feet of office/lab space, 148 car parking spaces (two levels), 4 bus bays and ground level active space accommodating retail and transit (Amtrak) oriented functions and the Heritage Square Garage on the east side of Horton Street, is a seven story, 73 foot tall building accommodating 675 parking stalls; and

**WHEREAS**, the Emeryville Planning Commission reviewed the proposal at study session August 27, 2009; and

**WHEREAS**, on January 28, 2010, the Planning Commission held a duly and properly noticed public hearing to solicit public comments and consider the proposal, and then failed to pass a motion approving the Project; and

**WHEREAS**, on February 2, 2010, the City Council passed a motion ordering that the Planning Commission's action on the Project stand appealed; and

**WHEREAS**, on February 16, 2010, the City Council held a duly and properly noticed public hearing on the proposed Project approvals; and

**WHEREAS**, the City of Emeryville City Council has reviewed the following environmental documentation for the Project: Mitigated Negative Declaration; Response to Comments (RTC), Draft Initial Study and the staff report prepared for the proposed Project (collectively, the "CEQA Documentation"); and

**WHEREAS**, the Emeryville City Council has reviewed and considered the staff report and attachments thereto, the plans, all public comments, the CEQA documentation and the proposal to construct two buildings on lots in the 5900 and 6100 blocks of Horton Street as described above and subject to the conditions and requirements set forth in Exhibit A attached to this Resolution and the applicable standards of the Emeryville Zoning Ordinance ("the Record"); now, therefore, be it



**RESOLVED**, that the City Council finds that, based on the Record, no further environmental review under CEQA is required, and the Council hereby directs the Planning Director to file a Notice of Determination with the Alameda County Clerk accordingly; and be it further

**RESOLVED**, that the City Council approves removal of approximately thirteen street trees along 59<sup>th</sup> and 62<sup>nd</sup> and Horton Streets as part of the project and subject to the conditions of approval attached hereto; and be it further

**RESOLVED**, that in granting the appeal of the Planning Commission decision and approving UP09-03/DR09-18, the City Council makes the following findings required by Emeryville Municipal Code Sections 9-4.82.13, 9-4.84.4(b), 9-6.503(a) and 9-6.509(c):

Section 1.      Use Permit Findings Pursuant to Section 9-4.82.13:

- a)      That the location, size, design and operating characteristics of the proposed use will be compatible with and will not adversely affect or be materially detrimental to: neighborhood character with consideration given to harmony in scale, bulk, coverage, and density of nearby uses, buildings and structures; the availability of civic facilities and utilities; the capacity and physical character of surrounding streets; the physical safety of the immediate area; and the amount of light falling on adjacent buildings and open spaces;

**The location, size, design, and operating characteristics of the project will be compatible with the surrounding neighborhood. The scale, bulk and coverage of the project are similar to other mixed use projects that have been approved in the area. The project will not result in any significant impacts on the neighborhood.**

**In addition, the proposed project can adequately be served by the capacity and physical character of surrounding streets. The proposed heights and design features break up the massing and are compatible with varied heights of buildings along Hollis and Horton Streets. The project as designed will not adversely affect safety in the immediate area; light which falls on adjacent buildings and open spaces will also not be impacted. The project can be served by existing public services and utilities.**

- b)      That the proposed use is consistent with the capability of the circulation, water supply, wastewater disposal, fire, police and school systems to operate adequately and cost effectively;

**The proposed project can be adequately served by all required utilities and public services, and it is not foreseen that there will be an increased demand for such services with the new use.**





**Demand for public safety services may be slightly increased with the new uses but no deficiencies have been identified by the Police and Fire Departments.**

- c) That the proposed use with its impacts and at its proposed location is consistent with the General Plan;

**The General Plan Land Use Classification for the property is Mixed Use with Non Residential (MUN) and Office/Technology (O/T). The proposal is consistent with the General Plan's goals and policies in the following way:**

**The project fulfills goals LUG-2 and LU-G-11 by adding laboratory, research space and ground level commercial, and transit related uses help to create a mix of uses and a wide range of economic activity that will strengthen the city's economic base. Additionally, the project meets policy LU-P-15 by widening the rail platform, providing bus bays next to the platform, creating a protected pedestrian waiting area as well as providing public parking. This assists in developing the Amtrak Station area with pedestrian amenities and transit-supporting uses as outlined in policy LU-P-15.**

- d) That the proposed use at its proposed location will provide a facility which will contribute to the general well-being of the surrounding neighborhood or community;

**The proposed project will enhance the surrounding area by replacing surface parking lots with buildings that will accommodate public parking and transit related commercial uses, a laboratory space and covered parking. In addition, the project includes a public plaza between the Amtrak Station and the proposed building that will improve the circulation of all modes of traffic. The project also includes a podium level landscaped area that will be open to the public and that will connect with the pedestrian bridge over the railroad tracks. These project components will add to the general well-being of the surrounding neighborhood.**

- e) That the proposed use complies with all applicable standards and requirements of the Zoning Ordinance;

**The project as proposed meets the standards and requirements of the Mixed Use with Non Residential and Office/Technology Zones.**



- f) That an environmental determination has been prepared in accordance with CEQA.

**An Initial Study/Mitigated Negative Declaration (IS/MND) was prepared for the project under the requirements of the California Environmental Quality Act (CEQA), and a Notice of Intent to Adopt a Mitigated Negative Declaration was circulated for public review between November 7, 2009 and December 9, 2009.**

Section 2.     Design Review Findings Pursuant to Section 9-4.84.4(b):

- 1) The site subject to design review shall be graded and developed with due regard for the natural terrain, aesthetic quality and landscaping so as not to impair the environmental quality, value or stability of the site or the environmental quality or value of improved or unimproved property in the area;

**The project site is a flat urban infill site. The proposed building will require minimal grading which will consider site terrain, aesthetic quality, and landscaping in such a manner so as not to impair environmental quality, value of adjacent property or site stability.**

- 2) A building, structure, or sign shall (a) Relate congruously to its site and property in the immediate and adjacent areas; and (b) Not be of such poor quality of design as to adversely affect the environmental quality or desirability of the immediate areas or neighboring areas; and (c) Not impede the benefits or occupancy of existing property or environmental quality thereof in such areas or the stability or value of improved or unimproved real property in such areas, or produce degeneration of property in such areas with attendant deterioration of conditions affecting the health, safety, and general welfare of the community;

**The project site is located in an area with a mix of building types, uses, and architectural styles. The surrounding buildings include Emery Station offices and other commercial buildings such the Post Office. The proposed project will visually upgrade the site by removing two surface parking lots and constructing buildings whose design, intensity and scale are appropriate to the site as well as compatible with the surrounding development.**

- 3) A site shall be developed to achieve a harmonious relationship with the area in which it is located and adjacent areas, allowing originality which does not impair the environmental quality or value of the improved or unimproved property or prevent appropriate development and use of such areas or produce degeneration of such Area with attendant deterioration of conditions affecting the health, safety, and general welfare of the City;





**This project will result in visually attractive buildings and will provide an active presence along Horton 59<sup>th</sup> and 62<sup>nd</sup> Streets.**

- 4) Open space, parking areas, pedestrian walks, signs, illumination, and landscaping (including irrigation) shall be designed and developed to enhance the environmental quality of the site and achieve a safe, efficient and harmonious development, and accomplish the objectives set forth in the precise plan of design and design criteria;

**The design provides for a publicly accessible landscaped terrace on the podium level of the Emery Station West (ESW) building, a landscaped public plaza between the Amtrak Station and the ESW building and new street trees and landscaping along Horton Street.**

- 5) Electrical and mechanical equipment or works and fixtures and trash storage areas shall be designed and constructed so as not to detract from the environmental quality of the site. Electrical and mechanical equipment or works shall be concealed by an appropriate architectural structure which uses colors and materials harmonious with the principal structure, placed underground if appropriate, or some other reasonable alternative;

**All mechanical equipment are screened by their location in the penthouse level of the ESW building. Trash collection and storage is sited on the northern side of the ESW building such that it faces the storage area of the post office. In addition, conditions of approval ensure that all electrical and mechanical equipment or works and fixtures and trash storage areas are designed and constructed such that they are well screened and functional.**

- 6) For the purpose of determining a reasonable implementation of said design and the effect on environmental quality of the area, the components considered in design review shall include but not be limited to exterior design, materials, textures, colors, means of illumination, landscaping, irrigation, height, shadow patterns, parking, access, security, safety, and other usual on-site development elements. Recommendations as to site coverage, and the intensity of proposed development may also be made;

**Design review consideration of this project has included the overall massing, bulk, building form, height, exterior materials, colors, and landscaping. These elements, taken together, have been reviewed and have been found to be well-designed and compatible with the surrounding development in the area.**



Section 3.     Findings for Retail Uses in Office/Technology Zone Pursuant to Section 9-6.503(a)

1.     That the use is secondary to other uses that are permitted or conditionally permitted in the OT Office/Technology zone.

**The ground level commercial space in the Heritage Square Garage building constitutes only about 3,620 square feet of a 211,000 square foot structure. Any retail use in this space would be intended to serve, and would clearly be secondary to, other surrounding uses that are permitted or conditionally permitted in the OT zone.**

Section 4.     Findings for Bonus Height over 100 feet Pursuant to Section 9-6.509 (c)

1.     That the proposed project is of excellent design quality;

**The Emery Station West building with its metal and glass skin provides a podium level roof terrace with upper floors that are set back and provide visually interesting lines. Overall, the building removes a surface parking lot to provide a well-designed project.**

2.     That the proposed project will provide significant public benefits substantially beyond normal requirements in three or more of the areas listed in Section 9-4.407(b);

**The project provides public benefits in the categories of “public open space”, “public parking”, “public-right-of-way improvements”, “alternative energy” and “transportation demand management” as described below. The open space/terrace on the third level is approximately 15,600 square feet and the public plaza between Emery Station West and the Amtrak Station is approximately 20,600 square feet. The proposed public open space constitutes about 31 per cent of total site area (36,200 divided by 116,741) which is above the 10 per cent threshold needed to qualify for bonus in this category. In addition, the project will provide a minimum of 125 public parking spaces and will include widening of the railroad platform as well as sidewalks along Horton Street. The project will provide on-site generation of one of the following: wind power, solar power or cogeneration facilities (See Condition of Approval Number VII.A.11). In the “transportation demand management” category, the project will provide electric vehicle charging stations, car pod and campus wide showers and locker facilities. (See Condition of Approval Numbers VI.A.1(g), VI.B.4, VIB.6 respectively).**





3. That the proposed project will minimize impacts on public views, wind and shadows at the street level.

**The building has minimal impacts on public views, wind and shadow as analyzed in the Aesthetics section of the Mitigated Negative Declaration.**

4. That the proposed project will be separated by an adequate distance from any other building with a height greater than 100 feet.

**There are no other buildings with a height greater than 100 feet in the immediate vicinity of the project site.**

and be it further


**RESOLVED**, that the City Council hereby approves **UP09-03/DR09-18** for the Emery Station West @ Emeryville Transit Center project on the 5900 and 6100 blocks of Horton Street subject to the Conditions of Approval attached hereto and the applicable standards of the City of Emeryville Municipal Code.

**ADOPTED** by the City Council of the City of Emeryville at a regular meeting held on Tuesday, February 16, 2010 by the following votes:

**AYES: (4) Mayor Atkin, Vice Mayor Brinkman and Councilmembers Bukowski and Davis**

**NOES: (1) Councilmember West**      **ABSENT: (0) None**

**EXCUSED: (0) None**      **ABSTAINED: None**

  
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**MAYOR**

**ATTEST:**

**APPROVED AS TO FORM:**

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

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