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January 18, 2019

Via E-mail

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Re: Marketplace Redevelopment Project, "Parcel B" (FDP18-001)  
(January 24, 2019 Planning Commission Hearing, Agenda Item 7.1)

Dear Planning Commission members, Mr. Bryant and Ms. Desai:

I am writing on behalf of the Laborers International Union of North America, Local Union 304 and its members living in and around the City of Emeryville ("LIUNA") regarding the Commission's consideration of a new Final Development Plan ("FDP") for Parcel B of the Marketplace Redevelopment Project Planned Unit Development. The new FDP would reduce the amount of retail space previously approved for this area and add 150,000 square feet of office/lab space and 565 parking spaces. Relevant to the comments below, the residential building included in the Project on Parcel A has not yet been constructed. Two other residential buildings on Parcels C2 and D are under construction and not yet completed. The Marketplace Redevelopment Project, including the FDP and the three residential buildings that have not been constructed or are under construction, are collectively referred to as the Project.

The currently proposed change to the FDP is not accompanied by any new environmental review prepared pursuant to the California Environmental Quality Act

("CEQA"). The City is relying on the environmental impact report prepared and certified for the Project in January 2008. Since that time, new information of substantial importance has come to light regarding the emission of toxic formaldehyde from interior finishes of residences and commercial buildings which emissions pose significant health risks to residents and workers in these environments. The risk posed by formaldehyde emissions in new buildings was not known and could not have been known with the exercise of reasonable diligence at the time the Project's EIR was certified in January 2008. Because this new information regarding the health threats posed by formaldehyde emissions shows that the Project may have one or more significant effects not discussed in the 2008 EIR, a supplemental EIR addressing this significant impact must be prepared before approving the FDP or proceeding with the construction of the Parcel A residential building, and in time to incorporate mitigation measures into the two other residential buildings.

When changes to a project's circumstances or new substantial information comes to light subsequent to the certification of an EIR for a project, the agency must prepare a subsequent or supplemental EIR if the changes are "[s]ubstantial" and require "major revisions" of the previous EIR. *Friends of Coll. of San Mateo Gardens v. San Mateo Cty. Cmty. Coll. Dist.* (2016) 1 Cal.5th 937, 943. "[W]hen there is a change in plans, circumstances, or available information after a project has received initial approval, the agency's environmental review obligations 'turn[ ] on the value of the new information to the still pending decisionmaking process.'" *Id.*, 1 Cal.5th at 951–52. The agency must "decide under CEQA's subsequent review provisions whether project changes will require major revisions to the original environmental document because of the involvement of new, previously unconsidered significant environmental effects." *Id.*, 1 Cal.5th at 952. Section 21166 and CEQA Guidelines § 15162 "do[] not permit agencies to avoid their obligation to prepare subsequent or supplemental EIRs to address new, and previously unstudied, potentially significant environmental effects." *Id.*, 1 Cal.5th at 958.

Section 15162 provides, in relevant part,

(a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

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(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

- (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
  - (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.
- (b) If changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, the lead agency shall prepare a subsequent EIR if required under subdivision (a).

14 Cal. Admin. Code § 15162(a)-(b). New information of substantial importance regarding the carcinogenic health impacts of formaldehyde emissions from newly constructed residential units and offices, which was not known and could not have been known with the exercise of reasonable diligence at the time the 2008 EIR was certified, shows that the Marketplace Redevelopment Project may have one or more significant health effects not discussed in the previous EIR. As a result, a subsequent EIR must be prepared for the Project.

Formaldehyde is a known human carcinogen. Many composite wood products typically used in residential and office building construction contain formaldehyde-based glues which off-gas formaldehyde over a very long time period. The primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particle board. These materials are commonly used in residential and office building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims. Given the prominence of materials with formaldehyde-based resins that will be used in constructing the Project and the residential buildings, there is a significant likelihood that the Project's emissions of formaldehyde to air will result in very significant cancer risks to future residents and workers in the buildings. Even if the materials used within the buildings comply with the California Air Resources Board's Airborne Toxic Control Measures, significant emissions of formaldehyde may still occur. As a result of this more recently identified significant effect to air quality and because the CEQA Analysis and prior EIR fail to address the health risks posed by these emissions, the City must prepare a subsequent or supplemental EIR "to address new, and previously unstudied, potentially significant environmental effects." *Friends of Coll. of San Mateo Gardens*, 1 Cal.5th at 958.

Both the office/lab space currently being considered as well as the three residential buildings will have significant impacts on air quality and health risks by emitting cancer-causing levels of formaldehyde into the air that will expose workers and residents to cancer risks well in excess of BAAQMD's threshold of significance. Information regarding the health risks posed by the use of formaldehyde-based products in building construction was not reasonably known in January 2008 when the

EIR for the Marketplace Redevelopment Project was certified. Likewise, CARB's Airborne Toxic Control Measures only went into effect on April 18, 2008. 17 Cal. Admin. Code § 93120. It was not until 2009 with the publication of a study known as the California New Home Study ("CNHS") that prior risks of unregulated formaldehyde-based products to residents and workers could reasonably be known. The CNHS can be found at <https://www.arb.ca.gov/research/apr/past/04-310.pdf>. Both of these key developments occurred after the certification of the EIR in January 2008. Prior to those events, it was not reasonable for people to be reasonably aware of the health risks posed by formaldehyde emissions in new buildings in order to make informed comments on that issue.

Even assuming people were reasonably aware of the formaldehyde emissions in new buildings in January 2018 as well as possible health risks associated with those emissions, people would not have been reasonably aware that buildings using materials that comply with CARB's ATCM would still pose significant health risks. Most people would assume that the emissions of formaldehyde from newly constructed buildings would not pose significant health risks if they were to comply with CARB's ATCM going forward. However, last year a follow-up study by Chan et. al., 2018 (attached as Exhibit A) measured formaldehyde levels in new structures constructed after the 2009 CARB rules went into effect. Although that study showed that, when compared to residences addressed in the earlier CNHS, the median level of formaldehyde in new homes after the CARB rules went into effect was reduced by about 30 percent, the levels of formaldehyde still result in cancer risks greater than 100 in a million, well above the 10 in a million significance threshold established by the Bay Area Air Quality District. This is significant new information that requires the EIR to be substantially revised in order to address this newly identified health risk to residents and workers.

Based on expert comments submitted on other similar projects and assuming all the Project's and the residential buildings' materials are compliant with the California Air Resources Board's formaldehyde airborne toxics control measure, future residents and employees using the Project will be exposed to a cancer risk from formaldehyde greater than the BAAQMD's CEQA significance threshold for airborne cancer risk of 10 per million. Currently, the City does not have any idea what risk will be posed by formaldehyde emissions from the Project or the residences. As a result, the Commission should deny the Project and remand its review back to staff in order to investigate this issue and prepare an analysis supported by appropriate expertise calculating the health risks that the Project's office and residential building's formaldehyde emissions may have on future residents and workers and present that analysis in a subsequent or supplemental EIR along with necessary mitigation measures.

The concern of unhealthy levels of formaldehyde in the Project is heightened by its proximity to the Amtrak station and the Union Pacific railroad tracks abutting the Project to the east. Because of train and traffic noise, the buildings' interiors will exceed applicable noise standards when the windows are open. See 2007 DEIR, p. 230. As a

result, it is expected that residents and office workers will have closed windows for long periods of time and mechanical ventilation will be the sole method of circulating indoor air for the Project. *Id.* The fact that windows will be closed will tend to exacerbate the levels of formaldehyde emitted into the Project's interior spaces.

A number of feasible mitigation measures are available to reduce formaldehyde emissions from the Project, including a condition that the Project only use no-added-formaldehyde or ultra-low emitting formaldehyde composite wood products, which are readily available. See [https://www.arb.ca.gov/toxics/compwood/naf\\_ulef/naf\\_ulef.htm](https://www.arb.ca.gov/toxics/compwood/naf_ulef/naf_ulef.htm). See also [https://www.arb.ca.gov/toxics/compwood/naf\\_ulef/listofnaf\\_ulef.htm](https://www.arb.ca.gov/toxics/compwood/naf_ulef/listofnaf_ulef.htm). The City also could require the Project to add filters to the Project's air ventilation systems capable of removing air-borne formaldehyde. Since the City's prior EIR does not analyze this impact at all, none of these or other mitigation measures have been considered.

Any decision not to supplement the 2008 EIR to address the Project's formaldehyde emissions also would be contrary to the California Supreme Court decision in *California Building Industry Ass'n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 386 ("*CBIA*"). In that case, the Supreme Court expressly holds that potential adverse impacts to future users and residents from pollution generated by a proposed project **must be addressed** under CEQA. At issue in *CBIA* was whether the Air District could enact CEQA guidelines that advised lead agencies that they must analyze the impacts of adjacent environmental conditions on a project. The Supreme Court held that CEQA does not generally require lead agencies to consider the environment's effects on a project. *CBIA*, 62 Cal.4th at 800-801. However, to the extent a project may exacerbate existing environmental conditions at or near a project site, those would still have to be considered pursuant to CEQA. *Id.* at 801. In so holding, the Court expressly held that CEQA's statutory language required lead agencies to disclose and analyze "impacts on **a project's users or residents** that arise **from the project's effects** on the environment." (*Id.* at 800 (emphasis added).)

Carcinogenic formaldehyde emissions from the Project are not an existing environmental condition. Those emissions to the air will be from the Project. People will be working in, residing in, and using the Project once it is built and begins emitting formaldehyde. Once built, the Project likely will emit formaldehyde at levels that pose significant health risks. The Supreme Court in *CBIA* expressly finds that this type of air emission and health impact by the project on the environment and a "project's users and residents" must be addressed in the CEQA process.

The Supreme Court's reasoning is well-grounded in CEQA's statutory language. CEQA expressly includes a project's effects on human beings as an effect on the environment that must be addressed in an environmental review. "Section 21083(b)(3)'s express language, for example, requires a finding of a 'significant effect on the environment' (§ 21083(b)) whenever the 'environmental effects of a project will cause substantial adverse effects *on human beings*, either directly or indirectly.'" (*CBIA*, 62

Cal.4th at 800 (emphasis in original.) Likewise, “the Legislature has made clear—in declarations accompanying CEQA’s enactment—that public health and safety are of great importance in the statutory scheme.” (*Id.*, citing e.g., §§ 21000, subds. (b), (c), (d), (g), 21001, subds. (b), (d).) It goes without saying that the hundreds of future workers and residents at the Project are human beings and the health and safety of those workers is as important to CEQA’s safeguards as other people near the Project site.

For the above reasons, the City’s proposed finding that the 2008 EIR need not be supplemented is incorrect. A subsequent or supplemental EIR must be prepared for the Project which includes an investigation and analysis of the Project’s formaldehyde emissions and consideration of appropriate mitigation measures to address all significant health risks posed by the Project.

Thank you for considering these comments.

Sincerely,



Michael R. Lozeau  
Lozeau | Drury LLP

# Indoor Air Quality in New California Homes with Mechanical Ventilation

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## SUMMARY

The Healthy Efficient New Gas Homes (HENGH) study measured indoor air quality and mechanical ventilation use in 70 new California homes. This paper summarizes preliminary results collected from 42 homes. In addition to measurements of formaldehyde, nitrogen dioxide (NO<sub>2</sub>), and PM<sub>2.5</sub> that are discussed here, HENGH also monitored other indoor environmental parameters (e.g., CO<sub>2</sub>) and indoor activities (e.g., cooking, fan use) using sensors and occupant logs. Each home was monitored for one week. Diagnostic tests were performed to characterize building envelope and duct leakage, and mechanical system airflow. Comparisons of indoor formaldehyde, NO<sub>2</sub>, and PM<sub>2.5</sub> with a prior California New Home Study (CNHS) (Offermann, 2009) suggest that contaminant levels are lower than measured from about 10 years ago. The role of mechanical ventilation on indoor contaminant levels will be evaluated.

## KEYWORDS

Formaldehyde; nitrogen dioxide; particles; home performance; field study

## 1 INTRODUCTION

The HENGH field study (2016–2018) aimed to measure indoor air quality in 70 new California homes that have mechanical ventilation. Eligible houses were built in 2011 or later; had an operable whole-dwelling mechanical ventilation system; used natural gas for space heating, water heating, and/or cooking; and had no smoking in the home. Study participants were asked to rely on mechanical ventilation and avoid window use during the one-week monitoring period. All homes had a venting kitchen range hood or over the range microwave and bathroom exhaust fans. This paper presents summary results of formaldehyde, NO<sub>2</sub>, and PM<sub>2.5</sub> measurements in 42 homes. The full dataset is expected to be available in summer 2018.

## 2 METHODS

Integrated one-week concentrations of formaldehyde and NO<sub>x</sub> were measured using SKC UMEx-100 and Ogawa passive samplers. Formaldehyde samplers were deployed in the main living space, master bedroom, and outdoors. PM<sub>2.5</sub> were measured using a pair of photometers (ES-642/BT-645, MetOne Instruments) indoor in the main living space and outdoors. PM<sub>2.5</sub> filter samples were collected using a co-located pDR-1500 (ThermoFisher) in a subset of the homes and time-resolved photometer data were adjusted using the gravimetric measurements. Results are compared with a prior field study CNHS (2007–2008) (Offermann, 2009) that monitored for contaminant concentrations over a 24-hour period in 108 homes built between 2002 and 2004, including a subset of 26 homes with whole-dwelling mechanical ventilation.

## 3 RESULTS

Figure 1 compares the indoor concentrations of formaldehyde, NO<sub>2</sub>, and PM<sub>2.5</sub> measured by the two studies. Results of HENGH are one-week averaged concentrations, whereas CHNS are 24-hour averages. HENGH measured lower indoor concentrations of formaldehyde and PM<sub>2.5</sub>, compared to CNHS. For NO<sub>2</sub>, the indoor concentrations measured by the two studies

are similar. Summary statistics of indoor and outdoor contaminant concentrations (mean and median concentrations; N=number of homes with available data) are presented in Table 1.

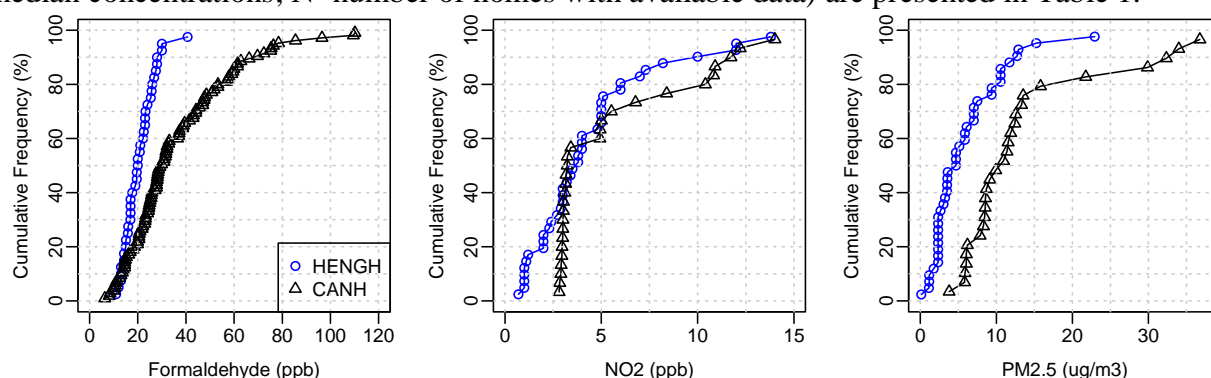


Figure 1. Comparisons of indoor contaminant concentrations measured by two studies.

Table 1. Summary statistics of indoor and outdoor contaminant concentrations.

	HENGH - Indoor			CNHS - Indoor			HENGH - Outdoor			CNHS - Outdoor		
	N	Median	Mean	N	Median	Mean	N	Median	Mean	N	Median	Mean
Formaldehyde (ppb)	39	20.0	20.6	104	29.5	36.3	38	2.0	2.0	43	1.8	2.8
NO <sub>2</sub> (ppb)	40	3.7	4.4	29	3.2	5.4	40	3.0	3.1	11	3.1	3.5
PM <sub>2.5</sub> (ug/m <sup>3</sup> )	41	4.7	5.8	28	10.4	13.3	42	5.9	7.7	11	8.7	7.9

## 4 DISCUSSION

The lower formaldehyde concentrations measured by HENGH in comparison to CNHS may be attributable to California's regulation to limit formaldehyde emissions from composite wood products that came into effect between the two studies. Gas cooking is a significant source of indoor NO<sub>2</sub> (Mullen et al., 2016). Even though NO<sub>2</sub> concentrations measured by HENGH are similar to levels found in CNHS, the two studies differed in that HENGH homes all use gas for cooking, whereas almost all homes (98%) from the prior study used electric ranges. More analysis is needed to determine the effectiveness of source control, such as range hood use during cooking, on indoor concentrations of cooking emissions such as NO<sub>2</sub> and PM<sub>2.5</sub>. Lower PM<sub>2.5</sub> indoors measured by HENGH compared to CNHS may be explained from a combination of lower outdoor PM<sub>2.5</sub> levels, reduced particle penetration due to tighter building envelopes (Stephens and Siegel, 2012) combined with exhaust ventilation, and use of medium efficiency air filter (MERV 11 or better) in some HENGH homes. Further analysis of the data will evaluate the role of mechanical ventilation, including local exhaust and whole-dwelling ventilation system, on measured indoor contaminant levels.

## 5 CONCLUSIONS

New California homes now have lower indoor formaldehyde levels than previously measured, likely as a result of California's formaldehyde emission standards. Indoor concentrations of NO<sub>2</sub> and PM<sub>2.5</sub> measured are also low compared to a prior study of new homes in California.

## ACKNOWLEDGEMENT

LBNL work on the project was supported by the California Energy Commission. Field data collection was performed by the Gas Technology Institute. Support for field teams was provided by Pacific Gas & Electric and the Southern California Gas Company.

## 6 REFERENCES

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Offermann FJ. 2009. California Air Resource Board and California Energy Commission Report CEC-500-2009-085.

Stephens B, Siegel JA. 2012 *Indoor Air* 22(6):501–513.

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## Re: Public Market Parcel B – Response to LIUNA Comment Letter

Dear Planning Commissioners:

We represent AG-CCRP Public Market, L.P in its application for a Final Development Plan for Parcel B (FDP18-001).

We are in receipt of the letter filed by the law firm of Lozeau Drury on behalf of the Laborers International Union of North America, Local Union 304. The letter, dated January 18, 2019 discusses concerns regarding health impacts of formaldehyde emissions from newly constructed residential units and offices. Similarly, the attached exhibit discusses “Indoor Air Quality in New California Homes with Mechanical Ventilation.” Construction of the proposed office/lab space on Parcel B is distinguishable from the homes studied in the cited exhibit, and impacts would further be less than significant because the project must comply with applicable regulatory requirements.

Formaldehyde is a common indoor pollutant.<sup>1</sup> The most significant source of formaldehyde that could be present in building materials is wood products, including plywood, particle board, and other pressed wood products, which are typically used in residential construction.<sup>2</sup> It is, therefore, first important to note that the proposed Parcel B FDP does not propose any residential homes. The proposed project includes 150,000 square feet of office/lab space, 15,800 square retail and 565 parking spaces.

Based on input from AG-CCRP’s architects, we understand that the use of any wood products will be very limited in a laboratory environment. In laboratory buildings, the most common wood product is often the

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<sup>1</sup> California Air Resources Board (“CARB”), Formaldehyde, available at: <https://www.arb.ca.gov/research/indoor/formaldehyde.htm>. Last accessed 1/22/2019.

<sup>2</sup> Id.

laboratory casework, which can be constructed of steel or wood products. If constructed of wood products, the tenant improvement phase casework specification would include a NAUF (No-Added-Urea-Formaldehyde) requirement. In the base building (core and shell) construction, this specification can be added to any small amounts of wood finish trim that might be utilized. Otherwise, use of wood would be extremely limited.

Further, in the study cited by Lozeau Drury, study participants were asked to rely on mechanical ventilation (venting kitchen range hood and/or over the range microwave and bathroom exhaust fans) and avoid window use during a one-week monitoring period, which creates an atypical environment. In contrast, the ventilation requirements of a lab environment are substantially higher than other office occupancies. Laboratories are typically required to be one pass through of fresh outside air (no recirculation) and depending on the type of system and occupancy, may require 2 to 12 air changes per hour.

Further, construction on Parcel B would comply with mandatory and applicable regulatory requirements, ensuring less than significant impacts from formaldehyde. Several of the requirements have been passed more recently than the building of the homes studied in the exhibit cited by Lozeau Drury (while it is a 2018 study, the homes studied were built in 2011 or later), further distinguishing construction on Parcel B from the homes studied. These applicable requirements include the following:

- The Composite Wood Products Regulation<sup>3</sup> is a California Air Resources Board (CARB) regulation that reduces public exposure to formaldehyde through the establishment of strict emission performance standards on particleboard, medium density fiberboard and hardwood plywood (collectively known as composite wood products). The regulation, adopted in 2007, established two phases of emissions standards: an initial Phase I, and later, a more stringent Phase 2 that requires all finished goods, such as flooring, destined for sale or use in California to be made using complying composite wood products. As of January, 2014 only Phase 2 products are legal for sale in California.
- On December 12, 2016, EPA published in the Federal Register a final rule to reduce exposure to formaldehyde emissions from certain wood products produced domestically or imported into the United States.<sup>4</sup> EPA worked with CARB to help ensure the final national rule was consistent with California's requirements for similar composite wood products.
- The California Green Building Standards Code (CALGREEN)<sup>5</sup> includes mandatory and voluntary measures for building materials, including formaldehyde emissions limits consistent with CARB's Composite Wood Products Regulation.<sup>6</sup> The City of Emeryville has adopted the CALGREEN code requirements, further ensuring compliance.<sup>7</sup>

Lastly, the study discussed in Lozeau Drury's exhibit simply does not conclude that formaldehyde constitutes a significant impact. Rather, the study's conclusion is that "[n]ew California homes now have lower indoor formaldehyde levels than previously measured, likely as a result of California's formaldehyde emission standards." Lozeau Drury's assertion that formaldehyde constitutes a significant impact is unsupported, and no further analysis or discussion of formaldehyde impacts is required under the California

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<sup>3</sup> 17 CCR 93120 et seq.

<sup>4</sup> 40 CFR 770; see also <https://www.epa.gov/formaldehyde/formaldehyde-emission-standards-composite-wood-products>, last accessed 1/22/2019.

<sup>5</sup> CCR Title 24, Part 11.

<sup>6</sup> See CALGREEN Section 5.504.5 in the mandatory requirements for non-residential development.

<sup>7</sup> See Emeryville Municipal Code, Chapter 8.

Environmental Quality Act. There is, in fact, no applicable threshold of significance for formaldehyde provided in State CEQA Guidelines, regional, or local guidance. As discussed throughout, the proposed Parcel B office/lab space with its extensive ventilation will not result in significant formaldehyde impacts.

We appreciate your time and consideration of the Parcel B FDP and the corresponding environmental analysis.

Sincerely yours,

HOLLAND & KNIGHT LLP



Chelsea Maclean

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Re: Marketplace Redevelopment Project, "Parcel B" (FDP18-001)  
(January 24, 2019 Planning Commission Hearing, Agenda Item 7.1)

Dear Planning Commission members, Mr. Bryant and Ms. Desai:

I am writing on behalf of the Laborers International Union of North America, Local Union 304 ("LIUNA") to follow-up on previous comments LIUNA submitted regarding the Commission's consideration of a new Final Development Plan ("FDP") for Parcel B of the Marketplace Redevelopment Project Planned Unit Development ("Project"). LIUNA has had an opportunity to discuss its comments with the applicant. In light of further information provided by the applicant and commitments that would reduce formaldehyde emissions, LIUNA believes its comments have been resolved and has no objections to the Planning Commission approving the project as proposed.

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Thank you for this opportunity to participate in the City's process.

Sincerely,

A handwritten signature in blue ink that reads "Michael R. Lozeau". The signature is written in a cursive, flowing style.

Michael R. Lozeau  
Lozeau | Drury LLP

January 18, 2019

Emeryville Planning Commission  
1333 Park Avenue  
Emeryville, CA 94608

Re: Marketplace Parcel B proposal to be heard January 24, 2019

Dear Planning Commissioners:

As a major property owner in very close proximity, we have enjoyed seeing the overall redevelopment of the Marketplace occur, including several projects closing in on completion right now. We think making that project a more dense and active area makes sense in the big picture. However, we have real reservations about some of the details of the most recent proposal for Parcel B, including the way that this latest proposal interacts with the previously-approved plans for development of Parcel A. We are not against development of those parcels but believe the current vision lacks key design features that are critical to pedestrian and employee experience of the entire area. The public plaza and landscaped open spaces at ground and at bridge level that we have just completed with our new EmeryStation West/Transit Center project were essentially important goals and requirements of the City Council and Planning Commission that approved it. The Marketplace proposals, as designed, seriously and negatively impact these public spaces in a way that is not best urban planning. The City has vested interest in seeing the Marketplace work with and enhance the public and open space improvements across the tracks. Let us enumerate our concerns:

- With our EmeryStation West project, we have just completed a public plaza extension of 59<sup>th</sup> Street and a strong pedestrian and visual connection to the existing railroad pedestrian bridge. We have similarly created a large and publicly-accessible raised landscaped plaza and connected it to the bridge and also to the ground via a large grand stair.

The design of Parcel A, which we understand is a done deal, unfortunately does not reinforce the straight open vista across the bridge we have created on the other side. Rather, pedestrians must travel through a tall, narrow “canyon” between the two apartment buildings. The two apartment buildings build almost all the way to the east property line along the tracks and present relatively featureless and flat facades to the east (facing our the new public areas and the Amtrak Station).

Wareham was reluctantly willing to accept the proposed design of Parcel A in light of the prior design for Parcel B adjacent to it. That proposal featured a large open area between the two parcels. Other than for a small, single story pad building, that open space was to be landscaped and made attractive. That open space allowed a key aperture towards our new raised landscaped plaza. Additionally, at only 40 feet, the previously-proposed Parcel B garage provided additional aesthetic relief in terms of varying heights, etc. The original PDP and the

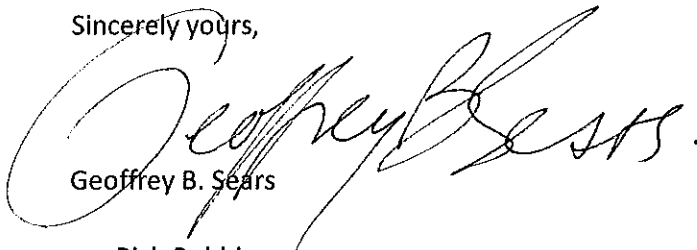
prior design proposals all contemplated varying buildings with varying heights along the railroad, not a monolithic flat wall such as we are seeing in the latest proposals.

- In today's proposal for Parcel B, that open space has been materially diminished in size, effectively cut in half. What is left serves primarily only as a trash/dumpster area. Like the Parcel A design, the Parcel B building is effectively built right up to the eastern property line and rises straight up without relief in a huge, flat wall. The designs of both Parcels A and B clearly treat their eastern facades as unimportant rear ends, which we do not think is justified given that these eastern faces are what travelers on Amtrak and the Capitol Corridor are presented as their entry to Emeryville.
- We believe the design of the new Parcel B building, built as close to the eastern property line as it is, violates the City's tower separation ordinance.

Our recommendations are as follows:

- 1) Require the applicant to maintain the amount of previously-shown open area between the Parcel A and Parcel B developments, either as open as before or at least by stepping the proposed building back as it rises.
- 2) Require the new tower to set back from its eastern property line as required by the City's tower separation ordinance.
- 3) Require the applicant to give as much aesthetic attention and care to the project's eastern face as it does to the western face and not treat all of the track sides as "rear ends".

Sincerely yours,

A large, stylized handwritten signature in black ink, appearing to read "Geoffrey B. Sears".

Geoffrey B. Sears

cc: Rich Robbins



January 22, 2019

*[Sent via email]*

Linda Barrera, Chair ([LPB.94608@gmail.com](mailto:LPB.94608@gmail.com))  
D. Miguel Guerrero, Vice Chair ([emeryvillemiguel@gmail.com](mailto:emeryvillemiguel@gmail.com))  
Gail Donaldson ([donaldson1286@yahoo.com](mailto:donaldson1286@yahoo.com))  
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C. Tito Young ([commissioner.ctyoung@gmail.com](mailto:commissioner.ctyoung@gmail.com))

**Re: Marketplace Parcel B (Office and Garage Building) (FDP18-001)**

Dear Planning Commissioners:

I have reviewed comments recently submitted by Geoff Sears and wish to respond.

As you may know, redevelopment of the Public Market is the result of a decade-plus public planning process, involving dozens of public hearings and stakeholder group meetings. AG-CCRP has specifically worked for over 5 years to bring needed housing, jobs, services and community gathering places to the City of Emeryville to fulfill the vision of the first LEED Platinum Neighborhood Designated project in the country. AG-CCRP has patiently, and painstakingly, implemented the approved 2008 Preliminary Development Plan (PDP) that embodied the goals and policies of the City's General Plan, the Shellmound Streetscape Design Guidelines, etc., and the refinements directed by several Planning Commissions.

We have incurred over \$30,000,000 in public improvements to activate the project, including the Shellmound Street realignment and Christie Park expansion. We have expended in excess of \$3,000,000 remodeling the Food Hall. The grocery store has been constructed and residential units are under construction. Parcel B is the last piece of the planning puzzle to bring daytime employees to the project to activate the streets and Food Hall. Parcel B has already undergone significant design modifications from the original, approved version which was abandoned because of more than \$4,000,000 in increased costs due to escalating construction costs and delays. Nonetheless, we believe the current version of Parcel B provides for a better outcome as it will better activate the district and provide a broader mix of uses.

It also achieves the original vision of the PDP approved in 2008. The current plan — Parcels A and B — presents less visual impacts than the original PDP. The approved PDP allowed a height of 120 feet. The proposed building is 112 feet. As shown in the attached Exhibit A, the original PDP contemplated a much taller tower on Parcel A up to 175 feet. The approved Parcel A allows a height of up to 86 feet on the northern portion of the building and a height of up to 50 feet on the southern portion of the building structure. Altogether, Parcels A and B will allow for a less monumental sightline.

In response to the comment that Parcel B violates the tower separation ordinance, that is not accurate. Zoning Code Section 9-4.202(f) provides that in the "one hundred plus (100+) height district, buildings

over one hundred feet (100') in height shall be separated from each other by a minimum horizontal distance equal to no less than the height of the taller building.” Since the Parcel A building is less than 100 feet, this section of the Code does not apply. Moreover, the Zoning Code recognizes the Marketplace PDP and provides that uses and development regulations shall be governed by the PDP and not later enacted regulations in the Zoning Code. (Zoning Code, Section 9-3.310) Accordingly, the tower separation provision of the Code is not applicable since it was adopted after the adoption of the PDP.

Much thought has gone into the East wall design. The proposed building design is intended to act as a four-sided building, a building with fronts on all sides and no back. The East and West facades of the building are similar and share in their size, proportion, and quality of windows, wall systems, expressed frame system, articulation of roofscape elements, open parking level design and expression, and generally limited articulation in the massing – a design strategy that was embraced by the majority of the Planning Commission.

It may also be noted that the Parcel B building is compatible with the buildings within the Public Market project, as well as the buildings in the surrounding vicinity. As shown in [Exhibit A](#), the proposed Parcel B is consistent with the buildings all around the Public Market as well as the building to the south of the Wareham building, particularly the Terraces apartment building along the railroad tracks, which has a similar four-sided massing.

Further, the Public Market Art Plan has recently been approved, which will result in world class art throughout the project, including an installation on the East side of Parcel B. An example of the art that may be installed on the East side of Parcel B is shown in [Exhibit B](#). The artwork will be visible by pedestrians from Amtrak passengers, Parcel A pedestrian bridge, and from the office buildings on the East side of the railroad.

While it is not part of the current consideration, the approved Parcel A plans include a bridge walk with a “grand staircase” and elevator with access directly to Shellmound Street. Public art has also been focused in this area, with examples shown in [Exhibit C](#). The Public Market Art Plan provides the following:

The Stairwell Plaza is located on the east side of Shellmound Street across from the existing Public Market and is considered a primary publically accessible space in the Shellmound Public Art Master Plan. The Grand Stair lands on a 45-foot wide public plaza with room for café seating on Shellmound Street. Rising from the plaza, an elevated pedestrian path provides the primary east-west connection between the Shellmound Market District and the neighborhoods across the railway.

An artwork consisting of multiple elements on the stairs rising from the plaza below will invoke curiosity, joy and invite further pedestrian exploration. It will also serve as a placemaker and wayfinder. Additionally, the artwork will anchor the south end of the site, as well as connect it to the Powell Street Gateway artwork.

Moreover, we just spent \$5,000,000 to provide the City a new park and over \$30,000,000 to provide complete streets with street trees and vegetation. Limitless attention, time and energy has been devoted to the pedestrian and community gathering experiences throughout the project with particular emphasis on stairwell plaza at the connection of Parcels A and B.

## AG-CCRP PUBLIC MARKET, LP

170 Grant Ave. Fl. 6 | San Francisco, CA 94108

I urge you to approve the current Parcel B proposal consistent with the largely positive feedback shared at the December Study Session in order to complete this mixed use district, bringing much needed jobs, housing, services and community gathering spaces to the City of Emeryville and to fulfill the original vision of the project, more than a decade in the making.

Sincerely,

Mark Stefan

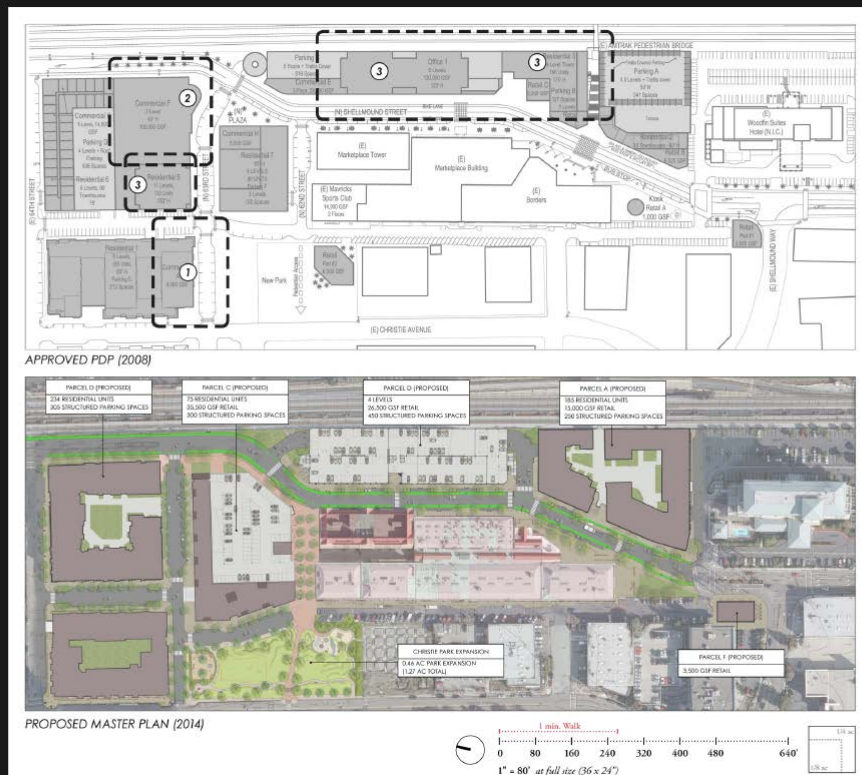
A handwritten signature in blue ink, appearing to read 'MS', with a long horizontal flourish extending to the right.

Cc: Charlie Bryant ([cbryant@emeryville.org](mailto:cbryant@emeryville.org))

Miroo Desai ([mdesai@emeryville.org](mailto:mdesai@emeryville.org))



Exhibit A –  
PDP Conformance



PDP Conformance

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2008 PDP



2014-2019 FDP'S

2008 PDP vs. 2019 FDP | Comparison of Massing from West

HART HOWERTON



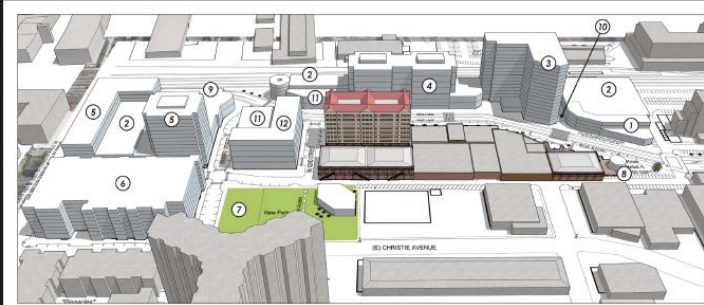
2008 PDP



2014-2019 FDP'S

2008 PDP vs. 2019 FDP | Comparison of Massing from Southeast

HART HOWERTON

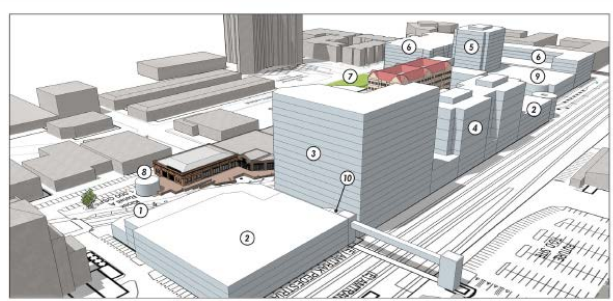


APPROVED PDP (2008)

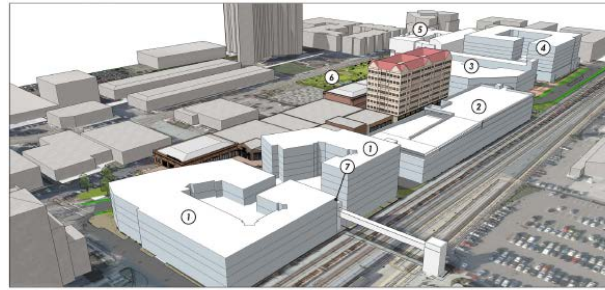


PROPOSED MASTER PLAN (2014)

PDP Conformance Massing From West



APPROVED PDP (2008)



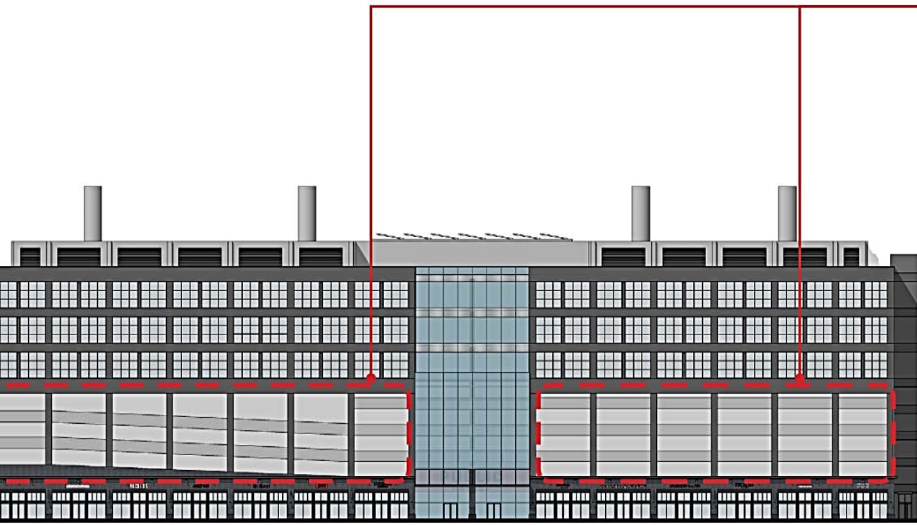
PROPOSED MASTER PLAN (2014)

PDP Comparison Massing From Southeast

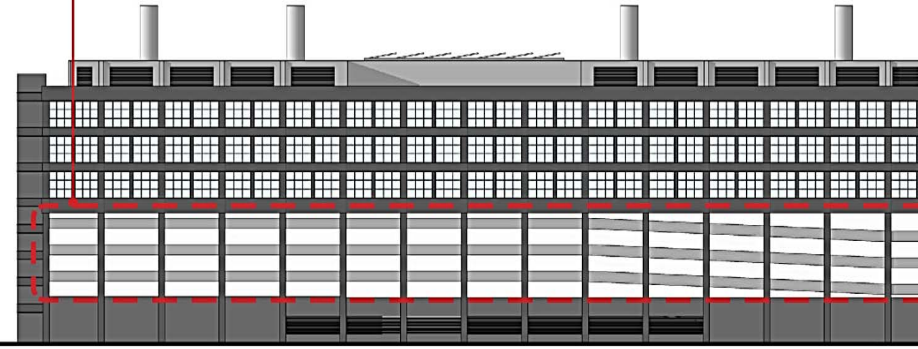


## EXHIBIT B

ARTIST WILL CONSIDER THESE AREAS AS A CANVAS. PART OF PUBLIC MARKET DISTRICT ART PROGRAM UNDER PURVIEW OF EMERYVILLE PUBLIC ART COMMITTEE.



A. WEST ELEVATION



B. EAST ELEVATION

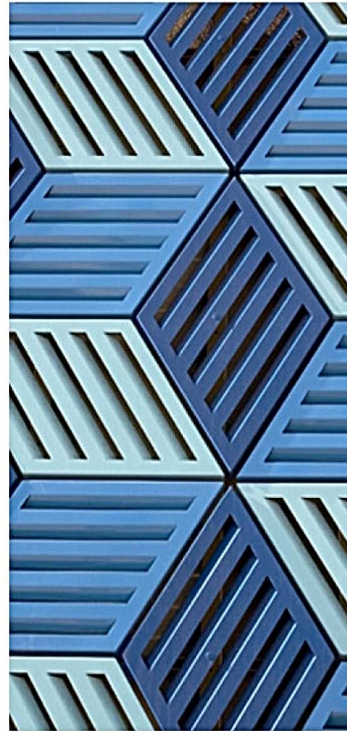
ISTS:



Erwin Redl



Jacob Hashimoto



Jim Isermann



Mark Reigelman



Ray King

Exhibit C

Stairwell Plaza Art





February 8, 2019

Mayor and City Council

City of Emeryville  
133 Park Avenue  
Emeryville, CA

Re: Marketplace Parcel B

Dear Mayor and City Council members:

We reluctantly appeal the recent Planning Commission approval of the latest Final Development Plan ("FDP") for Parcel B at the Marketplace. A developer and landlord active in the Emeryville community since 1978, we care greatly about long term impacts that developments can have on the community, particularly because we, Wareham, rarely sell any of our developments.

We are compelled to file this appeal because key quality of life issues are negatively impacted and go against the intent and spirit of the overall Marketplace project's approval in 2008. As designed, the proposal diminishes the pedestrian experience and aesthetics at the Emeryville Amtrak Station. In addition, we find a number of technical requirements established in that 2008 approval have not been met in the latest approval.

This latest proposal, actually promoted to the developer by the Planning Commission, greatly removes the important visual connections between the two key centers of City activity - the Marketplace and our EmeryStation campus anchored by the Emeryville Amtrak station. The latest plan for Parcel B diminishes space and separation between buildings, and has created adverse opportunity for wind tunnels, making the pedestrian experience uncomfortable. These two important projects should be able to relate to one another. This "football field and a half" long vertical massing block does more to separate the projects than connect them.

Emeryville has had a storied history of creating public-private partnerships to develop the City with transit, cycling routes, open space and other quality of life features. We feel that aspects of the approved Parcel B FDP, particularly in conjunction of the already-approved Parcel A development, works against these community goals, and particularly impacts negatively the important public space that the Emeryville Amtrak Intermodal Transit Center represents.

The Marketplace's 2008 approval set forth a number of requirements for each separate Final Development Plan. Our review finds that a number of important requirements of the project's Environmental approval have not been met. Specifically:

- 1) Requirement AES 1 calls for the final designs to "create a vital streetscape that enhances the pedestrian experience, avoid blank walls or box-like forms".

The project's design, extremely close to the equally tall and boxy existing Marketplace Tower to its west, will create a stark and dark cavern between them which will make the retail at their bases very uninviting public spaces. The proposed design indeed could not be more boxy,

antithetical and contrary to this requirement. The original 2008 approval indeed included large buildings along the railroad tracks. However, in that original approval they have varying and modulated heights and facade, with several important openings and livable gaps between different building masses.

- 2) Requirement WIND 1 calls for a wind study to review the winds that will exist on the pedestrian bridge. No such wind study was presented.

It certainly seems that the current design, with only the narrowest of gaps between buildings, will create a wind tunnel here and that those conditions deserve extra study.

- 3) WIND -1 also specifically says that any Final Design should "avoid narrow gaps between buildings where winds could be accelerated". The current design does exactly the opposite.

The prior approved design for Parcel B had a roughly 170 foot gap between it and the approved Parcel A building. The most recent approved design reduced the gap by almost half, to only less than 80 feet. This narrow gap eliminates any real visual connection between the eastern side of the railroad station and EmeryStation campus and the Marketplace, while increasing negative wind patterns. This is not to mention the fact that the prior wider gap was filled with a single-story retail pad building, possibly a restaurant, which would be an attractive area of activity. The current narrow gap only houses the dumpster that will serve the new building.

- 4) Requirement TRAF 1-b states that the Applicant will submit a Transportation Demand Management Plan to the City for review and approval prior to completion of the FDP. This did not occur as far as we can tell.

The traffic timing and impacts of the proposed office use are very different than those of retail. Office use primarily creates heavy commute-time trips while retail trips are much more dispersed throughout the day. The fact that the staff report says that total traffic counts are slightly less than the prior approval disregards the very real timing impact of those trips. The change of uses proposed with the latest Parcel B proposal deserves such detailed analysis.

- 5) We have been told that the City's "tower separation ordinance", which requires certain distances between buildings over 100 feet tall, does not apply in this case because the three buildings in question all were approved prior to the ordinance. Even if that is technically correct, the ordinance was put in place as the policy of the City for important planning and aesthetic reasons that matter regardless of some technicality. Built right out to the limits of its property lines, the new project is closer to our new EmeryStation West project than the ordinance guidelines allow, and is much, much closer to the existing Marketplace Tower than the ordinance allows.

We are not against the density nor uses proposed in this project, but are most concerned about how they are massed on the site. With no modulation, nor relief or separation, the proposed mass becomes a wall. A taller, narrower, building, with more separation that allows air, space, sunlight, would certainly be a greater improvement.

We also reserve the right to bring additional information to bear on this project and our appeal that might have meaning to your review.

In conclusion, it is regrettable that we feel we must appeal this latest Parcel B changed. Our concern is that it is best to seek refinement now, for the greater good of the City Center. We admire the passion that the Planning Commissioner articulated for greater density. That said, we respectfully disagree with the conclusion and Commission approval as designed. Though we have no argument with density, we do feel strongly that the project should be smart density, highlighted with architectural relief, texture, and articulation that is modulated as the original 2008 plan set forth. That would be a greater addition to the project and the community.

Very truly yours,



Richard K. Robbins

Wareham Development