

RESOLUTION NO. 19-____

A Resolution Of The City Council Of The City Of Emeryville Dismissing An Appeal By Wareham Development Of Resolution No. FDP18-001R, And Affirming Resolution No. FDP18-001R, A Resolution Of The Planning Commission Of The City Of Emeryville Approving A Final Development Plan (FDP) For APN 49-1556-16 ("Parcel B") Of The Marketplace Redevelopment Project Planned Unit Development (PUD04-02) For An Eight-Story Building With Approximately 15,800 Square Feet Of Rentable Retail Space, 150,000 Square Feet Of Rentable Office/Lab Space, And 560 Parking Spaces And Rescinding Resolution No. FDP15-001 Previously Adopted By The Planning Commission On June 23, 2016; CEQA Determination: Environmental Impact Report For Marketplace Redevelopment Project PUD Certified By Resolution No. 08-09 Applies

WHEREAS, on January 15, 2008, via Resolution No. 08-09, as required by the California Environmental Quality Act (Public Resources Code § 21000, et seq. ("**CEQA**")), the City Council certified the Marketplace Redevelopment Project Environmental Impact Report ("**EIR**") for the Marketplace Redevelopment Project Planned Unit Development ("**PUD**") and then on July 15, 2008, the Council passed Resolution No. 08-126 applying the EIR to the PUD, adopting mitigation measures, and adopting a Statement of Overriding Consideration; and

WHEREAS, on August 5, 2008, the City Council adopted Ordinance No. 08-004, approving the Marketplace Redevelopment Project Planned Unit Development/ Preliminary Development Plan (PUD/PDP) ("**PUD/PDP Project**"); the PUD/PDP Project involved redevelopment of the existing Marketplace site (consisting of APN 49-1556-16) with a phased development consisting of 674 multi-family residential units, 180,000 square feet of retail, and 120,000 square feet of office; the PUD/PDP Project included the 15-acre Marketplace site to be substantially redeveloped by replacement of surface level parking, realignment of Shellmound Street directly in front of the Marketplace Tower and Public Market buildings, addition of two new street segments with on-street parking (62nd and 63rd Streets), and addition of nine new buildings within the site and an enlarged City park; and

WHEREAS, on June 23, 2016, following a duly held and properly noticed public hearing the Planning Commission adopted Resolution No. FDP15-001, approving Final Development Plan 15-001 for Parcel B that included a four-story building with approximately 20,000 square feet of ground floor retail space and 300 parking spaces, and a stand-alone single story, 2,280 square foot commercial pavilion with a plaza between the garage building and the pavilion ("**FDP15-001 Project**"); and

WHEREAS, building permits B2017-0029 and B2017-0030 for the FDP15-001 Project ("**Building Permits**") were issued on January 12, 2018; however, no work was done under these permits, and AG-CCRP Public Market LP ("**Applicant**") submitted a letter withdrawing the building permits on October 10, 2018, and voluntarily relinquished their rights under the Building Permits and Resolution No. FDP15-001; and

WHEREAS, the Planning Commission held a duly and properly noticed public hearing on January 24, 2019, and adopted Resolution No. FDP18-001, approving a final

development plan application for construction of a parking garage with ground floor retail on Parcel B, 150,000 square feet of rentable office/laboratory space (“**Project**”) and rescinding Resolution No. FDP15-001; and

WHEREAS, in a letter dated February 8, 2019, Wareham Development (“**Appellant**”) timely appealed Resolution No. FDP18-001 to the City Council (“**Appeal I**”), which precluded Resolution No. FDP18-001 from taking effect; and

WHEREAS, on March 19, 2019, pursuant to Emeryville Municipal Code (“**EMC**”) section 9-7.1405(b)(3), the City Council reviewed Appeal I, and staff report with attachments, and remanded the appeal to the Planning Commission with instructions to consider the issues raised in the Appeal and to hold a new public hearing on the Project (Resolution No. 19-29) (“**Council Direction**”); and

WHEREAS, on April 25, 2019, at approximately 4:30 p.m., Appellant submitted a letter to the Planning Commission dated April 24, 2019, with several attachments, which included drawings on how the Project could be redesigned; and

WHEREAS, the Planning Commission held a duly and properly noticed public hearing on April 25, 2019, to solicit public comments to reconsider the Project pursuant to Council Direction, and heard testimony from both Applicant and Appellant; and

WHEREAS, the Planning Commission closed the public hearing held on April 25, 2019, but decided to continue the Planning Commission’s discussion of the Project to May 14, 2019, to allow the Planning Commission time to fully consider all evidence received on the Project, including the letter dated April 24, 2019, from Appellant; and

WHEREAS, on May 14, 2019, the Planning Commission reconvened to consider the Project, and reopened the public hearing to take into evidence the Emeryville Public Market – Parcel B Pedestrian Wind Study, prepared by RWDI, dated May 13, 2019, submitted by Applicant on May 13, 2019, and to allow further comment by the public, including Appellant, and thereafter the Planning Commission closed the public hearing; and

WHEREAS, following the Planning Commission’s review and consideration of the staff reports and attachments thereto, all public testimony, both written and oral, the Project as set forth in Resolution No. FDP18-001R, Council Direction, the relevant portions of the EIR, and the applicable provisions of the Emeryville Planning Regulations (“the **Record**”), on May 14, 2019, the Planning Commission adopted Resolution No. FDP 18-001R; and

WHEREAS, on May 21, 2019, at its regular meeting, pursuant to EMC § 9-7.1406, the City Council called for the review of Resolution No. FDP18-001R; and

WHEREAS, on May 29, 2019, Appellant filed a timely appeal of Resolution No. FDP18-001R pursuant to EMC § 9-7.101, 9-7.1012, and 9-7.1405 (“**Appeal II**”); and

WHEREAS, on October 1, 2019, pursuant to EMC § 9-7.1405(b), after reviewing Appeal II, FDP18-001R, the staff report that transmitted the Record, and its attachments, including the Record, staff presentation, and considering any additional public testimony and any written correspondence submitted after Appeal II has been filed, (“**City Council Record**”), the City Council considered whether to (1) affirm Resolution FDP18-001R, and dismiss Appeal II, (2) set a date for a public hearing on Appeal II or the Project; or (3) remand the Project to the Planning Commission to reconsider the Project, with direction to the Planning Commission as to what issues the Planning Commission should consider and whether the Planning Commission should hold a new public hearing; now, therefore, be it

RESOLVED, that based on the review of the City Council Record, the City Council of the City of Emeryville hereby finds that since certification of the EIR by the City Council on January 15, 2008 (Resolution No. 08-09), there have been no substantial changes to the Project, no substantial changes to the circumstances under which the Project will be undertaken and no new information of substantial importance, which would require further preparation of a subsequent EIR under CEQA section 21166 and corresponding CEQA Guidelines section 15162, that applicable mitigation measures have been incorporated into the Project’s conditions of approval, and therefore, no further environmental review is required by CEQA, and the EIR applies to the Project (see, e.g., AR 0004-949, 952-1021, AR1403-1468, 1586-88, 1627, 1767-74, 1780-83, 1785-91, 1826-63, 2073-96, 2370-96, 2421-84); and be it further

RESOLVED, that after reviewing Appeal I and Appeal II, the City Council Record, and any written correspondence submitted after the Appeals have been filed; and based on substantial evidence in light of the City Council Record, the City Council of the City of Emeryville makes the following findings:

1. Recitals: The foregoing recitals are true and correct, and incorporated by reference.
2. Planning Commission Action. Pursuant to EMC § 9-7.1405(b), the City Council finds that the facts ascertainable from the City Council Record do not warrant further hearing for the following reasons:
 - a. There is substantial evidence in light of the Record to support the finding that the final development plan for the Project substantially conforms to the preliminary development plan for the PUD/PDP Project.¹
 - b. There is substantial evidence in light of the Record to support the finding that the changes and conditions of approval specified by the City Council

¹ See, e.g., AR 1026-1108, 1206-1366, 1369-1396, 1515-1564, 1635-1737, 1767-79, 1813-18, 1838-63, 1905-55, 1999-2072.

in its approval of the preliminary development plan for the PUD/PDP Project have been met by the Project.²

- c. None of the evidence submitted after the Planning Commission's adoption of Resolution FDP18-001R warrants further consideration or modification of the Planning Commission's findings.³
3. City Council Findings: To the extent that the City Council is obligated to make findings pursuant to EMC § 9-7.1004(b) in adopting this Resolution, based on the substantial evidence in the City Council Record, the City Council finds:
- a. The final development plan substantially conforms to the preliminary development plan.⁴

The approved PUD/PDP Project calls for a building up to 120 feet tall on Parcel B, containing 120,000 square feet of office space, 29,150 square feet of commercial (retail) space, and 518 parking spaces. Compared to the approved PUD/PDP, the proposed building for the Project will have approximately 13,350 square feet less commercial space (15,800 square feet versus 29,150 square feet), 30,000 square feet more office space (150,000 versus 120,000 square feet), and 42 more parking spaces (560 spaces versus 518 spaces). The building height of 113 feet is consistent with the approved PUD/PDP height of 120 feet.

While the Project contains 30,000 square feet more office space than the PDP calls for, the overall intensity of the PUD buildout would still be less than allowed by the PDP. The total amount of commercial space in the PUD, including both office and retail space, will be 209,800 square feet under the various approved and proposed FDPs (150,000 square feet of office plus 59,800 square feet of retail), while the PDP allows for up to 300,000 square feet of commercial space (120,000 square feet of office plus 180,000 square feet of retail), so in all there will be 90,200 square feet less total commercial space (office and retail) than allowed by the PDP. Furthermore, the Project results in a development that is smaller in terms of Floor Area Ratio than that approved under the PUD/PDP Project. The intent of the original approval was to replace surface parking lots and create a mixed-use development over a 25-year period. The Project creates a slightly smaller mixed-use development that replaces the existing surface

² See, e.g., AR 1026-1108, 1206-1366, 1369-1468, 1515-1564, 1586-88, 1627, 1635-1737, 1767-91, 1813-18, 1823-1955, 1999-2072.

³ See e.g., City Council Staff Report 10/1/19; AR 2370-2484.

⁴ See, e.g., AR 1026-1108, 1206-1366, 1369-1396, 1515-1564, 1635-1737, 1767-79, 1813-18, 1838-63, 1905-55, 1999-2072, 2370-2484, City Council Staff Report 10/1/19.

parking lots with slightly less commercial space and within a shorter time frame.

- b. The changes and conditions of approval specified by the City Council in its approval of the preliminary development plan have been met.⁵

The Project is consistent with the conditions of approval of the PUD/PDP Project as approved by the City Council. In response to the issues raised by Appellant, specifically, the Project complies with PUD Condition of Approval II.E, and EIR Mitigation Measures AES 1, WIND 1, and TRAF 1b as follows:

PUD Conditions of Approval, II.E and AES 1: The approved FDP designs for both Parcel A and Parcel B are in conformance with the PDP, with substantially shorter building heights for Parcel A and a smaller overall massing impact on the site. (See e.g., Sheets A3.00.1 and A3.00.2 of project plans entitled “Emeryville Public Market Parcel B Final Development Plan” dated January 9, 2019 for a comparison of the proposed project with existing buildings; Sheets A.6.01 to A6.05 for elevations and renderings showing architectural details and break-up of massing; and Sheet A7.00 for treatment of the railroad façade with public art.) The FDP buildings have varying heights and, compared to the PDP, are much lower for Parcel A, and seven feet shorter for Parcel B, with similar gap widths between the buildings. Furthermore, the designs for both Parcel A and Parcel B were fine-tuned after several Planning Commission study sessions to create interesting facades on all four sides of the two buildings.

WIND 1: The applicant has conducted a wind analysis study that concludes that “based on the exposure, massing and orientation of the proposed building it would not have the potential to adversely affect ground-level winds near its base, at the proposed landscaped open spaces areas at the north and south ends of the site, within adjacent Parcel A to the south, or at properties east of the site on the far side of the UPRR train tracks.” Furthermore, in taking the existing conditions into account and analyzing the wind configurations as a result of the Project, RWDI concludes that the addition of the Project reduces the impacts from the existing wind across the site.

TRAF 1b: The applicant response to the appeal letter includes an update by Kimley Horn entitled “Traffic Response to Appeal Letter” that concludes that: “the vehicle trips for an office use occur at

⁵ See, e.g., AR 1026-1108, 1206-1366, 1369-1468, 1515-1564, 1586-88, 1627, 1635-1737, 1767-91, 1813-18, 1823-1955, 1999-2072, 2370-2485, City Council Staff Report 10/1/19.)

different times than for a retail use. However, the trip generation analysis that was conducted in the Emeryville Public Market Parcel B – Trip Generation Evaluation Final Letter, dated December 12, 2018 accounts for these differences. While only focusing on the peak hour of traffic in the AM and PM periods, the previous 2008 EIR and the proposed Parcel B were compared using trip generation rates from the industry standard Institute of Transportation Engineers (ITE) Trip Generation Manual. The trip generation rates are developed based on surveys collecting traffic counts during the AM and PM periods of adjacent street traffic at various sites throughout the country based on the square footage and land use. This evaluation concluded that the Project would generate fewer AM and PM peak hour trips.”

and be it further

RESOLVED, that based on the foregoing findings, the City Council of the City of Emeryville hereby AFFIRMS Planning Commission Resolution No. FDP18-001R and DISMISSES Appeal I and Appeal II.

ADOPTED by the City Council of the City of Emeryville at a regular meeting held Tuesday, October 1, 2019, by the following vote:

AYES: _____
NOES: _____
ABSTAIN: _____
ABSENT: _____

MAYOR

ATTEST:

APPROVED AS TO FORM:

CITY CLERK



CITY ATTORNEY