

RESOLUTION NO. 10- 32

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EMERYVILLE
ADOPTING A MITIGATED NEGATIVE DECLARATION FOR THE
EMERY STATION WEST @ EMERYVILLE TRANSIT CENTER PROJECT.**

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, an Initial Study for the Project was completed by the City of Emeryville as the lead agency, in compliance with the California Environmental Quality Act (Public Resources Code § 21000 et seq.; "CEQA"); and

WHEREAS, on November 4, 2009 a Notice of Intent to Adopt a Mitigated Negative Declaration was mailed to all responsible agencies and to all property owners within 300 feet of the property; and

WHEREAS, a Notice of Intent to adopt a Mitigated Negative Declaration, together with the Initial Study, was made available for public review and comment on November 7, 2009. The deadline for comments was December 9, 2009. Comments were received and a Response to Comments was prepared; and

WHEREAS, the City of Emeryville has specified the Emeryville Planning Department, 1333 Park Avenue, Emeryville, California 94608, as the custodian of all documents, reports, plans and all other materials which constitute the record of proceedings upon which the actions required to approve the Project will be based; and

WHEREAS, on January 28, 2010, the Planning Commission held a duly and properly noticed public hearing on the proposed Mitigated Negative Declaration and the proposed Project approvals and then voted to adopt the Mitigated Negative Declaration, but did not pass a motion to approve 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 Mitigated Negative Declaration and the proposed Project approvals; and

WHEREAS, the mitigation measures to reduce the Project's potential significant impacts on the environment shall be incorporated into the Project as conditions of approval; and

WHEREAS, the conditions of approval contain a mitigation monitoring and reporting program for the required mitigation measures to ensure that the Applicant shall comply with such mitigation measures during implementation of the Project; 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 City Council has considered the information contained in the CEQA Documentation, the public comments, and the evidence in the record as a whole; now, therefore, be it

RESOLVED, that based on its review and consideration of the foregoing documents and the testimony received at the February 16, 2010 public hearing concerning the proposed Mitigated Negative Declaration, the City of Emeryville City Council makes the following specific findings:

1. Compliance with CEQA Requirements: The City of Emeryville City Council has received, reviewed and considered the CEQA Documentation and other substantive and procedural components of CEQA compliance for the proposed Project, including the mitigation monitoring and reporting program. The CEQA Documentation prepared for the Project has been completed, and review procedures required by CEQA have been completed, in conformance with CEQA as set forth in the recitals to this resolution.
2. Compliance with the City of Emeryville Review Requirements: The City Council has received, reviewed and considered the CEQA Documentation for the Project in conformance with all applicable CEQA procedural requirements.
3. Independent Judgment. The Mitigated Negative Declaration reflects the City of Emeryville City Council's independent judgment and analysis.

and be it further

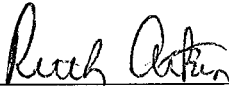
RESOLVED, that the City Council hereby adopts the Mitigated Negative Declaration for the Emery Station West @ Emeryville Transit Center Project, having found, on the basis of the whole record before it, including all of the CEQA Documentation listed in the recitals of this resolution, and all public comments and other information received, that the Project, as mitigated by the mitigation measures contained in the Mitigated Negative Declaration, will not have a significant effect on the environment.

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**



MAYOR

ATTEST:



CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

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 59th and 62nd 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 59th and 62nd 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

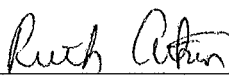
RESOLVED, that the City Council hereby approves **UP09-03/DR09-18** for the Emery Station West @ Emeryville Transit Center project on the 5900 and 6100 blocks of Horton Street subject to the Conditions of Approval attached hereto and the applicable standards of the City of Emeryville Municipal Code.

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**



MAYOR

ATTEST:



CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY