

ATTACHMENT 7
Draft Resolution

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 CPC RESOLUTION NO. FDP15-001 PREVIOUSLY ADOPTED BY THE PLANNING COMMISSION ON JUNE 23, 2016

WHEREAS, on January 15, 2008, via Resolution No. 08-09, 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 September 25, 2013, AG- CCRP Public Market LP filed a Final Development Plan application for construction of a parking garage with ground floor retail on Parcel B, and filed an updated application on November 17, 2015; and

WHEREAS, on December 1, 2015, the City Council adopted Ordinance No. 15-010, approving a Development Agreement among the City of Emeryville, AG-CCRP LP, and AvalonBay Communities, Inc (“Development Agreement”), with the ordinance effective on January 1, 2016, and the Development Agreement effective on January 13, 2016; and

WHEREAS, among other provisions and in relation to Parcel B, the Development Agreement provides that the Developer may use funds otherwise required for public art to treat the façade of the east wall of the Parcel B parking structure as public art; and

WHEREAS, on June 23, 2016, at 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

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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 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, on November 28, 2018, AG-CCRP Public Market LP filed a new 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

WHEREAS, the Planning Commission reviewed the Project at study session on December 13, 2018; and

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

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

WHEREAS, on March 19, 2019, pursuant to Emeryville Municipal Code section 9-7.1405(b)(3), the City Council reviewed the appeal, 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, 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

WHEREAS, the Planning Commission has reviewed and considered the staff report and attachments thereto, all public testimony, the Project as set forth in this Resolution, Council Direction, and the applicable provisions of the Emeryville Planning Regulations (“the Record”); now, therefore, be it

RESOLVED, that the Planning Commission hereby finds that the Marketplace Redevelopment Project Environmental Impact Report (EIR) certified by the City Council on January 15, 2008 (Resolution No. 08-09) applies to this Project, applicable mitigation measures have been incorporated into the Project’s conditions of approval, and as detailed in the Environmental Checklist, which evaluates all impact areas under the California Environmental Quality Act (CEQA), and which is included in the record as Attachment 4 to the January 24, 2019 Planning Commission Staff Report, since adoption of the EIR 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; furthermore, a traffic memo prepared by Kimley Horn concludes that

the proposed changes as between the PUD/PDP and the proposed FDP for Parcel B, will not result in trip generation and traffic impacts that were not analyzed in the EIR certified by City Council Resolution No. 08-09 and that, based on the review of actual and projected traffic volumes, the baseline conditions presented in the EIR have not significantly changed; and be it further

RESOLVED, that in approving the Project the Planning Commission makes the following findings required by Emeryville Municipal Code Section 9-7.1004(b) and based on its review and consideration of the Record:

1. The final development plan substantially conforms to the preliminary development plan.

The approved PUD/PDP 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 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 proposed FDP for Parcel B would contain 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 59,8000 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.

The current proposal results in a development that is smaller in terms of Floor Area Ratio than that approved under the 2008 Marketplace PUD/PDP. The intent of the original approval was to replace surface parking lots and create a mixed-use development over a 25-year period. The revised proposal is to create a slightly smaller mixed-use development that replaces the existing surface parking lots with slightly less commercial space and within a shorter time frame.

2. Changes and conditions of approval specified by the City Council in its approval of the preliminary development plan have been met.

The project is consistent with the conditions of approval of the Marketplace Redevelopment Project Preliminary Development Plan (PUD04-02) as approved by the City Council. Specifically, the Project complies with EIR Mitigation Measures AES 1, WIND 1, and TRAF 1b as follows:

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. The FDP buildings have varying heights and, compared to the PDP, are much lower for Parcel A, and 8 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.”

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 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 proposed Parcel B project would generate fewer AM and PM peak hour trips.”

and be it further

RESOLVED that the Planning Commission approves Final Development Plan FDP18-001 for development of 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 as outlined in the plans entitled “Parcel B Final Development Plan” dated January 9, 2019 and subject to the Conditions of Approval as set forth in Exhibit A to this resolution; and be it further

RESOLVED that the Planning Commission hereby rescinds CPC Resolution No. 15-001, which previously approved Final Development Plan FDP15-001 for development of 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.

APPROVED by the Planning Commission of the City of Emeryville at a regular meeting held on Thursday, April 25, 2019 by the following votes:

AYES: _____

NOES: _____ **ABSTAINED:** _____

EXCUSED: _____ **ABSENT:** _____

CHAIRPERSON

APPROVED AS TO FORM:

RECORDING SECRETARY

ASSISTANT CITY ATTORNEY