



**CONDITIONS OF APPROVAL**

**Sherwin Williams Mixed Use Project  
Planned Unit Development/Preliminary Development Plan  
1450 Sherwin Avenue (APNs: 49-1041-26-15 and -16)  
File Number: PUD 13-001  
Exhibit B. Conditions of Approval  
November 1, 2016**

As approved by the City Council pursuant to Ordinance No. 16-006 on November 1, 2016. (“Ordinance Of The City Council Of The City Of Emeryville Adopting A Planned Unit Development Zoning Designation And Approving A Preliminary Development Plan For The 10.05-Acre Sherwin Williams Project Site Bounded By Sherwin Avenue To The South, The Union Pacific Railroad Tracks To The West; Horton Street To The East, And Temescal Creek To The North (APNs 49-1041-26-15 And 16), And Adopting An Amendment To The Planning Regulations To Add The Sherwin Williams Mixed Use Project To The List Of Planned Unit Developments In Section 9-3.310.”)

“Applicant” in these Conditions of Approval shall mean an applicant for any Preliminary Development Plan (PDP) or Final Development Plan (FDP) approval for this project unless otherwise expressly limited to an applicant for a particular FDP approval.

**I. COMPLIANCE WITH APPROVALS**

- A. **PROJECT APPROVALS.** All phases of the project shall be constructed and operated in accordance with the following actions by the City Council:
1. General Plan Amendment (Resolution No. 16-148) to modify the Land Use Diagram (Figure 2-2) to reflect the proposed relocation of Park/Open Space and Mixed Use with Residential on the site, and to modify the Maximum Residential Densities map (Figure 2-6) to be consistent with the Land Use Diagram.

2. Approval of a rezoning of the Sherwin Williams project site identified by Assessor's Parcel Numbers 49-1041-26-15 and 49-1041-16 from Mixed Use (M-U) and Park/Open (PO) to Planned Unit Development (PUD) (Ordinance No.16-006).
3. Approval of Preliminary Development Plan (PDP) (Ordinance No. 16-006) with the following major components, as may be modified in accordance with these Conditions of Approvals so long as the floor area ratio (FAR) does not exceed 3.0 in the aggregate, and the height and general massing are within the limits shown on the approved PDP (defined below):

Construction of:

- (a) Up to 500 residential units (includes live-work units)<sup>1</sup>;
- (b) Up to 74,000 square feet of office space on Parcel A;
- (c) A minimum of 2,000 square feet and a maximum of 8,000 square feet of ground floor commercial space (exclusive of the public art gallery and community room described in Section II.D.2 (b)(2)). At a minimum, one commercial tenant space shall include infrastructure for a café/restaurant space (such as Type 1 grease exhaust, hood and duct systems)
- (d) A total of 3.53 acres of public park and open space that includes 2.08 acres on the Sherwin Williams property (APN 49-1041-26-15) and 1.45 acres on the Successor Agency-owned parcel (APN 49-1041-26-16) (the "City parcel"), including a public park of approximately 2.07 acres fronting on Sherwin Avenue, a Greenway running along the western edge of the project area adjacent to the railroad tracks, and other open areas as identified on Page 6 of the approved plans; and
- (f) Construction and dedication of new public streets: Hubbard Street extension between Sherwin Avenue and new 46<sup>th</sup> Street, and new 46<sup>th</sup> Street between Horton Street and Hubbard Street extension.

The maximum heights permitted on each parcel are:

Parcel A: Existing Building Height of 42 feet

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<sup>1</sup> For purposes of calculation of required affordable units, live-work units will be considered as residential units.

- Parcel B-1: 45 feet; 65 feet and 75 feet as shown on Pages 7 and 8 of the approved PDP plans  
Parcel B-2: 45 feet; 65 feet and 75 feet as shown on Pages 7 and 8 of the approved PDP plans  
Parcel C: 65 feet and 75 feet as shown on Pages 7 and 8 of the approved PDP plans  
Parcel D: 100 feet

Projections above these height limits shall be allowed pursuant to Section 9-4.202(c) of the Planning Regulations.

4. Uses Allowed on Ground Floor in All Buildings. Uses are allowed on ground floor areas of all buildings as follows:
  - (a) All uses permitted in the MUR zone pursuant to Table 9-3.202 of the Planning Regulations as effective on October 18, 2016 are permitted;
  - (b) All uses conditionally permitted in the MUR zone pursuant to Table 9-3.202 of the Planning Regulations as effective October 18, 2016 shall require a Minor Conditional Use Permit; and
  - (c) Residential units including live-work units are permitted.
5. Uses Permitted in Building 1-31. In addition to office use (general, government, and walk-in clientele), all non-residential uses that are permitted in the MUR zone that have an estimated parking demand that is the same as or less than that of office uses are permitted. All non-residential uses that are conditionally permitted in the MUR zone and that have an estimated parking demand that is the same as or less than that of office uses, shall require a Minor Conditional Use Permit. Any other uses that are permitted or conditionally permitted in the MUR zone shall require Planning Commission approval of a Major Conditional Use Permit.
6. Modification to the Requirements of the Planning Regulations.
  - (a) Parking. The maximum parking allowed for residential uses shall be 1 space per unit (including live-work units). For all other uses, including residential guest parking, the parking requirements shall be as set forth in Article 4 of Chapter 4 of the Planning Regulations. The affordable units shall be assigned one parking space per unit.

- (b) Other Requirements. All other requirements of the Planning Regulations as effective on October 18, 2016, including but not limited to bicycle parking, loading, courts, open space, landscaping and screening, water use, recycling and trash areas, and lighting and illumination, shall apply.
- B. APPROVED PLANS. The future Final Development Plans of the project shall substantially comply with the PDP plans dated September 13, 2016, entitled “Sherwin Williams Preliminary Development Plan” prepared by LPAS and CBG, pages 1 to 29 except as modified by these Conditions of Approval.
- C. APPROVAL EFFECTIVENESS AND DURATION. This permit shall automatically expire if an application for a Final Development Plan has not been filed and fees have not been paid within three years from the date of this approval. Pursuant to Section 9-7.1009(a) of the Emeryville Municipal Code, this time limit may be extended by the City Council.
- D. INSTALLATION AND MAINTENANCE OF IMPROVEMENTS. All improvements shall be installed in accordance with these approvals. Once constructed or installed, all improvements shall be maintained as approved. Minor changes may be approved by the Community Development Director. In constructing all public improvements, Applicant shall agree to all security, guarantee, warranty, and indemnification provisions as set forth in City’s encroachment agreement in a form approved by the City Attorney.
- E. COMPLIANCE WITH THE MUNICIPAL CODE AND GENERAL PLAN. No part of this approval shall be construed to be a violation of the Emeryville Municipal Code or the General Plan. This approval is contingent upon Resolution No. 16-148, amending the General Plan being effective. Operations on this site shall be conducted in a manner that does not create a public or private nuisance or otherwise violate the Emeryville Municipal Code.
- F. FAILURE TO COMPLY WITH CONDITIONS OF APPROVAL. If Applicant fails to comply with any of the Conditions of Approval or limitations set forth in these Conditions of Approval and does not cure any such failure within a reasonable time after notice from the City of Emeryville (“City”), then such failure shall be cause for non-issuance of a certificate of occupancy, revocation or modification of these approvals or any other remedies available to the City.
- G. APPLICATION TO SUCCESSORS IN INTEREST. These Conditions of Approval shall apply and shall be binding upon any successor in interest in the property and Applicant shall be responsible for assuring that the successor in interest is informed of the terms and conditions of this zoning/PUD/PDP approval.

H. FINAL DEVELOPMENT PLAN (FDP) APPLICATION. The Applicant may submit one or more FDP applications for the project, as follows:

- (a) New and Existing Buildings. The Applicant shall submit an FDP application for approval prior to submission of any building permit or grading permit for any building, including the existing Building 1-31 on Parcel A.
- (b) Parks. The Applicant shall hold at least two community meetings to solicit community input, and shall also obtain recommendations from relevant City Committees (including but not limited to the Parks and Recreation Committee and the Bicycle/Pedestrian Advisory Committee) for the design of the public park, open spaces, plazas, Greenway, and bicycle and pedestrian paths as part of a Final Development Plan (FDP). All park and open space related work in the approved FDP shall be completed and shall be open to the public no later than prior to the issuance of a temporary certificate of occupancy for the last new residential building; as will be further detailed in the Tentative Map for the project.

I. SUBDIVISION APPROVAL. Prior to the approval of the first Final Development Plan, the Public Works Director shall confirm that the Applicant has received Planning Commission approval of the Tentative Map for the project and has applied for the reapportionment of the Bay-Shellmound Assessment as applicable.

## II. GENERAL CONDITIONS

A. INDEMNIFICATION. Applicant, its assignees, and successors-in-interest shall defend, hold harmless, and indemnify the City of Emeryville, the Successor Agency to the Emeryville Redevelopment Agency, the Bay Cities Joint Powers Insurance Authority and their respective officials, officers, agents and employees (the Indemnified Parties) against all claims, demands, and judgments or other forms of legal and or equitable relief, which may or shall result from: 1) any legal challenge or referendum filed and prosecuted to overturn, set-aside, stay or otherwise rescind any or all project, general plan amendment, and/or zoning approvals, analysis under the California Environmental Quality Act or granting of any permit issued in accordance with the Project; or 2) Applicant's design, construction and/or maintenance of the public improvements set forth in the final building plans. Applicant shall pay for all direct and indirect costs associated with any action herein. Direct and indirect costs as used herein shall mean but not be limited to attorney's fees, expert witness fees, and court costs including, without limitation, City Attorney time and overhead costs and other City Staff overhead costs and normal day-to-day business expenses incurred by the City including, but not limited to, any and all costs which may be incurred by the City in conducting an election as a result of a referendum filed to challenge the project approvals.

The Indemnified Parties shall promptly notify the Applicant, its assignees, and successors-in-interest of any claim, demand, or legal actions that may create a claim for indemnification under this section and shall fully cooperate with Applicant, its assignees and successors-in-interest.

- B. MITIGATION MEASURES. The mitigation measures identified in the Final Environmental Impact Report (FEIR) prepared for the project are attached and incorporated by reference into this document. All mitigation measures that apply to the project's impacts shall be considered conditions of approval of the project, as may be further refined or clarified by these Conditions of Approval. Overall monitoring compliance with the mitigation measures will be the responsibility of the Community Development Director.
- C. AFFORDABLE HOUSING PROGRAM. No fewer than 17 per cent of total units in the project shall be affordable units, i.e. no fewer than 85 affordable units out of a total of 500 units. Prior to the issuance of the first building permit for a residential structure, the Community Development Director shall confirm that the Applicant has entered into an agreement (Affordable Housing Agreement) with the City and approved by the City Council to be recorded against the property which satisfies the requirements of the City of Emeryville's Affordable Housing Program, as set forth in Article 4 of Chapter 5 of Title 9 of the Emeryville Municipal Code.

1. Affordability Income Levels. Pursuant to Section 9-4.204(d)(1) of the Planning Regulations, affordable units shall, at a minimum, be affordable to households of the following income levels, as defined in Article 4 of Chapter 5 of the Planning Regulations, or at a deeper level of affordability:

Very Low Income	3.9%	20 units
Low Income	5.9%	30 units
Moderate Income	7.2%	35 units
TOTAL	17.0%	85 units

If the Applicant chooses to develop fewer than the maximum of 500 units, the number of affordable units shall be reduced proportionally, subject to the requirements of Section 9-4.204(d)(1) and the Rules for Rounding of Numbers in Section 9-2.103.

2. Stand-Alone Affordable Building. The required affordable units may be constructed in a stand-alone building on Parcel B-1 by a separate legal entity than the Applicant ("Affordable Housing Developer"), in which case the level of affordability shall be deeper than specified in Condition II.C.1 above. Specifically, 10% of the affordable units, i.e. 9 units, shall be affordable to households whose maximum annual income does not exceed

50% of Area Median Income (AMI), and 90% of the affordable units, i.e. 76 units, shall be affordable to households whose maximum annual income is 51% to 60% of AMI.

In order to ensure parity with market rate residential units the following conditions shall apply to the affordable units:

- (a) Deed Restriction. A deed restriction/affordable housing covenant shall be recorded against the parcel with the stand-alone affordable residential building in a form acceptable to the City Attorney. This deed restriction/covenant shall not be subordinate to any promissory note, deed of trust or mortgage on said parcel.
- (b) Materials and Finishes. The affordable residential building and units within the building shall be comparable with the design of market rate buildings and units within them in terms of appearance, materials, and quality of finishes.
- (c) Amenities. Residents of the stand-alone affordable residential building shall have access to and the right to use all project-wide shared amenities offered to market rate residents, under the same terms and conditions as offered to market rate residents, including but not limited to swimming pools, recreation facilities, bike facilities, car share stalls, and podium courtyards in buildings on Parcel B-2, C and D. A deed restriction on the parcels with market rate housing units shall be recorded in a form acceptable to the City Attorney to provide access and the right to use amenities to the residents of the affordable housing units to fulfill this condition.
- (d) Washer and Dryer. A clothes washer and dryer shall be provided in each affordable unit.
- (e) Maintenance. The operation and maintenance of the common areas, exterior, landscape, and units of the stand-alone affordable residential building shall be at the same level as the market rate units, and at all times, shall comply with applicable property maintenance and habitability codes. The deed restriction/affordable housing covenant shall address operation and maintenance performance standards and schedules to ensure parity of operation and maintenance between the stand-alone affordable residential building and the market rate units at all times.
- (f) Resident Manager. A full time, dedicated resident services manager shall be provided for the building. The building shall have

a dedicated office for the resident services manager, and a separate residential unit for the manager, which shall not be counted towards the required number of affordable units. The resident manager shall have at least five years' experience in the operation and management of similar size rental housing projects, and at least three years' experience in the operation and management of rental housing projects containing below-market-rate units, without any record of material violations of discrimination restrictions. No less than 10 City business days prior to hiring the manager the Affordable Housing Developer shall provide documentation to the City as is reasonably necessary to evaluate the proposed manager's experience and qualifications. No manager shall be hired, or management agreement signed or amended, without City's prior approval, which shall not be unreasonably withheld or delayed. Any change in the manager or amendment to the management agreement that impacts the level of service to the affordable housing residents shall require the prior written approval of City, which shall not be unreasonably withheld or delayed.

- (g) Unit Size and Mix. Prior to issuance of a Final Development Permit for any residential structure, the Community Development Director shall confirm that the average size and mix of affordable units, as measured by square footage and number of bedrooms, is equal to or greater than the average size of the market rate units.
- (h) Parking. Parking for affordable units shall be included in maximum rents and shall be provided in the building on Parcel B-2. Prior to issuance of a building permit for the stand-alone affordable housing building, an agreement in a form approved by the City Attorney shall be entered into between the Applicant and the Affordable Housing Developer guaranteeing that required parking to serve the stand-alone affordable housing building will be in place in the building on Parcel B-2 at all times that the affordable housing building is in operation.
- (i) Section 8 Vouchers. Section 8 vouchers shall be accepted for the affordable units.
- (j) Programs and Services. Affordable Housing Developer shall provide programs and services to residents of the stand-alone affordable housing building, such as employment/job training, after school programs, exercise classes, social activities, children's playground, and computer training. Such programs and services shall be provided by a full-time staff separate from the resident manager, and shall have an office separate from the resident



manager's office and adequate dedicated facilities within the stand-alone affordable housing building. Details of the programs and services to be provided shall be specified in the Affordable Housing Agreement.

- (k) Affordable Housing Building to be Occupied First. The stand-alone affordable housing building shall be occupied concurrently with, or prior to, the occupancy of any other new residential building, but shall not be occupied until its parking in the building on Parcel B-2 is available for use.
- (l) Funding. Applicant shall not apply for competitive funding sources for the stand-alone affordable housing project for which the City of Emeryville may apply, now or in the future.

D. BONUS POINTS. The project requires 100 bonus points for bonus floor area ratio (FAR), height, and residential density pursuant to Section 9-4.204 of the Planning Regulations. The Applicant shall obtain these 100 bonus points in the following manner:

- 1. Affordable Housing (50 points). Pursuant to Section 9-4.204(d) of the Planning Regulations, half of the required bonus points shall be earned through the provision of 17% of the total number of residential units as affordable units. Affordable units may be provided in a stand-alone building. See Condition II.C above for further details on the affordable housing requirements.
- 2. Community Benefits (50 points). Pursuant to Section 9-4.204(e) of the Planning Regulations, half of the required bonus points shall be earned through the provision of community benefits. Specifically, these points shall be earned through the provisions of public improvements, utility undergrounding, and flexible community benefits as stipulated in items (3), (4), and (7), respectively, of Table 9-4.204(e) of the Planning Regulations.
  - (a) Value of Community Benefits. Pursuant to Table 9-4.204(e) of the Planning Regulations, 10 bonus points shall be earned for each 1% of the total construction valuation of the project, i.e. 50 points requires community benefits valued at 5% of the total construction valuation of the project. This funding available for community benefits is estimated at approximately \$7 million.
  - (b) Flexible Community Benefits. Bonus points for flexible community benefits shall be earned from the following:

- (1) Retrofit Building 1-31 (Parcel A) for Permanent Public “Pass Through” Alley. The “pass through” alley shall begin with an opening at the western terminus of 45<sup>th</sup> Street at Horton Street and shall extend west through the building, unimpeded by other structures, to the park and open space. The width of the alley shall be approximately 24 feet). It shall be designed such that cyclists are not required to dismount and are able to move through the space continuously between the proposed public park and 45<sup>th</sup> Street. Construction of the “pass through” alley including any landscaping shall be completed prior to the issuance of a final certificate of occupancy of Building 1-13. (Estimated value: \$1 million)
  
- (2) Public Art Gallery and Community Room. Design and construction of a 2,000 square foot public art gallery and community room with walls at a height of no less than 15 feet and finishes appropriate for an art gallery (including 1000k amp service). The space shall include an office and a restroom and shall be made available as a meeting room for residents and the local community upon request in advance and subject to reasonable rules and policies. No fees shall be charged for use of this space. The Emeryville Celebration of the Arts or any successor organization shall be granted 24-hour access to the space. (Estimated value: \$600,000)
  
- (3) Community Shuttle to West Oakland BART. Provision of a community shuttle from the project site to the West Oakland BART station for the first five years of operation free of charge. The shuttle service shall commence within 60 days after occupancy of fifty percent of the total residential units for the project. The shuttle will operate at intervals sufficient to maximize trip reduction, as determined by the TDM. The hours of operation and location of the stop for the shuttle shall be approved by the City as part of the first residential Final Development Plan. Developer is only required to provide a secure stop at West Oakland BART and another location within 500 feet of the project site. This condition may be met by an existing shuttle provider providing the service, in which case Applicant shall not receive bonus points for this community benefit. (Estimated value: \$900,000)

- (c) Public Improvements and Utility Undergrounding. To the extent that funding for community benefits is available, bonus points for public improvements and utility undergrounding shall be earned for the following, listed in priority order:
- (1) Hubbard Street, east side between Sherwin and Park Avenues: sidewalk improvements and utility undergrounding. (Estimated value: \$700,000)
  - (2) Horton Street, between Park Avenue and new 46<sup>th</sup> Street: utility undergrounding. (Estimated value: \$1.8 million)
  - (3) Sherwin Avenue, south side, between Horton and Hubbard Streets: sidewalk improvements. (Estimated value: \$150,000)
  - (4) Hubbard Street, between Park Avenue and 40<sup>th</sup> Street: sidewalk improvements (both sides of street) and utility undergrounding. (Estimated value: \$680,000)
  - (5) Halleck Street, west side along frontage of Assessor Parcel Number 49-1036-2, extending approximately 185 feet south from Sherwin Avenue: sidewalk improvements. (Estimated value: 90,000)
  - (6) Horton Street, west side between Sherwin and Park Avenues: sidewalk improvements. (Estimated value: \$200,000)
  - (7) 45<sup>th</sup> Street, between Horton and Hollis Streets: utility undergrounding, including removal of adjacent poles on Holden Street. (Estimate value: \$1.44 million)
  - (8) Horton Street, between new 46<sup>th</sup> Street and 53<sup>rd</sup> Street: utility undergrounding. (Estimated value: \$1.05 million)
  - (9) Halleck Street, between Park Avenue and Beach Street: utility undergrounding (Estimated value: \$750,000)
- (d) Excess Funds. If there are funds remaining following completion of all of the projects listed above, or if there are not sufficient funds available to complete all of the projects, any excess funds shall be contributed by the Applicant to the South Bayfront Bridge and Horton Landing Park capital improvement project (Project Number 16475006). (See also Condition II.D.2(f) below.)

(e) Standards for Public Improvements and Utility Undergrounding.

- (1) Sidewalk Improvements. Sidewalks are to be consistent with the Park Avenue District Plan and existing side streets in the district, as follows: 12-foot total width from face of curb to edge of right-of-way, consisting of 6-inch wide curb, 4-foot wide landscape/street furniture zone containing tree wells, stormwater treatment areas, and/or concrete between curb and pedestrian pathway (trees, luminaires, street signs, and any other street furniture go in this zone), and a clear 7.5-foot wide concrete pedestrian pathway. Street trees shall be *Ginkgo biloba* at an average distance of 22 feet on center planted in 4-foot by 6-foot tree wells. Street lights shall be standard City street lights (Lumec Candela single pedestrian luminaires) spaced at 80 feet average on center per side, staggered at 40 feet average on center on opposite sides of the street, except that lights along Halleck Street shall be standard City Greenway lights (Holophane GranVille Series). Standard gutters and any roadway reconstruction necessary to match the grade of the new sidewalk shall be included.
  - (2) Utility Undergrounding. Utility undergrounding shall include payment of the costs necessary to connect all properties currently served by the existing overhead utilities to the new underground utilities, and installation of new Lumec Candela single pedestrian luminaires if not done in conjunction with sidewalk improvements that include new luminaires.
  - (3) Design and Construction. The design of all public improvements and utility undergrounding shall be reviewed and approved by the City Engineer prior to construction and shall be subject to Condition I.D above, including the requirement for encroachment permits.
- (f) Final True-Up of Community Benefit Costs. Prior to the issuance of a certificate of occupancy for the last building of the PUD, the total funding available for community benefits and the total value of community benefits provided shall be determined by the Community Development Director, and any remaining excess funding shall be contributed by the Applicant to the South Bayfront Bridge and Horton Landing Park capital improvement project (Project Number 16475006). The total funding available for community benefits shall equal five percent of the final total

project construction valuation as determined by the Chief Building Official. The value of community benefits provided shall be determined as follows:

- (1) “Pass-Through” Alley in Building 1-31 and Public Art Gallery/Community Meeting Room: Actual itemized costs shall be provided by Applicant and confirmed by the Chief Building Official.
- (2) West Oakland BART Shuttle: Contract for service shall be provided by Applicant. If this service is provided by an existing shuttle provider, the value of this community benefit shall not be included in the true-up.
- (3) Public Improvements and Utility Undergrounding: Actual itemized costs shall be provided by Applicant and confirmed by the Public Works Director.

E. TRANSPORTATION RELATED. The following conditions will apply to the project as identified and recommended in the Final Environmental Impact Report (FEIR) approved for the project:

1. The Applicant shall provide design details of the internal garage circulation and interface for each building with the street system. These plans shall be reviewed by the City’s transportation consultant prior to approval of any Final Development Plan for Parcels A, B-1, B-2, C and D.
2. The Applicant shall coordinate with the City Engineer concerning traffic controls at the site intersections shown on Figure IV. C-18 of the FEIR, attached here as Attachment 1.
3. The Applicant shall install crosswalks on all legs of the Sherwin Avenue/Halleck Street and Sherwin Avenue/Hubbard Street intersections consistent with the Emeryville Pedestrian and Bicycle Plan.
4. The Applicant shall provide Class III bicycle facility roadway markings and signage on Sherwin Avenue.
5. The Applicant shall provide lighting at equal spacing along Sherwin Avenue and Horton Street, and provide pedestrian scale lighting along the pedestrian pathway, north of Parcel C-2 and north of Parcel D. All lighting along streets shall be standard City street lights (Lumec Candela single pedestrian luminaires), and all lighting elsewhere on the site, including along the Greenway and within park/open areas, shall be standard City Greenway lights (Holophane GranVille Series).

6. All final site design plans should show entry door swing into the public right-of-way to ensure that the 6-foot pedestrian clear zone is maintained along the corridor when doors are open. The building design should orient pedestrians away from the door zone.
  7. The Applicant shall install curb extensions and a high visibility crosswalk on the north leg of Horton Street at Sherwin Avenue such that pedestrians and transit riders accessing the site from 40<sup>th</sup> Street do not have to cross two streets to access the site. The Applicant shall also install a high visibility crosswalk and curb ramps on the north leg of Horton Street at 45<sup>th</sup> Street to improve pedestrian access to transit.
  8. The Applicant shall designate an on-street loading zone on Hubbard Street extension to facilitate small deliveries within the site and ensure that each of the four designated loading zones have the capacity to accommodate garbage trucks and moving vans.
- F. PUBLIC ART PROGRAM. The project will be subject to Art in Public Places Ordinance (Article 4 of Chapter 2 of Title 3 of the Emeryville Municipal Code) and other applicable policies and programs. At the time of Final Development Plan approval, the project will be subject to standard conditions regarding submission of evidence of compliance with the Ordinance.
- G. COMPLIANCE WITH STORMWATER MEASURES. The project shall be designed, constructed, operated, and maintained in conformance with the “Alameda County Clean Water Program C.3 Stormwater Technical Guidance and including the Alameda County Clean Water Program Stormwater Treatment Requirements for New Development and Redevelopment” (“Stormwater Measures”) and the City’s “Stormwater Guidelines for Green Dense Redevelopment” (“Stormwater Guidelines”).
- H. LANDSCAPING AND STREET TREES. Applicant shall submit detailed landscaping and irrigation plans for the approval of the Public Works Director. The plans shall conform to Title 9 Section 4.602 “Water Efficient and Bay Friendly Landscaping” of the Emeryville Municipal Code, including guidelines from StopWaste.org, the Alameda Countywide Clean Water Program C3 Stormwater Technical Guidance, and EBMUD requirements for reclaimed water.

The plans shall include species, number of plantings, size of plantings and specifications for the irrigation system. Minimum plant sizes are flats or 1-gallon containers for ground cover, 5-gallon containers for shrubs and 24-inch box containers for trees. Street trees shall be of a species approved by the Public Works Director and shall be spaced as depicted on the approved Tentative Map and as approved by the Public Works Director. All planting areas and tree wells

shall include a 3 inch layer of bark mulch per the requirements of Bay Friendly Landscaping. Street trees may require tree grates as directed by the Public Works Director

The applicant shall install structural soil under sidewalk / hardscape areas, to provide adequate rootable soil volume areas for healthy street trees. The amount of rootable soil volume to be provided per tree shall depend on the ultimate size of the tree at maturity as follows:

- 600 cubic feet per small tree,
- 900 cubic feet per medium-sized tree
- 1200 cubic feet per large-sized tree.

Rootable soil volume for each tree shall be calculated by including both the structural soil beneath the hardscape areas and Bay Friendly approved horticultural soil within the planting areas. The landscape plans shall clearly show all locations of Rootable Soil including dimensions for structural soil and Bay Friendly Horticultural Soil to account for the above referenced requirements for Rootable soil volume.

The applicant shall perform horticultural soil and drainage tests on-site and in the public right of way areas that will receive tree plantings for review and approval by the City Arborist. Tree planting areas shall include drainage as necessary for all trees and could entail extensive excavation for sumps and subdrain systems. All existing native soil to be considered as rootable soil in planter areas shall be tested for chemical contaminants and horticultural suitability. Prior to importing any soil material to be used as rootable soil, the Applicant shall provide chemical and horticultural test results to the City for approval. Soil shall be amended as necessary with Bay Friendly compost per City standards in place of other soil amendments.

- I. PUBLIC SAFETY. All Final Development Plan (FDP) applications shall comply with applicable fire and emergency safety measures as required by the Fire Department, including access requirements, premises identification, key boxes, hydrants, fire protection systems and equipment and exiting and emergency illumination. All FDP applications shall also comply with the Police Department's standard specifications including requirement of knox-boxes where applicable.
- J. DESIGN REVIEW. All Final Development Plan (FDP) applications shall comply with the City's Design Guidelines as well as Park Avenue District Plan guidelines including but not limited to the requirements for shared parking, a special emphasis on the use of building materials and aesthetics that comply with the District's attention to the historic and industrial roots of the community and

screening of all mechanical and electrical equipment from the public right-of-way.

- K. DEDICATION OF LAND FOR PUBLIC PARK, OPEN SPACE USE AND ACCESS. Prior to the approval of the FDP, the City shall determine ownership, whether in fee or a permanent easement for public park, recreation, open space use, and pedestrian and bicycle access (identified as Open Space Park Parcel 1, 2, 3 and 4 in the PDP plans), with respect to that portion of the land subject to this permit which is not currently owned by the City. The City and Applicant shall enter into an agreement to convey such interest to the City and shall address, maintenance, and construction of improvements. The agreement shall be in a form acceptable to the City Attorney. If the property is to be dedicated to the City it shall not contain hazardous substances, waste or materials, as defined by State or Federal law, including petroleum, crude oil or any fraction thereof, or shall otherwise be remediated in accordance with a cleanup plan approved by the City and applicable State or Federal regulatory agencies to a level suitable for the intended use. Further, the Applicant shall agree to thereafter defend, indemnify, and hold the City harmless from all demands, claims, orders, costs, expenses, fees, penalties, and causes of action related to hazardous substances, waste or materials, as defined by State or Federal law, including petroleum, crude oil or any fraction thereof, located on or emanating from the property.
- L. BICYCLE AND PEDESTRIAN EASEMENT FOR “PASS THROUGH” ALLEY IN BUILDING 1-31 (PARCEL A). Prior to issuance of a temporary certificate of occupancy for Building 1-31 (Parcel A), the Applicant shall enter into and grant the City an irrevocable offer to dedicate an easement, at least 24 feet wide for a public pedestrian and bicycle path through the building as shown on the approved PDP plans. The Applicant shall construct this bicycle and pedestrian path prior to the issuance of a temporary certificate for occupancy for Building 1-31. Following construction, the Applicant shall be responsible for ongoing maintenance of the path. The path shall at all times remain open and accessible to the public for bicycle and pedestrian access, provided that if circumstances arise that warrant limitations on “24/7” public access, the developer may petition the City Council to establish hours for public access. No gates or other means of restricting access shall be installed or constructed at either point of entry without the prior approval of the City Council.
- M. UNIT MIX AND DESIGN. The overall project and each individual residential building within the project shall comply with the Multi-Unit Residential Development requirements of Article 20 of Chapter 5 of the Planning Regulations, including but not limited to the requirements for unit mix, design, and ownership housing. The ownership housing requirement shall not apply to a stand-alone affordable housing building.



- N. PUBLIC IMPROVEMENTS. Applicant shall be responsible for the design and construction of public improvements, including but not limited to street improvements, park and open spaces, site grading and storm drainage, sanitary sewers, traffic signals, landscaping, and underground utility lines, as will be further detailed in the Tentative Map for the project and/or the Final Development Plan(s).
- O. FENCE ALONG THE RAILROAD. The fence along the western perimeter of the project area shall match the fence along the western side of the railroad in adjacent to the Bay Street development.

### **III. PRIOR TO THE APPROVAL OF THE FIRST FINAL DEVELOPMENT PLAN**

- A. COST RECOVERY PLANNING FEES. Prior to the issuance of any building permit, the Community Development Director shall confirm that all cost recovery planning fees have been paid to date.
- B. PARKING. All of the parking requirements for Parcels A and B-1 are being met on Parcel B-2. To ensure that this requirement continues indefinitely the Applicant shall record a deed restriction or covenant on Parcel B-2 in a form acceptable to the City Attorney.

### **IV. SPECIAL CONDITIONS**

The following conditions have been voluntarily accepted by the Applicant and the Applicant has agreed that they will apply to the project:

- A. TRANSPORTATION DEMAND MANAGEMENT (TDM) PLAN. The Applicant shall submit a revised TDM plan prior to the approval of the first Final Development Plan that estimates a 30 per cent reduction in traffic based on the addition of transit-oriented incentives and mitigations. The TDM plan shall also include a shared parking plan that will optimized parking capacity by allowing varying uses within the project to share spaces. The shared parking plan should also allow for public parking. The TDM plan shall also include a plan to provide parking management services for time-restricted parking (including public street parking) to assist in facilitating the use of street and other parking for small businesses in the neighborhood including a description of the Applicant's financial contribution to the enforcement of those parking restrictions. The TDM shall annually quantify and report demand and usage of the car-shares, bike-shares, and bike lockers.
- B. CAR SHARE. The project shall provide ten dedicated car-share parking spaces, seven within the project site and three on streets adjacent to the project, if approved by the City. The Applicant shall obtain necessary permits from the City to designate public parking spaces for car share purposes. At the onset of

occupancy, only two of the on-site dedicated spaces need to be used for car-share purposes and the remaining five on-site spaces can be used for alternative parking purposes until the TDM provides for their use. The three off-site dedicated car-share parking spaces shall be provided in advance of occupancy of any residential structure, subject to approval by the City.

- C. BIKE SHARE AND LOCKERS. Prior to the issuance of the last temporary certificate of occupancy, the Applicant shall install a bike sharing station with an expandable capacity in a location determined by the City. The vendor for bike-shares shall be the same vendor that provides bike-share opportunities at the West Oakland BART station, which is currently Bay Area Bike Share. The cost of the bike-shares shall be subsidized by 50% of the current cost of the bike-share program and subsidized membership for the bike share program shall be provided on a per unit basis. The subsidy program details shall be outlined in the revised TDM plan.

The Applicant shall also maintain a minimum of 30 lockable, enclosed bike lockers for all residents and employees. The lockers shall be provided by the Applicant and no fee shall be charged for their use. No less than 50 percent of the bike lockers shall be sized to accommodate “cargo bikes”. The project shall provide outlets to charge electric bikes in all the proposed lockers. These 30 lockers shall count towards the bicycle parking requirements in Section 9-4.408.

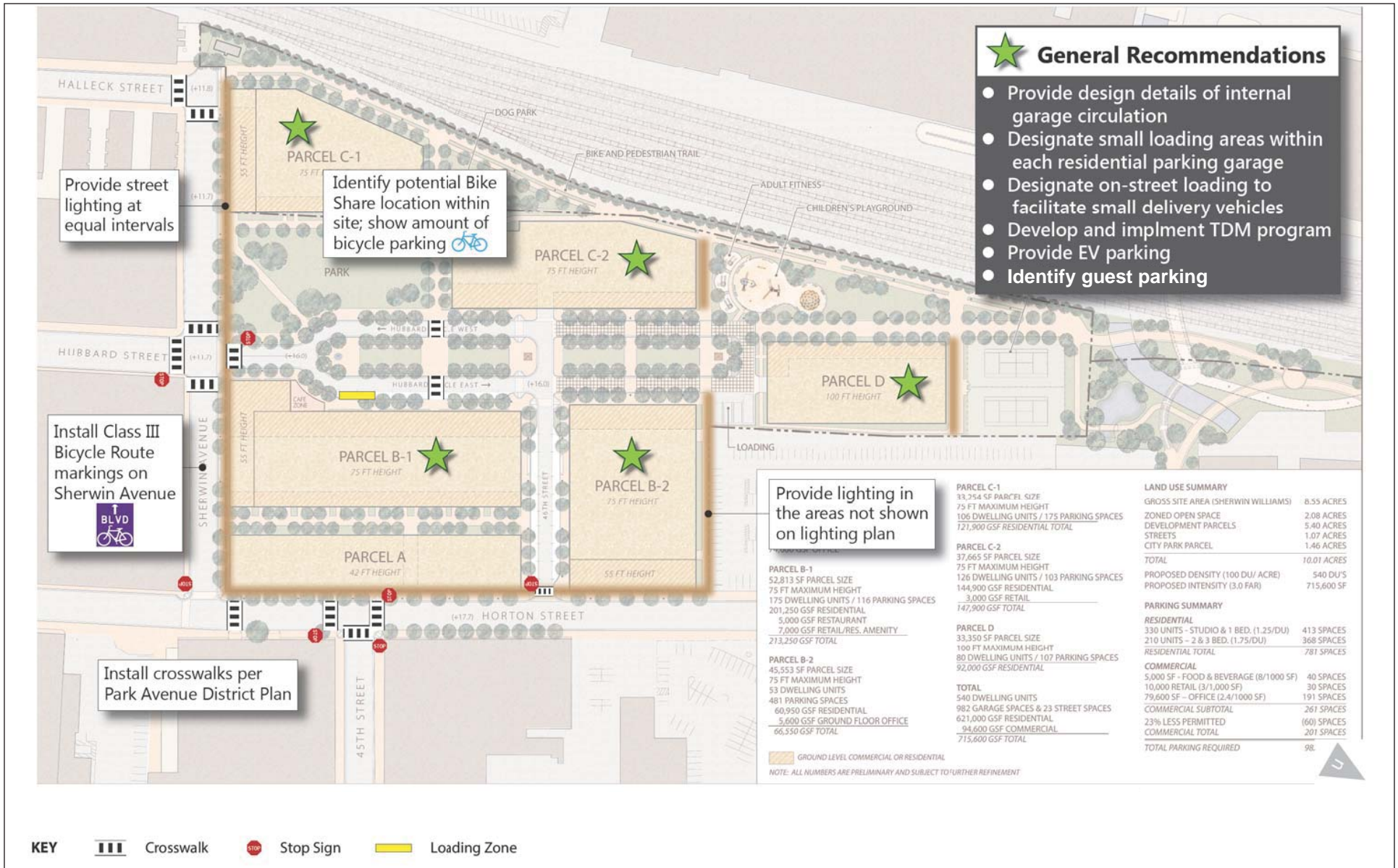
- D. GreenTRIP “PLATINUM” STATUS. Prior to the issuance of the last temporary certificate of occupancy, the Applicant shall demonstrate to the Community Development Director, that the project has achieved equivalent compliance to GreenTRIP “Platinum” as outlined by TransForm except for compliance with the 0.5 parking space per unit standard necessary to achieve “platinum” status.
- E. CONSTRUCTION PARKING. The Applicant shall provide off-street parking for construction workers during all phases of construction. All construction deliveries shall be within the project site and not off loaded from delivery vehicles on public streets with limited exceptions for site and construction work done on buildings and infrastructure along the perimeter streets of the project site.
- F. PARK AVENUE DISTRICT OVERLAY. The Applicant shall comply with the Park Avenue District overlay and associated guidelines, including but not limited to the requirements for shared parking, a special emphasis on the use of building materials and aesthetics that comply with the overlay’s attention to the historic and industrial roots of the community and a fine grain street layout that is pedestrian and bicycle-friendly.
- G. PUBLIC PROCESS FOR PARK DESIGN. The Applicant shall work with the City to engage the community in a public process that shall include facilitated

community workshops related to design of the parks, bike and pedestrian paths, streetscape and other public programming.

- H. DEED RESTRICTION AND/OR COVENANT. The Applicant shall record a deed restriction and/or covenant against the project for the ongoing obligations to notify future property owners of the special conditions and continuing obligations to the City in a form acceptable to the City Attorney.

Attachments:

1. Figure IV. C-18 of the Final Environmental Impact Report
2. Mitigation Measures



LSA

FIGURE IV.C-18

NOT TO SCALE



## ATTACHMENT 2:

### SHERWIN WILLIAMS MIXED USE PROJECT CONDITIONS OF APPROVAL (PUD13-001)

#### ***MITIGATION MEASURES IDENTIFIED IN FEIR PREPARED FOR THE PROJECT***

**TRANS-1a:** The project applicant shall undertake the following measures to reduce the level of traffic on Horton Street north of 53rd Street (analysis segment A):

- Pay the Transportation Impact Fee;
- Work with the City so that the final project design does not preclude the installation of desired traffic calming measures along the Horton Street corridor, as identified by the City; and

Pay for the installation of permanent Level 4 traffic calming measures and traffic restriction (diversion) measures on Horton Street (Level 5) per the Sherwin Williams - Horton Street Turn Restriction Assessment Memorandum (see Appendix B) that would result in the reduction of existing with project daily volumes to a level below 3,000 vehicles per day.

**TRANS-1b:** Implement TRANS-1a to reduce the level of traffic on Horton Street between 45th and 53rd streets (analysis segment B).

**TRANS-1c:** Implement TRANS-1a to reduce the level of traffic on Horton Street south of Sherwin Avenue (analysis segment C).

**TRANS-1d:** The applicant shall pay for the installation of a traffic signal at the Hollis Street/45th Street (#16) intersection, with necessary improvements for transit, bicycle and pedestrian infrastructure at the intersection, including directional curb ramps, bicycle detection, and transit priority; and a hard wired signal interconnect to the traffic signal at Park Avenue and Hollis Street.

**TRANS-2:** The project applicant shall undertake the following measures:

- Pay the Transportation Impact Fee;
- Work with City Staff to identify additional bicycle boulevard treatments that could be installed along the 45th Street corridor, including horizontal and vertical speed control; and
- Pay for the installation of a traffic signal at the Hollis Street/45th Street (#16) intersection, with necessary improvements for transit, bicycle and pedestrian infrastructure at the intersection, including directional curb ramps, bicycle detection, and transit priority; and a hard-wired signal interconnect to the traffic signal at Park Avenue and Hollis Street (same as TRANS-1d).

**TRANS-3:** The project applicant shall undertake the following measures:

- Pay the Transportation Impact Fee; and
- Work with City Staff to identify additional Level 4 bicycle boulevard treatments that could be installed along the 53rd Street corridor beyond those being installed as part of the ECCL project.

**TRANS-4a (Near-Term Condition):** Implement Mitigation Measure TRANS-1a to reduce the level of traffic on Horton Street north of 53rd Street (analysis segment A). Implementation of this measure would reduce the impact to Horton Street north of 53rd Street to a less-than-significant level in the Near-Term Condition. In the Cumulative Condition, the impact to Horton Street north of 53rd Street would remain significant and unavoidable.

**TRANS-4b:** Implement Mitigation Measure TRANS-1a to reduce the level of traffic on Horton Street between 45th and 53rd streets (analysis segment B). Implementation of this measure would reduce the traffic volume on Horton Street between 45th Street and 53rd Street to a level considered acceptable for a bicycle boulevard for the Near-Term Condition and the Cumulative Condition.

**TRANS-4c:** Implement Mitigation Measure TRANS-1a to reduce the level of traffic on Horton Street south of Sherwin Avenue (analysis segment C). Implementation of this measure would reduce the traffic volume on Horton Street south of Sherwin Avenue to a level considered acceptable for a bicycle boulevard for the Near-Term Condition and for the Cumulative Condition.

**TRANS-4d:** Implement Mitigation Measure TRANS-1d.

**TRANS-4e:** Along with implementation of TRANS-1a, the applicant shall coordinate with the City to extend the eastbound left-turn pocket on 40th Street at Hollis Street to provide at least 200 feet of vehicle storage and adjust the traffic signal timings to accommodate changed travel patterns in the Cumulative Condition.

**TRANS-5:** Implement Mitigation Measure TRANS-2 to reduce this impact to 45th Street, west of San Pablo Avenue, in the Near-Term and Cumulative Conditions to a less-than-significant level.

**TRANS-6:** Implement Mitigation Measure TRANS-3 to reduce this impact to 53rd Street, west of San Pablo Avenue, under Near-Term and Cumulative with Project Conditions to a less-than-significant level.

**TRANS-7:** The project applicant shall install a traffic signal at the Hollis Street/45th Street intersection (#16), including hard-wired signal interconnect to the traffic signal at Park Avenue and Hollis Street, and necessary improvements for transit, bicycle and pedestrian infrastructure at the intersection, including directional curb ramps, bicycle detection, and transit priority (included as part of Mitigation Measures TRANS-1d and TRANS-2). Installation of a traffic signal would reduce this impact to a less-than-significant level and with incorporation of pedestrian, bicycle and transit improvements, would not result in secondary impacts to other travel modes.

**TRANS-9:** Although construction impacts are expected to be temporary, development of a construction management plan would reduce the potential for construction vehicle conflicts with other roadway users.

The plan should include:

- Project staging plan to maximize on-site storage of materials and equipment;
- A set of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak hours; lane closure schedule and process; signs, cones, and other warning devices for drivers; and designation of construction access routes;
- Permitted construction hours;
- Location of construction staging;
- Identification of parking areas for construction employees, site visitors, and inspectors, including on-site locations and along the project frontage on Sherwin Avenue and Horton Street;
- Provisions for street sweeping to remove construction related debris on public streets; and
- Provisions for pavement maintenance where increased heavy vehicle traffic has the potential to degrade the pavement.
- Truck deliveries to the project shall occur not earlier than 7:00 a.m and not later than 4:00 p.m.
- If lane closures are required on Sherwin Avenue and/or Horton Street, the applicant shall notify property owners within 300 feet of the project site ten days in advance of the lane closures.

**AIR-1:** Consistent with guidance from the BAAQMD, the following actions shall be required in relevant construction contracts and specifications for the project:

- All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- All visible mud or dirt tracked-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- All vehicle speeds on unpaved roads shall be limited to 15 miles per hour (mph).
- All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- Construction equipment idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 2 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- All construction equipment shall be maintained and properly tuned in accordance with the manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- The project applicant shall post a publicly visible sign with the telephone number and person to contact at the City of Emeryville regarding dust complaints. This person shall respond to complaints and take corrective action within 48 hours. The BAAQMD's phone number shall also be visible to ensure compliance with applicable regulations.
- All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or a moisture probe.
- All excavation, grading, and/or demolition activities shall be suspended when average wind speeds exceed 20 mph.
- Vegetative ground cover (e.g., fast-germinating native grass seed) or other plants that offer dust mitigation measures shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
- The simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time shall be limited. To the extent feasible, activities shall be phased to reduce the amount of disturbed surfaces at any one time.
- All trucks and equipment, including their tires, shall be washed off prior to leaving the site.
- Sandbags or other erosion control measures shall be installed to prevent silt runoff to public roadways from sites with a slope greater than 1 percent.
- The project contractor shall use low volatile organic compound (i.e., ROG) coatings beyond the local requirements (i.e., Regulation 8, Rule 3: Architectural Coatings).
- All construction equipment, diesel trucks, and generators shall be equipped with Best Available Control Technology for emission reductions of NOx and PM.
- All contractors shall use equipment that meets California ARB's most recent certification standard (as of 2016, the certification date is July 26, 2007) for off-road heavy duty diesel engines.

**AIR-2a:** To reduce health risk levels for future residents of the project site, the project applicant shall provide an air ventilation system with filtration that can remove particulate matter from indoor air to a level sufficient to achieve compliance with the BAAQMD threshold. To reduce health risk levels for future residents of the project site, the control efficiency must result in a reduction of 60 percent of particulates of 2.5 microns or less, such as Minimum Efficiency Reporting Value (MERV)-11 filters or other indoor air filtration systems. This reduction could be accomplished via a duct routed from the return side of the ceiling mounted fan coil to the exterior of the building. A MERV-11 filter box could be installed in line with this duct along with a supply fan to overcome the pressure drop of this filter. The filter box would be installed in a concealed location such as a closet. This measure would reduce the maximum single source carcinogenic health risk level for future residents to 8.4 (which would be below the BAAQMD's significance criteria of 10). The ventilation system shall be certified to the satisfaction of the City to achieve the stated performance effectiveness from indoor areas.

**AIR-2b:** The project applicant shall disclose to potential occupants of the project that the proximity of the project site to the freeway, railroad tracks, and industrial sources of air pollution could result in increased long-term health risks. The disclosure shall indicate the specifications for the installed air filtration system.

The property manager shall be required to maintain particulate filters to ensure proper operation of HVAC equipment.

**NOI-1:** All residential units shall be designed and equipped with an alternate form of ventilation, such as mechanical ventilation or air conditioning to allow windows and doors to remain closed. Interior noise would be reduced to meet the standard of 45 dBA CNEL when all windows and doors are closed.

**NOI-2:** The final project design shall incorporate standard industrial noise control measures for any project stationary noise sources to meet the City of Emeryville Municipal Code standards of 55 dBA during the night and 65 dBA during the day. Such measures may include enclosing equipment in sound-attenuating structures, using buildings to shield these noise sources from sensitive receptors, or mounting equipment on resilient pads to reduce both groundborne and airborne vibration noises. The project sponsor shall ensure that operational noise from stationary sources do not exceed the thresholds set forth in the City of Emeryville Municipal Code for the surrounding residential land uses. The project sponsor shall use standard design features/approaches, including installation of relatively quiet models of mechanical equipment, installation of exhaust silencers, orientation of shielding to protect sensitive land uses, and installation within enclosures when necessary to reduce stationary, or fixed source, noise levels to below the established threshold when measures at the property line of the nearest affected sensitive receptor. Loading and unloading activities shall be restricted to the hours of 7:00 a.m. to 9:00 p.m. on weekdays and 8:00 a.m. to 9:00 p.m. on weekends.

**NOI-3:** The project contractor shall implement the following measures:

- General construction noise on private and public projects shall be limited to weekdays from 7:00 a.m. to 6:00 p.m. The loudest activities shall be limited to weekdays from 8:00 a.m. to 5:00 p.m., as stated in the City's Municipal Code.
- The applicant shall designate a construction liaison that would be responsible for responding to any local complaints about construction noise. The liaison would determine the cause of the noise complaints (e.g., starting too early, bad muffler) and institute reasonable measures to correct the problem. The applicant shall conspicuously post a telephone number for the liaison at the construction site.
- The project contractor shall, to the extent feasible, place all stationary construction equipment so that emitted noise is directed away from sensitive receptors nearest the project site.
- The construction contractor shall locate on-site equipment staging areas so as to maximize the distance between construction-related noise sources and noise-sensitive receptors nearest the project site during all project construction.
- Construction activities shall be prohibited on holidays.
- If the project applicant requests construction hours outside the Municipal Code's designated hours, the project applicant shall provide a Construction Noise Reduction Plan to meet a maximum permissible noise level of 55 dBA at the project boundary.
- Whenever feasible, the project contractor shall encourage implementation of the following strategies throughout all phases of construction:
  - Use smaller or quieter equipment;
  - Use electric equipment in lieu of gasoline or diesel powered equipment;
  - Turn off all idling equipment when anticipated to not be in use for more than 5 minutes;
  - Minimize drop height when loading excavated materials onto trucks;
  - Minimize drop height when unloading or moving materials on-site; and
  - Sequence noisy activities to coincide with noisiest ambient hours (i.e., 8:00 a.m. to 9:00 a.m. or 4:00 p.m. to 6:00 p.m.).

**GEO-1:** The project site is located within a mapped seismic hazard zone (under the Seismic Hazard Zone Mapping Act), and the following specific criteria for project approval shall apply:

- (a) The potential for the nature and severity of the seismic hazards, including liquefaction potential, at the site have been fully evaluated in a site-specific geotechnical report and appropriate mitigation measures have been proposed.
- (b) The geotechnical report(s) for the project shall be prepared by a registered civil engineer or certified engineering geologist who has competence in the field of seismic hazard evaluation and



mitigation. The geotechnical report shall contain site-specific evaluations of the seismic hazards affecting the project site, and shall identify portions of the project site containing seismic hazards. The report shall also identify any known off-site seismic hazards that could adversely affect the site in the event of an earthquake. The contents of the geotechnical report shall include, but shall not be limited to, the following:

- Project description and a description of the geologic and geotechnical conditions at the site;
  - Evaluation of site-specific seismic hazards based on geological and geotechnical conditions, in accordance with current standards of practice. Recommendations for appropriate mitigation measures.
  - Recommendations of appropriate mitigation measures.
  - Name of report preparer(s), and signature(s) of a certified engineering geologist and/or registered civil engineer, having competence in the field of seismic hazard evaluation and mitigation.
- (c) Prior to approving the project, the City shall independently conduct a review of the geotechnical reports to determine the adequacy of the hazard evaluation and proposed mitigation measures. Such reviews shall be conducted by a certified engineering geologist or registered civil engineer, having competence in the field of seismic hazard evaluation and mitigation. Analysis presented in the geotechnical report shall conform with the California Geological Survey (formerly known as the California Division of Mines and Geology) recommendations presented in the Guidelines for Evaluating Seismic Hazards in California. All mitigation measures, design criteria, and specifications set forth in the geotechnical and soils report shall be implemented as a condition of project approval.
- (d) Prior to approval of an occupancy permit for the redeveloped Building 1- 31, a design-level seismic upgrade report shall be prepared, submitted to the City for review and approval, and the upgrade recommendations shall be implemented. Prior to approving the design-level report, the City shall independently review the seismic upgrade report to determine the adequacy of the hazards evaluation and proposed mitigation measures. Such reviews shall be conducted by a structural engineer or registered civil engineer who has competence in the field of seismic hazard evaluation and mitigation.
- (e) All foundation designs and geotechnical remedies shall consider existing hazardous materials remediation systems and ensure that these remediation systems are not adversely affected. Any geotechnical remedies that could result in alteration of the direction or flow velocity of groundwater shall be approved by the DTSC prior to implementation.

**GEO-2a:** Prior to issuance of a grading permit, a final site-specific geotechnical report that evaluates the project site and the proposed grading plan for potential impacts associated with differential settlement shall be prepared and submitted to the City Department of Public Works for approval. The report shall include specific recommendations for mitigation of potential settlements associated with native soil/fill boundaries and areas of differential fill thickness. Recommendations for specific foundation designs which minimize the potential for damage related to settlement shall be presented in the report.

**GEO-2b:** For areas with expansive soils with moderate to high shrink-swell potential, recommendations for proposed building foundations and improvements shall take into account the following conditions: foundation design may include drilled pier and grade beams, deepened footings (extending below expansive soil), or post-tensioned slabs. Alternatively, expansive soil shall be removed and replaced with compacted non-expansive soil prior to foundation construction. The final geotechnical report for the project shall require that subgrade soils for pavements consist of moisture-conditioned, lime-treated, or non-expansive soil, and that surface (including roof drainage) and subsurface water be directed away from foundation elements to minimize variations in soil moisture.

**GEO-2c:** All excavation and shoring activities shall be conducted under the supervision of a certified engineering geologist and/or registered civil engineer who has competence in the field of soils and shoring systems.

**HYD-1a:** Consistent with the requirements of the statewide Construction General Permit, the project applicant shall prepare and implement a SWPPP designed to reduce potential adverse impacts to surface water quality during the project construction period. The SWPPP shall be designed to address the following objectives:

1. All pollutants and their sources, including sources of sediment associated with construction, construction site erosion and all other activities associated with construction activity are controlled;
2. Where not otherwise required to be under a Regional Water Board permit, all non-stormwater discharges are identified and either eliminated, controlled, or treated; and
3. BMPs are effective and result in the reduction or elimination of pollutants in stormwater discharges and authorized non-stormwater discharges from construction activity to the BAT/BCT standard.

The SWPPP shall be prepared by a Qualified SWPPP Developer. The SWPPP shall include the minimum BMPs required for this type of project (based on final determination of the project's Risk Level status, to be determined as part of the Notice of Intent for coverage under the Construction General Permit); these include: BMPs for erosion and sediment control, site management and housekeeping, waste management, management of non-stormwater discharges, runoff and runoff controls, and BMP inspection/maintenance/repair activities. BMP implementation shall be consistent with the BMP requirements in the most recent version of the California Stormwater Quality Association Stormwater Best Management Handbook-Construction. The SWPPP shall include a construction site monitoring program that identifies requirements for dry weather visual observations of pollutants at all discharge locations, and as appropriate (depending on the project Risk Level), sampling of the site effluent and receiving waters. A Qualified SWPPP Practitioner (QSP) shall be responsible for implementing the BMPs at the site. The QSP shall also be responsible for performing all required monitoring and BMP inspection, maintenance, and repair activities.

**HYD-1b:** The project applicant shall comply with the applicable requirements of Provision C.3 of the MRP. Responsibilities include, but are not limited to, designing BMPs into project features and operations to reduce potential impacts to surface water quality associated with operation of the project. These features shall be included in a design-level stormwater control plan (SCP). The SCP will serve as the overall stormwater quality management document that will describe measures to mitigate potential water quality impacts associated with the operation of the proposed project. At a minimum, the SCP for the project shall include:

1. An inventory and accounting of existing and proposed impervious areas.
2. LID design details incorporated into the project. LID features, include minimizing disturbed areas and impervious cover and then infiltrating, storing, detaining, evapotranspiring, and/or biotreating stormwater runoff and are required by the MRP. Practices used to adhere to these LID principles include measures such as rain barrels and cisterns, green roofs, permeable pavement, preserving undeveloped open space, and biotreatment through rain gardens, bioretention units, bioswales, and planter/tree boxes.
3. Measures to address potential stormwater contaminants. These may include measures to cover or control potential sources of stormwater pollutants at the project site.
4. All stormwater runoff from impervious surfaces shall be treated with Bay-Friendly Landscaping.
5. All stormwater treatment landscaping shall be maintained using a Bay-Friendly Landscaping company or staff.
6. All stormwater treatment measures shall consider existing hazardous materials remediation systems and ensure that these remediation systems are not adversely affected.

Any stormwater treatment measures that could result in alteration of the direction or flow velocity of groundwater shall be approved by the DTSC prior to implementation.

**HYD-2:** As a condition of approval of the final grading and drainage plans for the project, it must be demonstrated through detailed hydraulic analysis that implementation of the proposed drainage plans will:

1. Not increase peak runoff rates from any subareas, and/or that there is no increase in combined peak runoff volumes from subareas draining to the same downstream conveyance component (i.e., reductions in one subarea can offset increases in another subarea, if they drain to the same downstream conveyance), or that the downstream conveyance has adequate capacity to handle the proposed increase. The final drainage plan for the project shall document runoff rates for the final design and shall be prepared by a licensed professional engineer.
2. Include drainage components that are designed in compliance with City of Emeryville standards. The grading and drainage plans shall be reviewed for compliance with these requirements by the City of Emeryville Department of Public Works. Any improvements deemed necessary by the City, will be part of the conditions of approval.

**HAZ-1:** A Spill Response Plan, including emergency preparedness and response procedures, shall be developed by the contractor(s) to establish the procedures to be followed in the event of an accidental spill or other hazardous materials emergency during project site preparation and development activities. These procedures shall include evacuation procedures, notification procedures, spill containment procedures, and required personal protective equipment, as appropriate, in responding to the emergency. In addition, an accurate up-to-date inventor of hazardous materials, including Material Safety Data Sheets, shall be maintained on-site to assist emergency response personnel in the event of a hazardous materials incident. The contractor(s) shall submit the Spill Response Plan to the City for approval prior to demolition or development activities.

Compliance with these mitigation measures may occur in coordination with compliance with the Stormwater Pollution Prevention Plan and Best Management Practices required for the proposed project (See Mitigation Measures HYD-1 and HYD-2 for additional detail). Implementation of this mitigation measure would reduce this potential impact to a less-than-significant level.

**HAZ-2a:** As a condition of approval for construction permits for the Sherwin-Williams parcel, an evaluation of soil gas conditions and indoor air quality shall be performed on the Sherwin-Williams parcel and Department of Toxic Substances Control (DTSC) review and approval for construction shall be obtained. If the evaluation of soil gas conditions indicates that vapor intrusion to indoor air could pose a significant health risk for future occupants (e.g., if vapor intrusion could result in an excess cancer risk of greater than one in a million or an appropriate health risk threshold determined by DTSC), DTSC may require further investigation and/or implementation of engineering controls (e.g., installation of sub-slab vapor barriers and ventilation systems) to address the potential for vapor intrusion to indoor air. If engineering controls are required by DTSC to mitigate vapor intrusion risks, operations, maintenance, and monitoring of the engineering controls would be required by DTSC to ensure their effectiveness and demonstrate that performance standards are being achieved (e.g., monitoring of sub-slab concentrations of VOCs to demonstrate that the sub-slab ventilation system is functioning properly and that concentrations of VOCs are not accumulating beneath buildings that could exceed the level of protection offered by sub-slab vapor barriers). If the performance standards for the engineering controls are not achieved, additional engineering controls would be required by DTSC (e.g., converting a passive sub-slab ventilation system to an active sub-slab ventilation system, or maintaining positive pressure within buildings using the heating, ventilation, and air conditioning [HVAC] systems). The City shall ensure that the requirements specified by DTSC are implemented prior to occupancy of the proposed structures.

**HAZ-2b:** As a condition of approval for construction permits for residential housing on the Successor Agency parcel (under development Option A), an evaluation of soil gas conditions and indoor air quality shall be performed on the Successor Agency parcel and DTSC review and approval for construction shall be obtained. If the evaluation of soil gas conditions indicates that vapor intrusion to indoor air could pose a significant health risk for future occupants (e.g., if vapor intrusion could result in an excess cancer risk of greater than one in a million or an appropriate health risk threshold determined by DTSC), DTSC may require further investigation and/or implementation of engineering controls (e.g., installation of sub-slab vapor barriers and ventilation systems) to address the potential for vapor intrusion to indoor air. If

engineering controls are required by DTSC to mitigate vapor intrusion risks, operations and maintenance and monitoring of the engineering controls would be required by DTSC to ensure their effectiveness and demonstrate that performance standards are being achieved (e.g., monitoring of sub-slab concentrations of VOCs to demonstrate that the sub-slab ventilation system is functioning properly and that concentrations of VOCs are not accumulating beneath buildings at concentrations that could exceed the level of protection offered by sub-slab vapor barriers). If the performance standards for the engineering controls are not achieved, additional engineering controls would be required by DTSC (e.g., converting a passive sub-slab ventilation system to an active sub-slab ventilation system, or maintaining positive pressure within buildings using the HVAC systems). The City shall ensure that the requirements specified by DTSC are implemented prior to occupancy of the proposed structures.

**HAZ-2c:** As a condition of approval for construction permits for the Successor Agency parcel, a LUC for the Successor Agency parcel shall be prepared and approved by DTSC. The land use covenant shall define restrictions and requirements intended to prevent potential exposure of construction workers, the public, and the environment to hazardous materials which are present in the subsurface of the Successor Agency parcel. At the discretion of the DTSC, these restriction and requirements may include, but not be limited to:

- Prohibiting any use of groundwater for any purpose other than groundwater monitoring.
- Requiring preparation of a Soil Management Plan (SMP) and DTSC approval prior to performing any activities that will disturb soil on the property or import soil to the property.
- Prohibiting activities including any drilling, extraction of groundwater, installation of preferential pathways (e.g., utility trenches), or other construction or development activities without written approval from DTSC.
- Prior to construction or other development of the property, the owner shall submit an evaluation of soil gas conditions and indoor air quality and obtain DTSC approval, and DTSC may require further investigation and/or implementation of engineering controls to address the potential for vapor intrusion to indoor air.
- Allowing access to the property for DTSC personnel for the purpose of performing inspections, monitoring, and other activities.

Preparing annual inspection reports and submitting them to DTSC to document that the restriction and requirements of the LUC are being followed, and describes the actions to be taken if violations of the LUC are identified.

**HAZ-2d:** As a condition of approval for construction permits for the Successor Agency parcel and the Sherwin-Williams parcel, a SMP shall be prepared which provides guidelines for soil and groundwater disturbing activities to be performed on the Successor Agency parcel and the Sherwin-Williams parcel. The SMP shall include, but not be limited to, the following elements:

- Dust and vapor controls;
- Storm water controls;
- Excavated soil stockpile management;
- Soil stockpile sampling procedures;
- Soil and/or groundwater transportation and disposal procedures;
- Groundwater dewatering, treatment, and/or discharge;
- Notification and response procedures if previously unidentified subsurface features of environmental concern (e.g., buried tanks, drums, hazardous materials pipelines, or hazardous building materials) are discovered;
- Notification and response procedures if previously unidentified areas of potential soil or groundwater contamination (e.g., soil or groundwater exhibiting discoloration and/or odors, or soil containing rubble or other debris) are discovered;
- Notification and response procedures if previously installed remedial features are inadvertently damaged;
- Importing of clean fill materials; and
- Health and safety requirements.

The SMP shall be reviewed and approved by DTSC prior to conducting soil or groundwater disturbing activities at the project site. The SMP shall be revised if previously unidentified environmental hazards are discovered which require additional measures to be incorporated into the SMP to ensure protection of

construction workers, the surrounding public, and the environment, such as changes in health and safety requirements (e.g., worker training or personal protective equipment [PPE] requirements), material handling/sampling protocol, or air monitoring requirements. Any revisions to the SMP shall be reviewed and approved by DSTC prior to conducting soil or groundwater disturbing activities that would be affected by the revisions to the SMP.

**CULT-1:** Any renovation or alteration of Building 1-31 shall be conducted in accordance with the Secretary of the Interior's Standards for Rehabilitation (Standards) and undertaken with the assistance of a historic preservation architect meeting the Secretary of the Interior's Professional Qualifications Standards. The City shall confirm that the architectural firm responsible for overseeing the renovation of Building 1-31 has retained a qualified historic preservation architect. Renovation plans of Building 1-31 shall be reviewed by the preservation architect to ensure compliance with the Standards and to make changes to the plans to ensure compliance, as appropriate. The historic preservation architect shall regularly evaluate the ongoing renovation to ensure it continues to satisfy the Standards. The historic preservation architect shall submit status reports to the City Planning Department describing the renovation's compliance with the Standards and recommended measures to ensure compliance if corrective measures are necessary. These reports shall be submitted to the City according to a schedule agreed upon prior to commencement of the renovation. The City shall be responsible for ensuring that the recommendations of the preservation architect are implemented as a condition for project approval.

**CULT-2:** Archaeological monitoring shall be conducted for construction-related ground disturbance. Project ground disturbance shall cease within 25 feet of an archaeological discovery or discovery of human remains. The archaeological deposit shall be evaluated in accordance with an Archaeological Monitoring and Evaluation Plan (AMEP) prepared and implemented for the project. The purpose of the AMEP is to ensure that significant archaeological deposits discovered during construction are identified, evaluated, and appropriately treated through the use of a pre-established research design and field evaluation strategy, consistent with the requirements of CEQA Guidelines §15126.4 (b)(3)(C). The AMEP shall be approved by the City well in advance of construction, and its implementation shall be made a condition of the issuance of a grading or building permit for the project. The AMEP shall be prepared by professionals who meet or exceed the Secretary of the Interior's Professional Qualifications Standards in archeology. The AMEP shall include a construction monitoring component and an evaluation component. The monitoring component of the AMEP shall describe the specific methods and procedures for archaeological monitoring, including the frequency of such monitoring and notification procedures in the event archaeological deposits are identified. The evaluation component of the

AMEP would guide fieldwork if archaeological resources or human remains are identified during monitoring. The purpose of this component is to establish the procedures and methods to evaluate the significance of discoveries made during archaeological monitoring, as well as the recovery and analysis of significant discoveries. The treatment of human remains during the evaluation process shall be addressed, including the respectful treatment of such remains in consultation with appropriate descendant communities.

**CULT-3:** Should paleontological resources be encountered during project subsurface construction activities, all ground-disturbing activities within 25 feet shall be stopped and a qualified paleontologist contacted to assess the situation, consult with agencies as appropriate, and make recommendations for the treatment of the discovery. If found to be significant, and project activities cannot avoid the paleontological resources, adverse effects to paleontological resources shall be mitigated. Mitigation may include monitoring, recording the fossil locality, data recovery and analysis, a final report, and accessioning the fossil material and technical report to a paleontological repository. Public educational outreach may also be appropriate. Upon completion of the assessment, a report documenting methods, findings, and recommendations shall be prepared and submitted to the City for review, and, if paleontological materials are recovered, a paleontological repository, such as the University of California Museum of Paleontology.

The applicant shall inform its contractor(s) of the sensitivity of the project area for paleontological resources and shall include the following directive in the appropriate contract documents. The City shall verify that the following directive is included in the appropriate contract documents:

“The subsurface of the construction site may be sensitive for paleontological resources. If paleontological resources are encountered during project subsurface construction, all ground-disturbing activities within 25 feet shall be redirected and a qualified paleontologist contacted to assess the situation, consult with agencies as appropriate, and make recommendations for the treatment of the discovery. Project personnel shall not collect or move any paleontological materials. Paleontological resources include fossil plants and animals, and such trace fossil evidence of past life as animal tracks.”

**CULT-4**: The treatment of human remains and of associated or unassociated funerary objects discovered during project ground disturbance shall comply with applicable State laws. This shall include immediate notification of the County Coroner, and in the event of the Coroner’s determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC) who shall appoint a Most Likely Descendant (MLD) (Public Resources Code Section 5097.98). The archeological consultant, project sponsor, and MLD shall make all reasonable efforts to develop an agreement for the treatment of, with appropriate dignity, human remains and associated or unassociated funerary objects (CEQA Guidelines Section 15064.5(d)). The agreement shall take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects.