

ORDINANCE NO. 16-006

Ordinance Of The City Council Of The City Of Emeryville Adopting A Planned Unit Development Zoning Designation And Approving A Preliminary Development Plan On 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

WHEREAS, LMC Emeryville I Investor LLC ("Applicant") proposes to construct a mixed use project comprised of up to 500 multi-family residential units, a minimum of 2,000 square feet and a maximum of 8,000 square feet of ground floor retail/restaurant/office space, 74,000 square feet of office space, parking garages, open, space, infrastructure and landscaping on the former Sherwin Williams paint factory parcel and adjacent City-owner parcel 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 ("Project; and

WHEREAS, the Project requires an amendment to the General Plan 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 Project site and to modify the Maximum Residential Densities map (Figure 2-6) to be consistent with the Land Use Diagram; and

WHEREAS, on September 6, 2016, the Emeryville City Council certified the Final Environmental Impact Report for the Project, including the proposed General Plan amendment, as adequate under California Environmental Quality Act (Resolution No. 16-122); and

WHEREAS, on September 22, 2016, at a duly and properly noticed public hearing, the Planning Commission adopted Resolution No. EIR 16-03, reviewing and applying the Final EIR to the Project; recommending that the City Council adopt the Mitigation Measures and making findings as required by the California Environmental Quality Act; and

WHEREAS, on September 22, 2016, at a duly and properly noticed public hearing, the Planning Commission recommended that the City Council approve the proposed amendment to the General Plan, and recommended adoption of a Planned Unit Development (PUD) zoning designation and approval of a Preliminary Development Plan (PDP) (Resolution No. PUD 13-001); and

WHEREAS, on October 18, 2016, the City Council held a duly and properly noticed public hearing and took testimony about the Project, including the proposed amendment to the General Plan; and

WHEREAS, on October 18, 2016, following the public hearing, the City Council adopted Resolution No. 16-147, applying the Final EIR to the Project, and making certain findings of fact regarding impacts, adopting the Mitigation Monitoring and Reporting Program, and making certain findings related to alternatives and a statement of overriding considerations; and

WHEREAS, on October 18, 2016, following the public hearing, the City Council adopted Resolution No. 16-148, adopting the proposed amendment to the General Plan 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 Project site and to modify the Maximum Residential Densities map (Figure 2-6) to be consistent with the Land Use Diagram; and

WHEREAS, the City Council has reviewed and considered the staff report and attachments thereto, the plans, all public comments, and the proposed Sherwin Williams Mixed Use Project, subject to the conditions and requirements set forth in Exhibit B attached to this Resolution and the applicable standards of the Emeryville Planning Regulations ("the Record");

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EMERYVILLE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE. PURPOSE AND INTENT

The purpose and intent of this Ordinance is to adopt a Planned Unit Development zoning designation and to approve a Preliminary Development Plan on 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 to adopt 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.

SECTION TWO. REQUIRED FINDINGS FOR ADOPTING ORDINANCE

Planned Unit Development. The City Council makes the following findings to create a PUD zone and adopt a preliminary development plan, pursuant to Section 9-7.1004(a) of the Emeryville Municipal Code:

- (1) The proposed planned unit development conforms to the adopted General Plan and any other applicable plans.

General Plan goals (G) and policies (P) that are particularly germane, and with which the project is consistent, include:

- LU-G-2** *A mix of housing types – A diversity of housing types to accommodate a variety of household sizes and incomes.*
- LU-G-9** *Appropriately scaled buildings – heights and massing that do not appear monolithic.*
- LU-P-1** *Land uses will be consistent with the Land Use Classifications in section 2.4 and the Land Use Diagram, Figure 2-2.*
- LU-P-5** *Retail uses will be concentrated in areas with Neighborhood or Regional Retail overlays, near neighborhood centers, and in the Emeryville Marketplace.*
- LU-P-18** *The reuse of the Sherwin Williams site shall include a mix of residential and nonresidential uses with ample open space, centered on an extension of the Emeryville Greenway connecting Horton Landing Park and the Park Avenue District.*
- PP-P-6** *The north-south Emeryville Greenway will be expanded, enhancing its role as an open space corridor and connector across the City, and a source of inspiration and community pride. The City will support the expansion of a park at the Sherwin Williams site, in coordination with the development of Horton Landing Park and the Greenway.*

The project will provide a standalone affordable housing building in addition to market rate units in three other buildings. In addition, live-work units are also contemplated in the project. The building footprint along street frontages maintain a setback and the building heights are also stepped back so as to maintain the scale of the surrounding buildings.

General Plan goals policies (P) that are related to Urban Design, and with which the project is consistent, include:

- UD-P-46** *Street trees shall be provided on City streets where feasible. Street trees shall be planted in a row along the curb, between the vehicle roadway and sidewalk, unless this is physically impossible due to constraints such as underground water or sewer lines.*
- UD-P-47** *Streetscape landscaping shall follow Bay-Friendly Landscaping guidelines and serve the dual purpose of treating stormwater runoff and providing shade and beauty to the urban realm.*

New street trees have been provided along the new Hubbard Street extension and 46th Street and are proposed in a row along the curb between the road and sidewalk. In addition, conditions of approval require the project to follow Bay-Friendly Landscaping guidelines and the plans allow the use of the trees to treat stormwater where possible.

General Plan goals (G) and policies (P) that are related to Transportation, and with which the project is consistent, include:

- T-G-4** *A walkable city – provide an accessible, safe, pleasant, convenient, and integrated pedestrian system that provides links within the city and to surrounding communities, and reduces vehicular conflicts.*
- T-P-1** *The City's circulation plan shall be as set forth in Figures 3-1 through 3-8 and based on typologies described in the Transportation Chapter of the General Plan.*
- T-P-2** *The design, construction, operation, and maintenance of city streets shall be based on a "complete streets" concept that enables safe, comfortable, and attractive access and travel for pedestrians, bicyclists, motorists, and transit users of all ages and abilities.*
- T-P-4** *Transportation planning shall be coordinated with emergency service providers to ensure continued emergency service operation and service levels.*
- T-P-10** *The pedestrian circulation system shall be as set forth in Figure 3-4 and based on the typologies described in the General Plan Transportation Chapter.*

T-P-12 The City will plan, upgrade, and maintain pedestrian crossings at intersections and mid-block locations by providing safe, well-marked crosswalks with audio/visual warnings, bulb-outs, and median refuges that reduce crossing widths.

The design of two new streets, Hubbard Street extension and 46th Street is based on the “complete” streets concept that allows for on-street parking, wide sidewalks that provide street trees between the curb and pedestrian path, and adequate lighting via light poles. In addition, the project provides ample pedestrian connections within and to the project site by creating an east-west “pass through” pedestrian and bicycle alley in the existing Building 1-31 that will align with 45th Street on the east and terminate at the new public park on the west. In addition, walkability is further increased by extension of the Greenway along the western property edge.

General Plan policies (P) related to Conservation, Safety, Noise, and Sustainability that are particularly germane, and with which the project is consistent, include:

CSN-P-10 New development is required to incorporate source control, site design, and storm water treatment to reduce pollutants in stormwater runoff.

CSN-P-11 Exterior uses of water for landscaping and other purposes shall be reduced to minimize or eliminate runoff and water waste.

CSN-P-33 In order to reduce light pollution and use less energy, lighting (including on streets, recreational facilities, and in parking areas) should be designed to prevent artificial lighting from illuminating natural resources or adjacent residential neighborhoods.

CSN-P-44 The City will continue to require development projects to implement on-site stormwater management measures through the City’s development permit process.

ST-P-5 The City shall encourage, promote, practice, and where feasible, require Bay-Friendly landscaping practices as defined in the Bay-Friendly Landscape Guidelines, Sustainable Practices for Landscape Professionals.

The Citywide design guidelines that apply and are particularly germane, and with which the project is consistent via design and/or Conditions of Approval, include:

Site Planning:

- C-1 Consider the three-dimensionality of buildings: how they are perceived from the ground level, public streets, and side streets; and how they can contribute to, or detract from, the views, neighborhood or district character, and overall quality of life.***
- C-2 Site buildings and locate plazas, building entrances, seating, and visually interesting architectural features to encourage interaction among occupants and passersby.***
- C-4 Consider edge conditions and transition areas during site design to ensure compatibility between existing and new development.***
- C-6 Conceal all mechanical, electrical, and other building equipment from the public right-of way and from other existing buildings, where feasible. Use screening materials and other buffers to minimize noise and visual impacts. Mechanical equipment should not be located along the ground floor street frontage.***

Building heights are stepped back such that the tallest edge of the buildings are not within line of sight as seen from the street. In this way, the project heights are in proportion and compatible to the surrounding buildings as seen from the public streets outside the project i.e. Sherwin Avenue and Horton Street. Conditions of Approval ensure that all mechanical and other equipment will be adequately screened from the public right-of-way. In addition, the new public park as well as two public plazas allow opportunities for designing building entrances that encourage interaction among occupants and passersby.

Building Massing:

- D-1 In areas where building heights transition, step back upper levels of buildings to transition to adjacent lower building heights.***

- D-2 Encourage variation and articulation through changes in height and massing.***
- D-3 Create buildings openings that permit midblock pedestrian connections, thereby breaking up “super blocks” and expanding the pedestrian network.***
- D-7 Design of new buildings should consider shadow impacts on surrounding areas. 3D modeling is recommended to test the effect of building heights and massing on sidewalks and streets, in terms of shadows.***

Sidewalks and Green Streets (Policies A-1 to A-3 and I-23)

Generally, the Design Guidelines call for a minimum of 11.5 foot wide sidewalk, including 7.5 feet for a pedestrian pathway and 4 feet for a landscaped area between the pedestrian pathway and curb. Additionally, Sherwin Avenue, Hubbard Street extension, and Horton Street between Sherwin Avenue and 45th Street are designated “Green Streets” that calls for a 15-foot minimum sidewalk corridor, including 8 feet for a pedestrian pathway, 5 feet for a landscaped area next to the curb, and 2 feet for a landscaped area next to the adjacent property (Figure 3-6 of Emeryville Design Guidelines). Where the Greenway is separate from a street, the Design Guidelines call for a 20 foot minimum corridor including a 10 foot paved pedestrian/bicycle pathway and a 6 foot unpaved path separated by 4 feet of landscaping (Figure 3-5 of Emeryville Design Guidelines).

The Hubbard Street extension is designed as a 66-foot right of way with a 36- foot roadway, 5-foot planter strip between the curb and pedestrian pathway, 8-foot pedestrian pathway, and 2-foot landscaped area adjacent to the property line, thereby providing a minimum sidewalk width of 15 feet on both sides of the street. Thus, Hubbard Street extension is in compliance with the “Green Street” requirement.

The Sherwin Avenue street section shows compliance with the Green Street sidewalk width with an 8-foot clear pedestrian path, a 5-foot landscape area next to the curb; and a 2-foot landscape corridor between the sidewalk and the building wall.

In the interest of preserving existing mature trees along the Horton Street frontage, it is not possible to comply with the Green Street

sidewalk width; however, there is a clear pedestrian pathway of 8 feet.

The Greenway along the railway tracks provides a 20 foot multi-use trail with a 15-foot concrete pathway and a 5 foot decomposed granite path, in conformance with the Design Guidelines.

Sherwin Avenue between Hubbard Street and Halleck Street is designated as a Class II/III bikeway in the General Plan, and as a Class III Bicycle Route in the Pedestrian and Bicycle Plan, meaning that the roadway should be designed to be shared with bicycles. Condition of Approval Number II.E.4 requires bicycle signage on Sherwin Avenue.

The Park Avenue District Plan guidelines that apply and are particularly germane, and with which the project is consistent via design and/or Conditions of Approval, include:

- Work with surrounding property owners and businesses to time-share parking.
 - Residential projects should include units with multiple bedrooms that could accommodate families.
 - Development of large sites (1 acre or greater) should include residential or live/work units.
 - Encourage new development north of Sherwin Avenue and west of Horton Street (i.e. on the Sherwin Williams site) to include a public park or parks with ample green space.
 - Provide active uses on the street frontage of buildings.
 - Create a cultural arts center or a permanent home for Emeryville Art Exhibition.
- (2) The proposed planned unit development will provide for a cohesive, integrated, well-planned development which will contribute to the general well-being of the surrounding neighborhood or community.

The Project will create a new neighborhood that is fine-grained, providing bicycle and pedestrian connections via the Greenway, a new Green Street (Hubbard Street extension) to other neighborhoods and a “pass through” alley in an existing building that will result in

extension of the 45th Street corridor through the site terminating at a new public park. Building massing has been appropriately designed such that building heights are stepped back from the street frontages. In addition, ground floor spaces have been assigned for active uses such as retail, restaurant, residential amenities and other similar uses to create an integrated, well-planned development that provides well-lit tree-lined streets with ample sidewalks.

- (3) The project site is suitable for the uses permitted in the planned unit development in terms of access, size of parcel and relationship to similar or related uses.

The site is large and accessible enough to accommodate the proposed primarily residential use with 74,000 square feet of office and approximately 2,000-8,000 square feet of other commercial uses. The project will primarily redevelop existing vacant space of the former paint factory site and provide for a balanced in-fill development in a neighborhood that is a mix of commercial and residential development including the adjacent Artists Cooperative housing.

The site is currently zoned Mixed Use (M-U) and Park/Open (PO); the proposed uses are consistent with the types of uses permitted in a Mixed Use district and the project provides the required amount of Park/Open Space.

- (4) The location, size, coverage, density, design and operating characteristics of the proposed planned unit development will be compatible with, and will not adversely affect, the surrounding area, including neighborhood character, street design and capacity, safety, noise, and lighting.

The project design incorporates building setbacks; building heights and a creation of a more grid-like street pattern to ensure that the urban grid pattern of Emeryville is reflected and that building scale and massing are consistent with surrounding and adjacent land uses that primarily consist of residential and commercial development that are two to three stories high.

- (5) The subject property will be developed with due regard for aesthetic quality and landscaping so as to reduce, to the extent feasible, significant negative impacts on the environmental quality, value, or stability of the site or the environmental quality or value of improved or unimproved property in the area.

The streetscape reflects an urban setting and will be enhanced with broad sidewalks, trees, flowering plants, street furniture, and lighting. The project also proposes a new City park and other open areas thereby providing substantial open space amenities for all development in the vicinity. At the time of approval of Final Development Plans for each building, the design of buildings will be required to comply with applicable design guidelines, and will therefore include design features that incorporate well-articulated architecture with variations in building planes, colors and materials, balconies and trellises.

- (6) The proposed planned unit development will be developed to allow originality which does not have significant adverse impacts on the environmental quality or value of improved or unimproved property or prevent appropriate development and use of such areas.

The proposed planned unit development reconfigures the required open space by providing a new public park, extension of the Greenway and two other public plazas. The adverse environmental impacts that are identified in the Final EIR have been mitigated to a less than significant level or have been deemed acceptable because of overriding considerations as set forth in City Council Resolution No. 16-147.

- (7) The proposed planned unit development has been designed to include open space, parking areas; pedestrian walks, signs, illumination and landscaping (including irrigation) to enhance the environmental quality of the site.

The project consolidates a City parcel adjacent to the railroad to build a new public park, the Greenway extension and two public plazas. In addition, the development pattern is designed to provide maximum pedestrian circulation via a “pass through” alley within an existing building for cyclists and pedestrians and landscaping throughout the site. Other features such as car –share, bike share station, bike lockers and a new shuttle running to West Oakland are proposed to encourage non-vehicular modes of travel.

Significant Structures. The City Council makes the following finding for preservation and reuse of a significant structure pursuant to Emeryville Municipal Code Section 9.5.1206(a)(1):

- (1) That the proposed project will retain and enhance all or most of the features of the structure that make it significant, as described and indicated in Table 9-5.1210.

The project proposed preserve and reuse the existing Building 1-31 which is identified as Significant Structure Number 37 in Table 9-5.1210 with the following significant features: contrasting concrete and brick, three stories, window pattern, windows recessed with concrete sills, north end symmetric concrete and windows around entrance. The proposal involves installing a 24-foot wide “pass through” alley for pedestrians and cyclists that will involve removal of a roll up door which is not considered a significant feature. All the significant features of Building 1-31 will be retained and enhanced with the general upgrade and retrofit of the building.

Affordable Housing. The City Council makes the following finding to allow the project's affordable units to be contained within a single building rather than dispersed throughout the project, pursuant to Emeryville Municipal Code Section 9.5.408(c):

The provision of affordable units in a single building is compelling for the following reasons: a stand-alone building allows for a provision of deeper levels of affordability, it allows for partnering with a affordable housing developer with experience to provide on-site social services on a continuing basis; and as conditioned, its impact on the land uses for other proposed and existing affordable housing projects within the City will be mitigated by not competing for the funding that supports those land uses.

SECTION THREE: ADOPTION OF PLANNED UNIT DEVELOPMENT ZONING DESIGNATION AND APPROVAL OF PRELIMINARY DEVELOPMENT PLAN

Based on the findings set forth in this Ordinance, and the evidence in the record as a whole, the City Council hereby establishes a Planned Unit Development (PUD) zoning designation for the Sherwin Williams Project site by amending the Zoning Map as depicted in Exhibit A, and approves the Sherwin Williams Preliminary Development Plan (PDP) dated September 13, 2016 for the 10.05 acre 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 49-1041-26-16), attached hereto as Exhibit C, subject to the Conditions of Approval as set forth in Exhibit B. By approving the Sherwin Williams PDP, the uses, building intensity, building height, setbacks, landscaping, screening, off-street parking and loading, signage, illumination and basic guidelines for development shall be governed by the Sherwin Williams PDP.

SECTION FOUR: AMENDING PLANNING REGULATIONS

The City Council hereby amends the Planning Regulations in Title 9 of the Emeryville Municipal Code as follows:

Figure 9-3.103(a), Zoning Map, is amended as depicted in Exhibit A.

Section 9-3.310 is amended to add subsection (a)(7) to read as follows:

- (7) Sherwin Williams Mixed Use Project. Created by Ordinance No. 16-__ passed on November 1, 2016.

SECTION FIVE: CEQA DETERMINATION

On September 6, 2016, the City Council certified the Final Environmental Impact Report for the Project as adequate under California Environmental Quality Act (Resolution No. 16-122). On October 18, 2016, by Resolution No. 16-147, the City Council has applied the Sherwin Williams Environmental Impact Report to the Sherwin Williams Development Project; and made findings as required by the California Environmental Quality Act (CEQA); and adopted mitigation measures for the Project. Pursuant to State CEQA Guidelines Section 15094, the City Council hereby directs staff to file a Notice of Determination with the Alameda County Clerk.

SECTION SIX. SEVERABILITY

The City Council hereby declares that every section, paragraph, clause and phrase of this Ordinance is severable. If, for any reason, any section, paragraph, clause or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, clauses or phrases.

SECTION SEVEN. CODIFICATION.

Section Four of this Ordinance shall be codified in the Emeryville Municipal Code. Sections One, Two, Three, Five, Six, Seven, and Eight shall not be codified.

SECTION EIGHT. EFFECTIVE DATE AND POSTING.

This Ordinance shall take effect 30 days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by California Government Code Section 33693.

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting held on Tuesday, October 18, 2016, and passed and adopted by the City Council at a regular meeting held on Tuesday, November 1, 2016 by the following vote:

AYES:	<u>5</u>	Mayor Martinez, Vice Mayor Donahue and Council Members Asher, Atkin and Davis
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	

Dianne Martinez

MAYOR

ATTEST:

APPROVED AS TO FORM:

[Signature]
DEPUTY CITY CLERK

Michael Quinn
CITY ATTORNEY

Attachments:

Exhibit A – Zoning Map showing designation of the new PUD classification
Exhibit B – Conditions of Approval
Exhibit C – Preliminary Development Plan dated September 13, 2016

Planned Development (PUD)	
Zone	Ordinance
PUD-1	ORD #99-007
PUD-2	ORD #08-004
PUD-3	ORD #01-001
PUD-4	ORD #99-009
PUD-5	ORD #04-004
PUD-6	ORD #99-003
PUD-7	ORD #16-
Watergate Office Towers Marketplace Redevelopment (Public Market) Chiron (Novartis) South Bayfront (Bay Street) Pixar Emery Village (Promenade/CVS) Sherwin Williams Mixed Use Project	

BERKELEY CITY LIMITS
EMERYVILLE CITY LIMITS

San Francisco Bay

EXHIBIT A:

SHERWIN WILLIAMS MIXED USE PROJECT PUD CITY COUNCIL ORDINANCE NO.16-___



ZONING MAP

- High Density Residential
- Medium-High Density Residential
- Medium Density Residential
- Mixed Use with Residential
- Mixed Use with Residential South
- Mixed Use with Non-Residential
- Office/Technology
- Office/Technology Doyle Hollis North Area
- Heavy Industrial
- Light Industrial
- Public
- Marina
- Park/Open Space
- Shoreline Management
- Planned Unit Development
- Utilities/Transportation
- Railroad



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)¹;
- (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 46th Street, and new 46th Street between Horton Street and Hubbard Street extension.

The maximum heights permitted on each parcel are:

Parcel A: Existing Building Height of 42 feet

¹ 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 45th 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 45th 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 46th 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 40th 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) 45th 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 46th Street and 53rd 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 40th 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 45th 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

SHERWIN WILLIAMS PRELIMINARY DEVELOPMENT PLAN

PROJECT GRAPHICS



SUBMITTED BY

OWNER: SHERWIN WILLIAMS ACCEPTANCE CORPORATION (SWACE)
PROJECT SPONSOR: LMC EMERYVILLE I INVESTOR LLC

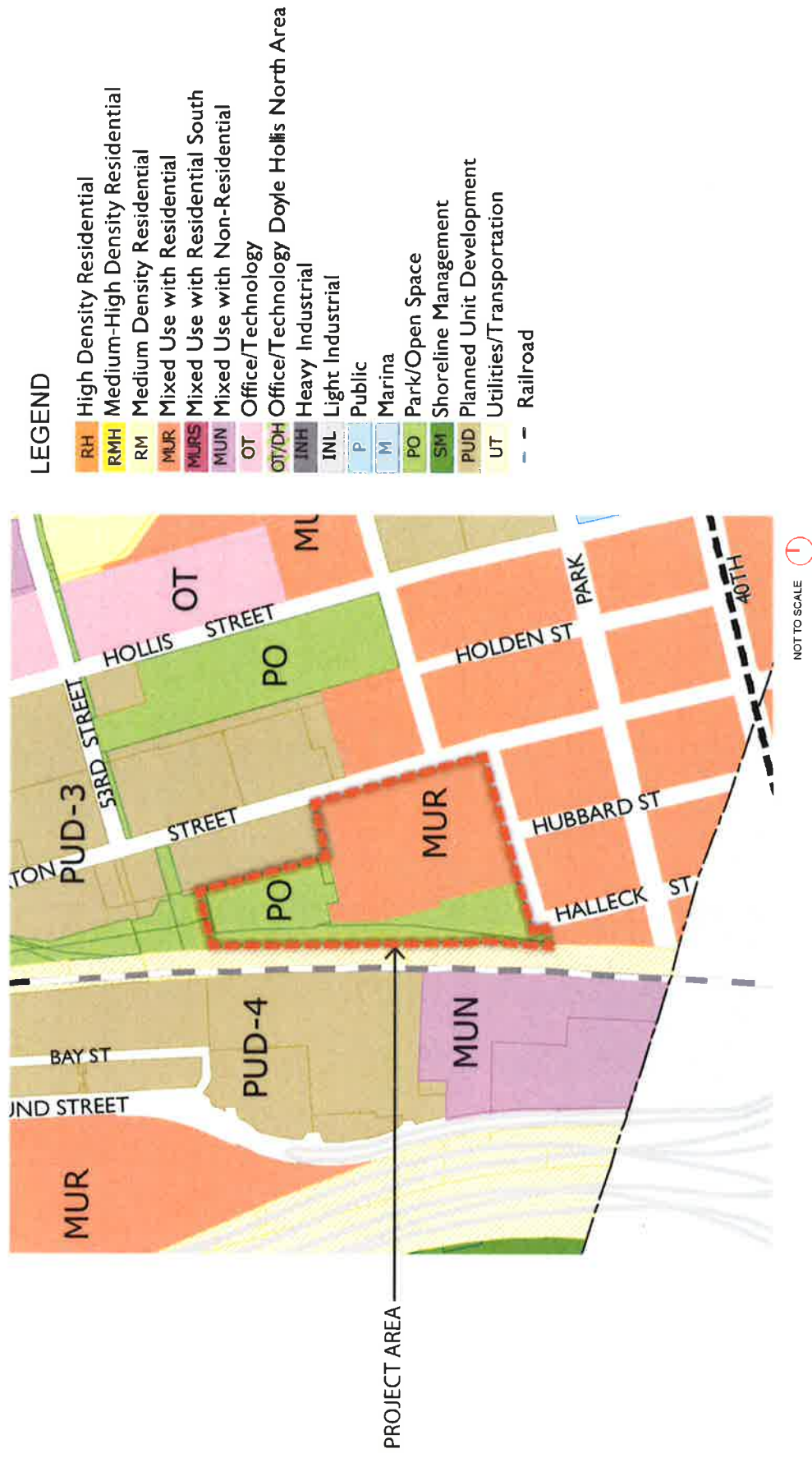
PREPARED BY: LPAS AND CBG

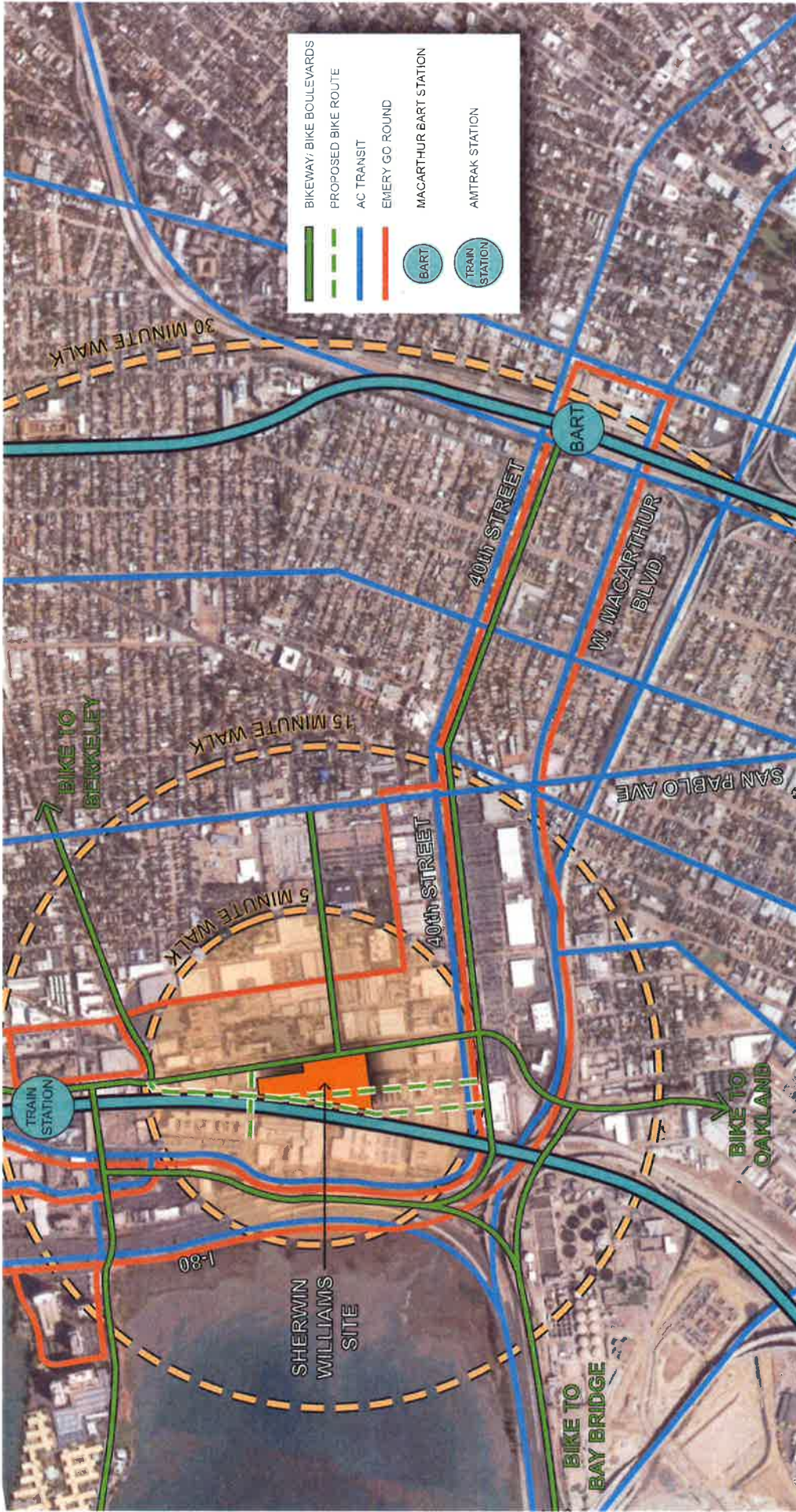
SEPTEMBER 13, 2016

SHERWIN WILLIAMS PRELIMINARY DEVELOPMENT PLAN

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VICINITY MAP

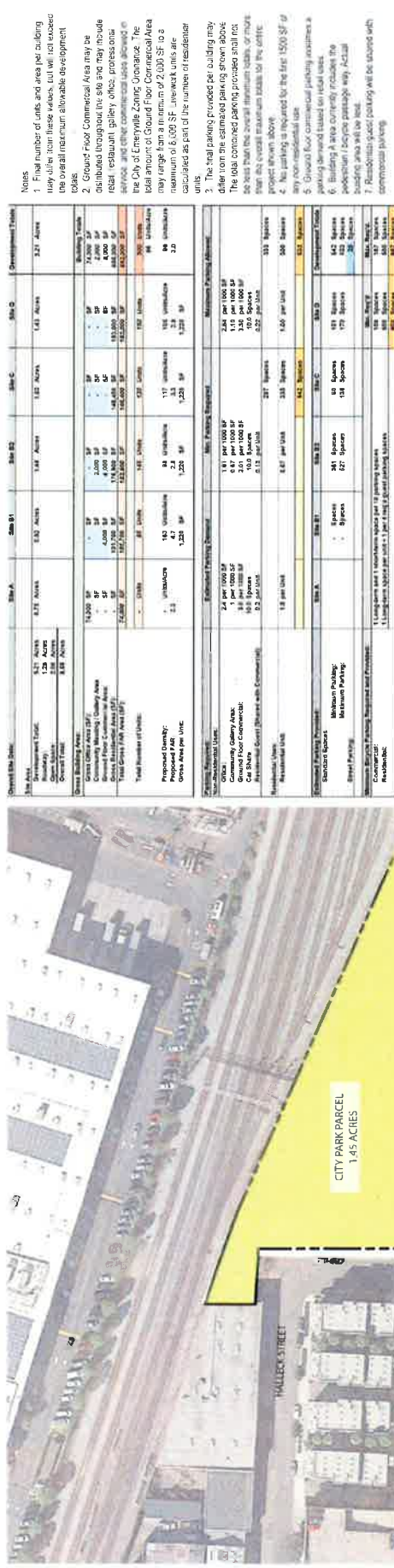


NOT TO SCALE

NEIGHBORHOOD TRANSPORTATION MAP



SITE AERIAL PHOTO

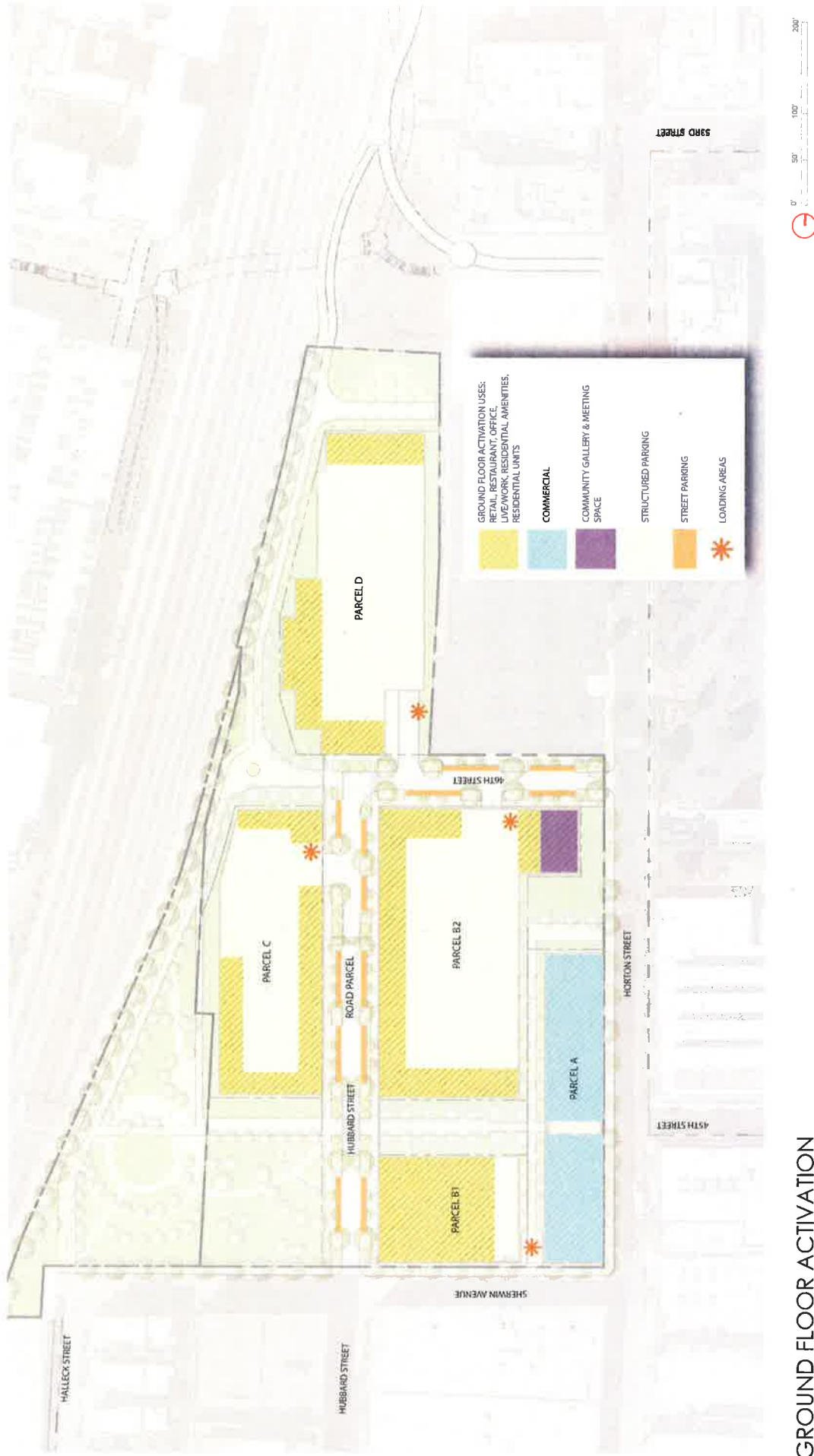




SITE DEVELOPMENT PLAN

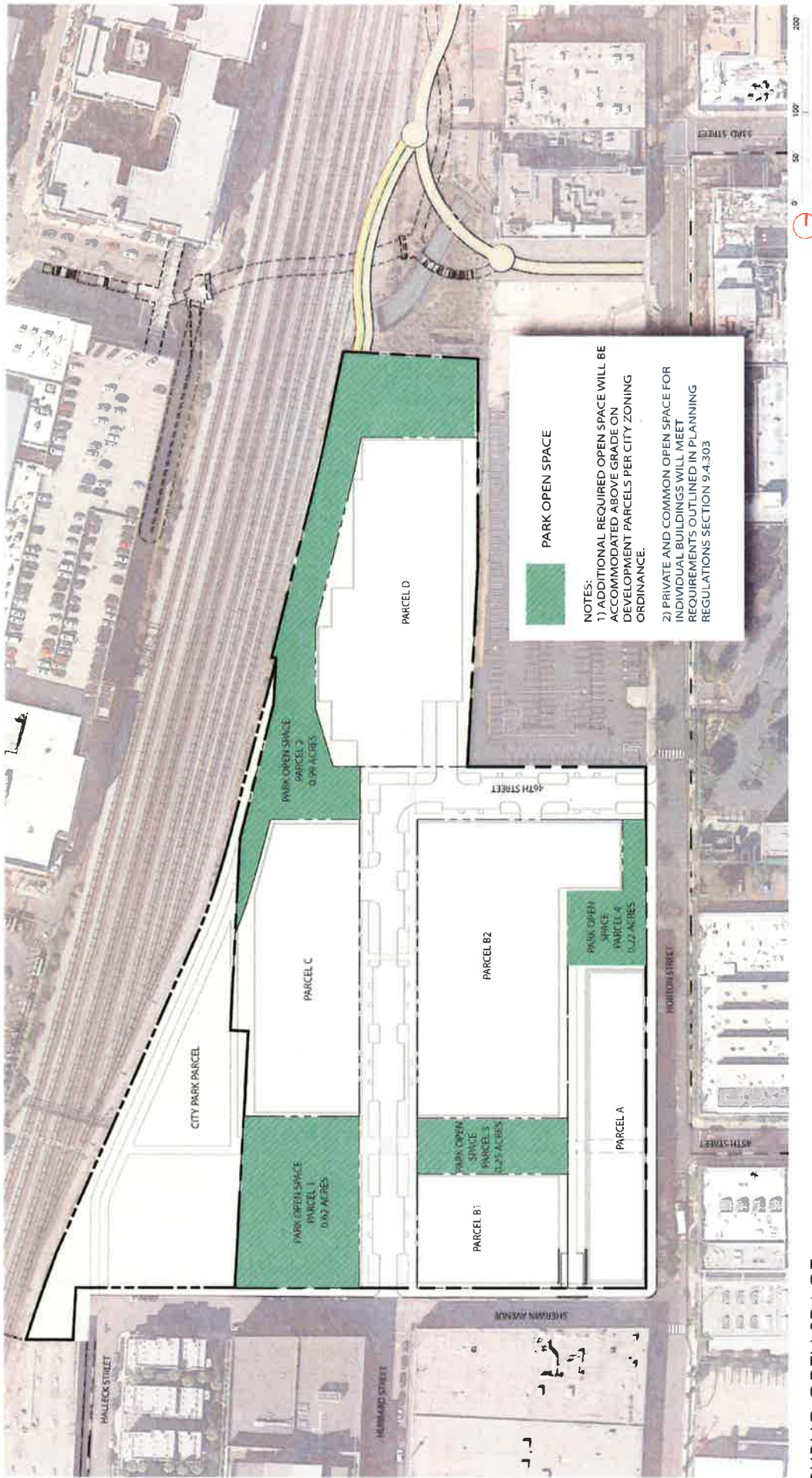


ILLUSTRATIVE DEVELOPMENT CONCEPT



GROUND FLOOR ACTIVATION

SHERWIN WILLIAMS PRELIMINARY DEVELOPMENT PLAN
 SEPTEMBER 13 2016, PREPARED FOR LMC EMERYVILLE | INVESTOR LLC BY LPAS AND CBG



PUBLIC OPEN SPACE

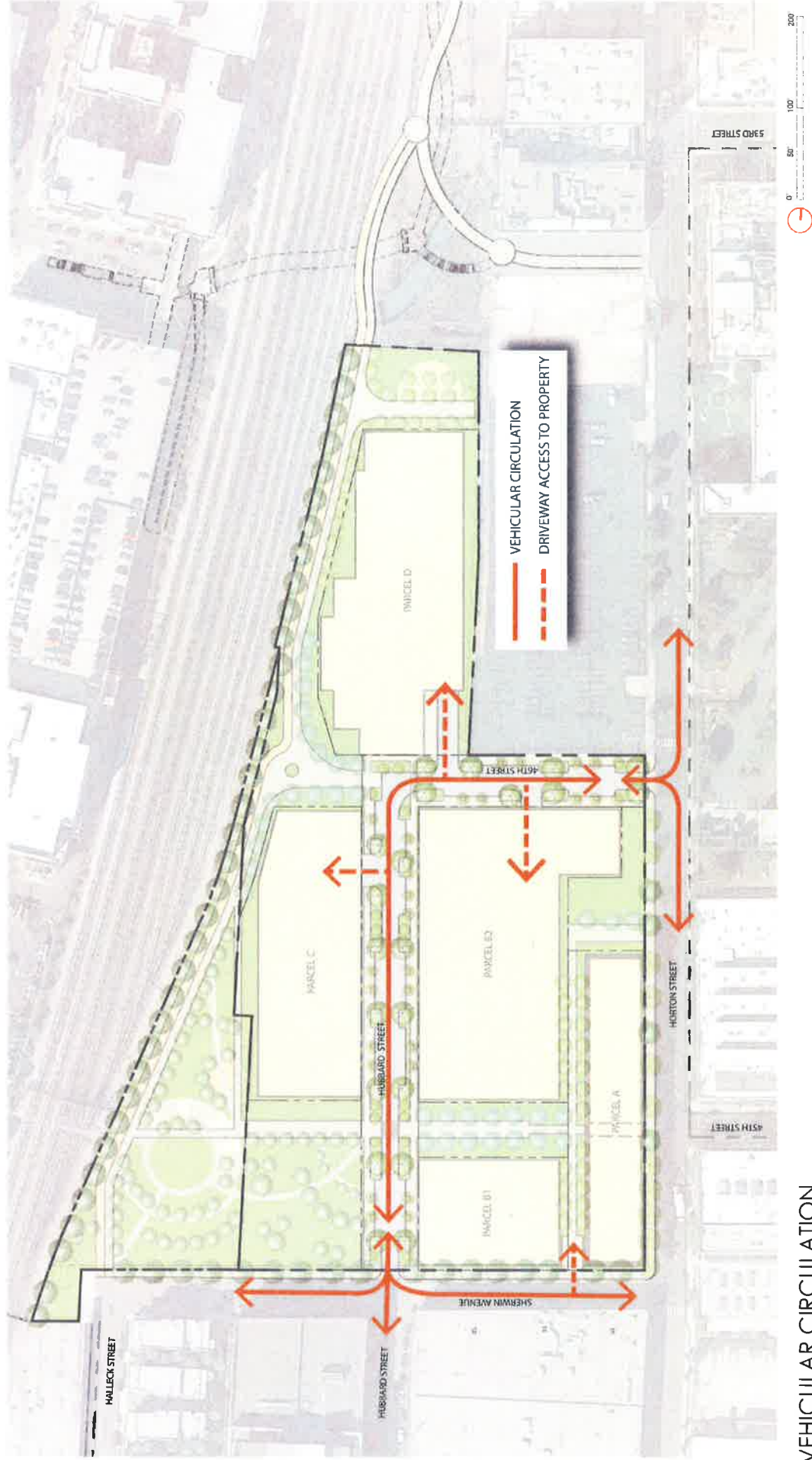


OPEN SPACE PRECEDENTS

SHERWIN WILLIAMS PRELIMINARY DEVELOPMENT PLAN
 SEPTEMBER 13 2016, PREPARED FOR LMC EMERYVILLE INVESTOR LLC BY LPAS AND CBG



SITE TRANSPORTATION PLAN

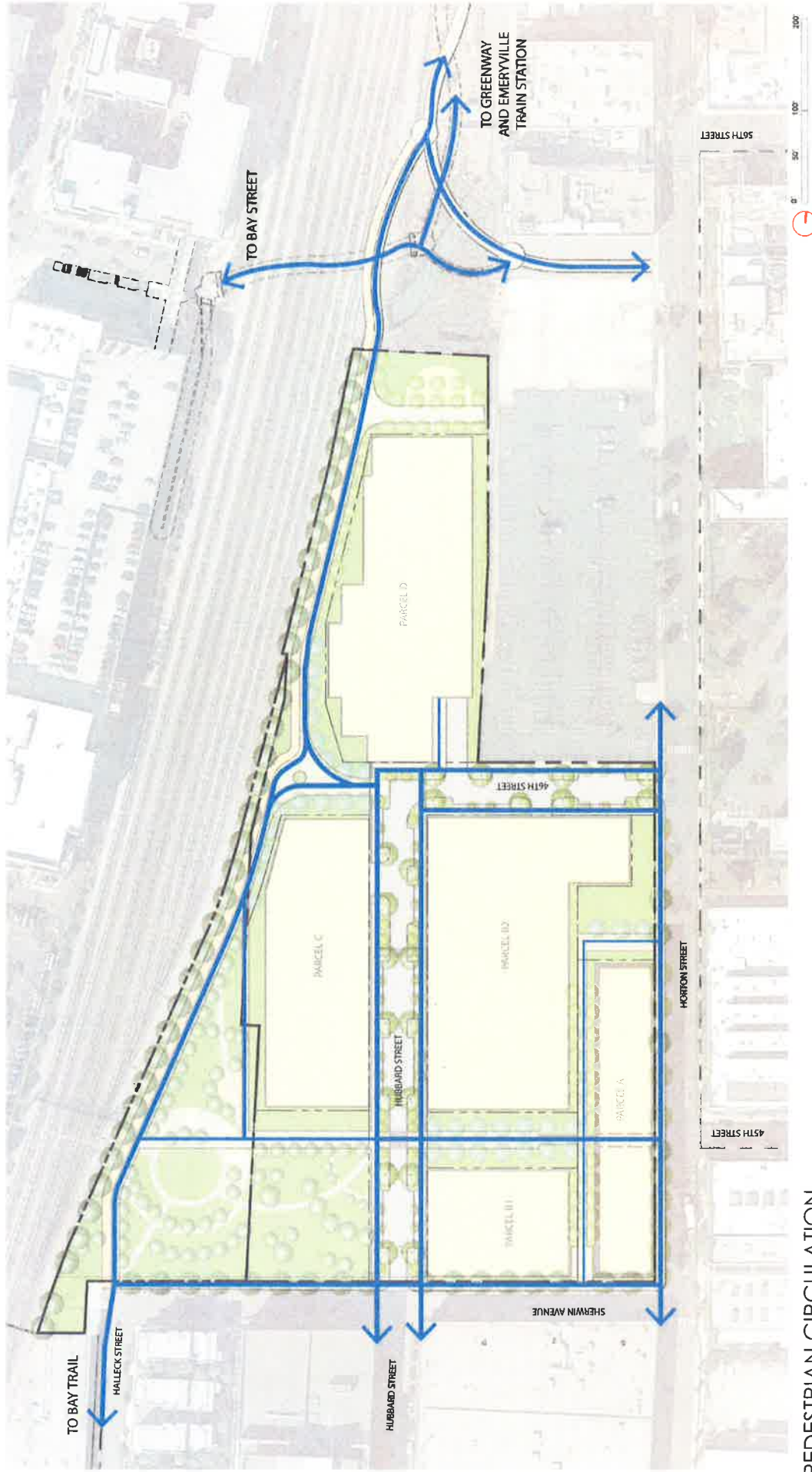


VEHICULAR CIRCULATION

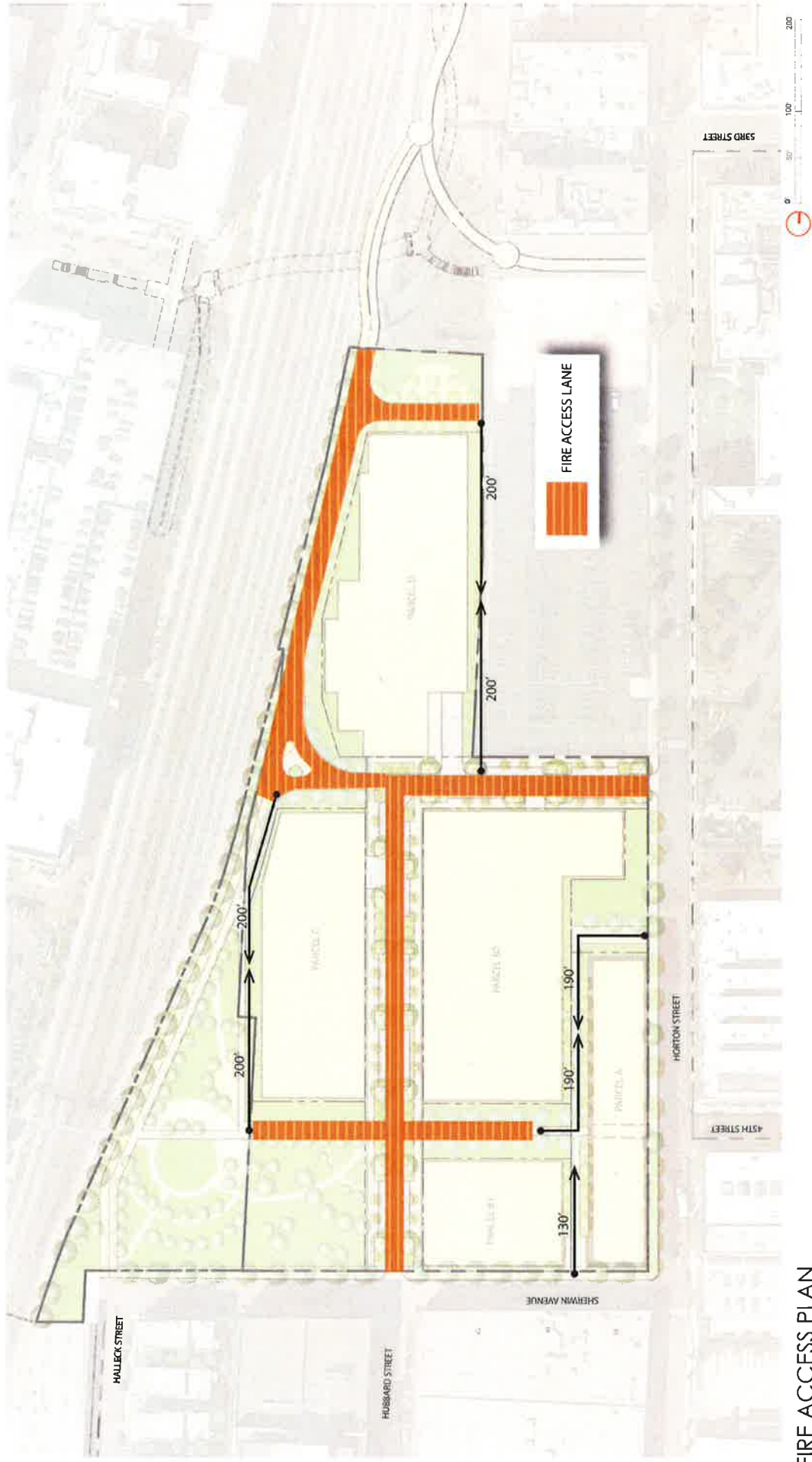


BICYCLE CIRCULATION

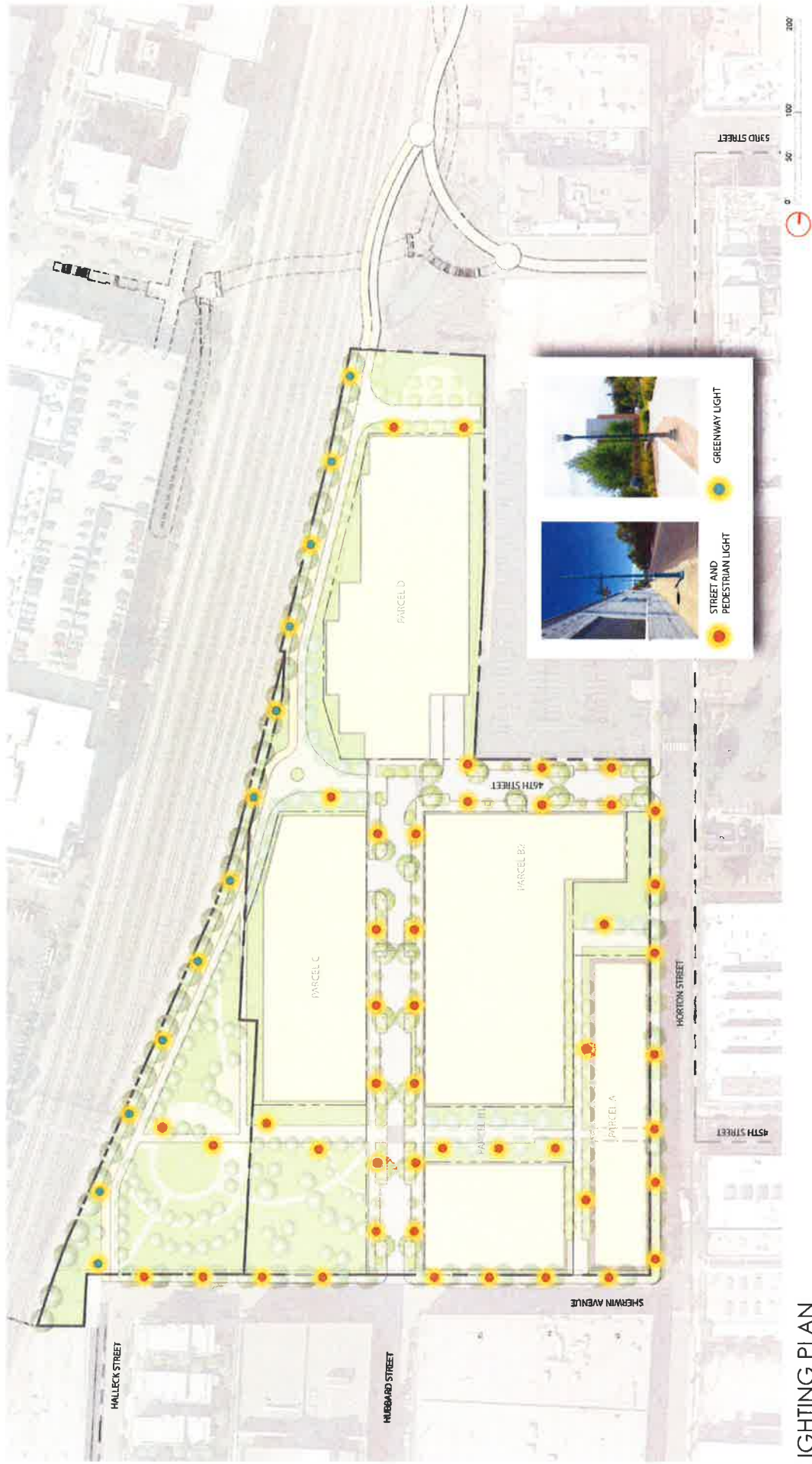
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 SEPTEMBER 13 2016, PREPARED FOR LMC EMERYVILLE INVESTOR LLC BY LPAS AND CBG



PEDESTRIAN CIRCULATION

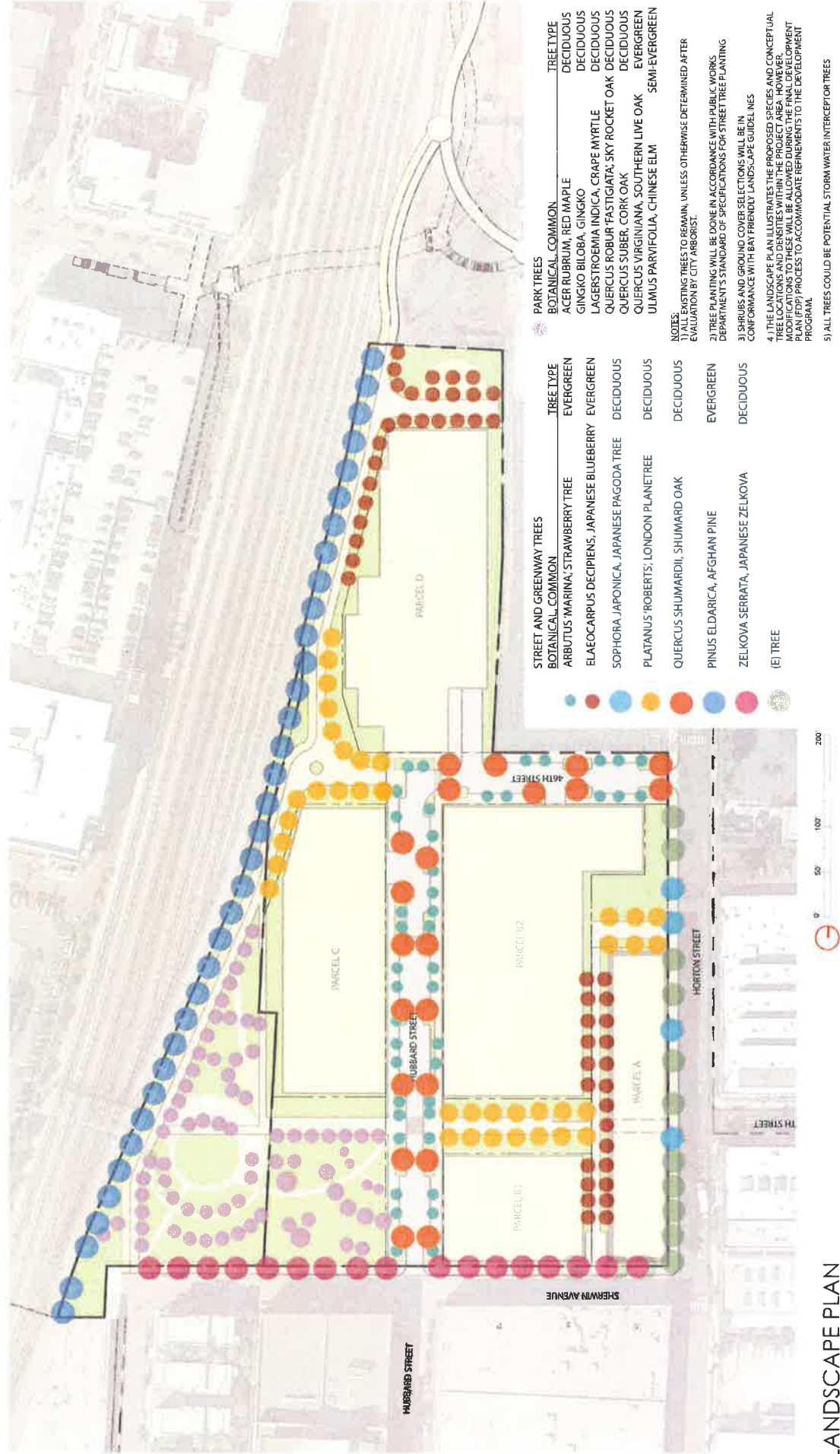


FIRE ACCESS PLAN



LIGHTING PLAN

SHERWIN WILLIAMS PRELIMINARY DEVELOPMENT PLAN
 SEPTEMBER 13 2016, PREPARED FOR LMC EMERYVILLE INVESTOR LLC BY LPAS AND CBG



LANDSCAPE PLAN



Arbutus 'Marina'
(Strawberry Tree)



Elaeocarpus decipiens
(Japanese Blueberry Tree)



Sophora japonica
(Japanese Pagoda Tree)



Platanus x acerifolia
London Plane Tree



Quercus shumardii
(Shumard Oak)



Pinus eldarica
(Afghan Pine)



Zelkova serrata
(Japanese Zelkova)



Park Tree
Acer rubrum
(Red Maple)



Park Tree
Ginkgo biloba
(Ginkgo)



Park Tree
Lagerstroemia indica
(Crape Myrtle)

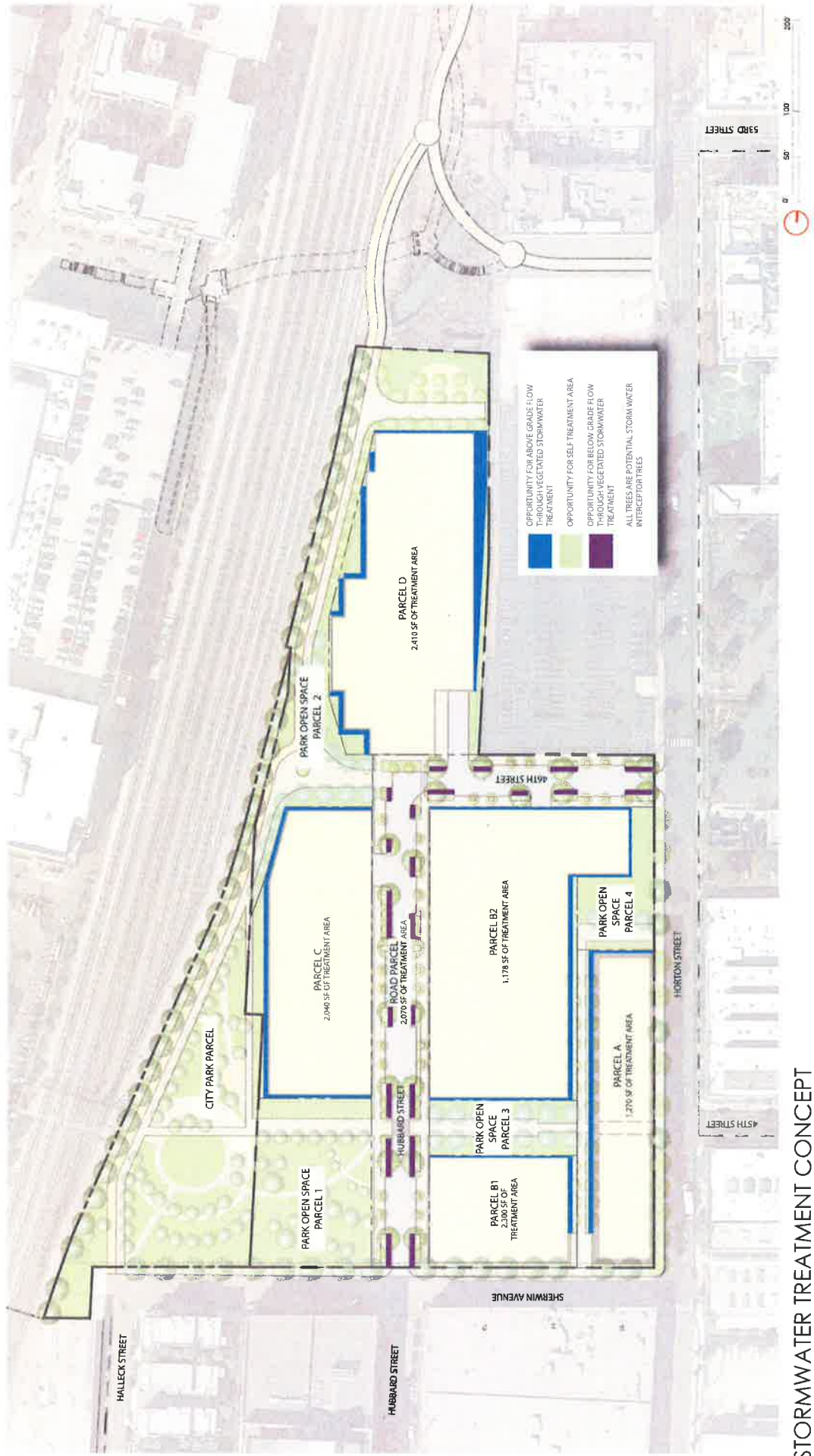


Park Tree
Quercus suber
(Cork Oak)



Park Tree
Quercus virginiana
(Southern Live Oak)

LANDSCAPE PRECEDENTS



STORMWATER TREATMENT CONCEPT

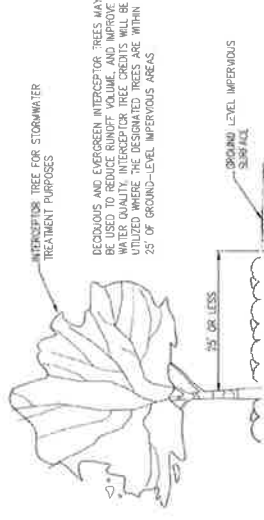
SHERWIN WILLIAMS PRELIMINARY DEVELOPMENT PLAN
 SEPTEMBER 13 2016, PREPARED FOR LMC EMERYVILLE INVESTOR LLC BY LPAS AND CBG

STORMWATER CONTROL NOTES:

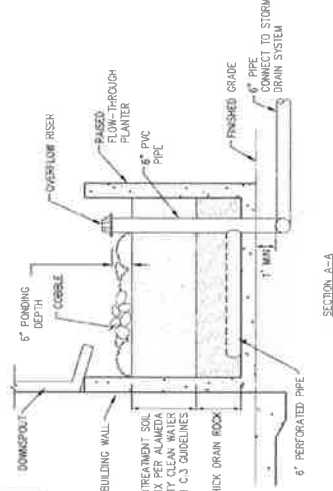
1. ALL STORMWATER TREATMENT MEASURES AND TECHNICAL REQUIREMENTS FOR THIS PROJECT WILL BE BASED UPON THE ALAMEDA COUNTY CLEAN WATER PROGRAM.
2. ALL STORMWATER TREATMENT MEASURES AND LOCATIONS SHOWN ON THE STORMWATER TREATMENT CONCEPT PLAN ARE PRELIMINARY AND SUBJECT TO CHANGE PENDING FINAL DESIGN.



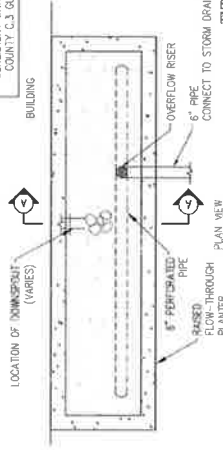
SELF-TREATING LANDSCAPE AREA
NOT TO SCALE



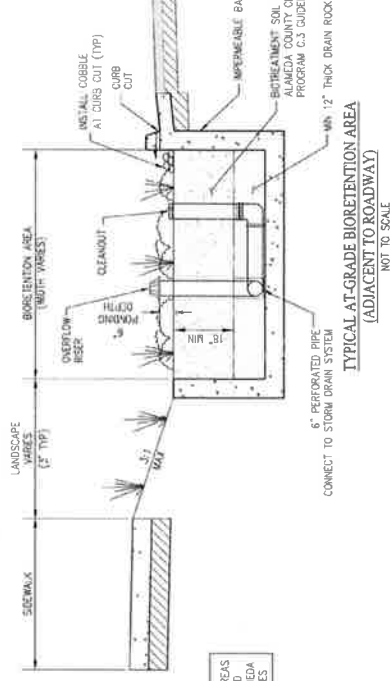
TYPICAL STORMWATER INTERCEPTOR TREE
NOT TO SCALE



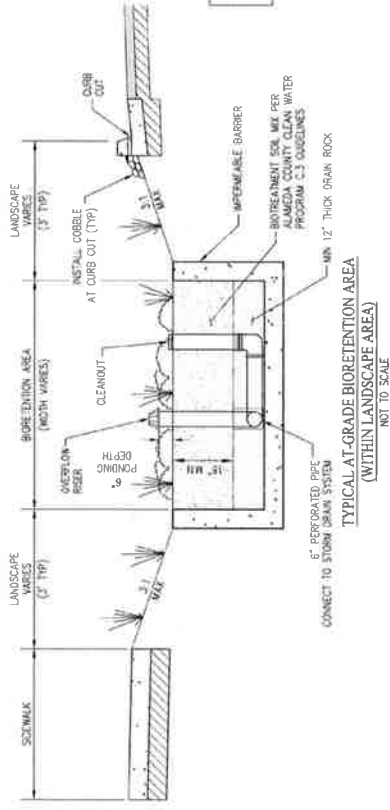
TYPICAL RAISED FLOW-THROUGH PLANTER
NOT TO SCALE



PLAN VIEW

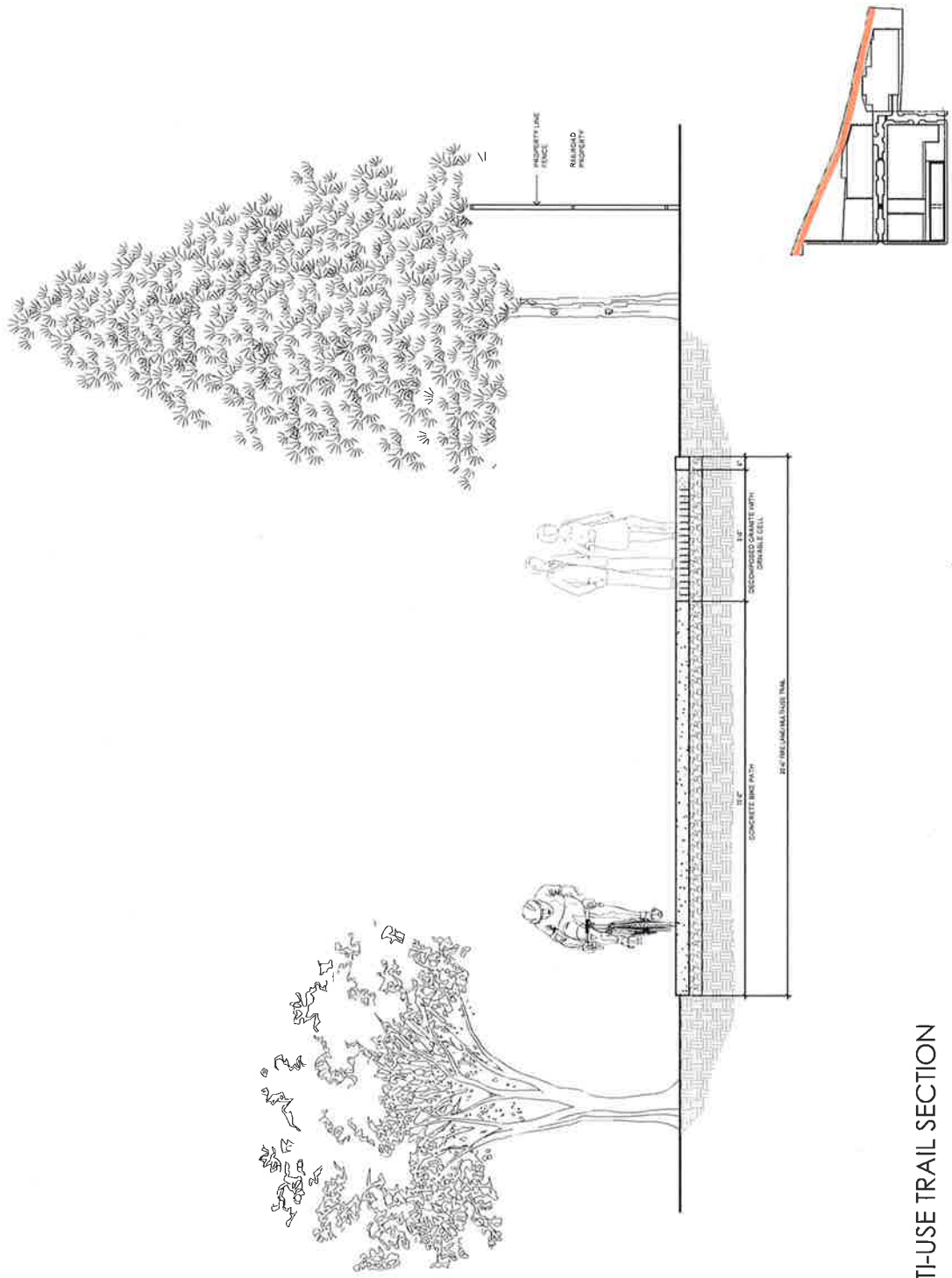


TYPICAL AT-GRADE BIORETENTION AREA (ADJACENT TO ROADWAY)
NOT TO SCALE



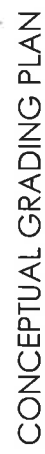
TYPICAL AT-GRADE BIORETENTION AREA (WITHIN LANDSCAPE AREA)
NOT TO SCALE

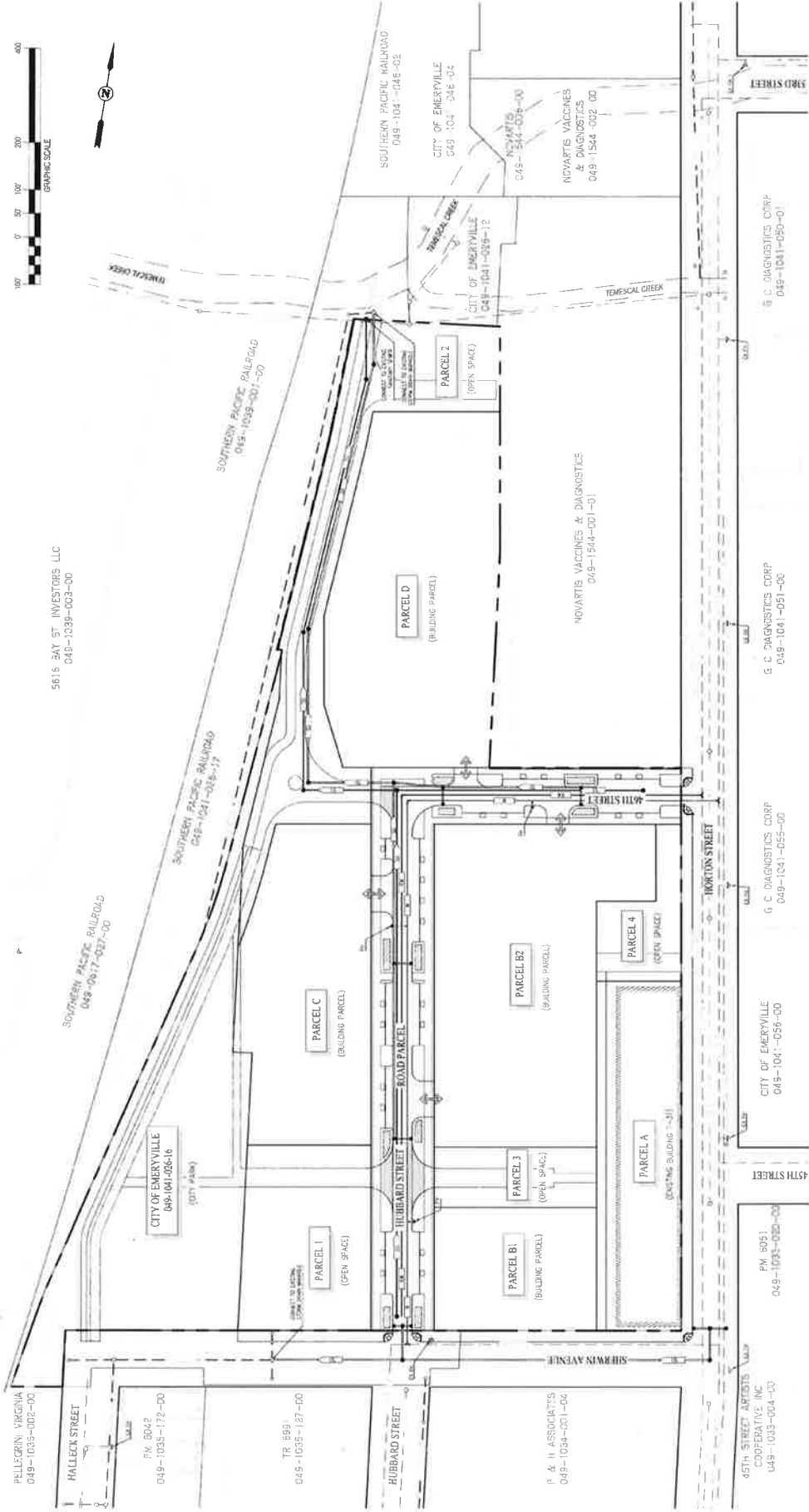
STORMWATER TREATMENT DETAILS



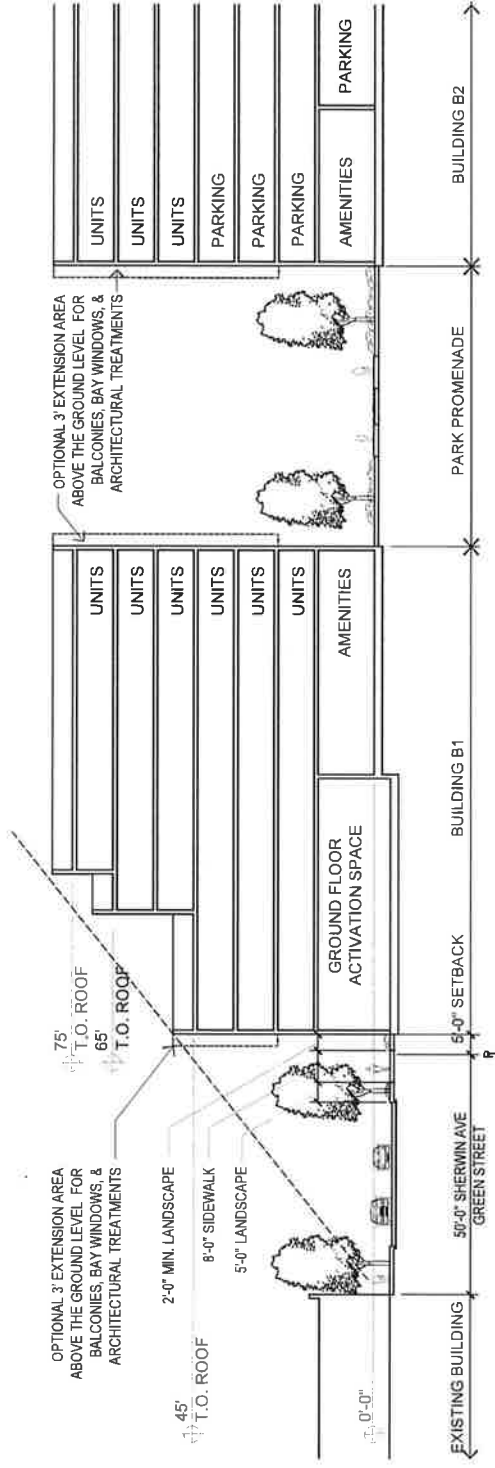
FIRE LANE AND MULTI-USE TRAIL SECTION

VICINITY MAP
NOT TO SCALE





UTILITIES



SECTION A

NOTE: ADDITIONAL BUILDING STEP BACKS AND SETBACKS MAY BE DEVELOPED DURING THE FDP PROCESS

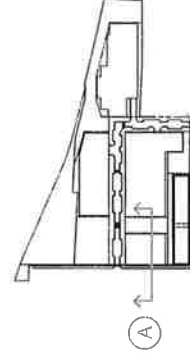
SCALE 1" = 30'

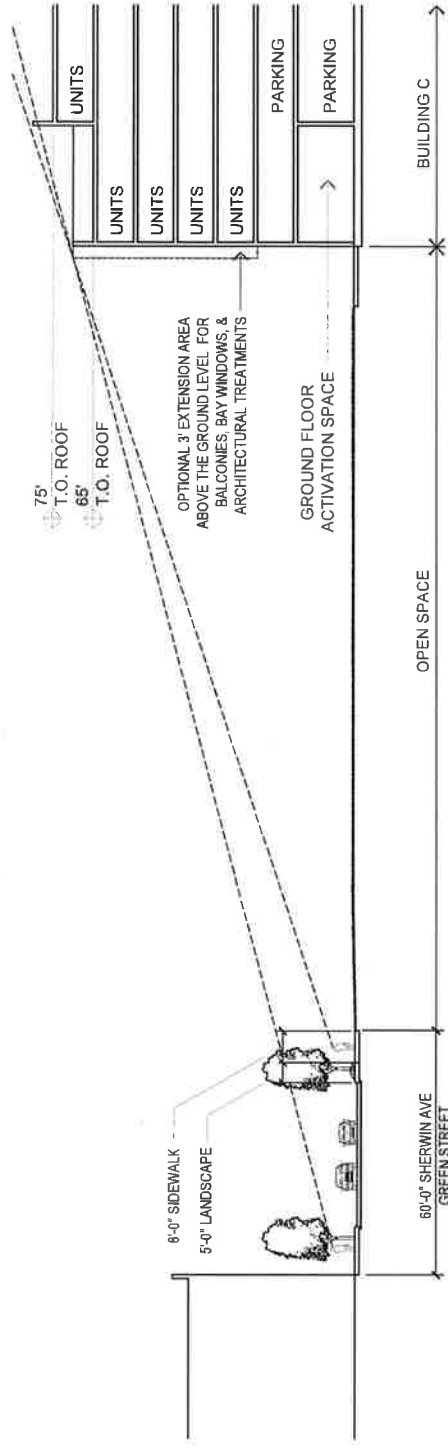


NOTES:

1. Ground floor activation spaces may have 1 or 2 floors
2. The existing retaining wall may be eliminated and the floor level may be lowered to ± 4.0 to activate sidewalk

SITE SECTION A

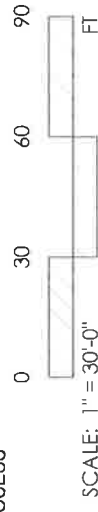




SECTION B

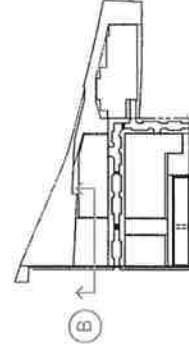
NOTE: ADDITIONAL BUILDING STEP BACKS AND SETBACKS MAY BE DEVELOPED DURING THE FDP PROCESS

SCALE 1" = 30'



NOTES:

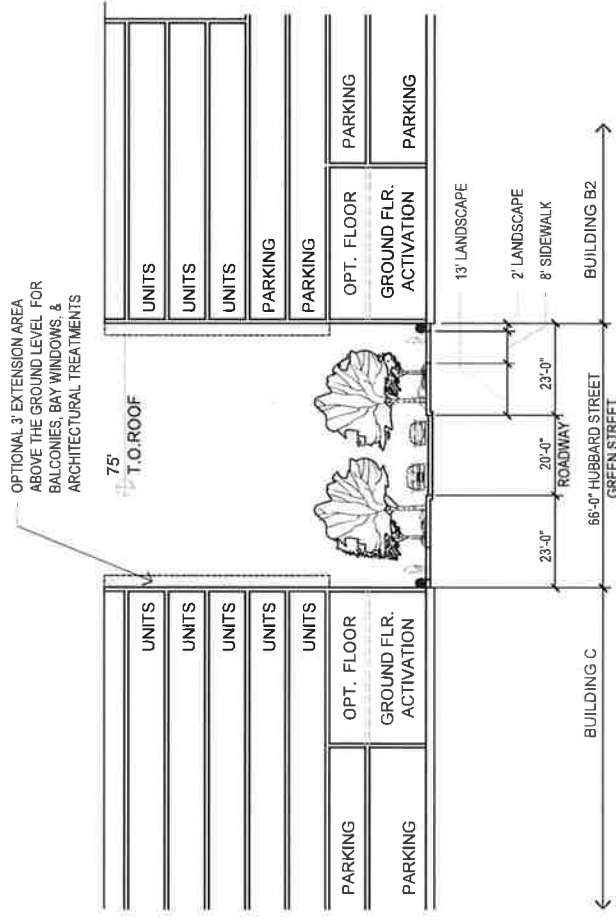
1. Ground floor activation spaces may have 1 or 2 floors



VICINITY MAP
NOT TO SCALE

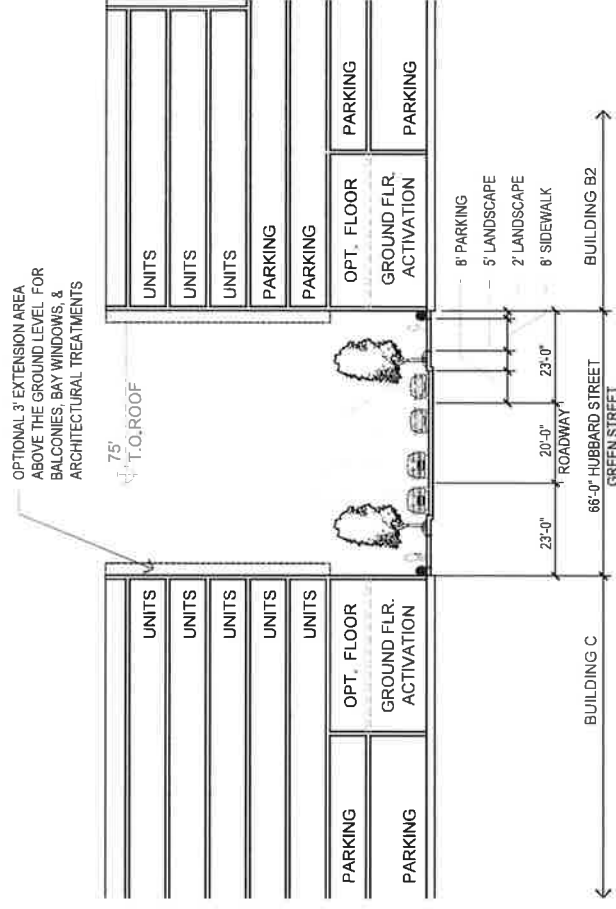
SITE SECTION B

SHERWIN WILLIAMS PRELIMINARY DEVELOPMENT PLAN
SEPTEMBER 13 2016, PREPARED FOR LMC EMERYVILLE INVESTOR LLC BY LPAS AND CBG



SECTION C WITHOUT PARKING

NOTE: ADDITIONAL BUILDING STEP BACKS AND SETBACKS MAY BE DEVELOPED DURING THE FDP PROCESS



SECTION C WITH PARKING

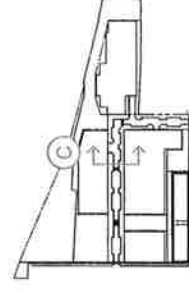
SCALE: 1" = 30'



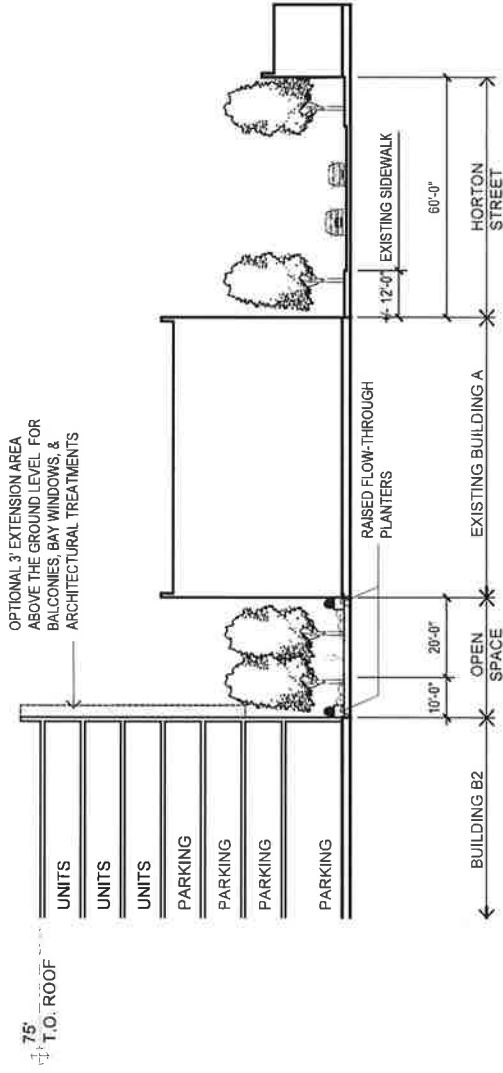
NOTES:

1. Ground floor activation spaces may have 1 or 2 floors

SITE SECTION C



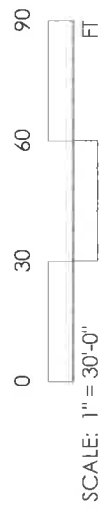
VICINITY MAP
NOT TO SCALE



SECTION D

SCALE 1" = 30'

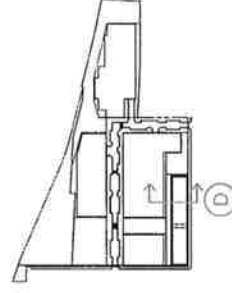
NOTE: ADDITIONAL BUILDING STEP BACKS AND SETBACKS MAY BE DEVELOPED DURING THE FDP PROCESS



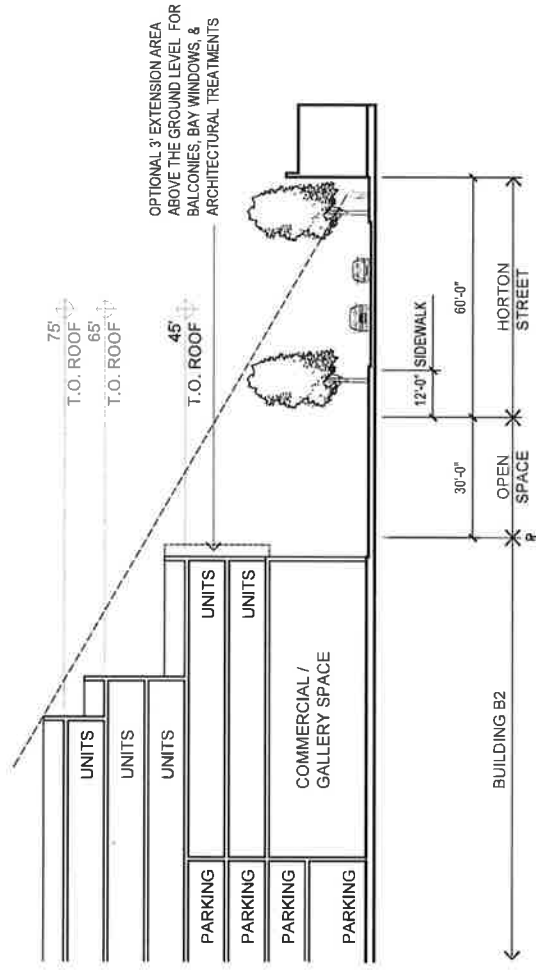
NOTES:

1. Ground floor activation spaces may have 1 or 2 floors

SITE SECTION D



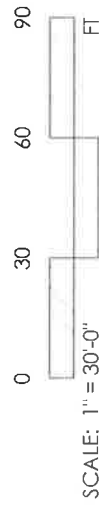
VICINITY MAP
NOT TO SCALE



SECTION E

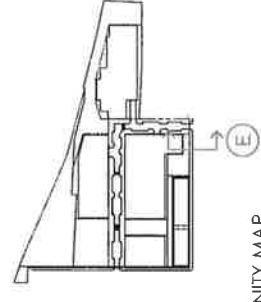
SCALE 1" = 30'

NOTE: ADDITIONAL BUILDING STEP BACKS AND SETBACKS MAY BE DEVELOPED DURING THE FDP PROCESS



NOTES:

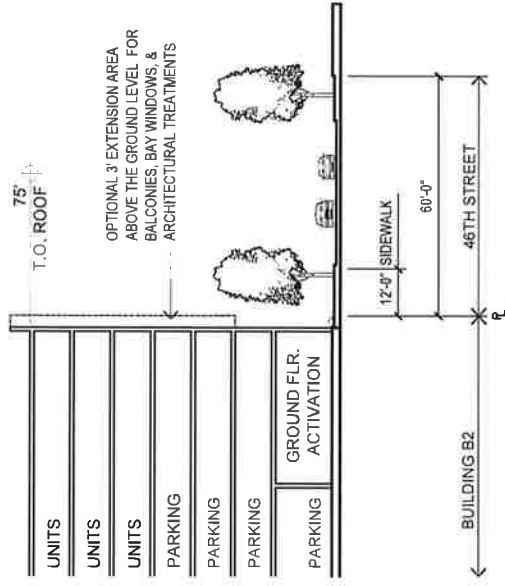
1. Ground floor activation spaces may have 1 or 2 floors



VICINITY MAP
NOT TO SCALE

SITE SECTION E

SHERWIN WILLIAMS PRELIMINARY DEVELOPMENT PLAN
SEPTEMBER 13 2016, PREPARED FOR LMC EMERYVILLE INVESTOR LLC BY LPAS AND CBG



SECTION F

SCALE 1" = 30'

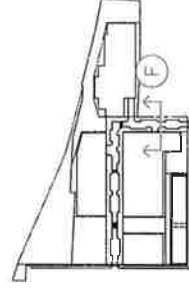
NOTE: ADDITIONAL BUILDING STEP BACKS AND SETBACKS MAY BE DEVELOPED DURING THE FDP PROCESS



NOTES:

1. Ground floor activation spaces may have 1 or 2 floors

SITE SECTION F



VICINITY MAP
NOT TO SCALE