

## **EXHIBIT A - FINDINGS OF FACT REGARDING IMPACTS AND MITIGATION MEASURES**

### **I. PROJECT DESCRIPTION:**

Based on input received from the community residents and the Planning Commission the applicant has revised the project to such that the “central green” has been eliminated; location of 46<sup>th</sup> Street and the configuration of the park and open space has been revised; and a “pass through” alley within Building 1-31 has been introduced such that it aligns with 45<sup>th</sup> Street.

The project includes up to 500 residential units, 74,000 square feet of office space, and a minimum of 2,000 square feet and a maximum of 8,000 square feet of ground floor commercial space, which may include retail, restaurant, office, professional service, and other commercial uses allowed by the Planning Regulations.

*Land Use and Massing:* The site would be divided into five new parcels – A, B1, B2, C and D. In addition, three open space parcels have been created: Park Open Space 1, Park Open Space 2, Park Open Space 3 and Park Open Space 4 whose sizes are 0.62 acre, 0.99 acres, 0.25 acres and 0.22 acre respectively. The City Parcel is to be developed as open space and is identified on the plans as “City Park Parcel”. A “Road Parcel” is also created to accommodate the L-shaped roadway providing access to the site via Sherwin Avenue and Horton Street.

Parcel A is created to accommodate the existing significant building (74,000 square feet) that will be reused as office space at the corner of Horton Street and Sherwin Avenue. A “pass through” alley through the building aligned with 45<sup>th</sup> Street will be built to accommodate travel of cyclists and pedestrians. The existing building maintains a height of approximately 42 feet. The parking for this building will be located in Building B-1.

Parcels B-1 and B-2 are located east of the Hubbard Street extension and are separated by Park Open Space Parcel 3. Building B-1 will have a maximum height of 75 feet with height stepping down to 45 feet for the first 30 feet back from Sherwin Avenue, and then stepping up to 65 feet for the next 10 feet, with the remaining building reaching a height of 75 feet. Parcel B-1 will accommodate 85 residential units.

Similar to Parcel B-1, Parcel B-2 will have a maximum height of 75 feet with height stepping down to 45 feet for the first 30 feet back from the Horton Street frontage, and then stepping up to 65 feet for the next 10 feet, with the remaining building reaching a height of 75 feet. Parcel B-2 will accommodate 145 residential units and 326-535 parking spaces. This parcel will provide parking for uses on Parcel A, B-1 and B-2.

Parcel C is located west of the Hubbard Street extension with a maximum height of 75 feet but is stepped down to 65 feet on the along the southern edge for a distance of 30 feet. The building is set back 155 feet from Sherwin Avenue and is separated from it by Park Open Space Parcel 1. The building will accommodate 120 residential units and 96-128 parking spaces.

Parcel D accommodates the tallest building (100 feet) and is situated to the north end of the property running parallel along the western property line of the Rifkin parcel. The building will accommodate 150 units and 121-198 parking spaces.

*Open Space:* Within the project there are approximately 3.54 acres of publicly accessible open space and about 1.19 acres of publicly accessible streets. The City Park Parcel (1.46 acres) will be developed by the Applicant as park/open space in its existing configuration and will be designed in conjunction with the adjacent Park Open Space Parcel 1 that in combination will provide a 2.07 acre park/open space area. Park Open Space Parcel 2 runs along the northern end and northwest property line and is approximately 0.99 acre in size. Parallel bicycle and pedestrian paths run adjacent to the railroad line through Park Open Space Parcel 2 and the City Parcel. This “Greenway” consists of a 20-foot wide area along entire alignment next to the railroad to connect to Halleck Street, and will also serve as an Emergency Vehicle Access (VHA) along the northern half adjacent to Parcel D. Park Open Space Parcel 3 (0.25 acres) provides plaza type areas between Parcels A, B1 and B2. Park Open Space Parcel (0.22 acre) fronts Horton Street and is located between Parcel A and B2.

Compared to the proposed project described in the Final EIR, the project would provide 40 fewer dwelling units and 10,600 fewer square feet of commercial space. The City Council finds that project achieves the City objectives of developing the site with a mix of residential and non-residential uses, providing public open space, extending the Greenway, and preserving and reusing of Tier 1 significant building. The City Council also finds that the overall analysis contained in the Final EIR has adequately addressed all the potentially significant impacts that may result.

**II. THE FINAL EIR:** The Final EIR consists of the Draft EIR and the Response to Comments Document.

**III. THE RECORD:** The following information is incorporated by reference and made part of the record supporting these findings:

- Draft EIR, Response to Comments Document and all documents relied upon or incorporated by reference and all testimony, documentary evidence and correspondence submitted to or delivered to the Emeryville Planning Commission, Emeryville City Council in connection therewith.
- City of Emeryville Planning Commission Staff Report dated April 24, 2008; City of Emeryville Planning Commission Resolution No. EIR 16-01; City of Emeryville Planning Commission Resolution No. PUD 13-001; and all testimony, documentary evidence and correspondence submitted to or delivered to the Emeryville Planning Commission.
- City of Emeryville City Council Staff Report dated \_\_\_\_\_; City of Emeryville City Council Resolution No. EIR \_\_\_\_; City of Emeryville City Council Resolution No. PUD; and all testimony, documentary evidence and correspondence submitted to or delivered to the Emeryville City Council.
- All testimony, documentary evidence and all correspondence submitted to or delivered to the Emeryville City Council in connection with the project.
- All staff reports, memoranda, maps, slides, letters, minutes of public meetings and other documents relied upon or prepared by City staff or consultants relating to this project.

- These Findings, the Findings of Fact Concerning Alternatives and the Statement of Overriding Considerations adopted in connection with this project.
- The Mitigation Monitoring and Reporting Program

#### **IV. CUSTODIAN OF DOCUMENTS**

The custodian of the record is the Director of Community Development, City of Emeryville, 1333 Park Avenue, Emeryville, CA 94608, Emeryville, CA 94608.

#### **V. FINDINGS AND STATEMENT OF FACTS SUPPORTING THE FINDINGS**

The Environmental Impact Report for the Sherwin Williams Project, prepared in compliance with the California Environmental Quality Act, evaluates the potentially significant and adverse environmental impacts which could result from the adoption of the project.

Pursuant to Section 15091 of Title 14 of the California Code of Regulations, the City is required to make certain findings with respect to these impacts. This document lists all identified potentially significant and significant impacts of the project, which can be avoided and mitigated to less than a significant level. This document also lists all potentially significant and significant impacts of the project, which cannot be mitigated to a less than significant level but for which the magnitude of the impact can be reduced or for which there is no feasible mitigation. These impacts are considered acceptable by the City based upon a determination that the benefits of the project (listed in this document and in the Statement of Overriding Considerations, Exhibit D) outweigh the risks of the potentially significant impacts of the project.

#### **POTENTIALLY SIGNIFICANT OR SIGNIFICANT IMPACTS THAT CAN BE AVOIDED AND MITIGATED TO LESS THAN SIGNIFICANT LEVEL**

As authorized by California Public Resources Code Section 21081 and Sections 15091, 15092 and 15093 of Title 14 of the California Code of Regulations, the City finds that changes or alterations have been required in, or incorporated into, the Project, which mitigate or avoid the significant environmental impacts listed below.

These findings are supported by substantial evidence in the record of proceedings before the City as stated below. Each significant impact that can be reduced to a less-than-significant level is discussed below, and the appropriate mitigation measure stated, and adopted for implementation by approval of these Findings of Fact. Additional information related to the facts in support of the findings with respect to each mitigation measure is set forth in the Mitigation Monitoring and Reporting Program.

#### **TRANSPORTATION AND CIRCULATION**

**Impact TRANS-1a:** The addition of project traffic to Horton Street north of 53rd Street (analysis segment A), a designated bicycle boulevard, could increase traffic volumes by more than 2 percent contributing to an exceedance of the volume threshold for a bicycle boulevard.

This impact would occur with either Option A or Option B and is considered a significant impact.

**Mitigation Measure:** 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 of DEIR) that would result in the reduction of existing with project daily volumes to a level below 3,000 vehicles per day.

**Findings:** The City finds that installation of the traffic calming measures will result in sufficient diversion of traffic such that the number of vehicles on Horton Street remains below the threshold of 3,000 vehicles per day.

**Impact TRANS-1b:** The addition of project traffic to Horton Street between 45th and 53rd streets (analysis segment B), a designated bicycle boulevard, could increase traffic volumes by more than 2 percent contributing to an exceedance of the volume threshold for a bicycle boulevard. This impact would occur with either Option A or Option B and is considered a significant impact.

**Mitigation Measure:** Implement mitigation measure to Impact TRANS-1a.

**Findings:** The City finds that installation of the traffic calming measures will result in sufficient diversion of traffic such that the number of vehicles on Horton Street remains below the threshold of 3,000 vehicles per day.

**Impact TRANS-1c:** The addition of project traffic to Horton Street south of Sherwin Avenue, a designated bicycle boulevard (analysis segment C), could increase traffic volumes by more than 2 percent contributing to an exceedance of the volume threshold for a bicycle boulevard. This impact would occur with either Option A or Option B and is considered a significant impact.

**Mitigation Measure:** Implement mitigation measure to Impact TRANS-1a

**Findings:** The City finds that installation of the traffic calming measures will result in sufficient diversion of traffic such that the number of vehicles on Horton Street remains below the threshold of 3,000 vehicles per day.

**Impact TRANS-1d:** Implementation of Mitigation Measure TRANS-1a would result in operations of the Hollis Street at 45th Street intersection (#16) to degrade with vehicles and transit vehicles experiencing significant levels of delay. Peak hour traffic signal warrants would also be met. The addition of traffic from either project Option A or Option B would further degrade operations. Based on the significance criteria, this would result in a significant secondary impact.

**Mitigation Measure:** 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.

**Findings:** The City finds that installation of the traffic signal at Hollis Street and 45<sup>th</sup> Street is appropriate and reasonable and will substantially lessen or avoid the impacts described above, such that they will be mitigated to a less than significant level.

**Impact TRANS-2:** The addition of project traffic to 45th Street, west of San Pablo Avenue (analysis segment F), a designated bicycle boulevard, could increase traffic volumes by more than 2 percent, contributing to an exceedance of the volume threshold for a bicycle boulevard. This impact would occur with either Option A or Option B and is a significant impact.

**Mitigation Measure:** The project applicant shall undertake the following measures:

- Pay the Transportation Impact Fee (TIF);
- 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).

**Findings:** The City finds that the installation of a traffic signals at Hollis Street and 45<sup>th</sup> Street in conjunction with contribution to the TIF fund that will fund additional bicycle boulevard treatments identified in the Bicycle and Pedestrian Plan is appropriate and reasonable and will substantially lessen or avoid the impacts described above, such that they will be mitigated to a less than significant level.

**Impact TRANS-3:** The addition of project traffic to 53rd Street, west of San Pablo Avenue (analysis segment H), a designated bicycle boulevard, could increase traffic volumes by more than 2 percent contributing to an exceedance of the volume threshold for a bicycle boulevard. This impact would occur with either Option A or Option B and is considered a significant impact.

**Mitigation Measure:** 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.

**Findings:** The City finds that contribution to the TIF fund that will fund bicycle boulevard treatments identified in the Bicycle and Pedestrian Plan is appropriate and reasonable and will substantially lessen or avoid the impacts described above, such that they will be mitigated to a less than significant level.

**Impact TRANS-4a:** The addition of project traffic to Horton Street north of 53rd Street (analysis segment A), a designated bicycle boulevard, under Near-Term and Cumulative Conditions could increase traffic volumes by more than 2 percent on a roadway where volumes already exceed the volume threshold for a bicycle boulevard. This impact would occur with either Option A or Option B and is considered a significant impact.

**Impact TRANS-4b:** The addition of project traffic to Horton Street between 45th and 53rd streets (analysis segment B), a designated bicycle boulevard, under Near-Term and Cumulative Conditions could increase traffic volumes by more than 2 percent on a roadway where volumes already exceed the volume threshold for a bicycle boulevard. This impact would occur with either Option A or Option B and is considered a significant impact.

**Impact TRANS-4c:** The addition of project traffic to Horton Street south of Sherwin Avenue (analysis segment C), a designated bicycle boulevard, under Near-Term and Cumulative Conditions could increase traffic volumes by more than 2 percent on a roadway where volumes already exceed the volume threshold for a bicycle boulevard. This impact would occur with either Option A or Option B and is considered a significant impact.

**Mitigation Measures:** Implement Mitigation Measure TRANS-1a which will reduce the level of traffic on Horton Street north of 53rd Street; on Horton Street between 45th and 53rd streets (analysis segment B); and on Horton Street south of Sherwin Avenue (analysis segment C).

**Findings:** The City finds that installation of the traffic calming measures will result in sufficient diversion of traffic such that the number of vehicles on Horton Street remains below the threshold of 3,000 vehicles per day in the Near-term and Cumulative Conditions. However, there is no assurance that the impact to Horton Street north of 53rd Street (analysis segment A) would be mitigated to a less than-significant level in spite the traffic calming measures. Therefore, this impact is considered significant and unavoidable and the City will adopt a Statement of Overriding Consideration for this impact (See Appendix D).

**Impact TRANS-4d:** Implementation of Mitigation Measure TRANS-1a would result in operations of the Hollis Street at 45th Street intersection (#16) to degrade with vehicles and transit vehicles experiencing significant levels of delay in both the Near-Term and Cumulative Conditions. Peak hour traffic signal warrants would also be met. The addition of traffic from either project Option A or Option B would further degrade operations. Based on the significance criteria, this would result in a significant secondary impact.

**Mitigation Measure:** 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.

**Findings:** The City finds that installation of the traffic signal at Hollis Street and 45<sup>th</sup> Street is appropriate and reasonable and will substantially lessen or avoid the impacts described above, such that they will be mitigated to a less than significant level in the Near-term and Cumulative Conditions.

**Impact TRANS-5:** The addition of project traffic to 45th Street, west of San Pablo Avenue (analysis segment F), a designated bicycle boulevard, under Near-Term and Cumulative Conditions could increase traffic volumes by more than 2 percent on a roadway where volumes already exceed the volume threshold for a bicycle boulevard. This impact would occur with either Option A or Option B and is considered a significant impact.

**Mitigation Measure:** 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.

**Findings:** The City finds that the installation of a traffic signals at Hollis Street and 45<sup>th</sup> Street in conjunction with contribution to the TIF fund that will fund additional bicycle boulevard treatments identified in the Bicycle and Pedestrian Plan is appropriate and reasonable and will substantially lessen or avoid the impacts described above, such that they will be mitigated to a less than significant level in the Near-term and Cumulative Conditions.

**Impact TRANS-6:** The addition of project traffic to 53rd Street, west of San Pablo Avenue (analysis segment H), a designated bicycle boulevard, under Near-Term and Cumulative Conditions could increase traffic volumes by more than 2 percent on a roadway where volumes already exceed the volume threshold for a bicycle boulevard. This impact would occur with either Option A or Option B and is considered a significant impact.

**Mitigation Measure:** 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.

**Findings:** The City finds that contribution to the TIF fund that will fund bicycle boulevard treatments identified in the Bicycle and Pedestrian Plan is appropriate and reasonable and will substantially lessen or avoid the impacts described above, such that they will be mitigated to a less than significant level in the Near-term and Cumulative Conditions.

**Impact TRANS-7:** The Hollis Street/45th Street intersection (#16) is projected to operate at LOS F during the weekday PM peak hour in the Near-Term and Cumulative Conditions and peak hour signal warrants would be satisfied. The addition of project traffic would exacerbate this deficiency, resulting in a significant impact in the Near-Term and Cumulative Condition. The addition of diverted traffic from Mitigation Measure TRANS-1 would also increase vehicle delay and queue spillback at the on Hollis Street/45th Street intersection (#16), and the changed area travel patterns would increase conflicts for bicyclists and pedestrians on the 45th Street bicycle boulevard (analysis segments E, F, and G).

**Mitigation Measure:** 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.

**Findings:** The City finds that the installation of a traffic signals at Hollis Street and 45<sup>th</sup> Street in conjunction with contribution to the TIF fund that will fund additional bicycle boulevard treatments identified in the Bicycle and Pedestrian Plan is appropriate and reasonable and will substantially lessen or avoid the impacts described above, such that they will be mitigated to a less than significant level in the Near-term and Cumulative Conditions.

**Impact TRANS-8:** At the San Pablo Avenue/40th Street intersection (#27), vehicle queues for some movements are projected to exceed the available storage in the Cumulative with Project Condition. For the southbound left-turn movement, the addition of project traffic to multiple movements at the intersection results in an increase of the southbound left-turn vehicle queue by more than 50 feet. As this queue is projected to exceed the available capacity prior to the addition of project traffic, this is considered a significant impact.

**Mitigation Measure:** The City of Emeryville does not have plans to increase the vehicular capacity of the San Pablo Avenue/40th Street intersection (#27). Extending the southbound left-turn pocket vehicle storage was reviewed, but an extension of the southbound left-turn pocket would require the removal or relocation of an existing mid-block pedestrian crossing, which is not recommended. To reduce the impact, there are transit, pedestrian, and bicycle improvements planned in the area that would provide increased travel options through the area, also the project would contribute their fair share to these improvements through the payment of the Transportation Impact Fee, and the City undergoes a regular process of updating traffic signal timings to accommodate changing travel patterns and minimize vehicle queue spillback.

**Findings:** The City finds that given that there are no plans to increase the vehicular capacity of the San Pablo Avenue/40<sup>th</sup> Street intersection and difficulties in installing a southbound left-turn pocket vehicle storage, there is no assurance that the impact would be mitigated to a less than-significant level in spite of planned transit, pedestrian, and bicycle improvements. Therefore, this impact is considered significant and unavoidable and the City will adopt a Statement of Overriding Consideration for this impact (See Appendix D).

**Impact TRANS-9:** Construction activities associated with the proposed project will have temporary adverse impacts on vehicular, bicycle, and pedestrian circulation and access.

**Mitigation Measure:** 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.

**Finding:** The City finds that submission of a construction plan is appropriate and will ensure that the construction related impacts are reduced to less than significant level.

### **AIR QUALITY**

**Impact AIR-1:** Construction of the proposed project would generate air pollutant emissions that could violate air quality standards.

**Mitigation Measure:** 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.

**Findings:** The City finds that the above stated mitigation measure to address potential dust, exhaust, and organic emissions during demolition and construction period activities is appropriate and reasonable and will substantially lessen or avoid the impacts described above, such that they will be mitigated to a less than significant level.

**Impact AIR-2:** Operation of the proposed project would expose future residents of the project site to toxic air contaminants.

**Mitigation Measure 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.

**Mitigation Measure 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.

**Findings:** City finds that the above stated mitigation measures to reduce health risk levels for future residents is appropriate and reasonable and will substantially lessen or avoid the impacts described above, such that they will be mitigated to a less than significant level.

## **NOISE AND VIBRATION**

**Impact NOI-1:** Implementation of the proposed project could result in the exposure of future residences of the project site to excessive noise levels.

**Mitigation Measure:** 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.

**Findings:** The City finds that the above stated mitigation measure regarding mechanical ventilation is appropriate and reasonable and will substantially lessen or avoid the impacts described above, such that they will be mitigated to a less than significant level.

**Impact NOI-2:** Implementation of the project could result in a substantial increase in stationary noise levels, due to delivery and loading/unloading activities, experienced at off-site sensitive land uses in the project vicinity compared to levels that would exist without the project.

**Mitigation Measure:** 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.

**Findings:** The City finds that the above stated mitigation measure to address noise arising from various activities is appropriate and reasonable and will substantially lessen or avoid the impacts described above, such that they will be mitigated to a less than significant level.

**Impact NOI-3:** Noise from construction activities could result in a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project.

**Mitigation Measure:** 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.).

**Findings:** The City finds that the above stated mitigation measures to address temporary noise arising from construction activities is appropriate and reasonable and will substantially lessen or avoid the impacts described above, such that they will be mitigated to a less than significant level.

### **GEOLOGY, SOILS, AND SEISMICITY**

**Impact GEO-1:** Implementation of the proposed project could expose people or structures to strong seismic shaking and related seismically induced hazards, including liquefaction.

**Mitigation Measure:** 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.

**Findings:** The City finds that the implementation of the above measures are appropriate and reasonable and will substantially lessen or avoid the impacts discussed above, such that they will be mitigated to a less than significant level.

**Impact GEO-2:** Construction of structures in areas of unstable geologic units, including expansive soils could expose people, structures, or utilities to damage.

**Mitigation Measures: 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.

**Findings:** The City finds that the implementation of the above measures are appropriate and reasonable and will substantially lessen or avoid the impacts discussed above, such that they will be mitigated to a less than significant level.

## **HYDROLOGY AND WATER QUALITY**

**Impact HYD-1:** Construction or operation of the proposed project could violate water quality standards or waste discharge requirements.

**Mitigation Measures: 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.

**Findings:** The City finds that the above stated mitigation is appropriate and reasonable and will substantially lessen or avoid the impacts described above, such that they will be mitigated to a less than significant level.

**Impact HYD-2:** Implementation of the proposed project could create or contribute runoff water which could exceed the capacity of existing or planned stormwater drainage systems.

**Mitigation Measure:** 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.

**Findings:** The City finds that the above stated mitigation is appropriate and reasonable and will substantially lessen or avoid the impacts described above, such that they will be mitigated to a less than significant level.

### **HAZARDOUS MATERIALS/PUBLIC HEALTH AND SAFETY**

**Impact HAZ-1:** The proposed project could result in accidents during construction involve release of hazardous materials into the environment.

**Mitigation Measure:** 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.

**Findings:** The City finds that a Spill Response Plan is appropriate and reasonable and will substantially lessen or avoid the impacts discussed above, such that they will be mitigated to a less than significant level.

**Impact HAZ-2:** **The proposed project could result in exposure of the public or the environment to hazardous materials present in soils, groundwater, and/or building materials as a result of historical land uses at the project site or in the project vicinity.**

**Mitigation Measures:** **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.
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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.

**Findings:** The City finds that with preparation of plans and activities described above and conducted under DTSC oversight will substantially lessen or avoid the impacts discussed above, such that they will be mitigated to a less than significant level.

### **CULTURAL AND PALEONTOLOGICAL RESOURCES**

#### **Impact CULT-1: Renovation and reuse of Building 1-31 has the potential to result in material impairment to a historical resource under CEQA.**

**Mitigation Measure:** 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.

**Findings:** The City finds that with oversight of an historical preservation architect as described above, the stated mitigation is appropriate and reasonable and will substantially lessen or avoid the impacts described above, such that they will be mitigated to a less than significant level.

**Impact CULT-2:** Ground-disturbing activities associated with project construction could adversely affect archaeological resources.

**Mitigation Measure:** 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.

**Findings:** The City finds that this mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impacts described above, such that they will be mitigated to a less than significant level.

**Impact CULT-3:** Ground-disturbing activities associated with project construction could adversely affect paleontological resources.

**Mitigation Measure:** 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.”

**Findings:** The City finds that the above stated mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impacts described above, such that they will be mitigated to a less than significant level.

**Impact CULT-4: Ground-disturbing activities associated with project construction could unearth Native American human remains.**

**Mitigation Measure:** 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.

**Findings:** The City finds that the above stated mitigation measure is appropriate and reasonable and will substantially lessen or avoid the impacts described above; however, there is no assurance that the impact would be mitigated to a less than-significant level in spite of this mitigation. Therefore, this impact is considered significant and unavoidable and the City will adopt a Statement of Overriding Consideration for this impact (See Appendix D).