



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** September 6, 2016

**TO:** Carolyn Lehr, City Manager

**FROM:** Charles S. Bryant, Director, Community Development Division

**SUBJECT:** Resolution Of The City Council Of The City Of Emeryville Certifying The Final Environmental Impact Report For The Sherwin Williams Development Project And Making Findings Required By The California Environmental Quality Act

### REQUESTED ACTION

The City Council is requested to adopt the attached Resolution certifying the Final Environmental Impact Report (FEIR) for the Sherwin Williams Development Project and making findings required by the California Environmental Quality Act (CEQA).

### CITY COUNCIL PROCEDURE

The City Council is asked to certify the Final Environmental Impact Report (FEIR) for the Sherwin Williams Development Project. While a public hearing is not required for this matter, the Council may take any final public testimony regarding the FEIR. Such testimony should be limited to the adequacy of the responses to the comments received. In certifying the FEIR, the City Council must make the following findings:

- That the FEIR has been completed in compliance with California Environmental Quality Act (CEQA); and
- That the FEIR reflects the City's independent judgment and analysis.

Please note that when the actual development project comes before the Planning Commission and the City Council, the actions related to the FEIR will involve the finding that the Commission and the Council reviewed and considered the information in the FEIR prior to approving the project. Given the fact that no specific development application is presently being considered by the Council, such a finding does not have to be made at this time.

## DISCUSSION

### Sherwin Williams Development Project EIR Overview:

The Sherwin Williams Development Project FEIR covers the potential environmental impacts as the result of redeveloping a 10.05 acre site for mixed use commercial, office and residential activities. Major issues and impacts identified in the document include: Transportation and Circulation; Air Quality; Noise; Geology, Soils, and Seismicity; Hazards and Hazardous Materials; Hydrology and Water Quality; and Cultural Resources. All impacts except three (TRANS-4a, TRANS-8, and CULT-4) would be reduced to a less-than-significant level through the implementation of identified mitigation measures and the City's applicable Standard Conditions of Approval. These significant unavoidable impacts are as follows:

- TRANS 4a: The addition of project traffic to Horton Street north of 53rd Street, a designated bicycle boulevard, under 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.
- 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. This impact would occur with either Option A or Option B.
- CULT 4: Ground-disturbing activities associated with project construction could unearth Native American human remains.

In addition to the proposed project, the FEIR also assessed potential impacts of other development alternatives:

- Existing Base Zoning/General Plan Development Alternative: This alternative describes what would be reasonably expected to occur in the foreseeable future if the project is constructed based on the current base General Plan and zoning designations.
- The Reduced Density Alternative: This alternative, compared to the proposed project, would provide 162 fewer residential units and 82,600 less square feet of commercial space.
- Lennar Alternative: This alternative, compared to the proposed project, would provide 8 fewer residential units and 12,600 less square feet of commercial space.

- No Project Alternative: This alternative assumes that the site would ultimately not remain vacant (i.e., a “no development alternative”) if the proposed project were not approved, but that a different project generally consistent with City policies and regulations would ultimately be proposed and approved.

From the analysis of the proposed project and the various alternatives that were studied, a comprehensive base of environmental information was developed that compared a broad range of development options and potential land uses. In this way, the City now has an adequate base of environmental information upon which to consider future development decisions for the Sherwin Williams project area.

### **Environmental Review Process to Date:**

A Notice of Preparation (NOP) of the Draft EIR was published on December 16, 2014 with a 45-day comment period ending on January 30, 2015. The review period was subsequently extended to February 27, 2015, total of 73 days. A scoping meeting was held during the NOP review period on January 27, 2015. The Draft Environmental Impact Report (DEIR) was made available to the public on January 8, 2016 and the 60-day public comment period ended on March 8, 2016. As part of this review period a Notice of Availability was posted and mailed to all property owners within 300 feet of the site, to all parties who had previously expressed interest to be notified about the matter and to all surrounding cities and public agencies. Although not required by law, during the comment period the Planning Commission held a public hearing and received oral testimony concerning the DEIR on February 25, 2016. Twenty persons provided comments at the hearing.

A total of 29 letters were received during the public comment period which included four letters from state, local and regional agencies; five letters from various neighborhood organizations; and 20 letters from individuals.

City staff and their consultants reviewed all comments and responded to them as part of the FEIR. The FEIR now before the City Council is composed of the following parts:

- The DEIR
- The comment letters received about the DEIR during the public comment period
- The responses to comments received during the public comment period about the DEIR
- Changes, clarifications or corrections to the DEIR, either as a result of the comments received during the public comment period or through staff initiated changes.

The latter three parts are included in the “Response to Comments Document” (RTC), which was made available for public review on June 28, 2016. The RTC does not present any new significant information which requires a subsequent or supplemental

analysis to evaluate the information and comments received about the DEIR, changes in circumstances, or new information presented to the City during the DEIR public comment period. Nor does the RTC present any new information of substantial importance showing new significant environmental effects or a substantial increase in the severity of previously identified significant environmental effects beyond those effects analyzed in the DEIR for the Sherwin Williams Development Project which were identified during the public comment period or during the preparation of the FEIR.

CEQA Guidelines Section 15088.5 requires a lead agency to recirculate an EIR when significant new information is added to an EIR after the availability of the EIR and before certification. New information is not “significant” unless the EIR is changed in a way that deprives the public a meaningful opportunity to comment upon a substantial adverse environmental effect of a project or a feasible way to mitigate or avoid such an effect that the project’s proponents have declined to implement. The revisions to mitigation measures contained in the RTC are the result of comments received during the public review period and will be implemented by the applicant and thus are not “significant” for purposes of Section 15088.5, and therefore recirculation of the EIR is not required.

### **Planning Commission Action**

At their July 28, 2016 meeting, the Planning Commission considered recommending that the City Council certify the FEIR for the Sherwin Williams Development project. Commissioner Bauters was recused on the grounds of residential proximity to the project site, while Commissioner Donaldson was recused because she works for a firm that is a client of the project developer. There is currently one vacancy on the Commission. Therefore, there was a quorum of four Commissioners present for this item. A motion was made to recommend that certification be deferred and referred back to the Commission for consideration in October to allow further study of traffic issues. This motion failed by a vote of 2 ayes (Commissioners Banta and Kang) and 2 noes (Vice Chair Cardoza and Chair Keller). A motion was then made to recommend certification of the FEIR. This motion also failed by a vote of 2 ayes (Vice Chair Cardoza and Chair Keller) and 2 noes (Commissioners Banta and Kang). Therefore, the Planning Commission was unable to pass any motion concerning a recommendation to the City Council as to whether or not to certify the FEIR.

### **Comment Letters on FEIR:**

After the City published the RTC on June 28, 2016, five comment letters were received from the following:

- Grassetti Environmental Consulting (GECO), dated July 22, 2016
- Gary Grimm and Ann Holsberry, dated July 22, 2016
- Richard D. Ambro, PhD., dated July 25, 2016
- Adams Broadwell Joseph & Cardozo, dated July 28, 2016
- Park Avenue Residents’ Committee (PARC), dated July 28, 2016

All five letters contended that the Final EIR was inadequate and should not be certified. City staff, consultants, and counsel have reviewed these letters and have concluded that they do not raise any issues that were not adequately addressed in the DEIR and RTC, or any significant new information that would require recirculation of the EIR. Although CEQA does not require that the public be provided an opportunity to comment on Final EIRs, nor that lead agencies respond to any such comments, the City has opted to prepare written responses to these five comment letters. The City's CEQA consultant has been engaged to prepare such responses, which will then be reviewed by City staff and counsel. These written responses are anticipated to be available by Friday, September 2, 2016, and will be made available to the City Council and the public at that time.

### **Next Steps in the CEQA Review Process:**

After the City Council certifies the FEIR, it will be used as the primary source of environmental information for reviewing and considering the mixed use project submitted by Lennar Multifamily Communities (also known as "LMC Emeryville I Investor LLC").

Note that a Mitigation Monitoring and Reporting Program, Statement of Overriding Considerations, application of the EIR to the project, and other required CEQA findings will be considered in conjunction with project approval at a future meeting and are not before the Council for consideration at this time.

### **What Certification of a FEIR Means:**

Certification of the FEIR does not, in any way, constitute approval of the proposed project or any alternative contained in the analysis. It does not signify the City's preference for any particular mitigation measure, development plan or design for the site. Certification means only that the City Council believes that the FEIR contains complete, independent and appropriate analysis of environmental impacts, alternatives and mitigation measures upon which to base future policy and development decisions with regard to the Sherwin Williams project area, and that the FEIR reflects their independent judgment and analysis.

### **Future Use of the FEIR in the Development Review Process for the Sherwin Williams Development Project:**

Prior to approving the Sherwin Williams Development Project, the decision making body must review and consider the information contained in the FEIR. Pursuant to CEQA, all significant adverse environmental impacts identified in the FEIR must be eliminated through a change in the project, reduced to a level of insignificance through a mitigation measure or change in the project, or may be accepted through adoption of a statement of overriding considerations due to social, economic or other factors. If a mitigation

measure is outside the City's jurisdiction or authority, a finding may be made that the implementation of the mitigation measure is infeasible. CEQA findings must be made for each action taken to approve the project (planned unit development, subdivision map, etc.) Thus, the FEIR will be used by the City throughout the development review process to determine conditions and requirements for approval of the Sherwin Williams Development Project.

## **FISCAL IMPACT**

None

**PREPARED BY:** Miroo Desai, Senior Planner

**APPROVED AND FORWARDED TO THE  
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



---

Carolyn Lehr, City Manager

## **Attachments:**

1. Resolution
2. Draft Environmental Impact Report
3. DEIR Appendices
4. Response to Comments