

M E M O R A N D U M

DATE: August 30, 2016

TO: Miroo Desai, Senior Planner, City of Emeryville

FROM: Judith H. Malamut, AICP

SUBJECT: Responses to Comments on the Responses to Comments (RTC) Document

Per the City's direction, this memorandum provides specific responses to comments on the Responses to Comments (RTC) Document published by the City in June of 2016. All comments received after publication of the RTC Document are attached to this memorandum and provided in their entirety. Additionally, each letter has been labeled (A-F) and each comment has been numbered (e.g., A-1). The responses below are keyed to the specific comments in each letter.

Please note the following regarding these responses to the comments on the RTC Document. As required by CEQA, the RTC Document included good faith, well-reasoned, written responses to all the comments received on the Draft EIR during the 60 day review period.

CEQA does not require the City as Lead Agency to prepare written responses to comments on the RTC Document, which with the Draft EIR constitutes the Final EIR (or FEIR). Before certifying an EIR, the City must accept and consider new environmental comments and include all new comments as part of the project's administrative record. This memorandum and attachments are therefore part of the administrative record. The CEQA Guidelines and judicial precedent indicate that a lead agency need not respond to late comments in writing; however, the lead agency should respond to any new substantive environmental comments as part of the record. For these responses, a "substantive" comment is considered to be one that raises new information in regards to the sufficiency of the Final EIR in responding to comments regarding the identification of environmental impacts and methods to avoid or mitigate those impacts (CEQA Section 15204).

The reader should note that many of the comments in the attached letters, as part of the public participation process, voice opinions concerning the merits of the project or the City's hearing or project review and approval processes. Per CEQA Section 15088, the City is not obligated to prepare detailed responses to such comments and did not in the RTC Document and does not in this memorandum. As noted above, all of these comments have been reviewed by the City, are part of the administrative record and will be considered by the decision-makers.

COMMENTS A

Adams Broadwell Joseph & Cardozo

Laura E. Horton

July 28, 2016

- Response A-1: This comment provides introductory information regarding the commenter's review of the RTC Document. The commenter notes that they believe the Draft EIR was "significantly flawed and did not comply with the requirements of ...CEQA," and that "the City's FEIR does not resolve these significant flaws." Additional detail regarding the identified adverse impacts that the commenter believes were not adequately addressed or mitigated are provided and responded to in the remaining 27 comments contained in the letter; see Responses A-2 through A-28 below.
- Response A-2: This commenter reiterates previous comments that were made by Emeryville Residents for Responsible Development indicating that the Draft EIR underestimated the Project's significant air quality impacts by facility to calculate air pollution associated with construction of parks, and other ancillary areas of the project. As described in RTC Response B4-8, the commenter is incorrect because the parks and open space components of the project were included as a function of the landscaping and roadway inputs which are incorporated into the residential land use code and project acreage entered into CalEEMod. However, to demonstrate that the slight change in model inputs would not affect the results of the analysis, LSA conducted an additional analysis using CalEEMod with the park land use separated from the residential total acreage. Results of the analysis were shown in the Revised Table IV.D-5 included in the RTC on page 245. Results indicate that construction emissions would be below the BAAQMD significance criteria and no significant construction impacts would result from implementation of the project.
- Response A-3: This comment claims the Draft EIR failed to correctly calculate the amount of volatile organic compounds (VOCs) that would be released from building painting and coating. This claim was based on a discrepancy between the number of units input into CalEEMod and the CalEEMod estimated total square footage of 540,000, which was slightly lower than the square footage identified in the project description (621,000 square feet). To address this discrepancy, VOC emissions associated with project construction were recalculated using a square footage of 621,000 and the findings were presented in the revised Table IV.D-5 included the RTC. The revised results indicate that no significant construction impacts, including those generated by VOC emissions, would result from construction of the project.
- Response A-4: This comment states that the Draft EIR underestimated the project's significant air quality impacts by failing to predict and include the number of haul trucks that would be required to remove unsuitable artificial fill material and contaminated soils from the project site. As noted in RTC Response B4-11, in a good faith effort, LSA estimated the number of truck trips based on

an estimate of the amount of material that would need to be removed for excavation and construction. No additional off-haul of materials/soil is expected at this time. However, should a substantial amount of additional soil off-haul (and associated truck trips) be required that is greater than the amount identified in the Draft EIR due to on-site conditions, the City would require additional review and would impose additional conditions, if necessary, at that time.

- Response A-5: This comment states that the Draft EIR underestimated the project's significant air quality impacts by underestimating project trip generation and by counting a portion of that traffic as "pass-by" trips that generate very little emissions. A response to this comment is provided on page 267 of the RTC Document. The "pass-by" assumption that was used in the analysis is in reference to a trip length time. As noted in the RTC, based on the available evidence, it would not be appropriate to edit the trip purpose type assumptions and the resulting trip length estimates used as the CalEEMod default values. Traffic for some uses was estimated to be diverted from areas within a mile of the site and the default values represent the range of trip lengths that would be associated with the project trip generation. All generated trips were included in the CalEEMod analysis. A detailed assessment of project trip generation was included in Appendix B of the RTC.
- Response A-6: This comment states that the RTC acknowledges that the Draft EIR did not contain a complete analysis of construction and coating emissions, and states that the RTC claims that construction emissions would be insignificant and that no mitigation is required. The claims in the RTC are supported by the documentation provided as shown in the revised Table IV.D-5 of the RTC. A revised CalEEMod analysis was conducted to more precisely reflect the square footage identified in the project description. The results are shown in the revised Table IV.D-5 and indicate that construction emissions, including those from architectural coatings, would not be significant and mitigation would not be required.
- Response A-7: A greater number of haul trips than those estimated in the Final EIR are not anticipated at this time for any reason. As noted in Response A-4 above and RTC Response B4-80, the CalEEMod analysis was revised to assess haul trip emissions associated with the 7,000 cubic yards of fill included in the project description. The updated emissions are included in revisions to Table IV.D-5 and indicate emissions associated with project construction, including haul truck trips would not result in significant emissions.
- Response A-8: The trip type and trip lengths including the small portion of trips that were considered "pass-by" are based on data from the Institute of Transportation Engineers and are approved for use by the California Air Pollution Control Officers Association in the CalEEMod modeling tool. Therefore, due to lack of supporting evidence necessary to change such default values (such as a trip origin destination survey specific to the project site), the most conservative approach is to use the default trip length and types, including the use of pass-by trips lengths assigned by default in CalEEMod. The trip

generation assumptions used in the analysis were consistent with the traffic impact analysis and therefore the analysis was appropriate.

This comment claims that concerns were dismissed, however, additional analysis was conducted to address the concerns, and results of the revised analysis indicates that no significant impacts would occur and additional mitigation would not be required.

Response A-9:

This comment states that the Draft EIR underestimates the volume of greenhouse gases (GHGs) that the project would produce due to the GHG intensity factor that was used in the analysis. As discussed in Response B4-18 in the RTC, the carbon intensity factor used in the analysis was based on the 2013 PG&E Guidance for Customers, which states that emission factors may be used for climate action planning purposes and greenhouse gas emission emissions tracking or reporting. A copy of the 2013 report, as well as the updated November 2015 document, is included in Appendix A to the RTC Document. The 2015 document also confirms the estimated carbon intensity factor for 2020 remains 290 lb/MWhr, despite recent drought conditions, because it is required under the State's Renewable Portfolio Standard.

In response to AB 32, the California Air Resources Board was required to develop renewable energy standards in its Scoping Plan. In 2011, the California Legislature passed a renewable portfolio standard program which requires PG&E and other electric utilities to serve 33 percent of their customers' electricity needs with clean renewable energy by 2020. According to the latest scoping plan, the large utilities, such as PG&E are on track to meet the 33 percent target by 2020. The 290 lb/MWhr reflects the emission reductions achieved through implementation of the renewables portfolio standard. The emission rate was independently developed and verified by the California Public Utility Commissions (CPUC). Therefore, the carbon intensity factor of 290 lb/MWhr used in the CalEEMod is appropriate to use in this analysis of 2020 greenhouse gas emissions (the opening year of the project).

It should also be noted that as shown in Table IV.E-3 of the Draft EIR, energy emissions associated with the project represent only 25 percent of all GHG emissions associated with the project, which includes natural gas usage. If the carbon intensity factor was increased by 100 percent and energy emissions associated with the project were doubled, the GHG emissions per service population would be 3.9 metric tons per year, which would also be well below the BAAQMD threshold of 4.6. Therefore, the findings of the analysis would not change with a higher carbon intensity factor. GHG emissions associated with the project would be below the BAAQMD significance criteria and mitigation measures would not be required.

Response A-10:

The trip generation methodology used in the Draft EIR is explained in detail in a memorandum included in Appendix B of the RTC Document. This document explains that the trip generation used in the traffic and GHG analysis was based on the MXD+ model that has been used on numerous

transportation assessments for projects in California with Certified Environmental Impact Reports dating back to 2009. The trip generation estimates are based on data specific to the project site and surrounding area, including the number of jobs within a 30-minute transit ride, the average vehicle ownership of future residents, which is estimated based on Census data from the surrounding neighborhood, and other site specific factors. Please see the Trip Generation memo in RTC Appendix B for additional information regarding trip generation, the model used and its validity. The trip generation is representative of the proposed project, therefore, the conclusions made using the data for air quality and GHG impacts were properly calculated.

Response A-11:

The commenter indicates that soil contamination is prevalent on and around the project site, and that the 2012 removal of “hot spots” on a portion of the site and the soil gas monitoring in 2012 and 2013 are not sufficient to protect residents and workers from the contaminants that remain.

As described on page 298 of the Draft EIR, confirmation sampling was performed in vadose zone excavations at the Sherwin-Williams parcel to demonstrate that impacted soil was sufficiently removed to achieve cleanup goals (Draft EIR, page 298). As described in the CDM Smith (CDM) 2012 Remedy Implementation Completion Report (Completion Report) for the Sherwin-Williams parcel, this confirmation sampling included confirmation sampling of “hot spot” excavations as well as the larger excavations performed on site (CDM, 2012).

As described in RTC Master Response 3, the Draft EIR acknowledges that soil and groundwater affected by hazardous materials may be disturbed and/or removed as a result of construction activities, and the Draft EIR discusses the environmental restrictions imposed by the Department of Toxic Substances Control (DTSC) and mitigations measures which would be implemented to prevent potential exposure of workers and the public to residual hazardous materials which are present in the subsurface of the project site, including: Land Use Covenants (LUCs), an Operations & Maintenance (O&M) Plan, a Soil Management Plan (SMP), further evaluation of soil gas conditions and potential vapor intrusion to indoor air, and mitigation of potential vapor intrusion risks, if necessary.

Response A-12:

The commenter indicates that the regulatory oversight to be provided by DTSC is limited and that there is no plan to further remediate the site to reduce human health risks to acceptable levels. The commenter requests further investigation of contamination on and adjacent to the site, preparation of a plan for remediation, and a project-specific health risk assessment. The commenter indicates that the Sherwin-Williams parcel is contaminated with the 100-year byproducts of manufacturing lead-based pesticides, arsenic-based pesticides, lacquer, and paint.

In response to this comment, the following information was included in RTC Master Response 3:

- The Draft EIR acknowledges that the Sherwin-Williams Company owned and operated a paint and coating manufacturing plant on the Sherwin-Williams parcel beginning in the early 1900s, and that pesticides were also manufactured at the plant from the 1920s until the mid-1940s.
- The Draft EIR discusses that a human health risk assessment (HHRA) was prepared under the oversight of DTSC in 2005 for the Sherwin-Williams parcel, and the results of the HHRA were used in the development of cleanup goals for the Remedial Action Plan (RAP) based on an unrestricted residential exposure scenario.
- The Draft EIR describes the many phases of environmental investigation and remediation activities that have been performed at the project site.
- DTSC oversight is required for the implementation of mitigation measures related to hazardous materials as well as the construction and operation of the proposed project, which would ensure suitability of the Project site for the proposed land uses.
- Further remediation of the project site is not planned, as the presence of residual contamination is being addressed by: 1) the LUC and O&M Plan for the Sherwin-Williams parcel, 2) the SMP that would be prepared for the project site as required by Mitigation Measure HAZ-2d; 3) the LUC that would be developed for the Successor Agency parcel, as required by Mitigation Measure HAZ-2c; and 4) further evaluations of soil gas conditions and indoor air quality and implementation of engineering controls, if necessary, to address the potential for vapor intrusion to indoor air, as required by DTSC and Mitigation Measures HAZ-2a and HAZ-2b.

Investigation activities extended into areas adjacent to the Site, as shown on Figure 2-3 of the RAP (CDM, 2010) and remediation was performed in areas adjacent to the project site as required by DTSC and documented in the Completion Report (CDM, 2012).

Response A-13:

The commenter indicates that the latest (2013) soil gas monitoring results for the Sherwin-Williams parcel indicated that naphthalene was 2.4 times above the safe level, benzene was 75 times above the safe level, and ethylbenzene was 145 times above the safe level; and that the soil gas monitoring report guessed that the presence of hazardous gases is due to soil contamination at locations where soil was not removed during previous remediation.

The Updated Soil Gas Data Summary and Evaluation Report (Soil Gas Monitoring Report) prepared for the Sherwin-Williams parcel in 2013 (CDM, 2013) indicates that concentrations of benzene and ethylbenzene detected during the June 2013 soil gas monitoring event were generally significantly lower than concentrations detected during past soil gas monitoring events. In June 2013, benzene was detected above the residential California Human Health Screening Level (CHHSL) at only one sample location (approximately 2.4 times above the CHHSL), and ethylbenzene was detected at only one sample location, and was below the residential CHHSL

at this location. Naphthalene was not detected at concentrations exceeding the residential CHHSL during the June 2012 and January 2013 soil gas monitoring events, and was detected at concentrations exceeding the CHHSL at three sample locations in June 2013 (up to approximately 2.4 times above the CHHSL). The Soil Gas Monitoring Report indicates that source of volatile organic compounds (VOCs) in the vicinity of one sample location (SGMP-06) may be vadose zone soil and groundwater, unlike other locations where VOCs in soil gas are currently attributed solely to groundwater (CDM, 2013).

As described in RTC Master Response 3, further evaluation of soil gas conditions and potential vapor intrusion to indoor air, and mitigation of potential vapor intrusion risks, if necessary, would be performed under DTSC oversight, as required by the LUC for the Sherwin-Williams parcel and Mitigation Measure HAZ-2a.

Response A-14: The commenter indicates that groundwater contamination persists on the site, particularly in locations where soil was not removed, and that high levels of dichloroethane, benzene, and arsenic were disclosed in a 2014 report.

As described in RTC Master Response 3,

- A LUC imposes environmental restrictions on the Sherwin-Williams parcel because VOCs and arsenic remain in groundwater above the unrestricted cleanup goals as defined in the RAP.
- The O&M Plan for the Sherwin-Williams parcel describes long-term monitoring and O&M activities to be performed for remedial features installed at the Sherwin-Williams parcel to ensure that remedial measures and engineering controls continue to be effective in preventing potential exposure of the public to hazardous materials which are present in the subsurface of the Sherwin-Williams parcel.
- A similar O&M Plan may be developed for the Successor Agency parcel if required by DTSC.
- Mitigation Measure HAZ-2c requires a LUC to be prepared for the Successor Agency parcel which would prevent potential exposure of construction workers, the public, and the environment to known and potential unidentified hazardous materials in the subsurface of the Successor Agency parcel.

As described on page 302 of the Draft EIR, post-remediation groundwater monitoring will continue for the Sherwin-Williams parcel as proposed in a January 2015 monitoring report.

Response A-15: The commenter indicates that more than 20 percent of the Sherwin-Williams parcel is covered by a large concrete pad of former Building 35, in an area previously used by Southern Pacific railroad. The commenter indicates that petroleum products, solvents, metals, and other chemicals that are legacy from railroad use were found at the Successor Agency parcel, that similar contamination likely exists beneath former Building 35, and that a 2012

report noted that a plume of contaminated groundwater was flowing along or under Building 35.

As described in RTC Master Response 3, investigation of the Building 35 area has been performed as indicated by the locations of previous borings presented on Figure 2-3 of the RAP (CDM, 2010). DTSC provided oversight of the development and implementation of the RAP, and did not require remedial activities beneath the Building 35 concrete pad. Compliance with the restrictions and requirements of the LUC for the Sherwin-Williams parcel and implementation of the SMP that would be developed for both parcels and the proposed project would effectively prevent potential exposure of construction workers, the public, and the environment to known and potential unidentified hazardous materials in the subsurface of the Sherwin-Williams parcel, including potential unidentified areas of hazardous materials impacts beneath the Building 35 concrete pad.

Response A-16: The commenter indicates that the Successor Agency parcel contains unhealthy levels of contaminants even after a 2008 remediation effort, which was limited by the presence of the adjacent Building 35, public sidewalks, and railroad tracks.

As described in RTC Master Response 3, the Draft EIR discloses that residual levels of contamination remain in the subsurface of the project site, and describes mitigation measures which would be implemented to prevent potential exposure of workers and the public to residual hazardous materials which are present in the subsurface of the project site.

Response A-17: The commenter indicates that the project will require an undisclosed scope of utility line replacements along Sherwin Avenue, where soil contamination for surrounding land uses has been documented, as well as other utility work along adjacent streets and rights-of-way. The commenter indicates that there is no analysis of how much contamination may be encountered during these excavation activities nor any plan to protect the public and workers.

Investigation activities extended into street areas adjacent to the site, including Sherwin Avenue and Horton Street, as shown on Figure 2-3 of the RAP (CDM, 2010). DTSC provided oversight of the development and implementation of the RAP, and did not require remedial activities beneath these street areas. Implementation of the SMP that would be developed for both parcels and the proposed project would effectively prevent potential exposure of construction workers and the public to potential hazardous materials which could be encountered during excavation activities for utility work in street areas adjacent to the project site.

Response A-18: The commenter indicates that DTSC has not required, and does not plan to require, a comprehensive cleanup plan to remove all soil and groundwater contamination.

As described in RTC Master Response 3, the Draft EIR describes the many phases of environmental investigation and remediation activities that have

been performed at the project site, and further remediation of the project site is not planned, as the presence of residual contamination is being addressed by environmental restrictions imposed by DTSC and mitigation measures required by the City which are intended to protect the public, construction workers, and the environment from residual hazardous materials that remain in the subsurface of the project site.

Response A-19: The commenter indicates that neither the City nor DTSC will require the project site to be developed in a way that does not threaten human health, that areas of the project site that are known to be contaminated or very likely to be contaminated will not be remediated, that previous remediation efforts were too limited.

Pages 296 to 304 of the Draft EIR describe the many phases of environmental investigations, extensive remediation activities, and post remediation activities performed for the project site.

As described in RTC Master Response 3, further remediation of the project site is not planned, as the presence of residual contamination is being addressed by environmental restrictions imposed by DTSC and mitigation measures required by the City which are intended to protect the public, construction workers, and the environment from residual hazardous materials that remain in the subsurface of the project site. Therefore, the City and DTSC are requiring the project site to be developed in a way that does not threaten human health.

Response A-20: The commenter indicates that DTSC's comments on the Draft EIR stand in contrast to the Draft EIR's assurances that previous remediation and future planned remedial actions are adequate to protect workers and public health. The commenter states that DTSC indicated that it did not issue a "no further action" letter for the site, but a "certificate of completion", and that neither DTSC nor the Regional Water Quality Control Board (RWQCB) provided regulatory oversight for the 2008 remediation of the Successor Agency parcel.

DTSC issued a "certificate of completion" for the Sherwin-Williams parcel, which indicates that remediation of the Sherwin-Williams parcel was completed to DTSC's satisfaction. A "no further action" determination would not be appropriate for the Sherwin-Williams parcel because post remediation residual impacts remain on the Sherwin-Williams parcel, therefore, DTSC requires environmental restrictions to be imposed on the Sherwin-Williams parcel, including requiring DTSC approval of future construction activities and implementation of long term O&M activities.

As described on page 301 of the Draft EIR, the RWQCB and DTSC approved the Site Cleanup Plan which was implemented for the Successor Agency parcel in 2008. As described on page 304 of the Draft EIR, a draft No Further Action (NFA) letter for the Successor Agency parcel was submitted to the RWQCB and DTSC; however, DTSC stated that they could not concur with the NFA if concentrations remain above residential levels

without a deed restriction. DTSC oversight would be required for implementation of mitigation measures related to residual hazardous materials on the Successor Agency parcel, including Mitigation Measure HAZ-2d (Draft EIR page 318) which requires preparation of a SMP for the Successor Agency parcel and the Sherwin-Williams parcel for DTSC review and approval, and an evaluation of soil gas conditions and indoor air quality that would be required for the Successor Agency parcel prior to construction of a new building on Parcel C-1 under development Option A, as required by Mitigation Measure HAZ-2b.

Response A-21: The commenter states that DTSC indicated that the only measure it would require for development of the project includes a SMP (which would only address “unexpected” contamination), a Groundwater Management Plan (which would only address off-site disposal of contaminated groundwater during construction), “future soil vapor investigations” and “future plans” to remove a transformer and underground storage tank (UST).

As discussed in RTC Response A4-9, DTSC did not indicate that the measures listed in comment A-21 were the only measures that would be required for the proposed project. DTSC indicated that the measures listed in comment A-21 needed to be included in Table III-4 of the Draft EIR, which lists required approvals for the project. DTSC’s approval of construction plans would also be required for the project as shown in Table III-4 of the Draft EIR. Additionally, as required by the LUC for the Sherwin-Williams parcel, DTSC would continue to provide oversight of the project to ensure compliance with the restrictions of the LUC, including implementation of long term O&M activities. As described on page 318 of the Draft EIR, DTSC approval of a LUC for the Successor Agency parcel, and DTSC oversight for compliance with the LUC would be required by Mitigation Measures HAZ-2c. As described in Master Response 3, 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.

Response A-22: The commenter indicates that the Final EIR fails to address that contamination from the project site and other former and current industrial sites has caused contamination beneath streets where utility work would be performed.

Pages 305 to 308 of the Draft EIR describe former and current industrial sites in the vicinity of the project site which may environmentally impact the project site. See also response to comment A-17 above regarding potential contamination beneath streets and potential impacts to utility work.

Response A-23: The commenter indicates that the Final EIR makes the statement that nothing in the Draft EIR acknowledges that contamination remains on the parcel above safe levels, and that the Final EIR states that nothing needs to be done to address remaining contamination, other than a future evaluation of vapor intrusion.

As described in the RTC Response B4-32, the Draft EIR does not indicate that contamination remains on the Sherwin-Williams parcel “above safe levels”, (these words are not used in the Draft EIR when describing the residual contamination that remains on the Sherwin-Williams parcel). As described in the RTC Response B4-32, VOCs and arsenic remain in groundwater and/or soil gas above the unrestricted cleanup goals as defined in the RAP. The presence of residual contamination above the unrestricted cleanup goals would not create an unsafe condition as the environmental restrictions and requirements imposed on the Sherwin-Williams parcel by DTSC and implementation of mitigation measures for the proposed project would prevent potential exposure of workers and the public to residual hazardous materials which are present in the subsurface of the project site. As described in Master Response 3, these environmental restrictions, requirements, and mitigation measures include much more than future evaluation of vapor intrusion to address potential impacts from remaining contamination at the project site.

Response A-24:

The commenter indicates that an SMP is not sufficient mitigation for a project that will be constructed in an area of known contamination, and indicates that the Final EIR acknowledges that SMPs are only designed to respond to unidentified environmental hazards that are discovered during construction.

The Final EIR does not indicate or acknowledges that SMPs are only designed to respond to unidentified environmental hazards that are discovered during construction. As described on page 318 of the Draft EIR, the SMP required by Mitigation Measure HAZ-2d would provide guidelines for soil and groundwater disturbing activities. This would include soil and groundwater disturbing activities in areas that are known or presumed to be free of contamination. As described on page 318 of the Draft EIR, the SMP would include procedures for notification and response if previously unidentified contamination is discovered. As described in Master Response 3, the environmental restrictions and requirements and mitigation measures include much more than an SMP to address potential impacts from remaining contamination at the project site.

Response A-25:

The comment is similar to comments on the Draft EIR regarding trip generation. A detailed memorandum with additional information was provided as part of the Draft EIR responses (see Appendix C of the RTC Document) in response to this comment.

Although the MDX+ model only included one validation site in Emeryville, the model was developed based on data from 260 sites, and validated with data from 27 different sites.

Response A-26:

This comment summarizes RTC comments and responses B4-44, B4-45, B4-95, B4-96 and B4-97. No new information is provided within this comment regarding the identified issues. The RTC response is repeated below.

Bicycle and pedestrian activity at the study intersections was observed as part of the transportation assessment. At the intersection of Horton Street at Sherwin Avenue, bicycle and pedestrian activity accounts for 20 percent of the total travel through the intersection during the weekday and Saturday peak hours; pedestrians volumes could be understated as the counts did not capture pedestrians that do not cross the street at the intersection. Similar ratios were observed at other intersections in the project vicinity. While bicycle and pedestrian travel can be impeded in some parts of Emeryville, the grid network and generally small block length in the project vicinity (300 to 600 feet) contributes to the walkable, bikeable nature of the project vicinity.

Improvements proposed as part of the project would also complete gaps in the bicycle and pedestrian network, including a Class I bicycle path along the western boundary of the project site that will connect to the South Bayfront Bridge, scheduled to start construction in Spring 2017. The bridge will provide a bicycle and pedestrian connection over the railroad tracks from Bay Street to Horton Landing Park, further reducing barriers to non-motorized travel in the project area. A focus of the City's Pedestrian and Bicycle Master Plan is to close gaps and reduce barriers to non-motorized travel.

The actual level of parking provided by the project will be refined to meet the current City Code requirements at the time of project approval, which requires 1 parking space per unit, plus 0.20 spaces per unit for guest parking. The proposed level of parking cited for the project in the Draft EIR was based on the parking requirements at the time the initial project plans were prepared.

All residential parking will be unbundled from the rent cost to encourage lower rates of vehicle ownership within the residential portion of the project. A car share pod will be located within the project site to provide future residents access to a vehicle when needed, but without the cost of vehicle ownership. The project will also be required to implement a transportation demand management program to manage the proposed parking supply, with provisions for on-going monitoring and plan refinement.

Response A-27:

The Draft EIR acknowledged that six intersections could operate beyond LOS D for vehicles in at least one scenario for at least one analysis time period.

- Powell Street/Frontage Road
- Powell Street/Christie Avenue
- Powell Street/Hollis Street
- Hollis Street/45th Street
- Horton Street/40th Street
- San Pablo Avenue/40th Street

Physical improvements have been identified at the Powell Street/Christie Avenue intersection and the Hollis Street/45th Street intersection. Potential improvements were considered at the remaining intersections. It was determined that physical improvements to increase vehicular capacity at one particular intersection would have a marginal benefit to overall mobility during peak hours and would degrade other modes of travel for the remaining hours of the day by either extending pedestrian crossing distances or creating additional conflicts for bicyclists.

Response A-28: It is the commenter's opinion that the Water Supply Assessment (WSA) "fails to adequately analyze the availability of water supplies for the Project." This comment was adequately responded to in Response A2-4 in the RTC Document, that noted,

The provision of water services and demand associated with the proposed project was evaluated in the Draft EIR Section IV.L, Utilities and Infrastructure. As described on page 371 of the Draft EIR, the City submitted a written request to EBMUD in March 2015 for an updated Water Supply Assessment for the proposed project. EBMUD responded in a letter dated May 13, 2015 (Enclosure B to the comment letter) which stated the following:

"The estimated demand for the Sherwin-Williams Emeryville Site Redevelopment Project consisting of 577 dwelling units and 35,000 square feet of commercial space in the approved WSA was about 110,000 gallons per day (gdp). Since the overall project demand decreased, EBMUD concludes that the WSA approved on March 10, 2005 is still valid, and a second WSA is not required for the Sherwin-Williams Development Project."

Because EBMUD is the water supplier and the author of the WSA, their response confirms that the document continues to be valid. The commenter does not identify where in Draft EIR Section IV.L, Utilities and Infrastructure or how the availability of water supplies for the project was inadequately analyzed, and no changes to the Draft EIR or RTC Document are necessary.

COMMENTS

Grassetti Environmental Consulting

Pang Ho

July 22, 2016

Response B-1:

The commenter repeats his comments in the RTC Document (see comment letter B2 and Responses B2-1 through B2-120) and restates his opinion that there is substantial information still missing from the project description, and that the RTC responses provided “ cursory discussion, deferral of the actual impact analysis and mitigation development to future studies and permits, or in responses that just don’t address the main issues raised in the comments.” While no details are provided in this comment regarding the missing information or the specific responses, the commenter does identify additional comments in the following letter and provides an “ attached list” (see “ Attachment 1” in comment letter B starting on page 10 identified as comments B-44 through B-138) that details his concerns. To assist the reader, many of the following responses provide a cross reference to comments on the same issues in Attachment 1.

This comment was responded to in Draft EIR and RTC Document defer “ important environmental issues...to later stages of the development process when more project details will be available,” and that the “ project description and the project baseline is still inadequate.” The commenter also identifies Master Response 1 in the RTC Document that provided a description of the City’s PUD/PDP process and information required to be included in an EIR Project Description (per CEQA Section 15124). As noted in Master Response, “ the City has confirmed that the applicant has provided the level of information required by the City’s PDP requirements,” and that “ the project before the Planning Commission and City Council (approval of a PDP application for the Sherwin-Williams development project) has been adequately described in the Draft EIR for consideration by the decision-makers and evaluation in the Draft EIR.” Therefore, the Draft EIR Project Description is considered to be adequate and is not lacking in information such that the decision-makers cannot make a decision on the adequacy of the Final EIR. Additionally, over 500 pages of text, tables and figures, the Draft EIR identifies the baseline conditions and evaluates and mitigates, where feasible, environmental effects associated with the project, and no “ important” environmental “ issues” or “ considerations” are improperly deferred.

Response B-2:

The commenter repeats his comments in the RTC Document (see RTC Comment B2-2) that the project description is missing information and “ because of these deficiencies, it was premature to start the CEQA process.” Additionally, because the applicant submitted additional information on the project as part of the permit approval process, that information should be evaluated as well. The Draft EIR and RTC evaluate the project described in Chapter III, Project Description of the Draft EIR, as explained in RTC Master Responses 1 and 2. The comment regarding the project description

was fully responded to in RTC Responses B2-2 through B2-12 and in Master Response 2 regarding a discussion of information required to be included in an EIR Project Description. This response also addresses Attachment 1 comments B-44, B-46, B-47, and B-48.

Response B-3: The commenter generally repeats his comments in the RTC Document (see RTC Comments and Responses B2-13, B2-14, B2-18, B2-20 through B2-31) regarding his opinion that the “project fails in numerous ways to comply with the City’s plans and policies.” The City and EIR authors disagree that there is an inadequate analyses of the project’s compliance with City plans and policies in the Draft EIR and RTC Document. Comments regarding policy and plan compliance were thoroughly addressed in the RTC Responses cited above, and no new substantial information was identified in these comments. This response also addresses Attachment 1 comments B-49 through B-51 and B-54 through B-57.

Response B-4: The commenter generally repeats his comments in the RTC Document (see RTC Comments and Responses B2-32 through B2-38) regarding his opinion that the Draft EIR fails “to address a number of potentially significant cumulative impacts.” The City and EIR authors disagree and note that cumulative impacts were adequately addressed in each topical section of the Draft EIR. Comments regarding cumulative impacts were thoroughly addressed in the RTC Responses cited above, and no new substantial information was identified in these comments. This response also addresses Attachment 1 comments B-58 through B-61.

Response B-5: The commenter generally repeats his comments in the RTC Document (see RTC Comments and Responses B2-39 through B2-42) regarding his opinion that the Draft EIR fails to evaluate all potential construction period impacts specifically on artists who live in the area and “must have windows open for ventilation.” The City and EIR authors disagree and note that construction period impacts were adequately evaluated and addressed and mitigation measures provided to reduce impacts to less-than-significant levels in each topical section of the Draft EIR, and specifically in Sections IV.C, Transportation and Circulation, IV.D, Air Quality, IV.F, Noise, and IV.I, Hazards and Hazards Materials. Regarding the comment requesting that delivery of construction materials should be by rail. This comment was specifically responded to in Response B2-40, and the City determined that requiring use of the railway is not a feasible mitigation measures, and is not necessary to address the impact as Mitigation Measure TRANS-9 would reduce the impact to a less-than-significant level. Comments regarding construction level impacts were thoroughly addressed in the RTC Responses cited above, and no new substantial information was identified in these comments. This response also addresses Attachment 1 comments B-62 through B-64.

Response B-6: This comment infers that construction traffic could block streets and have an impact on emergency response. As noted in Response B-5 above, implementation of Mitigation Measure TRANS-9 would reduce impacts related to construction level traffic and potential street blockages to a less-

than-significant level. Therefore, emergency access to the surrounding area during construction would not be significantly impacted by project construction traffic.

Response B-7:

In response to this comment, construction dust impacts in relation to ambient air quality standards and human health are discussed on pages 208 through 211 of the Draft EIR. CEQA does not require evaluation of impacts to artwork. As such, artists residing in the 45th Street Artists' Cooperatives and other PARC member buildings would be considered human receptors and any dust impacts would be in relation to ambient air concentrations and human health impacts, both of which were evaluated in the Draft EIR.

It should be noted, the construction health risk assessment presented in the Draft EIR was conducted following the Office of Environmental Health Hazard Assessment guidelines. The analysis assumed that residential receptors would live outdoors for 70-years, which would be a higher exposure level than what an individual would be exposed to indoors with windows open.

Results of the analysis indicate that construction impacts to the surrounding residents, including the 45th Street Artists' Cooperative would be less than significant with implementation of Mitigation Measure AIR-1. Mitigation Measure AIR-1 would require the project applicant to implement the best available measures for controlling construction dust and other pollutants. According to the BAAQMD, implementation of these measures would reduce fugitive dust impacts to a less than significant level for all land use types, including live/work spaces and those land uses that use windows for ventilation. The measure would require watering of all exposed surfaces; limited vehicle speeds on unpaved roads, suspension of excavation, grading and demolition activities during high wind events, and would require that vegetative ground cover be planted. With implementation of this measure, dust impacts would be reduced to a less than significant level as identified in the Draft EIR.

Response B-8:

This comment states that construction noise impacts to full-time occupants of nearby buildings were not addressed. Construction noise impacts are addressed on pages 266 and 267 of the Draft EIR and the City Noise Ordinance is described on page 259 of the Draft EIR. Additionally, as described in Response B2-42, the Ordinance defines daytime hours as the period from 7:00 a.m. to 9:00 p.m. on weekdays and from 8:00 to 9:00 p.m. The Ordinance does not make assumptions as to whether occupants of receiving land uses would be home during the day or not or whether land uses would be residential or office spaces. Nighttime noise limits are typically more restrictive to protect relaxation and sleeping hours. Page 267 of the Draft EIR identifies Mitigation Measure NOI-3, which would require the project contractor to implement measures to reduce construction noise impacts to a less than significant level by complying with the City's Noise Ordinance. The analysis concluded that impacts would be reduced to a less-than-significant level, and therefore retrofitting of the 45th Street building would not be required. This response also addresses Attachment 1 comments B-67.

Response B-9:

This comment is the same as RTC Comment B2-43. No new information is provided within Comment B-9. The RTC response is repeated below. This response also addresses Attachment 1 comments B-65.

The temporary vacancy of the Novartis/Grifols facility did not materially impact the conclusions presented in the EIR. Roadways in the immediate vicinity of the Novartis/Grifols facility that are designated bicycle boulevards either already operate beyond the desired volume thresholds, or are well within threshold range such that no additional bicycle boulevard impacts would be identified with a changed baseline. Although the City does not have an established level of service (LOS) policy for vehicles, the peak hour operations of intersections within the vicinity of the Novartis/Grifols facility operate well within the previously established LOS D range, such that changed traffic volumes for movements would not alter the conclusions presented in the EIR.

Although a changed baseline would not materially impact the conclusions presented in the EIR, the intersection counts collected for the project were compared to historical data. Intersection turning movement counts were collected for the project on Thursday, January 29 and Saturday January 31, 2015. Saturday traffic conditions would be largely unaffected by the temporary vacancy at the Novartis/Grifols facility.

The weekday PM peak hour counts, as presented on Figure IV.C-6 of the Draft EIR, were compared to counts contained in the City's traffic count database collected in December 2013 for the intersections of Hollis Street at 53rd Street, Hollis Street at Stanford Avenue, Hollis Street at 40th Street and Horton Street at 40th Street, where prior data was available. The Novartis facilities were not vacant during the counts taken in 2013.

On the southern end of the study area in December 2013, approximately 2,260 vehicles traveled through the Hollis Street at 40th Street intersection, as compared to 2,190 vehicles in 2015, a 3 percent increase; vehicle traffic on Hollis Street, north of 40th Street increased approximately 16 percent during the same time frame. In December 2013, approximately 2,040 vehicles traveled through the Horton Street at 40th Street intersection, as compared to 2,080 vehicles in 2015, a 2 percent increase; vehicle traffic on Horton Street, north of 40th Street increased approximately 17 percent during the same time frame.

Traffic volumes on the Horton Street and Hollis Street corridors increased by similar amounts between 2013 and 2015, approximately 15 percent. Although a portion of the Novartis/Grifols facility on Horton Street was vacant at the time of the data collection, the comparison of the traffic count data does not indicate that the

baseline counts are artificially low, and it is likely that the employees that typically reported for work in the under renovation portions of the Novartis/Grifols facility reported for work elsewhere in the general vicinity. Based on the comparison of the 2013 and 2015 data and the existing operations of the study intersections and roadway segments, a different baseline would not change the overall conclusions presented in the TIA and Draft EIR.

The PEER review consultant hired by the commenter reviewed the response and accepted it with no further comment (see comment B-145).

Response B-10: This comment is the same as RTC Comment B2-47. No new information is provided. The RTC Response is repeated below (see also RTC Responses B1-4 and B2-47). This response also addresses Attachment 1 comment B-68.

As discussed in the TIA for the Draft EIR, The City of Emeryville does not have a level of service policy for vehicles, but strives to achieve a quality of service. Quality of service recognizes that people travel by a variety of modes, not just in vehicles, and that the use of an auto-focused level of service standard does not address the mobility needs for non-auto roadway users.

For this assessment, level of service results are provided as a proxy for evaluating the transportation experience for vehicles, transit, and bicyclists and to guide the development of the transportation system in the project vicinity while balancing the variety of travel modes in the area.

Significance criteria for all travel modes were identified in the Draft EIR.

The City of Emeryville does not have an adopted “Quality of Life Service Criteria.” However, several criteria of significance related to all modes of travel were used, as detailed on pages 115 to 117 of the Draft EIR. As the City’s General Plan Policy T-P-3 does not recognize “Level of Service” (LOS) as a measure of vehicular transportation operations, LOS impacts cannot be considered for significance and therefore require mitigation measures for such impacts. However, the Draft EIR identifies LOS impacts for informational purposes only and outlines “recommendations” that would address these impacts.

Response B-11: The portion of the comment related to VMT is the same as RTC Comment B2-49. No new information is provided. The RTC Response is repeated below, with some additional clarifying information. This response also addresses Attachment 1 comment B-69.

At the time the Draft EIR was prepared, no VMT standards of significance have been established. Please also see Draft EIR Comment 7 from the Alameda CTC (Letter A3) which notes Alameda

CTC has not set thresholds for a VMT Assessment. Although a VMT threshold has not been established for application to this project, results of the VMT assessment indicate that the proposed project would generate VMT per capita at rates approximately 25 percent lower than the existing city-wide average VMT per capita based on the Alameda CTC model, exceeding the 15 percent reduction noted in the comment letter. No changes were made to the significance criteria.

Results of the VMT assessment under base year conditions indicates that the proposed project could generate approximately 26,161 daily vehicle miles of travel. These results are based on the Alameda CTC regional travel demand model and do not account for the implementation of Transportation Demand Management measures as part of the project. Based on the expected population and employment within the project (1,304 people based on model factors), the VMT per capita is estimated to be approximately 20.06 daily vehicle miles, which is approximately 25 percent less than the daily average VMT per capita generated by existing City of Emeryville uses. The updated CEQA guidelines that will include VMT thresholds have not yet gone through the formal rule making process (as of August 2016), and it will take two years to phase in the updated CEQA guidelines, therefore the VMT analysis and significance criteria employed in the Draft EIR were based on the best information available at the time the Draft EIR was prepared.

The portion of the comment related to Caltrans significance criteria is the same as RTC B2-51. No new information is provided. The RTC B2-51 Response is repeated below, with some additional clarifying information.

Caltrans recognizes that in congested areas such as the study area, it may not be feasible or desirable to maintain a level of service policy as roadway improvements that might decrease delay for vehicles could result in secondary impacts to other travel modes. For example, adding additional vehicle lanes at an intersection would increase pedestrian crossing distances and thus pedestrian exposure to vehicle conflicts. Potential deficiencies for vehicles would need to be balanced against other travel modes. No changes were made to the significance criteria.

The significance criteria for Caltrans facilities was based on information contained in Guide for the Preparation of Traffic Impact Studies, Caltrans, December 2002. Additionally, Caltrans was provided the opportunity to review and comment on the Draft EIR (see RTC Comment Letter A1) and associated significance criteria used to assess impacts to the state highway system. None of their comments related to the significance criteria.

Response B-12: Responses to specific comments from PHA Transportation Consultants alluded to in this comment are provided in responses B-13 through B-18, as well as responses to B-139 to B-153.

Response B-13: The comment is similar to RTC Comment B2-53 and no new information is provided. The RTC Response is repeated below, with some additional clarifying information. This response also addresses Attachment 1 comments B-45 and B-71.

Preparation of a detailed TDM will be a condition of approval for the project. The project applicant has prepared a preliminary TDM plan (see RTC Letter C15) that will be refined as the project description is further developed. A monitoring plan is incorporated into the TDM requirement such that additional measures can be required if specific goals have not been achieved.

Response B-14: The comment is the same as RTC Comment B2-54. No new information is provided. The RTC Response is repeated below. This response also addresses Attachment 1 comment B-72.

An evaluation of freeway mainline segments was conducted and presented in the TIA and Draft EIR. Project traffic would increase freeway traffic by less than 1 percent (and by less than 0.3 percent on the most congested segments), and the project specific freeway impact is less-than-significant. No further analysis was conducted.

Response B-15: The comment is similar to RTC Comments and Responses B2-52 and B2-55. No new information is provided. Please see the following additional information regarding the mixed-use trip generation model.

A technical memorandum was prepared providing additional details on the mixed-use trip generation model as part of the RTC responses (see Appendix B of the RTC).

The trip generation estimates reflect that some trips would remain internal to the development, such as a resident working at the on-site office building, or visiting the on-site retail or restaurant uses. The walk-bike trip estimates also reflect that some existing area residents and workers might walk or bike to a new retail establishment, as the potential project retail and restaurant uses are expected to be local serving establishments, not regional destinations.

As the end users of the retail and restaurant portions of the site are unknown, the trip generating potential of the proposed retail and restaurant uses was based on ITE average trip generation rates for shopping centers and high-turnover sit-down downtown restaurants in suburban areas with ample surface parking available. These similar uses proposed for the project are not expected to generate vehicle traffic at the same level as suburban establishments because patron parking would be provided either by limited on-street parking on Hubbard Circle, or within a parking structure that may not be conveniently located.

Response B-16: This comment is the same as RTC Comment B2-56. No new information is provided. The RTC Response is repeated below.

Based on observations of activity in the project vicinity, vehicle trips into and out of individual driveways on Horton Street and Sherwin Avenue are low and the addition of project traffic along the Horton Street and Sherwin Avenue could slightly increase delay for vehicles entering or exiting those driveways (1 to 2 seconds on average based on increases in delay at other side-street intersections along the Horton Street corridor), but would not impede access. As part of the data collection, truck traffic was documented and accounted for in the analysis of intersection operations. Bicycle and pedestrian conflict points were identified and mitigation measures were developed.

Response B-17: This comment is the same as RTC Comment B2-57 and B2-58. No new information is provided. The RTC Response is repeated below.

Signal warrants were evaluated for unsignalized study intersections. Signalization is not warranted at the intersections of 46th Street and 45th Street with Horton Street. Signal warrants are satisfied at the Hollis Street at 45th Street intersection; signalization was identified as a mitigation measure.

Please see RTC Response B2-54 and Response B-14 in regards to freeway evaluations. Numerous intersections that serve the City's retail areas and provided access to I-80 were included in the assessment, including:

1. Powell Street/Frontage Road
2. Powell Street/Eastbound I-80 Off-Ramp
3. Shellmound Way/Christie Avenue
4. Shellmound Street/Shellmound Way
5. Powell Street/Christie Avenue
6. Shellmound Street/Christie Avenue
7. Shellmound Street/Ohlone Way
8. Powell Street/Hollis Street

Response B-18: This comment is the same as RTC Comment B2-59. No new information is provided. This response also addresses Attachment 1 comment B-73. The RTC Response is repeated below.

The City's Transportation Impact Fee program identified a number of transportation improvements that over the life of the plan will construct funds numerous transportation improvements in the City, including transit, pedestrian and bicycle improvements. Improvements will be programmed as part of the City's Capital Improvement Plan (CIP) based on availability of funds from both the Fee program and other sources. Specific improvements identified in the plan that are along the project boundary will be constructed as part of the

project, including bicycle facilities on Sherwin Avenue and a Class I bicycle facility along the western project boundary.

For some mitigation measures, the wording allows City staff, Planning Commission Members and City Council members to develop a mitigation measure as part of the public hearing process.

Response B-19: In response to this comment and comment B-74 on Attachment A regarding the GHG criteria of significance, they are based on the BAAQMD thresholds of significance. The City does not have adopted criteria for the evaluation of GHG emissions in CEQA documents. The City's goal (not significance criteria) in implementing its greenhouse gas reduction strategies contained in the Climate Action Plan (CAP) is to reduce greenhouse gas (GHG) emissions by 25 percent below 2004 levels. Table IV.E-7 of the Draft EIR outlines how the project would be consistent with the City's greenhouse gas reduction strategies and how the project would be considered consistent with the City's CAP. The City's CAP is not considered a qualified CAP per Section 15183.5 of the State CEQA Guidelines. Therefore, the CAP was not used as a tiering document for purposes of a significance determination. The State Office of Planning and Research's proposed guidelines were released in 2008.¹ The current recommendations on the OPR website provide resource links to the BAAQMD CEQA Guidelines and their adopted thresholds, which were used in the Draft EIR analysis.² Therefore, the significance criteria used in the analysis was adequate for determining impacts, and additional analysis is not required.

This comment also suggests that the significance criteria for GHG's should be a 15 percent reduction in average per-capita VMT. As noted in Response A1-4, a VMT assessment was conducted for the project which concluded that the proposed project would generate VMT per capita at rates approximately 25 percent lower than the existing city-wide average VMT per capita based on the Alameda CTC model. Therefore, the project would meet this criteria suggested by the commenter.

Response B-20: In response to this comment and comment B-75 on Attachment A regarding cumulative emissions, as noted on page 220 of the Draft EIR, according to the BAAQMD, regional air pollution is largely a cumulative impact. No single project is sufficient in size to independently create regional nonattainment of ambient air quality standards. Instead, a project's individual emissions contribute to existing cumulatively significant adverse air quality impacts. Therefore, if daily average or annual emissions of construction or operational criteria air pollutants exceed any applicable threshold established by the BAAQMD or City of Emeryville, the proposed project would result in a cumulatively significant impact.

¹ California Office of Planning and Research, 2008. *CEQA and Climate Change: Addressing Climate Change Through CEQA Review*. June.

² Website: www.opr.ca.gov/s_ceqaandclimatechange.php (accessed: April 20, 2016).

As shown in Table IV.D-6 of the Draft EIR, implementation of the project would not exceed the operational thresholds for criteria pollutants. Therefore, the project would not result in a considerable contribution to a cumulatively significant criteria air pollutant impact. Additionally, as shown in Table IV.D-8 of the Draft EIR, the project would not exceed the BAAQMD's operational cumulative thresholds for TACs. Therefore, additional calculations are not required.

Response B-21: In response to this comment and comment B-76 on Attachment A regarding construction period impacts related to air quality, the significance criteria for the project were established based on guidance from the BAAQMD. The criteria are based on levels of pollutants that would protect human health, including the health of an artist. Special CEQA criteria are not available for “livability” or “workability” from an artist perspective.

Response B-22: In response to this comment, as identified in Response B2-63 of the RTC, the office space square footage was incorrectly listed as 74,000 square feet, however, the calculation to determine the service population was correctly calculated and based on the correct number of 79,600; therefore, no changes to the analysis are necessary. Additionally, a typographical error was found in the project retail square footage. The retail square footage was shown as 3,000 while total retail area is expected to be 10,000 square feet. However, the calculation of service population was based on the correct square footage as shown in service population column in Table IV.E-4. Therefore, edits to the table for project square footages do not change the findings of the analysis. The determination of GHG significance is based on the total service population. As shown in the revised Table IV.E-4, the service population used in the analysis did not change; therefore, the findings found in the Draft EIR related to GHG emissions also remain unchanged. Table IV.E-4 on page 241 of the Draft EIR is modified as follows:

Table IV.E-4: Annual Greenhouse Gas Emissions (Metric Tons/Service Population/Year)

Emissions Source	Project Square Footage/Units	Service Population (SP) Emissions	
		Service Population/ Square Foot ^a	Service Population
Retail	3,000 10,000	549	18
Restaurant	5,000	100	50
Office	74,000 79,600	304	262
Residential	540	1.71 ^b	923
Total Service Population			1,253
Emissions per Service Population CO ₂ e (MT/Year/SP)			3.15

^a U.S. Green Building Council. 2008. Building Area Per Employee By Business Type. February.

^b City of Emeryville, 2010 City of Emeryville Census Bureau Data, Bay Area Census. 2010;

Source: City of Emeryville, 2010 City of Emeryville Census Bureau Data, Bay Area Census. 2010; LSA Associates, Inc., 2015.

Response B-23: Please see Response B-19 regarding GHG criteria of significance.

Response B-24: As described in Response B2-65 of the RTC, the sea level rise discussion provided on page 226 and 227 of the Draft EIR is provided for informational purposes only. As noted in the comment, Section IV.H, Hydrology and

Water Quality provides additional background information on sea level rise as it pertains to the environmental evaluation of the project. No additional changes are required. This response also addresses comments B-77 and B-78 on Attachment A.

Response B-25: Please see Response B-24.

Response B-26: As described in Responses B2-67 and B2-68 of the RTC, the City has determined through development of its noise ordinance standards that the 55/65 dBA noise ordinance standard would be an adequate noise standard to achieve for operational noise. Table IV.F-2 of the Draft EIR indicates that 60 dBA is a typical noise level for normal speech. Additionally, existing noise measurements shown in Table IV.F-4 indicate that the noise ordinance standard would require noise levels to be lower than current noise sources in the project vicinity, such as traffic and rail noise, which were measured on the site to be up to 79 dBA Lmax under existing conditions. Therefore, if noise levels generated by a source are determined to meet noise ordinance standards, the resulting project related noise would be similar to or less than noise generated by existing conditions for residents at the 45th Street Artists' Cooperative with windows open. This response also addresses comment B-79 on Attachment A.

Response B-27: The commenter states that the projected construction noise levels of 89 dBA would make it "impossible for occupants to work." The criteria for evaluating noise impacts associated with the project are listed on page 259 of the Draft EIR. The ordinance is designed to protect sleeping hours; however, the ordinance does not distinguish between residents or workers of live/work spaces or typical office buildings. Therefore, the noise ordinance is applicable to both land use types. As described on page 63 of the Draft EIR, project construction would occur for less than 48 months. It should be noted that the maximum noise level of 89 dBA would be limited to construction activities that would occur adjacent to the 45th Street building, such as construction of Parcel A. Construction noise levels would be much lower for the remainder of the construction period, and would be consistent with existing noise sources in the project vicinity when that construction would occur in other areas of the project site. For example, noise levels at the 45th Street Artists' Cooperative during construction of Parcel D would be a maximum of 68.6 dBA which would be lower than other existing maximum noise sources in the project vicinity such as traffic noise. Implementation of Mitigation Measure NOI-3 would reduce noise impacts by locating equipment staging areas away from noise-sensitive receptors and by placing equipment so that noise would be emitted away from noise-sensitive receptors. Mitigation Measure NOI-3 would designate a construction liaison to respond to any noise complaints generated during the construction period. Implementation of Mitigation Measure NOI-3 would reduce impacts to a less-than-significant level. This response also addresses comment B-79 on Attachment A.

Response B-28: As stated previously in RTC Response B2-69, pile driving is not proposed as part of the project. Any pile driving would be subject to separate environmental review by the City.

Response B-29: In response to this comment, the criteria of significance for determining project noise impacts (page 259 of the Draft EIR) are based on compliance with the City's noise ordinance. As stated on page 267 of the Draft EIR, the City of Emeryville does not have a maximum noise level standard for construction noise impacts. Implementation of Mitigation Measures NOI-3 would require compliance with the hours specified in the Municipal Code, resulting in a less than significant impact to a temporary noise increase. The measure would also minimize impacts to the surrounding residents by further limiting the loudest activities to the hours of 8:00 a.m. to 5:00 p.m. This response also addresses comment B-80 on Attachment A.

Response B-30: See RTC Response B2-72 regarding the assessment of cumulative traffic noise modeling conducted for the project. Model results are shown in Appendix D of the Draft EIR. Model results indicate the project would not result in a substantial increase in traffic noise in the project vicinity, in combination with other projects that would be developed in the City. This response also addresses comment B-81 on Attachment A.

Response B-31: The commenter indicates that they had previously requested that the Draft EIR be augmented to address potential hazardous material/health risk impacts, and that this did not occur. The commenter indicates that restrictions on the project site need to be compared to proposed foundation designs to determine impacts and feasibility of the project, and that this should not be deferred to future study by DTSC.

As described in RTC Master Response 3, the restrictions and requirements of the LUC include DTSC review and approval of proposed activities that would potentially affect installed remediation features on the Sherwin-Williams parcel, therefore DTSC review and approval would be required for the proposed foundation design and construction method to ensure that the proposed construction design and activities would not adversely affect the integrity or effectiveness of remediation features.

As described in RTC Master Response 1, a Preliminary Development Plan (PDP) application does not require submission of plans that provide detailed building plans. Such detailed plans are part of the Final Development Plan process and not part of the PDP submittal.

As described in RTC Response B2-78, DTSC will perform their review of detailed construction plans and foundation designs when those designs are available which would be after the proposed project has been evaluated per this CEQA process. Therefore, mitigation has not been improperly deferred in the Draft EIR.

Response B-32: The commenter indicates that vapor intrusion impacts should not be deferred to future study by DTSC.

As described in RTC Master Response 3, post remediation soil gas monitoring has been performed at the Sherwin-Williams parcel, and the results of the soil gas sampling reported during 2006-2007 and 2012-2013 have been deemed by DTSC to be sufficient to determine where additional soil gas sampling may be required prior to construction of proposed buildings on the Sherwin-Williams parcel. Further evaluation of soil gas conditions and potential vapor intrusion to indoor air would be performed for the Sherwin-Williams property at DTSC's discretion, and an evaluation of soil gas conditions and indoor air quality would be required to be performed at the Successor Agency parcel prior to construction of a new building on Parcel C-1 under development Option A, as required by Mitigation Measure HAZ-2b. Performance standards and feasible measures to achieve performance standards that could be required by DTSC to address potential vapor intrusion impacts are also described in RTC Master Response 3. Therefore, potential vapor intrusion are not improperly deferred.

Response B-33: The commenter indicates that review of foundation design could alter the cap on residual contaminated soil on the project site should not be deferred to future study by DTSC.

See Response B-31 above regarding DTSC review of foundation designs. As described in Response B2-78, DTSC review of the detailed foundation designs and construction methods would include an evaluation of potential impacts and mitigations associated with altering the cap on the project site's residual contaminated soils.

Response B-34: The commenter indicates that the purpose of a LUC, as required by Mitigation Measure HAZ-2c, and how it can mitigate impacts is unclear.

As described in RTC Master Response 3, the restrictions and requirements of the existing LUC for the Sherwin-Williams parcel and the LUC that would be developed for the Successor Agency parcel, as required by Mitigation Measure HAZ-2c, would prevent potential exposure of construction workers, the public, and the environment to hazardous materials that may be present in the subsurface of the project site. Detailed descriptions of the restrictions and requirements of the existing LUC for the Sherwin-Williams parcel and the LUC that would be developed for the Successor Agency parcel were included in the Draft EIR on pages 302 to 303, and pages 317 to 318, respectively.

Response B-35: The commenter indicates that preparation of the Stormwater Pollution Prevention Plan (SWPPP) and SMP should not be deferred to future mitigation, and should be detailed and reviewed for effectiveness as part of the EIR. This response also addresses comments B-83 and B-84 on Attachment A.

As described in RTC Master Response 1, a PDP application does not require submission of detailed grading and drainage plans. Such detailed plans are part of the Final Development Plan process and not part of the PDP submittal. The SWPPP cannot be prepared until after detailed grading and drainage plans are prepared. Similarly, preparation of the SMP is more appropriate after detailed grading plans have been prepared. Page 290 of the Draft EIR provides a detailed description of the design objectives and requirements of the SWPPP, as required by Mitigation Measure HYD-1a, and pages 318 to 319 of the Draft EIR provide a detailed description of the information that would be included in the SMP, as required by Mitigation Measure HAZ-2d. As described in Master Response 3, the SMP would be reviewed and approved by DTSC prior to conducting soil or groundwater disturbing activities at the project site, and any revisions to the SMP must be reviewed and approved by DTSC prior to conducting soil or groundwater disturbing activities that would be affected by the revisions to the SMP.

- Response B-36: This comment requesting an analysis of private views was adequately addressed in RTC Responses B2-85 and B2-89. This response also addresses comment B-87 on Attachment A.
- Response B-37: This comment requesting additional analysis regarding policy compliance was adequately addressed in RTC Response B2-86 and in Response B-3 above. This response also addresses comment B-88 on Attachment A. Additionally, CEQA (Sections 15088 and 15204) does not require a lead agency to conduct every test or perform all research, study, or experimentation recommended by commenters. Rather, a lead agency need only respond to significant environmental issues and does not need to provide all information required by reviewers, as long as a good faith effort at full disclosure is made in the Final EIR. The City and EIR authors have made a good faith effort in the Draft EIR and the RTC Document (i.e., Final EIR), and again in this memorandum. This comment does not raise new substantive environmental issues associated with the project's policy and plan compliance that were not addressed in the Draft EIR and the RTC Document, and thus no changes to the those documents are necessary.
- Response B-38: This comment requesting additional analysis regarding light and glare impacts was adequately addressed in RTC Response B2-87. This response also addresses comment B-89 on Attachment A. As stated previously the level of information requested by the commenter is not required for a PDP approval.
- Response B-39: This comment requesting additional analysis regarding shadow impacts was adequately addressed in RTC Response B2-88. This response also addresses comment B-90 on Attachment A. As stated previously the level of information requested by the commenter is not required for a PDP approval.
- Response B-40: This comment reiterates previous comments concerning the analysis of visual impacts, and does not raise new information regarding changes to views associated with construction of the project leading to a significant impact.

See Responses B-36 above and RTC Response B2-89. This response also addresses comment B-91 on Attachment A.

Response B-41: This comment requesting additional analysis regarding wind effects associated with the project was adequately addressed in RTC Response B2-90. This response also addresses comment B-92 on Attachment A.

Response B-42: This comment states that the alternatives analysis is inadequate due to missing information regarding unit mix or per unit square footages for each alternative. This comment was adequately addressed in RTC Responses B2-91 through B2-98 concerning the identification and analysis of alternatives. This response also addresses comments B-93 through B2-99 on Attachment A. The use of the word "project" appears to be appropriate in RTC Response B2-98.

Response B-43: This comment is a conclusory comment that identifies issues responded to in Responses B-1 through B-42 above. In regards to the commenter's opinion that the Draft EIR requires recirculation, RTC Response B2-99 provided the following information regarding the adequacy of the Final EIR and the need for recirculation, and remains the City's response. This response also addresses comment B-100 in Attachment A.

"CEQA Guidelines Section 15088.5 state that:

- (a) A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term "information" can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. "Significant new information" requiring recirculation include, for example, a disclosure showing that:
 - (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
 - (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
 - (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it.

- (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (Mountain Lion Coalition v. Fish and Game Com. (1989) 214 Cal.App.3d 1043)
- (b) Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.

In this case, (1) there has been no significant new information added to the EIR as a result of these responses to comments or changes to the project or alternatives, (2) there has not been a substantial increase in the severity of an environmental impact; (3) no new considerably different feasible alternatives or mitigation measures have been proposed or are now available; and (4) it is the commenters opinion that the Draft EIR is “fundamentally and basically inadequate and conclusory in nature.” This general statement has been refuted in the specific responses to comments B2-1 through B2-99. The Draft EIR, with the minor corrections identified in this Response to Comments Document, provides an adequate level of information to allow the decision-makers to consider the significant impacts associated with the project and make a determination regarding project approvals, and the Draft EIR need not be recirculated. See also Response B2-2.”

In conclusion the CEQA requirements for recirculation of the Draft EIR have not been met.

- Response B-44: See Response B-2 above.
- Response B-45: See Response B-13 above.
- Response B-46: See Response B-2 above.
- Response B-47: See Response B-2 above.
- Response B-48: See Response B-2 above.
- Response B-49: See Response B-3 above.
- Response B-50: See Response B-3 above.
- Response B-51: See Response B-3 above.
- Response B-52: This comment concerning the achievement of development bonus points by the project was adequately addressed in RTC Response B2-16 and RTC Master Response 2.
- Response B-53: See Response B-52 above.
- Response B-54: See Response B-3 above.

- Response B-55: See Response B-3 above.
- Response B-56: See Response B-3 above.
- Response B-57: See Response B-3 above.
- Response B-58: See Response B-4 above.
- Response B-59: See Response B-4 above.
- Response B-60: See Response B-4 above.
- Response B-61: See Response B-4 above.
- Response B-62: See Response B-5 above. As stated in RTC Response B2-40, details regarding the origin of construction materials, including equipment, are not known at this stage of the project development. The conditions of the rail spur on the north side of the project site were not evaluated as part of the Draft EIR and it is not known if that spur would be able to accommodate deliveries by rail to the site. Additionally, implementation of Mitigation Measure NOI-3 would reduce construction impacts to a less than significant level and additional measures are not required.
- Response B-63: See Response B-5 above. Construction dust impacts are discussed on pages 208 through 211 of the Draft EIR. Results of the analysis indicate that construction impacts to the surrounding residents, including the 45th Street Artists' Cooperative would be less than significant with implementation of Mitigation Measure AIR-1. Mitigation Measure AIR-1 would require the project applicant to implement the best available measures for controlling construction dust and other pollutants. According to the BAAQMD, implementation of these measures would reduce fugitive dust impacts to a less than significant level for all land use types, including live/work spaces and those land uses that use windows for ventilation. The BAAQMD's written justification and substantial evidence supporting the use of the mitigation measure in reducing emissions to a less than significant level was included Appendix A of the RTC (see pages D-46 and D-47).
- Response B-64: See Response B-5 above. The noise analysis is based on compliance with the significance criteria identified by the City and are based on City General Plan and Noise Ordinance standards.
- Response B-65: See Response B-9 above.
- Response B-66: See Response B-9 above. This comment concerning the unit mix and population assumptions was adequately addressed in RTC Response B2-45. See also Response B-2 above.
- Response B-67: The City maintains that the direct displacement of residents due to the project is highly speculative. As noted in Section 15145 of the CEQA Guidelines, if, after thorough investigation, a lead agency finds that a particular impact is

too speculative for evaluation, the agency should not include its conclusion and should terminate discussion of the impact.

Response B-68: See Response B-10 above.

Response B-69: See Response B-11 above where additional information is provided regarding the VMT assessment.

Response B-70: Comment notes that the RTC response to RTC Comment B2-50 does not address the comment. The response is repeated below with additional clarifying information.

The 95th percentile vehicle queue threshold was developed based on proposed updates to the CEQA guidelines and is consistent with standards of significance used by other jurisdictions within Alameda County.

The vehicle queue significance criteria applied is:

If the addition of project traffic at a study intersection would result in the 95th percentile vehicle queue exceeding the available storage or would increase 95th percentile queue by more than two vehicles where the queue already exceeds the available storage space.

Under the criteria, an impact would be identified in the following situations:

- if the addition of project traffic would result in 95th percentile vehicles queues extending beyond the available storage, potentially impeding through traffic, or
- in instances when vehicle queues already extend beyond the available storage, the addition of project traffic would increase vehicle queues by more than two vehicles.

As noted in the original response, the significance criteria is consistent with other jurisdictions in Alameda County.

Response B-71: The City disagrees with the statement that the “DEIR’s TDM plan mitigation is non-compliant with recent case law,” and preparation of a TDM Plan is not improperly deferred is required by the City prior to approval of the project as explained in RTC Responses A1-4, B1-6, B1-7, B2-3, B2-53, and B3-9.

Response B-72: An assessment of freeway impacts was conducted for near-term (2025) and cumulative (2040) scenarios and the impacts were found to be less than significant. Project impacts to the Powell Street/I-80 Eastbound Ramps (intersection 2) were found to be less-than-significant. For all other freeway ramps in the immediate study area that were not evaluated, the project would add vehicle trips equivalent to less than 3 percent of the total ramp capacity such that the project impact to ramps would be less-than-significant based on the Draft EIR significance criteria.

- Response B-73: The City disagrees with the comment that the traffic mitigation measures in the Draft EIR improperly defer mitigation. See Response B-18 above.
- Response B-74: See Response B-19 above. GHG impacts were evaluated based on the latest BAAQMD Guidance.
- Response B-75: See Response B-20.
- Response B-76: See Response B-21.
- Response B-77: See Response B-24.
- Response B-78: See Response B-24.
- Response B-79: See Responses B2-66 through B2-68 in the RTC Document. The criteria of significance is based on City standards, therefore, compliance with City is standards is the criteria by which the evaluation is based.
- Response B-80: See Response B-29 above. The criteria of significance for determining project noise impacts (page 259 of the Draft EIR) are based on compliance with the City's noise ordinance. Mitigation Measure NOI-3 would require compliance with the noise ordinance. Other measures would contribute to an overall reduction in construction noise to minimize impacts to the surrounding area.
- Response B-81: See Response B-30 above. Construction truck traffic noise levels are shown in Table IV.F-13 of the Draft EIR and would not be the dominant source of noise during the construction period.
- Response B-82: See Response A-4 regarding the identification of construction period truck trips.
- Response B-83: The commenter indicates that analysis of geologic impacts is deferred to after the EIR is certified/project is approved, and that cut and fill numbers are inconsistent with those in the Draft EIR, and fail to address potential need to off-haul contaminated materials.

As described in Response B2-73, a site-specific preliminary geotechnical investigation has been performed at the project site. Analysis of potential geologic impacts was performed as part of the Draft EIR, and appropriate mitigation measures were developed to address the potential geologic impacts that were identified, therefore analysis of geologic impacts has not been deferred. Implementation of Mitigation Measure GEO-1, would ensure that all geohazards (including liquefaction and subsidence) would be addressed and foundation designs would be appropriate and in accordance with standard geotechnical practice. Mitigation Measure GEO-2a through GEO-2c address foundation design and include requirements that the final geotechnical report address unstable and expansive soils with appropriate foundation designs which could include drilled pier and grade beams, deepened footings (extending below expansive soil), or post-tensioned slabs.

The net import of fill numbers described in Response B2-73 are consistent with the net import of fill numbers (approximately 6,500 cubic yards for Option A and 7,800 cubic yards for Option B) presented on page 63 of the Draft EIR.

As described in Response B2-73, no off-haul of contaminated soil is expected at this time, and if previously undiscovered contamination is identified and would need to be disturbed on the Sherwin-Williams or Successor Agency parcels, DTSC and other regulatory agencies would provide regulatory oversight for any required remediation and determine if additional CEQA review would be required.

Response B-84: The commenter indicates that analysis of hazardous materials impacts should not be deferred to future study by DTSC.

As described in Response B2-79, potential hazardous materials impacts were analyzed and identified in the Draft EIR, and detailed mitigation measures with performance standards have been developed to address potentially significant impacts. Future environmental evaluations performed as part of these mitigation measures and compliance with the restrictions and requirements of LUCs (including review of plans [e.g., the SMP] and foundation designs) would be performed under DTSC oversight to ensure that the proposed project would not result in significant impacts related to hazardous materials.

Response B-85: This comment infers that the analysis of potential student generation of the project was faulty because unit mix information was missing from the project description. This issue was responded to in Response B-2 above regarding the project description and RTC Response B2-80, and the analysis of potential impacts on schools related to the project in the Draft EIR was determined to be adequate.

Response B-86: See response B-85 above.

Response B-87: See response B-36 above.

Response B-88: See response B-37 above.

Response B-89: See response B-38 above.

Response B-90: See response B-39 above.

Response B-91: See response B-40 above.

Response B-92: See response B-41 above.

Response B-93: See response B-42 above.

Response B-94: See response B-42 above.

- Response B-95: See response B-42 above.
- Response B-96: See response B-42 above.
- Response B-97: See response B-42 above.
- Response B-98: See response B-42 above.
- Response B-99: See response B-42 above.
- Response B-100: See response B-43 above.
- Response B-101: See response B-42 above and RTC Response B3-2 that provides an adequate response to this comment regarding alternatives.
- Response B-102: This comment is a follow-up comment to RTC comment and response B3-3. As the comment does not clarify what elements of the response were not addressed, the RTC Response is repeated below:

In regards to “traffic flow,” project trip generation, distribution and assignments were made for the proposed project in Section IV.C, Transportation and Circulation of the Draft EIR starting on page 117, and the impacts on local streets and intersections are provided in this section as well. The location of garages is not a necessary detail for an analysis of project impacts per the significance criteria identified in the Draft EIR. Trip generation was also identified for the alternatives; however CEQA allows for a lesser degree of analyses for alternatives. The comparison of alternatives to the project is adequate to allow the City Council to make a decision on the project and alternatives.

- Response B-103: This comment is a follow-up comment to RTC response B3-3 through B3-5. As the comment does not clarify what elements of the response were not addressed, the RTC Response is repeated below:

The Draft EIR acknowledges that the City is undertaking an experiment to evaluate the effectiveness of different Level 4 traffic calming devices along Horton Street between 45th and 53rd Streets and plans to install temporary measures for a period of at least one year. As these measures could be installed along the project frontage, Mitigation Measure TRANS-1 specifies that that project applicant work with the City so that the final project design does not preclude the installation of desired traffic calming measures and that the project applicant be require to pay for the installation of measures such that existing traffic volumes in combination with project volumes be below the volume threshold to reduce the impact to a less-than-significant level. The effects of the turn restrictions on Horton Street were evaluated without and with the Project, as presented in Appendix B of the Draft EIR.

The commenter makes general statement regarding the adequacy of the Draft EIR, but does not identify specific deficiencies within the Draft EIR to which specific responses can be provided.

Response B-104: Regarding the comment that the TDM Plan is impermissibly deferred, see Response B-71 above.

Response B-105: This comment is a follow-up comment to response to RTC comment B3-12, B3-33 and B3-34. The RTC Response to B3-12 that addresses the City's transportation fee program is repeated below with additional clarifying information.

The City's Transportation Impact Fee funds an array of City-wide projects primarily focused on bicycle, pedestrian and transit infrastructure. These improvements, as implemented, are intended to close gaps in the pedestrian and bicycle network, such as constructing a bicycle and pedestrian bridge connecting Bay Street to the study area. These improvements will complete improvements that are being constructed as part of the project, including construction of the Class I facility along the west side of the project site, and improvements to Sherwin Avenue consistent with improvements identified in the City's Pedestrian and Bicycle Plan.

The purpose of the fee program is to collect impact fees over time that can be combined to fund improvement projects that would either be beyond the ability of a single development to construct, such as the South Bayfront Bridge, or would be difficult to identify as a project-specific impact, such as installing a bus stop not within walking distance of a project. The fee program ensures that over time, identified transportation projects within the city have funding available and can be constructed. Projects can be added to fee program at any time and construction priorities are established by the City through the Capital Improvement Program process.

Response B-106: This comment is a follow-up comment to RTC Comment B3-16. The RTC Response is repeated below with additional clarifying information.

The intersection of San Pablo Avenue at 40th Street is within Caltrans jurisdiction and the City has no control over the implementation of improvements at that intersection, including adjusting traffic signal timings. As the City does not have jurisdiction over this intersection, the impact was classified as significant and unavoidable.

A mitigation measure extending the length of the southbound left-turn on San Pablo Avenue at the approach to 40th Street was considered for this intersection, of. However, extending the turn pocket would have resulted in secondary impacts to pedestrians as extending the turn pocket lane would require the removal or relocation of an existing mid-block pedestrian crossing, which is not recommended. However, as noted in the Mitigation Measure, the City will continue to work with Caltrans to periodically retime

traffic signals to accommodate changing travel patterns and to minimize vehicle queue spillback.

- Response B-107: As demonstrated in RTC responses B3-19 through B3-21, additional noise analysis is not required.
- Response B-108: This comment is a follow-up comment to RTC Comments B3-22 through B3-25. See Response B-36 above
- Response B-109: This comment is a follow-up comment to RTC Comment B3-27. See Response B-42 above
- Response B-110: This comment is a follow-up comment to RTC Comment B3-28. See Response B-42 above
- Response B-111: This comment is a follow-up comment to RTC Comment B3-31. The RTC Response is repeated below with additional clarifying information.

The commenter notes that the “project is described as a transit-oriented development,” but does not cite where in the Draft EIR that is stated. The term transit-oriented is not used to describe the project in Chapter III, Project Description. Transit in the vicinity of the project is identified in Chapter IV.C, Transportation and Circulation.

The project is not considered a transit-oriented development, although it is considered to be a transit accessible development. The daily trip generation estimates reflect a 35 percent reduction from standard ITE trip generation rates, and morning and evening peak hour trip generation estimates reflect a 40 percent reduction from standard ITE trip generation rates. Ten percent of daily trips and 15 percent of weekday peak hour trips are expected to be transit trips. Of the remaining trips generated by the project site, 10 percent are expected to remain internal to the site, such as a resident patronizing the on-site restaurant, 15 percent are expected to be walk or bicycle trips to/from the surrounding area, and 60 to 65 percent of the trips are expected to be in a private vehicle.

As noted in RTC Response A3-2, between AC Transit and Emery-go-Round service, there are approximately 29 buses that serve the project area during the morning and evening peak hours. Emery-go-Round route stops are located approximately 900 feet from the center of the project site on Horton Street at 45th Street, approximately 1,200 feet from the center of the site on 40th Street at Horton Street. AC Transit stops are co-located with Emery-go-Round stops on 40th Street. The Emery-go-Round trip length from the stops closest to the site to the MacArthur BART station is approximately 5-minutes. During the peak morning and evening commute periods, Emery-go-Round buses operate on 10 minute headways on both Hollis Street and 40th Street. With the construction of the South Bayfront Bridge, scheduled to start construction in Spring 2017, there would be a new pedestrian connection from the site to transit services on Shellmound Street.

Horton Street is a designated bicycle boulevard and as such, Emery-go-Round service is not permitted to operate a route on Horton Street. Therefore, Emery-go-Round service could not be provided to the site.

- Response B-112: This comment is a follow-up comment to RTC Comment B3-32. See Response B-42 above
- Response B-113: This comment is a follow-up comment to RTC Comment B3-36 and B3-37. See Responses A-5, A-8, A-10, A-25, and B-15.
- Response B-114: See Response B-2 above.
- Response B-115: See Response B-6 above.
- Response B-116: This comment is a follow-up comment to RTC Comment B3-47. The RTC Response is repeated below with additional clarifying information.

The City has committed to monitoring all bicycle boulevards once every two years, and the Horton Street Bicycle Boulevard will be monitored as part of this process.

The monitoring refers to the monitoring of the effectiveness of the mitigation measure. The original comment notes to edit bullet three, Line 4. However, the comment does not note what edits should be made.

- Response B-117: This comment is a follow-up comment to response to RTC Comment B3-48. The RTC Response is repeated below with additional clarifying information.

The Draft EIR acknowledged that construction vehicles could create conflicts with other uses of the roadway system. Mitigation Measure TRANS-9 requires the preparation of a construction management plan that includes development of a comprehensive set of traffic control measures to minimize disruptions to existing uses, including scheduling deliveries for off-peak time periods, and designation of truck access routes.

As detailed construction information is not available, Mitigation Measure TRANS-9 requires the preparation of a detailed construction management plan, which includes measures such as identifying parking locations, and procedures for minimizing the effects of truck deliveries such as avoiding peak travel times, and scheduling deliveries to minimize the potential for truck queues.

- Response B-118: This comment is a follow-up comment RTC Comment B3-49. The RTC Response is repeated below with additional clarifying information.

“The City’s Standard Condition of Approval require all construction hours shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday, except that pile driving and similarly loud equipment, including but not limited to jack hammering, grading, compacting,

dump trucks, generators, and chain saws shall be limited to 8:00 a.m. to 5:00 p.m., Monday through Friday. Request for construction work outside these hours and days require City Council approval. In addition, the applicant is required to designate a “Noise Disturbance Coordinator” who is be responsible for responding to any complaints about construction noise and whose name and contact information is conspicuously posted on-site.

The following measures that are not required by the City’s Standard COAs are added to Mitigation Measure TRANS-9 on page 173 of the Draft EIR as noted below:

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

- Project staging plan to maximize on-site storage of materials and equipment;
- A set of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak hours; lane closure schedule and process; signs, cones, and other warning devices for drivers; and designation of construction access routes;
- Permitted construction hours;
- Location of construction staging;
- Identification of parking areas for construction employees, site visitors, and inspectors, including on-site locations and along the project frontage on Sherwin Avenue and Horton Street;
- Provisions for street sweeping to remove construction related debris on public streets; and
- Provisions for pavement maintenance where increased heavy vehicle traffic has the potential to degrade the pavement. (LTS)
- 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. (LTS)

The following provides responses to specific requests in the comment.

- 1) Construction hours shall be from 7 AM to 5 PM Monday through Friday. If the project applicant requires weekend construction, the adjacent

properties to the project site shall be notified 10 days in advance of the proposed weekend work. The proposed work shall be included in the public notice.

- a) Standard construction hours are 7:00 a.m. to 6:00 p.m., Monday through Friday, except that pile driving and similarly loud equipment, including but not limited to jack hammering, grading, compacting, dump trucks, generators, and chain saws shall be limited to 8:00 a.m. to 5:00 p.m., Monday through Friday.
 - b) Weekend construction hours require City Council approval. Residents within 300 feet of the project site would be notified of the public hearing for Council consideration of weekend construction activities.
- 2) The construction staging plan submitted to the City shall identify all construction staging activities anticipated to occur on-site. If any construction staging activities will occur off-site, the construction staging plan shall identify the location of the off-site staging areas.
- a) This is included as part of TRANS-9.
- 3) Parking areas for construction workers, site visitors and inspectors shall be provided on the project site. If parking for the identified workers, visitors and inspectors cannot be accommodated on the project site, the project shall provide parking facilities at a designated location off-site and transport workers, visitors and inspectors to the project site.
- a) This is included as part of TRANS-9.
- 4) The Project shall provide funds to repair streets degraded by construction vehicles. The City shall provide a cost estimate to the project applicant based on their estimate of degradation to nearby streets.
- a) This is included as part of TRANS-9.

Response B-119:	As noted in RTC Response B3-50, impacts to historical resources were properly addressed in the Draft EIR, in Section IV.J, Cultural Resources.
Response B-120:	As noted, Comment B3-51 is an opinion regarding the merits of the project and it will be considered by the decision-makers as part of the project record.
Response B-121:	See Response B-3 above regarding compliance with policies and plans.
Response B-122:	See Responses A-1 through A-28 above. The emissions analysis was revised as described in Response B3-12 of the RTC Document. Results are shown in the revised Table IV.D-5 on page 245 of the RTC Document.
Response B-123:	See Responses A-1 through A-28 above. RTC Comment B4-20 was adequately responded to e City contends the response does address comment and supporting document was included in Appendix A of the RTC.
Response B-124:	See Responses D-1 through D-7 in this memorandum.

- Response B-125: See Responses C-1 through C-13 and Response B-5 in this memorandum.
- Response B-126: See Responses C-1 through C-13 in this memorandum. See Responses B-5 and B-26 above and Response B2-69 in the RTC Document. Pile driving is not proposed as part of the project. Any pile driving would be subject to environmental review by the City. See Response B2-5 in the RTC Document.
- Response B-127: See Responses C-1 through C-13 in this memorandum. See Response B-5 above.
- Response B-128: See Responses C-1 through C-13 in this memorandum. See Response B-62.
- Response B-129: See Responses C-1 through C-13 in this memorandum. Detailed cumulative noise calculations were provided and are included in Appendix D, noise modeling data of the Draft EIR.
- Response B-130: See Responses C-1 through C-13 in this memorandum. Comment C5-16 does not address cumulative TAC emissions. However, cumulative TAC analysis was included and addressed in Table IV.D-8 of the Draft EIR (page 218).
- Response B-131: See Responses C-1 through C-13 in this memorandum. As noted in Response C5-17 in the RTC Document, detailed construction data is provided in Appendix C of the Draft EIR.
- Response B-132: See Responses C-1 through C-13 in this memorandum. See Response B-63.
- Response B-133: See Responses C-1 through C-13 in this memorandum. As described in Response C5-19 in the RTC Document, long-term operation of the project would not result in the generation of substantial emissions as shown in Table IV.D-6 of the Draft EIR. Additionally, the project would not be a source of toxic air contaminants. Construction TAC emissions were evaluated, included trucks generated during construction, results of that analysis are shown in Table IV.D-7 of the Draft EIR.
- Response B-134: We assume that the commenter is referring to RTC Comment letter C10, and the City and EIR authors disagree with this comment, as thoughtful, well-reasoned responses were provided for all the comments in the letter.
- Response B-135: This comment is a follow-up comment to RTC Comments C11-3 and C11-4. As noted in the adequate RTC responses to these comments, no additional analysis is required.
- Response B-136: This comment is a follow-up comment to RTC Comments C12-4 and C12-5. See Responses B-1 and B-2 above.
- Response B-137: See Response B-5. As noted in the RTC, the City does not have different noise standards for residential uses that include live/work spaces. No additional analysis is required.
- Response B-138: This comment is primarily introductory and does not require a response.

Response B-139: This comment is a follow-up comment to RTC Comment B2-101. The RTC Response is repeated below with additional clarifying information.

The project is not expected to add more than 5 vehicle trips per lane over the course of the peak hour to the intersection of San Pablo Avenue and Stanford Avenue. Given the low concentration of project trips at this intersection, no further analysis was conducted.

The project is not expected to add more than 5 vehicle trips per lane over the course of the peak hour. For some approaches and movements, no project traffic would be added. In total, the project would add 30 PM peak hour trips through the intersection. As there are two through lanes in each direction plus left-turn pockets on all approaches, project traffic would equate to less than 1 percent of the total intersection traffic volume and the addition of project traffic would not change the overall operation of the intersection.

Response B-140: This comment is a follow-up comment to RTC Comment B2-102. No new information is provided. The RTC Response is repeated below.

Intersections are typically the constraint point in the transportation system and are a better representation of the transportation system than a roadway segment analysis. The roadway segment analysis conducted to comply with Alameda CTC's requirements concluded that the project would have a less-than-significant impact on key roadway segment operations in the project vicinity. While speed could be used as a travel metric, there are no standards of significance for either the City or responsible agencies that relate to travel speed.

The roadway segment analysis was conducted based on Alameda CTC requirements, which specifies the analysis of near-term and long-term roadway segment operations. Existing roadway segment analysis is not an Alameda CTC requirement. As intersection operations are a better indicator of the overall transportation system, existing intersection operations were evaluated.

Response B-141: RTC Responses B2-103 and B2-104 were accepted and no further comments were made.

Response B-142: This comment is a follow-up comment to RTC Comment B2-105. The RTC Response is repeated below with additional clarifying information.

The trip reductions used for the project were based on the use of a validated mixed-use trip generation model, as documented in the TIA and Draft EIR. The analysis assumed a 10 percent transit reduction for Saturdays, not the 20 percent noted in the comment. As documented in the Draft EIR, the trip generation is based on standard ITE rates with trip reductions applied to account for the mixed-use nature of the site, the surrounding area, and the level of transit service. No changes were made to the trip generation.

Tools for conducting transportation impact assessments and have been refined to better reflect the local context of projects. A mixed-use urban infill project in an area with regular transit, bicycle and pedestrian facilities will have different trip making patterns than a single-use suburban project with limited transit, limited pedestrian connectivity and limited bicycle facilities. An impact assessment conducted in an urban environment based on suburban data, i.e. a conservative approach, can result in traffic mitigations that prioritize vehicles over other modes.

Response B-143: All site access points were evaluated with the exception of the potential mid-block driveway Sherwin Avenue between Hubbard Street and Horton Street. An assessment of this driveway's operations was conducted and presented as part of response B-149.

Response B-144: RTC responses B2-107 and B2-108 were accepted and no further comments were made.

Response B-145: This comment is a follow-up comment to RTC Comment B2-109. The RTC Response is repeated below with additional clarifying information.

Beach Street was considered for inclusion in the assessment. However, the project is expected to add less than 10 vehicle trips per lane during peak hours to this connection and further analysis was not warranted.

There are a number of different routes that vehicles can take to access the regional roadway network from the project site. Although some trips are expected to travel on Beach Street, the majority of trips destined to the south are expected to use Mandela Parkway and Hollis Street as these roadways provide more direct connections to the regional roadway network. Travel through Beach and Wood Streets can be circuitous to reach the regional roadway network with added delay at major intersections.

Response B-146: RTC responses B2-110, B2-111, B2-112, B2-113, and B2-114 were accepted and no further comments were made.

Response B-147: RTC response B2-115 was accepted and no further comments were made.

Response B-148: This comment is a follow-up comment to RTC Comment B2-116. The RTC Response is repeated below with additional clarifying information.

The driveway for Parcel B-1 is located on Sherwin Avenue between Horton Street and Hubbard Street, and although the vehicle trips entering/exiting at this driveway were assigned to the roadway network, this driveway is not shown on the trip assignment figure. All project trips were assigned to the roadway network and accounted for in the intersection analysis. No changes were made to the analysis.

A supplemental analysis of driveway operations was conducted for the cumulative condition, as presented below for the weekday morning and evening peak hours, as well as the Saturday peak hour. Vehicles traveling on Sherwin Avenue would experience no added delay, while vehicles waiting to turn from the driveway onto Sherwin Avenue would experience an average delay of approximately 9 seconds, as shown below, and would operate at LOS A.

Table FEIR RTC-1: Intersection Level of Service – Cumulative Scenario

Intersection	Peak Hour	Delay/LOS
Parcel B-1 Driveway/ Sherwin Avenue	AM	2 (9)/A (A)
	PM	1 (9)/A (A)
	Sat	2 (9)/A (A)

Notes: Delay presented as intersection average for all movements (side-street stop-controlled movement delay).

Source: Fehr & Peers, 2016

- Response B-149: RTC responses B2-117, B2-118, B2-119 and B2-120 were accepted and no further comments were made.
- Response B-150: This comment summarizes comment B-145. Please see the response to that comment for additional information.
- Response B-151: This comment summarizes the trip generation approach and no response is necessary.
- Response B-152: See Response B-13 regarding a TDM plan.

COMMENTS C

Ann Holsberry
Gary J. Grimm
July 22, 2016

Response C-1: The commenters repeat their comments from the RTC Document (see comment letter C5) and restate that they believe the Draft EIR and RTC Document defer “important environmental issues...to later stages of the development process when more project details will be available,” and that the “project description and the project baseline is still inadequate.” These comments were addressed in Responses C5-2 through C5-20 in the RTC Document. The Project Description is adequate, and no environmental issues are deferred to later stages of development. The fact that the project requires further permits and approvals from the City (e.g. PUD/PDP) is not an indication of inadequate environmental review.

The commenter also identifies Master Response 1 in the RTC Document that provided a description of the City’s PUD/PDP process and information required to be included in an EIR Project Description (per CEQA Section 15124). As noted in Master Response, “the City has confirmed that the applicant has provided the level of information required by the City’s PDP requirements,” and that “the project before the Planning Commission and City Council (approval of a PDP application for the Sherwin-Williams development project) has been adequately described in the Draft EIR for consideration by the decision-makers and evaluation in the Draft EIR.” Therefore, the Draft EIR Project Description is considered to be adequate and is not lacking in information such that the decision-makers cannot make a decision on the adequacy of the Final EIR. Additionally, over 500 pages of text, tables and figures, the Draft EIR identifies the baseline conditions and evaluates and mitigates, where feasible, environmental effects associated with the project, and no “important” environmental “issues” or “considerations” are improperly deferred.

Response C-2: While this comment states that “The RTC frequently minimizes potential adverse environmental impacts based on the project’s compliance with local, regional or state regulations/statutes,” no specific examples are identified in the Draft EIR or RTC Document where this issue may have occurred, and therefore no further response can be provided.

Response C-3: The commenters repeat their comment from the RTC Document (see comment letter C5 and Response C5-2) and from comment C-1 above. Please see Response C-1 above regarding the Draft EIR providing an adequate level of information in the Project Description (Chapter III of the Draft EIR).

Response C-4: This comment concerns City of Emeryville hearing procedures and does not address the adequacy of the Final EIR.

Response C-5:

This comment relates to a response by the Planning Director at the hearing before the Planning Commission on February 25, 2016. This comment concerns City of Emeryville review procedures of CEQA documents and does not directly address the adequacy of the Final EIR. However, in Response B2-99 in the RTC Document (cited in RTC Response C5-4), information was provided in Response B-43 above regarding the adequacy of the Final EIR and the need for recirculation, and remains the City's response.

"The EIR authors and City as Lead Agency do not agree with the statement that the Planning Director provided "erroneous information" at the February 25, 2016 Draft EIR hearing. CEQA Guidelines Section 15088.5 state that:

- (a) A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. As used in this section, the term "information" can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. "Significant new information" requiring recirculation include, for example, a disclosure showing that:
 - (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
 - (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
 - (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it.
 - (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (*Mountain Lion Coalition v. Fish and Game Com.* (1989) 214 Cal.App.3d 1043)
- (b) Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.

In this case, (1) there has been no significant new information added to the EIR as a result of these responses to comments or changes to the project or alternatives, (2) there has not been a substantial increase in the severity of an

environmental impact; (3) no new considerably different feasible alternatives or mitigation measures have been proposed or are now available; and (4) it is the commenters opinion that the Draft EIR is “fundamentally and basically inadequate and conclusory in nature.” This general statement has been refuted in the specific responses to comments B2-1 through B2-99. The Draft EIR, with the minor corrections identified in this Response to Comments Document, provides an adequate level of information to allow the decision-makers to consider the significant impacts associated with the project and make a determination regarding project approvals, and the Draft EIR need not be recirculated. See also Response B2-2.

Therefore, the information provided by the Planning Directory regarding recirculation per CEQA Guidelines Section 15088.5 was correct.”

- Response C-6: The comment regarding the proposed project being an approval of a PDP application for the Sherwin-Williams development project is noted. The City disagrees with the comment that an insufficient level of detail was provided in the environmental analysis contained in the Draft EIR. See also Response C-1 above.
- Response C-7: The comment is noted that the additional time to review the RTC Document is appreciated.
- Response C-8: Implementation of the Mitigation Monitoring Program (NOI-2) would insure that any project stationary noise sources associated with the project would meet the City’s noise ordinance standards.
- Response C-9: As noted in the RTC, the project site is 5 acres, therefore, construction noise levels at any one off-site location would be limited to the construction phase of the building constructed closest to the receptor. The noise impacts associated with construction would be considered less than significant with adherence to the City’s Noise Ordinance standards, which would be required with implementation of Mitigation Measure NOI-3. Both the City’s Noise Ordinance and General Plan do not include a maximum noise level threshold for construction noise levels. Mitigation measure NOI-3 would meet the City’s noise criteria by complying with the City’s Noise Ordinance and would minimize impacts to surrounding residential areas with implementation of noise reduction measures.
- Response C-10: As noted in RTC Response C5-12, the City does not have a maximum noise level standard for construction impacts. Construction is only limited by the permissible hours of construction activities. Therefore, implementation of Mitigation Measure NOI-3, which would limit the construction hours to comply with the Noise Ordinance would reduce potential impacts to a less than significant level.
- Response C-11: As noted in RTC Response C5-14, it is unknown at this time if particular construction materials would be available for delivery by rail. However, this construction activity would also be limited to the permissible hours and other restrictions established in Mitigation Measure NOI-3. Therefore, any noise

associated with rail delivery would result in a less than significant impact. Additionally, air quality impacts associated with construction would be less than significant therefore, additional measures are not required.

- Response C-12: Air quality impacts for the entire construction duration were considered in the Draft EIR. The BAAQMD's significance criteria for construction emissions are based on the average daily emissions, which are presented in Table IV.D-5 of the Draft EIR. Health effects from construction emissions, including cancer risk, chronic health index, acute health index and annual average PM_{2.5} concentrations, were also quantified for the entire duration of the construction period. Results from the health risk assessment are shown in Table IV.D-7 of the Draft EIR.
- Response C-13: As described in RTC Response C5-19, long-term operation of the project would not result in the generation of substantial emissions as shown in Table IV.D-6 of the Draft EIR. Additionally, the project would not be a source of toxic air contaminants. Therefore, project operation is not expected to result in the exposure of sensitive receptors to substantial pollutant concentrations. Mitigation Measure AIR-2a and AIR-2b would reduce exposure of substantial pollutant concentrations to future residents of the project site. However, the project would not result in an increase in health risk to off-site residential receptors. Therefore, the project would not be required to mitigate impacts from existing sources of emissions to existing receptors. Any air ventilation improvements to existing residents from existing sources of air pollution would be the responsibility of the existing homeowner or landlord.

COMMENTS

Richard D. Ambro

July 25, 2016

Response D-1: This comment reiterates comments made in comment letter C2 in the RTC Document as the commenter restates that Section IV.J, Cultural Resources of the Draft EIR is “inadequate and unacceptable” and should be rejected. Additionally, the commenter notes that the Final EIR should be rejected because he found “the FEIR unresponsive and dismissive” to the previous criticisms and suggestions the commenter made in comment letter C2.

As required by CEQA, Emeryville as the Lead Agency and the EIR authors (identified in Chapter VIII, Report Preparation of the Draft EIR) prepared good faith, well-reasoned, written responses to all comments received on the Draft EIR during its review period. In regards to the commenters “criticisms and suggestions” for changes to the Cultural Resources analysis, full responses were provided in the RTC Document (see Responses C2-1 to C2-15, pages 282 through 284). In general, many of the commenter’s suggestions were requests for additional analysis, research or graphics beyond that provided in the Draft EIR. LSA cultural resources specialists felt these suggested revisions were not necessary for an adequate analysis and mitigation of the project’s potential impacts to cultural resources. CEQA (Sections 15088 and 15204) does not require a lead agency to conduct every test or perform all research, study, or experimentation recommended by commenters. Rather, a lead agency need only respond to significant environmental issues and does not need to provide all information required by reviewers, as long as a good faith effort at full disclosure is made in the Final EIR. The City and EIR authors have made a good faith effort in the Draft EIR and the RTC Document (i.e., Final EIR), and again in this memorandum. This comment does not raise new substantive environmental issues that were not addressed in the Draft EIR and the Response to Comments Document, and thus no changes to the those documents are necessary.

The commenter also appears to believe that the Draft EIR and RTC Document were written by and for the applicant and not the City of Emeryville as Lead Agency. The City and the EIR authors strongly disagree with this statement, as the EIR was written for and at the direction of the City, as required by CEQA.

Response D-2: The commenter refers to suggestions made in regards to potential construction related impacts that were addressed via Mitigation Measure CULT-2. No new information is provided in this comment.

Response D-3: This comment again requests that explanatory maps of the “known and possible prehistoric sites and human burial finds in the immediate vicinity of the Project: be provided; and that the failure to do so “constitute inadequate documentation.” The City and EIR authors disagree with this

characterization regarding documentation of sensitive materials. This request was also made in comment C2-11. The City's response (C2-11 on page 284) remains the same as that provided in the RTC Document, as follows:

The City does not support public distribution of such a map; release of archaeological site location information may be withheld from the public pursuant to CEQA Guidelines Section 15120(d). Furthermore, the California Historical Resources Information System, an affiliate of the California Office of Historic Preservation, strongly discourages the public release of archaeological site location information.

Response D-4: This comment also requests that additional information be included in the Draft EIR related to information "in previously cited CALTRANS reports." LSA responded to the commenter's request for additional graphic information and mapping of cultural resources be added to the Draft EIR (see Response C2-11) with the response identified in Response D-3 above. Additionally, the Caltrans report that the commenter is siting appears to relate to cultural resources analysis undertaken to evaluate effects for inclusion of High Occupancy Vehicle Lanes on I-80 which is approximately .5 miles from the project site. The commenter also infers that without that information the impacts to potential archeological resources cannot be adequately identified or addressed. Contrary to this opinion, the City and EIR authors believe that the potential impacts to cultural resources were adequately identified and addressed in the Draft EIR. This comment does not raise new substantive environmental issues that were not addressed in the Draft EIR and the Response to Comments Document, and thus no changes to the those documents are necessary. See also Response D-1 above regarding the fact that CEQA does not require a lead agency to conduct every test or perform all research, study, or experimentation recommended by commenters.

Response D-5: This comment suggests that there is an inadequate review of the "Historical Period for the Project Area" that would lead to errors in the analysis of potential archeological resources. The following response was provided to this comment in the RTC Document in Response C2-3 and is still pertinent to this comment, as follows:

This comment, which requests a "fuller, more detailed account" of the prehistoric and historical settings presented in the Draft EIR, is noted. This comment does not provide specific new information, or data not already considered in the Draft EIR that would inform the impacts analysis and appropriate mitigation measures. Note too that the AMEP (see Mitigation Measure CULT-2) would require a more detailed discussion of the appropriate evaluation contexts for post-review discovery of archaeological deposits.

Response D-6: This comment provides opinions regarding City staff and LSA and reiterates the opinions expressed in comment D-1 above. The comments are noted and will be considered by the decision-makers as part of the administrative

record. Per Section 15088 of the CEQA Guidelines, this comment does not raise new substantive environmental issues that were not addressed in the Draft EIR and the Response to Comments Document, and thus no changes to the those documents are necessary.

Response D-7: This comment reiterates the opinions expressed in Comment D-1 above.

COMMENTS E

Brian Donahue

August 9, 2016

Response E-1:

In response to the comment, the Draft EIR does provide adequate information to the Planning Commission and City Council and identifies project-related traffic effects on City streets and bike boulevards. The commenter is referring to the Bicycle Boulevard impact on Horton Street north of 53rd Street that would remain significant and unavoidable even after implementation of mitigation measures that would reduce the vehicle volume on other segments of Horton Street to a less-than-significant level. This section of Horton Boulevard provides 5-foot wide bicycle lanes in each direction, providing separate right-of-way for bicyclists, and while designated a bicycle boulevard, it functions as a Class II bicycle facility.

On Horton Street north of 53rd Street traffic volumes in the Cumulative Condition considered full buildout of the Novartis Campus and the partial street diverters would increase to over 3,000 vehicles per day, which would then be further exacerbated by the addition of project traffic. Traffic volumes on this segment are expected to remain below 3,000 vehicles per day in the existing and near-term condition with the implementation of mitigation measures and the addition of project traffic.

To maintain volumes below 3,000 vehicles per day on this segment in the Cumulative Condition, approximately 930 vehicle trips, primarily generated by potential buildout of the Novartis campus, would need to be diverted to other routes, or shifted to other travel modes. Shifting these trips to enter or exit the Novartis campus from 53rd Street, Stanford Avenue and/or Hollis Street has the potential to reduce the level of traffic on Horton Street to within thresholds without resulting in secondary impacts to other bicycle boulevards in the area or changing the peak hour operation of intersections. However, it is uncertain where the primary driveways serving the expanded Novartis campus would be located and the analysis presented in the Draft EIR presents a worst-case impact to Horton Street.

Per Section 15088 of the CEQA Guidelines, this comment does not raise new substantive environmental issues that were not addressed in the Draft EIR and the RTC Document, and thus no changes to the those documents are necessary.

COMMENTER F

Paul Germain

July 28, 2016

- Response F-1: This comment is an introductory statement that describes the project location and requests that the Planning Commission deny certification of the Final EIR. This comment does not raise new substantive environmental issues that were not addressed in the Draft EIR and the RTC Document, and thus no changes to those documents are necessary. See Responses F-2 through F-7 below.
- Response F-2: This comment refers to the trip generation methodology and states that the project “is not transit oriented.” Please see Appendix B: Trip Generation Memorandum and Appendix C MXD Model Validation Data in the RTC Document that provides information that responds to this comment. Please also see Response B-112 regarding transit accessibility.
- Response F-3: The Transportation Demand Management (TDM) plan would require more robust measures than bus passes, bike racks and carshare as noted in the comment. Additional measures that would be included in the TDM plan include:
- Unbundling of parking
 - Parking pricing
 - On-street parking time limits
 - Transit passes for residents and employees
 - Bicycle share
 - On-site bicycle repair facilities
 - On-site transportation coordinator
 - Monitoring for effectiveness and implementation of additional measures as needed.
- Many of these measures are standard requirements of the City, including transit passes, car sharing, and unbundling of parking. Additionally, a bike share location was identified for this site in the City's Bicycle and Pedestrian Master Plan. As such, these TDM elements were considered in the project's vehicle trip generation estimates.
- Response F-4: This comment summarizes comments F-2 and F-3 and does not identify new issues that were not addressed in Responses F-2 and F-3 above.
- Response F-5: In response to this comment, the overall parking requirement for the project is between 598 and 983 parking spaces, with a base off-street parking requirement for the residential portion of the site 648 spaces (1.2 spaces per unit), and 245 parking spaces for the commercial components of the projects.

A recent parking demand study conducted at the Archstone and Avenue 64 apartments in Emeryville observed an average parking demand of 1.33 spaces per dwelling unit (ranging between 1.27 to 1.39 spaces per unit), including on-street parking that captures potential guest parking demand (and may potentially overstate demand). It is not known if these two surveyed apartments have a TDM programs in place. The Institute of Transportation Engineers publication Parking Generation, 4th Edition, notes an average parking demand of 1.20 spaces per apartment unit in urban areas and 1.23 spaces per apartment unit in suburban areas.

Auto-ownership per household as documented by the American Community Survey (ACS), 2008-2012 for Emeryville, was also reviewed. For rental units in Emeryville, vehicle ownership rates are approximately 1.10 vehicles per household, with vehicle ownership rates increasing to approximately 1.40 for owner-occupied units in Emeryville. Approximately 70 percent of rental households have one vehicle, with 10 percent having none. The remaining households have two or more vehicles available. Prior to the implementation of TDM measures, the resident parking demand could be around 610 spaces, which is less than the resident parking supply. With implementation of TDM measures, resident parking demand could decrease.

TDM measures such as unbundling parking from the rental price disincentives residents from owning multiple vehicles as the parking cost is not bundled into their rent. To manage the parking demand and supply, each subsequent parking space leased can cost more per month than the first space.

Separate parking supplies would be provided for the commercial portions of the site. Site employees would be well versed with the transportation options in the area, would be aware of the availability of parking, and would plan their trip accordingly.

The restaurant and retail portions of the project are expected to be locally servicing uses such as a coffee or sandwich shop, and are expected to draw many patrons from within the immediate project vicinity that would walk or bike, such that sufficient parking would be provided to meet demand.

Based on the expected level of auto-ownership within the site, not even considering implementation of TDM measures, excess vehicles circulating through the area in search of parking is not expected.

Response F-6: See Response F-5 regarding the estimates of trips and that excess vehicles circling through the area in search of parking is unlikely.

Response F-7: In response to this summary comment, the level of code required parking was considered in the transportation analysis, per the responses above. As Horton Street is a bicycle boulevard, the Emery-go-Round is not able to expand service to the immediate project area. The TDM plan has a monitoring mechanism that would allow for additional measures to be phased in if necessary to achieve the TDM goals. Shared parking is included within the draft TDM plan.

ATTACHMENT

**Comment Letters A through F
on the Responses to Comments Document**

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July 28, 2016

Via Overnight Mail and EmailCity of Emeryville
Planning and Building Department
Attn: Miroo Desai
Emeryville, CA 94608
Email: mdesai@ci.emeryville.ca.usRe: Comments on the Final Environmental Impact Report for the Sherwin-Williams Development Project (SCH # 2004122083)

Dear Ms. Desai:

We are writing on behalf of Emeryville Residents for Responsible Development to submit comments on the City of Emeryville's ("City") Response to Comments and Final Environmental Impact Report ("FEIR") for the Sherwin-Williams Development Project ("Project"). The Project requires a General Plan Amendment, Planned Unit Development approval, Development Plan, Encroachment Permits, Tentative and Final Maps, a Potential Land Swap Agreement (Project Option A), and related approvals for the development of a new mixed-use community on 10 acres of urban land. The Project includes 540 residential units, 94,600 square feet of commercial space, 3.5 acres of parks and open space, and 1 acre of new roads.

As explained in Emeryville Residents for Responsible Development's comment letter submitted to the City on March 8, 2016, attached hereto and incorporated herein, the City's Draft Environmental Impact Report ("DEIR") for the Project was significantly flawed and did not comply with the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 *et seq.* The City's FEIR does not resolve these significant flaws. The City has refused to investigate, disclose, and mitigate significant impacts that will affect the health, safety, and quality of life for City residents and construction workers. The

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City may not approve the Project until an adequate Environmental Impact Report is prepared and recirculated for public comment.

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cont.

As explained in our March 8th comment letter, the Project will cause adverse unmitigated impacts on the City's air quality, will produce significant greenhouse gas emissions, expose workers and residents to known hazardous materials that are present both on the Project site and below adjacent underground utility rights-of-way, create significant traffic impacts, and strain the City's limited water supplies. These impacts have not been adequately addressed or mitigated in the City's FEIR.

A. Air Quality Impacts Remain Significant.

Air quality experts retained by Emeryville Residents for Responsible Development explained that the DEIR underestimated the Project's significant air quality impacts in the following ways:

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- Failing to calculate air pollution associated with the construction of Project parks, playground, sports courts, fitness area, trails, roads, and parking areas.
- Failing to correctly calculate the amount of volatile organic compounds ("VOCs") that will be released from building painting and coating.
- Failing to reasonably predict the significant number of haul trucks that will be required to remove unsuitable artificial fill material and contaminated soils that exist on the Project site.
- Underestimating the volume of Project-generated traffic, and counting a portion of that traffic as "pass-by" trips that generate very little emissions.

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The FEIR's Response to Comments acknowledges that the DEIR did not contain a complete analysis of construction and coating emissions, yet claims that construction emissions will nonetheless be insignificant and that no mitigation is required. The FEIR also acknowledges that the DEIR improperly excluded soil off-haul trips, but does not address the fact that the predicted number of haul trips is unreasonable given the need to remove a substantial amount of artificial fill. The

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FEIR simply indicates that if the City did underestimate the number of required haul trips it “would require additional review.”¹

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cont.

The FEIR also refuses to adjust the DEIR’s reliance on unlikely “pass-by” trips. In sum, the FEIR dismisses the substantial concerns raised by Emeryville Residents for Responsible Development, requiring no mitigation for these foreseeably significant air quality impacts of the Project.

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B. Greenhouse Gas Emissions Are Not Mitigated.

The air quality experts retained by Emeryville Citizens for Responsible Development concluded that the DEIR underestimated the volume of greenhouse gases (“GHGs”) that the Project will produce. First, it refused to use the standard GHG intensity factor that is assigned to PG&E’s electricity production. The DEIR instead used its own unverified estimate, which unreasonably reduced the estimate of the Project’s electricity-related GHG emissions by 65%. The DEIR’s replacement intensity factor is based on unreliable future estimates and does not take into account the increased GHG emissions associated with electric energy production in California’s drought conditions. Even PG&E’s published 5-year average intensity factor is much higher than the factor used by the City in the DEIR.

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The DEIR’s artificially reduced traffic estimates also reduced the estimate of GHG emissions associated with the Project. As a result, the City improperly concluded that it would not need to require any renewable energy mitigation measures or similar measures to offset the Project’s GHG emissions.

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The FEIR’s Response to Comments dismisses these comments, briefly concluding that the PG&E intensity factor and the traffic estimates used in the DEIR were appropriate, and refusing to require any GHG mitigation.²

C. Soil Contamination Will Pose Unacceptable Risks to Worker and Resident Health.

Emeryville Residents for Responsible Development submitted expert comments explaining the substantial evidence that legacy soil contamination is

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¹ FEIR Response to Comments, p. 245.

² FEIR Response to Comments, pp. 247-249.

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prevalent on and around the Project site. The 2012 removal of contaminated soil “hot spots” on only a portion of the site, and limited efforts to monitor soil gas in 2012 and 2013, are not sufficient to protect residents and workers from the significant contaminants that remain.

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cont.

Even the promise of regulatory oversight by the Department of Toxic Substances Control (“DTSC”) is clearly riddled with limitations, and it is clear from DTSC’s comments on the DEIR that there will be no transparent, comprehensive plan to further remediate the site and reduce human health risks to acceptable levels. Accordingly, Emeryville Residents for Responsible Development have requested further investigation of the contamination on and adjacent to the site, a comprehensive plan for remediation, and a Project-specific Health Risk Assessment. To summarize the basis for these concerns:

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- The Sherwin Williams site is contaminated with the 100-year byproducts of manufacturing lead-based pesticides, arsenic-based pesticides, lacquer, and paint.
- Sherwin Williams monitored soil gas for only two years, but the results show that cancer-causing benzene gas and other dangerous gases are still present in the soil at levels that exceed what the government considers safe. The latest soil gas monitoring report from 2013 showed that naphthalene gas was 2.4 times above the safe level, benzene gas was 75 times above the safe level, and ethylbenzene gas was 145 times above the safe level. This report guessed that the presence of hazardous gases is due to soil contamination at locations where soil was not removed during previous remediation attempts.
- Groundwater contamination also persists on the site, particularly in locations where soil was not removed. High levels of dichloroethane, benzene, and arsenic were disclosed in a recent 2014 report.
- More than 20% of the Sherwin Williams site is covered by a large concrete pad that was installed beneath the former Building 35 in the 1960’s. This location was earlier used by the Southern Pacific railroad for seven parallel sets of railroad tracks. Studies of the adjacent Successor Agency parcel, also used by the railroad, found petroleum products, solvents, cancer-causing chemicals and metals that are legacy contamination from

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railroad land uses. Similar contamination likely exists beneath former Building 35. A 2012 report noted that a plume of contaminated groundwater was flowing along or under Building 35.

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cont.

- The Successor Agency parcel contains unhealthy levels of contaminants including petroleum, arsenic, cadmium and lead, even after a 2008 remediation effort, which was limited by the presence of the adjacent Building 35, public sidewalks, and railroad tracks.
- The Project will require an undisclosed scope of utility line replacements along Sherwin Avenue, where soil contamination from surrounding land uses has been documented, as well as other utility work along adjacent streets and rights-of-way. There is no analysis of how much contamination may be encountered during these excavation activities, or any plan to protect the public and workers.
- The DTSC has not required a comprehensive cleanup plan to remove all soil and groundwater contamination that pose health risks on the Project site, and there is no indication that it plans to do so.

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The FEIR's Response to Comments only reinforces the fact that neither the City nor DTSC will require the Project site to be developed in a way that does not threaten human health. The FEIR is replete with statements indicating that large areas of the Project site that are *known to be contaminated* or very likely are contaminated will not be remediated, and that previous remediation efforts were too limited:

- **"In conclusion, further remediation of the project site is not planned . . ."**³
- "The [Land Use Covenant] for the Sherwin Williams parcel does not indicate that further investigation is required prior to disturbance of the site."⁴

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³ FEIR Response to Comments, pp. 16, 251.

⁴ FEIR Response to Comments, p. 249.

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- “Soil excavation is not planned for remediation purposes;”⁵
- “Investigation of the Building 35 area has been performed . . . DTSC provided oversight . . . and did not require remedial activities beneath the Building 35 concrete pad.”⁶
- “Based on a discussion with DTSC, additional evaluations of soil gas conditions and indoor air quality would be required prior to construction . . . however, an evaluation of soil gas conditions and indoor air quality throughout the entire Sherwin-Williams parcel would not be required.”⁷

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cont.

In fact, DTSC’s comments on the DEIR stand in stark contrast to the DEIR’s assurances that previous remediation efforts and future planned remedial actions are adequate to protect worker and public health. First, DTSC indicates that it did not issue a “no further action” letter for the site, but a “certificate of completion” to indicate that certain actions were completed.⁸ Second, DTSC clarifies that neither it nor the Regional Water Quality Control Board provided regulatory oversight for the 2008 remediation activities on the Successor Parcel. Those agencies were consulted, but did not provide any field oversight and have not reviewed any documents related to the actual remediation.⁹

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Third, DTSC indicates that the only measures it will require for development of the Project include a Soil Management Plan (which is only designed to address “unexpected” contamination encountered once construction begins), a Groundwater Management Plan (only designed to address the offsite disposal of contaminated groundwater during construction dewatering), “any future soil vapor investigations,” and “future plans” to remove a transformer and underground storage tank on the site.¹⁰

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⁵ FEIR Response to Comments, p. 246; *see also* p. 250.

⁶ FEIR Response to Comments, p. 13.

⁷ FEIR Response to Comments, p. 14; *see also* p. 55.

⁸ FEIR Response to Comments, p. DTSC Comment 5.

⁹ FEIR Response to Comments, DTSC Comment 6.

¹⁰ FEIR Response to Comments, DTSC Comment 9 and p. 57.

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The FEIR also fails to address at all the fact that contamination from the Project site and other former and current industrial sites has caused known contamination beneath surrounding streets where water, sewer, and other utility lines will need to be upgraded and replaced.¹¹

22

Despite overwhelming evidence that soil, soil gas, and groundwater at the Project site and adjacent areas are highly contaminated with dangerous levels of hazardous materials, the FEIR makes the incredulous statement that nothing in the DEIR “acknowledges that contamination remains on the parcel ‘above safe levels.’”¹² The FEIR further states that nothing needs to be done to address remaining contamination, other than a future evaluation of the potential for vapor intrusion to Project buildings.¹³

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It must be emphasized that a Soil Management Plan (“SMP”) is *not* sufficient mitigation for a Project that will be constructed in an area of known contamination. The FEIR acknowledges that SMPs are only designed to respond to “unidentified environmental hazards” that are “discovered” during construction.¹⁴ The City has failed to adequately address the very real public health and worker hazards that this Project will create.

24

D. Project Traffic Is Underestimated and Unmitigated.

The DEIR used a new unverified traffic model designed by a hired consultant, which unreasonably assumed that 40% of all trips coming and going from the Project will not be by car. The traffic expert retained by Emeryville Residents for Responsible Development concluded that the City did not properly calibrate this new model by comparing it with car trip rates at other mixed-use developments in Emeryville. The FEIR responds that only one Emeryville development, the Bay Street development, was compared to the new model.¹⁵

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¹¹ FEIR Response to East Bay Municipal Utility District comments, pp. 40-42 (In response to comments about potential contamination hazards during utility work the FEIR speaks only about the Project site and does not acknowledge surrounding contamination problems.)

¹² FEIR Response to Comments, p. 251.

¹³ *Id.*

¹⁴ FEIR Response to Comments, p. 252.

¹⁵ FEIR Response to Comments, p. 255.

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The Project site is not located in a highly walkable, bicycle-friendly part of the City. Railroad tracks to the west present a barrier to these modes of travel, as do the three non-pedestrian and non-bicycle friendly railroad overcrossings nearby. Commercial big-box store developments in this area are designed for automobile access only. The Project is also designed to provide the maximum number of parking spaces allowed under the City Code, which strongly suggests that the Project will be a car-dependent development. Accordingly, the 40% reduction in traffic estimated in the EIR, and the failure to require traffic improvements or other mitigation, does not adequately address potentially significant traffic impacts on the surrounding community. The FEIR's Response to Comments dismisses these concerns and makes no further adjustments to the EIR traffic analysis, nor is any further mitigation proposed.¹⁶

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The EIR did not use the standard "level of service" analysis for traffic impacts, but relied on new traffic analysis methods that are still under development. The traffic expert retained by Emeryville Residents for Responsible Development conducted a standard traffic analysis, and found that four City intersections will suffer from significantly degraded traffic conditions as a result of the Project. The FEIR does not respond to these concerns, and proposes no mitigation measures for these very real impacts that City residents will face.¹⁷

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E. The City's Ability to Serve Water to the Project Under Current Conditions Is Not Assessed.

The Water Supply Assessment that the EIR relies on was published more than 10 years ago for a different version of the Project. This was before the onset of prolonged drought conditions that are currently gripping California, and before the adoption of the East Bay Municipal Utility District's updated Urban Water Management Plan. Most modern Water Supply Assessments for large projects like this one typically provide a lengthy, detailed discussion about water supply challenges and the availability of water supplies for a project in normal years, single dry years, and multiple dry years. The Water Supply Assessment for this Project is only five pages long and fails to adequately analyze the availability of water supplies for the Project. As with the other comments and concerns raised by

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¹⁶ FEIR Response to Comments, pp. 255-256.

¹⁷ FEIR Response to Comments, p. 256.

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Emeryville Residents for Responsible Development, the FEIR only briefly addresses, and then dismisses, these concerns.¹⁸

28
cont.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Horton", with a stylized, flowing script.

Laura E. Horton

LEH:lj1

¹⁸ FEIR Response to Comments, p. 261.



Miroo Desai, AICP
Senior Planner
City of Emeryville
1333 Park Avenue
Emeryville, CA 94608

July 22, 2016

SUBJECT: COMMENTS ON FINAL ENVIRONMENTAL IMPACT REPORT FOR THE SHERWIN WILLIAMS DEVELOPMENT PROJECT

Dear Ms. Desai;

Grassetti Environmental Consulting (GECO) has been retained by The Park Avenue Residents Committee (PARC)¹ to assist in their participation in the City's CEQA process for the Sherwin Williams Development Project. In February 2015, we submitted comments on the Notice of Preparation (NOP) for the project EIR on behalf of the 45th Street Artists Cooperative. On March 7, 2016, we submitted detailed comments on the Draft EIR on behalf of the 45th Street Artists Cooperative. We have reviewed the Final Environmental Impact Report (FEIR) Response to Comments Document, and our comments regarding the adequacy of the responses to PARC member groups' comments are presented below.

In brief, the document is still missing substantial information from the project description, even though that information was specifically identified and requested in our comment letters on the NOP and DEIR, and is essential to conducting an adequate impact assessment.

The FEIR also fails to respond in a meaningful way to many of our detailed comments on the DEIR, either sweeping them under the rug via a cursory discussion, deferral of the actual impact analysis and mitigation development to future studies and permits, or in responses that just don't address the main issues raised in the comments. Recent CEQA case law (*City of Irvine v. County of Orange* (4th Dist., Div. 3, 2015) ___ Cal.App.4th ___, 2015 WL 4077320) states that "Guidelines §15088 reflects a *general* mandate to provide a written response to "comments on environmental issues" (§15088(a)), and a more *specific* one to respond in good faith and "detail" to "*significant* environmental issues" raised in comments, when the lead agency's position is "at variance" with the comment about such an issue. (Citing *Browning-Ferris Industries v. City Council* (1986) 181 Cal.App.3d 852, 862.) Despite numerous very specific comments on particular environmental issues of concern to the neighbors, this FEIR provided no meaningful response to over 40 of our 99 comments, and defers study in another 10 or so comments, as detailed in the attached list.

¹ PARC is comprised of the following groups:

45th Street Artists' Cooperative (1420 45th street, 4333 Holden street and 4250 Horton/56 units)
Horton Street Lofts (4300 Horton Street at 45th /15 units)
EWL (Emeryville Warehouse Lofts (1500 Park Avenue)
Blue Star Corner (Sherwin and Halleck)

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Our comments are detailed below, and some of the specific deficiencies (the list is not exhaustive) are listed in the table attached to this letter.

**1
cont.**

Project Description Issues

As detailed in our NOP and DEIR comment letters and summarized under “Plan Compliance Issues” below, the proposed project appears to conflict with a number of City policies, including density provisions. Despite our NOP and DEIR comments requesting specific information that needed to be added to the project description, the DEIR project description continues to be unstable and incomplete. The DEIR project description is lacking the following items:

- Full-sized scalable drawings, identifying uses and occupancy types, including floor plans and full building sections with roof-top equipment and penthouses, as well as schematic elevations also are needed to identify impact. As submitted, the application materials are of insufficient detail and of too small of a presentation scale to support an informed analysis and decision.
- Calculations and graphic displays of site areas devoted to private and common open space allotments, and mandatory 10% site landscaping areas for each created parcel as well as calculations of net project site area.
- Calculations of floor area of parking garage and access drives.
- Unit mix and model size calculations (so that their feasibility/number of units/alternatives can be accurately determined). What is the breakdown of apartment size: how many studio, 1 bedroom, 2 bedroom and 3 bedroom units? Will they be rentals or condos?
- The Project Description must identify the method of foundation construction because it affects the analyses of noise, dust, truck traffic, etc.

2

A new project plan has been submitted to the City after release of the FEIR. Therefore, as noted in our NOP and DEIR comment letter, because of these deficiencies, it was premature to start the CEQA process. As the court stated in *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192- 193, 139 Cal.Rptr. 396, “[o]nly through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal ... and weigh other alternatives in the balance. An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.” Thus, “[t]he defined project and not some different project must be the EIR’s bona fide subject.” (Id. at p. 199, 139 Cal.Rptr. 396.) Without the information described above, the proposal’s benefits simply cannot be meaningfully balanced against its environmental costs.

Plan Compliance Issues

The project fails in numerous ways to comply with the City’s plans and policies, as documented in our comments on the NOP and DEIR. Consideration of the project’s conformance with plans and policies is a CEQA issue when those policies apply to environmental issues. Please see the attached table for deficiencies in responses to these comments.

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Cumulative Impacts

The EIR continues to fail to address a number of potentially significant cumulative impacts. Please see the attached table for deficiencies in responses to these comments.

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Construction Impacts

In our NOP and DEIR comment letter we specifically requested that EIR evaluate the full suite of potential construction impacts, including noise, air quality, traffic, parking, and health risks. Because construction will occur over 3 years or longer, temporary impacts should not be considered less than significant based on their impermanent nature, and should be fully evaluated and mitigated.

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The FEIR continues to fail to address the following items of concern to PARC that were identified in our NOP and DEIR comment letters. Please see the attached table for deficiencies in responses to these comments.

- Construction access and truck loading/unloading. As mitigation, delivery of construction materials by rail should be required.
- Construction traffic blockages on Horton and Sherwin, and attendant impacts to emergency response.
- Construction dust emission impacts to health and to the ability for artists to conduct their work (much of which requires a dust-free environment), especially in light of the full-time live-work occupancy of the 45th Street Artists' Cooperatives and other PARC member buildings, and the fact that many of the building s' only ventilation is from opening windows and skylights.
- Construction noise impacts to the full-time occupants of nearby buildings. The analysis should consider specific physical conditions such as noise permeability of nearby live-work building windows in identifying impacts and mitigation measures. It may be necessary to retrofit nearby live-work buildings with double pane windows and air conditioning before the start of construction of the Project. Note that the City's noise ordinance assumes that residents are not home during the work-day – in this case, they would be, resulting in potentially significant impacts to home and work lives of residents. Please note that residents have previously experienced some similar noise and air quality impacts during the remediation of the site, and would be considered experts under CEQA (per *Oro Fino v. Eldorado County* and *Berkeley KJOB v. Board of Port Commissioners* decisions).

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Baseline Issues

As detailed in our DEIR comment letter, several of the buildings at the Novartis/Grifols facility on Horton Street have been temporarily empty during remodeling. It appears that the baseline traffic counts that also form the basis of the air quality and greenhouse gas analyses were taken during the period when these buildings were empty or only partially occupied. Because this was an anomalous situation that fails to describe the typical traffic baseline, is should not be used as the baseline for these topics in the DEIR. The DEIR traffic, air quality, and greenhouse gas analyses are uninformative and misleading absent consideration of full use of these existing, but temporarily unused, buildings. This conflicts with the requirements set forth in the *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) decision, which permits use of a future baseline when use of the existing baseline would be uninformative and misleading, and the *North County*

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Advocates v. City of Carlsbad (September 10, 2015) decision. This latter decision addresses the exact same situation regarding including traffic from temporarily empty buildings in the baseline, and concludes that such inclusion is required. Note that according to the *North County* decision, the existing Building A may also need to be considered operational, for traffic and other related impacts. Please see the attached table for deficiencies in responses to these comments.

**9
cont.**

Traffic

As discussed in our NOP and DEIR comment letters, absent adoption of a Quality of Service (QOS) standard by the City, it is not clear how this impact can be adequately addressed in the EIR. The DEIR fails to use Level of Service as a significance criterion, but also fails to use Quality of Service, because no QOS evaluation metric or criteria has been adopted by the City (and, in fact, there is no definition of QOS in the transportation engineering profession). Instead, the FEIR's Traffic significance criteria continue to use language so vague that it renders the criteria meaningless. The LOS impact "recommendations" should be mitigation measures until such time as a QOS criterion is adopted by the City.

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The FEIR's significance criteria of no increase in per capita VMT continues to be unsupported and fails to comply with recent case law (*Center for Biological Diversity v. California Department of Fish and Wildlife*, December 2015) and the State Office of Planning and Research's draft guidelines for evaluating VMT, which propose a threshold of 15% existing average per-capita VMT as the criteria of significance². Please revise the DEIR VMT analysis to assess compliance with this threshold. Caltrans' significance criterion for freeway on/off ramps (p. 117) is misstated: the DEIR states that an exceedence of Caltrans' significance criteria "may be considered significant". "May be considered" is not a criterion of significance. Please revise to "would be considered significant".

11

PHA Transportation Consultants conducted a peer review of the responses to traffic comments in the FEIR. The results of that analysis are attached to this letter and summarized below. As described in our comments on the DEIR, PHA found a number of substantial deficiencies in the traffic study. Most of these comments remain unresponded to in any substantive way. Please see the attached table for deficiencies in responses to these comments.

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Specific traffic Comment Responses

The PHA Transportation Consultants comments, attached and summarized below, show that the FEIR continues to understate the project's traffic impacts to the bicycle boulevards as well as other peripheral streets. Mitigating this impact requires a strong Transportation Demand Management (TDM) plan to effect major reduction in trip generation, yet that plan has not yet been created. The TDM plan has been improperly deferred in this EIR. We note that the applicant's traffic consultants belatedly submitted a draft TDM plan in the FEIR, however that plan was not reviewed or considered in the EIR transportation analysis, and no peer review of the effectiveness of that plan is included in the FEIR. As noted in our DEIR comments, this issue was litigated in *City of Hayward v. Hayward Planning Association* (2015), which found a TDM plan acceptable when 1) it was a

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² OPR, Revised Proposal on Updates to the CEQA Guidelines on Evaluating Transportation Impacts in CEQA, January 20, 2016.

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required mitigation measure, including a mechanism for funding and implementation and 2) it includes specific transit service improvements, specific alternative mode use incentives, and specific parking management requirements. A firm commitment to detailed studies as to how to fine tune the TDM plan also was required. In this EIR, the TDM plan is not even required and includes none of the detail necessary to assure implementation or effectiveness. In the *Hayward* court's parlance, this project's TDM plan is illusory.

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cont.**

Other Traffic Assessment Issues

Our NOP and DEIR comment letters noted that, in addition to local traffic problems, back-up from the I-80 Emeryville off-ramp on I-80 are worsening and are affecting traffic flows on the freeway in general. Therefore we requested that the EIR traffic study must include project and cumulative impacts to the I-80 off-ramps and on-ramps, as well as to main-stem I-80 traffic at peak hours. Impacts to the mainline I-80 from both the project and cumulative traffic are missing from the DEIR analysis and should be evaluated.

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The trip generation estimates – Table IV,C-7 are still questionable. The EIR traffic analysis assumed a 40% reduction in vehicle trips, assuming people will walk, bike and take transit to and from the site. In spite of our repeated requests, the FEIR continues to fail to provide any evidence supporting the use of the 40% trip-generation reduction, based on Emeryville-specific studies. PHA's peer review indicates that this trip reduction estimate is overly aggressive and may obscure potentially significant traffic impacts not identified in the FEIR.

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Our NOP and DEIR comment letters requested that, given the confluence of numerous driveways for all of the Project garages in close proximity to the intersection of the oval roadway and the new 46th Street extension, the traffic analysis should analyze the relative functionality of the roadway system as designed in terms of circulation flow, pattern, and turn or crossing conflicts (bicycle and pedestrian included) as well as its adequacy in regards to stacking and queuing at garages, driveways, and at each turn and stopping point in the roadway. The analysis should identify appropriate forms of signalization, especially at the 45th and 46th and Horton intersections. We also requested that project and cumulative impacts on all intersections leading to I-80 and Emeryville shopping areas also must be evaluated. The FEIR continues to fail to adequately address any of these issues.

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A number of the traffic mitigation measures included in the DEIR are so vague as to not assure mitigation. For example, Mitigation Measures TRANS-1, TRANS-2, and TRANS-3 include payment of an impact fee, but do not explain how payment of that fee would reduce or eliminate the impacts that the measure purports to mitigate. That measure also requires the applicant to "work with the City..." to mitigate impacts. Working with the City does not describe or require any mitigation. There is no way to evaluate how or even if this measure would be effective or implemented, respectively.

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Air Quality

In our letter on the DEIR, we requested that it be augmented to clearly address the following potential air quality impacts. This has not occurred. Please see the attached table for deficiencies in responses to these comments.

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- The project doesn't appear to be consistent with 25% GHG reduction goal in City's CAP. Why isn't this a criteria of significance (i.e. 25% reduction in per capita GHG emissions)? In addition, the State Office of Planning and Research recently published proposed guidelines proposing that the CEQA threshold of significance for GHGs should be a 15% reduction in average per-capita VMT. Please revise the VMT discussion to address this threshold of significance or the 25% City CAP one, above.
- The DEIR includes no analyses of cumulative emissions impacts, just an assumption that all would comply with BAAQMD standards. Because of the long list of cumulative projects proposed in the City, cumulative-plus-project Air Quality impacts must be calculated.
- The DEIR's dust significance criteria should be expanded to address how dust may affect livability/work-ability of artists' spaces.
- Table IV.E-4 uses an incorrect footage for project's commercial/office space. Please revise.

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Climate Change

In our letter on the DEIR, we requested that it be augmented to clearly address the following potential climate change impacts. This has not occurred. Please see the attached table for deficiencies in responses to these comments.

- The project doesn't appear to be consistent with 25% GHG reduction goal in City's CAP. Why isn't this a criteria of significance (i.e. 25% reduction in per capita GHG emissions)? In addition, the State Office of Planning and Research recently published proposed guidelines proposing that the CEQA threshold of significance for GHGs should be a 15% reduction in average per-capita VMT. Please revise the VMT discussion to address this threshold of significance or the 25% City CAP one, above.
- The sea-level rise discussion on p. 226 is at least a decade out of date- the hydrology section has the more recent levels. Please correct.
- The sea-level rise impacts discussion on p. 227 also is out of date/lower than the current range, which is 3-5 feet or more.

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Noise

In our letter on the DEIR, we requested that it be augmented to clearly address the following potential noise impacts. This has not occurred. Please see the attached table for deficiencies in responses to these comments.

- Please provide evidence that the 55/65 dBA significance criteria will effectively mitigate operational impacts at nearby live-work buildings, given that the building requires open windows for ventilation, and residents both live and work there.
- Construction noise impacts of up to 89 dBA at nearby live-work buildings would make it impossible for the occupants to work. The typical construction hours relied upon by the EIR as mitigation are not intended to apply to live-work situations. As clearly described by the court in the *Berkeley KJOB v. Board of Port Commissioners* case, if noise would significantly affect people, relying upon a generic standard cannot be considered to be an adequate criteria of significance. Please assess the potential impacts of 30-40 months of loud construction noise to live-work occupants at the 45th street coop and evaluate the effectiveness of mitigation measures. Please note in the analysis that the building relies entirely on open windows for ventilation.

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| • Pile driving impacts to nearby live-work building residents/workers needs to be specifically addressed if there's a potential that they will be used. | 28 |
| • There's no analysis of the effectiveness of the noise mitigation, just an assumption that they will be effective. There is zero evidence in the EIR that the proposed construction mitigation measures would reduce impacts to a less-than-significant level. Please provide an evaluation of the effectiveness of the identified measures given the 24-hour occupants and necessity to have windows open for ventilation. | 29 |
| • There's no assessment of noise cumulative impacts from construction and cumulative traffic of all of the proposed projects. | 30 |

Hazardous Emissions/Health Risk

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| In our letter on the DEIR, we requested that it be augmented to clearly address the following potential hazardous material/health risk impacts. This has not occurred. Please see the attached table for deficiencies in responses to these comments. | 31 |
| • Hazmat restrictions on the site need to be compared to proposed foundation designs to determine impacts of the project, as well as feasibility. The DEIR includes no information on this issue. It is impermissibly deferred to future study by DTSC. | 32 |
| • Vapor intrusion impacts analysis impermissibly deferred to mitigation. | 33 |
| • The DTSC review of foundation designs has been impermissibly deferred- this review should be done through the CEQA process so that the impacts and mitigations associated with altering the cap on the site's residual contaminated soils can be evaluated. | 34 |
| • Land use covenants are required by Mitigation HAZ-2c, but it is unclear what the purpose of a land use covenant is and how it can mitigate impacts after the mostly residential project has been approved. | 35 |
| • Preparation of the SWPPP and Soil Management Plan (SMP) have been impermissibly deferred to future mitigation – the SWPPP and SMP should be detailed and reviewed for effectiveness as part of this EIR. | 35 |

Visual Resources and Wind

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| In our letter on the DEIR, we requested that it be augmented to clearly address the following potential visual impacts. This has not occurred. Please see the attached table for deficiencies in responses to these comments. | 36 |
| • The DEIR is missing a viewpoint from 45th Street at Horton. This viewpoint is critical to evaluating views from nearby live-work and residential buildings and is likely the viewpoint from which impacts to residents would be greatest. Please add a simulation from this viewpoint and re-assess the project's impacts. | 37 |
| • Compliance of the project with many of the City's General Plan urban design elements listed under Regulatory Setting (p. 380) is not addressed in the EIR. Policy compliance is an essential element to determining visual impact significance. Please add a discussion of the project's compliance with Policies LU-G-8, UD-G-12, UD-P-3, UD-P-13, UD-P-33, UD-P-37, and UD-P-39, all of which the project appears to conflict with. | 38 |
| • Light and glare impacts not adequately evaluated. The discussion of this topic on p. 395 includes no actual impact analysis. Instead it just concludes that compliance with Municipal Code requirements would reduce the light impact to less than significant. CEQA requires | 38 |

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|---|---------------------|
| evidence supporting conclusions; this “analysis” includes no evidence and is therefore unsupported and arbitrary. Please prepare a light and glare study of the buildings, indicating the nighttime appearance of the facility in various public views. | 38
cont. |
| <ul style="list-style-type: none"> Shadow impacts to project’s open space and park not considered significant, but should be. The DEIR’s shadow analysis (p. 416) inexplicably fails to consider shading impacts to the public park to be developed along with the project. as significant, despite the shading conflicting with City policies (i.e. LU-G-8). Please revise to consider this impact as significant or explain why it is not significant. | 39 |
| <ul style="list-style-type: none"> Visual impacts appear to be significant on their face- unclear why EIR says all visual impacts would be less than significant. For example, on p. 418, the DEIR states that because views of the hills are not entirely blocked, cumulative impacts would be less than significant. This entirely ignores the effects on local views. Comparing views on Figure IV.M-29, the average person sees a massive change, where open views are replaced with a dark, boxed-in canyon perspective. Similarly, as shown on Figure IV.M-31, massive structures blot out much of the sky and all of the hills in views from the Bay Street mall area. Most hill views also are eliminated from views from the 40th Street Bridge, as shown on Figure IV.M-32. All of these changes can be construed as significant adverse impacts. | 40 |
| <ul style="list-style-type: none"> As described in our NOP comment letter, residents have noted that the taller Novartis/Grifols buildings on Horton Street north of the site have created a canyon effect with respect to wind (and shade). The proposed project buildings must be fully evaluated for the potential to create wind tunnels on Horton Street as well as on open space internal to the project some of which is, in effect, City park land. | 41 |

Project Objectives and Alternatives

In our letter on the DEIR, we identified a number of major deficiencies in the alternatives section of the EIR, including inappropriate objectives, inadequate consideration of reduced project alternatives, and incorrect environmentally superior alternative. None of these deficiencies have been remediated in the FEIR. In addition, no evidence is provided that the Housing Element’s 460 units cannot be built on the site in a much smaller project. At 621,000 sq ft of residential use for 54 units, the units would average 1150 sq ft each (gross). If the average unit footage were 800 sq ft, then the project (or an Alternative) could meet the 460 unit Housing Element requirements with only 368,000 sq. ft. of development, allowing more open space and lower buildings, and a substantial reduction in traffic, air quality, and GHG generation. Because the EIR steadfastly refuses to provide a unit mix or par unit footages, project impacts cannot be evaluated, and the selection of alternatives is impeded.	42
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Conclusions

As detailed above, the FEIR fails to meet even the most basic CEQA requirements for good faith analysis and disclosure. Numerous technical deficiencies that were identified in our comments on the DEIR have not been remedied in the FEIR. In addition, the FEIR’s responses to comments are not good-faith responses, but instead, on multiple occasions, misinterpret the comments and/or miss the main point of the comments, or are otherwise unresponsive. Some, but not all, of these missed comments, are identified in the attached table. The numerous deficiencies, including a defective project description, inadequacies in the baseline and impacts analyses, and improperly assessed and rejected alternatives, and failure to respond to comments in good faith, require	43
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Sherwin Williams FEIR Comments
Page 9

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recirculation of a revised draft EIR (per CEQA Guidelines Section 15088.5).

Please feel free to contact us if you have any questions regarding these comments. We look forward to working with the City to assure that the public and decision-makers are provided with a comprehensive environmental impact report.

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cont.**

Sincerely



Richard Grassetti
Principal
Grassetti Environmental Consulting

Attachments: Table of Specific Deficiencies in Responses to Comments
PHA Review of Responses to Traffic Comments on the DEIR

Attachment 1:

SHERWIN WILLIAMS DEVELOPMENT FEIR: TABLE OF DEFICIENCIES IN RESPONSES TO COMMENTS (note- this is a partial list, focusing responses to some of the 45th Street Coop and PARC letters; the FEIR likely includes many more similar deficiencies in responses to other comment letters)

Comment Number	Topic	Response Deficiency	
B2-2	Inadequate project description information	Fails to address specific comments re why requested information is needed to conduct adequate analyses.	44
B2-3	Missing TDM plan	Impermissible deferral of studies.	45
B2-5	Inadequate project description information	Refers reader to master response, which doesn't respond to this comment at all.	46
B2-7	Inadequate project description information	Doesn't address "separated and sold" issues raised for each project parcel.	47
B2-8	Inadequate project description information	New (substantially revised) project plans came in after FEIR was distributed to public and decision makers; FEIR fails to analyze current plans.	48
B2-9	General Plan conformance	P. 118, last paragraph states that PUD can override General Plan policies- this is impermissible under California land use planning law. Would require General Plan Amendment.	49
B2-13	General Plan conformance	Misses the point of the comment. CEQA case law clearly states that plan conformance can be used as an indicator of impact significance.	50
B2-14	General Plan conformance	Generic response fails to address comment.	51
B2-16	Development bonus	Response provides insufficient detail to assess project compliance with bonus points; needs a critical review of feasibility of proposed project.	52
B2-17	Development bonus	Response fails to address comment.	53

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B2-18, revised Table V-2	Development bonus	Response assumes compliance with section 9.4.204. EIR cannot assume compliance; it must evaluate compliance. No such evaluation is attempted in this document.	54
B2-22	General Plan conformance	Response fails to address comment.	55
B2-25	General Plan conformance	Response fails to address comment.	56
B2-26	General Plan conformance	Response fails to address comment.	57
B2-32	Cumulative projects/impacts	List of “near-term” projects is over a year old; needs to be updated. Also, the EIR used these near-term projects as the environmental setting condition, which is squarely in conflict with state supreme court directive that only existing conditions be used as setting. The EIR traffic analysis therefore remains inadequate.	58
B2-34	Cumulative projects/impacts	Response fails to address comment.	59
B2-35	Cumulative projects/impacts	Response claims that the project would have no land use impacts but fails to provide any evidence supporting that assertion.	60
B2-37	Cumulative projects/impacts	Response fails to address comment.	61
B2-38	Cumulative projects/impacts	Response fails to address comment.	61
B2-40	Use of rail spur for construction to reduce noise and traffic	Response fails to address comment. Rather than investigating the feasibility of a mitigation measure, it is dismissed because “conditions were not evaluated” and the mitigation “could unduly burden the project”. If conditions were not evaluated, then how can the EIR preparers assert that the mitigation could unduly burden the project. No analysis, no good faith response.	62

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B2-41	Dust impacts to artists	Response blindly relies on generic agency standards and fails to actually evaluate dust impacts to artists who must have windows open for ventilation, despite “expert” statements from those artists based on previous experiences with similar dust-generating construction on the site during remediation activities. Fails to comply with Berkeley KJOB, Pocket Protectors, and Oro Fino court decision requirements re impact assessment.	63
B2-42	Noise impacts to artists	Response blindly relies on generic agency standards and fails to actually evaluate noise impacts to artists who must have windows open for ventilation, despite “expert” statements from those artists based on previous experiences with similar noise-generating construction on the site during remediation activities. Fails to comply with Berkeley KJOB, Pocket Protectors, and Oro Fino court decision requirements re impact assessment.	64
B2-43, B3-7	Traffic baseline	Response fails to address comment, which had nothing to do with LOS. Comment was on use of vacant Novartis/Grifols building in traffic, noise, and air quality baselines.	65
B2-45	Population assumptions for project	Because the unit mix for the proposed project has not been disclosed (despite repeated requests for such disclosure), the use of the average Emeryville per-unit population factor continues to be unsupported by any fact.	66
B2-46	Noise impacts	Response cites CEQA Guidelines section 15145, which requires that the EIR conduct “a thorough investigation” before discarding an impact as “speculative”. This EIR failed to contact any of the residents, failed to take seriously their concerns based on past exposure, and failed to conduct any investigation of this issue, yet it discards the commentors’ concerns as speculative nonetheless. The cited analyses do not show that impacts would be reduced to a less than significant level. Impermissible, non-good-faith, response.	67

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B2-47	Traffic significance criteria	Response fails to address comment- which is where is the Quality of Life Criteria that the City General Plan requires be used in these analyses. Response fails to address comment.	68
B2-49	VMT impacts	VMT assertions in response are inconsistent with information in DEIR VMT analyses.	69
B2-50	Queue threshold	Response does not address comment.	70
B2-53	TDM plan deferral	DEIR's TDM plan mitigation is non-compliant with recent case law, as explained in the comment (and not responded to).	71
B2-54	Freeway impacts	Response is misleading- states freeway impact not significant, but evaluated only mainline, and not onramps, which are focus of the comment. Also, project generated traffic on mainline segments needs to be evaluated in a cumulative context- as a potentially cumulatively considerable contribution.	72
B2-59	Traffic mitigation	Response had zero nexus to comment – entirely unresponsive. Response” For some mitigation measures, the wording allows City staff, Planning Commission, and City Council members to develop a mitigation measure as part of the public hearing process” is completely contrary to CEQA requirements regarding impermissible deferral of mitigation.	73
B2-60	Greenhouse gas	Response fails to address issues raised in comments. Continues to rely on outdated (2008) proposed GHG Guidelines rather than proposed 2015 Guidelines identified in the comment.	74
B2-61	Air pollutants	Response fails to address comment that EIR has no cumulative analysis of air pollutants.	75
B2-62	Air pollutants	Response blindly relies on generic agency standards and fails to actually evaluate dust impacts to artists who must have windows open for ventilation, despite “expert” statements from	76

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		those artists based on previous experiences with similar dust-generating construction on the site during remediation activities. Fails to comply with Berkeley KJOB, Pocket Protectors, and Oro Fino court decision requirements re impact assessment. No evidence supporting EIR's conclusion.
B2-65	Sea level rise	Response does not address comment.
B2-66	GHG emissions	Response does not address comment.
B2-67, 68	Noise impacts	Response blindly relies on generic agency standards and fails to actually evaluate noise impacts to artists who must have windows open for ventilation, despite "expert" statements from those artists based on previous experiences with similar noise-generating construction on the site during remediation activities. Fails to comply with Berkeley KJOB, Pocket Protectors, and Oro Fino court decision requirements re impact assessment. EIR provides no evidence supporting conclusion that City standards would reduce impacts to LTS, despite residents' assertions to the contrary, which are based on their actual experience with similar noises. Response states that noise ordinance requires noise to be lower than existing noise, which makes no sense, and only argues that noise ordinance is ineffective in controlling noise. Also, response claims that project construction would generate less noise than existing fails to address increase in repeated single event noise, such as from construction activities, trucks, etc. A noise liaison does not mitigate noise impacts.
B2-70	Noise impacts	Response does not address comment.
B2-71	Noise impacts	Response fails to address impacts of construction traffic.
B2-72	Soil import/export	Response fails to address potential need for

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	issues	massive offhaul of soils. Non-response to comment.
B2-73	Geologic impacts	Analysis of geologic impacts is impermissibly deferred to after EIR is certified/project is approved. Cut and fill numbers are inconsistent with those in the DEIR, and fail to address potential need to offhaul contaminated materials.
B2-77, 79	Hazmat impacts	Impermissible deferral of analysis to future study by DTSC.
B2-80	Population	Because the unit mix for the proposed project has not been disclosed (despite repeated requests for such disclosure), the use of the average Emeryville per-unit population factor continues to be unsupported by any fact. How do "family-friendly" units factor into this? How many such units would be included in the project? Inadequate project description = inadequate impact analyses.
B2-81	Schools	Response stating "the enrollment factor is applicable to the dwelling unit and does not change based on the type of dwelling unit" is nonsensical- if what you're saying is that it's an average, then need to show unit mix in project is reflective of Emeryville average, otherwise it's not accurate. Still no discussion of student generation, school capacity, etc. Inadequate response.
B2-85	Visual impacts analysis	EIR focus on only public views is counter to CEQA case law, as cited in the comment.
B2-86	Policy conformance	Misses the point of the comment. CEQA case law clearly states that policy conformance can be used as an indicator of impact significance. Additional text in response just repeats policies and fails to address how the project would conform

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		to these policies.	88 cont.
B2-87	Visual impacts	<p>Response provides no evidence supporting conclusion that City's Standard Conditions of Approval would provide sufficient mitigation for light ad glare impacts, ands includes no actual analysis of impact or effectiveness of mitigation.</p> <p>Pose-project-approval review of lighting plans doe not meet CEQA requirements for impacts to be evaluated in the EIR.</p>	89
B2-88	Shadow impacts	<p>EIR conclusion that "The shading of public areas....would not substantially affect the use of these spaces" is entirely unsupported by evidence.</p> <p>Inadequate response to comment.</p>	90
B2-89	Visual impacts	Lengthy response is entirely unresponsive to actual comment re the "canyon view" that would be created by the project.	91
B2-90	Wind impact	No evidence is provided to support assertion in response.	92
B2-91	Alternatives	The response does not address any of the substantive issues raised in the comment.	93
B2-92	Alternatives	Why does the EIR include an objective that none of the alternatives "achieve", and which compliance with cannot be determined in the EIR? This clearly shows the inappropriateness of the objective, and why it should be removed, per our original comment.	94
B2-93	Alternatives	<p>"Avoid or substantially lessen ...significant effects of the project" is the same as "required to mitigate the project's significant impacts". It appears from this response that the EIR preparers do not understand even the most basic CEQA requirements.</p> <p>Response fails to address gist of comment.</p>	95

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B2-94	Alternatives	Response fails to address gist of comment.	96
B2-95	Alternatives	Response fails to address gist of comment.	97
B2-96	Alternatives	<p>Analysis of Environmentally Superior Alternative makes no sense- needs to be supported by analysis of relative impacts of each alternative.</p> <p>Further, no evidence is provided that the Housing Element's 460 units cannot be built on the site in a much smaller project. At 621,000 sq ft of residential use for 54 units, the units would average 1150 sq ft each. If the average unit footage were 800 sq ft, then the project (or an Alternative) could meet the 460 unit Housing Element requirements with only 368,000 sq. ft. of development, allowing more open space and lower buildings, and a more than 40% reduction in traffic, air quality, and GHG generation. Because the EIR steadfastly refuses to provide a unit mix or par unit footages, project impacts cannot be evaluated, and the selection of alternatives is impeded.</p>	98
B2-98	Alternatives	Response has zero substance. Please note that the comment had an obvious typographical error- "project" should have been "alternative". EIR preparers should have realized that error and responded appropriately.	99
B2-99	Recirculation	The responses claim that there is no substantive new information in the FEIR is true only because the FEIR continues to impermissibly defer studies critical to the impact analyses, and otherwise fails to adequately respond to comments, as listed in this table.	100
B3-2	Alternatives	No direct response to the substance of the comment (specific alternative suggested).	101
B3-3	Lack of adequate project description information- traffic flow	No information provided- conclusion of no significant impact absent any analysis.	102

B3-4, 5	Consideration of traffic calming features.	Response misses the point of the comment.	103
B3-9, 43	Parking impacts	Impermissibly defers analysis to future TDM plan.	104
B3-12, 33, 34	Transportation Impact Fee as mitigation	FEIR continues to impermissibly rely on fee that is unconnected with specific improvements as mitigation.	105
B3-16	Mitigation within Caltrans jurisdiction	EIR's claim that because the impacts are in Caltrans' jurisdiction the EIR need no identify mitigation is incorrect; EIR is required to identify mitigation, but may not be able to enforce its implementation.	106
B3-19-21	Noise impacts	No detailed analyses included to support conclusatory responses.	107
B3-22 through 25	Visual impacts	No actual analyses; false and unsupported reliance on lack of public views as reason for less than significant impacts, despite being informed of case law to the contrary.	108
B3-27	Alternatives	No response to gist of comment, which is re specific traffic and circulation impacts of the alternatives.	109
B3-28	Alternatives	No response to gist of comment, which is re specific visual impacts of the alternatives.	110
B3-31	Transit Oriented development	The 40% reduction in ITE traffic generation rates used in the project traffic analyses assume transit oriented development. Argumentative and substance-less response to the comment. Response fails to address specific comment on Emery Go Round.	111
B3-32	Alternatives/Objectives	Response is unresponsive to comment.	112
B3-36, 37	Trip reduction rates	40% rate reduction unsupported and "best case". See PHA memo.	113
B3-40, 41	Housing type and size breakdown	Response does no provide requested/needed information, essential to accurate impact	114

		assessment.	114 cont.
B3-44	Construction traffic impacts	FEIR includes construction schedule, but fails to address the impacts of that construction schedule on various resource topics, including traffic, as requested in this comment.	115
B3-47	Traffic Calming monitoring	Response is regarding monitoring of bicycle boulevards, and not of traffic calming features. Misses gist of the comment.	116
B3-48	Construction traffic impacts	Response fails to address specific questions in the comment.	117
B3-49	Construction traffic impacts	Response fails to address all of the specific mitigations requested in the comment.	118
B3-50	Visual impact mitigation	No direct response to gist of comment, which was on project impacts to historic-building related aesthetics.	119
B3-51	Visual impact	No response to gist of comment.	120
B3-52	Visual impact/Policy Compliance	No response to gist of comment.	121
B4-10, 11	Air quality	Responses fail to address emissions issue.	122
B4-20	GHG	Response fails to address gist of comment.	123
C2-11	Archaeological impacts	Response fails to address gist of comment.	124
C5-11	Noise impacts	Response blindly relies on generic agency standards and fails to actually evaluate noise impacts to artists who must have windows open for ventilation, despite “expert” statements from those artists based on previous experiences with similar noise-generating construction on the site during remediation activities. Fails to comply with Berkeley KJOB, Pocket Protectors, and Oro Fino court decision requirements re impact assessment.	125
C5-12	Noise impacts	If specific foundation methods are unknown at this time, then EIR analyses must assume reasonable worst-case impact; this EIR assumes best-case impacts.	126

July 22, 2016

C5-13	Construction noise impacts	Response blindly relies on generic agency standards and fails to actually evaluate noise impacts to artists who must have windows open for ventilation, despite “expert” statements from those artists based on previous experiences with similar noise-generating construction on the site during remediation activities. Fails to comply with Berkeley KJOB, Pocket Protectors, and Oro Fino court decision requirements re impact assessment.	127
C5-14	Construction deliveries by rail	Comment fails to address or evaluate this potential mitigation measure. CEQA requires that feasible mitigation measures be evaluated and included in an EIR. Response appears to fail to understand the basic concept of mitigation, and CEQA requirements regarding mitigation.	128
C5-15	Cumulative noise impacts	Response appears to fail to understand the basic concept of cumulative impacts, and CEQA requirements regarding cumulative impacts. Simply stated, lack of significant project impacts does not mean that the project’s contribution to a significant cumulative impact is not cumulatively significant.	129
C5-16	Cumulative health impacts	Contrary to response assertion, EIR fails to address cumulative TAC impacts.	130
C5-17	Adequacy of project description to do air quality analysis	Response fails to address gist of comment.	131
C5-18	Dust impacts	Response blindly relies on generic agency standards and fails to actually evaluate dust impacts to artists who must have windows open for ventilation, despite “expert” statements from those artists based on previous experiences with similar dust-generating construction on the site during remediation activities. Fails to comply with Berkeley KJOB, Pocket Protectors, and Oro Fino court decision requirements re impact assessment.	132

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		No evidence supporting EIR's conclusion.	132 cont.
C5-19	Air quality	Response fails to address comment regarding impacts to 24-hour resident/workers at nearby live-work buildings. Response is incorrect that operation of project would not generate substantial emissions- needs to evaluate TACs in trucks servicing the facility.	133
C101-6	Visual impacts	No substantive responses are provided to any of the comments.	134
C11-3, 4	Air quality impacts	No substantive responses are provided to the comments. Gist of comments missed.	135
C12-4, 5	Visual impacts	No substantive responses are provided to the comments. Gist of comments missed.	136
C13-6	Noise impacts	Gist of comment missed.	137

Sherwin Williams FEIR Comments
Page 22

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Attachment 2: PHA Comments on Responses to Comments

PHA Transportation Consultants

2711 Stuart Street Berkeley CA 94705
Phone (510) 848-9233
Web www.pangho.com

July 22, 2016

Richard Grassetti
Grassetti Environmental Consulting
Via Email

Re: Sherwin Williams Development – Responses to PHA DEIR Comments

Dear Richard:

PHA Transportation Consultants has reviewed the FEIR responses (June 2016) regarding our previous comments on the traffic study prepared by Fehr and Peers for the Sherwin Williams Site Development. Our comments to the FEIR responses are as follows:

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LSA Response B2-100

PHA: Response accepted. No further comments.

Response B2-101

PHA: This is a gateway intersection and has 12 approach lanes altogether. The addition of 5 vehicles per lane as indicated in the response means 60 vehicle trips, not an insignificant number. Further, the trip distribution assumptions in the traffic study send 10% residential and 10% commercial trips through this intersection, not an insignificant percentage either. This intersection should be evaluated and be included in the traffic study.

139

LSA Response B2-102

PHA: It's understood that intersections are controlling points. However, when traffic is congested and backup, intersection analysis would be unable to reflect the real traffic flow conditions, since a much smaller number of vehicles would be recorded passing through the intersection at a stop-and-go, or stand-still condition. As such, evaluating segment/corridor speed is a better indicator of actual traffic flow conditions.

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LSA Response B2-103

PHA: Response accepted. No further comment.

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LSA Response B2-104

PHA: Response accepted. No further comment.

LSA Response B2-105

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PHA: We realize that the project trip generation is calculated using ITE rates, not based on the MXD model for mixed- use projects. Still, the total 40% peak-hour trip reduction is high. In our professional opinion, a more conservative approach should have been taken. It's always better to err on the conservative side in impact evaluation.	142 cont.
LSA Response B2-106 PHA: The traffic study should evaluate all site access point, regardless whether or not traffic is heavy or light.	143
LSA Response B2-107 PHA: Response accepted. No further comment.	144
LSA Response B2-108 PHA: Response accepted. No further comment.	
LSA Response B2-109 PHA: According to the F and P traffic report, 15% of the residential and 10% of the commercial traffic will be traveling to and from the south (I-880) direction. Beach Street is the best connection to travel south to the direction of I-880 and should have been included in the study. Why people from the project site would choose to use Powell Street in conjunction with I-80, to travel to I-880? Both Powell Street and I-80 are actually longer in distance, travel time, and highly congested most of the time.	145
LSA Response B2-110 PHA: Response accepted. No further comment.	
LSA Response B2-111 PHA: Response accepted. No further comment.	
LSA Response B2-112 PHA: Response accepted. No further comment.	146
LSA Response B2-113 PHA: Response accepted. No further comment.	
LSA Response B2-114 PHA: Response accepted. No further comment.	
LSA Response B2-115 PHA: That's fine. It would not have a negative impact on LOS anyway. Response accepted. No further comment.	147
LSA Response B2-116 PHA: As noted above, all site access should be evaluated and discussed in the study.	148
LSA Response B2-117 PHA: Response accepted. No further comment.	149
LSA Response B2-118	

July 22, 2016

PHA: Response accepted. No further comment.

LSA Response B2-119

PHA: Response accepted. No further comment.

LSA Response B2-120

PHA: Response accepted. No further comment.

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In summary, we think the Fehr and Peer traffic study should have included analyses of Beach Street and the San Pablo Avenue/Stanford Avenue intersection. Both locations are expected to receive 20 plus percent of the site generated traffic according to the traffic study.

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Our review of the project trip generation analysis indicated that the Fehr and Peers site traffic is calculated based on ITE rates, plus an estimated reduction for internal trips, public transit use, bike and walk trips (a total of 40% peak-hour trip reduction). While it uses similar trip reduction assumptions used in the MXD trip generation model for mixed- use projects. The project trip generation itself is not calculated using the MXD model.

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We believe the 40% peak-hour trip reduction used in the study is aggressively high. The project must develop an equally aggressive TDM program (Travel Demand Management) to achieve such a high reduction goal. The Fehr and Peers traffic study does not include a TDM program. We note that the applicant provided a draft TDM program in the Comments and responses document; that program has not been analyzed for potential effectiveness in the FEIR, and therefore cannot be assumed to be adequate to achieve the aggressive trip reduction assumed in the traffic study (which was prepared absent the TDM plan)

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Please feel free to contact me if you have any questions. Thank you.

Pang Ho

AICP, Principal

Ann Holsberry
Gary J. Grimm

1420 45th St., Studio #32
Emeryville, CA 94608
Telephone: (510) 848-4140
Email: gjgrimm@mindspring.com

July 22, 2016

Via Email: mdesai@ci.emeryville.ca.us

City of Emeryville
Planning and Building Department
Attn: Miroo Desai
1333 Park Avenue
Emeryville, CA 94608

**Re: Comments on Response to Comments (RTC) to the DEIR
Sherwin Williams Development Project (SCH#2004122083)**

Dear Planning Commission Members:

Thank you for the opportunity to submit our comments on the Response to Comments (RTC) to the DEIR for the Sherwin-Williams Development Project EIR. We request that these comments be forwarded to the Planning Commission members in advance of the July 28, 2016 meeting of the Planning Commission.

My wife, Ann Holsberry, is a long-time member of the 45th Street Artists' Coop and has her art studio at 1420 45th Street, #32. On March 7, 2016 we submitted our written comments on the Sherwin Williams Development Project draft EIR.

We continue to be disappointed with the many important environmental issues that the RTC and the DEIR defers to later stages of the development process when more project details will be available. In effect, this means that the project description and the project baseline is still inadequate. This concern was repeatedly mentioned in written comments and at the February 25th Planning Commission meeting. For example, while Master Response 1 is helpful in its discussion of the PUD/PDP process, it provides a disservice to the environmental analysis of the project in that it serves to justify deferral of important project information and environmental considerations to later stages in the development process. These deferrals make it difficult to assess the environmental impacts at this time during the EIR process relating to lack of more detailed information on building locations and heights, information on site improvements, traffic assessment and control information, construction location details, building foundation plans, etc.

The RTC states that the “City has confirmed that the applicant has provided the level or information required by the City’s PDP requirements.” Not only is this inappropriately mixed in with the environmental analysis, but it fails to provide reference to or include the action or document where the City has found the PDP information to be complete. Thus, it is not possible to determine the basis for this conclusion.

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The RTC frequently minimizes potential adverse environmental impacts based on the project’s compliance with local, regional or state regulations/statutes. The analysis fails to recognize that significant environmental impacts may sometimes occur despite the projects compliance with regulations, policy, and statutes.

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The RTC relating to our March 7, 2016 comments on the DEIR is incomplete and not adequately responsive. Our comments on some of these RTC responses are as follows:

- Response C5-2: This response is inadequate for the reasons set forth above relating to Master Response 1. The lack of project detail remains a problem in the ability of the DEIR to fully and adequately assess the environmental impacts of the proposed project;
- Response C5-3: While it is understood that the City has considerable discretion with regard to hearing procedures relating to the DEIR, the RTC misses the point of the importance to the community of the customary 3 minutes to present comments on a project of this magnitude and significance. The number of residential units and density of this project is without parallel in the City’s residential development project history;
- Response C5-4: Our questioning the Planning Director’s response at the February 25th hearing that redrafting/recirculating the document is not an alternative remains unanswered. The Planning Commission has considerably more discretion with regard to the DEIR than City staff indicated, and redrafting/recirculating the document would have been an option;
- Response C5-6: It bears repeating that the project is a PUD does not diminish the level of detail required in providing a rigorous environmental analysis as was inferred in the City staff comment at the February 25th hearing;
- Response C5-7: We appreciate the additional time that has been provided beyond a one week period for consideration of the RTC prior to the Planning Commission July 28th meeting;
- Response C5-8: The RTC fails to provide the reason or rationale for the lack of long-term off-site noise monitoring. It simply concludes that additional long-term noise monitoring was not necessary;
- Response C5-11: While Mitigation NOI-2 is helpful, however, in light of the lack of important project details, the Mitigation measure and the RTC does little to quantify the noise reduction of the mitigation measures to off-site receptors in reaching the conclusion that NOI-2 would reduce stationary noise impacts to a less than significant level;
- Response C5-12: The DEIR finds that project construction activities could cause a substantial temporary increase in ambient noise levels in the project vicinity, and concludes that this would constitute a significant environmental impact. It should

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be noted that a 36-48 month (3 to 4 year) “temporary” noise disruption does little to provide comfort to nearby residents to the project this “temporary” disruption. The RTC does not address the “temporary” nature of this impact. The RTC goes on to state that the noise impacts associated with construction would be less than significant with adherence to the City’s Noise Ordinance standards per Mitigation Measure NOI-3. It then states that both the ordinance and the General Plan do not include a maximum noise level threshold for construction noise levels. Again, this lack of regulatory maximum noise level thresholds is not reassuring, and the RTC does nothing to quantify the noise reduction due to the potential mitigation measures;

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- Response C5-13: Again, the RTC provides no quantification or rationale for the conclusion that the noise ordinance would reduce potential noise impacts to a less than significant level. The RTC also does not address our criticism that many of the mitigation measures in Mitigation Measure NOI-3 are discretionary with the project developer and that there is no assurance that they will be implemented during the construction period;
- Response C5-14: The option of delivery of construction materials by rail should at least be studied by the project proponent, and that study required as a mitigation measure;
- Response C5-16: Although the BAAQMD and City do not distinguish between construction emissions that would be generated for specific duration periods, the environmental impact analysis should take this lengthy 3-4 year period into consideration in the quantification of the air quality impacts;
- Response C19: The RTC does little to explain or quantify why mitigation measures relating to long term air emissions will be required for future residence but are not necessary or required for neighboring residents. This ignores the reality and minimizes the importance of the adjacent live/work units as described by several commenters.

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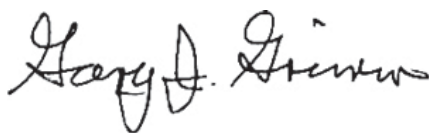
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We support the comments of Grassetti Environmental Consulting on behalf of the 45th Street Artists’ Coop and the Park Avenue Residents’ Committee (PARC) on the RTC and submit the further comments in this letter for your consideration.

Thank you for considering our comments.

Sincerely,



Gary Grimm & Ann Holsberry
1420 45th Street, Studio #32
Emeryville, CA 94608

July 25, 2016

TO: City of Emeryville- Planning and Building Department ATTN: Miroo Desai

TO: The Emeryville Planning Commission

TO: The Emeryville City Council

1333 Park Avenue

Emeryville, CA 94608

RICHARD D. AMBRO, Ph.D. COMMENTS ON FINAL EIR OF THE PROPOSED SHERWIN WILLIAMS PROJECT (EMERYVILLE) EIR RE: CULTURAL RESOURCES [SECTION C2]:

THIS SECTION OF THE FINAL ENVIRONMENTAL IMPACT REPORT IS INADEQUATE AND UNACCEPTABLE. I recommend and professionally demand REJECTION of the FEIR.

As you know, I am a long time resident of Emeryville and a retired UC Berkeley Ph.D. Archaeologist, well acquainted with the prehistory and history of Emeryville and Northern California. I found the Draft EIR inadequate and wrote a detailed review and response to that document, with suggestions for improved documentation. I found the FEIR unresponsive and dismissive to these criticisms and suggestions, and therefore inadequate and unacceptable. The document and "revision" process resembles something written by the and for the applicant alone, and not an independent statement of possible archaeological resources in the Proposed Project Area, their potential cultural and scientific value. The San Francisco Planning Department routinely requires submission of consultant documents **directly** to the Planning Department rather than pass through the Applicant first. I am not sure this precaution was observed by the Emeryville Planning Department.

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The FEIR was dismissive of my suggestions regarding potential construction-related impacts to archaeological cultural resources. My comments were based on details of impacts stated in the draft EIR, or standard construction options. Obviously the potential deeper impacts are now precluded by the final plans.

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More serious is the refusal of LSA to provide the suggested explanatory maps of the known and possible prehistoric sites and human burial finds in the immediate vicinity of the Project, because of supposed legal and ethical constraints. While it is true that planning documents available to the "public" may not be made public, Planners and City Officials can require access to such sensitive information for decision-making purposes. I have assisted in creating such cultural

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resources maps for Section 106 NEPA and CEQA documents in Alameda County, San Francisco County, and elsewhere in California, with the understanding that they would be handled sensitively by the municipalities in question. Obviously, LSA's refusal to provide such illustrative maps, or at least a detailed verbal discussion, constitute inadequate documentation. I am especially disappointed by failure to use or otherwise include information in previously cited CALTRANS reports. How can planners and indeed the City adequately assess the threat to potential archaeological resources, or understand proposed efforts to avoid or otherwise protect them without accurately identifying them?

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Another shortcoming is an inadequate review of the Historical Period for the Project Area- a common error in identifying potential archaeological resources. On at least two occasions, I took the time to outline my concerns to the City Council and Planning Board, particularly for the Prehistoric Period, First Contact, Mission Period and Gold Rush Periods. I incidentally earned the scorn and ridicule from some of the audience as an irrelevant, boring old professor of Archaeology. On at least one occasion, staff from LSA was present- busy taking notes- to what purpose? I see little or no evidence that these concerns were added to the Draft and Final EIR. In my comments on the Draft EIR, I offered to make available graphic documents or otherwise discuss the archaeology with LSA and its Staff, but was never contacted.

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I believe the blame for the shortcomings of the FEIR lie in the Staff of the Emeryville Planning Department- especially Miroo Desai, Mr. Charles Bryant- Director, and LSA, the consultant selected to prepare the EIR for the Project. In combination, they have apparently jointly worked to underplay the likelihood of the presence and impacts to significant archaeological resources within the Sherwin Williams Project Area. This may constitute actual DECEPTION, or at least BIAS, in the planning process.

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I must conclude my statement to say as a long-time resident of Emeryville and Professional Archaeologist, The Final EIR is hopelessly flawed and therefore unacceptable... Professor Ambro gives the FEIR an

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I recommend and indeed professionally demand the City of Emerrville to reject the FEIR as inadequate and unacceptable.

Sincerely,
Richard D. Ambro, Ph.D., retired R.O.P.A.
1264 64th St.
Emeryville, CA 94608
(510) 655-7951 richardambro@gmail.com

From: Brian Donahue [mailto:sophbeau@yahoo.com]
Sent: Tuesday, August 09, 2016 6:43 PM
To: Charles Bryant; Miroo Desai; Miroo Desai
Subject: The Sherwin Williams EIR Cannot Be Certified As It Is

The Sherwin Williams EIR doesn't tell the City Council how the project will effect traffic in the neighborhood. It is unacceptable because the traffic study in the EIR shows the effect the project will have on (south) Emeryville only with the condition that the City Council will later amend the General Plan to remove the Horton Street Bike Boulevard or amend it to allow more traffic than 3000 vehicle trips per day. The EIR should allow the decision makers to decide about the project with the assumption that the Bike Boulevard will be retained. A new traffic study must be prepared to show what the effect the project will have on traffic in Emeryville supposing we keep the Horton Street Bike Boulevard as the General Plan says it should be. In that case, the traffic study would show a surplus 940 vehicle trips per day placed on other streets and the Council needs to see how that traffic will degrade other these other roadways and intersections. This is central to CEQA: the decision makers need to know how the proposed project will negatively impact the neighborhood, in this case the traffic.

PARC

Park Ave Residents' Committee

Co-Chairs

Donna Briskin:

1500 Park Avenue
donna.briskin@gmail.com

Paul Germain:

Emeryville Artists Cooperative
pgermain999@gmail.com

Member Representatives:

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Mike McConnell:

1500 Park Avenue
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Sharon Wilchar:

Emeryville Artists Cooperative
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28 July 2016

Planning Commission

Subject: Sherwin Williams EIR Certification and Study Session.

Dear Planning Commission Members,

PARC is an association of two hundred residents that about the Sherwin-Williams project. We strongly desire to have a great development on the Sherwin-Williams site. However a project that plans to locate 9% of the population of our City in a location locked in by railroad tracks and industry, and a bicycle boulevard on a third side is likely, if not carefully planned, to have adverse traffic and parking impacts on the surrounding neighborhood.

PARC is requesting that the Planning Commission deny certification of the EIR at this time. The flaws in the document have been voluminously documented by our consultants and the responses to those flaws have been inadequate. If the Planning Commission does not certify the EIR at this time, it would be a statement that the project simply needs to be improved and that the Planning Commission, by withholding its certification, is expecting more from this project. Below are recommendations to improve the EIR and to ultimately make a better project for the city

● MXD Methodology for determining traffic impacts

The method utilized in the EIR for determining traffic impacts (MXD+) is complex and hybridized from several methodologies but the traffic reductions assumed by the EIR have typically been used for "transit oriented" projects and the reductions allowed (40%) are extremely aggressive, typical of transit oriented projects. This project has one bus stop located three blocks away and the Transit Demand Management (TDM) proposes to add one car share (possibly two) to the project. North Oakland BART is several miles away. Shattuck Avenue in Berkeley is a transit oriented area, this project is not transit oriented.

The Transit Demand Management (TDM) plan was submitted as a comment to the EIR and was not analyzed as a part of the EIR. It is also woefully inadequate. The fact that incorrect reductions in traffic impacts were made for a supposedly transit-oriented project means that, for the project to succeed, a highly creative and highly effective TDM must be implemented. The developers solution---handing out bus passes, providing bike racks, and one or two car-share spaces are hardly adequate. The TDM is essential to increasing the transit orientation of the project. It should be evaluated within the EIR as opposed to its current position (a seeming afterthought) as a comment letter. The City must require the developer to work with the city and transit agencies to increase transit infrastructure within the project and increase traffic-reducing incentives within the TDM.

Recommendation: Deny certification, recirculate the pertinent portions of the EIR, request a more conservative methodology for determining traffic impacts. Increase traffic reducing incentives within the TDM and allow the EIR to include

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and evaluate the TDM.

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cont.

● **Parking/Traffic/Bad Math**

The parking spaces analyzed by the EIR are the developer's proposed parking spaces as submitted initially by the developer and they vary from 930 spaces in the original submittal to 980 spaces in the alternative. The city changed its parking regulation during the EIR's production. The proposed parking spaces were not altered for evaluation in the EIR. The new parking regulations now allow 650 spaces maximum. This lack of parking needs to be part of the calculations in the EIR.

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The proposed project will have approximately 550 units, generating at least 1,000 tenants (depending on the family friendly configuration.) The city rules, recently changed, now allow 1.1 parking spaces per unit---650 spaces. LSA has stated in the response to comments that seventy people will be utilizing public transit. This bad math can (potentially) produce two-hundred-fifty cars circling the area searching for parking during peak trip generation. This must be considered an environmental issue. The neighborhood sits within one mile of I-80 and the MacArthur maze interchange. The Bay breezes blow the pollution from these freeways east into our air. The additional cars circling the neighborhood need to be addressed and mitigated..

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Recommendation: Temporarily deny certification, instruct LSA to analyze the effects on parking and traffic of this sizeable reduction in parking spaces, instruct developer to work with the city and transit agencies to increase transit infrastructure within the project. Increase traffic reducing incentives within the TDM. Have developer investigate nighttime parking share with the commercial building.

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Thank you...

Paul Germain, **PARC** Co-chair