



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: November 21, 2017

TO: Carolyn Lehr, City Manager

FROM: Charles S. Bryant, Community Development Director

SUBJECT: Study Session On Sherwin Williams Public Park Final Development Plan (FDP) And Potential Credit Of Parks And Recreation Facilities Impact Fee

RECOMMENDATION

After hearing a presentation from the applicant and receiving public testimony, staff requests that the City Council provide comment and direction regarding this project and the applicant's request for a credit of the Parks and Recreation Facilities Impact Fee, addressing the issues outlined at the end of this report and any other issues, as appropriate.

BACKGROUND

On November 1, 2016 the City Council unanimously approved the second reading of Ordinance No. 16-006 for the Sherwin Williams Planned Unit Development (PUD), and the ordinance went into effect on December 1, 2016. This ordinance created the PUD zoning for the site and approved the Preliminary Development Plan (PDP), which is the overall master plan for the project. The project will redevelop the former Sherwin Williams paint factory site and an adjacent City-owned parcel, including reuse of an existing 74,000 square foot significant structure for office use, construction of five new buildings that will accommodate approximately 500 dwelling units and a minimum of 2,000 square feet and a maximum of 8,000 square feet of commercial/retail space. The ground floor commercial space may include retail, restaurant, office, professional service, and other commercial uses allowed by the Planning Regulations. The project will also create two new streets: Hubbard Street extension and 46th Street and approximately 3.53 acres of public park/open space area on the City-owned property and in four "Park Open Space" parcels.

On January 5, 2017, the applicant submitted two Final Development Plan (FDP) applications for the project, one for the new buildings, and one for the parks and open space. FDPs are approved by the Planning Commission and are not considered by the City Council unless they are appealed. However, because the parks and open space FDP will create a City park, staff is seeking the City Council's comments prior to Planning Commission consideration of approval, which is scheduled for the December 14, 2017 Planning Commission meeting. The Planning Commission has held three study sessions

on the parks and open space FDP, on January 26, 2017, April 27, 2017, and October 26, 2017. The Commission's comments at these study sessions are summarized below.

On October 18, 2016, prior to the City Council's approval of the PUD, Lennar submitted a request for a credit of the Parks and Recreation Facilities Impact Fee because the park and open space facilities in the project are included in the list of facilities to be funded by the fee. At the time, Lennar was advised that their request was premature and should be considered at the time of FDP approval for the park and open space facilities. Now that the FDP is scheduled to be considered by the Planning Commission on December 14, 2017, it is appropriate to consider the fee credit request. Such credits must be approved by the City Council at a noticed public hearing. A City Council public hearing on the credit request is tentatively scheduled for January 16, 2018.

Planning Commission Comments

January 2017 Study Session Comments

The Planning Commission provided comments to preliminary conceptual design plans at the January 26, 2017 meeting. One Commissioner felt that it should be like the High Line in New York with organic planting and sculptures. Installation of bleacher seating facing the railroad was suggested along with a need for a smooth transition between vegetation and hardscape. Other suggestions included installation of landscaping to attract wildlife, living walls, exercise equipment and a children's play area near affordable housing building, and lots of public art. Another Commissioner stated that the park should have a strong theme and suggested a concept of a "circuit loop" of sculpture around the site. A concept called "Incredible Edibles" in Great Britain with raised beds of vegetables that anyone can pick was also suggested. A concern was expressed about the feeling of the "pass-through" with high walls on either side. It was also suggested that the sidewalks should meet minimum City requirements and be wider if possible.

A speaker from the public said that the design orientation of the park should be to the immediate neighborhood and that it should not be a destination park; the design should tie to the plaza at the end of Park Avenue; the children's play area should be located near the affordable housing building; the majority of the space should be unprogrammed and flexible; residents at Bay Street want the dog park at the north end, nearer to them; and public art should be distributed throughout the park. Another public comment was made regarding the recent adoption of the Public Art Master Plan and that the Sherwin Williams project was in the Park Avenue arts district. A need to carefully look at installation of the public art was suggested. In addition, a need to honor the history of the area was suggested and it was noted that this used to be site of the Oakland Trotting Park racetrack. It was also suggested that the Sherwin Williams paint factory be reflected in some form. A desire for trees that attract birds and landscaping that attracts butterflies and bees was also expressed.

April 2017 Study Session Comments

The Commission held a second study session on April 27, 2017, and was generally satisfied with the basic concept, stating that they were looking forward to seeing details regarding materials, play structures, benches, rest rooms, and other design features. There was some discussion on the curved nature of bicycle-pedestrian path connecting Horton Street and Hubbard Street Extension and whether the curvature would deter pedestrians who would prefer to see a clear path of travel. It was suggested that the path presented an opportunity for a visual terminus as it connected at the new park. A similar opportunity for a visual terminus at the end of 46th Street was also identified. It was noted that the bike share station should be located near the rest room and that locations of bicycle parking should be in open and clearly visible areas. The Commission cautioned against too many murals while acknowledging that walls on Building A and Building B-2 near the plaza area provided good opportunities for art work. A blanket of lights in the plaza was also suggested as it could be turned on and off and would provide a festive atmosphere in the space. A list of plants and what type of fauna each would attract was also requested. One citizen commented that the plans looked good so far and encouraged that the half basketball court be retained and that rooftop facilities in Building B-2 be open to the public.

October 2017 Study Session Comments

The Commission held a third study session on October 26, 2017 and was generally pleased with the overall design and details, including the programming and diversity of spaces, tree and plant palette, proposed sculptures, furniture, play structures, pollinator garden, and placement of the public rest room. A majority of the Commission requested that the “sport court” be redesigned as a full basketball court rather than a half court. Other requests from the Commission included an opening in the fence along the railroad tracks so that park users can see the trains passing by, more color variation in the concrete, a greater diversity of plant selection in some of the “districts”, and making the sidewalks along 46th Street as wide as possible. The Commission supported the placement of the applicant’s public art sculpture in the City park, which will require an agreement with the City for maintenance by the applicant, provided that the City Council agrees. (See further discussion of this issue below.) There were no public speakers at the October 26, 2017 study session.

FINAL DEVELOPMENT (FDP) PROPOSAL

The attached plans for the Park and Open Space FDP are dated October 10, 2017. The overall programming of the park and open spaces have not been changed from the April Study Session plan set. Sheets LP-005A and LP-005 of the attached plans shows the approved Preliminary Development Plan site plan with overall programming for the entire site. Sheets LP-008 to LP-011 provide enlarged plans for the four design districts:

District 1 (Warehouse District);
District 2 (Park Districts A, B and C);
District 3 (Rail District); and

District 4 (Boulevard District)

District 1 - Warehouse (Sheet LP-007) includes the pedestrian connection between Horton Street and the Greenway as well as the gallery plaza between Building B2 and Building A. The path will have a two-colored concrete treatment while the plaza area will include two-colored concrete unit pavers (See Sheet LP-013: Hardscape). Moveable tables and chairs are proposed in the plaza area and Sheet LP-025 provides manufacturer details on size and color.

District 2 – Park (A) (Sheet LP-008) includes a large multi-purpose lawn that could be used for group exercise, informal group sports, and special events. A sculpture is proposed at the north-west corner that serves as a “terminus” to the pedestrian path connecting Horton Street and the Greenway. Shaded seating is proposed along the perimeter of the lawn. A single use prefabricated restroom (“Portland Loo”) will be located to the southeast of the lawn outside the perimeter path adjacent to the Sherwin Avenue sidewalk. A community garden will include 4’x8’ raised garden beds. It is expected that the community garden will have a fence to secure the area. At this time, the type of fence has not been proposed. This sheet also provides the location of benches, tables and chairs, water fountains, and trash receptacles.

District 2 – Park (B) (Sheet LP-009) includes a children’s play area just east of the large lawn adjacent to Sherwin Avenue. This will accommodate interactive play structures with nearby shaded bench seats. Proposed play structures include a climbing net, slide and “paint can” play structure honoring the site’s former use. Manufacturer details of these structures are provided on Sheet LP-024).

District 2 – Park (C) (Sheet LP-010) includes an outdoor activity area proposed along the northern corner of the district between the Greenway and Building C with a half basketball court and a general activity area.

District 3 – Rail District (Sheet LP-011) incorporates the Greenway path with landscape buffer between the path and railroad as well as a dog park. The landscape buffer will include native plantings and a series of historical plaques and adult exercise stations along the length of the Greenway. Type of exercise equipment is shown on Sheet LP-023, and Sheet LP-024 provides details for plaques. A sculpture garden is also proposed in the area between Building C and Building D providing space for a permanent sculpture program. A dog park is proposed between Building D and the northern property line and proposes a variety of play structures for dogs that are shown on Sheet LP-024.

District 4 - Boulevard (Sheet LP-012) describes the landscape treatment along Hubbard Street Extension and the new 46th Street. These areas provide landscaping in the form of storm water treatment and some outdoor seating along sidewalks on Hubbard Street.

Landscape and Site Amenities. Sheet LP-013 provides a hardscape plan with Sheet LP-014 providing manufacturer details. Sheet LP-015 is the Landscape Plan (Trees) with Sheet LP-016 showing images of the proposed trees and the level of water usage. The shrub and ground cover plan on Sheet LP-017 divides the site into seven zones with

Sheets LP-018 to LP-021 providing the proposed combination of shrub and ground cover in each zone. The sheets also note the species that attract bees and butterflies. Site amenities are summarized on Sheet LP-022 with manufacturer details outlined on Sheets L-P023 to LP-025. A preliminary lighting concept is shown on Sheet LP-026; a photometric study will be submitted in the next plan set.

Proposed Sculpture in City Park. The applicant is proposing to partially satisfy the project's Art in Public Places requirement by providing sculptures at various locations in the park and open space areas. Most of the park and open space will be on private property, over which the City will have pedestrian, bicycle, and emergency access easements. The applicant will own and maintain all public art in these areas. However, the parcel in the southwest part of the site, on which a portion of the open lawn is to be located, is City property. The applicant is proposing to install one public art sculpture at a key visual terminus on this parcel (see item 7 on Sheet LP-008). This will require the City Council to approve an agreement for the applicant to own and maintain their sculpture on City property. Alternatively, the sculpture could be relocated to their private property and another feature installed at this key visual terminus.

Park Avenue District Plan

The Park Avenue District Plan has the following guidelines for street trees and street furniture:

- All new street tree plantings should be *Ginkgo biloba* trees.
- Benches, trash cans and other street furniture should be made of metal and could include artistic motifs.
- Lighting should be at pedestrian height and be composed of warm light, for example with a color rendering index of at least 90 and a temperature of 3,000 degrees Kelvin.
- The standard Emeryville light post should be used except on the Emeryville Greenway, where the light post designed for the northern sections of the Greenway should be used.

Park and Recreation Strategic Plan

The City's Parks and Recreation Strategic plan identifies a Recommended Park Program and Potential Program Elements for the Emeryville Greenway, including the portion through the Sherwin William site. The Recommended Park Program includes play for children; socializing, relaxing; picnicking/lunch; respite and solitude; games; recreation with dogs; exercise and fitness; viewing art; and walking, jogging, bicycling. The Potential Program Elements include education/learning and special events.

Public Art Master Plan

The City's recently-adopted Public Art Master Plan proposes a Greenway Walk project on the existing Emeryville Greenway and its extension south on the path next to the railroad, on Horton Street, and on Sherwin Avenue. Potential art components include

murals on the Sherwin-Williams site on buildings adjacent to the path; multimedia, artist-designed functional pieces such as bike racks and bollards; and crosswalk treatments. Please see attached pages from the Emeryville Public Art Master Plan.

Community Meeting Comments

The developer team has conducted two community meetings at ECCL, the first on December 30, 2016, and the second on April 6, 2017. Approximately 30 people attended the first community meeting, including Commissioner Barrera. The applicant, after a brief presentation, split the audience into four rotating groups and each group provided comments on possible programming for each of the four park open space areas. Approximately 12 people attended the second community meeting, including Council Member Martinez and Commissioner Barrera. There were some clarifying questions particularly regarding the location of the restroom and the area designated for the community garden. It was suggested that bike parking for the public should be included in the proposal and that it should be near the restroom. There was appreciation for the general aesthetic of the proposal.

Parks and Recreation Committee Comments

The Parks and Recreation Committee first reviewed the proposal on February 15, 2017. Some suggestions such as two play areas for children of different ages and a dog park catering to bigger dogs have been incorporated while some features such as a bocce ball court and tennis court have been eliminated as their feasibility was questioned.

The Committee reviewed the project for a second time at the July 19, 2017 meeting. The Committee generally appreciated the direction in which the plans were developing. They noted that more attention needed to be paid to the transition between the buildings and open spaces. It was suggested that seating and waste containers needed to be added to the small dog park area and that electrical outlets should be provided in the park area. Clarifications were sought for maintenance of various spaces including the proposed multi-media wall. The Committee recommended that flowering and fruiting trees that attracted pollinators and were bay-friendly should be used. They also recommended that the applicant consider adding “inclusive” features in addition to complying with ADA requirements for parks.

The Committee will review the project for a third time at its November 15, 2017 meeting. Their comments will be presented orally at the time of the City Council study session.

Bicycle And Pedestrian Advisory Committee Comments

The Bicycle and Pedestrian Advisory Committee reviewed the plans at their July 10, 2017 meeting. The Committee was satisfied with the proposed location of the bike share station on Horton Street. The Committee recommended that bicycle racks be provided near all building entrances. The project will be presented to the Committee for a final round of comments at its December 4, 2017 meeting.

Staff Comments

The project was most recently reviewed by the Development Coordinating Committee (DCC) on October 11, 2017. Staff noted that the applicant had responded to some of the earlier comments by proposing dog agility equipment and adult exercise equipment; multiple historical interpretative plaques; seating near the dog park and a revised location of the restroom.

At the October 11 meeting, it was suggested that more variety of shrubs be added in Zone G which currently includes only one shrub, Rosemary (Sheet LP-017 and LP-021). It was noted that the proposed species of trees and shrubs had been reviewed by the City Arborist whose report is attached to this staff report. Public Works staff noted that trash cans needed to be added along the Greenway and that inverted U type bicycle racks were the preferred bicycle racks. It was also suggested that a “bike fix-it” station be included on the site. There was also a discussion of including art features along the railroad fencing versus keeping the fence porous so that people and children could see trains passing by.

PARK FEE CREDIT

On July 15, 2014, the Emeryville City Council adopted Ordinance No. 14-008 adding Article 19 of Chapter 5 of Title 9 to the Emeryville Municipal Code, titled “Development Impact Fees”. This Article establishes the authority for the City to impose fees on development projects for the purpose of mitigating the impacts that the projects may have upon the City’s ability to provide public facilities. Also on July 15, 2014, the City Council adopted Resolution No. 14-104, establishing a Park and Recreation Facility Impact Fee. By this resolution, the City Council approved and adopted a “Park and Recreation Facilities Development Impact Fee Study” prepared by Willdan Financial Services (the “Willdan Park Impact Study”), dated April 24, 2014. The Willdan Park Impact Study specifically references, and is based upon, the City’s Parks and Recreation Strategic Plan (the “Strategic Plan”). The study assigned cost estimates to each of the planned and proposed park facilities set forth in the Strategic Plan, and then determined the cost per capita to provide those facilities. The City Council relied on those calculations when it approved the Impact Fee schedule that would be levied on each development. Both the Willdan Park Impact Study and the Strategic Plan include the expansion of the Emeryville Greenway as a priority project, including the portion running through the Sherwin Williams site, and it was clear that the proceeds collected could be used to fund these improvements.

Project’s Eligibility for a Park and Recreational Facility Impact Fee Credit

The Project incorporates significant improvements to park and recreation facilities contemplated in the City’s Strategic Plan with respect to the Emeryville Greenway. As part of the 2.08 acres of zoned open space on the Sherwin Williams property and the 1.45 acres of open space on the City property, the Project extends the Emeryville Greenway through the site from Horton Landing Park to Halleck Street. The proposed park includes City-owned land and part of the Sherwin Williams site, and will connect with the Emeryville

Greenway that will run through the Project. The applicant will design and construct improvements to both City-owned land and on the Sherwin Williams property.

By constructing facilities that form the basis of the Park and Recreation Facility Impact Fee with respect to the Emeryville Greenway, the Project directly effectuates the purposes of the fee, and is thus eligible for a fee credit.

Fee Credit Application

Planning Code Section 9-5.1911 specifies that "[a]n applicant may be eligible for a credit against impact fees otherwise owed, in return for providing a specified public facility to the City." The application must demonstrate compliance with six requirements to the satisfaction of the City Council as listed in Planning Code Section 9-5.1911 (a)-(f). These include (a) describing the public facilities to be provided; (b) identifying the cost of the public facilities; (c) describing the project to which the fee credit is requested to apply; (d) documenting that the applicant is required to construct the public facilities; (e) providing information about any proposed credit for land acquisition costs (none is proposed); and (f) demonstrating that no development bonus was received for providing the same public facilities for which a fee credit is requested (the applicant did not receive a bonus for providing the park and open space in the project). Staff believes that the applicant has demonstrated compliance. Please see the attached letter from the applicant.

One of the key issues to consider are the costs associated with the design and construction of the proposed "public facilities", i.e. the Greenway and the public park, versus the revenue to be generated by the park impact fee.

The total hard and soft costs associated with the improvements to the Emeryville Greenway is estimated by the applicant to be approximately \$3.5 million (please see below for cost break-down). The applicant is seeking a fee credit no greater than the amount that the Project would otherwise be assessed under the Impact Fee Ordinance, which is currently estimated to be \$2,225,860 according to the fiscal year 2017-2018 Development Impact Fee schedule (please see below for detailed estimate).

While it is not possible to develop a precise cost estimate for park construction at this time the Public Works Department has determined that the cost of the Greenway and the public park will exceed the money collected through Park and Recreational Facility Impact Fee.

It should be noted that the Willdan Park Impact Study includes a cost estimate of approximately \$25.8 million for the "Emeryville Greenway Expansions", based on the estimate in the Strategic Plan. This covers the entire north-south Greenway and includes land acquisition costs. There is no specific breakdown of the cost to develop the portion of the Greenway on the Sherwin Williams site.

Estimated Park Costs

Area	Size (acres)	Estimated Soft Costs	Estimated Hard Costs	Estimated Total Costs
City Park Parcel	1.45	\$75,000	\$1,579,050	\$1,654,050
Project Open Space Adjacent to Greenway	0.99	\$50,000	\$1,078,110	\$1,128,110
Project Open Space Adjacent to City Park Parcel	0.62	\$40,000	\$675,180	\$715,180
TOTAL	3.06	\$165,000	\$3,332,340	\$3,497,340

Estimated Park and Recreation Facility Impact Fee

Use	Units/Size	Park and Recreation Facility Impact Fee (FY 2017-18)	Total Fee Per Use
Rental Units	500 units	\$3,839/unit	\$1,919,500
Building 1-31 Office	74,000 s.f.	\$3.90/s.f.	\$288,600
Retail	8,000 s.f.	\$2.14/s.f.	\$17,120
Public Gallery	2,000 s.f.	\$0.32/s.f.	\$640
TOTAL FEE			\$2,225,860

It should be noted that the impact fees are not assessed until building permits are issued, and that the fees are increased each year by the Engineering News Record Construction Cost Index for San Francisco, which is typically an increase of about 3% to 4%. Since building permits are not expected to be issued for another year or two, the actual fees are likely to be slightly higher than the figures cited above. However, they will still be well below the actual cost of park and open space construction, which is also likely to increase by approximately the same percentage.

PARK IMPROVEMENT AGREEMENT

On May 25, 2017, the Planning Commission adopted Resolution CPC No. SUBDIV16-002 approving a major subdivision permit for Vesting Tentative Map 8357 (Vesting Tentative Map), subject to certain Conditions of Approval, for the project site. Condition of Approval III.A.3.h for the Vesting Tentative Map requires the developer to construct public park improvements over both a portion of Lennar's property and the adjacent City-owned parcel. To obtain approval of the first final map, Lennar and the City will need to enter into a Project Improvement Agreement to ensure construction of these improvements. Under Emeryville Municipal Code 9-6.603(a), the City Manager typically approves these agreements. However, the Park Improvement Agreement required for the construction of the park will not be a City standard Project Improvement Agreement because it will need to provide for Lennar's entry onto City Property to construct the park,

and install art (if Council directs). Staff anticipates presenting the Project Improvement Agreement for the Park to the Council at its January 16, 2018, meeting for approval.

NEXT STEPS

The Sherwin Williams Park and Open Space Final Development Plan is scheduled for a Planning Commission public hearing on December 14, 2017, and the park fee credit request and Project Improvement Agreement for the Park has been tentatively scheduled for a public hearing at the January 16, 2018, City Council meeting.

ISSUES TO BE CONSIDERED

Staff requests that the City Council give direction regarding the following issues:

- (1) Does the Council consent with the overall programming of the area and do you agree with the specific programming within the four districts? Are there any additional suggestions for programming? Does the Council wish to add or exclude any element?
- (2) Does the Council have any comments or preferences for the tree and plant palette?
- (3) Does the Council support the concept of a privately-owned sculpture in the City-owned portion of the public park, with an agreement for private maintenance of the sculpture?
- (4) Does the Council wish to comment on the Sherwin Williams Mixed Use project's eligibility for a park fee credit?
- (5) Any other comments?

RECOMMENDATION

After hearing a presentation from the applicant and receiving public testimony, staff requests that the City Council provide comment and direction on the issues noted above and any other issues identified by the Council.

PREPARED BY: Miroo Desai, Senior Planner

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



Carolyn Lehr, City Manager

ATTACHMENTS

1. City Arborist Report
2. Emeryville Public Art Master Plan, Pages 20-25
3. Lennar's Request Letter for a Park Fee Credit
4. Sherwin Williams Public Park and Open Space FDP Plans