



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** September 17, 2019

**TO:** Christine Daniel, City Manager

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

**SUBJECT:** **Ordinance Of The City Council Of The City Of Emeryville Adopting An Amendment To The Sherwin Williams Planned Unit Development/ Preliminary Development Plan (PUD/PDP) To Allow The Removal Of Street Trees On The West Side Of Horton Street (CEQA Determination: Environmental Impact Report for Sherwin Williams Project PUD Certified By City Council on September 6, 2016)**

## RECOMMENDATION

Staff recommends that the City Council adopt the attached Ordinance amending the Sherwin Williams Planned Unit Development/Preliminary Development Plan (PUD/PDP) to replace the Landscape Plan on Page 18 that calls for the retention of 11 existing street trees on the west side of Horton Street between Sherwin Avenue and new 46<sup>th</sup> Street, with a revised Landscape Plan that calls for removal of four trees in this location. This will accommodate the new 46<sup>th</sup> Street and joint trenching needed to underground overhead utilities on Horton Street between Park Avenue and new 46<sup>th</sup> Street.

## BACKGROUND

### ***Sherwin Williams Project History Related to Street Trees and Utility Undergrounding on Horton Street***

On November 1, 2016, the City Council unanimously approved the second reading of the ordinance for the Sherwin Williams Planned Unit Development (PUD), and the ordinance went into effect on December 1, 2016 (Ordinance No 16-006). 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 four new buildings that will accommodate 500 dwelling units and 2,000 to 8,000 square feet of ground floor commercial/retail space; a new street; and development of approximately three acres of public open space including a new City park.

During development of the PUD proposal in 2015-2016, several study sessions were held by the Planning Commission and City Council. One of the questions posed to the Commission and Council at these study sessions was whether the existing street trees along the Horton Street frontage of the project site should be retained, as proposed by the applicant, or removed and replaced, as recommended by the City Arborist (see

Attachment 3a, City Arborist Report, dated December 14, 2014). The Council's response to this question was that the trees should be retained, as proposed by the applicant. There is no condition of approval in the PUD requiring the preservation of these trees. However, the conditions reference the approved plans, including the Landscape Plan on page 18, which indicates that 11 existing trees along Horton Street are to be retained. (See Attachment 1.) Therefore, any proposal to now remove any of these trees requires an amendment to the PUD by replacing the Landscape Plan on page 18 of the approved plans with a new Landscape Plan that shows the trees to be removed.

The approved PUD also includes a list of community benefits that the applicant, Lennar, is required to provide in order to earn the development bonus points that are necessary for the project. These include retrofitting the existing building ("Building 1-31") for a pass-through between Horton Street and the new park; a public art gallery/community meeting room; a shuttle to the West Oakland BART station; and a prioritized list of nine public improvements, of which it is assumed that there should be sufficient funding for the first six. The second priority in this list of public improvements is the undergrounding of overhead utilities along Horton Street between Park Avenue and new 46<sup>th</sup> Street. These community benefits were negotiated by staff, the applicant, and the Park Avenue Residents' Committee (PARC) during the PUD approval process. (Please see Attachment 2 for a list and graphic showing Community Benefits for Development Bonus Points). In planning the undergrounding of the utility wires on Horton Street, as required by the conditions of approval, it was determined that it would be necessary to remove some or all of the existing street trees, as further discussed below. This required an amendment to the PUD/PDP.

Section 9-7.214(b) of the Planning Regulations stipulates that modifications to approved plans or conditions of approval that are not deemed minor require the approval of the original decision-makers, following the same procedure as required for the initial approval. In this case, an amendment to a PUD/PDP to allow removal of street trees along Horton Street requires the approval of the City Council upon a recommendation from the Planning Commission, with findings as prescribed in Section 9-7.1004(a).

On March 15, 2018, the Planning Commission held a public hearing on the proposed PUD/PDP amendment and then voted unanimously to recommend that the City Council approve the amendment to the Sherwin Williams PUD/PDP, and approved a Tree Removal Permit for 11 trees on the west side of Horton Street contingent upon City Council approval of the PUD/PDP amendment.

On April 17, 2018, the City Council held a public hearing on the first reading of the ordinance for the proposed PUD/PDP amendment. The Council continued the item to a future meeting to allow staff time to provide additional design-related information on the joint trenching and placement of utility vaults needed to achieve undergrounding of utilities on Horton Street with the goal of minimizing tree removal.

### ***Other Planning Entitlements and Construction Permits for the Sherwin Williams Project***

Subsequent to the City Council's approval of the PUD, Lennar has obtained approvals from the Planning Commission for two Final Development Plans (FDPs) for this project. The first FDP was approved on December 14, 2017 for Park and Open Space areas (FDP17-002) and the second one was approved for four new buildings on February 22, 2018 (FDP17-001). In addition, the Commission approved a Tentative Subdivision Map (SUBDIV17-001) on May 25, 2017. The first phase final map was approved by staff on April 19, 2018 and was recorded as Tract Map 8357 on May 15, 2018; and the second phase final map was approved by staff on July 2, 2019 and recorded as Tract Map 8455 on July 18, 2019.

Building permit applications for the four new buildings and grading permit applications for the open space and roadway improvements have been received and are being processed by the Building Division. Construction permits are expected to be issued soon, and construction is anticipated to begin in October.

It was originally anticipated that an FDP application for reuse of Building 1-31 for office use would be submitted in the summer of 2018, and that construction activity to modify this building, including the "pass-through" between Horton Street and the new park, would be completed prior to construction of the new buildings. However, negotiations between Lennar and the prospective purchaser of the building broke down and the FDP application has not yet been submitted. At this point, it is possible that Lennar may undertake the improvements to the existing building themselves before selling it. At any rate, the previous urgency to deal with the utility undergrounding along Horton Street has now subsided in light of the delays in developing the existing building.

## **DISCUSSION**

### ***Fundamentals of Utility Undergrounding***

Putting overhead utilities underground involves burying both the wires and all associated equipment such as transformers, relays, switches, etc. that is currently mounted overhead on utility poles. The wires are run through conduits placed in a long linear excavation called a "joint trench" because it jointly accommodates all overhead utilities such as electrical, telephone, cable television, internet, etc. (A joint trench may also accommodate natural gas lines, although this is not proposed on Horton Street.) The joint trench can either go under the roadway, if there is room between other existing utilities such as gas, water, sewer, and storm drains, or under the sidewalk if there is not room in the roadway. Transformers and other equipment are put into underground vaults, which can be quite large depending on the size of the equipment. These vaults are usually put under the sidewalk because there is typically not enough room for them in the roadway between existing utility lines, and because PG&E generally will not allow them to be put in the roadway.

The conduits, and the cables that run through them, are often large and not physically capable of making sharp turns. Therefore, when a change in direction is required, such as from a joint trench under the roadway to a large vault under the sidewalk, a gradual curve in alignment is required, commonly called a “sweep”. Routing these sweeps to avoid other utilities and tree roots can be challenging. (Smaller cables, such as telephone and internet service, can be run perpendicularly from the joint trench to the vault.)

Another complication is that the precise locations of existing utilities under the roadway and sidewalk are often unknown. These utilities were installed over many years by many different entities, including the City, PG&E, the East Bay Municipal Utility District, and others. Each entity typically keeps records of the locations of their own facilities, but not of those belonging to other entities. There is no single comprehensive database of the locations of all underground utilities. Therefore, one of the first steps in designing an undergrounding project is to locate, as precisely as possible, all existing underground utilities, which can be complicated and time consuming. Even with the best research, undergrounding projects often encounter underground utilities and other features that were not previously known. Also, PG&E approval of the final design is required, which may result in modifications. PG&E will not participate in the preliminary design phase of an undergrounding project, and will not begin design work without an engineering deposit from the Applicant, so PG&E has not been involved in the Horton Street undergrounding project to date.

### ***Arborist Reports***

Three arborist reports have been prepared for the trees along Horton Street in conjunction with the Sherwin Williams project. The first, dated December 29, 2014, was prepared prior to approval of the PUD to review the condition of the street trees bordering the site on Horton Street and Sherwin Avenue and to provide commentary and recommendations regarding the feasibility of retaining the trees. The second, dated March 5, 2018, was prepared prior to the City Council’s consideration of the PUD amendment on April 17, 2018, and provided values for trees located on both sides of Horton Street adjacent to the project site. The third report, dated November 15, 2018, was prepared following the Council’s consideration of the PUD amendment, and reviewed the trees on the west side of Horton Street, between Sherwin Avenue and the Rifkin parking lot, to provide an update on their condition. All three reports are attached for reference (see Attachments 3a, 3b, and 3c, respectively).

### ***Evolution of Undergrounding Plans for Horton Street***

The original proposal for undergrounding the utilities on Horton Street involved placing the joint trench under the sidewalk, because it was assumed that there were too many existing utilities under the roadway to allow the joint trench to be put there. These existing utilities include a 4” gas line, a 6” water line, a 10” water line, a 12” recycled water line, an 8” sanitary sewer line, and a 15” storm drain. Each of these lines has a required

separation distance from other utilities lines, which adds to the challenge of locating new utilities under the roadway. Consequently, two alternatives were proposed, one putting the joint trench and vaults under the sidewalk on the east side of the street, and one putting them under the sidewalk on the west side of the street.

The trenching work would have jeopardized and compromised the health of the existing trees, and it was likely that all or most of them would have needed to be replaced as part of the work. Because the sidewalk on the west side will be reconstructed as part of the Sherwin Williams PUD project, whereas a portion of the sidewalk along the east side is relatively new, Public Works staff recommended that the joint trench work for utility undergrounding occur on the west side, removing all the existing trees and replacing them with new trees in better soil conditions as part of the sidewalk reconstruction. This would have allowed the existing conditions on the east side to remain unchanged. Therefore, the proposal before the City Council at that time was to modify the PUD to allow the existing street trees on the west side of Horton Street to be removed.

At the April 17, 2018 public hearing, the City Council directed that staff work with the developer's engineering team to better determine where the existing utilities are located under the roadway and to develop a plan for undergrounding of Horton Street that minimizes tree removal. During the ensuing months, further research was conducted by Lennar and their engineers to more precisely locate the existing utilities under the roadway. (As noted above, Lennar's negotiations with the potential buyer of Building 1-31, which fronts on this block of Horton Street, had fallen through, which allowed additional time to explore options for undergrounding.) This research revealed that, contrary to prior assumptions, there is barely enough room in the roadway to squeeze in a joint trench between the 12" recycled water line and the 4" gas line.

As a result of this new information, the team developed two alternatives, both of which would locate the joint trench in the street: Alternative A locates the vaults under the east sidewalk and Alternative B locates the vaults under the west sidewalk. (See Attachment 4: Conceptual Horton Street Utility Undergrounding.)

Both alternatives would result in the removal of two trees on the west side of Horton Street at the north end of the project site, identified as #16 and #17 in the November 15, 2018 arborist report (Attachment 3c). These trees need to be removed because they are in the intersection of the new 46<sup>th</sup> Street, not because of the undergrounding. Both alternatives also identify tree #14 on the west side of Horton Street for removal because it is dead; however, this tree has already been removed by the City after these alternative drawings were prepared. It should be noted that none of these three trees was shown as an "existing tree" on the Landscape Plan included in the approved PUD/PDP, so it was already assumed that they would be removed. (Trees #3 and #5 were previously removed by the City; the November 15, 2018 arborist report notes that there is "no tree" in these locations.)

Alternative A would result in the removal of five additional trees on the east side of Horton Street, identified as #12, #13, #14, #15, and #29 in the March 5, 2018 arborist report Attachment 3b). That arborist report provides the following information about these five trees:

Tree Number	Botanical Name	Common Name	Diameter	Value
12	<i>Sophora japonica</i>	Japanese Pagoda	8.5"	\$1,554
13	<i>Sophora japonica</i>	Japanese Pagoda	6.5"	\$1,529
14	<i>Sophora japonica</i>	Japanese Pagoda	7"	\$1,852
15	<i>Sophora japonica</i>	Japanese Pagoda	11"	\$3,586
29	<i>Schinus terebinthifolius</i>	Brazilian Pepper	20.5"	\$11,977
Total Value				\$20,498

Alternative B would result in the removal of one additional tree on the west side of Horton Street, identified as #6 in the March 5, 2018 arborist report. This is an 8" diameter *Sophora japonica* (Japanese Pagoda) valued at \$2,018.

Alternative B has been selected as the option to pursue because it results in the least number of trees to be removed, and has no impact on the relatively new sidewalk on the east side of Horton Street.

The 11 existing trees to remain on the west side of Horton Street include those identified as #1, #2, #4, #7, #8, #9, #10, #11, #12, #13, and #15 in the November 15, 2018 arborist report. It should be noted that the conditions of approval for the Sherwin Williams Public Park and Open Space Final Development Plan (FDP17-002), approved by the Planning Commission on December 14, 2017, include the following condition concerning these trees:

**IV.A.1.d** [The Applicant shall be responsible for...] "Preparing and implementing a tree protection plan for all trees to remain within the Property, particularly street trees along Horton Street. The applicant shall post bond deposit in the amount equal to replacement value of all trees to be protected and shall be responsible for replacing any tree that dies during construction of the complete Sherwin Williams PUD/PDP project."

If any additional trees should need to be removed as a result of unforeseen circumstances or the PG&E approval process, as discussed above, this condition will address that situation. If drastic changes in the design result because of unforeseen circumstances or the PG&E approval process, such as a need to remove all or most of the existing trees on Horton Street, the item will be brought back to the Council for further consideration.

## **FINDINGS**

In adopting Ordinance No. 16-006 to approve the PUD/PDP, pursuant to Section 9-7.1004(a) of the Planning Regulations, the City Council had to make several findings. (See Attachment 5). Staff believes that the proposed amendment to allow the removal of street trees on the west side of Horton Street does not alter the findings originally made for approval of the PUD/PDP because the trees to be removed do not impact the overall design of the project and site. Findings that are specifically relevant to the proposed amendment to remove the existing street trees on Horton Street are included in the attached draft ordinance.

## **ENVIRONMENTAL REVIEW**

The City Council certified the Final Environmental Impact Report (EIR) for the Sherwin Williams Project PUD as adequate under the California Environmental Quality Act (CEQA) on September 6, 2016 (Resolution No. 16-122), and applied the EIR to the Sherwin Williams Project, made findings as required by CEQA, and adopted mitigation measures for the Project on October 18, 2016 (Resolution No. 16-147).

CEQA Section 21166 and its corresponding CEQA Guideline Section 15162 provide that once an EIR has been prepared, no subsequent or supplemental EIR shall be required by the lead agency unless: (1) substantial changes are proposed in the project which will require major revisions to the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (2) substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or (3) new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, shows any of the following:

- (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
- (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
- (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

- (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

CEQA Guideline Section 15164(e) provides that a brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 should be included in an addendum to an EIR, the lead agency's findings on the project, or elsewhere in the record.

Since certification of the EIR, there have been no substantial changes in the proposed Project, no substantial changes to the circumstances under which the project will be undertaken, and no new information of substantial importance, which would require preparation of a subsequent EIR under CEQA Section 21166 and corresponding State CEQA Guidelines Section 15162. The Project streetscape reflects an urban setting and will be enhanced with broad sidewalks, trees, flowering plants, street furniture, and lighting. The Project also proposes a new City park and other open areas thereby providing substantial open space amenities for all development in the vicinity. The removal of four street trees does not alter this, and in addition, the amendment to the PUD enhances the environmental quality of the site by providing new street trees and improved soil conditions for existing street trees along Horton Street.

## **FISCAL IMPACT**

None.

## **STAFF COMMUNICATION WITH THE PUBLIC**

A written notification of this public hearing item was sent to both owners and tenants of buildings within 300 feet of the project site. A notice was also published in the Oakland Tribune.

## **CONFLICT OF INTEREST**

Councilmember Bauters will need to recuse himself, as his residence is within 500 feet of the project site.

## **CONCLUSION**

Staff recommends approval of the amendment to the Sherwin Williams PUD/PDP to allow removal of existing street trees on the west side of Horton Street between Sherwin Avenue and new 46<sup>th</sup> Street.

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

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



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Christine Daniel, City Manager

**ATTACHMENTS**

1. Sherwin Williams Approved PUD Plans, Page 18: Landscape Plan
2. Sherwin Williams Project: Community Benefits for Development Bonus Points
3.
  - a. City Arborist Report dated December 29, 2014
  - b. City Arborist Report dated March 5, 2018
  - c. City Arborist Report dated November 15, 2018
4. Conceptual Horton Street Utility Undergrounding
5. Ordinance No. 16-006 (without Exhibits)
6. Proposed Ordinance, including Exhibit A, Conditions of Approval, and Exhibit B, Revised Page 18: Landscape Plan