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Mary Grace Houlihan, Director of Public Works

City of Emeryville
1333 Park Avenue
Emeryville, C A

June 10, 2021

Dear Mary Grace,

I am writing to follow up on the letter I sent to the City on 6/3/21 which alerted the City that we consider it “impossible” to comply with conditions of approval numbers “SW VTM 8357 III.A.3.b.i.k”, “FDP 17-002 IV.A.1.d”, and “FDP-17002 IV.D.1” for the Sherwin Williams development. You will recall these conditions of approval address the preservation of several street trees along the western side of Horton Street on the frontage of Lot 1 (i.e. office building frontage). Subsequent to my last letter, we have engaged in meetings with our construction personnel, engineers, PG&E inspectors and City Staff to make final preparations for the joint trench work around these trees, which is scheduled to start this coming Monday 6/14/21. As a result of these meetings and our previous investigations, we implore the City to issue an order for the urgent and immediate removal of these trees in order to address urgent worker and resident safety concerns, avoid further damage to public improvements, and to prevent substandard future improvements.

Nuisance Trees

We believe the City can rely on its Urban Forestry Ordinance for justification to remove these trees on an urgent basis. In Section 7-10.07(h) “Nuisance Trees; Abatement,” the ordinance defines a “nuisance tree” as follows:

(h) “Nuisance tree” shall mean any tree that poses a hazard to person or property. A tree may be deemed a nuisance if it or any part of it: (1) appears dead, dangerous, or likely to fall; (2) obstructs or damages a street or sidewalk; (3) harbors a serious disease or infestation threatening the health of other trees; (4) interferes with vehicular or pedestrian traffic; (5) obstructs official street cleaning activities; or (6) poses any other significant hazard or potential hazard, as determined by the Department.

Based on previous opinions by the City’s Arborist (see SBCA Tree Consulting reports dated 12/29/2014, 3/5/2018, and 11/15/2018), our Arborist (see Hortscience report dated 4/28/2021), and City Staff (see 9/17/2019 PUD Amendment Staff Report p5 par. 2) the trees in question clearly meet the “nuisance tree” definition in the code and were recommended for removal and replacement. They are in poor health and likely to fall (see UFO “Nuisance Tree” Definition Section 7-10.07(h)(1)), have caused extensive damage to sidewalks and streets and are expected to cause further such damage (see UFO “Nuisance Tree” Definition Section 7-10.07(h)(2)).

Urgency

We start construction of the joint trench around the trees on Horton Street on Monday 6/14/21 after years of preparation with our engineers, construction personnel, PG&E, and the City. This work is on the critical path for delivery of permanent power to our approved development by August of this year and we need to complete it timely in order to meet our schedule obligations to the City, the Sherwin office building owner, and our investors.

Damaging these trees beyond recovery is inevitable given the amount of work that must occur amongst their primary untrained surface roots.

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Obviously if we can remove the trees now, then we can start with a clean slate and install new trees with adequate structural soil to prevent this type of surface rooting and public infrastructure damage in the future. If the City chooses to wait even 2 weeks to discuss this with Council, then most of the excavation for the trenches and boxes will be well underway and the damage to the existing trees (expected not to live and thrive) will have been done.

If the City were to wait, discuss with Council, and then order us to remove the trees after the trenches and boxes have been installed and worst case after live power is connected, there could be severe repercussions.

When trees are finally removed, there is an extremely high risk that this operation will destabilize the sides of the installed joint trenches which are filled with sand per PG&E requirements, causing trench or pipe failures. It goes without saying that PG&E discourages any excavations (e.g. to replace trees) near or above live power lines and were this to be allowed it would be very dangerous for our workers. (see UFO "Nuisance Tree" Definition Section 7-10.07(h)(1)) Additionally, if trees are removed later, we will not have the ability to place as much structural soil for replacement trees as we could if we were to start with a "clean slate" now given the sequence of trench construction. Less structural soil for any future trees means that there is a greater chance of long-term damage to public infrastructure from tree roots. (see UFO "Nuisance Tree" Definition Section 7-10.07(h)(2) & (4))

Worker Safety:

The depth of the trenches and large utility vaults (up to 10' deep) will necessitate the use of heavy machinery for the safe and OSHA compliant excavation of these facilities. Workers cannot enter excavations of this depth without proper shoring walls/boxes and these cannot be installed by "hand digging" near primary root structures as specified in our tree protection measures imposed by the City. (see UFO "Nuisance Tree" Definition Section 7-10.07(h)(1))

Heavy machinery will need to be used to dig these trenches and, inevitably, primary root structures of the trees will be cut, destabilizing the trees. The destabilized trees will be subject to sudden and catastrophic failures and this creates an unsafe working environment for our contractors and for neighborhood residents that may pass the Horton frontage on foot, bike, or in a car. (see UFO "Nuisance Tree" Definition Section 7-10.07(h)(1), (2)&(4))

This is an extremely urgent matter and we respectfully request the City order the removal of these "nuisance" street trees (which are bonded) now so that the safety of our contractors and the public will not be put at further risk. Your prompt attention and response are greatly appreciated.

Respectfully submitted,

LMV II EMERYVILLE HOLDINGS, LP,
a Delaware limited partnership;

By: Lennar Multifamily BTC Venture II GP Subsidiary, LLC,
a Delaware limited liability company,
its General Partner;

By: Lennar Multifamily BTC Venture II Manager, LLC,
a Delaware limited liability company, its Manager;

By: Nathan Tuttle, Vice President

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