



M E M O R A N D U M

TO: Omar Benjamin, Executive Director
FROM: Joe Marsh, Port Permit Coordinator 
DATE: June 6, 2012
SUBJECT: **EXECUTIVE DIRECTOR'S PERMIT APPROVAL
for Work on Private Property**

The Port Permits Section has reviewed the subject Building Permit Application and conducted design review, and finds the proposal meets the applicable standards and restrictions. Detailed analysis and findings are set forth in the attachments.

It is recommended that the Executive Director consider and evaluate the East Bay Municipal Utilities District's Main Wastewater Treatment Plant (MWWTP) Land Use Master Plan Environmental Impact Report (EIR) and the First Addendum to the EIR, which were prepared in compliance with the California Environmental Quality Act (CEQA), approve the CEQA findings, the CEQA Statement of Overriding Considerations, conditions of approval, general plan conformity, and related findings described below, and adopt the Mitigation Monitoring and Reporting Program (MMRP) as it pertains to this project and approve the permit. Through acceptance of this permit, and the provisions therein, the Project Sponsors agree to build and operate the facility in compliance with the assumptions made in the EIR and to implement the mitigation measures identified in the MMRP. If you concur, please date and approve below.

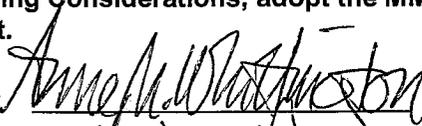
Port Permit No: 4935
Property Owner: East Bay Municipal Utilities District (EBMUD)
Permit Tenant: Recology
Project Location: 2020 Wake Ave., Oakland, CA
Parcel Number: 000-305-003-16
Estimated Value: \$6,000,000
Environ. Assessment: MWWTP Land Use Master Plan EIR, certified by EBMUD on June 28, 2011 (EIR) and Addendum, prepared by RMC for EBMUD and dated February 23, 2012 (2012 Addendum).

Summary Description:

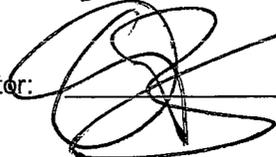
The applicant proposes to develop an Organic-Rich Materials Preprocessing Facility (Preprocessing Facility or Project) on EBMUD property as part of the EBMUD MWWTP Land Use Master Plan (Master Plan). The site is approximately 1.43 acres of the 63.9 acre parcel primarily used by EBMUD's Main Wastewater Treatment Facility. The applicant proposes to build a 59,000 s.f. main building with a 480 s.f. scale house and other site improvements. Further details are contained in the attachments as follows:

- Attachment 1- Project Description, Design Review, and Findings
- Attachment 2- Conditions of Approval
- Attachment 3- General Plan Conformity
- Attachment 4- EBMUD EIR (by reference)
- Attachment 5- EBMUD Findings, Statement of Overriding Considerations and MMRP
- Attachment 6- 2012 Addendum

RECOMMENDED: Consider the MWWTP Land Use Master Plan EIR and 2012 Addendum, approve CEQA findings and the Statement of Overriding Considerations, adopt the MMRP as it applies to this Project, and approve the building permit.

Environmental Programs and Planning Division:  Date: 6/6/2012

Director of Engineering:  Date: 6/6/2012

APPROVED:
Executive Director:  Date: 6/7/12

Project Description

The proposed Preprocessing Facility will be used as an on-site preprocessing operation to remove non-digestible materials from source separated food scraps in order to provide organic-rich feedstock directly to EBMUD's Front-End Processing Facility. The Front-End Processing Facility uses these feedstocks to generate electricity on-site. EBMUD currently gets these feedstocks from a number of different sources throughout the region. The Preprocessing Facility will replace these sources, and will be built and operated by Recology under a land-lease agreement with EBMUD. The facility is designed to process up to 600 tons of material per day. It is to be located approximately 200 feet southwest of the EBMUD Processing Facility.

The facility will have a main building of 59,200 s.f. on the 62,400 s.f. site. The rest of the site will be developed with a 480 s.f. scale house, a 5,000 gallon above ground fuel tank, and circulation. Most of the operations will be carried out inside the main building. Parking is provided at adjacent lots shared with EBMUD. The main building will be 185 ft. by 320 ft. with a total height of 43 ft. It is a metal building with three foot high concrete push walls around the perimeter and a concrete floor. The scale house is located just outside the west side of the building with an adjacent truck scale, and includes an office and rest room. Engineers Road on the south edge of the site is the primary access to and from the site.

Surrounding Area

The Project site is located on EBMUD's property at the Main Wastewater Treatment Facility in West Oakland. The site is at the west end of the property, just north of the intersection of Maritime Street and Grand Avenue. Engineers Road, on the south edge of the site, connects to Grand Avenue. Bordering the north edge of the site is the I-80 freeway Bay Bridge Toll Plaza approach. South of the site (south of Grand Avenue) are the Port's marine terminals (west of Maritime St.) and the Oakland Army Base (east of Maritime St.) Ports America Oakland Harbor (PAOH) operates the nearest marine terminal at Berths 20-25, more than 1000 feet away. The Army Base is being used in the short term by maritime-supporting activities while long range plans are being developed.

The EBMUD property is used primarily for wastewater treatment. The triangular site is dominated by large filtration tanks, with some support buildings, and is largely isolated from neighboring uses by multi-level freeway structures. I-80 from the toll plaza continues northeast, and connects to I-580 east forming the north border. The west I-80 connection to south I-880 forms the east border. The south border is formed by Grand Avenue and the elevated connection from the Bay Bridge to I-880 south. The west end of the property comes to a point just beyond the proposed Project site.

Land Use Analysis

The Preprocessing Facility continues the existing industrial use of the property, and expands on the existing waste processing activities. The Project enhances the existing green activity on the site of alternative electricity generation. The location adjacent to the Front-End Processing Facility will eliminate truck trips for transportation of the processed material. The site is near other industrial activities, and is isolated enough that it should not conflict with any future plans for the Oakland Army Base (OAB) or Maritime properties. The potential developer for the City of Oakland's portion of the OAB has been notified of the Master Plan and this Project, and will coordinate with EBMUD, the City of Oakland and the Port both informally and through the OAB environmental review process.

EBMUD Lead Agency CEQA Determination

EBMUD prepared a MWWTP Land Use Master Plan Draft EIR and Final EIR for the Preprocessing Facility Project and related projects (together, the Master Plan). The EIR, which encompasses the Draft and Final EIRs, assesses significant environmental impacts, mitigation measures, and alternatives. The Draft EIR concluded that, while many impacts associated with the Project were potentially significant, with implementation of the proposed mitigation measures only one remained significant: cumulative air quality community risks and hazards during operations.

The Port received EBMUD's Notice of Preparation (NOP) and submitted a comment letter on the NOP on December 21, 2009. EBMUD circulated the Draft EIR for public review on February 7, 2011. The public review and comment period closed on March 28, 2011. Two agencies and one organization submitted written comments. EBMUD responded in writing to comments and prepared the Final EIR in May 2011. On June 28, 2011, the EBMUD Board of Directors adopted Resolution No. 33834-11 to certify the final environmental impact report for the MWWTP Land Use Master Plan, make findings under CEQA, approve the mitigation monitoring and reporting program, and approve the Master Plan. The State Clearinghouse Number for the FEIR is SCH# 2009112073. No entity filed an action challenging EBMUD's certification of the EIR. EBMUD subsequently issued a February 23, 2012 Addendum¹ to the EIR to clarify the Port of Oakland's status as a responsible agency. See Attachments 4 (EIR), 5 (Findings and MMRP) and 6 (2012 Addendum).

The EBMUD Board of Directors determined that mitigation measures proposed in the Final EIR would lessen the impact of cumulative air quality community risks and hazards during operations, but that it was not feasible to completely mitigate adverse environmental impacts to a less-than-significant level. Therefore, the EBMUD Board of Directors adopted a Statement of Overriding Considerations as part of the findings.

Port Responsible Agency CEQA Determination

The Executive Director, on behalf of the Port as a responsible agency, is required to independently evaluate EBMUD's EIR, consider the environmental effects of the Project as shown in the EIR, and make findings for each significant environmental effect identified in the EIR². Port staff will file a CEQA Notice of Determination based on the Executive Director's determination.

The general findings are defined below. Detailed findings are described in the EIR and are incorporated here by reference.

CEQA Findings

As part of his approval of this Project, the Executive Director finds that:

1. The Port of Oakland is a responsible agency under CEQA with respect to the MWWTP Land Use Master Plan EIR (EIR);

¹ Prepared by RMC.

² Title 14, California Code of Regulations §15096 and §15091

2. He has independently evaluated the EIR certified by the EBMUD Board of Directors on June 28, 2011, along with EBMUD's Findings and Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Program (MMRP) that was adopted by the EBMUD Board of Directors on the same date, and the 2012 Addendum, all pursuant to CEQA Guidelines Section 15096(a);
3. He has considered the environmental effects of the proposed facility as described in the EIR, pursuant to CEQA Guidelines Section 15096(f);
4. The construction and operation of a Preprocessing Facility on EBMUD property is compatible with the land uses described in the EIR and certified by EBMUD;
5. Since EBMUD's certification of the EIR, no substantial changes have occurred and no new information exists that requires major revisions of the EIR due to new significant environmental effects or a substantial increase in the severity of previous identified significant effects, pursuant to CEQA Guidelines Section 15088.5;
6. Changes or alterations have been required in, or incorporated into, the proposed Project that avoid or substantially lessen a number of the significant environmental effects as identified in the EIR, pursuant to CEQA Guidelines Section 15091(a), and as identified in the MMRP.
7. Implementing the Project could result in one potentially significant and unavoidable adverse environmental impact (cumulative air quality impact associated with community risks and hazards during operation of the entire Master Plan project) that cannot be reduced to a less-than-significant level after carrying out associated mitigation measures.
8. The Port's authority over the Project is limited to granting a Port Development Permit for construction and operation of the proposed Preprocessing Facility component of the Master Plan, as described in this Permit Approval for Work on Private Property memo. EBMUD, rather than the Port, is the agency with authority to regulate land use on the entire Master Plan site. EBMUD adopted the feasible mitigation measures identified in the EIR to reduce the Master Plan's significant effects. Based on the EIR, EBMUD adopted an extensive Mitigation, Monitoring and Reporting Program for the Master Plan. Accordingly, there is no need for the Port to duplicate EBMUD's adoption of mitigation measures for the Project. The Port will take all reasonable steps to cooperate with EBMUD in EBMUD's implementation of the mitigation measures for the Project. The Port further finds that there are no other feasible mitigation measures within the Port's authority that have not already been adopted by EBMUD that would substantially lessen or avoid any significant effect of the Project.
9. The economic, legal, social, technological or other benefits of the proposed Project outweigh the unavoidable adverse environmental effect as identified in the EIR, pursuant to CEQA Guidelines Section 15093; and
10. There are no feasible alternatives or feasible mitigation measures within the power of the Port of Oakland that would substantially lessen or avoid the significant unavoidable environmental effect of the proposed Project, pursuant to CEQA Guidelines Section 15096(g)(2).

Statement of Overriding Considerations

For the Executive Director to approve the Project and CEQA determination on behalf of the Port, he must approve a statement of overriding considerations explaining why the benefits of the proposed Preprocessing Facility Project outweigh the significant unavoidable impact.

As described in the EIR and in the above CEQA Findings, the Executive Director has determined that implementing the Project could result in one potentially significant and unavoidable adverse environmental impact that cannot be reduced to a less-than-significant level after carrying out associated mitigation measures.

The only significant unavoidable impact identified for the Land Use Master Plan is the cumulative air quality impact associated with community risks and hazards during operation of the entire Master Plan. Mitigation Measure AIR-5³ (Diesel Participate Reduction Measures) is included in the Project and can reduce the combined excess cancer risk from emissions associated with the Land Use Master Plan, which includes the Project for which a Port Development Permit is requested, to below the Bay Area Air Quality Management District's (BAAQMD's) 10 in a million project-level risk threshold. However, this risk would contribute incrementally to the already impacted conditions in the Project vicinity; existing sources within 1,000 feet of the Master Plan site already exceed the BAAQMD cumulative significance threshold. EBMUD has existing programs to reduce on-site diesel particulate matter (DPM) emissions, and implementation of the biodiesel project would contribute to reductions of DPM emissions in the region. Nevertheless, because Project-related mitigation would reduce, but would not completely eliminate, the Project's toxic air contaminant emissions, this impact is considered to be cumulatively significant and unavoidable.

The benefits of the Master Plan are described in the June 28, 2011 EBMUD resolution adopting the Master Plan. Benefits pertaining to the Pre-Processing Facility Project under consideration by the Executive Director include the following:

- Flexibility to construct advanced treatment facilities to meet future regulations;
- Maintenance of reasonable wastewater user rates through revenue generation at the MWWTP;
- Potential for creation of local jobs;
- Increased solid waste diversion; and
- Production of renewable energy, including biodiesel, which may be used in heavy-duty trucks that access the Port of Oakland.

The Executive Director hereby finds, in accordance with Section 15093 of the CEQA Guidelines, that these economic, legal, social, technological, and service-related benefits of the Project outweigh the potentially significant and unavoidable adverse environmental impacts. These benefits constitute overriding considerations, and the potentially significant and unavoidable adverse environmental impacts of the Project are rendered acceptable in light of these overriding considerations.

Although the Executive Director finds and determines that, with the exception of the one potentially significant and unavoidable adverse environmental effect (i.e., cumulative air quality impact associated with community risks and hazards during operation of the entire Master Plan project), all other potentially significant effects of the proposed Project analyzed in the EIR will be mitigated to less-than-significant levels by the imposition of the various mitigation measures.

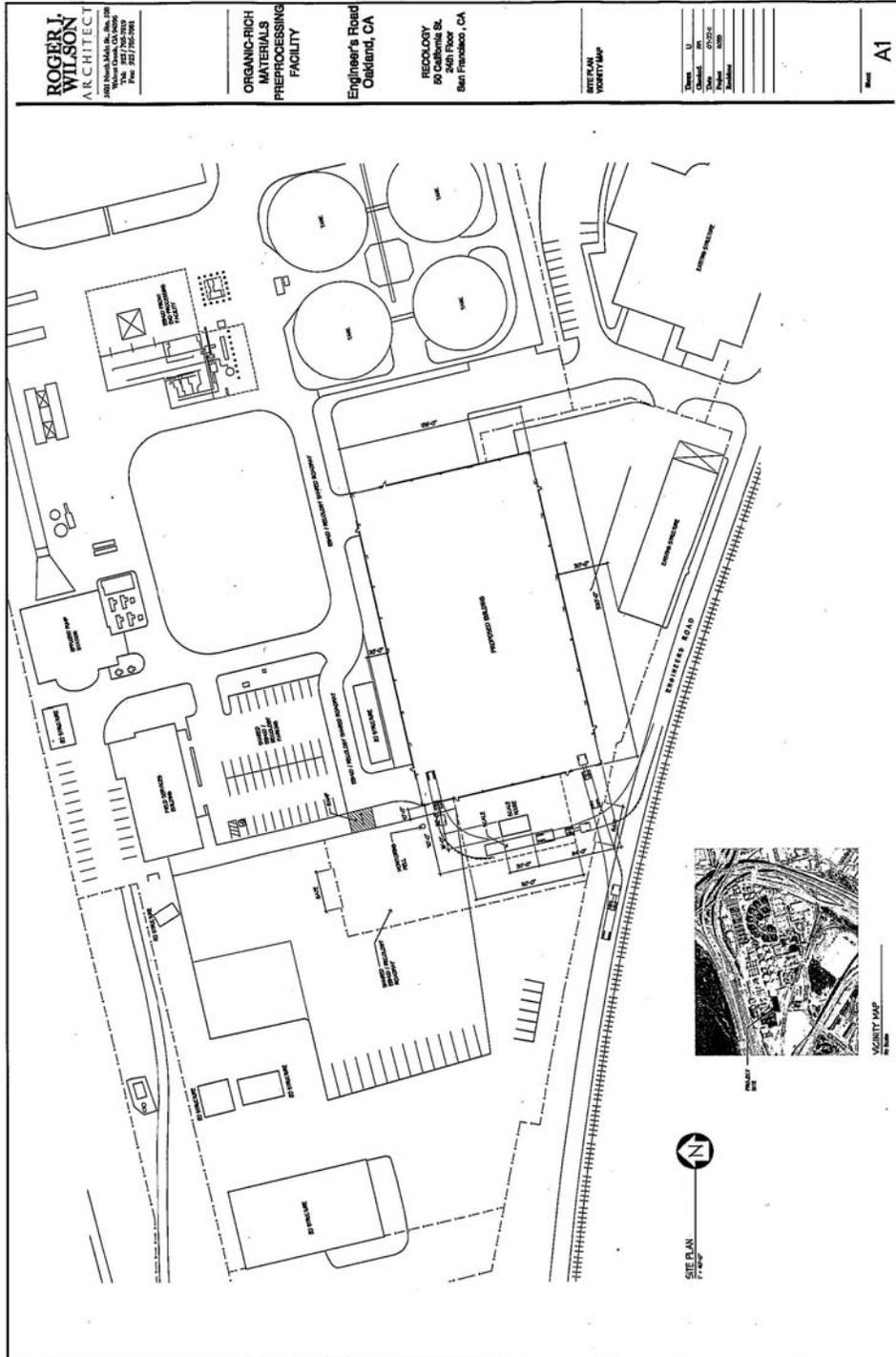
³ Mitigation Measure AIR-5: Diesel Participate Reduction Measures. Diesel-powered on-site rolling stock (2 loaders, excavator, and 2 end dump trucks) associated with the food waste preprocessing facility and any other diesel equipment or trucks operating solely within the MWWTP and West End property under the control of EBMUD shall install a CARB-verified Level 3 Diesel Particulate Filter to reduce PM_{2.5} emissions to achieve a minimum reduction of 50 percent (sufficient to reduce combined emissions to below the BAAQMD CEQA excess cancer risk threshold of 10 in a million). Alternative options for achieving this reduction can also be implemented, including the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, and/or other options as such become available.

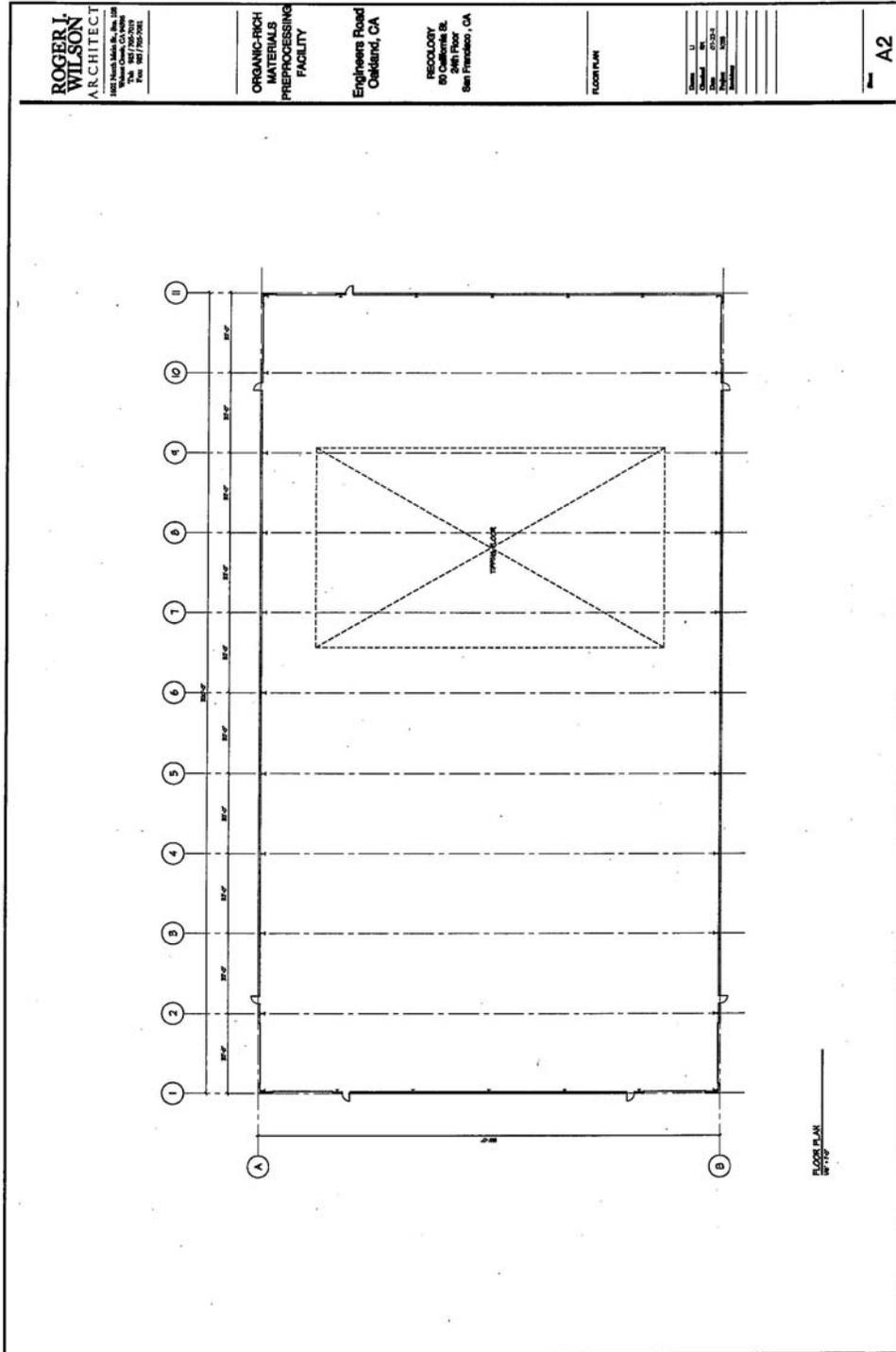
The Executive Director also finds that to the extent that any such impacts set forth in Section 4.2 of EBMUD's Findings document (Attachment 5) have any residual unavoidable impacts, such impacts are acceptable in light of the benefits provided by the Project.

Mitigation Monitoring and Reporting Program

See Attachment 5 for the Mitigation Monitoring and Reporting Program (MMRP) adopted by EBMUD's Board of Directors on June 28, 2011. Implementation of the MMRP is a requirement of the Port Development Permit.

The Port adopts and incorporates by reference EBMUD's Findings and Statement of Overriding Considerations and MMRP (Attachment 5). Any alterations or improvements to the site will be subject to a separate Port Development Permit and CEQA determination.





Permit Conditions of Approval:

The Project's Port Development Permit will be valid for 365 days from the date of approval. Commencement of construction or grading must occur within that period and continue with a valid City of Oakland building permit until completion. If the work is discontinued at any time after the 365-day term of the permit for more than 365 days, a new Port of Oakland Development Permit will be required for any additional work.

1. The Project Applicant shall be responsible for obtaining all other development-related permits required from other agencies, and is to be solely responsible for any conditions of such permits unless otherwise specified and agreed to by the Port.
2. The Project Applicant shall comply with all of the mitigation measures identified in the Mitigation Monitoring and Reporting Program (MMRP) included in EBMUD's EIR for the Project, and incorporated herein as a condition of approval of the Development Permit.
3. Final construction details, including landscaping plans, paving details, and building material samples, shall be submitted to the Port Permit Coordinator for review and approval prior to release of drawings for a City of Oakland application for a building permit for the Project, or any portion of the Project. Such review will insure consistency with this approval.
4. The Project Applicant shall obtain, at the Project Applicant's expense, all City of Oakland building permits required for the Project.
5. The Project Applicant shall maintain the Project site in a clean and orderly condition during the entire term of the Development Permit. If there is a work stoppage at any time after construction has commenced for a period of more than 30 days, the Project Applicant shall secure any completed or uncompleted work and remove or screen any stored materials. The Chief Engineer of the Port may provide a 30-day notice and order to the Project Applicant to comply with this condition. If the Project Applicant fails to comply during that time period, or fails to present and implement an acceptable plan for compliance, the Port maintains the right at Port's discretion, to complete the necessary work and bill the Project Applicant for all related costs, or impose reasonable fines for violation of this condition of approval and/or the Port Chief Engineer's order. Any such fine shall be reasonably related to the nature of the violation and/or the cost of correcting it.
6. To the maximum extent permitted by law, the Project Applicant shall defend, hold harmless, and indemnify the Port and its respective officers, agents and employees (whether the action is on behalf of the Port, or otherwise) (the "Indemnified Parties") against any and all liability, damages, claims, demands, judgments or other losses (including, without limitation, attorneys fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from or caused by any action or approval associated with the Project. This indemnity includes, without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set-aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the Project, and granting any permit issued in

accordance with the Project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs as used herein shall include, without limitation, any attorneys' fees, expert witness and consultant fees, court costs and other litigation fees, Port Attorney time and overhead costs, and other Port Staff overhead costs and normal day-to-day business expenses incurred by the Port ("Litigation Expenses"). The Indemnified Parties shall have the right to select counsel to represent the Indemnified Parties, at the Project Applicant's expense, in the defense of any action specified in this condition of approval. The Indemnified Parties shall take all reasonable steps to promptly notify the Project Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

7. Any work to modify the streets, including driveway cuts and/or modifications will be subject to further review by the City of Oakland.
8. The final lighting plan is subject to approval by the Port, and must be in compliance with the Port's adopted Dark Skies policy as well as mitigation measures identified in the MMRP.
9. These conditions of approval shall be printed on the first page of the Project plans submitted for grading and building permits to the City of Oakland. A copy of the final building permit plans shall be submitted to the Port Permit Coordinator for review for consistency with the Port Development Permit for the Project.
10. In addition to the conditions set forth above, the Project shall conform to all assertions made by the applicant in its descriptions and justifications for the Project, including operational representations in the CEQA documents.

Project and Property Description: [See Attachment 1]

General Plan Land Use Designation:

The Project site is designated as General Industry and Transportation by the Oakland General Plan and is located within the Port of Oakland land use jurisdiction. Per Table 2 of the “Guidelines for Determining Project Conformity with the General Plan,” (Guidelines) compliance for activities in this area is determined by the underlying zoning designation.

The Floor to Area Ratio (FAR) for the proposed Project is 0.95. The maximum allowable FAR for this classification is 2.0.

The General Plan requires that project activities in the General Industry areas comply with the underlying zoning designation, which for this site is IG. The proposal complies with this requirement.

Applicable General Plan Policies:

The following General Plan policies further support the Port’s conformity determination.

Objective I/C 1: Expand and retain Oakland’s job base and economic strength.

Objective I/C 2: Maximize the usefulness of existing abandoned or underutilized industrial buildings and land.

Objective I/C4: Minimize land use compatibility conflicts in commercial and industrial areas through achieving a balance between economic development values and community values.

Objective T1.5: Reduce truck traffic impacts on residential neighborhoods.

General Plan Conformity Analysis and Determination:

The Port finds that the proposed Project conforms to the General Plan per the Guidelines, including compliance with the use standards of the IG zone. It also meets each of the objectives listed above.

The original environmental documents are included in the original submittal for Executive Director Approval. A summary of the findings is in Attachment 1. A copy of the documents will be kept in the permit file; see the Port Permit Coordinator for a copy.

The original environmental documents are also available on-line:

- EBMUD Environmental Impact Report Main Wastewater Treatment Plant Land Use Master Plan (SCH# 2009112073) Draft EIR:
http://www.ebmud.com/sites/default/files/pdfs/MWWTP_Land_Use_Master_Plan_DEIR.pdf
- EBMUD Final EIR: www.ebmud.com/sites/default/files/pdfs/EBMUD-MWWTP-Land-Use-Maste-Plan-FEIR.pdf