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**Commercial Real Estate Committee**  
**Wednesday, January 10, 2007**  
**12:00 Noon – Board Room**

**ROLL CALL**

Commissioner John **Protopappas**, Chair  
Commissioner Patricia **Scates**  
Commissioner Kenneth **Katzoff**

**REVIEW OF JANUARY 16, 2007 BOARD CALENDAR ITEMS:**

1. Revision of the Business Park Ordinance to Provide a Procedure for Amendment Requests by the Public.
2. Approval to the Assignment of Lease from Oakland Hospitality, LLC to Shamrock-Hostmark Hotel Fund, L. P. and Authorization to Execute Related Lease Assignment Documents for the property located at 1103 Embarcadero.

**OPEN FORUM:**

Public comment on non-agenda items may be received by the Committee during this time. Please fill out a speaker card and present it to the Secretary of the Committee.

**ITEMS REQUIRING CLOSED SESSION: (90 minutes)**

1. **Conference With Legal Counsel – Anticipated Litigation**, Significant exposure to Litigation pursuant to subdivision (b) of California Government Code Section 54956.9: (2) matters.

**2. Conference With Real Property Negotiator.** Government Code Section 54956.8.

Property: Various Parcels in Jack London Square, Oakland  
Negotiating Parties: Port of Oakland and Ellis Partners  
Under Negotiation: Price and Terms of Payment

Property: Oak to Ninth Area, Oakland  
Negotiating Parties: Port of Oakland and Oakland Harbor Partners, LLC  
Under Negotiation: Price and Terms of Payment

Property: Oakland Marinas LP Jack London Square Marina  
(West Basin) Expansion Project, Oakland  
Negotiating Parties: Port of Oakland and Oakland Marinas LP  
Under Negotiation: Price and Terms of Payment

**ADJOURNMENT**

The next regular meeting of the Commercial Real Estate Committee will be held on Wednesday, February 7, 2007 at noon in the Board Room.

**Public Participation**

This meeting is wheelchair accessible. To request materials in alternative formats, or to request an ASL interpreter, or assistive listening device, please call the Board Secretary, John Betterton, at 510-627-1696 or TDD 510-763-5703 at least three working days before the meeting. Please refrain from wearing scented products to this meeting so attendees who experience chemical sensitivities may attend.

You may speak on any item appearing on the Agenda. Please fill out a Speaker's Card and give it to the Board Secretary before the start of the meeting. All speakers will be allotted a minimum of two minutes.

Should you have questions or concerns regarding this agenda, or wish to review any agenda-related materials, please contact the Board Secretary, John Betterton, at 510-627-1696 or visit our webpage at [www.portoakland.com](http://www.portoakland.com).

To receive Port Agendas and Agenda Related Materials by email, please email your request to [board@portoakland.com](mailto:board@portoakland.com).

# ITEM 1

## **AGENDA REPORT**

**TITLE:** Revision of the Business Park Ordinance to Provide a Procedure for Amendment Requests by the Public

**AMOUNT:** No Amount Involved

**PARTIES INVOLVED:**

<b>Corporate Name/Principal</b>	<b>Location</b>

**TYPE OF ACTION:** Ordinance

**SUBMITTED BY:** Jerry Serventi, Director of Engineering

**COMMITTEE ASSIGNED:** Commercial Real Estate

**SCHEDULED FOR COMMITTEE:** January 3, 2006

**APPROVED BY:** Jerry Bridges, Executive Director

### **FACTUAL BACKGROUND**

The Port of Oakland exercises its land use authority in the Oakland Airport Business Park through standards and restrictions in Port Ordinance No. 2832 (the "Ordinance.")

The Ordinance permits an applicant to construct a structure or engage in some action not otherwise permitted under the Ordinance through a variance application and procedure. However, variances are not granted to authorize a use or activity which is not otherwise authorized by the Ordinance. Rather, variances sanction deviations from the Ordinance standards and restrictions related to physical standards such as lot sizes, floor area ratios, set-backs and off-street parking requirements.

Section 3 of the Ordinance establishes a procedure for revision of the Ordinance, including amending the permissible uses or activities in the Business Park. However, Section 3 only applies to Port-initiated revisions, and does not allow for private party initiation of amendments. The proposed ordinance would set forth a process by which a private party may petition the Port to amend the Ordinance to permit certain uses not currently permitted under the Ordinance or to make other changes to the Ordinance. The proposed ordinance would also adopt application and fee requirements for initiating the study and consideration of the petition.

**ANALYSIS**

Two separate property owners have recently expressed an interest in uses for their properties in the Airport Business Park that are not currently allowed by the Ordinance. The changes of interest to the property owners would require significant analysis before staff could make a recommendation. Under the current procedure, the Port has the discretion to consider a proposed change or not, and is responsible for the cost of necessary analysis. Taking on even one such case would set a precedent for anyone wishing to request a change in use for their property. The expense for such analysis should be the responsibility of the applicant.

The proposed Ordinance revision establishes the application process, required study and fees chargeable to the applicant requesting an Ordinance change. It also clarifies the steps and analysis necessary for Port sponsored revisions. State regulations pertaining to such actions have changed since this Ordinance section was written nearly 20 years ago, and the proposed revision makes this section in compliance with current law.

**BUDGET & FINANCIAL IMPACT**

It is anticipated that the additional staff cost to process applications made under the revised procedure would be offset by fees paid by the applicant. An application under this procedure will be considered a development permit under the Engineering Fee Schedule adopted by the Board under Port Ordinance No. 3859.

The applicable fees in Ordinance No. 3859 chargeable to an applicant include (depending on the level of environmental review):

**Development Permits**

**Base Fee (Application and Approval)**

Application and Record Keeping	\$ 200
Board Decision, Cat. Ex.	\$ 300
Board Decision, Non-Cat Ex.	\$1,000

**Additional Fees (added to the Base Fee)**

General Plan Conformity Report	\$ 500
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**CEQA Environmental Review or (NEPA Equivalent)**

Categorical Exemption ("Cat.Ex.")	\$ 100
Cat.Ex. California Fish and Game	\$ 25
Negative Declaration Project (value <100,000)	\$1,500 (+10% of consultant costs)

Negative Declaration Project (value > 100,000)	\$1,500 + 1% of Project Cost (+ 10% of consultant costs)
Negative Declaration California Fish & Game . .	\$1275
Environmental Impact Report (value <100,000)	\$1,500 (+10% of consultant costs)
Environment Impact Report (value >100,000)	\$1,500 + 1% of Project Cost (+ 10% of consultant costs)

Other fees may be chargeable to an applicant if the application is submitting concurrent applications for subdivisions, building permits or variances.

The fees chargeable to the applicant are calculated and set to cover administrative costs to the Port for processing, studying and considering the applications. Therefore, the proposed amendment should not result in net additional costs to the Port, subject to the analysis under "Staffing Impact."

**STAFFING IMPACT**

An application under the revised procedure would require staff time to analyze and process for approval. The procedure calls for analysis of the proposal to be paid by the applicant, similar to the procedures and CEQA analysis required for development permits. Port analysis of consultant reports and approval processing will be carried out by current staff with no additional staff necessary. However, at current staffing levels (one permit coordinator) the added workload cannot be accommodated without impact on the current workload. The impacts will be analyzed when they begin to occur, and adjustments will be made at that time.

**SUSTAINABILITY**

The Sustainability Policy does not apply.

**ENVIRONMENTAL**

Under the "general rule" exemption (Guidelines to CEQA), an activity is not subject to CEQA where it can be seen with certainty that there is no possibility that the activity might have a significant effect. The proposed amendment to the Ordinance only changes the procedure for amending the Ordinance. The procedure establishes a level of analysis that would include CEQA review of specific proposed changes. Since the revised Ordinance does not allow any specific development that is not already allowed, there is no possibility that a significant effect on the environment can occur by the adoption of the recommended amendments to the Ordinance.

Additionally, the Guidelines for California Environmental Quality Act, section 15321 provides that actions taken by regulatory agencies for the enforcement of law is categorically exempt from CEQA because such class of actions has been determined not to have a significant effect on the environment. The Port acts as a regulatory agency in the

enforcement of land use regulation in the Port area and health and safety standards in its operations, including the Oakland Airport Business Park. The recommended amendment to the Ordinance is taken to facilitate the enforcement of land use regulation in the Business Park by establishing a procedure for analyzing requests that could not previously be processed. Therefore, this action is categorically exempt from CEQA.

**MARITIME AND AVIATION PROJECT LABOR AGREEMENT (MAPLA)**

The matters addressed under this action are not within the scope of the Port of Oakland Maritime and Project Labor Agreement (MAPLA) and the provisions of the MAPLA do not apply to this action.

**OWNER CONTROLLED INSURANCE PROGRAM (OCIP)**

This Ordinance will not require insurance under the Port's Owner Controlled Insurance Program (OCIP).

**GENERAL PLAN**

This action does not meet the definition of "project" under the City of Oakland General Plan, and no conformity determination is required.

**LIVING WAGE**

The matters addressed under this action are not within the scope of the Port of Oakland Living Wage Ordinance, and the provisions of the Living Wage Ordinance do not apply to this action.

**OPTIONS**

- 1) The Board could approve the proposed ordinance amendments and make findings necessary to permit the charging of fees as set forth..
- 2) The Board could request further revisions to the proposed amendments and fees.
- 3) The Board could take no action and leave the Ordinance as is. Property owners and tenants in the Business Park would have to convince the Port to take on a revision at Port expense or meet the current standard.

**RECOMMENDATION**

It is recommended that the Board approve the proposed amendment to the Oakland Airport Business Park Standards and Restrictions Ordinance No. 2832, as set forth herein and make necessary findings and authorize the charging of fees set forth in Ordinance No. 3859.

# ITEM 2

## **AGENDA REPORT - DRAFT**

<b>TITLE:</b>	Approval to the Assignment of Lease from Oakland Hospitality, LLC to Shamrock-Hostmark Hotel Fund, L.P. and Authorization to Execute Related Lease Assignment Documents for the property located at 1103 Embarcadero						
<b>AMOUNT:</b>	None						
<b>PARTIES INVOLVED:</b>	<table border="1"><thead><tr><th><b>Corporate Name/Principal</b></th><th><b>Location</b></th></tr></thead><tbody><tr><td>Shamrock-Hostmark Hotel Fund, L.P.</td><td>Burbank, CA</td></tr><tr><td> </td><td> </td></tr></tbody></table>	<b>Corporate Name/Principal</b>	<b>Location</b>	Shamrock-Hostmark Hotel Fund, L.P.	Burbank, CA		
<b>Corporate Name/Principal</b>	<b>Location</b>						
Shamrock-Hostmark Hotel Fund, L.P.	Burbank, CA						
<b>TYPE OF ACTION:</b>	Resolution						
<b>SUBMITTED BY:</b>	Joyce Washington						
<b>COMMITTEE ASSIGNED:</b>	Commercial Real Estate						
<b>SCHEDULED FOR COMMITTEE:</b>	January 10, 2007						
<b>APPROVED BY:</b>	Jerry Bridges, Executive Director						

### **FACTUAL BACKGROUND**

In 1996 the Port of Oakland entered into a 50-year ground lease with JBN Lodging LLC for the property at 1103 Embarcadero. The property consists of 118 guest room suites operated as the "Homewood Suites - Hilton", plus non-exclusive use of an adjacent parking lot. In 1999 JBN Lodging assigned their leasehold interest to Oakland Hospitality, LLC, who continues to operate the Homewood Suites, with an average room rate of \$115.00 and an average occupancy rate of 78%.

The tenant currently pays \$10,400 per month in Minimum Rent, against 5% of gross sales. The next Rent Adjustment Date is February 1, 2007. In 2004 and 2005, the Port received percentage rent of \$87,093 and \$125,190 respectively, in addition to the annual minimum rent of \$124,800.

Recently, Oakland Hospitality notified the Port of their intent to sell the hotel and assign their leasehold interest to Shamrock-Hostmark Hotel Fund L.P., and has requested the Port's approval of an assignment of their lease. In consideration of the Port's approval, the tenant has paid a non-refundable administrative fee of \$651.72, the maximum allowed under the lease.

**ANALYSIS**

Shamrock-Hostmark Hotel Fund, L.P. is a Delaware limited partnership formed in 2005 for the purpose of making investments in hotels and hospitality properties in the U.S. The Fund currently owns: a 151 room "Spring Hill Suites" hotel in Miami, Fl; a 241 room "Double Tree Hotel" in Princeton, NJ; and a 226 room "Crowne Plaza Hotel" in San Antonio, TX. In addition to the Homewood Suites in Oakland, the Fund is currently in the process of purchasing two additional hospitality properties.

The general partner of the Shamrock-Hostmark Hotel Fund L.P. is Shamrock-Hostmark LLC, which is comprised of two main entities:

- 1) Shamrock Holdings of California, Inc. - founded in 1978 as the Roy E. Disney family private investment company, Shamrock Holdings has invested more than \$2 billion in real estate and private equity transactions on behalf of the Disney family as well as major institutional investors. In addition to their financial resources, Shamrock brings extensive experience in commercial real estate development, investing in media, entertainment and communication industries, as well as domestic hospitality properties.
- 2) Hostmark Investors, LP - Hostmark Hospitality is one of the largest independent third-party hospitality management companies. Founded in 1965 and currently operating more than 40 hotels and resorts worldwide, Hostmark represents numerous independent hotel and resort properties, as well as major franchises such as the Hilton and Marriott.

Independently and together, Shamrock and Hostmark each have extensive backgrounds in the acquisition, development, and management of hospitality properties. They also have the expertise and capital to finance, renovate, reposition and rebrand hospitality properties.

The buyers will continue to operate the Homewood Suites as an extended stay hotel and maintain the Hilton franchise. As such, Shamrock-Hostmark Hotel Fund L.P. will be required to bring the hotel to current Hilton brand standards by investing an estimated \$5,000 - \$10,000 per room in improvements including new beds, new TV's, renovation of bathroom finishes and common area upgrades.

**BUDGET & FINANCIAL IMPACT**

The proposed assignment will have no budgetary or financial impact on Commercial Real Estate and the Port.

**STAFFING IMPACT**

The proposed assignment will not have an impact on Port staffing.

**SUSTAINABILITY**

The Port's Sustainability Policy does not apply to the proposed action.

**ENVIRONMENTAL**

The California Environmental Quality Act (CEQA) Guidelines, Section 15061 (b)(3) ("the general rule") states that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment, the activity is not subject to CEQA. Approving an Assignment of the lease to another party will not have an impact on the environment and is therefore not considered subject to CEQA.

**MARITIME AND AVIATION PROJECT LABOR AGREEMENT (MAPLA)**

The matters contained in this Agenda Report do not fall within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of the MAPLA do not apply.

**OWNER CONTROLLED INSURANCE PROGRAM (OCIP)**

This lease is not insured by the Port's Owner Controlled Insurance Program.

**GENERAL PLAN**

This action does not meet the definition of "project" under the City of Oakland General Plan, and no conformity determination is required.

**LIVING WAGE**

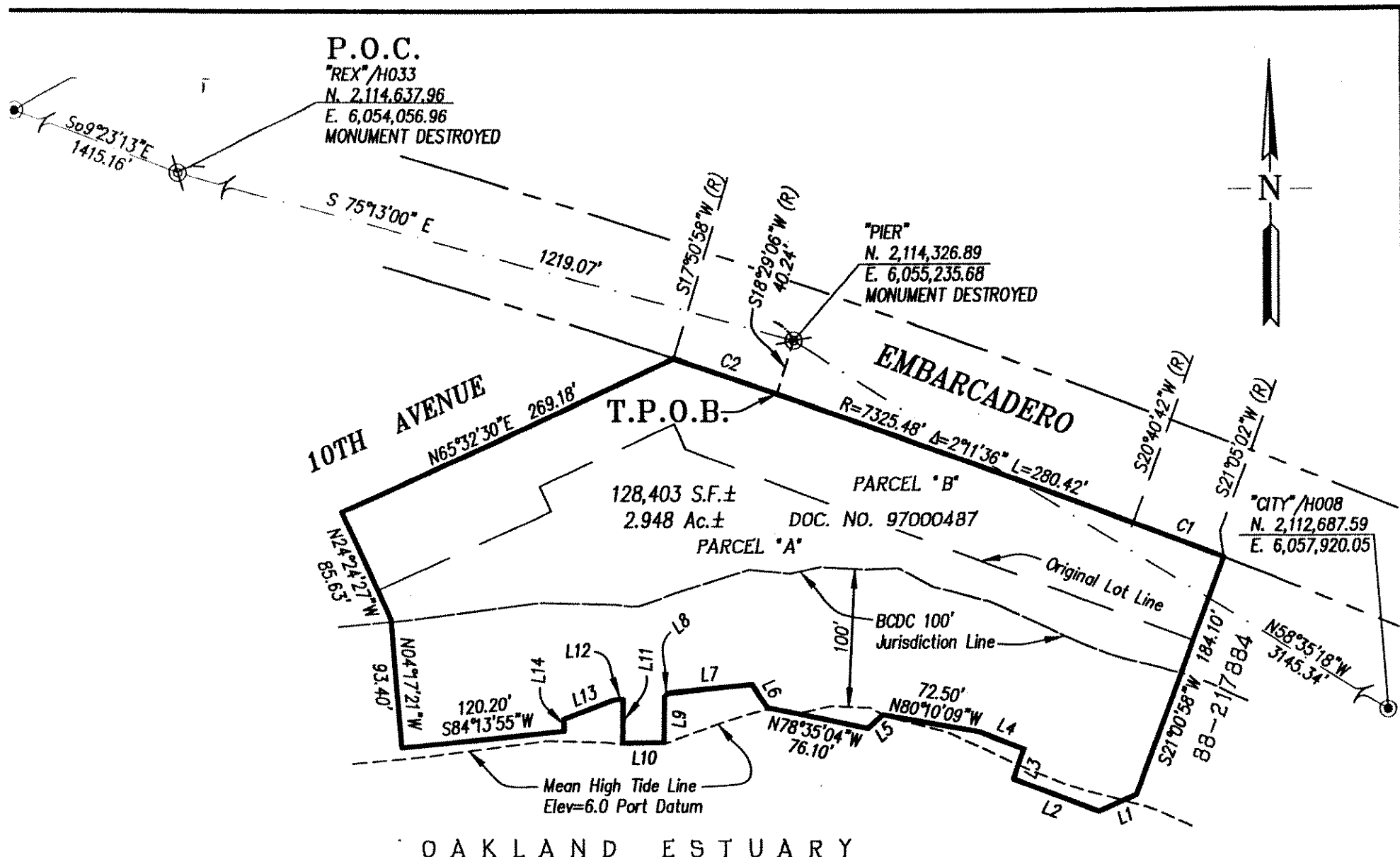
Based upon a review of the terms of the agreement and information provided by the tenant, it appears that the Port Living Wage requirements do not apply because the tenant is not a Port Aviation or Maritime business, thus not subject to Section 728 of the Charter (tenancy agreements are not subject to Port Ordinance No. 3666). However, the tenant will be required to certify that should living wage obligations become applicable, the tenant shall comply with all of its obligations.

**OPTIONS**

1. Approve the request of Oakland Hospitality, LLC to assign their interest in their lease with the Port to Shamrock-Hostmark Hotel Fund, L.P.
2. Do not approve the request of Oakland Hospitality, LLC to assign their interest in their lease with the Port to Shamrock-Hostmark Hotel Fund, L.P.

**RECOMMENDATION**

It is recommended that the Board approve an assignment of lease from Oakland Hospitality LLC to Shamrock-Hostmark Hotel Fund L.P. and authorize the Executive Director to execute any related lease assignment documents, subject to approval by the Port Attorney as to form and legality.



**PORT OF OAKLAND**  
 LAND SURVEYS AND MAPPING

530 Water Street  
 Oakland, California

**HOMEWOOD SUITES HOTEL**

DRAWN BY: KSW/cm	Field Bk:
CHECKED BY: CM	Wrk. Ord: 104027
SCALE: 1" = 100'	Data File:
DATE: 5/10/01	Revision:
SHEET 3 OF 3	Rev. date:
ATTACHMENTS:	
FILE LOC.> \104027\ONE PARCEL	