



PORT OF OAKLAND

MEMO

TO: Danny Wan, Executive Director

FROM: Joe Marsh, Port Permit Coordinator

DATE: January 11, 2022

**SUBJECT: PORT DEVELOPMENT PERMIT DECISION
for Work on Private Property in the Port Area**

The Port of Oakland Permit Coordinator and Environmental Programs and Planning Division staff have reviewed the subject Port Development Permit Application dated May 19, 2021, pursuant to the requirements of Port Ordinance No. 2083 (and amended in No. 2972, 3689, and 3943, collectively known as Permit Ordinances). Based upon this review, Port staff finds the proposal meets the applicable standards of Permit Ordinances, as set forth in the detailed analysis and findings below.

Port Permit No: 5321
Permit Applicant: First Element Fuel, Inc.
Project Location: 2100 Engineer Road, Oakland
Estimated Value: \$775,000
Environ. Assessment: Addendum to Main Wastewater Treatment Plant Land Use Master Plan Environmental Impact Report (prepared by East Bay Municipal Utilities District as Lead Agency)

Background:

First Element Fuel, Inc (FEF) has entered into an agreement with East Bay Municipal Utilities District (EBMUD) to develop a portion of EBMUD's site located at 2100 Engineer Road, Oakland, CA for a Hydrogen Fuel Refueling Station (HRS) Project (Proposed Project). The site is north of the former Oakland Army Base off West Grand Avenue and is not currently in use. The Port of Oakland (Port) has land use jurisdiction because the site is located within the Port Area.

The hydrogen fueling station project is an important component of a broader zero-emissions demonstration project to bring 30 Hyundai hydrogen fuel cell Class 8 tractors to the Port. The team leader for this project is the Center for Transportation and the Environment ("CTE"), an Atlanta-based, member-supported 501(c)(3) nonprofit organization with regional offices, including Berkeley, California. The CTE website states that CTE "develops, promotes, and implements advanced transportation technologies, vehicles, and fuels that reduce environmental pollution and fossil fuel dependency." The CTE team won a major \$22M grant, funded jointly by the California Energy Commission and the California Air Resources Board. The Bay Area Air Quality

Management District contributed \$3.4M and the Alameda County Transportation Commission contributed another \$3.6M. The total project cost is \$52M. The 30 trucks will be in operation by June 15, 2023. On February 16, 2021, Port provided a letter in support of the \$22 million grant application.

Project Description

Project site: The Proposed Project site is located at 2100 Engineer Road, Oakland, CA, which is north of West Grand Avenue. West Grand Ave is elevated for most of this frontage, transitioning to at grade level at the Maritime Street intersection. The site is accessed by going north from this intersection. The site is approximately 80,000 s.f. with a 28,000 s.f. building and is currently vacant. The existing building is proposed for demolition as part of the Proposed Project.

Project Features: The Proposed Project will construct a fuel dispensing facility for hydrogen fuel serving commercial vehicles (heavy duty fuel cell trucks).

Construction of the Proposed Project includes a storage area in the center of the site on a concrete pad with filling positions on each side (north and south). The filling position to the north is for heavy duty vehicles with two filling positions under a 25 ft by 48 ft canopy on a concrete pad. The other filling position serves light duty vehicles with two double-sided pump stations with integrated canopies, approximately 17 ft by 11 ft on a concrete pad. The Proposed Project will include a storage tank (12 ft diameter by 60 ft tall) and other storage vessels to be determined. The final fuel storage plan is subject to City of Oakland Fire Marshal approval and any other agency having jurisdiction. The rest of the site will be paved with asphalt except for landscaped areas necessary to comply with requirements of the Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems, Order 2013-001-DWQ, NPDES No. CAS000004.

The entire site will be enclosed by a chain link fence, 8 feet high with 3 strands of barbed wire on top, making the fence 9 feet total in height. A 31-foot traffic lane will be created along the west side of the site, outside the fence and perpendicular to Engineer Road to access the HRS. Two gates will be installed in the west side fence for access to the site.

The HRS would involve deliveries of liquid cryogenic hydrogen and cryogenic fueling system on an equipment skid (mounted platform) that includes liquid hydrogen storage, cryogenic pump, pressurized hydrogen storage, and mechanical and electrical facilities within a containerized enclosure.

Land Use Analysis

The Project is located on the EBMUD Oakland facility site. Most of the site is occupied by an existing EBMUD water treatment plant. Some of the property is currently used for processing green waste into biofuel. The Proposed Project will create a hydrogen fueling station for commercial vehicles to receive hydrogen fuel. The land use (fueling

activity) is consistent with the City of Oakland's General Plan, which designates the site as General Industry and Transportation. The Proposed Project conforms to all land use policies applicable to the site.

Findings

The Port approves this application for a Port Development Permit, as submitted by FEF, with the following findings:

1. The Proposed Project will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons working, visiting, transiting through the vicinity of the Proposed Project site, or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City of Oakland. By expanding access to green fuel, the project will improve the health and general welfare of workers and residents as described in the Addendum to EMBUD's 2011 Main Wastewater Treatment Plant Land Use Master Plan (LUMP) Environmental Impact Report (EIR). Refer to Attachment 2: May 13, 2021 Addendum to Main Wastewater Treatment Plant Land Use Master Plan Environmental Impact Report (EIR) – First Element Fuel Hydrogen Refueling.
2. The Proposed Project is consistent with the City of Oakland's General Plan, which designates the site as General Industry and Transportation. The Project supports existing industrial operations.
3. The Proposed Project complies with provisions of the City of Oakland Charter and the regulations adopted by the Port to carry out its building permit responsibilities by approving an improvement to the EBMUD facility.
4. The primary purpose of the Proposed Project is to install equipment to dispense hydrogen fuel to commercial vehicles. The Proposed Project will be monitored by the state of California and local regulatory agencies as applicable.
5. The Proposed Project will need electric power. The Port does not currently provide power to the Proposed Project site. This Permit approval is not intended to waive the Port's rights to provide power in the future or to establish a permanent alternate power provider.
6. The Port has attached such conditions to issuance of the Development Permit as it deems reasonable or necessary to achieve the purposes of the Permit Ordinances, to reduce or to mitigate environmental impacts, and to address the Proposed Project's anticipated burden on the Port, and which conditions otherwise promote the health, safety, and welfare of the surrounding community.

Environmental Findings

EBMUD, as the Lead Agency under the California Environmental Quality Act (CEQA), prepared and certified in 2011 the Main Wastewater Treatment Plant (MWWTP) LUMP EIR to serve as a high-level planning tool to guide development of the existing 48-acre MWWTP site. The LUMP EIR identified two renewable energy projects for implementation -(biodiesel production and food waste pre-processing) to help EBMUD meet sustainability goals by increasing on-site power generation. Those two projects did not move forward as described in the LUMP EIR, and EBMUD has now replaced the food waste project with FEF's Proposed Project.

EBMUD completed an Addendum to the LUMP EIR in May 2021 to replace the food waste pre-processing project with the Proposed Project and analyze the environmental effects of this Proposed Project. EBMUD determined that the Proposed Project did not (i) involve significant new environmental effects not analyzed in the LUMP EIR, (ii) substantially increase the severity of significant effects previously identified in the LUMP EIR, nor (iii) involve new information of substantial importance that became available since certification of the LUMP EIR.

EBMUD filed a Notice of Determination (NOD) with the Alameda County Clerk Office on June 2, 2021. Refer to Attachment 3: May 28, 2021 EBMUD Notice of Determination.

The Port, as the Responsible Agency under CEQA, received the NOD for the Addendum to the LUMP EIR on October 15, 2021. With implementation of the mitigation measures described in the LUMP EIR, the Port has determined that the Addendum adequately addresses the Proposed Project and no further environmental review is required. The Port will file an NOD with the Alameda County Clerk Office once the Executive Director approves the Port Development Permit for this Proposed Project and following the completion of the 14-day administrative appeal period.

Permit Conditions

1. All conditions of approval shall be printed on the final permit set of plans.
2. The Project shall conform to Port-stamped approved plans, including the conditions of approval, unless otherwise approved by the Port. The Permit Applicant is responsible for including all details agreed upon, or conditions made by the Port, during the approval process. Failure to include any such details will not exempt the Permit Applicant from meeting the Port Development Permit conditions.
3. The Permit Applicant shall meet all conditions and requirements of all outside agencies having jurisdiction over the project, including but not limited to the City of Oakland, Bay Area Air Quality Management District (BAAQMD) and San Francisco Bay Regional Water Quality Control Board. The Permit Applicant shall report to the Port prior to Project construction any conflicts with Port Development Permit or other requirements arising from outside agencies' permit

conditions and requirements. Any such conflicts must be resolved by the Permit Applicant to the satisfaction of the Port and the outside agency involved.


4. The Permit Applicant shall provide copies to the Port of authorizations or permits from outside agencies.
5. The Permit Applicant shall obtain, at the Permit Applicant's expense, all City of Oakland building permits required for the Project.
6. The Permit Applicant and the Permit Applicant's contractor shall construct the Project according to the plans approved under Port and City permits. Modifications made to comply with City of Oakland permit requirements shall be subject to verification of compliance with Port permit conditions by the Port prior to the start of Project construction.
7. The Permit Applicant will implement the applicable mitigation measures described in the LUMP EIR. Refer to Attachment 4: EBMUD LUMP EIR Mitigation Monitoring and Reporting Program.
8. The Permit Applicant shall maintain the Project site in a clean and orderly condition during the entire term of the Development Permit, which comprises the period from Permit approval to completion of construction. If there is a work stoppage at any time after Project construction has commenced for a period of more than 30 days, the Permit Applicant shall physically secure any completed or uncompleted work on the Project site and remove or screen any stored materials. The Chief Operating Officer of the Port may provide a 30-day Notice and Order to the Permit Applicant to comply with this condition. If the Permit 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 Permit Applicant for all related costs, or impose reasonable fines for violation of this condition of approval and/or for violation of the Chief Operating Officer's 30-day Notice and Order. Any such fines shall be reasonably related to the nature of the violation and/or the cost to correct.
9. To the maximum extent permitted by law, the Permit 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 attorney's

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 Permit 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 Permit Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.


10. The Permit Applicant shall agree to comply with any other conditions added by the Permit Hearing Officer.

RECOMMENDED:

Environmental Programs and Planning Supervisor: 
Colleen Liang (Jan 11, 2022 11:23 PST) Date: Jan 11, 2022

Environmental Programs and Planning Director: 
Richard Sinkoff (Jan 26, 2022 14:10 PST) Date: Jan 26, 2022

Port Permit Coordinator: 
Date: Jan 11, 2022

Chief Operating Officer: 
Krista McKenney (Jan 27, 2022 10:01 PST) Date: Jan 27, 2022

DECISION:

Executive Director: Approve Deny

Signature 
Danny Wan (Feb 1, 2022 15:59 PST) Date: Feb 1, 2022

- Attachment 1: 5321 FEF Plan Set
- Attachment 2: May 13, 2021 Addendum to Main Wastewater Treatment Plant Land Use Master Plan Environmental Impact Report (EIR) – First Element Fuel Hydrogen Refueling.
- Attachment 3: May 28, 2021 EBMUD Notice of Determination
- Attachment 4: EBMUD LUMP EIR Mitigation Monitoring and Reporting Program












5321 ED Decision Memo Final


Final Audit Report

2022-02-01

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