



PORT OF OAKLAND

MEMO

BY: Joe Marsh, Port Permit Coordinator
DATE: November 6, 2023
**SUBJECT: PORT PERMIT COORDINATOR DECISION
for Work on Private Property**

The Port of Oakland (Port) Permits Section staff and Environmental Programs and Planning staff have reviewed the subject Port Development Permit Application. We find the proposal meets the applicable standards of the "Port of Oakland Land Use and Development Code (LUDC) for the Oakland Airport Business Park." Detailed analysis and findings are set forth below.

Port Permit No: 5382
Permit Applicant: Form Energy, Inc.
Tenant: Form Energy, Inc.
Property Owner: BCHPI 7700 Edgewater, LLC
Project Location: 7700 Edgewater Drive, Oakland
APN: 42-4435-1-11
Valuation: \$102,000
Environ. Assessment: Categorically Exempt

Project Description

The project site is located in the southwestern portion of the City of Oakland (City), in the vicinity of Oakland International Airport and Interstate 880 (I-880). The address of the proposed project is 7700 Edgewater Drive, Oakland, CA. The site is adjacent to Elmhurst Creek.

The Project Applicant proposes to construct improvements to support a battery storage test facility. The project will make improvements to the pavement in the project area to support temporary facilities that will be removed at the end of the test period (up to 5 years.) Permanent improvements include paving, stormwater management systems, and striping for replacement parking in the rear of the lot. The Applicant will make temporary improvements including fencing, curbs and electrical systems. A container will be parked on the site with batteries inside for testing. Temporary improvements will be removed at the end of the testing period. Any further improvements will be subject to a new permit.

Surrounding Area

The project site is located within the Oakland Airport Business Park, Business Park Interior. The site has an existing 2-story multi-use building which will remain at the site. The project site is also within the Coliseum/Hegenberger Planning District of the Coliseum Area Redevelopment Project Area established by the City of Oakland in 1995 and expanded to a total of 6,764 acres in 1997.

The Applicant site has a two-story multi-tenant building with primarily cannabis-related uses. The site is adjacent to Elmhurst Creek. An R&D and Manufacturing tenant is across the creek from the site. Other sites in the vicinity have office, R&D, warehouse and distribution facilities.

Land Use Analysis (from LUDC Section 2)

The project site is located within the “Port Area” of the City of Oakland, and within the Commercial Corridor of the Oakland Airport Business Park, originally established by Port Ordinance No.1343 by the Board of Port Commissioners in 1966. Development in the Oakland Airport Business Park is currently regulated by the “Port of Oakland Land Use and Development Code (LUDC)”, adopted by the Board of Port Commissioners in June 2011, and revised in April 2016. The project is to install a temporary battery test facility categorized as R&D, which is allowed under the LUDC. The design conforms to the LUDC design standards.

Findings (from LUDC Section 5.5)

The Port approves this application for a Development Permit, as submitted, 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 Oakland Airport Business Park 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.
2. The proposed project is consistent with the City of Oakland's General Plan.
3. The proposed project complies with provisions of the LUDC.
4. The proposed project has been adequately evaluated under the California Environmental Quality Act (CEQA), see below for further details.
5. The proposed project has been approved, or has a reasonable chance of being approved, by all outside agencies having jurisdiction over the project, including, but not limited to: the City of Oakland, Bay Conservation and Development Commission, Federal Aviation Administration, San Francisco Bay Regional Water Quality Control Board, Alameda County Airport Land Use Commission, Alameda County Public Health Department, and the California State Lands Commission.
6. The proposed project will neither interfere with the operations of Oakland International Airport nor enable the establishment of uses that may be incompatible with the potential imposition of noise, light, smoke, air currents, electronic or other emissions, vibrations, discomfort, and/or inconvenience resulting from airport operations at Oakland International Airport.
7. The Port has attached such conditions to issuance of the Development Permit as it deems reasonable or necessary to achieve the purposes of the LUDC, to reduce or to mitigate environmental impacts, and to address the project's anticipated burden on the Business Park and the Port, and which conditions otherwise promote the health, safety, and welfare of the surrounding community.

Environmental Findings

The Port is the Lead Agency under the California Environmental Quality Act (CEQA), having land use jurisdiction over the Oakland Airport Business Park. The project boundaries are located in a developed area, and improvements will be made to an existing facility. The Port finds that this project is categorically exempt pursuant to CEQA Guidelines Section 15303, which exempts the construction of new small structures or conversion of small structures as well as associated minor utility extensions.

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 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 applicant from the Port for any changes prior to construction.
3. The use shall be fully described on the plans and is deemed approved by the Port approval stamp. Any modifications or clarifications will be included in the Specific Conditions. Any changes from the approved plans must be approved in writing by the Port.
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 obtain, at the Project Applicant's expense, all permits from other agencies having jurisdiction for the Project, including but not limited to the FAA (for height), FCC (for signal transmission), and BAAQMD (for generator).
6. The Project Applicant and the Project Applicant's contractor shall construct the Project according to the plans approved under Port, City and other agency permits. Modifications made to comply with City of Oakland permit requirements shall be subject to verification of compliance with Port permit conditions prior to the start of construction.
7. 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 Operating Officer 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 Operating Officer's order. Any such fine shall be reasonably related to the nature of the violation and/or the cost to correct.
8. 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 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 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.

- 9. The Project Applicant shall agree to comply with any other conditions added by the Permit Hearing Officer as well as any other conditions listed in the LUDC not otherwise listed here.

RECOMMENDED:

Environmental Programs
and Planning: _____ Date: _____
Anjana Mepani, Port Associate Environmental Planner/Scientist

Environmental Programs
and Planning: _____ Date: _____
Colleen Liang, EPP Director (acting)

DECISION:

Port Permit Coordinator: Approve Deny

Signature: _____ Date: _____
Joe Marsh, Port Permit Coordinator

Attachments:

Attachment 1 – Project Design Drawings