

**PLANNING COMMISSION MEETING
THURSDAY, MARCH 25, 2021**

**DOCUMENTS RECEIVED AFTER
PUBLISHED AGENDA**

ITEM #1 PH 21-031

**Proposed Zoning Text Amendment to Article 1, Chapter 10-1.1600 of the Hayward Municipal Code to include “Truck Terminals” as a Conditionally Permitted Use Within the IP (Industrial Park) District; and Approval of a Conditional Use Permit to Establish a Last Mile Delivery Station for Amazon Logistics in an Approximately 507,500 Square Foot Industrial Building Located at 2701 W. Winton Avenue
(Continued from March 11, 2021)**

**Staff Memo Regarding Revisions to
Agenda Item Attachments**



Date: March 25, 2021
To: Planning Commission
From: Leigha Schmidt, Acting Principal Planner
RE: **Agenda Item No 1, PH-21-031. Revised Sheets for Addendum, Mitigation Monitoring and Reporting Program and Condition(s) of Approval.**

Following release of the staff report and related materials for **Agenda Item 1, PH-21-031** (Application No. 201908318), the applicant and property owner asked staff and the CEQA consultant to revisit the mitigation measure language HYD-6 related to ongoing maintenance of a levee adjacent to the property, and to consider allowing a longer timeframe for installation of solar panels on the building.

Where a condition is amended, deleted text is shown in ~~striketrough~~ and new text is underlined.

Addendum, Mitigation Monitoring and Reporting Program and Condition 9

Following release of the staff report, the property owner pointed out that the Mitigation Measure (MM) language in the original Initial Study/Mitigated Negative Declaration (IS/MND) and related Mitigation Monitoring and Reporting Program (MMRP) required monitoring levee stability through grading and construction activities and that the proposed operations which would consist of driving around on paved internal roadways would not have an impact on the adjacent levee.

Upon review of the IS/MND language and the related design level geotechnical evaluation, the consultant recommends minor modifications to the Addendum and related MMRP, included as Attachments V and VII, respectively. The modifications are shown in track changes in the attached sheets to this memo. As a result of this modification to the Addendum (Attachment V) and MMRP (Attachment VII), proposed Condition of Approval 9 would be struck from Conditions of Approval (Attachment III).

Deleted Condition No. 9: ~~HYD-6. Levee maintenance. The project sponsor or property owner shall maintain levee stability as part of ongoing project operation. The Public Works—Engineering and Development Services Department shall conduct periodic monitoring to ensure compliance.~~

Solar Panels and Condition No. 18

In addition, the applicant has requested a modification to Condition No. 18 related to installation of solar panels on the building. The applicant is requesting an extension on the timeframe to install the panels to within two years of occupancy because the applicant typically contracts with vendors and does not have control over the vendor schedules. The revised condition would read:

Revised Condition No. 18: Per Section B5 of Project Description submitted on May 11, 2020, the applicant shall install solar panels to service the proposed use, and the panels shall be operational ~~prior to the start of business~~ within two years of occupation of the building.

Measures HYD-3 and HYD-4, which require the project sponsor to prepare and implement a Construction Period Stormwater Drainage Control Plan and to perform hydraulic modeling to ensure project modifications would not exceed the capacity of off-site stormwater drainage systems, respectively. As described above, because the project site has been developed, both of these mitigation measures have already been implemented. Proposed tenant improvements are not anticipated to significantly change the results of the hydraulic modeling that has already been done. Therefore, the proposed project would not result in impacts associated with flood flows. This impact would be less than significant.

The 2017 IS/MND identified a potentially significant impact related to the stability of the levee along the west side of the project site, potentially making it susceptible to failure during storm and coastal flooding events, which could result in flooding of the site and damage to property. However, the IS/MND determined that this impact could be reduced to a less-than-significant level with implementation of Mitigation Measure HYD-6, which requires that the design level geotechnical evaluation include an evaluation of the levee and the potential impacts of the proposed grading activities to the stability of the levee. Because the building has already been constructed and grading activities have been completed, this mitigation measure has been implemented. Proposed tenant improvements are not anticipated to significantly affect the stability of the levee. However, the land owner and tenant will be responsible for maintaining the stability of the levee throughout project operation, consistent with Mitigation Measure HYD-6. This impact would be less than significant.

The proposed Zoning Code amendment would allow truck terminal uses within the IP subdistrict. New construction within these areas could result in impacts associated with hydrology and water quality. However, individual projects that would locate truck terminal uses within the IP subdistrict would be governed by existing regulations and would be evaluated for any potential impacts related to hydrology and water quality as part of the Conditional Use Permit process. Therefore, no new or substantially more severe significant effects related to hydrology and water quality would occur associated with the minor changes to the 2017 project and no additional mitigation measures are required.

3.11 LAND USE AND PLANNING

The 2017 IS/MND concluded that the 2017 project would have no impact related to land use and planning. Specifically, the 2017 project would not result in the construction of a physical feature (such as an interstate highway or railroad tracks) or removal of a means of access (such as a local road or bridge) that would impair mobility within an existing community and therefore would not physically divide an established community. The 2017 project would represent a general continuation of the industrial uses found adjacent to the project site and would be consistent with the type and intensity of development in the area.

The proposed project would not result in the removal of any means of access, and would result in similar development as that associated with the 2017 project. However, as outlined in Section 2.3, Project Description, the proposed project does not comply with the City's current Zoning Ordinance. To allow the proposed use at the project site, the City's Zoning Code would be amended to conditionally permit truck terminal uses within the IP subdistrict and this change would apply Citywide. Allowing truck terminals, which are commercial distribution facilities, as a conditionally

Table 1: Mitigation Monitoring and Reporting Program

Impact	Mitigation Measures	Completed with Construction	Applicable to the Proposed Project	Timing and Responsibility
Changes in drainage patterns resulting from the proposed project could result in exceeding the capacity of existing stormwater drainage systems and increase the likelihood of flooding conditions off-site.	<u>HYD-4</u> : Post-construction site conditions shall be characterized using hydraulic modeling (i.e., HEC-RAS or similar program) to ensure that proposed project modifications would not impede or redirect flood flows, or contribute to exceeding the capacity of existing off-site stormwater drainage systems. If hydraulic modeling indicates that the project could exacerbate flooding conditions or increase off-site flood hazards, then modifications to the project drainage plans (e.g., increased on-site detention and/or improving existing off-site stormwater drainage systems) shall be designed and implemented to eliminate the increased flood hazard. The detailed hydraulic evaluations shall be performed by a qualified professional engineer and submitted to the City for review and approval prior to issuance of building permits.	Completed	NA	NA
The proposed project could place structures within a 100-year flood hazard area, which would impede or redirect flood flows.	<u>HYD-5</u> : Implement Mitigation Measures HYD-3 and HYD-5	Completed	NA	NA
The proposed project could expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam.	<u>HYD-6</u> : The design level geotechnical evaluation that will be prepared for the project, as required by Mitigation Measure GEO-1, shall include an evaluation of the levee and the potential impacts of the proposed grading activities to the stability of the levee. The design level geotechnical evaluation shall provide recommendations for maintaining the stability of the levee throughout project construction and operation and these recommendations shall be implemented by the project grading contractor to the satisfaction of the City of Hayward.	Completed	Project sponsor to maintain levee stability as part of project operation <u>NA</u>	Periodic Monitoring; Director of Development Services <u>NA</u>

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(Continued from March 11, 2021)**

Staff Response Letter to Applicant



March 24, 2021

Subject: Public Works & Utilities Staff Response to Amazon's March 23, 2021 Letter Titled "Applicant's Objection to Transportation-Related Fees and Exactions-Amazon Delivery Station"

Dear Planning Commissioners:

The City's Public Works & Utilities Department has completed a review of the March 23rd letter sent via email by the Applicant for the Proposed 507,500 square foot Amazon Last Mile Delivery Station at 2701 W. Winton Avenue. Staff's response is provided below.

Public Works has worked diligently to resolve disparities with the Applicant. The Applicant has rejected calculations made by Staff and has not provided Staff with alternative calculations that would result in a fair and equitable contribution covering the costs associated with the project's non-CEQA impacts related to transportation infrastructure.

The Applicant has claimed that Condition of Approval #10 limits their ability to "go above and beyond our operations as outlined in the May 11, 2020 Business Plan... which in turn limits us to 1,276 trips on average". In reality, Condition of Approval #10 does **not** limit the number of trips that the project generates currently, or into the future. Page 3 of the Applicant's Business Plan states that "All information stated below embodies good faith estimates of future operations, **but details will not be known until just before opening of the facility**". As such, the Business Plan and, by default, Condition of Approval 10, does not take into consideration future growth and does not specifically include any limitation on trips generated by the facility, nor does it specifically include any enforcement action or penalties associated with deviation from the Condition or the Business Plan related to traffic or transportation.

Public Works has reiterated to the Applicant on multiple occasions that staff is willing to accept a limitation on the number of trips generated by the proposed Project, subject to the ability of the City to verify those trips and City's imposition of enforcement action and penalties for exceeding the conditioned limit. While Amazon has agreed to similar conditions elsewhere in the state, this alternative solution was rejected by the Applicant on multiple occasions.

The Applicant claimed that staff has calculated the proposed fees by relying on outdated information and that the February 2020 ITE Supplement ("Supplement") should be used instead.



Per the Applicant's March 23, 2021 letter, the Supplement has two rates for Land Use Code 155, "Non-Sort" and "Sort". Applicant has claimed that the "Non-Sort" definition most closely matches the proposed Project. However, by definition, the "Non-Sort" category is applied to "fulfillment centers that ship large box items that are processed primarily with automation rather through manual means". This is not consistent with the Project description as the Project is not expected to primarily sort products through automation and does not limit processing to "large box items". Per the Applicant's own information that was provided to the City and included in the Project Description, the project is expected to require two shifts of Associate and Managerial staff, generating a minimum of 183 vehicular trips over an average "non-seasonal peak" day. This does not include delivery drivers who will come into and out of the site on a regular basis throughout a 24-hour period.

Further, the project is expected to process items of varying sizes and is not limited to "large box items", with direct distribution of products to end users, which is consistent with the definition of the land use code used in the Local Transportation Assessment and supported by Staff. That definition is available on Page 129 of the *ITE Trip Generation Manual, 10th Edition Volume 2*: "... High-cube fulfillment center warehouses **include** warehouses characterized by a significant storage function **and direct distribution of ecommerce product to end users.**"

Staff has concluded that the Local Transportation Assessment, dated January 25, 2021, correctly used the most applicable ITE rate available at the time of the preparation of the traffic analysis (which began prior to the February 2020 publishing of the Supplement), consistent with industry standards and the City's adopted traffic impact analysis thresholds and guidelines. Further documentation supporting Staff's position regarding the ITE rates are available in, and as attachments, to the Staff Report. Specifically, the March 8, 2021 letter to the Applicant from Staff and the March 17, 2021 letter from Hexagon Transportation Consultants to the Public Works Director.

The Applicant has further claimed that "Public Works has not adopted a Citywide fee for these costs under the Mitigation Fee Act, and we are unaware of any attempt by Public Works to apply such a fee to any other project in the City".

While it is true that a Citywide fee has not yet been adopted, the Project is unique in that the Applicant is requesting that an amendment be made to Citywide policy to allow "Truck Terminals", which are currently not permitted in the Industrial Park District. Allowing such a use would result in proportionate impacts to City infrastructure - particularly on roadway pavement that are unique to "Truck Terminals" and specifically, the Project and Staff has requested that the Applicant contribute the project's fair share toward the cost of these improvements.

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(Continued from March 11, 2021)**

Letter from Applicant

March 23, 2021

VIA E-MAIL sara.buizer@hayward-ca.gov

Planning Commissioners
c/o Sara Buizer, Planning Manager
City of Hayward Planning Commission
777 B Street
Hayward, CA 94541

**Re: Applicant's Objection to Transportation-Related Fees and Exactions
Amazon Delivery Station, File No. PH 21-019
Agenda Item #2, March 11, 2021 Planning Commission Meeting**

Dear Commissioners:

Amazon submits this letter in connection with your consideration of our proposed Delivery Station at 2701 W. Winton Avenue, which requires a Zoning Text Amendment and a Conditional Use Permit (CUP). For the last several weeks, we have diligently worked to come to a resolution with Public Works that is amendable to all parties. As part of these efforts, we have provided extensive data points and good faith offers to Public Works to reach a resolution, including a new offer presented to Public Works on Friday, March 19th. Unfortunately, we were unable to reach a solution amenable to both parties and determined further discussions were futile based upon Public Works' position that they "will object to any other fee reductions". As explained below, we feel the most recent offer is fair based upon the following:

- Condition 10 limits our ability to go above and beyond our operations as outlined in the May 11, 2020 Business Plan submitted by us, which in turn limits us to 1,276 trips on average.
- If 1,276 trips were used to calculate the project's impacts, it is very likely that the improvements that were identified in the Local Transportation Analysis (LTA) are no longer required; however, we are willing to pay for the traffic signals and striping identified in the LTA.
- If 1,276 trips were used to calculate the contribution, our fair share would be \$786,271; however, we are willing to contribute \$1,000,000.

The main point of contention continues to be that Public Works is calculating the proposed fees by relying on an Institute of Transportation Engineers (ITE) trip generation rate that results in our project generating 4,151 trips per day. We feel this approach is flawed for various reasons, including the fact that, as explained to Public Works in an email dated March 19, 2021, the 4,151 daily trip rates total **is not based on the latest publication from ITE**. ITE published a Supplement to the 10th Edition of its Trip Generation Manual in February 2020.

Per that Supplement, ITE now has two rates for Land Use Code 155 – High-Cube Fulfillment Warehouse. One is called "Not-Sort" and the other is "Sort". The Non-Sort is defined as a "fulfillment center that ships large box items that are processed primarily with automation rather than through manual means." This classification is what is used for a true Amazon Fulfillment Center. The Sort definition is "a fulfillment center that ships out smaller items, requiring extensive sorting, typically by manual means." Although this project is not a fulfillment center and therefore technically it does not fall within either definition, assuming Public Works continues to view it as a fulfillment center, the project should fall within the definition of Non-Sort, which has a trip rate of 1.81 daily trips per 1000 sq. ft. **Use of that ITE Code would yield 919 trips per day**. Application of this current ITE rate is more closely aligned with the daily trip generation rate that we provided to the City early on in the process – specifically, a total of 1,276 daily trips. This information is also closely aligned with the NV5 study previously provided to Public Works. That study analyzed multiple delivery stations and concluded that if the ITE factor was applied to the entire warehouse space, this type of facility would have a trip rate of 2.32

trips per 1,000 sq. ft. That trip rate is also more closely aligned with our intended use than the outdated ITE rate being applied by Public Works. However, Public Works has refused to use any any of this data.

This information confirms that the number of trips that will result from our operations – and which we are bound to by Condition 10 requiring that we implement our operations plan - will result in trips that are about 70% lower than the 4,151 trips projected by Public Works. Accordingly, there is no nexus, rough proportionality or reasonable relationship between Public Works' efforts to impose fees and exactions based on 4,151 trips.

In addition, Public Works has not adopted a Citywide fee for these costs under the Mitigation Fee Act, and we are unaware of any attempt by Public Works to apply such a fee to any other project in the City. It therefore appears that the City is singling out this project for disparate treatment without any basis for doing so.

We, however, continue to want to be a good member of the community, should this facility be approved. As a result, based upon the extensive information that has been shared with Public Works, we extended the following new offer:

- \$500,000 for installation of a traffic signal at the intersection of West Winton Avenue and Cabot Boulevard (Condition 38)
- \$500,000 either for (a) installation of a traffic signal at the intersection of SR-92/Clawiter Road/Eden Landing Road; or (b) funding improvement projects at the SR-92/Clawiter Road/Eden Landing Road interchange (Condition 40)
- \$5,000 for extending the existing northbound left turn lane by fifty (50) feet at the intersection of West Winton Avenue and Clawiter Road (Condition 39)
- \$1,000,000 Contribution towards any City established program

Based on the above, we continue to object to proposed Conditions of Approval 36, 37, 41 and 42, requiring transportation-related fees and exactions to offset the impacts of 4,151 daily trips, which are more than three times the project trips. We look forward to discussing this project in further detail at the March 25th Planning Commission hearing and we appreciate your willingness to consider all our supporting data, as well as the offer outlined above.

Sincerely,

Melissa Watkins

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(Continued from March 11, 2021)**

Public Comment



Service Development Department
1600 Franklin Street, Oakland CA 94612

March 24, 2021

Sent via Email to: cityclerk@hayward-ca.gov

City of Hayward Planning Commission
Hayward City Hall
777 B St.
Hayward, CA 94541

**RE: March 25, 2021 Meeting / Item PH 21-031 -- Amazon Last Mile Delivery Services
(Application No. 201908318)**

Dear Members of the Hayward Planning Commission,

AC Transit commends the City of Hayward for including transportation demand management (TDM) provisions as conditions of approval for the proposed construction of an Amazon Logistics facility.

Relative to other industrial areas in the greater Bay Area, the Hayward Industrial Park is served by transit throughout the week, and the inclusion of employee transit passes will help Amazon fully leverage those transportation advantages. In addition, the institution of pass programs and transportation demand management measures at the Amazon site will help mitigate project externalities and bring it more in line with local and regional equity goals by improving job access for low-income individuals.

As the city plans for new residential and commercial development, AC Transit strongly encourages the commission and the city council to continue to require active TDM measures and ongoing monitoring for new developments throughout the city. These incentives are tools that work well in the fight against climate change, reducing vehicle miles traveled and single-occupancy vehicle use in favor of enhanced infrastructure for transit, walking, and biking. With the City's leadership and continued partnership, I look forward to taking steps like this to tackle climate change together and bring about a healthier and more resilient future for all Hayward and Bay Area residents.

Thank you for your time and consideration.

Sincerely,

Robert del Rosario

Robert del Rosario
Director of Service Development of Planning

Cc: Kelly McAdoo, City Manager
Sara Buizer, Planning Manager (Sara.Buizer@hayward-ca.gov)