



**SPECIAL PLANNING COMMISSION MEETING  
REMOTE PARTICIPATION  
Thursday, March 25, 2021, 7:00 p.m.**

This meeting was conducted utilizing teleconference and electronic means consistent with State of California Executive Order No. 29-20 dated March 17, 2020, and Alameda County Health Officer Order No. 20-10 dated April 29, 2020, regarding the COVID-19 pandemic. Members of the Planning Commission, City Staff, and members of the public participated via the Zoom Webinar platform.

**MEETING**

A special meeting of the Hayward Planning Commission was called to order at 7:00 p.m. by Chair Roche.

**ROLL CALL**

Present: COMMISSIONERS: Ali-Sullivan, Bonilla, Goldstein, Oquenda, Patton, Stevens  
CHAIRPERSON: Roche  
Absent: COMMISSIONER: None

Staff Members Present: Ameri, Billoups, Brick, Chan, Chang, Garcia, Nguyen, Schmidt

**PUBLIC COMMENT:**

There were no speakers.

**PUBLIC HEARING:**

**For agenda items No. 1, the Planning Commission may make a recommendation to the City Council.**

1. Proposed Zoning Text Amendment to Article 1, Chapter 10, Section 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 SF Industrial Building at 2701 W. Winton Avenue (APN 438-0030-019-00). Amazon.com Services, Inc. (Applicant); Black Creek Group (Property Owner). (Item was continued from March 11, 2021).

Acting Principal Planner Schmidt provided a synopsis of the staff report and a PowerPoint presentation.

Public Works Director Ameri presented the staff report portion on Traffic and Transportation.



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Acting Principal Planner Schmidt spoke about the California Environmental Quality Act (CEQA) addendum and memo provided to the Planning Commission about deleting Condition of Approval (COA) No. 9 and revisions to COA No. 18 regarding the installation of solar panels.

Mr. Stephen Maduli-Williams, Ms. Melissa Watkins, and Mr. Harry Gates, representatives from Amazon, spoke about the proposed project and presented a PowerPoint Presentation. Amazon representatives spoke about the disparity between Amazon and City staff regarding trip calculations, traffic mitigation fees, and transparency.

Discussion ensued among Planning Commissioners, City staff and Amazon's team regarding:

For Staff: The reason for the reduction of the traffic mitigation fees; does the text amendment open up the other 40% of the industrial area to similar types of development; requested the level of service (LOS) current and LOS current with project, am and pm at W. Winton and Hesperian and Cabot and W. Winton; information about the Upland Bridgepoint project; staff's trip calculation methodology and reasoning for modifying the numbers; can COA No. 10 include language to address expansion impacts; mechanisms in place to count the trucks; difference between staff and Amazon's trip calculations; staff's opinion on the ITE manual's preface about modifying data based on road conditions; types of vehicle/trucks used for Amazon's operations and staff roadway impact analysis; this is an evolving land use and recommend that the applicant fund a trip counting and vehicle categorization. If the City accepted Amazon's proposed calculations and proposal, what position would that leave the City; is there a mechanism to follow up and readjust numbers in the future. If the Planning Commission approved the staff recommendation, what would occur if an applicant does not accept the staff recommendation.

For Amazon: requested data on the Fremont Commons operations; what truck routes do Amazon drivers follow; what are the economic benefits to the City; will Amazon be hiring locally; will there be infrastructure impacts to the City's roadways from the Amazon facility; why is there indoor parking; and discussions with Hayward Chamber of Commerce.

Mr. Stephen Maduli-Williams said that Amazon will commit to hiring locally; there will be induced sales tax from employees working in Hayward; Amazon is willing to do their fair share of their potential impacts. Mr. Maduli-Williams said that the City's trip estimate is wildly inaccurate; Amazon usually does not usually see traffic impact fees imposed on projects and without a framework to capture what the impact would be on the City's roads, Amazon feels that their \$1 million dollar contribution goes towards that effort.



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Commissioner Ali-Sullivan noted that he relies on our competent and capable City staff who are experts in their fields to present to the Planning Commission what the impacts would be for the City and to present mitigation measures to protect the City's infrastructure.

Public Works Director Ameri explained staff's recalculation of trips after discussions with Amazon. Mr. Ameri noted that Amazon informed staff that Amazon's vans will be on the City's roads for 9 to 10 hours each day, which was longer than staff anticipated. Mr. Ameri cited where he obtained the information for the Upland Bridgepoint project regarding Amazon. He said City staff has reasonable conditions to mitigate the impacts on W. Winton Avenue and local streets. Mr. Ameri said that staff utilized the acceptable industry standard, the Institute of Transportation Engineer's (ITE) projections, for trip calculations which is used on all projects. Mr. Ameri explained that during discussions Amazon presented a different calculation for pavements and staff reviewed the comments, recalculated the numbers determined the recalculated numbers resulted in a fair and equitable calculation for the costs of maintaining Amazon's impacts to the City's roadway infrastructure. Mr. Ameri added that this project does not generate any sales tax for the City, it generates a lot of degradation for the City's roadways, as trucks reduce the life of a roadway by an average of about 20 years by 25%, and if Amazon does not pay their fair share then the City's residents and businesses would have to subsidize these costs for these types of businesses.

Acting Principal Planner Schmidt spoke about the text amendment and the different types of permitted uses and how the conditional use permit (CUP) is the highest level of review when allowing certain uses, and that a CUP would require completion of traffic analysis and CEQA review. Ms. Schmidt said it is important to note that COA No. 10 states that the company will operate as indicated by the applicant's operations document and the numbers in this document are estimates and assumptions. As an example of how they could grow within the space, staff pointed out the fluctuations in seasonal operations. Ms. Schmidt said that if the City were to accept Amazon's calculations and proposal; both the COAs and more importantly the findings would be the affected and staff would need to go back and review both. Ms. Schmidt emphasized that staff would have to determine whether they could recommend findings for approval of the Text Amendment and CUP if Amazon's calculations and proposal were accepted.

Commissioner Patton expressed disappointment that for the past two weeks there has not been resolution to the issues regarding methodology for trip generation rates and traffic impact fees. City staff has compromised on the impact fees recommendation, but Amazon is not willing to agree on the numbers. Mr. Patton said a public hearing should not be a traffic and engineering meeting and that the real issue is about land use. He said the City spent about two years holding study sessions involving City Council, Economic Development, and community meetings. A lot of time an effort was put into developing and



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establishing the City's industrial districts and this particular use is not permitted. Mr. Patton said the facility itself is perfect for Amazon but is the land use consistent with this Industrial sub-district and asked will there be overriding community benefits that can compensate for the impacts created by this use? He said there is no guarantee that Hayward residents will be hired; there will be a tremendous amount of traffic generated from Amazon and Hayward residents will be bearing the costs of those impacts and having to deal with the increased traffic. Mr. Patton said the focus should be on a land use issue because if the land use is not acceptable then the discussions about traffic are irrelevant. Mr. Patton said the Planning Commission relies on City staff's expertise, Amazon has a different opinion and does not seem to want to talk about the land use issue. Mr. Patton requested Assistant City Attorney Brick to comment on the Amazon attorney's letter regarding the City's ability to assess fees.

Assistant City Attorney Brick said the nexus and the proportionality of these conditions have been discussed at length, it appears Amazon seems to be arguing about the proportionality of the condition. He noted typically courts will defer to the City's analysis as long as there is a reasonable basis for the analysis, which Public Works Director Ameri has confirmed and at this time has no concerns.

John Karnowski of NV5, said Amazon only has one building in Fremont, it is a much larger operation which is twice the size of what is planned in Hayward. Mr. Karnowski said the trips are lower than what is estimated by City staff.

Commissioner Goldstein stated the costs to maintain City roads and infrastructure are for everyone's benefit and that the industry standard formulas are designed to be fair and equitable as confirmed by Public Works staff. Mr. Goldstein said that data drives action and he does not think it would be wise for the City to change the calculations to fit Amazon's data science. Mr. Goldstein said that the City roads still need to be serviced and if the funds are not collected to maintain the infrastructure from these future traffic impacts then the City's Council, staff, and residents will suffer from these impacts.

Commissioner Stevens disclosed that he spoke with the applicant and he knows the project's environmental consultant. He said there is not a conflict of interest and he will be participating in the item. Mr. Stevens acknowledges that there seems to be a lot of variability and noted that the ITE trip generation manual has a preface that warns about the use of the data and that cities might want to modify/adjust the data based on use conditions. Mr. Stevens recommended that Amazon fund a trip counting and vehicle categorization so that the real-world impact data can be used to develop impact fee schedules.



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Commissioner Bonilla thanked staff for their expertise and recommendations and said that the City's calculations and recommendations are not unique for Amazon and in fact, the ITE projections and the methodology used by Public Works Engineering and Transportation Division, are used for any like business coming into the City. Mr. Bonilla stated that staff's recommendation makes a lot of sense.

Commissioner Ali-Sullivan asked what happens if the Commission approves the staff recommendation to Council and Amazon is not in agreement.

Assistant City Attorney Brick explained that the Planning Commission recommendation would move forward to the City Council and if the applicant chose to withdraw their application, then it would not move forward. If Council approves the staff recommendation and the applicant did not agree with the numbers, the applicant is under no obligation to proceed.

Chair Roche opened the public hearing at 8:52 p.m.

Mr. Michael Eshleman, Service Planning Manager of AC Transit and tenant in the Hayward Industrial Park, said they are glad that the City's Public Works Department recommended the transit demand management (TDM) strategies and fees for this project, commended the City for being proactive and referred to the letter that AC Transit submitted.

Chair Roche closed the public hearing at 8:54 p.m.

Chair Bonilla stated that this is a very complex item, there were multiple follow up discussions; the City has been very collaborative and thorough in their analysis; he agrees with some of the comments of his fellow Commissioners; the economic and community impacts related to the project are questionable; City staff's recommendations are very reasonable and was surprised to see how greatly the City compromised. Mr. Bonilla said the City has done a lot to compromise but that Amazon has not moved from their position of two weeks ago. Mr. Bonilla supports the staff's recommendations.

Commissioner Patton said he is not convinced that this is a beneficial use for Hayward residents as there will be additional traffic impacts in an area that is already problematic as evidenced by the LOS; he shared visiting the area at 11 a.m. and spoke about the existing traffic impacts. This operation will add major impacts with a 24-hour operation, large semi-trucks, hundreds of small delivery vans, and FLEX drivers. He said there will be a major impact to this area without any benefit to Hayward. Per staff the project description is not fully defined, and he is not comfortable moving this item forward in a positive way. Mr. Patton said that when a developer who is making a significant contribution of funds over a long period of time for public improvement, a better way to regulate the business is through the



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mechanism of a development agreement. Mr. Patton recommended that if this item moves forward to the City Council, that the Council consider executing a development agreement that will include an assessment of the traffic impact fees, public improvements and include a process of how these funds will be collected going forward that will work for the City and the applicant.

Commissioner Goldstein agrees with Commissioner Patton, and that even with COA No. 10, it would be difficult to enforce if and when more funding is needed. Mr. Goldstein admires Public Works Director Ameri's concessions in an effort to move this project forward but has a huge concern about obtaining the necessary funding to maintain the City's infrastructure. Mr. Goldstein insists on having a development agreement to ensure that the City's roads and intersections remain healthy and noted that the delivery trucks will be in constant motion for nine to ten hours a day. Mr. Goldstein said the City should not discount our road and infrastructure budget to accommodate this operation.

Commissioner Ali-Sullivan said it was exciting when he first read that Amazon was coming to Hayward and was interested to see what this would mean for the City. Mr. Ali-Sullivan said the amount of impacts such as wear and tear on the roads, greenhouse gas emissions; pollution; traffic impacts, noise pollution and given that there is no sales tax revenue, what benefit if any is there for Hayward and Hayward's residents. He said that Amazon is not acknowledging the impacts and does not want to pay their fair share. Mr. Ali-Sullivan said there were quite a few comments by one of Amazon's representatives that he takes umbrage to the characterization of our City staff and the work they have done on this project. Mr. Ali-Sullivan will not be supporting the staff recommendation.

Commissioner Oquenda agrees with his fellow Commissioners; and voiced his disappointment on where this project has ended up; there will be heavy degradation of the City roads; and he felt City staff compromised more than he would have. He said an issue is that this operation does not generate any sales tax revenue; given what we know about the traffic impacts in this area; there should be assurances that the funds will be obtained to cover the heavy use by this operation that will heavily impact roadway infrastructure. Mr. Oquenda said there is not a community benefit to the City; there is no guarantee on local hiring; City residents will bear the burden in higher taxes to cover the roadway impacts and he will not be supporting this item.

Commissioner Stevens said he does not know if this operation is good for Hayward, but if it does not get constructed in the City, Amazon vans will still be traveling all over the City. Mr. Stevens appreciates staff's analysis on this project, he has a fundamental problem with using the ITE Land Use Category 155 analysis, as he is not convinced that it necessarily applies. Mr. Stevens is also not convinced that Amazon's analysis is correct either. Mr. Stevens said he would prefer to see this project have a development agreement similar to what was



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recommended by Commissioner Patton, where there is some form of project analysis, with actual costs assigned based on actual trips and impacts and conduct a real analysis to determine pavement degradation and the associated costs in order for this operation to be sustainable for the City in the long term. Mr. Stevens said that he is bothered by the traffic signal at W. Winton Ave as these are based on warrants and has not seen anything compelling, as staff is relying on data from the ITE. Mr. Stevens stated that he does not support this project.

Chair Roche disclosed meeting with the applicant prior to the meeting of March 11, 2021. Ms. Roche has similar concerns as her fellow commissioners; there was a lot of detail to go through but that she had to take a step back and remind herself that she is not an expert on traffic analysis. Ms. Roche said that the Commission must determine what are the impacts to the City and do the best that we can to mitigate these impacts. Ms. Roche appreciates Commissioner Patton's recommendation on a development agreement and could support the item with the inclusion of this agreement. Ms. Roche said at this time, there is not an agreement that is satisfactory for the City. Ms. Roche added there needs to be stronger language for local hiring.

Commissioner Goldstein made a motion to approve staff recommendation with an added condition of a development agreement and include targets in place for hiring Hayward residents. Mr. Goldstein stated that the two main items are fees for traffic and road infrastructure.

Assistant City Attorney Brick said the Commissioner cannot impose a condition of a development agreement, this has to be negotiated between the City and the applicant. Also, Mr. Brick said that the Commission cannot mandate a hiring practice.

Commissioner Goldstein withdrew his motion.

Commissioner Ali-Sullivan disclosed meeting with the applicant via a phone call prior to the last meeting. Mr. Ali-Sullivan made a motion to deny the staff recommendation without prejudice in the hopes that the City and the applicant can continue discussions regarding benefits.

Commissioner Oquenda seconded the motion.

Commissioner Patton made a friendly amendment that should the Council proceed with approving the project, that Council considers executing a development agreement or other mechanism that will address traffic impact fees, assessing fees in the long term, and a traffic monitoring mechanism.



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Commissioner Ali-Sullivan and Commissioner Oquenda accepted the friendly amendment.

Acting Principal Planner Schmidt inquired if the item is denied, does it still move forward to Council. Assistant City Attorney Brick said that is up to the applicant noting that the recommendation is to deny without prejudice which means the applicant does not have to wait a year to reapply. The applicant has the option to continue working with staff; come back to the Planning Commission, and then onto the Council.

Commissioner Stevens asked if a development agreement were the only means to receive compensation for the City or could there be amended COAs that can tie the project to the validated impacts of the traffic.

Acting Principal Planner Schmidt responded that the COA can include fees.

Assistant City Attorney Brick said there are multiple methods to impose traffic fees.

Commissioner Oquenda added that Commissioner Patton's suggested amendment to the motion leaves this up to Council to determine the best way to move forward to address the impacts.

Commissioner Bonilla asked if there was a way for the Commission to suggest amended COAs to address the issues rather than just deny the staff recommendation.

Commissioner Ali-Sullivan responded that his motion to deny the staff recommendation without prejudice is in the hopes that the City and the applicant can continue discussions regarding the costs of the traffic impacts and the conditions of approval.

Commissioner Bonilla hopes that this can happen, as it has been two weeks and though the City has compromised on the costs, Amazon has not.

Chair Roche agreed with Commissioner Bonilla and is concerned which way this goes and hopes this does not come back to the Planning Commission without any improvement.

Commissioner Goldstein agrees with the motion and is not willing to approve this item without the recommended traffic fees. He said without an agreement from the applicant to pay the impact fees to sustain the City's roadways, this would place an undue burden on Hayward residents.





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Commissioner Oquenda commented that Amazon must contribute funds in order for the City to cover the costs of the impacts caused by Amazon's facility. Mr. Oquenda said that the Commission has to give the applicant the opportunity to be able to come back and do what is right.

Commissioner Patton wanted to make sure the everyone is clear on the process as this a CUP and text amendment. He said the Planning Commission's recommendation will be forwarded to the City Council and Amazon can 1-choose to argue their position with Council or 2-withdraw their application, or 3-choose to continue to meet with staff. Assistant City Attorney Brick confirmed as such.

Assistant City Attorney Brick reiterated the motion which is to recommend to the City Council to deny the staff's recommendation without prejudice and if this recommendation is brought before Council, that further recommendation that Council pursue a development agreement or other mechanism that addresses traffic impact fees and a monitoring mechanism.

Commissioner Patton asked that since this is a recommendation for denial there will be no CEQA action required; Assistant City Attorney Brick confirmed as such.

Commissioner Oquenda requested that the motion contain a local hire component and asked if this was part of the motion.

Commissioner Ali-Sullivan confirmed that a local hire component was not part of the motion.

Commissioner Patton made a friendly amendment that the development agreement or other mechanism would include a process for traffic impact and mitigation fees and projects and a process for the payment of the fees along with monitoring, but not exclusive to those issues that could include any other community benefits as deemed appropriate.

Commissioners Ali-Sullivan and Oquenda accept the friendly amendment.

Commissioner Goldstein commented that part of his original motion was to have language about local hiring and was informed by Assistant City Attorney Brick that could not be included. Mr. Goldstein said that the applicant indicated they were going to hold job fairs and have programs with Hayward schools. Mr. Goldstein asked if the maker of the motion and seconder would like to consider including language to strengthen these activities towards hiring locally.

Chair Roche said confirmed with the Assistant City Attorney Brick that language will be crafted to include amendments and recommendations made by the Planning Commissioners.



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A motion was made by Commissioner Ali-Sullivan, seconded by Commissioner Oquenda, to deny the staff's recommendation without prejudice, with a recommendation that if this item is presented to Council, that Council consider a Development Agreement or other mechanism to capture community benefits and to ensure that traffic impacts are monitored, mitigated, and traffic impact fees are appropriately assessed.

The motion passed with the following roll call votes:

AYES:	Commissioners Ali-Sullivan, Goldstein, Oquenda, Patton, Stevens Chair Roche
NOES:	Commissioner Bonilla
ABSENT:	None
ABSTAIN:	None

## **APPROVAL OF MINUTES**

2. Approval of the Planning Commission Meeting Minutes of March 11, 2021.

A motion was made by Commissioner Bonilla seconded by Commissioner Stevens, to approve the Planning Commission Meeting Minutes of September 10, 2020. T

The motion passed with the following roll call votes:

AYES:	Commissioners Ali-Sullivan, Bonilla, Oquenda, Patton, Stevens Chair Roche
NOES:	None
ABSENT:	None
ABSTAIN:	Commissioner Goldstein

## **COMMISSION REPORTS**

### ***Oral Report on Planning and Zoning Matters:***

Acting Principal Planner Schmidt shared that the Planning staff wished to thank Commissioner Patton for all his years of service not just for the City but also for the east bay.

Commission Patton appreciated staff's sentiments and his fellow Commissioners. He shared words of encouragement.

Chair Roche thanked Commissioner Patton.



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***Commissioners' Announcements, Referrals:***

Chair Roche wished Commissioner Patton good luck in his future endeavors.

**ADJOURNMENT**

Chair Roche adjourned the meeting at 9:41 p.m.

**APPROVED:**

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Robert Stevens, Secretary  
Planning Commission

**ATTEST:**

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Denise Chan, Senior Secretary  
Office of the City Clerk