

POLICY ADVISORY TO STAFF

Authorize Port Staff to Consider using "Performance Zoning Standards" in the Administration of the Land Use and Development Code at the Oakland Airport Business Park

October 10, 2013

Staff will provide a report which will describe an alternative approach based upon "performance zoning standards" to the current administration of the Land Use and Development Code at the Oakland Airport Business Park, as requested by a project proponent to locate a school (General Education use) in the Airport Business Park Interior. The discussion will include the recommendation to consider a "performance zoning standards"-based approach as an alternative means to administer the Land Use and Development Code. The discussion will describe the recommendation and related policy issues that arise out of the "performance zoning standards" approach. Additional information will be provided in a supplemental posting.

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AGENDA REPORT

TITLE: Policy Advisory to Staff: Authorize Port Staff to Consider using “Performance Zoning Standards” in the Administration of the Land Use and Development Code at the Oakland Airport Business Park.

AMOUNT: No cost

PARTIES INVOLVED:

Corporate Name/Principal	Location
Leadership Public Schools Soo Zee Park, COO Mark McClure, Partner, California Capital Investment Group (CCIG) – Property Owner	7700 Edgewater Drive Oakland Airport Business Park

TYPE OF ACTION: Resolution

SUBMITTED BY: Richard Sinkoff, Director of Environmental Programs and Planning
Chris Chan, Director of Engineering

APPROVED BY: J. Christopher Lytle, Executive Director

SUMMARY

The Oakland City Charter grants the Board of Port Commissioners land use authority within the Port Area. The Board exercises its land authority to manage and regulate land uses and related activities, to consider and approve development permit applications and to perform environmental review, among other activities. The Oakland Airport Business Park (ABP), a 400-acre area adjacent to Oakland International Airport (OAK), is within the Port Area and therefore subject to the Board’s land use and planning authority. The Board exercises its land use authority in the ABP primarily through the Airport Land Use and Development Code (LUDC) (see Figure 2.1 attached from the LUDC). The LUDC is the functional equivalent of a zoning ordinance and establishes permissible land uses in the ABP and conditions of approval. Uses inconsistent with the LUDC are prohibited absent amendment by the Board following appropriate environmental review under the California Environmental Quality Act (CEQA).

In April 2011, Leadership Public Schools (LPS) approached the Port and proposed establishment of a General Education (GE) use for a parcel located at 8000 Edgewater Drive in the ABP. GE uses are currently prohibited under the LUDC. On October 20, 2011, the Board directed staff to evaluate the land use implications and potentially significant environmental impacts of a school in the ABP. Since then, Port staff has been

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working with LPS on its proposal that the Port LUDC allow GE uses. Specifically, staff and LPS have been evaluating the potential adoption of a conditional use designation for GE uses similar to other conditional uses in the Business Park Interior (see attached Table 2.1 from the LUDC). Upon preparation of an Initial Study under CEQA, Staff determined that because of the potentially significant impacts of this proposed action, an Environmental Impact Report (EIR), rather than a lower level of environmental review, such as a Mitigated Negative Declaration (MND), should be prepared. LPS has objected to analyzing the full range of sites that could be used for GE uses, and to the requirement that an EIR be prepared because an EIR will take longer than LPS' proposed construction schedule would allow. LPS has now proposed that the Port adopt an alternative form of zoning, using performance standards (see 2 below). Under this approach site-specific environmental analysis would likely be limited to LPS's proposed site and an EIR may not be required to satisfy CEQA. Because this alternative differs from the Port's standard method of exercising its land use planning jurisdiction, staff seeks Board direction.

The following are the three options for Board consideration:

Option #1: Direct staff to prepare an amendment to the LUDC to allow GE uses in the Business Park Interior, subject to standard conditions (like those contemplated to date regarding location, lot size, and access to public transportation), in which case an EIR would be required (as communicated to LPS on July 5, 2013) for the four sites eligible for such a conditionally permitted use. This option relies upon the LUDC, adopted by the Board in 2011, and conforms to the current standard that the Board uses to exercise its land use planning authority in the ABP.

Option #2: Direct staff to prepare an amendment to the LUDC to allow GE, subject to a) the standard conditions described above and b) performance zoning standards requiring site-specific environmental analysis before any specific site would become eligible for the establishment of GE uses, allowing LPS to study only its proposed school site at 7700 Edgewater Drive, without requiring review of other sites. Port staff believes that this approach could appropriately entail environmental review through a Mitigated Negative Declaration (MND) under the California Environmental Quality Act (CEQA), absent a "fair argument" being raised by a project opponent during the CEQA process, in which case, an EIR would then be required. This is the option proposed by Leadership Public Schools because it would only require analysis of one of the four potential school sites, and a MND involves less analysis than an EIR.

Option #3: Direct staff to cease preparing an amendment to the LUDC to allow GE uses. This option maintains land uses in the ABP as adopted by the Board..

FACTUAL BACKGROUND

The ABP comprises approximately 400 acres situated between the OAK and the Oakland Coliseum. The Board of Port Commissioners adopted Standards and Restrictions for the ABP beginning in 1966 for "the orderly development of public and private lands in the Port Area," including establishing land uses. Up until the late 1990s, the Port was a significant

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land owner in the ABP, also known as the Oakland Distribution Center and the Oakland Industrial Park. The ABP saw significant development through the 1970s when most of the remaining vacant parcels were developed. For financial reasons, the Port sold most of its parcels in the 1990s, but retained zoning (land use) authority due to the proximity of the ABP to OAK to provide a safety and noise buffer, and minimize encroachment on OAK from surrounding areas. The ABP is unique within the Port Area because it is comprised mostly of private property under the planning jurisdiction of the Port. Furthermore, private property within the ABP is not subject to tideland trust restrictions regulated by the State Lands Commission.

In 2009-2011, Port staff performed a comprehensive review and revision to the ABP LUDC to establish clear development and use guidelines for current and future tenants and property owners. Port staff conducted substantial outreach and obtained input from property owners, real estate brokers and City of Oakland staff. The Board of Port Commissioners reviewed and adopted the revised LUDC on April 26, 2011.

Under the 2011 LUDC, the ABP designates the perimeter areas facing the major streets—Hegenberger Road, Oakport Street and Doolittle Drive—as a Commercial Corridor. Light industrial, research and development (R&D) and office uses are permitted within the interior of the ABP, designated as the Business Park Interior. Businesses with higher traffic levels are not permitted in the BPI. Schools (GE use) have never been allowed in the ABP. The LUDC reflects and continues previous Port of Oakland policies established in the 1988 version of the Business Park Standards and Restrictions. The 2011 LUDC primarily clarified existing policies and provided a document that is easier to use for the Board, current and future tenants, property owners, and the public.

At the April 26, 2011 Board meeting to adopt the revised LUDC, representatives from LPS voiced their desire to amend allowable land uses so LPS could establish a school at 8000 Edgewater Drive. The Board determined that considering the establishment of GE uses would require further environmental analysis under CEQA and that LPS's proposal should not delay approval of the LUDC. The Board offered that LPS could request an amendment to the LUDC. In response, LPS presented a formal request to the Port on May 20, 2011. Staff has been working with the Board and the LPS since that time as summarized below:

- May 2011 - July 2011: Various discussions by staff and senior managers led to suggestion that Port staff hold a public meeting to gauge public opinion on the matter before going to the Board.
- September 13, 2011: Public meeting was held to get public input on the proposal. Eleven (11) people attended the meeting and two sent comments by e-mail. Five (5) of the attendees were affiliated with LPS, including the property owner of 8000 Edgewater Drive. Two tenants of the ABP attended - one tenant who employs a parent of a child who currently attends LPS in Oakland; one from a business that works with LPS on research and development. Three (3) people attended who were involved in Educational Technology ("Ed Tech") companies outside the area in support of LPS. Two property owners attended, including the owner of 8000

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Edgewater, who supported the project. The other property owner from the ABP opposed the project since it potentially conflicts with other approved uses, and could deter desirable uses from locating in the ABP. Another property owner sent an e-mail expressing similar opposition.

- October 20, 2011: The Board directed staff to evaluate the land use implications and potentially significant environmental impacts of establishing GE uses in the ABP.
- November 2011: First draft of an IS/MND for 8000 Edgewater Drive submitted for Port review. Mark McClure, of California Capital Investment Group, hired as a broker for LPS,
- December 1, 2011: Port staff presents an informational report to the Board.
- March 2012: LPS returned to the Board with a revised proposal responding to Board and Staff concerns. LPS proposed a list of conditions for the conditionally approved use option, eliminated the middle school from its proposed campus, and provided further details regarding its school proposal. A number of meetings were held with LPS and Port staff to review these changes, as well as to review a new proposal by the property owner of 8000 Edgewater Drive to subdivide the property.
- April 5, 2012: Port staff presents a report to the Board on revisions to the LPS project and status.
- May 2012: At the request of LPS, the Office of the Port Attorney retained special legal counsel to hasten the pace of environmental review, subject to a reimbursement agreement with LPS.
- June 7, 2012: Port staff report to the Board.
- July 9, 2012: Meeting between LPS and Port staff, including LPS-hired environmental consultant and Port's special counsel. The LPS environmental consultant had submitted a revised draft IS/MND; progress and direction were discussed. It was agreed that the project proponent would enter into a reimbursement agreement to cover all Port staff costs, including special counsel, in lieu of paying the standard fees under the Port's established fee schedule. A reimbursement agreement was completed at the end of August 2012, and was retroactive to the start of the project.
- October 3, 2012: Port staff returned comments on the draft IS/MND for 8000 Edgewater Drive to LPS, with 121 numbered comments. Air quality and noise impacts were highlighted.
- October 31, 2012: Meeting with LPS to review staff comments.
- December 19, 2012: Meeting with LPS to review LPS' responses to comments.

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- May 2013: Meetings with LPS and first notice by LPS and California Capital Investment Group of a proposed change of school site to 7700 Edgewater Drive owned by California Capital Investment Group (CCIG). Port staff continued to review architectural and site plans for both sites with LPS. However, Port staff informed LPS that an application for a school in the ABP could not be submitted until the LUDC was amended to allow GE uses.
- June 10, 2013: Revised draft IS/MND returned by LPS to Port for the new site. The report indicated potentially significant impacts to school children from air quality and noise.
- June 26, 2013: Meeting with LPS to discuss air quality and noise impacts to school children. School children are considered “sensitive receptors”. The need for further CEQA review was discussed with LPS, including preparation of an EIR. LPS team stated a preference for an IS/MND. Based upon the environmental analysis performed by LPS which showed significant impacts to school children, the Port communicated to LPS by letter on Friday, July 5, 2013, that an EIR was the appropriate level of environmental review.
- September 10, 2013: LPS submitted site-specific noise and air studies for the property at 7000 Edgewater Drive to the Port.
- September 13, 2013: LPS and CCIG’s outside counsel proposes performance zoning standards.
- September 18, 2013: The Director of Environmental Programs and Planning communicates to LPS and CCIG that the staff is amenable to proposing a performance zoning approach to the Board for land use planning, subject to environmental review under a MND so long as 1) there is substantial evidence in the record supporting an Initial Study/Mitigated Negative Declaration (IS/MND), and 2) that, should a fair argument be made by a third party that the project warranted an EIR, then the project proponent would proceed with the EIR-level analysis, communicated to LPS on July 5, 2013. The Director of Environmental Programs and Planning requested a response e-mail from Leadership Public Schools concurring with this understanding. The Director of Environmental Programs and Planning also requested that LPS provide the Port with the proposed performance zoning standards.
- September 20, 2013: LPS and CCIG responded with their concurrence.
- September 24, 2013: LPS transmitted to the Port proposed performance zoning standards based upon CEQA thresholds.

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ANALYSIS

Port staff has identified three major policy issues associated with allowing GE in the ABP: 1) compatibility of school uses with commercial and industrial uses; 2) enforcement; and 3) land use compatibility.

Exposure of “Sensitive Receptors” to Noise and Air Quality Impacts: “Sensitive” uses, under California law, include schools, residences, day care centers, hospitals, etc. Allowing General Education use in the Airport Business Park is a policy issue because it means that school children will be in the ABP during the school year, on a daily basis. The proposed school site at 7000 Edgewater Drive is located close to Interstate 880 (approximately 1200 feet) and under the approach flight paths of OAK. The proximity to the I-880 freeway and OAK make noise and air quality impacts to school children a policy concern. The Bay Area Air Quality Management District (BAAQMD) has identified the section of the I-880 freeway adjacent to the ABP as severely affected by poor air quality.

Enforcement: The ABP is unique in the Port Area because it is comprised of mostly private property under the planning jurisdiction of the Port. In the Maritime Area and Airport Area, the Port owns the land and also has planning jurisdiction. The Port monitors and enforces rules and regulations, including conditions of approval, through its tenancy agreements. In the ABP, private property owners specify the terms of their tenant agreements. Thus, it may be difficult for the Port to monitor compliance with site-specific performance zoning standards, including responding to compliance issues raised by third parties (i.e., adjacent property owners, parents of school children, school associations, etc.)

Land Use Planning and Compatibility of Proposed and Future Land Uses: From a land use planning perspective, the Board has traditionally expressed a preference for uses in the ABP that are industrial or light industrial and compatible and supportive of aviation and air cargo activities at Oakland International Airport. The LUDC provides for these uses as “allowable uses” (i.e., Light Industrial, Warehousing, Research and Development.) When a non-conforming land use is proposed, such as General Education, that proposed non-conforming uses carries the burden of demonstrating, through CEQA review, that it will not adversely impact neighboring uses. This environmental assessment is one of the factors considered by the Board in reviewing a proposal to amend the LUDC.

Should the Board approve the amendment, the burden of analysis shifts to future prospective land uses to demonstrate that the activities of that proposed land use would not adversely impact existing land uses, including the uses permitted under the amended LUDC. As applied to the proposed GE use, any new proposed uses for the area must then demonstrate that they will not significantly impact the school. This could have a chilling effect on the types of businesses that can locate near an approved school in the ABP. Any determination in the future to reverse this action will not apply to LPS or any other school that locates in the ABP as these would become “existing non-conforming uses.”

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Finally, the City of Oakland is currently conducting a planning effort to create an Area Specific Plan for the Coliseum area, including the ABP, to attract Oakland’s sports teams. GE uses may conflict with the City’s Coliseum Area Plan.

Nonetheless, these policy considerations may be addressed by agreed upon performance zoning standards.

STRATEGIC PLAN

Strategic Priority Area	Goal	Objective	How + When Implemented
Sustainable Economic and Business Employment	Goal A: Create sustainable economic growth for the Port and beyond.	Objective 4. Pursue strategic partnerships at all levels: local, regional, national and international.	LPS anticipates creating a catalyst for Ed Tech businesses in the ABP.

BUDGET & FINANCIAL IMPACT

The project proponent has agreed to reimburse all staff costs relating to this action, including the cost of outside counsel used to expedite the process. A reimbursement agreement is in place, with funds collected to cover all costs to date.

STAFFING IMPACT

Staff time for this effort has been included in each Division’s work plans. Option 1 would involve the most staff time. Option 2 would require slightly less time, but would concentrate the time needed into a shorter period. Option 3 would require the least amount of additional staff time.

SUSTAINABILITY

There are no obvious opportunities for Sustainability initiatives associated with this item.

ENVIRONMENTAL

This action is advisory only, and does not require a CEQA determination.

The CEQA determination for the LUDC was able to rely upon the City of Oakland’s General Plan Land Use and Transportation Element EIR because there was no change in proposed land uses. The actions proposed under options 1 & 2 would require environmental review: Option 1 requires an EIR and Option 2 allows a MND. Option 3 does not require a CEQA determination.

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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 action is not subject to OCIP as it is not a capital improvement construction project.

GENERAL PLAN

This action is advisory and does not require a General Plan conformity determination. If this action leads to a change in the LUDC, a determination will be made at that time.

Under the City of Oakland General Plan, Land Use and Transportation Element, most of the Business Park is in the Business Mix area. Properties along Hegenberger Road are in the Regional Commercial area. The General Plan allows General Education in the Regional Commercial and Business Mix areas under certain conditions. These conditions are primarily related to compatibility with existing businesses, and could be incorporated into the language of the use conditions.

LIVING WAGE

Living wage requirements, in accordance with the Port's Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the "Living Wage Regulations"), do not apply because the requested action is not an agreement, contract, lease, or request to provide financial assistance within the meaning of the Living Wage Regulations.

OPTIONS

1. Direct staff to prepare an amendment to the LUDC to allow GE uses subject to standard conditions in which case an EIR would be required for all potential school sites.
2. Direct staff to prepare an amendment to the LUDC to allow GE uses subject to standard conditions and performance zoning standards requiring environmental analysis on a site-by-site basis (7700 Edgewater Drive). This approach could be appropriate for an IS/MND level of CEQA review (absent a fair argument being raised by a project opponent).
3. Direct staff to leave the LUDC as is and not allow GE uses.

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RECOMMENDATION

Staff recommends that the Board provide direction to staff to prepare an amendment to the LUDC for Board consideration to allow GE uses subject to standard conditions and performance zoning standards requiring environmental analysis on a site-by-site basis, subject to appropriate environmental review and all appropriate and necessary conditions of approval approved by the Port Attorney to ensure no adverse impacts to surrounding uses in the ABP, to avoid adverse impacts on sensitive receptors, and to ensure no additional exposure to risk or expense for OAK and the Port.

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ATTACHMENTS

**From the *Land Use and Development Code for the Oakland Airport Business Park*¹
First reading of the Ordinance approved by the Board on April 26, 2011**

Figure 2.1 – Airport Business Park Land Use Designations

Table 2.1 – Permitted Land Uses

¹ The entire Land Use and Development Code is available on the Port of Oakland's web site:
<http://www.portoakland.com/pdf/opportunities/LUDCJune2011.pdf>

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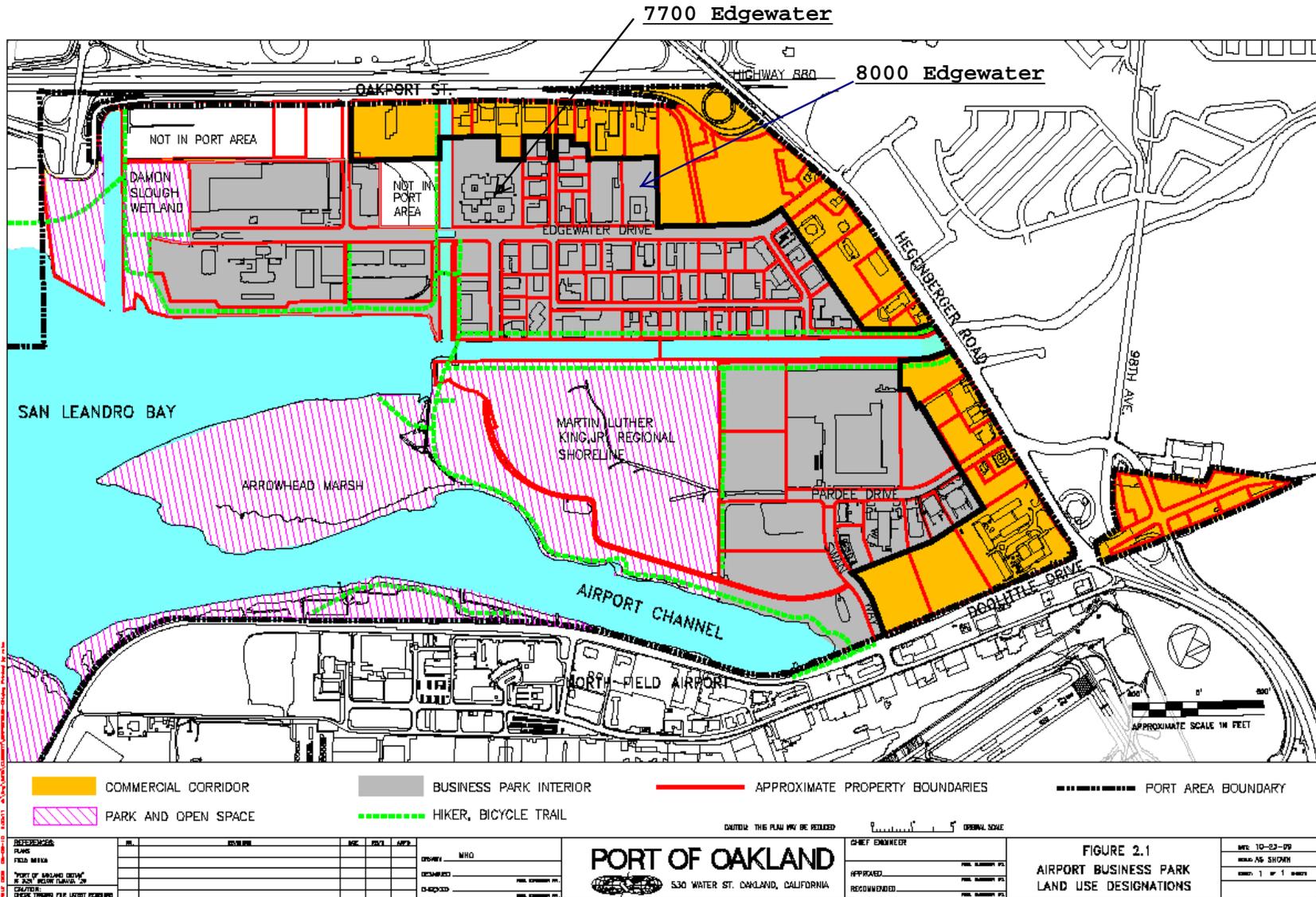


Figure 2.1 – Airport Business Park Land Use Designations

Table 2.1 - Permitted Land Uses

Uses	Areas	
	Commercial Corridor	Business Park Interior
1. Administrative	P	P
2. Adult Education/Vocational Training	P	P
3. Agriculture, Indoor	NP	P
4. Alcoholic Beverage Sales	PC(2.3A)	PC(2.3A)
5. Animal Breeding and Care	NP	NP
6. Automotive Fee Parking	NP	PC(2.3B)
7. Automotive Sales, Rental, Services or Brokerage	PC (2.3B.2)	NP
8. Automotive Servicing and Repair	PC (2.3B.3)	NP
9. Business Communication and Media Services	P	P
10. Community Assembly	NP	PC(2.3C)
11. Construction Operations	PC (2.3D)	PC (2.3D)
12. Construction Sales and Service	PC (2.3D)	PC (2.3D)
13. Consultative and Financial Service	P	NP
14. Convenience Market	P	NP
15. Custom Manufacturing	PC (2.3E)	P
16. Fast-Food Restaurant	PC (2.3F.1)	NP
17. Full Service Restaurant	P	NP
18. General Education	NP	NP
19. General Food Sales/Restaurants	P	PC (2.3F.2)

Uses	Areas	
	Commercial Corridor	Business Park Interior
20. General Manufacturing	NP	NP
21. General Retail Sales	P	NP
22. General Wholesale	PC(2.3.E)	P
23. Group Assembly	PC (2.3G)	NP
24. Health Care	NP	NP
25. Heavy Manufacturing	NP	NP
26. Large-Scale Combined Retail and Grocery Sales	P	NP
27. Light Manufacturing	PC (2.3E)	P
28. Mechanical or Electronic Games	NP	NP
29. Medical Service	P	PC (2.3H)
30. Personal Instruction and Improvement	P	P
31. Recycling and Waste Management	NP	PC (2.3I)
32. Repair Services	NP	P
33. Research and Development	NP	P
34. Retail Business Supply	P	NP
35. Retail Sales and Service	P	NP
36. Telecommunications	PC(2.3J)	PC (2.3J)
37. Transient Lodging	PC(2.3K)	NP
38. Trucking and Truck-Related Freight	NP	P
39. Trucking and Truck-Related Sales or Services	PC(2.3L)	NP

Uses	Areas	
	Commercial Corridor	Business Park Interior
40. Undertaking Services	NP	NP
41. Utility and Public Service	P	P
42. Warehousing, Storage, and Distribution	PC(2.3M)	PC(2.3M)

P	=	Permitted
PC (x)	=	Permitted conditionally with restrictions described in Section 2.3
NP	=	Not Permitted

2.3 Restrictions on Certain Permitted Uses

The following uses are permitted subject to the stated restrictions:

A. Alcoholic Beverage Sales: This use must be approved by the Port as part of a separate process prior to application to the State Alcoholic Beverage Commission. Off-sale (sale for off-site consumption) alcoholic beverage licenses, and on-sale (sale for on-site consumption) licenses not associated with a “full service” restaurant are subject to a Port finding of “public convenience or necessity” as required by the State of California. No off-sale license shall be allowed in the Business Park Interior except for wholesale sales.

B. Automotive

B.1 Automotive Fee Parking: A property owner may lease surplus parking to another business within the Business Park, only with prior approval of the Port after demonstrating that leased parking is not needed by on-site businesses. Such leased parking must not be considered a primary use on the property.

B.2 Automotive Sales, Rental, Services, or Brokerage: No restrictions apply on properties with an Oakport Street frontage. For properties with a Hegenberger Road frontage, this use is permitted only where vehicles are stored and displayed indoors. However, outdoor storage and display is permitted for up to 21 days a year as part of special outdoor promotional events.