

AGENDA REPORT

Administrative Appeals on the Environmental Impact Report and Development Permit (#5016) for the Proposed Hotel at 195 Hegenberger Road (Engineering)

<u>MEETING DATE:</u>	2/26/2015
<u>AMOUNT:</u>	\$750 fee paid by each appellant <i>Choose an item.</i>
<u>PARTIES INVOLVED:</u>	Monarch Equity Investments, Inc. (applicant) UNITEHERE! Local 2850 (appellant) Carpenters Trust Funds for N. CA (appellant)
<u>SUBMITTED BY:</u>	Chris Chan, Director of Engineering
<u>APPROVED BY:</u>	J. Christopher Lytle, Executive Director
<u>ACTION TYPE:</u>	Resolution

EXECUTIVE SUMMARY

In December 2014, the Port of Oakland (Port) Permit Hearing Officers (PHOs) certified the Environmental Impact Report (EIR), and approved the Development Permit for the proposed development of a hotel at 195 Hegenberger Road within the Oakland Airport Business Park (ABP) (See Figure 1). On January 5, 2015, the Port received two administrative appeals of these decisions. The Board of Port Commissioners (Board), acting as a quasi-judicial appellate body, must make a determination on these appeals; staff recommends that the Board uphold the PHOs' decision. This is the first appeal to the Board since establishment of this process in the ABP Land Use and Development Code in June of 2011.

BACKGROUND

Development Permit: The Oakland City Charter grants the Board land use authority within the Port Area, including the ABP. The Board exercises its land use authority primarily through its Land Use and Development Code (LUDC) to manage and regulate land uses and activities, consider and approve Development Permit applications, and perform environmental reviews and other related activities. The project applicant in this matter proposes to construct a full service hotel with 140 rooms at 195 Hegenberger Road in the ABP. The five-story hotel would occupy an 84,953-square-foot (sq. ft.) (1.95 acres) privately owned interior lot set back approximately 270 feet west of Hegenberger Road and

approximately 390 feet northeast of Pardee Drive. Vehicular access to the site would be provided by previously recorded driveway easements on adjacent privately owned properties from both Hegenberger Road and Pardee Drive.

In addition to 140 guest rooms, the hotel would include a 1,035 sq. ft. meeting room with 69 seats, a full-service restaurant, a bar/lounge, a small gym with exercise equipment, an outdoor swimming pool, and an outdoor patio. The hotel would also provide an employee break room, laundry, kitchen, offices, miscellaneous work areas, electrical and mechanical rooms, various storage rooms, and 151 vehicle surface parking spaces.

Site Location and Surrounding Uses: The project site is located within the Port Area. 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. Surrounding uses in the vicinity of the project site include a broad mix of uses such as: warehouse and distribution activities; visitor serving commercial uses including hotels and restaurants; light industrial activities; and office uses. The project site is located on an infill lot surrounded by existing developed properties, approximately 2 blocks from the entrance to Oakland International Airport. The site is nestled between existing buildings including the Oakland Harley-Davidson store, the Carpenters Trust Fund for Northern CA building, Francesco's restaurant, and the Comcast Cable office/warehouse building on Pardee Road.

Use Conformity: The project site is located within the Port Area of the City of Oakland, and within the Commercial Corridor of the ABP. The proposed use of the site is for transient lodging, which is a conditionally permitted use under the LUDC at this location. The specific conditions applicable to transient lodging facilities within the ABP are defined in the LUDC as: "Transient Lodging (otherwise known as hotels, motels, or inns) is permitted only on sites with access from Hegenberger Road. Such activities are only permitted where the facility meets the standards of a full service hotel defined as a minimum of one hundred (100) sleeping rooms, containing a full service restaurant providing three meals per day and room service, and including at least one indoor and one outdoor recreational amenity". A full service restaurant is defined in the LUDC as: "a restaurant where customers are served while seated, and order from a menu that provides enough choices to allow the customer to order a full meal. Such an establishment shall obtain at least 60% of its revenues from food service and no more than 40% of its revenue from alcoholic beverage sales. The sale or service of sandwiches (whether prepared in an on-site kitchen or made elsewhere and heated on the premises) or snack foods shall not constitute a full-service restaurant."

The proposed project complies with provisions of the LUDC by providing: access to the hotel from Hegenberger Road, 140 sleeping guest rooms, and a full-service restaurant. The applicant submitted documents describing how the applicant intends to comply with the "full service restaurant" requirement of the LUDC, including revisions to the project plans to incorporate the restaurant and food preparation areas, as well as an affirmative commitment statement from the applicant regarding compliance with the full service

restaurant requirement and food service intentions on the site, and a waiver letter from Marriott allowing the project applicant to offer a full service restaurant. A copy of the applicant's full service restaurant and the waiver letter are included in the PHOs' permit decision memo and included as Exhibits 1 and 2, respectively, of this agenda report. Based on an analysis of the Development Permit application and plans, including the various conditions of approval, the PHOs determined that the project description complies with the LUDC use standard.

The proposed hotel will also include a business center with computers, an indoor exercise room, a lounge area (indoor and outdoor), and an outdoor swimming pool, and

Design Conformity: With the exception of certain proposed signs (Signs, LUDC Section 4.2), the proposed hotel meets all the design standards of the LUDC, which include Architectural Design (LUDC Section 4.1), Antennas and Microwave Dishes (LUDC Section 4.3), Outside Storage (LUDC Section 4.4), and Maintenance (LUDC Section 4.5).

The project has been given a "Determination of No Hazard to Air Navigation" for its height by the Federal Aviation Administration. The building design follows the standards set for SpringHill Suites by the Marriott Hotel chain, and will enhance the aesthetics of the surrounding vicinity by placing an architecturally attractive building, which incorporates design elements such as a standing seam metal roof, masonry treatments on the ground floor of the exterior, tile accents in the stucco surface of the upper floors, a curved roof element over the porte cochere that is repeated on the roof line, and signage that is incorporated into the design elements, on a vacant lot that had blight concerns in the past. Given the setback from Pardee Drive and Hegenberger Road and potential viewing distances, the applicant requested variances for additional and larger signs than normally permitted under the LUDC. The Port posted a notice of the variance hearing on the Port's website on May 19, 2014, notifying the public that the Port will consider approval of the sign variances based upon the written findings. The Port held an initial hearing on May 30, 2014. Given the location and orientation of the site, and the need for visibility to succeed in their business, the PHO made a recommendation for approval. The Port posted a second notice for a second variance hearing, which was conducted on December 2, 2014 for final approval by the PHOs. The PHOs also recommended the variances be approved based upon the written findings included in the PHOs Decision memo (Refer to Exhibit 3), which relate to the unique physical and locational characteristics and dimensions of the subject parcel. No appeals of the sign variances were received during the administrative appeal period.

California Environmental Quality Act (CEQA): the Port, as Lead Agency, conducted environmental review, as follows:

- Consideration of development at this site began in 2009 with a proposal for another hotel. After completion of a draft Initial Study/Mitigated Negative Declaration, a determination was made to proceed with an EIR.
- October 2013: Discussed the project description with the applicant.

- February 4, 2014: Met with applicant to review permit requirements and entitlement process.
- March 3, 2014 to April 3, 2014: Circulated a Notice of Preparation for the EIR and the Initial Study Checklist to the public, including neighbors within 300 feet of the project site.
- March 19, 2014: Conducted a public scoping workshop.
- June 18, 2014 to August 4, 2014: Released the Draft EIR for public review.
- August 1, 2014 to August 4, 2014: Received comments from UniteHere Local 2850 (UniteHere) and Carpenters Trust Fund for Northern CA (Carpenters) on the Draft EIR with concerns regarding air quality, greenhouse gas emissions, onsite traffic circulation, and parking.
- September 18, 2014: Sent the Final EIR with responses to comments to commenters.
- September 22, 2014: Circulated the Final EIR with responses to comments on the Port's website (<http://www.portofoakland.com/environment/publications.aspx>).
- October 3, 2014: Received comments from the Carpenters opposing the Development Permit and certification of the Final EIR.
- October 6, 2014: Conducted a public hearing for the Permit Hearing Officers (PHOs) to consider certifying the EIR and approving the development permit. The PHOs considered the comments and testimony of the public, including the appellants, and continued the public hearing to allow for further testimony and consideration of the issues raised.
- November 11, 2014: Circulated the project applicant's clarification on the full-service restaurant, additional traffic circulation analysis, and notice of 2nd public hearing on the Port's website.
- November 24 to 25, 2014: Received comments from UniteHERE and Carpenters, opposing approval of the Development Permit.
- December 2, 2014: Conducted a 2nd public hearing for the PHOs to consider certifying the EIR, approving the sign variances, and approving the Development Permit. After receiving evidence and testimony, the PHOs took the matter under submission.
- December 18, 2014: Decision document signed by PHOs certifying the EIR, approving sign variances and approving the Development Permit (Refer to Exhibit 3).

Permit Findings: Based on the substantial evidence submitted in the Development Permit application materials, as well as the analysis provided by Port staff, and

testimony received during the public hearings on the Development Permit, the PHOs made the following findings in the Development Permit:

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, including the requirement to provide a "full-service restaurant" and other hotel-specific requirements specified in the LUDC based upon the following information:
 - Project Applicant commitment letter dated 10/10/2014 regarding compliance with full-service restaurant (attached with the development permit)
 - Project Applicant revisions to the main floor plan to clarify the restaurant and kitchen locations.
 - Port staff research and confirmation that SpringHill Marriott allows for standard select-service hotel to provide additional services and to become full-service hotel, similar to the Marriott Springhill Las Vegas.
 - Marriott waiver letter dated 12/10/2014 allowing project applicant to offer full-service restaurant, three meals per day, including room service, at the proposed hotel located at 195 Hegenberger Road.
4. The proposed project has been adequately evaluated under the California Environmental Quality Act (CEQA).
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, FAA, 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 burden on the Business Park and the Port, and which conditions otherwise promote the health, safety, and welfare of the surrounding community.

In addition, the PHOs found that with implementation of certain mitigation measures, no significant, unavoidable environmental impacts have been identified in the Final EIR. Mitigation measures and findings are provided below. Detailed findings and mitigation measures are described in the Final EIR and the associated Mitigation Monitoring and Report Program.

PHO FINDINGS:

1. Aesthetics

Standard CEQA Guidelines: Would the proposed project potentially create a new source of substantial light or glare that would adversely affect daytime or nighttime views in the area?

Analysis: The proposed site does not currently have existing sources of light; therefore the proposed project could potentially have a significant impact from the construction and operation of the hotel. To minimize this impact, the Final EIR includes Mitigation Measure AES-1, which requires the project applicant to design and install lighting that is fully shielded to minimize glare and obtrusive lighting.

Finding: The Permit Hearing Officers found that the identified impact is reduced to less than significant with this mitigation measure.

2. Air Quality

Standard CEQA Guidelines: Would the proposed project significantly violate air quality standards or contribute substantially to an existing or projected air quality violation?

Analysis: The Final EIR concludes in Impact 4.A-1 that construction of the proposed project would result in fugitive dust or PM10 emissions from excavation, trenching, and other construction activities. In addition, 4.B-1 concludes that construction of the project may result in temporary construction-related emissions of criteria pollutants from the use of heavy-duty construction equipment, haul truck trips, and vehicle trips generated from construction workers traveling to and from the site. To minimize this impact, the Final EIR includes Mitigation Measure 4.A-1, which requires that the Project Applicant implement best management practices (BMPs) related to dust control, pursuant to the Bay Area Air Quality Management District's 2012 CEQA Guidelines, during soil movement, grading and demolition activities as well as for vehicle and

equipment movement on unpaved surfaces. Some of the provisions include, but are not limited to: watering exposed soil surfaces periodically; covering haul trucks that are transporting loose material (i.e., soil, sand, etc); and idling no longer than 5 minutes for vehicles and equipment. The Final EIR also includes Mitigation Measure 4.B-1, which requires the use of alternative fuels (at least 15% of fleet) and locally sourced building materials (at least 10%).

Finding: The Permit Hearing Officers found that the identified impacts are reduced to less than significant with these mitigation measures.

3. Biological Resources

Standard CEQA Guidelines: (a) Would the proposed project have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act through the direct removal, filling, hydrological interruption, or other means?

Analysis: There are no wetlands or other waters of the U.S. within the proposed project site. However, there are bioswales north of the project site designed to capture storm water runoff from the parking lot. Runoff from the proposed project could potentially increase pollutants into the bioswales. To minimize this potential impact, the Final EIR includes Mitigation Measure HYD-1 and HYD-2, which includes preparation of a Storm Water Pollution Prevention Plan (SWPPP) for construction activities and a project drainage plan. The implementation of the best management practices identified in the SWPPP will reduce construction-related water quality impacts. The project drainage plan will incorporate the operation and performance of the proposed project site drainage facilities, including the bioswales.

Standard CEQA Guidelines: (b) Would the proposed project substantially interfere with the movement of any native resident or migratory fish or wildlife species, migratory corridors, or native wildlife nursery sites?

Analysis: There are no migratory wildlife corridors, migratory stopover sites, or native wildlife nursery sites within the project site. Biological resources are present in the surrounding undeveloped areas, particularly in Martin Luther King, Jr. Park located north of the project site. To minimize this impact, the Final EIR includes Mitigation Measure BIO-1, which requires pre-construction nesting bird surveys be conducted by a qualified biologist if removal of any vegetation and trees occurs between February 1 to August 31. In addition, the Final EIR includes Mitigation Measure BIO-2, which requires the project applicant to minimize night lighting by dimming lights in lobbies, perimeter circulation areas, and atria, turning off all unnecessary lighting by 11:00 PM, incorporating light-colored solar reflective window treatments, avoiding use of flood lights, and educating building management staff about dangers of night lighting to birds.

Finding: The Permit Hearing Officers found that these impacts are reduced to less than significant with these mitigation measures.

4. Cultural Resources

Standard CEQA Guidelines: Would the proposed project cause a substantial adverse change in the significance of an archaeological resource?

Analysis: The project site is located within the traditional territory of the Ohlone people.

Based on results of records and literature search, previous disturbance and geologic context in the project site, the project does not appear to have a potential impact to archaeological resources. However, the discovery of archaeological resources cannot be discounted during excavation. To minimize this impact the Final EIR includes Mitigation Measure CUL-1, which requires all construction activities to halt within 100 feet, proper notification to the Port and local, state, and federal agencies to determine if there is a potential archaeological resource, and development of a treatment plan, if required. To further ensure protection of cultural resources during construction, the Port's Emergency Plan of Action for Discoveries of Unknown Historic or Archaeological Resources shall be implemented.

Although there is no indication from the archival research that any part of the project site has been used for human burial purposes, there is potential for an inadvertent discovery. To minimize this impact, the Final EIR includes Mitigation Measure CUL-3, which requires the contractor to cease construction within 100 feet of the human remains discovery and contact the Alameda County Coroner's Office and the Native American Heritage Commission to determine if the remains are of Native American descent.

Finding: The Permit Hearing Officers found that these impacts are reduced to less than significant with these mitigation measures.

5. Climate Change and Greenhouse Gas Emissions

Standard CEQA Guidelines: Would the proposed project have a significant impact to the environment from greenhouse gas emissions?

Analysis: The Final EIR concludes that there are no impacts from operations, but Impact 4.B-1 notes GHG emissions from construction vehicles and equipment. To minimize the impact, the Final EIR includes Mitigation Measure 4.B-1, which requires the Project Applicant to use alternative fuels for construction vehicles and equipment (at least 15%) and locally sourced building materials (at least 10%), and recycle/reuse construction waste/demolition materials (at least 50%).

Finding: The Permit Hearing Officers found that the identified impact is reduced to less than significant with this mitigation measure.

6. Hazards and Hazardous Materials

Standard CEQA Guidelines: (a) Would the proposed project create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?

Analysis: The Final EIR concludes in Impact 4.D-1 that the proposed project site may contain contaminants that could potentially adversely affect site workers, the public or the environment through ground disturbing activities or from improper

handling, storage, or disposal of potentially contaminated soil. To minimize the impact, the Final EIR includes Mitigation Measure 4.D-1a and 4.D-1b. Some of the provisions in the mitigation measures include: Notification to the Regional Water Quality Control Board of the planned construction activities, Preparation and Implementation of a Soil Management Plan and a Health & Safety Plan, and characterization of the stockpile for off-site disposal.

Standard CEQA Guidelines: (b) Would the proposed project create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions of hazardous materials used during construction?

Analysis: The Final EIR states in Impact 4.D-2 that construction activities typically include handling hazardous substances such as paints, fuels, and solvents. If a spill or leak were to occur, workers and the environment could potentially be exposed to a hazardous condition. To minimize the impact, the Final EIR includes Mitigation Measure 4.D-2 which requires the Project Applicant to develop and implement a Storm Water Pollution Prevention Plan that includes a spill response plan and best management practices of hazardous materials.

Finding: The Permit Hearing Officers found that the identified impacts are reduced to less than significant with these mitigation measures.

7. Hydrology and Water Quality

Standard CEQA Guidelines: a) Would the proposed project potentially violate water quality standards or waste water discharge requirements?

Analysis: Project construction involves clearing, grading, and other earthwork related activities. If construction is not managed, there is potential for erosion and other pollutants to run-off or erode into storm drains systems or off-site. To minimize the impact, the Final EIR includes Mitigation Measure HYD-1, where the project applicant will be required to prepare and implement a SWPPP as described in the Biological Resources section above.

The proposed project operations could also potentially impact water quality from runoff from roofs, streets, parking areas and landscaped areas into the local drainage network. To minimize this impact, the Final EIR includes HYD-2 and HYD-3, where the project applicant will be required to submit final hydrology/hydraulics calculations based on the final design plan and comply with the State Water Resources Control Board's "National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities Order No. 2009-0009-DWQ, NPDES NO. CAS000002", and "Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4s) Water Quality Order No. 2013-0001, NPDES No. CAS000004".

Standard CEQA Guidelines: b) Would the proposed project alter the storm drainage system from the result of erosion at the project site?

Analysis: The proposed project involves changes to the existing impervious surfaces due to the construction of buildings. Project impacts to erosion and siltation are primarily related to construction activities. To minimize the impact,

the Final EIR includes Mitigation Measures HYD-1, HYD-2, and HYD-3 as described above.

Standard CEQA Guidelines: c) Would the proposed project alter the storm drainage system from the result of flooding from the site.

Analysis: The Proposed project is currently vacant with sparse vegetation. Project development would include new landscaping, however the new impervious surfaces would ultimately increase the peak discharges from the site. To minimize this impact, the Final EIR includes Mitigation Measure HYD-2 to ensure project impacts associated with downstream flooding are reduced to less than significant levels.

Standard CEQA Guidelines: d) Would the proposed project create or contribute to runoff or water or substantially degrade water?

Analysis: As described above, implementation of HYD-1, HYD-2, and HYD-3 would minimize impacts associated with construction-related water quality.

Finding: The Permit Hearing Officers found that these impacts are reduced to less than significant with these mitigation measures.

8. Noise

Standard CEQA Guidelines: Would the proposed project result in a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?

Analysis: Construction is expected to commence in Fall 2014 and last for 15 months. Construction of the proposed project would generate temporary and intermittent noise at and near the project site from excavation, auguring and concrete pumping, building construction, utility trenching, and landscaping. To minimize the impact from the temporary construction-related increase, the Final EIR includes Mitigation Measures NOI-1a to NOI-1c, which requires the project applicant to comply with the City of Oakland's noise measures, which include, but are not limited to, limitation on standard construction activities times as required by the City of Oakland's Building Department, reduction of daytime noise impacts due to construction, and completion of noise attenuation measures under the supervision of a qualified acoustical consultant.

Finding: The Permit Hearing Officers found that this impact is reduced to less than significant with these mitigation measures.

9. Transportation/Traffic

Standard CEQA Guidelines: Would the proposed project have a significant conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system and an applicable congestion management program?

Analysis: The final EIR concludes in Impact 4.C-1 that traffic from construction workers, the delivery of materials, and off-hauling construction debris could result in temporary impacts to circulation and congestion on the public roadways. To

minimize the impact, the Final EIR includes Mitigation Measure 4.C-1, which requires the Project Applicant to prepare and implement a construction management plan that includes traffic control measures, haul route designation, adjacent property notification of the construction management plan, and street monitoring for construction debris and damage.

Finding: The Permit Hearing Officers found that the identified impact is reduced to less than significant with mitigation measure 4C-1.

Following the completion of the final EIR, an additional traffic circulation analysis was conducted (Appendix C - Technical Memorandum - 195 Hegenberger Road Hotel: Traffic Circulation Analysis in Response to Comments on the Final EIR, prepared by ESA, dated November 12, 2014) to respond to commenters' concerns regarding level of service to the access driveways (off Hegenberger Road and Pardee Drive) and to on-site circulation. The additional analysis indicates that there is no significant impact to the concerns noted above.

PHO Permit Conditions: The PHOs approved the project subject to the following Permit conditions:

1. The Project's Port Development Permit will be valid for 365 days from the date of approval. Commencement of construction or grading must occur within that period and continue with a valid City of Oakland building permit until completion. If the work is discontinued at any time after the 365-day term of the permit for more than 365 days, a new Port of Oakland Development Permit will be required for any additional work.
2. The Project Applicant shall be responsible for compliance with all regulations of the LUDC, including all requirements for a full-service hotel featuring a full-service restaurant. Applicant's letter dated 10/10/14 is included with the Development Permit to demonstrate details of compliance. Non-compliance with any provision of the LUDC, including all Conditions of Approval attached to the Development Permit and the full-service hotel and restaurant requirements and the specifications set forth in the Applicant's letter, shall constitute a violation of this Development Permit subject to all of the code enforcement actions permitted under the LUDC.
3. Prior to start of construction, the applicant shall provide evidence of full compliance with Section 2.3K of the LUDC for operation of a full-service hotel including a full-service restaurant (as defined in Appendix A of the LUDC), three meals a day, and room service, and shall include an agreement or approval from the associated hotel company (e.g. for a select-service hotel to become a full-service hotel). Any material changes proposed to the approved project must be approved by the Port.
4. The Project Applicant shall comply with all of the mitigation measures identified in the Mitigation Monitoring and Report Program (MMRP) for the Project, included in Attachment 3 and incorporated herein as a condition of approval of the Development Permit. The Project Applicant shall complete the

MMRP Completion Checklist and submit the Checklist to the Port within 45 days after project completion.

5. Final construction details, including landscaping plans, paving details, and building material samples, shall be submitted to the Port Permit Coordinator for review and approval prior to release of drawings for a City of Oakland application for a building permit for the Project, or any portion of the Project. Such review will ensure consistency with this approval.

6. The Project Applicant shall obtain, at the Project Applicant's expense, all City of Oakland building permits required for the Project.

7. The Project Applicant is solely responsible for all other permits that may be required by other agencies for the construction and operation of the hotel. These include, but are not limited to, the County of Alameda Health Department for food service and the State of California Alcoholic Beverage Commission (ABC). This approval assumes that the premises will qualify for an on-site alcoholic beverage sale license as a bona fide eating establishment. Failure to obtain any such permit, where it results in the inability to meet any of the requirements of this permit, shall be grounds for revocation of the permit.

8. The Project Applicant and the Project 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 prior to the start of construction.

9. 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 Engineer 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 Engineer's order. Any such fine shall be reasonably related to the nature of the violation and/or the cost to correct.

10. 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, attorney's 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.

11. The hotel shall provide shuttle service, via ground vehicle service, between Oakland International Airport, downtown Oakland, and the Oakland Coliseum BART station. The service will be available 24 hours per day, seven days per week.

12. The hotel will provide valet parking service to off-site parking during conference events and at other times of heavy vehicle traffic accessing the facility. Off-site locations must be identified and communicated to the Port of Oakland prior to occupancy.

13. The parking provided on the Project site shall be used only by employees, patrons, visitors, and current hotel guests to the Project. No parking spaces shall be used for airport passenger parking.

14. Any work to modify the streets, including driveway cuts and/or modifications will be subject to further review by the City of Oakland. Hegenberger Road and Pardee Drive are dedicated City of Oakland streets.

15. Mature landscaping shall be used to the extent feasible to provide benefits as soon as possible. The submitted Landscape Plan shows 88 trees at 24" box size and 11 at 15 gallon size. This shall be the minimum for the final plan. Shrubs shall be minimum 1 gallon.

16. The Project Applicant shall determine the use of existing pipes (PVC-polyvinyl chloride) that extend above ground. If determined inactive, the Project Applicant shall properly remove or destroy (if groundwater monitoring wells) and dispose off-site in compliance with local, state and federal regulations.

17. The applicant shall confirm that an aviation easement in favor of Oakland International Airport in a form approved by the Port Attorney has been recorded on the subject property. If not, the applicant shall grant and record an aviation easement.

18. The Applicant shall include the following on-site traffic control measures:

- A. Install onsite traffic signs and provide information at the hotel entrance and lobby directing hotel traffic to exit at the Pardee Drive access driveway, including a written hand-out at the front lobby desk.
- B. Paint the standard traffic design markings stating “KEEP CLEAR” on the pavement at the Hegenberger Road driveway access entrance
- C. Install a “Right Turn Only” sign at the site exit on Hegenberger Road.

Traffic control measures 18B and 18C are subject to an agreement with other owners/operators with rights to the shared easement for the Hegenberger Road private driveway. If no agreement can reasonably be made between these parties, conditions 18B and 18C are void.

19. These conditions of approval shall be printed on the first page of the Project plans submitted for grading and building permits to the City of Oakland. A copy of the final building permit plans shall be submitted to the Port Permit Coordinator for review for consistency with the Port Development Permit for the Project.

20. Any other conditions added by the Permit Hearing Officer as well as any other conditions listed in the LUDC not otherwise listed here.

ANALYSIS

Following the PHOs written decision, the Port received correspondence, on January 5, 2015, from UniteHere Local 2850 (UniteHere) and Carpenters Trust Fund for Northern CA (Carpenters), appealing the PHOs decision. Refer to Exhibit 4 and 5, respectively.

The Appellants raised five issues of concern:

- 1) The project applicant will not comply with the full-service restaurant requirement in the LUDC (UniteHere).
- 2) The Port’s greenhouse gas emissions analyzed in the EIR is incorrect (UniteHere).
- 3) On-site vehicular traffic circulation will create safety issues for drivers and pedestrians at the Hegenberger Road Access Driveway (Carpenters).
- 4) There is a shortage of onsite vehicle parking stalls based upon the number of employees (Carpenters).
- 5) The development permit approval memo and EIR did not analyze truck loading requirements (Carpenters).

Port staff has reviewed the grounds for appeal in each of the administrative appeal letters. Below are Port staff’s responses to the Appellants’ grounds for appeal:

1) Compliance with the LUDC by operating a Full Service Restaurant

Appellant UniteHere has raised concerns regarding the project applicant’s compliance with the full-service hotel with a full-service restaurant requirement set

forth in the LUDC, and has asserted that the applicant only agreed to comply with these provisions in response to comments at the public hearing.

The project applicant has provided its commitment to meeting the LUDC throughout the process, and fully stated that it understood the requirements when discussed at the February 4, 2014 meeting. Specifically, the project applicant has:

- submitted a commitment letter dated 10/10/2014 to demonstrate an understanding regarding compliance with the full-service restaurant requirement;
- revised the main floor plan to clarify the restaurant and kitchen locations; and
- submitted a sample menu which shows a variety of breakfast, lunch, and dinner options

Port staff also conducted research and confirmed (through telephone calls on December 3, 2014) that SpringHill Marriott allows for a standard select-service hotel to become a full-service hotel, similar to the Springhill Marriott Las Vegas. In addition, the Port received a Marriott waiver letter dated 12/10/2014 allowing the project applicant to offer full-service restaurant, three meals per day, including room service, at the proposed hotel located at 195 Hegenberger Road.

To ensure the project applicant implements the full-service hotel with full-service restaurant, the PHOs included the following conditions as part of the Development Permit approval:

- The Project Applicant shall be responsible for compliance with all regulations of the LUDC, including all requirements for a full-service hotel featuring a full-service restaurant. Applicant's letter dated 10/10/14 is included herein to demonstrate details of compliance. Non-compliance with any provision of the LUDC, including all Conditions of Approval attached to this permit and the full-service hotel and restaurant requirements and the specifications set forth in the Applicant's letter, shall constitute a violation of this Development Permit and shall be subject to all of the code enforcement actions permitted under the LUDC.
- Prior to start of construction, the applicant shall provide evidence of full compliance with Section 2.3K of the LUDC for operation of a full-service hotel including a full-service restaurant (as defined in Appendix A of the LUDC), three meals a day, and room service, and shall include an agreement or approval from the associated hotel company (e.g. for a select-service hotel to become a full-service hotel). Any material changes proposed to the approved project must be approved by the Port.

Because the proposed project and the approval for that project squarely comply with the full-service hotel with a full-service restaurant requirement set forth in the LUDC, it is the staff's position that the appellant has failed to state a basis for overturning the PHOs' approvals of the project and that the project proposed will be the project developed. Fundamentally, Appellant UniteHere appears to be concerned that the Port will not enforce the provisions of its LUDC in the future, not that the project proposed is inconsistent with the LUDC. Because the LUDC has a robust

enforcement process, staff is confident that should the project proposed not be the project developed or operated, the Port will be able to effectively either bring the project into compliance or shut it down, just as it can with any other use that does not conform to the LUDC requirements.

2) Greenhouse Gas Analysis in the EIR

Appellant UniteHere contends that the trip generation and average commuter length is miscalculated in the EIR, and thus the greenhouse gas emissions from the project would exceed the threshold of significance defined in the Bay Area Air Quality Management District's (BAAQMD) CEQA Air Quality Guidelines (1,100 metric tons of CO₂e per year). The Appellant refers to the URBEMIS model as the preferred methodology by BAAQMD.

As stated on its website (<http://www.baaqmd.gov/Divisions/Planning-and-Research/CEQA-GUIDELINES.aspx>), as of July 31, 2013, BAAQMD requires the use of CalEEMOD – the new air quality analysis methodology and no longer supports the use of the URBEMIS model, which contains outdated emission factors. Regardless, as noted in the Port's response on December 2, 2014 (http://www.portofoakland.com/pdf/environment/Tech_Memo_Employee_Analysis.pdf) the trip generation for the project was based from the ITE Trip Generation Manual, which is widely used and accepted source of trip generation. The daily trip was calculated based on the best fitted curve equation, rather than the average daily rate, as the equation represents a best fit of the relations between number of rooms and trips generated for this hotel. This memo also fully discharges questions raised at the December 2, 2014 hearing by the Appellant UniteHERE regarding the number of workers. The correct greenhouse gas analysis is based upon a factor of 0.9 employees per hotel room, and not based upon a specific representation of number of employees provided by the project applicant.

The average residential worker trip lengths (12.4 miles per CalEEMOD) can be misunderstood to be used in the analysis because it can be perceived as the length from work to home. However, this trip length is to be used in analysis for projects that are of residential use only. Because the hotel project is a commercial use, the average commercial worker trip length is 9.5 miles, which is defined by CalEEMOD as "a trip made by someone who is employed by the commercial land use sector", which can be found in Table 4.2 of Appendix D of the CalEEMod User's Manual at <http://www.caleemod.com>. Trip lengths in the model were supplied by the local districts or use a default average for the state. Therefore, the appropriate trip generation and worker trip lengths were used in the EIR analysis.

3) On-Site Vehicular Traffic Circulation

Appellant Carpenters states the project will cause an unacceptable delay and worsen the egress that will be "detrimental to the health, safety, peace, morals, comfort or general welfare" as stated in the LUDC, at the Hegenberger Road access

driveway, even though the project does not require a signal light based on the conditions described in the California Manual on Uniform Traffic Control Devices (CA MUTCD).

The Port directed the traffic consultant, ESA Environmental, to analyze the Level of Service (LOS) at the Hegenberger Road access driveway (delay at the location), even though analysis at a private unsignalized access driveway is not standard practice under CEQA (http://www.portofoakland.com/pdf/environment/Tech_Memo_Post_EIR_Traffic_Analysis.pdf). Based on the traffic model calculation, the existing Hegenberger Road access driveway was projected to already be at LOS E (an unacceptable level). With the project, the LOS was calculated to be LOS F. Following standard traffic analysis practices to use professional engineering judgment to ensure that reported LOS accurately reflects the current conditions at the site (as recommended in the Highway Capacity Manual), the licensed traffic engineer subsequently conducted site observations and noted that the existing LOS is not at LOS E, it is, in fact at LOS D or better. In addition, ESA reviewed the requirements of a signal light warrant from the CA MUTCD signal warrant and concluded the project did meet the requirements to warrant a signal light at the Hegenberger Road access driveway. Based on these factors, modeled analysis, and observations in the field, ESA determined there was no significant impact.

To address continuing public concerns relating to hypothetical delays from the project, the PHOs included the following traffic control measures as part of the conditions of the development permit approval:

“18. The Applicant shall include the following on-site traffic control measures:

- A. Install onsite traffic signs and provide information at the hotel entrance and lobby directing hotel traffic to exit at the Pardee Drive access driveway, including a written hand-out at the front lobby desk.
- B. Paint the standard traffic design markings stating “KEEP CLEAR” on the pavement at the Hegenberger Road driveway access entrance
- C. Install a “Right Turn Only” sign at the site exit on Hegenberger Road.

Traffic control measures 18B and 18C are subject to an agreement with other owners/operators with rights to the shared easement for the Hegenberger Road private driveway. If no agreement can reasonably be made between these parties, conditions 18B and 18C are void.”

The Appellant Carpenters note that there is only one “enforceable condition of approval, which is of limited value.” The Hegenberger Road access driveway has a shared easement, therefore the Port cannot enforce a traffic control measure on the project applicant without the other private properties on the shared easement agreement consenting to move forward with measures 18B and 18C. The Appellant Carpenters, who leases property that is on the shared easement, could and should encourage the property owner of their leased site to agree with the measures so the project applicant can implement all three measures.

In addition to these traffic control measures, the Appellant Carpenters requests a left-turn lane and a right-turn lane be installed at the Hegenberger Road access driveway. Staff does not support this approach. As noted above, the alleged impacts are not significant and do not need to be mitigated under CEQA. Further, installing these designated lanes will not resolve their concerns about potential delays caused by making left turns. Further, this solution would likely not be feasible within the existing easement boundaries, so an expanded easement dedication from one or both of the other two owners would be necessary. Therefore, Port staff believes these designated lanes are not warranted and implementation of a right-turn only sign when exiting the property site at Hegenberger Road access driveway will resolve any hypothetical public safety issues relating to the left-turn.

4) Vehicle Parking

The project applicant proposes to install 151 parking stalls onsite. The Appellant Carpenters contend that at least 167 vehicles parking stalls are required to meet the LUDC parking requirements (Section 3.C and Table 3.1 in the LUDC). Staff does not agree with this calculation.

The LUDC parking calculation is as follows:

LUDC Parking Requirement	Proposed Hotel Calculation	Proposed Hotel Parking Stalls
1 stall per room at 80% occupancy	1 x 140 rooms x 0.8	112
3 stalls per 4 employees (1 employee per 13 rooms)	$\frac{3}{4}$ (140 rooms/13)	9
1 stall per manager	2 (assume 2 managers)	2
1 stall per 3 seats in the meeting room	1 x (69 seats/3)	23
1 stall per 2 banquet employees (7 employees per 100 seats at 60% occupancy)	$(69 \text{ seats} \times 0.6) = 42$ $42/7 = 6$ $6/2 = 3$	3
	TOTAL	149

Based on these calculations, 149 parking stalls (not 167) are required under the LUDC. Therefore the project applicant should be required to comply with the LUDC parking requirement of 149 parking stalls.

5) Truck Loading Requirements

The Appellant Carpenters state that the project applicant's proposed project "transformed into a full service hotel with a full service restaurant" during the hearing

process, therefore the effects of food delivery trucks must be analyzed and conform to the LUDC truck loading requirements.

The project applicant proposed a full service hotel with full service restaurant from the beginning of the permitting process. The revisions to the floor plan, project applicant commitment letter, and the Marriott waiver provided during the hearing process were to provide further evidence and clarification that the hotel is going to be a full service hotel in response to public comments. The project description that describes delivery trucks to be no larger than FedEx and UPS size delivery trucks has not changed and are still expected to use the porte-cochere. No other truck loading design requirements are mandated by the LUDC.

Based upon the documentation received from the project applicant and the traffic analysis conducted, Port staff has determined that the project as proposed by the applicant complies with the LUDC requirements based upon the existing design and there are no additional truck loading impacts projected to stem from the project.

In summary, based upon the evidence provided, it is the staff's position that the Appellants have failed to state a basis for overturning the PHOs' certification of the EIR and approval of the Development Permit.

BUDGET & STAFFING

The proposed action does not have any budget or staffing impact.

MARITIME 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.

STRATEGIC PLAN

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Plan (<http://www.portofoakland.com/pdf/about/strategicPlan2011-2015.pdf>)

Goal A: Create Sustainable Economic Growth for the Port and Beyond

Objective 1: Maximize the use of existing assets; and

Objective 3: Increase revenue, job creation and small business growth.

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 action involves an administrative decision by the Board on the administrative appeals to the PHOs approval of the development permit on privately owned property.

ENVIRONMENTAL

Impacts from the construction and operation of the proposed hotel have been analyzed in the Final 195 Hegenberger Road Hotel EIR. Pursuant to the LUDC, Section 5.7 Administrative Appeals, certification of the EIR is being challenged.

GENERAL PLAN

This project was found to conform to the General Plan pursuant to Section 727 of the City of Oakland Charter. The current General Plan designation for the property Regional Commercial, "intended to maintain, support and create areas of the City that serve as region-drawing centers of activity." This designation allows a mix of commercial, office, entertainment and visitor serving activities, including hotels. The allowable FAR/density for this classification is 4.0, well over the density proposed for the site (1.3). The appeal does not challenge this determination, and no further action is required for any of the alternatives proposed.

OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)/ PROFESSIONAL LIABILITY INSURANCE PROGRAM (PLIP)

The Owner Controlled Insurance Program (OCIP) and Professional Liability Insurance Program (PLIP) do not apply to the matters addressed by this Agenda Report as they are not capital improvement construction or design projects.

OPTIONS

1. Uphold the Permit Hearing Officers' decision to certify the Environmental Impact Report and approve the development permit for 195 Hegenberger Road Hotel project.
2. Uphold the Permit Hearing Officers' decision to certify the Environmental Impact Report but deny the development permit.
3. Uphold the appeals and reject the Permit Hearing Officers' decision to certify the Environmental Impact Report and approve the development permit.

RECOMMENDATION

Adopt a resolution to uphold the Permit Hearing Officers' certification of the Environmental Impact Report and approval of the Development Permit for the 195 Hegenberger Road Hotel project, based on the totality of the administrative record, including the analysis, reports, findings, and expert testimony, considered by the PHOs and the Board, and including the following specific findings:

1. The PHOs' determination that the proposed project complies with the LUDC's full-service hotel with a full-service restaurant is supported by substantial evidence in the record and the plans and specifications submitted for the subject project clearly describe and depict a full-service hotel with a full-service restaurant within the meaning of the LUDC and are supported by the applicant's written and binding commitment to meeting the LUDC generally and the full-service hotel with a full-service restaurant requirement, in particular, along with the project condition of approval to that effect.
2. The PHOs' determination that the greenhouse gas analysis in the EIR was adequate and in compliance with CEQA is supported by substantial evidence in the record; the appropriate trip generation and worker trip lengths were used in the EIR analysis and the project impacts will not exceed BAAQMD's threshold of significance.
3. The PHOs' determination that no significant adverse impact will result from the project's effect to on-site traffic circulation is supported by substantial evidence in the record; a traffic analysis was conducted by the Port's expert consultant at the Hegenberger Road access driveway to specifically evaluate this issue, and that analysis concluded there was no significant impact from the project.
4. The PHOs' determination that the project proposed provides adequate parking (at 149 parking stalls) to meet the LUDC requirements is supported by substantial evidence in the record; based on the calculations set forth in the LUDC, (Section 3.C and Table 3.1) 149, not 167 or more, parking stalls are required.
5. The PHOs' determination that no significant adverse impacts from onsite truck loading and that such potential impacts were adequately evaluated in the EIR is supported by substantial evidence in the record; the revisions to the floor plan, project applicant commitment letter, and the Marriott waiver provided during the hearing process were to provide evidence and clarification that the hotel is going to be a full service hotel in response to public concerns; these submittals did not and do not signal a change to

the type and size of delivery trucks described in the original project description in the EIR.

Attachments:

Exhibit 1: Project Applicant's Compliance with Full-Service Restaurant Commitment Letter dated 10/10/2014

Exhibit 2: Marriott Waiver Letter dated 12/10/2014

Exhibit 3: Permit Hearing Officers' Decision Memo dated 12/18/2014

Exhibit 4: UNITEHERE Appeal Letter dated 12/23/2014

Exhibit 5: Carpenters Trust Funds for Northern California Appeal Letter dated 12/31/2014



Source: ESA, *Technical Memorandum, 195 Hegenberger Road Hotel: Traffic Circulation Analysis in Response to Comments on the Final FIR*. November 12, 2014.