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December 23, 2014

Board of Port Commissioners
Port of Oakland
530 Water Street
Oakland, CA 94607

Dear Commissioners:

I am writing on behalf of UNITE HERE Local 2850 to appeal the decision of the Port Hearing Officers to approve a Development Permit and certify the corresponding Environmental Impact Report (EIR) for the hotel project at 195 Hegenberger Road. We object to the Hearing Officers' decision for the following reasons:

1. We believe the hotel will not conform to the requirement in the Port's Land Use and Development Code (LUDC) that it offer a full service restaurant serving three meals per day and room service. The plans submitted with the applicants' original application clearly did not include such a restaurant, as the applicants' October 10th letter implicitly acknowledges. After Local 2850 made comments to that effect at the hearing on October 6th, 2014, the applicants revised the floor plans, expanding the kitchen and printing the word "restaurant" in the hotel lobby (an area known as the "communal circle" in Marriott's template floor plans for the SpringHill Suites brand). While it is easy to change a drawing, it is another thing to change a business plan. Based on the original application, we believe the applicants have never intended to operate a full service hotel. They are proposing to operate a SpringHill Suites, which is a "select service" (meaning not full service) brand in the Marriott family and whose standard food-and-beverage offerings are limited to a free breakfast buffet. The "waiver" submitted by Marriott allowing the applicants to include a full service restaurant obviously does not ensure that such a restaurant will actually be operated.

The Port staff's memo cites the SpringHill Suites Las Vegas as an example of a hotel in this chain that offers a full service restaurant. This hotel, which is steps from the Las Vegas strip, on the same block as the Riviera and across the street from the former Las Vegas Hilton (now Westgate Las Vegas), is clearly an outlier and not a relevant comparison. Nonetheless, even this hotel would not comply with the terms of the LUDC. According to the hotel's website, its restaurant is open only for lunch and dinner. For breakfast, the hotel apparently serves the standard SpringHill Suites free breakfast buffet. (See the attached document taken from the hotel's website.) By definition, a

buffet is not a full service restaurant. (*Black's Law Dictionary* defines a "full service restaurant" as one that "provides complete and varied breakfast, lunch, and dinner menus, along with a wide selection of foods and beverages, and table service.") The sample menu provided by the applicants seems to indicate that the proposed hotel would also provide a buffet-only free breakfast, which would not comply with the LUDC.

The applicants may object that such strict requirements do not make sense for the type and location of the hotel they are proposing. But this is precisely the point. Across North America, new hotel development is increasingly dominated by limited service (or "select service") hotels, which are attractive to developers and owners primarily because they allow tremendous savings on food-and-beverage labor costs, food and beverage being the least profitable segment of a hotel operation. The Port's requirement that new hotels be full service hotels with full service restaurants (which it adopted following the City of Oakland's adoption of the same policy) is intended to counter this trend in order to ensure that Oakland provides the first-class accommodations that befit a first-class destination for tourists, business travellers, and conventioners. The Hegenberger corridor already has more than enough motels and limited service hotels, all of which were entitled before the City's adoption of the full-service requirement in 2000. Importantly, the development of a 140-room SpringHill Suites will only make it less likely that the market will accommodate the development of another true full service hotel (such as Marriott, Hyatt Regency, or Sheraton) to complement the Hilton Oakland Airport.

While the Port staff is proposing conditions of approval that would require the operation of a full-service restaurant serving three meals a day, it is extremely unlikely that the market segment that the SpringHill suites brand inhabits will allow such an operation to make business sense, whereas a full-service hotel brand such as Marriott, Hyatt Regency, or Sheraton would be much more likely to support such a restaurant. We believe it is unwise for the Port to approve the development of a hotel with conditions of approval that are so likely to be violated due to such predictable business considerations, thereby putting the Port in the difficult and entirely avoidable position of having to enforce a requirement that the hotel operators will claim (truthfully, in all likelihood) does not make business sense and is economically infeasible for a 140-room SpringHill suites situated behind a motorcycle dealership. When the SpringHill Suites restaurant closes for lunch because it is losing money, or otherwise cuts back on service in order to save on labor costs, is the Port prepared to litigate to seek an injunction requiring the operation of a restaurant that, because of the hotel's market segment, is guaranteed to lose money? Is the Port prepared to impose \$10,000 administrative penalties on the property owners, to record nuisance abatement liens, or to seek criminal prosecution resulting in up to six months imprisonment for every day the restaurant is closed for lunch or doesn't offer a full breakfast menu, as allowed by the enforcement provisions of the LUDC? If the Port is not prepared to take such actions, it sends a signal that the requirements of the LUDC are not real requirements.

Rather than put the Port (and the property owners) in this position, we believe it would be wise for the Commissioners to overturn the approval the Development Permit for 195 Hegenberger, thereby leaving room in the market for the development of a true full service hotel that would accomplish the goals of the City and the Port with respect to maximizing Oakland's appeal as a destination for tourists, business travellers, and conventions.

2. As explained in previous letters (attached), the EIR for the hotel does not adequately analyze the hotel's potential greenhouse gas emissions. By understating the trip generation and average commute length of the project, it miscalculates the greenhouse gas emissions, thereby concluding incorrectly that the hotel would not have a significant effect on climate change. The miscalculations put the estimate of carbon emissions just under the BAAQMD threshold of significance, and the correct numbers would likely cause the estimate to exceed said threshold, which would require the adoption either of mitigation measures or of a statement of overriding considerations.

Port staff has provided a technical memo from the authors of the EIR attempting to dispute these claims. The memo attempts to justify the estimate of 880 trips per day, rather than the 1,144 trips that would result from the use of the average daily rate given by the Institute of Transportation Engineers (ITE) *Trip Generation Manual* (140 rooms times 8.17 trips per room), by referring to unspecified "guidance of the *Trip Generation Manual*" advising the use of the fitted curve equation rather than the average daily rate. The *Trip Generation Manual* gives guidance regarding the suitability of the fitted curve equation and average daily rate as follows: the fitted curve equation is suitable when the coefficient of determination (R^2) is over 0.75, and the average daily rate is suitable when the standard deviation is below 110% of the average daily rate. In the case of the applicable land use, hotel (ITE land use code 310), both conditions are met, leaving it up to the discretion of the analyst which method to use. However, as stated in our previous letter to the Port Hearing Officer, the BAAQMD CEQA guidelines recommend the use of the URBEMIS model, which uses the average daily rate, not the fitted curve equation. The memo fails to specify any ITE guidance that would justify deviating from the standard practice established by the BAAQMD and the URBEMIS model. Tellingly, in calculating the AM peak hour trip generation, another case in which the average rate and the fitted curve equation are both valid choices, the EIR uses the average rate rather than the fitted curve equation. (The AM peak hour calculation is used in the traffic and transportation analysis, not in the greenhouse gas and climate change analysis.) In our opinion, this inconsistency makes the divergence from the BAAQMD guidelines particularly suspect.¹

¹ Moreover, the fitted curve equation itself seems inappropriate for use with such a small hotel. The equation is " $y=8.95x-373.16$," which would indicate, absurdly, that a hotel with 41 rooms would generate zero trips per day, and that smaller hotels would generate negative trips. It is less absurd, but also seemingly illogical, that a hotel in the neighborhood of 100-150 rooms would generate as few trips per room (i.e. so much lower than the average rate) as the regression equation would suggest. The average rate and the fitted curve equation converge at approximately 478 rooms; the proposed hotel's number of rooms, 140, is much closer to 41 than to 478. The *Trip Generation Manual* itself cautions:

Finally, the memo fails to respond to at all to our November 25th letter's objection to the figure used for the average commute length for the project. This figure is important in the analysis of climate change impacts because nearly 20% of the trips generated are expected to be worker commutes, so the average commute length is a significant variable in calculating annual vehicle miles travelled, which is the key statistic for estimating greenhouse gas emissions. Our August 1st letter commenting on the DEIR raised questions about the accuracy of the EIR's estimate of average commute length, 9.5 miles. The response to this comment in the FEIR claimed that this figure was the "regional commercial worker trip length specified for Alameda County by BAAQMD." However, our November 25th letter pointed out that this figure is nowhere to be found in the latest version of the BAAQMD CEQA guidelines. Furthermore, as stated in the same letter, the BAAQMD itself uses a regional (Bay Area) average of 13 miles for the purposes of an environmental review document released in March 2014. Using this figure, the calculation of total annual greenhouse gas emissions would exceed the BAAQMD threshold of significance. By using the lower figure, for which the authors of the EIR provide no specific citation and the source of which remains unclear, the EIR incorrectly concludes that the project's greenhouse gas emissions would be below the threshold of significance, thereby inappropriately avoiding the adoption of mitigation measures or a statement of overriding considerations.

In conclusion, we believe for the reasons stated above that the EIR incorrectly analyses the proposed hotel's potential to have a significant impact on climate change, and therefore that if the hotel were to be approved, it should be required to comply with appropriate mitigation measures. However, even in the absence of this CEQA consideration, our primary objection to the proposed hotel remains. The full service hotel requirement is simply good policy for the Port and City of Oakland, and it is unwise and inappropriate for the Port to approve a project that, we believe, is simply pretending to comply with the requirement and, once it opens, will almost certainly face overwhelming economic pressure to violate it, due to its brand identity, market segment, and specific location. By overturning the Port Hearing Officers' approval of the proposed hotel at 195 Hegenberger, the Commissioners can preserve the integrity of the LUDC as well as the potential for the development of the type of hotel that Oakland needs more of—a real full service hotel.

Sincerely,

A handwritten signature in black ink, appearing to read "Ty Hudson", with a stylized, flowing script.

Ty Hudson
Research Analyst

"The regression equation typically yields a line with a y-intercept. For an independent variable with a low value (i.e., near zero), the regression equation might produce a trip ends estimate that is illogical. In such a case, the analyst should use the weighted average trip rate to estimate trip ends."

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