

AGENDA REPORT

Continuation of February 26, 2015, Administrative Appeals Hearing on Certification of the Focused Environmental Impact Report (Focused EIR) and Approval of Port Development Permit #5016 for the Proposed Hotel at 195 Hegenberger Road in the Oakland Airport Business Park, Oakland, California

MEETING DATE: 5/14/2015

AMOUNT: \$750 fee paid by each appellant
[Choose an item.](#)

PARTIES INVOLVED: Monarch Equity Investments, Inc. (Applicant)
UNITEHERE! Local 2850 (Appellant)
Carpenters Trust Funds for N. CA (Appellant)

SUBMITTED BY: Chris Chan, Director of Engineering

APPROVED BY: J. Christopher Lytle, Executive Director

ACTION TYPE: 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 Port conducted a hearing with the Board of Port Commissioners (Board), acting as an appellate body, on February 26, 2015. On March 12, 2015, the Board approved the motion to continue the hearing to May 14, 2015. The Board must make a determination on these appeals; staff recommends that the Board uphold the PHOs' decision.

BACKGROUND

Appeal of Permit Decision: This item is a continuation of the February 26, 2015 hearing to consider the appeals of a Port Development Permit approval and of the certification of the EIR, brought by two parties: UniteHere Local 2850 and the Carpenters Union Pension Trust Funds. The development permit for a new hotel at 195 Hegenberger Road proposed by Monarch Equity Investments, Inc. was approved by the Permit Hearing Officer (PHO) as designated by the Executive Director, on December 18, 2014.

The Board of Port Commissioners held a public hearing and heard arguments on both sides of the appeal at its February 26, 2015 meeting. The Board determined that it needed more information, and continued the matter to a later date, now scheduled for May 14, 2015. This Supplemental Report focuses on those issues raised by the Board at the February 26, 2015 hearing.

On March 3, 2015, Port Engineering and Environmental Planning staff met with the Applicant to discuss the February 26, 2015 hearing and to provide direction on the submittals required for the continued hearing. On March 10, 2015, Port staff sent a letter to the Applicant with instructions regarding required actions, including detailed written responses. For written responses from the Applicant see Exhibit #2, "Appeal: Oakland SpringHill Suites, 195 Hegenberger Rd. Response to comments received at 2/26th Hearing." (April 13, 2015) The Applicant completed a series of meetings with adjacent property owners (see Issue #1) and conducted further analysis of circulation at the Pardee Drive exit (see Issue #3), as well as clarified operational details related to truck deliveries, on-site parking, shared easements and the operation of the full service restaurant. The Applicant submitted a memorandum on April 13, 2015 presenting a detailed response to the issues raised by the Board with support documentation (see April 13, 2015 memorandum, attached.)

ANALYSIS

The testimony and comments made by Commissioners at the February 26, 2015 hearing focused on the following issues and questions:

- 1) It was requested that the Applicant meet with the adjacent property owners and Appellants to discuss specific concerns and attempt to work towards resolution of those concerns;
- 2) Further clarify the on-site vehicle parking supply and layout;
- 3) Further clarify the on-site traffic circulation, including issues related to a left turn exit onto Hegenberger Road, and exiting onto Pardee Drive. Identify any shared circulation easements on or adjacent to the premises;
- 4) Further detail regarding the adequacy and provision of on-site truck loading, and compliance with LUDC requirements;
- 5) Clarify regarding greenhouse gas emissions and the related employee count for the proposed use;
- 6) How the proposed use complies with the full-service restaurant requirement of the LUDC.

Issue # 1. Applicant/Developer Meetings with Adjacent Property Owners and Appellants

At the hearing, several Commissioners stated that there should be more effort exerted by the project applicant to meet with the adjacent property owners and with the Appellants to discuss the project regarding their specific concerns. The

four adjacent property owners are: Comcast; Carpenters Pension Trust Fund (1st Appellant); Harley Davidson; Francesco's; and the second Appellant is Unite Here.

The Applicant has informed the Port that he has met with all the project site neighbors and the Appellants. Below is a summary of the meetings; further detail is provided in the Applicant response letter, attached. (See Exhibit 2.)

Comcast: The Applicant has stated that Comcast representatives stated that they do not object to the proposed hotel project. During the meeting with the Applicant, Comcast indicated that it would use the hotel for out-of-town visitors for meetings, conferences, and training purposes.

Harley-Davidson: The Applicant has stated that Harley-Davidson representatives stated that they do not object to the proposed hotel project. They expressed concerns with parking and access to the rear of their facility, sound and noise generated by their business that would impact the hotel guests, and site security issues.

Harley-Davidson understood that the shared access easement and parking area between the two buildings is part of the proposed hotel site access and that adequate parking is provided on the Applicant's property.

Regarding noise generated by Harley-Davidson's motorcycle operations, the Applicant expressed to Harley-Davidson that it shares the same concern and explained that the hotel will be constructed with building code compliant materials to provide adequate sound insulation.

Regarding site security, the Harley-Davidson representatives understood that they can relocate their existing security gate on their property line to maintain site security.

Francesco's Restaurant: The Applicant has stated that Francesco's representatives stated that they do not object to the proposed hotel project. The project applicant informed the Port that Francesco's is encouraging the project applicant to develop this site as soon as possible.

UniteHere: According to the Applicant, the Applicant and Appellant representatives met but could not come to an agreement on the issues of greenhouse gas emissions or the compliance with full service hotel requirements. Appellant raised the issue of union representation for hotel workers, which is not a land use issue.

Carpenters Union Pension Trust Fund (Carpenternters): According to the Applicant, the Carpenters representative seemed to agree with the installation of a right turn only lane at the Hegenberger access and the "Do Not Block"

pavement marking to mitigate potential traffic issues. Carpenters would like to have a second right turn lane at the Hegenberger exit. While a second right turn lane does not appear to be viable due to the space requirements on the shared easement, the Applicant agreed to raise the issue with Port staff. Carpenters stated that they are not convinced that compliance with the Port parking requirement, as currently recommended by staff, will be adequate for the hotel need.

As demonstrated by its follow-up actions, Port staff believes that Applicant has made reasonable efforts to meet and resolve outstanding issues with project site neighbors and Appellants. To provide further assurance, Port staff has forwarded the Applicant's response (Exhibit #2) to the Appellants for their review. Port staff has verified the statement in the Applicant's letter from Francesco's in support of the project. Port staff is following up with the other two adjacent property owners – Comcast and Harley-Davidson – to confirm their responses to the project. As of the date of this report, Port staff is awaiting a response from Comcast and Harley-Davidson.

Harley-Davidson raised concerns during the initial hearing process, but they have not raised any concerns during the appeal process. The Applicant reports they have agreement on the resolution of issues with Harley-Davidson. The Applicant appears to have agreement with the Carpenters Union Pension Trust Fund - on the traffic conditions to resolve the Hegenberger Road driveway safety concerns pursuant to the proposed conditions of approval. A second right turn lane suggested by the Carpenters Union Pension Trust Fund would likely require that the shared easement be widened. The current property lines do not have adequate area for an expansion of the easement without encroaching on other non-circulation uses, such as parking areas. The second right hand turn lane concept was only recently put forward by the Carpenters Union Pension Trust Fund and was not raised previously as part of the Appeal. No previous study by the Applicant's traffic engineer or Appellant has suggested that the volume of traffic at this exit would warrant the addition of a second right hand turn lane.

Issue # 2. Vehicle Parking

The project applicant proposes to install 151 parking stalls onsite. The Appellant Carpenters contends that the on-site parking supply is inadequate and that at least 167 vehicles parking stalls are required to meet the LUDC parking requirements (See Section 3.C and Table 3.1 in the LUDC excerpted at the end of Issue #2).

At the February 26, 2015 Board meeting, the Commissioners asked about the parking calculation, specifically: 1) how public transportation usage affects the required parking; 2) whether parking was adequate for the number of employees projected; 3) whether the potential parking impacts would be worsened if the

number of employees were increased; and 4) where the employees' parking would be located.

On-Site Parking Supply: The LUDC parking requirement for on-site parking supply is based on the number of rooms and the size of the banquet/meeting space. The applicant has proposed to provide 151 parking spaces, exceeding the LUDC requirement by 2. This formula has been required in the Port's development standards since 1984 (Port Ordinance # 2604, revision of P.O. # 1343), and was last used for the Holiday Inn project on Hegenberger Road, approved May 2006. It is an industry standard formula used by other jurisdictions. The Cities of Anaheim, Santa Ana, and San Leandro all use a formula that starts with a number of spaces based on room count and adds spaces for other amenities. The City of Oakland uses a formula of 3 spaces per 4 guest rooms for hotels, and adds spaces (1 per 16 seats) under its conference center parking standard. The City of Oakland standard would require approximately 110 parking spaces if applied to this project, thus, the hotel would exceed the City's parking supply requirement by 41 spaces.

The research conducted by Port staff regarding parking supply calculations found no data or reports to indicate that the current LUDC formula is inadequate. He Port parking supply requirement is near the median of the twelve cities surveyed. We would not recommend any variation from the LUDC formula for this permit. Public transportation usage and the number of employees presented by the project applicant are not calculated in the formula as these factors can be vary. Given the use of a 24-hour shuttle and the proximity to public transportation (AC Transit Route #73 and Coliseum BART station), there will certainly be many guests and employees that will use an alternative to the private vehicle to arrive and depart from the hotel site. However, the parking calculation does not factor in shuttle or public transportation trips in order to be as conservative as possible in its parking supply calculation.

Table 3.1: 195 Hegenberger Road; On-Site Parking Supply Calculation

LUDC Parking Requirement	Proposed Hotel Calculation	Proposed Hotel Parking Stalls
1 stall per guest 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

Source: "Airport Business Park Land Use and Development Code, Section 3.C" June 2011

On-Site Parking Layout: The Applicant has provided a site plan showing the on-site parking layout to comply with the required parking demand (see Exhibit #2: Applicant's Response Letter). Regarding the designated employee parking location, the project applicant states that the spaces will be furthest from the hotel (i.e., parking spaces leading up to Pardee Drive), as indicated in the attached site plan (see Exhibit #6).

Issue # 3. On-Site Vehicular Traffic Circulation

The Carpenters' Pension Trust Fund 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", at the Hegenberger Road access driveway. (Exhibit #2)

At the hearing, Commissioners asked how the project applicant will enforce on-site hotel traffic to exit at Pardee Drive, and questioned the traffic analysis conducted at the Hegenberger Road access driveway.

At the request of the Permit Hearing Officer in response to Appellant statements at the first public hearing on the matter, October 6, 2014, Port staff directed the traffic consultant, ESA Environmental, to analyze the Level of Service (LOS) delay at the location of the Hegenberger Road access driveway. Normally, an LOS analysis at a private unsignalized access driveway is not standard practice under CEQA. The analysis indicated there would be no significant impact, though there would be a slight delay for traffic turning left onto Hegenberger Road from the project.

To address continuing concerns relating to LOS, the Permit Hearing Officers included the following traffic control measures as part of the Development Permit conditions of approval:

18. *The Applicant shall include the following on-site traffic control measures:*
 - A. *Install on-site 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 standard traffic design markings stating "KEEP CLEAR" on the pavement at the Hegenberger Road driveway access entrance/exit.*
 - 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 Applicant has met with the adjacent property owners – Harley Davidson and Carpenters Union Pension Trust Fund – who share easement rights. The Applicant has indicated he is willing to comply with 18A, and that he has reached an agreement for implementation of 18B and 18C. The Carpenters' Pension Trust Fund also requested that the Applicant consider installation of a second right turn lane. The second right turn lane is further discussed at the end of Issue #1. No further action is recommended regarding the second turn lane suggestion at this time.

Issue # 4. Delivery Truck Loading Requirements

The Appellant Carpenters' Pension Trust Fund stated that the Applicant's proposed project "transformed [a limited service hotel] into a full service hotel with a full service restaurant"; therefore, the effects of food delivery trucks must be analyzed and conform to the LUDC truck loading requirements.

At the hearing, Commissioners requested clarification on the loading requirements, delivery location and truck size, relative to the porte-cochere.

Section 3.6 of the LUDC states that "the loading or unloading of trucks on streets in the Business Park is prohibited and trucks being loaded or unloaded may not project onto any street. Truck doors and loading docks are not permitted facing Hegenberger Road; structures facing Hegenberger Road must have truck loading doors at the sides or rear of the building. Suitable screening of truck doors from the frontage street of any site must be provided."

The Applicant proposes truck deliveries to load and unload at the porte-cochere, which does not block any streets. The Applicant is not proposing any truck doors or loading docks at the hotel. The LUDC does not specify the size or number of truck loading spaces required for this use.

Since the 2/26/15 hearing, the Applicant has provided information to clarify his intent for deliveries. The Applicant intends to contract with Sysco Corporation for food deliveries, which has an option for night delivery between 1 and 5 am. The Applicant also provided the dimensions of the standard delivery truck and verified that it will fit under the porte-cochere. Port staff has determined that the project as proposed by the Applicant complies with the LUDC requirements based upon the existing design.

Issue # 5. Greenhouse Gas Analysis in the EIR

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 CO2 per year). The Appellant refers to the URBEMIS model as the preferred methodology by BAAQMD.

As stated on its website (<http://www.baagmd.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. As noted in the Port's response on December 2, 2014 (http://www.portoakland.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. 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.

Issue # 6. 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 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.

Some Commissioners expressed concerns that the hotel might not comply with the requirements of a full-service restaurant. Other Commissioners commented that the hotel should help business development in the surrounding area while acknowledging that the site has limited visibility because it is landlocked by surrounding businesses.

The requirement for full service hotel is a condition of the use approval referenced under LUDC Section 2.2 and Table 2.1, and contained in Section 2.3K. The definition of "full service restaurant" is in the appendix to the LUDC. The specific language is as follows:

Condition of use per Section 2.3

K. Transient Lodging: *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.*

Definition of Full Service Restaurant from Appendix:

Full Service Restaurant: *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 Applicant has provided his commitment to comply with the LUDC throughout the process, and fully stated that he understood the LUDC requirements. The Applicant's signature on the permit application binds the Appellant to follow all the rules of the Port, including those standards and all conditions of approval.

The submitted documents show a facility with more than 100 rooms, an outdoor swimming pool, and an indoor exercise room. The original plan labelled the kitchen as "food preparation" and the restaurant seating as "seating area". These labels were revised during the process to clarify the intent, and some equipment details were added to the kitchen.

In addition, the project applicant has provided documents as noted above (12/10/2014 Marriott waiver letter and a sample menu) to demonstrate his commitment. The Marriott waiver allows the SpringHill Marriott to become a full service hotel. The Applicant has provided sample menus to show compliance with the requirement to provide menu choices to allow a customer to order a full meal. The Applicant has described the staffing plan that will have at least one person in the kitchen and one person available for table service at all times. Other staff to be assigned during peak service times.

To further provide confirmation that the Applicant will implement the full service hotel with full service restaurant, the PHOs included conditions as part of the Development Permit approval that require the Applicant to comply with all LUDC regulations and provide evidence that the Applicant is in full compliance with the full service restaurant.

The Applicant has stated that the hotel will provide significant revenue (approximately \$700,000/year), and will provide employment opportunities to local people. The Applicant has expressed his commitment to make this a successful and model project regardless of the challenges of the site configuration.

Because the proposed project complies with the full-service hotel and full-service restaurant requirements 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. In addition, Port staff contacted numerous hotels within the SpringHill Marriott brand, and confirmed that Marriott allows for a standard select-service hotel to provide additional services and to become a full-service hotel, similar to the Marriott Springhill Las Vegas. 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, Port staff is confident that necessary steps can be pursued by the Port to ensure compliance with the LUDC or discontinue the operation, just as it can with any other use that does not conform to the LUDC requirements.

In summary, based upon the Applicant's efforts in following up with the Board's questions, including meeting with the adjacent property owners and Appellants, and providing additional clarification regarding hotel operations, staff recommends upholding the PHOs' certification of the EIR and approval of the Development Permit.

BUDGET & STAFFING

(No change from 2/26/15 report, attached.)

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

(No change from 2/26/15 report, attached.)

STRATEGIC PLAN

(No change from 2/26/15 report, attached.)

LIVING WAGE

(No change from 2/26/15 report, attached.)

ENVIRONMENTAL

(No change from 2/26/15 report, attached.)

GENERAL PLAN

(No change from 2/26/15 report, attached.)

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

(No change from 2/26/15 report, attached.)

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.
4. Remand to the Permit Hearing Officers for further study or investigation of issues determined by the Board to require such additional analysis.

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's provision of 151 parking stalls is adequate to meet the LUDC requirements and is supported by substantial evidence in the record.
5. The PHOs' determination that no significant adverse impacts from on-site 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 provide evidence and clarification that the hotel is 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: Agenda Report for 2/26/15 public hearing.
- Exhibit 2: Project Applicant's Response Letter dated 4/13/2015. (Includes ESA memoranda dated December 4, 2014 and April 13, 2015.)
- 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
- Exhibit 6: Site Plan: SpringHill Suites, Lee Gage & Associates



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