MEMO

To: Monarch Equity Investments, Inc.
    Richard Lund, Esq.
    Mahendra Bhukhan
    Dan Maneklal
    Ken Patel

From: Joe Marsh, Port Permit Coordinator

Subject: Final Approved Permit #5016
195 Hegenberger Road, Oakland, California

Date: June 6, 2016

During a public hearing on May 26, 2016, and after considering hearing testimony, reviewing hearing exhibits and evaluating legal briefs, the Board of Port Commissioners ("Board") approved and adopted the Permit Hearing Officers’ findings of fact and determinations as set forth in their December 18, 2014 decision, their May 13, 2016 supplemental response, and their May 13, 2016 response to the Board’s May 14, 2015 remand of five issues. The Board also certified the Final Focused Environmental Impact Report, approved the Development Permit #5016 and the final conditions of approval, and denied the appeals of the Appellants Carpenters and UNITEHERE.

In connection with the Board’s actions as described above, enclosed please find the final approved Development Permit #5016 ("Permit") for the subject matter noted above for your files. The Permit includes the following attachments:

1. December 18, 2014 Permit Hearing Officers’ decision memo with final stamp approval by the Port Permit Coordinator
2. Resolution 16-59 by the Board
3. Final Conditions of Approval

Should you have any questions or concerns about the enclosed documents or the Board’s action in reference to the 195 Hegenberger Road property, please do not hesitate to contact Richard Sinkoff, the Director of the Port of Oakland’s Environmental Programs and Planning Department, or me.

Enclosures

Cc: Ty Hudson, UNITEHERE! Local 2850 (Appellant)
    David Blackwell, Esq., Carpenters Trust Funds for Northern CA (Appellant)
MEMO

TO: Port Permit Hearing Officers
FROM: Chris Chan, Director of Engineering
DATE: December 18, 2014

SUBJECT: PERMIT HEARING OFFICERS' DECISION
for Work on Private Property

The Port of Oakland (Port) Permits Section staff and Environmental Programs and Planning staff have reviewed the subject Port Development Permit Application. We find the proposal meets the applicable standards of the "Port of Oakland Land Use and Development Code (LUDC) for the Oakland Airport Business Park". Consistent with the Port By-laws, the Port conducted public meetings as the Lead Agency under the California Environmental Quality Act (CEQA) and in association with sign variances under the LUDC. Five (5) variances from the LUDC for signs are recommended for approval by the Port's Permit Hearing Officers. Detailed analysis and findings are set forth in the attachments.

It is recommended that the Port's Permit Hearing Officers certify the Environmental Impact Report, approve the sign variances and approve the development permit, including conditions of approval, general plan conformity, and related findings described below. Please mark your decision (approve or deny), date and sign at the bottom of this memo.

Port Permit No: 5016
Property Owner: Monarch Equity Investments
Permit Applicant: Monarch Equity Investments
Project Location: 195 Hegenberger Road, Oakland
Estimated Value: $8,000,000
Environ. Assessment: Environmental Impact Report

Summary Description:

The applicant proposes a five-story, 140-room hotel on an approximately 1.95 acre (84,953 sq. ft.) vacant parcel in the Oakland Airport Business Park. The proposed hotel would be a free-standing 65-foot tall structure and would include parking for 151 vehicles. The site is L-shaped, with access to Hegenberger Road and Pardee Drive. Five variances from the Oakland Airport Business Park Design Standards (Section 4.2) are required for the project, as currently proposed. Further details are contained in the attachments as follows:

Attachment 1- Project Description and LUDC Conformity Findings
Attachment 2- Variances and Environmental Findings
Attachment 3- Final Environmental Impact Report and Mitigation Monitoring and Reporting Program
Attachment 4- Conditions of Approval
Attachment 5- Conformity with City of Oakland General Plan
Attachment 6- Additional Traffic Circulation Analysis

RECOMMENDED:

Environmental Programs and Planning:

Port Permit Coordinator:

Date: 12-18-2014

Date: 12/18/14

* NOTE: See Port Permit Coordinator for revised attachments.
DECISION:

Port Hearing Officer: □ Approve □ Deny

Signature: [signature] Date: 12/18/14

Director of Commercial Real Estate

Port Hearing Officer: □ Approve □ Deny

Signature: [signature] Date: 12/18/14

Director of Aviation

Port of Oakland

JUN 6 2016

ENGINEERING SERVICES DEPARTMENT

Permit No. 5016

PORT OF OAKLAND APPROVAL IS LIMITED TO CONFORMANCE WITH PORT PLANNING AND LAND USE JURISDICTION PROVIDED BY THE OAKLAND CITY CHARTER IN THE PORT AREA. ALL WORK SUBJECT TO CITY OF OAKLAND BUILDING PERMIT REQUIREMENTS.

Approved for conformance with Port of Oakland Permit requirements.

[signature]

Director of Engineering

12/18/14
BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND

RESOLUTION NO. 16-59


WHEREAS, Monarch Equity Investments, Inc. ("Applicant") has applied for approval of a development permit and variances for the development and use of a hotel in the Port Area at 195 Hegenberger Road, Oakland, California ("Project").

WHEREAS, the Ports' Land Use and Development Code ("LUDC") provides that the Port Permit Hearing Officers ("PHOs") shall consider, make findings and decide on the approval of development permits and variances and their findings and decisions may be appealed to the Board of Port Commissioners ("Board"). An appeal shall be deemed to concern only those issues raised in the administrative appeal form filed by the appellant.

WHEREAS, after due notice, conducting proper hearings and review of report and evidence, including a Focused Environmental Impact Report ("EIR") prepared by ESA Community Development, together with all comments, responses and supplemental reports pursuant to the California Environmental Quality Act ("CEQA"), on December 18, 2014, the PHOs issued a decision document approving and certifying the Final Focused EIR, approving the five (5) sign variances and approving the Development Permit.

WHEREAS, The Port received an appeal on the certification of the EIR and approval of the Development Permit from Appellant Carpenters' Pension Trust Funds for Northern California which raised the following three appellate issues: (1) on site vehicular traffic circulation will create safety issues for drivers and pedestrians at the Hegenberger Road Access Driveway; (2) the Proposed Project will not meet the LUDC
parking requirements; and, (3) the Development Permit approval memo and EIR did not analyze truck loading requirements.

WHEREAS, the Port received an appeal on the certification of the EIR and approval of the Development Permit from UNITEHERE! Local 2850, which raised the following two issues: (1) the project Applicant will not comply with the full service restaurant requirement in the LUDC; and, (2) the EIR did not adequately analyze greenhouse gas emissions.

WHEREAS, on February 26, 2015, the Board convened a public administrative appeal hearing at its regular Board meeting during which the Board continued the hearing after hearing staff report and testimony from the Applicant and Appellants to allow the Applicant time to research and respond to the questions and concerns raised during said hearing.

WHEREAS, on May 14, 2015, the Board convened and continued the administrative appeal hearing, and after hearing testimony from Port staff, and testimony the Applicant and Appellants, the Board remanded the five issues arising from Appellants’ appeals (“Remand Issues”) (as set forth in the Agenda Report for Agenda #1 of the Board’s May 26, 2016 regular Board meeting pertaining to this Resolution (“Agenda Report”)) to the Permit Hearing Officers and directed the PHOs/Port staff to conduct further factual investigation and evidence gathering and to make findings of fact pertaining to Remand Issues.

WHEREAS, after conducting extensive investigations and studies, additional meetings and consultations with Applicant and Appellants, briefings and communications, the PHO’s presented its findings on the Remand Issues and an additional issue relating to an access easement and their recommendations to the Board to deny the appeal, approve and ratify the findings of the PHO’s and to approve and certify the EIR as set forth in the Agenda Report.

WHEREAS, the Board has reviewed and evaluated: (1) the Agenda Report, as well as the agenda reports, and exhibits thereto of its previous meetings of February 26, 2015 and May 14, 2015 (hereinafter “Board meetings”) concerning the administrative appeals filed by the Carpenters’ Pension Trust Funds for Northern California (“Carpenters”) and UNITEHERE! Local 2850 (“UNITEHERE!”; collectively, “Appellants”) in connection with the PHOs’ certification of the EIR, approval of the Development Permit #5016 (“Permit”) and approval of the five sign variances for the Project, along with the exhibits attached thereto; (2) the written legal argument submitted to the PHOs by Applicant and Appellants; (3) the PHO’s December 18, 2014 Decision, April 12, 2016 Email, May 13, 2016 Supplemental Response and May 13, 2016 Response to the May 14, 2015 Remand; (4) the EIR, comments thereto and responses to said comments, correspondence, briefings, supplement technical reports and other documents prepared as part of the environmental review of the Project under CEQA; (5) the Port’s Land Use and Development Code; (6) all other related documents; (7) the expert
testimony provided at the Board meetings; and, (8) the comments from the Applicant, the Appellants and members of the general public during the Board Meetings (collectively (including those documents, correspondence and proceedings set forth in Appendix A to the Agenda Report), the "Administrative Record"); and

WHEREAS, that in acting upon this matter, the Board has exercised its independent judgment based on substantial evidence as found in the totality of the Administrative Record, testimony and public comments provides at or in connection with the Board Meetings, and hereby adopts and relies upon the facts, data, analysis, and findings presented to it and to the PHOs; now, therefore, be it

RESOLVED, that the Board hereby finds substantial evidence in the Administrative Record to support the PHOs’ certification of the EIR and the PHOs’ approval of the Development Permit for the 195 Hegenberger Road Hotel Project and that Appellants have failed to establish that the PHOs’ EIR certification and permit approval were improper because they were not supported by substantial evidence in the administrative record, and therefore, the Appellants’ appeals are DENIED; and be it

FURTHER RESOLVED, that the Board hereby ratifies, approves and adopts the findings and determinations of the PHO’s in the Administrative Record, including, but not limited to, those set forth in:

a) PHOs’ December 18, 2014 Decision (Appendix A, Exhibit 5 to the Agenda Report),

b) PHOs’ April 12, 2016 Email (Appendix A, Exhibit 31 to the Agenda Report),

c) PHOs’ May 13, 2016 Supplemental Response (Appendix A, Exhibit 33), and

d) PHO’s May 13, 2016 Response to the May 14, 2015 Remand (Appendix A) (collectively, the “Findings and Determinations”);

and be it

FURTHER RESOLVED, that the Board hereby adopts, approves, certifies the EIR for the Project based on the totality of the Administrative Record and the Findings and Determinations (including those set forth in Appendix A, Exhibit 5 to the Agenda Report), analysis, reports, findings, and testimony considered by the PHOs and the Board; specifically the Board (1) finds that changes or alterations have been required as part of the revised conditions of approval attached to and incorporated as part of this Resolution (“Conditions of Approval”) or incorporated into the project which avoid any significant environmental effect or potentially significant environmental effect as identified in the EIR and (2) adopts a program for reporting on or monitoring including those set forth in Appendix A, Exhibit 5 and the Conditions of Approval to be enforceable as part of the permit conditions; and be it
FURTHER RESOLVED, that the Board hereby approves the Development Permit for the Project and the Conditions of Approval, based on the totality of the Administrative Record and the Findings and Determinations, including the analysis, reports, findings, and testimony considered by the PHOs and the Board; and be it

FURTHER RESOLVED, that the Board hereby approves the five sign variances for the 195 Hegenberger Road Hotel Project based on the totality of the Administrative Record and the Findings and Determinations, including the analysis, reports, findings, and testimony considered by the PHOs and the Board; and be it

FURTHER RESOLVED, that this resolution adopting the PHOs’ Findings and Determinations, certifying the EIR, approving the Development Permit, approving the five sign variances and denying the appeals shall become effective immediately upon adoption by the Board.

At the regular meeting held on May 26, 2016

Passed by the following vote:

Ayes: Commissioners Colbruno, Martinez, Story, Yee and President Hamlin – 5
Recused: Commissioners Butner and Cluver – 2
Noes: 0
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 (Section 2.3K and Appendix A). This compliance is currently demonstrated by the reconfigured plan dated 08/11/15, and the final plan shall provide at least the same square footage for restaurant, kitchen and storage spaces. Applicant’s letter dated 10/10/14 is also included herein to demonstrate details of compliance. See Conditions #19 and 20 for further details.

3. 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 subject to all of the code enforcement actions permitted under the LUDC.

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. The Proposed Project floor and site plans dated 8/11/2015 and 09/21/15, respectively, show 134 guest rooms and 156 parking spaces. This represents the maximum number of guest rooms allowed as part of this Development Permit and the minimum number of parking spaces required as part of this Development Permit.

20. As shown on the Proposed Project site plan dated 09/21/15, the truck loading entrance must be located on the west side of the building, away from the porte cochere. Truck loading will only be allowed between 1:00 am and 5:00 am, for a maximum duration of twenty (20) minutes per delivery with a maximum of two deliveries per week through the approved loading entrance. Delivery trucks will be directed to use Pardee Drive to enter and exit the site.

21. 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.

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

23. Hotel employees will park along the driveway near the Pardee entrance, furthest away from the main hotel entrance, except that up to three spaces may be reserved closer to the building for management and/or designated employees.