



PORT OF OAKLAND

MEMO

BY: Joe Marsh, Port Permit Coordinator

DATE: November 6, 2020

**SUBJECT: PORT PERMIT COORDINATOR 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." Detailed analysis and findings are set forth below.

Port Permit No: 5309
Permit Applicant: John Melendez
Tenant: Raising Canes Chicken Fingers
Property Owner: Rubicon Property Group
Project Location: 8430 Edgewater Drive, Oakland Airport Business Park
Environ. Assessment: Consistent with Metroport Environmental Impact Report

Project Description

Site

[For the purpose of the description for this project, I-880 will be considered the eastern boundary of the site, Edgewater Drive is the western boundary, Oakport Street is the northern boundary, and Hegenberger Road is to the south of the site.]

The project site is in the southwestern portion of the City of Oakland (City), in the vicinity of Oakland International Airport and Interstate 880 (I-880). The proposed address of the project is 8430 Edgewater Drive, Oakland, CA. The site is adjacent to Edgewater between the large building previously occupied by Walmart, 8400 Edgewater Drive, and the strip of retail shops at 8450 Edgewater Drive. The site was originally developed by SIMEON Commercial Properties. It has been subdivided into parcels corresponding to the buildings but continues to function as a single development with two common driveways from Edgewater Drive and one from Oakport Street. The large vacant building is on the north side of the site with separate rear access to Oakport Street. The retail strip is along the south boundary of the development. The proposed project site is between the two common driveways from Edgewater Drive.

Description

The Applicant proposes to construct a 3,267 sf drive-thru restaurant on an approximately 1 acre site. Other improvements include a 495 sf outdoor covered seating area on the south side of the building, a 195 sf coral (outdoor covered service area) outside the kitchen on the north end, drive-thru lanes, parking, landscaping and

signage (Project). The restaurant's customer entrance is adjacent to the outdoor seating on the south facade. There is an indoor seating area and order counter in the south end of the building, kitchen and staff areas occupy the north end of the building interior. The drive-thru lanes begin at the north end of the site and continue along the west side of the building adjacent to Edgewater Drive, and exit at the south Edgewater driveway. There will be a two-lane entrance for ordering, which then merges into one lane for pick up and exit. Parking for walk-in customers and employees is located on the east side of the building, adjacent to other existing on-site parking. The Project will provide 27 dedicated parking spaces, including two ADA compliant spaces. Additional space on the site will be landscaped. Refer to Figure 1.

The area dedicated to the site is shown as 41,479 sf, or approximately .94 acre. The owner of the site plans to file a Parcel Map for the site to be able to sell the property to the Applicant. The minimum lot size for the Business Park is 1 acre. The owner will adjust the size of the site or obtain a variance prior to requesting a Parcel Map from the Port. The site could be expanded to the east to add parking without significant change to the site plan. The Port reserves the right to reject an expanded site plan if it finds that other on or off-site traffic will be negatively impacted.

Surrounding Area

The project site is located within the Oakland Airport Business Park, Commercial Corridor sub-area. This sub-area is largely occupied by retail and office uses. 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. The site is within the larger site originally developed by Simeon as a retail center with the now vacant Walmart store and other smaller shops and restaurants. The larger site is bounded by 1-880, Hegenberger Road, Edgewater Drive, and Oakport Street. This project will fill in the Edgewater frontage between the two driveways. The property across Edgewater is a retail and office development with a gas station, banks, office, and restaurants.

Land Use Analysis (from LUDC Section 2)

The project site is located within the "Port Area" of the City, and within the Commercial Corridor area of the Oakland Airport Business Park, originally established by Port Ordinance No.1343 by the Board of Port Commissioners in 1966. Development in the Business Park is currently regulated by the "Port of Oakland Land Use and Development Code (LUDC)", adopted by the Board of Port Commissioners on June 2011. The proposed use is classified as Fast Food Restaurant and is a conditionally allowed use under the LUDC for this site. These conditions are incorporated into the Conditions of Approval in this document

General Plan Conformity

By approval of this permit, the Port makes a determination that the Project conforms to the City of Oakland General Plan, including the Land Use and Transportation Element

and the Coliseum Area Specific Plan. The LUDC has been found to be in conformance with these plans. As an existing compliant use, the confirmed conformity determination is not required to be reviewed by the City of Oakland.

Findings (from LUDC Section 5.5)

The Port approves this application for a Development Permit, as submitted, with the following findings:

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.
4. The proposed Project has been adequately evaluated under the California Environmental Quality Act (CEQA), see Environmental Findings section below for further details.
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, Bay Conservation and Development Commission, Federal Aviation Administration, 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 anticipated burden on the Business Park and the Port, and which conditions otherwise promote the health, safety, and welfare of the surrounding community.
8. The proposed Project is consistent with the purposes, use restrictions and development and design standards established by this Code for the Commercial Corridor area.

Environmental Findings

The Port, as Lead Agency under the California Environmental Quality Act (CEQA), certified the 2003 Metroport Final Environmental Impact Report (2003 Metroport EIR) for a 23-acre site located on the northwest corner of Hegenberger Road and Edgewater Drive on February 18, 2003 (Resolution # 03044, SCH# 2001052001). The Metroport EIR analyzed construction of approximately 1.3 million square feet (SF) of office space, a full-service hotel, parking garages, and 50,000 sf of retail (of which 40,000 sf was assumed for restaurant spaces). Approximately 22,700 sf of restaurant space has been constructed to date.

The Port has reviewed the applicant's proposed 3,267 sf restaurant with site improvements and determined that the proposed Project use has been adequately analyzed under the 2003 Metroport EIR. The mitigation measures applicable to this proposed Project have been included in the Permit Section below. No further environmental review is required. A Notice of Determination will be filed with the Alameda County Clerk's office 5 calendar days after final approval.

Sustainability

The Permit Applicant (Applicant) will apply sustainability measures as feasible for the Project, including post construction controls for stormwater, compliance with the California Green Building Code and the Oakland Construction Debris Recycling Ordinance.

The Applicant has identified the following sustainability measures as part of the Project:

- There are two designated areas on the roof for future solar panels. This area shall comply with California Building Energy Efficiency Standards (Title 24, Parts 6 and 11).
- Trees will be located to shade the structure, minimizing the need for cooling the interior of the structure and also idling vehicles.
- Sourcing materials such as wood mulch, rock, and planting materials from local suppliers.
- Use low water use vegetation and a high efficiency irrigation system to minimize the use of water. Also, complying with MWELo calculation for the site.
- Restroom plumbing fixtures and kitchen faucets will be specified to CalGreen Standards.
- The infrastructure for "future" electrical vehicle charging stations will be installed, and in compliance with California Building Code as enforced by the City of Oakland.
- Planting an abundance of trees, shrubs, and groundcovers that will naturally help absorb carbon and reduce dust.

- Use plant material that requires little maintenance as well as being native and regionally specific.

Permit Conditions

1. All conditions of approval shall be printed on the final permit set of plans.
2. The project shall conform to Port-stamped approved plans, including the conditions of approval, unless otherwise approved by the Port. The applicant is responsible for including all details agreed upon, or conditions made by the Port, during the approval process. Failure to include any such details will not exempt the applicant from the Port for any changes prior to construction.
3. The tenant must maintain a City of Oakland Business License as required under the Municipal Code.
4. The applicant shall meet all conditions and requirements of all outside agencies having jurisdiction over the project, including but not limited to: the City of Oakland, San Francisco Bay Conservation and Development Commission (BCDC), Federal Aviation Administration, 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. The applicant shall report any conflicts with Port requirements to the Port prior to construction. Any such conflicts must be resolved by the applicant to the satisfaction of the Port and the outside agency involved.
5. The applicant shall provide copies of authorizations or permits from agencies noted above, where applicable.
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 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.
8. 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 Operating Officer 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 Chief Operating Officer order.

Any such fine shall be reasonably related to the nature of the violation and/or the cost to correct.

9. 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, attorneys 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 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.
10. The Applicant shall comply with stormwater quality requirements, including Post Construction Stormwater Control measures and the Port's Stormwater Ordinance, as may be amended.
11. The Applicant shall agree to comply with any other conditions added by the Permit Coordinator as well as any other conditions listed in the LUDC not otherwise listed here.
12. The Applicant shall record an avigation easement prior to occupancy of the project.
13. All disposable items shall be imprinted with the name of the restaurant.
14. The applicant shall provide a site plan showing location(s) of recycling and debris containers.
15. The applicant shall provide an operation plan including hours of operation, security, and litter removal.
16. Where a drive-through window is proposed, the site plan shall also show traffic circulation from the street and within the site. Thirty (30) days prior to

construction of the Project, the Applicant shall provide to the Port for review and approval an overflow traffic plan such that any overflow traffic from the site will be contained on the larger site and off the street.

17. The applicant shall comply with the following mitigation measures as required in the Metroport EIR¹:

A. Air Quality

Lower Vehicle Emissions: To reduce the significance of the operational impacts of the project, the project sponsor² shall implement the following mitigation measures. These mitigation measures shall be in place by the time of project build out and occupancy. Mitigation measures required for reducing motor vehicle emissions are provided in italics followed by specific measures already included as part of the proposed project.

Rideshare Measures

- *The project sponsor shall require tenants at the site to implement carpool/vanpool programs (e.g., carpool, ride matching for employees, assistance with vanpool formation, provision of vanpool vehicles, etc.)*

The project sponsor shall be required to distribute information about the Alameda County Congestion Management Agency's Guaranteed Ride Home Program to tenants of the buildings to facilitate alternative transportation modes. As part of this program, a person who uses an alternate mode of travel, including transit or a carpool is provided with free taxi service in the case of unexpected circumstances. These circumstances might include unscheduled overtime or a family illness or emergency.

- *The project sponsor shall require tenants to implement employee rideshare incentive programs providing cash payments or pre-paid fare media such as transit passes or coupons.*

Parking Measures

- *The project sponsor and/or tenants shall provide preferential parking for carpool and vanpool vehicles (e.g., near building entrance, sheltered area, etc.)*

¹ Mitigation measure language was taken directly from the 2003 Metroport Final EIR.

² Project sponsor is the Project Applicant.

- *The project sponsor shall require tenants to meet minimum employee ridesharing requirements or provide incentives for them to meet targets.*

Bicycle and Pedestrian Measures

- *The project sponsor shall be required to provide secure-short-term bicycle parking for retail customers and other non-commute trips.*

The project would provide 34 short-term and 135 long-term bicycle-parking spaces, which is consistent with the City of Oakland current practices.

- *The project sponsor shall be required to provide secure, weather-protected bicycle parking for employees.*

As noted above, the project would provide 34 short-term and 135 long-term bicycle spaces, which is consistent with the City of Oakland current practices.

- *The project sponsor shall require tenants to provide showers and lockers for employees bicycling or walking to work.*
- *The project sponsor shall provide the direct safe, attractive pedestrian and bicycle access to transit stops and adjacent development.*
- *The project sponsor shall provide adequate street lighting.*

Dust Control

During construction, the project sponsor shall require the construction contractor to implement BAAQMD's basic and enhanced dust control procedures required for sites larger than four acres.

B. Biological Resources/Wetlands

Nesting Birds

Although recent studies of the site indicate that no burrowing owls are present, the project sponsor shall conduct pre-construction breeding bird surveys in all area that may provide nesting habitat. If any nests are identified, occupied nests or burrows would not be disturbed during the nesting season.

C. Geology and Seismicity

Geotechnical Measures

The project sponsor shall conduct a design level geotechnical investigation for the project site that includes an analysis of ground shaking, liquefaction potential, and earthquake- induced settlement, and provide recommendations to reduce these hazards. The project applicant shall comply with recommendations of the geotechnical engineer and these recommendations shall become part of the project. In addition, the project will comply with all applicable local (City of Oakland, County of Alameda) and state policies, codes, and regulations pertaining to geotechnical investigation, seismic design, and grading and construction. Subsurface investigation shall comply with guidelines set forth by the CGS Special publication 117 for evaluation and mitigation of seismic hazards.

Adverse Soil Conditions

The project sponsor shall ensure that the proposed development complies with applicable City policies, and appropriate Engineering investigation necessary to reduce the potential detrimental effects of differential settlement, expansive soils, and soil erosion. recommendations provided by the geotechnical engineer pertaining to mitigation of adverse soil conditions shall become part of the project.

D. Hazardous Materials

EH&S Plan

Prior to construction, the project sponsor shall create an environmental site health and safety plan to address workers safety hazards that may arise during construction activities.

Soil and Groundwater

The project sponsor shall comply with all applicable regulatory agency requirements including those set forth by Alameda county, the Regional Water Quality Control Board, and the California DTSC Regulations regarding the potential re-use of impacted artificial Phil, and the storage and transportation of hydrocarbon-impacted soil and groundwater.

E. Hazards/Air Safety

FAA Study

The Project sponsor shall file FAA form 7460 Dash one with the FAA requesting that an Aeronautical Study be performed for the proposed project. If necessary, the project sponsor shall then reduce the height of the structures and/or Mark and light the structures according to the results of the FAA's determination so that the project would not be a hazard to air navigation.

F. Hydrology and Water Quality

Source Control Measures

To help minimize the amount of pollutants entering the storm drain system, the project sponsor shall implement source control measures on project roadways and parking areas that shall include, but are not necessarily limited to, regular street sweeping by mechanized equipment, proper clean-up of soil-debris following landscape work or small scale construction, available trash receptacles, regular trash collection and the application of absorbent material on oil and fuel leaks from automobiles. Additionally, litter and debris that may accumulate on the project site shall be regularly collected and properly disposed. The project sponsor shall incorporate appropriate source control measures as recommended in the California Stormwater Best Management Practice Handbooks for Industrial and Commercial sites.

NPDES

The project sponsor shall obtain NPDES permit required by RWQCB for construction dewatering and implement conditions of the permit.

Discharge Permit

The project sponsor shall obtain a discharge permit from East Bay municipal utility District, or the city of Oakland Public Works department.

Construction Practices

Project sponsor shall employ construction stormwater quality management practices.

G. Noise

Construction Hours

The project sponsor shall require construction contractors to limit construction activities in accordance with the City Noise Ordinance or as otherwise allowed by the City Building Department. Such activities are generally limited to between 7:00 AM and 7:00 PM Monday through Friday; pile-driving activities to between 8:00 AM and 4:00 PM Monday through Friday, with no extreme noise generating activity permitted between 12:30 PM and 1:30 PM, and no construction activities on weekends until after the building is enclosed without prior authorization of the Building Services Division.

Construction Equipment

To reduce daytime noise impacts due to construction, the project sponsor shall require construction contractors to implement the following measures:

- Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., Improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible).
- Impact tools (e.g. jackhammers, pavement breakers, and rock drills) Used for project construction Shelby hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of a pneumatic tools is unavoidable, and exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA.

External jackets on the tools themselves shall be used where feasible, and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever feasible.

- Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or other measures to the extent feasible.

- If feasible, the noisiest phases of construction shall be limited to less than 10 days to show compliance with the local noise ordinance.

Pile Driving

To reduce the potential for noise impacts from pile driving, alternate methods of driving shall be used, if feasible.

Noise Attenuation Plan

To further mitigate potential construction noise impacts, the project sponsor Schott developed a set of site-specific noise attenuation measures under the supervision of a qualified noise consultant. Prior to commencing construction, this plan should be submitted for review and approval by the city to ensure that maximum feasible noise attenuation is achieved. These attenuation measures shall include as many of the following control strategies as feasible and shall be implemented prior to any potential pile driving activities:

- Erecting temporary plywood noise barriers around the construction site;
- Utilizing noise control blankets on the building structure as a building is directed to reduce noise emission from the site;
- If feasible, control noise at the receivers by temporarily improving the noise reduction capability of adjacent buildings.

Noise Complaints

Prior to the issue of a building permit, along with the submission of construction documents, the project sponsors to submit to the city building department a list of measures to respond to and track complaints pertaining to construction noise. These measures shall include:

- A procedure for notifying the city building division staff and Oakland Police Department;
- A plan for posting signs on-site pertaining to permitted construction days in hours and complete procedures and who to notify in the event of a problem;
- A listing of telephone numbers (during regular construction hours and off-hours);

- The designation of a construction complaint manager for the project; and
- Notification of neighbors within 300 feet of the project construction area at least 30 days in advance of pile-driving activities about the estimated duration of the activity.

H. Utilities and Service Systems

Water Conservation

The project sponsor shall incorporate water conservation measures into the design and operation of the proposed project through use of current water conservation technologies. Such conservation measures include incorporation of water-efficient equipment and devices, such as low-flush toilets, into building design, the use of drought-resistant and native plants for landscaping, and minimization of turf areas.

Recycled Water

The project sponsor shall use recycled water from EBMUD's San Leandro reclamation facility, if available at the site and as allowed or required by Porte ordinance for landscape irrigation and other suitable purposes.

C&D Debris

Project sponsor shall prepare and submit a Construction and Demolition Debris Waste Reduction and recycling plan to the City of Oakland as part of its application for a building permit. In addition, the project sponsor shall divert a minimum of 50% of the construction and demolition debris from each phase of the project. This percentage is to be based on the City of Oakland's method for calculating diversion by total volume or weight as described in all the Municipal Code Section 15. 34. 050.

Storage for Recyclables

Project sponsor shall prepare and submit building plans that specify adequate storage space for recyclable and compostable materials for each proposed building to the City of Oakland, as part of his application for a building permit. The design, location and maintenance of recycling collection and storage areas shall substantially comply with the provision of the Oakland city planning Commission's Guidelines for the Development and Evaluation of

Recycling Collection and Storage Area, Policy No. 100-28. A minimum 2 ft.³ of storage and collection area shall be provided for each 1000 ft.² of commercial space.

RECOMMENDED:

Environmental Programs and Planning:

Colleen Liang

Colleen Liang (Nov 10, 2020 10:13 PST)

Date: Nov 10, 2020

Colleen Liang, Port Environmental Supervisor

DECISION:

Port Permit Coordinator: X Approve Deny

Joe Marsh

Joe Marsh (Nov 10, 2020 10:15 PST)

Date: Nov 10, 2020

Joe Marsh, Port Permit Coordinator

Attachments:

Figure 1 – Site Plan

Project Plans and Elevations (10 sheets, separate file)

5309 PC Memo Final

Final Audit Report

2020-11-10

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