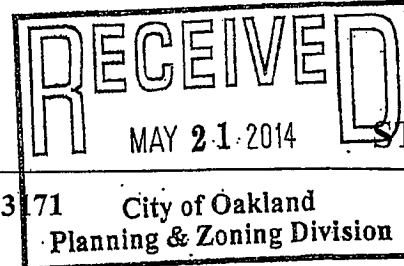


Oakland City Planning Commission
Planning Commission



*Submitted to
Planning Commission
by Ellis Partners*

STAFF REPORT

Case File Number: ER030004, PUD13170, DA13171

City of Oakland
Planning & Zoning Division

May 21, 2014

| | |
|-------------------------------------|---|
| Location: | Jack London Square Development Project: Sites D at Broadway and F2 at Harrison Street (south of Embarcadero). |
| Proposal: | Amendment #1 to adopted PUD to include three residential options each for Sites D and F2 and remove an existing limitation on office space with respect to Sites D and F2. |
| Applicant: | Ellis Partners, Matt Weber: (415) 391-9800 |
| Owner: | JLSV Land, LLC |
| Planning Permits Required: | General Plan Amendment, Revision to PUD (PDP, only), Design Review, Minor variance for loading; compliance with CEQA. |
| General Plan: | Site D=Retail, Dining and Entertainment-1; and Site F2=Waterfront Commercial Recreation-1. |
| Zoning: | C-45 Community Shopping Commercial Zone |
| Environmental Determination: | Final EIR certified on March 17, 2004 by the Planning Commission; Addendum #1 available for public review on May 9, 2014. |
| Historic Status: | None for affected sites. |
| Service Delivery District: | I – Downtown/West Oakland/Harbor |
| City Council District: | 3 – Lynette Gibson McElhaney |
| Action to be Taken: | Consider acceptance of Addendum to EIR; Consider recommendation for a GPA to City Council; Consider approval of revision to PUD, Design Review and Minor Variance for loading conditioned upon approval of GPA by City Council. |
| Finality of Decision: | Appealable to City Council |
| For further information: | Contact case planner Catherine Payne at 510-238-6168 or by e-mail at cpayne@oaklandnet.com |

SUMMARY

The purpose of this report is to request consideration of a proposed amendment to the Planned Unit Development (PUD) Preliminary Development Permit (PDP) for the Jack London District Development Agreement and Planned Unit Development (case files ER030004, DA13171 and PUD13170). Specifically, staff requests that the Planning Commission consider conditionally approving the amendment to the PUD, Design Review and Variances related to the project, subject to the attached findings and conditions of approval, and make a recommendation to the City Council regarding General Plan Amendments. The applicant initially proposed an amendment to extend the term of the existing Development Agreement but has since withdrawn that request. The City of Oakland originally approved the nine-site, multi-phased development project known as "Jack London Square" in 2004. Three sites have been constructed, and the applicant is currently seeking revisions to the entitlements for two of the remaining development opportunity sites in Jack London Square. In summary, the applicant proposes adding residential options for two project sites, D and F2, and eliminating a cap on office space that would allow increased office development potential on Sites D and F2. The applicant is specifically requesting consideration of a revision to the PDP to include three residential options for each site (for a total of six residential options). These options would be in addition to the currently

#4

CITY OF OAKLAND PLANNING COMMISSION



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Case File: ER030004, PUD13170 and DA13171
Applicant: Ellis Partners, Matt Weber: (415) 391-9800
Address: Jack London Square Development Project:
Generally, south of Embarcadero between Clay and Alice Streets;
Specifically proposed development sites: Sites D at Broadway
and F2 at Harrison Street (South of Embarcadero)
Zone: C-45

approved commercial development PDPs for each site. Any approved PDP would require a Final Development Permit (FDP) to be considered and approved later by the Planning Commission before receiving any construction-related permits.

PROJECT SITE AND SURROUNDING AREA

The Jack London Square project site is a nine-site area located along the Oakland Estuary (at the southern terminus of Broadway) between Clay and Alice Streets. More specifically, Jack London Square project "Site D" is located immediately south of Embarcadero (and the Union Pacific right-of-way) on the west side of Broadway. Surrounding land uses include entertainment, dining and destination retail uses and the Jack London Square Marina to the south. "Site F2" is located immediately south of Embarcadero between Harrison and Alice Streets. Adjacent uses include the "Site F1" commercial building to the west, the Union Pacific right-of-way and "Site G" garage and commercial building and Amtrak passenger train station to the north, residential uses to the east, and a vacant lot ("Site F3", a planned hotel site) to the south.

PROJECT BACKGROUND

Project History

As briefly mentioned in the Summary Section above, the City of Oakland approved the nine-site, multi-phased development project known as "Jack London Square" in 2004. The project is located on sites located throughout the Jack London District of Oakland, south of Interstate 880, and owned by the Port of Oakland (with the exception of Sites D and F2, which are owned by JLSV Land, LLC). The project was subject to an Environmental Impact Report, Preliminary and Final Development Permits (and appeal), Major Conditional Use Permit (and appeal), Major Variance, Rezone, Development Agreement (and appeal), with final approvals for the land use entitlements granted by the Oakland City Council on June 15, 2004.

The adopted project is an entirely commercial development scheme that supports the retail, entertainment and dining uses in the project area. The project was subject to a high level of design scrutiny in 2004 with a concern for how buildings would relate to the waterfront, to the public spaces in Jack London Square (including the Bay Trail), and to nearby residential uses.

Since 2004, the project proponent has developed three sites: Sites "C", "G" and "F1". "Site C" is a commercial building that includes 16,000 square feet of above-ground floor office space and 16,000 square feet of vacant retail, dining and entertainment space on the ground floor. "Site G" includes 1,086 parking spaces (although the site was only required to have 743 spaces), 30,000 32,000 square feet of vacant retail space on the ground floor, and a pedestrian bridge connecting the building to Jack London Square over the railroad ROW along Embarcadero. "Site F1" is a six-story building with an approximately 33,000 square-foot footprint, and encompasses a total of 191,000 square feet; there is a restaurant located on the ground floor and mostly occupied office uses on the upper floors.

The uses for sites approved in 2004 for sites D and F2 are as follows:

- Site D: The approved use is for up to 190,000 square feet of retail and office uses, including a theatre. The approved maximum building height is 150 feet.
- Site F2: The approved use is for up to 149,000 square feet of retail and office uses, and up to 550 parking spaces. The approved maximum building height is 125 feet.

Design Review Committee

The Design Review Committee (DRC) reviewed the project at their regularly scheduled public hearing on December 18, 2013. Comments included the following:

- DRC comments:
 - The DRC supports residential uses in the Jack London area.
 - Design is appropriate and adequate for PDP.
 - DRC should review FDP application, as well.
 - Applicant should provide more information regarding how proposal would meet open space, bicycle parking and recycling requirements.
 - How does the applicant propose resolving the emergency response issue related to the unstaffed fire station at Jack London Square?
 - The DRC supports the GPA request.
 - Both sites should include strong, distinct residential entrances.
 - How do lobbies work? What amenities are included in lobbies? What is the proposed ceiling height? Where are mailboxes and trash located?
 - Highrise is acceptable for Site D, as this is a gateway site and merits an iconic structure.
 - Highrise might be acceptable on Site F2, but should be considered with caution given the risk of setting a negative precedent along the waterfront.
 - What is the design of the promenade between Sites F2 and F3?
 - Design guidelines are adequate.
 - Need more information about and demonstration of connection between buildings and streetscape.
 - Retail uses should be provided on Site D.
 - Ground floor should be 15' floor-to-ceiling on both sites.
 - Site D should have retail on all sides adjacent to public right-of-way.
 - Building on Site D should be set back from property line with generous public plaza/open space at lobby area.
 - Provide more information about streetscape treatment where Broadway meets Embarcadero adjacent to Site D.
 - Request DA extension near end of term of DA and demonstrate conformance with DA at that time.
 - Unit design should include larger living rooms for larger units.

Public comments:

- High-density residential development in Jack London Square would support planned entertainment and retail uses in currently vacant spaces and would provide safety for residents and visitors, alike.
- Extending the term of the DA would allow vacant parcels to fester over a longer period of time, and is inconsistent with the original promises of the applicant to provide the approved development under the DA in a timely manner.
- Elimination of office cap would potentially crowd out planned retail and entertainment uses, making Jack London Square an office district, as opposed to a destination public venue with extensive entertainment and retail options.
- Highrise buildings are inappropriate on the waterfront. Development should step down to the waterfront. The waterfront should feel open and accessible to the public and highrise development would create a perceived wall along the waterfront.
- Development on the water side of Embarcadero is generally less than six stories and should remain so. Highrise development would set precedent for large, private development along the waterfront that would inhibit public access and enjoyment of the waterfront.
- The City should provide extensive opportunities for the public to review the project and should ensure adequate time for public review.
- The applicant should follow through on their existing commitments. The community supports the approved plan. The community worked hard to achieve the balance represented by the current approval and wants the applicant to respect this commitment.
- The approved project had a commercial vision (and was entirely commercial uses) that would support the destination retail, dining and entertainment designation of Jack London Square. What is the vision for the current proposal, which includes non-commercial uses?
- The applicant should provide a grocery store in existing, vacant retail space before requesting to maximize time and development options for yet undeveloped sites/
- Existing bridge from Site G across Embarcadero should provide a direct access to the ground level for the public.
- The planned theater in the Site D space continues to be desirable to the community.
- The proposed development should include publicly accessible uses on the ground floor (such as retail and entertainment uses).
- Development on both sites should be of signature quality, similar to the sites previously development under the DA (Sites C, G and F1).
- Any proposed changes to land uses on Sites D and F2 should respect the approved building heights for those sites, and not set a building height precedent along the waterfront.
- The applicant should provide more architectural detail than just the massing study to ensure high quality design.
- Any proposed massing should be consistent with and complement the nearby warehouse district scale.

- Decision-makers should only allow one option on each site to provide certainty about what will be developed over time.
- Recent highrise, single use residential development in the neighborhood has not successfully activated the adjacent public right-of-way.
- Any proposal should be consistent with the Estuary Policy Plan.
- The City should undertake a Specific Plan for the Jack London area to ensure land use planning coherence.
- What are the proposed community benefits that would be tied to and/or result from this proposal?
- The proposal needs to maximize the public-private interface.

Zoning Update Committee

The Zoning Update Committee reviewed the proposed project at their regularly scheduled hearing on January 15, 2014. Many comments were similar to the comments made at the DRC meeting (discussed above). Additional comments included the following:

- ZUC comments:
 - Supports diversifying land uses in the district.
 - Residential uses would activate currently vacant retail uses.
 - Comfortable with providing more flexibility within DA as long as residential uses are guaranteed.
 - Only remove office cap if residential development is also mandated.
 - Sympathetic to need for DA term extension as long as public review opportunities are in place throughout life of DA.
 - Maintaining current DA term encourages applicant to complete project.
 - Need better description of elimination of office cap.
 - Need better description of maximum building heights under each scenario.
 - Need more images to describe high-rise options in a convincing manner.
 - Site D should host iconic, timeless building that is sensitive to all sides and contexts;
 - Provide retail on ground floor.
 - Support GPAs.
- Public Comments:
 - Design should be a product of a combined City, community and developer process.
 - City should develop a Specific Plan for the Jack London District.
 - Low-rise and mid-rise options are acceptable, but not high-rise options.
 - Support residential land uses.
 - Maintain office cap. Do not want an office park that is vacant nights and weekends.
 - Maintain current DA term.
 - Proposed residential uses are not enough to resolve existing retail vacancies.
 - Keep same height and footprint approved in 2004.

- Need ground floor retail uses, otherwise ground floor will be a blank wall and will not activate street.
- Site D is a key site and should be mixed-use development.
- High-rise development would be out of scale with surrounding neighborhood.
- High-rise development would cast shadows on surrounding neighborhood.
- First goal should be to renovate and occupy existing, vacant uses before developing new uses.
- Want strong public interface and activated ground floor.
- Project should include additional park space.
- Need retail on Site D.
- Need community benefits.
- City needs to comply with Estuary Policy Plan more consistently.
- Development should step down toward the waterfront.

PROJECT DESCRIPTION

In summary, the proposed project includes three components:

- Removal of the 355,300 square-foot cap on office space, allowing for up to 61,700 additional square feet than currently approved, which would be applied only to Sites D and F2; and
- The inclusion of six residential options for Sites D and F2 (three options for each site, including low-, mid- and high-rise). The applicant is requesting that the PUD be revised to allow the maximum number of residential units possible under the proposed GPA (666 dwelling units). However, the PDP only shows up to 167 units on Site D and up to 370 units on Site F2.

More specifically, the land use proposal includes the following (and is described below):

| Site | Existing DA/PUD | Proposal | Requirements |
|-------------------|--|--|-----------------------------|
| Site D | Retail, office (190k sf) | Residential (168,294 sf) (1:1 parking) | Amend PUD, and GPA |
| Site F2 | Retail, office, parking (149k sf/550 pkg) | Residential (369,235 sf) (1:1 parking) | Amend PUD, and GPA |
| Site G | Garage (completed) | Allow residential use (to be transferred to Sites D and F2) | Amend PUD |
| Remove office cap | 355,300 sf max | No cap (allows for up to 61.7 k sf more than currently approved); applies only to Sites D and F2 | Amend PUD and DA |
| Overall PUD | 291 du (limited to Site G) | Up to 666 du on Sites D and F2 (combined) | Amend PUD and GPA |
| | | | |

Development Agreement Amendment

Previously, the applicant proposed extending the term of the DA from 2019 to 2027. Staff responded to this request with a request for community benefits (see Attachment H: ZUC Report, dated January 15, 2014). However, the applicant has now withdrawn this request. Accordingly, staff is withdrawing the request for community benefits.

The proposed project would not result in a modification to the DA that would require an amendment. However, it should also be noted that, although there is no longer a proposed amendment to the DA, the applicant has decided of their own accord to offer the City a pledge of \$250,000 towards design and implementation of a Broadway 880 underpass pedestrian upgrade and of the Webster Green (see Attachment D). This offer is desirable to both the applicant and the community in terms of supporting established desirable community benefits. This commitment is included in the Conditions of Approval for this project.

Removal of the Office Cap

The applicant proposes removing a cap on office square footage that was placed on the project by the City Council at the time of the original approvals (2004), although the project was not proposed with an office cap. Removal of the office cap would allow for development of up to 61,700 square feet of additional office space beyond the currently approved 355,300 net square feet of office space. The applicant proposes to limit the locations where this additional office square footage could occur to Sites D and F2. This would potentially allow development up to (but not exceeding) the currently requested massing and height envelope (193 feet for Site D, and 293 feet for Site F2). It should be noted that the currently proposed removal of the office cap does not require any supplemental environmental review because the 2004 EIR studied the project impacts without a cap on the allowable office square footage.

Residential Options on Sites D and F2

The approved project does not include any residential development. The applicant is currently proposing adding residential variants to both Sites D and F2. For each site, the applicant proposes three residential options, including a low-rise, mid-rise and high-rise option. The maximum number of residential units is 665: up to 167 units on Site D; and up to 370 units on Site F2. Under the proposed GPA, up to 665 residential units may be distributed between Sites D and F2.

The residential options would also include changes to the maximum allowed massing and height for Sites D and F2:

Maximum Proposed Building Height

| | 2004 Approval | 2014 Proposal |
|----------------------------------|-----------------------------|--|
| Site D (Broadway/Embarcadero) | 150' max ht. (7 stories) | 193' max ht. (17 stories, up to 167 du) |
| Site F2 (Alice/Embarcadero) | 125' max ht. (8 stories) | 293' max ht. (26 stories, up to 370 du) |

GENERAL PLAN ANALYSIS*Existing General Plan Land Use Classifications*

The Jack London Square Project is located in the Estuary Policy Plan Area of the Oakland General Plan, which was adopted in 1999.

The F2 project site is located in the Waterfront Commercial Recreation 1 (WCR-1) land use classification of the General Plan. The intent of this classification is to "extend public-oriented waterfront activities west from Webster Street to Alice Street, in conjunction with enhanced public access, open space, and recreational opportunities." (EPP, page 132) With regards to desired character, "Future development in this area should be primarily retail, restaurant, cultural, office, hotel, commercial-recreational, conference, exhibition, performances, shows, parks, and public open spaces, and recreational opportunities with active public-oriented uses on ground floors on streets and adjacent to open space areas." (EPP, page 132) The average floor area ratio (FAR) over the entire area is 3.0. Residential uses are not included in this land use classification.

Site D is located in the Retail, Dining, Entertainment Phase 1 (RDE-1) land use classification of the General Plan. The intent of this classification is to "intensify and enhance public-oriented uses and activities that strengthen the attractiveness of the area as an active and pedestrian-friendly waterfront destination." (EPP, page 132) With regards to desired character, "future development in this area should be primarily retail, restaurant, entertainment, marina support, cultural, hotel, upper level offices, parks, and open space with active uses on the ground level of principle streets." (EPP, page 132) The average FAR over the entire area is 3.5. Residential uses are not included in this land use classification.

*Proposed General Plan Land Use Classification***Summary of Proposed General Plan Amendment**

| | Current GP | Proposed GP | | Allowable FAR | Requirements |
|---------|---------------------------------|-------------|-------------------------------|---------------|--------------|
| Site D | RDE-1 (3.5 FAR, no residential) | RDE-2 | 166.67 du/ac (92 du/666 du*) | 7.0 FAR | GPA |
| Site F2 | WCR-1 (3.0 FAR, no residential) | MUD | 166.67 du/ac (283 du/666 du*) | 5.0 FAR | GPA |

*GP density can be applied in an additive manner within a PUD. Therefore, unrealized residential density for Site G (291 du) can be added to build-out for Sites D and F2 sites. The total number of units for the PUD would be 666.

The applicant proposes a General Plan Amendment (GPA) to allow residential uses on both Sites D and F2.

The applicant proposes amending the Site D land use designation to become Retail, Dining, Entertainment Phase 2 (RDE-2). The intent of this classification is to "enhance and intensify Lower Broadway as an active pedestrian-oriented entertainment district that can help to create stronger activity and pedestrian linkages with downtown Oakland, Old Oakland, and Chinatown." (EPP, page 132) With regards to desired character, "Future development in this area should be primarily retail, restaurant, entertainment, hotel, upper level office, cultural, parks public open space, and any other use that is complementary to active public-oriented ground-level uses." (EPP, p. 132) The maximum FAR is 7.0, and the district allows 125 dwelling units per gross acre. In summary, the difference between the RDE-1 and RDE-2 designations is that the latter allows residential uses and emphasizes pedestrian-oriented development with active public-oriented uses on the ground floor.

The applicant proposes amending the Site F2 land use designation to become Mixed Use District (MUD). The intent of his classification is to "Encourage the development of nontraditional higher density housing (work/live, lofts, artist studios) within a context of commercial and light industrial/manufacturing uses." (EPP, p.133) With regards to desired character, "Future development in this area should be primarily light industrial, warehousing, wholesale, retail, restaurant, office, residential, work/live, loft units, parks, and public open spaces with manufacturing, assembly, and other uses that are compatible with adjacent uses." (EPP, p. 133) The maximum FAR is 5.0, and the district allows up to 125 dwelling units per gross acre.

ZONING ANALYSIS

Zoning District Analysis

Both Sites D and F2 are currently zoned C-45 Community Shopping Commercial Zone (C-45 zone). The applicant does not propose a rezone. The existing zoning regulations are consistent with the proposed General Plan land use designations and would allow the proposed physical changes to the project (residential options and removal of office cap). The intent of the C-45 zone is to "create, preserve, and enhance areas with a wide range of both retail and wholesale establishments serving both long and short term needs in compact locations oriented toward pedestrian comparison shopping, and is typically appropriate to commercial clusters near intersections of major thoroughfares." (Oakland Planning Code Section 17.56.010) The outright permitted residential density is one dwelling unit per 300 square feet of lot area. The maximum FAR is 7.0 (and may be exceeded by 10 percent on any corner lot).

The following table compares the proposed project with the C-45 development standards:

| Zoning Criteria | C-45 Development Standards | Site D Proposal | Site F2 | Comments |
|-----------------|----------------------------|-----------------|---------|----------|
|-----------------|----------------------------|-----------------|---------|----------|

| Land Use | Includes permanent residential | Permanent Residential | Permanent Residential | Complies |
|------------------|--------------------------------|-----------------------|-----------------------|--|
| Density | 1 unit/300 s.f. lot area | NA | NA | Density does not apply in Estuary Plan area if GP FAR not exceeded |
| Front Yard | 0' | | | Complies |
| Street Side Yard | 0' | | | Complies |

| | | | | |
|--------------------|--|--|--------------------------------|----------------------------------|
| Interior Side Yard | 0' unless if opposite living room window, then 8' plus 2' additional for each story above ground level | | | Complies |
| Courts | Required opposite legally required windows | | Courts provided | Complies |
| Rear Yard | 0' | | | Complies |
| Building Height | No height limit | 17 stories, max (193' max ht.) | 26 stories, max (293' max ht.) | Complies |
| Open Space | 150 s.f. group/unit (private space reduces requirement by 50%) | | | To Be Determined |
| Parking | 1 space/residential unit | | | Complies |
| Loading | <50 k sf = 0 >50k sf = 1 >200k sf = 2 | None provided; solution = 1 off-site loading space adj. to bldg. entry | 1 provided | Minor variance for Site D and F2 |
| Bicycle Parking | Long-term: 1 per 4 units Short-term: 1 per 20 units | | | Complies |
| Recycling Space | 2 cubic feet of space per unit | | | Complies |

Loading Variance

The applicant is requesting an off-street loading variance for both Sites D and F2. For Site D, the applicant proposes no on-site loading spaces, and one off-site loading space on Broadway, south of Embarcadero, adjacent to the building entrance. For Site F2, the applicant proposes one on-site loading space where two are required under the zoning regulations.

PUD Analysis

The proposed revisions to the PUD include the addition of residential options for Sites D and F2 and the removal of the cap on office uses for the same sites. The PUD allows permitted density and FAR to be applied in an additive manner throughout the PUD area. This means that the available FAR from one PUD site can be added to another site located within the same PUD.

The proposed residential options rely on this calculation to maximize the allowable density and FAR for Sites D and F2, as shown below.

90k sf Office / 59k sf Retail / 41k sf Theater Site D 250,775 sf

| Site D PUD Requirement | | Consistency of Site D Proposal | Requirements |
|------------------------|--|--------------------------------------|------------------------|
| Land Use | 90k sf Retail/ 59k sf Office/41k sf theater | 168,294 sf residential/ 92-666 du | PUD amendment required |
| FAR | 7.0 FAR (168,294 sf/886,723 sf sitewide*) | Complies | Consistent with PUD |
| Footprint | 38k sf | Complies | Consistent with PUD |
| Height | 150 feet | Exceeds | PUD amendment required |
| Square footage | 190k sf | 168,294 sf 250,775 sf | Consistent with PUD |

*FAR can be applied in an additive manner within a PUD. Therefore, unrealized residential FAR for Site G (349,194 sf) can be added to build-out for the Sites D and F2 sites, subject to FDP approval.

Site F2

| Site F2 PUD Requirement | | Consistency of Site F2 Proposal | Requirements |
|-------------------------|---|-----------------------------------|------------------------|
| Land Use | 15k sf Retail/ 134k sf Office | 540,205 sf residential/283-666 du | PUD amendment required |
| FAR | 5.0 FAR (73,847 sf/886,723 sf sitewide*) 369,235 sf | Complies | Consistent with PUD |
| Footprint | 57k sf | Exceeds | PUD amendment required |
| Height | 125 feet | Exceeds | PUD amendment required |
| Square footage | 149k sf | 540,205 sf | PUD amendment required |
| Parking | 550 spaces | | |

*FAR can be applied in an additive manner within a PUD. Therefore, unrealized residential FAR for Site G (349,194) can be added to build-out for the Sites D and F2 sites, subject to FDP approval.

Office Cap

| | Existing | Proposed | Requirement | |
|------------|------------|---|---------------------------|---|
| Office cap | 355,300 sf | Unlimited (realistically, up to 62,000 sf more than currently allowed, and limited to Sites D and F2) | Requires amendment to PUD | Must comply with FAR and density requirements |

CALIFORNIA ENVIRONMENTAL QUALITY ACT

The Planning Commission certified an EIR for the existing project approvals on March 17, 2004. The EIR considered an envelope of development of up to 960,700 square feet of commercial uses. The proposed project would develop up to 1,287,700 net new gross square feet of commercial and residential uses (including up to 665 dwelling units not previously proposed and a "Maximum Commercial Scenario" that would develop up to 960,700 net new gsf of commercial uses (similar to the project analyzed in the 2004 EIR).

In accordance with CEQA, the City reviewed and analyzed the proposed project changes and other relevant information to determine whether circumstances requiring the preparation of a subsequent or supplemental EIR exist. Based upon preliminary information, the City has determined that none of those circumstances are present. As a result, the appropriate CEQA documentation is an Addendum. An Addendum is appropriate when none of the circumstances that require a supplemental or subsequent EIR pursuant to CEQA Guidelines Section 15162 have occurred, specifically:

- There are no substantial changes proposed in the project which would result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- There are no substantial changes with respect to project circumstances which would result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and
- There is no new information of substantial importance which would result in new significant environmental effects, a substantial increase in the severity of previously identified significant effects, previously infeasible mitigation measures or alternatives now found to be feasible, or new mitigation measures or alternatives which are considerably different from previous ones that would substantially reduce environmental effects.

Here, based upon preliminary information, the City believes that none of the circumstances described above have occurred since 2004. As a result, the appropriate CEQA documentation is an Addendum. The Addendum was published and made publically available on May 9, 2014. The document is provided under separate cover to the Planning Commission and is available to the public at 250 Frank Ogawa Plaza, Suite 3315, Oakland CA 94612 during normal business hours and at

<http://www2.oaklandnet.com/Government/o/PBN/OurOrganization/PlanningZoning/OAK044560>.

ZONING AND RELATED ISSUES

The proposed project is a revision to a Planned Unit Development (PUD) and a Preliminary Development Plan (PDP). Consistent with Planning Code Section 17.140.020, a PDP should show, "streets, driveways, sidewalks and pedestrian ways, and off-street parking and loading areas; location and approximate dimensions of structures; utilization of structures, including activities and the number of living units; estimated population; reservations for public uses, including schools, parks, playgrounds, and other open spaces; major landscaping features; relevant operational data; and drawings and elevations clearly establishing the scale, character, and relationship of buildings, streets, and open spaces." Architecturally, a PDP is less refined than a Final Development Plan (FDP) and need only include massing models (and not show fenestration and/or finishes, for example).

The JLD applicant has provided massing models and preliminary site planning information for three residential density options for each of Sites D and F2. In addition, the applicant has provided an illustrative drawing depicting what a highrise tower on F2 might look like, images of primary building entrances, and images of materials and details that provide a sense of what future buildings might look like (see Attachment A). The massing models are rough and represent only an outer box in which any future development would be located. Plans also indicate a pedestrian promenade between Sites F2 and F3.

Refinement of the massing model and added details would be provided at the time of FDP submittal. At the time of FDP submittal, staff would expect to receive the following design information:

- Schematic building design drawings, showing:
 - Refined massing, indicating distinct features of the proposed building such as (but not limited to) base, middle and top, and actual projections and recesses;
 - Window schedule;
 - Exterior materials details;
 - Location and design of required open space;
- Landscaping plans;
- Public right-of-way and off-site design and details adjacent to development:
 - Design of corner at Broadway and Embarcadero, including special paving and street furnishings;
 - F2 vehicular entry from Embarcadero; and

- Pedestrian promenade between Sites F2 and F3.

Issues

Staff has identified the following concerns for Planning Commission consideration. Staff and/or DRC and ZUC analysis provided in italicized text at the end of each discussion bullet:

- **General Plan Land Use Classification:** As noted above, the applicant is requesting a GPA for both proposed development sites. Although the proposed land use classifications would accommodate the proposed residential densities at both development locations, in both cases the submittal does not indicate that the proposal meets the intent of the proposed land use classification:
 - Site D: The applicant proposes amending the Site D land use classification to RDE-2. In part, the intent of this classification is to provide active ground floor uses. The proposed design includes a small space facing Broadway reserved for retail or amenity space. Site D is challenged in terms of its location adjacent to the railroad right-of-way along Embarcadero (and by an abundance of vacant retail space in the Jack London District). However, staff believes the entire ground floor frontage on Broadway and Embarcadero (excluding vehicular access) should provide visual interest for pedestrians (such as informational storefront windows and lighting or an attractive public art piece lining the garage on the ground floor along Embarcadero). Staff believes that the ground floor frontage need not be specifically retail, but should be visually interesting, well-lit and inviting. In addition, the proposed retail and/or amenity space should be for public use and not exclusively for residents.
 - Site F2: The applicant proposes amending the Site F2 land use classification to MUD. As noted above, the intent of this classification is to support and provide a warehouse/loft feel similar to the neighborhood north-east of the F2 site. The photo images and illustratives provided as part of the application show a possible "look" for the project that has a more corporate, high-end appearance. Staff believes that, although the MUD classification allows the desired density for the Site F2 project, it is intended to protect and preserve the historic warehouse/loft neighborhood to the northeast. In short, the district is not specifically intended for this waterfront location but for the distinct adjacent neighborhood located on the other side of Embarcadero. Staff believes the MUD classification is an adequate but not a precise fit for the proposed F2 development and that the Planning Commission should evaluate how important the desired MUD character is for this site should the site be reclassified as MUD and, accordingly, direct the applicant regarding design style.
 - *The DRC and ZUC have indicated that they do not have concerns about the proposed GPAs for Sites D and F2.*
- **Proposed Land Uses:** Residential development has the potential to complement and even enhance the desired retail and entertainment character of the Jack London District. However, residential uses were not historically envisioned in this area. Residential uses

have the risk of conflicting with certain entertainment uses. In addition, the Oakland Fire Department does not have facilities in the Jack London District to service residential and/or highrise uses (Station 2 has been vacant since 2009 and does not have the capacity to respond to a highrise building). The environmental documentation finds emergency response times adequate for the project, but the situation is nonetheless not ideal. The Planning Commission should consider the appropriateness of high-density residential development at these locations.

- **Building Design:** As noted above, the application is for a PDP and, as such, has minimal design information about the proposed development. That said, the massing models are very boxy and unrefined, and raise concerns about the potential for future design issues. The applicant has submitted design guidelines intended to control the design of the FDP. However, staff believes the Planning Commission should consider the massing models, as follows:
 - Organization of building in terms of massing: Although there are successful, large buildings that do not rely on sophisticated massing and articulation for their design quality, those buildings rely on distinctive proportions, sophisticated organization of patterns and rhythm in building features and extremely high-quality materials to create visual harmony and interest. The massing models do not have enough information to ensure that the FDP will be visually complex and attractive. Does the Planning Commission want to see massing models that simply delineate the envelope in which the FDP could be designed? Does the Planning Commission want to see massing models that rely on standard articulation, such as base, middle and top? Are there projects in Oakland from which this project could take design cues (such as the Essex, 100 Grand)? It should be noted that the project, as built to date, has relied on even less informative PDPs and the FDPs and built products are well massed and architecturally responsive to the surrounding context.
 - Design character and quality: Both proposed development sites are prominent.
 - Site D is one of the most important locations in Oakland. It marks the terminus of Broadway, the most important organizing arterial street in Oakland. It is a gateway between the City of Oakland and the San Francisco Bay. Finally, it is located within a regional destination, the Jack London District. Staff believes that any development at this site should be of landmark quality, provide significant transparency (especially at the ground floor) and include high-quality materials.
 - Site F2 is located in the Jack London District, a regional destination, and near the waterfront. Although development at this location perhaps need not be of landmark quality, staff believes it should be very high quality and elegant, and include high-quality materials.
 - Ground floor height: The proposed plans do not indicate a minimum ground floor height. Staff believes that the ground floor uses adjacent to the public right-of-way should be a minimum of 15 feet tall (floor to ceiling).
 - *The project has been refined throughout the application process, including the massing models, ground floor sketches and design guidelines.*

Overall, the project generally addresses the design-related issues, and the considerations identified here can be addressed in any future FDP review.

- **Parking:** The proposed plans indicate each residential proposal would include one-to-one on-site parking. Staff supports this approach (as opposed to relying on the Site G parking garage to provide parking for Sites D and F2); however, to the extent feasible, parking should be wrapped with commercial and residential uses adjacent to the public right-of-way and have an appropriate floor-to-ceiling height (see discussion above). Where infeasible, parking should be attractively screened, with screening integrated into the building architecture and supporting the pedestrian experience.
- **Towers Along the Waterfront:** In the past, community members have expressed concern about large buildings and towers along the waterfront that might obscure visual access to the Oakland Estuary. In addition, the waterfront is both a physical and visual regional destination. Staff believes that any towers at these locations would be iconic for Oakland, and should be slender and elegant. Although neither site is subject to a height limit, does the Planning Commission prefer to have development step down toward the waterfront and/or away from Broadway? Does the Planning Commission believe that towers at these locations should have a certain character?
- **Building Height:** The underlying zoning regulations do not contain building height restrictions. However, there has been historic community interest in development stepping down toward the waterfront and away from Broadway. The Planning Commission should consider the appropriateness of highrise development at the proposed locations on Broadway and on the waterfront. The proposed maximum building heights (under the highrise scenarios) are as follows: Site D maximum height would be 17 stories (193 feet); and Site F2 maximum height would be 26 stories (293 feet).
- **Loading Variance:** Staff generally supports the variance request, based on the attached findings. The applicant has provided documentation that the proposed on-street loading on Broadway is permitted by the Port of Oakland. However, any approval of the loading variance for Parcel D would be conditioned upon the applicant getting other required approvals for the proposed loading space on Broadway. If permitting agencies, such as Oakland Fire Department, will not allow the on-street loading space, the applicant will have to provide on-site loading or apply for a variance for a different off-site solution.
- **Design Guidelines:** The adopted DA provides design guidelines for the entire project, including the approved commercial development for Sites D and F2. The applicant has also provided specific design guidelines for residential development on Sites D and F2 as part of the current application to revise the approvals (see Attachment A). The purpose of the design guidelines is to prescribe how the PDP should be refined in order to ensure high quality development on Sites D and F2. The Design Guidelines identify the quality of materials, definition of base, middle and top of building, articulation and architectural variation. In addition, the proposed design guidelines address:

- Corner treatments (for the corner of Broadway and Embarcadero and the corner of Harrison and the Promenade, in particular);
 - Integrating balconies and other applied features into the architectural design of the building;
 - The potential for ground floor monotony along long facades adjacent to public row and how to remedy this;
 - Ground floor transparency;
 - Establishing minimum ground floor heights; and
 - Iconic design: The Site D building, in particular, would be located on a very prominent site and should be an architectural beacon for Oakland. Off-Site Improvements: The Design Guidelines include sidewalk and promenade design concepts and materials, street furnishings, lighting, trees, treatment of interface with UP ROW, should reference the approved Landscape Master Plan, and should be consistent with and support the Estuary Policy Plan.
 - Relationship to Off-Site Improvements:
 - The Design Guidelines address the interface between F2 and the promenade.
 - The Design Guidelines specify ways by which the ground floor adjacent to the public right-of-way can be animated to support pedestrian use.
- **Standard Conditions of Approval:** The proposed project only affects Sites D and F2. With this in mind, staff has limited the application of new Standard Conditions of Approval to the proposed residential options and removal of the office cap on Sites D and F2. The previously adopted conditions of approval will continue to apply to the previously approved project, consistent with the terms of the DA.

It should be noted that the City's Standard Conditions of Approval (SCA) includes an SCA relating to GHG emissions: SCA GHG-1, which requires a greenhouse gas reduction plan to be prepared and adhered to for projects that would have a significant climate change impact under CEQA. The City's policy is to submit residential projects that include 172 or more units to City Planning staff and the City Attorney's office for a determination as to "the appropriate CEQA review." This policy is based on the EIR for the City's 2007-2014 Housing Element, which included a finding that that no operational emissions from any individual residential development project constructed pursuant to the Housing Element (regardless of size) would result in a significant climate change impact.¹

As shown in the Addendum (see Attachment C), the greenhouse gas emissions from the maximum of 665 residential units proposed as part of the 2014 Modified Project would not exceed BAAQMD's threshold of 4.6 MT CO₂e per service population per year. Further, development of the Maximum Residential Scenario would actually result in a decrease in the amount of greenhouse gas emissions in comparison to construction of the

¹ See p. 3.5-35, Discussion of Future Development Projects, *City of Oakland 2007-2014 Housing Element Draft EIR*: "[P]roject-level GHG impacts associated with all future residential development projects under the 2007-2014 Housing Element would be less than significant and no project-specific GHG analysis would be required."

previously approved, non-residential variants on both D and F2. Based on the data and the policy underlying the City's climate change thresholds of significance, the City has determined that development of the new residential elements would have a less-than-significant climate change impact, and thus SCA GHG-1 does not apply to the Jack London Square Project.

City staff has consulted with the City Attorney's Office regarding this specific case and recommends that the Planning Commission find that SCA GHG-1 does not apply to the proposed project. The proposed change to the project would, in-and-of-itself, *reduce* (and not increase) the greenhouse gas emissions from the previously approved project. However, staff understands that the overall project, due to other previously approved components of the project, would theoretically trigger the application of the SCA. Staff believes that it is reasonable, in this specific case, to evaluate the *change to the project* as opposed to the *changed project*. This is a reasonable approach for the reason stated above as well as for the following reasons: the proposed project is a change to a previously approved project (as opposed to an entirely new project) and would not in-and-of-itself trigger the application of SCA-1 (either as a CEQA mitigation measure or a SCA); and the approved project was subject to an EIR prior to consideration of climate change impacts and so the previously approved project was not at that time found to result in impacts that would trigger the application of SCA GHG-1 as a mitigation measure or otherwise, and it would not be reasonable to require a new mitigation measure specific to components of a previously approved project. For these reasons, and specific to this case, staff recommends not applying SCA GHG-1 to the proposed project.

RECOMMENDATION

Although staff has identified a number of design questions and issues regarding the proposed Jack London Square Redevelopment Project proposed revision, staff recommends approval of the project. The proposed PDP, including the massing models, design vignettes and design guidelines, generally address the questions and issues raised by staff. More importantly, the addition of residential uses, though controversial in the vicinity of the waterfront, would diversify land uses in the Jack London area and provide an audience for currently struggling commercial and entertainment uses in the vicinity. Staff recommends approving the project to support the potential for iconic architecture and land use synergy that would enhance the prominence of the area as both a local and regional destination.

CONCLUSION

Staff requests the Planning Commission to consider the following:

- Based on the attached findings, accept the Jack London Square Redevelopment Project Environmental Impact Report Addendum #1;

- Based on the attached findings, conduct design review and approve revisions to the PUD subject to conditions of approval, conditioned upon City Council approval of the proposed General Plan Amendments for Sites D and F2. Revisions to the PUD include:
 - Removal of office cap of 355,300 square feet, allowing up to 62,000 square feet of additional office space to be located on Sites D and/or F2;
 - Revise PDP to allow up to 665 residential dwelling units on Sites D and F2;
 - Revise PDP to allow a maximum mass, as follows: 250,775
 - Site D: 193' maximum height (up to 17 stories) and up to 168,294 square feet of development; and
 - Site F2: 293' maximum height (up to 26 stories) and up to 540,205 square feet of development.
- Based on the attached findings, approve a Minor Variance from loading requirements, to:
 - Require no loading spaces on Site D for the residential options, conditioned upon approval of a dedicated off-site loading space on Broadway fronting the project site; and
 - Require one loading space on Site F2.
- Based on the attached findings, recommend approval of the proposed GPA to the City Council.

Prepared by:

CATHERINE PAYNE
Planner III

Approved by:

Scott Miller
Zoning Manager

Approved for forwarding to the Planning Commission

Darin Ranelletti, Deputy Director
Bureau of Planning

Attachments:

- A. Proposed Project Plans and Design Guidelines
- B. Proposed Revisions to the PUD text
- C. Jack London Square Redevelopment Project EIR and Addendum #1 (provided under separate cover to the Planning Commission; available to the public at 250 Frank Ogawa Plaza, Suite 3315, Oakland CA, 94612 during regular business hours and at <http://www2.oaklandnet.com/Government/o/PBN/OurOrganization/PlanningZoning/OAK044560>).
- D. Letter from Ellis Partners, dated April 10, 2014
- E. Loading Variance Request Exhibit
- F. Public Comments Provided in Writing
- G. DRC Staff Report, dated December 18, 2013
- H. ZUC Staff Report, dated January 15, 2014 (includes 2004 approved FDPs for Sites D and F2)

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**City of Oakland
Planning & Zoning Di**

Submitted to
Planning Commission by
Ellen Partner

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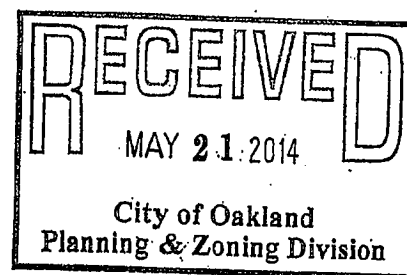
| Site Designation | Pavilion 2 | | Water / Expansion | | 66 Franklin | | | |
|---------------------------|------------------|----------|-------------------|----------|------------------|----------|---|----------|
| | Variant 0 GSF | Land Use | Variant 0 GSF | Land Use | Variant 1 GSF | Land Use | Variant 1b GSF | Land Use |
| New Development | 15,000 | Retail | | | | | | |
| Level 1 use 1 | | | 20,000 | Retail | 35,000 | Retail | 28,500 | Retail |
| Level 1 use 2 | | | | | 2,000 | Office | 2,000 | Office |
| Level 1 use 3 | | | | | | | 47,250 | Parking* |
| Level 2 use 1 | | | 20,000 | Retail | 37,000 | Retail | 30,500 | Retail |
| Level 2 use 2 | | | | | | | | |
| Level 3 use 1 | | | | | 37,000 | Office | 37,000 | Parking |
| Level 3 use 2 | | | | | | | | |
| Level 4 use 1 | | | | | 23,500 | Office | 37,000 | Office |
| Level 4 use 2 | | | | | 23,500 | Office | 37,000 | Office |
| Level 5 | | | | | 23,500 | Office | 23,500 | Office |
| Level 6 | | | | | | | | |
| Level 7 | | | | | | | | |
| Level 8 | | | | | | | | |
| Level 9 | | | | | | | | |
| Level 10 | | | | | | | | |
| Level 11 | | | | | | | | |
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| Level 14 | | | | | | | | |
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| Level 20 | | | | | | | | |
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| Level 23 | | | | | | | | |
| Level 24 | | | | | | | | |
| Level 25 | | | | | | | | |
| Level 26 | | | | | | | | |
| Total GSF New | 15,000 | | 40,000 | | 181,500 | | 242,750 | 84,700 |
| Less Existing Development | | | | | | | | |
| Level 1 | | | -14,000 | Retail | -32,600 | Retail | -32,600 | Retail |
| Level 2 | | | | | -30,600 | Office | -30,600 | Office |
| Level 3 | | | | | -30,600 | Office | -30,600 | Office |
| Total GSF Existing | | | -14,000 | | -93,800 | | -93,800 | |
| TOTAL NET GSF | | | | | | | | |
| OFFICE | | | | | 85,300 | | -35,700 | 84,700 |
| RETAIL | 15,000 | | 26,000 | | 2,400 | | 26,400 | |
| THEATER | | | | | | | | |
| HEALTH CLUB | | | | | | | | |
| HOTEL | | | | | | | | |
| CONFERENCE | | | | | | | | |
| RESIDENTIAL | | | | | | | | |
| RESIDENTIAL UNITS | | | | | | | | |
| PARKING | | | | | | | | |
| PARKING STALLS | | | | | | | 158,250 | |
| Notes | | | | | | | 422 rough est. | |
| | | | | | | | *Parking at 3 levels behind retail levels 1 and 2 | |
| | | | | | | | This variant is an addition of 2 and a half floors to the existing building | |

**CONDITIONS OF APPROVAL FOR JACK LONDON SQUARE PROJECT GENERAL PLAN
AMENDMENT APPROVAL, PLANNED UNIT DEVELOPMENT AMENDMENT APPROVAL,
DESIGN REVIEW, AND MINOR VARIANCE**

Except as otherwise specifically provided, these Conditions of Approval shall apply only to the development of residential uses on Sites D and F2.

as modified by Addendum #1

It should be noted that all previously adopted Conditions of Approval and ~~Mitigation Measures~~ apply to the previously approved project unless expressly modified herein. The Conditions of Approval in this document are limited to the specific revisions to the project addressed in the May 21, 2014 Planning Commission staff report.



*Submitted to Planning
Commission by Ellen Partman*

1. **Approved Use**

Ongoing

May 21, 2014

- a) The project shall be constructed and operated in accordance with the authorized use as described in the application materials, **staff report dated May 7, 2014**, exhibits, and as amended by the following conditions. Any additional uses or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval. Any deviation from the approved drawings, Conditions of Approval or use shall required prior written approval from the Director of City Planning or designee.
- b) This action by the **City Planning Commission and City Council** ("this Approval") includes the approvals set forth below. This Approval includes: ~~i. Amendment to the Development Agreement, under Municipal Code Section 17.138, Development Agreement Procedure;~~
- ii. General Plan Amendment;
 - iii. Revision to PUD (PDP, only), under Municipal Code Section 17.140, Planned Unit Development Procedure;
 - iv. Design Review, under Municipal Code Section 17.136, Design Review Procedure; and
 - v. Minor variance for loading, under Municipal Code Section 17.148, Variance Procedure.

2. **Effective Date, Expiration, Extensions and Extinguishment**

Ongoing

Unless a different termination date is prescribed, this Approval shall expire **two (2) years** from the approval date, unless within such period all necessary permits for construction or alteration have been issued, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit for this project may invalidate this Approval if the said extension period has also expired.

3. **Scope of This Approval: Major and Minor Changes**

Ongoing

The project is approved pursuant to the **Planning Code and other applicable legal requirements**. Minor changes to approved plans may be approved administratively by the Director of City Planning or designee. Major changes to the approved plans shall be reviewed by the Director of City Planning or designee to determine whether such changes require submittal and approval of a revision to the approved project by the approving body or a new, completely independent permit.

4. **Conformance with other Requirements**

Prior to issuance of a demolition, grading, P-job, or other construction related permit

- a) The project applicant shall comply with all other applicable federal, state, regional and/or local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Building Services Division, the City's Fire Marshal, and the City's Public Works Agency. Compliance with other applicable requirements may require changes to the approved use and/or plans. These changes shall be processed in accordance with the procedures contained in Condition of Approval 3.
- b) The applicant shall submit approved building plans for project-specific needs related to fire protection to the Fire Services Division for review and approval, including, but not limited to automatic

extinguishing systems, water supply improvements and hydrants, fire department access, and vegetation management for preventing fires and soil erosion.

5. **Conformance to Approved Plans; Modification of Conditions or Revocation**

Ongoing

- a) Site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60-90 days of approval, unless an earlier date is specified elsewhere.
- b) The City of Oakland reserves the right at any time during construction to require certification by a licensed professional that the as-built project conforms to all applicable zoning requirements, including but not limited to approved maximum heights and minimum setbacks. Failure to construct the project in accordance with approved plans may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension or other corrective action.
- c) Violation of any term, **Conditions of Approval and Mitigation Measures** or project description relating to the Approvals is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approvals or alter these **Conditions of Approval and Mitigation Measures** if it is found that there is violation of any of the **Conditions of Approval and Mitigation Measures** or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement actions. The project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Conditions of Approval.

6. **Signed Copy of the Conditions of Approval and Mitigation Measures**

With submittal of a demolition, grading, and building permit

A copy of the approval letter and **Conditions of Approval and Mitigation Measures** shall be signed by the property owner, notarized, and submitted with each set of permit plans to the appropriate City agency for this project.

7. **Indemnification**

Ongoing

- a) To the maximum extent permitted by law, the applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and its respective agents, officers, and employees (hereafter collectively called City) from any liability, damages, claim, judgment, loss (direct or indirect) action, causes of action, or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul, (1) an approval by the City relating to a development-related application or subdivision or (2) implementation of an approved development-related project. The City may elect, in its sole discretion, to participate in the defense of said Action and the applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.
- b) Within ten (10) calendar days of the filing of any Action as specified in subsection A above, the applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Letter of Agreement shall survive

termination, extinguishment or invalidation of the approval. Failure to timely execute the Letter Agreement does not relieve the applicant of any of the obligations contained in this condition or other requirements or conditions of approval that may be imposed by the City.

8. Compliance with Conditions of Approval

Ongoing

The project applicant shall be responsible for compliance with the recommendations in any submitted and approved technical report and all the Conditions of Approval and all applicable adopted mitigation measures set forth below at its sole cost and expense, and subject to review and approval of the City of Oakland.

9. Severability

Ongoing

Approval of the project would not have been granted but for the applicability and validity of each and every one of the specified conditions **and/or mitigation measures**, and if one or more of such conditions **and/or mitigation measures** is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid conditions **and/or mitigation measures** consistent with achieving the same purpose and intent of such Approval.

10. Job Site Plans

Ongoing throughout demolition, grading, and/or construction

At least one (1) copy of the stamped approved plans, along with the Approval Letter and Conditions of Approval **and/or mitigation measures**, shall be available for review at the job site at all times.

11. Special Inspector/Inspections, Independent Technical Review, Project Coordination and Management

Prior to issuance of a demolition, grading, and/or construction permit

The project applicant may be required to pay for on-call third-party special inspector(s)/inspections as needed during the times of extensive or specialized plancheck review or construction. The project applicant may also be required to cover the full costs of independent technical review and other types of peer review, monitoring and inspection, including without limitation, third party plan check fees, including inspections of violations of Conditions of Approval. The project applicant shall establish a deposit with the Building Services Division, as directed by the Building Official, Director of City Planning or designee.

12. Required Landscape Plan for New Construction and Certain Additions to Residential Facilities

Prior to issuance of a building permit

Submittal and approval of a landscape plan for the entire site is required for the establishment of a new residential unit (excluding secondary units of five hundred (500) square feet or less), and for additions to Residential Facilities of over five hundred (500) square feet. The landscape plan and the plant materials installed pursuant to the approved plan shall conform with all provisions of Chapter 17.124 of the Oakland Planning Code, including the following:

- a) Landscape plan shall include a detailed planting schedule showing the proposed location, sizes, quantities, and specific common botanical names of plant species.
- b) Landscape plans for projects involving grading, rear walls on downslope lots requiring conformity with the screening requirements in Section 17.124.040, or vegetation management prescriptions in the S-11 zone, shall show proposed landscape treatments for all graded areas, rear wall treatments, and vegetation management prescriptions.

- c) Landscape plan shall incorporate pest-resistant and drought-tolerant landscaping practices. Within the portions of Oakland northeast of the line formed by State Highway 13 and continued southerly by Interstate 580, south of its intersection with State Highway 13, all plant materials on submitted landscape plans shall be fire-resistant. The City Planning and Zoning Division shall maintain lists of plant materials and landscaping practices considered pest-resistant, fire-resistant, and drought-tolerant.
- d) All landscape plans shall show proposed methods of irrigation. The methods shall ensure adequate irrigation of all plant materials for at least one growing season.

13. Assurance of Landscaping Completion.

Prior to issuance of a final inspection of the building permit

The trees, shrubs and landscape materials required by the conditions of approval attached to this project shall be planted before the certificate of occupancy will be issued; or a bond, cash, deposit, or letter of credit, **acceptable to the City**, shall be provided for the planting of the required landscaping. The amount of such a bond, cash, deposit, or letter of credit shall equal the greater of two thousand five hundred dollars (\$2,500.00) or the estimated cost of the required landscaping, based on a licensed contractor's bid.

14. Underground Utilities

Prior to issuance of a building permit

The project applicant shall submit plans for review and approval by the Building Services Division and the Public Works Agency, and other relevant agencies as appropriate, that show all new electric and telephone facilities; fire alarm conduits; street light wiring; and other wiring, conduits, and similar facilities placed underground. The new facilities shall be placed underground along the project applicant's street frontage and from the project applicant's structures to the point of service. The plans shall show all electric, telephone, water service, fire water service, cable, and fire alarm facilities installed in accordance with standard specifications of the serving utilities.

15. Improvements in the Public Right-of-Way (General)

Approved prior to the issuance of a P-job or building permit

- a) The project applicant shall submit Public Improvement Plans to Building Services Division for adjacent public rights-of-way (ROW) showing all proposed improvements and compliance with the conditions **and/or mitigations** and City requirements including but not limited to curbs, gutters, sewer laterals, storm drains, street trees, paving details, locations of transformers and other above ground utility structures, the design specifications and locations of facilities required by the East Bay Municipal Utility District (EBMUD), street lighting, on-street parking and accessibility improvements compliant with applicable standards and any other improvements or requirements for the project as provided for in this Approval. Encroachment permits shall be obtained as necessary for any applicable improvements- located within the public ROW.
- b) Review and confirmation of the street trees by the City's Tree Services Division is required as part of this condition **and/or mitigations**.
- c) The Planning and Zoning Division and the Public Works Agency will review and approve designs and specifications for the improvements. Improvements shall be completed prior to the issuance of the final building permit.
- d) The Fire Services Division will review and approve fire crew and apparatus access, water supply availability and distribution to current codes and standards.

16. Improvements in the Public Right of Way (Specific)

Approved prior to the issuance of a grading or building permit

Final building and public improvement plans submitted to the Building Services Division shall include the following components:

- a) Install additional standard City of Oakland streetlights **where required** by the SCAMMRP
- b) Remove and replace any existing driveway that will not be used for access to the property with new concrete sidewalk, curb and gutter.
- c) Reconstruct drainage facility to current City standard **where required** on-site by the SCAMMRP
- d) Provide separation between sanitary sewer and water lines to comply with current City of Oakland and ~~Alameda Health Department~~ standards.
- e) Construct wheelchair ramps that comply with Americans with Disability Act requirements and current City Standards where required by the SCAMMRP
- f) Remove and replace deficient concrete sidewalk, curb and gutter within property frontage **where required** by the SCAMMRP

Provide adequate fire department access and water supply, including, but not limited to currently adopted fire codes and standards.

17. Payment for Public Improvements

Prior to issuance of a final inspection of the building permit.

The project applicant shall pay for and install public improvements made necessary by the project including damage caused by construction activity.

18. Compliance Matrix

Prior to issuance of a demolition, grading, or building permit

The project applicant shall submit to the Planning and Zoning Division and the Building Services Division a **Conditions/Mitigation Measures** compliance matrix that lists each condition of approval **and/or mitigation measure**, the City agency or division responsible for review, and how/when the project applicant has met or intends to meet the conditions **and/or mitigation measures**. The applicant will sign the Conditions of Approval attached to the approval letter and submit that with the compliance matrix for review and approval. The compliance matrix shall be organized per step in the plancheck/construction process unless another format is acceptable to the Planning and Zoning Division and the Building Services Division. The project applicant shall update the compliance matrix and provide it with each item submittal.

19. Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCAMMRP)

Ongoing

as modified by

All mitigation measures identified in the Jack London Square EIR and Addendum #1 are included in the Standard Condition of Approval and Mitigation Monitoring Program (SCAMMRP) which is included in these conditions of approval and are incorporated herein by reference, as conditions of approval of the project. The Standard Conditions of Approval identified in the **Jack London Square EIR and Addendum #1** are also included in the SCAMMRP, and are therefore, not repeated in these conditions of approval. To the extent that there is any inconsistency between the SCAMMRP and these conditions, the more restrictive conditions shall govern. The project sponsor (also referred to as the Developer or Applicant) shall be responsible for compliance with the recommendation in any submitted and approved technical reports, all applicable mitigation measures adopted and with all conditions of approval set forth herein at its sole cost and expense, unless otherwise expressly provided in a specific mitigation measure or condition of approval, and subject to the review and approval of the City of Oakland. The SCAMMRP identifies the time frame and responsible party for implementation and monitoring for each mitigation measure. Overall monitoring and compliance with the mitigation measures will be the responsibility of the Planning and Zoning Division. Adoption of the SCAMMRP will constitute fulfillment of the CEQA monitoring and/or reporting requirement set forth in Section 21081.6 of CEQA. Prior to the issuance of a demolition, grading, and/or construction permit, the project sponsor shall pay the applicable mitigation and monitoring fee to the City in accordance with the City's Master Fee Schedule.

20. Tree Removal Permit on Creekside Properties

Prior to issuance of a final inspection of the building permit

Prior to removal of any tree located on the project site which is identified as a creekside property, the project applicant must secure the applicable creek protection permit, and abide by the conditions of that permit.

21. Tree Removal During Breeding Season

Prior to issuance of a tree removal permit

To the extent feasible, removal of any tree and/or other vegetation suitable for nesting of raptors shall not occur during the breeding season of March 15 and August 15. If tree removal must occur during the breeding season, all sites shall be surveyed by a qualified biologist to verify the presence or absence of nesting raptors or other birds. Pre-removal surveys shall be conducted within 15 days prior to start of work from March 15 through May 31, and within 30 days prior to the start of work from June 1 through August 15. The pre-removal surveys shall be submitted to the Planning and Zoning Division and the Tree Services Division of the Public Works Agency. If the survey indicates the potential presences of nesting raptors or other birds, the biologist shall determine an appropriately sized buffer around the nest in which no work will be allowed until the young have successfully fledged. The size of the nest buffer will be determined by the biologist in consultation with the CDFG, and will be based to a large extent on the nesting species and its sensitivity to disturbance. In general, buffer sizes of 200 feet for raptors and 50 feet for other birds should suffice to prevent disturbance to birds nesting in the urban environment, but these buffers may be increased or decreased, as appropriate, depending on the bird species and the level of disturbance anticipated near the nest.

22. Tree Protection During Construction

Conditions of Approval

Prior to issuance of a demolition, grading, or building permit

Adequate protection shall be provided during the construction period for any trees which are to remain standing, including the following, plus any recommendations of an arborist:

- a) Before the start of any clearing, excavation, construction or other work on the site, every protected tree deemed to be potentially endangered by said site work shall be securely fenced off at a distance from the base of the tree to be determined by the City Tree Reviewer. Such fences shall remain in place for duration of all such work. All trees to be removed shall be clearly marked. A scheme shall be established for the removal and disposal of logs, brush, earth and other debris which will avoid injury to any protected tree.
- b) Where proposed development or other site work is to encroach upon the protected perimeter of any protected tree, special measures shall be incorporated to allow the roots to breathe and obtain water and nutrients. Any excavation, cutting, filing, or compaction of the existing ground surface within the protected perimeter shall be minimized. No change in existing ground level shall occur within a distance to be determined by the City Tree Reviewer from the base of any protected tree at any time. No burning or use of equipment with an open flame shall occur near or within the protected perimeter of any protected tree.
- c) No storage or dumping of oil, gas, chemicals, or other substances that may be harmful to trees shall occur within the distance to be determined by the Tree Reviewer from the base of any protected trees, or any other location on the site from which such substances might enter the protected perimeter. No heavy construction equipment or construction materials shall be operated or stored within a distance from the base of any protected trees to be determined by the tree reviewer. Wires, ropes, or other devices shall not be attached to any protected tree, except as needed for support of the tree. No sign, other than a tag showing the botanical classification, shall be attached to any protected tree.
- d) Periodically during construction, the leaves of protected trees shall be thoroughly sprayed with water to prevent buildup of dust and other pollution that would inhibit leaf transpiration.
- e) If any damage to a protected tree should occur during or as a result of work on the site, the project applicant shall immediately notify the Public Works Agency of such damage. If, in the professional opinion of the Tree Reviewer, such tree cannot be preserved in a healthy state, the Tree Reviewer shall require replacement of any tree removed with another tree or trees on the same site deemed adequate by the Tree Reviewer to compensate for the loss of the tree that is removed.
- f) All debris created as a result of any tree removal work shall be removed by the project applicant from the property within two weeks of debris creation, and such debris shall be properly disposed of by the project applicant in accordance with all applicable laws, ordinances, and regulations.

23. Erosion and Sedimentation Control Plan

Prior to any grading activities

- a) The project applicant shall obtain a grading permit if required by the Oakland Grading Regulations pursuant to Section 15.04.660 of the Oakland Municipal Code. The grading permit application shall include an erosion and sedimentation control plan for review and approval by the Building Services Division. The erosion and sedimentation control plan shall include all necessary measures to be taken to prevent excessive stormwater runoff or carrying by stormwater runoff of solid materials on to lands of adjacent property owners, public streets, or to creeks as a result of conditions created by grading operations. The plan shall include, but not be limited to, such measures as short-term erosion control planting, waterproof slope covering, check dams, interceptor ditches, benches, storm drains, dissipation structures, diversion dikes, retarding berms and barriers, devices to trap, store and filter out sediment, and stormwater retention basins. Off-site work by the project applicant may be necessary.

The project applicant shall obtain permission or easements necessary for off-site work. There shall be a clear notation that the plan is subject to changes as changing conditions occur. Calculations of anticipated stormwater runoff and sediment volumes shall be included, if required by the Director of Development or designee. The plan shall specify that, after construction is complete, the project applicant shall ensure that the storm drain system shall be inspected and that the project applicant shall clear the system of any debris or sediment.

Ongoing throughout grading and construction activities

- b) The project applicant shall implement the approved erosion and sedimentation plan. No grading shall occur during the wet weather season (October 15 through April 15) unless specifically authorized in writing by the Building Services Division.

24. Creek Dewatering and Aquatic Life

Prior to the start of and ongoing throughout any in-water construction activity

- a) ~~If any dam or other artificial obstruction is constructed, maintained, or placed in operation within the stream channel, ensure that sufficient water is allowed to pass down channel at all times to maintain aquatic life (native fish, native amphibians, and western pond turtles) below the dam or other artificial obstruction.~~
- b) ~~The project applicant shall hire a biologist, and obtain all necessary State and federal permits (e.g. CDFG Scientific Collecting Permit), to relocate all native fish/native amphibians/pond turtles within the work site, prior to dewatering. The applicant shall first obtain a project-specific authorization from the CDFG and/or the USFWS, as applicable to relocate these animals. Captured native fish/native amphibians/pond turtles shall be moved to the nearest appropriate site on the stream channel downstream. The biologist/contractor shall check daily for stranded aquatic life as the water level in the dewatering area drops. All reasonable efforts shall be made to capture and move all stranded aquatic life observed in the dewatered areas. Capture methods may include fish landing nets, dip nets, buckets, and by hand. Captured aquatic life shall be released immediately in the nearest appropriate downstream site. This condition does not allow the take or disturbance of any state or federally listed species, nor state-listed species of special concern, unless the applicant obtains a project specific authorization from the CDFG and/or the USFWS, as applicable.~~

25. Creek Dewatering and Diversion

Prior to the start of any in-water construction activities

If installing any dewatering or diversion device(s), the project applicant shall develop and implement a detailed dewatering and diversion plan for review and approval by the Building Services Division. All proposed dewatering and diversion practices shall be consistent with the requirements of the Streambed Alteration Agreement issued by the California Department of Fish and Game.

- a) ~~Ensure that construction and operation of the devices meet the standards in the latest edition of the Erosion and Sediment Control Field Manual published by the Regional Water Quality Control Board (RWQCB).~~
- b) ~~Construct coffer dams and/or water diversion system of a non-erodible material which will cause little or no siltation. Maintain coffer dams and the water diversion system in place and functional throughout the construction period. If the coffer dams or water diversion system fail, repair immediately based on the recommendations of a qualified environmental consultant. Remove devices only after construction is complete and the site stabilized.~~

- e) Pass pumped water through a sediment settling device before returning the water to the stream channel. Provide velocity dissipation measures at the outfall to prevent erosion.

26. Railroad Crossings

Analysis required during project review; implementation prior to project completion

The Transportation Impact Studies (TIS) otherwise required to be prepared for the project, in accordance with standard City policies and practices, must evaluate potential impacts to at-grade railroad crossing resulting from project-related traffic. In general, the major types of impacts to consider are collisions between trains and vehicles, trains and pedestrians, and trains and bicyclists. The TIS should include an analysis of potential queuing onto railroad tracks. A "Diagnostic Review" must be undertaken and include specific traffic elements, such as roadway and rail description, accident history, traffic volumes (all modes, including pedestrian and bicyclist crossing movements), train volumes, vehicular speeds, train speeds, and existing rail and traffic control.

Where the TIS identifies potentially substantially dangerous crossing conditions at at-grade railroad crossings caused by the project, measures relative to the project's traffic contribution to the crossings may be applied through project redesign and/or incorporation of the appropriate measures to reduce potential adverse impacts caused by specific housing development projects. These measures may include, without limitation, the following:

- a) Installation of grade separations at crossings, i.e., physically separating roads and railroad tracks by constructing overpasses or underpasses
- b) Improvements to warning devices at existing highway rail crossings that are impacted by project traffic
- c) Installation of additional warning signage
- d) Improvements to traffic signaling at intersections adjacent to crossings, e.g., signal preemption
- e) Installation of median separation to prevent vehicles from driving around railroad crossing gates
- f) Where sound walls, landscaping, buildings, etc. would be installed near crossings, maintaining the visibility of warning devices and approaching trains
- g) Prohibition of parking within 100 feet of the crossings to improve the visibility of warning devices and approaching trains
- h) Construction of pull-out lanes for buses and vehicles transporting hazardous materials
- i) Installation of vandal-resistant fencing or walls to limit the access of pedestrians onto the railroad right-of-way
- j) Elimination of driveways near crossings
- k) Increased enforcement of traffic laws at crossings
- l) Rail safety awareness programs to educate the public about the hazards of highway-rail grade crossings

Any proposed improvements must be coordinated with California Public Utility Commission (CPUC) and affected railroads and all necessary permits/approvals obtained, including a GO 88-B Request (Authorization to Alter Highway Rail Crossings).

27. Project-specific Conditions of Approval

- The loading variance for Site D is granted conditioned upon securing permits to allow off-site loading on Broadway, adjacent to Site D, from the appropriate jurisdiction(s). Failure to secure the appropriate

~~permits would require the applicant to either provide adequate on-site loading or seek (and obtain) an alternative variance for not meeting the on-site loading requirements for this project.~~

- The design guidelines for this set of approvals is contained in the Development Agreement, Exhibit C. All future permit applications resulting from this set of approvals shall be accompanied by the design guidelines contained in the Development Agreement Exhibit C, as amended.
- Pedestrian-Related Improvements:
 - Prior to Certificate of Occupancy for Site D: All-way stop control shall be installed at the Webster Street/Embarcadero intersection, including high-visibility ladder crosswalks at all intersection approaches with advance yield markings, consistent with current City of Oakland crosswalk standards for unsignalized intersections. Stop lines for vehicles shall be placed such that any stopped motorist can clearly see pedestrians intending to cross and vehicles at opposing intersection approaches.
 - Prior to Certificate of Occupancy: The following measures shall be implemented to enhance pedestrian safety:
 - Install pedestrian signal heads (with adequate time for pedestrians to cross Embarcadero) when new traffic signals are installed as part of the Project.
 - Install informational signs to indicate to pedestrians where pedestrian bridges are located.
 - Install warning signs, and/or audible signals, at parking garage access points to alert pedestrians about approaching vehicles.
 - Prior to the issuance of the first construction-related permit for either Site D or F2, the project applicant and construction contractor shall meet with the Traffic Engineering and Parking Division of the Oakland Public Works Agency and other appropriate City of Oakland agencies to determine traffic management strategies to reduce, to the maximum extent feasible, traffic congestion and the effects of parking demand by construction workers during construction of this project and other nearby projects that could be simultaneously under construction. The project applicant shall develop a construction management plan for review and approval by the City Traffic Engineering Division. The plan shall include at least the following items and requirements:
 - A set of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak traffic hours, detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes. In addition, the information shall include a construction staging plan for any right-of-way used on the Embarcadero, Broadway, and Franklin, Alice, and 2nd Streets, including sidewalk and lane intrusions and/or closures.
 - Identification of any transit stop relocations, particularly along the Embarcadero and 2nd Street.
 - Provision for parking management and spaces for all construction workers to ensure that construction workers do not park in on-street spaces.
 - Identification of parking eliminations and any relocation of parking for employees and public parking during construction.

- Notification procedures for adjacent property owners and public safety personnel regarding when major deliveries, detours, and lane closures will occur.
 - Provisions for accommodation of pedestrian flow, particularly along Embarcadero.
 - Location of construction staging areas for materials, equipment, and vehicles.
 - Identification of haul routes for movement of construction vehicles that would minimize impacts on vehicular and pedestrian traffic, circulation and safety; and provision for monitoring surface streets used for haul routes so that any damage and debris attributable to the haul trucks can be identified and corrected by the project applicant.
 - Temporary construction fences to contain debris and material and to secure the site.
 - Provisions for removal of trash generated by project construction activity.
 - A process for responding to, and tracking, complaints pertaining to construction activity, including identification of an onsite complaints manager.
- Compliance with the commitments made in Ellis letter, dated April 10, 2014 and included in the staff report.

APPROVED BY:

City Planning Commission: _____ (date) _____ (vote)

City Council: _____ (date) _____ (vote)

Applicant and/or Contractor Statement

I have read and accept responsibility for the Conditions of Approval, as approved by Planning Commission action on _____. I agree to abide by and conform to these conditions, as well as to all provisions of the Oakland Zoning Code and Municipal Code pertaining to the project.

Signature of Owner/Applicant: _____ (date)

Signature of Contractor: _____ (date)