

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2009 MAY 14 PM 4:18

## CITY OF OAKLAND

### *Agenda Report*

TO: Office of the City Administrator  
ATTN: Dan Lindheim  
FROM: Community and Economic Development Agency  
DATE: May 26, 2009

RE: **A Report And Resolution Accepting The Dedication Of A Public Sidewalk Easement Along Embarcadero Without Cost From The Port Of Oakland For A New Building At 65 Harrison Street Being Constructed By Jack London Square Investors II**

---

#### **SUMMARY**

A resolution has been prepared accepting a six feet (6') wide by three hundred (300') feet long public access easement without cost from the Port of Oakland for the new Harvest Hall building (office and retail grocery) located on the estuary side of Embarcadero at its intersection with Harrison Street. The replacement sidewalk will be relocated onto the Port's F1 site to allow delivery truck parking outside of the parking lane. This will facilitate traffic flow when trains are moving to and from the Port. The easement will be accepted after all infrastructure improvements (sidewalk, utilities, etc.) have been constructed without cost to the City by the property lessee, Jack London Square Investors II.

#### **FISCAL IMPACT**

Staff costs for processing the proposed dedication are covered by fees set by the Master Fee Schedule and have been paid by the developer and were deposited in the special revenue Development Service Fund (2415), Engineering Services organization (88432), Encroachment Permits account (42314), Engineering and Architectural Plan Approval (PS30). The construction of public infrastructure improvements will be without cost to the City.

#### **PROJECT DESCRIPTION**

Jack London Square Investors II, a California limited liability company (no. 200708910145), is constructing a new commercial building ("Harvest Hall") on the Port of Oakland's F1 site located on the estuary side of Embarcadero at the intersection of Harrison Street (APN 0000-0420-004-00). The project's environment impact report (ER 030004) previously identified that delivery truck parking for the ground-floor tenant spaces (retail grocery) should be relocated into the portion of the right-of-way typically occupied by the public sidewalk. Repositioning curbside parking to the edge of existing right-of-way will facilitate traffic flow when trains are moving on the Embarcadero railroad tracks. The sidewalk will be constructed by the developer without cost to the City (permit PX 0800202) within the proposed easement (permit PPE 08071). The Port's long-term lease agreement makes the developer responsible for sidewalk maintenance.

Item No. \_\_\_\_\_  
Public Works Committee  
May 26, 2009

## **KEY ISSUES AND IMPACTS**

In general, the City can obtain privately owned real property by dedication, where the underlying fee title interest does not transfer to the City, or by purchase, foreclosure, gift, exchange, or eminent domain, where the fee title interest transfers to the City. The following are some of the legislation means that enable the City to obtain private property:

- **Oakland Municipal Code**

OMC Sections 16.12.080 and 16.20.050 provide that the City Engineer and City Council can accept real property by dedication and that the City Council can acquire real property by purchase as a condition of land subdivision.

- **Oakland City Charter**

Charter Section 219.6 requires that the City Council acquire real property and improvements by ordinance when the purchase price exceeds five thousand dollars (\$5,000).

- **Oakland City Ordinance**

Ordinance No. 9960 C.M.S. provides that the City Council can acquire real property with distressed improvements (substandard improvements) through eminent domain.

Ordinance No. 11836 C.M.S. provides that the Manager of Real Estate Services can accept public easements by dedication and acquire real property by purchase when the price does not exceed five thousand dollars (\$5,000).

- **California Government Code**

Section 7050 allows a City to accept privately owned real property by dedication for any public purpose, including use as public right of way and easements for streets and sidewalks.

## **SUSTAINABLE OPPORTUNITIES**

### **Economic**

Construction of the new building will provide opportunities for professional services and construction related jobs.

### **Environmental**

Construction permits for infrastructure improvements require that the permittee comply with City ordinances and regional Best Management Practices for reducing nuisance noise, fugitive dust, construction debris disposal, and pollutant runoff.

**Social Equity**

Construction of the new building will future employment opportunities for the Oakland community.

**DISABILITY AND SENIOR CITIZEN ACCESS**

Construction permits will conform to State and City requirements for handicapped accessibility.

**RECOMMENDATIONS**

Staff recommends that the Committee accept this report and forward it to the City Council to adopt the proposed resolution accepting the dedication of a public access easement.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the City Council accept this report and adopt the proposed resolution accepting the dedication of a public access easement along Embarcadero from the Port of Oakland for a replacement sidewalk for a new building at 65 Harrison Street.

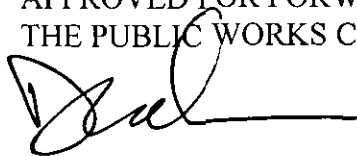
Respectfully submitted,



Walter S. Cohen, Director  
Community and Economic Development Agency

Prepared by:  
Raymond M. Derania  
City Engineer  
Building Services Division

APPROVED FOR FORWARDING TO  
THE PUBLIC WORKS COMMITTEE



Office of the City Administrator

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
Introduced By  
2009 MAY 14 PM 4:18  
Councilmember

DRAFT

Approved For Form And Legality

City Attorney

## OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C.M.S.

**RESOLUTION CONDITIONALLY ACCEPTING THE DEDICATION OF A  
PUBLIC SERVICE EASEMENT WITHOUT COST FROM THE PORT OF  
OAKLAND FOR A NEW SIDEWALK ADJOINING EMBARCADERO SERVING  
A NEW BUILDING AT 65 HARRISON STREET BEING CONSTRUCTED BY  
JACK LONDON SQUARE INVESTORS II**

**WHEREAS**, the Port of Oakland ("Grantor") is the owner of the Site F1 real property described in the Assignment And Assumption Of Lease Agreement, recorded May 3, 2007, series no. 2007172751, by the Alameda County Clerk-Recorder, and identified by the Alameda County Assessor as parcel number 0000-0420-004-00, and identified by the City of Oakland as 65 Harrison Street, and more particularly described in *Exhibit A* attached hereto; and

**WHEREAS**, pursuant to California Government Code section 7050, said Grantor recorded an irrevocable dedication to the City of Oakland, a municipal corporation, on March 35, 2009, series no. 2009087611, attached hereto as *Exhibit B*, of a six feet (6') wide by three hundred feet (300') long portion of Site F1 adjoining the estuary side of Embarcadero as a public service easement (permit no. PPE 08071); and

**WHEREAS**, pursuant to an ordinance passed by the Board of Commissioners of the Port of Oakland on May 3, 2009, the Executive Director, Mr. Omar Benjamin, executed said dedication on behalf the Port and caused its recordation; and

**WHEREAS**, said easement is intended to provide access in perpetuity by the general public for a new sidewalk serving a new building being constructed on Site F1 (permit no. B 0702819) by Jack London Square Investors II ("Developer"), a California limited liability company (no. 2007-08910145); and

**WHEREAS**, said Developer is also the co-executor of said Lease Agreement; and

**WHEREAS**, the Jack London Square Redevelopment Project Environment Impact Report (ER 030004), which was certified by the City of Oakland on March 17, 2004, identified that constructing said sidewalk on Site F1 was necessary to provide curbside parking for deliver trucks in the portion of the existing Embarcadero right-of-way customarily reserved for the sidewalk; and

**WHEREAS**, said relocation of curbside parking to the edge of the existing right-of-way will provide additional traffic lane width for vehicles to pass along the estuary side of Embarcadero when trains moving to and from the Port simultaneously occupy the street; and

**WHEREAS**, said Developer has made an application (permit no. PX 0800202) to the City Engineer of the City of Oakland to construct said sidewalk and other necessary public infrastructure improvements to serve said new building on Site F1; and

**WHEREAS**, pursuant to the City of Oakland's standard specifications for sidewalk construction, said sidewalk shall be not less than five feet six inches (5' 6") in width, measured tangentially to the longitudinal axis, to accommodate handicapped accessibility; and

**WHEREAS**, the metes and bounds describing and delineating the limits of said dedication, attached hereto as *Exhibit C* and *Exhibit D*, were prepared at the request of the Grantor by a qualified land surveyor licensed by the State of California; and

**WHEREAS**, said Grantor and Developer understand and agree that construction without cost to the City of Oakland of said infrastructure improvements in and adjoining said easement are required for the full use of said sidewalk and shall be an indistinguishable part of permit PX 0800202 and said Lease Agreement executed by the Grantor and Developer; and

**WHEREAS**, said infrastructure improvements shall conform in all manners with the plans and specifications approved with permit PX 0800202 for construction of said building on Site F1; and

**WHEREAS**, the Council of the City of Oakland hereby finds and determines on the basis of substantial evidence in the record that the Jack London Square Redevelopment Project Environmental Impact Report (ER 030004), which was certified in 2004, fully analyzed the potential environmental effects of the project, including the dedication contemplated herein, and incorporates mitigation measures to substantially lessen or avoid any potentially significant impacts in accordance with CEQA. None of the circumstances necessitating preparation of additional CEQA review as specified in CEQA and in CEQA Guidelines, including without limitation Public Resources Code Section 21166 and CEQA Guidelines Section 15162, are present in that (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the EIR due to the involvement of new environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no "new information of substantial importance as described in CEQA Guidelines Section 15162(a)(3); now, therefore, be it

**RESOLVED**: That the dedication of said public service easement, as conditioned herein, complies with the California Environmental Quality Act; and be it

**FURTHER RESOLVED**: That pursuant to California Government Code section 7050, the dedication of said public service easement, as described in *Exhibit C* and delineated in *Exhibit D*, is hereby conditionally accepted for a new public sidewalk adjoining the estuary side of Embarcadero to serve a new building at 65 Harrison Street; and be it

**FURTHER RESOLVED**: That the dedication of said public service easement is hereby conditioned by the following special requirements:

- the Developer shall complete the construction of necessary public infrastructure improvements without cost to the City of Oakland and to the satisfaction of the City Engineer;

- construction of said infrastructure improvements shall conform with the plans, specifications, and general and special conditions of permit number PX 0800202 and all revisions thereto;
- all requirements, restrictions, conditions, limitations, and time durations set forth in said Lease Agreement executed by the Grantor and the Developer shall apply equally to construction of said public infrastructure improvements and acceptance of said dedication of the public service easement and subsequent maintenance of said public sidewalk;
- these conditions shall be binding upon the Grantor and the Developer and their representatives, heirs, successors, beneficiaries, and assigns; and be it

**FURTHER RESOLVED:** That said easement shall allow the following:

- unconditional and unrestricted access at all times by the general public;
- unconditional and unrestricted installation, maintenance, repair, replacement, and removal of publicly maintained subsurface, surface, and overhead utilities, including street lights, sanitary sewer, storm drain, natural gas, potable and reclaimed water, and telecommunications and electrical cabling, and appurtenances, including signage and traffic control devices; and be it

**FURTHER RESOLVED:** That this resolution shall become effective after all the conditions set forth above have been complied with to the satisfaction of the City Engineer of the City of Oakland and shall become null and void upon the failure of the Grantor and Developer to comply with these conditions after notice and failure to cure such conditions in a reasonable manner; and be it

**FURTHER RESOLVED:** That the City Clerk is hereby directed to file a certified copy of this resolution for recordation by the Alameda County Clerk-Recorder.

**IN COUNCIL, OAKLAND, CALIFORNIA,** \_\_\_\_\_, **2009**

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID,  
AND PRESIDENT BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California

**Exhibit A**  
*Description of Property*

1) South  $47^{\circ}28'08''$  East 26.64 feet to the beginning of a tangent curve to the left having a radius of 209.99 feet;

2) southeasterly 55.42 feet along said curve through a central angle of  $15^{\circ}07'15''$  to the southeast line of said Webster Street; and

3) South  $62^{\circ}35'23''$  East 340.51 feet to the direct extension southwesterly of the centerline of Harrison Street, 80.67 feet wide as established by said Ordinance No. 367;

Thence along said southwesterly extension South  $27^{\circ}24'37''$  West 192.31 feet to a point on the Ordinary High Water Mark of the San Antonio Estuary, which for the purposes of this description is defined by meanders transcribed in the official field notes of Official Survey of the portion of the Rancho San Antonio as finally confirmed to Vincente and Domingo Peralta, et al. by the U.S. Surveyor General in June of 1871, and as located and tabulated by William F. Boardman in 1873, hereinafter referred to as the "Peralta Grant Line";

Thence along said Ordinary High Water Mark and along said Peralta Grant Line South  $19^{\circ}12'23''$  East 37.39 feet to a point on a line parallel with and distant 218.00 feet southwest from said southwest line of Embarcadero;

Thence along said parallel line North  $62^{\circ}35'23''$  West 27.18 feet to said southwesterly extension of the centerline of Harrison Street;

Thence along said southwesterly extension South  $27^{\circ}24'37''$  West 107.23 feet to a chain link fence on the northeast line of the Marina Promenade as shown in Port of Oakland Drawing Set No. AA-3482, entitled "Reconstruction of Jack London Square Marina", dated July 16, 1998;

Thence along said fence North  $61^{\circ}39'56''$  West 110.01 feet to a point on a line parallel with and 110.00 feet northwest of said southwesterly production of the centerline of Harrison Street;

Thence along said parallel line North  $27^{\circ}24'37''$  East 114.86 feet to a point on a line parallel with said southwest line of Embarcadero and distant 30.00 feet southwest from the southwest exterior face of Port of Oakland Building No. F-203, commonly known as Helnold's First and Last Chance Saloon, located by field survey measurements in March 2001 and logged in Field Book T665 at page 3, on file in the Office of the Port Land Surveyor;

Thence along said parallel line North  $62^{\circ}35'23''$  West 311.00 feet to the southerly production of said northwest line of Webster Street;

## Exhibit A

### Description of Property

Lands of Jack London Square Investors II, a California Limited Liability Corporation, as described in the Assignment and Assumption of Lease Agreement, recorded May 3, 2007 series number 2007172751 by the Alameda County Clerk-Recorder

Real property in the City of Oakland, County of Alameda, State of California:

A portion of the parcel of land described in the Deed recorded August 13, 1936, in Book 3350 of Official Records at page 413, Alameda County Records;

Also a portion of Parcel No. 1 described in the Deed recorded August 8, 1944, in Book 4607 of Official Records at page 29, Alameda County Records;

Also a portion of the premises described in the Grant Deed recorded June 22, 1967, in Reel 1985 at Image 658, Alameda County Records;

Also a portion of Water Street vacated by City of Oakland Ordinance No. 10936 C.M.S., recorded March 30, 1988, as Document No. 88-077009, Alameda County Records;

And also a portion of Webster Street described in Oakland City Council Resolution No. 42624 C.M.S., entitled "Resolution granting the Board of Port Commissioners of the City of Oakland a revocable permit to occupy all that portion of Webster Street lying southerly of First Street, for the purpose of constructing, operating and maintaining thereon a public parking area", approved November 27, 1962;

All of which are more particularly described as follows:

**COMMENCING** at a City of Oakland pin monument in a cast iron well, located at the intersection of Embarcadero (formerly First Street) and Broadway;

Thence South  $62^{\circ}35'34''$  East 808.85 feet to a Port of Oakland brass disk monument in a monument well, located at the intersection of Webster Street and Embarcadero, designated as Monument No. H016 on Record of Survey No. 990, filed July 19, 1994, in Book 18 of Records of Survey at pages 50 through 60, Alameda County Records;

Thence South  $50^{\circ}29'26''$  West 69.41 feet to a point on the northwest line of Webster Street, 80.50 feet wide as established by City of Oakland Ordinance No. 367 entitled, "An ordinance establishing street lines within the City of Oakland", approved February 7, 1870; said point is also on the southwest line of Embarcadero as described in City of Oakland Board of Port Commissioners Resolution No. 22628, entitled "Resolution offering to dedicate certain areas in the Port Area as a public street and requesting the City Council to open said street as a public street"; and said point is also the **POINT OF BEGINNING**;

Thence along said southwest line of Embarcadero the following three courses:



## Exhibit B

### *Irrevocable Dedication of a Public Service Easement* (page 1 only)

COPY

recording requested by:

CITY OF OAKLAND

When recorded mail to:

City of Oakland  
CEDA - Building Services  
Dalziel Administration Building  
250 Ogawa Plaza - 2nd Floor  
Oakland, CA 94612  
Attn: City Engineer



2009087611

03/25/2009 01:00 PM

OFFICIAL RECORDS OF ALAMEDA COUNTY  
PATRICK O'CONNELL  
RECORDING FEE: 0.00



of Document Recorded  
9 PGS

space above for Recorder's use only

## IRREVOCABLE DEDICATION OF A PUBLIC SERVICE EASEMENT

Pursuant to California Government Code Section 7050 and Streets and Highways Code Section 8306, the undersigned, as lessee of the real property described in the Assignment And Assumption Of Lease Agreement, series no. 2007172751, recorded May 3, 2007, by the Alameda County Clerk-Recorder and identified by the Alameda County Assessor as parcel no. 0000-0420-004-00 and further identified by the City of Oakland as 65 Harrison Street as further described in Exhibit C-1, C-2, and C-3 attached here to, does hereby make an irrevocable offer of dedication of a strip of land, as delineated in Exhibit A, B-1, and B-2 attached hereto, to the City of Oakland, a California municipal corporation, for its use in perpetuity as a public service easement to allow,

- unconditional and unrestricted pedestrian and vehicle access by the general public, and to allow
- the unconditional and unrestricted installation, continuing use, maintenance, repair, replacement, and removal of a public roadway with associated appurtenances, including, but not limited to, pavement, trees, and lighting, traffic control devices, and signage, and to allow
- the unconditional installation, continuing use, maintenance, repair, replacement, and removal of belowground, surface, and aboveground utilities, including, but not limited to, sanitary and storm water sewer, electricity, natural gas, potable and reclaimed water, and wire and wireless communications.

## RECITAL

- The lessee subscribed below in the subject real property hereby establishes, without valuable consideration, a public service easement for public access and public utilities which shall inure in perpetuity to and for benefit of the City of Oakland and all current and future serving utility companies and their successors in interest.

65 Harrison Street  
Public Service Easement

December, 2008

Page 1

## Exhibit C

### *Description of Public Service Easement*

BEGINNING AT A PORT OF OAKLAND BRASS DISK MONUMENT IN MONUMENT WELL, LOCATED AT THE INTERSECTION OF WEBSTER STREET AND EMBARCADERO, DESIGNATED AS H016 ON RECORD OF SURVEY NO. 990, FILED JULY 19, 1994, IN BOOK 18 OF RECORDS OF SURVEY AT PAGES 50 THROUGH 60, ALAMEDA COUNTY RECORDS, SAID MONUMENT HAVING NATIONAL GEODETIC SURVEY (NAD '83) COORDINATES OF NORTH 2116592.90 AND EAST 6048987.71 PER SAID RECORD OF SURVEY, AND LYING NORTH 62°59'35" WEST 1909.34 FEET FROM A BRASS DISK MONUMENT IN MONUMENT WELL DESIGNATED AS H031 ON SAID RECORD OF SURVEY, SAID MONUMENT HAVING NATIONAL GEODETIC SURVEY (NAD '83) COORDINATES OF NORTH 2115725.87 AND EAST 6050688.84 PER SAID RECORD OF SURVEY;

THENCE LEAVING SAID POINT OF BEGINNING, SOUTH 50°29'26" WEST 69.41 FEET TO THE MOST NORTHERLY CORNER OF SAID PARCEL F-1 PER SAID DOCUMENT NO. 2005174408, SET POINT LYING ON THE NORTHWEST LINE OF WEBSTER STREET, 80.50 FEET WIDE AS ESTABLISHED BY CITY OF OAKLAND ORDINANCE NO. 367 ENTITLED "AN ORDINANCE ESTABLISHING STREET LINES WITHIN THE CITY OF OAKLAND", APPROVED FEBRUARY 7, 1870, SAID POINT ALSO LYING ON THE SOUTHWEST LINE OF EMBARCADERO AS DESCRIBED IN CITY OF OAKLAND BOARD OF COMMISSIONERS RESOLUTION NO. 22628, ENTITLED "RESOLUTION OFFERING TO DEDICATE CERTAIN AREAS IN THE PORT AREA AS A PUBLIC STREET AND REQUESTING THE CITY COUNCIL TO OPEN SAID STREET AS A PUBLIC STREET", SAID PORTION OF WEBSTER STREET HAVING BEEN LATER DESCRIBED IN OAKLAND CITY COUNCIL RESOLUTION NO. 42624 C.M.S., ENTITLED "RESOLUTION GRANTING THE BOARD OF PORT COMMISSIONERS OF THE CITY OF OAKLAND A REVOCABLE PERMIT TO OCCUPY ALL THAT PORTION OF WEBSTER STREET LYING SOUTHERLY OF FIRST STREET, FOR THE PURPOSE OF CONSTRUCTING, OPERATING AND MAINTAINING THEREON A PUBLIC PARKING AREA", APPROVED NOVEMBER 27, 1962;

THENCE ALONG SAID SOUTHWEST LINE OF EMBARCADERO, AND THE NORTHEASTERLY LINE OF SAID PARCEL F-1, SOUTH 47°28'08" EAST 26.64 FEET;

THENCE CONTINUING ALONG SAID SOUTHWEST LINE OF EMBARCADERO, AND SAID NORTHEASTERLY LINE OF SAID PARCEL F-1, ALONG A CURVE TO THE LEFT, SAID CURVE BEING TANGENT TO LAST SAID COURSE, BEING CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 209.99, A CENTRAL ANGLE OF 10°56'09" AND AN ARC LENGTH OF 40.08 FEET TO THE TRUE POINT OF BEGINNING;

## Exhibit C

### *Description of Public Service Easement*

THENCE CONTINUING ALONG SAID SOUTHWEST LINE OF EMBARCADERO, AND SAID NORTHEASTERLY LINE OF SAID PARCEL F-1, CONTINUING ALONG SAID CURVE, THE RADIUS POINT OF WHICH BEARS NORTH 31°45'33" EAST FROM SAID TRUE POINT OF BEGINNING, THROUGH A CENTRAL ANGLE OF 4°11'06" AND AN ARC LENGTH OF 15.34 FEET;

THENCE CONTINUING ALONG SAID SOUTHWEST LINE OF EMBARCADERO, AND SAID NORTHEASTERLY LINE OF SAID PARCEL F-1, SOUTH 62°35'23" EAST 298.97 FEET;

THENCE LEAVING SAID SOUTHWEST LINE OF EMBARCADERO, AND THE NORTHWESTERLY LINE OF SAID GRANT DEED, SOUTH 27°24'37" WEST 5.50 FEET;

THENCE NORTH 62°35'23" WEST 314.29 FEET;

THENCE NORTH 27°24'37" EAST 6.06 FEET TO THE TRUE POINT OF BEGINNING;

DESCRIBED PARCEL CONTAINING AN AREA OF 1,731 SQUARE FEET, MORE OR LESS;

THE LAND DESCRIBED HEREON IS SHOWN ON THE ATTACHED PLAT, EXHIBIT "A", AND IS BY REFERENCE, MADE A PART THEREOF.

# Exhibit D

## Plat of Public Service Easement

