

**CITY OF OAKLAND  
COUNCIL AGENDA REPORT**

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OFFICE OF THE CITY CLERK  
OAKLAND

2003 OCT 16 PM 3:19

TO: Office of the City Manager  
ATTN: Deborah Edgerly  
FROM: Community and Economic Development Agency  
DATE: October 28, 2003

RE: STATUS REPORT ON PROPOSED JACK LONDON REDEVELOPMENT  
PROJECT AND PRELIMINARY CONSIDERATION OF MAJOR DEAL POINTS  
FOR INCLUSION IN THE REQUESTED DEVELOPMENT AGREEMENT

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### **SUMMARY**

In November, 2002, Jack London Square Partners (“Applicant”) filed an environmental review application to begin review and consideration of the redevelopment of Jack London Square. The project site is located primarily on the estuary side of the Embarcadero between Clay Street and Alice Street in downtown Oakland, south of Interstate 880 (I-880). The proposal intensifies the retail, dining, and entertainment uses within Jack London Square, resulting in approximately over one million new net square-feet of development. Approximately 161,800 square-feet of existing commercial space may be demolished as part of the development. The Project Applicant has requested that a Planned Unit Development (PUD) and Development Agreement (DA) be considered by the City, rezoning of the entire project site to C-45 (Community Commercial) and conditional use permits for certain uses and development standards Variances for certain development standards may be required as well. The Project Applicant submitted land use applications in September, 2002, including a request for a Planned Unit Development (PUD), a rezoning, conditional use permit and design review.

A Draft Environmental Impact Report (DEIR) was published on September 8, 2003, beginning a 46-day public review period that ends on October 24, 2003. No land use entitlements for the project can be considered for approval prior to completion of the EIR process. The purpose of this report is to provide an overview of the project, the major issues that have been identified, and the schedule for consideration of the project. In addition, City staff requests that the City Council provide preliminary comments and direction of the proposed major deal points that will be reviewed and considered as part of the requested Development Agreement (“DA”).

### **FISCAL IMPACTS**

This project, if approved, would likely have significant fiscal benefits to the City in the form of increased property tax revenues, sales tax revenues, building permit and other fees. In addition, the intensification of retail, restaurant and commercial activity would likely have indirect

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economic benefits. The costs of processing this application are recovered through application fees.

**BACKGROUND AND PROJECT DESCRIPTION**

The proposed project would redevelop nine specific sites within Jack London Square. These sites are owned by the Port of Oakland, and a Master Lease Agreement has been executed between the Port and the Project Applicant to grant options for future long – term ground lease interests. The project would intensify existing office, retail, and dining establishments by providing new construction on nine development areas (labeled Site C, Site D, Pavilion 2, Water I Expansion, 66 Franklin, Site F1, Site F2, and Site F3) as well as add retail and possibly residential uses on an adjacent full block (labeled Site G) on the project area site plan (please refer to Attachment A).

The DEIR contains a detailed analysis of 1.2 million square feet of mixed-use development. This scale and intensity is considered the worst-case analysis with regard to potential environmental impacts. The applicant has submitted specific design plans for a much smaller scheme (650,000 square feet.) within the larger development envelope used for the DEIR’s analysis. A comparison chart of the November 2002 project and the design review submittal is attached (Attachment B).

**Requested and Required Land Use Approvals.** This project will require approvals from both the Planning Commission and the City Council. These approvals are outlined below:

Entitlement	Type of Action	Commission or Council Action Required
EIR	By Resolution	Commission certifies the FEIR, the Council confirms it
Planned Unit Development (PUD)	By Resolution	Commission ordinarily has final action on PUD; this action can be appealed to the Council. In this case, the Council is expected to review and consider the PUD as part of its review of the legislative actions associated with the project.
Rezoning	By Ordinance	Commission must review and recommend action to the City Council. The Council has the final action.
Conditional Use Permit (CUP) and Variances	By Resolution	Commission ordinarily has final action on CUPs and major variances; these actions can be appealed to the Council. In this case, the Council is expected to review and consider the CUPs and any variances as part of its review of the legislative actions associated with the project.

Development Agreement	By Ordinance	Commission must review <b>and</b> recommend action to the City Council; The City Council has <b>the</b> final action.
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**Anticipated Project Review Schedule.** On September 17, 2003, the Planning Commission considered the following schedule for the review and consideration of this project:

- Publish Draft Environmental Impact Report (DEIR); 45-day public review period begins (9/8/03)
- Commission review of process and development review steps (9/17/03)
- Applicant-hosted community meeting (9/22/03)
- Design Review Committee meeting (9/24/03)
- Planning Commission meeting on DEIR and design (10/1/03)
- Landmarks Board meeting (10/6/03)
- Second Design Review Committee meeting (10/22/03)
- Special Projects Committee meeting (if needed for traffic concerns, mitigation measures, conditions of approval, etc.) (10/22/03)
- 46-day DEIR public review period ends (10/24/03)
  - City Council CED Committee meeting re: project, process, DEIR, Development Agreement deal points, etc. (10/28/03)
- CED Committee “reports out” to City Council (11/18/03)
- Planning Commission public hearing on project issues and conditions (11/19/03)
- Design Review Committee meeting (12/10/03)
- Final EIR published (12/22/03)
- City Council meeting re: project, process, EIR, Development Agreement deal points, etc. (1/13/04)
- Special Projects Committee meeting (if necessary) (1/14/03)
- Planning Commission public hearing on Final EIR, project and Development Agreement (1/21/04)
- Planning Commission continued public hearing on Final EIR, project and Development Agreement (special meeting, if needed) 1/28/04
- City Council CED Committee meeting on rezoning and Development Agreement (2/10/04 or 2/24/04 if Planning Commission hearing continued)
- City Council public hearing on rezoning and Development Agreement (3/02/04 or 3/16/04 if Planning Commission hearing continued)

## KEY ISSUES

**Major Issues Identified About the Project to Date.** A number of **issues** have been identified to date concerning this project. These are summarized below:

- Parking capacity and demand – concern about deferral of improvements until problems occur
- Traffic congestion
- Impacts to historic structure, Heinhold’s First and Last Chance Saloon
- Overall lack of attention to the area around Jack London’s Cabin and Heinhold’s with regard to honoring and acknowledging history of the area
- Storm water run-off and impacts to Estuary
- Webster Street (Chinatown) pedestrian impacts
- Noise impacts both during construction and operation (car alarms in parking garages)
- Air quality impacts both during construction and operation
- Organization and amount of open space
- Impacts to the adjacent Produce Market District and Waterfront Warehouse District
- Impacts to downtown retail and commercial development
- Timing/phasing of development in relation to public improvements associated with the overall plan and commitments associated with the DA

There has also been a verbal request before the Planning Commission, as well as a formal written request to extend to public comment period for the Draft EIR from 46 (current period – ends on October 24) to 90 days. At the October 1, 2003 Planning Commission public meeting, staff responded that 45 days is the CEQA standard comment period for a Draft EIR; that copies are available and, at that time, there remained several weeks during the period to review and prepare comments; that there was no apparent reason to extend it; and that many of the issues raised as a rationale to extend the time period are policy issues, not environmental issues, and will be addressed during the review and consideration of the project in the coming months. The Planning Commission has concurred with staff.

*Use of a Development Agreement.* A Development Agreement (DA) is a type of contract authorized by State Government Code. DAs are used throughout California to regulate large-scale development projects and to provide developers with assurances that the project can be successfully and completely built out over time. Such agreements are formal contractual arrangements between a developer and the City establishing vested development rights for a specified period, responsibilities and requirements, and as such, they permit and anticipate that many aspects of the project, and many benefits to the community resulting from the project will be negotiated. In short, upon execution of a DA, the developer derives long-term certainty that the land use rules, requirements and other provisions such as payment of fees will not change over the time period of the agreement.

*Major Deal Points to be Considered for the Development Agreement.* State law allows the City, through a DA, to require an applicant to provide community benefits that exceed the standard “nexus” restrictions that ordinarily apply to development projects. In other words, in exchange for the value the applicant derives from locking in land use entitlements, the developer agrees to certain requirements and conditions that the City could not require absent a DA. These requirements and conditions may go beyond the standard requirements directly related to the project, such as a mitigation measure for a traffic signal or a new storm drain to manage the expected run-off.

The key issue to understand in this context is that the developer derives great value in having the certainty that the City cannot change land use entitlements or regulations applicable to the project during the life of the DA, and that the applicable land use entitlements will survive well past the standard effective periods. In this case, the Project Applicant has requested a 15 year term for the DA, during which time the City approvals would be vested and changes in City laws and policies could not apply to the project site. In contrast, the standard period for a PUD entitlement of this scale is two to three years of initial approval, followed by a one year extension that may be granted administratively and a single one year extension that may be granted by the Planning Commission, for a total of six years.

In reviewing this project and the major deal points that should be considered, staff acknowledges that there are many potential benefits that may result through the intensification and redevelopment of these nine sites, as envisioned by the Estuary Policy Plan (EPP). The additional theater venue, additional retail space and four-star hotel will add to the overall vitality of the area. In addition, the open space improvements, Water Street improvements and shoreline trail improvements are consistent with and will further the objectives of the EPP. Increases in sales, property taxes, permanent and temporary employment as well as other indirect economic spin-offs may also result.

On the other hand, a 15-year lock-in of project entitlements for these nine development sites accrues substantial value to the Project Applicant. Staff is presently working with a consultant to quantify this value, as well as the other economic benefits over the 15 year time period, so this information can be evaluated as part of the consideration of the DA. We also note that the Amended and Restated Agreement for Acquisition of Ground Lease Interests executed between the Project Applicant and the Port of Oakland includes payments of \$10 million to the Project applicant, for open space improvements and construction of structured parking.

The following table presents the major deal points that have been reviewed with the Project Applicant to date. Staff requests that the City Council review these points, and give staff preliminary direction as to whether they should be modified, added to or deleted. In this way, staff can continue to work with the Project Applicant to complete a draft DA for presentation to the Planning Commission and the City Council in the near future that is consistent with this preliminary direction.

Deal Point	Staff Response	Staff Comments and Options
Time Period: 15 years	agree in concept, provided that City derives a commensurate benefit	A specific time period is required; 10 – 15 years is not uncommon.

Project Applicant Deal Point	Staff Response	Comments and Options
<p><b>Minimum Project:</b> Building on Site D (theater); Site F1 (Harvest Hall –retail, restaurant and office) for a minimum square footage of 145,000square feet. In addition, Water Street improvements, East Green and West Green, Celebration Plaza would be completed, along with the shoreline trail and connections to Water Street. Commitment to obtain building permits within six years of date of DA execution, subject to review of market conditions.</p>	<p>Staff believes development of a minimum project within a specified time period (less than the full DA term) is <u>the key</u> incentive for the City to enter into a DA. To lock in 15 year development rights with no guarantee of a minimum set of improvements and development simply would not justify the City’s commitment to bind the City’s future discretion over the site. If no building permits are issued, staff proposes that the DA should sunset (but not other entitlements), regardless of market conditions.</p>	<p>Provide development incentives, or require a phasing sequence; such as first building permit to be obtained within 2 years with completion within 4 years; require parking structure on Site G within the minimum build project since it would provide substantial public benefit and Port is providing financial assistance.</p>

<p><b>Design Review Process for future changes to approved plans:</b> The approved Final Development Plan (FDP) (620,000 square feet) would be initially approved as part of the Planning Commission process. The Applicant would have the right under the DA to build up to 1.2 million square feet total (or an additional 580,000 square feet) with the following procedure: a 15 percent expansion per building site would be allowed administratively and a larger project would need a formal amendment to the approved plan reviewed by the Planning Commission. The Commission would be limited to using the approved design guidelines contained in the DA as a basis for approving the amendment.</p>	<p>Tentatively agree; must be reviewed on a site by site basis during design review to determine whether there would be outstanding design issues through increasing building envelope within the 15 percent proposed. The design guidelines must be carefully crafted and specified to assure high quality, appropriate massing, exterior materials, setbacks, etc. on a site-by-site basis. Any future discretionary process would also need to accommodate CEQA review, as applicable.</p>	<p>Design review is proceeding within a much smaller project than the one the Applicant has submitted under a Planned Unit Development Application (620,000 vs. 1.2 million square feet.) Some flexibility is essential to respond to changing tenant and market conditions. However, the actual designs of the larger buildings will not have been rigorously considered within the current review process under the Applicant’s proposed process.</p>
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<b>Project Applicant Deal Point</b>	<b>City Response</b>	<b>Comments and Options</b>
<u>Transfer Provisions</u> : flexibility to assign DA to affiliates without City approval, with limited City approval to non-affiliates	Needs further development.	Future transfers are an important tool for the Project Applicant but they must be made within a framework that assures that any new partners or affiliates would have the financial and other capacity to perform under the provisions and to ensure that project conditions of approval and mitigation measures can be effectively monitored and implemented
<u>Small Local Business Utilization; Prevailing Wage and Living Wage Reaquirements</u> : proposal to use the Port's standard requirements	Agree	
<u>Public Art</u> : proposal to use the Port's requirements through Ordinance No. 3694.	Agree	
<u>Future Payment of Fees</u> : DA provides that no City fees will be charged during the life of the DA, other than those associated with required building and planning permit applications at the time of implementation	Needs more work: specific fees, charges and other payments must be specified further in order for the City to be assured that the project can be successfully implemented. This is a large scale and complicated project and special inspection fees for monitoring construction, public works inspection, etc. must be further specified. City also must retain ability to impose future mitigation if applicable.	Under most DA's, the ability to charge fees in the future is qualified to specific circumstances. It is important to carefully consider these provisions as the City could not recover actual costs associated with future services or legal or regulatory requirements. For example, without a DA, the City could require a special inspection deposit in order to assure compliance with construction noise and other construction management requirements. At this juncture, the full range of potential costs may not be accurately estimated.

**ENVIRONMENTAL AND SUSTAINABLE OPPORTUNITIES**

Economic: This project has significant potential economic benefits such as increases in property tax valuation, sales tax increases, helping to revitalize the Jack London Square area of downtown

and indirect economic benefits of increasing both temporary and permanent employment and increasing investment in this part of Oakland.

Environmental: The Project Applicant has stated that they will incorporate green building techniques and materials in the new construction. **AS** mandated, a construction waste recycling and reuse plan will be required as a condition of approval.

Social Equity: The proposed Development Agreement will contain provisions for using small and local business in the implementation of the project, as well as the use of prevailing and living wages.


### **DISABLED AND SENIOR ACCESS**

The project must comply with all physical disabled access requirements in the buildings and other public improvements along the Estuary. There are no special provisions for accommodating senior programs or access into the project.

### **RECOMMENDED COUNCIL ACTION**

- 1) To review the status of the Jack London Square Project and proposed schedule for review.
- 2) To review and comment on the major deal points proposed for the Development Agreement and give staff preliminary direction concerning the major deal points.

Respectfully submitted,



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Claudia Cappio  
Development Director

APPROVED AND FORWARDED TO THE  
CED COMMITTEE

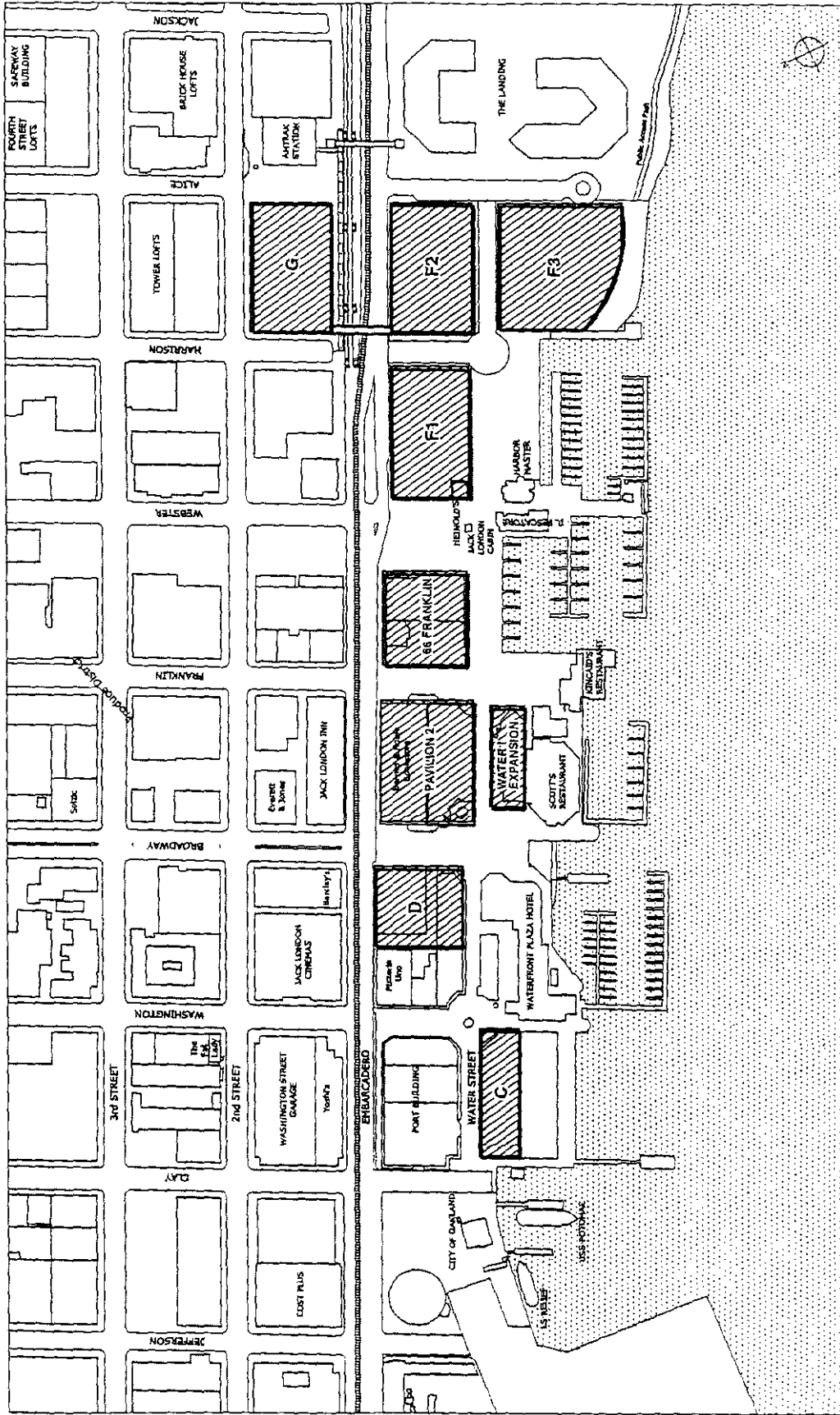



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Attachments: Attachment A – Site Plan; Attachment B – Summary Chart

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 PROJECT DEVELOPMENT AREAS

November 2002 Submittal	Modified Development Alternative	Design Review Submittal
Approximately up to 1.2 million net new gross square feet of office, retail and restaurant space, hotel, conference/banquet space, cinema, residential and supermarket uses as well as associated parking.	Approximately up to 1.1 million net new gross square feet of office, retail and restaurant space, hotel, conference/banquet space, cinema, residential and supermarket uses as well as associated parking.	Approximately 690,000 net new gross square feet of office, retail and restaurant space, hotel, conference/banquet space, cinema, and supermarket uses as well as associated parking.
Approximately 380,300 gross square feet of office.	Approximately 364,300 gross square feet of office (a reduction of approximately 16,000 square feet).	Approximately 132,900 gross square feet of office.
Approximately 404,000 gross square feet of retail and restaurant.	Approximately 320,400 gross square feet of retail and restaurant (a reduction of 84,000 square feet)	Approximately 264,260 gross square feet of retail and restaurant.
Approximately 10,000 gross square feet of conference space in the hotel.	Approximately 15,000 gross square feet of conference space in the hotel (a reduction of approximately 15,000 square feet).	Approximately 15,000 gross square feet of conference space in the hotel.
50-room hotel.	Same as November 2002 submittal.	Same
1,700-seat cinema.	Same as November 2002 submittal.	Approximately 1,500 seat cinema.
40,000 gross square feet of supermarket space.	Same as November 2002 submittal.	Approximately 30,000 gross square feet of supermarket space.
120 residential units.	Same as November 2002 submittal.	0 residential.
1,293 structured parking stalls.	Same as November 2002 submittal.	Approximately 1,450 structured parking stalls.
Demolition of approximately 161,800 square feet as follows: 14,000sq. ft. at Site D 14,000 sq. R. at Water Street 1 93,800 sq. R. at 66 Franklin Street 30,000sq. R. at Pavilion 2	Demolition of approximately 131,300 square feet (approximately 30,000 square feet less than November 2002 submittal) as follows:  14,000 sq. R. at Water Street 1 93,800 sq. R. at 66 Franklin Street • Pavilion 2 is retained.	0 demolition.
Building Massing: <ul style="list-style-type: none"> <li>■ Site C: 3 levels</li> <li>■ Site D: 7 levels</li> <li>■ Pavilion 2: 2 levels</li> <li>■ Water 1: 2 levels</li> <li>■ 66 Franklin: 6 levels</li> <li>■ Site F1: 9 levels</li> <li>■ Site FZ: 8 levels</li> <li>■ Site F3: 13 levels</li> <li>■ site G: 8 levels</li> </ul>	Building Massing: <ul style="list-style-type: none"> <li>• Site C: 2 levels (a reduction of one level)</li> <li>• Site D: same as 11/02 submittal</li> <li>• Pavilion 2: possible kiosks instead of new construction</li> <li>• Water 1: same as 11/02 submittal</li> <li>• 66 Franklin: same as 11/02 submittal</li> <li>• Site F1: same as 11/02 submittal</li> <li>• Site FZ: same as 11/02 submittal</li> <li>• Site F3: same as 11/02 submittal</li> <li>• Site G: same as 11/02 submittal</li> </ul>	Building Massing: <ul style="list-style-type: none"> <li>■ Site C: 2 levels</li> <li>■ site D: 2 levels</li> <li>■ Pavilion 2: 1 level</li> <li>■ Water 1: no application</li> <li>• 66 Franklin: 3 levels</li> <li>■ Site F1: 5 levels</li> <li>■ Site FZ: 8 levels</li> <li>• Site F3: 12 levels</li> <li>■ Site G: 7 levels</li> </ul>