

Introduced By

Councilmember

OFFICE OF THE CITY CLERK
CITY OF OAKLAND

2007 MAR 15 PM 3:23

Approved For Form And Legality

Hlee

City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. 80981 C.M.S.

RESOLUTION GRANTING JACK LONDON SQUARE INVESTORS II, LP, A REVOCABLE AND CONDITIONAL PERMIT TO ALLOW UNDERGROUND FOUNDATIONS, TRANSFORMERS, AND VAULTS FOR A NEW MULTI-MODAL PARKING GARAGE AT 255 2nd STREET TO ENCROACH BENEATH THE PUBLIC RIGHT-OF-WAY ALONG 2nd STREET AND EMBARCADERO AND BENEATH PUBLIC EASEMENTS IN ALICE STREET AND HARRISON STREET

WHEREAS, Jack London Square Investors II, a California limited liability company (no. 200708910145) and owner of the properties identified by the Alameda County Assessor as APN 001-0151-007-00 and 001-0151-008-00, and identified by the City of Oakland as 255 2nd Street, and more particularly described in Exhibit A attached hereto, has made an application to the Council of the City of Oakland for a conditional permit (ENMJ 07273) to allow underground building foundations, an electrical transformer, a telecommunications transformer, and concrete vaults for a new multi-modal parking garage (permit B0701473) to be constructed beneath the public right-of-way along 2nd Street and Embarcadero and beneath public easements in the vacated right-of-way of Alice Street and Harrison Street; and

WHEREAS, pursuant to ordinance 11594 C.M.S., Alice Street between the intersections of 2nd Street and Embarcadero was vacated by the Council of the City of Oakland in 1993 with a reservation of a public utility easement for the full width of the right-of-way which excluded private encroachments; and

WHEREAS, pursuant to ordinance 11646 C.M.S., Harrison Street between the intersections of 2nd Street and Embarcadero was vacated by the Council of the City of Oakland in 1993 with a reservation of a public utility easement for the full width of the right-of-way which excluded private encroachments; and

WHEREAS, the limits of the encroachment are delineated in Exhibit B attached hereto; and

WHEREAS, the locations of the new foundations within the public right-of-way and public easements are necessary to maximize the usable floor space within the parking garage for automobiles and handicapped vans and to minimize the differential settlement of the building foundations due to the liquefaction potential of the underlying soils; and

WHEREAS, Pacific Gas and Electric and AT&T have approved the locations of the transformer vaults and will maintain the transformers; and

WHEREAS, the encroachments and their locations will not interfere with the use by the public of the roadway or sidewalk or easement or buried utilities; and

WHEREAS, the City of Oakland, as the Lead Agency for purposes of environmental review under the California Environmental Quality Act of 1970 ("CEQA"), prepared the Jack London Square Final Environmental Impact Report ("EIR"), certified by the Oakland Planning Commission on March 17, 2004 in accordance with the California Environmental Quality Act, Public Resources Code § 21000, et seq., and upheld by the City Council on June 15, 2004 (Oakland City Council Resolution No. 78635 C.M.S.; and

WHEREAS, the City of Oakland has reviewed and considered documentation relevant to the proposed encroachment and the EIR and hereby finds and determines that there are no changes to the project considered in the EIR, or circumstances under which it will be undertaken, or new information of substantial importance that requires preparation of a subsequent or supplemental EIR, as specified in CEQA and the State EIR Guidelines, including without limitation, Public Resources Code Section 2116 and State EIR Guidelines Section 15162 and 15163; and the requirements of the California Environmental Quality Act (CEQA), the Guidelines as prescribed by the Secretary of Resources, and the provisions of the Statement of Objectives, Criteria and Procedures for Implementation of the California Environmental Quality Act have been satisfied, in that this project is exempt from the California Environmental Quality Act in accordance with, but not limited to, each of following California Code of Regulations: Section 15332 (Class 32: Infill Projects), Section 15301 (minor alteration to existing structures), and Section 15304 (minor alterations to land), ; now, therefore, be it

RESOLVED: That the City hereby finds and determines: (1) that it has been presented with, and has independently reviewed and considered the information contained in the previously certified EIR and relevant to the encroachment, and the encroachment complies with CEQA and none of the circumstances necessitating preparation of additional CEQA review as specified in CEQA and the 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); and be it

FURTHER RESOLVED: That the encroachment, as conditioned herein and delineated in Exhibit B, is hereby granted for a revocable permit to allow the construction of building foundations under the public sidewalk along 2nd Street and Embarcadero for a new public parking garage at 255 2nd Street; and be it

FURTHER RESOLVED: That the encroachment is hereby conditioned by the following special requirements:

1. the Permittee is responsible for the relocation of all existing public utilities including but not limited to fire alarm cable, master signal cable, street lighting and intersection signal cable, as required; and

2. after notice to the Permittee, this permit shall be revocable at the sole discretion of the Council of the City of Oakland, expressed by resolution of said Council; and
3. the Permittee, by the acceptance of this conditional and revocable permit, hereby disclaims any right, title, or interest in or to any portion of the public right-of-way area, underlying the encroachments or the air space above and agrees that said temporary use of the area does not constitute an abandonment on the part of the City of Oakland of any of its rights for street purposes and otherwise; and
4. the Permittee shall maintain in force and effect at all times that the encroachments occupy the public right-of-way, valid and sufficient Commercial General Liability insurance in an amount not less than \$2,000,000.00 for each occurrence with a property damage sub-limit in the amount not less than \$1,000,000.00 for each occurrence, including contractual liability and naming as additional insured the City of Oakland, its directors, officers, agents, representatives, employees, and volunteers against any and all claims arising out of the existence of said encroachments in said right-of-way area, and that a certificate of such insurance and subsequent notices of the renewal thereof, shall be filed with the City Engineer of the City of Oakland and that such certificate shall state that said insurance coverage shall not be canceled, materially changed, or be permitted to lapse without thirty (30) days' written notice to the City Engineer. The Permittee also agrees that the City of Oakland may review the type and amount of insurance required at any time and may require the Permittee to increase the amount of and/or change the type of insurance coverage required. In addition, the insurance amounts stated above shall be automatically adjusted upwards cumulatively consistent with the Consumer Price Index (CPI) in the Bay Area every five years; and
5. the Permittee, by the acceptance of this conditional permit agrees and promises to defend, hold harmless, and indemnify the City of Oakland and its officials, officers, employees, agents, representatives, and volunteers from any and all claim, demand, lawsuit and judgment for damages of any kind and nature whatsoever arising out of or caused by the existence, installation or maintenance of the encroachments into the public right-of-way and regardless of responsibility for negligence. This indemnification shall survive termination of this Permit; and
6. the Permittee shall make no changes to the encroachments hereby allowed either structurally, with regard to dimension, or with respect to use, without the prior written consent of the City Engineer and understands that the City of Oakland may impose reasonable fees and considerations for processing permits required for such proposed changes. The Permittee also understands that the City of Oakland is not obligated to grant any changes requested by the Permittee; and
7. the Permittee, by the acceptance of this conditional permit shall be solely and fully responsible for the repair or replacement of any portion or all of the improvements in the event that the improvements shall have failed or have been damaged to the extent of creating a menace or of becoming a hazard to the safety of the general public; and that the Permittee shall be solely liable for the expenses connected therewith; and

8. upon the termination of the permission herein granted, the Permittee shall immediately remove the encroachments from within the public right-of-way, restore the premises to its original condition, and shall repair any resulting damage to the satisfaction of the City Engineer; and
9. the Permittee shall file with the City of Oakland for recordation, a disclaimer and agreement that Permittee accepts and shall comply with and shall be bound by each and all of the terms, conditions and provisions of this resolution; and that the disclaimer and agreement shall be subject to the approval of the City Attorney and the City Engineer; and
10. the plans and exact location of the encroachments hereby granted are subject to the review and approval of the City Engineer and that the Permittee shall obtain all necessary permits prior to commencing said work; and that the encroachment shall be located as set forth in Exhibit B; and
11. the Permittee acknowledges that the City of Oakland makes no representations or warranties as to the conditions beneath the encroachments; and that by accepting this conditional revocable permit, the Permittee agrees that it will use the encroachment area at its own risk, is responsible for the proper coordination of its activities with all other permittees, underground utilities, contractors, or workmen operating within the encroachment area and for the its own safety and any of its personnel in connection with its entry under this conditional revocable permit; and
12. the Permittee acknowledges that the City of Oakland is unaware of the existence of any hazardous substances beneath the encroachment areas, and hereby waives and fully releases and forever discharges the City of Oakland and its officers, directors, employees, agents, and volunteers from any and all claims, demands, liabilities, damages, actions, causes of action, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise out of or in any way connected with the physical condition, or required remediation of the excavation area or any law or regulation applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), the Clean Water Act (33 U.S.C. Section 466 et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629), the California Hazardous Waste Control Law (California Health and Safety Code Sections 25100 et seq.), the Porter-Cologne Water Quality Control Act (California Health and Safety Code Section 13000 et seq.), the Hazardous Substance Account Act (California Health and Safety Code Section 25300 et seq.), and the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5 et seq.); and
13. the Permittee further acknowledges that it understands and agrees that it hereby expressly waives all rights and benefits which it now has or in the future may have, under and by virtue of the terms of California Civil Code Section 1542, which reads as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF

KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR"; and

14. the Permittee recognizes that by waiving the provisions of Civil Code Section 1542, it will not be able to make any claims for damages that may exist, and to which, if known, would materially affect its decision to execute this encroachment agreement, regardless of whether Permittee's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause; and
15. the hereinabove conditions shall be binding upon the Permittee and the successive owners and assigns thereof; and be it

FURTHER RESOLVED: That this resolution shall take effect when all the conditions hereinabove set forth shall have been complied with to the satisfaction of the City Attorney and the City Engineer of the City of Oakland and shall become null and void upon the failure of the Permittee to comply with the conditions hereinabove set forth 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, DEC 18 2007, 2007

PASSED BY THE FOLLOWING VOTE:

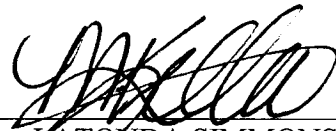
AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND
PRESIDENT DE LA FUENTE - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:



LATONDA SIMMONS

City Clerk and Clerk of the Council
of the City of Oakland, California

EXHIBIT A

Lands of Jack London Square Investors II LLC, as described in a Deed of Trust, recorded May 3, 2007, series no. 2007172758, by the Alameda County Clerk-Recorder

PARCEL ONE:

PARCEL 'G':

A PORTION OF HARRISON STREET VACATED BY CITY OF OAKLAND ORDINANCE NO. 11646 C.M.S., RECORDED NOVEMBER 9, 1993, AS SERIES NO. 93-399745, ALAMEDA COUNTY RECORDS, A PORTION OF ALICE STREET VACATED BY CITY OF OAKLAND ORDINANCE NO. 11594 C.M.S., RECORDED AUGUST 27, 1993, AS SERIES NO. 93-307111, ALAMEDA COUNTY RECORDS, AND A PORTION OF THE REAL PROPERTY DESCRIBED IN THE GRANT DEED RECORDED JUNE 19, 1985, AS SERIES NO. 85-118933, ALAMEDA COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A CITY OF OAKLAND NAIL AND TAG MONUMENT IN A MONUMENT WELL, LOCATED AT THE INTERSECTION OF MARTIN LUTHER KING JR. WAY (FORMERLY GROVE STREET) AND EMBARCADERO (FORMERLY FIRST STREET), DESIGNATED AS MONUMENT NO. H020 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 $62^{\circ}35'34''$ EAST 2310.66 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 SAID RECORD OF SURVEY NO. 990; THENCE SOUTH $68^{\circ}48'37''$ EAST 396.12 FEET TO A POINT ON THE CENTERLINE OF HARRISON STREET VACATED BY SAID CITY OF OAKLAND ORDINANCE NO. 11646 C.M.S.; SAID POINT IS ALSO ON THE NORTHEAST LINE OF EMBARCADERO, 121.00 FEET WIDE 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 IS THE TRUE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID CENTERLINE OF VACATED HARRISON STREET NORTH $27^{\circ}24'37''$ EAST 199.99 FEET TO THE SOUTHWEST LINE OF SECOND 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; THENCE ALONG SAID SOUTHWEST LINE OF SECOND STREET SOUTH $62^{\circ}35'23''$ EAST 380.80 FEET TO A POINT ON THE CENTERLINE OF ALICE STREET VACATED BY SAID CITY OF OAKLAND ORDINANCE NO. 11594 C.M.S.; THENCE ALONG SAID CENTERLINE OF VACATED ALICE STREET SOUTH $27^{\circ}24'37''$ WEST 199.99 FEET TO SAID NORTHEAST LINE OF EMBARCADERO; THENCE ALONG SAID NORTHEAST LINE NORTH $62^{\circ}35'23''$ WEST 380.80 FEET TO THE TRUE POINT OF BEGINNING.

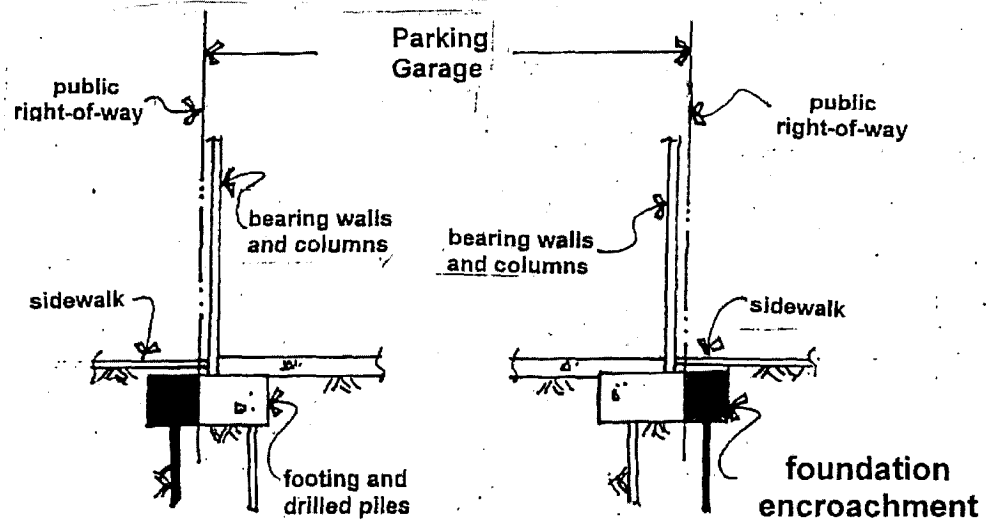
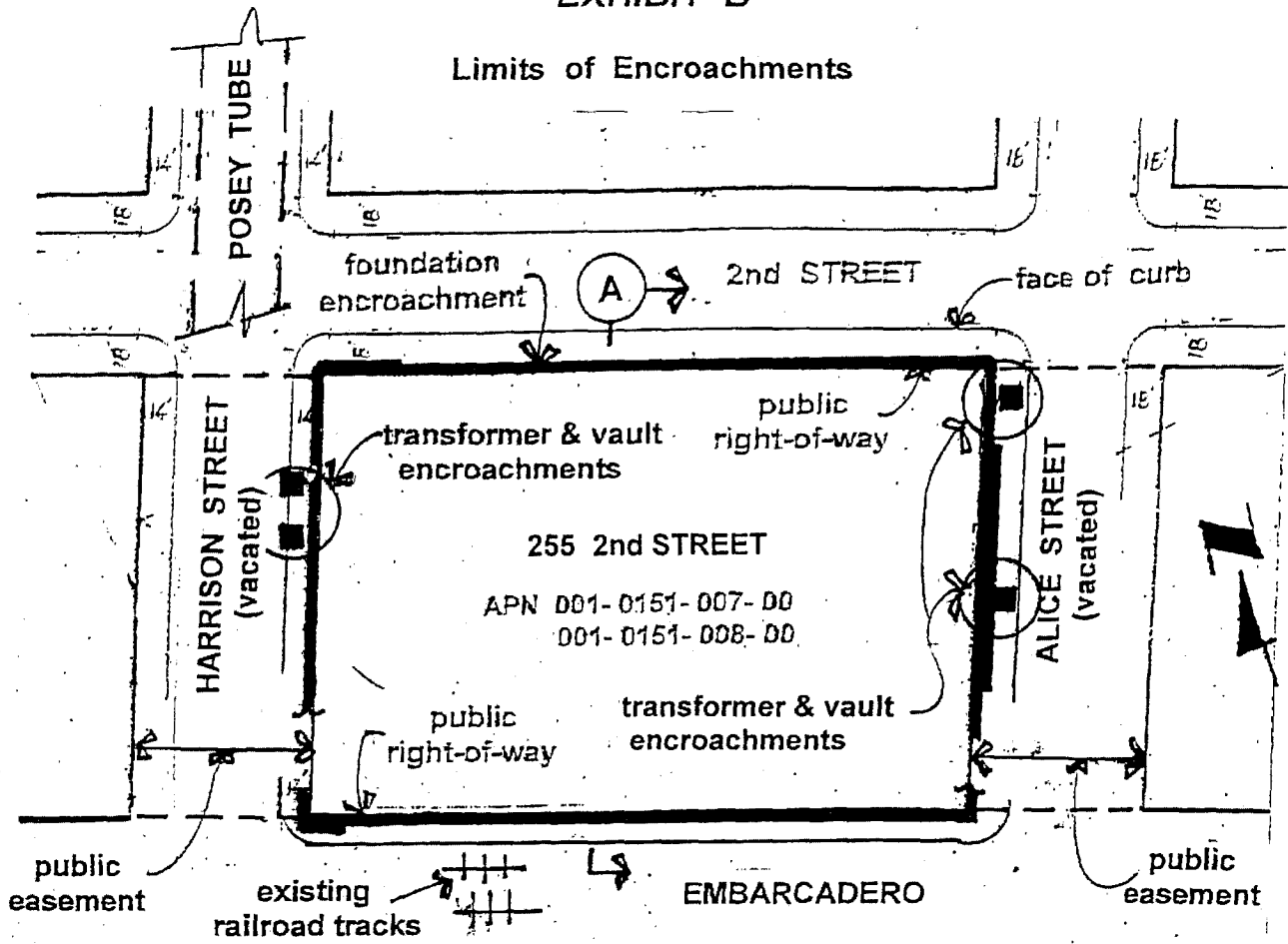
BEARINGS AND DISTANCES CALLED FOR IN THIS DESCRIPTION ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM, ZONE III, NORTH AMERICAN DATUM OF 1983 (NAD83), 1984 ADJUSTMENT, PUBLISHED IN 1986. ALL DISTANCES IN THIS DESCRIPTION ARE GRID DISTANCES. MULTIPLY GRID DISTANCES BY 1.0000705 TO OBTAIN GROUND DISTANCES.

PARCEL TWO:

THE RIGHTS TITLE AND INTEREST IF ANY CONTAINED IN THAT CERTAIN DOCUMENT ENTITLED OPERATING AGREEMENT BETWEEN THE CITY OF OAKLAND, A MUNICIPAL CORPORATION ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS AND CEP-JLS I LLC, A DELAWARE LIMITED LIABILITY COMPANY, RECORDED MARCH 29, 2002 AS INSTRUMENT NO. 2002141789, OFFICIAL RECORDS, ALAMEDA COUNTY AND AMENDED BY DOCUMENT RECORDED MAY 3, 2007 AS INSTRUMENT NO. 2007172754 OFFICIAL RECORDS, ALAMEDA COUNTY.

EXHIBIT B

Limits of Encroachments



VIEW

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