

AGENDA REPORT

Resolution Affirming Port Consent to the Planned Unit Development Amendment Authorized by the City of Oakland for Various Properties in Jack London Square **Commercial Real Estate**

MEETING DATE: 4/23/2015

AMOUNT: \$275,000 (One-Time Payment)
Revenue

PARTIES INVOLVED: JLSV Land, LLC, San Francisco, CA
Jim Ellis, Managing Principal

SUBMITTED BY: Pamela Kershaw, Director of Commercial Real Estate

APPROVED BY: J. Christopher Lytle, Executive Director

ACTION TYPE: Resolution

EXECUTIVE SUMMARY

This subject report recommends affirmation by the Port of Oakland ("Port") of its consent to the previously approved Planned Unit Development ("PUD") Amendment for various properties in Jack London Square that was authorized by the City of Oakland ("City") in September of 2014. This action is intended to affirm the allocation of density of up to 216 units from Property located at 255 Second Street (currently subject to a ground lease with JLSV Investors) to two other properties owned by JLSV Land, LLC ("Developer") within Jack London Square, subject to final approval of the Final Development Plan and Design Review permits/approvals from the City of Oakland. This confirmation is conditioned upon a one-time payment of \$275,000.00 to the Port.

BACKGROUND

Through a series of related transactions over the past 10+ years, the Port has executed various long term ground leases with a Master Developer Lessee, Jack London Square Ventures LLC ("Developer"), for various properties in Jack London Square. In addition, in 2006 and 2007 the Port also sold two parcels of land in Jack London Square to this same Developer, under an affiliate name of JLSV Land, referred to as "Site D" and "Site F-2". A Map indicating the location of the various parcels leased and sold to the Developer is attached to this report as Exhibit A for reference. One of the sites currently subject to a long term ground lease with the Developer is the site containing the newly constructed public parking structure

immediately adjacent to the Amtrak train station located at 255 Second Street, referred to as Site G.

Over the course of the past 18+ months, the Developer has been pursuing land use entitlements from the City of Oakland, the regulatory agency with land use authority for the Jack London Square district, to re-entitle the two privately owned properties, Site D and Site F-2, to allow for the option to construct multi-family residential development on these two sites. These two sites are currently utilized as surface parking lots. In September of 2014 the City Council approved new land use entitlements allowing for the construction of multifamily residential development on these two sites, in addition to the previously approved commercial uses. The new land use entitlements include an amendment to the existing Planned Unit Development Permit ("PUD"), which now allows for the construction of up to 666 combined total residential units within the PUD boundaries upon Sites D and F-2. The Developer still needs to receive Design Review and Final Development Plan approvals from the City of Oakland, which generally will be limited to the exterior finishes, treatments, and architectural designs for both sites, but the allowable density and massing envelope was established via the approved amendment to the PUD that was granted in September of 2014.

The manner in which residential density is allocated to individual sites within a PUD permit pursuant to the City of Oakland Planning Code allows for the sharing of density within and among individual properties within the boundaries of the same PUD, with the concurrence of all property owners within the PUD boundaries. The intention of this provision is to enable variations in scale and density of development within large integrated centers and to provide for flexibility in design and massing within large master planned sites. Thus, in the absence of the PUD, the maximum density limit allocated to both Site D and Site F-2 combined would equate to a total of 375 residential units. However, the PUD amendment resulted in additional residential density from other parcels within the same PUD project boundary being allocated or shared with Site D and Site F-2, with the result that the residential density allocation for these two parcels increases to the City approved maximum of 666 units, subject to the constraints of maximum "massing envelopes" for the two sites.

ANALYSIS

Due to the existing zoning and General Plan designations of the other PUD sites, the only other site within the PUD boundaries for which the General Plan and zoning does not prohibit residential uses is Site G. As previously mentioned, Site G is owned by the Port and leased to the Developer pursuant to a long term Ground Lease for a public parking structure with ground floor retail. The Site G Lease has 56 years left remaining on the existing Lease. The Developer has requested that the Port affirm its' consent to the allocation of 216 units of residential density from Site G to Sites D and F-2, thus enabling the Developer to build up to 591 residential units, which is below the approved maximum PUD density amount of 666. Final design plans and financing for construction have not yet been secured by the Developer for these two sites, so the Developer is uncertain if the ultimate number of units built will be 591 or some lower number, but the Developer wants the flexibility to pursue up to 591 units on Site D and Site F-2 if financing can be secured.

Port staff and the Developer have been discussing this requested PUD density allocation of 216 units from Site G to Sites D and F-2 for the past several months. The Developer believes that residential construction on Site D and Site F-2, will result in significant benefit to the Port due to the additional pedestrian activity anticipated in Jack London Square and the additional patronage at local restaurants, retail establishments, and parking facilities. As mentioned above, the only other property (other than Site D and Site F-2) that is allocated any residential density by land use zoning and the General Plan within the PUD boundaries is Site G, which is currently under long term lease to the Developer for another 56 years as a multi-level public parking structure with a small ground floor retail space. Pursuant to the terms of the Lease for Site G, the Port may not pursue reuse of this site for any other purpose, including residential development, without the consent of the Lessee during the remaining term of the Lease. Furthermore, as a Trustee of public trust lands on behalf of the State of California, the Port cannot establish or allow any use of Port lands that is not consistent with the public trust, which prohibits residential uses on trust lands.

Port staff concurs that residential development on Site D and Site F-2 will generate positive financial impacts for the Port from increased patronage at retail, dining and entertainment venues in the Square, and that the integration of residential uses into the project boundaries is an appropriate and timely amendment to the existing PUD for numerous sound land use and planning reasons, and supports the City of Oakland approval of this PUD modification. Port staff and the Developer have tentatively agreed that a payment to the Port in the amount of \$275,000 is equitable and appropriate to account for any potential diminishment in value to Site G as a result of the requested confirmation of the allocation of 216 units from this parcel. Staff believes that this payment is an appropriate amount in light of the fact that the Port cannot practically capture any residential density value from Site G for the next 56+ years, and with the knowledge that the Port could independently pursue a rezoning request for Site G at some time 56+ years in the future to recover or increase the allowable residential density on Site G if desired and if consistent with the land use policy direction established by the City at that time. Thus, staff believes the requested confirmation of the allocation of this density under the PUD should be approved, based on the terms and conditions stated within this Agenda Report including the payment of \$275,000 to the Port, but that this confirmation should be conditioned upon the Developer receiving Final Development Plan and Design Review approvals from the City of Oakland for the proposed residential developments on Site D and Site F-2 within the timeframe established by the City Development Agreement.

BUDGET & STAFFING

Approval of the proposed item will result in a one-time payment to the Port in the amount of \$275,000 which was not included in the Fiscal Year 2014/15 operating budget.

The proposed action will have no impact on Port staffing as the Jack London Square project is currently managed by existing staff within the Commercial Real Estate Division.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The work performed under this contract is not within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of the MAPLA do not apply to this work.

STRATEGIC PLAN

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Plan (<http://www.portofoakland.com/pdf/about/strategicPlan2011-2015.pdf>)

Goal A: Create Sustainable Economic Growth for the Port and Beyond

- Goal A: Objective 1: Maximize the use of existing assets.
- Goal A: Objective 3: Increase revenue, job creation and small business growth.

LIVING WAGE

Living wage requirements, in accordance with the Port's Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the "Living Wage Regulations"), do not apply to this matter because tenancies outside of the Aviation and Maritime areas with entities that do not principally provide aviation or maritime services are excluded from the Living Wage Regulations.

ENVIRONMENTAL

City of Oakland Lead Agency CEQA Determination: The City of Oakland, as lead agency, circulated for public review a draft Environmental Impact Report (EIR) on the proposed Jack London Square Redevelopment in September 2003. The City of Oakland certified the Final EIR in June 2004. In May 2014 the City of Oakland amended the EIR to also allow residential development on Parcels D and F-2. The project sponsor filed a notice of Determination in September 2014 with the Alameda County Clerk.

Port Responsible Agency CEQA Determination: The Port, as a responsible agency, received the City's notice of preparation, participated in meetings with City staff, and reviewed the City's CEQA documents.

Port CEQA Determination for this Discretionary Action: The Port's action affirming the PUD authorized by the City of Oakland is not a project under CEQA as there will be no physical change to the environment. This action is therefore exempt from CEQA under the common sense exemption. The project sponsor plans to file a Notice of Determination/Notice of Exemption for this action.

GENERAL PLAN

The project conforms to the policies of the General Plan. The project is within City of Oakland planning jurisdiction, and the City made General Plan conformity findings as part of the prior City of Oakland approval of the amendment to the Planned Unit Development permit.

OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)/ PROFESSIONAL LIABILITY INSURANCE PROGRAM (PLIP)

This action is not subject to the Port's Owner Controlled Insurance Program (OCIP) or Professional Liability Insurance Program (PLIP) as it is not a capital improvement construction project or design project supporting such construction.

OPTIONS

- Affirm Port consent to the Planned Unit Development Amendment previously approved by the City of Oakland for various properties in Jack London Square in exchange for a one-time payment of \$275,000.00 to the Port, and subject to receipt of Final Development Plan/Design Review approvals from the City of Oakland, as described within this Agenda Report. This is the recommended action.
- Do not affirm Port consent to the Planned Unit Development Amendment previously approved by the City of Oakland for various properties in Jack London Square, which may render the proposed residential development(s) infeasible as approved by the City.
- Affirm Port consent to the Planned Unit Development Amendment previously approved by the City of Oakland for various properties in Jack London Square, but subject to different terms of payment or conditions other than those described within this Agenda Report, which depending on the nature of the alternative terms and conditions, may not be acceptable to the Developer.

RECOMMENDATION

Adopt a Resolution affirming Port consent to the Planned Unit Development Amendment previously approved by the City of Oakland for various properties in Jack London Square authorizing the allocation of up to 216 units of residential density from Site G to Site D and Site F-2, subject to a one-time payment of \$275,000 to the Port and subject to the Developer first obtaining Final Development Plan/Design Review approvals from the City of Oakland within the timeframes established by the City Development Agreement, and authorizing such other agreements and additional documents as may be necessary to consummate this transaction, subject to approval by the Port Attorney as to form and legality; it is further recommended that the subject approval be valid for no longer than 1 year from the date of Board authorization, and that if the amount of \$275,000 is not paid to the Port by that date then such approval shall be null and void unless further extended at the sole and absolute discretion of the Executive Director or his designee.

Attachments: Exhibit A – Map of Property

Development Sites

EXHIBIT A



JACK LONDON SQUARE

