

Oct 23, 2003

Diane Henderson, Project Manager
City of Oakland Community and Economic Development Agency
Planning and Zoning Division
250 Frank H. Ogawa Plaza
Oakland, CA 94612

RE: Draft Environmental Impact Report for the Jack London Square Redevelopment Project, Case File Number ER03-0004

Dear Diane Henderson:

Please accept this letter to serve as my comments on the Draft Environmental Impact Report for the Jack London Square Redevelopment, prepared by Environmental Science Associates and dated September 8, 2003.

I am a historical archaeologist and have a M.A. in anthropology/archaeology from the University of California, Berkeley, the top school in this field, where I am currently a Ph.D. candidate in historical archaeology. My training focuses specifically on historic urban built environments has included graduate work in U.S. historic landscapes and urban forms with historian Dr. Mary Ryan and architect/architectural historian Dr. Paul Groth, nationally-renown specialist in Bay Area historic architecture and city landscapes. My extensive research experience includes working on staff in prominent public-stewardship projects such as Andrew Jackson's Hermitage and archaeological research for the Presidio Trust at the Presidio of San Francisco.

The DEIR for the Jack London Square Project is incomplete and inadequate. While conducting archaeological research, I happen to have recently also accessed the Northwest Information Center's records for the greater downtown Oakland area using the Oakland West USGS 7.5-minute quadrangle map Environmental Science Associates viewed in the preparation of this DEIR (DEIR page IVE-3). Based on what I saw at the Northwest Information Center, it is my opinion that the DEIR may be underreporting the number of prehistoric archaeological sites recorded adjacent to or in the project area. This seems to leave the project planners unprepared for what may be a likely scenario of the construction project encountering the subsurface remains of Native Californian shellmound sites and their associated human burials. This scenario seems quite probable, as the DEIR reports both that a 2000 cultural resources survey by W.L. Nelson "cover[ed] much of the Jack London Square", and "Recent surveys have noted that subsurface components of CA-ALA-314 may exist in the area (p. IV.E-4)."

Given that the DEIR—regardless of possible underreporting of confirmed prehistoric sites in the area—already anticipates the existence of Native Californian archaeological remains in the project area, it would facilitate the project's completion in accordance with city, CEQA, and Section 106 guidelines to involve in the early planning stages relevant Native Californian groups, and especially Native American monitors/consults who are themselves qualified archaeologists or Native American monitors/consultants working in conjunction with qualified archaeologists.

The Native American Heritage Commission reminds us:

"When developers and public agencies assess the environmental impact of their projects, they must consider "cultural resources" as an aspect of the environment in accordance with Article 5, Section 15064.5 (formerly known as Appendix K) of the California Environmental Quality Act

Guidelines,. These resources can include Native American graves and artifacts; natural resources used for food, ceremonies or traditional crafts; and places that have special significance because of spiritual power associated with them. **When projects are proposed in areas where cultural resources are likely to be affected, one way to avoid damage to cultural resources and minimize litigation associated with the project is to perform archaeological testing, with a Native American monitor/consultant on site.** In sensitive areas, it may be appropriate to have a monitor/consultant on site during part or all of the construction work.”¹

The Native American Heritage Commission further explains the benefits of early involvement of a Native American Monitor/consultant to a project’s successful and timely completion:

“By working with and acting as a liaison between Native Americans, archaeologists, developers, contractors and public agencies, **a Native American monitor/consultant can see that cultural resources are treated appropriately** from the Native American point of view. **This can help others involved in a project to coordinate mitigation measures and avoid obstacles to project completion.**”

Involvement of local Native Americans has the potential to help best facilitate the project. The Native American Heritage Commission recommends “that preference for monitor/consultant positions be given to local Native Americans. These local people usually have knowledge of the local customs and traditions. They are also aware of the local leaders and elders that may need to be contacted should an unusual situation occur. Since it is their traditional area being impacted, local Indians have vested interest in the project.”

As indicated by the above, Native Californians should be involved in the planning process as potential stakeholders and as Native American monitors/consultants. From the content of the DEIR it seems that relevant Native American / Native Californian groups were not contacted for EIR-scoping comments. This is another inadequacy of the DEIR.

In an area recognized as likely to contain unique archaeological resources in the form of subsurface remains of a registered Native Californian archaeological site, like this project area, Native Californian groups should be contacted regarding the scoping of the DEIR. Native Californian groups should also be invited to comment on the DEIR at a minimum, and should early on be invited into the planning process to contribute to determining the scope for adequate study of the area and possible mitigation alternatives.

¹ From the Native American Heritage Commission’s “Guidelines for Monitors/Consultants, Native American Cultural, Religious, and Burial Sites,” Final Approval date 7/10/89, online at <http://ceres.ca.gov/nahc/guidelines4mon.html>. Also relevant is “Professional Guide for the Preservation and Protection of Native American Remains and Associated Grave Goods: A Resource Guide For Coroners, Native American Most Likely Descendants, Tribal Governments, Tribal Organizations, Archeologists, Law Enforcement Officials, City and County Planners, Property Owners, and Developers,” which excerpts from California law concerning Native American human remains Chapter 1492, Statutes of 1982, which added Section 7050.5 to the Health and Safety Code, amended Section 5097.94 of the Public Resources Code and added Sections 5097.98 and 5097.99 to the Public Resources Code; online at <http://ceres.ca.gov/nahc/profguide.html>

Regarding Historical Resources, and particularly Heinhold's First and Last Chance Saloon, a City of Oakland Landmark listed on the California Register of Historic Resources and National Register of Historic Places, the DEIR's studies of impacts and proposed mitigation measures are inadequate.

At the Oct 22nd Planning Commission Design Review Committee meeting, a representative of Jack London Square Partners, LLC, indicated that the developers would be willing to devote space in the project to a Jack London museum. This museum could take the form of a small, freestanding building of one or two stories that could provide a transition between Heinhold's and the massive Harvest Hall structure. As part of their mitigation measures, Jack London Square Partners, LLC, could endow an Oakland Museum of California position that would be dedicated to programming for and managing this Jack London-themed museum as a satellite of the main museum. Such an alternative is worthy of study and should be pursued as part of the EIR.

The DEIR is also inadequate in that the project described in the DEIR is not the project the developers are currently pursuing. It may be that a new DEIR should be prepared to reflect the project the developers are planning.

Finally, given the complexity of the proposed project and proposed entitlements, if a new DEIR is not prepared, more time should be provided for public comment on this DEIR.

Sincerely,

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Cc: Native American Heritage Commission
City of Oakland Landmarks Preservation Advisory Board
Oakland Heritage Alliance
Heinhold's First and Last Chance Saloon

Sources Cited:

Environmental Science Associates, 2003, *Draft Environmental Impact Report for the Jack London Square Redevelopment*, dated September 8, 2003; publicly available at City of Oakland Community and Economic Development Agency, Planning and Zoning Division.

Native American Heritage Commission, "Guidelines for Monitors/Consultants, Native American Cultural, Religious, and Burial Sites," Final Approval date 7/10/89, online at <http://ceres.ca.gov/nahc/guidelines4mon.html>, Native American Heritage Commission, 915 Capitol Mall Room 364, Sacramento, CA 95814

Native American Heritage Commission, "Professional Guide for the Preservation and Protection of Native American Remains and Associated Grave Goods: A Resource Guide

For Coroners, Native American Most Likely Descendants, Tribal Governments, Tribal Organizations, Archeologists, Law Enforcement Officials, City and County Planners, Property Owners, and Developers,” which excerpts from California law concerning Native American human remains Chapter 1492, Statutes of 1982, which added Section 7050.5 to the Health and Safety Code, amended Section 5097.94 of the Public Resources Code and added Sections 5097.98 and 5097.99 to the Public Resources Code; online at <http://ceres.ca.gov/nahc/profguide.html>

W.L. Nelson, 2000, *Cultural Resources Survey for the Level (3) Communications Long Haul Fiber Optics Project, Segment W507, Oakland to San Jose*, on File at the Northwest Information Center, File No. 22820; cited in ESA’s DEIR, especially Table IV.E-1, “Identified Cultural Resources and Surveys Conducted Within the Project Area,” page IV.E-4