

OFFICE OF THE CITY CLERK
OAKLAND
2010 JUN 24 PM 5:10

APPROVED AS TO FORM AND LEGALITY
Mark P. Wall
DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION NO. 82878 C.M.S.

A RESOLUTION DENYING THE APPEAL (A10-139), THEREBY UPHOLDING THE PLANNING COMMISSION DECISION TO ADOPT CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS AND APPROVE A PLANNED UNIT DEVELOPMENT (INCLUDING A PRELIMINARY DEVELOPMENT PLAN FOR THE MASTER PLAN AND A FINAL DEVELOPMENT PLAN FOR PHASE 1); DESIGN REVIEW FOR PHASE 1; A CONDITIONAL USE PERMIT FOR DEMOLITION OF EXISTING ROOMING UNITS; AND A MINOR VARIANCE FOR OFF-STREET PARKING FOR THE ALTA BATES SUMMIT MEDICAL CENTER, SUMMIT CAMPUS SEISMIC UPGRADE AND MASTER PLAN PROJECT (Planning Case File Nos. ER09-0001, PUD09-104, DR09-105)

WHEREAS, on January 16, 2009 the Applicant Alta Bates Summit Medical Center, an affiliate of Sutter Health, applied for a Planned Unit Development (including a Preliminary Development Plan for the Master Plan and a Final Development Plan for Phase 1), and Design Review for Phase 1 of the Alta Bates Summit Medical Center, Summit Campus Seismic Upgrade and Master Plan Project and environmental review thereof; and this application was subsequently supplemented with an application for a Conditional Use Permit for demolition of existing rooming units and an application for a minor variance for off-street parking (collectively called "Project"); and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) and the CEQA Guidelines, a Notice of Preparation (NOP) of a Draft EIR for the Project was published on January 26, 2009 and re-issued on March 13, 2009 and the public comment period on the NOP ended on April 15, 2009; and

WHEREAS, on February 18, 2009 the Planning Commission conducted an EIR scoping session concerning the scope of the EIR; and

WHEREAS, a Draft EIR was prepared for the Project to analyze its environmental impacts and the Draft EIR was properly circulated for a 45-day public review period starting on December 21, 2009; and

WHEREAS, public hearings on the Draft EIR were held at the January 20, 2010 meeting of the Planning Commission and at the February 8, 2010 meeting of the Landmarks Preservation Advisory Board; and

WHEREAS, the City received written and oral comments on the Draft EIR and the City prepared written responses to comments on environmental issues and made changes to the Draft EIR, and the responses to comments, changes to the Draft EIR, and additional information were made available to all commenting agencies in a Final EIR published on May 7, 2010 - twelve days prior to the May 19, 2010 Planning Commission hearing; and

WHEREAS, a Notice of Availability/Notice of Release of the Final EIR was distributed to those state and local agencies who commented on the Draft EIR, posted on the Project page on the City's website, and mailed and e-mailed to numerous individuals who had requested specifically to be notified of official City actions on the Project and/or who commented on the Draft EIR (including the Appellant), and copies of the Draft and Final EIR were distributed to those state and local agencies who commented on the Draft EIR, and to City officials including the Planning Commission, and were made available for public review at the Oakland Main Library (124 14th Street), at the office of the Community and Economic Development Agency (250 Frank H. Ogawa Plaza, Suite 3315), and on the City's website; and

WHEREAS, on May 19, 2010 a duly noticed public hearing was held before the City Planning Commission for the Project, accompanied by a Planning staff recommendation for adoption of CEQA Findings (including Certification of the EIR as having been completed and reviewed in compliance with CEQA, rejection of alternatives, and adoption of a Statement of Overriding Considerations) and approval of the Project; and

WHEREAS, on May 19, 2010, in accordance with CEQA, the Planning Commission independently reviewed the record and the EIR, and adopted (by a 4-0 vote) the above-referenced CEQA Findings, including certification of the EIR, prior to taking any action on the Project; and

WHEREAS, on May 19, 2010 the Project was approved by the City Planning Commission (by a 4-0 vote), subject to specified conditions of approval (including the Standard Conditions of Approval / Mitigation Monitoring and Reporting Program (SCAMMRP)) contained in and attached to the May 19, 2010 City Planning Commission Report; and

WHEREAS, on June 1, 2010 an appeal of the Planning Commission's May 19, 2010 decision was filed by Ms. Gloria D. Smith, representing the California Nurses Association/ National Nurses Organizing Committee ("Appellant"), challenging only the certification of the EIR on certain limited grounds and not the approval of the Project itself ("Appeal"); and

WHEREAS, Appellant failed to exhaust its administrative remedies because it did **not** (nor did anyone else) present to the Planning Commission during the May 19, 2010 public hearing on the Project the specific objections they now raise in the Appeal, even though the Notice of such hearing (which was sent to Appellant) expressly required that "[i]f you challenge a Commission decision in court, you will be limited to issues raised at th[is] public hearing or in

correspondence delivered . . . at, or prior to, the public hearing.” Moreover, similar language was included in the Notice of Availability/Notice of Release of the Final EIR which was also sent to Appellant. Thus, the Appeal raised for the first time the specific objections to the EIR when such objections are required to have been raised before the Planning Commission in order to be considered as part of an appeal; and

WHEREAS, after giving due notice to Appellant, Applicant, all interested parties and the public, the Appeal came before the City Council in a duly noticed public hearing on July 6, 2010; and

WHEREAS, Appellant, Applicant and all other interested parties were given the opportunity to participate in the public hearing by submittal of oral and written comments; and

WHEREAS, the public hearing on the Appeal was closed by the City Council on July 6, 2010; now, therefore, be it

RESOLVED: That the City Council, having independently heard, considered, reviewed and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Project and the applications therefor, the Planning Commission’s decision, the EIR and the Appeal, finds that the Appellant has **not** shown, by reliance on evidence in the record, that the Planning Commission’s decision was made in error, that there was an abuse of discretion by the Commission, and/or that the Commission’s decision was not supported by sufficient, substantial evidence in the record. This decision is based, in part, on the July 6, 2010 City Council Agenda Report and the May 19, 2010 approved Planning Commission Report, which are hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeal is denied, the Planning Commission’s decision to adopt the above-referenced CEQA Findings and approve the Project is upheld, and the Project and the applications therefor are approved; and be it

FURTHER RESOLVED: That, in further support of the City Council’s decision to deny the Appeal and approve the Project, the City Council affirms and adopts as its own findings and determinations (i) the July 6, 2010 City Council Agenda Report including without limitation the discussion, findings, conclusions, specified conditions of approval (including the Standard Conditions of Approval / Mitigation Monitoring and Reporting Program (SCAMMRP)) (each of which is hereby separately and independently adopted by this Council in full), and (ii) the May 19, 2010 approved City Planning Commission Report, including without limitation the discussion, findings, conclusions, conditions of approval and SCAMMRP (each of which is hereby separately and independently adopted by this Council in full), except where otherwise expressly stated in this Resolution; and be it

FURTHER RESOLVED: That the City Council, separately and independently, denies the Appeal because the Appellant failed to exhaust its administrative remedies; and be it

FURTHER RESOLVED: That the record before this Council relating to this Project and Appeal includes, without limitation, the following:

1. the Project applications, including all accompanying maps and papers;

2. all plans submitted by the Applicant and its representatives;
3. all final staff reports, decision letters and other documentation and information produced by or on behalf of the City, including the Draft and Final EIR;
4. all oral and written evidence received by the City staff, Planning Commission and City Council before and during the public hearings on the Project and Appeal; and
5. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan and the General Plan Conformity Guidelines; (b) Oakland Municipal Code, including, without limitation, the Oakland real estate regulations, (c) Oakland Fire Code; (d) Oakland Planning Code; (e) other applicable City policies and regulations; and, (f) all applicable state and federal laws, rules and regulations; and be it

FURTHER RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Community & Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, CA; and be it

FURTHER RESOLVED: That the recitals contained in this resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 6 2010, 2010

PASSED BY THE FOLLOWING VOTE:

AYES- Kaplan, Kernigha, Nadel, Quan, Reid and Chairperson Brunner - 6

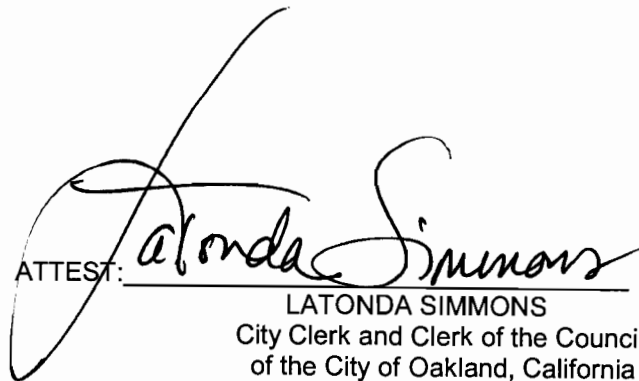
NOES- 0

ABSENT- Brooks - 1

ABSTENTION- 0

Excused- De La Fuente - 1

ATTEST:



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

LEGAL NOTICE:

ANY PARTY SEEKING TO CHALLENGE THIS FINAL DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE DATE OF THE ANNOUNCEMENT OF THIS DECISION, UNLESS A SHORTER PERIOD APPLIES.