

FILED
CLERK OF SUPERIOR COURT
OAKLAND

16 DEC -6 PM 4:02

CITY OF OAKLAND



ONE FRANK OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
Barbara J. Parker
City Attorney

(510) 238-3601
FAX: (510) 238-6500
TDD: (510) 839-6451

December 13, 2016

HONORABLE CITY COUNCIL
Oakland, California

**Subject: Commercial and Retail Attraction and Development for the Laurel; et al. v. City of Oakland; et al.
Alameda County Superior Court No. RG13-707128
City Attorney File No. X03983 - (Oakland Planning & Building)**

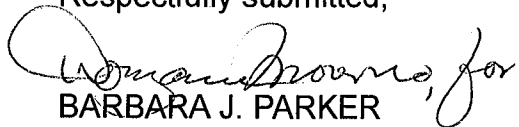
President Gibson-McElhaney and Members of the City Council:

Pursuant to Section 401 of the City Charter, the City Attorney has prepared and requests your approval of a resolution decertifying the previously certified Environmental Impact Report ("EIR") for AMG & Associates' mixed-use project at 4311- 4317 MacArthur Blvd.

This action arises from the City's approval of AMG & Associates' mixed-use project consisting of market rate and affordable senior housing and retail space at 4311-4317 MacArthur Blvd and the City's certification of an EIR (State Clearinghouse No. 2011052049) for that project. The organization Commercial and Retail Attraction Development for the Laurel (CRADL) sued challenging the project. AMG & Associates has withdrawn the project due to changes in Federal, State and Local funding sources for affordable housing and, as a result, the City has notified AMG & Associates that the project approvals are no longer valid. The City has no reason to maintain certification of an EIR related to a development project that has been officially withdrawn.

AMG & Associates has calendared a hearing in Alameda County Superior Court on January 17, 2017, seeking to dismiss the lawsuit as moot on behalf of itself and the City of Oakland based on the fact that the project has been officially withdrawn.

Respectfully submitted,


BARBARA J. PARKER
City Attorney

Attorney Assigned:
Jennifer N. Logue
2031036

16 DEC -6 PM 4:02

Approved as to Form and Legality

[Signature]
City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

RESOLUTION DECERTIFYING PREVIOUSLY CERTIFIED ENVIRONMENTAL IMPACT REPORT FOR MIXED-USE PROJECT, CONSISTING OF MARKET RATE AND AFFORDABLE SENIOR HOUSING UNITS AND RETAIL SPACE, AT 4311- 4317 MACARTHUR BOULEVARD

WHEREAS, on March 5, 2010, AMG & Associates ("Applicant") filed applications for Major Conditional Use Permits, Variances, Design Review and California Environmental Quality Act ("CEQA") Review for a mixed-use project consisting of market rate and affordable senior housing and retail space at 4311- 4317 MacArthur Blvd ("Project"); and

WHEREAS, on July 17, 2013, following duly noticed public hearings and public comment periods, the Oakland Planning Commission approved the Project, subject to findings and conditions of approval, and certified the final Environmental Impact Report ("EIR") for the Project; and

WHEREAS, on July 29, 2013, the Commercial and Retail Attraction and Development for the Laurel ("CRADL") and Citizens4Oakland filed an appeal to the City Council challenging the Planning Commission's approval of the Project and certification of the EIR ("Appeal"); and

WHEREAS, on November 19, 2013, following a duly noticed public hearing, City Council denied the Appeal and upheld the Project approval and certification of the EIR by Resolution No. 84717 C.M.S.; and

WHEREAS, on December 17, 2013, CRADL, Citizens4Oakland and Maureen Dorsey filed a Complaint and Petition for Writ of Mandamus in Alameda County Superior Court challenging City Council's decision to uphold the Project approval and certification of the EIR ("Lawsuit"); and

WHEREAS, pursuant to a defense and indemnification agreement, Applicant retained legal counsel to defend the City of Oakland in the Lawsuit; and

WHEREAS, on July 17, 2015, Applicant notified the City of Oakland Planning Department that due to changes in Federal, State and Local funding sources for affordable housing, the Project was no longer feasible and withdrew the Project; and

WHEREAS, on August 26, 2015, the Planning Department acknowledged Applicant's withdrawal of the Project and notified Applicant that in light of the Project withdrawal, the Project approvals (as defined in Condition #1 of the Project's Conditions of Approval) are no longer valid; and

WHEREAS, the Project approvals are no longer valid and the City has no reason to defend an EIR related to a development project that is no longer being pursued due to economic reasons; now therefore, be it

RESOLVED: That the City's prior certification of the EIR related to the Project is rescinded; and be it

FURTHER RESOLVED: That the EIR is decertified effective immediately.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GUILLÉN, KALB, KAPLAN, REID AND PRESIDENT
GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION -

ATTEST:

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

2021366