

MEMORANDUM

TO: John S. Bridges
FROM: Michael P. Burns
DATE: February 10, 2011
RE: Signal Hill LLC Pebble Beach Property (33428.30989): Research re
Recommendations for Demolition of Historic Property

I. SUMMARY AND RECOMMENDATION

I reviewed the statutes, regulations, and cases regarding the issue we discussed this morning. In short, there is very little authority that supports the demolition of a historic property similar to our client's. However, our consultant should be advised to follow, as closely as possible, the guidelines set forth in the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings ("the Standards".) While the Standards do not directly address the demolition of a historic property, they provide a list of standards to follow when "renovating" a historic property. The consultant's report should therefore include evidence that the property "will be used as it was historically or be given a new use which reflects the property's restoration period", will preserve "distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize the restoration period", and generally demonstrate that the proposed house will reflect the "character" of the current house as closely as possible.

II. LEGAL ANALYSIS

The proposed demolition of the house is governed by CEQA Guidelines Section 15064.5, which provides:

- (b) A project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.
- (1) *Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired.*
- (2) The significance of an historical resource is materially impaired when a project:
 - (A) *Demolishes* or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical

significance and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources; or

- (B) *Demolishes* or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources pursuant to section 5020.1(k) of the Public Resources Code or its identification in an historical resources survey meeting the requirements of section 5024.1(g) of the Public Resources Code, unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant; or
 - (C) *Demolishes* or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its eligibility for inclusion in the California Register of Historical Resources as determined by a lead agency for purposes of CEQA.
- (3) *Generally, a project that follows the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings or the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (1995), Weeks and Grimmer, shall be considered as mitigated to a level of less than a significant impact on the historical resource.*
 - (4) A lead agency shall identify *potentially feasible measures* to mitigate significant adverse changes in the significance of an historical resource. The lead agency shall ensure that any adopted measures to mitigate or avoid significant adverse changes are fully enforceable through permit conditions, agreements, or other measures.

(Italics added.)

The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings ("the Standards") does not discuss mitigation measures where a historic building is demolished. Rather, it addresses mitigation efforts for projects that do not involve demolition (such as renovation and remodeling.)

The Standards do, however, offer the following guidelines for preserving a property's "historical heritage", which should serve as the primary guideline for our consultant in preparing her report:

1. A property will be used as it was historically or be given a new use which reflects the property's restoration period.
2. Materials and features from the restoration period will be retained and preserved. The removal of materials or alteration of features, spaces, and spatial relationships that characterize the period will not be undertaken.

3. Each property will be recognized as a physical record of its time, place, and use. Work needed to stabilize, consolidate and conserve materials and features from the restoration period will be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.
4. *Materials, features, spaces, and finishes that characterize other historical periods will be documented prior to their alteration or removal.*
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize the restoration period will be preserved.
6. Deteriorated features from the restoration period will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials.
7. Replacement of missing features from the restoration period will be substantiated by documentary and physical evidence. A false sense of history will not be created by adding conjectural features, features from other properties, or by combining features that never existed together historically.
8. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
9. Archeological resources affected by a project will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
10. Designs that were never executed historically will not be constructed.

(Standards, p. 118.)

If the expert can demonstrate that the demolition will not materially violate these standards, the client will likely be on much firmer ground for seeking a permit to demolish the house.

Several cases have rejected mitigation efforts involving historic buildings. In *League for Protection of Oakland's etc. Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 909, the city adopted a negative mitigated declaration for the demolition of a large Montgomery Ward warehouse built in 1923. The warehouse had fallen into disrepair and the city sought to redevelop the site. It prepared a negative mitigated declaration in spite of the building's historic and architectural import. The city proposed five mitigation measures, which included (1) preparation of a "historic resources documentation report," (2) a historical building survey; (3) design of the proposed shopping center to be built on the site would reflect elements of the Montgomery Ward building's original architecture; (4) display on the site of a plaque

commemorating the building; and (5) consultation with an archeologist to monitor excavation for discovery of possible cultural resources. *Id.* at 901.

The Court of Appeal held that these mitigation measures did not reduce the environmental impacts to an insignificant level:

A *large* historical structure, once demolished, normally cannot be adequately replaced by reports and commemorative markers. Nor, we think, are the effects of the demolition reduced to a level of insignificance by a proposed new building with *unspecified design* elements which may incorporate features of the original architecture into an entirely different shopping center.

Id. at 909 (italics added, citation omitted.)

Similarly, in *Architectural Heritage Association v. County of Monterey* (2004) 122 Cal.App.4th 1095, the county attempted to tear down a little-used, 73-year-old jail in order to renovate the adjacent courthouse and government offices. The county Planning and Building Inspection Department adopted a mitigated negative declaration and issued a demolition permit. The mitigation measures included photographic documentation; preparation of an historic monograph, including detailed descriptions of the jail's construction, the social environment in which it was built, its association with local, state, and national history, and jail culture; reuse or duplication of architectural elements from the building, with certain salvage details called out; and maintaining a complete set of the architectural and engineering blueprints at various agencies, including the local historical society.

The Court of Appeal held, in a cursory analysis that largely relied on the *City of Oakland* case, that these mitigation measures were insufficient: "As we see it, however, that fact [objections to the building's designation as a historical structure] goes to the question of the building's historic status, *not to the issue of mitigation.*" *Id.* at 1119. Thus, contrary to the statement in Section 20.99 of the CEQA treatise *Practice Under the Cal. Environmental Quality Act*, no meaningful analysis of the mitigation measures was undertaken by the court.

Other cases, however, have approved of mitigation efforts involving historic buildings. In *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, the City preserved "the most significant architectural and historic elements of the Emporium Building while revitalizing a major downtown area at a cost the City could afford." The court noted that "great efforts were made to preserve the most significant historical aspects of the Emporium Building. Thus, the historic facade and office portion facing Market Street, as well as the large rotunda and dome are to be preserved and indeed restored." *Id.* at 679.

Similarly, in an unpublished decision, *Citrus Heights Infrastructure Pay-As-You-Go v City of Citrus Heights*, 2008 Cal. App. Unpub. LEXIS 4010, the court held that the potential impact on a historic "oven" (that had been destroyed) could be effectively mitigated:

Even if there was evidence the project would impact the oven, the City already mitigated that impact. As a part of its environmental analysis, the City hired an expert to evaluate the project's impacts on historical resources. Before the oven was destroyed, the expert prepared a detailed report on the oven that included drawings, and reports from oral interviews to document the oven's construction, history, use, and significance. The expert concluded that the preparation and archiving of this report was the only feasible mitigation measure because the oven was too weak to be moved, and because it was not feasible to preserve the oven within the new development by itself without the context and setting of the farm and surrounding ranch.

Id. at *16.

Based upon the foregoing, it is unlikely that merely documenting the client's property by historical narrative, photographs, or architectural drawings, by itself, will constitute adequate mitigation measures supporting the demolition of the house. The consultant should, in addition to taking such measures, follow the guidelines on page 118 in the federal Standards. This should involve documenting that the property "will be used as it was historically or be given a new use which reflects the property's restoration period", that "materials and features from the restoration period will be retained and preserved", that the "removal of materials or alteration of features, spaces, and spatial relationships that characterize the period will not be undertaken," and ensuring that in the "replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials."