

MEMORANDUM

TO: John S. Bridges
FROM: Elizabeth Leitzinger
DATE: September 25, 2012
RE: Mitigation for Demolition of Historical Resources through Documentation Under CEQA

I. INTRODUCTION

Pursuant to the California Environmental Quality Act (“CEQA”), a potentially significant adverse environmental impact related to demolition of an historic structure may be mitigated to less than significant level through documentation of the historic resource in an historic narrative, photographs, or drawings. This type of mitigation is expressly authorized by the CEQA Guidelines, is regularly utilized by public agencies and developers in approval of development projects, and has been recognized by California courts as an effective method of mitigation.

II. LEGAL ANALYSIS

With respect to historic resources, the CEQA guidelines provide express instruction as to what type of mitigation is adequate to reduce the impact of a substantial adverse change in the significance of an historical resource. A substantial adverse change in the significance of an historical resource is treated as a significant effect on the environment. 14 Cal. Code Regs. § 15064.5(b). A “substantial adverse change” includes demolition, destruction, relocation, or alteration of the resource or its immediate surroundings resulting in the significance of the resource being materially impaired. 14 Cal. Code Regs. § 15064.5(b)(1).

In some circumstances, a significant adverse change to the historic resource is presumptively considered to be mitigated to a less than significant level. For example, a significant impact to an historical resource *must be considered to be mitigated* to a less than significant level if the mitigation measure follows the standards adopted by the Secretary of the Interior Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings. Cal. Code Regs. §§ 15064.5(b)(3)-(b)(4), and 15126.4(b)(1) [emphasis provided]. *The CEQA Guidelines expressly provide that in other cases, documentation of an historic resource by an historic narrative, photographs, or drawings can serve as sufficient mitigation.* Cal. Code Regs. § 15126.4(b)(2); *Molano v. City of Glendale* (2009) Cal.App.Unpub. LEXIS 1414 [emphasis provided].

Although some cases have found documentation of an historic resource insufficient to mitigate the demolition of the historic resource, those cases involved demolition of much larger and more historically significant properties than a single family home. *League for Protection of Oakland’s Architectural and Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896 [court determined that negative declaration proposing historical documentation was insufficient

to mitigate demolition of the first Montgomery Ward Department Store in California]; *Architectural Heritage Ass', v. County of Monterey* (2004) 122 Cal.App.4th 1095 [relying on *City of Oakland*, court found that negative declaration proposing historical documentation was insufficient to mitigate demolition of historic jail property]. Neither of these cases stand for the proposition that documentation of an historic resource *cannot ever* constitute adequate mitigation of a proposed demolition. Rather, these cases are limited to their particular facts, as any broader holding would contradict the express language of the CEQA Guidelines. Cal. Code Regs. § 15126.4(b)(2). Further, each of these cases were litigated in the context of a proposed mitigated negative declaration, and the courts in both cases only went so far as to determine that an EIR would be necessary prior to approval of demolition of those particular buildings. *League for Protection of Oakland's Architectural and Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 901-903; *Architectural Heritage Ass', v. County of Monterey* (2004) 122 Cal.App.4th 1095, 1119-1121.)

In contrast to these few cases, there are other examples of projects and cases that have successfully utilized documentation of an historical resource as mitigation for its demolition. In *Lincoln Place Tenants Assn. v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, a court recognized documentation of an historical resource prior to demolition as sufficient method of mitigation, and held that the public agency which required the documentation could not later ignore it's own conditions:

The EIR concluded, "Lincoln Place has some historical and architectural value, but this value is not of a level of particular historical significance[.]" However, because "the architectural history of multi-family development in the Post World War II era has not been the subject of extensive academic study," the report recommended that prior to demolishing the present structures photographs should be taken of typical interiors and exteriors and drawings made of each type of unit and of the overall site plan. In addition, prior to their demolition the structures at Lincoln Place were to be offered for sale and removal to a new location.

...

The department stated that with the mitigation measures discussed above the historical impact of demolition would be "less than significant."

Lincoln Place Tenants Assn. v. City of Los Angeles (2005) 130 Cal.App.4th 1491, 1498-1499.

Similarly, in *San Conservancy v. City of Oxnard* (2011) Cal.App.Unpub. LEXIS 1966, an EIR¹ that proposed documentation efforts as adequate mitigation of demolition of historic ranch houses was approved and upheld when challenged in court. In that case, the mitigation measures included: (1) preparation of a documentation report consisting of archival quality photographs; measured drawings of the significant buildings and structures; and a historic resources report; (2) incorporation of significant features of the historic properties into the design of the new project, including freestanding and attached signs; (3) creation of an onsite interpretive display describing the property's significant historic themes; (4) production of a video-based oral history

¹ The preparation of an EIR in these cases does not mean an EIR is necessary to define mitigation. If adequate mitigation is defined early and proposed as part of a project application or made a condition of project approval, a Mitigated Negative Declaration is actually the legally appropriate CEQA document (CEQA Guidelines § 15070.b).

project regarding the site; and (5) production of two television programs of at least 30 minutes in length to be broadcast on local public access. *San Conservancy v. City of Oxnard* (2011) Cal.App.Unpub. LEXIS 1966.

There have also been some other recent high profile instances in which documentation has been used to mitigate the adverse effect of demolition of significant historical structures. In 1999, a Julia Morgan designed residence in Woodside, California was allowed to be dismantled so that owner, Larry Ellison, could build a new personal residence on the site. The demolition was allowed as a result of the town's approval of a 1996 mitigated negative declaration in which Ellison agreed to document the house with photos and video, and to collect all existing photos of the house for donation to local historical organizations. Ellison further agreed to donate the house itself to a charitable organization that would relocate and restore the house. Town of Woodside Report to Planning Commission dated June 25, 1996, regarding 745 Mountain Home Road, Woodside California. When no charitable organization was ultimately able to take on the house relocation project, the house was allowed to be demolished, and its historic features stored for future use. Town of Woodside Report to Planning Commission dated June 25, 1996, regarding 745 Mountain Home Road, Woodside California; Almanac News Article WOODSIDE: Julia Morgan house may be dismantled and rebuilt in town, dated January 20, 1999.

In February of 2011, after a protracted court battle, Steve Job's was allowed to demolish the 1920s Spanish Revival Jackling House designed by George Washington Smith, also in Woodside, California. Although the project was initially halted in *Uphold our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, Jobs' later permit applications were eventually approved in 2009 on condition of preservation, in part through documentation. As a condition of demolition, Jobs agreed to a materials inventory, photo-documentations, and solicitation of remnants of the residence prior to demolition. Town of Woodside Report to Town Council dated July 14, 2009, regarding Approval of Agreement with Respect to Demolition of Historic Residence. The court ultimately upheld the approval of the demolition permit. San Mateo Superior Court Docket in Case No. CIV444270, specifically entries on April 26, 2010 and April 30, 2010.

The Julia Morgan House and the Jackling House illustrate the propriety and effectiveness of documentation as mitigation for the impact of demolition of an historic structure. In both of those instances, the relevant public agency was dealing with a high profile historic property. In both cases, the mitigation efforts relied heavily on documentation through photographic, written, and video recording. In the case of the Julia Morgan House, the mitigated negative declaration expressly provided for failure of the house relocation efforts, which ultimately came to pass. According to the terms of the mitigated negative declaration, Ellison was nevertheless allowed to proceed with demolition, with the historic documentation being the most significant remaining item of mitigation.

III. CONCLUSION

The statutory provisions, regulatory guidance, and case law evidence that documentation of historic resources as a means of mitigating the effects of demolition is not only possible, but expressly authorized and commonly done. Although there may be certain factual circumstances

in which documentation may not, in and of itself, be an adequate mitigation, such circumstances are the exception rather than the rule and tend to involve larger historical structures with substantial historical significance. Even in those cases, the courts have simply required preparation of an EIR rather than a mitigated negative declaration. The courts have not rejected mitigation for demolition outright. Further, even within the context of mitigated negative declarations, more recent, high profile cases show a pattern of documentation being upheld as sufficient mitigation for the impact of demolition of an historic resource.