

RESOLUTION NUMBER R-308449

DATE OF FINAL PASSAGE SEP 23 2013

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO GRANTING AN APPEAL OF THE
ENVIRONMENTAL DETERMINATION FOR THE BERNATE
TICINO RESIDENCE LOCATED AT 1328 VIRGINIA WAY
(PROJECT NO. 293008).

WHEREAS, on December 22, 2011, an application for a demolition permit was submitted with the City of San Diego to demolish the building located at 1328 Virginia Way (Windemere Cottage); and

WHEREAS, the demolition permit was issued and Windemere Cottage was subsequently demolished; and

WHEREAS, on August 22, 2012, Frank and Nina Bottini (Applicants) filed an application with the City of San Diego for a Coastal Development Permit (CDP) to construct a new single-family residence on a vacant lot (Bernate Ticino Residence Project); and

WHEREAS, on January 11, 2013, the Environmental Analysis Section of the Development Services Department made the determination that the Bernate Ticino Residence Project was exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA State Guideline Section § 15303, and a Notice of Right to Appeal was prepared and posted pursuant to SDMC Section § 112.0310; and

WHEREAS, on February 4, 2013 two appeals were filed on this environmental determination (Appeal); and

WHEREAS, the issues on Appeal were heard, and evidence in the form of testimony and other evidence was accepted into the record by the City Council on September 24, 2013 after being continued on June 3, 2013 and June 24, 2013; and

WHEREAS, under Charter Section § 280(a)(2) this resolution is not subject to veto by the Mayor because this matter required the City Council to act as a quasi-judicial body, a public hearing was required by law implicating due process rights of individuals affected by the decision, and the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; NOW, THEREFORE,

BE IT RESOLVED, that the appeal of La Jolla Historical Society and the appeal of the La Jolla Community Planning Association are granted based on the fact that there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances and may cause a substantial adverse change in the significance of a historic resource; to remand this project to staff to re-evaluate the environmental determination with the baseline for the project set with Windemere Cottage on the site at the time of the historical survey dated January 2010, as modified by the Applicant's addendum, and staff field visit and staff report to the Historical Resources Board in August of 2011; to direct staff to prepare the appropriate environmental document given there is substantial evidence in the record that this project will have a significant impact on historic resources, considering the historic nature of the 1894 Windemere Cottage previously located on this site along with the following findings:

1) Failure to proceed in the manner required by law. The Development Services Department's issuance of a demolition permit for the Windemere Cottage while it was being considered for listing on the California Register of Historical Resources with no CEQA review was a failure to proceed in the manner required by law.

Based on evidence in the record and the testimony before us today; it is clear that the current application for a coastal development permit for a single-family residence was the reason

for the demolition of Windemere Cottage. Given the demolition permit issued for Windemere Cottage was part of this larger project, that demolition should be included in the environmental analysis of the Bernate Ticino Project. Failure to consider the Windemere Cottage in the project description constitutes failure to follow CEQA;


2) *The environmental determination relies on improper baseline conditions. The proper baseline conditions are set at the time the leaded glass diamond-paned windows were removed from Windemere Cottage in May 2011.* CEQA Guidelines require that environmental review must occur as early as possible in the process. The baseline against which to compare the project must be set prior to project commencement. The project applicant improperly segmented the project by removing significant architectural features of Windemere Cottage prior to requesting a permit for the demolition of Windemere Cottage. This piecemeal dismantling of the Cottage was part of the larger project;

3) *The environmental determination fails to consider the “whole of the action” including the demolition of “Windemere Cottage” in order to allow construction of the proposed single-family residence.* This improper segmentation of the project occurred because the Development Services Department ignored that the structure was being considered for listing on the California Register of Historic Resources. This decision, combined with a misrepresentation of the project perpetrated by the applicant, does not excuse full compliance with CEQA. CEQA review must be completed on the whole of the action;

4) *There is substantial evidence to support a fair argument that the demolition of Windemere Cottage and the construction of the Bernate Ticino Residence may have a significant impact on historic resources.* The Legacy 106 Historical Nomination of Windemere, the La Jolla Historical Society Nomination of Windemere, the letter from the State Office of Historical Preservation and the testimony before us today have provided substantial evidence the demolition of Windemere Cottage may have a significant impact on historical resources. Therefore, this project is not categorically exempt from an environmental analysis and that analysis must be performed; with direction to staff to expedite the review.

BE IT FURTHER RESOLVED, that, based on the whole record before it, the City Council of the City of San Diego grants the Appeal, sets aside the environmental determination, remands the matter to staff for appropriate actions and directs staff to expedite the review.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 

Corrine L. Neuffer
Deputy City Attorney

CLN:dkr
9/25/2013
Or.Dept:DSD
Doc. No.: 641593_2

Passed by the Council of The City of San Diego on SEP 23 2013, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage SEP 23 2013.

(Please note: When a resolution is approved by the Council President as interim Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY: TODD GLORIA, COUNCIL PRESIDENT
as interim Mayor of The City of San Diego, California.

(Seal) ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By *Mary Gomez*, Deputy

Office of the City Clerk, San Diego, California
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