

#2026
10/7

RESOLUTION NUMBER R- 312685

DATE OF FINAL PASSAGE OCT 07 2019

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO DENYING THE APPEALS AND APPROVING ENVIRONMENTAL DETERMINATION THAT THE PROJECT IS EXEMPT FROM CALIFORNIA ENVIRONMENTAL ACT (CEQA) PURSUANT TO GUIDELINES SECTION 15303 (NEW CONSTRUCTION OR CONVERSION OF SMALL STRUCTURES) FOR THE BERNATE TICINO RESIDENCE – PROJECT NO. 293008.

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

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

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

WHEREAS, the Environmental Analysis Section of the Development Services Department made the determination that the 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 San Diego Municipal Code section 112.0310; and

WHEREAS, two appeals were filed by the La Jolla Historical Society and the La Jolla Community Planning Association on the environmental determination (Appeals); and

WHEREAS, at the hearing on the Appeals, the City Council (1) granted the Appeals based on the fact that there was a reasonable possibility that the activity would 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; (2) remanded the Project to staff to re-evaluate the environmental determination with the baseline for the Project set with the 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; and (3) directed staff to prepare the appropriate environmental document given there was substantial evidence in the record that the Project would have a significant impact on historical resources, considering the historic nature of the Windemere Cottage previously located on the site along with the findings listed in Resolution R-308449; and

WHEREAS, the Applicants filed a petition for writ of mandate with the San Diego Superior Court in Case No. 37-2013-000075491, to set aside the City Council's determination on the Appeals; and

WHEREAS, the trial court granted the Applicants' petition for writ of mandate and determined that the City improperly included the previously demolished Windemere Cottage as part of the Project baseline under CEQA; and

WHEREAS, the trial court issued a peremptory writ of mandate and ordered the City to set aside its adoption of Resolution R-308449, which granted the Appeals, and reconsider the Appeals in conformance with the trial court opinion granting the petition for writ of mandamus; and

WHEREAS, the City appealed the trial court decision and the Court of Appeal, in *Bottini v. City of San Diego*, 27 Cal. App. 5th 281 (2018), affirmed the trial court's judgment insofar as it granted the petition for a peremptory writ of mandamus; and


WHEREAS, in accordance with the Court of Appeal decision and the December 23, 2016, San Diego Superior Court Order for Case No. 37-2013-0075491, on October 7, 2019, the City Council vacated and set aside the September 23, 2013 City Council determination, as set forth in Resolution R-308449, granting the Appeals and reconsidered the Appeals; 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, by the City Council of the City of San Diego, that the Appeals of Environmental Determination for the Bernate Ticino Residence are denied and the Environmental Determination is exempt from the California Environmental Quality Act (CEQA) pursuant to Guidelines Section 15303 (New Construction or Conversion of Small Structures).

APPROVED: MARA W. ELLIOTT, City Attorney

By



Corrine L. Neuffer
Deputy City Attorney

CLN:als
10/11/2019
Or.Dept:DSD
Doc. No.: 2196871

Passed by the Council of The City of San Diego on OCT 07 2019, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage OCT 07 2019.

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

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

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

By *City Clerk*, Deputy

Office of the City Clerk, San Diego, California

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