

**Office of
The City Attorney
City of San Diego**

MEMORANDUM

DATE: November 14, 2007

TO: Chairman Schultz and Members of the Planning Commission

FROM: City Attorney

SUBJECT: Kensington Terrace; PTS No. 105244

Introduction

The above-referenced project was docketed on November 8, 2007, for hearing on the application for a Planned Development Permit and Vesting Tentative Map, as well as certification of a Mitigated Negative Declaration [MND]. At that time, the City Attorney's Office requested a continuance in order to give the MND further legal analysis. The request was granted, and as is discussed more fully below, it is the opinion of the City Attorney that the Planning Commission should direct an Environmental Impact Report be prepared for this project.

Facts

The project proposes to demolish, among others, an existing Craftsman-style single-family dwelling located at 4166 Adams Avenue. The initial study found "the structure was identified as a contributor to a potential Kensington Historic District. While the structure could not be designated as a contributor because the Kensington Historic District has not been established, the house could rise to a level of individual significance."

The Mid-City Communities Plan [Plan] identifies the Kensington & Talmadge Historic District in Kensington as a district eligible for historic designation. Furthermore, the Plan expresses a vision for Mid-City communities "where prehistoric and historic resources are celebrated, preserved, and enhanced." *San Diego Mid-City Communities Plan*, p. 49, August 1998.

Analysis

CEQA requires a lead agency to prepare an EIR "whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact." *League for Protection of Oakland's Architectural and Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 904 (citations omitted). Pub. Res. Code Sec. 21060.5 includes historic conditions within the definition of environment. In addition, "a project that may cause substantial adverse change in the significance of an historical resource is a project that may have

a significant effect on the environment.” Pub. Res. Code Sec. 21084.1. Further, “[a] project will normally have a significant effect on the environment if it will . . . disrupt or adversely affect . . . a property of historic or cultural significance to a community or ethnic social group.” *Id.* at 905-06.

In *Protection of Oakland’s Architecture*, the Court found that a dilapidated industrial building qualified as a historical resource under CEQA, and therefore a project scheduling its demolition would have a significant environmental effect. Such a result required the City of Oakland to prepare an EIR, instead of the MND that was the subject matter of the case. Like the historical structure in *Protection of Oakland’s Architecture*, the Adams Avenue Craftsman is not listed in, or determined to be eligible for listing in, the California Register of Historical Resources; neither is it included in a local register of historical resources. Nevertheless, the Court found these more formal designations unnecessary to a finding of significance. *Id.* at 906.

In the event the entire record supports a fair argument that a building might be a historical resource, CEQA mandates the lead agency prepare an EIR. Here, a fair argument certainly exists. The Historic Resources Board determined the Adams Avenue Craftsman is a contributor to the “unformed” Kensington Historic District. The San Diego Municipal Code recognizes historical districts regardless of formal designation, thus, the lack of a formal designation in this case is irrelevant. SDMC 113.0103. As in *Protection of Oakland’s Architecture*, the Community Plan identifies Kensington as a potential historic district. This evidence presents a fair argument that destruction of the Adams Avenue Craftsman would significantly impact the environment. Thus, it is the recommendation of the City Attorney’s Office that an EIR be prepared in lieu of the existing MND.

Conclusion

In conclusion, the City Attorney’s Office respectfully advises that the Planning Commission direct City staff to prepare an EIR for the above-referenced project.

MICHAEL J. AGUIRRE, City Attorney

By: _____
Andrea Contreras Dixon
Deputy City Attorney

ACD:ms

cc: Karen Heumann, Assistant City Attorney
Shirley Edwards, Chief Deputy City Attorney
Alex Sachs, Deputy City Attorney
Mike Westlake, Program Manager
Anne Jarque, Environmental Analyst
John Fisher, Project Manager