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June 9, 2017

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By Mail
Matthew Weintraub
City of Oakland
Planning Department
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

By Email
MWeintraub@oaklandnet.com

**Re: June 12, 2017, Meeting, Item 6.2, 41 Tunnel Road; Claremont Hotel - Club
Expansion and Residential Project**

Dear Members of the Board and Mr. Weintraub:

This office represents the Claremont Preservation Coalition. I write on its behalf to object to the Board approving, ratifying, or otherwise condoning the Draft Historic Resources Evaluation prepared by Carey & Co., Inc, for this Project (HRE) or the Supplemental Historic Resources Evaluation prepared by LSA Associates, Inc. for this Project (Supplemental HRE).

Procedural Objections

1. The HRE, HRE Supplement, and May 8, 2017, Staff Report collectively attempt to constrain the Project's future Environmental Impact Report's (EIR) assessment of how the proposed Project will affect the historic Claremont Hotel and grounds. Consequently, they represent an improper attempt to segment environmental review, to prematurely certify a portion of EIR, to have this Board certify a portion of EIR when this Board lacks authority to do so, and to prematurely make findings regarding the significance of the Project's impacts on historic resources.
2. Staff's slide presentation at the Board's May 8, 2017, meeting makes a number of inaccurate and misleading assertions regarding the HRE and Supplemental HRE as well as the nature of this proceeding. The slide presentation asserts that the HRE merely provides "updated baseline information for CEQA environmental review;" "does not evaluate the potential impacts of the proposed project;" and does "not propose any changes to the existing historic property evaluations or designations." (May 8 Presentation, slides 2, 3.) This is inaccurate and misleading because the

HRE does not merely describe the physical features of the Project setting (i.e., its “baseline”); it also downgrades the evaluation of the historic resource value of portions of the historic site, which is an inseparable part of determining the significance of Project impacts under CEQA. In addition, the Supplemental HRE proposes a new historic district that would exclude portions of the existing historic site, which clearly changes the existing historic property evaluations or designations.

3. The “baseline” (also known as the “environmental setting”) is a key portion of any EIR, because CEQA requires assessing the impact of the project on the existing “affected environment.” But both HRE reports go well beyond mere descriptions of the physical features of the Project setting. They both find that two portions of the Project site currently considered eligible for listing in the National Register and listed in the California Register (i.e., the newly renamed “Formal Gardens” and “Auto Court & Driveway”) have lost “integrity” such that they no longer qualify for these listings. As a result, they both make judgments about the value of the environmental resources that may be harmed by the Project. In doing so, they move from merely establishing a baseline to evaluating Project impacts.

4. In addition, the May 8, 2017, staff report requests that this Board approve the “validity” of the “methodology, findings and conclusions contained in the draft HRE and the Supplemental Memorandum, as considered separately and together” (staff report, pp. 1-2), and to “Provide comments on the accuracy, completeness, and findings of the draft HRE and the draft Supplemental Memorandum, as considered separately and together, prior to finalization” (staff report, p. 10). As noted, these reports contain analyses that must be presented in the Project EIR for purposes of assessing the significance of the Project’s impacts on historic resources.

5. This Board cannot “approve” or otherwise ratify the reports’ “methodology, findings and conclusions” at this time because doing so would exclude the public and agency from effective review and comment on the EIR’s historic resource impact assessment as it pertains to certain areas of the property and certain components of the Project. By downgrading the “integrity” of the Formal Gardens and Auto Court & Driveway areas, the HRE and Supplemental HRE set the stage for the EIR to conclude that Project impacts on these areas are less than significant because there is nothing “historical” about these areas to harm. For example, because these reports conclude the Auto Court & Driveway area is no longer a historic resource worthy of protection, Board approval of the reports would pre-judge and constrain the EIR’s assessment of whether replacing the Auto Court & Driveway with housing represents a significant impact.

6. If such a finding is to be made, it must be made according to the process established by CEQA. This process includes making the finding in a draft EIR issued for public and agency comment, issuing a Final EIR with responses to comments, certification of the Final EIR by the legislative body with authority to do so, and making findings required by CEQA section 21081 by the legislative body with authority to do so. Since none of that has happened yet, the Board cannot “approve” or otherwise ratify these reports’ “methodology, findings and conclusions.” Doing so would violate CEQA by unlawfully segmenting the City’s environmental review of the Project and because such action is beyond this Board’s authority.

Substantive Objections

7. The HRE, HRE Supplement, and May 8, 2017, Staff Report use the concept of “integrity” as a proxy for “historic resource value.” In assessing the purported “baseline” integrity of the “historic property” (i.e., the area that is eligible for listing on the NRHP, is listed on the CRHP, and is landmarked or zoned S-4 by the City), these reports divide the property into separate pieces and analyze the “integrity” of each piece in isolation. In addition, the reports ignore the most important component of the site’s integrity, which is its openness and lack of competing buildings. These are fundamental errors.
8. The HRE reports’ “divide and conquer” strategy is deeply inconsistent with CEQA. CEQA requires assessing impacts of the “whole of the project” and “forbids ‘piecemeal’ review of the significant environmental impacts of a project.” (*Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1222 [“Agencies cannot allow “environmental considerations [to] become submerged by chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences”].) Under CEQA, “the concept of cumulative effect ... assesses cumulative damage as a whole greater than the sum of its parts.” (*Environmental Protection Information Center, Inc. v. Johnson* (1985) 170 Cal.App.3d 604, 625.)
9. Here, the HRE reports piecemeal their analysis of the resource value of the environmental setting, and by doing so, set the stage for piecemeal analysis of the Project’s impacts on the entire affected environment.¹ This error is particularly acute with respect to the effect of the proposed condominium building on the historic property. The condominium building is proposed in the Auto Court & Driveway area. Not coincidentally, the HRE report divides the Auto Court & Driveway area from the remainder of the historic property for purposes of downgrading its current historic resource value “integrity.” Then, in the *coup de grace*, the Supplemental HRE entirely excludes the Auto Court & Driveway area from its proposed historic district!
10. The HRE reports’ methodology and conclusions are also directly contrary to the legislative purpose of Ordinance No. 12438. This ordinance specifies that the key historic resource value of the historic property’s grounds, including the Auto Court & Driveway, is its openness and the absence of competing buildings. The ordinance requires that applications for design review shall be reviewed to: “(a) protect sight lines of the hotel building from the immediate downhill streets and from distant public views of the building from San Francisco and Oakland; and (b) provide an appropriate sense of open space around the hotel building” (underline added).
11. The HRE report discloses that “integrity” has three aspects, namely, “setting, association and

¹CEQA Guideline § 15360 [“‘Environment’ means the physical conditions which exist within the area which will be affected by a proposed project”].)

feeling.” Similarly, the Supplemental HRE report discloses that National Register guidance provides that the boundaries of historic districts “should include surrounding land that contributes to the significance of the resources by functioning as the setting” because “setting is an integral part of the eligible property.” (Supplemental HRE, p. 4.) The National Register guidance on boundaries then admonishes: “do not limit the property to the footprint of a building, but include its yard or grounds.” (Supplemental HRE, p. 4.)

12. Remarkably, both the HRE and Supplemental HRE then simply ignore the role that the Auto Court & Driveway plays (i.e., providing open space and the absence of competing building) in the historic property’s setting. As noted above, openness and absence of competing buildings are the key features of the “setting” called out for protection by Ordinance No. 12438. Instead, both HRE reports base their purported downgrade of the Auto Court & Driveway area’s historic resource integrity on the replacement of vegetation with paving. This is a change, no doubt, but the most important feature—openness—has not changed.

13. Moreover, the various city, state, and federal recognitions of the “historic property” as having high resource value are not based on an analytic approach remotely resembling the HRE reports’ “divide and conquer” strategy. Instead, governmental recognition is based on considering the “historic property” as a whole. To the extent this recognition involved distinguishing different areas of the property from each other, that was done when the boundary of the “historic property” was drawn as a subset of the entire common ownership, and again when Ordinance No. 12438 landmarked the hotel building and adopted design review requirements for the historic property’s grounds. But at no time were any of these government decisions based on subdividing the “historic property” or segregating the Auto Court & Driveway for purposes of analyzing integrity or resource value.

14. The HRE states that “Prior to the determination by the Keeper of the NRHP, OHP commented to the Keeper that OHP did not consider the Auto Court and Drive eligible” (HRE, p. 4) and refers to an “OHP memo” on this point (HRE, p. 1). Similarly, the Supplemental HRE asserts that, based on the fact that “much of the grounds have been altered,” the California OHP recommended that the National Park Service exclude the Auto Court and Driveway area. (Supplemental HRE, p. 2.) Staff suggests that the Keeper somehow “overlooked” this comment and recommendation, but presents no evidence to support this assertion.

15. On June 6, 2017, I sent an email to Mr. Weintraub asking for a copy of the alleged California OHP “memo” that purportedly made this recommendation. On June 8, 2017, Mr Weintraub sent me an email attaching a one page document dated July 12, 2002, entitled “Claremont Hotel, Oakland, Berkeley, Alameda County, Staff Evaluation.” These two emails and the attached Staff Evaluation are attached to this letter as Exhibit 1.

16. Contrary to the representations in the HRE and the Supplemental HRE, this “Staff Evaluation” does not recommend that the National Park Service exclude the Auto Court and Driveway area or any other area from the nomination to the National Register. Instead, this Staff

Evaluation states:

“The extensive grounds were originally landscaped but today are developed with parking, tennis courts, clubhouse, swimming pools, and a number of small buildings .. Two small patches of landscaping in front of the hotel and a eucalyptus grove to the rear remain. Although much of the grounds have been altered, the registration form proposes to nominate the full 19.4 acres under hotel ownership ...

Staff recommends finding the Claremont Hotel eligible under Criterion A at the local level of significance and under Criterion C at the state level of significance for either listing or determination of eligibility, depending on whether a notarized statement is submitted.”

(Exhibit 1.)

17. The Coalition requests that this Board insist on staff providing a satisfactory explanation for the discrepancy between the one page memorandum that Mr. Weintraub sent to me and the characterization of the California OHP memo in the HRE, Supplemental HRE, and staff presentation at the May 8, 2017, meeting.

18. Even if there was such a recommendation from the California OHP, the Keeper determined the entire historic property, including the Auto Court and Driveway area, is eligible for listing on the National Register. The National Register nomination states:

“The Claremont Hotel was designed to be, and in essence still is, a garden hotel. Its significance and integrity depend greatly on the spacious grounds that complement the main building. The grounds and the main building should not be artificially separated. The property as a whole should be perceived and recognized as an entity. Although this application’s text and sketch map technically identify as “contributing” resources only some of the property’s elements, even elements not so labeled are in some important ways compatible with—and/or in a sense even contributory to the property’s overall concept. Accordingly, the boundary takes in—with one exception—all Oakland and Berkeley parcels now owned by KSL Claremont Resort, Inc. which are contiguous or are separated only by a segment of the narrow right-of-way called The Short Cut.”

(HRE, Appendix D, Section 10, p. 40 [National Register Nomination] (emphasis added).) This is what the Keeper certified as eligible for listing on the NRHP. And the Keeper’s determination resulted in the entire historic property, including the Auto Court & Drive area, being listed on the California Register. Moreover, the City of Oakland obviously considered the entire historic property, including the Auto Court and Driveway area, to be worthy of enhanced protection under the planning code; hence its adoption of Ordinance No. 12438. These facts cannot be so easily swept under the rug.

19. While the HRE's transparently result-driven analysis might be expected from the developer's retained consultant, the Claremont Preservation Coalition finds it particularly troubling that the City's retained consultant and planning staff have uncritically adopted the same position.

Conclusion

20. In sum, the HREs represent an improper strategy to re-define and minimize significant features of the Project setting— to unjustifiably substitute new, far more restrictive boundaries to the existing protected areas of the Claremont property which were—and remain—listed as a California Historical Resource worthy of protection and respect. Approving the HRE's and Supplemental HRE's findings, methods and conclusions would seriously undermine the statutory procedures established under CEQA for the purpose of assuring a full evaluation of potential impacts of the Project on unique and invaluable Historical Resources. Furthermore, the Supplemental HRE proposal that a new Historic District be created, excluding portions of the existing designated site, proposes to radically alter and adversely affect the existing Historic Resource evaluations and designations.

21. Therefore, the Claremont Preservation Coalition requests that you reject the HRE's and Supplemental HRE's findings, methods and conclusions.

Thank you for your attention to this matter.

Very Truly Yours,

A handwritten signature in blue ink that reads "Tom Lippe". The signature is written in a cursive, slightly slanted style.

Thomas N. Lippe

List of Exhibits

1. June 6, 2017, email from Tom Lippe to Matthew Weintraub; June 8, 2017, email from Matthew Weintraub to Tom Lippe; one page attachment dated July 12, 2002, entitled "Claremont Hotel, Oakland, Berkeley, Alameda County, Staff Evaluation."

Subject: RE: Claremont project

From: "Weintraub, Matthew" <MWeintraub@oaklandnet.com>

Date: 6/8/2017 5:09 PM

To: Tom Lippe <lippelaw@sonic.net>

CC: "Wald, Mark" <MWald@oaklandcityattorney.org>, "Merkamp, Robert" <RMerkamp@oaklandnet.com>

Hello,

Please see the attached document.

Thank you,
Matt

Matthew Weintraub, Planner III, Historic Preservation | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 2214 | Oakland, CA 94612 | Phone: [\(510\) 238-6983](tel:5102386983) | Fax: [\(510\) 238-4730](tel:5102384730) | Email: mweintraub@oaklandnet.com | Website: www.oaklandnet.com/planning

From: Tom Lippe [mailto:lippelaw@sonic.net]
Sent: Tuesday, June 6, 2017 3:02 PM
To: Weintraub, Matthew <MWeintraub@oaklandnet.com>
Subject: Re: Claremont project

Mr. Weintraub:

The Draft HRE attached to the May 8 LPAB meeting staff report for this project, at page 4, states that "Prior to the determination by the Keeper of the NRHP, OHP commented to the Keeper that OHP did not consider the Auto Court and Drive eligible" and refers to an "OHP memo" on this point.

Can you send me a copy of the referenced OHP memo?

Thank you.

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CONFIDENTIALITY NOTE: This and any accompanying pages contain information from Law Office

—Attachments:—

Claremont Hotel - Staff Evaluation.pdf

75.1 KB

EXHIBIT 1

**Claremont Hotel
Oakland, Berkeley, Alameda County
Staff Evaluation**

The Claremont Hotel is a very large, rambling, half-timbered and stucco, wood frame building with several towers, numerous gable roofs and gable dormers and rock siding on some of the lower floors. The building was designed in 1906, but because of delays did not open until 1915. The building's exterior has been altered in various ways, most notably by color change, enclosure of the original verandas, and by additions on the south end. Other changes include replacing most of the windows and the two original porte-cocheres, and adding an elevator tower on the front elevation. Interiors have been extensively remodeled. The hotel's original powerhouse remains intact. The hotel sits high in the Oakland/Berkeley hills with a eucalyptus grove backdrop and panoramic views of San Francisco and the bay.

The extensive grounds were originally landscaped but today are developed with parking, tennis courts, clubhouse, swimming pools, and a number of small buildings. Two small patches of landscaping in front of the hotel and a eucalyptus grove to the rear remain. Although much of the grounds have been altered, the registration form proposes to nominate the full 19.4 acres under hotel ownership.

The Claremont Hotel is being nominated at the local level under Criterion A in the areas of community planning, recreation, and social history for the important role the building played in the development of the area and as a major center for recreation and social activities. The property is also being nominated at the state level under Criterion C in the area of architecture as an example of a grand American hotel in California, as seen in its great size and theatrical extravagance, and as a major work of architect Charles William Dickey.

The nomination applicant is Berkeley/Oakland Neighbors of the Claremont. The owner is KSL Claremont Resort, Inc. On July 12, 2002, Vice-President and General Manager Todd Shalan stated in a phone conversation the hotel opposed the listing and would submit a notarized statement to that effect.

Staff recommends finding the Claremont Hotel eligible under Criterion A at the local level of significance and under Criterion C at the state level of significance for either listing or determination of eligibility, depending on whether a notarized statement is submitted.

Cynthia Howse
Historian II
July 11, 2002