

Communication from Public

Name: Mitzi March Mogul

Date Submitted: 01/26/2020 02:21 PM

Council File No: 19-1603

Comments for Public Posting: Resubmission on the impacts of the project at 806 W Adams with curriculum vitae attached. There are many types of impacts, none of which have been evaluated with regard to this project. It is imperative that a full CEQA review be done to address the impacts on the surrounding historic resources and make the necessary changes to the proposed project so that it is compatible with its neighbors. It is my hope that a proper CEQA evaluation be done. Only then can the project proceed in a manner appropriate to its location.

MITZI MARCH MOGUL
HISTORIC PRESERVATION CONSULTANT
1725 Wellington Road Los Angeles, CA 90019 323/734-9980 Mogulink@gmail.com

January 15, 2020

Re: 806 West Adams, ZA-2018-2453-CU-DB-SPR, ENV-2018-2454-CE
Appeal of the CE to City Council

Via email and by hand

Los Angeles City Council and Planning & Land Use Management Committee
c/o City Clerk Holly L. Wolcott, CityClerk@lacity.org, www.LACouncilComment.com
City Hall, Room 395
200 N. Spring Street
Los Angeles, CA 90012

Re: CF 19-1603
Case No. ZA-2018-2463-CU-DB-SPR-1A
Environmental No. ENV-2018-2454-CE, CD9

Honorable Members of the City Council PLUM Committee
Marqueece Harris-Dawson, Chair
Bob Blumenfield, Vice-Chair
Members Gilbert A. Cedillo, Curren D. Price Jr., John S. Lee

Dear Councilmembers:

I have been asked by the North University Park Community Association (NUPCA) and the Adams Severance Coalition (ASC) to address the issues regarding the project located at 806 W. Adams Boulevard and 2610 Severance Street. I am a Historic Preservation Consultant with more than 30 years in practice in Los Angeles.

The project has apparently been erroneously approved without understanding the impacts the project will have on the many historic resources surrounding the project location.

Two buildings have already been demolished in anticipation of approval of the project; one building remains, as well as a parking lot, both of which are part of the project site. Although the property is not located within an HPOZ and neither the remaining building or the parking lot are designated historic in any way, does not minimize the impact of the project as currently proposed on adjacent historic properties.

In the CPC Decision Site Plan Review Findings, #7, Pages 5-6 it is stated:
The project is not within a Historic Preservation Overlay Zone. The subject property is comprised of four lots at 758 – 832 West Adams Boulevard and 2610 South Severance Street. The project site is currently occupied by a two-story plaster building used by the University of Southern California as an office, childcare, and classroom facility, as well as a surface parking lot and ornamental trees and landscaping. The project site previously contained a separate two-story office, childcare, and classroom facility that was demolished in

2017 as a separate action that is not part of the currently proposed project. The existing building was constructed in 1971. None of the existing structures on the project site are designated as historic cultural monuments and the project site is not located within a Historic Preservation Overlay Zone.

While the above description of the actual site is accurate, it fails to mention the proximity of a number of significant historic properties within close range and which would be substantially damaged in terms of their context, ambiance, environment (ie shade/shadow) and in some cases, quality of life.

When a project directly involves a listed historic property, certain regulations apply because of direct impact. In this case, even though the parcels for construction do not involve historic resources, those parcels are located in an area that is rich in historic resources. The secondary impacts to those resources have been completely ignored in examining the project. The City documents as well as the Historic Resources Report do not even acknowledge that these other historic properties exist. The City only looked at the parcels intended for construction, however they do not exist in a vacuum. A 4-story contemporary building looming over a 2-story historic building is a major impact. Issues of traffic, noise, and other human-induced actions and effects will alter the quality of life for those occupying the historic structures as well as the way that others will experience the historic resources.

One of the reasons that we (Society) have developed mechanisms for preserving, restoring, and maintaining properties which have been determined to have historic value is that we recognize that these properties enhance our built environment and contribute to our understanding of history and our appreciation of outstanding design. Part of protecting them is controlling the nearby environment, be it natural or man-made. The point is not to prevent, only to control.

Ordinances and regulations have been instituted over the years without regard to whether or not they are in conflict with each other, producing only the “law of unintended consequences.” All indications are that both the City and the developer are taking advantage of this confusion in order to push the project through. For instance, stating that replacing a parking lot with a structure has no impact is wrong on its face: a parking lot is open space which affords views as well as minimizing encroachment. Clearly, there are impacts; whether they are significant cannot be determined without an acknowledgement and evaluation.

Page one of the Letter of Determination dated November 20, 2019 states:

...that based on the whole of the administrative record, the Project is exempt from CEQA pursuant to CEQA Guidelines, Section 15332, and there is no substantial evidence demonstrating that an exception to a categorical exemption pursuant to CEQA Guidelines, Section 15300.2 applies;

As stated previously, there is significant and substantial evidence that the project as currently proposed would negatively affect historic resources. Just because those resources are not located on the project site does not mean that they are not impacted. The above statement has clearly been made by someone not versed in the guiding principles of historic preservation or the procedures and criteria for evaluation.

Under Site Plan Review Findings, the CPC Decision, #10, Page 10, states:

The project includes outdoor residential amenity spaces at the podium and building roof levels. The podium-level amenity space would include landscaping, gathering areas, paseos, outdoor cooking areas, and an outdoor swimming pool. Building roofs contain additional private amenity spaces that would include landscaping and outdoor lounge and cooking areas. The revised

project locates accessible rooftop amenities away from the perimeter of the building to minimize impacts on neighboring properties.

Far from minimizing impacts on the surrounding neighborhood, this project would dramatically increase negative impacts. The balconies, rooftop decks, outdoor lounge and cooking (barbeque) area, and outdoor swimming pool represent cumulative impacts of noise and unwanted odors. Locating these areas away from the perimeter of the building will not contain sound or odor; sound reverberates and carries, and odor rises and drifts through the air.

The same section further states:

The abundant landscaping will soften the appearance of the development, thus allowing the new design to blend in well with surrounding uses.

The comment about landscaping softening the building's appearance is a tacit admission that the building has a hard, unpleasant design and needs softening. Indeed, the design apparently does not blend in well with the surrounding area—it is attempting to use landscaping as a disguise.

The second driveway will be off of Severance Street where there will be one lane for vehicles to enter and another lane to exit.

Funneling all of that traffic on Severance Street would be disastrous for the residents of Severance Street, which is narrow and contains many historic structures. It is obvious that everyone has failed to observe current traffic patterns and anticipated traffic and brushed aside its cumulative impacts.

There is no question that there are secondary (also known as indirect) impacts of the project on adjacent and neighboring historic resources (which include the Kerkhoff Residence, Ezra Stimson House, Mount St. Mary's Doheny Campus/Chester Place Historic District, St. Vincent DePaul Church, Fraternity/Sorority Row, and many private residences on Severance and Scarff Streets).

It is not my intent to present arguments in order to prevent all development in that location, only to impress upon the City the need to fully assess the potential impacts on the community. As it stands, the decision seems to have been made without all the facts being examined and is therefore substandard. Regardless of whether or not it is the case, the appearance of the City favoring the developer is a slap in the face of the citizens.

There are many types of impacts, none of which have been evaluated with regard to this project. It is imperative that a full CEQA review be done to address the impacts on the surrounding historic resources and make the necessary changes to the proposed project so that it is compatible with its neighbors. It is my hope that a proper CEQA evaluation be done. Only then can the project proceed in a manner appropriate to its location.

Sincerely,

Mitzi March Mogul

Mitzi March Mogul

Cc Sherilyn Correa (sherilyn.correa@lacity.org) CD9, Luciralia Ibarra luciralia.ibarra@lacity.org CD8, Gerald Gubatan CD1 (gerald.gubatan@lacity.org), andrew.pennington@lacity.org CD3, Jean Frost (indiejean@att.net)
ATT: Curriculum Vitae

CURRICULUM VITAE

Mitzi March Mogul
(323) 734-9980

1725 Wellington Road
Los Angeles, CA 90019
Email:

Mogulink@gmail.com

RELEVANT EXPERIENCE:

- Continuing Historic Preservation Consultant
Advise on restoration, including paint, lighting, conservation techniques, CEQA regulations, tax credits, adaptive re-use, research, reports. Projects include Dominguez-Wilshire Building, Max Factor Building, Genesee Apartments, Mel's Drive-In, Hermosa Beach Community Center, Café Club Fais Do-Do, Desmond's Building, The Boat Recording Studio, Sonic Automotive,
Flower Drive Historic District, Versailles Apartments, Alvarado Terrace Park, Four Star Theater, Alexandria Hotel Addition; numerous private residences and Historic-Cultural Monument nominations and Mills Act submissions, including West Boulevard Bridge, Kite Coffee Shop, Heritage Square Museum, Alexandria Hotel Addition, Chateau Chaumont Apartments, numerous private residences, etc.
- 1997 Regional Arts Council Facilitator, Los Angeles Cultural Affairs Dept.
Responsible for promoting Councils, recruitment of Council members, reports on process, procedure, management, and recommendations, etc.
- 1991-1996 Writer, regular feature column, Collector Magazine
- 1991-1999 Preservation Editor, L.A. Architect
Monthly column and feature stories
- 1990-95 Regular contributor, Urban Explorer Magazine
- 1995-97 Historian, Tanzmann Associates
Project historian for the Community Redevelopment Agency Normandie 4321
Historic Preservation Education Program
- 1993 Prince of Wales' Foundation for Architecture
Organized the visit of Prince Charles on behalf of the Royal Household and represented the Prince of Wales' Institute and Foundation
- 1990-91 Consultant, Los Angeles Historic Theatre Foundation
Advise and coordinate membership campaign, fundraising and marketing
- 1991 Consultant, Maestro Foundation
Advised on development and membership
- 1989-90 Instructor, American College for Applied Arts
Historic Preservation: Designed curriculum and taught courses
- 1988--90 Director of Development, Heritage Square Museum

Responsible for pres/public relations; program development and implementation; fundraising and marketing; commercial use; staff management

1987-88 Administrator, West Adams Heritage Association
Handled all inquiries and correspondence; advised Board of Directors on Preservation Issues, assisted in coordinating activities of the organization; edited and produced monthly newsletter

1984-87 Administrative Assistant, Los Angeles Conservancy

Lectures and Tours

Wilshire Boulevard Centennial Walking Tour series
Northridge Arts Council (tour)
Friends of Hollyhock House (lecture)
Frank Lloyd Wright Home & Studio Foundation (lecture/tour)
Rudolph M. Schindler house tour
Berkeley School Alumni (lecture)
National Charity League (tour)
WPA Art & Architecture (tour/lecture) for Society of Architectural Historians
Workman Temple Homestead International Delegates to World Congress (tour)
International Interior Design Association (lecture)
Charles Rennie Mackintosh Society (lecture/tour)
American Institute of Architects (tour)
International Association of Assessing Officers, L.A. Chapter (lecture)
Istituto Italiano Di Cultura (panel discussion on Art Deco)
Windsor Square Hancock Park Historical Society ((lecture)
National Trust for Historic Preservation (tour, L.A. conference)
Los Angeles Pierce College (lecture)
Price Tower Museum (lecture)
Philbrook Museum, Tulsa OK (lecture)
AIA, Eastern Oklahoma chapter (lecture)
Cooper-Hewitt Museum (lecture)
Fresno Art Museum (lecture)
Palace of the Legion of Honor, San Francisco (lecture)
Museum of Latin American Art (lecture)
Antiquarian Society of California (lecture)
Curator, "Having a Wonderful Time: The History of Los Angeles Through Postcards"
Curator, "Well Done: The Story of Cookbooks and Commerce" exhibit at Heritage Square Museum
Curator, "Paving the Way" exhibit at Heritage Square Museum

Affiliations, Honors, Publications, Appearances:

Martin E. Weil Award for Historic Preservation
President, Los Angeles Historic Theatre Foundation
Vice-President, Board of Directors, Heritage Square Museum
President Emeritus, Art Deco Society of Los Angeles
Miracle Mile Design Guidelines Committee
Member, West Adams Heritage Association Preservation Committee
Chair, Lafayette Square Historic Preservation Overlay Zone Board
Co-chair, West Hollywood Centennial Celebration Committee, 1995

President, Board of Directors, Art Deco Society of Los Angeles, 1991-2006
Facilitator, International Coalition of Art Deco Societies, 1999-2001
Education Committee, Los Angeles Chamber Orchestra
Board of Directors, L.A. Architect
Board of Directors, West Hollywood Urban Conservation League
Historic Resources Committee, American Institute of Architects, L.A. Chapter
Board of Directors, Hollywood Media District BID
Member, Mayor's Advisory Committee on the Arts
Member, Victorian Society in America
Organizer, Fourth World Congress on Art Deco, Los Angeles (1995-97)
Featured Speaker, 2nd World Congress on Art Deco, Perth Australia (1993)
Featured Speaker, World Congress on Art Deco III, Brighton, England (1995)
Speaker, 5th World Congress on Art Deco, Napier, New Zealand (1999)
Key Speaker, Sixth World Congress on Art Deco, Tulsa Oklahoma (2001)
Graduate, with honors, Victorian Society Alumni Summer School, Glasgow, Scotland
"The Search for Art Deco in London," 1987 "Footnotes," Los Angeles Conservancy
Hollywood Be Thy Name, 1988, Art Deco Society of Los Angeles
Santa Monica's Art Deco Architecture, 1988, Art Deco Society of Los Angeles
West Hollywood's Period Revival Architecture, 1991, Art Deco Society of Los Angeles
The Bungalows, 1991 monograph
"The Craftsman Bungalow in Australia and New Zealand," 1995, American Bungalow Magazine
Your Neighborhood--A Very Special Place, 1996 monograph
Lafayette Square Historic Homes, 2000 monograph
Historic Hotels of America, KCET TV
"Sightings, w/ Mary Lou Gelbhard," Australian Broadcasting Commission
Doug McIntyre Show, KTZN Radio, Los Angeles
Larry Mantle Show, KPPC Radio, Los Angeles
"Life & Times," KCET TV
NBC Today Show
"Interior Motives," Discovery Channel
Visiting with Huell Howser, KCET TV
1997 Women in Leadership Award, West Hollywood Chamber of Commerce & West Hollywood Women's Advisory Council
Los Angeles Conservancy Preservation Award 2000 for Dominguez Wilshire Building
"Tulsa Times," OETA Public Television
"L.A. Commons" (Cable Access)
Helga Sitkin Show, American Radio Network
Chef Jaime Show, KABC Radio
Featured Speaker, 12th World Congress on Art Deco, Napier, Havana, Cuba (2013)
Featured Speaker, 15th World Congress on Art Deco, Buenos Aires, Argentina (2019)

Communication from Public

Name: West Adams Heritage Association

Date Submitted: 01/26/2020 06:14 PM

Council File No: 19-1603

Comments for Public Posting: On behalf of the West Adams Heritage Association, a non-profit organization in the area in which this development is sited, we make the following additional comments and recommendations. The negative factors include cumulative impacts, those that have previously occurred and adverse effects that are reasonably foreseeable, caused by the undertaking which may occur later in time, be farther removed in distance or be cumulative. Development patterns are being introduced by this project which will have a chilling effect on the ability for the historic neighborhood to have a sense of linkage and sense of place and how each of the historic sites interrelate and support each other. It appears clear that all of the efforts undertaken to render this development compatible, when the AZA found the project incompatible in his decision regarding site plan review, are mitigations to have a "band aid" solution to change what is essentially an incompatible development in the heart of historic University park. All of these behind the scenes types of mitigations only demonstrate that this project is not eligible for a Class 32 exemption. We provide for your understanding a previous CEQA court case where WAHA challenged the use of a categorical exemption. Again here a CE ought not to be used.

West Adams Heritage Association
v.
City of Los Angeles

Judge Luis A. Lavin
Hearing: March 4, 2014

Real Parties in Interest: *Paras Bhakta; 1342 W. Adams Holding, LL; and Does 1 to 10.*

Case No. BS145631

Tentative Decision on Motion to Quash and Dismiss: Denied

Tentative Decision on OSC re PI: Granted

Real Parties in Interest Paras Bhakta (“Bhakta”) and 1342 W. Adams Holding, LLC (“LLC”) move to quash service of the summons and dismiss the Petition for Peremptory Writ of Mandate brought under the California Environmental Quality Act (“CEQA”), Public Resources Code § 21000 et seq. Bhakta and LLC are referred to collectively as “RPIs.”

In turn, Petitioner West Adams Heritage Association (“Petitioner” or “WAHA”), a non-profit community based organization, moves to enjoin RPIs and their employees, contractors, agents, and any other persons or entities acting in concert with RPIs, from all construction and demolition activities at 1342 West Adams Boulevard, Los Angeles, California (the “subject property”) that change the physical environment of the William T. Bishop Mansion (“Bishop Mansion”) located on the subject property. In seeking a preliminary injunction, Petitioner challenges the City of Los Angeles’ (“City”) approval of RPIs’ project that would convert the Bishop Mansion and a carriage house located on the subject property into multi-family residential units to be used as student housing for the University of Southern California (“the Project”). Petitioner bases its challenge on the contention that the City’s approval of the Project was improper because the City erroneously determined that the Project was exempt from CEQA review.

The matters were argued and submitted on March 4, 2014. After reading and considering the parties’ moving and opposition papers, the Court rules as follows:

Statement of the Case

The Property

The Bishop Mansion is currently a part of the Roger Williams Baptist Church complex, which covers five City parcels, including the subject property and 1326 West Adams Boulevard, both of which are located in the West Adams District of Los Angeles. Verified Petition (“Petition”) ¶ 14; Minter Decl., ¶ 19, Exhibit L. The complex includes several buildings, including the Bishop Mansion, an adjacent carriage house, the Roger Williams Baptist Church, a gymnasium, and a social hall. *Id.*, ¶ 15. The Bishop Mansion and the Roger Williams Baptist Church are connected by a 100-foot cloister that fronts West Adams Boulevard. *Id.*, ¶ 15.

The Bishop Mansion and its adjacent carriage house were constructed in 1898 for residential purposes. Badaraite Decl., ¶ 3, Exhibit B. The Bishop Mansion is a 7,486 square foot, two-and-a-half story building with a stucco façade and approximately 77 windows. *Id.*, ¶ 3, Exhibit B. The mansion was constructed in a chateausque style, with a steeply-pitched roof system, irregular-shaped floor plan, and asymmetrical façade. *Id.*, ¶ 3, Exhibit B. The carriage house, which is a two-story building built in the same architectural style as the Bishop Mansion, is located behind the Bishop Mansion. *Id.*, ¶ 3, Exhibit B.

In the 1930s, the Bishop Mansion was converted into a church by the Roger Williams Baptist Church congregation. Badaraite Decl., ¶ 3, Exhibit B. Two years later, the church was constructed on the property next to the Baptist Mansion. *Id.*, ¶ 3, Exhibit B. During this period, the facades of the Bishop Mansion and the carriage house were clad with stucco to match the newly constructed church. *Id.*, ¶ 3, Exhibit B. Since the 1930s, the Bishop Mansion and the Roger Williams Baptist Church have been used for church services and Sunday school classes. *Id.*, ¶ 21.

In 1983, the Bishop Mansion and the Roger Williams Baptist Church were deemed eligible for listing on the National Register of Historic Places when the North University Park Specific Plan, which encompasses the subject property, was developed by the City. Frost Decl., ¶ 4.

The Challenged Project

RPIs, owners of the Bishop Mansion and the Roger Williams Baptist Church, seek to convert the Bishop Mansion and the carriage house into multi-family residences to provide housing for USC students. Badaraite Decl., ¶ 3, Exhibit B.

The Project proposes to create eight individual dwelling units in the Bishop Mansion. Badaraite Decl., ¶ 3, Exhibit B. Although the Project originally proposed to remove the cloister fronting the subject property and several of the Bishop Mansion's windows, the Project's current design calls for the cloister and the façade's stucco cladding and pilasters to be repaired. *Id.*, ¶ 3, Exhibit B. The building's windows will also be repaired under the Project's current design, with 4 of the 77 windows being removed and replaced with windows designed to match the originals. *Id.*, ¶ 3, Exhibit B. To convert the building's attic space into a living area, the Project will add two new dormers to the building's rear-facing rooflines. *Id.*, ¶ 3, Exhibit B. The existing composition shingle roof will be replaced with a similar dark-colored composition shingle material. *Id.*, ¶ 3, Exhibit B.

The Project will also convert the carriage house into two dwelling units. Badaraite Decl., ¶ 3, Exhibit B. In order to accommodate two dwelling units, the Project calls for the addition of a 184 square-foot second story over a section of the carriage house. *Id.*, ¶ 3, Exhibit B.

Administrative Proceedings

In pursuing the Project, RPIs applied for a Certificate of Appropriateness and a Project Compliance Permit. Minter Decl., ¶ 10, Exhibit C (p. 40). On November 9, 2012, a Notice of Exemption for the Project was issued, which stated that the Project was entitled to a Class 31

Categorical Exemption, exempting the Project from CEQA review, because the City found that the Project was “limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of historical resources in a manner consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings.” Minter Decl., ¶ 10, Exhibit C (pp. 73, 78).

On November 15, 2012, the Department of City Planning deemed RPIs’ application for the Project complete and forwarded the application to the North University Park Specific Plan Design Review Board (“Design Review Board”). Minter Decl., ¶ 10, Exhibit C (p. 40). On November 28, 2012, the Design Review Board considered RPIs’ Certificate and Permit. Minter Decl., ¶ 10, Exhibit C (p. 40). No official recommendation was made by the Design Review Board; however, the Design Review Board adopted a motion to request a historic resources report from RPIs to document the appropriateness of the Project’s proposed alterations. *Id.*, ¶ 10, Exhibit C (p. 40).

On January 18, 2013, the Cultural Heritage Commission recommended approval of the Project, finding that the Project complies with the goals and requirements of the Preservation Plan and the Secretary of the Interior’s Standards. Minter Decl., ¶ 10, Exhibit C (p. 80).

On January 30, 2013, the Director of Planning issued a Certificate of Appropriateness (“Certificate”), approving the Project. Minter Decl., ¶ 10, Exhibit C (pp. 66-76). In issuing the Certificate, the Director of Planning found that the Project complied with the provisions and intent of the North University Park Specific Plan. *Id.*, ¶ 10, Exhibit C (pp. 66-76). Relevant here, the Director of Planning found the Project was categorically exempt from CEQA review as a Class 31 Categorical Exemption because the Project “consists of the rehabilitation and restoration of buildings deemed historic as part of the North University Park Historic Resources Survey.” *Id.*, ¶ 10, Exhibit C (p. 73). The Director approved the project subject to certain enumerated conditions. *Id.*, ¶ 10, Exhibit C (pp. 66-68).

On February 14, 2013, Petitioner appealed the Director of Planning’s issuance of the Certificate to the South Los Angeles Area Planning Commission (“SAPC”). Minter Decl., ¶ 10, Exhibit C (p. 41). In its appeal, Petitioner objected to the Director of Planning’s finding that the Project was entitled to a Class 31 Categorical Exemption, arguing that the Project did not comply with the Secretary of the Interior’s Standards for the Treatment of Historic Properties. *Id.*, ¶ 10, Exhibit C (pp. 57-58). Petitioner also argued that the Planning Director failed to consider several elements of the Project and their impact on the historical nature of the subject property, including the Project’s proposed removal of the cloister fronting the subject property and the proposed addition of 14 new windows and doors to the Bishop Mansion. *Id.*, ¶ 10, Exhibit C (p. 57). As part of its appeal, Petitioner provided analysis from several experts in historical architecture that found the Project would not satisfy the Secretary of the Interior’s standards. *Id.*, ¶¶ 11-13, Exhibits D through F.

Although the SAPC was to consider WAHA’s appeal at an April 2013 meeting, the SAPC hearing was continued to June 18, 2013 to allow the parties to address the concerns raised by Petitioner in its administrative appeal. Minter Decl., ¶ 10, Exhibit C (p. 41). During this time

period, RPIs met with Petitioner, retained a historical preservation consultant, withdrew a previously filed lot line adjustment application concerning a portion of the Project, and began modifying the Project to address several of Petitioner's concerns. *Id.* After meeting with Petitioner, RPIs modified the design of the Project by agreeing to retain the cloister and restore, rather than replace, several of the Bishop Mansion's original doors and windows. *Id.*, ¶ 10, Exhibit C, (p. 41).

On June 18, 2013, the City's planning staff submitted to SAPC a detailed Recommendation Report based on, among other things, the expert historical analysis provided by Petitioner and RPIs' modified design of the Project. Minter Decl., ¶ 10, Exhibit C. The Report recommended that SAPC deny Petitioner's appeal and approve the Project. *Id.*, ¶ 10, Exhibit C. The Report included the Planning Commission's proposed findings, which determined that RPIs' modifications of the Project's design remedied several of the concerns raised in Petitioner's appeal. *Id.*, ¶ 10, Exhibit C, (p. 48). The Report also disagreed with Petitioner's contention that the Director of Planning failed to evaluate the Project based on the subject property's status in the National Register, finding that the Bishop Mansion was not listed as a Historic Place in the National Register. *Id.*, ¶ 10, Exhibit C (p. 42). The Report concluded that the Project, as modified, was in keeping with the Secretary of the Interior's Standards for Rehabilitation and complied with all relevant provisions of the North University Park Specific Plan. *Id.*, ¶ 10, Exhibit C (p. 50). This Report also contained eight revised conditions of approval. *Id.*, ¶ 10, Exhibit C (p. 49).

That same day, SAPC denied Petitioner's appeal, sustained the Director of Planning's January 30, 2013 decision, and approved the Project as modified by RPIs. Badaraite Decl., ¶ 3, Exhibit C. SAPC found that (1) RPIs "remedied concerns raised by Petitioner by modifying the design of the Project;" (2) the Project was in keeping with the Secretary of the Interior's Standards for Rehabilitation; and (3) the Project complied with all relevant provisions of the North University Park Specific Plan. *Id.*, ¶ 3, Exhibit C. Although SAPC approved the Project "as modified," SAPC's June 18, 2013 decision letter includes the Planning Director's January 30, 2013 CEQA findings, which pre-date the Project's modifications. See *Id.*, ¶ 3, Exhibit C; see also Minter Decl., ¶ 10, Exhibit C (p. 73).

On July 19, 2013, Petitioner appealed the SAPC's decision to the City Council. Petition ¶ 43. On August 19, 2013, Petitioner sent a letter to the City Council and Planning and Land Use Management Committee ("PLUM") arguing that the City's determination that the Project was entitled to a Class 31 Categorical Exemption from CEQA review was inappropriate. Minter Decl., ¶ 18, Exhibit K. On August 20, 2013, PLUM held a hearing on Petitioner's appeal, after which PLUM recommended that the City Council deny Petitioner's appeal and approve the Project. Petition ¶ 44.

On September 17, 2013, the City Council adopted PLUM's recommendation, denied Petitioner's appeal and approved the Project. Minter Decl., ¶ 15, Exhibit H. The City's final decision also adopted SAPC's findings set forth in its June 18, 2013 decision letter. *Id.*, ¶ 15, Exhibit H.

Court Proceedings and Service of the Petition

On October 17, 2013, Petitioner filed a Petition for Peremptory Writ of Mandate seeking, among other things, an order requiring the City to set aside and void the Certificate of Appropriateness for the Project and requiring RPIs to conduct adequate CEQA review before any subsequent approval of the Project. Petitioner filed a notice of election to prepare the administrative record on the same date.

On October 24, 2013, Petitioner personally served a copy of the Petition on the City. Minter Quash Decl., ¶ 5, Exhibit B. Prior to serving RPIs, Petitioner's counsel conducted a search of the Secretary of State's records and determined that RPI Bhakta was RPI LLC's agent for service of process and that RPI LLC's address listed for service was 2905 South Vermont Avenue, Suite 201, Los Angeles, California 90007. *Id.*, ¶ 6, Exhibit C. On October 25, 2013, Petitioner placed two copies of the Petition in Federal Express envelopes; the envelopes were then placed in a Federal Express mailbox. *Id.*, ¶ 7. One envelope was addressed to RPI LLC, "care of Paras Bhakta," and the other envelope was addressed to RPI Bhakta. *Id.*, ¶ 7. Each listed 2905 South Vermont Avenue, Suite 201, Los Angeles, California 90007 as the mailing address. *Id.*, ¶ 7.

On October 29, 2013, both envelopes were delivered to 2905 South Vermont Avenue, Suite 201, and Federal Express provided Petitioner's counsel's office with signed delivery receipts. Minter Quash Decl., ¶ 7. The receipts indicated that the envelopes were signed for by "C Benton," an employee of RPI LLC. *Id.*, ¶ 7. RPI Bhakta acknowledges that he was informed about the envelopes on October 31, 2013. Bhakta Quash Decl., ¶ 4.

On January 15, 2014, Real Parties in Interest filed an ex parte application to specially set a hearing date on a motion to quash and dismiss. The matter came on for hearing that same day, and the Court denied the application. However, the Court advanced and continued the TSC set on February 18, 2014 to April 29, 2014.

On February 4 and 5, 2014, a member of WAHA observed construction work occurring on the subject property. Meyers Decl., ¶¶ 3.

On February 11, 2014, Petitioner filed an ex parte application seeking a TRO and OSC re PI enjoining RPIs from progressing with construction of the Project pending resolution of the instant CEQA action. The Court granted Petitioner's request for a TRO and OSC re PI and set a hearing date on the OSC re PI for March 4, 2014. The Court's TRO restrained and enjoined RPIs from demolishing, renovating, or performing any construction work on the subject property, except for work necessary to ensure the structural integrity of the property. The Court also informed the parties that if RPIs filed a motion to quash and dismiss by February 13, 2014, the motion to quash and OSC re PI would be heard together at the March 4, 2014 hearing.

On February 13, 2014, Petitioner filed a motion for a preliminary injunction and notice of order granting the TRO. That same day, RPIs filed a motion to quash and dismiss.

On February 18, 2014, Petitioner filed a partial certification of the record of the proceedings.

On February 25, 2014, Respondent City filed a notice of non-opposition to RPIs motion to quash. On this same date, RPIs filed a supplemental opposition to the motion for preliminary injunction, and Petitioner filed an opposition to the motion to quash and dismiss.

On February 27, 2014, Petitioner filed a reply in support of the preliminary injunction motion, and RPIs filed a reply in support of their motion to quash and dismiss.

Summary of Applicable Law

1. Motion to Quash Service of Summons

Code of Civil Procedure section 418.10(a) provides that “[a] defendant, on or before the last day of his or her time to plead or within any further time that the court may for good cause allow, may serve and file a notice of motion . . . [to] quash service of summons on the ground of lack of jurisdiction of the court over him or her.” CEQA does not expressly create rules governing the obligations by respondents and real parties in interest to file responsive pleadings. However, Code of Civil Procedure section 1089.5, which governs mandamus actions in which a petitioner does not obtain an alternative writ of mandate and does not file a complete record concurrently with the petition, allows respondents and real parties in interest an additional 30 days after completion of the record to file their answers or demurrers. As such, to the extent that RPIs’ motion is brought under CCP section 418.10(a), it is timely.

However, a party may not file a motion to quash as an alternative to a demurrer. See Greener v. Workers' Comp. Appeals Bd., (1993) 6 Cal. 4th 1028, 1036-1037. That is, a motion to quash service of summons lies on the ground that the court lacks personal, not subject matter, jurisdiction over the moving party. Code Civ. Proc. § 418.10. Accordingly, if a moving party seeks relief in the motion to quash or dismiss on any basis other than lack of personal jurisdiction, he or she makes a general appearance. 6 Cal. 4th at 1036-1037.

Complainants have the initial burden to demonstrate valid statutory service of a summons and complaint. Dill v. Berquist Const. Co., Inc., 24 Cal.App.4th 1426, 1439-40 (1994); Floveyor Internat. v. Sup. Ct., 59 Cal. App. 4th 789, 794 (1997); Weil & Brown, Civ. Pro. Before Trial (The Rutter Group 2008) ¶ 4:428. “[C]ompliance with the statutory procedures for service of process is essential to establish personal jurisdiction.” Ellard v. Conway, 94 Cal.App.4th 540, 544 (2001). A filed proof of service creates a rebuttable presumption that service was proper, if it complies with applicable statutory requirements. Floveyor Internat. v. Sup. Ct., 59 Cal.App.4th 789, 795 (1997).

2. Preliminary Injunction

The purpose of a preliminary injunction is to preserve the status quo pending a decision on the merits. Major v. Miraverde Homeowners Ass’n., (1992) 7 Cal. App. 4th 618, 623. A plaintiff seeking injunctive relief must show the absence of an adequate damages remedy at law. Code Civ. Pro. §526(a)(4). In determining whether to issue a preliminary injunction, the trial court is to consider the likelihood that the plaintiff will prevail on the merits at trial and to weigh the

interim harm to the plaintiff if the injunction is denied against the harm to the defendant if the injunction is granted. King v. Meese, (1987) 43 Cal. 3d 1217, 1226.

A party seeking an injunction must demonstrate a reasonable probability of success on the merits. IT Corp. v. County of Imperial, (1983) 35 Cal.3d 63, 73-74. “In seeking a preliminary injunction, [the party seeking the injunction] bore the burden of demonstrating both likely success on the merits and the occurrence of irreparable harm.” Savage v. Trammell Crow Co., (1990) 223 Cal.App.3d 1562, 1571; Citizens for Better Streets v. Board of Sup’rs of City and County, (2004) 117 Cal.App.4th 1, 6.

A preliminary injunction ordinarily cannot take effect unless and until the plaintiff provides an undertaking for damages which the enjoined defendant may sustain by reason of the injunction if the court finally decides that the plaintiff was not entitled to the injunction. See Code Civ. Pro. § 529(a); City of South San Francisco v. Cypress Lawn Cemetery Ass’n, (1992) 11 Cal. App. 4th 916, 920.

Analysis

1. Motion to Quash

RPIs move to quash service of the Petition and for an order dismissing the action based on Petitioner’s service of the Petition through Federal Express. RPIs argue that Petitioner failed to properly serve the Petition because service through Federal Express is not authorized by law and because the Petition was delivered to, and signed by, an RPI LLC employee, and not RPI Bhakta, RPI LLC’s agent for service of process.

When bringing a petition for writ of mandate challenging the decision of a public agency under CEQA, Public Resources Code section 21167.6.5(a) provides:

The petitioner or plaintiff . . . shall serve the petition or complaint on [the] real party in interest, by personal service, mail, facsimile, or any other method permitted by law, not later than 20 business days following service of the petition or complaint on the public agency.

Petitioner filed the Petition on October 17, 2013. On October 24, 2013, Petitioner personally served a copy of the Petition on the City. Minter Quash Decl., ¶ 5, Exhibit B. Thus, pursuant to Public Resources Code section 21167.6.5(a), Petitioner had 20 business days from October 24, 2013 to serve the Petition on RPIs.

On October 25, 2013, Petitioner placed two copies of the Petition in Federal Express envelopes—one envelope was addressed to RPI LLC “care of RPI Bhakta,” and the other envelope was addressed to RPI Bhakta individually. Id., ¶ 7. Both envelopes were addressed to RPI LLC’s address listed for service of process—2905 South Vermont Avenue, Suite 201, Los Angeles, California 90007. Id., ¶ 7. The envelopes were deposited in a Federal Express mailbox with postage for 2-day delivery paid. Id., ¶ 7, Exhibit D. On October 29, 2013, both envelopes were delivered to RPI LLC’s address. Minter Quash Decl., ¶ 7. After the envelopes were

delivered, Federal Express provided Petitioner's counsel's office with signed delivery receipts indicating that the envelopes were signed for by Colby Benton, an employee of RPI LLC. Id., ¶ 7. RPI Bhakta acknowledges that he became aware of the envelopes on October 31, 2013. Bhakta Quash Decl., ¶ 4.

The Court rejects RPIs' argument that the method of process utilized by Petitioner was improper. Public Resources Code section 21167.6.5(a) expressly provides that service of a CEQA petition may be made by mail. RPIs rely on Board of Supervisors v. Superior Court, (1994) 23 Cal.App.4th 830, to argue that Petitioner was required to follow service requirements set forth in other provisions of the Code of Civil Procedure and Corporations Code. However, the decision in Board of Supervisors analyzed the requirements for serving a CEQA petition under the former version of Public Resources Code section 21167.6(a), which addressed service of a CEQA petition on the respondent public agency, not the real party in interest. See Board of Supervisors, supra, 23 Cal.App.4th at p. 834. Further, at the time Board of Supervisors was decided, Public Resources Code section 21167.6(a) only specified a time for service; it did not address the manner in which the petition was to be served. See Id. at p. 834, n. 1.

Public Resources Code section 21167.6.5(a), in contrast, provides both the manner through which service may be made and the time within which service must be made. While RPIs are correct in pointing out that Public Resources Code section 21167.6.5(a) does permit service to be made through other methods permitted by law, there is nothing to suggest that service *must* be made through those other methods, as RPIs argue. Thus, the Court finds that Petitioner was authorized to utilize any of the methods of service expressly stated in Public Resources Code section 21167.6.5(a). C.f. Committee for a Progressive Gilroy v. State Water Resources Control Bd. (1987) 192 Cal.App.3d 847, 859 (concluding that in a CEQA action, the more specific CEQA statute of limitations take precedence over more general statutes of limitations based on the settled rules of statutory construction which provide that "a general provision is controlled by one that is special, the latter being treated as an exception to the former").

RPIs' reliance on Dill v. Berquist Construction Co., (1994) 24 Cal. App. 4th 1426, is misplaced. Unlike in Dill, the instant Petition was not addressed solely to the corporation, it was addressed to RPI LLC care of RPI Bhakta, the agent for service of process. Further, here there is evidence "establishing actual delivery to the person to be served." Dill v. Berquist Construction Co., 24 Cal. App. 4th at p. 1439. As discussed above, RPI Bhakta acknowledges that he became aware of the envelopes on October 31, 2013. Bhakta Quash Decl., ¶ 4. Notably, the court in Dill acknowledged that in deciding whether service is valid, the statutory provisions regarding service of process should be liberally construed to effectuate service and uphold the jurisdiction of the court if actual notice has been received by the defendant. Id., 24 Cal. App. 4th at pp. 1436-1437. At a minimum, Petitioner substantially complied with Public Resources Code section 21167.6.5(a).

In sum, Petitioner served the Petition on RPIs within twenty days of serving it on Respondent City, as required by Public Resources Code section 21167.6.5(a). The envelopes containing the Petition were properly addressed—one was addressed to RPI LLC "care of Paras Bhakta," who is RPI's agent for service of process, and the other was addressed to RPI Bhakta in his individual capacity. Minter Quash Decl., ¶ 7. After both envelopes were delivered, receipts were returned

to Petitioner indicating that the envelopes were delivered to RPI LLC's address listed for service and were signed for by an employee of RPI LLC. *Id.*, ¶ 7. Further, RPI Bhakta acknowledges that RPI LLC received the Petitions on October 31, 2013, less than ten days after Petitioner served the Petition on Respondent City. Bhakta Quash Decl., ¶ 4. Accordingly, the Court denies RPIs' motion to quash and dismiss the Petition.

2. Preliminary Injunction

As a preliminary matter, Petitioner's application for injunctive relief is proper under Code of Civil Procedure section 526(a)(4) and Glynn v. Marquette, because it involves real property and money damages for the loss of real property are presumptively inadequate. Now the Court must determine whether to issue the preliminary injunction requested based on the analysis established in King, *supra*.

A. There is a Reasonable Probability Petitioner Will Prevail on the Merits

Petitioner argues it is likely to prevail on the merits for the following reasons: (1) the Project does not qualify as a Class 31 Categorical Exemption to CEQA review; (2) even if the Project does qualify, the Project falls within an exception to CEQA's categorical exemptions, thus requiring the Project to be subjected to CEQA review; and (3) even if the Project does not fall within an exception to a CEQA exemption, Respondent City impermissibly subdivided the Project into smaller subprojects in determining that the Project qualified as a Class 31 Exemption.

CEQA is a comprehensive scheme designed to provide long-term protection to the environment, and must be interpreted "to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." Mountain Lion Foundation v. Fish & Game Com., (1997) 16 Cal.4th 105, 112. To achieve its objective of environmental protection, CEQA and the regulatory guidelines implementing it "establish a three-tiered structure. If a project falls within a category exempt by administrative regulation [citation] or it can be seen with certainty that the activity in question will not have a significant effect on the environment [citation] [then] no further agency evaluation is required. If there is a possibility that the project may have a significant effect, the agency undertakes an initial threshold study [citation] [and] if that study demonstrates that the project will not have a significant effect, the agency may so declare in a brief Negative Declaration. [Citation.] If the project is one which may have a significant effect on the environment, an [Environmental Impact Report (EIR)] is required." No Oil, Inc. v. City of Los Angeles, (1974) 13 Cal.3d 68, 74.

Certain classes of projects are "categorically exempt" from CEQA pursuant to administrative regulation because they do not have a significant effect on the environment. Mountain Lion Foundation v. Fish & Game Com., *supra*, 16 Cal.4th at pp. 112–113; Pub. Resources Code, §§ 21080, subd. (b)(9), 21084, subd. (a). Categorical exemptions, however, are subject to important exceptions based on factors such as location, cumulative impact, or unusual circumstances. Cal. Code Regs., tit. 14, § 15300.2. An agency should decide whether a project is eligible for a categorical exemption as part of its preliminary review of the project without reference to or

reliance upon any proposed mitigation measures. Salmon Protection & Watershed Network v. County of Marin, (2004) 125 Cal. App. 4th 1098, 1108.

Here, Respondent City found that the Project was exempt from CEQA review because it qualified as a Class 31 Exemption. "Class 31 consists of projects limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties^[1]" Cal. Code Regs. tit. 14, ("CEQA Guidelines"), § 15331. For the reasons discussed below, Petitioner has demonstrated a likelihood of success on the merits because the City's CEQA exemption findings do not comply with the mandate of Topanga Assn. for a Scenic Community v. County of Los Angeles, ("Topanga"), (1974) 11 Cal. 3d 506, and, in any event, the City improperly relied upon mitigation measures to grant the Class 31 Exemption.

In approving the Project, the City determined that it qualified as a Class 31 Exemption to CEQA review. In doing so, the City adopted the SAPC's June 18, 2013 decision letter. Minter Decl., ¶ 15, Exhibit H. The decision letter states that SAPC found "that the revised project is Categorically Exempt . . . from [CEQA] under [CEQA Guidelines] Section 15331: Historical Resource Restoration/Rehabilitation." Badaraite Decl., ¶ 3, Exhibit C. Although the June 18, 2013 decision letter states that the "modified project is in keeping with the Secretary of the Interior's Standards for Rehabilitation," included in that decision are the findings made by the Director of Planning on January 30, 2013, which were made prior to Petitioner's appeal and before the Project was modified. See Badaraite Decl., ¶ 3, Exhibit C; see also Minter Decl., ¶ 10, Exhibit C. Similarly, the City Council's September 17, 2013 final decision also incorporates by reference the findings made by the Director of Planning on January 30, 2013 since it expressly adopted the SAPC's June 18, 2013 determination. See Badaraite Decl., ¶¶ 2-3, Exhibits B and C; Minter Decl., ¶ 15, Exhibit H.

In Topanga, 11 Cal. 3d at p. 515, the Supreme Court held that "implicit in [Code of Civil Procedure] section 1094.5 is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order." The court explained that "among other functions, a findings requirement serves to conduce the administrative body to draw legally relevant sub-conclusions supportive of its ultimate decision; the intended effect is to facilitate orderly analysis and minimize the likelihood that the agency will randomly leap from evidence to conclusions. [Citations.] In addition, findings enable the reviewing court to trace and examine the agency's mode of analysis. [Citations.] Absent such road signs, a reviewing court would be forced into unguided and resource-consuming explorations; it would have to grope through the record to determine whether some combination of credible evidentiary items which supported some line of factual and legal conclusions supported the ultimate order or decision of the agency. Moreover, properly constituted findings enable the parties to the agency proceeding to determine whether and on what basis they should seek review. [Citations.] They also serve a public relations function by helping to persuade the parties that administrative decision-making is careful, reasoned, and equitable." 11 Cal. 3d at pp. 516-517 (fns. omitted.) When the administrative agency's findings are not adequate, an appropriate remedy is to remand the matter so that proper

¹ The current standards can be found at: http://www.nps.gov/hps/tps/standguide/rehab/rehab_standards.htm

findings can be made. See, e.g., Saleeby v. State Bar, (1985) 39 Cal. 3d 547, 566-567, 575; Eureka Teachers Assn. v. Board of Education, (1988) 199 Cal. App. 3d 353, 367-369.

Here, the City's final decision approving the Project's CEQA exemption does not comply with Topanga. First, the CEQA exemption findings set forth in SAPC's June 18, 2013 decision letter, and later adopted by the City Council, do not support SAPC's or the City's determination that the Project is categorically exempt under CEQA. As noted above, SAPC's decision letter repeatedly states that the *modified* Project is in keeping with CEQA Guidelines section 15331's requirements. See Badaraite Decl., ¶ 3, Exhibit C. However, the findings attached to the decision letter do not correspond to the modified Project. Rather, they correspond to the *original design* of the Project approved by the Director of Planning on January 30, 2013. For example, the finding corresponding to the Secretary of the Interior's second standard provides:

The change of use, restoration, and addition will all retain the historic character of the property, as the significant rooflines, windows, and doors will all be maintained. *The materials and elements removed – including stucco and cloister* – result in the exposure of the original materials and the restoration of the historic appearance of the building.

See Badaraite Decl., ¶ 3, Exhibit C. (Emphasis added). This finding directly contradicts the Revised Findings and Revised Conditions of Approval addressed earlier in the June 18, 2013 decision. Under the Revised Findings, SAPC states “[t]he applicant has remedied the concerns raised in the appeal by modifying the design of the project. The changes include the retention rather than demolition of the cloister, retention rather than removal of the stucco cladding” Badaraite Decl., ¶ 3, Exhibit C. Under the first revised condition of approval, SAPC states “[t]he cloister, front façade pilasters, and stucco cladding shall be retained and repaired in kind.” *Id.*, ¶ 3, Exhibit C. From a reading of SAPC's decision letter, it is apparent that the CEQA exemption findings set forth by SAPC do not support SAPC's or the City's determination that the Project satisfies the CEQA exemption requirements because the findings and the final determination are based on two different versions of the Project. Thus, the evidence before the Court at this time demonstrates that Petitioner is likely to prevail on the merits because the City's final decision does not comport with Topanga's findings requirement. See Topanga, *supra*, 11 Cal.3d 506, 516 (an agency is required “to draw legally relevant sub-conclusions supportive of its ultimate decision”).

In any event, and regardless of which findings were ultimately adopted by the City, the City erred in relying upon mitigation measures to grant a categorical exemption from CEQA. As discussed above, the January 30, 2013 Certificate of Appropriateness approved the Project subject to certain enumerated conditions. Minter Decl., ¶ 10, Exhibit C (pp. 66-68). For example, approval was conditioned upon the removal of the existing wrought iron fence and its replacement with a new fence subject to further approval by the City. *Id.* In turn, the June 18, 2013 revised conditions of approval range from retention of the cloister to the requirement that all new windows must be made of wood. Badaraite Decl., ¶ 3, Exhibit C. These are mitigation measures designed to ensure that the renovations to the Project are consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties. Minter Decl., ¶ 10, Exhibit C (p. 49). If a project may have a significant effect on the environment, CEQA review must

occur and only then are mitigation measures relevant. Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster, (1997) 52 Cal.App.4th 1165, 1199–1200. That is, mitigation measures may support a negative declaration but not a categorical exemption. Salmon Protection & Watershed Network v. County of Marin, (2004) 125 Cal. App. 4th 1098, 1102.

There are sound reasons for precluding reliance upon mitigation measures at the preliminary stage of determining eligibility for a categorical exemption. Regulatory guidelines dealing with the environmental review process under CEQA “contain elaborate standards—as well as significant procedural requirements—for determining whether proposed mitigation will adequately protect the environment and hence make an EIR unnecessary; in sharp contrast, the Guidelines governing preliminary review do not contain any requirements that expressly deal with the evaluation of mitigation measures.” Azusa, *supra*, 52 Cal.App.4th at p. 1200. The City should not be permitted to evade standards governing the preparation of a mitigated negative declaration by evaluating proposed mitigation measures in connection with the significant effect exception to a categorical exemption. Salmon Protection & Watershed Network v. County of Marin, *supra*, 125 Cal. App. 4th at pp. 1105-1106.

B. The Balance of the Harms Weighs in favor of Petitioner

Petitioner argues that it will suffer irreparable harm if a preliminary injunction is not granted because RPIs have initiated construction on the Project and allowing RPIs to continue with construction would threaten to moot Petitioner’s challenge in the instant case. RPIs argue that Petitioner will suffer no irreparable harm if an injunction is not granted because the Project does not involve historic resources. The Court finds that the balance of harm weighs in favor of Petitioner. The Court also finds that Petitioner will suffer irreparable harm unless an injunction is issued.

As a preliminary matter, the Court takes issue with RPIs’ argument concerning irreparable harm. This argument is inconsistent with RPIs’ other arguments. Indeed, in the first part of their opposition, RPIs argue that the Project should be exempt from CEQA review because the subject property is an historic resource and the Project complies with the CEQA categorical exemption governing historic resources. Thus, in arguing that Petitioner was unlikely to succeed on the merits, RPIs invoked and relied on the subject property’s classification as an historic resource. Yet now, in contending that Petitioner will not suffer irreparable harm, RPIs argue that the subject property is not an historic resource. This is a contradictory stance, and if the Court were to accept RPIs argument here, it would undermine RPIs argument that the subject property is entitled to a Class 31 exemption in first place. See CEQA Guidelines section 15331.

In addition, it is well established that in the context of CEQA, a project applicant takes the risk of constructing a project during the pendency of a CEQA lawsuit because the completion of a project does not render a CEQA challenge moot. See Woodward Park Homeowners v. Garreks, (2000) 77 Cal.App.4th 880, 889; Association for a Cleaner Environment v. Yosemite Community College Dist., (2004) 116 Cal.App.4th 629, 641. Here, the Court find that the essence of Petitioner’s CEQA challenge and the purpose of the Class 31 Exemption under CEQA Guidelines section 15331 would be undermined if RPIs are permitted to proceed with construction work that does not concern the structural integrity of the subject property. Through

the instant suit, Petitioner seeks to preserve the historic nature of the subject property and its individual components. This is the same goal sought to be achieved by the CEQA Guidelines which seek to preserve the historic nature of properties through adherence to the Secretary of the Interior's Standards. See CEQA Guidelines, § 15331. By allowing RPIs to proceed with construction without receiving an adequate CEQA exemption determination would undermine the restorative and rehabilitative purpose of Section 15331, even if the action itself were allowed to proceed following the completion of construction.

In sum, because Petitioner has demonstrated the likelihood of success on the merits, and because Petitioner has shown that it will likely suffer irreparable harm if an injunction is not issued, the Court grants Petitioner's request.

C. Undertaking

Code of Civil Procedure section 529(a) provides:

On granting an injunction, the court or judge must require an undertaking on the part of the applicant to the effect that the applicant will pay to the party enjoined any damages, not exceeding an amount to be specified, the party may sustain by reason of the injunction, if the court finally decides that the applicant was not entitled to the injunction. Within five days after the service of the injunction, the person enjoined may object to the undertaking. If the court determines that the applicant's undertaking is insufficient and a sufficient undertaking is not filed within the time required by statute, the order granting the injunction must be dissolved.

"Thus, the trial court's function is to estimate the harmful effect which the injunction is likely to have on the restrained party, and to set the undertaking at that sum." Abba Rubber Co. v. Seaquist, (1991) 235 Cal.App.3d 1, 14. "That estimation is an exercise of the trial court's . . . sound discretion, and will not be disturbed on appeal unless it clearly appears that the trial court abused its discretion by arriving at an estimate that is arbitrary or capricious, or is beyond the bounds of reason." Id.

RPIs request that the Court order a bond in the amount of at least \$1,028,400. RPIs base this amount on the predicted loss of income resulting from uncollected rent that may result if construction of the Project is not permitted to proceed. RPIs, however, provide no evidence substantiating this amount. Petitioner, on the other hand, argues that the Court should require no more than a nominal undertaking because to do otherwise would effectively deny Petitioner access to judicial review.

While the posting of a bond is required in most cases where an injunction is issued, the posting requirement is often relaxed in the CEQA context. This is so because requiring a substantial bond would likely have a chilling effect on environmental litigation in the public interest. See People of State of Cal. ex rel. Van De Kamp v. Tahoe Regional Planning Agency (9th Cir. 1985) 766 F.2d 1319, 1325 (proper to waive bond requirement where statute provides for private right of enforcement and party seeking enforcement is a nonprofit advocacy group); Natural

Resources Defense Council, Inc. v. Morton (D.D.C. 1971) 337 F.Supp. 167, 169 (requiring a substantial bond would effectually preclude nonprofit groups from seeking judicial review); see also No Oil, Inc. v. City of Los Angeles, (1974) 13 Cal.3d 68, 86, supplemented, (1975) 13 Cal.3d 486 (federal cases interpreting the National Environmental Policy Act are persuasive authority in interpreting CEQA).

Although RPIs claim they may potentially suffer more than \$1,000,000 in lost rent if they are not allowed to proceed with construction, they provide the Court with no evidence substantiating this claimed amount. Further, Petitioner presents evidence demonstrating that RPIs improperly calculated the amount sought for the bond because the amount sought by RPIs includes alleged lost income from portions of the subject property still in use. For example, Petitioner has presented evidence that the gym, which RPIs claim will be a source of lost income contributing to the amount sought for the bond, is still being used for church services. See Meyers Decl., ¶ 4.

For these reasons, the Court finds that Petitioner must post a nominal bond in the amount of \$1,000.

Disposition

RPIs' motion to quash and dismiss is denied.

Petitioner's motion for a preliminary injunction is granted. RPIs, as well as their agents, contractors, employees, and any other person or entity acting in concert with RPIs, are enjoined from demolishing, renovating, or performing any construction work on the subject property, except for work necessary to ensure the structural integrity of the property while the case is pending. Petitioner shall post an undertaking in the amount of \$1,000 within 10 days.

IT IS SO ORDERED.

March 4, 2014

Hon. Luis A. Lavin
Judge of the Superior Court