

MEMORANDUM

Date: September 18, 1996

To: Bill Agnello, Sr. Vice President
Real Estate Group

From: Sandy Sloan

Re: Agnews Historic Buildings

1. CEQA. The California Environmental Quality Act ("CEQA")(Public Resources Code Section 21000 et seq.) was enacted in 1970 to be patterned after the National Environmental Policy Act ("NEPA"). Declaring that "the maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern," CEQA requires that public agencies assess the environmental impacts of all projects that they undertake or approve.

CEQA mandates that the California Office of Planning and Research prepare and develop proposed guidelines for CEQA to include objectives and criteria for the orderly evaluation of projects. These guidelines, found in Title 14 of the California Code of Regulations, Section 15000 et seq., more detailed and process-oriented than the law itself, are now used as protocol for all CEQA documents.

Among other things, the Guidelines set out an Environmental Checklist Form indicating environmental factors that would be potentially affected by a project. To determine the impact on historic resources, the Checklist refers back to Guideline 15064.5. This section defines "historic resources" as including the following:

(1) A resource listed in, or determined to be eligible by the State Historical Resources Commission, for listing in the California Register of Historical Resources (Pub. Res. Code SS5024.1, Title 14 CCR, Section 4850 et seq.).

(2) A resource included in a local register of historical resources, as defined in section 5020.1(k) of the Public Resources Code or identified as significant in an historical resource survey meeting the requirements of section 5024(g) of the Public Resources Code, shall be presumed to be historically or culturally significant. Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant.

(3) Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in

the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California may be considered to be an historical resource, provided the lead agency's determination is supported by substantial evidence in light of the whole record. Generally, a resource shall be considered by the lead agency to be "historically significant" if the resource meets the criteria for listing on the California Register of Historical Resources (Pub. Res. Code SS5024.1, Title 14 CCR, Section 4852) including the following:

(A) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;

(B) Is associated with the lives of persons important in our past;

(C) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or

(D) Has yielded, or may be likely to yield, information important in prehistory or history.

(4) The fact that a resource is not listed in, or determined to be eligible for listing in the California Register of Historical Resources, not included in a local register of historical resources (pursuant to section 5020.1(k) of the Public Resources Code), or identified in an historical resources survey (meeting the criteria in section 5024.1(g) of the Public Resources Code) does not preclude a lead agency from determining that the resource may be an historical resource as defined in Public Resources Code sections 5020.1(j) or 5024.1.

The Agnews buildings are not officially listed in the California Register of Historical Resources or even in a local register, probably because most of them were never seen by members of the public and they were associated with those members of our society that people often ignore. However, there is no doubt that the Agnews buildings would be eligible for a listing on the California Register of Historical Resources - - they are associated with a significant turn of the century model of care for the insane and disabled and many of them embody the distinctive characteristics of the architecture popular immediately after the San Francisco Bay Area's great 1906 earthquake.

Section 15064.5 goes on to declare that a project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment. Among other things, the significance of an historical resource is impaired when a project demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources (Section 15064.5(b)(2)(A)) or demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its eligibility for inclusion in the California Register of Historical Resources as determined by a lead agency for purposes of CEQA. Section 15064.5(b)(2)(C).

Generally, a project that follows the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer, shall be considered as mitigated to a level of less than a significant impact on the historical resource. Section 15064.5(b)(3).

The State's and Sun's desire to rehabilitate the three most significant buildings at Agnews will certainly mitigate any impact on those buildings. But, it will not be possible to mitigate the impact on all the other historic buildings that will necessarily need to be destroyed for Sun to use the Property.

CEQA mandates the gathering of information and the consideration of significant impacts and ways to mitigate those impacts, but CEQA does not mandate a particular decision by a governmental agency or require an agency to disapprove a project if significant impacts are not mitigated. However, CEQA does not allow an agency to blithely ignore significant impacts or dismiss viable mitigations. Rather the law dictates that each significant impact be mitigated to an insignificant level or that the approving agency find possible mitigations infeasible for economic, legal, social, technological or other reasons. Section 15091(a). These findings must be supported by substantial evidence. Section 15091(b).

Even if an agency finds that mitigations to reduce significant impacts to an insignificant level are infeasible, CEQA requires that the agency balance the economic, legal, social, technological or other benefits of a project against its unavoidable environmental risks when determining whether to approve a project. Section 15093.

CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable." Section 15093(a).

When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record. Section 15093(b).

Given the requirements of CEQA, I suggest that Sun reevaluate whether it can rehabilitate and use more than three of the Agnews buildings, and also present extensive evidence as to why - - for economic, social and technological reasons - - it is not able to reuse more of these buildings.

2. State Historic Preservation Officer ("SHPO"). CEQA Guideline Section 15064.5(b)(5) imposes an additional requirement for state-owned historical resources,

as described in Public Resources Code Section 5024. See Exhibit D. These state-owned buildings cannot be transferred or demolished without the concurrence of the State Historic Preservation Officer (“SHPO”). If concurrence is not obtained, the matter can be “mediated” with the State’s Office of Planning and Research. The statute, however, does not specify what will occur if ultimately no resolution is reached.