



Legislation Details (With Text)

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Title: CONSIDER AND MAKE FINDINGS ON THE APPLICATION BY THE CUSTODIAN FOR RELOCATION OF THE CALIFORNIA MERCI TRAIN BOXCAR (HR #025) LOCATED AT 3509 N FIRST STREET PURSUANT TO THE AGREEMENT BETWEEN CITY OF FRESNO AND THE GRAND DU CALIFORNIA OF LA SOCIETE DES 40 HOMMES ET 8 CHEVAUX (SEPTEMBER 21, 2004) AND FMC 12-1619.

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Attachments: 1. California Merci Train Boxcar Attachments

Date	Ver.	Action By	Action	Result
4/22/2019	1	Historic Preservation Commission	rejected	
April 22, 2019				

FROM: DANIEL ZACK, AICP
Assistant Director
Development and Resource Management Department

BY: LAURA GROVES van ONNA
Historic Preservation Specialist
Development and Resource Management Department

SUBJECT:
CONSIDER AND MAKE FINDINGS ON THE APPLICATION BY THE CUSTODIAN FOR RELOCATION OF THE CALIFORNIA MERCI TRAIN BOXCAR (HR #025) LOCATED AT 3509 N FIRST STREET PURSUANT TO THE AGREEMENT BETWEEN CITY OF FRESNO AND THE GRAND DU CALIFORNIA OF LA SOCIETE DES 40 HOMMES ET 8 CHEVAUX (SEPTEMBER 21, 2004) AND FMC 12-1619.

RECOMMENDATION

Staff recommends that the Commission deny the Application by the custodian for relocation of the California Merci Train Boxcar (HR #025) located at 3509 N First Street pursuant to the Agreement between City of Fresno and the Grand du California of La Societe des 40 Hommes et 8 Chevaux (September 21, 2004) and FMC 12-1619 with the following recommendation:

- 1) The custodian shall not relocate the Boxcar to the Palm Springs Air Museum and shall continue to work with the City of Fresno in pursuit of a more appropriate location for it within the Fresno area.

EXECUTIVE SUMMARY

The custodian of the California Merci Train Boxcar has requested that their Application for relocation to the Palm Springs Air Museum be considered for Historic Review. Because this project proposal is a substantial alteration to a Heritage Property, it requires review by the Historic Preservation Commission. Primary concerns for Staff include the removal of a historic resource from Fresno city limits, Fresno County, and the Central Valley. Furthermore, according to the Agreement between City of Fresno and the Grand du California of La Societe des 40 Hommes et 8 Chevaux (September 21, 2004), the City of Fresno has the right to require that the Boxcar remain on public display in Fresno, or the City may exercise a reversionary right to retake custody of the Boxcar. Pursuant to the 2004 Agreement and FMC 12-1619, Staff requests that the Commission consider and make findings on the Application.

BACKGROUND

The custodian of the California Merci Train Boxcar (Boxcar) has requested that their Application for relocation to the Palm Springs Air Museum be considered for Historic Review. This request entails the removal of a historic resource from Fresno city limits, Fresno County, and the Central Valley. Because this project proposal is a substantial alteration to a Heritage Property, it requires review by the Historic Preservation Commission.

The relocation plans entail the ability and willingness of the Palm Springs Air Museum to move the Boxcar from its present location at (American Legion) Fresno Federal Post 509 located at 3509 N First Street in Fresno by truck to their facilities located at 745 N Gene Autry Trail in Palm Springs - specifically within the south end of their newest hangar - where it would be protected and displayed. The Palm Springs Air Museum expressed their ability and willingness to relocate the Boxcar upon receiving inquiry from Joseph R. Donovan, Grand Correspondant for the Grand Voiture du California (The Grand) - the custodian for the Boxcar.

Representatives of The Grand contacted multiple railroad museums in California, specifically in Sacramento, Fairfield, and San Luis Obispo; none of those contacted had space or were willing to accept custody of the Boxcar. The Grand's premise for pursuing potential relocation sites for the Boxcar is the longstanding inability on anyone's part to provide appropriate shelter for it. However, The Grand initiated pursuit of potential relocation sites without notice to, consultation with, or permission from the City of Fresno pursuant to the Agreement between City of Fresno and the Grand du California of La Societe des 40 Hommes et 8 Chevaux (September 21, 2004).

The Boxcar has been located in Fresno since 1952, when it arrived from France by way of Long Beach, and was placed in Roeding Park. It remained in Roeding Park until 2004 when an Agreement was reached between the Grand and the City of Fresno to relocate the Boxcar to Fresno Federal Post 509 of the American Legion and to transfer custodianship of the Boxcar to The Grand. A letter exists from City of Fresno Mayor Gordon G. Dunn addressed to The Grand on May 12, 1952, declaring the City of Fresno's acceptance of the Boxcar at Roeding Park and mention of various preservation measures including the installation of a cover for it. However, the installation of a cover never occurred, and upon transfer of custodianship of the Boxcar in 2004, the City of Fresno was released from this obligation.

Stipulations 3, 4, and 5 within the 2004 Agreement are particularly relevant to the current proposal

for relocation:

3. Boxcar Restoration, Maintenance and Public Display. The Grand, at its sole cost, shall refurbish and restore the Boxcar and thereupon place the Boxcar on public display at Post 509 by not later than July 4, 2005, or such other time as the City's Chief Administrative Officer may in his/her sole discretion agree in writing. The Boxcar shall remain on public display at all times thereafter. The Grand, at its sole cost, shall at all times reasonably maintain the Boxcar.

4. Default, Termination, Recapture and Reversion. Any failure to perform by The Grand not cured following 30 days written notice thereof shall be an event of default. Upon a default by The Grand, the City may at its option (i) terminate this Agreement with full reservation of rights and remedies available under law, contract and equity, and/or (ii) give written notice to The Grand of recapture/reversion of custodianship of the Boxcar, whereupon custodianship of the Boxcar shall immediately revert to and re-vest in the City with full rights to reenter and recapture in any manner allowed by law.

5. Indemnification. To the furthest extent allowed by law The Grand shall indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the City, The Grand, or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. The Grand's obligations under the preceding sentence shall apply regardless of whether the City or any of its officers, officials, employees or agents are passively negligent, but shall not apply to any loss, liability, fines, forfeitures, costs or damages caused by the active negligence or by the willful misconduct of the City. This section shall survive termination or expiration of this Agreement.

Despite this release from obligation, the City has attempted to work with The Grand in pursuit of an appropriate cover for the Boxcar since its relocation to the American Legion Post. The funding required to install an appropriate cover remains the issue, which has led to The Grand's pursuit of potential relocation sites.

Upon learning of the potential proposal for relocation of the Boxcar to the Palm Springs Air Museum, City staff with assistance from the City Attorney's Office sent correspondence on multiple occasions to The Grand relaying the legal obligations surrounding the Boxcar, appreciation for their vested interest thus far in the sustainability of the Boxcar, and that City staff would be guiding the process forward.

City staff also reached out to the Fresno Historical Society and the Board of Trustees of the Big Fresno Fair to scope potential alternative relocation sites within Fresno County. Although interest

was expressed for the Boxcar, neither organization would be able to maintain and publicly display it. The Executive Director for the Fresno Historical Society stated that they do not have interior storage for such a large item and because they are located at Kearney Park, a public park, they would not be able to protect it from weather or vandalism. The same issues exist according to the Chief Executive Officer for the Big Fresno Fair. Local military historian David Paul Davenport, Ph.D. also reached out to the Legion of Valor which operates the Veterans Memorial Museum within Fresno Memorial Auditorium (NR; CR; HP #052) located at 2425 Fresno Street. Although there is space in the lobby of the Auditorium, the Boxcar is too large to fit through the front doors; and, it could enter the building through the backstage doors, but the ceilings along the two corridors connecting the lobby with the backstage area are too low to transport the Boxcar to the lobby without removing the wheel carriages. Additionally, placing the Boxcar in the lobby would preclude use of the space for events and receptions.

Heritage Fresno has recently voiced its support for keeping the Boxcar in Fresno and conducted outreach to begin gathering support across Fresno County. Their outreach has resulted in confirming the ability and willingness of the Clovis Veterans Memorial District to appropriately display and protect the Boxcar; securing the interest of Alliance Francaise, the Westerners, and other local history groups as well as local veterans groups; and collection of a petition consisting of at least 154 signatures thus far in support of keeping the Boxcar in Fresno County. Additionally, a letter of support has been received from the Fresno County Historical Landmarks and Records Advisory Commission. Heritage Fresno is committed to spearheading fundraising for the relocation and display of the Boxcar in Fresno.

Furthermore, upon meeting with the City Manager on March 22, 2019, staff received confirmation that the Office of the City Manager will keep the Boxcar in Fresno. With this confirmation from the Office of the City Manager and the show of community support voiced so far in addition to the legal obligations within the 2004 Agreement and the City's Historic Preservation Ordinance, City staff recommends denial of the Application by The Grand for relocation of the Boxcar to the Palm Springs Air Museum and a recommendation that The Grand continue to work with the City of Fresno in pursuit of a more appropriate location of the Boxcar.

The California Merci Train Boxcar (1885-1901) located within the southeast corner of the parcel at 3509 N First Street is a standard design constructed in the late 19th century by the French military. The period of significance for the property is 1949, the year each of the 48 states that existed at the time received a boxcar.

The California Merci Train Boxcar was designated as a Heritage Property by the Historic Preservation Commission on January 25, 2016. The property is greater than 50 years of age and possesses integrity of location, design, materials, workmanship, feeling, and association (FMC 12-1607). The Boxcar appeared to be eligible for the Local Register of Historic Resources as well as the California Register of Historical Resources - and potentially as a California Landmark - at the time of its evaluation. It is significant under Criterion i/1 because it is associated with military history in Fresno and California and Criterion iii/3 because it is an excellent example of a French World War I Boxcar property type.

Duties and Powers of the Commission:

The City's Historic Preservation Ordinance is located at Chapter 12, Article 16 of the Fresno Municipal Code.

Section 1619 outlines the Heritage Property Permit Review Process.

Attachments

Exhibit A: Agreement between City of Fresno and the Grand du California of La Societe des 40 Hommes et 8 Chevaux (September 21, 2004).

Exhibit B: Letter from City of Fresno Mayor Gordon G. Dunn to the Grand Voiture du California (May 12, 1952).

Exhibit C: Correspondence with Joseph R. Donovan, Grand Correspondant for the Grand Voiture du California.

Exhibit D: Letters of support and a petition for keeping the California Merci Train Boxcar in Fresno.

Exhibit E: State of California Survey Forms for the California Merci Train Boxcar 3509 N First Street Prepared January 14, 2016 by Karana Hattersley-Drayton for the City of Fresno.