



THE CITY OF SAN DIEGO

REPORT TO THE CITY COUNCIL

DATE ISSUED: September 17, 2009 REPORT NO.

ATTENTION: Land Use and Housing Committee
Agenda of September 23, 2009

SUBJECT: Historic Preservation

REFERENCE: Land Use and Housing Meeting of July 16, 2008; Report to the City Council NO. 08-079, dated May 13, 2008; Land Use and Housing Meeting of January 23, 2008.

REQUESTED ACTION:

Accept the Report and provide input on issues related to the permit review process for potentially historic properties, conservation areas, and General Plan incentives. Take action on proposed revisions to the Land Development Code and Mills Act application fees and deadline for Burlingame Historic District.

STAFF RECOMMENDATION:

1. Request the Mayor's office continue to work with the public input working group to address outstanding issues related to the Permit Review Process for Potentially Historic Properties
2. Request the Mayor's office continue to work to develop conservation areas as a tool to address conservation of community and neighborhood character as part of the community plan update process
3. Accept the information on the status update of the Mills Act Program and provide input to the Mayor's office, as warranted
4. Approve in concept the proposed revisions to the Land Development Code and Request the Mayor's Office continue to process the recommended code amendments and proceed through typical process
5. Request the Mayor's office continue working with the Incentives Subcommittee of the Historical Resources Board to develop appropriate historic preservation incentives program consistent with the General Plan
6. Accept the information on the status update of the current effort to process three new historic districts and Refer to the full City Council the issue related to Mills Act application fees and deadline for property owners within the Burlingame Historic District

SUMMARY:

Background

The City Council Land Use and Housing Committee (LU&H) has addressed a number of issues related to historical resources and the City's historic preservation program over the past several years. Various historic preservation issues were raised during review and adoption of the General Plan in 2007 and 2008. Issues have also been raised by members of the public and Councilmembers during the same timeframe. This LU&H hearing is an opportunity to address the concerns raised by members of the public and for staff to present a status update on several aspects of the City's historic preservation program.

Demolition of buildings that are 45 or more years old were discussed at the January 23, 2008 and May 21, 2008 LU&H meetings (Attachment 1), with issues expressed most frequently by the public including community notification of pending demolitions, review by qualified City staff prior to issuance of a demolition permit, loss of community and neighborhood character, need for penalty in cases of illegal demolition, and applicability of the California Environmental Quality Act (CEQA) to demolition review. More recently the Uptown Planners Community Planning Group adopted a list of demolition policy concerns and proposed solutions for review by LU&H (Attachment 2).

While review of potentially historic properties is a very important aspect of the City's historic preservation program, there are several other aspects of the program that warrant review and discussion at this time, as well. The General Plan addresses historic preservation in a comprehensive manner and is the adopted policy for the City. General Plan policies address historic preservation planning; integrating the consideration of historical resources in the larger land use planning process; fostering government-to-government relationships with local Indian tribes; identifying, documenting, and evaluating historical resources; designating and preserving historical resources; fostering greater public participation and education related to historical resources; promoting the maintenance, restoration, and rehabilitation of historical resources through a variety of incentives; developing a historic preservation sponsorship program; and, increasing opportunities for cultural heritage tourism. The issues addressed in this report relate to several of the General Plan policies and include issues raised by members of the public and are of interest to the City Council.

Permit Review Process for Potentially Historic Properties

The City's current demolition permitting process requires ministerial review, unless a designated historical resource is involved, in which case a discretionary permit subject to CEQA, is required. Demolition of a building before the property owner is ready to rebuild can become a blighting influence on surrounding properties if the site sits vacant for a lengthy period. However, this circumstance can result in a positive improvement in the case of demolition of non-maintained and abandoned buildings. Designated historic buildings cannot be demolished prior to approval for new development on the same premises. Segmenting demolition from redevelopment can significantly impact neighborhood character when design review or development guidelines for new development are not in place and redevelopment relies solely on zoning restrictions.

Land Development Code Section 143.0212 requires review of structures that are 45 or more years old for potential historical significance prior to issuance of a ministerial construction permit, including a demolition permit, or a discretionary development permit. If it is determined by City staff that a historical resource may exist on the parcel under review, a site specific survey report is required. The survey report must be conducted consistent with the Historical Resources Guidelines of the Land Development Manual. Based on the report and the best information available, City staff then determines whether a potential historical resource is eligible for designation by the Historical Resources Board. If the eligible historical resource is designated, it may not be substantially altered, demolished, destroyed, removed, or relocated except through a discretionary deviation process.

The Historical Resources Guidelines state that the City should consult with and consider input from local individuals and groups with expertise in Historical Resources of the San Diego area as early as possible in the process so that their input can be considered during the timeframe allotted to determine the need for a site specific survey for a permit involving a structure that is 45 or more years old. Currently the timeframes are 10 working days for a ministerial construction permit (building or demolition) and 30 calendar days for a discretionary development permit. In early 2008, the City contacted all recognized community planning groups, Save Our Heritage Organisation (SOHO), the San Diego, North Park, University Heights, and La Jolla Historical Societies, Mission Hills Heritage, and La Playa Heritage to solicit their level of interest in determining the need for a site specific survey report for potential historic properties. A number of these groups indicated a desire to be involved in the review process.

The public input working group was established in May 2008 to solicit information from community planning groups and historical organizations on the potential significance of properties under review for ministerial and discretionary permits, including demolition permits. Currently, there are 18 community planning groups and nine historical organizations represented as part of this working group. The process includes notification emails sent to the group participants when a project is received for review. Responses are provided within a specified timeframe and are strongly considered by staff in determining whether a property is potentially historic and whether a historical research report should be required prior to project approval. The public input process has improved the overall quality of historic reviews, with interested members of the public providing knowledge of the history and context of older buildings and identifying those buildings that are important to their neighborhoods.

Conservation of Community and Neighborhood Character (Conservation Areas)

The loss of neighborhood character through demolition of older buildings has been raised as a concern by the public. This concern is heightened in many older communities where redevelopment, infill and new development are regulated solely by the underlying zone. In these areas, the public perceives the historic designation of individual buildings or establishment of historic districts as the only tool for the preservation of existing neighborhood character. However, areas that can be identified as retaining community character may not retain sufficient historic integrity at a level that meets local, state or national designation criteria and would not be regulated through the historical resources regulations. A widely accepted planning tool that can be used to maintain important aspects of older communities is often called a conservation district and is referred to in the Historic Preservation and Urban Design Elements of the recently adopted General Plan as a conservation area. Use of conservation areas in the form of overlay zones that provide guidance for retention of community character in older neighborhoods of the city while allowing redevelopment may be a useful tool that can be implemented in conjunction with the community plan update process.

Mills Act Program

In December 2008, the City Council approved reforms to Council Policy 700-46 (Attachment 3). The Mills Act Program reforms allowed for more accountability on the part of the city and the citizens who were recipients of the property tax incentives. With the reforms, several changes were made to the program to enhance its effectiveness. Anyone wishing to apply for the program is now required to complete an application, fees were introduced to recover staff's time, agreements were tailored and the impact to the General Fund was addressed.

Now, in completing the application, reinvestment in the historic property must be clearly documented. The means of reinvestment, with input from staff, help to define a tailored 10-year work plan for the property. During the 10-year timeline work could include window repair, reversal of inappropriate alterations or general maintenance of the house. In order to recover the costs for staff time associated with the Mills Act Program, a fee of \$590 at the time is required with the application submittal and a \$492 fee for inspection is remitted at the time the contract is signed. Additionally, any future enforcement action would require a fee of \$949 from the property owner.

Land Development Code Revisions

The current Historical Resources Regulations and other sections of the Land Development Code were enacted in late 1999 and became effective in 2000. A limited number of proposals that have recently been suggested related to regulatory relief and incentives are under consideration. These proposals are minor in nature and would not adversely impact historical resources or the review process for potential historic properties. A brief discussion of these items is provided in the discussion section below.

General Plan Incentives

The General Plan recognizes that where preservation is supported by local government policies and incentives, designation can increase property values and pride of place and includes policies that promote the maintenance, restoration, and rehabilitation of historical resources through a variety of financial and development incentives. Following adoption on the General Plan Update, the HRB established an ad hoc Incentives Subcommittee made up of Boardmembers and members of the public. The Subcommittee meets monthly with the goal of developing a Historic Preservation Incentives Program based on the adopted policies of the General Plan.

One of the identified incentives and another tool that may be useful in the retention of community character is a Transfer of Development Rights (TDR) program for historic resources. This program would encourage preservation of community character through retention of individual designated historical resources in areas zoned for densities at levels higher than currently developed. Allowing unused development potential, based on the underlying zone and gained from the preservation of designated historical resource, to be transferred, saves individual resources, allows an overall increase of density at the community plan level, and directs new development and infill to appropriate locations, while providing the historic property owner a monetary incentive to preserve their resource. Discussion of a number of other incentives is provided in the discussion section below.

Historic Districts

Status of Current District Processing

With the adoption of the General Plan update in March of 2008, the City acknowledged the importance of historic districts to the preservation of the unique character of San Diego; and reaffirmed its commitment to the establishment of new historic districts where concentrations of buildings, structures, sites, landscapes and objects are identified. The General Plan update also provides the opportunity for the identification of potential historic districts through policies that require the development of context statements and the completion of historic resource reconnaissance surveys.

As these surveys are completed and potential historic districts are identified, it is anticipated that community members and property owners wishing to preserve the historic character and quality of their neighborhoods will wish to pursue establishment of historic districts identified by the surveys. Because the surveys' resources will be limited to reconnaissance level work and will not include the intensive level survey work required to establish a historic district, it is also anticipated that community members and property owners will express interest in preparing and submitting historic district nominations rather than relying on the availability of limited City resources. With this in mind historical resources staff developed Historic District Nomination Guidelines to encourage and facilitate community-lead efforts to survey and nominate historic districts.

Over the last year, the Historical Resources section has been working on several historic district nominations submitted by members of the public. These applications are in various stages of processing. These potential districts are the Dryden District in North Park, the Kensington Heights Unit No 2 District in Kensington, and Phase II of the Mission Hills District in Uptown.

Burlingame Historic District

The Burlingame Historic District (HRB #526) was first established in 2002 as a voluntary historic district. After reaching in excess of 85% of the properties voluntarily designated as contributing resources to the District, the district type was amended in November 2007 by the HRB to be a traditional geographic district and as such, all remaining contributing and non-contributing properties were identified. The amendment was appealed by three property owners who opposed the change from a voluntary to a traditional district type and opposed the inclusion of their property as contributing resources. The appeal was put on hold at the request of the appellants' legal counsel in order to gather information and prepare their cases. The appeals were withdrawn this year at the end of the Mills Application period (March 31, 2009) and all three appellants applied for Mills Act agreements. At the time the appeals were withdrawn a request was made of staff to apply the pre-2009 fee of \$400 rather than the current fee of \$590. It was explained that the current fee was adopted by resolution of the City Council and could not be modified by staff. It was agreed that staff would raise the issue to the City Council for a decision.

Discussion

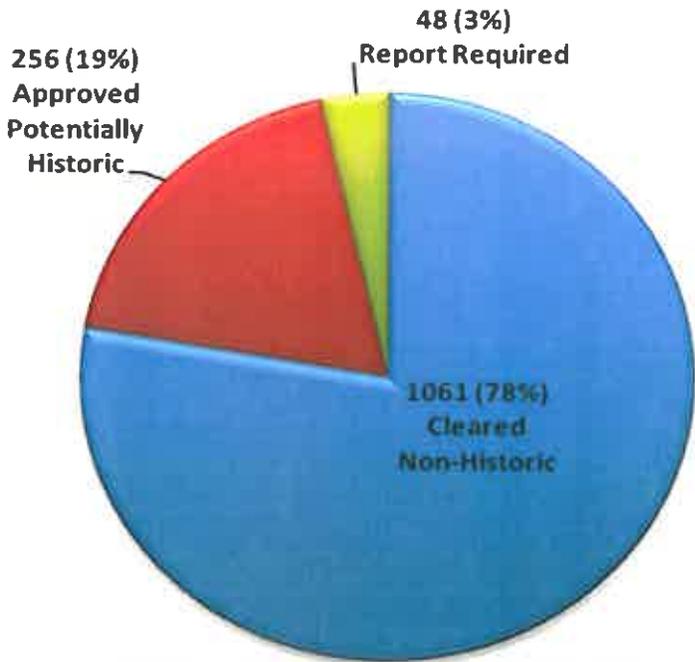
Permit Review Process for Potentially Historic Properties

The review process for potentially historic properties continues to reside in CPCI with qualified professional staff conducting reviews with consideration of comments from the public input working group. Since April 1, 2008 historic resources staff have reviewed 1,365 projects, averaging 85 projects per month. Of these projects, public input was received on 280, or roughly 20%. The 1,365 reviews include applications for building alterations and demolitions, with 104 (or about 8%) of the projects proposed demolitions and the remaining projects exterior remodels and additions. Following staff review and public input, 1,061 (78%) of the total projects were cleared as non-historic properties, 256 or 19% were approved as projects consistent with the Secretary of the Interiors Standards, and 48 projects or 3% were determined by staff not to be consistent with the Secretary of the Interiors Standards and research reports were required. These statistics are represented visually in the chart below. Of these 48 projects, eight were referred to the Historical Resources Board for a hearing on historical significance. The remaining 40 reports have not yet been submitted by the project applicant and may either be in process or the project withdrawn.

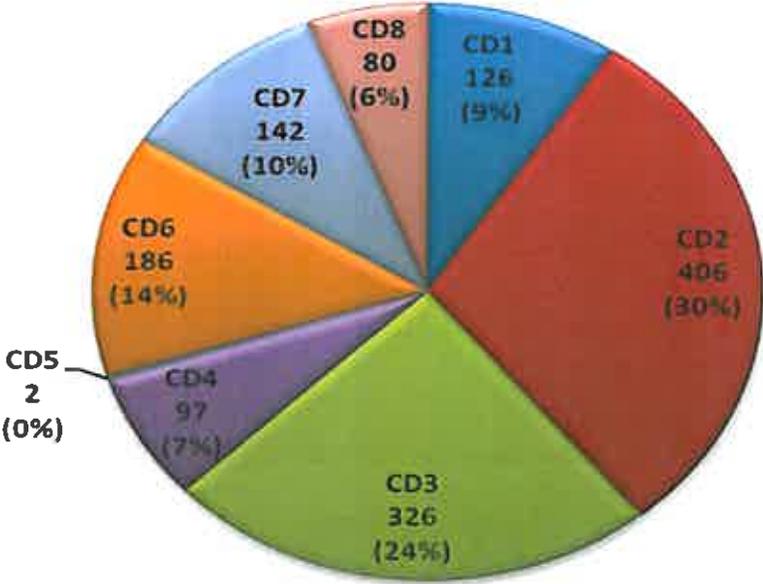
The locations of projects reviewed by historic staff naturally correlate with the older San Diego communities, with more than half (54%) occurring in Council Districts 2 and 3 combined. Communities with the highest number of historic reviews include Clairemont Mesa with 128, Greater North Park with 114, La Jolla with 108, Peninsula with 167, and Uptown with 142. The number of reviews for each Council District and Community are displayed in the following charts.

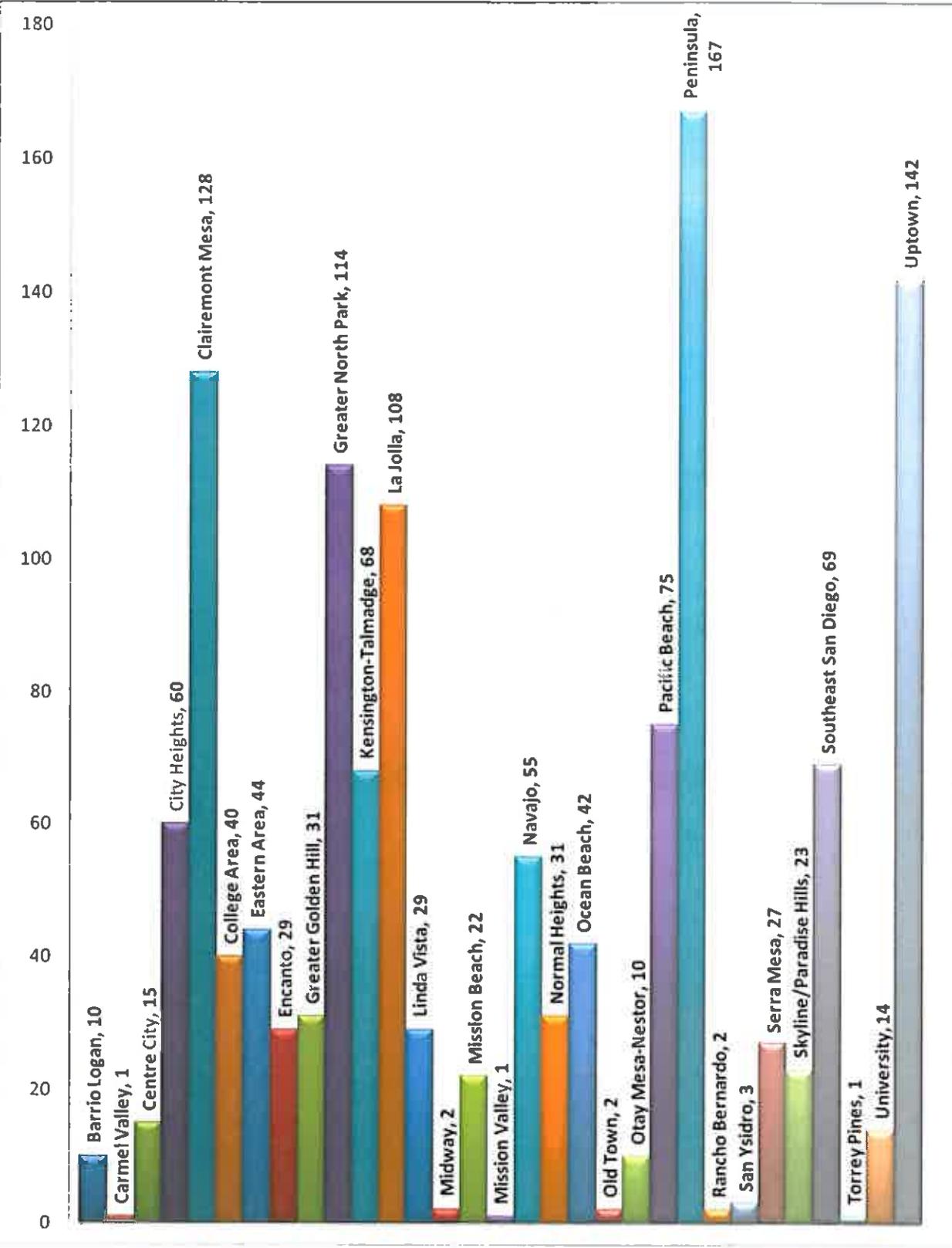
The public input working group met with staff on a quarterly basis during the first year and has continued to meet semiannually thereafter, to address any issues of mutual concern. The most recent meeting was held on June 12, 2009. At this meeting it was agreed that the newly required digital photos are an improvement and cut down on the driving around time of the group participants. It was also agreed that in general the timelines and project descriptions provided for project reviews are working well. Participants requested more feedback from staff on the outcome of reviews and some individuals requested participation in the review of research reports prior to a staff determination of historical significance. In addition, the current preliminary review process, a review of limited issues by the City at the applicants request prior to project submittal, was identified as a flaw in the public input process by some participants. There continues to be concerns by members of the public, as presented by Uptown Planners and others, in noticing, penalties, applicability of CEQA to the review process, and preliminary reviews.

HR Staff Determination



Reviews by Council District





Noticing

Although email notification of ministerial and discretionary permits are provided to the public input working group, additional notification to community members has been raised as an issue related to historical preservation. Additional means of notification to the public could be provided through posting a demolition permit notice on the property prior to issuance of the permit, similar to posting of notices for discretionary permits. This would allow more members of the public to be informed of a pending demolition in their neighborhood and would require a change to the noticing requirements of the Land Development Code. It may be appropriate to require property owners to post a notice of a pending demolition or building permit on the property to better inform the neighborhood of proposed work. At the May 21, 2008 LU&H hearing the Committee recommended this approach. Currently, this change to the noticing requirements is not a priority in the Code update work program, due to limited DSD Code staffing. However, DSD will consider making this change in the future.

Posting of demolition permits on the DSD website was another suggestion raised to increase public notification. Currently, information is provided to the public regarding permit applications, permits issued and permits completed on a subscription basis. DSD is considering the weekly posting of permits on the website.

Penalties

Illegal demolitions occur when a property owner demolishes a building without first obtaining a permit or when a property owner demolishes a building after obtaining a permit that is based on misleading or incorrect information provided to staff and relied on for permit issuance. Guidance and submittal requirements for building demolition and removal are provided to property owners in DSD Information Bulletin 710. The need for historical review for structures 45 years or older and special permitting requirements for designated historic sites are included in this bulletin. The public has raised issues related to the loss of historic buildings through illegal demolitions that could have been avoided through a more rigorous review process and deterred through a monetary penalty. Currently, the historical resources regulations do not include a fine for the illegal demolition of historical resources; however, the general code enforcement provisions of the Municipal Code provide penalties and fines for any violation of the code and have been used to fine property owners for violations of the historical resources regulations.

Applicability of the California Environmental Quality Act (CEQA)

The current demolition process is ministerial by definition of the Land Development Code and is therefore not subject to environmental review under CEQA. It has been argued by the public that review of potentially historic resources should be a discretionary action and that the definition of a historical resource under CEQA should be used in the demolition review process. The City Attorney's office is currently reviewing this issue.

Preliminary Reviews

The Preliminary Review process allows an applicant to submit a questionnaire to DSD for early feedback on a potential project or to request a determination of historical significance. The submittal requirements are the same as for a building permit and staff conducts the initial review in the same manner as for a building or demolition permit. The review time however is typically five business days rather than 10 days. Members of the public have identified this process as a flaw in the public input process and have asked to be notified of preliminary reviews and have requested the review time be extended to 10 days. Staff supports notification to the public input working group so they can provide historic information before a decision is made and to increase the public awareness of potential future projects in their communities. Staff does not support the increased review time for a preliminary review

as this process is intended to be a way for an applicant to get a quick response from the City and to facilitate easy access to City review decisions.

Conservation of Community and Neighborhood Character (Conservation Areas)

Conservation areas are those with distinct physical characteristics that merit special land use attention. They possess form, character, and visual qualities derived from arrangements or a combination of natural environment and manmade environment or places of natural or cultural significance that create an image of stability and identity. Because of their cultural significance they overlap with historic areas that have lost their historic integrity but kept their historic character. Even though San Diego does not have any established conservation areas, it has many neighborhoods that are first choice neighborhoods to live, shop, work and play and have many of their buildings architecturally and culturally significant. San Diego's General Plan approved in 2008 recognized the potential of these neighborhoods and addressed conservation areas in its Historic Preservation and Urban Design elements.

The discussion in the Historic Preservation element suggests “. . . as future growth in San Diego shifts attention from building on open land to a focus on reinvestment in existing communities, historical and cultural resources will be increasingly viewed as sites with opportunity to redevelop, both in the Centre City area and surrounding older communities. This development pressure will threaten both the built environment and archeological sites. . . .” Under the policy statements, it is recommended to fully integrate the consideration of historical and cultural resources in the larger land use planning process and use Conservation Areas as tools to complement community character.

The Urban design Element suggests a survey to be conducted to identify "conservation areas" that retain original community character, that respect the context of historic streets, landmarks, and give a community a sense of place or history, but do not meet historic designation criteria as an individual historical resource or as a contributor to a historical district. Further, the Urban Design Element suggests creating design guidelines as an implementation tool in community plans and reviewing the redevelopment of the properties within the conservation areas according to the guidelines to maintain important aspects of the surviving community character.

Conservation Areas are not historic districts. They either surround the historic districts to continue the distinct character or they are independent areas that share similar physical and cultural characteristics. Compared to Historic Districts; in conservation areas:

- Time and age is not a consideration,
- Historical integrity is not a concern, but form, character visual quality of streetscape, landscape, and urban form is important,
- Compliance with the Secretary of the Interior Standards is not required, but values and perceptions of the local citizens are important,
- Boundary of the Conservation areas is not drawn by technical surveys but consensus,
- Common architectural elements are important but their originality is not important.

Conservation areas are seen as tools to bring economic development by raising quality of life and attractiveness of the area because they are complete neighborhoods with walkable and safe streets and they would become a first choice to live shop, work, and play. The success of conservation areas depend on the size, the process of nomination, and the implementation. The

Conservation Area tool is being used in many large and small U.S. Cities such as Philadelphia, PA; Boston, MA; Davis, CA; and Napa, CA. It is not only an urban design and preservation tool but an economic development tool that raises property values, attracts business and people to shop by creating safe walkable streets, attractive civic spaces, complete neighborhoods and high quality of life for the residents. However, conservation areas have to be embraced and supported by the community because they create a form of regulations that redevelopment and new development needs to follow and be reviewed according to the design guidelines created. The success of the Conservation areas depends on the support of the communities, clarity of the design guidelines and effectiveness of applying the design guidelines to the review process.

Mills Act Program

The adopted revisions to the Mills Act Program changed the way the number of applications and contracts is reported, from a calendar year to a fiscal year basis. The revisions also limited the application period to January through March of each calendar year, where previously requests for Mills Act agreements were accepted through October. The number of new applications decreased for FY 2009 due to these modifications to the program. During the newly established January 1st to March 31st deadline, staff received 12 applications, compared to 61 during the previous fiscal year.

These 12 applications are from historic property owners located in Greater Golden Hill (1), Greater North Park (3), La Jolla (1), Southeastern San Diego (1), and Uptown (6). The individual property tax savings range from a high of \$16,600 to a low of \$533, with two owners saving less than \$1,000 each, five owners saving between \$1,000 and \$5,000 each, one saving between \$5,000 and \$10,000, and four saving more than \$10,000 each. The average tax savings is \$6,000. This tax savings represents an estimated \$15,000 reduction in property tax revenue to the City’s General Fund in FY 2011, well below the established threshold of \$200,000.

The chart below provides information on the number of Mills Act applications received and recorded last year, the current year and those anticipated for the following year. It is anticipated that there will be a higher number of applications in FY 2010, with the inclusion of the Burlingame Historic District, as well as designations from the latter part of 2009.

	FY 2009		FY 2010		FY 2011
	July 1 – Dec. 31 2008	Jan. - June 30 2009	July 1 – Dec. 31 2009	Jan. 1 – June 30 2010	July 1 – Dec. 31 2010
Mills Act Applications	61 (actual)	12 (actual)	n/a	60 (expected)	n/a
Mills Act Recorded	96 (actual)	n/a	12 (actual)	n/a	60 (expected)

To ensure that properties are being maintained in accordance with the *Secretary of the Interior’s Standards for the Treatment of Historic Properties*, staff is developing a comprehensive monitoring program. While the agreement has always provided language for an inspection program, no program was put in place to ensure that the properties were being maintained properly. After the 2008 reforms, the designated historic properties with the oldest 200 Mills Act Agreements were notified of an upcoming inspection and the \$492 fee was requested. To date approximately half of the property owners have either remitted payment to the city or have

requested a longer period of time to pay. Staff has also scheduled individual appointments with property owners and scheduled times to view the remaining sites. Staff will be evaluating three main areas: 1) visibility of the resource; 2) general maintenance of the resource; and 3) any alterations that did not receive approval from the City. It is anticipated that a number of the properties will require follow-up communication to remedy any areas of concern.

Land Development Code Revisions

Four revisions to the Land Development Code have been proposed to address regulatory relief and preservation incentives. A brief explanation of the proposals is provided in the chart below. Staff is recommending that these Code revisions be processed through the typical process, involving public review and review by the Community Planners Committee and Planning Commission prior to being heard by the full Council.

Subject	Code Section	Proposed Amendment	Staff Comments
Archaeology Buffer	143.0220(d)(2)	Delete this requirement for a 100' buffer around an Important Archaeology Site to meet exemption criteria.	Archaeology sites are protected through implementation of other sections of the Historical Resources Regulations and Guidelines.
45-Year Permit Review	143.0212(c)	Clarify what types of construction permits for structures 45 years or older trigger the review for potentially historic resources.	As currently adopted, this review can apply to plumbing, mechanical, and electrical and work solely on building interiors. Current submittal requirements assure that any work to a building exterior requires the review.
Historic Preservation Incentives – Floor Area Ratio (FAR)	143.0251	Increase FAR for designated sites; development would still be subject to height and setback requirements	Would apply only to designated historical resources. May provide an incentive to owner to add on to the resource rather than demolish it and rebuild to gain increased FAR. Project must be in compliance with the Standards.
Historic Preservation Incentives – Variance Findings	126.0805	Establish separate finding(s) to allow for development of historic sites where the structure or site prohibits compliance with certain Code regulations	Would apply only to designated historical resources. May provide an incentive to owner to reuse resource rather than demolish it and rebuild to current zoning requirements. Would require discretionary review and site specific historic review.

General Plan Incentives

The Historic Preservation Element of the General Plan includes a number of important incentives for historic property owners and includes a policy to create a historic preservation fund that provides a monetary source for local preservation incentives such as an architectural assistance program and archaeological site protection plan. The policy states that the fund may be supported through grants, private or public donations, or other sources. In July 2009, the City Council established this fund for any and all potential grants, donations, fines, penalties, or other sources of funding for the purpose of historic preservation. The Comptroller was authorized to appropriate funds from the Historic Preservation Fund for the local preservation programs and incentives consistent with the General Plan. These monies shall come to Council through the budget process before any funds are expended. In addition to an architectural assistance program for designated historic properties and development of an archaeological site protection plan, staff has identified the following activities as appropriate to be funded through the Historic Preservation Fund:

- Rehabilitation assistance for low and moderate income designated historic property owners
- Assistance to improve energy efficiency of designated historic homes
- Certified Local Government training requirements which benefit the HRB, staff and members of the public
- Improved technology to assist with historic surveys and make survey data accessible to the public.

Staff will continue to work with the Incentives Subcommittee to refine uses of the Preservation Fund prior to returning to Council for approval. Staff and the Subcommittee will also address other incentives identified in the General Plan, including development of a Transfer of Development Rights program, retention of non-conforming setbacks for designated historical resources without requiring a variance or hardship findings, and use of the CUP and NDP process for reuse of designated historical resources that would not adversely affect community plan.

Historic Districts

Status of District Nominations

The **Dryden District** was submitted by members of the North Park Historical Society in May 2007. Staff reviewed the nomination in June and July of 2008 and provided comments to the applicant that identified several areas of concern. These issues related to the district boundary, the historic context and statement of significance, the period of significance, the applicable designation criteria and the classification of contributing and non-contributing resources within the district.

Of these issues, the district boundary was the most significant. Although the boundaries of the proposed district reflect the boundaries identified in the 1996 Mid-City reconnaissance survey, a reconnaissance survey provides only a cursory evaluation of resources and potential districts. Boundary refinement may be required as more intensive level research is conducted and a context statement is developed. The boundary proposed was not well justified in the nomination. Staff met with the applicant in September 2008 to discuss the issues in greater detail and provide direction regarding the revisions that would need to be completed before the nomination could move forward.

The applicant submitted supplemental material in January of 2009 in response to staff direction. At the same time, the City was in the process of selecting a historic resource consultant to prepare a historic context statement and complete a reconnaissance survey of North Park as part of the Community Plan Update process. This provided an excellent opportunity for an independent preservation professional to review the nomination and provide comment. The consultant, Historic Resources Group (HRG) was selected and brought on-board in late July 2009. Staff met with HRG in early August and provided copies of all nomination materials for their review. On September 8th HRG provided comment on the nomination to staff.

HRG found that the original nomination and the supplemental application both contain very good historical information and reflect a substantial amount of research into the development of this area of North Park and the people responsible for this development. Based upon their preliminary assessment of the materials, they found that the North Park Dryden Historical District appears to meet one or more of the City's designation criteria for historic districts. However, HRG also noted that the nomination must be refined, reorganized, and further analyzed to better highlight the strongest aspects of the proposed district's historic significance.

Based on these reviews, the Dryden District nomination will need to be revised before moving forward. This will include revising the period of significance, strengthening the historic context and statement of significance, and addressing the district boundary. The historic context for the North Park Survey should be completed by HRG by late fall of 2009. The completion of this context will assist in strengthening the historic context and statement of significance for the Dryden District by establishing a broader context in which the Dryden District can be evaluated. The district boundary can then be addressed once the survey work for North Park is completed in late spring of 2010. Completion of the survey work will allow staff and the applicant to determine whether the proposed boundary is appropriate, or whether it should be expanded to include a larger, architecturally cohesive area. Based on this timeline, staff would anticipate taking the Dryden District nomination before the Historical Resources Board in late 2010.

The nomination for the **Kensington Heights Unit No. 2 District** was submitted by the applicant, Priscilla Ann Berge, in September 2008. Staff reviewed the nomination in early 2009 and provided comments to the applicant, which were addressed with a revised nomination. On April 30, 2009 staff conducted a noticed informational workshop with property owners to present the nomination and answer questions. Immediately following the workshop, it came to the attention of staff that a conflict existed which precluded further processing the district nomination. The applicant who had been working on the district nomination since 2002, Ms. Berge, was appointed to the Historical Resources Board in November 2006. Although the preparation of the nomination was a volunteer effort, staff was advised by the City Attorney's Office and the Ethics Commission that the Kensington Manor Unit No. 2 Historic District nomination should not be processed while Ms. Berge sits on the Board. As Ms. Berge was reappointed to a new two year term expiring in March of 2011, we do not anticipate resuming processing of the district until that time, at the earliest.

Once the nomination process resumes, staff will hold additional workshops with the property owners to address outstanding issues and concerns, which include the involuntary nature of the district and allowable modifications within a historic district. Property owners will be explicitly notified when the nomination process does resume and will be highly encouraged to attend all workshops so that they may be fully informed of both the benefits and limitations associated with a historic district designation.

In late summer of 2008, community members approached staff with a proposal to survey and nominate the **Mission Hills District, Phase II** area of the larger Mission Hills District. This process entails surveying the area and preparing a form for each property that includes a photo of the building; an architectural description; a date of construction; the name of the architect and/or builder if available; a list of building modifications; and location and ownership information. Following the survey work, City staff will review the nomination and schedule a noticed property owner workshop before taking the nomination through the public hearing process.

In September 2008 the City mailed self-addressed stamped petition cards to property owners within the expansion area in order to gauge the level of interest in the historic district before the volunteers began their work. Staff received responses from 59 of the 99 property owners within the expansion area. Of those that responded, 49% supported the effort, 32% opposed the effort, and 19% wanted additional information before making a determination. The applicants are still in the process of surveying the area and preparing the required documentation. Once that is completed and submitted, staff will review the nomination and provide comment on the nomination before holding a property owner workshop. Staff currently estimates that the nomination of the expansion area as Phase II of the Mission Hills District will be brought before the Board in late 2010.

CONCLUSION:

In conclusion, staff recommends the Land Use and Housing Committee request the Mayor's office continue to work with the public input working group to address outstanding issues related to the Permit Review Process for Potentially Historic Properties; request the Mayor's office continue to work to develop conservations areas as a tool to address conservation of community and neighborhood character as part of the community plan update process; accept the information on the status update of the Mills Act Program and provide input to the Mayor's office, as warranted; approve in concept the proposed revisions to the Land Development Code and request the Mayor's Office continue to process the recommended code amendments and proceed through the typical process; request the Mayor's office continue working with the Incentives Subcommittee of the Historical Resources Board to develop appropriate historic preservation incentives program consistent with the General Plan; and, accept the information on the status update of the current effort to process three new historic districts and refer to the full City Council the issue related to Mills Act application fees and deadline for property owners within the Burlingame Historic District.

FISCAL CONSIDERATION:

Staffing for review of ministerial and discretionary projects is supported through permit fees and deposit accounts. Staff bills actual time spent on the review to the account as part of the review process. The Mills Act Program is supported by cost recovery fees. Development of conservation areas as part of the community plan update process is funded by a combination of consultant and staff work budgeted in the General Fund. Work on the Land Development Code amendments, Incentives Subcommittee, historic district processing, supervision of Historical Resources staff, and management of the historic preservation program is dependent on the General Fund.

PREVIOUS COMMITTEE AND PLANNING COMMISSION ACTIONS:

Public comments raising concerns about the demolition review process, particularly related to historical resources, were raised at several LU&H Committee meetings, Natural Resources and Culture Committee meetings, and Planning Commission meetings in 2007 and 2008 during workshops and hearings on the recently adopted General Plan update. The specific issue of demolition permit review was heard by LU&H at the January 23, 2008 and May 21, 2008 meetings.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

In early 2008, the City contacted all recognized community planning groups, Save Our Heritage Organisation (SOHO), the San Diego, North Park, University Heights, and La Jolla Historical Societies, Mission Hills Heritage, and La Playa Heritage to solicit their level of interest in determining the need for a site specific survey report for potential historic properties. A number of these groups indicated a desire to be involved in the review process. The public input working group was established in May 2008 to solicit information from community planning groups and historical organizations on the potential significance of properties under review for ministerial and discretionary permits, including demolition permits. Currently, there are 18 community planning groups and nine historical organizations represented as part of this working group. The public input working group met with staff on a quarterly basis during the first year and has continued to meet semiannually thereafter, to address any issues of mutual concern.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key stakeholders include the general public, community groups, historic preservation groups, the building industry, and property owners. It is anticipated that the demolition review process will be improved through the procedures already implemented and those still under consideration to the benefit of older neighborhoods and communities of San Diego. The building industry and property owners have experienced a lengthened review process for some ministerial approvals due to the change in some procedures. Specifically, no over the counter, same day approvals are being issued for properties that involve a building or structure 45 or more years old.

Respectfully submitted,



William Anderson, FAICP, Director
City Planning & Community Investment



Cathy Winterrowd, Principal Planner
Historical and Natural Resources

ANDERSON/KOKSUZ/CW/cw

- Attachments:
1. Report to the City Council dated May 13, 2008 No. 08-079
 2. Uptown Planners Land Use and Housing Demolition Policy Concerns and Proposed Solutions dated September 1, 2009
 3. Council Policy 700-46



THE CITY OF SAN DIEGO

REPORT TO THE CITY COUNCIL

DATE ISSUED: May 13, 2008 REPORT NO. 08-079

ATTENTION: Land Use and Housing Committee
Agenda of May 21, 2008

SUBJECT: Demolition Permit Processing

REFERENCE: Land Use and Housing Meeting of January 23, 2008; Memo from Councilmember Toni Atkins to Councilmember Ben Hueso dated December 14, 2007; and Memo from Bill Anderson, Deputy Chief Operating Officer (DCOO) to Councilmember Toni Atkins, dated November 16, 2007.

REQUESTED ACTION:

Provide input on progress made on addressing issues raised by Councilmembers and the public regarding the review of demolition permits in the City of San Diego.

STAFF RECOMMENDATION:

Request the Mayor's office continue to investigate and implement ways to improve the demolition review process.

SUMMARY:

Background

The City's Land Development Code (Section 143.0212) requires review of structures that are 45 or more years old for potential historical significance prior to issuance of a ministerial construction permit, including a demolition permit, or a discretionary development permit. If it is determined by City staff that a historical resource may exist on the parcel under review, a site specific survey report is required. The survey report must be conducted consistent with the Historical Resources Guidelines of the Land Development Manual. Based on the report and the best information available, City staff then determines whether a potential historical resource is eligible for designation by the Historical Resources Board. If the eligible historical resource is designated, it may not be substantially altered, demolished, destroyed, removed, or relocated except through a discretionary deviation process.

Issues related to demolition of buildings that are 45 or more years old have been raised by members of the public and were discussed at the January 23, 2008 Land Use and Housing Committee (LU&H) meeting. Following lengthy public testimony, Committee members asked staff to review the current policies and procedures related to demolition review and return to LU&H with alternatives that would address the issues raised by the public. The issues expressed most frequently by the public include community notification of pending demolitions, review by

qualified City staff prior to issuance of a demolition permit, loss of community and neighborhood character, need for penalty in cases of illegal demolition, and applicability of the California Environmental Quality Act (CEQA) to demolition review. These issues are addressed in detail in memos from the Greater North Park Planning Committee and Uptown Planners (Attachments 1 and 2). Prior to the January LU&H meeting, several issues related to demolition permits were addressed in a memo from Bill Anderson, DCOO for City Planning and Development to Councilmember Atkins. This memo described several procedures that had been considered by the Development Services Department to address some of the issues related to the historical review process (Attachment 3). Following the LU&H meeting, additional procedures have been considered and several important changes have been made to the demolition review process. These improvements and the potential for additional revisions to the demolition review process are discussed below.

Discussion

The City's current demolition permitting process requires ministerial review, unless a designated historical resource is involved in which case a discretionary permit, subject to CEQA is required. Demolition of buildings and structures in the City of San Diego occurs under several scenarios and results in various impacts. Demolition can be beneficial for the protection of life and safety particularly following a natural disaster (e.g., fire, landslide, flood, etc.) or to mitigate a dangerous situation. Designated historic buildings can be demolished, if required to protect the public health and safety. A subsequent permit is required consistent with the historical resources regulations.

Demolition of a building before the property owner is ready to rebuild can become a blighting influence on surrounding properties if the site sits vacant for a lengthy period. However, this circumstance can result in a positive improvement in the case of demolition of non-maintained and abandoned buildings. Designated historic buildings are required to be maintained and not result in passive demolition through neglect and cannot be actively demolished prior to approval for new development on the same premises. Segmenting demolition from redevelopment can significantly impact neighborhood character when design review or development guidelines for new development are not in place and redevelopment relies solely on zoning restrictions.

These various situations that involve demolition raise several questions about the overall review process, particularly in light of the recently adopted General Plan and need for redevelopment in the already urbanized communities. When is it appropriate to allow demolition without concurrent approval of a new project? When should demolition review be discretionary? How can community character be protected while supporting redevelopment and increased development intensity in appropriate areas of the City? These issues would be best addressed through community plan updates and the incorporation of a historic preservation element that would consider historical resources and community character in the context of surveys, districts, conservation areas and design standards.

Based on comments received by the public and direction from LU&H to look at changes in procedures to improve the process for reviewing demolition permits and the review of structures over 45 years old, some changes have already been put in place and future changes are under consideration. The following is a discussion of changes in procedures that have been implemented in response to comments from LU&H and the public and a discussion of additional items under consideration.

Review by Qualified City Staff Prior to Issuance of a Demolition Permit – Implemented

One of the issues raised at LU&H is staff's ability to make determinations related to the demolition of buildings. Staff meeting the U.S. Secretary of the Interior's Qualifications in Architectural History has been hired by Development Services to conduct the review of all ministerial projects involving potential historic buildings. This individual is housed with the Historical Resources staff in City Planning & Community Investment (CPCI), has worked with the Historical Resources Board (HRB), attends all HRB meetings, conducts site visits, and is directly supervised by the historical resources program coordinator. The position is responsible for review of all ministerial projects involving buildings and structures 45 or more years old, including reviews that were previously conducted over the counter in Development Services. Beginning March 17, 2008 any approval that falls under the historical resources regulations requires submittal of a scope of work, photos, a residential building record, and other requested information prior to the City issuing a demolition or building permit. Following public notification as described below, the need for a site specific survey report and determination of eligibility for designation are made in consultation with Senior Planners in CPCI.

Discretionary projects involving a potential historic resource, including building alterations, demolitions, and new construction, are being reviewed by qualified Historical Resources staff in CPCI. The community is being notified in the same manner as for ministerial projects and the need for a site specific survey report and determination of eligibility for designation are made in consultation with other Senior Planners in CPCI.

A total of 75 projects were reviewed under this new process in April 2008. Of these, 49 were cleared as non-historic and 20 were approved as projects consistent with the historical resources regulations involving potentially historic resources. Reports were required for six projects, three in Greater North Park, one in Mid-City (Kensington-Talmadge), one in Peninsula, and one in Uptown (Hillcrest). A table of these reviews by community is provided in Attachment 4.

Community Notification of Pending Demolitions – Implemented

Notification to the public prior to issuance of a demolition permit was another important issue raised at the January 2008 LU&H meeting. The Historical Resources Guidelines state that the City should consult with and consider input from local individuals and groups with expertise in Historical Resources of the San Diego area as early as possible in the process so that their input can be considered during the timeframe allotted to determine the need for a site specific survey for a permit involving a structure that is 45 or more years old. Currently the timeframes are 10 working days for a ministerial construction permit (building or demolition) and 30 calendar days for a discretionary development permit.

Since the LU&H meeting in January, the City has contacted all recognized community planning groups, Save Our Heritage Organisation (SOHO), the San Diego, North Park, University Heights, and La Jolla Historical Societies, Mission Hills Heritage, and La Playa Heritage to solicit their level of interest in determining the need for a site specific survey report for potential historic properties. A number of these groups have indicated a desire to be involved in the review process. A meeting was held on May 8, 2008 with interested individuals to discuss the process and notifications began with projects deemed complete on that date. Staff will provide an oral update on the notification process at the LU&H meeting.

Increased Public Notice – Under Consideration

An increase in the timeframe for ministerial reviews from 10 working days to 20 working days would allow a more meaningful review by the public and would require a change to the Land Development Code. This proposal will be reviewed by the LU&H Technical Advisory Committee (TAC) on May 14, 2008. Staff will provide an oral update on the response from TAC.

Additional means of notification to the public could be provided through posting a demolition permit notice on the property prior to issuance of the permit, similar to posting of notices for discretionary permits. This would allow more members of the public to be informed of a pending demolition in their neighborhood and would require a change to the noticing requirements of the Land Development Code. Staff recommends making this change in order to provide increased notification to the community and provide for improved community involvement in the demolition review process.

Posting of demolition permits on the DSD website was another suggestion raised to increase public notification. Currently, information is provided to the public regarding permit applications, permits issued and permits completed on a subscription basis. DSD is considering the weekly posting of permits on the website.

Loss of Community and Neighborhood Character – Under Consideration

The loss of neighborhood character through demolition of older buildings has been raised as a concern by the public. This concern is heightened in many older communities where redevelopment, infill and new development are regulated solely by the underlying zone. In these areas, the public perceives the historic designation of individual buildings or establishment of historic districts as the only tool for the preservation of historic neighborhood character. However, areas that can be identified as retaining original community character may not retain sufficient historic integrity at a level that meets local, state or national designation criteria and would not be regulated through the historical resources regulations. A widely accepted planning tool that can be used to maintain important aspects of older communities is often called a conservation district (see Attachment 5) and is referred to in the Historic Preservation and Urban Design Elements of the recently adopted General Plan as a conservation area. Use of conservation areas in the form of overlay zones that provide guidance for retention of community character in older neighborhoods of the city while allowing redevelopment may be useful in the interim until community plan updates are approved.

Another tool that may be useful in the retention of community character is a Transfer of Development Rights (TDR) program for historic resources. This program would encourage preservation of community character through retention of individual designated historical resources in areas zoned for densities at levels higher than currently developed. Allowing unused development potential, based on the underlying zone and gained from the preservation of designated historical resource, to be transferred, saves individual resources, allows an overall increase of density at the community plan level, and directs new development and infill to appropriate locations.

Need For Penalty in Cases of Illegal Demolition – Under Consideration

Illegal demolitions occur when a property owner demolishes a building without first obtaining a permit or when a property owner demolishes a building after obtaining a permit that is based on misleading or incorrect information provided to staff and relied on for permit issuance. Guidance and submittal requirements for building demolition and removal are provided to property owners in DSD Information

Bulletin 710. The need for historical review for structures 45 years or older and special permitting requirements for designated historic sites are included in this bulletin. The public has raised issues related to the loss of historic buildings through illegal demolitions that could have been avoided through a more rigorous review process and deterred through a monetary penalty. Currently, the historical resources regulations do not include a fine for the illegal demolition of historical resources, however, the general code enforcement provisions of the Municipal Code provide penalties and fines for any violation of the code.

Review of Information Bulletin 710 indicates that the language describing the historic building demolition review process and need for permitting is not detailed enough to stress the importance of this review requirement. Additionally, the submittal requirements are not specific enough to provide necessary information for a thorough review of potential historical value as part of the demolition review process. The General Plan supports updating regulations and guidelines to maintain adequate protection of historical resources and creation of a historic preservation fund to be used for local preservation incentives. Staff is currently in the process of updating Information Bulletin 710, including the submittal requirements for historical review to address the current deficiencies.

In summary, several improvements to the historic review process for proposed demolition permits have been implemented including improved notification to the public and review of demolition permits by qualified City staff. It is recommended that the Mayor's office continue to investigate and implement additional ways to improve the demolition review process, as described above.

Applicability of CEQA to Demolition Review

The current demolition process is ministerial by definition of the Land Development Code and is therefore not subject to environmental review under CEQA. It has been argued by the public that review of potentially historic resources should be a discretionary action and that the definition of a historical resource under CEQA should be used in the demolition review process. The Chair of LU&H requested the City Attorney's office to review this issue and report back on their findings.

FISCAL CONSIDERATION:

Staffing for review of ministerial demolition permits is paid by the Development Services Enterprise Fund and supported through permit fees. Review of discretionary projects is paid by the applicant through a deposit account. Staff bills actual time spent on the review to the account as part of the review process. Supervision of Historical Resources staff is dependent on funding through the General Fund.

PREVIOUS COMMITTEE AND PLANNING COMMISSION ACTIONS:

Public comments raising concerns about the demolition review process, particularly related to historical resources, were raised at several LU&H Committee meetings, Natural Resources and Culture Committee meetings, and Planning Commission meetings in 2007 and 2008 during workshops and hearings on the recently adopted General Plan update.

The specific issue of demolition permit review was heard by LU&H at the January 23, 2008 meeting. There was an oral staff report and substantial public comment presented at that meeting.

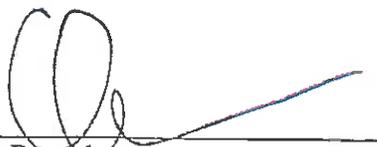
COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Since the LU&H meeting in January, the City has contacted all recognized community planning groups, Save Our Heritage Organisation (SOHO), the San Diego, North Park, University Heights, and La Jolla Historical Societies, Mission Hills Heritage, and La Playa Heritage to solicit their level of interest in determining the need for a site specific survey report for potential historic properties. A number of these groups have indicated a desire to be involved in the review process. A meeting was held on May 8, 2008 with interested individuals to discuss the process and notifications began with projects deemed complete on that date. It was agreed that a follow up meeting with interested individuals will be scheduled to refine the process.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key stakeholders include the general public, community groups, historic preservation groups, the building industry, and property owners. It is anticipated that the demolition review process will be improved through the procedures already implemented and those still under consideration to the benefit of older neighborhoods and communities of San Diego. The building industry and property owners will likely experience a lengthened review process for some ministerial approvals due to the change in some procedures. Specifically, no over the counter, same day approvals will be issued for properties that involve a building or structure 45 or more years old.

Respectfully submitted,



Kelly Broughton
Development Services Director



William Anderson, FAICP, Deputy Chief
City Planning and Development

ANDERSON/BROUGHTON/GALLARDO/CW/sa

- Attachments:
1. Greater North Park Planning Committee Memo
 2. Uptown Planners Memo
 3. Memo from Bill Anderson to Councilmember Atkins
 4. Over 45 Year Reviews April 2008
 5. "Alternative Forms of Protection: Conservation Districts and Conservation Easements" from Drafting Historic Preservation Ordinances, OHP Technical Assistance Bulletin #14, Pages 47-49.

Date: July 17, 2007

Attention: City of San Diego:
Mayor Jerry Sanders
Third District City Councilmember Toni Atkins
Land Use and Housing Committee
Planning Commission
Development Services Department
Historic Resources Board
City Planning & Community Investment Department

Subject: (1) Development Services Department multi-family housing review and demolition permit policy.

(2) Certification and adoption of North Park Historical Resources Survey.

(3) Land development code loophole allowing ministerially approved apartments to initiate tentative map approval process to covert said apartments to condominiums.

(4) Update of the Greater North Park Community Plan.

References: Greater North Park Community Plan (1986)
Municipal Code Section 129.05
Land Development Manual: Historic Resources Guidelines Section II. A.1. (2001)

Issues:

The North Park Planning Committee (NPPC) represents an involved diverse population that shares the vision of a growing vibrant community while retaining its proud history. The community's vision is challenged by two development services policies. The first is the ministerial review that allows the issuance of building permits to construct multi-family rental apartment projects without community planning group design review. Exacerbating the problem is the fact that many of these projects subsequently seek approval for condominium conversion at a time when community planning group review has little or no impact on the project design.

The second challenge is the issuance of demolition permits for buildings older than 45 years, without community planning group notification. The city's review process relies on the accuracy of information provided by the applicant and the Historical Resources Section review based on photographs submitted by the applicant. There is no requirement for physical inspection by the Historical Resources Section. Additionally, the Historical Resources Board and the City Council have never approved the North Park Historical Resources Survey. This is a critical aspect for the responsible review demolition permit applications.

The ramifications for our community are that we are not given the opportunity to comment on construction and demolition proposals and are thereby forced to accept the

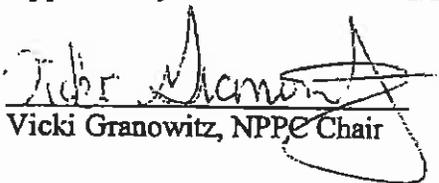
multi-family developments that ignore Community Plan goals and objectives. The majority of these developments become condominiums and due to their multiple ownerships will live on for perpetuity. In addition, many of the homes constructed in the 1940's and earlier have been demolished and the community has permanently lost a richness of heritage, history, diversity, and cultural life.

Recommendations:

1. The Development Services Department in coordination with the City Planning & Community Investment Department shall establish a process to allow community planning group review of all new multi-family developments, regardless of the number of units or overall size of the project (square feet).
2. The Development Services Department in coordination with the City Planning & Community Investment Department shall re-implement the existing procedures, as practiced in the past and currently documented under the Land Development Manual: Historical Resources Guidelines Section II: Development Review Process, A.1. For Purposes of Obtaining a Permit (2001). This document provides for community planning group review of all demolition permits and a requirement that the Historic Resources Section physically inspect proposed demolitions of buildings identified or believed to be 45 years or older to ascertain if the subject property is a historical or a potentially contributing resource, as well as determining if the property is located in special zones or districts.
3. NPPC requests a thorough review of demolition permits and supports the Development Services Department in their incorporating a Planned District Ordinance as part of the Greater North Park Community Plan Update. However, as a prerequisite, the North Park Historical Resources Survey must be completed and certified before the Historic Resources Board and adopted by the City Council.
4. The City Planning & Community Investment Department shall initiate the process to update the Greater North Park Community Plan by January 2008. It should be completed and approved by the Planning Commission and adopted by the City Council by within 24 months from initiation.

These recommendations will ensure that the development and redevelopment of single and multi-family and commercial neighborhoods within Greater North Park will be accomplished in a manner that will preserve and enhance the community's diverse architectural, historical, and cultural characteristics as well as the overall quality of life and enable the implementation of the goals and objectives adopted in the Greater North Park Community Plan (1986) and as documented in the upcoming Greater North Park Community Plan Update.

Approved by the North Park Planning Committee on July 17, 2007.


Vicki Granowitz, NPPC Chair


Vernon Franck, Urban Design/Project Review Chair

Demolition Process Evaluation Process Recommendations
 Adopted: February 5, 2008

Uptown Planners Demolition Policy Recommendations

On February 5, 2008, the Uptown Planners Board voted to forward the following demolition policy recommendations to City of San Diego staff with the intent to influence process changes in the current policies to the fullest extent possible.

Background: The Uptown Planners board approved a public records request related to two potentially historic Spanish revival bungalows that were demolished on Third Avenue as a ministerial process. As a result of the documents produced by that request, the board approved the subcommittee to provide recommendations to address the process.

Additionally, the Uptown Planners received a memorandum by Bill Anderson dated November 16, 2007 with some proposals to address reckless demolitions in response to a memorandum to the Mayor by Council member, Toni Atkins dated June 14, 2007. Mr. Anderson's recommendations were considered and comments pertaining to his recommendations are included in this memo.

The proposed process recommendations increases accountability by applicant and decision makers enabling the public to participate in the process and engage city staff in oversight of the applicants' adherence to the process—each of these elements are missing with the current process.

4235 and 4241 Third Avenue demolitions

Uptown Planners requested the following through a records request

1. Permit documentation related to the demolition of 4235 and 4241 Third Avenue specifically as it relates to the determination that these buildings were not historic resources.
 This request should include any and all inter or intra department logs, notes, email or other communications, applicant communications, consultant reports and/or any documents related to the permit for demolition and documentation showing the information used to evaluate the properties for historicity.
2. This request is also for any and all internal communications between staff, the applicant or consultants related to requests by interested parties or community members for intervention prior to the full demolition of the aforementioned buildings included but not limited to any notes, email or other communications, consultant communications that relates to proceeding with the demolition.
3. All documentation inter and intra departmentally, and communications to consultants or applicants and to interested parties regarding all requests for historical reports or information concerning the aforementioned demolitions.

The following documents were produced in response to the request

1. Photos of the site
2. Residential Building records
3. Project print out that shows sign off to demolish the buildings

It was not evident that there was any analysis conducted of the buildings. It is not apparent that the context of the community or factors related to the potential historic character of the

Demolition Process Evaluation Process Recommendations

Adopted: February 5, 2008

community, the community plan or impact to the streetscape was considered. It was impossible for our board to understand the reason these high quality buildings in an intact block were demolished without a more thorough analysis. These were two buildings in an intact row of Spanish bungalows so it is possible that an EIR or historical assessment would have been more appropriate requirements at minimum, prior to the permit approval.

Clearly, actions to strengthen the process are needed to support a better analysis. One measure of the analysis is the application process that is open for and results in erroneous demolition of historic resources in our community. We offer an example process that could be followed starting today on the following pages.

When a qualified analysis is conducted, and a public process is performed then errors will be radically reduced or flagged before the demolition permit is granted instead of afterwards. In situations where there is any doubt how the project would affect the character of the community in context, then the matter should be immediately be referred to the Historic Resources Board or for a professional analysis. First we have responses to the Memorandum by Mr. Anderson

I. Mr. Anderson's memorandum as mentioned above outlined a number of broad policy suggestions to address the reckless demolitions. The subcommittee believes that a different approach is needed to remedy the current situation, as it exists in Uptown and that there may be other communities that would benefit from the broader policies.

Here is a response to Mr. Anderson's suggestions with headings corresponding to his memo.

Survey and Cleared Areas: The accuracy of the data, coding and uses or conclusions of the Uptown Historic Survey are not acceptable in their present form. Basically, the survey shows more than half of the Uptown area as Clear areas and there is a direct conflict with areas that were initially designated as Conservation Areas in the original survey data.

At present, there is no jurisdiction of the Historic Resources Board to create Conservation Areas so the Survey conclusions would need to be revised AFTER the proper jurisdictional authority designates the Conservation Areas. After that time the data from the survey would need to be recalibrated and would result in different conclusions, presumably more favorable to preserving the community character. We do agree that the survey should be used as a starting point for gathering information.

Over the counter Demolition Permits

The current process that provides for rushing a demolition permit through for approval in ten (10) days is part of the systemic problems with the current system. We offer alternatives below. More importantly the process needs to be public, thorough and provides a means for mitigation of the impacts to the community.

Process Tracking Systems Report and Community Notifications

The process tracking system report is helpful and a step in the right direction. However, coupled with the current ten (10) day process, the reports being sent out on Sunday night at 10:30 PM as a batch instead of nightly reduce the available time to comment by the public to even fewer days. Public hearings for demolitions would be a better solution.

Demolition Process Evaluation Process Recommendations

Adopted: February 5, 2008

DSD and CPCI Review

Staff members do not have adequate training to make decisions regarding demolitions as demonstrated to members of the community. Providing a public hearing by a qualified board would be the responsible approach to handling demolition permits.

Discretionary Permits for Demolition

It is our understanding that once a project is pulled out of the ministerial process of review for a permit that it cannot re-enter the ministerial process—by being pulled out of that process it is now discretionary. An example of when this would occur is for demolition of a structure that is 45 years or older. The simple determination of the age of the structure moves it into a discretionary process.

Of course, the accuracy during the review process is paramount; therefore a qualified board with public input is needed because the historic resources in Uptown are significant to the community character of the area. Mr. Anderson suggests that the structure needs to meet the standards as an individually significant house before it is moved into a discretionary process. The standards are actually much lower than Mr. Anderson is advising you and meeting the high threshold of individual designation is not required.

Under Land Development Code Section 15064.5(4) a building does not need to be landmarked to be considered significant for CEQA evaluation or protective mitigation. While current practices are followed in DSD that are contrary to CEQA, we are greatly concerned that these policies have already proven to be detrimental to our community by demolishing character defining resources within it and they carry the additional risk of liability exposure for our city.

Subcommittee Recommendations

We believe that solutions need to be more comprehensive to address our concerns and we offer the following policy recommendations.

1. Revise the definition of Demolition and Remodels.

An example definition is available from the city of Las Gatos-

Demolition is defined as removal of more than twenty five (25) percent of the wall(s) facing a public street(s) or fifty percent of all exterior wall area; or

Enclosure or alteration (i.e. new windows and/or window relocation) of more than twenty five (25) percent of the wall area facing a public street (or a street facing elevation if the parcel is landlocked) or fifty percent of the exterior walls so that they no longer function as exterior walls; and

No new exterior wall covering shall be permitted over the existing exterior wall covering.

When damage is discovered when working, then the applicant is directed to stop work and contact the local historic board group for a re-evaluation.

This city also requires an affidavit signed by the property owner, architect, engineer, and contractor, confirming understanding of the definitions and affirming actions to be taken.

Demolition Process Evaluation Process Recommendations

Adopted: February 5, 2008

2. Removal of the 10-day turn around time that is currently causing staff to issue demolition permits without conducting a higher quality and more thorough analysis, especially considering that the implications of these actions. As Mr. Anderson implied, these time limits are less important than providing a complete/thorough evaluation.

3. Public hearings: Hold hearings before demolishing historic buildings and removing decision-making power from staff without adequate training. At present, staff making decisions for the HRB or EAS lack training and are making decisions that are improper applications of the law/rules and regulations and guidelines for historic properties and have lasting negative and detrimental effects on retaining cohesive neighborhoods. The function of staff would be important to assist community and the board so that adequate back up materials were available to board members.

4. Demolition and Project plans need to be combined as one project instead of piece by piece. By separating the project into two pieces it conflicts with neighborhood continuity because the projects are always going to be linked together by the site anyway. The current process is not an accurate reflection of what happens on the ground and compromises the holistic presentation of the impact to the site. The mitigation to the neighborhood impacted by the demolition is predicated on what is demolished and what is planned for the site and this is best viewed before the resource is demolished.

5. The Uptown Community plan needs to be updated. The overwhelming increases in zoning in 1989 increases the pressure by developers to demolish the historic fabric and established character of the area creates a contentious working relationship with developers and residents. Other implications to quality of life in Uptown that can't be mitigated have also resulted in dissatisfaction in the community for the current zoning, especially without any significant infrastructure investment. The community plan will need to be amended in order to retain the character defining areas that have made the area nationally recognized.

6. Fines for fraud by applicants need to be punitive. The project should be delayed for at least two years, the project should be analyzed as if the resource still remained in place and it should be determined if the original structure should be rebuilt or the site be used as a receiver site for another historic structure displaced by another project. Other cities charge significant fines. Save Our Heritage Organisation recently recommended that the delay is five years, that fines for unlawful demolitions amount be equal to the cost to reproduce the destroyed resource as determined by a qualified preservation architect and that new buildings are restricted to the former building footprint. Fines and punitive measures need to be established so that behavior that is commonplace today becomes a rarity.

All of these measures need to be implemented to bring back integrity into the process.

II. In direct response to the Third Avenue demolitions the use of a simple worksheet such as the one that follows could have been used as both a checklist and a report form during evaluation by the respective board members and would show due consideration of the various resources related to the proposed demolition.

Demolition Process Evaluation Process Recommendations

Adopted: February 5, 2008

The applicant should be required to provide the following information in addition to the permit application. The application itself should include liability disclosures for falsifying application or attachment information.

1. Photos of the property
2. Historic photos if available
3. Residential Building Record
4. Original Water/Sewer permits – year _____ Builder identified on permits _____
5. Sandborn fire maps
6. In the case of a remodel, describe extent of alterations and additions to original structure that may affect its historic integrity.

City staff needs to provide greater oversight into the process and be responsible for providing decision makers the following information as part of the application process - especially since the City is responsible to the community for oversight of the process.

1. GIS map
2. Historic Sensitivity Maps
3. Sandborn fire maps (any missing from the application)
4. Aerial shots
5. Historical Survey information including the year built, architect if known, definition of the style and other information available about the property i.e. significant owner _____
6. Identify character defining/original features that remain on the building: _____
7. Community Context: _____
8. Compatibility (i.e. is the building compatible to surrounding development): _____
9. Streetscape Impacts (Will the loss of the building be disruptive to the streetscape pattern): _____
10. Site visit by city staff (to eliminate the potential for fraud and consider the streetscape impacts and community context) and verification of photos supplied by the applicant (date) _____
11. Historic Resources Board Design Assistance Consulted _____
12. Other resources consulted: _____

If any of the below answers are "Yes" then staff would pull the project for a discretionary process so that the application is referred to the Historic Resources Board for further analysis:

Answer: Yes/No

1. Property is older than 45 years old _____
2. Substantially unaltered from its original condition _____
3. Building is built by a significant architect or builder _____
4. Building is associated with a historic person _____
5. Building is in an area that could be considered a potentially historic district, conservation district or has significance as a cultural resource _____

Demolition Process Evaluation Process Recommendations

Adopted: February 5, 2008

6. Does the demolition or remodel of this building create an adverse change as defined in Section 15064.5(b)(1) of the CEQA Guidelines in the significance of a historic resource, historic district or its immediate surroundings such that the significance of an historical resource could be materially impaired?¹ _____

7. Does the demolition cause a substantial change in the significance of an archaeological resource (pursuant to Section 15064.5) that disturbs paleontological or human remains? _____

8. Could a fair argument be made that this structure is considered historic? If so, a full EIR is recommended

Board Analysis

Application is denied _____

Application requires further investigation and this demolition may be a significant loss and have a significant effect to the community, therefore an Environmental Impact Report is required:

After hearing this matter, the application is approved based on the following:
(analysis) _____

¹ The significance of a historical resource is materially impaired according to CEQA Guidelines Section 15064(b)(2) when a project demolishes or materially alters, in an adverse manner, those physical characteristics of the resource that (among other conditions) account for its inclusion in a local register of historical resources adopted by local agency ordinance or resolution.)



THE CITY OF SAN DIEGO
MAYOR JERRY SANDERS

M E M O R A N D U M

DATE: November 16, 2007

TO: Honorable Councilmember Toni Atkins, District 3

FROM: Bill Anderson, Deputy Chief Operating Officer, City Planning and Development

SUBJECT: Demolition Permits

The Development Services Department (DSD) received your memorandum dated June 14, 2007 regarding demolition permits. Attached to your memorandum was a letter you received from Rene A. Smith on the same topic. You have asked that options be considered for notifying communities of pending applications for demolition permits. The concern for the demolition permits is focused on the historical review of structures over 45 years old.

As you know, building permits and demolition permits involving structures that are over 45 years old are required to be reviewed for historical significance prior to the issuance of the permit. Documentation is required to be submitted with the permit application and senior Environmental Analysis staff in DSD must review it. This review can include DSD management and Historical Resources Board (HRB) staff of the City Planning and Community Investment (CPCI) Department and must occur within 10 days of receiving the application, pursuant to the Land Development Code. If there is a potential for historical significance, a site-specific historical study of the property by a qualified consultant will be required. Such study will be reviewed by both DSD and HRB staff and if evidence of historical significance is found, HRB staff will schedule the site for a hearing before the HRB to consider a historical designation for the property. If the site is designated, any significant modification will require a discretionary Site Development Permit.

A number of procedures have been considered to address some of the issues raised with the current historical review process. Some of these procedures have already been implemented or are in the process of being implemented. A discussion of these follows.

Surveys and Districts

As staff, workloads and funding permits, CPCI/ HRB staff have been conducting surveys of areas with high concentrations of potentially historic structures. As surveys are completed and

historic districts are adopted, a lot of information becomes available to staff and the public regarding which properties may or may not have historical significance within the boundaries. This information is posted as a layer on the City's GIS/Project Tracking System and is extremely helpful in the review of future projects.

Cleared Areas

Related to surveys is the concept to "clear" certain areas where it is known that there are no structures with potential historical significance. This effort would most likely happen as part of a survey. Such areas would have to be accepted by the HRB at a public hearing. This effort is dependant on staff availability and funding. Over the past several years, there has been no funding to support the survey activity although CPCI is undertaking surveys in conjunction with community plan updates.

Over-the-Counter Demolition Permits

DSD could eliminate the issuance of over-the-counter ministerial demolition permits if the structure is over 45 years old and not in a "clear area" as described above. This would require that in all cases, senior Environmental Analysis staff would be involved in the determination of historical significance. As is currently the case, this determination must still be made with in 10 days. Elimination of over-the-counter demolition permits would add time delays to development projects.

Project Tracking System Report

In recent months, DSD has made available to the public a report that summarizes all building permit activity within the City (including demolition permits). This report identifies all permits applied for, issued and completed. It is updated weekly and is available to anyone requesting to receive it. DSD encourages any individual or group with interest in this information to subscribe as the information is quite comprehensive. DSD is looking into putting this information on the City's Web site in the future.

Community Notification

DSD is looking into a process to reinstate a community notification procedure as part of the initial historical significance determination. The Historical Resources Guidelines of the Land Development Manual recommends that in determining the need for a site-specific historical study, input from local individuals and groups should be considered. This could involve notification to community planning groups and interested individuals asking to be notified. The specifics for how the notification will occur are being worked out, but it is clear from the guidelines that the input would be limited to information regarding the need for a historical study within the initial 10-day review period of a permit application.

Joint DSD and CPCI Review

DSD and CPCI have been working together to address issues associated with the historical review process. In response to some concerns raised, there has been more interaction between the two departments. In cases where the historicity is not obvious, DSD will consult with HRB

Page 3
Honorable Councilmember Toni Atkins
November 16, 2007

staff as part of the initial 10-day review period in determining if a site-specific historical study is required. Additionally, if a study is required, current procedures require one copy to be sent to HRB staff for their review and comment.

Discretionary Permits for Demolition

It has been suggested that all demolition permits be a discretionary action. This concept has not been pursued by DSD. The demolition itself has always been a ministerial action. The issue is the adequacy of review of the structure prior to demolition. With the existing and newly implemented procedures in place, the review for historical significance will be improved and should address most, if not all, of the issues associated with this process. A discretionary action will be required for the demolition of those structures found to be historically significant. First, there will be a hearing before the HRB. Then, if designated, there will be a hearing for a required discretionary permit. To require discretionary action on all demolition permits would require an amendment to the Land Development Code. DSD does intend to review the City's demolition policies comprehensively during the next calendar year.

These procedures and any others that are brought to our attention could benefit from a discussion at the Land Use and Housing Committee, as you suggested in your memorandum. DSD and CPCI would welcome such a discussion with all stakeholders present.

Thank you for the opportunity to present these issues to you. I look forward to a discussion at Land use and Housing Committee.



Bill Anderson
Deputy Chief Operating Officer

cc: Kelly Broughton, Director, Development Services Department
Robert Manis, Deputy Director, Entitlements Division, DSD
Afsaneh Ahmadi, Deputy Director, Building & Safety, DSD
Betsy McCullough, Assistant to the Director, City Planning and Community Investment
✓ Cathy Winterrowd, Senior Planner, City Planning and Community Investment
Myra Herrmann, Senior Planner, Development Services Department

Over 45 Year Reviews
April 2008

ATT 4

Community	Cleared Non-Historic	Approved Potentially Historic	Report Required	Total Reviews
Clairemont Mesa	2			2
College Area	1	1		2
Encanto	1			1
Greater North Park	1	7	3	11
La Jolla	5	1 (pending)		5
Linda Vista	2			2
Mid-City: City Heights	2	1		3
Mid-City: Eastern Area	3	1		4
Mid-City: Kensington-Talmadg	3	4	1	8
Mission Beach	1			1
Navajo	3			3
Normal Heights		1		1
Ocean Beach	2			2
Old Town	1			1
Pacific Beach	7	1		8
Peninsula	3	2	1	6
Serra Mesa	2			2
Skyline-Paradise Hills	1			1
Southeastern San Diego	4	1		5
University	1			1
Uptown: Hillcrest			1	1
Uptown: Mission Hills	3			3
Uptown: University Heights	1	1		2
Totals	49	20	6	75

ALTERNATIVE FORMS OF PROTECTION: CONSERVATION DISTRICTS AND CONSERVATION EASEMENTS

To supplement their existing historic district regulations, many communities have created a second type of resource district called a "conservation district." Geared to preserving the character rather than the historic fabric of existing neighborhoods, conservation districts are being considered or have been adopted in a growing number of jurisdictions across the United States as alternatives to more stringent historic district regulations. Cities as varied as Dallas, Texas; Omaha, Nebraska; and Cambridge, Massachusetts have all adopted some form of conservation districts. Many conservation districts have been implemented for areas that fall short of meeting the criteria for a local, state, or national historic designation, but nevertheless have important cultural, visual, or other significance. Some are intended as step-down, buffer, or transition areas immediately surrounding a protected historic district. Others are directed at preserving the residential character of a neighborhood, maintaining a unique community center, or emphasizing an important cultural element of a community.

Conservation districts are typically established as either base districts or overlay districts within the local zoning ordinance. One California example is the Fresno Residential Modifying District:

"R-M" RESIDENTIAL MODIFYING DISTRICT. The "R-M" Residential Modifying District is an overlying zoning district which may be applied to the AE-5, R-1-B, R-1-A, R-1-AH, R-1-E, R-1-EH, and R-A districts, and is intended to provide special land development and street development standards which will create, protect, and maintain designated areas, streets, and adjacent properties as residential areas of exceptional public and private value by reason of their location, form, extent of trees and other vegetation, public improvements, and private improvements. All regulations for this district are deemed necessary for the protection of arcadian landscape quality and value and for the securing of the health, safety, and general welfare of owners and users of the private property and of pedestrian, equestrian, and vehicular traffic.

The use of conservation districts to protect neighborhood character is particularly effective when the applicable zoning regulations include specific standards addressing those characteristics. The City of Sacramento, for example, has an extensive system of special zoning provisions to protect neighborhood character. A number of conservation districts are established in the zoning ordinance, cited as "Special Planning Districts" and including both residential and non-residential areas.

The purpose and intent statement of the Alhambra Corridor area, at Chapter 17.104.010 of the City code is excerpted below.

The Alhambra Corridor area consists of properties located between 26th and 34th Streets from the Southern Pacific railroad mainline levee to the W/X Freeway. The district boundaries are

identified on a map in Appendix A, set out at the end of this chapter. This area consists of a number of different neighborhoods and is intended to provide residential uses along with neighborhood related commercial uses in commercial districts. The plan is intended to assist in the preservation of the neighborhood scale and character along with providing additional housing opportunities in the area. The city council further finds and declares that, given the history, nature and scope of recent development within the Alhambra Corridor, special rules are necessary to regulate nonconforming uses, and nonconforming buildings and structures, within the corridor. The non-conforming uses and nonconforming buildings and structures that currently exist within the corridor are generally compatible with the conforming uses that are permissible within the corridor. It is therefore appropriate to allow for the nonconforming uses to continue, and to allow for the buildings and structures to be rebuilt or replaced with buildings and structures of the same or lesser size and intensity.

The goals of the Alhambra Corridor SPD are as follows:

- A. Maintain and improve the character, quality and vitality of individual neighborhoods;*
- B. Maintain the diverse character and housing opportunities provided in these urban neighborhoods;*
- C. Provide the opportunity for a balanced mixture of uses in neighborhoods adjacent to transit facilities and transportation corridors;*
- D. Maintain the neighborhood character of existing commercial neighborhoods while allowing for limited office to serve the medical complex in this area;*
- E. Provide the opportunity for reuse and rehabilitation of heavy commercial and industrial neighborhoods to take advantage of close-in living while reducing the number of obsolete and underutilized buildings and sites.*

The Alhambra Corridor provisions include detailed dimensional regulations, applicable to both conforming and non-conforming buildings. Sacramento also provides numerous other examples of both more and less intense regulation of conservation zones. For example, the Special Planning District established for the Central Business District includes a set of design guidelines and special procedures for development review. In addition to conservation districts, the conservation easement is becoming increasingly popular as a tool for preserving natural and cultural resources. Conservation easements involve the acquisition of certain development rights by an organization seeking to preserve the character of a neighborhood or region. For example, a conservation easement for historic preservation might consist of an agreement between the owner and a city that an historic structure will not be demolished and will be maintained in good condition. The conservation easement is a real estate transaction and typically involves the creation of a covenant on the property under easement that will restrain any future development contrary to the intent of the easement. The conservation easement is possibly the most popular non-regulatory approach to historic preservation, though acquisition of historic properties by stewardship organizations or users who agree to adaptive reuse is also an important approach to consider.

Land Use and Housing Demolition Policy Concerns & Proposed Solutions

Recently, there has been considerable effort by City Staff and neighborhood groups to support historic review of applicant projects in the older areas of San Diego. The most successful results of the process have been with applicants who are working in good faith. However, lax enforcement and some processes that obscure public involvement have pointed to a variety of process issues. The results have been shocking because those who seemingly intend to bypass the system or use political influence to bend the rules in favor of their own interests and are granted demolition permits. Examples of abuses in the system continue and much can be achieved by correcting deficiencies in these systems through often-simple process changes, by adjusting regulations and adjusting policies. When the system supports more transparency it seems that it will be easier to identify those who do not intend to comply to regulations before there is actual demolition.

Results of the changes to the current codes, regulations and policies would have the overall positives effects:

- Preserving San Diego’s historic architecture and cultural heritage
- Providing applicants a clear path to navigate the process
- Decreasing landfill waste and discarding quality materials such as old growth lumber
- Enable more cost effective reinvestment into the established communities and maintaining the rhythm and scale of the streetscape, which invites aesthetic upgrades and staves off blight.
- Complying with CEQA and reducing the city’s liability exposure.

Specific actions that Land Use & Housing can take to address the issues concerning demolitions are listed as proposed solutions in the below table.

Open Issues

	Issue	Proposed Solutions
1.	Communication with Stakeholders	Proposals
	<p>A. Community Member/Stakeholders are not given timely or accurate notice of pending demolition permits, which inhibits action at the time an actual permit is issued.</p> <p>B. Community Stakeholders have trouble verifying when permitted work or unpermitted work is being done and often only have access to information after the fact. Permits are not on buildings and building addresses are not required to be visible during construction/demolition</p>	<ul style="list-style-type: none"> • Provide on-line notices of pending and issued permits in real time, or delay granting the applicants permit until the actual notice is published and available to the public. • An option immediately available for implementation is to process demolitions and upcoming controversial projects or those sites with buildings 45 years or older through the community-planning groups since they may be in a better position to understand the cumulative impacts. • Require permit notices and addresses to be posted and visible on any construction/demolition site.

<p>C. Permits are issued for properties but notices are delayed and verification is difficult.</p> <p>D. Permit notices are inconsistent and don't provide the planning area or current zoning. Also permits don't list all of the properties involved in the project. Demolition permits don't provide information connecting it to current or future projects.</p> <p>E. The Code Monitoring Team and the Technical Advisory Team have not undertaken these issues. Yet unpermitted work goes on all of the time and is pervasive in our older communities. The unpermitted work eliminates the ability for the process to work as it was intended and ultimately affects our quality of life.</p>	<ul style="list-style-type: none"> • Permits provide consistent information regarding all of the addresses/parcels involved in the application, the planning area and zoning information on the permit notice. • Put forward language for these proposals to coincide with the next Land Development Manual "LDM") or Code or otherwise request staff to make policy and regulation changes effective immediately. Additionally, include community member oversight of the legislative process and changes in the LDM or LDC as they affect demolition policies and historic preservation. <p>Results: Opens up the process to the stakeholders in the community and makes the process more transparent. Also makes code enforcement easier.</p>
<p>2. Legal Issues</p>	<p>Proposals</p>
<p>A. The City's process of taking permit applications out of the Ministerial process to review it for the 45-Year analysis should in and of itself require it to be moved into a Discretionary process. Ministerial projects are for straightforward projects that don't require intervention/evaluation by staff. Once pulled out of the Ministerial track the project is inherently Discretionary. The city does not abide by this and routinely pulls and reinserts applications returning them back on the Ministerial track. This opens the city to unnecessary liability.</p> <p>B. Buildings must be considered historic under CEQA if there is a fair argument that they are eligible for the California register even if they are not already designated. If there is simply a fair argument that the structure is eligible the impacts must be assessed and an environmental document is required. Also the current and foreseeable new project needs analysis because of the</p>	<ul style="list-style-type: none"> • Request an evaluation and opinion from the City Attorney on current practices for project applications that are presented as Ministerial but require extra handling during processing. Including how the current handling of applications conforms/does not conform with CEQA and the LDC, and practical recommendations in processing applications to reduce liability. • Arrange SOHO and City Attorney co-sponsored training for DSD Staff on interpretation of CEQA law. • Adhere to the environmental review and analysis required by CEQA when buildings are over 45 years old and analyze the foreseeable future projects cumulative impacts when stakeholders, consultants and/or City Staff raise concerns about historical resources (CEQA fair argument). Compliance with CEQA is not optional.

<p>cumulative impacts. Demolitions are granted for historic buildings when a fair argument has been made but the CEQA analysis is not provided for both the proposed new project/demolition. Therefore demolitions occur without full and complete analysis or mitigation.</p> <p>Effects: These practices allow for substantial loss of historic buildings in our established communities and may put the City in a position of liability exposure.</p>	<ul style="list-style-type: none"> • When a disagreement occurs pertaining to the historic status of a building between staff and/or community stakeholders this triggers the fair argument standard of CEQA and the application should then follow a Discretionary process. • Provide a database system to ensure that cumulative impacts are properly monitored including air quality, water quality and waste. <p>Results: Enforcement of the CEQA, laws and regulations, increased staff and community input. Analysis of potential environmental impacts and alternatives and mitigation to the community through the process or by review of environmental documents (NMD, ND or EIR) when necessary.</p>
<p>3. Community Plan Historic Surveys and EIR</p>	
<p>A. It is widely accepted that a reconnaissance windshield survey cannot reveal all of the character defining features or historic references related to a given property. The change in the 45-year review process is an example of what can be found while looking at properties more closely. In 2006, the draft Uptown Survey was submitted but not adopted. Concerns were raised at that time because of the potential elimination of further investigation on over half of the properties in Uptown. City Staff now plans to adhere to the State status codes and is working towards adoption of new Surveys in preparation of Community Plan Updates.</p> <p>The older communities become vulnerable if a more in-depth analysis for the oldest properties in our established San Diego communities is not required before demolition permits are issued.</p> <p>B. An EIR was not conducted before adoption of the General Plan but must be done as part of the Community Plan updates for North Park, Golden Hill and Uptown because these affect some of our oldest communities.</p>	<p>Not all properties can be given intensive study but further investigation should be warranted for the oldest properties, as has been the case citywide with the current 45-year process.</p> <ul style="list-style-type: none"> • City staff should require more intense investigation such as when properties are 65 years or older after reconnaissance surveys are adopted. • Make survey data available on-line within City departments and to the public. • EIRs should be conducted during the Community Plan updates. <p>Results: Research of the oldest resources in San Diego's older communities relate to the historic context of the community and contribute to the story of San Diego's history. These older properties should be given more in-depth analysis before demolition permits are issued.</p> <p>An EIR for each community plan update will include alternatives and mitigation as part of the discussion and offer opportunities for</p>

		substantive dialogue and consideration pertaining to the quality of life factors in our communities.
4.	Permit Process Aberrations	
	<p>A. The Preliminary Review process bypasses the 45-year review (a 10 day review by the community) that also results in issuance of demolition permits. It is a loophole that results in land use decisions without adequate analysis or review. This process was used issuing one permit to demolish six houses on Centre Street and the resulting development of the site should not be Ministerial bypassing community input but because its scope should have triggered a CEQA review and Discretionary process.</p> <p>B. When inadequate research is presented by the applicant and there is not enough time for a community response then bad decisions are made simply because the time is up. Once the resource is demolished, the report, if inaccurate, is the only documentation left behind and it does not adequately represent the history or legacy.</p> <p>C. Those who profit from demolishing historic properties pay consultants who leave out facts or misinterpret analysis with apparent intent to bypass CEQA.</p> <p>D. Demolition by neglect is accepted as a persuasive argument to demolish historic buildings instead of promoting adaptive reuse.</p> <p>Effects: Demolition of historic properties and changes to the historic context of our communities and the Preliminary Review process sidesteps the 45 year review and other community input processes. Often investors neglect or don't maintain the building or property to attempt to make a case that the building is not significant because they have not kept it up. Paid consultants with an agenda to suit their clients submit inadequate, and biased reports pertaining to applicants' projects and cause a loss of confidence and</p>	<ul style="list-style-type: none"> • Review of all demolition permits by staff meeting the Secretary of Interior Standards qualifications. • Preliminary Review should not bypass securing community input so instead it should be part of the Community Planning Group meeting process. • Abide by CEQA and provide a mechanism to take projects out of the Ministerial or Preliminary Review process when they require more community input– Such as potentially historic properties, controversial projects or large projects such as the application to demolish six old houses on Centre Street. • City staff should provide better oversight of historic reports including reference and data checking with conclusions based on evidence or supportive documentation. • Provide community members and City Staff with a feedback mechanism to remove consultants from the city's consultant list when reports repeatedly leave out facts or conclusions are unjustified. • When consultant reports leave out facts or conclusions are unjustified consider community input under CEQA fair argument standards and require environmental documents as the next step, before any demolition permits are issued. • Promote adaptive reuse and enforce code compliance issues since it encourages improving communities. <p>Results: Reduce rushed demolitions of properties that are historic in nature, less vacant lots and reduced losses of the historic integrity of the</p>

	<p>integrity in the process because there is little City supervision or adjustment to mitigate the faulty or inadequate reports. Permits processed for the sake of a bonus instead of quality of the review perpetuates these problems and leads to unjustified demolition of historic properties.</p>	<p>community. Beautify and improve the built environment. Improve integrity of the historic review process. Also provide incentives for quality historic research reports by enabling City Staff to raise the standards for submitted reports which may be the only documentation pertaining to the resource. Enforces CEQA and codes while protecting historic assets from reckless demolitions</p>
<p>5. CEQA and Mitigation for Non-Compliance</p>		
	<p>A. Permits are issued after demolition takes effect.</p> <p>B. Demolition permits are separated from the foreseeable project and there is no analysis of the cumulative impacts.</p> <p>C. Simple permits are issued but are not relevant to the work being completed. (Permit for a water heater does not pertain to siding being removed/installed).</p> <p>D. Penalties are too low to discourage un-permitted demolitions.</p> <p>E. Errors in processing applications by staff or mis-information by applicants resulting in demolition of significant properties.</p> <p>Effects: Cumulative impacts are not addressed and are out of CEQA compliance</p>	<ul style="list-style-type: none"> • Projects including demolitions on a particular site should not be partitioned. Thus permits for a demolition would not be issued as a bureaucratic process but in context with the proposed new project, zoning, site, planning area and all affected parcels. • Posted addresses and permits during notice and all phases of construction will help inspectors and community members verify the work that is being done matches the issued permit. • DSD should maintain and make a database available to the public that shows the cumulative impacts related to built, planned and future projects (per zoning) for better analysis as projects come forward. • Substantially increasing enforcement and meaningful fines are in the work plan and need to be completed. A substantial and punitive interim penalty should be established until all the details of the fine in the work plan are fully approved. <p>Results: Projects include the plan for the demolition so that it can be viewed thoughtfully and comprehensively in accordance with CEQA analysis of the whole record. Fines will deter those who wish to circumvent the system and could provide mitigation to the community by funding other preservation projects. Issues with projects would be discovered earlier when enforcement actions are more meaningful.</p>

6.	<p>Other Policy Issues and Impacts to Older Undesignated Structures</p>	
	<p>A. Remodels and demolitions differ and need to be permitted differently. Demolitions disguised as remodels cheat the community out of input as well as review of parking requirements. Coastal Commission requirements are clear and could be the model for city codes.</p> <p>B. Applicants obtain legitimate permits for a minor item or partial permit but exceed and cheat the permit resulting in major demolition/losses. (i.e. kitchen remodel permit results in tear down)</p> <p>C. Zoning creates pressure on commercial historic resources in high-density zones and Conservation Areas need to be implemented. There is currently no mechanism to do so.</p> <p>D. Ministerial projects bypass the goals set out in the community plan and erode the unique character of San Diego communities over time.</p> <p>E. Spot planning by frequent community plan amendments undermines the community planning process.</p>	<ul style="list-style-type: none"> • Revise the definition of a remodel so it is limited to 25% or less of the building and include language in requirements effecting remodels mirror the provisions enforced by the Coastal Commission. • An ongoing inspection at various thresholds to ensure that demolition of existing resources is not excessive. • Issue fines and provide mitigation measures for projects that exceed permitted actions. • LDC & Procedures for Design Guidelines is missing from General Plan Actions – Implementation of Conservation Areas need to be established for older areas now because they are undergoing plan updates. • Ministerial projects need to show conformance and be subject to the Community Plan. • Limit the number of introductions/adoptions of Community Plan updates each year. <p>Results: The public would be clear on the project permitted when remodels and demolitions are clearly distinct. Conservation Areas with complementary zoning that recognizes the benefits of historic commercial areas reduces pressure to radically alter the established character of these areas.</p> <p>Ministerial projects that adhere to the community plan will appear complementary to the established streetscape.</p>

Thank you for taking the time to address these topics. In order to make these proposals actionable we request that a motion is made to support proposals as presented including changes to the land development code, regulations and policies.

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

SUBJECT: MILLS ACT AGREEMENTS FOR PRESERVATION OF HISTORIC
PROPERTY
POLICY NO.: 700-46
EFFECTIVE DATE: December 15, 2008

BACKGROUND:

California state law authorizes cities to enter into contracts (“Mills Act Agreements”) with the owners of qualified historical properties to provide a property tax reduction for the use, maintenance and restoration of historically designated properties. “Qualified Properties” are defined in Government Code Section 50280.1 as: “privately owned property which is not exempt from property taxation and which meets either of the following:

- (a) Listed in the National Register of Historic Places or located in a registered historic district, as defined in Section 1.191-2(b) of Title 126 of the Code of Federal Regulations.
- (b) Listed in any state, city, county, or city and county official register of historical or architecturally significant sites, places, or landmarks.”

The minimum requirements for a Mills Act Agreement, as mandated by state law include:

- 1) Minimum Agreement term of ten (10) years, automatically renewable on an annual basis, to be recorded against title to the property and running with the land.
- 2) Owner shall maintain the regulated characteristics of historical significance of the Historic Site in accordance with the rules and regulations published by the U.S. Secretary of the Interior.
- 3) Owner must allow reasonable periodic examination of the Historic Site, if a request is made and by prior appointment, by representatives of the County Assessor, State Department of Parks and Recreation and the State Board of Equalization.
- 4) City may cancel the agreement following a duly noticed public hearing if it is determined that the owner breached any mandatory conditions of the Agreement.

In 1995, the City Council determined that there was significant public benefit in granting Mills Act contracts to qualified properties and a City program was established.

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

PURPOSE:

This policy is adopted to enable a granting of a monetary incentive to the owners of historically designated properties in the form of a property tax reduction for the maintenance, restoration and rehabilitation of historic properties within the City of San Diego. A properly recorded Mills Act Agreement automatically triggers an alternative method for determining the assessed value of the affected historic property, thus potentially resulting in significant property tax savings for the owner of the historic property.

This policy is intended to set the general parameters within which the City Council will allow property tax benefits to be gained by individual property owners who, in exchange, restore and maintain their historic properties, thus generating a public benefit.

POLICY:

It is the policy of the City of San Diego to foster and encourage the preservation, maintenance, rehabilitation and restoration of historically designated properties. It is recognized by the City that a reduction in property taxes afforded by the Mills Act will serve as a key monetary incentive for citizens to acquire, maintain and restore historic property within the City of San Diego. However, it is also recognized that the reduction in property taxes affects the City's General Fund and in order to understand and manage this fiscal impact new Mills Act Agreements shall be subject to the Implementation delineated below.

It is also recognized that the historic preservation goals of the Mills Act may overlap and conflict with the neighborhood revitalization mission, goals, policies and programs of the Redevelopment Agency of the City of San Diego. Because of the negative impact on tax increment financing and other measures available to promote historic preservation through redevelopment, Mills Act Agreements shall be applied in redevelopment project and study areas as delineated below.

IMPLEMENTATION:

I. Areas Outside of Redevelopment Project Areas and Study Areas

The City Manager or designee is authorized to enter into a Mills Act Agreement with the owner of a historically designated property, upon application by the owner, subject to the following:

- A) Property Conditions: The Agreement shall contain the minimum mandatory conditions required by state law, including, but not limited to, provisions related to maintenance or rehabilitation of the property, explanation of conditions for non-renewal or revocation, and requirements for access by government officials for owner's compliance with the Agreement.
- B) Application Deadline: The City will recognize and accept into the Mills Act Program those properties included on the local San Diego Register of Historical Resources. The deadline for requesting a Mills Act Agreement, through formal submittal of an application shall be March 31st of each year. The property for which the agreement is requested must have been designated a historical resource by the City of San Diego Historical Resources Board at a noticed public hearing by December 31st of the year prior to the year an agreement is requested.
- C) Investment of Tax Savings: The Mills Act agreement application shall include a 10-year tailored work plan and shall demonstrate investment of the anticipated tax savings into the historic property. Work done prior to historic designation that was necessary to restore or rehabilitate the property to meet minimum requirements for designation, can be included in the work plan to demonstrate an investment in the historic property.
- D) Property Tax Reduction Threshold: The City Manager or designee shall evaluate the anticipated tax reduction of each application, based on the County Tax Assessor's formula. The City Manager is authorized to enter into all agreements that collectively fall within an annual threshold of \$200,000 projected reduction in property tax revenue to the City's General Fund. The applications shall be evaluated and processed in the order received until the total projected reduction in property tax revenue to the City has reached \$200,000 on an annual fiscal basis.
- E) Exceeding the Threshold: If in any fiscal year, the projected reduction in property tax revenue to the City from Mills Act Agreement applications exceeds \$200,000, the City Manager or designee shall seek Council authorization to exceed the threshold. The City Council may authorize the processing of Mills Act Agreements exceeding the \$200,000 threshold by making a finding that the fiscal health of the City is such that additional reduction in tax revenue can be supported by the budget.

If in any calendar year, the projected reduction in property tax revenue to the City from Mills Act Agreement applications exceeds \$200,000, and the City Council does not make a finding to authorize the processing of those Agreements, the property owner's application will be automatically rolled over to the next fiscal year.

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

- F) Fees: The owner shall pay, in accordance with state law, a fee established by the City Council to cover the City's reasonable cost of administering the program, including: Mills Act Agreement preparation, processing, recording, monitoring, and enforcement. This fee is in addition to a City Council-adopted fee for processing historical nominations submitted in accordance with Land Development Code Section 123.0202(a).
- G) Monitoring and Enforcement: Inspections will be performed on a periodic basis by City staff to verify that the designated site is being maintained in a condition that meets the U.S. Secretary of the Interior's Standards, the City of San Diego Land Development Code, and the specific conditions of the Mills Act Agreement for the property.
- H) Public Benefit: The Owner must allow or create visibility of the exterior of the structure from the public right-of-way.

2. Areas within Redevelopment Project Areas and Study Areas

Only after approval by the Redevelopment Agency, the Centre City Development Corporation, or the Southeast Economic Development Corporation, the City Manager or designee is authorized to enter into a Mills Act Agreement with the owner of a historically designated property located within a Redevelopment Project or Study area, upon application by the owner, subject to the provisions of Item 1 above, and the following:

Redevelopment Study Areas

Within a Redevelopment Study Area, Mills Act Agreements shall be permitted in conformance with this City Council Policy 700-46 and State law requirements, until adoption of the redevelopment project area. Within the Sherman Heights and Grant Hill Historic Districts, however, should they become part of a redevelopment project area, Mills Act Agreements shall be implemented as in Item 1 above.

Redevelopment Project Areas

Within a redevelopment project area, with the exception of the College Community Redevelopment Project Area, Mills Act Agreements shall be permitted as follows:

1. Owner-occupied single-family homes (including properties which may have a second residential unit) shall be eligible for Mills Act Agreements, in conformance with this City Council Policy 700-46 and state law requirements.

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

2. All other properties shall be eligible for Mills Act Agreements, in conformance with this City Council Policy 700-46 and State law requirements, on a case by case basis and only when all of the following criteria are met:
 - (1) The property requires rehabilitation; and
 - (2) The owner agrees to rehabilitate the property in accordance with plans approved by the Agency; and
 - (3) The owner demonstrates that, through a project pro forma which is independently evaluated by the Agency, a Mills Act Agreement is necessary to achieve a financially feasible project, and the Agency concurs that a Mills Act Agreement is the appropriate form of public financial assistance.

No Mill Act Agreement shall be entered into within the College Community Redevelopment Project Area.

The City Manager shall report on annual basis to the City Council, with respect to the number of Mills Act Agreements executed and the effectiveness of the program. The form of the report may be the required Certified Local Government Annual Report to the State Office of Historic Preservation which is also forwarded to the City Council.

MILLS ACT AGREEMENT PROCESSING

The City Manager or designee is authorized to process a Mills Act Agreement consistent with this Council Policy and subject to the following:

- (a) Owners of private property that are subject to property taxation may request a Mills Act Agreement from the City in pursuit of a property tax reduction in accordance with Government Code Sections 50280 – 50290. The prerequisites for a property owner seeking a Mills Act Agreement are:
 - (1) the site is a designated historical resource [either individually designated or a contributor to a historical district] on the City's Register of Historical Resources,
 - (2) an application has been submitted to the City consistent with this Council Policy, as amended,
 - (3) if the site is in a Redevelopment Area, the property owner has obtained approval from an official of the Redevelopment Agency; and,

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

- (4) all fees established by the City Council have been paid for processing the historical nomination, processing the Mills Act Agreement, and the initial Mills Act monitoring fee.
- (b) Upon completion of items in (a), the City staff shall provide a draft Agreement to the property owner, consistent with this Council Policy, as amended. The property owner may then submit the signed and notarized Mills Act Agreement for City processing.
- (c) The Agreement shall contain:
 - (1) conditions imposed by the Historical Resources Board or City staff that are specific to the submitted property;
 - (2) the property owner's commitment to investment of the tax savings into the maintenance and improvement of the property as part of a 10-year work plan and in accordance with the intent of the state law;
 - (3) the property owner's agreement to comply with the U.S. Secretary of the Interior's Standards for the Treatment Historic Properties;
 - (4) the property owner's acknowledgement that, in accordance with state law, that the Mills Act Agreement may be revoked for non-compliance with the Agreement provisions, including payment of established fees; and,
 - (5) a provision to allow or create visibility of the exterior of the structure from the public right-of-way.
- (d) City staff is authorized to establish cut-off dates for processing of Mills Act Agreements for that calendar year, including but not limited to, the date City staff must receive properly signed and notarized Mills Act Agreements to allow forwarding to the County of San Diego by the close of the calendar year.

STATE LAW

If any provision of Government Code Sections 50280 – 50290 are amended in the future and it conflicts with any provision of this policy, staff is directed to follow state law and to bring forward an amendment to this Policy or to applicable provisions of the Land Development Code.

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

CROSS REFERENCE:

Land Development Code, Chapter 12, Article 3, Division 2: Designation of Historical Resources Procedures; Land Development Code, Chapter 14, Article 3, Division 2: Historical Resources Regulations.

Government Code Sections 50280 – 50290.

HISTORY:

Adopted by Resolution R-285410	02/27/1995
Amended by Resolution R-286051	07/18/1995
Amended by Resolution R-304532	12/15/2008

