



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

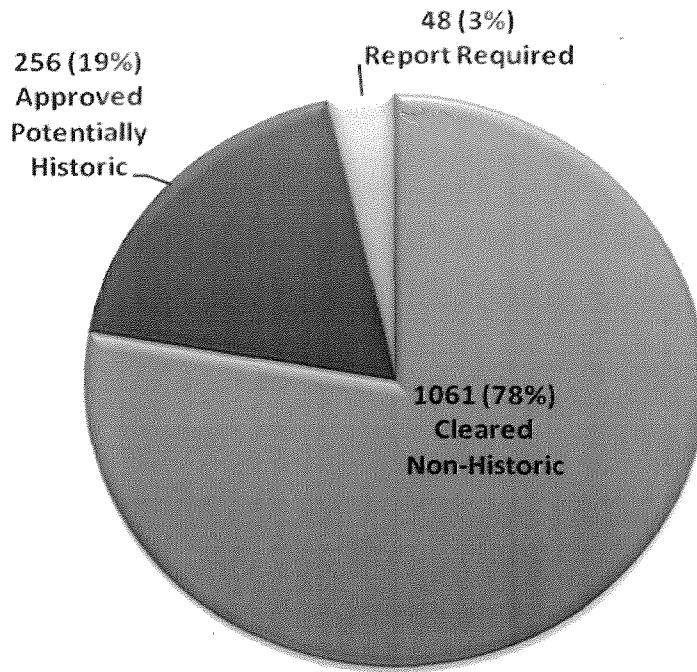
Permit Review Process for Potentially Historic Properties

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.

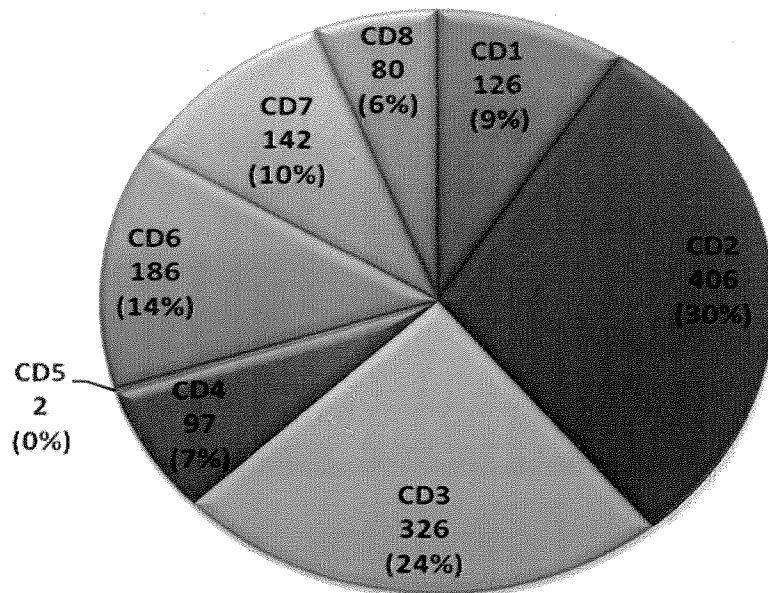
The locations of projects reviewed by historic staff naturally correlate with the older San Diego communities, with more than half (54%) occurring in Council Districts 2 and 3 combined. Communities with the highest number of historic reviews include Clairemont Mesa with 128, Greater North Park with 114, 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.

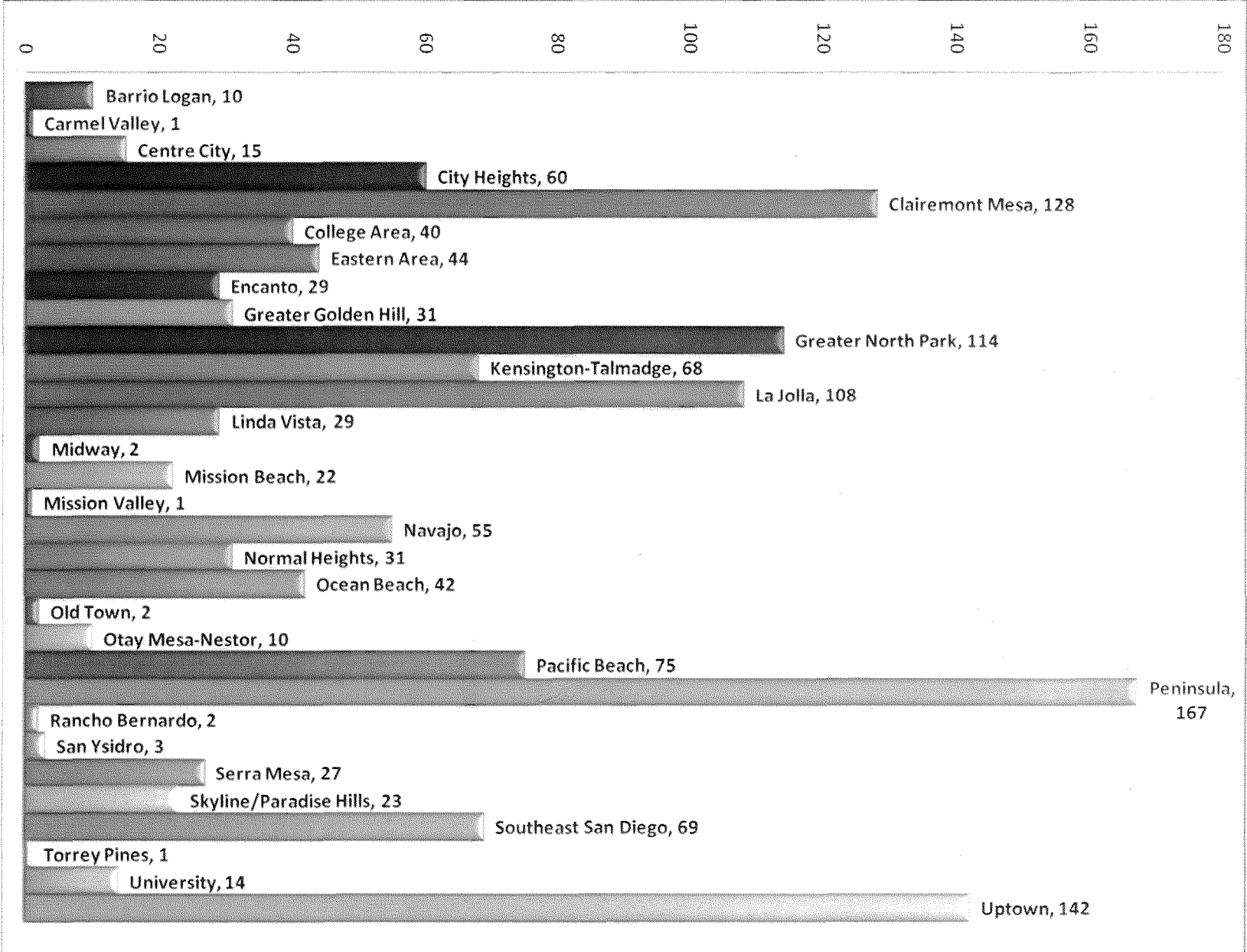
The public input working group met with staff on a quarterly basis during the first year and has continued to meet semiannually thereafter, to address any issues of mutual concern. The most recent meeting was held on June 12, 2009. At this meeting it was agreed that the newly required digital photos 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,



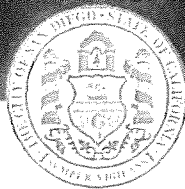
William Anderson, FAICP, Director
City Planning & Community Investment



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.