

North Park Planning Committee

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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

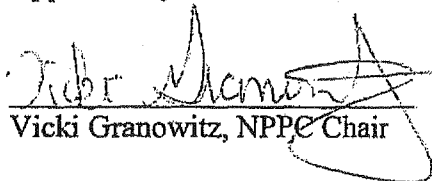
multi-family developments that ignore Community Plan goals and objectives. The majority of these developments become condominiums and due to their multiple ownerships will live on for perpetuity. In addition, many of the homes constructed in the 1940's and earlier have been demolished and the community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

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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.

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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.

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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.

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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 _____

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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 1506-4(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

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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

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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>
2.	Legal Issues	Proposals
	<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>
3	Community Plan Historic Surveys and EIR	
	<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>

		<p>substantive dialogue and consideration pertaining to the quality of life factors in our communities.</p>
<p>4. Permit Process Aberrations</p>		
	<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 unpermitted 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.	Other Policy Issues and Impacts to Older Undesignated Structures	
	<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.

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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.

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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:

1. 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:

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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,

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- (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.

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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

