Oakland City Planning Commission **STAFF REPORT**

Zoning Update Committee **January 20, 2010**

Blake Huntsman--Chair
Doug Boxer
Michael Colbruno

Location:	Citywide
Proposal:	Amend the Planning Code to establish findings and requirements for the demolition of historic resources.
Applicant:	City Planning Commission
General Plan:	All General Plan designations
Existing Zoning:	All zoning designations
Environmental Determination:	The proposal relies on the previously certified Final Environmental Impact Report (EIR) for the Land Use and Transportation Element of the General Plan (1998); the Final Environmental Report for the 1998 Amendment to the Historic Preservation Element of the General Plan; and the Housing Element Update Initial Study/Mitigated Negative Declaration (2004). As a separate and independent basis, the proposal is also exempt from CEQA pursuant to CEQA Guidelines Section 15183 "Projects Consistent with a Community Plan, General Plan or Zoning" and/or 15061(b)(3)(General Rule—no possibility of significant environmental impact.
Case File Number:	ZT09251
Action to be taken:	Discuss and make recommendation to the Planning Commission.
For further information:	Contact: **Neil Gray** at 238-3878 or email ngray@oaklandnet.com

SUMMARY/BACKGROUND

On July 7, 2009, the City Council voted to adopt new zoning designations for the Central Business District. Part of this ordinance included several protections for historic resources, including lower height limits in several historic neighborhoods, new findings required to alter historic buildings, and new findings required to be met to construct in historic neighborhoods. At the July 7, 2009, City Council meeting, staff committed to develop findings and other requirements necessary to demolish historic buildings. Since then, the Landmarks Preservation Advisory Board (LPAB) has met six times to develop recommendations for these requirements for the entire City. Historic Preservation and Strategic Planning Staff have used these recommendations as a basis for the new recommendations to the Zoning Update Committee contained in this report. Staff's recommendations are contained in Attachment A; the LPAB's recommendations are contained in Attachment B. Staff recommends that the Zoning Update Committee review staff's proposal and make recommendations to the Planning Commission.

Note that this item was originally scheduled to be heard in front of the Zoning Update Committee on December 2, 2009. The item was rescheduled for January 20, 2010 because Commissioner Colbruno could not attend the December meeting.

Attachment C

REGULATORY FRAMEWORK

The Historic Preservation Element (HPE) of the General Plan, adopted in 1994 (amended in 1998), provides a strategy to preserve the City's historic resources and establishes a rating system for historic neighborhoods and individual buildings. The HPE establishes a rating system for individual historic buildings of "A" (highest importance) to "E" (no particular interest)[1]. The element also establishes the criteria and process to establish a landmark property. The HPE separates historic neighborhoods into two categories: Areas of Primary Importance (API's) and Areas of Secondary Importance (ASI's). API's are historically or visually cohesive areas that appear eligible for the National Register of Historic Places. These areas contain a high proportion of individual properties rated "C" or greater; at least two-thirds of the properties in an API must contribute to its principal historical or architectural theme. Examples of API's include Old Oakland, Mills College, Preservation Park, Oak Center, and Haddon Hill. ASI's are similar to API's except they do not appear eligible to be on the National Register and they require two-thirds of the properties to be either *potential* contributors or contributors to the historic district. Examples of ASI's include the Rockridge and Fruitvale commercial districts, Jingletown, and the Clinton residential neighborhood.

The HPE also contains goals, policies and actions that govern how the City will treat historic and neighborhoods and properties, including their demolition. The demolition policies in the HPE provide the foundation for developing demolition findings in the Planning Code. The following lists these demolition related policies:

Policy 2.4 Landmark and Preservation District Regulations.

Demolitions and removals involving Landmarks or Preservation Districts will generally not be permitted or be subject to postponement unless certain findings are made. Demolition or removal of more important Landmarks and of most Preservation District properties will normally not be permitted without the required findings, while demolition or removal of less important Landmarks will be subject only to postponement.

a) Demolitions and removals involving Landmarks or Preservation Districts will generally not be permitted or be subject to postponement unless certain findings are made. Demolition or removal of more important Landmarks and of most Preservation District properties will normally not be permitted without the required findings, while demolition or removal of less important Landmarks will be subject only to postponement.

c) Findings for approval of demolitions, removals, alterations, or new construction involving Landmarks or Preservation Districts will seek to balance preservation of these properties with other concerns.

d) Specific regulatory provisions are set forth in the tables entitled "Demolition and Removal Regulations for Landmarks and Preservation Districts" (see Attachment C) and "Alteration and New Construction Regulations for Landmarks and Preservation Districts."

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[1] A = Highest Importance, B = Major Importance, C = Secondary Importance, D = Minor Importance, E = No particular interest.

Policy 3.5: Historic Preservation and Discretionary Permit Approvals.

(First paragraph of Policy omitted because it is not related to the demolition of historic resources)

For any project involving complete demolition of Heritage Properties or Potential Designated Historic Properties[1] requiring discretionary City permits, the City will make a finding that: (1) the design quality of the proposed project is at least equal to that of the original structure and is compatible with the character of the neighborhood; or (2) the public benefits of the proposed project outweigh the benefit of retaining the original structure; or (3) the existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.

3.7: Property Relocation Rather than Demolition as Part of Discretionary Projects

As a condition of approval for all discretionary projects involving demolition of existing or Potential Designated Historic Properties, the City will normally require that reasonable efforts be made to relocate the properties to an acceptable site.

Action 3.7.1: Property Relocation Procedures and Design Guidelines for All Discretionary Projects.

Prepare property relocation procedures and design guidelines to be adopted by the LPAB and City Planning Commission for existing or Potential Designated Historic Properties required to be relocated pursuant to discretionary City Approvals.

EXISTING DEMOLITION ZONING REGULATIONS

The Planning Code contains two Preservation District zoning designations: the S-7 Preservation Combining Zone and the S-20 Historic Preservation District Combining Zone. Both these zones contain provisions that allow for the postponement of – and require special criteria for – the demolition of historic structures. The S-7 district is designated in various areas, including the 7th Street Commercial District, the Belleview-Staten Apartment District, Old Oakland, and Preservation Park in Downtown. Sheffield Village in the North Hills and Oak Center in West Oakland both have an S-20 designation.

Subsections 17.136.070(C-D) of the Planning Code (see Attachment D) require a design review process and contain required criteria to demolish Landmarks. Section 17.136.075 contains regulations allowing the Planning Director to postpone the demolition of a Local Register property[1].

PROPOSAL

The proposed findings are grouped into two basic categories of historic resources: 1) Local Register Properties[1] and 2) contributors to ASI's and "C" rated properties that do not contribute to a historic district. These categories were chosen because the demolition of a Local Register Property will generally require the preparation of an Environmental Impact Report under the California Environmental Quality Act, while the demolition of ASI contributors or noncontributing "C" rated properties generally do not. Local Register properties also have two subcategories of findings under the proposal: properties that are within a major historic district (an S-7 Combining Zone, S-20 Combining Zone, or an API) and those that are outside a major historic district. These subcategories were chosen so that the impacts of demolitions on historic districts could be specifically addressed with new findings.

Each category of historic structures contains two requirements: findings in the Planning Code that need to be met in order to demolish the historic resource and corresponding submittals required to be included with the demolition application. The submittals specifically describe the type and content of studies required to determine whether a demolition finding can be met.

The following summarizes staff's recommendations. The complete proposal is contained in Attachment A.

Findings for Individual Local Register Properties

The following are recommendations for required findings and submittals to demolish individual properties on the local register (Landmarks, "A" and "B" rated buildings, and Heritage Properties) that are outside an S-7 zone, S-20 zone, or an API.

Findings 1-2: 1) The applicant demonstrates that the existing property has no reasonable use or cannot generate a reasonable economic return and that the development replacing it will provide such use or generate such return; or 2) The applicant demonstrates that the property constitutes a hazard and is economically infeasible to rehabilitate on its present site.

These findings directly implement HPE Policy 2.4 and are contained in Table 4-1, "Demolition and Removal Regulations for Landmarks and Preservation Districts" of the HPE (see Attachment C). The submittal findings for Finding 1 would include studies regarding the economic viability of keeping the current building; the soundness of the building; the building maintenance history;

[1] Local Register properties include: Landmarks, contributors to S-7 and S-20 preservation districts, contributors to API's, Heritage Properties (properties that appear potentially eligible for landmark or Preservation District designation), properties on the Study List (XX), and properties with an "A" or "B" historic rating.

the appraised value of the existing building; and public benefits. Finding 2 can be met if the City determines that the building is an imminent hazard to public safety.

Finding 3: The design quality of the replacement facility is equal/superior to that of the existing facility.

Like Findings 1 and 2, this finding directly implements HPE Policy 2.4 and is contained in Table 4-1 of the HPE (see Attachment C). The submittal requirements include an analysis, prepared by a historic architect or professional with equivalent experience, of the replacement facility in terms of design value, materials, visual interest, composition, detailing, and other items.

Finding 4: It is infeasible to incorporate the building into the proposed development.

This finding is not directly from the HPE, but staff believes that incorporating a historic building into a new development can provide opportunities for saving the historic resource as well as create interesting new architecture. Combining new and old buildings has been successfully done for developments such as the Altenheim, the Fox Theater, and Whole Foods in Oakland and the Jewish Contemporary Museum in San Francisco.

Findings for Local Register Properties that Contribute to a Historic District

The following summarizes the findings and submittals required to demolish individual properties on the Local Register (Landmarks, "A" and "B" rated buildings, Preservation Study List Properties, and Heritage Properties) that are within an S-7 zone, S-20 zone, or an API.

Findings 1 - 2: 1) The applicant demonstrates that the existing property has no reasonable use or cannot generate a reasonable economic return and that the development replacing it will provide such use or generate such return; or 2) the applicant demonstrates that the property constitutes a hazard and is economically infeasible to rehabilitate on its present site.

These are the same as Findings 1 and 2, above, for the demolition of an individual Local Register Property. The submittal requirements are also the same as those findings.

Finding 3: For noncontributing properties, the existing facility is either:

a. **Seriously deteriorated or a hazard, or**
b. **The existing design is undistinguished and does not warrant retention.**

This finding also directly implements HPE Policy 2.4 and is contained in Table 4.1 of the HPE (see Attachment C). For (a), the submittal requirement includes a determination of an imminent hazard by the City. For (b), an application for submittal would require an analysis of whether a noncontributing property could feasibly become a contributor after damages to the building were reversed.

Finding 4: For all properties in a district: The design quality of the replacement facility is superior to that of the existing facility

This finding directly implements HPE Policy 2.4 and is contained in Table 4.1 of the HPE (see Attachment C). The submittal requirements include an analysis prepared by a historic architect or professional with equivalent experience of of the replacement facility in terms of design value, materials, visual interest, composition, detailing, and other items.

Finding 5: For all properties in a district: the design of the replacement project is compatible with the character of the preservation district, and there is no erosion of design quality at the project site and in the surrounding area. This includes, but is not necessarily limited to, the following additional criteria:

a. **The replacement project is compatible with the district in terms of massing, siting, rhythm, composition, patterns of openings, quality of material, and intensity of detailing;**
b. **New street frontage with forms that reflect the widths and rhythm of the facades on the street and entrances that reflect the patterns on the street;**
c. **The replacement project provides high visual interest that either reflects the level and quality of visual interest of the district contributors or otherwise enhances the visual interest of the district;**
d. **If the design contrasts the new to the historic character, the replacement project enriches the historic character of the district;**
e. **Is consistent with the visual cohesiveness of the district. For the purpose of this item, visual cohesiveness is the architectural character, the sum of all visual aspects, features, and materials that defines the district. A new structure contributes to the visual cohesiveness of a district if it relates to the design characteristics of a historic district while also conveying its own time. New construction may do so by drawing upon some basic building features, such as the way in which a building is located on its site, the manner in which it relates to the street, its basic mass, form, direction or orientation (horizontal vs. vertical), recesses and projections, quality of materials, patterns of openings and level of detailing. When a combination of some these design variables are arranged in a new building to relate to those seen traditionally in the area, but integral to the design and character of the proposed new construction, visual cohesiveness results; and**
f. **The project will not cause the district to lose its current historic status.**

The first paragraph of this finding directly implements HPE Policy 2.4 and is contained in Table 4.1 of the HPE (see Attachment C). Criteria a) through f) refine the HPE policy by providing specific compatibility requirements. These criteria are consistent with the recently adopted requirements for new construction in an historic district in the Central Business District. The submittal requirements include an analysis of several discussion points regarding compatibility, including:

- The replacement project's architectural compatibility with the district without being subservient. If it is subservient to the district character, is it a watered down version of a

period revival style or a generic building or a visually cohesive design with a strong concept?

- The new building's contemporary interpretation of the demolished building's elements in terms of the cultural, historic, economic, or technological trends of its time.
- The preservation of the authenticity of the existing historic district with a replacement building that has an authenticity of its own time.
- The compatibility of the design of the replacement proposal with the district without being merely a compilation of façade features that are common to district or a caricature of the buildings in the district.

The findings and the submittals emphasize that a replacement project should not imitate the façade of existing historic buildings, but rather relate to the district in more contemporary fashion. In other words, a new building should have elements that relate to the district, but should not be imitative or a caricature of its historic buildings.

Finding #6: It is infeasible to incorporate the building into the proposed development.

This is the same as Finding 4 for the demolition of an individual Local Register property. The submittal requirements are also the same as that finding.

Findings for "C" rated buildings and ASI contributors

The following summarizes the findings and submittals required to demolish a PDHP that are not on the Local Register. These include "C" rated buildings and buildings that contribute to an ASI. There are four findings listed for these historic resources, but an applicant would have a choice of three combinations findings to meet: Findings 1 and 3; or Findings 2 and 3; or just 4. The following lists the findings:

Finding 1: The design quality of the proposed replacement project is at least equal to that of the original structure and the proposed replacement project is compatible with the character of the neighborhood.

Finding 2: The public benefits of the proposed project outweigh the benefit of retaining the original structure.

Finding 3: It is economically, architecturally, or structurally infeasible to incorporate the historic building into the proposed development.

Finding 4: The existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.

Findings 1, 2, and 4 are directly from the HPE. According to the HPE, only one of these findings needs to be met to demolish a "C" rated building or a contributor to an ASI. Staff recommends that Finding 2 also be required with Finding 1 or 2 because of the many opportunities to make additions to existing historic buildings. An application to demolish a building can be approved if only Finding 4 is met because demolition is no longer an issue if the building proposed for demolition is undistinguished and the new building is compatible with the district.

The submittal requirements for Findings 1 and 2 include an analysis of equal quality and compatibility by a historic architect. The submittal requirements emphasize that replacement projects should be compatible with the district without being a caricature of its historic buildings. The submittal requirements for 3 and 4 include analyses by qualified experts.

DIFFERENCES BETWEEN LPAB AND STAFF PROPOSAL

The following summarizes the substantive differences between the LPAB and staff proposals. A more detailed description is contained in Attachment E.

- The revised version contains a requirement that the application for a replacement development be complete at the time of the application for the demolition. Staff recommends this change because the relative benefits and qualities of the proposed replacement project cannot be evaluated without a complete application. This requirement would not be necessary if the building proposed for demolition poses an imminent hazard to public health or safety.
- Staff removed a requirement for an applicant to analyze alternative sites where a proposal would not endanger a Local Register property. Staff believes that this is an open ended requirement and cannot take into account the obstacles of purchasing alternative properties.
- The revised version states that if a building is demolished due to an imminent public hazard, any replacement project must be of equal or greater quality than the building proposed for demolition.
- Staff removed a requirement to perform an analysis of whether a replacement project for a demolished Local Register property is designed to last 100 plus years. It has been removed because it is impractical to make this assessment prior to construction of a building.
- Staff has included findings requiring analysis of whether a building proposed for demolition could instead be incorporated into a new project.
- Staff included an additional five items to Finding 5 for demolitions in Local Register districts. These items were included to provide a more specific definition for compatibility in a historic neighborhood. The additional language also brings consistency with the recently approved requirements for new construction in historic districts in the Central Business District.

RECOMMENDATION

Staff recommends that the Zoning Update Committee review the proposal and make recommendations to the Planning Commission.

Prepared by:

NEIL GRAY, Planner III

Approved for forwarding to the
Zoning Update Committee of the
City Planning Commission

ERIC ANGSTADT
Deputy Director
Community and Economic Development Agency

ATTACHMENTS:

A. Proposed findings and submittal requirement for the demolition of historic resources.
B. LPAB recommendations for findings and submittal requirement for the demolition of historic resources.
C. Section 17.136.070 of the Planning Code
D. Table 4-1 of the Historic Preservation Element
E. Substantive differences between staff proposal and LPAB proposal

ATTACHMENT A
STAFF RECOMMENDATIONS FOR FINDINGS REUIRED FOR THE DEMOLITION OF HISTORIC PROPERTIES
1-20-10 ZONING UPDATE COMMITTEE

Historic Status	Findings for demolition or removal	Submittal Requirements/Discussion Points
The following Local Register Properties: ➢ Landmarks ➢ Heritage Properties ➢ "A" and "B" rated properties ➢ Preservation Study List Properties	1. The applicant demonstrates that the existing property has no reasonable use or cannot generate a reasonable economic return and that the development replacing it will provide such use or generate such return ***Or*** 2. The applicant demonstrates that the property constitutes a hazard and is economically infeasible to rehabilitate on its present site.	**For Finding 1:** **(i) Complete application for the replacement project prepared by a licensed architect, uless the building proposed for demolition poses an imminent hazard to the public health.** **(ii) Building Use – Economic Viability** The applicant shall submit a market analysis prepared by an architect, developer, real estate consultant, appraiser, or other real estate professional with extensive experience in both real estate and historic rehabilitation that demonstrates all of the following: • The current use does not generate a reasonable economic return (may include market report of like uses and building scale in the same or similar neighborhood); • That appropriate and reasonable alternate uses in the building could not generate a future reasonable economic return; • That alterations or additions to the existing building could not make the current or future use generate a reasonable economic return; and • Potential Federal Tax Credits, Mills Act Contracts, Façade Grants, Transfer of Development Rights or other funding sources are not feasible to bridge the gap identified above. **(iii) Building Soundness** The applicant shall submit a report from a licensed engineer or architect with extensive experience in rehabilitation as to the structural soundness of the property and its suitability for rehabilitation. The soundness report shall be based on the requirements contained in Exhibit A, attached. **(iv) Building Maintenance History** The applicant shall submit a cost estimate report prepared by a qualified cost estimator with extensive experience in rehabilitation, analyzing any building neglect contributing to any deterioration; a) Is the building free of a history of serious, continuing code violations? b) Has the building been maintained and stabilized? Long term deferred maintenance and/or a history of continuing code violations not addressed by the owner, or other proper person having legal custody of the structure or building shall constitute a violation and will not be considered as a part of the economic infeasibility analysis bottom line.

Historic Status	Findings for demolition or removal	Submittal Requirements/Discussion Points
The following Local Register Properties: ➢ Landmarks ➢ Heritage Properties ➢ "A" and "B" rated properties ➢ Preservation Study List Properties (continued)		**(v) Existing Building Appraised Value** a. All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing, or ownership of the property; b. Any listing of the property for sale or rent price asked, and offers received, if any, within the previous two years; and c. Existing Building/Property Appraisal (current within the last six months): • Estimated market value of the property in its current condition under best practices management; • After repair of construction deficiencies; • After repair of construction deficiencies and maintenance; • After any changes recommended by the Historic Preservation Staff/LPAB; • After completion of the proposed demolition or removal; and • After completion of the replacement proposal. **(vi) A Public Benefits** A public benefits analysis report shall be prepared and take into consideration the educational, cultural, social, equity, and economic benefits of the historic building and the proposed building. Some issues that shall be considered include, but are not limited to: • The benefits to the City's tourism industry; • The benefits to owners of other commercial and residential property owners and renters in the area; • The services provided to the community, including social services; • Housing and jobs opportunities; • Civic, community, and neighborhood identity; • Cultural heritage and the image of the City and local neighborhood; and • Educational opportunities and cultural benefits regarding architectural and local history.

The following Local Register Properties: ➢ Landmarks ➢ Heritage Properties ➢ "A" and "B" rated properties ➢ Preservation Study List Properties (continued)		**vii) Optional submittal: Sustainability – Life Cycle Assessment Criteria** The applicant may wish to submit a Life Cycle Assessment Report to demonstrate the quality of the replacement proposal and of the existing building as described below. Demonstration that the durability and expected life of the new proposal's quality of construction, materials and craftsmanship, including the cost of demolition or deconstruction of the historic resource, exceeds the value of the embodied energy of the building's existing materials, durability of materials, quality of construction, level of craftsmanship, cost to repair construction deficiencies and maintenance. **For Finding 2:** The existence of the building proposed for demolition is determined to constitute an imminent hazard to public safety or health by the City of Oakland Building Official, Health Officer, or the Fire Chief., or is detrimental to public health or the health of the occupants, as determined by the Health Officer, and abatement procedures and/or rehabilitation are not economically feasible. A replacement project, if any, must meet finding 3.
	3. The design quality of the replacement facility is equal/superior to that of the existing facility.	Analysis prepared by a historic architect or professional with equivalent experience. The following discussion points shall be taken into account when making this finding. • A clearly identifiable visual or design value. For instance, does the replacement proposal express its present character as strongly as the historic design expressed its past? • Durability, quality, and design value of surface materials. Durable and quality materials include, but are not limited to: stone, granite, marble, concrete, highest quality and detailed glass curtain wall, terra cotta or other materials appropriate to the design style of the building or context of the neighborhood. In terms of design value, are materials in the replacement building used to enhance the architectural design elements of the building instead of used solely for the sake of variety? • Significant enhancement of the visual interest of the surrounding area; • High quality detailing; • Composition. A well composed building integrates all aspects of the building (materials, façade patterns, proportions, openings, forms, massing, detailing, etc.) into its overall character and design. • Site setting, neighborhood, and streetscape contexts; • Incorporating "especially fine" construction details, methods, or structural materials. These include those that successfully address challenging structural problems, contribute significantly to the building's overall design quality, exhibit fine craftsmanship, or are visible design elements; • The replacement building's reflection of the time it was designed not merely a caricature of the demolished building; • The replacement building's contemporary interpretation of the demolished building's elements in terms of the cultural, historic, economic, or technological trends of its time.
	4. It is economically, functionally architecturally, or structurally infeasible to incorporate the historic building into the proposed development.	Analysis of the finding prepared by qualified architects, economists, engineers, or other equally qualified professionals.

Historic Status	Findings for demolition or removal	Submittal Requirements
The following Local Register Properties: S-7/S-20/API contributors & noncontributors	For contributing or potentially contributing properties: 1. The applicant demonstrates that the existing property has no reasonable use or cannot generate a reasonable economic return and that the development replacing it will provide such use or generate such return ***Or*** 2. The applicant demonstrates that the property constitutes a hazard and is economically infeasible to rehabilitate on its present site.	Same as submittal findings as Findings 1 and 2 for Landmarks, Heritage Properties, "A" and "B" rated properties and study list properties.
	3. For noncontributing properties: The existing facility is either: a. Seriously deteriorated or a hazard, or b. The existing design is undistinguished and does not warrant retention.	Same as (1), but demolition or removal is also permitted if either: For a: The existence of the building proposed for demolition is determined to constitute an imminent hazard to public safety or health by the City of Oakland Building Official, Health Officer, or the Fire Chief, or is detrimental to public health or the health of the occupants, as determined by the Health Officer, and abatement procedures and/or rehabilitation are not economically feasible, or For b: The Property is determined to be "Of no particular interest" by the Oakland Cultural Heritage Survey Evaluation. If the property is so rated due to alterations, reversal of the historic architectural integrity is not economically or physically feasible (as determined under Local Register Properties (ii), (iii) and (iv)).
	4. For all properties in a district: The design quality of the replacement facility is equal/superior to that of the existing facility.	Same as submittal findings as Finding 3 for Landmarks, Heritage Properties, "A" and "B" rated properties.
	a. 5. For all properties in a district: the design of the replacement project is compatible with the character of the preservation district, and there is no erosion of design quality at the replacement project site and in the surrounding area. This includes, but is not necessarily limited to, the following additional findings:The replacement project is compatible with the district in terms of massing, siting, rhythm, composition, patterns of openings, quality of material, and intensity of detailing; b. New street frontage with forms that reflect the widths and rhythm of the facades on the street and entrances that reflect the patterns on the street; c. The replacement project provides high visual	Analysis of the findings prepared by a historic architect or professional with equivalent experience. Other discussion points include: • The replacement project's architectural compatibility with the district without being subservient. If it is subservient to the district character, is it a watered down version of a period revival style or a generic building or a visually cohesive design with a strong concept? • The new building's contemporary interpretation of the demolished building's elements in terms of the cultural, historic, economic, or technological trends of its time. • The preservation of the authenticity of the existing historic district with a replacement building that has an authenticity of its own time. • The compatibility of the design of the replacement proposal with the district without being merely a compilation of façade features that are common to district or a caricature of the buildings in the district.

	interest that either reflects the level and quality of visual interest of the district contributors or otherwise enhances the visual interest of the district; d. If the design contrasts the new to the historic character, the replacement project enriches the historic character of the district; e. Is consistent with the visual cohesiveness of the district. For the purpose of this item, visual cohesiveness is the architectural character, the sum of all visual aspects, features, and materials that defines the district. A new structure contributes to the visual cohesiveness of a district if it relates to the design characteristics of a historic district while also conveying its own time. New construction may do so by drawing upon some basic building features, such as the way in which a building is located on its site, the manner in which it relates to the street, its basic mass, form, direction or orientation (horizontal vs. vertical), recesses and projections, quality of materials, patterns of openings and level of detailing. When a combination of some these design variables are arranged in a new building to relate to those seen traditionally in the area, but integral to the design and character of the proposed new construction, visual cohesiveness results; and f. The replacement project will not cause the district to lose its current historic status,	
	6. It is economically, functionally architecturally, or structurally infeasible to incorporate the historic building into the proposed development.	Analysis of the finding prepared by qualified architects, economists, engineers, or other equally qualified professionals.

Historic Status	Findings for demolition or removal	Submittal requirements
Other PDHPs: C's ASI contributors	**Findings required: 1 and 2 or 2 and 3; or only 4.** 1. The design quality of the proposed replacement project is at least equal to that of the original structure and the proposed replacement project is compatible with the character of the neighborhood.	The following submittals shall be required: • Complete application for the replacement project, including plans designed by a licensed architect. • Analysis of 'equal quality' and compatibility prepared by historic architect, or professional with equivalent experience; this includes: 1) the same submittal findings as Finding 3 for Landmarks, Heritage Properties, "A" and "B" rated properties and Finding 4 for Local Register of Historical Resources Districts and; 2) Discussion points for Finding 5 for S-7/S-20/API contributors & noncontributors. • For the demolition of a substantial portion of or an entire ASI, the analysis should include whether the cumulative effect of a significant loss of the City's character and special sense of place provided by older historic properties commensurate with the quality of the proposed replacement project.
	2. It is economically, architecturally, or structurally infeasible to incorporate the historic building into the proposed development.	Complete application for the replacement project, including plans designed by a licensed architect. Analysis of the finding prepared by qualified architects, economists, engineers, or other equally qualified professionals.
	3. The public benefits of the proposed replacement project outweigh the benefit of retaining the original structure.	Same as submittal findings as Finding 1(vi) for Landmarks, Heritage Properties, "A" and "B" rated properties, and study list properties. In addition to the analysis above, the following may be taken into account in the analysis. Is the original structure lacking in benefit because it: • does not contribute to a district architectural context; • is not located in a highly visible prominent location (major corridor, corner); • is not part of a continuous group/streetscape whose continuity would be diminished if demolished; • is not a neighborhood landmark or a building that the neighborhood identifies as a symbol/image of the neighborhood; • is not part of a thematic group of buildings contributing to a cultural/historical group of buildings (e.g., Kaiser in Richmond which includes ship building docks, industrial related buildings, worker housing); • is not a rare building with respect to age, style, quality, character and/or use; or • is located in a "Grow and Change" area as described in the Strategic Diagram of the Land Use and Transportation Element of the General Plan.
	4. The existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.	• Complete application for the replacement project, including plans designed by a licensed architect. • Determination by Oakland Cultural Heritage Survey Evaluation the property is determined to be 'Of no particular interest.' If the property is so rated due to alterations, reversal of the historic architectural integrity is not economically or physically feasible (as determined under Local Register Properties (ii), (iii) and (iv)). • Analysis of 'compatibility with the neighborhood' prepared by historic architect (see discussion points for #1 above).

All consultant reports required for the Demolition Findings shall be prepared by independent third party consultants, or each report shall be peer reviewed. Reports shall be paid for by the applicant, the consultant approved by the City and the Consultant shall report to City, as in the City's Environmental Review process. All applicable discussion points shall be taken into account when making a finding. If a point is not applicable, the analysis shall state why. Any analysis may also include attributes that the support the replacement project, but are not mentioned in the points.

I. Category I/Local Register Property Findings and Submittal Requirements

It was the Board consensus to adopt the following findings and submittal requirements for Category I [i.e., (a) Designated Landmarks, S-7 and S-20 Districts, and Heritage Properties; and (b) all "A" rated properties, including those on the Preservation Study List] at their May 11, 2009 meeting.

All consultant reports required for the Demolition Findings shall be prepared by independent third party consultants, or each report shall be peer reviewed. Reports shall be paid for by the applicant, the consultant approved by the City and the Consultant shall report to City, as in the City's Environmental Review process.

FINDINGS:

Demolition or removal of Local Register Properties is prohibited, unless at least finding [(i) or (ii)] and (iii) is made.

(i) The applicant demonstrates that the existing property has no reasonable use or cannot generate a reasonable economic return and that the development replacing it will provide such use or generate such return;
OR

(ii) The applicant demonstrates that the property constitutes a hazard to public safety and is economically infeasible to rehabilitate on its present site.
AND

(iii) The design quality of the replacement facility is equal/superior to that of the existing facility; in a district, the design is compatible with the character of the neighborhood, and there is no erosion of design quality at the project site and in the surrounding area.

The following discussion points shall be taken into consideration in making this finding. The proposal:

A) Context – Visual and Formal Characteristics:

- Has a clearly identifiable visual or design value;
- Incorporates "especially fine" construction methods or structural materials, including those which successfully address challenging structural problems or contribute significantly to the building's overall design quality or which exhibit fine craftsmanship or other materials appropriate to the particular context, well-detailed;
- Incorporates especially fine surface materials such as stone, granite, marble, concrete, high-quality and detailed glass curtain wall, terra cotta or other materials appropriate to the particular context, well-detailed;
- Significantly enhances the visual interest of the surrounding area;
- Is constructed with construction details and materials designed to last 100 plus years; and
- The proposal demonstrates equal/superior quality with respect to:
  - composition;
  - configuration/site setting within the neighborhood streetscape;

ATTACHMENT B

- proportions;
- facade patterns/detailing.

- Materials are used to enhance the architectural design elements and not used solely for the sake of variety.
- The proposed design not only protects the integrity and aesthetic quality of the historic district, but enhances and enlivens the historic fabric at the same time respecting and recognizing the district; OR due to circumstances discussed in the analysis, the project has been designed as a background project to the district (i.e., a watered down version of a period revival style or a generic building).

B) Context –Interpretations that utilize cultural, political, economic trends, and/or material and technological innovations of the period of historic development.

- the proposed project architecture 'dialogues' with the existing historic character through historic characteristics other than solely building facade and form character (visual and formal characteristics) as a way to provide compatibility [1];
- the proposed architecture is compatible without being subservient (i.e., the proposed architecture expresses the character of the present as strongly as the historic design expressed its past)[2];
- if the design contrasts the new to the historic character, it enriches the historic character and/or melds the new with the historic in direct or in indirect/abstract methods;

The analysis shall discuss all applicable points. If a point is not applicable, the analysis shall state why. The analysis may also include attributes that support the project.

Submittal Requirements for Finding (i):

I. Quantitative Submittal Requirements -

A. **Building Use – Economic Viability**

The applicant shall submit a market analysis prepared by an architect, developer, real estate consultant, appraiser, or other real estate professional with extensive experience in both real estate and historic rehabilitation that demonstrates all of the following:

1) The current use does not generate a reasonable economic return (may include market report of like uses and building scale in the same or similar neighborhood), and alternate opportunity sites have been explored; and

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[1] Cast iron façade context in Old Oakland – the result of technological and material innovation during the time of economic constraints led to the replication of stone in a more affordable, efficient construction method. Relying on this technological aspect of the historic district could lead to a broader range of possibilities for innovative new designs incorporating current technological materials' advancements.);

[2] See Attachment illustrating the subtle use of the new Carre d'Art's building and portico proportions in relation to the historic Maison Carre in Nimes, France. The new proposal is clearly a contemporary relative of the distant past Maison Carre, but relies on a deeper interpretation of compatibility through building proportions, rather than a cohesive blend of facade characteristics.

2) That appropriate and reasonable alternate uses in the building could not generate a future reasonable economic return; and
3) That alterations or additions to the existing building could not make the current or a future use generate a reasonable economic return.
4) Where applicable, Transfer of Development Rights, Mills Act Contract, Federal Tax Credits, Façade Grants, Etc. shall be considered.
5) Alternate opportunity sites have been explored.

B. Physical Condition

1) Building Soundness [3]–

(i) The applicant shall submit a report from a licensed engineer or architect with extensive experience in rehabilitation as to the structural soundness of the property and its suitability for rehabilitation. This analysis would include only repairs of construction deficiencies in the upgrade cost. The State Historical Building Code would be applicable.

a) Is it considered unsound if the cost to upgrade construction deficiencies exceeds 50% of the replacement cost.

If the soundness report cannot support the above finding, the next step is to calculate a second upgrade cost, including the costs calculated for the 50% upgrade, and also adding in the cost of any necessary habitability/re-usability repairs attributable to lack of maintenance. Then,

b) Is it considered unsound if the cost to upgrade construction deficiencies exceeds 75% of the replacement cost.

If the City adopts this policy, based on San Francisco's Soundness Report Requirements (Attached), the City would need to establish Replacement Cost standards for both residential and commercial buildings as the San Francisco report established for residential buildings.

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[3] "Soundness" is an economic measure of the feasibility of repairing a sub-standard structure. It compares an estimate of construction-repair cost, the Upgrade Cost – *an estimate of the cost to make the existing structure "safe and useable," that is, the cost to bring a sub-standard structure into compliance with the minimum standards of the Building Code in effect at the time of its construction, or the State Historical Building Code, with certain retroactive life-safety exceptions*, to an estimate called the Replacement Cost - *the current cost to construct a building exactly like the size and quality of materials of that proposed for demolition.*

Programmatic shortcomings of the existing structure have no bearing on the soundness report. Costs to add floor space in an addition, to increase headroom in a basement or attic, to install interior finish upgrades, etc. cannot be included, nor can certain "soft costs" and site improvements. Bringing the structure into compliance with the current seismic requirements of the Building Code is not an allowable expense, even though it may be prudent and desirable, or even if required by the Building Code for the scope of repair work. Routine, repetitive maintenance costs must also be excluded. Contractor's profit and overhead and permit costs may be included, but 'Architects' and 'Engineers' design fees, and allowances for construction contingencies may not. Just because a building component or system is not pristine or modern does not justify its replacement, as long as it meets required functional standards and is not a hazard. For example, the presence of knob and tube wiring, unless unequivocally documented as a hazard, does not justify replacement of the electrical service with conduit or Romex. The cost to replace a pull-out fuse box that is not a hazard with a new circuit breaker panel cannot be included as an upgrade expense, even if it is part of the proposed work. (primarily from *Soundness Report Requirements*-City of San Francisco)

2) **Building Maintenance History -**

(i) The applicant shall submit a cost estimate report prepared by a qualified cost estimator with extensive experience in rehabilitation, analyzing any building neglect contributing to any deterioration;

a) Is the building free of a history of serious, continuing code violations?

b) Has the building been maintained and stabilized?

(Long term deferred maintenance and/or a history of continuing code violations not addressed by the owner, or other proper person having legal custody of the structure or building shall constitute a violation and will not be considered as a part of the economic infeasibility analysis bottom line.)

C. Existing Building Appraised Value

The applicant shall submit the following:

1) All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing, or ownership of the property; and
2) Any listing of the property for sale or rent price asked, and offers received, if any, within the previous two years; and
3) Existing Building/Property Appraisal (current within the last six months):
    a. estimated market value of the property in its current condition under best practices management; and
    b. after repair of construction deficiencies; and
    c. after repair of construction deficiencies and maintenance; and
    d. after any changes recommended by the Historic Preservation Staff/LPAB; and
    e. after completion of the proposed demolition or removal; and
    f. after completion of the replacement proposal.

II. Qualitative Submittal Requirements –

A Public Benefits Analysis Report shall be prepared and take into consideration the following discussion points in reference to the retention of the historic resource, in addition to an analysis of the public benefits of the proposed replacement project:

D. Intrinsic/Qualitative Economic Vitality

Existing Building Retention - City of Oakland Benefits

- Cultural benefits of the historic building/district to owners of other commercial properties in the area;
- Cultural benefits of the historic building/district to owners of residential properties in the area;
- Cultural benefits as an attraction to tourists and visitors, regionally or further abroad, of an individual building or contributing building to a district;
- Cultural benefits to users to the historic building/district;
- Cultural benefits to the general public:
    - Does the existing building/district entail desirable features of the existing urban fabric that would benefit the City in fostering:
        - Civic pride in the craftsmanship, architectural accomplishments of the past?
        - The education, pleasure and welfare of the citizens of the City by raising community awareness and appreciation of Oakland's history, culture and architecture?
        - Community/neighborhood identity and "image"?

- The benefits analysis shall include discussion of potential economics benefits of a rehabilitated or reused cultural resource, including how building or district character might affect property values, attract commercial economic development, and increase City tax revenues.

***III. Optional Submittal* – The applicant may wish to submit a Life Cycle Assessment Report to demonstrate the quality of the proposal and of the existing building as described below.**

E. Sustainability – Life Cycle Assessment Criteria

Demonstration that the durability and expected life of the new proposal's quality of construction, materials and craftsmanship, including the cost of demolition or deconstruction of the historic resource, exceeds the value of the embodied energy of the building's existing materials, durability of materials, quality of construction, level of craftsmanship, cost to repair construction deficiencies and maintenance (as defined under 'soundness' and 'maintenance' under B.1: Physical Condition – Building Soundness).

Submittal Requirements for Finding (ii):

A. All of the above requirements for (i); and

B. The property is determined to constitute a hazard to public safety by the City of Oakland Building Official or the Fire Chief, or detrimental to public health or the health of the occupants, as determined by the Health Officer, and abatement procedures and/or rehabilitation are not economically feasible. (Note: Note that demolition or removal of properties is permitted in all cases and may proceed at once without the special approvals normally required if based on a written determination by the Building Official, Housing Official, or their respective appeals boards that the property constitutes an *immediate* hazard to public safety and that the demolition or removal is *necessary* to abate the hazard.)

Suggested Submittal Requirements for District Finding (iii):

Analysis of the discussion points including analysis that the new project **demonstrates durability, with analysis prepared by historic architect, or professional with equivalent experience.**

II. Category I/Local Register Districts Findings and Submittal Requirements

FINDINGS:

Demolition or removal of Local Register District properties is prohibited, unless at least one of findings (i), (ii)(a) or (ii)(b) and finding (iii) is made:

(i) for contributing and potentially contributing properties, one of the two findings permitting demolition or removal of Local Register historic resources can be made; OR

(ii) for non-contributing properties, same as (i), but demolition or removal is also permitted if either :

(a) The existing facility is seriously deteriorated or a hazard; OR

(b) The existing design is undistinguished and does not warrant retention; AND

(iii) The design quality of the replacement facility is equal/superior to that of the existing facility, the design is compatible with the character of the Preservation District or API, and there is no erosion of design quality at the project site and in the surrounding area and the proposed design would not impair the district's eligibility for the National Register of Historic Places. The following shall be taken into consideration in making this finding. The proposal:

A) Context – Visual and Formal Characteristics:

- Has a clearly identifiable visual or design value;
- Incorporates "especially fine" construction methods or structural materials, including those which successfully address challenging structural problems or contribute significantly to the building's overall design quality or which exhibit fine craftsmanship, or other materials appropriate to the particular context, well-detailed;
- Incorporates especially fine surface materials such as stone, granite, marble, concrete, high-quality and detailed glass curtain wall, terra cotta, or other materials appropriate to the particular context, well-detailed;
- Significantly enhances the visual interest of the surrounding area;
- Is constructed with construction details and materials designed to last 100 plus years (See discussion of Issues, Issue #1); and
- The proposal demonstrates equal/superior quality with respect to:
  - composition;
  - configuration/site setting within the neighborhood streetscape patterns;
  - proportions;
  - facade patterns/detailing.
- Materials are used to enhance the architectural design elements and not used solely for the sake of variety.
- The proposed design not only protects the integrity and aesthetic quality of the historic district, but enhances and enlivens the historic fabric at the same time respecting and recognizing the district; OR due to circumstances discussed in the analysis, the project has been designed as a background project to the district (i.e., a watered down version of a period revival style or a generic building)
- The proposed new design preserves the authenticity of the existing historic district and provides compatible authenticity of its own time.

B) Context –Interpretations that utilize cultural, political, economic trends, and/or material and technological innovations of the period of historic development.

- the proposed project architecture 'dialogues' with the existing historic character through historic characteristics other than solely building facade and form character (visual and formal characteristics) as a way to provide compatibility [4];
- the proposed architecture is compatible without being subservient (i.e., the proposed architecture expresses the character of the present as strongly as the historic design expressed its past)[5];
- if the design contrasts the new to the historic character, it enriches the historic character and/or melds the new with the historic in direct or in indirect/abstract methods;

The analysis shall discuss all applicable points. If a point is not applicable, the analysis shall state why. The analysis may also include attributes that support the project.

SUBMITTAL REQUIREMENTS:

Options for Submittal Requirements for District Finding (i) – Contributing and potentially contributing properties:

Same as for Local Register Property.

Submittal Requirements for District Findings (ii)-(a) – Noncontributing properties:

For (a): the existing facility is seriously deteriorated or a hazard;

Determination by appropriate City of Oakland Official

The property is determined to constitute a hazard to public safety by the City of Oakland Building Official or the Fire Chief, or detrimental to public health or the health of the occupants, as determined by the Health Officer, and abatement procedures and/or rehabilitation are not economically feasible (as defined under ***Quantitative Submittals,*** **A, B, and C,** above).

Submittal Requirements for District Findings (ii)-(b) – Noncontributing properties:

For (b): The existing design is undistinguished and does not warrant retention;

Determination by Oakland Cultural Heritage Survey Evaluation

The property is determined to be 'Of no particular interest'. If the property is so rated due to alterations, reversal of the historic architectural integrity is not economically or physically feasible (as defined under ***Quantitative Submittals,*** **A, B, and C,** above).

Submittal Requirements for District Finding (iii):

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[4] Cast iron façade context in Old Oakland – the result of technological and material innovation during the time of economic constraints led to the replication of stone in a more affordable, efficient construction method. Relying on this technological aspect of the historic district could lead to a broader range of possibilities for innovative new designs incorporating current technological materials' advancements.);

[5] See Attachment illustrating the subtle use of the new Carre d'Art's building and portico proportions in relation to the historic Maison Carre in Nimes, France. The new proposal is clearly a contemporary relative of the distant past Maison Carre, but relies on a deeper interpretation of compatibility through building proportions, rather than a cohesive blend of facade characteristics.

economically or physically feasible (as defined under ***Quantitative Submittals,*** **A, B, and C,** above).

Submittal Requirements for District Finding (iii):

Analysis of the discussion points including analysis that the new project **demonstrates durability, with analysis prepared by historic architect or professional with equivalent experience.**

III. Category III – PDHP Findings and Submittal Requirements

Category III includes all other Potential Designated Historic Properties and contributors to Areas of Secondary Importance. The LPAB Strategy recommendation to the Planning Commission recommended stronger protection of PDHPs under Historic Preservation Policy 3.5. HPE Policy 3.5 states the following findings for projects involving complete demolition of Potential Designated Historic Properties:

(1) the design quality of the proposed project is at least equal to that of the original structure and is compatible with the character of the neighborhood; or
(2) the public benefits of the proposed project outweigh the benefit of retaining the original structure; or
(3) the existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.

The current direction to the Board is to expand the findings for more specificity. Staff has outlined discussion points under each of the three findings. The discussion points would be addressed in the analysis of how the proposal meets/does not meet the finding.

FINDINGS WITH DISCUSSION POINTS:

(1) the design quality of the proposed project is at least equal to that of the original structure and is compatible with the character of the neighborhood;

a. A historic architect or professional with equivalent experience, in making a professional analysis of the proposal's design quality to meet the finding, shall consider and evaluate the following discussion points:

A) Context – Visual and Formal Characteristics;

- The proposal demonstrates 'equal quality' with respect to:
  - composition;
  - configuration/site setting/the manner in which it relates to the street;
  - basic mass, form, direction or orientation (horizontal vs. vertical);
  - proportions;
  - pattern of window and door openings;
  - facade patterns/detailing;
  - recesses and projections;
  - materials;
    - materials should enhance the architectural design elements and not be used solely for the sake of variety;
    - materials can be ranked in order of quality in terms of durability, craftsmanship, cost and aesthetics (highest to lowest):
      - polished stone slabs (marble, granite, etc.)
      - architectural terra cotta;
      - stone or ceramic tile;

- pressed brick or face brick;
- concrete;
- glass curtain wall (Mies quality of detail);
- surfaced or finished wood;
- stucco;
- unsurfaced (rough) wood; or
- other materials appropriate to the particular context, well-detailed;

- quality of construction;
- detailing and craftsmanship;
  - the proposal incorporate details that add to the character and richness of the building, in a manner that is integral to the architectural design and structure;

- if the design is compatible by use of a cohesive blend of façade characteristics (as outlined above), it is not just a caricature of the historic character; the design does not use appliqué of architectural elements in a false manner[6] ;(e.g. historically structural element, such as knee braces, where they are nc .ructurally required);
- if the design matches the new to the old, authentic materials are used, minimally on the lower floors of the proposal where pedestrian access and visibility is high.
- The proposal demonstrates compatibility with the character/context of the streetscape and the neighborhood;
- The new proposal is more than a compilation of features that respond to the historic character, but provides a compatible and comprehensive design that stands on its own and the features are all integral to the overall design.

B) Context –Interpretations that utilize cultural, political, economic trends, and/or material and technological innovations of the period of historic development.

- the proposed project architecture 'dialogues' with the existing historic character through historic characteristics other than solely building facade and form character (visual and formal characteristics) as a way to provide compatibility [7];
- the proposed architecture is compatible without being subservient (i.e., the proposed architecture expresses the character of the present as strongly as the historic design expressed its past)[8];
- if the design contrasts the new to the historic character, it enriches the historic character and/or melds the new with the historic in direct or in indirect/abstract methods;

The analysis shall discuss all applicable points. If a point is not applicable, the analysis shall state why. The analysis may also include attributes that support the project.

(b.) For loss of a substantial portion or en entire ASI (i.e. loss of substantial City historic character), the following discussion points apply: Same as a Local Register Property

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[6] Preserves the authenticity of the old and the new.

[7] Cast iron façade context in Old Oakland – the result of technological and material innovation during the time of economic constraints led to the replication of stone in a more affordable, efficient construction method. Relying on this technological aspect of the historic district could lead to a broader range of possibilities for innovative new designs incorporating current technological materials' advancements.);

[8] See Attachment illustrating the subtle use of the new Carre d'Art's building and portico proportions in relation to the historic Maison Carre in Nimes, France. The new proposal is clearly a contemporary relative of the distant past Maison Carre, but relies on a deeper interpretation of compatibility through building proportions, rather than a cohesive blend of facade characteristics.

(2) the public benefits of the proposed project outweigh the benefit of retaining the original structure:

A historic architect or professional with equivalent experience, in making a professional analysis of the public benefits, may consider and evaluate the following discussion points:

- Cultural benefits of the historic building/district to owners of other commercial properties in the area;
- Cultural benefits of the historic building/district to owners of residential properties in the area;
- Cultural benefits as an attraction to tourists and visitors, regionally or further abroad, of an individual building or contributing building to a district;
- Cultural benefits to users to the historic building/district;
- Cultural benefits to the general public:
    - Does the existing building/district entail desirable features of the existing urban fabric that would benefit the City in fostering:
        - Civic pride in the craftsmanship, architectural accomplishments of the past?
        - The education, pleasure and welfare of the citizens of the City by raising community awareness and appreciation of Oakland's history, culture and architecture?
        - Community/neighborhood identity and "image"?
- Could alterations or additions to the existing building make the current or a future use generate a reasonable economic return and/or architecturally/structurally accommodate the proposed uses;
- Do preservation alternatives exist which can achieve at least the same level of non-preservation benefits;
- The benefits analysis shall include discussion of potential economics benefits of a rehabilitated or reused cultural resource, including how building or district character might affect property values, attract commercial economic development, and increase City tax revenues.
- Is the original structure lacking in benefit because it:
    - does not contribute to a district architectural context;
    - is not located in a highly visible prominent location (major corridor, corner);
    - is not part of a continuous group/streetscape whose continuity would be diminished if demolished;
    - is not a neighborhood landmark or a building that the neighborhood identifies as a symbol/image of the neighborhood;
    - is not part of a thematic group of buildings contributing to a cultural/historical group of buildings (e.g., Kaiser in Richmond which includes ship building docks, industrial related buildings, worker housing);
    - is not a rare building with respect to age, style, quality, character and/or use;
    - is located in an area which exhibits change and growth, evidenced by the scale, use and building type.

(3) the existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.

Discussion points for this finding shall include:

- Determination by Oakland Cultural Heritage Survey Evaluation that the property is determined to be 'Of no particular interest; and
- If the property is so rated because of alterations, reversal of the historic architectural integrity is not economically and/or physically feasible (as defined under *Quantitative Submittals,* A, B, and C, above); and
- all of the discussion points under Policy 3.5, Finding #1, as outlined above for the new building(s).

SUBMITTAL REQUIREMENTS:

(1) **the design quality of the proposed project is at least equal to that of the original structure and is compatible with the character of the neighborhood;**
- Analysis of 'equal quality' prepared by historic architect, or professional with equivalent experience;
- Analysis of 'compatibility with the neighborhood' prepared by historic architect, or professional with equivalent experience;

(2) **the public benefits of the proposed project outweigh the benefit of retaining the original structure;**
- Analysis of discussion points prepared by historic architect, or professional with equivalent experience;

(3) **the existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood;**
- Determination by Oakland Cultural Heritage Survey Evaluation
  The property is determined to be 'Of no particular interest'. If the property is so rated due to alterations, reversal of the historic architectural integrity is not economically or physically feasible based on submittal requirements under Category I, *Quantitative Submittals,* A, B, and C, as applicable.
- Analysis of 'compatibility with the neighborhood' prepared by historic architect, or professional with equivalent experience;

ATTACHMENT C
SECTION 17.136.070 OF THE PLANNING CODE
1-20-10 ZONING UPDATE COMMITTEE MEETING

17.136.070 - Special regulations for designated landmarks.

A. Designation. In any zone, the City Council may designate as a landmark any facility, portion thereof, or group of facilities which has special character, interest, or value of any of the types referred to in Section 17.07.030P. The designating ordinance for each landmark shall include a description of the characteristics of the landmark which justify its designation and a clear description of the particular features that should be preserved. Each ordinance shall also include the location and boundaries of a landmark site, which shall be the lot, or other appropriate immediate setting, containing the landmark. Designation of each landmark and landmark site shall be pursuant to the rezoning and law change procedure in Chapter 17.144.

B. Design Review for Construction or Alteration. Except for projects that are exempt from design review as set forth in Section 17.136.025, no Building Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure on any designated landmark site shall be constructed or established, or altered in such a manner as to affect exterior appearance unless plans for the proposal have been approved pursuant to the design review procedure in this chapter and the applicable provisions of this section. Furthermore, for a publicly owned landmark, the designating ordinance may require such approval of proposed changes to major interior architectural features.

C. Design Review for Demolition or Removal. Within any designated landmark site, no building facility, portion thereof, or other landmark shall be demolished or removed, unless plans for the proposal have been approved pursuant to the regular design review procedure in Section 17.136.040 and the applicable provisions of this section. However, in any case, after notice to the Director of City Planning, demolition or removal shall be permitted without such approval upon a determination by the Building Services Department, the Housing Conservation Division, their respective appeals boards, or the City Council that immediate demolition is necessary to protect the public health or safety, or after expiration of the periods of postponement referred to in subsection E of this section.

D. Regular Design Review Criteria. Proposals involving designated landmarks that require regular design review approval may be granted only upon determination that the proposal conforms to the regular design review criteria set forth in Section 17.136.050 and to the additional criteria set forth below in subdivisions 1, 2 and 3 or to one or both of the criteria set forth in subdivision 4:

1. That the proposal will not adversely affect the exterior features of the designated landmark nor, when subject to control as specified in the desig-nating ordinance for a publicly owned landmark, its major interior architectural features;

2. That the proposal will not adversely affect the special character, interest, or value of the landmark and its site, as viewed both in themselves and in their setting;

3. That the proposal conforms with the Design Guidelines for Landmarks and Preservation Districts as adopted by the City Planning Commission and, as applicable for

certain federally related projects, with the Secretary of the Interior's Standards for the Treatment of Historic Properties;

4. If the proposal does not conform to the criteria set forth in subdivisions 1, 2 and 3:

i. That the designated landmark or portion thereof is in such condition that it is not architecturally feasible to preserve or restore it, or

ii. That, considering the economic feasibility of alternatives to the proposal, and balancing the interest of the public in protecting the designated landmark or portion thereof, and the interest of the owner of the landmark site in the utilization thereof, approval is required by considerations of equity.

E. Postponement of Demolition or Removal. If an application for approval of demolition or removal of a facility, pursuant to subsections C and D of this section, is denied, the issuance of a permit for demolition or removal shall be deferred for a period of one hundred twenty (120) days, said period to commence upon the initial denial by the reviewing officer or body. During the period of postponement, the Director of City Planning or the City Planning Commission, with the advice and assistance of the Landmarks Preservation Advisory Board, shall explore all means by which, with the agreement of the owner or through eminent domain, the affected facility may be preserved or restored. The reviewing officer or body from whose decision the denial of the application became final may, after holding a public hearing, extend said period for not more than additional one hundred twenty (120) days; provided, however, that the decision to so extend said period shall be made not earlier than ninety (90) days, nor later than thirty (30) days prior to the expiration of the initial one hundred twenty (120) day period. Notice of the hearing shall be given by posting an enlarged notice on the premises of the subject property involved. Notice of the hearing shall also be given by mail or delivery to the applicant, to all parties who have commented on the initial application, and to other interested parties as deemed appropriate. All such notices shall be given not less than seventeen (17) days prior to the date set for the hearing. Such extension shall be made only upon evidence that substantial progress has been made toward securing the preservation or restoration of the facility. In the event that the applicant shall have failed to exhaust all appeals under Sections 17.136.080 and 17.136.090 from the denial of the application, the decision to extend said period shall be appealable under the provisions of Sections 17.136.080 and 17.136.090 to those bodies to whom appeal had not been taken from the initial denial of the application.

TABLE 4-1: DEMOLITION AND REMOVAL REGULATIONS FOR LANDMARKS AND PRESERVATION DISTRICTS (continued)

(e) Class 2 Preservation Districts:

(i) Contributing and potentially contributing properties:

Same as for noncontributing properties in Class 1 Preservation Districts.

(ii) Noncontributing properties:

Demolition or removal is permitted in all cases, subject to the requirements of other City ordinances, but City approval will be required for the design of any replacement facility pursuant to Table 4-2, Item (1)(d).

2. DECISION MAKING PROCEDURE

Decision is by the Planning Director after receiving a recommendation from the Landmarks Preservation Advisory Board. The Director's decision is appealable by anyone to the City Planning Commission. The Commission's decision is appealable to the City Council.

NOTE 1: When demolition of a Class 1 or Class 2 Landmark is approved, demolition in all cases will be postponed for a sufficient period of time, but not to exceed 240 days, to investigate sale or moving of the property unless either:

(i) The applicant has demonstrated that (A) the property cannot be sold in the open market for a price sufficient to generate a reasonable economic return on the owner's investment in the property, and (B) the property is economically infeasible to move; or

(ii) The applicant has demonstrated that postponement would result in excessive economic hardship to the owner; or

(iii) The applicant has demonstrated that the property constitutes a hazard to public safety and is economically infeasible to rehabilitate either on its present site or at any relocation site.

Finding (iii) will apply only if the initial demolition approval is based at least in part on the similar Finding (b) for demolition or removal of Class 1 or Class 2 Landmarks (see Items (1) and (2) of the table). The only difference between the two findings is that Finding (iii) requires the applicant to demonstrate the infeasibility of rehabilitation at any relocation site, (i.e. that the property is economically infeasible to move) while Finding (b) does not.

NOTE 2: When demolition of any Class 1, Class 2, or Class 3 Landmark is approved, the City, when appropriate, will require:

(i) That the property be documented and a salvage program instituted; and

(ii) That, for Class 3 Landmarks, the applicant makes a reasonable effort to sell or move the property.

TABLE 4-1: DEMOLITION AND REMOVAL REGULATIONS FOR LANDMARKS AND PRESERVATION DISTRICTS

(Incorporated by reference into Policy 2.4)

GENERAL NOTE: Demolition or removal of Landmark and Preservation District properties is permitted in all cases and may proceed at once without the special approvals normally required by this table if based on a written determination by the Building Official, Housing Official, or their respective appeals boards that the property constitutes an immediate hazard to public safety and that the demolition or removal is necessary to abate the hazard.

If a property is both a Landmark and located in a Preservation District and is therefore subject to both Landmark and Preservation District regulations, the stricter regulations prevail.

1. TYPES OF REGULATIONS

(a) **Class 1 Landmarks:** Demolition or removal is permitted only if either:

(i) The applicant demonstrates that the existing property has no reasonable use or cannot generate a reasonable economic return and that the development replacing it will provide such use or generate such return; or

(ii) The applicant demonstrates that the property constitutes a hazard to public safety and is economically infeasible to rehabilitate on its present site.

See Notes 1 and 2.

(b) **Class 2 Landmarks:** Demolition or removal is permitted only if Finding (a) or (b) above for Class 1 Landmarks is made or if either:

(iii) The design quality of the replacement facility is at least equal to that of the existing facility as determined by the Design Guidelines for Landmarks and Preservation Districts and is compatible with the character of the neighborhood as determined by the Guidelines; or

(iv) Demolition or removal is necessary to allow the development of a project having public benefits outweighing the benefit of retaining the Landmark.

See Notes 1 and 2.

(c) **Class 3 Landmarks:** Demolition or removal is postponed for up to 240 days consisting of two successive 120-day postponement periods unless one of the four findings permitting demolition or removal of Class 2 Landmarks can be made.

During the postponement period the applicant and the City will investigate all reasonable means to preserve the property, including, but not necessarily limited to, moving the property to another site (for demolitions only) and selling the property to a new owner who will preserve it. The City will inform the owner of all preservation incentives and alternatives. The second 120 day postponement period applies only if the Planning Director determines that substantial progress is being made to preserve the property.

See Note 2.

(d) **Class 1 Preservation Districts:**

(i) **Contributing and potentially contributing properties:**

Demolition or removal is permitted only if one of the two findings permitting demolition or removal of Class 1 Landmarks can be made.

(ii) **Noncontributing properties:**

Same as for contributing and potentially contributing properties but demolition or removal is also permitted if either:

(A) The existing facility is seriously deteriorated or a blighting influence; or

(B) The design quality of the replacement facility is at least equal to that of the existing facility as determined by the Design Guidelines for Landmarks and Preservation Districts (Action 2.1.5) and is compatible with the character of the Preservation District as determined by the Guidelines.

(Continued on next page)

ATTACHMENT E

DIFFERENCES BETWEEN STAFF RECOMMENDATIONS AND LPAB RECOMMENDATIONS FOR FINDINGS REUIRED FOR THE DEMOLITION OF HISTORIC PROPERTIES

1-20-10 ZONING UPDATE COMMITTEE

Historic Status	Findings for demolition or removal	Submittal Requirements/Discussion Points
The following Local Register Properties: ➢ Landmarks ➢ Heritage Properties ➢ "A" and "B" rated properties ➢ Preservation Study List Properties	1. The applicant demonstrates that the existing property has no reasonable use or cannot generate a reasonable economic return and that the development replacing it will provide such use or generate such return ***Or*** 2. The applicant demonstrates that the property constitutes a hazard and is economically infeasible to rehabilitate on its present site.	**For Finding 1:** **(i)** Complete application for the replacement project prepared by a licensed architect, uless the building proposed for demolition poses an imminent hazard to the public health. **(ii) Building Use – Economic Viability** The applicant shall submit a market analysis prepared by an architect, developer, real estate consultant, appraiser, or other real estate professional with extensive experience in both real estate and historic rehabilitation that demonstrates all of the following: • The current use does not generate a reasonable economic return (may include market report of like uses and building scale in the same or similar neighborhood); • That appropriate and reasonable alternate uses in the building could not generate a future reasonable economic return; • That alterations or additions to the existing building could not make the current or future use generate a reasonable economic return; and • Potential Federal Tax Credits, Mills Act Contracts, Façade Grants, Transfer of Development Rights or other funding sources are not feasible to bridge the gap identified above. ~~Alternate opportunity sites have been explored.~~ **(iii) Building Soundness** The applicant shall submit a report from a licensed engineer or architect with extensive experience in rehabilitation as to the structural soundness of the property and its suitability for rehabilitation. The soundness report shall be based on the requirements contained in Exhibit A, attached. **(iv) Building Maintenance History** The applicant shall submit a cost estimate report prepared by a qualified cost estimator with extensive experience in rehabilitation, analyzing any building neglect contributing to any deterioration; a) Is the building free of a history of serious, continuing code violations? b) Has the building been maintained and stabilized? Long term deferred maintenance and/or a history of continuing code violations not addressed by the owner, or other proper person having legal custody of the structure or building shall constitute a violation and will not be considered as a part of the economic infeasibility analysis bottom line.

Historic Status	Findings for demolition or removal	Submittal Requirements/Discussion Points
The following Local Register Properties: ➢ Landmarks ➢ Heritage Properties ➢ "A" and "B" rated properties ➢ Preservation Study List Properties (continued)		**(v) Existing Building Appraised Value** a. All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing, or ownership of the property; b. Any listing of the property for sale or rent price asked, and offers received, if any, within the previous two years; and c. Existing Building/Property Appraisal (current within the last six months): • Estimated market value of the property in its current condition under best practices management; • After repair of construction deficiencies; • After repair of construction deficiencies and maintenance; • After any changes recommended by the Historic Preservation Staff/LPAB; • After completion of the proposed demolition or removal; and • After completion of the replacement proposal. **(vi) A Public Benefits** A public benefits analysis report shall be prepared and take into consideration the educational, cultural, social, equity, and economic benefits of the historic building and the proposed building. Some issues that shall be considered include, but are not limited to: • The benefits to the City's tourism industry; • The benefits to owners of other commercial and residential property owners and renters in the area; • The services provided to the community, including social services; • Housing and jobs opportunities; • Civic, community, and neighborhood identity; • Cultural heritage and the image of the City and local neighborhood; and • Educational opportunities and cultural benefits regarding architectural and local history.

The following Local Register Properties: ➢ Landmarks ➢ Heritage Properties ➢ "A" and "B" rated properties ➢ Preservation Study List Properties (continued)		**vii) Optional submittal: Sustainability – Life Cycle Assessment Criteria** The applicant may wish to submit a Life Cycle Assessment Report to demonstrate the quality of the replacement proposal and of the existing building as described below. Demonstration that the durability and expected life of the new proposal's quality of construction, materials and craftsmanship, including the cost of demolition or deconstruction of the historic resource, exceeds the value of the embodied energy of the building's existing materials, durability of materials, quality of construction, level of craftsmanship, cost to repair construction deficiencies and maintenance. **For Finding 2:** The existence of the building proposed for demolition is determined to constitute an imminent hazard to public safety or health by the City of Oakland Building Official, Health Officer, or the Fire Chief., or is detrimental to public health or the health of the occupants, as determined by the Health Officer, and abatement procedures and/or rehabilitation are not economically feasible. A replacement project, if any, must meet finding 3.
	3. The design quality of the replacement facility is equal/superior to that of the existing facility.	Analysis prepared by a historic architect or professional with equivalent experience. The following discussion points shall be taken into account when making this finding. • A clearly identifiable visual or design value. For instance, does the replacement proposal express its present character as strongly as the historic design expressed its past? • Durability, quality, and design value of surface materials. Durable and quality materials include, but are not limited to: stone, granite, marble, concrete, highest quality and detailed glass curtain wall, terra cotta or other materials appropriate to the design style of the building or context of the neighborhood. In terms of design value, are materials in the replacement building used to enhance the architectural design elements of the building instead of used solely for the sake of variety? • Significant enhancement of the visual interest of the surrounding area; • High quality detailing; • Composition. A well composed building integrates all aspects of the building (materials, façade patterns, proportions, openings, forms, massing, detailing, etc.) into its overall character and design. • Site setting, neighborhood, and streetscape contexts; • Incorporating "especially fine" construction details, methods, or structural materials. These include those that successfully address challenging structural problems, contribute significantly to the building's overall design quality, exhibit fine craftsmanship, or are visible design elements; • The replacement building's reflection of the time it was designed not merely a caricature of the demolished building; • The replacement building's contemporary interpretation of the demolished building's elements in terms of the cultural, historic, economic, or technological trends of its time. ~~Is constructed with construction details and materials designed to last 100 plus years.~~
	4. It is economically, functionally architecturally, or structurally infeasible to incorporate the historic building into the proposed development.	Analysis of the finding prepared by qualified architects, economists, engineers, or other equally qualified professionals.

Historic Status	Findings for demolition or removal	Submittal Requirements
The following Local Register Properties: S-7/S-20/API contributors & noncontributors	For contributing or potentially contributing properties: 1. The applicant demonstrates that the existing property has no reasonable use or cannot generate a reasonable economic return and that the development replacing it will provide such use or generate such return ***Or*** 2. The applicant demonstrates that the property constitutes a hazard and is economically infeasible to rehabilitate on its present site.	Same as submittal findings as Findings 1 and 2 for Landmarks, Heritage Properties, "A" and "B" rated properties and study list properties.
	3. For noncontributing properties: The existing facility is either: a. Seriously deteriorated or a hazard, or b. The existing design is undistinguished and does not warrant retention.	Same as (1), but demolition or removal is also permitted if either: For a: The existence of the building proposed for demolition is determined to constitute an imminent hazard to public safety or health by the City of Oakland Building Official, Health Officer, or the Fire Chief, or is detrimental to public health or the health of the occupants, as determined by the Health Officer, and abatement procedures and/or rehabilitation are not economically feasible, or For b: The Property is determined to be "Of no particular interest" by the Oakland Cultural Heritage Survey Evaluation. If the property is so rated due to alterations, reversal of the historic architectural integrity is not economically or physically feasible (as determined under Local Register Properties (ii), (iii) and (iv)).
	4. For all properties in a district: The design quality of the replacement facility is equal/superior to that of the existing facility.	Same as submittal findings as Finding 3 for Landmarks, Heritage Properties, "A" and "B" rated properties.
	5. For all properties in a district: the design of the replacement project is compatible with the character of the preservation district, and there is no erosion of design quality at the replacement project site and in the surrounding area~~, nor impair the district's eligibility for the National Register of Historic Places.~~ This includes, but is not necessarily limited to, the following additional findings: a. The replacement project is compatible with the district in terms of massing, siting, rhythm, composition, patterns of openings, quality of material, and intensity of detailing; b. New street frontage with forms that reflect the widths and rhythm of the facades on the street and entrances that reflect the patterns on the street;	Analysis of the findings prepared by a historic architect or professional with equivalent experience. Other discussion points include: • The replacement project's architectural compatibility with the district without being subservient. If it is subservient to the district character, is it a watered down version of a period revival style or a generic building or a visually cohesive design with a strong concept? • The new building's contemporary interpretation of the demolished building's elements in terms of the cultural, historic, economic, or technological trends of its time. • The preservation of the authenticity of the existing historic district with a replacement building that has an authenticity of its own time. • The compatibility of the design of the replacement proposal with the district without being merely a compilation of façade features that are common to district or a caricature of the buildings in the district.

	c. The replacement project provides high visual interest that either reflects the level and quality of visual interest of the district contributors or otherwise enhances the visual interest of the district; d. If the design contrasts the new to the historic character, the replacement project enriches the historic character of the district; e. Is consistent with the visual cohesiveness of the district. For the purpose of this item, visual cohesiveness is the architectural character, the sum of all visual aspects, features, and materials that defines the district. A new structure contributes to the visual cohesiveness of a district if it relates to the design characteristics of a historic district while also conveying its own time. New construction may do so by drawing upon some basic building features, such as the way in which a building is located on its site, the manner in which it relates to the street, its basic mass, form, direction or orientation (horizontal vs. vertical), recesses and projections, quality of materials, patterns of openings and level of detailing. When a combination of some these design variables are arranged in a new building to relate to those seen traditionally in the area, but integral to the design and character of the proposed new construction, visual cohesiveness results; and f. The replacement project will not cause the district to lose its current historic status.	
	6. It is economically, functionally architecturally, or structurally infeasible to incorporate the historic building into the proposed development.	Analysis of the finding prepared by qualified architects, economists, engineers, or other equally qualified professionals.

Historic Status	Findings for demolition or removal	Submittal requirements
Other PDHPs: C's ASI contributors	**Findings required: 1 and 2 or 2 and 3; or only 4.** 1. The design quality of the proposed replacement project is at least equal to that of the original structure and the proposed replacement project is compatible with the character of the neighborhood.	The following submittals shall be required: • Complete application for the replacement project, including plans designed by a licensed architect. • Analysis of 'equal quality' and compatibility prepared by historic architect, or professional with equivalent experience; this includes: 1) the same submittal findings as Finding 3 for Landmarks, Heritage Properties, "A" and "B" rated properties and Finding 4 for Local Register of Historical Resources Districts and; 2) Discussion points for Finding 5 for S-7/S-20/API contributors & noncontributors. • For the demolition of a substantial portion of or an entire ASI, the analysis should include whether the cumulative effect of a significant loss of the City's character and special sense of place provided by older historic properties commensurate with the quality of the proposed replacement project.
	2. It is economically, architecturally, or structurally infeasible to incorporate the historic building into the proposed development.	Complete application for the replacement project, including plans designed by a licensed architect. Analysis of the finding prepared by qualified architects, economists, engineers, or other equally qualified professionals.
	3. The public benefits of the proposed replacement project outweigh the benefit of retaining the original structure.	Same as submittal findings as Finding 1(vi) for Landmarks, Heritage Properties, "A" and "B" rated properties, and study list properties. In addition to the analysis above, the following may be taken into account in the analysis. Is the original structure lacking in benefit because it: • does not contribute to a district architectural context; • is not located in a highly visible prominent location (major corridor, corner); • is not part of a continuous group/streetscape whose continuity would be diminished if demolished; • is not a neighborhood landmark or a building that the neighborhood identifies as a symbol/image of the neighborhood; • is not part of a thematic group of buildings contributing to a cultural/historical group of buildings (e.g., Kaiser in Richmond which includes ship building docks, industrial related buildings, worker housing); • is not a rare building with respect to age, style, quality, character and/or use; or • is located in a "Grow and Change" area as described in the Strategic Diagram of the Land Use and Transportation Element of the General Plan.
	4. The existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.	• Complete application for the replacement project, including plans designed by a licensed architect. • Determination by Oakland Cultural Heritage Survey Evaluation the property is determined to be 'Of no particular interest.' If the property is so rated due to alterations, reversal of the historic architectural integrity is not economically or physically feasible (as determined under Local Register Properties (ii), (iii) and (iv)). • Analysis of 'compatibility with the neighborhood' prepared by historic architect (see discussion points for #1 above).

All consultant reports required for the Demolition Findings shall be prepared by independent third party consultants, or each report shall be peer reviewed. Reports shall be paid for by the applicant, the consultant approved by the City and the Consultant shall report to City, as in the City's Environmental Review process. All applicable discussion points shall be taken into account when making a finding. If a point is not applicable, the analysis shall state why. Any analysis may also include attributes that the support the replacement project, but are not mentioned in the points.