

**BENICIA HISTORIC PRESERVATION REVIEW
COMMISSION**

CITY HALL COMMISSION ROOM

REGULAR MEETING AGENDA

Thursday, September 24, 2009

6:30 P.M.

I. OPENING OF MEETING

A. Pledge of Allegiance

B. Roll Call of Commissioners

C. Reference to Fundamental Rights of

Public - A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to this meeting room per Section 4.04.030 of the City of Benicia's Open Government Ordinance.

II. AGENDA CHANGES AND DISCUSSION

III. OPPORTUNITY FOR PUBLIC COMMENT

A. WRITTEN

B. PUBLIC COMMENT

IV. ELECTION OF OFFICERS

V. CONSENT CALENDAR

Consent Calendar items are considered routine and will be enacted, approved or adopted by one motion unless a request for removal for discussion or explanation is received from the Historic Preservation Review Commission or a member of the public by submitting a speaker slip for that item.

*Any Item identified as a Public Hearing has been placed on the Consent Calendar because it has not generated any public interest or dissent. However, if any member of the public wishes to comment on a Public Hearing item, or would like the item placed on the regular agenda, please notify the Community Development Staff either prior to, or at the Historic Preservation Review Commission meeting, prior to the reading of the Consent Calendar.

A. Approval of Agenda

B. [Approval of Joint Planning Commission/Historic Preservation Review Commission Minutes of August 27, 2009](#)

VI. REGULAR AGENDA ITEMS

A. [MILLS ACT CONTRACT- 1101 WEST SECOND STREET](#)

09PLN-44 APN: 87-161-260

PROPOSAL:

The applicant requests approval of a Mills Act Contract with the City of Benicia for this property.

Recommendation: Recommend City Council approval of Mills Act Contract.

B. MILLS ACT CONTRACT – 182 EAST I STREET

09PLN-43 APN: 89-052-09

PROPOSAL:

The applicant requests approval of a Mills Act Contract with the City of Benicia for this property.

Recommendation: Recommend City Council approval of Mills Act Contract.

C. 127 FIRST STREET (THE TANNERY) – BUILDING MATERIALS

09PLN-01 APN: 089-244-050

PROPOSAL:

Pursuant to Resolution 09-13 (HPRC), which approved a new refuse storage area, new outdoor patio windscreen and wall, and installation of new entry doors along First

Street, the applicant requests HPRC approval of colors and materials for the following items as stated under Condition #15 of Resolution 09-13: samples of brick veneer and a painted stucco sample for the new patio wall; roof materials for the trash enclosure; paint swatches for all painted areas.

Recommendation: Review materials and colors for a new outdoor patio wall, a new trash enclosure, and all paint color swatches for improvements to an existing building located at 127 First Street.

D. [LISTING PROCESS FOR HISTORIC RESOURCES TO REGAIN HISTORIC STATUS](#)

PROPOSAL:

Per City Council direction, the Commission will discuss a process that allows an eligible property to gain historic status. This discussion includes suggestions made by Commissioner Taagepera in a memo dated March 25, 2009.

Recommendation: Based on this discussion, staff will prepare a draft ordinance for the Commission to make a recommendation to the City Council.

VII. COMMUNICATIONS FROM STAFF

A. HISTORIC CONTEXT CONSULTANT SELECTION COMMITTEE

Staff requests the Commission designate a member to sit on the Historic Context Consultant Selection Committee.

VIII. COMMUNICATIONS FROM COMMISSIONERS

IX. ADJOURNMENT

Public Participation

The Benicia Historic Preservation Review Commission welcomes public participation.

Pursuant to the Brown Act, each public agency must provide the public with an opportunity to speak on any matter within the subject matter jurisdiction of the agency and which is not on the agency's agenda for that meeting. The Historic Preservation

Review Commission allows speakers to speak on agendized and non-agendized matters under public comment. Comments are limited to no more than 5 minutes per speaker. By law, no action may be taken on any item raised during the public comment period although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the Historic Preservation Review Commission.

Should you have material you wish to enter into the record, please submit it to the Commission Secretary.

Disabled Access

In compliance with the Americans with Disabilities Act (ADA), if you need special assistance to participate in this meeting, please contact Valerie Ruxton, the ADA Coordinator, at (707) 746-4211. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Meeting Procedures

All items listed on this agenda are for Commission discussion and/or action. In accordance with the Brown Act, each item is listed and includes, where appropriate, further description of the item and/or a recommended action. The posting of a recommended action does not limit, or necessarily indicate, what action the Commission may take.

The Historic Preservation Review Commission may not begin new public hearing items after 11 p.m. Public hearing items, which remain on the agenda, may be continued to the next regular meeting of the Commission, or to a special meeting.

Pursuant to Government Code Section 65009; if you challenge a decision of the Historic Preservation Review Commission in court, you may be limited to raising only those issues you or someone else raised at the Public Hearing described in this notice, or in written correspondence delivered to the Historic Preservation Review Commission at, or prior to, the Public Hearing. You may also be limited by the ninety (90) day statute of limitations in which to file and serve a petition for administrative writ of mandate challenging any final City decisions regarding planning or zoning.

Appeals of Historic Preservation Review Commission decisions that are final actions, not recommendations, are considered by the Planning Commission. Appeals must be filed in the Community Development Department in writing, stating the basis of appeal with the appeal fee within 10 business days of the date of action.

Public Records

The agenda packet for this meeting is available at the City Clerk's Office, the Benicia Public Library and the Community Development Department during regular working hours. To the extent feasible, the packet is also available on the City's web page at www.ci.benicia.ca.us under the heading "Agendas and Minutes." Public records related to an open session agenda item that are distributed after the agenda packet is prepared are available before the meeting at the Community Development Department's office located at 250 East L Street, Benicia, or at the meeting held in the City Hall Council Chambers. If you wish to submit written information on an agenda item, please submit to Gina Eleccion, Management Analyst, as soon as possible so that it may be distributed to the Historic Preservation Review Commission.



**SPECIAL JOINT MEETING OF THE
BENICIA PLANNING & HISTORIC PRESERVATION REVIEW COMMISSIONS
CITY COUNCIL CHAMBERS
SPECIAL MEETING MINUTES
Thursday, September 10, 2009
7:00 P.M.**

I. CALL TO ORDER – JOINT MEETING OF PLANNING COMMISSION AND HISTORIC PRESERVATION REVIEW COMMISSION

- A. Pledge of Allegiance**
- B. Roll Call of Commissioners**

Planning Commission:

Present: Commissioners Bortolazzo, Dean, Sherry, Syracuse, Thomas, and Chair Healy
Absent: Commissioner Ernst (excused)

Historic Preservation Review Commission:

Present: Commissioners Crompton, McKee, Taagepera, White and Chair Mang
Commissioner Donaghue (arrived late at 7:30 pm)
Absent: Commissioner Haughey (excused)

Staff Present:

Damon Golubics, Principal Planner
Lisa Porras, Senior Planner
Gina Eleccion, Management Analyst
Rhonda Corey, Senior Administrative Clerk
Kat Wellman, Contract Attorney

- C. Reference to Fundamental Rights of Public - A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to this meeting room per Section 4.04.030 of the City of Benicia's Open Government Ordinance.**

II. AGENDA CHANGES AND DISCUSSION

None.

III. OPPORTUNITY FOR PUBLIC COMMENT

A. WRITTEN

None.

B. PUBLIC COMMENT

None.

IV. PLANNING AND HISTORIC PRESERVATION REVIEW COMMISSION CONSENT CALENDAR

Chair Mang requested the minutes be pulled.

On motion of Planning Commissioner Syracuse, seconded by Planning Commissioner Sherry, the Agenda was approved by the following vote:

Ayes: Planning Commissioners Bortolazzo, Dean, Sherry, Syracuse, Thomas and Chair Healy
Noes: None
Absent: Planning Commissioner Ernst
Abstain: None

A. Approval of Agenda

B. Approval of Joint Meeting Minutes of August 27, 2009

Chair Mang requested the minutes be pulled to make the following change:

Amend language to reflect his statement regarding the use of the State Park for a Park and Ride location is something he approves of. He requested “does not like” be changed to “does like”.

On motion of Historic Preservation Review Commissioner Crompton, seconded by Commissioner McKee, the Agenda with a modification to the minutes of August 27, 2009 was approved by the following vote:

Ayes: Historic Preservation Review Commissioners Crompton, McKee, Taagepera, White, and Chair Mang
Noes: None
Absent: Historic Preservation Review Commissioner Haughey
Abstain: Historic Preservation Review Commissioners Taagepera and White (Item IV-B only)

V. REGULAR AGENDA ITEMS

A. NEW HARBOR CHURCH – 882 BLAKE COURT

The City of Benicia has received an application from New Harbor Community Church to construct a new 20,244 sq. ft. two-story church at the terminus of Blake Court, east of Rose Drive. City staff will present an overview of the project, followed by a presentation from the applicant. The purpose of this meeting will be to inform the Commissioners and the public of the full scope of the project and answer questions from the Commissioners. This application will require approval of a Use Permit, Variance, and Design Review, all of which will be addressed during future hearings. The project site and building details include: a 3.11-acre site consisting of 1.6 acres of open space and a remaining 1.5 acres of developable land, a 20,244 sq. ft. two-story building (main building reaches 30 ft. tall, with a lighthouse and cross reaching almost 46 ft.), 13,127 sq. ft. building footprint, 17,073 sq. ft. of landscaped areas, and 103 parking spaces. Proposed uses include 5,040 sq. ft. worship area doubling as a basketball court, 2,252 sq. ft. of study rooms, 636 sq. ft. for daycare, 1,592 sq. ft. of office and administrative space, 341 sq. ft. for den with fireplace, 645 sq. ft. for break/coffee room, 460 sq. ft. kitchen, and 235 sq. ft. for a bookstore.

Recommended Action: Advise staff and the applicant regarding any issues related to a proposed two-story 20,244 sq. ft. building at 882 Blake Court, at Rose Drive.

Lisa Porras, Senior Planner, gave an overview of the project

Commissioners commented on parking issues, traffic congestion on Rose Dr., fence height, stormwater plans for drainage, congregation size, landscaping, lighting, the proposed Daycare Center, basketball court, retaining wall height, and grading issues.

The public hearing was opened.

David Bowie- Attorney for New Harbor- Thanked staff for hard work on the project. Requests to negotiate further regarding landscaping and parking requirements. Understands that additional conditions may be imposed. Here to listen to comments from the public and Commissioners in order to be a further asset to the Community. Stated that the church has already existed in the City of Benicia for 18 years. Feels the current site in the Benicia Industrial Park is too constrained with business neighbors and is not aware of any complaints regarding current activities at the church. Says that activity at the new location will not have an adverse affect on the neighbors. Asks that future neighbors come to the current location to see what the current activity level is to get an idea regarding impact. Feels a variance request would meet legal standards.

Greg Lefler-Project Architect- Thanked staff for hard work on the project. Feels Planner Lisa Porras has done an excellent job handling the project. Also thanked HPRC Commissioners. Advised he is open to suggestions regarding drive aisles, lighting, stormwater drainage and retaining wall height to meet the necessary requirements. Further

stated that on several occasions, neighbors have been invited to see a model of what the church will look like.

Public comment:

T. Bentley – Resident on Rose Dr.- Questioned whether the congregation number of 200 is the number of families or individual persons. Is very concerned about traffic issues that already exist and make it dangerous for her children to play outside in the area. Requests a traffic study as stop signs are ignored by many motorists and are not effective at reducing speed. Expressed concerns about lighting and the affect on wildlife in the open space.

Julia Ecker- She is an employee of New Harbor Church who is concerned about a large number of citizens looking for help and assistance. She advised that the church currently offers grief support groups, numerous youth programs, teen programs, programs for seniors and outreach. Stated that a lot more people could receive assistance with the new facility.

Peggy Cooley- resident at the bottom of Rose Drive- Stated that she would rather have a church at it's proposed location than other projects proposed here. Is thankful for the church and its service to the community and looks forward to its new location.

Kelly Patchin-Pastor/ New Harbor Church- Let Commissioners and Staff know that the large amount of attendees at the meeting tonight are his parishioners who came to let everyone see who they are. Looks forward to helping and building lasting relationships with the community. Says they have been trying very hard to resolve issues to complete the project. Thanked everyone for allowing he and members of the congregation to speak and share their hearts.

Randy Wright- Parishioner of the church since 1999. States he has a background in Public safety and feels the church could serve as an emergency location in times of need. Feels that the need for the basketball court in the plan would be an important asset to the community for youth, teens and adults. Non-members of the congregation would also be allowed to engage in activities. States that it has a multi-purpose use as the space would be used for worship with chairs set up and the basketball court when chairs are removed and services are not being conducted. Hopes to attract new parishioners from the neighborhood.

Tyler Robbins- Benicia resident for 8 years. Said that the basketball court also serves as a men's ministry, which would be open to all members of the community to participate in activities at the church.

Pat Everhart- Had questions regarding whether residents had any voice in whether or not the project is approved. Concerned about traffic, the daycare center and its impact on neighbors and does not feel it is an appropriate location for a church. Chair Healy advised him that the EIR Addendum would address all of those issues.

Phil Lescure- Surprised by the large scale of the project and expressed the common traffic concerns. States that he already has a problem getting out of his own driveway.

Colin Cabrall- 851 Clifton Court- Expressed traffic concerns on Rose Drive and feels that the traffic congestion that already exists without the church traffic is already hazardous and is afraid someone may get killed. Recommends traffic lights on Rose Drive to alleviate the problem.

Gerald Bethen- 884 Rose Drive- Expressed displeasure with the fact that his residence used to back up to open space and the existence of the church at that location would change that. Also hates to lose the current cul-de-sac. Likes the church and the pastor but does not want it in his neighborhood.

Carrie Degarth- Resident on Rose Drive- Very opposed to the project. Concerned about construction noise and traffic issues before and after the project is complete. Concerned about overflow of parking onto Rose Drive. Feels parking spaces in back of neighboring residences will create noise from cars starting, doors slamming and people lingering in the parking lot to talk. Stated that the church needs to understand the impact to residents in the area. Invited Commissioners to visit the Rose Drive area during times of highest vehicle traffic to envision what impact one hundred or more vehicles driving in the area may have on the entire area.

Victoria Johnson- 880 Rose Drive- Is concerned about the dangerousness of a blind hill from Blake Court onto Rose Drive that is already a hazard without the additional traffic that will exist. She has concerns that the back of her residence will be facing the church and would like to see landscaping instead of a building or wall. Expressed concern about existing fire danger as the area historically has had numerous grass fires in the past and is concerned about fire vehicle access.

A citizen stated that she previously lived in a residence with a church behind her residence, and while in her backyard, she and her children could hear inappropriate conversations during revivals. She expressed concerns with traffic and impact on wildlife.

A recess was called at 8:55 pm. The meeting was reconvened at 9:10 pm.

HPRC comments:

Commissioners expressed concern regarding the upcoming EDAW traffic report, the addendum to the EIR, alternative analysis, design review criteria, blocking of city views, stormwater issues, the large scale of the project, window uniformity making the building look institutional and monolithic, the lighthouse design, the large size of the lobby area, lighting issues, tree selections, parking dimensions, pre-school play area being located in back of residences on Rose Drive. They would like to see samples of materials to be used in the project.

Planning Commission comments:

Commissioners expressed concerns regarding traffic issues that may impact the area of Rose Drive/ Columbus Pkwy. Questions were raised about whether the EIR addresses the

status of the cleanup of the site. Lisa Porras advised that per the EIR, the standards for cleanup were exceeded. Commissioners questioned if other sites were investigated. Pastor Kelly Patchin stated that other sites were considered and that this site is the best option. There are limited areas where churches are allowed. Damon Golubics also advised that per the City Council the church is allowed to be built on this site. Water quality issues are also an area of concern due to the site plan possibly having difficulty with water treatment and filtering. Concerns with parking issues were also expressed. Alley/easement issues were discussed. The state of land use (zoning), which is residential, was a concern due to the previous landfill. Flow of traffic near Bordoni Ranch is also a concern. Use of “green” building standards as much as possible was suggested.

Staff informed the Planning Commission and HPRC that the EIR Addendum would be completed and available for review for a period of 45 days. Thereafter, a hearing with the Planning Commission to act on the use permit and variance will be scheduled.

B. LOCAL HAZARD MITIGATION PLAN UPDATE

In February 2007, the City of Benicia adopted the Association of Bay Area Government’s (ABAG) Taming Natural Disasters plan and the City’s Annex, Strategies, and Critical Facilities Plan as the City of Benicia’s Local Hazard Mitigation Plan (LHMP). The federal Disaster Mitigation Act of 2000 requires all cities, counties and special districts to have adopted a LHMP to receive disaster mitigation funding from FEMA. This plan addresses critical areas within our community and qualifies the City for possible mitigation funding that may become available in the future from FEMA. City Staff has been working with ABAG staff to update the LHMP Strategies and is requesting input from the Commissions and community.

Recommendation:

Staff is requesting comments from the Commissions and community regarding the update to the Local Hazard Mitigation Plan strategies and priorities. No additional action is required.

Gina Eleccion, Management Analyst, gave an overview of the Plan update The presentation to Commissioners was given for instructional purposes and an overview of the project.

Gina Eleccion asked for ideas from Commissioners and citizens.

The public hearing was opened. There was no public comment. The public hearing was closed.

Commissioners asked questions about historic buildings, incentive programs for private homeowners to purchase earthquake insurance, what areas need funding and whether or not the plan addresses just Benicia.

Gina Eleccion advised that hazards related to historic buildings are included. She stated that there are currently incentive programs for homeowners. The reality of the

implementation of the new program is that a lot of areas still need funding which would not be possible until the next budget cycle.

Gina Eleccion advised Commissioners and public that comments may be made via the City of Benicia website, by email or phone. Email address is comdev@ci.benicia.ca.us Comments will be incorporated into the plan. Deputy Fire Chief Winfield is also working on the strategies and priorities.

VI. COMMUNICATIONS FROM STAFF

Gina Eleccion advised that an RFP for the Historic Context has been circulated. Proposals will be coming in on Monday September 14, 2009.

Damon Golubics stated that the Joint Meeting on the Arsenal has been changed to October 22, 2009. The period for comments has also been extended to October 22, 2009. He advised Commissioners that information regarding noise and climate change are on the city website.

VII. COMMUNICATIONS FROM COMMISSIONERS

HPRC Commissioner Taagepera had questions about the façade of the IOOF building. Gina Eleccion stated that the process of negotiating with the consultants is ongoing to get the City's expectations met regarding the scope of the project.

VIII. ADJOURNMENT

Chair Healy adjourned the meeting at 10:12 pm

AGENDA ITEM
HISTORIC PRESERVATION REVIEW COMMISSION MEETING
SEPTEMBER 24, 2009
REGULAR AGENDA ITEMS

DATE : September 9, 2009

TO : Historic Preservation Review Commission

FROM : Amy Million, Consulting Planner

SUBJECT : **MILLS ACT CONTRACT FOR 1101 WEST SECOND STREET(09PLN-00044)**

RECOMMENDATION:

Adopt a resolution recommending that the City Council authorize the City Manager to enter into a Mills Act Contract with the property owners of 1101 West Second Street in the City of Benicia.

EXECUTIVE SUMMARY:

Gilbert and Linda Von Studnitz request approval of a Mills Act Contract for a contributing building located at 1101 West Second Street, as provided by the City of Benicia's Mills Act Program.

The Mills Act Program, enacted by the State of California in 1972, encourages the restoration and preservation of qualified historic buildings through economic incentive and authorizes its implementation by local governments. In 2003, Council approved the City of Benicia Mills Act Program and assigned initial review and recommendation of Mills Act Contract applications to the Historic Preservation Review Commission (Resolution 03-12). The program incentive consists of an alternative method for determining property value for tax assessment purposes.

Staff has determined the property at 1101 West Second Street meets the eligibility requirements for the Mills Act Program and all application requirements have been satisfied.

BUDGET INFORMATION:

An approved Mills Act Contract would reduce the property taxes collected from 1101 West Second Street. The City collects 26% of paid property taxes. Based on data available on the Solano County Tax Assessor's website, the City would receive about \$1098 in the 08/09 tax year from 1101 West Second Street. Should the Mills Act Contract be approved, the City would receive \$442 per year which is a loss of approximately \$656.

No other budget impacts are anticipated.

ENVIRONMENTAL ANALYSIS:

This project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15331, which applies to projects limited to the maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of historical resources in a manner consistent with the federal Secretary of the Interior's Standards for the Treatment of Historic Properties. Mills Act Contracts require all work performed subsequent to entering into a contract be consistent with these standards.

BACKGROUND:

On June 30, 2009, Gilbert and Linda Von Studnitz, owners of the residence at 1101 West Second Street applied to enter into a Mills Act Contract with the City of Benicia.

The property is listed as a contributing building in the City's Downtown Historic Conservation Plan. The subject building meets the eligibility requirements for the Mills Act Program. The applicant has met all of the submittal requirements.

According to Solano County Assessor's parcel data, the existing structure was built in 1913. At present, the property is listed as a Contributing building to the Downtown Historic District, as shown in the City's Downtown Historic Conservation Plan. In a survey completed by Carol Roland (DPR Form 523 A&B), her analysis estimated the building's construction circa 1920. She noted that the building is an excellent example of the Craftsman style bungalow that has been well maintained and retains its integrity. She recommended that the building remain as a contributing structure.

SUMMARY:

Site Description

The property is located on northwest corner of West Second and West K Street. The property contains one single-family detached structure (one-story) that is approximately 3,040 square feet, with an east facing front entrance along West Second Street.

Project Description

As noted on Roland's survey and site photographs, the building is generally in good condition and it retains its historic integrity. The building is described as a Craftsman bungalow. The building is clad with a mix of wood lap siding and wood shingles. The wood shingle siding on the south façade (West K Street) and the roof rafters on the front facade (West Second Street) have begun to suffer some weather deterioration. Typically this would be a general maintenance item, however as a new Contract, it is staff recommendation that the restoration of the siding be included in the work plan. Inclusion in the work plan will allow the property owner to take advantage of the tax savings and budget for the repair work. The proposed Architectural Preservation Schedule outlines the timeframe for completion of this project as follows:

1. The wood shingle siding on the south façade (West K Street) and the roof rafters on

the front facade (West Second Street) that have suffered weather deterioration shall be restored. (2015 completion date).

This rehabilitation work is consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties as demonstrated by the attached checklist. This scope of work is appropriate for Mills Act contracts. Items listed in the Draft Work Plan and Schedule (Exhibit C of Draft Contract) are intended to rehabilitate this downtown historic resource.

Secretary of the Interior's Standards for Treatment of Historic Properties

As a designated contributing historic structure and pursuant to the Mills Act Contract, all exterior changes must comply with the Secretary of the Interior's Standards for Rehabilitation. According to the Standards:

“...where an important architectural feature is missing, its replacement is always recommended in the Rehabilitation guidelines as the first, or preferred, course of action. If adequate documentation exists so that the feature may be accurately reproduced, and if it is desirable to re-establish the feature as part of the building's historical appearance, then designing and constructing a new feature based on such information is appropriate. When replacing a missing historic feature such as an entrance or porch, the Standards recommend restoration based on historical, pictorial, and physical documentation; a new design that is compatible with the historic character building. If using the same kind of material is not technically or economically feasible, then a compatible substitute material may be considered. “

All work must be consistent with the standards and guidelines for rehabilitation.

Downtown Historic Conservation Plan Consistency

The Downtown Historic Conservation Plan provides Design Guidelines for all categories of designated historic residential buildings. The guidelines are intended to guide renovation work. Staff has determined that the proposed work program is consistent with these guidelines (see attachment).

Conclusion

The improvement listed in Exhibit C Architectural Rehabilitation of the Draft Contract is consistent with historic preservation goals established by the City of Benicia, including General Plan Goal 3.1, to “Maintain and enhance Benicia's historic character.” The proposed work program is also consistent with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for the Treatment of Historic Buildings, and the Downtown Historic Conservation Plan.

The work described herein is appropriate to execute this Mills Act Contract.

FURTHER ACTION:

The recommendation of the Historic Preservation Review Commission will be forwarded to the City Council for final action. The decision of the Historic Preservation Review Commission may be appealed to the Planning Commission within ten (10) business days.

Attachments:

- ❑ Consistency Analysis: Secretary of the Interior's Standards for Rehabilitation
 - ❑ Applicable Downtown Historic Conservation Plan Guidelines
 - ❑ Department of Parks & Recreation (DPR) Forms 523 A & B
 - ❑ Photographs
 - ❑ Draft Resolution
 - ❑ Draft Contract
- Exhibit A: Legal Description of Property
Exhibit B: Secretary of the Interior Standards for Rehabilitation
Exhibit C: Architectural Preservation Work Program and Schedule

**CONSISTENCY ANALYSIS:
SECRETARY OF THE INTERIOR'S
STANDARDS FOR REHABILITATION**

**Project Consistency Analysis:
Secretary of Interior's Standards for Rehabilitation
Mills Act Contract (09PLN-00044)
1101 West Second Street**

Rehabilitation is defined as the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features that convey its historical, cultural, or architectural values.

When repair and replacement of deteriorated features are necessary; when alterations or additions to the property are planned for a new or continued use; and when its depiction at a particular period of time is not appropriate, rehabilitation may be considered as a treatment.

The bold text are the Secretary of Interior's Standard for Rehabilitation guidelines. The regular text is staff's response about how the particular guideline or policy relates to the proposed project.

- 1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.**

The existing residential use will not change.

- 2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.**

The structure at 1101 West Second Street is a bungalow style house. The principal character-defining features of this style of building as exhibited on the subject property, are as follows:

1. One and one-half story, rectangle floor plan
2. Exposed rafters under a wide roof overhang
3. Wood lap and wood shingle exterior siding
4. Large cut-in porch

With exception to the slight deterioration of the wood shingle siding, these character-defining features are still present and will be retained and preserved. The proposal does not involve the removal of distinctive materials or alteration of features, spaces and spatial relationship that characterizes the property.

- 3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.**

The rehabilitation of the exterior siding completed by 2015, will be done in accordance with the Secretary of Interior's Guidelines for Historic Preservation.

4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.

According to the property survey prepared by Carol Roland, the building is an excellent example of a Craftsman style bungalow and retains its integrity. There are no changes to the property that have acquired historic significance in their own right which need to be retained and preserved.

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

The rehabilitation work plan included in the draft contract would preserve the distinctive materials, features, finishes and construction techniques of the property. The focus of the work plan is to repair the existing materials instead of replacement, wherever possible.

6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

The proposed rehabilitation would repair any distinctive materials, features, finishes and construction techniques of the building. Any future general maintenance performed during the term of the contract that involves deteriorated historic features that cannot be repaired will be replaced in-kind and will match the old in design, color, and texture.

7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

This standard does not apply to this project.

8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

This standard does not apply to this project.

9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

There are no new additions or related construction associated with this Mills Act Contract rehabilitation plan resulting in the destruction of historic materials, features and spatial relationship. Exterior alterations will be limited to repair or replacement in-kind therefore will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

No new additions or related new construction is proposed and therefore the essential form and integrity of the historic property would not be impaired by future removal.

**APPLICABLE DOWNTOWN HISTORIC
CONSERVATION PLAN GUIDELINES**

Applicable Downtown Historic Conservation Plan Guidelines 1101 West Second Street

- Policy 1: Design Integrity. Maintain the design integrity and distinguishing features of historic buildings.
- Policy 2: Façade Elements and Details. Retain the traditional façade elements, proportions and architectural details which give historic buildings their special character and use appropriate replacements where necessary.
- Policy 3: Integrity of Materials. Maintain the integrity of original building materials.
- Policy 4: Appropriate Materials, Colors, and Finishes. Promote the use of appropriate materials in restorations, renovations and additions to historic and colors which complement their styles and particular combination of building materials.

Given the proposed work schedule, the following DHCP guidelines apply to this property:

4.1 – Use original materials wherever possible in restoration, renovation, or repair work and use the same materials for building additions.

4.2 – When necessary to substitute a material, take care that its outward appearance, durability, texture and finish will be as close as possible to that of the original. If the original material was painted, be sure that the substitute will accept and retain the same painted finish.

**DEPARTMENT OF PARKS AND RECREATION
FORMS 523 A & B**

PRIMARY RECORD

Primary #:
HRI #
Trinomial
NRHP Status Code:
Other Listings

Review Code _____ Reviewer _____ Date _____

*Resource Name or #: 1101 West Second Street

P1. Other Identifier:

- *P2. .Location: *a. County Solano
- b. Address: 1101 West Second Street
- *c. City: Benicia Zip 94510
- d. UTM: N/A
- e. USGS Quad: Benicia T2N R3W MDM
- *f. Other Locational Data (APN #): 87-161-26

***P3a. Description**

This is a fine example of a Craftsman house. One and one-half story, it is rectangular in plan. The roof is side gabled and of moderate pitch. It has wide overhangs with exposed rafters and purlins and a wide plain cornice. A front gable dormer pierces the front slope of the roof. A large cut-in porch spans three-quarters of the front elevation. The arched opening to the porch is supported on battered piers. The porch rail is closed as is the low balustrade which flanks the wooden entry steps. The original heavy oak door with decorative glazing is asymmetrically placed and is flanked by multi-light side lights. Fenestration consists of double hung windows except for the front window. This window has a central fixed panel with double hung side lights set in a slightly extended square bay. Lap siding covers the building, foundation and piers and porch rails.

***P3b. Resource Attributes:** HP2

- *P4. Resources Present: Building Structure Object Site District Element of District

P5b. Description of Photo:

Front façade, view southwest

- *P6. Date Constructed/Age: 1920
 Prehistoric Historic Both
- *P7. Owner and Address:

Gilbert Von Studnitz
1101 West Second Street
Benicia, CA 94501

- *P8. Recorded by:
Carol Roland
Roland-Nawi Associates
4829 Crestwood Way
Sacramento, CA 95822
- *P9. Date Recorded: 11-20-04
- *P10. Type of Survey: Intensive Reconnaissance Other

- Describe Eligibility Evaluation
- *P11. Report Citation: none

- *Attachments: NONE Map Sheet
 Continuation Sheet Building, Structure,
and Object Record Linear Resource Record
 Archaeological Record District Record
 Milling Station Record Rock Art Record
 Artifact Record Photograph Record
Other (List):

P5. Photograph or Drawing (Photograph required for buildings, structures, and objects.)



BUILDING, STRUCTURE, AND OBJECT RECORD

*Resource Identifier: 1101 West Second Street

*NRHP Status Code: 3D

B1. Historic Name: N/A

B2. Common Name:

B3. Original Use: Residence

B4. Present Use: Residence

***B5. Architectural Style:** Craftsman

B7. Moved? No Yes Unknown

Date: N/A **Original Location:** same

***B8. Related Features:** None

B9a. Architect: unknown

B9b. Builder: unknown

***B10. Significance: Theme:** Benicia Downtown District

Period of Significance: 1847-1940

Property Type: Single Family

Applicable Criteria: A / C

This house is an excellent example of the Craftsman bungalow style. It exhibits the major characteristics of the style including its rectangular massing and form, moderately pitched side gable roof with exposed rafters and purlins, large porch with battered posts and horizontally emphasized fenestration. The house has been well maintained and exhibits integrity of setting, location, design, materials, workmanship and association. It is a contributing building in the Downtown Historic District and should retain this status.

B11. Additional Resource Attributes: N/A

B12. References: McAlester, Virginia and Lee. *A Field Guide to American Houses*. New York: Alfred Knopf (1986); Bruegmann, Robert. *Benicia Portrait of an Early California Town: An Architectural History* (San Francisco: 101 Productions (1980); Woodbridge, Sally and Cannon Design Group. *Benicia, California: Downtown Historic Conservation Plan*. City of Benicia, 1990; Sanborn Map Benicia, CA. 1886; 1986 Benicia Historic Inventory form.

State of California — The Resources Agency
DEPARTMENT OF PARKS AND RECREATION
BUILDING, STRUCTURE, AND OBJECT RECORD

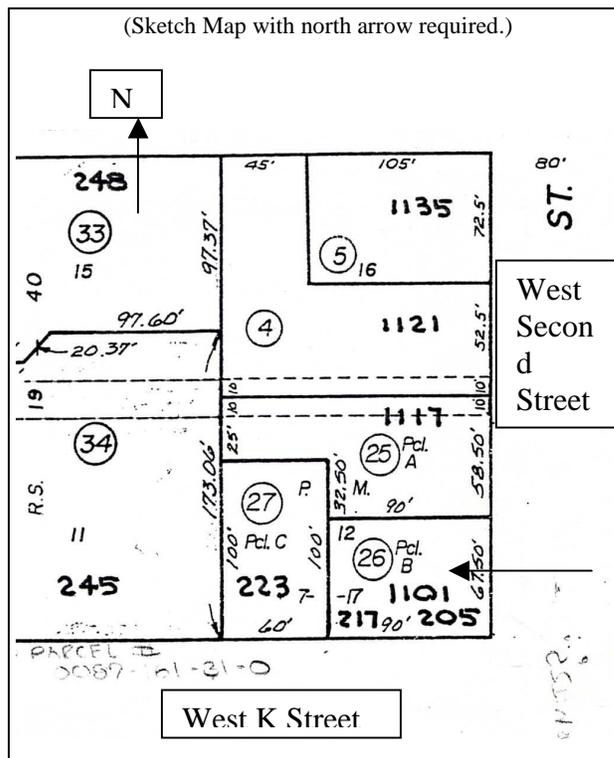
Primary #:
HRI#:

Remarks: N/A

B14. Evaluator: Carol Roland, Ph.D.

Roland-Nawi Associates: Preservation Consultants
4829 Crestwood Way
Sacramento, CA 95822

B 15. Date of Evaluation: 11-22-04



(This space reserved for official comments.)

PHOTOGRAPHS



**PHOTOGRAPHS OF SIDING ON SOUTH FAÇADE
(WEST K STREET)**



**PHOTOGRAPH OF RAFTERS ON FRONT
FAÇADE (WEST SECOND STREET)**

DRAFT RESOLUTION

RESOLUTION NO. 09- (HPRC)

A RESOLUTION OF THE HISTORIC PRESERVATION REVIEW COMMISSION OF THE CITY OF BENICIA RECOMMENDING CITY COUNCIL AUTHORIZE THE CITY MANAGER TO ENTER INTO A MILLS ACT CONTRACT FOR THE PROPERTY LOCATED AT 1101 WEST SECOND STREET

WHEREAS, the purpose of the Mills Act Program is to encourage the preservation, restoration and rehabilitation of historic properties within the City of Benicia; and

WHEREAS, the property at 1101 West Second Street is listed as a contributing building in the Downtown Historic Conservation Plan; and

WHEREAS, General Plan Goal 3.1 is to “Maintain and enhance Benicia’s historic character” and the and preservation and rehabilitation of the contributing building at 1101 West Second Street is consistent with this Goal; and

WHEREAS, all exterior work undertaken pursuant to the subject Mills Act Contract must be consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties; and

WHEREAS, the City has determined that this project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15331, which states that modifications to historic structures consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties are categorically exempt from CEQA review; and

WHEREAS, the Historic Preservation Review Commission at a regular meeting on September 24, 2009 considered the Mills Act contract application of Gilbert and Linda Von Studnitz.

NOW, THEREFORE, BE IT RESOLVED THAT the Historic Preservation Review Commission of the City of Benicia hereby finds that:

The proposed application is consistent with General Plan Goal 3.1 as the proposed contract will allow the applicant to continue to preserve and enhance a contributing building at 1101 West Second Street.

BE IT FURTHER RESOLVED THAT the Historic Preservation Review Commission recommends that the City Council approve the Mills Act Contract application of Gilbert and Linda Von Studnitz.

* * * * *

On motion of Commissioner _____, seconded by Commissioner _____, the above Resolution was adopted at a regular meeting of the Historic Preservation Review Commission on September 24, 2009 by the following vote:

Ayes:

Noes:

Absent:

Abstain:

Historic Preservation Review Commission Chair

DRAFT CONTRACT

WHEN RECORDED, RETURN TO:

CITY OF BENICIA
250 East L Street
Benicia, CA 94510
Attention: City Clerk

HISTORICAL PROPERTY PRESERVATION AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of December 2009, by and between the CITY OF BENICIA, a municipal corporation (hereinafter referred to as the “City”), and Gilbert and Linda Von Studnitz (hereinafter referred to as the “Owner”).

WITNESSETH

A. Recitals

1. California Government Code Sections 50280, et seq. allow cities the discretion to enter into contracts with the owners of qualified historical properties, as the term is defined by Government Code Section 50280.1, for the purpose of restricting development of its cultural and historic significance and continuing maintenance of the historical property;
2. Owners possess fee title in and to that certain real property, together with associate structures and improvements thereon, located at the street address 1101 West Second Street, Benicia, CA 94510 (hereinafter, shall be referred to as the “the Historical Property”). A legal description of the Property is attached hereto and incorporated herein by this reference as Exhibit A;
3. On November 17, 2009 the City Council of the City of Benicia adopted Resolution No. 09- thereby declaring its intention to enter into this Historic Property Preservation Agreement.
4. City and Owners, for their mutual benefit, now desire to enter into this Agreement both to protect and preserve the characteristics of cultural and historical significance of the Property and to qualify the Property for an assessment of valuation pursuant to the provisions of Article 1.9, Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code

B. Agreement

NOW, THEREFORE, City and Owner, in consideration of the mutual promises, covenants and conditions set forth herein, do hereby agree as follows:

1. Effective Date and Term of Agreement. This Agreement shall be effective and commence on January 1, 2009 and shall remain in effect for a term of (10) years thereafter. Each year, upon the anniversary of the effective date of this Agreement (hereinafter "renewal date"), one (1) year shall automatically be added to the term of the Agreement, unless timely notice of nonrenewal, as provided in paragraph 2, is given. If either City or Owners serves notice to the other of nonrenewal in any year, the Agreement shall remain in effect for the balance of the term then remaining, either from its original execution or from the last renewal of the Agreement, whichever may apply.
2. Notice of Nonrenewal. If City or Owner desires in any year not to renew the Agreement, that party shall serve written notice of nonrenewal in advance of the annual renewal date of the contract as follows: (1) Owner must serve written notice of nonrenewal at least ninety (90) days prior to the renewal date or (2) City must serve written notice within sixty (60) days prior to the renewal date. Owner may make a written protest of the notice. City may, at any time prior to the annual renewal date of the Agreement, withdraw its notice of nonrenewal to Owner.
3. Valuation of Historical Property. During the term of this Agreement, Owner is entitled to seek assessment of valuation of the Historical Property pursuant to the provisions of Article 1.9, Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code.
4. Standards for Historical Property. During the term of this Agreement, the Property shall be subject to the following conditions, requirements and restrictions:
 - a) Owner shall preserve and maintain the characteristics of cultural and historical significance of the Property in accordance to the Secretary of the Interiors Standards for Rehabilitation and the minimum maintenance standards, identified in Exhibit "B", attached hereto, which shall apply to the property throughout the term of this Agreement. New additions, exterior alterations, or related new construction shall comply with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitation of Historic Buildings.
 - b) Owner shall make improvements to bring the Property into good condition. Attached hereto, marked as Exhibit "C", and incorporated herein by this reference, is a list of work that both City and Owner agree is necessary to bring the Property into good condition.

Owner shall undertake all improvements in accordance with Exhibit "C". If the schedule set out in Exhibit "C" is not complied with, then City will use the following process to determine whether the owner is making good faith progress on the schedule of work. Upon City's request, the Owner shall submit documentation of expenditures, made to

accomplish the next highest priority improvement project for the property, within the last 24 months. The owner shall be determined to be in substantial compliance when the expenditures are equal to or greater than the property tax savings provided by the Property being in the Mills Act Program. This schedule set out in Exhibit "C" shall be revised to reflect the schedule change. The Community Development Director shall have the ability to administratively adjust the schedule timeline, in concurrence with the property owner, only by written recorded instrument executed by the parties hereto.

5. Inspections and Annual Reporting. Owners agrees to permit the periodic examination, by prior appointment, of the interior and exterior of the Historic Property by the County Assessor, the State Department of Parks and Recreation, the State Board of Equalization and the City as may be necessary to determine Owners' compliance with the terms and provisions of this Agreement. Owners agree to provide the City with a report as to the status of the Historic Property annually and when any improvements or changes have been made.
6. Provision of Information. Owners hereby agree to furnish City with any and all information requested by City which City deems necessary or advisable to determine compliance with the terms and provisions of this Agreement.
7. Cancellation. City, following a duly noticed public hearing as set forth in California Government Code Section 50285 may cancel this Agreement if it determines that Owners have breached any of the conditions of the Agreement or has allowed the property to deteriorate to the point that it no longer meets the standards for a qualified historical property. City may also cancel this Agreement if it determines that Owners have failed to restore or rehabilitate the Historical Property in the manner specified in paragraph 4 of this Agreement.

In the event of cancellation, Owner shall be subject to payment of those cancellation fees set forth in California Government Code Sections 50280 et seq., described herein. Upon cancellation, Owners shall pay a cancellation fee of twelve and one-half percent (12 1/2%) of the current fair market value of the Historic Property at the time of cancellation, as determined by the county assessor as though the Historic Property were free of any restrictions pursuant to this Agreement.

8. Enforcement of Agreement. In lieu of any provisions to cancel the Agreement as referenced herein, City may specifically enforce, or enjoin the breach of, the terms of this Agreement. In the event of a default, under the provisions of this Agreement by Owner, City shall give written notice to Owner by registered or certified mail addressed to the address stated in the Agreement, and if such a violation is not corrected to the reasonable satisfaction of City within thirty (30) days thereafter, or if not corrected within such a reasonable time as may be required to cure the breach or default if said breach or default cannot be cured within thirty (30) days provided that acts to cure the breach or default may be commenced within (30) days and must thereafter be diligently pursued to completion by Owner, then City may, without further notice, declare a default under the terms of this Agreement and may bring any action necessary to specifically enforce the

obligations of Owner growing out of the terms of this Agreement, apply to any violation by Owner or apply for such other relief as may be appropriate.

9. Waiver. City does not waive any claim of default by Owner if City does not enforce or cancel this Agreement. All other remedies at law or in equity which are not otherwise provided for in this Agreement or in City's regulations governing historic properties are available to the City to pursue in the event that there is a breach of this Agreement. No waiver by City of any breach or default under this Agreement shall be deemed to be a waiver of any other subsequent breach thereof or default hereunder.
10. Binding Effect of Agreement. Owner hereby subject the Historical Property described in Exhibit A hereto to the covenants, reservations and restrictions as set forth in this Agreement. City and Owners hereby declare their specific intent that the covenants, reservations and restrictions as set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owners' successors and assigns in title or interest to the Historical Property.

Each and every contract, deed or other instrument hereinafter executed, governing or conveying the Historical Property, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, reservations and restrictions expressed in this Agreement regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

City and Owner hereby declare their understanding and intent that the burden of the covenants, reservations and restrictions set forth herein touch and concern the land in that it restricts development of the Historic Property. City and Owners hereby further declare their understanding and intent that the benefit of such covenants, reservations and restrictions touch and concern the land by enhancing and maintaining the cultural and historic characteristics and significance of the Historic Property for the benefit of the public and Owner.

11. Notice. Any notice required to be given by the terms of this Agreement shall be provided at the address of the respective parties as specified below, or at any other address as may be later specified by the parties hereto.

City: City of Benicia
250 East L Street
Benicia, California 94510

Owner: Gilbert and Linda Von Studnitz
1101 West Second Street
Benicia, CA 94510

12. General Provisions

a. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause them to be considered joint ventures or members of any joint enterprise.

b. Owner agrees to and shall hold City and its elected officials, officers, agents and employees harmless from liability for damage or claims which may arise from the direct or indirect use or operations of Owner or those of their contractor, subcontractor, agenda, employee or other person acting on his/her behalf which relates to the use, operation and maintenance of the Historic Property and from any injury to property caused by the restrictions on development of the Historical Property from application or enforcement of the City's Historical Preservation Ordinance or from the enforcement of this Agreement. Owner hereby agrees to and shall defend the City and its elected officials, officers, agents and employees with respect to any and all actions for damages caused by, or alleged to have been caused by, reason of Owners' activities in connections with the Historic Property. This hold harmless provision applies to all damages and claims for damages suffered, or alleged to have been suffered, by reason of the operations referred to in this Agreement regardless of whether or not the City prepared, supplied or approved the plans, specifications or other documents for the Historical Property.

c. All of the agreements, rights, covenants, reservations and restrictions contained in this Agreement shall be binding upon and shall inure to the benefit of the parties herein, their heirs, successors, legal representatives, assigns and all persons acquiring any part or portion of the Historic Property, whether by operation of law or in any manner whatsoever.

d. In the event legal proceedings are brought by any party or parties to enforce or restrain a violation of any of the covenants, reservations or restrictions contained herein, or to determine the rights and duties of any party hereunder, the prevailing party in such proceeding may recover all reasonable attorney's fees to be fixed by the court, in addition to court costs and other relief ordered by the court.

e. In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, or by subsequent preemptive legislation, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

f. This Agreement shall be constructed and governed in accordance with the laws of the State of California.

13. Recordation. No later than twenty (20) days after the parties execute and enter into this Agreement, the City shall cause the Agreement to be recorded in the office of the County Recorder of the County of Solano.

14. Notice to State Office of Historic Preservation. The Owner or Agent of the Owner shall provide written notice of this Agreement to the State Office of Historic Preservation within six (6) months of the date of this Agreement.

15. Amendments. This Agreement may be amended, in whole or in part, only by written recorded instrument executed by the parties hereto

IN WITNESS WHEREOF, City and Owners have executed this Agreement on the day and year first written above.

Gilbert Von Studnitz
Linda Von Studnitz

CITY OF BENICIA

BY:
DATED:

BY: Jim Erickson, City Manager
DATED:

BY:
DATED:

APPROVED AS TO FORM

Heather McLaughlin, City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

(See attached sheet)

EXHIBIT B

THE SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

The following Standards are to be applied to rehabilitation projects for the Property in a reasonable manner, taking into consideration economic and technical feasibility:

- (1) The Property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
- (2) The historic character of the Property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize the Property shall be avoided.
- (3) The Property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
- (4) Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
- (5) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize the historic property shall be preserved.
- (6) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical or pictorial evidence.
- (7) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of the structure(s), if appropriate, shall be undertaken using the gentlest means possible.
- (8) Significant archeological resources affected by this project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
- (9) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
- (10) New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Minimum Property Maintenance:

As part of this agreement the Owner shall maintain all buildings, structures, yards and other improvements in a manner that does not detract from the appearance of the immediate neighborhood. The following conditions (including, but not limited to) are prohibited:

1. Dilapidated, deteriorating, or unrepaired structures, such as: fences, roofs, doors, walls, and windows, broken windows, peeling exterior paint, broken structures;
2. Scrap lumber, junk, trash or debris;
3. Abandoned discarded or unused objects, equipment such as automobiles, automobile parts, furniture, appliances, containers, cans or similar items;
4. Stagnant water, including pools or spas, or open excavations;
5. Any device, decoration, design, structure, vegetation or landscape which is unsightly by reason of its height, condition or its inappropriate location;
6. Graffiti;
7. Incomplete exterior construction where no building inspections have been requested for 6 or more months, or for work which does not require a building permit, where there has been no significant progress for 90 days.

EXHIBIT C

Architectural Rehabilitation and/or Restoration

The City and the Owner agrees to the following Rehabilitation project to be undertaken by the Owner in conformance with Paragraph 4b of this Agreement. In addition, throughout the life of this contract the owner shall maintain Minimum Property Maintenance as described in Exhibit B. The work will be conducted as indicated below.

PROJECT(S)	SCHEDULE
The wood shingle siding on the south façade (West K Street) and the roof rafters on the front facade (West Second Street) that have suffered weather deterioration shall be restored.	2015

AGENDA ITEM
HISTORIC PRESERVATION REVIEW COMMISSION MEETING
SEPTEMBER 24, 2009
REGULAR AGENDA ITEMS

DATE : September 8, 2009
TO : Historic Preservation Review Commission
FROM : Amy Million, Consulting Planner
SUBJECT : **MILLS ACT CONTRACT FOR 182 EAST I STREET**

RECOMMENDATION:

Adopt a resolution recommending that the City Council authorize the City Manager to enter into a Mills Act Contract with the property owners of 182 East I Street in the City of Benicia.

EXECUTIVE SUMMARY:

Robert and Lauri VanWert request approval of a Mills Act Contract for a contributing building located at 182 East I Street, as provided by the City of Benicia's Mills Act Program.

The Mills Act Program, enacted by the State of California in 1972, encourages the restoration and preservation of qualified historic buildings through economic incentive and authorizes its implementation by local governments. In 2003, Council approved the City of Benicia Mills Act Program and assigned initial review and recommendation of Mills Act Contract applications to the Historic Preservation Review Commission (Resolution 03-12). The program incentive consists of an alternative method for determining property value for tax assessment purposes.

Staff has determined the property at 182 East I Street meets the eligibility requirements for the Mills Act Program and all application requirements have been satisfied.

BUDGET INFORMATION:

An approved Mills Act Contract would reduce the property taxes collected from 182 East I Street. The City collects 26% of paid property taxes. Based on data available on the Solano County Tax Assessor's website, the City received about \$1157 in the 08/09 tax year from 182 East I Street. Should the Mills Act Contract be approved, the City would receive approximately \$300 per year, which is an estimated loss of \$857.

No other budget impacts are anticipated.

ENVIRONMENTAL ANALYSIS:

This project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15331, which applies to projects limited to the maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of historical resources in a manner consistent with the federal Secretary of the Interior's Standards for the Treatment of Historic Properties. Mills Act Contracts require all work performed subsequent to entering into a contract be consistent with these standards.

BACKGROUND:

On June 11, 2009, the applicant's received approval for Design Review 09PLN-07 and Variance 09PLN-31 requests to construct an addition to the rear of the subject building. In summary, the new a one-story addition measures 612 square foot and 19-feet tall. The addition is recessed on both side elevations so that it is minimally visible from East I Street. The new addition will also use a different size V-rustic siding so that it is differentiated from the existing historic structure. The addition was found to be consistent with the Secretary of the Interior Standards for Rehabilitation, which is consistent with the requirements of a Mills Act Contract.

On June 26, 2009, Robert and Lauri VanWert, owners of the residence at 182 East I Street applied to enter into a Mills Act Contract with the City of Benicia. The property is listed as a contributing building to the Downtown Historic District, as shown in the City's Downtown Historic Conservation Plan. According to Solano County Assessor's parcel data, the existing historic structure was built in 1912. In a survey completed by Carol Roland of Roland Nawi and Associates in 2005 (DPR Form 523 A&B), her analysis estimated the building's construction to be circa 1920. She noted that the building has been minimally altered and retains it integrity. She recommended that the building remain as a contributing structure.

SUMMARY:

Site Description

The property is located on the south side of East I Street on the block between First and East Second Streets. The property contains one single-family detached structure (one-story) that is approximately 1,440 square feet, with a north facing front entrance.

Project Description

As noted on Roland's survey and site photographs, the building is generally in good condition and it retains its historic integrity. The building is described as a double gable bungalow with a three-quarter length front porch. The front porch is an important character-defining feature for this type of architecture. At some point, the porch flooring was replaced with concrete (see attached photograph). It is staff's recommendation that the concrete either be replaced entirely with wood or clad with wood. This work item is included in the draft contract. The proposed Architectural Preservation Schedule outlines the timeframe for completion of this project as follows:

1. The concrete front porch flooring shall either be replaced entirely with wood, or clad

with wood so that no portion of the concrete is visible. The new wood porch should be appropriate to the historic and architectural style of the building. The final design shall be reviewed and approved by the Community Development Director. (2015 completion date).

The item listed in the draft work plan (Exhibit C of Draft Contract) is intended to rehabilitate this downtown historic resource.. This scope of work is appropriate for Mills Act Contracts.

Secretary of the Interior's Standards for Treatment of Historic Properties

As a designated contributing historic structure and a Mills Act Contract property, all exterior changes must comply with the Secretary of the Interior's Standards for Rehabilitation. According to the Standards:

“...where an important architectural feature is missing, its replacement is always recommended in the Rehabilitation guidelines as the first, or preferred, course of action. If adequate documentation exists so that the feature may be accurately reproduced, and if it is desirable to re-establish the feature as part of the building's historical appearance, then designing and constructing a new feature based on such information is appropriate. When replacing a missing historic feature such as an entrance or porch, the Standards recommend restoration based on historical, pictorial, and physical documentation; a new design that is compatible with the historic character building. If using the same kind of material is not technically or economically feasible, then a compatible substitute material may be considered. “

The work plan attached to the draft contract is consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties as demonstrated by the attached checklist

Downtown Historic Conservation Plan Consistency

The Downtown Historic Conservation Plan provides Design Guidelines for designated historic residential buildings. The guidelines are intended to guide renovation work as well as building additions. Staff has determined that the proposed work program is consistent with these guidelines (see attachment).

Conclusion

The improvement listed in Exhibit C Architectural Rehabilitation of the draft contract is consistent with historic preservation goals established by the City of Benicia, including General Plan Goal 3.1, to “Maintain and enhance Benicia's historic character.” The proposed work program is also consistent with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for the Treatment of Historic Buildings, and the Downtown Historic Conservation Plan.

FURTHER ACTION:

The recommendation of the Historic Preservation Review Commission will be forwarded to the City Council for final action. The decision of the Historic Preservation Review Commission may be appealed to the Planning Commission within ten (10) business days.

Attachments:

- ❑ Consistency Analysis: Secretary of the Interior's Standards for Rehabilitation
 - ❑ Applicable Downtown Historic Conservation Plan Guidelines
 - ❑ Department of Parks & Recreation (DPR) Forms 523 A & B
 - ❑ Photographs
 - ❑ Draft Resolution
 - ❑ Draft Contract
- Exhibit A: Legal Description of Property
Exhibit B: Secretary of the Interior Standards for Rehabilitation
Exhibit C: Architectural Rehabilitation and/or Restoration

**CONSISTENCY ANALYSIS:
SECRETARY OF THE INTERIOR'S
STANDARDS FOR REHABILITATION**

**Project Consistency Analysis:
Secretary of Interior's Standards for Rehabilitation
Mills Act Contract (09PLN-00043)
182 East I Street, Benicia, CA**

Rehabilitation is defined as the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features that convey its historical, cultural, or architectural values.

When repair and replacement of deteriorated features are necessary; when alterations or additions to the property are planned for a new or continued use; and when its depiction at a particular period of time is not appropriate, rehabilitation may be considered as a treatment.

The bold text are the Secretary of Interior's Standard for Rehabilitation guidelines. The regular text is staff's response about how the particular guideline or policy relates to the proposed project.

- 1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.**

The existing residential use will not change.

- 2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.**

The structure at 182 East I Street is a bungalow style house. The principal character-defining features of this style of building as exhibited on the subject property, are as follows:

1. Rectangle floor plan
2. Double gable
3. Moderately pitched front gable roof
4. Three quarter length porch supported by full-length square posts

With exception to the concrete flooring on the porch, these character-defining features are still present and will be retained and preserved. The Architectural Rehabilitation plan does not involve the removal of distinctive materials or alteration of features, spaces and spatial relationship that characterizes the property.

- 3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.**

The rehabilitation of the concrete portion of the front porch in 2015, will be done in accordance with the Secretary of Interior's Guidelines for Historic Preservation. The work will remove the concrete flooring and replace it with historic and architecturally appropriate

wood board. Wood porches are historically appropriate for this type of building and are evident throughout the Downtown Historic District.

4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.

According to the property survey prepared by Carol Roland, the building has been minimally altered over time and retains its integrity. A recent site visit and photographs confirm that the original wood windows have been replaced with new wood windows and the front porch was modified with concrete flooring. The work plan includes the rehabilitation of the front porch to either remove the concrete or clad with wood. There are no changes to the property that have acquired historic significance in their own right which need to be retained and preserved.

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

The property maintenance outlined in the Mills Act Contract would preserve the distinctive materials, features, finishes and construction techniques of the property. The focus of the draft contract and the applicable standards in the Downtown Historic Conservation Plan are to repair the existing materials instead of replacement, wherever possible.

6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

The Mills Act Contract requires that any distinctive materials, features, finishes and construction techniques of the building be repaired rather than replaced. Any future general maintenance performed during the term of the contract that involves deteriorated historic features that cannot be repaired will be replaced in-kind and will match the old in design, color, and texture.

7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

This standard does not apply to this project.

8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

This standard does not apply to this project.

9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic

materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

There are no new additions or related construction associated with this Mills Act Contract rehabilitation plan resulting in the destruction of historic materials, features and spatial relationship. The proposed alteration to the porch flooring will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

No new additions or related new construction is proposed and therefore the essential form and integrity of the historic property would not be impaired by future removal.

**APPLICABLE DOWNTOWN HISTORIC
CONSERVATION PLAN GUIDELINES**

Applicable Downtown Historic Conservation Plan Policies and Guidelines 182 East I Street, Benicia, CA

- Policy 1: Design Integrity. Maintain the design integrity and distinguishing features of historic buildings.
- Policy 2: Façade Elements and Details. Retain the traditional façade elements, proportions and architectural details which give historic buildings their special character and use appropriate replacements where necessary.
- Policy 3: Integrity of Materials. Maintain the integrity of original building materials.
- Policy 4: Appropriate Materials, Colors, and Finishes. Promote the use of appropriate materials in restorations, renovations and additions to historic and colors which complement their styles and particular combination of building materials.

Given the proposed work schedule, the following DHCP guidelines apply to this property:

2.1 – Architectural elements such as porches, steps and railings should not be removed. Replacements, where required, should be similar in character to the original.

4.1 – Use original materials wherever possible in restoration, renovation, or repair work and use the same materials for building additions.

4.2 – When necessary to substitute a material, take care that its outward appearance, durability, texture and finish will be as close as possible to that of the original. If the original material was painted, be sure that the substitute will accept and retain the same painted finish.

**DEPARTMENT OF PARKS AND RECREATION
FORMS 523 A & B**

PRIMARY RECORD

Primary #:
HRI #
Trinomial
NRHP Status Code:
Other Listings

Review Code _____ Reviewer _____ Date _____

*Resource Name or #: 182 East I Street

P1. Other Identifier:

*P2. Location: *a. County Solano

b. Address: 182 East I Street

*c. City: Benicia Zip 94510

d. UTM: N/A

e. USGS Quad: Benicia T2N R3W MDM

*f. Other Locational Data (APN #): 89-052-09

***P3a. Description**

This is a double gable bungalow. The house is rectangular in plan with a moderately pitched front gable roof. Eave overhangs have exposed rafter tails and the gable is finished with a plain facial. An attic vent is located under the roof ridge on the gable end. A three-quarter length porch spans the front elevation, its front gabled roof creating the double gable effect. The porch gable is finished in a manner identical to the principal roof gable. It is supported on full-length square posts. There is no porch rail. Fenestration consists of paired double hung windows arranged on either side of the central entry door. The building is clad with clapboard.

*P3b. Resource Attributes: HP2

*P4. Resources Present: Building Structure Object Site District Element of District

P5b. Description of Photo:

Front façade, view south

*P6. Date Constructed/Age: 1920

Prehistoric Historic Both

*P7. Owner and Address:

Robert Vanwert
182 East I Street
Benicia, CA 94510

*P8. Recorded by:

Carol Roland
Roland-Nawi Associates
4829 Crestwood Way
Sacramento, CA 95822

*P9. Date Recorded: 11-20-04

*P10. Type of Survey: Intensive

Reconnaissance Other
Describe Eligibility Evaluation

*P11. Report Citation: none

*Attachments: NONE Map Sheet Continuation Sheet Building, Structure, and Object Record Linear Resource Record Archaeological Record District Record Milling Station Record Rock Art Record Artifact Record Photograph Record Other (List):

P5. Photograph or Drawing (Photograph required for buildings, structures, and objects.)



BUILDING, STRUCTURE, AND OBJECT RECORD

*Resource Identifier: 182 East I Street

*NRHP Status Code: 3D

B1. Historic Name: N/A

B2. Common Name:

B3. Original Use:

B4. Present Use: commercial

*B5. **Architectural Style:** Craftsman Bungalow

B7. Moved? No Yes Unknown

Date: N/A

Original Location: same

*B8. **Related Features:** None

B9a. Architect: unknown

B9b. Builder: unknown

*B10. **Significance: Theme:** Benicia Downtown District

Period of Significance: 1847-1940

Property Type: Single Family

Applicable Criteria: A / C

This is a simple example of the Bungalow Style, one that relies on form, massing, and roof and porch shape to convey its style. The building has been minimally altered over time and retains its integrity in all regards. The building is a contributor in the Benicia Downtown Historic District and should retain its status.

B11. Additional Resource Attributes: N/A

B12. References: McAlester, Virginia and Lee. *A Field Guide to American Houses*. New York: Alfred Knopf (1986); Bruegmann, Robert. *Benicia Portrait of an Early California Town: An Architectural History* (San Francisco: 101 Productions (1980); Woodbridge, Sally and Cannon Design Group. *Benicia, California: Downtown Historic Conservation Plan*. City of Benicia, 1990; Sanborn Map Benicia, CA. 1886; 1986 Benicia Historic Inventory form.

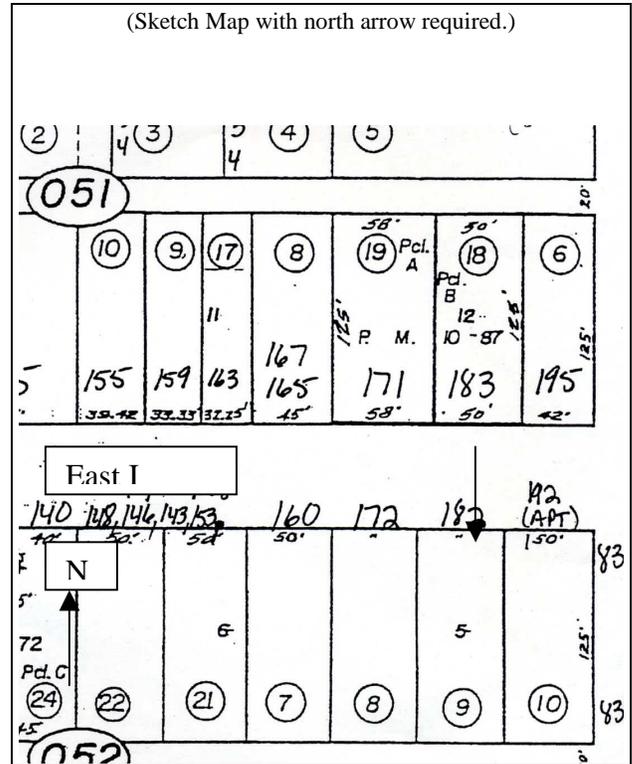
BUILDING, STRUCTURE, AND OBJECT RECORD

Remarks: N/A

B14. Evaluator: Carol Roland, Ph.D.

Roland-Nawi Associates: Preservation Consultants
 4829 Crestwood Way
 Sacramento, CA 95822

B 15. Date of Evaluation: 11-22-04



(This space reserved for official comments.)

PHOTOGRAPHS



PHOTOGRAPH OF CONCRETE FRONT PORCH

DRAFT RESOLUTION

RESOLUTION NO. 09- (HPRC)

A RESOLUTION OF THE HISTORIC PRESERVATION REVIEW COMMISSION OF THE CITY OF BENICIA RECOMMENDING CITY COUNCIL AUTHORIZE THE CITY MANAGER TO ENTER INTO A MILLS ACT CONTRACT FOR THE PROPERTY LOCATED AT 182 EAST I STREET

WHEREAS, the purpose of the Mills Act Program is to encourage the preservation, restoration and rehabilitation of historic properties within the City of Benicia; and

WHEREAS, the property at 182 East I Street is listed as a contributing building in the Downtown Historic Conservation Plan; and

WHEREAS, General Plan Goal 3.1 is to “Maintain and enhance Benicia’s historic character” and the preservation and rehabilitation of the contributing building at 182 East I Street is consistent with this Goal; and

WHEREAS, all exterior work undertaken pursuant to the subject Mills Act Contract must be consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties; and

WHEREAS, the City has determined that this project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15331, which states that modifications to historic structures consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties are categorically exempt from CEQA review; and

WHEREAS, the Historic Preservation Review Commission at a regular meeting on September 24, 2009 considered the Mills Act contract application of Robert and Lauri Van Wert.

NOW, THEREFORE, BE IT RESOLVED THAT the Historic Preservation Review Commission of the City of Benicia hereby finds that:

The proposed application is consistent with General Plan Goal 3.1 as the proposed contract will allow the applicant to continue to preserve and enhance a contributing building at 182 East I Street.

1. **BE IT FURTHER RESOLVED THAT** the Historic Preservation Review Commission recommends that the City Council approve the Mills Act Contract application of Robert and Lauri Van Wert.

* * * * *

On motion of Commissioner _____, seconded by Commissioner _____, the above Resolution was adopted at a regular meeting of the Historic Preservation Review Commission on September 24, 2009 by the following vote:

Ayes:

Noes:

Absent:

Abstain:

Historic Preservation Review Commission Chair

DRAFT CONTRACT

WHEN RECORDED, RETURN TO:

CITY OF BENICIA
250 East L Street
Benicia, CA 94510
Attention: City Clerk

HISTORICAL PROPERTY PRESERVATION AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of November 2009, by and between the CITY OF BENICIA, a municipal corporation (hereinafter referred to as the “City”), and Robert and Lauri Van Wert (hereinafter referred to as the “Owner”).

WITNESSETH

A. Recitals

1. California Government Code Sections 50280, et seq. allow cities the discretion to enter into contracts with the owners of qualified historical properties, as the term is defined by Government Code Section 50280.1, for the purpose of restricting development of its cultural and historic significance and continuing maintenance of the historical property;
2. Owner possess fee title in and to that certain real property, together with associate structures and improvements thereon, located at the street address 182 East I Street, Benicia, CA 94510 (hereinafter, shall be referred to as the “the Historical Property”). A legal description of the Property is attached hereto and incorporated herein by this reference as Exhibit A;
3. On November 17, 2009 the City Council of the City of Benicia adopted Resolution No. 09- thereby declaring its intention to enter into this Historic Property Preservation Agreement.
4. City and Owner, for their mutual benefit, now desire to enter into this Agreement both to protect and preserve the characteristics of cultural and historical significance of the Property and to qualify the Property for an assessment of valuation pursuant to the provisions of Article 1.9, Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code

B. Agreement

NOW, THEREFORE, City and Owner, in consideration of the mutual promises, covenants and conditions set forth herein, do hereby agree as follows:

1. Effective Date and Term of Agreement. This Agreement shall be effective and commence on January 1, 2009 and shall remain in effect for a term of (10) years thereafter. Each year, upon the anniversary of the effective date of this Agreement (hereinafter "renewal date"), one (1) year shall automatically be added to the term of the Agreement, unless timely notice of nonrenewal, as provided in paragraph 2, is given. If either City or Owners serves notice to the other of nonrenewal in any year, the Agreement shall remain in effect for the balance of the term then remaining, either from its original execution or from the last renewal of the Agreement, whichever may apply.
2. Notice of Nonrenewal. If City or Owner desires in any year not to renew the Agreement, that party shall serve written notice of nonrenewal in advance of the annual renewal date of the contract as follows: (1) Owner must serve written notice of nonrenewal at least ninety (90) days prior to the renewal date or (2) City must serve written notice within sixty (60) days prior to the renewal date. Owner may make a written protest of the notice. City may, at any time prior to the annual renewal date of the Agreement, withdraw its notice of nonrenewal to Owner.
3. Valuation of Historical Property. During the term of this Agreement, Owner is entitled to seek assessment of valuation of the Historical Property pursuant to the provisions of Article 1.9, Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code.
4. Standards for Historical Property. During the term of this Agreement, the Property shall be subject to the following conditions, requirements and restrictions:
 - a) Owner shall preserve and maintain the characteristics of cultural and historical significance of the Property in accordance to the Secretary of the Interiors Standards for Rehabilitation and the minimum maintenance standards, identified in Exhibit "B", attached hereto, which shall apply to the property throughout the term of this Agreement. New additions, exterior alterations, or related new construction shall comply with the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitation of Historic Buildings.
 - b) Owner shall make improvements to bring the Property into good condition. Attached hereto, marked as Exhibit "C", and incorporated herein by this reference, is a list of work that both City and Owner agree is necessary to bring the Property into good condition.

Owner shall undertake all improvements in accordance with Exhibit "C". If the schedule set out in Exhibit "C" is not complied with, then City will use the following process to determine whether the owner is making good faith progress on the schedule of work. Upon City's request, the Owner shall submit documentation of expenditures, made to

accomplish the next highest priority improvement project for the property, within the last 24 months. The owner shall be determined to be in substantial compliance when the expenditures are equal to or greater than the property tax savings provided by the Property being in the Mills Act Program. This schedule set out in Exhibit "C" shall be revised to reflect the schedule change. The Community Development Director shall have the ability to administratively adjust the schedule timeline, in concurrence with the property owner, only by written recorded instrument executed by the parties hereto.

5. Inspections and Annual Reporting. Owners agrees to permit the periodic examination, by prior appointment, of the interior and exterior of the Historic Property by the County Assessor, the State Department of Parks and Recreation, the State Board of Equalization and the City as may be necessary to determine Owners' compliance with the terms and provisions of this Agreement. Owners agree to provide the City with a report as to the status of the Historic Property annually and when any improvements or changes have been made.
6. Provision of Information. Owners hereby agree to furnish City with any and all information requested by City which City deems necessary or advisable to determine compliance with the terms and provisions of this Agreement.
7. Cancellation. City, following a duly noticed public hearing as set forth in California Government Code Section 50285 may cancel this Agreement if it determines that Owners have breached any of the conditions of the Agreement or has allowed the property to deteriorate to the point that it no longer meets the standards for a qualified historical property. City may also cancel this Agreement if it determines that Owners have failed to restore or rehabilitate the Historical Property in the manner specified in paragraph 4 of this Agreement.

In the event of cancellation, Owner shall be subject to payment of those cancellation fees set forth in California Government Code Sections 50280 et seq., described herein. Upon cancellation, Owners shall pay a cancellation fee of twelve and one-half percent (12 1/2%) of the current fair market value of the Historic Property at the time of cancellation, as determined by the county assessor as though the Historic Property were free of any restrictions pursuant to this Agreement.

8. Enforcement of Agreement. In lieu of any provisions to cancel the Agreement as referenced herein, City may specifically enforce, or enjoin the breach of, the terms of this Agreement. In the event of a default, under the provisions of this Agreement by Owner, City shall give written notice to Owner by registered or certified mail addressed to the address stated in the Agreement, and if such a violation is not corrected to the reasonable satisfaction of City within thirty (30) days thereafter, or if not corrected within such a reasonable time as may be required to cure the breach or default if said breach or default cannot be cured within thirty (30) days provided that acts to cure the breach or default may be commenced within (30) days and must thereafter be diligently pursued to completion by Owner, then City may, without further notice, declare a default under the terms of this Agreement and may bring any action necessary to specifically enforce the

obligations of Owner growing out of the terms of this Agreement, apply to any violation by Owner or apply for such other relief as may be appropriate.

9. Waiver. City does not waive any claim of default by Owner if City does not enforce or cancel this Agreement. All other remedies at law or in equity which are not otherwise provided for in this Agreement or in City's regulations governing historic properties are available to the City to pursue in the event that there is a breach of this Agreement. No waiver by City of any breach or default under this Agreement shall be deemed to be a waiver of any other subsequent breach thereof or default hereunder.
10. Binding Effect of Agreement. Owner hereby subject the Historical Property described in Exhibit A hereto to the covenants, reservations and restrictions as set forth in this Agreement. City and Owners hereby declare their specific intent that the covenants, reservations and restrictions as set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owners' successors and assigns in title or interest to the Historical Property.

Each and every contract, deed or other instrument hereinafter executed, governing or conveying the Historical Property, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, reservations and restrictions expressed in this Agreement regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

City and Owner hereby declare their understanding and intent that the burden of the covenants, reservations and restrictions set forth herein touch and concern the land in that it restricts development of the Historic Property. City and Owners hereby further declare their understanding and intent that the benefit of such covenants, reservations and restrictions touch and concern the land by enhancing and maintaining the cultural and historic characteristics and significance of the Historic Property for the benefit of the public and Owner.

11. Notice. Any notice required to be given by the terms of this Agreement shall be provided at the address of the respective parties as specified below, or at any other address as may be later specified by the parties hereto.

City: City of Benicia
250 East L Street
Benicia, California 94510

Owner: Robert and Lauri Van Wert
182 East I Street
Benicia, CA 94510

12. General Provisions

a. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause them to be considered joint ventures or members of any joint enterprise.

b. Owner agrees to and shall hold City and its elected officials, officers, agents and employees harmless from liability for damage or claims which may arise from the direct or indirect use or operations of Owner or those of their contractor, subcontractor, agenda, employee or other person acting on his/her behalf which relates to the use, operation and maintenance of the Historic Property and from any injury to property caused by the restrictions on development of the Historical Property from application or enforcement of the City's Historical Preservation Ordinance or from the enforcement of this Agreement. Owner hereby agrees to and shall defend the City and its elected officials, officers, agents and employees with respect to any and all actions for damages caused by, or alleged to have been caused by, reason of Owners' activities in connections with the Historic Property. This hold harmless provision applies to all damages and claims for damages suffered, or alleged to have been suffered, by reason of the operations referred to in this Agreement regardless of whether or not the City prepared, supplied or approved the plans, specifications or other documents for the Historical Property.

c. All of the agreements, rights, covenants, reservations and restrictions contained in this Agreement shall be binding upon and shall inure to the benefit of the parties herein, their heirs, successors, legal representatives, assigns and all persons acquiring any part or portion of the Historic Property, whether by operation of law or in any manner whatsoever.

d. In the event legal proceedings are brought by any party or parties to enforce or restrain a violation of any of the covenants, reservations or restrictions contained herein, or to determine the rights and duties of any party hereunder, the prevailing party in such proceeding may recover all reasonable attorney's fees to be fixed by the court, in addition to court costs and other relief ordered by the court.

e. In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, or by subsequent preemptive legislation, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

f. This Agreement shall be constructed and governed in accordance with the laws of the State of California.

13. Recordation. No later than twenty (20) days after the parties execute and enter into this Agreement, the City shall cause the Agreement to be recorded in the office of the County Recorder of the County of Solano.

14. Notice to State Office of Historic Preservation. The Owner or Agent of the Owner shall provide written notice of this Agreement to the State Office of Historic Preservation within six (6) months of the date of this Agreement.

15. Amendments. This Agreement may be amended, in whole or in part, only by written recorded instrument executed by the parties hereto

IN WITNESS WHEREOF, City and Owner have executed this Agreement on the day and year first written above.

Robert Van Wert
Lauri Van Wert

CITY OF BENICIA

BY:
DATED:

BY: Jim Erickson, City Manager
DATED:

BY:
DATED:

APPROVED AS TO FORM

Heather McLaughlin, City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

(See attached sheet)

EXHIBIT B

THE SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

The following Standards are to be applied to rehabilitation projects for the Property in a reasonable manner, taking into consideration economic and technical feasibility:

- (1) The Property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
- (2) The historic character of the Property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize the Property shall be avoided.
- (3) The Property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
- (4) Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
- (5) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize the historic property shall be preserved.
- (6) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical or pictorial evidence.
- (7) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of the structure(s), if appropriate, shall be undertaken using the gentlest means possible.
- (8) Significant archeological resources affected by this project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
- (9) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
- (10) New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Minimum Property Maintenance:

As part of this agreement the Owner shall maintain all buildings, structures, yards and other improvements in a manner that does not detract from the appearance of the immediate neighborhood. The following conditions (including, but not limited to) are prohibited:

1. Dilapidated, deteriorating, or unrepaired structures, such as: fences, roofs, doors, walls, and windows, broken windows, peeling exterior paint, broken structures;
2. Scrap lumber, junk, trash or debris;
3. Abandoned discarded or unused objects, equipment such as automobiles, automobile parts, furniture, appliances, containers, cans or similar items;
4. Stagnant water, including pools or spas, or open excavations;
5. Any device, decoration, design, structure, vegetation or landscape which is unsightly by reason of its height, condition or its inappropriate location;
6. Graffiti;
7. Incomplete exterior construction where no building inspections have been requested for 6 or more months, or for work which does not require a building permit, where there has been no significant progress for 90 days.

EXHIBIT C

Architectural Rehabilitation and/or Restoration

The City and the Owner agrees to the following Rehabilitation project to be undertaken by the Owner in conformance with Paragraph 4b of this Agreement. In addition, throughout the life of this contract the owner shall maintain Minimum Property Maintenance as described in Exhibit B. The work will be conducted as indicated below.

PROJECT(S)	SCHEDULE
The concrete front porch flooring shall either be replaced entirely with wood, or clad with wood so that no portion of the concrete is visible. The new wood porch should be appropriate to the historic and architectural style of the building. The final design shall be reviewed and approved by the Community Development Director.	2015

AGENDA ITEM
HISTORIC PRESERVATION REVIEW COMMISSION: SEPTEMBER 24, 2009
REGULAR AGENDA ITEM

DATE : September 16, 2009

TO : Historic Preservation Review Commission

FROM : Lisa Porras, Senior Planner

SUBJECT : **TANNERY BUILDING - MATERIALS AND COLORS**

PROJECT : 09PLN-01 Design Review
127 First Street
APN 089-244-050

RECOMMENDATION:

Review materials and colors for a new outdoor patio wall, a new trash enclosure, and all paint color swatches for improvements to an existing building located at 127 First Street.

SUMMARY:

Pursuant to Condition #15 of Historic Preservation Review Commission (HPRC) Resolution No. 09-13, which approved a new refuse storage area, new outdoor patio windscreen and wall, and installation of new entry doors along First Street, the applicant requests that HPRC review proposed materials and colors for the new patio wall (brick veneer and painted stucco samples), the roof materials for the new trash enclosure, and paint color swatches for all painted areas.

Materials will be on display during the HPRC hearing of September 24, 2009.

ATTACHMENT:

- Resolution No. 09-13 (HPRC)

RESOLUTION NO. 09-13 (HPRC)

RESOLUTION NO. 09-13 (HPRC)**A RESOLUTION OF THE HISTORIC PRESERVATION REVIEW COMMISSION OF THE CITY OF BENICIA APPROVING DESIGN REVIEW OF A NEW PATIO WINDSCREEN AND WALL, REFUSE STORAGE AREA, AND NEW ENTRY DOORS ALONG THE EAST ELEVATION AT THE TANNERY BUILDING LOCATED AT 127 FIRST STREET**

WHEREAS, John R. Hernandez has requested Design Review approval for a new outdoor patio windscreen and wall, redesigned refuse storage area, and new entry doors along the east elevation at the Tannery Building at 127 First Street; and

WHEREAS, the Historic Preservation Review Commission at a regular meeting on July 23, 2009 conducted a public hearing and reviewed the proposed project;

NOW, THEREFORE, BE IT RESOLVED THAT the Historic Preservation Review Commission of the City of Benicia hereby approves the new outdoor patio windscreen and wall, redesigned refuse storage area, and new entry doors along the east elevation at the Tannery Building; and

BE IT FURTHER RESOLVED THAT the Historic Preservation Review Commission finds that:

- a) The proposed development is consistent with the objectives and the applicable provisions of Title 17 of the Benicia Municipal Code and the Downtown Historic Conservation Plan;

The proposed modifications are consistent with Policies 1, 2, 4, 5, and 6 of the Downtown Historic Conservation Plan, and Section 17.70.200.

- b) The location and configuration of the proposed changes are visually harmonious with their site and with surrounding sites and structures, and do not unnecessarily block scenic views from other buildings or public parks or dominate their surroundings to an extent inappropriate to their use;

Proposed changes are satisfactory and do not impact or dominate surrounding sites, and features, or views.

- c) The architectural design of the proposed changes, their materials and colors are visually harmonious with surrounding development and with the natural landforms and vegetation of the areas in which they are proposed to be located;

Materials and colors selected for new doors and windows along First Street, the redesigned trash enclosure, the new outdoor patio windscreen and wall would not impact or overwhelm the features of surrounding development.

- d) The proposed modifications and the proposed conditions of approval are consistent with the Downtown Historic Conservation Plan and Title 17 of the Benicia Municipal Code and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the neighborhood of the proposed project, nor detrimental to properties or improvements in the vicinity or to the general welfare of the city;

The proposed modifications are consistent with Policies 1, 2, 4, 5, and 6 of the Downtown Historic Conservation Plan, and Section 17.70.200 of the Municipal Code.

BE IT FURTHER RESOLVED THAT the Benicia Historic Preservation Review Commission hereby approves the proposed project subject to the following conditions:

1. This approval applies to the replacement and installation of new doors and windows along First Street as shown on the elevation date stamped July 9, 2009 submitted by John Hernandez, consisting of four sheets marked Exhibit A, attached to this decision of record on file with the Community Development Department.
2. This approval also applies to the redesigned trash enclosure, and the new outdoor patio windscreen and wall as shown on the plans date stamped July 13, 2009 submitted by John Hernandez, consisting of five sheets marked Exhibit B, attached to this decision of record on file with the Community Development Department.
3. The plans submitted for the building permit and development and construction shall substantially comply with the plans specified in conditions 1 and 2 above, on file with the Community Development Department, except as modified by the following conditions.
4. All conditions from previous Resolutions, including HPRC 09-6, HPRC 09-2, and HPRC 08-3 shall remain in effect.
5. The project shall adhere to all applicable ordinances, standard plans, and specifications of the City of Benicia.
6. Any alteration of the approved plans, or of conditions listed herein, including substitution of materials, shall be requested in writing and reviewed by the Historic Preservation Review Commission prior to changes being made in the field.
7. A sign program shall be prepared, consistent with the Sign Ordinance as provided under Title 18 of the Benicia Municipal Code and consistent with applicable guidelines listed in the Downtown Historic Conservation Plan, and presented to the Historic Preservation Review Commission for review and approval prior to issuing any sign permits for any tenant of the entire building.
8. The new windscreen shall be made of tempered glass with metal framing in a tan color that matches the windows frames on the south façade and shall be 10 feet tall.

9. The new wall along the south property line shall be 10 ft. tall and offset from the existing brick wall a minimum of 3 inches to the south. Materials for the north side of the wall that faces the outdoor patio shall be brick veneer (integral color) over concrete block. Materials for the south side of the wall that faces Captain Blyther's Restaurant shall be smooth stucco, with two coats, painted offwhite.
10. Materials for the new wall enclosing the trash area shall be brick veneer (integral color) over concrete block on all four sides.
11. The roof covering the trash area shall be of composition shingle in a hunter green color. In addition, the doors to the trash area shall be painted hunter green.
12. New doors along the east façade of the Tannery shall be manufactured by T.M. Cobb, in the High Performance Unit models consisting of French doors with full lite grids, in unfinished wood painted in a tan color.
13. The applicant shall be required to apply for and receive a decision on a Tree Removal Permit for the existing tree along the fence line, prior to receiving building permits.
14. Prior to issuance of building permit, all construction plans shall be reviewed by the Community Development Director, or designee prior to receiving a building permit.
15. The following materials shall be brought back to the Historic Preservation Review Commission for review and approval prior to issuance of a building permit:
 - a. Materials for the new patio wall, which includes samples of the brick veneer and a painted stucco sample.
 - b. Materials for the trash area roof, including a sample on the composition shingles in a hunter green color.
 - c. Actual paint swatches for all painted areas.
16. Construction activities shall meet all municipal code requirements for hours of operation. Construction equipment shall be adequately muffled and controlled. These requirements shall be made a condition of all related contracts for the project.
17. The applicant or permittee shall defend, indemnify, and hold harmless the City of Benicia or its agents, officers, and employees from any claim, action, or proceeding against the City of Benicia or its agents, officers, or employees to attack, set aside, void, or annul an approval of the Historic Preservation Review Commission, Planning Commission, City Council, Community Development Director, or any other department, committee, or agency of the City concerning a development, variance, permit or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or permittee's duty to so defend, indemnify, and hold harmless shall be subject to the City's promptly notifying the applicant or permittee of any said claim, action, or proceeding

and the City's full cooperation in the applicant's or permittee's defense of said claims, actions, or proceedings.

* * * * *

On motion of Commissioner White, seconded by Commissioner Haughey, the above Resolution was adopted by the Historic Preservation Review Commission of the City of Benicia at a regular meeting of said Commission held on July 23, 2009 by the following vote:

Ayes: Commissioners Crompton, Haughey, McKee, Taagepera, White and Chair Mang
Noes: Commissioner Donaghue
Absent: None
Abstain: None



Chuck Mang
Historic Preservation Review Commission Chair



Public Works & Community Development Department
MEMORANDUM

Date: September 15, 2009
To: Historic Preservation Review Commission
From: Gina Eleccion, Management Analyst *GE*
Re: Listing Process for Historic Resources to Regain Historic Status

At its March 17, 2009 meeting, and as part of the historic resource inventory update discussion, City Council directed staff to develop a process that allows an eligible property that goes through a restoration to gain historic status.

In Section 17.54.090, there is an existing process for designating landmarks. This chapter could be amended to include a clearer process for any resource to regain historic status. Staff recommends replacement of the word "Landmark" with "Historic and/or contributing structure."

In March 2009, Commissioner Taagepera submitted a memo outlining a procedure.

Staff is requesting a discussion on the existing process, with Commissioner Taagepera's suggestions, and any additional comments or suggestions by the Commission and public.

Based on input from this discussion, staff will prepare a draft ordinance for the Commission to make a recommendation to the City Council.

Attachments:

- Benicia Municipal Code – Chapter 17.54 (H Historic Overlay District)
- Commissioner Taagepera memo dated March 25, 2009

**BENICIA MUNICIPAL CODE – CHAPTER 17.54
(H HISTORIC OVERLAY DISTRICT)**

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Chapter 17.54 H HISTORIC OVERLAY DISTRICT

Sections:

<u>17.54.010</u>	Specific purposes.
<u>17.54.020</u>	Applicability and zoning map designator.
<u>17.54.030</u>	Land use and development regulations.
<u>17.54.040</u>	Criteria for establishment of H district.
<u>17.54.050</u>	Criteria for designating landmark buildings.
<u>17.54.060</u>	Conservation plan required.
<u>17.54.070</u>	Application requirements.
<u>17.54.080</u>	Review and approval.
<u>17.54.090</u>	Establishment of H districts and landmark designation.
<u>17.54.100</u>	Demolition and design review procedures.
<u>17.54.120</u>	Maintenance of structures and premises.

17.54.010 Specific purposes.

The specific purposes of the H historic overlay district are to:

- A. Implement the city's general plan;
- B. Deter demolition, destruction, alteration, misuses, or neglect of historic or architecturally significant buildings that form an important link to Benicia's past;
- C. Promote the conservation, preservation, protection, and enhancement of each historic district;
- D. Stimulate the economic health and residential quality of the community and stabilize and enhance the value of property;
- E. Encourage development tailored to the character and significance of each historic district through a conservation plan that includes goals, objectives, and design criteria. (Ord. 87-4 N.S., 1987).

17.54.020 Applicability and zoning map designator.

The H historic overlay district may be combined with any zoning district. Each H overlay district shall be shown on the zoning map by adding an "-H" designator to the base district designation followed by the number of the district based on the order of adoption. (Ord. 87-4 N.S., 1987).

17.54.030 Land use and development regulations.

A. The land use and development regulations applicable in an H district shall be as prescribed for the base district with which it is combined unless modified by another overlay district; provided, that the requirements of the district conservation plan shall govern where conflicts arise.

B. Exceptions for Historic and Architecturally Significant Structures.

1. The community development director may grant a use permit for an exception to the land use regulations of the base district with which an H district is combined when such an exception is necessary to permit the preservation or restoration of an historic or architecturally significant building, structure or site.

2. Applications for such use permits shall be filed with the community development director on a form provided. The community development director shall refer all applications for an exception under this section to the historic preservation review commission (HPRC) for a report and recommendation. In making a decision, the community development director shall make a written finding that shall specify the facts relied upon in rendering his decision. A copy of this written finding, together with all evidence presented to the community development

director, shall be filed in the planning department. The written finding and decision shall be mailed to the applicant and shall be subject to appeal to the planning commission. Decision-making authority on such use permits may be deferred to the planning commission at the option of the community development director. Upon their decision in such instances, an appeal may be made to the city council as prescribed in Chapter 1.44 BMC. (Ord. 07-59 § 1; Ord. 05-03 § 4; Ord. 87-4 N.S., 1987).

17.54.040 Criteria for establishment of H district.

A. A portion of a base district shall be eligible for inclusion in an H district if one or more of the following criteria, rigorously applied, are met:

1. The area possesses character, interest, or value as part of the heritage of the city.
2. The area is the location of a significant historical event.
3. The area is identified with a person or group that contributed significantly to the culture and development of the city.
4. Structures within the area exemplify a particular architectural style or way of life important to the city.
5. Structures within the area are the best remaining examples of an architectural style in a neighborhood.
6. The area or its structures are identified as the work of a person or group whose work has influenced the heritage of the city, the state, or the United States.
7. The area or its structures embody elements of outstanding attention to architectural or landscape design, detail, materials, or craftsmanship.
8. The area is related to a designated historic building or district in such a way that its preservation is essential to the integrity of the building or district.
9. The area's unique location or singular physical characteristics represent an established and familiar visual feature of a neighborhood.
10. The area has potential for yielding information of archaeological interest.
11. The area's integrity as a natural environment strongly contributes to the well-being of the people of the city.

B. Portions of a base zoning district that do not meet the above criteria may be included in an H district if inclusion is found to be essential to the integrity of the district. (Ord. 87-4 N.S., 1987).

17.54.050 Criteria for designating landmark buildings.

Individual buildings may be designated as historic or architecturally significant landmarks if one or more of the criteria set forth in BMC 17.54.040 are met. A landmark so designated shall be eligible for the same review procedures as buildings and structures within an H district. (Ord. 87-4 N.S., 1987).

17.54.060 Conservation plan required.

Prior to filing an application for an H district, the applicant shall prepare an historic district conservation plan with the assistance of the planning department. Each conservation plan shall contain:

- A. A map and description of the proposed district, including boundaries; the age, setting, and character of structures; urban design elements and streetscapes; major public improvements; and proposed objectives to be achieved;
- B. A statement of the architectural or historical significance of the proposed district;
- C. A list of specific alterations that should be subject to design review in order to protect the architectural or historical character of the proposed district;
- D. A set of specific performance guidelines for new construction and alterations necessary to preserve the character of the proposed district;
- E. Proposed rules and regulations for design review. (Ord. 87-4 N.S., 1987).

17.54.070 Application requirements.

A. Filing of Petition. An application for an H district or landmark designation may be initiated by the planning commission or city council, or by filing a petition requesting establishment of

the district with the community development director, accompanied by the required fee. If initiated by petition, the application shall include:

1. The proposed conservation plan for the district as prescribed by BMC 17.54.060;
2. A form bearing the signatures of the owners of 51 percent of the land area within the proposed district.

B. Application Contents. An application for a landmark designation shall contain:

1. A map showing the location of the building or structure and building plans or photographs of the building exterior;
2. A statement of the architectural or historical significance of the proposed building and description of the particular features that should be preserved; and
3. Except when initiated by the city, the consent of the owner or authorized agent to the proposed designation is required. For purposes of this section, each condominium owner's association shall be deemed the property owner of common areas.

Prior to accepting the application as complete, the community development director may request additional information, plans or materials deemed necessary to support the application. A planning commission public hearing on the petition shall be held within 90 days of the date the petition is accepted as complete. (Ord. 87-4 N.S., 1987).

17.54.080 Review and approval.

A. Neighborhood Workshop. The planning department shall conduct a neighborhood workshop in the proposed district to explain the proposal and the amendment process to neighborhood residents. Notice of the workshop shall be given in the same manner prescribed for zoning map amendments by BMC 17.120.040.

B. Notice and Public Hearing. After the neighborhood workshop, the proposed district shall be the subject of public hearings before the planning commission and the city council. The hearings shall be set, noticed, and conducted as prescribed by Chapter 17.120 BMC.

C. Contents of Public Notice. In addition to the information prescribed by Chapter 17.120 BMC, notice of a public hearing for the establishment of an H district or designation of a landmark shall include a statement that original petitioners have the right to withdraw their support of the district at any time prior to the hearing, and that property owners who have not signed the petition have the right to do so prior to the date of the hearing. (Ord. 87-4 N.S., 1987).

17.54.090 Establishment of H districts and landmark designation.

A. Required Findings. In addition to the findings required by Chapter 17.120 BMC, the planning commission and city council shall find that the proposed district or landmark has a significant architectural or historical character that can be preserved and enhanced through appropriate controls on new development and alterations to existing buildings and landscaping.

B. Adoption of Conservation Plan. An ordinance establishing an H district shall include an historic district conservation plan in the form submitted or as revised by the planning commission or city council. The plan's performance guidelines may modify the land use and development regulations of the base zoning district, but shall not significantly alter the regulations. A performance guideline shall be found to be a significant alteration of base district regulations if it substantially prevents property from being used in accord with the provisions of the base district, or creates a substantial number of nonconforming uses or structures.

C. Effects on Projects Initiated Prior to Effective Date. No provision of this chapter shall apply to projects initiated prior to the effective date of an ordinance establishing an H district or designating a landmark. Such projects shall be considered nonconforming uses, subject to the provisions of Chapter 17.98 BMC. For the purposes of this subsection, a project shall be deemed initiated if an application, plans, and materials for concept or development plan review have been filed and accepted as complete.

D. Amendments to Adopted Conservation Plans. Procedures for an amendment to an adopted conservation plan shall be initiated in the same manner as an application for a zoning map amendment (Chapter 17.120 BMC). (Ord. 87-4 N.S., 1987).

17.54.100 Demolition and design review procedures.

A. In General. Except as modified by an adopted conservation plan, design review in an H district or of a proposed alteration, enlargement or demolition of a designated landmark shall be conducted as prescribed by Chapter 17.108 BMC. Design review and approval shall be the responsibility of the community development director or the design review commission, as the case may be.

The building official shall not issue a permit for construction, alteration, enlargement, or demolition of a building or structure located in an H district or of a designated landmark without the prior approval of the community development director or the design review commission. Prior approval of the community development director or the design review commission is not required for permit applications of an emergency nature to rehabilitate an unsafe building or to demolish the structure for the same reasons.

B. Criteria. In addition to the requirements of Chapter 17.108 BMC, the community development director or design review commission, as the case may be, shall consider the proposed demolition, new construction, or alteration in the context of the adopted conservation plan and the architectural or historical value and significance of the site and structure in relation to the overlay district. These considerations shall include the visual relationship of proposed architectural design elements to the surrounding area, including scale, height, rhythm of spacing, pattern of windows and doorways, building siting and relationship to landscaping, roof pitch, architectural style, and structural details, materials, colors, and textures.

C. Required Findings. No demolition permit shall be issued for demolition of any historic structure within an H district or for demolition of a designated landmark without prior review and approval by the design review commission. Demolition permits for nonhistoric structures within the H district may be approved by the community development director. To assist any evaluation by the design review commission, the community development director shall submit a report and recommendation to the design review commission.

1. For Demolitions.

a. If, after review of the request for a demolition permit, the design review commission determines that the structure itself has historical, architectural or cultural interest or value, the commission may withhold approval for demolition for 180 days (from the date of commission action) or until environmental review is completed, whichever occurs later.

During the 180 days, the design review commission may direct the planning department to consult with recognized historic preservation organizations and other civic groups, public agencies and interested citizens; make recommendations for acquisition of property by public or private bodies or agencies; explore the possibility of moving one or more structures or other features; and take any other reasonable measures.

At the end of the 180-day period, the demolition permit shall be issued if environmental review determines there will not be a significant impact on the environment and all requirements of this title are met or, if there may be substantial environmental damages, that specific economic, social or other considerations make infeasible the mitigation measures or alternatives identified during environmental review.

b. If, after review of the request for a demolition permit, the design review commission determines that the building or structure has no substantial historical, architectural, or cultural interest or value, a building permit for demolition may be issued.

2. For New Construction or Alterations. The director or the commission shall not grant design approval for new construction or alterations unless it finds that the proposed new construction or alteration will be compatible with and help achieve the purposes of the H district.

3. For Removal or Alteration of Certain Landscape Materials. The director's or commission's approval shall be required for removal or alteration of landscape materials identified as significant resources by the historic district conservation plan. Removal or alteration of such landscape materials shall require a finding that the proposed removal or alteration will not affect the character of the H district, or that the safety of persons or property

requires the removal or alteration. No provisions of this subsection shall be construed as restricting routine maintenance of landscape materials.

D. Economic Hardship Waiver. If an applicant for design concept or design approval presents evidence of inability to meet the cost of complying with a condition of approval, the director or the commission may grant the approval with the requirement that all conditions be met within a period of up to five years. If such conditions are not met within five years, the property owner shall be subject to the enforcement provisions of Chapter 17.128 BMC.

E. Effective Date – Appeals. Decisions of the director or commission shall be final on the tenth business day after the date of the decision, unless appealed in accordance with Chapter 1.44 BMC. (Ord. 07-59 § 2; Ord. 93-1 N.S. § 5, 1993; Ord. 87-4 N.S., 1987).

17.54.120 Maintenance of structures and premises.

All property owners in H districts and owners of designated landmarks shall have the obligation to maintain structures and premises in good repair. Structures and premises in good repair shall present no material variance in apparent condition from surrounding structures in compliance with the provisions of this chapter. Good repair includes and is defined as the level of maintenance that ensures the continued availability of the structure and premises for a lawfully permitted use, and prevents deterioration, dilapidation, and decay of the exterior portions of the structure and premises. (Ord. 87-4 N.S., 1987).

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**COMMISSIONER TAAGEPERA MEMO
DATED MARCH 25, 2009**

DATE: March 25, 2009
TO: HPRC Commissioners
FROM: Leann Taagepera
SUBJECT: Procedure for Regaining Historic Status

Buildings have been de-listed which could be restored. It would be prudent for the City to adopt a program whereby a property owner can restore a building and regain historic status. The HPRC is tasked with encouraging historic preservation. If historic buildings have had alterations which could be restored, de-listing them with no procedure to allow them to regain historic status has removed all financial incentives to restore, because now those buildings are no longer eligible for the Mill's Act property tax savings and they cannot use the historical building code. People who need to restore their buildings would benefit from that savings the most. I have spoken with historic preservation officers and architectural historians about this situation and they term de-listing buildings on the borderline of historical integrity as "throwing out the baby with the bath water."

I propose the following procedure as a starting point for discussion and request that this item be agendized for the next HPRC meeting.

Property owners of buildings which currently are not deemed to be contributors to the Downtown Historic Conservation District, due to a de-listing of these buildings in the 2009 historic survey, may apply to the City for a historic redesignation of their buildings. Redesignation of their building from non-contributor to contributor (or to Landmark status, in the event this were ever appropriate) would require approval by the HPRC. If such request were denied, applicant could appeal denial to the City Council.

Application material to be submitted to the City Community Development Department would be composed of the following:

1. A list of inappropriate alterations which have resulted in the loss of historic integrity, and therefore, loss of historic designation;
2. Information about when these inappropriate alterations occurred, if known;
3. A description of which of these alterations are proposed to be reversed or restored, and a description of the methods and materials proposed;
4. A drawing or architectural rendering of the building, identifying the areas that would be restored or replaced;
5. Photos of the building as it appears now;
6. Any photos that can be provided as the building looked prior to any or all of the inappropriate alterations.

As this re-designation is intended to encourage the restoration and preservation of historic buildings in Benicia, the only fee that would be charged would be a simple fee for a minor application of no more than \$200, and the fee for the Mill's Act application, if appropriate. It would be important for the City to advertise this program, so property owners were aware of it. The HPRC and City staff would be tasked with determining if the proposed plan for restoration would result in re-establishing the building's historical integrity, thereby warranting re-listing the building.