

Chapter 4:
PRESERVATION INCENTIVES AND REGULATIONS

OBJECTIVE 2: PRESERVATION INCENTIVES AND REGULATIONS

To develop a system of preservation incentives and regulations for specially designated significant older properties which (i) enhances economic feasibility for preservation; (ii) provides a predictable and appropriate level of protection, based on each property's importance; (iii) reasonably balances preservation with other concerns; and (iv) operates efficiently, avoiding unnecessary regulatory procedures and review periods.

Of all historic preservation concerns, the use of preservation regulations for demolitions, removals, alterations and new construction is often the most debated. In order to be successful, preservation regulations should:

- (a) provide a reliable and predictable degree of protection;
- (b) appropriately balance preservation with other concerns;
- (c) avoid unnecessary delays and red tape; and
- (d) be accompanied by economic benefits and other incentives to encourage property owners to accept the regulations and initiate preservation activities.

Oakland's existing preservation regulations do not adequately possess these characteristics. The relative lack of meaningful incentives is especially critical. This chapter's policies and their accompanying tables set forth a revised system of regulations coupled with preservation incentives.

POLICY 2.1: PRESERVATION INCENTIVES AND REGULATIONS FOR DESIGNATED HISTORIC PROPERTIES

The City will use a combination of incentives and regulations to encourage preservation of significant older properties and areas which have been designated as Landmarks, Preservation Districts, or Heritage Properties. The regulations will be applied according to the importance of each property, with the more important properties having stronger regulations.

Policy 2.1 is a general policy which is expressed more specifically in this Chapter's remaining policies. Similarly, the following two actions implementing Policy 2.1 also implement this Chapter's remaining policies and are expressed more specifically in the Chapter's remaining actions.

ACTION 2.1.1: AMEND ZONING TEXT

Amend the Zoning Regulations text to incorporate the new preservation regulations and incentives.

The amendments would mostly replace existing Zoning Regulations Sections 7002, 7005 and 6400-6406 concerning landmarks, the preservation study list, and preservation districts. There would also be minor changes to the portions of the Rezoning and Law Change Procedure at Sections 9500-9508 concerning landmark and preservation district designations. All of the substantive zoning text changes are presented in Policies 2.2-2.6 and related tables below. Consolidation of all of the Zoning Regulations' historic preservation provisions into a separate section should be considered.

The text changes should be accompanied by administrative definitions of the phrases "reasonable economic return" and "reasonable use" used in Policy 2.4 (Item 1, Finding (a) of Table 4-1 for demolitions and removals and Item 1(a), Finding (iv) of Table 4-2 for alterations and new construction).

The description in Policy 2.4 (Table 4-1, Item 3) and Policy 2.5 (Table 4-5, Items 1 and 2) of what is supposed to happen during the postponement periods for demolition or removal of Class 3 Landmarks and for demolition, removal, or Specified Major Alteration of Heritage Properties should be stated more specifically in the zoning text. (See Policy 2.2 for Landmark class definitions, and Policy 2.5 for Heritage Property provisions.) If a demolition postponement's purpose is for consideration of relocating a building or other facility to another site, the criteria and procedure for consideration will be similar to that in Chapter 5, Action 3.7.1 (Property relocation procedures and design guidelines for properties to be relocated as part of discretionary project approvals).

ACTION 2.1.2: REDESIGNATION OF EXISTING LANDMARK, PRESERVATION DISTRICT AND STUDY LIST PROPERTIES

Redesignate existing landmarks and preservation districts under the new zoning text provisions. Review and, if appropriate, reclassify existing preservation study list properties as Heritage Properties.

The redesignation and reclassification process would be identified concurrently with Action 2.1.1's zoning text changes.

Most existing landmarks would be eligible for redesignation as Class 1 or Class 2 Landmarks (See Policy 2.2 for Landmark and Preservation District class definitions), but the initial redesignations could be as Class 3 to minimize property owner objections to the stronger regulations accompanying Class 1 and 2 designations.

Current regulations for existing preservation districts should probably be retained (without Policy 2.4's streamlined permit procedures and Policy 2.6's preservation incentives) for at least an interim period following the zoning text changes. This would allow time to redesignate each existing district as a Class 1 or Class 2 District.

POLICY 2.2: LANDMARK AND PRESERVATION DISTRICT ELIGIBILITY CRITERIA

Landmarks and Preservation Districts will be classified according to importance, with three classes of Landmarks and two classes of Preservation Districts. Properties eligible for each of these classifications will be as follows:

Class 1 Landmarks: Properties rated "A" under the Landmarks Preservation Advisory Board's "Guidelines for Determination of Landmark Eligibility" (the "Guidelines") and which are on or appear eligible for the National Register of Historic Places.

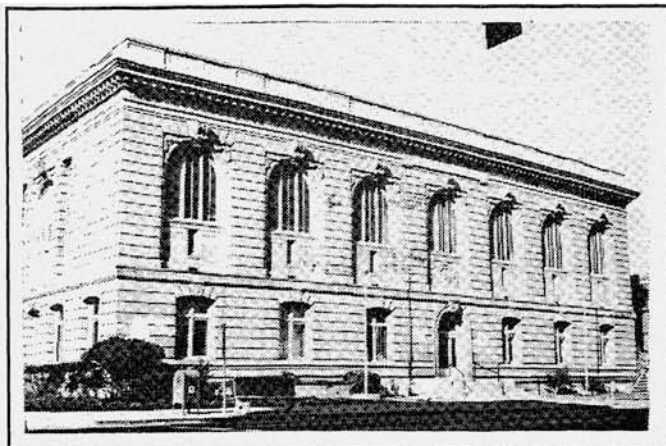
Class 2 Landmarks: Properties rated "B" under the Guidelines and which are on or appear eligible for the National Register of Historic Places; and properties rated "A" under the Guidelines and which are not on and do not appear eligible for the National Register of Historic Places.

Class 3 Landmarks: Properties rated "B" under the Guidelines and which are not on and do not appear eligible for the National Register of Historic Places.

Class 1 Preservation Districts: All Areas of Primary Importance identified by the Intensive Survey plus other areas which meet the "Guidelines for Determination of Preservation District Eligibility".

Class 2 Preservation Districts: All Areas of Secondary Importance identified by the Intensive Survey plus other areas which meet the "Guidelines for Determination for Preservation District Eligibility".

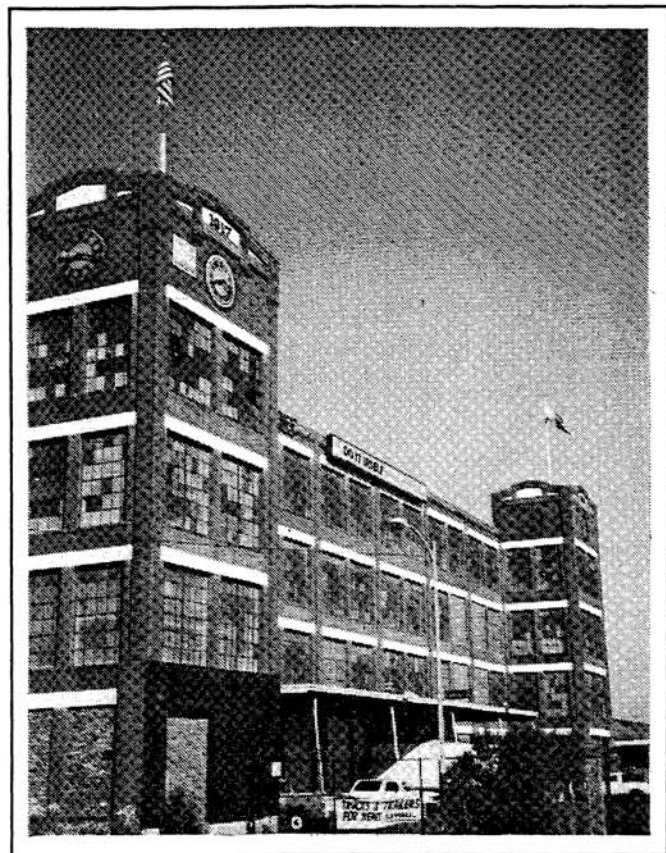
The methodology of the Intensive Survey will be used to determine whether properties appear eligible for the National Register of Historic Places.



Possible Class 1 Landmark: City of Oakland Administrative Annex (originally Main Library, later Charles S. Greene Branch Library) 659 14th Street. Oakland Landmark No. 49. On National Register of Historic Places. Possible "A" under Landmark Eligibility Guidelines.



Possible Class 3 Landmark: Saxtorph House, 1937 8th Avenue. Oakland Landmark No. 105. Possible "B" under Landmark Eligibility Guidelines. Does not appear individually eligible for National Register.



Possible Class 2 Landmarks: Left: California Cotton Mills 1917 Building, 1091 Calcot Place (near I-880 Freeway). Oakland Landmark No. 25. Appears eligible for National Register. Possible "B" under Landmark Eligibility Guidelines.



Right: Former Central Pacific Railroad 7th Street Depot (now Mi Rancho Tortilla Factory and Delicatessen), 464-468 7th Street. Oakland Landmark No. 66. Possible "A" under Landmark Eligibility Guidelines but does not appear individually eligible for the National Register due to alterations (top: original appearance, bottom: present appearance).



Possible Class 1 Preservation District: Old Oakland S-7 Zone. Area of Primary Importance identified by Intensive Survey. Eligible for National Register of Historic Places.



Possible Class 2 Preservation District: South Oakland Point (South Prescott) Neighborhood. Area of Secondary Importance identified by Intensive Survey.

Policy 2.2's hierarchical Landmark and Preservation District classifications enable preservation regulations to be structured in a corresponding hierarchy based on each property's importance -- the more important the property, the greater the weight given to preservation in balancing against other concerns.

Landmark Eligibility and Classification

The existing landmark eligibility criteria at Section 2002(p) of the Zoning Regulations (See Technical Report, Chapter 4, Section F.2.a) are very broad and open to interpretation. The Landmarks Preservation Advisory Board's "Guidelines for Determination of Landmark Eligibility" were partly intended to clarify the criteria and to improve the consistency of landmark eligibility determinations. However, the Guidelines have never been formally reviewed or adopted by the City Planning Commission or the City Council, both of which are required to act on landmark designation proposals. The Guidelines are in Appendix D and discussed in the Technical Report, Chapter 4, Section F.2.b.

Policy 2.2 establishes the Guidelines as the City's official Landmark eligibility determination method. Properties receiving an "A" or "B" Guidelines rating are eligible for Landmark designation.

Preservation District Eligibility and Classification

The Zoning Regulations' existing S-7 Preservation Combining Zone criteria (see Technical Report, Chapter 4, Section F.2.a) are similar to the existing landmark criteria and are subject to the same broad interpretation. Policy 2.2 clarifies the criteria by defining areas eligible for Preservation District designation according to either Intensive Survey results or new "Guidelines for Determination of Preservation District Eligibility" (see Action 2.2.1).

District designations based on the Guidelines rather than on the Intensive Survey will require determinations of the District's class, using Survey or other criteria yet to be defined.

ACTION 2.2.1: GUIDELINES FOR PRESERVATION DISTRICT ELIGIBILITY

Develop and adopt Guidelines for Determination of Preservation District Eligibility.

The Guidelines would supplement the existing "Guidelines for Determination of Landmark Eligibility". The District Guidelines would provide criteria for identifying eligible Preservation Districts in areas not yet covered by the Intensive Survey, and could be based on the Intensive Survey criteria for identifying Areas of Primary and Secondary Importance. (see Table 3-1 in Chapter 3). Actual determination of Preservation District eligibility will be by the Landmarks Board according to Article 4, Sections D and I of the Board's Rules of Procedure (see Technical Report, Appendix F).

POLICY 2.3: LANDMARK AND PRESERVATION DISTRICT DESIGNATION PROCEDURE

- (a) Landmarks and Preservation Districts will be treated as zones pursuant to the Oakland Zoning Regulations and will be designated in the same manner as rezonings. Designation of Landmarks and Preservation Districts may be initiated by the owner(s), the Landmarks Preservation Advisory Board or the City Planning Commission. The City Planning Commission will hold a public hearing and act after either (i) receiving the proposal from the Landmarks Preservation Advisory Board (if initiated by the Board); or (ii) receiving the Board's recommendation on the proposal (if initiated by the owner(s) or Planning Commission). The Planning Commission will forward all recommendations to the City Council which will make the final decision.
- (b) For purposes of preservation regulations, designation will apply only to property exteriors and to specially-designated interiors.
- (c) Property owner notification will be required before Landmarks Board, City Planning Commission or City Council action on Landmark or Preservation District designation proposals. Initial Landmarks Board notification will be by both certified and first class mail. If a property owner does not respond to the first notification attempt, the Board, before acting on the designation proposal, will make a second attempt for that owner in the same manner as the first attempt. However, a second attempt will not be required if the Board determines that an emergency exists. An emergency will exist whenever there is significant reason to believe that immediate demolition, removal or alteration is being considered for the property proposed for designation and that such demolition, removal or alteration would adversely affect the property's Character-Defining Elements.

- (d) If a property owner submits a written objection to a proposed Landmark designation, the designation will be approved only if the City Council determines either that (i) the objection is without substantial merit or (ii) the proposed Landmark is of exceptional significance. Property owner objections to Preservation District designations will be handled on a case by case basis.

Policy 2.3's designation procedure is the same as existing practice, but formalizes and expands owner notification requirements and clarifies the treatment of owner objections.

Treating Landmark and Preservation District designations as a form of zoning affirms Oakland's existing practice, but is somewhat unusual nationwide. Most communities provide such designations as part of an historic preservation ordinance separate from the zoning ordinance. Incorporating these designations within the zoning ordinance eliminates an additional regulatory document, improves coordination of historic preservation and other land use regulations and requires Landmarks and Preservation Districts to be shown on the City's zoning maps along with other zones. Members of the public are thereby routinely informed of whether a property is a Landmark or in a Preservation District when they check the zoning.

The Zoning Regulations now require property owner notification for all rezonings, including landmark or preservation district designations, at the time of City Planning Commission consideration. Notification of property owners and others is also required at the City Council level but only if they have commented previously. In addition, the Landmarks Board's Rules of Procedure provide a very detailed notification process at the time of Board consideration. (See summary of Board procedure for initiation of Landmark or S-7 Zone designation in Appendix E).

Policy 2.3 changes existing notification procedures by requiring owner notification in all cases at the time of City Council consideration and by formalizing the Board's existing notification process.

The Zoning Regulations and the Board's procedures do not address owner objections, but it is expected that the combination of enhanced preservation incentives with streamlined permit procedures (See Policies 2.4, 2.5 and 2.6 and related tables and discussion) will significantly reduce their frequency. Policy 2.3 clarifies the City's treatment of any remaining owner objections.

Responding to owner objections to Preservation District designations on a case by case basis affirms existing practice.

ACTION 2.3.1: CRITERIA FOR DESIGNATING LANDMARKS OVER OWNER OBJECTIONS

Develop and adopt "Criteria for Designating Landmarks Over Owner Objections".

The Criteria will define objections which are "without substantial merit", and properties of "exceptional significance" as these terms are used in Policy 2.3.

POLICY 2.4: LANDMARK AND PRESERVATION DISTRICT REGULATIONS

- (a) **Demolitions and removals involving Landmarks or Preservation Districts will generally not be permitted or be subject to postponement unless certain findings are made. Demolition or removal of more important Landmarks and of most Preservation District properties will normally not be permitted without the required findings, while demolition or removal of less important Landmarks will be subject only to postponement.**
 - (b) **Alterations or New Construction involving Landmarks or Preservation Districts will normally be approved if they are found to meet the Secretary of the Interior's Standards for the Treatment of Historic Properties or if certain other findings are made.**
 - (c) **Findings for approval of demolitions, removals, alterations or New Construction involving Landmarks or Preservation Districts will seek to balance preservation of these properties with other concerns.**
 - (d) **Specific regulatory provisions are set forth in the tables entitled "Demolition and Removal Regulations for Landmarks and Preservation Districts" and "Alteration and New Construction Regulations for Landmarks and Preservation Districts".**
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The tables referred to in Policy 2.4 are Tables 4-1 and 4-2, shown on the following pages. The Secretary of the Interior's Standards for the Treatment of Historic Properties are in Table 4-3 and are discussed in the Technical Report, Chapter 4, Section A.5.

Following is a discussion of the major provisions of Policy 2.4 and Tables 4-1 and 4-2.

Demolition and Removal Regulations

The existing landmark and preservation district regulations only delay demolition or removal for up to 240 days. Table 4-1 prohibits demolition or removal of Class 1 and Class 2 Landmarks, Class 1 Preservation District properties, and contributing or potentially contributing properties in Class 2 Districts unless at least one of several specific findings are made. However, delay of demolition or removal is retained for Class 3 Landmarks, while demolition or removal of noncontributing Class 2 Preservation District properties (now subject to delay) is normally permitted outright (see also "Regulation Streamlining" below).

Table 4-1 has two findings either of which permit demolition or removal of any Landmark or Preservation District property and two additional findings for lower ranking properties.

Secretary of the Interior's Standards

The Secretary of the Interior's Standards for the Treatment of Historic Properties consist of Standards for "Preservation", "Rehabilitation", "Restoration", and "Reconstruction". The Standards underwent major revision in 1990-92 and were previously called "The Secretary of the Interior's Standards for Historic Preservation Projects".

By using the Standards as set forth in Policy 2.4(b) and Table 4.2, Oakland will join many other communities nationwide. Conformity with the Standards is required for historic building rehabilitation projects seeking the 20 percent Federal Investment Tax Credit and is strongly encouraged for projects subject to Section 106 of the National Historic Preservation Act (see Technical Report, Chapter 4, Sections A.2 and A.4). Oakland's use of the Standards will simplify the overall City, State, and Federal approval process for Tax Credit and Section 106 projects by providing one set of standards.

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

(Incorporated by reference into Policy 2.4)

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

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

1. TYPES OF REGULATIONS

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

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

See Notes 1 and 2.

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

- (iii) The design quality of the replacement facility is at least equal to that of the existing facility as determined by the Design Guidelines for Landmarks and Preservation Districts and is compatible with the character of the neighborhood as determined by the Guidelines; or
- (iv) Demolition or removal is necessary to allow the development of a project having public benefits outweighing the benefit of retaining the Landmark.

See Notes 1 and 2.

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

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

See Note 2.

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

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

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

(ii) **Noncontributing properties:**

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

- (A) The existing facility is seriously deteriorated or a blighting influence; or
- (B) The design quality of the replacement facility is at least equal to that of the existing facility as determined by the Design Guidelines for Landmarks and Preservation Districts (Action 2.1.5) and is compatible with the character of the Preservation District as determined by the Guidelines.

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

(e) Class 2 Preservation Districts:

(i) Contributing and potentially contributing properties:

Same as for noncontributing properties in Class 1 Preservation Districts.

(ii) Noncontributing properties:

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

2. DECISION MAKING PROCEDURE

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

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

- (i) The applicant has demonstrated that (A) the property cannot be sold in the open market for a price sufficient to generate a reasonable economic return on the owner's investment in the property, and (B) the property is economically infeasible to move; or
- (ii) The applicant has demonstrated that postponement would result in excessive economic hardship to the owner; or
- (iii) The applicant has demonstrated that the property constitutes a hazard to public safety and is economically infeasible to rehabilitate either on its present site or at any relocation site.

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

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

- (i) That the property be documented and a salvage program instituted; and
- (ii) That, for Class 3 Landmarks, the applicant makes a reasonable effort to sell or move the property.

**TABLE 4-2: ALTERATION AND NEW CONSTRUCTION REGULATIONS
FOR LANDMARKS AND PRESERVATION DISTRICTS**

(Incorporated by reference into Policy 2.4)

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

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

Controls on alterations apply only to exteriors and to specially-designated interiors.

1. TYPES OF REGULATIONS

(a) Class 1 and Class 2 Landmarks:

Major and Minor Alterations¹ and New Construction² are permitted only if either:

- (i) The proposal conforms with the Secretary of the Interior's Standards for the Treatment of Historic Properties; or
- (ii) The Secretary of the Interior's Standards do not legally apply to the proposal, and the proposal will not adversely affect the character of the property as determined by the Design Guidelines for Landmarks and Preservation Districts; or
- (iii) The applicant demonstrates that a special circumstance exists that overrides strict application of the Secretary of the Interior's Standards as determined by said Guidelines; or
- (iv) The applicant demonstrates that the property has no reasonable use or cannot generate a reasonable economic return in the absence of the proposal and that no alternatives are available to obtain such use or return.

(b) Class 3 Landmarks:

Minor Alterations¹ are permitted in all cases, subject to the requirements of other City ordinances. Major Alterations¹ and New Construction² are permitted only if either:

- (i) One of the four findings permitting alterations or New Construction to Class 1 or Class 2 Landmarks can be made (see Item (a) above); or
- (ii) The proposal is necessary to allow the development of a project having public benefits outweighing the public benefit of avoiding adverse effects to the character of the existing property; or
- (iii) The proposal will result in an overall design that is at least equal in quality to the existing design and is compatible with the character of the neighborhood.

(c) Class 1 Preservation Districts:

(i) Contributing and potentially contributing properties:

Same as for Class 1 and Class 2 Landmarks.

(ii) Noncontributing properties:

Same as for Class 1 and Class 2 Landmarks but also if the following additional two-part finding is made:

(A) The proposal will result in an overall design that is at least equal in quality to the existing design as determined by the Design Guidelines for Landmarks and Preservation Districts; and

(B) is compatible with the character of the District as determined by the Guidelines.

This finding does not apply to new construction on vacant parcels.

(d) Class 2 Preservation Districts -- all properties:

Same as for noncontributing properties in Class 1 Preservation Districts.

**TABLE 4-2: ALTERATION AND NEW CONSTRUCTION REGULATIONS
FOR LANDMARKS AND PRESERVATION DISTRICTS (continued)**

2. DECISION MAKING PROCEDURE

Decision is by the Planning Director after receiving a recommendation from the Landmarks Preservation Advisory Board except for: (a) cases limited to **Minor Alterations**¹, and (b) cases involving **noncontributing properties** in Preservation Districts and limited to construction of small accessory facilities or any alteration or addition other than a substantial front addition. However, these cases will be referred to the Board for recommendation at either the Planning Director's option or if such referral is requested by any one Board member. All substantial freestanding new construction and substantial front additions will be referred to the Board.

The Planning Director's decision is appealable by anyone to the City Planning Commission. The Commission's decision is appealable to the City Council.

NOTES:

1. "**Minor Alterations**" consist of the following: (i) frequently changing elements such as signs, awnings, or paint colors which do not have any special historic, architectural, or other interest or do not obscure any existing Character-Defining Element; (ii) nonhistoric site features such as nonhistoric fences and landscaping; and (iii) alterations and New Construction which are not part of a principal facade, not visible from street(s) fronting the property or from other public areas, and not part of a specially-designated interior. All other alterations are "**Major Alterations**."
2. "**New Construction**" consists of additions to existing facilities and construction or establishment of any new facility on any Landmark or Preservation District vacant or developed parcel.

**TABLE 4-3: SECRETARY OF THE INTERIOR'S STANDARDS
FOR THE TREATMENT OF HISTORIC PROPERTIES**

The Secretary of the Interior's Standards for the Treatment of Historic Properties are in four parts: Standards for Preservation, Standards for Rehabilitation, Standards for Restoration and Standards for Reconstruction.

STANDARDS FOR PRESERVATION

Preservation is defined as the act or process of applying measures necessary to sustain the existing form, integrity, materials of a historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction. New exterior additions are not within the scope of this treatment; however, the limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project.

1. A property shall be used as it was historically, or be given a new use that maximizes the retention of distinctive materials, features, spaces, and spatial relationships. Where a treatment and use have not been identified, a property shall be protected and, if necessary, stabilized until additional work may be undertaken.
2. The historic character of a property shall be retained and preserved. The replacement of intact or repairable historic materials or alteration of features, spaces, and spatial relationships that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place, and use. Work needed to stabilize, consolidate, and conserve existing historic materials and features shall be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.
4. Changes to property that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.
6. The existing condition of historic features shall be evaluated to determine the appropriate level of intervention needed. Where the severity of deterioration requires repair or limited replacement of a distinctive feature, the new material shall match the old in composition, design, color, and texture.
7. Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used.
8. Archeological resources shall be protected and preserved in place. If such resources must be disturbed, mitigation measures shall be undertaken.

STANDARDS FOR REHABILITATION

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

1. A property shall 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.
2. The historic character of a property shall be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property shall be avoided.
3. Each 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 elements from other historic properties, shall not be undertaken.
4. Changes to a property that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.

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**TABLE 4-3: SECRETARY OF THE INTERIOR'S STANDARDS
FOR THE TREATMENT OF HISTORIC PROPERTIES (continued)**

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, where possible, materials. Replacement of missing features shall be substantiated by documentary and physical evidence.
7. Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used.
8. Archeological resources shall be protected and preserved in place. 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, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and shall 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 shall be undertaken in a such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

STANDARDS FOR RESTORATION

Restoration is defined as the act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a restoration project.

1. A property shall be used as it was historically or be given a new use which interprets the property and its restoration period.
2. Materials and features from the restoration period shall be retained and preserved. The removal of materials or alteration of features, spaces, and spatial relationships that characterize the period shall not be undertaken.
3. Each property shall be recognized as a physical record of its time, place, and use. Work needed to stabilize, consolidate and conserve materials and features from the restoration period shall be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.
4. Materials, features, spaces, and finishes that characterize other historical periods shall be documented prior to their alteration or removal.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize the restoration period shall be preserved.
6. Deteriorated features from the restoration period 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, where possible, materials.
7. Replacement of missing features from the restoration period shall be substantiated by documentary and physical evidence. A false sense of history shall not be created by adding conjectural features, features from other properties, or by combining features that never existed together historically.
8. Chemical or physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used.
9. Archeological resources affected by a project shall be protected and preserved in place. If such resources must be disturbed, mitigation measures shall be undertaken.
10. Designs that were never executed historically shall not be constructed.

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**TABLE 4-3: SECRETARY OF THE INTERIOR'S STANDARDS
FOR THE TREATMENT OF HISTORIC PROPERTIES (continued)**

STANDARDS FOR RECONSTRUCTION

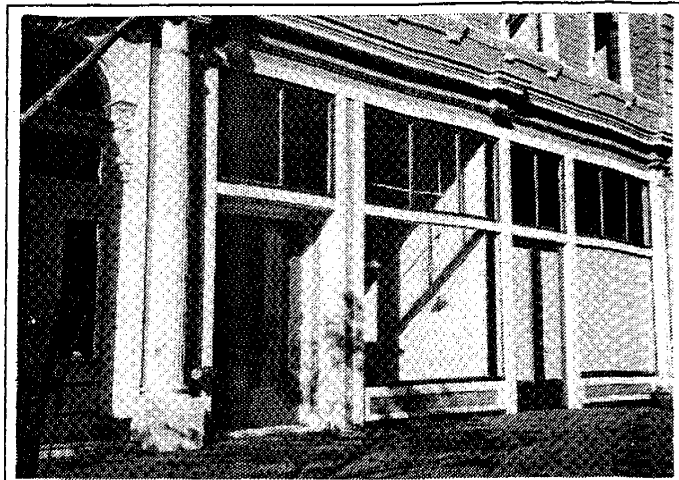
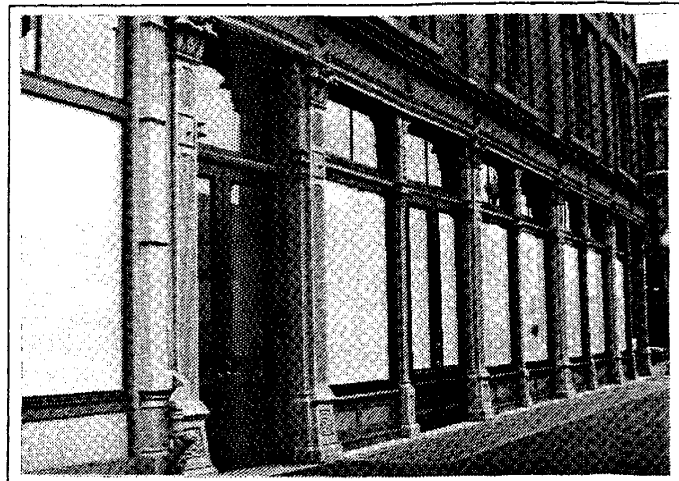
Reconstruction is defined as the act or process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location.

1. Reconstruction shall be used to depict vanished or non-surviving portions of a property when documentary and physical evidence is available to permit accurate reconstruction with minimal conjecture, and such reconstruction is essential to the public understanding of property.
2. Reconstruction of a landscape, building, structure, or object in its historic location shall be preceded by a thorough archeological investigation to identify and evaluate those features and artifacts which are essential to an accurate reconstruction. If such resources must be disturbed, mitigation measures shall be undertaken.
3. Reconstruction shall include measures to preserve any remaining historic materials, features, and spatial relationships.
4. Reconstruction shall be based on the accurate duplication of historic features and elements substantiated by documentary or physical evidence rather than on conjectural designs or the availability of different features from other historic properties. A reconstructed property shall re-create the appearance of the non-surviving historic property in materials, design, color, and texture.
5. A reconstruction shall be clearly identified as a contemporary recreation.
6. Designs that were never executed historically shall not be constructed.

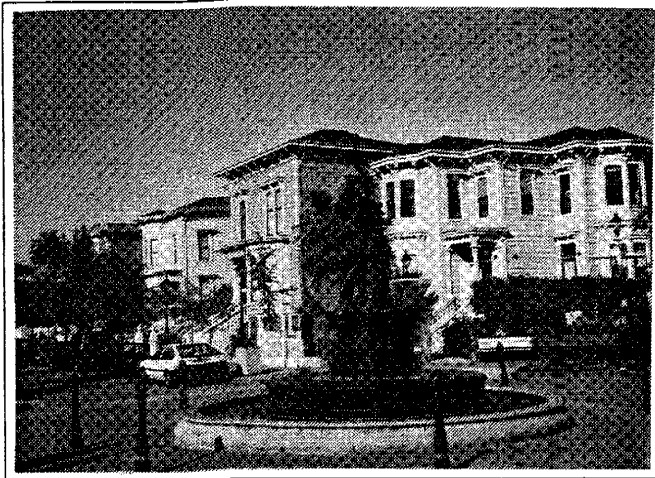
The City believes that conformity with the Standards is not the only way to avoid adverse effects on Landmarks and Preservation Districts. In the past, the City has consistently approved alterations to noncharacter-defining elements or additions which match the style of the existing building but violate the Standards (e.g. Rehabilitation Standard 3) because the design either cannot be documented as an actual historical design or makes minor modifications to the historical design for functional reasons. The Standards consider such changes to create false historical appearances, but it may be appropriate for the City to continue this practice if the work is well done. Finding (ii) of Table 4-2, Item 1(a) therefore does not require conformity with the Standards if they do not legally apply to the project (e.g. the project does not require tax credit or Section 106 reviews) and the project will still not adversely affect the Landmark or Preservation District.

Conformity and nonconformity with Secretary of the Interior's Standards:
Top: Reconstructed storefronts of Snyder Block (LaSalle Building), 491-97 9th Street. Determined by the National Park Service to not conform with the Secretary of the Interior's Standards because of new historicist detailing that cannot be documented as having previously existed on the building, thus creating a false historical appearance. Bottom: Reconstructed storefronts of Wilcox Block Annex (Gladstone Building), 471-75 9th Street. Determined to conform with the Standards; similar to Snyder Block, but without the historicist detailing.

Both designs were approved by the City of Oakland in the 1980s and would also probably be approved under Table 4-2's findings.



In districts, similar violations of the Standards will occur for new buildings designed in one of the district's historical styles and for some moved-on buildings, even when the building is stylistically consistent with the district.



Moved buildings in districts not conforming with Secretary of the Interior's Standards. These moved buildings in Preservation Park were determined by the National Park Service to not conform with the Standards because they had different compass orientations than at their original sites and because the street layout, lamp posts and other site improvements, although partly inspired by late 19th Century designs, were not sufficiently consistent with those designs.

Action 2.4.1's Design Guidelines will identify types of changes which may violate the Standards but normally do not result in adverse effects.

Regulation Streamlining

The streamlined regulations are set forth in Tables 4-1 and 4-2 and should help make Landmark and Preservation District designations more acceptable to property owners.

The streamlined regulations consist of the following:

- **Elimination of mandatory Landmarks Board review of "Minor Alterations" to Landmarks and contributing Preservation District properties and of most alterations to noncontributing Preservation District properties (Table 4-2, Item 2).**

These types of alterations can still be referred to the Board for recommendation at either the Planning Director's option or the request of any one Boardmember. The Board will always be notified when applications for such alterations are filed so that each Boardmember may have the opportunity to request review.

Eliminating automatic Landmarks Board review for these alterations will expedite processing and save applicants the effort of making presentations at Board meetings. The Board will retain its ability to appeal the Planning Director's decisions on all of these cases to the City Planning Commission and City Council. The Board will be promptly notified of the decision so that it will have the opportunity to appeal.

- **Elimination of design review for "Minor Alterations" to Class 3 Landmarks (Table 4-2, Item 1[b]).**

This change will often eliminate the waiting time for City permits, since building permits for Minor Alterations are usually issued immediately or, as with repainting proposals, are not required.

- **Elimination of design review for demolition or removal of noncontributing properties in Class 2 Preservation Districts (Table 4-1, Item 1[e][ii]).**

Although this could adversely affect Class 2 Districts over the short term by allowing removal of noncontributing, but compatible, properties, the replacement facilities will require design review and be required to be compatible with the District.

ACTION 2.4.1: LANDMARK AND PRESERVATION DISTRICT DESIGN GUIDELINES

Develop and adopt design guidelines for Landmarks and Preservation Districts.

The guidelines will be the basis for approving or denying alterations and New Construction permits involving Landmarks and Preservation Districts; they will be based on the Secretary of the Interior's Standards for the Treatment of Historic Properties.

The guidelines will also address three issues referenced in the findings of Tables 4-1 and 4-2:

- (a) what types of alterations or New Construction not conforming with the Secretary's Standards will not adversely affect a Landmark or Preservation District.
- (b) what is "equal" design quality; and
- (c) what is a "special circumstance that overrides strict application of the Standards".

The guidelines will be adopted by the Landmarks Board and City Planning Commission. They will include pictorial examples of design approaches which should be either encouraged or avoided. The guidelines will be similar to, but more stringent than the new "Design Guidelines for Discretionary Permit Approvals" in Chapter 5, Action 3.5.1.

POLICY 2.5: HERITAGE PROPERTIES

- (a) Properties which definitively warrant preservation but which are not Landmarks or Preservation Districts will be eligible as Heritage Properties and may be so designated by either the Landmarks Preservation Advisory Board or the City Planning Commission. Heritage Properties may also be designated by the Director of City Planning, subject to confirmation within 45 days by either the Board or Commission.
 - (b) Owners of properties being considered for Heritage Property designations will receive ample opportunity to comment on designation proposals.
 - (c) Demolition, removal or Specified Major Alterations of Heritage Properties may normally be postponed for up to 120 days.
 - (d) Heritage Properties shall constitute an officially adopted City register or inventory of historically or architecturally significant sites or places as defined by the State Historical Building Code.
 - (e) The Heritage Property eligibility criteria, designation procedure and preservation regulations are set forth in the tables entitled "Heritage Property Eligibility Criteria and Designation Procedure" and "Heritage Property Regulations".
-

The tables referred to in Policy 2.5 are Tables 4-4 and 4-5.

**TABLE 4-4: HERITAGE PROPERTY ELIGIBILITY CRITERIA
AND DESIGNATION PROCEDURE**

(Incorporated by reference in Policy 2.5)

1. HERITAGE PROPERTY ELIGIBILITY CRITERIA

A property is eligible for Heritage Property designation if it either:

- (a) has received an existing or contingency rating¹ of "A" (Highest Importance), "B" (Major Importance), or "C" (Secondary Importance) according to the methodology of the Intensive Survey;
- (b) has received an existing or contingency rating of "A" or "B" from the Reconnaissance Survey; or
- (c) contributes or potentially contributes¹ to any area potentially eligible for Preservation District designation (see Policy 2.2).

2. HERITAGE PROPERTY DESIGNATION PROCEDURE

- (a) Heritage Properties may be designated by either the Landmarks Preservation Advisory Board or City Planning Commission after owner notification and acceptance. Full disclosure of Heritage Property preservation incentives and regulations are provided as part of owner notification. Owners have 60 days to respond to designation proposals. If the owner objects to the designation or does not respond within 60 days, the Heritage Property can be designated by the Board or Commission for a period of time², during which the Heritage Property can be either designated permanently or dedesignated. Owners are notified of such designations and advised of the appeal process set forth in (c) below.
- (b) Permanent Heritage Property designation over owner objections can occur only if the City finds that a special circumstance exists justifying the designation over owner objections.
- (c) Landmarks Board actions on Heritage Property designations are appealable by anyone to the City Planning Commission. Commission actions are appealable to the City Council.
- (d) Heritage Properties can also be provisionally designated by the Planning Director, but the provisional designation must be confirmed within 45 days by either the Landmarks Board or the City Planning Commission according to the procedure in (a)-(c) above. Provisional designations by the Planning Director are effective immediately and are followed within five days by notification to owners including notification of the date of Landmarks Board or City Planning Commission consideration. Owner notification must be at least ten days prior to Board or Commission consideration.
- (e) Heritage Properties may be dedesignated at any time by the Landmarks Board at the property owner's request or at the initiative of the Board. All dedesignations must be based on documentation that the property does not meet the Heritage Property eligibility criteria, unless the designation was to be only for a period of time pursuant to (a) above. The Board's decision is appealable by anyone to the City Planning Commission. The Commission's decision is appealable to the City Council.

NOTES:

- 1. The term "existing or contingency rating" means the two-component rating assigned by the Intensive and Reconnaissance Surveys to properties having conditions or circumstances which could change significantly in the future. The first component ("existing rating") describes the property under present circumstances. The second component ("contingency rating") describes the property under possible future circumstances. See Chapter 4, Section F.5.a.i of the Historic Preservation Element Technical Report for further explanation.

"Existing and potential contributors" to areas potentially eligible for Preservation District designation are defined similarly.

- 2. The specific time period in these cases will be determined as part of the Zoning Regulations amendments implementing this table's provisions (See Historic Preservation Element Action 2.2.1).

TABLE 4-5: HERITAGE PROPERTY REGULATIONS

(Incorporated by reference in Policy 2.5)

GENERAL NOTE: Demolitions and alterations to Heritage Properties are permitted in all cases without the postponements normally provided by this table and may proceed at once if based on a written determination by the Building Official, Housing Official, or their respective appeals boards that the property constitutes an immediate hazard to public safety and that the demolition or alteration is necessary to remove the hazard.

1. DEMOLITIONS AND REMOVALS

Demolition and removals of Heritage Properties may be postponed for up to 60 days by the Planning Director, with a possible 60-day extension.

During the postponement period, the City will:

- (a) consider designating the property a Landmark or including the property in a Preservation District; and/or
- (b) investigate means to preserve the property, including moving the property to another site (except for properties already proposed for relocation and contributing to areas eligible as Preservation Districts) and selling the property to a new owner who will preserve it.

The possible 60-day extension applies only if the Planning Director determines that substantial progress is being made to preserve the property or if Landmark or Preservation District designation has been initiated during the first 60-day period.

2. SPECIFIED MAJOR ALTERATIONS

Specified Major Alterations to Heritage Properties not requiring any Design Review approvals (including Special Residential Design Review approvals or exemptions) may be postponed for up to 60 days by the Planning Director with a possible 60-day extension in the same manner as for demolitions or removals. The postponement and possible extension will be subject to the same conditions as for demolitions and removals. The City will take the same actions during the postponement period as for demolitions and removals.

Specified Major Alterations include but are not necessarily limited to:

- (i) Major changes to surface materials, such as covering or replacing one kind of siding with another;
- (ii) Removal of structural elements (such as bay windows or porches) or architectural detailing;
- (iii) Changes to the shapes and locations of windows or other openings; or
- (iv) Structural additions.

The Heritage Property designation replaces the preservation study list. Major differences between Heritage Properties and the study list are:

Purpose

The Zoning Regulations state that the study list consists of facilities "under serious study" by the City Planning Commission, Landmarks Board or Director of City Planning "for possible landmark designation... or for other appropriate [preservation] action...". Issuance of a demolition permit for a study list property may be postponed for up to 60 days to allow time to explore preservation alternatives, such as: landmark or preservation district designation; encouraging the applicant to reconsider the demolition proposal; arranging the sale of the property to a new owner who will preserve it; City acquisition using eminent domain if necessary (see Policy 3.4); or, where applicable and appropriate, moving the facility to another site.

The purpose of the Heritage Property designation is similar, but more explicit: (a) a formal declaration by the City that a property has some historical, architectural, or aesthetic value and definitively warrants at least some preservation effort and (b) provision of a minimal level of regulatory protection. This reflects what is now frequent but not formally adopted study list practice.

Augmented Development Regulations

The Heritage Property designation allows the study list's 60-day demolition postponement to be extended for an additional 60 days (resulting in a potential postponement period of up to 120 days) and expands the postponement to removals and certain large-scale alterations, called Specified Major Alterations. Examples of Specified Major Alterations are shown in Figure 4-1 on the next page.

The additional 60 days will allow completion of Landmark or Preservation District designations without requiring the Landmarks Board (which normally meets only once a month) to hold a special meeting. However, if the City determines that a Heritage Property does not warrant any further preservation action, the total postponement period could be very brief.

Applying the postponement to Specified Major Alterations recognizes that such alterations can often impact a property's Character-Defining Elements as adversely as demolition.

More Limited Eligibility Criteria

The study list has no specific restrictions on eligibility; a property must only be under serious study for preservation action, as discussed under "Purpose" above. However, Heritage Properties are limited to properties which could be eligible for Landmark or Preservation District designation.

FIGURE 4-1: HERITAGE PROPERTY REGULATIONS--SPECIFIED MAJOR ALTERATIONS.

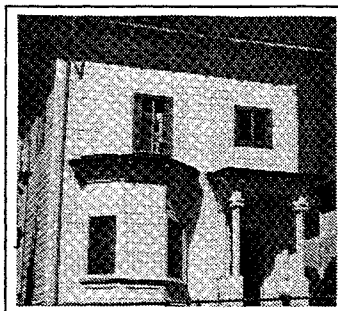
Shown below are examples of the four types of Specified Major Alterations listed in Table 4-5:

(i) Major changes to surface materials, such as covering or replacing one kind of siding with another:



Bowles Building, 1713-21 Broadway/1712-20 Telegraph Avenue. Right side with original Art Deco terra cotta upper floor. Left side covered with stucco. Window shapes also changed.

(iii) Changes to shapes and locations of windows or other openings:



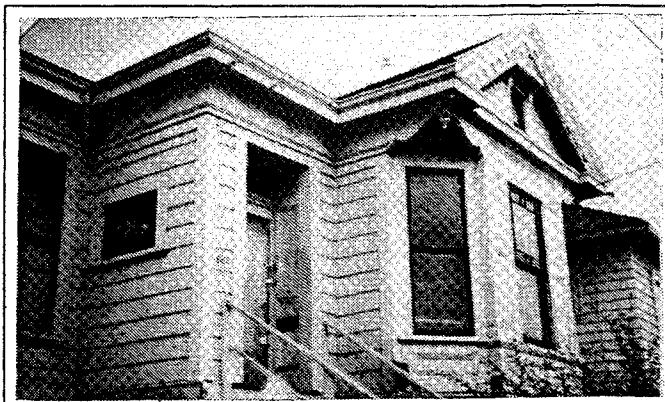
Italianate Victorian house with original tall wood double-hung windows either infilled entirely or replaced with a combination of smaller aluminum sliding windows and infill.

(ii) Removal of structural elements (such as bay windows or porches) or architectural detailing:



Former Oakland Point Firehouse, 1681 8th Street. Oakland Landmark No. 37. Left: As originally built. Right: Present appearance with cornice, parapet and other detailing removed. Doors also replaced.

(iv) Structural additions:



Top: before. Bottom: after. Major two story addition at left of original building. Original siding also covered over, windows changed and detailing removed.

Under the Heritage Property regulations, Specified Major Alterations can be postponed for up to 60 days, with a possible 60 day extension. As indicated in Table 4-5, the Specified Major Alterations identified in the Heritage Property regulations may not be limited to the above four types.

Changes to Designation Process

A property can now be added to the study list by the Landmarks Board, City Planning Commission or Planning Director with no legally required notification to the owner; however such notification is, in practice, provided by the City after the property is listed.

Heritage Properties can be permanently designated only by the Board or Commission, require owner notification prior to Board or Commission consideration, and have a more formal designation and appeal procedure. Policy 2.5(a)'s provision allowing the Director of City Planning to provisionally designate a Heritage Property subject to Board or Commission confirmation is mostly intended for emergency situations, such as where an application for demolition, removal or Specified Major Alterations has already been filed, but the permit has not been issued.

The "special circumstances" referred to in Table 4-4, Part (2)(b) justifying permanent Heritage Property designations over owner objections will be identified as part of the Zoning Regulations amendments implementing the Element's preservation regulations and incentives (Action 2.1.1).

Official Register or Inventory as Defined by the State Historical Building Code

Considering Heritage Properties to be such a register or inventory makes them eligible for the State Historical Building Code (See Action 2.6.10 and Technical Report, Chapter 4, Section D.3). The City has not generally considered the study list to constitute such a register or inventory.

POLICY 2.6: PRESERVATION INCENTIVES

(a) Landmarks and all properties contributing or potentially contributing to a Preservation District will be eligible for the following preservation incentives:

(i) Mills Act contracts for reducing property tax assessments;

(ii) State Historical Building Code and other related alternative codes for older buildings such as the Uniform Code for Building Conservation (UCBC), to provide more flexible construction standards;

(iii) conservation easements to reduce property tax assessments and, for National Register properties, to obtain income tax deductions;

(iv) broader range of permitted or conditionally-permitted uses;

(v) transferable development rights;

(vi) priority for economic development and community development project assistance and eligibility for possible historic preservation grants for low-income housing;

(vii) eligibility for acquisition, rehabilitation, and other development assistance from a possible historic preservation revolving fund or possible Marks historical rehabilitation bond program; and

(viii) fee waivers or reductions for City permits for demolition, new construction, or alterations.

(b) Compatible new development on vacant noncontributing Preservation District parcels will be eligible for Incentives (iv), (v), (vi) and (vii). Heritage Properties will be eligible for incentives (ii), (vi) and (vii).¹

The incentives are discussed in the text accompanying Actions 2.6.1 - 2.6.12.

The incentives are expected to encourage greater property owner acceptance of Historic Property designations and of the accompanying development regulations. All of the incentives offer some tangible economic benefit to owners. For some incentives, such as transferable development rights and Mills Act contracts, the potential benefit can be very substantial.

The incentives are also expected to encourage more owners to actively engage in the preservation of their properties and to request Landmark or Preservation District designation in order to obtain the incentives.

1. Note: Policy 3.3 requires that in order for a Heritage Property to receive Incentives (vi) and (viii), the Heritage Property in exchange for these incentives must either be designated as a Landmark, included in a Preservation District, or be subject to protective covenants with provisions similar to those for Landmarks and Preservation Districts except for projects which are small scale or do not change exterior appearance.

ACTION 2.6.1: MILLS ACT CONTRACTS

Adopt a Mills Act contract program to reduce property tax assessments for Landmarks and Preservation Districts .

The Mills Act allows reductions of property tax assessments for historic properties if the owner signs a contract with the local government agreeing to preserve the property, maintain its historic characteristics, and, if necessary, restore the property. Properties eligible for Mills Act contracts are those listed on the National Register of Historic Places, located in a "registered historic district" (see Technical Report, Chapter 4, Section A.4) or listed in any city or county "official register of historical or architecturally significant sites, places, or landmarks." The contracts are for ten-year periods with automatic annual renewals unless either party chooses not to renew.

For contracted properties, property tax assessments are calculated on capitalization of income based on the property's present use, rather than possible higher and better uses and are frozen during the contract period. The effect of the contracts, therefore, is often to reduce property taxes in return for preventing a property from being developed to a higher intensity. Since the frozen property tax assessment remains in place if the property is sold, the buyer avoids any increases in property tax assessments that would normally be triggered by the sale.

A Mills Act program will require both a procedure for establishing contracts and a standard contract format. Existing programs in other communities could be used as models.

See Technical Report, Chapter 4, Section D.4 for further discussion of Mills Act contracts.

ACTION 2.6.2: CONSERVATION EASEMENTS

Establish procedures for City acceptance of conservation easements for Landmarks and Preservation Districts.

Conservation easements (also called preservation easements or facade easements) can, like Mills Act contracts, provide property tax reductions and, for National Register properties, income tax deductions. The easement can be granted to a government agency or a nonprofit historic preservation organization and allows the grantee to require the owner to preserve the property in perpetuity.

The City's easement acceptance procedures should include a standard format for easement recordation and criteria for determining the portions of the property to be included in the easement.

A list of City easements should be available at the permit counters. The easements should also be shown on the Zoning Maps and included in the proposed citywide land-use database (see Action 5.1.7). See Technical Report, Chapter 4, Section A.6 for further discussion of conservation easements.

ACTION 2.6.3: TRANSFERABLE DEVELOPMENT RIGHTS

Amend the Zoning Regulations to provide transferable development rights to Landmarks and Preservation Districts and to establish areas where properties are eligible to receive transferred development rights. Investigate establishing a marketing mechanism for transferable development rights.

Transferable development rights (TDRs) are provided to property owners under zoning or other development laws and allow owners to sell or transfer the unused development potential of their parcel to other parcels, increasing the development potential of the receiving parcel above that which would otherwise be allowed. TDRs are usually defined as the difference between the potential floor area allowed on a parcel under the existing zoning and the floor area of the existing improvements. However, TDRs can also be used to transfer additional uses to parcels where, without TDRs, the uses would not be permitted.

In Oakland, TDRs would generally be of greatest value to low-density buildings in high-density areas experiencing major growth pressure. TDRs may also be valuable to large, campus-like properties with large amounts of potentially developable open space.

TDRs have been incorporated into numerous preservation ordinances nationwide, but few TDRs have actually been sold. A major reason appears to be the lack of central TDR marketplaces where developers interested in building projects within TDR receiving zones can go to buy TDRs. A TDR program which has achieved some success is operated by the California Coastal Conservancy and provides such a marketplace in the form of a land trust.

Following is an outline of a possible historic preservation TDR program in Oakland. The program is designed to overcome the marketing problems of most other TDR programs.

- a) Issue TDRs to Landmarks and properties contributing or potentially contributing to Preservation Districts. Issue the TDRs at the time of Landmark or District designation. Also issue TDRs at the time of approval of New Construction on vacant noncontributing Preservation District parcels, if the construction is compatible with the District as determined by Policy 2.4, (Table 4-2, Item 1[c][ii]). The TDRs would equal the amount of floor area allowed on the Landmark or Preservation District parcel which exceeds the existing or (for unbuilt, but approved New Construction projects) approved floor area.
- b) Identify areas capable of absorbing density increases through TDR transfers. Designate these areas as TDR receiving zones. Within these zones, allow density increases with a Conditional Use Permit based on acquired TDRs.
- c) Establish a Conditional Use Permit procedure for granting density increases and possibly a broader range of uses in TDR receiving zones using TDRs.
- d) Establish a land trust to serve as a TDR marketplace. Investigate using nonprofit organizations such as the Trust for Public Land as the land trust.

The above program is based on the recommendations made in "A Preservation Strategy for Downtown San Francisco", prepared by John M. Sanger Associates for the Foundation for San Francisco's Architectural Heritage in November, 1982. These recommendations were the basis for the TDR provisions in San Francisco's Downtown Plan.

See the Technical Report's discussion of this action for additional information on TDRs.

ACTION 2.6.4: LIMIT EXISTING CONDITIONALLY-PERMITTED ADDITIONAL USES FOR HISTORIC PROPERTIES TO LANDMARKS AND PRESERVATION DISTRICTS

Amend the Zoning Regulations to limit Consultative and Financial Service Commercial Activities now conditionally permitted in the R-70, R-80, and R-90 Zones for "architecturally or culturally significant" buildings to Landmarks, properties contributing or potentially contributing to Preservation Districts, and compatible New Construction on vacant noncontributing Preservation District parcels.

Sections 3811, 3861(b), and 3911 of the Zoning Regulations conditionally permit Consultative and Financial Service Commercial Activities (e.g. financial, insurance and real estate brokerage services and professional consultants) in the R-70, R-80, and R-90 Zones if, among other things, the proposal preserves an existing "architecturally or culturally significant" building or "substantially contributes to the livability of abutting properties and the surrounding neighborhood".

Action 2.6.4 clarifies the phrase "architecturally or culturally significant" buildings to mean Landmarks and certain Preservation District properties. This will increase the importance of obtaining Landmark or Preservation District designation for developers wishing to introduce Consultative and Financial Service Commercial Activities in the R-70, R-80, or R-90 Zones and encourage compatible new development on vacant noncontributing parcels in Preservation Districts.

ACTION 2.6.5: ADDITIONAL CONDITIONALLY-PERMITTED USES FOR LANDMARKS AND PRESERVATION DISTRICTS

Investigate additional zoning amendments to broaden the range of conditionally-permitted activities for Landmarks and Preservation Districts in certain zones.

The new conditionally permitted activities would supplement the conditionally permitted Consultative and Financial Service Commercial Activities discussed in Action 2.6.4. Possible examples of the new activities include bed and breakfast accommodations and small restaurants in certain high density residential zones. However, these uses would be approved only if they did not adversely affect the area's character.

ACTION 2.6.6: PRIORITY DESIGNATED TO HISTORIC PROPERTIES FOR CITY DEVELOPMENT ASSISTANCE

Amend/develop economic development and community development project selection criteria to give priority to historic preservation projects involving Designated Historic Properties and for compatible New Construction on vacant noncontributing Preservation District parcels. Investigate Historic Preservation Grant Program for low-income residential Designated Historic Properties.

This action relates to Action 3.6.1's evaluation and selection procedure for City-sponsored or assisted projects. Giving priority to economic development and community development projects which preserve or enhance Designated Historic Properties will be one component of this procedure.

For community development projects, priority to historic preservation projects will be assigned only if the other evaluation factors between competing projects are equal. For residential rehabilitation projects, these factors will include the condition of the property (work to correct health and safety hazards is normally a priority) and the degree of the owner's need for assistance.

A residential historic preservation rehabilitation grant program should be investigated. The grants would supplement the City's residential rehabilitation loans and, like the loans, be limited to projects benefiting low-income residents. The grants would pay for any increased rehabilitation cost due to preserving existing Character-Defining Elements or for restoring missing or altered Character-Defining Elements.

All Designated Historic Properties eligible for residential rehabilitation loans would also be eligible for the grants, but due to funding limitations, it may be necessary to limit the grants only to the more important properties. Potential Designated Historic Properties would also be eligible for the grants if the owner agreed to apply for and obtain the highest Designated Historic Property status for which the property was eligible.

ACTION 2.6.7: HISTORIC PRESERVATION REVOLVING FUND

Study the feasibility of establishing a historic preservation revolving fund to be financed by tax increments, community development funds, or other sources to assist acquisition, rehabilitation, and, where necessary, relocation of Designated Historic Properties.

The revolving fund would provide loans to property owners and developers, but could also be used to finance purchase and rehabilitation by the City, followed by resale.

Establishing a revolving fund, rather than funding projects on a case-by-case basis, would assure that a source of funding is available when specific historic preservation projects are proposed. The fund would also facilitate projects which require funding on short notice, such as for properties which must be repaired immediately to correct conditions hazardous to public safety (see Policy 3.12 and related actions).

ACTION 2.6.8: MARKS BONDS

Investigate establishing a Marks historical rehabilitation bond program for acquisition, rehabilitation, and, where necessary, relocation of Designated Historic Properties.

Marks bonds can be issued by local governments to provide land for the acquisition, relocation, reconstruction, restoration, renovation or repair of historic properties.

Since the interest rates on Marks bond loans are similar to bank interest rates, the bonds appear to be most useful for projects which private lenders may be reluctant to finance, such as repair of earthquake-damaged buildings and seismic retrofit of unreinforced masonry buildings.

The bonds could be used to help finance the historic preservation revolving fund (Action 2.6.7 above), but, because they would typically be for long-term loans, they should probably be a separate program.

See Technical Report, Chapter 4, Section D.5 for further discussion.

ACTION 2.6.9: WAIVERS AND REDUCTIONS OF PERMIT FEES

Extend existing design review fee waivers for Landmarks to properties contributing or potentially contributing to Preservation Districts and for compatible New Construction on vacant noncontributing parcels in Preservation Districts. Investigate waiving or reducing building permit fees for design review applications involving these properties.

The City Planning Department now waives all design review permit fees for Landmarks. This practice should be extended to properties contributing or potentially contributing to Preservation Districts since these properties are subject to essentially the same development controls as Landmarks. Waiving or reducing building permit fees for work requiring design review should also be investigated.

Since permit fees pay the City's permit processing costs, any further fee reductions will require alternate funding sources. Possible sources include the general fund and, within redevelopment areas, tax increments.

ACTION 2.6.10: STATE HISTORICAL BUILDING CODE

Issue an Administrative Instruction directing application of the State Historical Building Code to Designated Historic Properties, and other qualified historical buildings.

The State Historical Building Code (SHBC) allows alternative methods of construction which are often less costly and intrusive than those normally required under current building codes, while still providing a reasonable level of safety. The SHBC and related alternative codes for older buildings are described in the Technical Report, Chapter 4, Section D.3.

For building, electrical, plumbing, and mechanical permits the Building Services Department has been making the SHBC available administratively to National Register properties, State Historical Landmarks, State Points of Historical Interest, Oakland landmarks, and properties contributing or potentially contributing to preservation districts. However, this administrative application is not formalized.

Additionally, under the Earthquake Repair Ordinance, the SHBC is available for repair of earthquake-damaged buildings which have been rated "A" or "B" by the Intensive Survey and are on the preservation study list, (see Technical Report, Chapter 4, Section G.3). Policy 2.6 further extends the SHBC to all Heritage Properties.

Action 2.6.10's Administrative Instruction will ensure implementation of Policy 2.6's SHBC provisions by all City departments which work with building codes, such as the Fire Prevention Bureau (Oakland Fire Code) and the Code Compliance Section (Oakland Housing Code).

**ACTION 2.6.11: STATE HISTORICAL BUILDING
CODE INFORMATION SHEET**

Prepare State Historical Building Code information sheet.

Many building owners, architects, and contractors are not familiar with the SHBC. The information sheet would help remedy this problem. Since some projects might not be economically feasible without the SHBC, encouraging SHBC use could stimulate projects which might not otherwise be built.

The sheet will summarize SHBC provisions and be displayed at the Central Permit, Zoning, Fire Prevention and Code Enforcement counters. In addition, the Building Services Department's informational brochure "Construction Permits in the City of Oakland" will be revised to mention the SHBC.

**ACTION 2.6.12: STATE HISTORICAL BUILDING
CODE INTERPRETATIONS**

Develop interpretations of selected State Historical Building Code provisions which are discretionary or ambiguous.

Some SHBC provisions give the City's Building Official significant discretion for applying each provision to a particular project. Also, some SHBC provisions are ambiguous, such as what constitutes fire or life safety considerations which would override the SHBC in certain situations, and whether the SHBC allows or mandates reduction in the maximum force levels related to wind or seismic loads.

Under Action 2.6.12, the Building Services Department would issue Code Interpretation Bulletins clarifying frequently used SHBC provisions that are discretionary or ambiguous.