



Historic Resources Board Staff Report

From: Planning and Development Services Director
Lead Department: Planning and Development Services

Meeting Date: December 14, 2023
Report #: 2311-2270

TITLE

Discussion of Protocols for Notices of Palo Alto Inventory Nomination Meetings and Expectations in Advance of the January 25, 2024 HRB Meeting Regarding Making Recommendations Following Receipt of Objection Letters

RECOMMENDATION

Staff recommends that the Historic Resources Board (HRB) discuss protocols and expectations for this nominations process, including the following potential discussion topics:

1. Processing objections received after the November 9, 2023 HRB nominations
2. Protocols of other Certified Local Government (CLG) cities with respect to nominations
3. Expectations for the January 25, 2024 HRB meeting; for this topic, staff recommends the HRB:
 - (a) Establish a protocol for the January 25, 2024 HRB meeting, when the HRB will receive a presentation of properties found eligible for the National Register, California Register, and local inventory, but for which staff received owners' objections prior to the January 25, 2024 HRB hearing
 - (b) Acknowledge the HRB's ability to affirm the continuing eligibility of properties for the local inventory based on the local criteria set forth in the nomination memos, and
 - (c) Affirm that the HRB would not recommend that Council place properties on the local historic inventory 'over the expressed objections of property owners'

Further, staff suggests the HRB discuss a February date for an evening community meeting to further discuss the reasons given for objections to local inventory listing, review Palo Alto's historic preservation incentives, and recommend the City explore establishing additional incentives for historic preservation. Property owners who have stated the City's historic preservation incentives are not compelling enough may wish to participate in helping the City to improve upon the existing historic preservation incentives.

BACKGROUND

Certified Local Government

Palo Alto is a Certified Local Government (CLG); this carries responsibilities under our certification agreement with the State Office of Historic Preservation (OHP), such as providing an annual report to

the state Office of Historic Preservation. Frequently asked questions are found on the OHP's webpage here: https://ohp.parks.ca.gov/?page_id=24494. Because the City files timely annual reports each year, Palo Alto qualifies for grants to offset the costs of our historic program.

2023 Historic Resources Reconnaissance Survey Project

The 2023 Historic Resources Reconnaissance Survey project is the implementation of policies and programs in Palo Alto's Comprehensive Plan, which Council adopted in December 2017. Council gave staff and the HRB direction to proceed with policy implementation and this effort has been noted as a goal on the HRB's work plan for several years. Properties recognized as an "eligible" historic resource for the National Register in the Palo Alto's 1997-2001 historic survey were re-evaluated during the 2023 survey to review eligibility for the Palo Alto Inventory (Local Register). The properties that continued to demonstrate eligibility as historic resources are now in a process for nomination to the Palo Alto Inventory.

National Register Eligible Properties with Single Family Residential Zoning

There are still 154 properties remaining with integrity from the 165 properties found eligible for the National Register during Palo Alto's 1997 - 2000 historic survey. Approximately 57% or 88 of these 154 properties that still exist/have integrity are zoned single-family residential (R1, R1 (10,000 (reflecting minimum lot size in square feet), or RE); these single-family zoned properties are currently eligible for streamlined, ministerial development under the State legislation SB 9 because they are not formally listed on the City's local inventory, California Register, nor on the National Register. This has been noted as a catalyst for the commencement of this survey project, since SB 9 projects are ministerial projects exempt from the California Environment Quality Act (CEQA), and therefore will not receive historic resources review prior to demolition¹.

Non-Single Family Residential, National Register Eligible Properties

Depending on a project's scope and zoning designation, a project may be subject to (1) ministerial permit review or (2) discretionary review. The non-single-family zones of the National Register eligible properties are R-2, RM-20, RM-30, RM-40, RMD (NP), RT-35, CD-C (P), DHS, RE, AMF, AMF (MUO), CC-2(R)(P), CDC(GF)(P), HD, PC, PF, PF(D). Development of duplexes is subject to ministerial permits, not discretionary review. Development of three or more residential units on multiple-family residential zoned properties is subject to discretionary review, typically the Architectural Review process, or, in some cases, a more streamlined review. Development in the Commercial (C) districts, HD, PC, and PF zones is also subject to discretionary Architectural Review process. The SOFA 2 CAP properties (RT-35, DHS, AMF, AMF(MUO) have specific regulations, benefits, and discretionary review requirements. All discretionary review projects on these properties found eligible for State and National Registers are reviewed for potential impacts under CEQA. As per the OHP description, historical resources are considered part of the environment and a project that may cause a substantial adverse effect on the

¹ Information related to SB9 is available at the SB9 California H.O.M.E. Act webpage: <https://focus.senate.ca.gov/sb9>

significance of a historical resource is a project that may have a significant effect on the environment. The definition of "historical resources" is contained in Section 15064.5 of the CEQA Guidelines².

Notification and Setting Expectations

As noted in the property nominations staff report for December 14, 2023, staff sent certified letters³ to owners of those properties regarding the meeting and modified the letter as well. Concern was previously expressed by several owners of properties presented in the November 9th packet, regarding the need to clarify expectations regarding the upcoming January 25, 2024 HRB meeting. Some owners expressed concern that they were forced to participate in a study and process where there are concerns for their properties.

The published schedule⁴ for HRB consideration of eligible properties, a document titled "Property Groupings for HRB Nomination Hearings" is viewable on the City's project page. The schedule has all addresses listed and viewers can click on each address to see nomination forms, completed DPR forms from the 1997-2000 survey and in some cases, Historic Resource Evaluations completed more recently. The addresses were grouped by their eligible criteria(s) and nominations. A summary is provided below for reference.

HRB Hearings Held on/Scheduled for:

- November 9, 2023 Association with Events and Architecture
- December 14, 2023 Association with Events or for their Architecture
- January 11, 2024 Association with Persons, were found eligible for the California Register through individual historic resource evaluations, or are the site of an ongoing or previously approved project

DISCUSSION

Objections

Staff recommend that the HRB discuss and determine whether to treat owner objections as dispositive or as one of several factors in deciding whether to recommend local listing. PAMC 16.49, Historic Preservation, is silent on what the HRB and Council should do when staff has received objections from property owners, and property owners have expressed anxiety regarding what might happen without this clarity in the code. Staff and the consultant have cited the example of the State of California; when presented with objections, the State will not list a property on its register 'over the objections of property owners'. The State Historic Resources Commission (SHRC) Procedure is:

- The SHRC hears and votes on properties to be listed to the National Register and California Register. The SHRC reviews groups of properties together within a hearing structure that

²Office of Historic Preservation. CEQA Basics available at: https://ohp.parks.ca.gov/?page_id=21721

³ Link to letter sent certified mail: https://www.cityofpaloalto.org/files/5e73607e-5ab9-44da-aa65-89f1a2a986cb/Nomination-Notification-Letter_12.14.2023.pdf

⁴ Link to schedule <https://www.cityofpaloalto.org/files/assets/public/v/1/planning-amp-development-services/historic-preservation/historic-inventory/property-groupings-for-hrb-hearings-hyperlinked.pdf>

includes staff presentations, questions from the SHRC, call for public comment, and a final deliberation and single vote on the properties presented as a group.

- As the SHRC will have reviewed the nomination forms ahead of the hearing, individual properties are not typically discussed in depth; this aids in the SHRC's ability to recommend multiple properties for designation within one hearing.
- However, if a particular property faces owner opposition or has some other need that requires individual attention, it is removed from the group and placed as an individual item at the end of the hearing agenda for additional discussion.

Staff are receiving objections to nominations from property owners, and a group of realtors submitted a general letter; many of these were also sent to the HRB and City Council. At the time this staff report was scheduled for publication (one week before the meeting), staff had received 42 objection letters associated with the properties in the November 9 HRB packet (32 objections received prior/during the HRB meeting, and ten objections received after the November 9 meeting). Staff recently received 14 objection letters for properties previously scheduled for HRB consideration on December 14 and January 11 meetings.

When staff has received an objection, whether by email, letter, or visit to the Development center, staff completes the following. First, the owner is informed of that the objection has been received and recorded. Secondly, a copy of the Nomination Memo with the DPR is provided as a record. If questions have been posed by the owner, staff provides a response and offers a follow up phone call or meeting. Lastly, staff informs that the objections properties would ultimately be considered by the HRB during its meeting on January 25, 2024, including the properties the HRB already nominated on November 9. Staff intends to carefully review all objection letters and compile a report on these objections for the January 25, 2024 HRB meeting. To date:

- All objections received prior to or during the scheduled HRB meetings result in removal of those property addresses from the groups the HRB considers on 11-9, 12-14 and 1-11; consideration of these properties is deferred to the January 25 HRB meeting.
- Objections were received after the 11-9 HRB meeting during which the HRB nominated the properties; staff informed those owners the HRB would re-consider the properties on the January 25th HRB meeting date.

Objections – Technical Assistance from the Office of Historic Preservation (OHP)

OHP published Technical Assistance Bulletin #14⁵, on crafting effective preservation ordinances. Staff has reviewed this bulletin; owner consent information begins on page 30 under the heading 'Designation Procedures: Owner Consent'; a portion of pages 30 and 31 are excerpted below:

A number of existing preservation ordinances allow property owners to object to historic designation, potentially exempting those properties from the community's preservation program. Most owner consent provisions take one of three basic approaches. Some give owners an absolute veto over designation if they file a written objection, an approach currently reflected in federal designations for the National Register of Historic Places. A variation prohibits designation without affirmative, express consent of a historic property owner or a majority of owners in a proposed district. These two approaches are generally thought of as involving "owner consent." A third variety requires a supermajority vote of the governing

⁵ link to OHP TAB #14: <https://ohp.parks.ca.gov/pages/1069/files/14%20ordinances.pdf>

body for designation if an owner or majority of owners object – so called “owner objection” or “protest” provisions.

[. . .]

Practical experience around the country shows that it is difficult to craft an effective historic preservation program if owner consent is required. Inevitably, the city will lose significant structures or deleterious alterations will be made. However, in some cases, practical and political considerations may dictate that owner consent provisions be present in order to ensure passage of a preservation ordinance.

[. . .]

The challenge is to balance preservation goals and the needs of the community as a whole with the need to bring landowners into the preservation process in a positive fashion. The vast majority of preservation ordinances nationwide wisely avoid any type of owner consent provisions. But, again, they may sometimes be necessary for political reasons.

Objections - Other CLG Cities’ Protocols for Listing

In addition to reviewing information from the OHP bulletin, staff captured a CLG List-serve discussion regarding property owner consent prior to listing. The below table shows information from nine CLG cities and two CLG counties. Staff added Mountain View to this table because Mountain View is in a similar process currently. The two counties (unincorporated county areas) require owner consent to list on their registers. Eight of the nine CLG cities who responded list properties over owner objections.

City/County	Owner consent required for individual Landmark designation?	Code/Council Action
Berkeley	No	The LPO (BMC 3.24.120) does NOT require the property owner’s consent to initiation a Landmark or Structure of Merit consideration for an individual property/site. However, in order to initiate a district, a majority of the owners or residents must “sign off” on the initiation.
Burbank	Yes	Owner consent prior to designation
Long Beach	No	The City of Long Beach does not require owner consent. If the nomination is adverse to the owner’s wishes however our ordinance sets out some additional meeting and discussion requirements but at the end of the day the City Council can still impose landmark status. I believe this balance is best practice across many cities.
Monterey	Depends	The Monterey ordinance distinguishes between its most important historical resources (called “landmarks”) and other historical resources; the former (called H-1 resources) may be designated without owner consent, while the latter cannot."
Mountain View	No	https://www.mountainview.gov/our-city/departments/community-development/planning/development-projects/historic-preservation-and-register-update?locale=en Owner can appeal listing within 6 months

Pomona	Yes - for single-family homes	For non-residential structures, City Council can override property owner objection with a 5/7's majority vote provided a finding can be made that the structure is of unique value and of special interest to the entire community. For Historic Districts, 50% plus one owner must not oppose the request in order for the designation to move forward. If there is enough owner support for designation, individual owners may still request that their property be exempted from the district.
Sacramento	No	12-10-19 1400 properties listed, most within existing historic districts. Many were listed over objections.
City/County	Owner consent required for individual Landmark designation?	Code/Council Action
San Diego County	Yes	For the County of San Diego, owner consent is required.
San Gabriel	No	Owners can voice concerns and appeal decisions but their opposition to destination was not the last word.
Santa Clara County	Yes	For the lower tier of listing, called the Heritage Resource Inventory, owner consent is not required. However, listing on the HRI only requires historic review if demolition of the listed resource is proposed.
Santa Monica	No	Santa Monica is a city that doesn't require owner consent but relies on the findings of significance in the criteria for designation. Owners are notified and are part of the process, but they don't determine outcomes.
South Pasadena	No, but district designation requires majority of owners in favor	To provide balance in the ordinance, property owners are afforded an opportunity to address the CHC and City Council and appeal the designation if they oppose it.
West Hollywood	No	The City of West Hollywood does not require owner consent to nominate or designate a property as a local cultural resource.

While there are many CLG cities with robust historic preservation programs that do not require consent from property owners, there are several others that, like the State OHP, will not place a property on a local register over the objections of property owners. The City's consultant informed staff that in the Bay Area, those cities that do have historic preservation ordinances and registers typically require property owner consent for listing on the local register. San Francisco is initiating a citywide survey mostly for California Register/National Register eligibility for CEQA purposes⁶. San Francisco is not planning to designate any of the properties as landmarks; the goal is to identify properties that are eligible.

City of Palo Alto Local Inventory Incentives

⁶ *San Francisco Planning*. Information related to the "Citywide Cultural Resources Survey" is available at: <https://sfplanning.org/project/citywide-cultural-resources-survey#about>

The City's webpages list incentives⁷ or benefits for properties listed on the City's local inventory. These benefits are specific to each property and conversations with planners are important to ensure complete understanding of the incentives and benefits to listing on the local inventory. It has been difficult for staff and the consultants to adequately describe all incentives to listing on the inventory during public meetings. Some owners have said that they reviewed the Title 18 incentives posted on the City's website and that the incentives do not provide value to them, either as to applicability to a future project on their property, as a monetary gain, or overall tax reduction. Some members have cited that it is an issue that the City does not have a Mills Act program (though the HRB has a pilot program at the ready for Council to review), and that there is no guarantee of the program being established in the City.

Preservation incentives, primarily related to work for maintenance, addition, alterations, etc. A summary and examples of benefits are available within the Community Meeting #2 [presentation](#). Staff was unable to present these slides about incentives and examples during the community meeting held on October 24, 2023, given the many attendee questions and concerns about the process. Staff has encouraged property owners to provide feedback on the existing preservation incentives and benefits.

Briefly, general benefits include:

- Application of the California Historic Building Code
- Palo Alto Building Code (PABC) and Palo Alto Municipal Code (PAMC) offer development incentives that assist owners of historic resources
- R-1 zoned parcels with two homes (one listed historic) can create a flag lot
- Income-producing properties may be able to apply for Federal Historic Rehabilitation Tax Credits
- Palo Alto Planning Department is available to provide design guidance regarding proposed projects
- Potential property tax reduction incentive through a Mills Act Program, if Council adopts a program

Examples of area-specific benefits for historic resources are as follows:

- Properties located within the South of Forest Area II Coordinated Area Plan area and noted in that document as "SOFA II historic resources" *are already eligible to participate in the bonus floor area and transfer of development rights programs*, without any individual nomination as a category 1 through 4 local inventory historic resource.
- Inventory eligible properties within the Downtown cannot participate in the bonus floor area and transfer of development rights programs, until they are nominated and placed on the City's local inventory.

Staff has noted that properties listed within the Palo Alto Inventory would be subject to the City of Palo Alto Municipal Code, [Chapter 16.49 Historic Preservation](#). Major alterations or demolition may undergo HRB review and Environmental Review (CEQA) may be required for demolitions (and this represents time and extra cost.)

Some property owners have been reaching out to have conversations with staff to learn more about their properties. Some property owners are submitting objections instead of having conversations with

⁷ Palo Alto's webpage noting incentives: <https://www.cityofpaloalto.org/Departments/Planning-Development-Services/Historic-Preservation/Preservation-Incentives>

staff about their properties and City's codes and potential benefits on individual properties. The objections, with or without conversations with staff, express the owner's uncertainty about the nomination process, general opinion or perhaps fear about potential property values and review processes related to listing on the City's inventory, or disagreement with the property's nomination findings and/or description.

Parallel Process – City of Mountain View

Staff reviewed Mountain View's ordinance from 2004. The ordinance enables property owners to formally request the city remove their properties from the City's Register within six months of placement. Mountain View only added properties to its register once, after the 2004 survey when the city established the historic register. The city allowed property owners to remove their properties within six months, but this protocol has not been a rolling basis process. The Planning Department keeps track of the properties that were removed, knowing they have historic merit, and Mountain View staff try to provide additional review of projects on those properties, when possible.

The City's consultant, Page and Turnbull, is helping Mountain View pull together comparative data from other cities prior to a Mountain View City Council meeting scheduled for December 12. It will be a study session on its program and nominations project. Mountain View held its second community meeting for the project on October 30, 2023; a link to their meeting presentation⁸ is provided below. A link to the Mountain View municipal code⁹ is also provided below. Mountain View's municipal code appears to offer more incentives for historic preservation than Palo Alto offers. Mountain View's preservation incentives are listed in the next section. Staff used bold text to show the incentives Mountain View has that Palo Alto/Palo Alto Municipal Code does not have.

City of Mountain View Incentives for Historic Preservation

Historic resources are eligible for special incentives and benefits as determined and adopted by the Mountain View city council. The availability of the following incentives and benefits is contingent upon the determination that the approval, exemption or benefit will protect and enhance the character-defining features or retention of the historic resource.

- Variances pursuant to [Section 36.46.35](#);
- Major floor area ratio exceptions pursuant to Section 36.14.90.b;
- Setback and minor floor area exceptions pursuant to [Section 36.14.80](#) and 36.14.90.a;
- Exemptions from nonconforming uses and structures pursuant to [Section 36.06.70](#);
- Exceptions from requirements of the downtown precise plan;
- Use of the State Historic Building Code;
- **Mills Act contracts;**

⁸ Mountain View's power point for 10-30-23 community meeting:

<https://www.mountainview.gov/home/showpublisheddocument/7920/638346183083230000>

⁹ Mountain View Code link:

https://library.municode.com/ca/mountain_view/codes/code_of_ordinances?nodeId=PTIITHCO_CH36ZO_ARTXVI_ZOORAD_DIV15DEPRHIRE

- **Exemption from planning, building and historic preservation permit fees related to the historic resource, including, but limited to, the relocation, preservation and rehabilitation of the historic resource;**
- **Credit for BMR program requirements, including BMR units and in-lieu fees, where the historic resource is preserved or rehabilitated as part of a residential development;**
- **Credit toward park land dedication or fees in lieu thereof; and**
- **Approval for condominium conversions of six (6) residential units or less in a single historic resource.**

The Mountain View council may also, by resolution or on a case-by-case basis during a public hearing process, determine which of the following additional incentives and/or benefits are appropriate. The incentives and benefits thereby granted shall only be effective during the maintenance of the historic resource.

- **Historic building rehabilitation loan fund; and**
- **Rebate of the City of Mountain View portion of the property tax during the designation period. The city's finance and administrative services director shall develop a procedure to facilitate this rebate. The rebate shall be based on the property owner's/property owners' application for the benefit and may be granted on a prospective basis only.**

Community Outreach

The project's community outreach will continue throughout the property's nomination process, which includes HRB meetings for recommendations to City Council and the City Council meeting. Community outreach has included two evening community meetings, responses to survey and nomination inquiries, phone calls and meetings with owners, and record of public comments and objections. The recordings and presentations of the past community meetings are available on the project webpage.¹⁰

As noted within the Notice Letter for the December 14 HRB meeting, in advance of the HRB meetings and the City Council meeting, the following opportunities are available to the property owners:

1. Review of the project documents, located on the project website, including the "Revised Draft Reconnaissance Survey Report," the "Nomination Memos," and the "Property Groupings for HRB Nomination Hearings." <https://bit.ly/2023ReconSurvey>
2. Contact city staff or consultant by email (Amy French at amy.french@cityofpalto.org or Isabel Castellano at icastellano@m-group.us), or submit a "Contact Form" on the project webpage to answer and complete the following:
 - a. To schedule a consultation meeting to discuss your property's preservation incentives.
 - b. Specific questions related to the survey project and your property.
 - c. Request a digital copy of your property's Nomination Memo.
 - d. Request a digital copy of your property's 1997-2001 Department of Parks and Recreation (DPR) Form or Historic Resource Evaluation.

¹⁰ Refer to "First" and "Second Community Meeting" on the project webpage to access and view the recordings and presentations related to each meeting. Project webpage: <https://bit.ly/2023ReconSurvey>

3. Visit the Development Center, located at 285 Hamilton Avenue, Suite 100, Palo Alto, CA 94301, if you would like to speak with planning staff or request a printed copy of your property's Nomination Memo and DPR Form or HRE.
4. Submit an objection letter to city staff, by email or to the Development Center. In the letter, please address the HRB, include the property address you are objecting to, and provide a brief description or reasons for objection. The letters will be shared with the HRB for review and consideration.
5. Preservation incentives are available to properties listed in the Palo Alto Inventory and included on the project website for review. Please review and feedback is welcome.

Nominations considered by the HRB in 2023 and 2024 will be forwarded to City Council in the Spring of 2024. Only the City Council can act on nominations for the Palo Alto Inventory, pursuant to Chapter 16.49 of the Palo Alto Municipal Code. Letters will continue to be sent to property owners in advance of a Historic Resource Board and the City Council meeting to keep the owners informed of the next meeting associated with their property.

Staff are tracking the objections received – including objection letters received after the last HRB meeting of November 9th for properties in that HRB packet - and tracking as feasible the addresses where staff has not received affirmative or negative responses. Staff will follow up after the HRB hearings to ensure owners are aware their properties have been recommended/nominated. Prior to the January 25 HRB meeting, staff intends to send certified return receipt letters to all owners from whom staff did not receive affirmative or objection email or letters (the balance of properties). These letters will provide owners with descriptions of the next steps in the process.

AUTHOR/TITLE:

Amy French, Chief Planning Official