To: Landmarks Preservation Commission June 20, 2006

From: John English

Re: **Comments on the June 15 LPO and Zoning Drafts**

Finding as to Feasibility. Section 3.24.240.H's paragraph 1 would call for approving a landmark's alteration or demolition if the LPC finds that the structure "is in such condition that it is not feasible to preserve or restore it and put it to use . . . ." If this paragraph is retained, it should at least be tightened by changing "not feasible" to "*clearly* not feasible."

Documented Owner Neglect. Section 3.24.240.H's above-mentioned paragraph 1 and its paragraph 3 (which involves contentions that historic, etc., interest or value has been severely reduced due to physical change on the property occurring since its designation) would say that the condition or change (whichever applies) must not be "due to *documented* owner neglect." But using the word "documented" here could backfire. It could dangerously shift the burden of proof—and inadvertently reward neglectful owners in cases where City staff have never happened to notice the neglect and/or officially cite the owner for it.

Scope of "Safe Harbors." For various situations where a property hasn't been initiated by a prescribed deadline—or where it's been initiated but landmarking is denied—Sections 3.24.130 and 3.24.150 would prescribe periods of time thereafter during which "*this chapter [the entire LPO]* shall be inapplicable to that property." (Staff have sometimes called such periods a "safe harbor.") But the property shouldn't be exempted from the whole LPO. Even if it gets sheltered from landmarking initiations—and from the LPC's regulatory power, which the LPO's Article III mostly involves—the LPC should still be able to do things like offer advice under the LPO's Articles I and V. And in particular it should still be able to comment on *environmental documents*, under Article III's Section 3.24.220. So "this chapter shall be inapplicable" should be changed to *"the provisions of Article III of this chapter, except for Section 3.24.220,* shall be inapplicable." Incidentally, the latter wording already appears in the draft's own Section 3.24.350.

Length of "Safe Harbor" Where There's an AHS But No Project Application. Proposed Sections 3.24.130 and 3.24.150 attempt to deal with four different situations—which depend on whether or not there's a request for an "AHS" (assessment of historical significance, formerly called "RFD") and whether or not an actual project application has been filed. Those sections' organization makes it hard to understand exactly which provisions would apply to each of the four situations. But the draft seems to imply that where there's an AHS request but no project application, then the safe harbor could potentially last either *two years* (under 3.24.130.E) or *five years* (under 3.24.150.D)! Is that really intended? For the same situation, even the Planning Commission didn't ask for so lengthy a safe harbor. Instead, the Planning Commission proposed that ". . . Article III . . . shall be inapplicable for a period of *one year* from the date of the final action concerning initiation or designation, *provided that if an application for a development project is submitted and is deemed or determined to be complete within that period, Article III . . . shall continue to be inapplicable* to the subject property unless and until the application for a development project is denied, or [etc.] . . . ." *If* there must be an AHS procedure for cases where no project application has been filed, the Planning Commission language quoted here would be more palatable than what the current draft seems to say.

Timeline for Initiation and Hearing Where There's an AHS But No Project Application. For *all* cases where there's a request for an AHS, Section 3.24.130 would impose an early deadline for landmarking initiations—and would say that if the LPC initiates a property, it must open the public hearing on designation at its very next regular meeting. The proposed requirements would apply even in

cases where no project application has been filed and there are no CEQA or PSA rules to worry about. Thus they could needlessly restrict the time available for citizens to effectively rebut consultant-prepared AHS requests. So why should the timelines in such cases be any shorter than in ordinary landmarkings (where there's neither a project application nor an AHS request)?

Public Notice Where There's a Project Application But No AHS. Section 3.24.130 would require a widely noticed public hearing on all AHS requests. Otherwise, though, most project applications (which would be numerous) would be handled much more simply. Zoning Ordinance Section 23B.24.030.B would say that before filing "applications for Permits," applicants would have to post a readily visible "conspicuous notice" on the property itself. Under that Zoning Ordinance section and/or LPO Section 3.24.130, all such applications would be listed "on the agenda" of the next regular LPC meeting, "for potential initiation." However, should there also be some other required form of public notification? In this regard, workload and mailing costs are valid concerns. But for instance, should the list of project applications at least have to be posted near the zoning counter and/or mailed to certain relevant organizations?

Public Hearing on Whether to Initiate. For cases where there's a project application but no AHS request, and the LPC doesn't initiate the property at its first regular meeting at which the application is on the agenda, Section 3.24.130.C.2.*b* would call for a widely noticed "*public hearing* at its next regular meeting *to consider initiation."* That requirement (which evidently wouldn't apply if the LPC initiated at its *first* meeting) seems odd and unnecessary. I suspect it was unintended.

Procedure for Ordinary Maintenance and Repairs. For landmarked properties Section 3.24.210 would authorize the Planning Director to act on ordinary maintenance and repairs "in the same manner, and subject to the same procedural requirements, as the Zoning Officer acts on applications for Administrative Use Permits (AUPs) under [the Zoning Ordinance] . . . ." Even *if* the Planning Director should have such power, this provision badly needs rewording. The apparently intended process would be analogous to but *not* the same as for AUPs. The criteria should be different from the Zoning Ordinance's findings for AUPs. And the Planning Director's decisions should be appealable to the LPC instead of ZAB!

Integrity per National Register Bulletin. Sections 3.24.110.A and 3.24.112.A would both require a property to have integrity as defined in Section 4852 of Title 14 of the California Code of Regulations "and, to the extent it is referred to therein, National Register Bulletin #15." If read closely in its context, that quoted wording scarcely makes sense. More basically, why not just delete mention of the National Register Bulletin?

Local Integrity Criteria. Section 3.24.112 obviously wouldn't satisfy the concern expressed by various preservationists that for structures of merit, meeting *local* criteria of integrity should suffice. It would still require always meeting the state and/or federal definition of integrity. Although subsection E would say the LPC "may propose to the Council, for adoption by ordinance, modifications to the manner in which integrity is evaluated in Berkeley," that's meaningless.

Miscellaneous Technical Problems. The June 15 LPO draft still has numerous mistakes and inconsistencies. For instance, its Section 3.24.120 still refers to "structures of neighborhood interest"—even though that concept has now been dropped and its pertinent Section 3.24.114 has been deleted.