

## Category II

# FINDINGS REQUIRED FOR THE DEMOLITION OF HISTORIC PROPERTIES

This handout contains the findings required to be met to approve a Regular Design Review application to demolish a historic structure in the City of Oakland. These findings are required by Section 17.136.075 of the Planning Code. All other regulations, including analysis required under the California Environmental Quality Act, apply.

The handout also describes the items required to be submitted with the design review application. The goal of the required submittals is to assist staff in evaluating whether a project meets the findings required to demolish a building. The submittals may consist of economic and financial analyses, informational reports, and/or “discussion points” required to be addressed within a design or historic analysis of a project. The submittals are not criteria for whether a demolition can or cannot occur; they are only the information required by the City to make a determination as to whether an application meets the required findings for demolition. Further, the required submittals are not meant to discourage either contemporary or historicist architecture in new construction. The Planning Director can, from time to time, make modifications to the required submittals if they are consistent with the intent of the proposed requirements.

All reports required for the demolition findings must be prepared by independent third party consultants or be peer reviewed. Reports will be paid for by the applicant and consultant shall be approved by, and report to, the City. All applicable discussion points shall be taken into account when making a finding. If a point is not applicable, the analysis shall state why. Any submittal may also include attributes that support the demolition proposal and/or the replacement project.

A complete application for demolition of historic property includes following:

- A completed application for Regular Design Review.
- A description of how a project meets the findings described in this form.
- The required submittals described in this form.
- A complete application for the replacement project, including plans designed by a licensed architect.

Different findings are required for the demolition of three categories of historic structures:

- **Category I** includes any Landmark; Heritage Property; property rated “A” or “B” by the Oakland Cultural Heritage Survey; or Preservation Study List Property. This category excludes any property that falls into Category II.
- **Category II** includes properties in an S-7 or S-20 zone or an Area of Primary Importance. Any building, including those that do not contribute to the historic quality of the district, fall into this category.
- **Category III** includes properties rated “C” by the Oakland Cultural Heritage Survey or contributors to an Area of Secondary Importance. This category excludes any property that falls into Category II.

Please call the Oakland Cultural Heritage Survey at (510)238-6879 to determine if a property falls into any of the three categories described above.



# CITY OF OAKLAND

## DEMOLITION FINDINGS FOR

### CATEGORY II HISTORIC PROPERTIES

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The following findings are required to be met to demolish a Category II Historic Structure. This category includes any property in the S-7 or S-20 zone or in an historic neighborhood defined as an “Area of Primary Importance” by the Oakland Cultural Survey. The demolition of any building, including those that do not contribute to the historic district, fall into this category.

Finding 1 or Finding 2 plus Findings 4, 5 and 6, below, must be met to demolish a Category II Historic Resource that contributes to a historic district. Findings 3, 4, and 5 are required to be met to demolish a noncontributing property. Please indicate how the proposed demolition meets the required findings and include all the applicable submittal materials for the corresponding findings.

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**Finding 1 (contributing properties):** 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.

**Finding 1 submittal requirements:**

1. *Building Use – Economic Viability.* The applicant shall submit a market analysis prepared by an architect, developer, real estate consultant, appraiser, or other real estate professional with extensive experience in both real estate and historic rehabilitation that demonstrates all of the following:
  - a. The current use does not generate a reasonable economic return (may include market report of like uses and building scale in the same or similar neighborhood);
  - b. That appropriate and reasonable alternate uses in the building could not generate a future reasonable economic return;
  - c. That alterations or additions to the existing building could not make the current or future use generate a reasonable economic return; and
  - d. Potential Federal Tax Credits, Mills Act Contracts, Façade Grants, Transfer of Development Rights or other funding sources are not feasible to bridge the gap identified above.
2. *Building Soundness.* The applicant shall submit a report from a licensed engineer or architect with extensive experience in rehabilitation as to the structural soundness of the property and its suitability for rehabilitation. The soundness report shall be based on the requirements contained in the Soundness Report Requirements, attached.
3. *Building Maintenance History.* The applicant shall submit a building maintenance history. The report shall also answer the following questions:
  - a. What is the cost to repair any code violations?
  - b. Is the building free of a history of serious, continuing code violations?
  - c. Has the building been properly maintained and stabilized?

Long term deferred maintenance and/or a history of continuing code violations not addressed by the owner, or other proper person having legal custody of the structure or building shall constitute a

violation and will not be considered as a part of the bottom line of the economic viability report (see submittal requirement #1).

4. *Existing Building Appraised Value.* All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing, or ownership of the property;
  - a. Any listing of the property for sale or rent price asked, and offers received, if any, within the previous two years; and
  - b. Existing Building/Property Appraisal (current within the last six months):
    - i. Estimated market value of the property in its current condition under best practices management;
    - ii. After repair of construction deficiencies as defined in the Soundness Report Requirements, attached;
    - iii. After repair of construction deficiencies and maintenance as defined in the Soundness Report Requirements, attached;
    - iv. After any changes recommended by the Historic Preservation Staff/LPAB;
    - v. After completion of the proposed demolition or removal; and
    - vi. After completion of the replacement proposal.
  
5. *Public Benefits.* A public benefits analysis report shall be prepared and take into consideration the educational, cultural, social, equity, and economic benefits of the historic building and the proposed building. Some issues that shall be considered include, but are not limited to:
  - a. The benefits to the City's tourism industry;
  - b. The benefits to owners of other commercial and residential property owners and renters in the area;
  - c. The services provided to the community, including social services;
  - d. Housing and jobs opportunities;
  - e. Civic, community, and neighborhood identity;
  - f. Cultural heritage and the image of the City and local neighborhood; and
  - g. Educational opportunities and cultural benefits regarding architectural and local history.
  
6. *Optional Submittal: Sustainability - Life Cycle Assessment Criteria.* The applicant may wish to submit a Life Cycle Assessment Report to demonstrate the quality of the replacement proposal and of the existing building as described below. Demonstration that the durability and expected life of the new proposal's quality of construction, materials and craftsmanship, including the cost of demolition or deconstruction of the historic resource, exceeds the value of the embodied energy of the building's existing materials, durability of materials, quality of construction, level of craftsmanship, cost to repair construction deficiencies and maintenance.

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**Finding 2 (contributing properties): The property constitutes a hazard and is economically infeasible to rehabilitate on its present site. For this finding, a hazard constitutes a threat to health and safety that is not imminent.**

**Finding 2 submittal requirements:**

1. A declaration from the Building Official or the City Council that the structure to be demolished is a threat to the public health and safety although such threat is not immediate.
2. A report from a licensed engineer or architect with extensive experience in rehabilitation as to the structural soundness of the property and its suitability for rehabilitation. The soundness report shall be based on the requirements contained in the Soundness Report Requirements, attached.
  - a. Is the building free of a history of serious, continuing code violations?

3. The applicant shall submit a building maintenance history. The report shall answer the following questions:
  - a. What is the cost to repair any code violations?
  - b. Is the building free of a history of serious, continuing code violations?
  - c. Has the building been properly maintained and stabilized?

Long term deferred maintenance and/or a history of continuing code violations not addressed by the owner, or other proper person having legal custody of the structure or building shall constitute a violation and will not be considered as a part of the bottom line of the economic viability report  
Based on these reports, the other submittals contained in Finding 1 may be required.

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**Finding 3 (noncontributing properties): The existing facility is either: (a) seriously deteriorated or a hazard, or (b) the existing design is undistinguished and does not warrant retention. For this finding, a hazard constitutes a threat to health and safety that is not imminent.**

**Finding 3 submittal requirements:**

Same as submittal findings as Finding 1, but demolition or removal is also permitted if either:

- For (a): A declaration from the Building Official or the City Council that the structure to be demolished is a threat to the public health and safety although such threat is not immediate or a public nuisance; or
- For (b): The Property is determined to be “of no particular interest” by the Oakland Cultural Heritage Survey. If the property is so rated due to alterations, reversal of the historic architectural integrity is not economically or physically feasible (as determined under Local Register Properties (ii), (iii) and (iv)).

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**Finding 4 (all properties): The design quality of the replacement facility is equal/superior to that of the existing facility.**

**Finding 4 submittal requirements:**

A report shall be submitted that addresses whether the proposal demonstrates equal or superior quality with respect to:

1. A clearly identifiable visual or design value. For instance, does the replacement proposal express its present character as strongly as the historic design expressed its past?
2. Durability, quality, and design value of surface materials. Durable and quality materials include, but are not limited to: stone, granite, marble, concrete, highest quality and detailed glass curtain wall, terra cotta or other materials appropriate to the design style of the building or context of the neighborhood. In terms of design value, are materials in the replacement building used to enhance the architectural design elements of the building instead of used solely for the sake of variety?
3. Significant enhancement of the visual interest of the surrounding area;
4. High quality detailing;
5. Composition. A well composed building integrates all aspects of the building (materials, façade patterns, proportions, openings, forms, massing, detailing, etc.) into its overall character and design.
6. Site setting, neighborhood, and streetscape contexts;

7. Incorporating “especially fine” construction details, methods, or structural materials. These include those that successfully address challenging structural problems, contribute significantly to the building’s overall design quality, exhibit fine craftsmanship, or are visible design elements;
8. The replacement building’s reflection of the time it was designed, not merely a caricature of the demolished building;
9. The replacement building’s contemporary interpretation of the demolished building’s elements in terms of the cultural, historic, economic, or technological trends of its time.

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

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

**Finding 5 submittal requirements:**

Analysis of the findings prepared by a historic architect or professional with equivalent experience. Other discussion points include the following:

1. The proposed design not only protects the integrity and aesthetic quality of the historic district but enhances and enlivens the historic fabric at the same time respecting and recognizing the district or due to circumstances discussed in the analysis, the project has been designed as a background project to the district (i.e., a simplified version of a period revival style).
  2. The new building’s contemporary interpretation of the demolished building’s elements in terms of the cultural, historic, economic, or technological trends of its time.
  3. If a replacement project conveys an authenticity of its own time, it is compatible with the authenticity of the existing historic district.
  4. The compatibility of the design of the replacement proposal with the district without being merely a compilation of façade features that are common to district or a caricature of the buildings in the district.
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**Finding 6 (contributing properties): It is economically, functionally architecturally, or structurally infeasible to incorporate the historic building into the proposed development.**

**Finding 6 submittal requirements:**

A report shall be submitted that addresses the following discussion points:

1. Could alternations or additions to the existing building make the current or a future use generate a reasonable economic return and/or architecturally/structurally accommodate the proposed uses?
2. Do preservation alternatives exist which can achieve at least the same level of non-preservation benefits?
3. Include discussion of potential economic benefits of a rehabilitated or reused cultural resource, including how building or district character might affect property values, attract commercial economic development, and increase City tax revenues.



# CITY OF OAKLAND

## SOUNDNESS REPORT REQUIREMENTS

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Applicants proposing the demolition of any Category I or Category II resource that contributes to an Area of Primary Importance, S-7 zone, or S-20 zone require a report to determine the soundness of the historic building. This attachment explains what should be included in the soundness report.

Soundness reports are required to be produced by licensed design or construction professionals (architects, engineers, and contractors) or by certified specifiers, construction cost estimators or building inspectors. The author of the report must be a disinterested third party that is not involved in the development's ownership, design or construction. Professionals who prepare such reports must be familiar with the City's demolition regulations and knowledgeable about construction assemblies, processes and cost.

Authors of Soundness Reports should focus on the concept that "soundness" is an economic measure of a building, not an issue of structural compliance with the current Building Code. Further, they should distinguish costs to upgrade elements that were original construction deficiencies from those elements needing repair due to deferred maintenance, as explained below.

Without a determination that the structure is unsound, the recommendation of approval to demolish is more difficult to make. In this case, the applicant may be advised to consider a project that alters, rather than demolishes, the existing structure.

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### Definitions

Soundness is an economic measure of the feasibility of repairing construction deficiencies. It compares an estimate of construction-repair cost called the upgrade cost to an estimate called the replacement cost.

Hazard is defined the same as it is in the Demolition Findings, Category I and Category II, Finding 2. For this finding, a hazard constitutes a threat to health and safety that is not imminent.

Replacement cost is defined as the current cost to construct structures exactly the size of those proposed for demolition. The current costs are determined by the most recent City of Oakland Building Services Construction Valuation For Building Permits<sup>1</sup>.

Unsound structure is a structure where the primary upgrade cost construction deficiencies exceeds 50 percent of its replacement cost or the primary *plus* secondary upgrade cost exceeds 75 percent.

Primary upgrade cost is an estimate of the cost to make the existing structure 'usable.' This is the cost to bring a construction deficient structure into compliance with the minimum standards of the Building Code in effect at the time of its construction, with certain retroactive life-safety exceptions. Programmatic shortcomings of the existing structure have no bearing on the upgrade cost. Costs such as

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<sup>1</sup> Market value based on the current costs of labor, materials, related fees, and any entrepreneurial profit or incentive.

adding floor space in an addition, to increasing headroom in a basement or attic, or to installing interior upgrades, cannot be included, nor can certain “soft costs” and site improvements listed below. Bringing the structure into compliance with current seismic requirements of the Building Code is not an allowable expense, even though it may be prudent or desirable for the public good, or even if required by the Building Code for the scope of repair work. Routine, repetitive maintenance costs are also excluded. Contractor’s profit, overhead, and permit costs may be included, but Architects’ and Engineers’ design fees, and allowances for construction contingencies may not.

Secondary upgrade cost is an estimate of the cost of functional repairs attributable to lack of maintenance. For instance, a significant roof leak that went unrepaired for a sufficient length of time to cause mildewed gypsum board and rotted structural members is a secondary upgrade cost. Replacement of a building component because it is not pristine or modern does not qualify as a secondary upgrade cost unless the component does not meet required functional standards and/or is a hazard. For example, the replacement of rusted ductwork on a heating system that can maintain the temperature requirement does not qualify as a secondary upgrade cost nor is the replacement of a functional and safe knob and tubing wiring system. The cost to replace a pull-out fuse box that is not a hazard with a new circuit breaker panel cannot be included as an secondary upgrade cost, even if it is part of the proposed work.

Further examples items that cannot be included in the secondary upgrade cost calculation are:

- Replacement of roof flashing, step flashing, coping, gravel stops, and diverters. These are excluded from the calculation because these items can be replaced as part of the re-roofing process, and, in that sense, are maintenance items. Replacement of corroded galvanized sheet metal head flashing over doors and windows might be considered a cost allowed at the 75 percent level if it is clear that the corrosion resulted from lack of painting or other improper maintenance.
- Window replacements. The Building Code requires that windows, like all elements of structure, be maintained and repaired. Replacement of windows meeting the code requirements at the time of their installation cannot be included in 75 percent cost calculation. For instance, replacing single-glazed windows installed in 1972, before Title 24 energy requirements, with double-glazed, energy efficient windows would not be an allowed in the 75 percent cost calculation. Repair of leaky or aged windows may be included at the 75 percent threshold to the extent that it is demonstrable that the repair is necessitated by poor maintenance.
- Stair replacement or removal. Removal and replacement of existing stairs without legal headroom can be included as a primary upgrade cost only if the stairs are a means of egress required by the Building Code. If the stairs are not part of a required exit system, but provide access to a room or garage, their replacement to meet current headroom requirements or rise and run ratios cannot be included. Wooden exterior stairs have a finite life, and their periodic replacement is considered a maintenance issue. Only if it can be documented that improper construction led to the early loss of the stairs could their replacement be included in upgrade costs for soundness determination.



### **Examples of what are and are not considered primary and secondary upgrade costs**

For general guidelines for what is considered a primary and secondary upgrade cost, see the description in the three lists below. Also note that, in general, the code requires that buildings be maintained in accordance with the codes in effect at the time of their original construction. Please note that some of the concepts addressed in these standards are not detailed, and can only be determined upon review of specific cases by competent professional persons.

Work that could be included in the 50 percent threshold (the primary cost):

- Building Permit Application cost.
- Correcting lack of flashing or proper weather protection if not originally installed.
- Installing adequate weather protection and ventilation to prevent dampness in rooms if not originally constructed.
- Provision of garbage and rubbish storage and removal facilities if not originally constructed.
- Eliminating structural hazards in foundation due to structural inadequacies.
- Eliminated structural hazards in flooring or floor supports, such as defective members, or flooring or supports of insufficient size to safely carry the imposed loads.
- Correcting vertical walls or partitions which lean or are buckled due to defective materials or which are insufficient in size to carry loads.
- Eliminating structural hazards in ceilings, roofs, or other horizontal members, such as sagging or splitting, due to defective materials or insufficient size.
- Eliminating structural hazards in fireplaces and chimneys, such as listing, bulging or settlement due to defective materials or due to insufficient size or strength.
- Upgrading electrical wiring which does not conform to the regulations in effect at the time of installation.
- Upgrading plumbing materials and fixtures that were not installed in accordance with regulations in effect at the time of installation.
- Providing exiting in accordance with the code in effect at the time of construction.
- Correction of improper roof, surface or sub-surface drainage if not originally installed
- Correction of structural pest infestation (termites, beetles, dry rot, etc.) to extent attributable to original construction deficiencies, (e.g., insufficient earth-wood separation).
- Contractor's profit and overhead, not to exceed 18 percent of construction subtotal, if unit costs used for repair items do not include Profit and Overhead.

Work that could be included in the cost estimate for the the 75 percent threshold (the primary plus secondary upgrade costs):

- Repair of fire-resistive construction and fire protection systems if required at the time of construction, including plaster and sheet rock where fire separation is required, and smoke detectors, fire sprinklers, and fire alarms when required.
- Repairs as need to provide at least one properly operating water closet, lavatory, and bathtub or shower.
- Repair of a sinks not operating properly.
- Provision of kitchen appliances, when provided by owner, in good working condition, excluding minor damage.
- Repair if needed of water heated to provide at least 8 gallons of hot water storage.
- Both hot and cold running water to plumbing fixtures.

- Repair to a sewage connection disposal system, if not working.
- Repair heating facilities to permit heat to habitable rooms, if not working.
- Repair ventilation equipment, such as bathroom fans, where operable windows are not provided, if not working.
- Provision of operable windows in habitable rooms (certain exceptions may apply).
- Repair of electrical wiring if not maintained in a safe condition.
- Repair of plumbing materials and fixtures if not maintained in good condition.
- Correcting vertical walls or partitions which lean or are buckled due to deterioration.
- Eliminating structural hazards in ceilings, roofs, or other horizontal members due to deterioration.
- Eliminating structural hazards in fireplaces and chimneys, such as listing, bulging or settlement due to deterioration.
- Eliminating chronic, severe mold and mildew.
- Repairing proper weather protection, including exterior coverings such as paint and roof coverings and windows and doors due to lack of maintenance.
- Repairing deteriorated, crumbling or loose plaster, gypsum board and floor finishes due to faulty, poorly maintained weather protection.
- Contractor's profit and overhead, not to exceed 18 percent of construction subtotal, if unit costs used for repair items do not include profit and overhead.

Work that is excluded from both the 50 percent and 75 percent thresholds (the primary and secondary upgrade costs):

- Architects' fees, Engineers' fees and other design fees.
- Construction contingency allowance.
- Addition of floor space, or increasing headroom or other programmatic requirements that are not required standards as part of the original structure.
- Adding electrical receptacles where not necessary;
- Installation of a higher capacity electrical service, unless the existing is a hazard.
- Finish upgrades, such as new cabinetry, countertops, tile, stonework and other interior finishes;
- Site work, such as repairs to walkways, driveways, decks on grade, and retaining walls not part of the building foundation.
- Landscape and irrigation work.
- Removal of fire hazards, such as buildup of combustible waste and vegetation.
- Removal of accumulation of weeds, vegetation, trash, junk, debris, garbage, stagnant water.
- Elimination of insect, vermin or rodent infestation.
- Other routine, repetitive maintenance costs.

### **Content of soundness report**

The Soundness Report should begin with a thorough description of the building in question: its age, size (e.g., footprint area, height, number of stories, square footage), roof form, roofing material, construction type, foundation and floor system, exterior siding, interior wall finish, and a description of repairs, maintenance, and any remodeling or additions. Documentation supporting the previous should be included in an appendix, using copies of the building permit history of the building.

Next, the replacement cost should be calculated using the definitions described above. Both the 50 and the 75 percent threshold should be computed and noted.

The 50 percent upgrade cost (the primary cost) should be described next, with line item descriptions of each element qualifying for upgrade (those due to initial construction deficiencies), followed by the unit cost, the unit multiplier, and the total cost for that element. If the sum of these cost items does not exceed 50 percent of the replacement cost, than a 75 percent upgrade cost (secondary plus primary upgrade cost) can be detailed, including the previous upgrade items and adding in costs for repair of qualifying items deteriorated due to deferred maintenance, presented in a similar format.

Generalities and assertions unsupported by professional, detailed justification, or by photographic evidence or other documentation will undermine the essential credibility of the report. Replacement of many structural assemblies and mechanical systems is justified only if the existing elements are hazards. Careful and thorough demonstration of the hazardous condition is required, to justify including the replacement in the upgrade cost estimate.

Copies of any pest report, if such work is needed, and any other documentation supporting the conclusions of the soundness report, should be provided. Pest control work should be carefully analyzed to determine which portions of work and cost are applicable to the 50 percent (primary upgrade cost) threshold and which to the 75 percent (primary plus secondary upgrade cost) threshold.

Clear and well-labeled photographs of the façade, and close-ups that document elements needing upgrade work, are essential to support assertions that the elements in question qualify for inclusion in the upgrade cost.

A factual summary of the findings is a useful conclusion to the document.

### **How will the City decide whether to approve the demolition application?**

The Soundness Report will be reviewed and considered in conjunction with all other required submittals by the Findings for Demolition of Local Register Historic Properties. All of these reports will be reviewed by the appropriate advisory group(s) and decision maker(s). A replacement project, if any, must also meet the Demolition Findings.

Because a finding that a building is unsound makes approval of the demolition more probable, and because some costs included in the soundness report represent a subjective professional judgment, there may be a temptation to inflate the upgrade cost estimate, by including costs of elements that do not require repair or by exaggerating the cost of repairs, or by suggesting seismic or other structural upgrades beyond the scope of the requirements. Resist this temptation. Presentation of soundness reports with inflated upgrade costs or low replacement costs may lead to denial of the related demolition permits, or require a peer review, paid for by the applicant.

If the Soundness Report is credible and demonstrates that the structure in question is sound/not sound, the report findings will be taken into consideration, along with other required submittals by the Findings for Demolition of Local Register Historic Properties, for evaluation and determination of demolition approval, when reviewed by Landmarks Preservation Advisory Board and the Planning Commission.