



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: December 21, 2021

Agenda Item 7B
Approvals:
City Manager ES
Dept. Head CGD
Attorney _____
Finance JLW

Department: Community Development/Planning Division
Prepared By: David Carrillo, Assistant Planner

Subject: AMENDMENT TO HISTORIC PROPERTY PRESERVATION AGREEMENT 18-442 (HPPA 21-342), VIRGIL WESTBROOK RESIDENCE, LOCATED AT 235 AVENIDA MIRAMAR

Fiscal Impact: Execution of the Historic Property Preservation Agreement may result in minimal reductions in property tax revenues to the City. The approximate impact is anticipated to be between \$3,700 and \$6,500 per year.

Summary: Staff recommends the City Council (Council) approve an amendment to the approved, but unexecuted, Historic Property Preservation Agreement (HPPA) 18-442 for a historic house located at 235 Avenida Miramar.

Background: On December 4, 2018, the City Council adopted Resolution No. 18-54 approving the subject HPPA (see Attachment 4 for the minutes and staff report). However, the HPPA has not been executed resulting in an outdated agreement with improvements that are past due. Prior to the application's expiration date of December 4, 2021, the applicant submitted a time extension request, which has been granted by the City Planner, to allow the request for an amendment to HPPA 18-442. The amendment consists of updated dates to the agreement to reflect the anticipated year of execution, being 2021. Additionally, staff modified improvement #6 to give the property owner an option to deter skateboarding on a front yard wall by using protective guards, or landscaping, instead of requiring the owner to solely use protective guards. The landscaping option gives an opportunity to address skateboarding concerns in a more attractive manner.

Discussion: The amended work list (Exhibit D of Attachment 1) essentially remains intact as approved by the City Council in 2018, with the exception of the insignificant modification to improvement #6, and updates to dates in the agreement, including work list item due dates.

Recommended Action: STAFF RECOMMENDS THAT the City Council approve HPPA 21-342, Amendment to Historic Property Preservation Agreement 18-442, for the historic house located at 235 Avenida Miramar.

- Attachments:**
- Attachment 1 Resolution
 - Exhibit 1 HPPA 18-442
 - Exhibit A Historic Property Legal Description
 - Exhibit B Secretary of the Interior's Standards for the Treatment of Historic Properties
 - Exhibit C City of San Clemente Historic Property Minimum Maintenance Standards
 - Exhibit D Historic Property Improvements to be completed
 - Attachment 2 Minutes and Staff Report – December 4, 2018 City Council Meeting
 - Attachment 3 City Council Resolution No. 18-54

Notification: All of the property owners within 300 feet and the Historical Society have been notified of the project.

ATTACHMENT 1

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING HISTORIC PROPERTY PRESERVATION AGREEMENT 21-342, AMENDMENT TO HISTORIC PROPERTY PRESERVATION AGREEMENT 18-442, FOR THE PROPERTY LOCATED AT 235 AVENIDA MIRAMAR

WHEREAS, the City Council of the City of San Clemente adopted Ordinance 1194, which in Section 3, establishes procedures for property owners of designated historically significant structures to voluntarily enter into Historic Property Preservation Agreements in order to apply to receive property tax reductions as an incentive for historic preservation; and

WHEREAS, on December 4, 2018, the City Council of the City of San Clemente held a duly noticed public hearing on the subject application, considered written and oral comments, and facts and evidence presented by the applicant, City staff, and other interested parties, and approved Historic Property Preservation Agreement 18-442, subject to Conditions of Approval; and

WHEREAS, on December 3, 2021, an application was submitted by Matthew Mason and Tiffany Mason-Lopez, 235 Avenida Miramar, San Clemente, CA 92672, who are the owner of a designated historically significant structure, to amend an approved, but unexecuted, Historic Property Preservation Agreement (HPPA) for their property located at 235 Avenida Miramar, the legal description being Lot 18, Block 14 of Tract 779; and

WHEREAS, on December 21, 2021, the City Council held a duly noticed public hearing, and considered testimony of City staff, the applicant and property owner, and other interested parties.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE HEREBY RESOLVES AS FOLLOWS:

SECTION 1: The City Council hereby approves HPPA 21-342, attached hereto and incorporated herein by reference as Exhibit 1, and authorizes the Mayor to execute, and the City Clerk to record, the HPPA for the property at 235 Avenida Miramar, after the required application fee has been submitted to the City by the property owner, but not later than June 30, 2022.

PASSED AND ADOPTED this ____ day of _____, 2021.

ATTEST:

City Clerk of the City of
San Clemente, California

Mayor of the City of
San Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) §
CITY OF SAN CLEMENTE)

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. _____ was adopted at a regular meeting of the City Council of the City of San Clemente held on the _____ day of _____, _____, by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this _____ day of _____, _____.

CITY CLERK of the City of
San Clemente, California

Approved as to form:

City Attorney

EXHIBIT 1

Recording Requested by, and
when Recorded Mail to:

City Clerk
City of San Clemente
910 Calle Negocio
San Clemente, CA 92672

This Agreement is recorded for the benefit of the City of San Clemente and is exempt from the payment of recording fees pursuant to Government Code Sections 6103 and 27383.

HISTORIC PROPERTY PRESERVATION AGREEMENT

THIS AGREEMENT is made and entered into this 21st day of December, 2021, by and between the City of San Clemente ("City"), a municipal corporation of the State of California, and Matthew Mason and Tiffany Mason-Lopez ("Owner").

RECITALS

WHEREAS, the owners possess fee title in and to that certain qualified real property, together with associated structures and improvements thereon, located on Assessor's Parcel Number 058-122-02, located at 235 Avenida Miramar, San Clemente, California 92672, more specifically described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the Historic Property is a qualified historic property in that it is privately owned property which is not exempt from property taxation and is listed in the City's Designated Historic Structures List, which is the City's official register of historically significant sites adopted October 2, 2007 by Resolution 07-72 of the San Clemente City Council, as amended; and

WHEREAS, both City and Owner desire to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code; and

WHEREAS, both City and Owner desire to enter into this Agreement for the purpose of protecting and preserving the characteristics of historical significance of the Historic Property through the incentive of a potential property tax reduction; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement, shall be entitled to qualify for a reassessment of valuation of the Historic Property, pursuant to provisions of the aforementioned California Revenue and Taxation Code, and any corresponding adjustment in property taxes resulting therefrom.

AGREEMENT

NOW, THEREFORE, both Owner and City, in consideration of the mutual promises, covenants and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. AGREEMENT SUBJECT TO GOVERNMENT CODE SECTIONS 50280-50290. This agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes.

2. REASSESSMENT OF VALUATION. The determination of property valuation pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code, is in the sole discretion of the Orange County Tax Assessor's Office. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.

3. PRESERVATION OF PROPERTY. Owner agrees to preserve and maintain the Historic Property and its character-defining features, as provided below. Character-defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roof line and other aspects of the appearance of the exterior of the property. The Secretary of the Interior's Standards for the Treatment of Historic Properties and minimum maintenance standards, attached hereto and incorporated herein by reference as Exhibit "B," shall constitute the minimum standards and conditions for maintenance, use, and preservation of the Historic Property, and shall apply to the property throughout the term of this Agreement. Owner shall, where necessary, restore and rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the U.S. Secretary of the Interior's Standards for the Treatment of Historic Properties, the City of San Clemente Design Guidelines and in accordance with the attached schedule of improvements, attached hereto and incorporated herein by reference as Exhibit "B".

4. BUILDING CHANGES. All building changes shall comply with applicable City specific plans, City regulations and guidelines, and with the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, namely the U.S. Secretary of the Interior's Standards for Rehabilitation and Standards and Guidelines for Historic Preservation Projects.

5. NOTIFICATION OF DIRECTOR. The Community Development Director shall be notified by the Owner of changes to character-defining exterior features prior to their execution, such as major landscaping projects and tree removals, exterior door or window replacement, exterior repainting, remodeling, or other exterior alterations requiring a building permit. The Owner agrees to secure all necessary City approvals and/or permits prior to changing the building's exterior appearance or use, or prior to commencing construction work.

6. PROHIBITED. The following are prohibited: demolition or partial demolition of the historic building or accessory buildings without prior City approval; exterior

alterations or additions not in keeping with the standards listed above; dilapidated, deteriorating or unrepaired structures such as fences, roofs, doors, walls, windows; outdoor storage of junk, trash, debris, appliances, or furniture visible from a public way; or any device, decoration, structure or vegetation which is unsightly due to lack of maintenance or because such feature adversely affects, or is visually incompatible with, the property's recognized historic character, significance and design, as determined by the Community Development Director.

7. **INSPECTIONS.** Owner agrees to permit the periodic examination, by prior appointment, of the interior and exterior of the Historic Property by the County Assessor, the Department of Parks and Recreation, the State Board of Equalization and City as may be necessary to determine Owner's compliance with the terms and provisions of this Agreement. After five years and every five years thereafter, the City shall inspect the property to determine the owner's continued compliance with the agreement.

8. **PAYMENT OF FEE.** As a condition of executing the contract, Owner shall pay City a fee as provided in the City's current Planning Fee Schedule, after City Council approval of the Agreement, which fee does not exceed the reasonable cost of administering City's historical preservation program. Said fee shall be made payable to the City of San Clemente and shall be remitted to the Planning Division prior to the Agreement being executed by City.

9. **TERM.** The term of this Agreement shall be from December 4, 2018, to and including December 4, 2028.

10. **AUTOMATIC RENEWAL.** On each yearly anniversary of the effective date of this Agreement (hereinafter referred to as the "renewal date"), one year shall be added automatically to the initial term of this Agreement unless notice of non-renewal is given as provided in this Agreement.

11. **NOTICE OF NONRENEWAL.** If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal on the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least 90 days, or by City to Owner at least 60 days, prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within 15 days of receipt by Owner of a notice of nonrenewal, Owner may make a written appeal of non-renewal. Such appeal shall include, but is not limited to, a statement of the grounds on which the appeal is based. Upon receipt of such an appeal, the City Clerk shall set a hearing before the City Council prior to the annual renewal date of this Agreement, or following the renewal date at the earliest date such hearing can reasonably be held. Owner may furnish the City Council with any information which the Owner deems relevant, and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.

12. **EFFECT OF NOTICE NOT TO RENEW.** If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the period since the original execution, or the last renewal of the Agreement, as the case may be. Thereafter, this Agreement shall terminate.

13. FURNISHING OF INFORMATION. Owner shall furnish City with any information City shall require in order to enable City to determine eligibility of the property to be classified as a qualified Historic Property.

14. ENFORCEMENT OF AGREEMENT. In lieu of, and/or in addition to, any provisions to cancel the Agreement as referenced herein, City may specifically enforce, or enjoin the breach of, the terms of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner by registered or certified mail addressed to the address stated in this Agreement of violations of this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days after the date of the notice of violation, or within such reasonable time as may be required to cure the breach or default [provided that acts to cure the breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion], then City may, without further notice, declare a default under the terms of this Agreement and bring any action necessary to specifically enforce the obligations of Owner growing out of the terms of this Agreement, including, but not limited to, bringing an action for injunctive relief against the Owner or for such other relief as may be appropriate.

The City has the option to either cancel the contract or bring action in court to enforce the contract, if the city determines that the owner has breached any of the conditions of the contract or has allowed the property to deteriorate to the point that it no longer meets the standards for a qualified historical property. As an alternative to canceling the contract, a landowner that is a party to the contract may bring any action in court necessary to enforce the contract.

City does not waive any claim of default by Owner if City does not enforce or cancel this Agreement. All other remedies at law or in equity which are not otherwise provided for in this Agreement or in City's regulations governing historic properties are available to City to pursue in the event there is a breach of this Agreement. No waiver by City or any breach or default under this Agreement shall be deemed to be a waiver of any other subsequent breach thereof or default thereunder.

15. CANCELLATION. City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historic property. City may also cancel this Agreement if it determines Owner has failed to restore or rehabilitate the property in the manner specified in this Agreement.

16. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50284. Notice of the hearing shall be mailed to the last known address of each owner of property on the City's Designated Historic Structures List and shall be published in accordance with Government Code section 6061. Cancellation shall be effective on the date of Council adoption of a resolution cancelling the Agreement.

17. CANCELLATION FEE. If City cancels this Agreement in accordance with Sections 15 and 16 above, Owner shall pay a cancellation fee of twelve and one-half percent (12½%) of the full value of the property at the time of cancellation. The full value shall be determined by the County Assessor without regard to any restriction on the

property imposed pursuant to this Agreement. The cancellation fee shall be paid to the Controller at such time and in such manner as the Controller shall prescribe in accordance with State law.

18. **NOTICES.** All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties hereto:

To City: City of San Clemente
910 Calle Negocio
San Clemente, CA 92672
Attention: City Manager

To Owner: Matthew Mason and Tiffany Mason-Lopez
235 Avenida Miramar
San Clemente, CA 92672

Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice.

19. **NO COMPENSATION.** Owner shall not receive any payment from City in consideration of the obligations imposed under this Agreement, it being recognized and agreed that the consideration for the execution of this Agreement is the substantial public benefit to be derived from the preservation and maintenance of historic resources and the right to reassessment under State law.

20. **REMEDY IF AGREEMENT HELD NOT ENFORCEABLE .** In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the property subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.

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

22. **INDEMNITY OF CITY.** Owner agrees to protect, defend, indemnify and shall hold harmless the City and its elected officials, officers, agents and employees from liability for claims, loss, proceedings, damages, causes of action, liability, costs or expense, including reasonable attorney's fees in connection with damage for personal injuries, including death, and claims for property damage which may arise from the direct or indirect use or operations of Owner or those of his contractor, subcontractor, agent, employee or other person acting on his behalf which relate to the use, operation and maintenance of the Historic Property. Owner hereby agrees to and shall defend the City and its elected officials, officers, agents and employees with respect to any and all actions

for damages caused by, or alleged to have been caused by, reason of Owner's activities in connection with the Historic Property. This hold harmless provision applies to all damages and claims for damages suffered, or alleged to have been suffered, by reason of the operations referred to in this Agreement regardless of whether or not the City prepared, supplied or approved the plans, specifications or other documents for the Historic Property.

23. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.

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

25. AMENDMENTS. This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto.

26. COMPLIANCE WITH APPLICABLE LAWS. During the term of this Agreement, Owner shall maintain and use the Historic Property in compliance with all applicable State and local statutes, ordinances, regulations and official policies; provided that, except as specifically set forth in Paragraph 3, nothing in this Agreement shall be deemed to require Owner to waive any vested rights or rights to continue to maintain a legally non-conforming structure or use existing as of the date of this Agreement.

IN WITNESS WHEREOF, the parties to this contract have caused their names to be affixed hereto on the day and year first written above.

City of San Clemente

By _____ Mayor

ATTEST:

City Clerk

Resolution No.

Page 9

Owner

By _____

STATE OF CALIFORNIA
COUNTY OF ORANGE

On _____, before me, _____, a Notary Public in and for said State, personally appeared _____, personally known to be (or proved to me on the basis of satisfactory evidence to be) the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

_____(Seal)

EXHIBIT A

HISTORIC PROPERTY LEGAL DESCRIPTION

LOT 18, IN BLOCK 14 OF TRACT NO. 779, IN THE CITY OF SAN CLEMENTE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 058 PAGE 12 INCLUSIVE OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXHIBIT B

SECRETARY OF THE INTERIOR'S STANDARDS FOR THE TREATMENT OF HISTORIC PROPERTIES

Rehabilitation (making possible a compatible use for a property through repair, alterations and additions while preserving portions/features that convey its historical, cultural or architectural values)

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces and spatial relationships.
2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes and construction techniques or examples of craftsmanship that characterize a property will be preserved.
6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
9. New additions, exterior alterations or related new construction will not destroy historic materials, features and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Preservation (applying measures necessary to sustain the existing form, integrity and materials)

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

Restoration (accurately depicting the form, features, and character of a property as it appeared at a particular period of time)

1. A property will be used as it was historically or be given a new use that interprets the property and its restoration period.
2. Materials and features from the restoration period will be retained and preserved. The removal of materials or alteration of features, spaces and spatial relationships that characterize the period will not be undertaken.
3. Each property will 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 will 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 will 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 will be preserved.
6. Deteriorated features from the restoration period will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and, where possible, materials.

7. Replacement of missing features from the restoration period will be substantiated by documentary and physical evidence. A false sense of history will 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, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
9. Archeological resources affected by a project will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
10. Designs that were never executed historically will not be constructed.

Reconstruction (depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure or object at a specific time period in its historic location)

1. Reconstruction will 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 the property.
2. Reconstruction of a landscape, building, structure or object in its historic location will be preceded by a thorough archeological investigation to identify and evaluate those features and artifacts that are essential to an accurate reconstruction. If such resources must be disturbed, mitigation measures will be undertaken.
3. Reconstruction will include measures to preserve any remaining historic materials, features and spatial relationships.
4. Reconstruction will 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 will re-create the appearance of the non-surviving historic property in materials, design, color and texture.
5. A reconstruction will be clearly identified as a contemporary re-creation.
6. Designs that were never executed historically will not be constructed.

EXHIBIT C

CITY OF SAN CLEMENTE HISTORIC PROPERTY
MINIMUM MAINTENANCE STANDARDS

All buildings, structures, yards and other improvements shall be maintained in a manner which does not detract from the appearance of the immediate neighborhood. The following conditions are prohibited:

1. Dilapidated, deteriorating, or un-repaired structures, such as: fences, roofs, doors, walls and windows.
2. Publicly visible storage of scrap lumber, junk, trash or debris.
3. Publicly visible storage of abandoned, discarded or unused objects or equipment, such as automobiles, automobile parts, furniture, stoves, refrigerators, cans, containers or similar items.
4. Stagnant water or excavations, including pools or spas.
5. Any device, decoration, design, structure or vegetation which is unsightly by reason of its height, condition, or its inappropriate location.

EXHIBIT D

HISTORIC PROPERTY IMPROVEMENTS TO BE COMPLETED

Historic property improvements due prior to and up to the date of sale or transfer of the property shall be completed prior to sale or transfer of the property.

	Proposed Work/Task	Proposed Completion
1.	Prepare a comprehensive landscape and hardscape plan, documenting existing conditions as well as plans for proposed work, and submit to the City. Plans should include tree removal, backyard paving, front walkway and retaining walls.	2022
2.	Trim wisteria and honeysuckle to remain at a level below the roof eaves. Remove vines growing up exterior surface of house. Creeping fig and any other vines should either be removed or trellised. The maintenance plan should be included on the landscape plans.	2022
3.	Where missing, replace downspouts in kind to match existing and ensure that water is properly diverted away from the buildings. Where missing, add mortar bird stops to clay tiles on roof edge.	2022
4.	Carefully remove large cypress tree that is damaging foundation of garage and poses threat to the structural integrity of the house.	2022
5.	Repair concrete slab/foundation of garage.	2023
6.	Carefully repair or replace in-kind damaged and deteriorating stucco retaining walls in front and rear yards. Install protective guards, or compatible landscaping subject to approval by the City's Landscape Consultant, on front yard retaining wall to prevent skateboarders from causing further damage.	2023
7.	Replace garage door with compatible, weather-tight option to ensure long-term preservation of the original detached garage.	2024
8.	Remove internal framing and shelving in garage to allow for parking.	2024
9.	Repair and replace patio tiles and planter wall in rear yard with compatible material after the removal of the Cypress tree.	2024
10.	Replace incompatible, non-original vinyl windows (3) with windows that are compatible with the historic character of the buildings.	2027
11.	Replace plastic flood lights and other incompatible light fixtures with more historically appropriate options. Disguise or tuck lighting under eaves and shield lighting to prevent light spillage onto adjacent properties.	2027
12.	Paint the vent pipe on the attached shed roof over the rear door to be bronze.	2027

	Proposed Work/Task	Proposed Completion
13.	Front walkway tiles appear non-original. Repair and/or replace individual damaged tiles as necessary or re-tile/repave entire front walkway with compatible material.	2028
14.	Provide a clear termite inspection report (also known as a WDO Report).	2028

CITY OF SAN CLEMENTE

City Council Minutes

Regular City Council Meeting – December 4, 2018

These minutes reflect the order in which items appeared on the meeting agenda and do not necessarily reflect the order in which items were actually considered.

A Regular Meeting of the San Clemente City Council was called to order on December 4, 2018 at 5:02 p.m. in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California, by Mayor Brown.

PRESENT DONCHAK, HAMM, SWARTZ, WARD, MAYOR BROWN

ABSENT NONE

STAFF PRESENT James Makshanoff, City Manager; Scott Smith, City Attorney; Joanne Baade, City Clerk; Laura Campagnolo, Deputy City Clerk

CLOSED SESSION

A. CONFERENCE WITH LABOR NEGOTIATORS

Pursuant to Government Code Section 54957.6

Agency designated representative: Mayor

Unrepresented employee: City Manager

B. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Existing litigation pursuant to Government Code Section 54956.9(d)(1)

Number of Cases: 2

Case Name: City of San Clemente v. Foothill/Eastern Transportation Corridor Agency and County of Orange

Case Number: OCSC 30-2017-00934703-CU-PT-CXC

Case Name: City of San Clemente v. Foothill/Eastern Transportation Corridor Agency

Case Number: OCSC 30-2018-01000331-CU-WM-CJC

C. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2)

Number of potential cases: 2

Closed Session items continued on next page

D. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Initiation of litigation pursuant to Government Code Section 54956.9(d)(4)

Number of potential cases: 1

Jim Dahl, San Clemente, urged Council to defer tonight's Closed Session until the next Council is seated.

Gloria Dugan, San Clemente, voiced concern with any action to limit power of the new City Council.

Wendy Shrove, San Clemente, thanked Councilmember Donchak for her service; requested that the newly-elected Councilmembers be allowed to participate in tonight's Closed Session.

Brad Malamud, San Clemente, opined that Councilmembers-Elect Bane and Ferguson should have been sworn in prior to this evening's Closed Session to allow them to participate in discussions; opined that it is illegal for Council to discuss Item A in Closed Session this evening; urged Council to vote to defer tonight's Closed Session.

Gene James, San Clemente, requested that Council defer tonight's Closed Session until the new Councilmembers are sworn in.

Cord Bauer, San Clemente, suggested Council defer this evening's Closed Session until the new Council is seated.

Dawn Urbanek, San Clemente, urged Council to not meet in Closed Session before the new Councilmembers are installed.

Ashly Fox, San Clemente, suggested that the current Council is not serving the best interest of the community; urged Council to allow Councilmembers-Elect Bane and Ferguson to be part of this evening's Closed Session.

Jim Bieber, San Clemente, urged Council to not discuss the City Manager's contract before the new Council is seated and spoke in opposition to any increase in the City Manager's severance package.

City Attorney Smith reported that Item C on the Closed Session agenda relates to threats of litigation, i.e., Brad Malamud's Brown Act demand and a threat of litigation (not yet served on the City) from Coast Law Group that challenges the City's coastal regulations and Short Term Lodging Unit regulations; stated there are no time-critical issues on the Closed Session agenda and recommended that the Closed Session be tabled; narrated a PowerPoint presentation entitled "Executive Contract Items, Brown Act Issue". A hard copy of Mr. Smith's presentation is on file with the City Clerk.

MOTION BY COUNCILMEMBER WARD, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to table the Closed Session.

Brad Malamud, San Clemente, opined that the City Manager's Contract Amendment was not legally noticed; urged Council to rescind its November 20, 2018 decision concerning the City Manager's contract.

Cord Bauer, San Clemente, suggested that it is inappropriate for the current City Council to amend the City Manager's employment agreement.

Jim Bieber, San Clemente, urged Council to not authorize an enhanced severance package for the City Manager.

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER HAMM, CARRIED 5-0, to recess the meeting to the public business meeting that will commence at 6:00 p.m.

MEETING RECESSED

Council recessed at 5:37 p.m.

BUSINESS MEETING CONVENED

The City Council Business Meeting of December 4, 2018 convened at 6:02 p.m., with all members present.

INVOCATION

Mark Ambrose, Lead Pastor, Pacific Coast Church, gave the invocation.

PLEDGE OF ALLEGIANCE

Councilmember Donchak led the Pledge of Allegiance.

A. ELECTION RESULTS, ADMINISTRATION OF OATH OF ALLEGIANCE, AND ELECTION OF MAYOR AND MAYOR PRO TEMPORE

(1) Results of the General Municipal Election Held on November 6, 2018

City Clerk Baade reviewed the contents of the Administrative Report.

MOTION BY MAYOR PRO TEM HAMM, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 5-0, to adopt Resolution No. 18-44 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, RECITING THE FACT OF THE GENERAL MUNICIPAL ELECTION HELD NOVEMBER 6, 2018, DECLARING THE RESULTS AND SUCH OTHER MATTERS AS PROVIDED BY LAW.

Mayor Pro Tem Hamm presented outgoing Councilmember Donchak and Mayor Brown with City tiles, Commendations, and Rick Delanty giclees. Mayor Brown also received a plaque in recognition of his service as Mayor during the past year.

Don Brown, San Clemente, thanked Councilmember Donchak and Mayor Brown for their service to San Clemente.

Jim Dahl, San Clemente, thanked Councilmember Donchak and Mayor Brown for their service to the community and congratulated the Councilmembers-Elect.

Sheyenne Bane, San Clemente, thanked Councilmember Donchak and Mayor Brown for their service and expressed confidence that the newly elected Councilmembers will also serve the City well.

Ken Nielsen, San Clemente, thanked Councilmember Donchak for her service.

Kathryn Stovall-Dennis, San Clemente, congratulated the incoming Councilmembers; thanked Councilmember Donchak and Mayor Brown for their service.

Susan Ritschel, San Clemente, thanked Councilmember Donchak and Mayor Brown for their contributions to the community.

Mikii Rathmann, San Clemente, thanked City Clerk Baade for her work during the election process and, on behalf of the Downtown Business Association and Pier Pride, thanked Mayor Brown and Councilmember Donchak for their contributions to the City.

Bob Baker, San Clemente, congratulated Councilmember Ward on her re-election; thanked Mayor Brown for his leadership.

John Dorey, San Clemente, thanked Councilmember Donchak and Mayor Brown for their service and acknowledged their accomplishments.

Don Hansen and Donna Kalez, San Clemente, thanked Councilmember Donchak for her service and, in particular, her work with Pier Pride.

Michael Kaupp, San Clemente, congratulated the Councilmembers-Elect and thanked Councilmember Donchak and Mayor Brown for their dedication and service to the community.

Heather Brown, San Clemente, thanked Mayor Brown and the entire Council for giving of their time for the betterment of San Clemente.

Councilmember Donchak thanked the Council, community and her husband for their support during her tenure as a member of the City Council; noted highlights during her term, and offered advice for the new Councilmembers.

Mayor Brown thanked the Council, citizens, staff, and his family for their support during his tenure as a member of the City Council.

Assemblymember Brough and Senator Bates presented Mayor Brown and Councilmember Donchak with Resolutions from the State Legislature and thanked them for their service; noted Mayor Brown's and Councilmember Donchak's many accomplishments during their tenure on the City Council.

(2) **Oath of Allegiance - Newly-Elected Councilmembers**

Senator Bates administered the Oath of Allegiance to Councilmember-Elect Dan Bane.

City Clerk Baade presented Councilmember Bane with a Certificate of Election.

Assemblymember Brough administered the Oath of Allegiance to Councilmember-Elect Laura Ferguson.

City Clerk Baade presented Councilmember Ferguson with a Certificate of Election.

City Clerk Baade administered the Oath of Allegiance to Councilmember-Elect Ward.

City Clerk Baade presented Councilmember Ward with a Certificate of Election.

Councilmembers Bane, Ferguson and Ward assumed their seats at the dais.

(3) **Election of Mayor and Mayor Pro Tempore**

City Clerk Baade opened nominations for Mayor.

Councilmember Bane nominated Steve Swartz to the office of Mayor.

Councilmember Ward nominated Chris Hamm to the office of Mayor.

There being no additional names submitted for consideration, nominations were closed.

Council took a straw poll as follows to determine the nominee with the highest level of support.

BANE:	Swartz
FERGUSON:	Swartz
HAMM:	Hamm
SWARTZ:	Swartz
WARD:	Swartz

MOTION BY COUNCILMEMBER BANE, SECOND BY COUNCILMEMBER FERGUSON, CARRIED 4-1 (COUNCILMEMBER HAMM VOTING NOE), to elect Steve Swartz to the office of Mayor.

Mayor Swartz opened nominations for the office of Mayor Pro Tem.

Councilmember Ferguson nominated Councilmember Bane for the office of Mayor Pro Tem.

There being no additional names submitted for consideration, nominations were closed.

MOTION BY COUNCILMEMBER FERGUSON, SECOND BY MAYOR SWARTZ, CARRIED 3-2 (COUNCILMEMBER HAMM AND COUNCILMEMBER WARD VOTING NOE), to elect Dan Bane to the office of Mayor Pro Tem.

Mayor Pro Tem Bane thanked Tim Brown and Lori Donchak for their service; noted that he looks forward to working with Council on issues such as transparency and the Toll Road.

Councilmember Ferguson thanked San Clemente voters for demonstrating confidence in her; noted she looks forward to forming additional commissions and committees in an effort to enhance opportunities for community involvement.

Councilmember Ward stated that it is an honor to serve the people of San Clemente for a second term and noted Council's many accomplishments during her first term.

1. **SPECIAL PRESENTATIONS**

A. **Holiday Serenade - San Clemente High School Madrigals**

The San Clemente High School Madrigals, under the direction of CJ Daniel, performed a holiday serenade.

B. Toll Road Update

Mark McGuire, San Clemente, reported that he attended a meeting with Supervisor Bartlett at which she indicated that she does not support any current Toll Road alternative nor does she support managed lanes; voiced concern that Supervisor Bartlett could not say definitively that Los Patrones Parkway would remain a County arterial; asserted that the Toll Road should not extend past Oso Parkway.

2. ORAL COMMUNICATIONS (PART 1)**Fire and Flood Danger in Colony Cove**

Cheryl Abbott, San Clemente, voiced concern that Colony Cove is at risk for fire and floods; stated that Lot K in Sea Summit drains toward Colony Cove and noted the fire potential posed by habitat areas adjacent to Colony Cove; requested City assistance in alleviating the risk for fire and floods.

Various Requests for Council

Brad Malamud, San Clemente, urged Council to readdress the City Manager's contract amendment, consider adopting a Sunshine Ordinance, rezone the hospital property back to its original designation to end the litigation, allow individuals to appeal City decisions without cost, and allow residents to agendize topics with a petition of 20 signatures or more; opined that BBK should not serve as both the City Attorney and City litigator.

Presentation for Kathy Ward

Jeanne Reiss, San Clemente, thanked Councilmember Ward for her service and presented her with a "medal" of appreciation.

Status of Possible New Hospital Operator/Signage at Ole Hanson Beach Club

Tony Rubolino, San Clemente, requested an update on the possibility of a new hospital operator coming to San Clemente; reported on documents he received through a Public Records Request regarding signage at the Ole Hanson Beach Club.

Article in OC Weekly

Jim Bleber, San Clemente, reported on an article in OC Weekly that was attributed to a source on the City Council; stated that the reporter later retracted the article because it was inaccurate.

3. MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER FERGUSON, CARRIED 5-0, to waive reading in full of all Resolutions and Ordinances.

4. **CONSIDERATION OF AGENDIZING ITEMS REQUIRING IMMEDIATE ACTION**

None.

5. **CLOSED SESSION REPORT - CITY ATTORNEY**

None.

6. **CONSENT CALENDAR**

MOTION BY COUNCILMEMBER WARD, SECOND BY MAYOR PRO TEM BANE, CARRIED 5-0, to approve the Consent Calendar, with the removal of Item 6E.

A. **City Council Minutes**

None.

B. **Commission and Committee Minutes**

MOTION BY COUNCILMEMBER WARD, SECOND BY MAYOR PRO TEM BANE, CARRIED 5-0, to receive and file the following:

- (1) Design Review Subcommittee Regular Meeting minutes of October 10, 2018.
- (2) Design Review Subcommittee Regular Meeting minutes of October 24, 2018.
- (3) Zoning Administrator Regular Meeting minutes of November 8, 2018.
- (4) Coastal Advisory Committee Regular Meeting minutes of September 13, 2018.

C. Warrant Register

MOTION BY COUNCILMEMBER WARD, SECOND BY MAYOR PRO TEM BANE, CARRIED 5-0, to:

Approve Wire Transfers Nos. 1935 through 1936, and Warrant Nos. 554525 through 554792, paid on 11/16/18, in the amount of.....\$2,537,385.50

Approve Wire Transfers Nos. 1937 through 1940, and Warrant Nos. 554793 through 554887, paid on 11/23/18, in the amount of.....\$ 659,576.25

TOTAL WARRANT REGISTER.....\$3,196,961.75

Payroll Register

MOTION BY COUNCILMEMBER WARD, SECOND BY MAYOR PRO TEM BANE, CARRIED 5-0, to:

Approve Warrant No. 700 and Automatic Deposit Advises 52561 through 52847 for the period 11/5/18 through 11/18/18, paid on 11/23/18, in the amount of.....\$ 459,416.89

TOTAL PAYROLL REGISTER.....\$ 459,416.89

D. Notice of Completion – Primary Clarifier Number 4 Rehabilitation (Sludge Collection Equipment and Tank Coating)

MOTION BY COUNCILMEMBER WARD, SECOND BY MAYOR PRO TEM BANE, CARRIED 5-0, to:

1. Accept the Primary Clarifier Number 4 Rehabilitation (Sludge Collection Equipment and Tank Coating), Project No. 16204, from the contractor, Tharsos, Inc.
2. Authorize the Mayor to execute, and the City Clerk to record, the Notice of Completion for the Primary Clarifier Number 4 Rehabilitation (Sludge Collection Equipment and Tank Coating).

Action continued on next page

3. Authorize the City Clerk to release the Payment Bond 35 days from the recordation of the Notice of Completion upon verification with the Utilities Division that no liens have been levied against the contractor, Tharsos, Inc.
4. Authorize the City Clerk to release the Performance Bond upon receipt of a Warranty Bond in the amount of 25% of the construction cost.

F. **Contract Award – FY 2018/19 Traffic Signal Equipment Upgrades**

MOTION BY COUNCILMEMBER WARD, SECOND BY MAYOR PRO TEM BANE, CARRIED 5-0, to:

1. Approve the plans and specifications for the FY 2018/19 Traffic Signal Equipment Upgrades, Project Nos. 17335, 18807, 18808 and 19320.
2. Approve, and authorize the City Manager to execute, Contract C18-71, by and between the City of San Clemente and International Line Builders, Inc., providing for construction of the FY 2018/19 Traffic Signal Equipment Upgrades, in the amount of \$234,443.

G. **Initiation of Zoning Amendment – Incentives for Housing Projects that Include Consolidation of Substandard Lots Within Mixed Use Zoning Districts**

MOTION BY COUNCILMEMBER WARD, SECOND BY MAYOR PRO TEM BANE, CARRIED 5-0, to initiate a Zoning Amendment, as authorized by Municipal Code Section 17.16.020(C)(1), to provide incentives for housing projects that include consolidation of substandard lots within mixed use zoning districts.

H. **Contract Award – Street Sweeping Services**

MOTION BY COUNCILMEMBER WARD, SECOND BY MAYOR PRO TEM BANE, CARRIED 5-0, to approve, and authorize the City Manager to execute, Contract C18-72, by and between the City of San Clemente and Sunset Property Services, providing for street sweeping services for an initial 2½ year term from January 2, 2019 through June 30, 2021, at a cost not to exceed \$1,083,631.

ITEMS REMOVED FROM THE CONSENT CALENDAR FOR DISCUSSION

E. Contract Award – Boys and Girls Club Trash Enclosure

Don Brown, Board Member of the Boys and Girls Club, noted that the subject trash enclosure is City property for Bonita Canyon Park; voiced concern that homeless persons sometimes live in the enclosure and noted that drug paraphernalia has been found inside the enclosure; conveyed support for the project.

Brad Malamud, San Clemente, noted that City Manager Makshanoff responded to his questions about the subject project; requested that agenda reports include more detail to adequately inform the public.

MOTION BY COUNCILMEMBER FERGUSON, SECOND BY MAYOR PRO TEM BANE, CARRIED 5-0, to:

1. Approve the plans and specifications for the Boys and Girls Club Trash Enclosure, Project No. 19510.
2. Approve a supplemental appropriation of \$20,545 from the Facilities Maintenance Reserve Fund undesignated fund balance to Account 014-811-45300-000-19510 for the Boys and Girls Club Trash Enclosure project.
3. Approve, and authorize the City Manager to execute, Contract C18-70, by and between the City of San Clemente and West Gate Contractor, providing for construction of the Boys and Girls Club Trash Enclosure, in the amount of \$43,770.

7. PUBLIC HEARINGS

A. Historic Property Preservation Agreement 18-434, Lindbom House – 1815 Calle De Los Alamos

Public Hearing to consider approving Historic Property Preservation Agreement 18-434, for the historic house located at 1815 Calle De Los Alamos.

Assistant Planner Lightfoot narrated a PowerPoint presentation entitled "Historic Property Preservation Agreement 18-434, 1815 Calle De Los Alamos (Lindbom House)" and responded to Council inquiries. A hard copy of Mr. Lightfoot's PowerPoint is on file with the City Clerk.

Mayor Swartz opened the Public Hearing.

Larry Culbertson, San Clemente Historical Society, spoke in support of the project; stated that he is encouraged with the City's direction with regard to protecting historic resources; urged that the City utilize the services of a preservation specialist.

Rick Jones, applicant, thanked Council for the opportunity to receive Mills Act benefits.

There being no others desiring to speak on this item, the Public Hearing was closed.

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER FERGUSON, CARRIED 5-0, to adopt Resolution No. 18-53 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING HISTORIC PROPERTY PRESERVATION AGREEMENT 18-434 FOR THE PROPERTY LOCATED AT 1815 CALLE DE LOS ALAMOS.

B. Historic Property Preservation Agreement 18-442, Westbrook Residence – 235 Avenida Miramar

Public Hearing to consider approving Historic Property Preservation Agreement 18-442, for the historic house located at 235 Avenida Miramar.

Assistant Planner Lightfoot narrated a PowerPoint presentation entitled "Historic Property Preservation Agreement 18-442, 235 Avenida Miramar (Westbrook Bungalow)" and responded to Council inquiries. A hard copy of Mr. Lightfoot's PowerPoint is on file with the City Clerk.

Mayor Swartz opened the Public Hearing.

Larry Culbertson, San Clemente Historical Society, spoke in support of the project; requested that the estimated cost for items identified for improvement as part of an Historic Property Preservation Agreement be included in the Administrative Reports.

There being no others desiring to speak on this item, the Public Hearing was closed.

Following discussion, MOTION BY COUNCILMEMBER WARD, SECOND BY MAYOR PRO TEM BANE, CARRIED 5-0, to adopt Resolution No. 18-54 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING HISTORIC PROPERTY PRESERVATION AGREEMENT 18-442 FOR THE PROPERTY LOCATED AT 235 AVENIDA MIRAMAR, with the modification that the Work/Task List for the subject Historic Property Preservation Agreement be expanded to include the following task to be completed by 2028: *"Provide a clear termite inspection report (also known as a WDO Report)."*

8. **UNFINISHED BUSINESS**

None.

9. **NEW BUSINESS**

None.

10. **ORAL COMMUNICATIONS (PART 2)**

None.

11. **REPORTS**

A. **Commissions and Committees**

None.

B. **City Manager**

None.

C. **City Attorney**

None.

D. **Council Members**

Sunshine Ordinance

Councilmember Ferguson requested that the issue of a possible sunshine ordinance be agendized. City Attorney Smith offered to provide Council with a survey of other cities concerning Sunshine Ordinances.

Orange County Transportation Authority (OCTA) - Long Range Transportation Plan

Mayor Pro Tem Bane requested that the OCTA be invited to a Council meeting to report on the Long Range Transportation Plan.

Public Safety Task Force Reactivation

Mayor Pro Tem Bane requested that the possibility of reactivating a Public Safety Task Force in the City be agendized.

City Properties Suitable for Rezoning for Hospital Use

Mayor Pro Tem Bane requested that a report that identifies properties suitable for possible rezoning for hospital use be agendized.

Welcome to New Councilmembers

Mayor Swartz welcomed the newly-elected Councilmembers.

12. **RESOLUTIONS/ORDINANCES**

A. **Ordinance No. 1665 (Second Reading) – Sidewalk Construction and Repair**

MOTION BY MAYOR SWARTZ, SECOND BY COUNCILMEMBER HAMM, CARRIED 5-0, to adopt Ordinance No. 1665 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING MUNICIPAL CODE CHAPTER 12.08 TO UPDATE THE REQUIREMENT FOR CONSTRUCTION OF NEW SIDEWALK OR REPAIR OF EXISTING SIDEWALK.

13. ADJOURNMENT

MOTION BY COUNCILMEMBER FERGUSON, SECOND BY COUNCILMEMBER WARD, CARRIED 5-0, to adjourn at 8:09 p.m. The next Regular Council Meeting will be held on Tuesday, December 18, 2018 in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California. Closed Session items will be discussed at 5:00 p.m. The General Session will commence at 6:00 p.m.

Note: The first Regular Council Meeting in January 2019 was previously cancelled because it falls on New Year's Day.



MAYOR of the City of
San Clemente, California



CITY CLERK of the City of
San Clemente, California



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: December 4, 2018

Agenda Item 7B
Approvals:
City Manager JM
Dept. Head [Signature]
Attorney [Signature]
Finance [Signature]

Department: Community Development/Planning Division
Prepared By: Jonathan Lightfoot, Assistant Planner

Subject: HISTORIC PROPERTY PRESERVATION AGREEMENT 18-442, VIRGIL WESTBROOK RESIDENCE, LOCATED AT 235 AVENIDA MIRAMAR

Fiscal Impact: Execution of the Historic Property Preservation Agreement may result in minimal reductions in property tax revenues to the City.

Summary: Staff recommends the City Council (Council) approve a Historic Property Preservation Agreement (HPPA) for a historic house located at 235 Avenida Miramar. The HPPA provides a property tax reduction incentive to owners of historic properties to restore, improve, and preserve their buildings and grounds.

Background: The subject property was developed in 1927 and includes a 1,020 square foot residence and detached garage on a 4,000 square foot lot. The site is in the Residential Medium Zone within the Coastal Zone overlay (RM-CZ). Please reference Attachment 1 for a vicinity map. The architect and presumed original resident of the home was Virgil Westbrook, the architect of many early San Clemente buildings including the Ole Hanson Beach Club (1927).

The property was surveyed in the 2006 Historic Resources Survey Update. The survey stated that the resource is in good condition and identified the structure as a contributor to a potential local historic district under Criterion A for its association with the Ole Hanson/Spanish Village by the Sea period of development. The character defining features of the house include: 1) low-pitch side-gable roof with clay tiles and exposed rafter tails; 2) white stucco walls and a stucco chimney with an arched cap emerging from the northern façade; 3) covered porch with a fixed wood window articulated by two stucco-clad stout columns; 4) a horizontal-sliding wood window above a protruding exterior window sill; and 5) a mosaic over the interior fireplace. More information on the property's historic significance is provided as Attachment 3.

Discussion: Staff visited the subject property with an architectural historian, Audrey von Ahrens of GPA Consulting to evaluate the integrity and condition of the historic resource and determine if any restoration improvements are necessary to rehabilitate the historic resource. Staff and the architectural historian developed a list of prioritized work for rehabilitation and maintenance of the property. An annotated work list is provided as Attachment 4 to this report.

The HPPA was reviewed by the Design Review Subcommittee (DRSC), which serves as the Cultural Heritage Subcommittee, on October 24, 2018 and they supported the HPPA request with the following items to be completed within the initial ten year term of the agreement:

Complete by end of 2023

1. Prepare a comprehensive landscape and hardscape plan, documenting existing conditions as well as plans for proposed work, and submit to the City. Plans should include tree removal, backyard paving, front walkway and retaining walls.
2. Trim wisteria and honeysuckle to remain at a level below the roof eaves. Remove vines growing up exterior surface of house. Creeping fig and any other vines should either be removed or trellised. The maintenance plan should be included on the landscape plans.
3. Where missing, replace downspouts in kind to match existing and ensure that water is properly diverted away from the buildings. Where missing, add mortar bird stops to clay tiles on roof edge.
4. Carefully remove the large cypress tree in the rear yard. It is damaging the foundation of the garage and poses a threat to the structural integrity of the house due to continued trimming by SDGE around overhead power lines.
5. Repair concrete slab/foundation of garage.
6. Carefully repair or replace in-kind damaged and deteriorating stucco retaining walls in front and rear yards. Install protective guards on front yard retaining wall to prevent skateboarders from causing further damage.

Complete by end of 2028

7. Replace garage door with compatible, weather-tight option to ensure long-term preservation of the original detached garage.
8. Remove internal framing and shelving in garage to allow for parking.
9. Replace incompatible, non-original vinyl windows (3) with windows that are compatible with the historic character of the buildings.
10. Replace plastic flood lights and other incompatible light fixtures with more compatible options. Disguise or tuck lighting under eaves and shield lighting to prevent light spillage onto adjacent properties.
11. Paint the vent pipe on the attached shed roof over the rear door to match the bronze color of the gutters.

12. Repair and replace patio tiles and planter wall in rear yard with compatible material after the removal of the Cypress tree.
13. Front walkway tiles appear non-original. Repair and/or replace individual damaged tiles as necessary or re-tile/repave entire front walkway with compatible material.

The property owner would need to apply for and receive applicable permits at the time that work is proposed consistent with HPPA requirements and Secretary of the Interior Standards for the Treatment of Historic Properties (Exhibit B of Attachment 1).

If approved by Council, the HPPA will be executed after the owner has submitted the required \$353 filing fee. The executed HPPA will then be recorded with the County and forwarded to the Tax Assessor. The estimated tax savings will range from \$3,700 to \$6,500 per year. The exact amount of the reduction will only be known after the County Tax Assessor completes a valuation for the property in 2019 based on the executed Agreement.

Recommended

Action: STAFF RECOMMENDS THAT the City Council approve HPPA 18-442 for the historic house located at 235 Avenida Miramar.

- | | | |
|-------------------------|--------------|--|
| Attachments: | Attachment 1 | Resolution |
| Exhibits: | Exhibit 1 | HPPA 18-442 |
| | Exhibit A | Historic Property Legal Description |
| | Exhibit B | Secretary of the Interior’s Standards for the Treatment of Historic Properties |
| | Exhibit C | City of San Clemente Historic Property Minimum Maintenance Standards |
| | Exhibit D | Historic Property Improvements to be completed |
| | Attachment 2 | Vicinity Map |
| | Attachment 3 | DPR Form |
| | Attachment 4 | Annotated photographs of rehabilitation items |
| | Attachment 5 | Cultural Heritage Subcommittee October 24, 2018 meeting report and minutes (excerpted) |
| | Attachment 6 | Mills Act Background Information |
| | Attachment 7 | Photographs |

Notification: All of the property owners within 300 feet and the Historical Society have been notified of the project

EXHIBIT 1

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING HISTORIC PROPERTY PRESERVATION AGREEMENT 18-442 FOR THE PROPERTY LOCATED AT 235 AVENIDA MIRAMAR

WHEREAS, the City Council of the City of San Clemente adopted Ordinance 1194, which in Section 3, establishes procedures for property owners of designated historically significant structures to voluntarily enter into Historic Property Preservation Agreements in order to apply to receive property tax reductions as an incentive for historic preservation; and

WHEREAS, on June 27, 2018, an application was submitted by Matthew Mason and Tiffany Mason-Lopez, 235 Avenida Miramar, San Clemente, CA 92672, who are the owner of a designated historically significant structure, to enter into an Historic Property Preservation Agreement (HPPA) for their property located at 235 Avenida Miramar, the legal description being Lot 18, Block 14 of Tract 779; and

WHEREAS, on October 24, 2018, the Design Review Subcommittee, which serves as the Cultural Heritage Subcommittee of the Planning Commission, reviewed the application and recommended approval of HPPA 18-442 with thirteen restoration improvement conditions; and

WHEREAS, on December 4, 2018, the City Council held a duly noticed public hearing, and considered testimony of City staff, the applicant and property owner, and other interested parties.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE HEREBY RESOLVES AS FOLLOWS:

SECTION 1: The City Council hereby approves HPPA 18-442, attached hereto and incorporated herein by reference as Exhibit 1, and authorizes the Mayor to execute, and the City Clerk to record, the HPPA for the property at 235 Avenida Miramar, after the required application fee has been submitted to the City by the property owner.

PASSED AND ADOPTED this _____ day of _____, 2018.

Mayor of the City of
San Clemente, California

Resolution No.

Page 2

ATTEST:

CITY CLERK of the City of
San Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) §
CITY OF SAN CLEMENTE)

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. _____ was adopted at a regular meeting of the City Council of the City of San Clemente held on the ____ day of _____, 2018, by the following vote:

AYES:
NOES:
ABSENT:

CITY CLERK, of the City of
San Clemente, California

Approved as to form:

City Attorney

EXHIBIT 1

Recording Requested by, and
when Recorded Mail to:

City Clerk
City of San Clemente
910 Calle Negocio
San Clemente, CA 92672

This Agreement is recorded for the benefit of the City of San Clemente and is exempt from the payment of recording fees pursuant to Government Code Sections 6103 and 27383.

HISTORIC PROPERTY PRESERVATION AGREEMENT

THIS AGREEMENT is made and entered into this 4th day of December, 2018, by and between the City of San Clemente ("City"), a municipal corporation of the State of California, and Matthew Mason and Tiffany Mason-Lopez ("Owner").

RECITALS

WHEREAS, the owners possess fee title in and to that certain qualified real property, together with associated structures and improvements thereon, located on Assessor's Parcel Number 058-122-02, located at 235 Avenida Miramar, San Clemente, California 92672, more specifically described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the Historic Property is a qualified historic property in that it is privately owned property which is not exempt from property taxation and is listed in the City's Designated Historic Structures List, which is the City's official register of historically significant sites adopted October 2, 2007 by Resolution 07-72 of the San Clemente City Council, as amended; and

WHEREAS, both City and Owner desire to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code; and

WHEREAS, both City and Owner desire to enter into this Agreement for the purpose of protecting and preserving the characteristics of historical significance of the Historic Property through the incentive of a potential property tax reduction; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement, shall be entitled to qualify for a reassessment of valuation of the Historic Property, pursuant to provisions of the aforementioned California Revenue and Taxation Code, and any corresponding adjustment in property taxes resulting therefrom.

AGREEMENT

NOW, THEREFORE, both Owner and City, in consideration of the mutual promises, covenants and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. **AGREEMENT SUBJECT TO GOVERNMENT CODE SECTIONS 50280-50290.** This agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes.

2. **REASSESSMENT OF VALUATION.** The determination of property valuation pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code, is in the sole discretion of the Orange County Tax Assessor's Office. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.

3. **PRESERVATION OF PROPERTY.** Owner agrees to preserve and maintain the Historic Property and its character-defining features, as provided below. Character-defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roof line and other aspects of the appearance of the exterior of the property. The Secretary of the Interior's Standards for the Treatment of Historic Properties and minimum maintenance standards, attached hereto and incorporated herein by reference as Exhibit "B," shall constitute the minimum standards and conditions for maintenance, use, and preservation of the Historic Property, and shall apply to the property throughout the term of this Agreement. Owner shall, where necessary, restore and rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the U.S. Secretary of the Interior's Standards for the Treatment of Historic Properties, the City of San Clemente Design Guidelines and in accordance with the attached schedule of improvements, attached hereto and incorporated herein by reference as Exhibit "B".

4. **BUILDING CHANGES.** All building changes shall comply with applicable City specific plans, City regulations and guidelines, and with the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, namely the U.S. Secretary of the Interior's Standards for Rehabilitation and Standards and Guidelines for Historic Preservation Projects.

5. **NOTIFICATION OF DIRECTOR.** The Community Development Director shall be notified by the Owner of changes to character-defining exterior features prior to their execution, such as major landscaping projects and tree removals, exterior door or window replacement, exterior repainting, remodeling, or other exterior alterations requiring a building permit. The Owner agrees to secure all necessary City approvals and/or permits prior to changing the building's exterior appearance or use, or prior to commencing construction work.

6. **PROHIBITED.** The following are prohibited: demolition or partial demolition of the historic building or accessory buildings without prior City approval; exterior

alterations or additions not in keeping with the standards listed above; dilapidated, deteriorating or unrepaired structures such as fences, roofs, doors, walls, windows; outdoor storage of junk, trash, debris, appliances, or furniture visible from a public way; or any device, decoration, structure or vegetation which is unsightly due to lack of maintenance or because such feature adversely affects, or is visually incompatible with, the property's recognized historic character, significance and design, as determined by the Community Development Director.

7. **INSPECTIONS.** Owner agrees to permit the periodic examination, by prior appointment, of the interior and exterior of the Historic Property by the County Assessor, the Department of Parks and Recreation, the State Board of Equalization and City as may be necessary to determine Owner's compliance with the terms and provisions of this Agreement. After five years and every five years thereafter, the City shall inspect the property to determine the owner's continued compliance with the agreement.

8. **PAYMENT OF FEE.** As a condition of executing the contract, Owner shall pay City a fee as provided in the City's current Planning Fee Schedule, after City Council approval of the Agreement, which fee does not exceed the reasonable cost of administering City's historical preservation program. Said fee shall be made payable to the City of San Clemente and shall be remitted to the Planning Division prior to the Agreement being executed by City.

9. **TERM.** The term of this Agreement shall be from December 4, 2018, to and including December 4, 2028.

10. **AUTOMATIC RENEWAL.** On each yearly anniversary of the effective date of this Agreement (hereinafter referred to as the "renewal date"), one year shall be added automatically to the initial term of this Agreement unless notice of non-renewal is given as provided in this Agreement.

11. **NOTICE OF NONRENEWAL.** If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal on the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least 90 days, or by City to Owner at least 60 days, prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within 15 days of receipt by Owner of a notice of nonrenewal, Owner may make a written appeal of non-renewal. Such appeal shall include, but is not limited to, a statement of the grounds on which the appeal is based. Upon receipt of such an appeal, the City Clerk shall set a hearing before the City Council prior to the annual renewal date of this Agreement, or following the renewal date at the earliest date such hearing can reasonably be held. Owner may furnish the City Council with any information which the Owner deems relevant, and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.

12. **EFFECT OF NOTICE NOT TO RENEW.** If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the period since the original execution, or the last renewal of the Agreement, as the case may be. Thereafter, this Agreement shall terminate.

13. FURNISHING OF INFORMATION. Owner shall furnish City with any information City shall require in order to enable City to determine eligibility of the property to be classified as a qualified Historic Property.

14. ENFORCEMENT OF AGREEMENT. In lieu of, and/or in addition to, any provisions to cancel the Agreement as referenced herein, City may specifically enforce, or enjoin the breach of, the terms of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner by registered or certified mail addressed to the address stated in this Agreement of violations of this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days after the date of the notice of violation, or within such reasonable time as may be required to cure the breach or default [provided that acts to cure the breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion], then City may, without further notice, declare a default under the terms of this Agreement and bring any action necessary to specifically enforce the obligations of Owner growing out of the terms of this Agreement, including, but not limited to, bringing an action for injunctive relief against the Owner or for such other relief as may be appropriate.

The City has the option to either cancel the contract or bring action in court to enforce the contract, if the city determines that the owner has breached any of the conditions of the contract or has allowed the property to deteriorate to the point that it no longer meets the standards for a qualified historical property. As an alternative to canceling the contract, a landowner that is a party to the contract may bring any action in court necessary to enforce the contract.

City does not waive any claim of default by Owner if City does not enforce or cancel this Agreement. All other remedies at law or in equity which are not otherwise provided for in this Agreement or in City's regulations governing historic properties are available to City to pursue in the event there is a breach of this Agreement. No waiver by City or any breach or default under this Agreement shall be deemed to be a waiver of any other subsequent breach thereof or default thereunder.

15. CANCELLATION. City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historic property. City may also cancel this Agreement if it determines Owner has failed to restore or rehabilitate the property in the manner specified in this Agreement.

16. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50284. Notice of the hearing shall be mailed to the last known address of each owner of property on the City's Designated Historic Structures List and shall be published in accordance with Government Code section 6061. Cancellation shall be effective on the date of Council adoption of a resolution cancelling the Agreement.

17. CANCELLATION FEE. If City cancels this Agreement in accordance with Sections 15 and 16 above, Owner shall pay a cancellation fee of twelve and one-half percent (12½%) of the full value of the property at the time of cancellation. The full value shall be determined by the County Assessor without regard to any restriction on the

property imposed pursuant to this Agreement. The cancellation fee shall be paid to the Controller at such time and in such manner as the Controller shall prescribe in accordance with State law.

18. NOTICES. All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties hereto:

To City: City of San Clemente
910 Calle Negocio
San Clemente, CA 92672
Attention: City Manager

To Owner: Matthew Mason and Tiffany Mason-Lopez
235 Avenida Miramar
San Clemente, CA 92672

Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice.

19. NO COMPENSATION. Owner shall not receive any payment from City in consideration of the obligations imposed under this Agreement, it being recognized and agreed that the consideration for the execution of this Agreement is the substantial public benefit to be derived from the preservation and maintenance of historic resources and the right to reassessment under State law.

20. REMEDY IF AGREEMENT HELD NOT ENFORCEABLE . In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the property subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.

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

22. INDEMNITY OF CITY. Owner agrees to protect, defend, indemnify and shall hold harmless the City and its elected officials, officers, agents and employees from liability for claims, loss, proceedings, damages, causes of action, liability, costs or expense, including reasonable attorney's fees in connection with damage for personal injuries, including death, and claims for property damage which may arise from the direct or indirect use or operations of Owner or those of his contractor, subcontractor, agent, employee or other person acting on his behalf which relate to the use, operation and maintenance of the Historic Property. Owner hereby agrees to and shall defend the City and its elected officials, officers, agents and employees with respect to any and all actions

for damages caused by, or alleged to have been caused by, reason of Owner's activities in connection with the Historic Property. This hold harmless provision applies to all damages and claims for damages suffered, or alleged to have been suffered, by reason of the operations referred to in this Agreement regardless of whether or not the City prepared, supplied or approved the plans, specifications or other documents for the Historic Property.

23. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.

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

25. AMENDMENTS. This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto.

26. COMPLIANCE WITH APPLICABLE LAWS. During the term of this Agreement, Owner shall maintain and use the Historic Property in compliance with all applicable State and local statutes, ordinances, regulations and official policies; provided that, except as specifically set forth in Paragraph 3, nothing in this Agreement shall be deemed to require Owner to waive any vested rights or rights to continue to maintain a legally non-conforming structure or use existing as of the date of this Agreement.

IN WITNESS WHEREOF, the parties to this contract have caused their names to be affixed hereto on the day and year first written above.

City of San Clemente

By _____ Mayor

ATTEST:

City Clerk

Resolution No.

Page 9

Owner

By _____

STATE OF CALIFORNIA
COUNTY OF ORANGE

On _____, before me, _____, a Notary Public in and for said State, personally appeared _____, personally known to be (or proved to me on the basis of satisfactory evidence to be) the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

_____(Seal)

EXHIBIT A

HISTORIC PROPERTY LEGAL DESCRIPTION

LOT 18, IN BLOCK 14 OF TRACT No. 779, IN THE CITY OF SAN CLEMENTE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 058 PAGE 12 INCLUSIVE OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXHIBIT B

SECRETARY OF THE INTERIOR'S STANDARDS FOR THE TREATMENT OF HISTORIC PROPERTIES

Rehabilitation (making possible a compatible use for a property through repair, alterations and additions while preserving portions/features that convey its historical, cultural or architectural values)

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces and spatial relationships.
2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes and construction techniques or examples of craftsmanship that characterize a property will be preserved.
6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
9. New additions, exterior alterations or related new construction will not destroy historic materials, features and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Preservation (applying measures necessary to sustain the existing form, integrity and materials)

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

Restoration (accurately depicting the form, features, and character of a property as it appeared at a particular period of time)

1. A property will be used as it was historically or be given a new use that interprets the property and its restoration period.
2. Materials and features from the restoration period will be retained and preserved. The removal of materials or alteration of features, spaces and spatial relationships that characterize the period will not be undertaken.
3. Each property will 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 will 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 will 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 will be preserved.
6. Deteriorated features from the restoration period will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and, where possible, materials.

7. Replacement of missing features from the restoration period will be substantiated by documentary and physical evidence. A false sense of history will 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, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
9. Archeological resources affected by a project will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
10. Designs that were never executed historically will not be constructed.

Reconstruction (depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure or object at a specific time period in its historic location)

1. Reconstruction will 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 the property.
2. Reconstruction of a landscape, building, structure or object in its historic location will be preceded by a thorough archeological investigation to identify and evaluate those features and artifacts that are essential to an accurate reconstruction. If such resources must be disturbed, mitigation measures will be undertaken.
3. Reconstruction will include measures to preserve any remaining historic materials, features and spatial relationships.
4. Reconstruction will 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 will re-create the appearance of the non-surviving historic property in materials, design, color and texture.
5. A reconstruction will be clearly identified as a contemporary re-creation.
6. Designs that were never executed historically will not be constructed.

CITY OF SAN CLEMENTE HISTORIC PROPERTY
MINIMUM MAINTENANCE STANDARDS

All buildings, structures, yards and other improvements shall be maintained in a manner which does not detract from the appearance of the immediate neighborhood. The following conditions are prohibited:

1. Dilapidated, deteriorating, or un-repaired structures, such as: fences, roofs, doors, walls and windows.
2. Publicly visible storage of scrap lumber, junk, trash or debris.
3. Publicly visible storage of abandoned, discarded or unused objects or equipment, such as automobiles, automobile parts, furniture, stoves, refrigerators, cans, containers or similar items.
4. Stagnant water or excavations, including pools or spas.
5. Any device, decoration, design, structure or vegetation which is unsightly by reason of its height, condition, or its inappropriate location.

EXHIBIT D

HISTORIC PROPERTY IMPROVEMENTS TO BE COMPLETED

Historic property improvements due prior to and up to the date of sale or transfer of the property shall be completed prior to sale or transfer of the property.

	Proposed Work/Task	Proposed Completion
1.	Prepare a comprehensive landscape and hardscape plan, documenting existing conditions as well as plans for proposed work, and submit to the City. Plans should include tree removal, backyard paving, front walkway and retaining walls.	2020
2.	Trim wisteria and honeysuckle to remain at a level below the roof eaves. Remove vines growing up exterior surface of house. Creeping fig and any other vines should either be removed or trellised. The maintenance plan should be included on the landscape plans.	2020
3.	Where missing, replace downspouts in kind to match existing and ensure that water is properly diverted away from the buildings. Where missing, add mortar bird stops to clay tiles on roof edge.	2019
4.	Carefully remove large cypress tree that is damaging foundation of garage and poses threat to the structural integrity of the house.	2021
5.	Repair concrete slab/foundation of garage.	2023
6.	Carefully repair or replace in-kind damaged and deteriorating stucco retaining walls in front and rear yards. Install protective guards on front yard retaining wall to prevent skateboarders from causing further damage.	2019
7.	Replace garage door with compatible, weather-tight option to ensure long-term preservation of the original detached garage.	2024
8.	Remove internal framing and shelving in garage to allow for parking.	2024
9.	Replace incompatible, non-original vinyl windows (3) with windows that are compatible with the historic character of the buildings.	2027
10.	Replace plastic flood lights and other incompatible light fixtures with more historically appropriate options. Disguise or tuck lighting under eaves and shield lighting to prevent light spillage onto adjacent properties.	2027
11.	Paint the vent pipe on the attached shed roof over the rear door to be bronze.	2027
12.	Repair and replace patio tiles and planter wall in rear yard with compatible material after the removal of the Cypress tree.	2024
13.	Front walkway tiles appear non-original. Repair and/or replace individual damaged tiles as necessary or re-tile/repave entire front walkway with compatible material.	2029

12-4-18 / 7B-17



Legend
Historic Structure



City of San Clemente
Project: HPPA 18-442
Address: 235 Avenida Miramar



12-4-18 / 7B-18

50

12-21-21 / 7B-50

PRIMARY RECORD

Other Listings
Review Code _____ Reviewer _____ Date _____

Page 1 of 3 Resource Name or #: 235 AVENIDA MIRAMAR

P1. Other Identifier:

P2. Location: Not for Publication Unrestricted a. County Orange
and (P2b and P2C or P2d. Attach a Location Map as necessary.)
b. USGS 7.5' Quad Date T; R; 1/4 of 1/4 of Sec; B.M.
c. Address 235 Avenida Miramar City San Clemente Zip 92672
d. UTM: Zone; mE/ mN

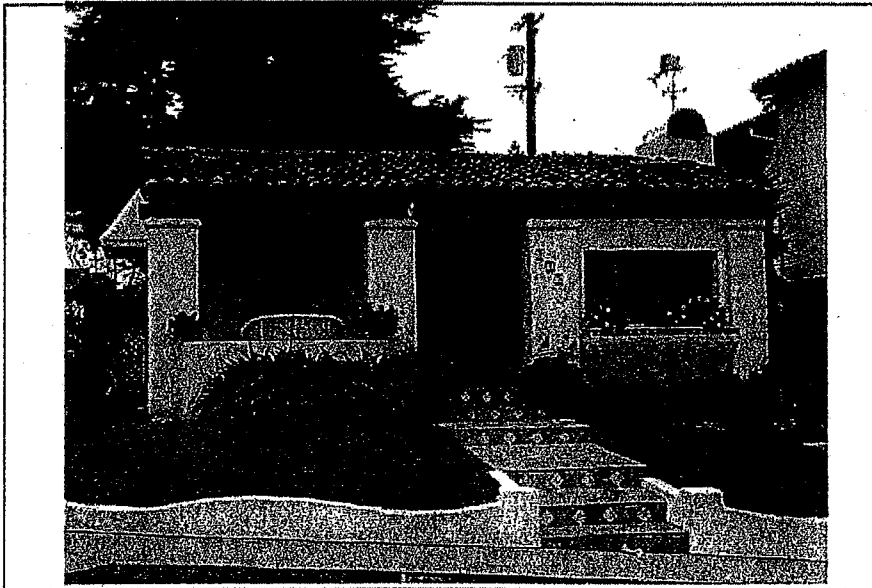
e. Other Locational Data: Assessor Parcel Number: 058-122-02

P3a. Description:

The property contains a one-story single family residence with a rectangular plan and wood-frame construction. Designed in the Spanish Colonial Revival style, it has a low-pitch side-gable roof with clay tiles and exposed rafter tails. The exterior walls are clad with smooth stucco. A stucco chimney with an arched cap emerges from the northern facade. The primary (east) facade is three bays wide. The southernmost bay is a covered porch with a fixed wood window articulated by two stucco-clad stout columns. The central bay is the recessed main entrance. The northernmost bay contains a horizontal-sliding wood window with an exterior window sill. The bay is articulated by a pair of pilasters that match the columns. The property line is delineated by a low, scalloped retaining wall interrupted at the central tiled pathway with low-rising steps. The fenestration consists of non-original but compatible wood casement windows throughout the residence. The residence is in good condition. Its integrity is good.

P3b. Resources Attributes: 02 Single Family Property

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



P5b. Description of Photo:
East elevation, west view, May 2006.

P6. Date Constructed/Sources:
 Historic Both
 Prehistoric
1927 (E) Tax Assessor

P7. Owner and Address:
Mc Garry, James D. & Mc Garry, Delma L.
235 Avenida Miramar

P8. Recorded by:
Historic Resources Group, 1728
Whitley Avenue, Hollywood, CA
90028

P9. Date Recorded: 9/21/2006

P10. Survey Type:
City of San Clemente Historic
Resources Survey Update

P11. Report Citation: None.

Attachments: NONE Location Map Sketch Map Continuation Sheet Building, Structure, and Object Record
 Archaeological Record District Record Linear Feature Record Milling Station Record Rock Art Record
 Artifact Record Photograph Record Other:

DPR 523A (1/95) HRG

BUILDING, STRUCTURE, AND OBJECT RECORD

Page 2 of 3

NRHP Status Code 3D

Resource Name or #: 235 AVENIDA MIRAMAR

- B1. Historic Name: (Unknown)
- B2. Common Name: (Unknown)
- B3. Original Use: Single-family residential
- B4. Present Use: Single-family residential
- B5. Architectural Style: Spanish Colonial Revival
- B6. Construction History:

B7. Moved? No Yes Unknown Date: Original Location:
 B8. Related Features:

- B9a. Architect: (Unknown) b. Builder: (Unknown)
- B10. Significance: Theme Ole Hanson/Spanish Village by the Sea Area City of San Clemente
 Period of Significance 1925-1936 Property Type Residential Applicable Criteria A

This one-story single family residence appears to have been built for architect Virgil Westbrook in 1927. This property is a typical example of the Spanish Colonial Revival style as represented in San Clemente. This property appears eligible as a contributor to a potential National Register district under Criterion A for its association with the Ole Hanson/Spanish Village by the Sea period of development. It also appears eligible at the local level as a contributor to a potential historic district. It is recommended for retention on the Historic Structures List.

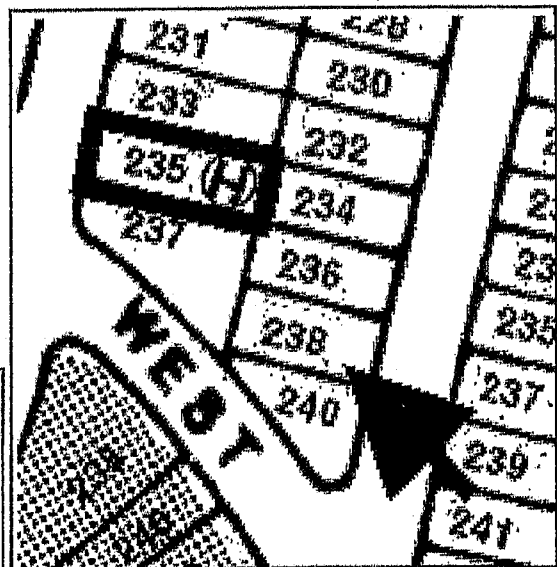
B11. Additional Resource Attributes: 02 Single Family Property

B12. References: Orange County Tax Assessor Records; Historic Resources Survey, Leslie Heumann and Associates, 1995.

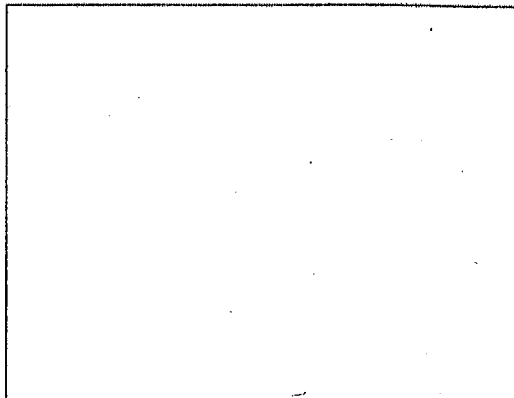
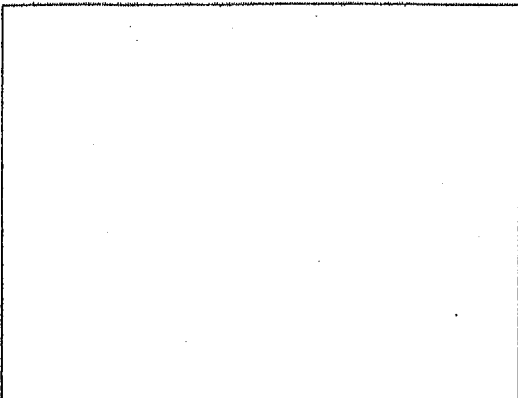
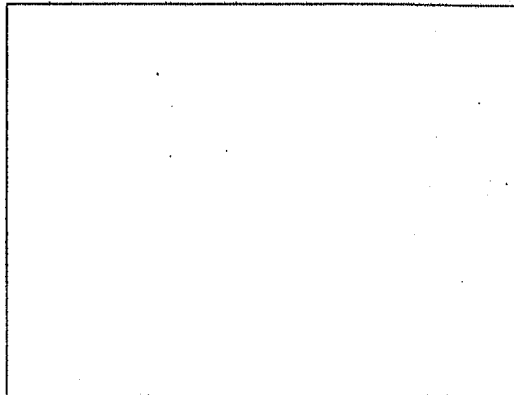
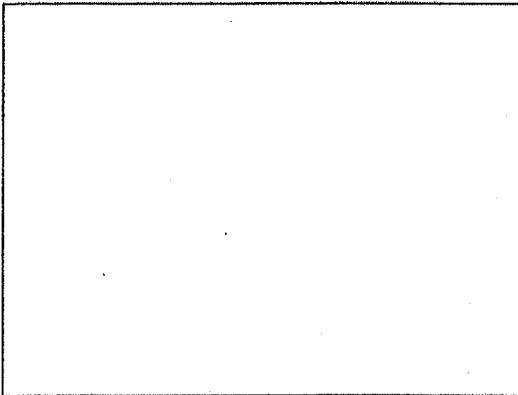
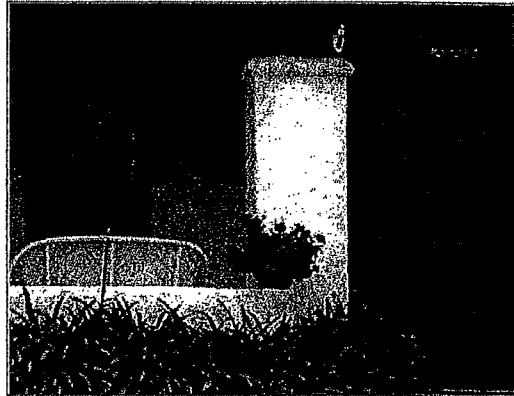
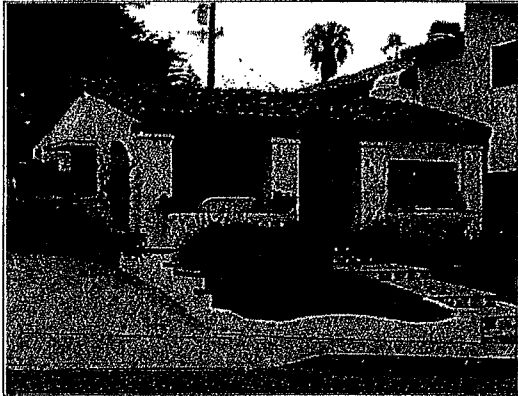
B13. Remarks: (none)

B14. Evaluator: Historic Resources Group, Hollywood, CA
 Date of Evaluation: 9/21/2006

(This space reserved for official comments.)



Photographs of the Subject Property, Continued:



Historic Property Preservation Agreement 18-442:

235 Avenida Miramar
(Westbrook Bungalow)

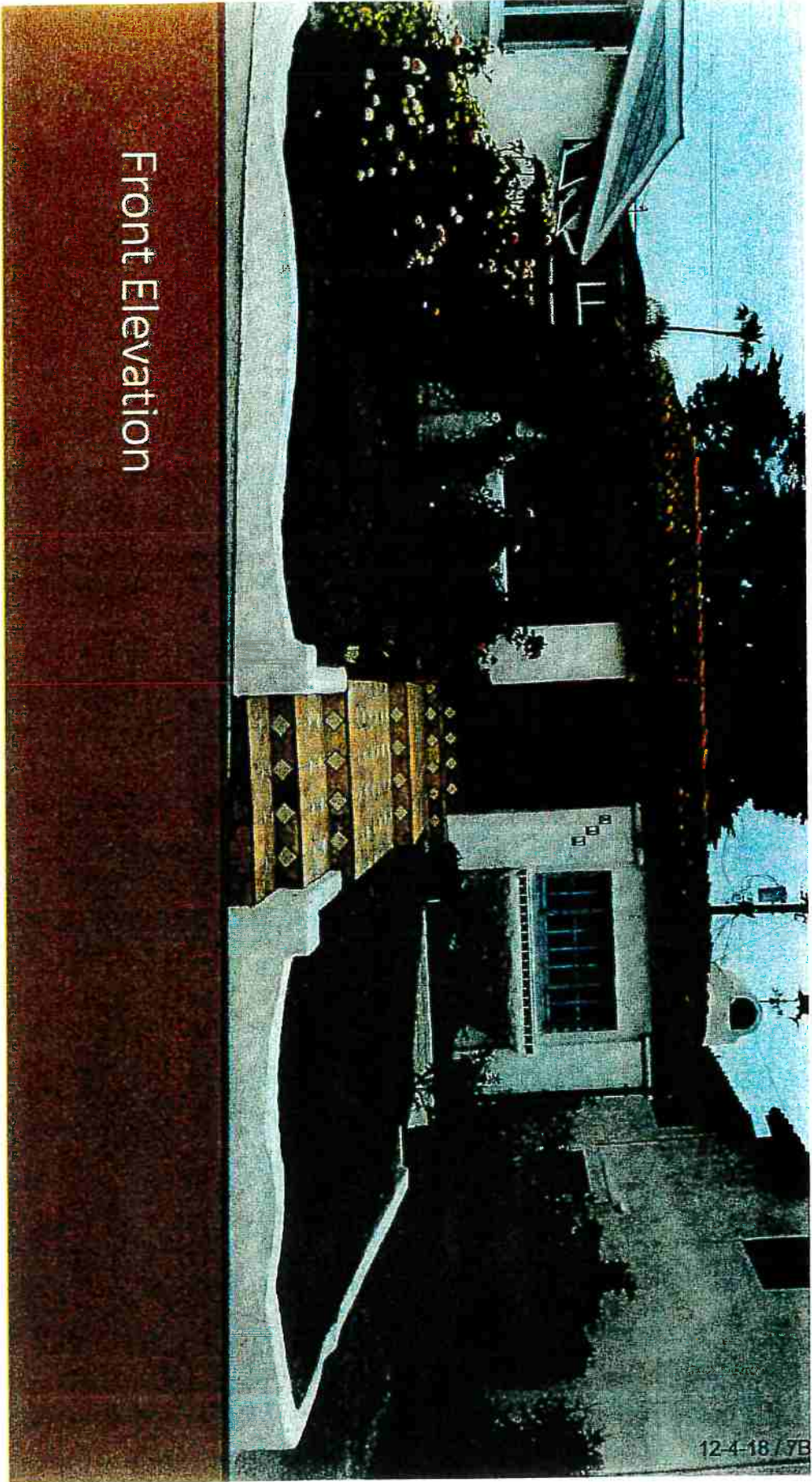
JONATHAN LIGHTFOOT, ASSISTANT PLANNER
CITY COUNCIL REVIEW, 12/4/2018



Vicinity Map:
235 Ave. Miramar



4-18 / 7B-23



Front Elevation

12-4-18 / 7B-24

56

12-21-21 / 7B-56

Permit History

- Reroof in 1982 and 2013. Original tiles on front elevation; replacement tiles on rear and garage. There are additional original tiles preserved/stacked in garage.
- Rear elevation: room addition permitted in 1989, but not built.
- Block wall (rear), plumbing, and electrical upgrades



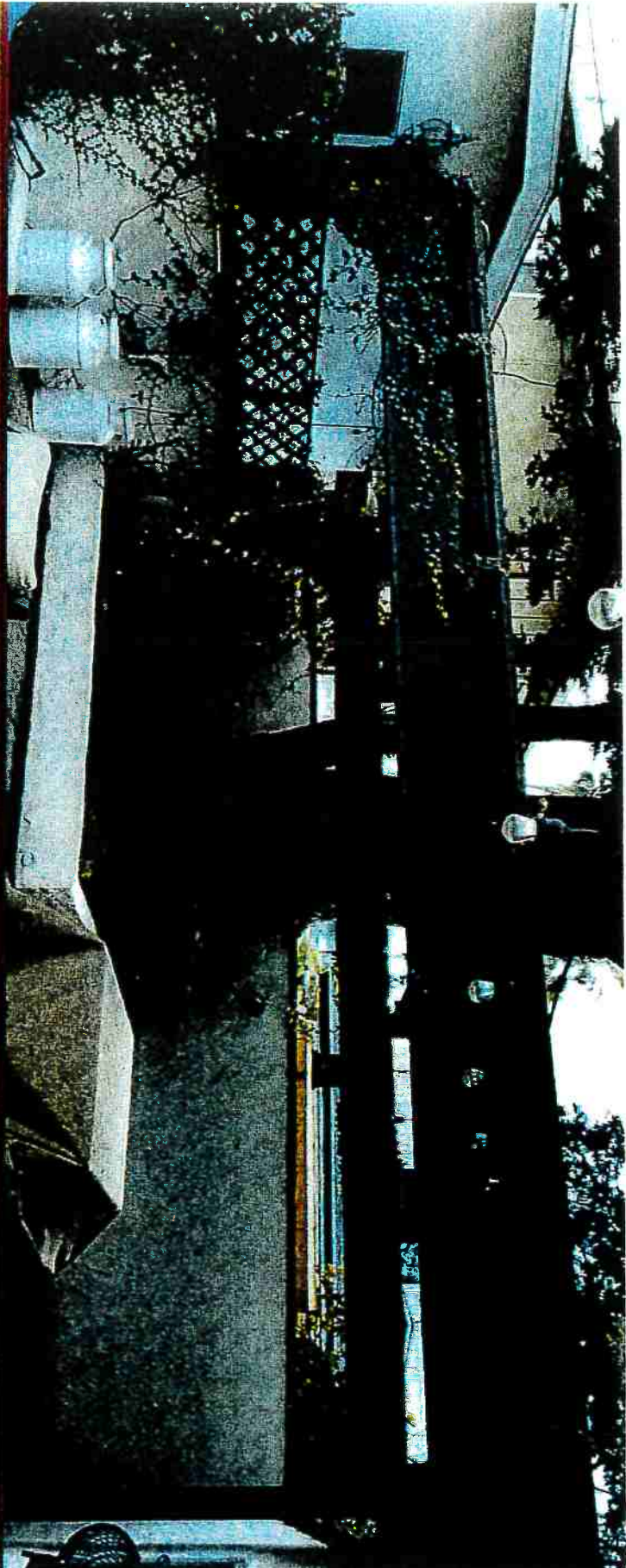
Prioritized Work List

DEVELOPED WITH ASSISTANCE FROM GPA CONSULTING

12-4-18 / 7B-26

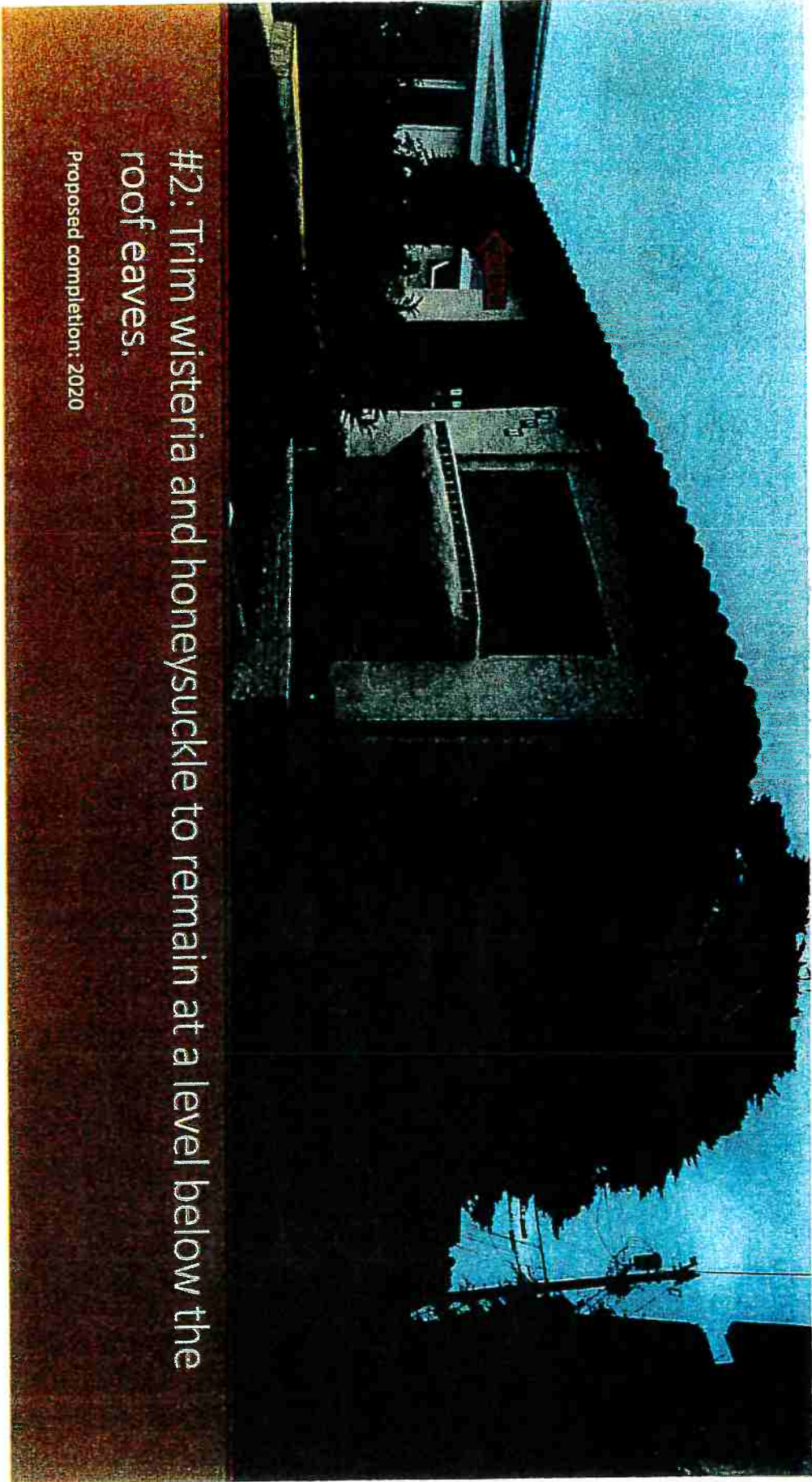
58

12-21-21 / 7B-58



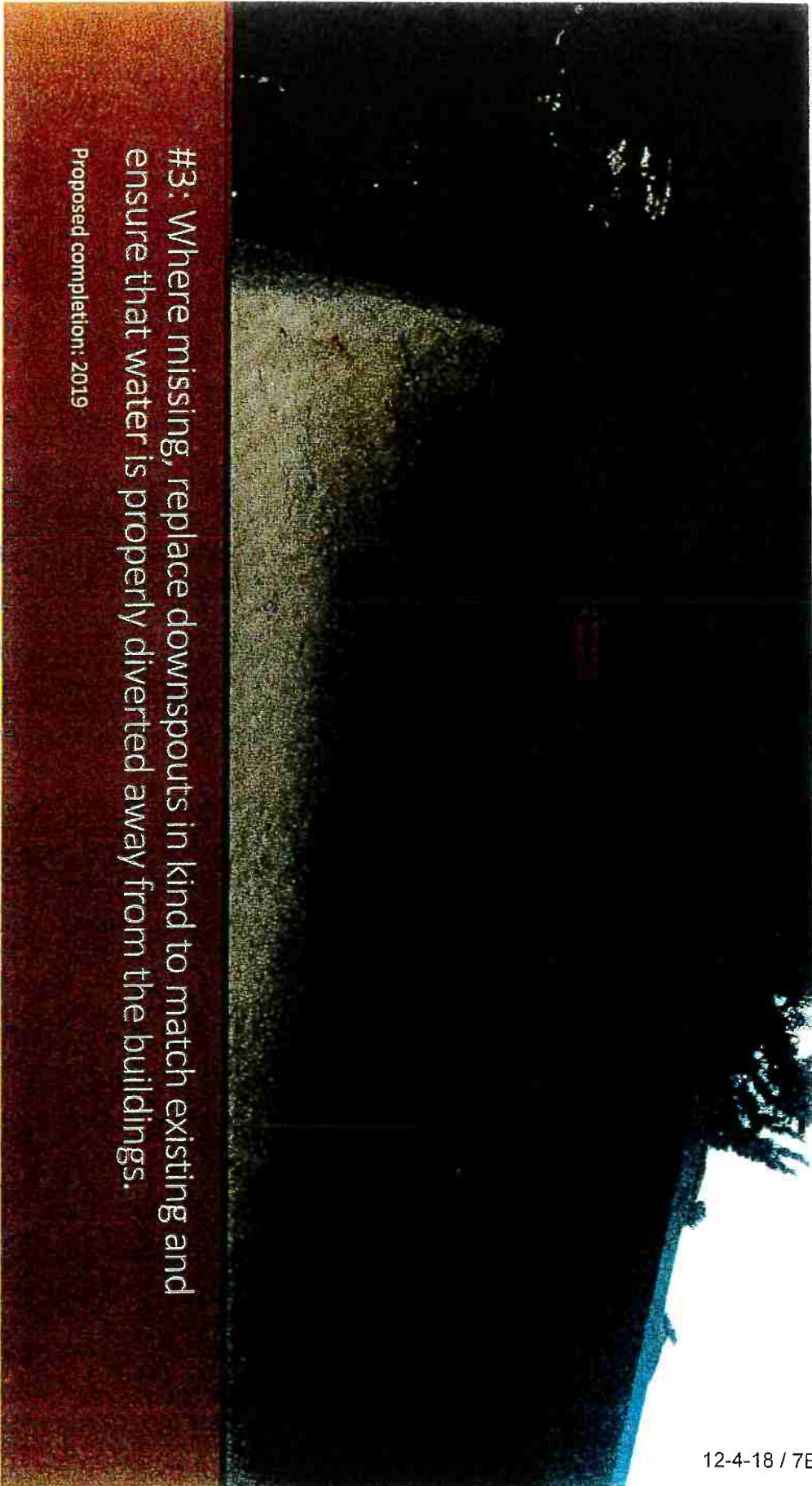
#1: Prepare a comprehensive landscape plan

Proposed completion: 2020



#2: Trim wisteria and honeysuckle to remain at a level below the roof eaves.

Proposed completion: 2020

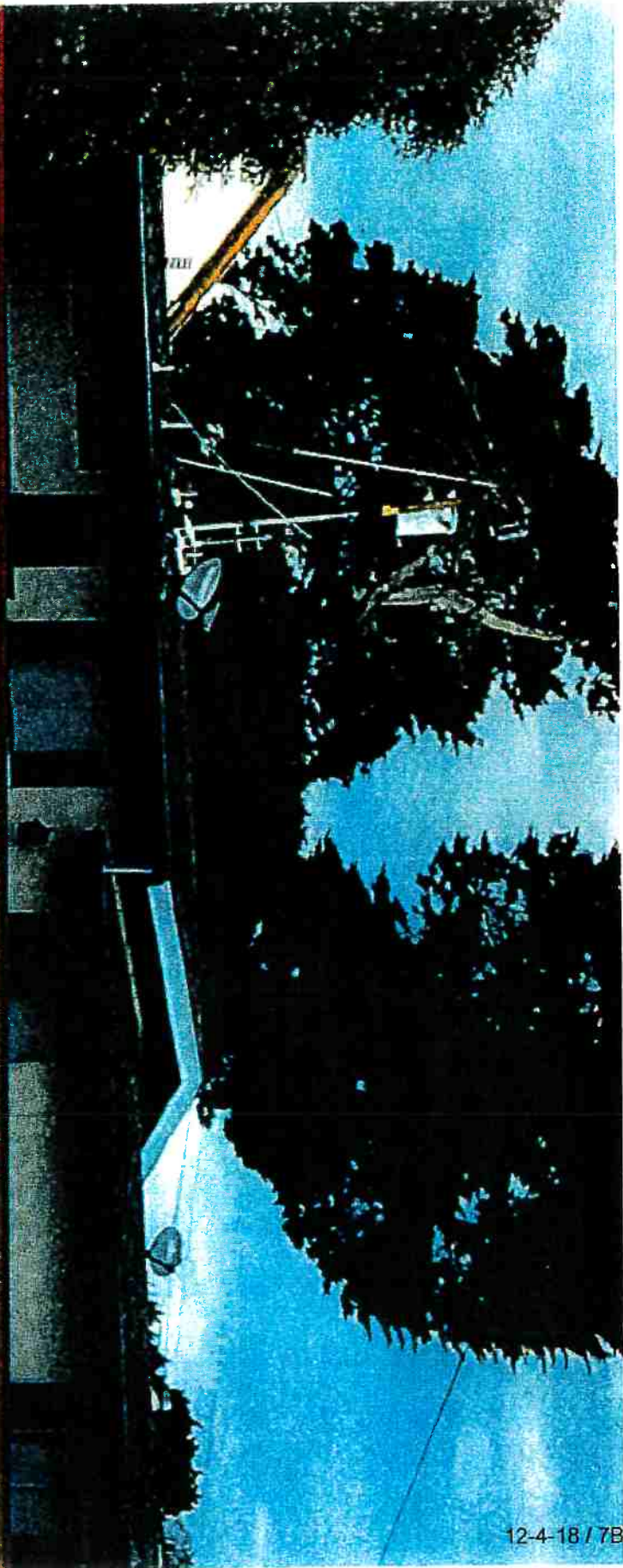


#3: Where missing, replace downspouts in kind to match existing and ensure that water is properly diverted away from the buildings.

Proposed completion: 2019

#4: Carefully remove large cypress tree that is damaging the foundation of the garage and poses a threat to the structural integrity of the house. Replant an appropriate tree as approved in the landscape plan.

Proposed completion: 2021



12-4-18 / 7B-30

62

12-21-21 / 7B-62



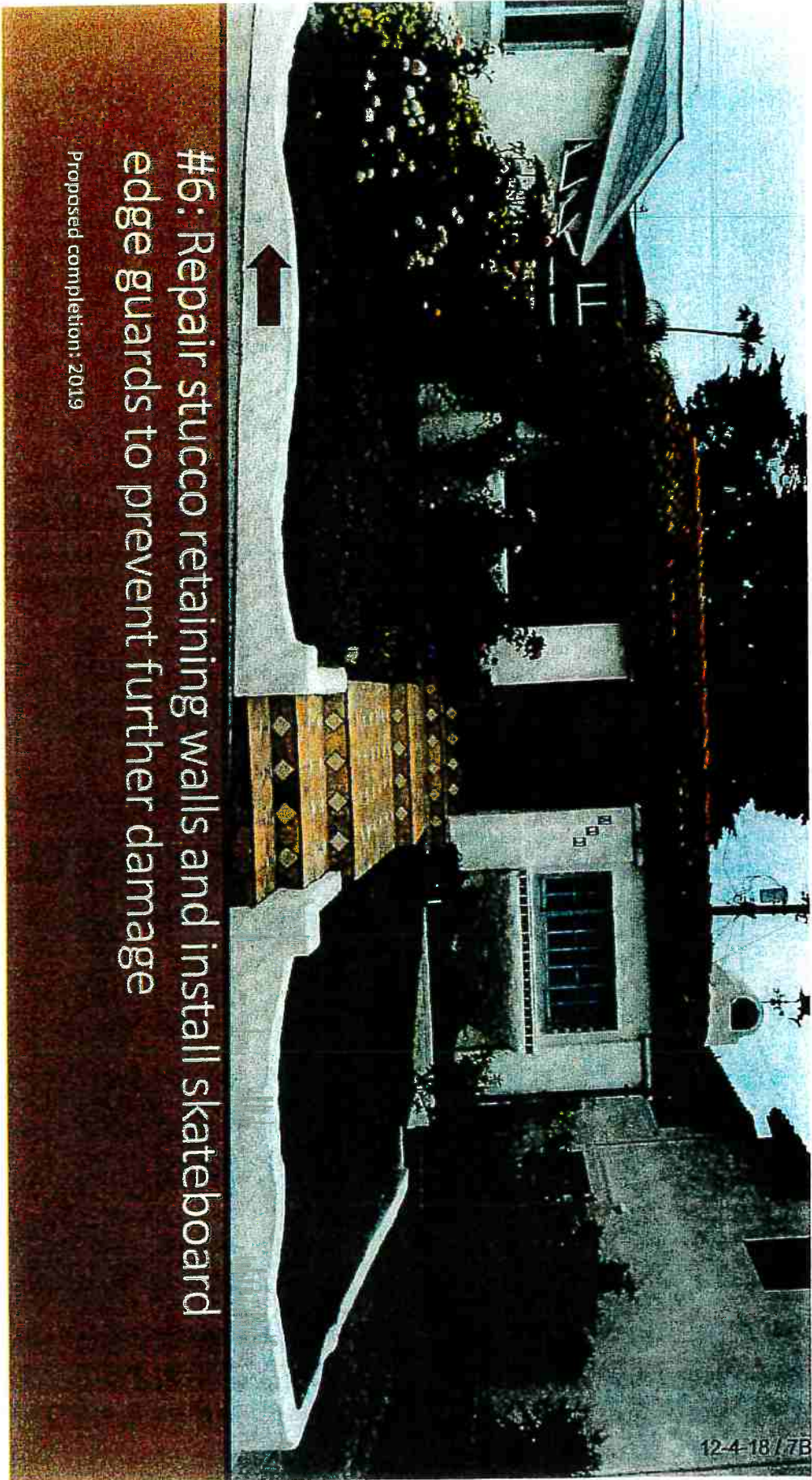
#5: Repair concrete slab/foundation of garage.

Proposed completion: 2023

12-4-18 / 7B-31

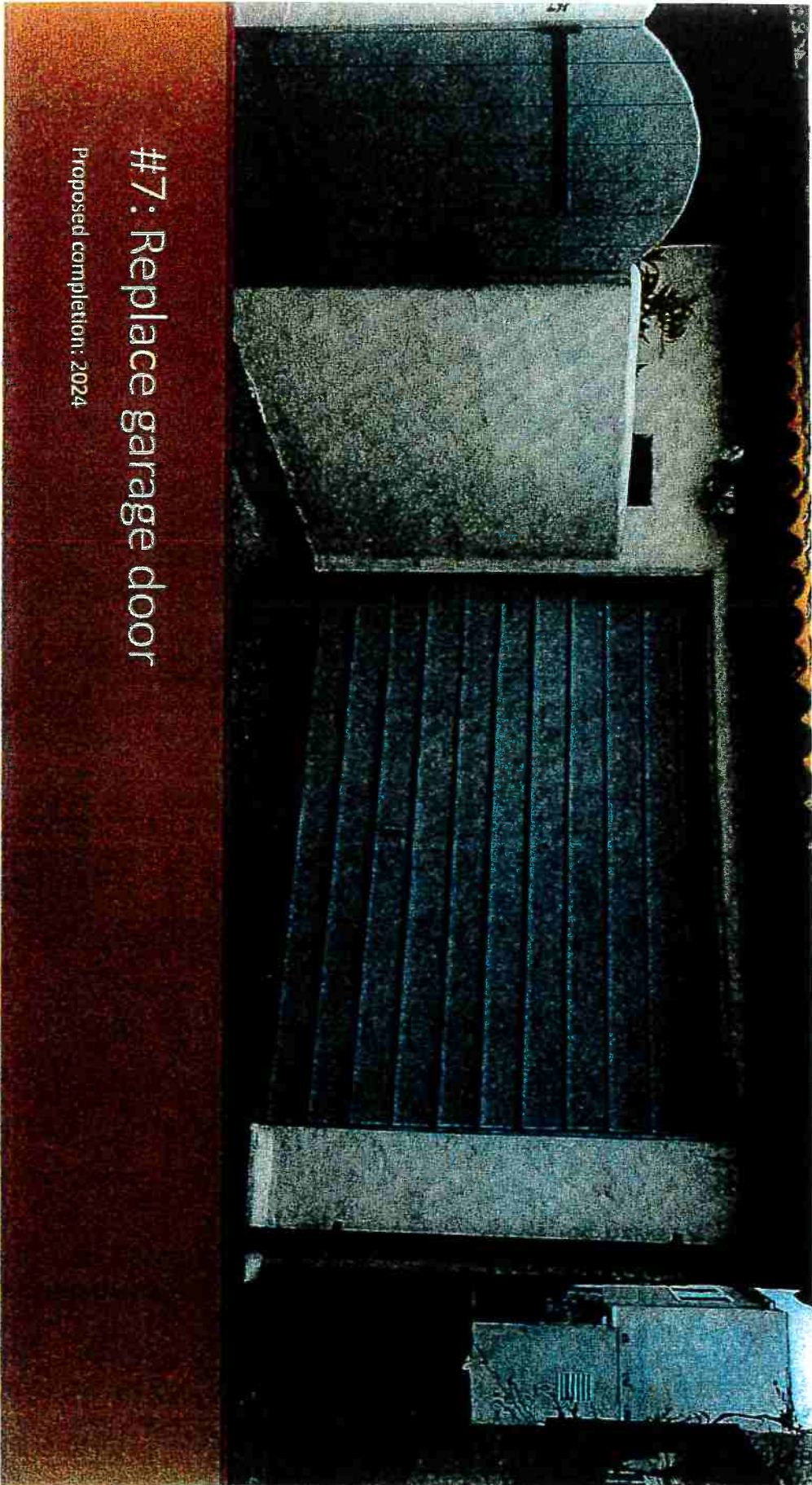
63

12-21-21 / 7B-63



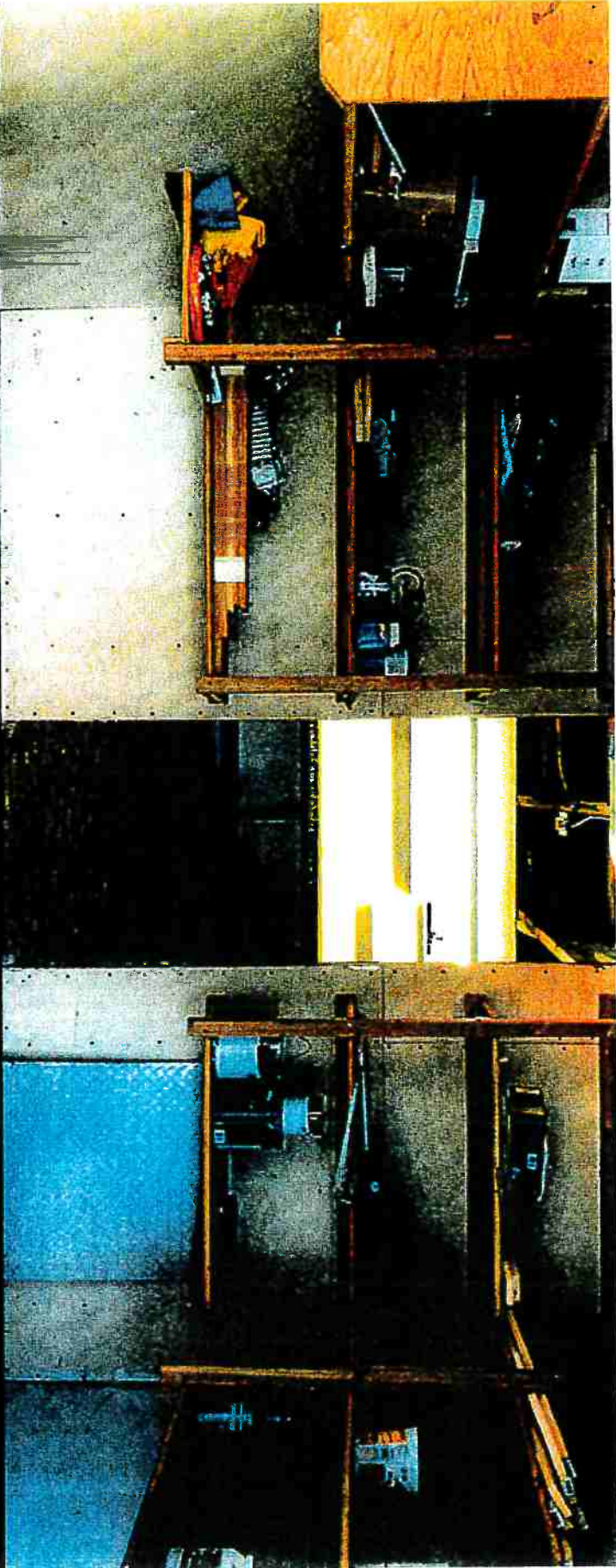
#6: Repair stucco retaining walls and install skateboard edge guards to prevent further damage

Proposed completion: 2019



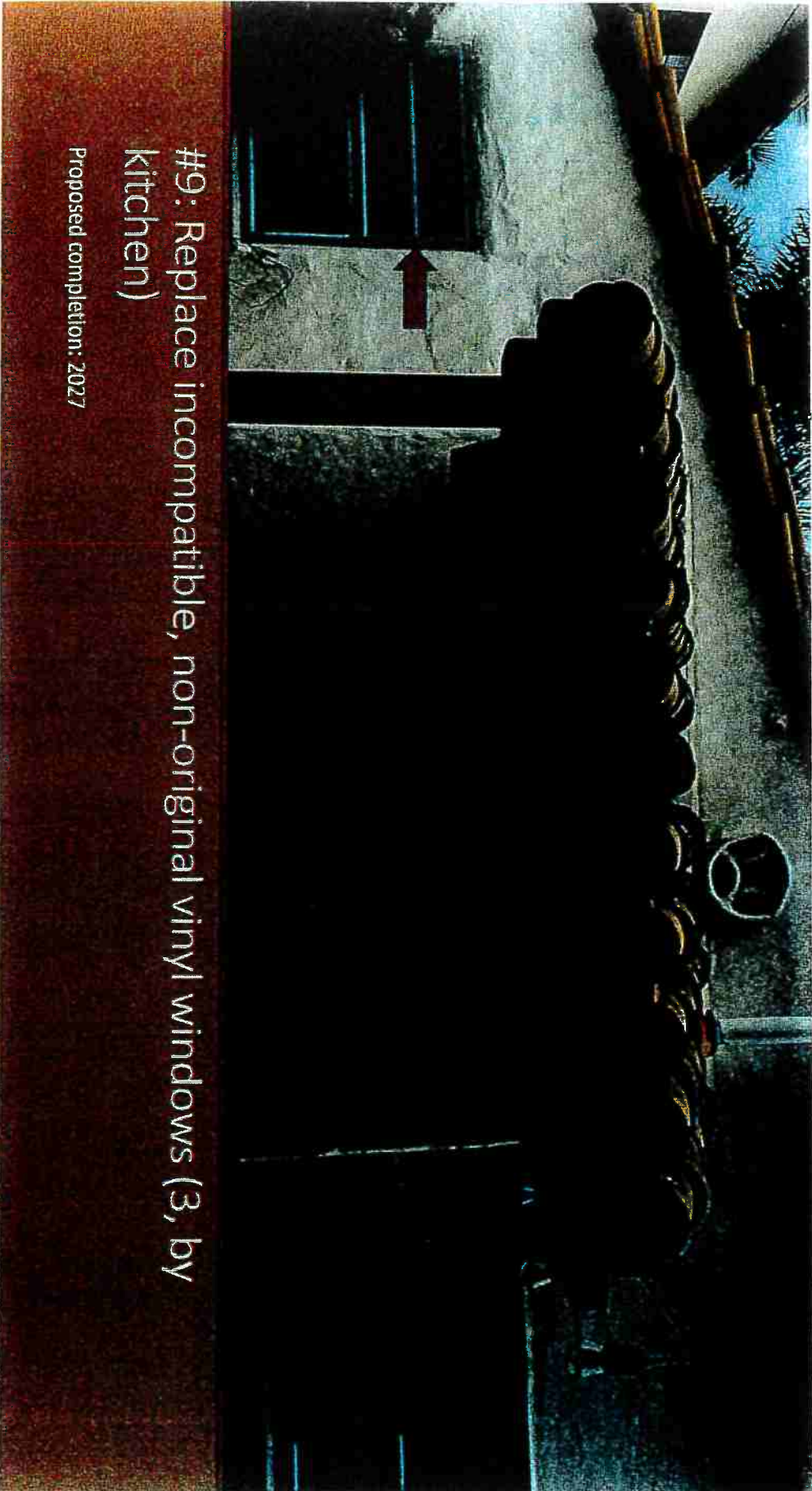
#7: Replace garage door

Proposed completion: 2024



#8: Remove interior framing in garage that prevents parking in the space.

Proposed completion: 2024



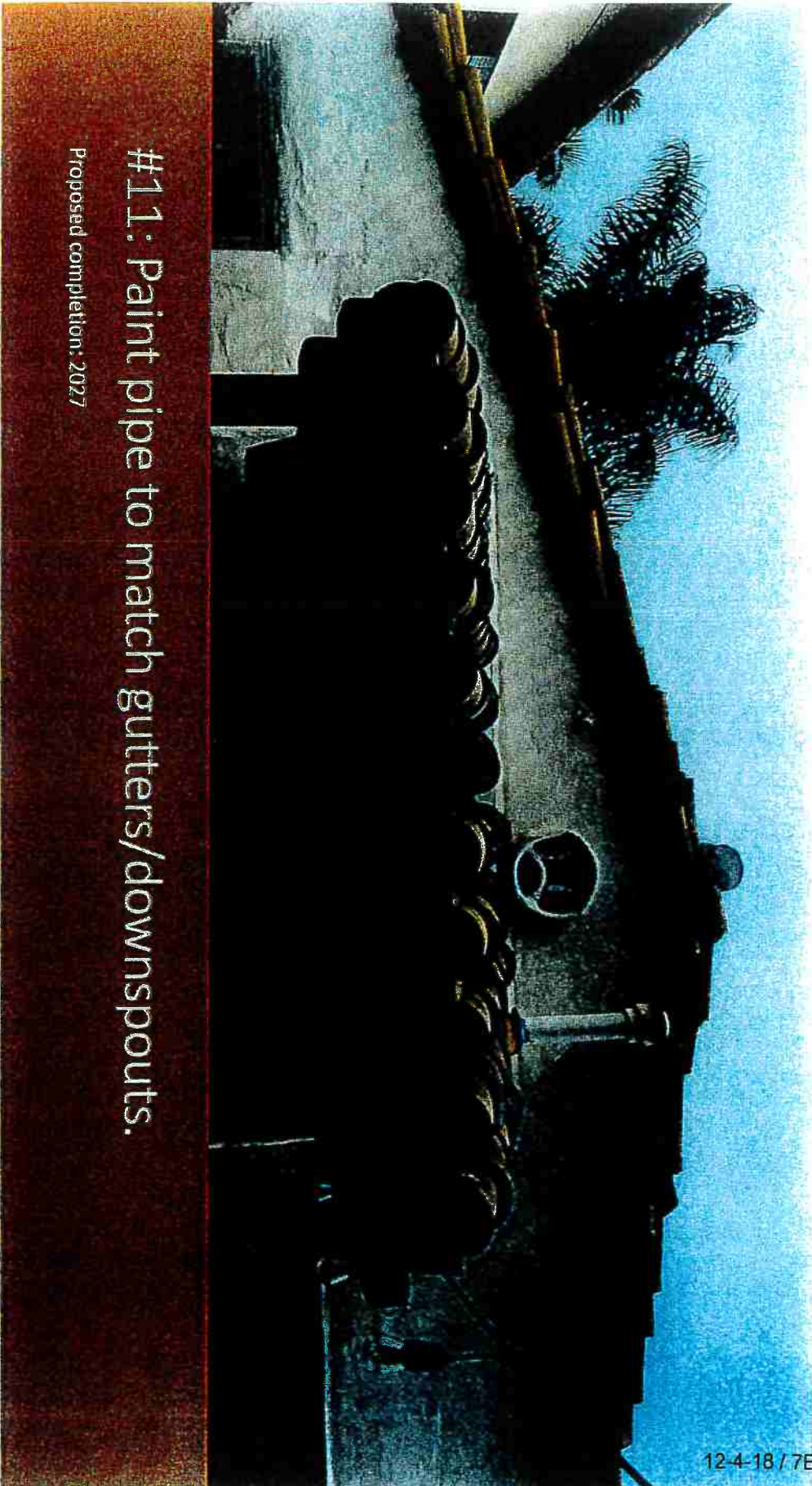
#9: Replace incompatible, non-original vinyl windows (3, by kitchen)

Proposed completion: 2027

#10: Replace plastic flood lights and other incompatible light fixtures with more compatible option.

Proposed completion: 2027





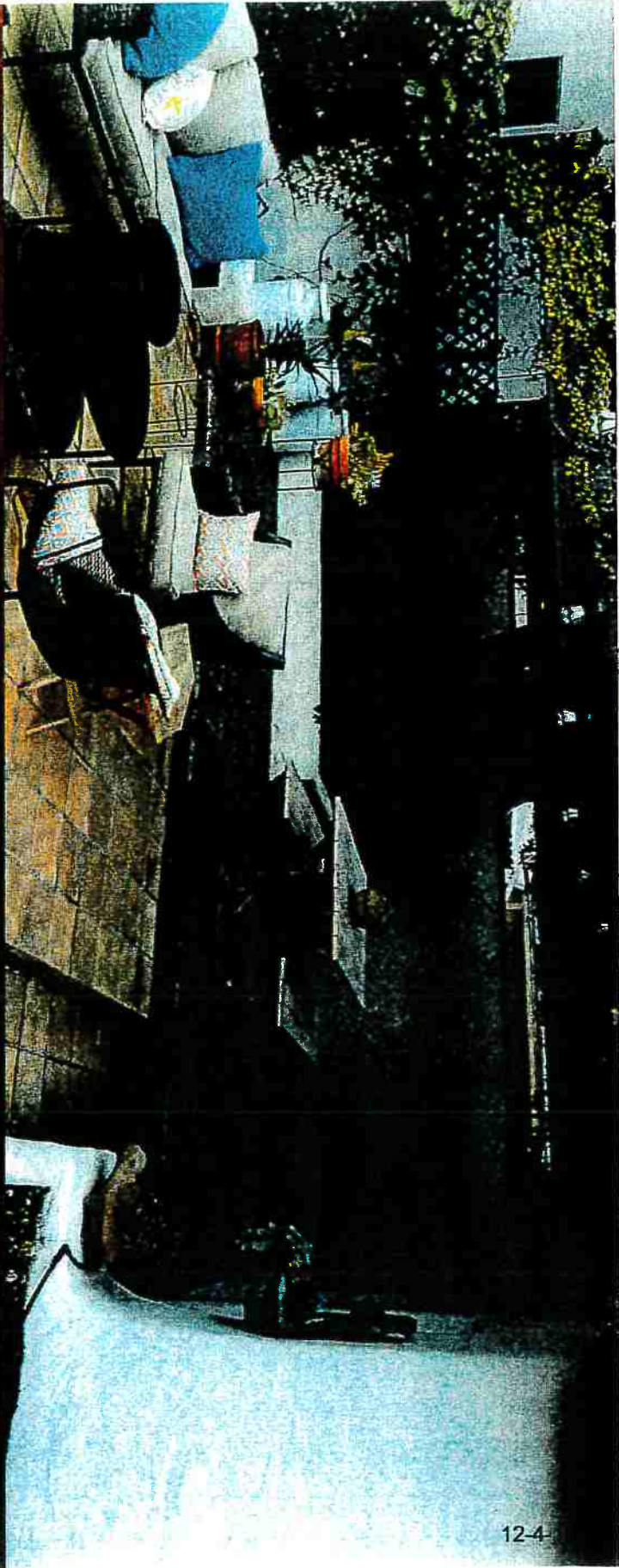
#11: Paint pipe to match gutters/downspouts.

Proposed completion: 2027

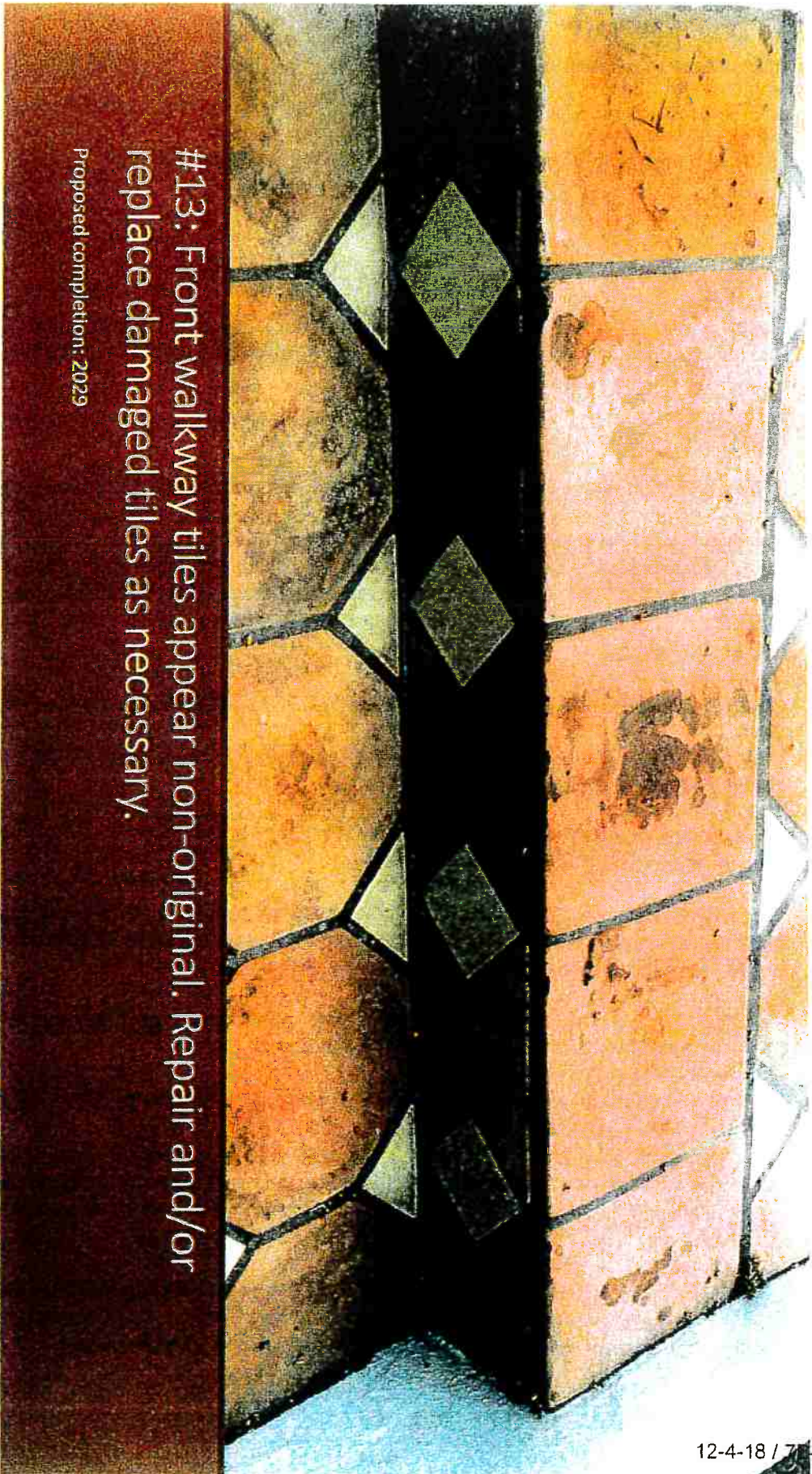
12-4-18 / 7B-37

69

12-21-21 / 7B-69



#12: Repair and replace patio tiles and planter wall in rear yard with compatible material after the removal of the Cypress tree.
Proposed completion: 2024



#13: Front walkway tiles appear non-original. Repair and/or replace damaged tiles as necessary.

Proposed completion: 2029

**CITY OF SAN CLEMENTE
MINUTES OF THE REGULAR MEETING OF THE
DESIGN REVIEW SUBCOMMITTEE
OCTOBER 24, 2018**

Subcommittee Members Present: Jim Ruehlin, Bart Crandell

Staff Present: Senior Planner Stephanie Roxas, Assistant Planner Veronica Morones, Assistant Planner Jonathan Lightfoot, City Planner Gabriel Perez

1. **MINUTES**

The Subcommittee approved the minutes from the September 26, 2018 meeting.

The Subcommittee continued review of the October 10, 2018 meeting minutes to the following meeting on November 14, 2018. The Subcommittee directed staff to discuss procedural approval of the meeting minutes with the City Attorney given that a majority of the Subcommittee members may not be present at the following meetings.

2. **ARCHITECTURAL REVIEW OF THE FOLLOWING ITEMS:**

Historic Preservation Property Agreement (HPPA) 18-442, Virgil Westbrook Bungalow, 235 Avenida Miramar (Lightfoot)

A request for a Mills Act agreement between the City and the owners of a historic private residence at 235 Avenida Miramar.

Assistant Planner Jonathan Lightfoot summarized the staff report. The applicant, Matthew Mason, was present for questions. Mr. Mason discussed the proposed work list and requested alterations to work list items 2, 3, 11, and 13.

The Design Review Subcommittee (DRSC) discussed the project, and made the following comments either individually or as a group:

- Thanked the applicant for his willingness to protect and preserve a valuable historic home.
- In regard to work list item #2, concurred with the applicant that trimming the wisteria and honeysuckle below the eaves is an acceptable solution. Stated that creeping fig and any other vines should either be removed or trellised. The maintenance plan should be included on the landscape plans.
- In regard to work list item #3, expressed preference for replacement of the downspouts. Stated that even if water drains away from the structure without downspouts, splashing onto the structure is still a concern.

- In regard to work list item #11, concurred with the applicant that a bronze finish on the vent pipe would also be acceptable.
- In regard to work list item #13, stated that repairing and/or replacing only damaged tiles in kind is acceptable. Stated the entire front walkway does not need to be replaced.
- Concurred with staff's recommendations for the remainder of items in the work list.
- Recommended that the applicant try to identify the original trim color of the windows.
- Recommended that non-original lighting, such as the security light on the garage, be tucked up under the rafters and shielded to prevent light spillage.
- Recommended that mortar bird stops be added to the roof tiles if missing.
- Suggested that the applicant provide any historic documentation or photos to staff to help maintain a robust record for the property.
- Requested clarity from staff regarding enforcement of HPPA contracts.

Staff confirmed that inspections are conducted to verify work list tasks are completed. Historically, extensions have been granted for hardships such as health or financial issues. Contracts do include a "due on sale" clause that is enforced. The City or Applicant can choose to initiate a non-renewal to end the automatic annual renewal of the contract; this would trigger a ten-year count down to termination of the contract at which point the associated tax benefits would cease. The City may also cancel the contract if the homeowners have breached the contract or allowed the home to deteriorate to an extent that it loses historic integrity. This cancellation would result in a penalty of 12.5 percent of the full value of the property.

The Subcommittee recommended that the HPPA be scheduled for City Council review.

Historic Preservation Property Agreement 18-575, Pekarek Residence, 199 Avenida La Cuesta (Lightfoot)

A request for a Mills Act agreement between the City and the owners of a historic private residence at 199 Avenida La Cuesta.

Assistant Planner Jonathan Lightfoot summarized the staff report. The applicant, Mark Pekarek, was present for questions. He did assent to the tentative task list with the exception of work list item #6.

The Design Review Subcommittee (DRSC) discussed the project, and made the following comments either individually or as a group:

- Stated that work list item #6 should be removed as the irrigation system is nonessential for historic preservation.

ATTACHMENT 6

Purpose of the Mills Act Program

Economic incentives foster the preservation of residential neighborhoods and the revitalization of downtown commercial districts. The Mills Act is the single most important economic incentive program in California for the restoration and preservation of qualified historic buildings by private property owners.

Enacted in 1972, the Mills Act legislation grants participating local governments (cities and counties) the authority to enter into contracts with owners of qualified historic properties who actively participate in the restoration and maintenance of their historic properties while receiving property tax relief.

Benefits to Local Governments

The Mills Act allows local governments to design preservation programs to accommodate specific community needs and priorities for rehabilitating entire neighborhoods, encouraging seismic safety programs, contributing to affordable housing, promoting heritage tourism, or fostering pride of ownership. Local governments have adopted the Mills Act because they recognize the economic benefits of conserving resources and reinvestment as well as the important role historic preservation can play in revitalizing older areas, creating cultural tourism, building civic pride, and retaining the sense of place and continuity with the community's past.

A formal agreement, generally known as a Mills Act or Historical Property Contract, is executed between the local government and the property owner for a minimum ten-year term. Contracts are automatically renewed each year and are transferred to new owners when the property is sold. Property owners agree to restore, maintain, and protect the property in accordance with specific historic preservation standards and conditions identified in the contract. Periodic inspections by city or county officials ensure proper maintenance of the property. Local authorities may impose penalties for breach of contract or failure to protect the historic property. The contract is binding to all owners during the contract period.

Benefits to Owners

Owners of historic buildings may qualify for property tax relief if they pledge to rehabilitate and maintain the historical and architectural character of their properties for at least a ten-year period. The Mills Act program is especially beneficial for recent buyers of historic properties and for current owners of historic buildings who have made major improvements to their properties.

Mills Act participants may realize substantial property tax savings of between 40% and 60% each year for newly improved or purchased older properties because valuations of Mills Act properties are determined by the Income Approach to Value rather than by the standard Market Approach to Value. The income approach, divided by a capitalization rate, determines the assessed value of the property. In general, the income of an owner-occupied property is based on comparable rents for similar properties in the area, while the income amount on a commercial property is based on actual rent received. Because rental values vary from area to area, actual property savings vary from county to county. In addition, as County Assessors are required to assess all properties annually, Mills Act properties may realize slight increases in property taxes each year.

Qualified Historic Property

A qualified historic property is a property listed on any federal, state, county, or city register, including the National Register of Historic Places, California Register of Historical Resources, California Historical Landmarks, State Points of Historical Interest, and locally designated landmarks. Owner-occupied family residences and income-producing commercial properties may qualify for the Mills Act program, subject to local regulations.

OHP's Role

OHP provides technical assistance and guidance to local governments and property owners. OHP maintains a current list of communities participating in the Mills Act program and copies of Mills Act ordinances, resolutions, and contracts that have been adopted. OHP does not participate in the contract negotiations and is not a signatory to the contract.

Front Elevatio

ATTACHMENT 7



Front Patio

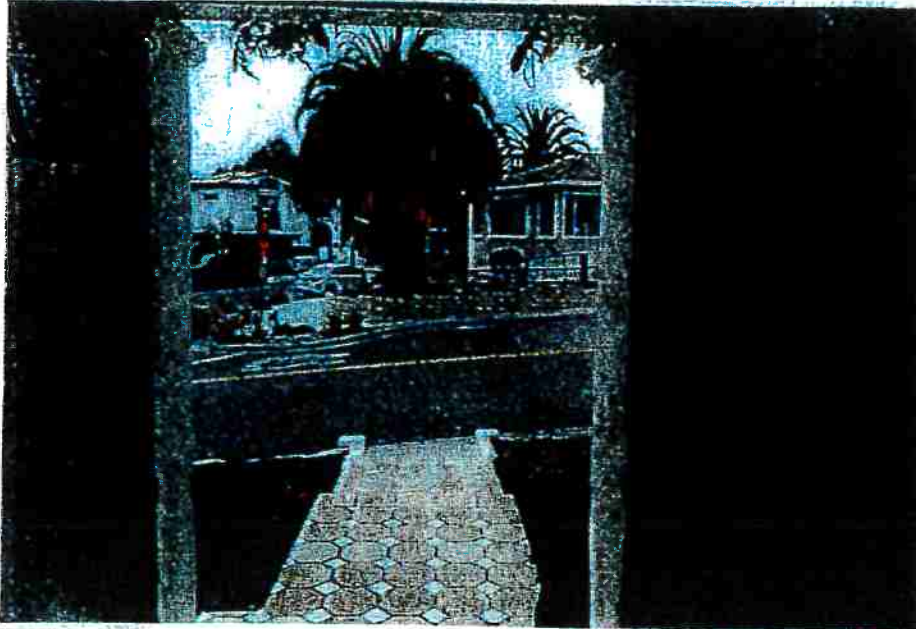


12-4-18 / 7B-44

76

12-21-21 / 7B-76

View from Front Door



View from SE Corner to rear of Home



→
kshop
ry door
& window
sting

12-4-18 / 7B-45

77

12-21-21 / 7B-77

View East



View West



View from South Wall to rear of home



View from back door to back patio



12-4-18 / 7B-47

79

12-21-21 / 7B-79

Original fireplace with
original mosaic design.
Now plumbed with natural
gas.



Mosaic Detail





Single Garage with failing garage door
(probably not original).
Interior Workshop space to the left has
separate entry door from patio.



SW Corner of property

12-4-18 / 7B-49

Failing Garage Slab/Foundation



Existing Side
Entry



Workshop room 1



12-4-18 / 7B-50

82

12-21-21 / 7B-82

ATTACHMENT 3

RESOLUTION NO. 18-54

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING HISTORIC PROPERTY PRESERVATION AGREEMENT 18-442 FOR THE PROPERTY LOCATED AT 235 AVENIDA MIRAMAR

WHEREAS, the City Council of the City of San Clemente adopted Ordinance 1194, which in Section 3, establishes procedures for property owners of designated historically significant structures to voluntarily enter into Historic Property Preservation Agreements in order to apply to receive property tax reductions as an incentive for historic preservation; and

WHEREAS, on June 27, 2018, an application was submitted by Matthew Mason and Tiffany Mason-Lopez, 235 Avenida Miramar, San Clemente, CA 92672, who are the owner of a designated historically significant structure, to enter into an Historic Property Preservation Agreement (HPPA) for their property located at 235 Avenida Miramar, the legal description being Lot 18, Block 14 of Tract 779; and

WHEREAS, on October 24, 2018, the Design Review Subcommittee, which serves as the Cultural Heritage Subcommittee of the Planning Commission, reviewed the application and recommended approval of HPPA 18-442 with thirteen restoration improvement conditions; and


WHEREAS, on December 4, 2018, the City Council held a duly noticed public hearing, and considered testimony of City staff, the applicant and property owner, and other interested parties.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE HEREBY RESOLVES AS FOLLOWS:


SECTION 1: The City Council hereby approves HPPA 18-442, attached hereto and incorporated herein by reference as Exhibit 1, and authorizes the Mayor to execute, and the City Clerk to record, the HPPA for the property at 235 Avenida Miramar, after the required application fee has been submitted to the City by the property owner.

PASSED AND ADOPTED this 4th day of December, 2018.

ATTEST:



City Clerk of the City of
San Clemente, California



Mayor of the City of San
Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) §
CITY OF SAN CLEMENTE)

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. 18-54 was adopted at a regular meeting of the City Council of the City of San Clemente held on the 4th day of December, 2018, by the following vote:

AYES: BANE, FERGUSON, HAMM, WARD, MAYOR SWARTZ

NOES: NONE

ABSENT: NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this 13TH day of DEC., 2018.


CITY CLERK of the City of
San Clemente, California

Approved as to form:


City Attorney

EXHIBIT 1

Recording Requested by, and
when Recorded Mail to:

City Clerk
City of San Clemente
910 Calle Negocio
San Clemente, CA 92672

This Agreement is recorded for the benefit of the City of San Clemente and is exempt from the payment of recording fees pursuant to Government Code Sections 6103 and 27383.

HISTORIC PROPERTY PRESERVATION AGREEMENT

THIS AGREEMENT is made and entered into this 4th day of December, 2018, by and between the City of San Clemente ("City"), a municipal corporation of the State of California, and Matthew Mason and Tiffany Mason-Lopez ("Owner").

RECITALS

WHEREAS, the owners possess fee title in and to that certain qualified real property, together with associated structures and improvements thereon, located on Assessor's Parcel Number 088-122-02, located at 235 Avenida Miramar, San Clemente, California 92672, more specifically described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, the Historic Property is a qualified historic property in that it is privately owned property which is not exempt from property taxation and is listed in the City's Designated Historic Structures List, which is the City's official register of historically significant sites adopted October 2, 2007 by Resolution 07-72 of the San Clemente City Council, as amended; and

WHEREAS, both City and Owner desire to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code; and

WHEREAS, both City and Owner desire to enter into this Agreement for the purpose of protecting and preserving the characteristics of historical significance of the Historic Property through the incentive of a potential property tax reduction; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement, shall be entitled to qualify for a reassessment of valuation of the Historic Property, pursuant to provisions of the aforementioned California Revenue and Taxation Code, and any corresponding adjustment in property taxes resulting therefrom.

AGREEMENT

NOW, THEREFORE, both Owner and City, in consideration of the mutual promises, covenants and conditions contained herein and the substantial public benefits to be derived therefrom, do hereby agree as follows:

1. **AGREEMENT SUBJECT TO GOVERNMENT CODE SECTIONS 50280-50290.** This agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes.

2. **REASSESSMENT OF VALUATION.** The determination of property valuation pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code, is in the sole discretion of the Orange County Tax Assessor's Office. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.

3. **PRESERVATION OF PROPERTY.** Owner agrees to preserve and maintain the Historic Property and its character-defining features, as provided below. Character-defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roof line and other aspects of the appearance of the exterior of the property. The Secretary of the Interior's Standards for the Treatment of Historic Properties and minimum maintenance standards, attached hereto and incorporated herein by reference as Exhibit "B," shall constitute the minimum standards and conditions for maintenance, use, and preservation of the Historic Property, and shall apply to the property throughout the term of this Agreement. Owner shall, where necessary, restore and rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the U.S. Secretary of the Interior's Standards for the Treatment of Historic Properties, the City of San Clemente Design Guidelines and in accordance with the attached schedule of Improvements, attached hereto and incorporated herein by reference as Exhibit "B".

4. **BUILDING CHANGES.** All building changes shall comply with applicable City specific plans, City regulations and guidelines, and with the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, namely the U.S. Secretary of the Interior's Standards for Rehabilitation and Standards and Guidelines for Historic Preservation Projects.

5. **NOTIFICATION OF DIRECTOR.** The Community Development Director shall be notified by the Owner of changes to character-defining exterior features prior to their execution, such as major landscaping projects and tree removals, exterior door or window replacement, exterior repainting, remodeling, or other exterior alterations requiring a building permit. The Owner agrees to secure all necessary City approvals and/or permits prior to changing the building's exterior appearance or use, or prior to commencing construction work.

6. **PROHIBITED.** The following are prohibited: demolition or partial demolition of the historic building or accessory buildings without prior City approval; exterior

alterations or additions not in keeping with the standards listed above; dilapidated, deteriorating or unrepaired structures such as fences, roofs, doors, walls, windows; outdoor storage of junk, trash, debris, appliances, or furniture visible from a public way; or any device, decoration, structure or vegetation which is unsightly due to lack of maintenance or because such feature adversely affects, or is visually incompatible with, the property's recognized historic character, significance and design, as determined by the Community Development Director.

7. **INSPECTIONS.** Owner agrees to permit the periodic examination, by prior appointment, of the interior and exterior of the Historic Property by the County Assessor, the Department of Parks and Recreation, the State Board of Equalization and City as may be necessary to determine Owner's compliance with the terms and provisions of this Agreement. After five years and every five years thereafter, the City shall inspect the property to determine the owner's continued compliance with the agreement.

8. **PAYMENT OF FEE.** As a condition of executing the contract, Owner shall pay City a fee as provided in the City's current Planning Fee Schedule, after City Council approval of the Agreement, which fee does not exceed the reasonable cost of administering City's historical preservation program. Said fee shall be made payable to the City of San Clemente and shall be remitted to the Planning Division prior to the Agreement being executed by City.

9. **TERM.** The term of this Agreement shall be from December 4, 2018, to and including December 4, 2028.

10. **AUTOMATIC RENEWAL.** On each yearly anniversary of the effective date of this Agreement (hereinafter referred to as the "renewal date"), one year shall be added automatically to the initial term of this Agreement unless notice of non-renewal is given as provided in this Agreement.

11. **NOTICE OF NONRENEWAL.** If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal on the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least 90 days, or by City to Owner at least 60 days, prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within 15 days of receipt by Owner of a notice of nonrenewal, Owner may make a written appeal of non-renewal. Such appeal shall include, but is not limited to, a statement of the grounds on which the appeal is based. Upon receipt of such an appeal, the City Clerk shall set a hearing before the City Council prior to the annual renewal date of this Agreement, or following the renewal date at the earliest date such hearing can reasonably be held. Owner may furnish the City Council with any information which the Owner deems relevant, and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.

12. **EFFECT OF NOTICE NOT TO RENEW.** If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the period since the original execution, or the last renewal of the Agreement, as the case may be. Thereafter, this Agreement shall terminate.

13. FURNISHING OF INFORMATION. Owner shall furnish City with any information City shall require in order to enable City to determine eligibility of the property to be classified as a qualified Historic Property.

14. ENFORCEMENT OF AGREEMENT. In lieu of, and/or in addition to, any provisions to cancel the Agreement as referenced herein, City may specifically enforce, or enjoin the breach of, the terms of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner by registered or certified mail addressed to the address stated in this Agreement of violations of this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days after the date of the notice of violation, or within such reasonable time as may be required to cure the breach or default [provided that acts to cure the breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion], then City may, without further notice, declare a default under the terms of this Agreement and bring any action necessary to specifically enforce the obligations of Owner growing out of the terms of this Agreement, including, but not limited to, bringing an action for injunctive relief against the Owner or for such other relief as may be appropriate.

The City has the option to either cancel the contract or bring action in court to enforce the contract, if the city determines that the owner has breached any of the conditions of the contract or has allowed the property to deteriorate to the point that it no longer meets the standards for a qualified historical property. As an alternative to cancelling the contract, a landowner that is a party to the contract may bring any action in court necessary to enforce the contract.

City does not waive any claim of default by Owner if City does not enforce or cancel this Agreement. All other remedies at law or in equity which are not otherwise provided for in this Agreement or in City's regulations governing historic properties are available to City to pursue in the event there is a breach of this Agreement. No waiver by City or any breach or default under this Agreement shall be deemed to be a waiver of any other subsequent breach thereof or default thereunder.

15. CANCELLATION. City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historic property. City may also cancel this Agreement if it determines Owner has failed to restore or rehabilitate the property in the manner specified in this Agreement.

16. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50284. Notice of the hearing shall be mailed to the last known address of each owner of property on the City's Designated Historic Structures List and shall be published in accordance with Government Code section 6061. Cancellation shall be effective on the date of Council adoption of a resolution cancelling the Agreement.

17. CANCELLATION FEE. If City cancels this Agreement in accordance with Sections 15 and 16 above, Owner shall pay a cancellation fee of twelve and one-half percent (12½%) of the full value of the property at the time of cancellation. The full value shall be determined by the County Assessor without regard to any restriction on the

property imposed pursuant to this Agreement. The cancellation fee shall be paid to the Controller at such time and in such manner as the Controller shall prescribe in accordance with State law.

18. NOTICES. All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties hereto:

To City: City of San Clemente
910 Calle Negocio
San Clemente, CA 92672
Attention: City Manager.

To Owner: Matthew Mason and Tiffany Mason-Lopez
235 Avenida Miramar
San Clemente, CA 92672

Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice.

19. NO COMPENSATION. Owner shall not receive any payment from City in consideration of the obligations imposed under this Agreement, it being recognized and agreed that the consideration for the execution of this Agreement is the substantial public benefit to be derived from the preservation and maintenance of historic resources and the right to reassessment under State law.

20. REMEDY IF AGREEMENT HELD NOT ENFORCEABLE. In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the property subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.

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

22. INDEMNITY OF CITY. Owner agrees to protect, defend, indemnify and shall hold harmless the City and its elected officials, officers, agents and employees from liability for claims, loss, proceedings, damages, causes of action, liability, costs or expense, including reasonable attorney's fees in connection with damage for personal injuries, including death, and claims for property damage which may arise from the direct or indirect use or operations of Owner or those of his contractor, subcontractor, agent, employee or other person acting on his behalf which relate to the use, operation and maintenance of the Historic Property. Owner hereby agrees to and shall defend the City and its elected officials, officers, agents and employees with respect to any and all actions

for damages caused by, or alleged to have been caused by, reason of Owner's activities in connection with the Historic Property. This hold harmless provision applies to all damages and claims for damages suffered, or alleged to have been suffered, by reason of the operations referred to in this Agreement regardless of whether or not the City prepared, supplied or approved the plans, specifications or other documents for the Historic Property.

23. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.

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

25. AMENDMENTS. This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto.

26. COMPLIANCE WITH APPLICABLE LAWS. During the term of this Agreement, Owner shall maintain and use the Historic Property in compliance with all applicable State and local statutes, ordinances, regulations and official policies; provided that, except as specifically set forth in Paragraph 3; nothing in this Agreement shall be deemed to require Owner to waive any vested rights or rights to continue to maintain a legally non-conforming structure or use existing as of the date of this Agreement.

IN WITNESS WHEREOF, the parties to this contract have caused their names to be affixed hereto on the day and year first written above.

City of San Clemente

By _____ Mayor

ATTEST:

City Clerk

Owner

By _____

STATE OF CALIFORNIA
COUNTY OF ORANGE

On _____, before me, _____, a Notary Public in and for said State, personally appeared _____, personally known to be (or proved to me on the basis of satisfactory evidence to be) the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(Seal)

EXHIBIT A

HISTORIC PROPERTY LEGAL DESCRIPTION

LOT 18, IN BLOCK 14 OF TRACT No. 779, IN THE CITY OF SAN CLEMENTE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 058 PAGE 12 INCLUSIVE OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXHIBIT B

SECRETARY OF THE INTERIOR'S STANDARDS FOR THE TREATMENT
OF HISTORIC PROPERTIES

Rehabilitation (making possible a compatible use for a property through repair, alterations and additions while preserving portions/features that convey its historical, cultural or architectural values)

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces and spatial relationships.
2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes and construction techniques or examples of craftsmanship that characterize a property will be preserved.
6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
9. New additions, exterior alterations or related new construction will not destroy historic materials, features and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Preservation (applying measures necessary to sustain the existing form, integrity and materials)

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

Restoration (accurately depicting the form, features, and character of a property as it appeared at a particular period of time)

1. A property will be used as it was historically or be given a new use that interprets the property and its restoration period.
2. Materials and features from the restoration period will be retained and preserved. The removal of materials or alteration of features, spaces and spatial relationships that characterize the period will not be undertaken.
3. Each property will 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 will 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 will 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 will be preserved.
6. Deteriorated features from the restoration period will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and, where possible, materials.

7. Replacement of missing features from the restoration period will be substantiated by documentary and physical evidence. A false sense of history will 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, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
9. Archeological resources affected by a project will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
10. Designs that were never executed historically will not be constructed.

Reconstruction. (depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure or object at a specific time period in its historic location)

1. Reconstruction will 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 the property.
2. Reconstruction of a landscape, building, structure or object in its historic location will be preceded by a thorough archeological investigation to identify and evaluate those features and artifacts that are essential to an accurate reconstruction. If such resources must be disturbed, mitigation measures will be undertaken.
3. Reconstruction will include measures to preserve any remaining historic materials, features and spatial relationships.
4. Reconstruction will 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 will re-create the appearance of the non-surviving historic property in materials, design, color and texture.
5. A reconstruction will be clearly identified as a contemporary re-creation.
6. Designs that were never executed historically will not be constructed.

EXHIBIT C

CITY OF SAN CLEMENTE HISTORIC PROPERTY
MINIMUM MAINTENANCE STANDARDS

All buildings, structures, yards and other improvements shall be maintained in a manner which does not detract from the appearance of the immediate neighborhood. The following conditions are prohibited:

1. Dilapidated, deteriorating, or un-repaired structures, such as: fences, roofs, doors, walls and windows.
2. Publicly visible storage of scrap lumber, junk, trash or debris.
3. Publicly visible storage of abandoned, discarded or unused objects or equipment, such as automobiles, automobile parts, furniture, stoves, refrigerators, cans, containers or similar items.
4. Stagnant water or excavations, including pools or spas.
5. Any device, decoration, design, structure or vegetation which is unsightly by reason of its height, condition, or its inappropriate location.

EXHIBIT D

HISTORIC PROPERTY IMPROVEMENTS TO BE COMPLETED

Historic property improvements due prior to and up to the date of sale or transfer of the property shall be completed prior to sale or transfer of the property.

	Proposed Work/Task	Proposed Completion
1.	Prepare a comprehensive landscape and hardscape plan, documenting existing conditions as well as plans for proposed work, and submit to the City. Plans should include tree removal, backyard paving, front walkway and retaining walls.	2020
2.	Trim wisteria and honeysuckle to remain at a level below the roof eaves. Remove vines growing up exterior surface of house. Creeping fig and any other vines should either be removed or trellised. The maintenance plan should be included on the landscape plans.	2020
3.	Where missing, replace downspouts in kind to match existing and ensure that water is properly diverted away from the buildings. Where missing, add mortar bird stops to clay tiles on roof edge.	2019
4.	Carefully remove large cypress tree that is damaging foundation of garage and poses threat to the structural integrity of the house.	2021
5.	Repair concrete slab/foundation of garage.	2023
6.	Carefully repair or replace in-kind damaged and deteriorating stucco retaining walls in front and rear yards. Install protective guards on front yard retaining wall to prevent skateboarders from causing further damage.	2019
7.	Replace garage door with compatible, weather-tight option to ensure long-term preservation of the original detached garage.	2024
8.	Remove internal framing and shelving in garage to allow for parking.	2024
9.	Replace incompatible, non-original vinyl windows (3) with windows that are compatible with the historic character of the buildings.	2027
10.	Replace plastic flood lights and other incompatible light fixtures with more historically appropriate options. Disguise or tuck lighting under eaves and shield lighting to prevent light spillage onto adjacent properties.	2027
11.	Paint the vent pipe on the attached shed roof over the rear door to be bronze.	2027
12.	Repair and replace patio tiles and planter wall in rear yard with compatible material after the removal of the Cypress tree.	2024

	Proposed Work/Task	Proposed Completion
13.	Front walkway tiles appear non-original. Repair and/or replace individual damaged tiles as necessary or re-tile/repave entire front walkway with compatible material.	2028
14.	Provide a clear termite inspection report (also known as a WDO Report).	2028

