



# *Memorandum*

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Chris Burton

**SUBJECT:** SEE BELOW

**DATE:** October 15, 2021

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**COUNCIL DISTRICT: 6**

**SUBJECT: CITY LANDMARK DESIGNATION (FILE NO. HL21-002) AND HISTORICAL PROPERTY (MILLS ACT) CONTRACT (FILE NO. MA21-002) FOR THE “NEIFING HOUSE” AT 1169 MAGNOLIA AVENUE**

## **RECOMMENDATION**

The Historic Landmarks Commission (HLC) voted unanimously on October 6, 2021, to recommend that the City Council:

- a. Adopt a Resolution designating 1169 Magnolia Avenue (“Neifing House”) as a City Landmark of special historic, architectural, aesthetic or engineering interest, or value of a historic nature; and
- b. Adopt a Resolution to approve the Historical Property Contract (Mills Act Contract) between the City of San José and property owners, Arthur Kao and Rachel Sussman, for the property located at 1169 Magnolia Avenue (APN: 261-20-040) on a 0.25-gross acre site.

## **OUTCOME**

Designation of the subject property as a City Landmark would preserve the historic integrity of a Craftsman Bungalow and recognize its historic and architectural interest. Approval of the Mills Act Contract would result in a reduced property tax rate for the property over a ten-year period, provided that the property owner uses the property tax savings for the preservation, restoration, and rehabilitation of the City Landmark.

## **BACKGROUND**

On June 8, 2021, the property owners of 1169 Magnolia Avenue submitted an application to nominate the property as a City Landmark and if designated, to enter into a Mills Act Contract.

On October 6, 2021, the HLC held a public hearing on the applications. The project's historic resources consultant, Krista Van Laan, provided a short presentation of the history of the house and its architectural style. She noted the Stick style of architecture was a transitional style between the Italianate and Queen Anne styles and is less decorative than the Queen Anne style, but shared similar features. She noted that the Stick style shows off its modern balloon frame construction, which was a departure from the early post and beam construction. The Stick style accentuated the under-structure by highlighting the trim to highlight the vertical members of the wood framing of the house. Ms. Van Laan noted that the house retains its original window casing and stained glass. She commented that the West Coast version of the Stick style included incised trim which is located around the window frame, bargeboard and gable pediment, and also paneling as seen below the front bay window. Ms. Van Laan noted that she found a photograph of the original house which is very unusual and commented that its architectural features are highly intact. She commented that the Stick style is not all that common in San José.

Commissioner Nestle expressed his thanks and congratulations to the property owners and wished them luck in the restoration of the house. Commissioner Arnold concurred with Commissioner Nestle and noted the connection with the past and the present represented by the house. She noted the ten-year maintenance and restoration plan for the house and expressed thanks. Vice-Chairman Raynsford inquired about the balustrade and the missing spindles and whether they would be restored. The property owners stated that restoration work was included in the Mills Act contract ten-year plan. Ms. Van Laan noted that the property owners also plan to restore the lost finials on the house gables. Chairman Boehm inquired about the placement of the proposed bronze plaque. The property owners stated that a potential place might be at the corner where the driveway meets the sidewalk. Chairman Boehm stated that his interest in the plaque was to ensure that it can be easily read by passersby on the street. He noted that the proposed restoration and maintenance work will strengthen the historic significance of the house.

Ben Leech, Preservation Action Council San José (PAC\*SJ), expressed strong support of the City Landmark designation and Mills Act contract. He thanked the property owners and the historic resource consultant who documented and evaluated the property. Mr. Leech echoed all the positive comments of the HLC members. Mike Sodergren from PAC\*SJ, thanked the property owners for all their hard work and encouraged them to install the plaque as soon as possible. He suggested the property owners collaborate with the owners of the Doobie Brother's House who desired to make information about the house available digitally (such as a QR code) because the house has a deeper story than information that can fit on a plaque. The property owner expressed enthusiasm for doing that and thanked the speaker for the idea. The property owners were also interested in including on the plaque an acknowledgment of the native people whose land the house is located upon.

The HLC made the findings that 1169 Magnolia Avenue meets City Landmark designation criterion 6 in Section 13.48.110(H) and the Historical Property Contract requirements of Section 13.48.540 of the San José Municipal Code, and unanimously (4-0) recommended that the City Council approve the City Landmark designation and the Mills Act Contract.

## **ANALYSIS**

The house at 1169 Magnolia Avenue qualifies for City Landmark designation because it meets designation criterion 6 in Section 13.48.110(H) of the San José Municipal Code:

*Criterion 6: Its embodiment of distinguishing characteristics of an architectural type or specimen.*

The property embodies distinguishing characteristics of the Victorian-era Stick style of the late nineteenth-century era of residential architectural design. Strongly vertical, with high windows and angular lines, the style is characterized by its raised balloon framing that was revolutionary in its use of lumber and nails, instead of the more expensive post-and-beam construction. The Stick style uses wood trim (“sticks”) to trace the wooden understructure. In the subject property, this is achieved with vertical and horizontal trim that outlines the walls and gables. A wide wood water table wraps around the house and vertical wood trim has been applied to the exterior corners, extending from the water table up to the soffit to follow the long vertical members in the balloon frame construction. Frieze boards emphasize the roofline and horizontal trim outlines the bottom of the eastern gable.

The subject property is an excellent local example of what is sometimes called “West Coast Stick,” or “Stick-Eastlake,” with design features including incised Eastlake-style wood trim, squared bay windows (otherwise known as box bays), and decorative panels set into the walls of the box bay. The gables with their decorative sunburst gable pediments are representative of the style, as is the distinctive and ornate wide front porch with its arched frieze with sunburst design and spindled columns and balustrades. Original architectural elements such as the numerous stained-glass windows, curvilinear window casings, Eastlake-style bargeboard, and original doors and hardware complete its historical character. A distinctive and unusual feature of the house, perhaps more representative of the Queen Anne period that followed Stick, is on the eastern façade, where a round, four-lite bow window projects from the wall, topped by a cantilevered projecting gable.

An original historical photograph shows that the house at 1169 Magnolia Avenue has retained the majority of its defining characteristics and original materials. Representative of the Victorian houses that originally made up this neighborhood, in its intact nature, it provides a link to the past.

The house at 1169 Magnolia Avenue qualifies for a Historical Property Contract because it meets the following criteria in Section 13.48.540 of the San José Municipal Code:

*The proposed contract is consistent with the General Plan.*

The preservation and rehabilitation of City Landmarks advance the goals of the Envision San José 2040 General Plan, specifically Historic Preservation Goal 13 and Policies LU-13.6 and LU-13.13. The Mills Act contract, in conjunction with the City Landmark designation, would advance Historic Preservation Goal 13 by promoting a greater sense of historical awareness of the late nineteenth-century construction methods and architecture of the Stick style house and preserving a sense of place in its setting in the Hanchett and Hester Park Conservation Area. The Mills Act contract would require the property owner to commit to a ten-year work

plan to invest in the maintenance and rehabilitation of the house. In conjunction with the City Landmark designation, the work would conform with the requirements of the Historic Preservation Ordinance, the Secretary of the Interior's Standards for the Treatment of Historic Properties, and "Your Old House Guide for Preserving San José Homes." These requirements would address Historic Preservation Policy LU-13.6. The Mills Act contract would implement Historic Preservation Policy LU -13.13 by utilizing a property tax incentive to foster the preservation and rehabilitation of the house which has architectural significance as represented in its Stick style character-defining features.

*The proposed contract would provide greater protection for the landmark property than is otherwise provided by the provisions of Municipal Code Chapter 13.48.*

The Mills Act contract would provide greater protection for the City Landmark because the Historical Property Contract includes a schedule of maintenance and improvements and the owner would agree to complete the following over a ten-year period:

**Year 1:** Install historically appropriate wood window screens for all of the home's original windows. Make and install bronze historic landmark plaque.

**Year 2:** Remove the upper front deck on the east side of the house to expose the original distinctive bow window, trim, and brick.

**Year 3:** Repair and restore rear foundation and footings. Remove porch enclosure with modern metal-frame windows at the rear of the house and replace with period-appropriate open porch and wood windows as was on the original house.

**Year 4:** Repair front and side brick foundation which currently has significant water damage. Remove damaged brick chimney (no fireplace in the house currently) which is an earthquake safety hazard.

**Year 5:** Restore damaged side porch steps and replace railing with wood balusters to match those from the front porch.

Upgrade electrical and plumbing as necessary.

**Year 6:** Fix east side kitchen window and replace with double-hung sash window and original window trim. Repaint the exterior of the home.

**Year 7:** Repair and restore damaged front porch and front porch steps.

Restore balusters on the railing of steps to match the original as seen in the historic photograph.

**Year 8:** Restore decorative details of the wood window trim. Repair and repaint deteriorated wood at other points around the exterior of the home.

**Year 9:** Recreate (from the original historical photograph) and install roof finials.

Repair, restore, and install original wrought iron side gate (found in the garage).

**Year 10:** Refinish front and side doors of home (currently painted) to the original stained wood finish. Re-roofing, as necessary.

The complete analysis is contained in the attached HLC staff report.

## **CONCLUSION**

The City Landmark designation and a Mills Act contract for 1169 Magnolia Avenue would foster the preservation and rehabilitation of the architecturally significant 1892 Stick style house and would promote a greater sense of historical awareness of the architecture and construction methods of the late nineteenth century. In its setting in the Hanchett and Hester Park Conservation Area, the architectural features of the house contribute to a sense of place with the Hester District dating to the year 1890.

## **EVALUATION AND FOLLOW UP**

If the Landmark application is approved, 1169 Magnolia Avenue would be designated a City Landmark and the property would be added to the Historic Resources Inventory. Future work on the exterior of the house would require the issuance of a Historic Preservation Permit and conformance with all applicable standards and guidelines.

If the Mills Act Contract is approved, the County Assessor would recalculate the property taxes using a formula in the Mills Act and Revenue and Taxation Code and the schedule of proposed maintenance as well as improvements included in the Historical Property Agreement would be completed over a ten-year period.

## **CLIMATE SMART SAN JOSE**

The recommendation in this memorandum for File Nos. HL2-002 and MA21-002 will have no negative effect on the Climate Smart San José energy, water, or mobility goals.

## **POLICY ALTERNATIVES**

The City Council could vote to deny the City Landmark designation of 1169 Magnolia Avenue (“The Neifing House”). If the property is not designated a City Landmark, the property owners would not be required to preserve and maintain the house and it would not be eligible for a Mills Act Contract.

## **PUBLIC OUTREACH/INTEREST**

Staff followed the public notification requirements of Section 13.48.110 of the San José Municipal Code. A public hearing notice for the project was published in a local newspaper and posted at the site. Information about the proposed designation and the associated public hearings has been made available through the Planning Division website, and staff has been available to answer questions.

## **COORDINATION**

This memorandum was coordinated with the City Attorney's Office.

## **CEQA**

The environmental impacts of the project will not have a negative effect on the subject property or the adjacent property in that the project has been determined exempt from the provisions of the California Environmental Quality Act (CEQA) per Section 15331. The project is limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation, or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

/s/

Christopher Burton, Director  
Planning, Building and Code Enforcement

For questions, please contact Robert Manford, Deputy Director, at (408) 535-7900.

Attachments: October 6, 2021 HLC Staff Report with Attachments



## HISTORIC LANDMARKS COMMISSION STAFF REPORT

<b>File Nos.</b>	<b>HL21-002 and MA21-002</b>
<b>Application Type</b>	<b>City Landmark Designation and Historical Property (Mills Act) Contract</b>
<b>Applicants</b>	<b>Arthur Kao and Rachel Sussman</b>
<b>Location</b>	<b>1169 Magnolia Avenue</b>
<b>APN</b>	<b>261-20-040</b>
<b>Zoning District</b>	<b>R-2 Two Family Residence</b>
<b>Council District</b>	<b>6</b>
<b>Historic Area</b>	<b>Hanchett and Hester Park Conservation Area</b>
<b>Historic Resource Inventory</b>	<b>Identified Structure</b>
<b>Annexation Date</b>	<b>December 8, 1925</b>
<b>CEQA</b>	<b>Exempt per CEQA Guidelines Section 15331 for Historical Resources and Rehabilitation</b>

### APPLICATION SUMMARY:

**File Nos. HL21-002 and MA21-002:** Applications for 1169 Magnolia Avenue to designate the property a City Landmark (Neifing House) and to execute a Historical Property (Mills Act) Contract between the City of San José and the property owners (Kao Arthur and Sussman Rachel).

### RECOMMENDATION:

Staff recommends the Historic Landmarks Commission recommend to the City Council the following actions:

1. Adopt a resolution to designate 1169 Magnolia Avenue (Neifing House) as a City Landmark of special historical, architectural, cultural, aesthetic or engineering interest or value of an historic nature; and
2. Adopt a resolution to approve the Historical Property (Mills Act) Contract between the City of San Jose and property owners Arthur Kao and Rachel Sussman for the property located at 1169 Magnolia Avenue.

**PROJECT DATA**

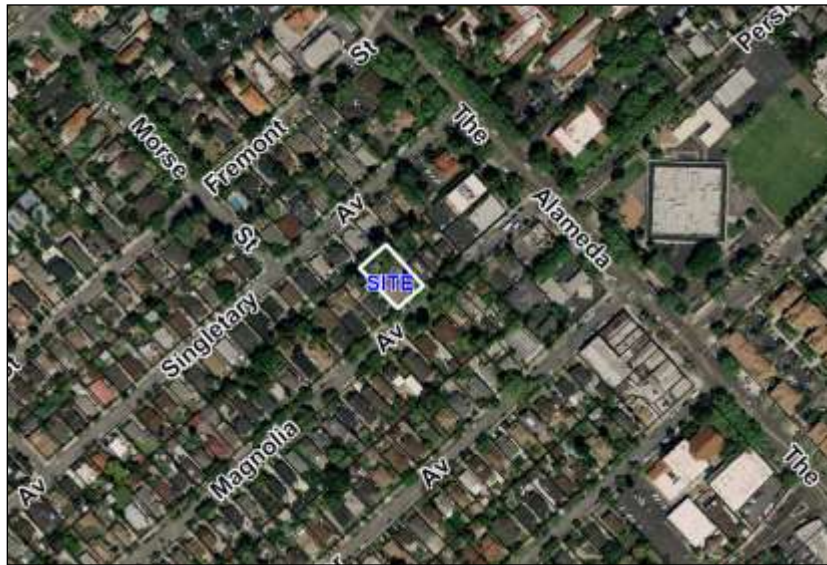
<b>GENERAL PLAN CONSISTENCY</b>			
<b>General Plan Designation</b>		<b>Residential Neighborhood</b> <input checked="" type="checkbox"/> <b>Consistent</b> <input type="checkbox"/> <b>Inconsistent</b>	
<b>Consistent Policies</b>		LU-13, LU-13.6, LU-13.13	
<b>Inconsistent Policies</b>		None	
<b>SURROUNDING USES</b>			
	<b>General Plan Land Use</b>	<b>Zoning</b>	<b>Existing Use</b>
<b>North</b>	Residential Neighborhood	R-1-8 Single Family Residence	Single-family residence
<b>South</b>	Residential Neighborhood	R-2 Two Family Residence	Single-family residence
<b>East</b>	Residential Neighborhood	R-2 Two Family Residence	Single-family residence
<b>West</b>	Residential Neighborhood	R-2 Two Family Residence	Single-family residence

<b>RELATED APPROVALS</b>	
<b>12/8/1925</b>	Annexation No. 8; College Park/Burbank Sunol
<b>6/18/1979</b>	Building Permit No. 1979-071329 for service upgrade
<b>10/17/1996</b>	Building Permit No. 1996-075621 for re-roofing
<b>5/07/2001</b>	Building Permit No. 2001-055624 for a new 1,148-square foot deck in front yard
<b>12/18/2006</b>	Building Permit No. 2006-021794 for addition of a workshop to the detached garage.
<b>8/18/2017</b>	Building Permit No. 2017-031524 for re-roofing with new composition roofing

**PROJECT LOCATION AND DESCRIPTION**

The subject 0.25-gross acre property is located at 1169 Magnolia Avenue on the northwest side of Magnolia Avenue, approximately 400 feet southwest of The Alameda on a large lot in the Hanchett and Hester Park Conservation Area (see Figure 1). The property is surrounded by late nineteenth and early twentieth century single-family houses to the north, east, west and south.





**Figure 1: Location Map**

On June 8, 2021, the property owners, Arthur Kao and Rachel Sussman, submitted applications to designate the house at 1169 Magnolia Avenue (Neifing House) as a City Landmark and to enter into a Historical Property (Mills Act) Contract to restore, rehabilitate and maintain the property over a 10-year period.

The building proposed for City Landmark designation is a Stick style house constructed in 1892 (see Figure 2, Figure 3, Figure 4 and Figure 5).



**Figure 2: Front and Southwest Façade of 1169 Magnolia Avenue**



Figure 3: Southeast Façade



Figure 4: West Façade





**Figure 5: Northeast (Rear) Facade**

The property was documented and evaluated by Archives and Architecture (Krista Van Laan) in 2021 (Attachment 1) and the following is a summary of the architectural description, character-defining features and history of the house.

The house is a two-story, wood frame building with a hip and cross-gabled roof sheathed with composite shingle. Its central roof is a moderately pitched pyramidal hip, with crossed gables on the front and sides and deep boxed eaves. The exterior is clad with wide-board V-groove siding with a prominent front gable and porch as its dominating features. The house is raised over a full basement, with a wide wood water table wrapping around the house above the high brick base.

The house maintains its original wood-frame windows trimmed with square wood casings, stained glass, and decorative Eastlake window trim. The front gable has a projecting angled bay window with wide wood trim in the incised Eastlake style. The bay's center window has an upper pane of stained-glass with three fleur-de-lis patterns surrounded by a border of rectangular panes of colored glass. Most of the windows are one-over-one sash windows.

The house maintains the following character-defining features:

- Prominent front gable with box bay window
- Steeply pitched hipped roof with crossed gables on the front and sides
- Ornate front porch with arched frieze and spindled columns and railing

- Ornamental “gingerbread” trim in the incised and spindled Eastlake style
- Stained-glass windows

The immediate setting for the house includes a wide front yard facing Magnolia Avenue, primarily grassy lawn with a central paved walkway leading from the sidewalk to the front porch steps and circling around the front of the house. Roses and other flowering plants grow along the foundation and on both sides of the driveway. There are two Magnolia trees on the front (south) yard and various other deciduous trees within the side and rear yards, and low fencing and gates. A row of tall cypress trees lines the property line to the west.

A building permit was issued in 2006 for the construction of an addition to an existing accessory building (detached two car garage) in the rear yard.

The house was built in 1892 by a well known San José contractor, Robert Shottenhamer, who was a partner in the firm the Shottenhamer Brothers. From 1904 to 1913, the Shottenhamer brothers also developed two subdivisions of their own in downtown San José called the Shottenhamer Tracts 1 and 2. The house was built for Julius and Bertha Neifing who arrived in San José in 1884 from their home state of Indiana. Julius Neifing was born in Prussia in 1848 and came to the United States when he was 17 years old. In 1879, he married 17-year-old Bertha Frauenknecht, who was born in Pennsylvania to German parents. Julius Neifing was naturalized in Crown Point, Indiana in 1880. He opened a beer and lunch hall downtown on First Street in 1884, and in 1887 he purchased the Pacific Hotel with Jacob Schlenker.

The Neifings lived at the Pacific Hotel until 1892 when their new house was built on Magnolia Avenue. Julius Neifing began running a business from the house manufacturing and selling his patented “Exit” fly screen, which was designed to prevent flies from entering into a room while still allowing them to exit. An entrepreneur and inventor of sorts, Neifing had obtained at least two patents, one for a telegraph circuit closer in 1884, and one for the “Exit” fly screen in 1887. The fly screen patent received mention in several newspapers, books and Scientific American (November 19, 1887 issue). Neifing also advertised himself as a music teacher and gave lessons from the house. During their tenure on Magnolia Avenue, the Neifing family experienced a number of tragedies. Wife Bertha died in 1896, leaving husband Julius to raise their two children. After his wife’s death, Julius began sharing the house with another family, Albert and Gertrude Benson and their son Malcolm. Julius’ 21-year old daughter Elinora died in 1901, and Julius himself passed away on December 8, 1905. The house was then occupied by the Gruwell and Kean families. Pharmacist Albert Purdy and his wife Hazel, an apartment manager, purchased the house in 1932 and they resided in the house until about 1968.

### **Hanchett and Hester Park Conservation Area**

The house is located on the northern edge of the Hanchett and Hester Park Conservation Area, which consists of two neighborhoods generally bounded by Magnolia Street to the north, The Alameda to the east, Park Avenue to the west, and Mariposa Avenue to the south (see Figure 6).



**Figure 6: Hanchett and Hester Park Conservation Area Map**

Hanchett Park was developed in 1907 by Lewis Hanchett on the site of the Argicultural Park amusement and exhibition grounds west of The Alameda. The streets were laid out by John McLaren, supervisor and designer of Golden Gate Park in San Francisco. The Hester District dates to 1890 and includes the former Gardner District (annexed 1911). The Hester-Hanchett-College Park district was annexed to the City of San José in 1925. Most of the houses in the Hanchett and Hester Park Conservation Area were built between 1906 and 1935.

## ANALYSIS

The applications for City Landmark designation and a Mills Act contract were analyzed with respect to conformance with: 1) the Envision San José 2040 General Plan; 2) the Historic Preservation Ordinance; and 3) the California Environmental Quality Act (CEQA).

### Envision San José 2040 General Plan Conformance

The proposed City Landmark designation and Mills Act contract promotes the following goal and policies of the General Plan with respect to historic preservation:

Historic Preservation Goal LU-13 - Landmarks and Districts: Preserve and enhance historic landmarks and districts in order to promote a greater sense of historic awareness and community identity and contribute toward a sense of place.

***Analysis:** City Landmark designation and a Mills Act contract for 1169 Magnolia Avenue would promote a greater sense of historic awareness of the late nineteenth century construction methods and architecture of the Stick style house. In its setting in the Hanchett and Hester Park Conservation Area, the architectural features of the house contribute to a sense of place with the Hester District dating to 1890.*

Historic Preservation Policy LU-13.6: Ensure modifications to candidate or designated landmark buildings or structures conform to the Secretary of the Interior's Standards for the Treatment of Historic Properties and/or appropriate State of California Requirements regarding historic buildings and/or structures, including the California Historical Building Code.

***Analysis:** City Landmark designation would require a Historic Preservation Permit for exterior changes to the house and ancillary construction on the lot. The work would need to conform with the requirements of the Historic Preservation Ordinance, the Secretary of the Interior's Standards for the Treatment of Historic Properties, and "Your Old House Guide for Preserving San José Homes." The Mills Act contract would require the property owner to commit to a ten-year work plan to invest in the maintenance and rehabilitation of the house. These requirements would address Historic Preservation Policy LU-13.6.*

**Historic Preservation Policy LU -13.13:** Foster the rehabilitation of buildings, structures, areas, places, and districts of historic significance. Utilize incentives permitting flexibility as to their uses; transfer of development rights; tax relief for designated landmarks and districts; easements; alternative building code provisions for the reuse of historic structures; and financial incentives.

***Analysis:** A Mills Act Contract for 1169 Magnolia Avenue would implement Historic Preservation Policy LU -13.13 by utilizing a property tax incentive to foster the preservation and rehabilitation of the house which has architectural significance as a Stick style house constructed in 1892.*

### **Historic Preservation Ordinance Conformance for City Landmark Designation**

In accordance with Historic Preservation Ordinance Section 13.48.110(H), the Historic Landmarks Commission should consider, among other relevant factors, the following eight criteria in making the findings that a proposed Landmark has special historical, architectural, cultural, aesthetic, or engineering interest or value of an historical nature:

1. Its character, interest or value as part of the local, regional, state or national history, heritage or culture;
2. Its location as a site of a significant historic event;
3. Its identification with a person or persons who significantly contributed to the local, regional, state or national culture and history;
4. Its exemplification of the cultural, economic, social or historic heritage of the city of San José;
5. Its portrayal of the environment of a group of people in an era of history characterized by a distinctive architectural style;
6. Its embodiment of distinguishing characteristics of an architectural type or specimen;
7. Its identification as the work of an architect or master builder whose individual work has influenced the development of the city of San José; and
8. Its embodiment of elements of architectural or engineering design, detail, materials or craftsmanship which represents a significant architectural innovation or which is unique.

Based on the documentation and evaluation of the property prepared by a qualified historic resources consultant (Archives and Architecture, Krista Van Laan), the house at 1169 Magnolia Avenue is eligible for City Landmark designation under designation criterion 6:

**Criterion 6: Its embodiment of distinguishing characteristics of an architectural type or specimen.**

*Analysis:* The property embodies distinguishing characteristics of the Victorian-era Stick style of the late nineteenth-century era of residential architectural design. Strongly vertical, with high windows and angular lines, the style is characterized by its raised balloon framing that was revolutionary in its use of lumber and nails, instead of the more expensive post-and-beam construction. The Stick style uses wood trim (“sticks”) to trace the wooden understructure. In the subject property, this is achieved with vertical and horizontal trim that outlines the walls and gables. A wide wood water table wraps around the house and vertical wood trim has been applied to the exterior corners, extending from the water table up to the soffit to follow the long vertical members in the balloon frame construction. Frieze boards emphasize the roof line and horizontal trim outlines the bottom of the eastern gable.

The subject property is an excellent local example of what is sometimes called “West Coast Stick,” or “Stick-Eastlake,” with design features including incised Eastlake-style wood trim, squared bay windows (otherwise known as box bays), and decorative panels set into the walls of the box bay. The gables with their decorative sunburst gable pediments are representative of the style, as is the distinctive and ornate wide front porch with its arched frieze with sunburst design and spindled columns and balustrades. Original architectural elements such as the numerous stained-glass windows, curvilinear window casings, Eastlake-style bargeboard, and original doors and hardware complete its historical character. A distinctive and unusual feature of the house, perhaps more representative of the Queen Anne period that followed Stick, is on the eastern façade, where a round four-lite bow window projects from the wall, topped by a cantilevered projecting gable.

An original historical photograph shows that the house at 1169 Magnolia Avenue has retained the majority of its defining characteristics and original materials. Representative of the Victorian houses that originally made up this neighborhood, in its intact nature, it provides a link to the past.

**Historic Preservation Ordinance Conformance for Mills Act Contract**

The Mills Act is state legislation that grants cities and counties the authority to enter into contracts with the owners of qualified historic properties who actively participate in the restoration and maintenance of their historic properties while receiving property tax relief. In the City of San José, qualified historic properties are those that have been designated as a City Landmark. Property taxes are recalculated using a formula in the Mills Act and the Revenue and the Taxation Code.

The minimum duration for a Mills Act Contract is ten years. Mills Act contracts renew automatically every year after the initial ten-year period unless the property owner or City opts to end the contract. Mills Act contracts include a schedule of proposed maintenance and improvements that the owner agrees to complete. Such proposed maintenance and improvements are typically spread over a ten-year period. All work is required to comply with the Secretary of the Interior’s Standards for the Treatment of Historic Properties and “*Your Old House Guide for Preserving San José Homes*.” The purpose of the Mills Act is to provide a long-term incentive for the restoration, rehabilitation and preservation of historic buildings that obligates current and future owners to the maintenance and care of the property.

The draft Resolution to designate to 1169 Magnolia Avenue (Neifing House) as a City Landmark of special historical, architectural, cultural, aesthetic or engineering interest or value of an historic nature is included in this memorandum as Attachment 2.

***Required Findings of Mills Act Contract (Historical Property Contract)***

Part 4 of the Historic Preservation Ordinance establishes a procedure for the administration of Mills Act (Historical Property) contracts pursuant to Section 50280 et seq. of the California Government Code, as amended, known as the California Mills Act of 1972.

Section 13.48.540 sets forth the findings the City Council may, but under no circumstances shall be required, approve a historical property contract. Outlined below are the findings followed by staff analysis:

**1. The proposed contract is consistent with the General Plan.**

*Analysis: The preservation and rehabilitation of City Landmarks advances the goals of the Envision San José 2040 General Plan, specifically Historic Preservation Goal 13 and Policies LU-13.6 and LU-13.13. The Mills Act contract, in conjunction with the City Landmark designation, would advance Historic Preservation Goal 13 by promoting a greater sense of historic awareness of the late nineteenth century construction methods and architecture of the Stick style house and preserving a sense of place in its setting in the Hanchett and Hester Park Conservation Area. The Mills Act contract would require the property owner to commit to a ten-year work plan to invest in the maintenance and rehabilitation of the house. In conjunction with the City Landmark designation, the work would conform with the requirements of the Historic Preservation Ordinance, the Secretary of the Interior's Standards for the Treatment of Historic Properties, and "Your Old House Guide for Preserving San José Homes." These requirements would address Historic Preservation Policy LU-13.6. The Mills Act contract would implement Historic Preservation Policy LU -13.13 by utilizing a property tax incentive to foster the preservation and rehabilitation of the house which has architectural significance as represented in its Stick style character-defining features.*

**2. The proposed contract would provide greater protection for the landmark property than is otherwise provided by the provisions of Municipal Code Chapter 13.48.**

*Analysis: The Mills Act contract would provide greater protection for the City Landmark because the Historical Property Contract includes a schedule of maintenance and improvements the owner would agree to complete the following over a ten-year period:*

*Year 1: Install historically-appropriate wood window screens for all of the home's original windows. Make and install bronze historic landmark plaque.*

*Year 2: Remove the upper front deck on the east side of the house to expose the original distinctive bow window, trim, and brick.*

*Year 3: Repair and restore rear foundation and footings. Remove porch enclosure with modern metal-frame windows at rear of house and replace with period-appropriate open porch and wood windows as was on the original house.*

*Year 4: Repair front and side brick foundation which currently has significant water damage. Remove damaged brick chimney (no fireplace in house currently) which is an earthquake safety hazard.*

*Year 5: Restore damaged side porch steps and replace railing with wood balusters to match those from the front porch.*

*Upgrade electrical and plumbing as necessary.*



- Year 6: *Fix east side kitchen window and replace with double-hung sash window and original window trim. Repaint exterior of home.*
- Year 7: *Repair and restore damaged front porch and front porch steps.*  
*Restore balusters on railing of steps to match original as seen on historic photograph.*
- Year 8: *Restore decorative details of wood window trim. Repair and repaint deteriorated wood at other points around the exterior of home.*
- Year 9: *Recreate (from original historical photograph) and install roof finials.*  
*Repair, restore and install original wrought iron side gate (found in garage).*
- Year 10: *Refinish front and side doors of home (currently painted) to original stained wood finish. Re-roofing, as necessary.*

**3. The proposed contract complies with the required provisions of Historical Property Contracts listed above.**

*Analysis: The proposed Historical Property Contract includes a description of the landmark property; a minimum contract period of ten years; specific conditions requiring preservation of the landmark property including the required 10-year work plan as outlined above and conformance with the Secretary of the Interior Standards for Rehabilitation, the California State Historical Building Code, and the requirements of the City; provision for the periodic examination of the interior and exterior of the landmark property for at least five years by the City of San José and the County of Santa Clara to determine the owner's compliance with the contract; a requirement that the property owner(s) annually expend an amount equal to a minimum of ten percent of the tax savings attributed to the contract to the preservation and maintenance of the landmark property, and make this documentation available to the City of San José at the time of the periodic examination; a provision that the contract is binding and applies to all successors in interest to the owner(s) who entered into the contract; and a provision requiring recordation of the contract with the Santa Clara County recorder's office within six months of the effective date of the contract.*

The draft resolution to approve the Historical Property (Mills Act) Contract between the City of San Jose and property owners Arthur Kao and Rachel Sussman for the property located at 1169 Magnolia Avenue is included in this memorandum as Attachment 3.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT**

The proposed project is exempt from provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15331 of the State CEQA Guidelines. The project is limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

**PUBLIC HEARING NOTIFICATION**

Staff followed the public notification requirements of Section 13.48.110 of the San José Municipal Code. A notice of this hearing appeared in a newspaper of general record at least 10 days prior to the hearing, a mailing of the notice to the property owner and occupants and posting the notification of the hearing along the frontage of the site. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

**Project Manager:** Rina Shah, Planner

**Approved by:** /s/ , Deputy Director for Christopher Burton, Planning Director

**Date:** October 6, 2021

**Attachments:**

1. State Department of Parks and Recreation forms (DPR 523A & B), prepared by Archives and Architecture (Krista Van Laan), September 10, 2021
2. Draft Resolution for HL21-002
3. Draft Resolution for MA21-002

**Owner/Applicant Address:**

Arthur Kao and Rachel Sussman  
1169 Magnolia Avenue  
San Jose, CA 95126

## **HL21-002 and MA21-002**

### **Links to the Attachments**

Click on the title to view document

1. State Department of Parks and Recreation forms (DPR 523A & B), prepared by Archives and Architecture (Krista Van Laan), September 10, 2021
2. Draft Resolution for HL21-002
3. Draft Resolution for MA21-002