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To: Landmarks Preservation Commission
Subject: In opposition to proposed Mills Act contracts

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Dear Commissioners and staff of the Landmarks Preservation Commission:

I am opposed to all three of the Mills Act contracts appearing on the September 2025 agenda: item 7C, 1619 Walnut; item 7D, 21 Mosswood; and item 7E, 2845 Woolsey. These proposals serve the financial self-interest of the applicants, but provide no substantial public benefit. At the same time the combined proposals come at an immediate concrete cost to the people of Berkeley and beyond. Each application contains significant misstatements of income, expenses, and taxes. One of the applications raises conflict of interest concerns. Local ordinance empowers the Commission to disapprove these contracts, and the Commission should do so in these cases.

Item 7C, 1619 Walnut: The application misleads us by understating actual revenues. The owner is required to register all new leases and vacancies with the Rent Stabilization Board within 15 days, so we can assume that the Board's registry is up-to-date. According to the registry, the 7 apartments at 1619 Walnut provide a gross revenue of \$16,386 per month, 31% higher than the claimed \$12,500/mo. Furthermore, Rev. & Tax. Code, § 439.2, subd. (a), requires this applicant to estimate the fair market rent for long-held leases, as if they were "renegotiated in the light of current conditions". The property has 2 apartments under leases from 1988. The gross revenue of these apartments would be much higher today, and the applicant must use the higher estimate.

Section 439.2 permits, as expenditures against revenue, "only those which are ordinary and necessary in the production and maintenance of the revenue". It is clear that the costs of utilities, insurance, and management of the building are not proportional to revenue. If the owner lets an apartment at \$3,000/mo, which was previously leased for \$1,500/mo, the owner's costs do not consequently double. It is therefore improper for the applicant to state their expenses as 25% of revenue. The applicant may only use actual expenses to offset revenues for this calculation.

Considering that the building has recently leased 4 apartments between \$2,600 and \$3,100, with an average rent of \$2,815, a fair estimate of gross revenue is \$235,000 per year, more than half again what the applicant claims. The fair-market unencumbered value of this property is \$2.5 to \$3.5 million.

The Commission should deny this application on the basis of inconsistent facts, and in light of the public interest.

Item 7D, 21 Mosswood: This Mills Act application raises significant questions of conflict of interest, and shines a spotlight on the flimsy rationale of the designation as a structure of merit. The applicant is a

director of BAHA. BAHA works closely with and, arguably, directs the activities of the Commission. In the past a Commissioner has told applicants that consultation through BAHA is a *requirement* for landmark status in Berkeley. This is, of course, false, but it has been said by the Commission in its official capacity during a public hearing. BAHA and the Commission work hand-in-glove to draft and advance landmark applications. The applicant, a BAHA insider and therefore a related party to the Commission, asks the Commission to hand them a tax abatement worth well over half a million dollars. A very generous description of this situation would be "appearance of a conflict". Others might choose stronger words.

The applicant's proposal also invites fresh scrutiny of the landmark designation, drafted by the same applicant. The Mills Act contract proposes spending a whopping \$338k to fix the garage, but the connection between the garage and the architectural merit of the home and site is tenuous and unsupported by evidence in the record. The initial application does not list the garage as a feature to be preserved. The supporting description of the site from the National Register does not mention the garage at all. The garage did not appear as a feature to be preserved until the last paragraph of the staff report, without any justifying discussion of its compatibility with the architectural style being preserved. Indeed, the main building's remarkable features include "asymmetry" while the garage's "rectangular plan" is to be protected. This incongruence leaves readers to wonder why the garage was protected, other than to make it eligible for Mills Act funds.

The applicant's statement of revenue and expenses contains errors similar to those committed by the previous item. The imputed rent of \$8,000 per month is well below the market. Other homes of this size at this distance to campus rent for \$12,000 or more. As above, this applicant improperly uses percentages of revenue for expenses, when these expenses are not proportional to revenue. This combination leads to a severe underestimate of the assessment on an income capitalization basis. The application also seems to misrepresent the current tax liability, by roughly 100%.

To avoid the appearance of a conflict of financial interests, and in light of the balance of equity, and given the misrepresentations in the financial statements, the Commission should disapprove this application.

Item 7E, 2845 Woolsey: Perhaps the most disturbing of the three proposals, the one for 2845 Woolsey raises severe issues of equity and public interest. Other jurisdictions limit the pre-Mills valuation of properties to prevent this type of abuse. For example Los Angeles will not allow a Mills Act contract for a parcel worth over \$1.5 million. This home was recently purchased by the applicant for over \$4 million. The applicant clearly has no need of the tax abatement. There are no public benefits that would be realized by this massive giveaway, and a \$535k loss at the expense of schools, parks, and buses would be morally repugnant.

Commission's Powers and Affirmative Duties

The Commission is empowered by local statute to decline or ignore these applications, and it should decline all of these. Like all other local officials, the Commissioners must act at all times in the public interest, and as fiduciaries of the City. These applications ask us to divert well over a million dollars from the budgets of the City, County, Berkeley Unified School District, BART, EBMUD, AC Transit, East Bay Recreation and Parks, and the Community College district. The applicants wish for these millions to go to their personal remodelling budgets. The benefits to the public are purely hypothetical: a two-car garage on a dead-end street at the edge of town might not collapse, an out-of-town landlord might replace some windows, and an ultra-wealthy mansion owner will get new interior plumbing and wiring. On the balance of equitable interests, the public gets nothing.

Please deny all of these applications.

Sincerely,
Jeff Baker