THE CITY OF SAN DIEGO

REPORT TO THE CITY COUNCIL

DATE ISSUED: November 18, 2008 REPORT NO 08-176

ATTENTION: Council President and City Council
Docket of November 24, 2008

SUBJECT: Mills Act Program Reforms and Cost Recovery Fees

REFERENCE: Planning Department Budget Hearing of June 13, 2005; Land Use and Housing Committee Hearing of June 21, 2006; Historical Resources Board Hearing of July 24, 2008

REQUESTED ACTION:

Adopt a series of amendments to Council Policy 700-46, "Mills Act Agreements for Preservation of Historic Property," to reform the City's Mills Act Program and provide improved accountability and annual fiscal thresholds for new agreements (Attachment 1); and establish fees associated with historical resources nomination and Mills Act Program components to provide full recovery of staff costs (Attachment 2).

STAFF RECOMMENDATIONS:

1. Approve the following Mills Act Program reforms:
    - Add a fiscal threshold of $100,000 new tax revenue reduction to general fund on an annual basis
    - Authorize exceeding the threshold as part of the annual budget process, based on findings made by the City Council that the fiscal health of the City is such that additional reduction in tax revenue can be supported
    - Require a formal application process with a deadline of March 31st of each year for properties designated by December 31st of previous year
    - Require the property owner to demonstrate substantial investment of the tax savings into the designated historic property through a 10-year tailored work plan which may include costs of rehabilitation or restoration of the historic property necessary to achieve historic designation
    - Establish an inspection schedule for monitoring of Mills Act properties prior to a new agreement and every 5 years thereafter prior to the renewal date to assure compliance with contract requirements
2. Establish cost-recovery fees for:
    - public nominations of individual properties submitted for historic designation pursuant to Land Development Code (LDC) Section 123.0202(a);
    - Mills Act Program agreement (revised fee);
    - Mills Act Program monitoring; and,
    - Mills Act Program enforcement.

3. Apply the Program reforms and new fees to pending and future nominations and Mills Act Program agreements and the monitoring and enforcement fees to existing and future Mills Act Program agreements.
4. Do not adopt fees for processing nominations of historic districts but apply the same Mills Act Program reforms and the agreement, monitoring and enforcement fees to designated historical resources within Districts.

SUMMARY:

BACKGROUND

The Mills Act was enacted in 1972 by the State of California to enable local jurisdictions "to enter into contracts with property owners of qualified historic properties who actively participate in the restoration and maintenance of their historic properties while receiving property tax relief" (see Attachment 3). The San Diego City Council adopted Council Policy 700-46 in 1995 "to provide a monetary incentive to the owners of historically designated properties in the form of a property tax reduction for the maintenance, restoration and rehabilitation of historic properties within the City of San Diego" (Attachment 4). The City's first Mills Act agreement was recorded in 1995. During the past 12 years the number of agreements has increased substantially and the program is the most active one within the State. As of the 2007 tax assessment, there are 901 effective Mills Act agreements for historic properties within the City.

Current Mills Act Program

The Mills Act Program agreement is a legal contract binding the owner of a designated historical resource to maintain the subject property consistent with the U.S. Secretary of the Interior's Standards, to provide visibility of the historical resource from the public right-of-way, and to improve or rehabilitate the property based on specific conditions included in the agreement. The agreement is recorded with the County which allows the Assessor to determine the property tax, based on a formula set in State Law that typically results in a substantial annual savings to the property owner. The average savings is 50 percent with a range of property tax reduction between 25 percent and 75 percent. This tax benefit, authorized by the State of California in Government Code Sections 50280-50290, has been available since 1995 and is authorized by Council Policy 700-46, "Mills Act Program Agreements for Preservation of Historic Property." This property tax reduction is the one financial incentive that can be offered citywide, excluding some redevelopment areas, to property owners of qualified properties as an incentive to maintain their designated historical resources. Other incentives may be available within redevelopment areas.

When the Mills Act Program was set up in 1995, a monitoring system was not established. The Mills Act Program agreement is entered into for a period of ten years, with automatic renewal each year unless one of the parties proposes to end it. The City of San Diego may propose to end the Mills Act Program agreement if the property is not maintained in accordance with the U.S. Secretary of the Interior's Standards, or if other contract provisions are not met. Mills Act Program agreements that were entered early into the program have now existed for 12 years.

With a Mills Act Program agreement, the loss of tax revenue to the City is offset by the public benefit of preservation of our important historical resources. Maintaining the significant character defining features of historic properties through a Mills Act Program Agreement is a

keystone of the overall program. In order to assure a Mills Act property is maintained as required by the Mills Act Program Agreement, periodic monitoring is necessary. Although alterations to designated historical resources are subject to regulation by the LDC, unauthorized alterations do occur. These are typically brought to the attention of code enforcement staff only if a neighbor or other community member reports the work.

Fees

The City of San Diego generally charges a fee to a property owner for services specific to their property. There is currently a maximum fee of $400 required from the property owner to process a Mills Act Program agreement. This fee is determined by the property value and does not sufficiently recover the cost to the City for this work. Designation of a property as a historical resource is a required prerequisite for an owner seeking a Mills Act Program agreement. A number of specific tasks are required to process the nomination and then the agreement.

- The San Diego Municipal Code allows any member of the public or any City agency to nominate a property for designation as a historical resource.
- The nomination and designation process begins with submittal of a historical resource research report addressing the significance of the resource and how it meets any of the six adopted designation criteria.
- The report is reviewed by Historical Resources staff; the property is visited by staff to photograph and confirm its condition; a staff report to the Historical Resources Board (HRB) is prepared; and, a public hearing is held by the HRB to consider the merits of the designation request.
- If the property is designated as a historical resource by the HRB, and other conditions are met, the property owner is entitled to enter into a Mills Act Program agreement with the City.
- The cost to process these voluntary nominations is currently absorbed by the General Fund.
- There is currently no formal Mills Act monitoring program in place and no fee in place to cover the City's cost of monitoring.
- Major violations of Mills Act agreements are expected to occur in only a few instances. However, if violations of a Mills Act Program agreement do occur, the City must require a remedy and there is no fee in place to cover the cost of enforcement.

Cost recovery fees for the historical designation process and the processing, monitoring and enforcement of Mills Act agreements are included in this proposal. The issue of cost recovery fees for the designation and Mills Act program components has been under review for more than two years. A formal proposal was taken to the Land Use and Housing Committee in 2006.

Land Use and Housing Committee Direction

On June 21, 2006, the LU&H Committee reviewed the issue of fees for nominations of historical resources and Mills Act Program Agreements (Attachment 5). Testimony was presented both in support of the proposed fees and in opposition. Support was expressed by the Chair of the HRB, community activists, historical consultants, and land use attorneys, with many speakers recommending the need for a fee exemption for those who may be unable to pay. The speakers

in opposition included historical resources consultants and a representative of Save Our Heritage Organization (SOHO). These speakers all felt that a full cost recovery fee would be a deterrent to homeowners nominating their own property for designation and taking advantage of the Mills Act incentive. Most opposition speakers suggested a nominal fee of $500 or less. A sliding scale and payment at the end of the process, rather than prior to staff work on the nomination, was also suggested. LU&H Committee members discussed the need for City programs to pay for themselves and the high overall satisfaction the public has with the historical resources program and recognized the benefit of the important Mills Act incentive. There was concern whether a fee would discourage homeowners, especially in areas already underrepresented by designated historical resources or lower income neighborhoods. The timing of the fee and a way to provide an exception in specified circumstances was also discussed. The LU&H Committee forwarded the issue of fees for nominations of historical resources and the Mills Act Program to the full City Council without a recommendation but with direction for staff to develop options related to the timing of a fee, and a way to accommodate those property owners who cannot afford to pay the fee. The issue of fees is now coming forward as part of the overall Mills Act reform package.

Review of Current Program

Review of the City's Mills Act program began in 2004 with a focus on changing the fee structure that would provide sufficient revenue to the City to pay the cost of the service being offered in preparation and monitoring of Mills Act agreements. This initial review of the program included an acknowledgement by the City that sufficient monitoring and inspection of Mills Act properties was not occurring. The fee structure developed at that time included the costs for staff time to monitor existing Mills Act properties along with time to prepare new agreements.

As part of the review of the City's current process, staff researched how other California cities and counties implement the Mills Act. A number of cities, large and small, throughout the State were contacted to obtain information about their programs. Categories of information included numerical limits, eligibility requirements, application deadline, contract requirements, inspection requirements, and fees. The data was compiled and compared to the City's program. Staff presented information comparing the City's overall Mills Act program with other jurisdictions' programs and the potential for changes to the HRB Policy Subcommittee during 2006 and 2007. A draft proposal for changes to the City's program was presented to the Policy Subcommittee in January 2008 (Attachment 6a). This early draft proposal addressed such issues as an annual limit to the number of new Mills Act agreements, increased eligibility requirements to participate in the program, an earlier application deadline, expanded requirements of the agreement, monitoring of agreements, and fees.

There was much public interest and concern about the proposed changes expressed at the Policy Subcommittee meeting and to staff and the Mayor's office following the meeting. Opposition to any changes to the current program was strongly expressed by those individuals in attendance and through numerous phone calls, emails and letters to the City. Staff continued to research other jurisdictions' programs and refine the proposed changes, considering public input and the City's desire to increase the effectiveness of the program and assure compliance with performance requirements. A slightly revised proposal was presented to the Community Planners Committee in March 2008 (Attachment 6b). Again, concern about the proposed changes was expressed.

In order to provide the broadest public review and obtain the greatest public input possible, the HRB held two workshops, in April 2008 and June 2008. Every owner of a designated historic property or of a nominated property was notified by mail of these workshops. A very significant number of people attended the workshops. Many individuals expressed strong opposition to specific changes being proposed, particularly any limit to the number of new contracts and any new eligibility requirements. However, there was some general agreement with changes related to an earlier application deadline, need for tailored agreements that include appropriate maintenance and/or rehabilitation, an inspection schedule, and reasonable fees.

In July 2008, the HRB held a public hearing on the proposed Mills Act reforms (Attachment 7). As with previous workshops, every owner of a designated historic property or of a nominated property, historic consultants, preservation organizations, and others who had expressed interest were notified by mail of the hearing. In addition to the Historical Resources staff presentation of the revised proposal to reform the Mills Act program, the Statewide Mills Act Coordinator for the California Office of Historic Preservation (OHP) presented comments on the proposal (Attachment 8). The OHP comments noted they have ". . . long applauded the robust nature of San Diego's Mills Act Program." And they recognize the City has ". . . led the state in championing this important and affective fiscal preservation incentive."

While recognizing the public's concerns for the proposed changes to the City's Mills Act Program, OHP stated that the proposed changes are in fact in line with current Mills Act policies, practices, and industry standards statewide and that the proposed changes meet the needs of the City's historic preservation goals within the framework established by the state law. Further stating, "By adopting an annual fiscal limit for new contracts, establishing eligibility criteria, instituting work schedules for restoration, rehabilitation and maintenance, and setting a timeline for routine inspections a framework will be established for a program that holds both the City and private property owners accountable for their actions with regard to Mills Act contracts. The emphasis of the proposed changes reflects a commitment to the premise that tax savings realized through a Mills Act contract should be reinvested in the historic resource, which clearly echoes the intent of the law and serves to further the goals of the active and vital preservation program in the City of San Diego." The OHP remarks concluded with a recommendation that the City ". . . reevaluate the new program framework and limits within the first five years in order to determine if the changes have affectively achieved the program goals and the Mills Act continues to be a strong positive tool for the preservation of San Diego's historical resources."

Throughout the public testimony, there was strong opposition to any changes in the program that would limit the number of new contracts or add eligibility requirements for new contracts and more generalized opposition to any changes in the current program. The HRB deliberated each of the proposed changes, with some Boardmembers expressing opposition to any changes but most expressing support of changes to the application deadline, requirement for a 10-year tailored contract, establishing an inspection schedule for Mills Act properties, and cost recovery fees. The Chair did not support an annual fiscal limit for new contracts and suggested that the tailored agreement could include the owner's documentation of investment of tax savings back into the property rather than adding new eligibility requirements.

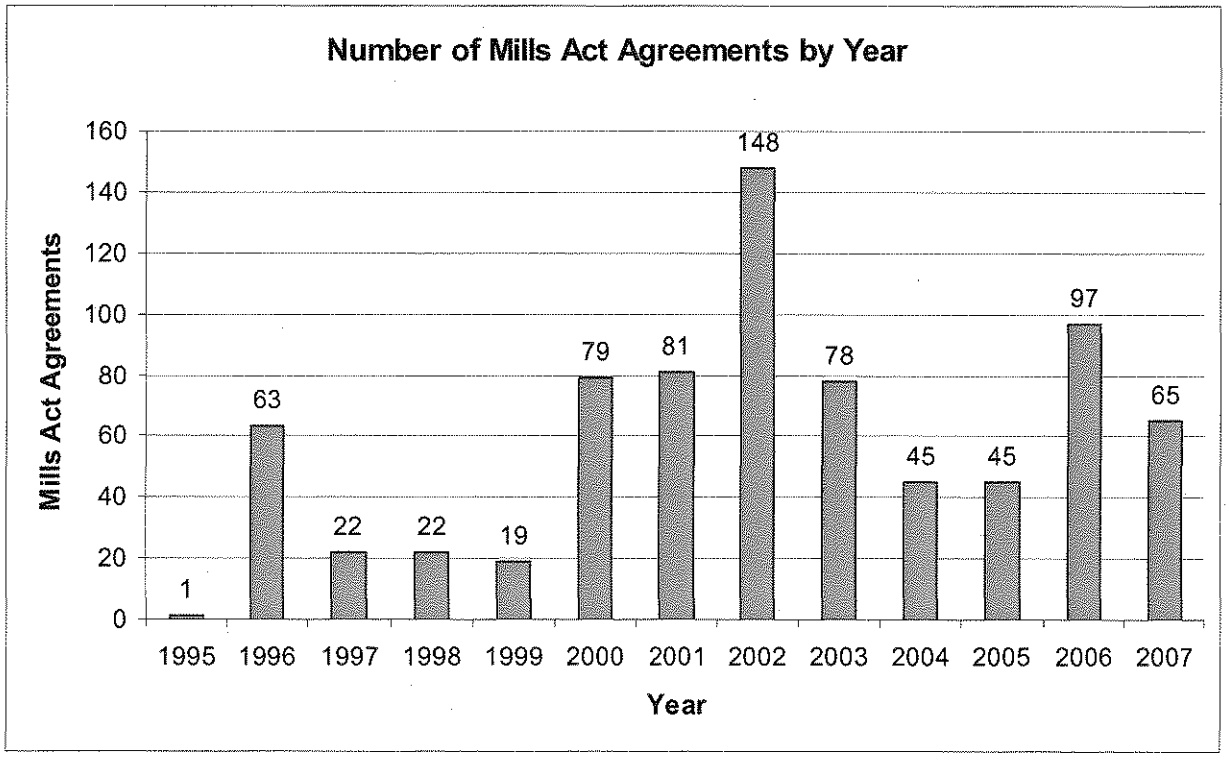
The HRB's unanimous action was to recommend to the City Council approval of the proposed changes to the application deadline, requirement for a 10-year tailored contract, establishing an inspection schedule for Mills Act properties with the provision that more detailed information concerning the scope and protocol of the inspections be prepared and brought to the Board for

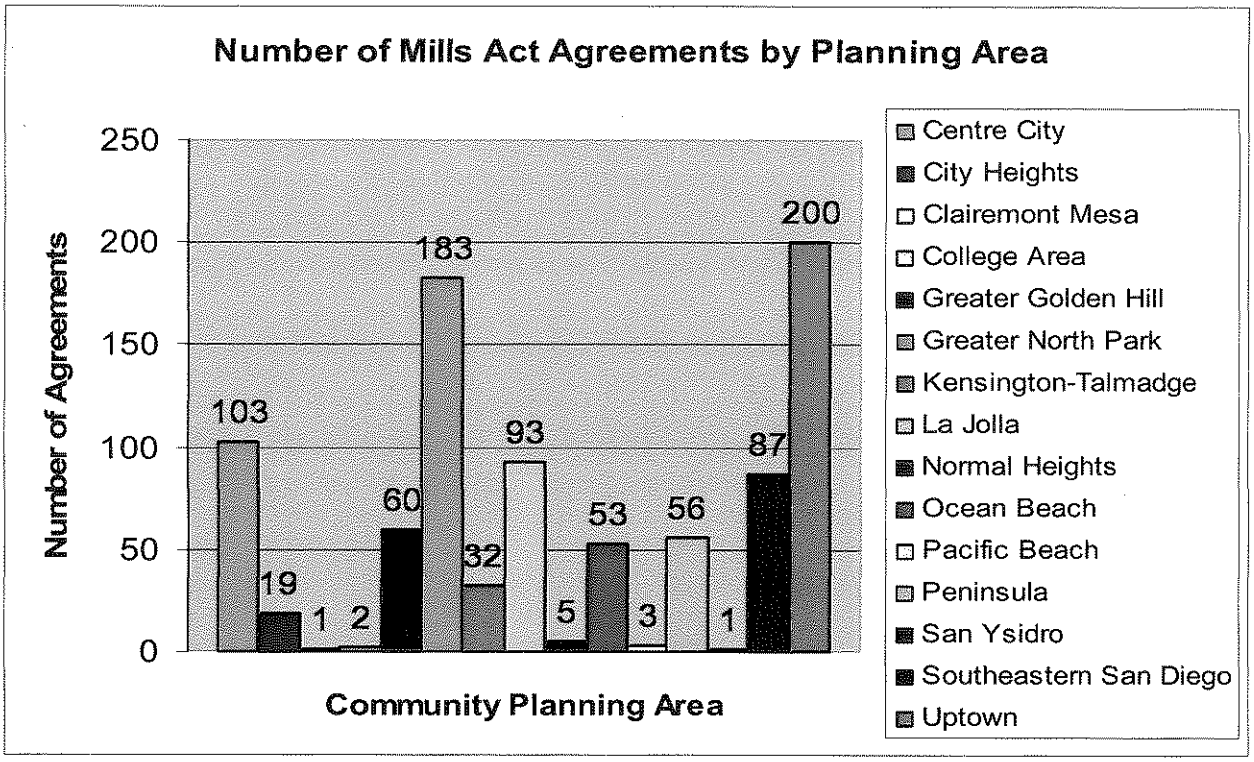
public comment and that staff report on an annual basis how many inspections have been done, and cost recovery fees with consideration of a provision for a fee waiver or reduction for low income applicants.

Following the HRB hearing in July, the Mayor and staff evaluated the proposed reforms for ways to address the public's concerns while maintaining the necessity of reforming the program by understanding and managing the reduction in property tax revenue on an annual basis, increasing accountability of the program through formal inspection and monitoring of Mills Act properties and agreements, and establishing fees that would allow the City to recover the cost of implementing the program. Attachment 9 provides a summary of the issues raised by the HRB and the public with background discussion and the Mayor's current proposed reforms, which are discussed in detail below.

DISCUSSION

Within the City of San Diego, the Mills Act Program has been an exceedingly successful incentive for historic preservation. The City executed 804 Mills Act Program Agreements from 1995 through 2007 with an additional 94 contracts automatically extended to new owners of Mills Act property that has been converted to condominium ownership, as the contract extends to the land. The public is benefiting from the increased protection of these historic properties gained under these Mills Act Program agreements. Interest in the program remains high and continues to grow, with more than 75 Mills Act Program agreements being processed during the 2008 calendar year. The number of contracts process by year is shown in the graph below, followed by a graph of the total 898 effective contracts by community planning area.





The spike in the number of contracts in 2002 is related to the designation of the Burlingame Historic District. As would be expected, the majority of Mills Act agreements have been processed for communities with the largest number of historic properties. Greater North Park, with 183 contracts includes the Burlingame Historic District while Uptown with 200 contracts reflects all individually significant historic properties.

To determine the fiscal impact to the City's General Fund from reduced Mills Act property taxes, the Tax Assessor's office provided the Prop13 property values and the Mills Act property values from the most recent assessment. The reduction in property tax revenue to the City of $1,134,170 is determined by multiplying the tax rate (1.3359%) by the difference between the Prop 13 value and the Mills Act value ($499,408,134) and then multiplying that difference by the City's share of property tax revenue (17%). On average, Mills Act property owners save $7,886 in property taxes each year, with the majority 84% saving between $1,000 and $20,000 annually. There are about the same number of property owners saving less than $1,000 (72) and saving more than $20,000 (68). On average, the City's share of the reduced property tax is $1,340 annually per Mills Act contract.

Other jurisdictions' programs are compared to the City's existing program in the table below. As can be seen, the Mills Act programs across the state are quite variable in the factors being shown. However, most of the selected cities include some type of eligibility requirements and require a rehabilitation or maintenance plan with each contract.

MILLS ACT PROVISIONS IN SELECTED CALIFORNIA CITIES

Jurisdiction	Numerical Limit	Eligibility Requirements	Application Deadline	Mills Act Requirements	Inspection Requirements	Fees
Pasadena	13 per year, soon will be 23 per year	Competitive selection process	March 31	Rehab or reinvestment required	Not in past, proposed in future	None now, may be in the future
Los Angeles	No limit	5 criteria used to assess eligibility	Early July	Rehab, restoration or maintenance	Periodic	$25 application $243 to execute contract
Anaheim	60 per year	Pass initial inspection	No deadlines	Determined during inspection	Annual	None
Santa Ana	No limit	Elimination of code violations and imperfections	Processed through October	Proper review and permits for all improvements	Exteriors inspected periodically	$390
Escondido	No limit	Must meet set criteria	No deadlines	10-12 improvements over 10 years	Periodic	None
San Jose	No limit	Only top tier landmarks eligible	No deadlines	Rehab, restoration or maintenance	No formal inspection program	Sliding scale: $640-$2675
Long Beach	No limit, may soon be 2-4 per year	Only most significant resources	September 1	10 year improvement plan	Not in past, proposed in future	$410 for single family houses
Existing San Diego Program	No limit	All designated properties eligible, except within Redevelop-ment Areas	October 1	Visibility of the resource and site specific conditions	None	$100 for every $100k of assessed value, up to a max of $400

Mills Act Program Reforms

The current Mills Act Program was adopted by the San Diego City Council in July 1995 (Council Policy 700-46) as way to provide an incentive to historic property owners and bring historically significant properties under the City's authority for preservation, at time when there were no historical resources regulations. The current program is very informal with all designated historic properties located outside Redevelopment Areas eligible for Mills Act tax reduction. Specific requirements apply within Redevelopment Areas. A designated historic

property owner can request a Mills Act agreement after historical designation prior to October 1st each year. There is no formal application required.

All Mills Act agreements require visibility of the designated property from the public right-of-way and maintenance of the property in conformance with the Secretary of the Interior's Standards. Only a limited number of agreements include additional preservation or rehabilitation requirements and there is no requirement that the tax savings realized through this program be invested in the historic property. There is no formal inspection schedule or monitoring of agreements for compliance with the contract requirements.

The Mills Act Program has not been updated or modified since its initial adoption and it is the City's position that changes to the current Mills Act program are warranted for a number of reasons. Namely, the Land Development Code now includes historical resources regulations and it is understood that formal monitoring of agreements is necessary. There is a desire on the part of the City to improve accountability of the overall program and to understand and manage the fiscal impacts of the program on an annual basis. The number of annual new agreements has increased substantially since the year 2000. San Diego now has just under 900 agreements which is out of proportion with other California cities and counties compared to the number of designated resources. The City does not monitor the fiscal impact to the General Fund from the reduction in property tax income, does not require investment of tax savings in the historic property, and does not inspect or monitor the Mills Act properties to ensure compliance with the agreements. Proposed changes to the City's Mills Act Program are compared to the existing program in Attachment 10 and are discussed in more detail below.

Proposed changes to the City's program would include fiscal considerations of authorizing new Mills Act agreements by understanding the fiscal impact to the General Fund and managing this reduction in property tax revenue on an annual basis. The changes would greatly increase accountability of the program by requiring property owners to demonstrate how their tax savings would be invested into their historic property and through formal inspection and monitoring of Mills Act properties and agreements. Finally, the changes would allow the City to recover the costs of implementing the program through new and revised fees.

Annual Limit on New Agreements

There has been much concern raised by the public related to the City imposing any limit to the number of new Mills Act agreements approved annually. Earlier in 2008 an annual limit on the number of new agreements was contemplated by staff as a way of managing the fiscal impacts of the Program. It has since been determined that rather than enacting a numerical limit, a fiscal threshold related to the anticipated property tax reduction is the most appropriate way to address the fiscal implications of the Program.

Although minimal in the overall City budget, it is important to understand the fiscal impact of the program and manage it on an annual basis. To date, this analysis has not occurred and no limitation to the Program has been enacted. The current annual reduction of property tax revenue to the City's General Fund is $1,134,170 from Mills Act property valuations, based on a total reduction in property taxes paid by Mills Act property owners of $6,671,593. Contrary to the public's concerns, setting an annual threshold for new contracts would not eliminate the program and is not expected to significantly reduce the current level of new contracts on an annual basis. The annual average number of new contracts for the life of the program is 67, with

an annual average reduction in tax revenue to the City of $1,340 per contract. The most recent annual averages, from 2005 through 2007, of 55 new contracts with a tax reduction of $2,013 per contract, reflect overall increases in property values and a reduction in the average number of new contracts being processed.

Based on the need to manage the fiscal impacts of the Program, it is recommended that the City not limit the number of new agreements within a fiscal threshold of $100,000 new tax revenue reduction to general fund on annual basis. This threshold would result in an average of approximately 50 to 75 new agreements yearly. It is also recommended that the City Council could authorize exceeding the threshold as part of the annual budget process, based on findings that the fiscal health of the City is such that additional reduction in tax revenue can be supported. If more applications were submitted in a year than could be accommodated under this threshold, and the City Council does not authorize exceeding the threshold, the property owner would have the option of applying for a Mills Act agreement in a subsequent year.

Eligibility Requirements

A number of California cities have included eligibility requirements for participation in their Mills Act programs. The City of San Diego does not have any eligibility requirements other than historical designation, which is the minimum required by State law, except within Redevelopment Areas. Earlier proposals for changes to the City's Program included eligibility requirements aligned with General Plan goals for affordability housing and with historic preservation goals. The public expressed significant concern related to any additional eligibility requirements while generally supporting the need for the Mills Act tax savings to be invested in the historic property.

This proposal recommends no new eligibility requirements for Mills Act agreements. The need for a property owner to demonstrate substantial investment of their tax savings into their historic property is recommended as a requirement for obtaining a Mills Act agreement. A discussion of this requirement is provided below.

Application Deadline

The current Program does not include a formal application process and the deadline to request an agreement is October 1st of each year. In order to allow sufficient time for the fiscal impacts of new agreements to be included in the annual City budget process, it is recommended that owners of historically designated properties would be required to submit an application for a Mills Act agreement no later than March 31 to be considered that year. The property must have been designated prior to December 31st of the previous year to allow a sufficient separation between the designation process and a subsequent Mills Act agreement. This recommendation has general support from the public, although there was concern that March 31st is too early for the deadline.

Mills Act Agreement Requirements

Currently, all Mills Act agreements require the historic building be visible from the public right-of-way to afford the public enjoyment of viewing the exterior of the resource, and require the property be maintained consistent with the U.S. Secretary of the Interior's Standards, the nationally accepted standard for the treatment of historic properties. More recently, specific

conditions related to rehabilitation or restoration of historic properties have been included in a small number of Mills Act agreements.

It is recommended that owners of designated historic properties be required to include a 10-year maintenance and rehabilitation/restoration work plan at the time of application for a Mills Act agreement. Ten years is the minimum contract length and an appropriate time frame for completion of any necessary rehabilitation or restoration work. Maintenance of the character defining features of the resource would be required to continue for the life of the contract, which is automatically renewed on an annual basis, unless non-renewal is requested by one of parties.

As part of this required 10-year work plan, the property owner would be required to demonstrate that the requested Mills Act agreement would result in a substantial investment of the anticipated tax savings into the designated historic property, including the costs if rehabilitation or restoration work, consistent with the Standards, that was necessary for the property to be eligible for historic designation.

This requirement could be met by an owner showing that a substantial portion of their anticipated property tax savings would be invested in the historic property over time. An estimate of the property tax savings from the County Tax Assessor's office and a cost estimate of needed maintenance, repairs and/or rehabilitation work would be needed. It is anticipated that most historic property owners would be able to meet this contract requirement.

Inspection Schedule

While there is a responsibility on the part of the property owner to maintain the historical significance of their designated resource, there is also a responsibility on the part of the City to assure that a property remains in compliance with the Mills Act Program agreement, since property owners receive annual tax relief intended to assist with appropriately maintaining their property. Staff believes there is a critical need to implement a monitoring program to assure compliance with Mills Act Program agreement provisions and preservation of designated properties.

Specifically, a monitoring program would primarily entail site visits, records maintenance, and staff review of compliance with contract requirements on a five-year basis. This level of monitoring would allow contact with a new owner, if there has been a change in ownership, to explain the responsibilities and provisions under the Mills Act Program agreement, since the historical designation and Mills Act Program agreement run with the property. It would also provide adequate review in cases where owners make changes that may negatively affect the property's historical integrity but do not typically require a building permit, or where owners make substantial changes to the property without obtaining the required permit.

A formal schedule for inspections and monitoring of Mills Act properties would be established by staff and conducted to assure compliance with the provisions of the agreement. Staff would work with property owners to remedy any problems identified through the inspection process. A maintenance and/or rehabilitation/restoration plan may be prepared as part of a renewal of an agreement to assure the necessary remedy.

Pipeline Provisions for Mills Act Program Reforms

Pipeline provisions for those pending historic designations awaiting review and action by the HRB have been discussed throughout the review process for proposed changes to the Mills Act Program. Concerns expressed by these property owners is that they contracted for historical consulting services and submitted a nomination report to the City in order to obtain the necessary historic designation required to participate in the Mills Act tax reduction program and the proposed Mills Act reforms could change their ability to participate in the program. The greatest concern was expressed relative to the City enacting limits on the number of contracts and adding new eligibility requirements. As discussed above, no annual limits are proposed and the fiscal threshold would accommodate the average number of annual new contracts based on past performance of the program. Additionally, the City Council would be able to exceed the threshold under certain circumstances. Likewise, no new eligibility requirements are proposed and it is anticipated that most if not all historic property owners can demonstrate substantial investment of their tax savings into the historic property. Therefore, staff does not believe pipeline provisions for the currently proposed revisions to the Mills Act Program are warranted and proposes that the reforms proposed with this action become effective with the new calendar year.

Proposed Fees

The Mayor's proposed reforms include establishing a fee that recovers costs for professional and administrative staff time involved in processing individual historic designation nominations and in processing and executing Mills Act Program agreements and their monitoring and enforcement.

The City of San Diego generally charges a fee to a property owner for services specific to their property. No fee is currently charged for the processing of a historical nomination. Between 1967, when the HRB was first established, and 1995, when Mills Act Program agreements were authorized by the City Council, approximately 326 individual properties or districts were designated as historical resources in the City. These designations were generally a result of a historical property being proposed for demolition or substantial alteration coming to the attention of the HRB or Historical Resources staff, with the City initiating the nomination. Since 1995, more than 1,050 individual properties or district contributors have been designated as historical resources, with the majority of these nominations, particularly in the last few years, voluntarily coming from property owners seeking designation in conjunction with the benefits of Mills Act tax reductions. It should be noted that nominations for historical designation that are referred to the HRB through the ministerial or discretionary review process from Development Services are fully charged for costs associated with the Historical Resources Staff review and processing of the nomination.

Under Council Policy 700-46, the initial fee for processing the Mills Act Program agreement was set very low, to encourage participation in the program by property owners. Council Policy 700-46 established a fee of $100 per $100,000 of assessed property valuation for processing a Mills Act Program Agreement, though the City Manager's staff capped the fee at $400. Government Code Section 50281.1 allows local jurisdictions to ". . . require that the property owner, as a condition to entering into the contract, pay a fee not to exceed the reasonable cost of administering this program."

Throughout the process of preparing this proposal, staff has diligently analyzed average/typical time and costs associated with the processing of voluntary nominations and Mills Act Program Agreements to identify an appropriate fee amount. Additionally, following the June 2006 LU&H Committee hearing, staff reassessed the proposed fees to address public comment that the nomination fee was too high and may chill the public's interest in historic preservation or may make historical designation inaccessible to certain income groups. The current fee proposal incorporates both increased salaries previously negotiated with the labor union and reduced processing time resulting from increased efficiencies for processing individual historical designation nominations. Staff reevaluated the Mills Act components and determined that a higher level of effort would be required, with an emphasis on monitoring and enforcing the provisions of Mills Act Program agreements, in order to adequately ensure appropriate maintenance and treatment of historically designated properties.

The proposed fee of $2,267 consists of the following: $1,185 for the historic designation process; $590 for the Mills Act Program agreement process; and $492 to be assessed for monitoring with the initial Mills Act Program agreement and every five years thereafter (see Attachments 11A, 11B, 11C). The nomination fee of $1,185 is due upon submittal of the nomination. The Mills Act Program Agreement fee of $590 is due with the property owners request for a Mills Act Program agreement following the historic designation. The Mills Act Program monitoring fee of $492 is due upon submittal of a signed and notarized Mills Act Program agreement submitted by the property owner. An enforcement fee of $949 is also proposed for those expected rare instances when a Mills Act agreement has been breeched by the owner and remedies for violations are sought (Attachment 11D). This fee would be required as part of an enforcement action to recover associated City costs.

- **Individual Historical Resource Nomination Fee of $1,185 (see Attachment 11A):** Currently the entire cost of processing an individual historical nomination request is absorbed by the General Fund. Since this process is a service to individual property owners, staff recommends establishing a fee that recoups the average/typical cost of processing a voluntary nomination. The fee would cover direct costs of City staff to accept, review and analyze reports, conduct a site visit, and take to an HRB hearing each request for designation. The fee would also cover the costs of required document preparation that must be performed for each site upon designation by the HRB.

  It should be noted that the applicable LDC section allows an application by any member of the public, not just by the property owner. Therefore, this fee would be charged to the actual person or persons submitting the nomination (e.g., neighbors submitting each others' residences as well as individuals or historical societies submitting someone's property without the owner's support - both rare exceptions to the voluntary nature of this program).

  Issues with the fee proposal are expressed through a letter from the SOHO, (see Attachment 12). A meeting was held in May 2006, and many of the same issues arose as from a May 2004 meeting. Staff took these recommendations seriously; however, after reviewing the current fiscal situation and conferring with the City Attorney's office, staff cannot support any of these alternative fee proposals. Additionally, in public meetings where the proposed fee was discussed, there was concern expressed about the negative impact on the ability for individuals or organizations to make nominations that would

benefit the general public interest and that the cost may be prohibitive to some. Staff further reviewed these concepts and, although it is acknowledged that a full cost recovery fee may result in a disincentive to designation and may make the program unavailable to all income groups, the possibility of establishing an exemption to the fee or sliding scale, based on property value, cannot be supported.

It was too difficult to identify those circumstances that could be granted an exemption; however, there would be no cost if a property were nominated by the Mayor, City Council, HRB, CCDC, or other City agencies. Properties viewed as benefiting the general public interest and supporting the General Plan Historic Preservation Element and community plan goals could be nominated by the City with the cost of processing the nomination absorbed by the General Fund. Furthermore, staff proposes that the nomination fee not be applied to the establishment of historic districts and district contributors. A sliding scale fee is problematic because the staff cost, associated with review of high-value properties, is too similar to that of lower-value properties to establish different fee levels, and basing a fee on property value replicates a tax on the property and has been successfully challenged as such for other City value-based fees.

Staff also can assist a property owner who is unsure about whether their property is a likely candidate for designation and who is hesitant to spend $1,185 for the nomination's submittal. Upon request, staff spends time, approximately one-half hour, discussing any site with an owner without charge. This is typically an adequate amount of time for the owner and their consultant to get a sense of the property's physical characteristics and changes and can alert the owner if there are obvious concerns about the property's ability to meet the U.S. Secretary of the Interior's Standards for designation.

- **Mills Act Program Agreement Fee of $590 (see Attachment 11B):** Under Council Policy 700-46, the City Council authorizes staff to collect a fee for costs of processing the Mills Act Program Agreements. Staff recommends discontinuing the current fee which is based on assessed property values of record. Alternatively, staff proposes a fee based on the calculated cost of the actual tasks required to process a Mills Act Program Agreement. Included in this fee are costs for document preparation, discussions and Mills Act Program Agreements with property owners, legal Mills Act Program Agreement signing and review, and recording of the Mills Act Program Agreement (see Attachment 2 for proposed revisions to Council Policy 700-46 supporting the fee revision).

  It should be noted that staff's intent is to amend the Mills Act Program Agreement document shell and clarify current standard provisions. In addition, staff intends to include in future Mills Act Program Agreements any specific property improvements or conditions that the HRB or staff identify during the designation process that would assure that the property would be improved or maintained in a condition that warrants the Mills Act Program Agreement's property tax reductions. Other jurisdictions granting Mills Act Program Agreements impose conditions, and staff intends to adopt this practice. Typical requirements could include assuring visibility of the site from the public right-of-way, reversing incompatible non-historic improvements, and maintaining key historical features of the property. Also, included would be the requirement to pay a future monitoring fee as proposed below.

- **Mills Act Monitoring Fee of $492 initially and every five years thereafter (see Attachment 11C):** The purpose of the Mills Act legislation and Council Policy 700-46 is to encourage property owner reinvestment in historical properties through the use of property tax savings. A monitoring program is necessary to ensure Mills Act Program Agreement compliance and proper maintenance of designated properties in accordance with standards. Staff proposes this program component to assure that there is public benefit attained in exchange for the foregoing of a portion of a historical site's normally-assessed property tax. This fee would be assessed at the time of the initial Mills Act Program Agreement and every five years thereafter. Payment of this fee would be a condition of the Mills Act Program Agreement, meaning that non-payment of a future monitoring fee assessment would constitute violation of the Mills Act Program Agreement and subject it to revocation. Staff would begin the monitoring program with the earliest contracts and review approximately 200 contracts each year. The monitoring fee for existing Mills Act Program Agreements would be a requirement of the City's renewal of the Mills Act Program Agreement in the year that monitoring is first undertaken. This means that current property owners of the approximately 200 Mills Act Program Agreements first entered into with the City would be required to pay the $492 fee or the City would issue a non-renewal notice. This would occur each year, addressing the existing Mills Act Program Agreements in order. It is estimated that each Mills Act contract will be reviewed every five years. This interval, to review a property's physical compliance with the requirements of the Mills Act Program Agreement, is expected to be a reasonable time frame to assure appropriate treatment by property owners of these historical resources. Every five years, a new fee and review will be required.

- Staff has also developed an additional fee of $949 that would be charged only in the case of a **violation of the Mills Act Program Agreement (see Attachment 11D)**. In that case, staff would need to pursue compliance with the Mills Act Program Agreement, or process a revocation action.

Application of Fees for Submittals Pending Staff Review

Staff has had authorization to proceed with developing a fee since December 2003, (an LU&H Committee meeting directive). In addition, the City Council directed development of a fee during the budget hearings in June 2005. In neither hearing, however, was the issue of how to financially treat pending requests for voluntary nominations addressed. In order to treat all nominations equitably, staff proposes that all (approximately 105) pending requests be subject to the new fee. It is fair that requests continue to be evaluated and processed in order of submittal, with the longest-pending requests processed prior to newly-submitted ones. However, given that cost recovery is now a requirement to support this program, all requests that have not been reviewed and worked on by staff should be subject to the fee. All nominations currently awaiting staff review were submitted after January 1, 2007, well after the July 1, 2005 date the City Council directed a fee be developed and returned for adoption. The City Attorney's memo, dated March 10, 2005, supports the City's ability to apply the designation fee to these waiting nominations.

Unlike development projects typically seen by City decision makers, designation requests submitted under LDC Section 123.0202(a) are voluntary. Because these requests are not submitted in order to receive permission to make structural modifications to one's property, an applicant or owner may withdraw an application to avoid payment of the fee. There is no penalty

for withdrawing an application, and there is no mandate for the HRB to go forward with the designation process if an applicant chooses not to proceed. Property owners may make modifications to potential historical properties without the need to process a historical designation if those modifications are consistent with the U.S. Secretary of the Interior's Standards.

The City Council may establish the fee and apply it to pending nominations. Those nominations, yet to be analyzed by staff as of the effective date of the fee, would need to submit the nomination fee, as well as the Mills Act Program agreement processing fee and monitoring fee, in order to complete the Mills Act recordation (the final City step in the property tax reduction process). If processing of a nomination has been completed, and the site has been designated by the HRB, then only a revised Mills Act Program agreement fee and a monitoring fee would be collected.

Timing of Fee Payment

An additional issue of the timing of fee payment, with a suggestion that it could be paid at the time of the Mills Act Program agreement, was discussed at the June 2006 LU&H Committee hearing and previously raised during staff's outreach and discussion with community representatives, members of the public, and historical property consultants.

The perceived benefits of a delayed imposition of the fee would be: those who cannot afford the City's fee (total about $2,300; initial cost about $1,200) will be kept from having their property designated and delaying the fee will give them confidence that they will get the future tax relief; and, individuals may be interested in designation only for preservation of the home, not for the Mills Act tax relief, and they should not pay if they are only designating for public benefit.

The City Attorney has advised, in a June 17, 2005, memo that ". . . there is no compelling governmental purpose to warrant charging Mills Act Program Agreement applicants for the cost of the historical designation process while providing the service at no cost to property owners that elect not to apply for a Mills Act Program Agreement." Staff believes there is a risk in being able to collect a fee if the HRB denies a designation; owners will not want to pay for a process where they are not able to proceed to reduce their property tax. In other fee or deposit processes in the City, an applicant must pay whether a project is approved or denied. The same requirement should apply here since the same amount of staff work is required to move a nomination to an HRB hearing. It should be noted that with the current average annual savings in property taxes of $7,886 and 76 percent of current Mills Act properties receiving more than $2,500 in annual tax savings, the vast majority of Mills Act recipients will be able to recoup the proposed designation and Mills Act fees within one year, and 85 percent will recoup $2,000 within the first two years. Savings will continue to accumulate each year.

In the same June 17, 2005 memo, the City Attorney agrees with staff that "cost recovery is best accomplished by charging the designation applicant at the time of application for designation or at established stages of the application process, but in either case, before the service is rendered." The Urban Form Division does not have the capacity in its budget to carry, or perhaps even forego, fees for work already performed. However, it may be possible for a historic preservation organization or other nonprofit group to establish a grant or loan program to help homeowners defer the cost of nomination until after designation.

CONCLUSION

As presented herein, staff recommends adopting several reform measures to the Mills Act Program that would allow the fiscal impacts to be managed, improve the accountability of the Program and provide cost recovery fees for the processing of designation requests submitted in accordance with LDC Section 123.0202(a), a Mills Act Program Agreement, monitoring program, and enforcement. Additionally, staff recommends that the reforms and fees be applied to pending applications and that the fee be required prior to work on each aspect of the program. Additionally, a Mills Act Agreement monitoring program would be established to ensure compliance with the requirements of individual contracts and the state enabling legislation for the benefit of the public.

ALTERNATIVES

As an alternative to the full cost recovery fee described above, which may result in a barrier to designation and may make the program unavailable to some economic groups, the City Council could adopt an alternative fee structure. A nomination fee of only $100 would cover direct City costs of noticing, copying, postage, etc. associated with processing a nomination request. This alternative would include the full cost recovery fees for Mills Act Program agreements ($590), monitoring of Mills Act agreement compliance ($492 every five years), and Mills Act agreement enforcement, if needed ($949). Because there would be only nominal fees for nominations, that aspect of the work program would not be cost recovery and would continue to be paid through the General Fund. The Mills Act monitoring program would be established under this alternative, resulting in an overall public benefit by ensuring appropriate maintenance and protection of these properties. There would be no perceived barrier to designation, with only a nominal cost to homeowners, the community or a historical group. The program would be available to all income groups.

Another alternative that the City Council could adopt is a fee waiver for economic hardship when a property owner can satisfactorily demonstrate that their annual income is less than the Area Median Income. This fee waiver could be applicable to all proposed fees. In these cases the cost of the nomination for historic designation and Mills Act program work would not be recovered and would be paid through the General Fund. The Area Median Income is set by the U.S. Department of Housing and Urban Development and is used by the City for various programs. This alternative would allow the historic designation process and Mills Act Program to be available to lower income property owners.

FISCAL CONSIDERATION:

It is staff's intention to closely monitor the revenue and costs of this program to ensure that staff time is fully recovered through the fee structure and that the program provides a high quality service to owners of designated historical resources for the benefit of the public. Adjustments to the fee schedule and the nomination and Mills Act Program agreement process in the future to better reflect accumulated experience are a necessary component of the program to ensure accountability and credibility.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

In December 2003, Planning Department staff asked the LU&H Committee to support a moratorium on processing voluntary nominations while staff prepared a fee for the service. While the LU&H Committee did not approve a moratorium, it did "authorize staff to develop a

fee proposal" and "to investigate internal re-staffing and volunteer opportunities, and limiting the number of applications (for designation) accepted per month . . ." During review of the Planning Department's Fiscal Year 2006 budget, the City Council directed staff to prepare a fee proposal to recover costs associated with nominations of historical resources submitted by any member of the public.

On June 21, 2006, the LU&H Committee reviewed the issue of fees for nominations of historical resources and Mills Act Program Agreements (see Attachment 5). After taking testimony and discussing the issues, the LU&H Committee forwarded the fee proposal to the full City Council without a recommendation but with direction for staff to develop options related to the timing of a fee and a way to accommodate those property owners who cannot afford to pay the fee.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

In the six months following the initial LU&H Committee direction on the question of fees in 2003, Historical Resources staff met several times with the Policy Subcommittee of the HRB, and several times with historical resources consultants, community historical societies, and representatives of the City's recognized community planning groups. The Policy Subcommittee of the HRB consistently supported a fee to cover staff processing costs of voluntary nominations. However, both historical properties consultants and community representatives expressed concern that any fee, other than a nominal one, would deter property owners who wanted their properties to be designated as a historical resource from coming forward. Staff met with preservation stakeholders several times between 2004 and 2006 to discuss the fee proposal and need for more formal inspections of Mills Act properties. The same positions came forward from consultants and community representatives at a meeting held in May 2006.

Staff presented information comparing the City's overall Mills Act program with other jurisdictions' programs and the potential for changes to the HRB Policy Subcommittee during 2006 and 2007. A draft proposal for changes to the City's program was presented to the Policy Subcommittee in January 2008. There was much public interest and concern about the proposed changes expressed at the Policy Subcommittee meeting and to staff and the Mayor's office following the meeting. Staff continued to research other jurisdictions' programs and refine the proposed changes, considering public input and the City's desire to increase the effectiveness of the program and assure compliance with performance requirements. A slightly revised proposal was presented to the Community Planners Committee in March 2008. Again, concern about the proposed changes was expressed by the public. In order to provide the broadest public review and obtain the greatest public input possible, the HRB held two workshops, in April and June 2008. Every owner of a designated historic property or of a nominated property was notified by mail of these workshops. A very significant number of people attended the workshops. Many individuals expressed opposition to some or all of the changes being proposed. However, there was general agreement with changes related to an earlier application deadline, need for tailored agreements that include appropriate maintenance and/or rehabilitation, an inspection schedule, and reasonable fees.

In July 2008, the HRB held a public hearing on the proposed Mills Act reforms. As with previous workshops, every owner of a designated historic property or of a nominated property, historic consultants, preservation organizations, and others who had expressed interest were notified by mail of the hearing. There remained strong opposition to any change in the program that would limit the number of new contracts or add eligibility requirements for new contracts.

Respectfully submitted,

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Attachments:
1. Revisions to Council Policy 700-46 "Mills Act Program Agreements for Preservation of Historic Property"
2. Draft Resolution for Revisions to Council Policy 700-46 and for the adoption of a Fee Schedule
3. Mills Act Property Tax Abatement Program, Technical Assistance Series, California Office of Historic Preservation
4. San Diego Council Policy 700-46
5. Report to LU&H dated June 14, 2006 "Fees for Nominations of Historical Resources and Mills Act agreements"
6. Mills Act Program Working Drafts
7. Report to the Historical Resources Board dated July 18, 2008 "Item 12 – Proposed Changes to the Mills Act Program"
8. Comments prepared by Shannon Lauchner for the July 24, 2008 City of San Diego Historic Resources Board Meeting on proposed changes to their Mills act Program
9. Issues Raised on Proposed Mills Act Policy Changes with City Responses and Proposed Reforms
10. Summary of Existing Mills Act Program and Proposed Changes to the Mills Act Program

11A. Individual Historical Resource Nomination Fee Schedule (Land Development Code Section 123.0202(a))
11B. Mills Act Program Agreement Fee Schedule
11C. Mills Act Program Monitoring Fee Schedule
11D. Mills Act Program Enforcement Fee Schedule

12. SOHO Letter, dated July 21, 2005