

**ATTACHMENT A  
PROJECT DISCUSSION  
REF130101 (Mills Act)**

**Purpose**

The Mills Act is the single most important economic incentive program in California for the restoration and preservation of qualified historic buildings by private property owners. Private owners of historic properties often take pride in ownership of their significant and unique properties; however, there are a number of cases where historic properties can be undesirable due to the size, condition, location, and other factors combined with regulatory hurdles inherent to historic preservation. When a property is not maintained for a long period of time it can become dilapidated resulting in loss of historic integrity and potentially demolition. The Mills Act program is designed to promote and aid in the maintenance and preservation of privately owned historic properties by offering property tax incentives in exchange for the owner's commitment to restore and preserve their historic property. Historic preservation fosters cultural tourism and improves safety and appearance of historic properties.

A Mills Act program could be a significant component of the County's Historic Preservation Plan as an incentive for historic preservation. For the inland areas, the 2010 General Plan contains policies that require the County to support incentives that will help to preserve historic and cultural resources including the Mills Act (Policy PS-12.6) and to identify and pursue revenue sources that provide funds for the restoration and enhancement of historic resources (Policy PS-12.7). Similarly, in the Coastal areas, preservation of historic resources is encouraged within the Local Coastal Program and the 1982 General Plan. Therefore, Chapter 18.28 is designed to apply county-wide.

**Background**

Consideration of a Monterey County Mills Act program began several years ago with a referral from Supervisor Calcagno (Board Referral No. 2008-27). On October 20, 2009, staff presented a report outlining options and potential financial impacts, and requested direction from the Board of Supervisors regarding how to proceed. The Board provided direction to prepare a pilot Mills Act program. Staff worked with the Historic Resources Review Board (HRRB) and other interested stakeholders. An ordinance establishing the Pilot Program was adopted by the Board of Supervisors on May 18, 2010. The Pilot Program, which was codified in Chapter 18.27 of the County Code, was established for two years or until five contracts were approved, whichever occurred first.

Under the Pilot Program, three applications were received, and three Historic Property Contracts were approved (The Captain's Inn (PLN100457), the Joan Baez house (PLN100458), and the Rose house (PLN110360)). On May 7, 2012, the Board of Supervisors received a report on the Pilot Program including details on those contracts, lessons learned, and financial impacts. At that time, the Board directed staff to prepare an ongoing Mills Act program addressing the lessons learned from the Pilot Program and incorporating limitations for financial impacts to the County.

## Overview

The Mills Act (California Government Code Sections 50280-50290) authorizes local jurisdictions to establish reasonable procedures under which the jurisdiction may, in its discretion, enter into contracts with owners of qualified historic properties. These Mills Act contracts are also referred to as “Historic Property Contracts.” Historic Property Contracts allow the owner of a qualified historic property to obtain preferential property tax assessment in exchange for restrictions on the property to preserve, restore, and maintain the historic property. The subject ordinance builds on the experience gained through the Mills Act Pilot Program.

Under the Pilot Program (Chapter 18.27 of the Monterey County Code), consideration of Historic Property occurred in two parts. The first part involved staff review of the applications for basic submittal and qualification requirements, followed by a recommendation from the Historic Resources Review Board and subsequent decision by the Board of Supervisors on the ranking position of the applications. The ranking system was intended to prioritize Historic Property Contract applications, so that the County had a method of choosing which owners to offer contracts to in the event that more than five applications were received (the pilot program was limited to a total of five contracts).

Once the ranking process was complete, the County could negotiate Historic Property Contracts with the owners of properties ranked in the top five. The Board of Supervisors would then consider whether to approve the negotiated Historic Property contracts. If approved by the Board of Supervisors, the Historic Property Contracts were recorded at the Recorder’s Office and owner’s tax benefits began the following tax year.

The proposed ordinance (Attachment B) establishes the Mills Act program on an on-going basis. The on-going program would be codified at Chapter 18.28 of the Monterey County code. In addition to some technical changes to conform to amendments to state law since the County adopted the Pilot Program, the proposed on-going Mills Act Program differs from the Pilot Program (Chapter 18.27) in the following ways:

1. Eliminates the five contract limitation;
2. Eliminates the “Ranking Process” and provides the Director of Planning with the authority to negotiate contracts without pre-selection/ranking by the Board (contracts would still require Board of Supervisors final approval); and
3. Develops limitations to address financial impacts to the County from lost property tax revenue.

1. *Contractual Limitation:*

Removal of the five contract limit reflects the fundamental change from the limited pilot program to an on-going program.

2. *Ranking Process:*

Eliminating the inherent competition between potential contract candidates and the available number of contracts alleviates the need to “rank” applications to determine which candidates should receive contracts and which should not. Without a ranking

requirement, the procedures for processing Historic Property Contract applications can be simplified and the fees for application kept to a minimum. The recommended revisions provide the Director of Planning with the authority to negotiate Historic Property Contracts with applicants of qualified projects, rather than requiring Board authorization to negotiate contracts. Board authorization of contract negotiations involves significant staff time. Eliminating the ranking process and related Board action will reduce staff time and the cost of operating the program. Final Board approval of Historic Property Contracts will still be required.

3. *Financial Limitations:*

Staff has worked closely with the HRRB and other interested persons to develop an approach to limit financial impacts to the County from reduced property tax revenue. Several options aimed at limiting financial impacts were analyzed including:

- A. A not-to-exceed dollar amount of lost property tax revenue to the County;
- B. A higher cap on the total number of contracts allowed;
- C. A property value limit for qualified properties; or
- D. Some combination of these methods.

Ultimately, staff and the HRRB developed a recommendation to make properties with a fair market value of \$3,000,000 or more for residential buildings and \$5,000,000 or more for commercial/industrial buildings ineligible for a contract unless a waiver to this limit is approved (**Option C**). Approval of a waiver would be based on specific characteristics of a property which supports findings that it is of exceptional historic value and is in danger of being demolished or significantly altered. The recommendation is based on the following:

*Option A.* The not-to-exceed amount of lost property tax revenue could ultimately result in a defined-term program similar to the pilot program and not accomplish the goal of creating an on-going program. In addition, tracking the cost to the County in reduced property taxes would be a difficult task because both the unrestricted property tax amount and the Mills Act restricted property tax amount vary from year to year and have the potential to vary significantly with changes in ownership and market fluctuations.

*Option B.* A cap on the total number of contracts allowed could also result in a defined-term program and not accomplish the goal of creating an on-going program. A yearly cap on the number of allowable contracts would do little to address financial concerns because the total impacts are cumulative, meaning that if ten contracts are approved in one year, the lost property tax revenue would eventually be the same as if the contracts are approved over the course of several years. Maintaining a cap on the number of contracts allowed would also require the “ranking process,” along with the fees to recover staff costs for processing associated with that process, to remain as part of the program.

*Option C.* The proposal to limit the eligibility based on value of the property is a method successfully used by other jurisdictions throughout the state including San

Francisco, Santa Barbara, Los Angeles and others. This type of limitation is also supported by the lessons learned under the Pilot Program where it was discovered that one contract, for a property with a fair market value over \$10,000,000, resulted in lost property tax revenue that accounted for a large portion (nearly 80%) of the overall pilot program financial impact.

*Option D.* Due to the problems with Options A and B a combination approach was dismissed.

For the reasons described above, the proposed ordinance contains eligibility limits based on the fair market value of a property and provides a procedure for waiving this limit in exceptional cases. The Historic Resources Review Board has unanimously recommended approval of this approach at their hearing on March 7, 2013 (Attachment C). The table below shows a comparison of the pilot program and the proposed ordinance.

**Table Summary of Changes**

| Process   |                |   |
|---|----------------|---|
|   | Pilot Program  | New Program   |
| Initial Staff Review of application                           | Yes            | Yes   |
| Historic Resource Review Board review and recommendation      | Yes            | Yes   |
| Board Ranking   | Yes            | No  |
| Negotiate contract with owner                                 | Yes            | Yes   |
| Board approval of contract                                    | Yes            | Yes   |
| Recordation of Contract                                       | Yes            | Yes   |
| Contract Limitations  |                |   |
| Total number of contracts allowed                             | 5              | No limit  |
| Eligibility limitation based on fair market value of property | No limit       | Not to exceed:<br>Residential - \$3,000,000<br>Commercial - \$5,000,000 |
| Exception to limitation                                       | Not applicable | Yes   |

**Other Considerations:**

*Application Fees:* Application fees for a Historic Property Contract under the Pilot Program were set at \$1,926.87 for the initial review and “ranking process”. Once ranked, an additional “selected contract processing fee” of \$1,425.02 was required for applications who qualified for a contract. Combined, the total fee for a Historic Property Contract is \$3,351.89. This fee was found to be insufficient to cover staff time for processing meaning that an increase in fees for the program would have been needed to reflect the actual cost of carrying out the program. Eliminating the “ranking process” (as described above) simplifies the process for considering Historic Property Contracts. Simplification of the process may avoid the need to increase overall fees; however,

changes in the application fee will need to be reviewed as a result of this ordinance and other relevant factors. A fee schedule amendment will need to be considered under a separate Board of Supervisors action. The ordinance proposes that the Board set fees for the different stages of the process: application and eligibility determination by the HRRB, contract processing for contracts determined eligible, as well as fees for other processing tasks. (See Section 18.28.070 of the proposed ordinance.)

*Public Outreach:* Staff has been working with the Historic Resources Review Board (HRRB) to provide more public outreach and education on the Mills Act program incentive. Over the course of the last couple of years, the HRRB and staff have been informing owners and applicants with historic properties of the potential for participation in the program as a key incentive to voluntarily register the historic property. The HRRB is exploring other methods of providing outreach.

### **Finance**

Under the Pilot Program, three contracts were approved and executed, resulting in a reduction in total property tax revenue of approximately \$108,000 per year. One of the contracts approved accounted for nearly 80% of that overall figure (the Rose House contract – PLN110360) because the property's fair market value was well over \$10,000,000 when the contract was approved (2011).

Limiting the eligibility for a contract based on current fair market values of \$3,000,000 for residential properties and \$5,000,000 for commercial/industrial properties effectively caps the maximum per contract loss of property tax revenue to the County and special districts. Rounding the average property tax revenue to 1% of the market value in a year, and assuming the existing assessments are reflective of the current market value (which is rarely the case because of limitations on property tax increases under state law), the theoretical loss in property tax revenue per contract, per year, could not exceed \$30,000 for a residential property and \$50,000 for a commercial/industrial property. The Mills Act program does not relieve property owners from paying any property taxes in a year and the current assessed value of properties is often lower than the current market value of the property (due to proposition 13), so the assumptions described above reflect a worst case scenario. On average, the Mills Act program provides around a 70% reduction in property taxes. The money saved by a property owner from reduced property tax liability is intended to be invested into the repair, maintenance, preservation, or rehabilitation of their historic property.

Overall, there are a limited number of properties that could be eligible for Historic Property Contracts within the unincorporated areas of the County, although the exact number of eligible properties is not known because the County does not have a comprehensive survey of all historic structures. Currently there are approximately 200 properties in the unincorporated area on the County, State, or Federal historic registers that could be eligible for a Historic Property contract in Monterey County. Of these 200 properties, some will be ineligible due to the market value cap discussed above. Others may be ineligible due to existing Williamson Act contracts or other property tax

exemptions. In addition, it is highly unlikely that all owners of eligible properties will make the commitment to enter into a Historic Property contract.

In an attempt to estimate the financial impact of the Mills Act program, the following assumptions have been used, based on the Pilot program data, an average of 70% reduction in property taxes per contract, and other relevant factors:

- The County would approve an average of three contracts per year over the next five years resulting in a total of fifteen new contracts;
- Twelve of the fifteen contracts would be for residential properties and three would be for commercial/industrial properties; and
- The average lost property tax revenue for each contract would be \$21,000 for residential properties and \$35,000 for commercial/industrial properties.

Based on these assumptions, the estimated financial impact from reduced property tax revenue over the next five years is estimated to be approximately **\$465,000** per year. This estimate is the sum of the following:

- Three contracts already approved that have resulted in approximately \$108,000 in reduced revenue annually;
- Twelve residential contracts times at an average of \$21,000 per contract, per year totaling \$252,000; and
- Three commercial/industrial contracts at an average of \$35,000 per contract per year totaling \$105,000.

$$[108,000 + 252,000 + 105,000 = \underline{\mathbf{\$465,000}}]$$

It is impossible to know the actual financial impact of the program, so staff suggests that the Board review the program every five years. This program is a voluntary program, and entering a contract is entirely optional for both the County and for property owners, meaning that at anytime the Board may decide to stop approving contracts. Contracts already in effect would remain in effect until a non-renewal or cancellation process is satisfied. Per state law, cancellation requires a ten-year process.

#### *Staff Resources*

The Mills Act program will require RMA-Planning staff time for program implementation and oversight. Staff will need to process applications for Historic Property Contracts through the Historic Resources Review Board and to the Board of Supervisors for final approval in accordance with the procedures contained in the draft ordinance. An application fee to cover staff time for processing Mills Act contracts is currently in place but will need to be updated as a result of this ordinance and other relevant factors. A fee schedule amendment will need to be considered under a separate Board of Supervisors action.

Once a Historic Property Contract is approved and recorded, staff will be responsible for reviewing mandatory yearly reports from property owner's demonstrating compliance

with the contract. In most cases, this yearly review will demand minimal staff time for each contract. In some cases, written communication and follow-up may be necessary. In these cases, demands on staff time would still typically be minimal. There is no fee existing or proposed for yearly monitoring. Per amendments to state law, the contracts must allow for inspection of the property by the County every five years to determine the owner's compliance. It is estimated based on data and experience gathered from the pilot program, that the application processing and yearly monitoring duties inherent to the Mills Act program will require approximately 0.15 full time equivalent staff positions. These staff resources would be absorbed within the RMA – Planning budget.

### **California Environmental Quality Act**

Environmental review of the proposed ordinance is not required under the California Environmental Quality Act (CEQA) because the ordinance is not a “project” as defined in Section 15378 of the CEQA Guidelines. Pursuant to CEQA Guidelines section 15060(c)(3), an activity which does not meet the CEQA definition of “project” is not subject to CEQA. Under CEQA Guidelines section 15378 (b)(4), “the creation of government funding mechanisms or other fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment” is not a “project.” The proposed ordinance is thus not a “project” because it implements a property tax based funding mechanism for the enhancement and protection of historic resources, does not approve or commit the County to any specific development project, and does not result in a direct or indirect physical change in the environment. Moreover, the proposed ordinance provides for appropriate environmental review of applications after initial determination of eligibility but prior to approval of contracts. Accordingly, the proposed ordinance does not require environmental review.

### **Conclusion/Recommendation**

Staff is recommending that the Board of Supervisors introduce, waive reading, and set April 8, 2014 at 1:30 P.M. as the date and time to consider adoption of an ordinance (Attachment B of this report) adding Chapter 18.28 to the Monterey County Code to establish an on-going program implementing the Mills Act.