

Attachment B
Draft Ordinance
adding Chapter 18.28 to the
Monterey County Code

REF130101

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ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,
ADDING CHAPTER 18.28 TO THE MONTEREY COUNTY CODE TO ESTABLISH AN
ON-GOING PROGRAM TO IMPLEMENT CALIFORNIA GOVERNMENT CODE
SECTIONS 50280, ET SEQ., COMMONLY KNOWN AS THE "MILLS ACT"**

County Counsel Summary

This ordinance adds Chapter 18.28 to the Monterey County Code to establish an on-going program under which the Board of Supervisors may, in its discretion, enter into historic property contracts. The contracts allow the owners of selected qualified historical properties within the unincorporated area of the County of Monterey to obtain preferential property tax assessment in exchange for restrictions on the property to help preserve, restore, and maintain the historic property under the terms outlined in the contract. The ordinance provides uniform procedures to carry out the program, including procedures for contract application, selection, monitoring, renewal or non-renewal, and cancellation. The County previously established a temporary Mills Act Pilot Program (Chapter 18.27 of the Monterey County Code). This ordinance would establish a Mills Act Program on an on-going basis within the County, with certain modifications from the Pilot Program based on changes to state law and County's evaluation of the Pilot Program.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Chapter 18.28 is added to the Monterey County Code to read as follows:

CHAPTER 18.28

MILLS ACT PROGRAM

Sections:

- | | |
|------------------|---|
| 18.28.010 | Authority for adoption. |
| 18.28.020 | Purpose and applicability. |
| 18.28.030 | Definitions. |
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| 18.28.110 | Review of approved Historic Property Contracts. |

- 18.28.120 Nonrenewal of Historic Property Contracts.**
- 18.28.130 Amendment of Historic Property Contracts.**
- 18.28.140 Cancellation of Historic Property Contracts.**
- 18.28.150 Notice of hearings.**
- 18.28.160 Annexation.**
- 18.28.170 Contracts approved under the Pilot Program.**

18.28.010 Authority for adoption.

This Chapter is adopted pursuant to California Government Code Sections 50280 through 50290, commonly known as the “Mills Act”.

18.28.020 Purpose and applicability.

State law provides that the legislative body of a county may contract with the Owner of any Qualified Historical Property in a manner which the legislative body deems reasonable to carry out the purposes of the Mills Act. The Mills Act enables the Board of Supervisors of the County of Monterey, in its discretion, to enter into Historic Property Contracts with the Owners of certain selected Qualified Historic Properties within the unincorporated area of Monterey County. The Historic Property Contract allows the Owner of a Qualified Historical Property to obtain preferential property tax assessment in exchange for restrictions on the property to help preserve, restore, and maintain the historic property. The County previously established a temporary Mills Act Pilot Program (Chapter 18.27 of the Monterey County Code). Chapter 18.28 establishes a Mills Act Program on an on-going basis within the County, with certain modifications from the Pilot Program based on changes to state law and County’s evaluation of the Pilot Program. Chapter 18.28 is intended to apply to the selection and all matters of administration of Historic Property Contracts executed after the effective date of the ordinance establishing this Chapter 18.28.

18.28.030 Definitions.

The following definitions shall apply for the purposes of this Chapter:

- A. “Anniversary Date” means the date of final execution by all parties of the Historic Property Contract and the same date each subsequent year that the Historic Property Contract is in effect.
- B. “Contributing Structure” means a resource within a Historic District which by location, design, setting, materials, workmanship, feeling and/or association adds to the sense of historical authenticity, historical development, or value of a historic district.
- C. “Director of Planning” means the Director of the Resource Management Agency-Planning Department of the County of Monterey or his or her designee.
- D. “Historic District” means a national, state, or local registered geographic area, including a non-contiguous thematic area, which contains a concentration of historic buildings, structures or sites united historically, culturally or architecturally within specific boundaries.
- E. “Historic Property Contract” means a contract between the Owner of a Qualified Historic Property and the County of Monterey, meeting all requirements of state law and this Chapter. The “Historic Property Contract” may also be referred to in this Chapter as “Contract.”
- F. “Historic Resources Review Board” or “HRRB” means the Historic Resources

Review Board established by Chapter 2.56 of the Monterey County Code.

G. "Owner" means all persons and entities that have a right, title, or interest in the property which is the subject of the Historic Property Contract. The term "Owner" includes agents authorized in writing by the Owner to act on Owner's behalf. The term "Owner" also includes Owner's successors-in-interest.

H. "Qualified Historical Property" means a privately owned property, inclusive of the qualified historical improvements and any land on which the qualified historical improvements are located, which is not exempt from property taxation and which meets any one of the following criteria:

1. A property or structure listed individually in the National Register of Historic Places;
2. A property or structure listed individually in the California Register of Historical Resources;
3. A property or structure listed individually in the County of Monterey's Register of Historical Resources;
4. A property or structure listed as "Contributing" in a registered Historic District; or
5. A property or structure within a registered Historic District, if the structure is not currently a "Contributing Structure" but would qualify as such, as determined by a qualified historian, upon the implementation of the provisions of the specific Historic Property Contract.

18.28.040 Limitations on Historic Property Contracts.

A. The Board of Supervisors of the County of Monterey may, in its sole discretion and pursuant to the terms of this Chapter, enter into Historic Property Contracts with the Owners of Qualified Historical Properties that are located within the unincorporated area of the County of Monterey.

B. Only Qualified Historical Properties shall be eligible to enter into Historical Property Contracts.

C. Eligibility for Historic Property Contracts shall be limited to residential properties whose fair market value (land plus improvement value) does not exceed \$3,000,000 and commercial/industrial properties whose fair market value (land plus improvement value) does not exceed \$5,000,000 as demonstrated by a certified appraisal prepared no more than one (1) year prior to the application and as determined prior to the improvements proposed in the application for the Historic Property Contract, unless an exception to this limit on eligibility is granted pursuant to the criteria set forth in Section 18.28.080.B of this Chapter.

D. Applications for Historic Property Contracts must be received prior to July 1 of any calendar year to be processed during that calendar year. Historic Property Contracts must be approved, signed, and recorded in the Office of the Recorder of the County of Monterey on or before December 31 of a calendar year to be eligible for property tax reassessment for the following fiscal year.

E. The intent of this Chapter is to establish procedures whereby property subject to a Historic Property Contract approved, executed, and recorded pursuant to this Chapter will be eligible for property tax valuation as an enforceably restricted historical property pursuant to state law (sections 439 through 439.4 of the California Revenue and Taxation Code, as may be periodically amended). In the event that only a portion of a property or structure is the subject of

a Historic Property Contract, only that portion of the property or structure covered by the Historic Property Contract shall be considered for preferential property tax assessment treatment under state law. The rest of the property or structure shall be subject to standard property tax assessment, and the total assessed value shall be a combination of the two methods as determined by the County Assessor. This section shall not be construed to circumvent or diminish any requirements of the Subdivision Map Act.

F. Properties with recorded Historic Property Contracts must comply with all applicable County rules, regulations, policies, permit requirements, and associated fees, including those needed to carry out the provisions of the Historic Property Contract. Entry into a Historic Property Contract does not relieve the property which is the subject of the Contract from compliance with any and all applicable federal and state laws and County regulations.

G. Applications for Historic Property Contracts on properties on which a Notice of Violation has been recorded will not be accepted under this Chapter until the violation has been cleared.

H. Nothing in this Chapter limits the authority or obligation of the County to hold necessary public hearings as may be required by law or limits the County's lawful exercise of its discretion.

18.28.050 Required provisions of Historic Property Contracts.

A. The Historic Property Contract shall be in a form acceptable to County Counsel and the Director of Planning and shall be retained in the records of the County Resource Management Agency (RMA)-Planning Department or its successor department of the County. The RMA-Planning Department may develop and maintain a "Historic Property Contract" template.

B. Each Historic Property Contract shall at a minimum include, without limitation, the following terms, conditions, restrictions, and requirements:

1. The Contract shall contain a legal description of the property which is the subject of the Contract.

2. The Contract shall have a minimum term of ten years. Each year, on the Anniversary Date of the contract or such other annual date as is specified in the contract, a year shall be added automatically to the initial term of the Contract unless the Owner or the County has given timely written notice of non-renewal in accordance with the requirements of this Chapter;

3. The Contract shall run with the land and be binding upon, and inure to the benefit of, all successors in interest of the Owner. A successor in interest shall have the same rights and obligations under the Contract as the original Owner who entered into the Contract.

4. The Contract shall include a written commitment to restore, rehabilitate, and/or preserve the subject property in conformance with all of the following as applicable:

a. The rules and regulations of the Office of Historic Preservation of the California State Parks Department;

b. The United States Secretary of the Interior's Standards for the Treatment of Historic Properties;

c. The California Building Standards Code (Title 24 of the California Code of Regulations), including the California Historical Building Code (Part 8 of Title 24) where

applicable; and

d. The requirements, provisions, and conditions set forth in the Historic Property Contract.

5. The Contract shall provide for inspection of the interior and exterior of the premises by the County five years after entry into the Contract and every five years thereafter to determine the Owner's continued compliance with the Contract.

6. The Contract shall provide that the County may cancel the Contract, subject to the terms of this Chapter, if the County determines that any of the following have occurred:

a. The Owner has breached any of the conditions of the Contract; or

b. The Owner has allowed the property to deteriorate to the point that it no longer meets the definition of a Qualified Historical Property.

7. The Contract shall provide that the Owner shall furnish the County with any information the County requires in order to enable it to determine the eligibility of the property for Contract renewal, including the documentation required for the annual review for compliance with the Historic Property Contract's work program.

8. The Contract shall contain a clause in a form acceptable to County Counsel that requires the Owner to defend, indemnify, and hold harmless the County, its agents, officers, and employees from any claim, action or proceeding against the County or its agents, officers, and employees arising in connection with the Historic Property Contract.

9. The Contract may contain such other provisions as the Board of Supervisors may deem appropriate, including but not limited to allowing for a yearly public tour of the property, provided the tour is approved in advance by the Director of Planning.

C. At the time rehabilitation or restoration of the subject property is achieved and so long as the Contract is in effect, the Owner shall commit to and be responsible for appropriate maintenance and preservation of the subject property in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

18.28.060 Application for Historic Property Contracts.

A. Only Qualified Historical Properties, as defined by this Chapter, are eligible for Historic Property Contracts under this Chapter. The Owner of a Qualified Historical Property may file an application to enter into a Historic Property Contract. Only the Owner or agent of the Owner may file the application. If the application is made by an agent of the Owner, the agent must provide written documentation as part of the application of the Owner's authorization of the agent to act on the Owner's behalf.

B. All applications for Historic Property Contracts shall be filed with the Director of Planning on the form and in the manner prescribed by the Director of Planning. The application shall contain, without limitation, the following information and documentation:

1. The name and address of the Owner and signature of the applicant and the names and addresses of all persons and entities having any right, title, or interest in the property which is the subject of the proposed Historic Property Contract;

2. Written consent to make the application from all persons and entities having a right, title, or interest in the real property which is the subject of the proposed Historic Property Contract;

3. A nonrefundable application fee as set by the Board of Supervisors;

4. A legal description of the real property and a listing of the Assessor's parcel number(s) for the property;
5. Color photos and low contrast black and white photos of the property and each elevation of the subject structure(s);
6. Site plans drawn to scale (the number of site plans required shall be as determined by the Director of Planning);
7. An itemized ten-year maintenance/rehabilitation work program containing, at a minimum, the following information:
 - a. A description of the improvements to be done. The proposed improvements must be appropriate to restore, preserve, and/or maintain the historic structure in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties.
 - b. Schedule of improvements;
 - c. Cost estimates associated with the proposed improvements;
 - d. Preliminary plans, elevations, or any appropriate documentation needed to substantiate and illustrate proposed improvements.
8. Proof that the property is a "Qualified Historical Property." Such proof may include proof of listing on the National Register of Historic Places, proof of listing on the California Register of Historic Resources, Monterey County Board of Supervisors resolution placing the property or structure on the County of Monterey's Register of Historical Resources, or evidence pertaining to the contributing status of a property or structure within a Registered Historic District.
9. A property tax adjustment worksheet, on a form acceptable to the Director of Planning, providing the Owner's calculated estimate of the property tax reassessment that would result from the Contract.
10. A copy of the most recent real property tax bill for the property.
11. An appraisal of the fair market value of the property (land plus improvement value), prepared by a certified appraiser no more than one (1) year prior to the application for the Contract and as determined prior to the improvements proposed in the application for the Contract.
12. Such other information as the Director of Planning may request to evaluate and process the application.
 - C. If the application for a Historic Property Contract exceeds the fair market value limitation established in Section 18.28.040.C of this Chapter, the application must also include a written request for an exemption from the property value limits and the following information and documentation:
 1. An evaluation of the property prepared by a qualified historian describing the historic significance and integrity of the property;
 2. A written statement by the Owner, including supporting evidence, demonstrating the risk of substantial adverse change to the significance of the historic resource and the need for a Historic Property Contract to address the risk; and
 3. Such other information as the Director of Planning may request to evaluate and process the request for an exemption from the property value limits.
 - D. A separate application shall be filed for each property on which a Historic Property Contract is requested.

E. The Owner shall allow for an inspection of the interior and exterior of the premises by the County prior to entry into the Contract.

18.28.070 Fees.

The applicant for a Historic Property Contract shall pay such application fees as have been adopted by the Board of Supervisors by ordinance or resolution. Such fees shall not exceed the reasonable cost of providing the service for which the fee is charged. The fees may include an initial fee for processing the application through the Historic Resources Review Board's eligibility recommendation, an additional fee for processing of the Historic Property Contract through the Board of Supervisors, including fees for environmental review as applicable, a fee for filing an appeal for the Director's denial of eligibility for a Contract, and a fee for Contract amendment. All fees and any remaining balance shall be paid prior to Board action on any Historic Property Contract.

18.28.080 Eligibility criteria.

A. To be eligible for a Historic Property Contract, the application must meet all of the following criteria:

1. The property that is the subject of the application is a Qualified Historical Property as defined by this Chapter.
2. The application is consistent with the County's historic preservation goals and policies, as set forth in the County's General Plan and ordinances.
3. The application is consistent with the applicable Secretary of the Interior's Standards for the Treatment of Historic Properties, the rules and regulations of the Office of Historic Preservation of the California State Parks Department, and the California Historical Building Code.
4. The fair market value of the property that is the subject of the application is equal to or less than the valuation limits set forth in section 18.28.040.C of this Chapter, unless an exception has been granted pursuant to this Chapter.
5. The application is consistent with the requirements of this Chapter.

B. A property that exceeds the valuation limits set forth in section 18.28.040.C of this Chapter may be eligible for an exception to the valuation limits if the following criteria are met:

1. The site, building, object, or structure is a particularly important resource such as the last or only example of its kind, and it represents an exceptional example of an architectural style, the work of a master, or is associated with the lives of significant persons or events important to history; and
2. The Historical Property Contract will result in the preservation of a site, building, object, or structure whose significance as a historical resource would otherwise be at immediate risk of substantial adverse change. A substantial adverse change in the significance of the historical resource means the physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of the resource would be materially impaired; and
3. The exception is warranted due to one or more of the following additional factors:
 - a. The resource is highly visible to the public;

b. The difference between the current property tax obligation for the property and the estimated property tax obligation under the Mills Act is within the same range as the expected estimated lost property taxes from Historic Property Contracts for properties meeting the valuation limit;

c. The work program proposes to provide for critical improvements immediately necessary to preserve the resource, and it provides for the best and most efficient use of the expected property tax savings; or

d. Approval of the contract would generate heritage tourism, affordable housing, or similar public benefits.

18.28.090 Review of applications.

A. The Director of Planning shall review the applications for completeness and accuracy and may require such additional information from the applicant as is needed to make the application complete. Only applications filed on or before July 1 of a calendar year shall be eligible for consideration for a Historic Property Contract for the subsequent fiscal year.

B. All applications deemed complete by the Director of Planning shall be referred to the Historic Resources Review Board (HRRB) for recommendation to the Director of Planning on eligibility of the property for a Historic Property Contract.

C. The HRRB shall make a recommendation on the eligibility of the property for a Historic Property Contract including, if applicable, a recommendation on any request by the applicant for an exception from the property valuation limit, based on the eligibility criteria set forth in this Chapter.

F. If the HRRB finds that the application meets the criteria for eligibility for a Historic Property Contract, the HRRB shall recommend approval to the Director of Planning. If the HRRB finds that the application does not meet the criteria for eligibility, the HRRB shall recommend to the Director of Planning that the Director deny the request for a Historic Property Contract.

G. When the application includes a request for an exception from the property valuation limit, the HRRB's recommendation shall include a finding as to whether the application qualifies for the exception to the valuation limits.

H. Upon receipt of the HRRB recommendation, the Director of Planning shall make a determination of eligibility to negotiate a Historic Property Contract based on the eligibility criteria set forth in this Chapter. If Director determines that the application meets the criteria for eligibility for a Historic Property contract, the Owner shall be entitled to negotiate a Historic Property Contract with the Director of Planning for the qualifying property, subject to appropriate environmental review, payment of such application fees as have been established by the Board of Supervisors for processing the Historic Property Contract, successful negotiation of the contract, and final consideration by the Board of Supervisors. The Director's determination of eligibility is not an approval of the Historic Property Contract or a guarantee of approval.

I. If the Director of Planning determines that the application is not eligible for a Historic Property Contract, the Director shall deny the application and notify the applicant in writing of the denial of the Historic Property Contract application and the reasons for the denial. Said notification shall inform the applicant of the right of appeal of the denial to the Board of Supervisors. The Owner may appeal the denial by submitting to the Clerk of the Board of

Supervisors a written appeal specifying the specific reasons the appellant disagrees with the Director's determination. Said appeal must be submitted within ten days after written notice of the denial has been mailed to the Owner and must be accompanied by such fee as the Board has adopted for such appeals. The appeal shall not be accepted as complete by the Clerk unless it complies with these appeal requirements and the appeal fee is paid. The Board shall consider the appeal at a noticed public hearing within 60 days of the Clerk's acceptance of the appeal as complete. The Board may grant or deny the appeal based on the eligibility criteria set forth in this Chapter. A grant of the appeal means only that the Owner shall be entitled to proceed to negotiate a Historic Property Contract with the Director of Planning for the qualifying property, subject to appropriate environmental review, payment of such application fees as have been established by the Board of Supervisors for processing the Historic Property Contract, successful negotiation of the Contract, and final consideration by the Board of Supervisors. The grant of the appeal is not an approval of the Historic Property Contract or a guarantee of approval.

J. The Historic Property Contract shall be consistent with the requirements of this Chapter and state law and in a form acceptable to the Director of Planning. The Contract shall be approved as to form by County Counsel prior to submission of the Contract to the Board of Supervisors for its consideration.

K. Following negotiation of the Historic Property Contract, the Director of Planning shall submit the contract to the Board of Supervisors for final action on the Contract with a recommendation for approval or denial.

L. Final action on the Contract shall be considered by the Board of Supervisors at a noticed public hearing. The County shall not execute any Contract until authorized by the Board of Supervisors and until all persons and entities having any right, title, or interest in the property which is the subject of the Contract have signed the Contract or provided written authorization for an agent to execute the Contract on their behalf and until the Owner has submitted to the County the appropriate fee for recordation of the Contract.

18.28.100 Recordation of approved Historic Property Contracts.

No later than twenty (20) calendar days after execution by all parties of the Historic Property Contract, the Clerk of the Board shall cause a copy of the executed Historic Property Contract to be recorded in the Office of the Recorder of the County of Monterey accompanied by the fee paid by Owner for recordation of the Contract.

18.28.110 Review of approved Historic Property Contracts.

A. The Owner shall allow for inspection of the interior and exterior of the premises by the County after five years from entry into the Contract and every five years thereafter to determine the Owner's continuing compliance with the Historic Property Contract.

B. No later than 90 days prior to each annual Anniversary Date of the Historic Property Contract, the Owner shall submit documentation to the Director of Planning in sufficient detail to demonstrate compliance with the Historic Property Contract's work program, including but not limited to the following documentation:

1. Color photos of actual work done in conformance with the Contract;
2. Receipts and copies of financial transactions related to work carried out in conformance with the recorded Contract;

3. Copies of building permits and/or planning entitlements for work carried out in conformance with the recorded Historic Property Contract; and

4. Such other information as may be required by the Director of Planning.

C. The Director of Planning shall review the documentation to determine compliance with the recorded Historic Property Contract. If documentation is not submitted within the required timeframe or the documentation submitted demonstrates in the determination of the Director of Planning that the Owner has breached any of the conditions of the Historic Property Contract or has allowed the property to deteriorate to the point that it no longer meets the standards for a Qualified Historical Property, the Director shall begin the process for cancellation of the Contract pursuant to Section 18.27.140 of this Chapter.

D. At least 60 days prior to the tenth Anniversary Date of the Historic Property Contract, the Owner shall submit a report from a qualified historian to the Director of Planning. The report shall describe the work carried out pursuant to the Contract and shall recommend any appropriate improvements needed to achieve rehabilitation, restoration, or preservation of the property. Based on the recommendations, the County may require an amendment to the Contract. If the Director of Planning determines, as part of the tenth year review, that rehabilitation or restoration for the subject property has been achieved, the Owner shall commit to and be responsible for appropriate maintenance and preservation of the subject property in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties so long as the Contract remains in effect.

18.28.120 Nonrenewal of Historic Property Contracts.

A. Each year on the Anniversary Date of the Contract or such other date as is specified in the Contract, a year shall be added automatically to the initial term of the Contract, unless the Owner or the County has given timely written notice of nonrenewal in accordance with the requirements of state law and this Chapter. If the Owner desires in any year not to renew the Contract, the Owner shall serve written notice of nonrenewal of the Contract on the Director of Planning and the Clerk of the Board at least 90 days in advance of the annual renewal date of the Contract. If the County Board of Supervisors determines in any year not to renew the Contract, the County Board of Supervisors or their authorized designee shall serve written notice of nonrenewal of the Contract on the Owner at least 60 days in advance of the annual renewal date of the Contract. The County Board of Supervisors shall serve a notice of nonrenewal only after the Board of Supervisors has conducted a noticed public hearing to consider the nonrenewal. Unless the notice of nonrenewal is served by the Owner or the County in accordance with these requirements, one year shall automatically be added to the term of the Contract.

B. If the County or the Owner serves notice of nonrenewal in any year and the Owner does not file a written protest, the existing Contract shall remain in effect for the balance of the period remaining since the original execution or the last renewal of the Contract, as the case may be.

C. Upon receipt by the Owner of a notice from the County for nonrenewal of the Contract, the Owner may make a written protest of the notice to the Board of Supervisors. Such protest must be in writing and filed with the Clerk of the Board of Supervisors within ten days after the written notice of nonrenewal was mailed to the Owner. If a written notice of protest is

timely filed, the Clerk of the Board shall schedule the protest for a noticed public hearing before the Board of Supervisors within 60 days of the filing of the protest and notify the Owner of the hearing date. The Board of Supervisors may, at any time prior to the renewal date, withdraw the notice of non-renewal. Following the hearing, the Board may withdraw or affirm the notice of non-renewal. If the Board of Supervisors affirms the notice of nonrenewal, the existing Contract shall remain in effect for the balance of the period remaining since the original execution or the last renewal of the Contract, as the case may be.

D. Following the nonrenewal of the Contract, the property shall be assessed in accordance with state law (section 439.3 of the Revenue and Taxation Code, as may be periodically amended).

18.28.130 Amendment of Historic Property Contracts.

A. A Historic Property Contract may be amended, in whole or in part, upon mutual agreement of the Owner and the County. Such amendments must be in writing and approved by the Owner and the Board of Supervisors.

B. For Owner-initiated amendments to a Historic Property Contract, the Owner must file an application for an amendment with the Director of Planning on the form and in the manner prescribed by the Director of Planning. The Owner shall pay such amendment application fees as have been set by the Board of Supervisors. The Director of Planning shall review the amendment application for completeness and adequacy. The Director may request additional information as necessary to evaluate the amendment.

C. At such time that the Director has determined the amendment to be complete, the Director shall refer the amendment to the Historic Resources Review Board (HRRB) for a recommendation to the Board of Supervisors.

D. Following receipt of the HRRB recommendation and following all appropriate environmental review, the Board of Supervisors shall render a decision on the proposed amendment. The County shall not execute the Historic Property Contract amendment until all persons and entities having a right, title, or interest in the property which is the subject of the Historic Property Contract have signed the amendment or provided written authorization for an agent to execute the Contract amendment on their behalf and until the Owner has submitted to the County the appropriate fee for recordation of the Contract amendment.

E. No later than 20 calendar days after County execution of the amendment to the Historic Property Contract, the Clerk of the Board of Supervisors shall cause a copy of the executed amendment to be recorded in the Office of the Recorder of the County of Monterey accompanied by the fee paid by Owner for recordation of the Contract amendment.

18.28.140 Cancellation of Historic Property Contracts.

A. The County may cancel a Historic Property Contract, subject to the process described in this section, if the County finds that one of the following conditions has occurred:

1. The Owner has breached any of the conditions of the Historic Property Contract;
- or
2. The Owner has allowed the property to deteriorate to the point that it no longer meets the definition of a Qualified Historical Property.

B. The following process shall be followed for cancellation of a Historic Property

Contract:

1. If the Director of Planning determines at any time that the Owner has breached any of the conditions of the Historic Property Contract or has allowed the property to deteriorate to the point that it no longer meets the definition of a Qualified Historical Property, the Director of Planning shall notify the Owner in writing describing the deficiencies. If the Owner has not corrected the deficiencies to the satisfaction of the Director within 60 days of the issuance of the notification, the Director may refer the cancellation of the Contract to the Historic Resources Review Board for a recommendation to the Board of Supervisors on the cancellation.

2. The HRRB shall, at a noticed public hearing, evaluate the evidence in the record and provide a written recommendation to the Board of Supervisors as to whether one of the conditions for cancellation has occurred.

3. Following receipt of the HRRB recommendation, the Board of Supervisors shall, at a noticed public hearing, consider whether to cancel the Contract. No contract shall be cancelled until after the Board of Supervisors has given notice of and has held a public hearing on the cancellation.

C. To cancel the Contract, the Board of Supervisors must make a finding, based on substantial evidence that one of the following conditions has occurred:

1. The Owner has breached a condition of the Historic Property Contract; or

2. The Owner has allowed the property to deteriorate to the point that it no longer meets the definition of a Qualified Historical Property.

D. If a Historic Property Contract is cancelled under this section, the Owner shall, in accordance with Government Code sections 50284 and 50286, pay a cancellation fee equal to twelve and one half percent (12 ½ %) of the property's current fair market value, as determined by the County Assessor as though the property were free of the contractual restriction. The cancellation fee shall be paid to the County Auditor, at the time and in the manner that the County Auditor shall prescribe. The cancellation fee shall be allocated by the County Auditor to each jurisdiction in the tax rate area in which the property is located in the same manner as the auditor allocates the annual tax increment in that tax rate area in that fiscal year.

E. As an alternative to cancellation of the Contract for breach of any condition, the County or Owner may bring any action in court necessary to enforce a contract including, but not limited to, an action to enforce the contract by specific performance or injunction.

F. In the event that a property subject to a Contract under this Chapter is acquired in whole or in part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the Board of Supervisors to frustrate the purpose of the Contract, such Contract shall be cancelled and no cancellation fee shall be imposed. Such contract shall be deemed null and void for all purposes of determining the value of the property so acquired.

18.28.150 Notice of hearing.

Whenever a noticed public hearing is required by this Chapter, notice of the hearing shall be published at least once in at least one newspaper of general circulation at least ten days prior to the hearing date. Notice shall also be mailed at least ten days prior to the hearing date to the Owner(s) of the property which is the subject of the public hearing. In the event that the property which is the subject of the hearing is located within a registered historic district, notice

shall also be mailed at least ten days prior to the hearing date to the last known address of each owner of property within the district.

18.28.160 Annexation.

In the event that property restricted by a Historic Property Contract with the County of Monterey is annexed to a city, the city shall succeed to all rights, duties, and powers of the County under such contract.

18.28.170 Contracts approved under the Pilot Program.

Contracts approved pursuant to the Mills Act Pilot Program (Chapter 18.27 of the Monterey County Code, adopted by Ordinance No. 5159) shall continue to be subject to Chapter 18.27 of the Monterey County Code.

SECTION 2. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 3. EFFECTIVE DATE.

This ordinance shall become effective on the 31st day following its adoption.

PASSED AND ADOPTED on this ____ day of _____, 2014, by the following vote:

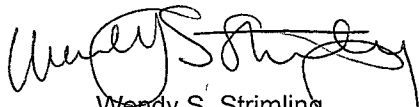
AYES:
NOES:
ABSENT:

Louis Calcagno, Chair
Monterey County Board of Supervisors

A T T E S T:

GAIL T. BORKOWSKI
Clerk of the Board

By _____
Deputy

APPROVED AS TO FORM:

Wendy S. Strimling
Senior Deputy County Counsel