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| 6. | Location: | Citywide |
| | Proposal: | Adoption of a Citywide two-year pilot Mills Act Property Tax Abatement Program for Qualified Historic Properties |
| | Recommendation: | <ol style="list-style-type: none"> 1. Receive any testimony from interested citizens; 2. Comment and give staff direction on any Mills Act Program issues; 3. Review the Draft Model Agreement, make recommendations for any modifications and or additions; 4. Direct staff to forward the two-year pilot Mills Act Property Tax Abatement Program for Qualified Historic Properties and Model Agreement to the City Council for public hearing, with Planning Commission recommendation to the City Council as follows: <ol style="list-style-type: none"> a) amend the General Plan, Historic Preservation Element (HPE) Policy as outlined in this report; b) amend the Fee Schedule to add the Mills Act Program Application Fee of \$400 and the Mills Act Program Inspection Fee of \$100/inspection; c) adopt an Ordinance establishing a two-year pilot Mills Act Property Tax Abatement Program for Qualified Historic Properties, pursuant to Section 50280-90 of the California Government Code and Section 439.2 of the California Revenue and Taxation Code; d) approve the Model Mills Act Agreement; and e) direct Staff to implement the Mills Act Property Tax Abatement Program. |
| | Environmental Determination: | Exempt per California Environmental Quality Act Guidelines Section 15331: Historical Resource Restoration/Rehabilitation. |
| | Service Delivery District: | Citywide |
| | City Council District: | Citywide |
| | Action to be Taken: | Recommendation to City Council on adoption of a two-year pilot Mills Act Program. |
| | For further information: | Contact case planner Joann Pavlinec at (510) 238-6344 or by e-mail at jpavlinec@oaklandnet.com |

SUMMARY

Since January of 2004, City staff has been working on measures to adopt a Mills Act Program for the City of Oakland, as part of the Historic Preservation Incentives outlined in the General Plan Historic Preservation Element Policy 2.6. The Mills Act is a preservation incentive that allows reductions of property tax assessments for historic properties if the owner signs an agreement with the local government to preserve and maintain the historic characteristics of the property. Additionally, the Landmarks Preservation Advisory Board (LPAB) adopted the establishment of a Mills Act Property Tax Abatement Program for the City of Oakland as a major goal for 2005/06.

Mills Act Pilot Program

The City was awarded a matching grant from the National Trust for Historic Preservation to assist the City by providing consultation fees for economic analysis that would inform the public and individual property owners, as well as provide a basis for the City to understand the potential implications in tax revenue receipts to the City.

City staff has solicited input on shaping a Mills Act Program particular to Oakland from the Oakland Heritage Alliance, the LPAB, the Redevelopment Agency and Financial Services Agency. A Model Mills Act Agreement is attached (See Attachment A). Adoption of a Mills Act Program as proposed in this report will require a General Plan Amendment to Historic Preservation Element Policy 2.6 in order to expand the list of eligible properties and to provide for design review fee waivers for all properties participating in the Mills Act Program. An Amendment to the Master Fee Schedule to establish a Mills Act Program application fee and a Mills Act Program inspection fee will also be required. A summary of the Mills Act Agreement provisions, recommendations on property eligibility criteria for participation in the Mills Act, on methods to control fiscal impacts on the City, on application and inspection fees, and on an implementation program are outlined in this report.

At the February 27, 2006 Landmarks Preservation Advisory Meeting, the Board reviewed the adoption of a Mills Act Pilot Program and a Model Mills Act Agreement. Two citizens, a single-family home owner and developer, and the President of the Oakland Heritage Alliance commented in support of the Mills Act Pilot Program.

The Board discussed the issues raised in the staff report (See page 12 of this report for full discussion of each issue) and supported:

- Properties on the City of Oakland's Local Register of Historical Resources as those properties eligible for the Mills Act;
- A General Plan Amendment to include 'Heritage' Properties as eligible for the Mills Act Program;
- A General Plan Amendment to waive Design Review fees for Heritage Properties participating in the Mills Act Program;
- Including condominium projects as eligible for the Mills Act Program;
- Control of Mills Act fiscal impacts on the City by capping the dollar amount of revenue loss per year and capping the number of applications per year;
- A Master Fee Schedule Change, including a Mills Act application fee of \$400 and an Mills Act Inspection Fee of \$100; and
- Suggested that if the Mills Act Pilot Program is approved, it should be placed on the City's Website.

The Board unanimously recommended that staff forward the two-year pilot Mills Act Property Tax Abatement Program for Qualified Historic Properties and Model Agreement to the Planning Commission for public hearing, with the recommendation to the Planning Commission that City Council:

Mills Act Pilot Program

- a) amend the General Plan, Historic Preservation Element (HPE) Policy as outlined in this report;
- b) amend the Fee Schedule to add the Mills Act Program Application Fee of \$400 and the Mills Act Program Inspection Fee of \$100/inspection;
- c) adopt an Ordinance establishing a two-year pilot Mills Act Property Tax Abatement Program for Qualified Historic Properties, pursuant to Section 50280-90 of the California Revenue and Taxation Code;
- d) approve the Model Mills Act Agreement; and
- e) direct Staff to implement the Mills Act Property Tax Abatement Program.

BACKGROUND

The Mills Act is a preservation incentive adopted by California in 1976 that allows reductions of property tax assessments for historic properties if the owner signs an agreement with the local government agreeing to preserve the property, maintain its historic characteristics, and, if necessary, restore the property. Property owners' participation in such a program is voluntary.

Many Bay Area municipalities are using the Mills Act to revitalize their cities.¹ In these cities, the Mills Act has acted as a catalyst for neighborhood revitalization since property owners who enter into an agreement are obligated to maintain and prevent deterioration of the property, in addition to complying with any specific restoration or rehabilitation provisions contained in the agreement.

A Mills Act Program would offer one of the few available incentives to owners of historic properties to pursue maintenance, repair and rehabilitation or restoration. City staff receives numerous calls from owners of historic buildings requesting information on City assistance programs that might aid them in the appropriate maintenance, repair and rehabilitation of their historic properties; there has been little to offer.

Along with other supportive General Plan policies, the Historic Preservation Element Policy 2.6: Preservation Incentives calls specifically for adoption of a Mills Act Program to reduce property tax assessments for Landmarks and Preservation Districts. Adoption of a Mills Act Program could affect properties city-wide and has the potential to be a catalyst for further revitalization of Oakland's distinct and diverse neighborhoods and strong historical character. Since it is a long-term program, it also has the strong potential to continuously promote economic, quality of life and sense of community goals throughout the city as new property owners enter into Mills Act Agreements for rehabilitation or restoration. Mills Act Agreements would also directly benefit the City as

¹Bay Area cities with an adopted Mills Act Program include Belvedere, Berkeley, Danville, Fremont, Larkspur, Morgan Hill, Orinda, Redwood City, San Francisco, San Jose, San Mateo, Sunnyvale.

Mills Act Pilot Program

they are utilized to rehabilitate or restore individual buildings throughout the City, which in turn acts as a catalyst for further neighborhood reinvestment and sense of community. Please see Attachment B for a Summary list of the Mills Act basic points and benefits.

Should a Mills Act Program be established, there are approximately 140 City of Oakland Landmarks and nine designated S-7 and S-20 Historic Districts (consisting of approximately 1,000 properties) that could immediately apply for a Mills Act Agreement. Under the existing Historic Preservation Element Policy 2.6, staff is recommending adding the rest of the City of Oakland’s Local Register of Historical Resources as eligible properties for the Mills Act Program. Therefore, in addition to those properties already mentioned above, there would be an approximately 2,500 additional properties that would be considered qualified historic properties, but which would be required to seek City of Oakland designation (Landmark or Heritage) prior to, or concurrent with in the case of Heritage designation, an application for a Mills Act Agreement. Properties that are not part of the Local Register (e.g. those Potential Designated Historic Properties that have an existing rating of “C”) could first apply for Heritage Property designation, after which they could also apply for and benefit from the program. Properties not in the Local Register constitute the remainder of the historic properties in the City and include an approximate total of 17,000 properties.

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| Currently qualified for Mills Act Agreement [Designated Historic Properties (DHPs)] | 1,140 properties |
| Qualify with Proposed General Plan Amendment (Local Register) | 2,500 properties |
| Potentially Qualified [Potential Designated Historic Properties (PDHPs)] | 17,000 properties |

National Trust for Historic Preservation Grant (Johanna Favrot Fund for Historic Preservation) for Consultant Assistance

In order to pursue a Mills Act Program, the City has received a matching grant from the Johanna Favrot Fund for Historic Preservation from the National Trust for Historic Preservation; the City Council has approved matching funds (Resolution 78297). In addition further funding is provided per Mitigation Measures in both the West Oakland Redevelopment Plan EIR and the Central City East Redevelopment Plan EIR.

Summary - Economic Analysis Report (by Economic & Planning Systems)

Economic & Planning Systems (EPS), a land economics consulting firm experienced in services related to real estate development, market analysis, public/private partnerships, and the financing of government services and public infrastructure, has assisted the City with the analysis of the financial and fiscal implications of a Mills Act Program.

Mills Act Pilot Program

EPS has completed its research and analysis and has provided the City with its results. (Please see Attachment C). This analysis helps to quantify the potential magnitude of property tax savings for properties with different characteristics. The information can be used to inform the public, decision makers and individual property owners, as well as provide a basis for the City to understand the potential implications in tax revenue receipts to the City. Mills Act properties are assessed by the County using the “income approach” to value to determine property tax adjustments. The analysis utilized a matrix of case study properties. The EPS report includes several illustrative examples based on the above methodology.

In the analysis, residential properties are valued based on their rental income, which typically results in a value lower than current market values. For commercial properties, the benefit of the Mills Act is less, however still provides some benefit.

The research and analysis showed the following:

- Residential properties with assessed values reflecting current market prices are expected to experience property tax savings of 40% to 50% under the Mills Act.
- Commercial properties are expected to experience savings of 10% to 20% under the Mills Act.
- The Mills Act’s income approach to value is not likely to produce a benefit for properties last sold more than two to five years ago.
- Case studies suggest that properties’ specific characteristics can produce a wide variety of results under the Mills Act.
- Potential property tax revenue losses as a result of a Mills Act Program should be understood in the larger context of the City’s tax base. Oakland generates total property tax revenues of roughly \$313 million, of which approximately \$85 million would go to the City. Savings may be significant for the individual property owner; however, even with substantial participation the loss to the City is likely to be an extremely small portion of total property tax revenues.

The report sample of a 4,000 square foot residential property with an assessed value of \$800,000 might be expected to experience a 45 percent decrease in property taxes under a Mills Act Agreement, about \$1,000 of which represents the City’s share. Ten similar properties that participate in the Mills Act program, would represent a reduction to the City’s property tax revenues by about \$10,000 annually.

- Although the property tax impacts of the Mills Act in redevelopment areas will be borne predominantly by the redevelopment agency, the Mills Act will further redevelopment goals by encouraging property rehabilitation.²

² In general, the amount of taxes saved by a Mills Act property owner is more than what the city loses. However, this may not be true if the property is in a redevelopment area. Property tax revenue in redevelopment areas is not divided between the city, county and other political subdivisions. The redevelopment concept is that public investment in a project area will result in an increased property values and in turn increased tax revenues. In order to pay for the public

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Four properties ranging in Assessed Value between \$440,000 and \$1,500,000 were compared in EPS's analysis. Under the Mills Act the annual property tax decrease per property ranged from \$8 to \$4,708, with the accompanying City percent decrease ranging from \$2 (0%) to \$984 (45%).

Summary - Comments/Policy Direction from Mills Act Issue Meetings:

- 1. Landmarks Preservation Advisory Board**
- 2. Oakland Heritage Alliance**
- 3. City Redevelopment Agency and City Financial Services**

Staff has solicited direction from the historic community and in-house City stakeholders, in order to create an inclusive pilot program that responds to a variety of Oakland issues. A short summary of comments from these meetings is presented below.

1. Landmarks Preservation Advisory Board (LPAB):

The LPAB discussed the Mills Act at its September 12, 2005 meeting. The following concerns were expressed:

- Catastrophic events occur in people's lives. Should a Mills Act Program participant become ill, or unemployed, the penalty for breach of agreement is severe. Recommend that the Oakland Mills Act Program address this.

Please see Mills Act Agreement (Attachment A) Section 4c which allows the Development Director to administratively adjust the schedule timeline of the work program, by a written recorded instrument executed by both parties.

- Concern that the process may be overwhelming for many who want to participate in the program.
- Recommendation that Mills Act Agreement participants be required to work with an architect, and that applicants for the program submit a budget with their work program in order to determine that the proposed budget is realistic and the proposed work program and schedule is feasible.

The applicant will submit a work program with an estimated budget at the time of application. At each phase of the project, or for the entire work program, the applicant will submit a design review application to be reviewed and approved by the Landmarks Preservation Advisory Board.

investment, the entire increased tax revenues, 'tax increment,' are returned to the redevelopment agency rather than being divided. Thus, in a Mills Act property located in a redevelopment area, the resulting loss of revenue will be borne entirely by the local government rather than being apportioned among various governmental agencies.

Mills Act Pilot Program

- Recommendation that the program also apply to multi-unit residential projects.
The Mills Act Program will be available to multi-use residential projects and to live-work projects. The Mills Act state-enabling legislation is designed for all tax paying properties. The Mills Act Agreement availability to Condominium properties in Oakland's program is discussed later in this report. (See Section 3, bullet point 1.)

2. Oakland Heritage Alliance:

- Supportive of the program. Should be modeled on those cities that are most successful (i.e., San Diego).
- At the end of the Pilot Program, analysis should include how the program affects neighborhoods (i.e., the domino effect of non-subsidized investment that follows when one or two buildings benefit from the Mills Act). Look at tax increases in two to three years that occur as a result of Mills Act agreements.
The two-year pilot program will be evaluated.
- Consider other sources of subsidies available when determining qualifications for a Mills Act Agreement. For example, does the building qualify for Historic Tax Credits? For a Redevelopment Façade Grant, etc.? Determine through City's Redevelopment office if there is a need of the Mills Act for high end projects, or if other available funds might meet the project's financial need.
Implementation of the Mills Act Program provides guidelines to address this concern. (Discussed later in this report)
- Consider an expedited designation process for owner initiated landmarking.
Staff recommends that this be considered following the Pilot Program, due to time considerations. If the Pilot Program draws a number of applicants whose buildings are Landmark-eligible, but not designated properties, this recommendation will be considered in the evaluation. The Implementation requires that applicants during the first year of the Pilot Program are property owners of currently designated historic properties or on the Local Register of Historic Resources applying for Heritage Property designation concurrent with a Mills Act application.
- Provide that Heritage Property designation can occur concurrent with Mills Act Agreement application.
Heritage Property designation may be made by either the Landmarks Preservation Advisory Board or City Planning Commission. Per the Mills Act Program Implementation, the LPAB will review the application and the work program. Any application for the Mills Program Agreement and for Heritage Property designation shall be concurrently reviewed with eligibility determined by the LPAB.

Mills Act Pilot Program

- If during the pilot program it appears that there is a significant response to the program, hire additional staff to facilitate a greater number of agreements/year.

Staff recommends that this be considered following the Pilot Program. If the Pilot Program draws a significant number of applicants, this shall be considered as a recommendation of the Pilot Program evaluation.

- Create a template for the five to ten top uses for Mills Act: (i.e., roof, foundation, seismic, windows, siding, etc.). Require that structural issues that need to be addressed in order to maintain the integrity of the building be completed first.

The suggested implementation requires that work incorporated in the Mills Act Agreement work program be limited to character defining historic features and maintenance for structural integrity. Staff suggests that this information be included in the information about the program. The LPAB will review the work programs and will be able to address priorities.

3. Redevelopment Agency and Financial Services Agency:

- Recommendation to not include condominium projects as eligible for the Mills Act Program.

Since this recommendation, staff has had the opportunity to discuss this recommendation with condominium conversion developers who focus on adaptive reuse of historic buildings. These developers recommended that condominium projects be eligible for the Mills Act Program because Federal Historic Tax Credits are not available for this type of project (available for income-producing projects only). One Portland developer has used an Oregon program similar to the Mills Act, as a marketing tool to offer potential condo buyers lower taxes. Thus, the Mills Act Program could be used in this way to provide an incentive for rehabilitation of historic buildings for condominiums. Staff recommends that condominium projects be included as eligible for the Mills Act Program.

The Mills Act Program may be an effective tool to propel adaptive reuse of Oakland's historic buildings to condominiums. Also, as part of the program implementation, the Redevelopment Agency has requested concurrent review of any commercial project applying for the Mills Act Program to determine if other funding is available. This review could include condo conversions; it would act as a check to ensure that the City's funding sources are allocated appropriately. (See below.)

- All commercial applicants should be reviewed on a case-by-case basis by the Redevelopment Agency to determine other funding that might be available and if the Mills Act Program is necessary for the project to move forward financially.

Mills Act Pilot Program

This recommendation is included in the implementation recommendations.

- Recommend that during the first year of the pilot program, properties must already be historically designated or on the Local Register of Historic Resources applying for Heritage Property designation concurrent with a Mills Act application, to apply for the Program.

This recommendation is included in the implementation recommendations.

- The pilot program impact on City revenues should be limited to \$100,000/year or \$200,000 cumulatively for the two-year pilot program.

The Ordinance to enable the two-year pilot Mills Act Program will incorporate the above limits. These limits would allow unused funds in the first year to be rolled over to the second year, for a two-year total of \$200,000.

GENERAL PLAN POLICY

As stated earlier in this report the Historic Preservation Element of the General Plan calls specifically for adoption of a Mills Act Agreement program to reduce property tax assessments for Landmarks and Preservation Districts. In addition, the adoption of a Mills Act Program for the City of Oakland is strongly supported by other General Plan Policies, including:

- **Policy I/C1.4 Investing in Economically Distressed Areas of Oakland**
Economic investment, consistent with the City's overall economic strategy, should be encouraged, and, where feasible, should promote viable investment in economically distressed areas of the City.
- **Policy I/C2.2 Reusing Abandoned Buildings**
The reuse of abandoned industrial buildings by non-traditional activities should be encouraged where the uses are consistent with, and will assist in the attainment of, the goals and objectives of all elements of the Plan.
- **Policy D1.4 Planning for Old Oakland**
Old Oakland should be respected and promoted as a significant historic resource and character-defining element, with Washington Street as its core. Residential development in Old Oakland should be of mixed housing type, with ground-floor retail where feasible.
- **Policy D6.2 Reusing Vacant or Underutilized Buildings**
Existing vacant or underutilized buildings should be reused. Repair and rehabilitation, particularly of historic or architecturally significant structures, should be strongly encouraged.

Mills Act Pilot Program

- **Policy D12.1 Promoting Oakland's Strengths**
Build on and promote Oakland's educational resources, historic importance as an entertainment venue, existing cultural diversity, and strong arts community.
- **Policy N9.1 Recognizing Distinct Neighborhoods**
The City should encourage and support the identification of distinct neighborhoods.
- **Policy N9.2 Supporting Neighborhood Improvement**
The City should be supportive of the efforts of local neighborhood organizations in improving their neighborhoods, by providing information, guidance, and assistance where feasible.
- **Policy N9.8 Preserving History and Community**
Locations that create a sense of history and community within the City should be identified and preserved where feasible.
- **Policy N9.9 Respecting Architectural Integrity**
The City encourages rehabilitation efforts which respect the architectural integrity of a building's original style.

Historic Preservation Element

- **Objective 2: Preservation Incentives and Regulations**
To develop a system of preservation incentives and regulations for specially designated significant older properties which (i) enhances economic feasibility for preservation; (ii) provides a predictable and appropriate level of protection, based on each property's importance; (iii) reasonably balances preservation with other concerns; and (iv) operates efficiently, avoiding unnecessary regulatory procedures and review periods.
- **Policy 2:1 Preservation Incentives and Regulations for Designated Historic Properties**
The City will use a combination of incentives and regulations to encourage preservation of significant older properties and areas which have been designated as Landmarks, Preservation Districts, or Heritage Properties.
- **Policy 2.6: Preservation Incentives**
Landmarks and all properties contributing or potentially contributing to a Preservation District will be eligible for the following preservation incentives:
 - (i) Mills Act contracts for reducing property tax assessments;

Mills Act Pilot Program

- **Policy 3:14 Commercial Revitalization Programs**
The City will give special consideration to area wide commercial revitalization efforts which preserve or enhance significant numbers of existing or Potential Designated Historic Properties.

MILLS ACT AGREEMENT PROVISIONS

The Model Mills Act Agreement (Agreement) is attached (Attachment A). The major provisions and concepts of the Agreement are outlined below.

Participation: Participation on the part of the property owner is completely voluntary.

Agreement: The Agreement is between the City and the owner of a designated historic structure.

Tax Assessment: Upon receipt of an executed Agreement, the County Tax Assessor is directed by the State to re-assess the value of the property, resulting in a reduction of property tax for the owner, which will vary depending on a number of factors.

Term: The minimum term of an Agreement is ten years. An additional year is added at each anniversary date of the Agreement, unless the owner or the local government gives written notice of non-renewal by specified deadlines in an agreement year. If proper notice of non-renewal is given, the agreement will cease to be effective 10 years hence. However, see Cancellation below.

Preservation/Restoration/Rehabilitation/Maintenance Requirement: The Agreement requires that the owner preserve/rehabilitate and maintain cultural, historical and architectural characteristics of the listed historic property, as approved by the LPAB. Any preservation/rehabilitation and maintenance work must be done in conformance with the standards administered by the State of California's Office of Historic Preservation, the State Historical Building Code, and the Secretary of the Interior's Standards. At minimum, the Mills Act requires the owner to prevent deterioration of the property. The Agreement provisions would include language defining maintenance requirements, as outlined below.

Property Maintenance (Exhibit D of the Mills Act Agreement): The following conditions are prohibited:

1. Dilapidated, deteriorating, or unrepaired structures, such as: fences, roofs, doors, walls, and windows, broken windows, peeling exterior paint, broken structures;
2. Graffiti;
3. Incomplete exterior construction where no building inspections have been requested for six or more months, or for work which does not require a building permit, where there has been no significant progress for 90 days.

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Required Inspection: The Agreement provides for periodic inspections as necessary to determine the owner's compliance with terms of the agreement.

Applicability to New Owners: Both the benefits and the burdens of the Agreement transfer to new owners of a property that is subject to an Agreement. The Mills Act requires that the Agreements be recorded with the County Recorder. This will notify any prospective purchaser of a Mills Act property of the Agreement's existence.

Cancellation of Mills Act Agreements: The City Council may, after notice and hearing, cancel an Agreement if it determines that the owner has breached any of the above or other agreement terms or if the property no longer meets the criteria for listing on an official register. In the event of a cancellation, the owner is assessed a penalty of 12.5% of the property's market value at the time. The Mills Act does not contain a provision that would allow an owner to cancel an Agreement other than by giving 10 years notice of non-renewal (Term above).

The City of Oakland will also include a provision in the Agreement that allows for the cancellation of an Agreement in the event a property is destroyed through no fault of the owner. To the extent state law allows, the cancellation of agreements in this instance would occur without payment of the cancellation fee.

The City of Oakland will also include a provision in the Agreement that allows the owner to modify the work program in case the owner undergoes a catastrophic event, such as terminal illness, or loss of job for an extended period of time, minimum of six months.

Enforcement: The Mills Act allows the City to obtain a court order to compel the actual performance of each of the obligations contained in the Agreement. Thus, even though an owner may wish to default on the Agreement, he or she may be compelled to comply with the specific stipulations of the Agreement for its entire term.

MILLS ACT PROGRAM ISSUES

Issue #1: Determination of property eligibility for participation in the Mills Act;

LPAB support at 2/27/06 Meeting: Properties on the City of Oakland's Local Register of Historical Resources as those properties eligible for the Mills Act

Per Government Code, Section 50280.1, [Historical Property Contracts, (The Mills Act)], Qualified historical property is defined as:

- Privately owned property which is not exempt from property taxation and which meets either of the following:
 - i. Listed in the National Register of Historic Places or located in a registered historic district, as defined in Section 1.191-2(b) of Title 26 of the Code of Federal Regulations;

Mills Act Pilot Program

- ii. Listed in any state, city, county, or city and county official register of historical or architecturally significant sites, places, or landmarks.

Staff is recommending that ‘Qualified historical property’ for the City of Oakland include not only currently designated properties, but also the City of Oakland’s Local Register of Historical Resources. As defined in Policy 3.8 of the Historic Preservation Element, the following properties constitute the City of Oakland Local Register of Historical Resources:

- All Designated Historic Properties (Landmarks, Heritage Properties, Study List Properties, Preservation Districts, and S-7 and S-20 Combining Zone Properties); and
- Those Potential Designated Historic Properties that have an existing rating of “A” or “B” or are located within an Area of Primary Importance.

The Local Register of Historical Resources would be consistent with i. and ii. above. The Local Register includes those properties listed on the National Register (individually or in districts) because National Register properties by definition have an ‘A’ or ‘B’ rating or are located within an Area of Primary Importance.

PDHP’s on the Local Register but not currently designated would be required to minimally apply for and attain Heritage Property designation from the LPAB in order for the Mills Act Program application to move forward to the Planning Commission. As outlined earlier, the Heritage Property designation process would be concurrent with the Mills Act application process. Heritage Property designation could be achieved much more quickly than Landmark designation, due to the length and complexity of the Landmark designation process. Under the Pilot Program, applicants seeking City of Oakland Landmark designation would be required to go through the Landmark designation process (e.g. Landmark initiation, Planning Commission recommendation, City Council designation) prior to applying for a Mills Act Program agreement.

This criterion would not automatically include the vast majority of PDHP properties identified in an Area of Secondary Importance or rated C or below. Such PDHP’s would be required to first apply for ‘Landmark’ or ‘Heritage Property Designation.’

In some discussions regarding the Mills Act, it had been suggested that the Mills Act only apply to certain areas of the City, to only certain uses (e.g., residential, commercial, etc.), or to a pre-determined scale of a building (defined by square footage). Staff recommends that these criteria be kept open during the Pilot Program and results studied toward the end of the Pilot Program, to determine based on response, if the Mills Act should be more focused than Citywide.

However, as explained below, a General Plan Amendment is required to modify properties eligible for participation in the Mills Act Program.

Mills Act Pilot Program
General Plan Amendment

Adoption of a Mills Act Ordinance as outlined in this report would require a General Plan Historic Preservation Element Amendment. This would be agendaized for review by City Council concurrently with the adoption of the Mills Act Ordinance.

The Oakland General Plan, Historic Preservation Element Policy 2.6 outlines Preservation Incentives. The applicable sections of Policy 2.6 state (Please see Attachment E for the entire policy):

- (a) Landmarks and all properties contributing or potentially contributing to a Preservation District will be eligible for the following preservation incentives:*
 - (i) Mills Act contracts for reducing property tax assessments;*
 - (viii) fee waivers or reductions for City permits for demolition, new construction, or alterations.*
- (b) Compatible new development on vacant noncontributing Preservation District parcels will be eligible for Incentives (iv), (v), (vi) and (vii). Heritage Properties will be eligible for incentives (ii), (vi) and (vii).*

Policy 2.6(b) currently excludes Heritage Properties from eligibility for the Mills Act Program, and from fee waivers or reductions for City permits. It is staff's recommendation that Heritage Properties be eligible for the Mills Act Program, and that Heritage Properties that enter into Mills Act Agreements receive a design review fee waiver, as Landmarks and Preservation Districts currently receive. The applicant's Mills Act Work Program will require Design Review by the Landmarks Preservation Advisory Board in order to determine that any proposed maintenance or restoration/rehabilitation work is in compliance with the Secretary of Interior's Standards.

Issue #2: General Plan, Historic Preservation Element Policy 2.6 excludes Heritage Properties from eligibility for the Mills Act Program:

LPAB support at 2/27/06 Meeting: A General Plan Amendment to include 'Heritage' Properties as eligible for the Mills Act Program

Staff recommends that Heritage Properties be included as eligible for Mills Act Program agreements.

A Heritage Property is defined in Policy 2.5 of the Historic Preservation Element as follows:

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Properties which definitively warrant preservation but which are not Landmarks or Preservation Districts will be eligible as Heritage Properties and may be so designated by either the Landmarks Preservation Advisory Board or the City Planning Commission. Heritage Properties may also be designated by the Director of City Planning, subject to confirmation within 45 days by either the Board or Commission.

A property is eligible for Heritage Property designation if it either:

- (a) has received an existing or contingency rating of "A" (Highest Importance), "B" (Major Importance), or "C" (Secondary Importance) according to the methodology of the Intensive Survey;*
- (b) has received an existing or contingency rating of "A" or "B" from the Reconnaissance Survey; or*
- (c) contributes or potentially contributes to any area potentially eligible for Preservation District designation.*

Demolition, removal or major alterations of Heritage Properties may normally be postponed for up to 120 days.

Oakland has a wealth of individual historic buildings and neighborhoods matched by few other California cities. These historic properties consist of Landmarks and a number of individual Landmark quality A and B- rated properties; these are the outstanding and especially fine architectural examples of major historical importance. And, while some 140 of these individual buildings have been designated as City of Oakland Landmarks, few neighborhood districts have become designated Historic Districts. However, overall, Oakland's distinct historic neighborhoods contribute significantly to the historic architectural character of the City. Most often in these older neighborhoods, a high percentage of the housing stock qualifies as 'C' rated, superior or visually important examples. Individual 'C' rated structures could qualify for 'Heritage' property designation, prior to any Historic District designation. Maintaining the physical integrity of these abundant C-rated properties is critical to maintaining the historic character of each neighborhood.

Staff is recommending that Policy 2.6 be modified to include Heritage Property participation in the Mills Act Program because Historic District designation (the other manner which would determine these properties eligible for the Mills Act) is not a process that is easily achievable; it requires a significant level of neighborhood organization, time and commitment. However, since most of the properties in these neighborhoods would be individually eligible for historic designation as Heritage Properties, they could qualify for the Mills Act Program without waiting for the entire neighborhood to become a designated historic district.

Modifying Historic Preservation Element Policy 2.6 to include Heritage Property participation in the Mills Act Program is also particularly timely because of recent

Mills Act Pilot Program

adoption of two Redevelopment Plans, Central City East and West Oakland³. The Mills Act would provide a concurrent avenue of investment in these economically distressed areas of the City. The timing of these Redevelopment Plans and the proposed adoption of a Mills Act Program also coincides with a period of economic hardship for middle- to low-income homeowners and small business owners. The Mills Act is one of the very few incentives available to owners of historic properties and therefore is likely to encourage property maintenance and restoration/rehabilitation as well providing an incentive for additional historic designations. Over time, these individual Heritage Property designations along with Mills Act participation will lead to revitalization, reinvestment and a strong sense of community in each neighborhood, and in time, neighborhood organizations seeking Historic District designation.

Issue #3: General Plan, Historic Preservation Element Policy 2.6 excludes Heritage Properties from fee waivers or reductions for City permits.

LPAB support at 2/27/06 Meeting: A General Plan Amendment to waive Design Review fees for Heritage Properties participating in the Mills Act Program

Staff recommends that Heritage Properties applying for Design Review as part of a Mills Act Program agreements receive a fee waiver for design review. (Landmark properties, S-7 and S-20 Preservation Districts currently receive design review fee waivers.)

Historic Preservation Element Requirement for highest local designation for City-Assisted Properties

Policy 2.6 provides for fee waivers for Landmarks and Preservation Districts, but not for Heritage Properties unless the Heritage Property is designated as a Landmark, included in a Preservation District, or subject to protective covenants. This restriction comes from Policy 3.3: Designated Historic Property Status For Certain City-Assisted Properties (See Attachment F) which requires that to the extent consistent with other General Plan Goals, Policies and Objectives, projects involving existing or Potential Designated Historic Properties apply to receive the highest local designation for which they are eligible prior to issuance of a building permit, as a condition of financial assistance. However it does not require Landmark or Preservation District application for projects which are small-scale or do not change exterior appearance.

Staff finds that waiving design review fees for Heritage Properties is consistent with the intent of Policy 3.3, since in most cases these Mills Act agreement Heritage Properties would be small-scale. With respect to a change of exterior appearance, they may change; however, exterior changes would reverse past inappropriate design modifications, in order to meet the Secretary of Interior's Standards.

³ There are approximately 9,000 historic structures in these two areas, potentially eligible for some level of designation.

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In the technical report of the DRAFT Historic Preservation Element, Policy 3.3 is further clarified. The technical report states that this policy would mostly apply to financial assistance programs administered by the City's Office of Housing and Neighborhood Development and the Office of Economic Development and Employment. It further states that small scale projects should be exempted from applying for Landmark or Preservation District designation because they are usually for low-income households, many of which are owner occupied, or small businesses with limited financial resources. As an alternate, the technical report states that these should be designated as Heritage Properties.

In order to respond to the above two issues, Staff recommends amending Policy 2.6 as follows.

POLICY 2.6: PRESERVATION INCENTIVES

- (a) Landmarks and all properties contributing or potentially contributing to a Preservation District will be eligible for the following preservation incentives:
- ~~(i) Mills Act contracts for reducing property tax assessments;~~
 - ~~(i)(ii)~~ State Historical Building Code and other related alternative codes for older buildings such as the Uniform Code for Building Conservation (UCBC), to provide more flexible construction standards;
 - ~~(ii)(iii)~~ conservation easements to reduce property tax assessments and, for National Register properties, to obtain income tax deductions;
 - ~~(iii)(iv)~~ broader range of permitted or conditionally-permitted uses;
 - ~~(iv)(v)~~ transferable development rights;
 - ~~(v)(vi)~~ priority for economic development and community development project assistance and eligibility for possible historic preservation grants for low-income housing;
 - ~~(vi)(vii)~~ eligibility for acquisition, rehabilitation, and other development assistance form a possible historic preservation revolving fund or possible Marks historical rehabilitation bond program;
 - ~~(vii)(viii)~~ fee waivers or reductions for City permits for demolition, new construction, or alterations.

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- (b) Properties on the City’s Local Register of Historic Resources (Landmarks, Heritage properties, Preservation Study List properties, all properties contributing to an S-7 or an S-20 Preservation District, and those Potential Designated Historic

Properties that have an existing rating of “A” or “B” or are located within an Area of Primary Importance) will be eligible for the following preservation incentives:

(i) Mills Act agreements for reducing property tax assessments;

(ii) Waiver of City Design Review fees for design review associated with a Mills Act Agreement.

~~(c)(b)~~ Compatible new development on vacant noncontributing Preservation District parcels will be eligible for Incentives ~~(iv), (v), (vi) and (vii)~~ (iii), (iv), (v) and (vi). Heritage Properties will be eligible for incentives ~~(ii), (vi) and (vii)~~ (i), (v) and (vi).

Note: Policy 3.3 requires that in order for a Heritage Property to receive Incentives ~~(vi) (v) and (viii)~~ (vi), the Heritage Property in exchange for these incentives must either be designated as a Landmark, included in a Preservation District, or be subject to protective covenants with provisions similar to those for Landmarks and Preservation Districts except for projects which are small scale or do not change exterior appearance.

Issue #4: Eligibility of Condominium Projects for the Mills Act Program

LPAB support at 2/27/06 Meeting: Including condominium projects as eligible for the Mills Act Program

Staff recommends that owner-occupied condominium projects be eligible for the Mills Act Program because Federal Historic Tax Credits are not available for this type of project (available for income producing projects only). One Portland developer has used an Oregon program similar to the Mills Act as a marketing tool to offer potential condo buyers lower taxes. Thus, the Mills Act could be used in this way to provide an incentive for rehabilitation of historic buildings for condominiums.

EPS has researched the use of Mills Act contracts for condominium buildings in other California cities. These models provide examples of how the Act might be applied to condominiums. The Mills Act has been applied to condos in Orange Count and Los Angeles County using two basic approaches.

The first approach consists of a single contract with a condo owners’ association. Condo units are assessed based on the Mills Act formula and property tax savings show up on each individual owner’s property tax bill. The owners’ association is then responsible for

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compliance with the contract and may collect extra dues from members to make exterior and common area improvements. This approach has the advantage of allowing the City to deal with a single entity. The City of Long Beach currently has Mills Act contracts with the owners' associations of three to four condominium buildings.

In the second approach, separate contracts are established with individual condominium owners. The effect on property taxes, and therefore the tax incentive to participate, is the same as under a single contract with the owners' association. However, there is not enforcement through an owners' association or similar entity. The contracts may require owners to place their property tax savings in a special fund used to pay for improvements to exteriors and common areas, as has been done in the City of Pasadena.

Although the City of Los Angeles does not currently have Mills Act contracts with condominiums, six pending condo conversions will subdivide Los Angeles apartment buildings with existing Mills Act contracts. These contracts will remain in place and will initially reside with the owners' associations. The Los Angeles County Assessor's Office has indicated that it will require that the City execute contracts with individual condo owners within four years of conversion, though the specific structure of these contracts has not yet been determined.

Staff recommends that the actual structure of a Mills Act condominium project be structured so that the City deals with a single entity. The actual structure of the contracts beyond this requirement would need to be worked out with the County Assessor. The LPAB strongly recommended that condominium projects be included as eligible for the Mills Act Program because it could facilitate the rehabilitation of many of Oakland's Mills Act eligible buildings.

Issue #5: Control of fiscal impacts on the City through capping the dollar amount of revenue loss per year and/or capping the number of applications per year

LPAB support at 2/27/06 Meeting: Control of Mills Act fiscal impacts on the City by capping the dollar amount of revenue loss per year and capping the number of applications per year

Based on preliminary research and available data, the amount of taxes saved by the property owner is more than what the city loses, as the county absorbs the majority of the loss. Actual savings are determined by the County Assessor following submittal of the Mills Act Agreement. Therefore, the actual amount of revenue loss could not be determined until after entering into the Mills Act Agreement. EPS, our consultants, have provided a Mills Act Property Tax Calculator to estimate the impact of the Mills Act on any given property. A second table they have provided gives the associated impact on the City and/or Redevelopment Agency. We will test these tools during the Pilot Program for accuracy and reliability.

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Two methods have been used by other cities to cap revenue losses to cities: 1) limiting the number of agreements per year; or 2) limiting the dollar amount of tax revenue losses per year (estimated).

The City is proposing to do both during the Pilot Program. At this time, the City is looking at a proposed two-year pilot program, with a cap of 10 applications the first year and a cap of 20 applications in the second year. The pilot program impact on City revenues (per the recommendation of Redevelopment/Financial Services Agency) shall be limited to \$100,000/year or \$200,000 cumulatively for the two-year pilot program. However, rollovers of both applications and fiscal impacts shall be allowed, provided the total number of applications does not exceed 30 and the total fiscal impact does not exceed \$200,000 for the two-year Pilot Program.

Eighteen months after the implementation of a Mills Act Program following City Council approval, City staff would prepare a report for the City Council that addresses the effects on property tax revenue, staff workload and neighborhood revitalization and request that Council direct staff as to adoption of the Mills Act Program, future caps and processes.

Issue #6: Determination of Application and Inspection Fee Amounts/Master Fee Schedule Change

LPAB support at 2/27/06 Meeting: A Master Fee Schedule Change, including a Mills Act application fee of \$400 and an Mills Act Inspection Fee of \$100

Government Code Section 50281.1 Contract fee states:

The legislative body entering into a contract described in this article may 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. The Mills Act also requires periodic examination of the property to determine the owner's compliance with the contract.

Application Fee

In reviewing fees charged by cities with an existing Mills Act Program, there is range from no fees to a fee of +\$4,000, with a mid-range \$250 - \$400 for the Mills Act application. Both the West Oakland Redevelopment Plan and the Central City East Redevelopment Plan have mitigation measures to fund a Mills Act Study for the Redevelopment Project Area. It has been suggested that these funds might be used to cover application costs for these areas. In other areas of the City, staff is recommending an application fee that will offset some of the staff costs associated with application processing and initial agreement negotiations.

Staff is recommending an application fee of \$400. This is equivalent to approximately four and one-half hours of time, based on current Administrative Pre-application fees.

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The actual application, if implemented as outlined below, would require a report and hearing before the LPAB, the Planning Commission and Agreement Approval by the City Council.

The Mills Act Agreement requires the property owner to maintain the historic property and restore character defining features. Each applicant will be required to submit a work program. The LPAB will review and make the determination on the restoration/maintenance program. Following LPAB recommendation to the City Council to enter into a Mills Act Agreement with an applicant, the Planning Commission will review the application as a Consent Item, followed by a City Council authorization to the City Manager to execute the Mills Act Agreement.

Although time for this process is expected to exceed four and one-half hours, staff recommends that the fee be kept relatively low in order to encourage applications during this Pilot Program. Staff understands that cities with high Mills Act application fees have not been successful (e.g., where the fees are the highest, the Mills Act agreement has been applied for by only one applicant). Moreover, the fee should be assessed and collected at the time of application, even if the application is eventually denied (i.e., the agreement is not entered into) as the City will incur costs for processing the application.

Inspection Fee

Staff recommends an Inspection Fee of \$100 based on CEDA's building inspection fees. CEDA's charges for building inspections are rolled into the Permit Fee based on the value of the work. However, if a project exceeds the number of jobsite inspections limit, each additional jobsite visit fee is \$95.25. This would include a site visit and would be done on a periodic basis, or as necessary.

Administrative Fee

Staff is not recommending an Administrative Fee for the Pilot Program, although administrative tasks, such as answering inquiries, program out-reach, review of reports by city staff, building plan permit review, etc. will be required for the Pilot Program. Staff is recommending that this administrative time be tracked during the Pilot Program. When the Pilot Program is evaluated, an administrative fee can be considered, based on actual use of time.

The Adoption of a Mills Act Ordinance will require a change to the Master Fee Schedule by the City Council. This will be pursued concurrently with the proposed Mills Act Pilot Program.

Issue # 7: Implementation of the program;

Staff is recommending the following procedures for implementation:

- Process for review and approval of applications – once a year deadline;

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(deadline is to be coordinated to meet County Assessor's review deadline for tax adjustment);

- Applications during the first year of the pilot program must be Designated Historic Properties, or on the Local Register of Historic Resources
- applying for Heritage Property Designation concurrent with the Mills Act application;
- Applications should be considered on a first-come, first-served basis. In the case of applications received simultaneously and exceeding the number of allowed Mills Act Agreements for that year, Landmark Properties, S-7 and S-20 Historic Districts should have priority over other historic properties on the Local Register of Historic Resources. Also, a broad variety of building types, scale and uses is desired to obtain as much information as possible during the Pilot Program and this will be taken into consideration.
- Limit agreements to exterior restoration/maintenance, unless the LPAB determines that the property includes significant historic interiors.
- Limit work to character defining historic features and maintenance for structural integrity;
- If the property does not require any maintenance or restoration/rehabilitation, it will not be considered for a Mills Act Agreement;
- Properties proposing additions will be eligible for the Mills Act Program if the work meets the Secretary of Interior's Standards, and if the addition is part of an overall rehabilitation;
- If a structure is in poor repair or has been altered in some way to compromise its historic status, the City and applicant agree in the Agreement to remedy the compromises within a prescribed time frame or deny the request;
- Submittal requirements include a work program with an estimated budget. At each phase of the proposal, or for the entire work program, LPAB design review will be required;
- LPAB reviews and recommends to the City Council that the Mills Act application be approved, conditionally approved or denied, with notice of recommendation to the Planning Commission;
- Consider, prior to LPAB review, other sources of subsidies available when determining qualifications for a Mills Act Agreement. For example, does the building qualify for Historic Tax Credits? For a Redevelopment Façade Grant, etc.? Determine through City's Redevelopment office if there is a need of the Mills Act Program for high end projects, or if other available funds might meet the project's financial need.
- Once agreement is approved, applicant shall submit plans based on work program to Historic Planning Staff for LPAB design review;
- Design Review fees are waived;
- Regular inspections required.

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RECOMMENDATION

1. Receive any testimony from interested citizens;
2. Comment and give staff direction on the Mills Act Program issues outlined in this report;
3. Review the Model Agreement, make recommendations for any modifications and or additions;
4. Direct staff to forward the two-year pilot Mills Act Property Tax Abatement Program for Qualified Historic Properties and Model Agreement to the City Council for public hearing, with a recommendation to City Council to:
 - a) amend the General Plan, Historic Preservation Element (HPE) Policy as outlined in this report;
 - b) amend the Fee Schedule to add the Mills Act Program Application Fee of \$400 and the Mills Act Program Inspection Fee of \$100/inspection;
 - c) adopt an Ordinance establishing a two-year pilot Mills Act Property Tax Abatement Program for Qualified Historic Properties, pursuant to Section 50280-90 of the California Government Code and Section 439.2 of the California Revenue and Taxation Code;
 - d) approve the Model Mills Act Agreement; and
 - e) direct Staff to implement the Mills Act Property Tax Abatement Program.

Respectfully submitted,

CLAUDIA CAPPPIO
Development Director

Prepared by:

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Major Projects and Historic Preservation

Attachments:

- A:** Model Mills Act Agreement for Preservation of Historic Property
- B:** Mills Act Summary
- C:** EPS Report

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D: Section 50280-90 of the California Government Code and Section 439.2 of the California Revenue and Taxation Code

E. General Plan Historic Preservation Policy, Policy 2.6: Preservation Incentives

F. General Plan Historic Preservation Policy, Policy 3.3: Designated Historic Property Status for Certain City-Assisted Properties