

CITY OF OAKLAND
AGENDA REPORT

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OFFICE OF THE CITY CLERK
OAKLAND

2009 NOV 18 PM 12:45

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: December 1, 2009

RE: **Public Hearing for:**

(A) City Resolution To Approve Eleven Mills Act Contracts Between The City Of Oakland And The Following Properties: 1782 8th Street, 227 John Street, 1225 12th Street, 2429 13th Avenue, 1024 Adeline Street, 614 Haddon Road, 712-716 Peralta Street, 1676 12th Street, 3415-3417 Martin Luther King Jr. Way, 1717 16th Avenue, 460 W. MacArthur Boulevard, Pursuant To Ordinance No. 12784 C.M.S. [Two-Year Pilot Mills Act Program], To Provide These Owners With Property Tax Reductions In Exchange For Their Agreement To Repair And Maintain Their Historic Property In Accordance With Submitted Work Program.

(B) City Ordinance expanding and making permanent the Mills Act Property Tax Abatement Program For Qualified Historic Properties which was established as a Two-Year Pilot Program via Ordinance No. 12784 C.M.S.

SUMMARY

(A) Resolution Approving 2009 Mills Act Contract Applications

Per City Council Ordinance No. 12784 (Attachment A), a two-year Pilot Mills Act Property Tax Abatement Program was adopted on February 6, 2007. The Mills Act Program 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 to preserve and maintain the historic characteristics of the property.

The Ordinance sets a limit of ten Mills Act contracts for the first year, 20 for the second year, and also limits the pilot program impact on City revenues to \$25,000/year, and on Redevelopment revenues to \$250,000/year, with additional limits of \$25,000/year in any single redevelopment area.

Twenty-one Mills Act Applications were submitted to the City in 2008 for the first year and six were submitted for this year, the second year of the two-year Mills Act Pilot Program. The Landmarks Preservation Advisory Board (LPAB) is recommending eleven applications for Mills Act Contracts to the City Council, for the 2009 Mills Act Program.

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(B) Ordinance Expanding and Making Permanent the Mills Act Property Tax Abatement Program

Under implementation of the Pilot Program, it has been discovered that large commercial properties that have applied for the Program have exceeded the tax revenue loss limits and therefore staff was not able to process those applications. Based on the Mills Act Calculator, the re-assessed value of the commercial property has in all estimated cases, brought a significant increase in tax revenues to the City, even though the Mills Act Property tax calculation also provides a reduction in taxes to the property owner (see case study example under Fiscal Impacts).

In addition to the increased tax revenues to the City in support of expanding the Mills Act Program, the Planning Commission has recently recommended that that the Program be expanded, in their review and discussion of the recent Zoning Regulations Update for the Central Business District.

The expansion proposes to raise the limits of Redevelopment Tax Revenue losses in the Central Business District and to allow any property applying for a Mills Act Contract anywhere in the City that exceeds the limits of the tax revenue losses to request special consideration of the City Council.

This proposal also concurrently proposes to make permanent the Mills Act Property Tax Abatement Program. The implementation of the two-year pilot program has been successful in that applications are consistent with the limits set forth in the Ordinance, with the exception of the large commercial buildings, and the geographic diversity of application submittals has demonstrated interest in the program throughout the City (Attachment B). The approved 2008 applications will begin the first year of their Work Program this 2009-2010 property tax year.

FISCAL IMPACT

(A) Resolution Approving 2009 Mills Act Contract Applications

Using the Mills Act Calculator¹ as an estimator to check compliance with limits set out in the Ordinance, the eleven recommended applications result in the following tax decreases to applicants:

¹ The city makes no warranties or representations about the accuracy or validity of the Mills Act Property Tax Calculator - it is merely an information tool that applicants may use (at their sole risk), which does not substitute/replace legal counsel or a financial advisor. Actual Tax deductions, if any, will be calculated by the County Assessor's Office after the Assessor has received the executed Mills Act contracts.

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City Revenues (3 applications)	\$ 4,136/year	
Central City East Redevelopment Revenues (1 application)		\$ 2,200/year
Oak Center Redevelopment Revenues (2 applications)		\$ 7,276/year
West Oakland Redevelopment Revenues (4 applications)		\$ 7,065/year
Broadway/MacArthur/San Pablo Redevelopment Revenues (1 application)		\$ 4,073/year
TOTAL – City Revenues Losses	\$ 4,136/year	
TOTAL – Redevelopment Revenues Losses		\$ 20,614/year

These dollar amounts comply with the City revenue limit of \$25,000/year and the Redevelopment revenue limits of \$250,000/year and \$25,000/year in any single redevelopment area.

(B) Ordinance Expanding and Making Permanent the Mills Act Property Tax Abatement Program

Using the Mills Act Calculator as an estimator to check compliance with limits set out in the Ordinance, staff has outlined below a typical case for a large commercial building. This case is based on one of the 2008 applications received by the City. The County Tax Assessor uses several methods to calculate taxes for a Mills Act Contract property, including a Market Value approach and the Mills Act approach. After calculating each method, the lowest of the total property tax amount is billed to the property owner.

Current Status of Proposed Mills Act Property

Current Taxes

Assessed Value	\$ 3,121,200
Total Property Taxes	40,754

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Assessed Value Based on Mills Act Formula	6,916,157
Total Property Tax Based on Mills Act Formula	90,304

CHANGE IN TAXES
(for current status of property under
the Mills Act formula)

Increase due to Mills Act	+\$49,551
Increase in City/Redevelopment Revenues from Current Status	0

Note that while the building remains in its current status (i.e., not rehabilitated) under the Mills Act tax formula calculation, the taxes would increase over the market tax formula calculation method. Therefore, the current lower market tax calculation would remain in effect. The City would not lose or gain any tax revenues under a Mills Act Contract until the property had been rehabilitated and reassessed by the County Tax Assessor for those rehabilitation improvements. Staff has found that this is a typical scenario in all three of the large commercial property applications the City has received.

Rehabilitated Status of Proposed Mills Act Property

Taxes after Rehabilitation and
County Reassessment

Re-assessed Value	\$ 13,000,000
Total Property Tax	169,741
Assessed Value Based on Mills Act Formula	6,916,157
Total Property Tax Based on Mills Act Formula	90,304

CHANGE IN TAXES

Decrease due to Mills Act	-\$79,437
Increase in City Revenues from Rehabilitated Status	+\$49,550

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Note that once the building has been rehabilitated and the County Tax Assessor has re-assessed the property, the taxes would increase from \$40,754 to \$169,741 under the market tax assessment formula. Under the Mills Act formula, the total property taxes are \$90,304. However, under the rehabilitated status of the building, the Mills Act formula would be used since it is the lesser of the two calculations, \$169,741 and \$90,304. As a result the property owner's taxes would be reduced by \$79,437 and the City's tax revenues would be increased by \$49,550 under the rehabilitated Mills Act Tax calculation.

A Mills Act Contract would not increase a property owner's taxes above that of the market property tax assessment calculation method, because once a Mills Act Contract is in effect, the tax assessor calculates the property taxes under both methods and the lowest tax amount becomes the property's total tax.

The two-year pilot program impact on the Redevelopment Agency's gross property tax revenues was limited to \$250,000/year or \$500,000 cumulatively for the two-year pilot program, with additional limits of \$25,000/year or \$50,000 cumulatively on any single redevelopment area. A \$250,000 tax loss would result in an annual loss of 0.21% of the gross annual redevelopment tax revenues, which total \$120.7 million. This impact will continue annually until a contract is terminated, either by the property owner or the City.

The expansion proposes to raise the limits of Redevelopment Tax Revenue losses in the Central Business District to \$100,000/building/year or \$250,000/year cumulatively (see case study example under Fiscal Impacts). The proposal also proposes that any property applying for a Mills Act Contract anywhere in the City that exceeds the limits of the tax revenue losses may request special consideration of the City Council. This would expand the total annual loss to 0.41% of the gross annual redevelopment tax revenues.

The remainder redevelopment area's limits would remain the same as the two-year pilot program. These are \$25,000/year in any single redevelopment area with a cumulative limit of \$250,000/year for all redevelopment areas (i.e., not including the Central Business District).

The permanent Mills Act Property Tax Abatement Program would utilize the same City tax revenue loss limits as the two-year pilot program, \$25,000/year. A \$25,000 tax loss amounts to 0.02% of the City's annual tax revenues, which total \$129.8 million.

BACKGROUND

(A) Resolution Approving 2009 Mills Act Contract Applications

Number and Historic Status

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Six new Mills Act Applications were submitted to the City for the second year of the two-year Mills Act Pilot Program. Five of the six are complete and are moving forward for consideration. Five applications have been rolled over from 2008. One application that was received in the 2008 but was incomplete as of last year's deadline has been completed and carried forward for consideration this year. The Landmarks Preservation Advisory Board (LPAB) is recommending eleven applications for Mills Act Contracts to the City Council, for the 2009 Mills Act Program.

Of the 11 applications considered this year, seven properties are Local Register properties². Five properties are Designated Historic Properties and six properties are Potential Designated Historic Properties that have applied and been approved for Heritage Property Designation. With respect to historic districts, two properties are contributors in a Designated Historic District (S-20 Historic Preservation District Combining Zone); four properties are located in Areas of Primary Importance, or APIs; four properties are in Areas of Secondary Importance, or ASIs; and one property is not in a historic district. .

The individual applications are further described below.

Special Requirements for Recent New Redevelopment Areas

The Ordinance also states that since implementing the Mills Act is a Mitigation Measure for both the West Oakland Redevelopment Plan and the Central City East Redevelopment Plan, the pilot program implementation will pursue a minimum of 20% of the 30 Mills Act Contracts (six contracts) from each of the two areas.

For the West Oakland Redevelopment Area (this does not include Oak Center), one application was submitted last year and recommended to be rolled over for approval this year, and three new applications were submitted and are being recommended for approval this year. For the Central City East Redevelopment Area, three applications were submitted and approved in the first year, of which one did not sign the Mills Act Contract, and one new application was submitted and is being recommended for approval this year. If all recommended applications are approved this year, this will bring the totals for the two-year pilot program to four Mills Act contracts in the West Oakland Redevelopment Area and three in the Central City East Redevelopment Area. This is approximately 20% from each of the two areas, of the twenty-one total contracts to be approved during the two-year pilot program.

Landmark Preservation Advisory Board Recommendation – September 14, 2009

² A local register property is a building with an Oakland Cultural Heritage Survey rating of 'A' or 'B', a Potential Designated Historic Property (PDHP) located in an Area of Primary Importance, a property listed on the Preservation Study List. Local Register properties and other PDHPs are required to concurrently submit an application for Landmark Designation.

A Landmarks Preservation Advisory Board (LPAB) sub-committee was created to work with Historic Preservation staff to review the eleven applications and make selection recommendations to the full Landmarks Board. The Landmarks sub-committee based their review on Standards, based on the Selection Criteria stated in the Mills Act Application, which were reviewed and approved by the full Board. These review criteria include:

- the property's historic status;
- the financial scope of the work program must equal or be greater than the property tax reduction;
- the visibility of the work, scope of the work in proportion to the scale of the property, and prominence of the building;
- the potential of the scope of work to act as a neighborhood catalyst;
- the need for stabilization of the property (structural, seismic work);
- the timeline of the work program over the next ten years;
- geographic distribution of applications to represent the Mills Act Program citywide;
- building type of the property to represent the Mills Act Program for a variety of building types including residential, commercial, etc., and
- location in the West Oakland Redevelopment Area or the Central City East Redevelopment Area.

At the September 14, 2009 LPAB meeting, the Mills Act sub-committee recommended approval of eleven applications for Mills Act Contracts as outlined in the Ordinance. The full LPAB unanimously passed a **MOTION** made by **Rosemary Muller** and seconded by **Thomas Biggs** to:

- 1) recommend the eleven applications outlined in the staff report for recommendation to the City Council, for the 2009 Mills Act Program; and
- 2) forward the same recommendations to the Planning Commission as an Information Item (as required by the adopted process).

(B) *Ordinance Expanding and Making Permanent the Mills Act Property Tax Abatement Program*

Under implementation of the Pilot Program, it has been discovered that large commercial properties that have applied for the Program have exceeded the tax revenue loss limits and therefore staff was not able to process those applications. Three applications for large scale commercial buildings located in the Central District Redevelopment area submitted Mills Act applications in 2008. Based on the Mills Act Calculator, which provides an estimation of tax savings, each of these commercial buildings would exceed the \$25,000/year limit in a single redevelopment area. However, when a commercial building is rehabilitated, usually in a short

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amount of time compared to a residential property timeline, the re-assessed value of the commercial property has in all estimated cases, brought a significant increase in tax revenues to the City, even though the Mills Act Property tax calculation also provides a reduction in taxes to the property owner (see case study example under Fiscal Impacts).

In addition to the increased tax revenues to the City in support of expanding the Mills Act Program, the Planning Commission has recently recommended that that the Program be expanded, in their review of the recent Zoning Regulations Update for the Central Business District, adopted by the Council on July 21, 2009. In their discussion, the Commission strongly recommended to:

- increase the Mills Act current loss of revenue limits for the Central Business District; and
- adopt a permanent Mills Act Program for the Central Business District.

The expansion proposes to raise the limits of Redevelopment Tax Revenue losses in the Central Business District and that any property applying for a Mills Act Contract anywhere in the City that exceeds the limits of the tax revenue losses may request special consideration of the City Council.

The proposal concurrently proposes to make permanent the Mills Act Property Tax Abatement Program. The two-year pilot program has demonstrated that applications are consistent with the limits set forth in the Ordinance, with the exception of the large commercial buildings. In addition, the geographic diversity of application submittals has demonstrated interest in the program throughout the City (Attachment B).

KEY ISSUES AND IMPACTS

(A) Resolution Approving 2009 Mills Act Contract Applications

The LPAB took a multi-layered approach to review and evaluate the applications, including review of the application materials submitted, the Selection Criteria addressed in the application, and the Standards developed by the 2008 sub-committee. Much of the sub-committee and staff discussion focused on the immediate necessity of the work to deter any further deterioration, visibility of the work being proposed to act as a catalyst for neighborhood revitalization and as a model for the Mills Act Program, neighborhood diversity to spread the program to as many neighborhoods as possible, building type diversity to illustrate the flexibility of the Mills Act for different types of properties, and the thoroughness of the application above and beyond being 'Complete'. Listed below are the eleven Mills Act Contract recommendations.

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Applications Rolled Over from 2008

1 - MA08-002 – 1782 8th Street

OCHS Rating: Ba1+, Major Importance with a contingency rating of Highest Importance, Contributor to an Area of Primary Importance, Designated Historic Property (Study List)

Redevelopment District: West Oakland

Council District: 3 (Nadel)

Significance: The Berry-Shorey house is a two-story wood frame Italianate house, dating to 1872-73. It has a rectangular plan and a new concrete foundation. It is a very early West Oakland house with strong associations with Oakland's 19th and 20th century African-American community.



It contributes to the National Register eligible Oakland Point District. This district was settled largely by families associated with the railroad or like the Shoreys, with the waterfront. John Winfield Pearson, owner from 1873-74, was a real estate speculator and a major developer in West Oakland who reportedly owned 110 tenement houses. The Shorey family obtained title in 1888, with two interim owners. William T. Shorey (1859-1919) was born on the island of Barbados in the British West Indies. With a strong attraction to the sea, he left for Boston as a cabin boy, and then worked on a whaler out of New England until the whaling industry shifted to the West Coast. He rose rapidly from mate to officer to captain. In 1886 he became the only black captain on the Pacific Coast. He was a pillar of the community and a leader in society. Booker T. Washington came to speak at a dinner here in 1903, raising funds for Tuskegee Institute.

As is apparent from the photo, this house has recently been substantially restored, based on a historic photograph. Because priority in the first year was given to applications where immediate and visible work was needed, this application was recommended for rollover and consideration in the second year.

Work Program:

- Plant tree, install fence and flagpole and historic plaque
- Replace hardscape in front with period surface
- Install fire rated windows on zero lot line side
- Match upper window hood trim on all windows
- Paint exterior of house every 5 years

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Application Strengths:

- Preserving neighborhood character
- Catalyst for neighborhood
- Conserving materials and energy embodied in existing building
- Reversal of inappropriate work
- Restoration of character defining features
- Located in West Oakland Redevelopment Area

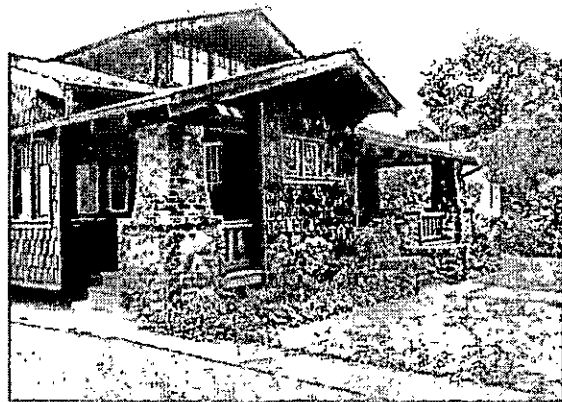
2 - MA08-012 – 227 John Street

OCHS Rating: B-2+, Major Importance, Contributor to an Area of Secondary Importance, Designated Historic Property

Redevelopment District: Not in a Redevelopment District

Council District: 1 (Brunner)

Significance: The Walter Upward



house is not only a fine period house, but is also a particularly successful example of the Strang Brothers Craftsman bungalows. A building permit was submitted to the City of Oakland in 1914 for this one-and-a-half story house, built on a pie-shaped lot. 227 John Street has many of the Strang trademarks shared by most of the homes in the Burbank-Portola area of Alameda, including broad porches with massive river rock and/or clinker brick pillars, porch piers, and chimneys, with a composition shingle roof. This property possesses the unusual feature of a small porte-cochere off the driveway. Mr. Upward lived in the house with his wife for about two years, afterwards moving into a series of larger, grander houses throughout Oakland. He is buried at Mountain View Cemetery, about five blocks from the property.

Work Program:

- Foundation improvement and seismic upgrading
- Repair of rafter ends
- Stripping and repainting wood peeling shingles
- Repoint and repair brick and rock work
- Replace gutters/downspouts
- Replace aluminum windows [from the photos, there are very few]
- Repaint all window sash and all wood shingles
- Ventilate attic

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- Replace modern doors at back of house and garage
- Reroof garage and house
- Upgrade front porch and wooden steps

Application Strengths:

- Stabilization/structural/seismic work
- Reversal of inappropriate work
- Restoration of character defining features
- Repairs/maintenance

3 - MA08-011 – 1225 12th Street

OCHS Rating: C2+ / S20, Secondary Importance, Contributor to an Area of Secondary Importance, Contributor to the Oak Center Designated S-20 District

Redevelopment District: Oak Center

Council District: 3 (Nadel)

Significance: This shingle style-Colonial Revival house was built in 1899-00. Historically the building reflects the 19th century development of Oakland neighborhoods. It is part of a row of similar style homes.



Work Program:

- Termite treatment
- Replace side/upper siding shingles
- Repaint exterior
- Replace doors and windows with historically accurate and energy efficient models
- Rebuild front and back porches
- Rebuild original fence/gate
- Remove concrete and contaminated soil and re-landscape

Application Strengths:

- Part of a continuous group/streetscape whose continuity would be improved by the work
- Increasing architectural integrity
- Preserving neighborhood character
- Reversal of inappropriate work
- Restoration of character defining features
- Repair/maintenance

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4 - MA08-006 – 2429 13th Avenue

OCHS Rating: C3, Secondary Importance, Not in a district, Designated Historic Property

Redevelopment District: Not in a Redevelopment District

Council District: 2 (Kernighan)

Significance: Built in 1888-90, the Crane house is described by the applicant as an early example of a free classic Queen Anne. The spindlework type of Queen Anne built from about 1880-90 began to lose favor to the cleaner lines of the free classic style. There are earlier large Queen Annes in the surrounding neighborhood, more of the spindlework type. This is one of the only free classic types in the immediate neighborhood.

It would have been an innovative architect who embraced the new free classic style of Queen Anne. Details include fish scale shingles, large gable ends, clapboard siding sections, and Swiss-cheese brackets. It has a partial porch, with classic columns typical of the free classic type Queen Anne.



Work Program:

- Engineering plans for overall project
- Foundation replacement
- Seismic retrofitting
- Retaining wall

Application Strengths:

- Prominent location
- Stabilization/structural/seismic work
- Major repair

5 - MA08-014 – 1024 Adeline Street

OCHS Rating: C2+, S20, - Secondary Importance, Contributor to an Area of Secondary Importance, Contributor to the Oak Center Designated S-20 District

Redevelopment District: Oak Center

Council District: 3 (Nadel)

Significance: This Italianate house was



built in 1875-76. Historically, the building reflects the 19th century development of Oakland neighborhoods. The carriage house in the back appears to be slightly newer.

Work Program:

- Repair windows/update plumbing
- Repair dry rot
- Replace foundation
- New roof
- Paint
- Repair driveway
- Update electrical system
- Update electrical/plumbing – back unit

Application Strengths:

- Prominent street
- Stabilization/structural/seismic work
- Major repair/maintenance

6 - MA08-015 – 614 Haddon Road

OCHS Rating: C1+, Secondary Importance,
Contributor to an Area
of Primary Importance
Heritage Property
Designation Required

Redevelopment District: Not in a Redevelopment
District

Council District: 2 (Kernighan)

Significance: Built in 1922, this house is



“a very good example of the modern type of English architecture,” as described in an article featuring the home in *The Home Designer and Garden Beautiful* magazine in the 1920s. It is located in Haddon Hill, a neighborhood of distinguished Period Revival houses. The Tudor revival style draws from a variety of English building traditions and typically emphasizes high-pitched, gabled roofs and elaborate chimneys. Among the signature English cottage details incorporated into this house are multiple groups of casement windows, rolled eaves imitating thatch, stucco wall cladding, cross gables, and a whimsical roof-line that suggests an eyebrow window. The deep slope of the front porch roof creates a feeling of being low to the ground. The *Home Designer and Garden Beautiful* article features the fountain and landscaping in the rear yard, which are proposed to be restored as part of the Mills Act work program.

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Work Program:

- French drain repair in rear of house
- Fountain and pond repair
- Landscaping
- Rear steps replacement
- Stucco repair
- Repair roof water leaks
- Exterior painting of home and carriage house
- Wood window replacement and repair
- Driveway crack repairs and painting

Application Strengths:

- Visible location in an important historic and architectural district
- Preserving neighborhood character
- Stabilization work – drainage and waterproofing
- Reversal of inappropriate window alterations

New Applications - 2009

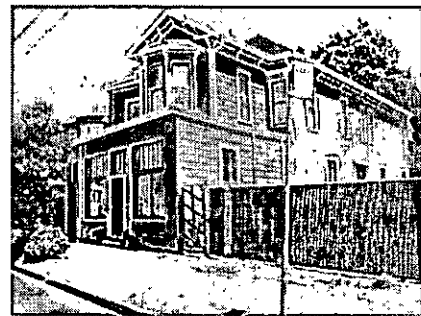
7 MA09-001 – 712-716 Peralta Street

OCHS Rating: Cb-1+, Secondary Importance with a contingency rating of Major Importance, Contributor to an Area of Primary Importance

Redevelopment District: West Oakland

Council District: 3 (Nadel)

Significance: This property (historic name: Eiben & Nor House - West Oakland Free Reading Room) is an early example of a mixed use building. The residential portion, an Italianate style cottage, was constructed in 1880-81 and the storefront addition and lower story were constructed in 1907. The commercial portion served as the West Oakland Library from approximately the mid-1910s until the current branch of the West Oakland Library at 1801 Adeline Street opened in the mid-1970s. As such, the building represents the 19th century development of Oakland neighborhoods as well as early civic institutions and activities in West Oakland.



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The building is in fair condition and its historic integrity remains high. It has been determined eligible for listing on the National Register of Historic Places as a contributor to the Oakland Point historic district. Its current use is live-work.

Work Program:

- Replace roof
- New exterior paint
- Replace exterior doors (front and back) and south side window
- Upgrade and repair rear stairs and patio
- Replace missing trim accents and add period/vintage lighting to front
- Remove fence, berm, concrete, etc from back yard

Application Strengths:

- Historically significant building that links the Oakland Point API and the 7th Street S-7 districts
- Strong potential to act as a catalyst for neighborhood revitalization
- Major repair and maintenance work
- Redevelopment goal of Mills Act Ordinance for West Oakland properties

8 MA09-006 – 1676 12th Street

OCHS Rating: C1+, Secondary Importance,
Contributor to an Area of
Primary Importance

Redevelopment District: West Oakland

Council District: 3 (Nadel)

Significance: This small, two-story Italianate house was built in 1876-77 during the peak of the West Oakland development boom years. It is one of hundreds of Victorian houses built in Oakland Point to accommodate the demand for housing for railroad workers after Oakland was designated in 1869 as the terminus for Central Pacific's



transcontinental railroad. The Oakland Point district has been determined eligible for listing on the National Register of Historic Places.

Set back deeply on the lot and surrounded by open space and large redwoods, the house is unique in its size – only 15 feet in width – and its gable roof which peeks out slightly behind the flat parapet. The house has a long, narrow single-story rear addition that was probably built at a later time. Although it remains structurally sound, various exterior elements are dilapidated or missing and are in need of replacement.

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Work Program:

- Lead paint removal, sanding and prep; new exterior paint
- Repair siding
- Restore decorative brackets under eaves
- Restore transom window over front door
- Repair front, side and rear porches
- Replace windows on front first story
- Relocate utility meters to inside crawl space

Application Strengths:

- Major repair and maintenance work
- Restoration of character-defining features
- Strong potential to act as catalyst for neighborhood revitalization
- Redevelopment goal of Mills Act Ordinance for West Oakland properties

9 MA09-007 – 3415-3417 Martin Luther King Jr. Way

OCHS Rating: C2+, Secondary Importance,
Contributor to an Area of
Secondary Importance

Redevelopment District: West Oakland

Council District: 3 (Nadel)

Significance: This fine example of a Craftsman flats building was designed by Charles McCall, an architect who was trained in England and practiced in Oakland from 1901 until the 1940s. It is two stories and has a nested low gable roof, wide eaves, a front shallow angled bay on the ground floor, unpainted wood shingles and contrasting painted sills and window trim. Some of the building's original decorative elements are missing, such as cornice molding over the side entryway arch. Some original wood windows have also been replaced with aluminum. Its present use is a residential duplex.



Work Program:

- Architectural drawings for restoration of missing details
- Restore original facing around front door
- Restore original cornice over entryway arch
- Replace existing sliding doors to upper and lower porches with new hinged French doors
- Install new steps at front gate and construct new path to and along front garden bed

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- Remove existing (non-original) cedar exterior shingles and replace with new wood shingles to match size and orientation of original. Install new matching siding on two sides of garage

Application Strengths:

- Prominent location on major street
- Restoration of character-defining features
- Strong potential to act as catalyst for neighborhood revitalization
- Redevelopment goal of Mills Act Ordinance for West Oakland properties

10 MA09-004 – 1717 16th Avenue

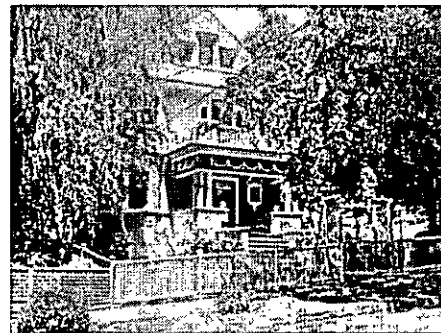
OCHS Rating: C2+, Secondary Importance, Contributor to an Area of Secondary Importance

Redevelopment District: Central City East

Council District: 2 (Kernighan)

Significance: This 1901 three-story wood frame house has elements of the Colonial Revival, Shingle, and Queen Anne styles. It has a particularly noteworthy history in that it has been re-located

twice, following patterns of neighborhood development in Oakland. Its original location was downtown on Webster Street just south of 22nd Street (then called Walnut Street), and it was moved in 1908 to 395 Staten Avenue in the Adams Point area. Threatened in the 1970s by condominium development in Adams Point, it was again relocated to its current location across the street from San Antonio Park in 1981, at which time it was extensively renovated and converted from a single-family home to a duplex.



The house features many unique architectural details, including two half-cylindrical windows, a five-sided turret on the ground floor with a smaller round turret above on the second floor, two sets of triple columns on the front porch, and a gable roof with no eaves.

Work Program:

- Install new rain gutters
- Insulate bottom floor underneath crawl space
- Replace double-hung windows (nine total)
- Prep and paint exterior, including all porches, steps, and window trim & sills

Application Strengths:

- Visually prominent house and location – across from San Antonio Park

- Maintenance and repair of minor wear and tear
- Stabilization and waterproofing – rain gutters, windows, and paint
- Redevelopment goal of Mills Act Ordinance for Central City East properties
- Exceptionally thorough application

11 MA09-005 – 460 W. MacArthur Boulevard

OCHS Rating: D2+, Minor Importance,
Contributor to an Area of
Secondary Importance

Redevelopment District: Broadway/MacArthur/San Pablo

Council District: 1 (Brunner)

Significance: Built in 1908, this is a fine example of the Classic Box style. The original owner and occupant, Elizabeth Latimer (née de Verner), had a significant impact on the surrounding neighborhood. Between 1891 and 1895 she acquired six parcels in the area between 38th Street and Moss Avenue and between Telegraph Avenue and Ruby Street. She developed houses on these parcels between 1902 and 1907 and also created Latimer Place, the small cross-street that borders the property's east side. The house reflects the development boom in Oakland following the 1906 earthquake and expansion of "streetcar suburbs" to the north of downtown.



The two-story flats building has retained its original wood siding and many of its original decorative details. Some of these include window trim, decorative brackets under wide eaves, and fluted Corinthian columns on the front corners of the upper story.

Work Program:

- Repair and restore original siding, address leakage problems
- Remove existing cyclone fence and replace with more attractive and compatible fence
- Caulking and painting exterior
- Replace vinyl windows with wood
- Repair front and rear porches and restore original porch elements (railings, columns, brickwork)

Application Strengths:

- Major structural work and weatherproofing
- Restoration of character-defining elements
- Good example of Mills Act encouraging appropriate historical rehabilitation
- Visible location on major street
- Strong potential to act as catalyst for neighborhood revitalization

Item: _____
CED Committee
December 1, 2009

(B) Ordinance Expanding and Making Permanent the Mills Act Property Tax Abatement Program

The two-year pilot program impact on the Redevelopment Agency's gross property tax revenues was limited to \$250,000/year or \$500,000 cumulatively for the two-year pilot program, with additional limits of \$25,000/year or \$50,000 cumulatively on any single redevelopment area. A \$250,000 tax loss would result in an annual loss of 0.21% of the gross annual redevelopment tax revenues, which total \$120.7 million. This impact will continue annually until a contract is terminated, either by the property owner or the City.

The expansion proposes to raise the limits of Redevelopment Tax Revenue losses in the Central Business District to \$100,000/building/year or \$250,000/year cumulatively (see case study example under Fiscal Impacts). The proposal also proposes that any property applying for a Mills Act Contract anywhere in the City that exceeds the limits of the tax revenue losses may request special consideration of the City Council. This would expand the total annual loss to 0.41% of the gross annual redevelopment tax revenues.

The remainder redevelopment area's limits would remain the same as the two-year pilot program. These are \$25,000/year in any single redevelopment area with a cumulative limit of \$250,000/year for all redevelopment areas (i.e., not including the Central Business District).

The permanent Mills Act Property Tax Abatement Program would utilize the same City tax revenue loss limits as the two-year pilot program, \$25,000/year. A \$25,000 tax loss amounts to 0.02% of the City's annual tax revenues, which total \$129.8 million.

The proposal to make permanent the Mills Act Property Tax Abatement Program is based on the successful implementation of the two-year pilot program. The two-year pilot program has demonstrated that applications are consistent with the limits set forth in the Ordinance, with the exception of the large commercial buildings. In addition, the geographic diversity of application submittals has demonstrated interest in the program throughout the City (please see attached map).

The Program will not only rehabilitate each Mills Act Contract property, but it has been demonstrated that there is spillover to non-Mills Act properties. Criteria in applicant selection for the Program has included the potential for neighborhood impact with respect to evaluating the visibility of the work program and the prominence of location to passersby, so that the Program will function as an additional tool for neighborhood revitalization and further redevelopment and economic goals of the City by encouraging property rehabilitation on non-Mills Act properties. This potential non-Mills Act revitalization would increase property values

which in turn will increase tax revenues. The Mills Act Program will indirectly increase neighborhood property values, providing increased tax revenue.

PROGRAM DESCRIPTION

The Mills Act Program 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.

Many Bay area municipalities are using the Mills Act to revitalize their cities. 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.

Important aspects of the Mills Act program include:

- The Mills Act Program is a voluntary program.
- The Mills Act contract is between the City and the owner of a designated historic structure.
- The initial contract is for 10 years; at the end of each year the term is automatically extended one year, unless the owner or the city gives notice to not renew the contract. If the notice is given, the contract remains in effect for the balance of the current 10-year contract.
- The Agreement requires that the owner preserve/rehabilitate and maintain cultural, historical and architectural characteristics of the listed historic property, as set forth in the Work Program schedule of improvements. In Oakland, the property tax savings are required to be invested back into the property.
- The Agreement provides for periodic inspections, as necessary, to determine the owner's compliance with the terms of the Agreement.
- The penalty for breach of contract is 12.5% of the current property value.

- The contract stays with the property, that is, the contract automatically transfers to each new property owner and the property is not reassessed to its full market value upon sale.
- Upon receipt of an executed contract, the County Tax Assessor is directed by State law to re-assess the value of the property, which may result in a reduction of property tax.
- The reduction will vary depending on a number of factors. Studies have shown that the largest property tax reductions occur for properties purchased or reassessed in recent years.

SUSTAINABLE OPPORTUNITIES

Economic:

Historic preservation or rehabilitation is labor intensive and will provide opportunities for professional services and construction related jobs for the Oakland community. Historic preservation or rehabilitation frequently involves specialty trades, craftspeople, products and suppliers. The Mills Act properties would provide opportunities for this sector of the construction industry.

Historic preservation or rehabilitation will increase the property value of each Mills Act participant. While these tax revenue losses to the City are minimal, it has been shown in other California cities that Mill Act properties act as catalysts for revitalization in the larger surrounding neighborhood. Overtime, with increased neighborhood property maintenance and enhancement, neighborhood property values will increase and tax revenues will follow.

Environmental:

Historic preservation or rehabilitation is sustainability on a grand scale. It conserves materials and energy embodied in existing building stock.

Social Equity:

Historic preservation or rehabilitation will assist in the revitalization of Oakland's historic buildings and neighborhoods citywide. Although applicants come from all areas of the City, each single project will act as a catalyst for neighborhood revitalization since property owners who enter into an agreement are obligated to maintain and prevent deterioration of the property. Historic buildings reinforce a community's connection to its past and place. Revitalization of these historic properties will engender pride of neighborhood and community.

DISABILITY AND SENIOR CITIZEN ACCESS

The preservation or rehabilitation of existing historic commercial properties will require accessibility upgrades for the disabled.

RECOMMENDATION(S) AND RATIONALE

The LPAB recommends that the City Council adopt a Resolution to approve eleven Mills Act Contracts between the City of Oakland and the following Properties, as described under Key Issues and Impacts:

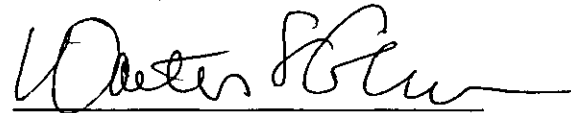
1782 8th Street
227 John Street
1225 12th Street
2429 13th Avenue
1024 Adeline Street
614 Haddon Road
712-716 Peralta Street
1676 12th Street
3415-3417 Martin Luther King Jr. Way
1717 16th Avenue
460 W. MacArthur Boulevard

Staff also recommends adoption of the Ordinance expanding and making permanent the Mills Act Property Tax Abatement Program for qualified historic properties which was originally established as a two-year pilot program via Ordinance No. 12784 C.M.S.

ACTION REQUESTED OF THE CITY COUNCIL

- 1) Accept this report for the approval of eleven Mills Act Contracts between the City of Oakland and the properties outlined in this report, and adopt the Resolution to approve these agreements.
- 2) Adopt the City Ordinance expanding and making permanent the Mills Act Property Tax Abatement Program for Qualified Historic Properties.

Respectfully submitted,



Walter S. Cohen, Director
Community and Economic Development Agency

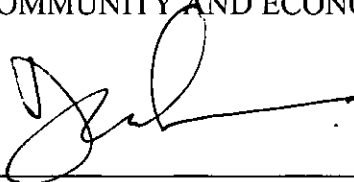
Reviewed by:

Eric Angstadt, Deputy Director of CEDA

Prepared by:

Joann Pavlinec, Planner IV
Planning

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE



Office of the City Administrator

- Attachments: A. Ordinance No. 12784 C.M.S. with attached Exhibit A – (Model) Mills Act Agreement for Preservation of Historic Property.
B. 2008 and 2009 Mills Act Applications Map – Geographic Distribution

Item: _____
CED Committee
December 1, 2009

2006 NOV 16 PM 4:26

APPROVED AS TO FORM AND LEGALITY
Mark P. Ward
DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

ORDINANCE No. 12784 C.M.S.

AN ORDINANCE ADOPTING A TWO-YEAR PILOT MILLS ACT PROPERTY TAX ABATEMENT PROGRAM FOR QUALIFIED HISTORIC PROPERTIES, AND MAKING RELATED AMENDMENTS TO THE CITY'S MATER FEE SCHEDULE

WHEREAS, the General Plan Historic Preservation Element Policy 2.6.1 calls for the adoption of a Mills Act contract program, pursuant to Sections 50280-90 of the California Government Code and Section 439.2 of the California Revenue and Taxation Code, to promote historic preservation; and

WHEREAS, establishment of a Mills Act Program would meet numerous General Plan Land Use goals and policies, including housing rehabilitation, preservation of community character and identity, sustainability, commercial and corridor revitalization, and image; and

WHEREAS, funding for a Mills Act study is provided per Mitigation Measures outlined in the Environmental Impact Reports for both the West Oakland Redevelopment Plan and the Central City East Redevelopment Plan; and

WHEREAS, the City Council approved the Johanna Favrot Fund for Historic Preservation Matching Fund Grant through the National Trust for Historic Preservation (Resolution No. 78297 C.M.S.) to assist the City with the analysis of the financial and fiscal implications of a Mills Act Program; and

WHEREAS, the Landmarks Preservation Advisory Board adopted the establishment of a Mills Act Property Tax Abatement Program for the City of Oakland as a major goal for 2005/06; and

WHEREAS, the City of Oakland has a wealth of historic buildings and neighborhoods matched by few other California cities; and

WHEREAS, the establishment of a Mills Act Program for the City of Oakland could affect historic properties city-wide and has the potential to be a catalyst for further revitalization and reinvestment of its distinct and diverse neighborhoods and its strong historical character; and

ATTACHMENT A - 1

WHEREAS, staff has solicited direction from the historic community and in-house City stakeholders, including the Landmarks Preservation Advisory Board, the Oakland Heritage Alliance, the City Redevelopment Agency and City Financial Service, in order to create an inclusive pilot program that responds to a variety of Oakland concerns; and

WHEREAS, the Landmarks Preservation Advisory Board on February 27, 2006 and the Planning Commission on April 5, 2006 held public hearings on the Mills Act Program, and unanimously recommended the two-year pilot Mills Act be approved by the City Council;

NOW, THEREFORE,

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and determines that a two-year Mills Act Pilot Program will implement the General Plan Historic Preservation Element, provide an incentive for historic property maintenance, preservation and/or rehabilitation and thereby act as a catalyst for revitalization citywide, thus promoting the health, safety and welfare and furthering numerous general plan policies and objectives.

SECTION 2. The City Council hereby adopts a two-year Mills Act Pilot Program, as detailed in the April 5, 2006 Report to the City Planning Commission and the December 5, 2006 City Council Agenda Report. During the two-year pilot program, there shall be a limit of ten (10) Mills Act contracts for the first year and a limit of twenty (20) contracts for the second year with the pilot program impact on City revenues limited to \$25,000/year or \$50,000 cumulatively for the two-year pilot program. However, rollovers of both applications and revenue impacts may be allowed, provided the total number of applications does not exceed thirty (30) and the total revenue impact does not exceed \$50,000 from the City and \$500,000 from the Redevelopment Agency for the two-year pilot program. Since implementing the Mills Act is a Mitigation Measure for both the West Oakland Redevelopment Plan and the Central City East Redevelopment Plan, the pilot program implementation will pursue a minimum of 20% of the 30 Mills Act Contracts (six contracts) from the Central City East Redevelopment Area and a minimum of 20% of the 30 Mills Act Contracts (six contracts) from the West Oakland Redevelopment Area.

The Landmarks Preservation Advisory Board shall review and consider all Mills Act contracts, which shall be in substantial conformance to the Model Mills Act Agreement (Exhibit A), and shall forward its recommendations to the City Council. If the City Council approves any Mills Act contracts, it shall do so by resolution.

SECTION 3. Prior to the end of the two-year pilot program, city staff shall submit a report to the City Council which analyzes the effects on property tax revenue, staff

workload and neighborhood revitalization, and make recommendations as to the future caps and processes for the Mills Act Program.

SECTION 4. The City of Oakland's Master Fee Schedule is hereby amended to adopt a new Mills Act Application Fee of \$400 and a Mills Act Inspection Fee of \$100/inspection, to be deposited in Development Service Fund (2415), City Planning – Other organization (88229).

SECTION 5. The City Council finds and determines that the requirements of the California Environmental Quality Act of 1970 (CEQA), the CEQA Guidelines, and the provisions of the Environmental Review Regulations of the City of Oakland have been met, and the actions authorized by this Ordinance are categorically exempt from CEQA under CEQA Guidelines Section 15331: Historical Resource Restoration/Rehabilitation.

SECTION 6. The City Council authorizes staff to take any and all steps necessary to implement the two-year Mills Act Pilot Program consistent with this ordinance.

IN COUNCIL, OAKLAND, CALIFORNIA, FEB 6 2007, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, ~~REID~~, and PRESIDENT DE LA FUENTE - 7


NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Reid - 1

ATTEST:



LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

Introduction Date: JAN 16 2007

new

WHEN RECORDED, RETURN TO:

City of Oakland
Community & Economic Development Agency
Attn: Planning & Zoning, Historic Preservation/Secretary of Landmarks Board
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA. 94612

**(MODEL) MILLS ACT AGREEMENT FOR
PRESERVATION OF HISTORIC PROPERTY**

This Agreement is entered into this _____ day of _____, 200_, by and between the City of Oakland, a municipal corporation (hereinafter referred to as the "City"), and _____ (hereinafter referred to as the "Owner(s)"), owner(s) of the structure located at _____, in the City of Oakland (Exhibit A – Legal Description of Property).

RECITALS

Owner possesses and owns real property located within the City and described in Exhibit A ("Property") attached and made a part hereof.

The Property is a Qualified Historic Property within the meaning of Oakland City Council Resolution No. _____ C.M.S., in that it is a privately owned property which is not exempt from property taxation and is on the City of Oakland's Local Register of Historic Resources.

Both City and Owner desire to carry out the purposes of Section 50280 of the California Government Code and Section 439 of the California Revenue and Taxation Code.

Both Owner and City desire to enter into a Agreement to preserve the Property so as to retain its characteristics of cultural, historical and architectural significance and to qualify the Property of an assessment of valuation pursuant to Section 1161 of the Revenue and Taxation code of the State of California.

NOW, THEREFORE, both Owner and City, in consideration of the mutual promise, covenants and conditions contained herein and the substantial public benefit to be derived therefrom, do hereby agree as follows:

Exhibit A

ATTACHMENT A - 2

- 1) **Effective Date and Term of Agreement (California Government Code Section 50281.a)** The term of this Agreement shall be effective commencing on _____ and shall remain in effect for a term of ten (10) years thereafter. Each year, upon the anniversary of the effective date of this Agreement (hereinafter "renewal date"), one (1) year shall automatically be added to the term of the Agreement, unless timely notice of nonrenewal, as provided in paragraph 2, is given. If either City or Owner(s) serves written notice to the other of nonrenewal in any year, the Agreement shall remain in effect for the balance of the term then remaining, either from its original execution or from the last renewal of the Agreement, whichever may apply.

- 2) **Notice of Nonrenewal (California Government Code Section 50282, California Revenue and Taxation Code Section 439.3)** If City or Owner(s) desires in any year not to renew the Agreement, that party shall serve written notice of nonrenewal in advance of the annual renewal date of the Agreement as follows:
 - a. Owners must serve written notice of nonrenewal at least ninety (90) days prior to the renewal date; or
 - b. City must serve written notice within sixty (60) days prior to the renewal date. Owners may make a written protest of the notice. City may, at any time prior to the annual renewal date of the Agreement, withdraw its notice of nonrenewal to Owner(s).
 - c. If the City or Owner(s) serves notice of intent in any year to not renew the Agreement, the existing Agreement shall remain in effect for the balance of the period remaining since the original execution or the last renewal of the Agreement, as the case may be.
 - d. Any notice required to be given by the terms of this Agreement shall be provided by U.S. mail or hand delivery at the address of the respective parties as specified below or at any other address as may be later specified in writing by the parties hereto.

To City: City of Oakland
Community and Economic Development Agency
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612-2032
ATTN: Secretary, Landmarks Preservation Advisory Board

To Owner:

- 3) **Valuation of Historical Property (California Revenue and Taxation Code, Section 439.2)** During the term of this Agreement, Owner(s) are entitled to seek assessment of valuation of the Historical Property pursuant to the provisions of

Section 439 et. seq. of the California Revenue and Taxation Code.

- 4) **Preservation/rehabilitation and Maintenance of Property (California Government Code Section 50281(b)1)** During the term of this Agreement, the Property shall be subject to the following conditions, requirements and restrictions:
- a. Owner(s) agree to preserve/rehabilitate and maintain cultural, historical and architectural characteristics of the Property during the term of this Agreement as set forth in the attached schedule of improvements, which has been reviewed by the Landmarks Preservation Advisory Board and approved by the City Council (Exhibit B attached and made a part hereof). No demolition or other work may occur which would adversely impact the cultural, historical and architectural characteristics of the Property during the term of this Agreement.
 - b. All work on the Property shall meet , at a minimum, the Secretary of Interior's Standards for Rehabilitation of Historic Properties ,the Office of Historic Preservation of the Department of Parks and Recreation,(Exhibit C attached and made a part hereof), the Minimum Property Maintenance conditions (Exhibit D attached and made a part hereof) the State Historical Building code as determined as applicable by the City of Oakland and all required review and conditions of the Landmarks Preservation Advisory Board, the Planning Commission, the City Council, and/or the Community and Economic Development Agency of the City of Oakland.
 - c. If the schedule set out in Exhibit B is not complied with, then City will use the following process to determine whether the Owner(s) are making good faith progress on the schedule of work. Upon City's request, the Owner(s) shall timely submit documentation of expenditures, made to accomplish the next highest priority improvement project for the property within the last 24 months. The Owner(s) shall be determined to be in substantial compliance when the expenditures are equal to or greater than the property tax savings provided by the Property being in the Mills Act Program. This schedule set out in Exhibit B shall be revised to reflect the schedule change. The Community and Economic Development Agency's Director, or his/her designee, shall have the ability to administratively adjust the schedule timeline, in concurrence with the Property Owners(s), only by written recorded instrument executed by the parties hereto.
 - d. Owner(s) shall, within five (5) days notice from the City, furnish City with any information City shall require to enable City to determine (i) the Property's present state, (ii)its continuing eligibility as a Qualified Historic Property, and (iii) whether the Owner is in compliance with this Agreement.

- 5) **Destruction through 'Acts of God' or "Acts of Nature"**. To the extent authorized by state law, Owner(s) shall not be held responsible for replacement/repair of the Property if it is Damaged or Destroyed through "Acts of God"/Nature, such as slide, flood, tornado, lightning or earthquake. Damaged or Destroyed means that the property is no longer restorable to a condition eligible for historic designation due to substantial loss of integrity, as determined by an Historic Architect.
- 6) **Inspections (California Government Code Section 50281(b)2)**. Owner(s) agrees to permit such periodic examinations/inspections, by appointment, of the interior and exterior of the Property by the City staff, Members of the Landmarks Preservation Advisory Board, representatives of the County Assessor's Office, representatives of the State Board of Equalization and representatives of the Department of Parks and Recreation as may be necessary to determine the Owner's compliance with this Agreement. Such examination/inspection shall be upon not less than five (5) days written or oral notice.
- 7) **Payment of Fees (California Government Code Section 50281.1)** The Owner shall pay the City a fee established pursuant to the City's Master Fee Schedule, for costs related to the preparation and review of the Agreement and related documents **at the time of application.**
- 8) **Binding on Successors and Assigns (California Government Code Section 50281.b.3)** Owner agrees that this Agreement shall be binding upon and inure to the benefit of all parties herein, their heirs, successors in interest, legal representatives, assigns and all persons acquiring any part or portion of the Property, whether by operation of law or otherwise, and that any such person(s) shall have the same rights and obligations under this Agreement.
- 9) **Cancellation (California Government Code Section 50284)** City, following a duly noticed public hearing before the City Council, as set forth in California Government Code Section 50285, may cancel this Agreement if it determines that Owner(s): (a) have breached any of the conditions of the Agreement; (b) have allowed the property to deteriorate to the point that it no longer meets the standards for being on the City's Local Register of Historic Resources ; or (c) if the Owner(s) have failed to restore or rehabilitate the Property in the manner specified in paragraph 4 of this Agreement.

In the event of cancellation, Owner(s) shall be subject to payment of those cancellation fees set forth in California Government Code Sections 50280 et seq., described herein. Upon cancellation, Owner(s) shall pay a cancellation fee of twelve and one-half percent (12 ½%) of the current fair market value of the Property at the time of cancellation, as determined by the County Assessor as though the Property were free of any restrictions pursuant to this Agreement.

- 10) **No Compensation** Owner shall not receive any payment from City in consideration of the obligations imposed under this Agreement, it being recognized and agreed that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the Property's assessed value on account of the restrictions required for the preservation of the Property.
- 11) **Enforcement of Agreement** As an alternative to cancellation of the Agreement for breach of any condition as provided in paragraph 9, City may, in its sole discretion, specifically enforce, or enjoin the breach of the terms of this Agreement. In the event of a default, under the provisions of this Agreement by the Owners, City shall give written notice to Owners by registered or certified mail. If such a violation is not corrected to the reasonable satisfaction of City within thirty (30) days thereafter, or if not corrected within such a reasonable time as may be required to cure the breach or default if said breach or default cannot be cured within thirty (30) days provided that acts to cure the breach or default may be commenced within (30) days and must thereafter be diligently pursued to completion by Owners, then City may, without further notice, declare a default under the terms of this Agreement and may bring any action necessary to specifically enforce the obligations of Owners growing out of the terms of this Agreement, apply to any violation by Owners or apply for such other relief as may be appropriate.
- 12) **Indemnification** Owner shall indemnify, defend (with counsel reasonably acceptable to City) and hold harmless the City of Oakland, and all of its boards, commissions, departments, agencies, agents, officers, and employees (individually and collectively, the "City") from and against any and all actions, causes of actions, liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses (collectively called "Claims") incurred in connection with or arising in whole or in part from this Agreement, including without limitation:
- a. any accident, injury to or death of a person, loss of or damage to property occurring in or about the Property;
 - b. the use or occupancy of the Property by Owner, its Agents or Invitees;
 - c. the condition of the Property; or
 - d. any construction or other work undertaken by Owner on the Property.
- This indemnification shall include, without limitation, reasonable fees for attorneys, consultants and experts and related costs and City's cost of investigating any Claims. Owner shall defend the City from any and all Claims even if such Claim is groundless, fraudulent or false. Owner's obligations under this Paragraph shall survive termination of this Agreement.
- 13) **Governing Law** This Agreement shall be construed and enforced in accordance with the State of California.

- 14) **Amendments** This Agreement may be amended in whole or in part only by a written recorded instrument executed by the parties hereto in the same manner as this Agreement.
- 15) **No Waiver** No failure by the City to insist on the strict performance of any obligation of Owner under this Agreement or to exercise any right, power or remedy arising out of a breach hereof, shall constitute a waiver of such breach or of City's right to demand strict compliance with any terms of this Agreement. No acts or admissions by City, or any agent(s) of City, shall waive any or all of City's right under this agreement.
- 16) **Severability** If any provision of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each other provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 17) **Recording with Alameda County (California Government Code Section 50282.e)** No later than 20 days after execution of this Agreement, the Owner shall record with the county recorder a copy of the Agreement and provide proof of such to the City.
- 18) **Notice to State Office of Historic Preservation** The Owner shall provide written notice of the Agreement to the State Office of Historic Preservation within six (6) months of the date of this Agreement, and provide City with a copy of such notice.
- 19) **Eminent domain (California Government Code Section 50288)** In the event that the Property 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 legislative body to frustrate the purpose of the Agreement, such Agreement shall be canceled and no fee shall be imposed under paragraph 9. This Agreement shall be deemed null and void for all purposes of determining the value of the Property so acquired.
- 20) **General Provisions** None of the terms provisions or conditions of this Agreement shall be deemed to create a partnership hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause them to be considered joint ventures or members of any joint enterprise.
- 21) **Attorney's Fees** In the event legal proceedings are brought by any party or parties hereto, to enforce or restrain a violation of any of the covenants, reservations or restrictions contained herein, or to determine the rights and duties of any party hereunder, the prevailing party in such proceeding may recover its reasonable attorney's fees in addition to court costs and other relief ordered by the court.

22) **Complete Agreement** This Agreement represents the complete understandings and agreement of the parties and no prior oral or written understandings are in force and effect.

23) **Headings** The headings in this Agreement are for reference and convenience of the parties and do not represent substantive provisions of this Agreement.

IN WITNESS WHEREOF, City and Owners have executed the Agreement on the day and year first written above.

Property Owner:

Owner date

Owner date

City of Oakland:

City Administrator date

APPROVED AS TO FORM AND LEGALITY

City Attorney date

On _____, before me, _____
a Notary Public for the State of California, personally appeared _____
_____, personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to in the within
instrument, and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the
day and year first written above.

Notary Public
State of California

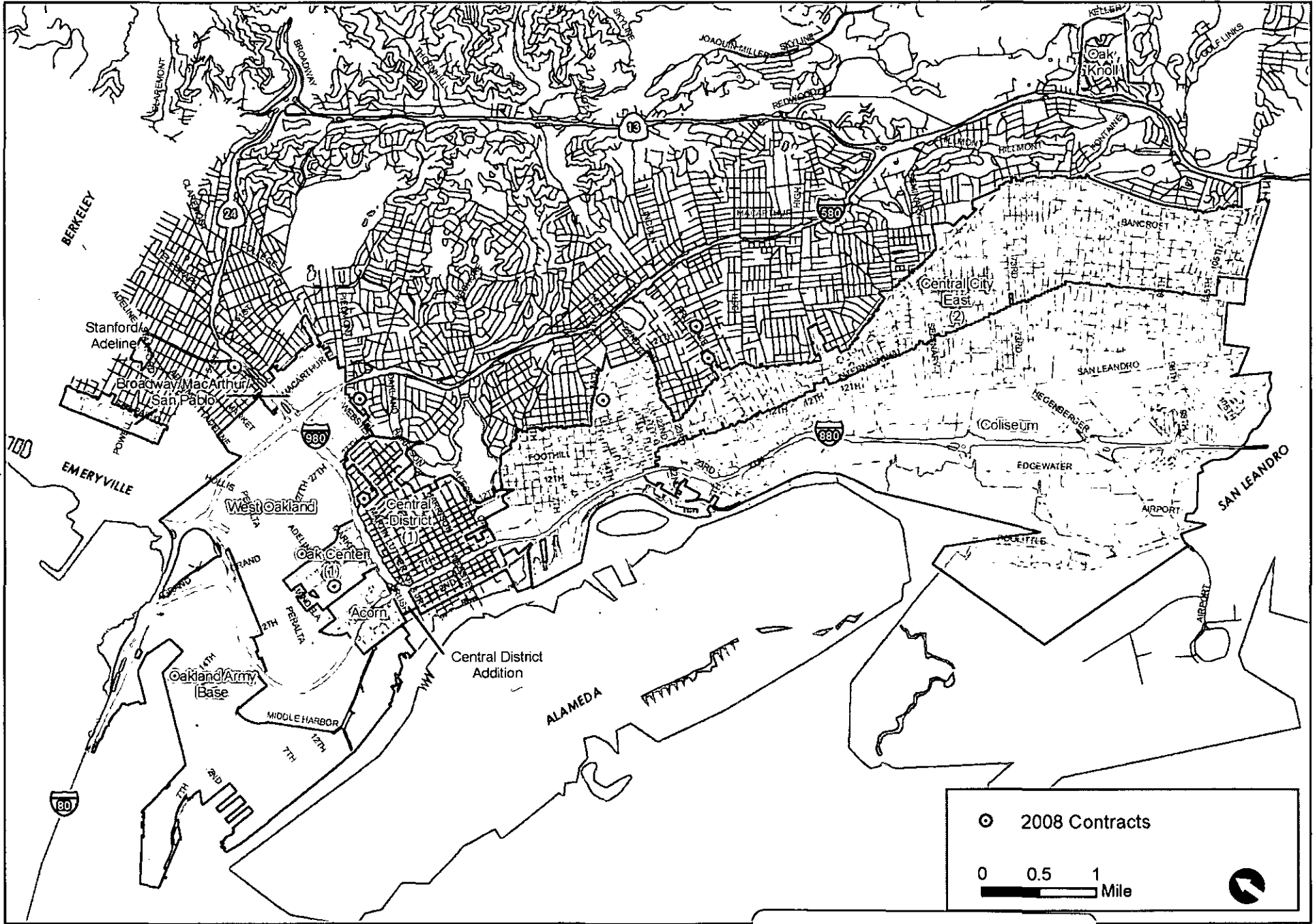
EXHIBITS

EXHIBIT A: Legal Description of Property

EXHIBIT B: Schedule of Improvements

EXHIBIT C: The Secretary of the Interior's Standards for Rehabilitation

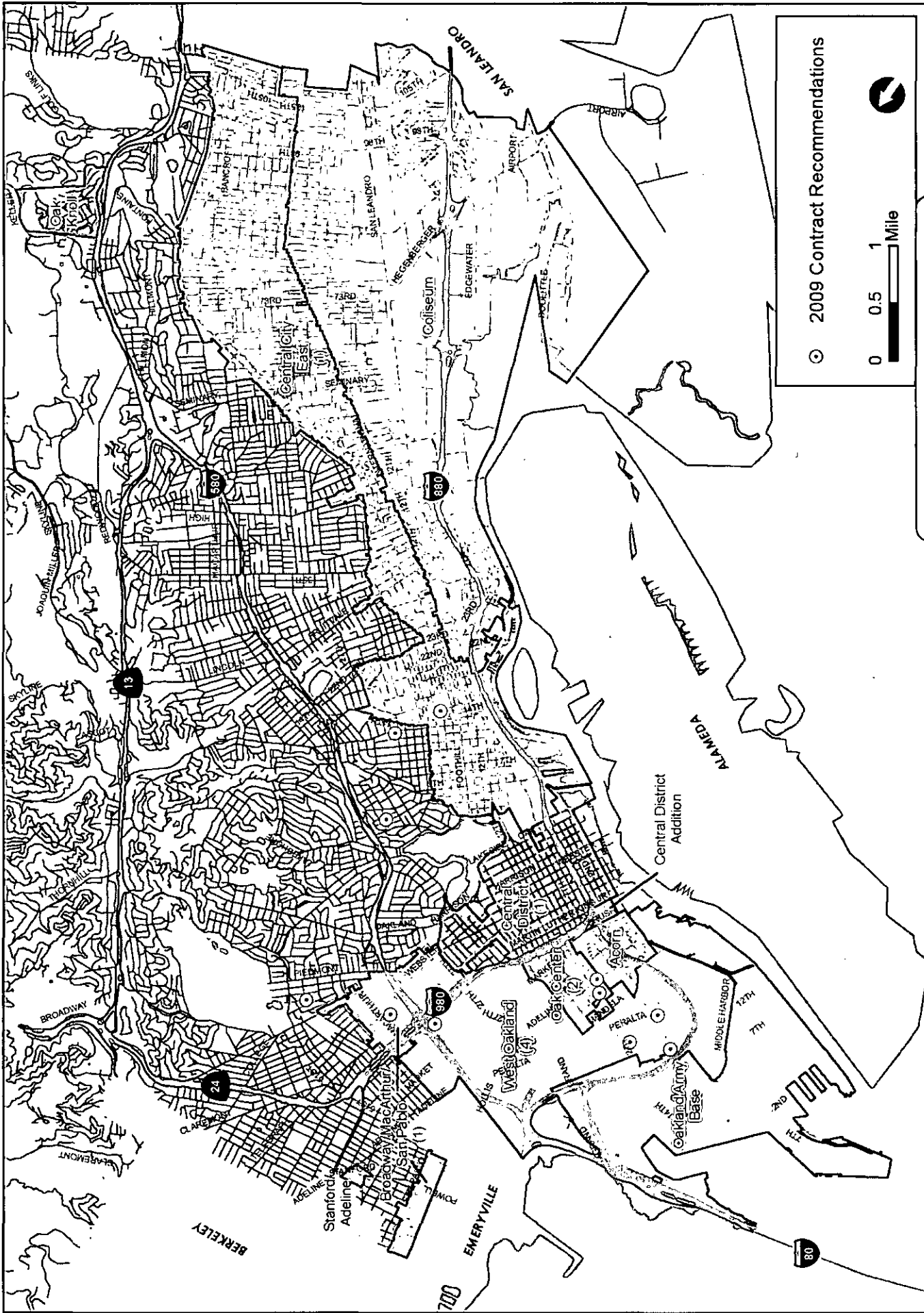
EXHIBIT D: Minimum Property Maintenance Standards



Mills Act 2008 Contracts

ATTACHMENT B-1

September 21, 2009

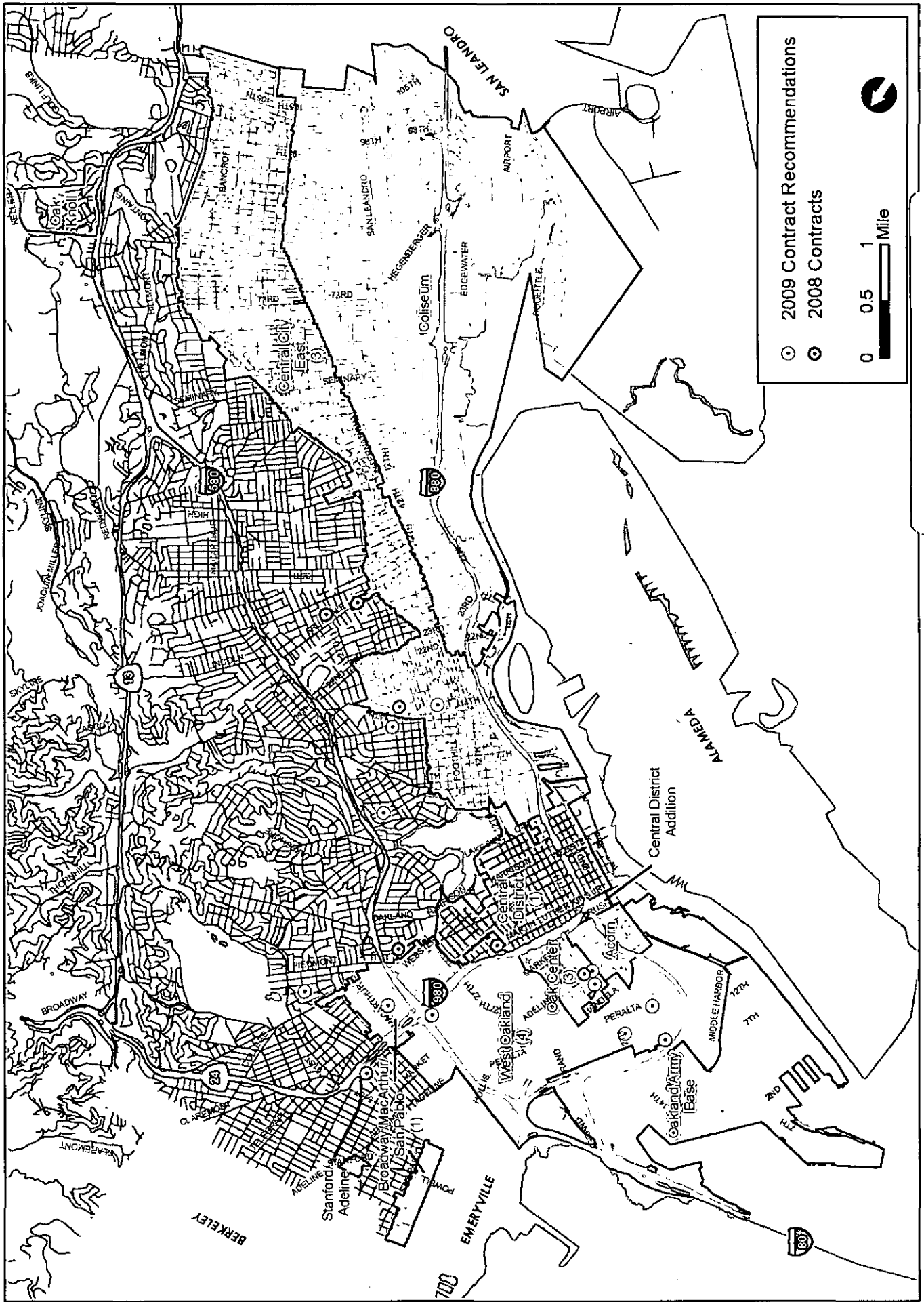


Mills Act 2009 Contract Recommendations

Community and Economic Development Agency

ATTACHMENT B-Z

September 21, 2009



Mills Act Contracts & Contract Recommendations



FILED
Approved as to Form and Legality
OF THE CITY OF OAKLAND
Mark F. Walz
Oakland City Attorney's Office
2009 NOV 18 PM 12:45

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

Introduced by Councilmember _____

RESOLUTION TO APPROVE ELEVEN MILLS ACT CONTRACTS BETWEEN THE CITY OF OAKLAND AND THE FOLLOWING PROPERTIES: 1782 8TH STREET, 227 JOHN STREET, 1225 12TH STREET, 2429 13TH AVENUE, 1024 ADELIN STREET, 614 HADDON ROAD, 712-716 PERALTA STREET, 1676 12TH STREET, 3415-3417 MARTIN LUTHER KING JR. WAY, 1717 16TH AVENUE, 460 W. MAC ARTHUR BOULEVARD, PURSUANT TO ORDINANCE NO. 12784 C.M.S. [TWO-YEAR PILOT MILLS ACT PROGRAM], TO PROVIDE THESE OWNERS WITH PROPERTY TAX REDUCTIONS IN EXCHANGE FOR THEIR AGREEMENT TO REPAIR AND MAINTAIN THEIR HISTORIC PROPERTY IN ACCORDANCE WITH SUBMITTED WORK PROGRAM.

WHEREAS, the General Plan Historic Preservation Element Policy 2.6.1 calls for the adoption of a Mills Act contract program pursuant to Sections 50280-90 of the California Government Code and Section 439.2 of the California Revenue and Taxation Code, to promote historic preservation; and

WHEREAS, the implementation of the Mills Act Program will meet numerous General Plan Land Use goals and policies, including housing rehabilitation, preservation of community character and identity, sustainability, commercial and corridor revitalization, and image; and

WHEREAS, the Oakland City Council adopted a two-year pilot Mills Act Property Tax Abatement Program for qualified historic properties on February 6, 2007, via Ordinance No. 12784 C.M.S.; and

WHEREAS, the City has received Mills Act contract applications from qualified historic properties throughout the City, with accompanying work programs that will maintain and prevent deterioration of the property, revitalize historic properties, engender pride of neighborhood and community, act as a catalyst for neighborhood revitalization; and

WHEREAS, at a duly noticed meeting, the Landmarks Preservation Advisory Board on September 14, 2009 unanimously recommended the eleven applications, as outlined above, to the City Council, for contract approval for the 2009 Mills Act Program; and

WHEREAS, at a duly noticed meeting, the Landmarks Preservation Advisory Board's eleven Mills Act contract recommendations were presented to the Planning Commission as a Director's Report on October 7, 2009; now, therefore be it

RESOLVED; that, the City Administrator, or his designee, is hereby authorized to enter into Mills Act contracts, in substantial conformity with the previously approved model Mills Act contract, with the following properties and to take whatever actions are necessary to implement the previously approved Mills Act Program:

**1782 8th STREET
227 John STREET
1225 12th STREET
2429 13th AVENUE
1024 ADELIN STREET
614 HADDON ROAD
712-716 PERALTA STREET
1676 12th STREET
3415-3417 MARTIN LUTHER KING JR. WAY
1717 16th AVENUE
460 W. MAC ARTHUR BOULEVARD**

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, AND PRESIDENT BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California

DATE OF ATTESTATION: _____

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 NOV 18 PM 12:45
APPROVED AS TO FORM AND LEGALITY

Mark P. Wald

City Attorney

INTRODUCED BY COUNCILMEMBER De La Fuente

OAKLAND CITY COUNCIL
ORDINANCE NO. _____ C.M.S.

AN ORDINANCE EXPANDING AND MAKING PERMANENT THE MILLS ACT PROPERTY TAX ABATEMENT PROGRAM FOR QUALIFIED HISTORIC PROPERTIES WHICH WAS ESTABLISHED AS AT TWO-YEAR PILOT PROGRAM VIA ORDINANCE NO. 12784 C.M.S.

WHEREAS, the General Plan Historic Preservation Element Policy 2.6.1 calls for the adoption of a Mills Act contract program, pursuant to Sections 50280-90 of the California Government Code and Section 439.2 of the California Revenue and Taxation Code, to promote historic preservation; and

WHEREAS, establishment of a permanent Mills Act Program would meet numerous General Plan Land Use goals and policies, including housing rehabilitation, preservation of community character and identity, sustainability, commercial and corridor revitalization, and image; and

WHEREAS, the Landmarks Preservation Advisory Board adopted the establishment of a Mills Act Property Tax Abatement Program for the City of Oakland as a major goal for 2005/06; and

WHEREAS, the City of Oakland has a wealth of historic buildings and neighborhoods matched by few other California cities; and

WHEREAS, the City Council adopted a two-year pilot Mills Act Property Tax Abatement Program for Qualified Historic Properties in 2007 via Ordinance No. 12784 C.M.S.; and

WHEREAS, the two-year pilot program has successfully been implemented, with *applications submitted representing geographic diversity within the City, and with applications submitted that are within both the range of the limit on the number of contracts and the limit of losses on Property Tax revenues, with the exception of large commercial properties;* and

WHEREAS, the two-year pilot program demonstrated the need to expand the limits of

of losses of Property Taxes in the Central Business District to include these large commercial properties in the Program, to provide an incentive for rehabilitation of Central Business District historic properties, which benefit both the property owner with a potential tax reduction and the City with a potential Tax Revenue increase; and

WHEREAS, the establishment of a permanent and expanded Mills Act Program for the City of Oakland could affect historic properties city-wide and has the potential to be a catalyst for further revitalization and reinvestment of its distinct and diverse neighborhoods, including the Central Business District, and its strong historical character; and

WHEREAS, staff has solicited direction from the historic community and in-house City stakeholders, including the Landmarks Preservation Advisory Board, the Oakland Heritage Alliance, interested Developers and the City Redevelopment Agency, in order to create an inclusive program that responds to a variety of Oakland concerns; and

WHEREAS, the Landmarks Preservation Advisory Board and the Planning Commission have strongly supported the goals to expand and make permanent the Mills Act Tax Abatement Program; **NOW, THEREFORE,**

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and determines that an expanded and permanent Mills Act Program will implement the General Plan Historic Preservation Element, provide an incentive for historic property maintenance, preservation and/or rehabilitation and thereby act as a catalyst for revitalization citywide, thus promoting the health, safety and welfare and furthering numerous general plan policies and objectives.

SECTION 2. The City Council hereby adopts an expanded and permanent Mills Act Program, as detailed in the December 1, 2009 City Council Agenda Report. There shall be a limit of the program impact on City revenues limited to \$25,000/year, on Redevelopment revenues to \$25,000/year in any single redevelopment area with a cumulative limit of \$250,000/year for all redevelopment areas with the exception of the Central Business District. In the Central Business District, there shall be a limit of the program impact on Redevelopment revenues to \$100,000/building/year with a cumulative limit of \$250,000/year.

Additionally, any Mills Act Program property applicant, whose estimated Property Tax loss exceeds the above limits, may request special consideration by the City Council.

The Landmarks Preservation Advisory Board shall review and consider all Mills Act contracts, which shall be in substantial conformance to the Model Mills Act Agreement (**Exhibit A**), and shall forward its recommendations to the City Council. If the City

Council approves any Mills Act contracts, it shall do so by resolution.

SECTION 3. The City Council finds and determines that the requirements of the California Environmental Quality Act of 1970 (CEQA), the CEQA Guidelines, and the provisions of the Environmental Review Regulations of the City of Oakland have been met, and the actions authorized by this Ordinance are categorically exempt from CEQA under CEQA Guidelines Section 15331: Historical Resource Restoration/Rehabilitation.

SECTION 4. The City Council authorizes staff to take any and all steps necessary to implement the Mills Act Pilot Program consistent with this ordinance.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____

MPW

NOTICE & DIGEST

**AN ORDINANCE EXPANDING AND MAKING
PERMANENT THE MILLS ACT PROPERTY TAX ABATEMENT
PROGRAM FOR QUALIFIED HISTORIC PROPERTIES WHICH
WAS ESTABLISHED AS AT TWO-YEAR PILOT PROGRAM VIA
ORDINANCE NO. 12784 C.M.S.**

This ordinance (a) adopts a permanent Mills Act Property Tax Abatement Program which allows reductions of property tax assessments for eligible historic properties if the owner signs an agreement with the city to preserve and maintain the historic characteristics of the property, based on the two-year pilot program via Ordinance No. 12784 C.M.S.; and (b) expands the program so that large commercial properties in the Central Business District can participate in the Program.

WHEN RECORDED, RETURN TO:

City of Oakland
Community & Economic Development Agency
Attn: Planning & Zoning, Historic Preservation/Secretary of Landmarks Board
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA. 94612

**(MODEL) MILLS ACT AGREEMENT FOR
PRESERVATION OF HISTORIC PROPERTY**

This Agreement is entered into this _____ day of _____, 200_, by and between the City of Oakland, a municipal corporation (hereinafter referred to as the "City"), and _____ (hereinafter referred to as the "Owner(s)", owner(s) of the structure located at _____, in the City of Oakland (Exhibit A – Legal Description of Property).

RECITALS

Owner possesses and owns real property located within the City and described in Exhibit A ("Property") attached and made a part hereof.

The Property is a Qualified Historic Property within the meaning of Oakland City Council Resolution No. _____ C.M.S., in that it is a privately owned property which is not exempt from property taxation and is on the City of Oakland's Local Register of Historic Resources.

Both City and Owner desire to carry out the purposes of Section 50280 of the California Government Code and Section 439 of the California Revenue and Taxation Code.

Both Owner and City desire to enter into a Agreement to preserve the Property so as to retain its characteristics of cultural, historical and architectural significance and to qualify the Property of an assessment of valuation pursuant to Section 1161 of the Revenue and Taxation code of the State of California.

NOW, THEREFORE, both Owner and City, in consideration of the mutual promise, covenants and conditions contained herein and the substantial public benefit to be derived therefrom, do hereby agree as follows:

1) **Effective Date and Term of Agreement (California Government Code Section 50281.a)** The term of this Agreement shall be effective commencing on _____ and shall remain in effect for a term of ten (10) years thereafter. Each year, upon the anniversary of the effective date of this Agreement (hereinafter "renewal date"), one (1) year shall automatically be added to the term of the Agreement, unless timely notice of nonrenewal, as provided in paragraph 2, is given. If either City or Owner(s) serves written notice to the other of nonrenewal in any year, the Agreement shall remain in effect for the balance of the term then remaining, either from its original execution or from the last renewal of the Agreement, whichever may apply.

2) **Notice of Nonrenewal (California Government Code Section 50282, California Revenue and Taxation Code Section 439.3)** If City or Owner(s) desires in any year not to renew the Agreement, that party shall serve written notice of nonrenewal in advance of the annual renewal date of the Agreement as follows:

- a. Owners must serve written notice of nonrenewal at least ninety (90) days prior to the renewal date; or
- b. City must serve written notice within sixty (60) days prior to the renewal date. Owners may make a written protest of the notice. City may, at any time prior to the annual renewal date of the Agreement, withdraw its notice of nonrenewal to Owner(s).
- c. If the City or Owner(s) serves notice of intent in any year to not renew the Agreement, the existing Agreement shall remain in effect for the balance of the period remaining since the original execution or the last renewal of the Agreement, as the case may be.
- d. Any notice required to be given by the terms of this Agreement shall be provided by U.S. mail or hand delivery at the address of the respective parties as specified below or at any other address as may be later specified in writing by the parties hereto.

To City: City of Oakland
Community and Economic Development Agency
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612-2032
ATTN: Secretary, Landmarks Preservation Advisory Board

To Owner:

3) **Valuation of Historical Property (California Revenue and Taxation Code, Section 439.2)** During the term of this Agreement, Owner(s) are entitled to seek assessment of valuation of the Historical Property pursuant to the provisions of

Section 439 et. seq. of the California Revenue and Taxation Code.

- 4) **Preservation/rehabilitation and Maintenance of Property (California Government Code Section 50281(b)1)** During the term of this Agreement, the Property shall be subject to the following conditions, requirements and restrictions:
- a. Owner(s) agree to preserve/rehabilitate and maintain cultural, historical and architectural characteristics of the Property during the term of this Agreement as set forth in the attached schedule of improvements, which has been reviewed by the Landmarks Preservation Advisory Board and approved by the City Council (Exhibit B attached and made a part hereof). No demolition or other work may occur which would adversely impact the cultural, historical and architectural characteristics of the Property during the term of this Agreement.
 - b. All work on the Property shall meet , at a minimum, the Secretary of Interior's Standards for Rehabilitation of Historic Properties ,the Office of Historic Preservation of the Department of Parks and Recreation_(Exhibit C attached and made a part hereof), the Minimum Property Maintenance conditions (Exhibit D attached and made a part hereof) the State Historical Building code as determined as applicable by the City of Oakland and all required review and conditions of the Landmarks Preservation Advisory Board, the Planning Commission, the City Council, and/or the Community and Economic Development Agency of the City of Oakland.
 - c. If the schedule set out in Exhibit B is not complied with, then City will use the following process to determine whether the Owner(s) are making good faith progress on the schedule of work. Upon City's request, the Owner(s) shall timely submit documentation of expenditures, made to accomplish the next highest priority improvement project for the property within the last 24 months. The Owner(s) shall be determined to be in substantial compliance when the expenditures are equal to or greater than the property tax savings provided by the Property being in the Mills Act Program. This schedule set out in Exhibit B shall be revised to reflect the schedule change. The Community and Economic Development Agency's Director, or his/her designee, shall have the ability to administratively adjust the schedule timeline, in concurrence with the Property Owners(s), only by written recorded instrument executed by the parties hereto.
 - d. Owner(s) shall, within five (5) days notice from the City, furnish City with any information City shall require to enable City to determine (i) the Property's present state, (ii)its continuing eligibility as a Qualified Historic Property, and (iii) whether the Owner is in compliance with this Agreement.

- 5) **Destruction through ‘Acts of God’ or “Acts of Nature”**. To the extent authorized by state law, Owner(s) shall not be held responsible for replacement/repair of the Property if it is Damaged or Destroyed through “Acts of God’/Nature, such as slide, flood, tornado, lightning or earthquake. Damaged or Destroyed means that the property is no longer restorable to a condition eligible for historic designation due to substantial loss of integrity, as determined by an Historic Architect.
- 6) **Inspections (California Government Code Section 50281(b)2)**. Owner(s) agrees to permit such periodic examinations/inspections, by appointment, of the interior and exterior of the Property by the City staff, Members of the Landmarks Preservation Advisory Board, representatives of the County Assessor’s Office, representatives of the State Board of Equalization and representatives of the Department of Parks and Recreation as may be necessary to determine the Owner’s compliance with this Agreement. Such examination/inspection shall be upon not less than five (5) days written or oral notice.
- 7) **Payment of Fees (California Government Code Section 50281.1)** The Owner shall pay the City a fee established pursuant to the City’s Master Fee Schedule, for costs related to the preparation and review of the Agreement and related documents **at the time of application**.
- 8) **Binding on Successors and Assigns (California Government Code Section 50281.b.3)** Owner agrees that this Agreement shall be binding upon and inure to the benefit of all parties herein, their heirs, successors in interest, legal representatives, assigns and all persons acquiring any part or portion of the Property, whether by operation of law or otherwise, and that any such person(s) shall have the same rights and obligations under this Agreement.
- 9) **Cancellation (California Government Code Section 50284)** City, following a duly noticed public hearing before the City Council, as set forth in California Government Code Section 50285, may cancel this Agreement if it determines that Owner(s): (a) have breached any of the conditions of the Agreement; (b) have allowed the property to deteriorate to the point that it no longer meets the standards for being on the City’s Local Register of Historic Resources ; or (c) if the Owner(s) have failed to restore or rehabilitate the Property in the manner specified in paragraph 4 of this Agreement.

In the event of cancellation, Owner(s) shall be subject to payment of those cancellation fees set forth in California Government Code Sections 50280 et seq., described herein. Upon cancellation, Owner(s) shall pay a cancellation fee of twelve and one-half percent (12 ½%) of the current fair market value of the Property at the time of cancellation, as determined by the County Assessor as though the Property were free of any restrictions pursuant to this Agreement.

10) No Compensation Owner shall not receive any payment from City in consideration of the obligations imposed under this Agreement, it being recognized and agreed that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the Property's assessed value on account of the restrictions required for the preservation of the Property.

11) Enforcement of Agreement As an alternative to cancellation of the Agreement for breach of any condition as provided in paragraph 9, City may, in its sole discretion, specifically enforce, or enjoin the breach of the terms of this Agreement. In the event of a default, under the provisions of this Agreement by the Owners, City shall give written notice to Owners by registered or certified mail. If such a violation is not corrected to the reasonable satisfaction of City within thirty (30) days thereafter, or if not corrected within such a reasonable time as may be required to cure the breach or default if said breach or default cannot be cured within thirty (30) days provided that acts to cure the breach or default may be commenced within (30) days and must thereafter be diligently pursued to completion by Owners, then City may, without further notice, declare a default under the terms of this Agreement and may bring any action necessary to specifically enforce the obligations of Owners growing out of the terms of this Agreement, apply to any violation by Owners or apply for such other relief as may be appropriate.

12) Indemnification Owner shall indemnify, defend (with counsel reasonably acceptable to City) and hold harmless the City of Oakland, and all of its boards, commissions, departments, agencies, agents, officers, and employees (individually and collectively, the "City") from and against any and all actions, causes of actions, liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses (collectively called "Claims") incurred in connection with or arising in whole or in part from this Agreement, including without limitation:

- a. any accident, injury to or death of a person, loss of or damage to property occurring in or about the Property;
- b. the use or occupancy of the Property by Owner, its Agents or Invitees;
- c. the condition of the Property; or
- d. any construction or other work undertaken by Owner on the Property.

This indemnification shall include, without limitation, reasonable fees for attorneys, consultants and experts and related costs and City's cost of investigating any Claims. Owner shall defend the City from any and all Claims even if such Claim is groundless, fraudulent or false. Owner's obligations under this Paragraph shall survive termination of this Agreement.

13) Governing Law This Agreement shall be construed and enforced in accordance with the State of California.

- 14) **Amendments** This Agreement may be amended in whole or in part only by a written recorded instrument executed by the parties hereto in the same manner as this Agreement.
- 15) **No Waiver** No failure by the City to insist on the strict performance of any obligation of Owner under this Agreement or to exercise any right, power or remedy arising out of a breach hereof, shall constitute a waiver of such breach or of City's right to demand strict compliance with any terms of this Agreement. No acts or admissions by City, or any agent(s) of City, shall waive any or all of City's right under this agreement.
- 16) **Severability** If any provision of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each other provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 17) **Recording with Alameda County (California Government Code Section 50282.e)** No later than 20 days after execution of this Agreement, the Owner shall record with the county recorder a copy of the Agreement and provide proof of such to the City.
- 18) **Notice to State Office of Historic Preservation** The Owner shall provide written notice of the Agreement to the State Office of Historic Preservation within six (6) months of the date of this Agreement, and provide City with a copy of such notice.
- 19) **Eminent domain (California Government Code Section 50288)** In the event that the Property 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 legislative body to frustrate the purpose of the Agreement, such Agreement shall be canceled and no fee shall be imposed under paragraph 9. This Agreement shall be deemed null and void for all purposes of determining the value of the Property so acquired.
- 20) **General Provisions** None of the terms provisions or conditions of this Agreement shall be deemed to create a partnership hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause them to be considered joint ventures or members of any joint enterprise.
- 21) **Attorney's Fees** In the event legal proceedings are brought by any party or parties hereto, to enforce or restrain a violation of any of the covenants, reservations or restrictions contained herein, or to determine the rights and duties of any party hereunder, the prevailing party in such proceeding may recover its reasonable attorney's fees in addition to court costs and other relief ordered by the court.

22) **Complete Agreement** This Agreement represents the complete understandings and agreement of the parties and no prior oral or written understandings are in force and effect.

23) **Headings** The headings in this Agreement are for reference and convenience of the parties and do not represent substantive provisions of this Agreement.

IN WITNESS WHEREOF, City and Owners have executed the Agreement on the day and year first written above.

Property Owner:

Owner date

Owner date

City of Oakland:

City Administrator date

APPROVED AS TO FORM AND LEGALITY

City Attorney date

On _____, before me, _____
a Notary Public for the State of California, personally appeared _____
_____, personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to in the within
instrument, and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the
day and year first written above.

Notary Public
State of California

EXHIBITS

EXHIBIT A: Legal Description of Property

EXHIBIT B: Schedule of Improvements

EXHIBIT C: *The Secretary of the Interior's Standards for Rehabilitation*

EXHIBIT D: Minimum Property Maintenance Standards