



CITY OF BEVERLY HILLS STAFF REPORT

Meeting Date: December 4, 2012
To: Honorable Mayor & City Council
From: Jonathan Lait AICP, Assistant Director of Community Development
Subject: Discussion of Potential Mills Act Contract Modifications

INTRODUCTION

Staff requests City Council policy direction on a request made by an applicant to modify the City's standard Mills Act contract. The policy matter relates specifically to contract administration in the event an applicant is noncompliant with any part(s) of the submitted Repair and Rehabilitation Plan (Preservation Plan). The Preservation Plan is an essential component of the Mills Act contract as it sets forth the applicant's plan to restore, repair and maintain the property using savings gained from lowered property tax. Although this request specifically concerns one Mills Act application it does potentially establish precedence for future Mills Act applications.

SUMMARY

The Cultural Heritage Commission has recommended designation of the Liliore Green Palmer Rains Estate at 603 Doheny Road as a landmark in response to an application by the owners, and inclusion of the property as part of the City's Pilot Mills Act Program. These recommendations are scheduled for consideration by City Council at the formal meeting of December 4, 2012. However, before the City Council formally considers these matters, the applicant seeks City Council support to modify standard language in the City's Mills Act contract as it relates to remedies available in the event of a breach of contract.

BACKGROUND

A Pilot Mills Act Program was established by City Council as an incentive for owners of local Landmark properties in Beverly Hills. The program offers property tax reduction to owners of participating historic properties. In exchange property owners agree to use tax savings to

complete a pre-approved Preservation Plan to restore, repair and maintain historic properties over the life of the contract. Mills Act contracts run for an initial ten (10) year term automatically renewing each year after that on the agreement date anniversary. The City Council adopted Ordinance No. 11-R-12838 on October 18, 2011, establishing the Pilot Mills Act Program for a two year period, for a maximum of six qualified participating properties and with a capped maximum annual revenue loss to the City of \$50,000.00.

The property at 603 Doheny Road is the only property under consideration in the 2012 cycle of the Pilot Program; 2013 is the final year of the Pilot Program, unless extended by the City Council. There was one other application filed with the City, but application processing was suspended at the applicant's request. It is not anticipated that six qualifying properties will participate in the Pilot Program. However, as detailed below, and based on the property value of 603 Doheny Road, approximately forty-four percent (44%) of the maximum annual revenue loss to the City may be reached, if the Mills Act application is approved by the City Council.

The current annual property taxes for this property are \$157,500.00. Under Mills Act the applicant's estimated annual property taxes would be reduced to approximately \$31,690.00 per annum, a yearly reduction of approximately \$125,810.00, 17.4% of which, or a maximum of \$21,890.94 per annum is staff's recommended maximum capped loss to the City. The annual loss to the School District, calculated at 15.3% of the yearly tax reduction, is \$19,248.93. The actual revenue loss per annum is subject to annual review and determined jointly by the City working with the County Tax Assessor.

DISCUSSION

If approved by City Council as a local Landmark and included in the City's Pilot Mills Act Program, the owners of the property would agree, in exchange for property tax savings of \$1,258,100.00 over the initial ten-year term, to protect, maintain, repair and where necessary, restore the historic property. The Repair and Rehabilitation Plan provided by the applicant details the proposed ten-year work plan for this property with projected total expenditure from property tax savings, for all scheduled rehabilitation, repair and maintenance works of \$1,017,528.27. The detailed work plan includes the following items:

- Natural ground spring water capture and irrigation system upgrades for the historic cistern.
- Maintenance of extant Canary Island pine forest.
- Repairs and maintenance of Rustic-style Cabin including fire rated roof.
- Building Maintenance Survey.
- Patching of exterior cast concrete block veneer to main residence.
- Exterior painting of main residence.
- HVAC replacement including humidity control to protect structural elements.
- Repair and maintenance of eastern site perimeter walling.
- Ongoing maintenance of buildings and grounds.

However, under the Mills Act statutes, if the property owner breaches the agreement, then the City Council shall either cancel the Mills Act Contract or bring any action in court necessary to

enforce the contract. (Govt. Code Sec. 50284.)¹ In the event of contract cancellation, the owner would be assessed a penalty of 12.5% of the unrestricted property value at the time of the breach. In the case of this property, worth as much as \$15.8 million, the penalty to the owner of cancellation by the City could be as much as \$1,975,000.00. The applicant's representative suggests that this would be an unfair penalty in that it bears no real correlation back to any breach that might result from a disagreement with the City regarding compliance with the Repair and Rehabilitation Plan, and in particular no relationship to the actual cost of any disputed repair or rehabilitation projects.

In order to remedy the applicant's fairness and risk concerns, the applicant is proposing additional language in the contract to allow for mediation of any possible dispute(s), regardless of the value of any disputed work(s), and recourse other than contract cancellation by the City.

The standard contract language as it relates to a breach of contract is provided below:

- A. Notice of Breach; Opportunity to Cure. If Owner breaches any provision of this Agreement, City may give written notice to Owner, by registered or certified mail, detailing Owner's violations. If such violation is not corrected to the reasonable satisfaction of City within thirty (30) days after the date of notice of violation, or within such a reasonable time as may be required to cure the violation (provided the acts to cure the violation are commenced within thirty (30) days and thereafter diligently pursued to completion), the City may, without further notice, declare Owner to be in breach of this Agreement. Upon City's declaration of Owner's breach, City may pursue any remedy available under local, state, or federal law, including those specifically provided for in this section.
- B. Remedies. If City determines, following a duly noticed public hearing in accordance with Government Code Sections 50285 and 50286, that Owner breached any of the conditions of the Agreement, Owner allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historical property, or Owner failed to maintain and preserve the Historic Property in accordance with the terms of this Agreement, City shall either cancel this Agreement or bring an action in court to enforce the contract. If this Agreement is cancelled under this paragraph, Owner shall pay a cancellation fee to the County of Los Angeles as required by Government Code Section 50286.

The applicant's proposed language would replace the above with the following:

- A. Notice of Breach; Opportunity to Cure. If Owner breaches any provision of this Agreement, City shall give written notice to Owner, by registered or certified mail, detailing Owner's violations ("First Notice"). If such violation is not corrected to the satisfaction of City within thirty (30) days after the date of the First Notice, or within such a reasonable time as may be required to cure the violation (provided the acts to

¹ In 2011, Section 50284 was amended to **require** a legislative body to take one of the two actions (enforcement action or cancellation). Prior to the 2011 amendment the language stated: "The legislative body **may** cancel a contract if it determines that the owner has breached any of the conditions of the contract provided for in this article or has allowed the property to deteriorate to the point that it no longer meets the standards for a qualified historical property. The legislative body **may** also cancel a contract if it determines that the owner has failed to restore or rehabilitate the property in the manner specified in the contract." (Emphasis added.)

cure the violation are commenced within thirty (30) days and thereafter diligently pursued to completion), the City and the Owner shall engage in non-binding mediation before a mutually selected retired judge of the Superior Court, Court of Appeal or Supreme Court of the State of California. If the City and Owner cannot agree on a mediator, mediation shall be held at ADR Services, Inc., Century City, California before a mediator selected by ADR Services Inc. If the mediation fails to resolve the claim by the City that the Owner is in breach of this Agreement or if the City claims that the Owner has failed to carry out the terms of any agreement reached through mediation, City shall notify Owner by registered or certified mail, detailing Owner's violations and setting forth the Cure Cost to remedy the breach ("Second Notice"). Owner may within thirty (30) days of the date of the Second Notice (i) cure the violations, or (ii) post with the City a corporate surety bond, cash bond, or other such collateral as is acceptable to the City in an amount equal to the Cure Cost ("Security"). The Cure Cost for failure to perform one or more of the projects set forth in the Preservation Plan shall be the amount set forth in Exhibit "D" for the given project or projects. If Owner timely cures the violation, the City shall release the Security to the Owner. If such violation is not cured to the reasonable satisfaction of the City within thirty (30) days after the Second Notice, City shall retain the Security as liquidated damages for the alleged violation of this Agreement and this Agreement shall remain in full force and effect. Upon retention of the Security, the City may only commence an action pursuant to Government Code Section 50284 (b) to enforce the contract, and shall not cancel the agreement based upon the violation(s) for which the Security was posted.

- B. Remedies. If City determines, following a duly noticed public hearing in accordance with Government Code Sections 50285 and 50286, that Owner breached any of the conditions of the Agreement, Owner allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historical property, or Owner failed to maintain and preserve the Historic Property in accordance with the terms of this Agreement, City shall either cancel this Agreement except as provided in paragraph (A) above, or bring an action in court to enforce the contract. If this Agreement is cancelled under this paragraph, Owner shall pay a cancellation fee to the County of Los Angeles as required by Government Code Section 50286.

ANALYSIS

The standard contract language and the applicant proposed modifications above relate specifically to a breach in an applicant's contractual responsibilities to maintain the historic property in exchange for reduced property tax. The applicant's Preservation Plan sets forth specific work or actions that will be performed each year in accordance with the Mills Act Program.

With the standard contract language, the applicant is given notice and an opportunity to cure any observed violation. If still in breach, a noticed public hearing is held before the City Council who decides if the applicant is in breach.

If the Council determines the applicant is in breach and there is no remedy or agreement of remedy to cure the violation, the State requires the local agency either cancel the contract and assess the 12.5% penalty or bring action in court to enforce the contract. If canceled, the owner pays the cancellation fee to the County. The City would receive 17.4% of that penalty; the

balance is distributed to other taxing entities, including the 15.3% apportioned to the Beverly Hills Unified School District.

The applicant's proposed alternative sets forth additional noticing requirements, mediation, and prevents the City from exercising its State-granted authority to cancel a contract when the Mills Act participant is found in breach of contract and when the participant submits a security in the amount to cure the violation within a specified period of time.

The value of land and property improvements at 603 Doheny Road illustrates a potential challenge in Beverly Hills where highly valued properties participate in the Mills Act Program. It may be that the applicant's proposed solution is appropriate to address local conditions and minimize a financial deterrent to participation in the Program. It also highlights the significant tax savings that can be achieved through participation in the Program and the need to ensure that participants fulfill their contractual obligations to support the City's historic preservation efforts.

After consultation with the City Attorney's Office, staff finds the standard contract language adequate to address any breach and provides sufficient due process for a property owner to make any arguments to the City Council. Moreover, staff does not recommend that the City limit its right to cancel the Mills Act contract in the event of an uncured breach, which is the effect of the applicant proposed language.

Staff has other concerns too. The objective of the Mills Act Program is to encourage the maintenance, repair and rehabilitation of historic properties. If in the event of a breach, the owner is allowed to pay the cost of the repair as specified in the Preservation Plan without actually implementing the needed repair, it may be materially detrimental to the historic integrity of the property. And, under this scenario, the City would have relinquished its right to cancel the contract even though the owner remains in breach of contract, leaving only the option of commencing litigation to enforce the contract.

Additionally, while the applicant proposed security may provide funds to the City by way of liquidated damages, it does not result in funds to other taxing entities, such as the school district, which may be construed as unfair and deprive taxing entities of cancellation funds.

Accordingly, staff has concerns with the applicant proposed amendment to the standard contract language, but appreciates the challenges owners of highly valued properties face if participating in the program.

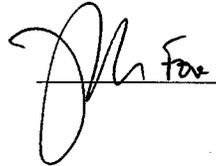
Staff seeks the City Council's guidance as to whether the Mills Act contract retain the standard language, be modified to reflect the applicant's proposal, or modified in some other manner to address the Council policy direction.

FISCAL IMPACT

In the unlikely case of a contract cancellation by City Council, penalty funds forfeited by the property owner would be paid to the County Assessor who would apportion resultant revenue exactly as for normal property taxes. Any decision of the City Council to allow for mediation of disputes rather than contract cancellation would also deny the possibility of future penalty apportionments to other taxing entities in the case of an unresolved dispute.

RECOMMENDATION

Staff recommends that the Council direct staff to maintain the standard contract language without modification.



Susan Healy Keene, AICP,
Director of Community Development
Approved By
