



AGENDA REPORT

Meeting Date: December 5, 2013

Item Number: E-1

To: Honorable Mayor & City Council

From: William R. Crouch, AIA, NCARB, AICP, LEED (AP), Urban Designer

Subject: A RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS APPROVING A MILLS ACT CONTRACT FOR BEVERLY HILLS POST OFFICE – WALLIS ANNENBERG CENTER FOR THE PERFORMING ARTS AT 9390 NORTH SANTA MONICA BOULEVARD, BEVERLY HILLS.

Attachments:

1. Resolution Approving a Mills Act Contract for Beverly Hills Post Office – Wallis Annenberg Center for the Performing Arts.
2. Mills Act Application and Rehabilitation and Maintenance Plan
3. Historic Structures Report
4. Mills Act Contract
5. Recommendation of the Cultural Heritage Commission and Commission Staff Report

RECOMMENDATION

Upon the recommendation of the Cultural Heritage Commission, the City Council is asked to adopt a resolution approving a Mills Act Contract for Beverly Hills Post Office – Wallis Annenberg Center for the Performing Arts at 9390 North Santa Monica Boulevard, Beverly Hills.

BACKGROUND

A Pilot Mills Act Program was established by the City Council as an incentive for owners of qualifying Local Landmark properties in Beverly Hills. The program offers a property tax reduction to owners of participating historic properties. In exchange, property owners agree to use tax savings to complete a pre-approved Rehabilitation and Maintenance 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 on the agreement date anniversary, unless either party serves a written notice of nonrenewal. 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.

DISCUSSION

On August 30, 2013 a completed Mills Act Contract Application was submitted to the City by Ms. Tania Camargo, General Manager of the Wallis Annenberg Center for the Performing Arts, for the Beverly Hills Post Office at 9390 North Santa Monica Boulevard, Beverly Hills. This new address for the Wallis Annenberg Center for the Performing Arts was recently approved by the City, and it replaces all previous addresses for this property including 470 North Canon Drive, and 469 N. Crescent Drive. The City's Pilot Mills Act Program specifically enables Public Theaters that are local landmarks to participate in the program. In this case, the 1933 Beverly Hills Post Office, designed by master architect Ralph C. Flewelling, has been fully restored and adaptively re-used as part of the Wallis Annenberg Center for the Performing Arts. The Beverly Hills Post Office is a Listed National Register Property and designated as a local landmark. (No. 5, Approved by City Council, January 24, 2013)

In addition to the Fox Wilshire - Saban Theatre, the Beverly Hills Post Office is the second landmark property to come before City Council in 2013 for participation in the City's Pilot Mills Act Program. No Mills Act Contracts were entered into in the 2012 cycle and no additional Mills Act applications are on file at this time. If a Mills Act Contract is approved by City Council for the Beverly Hills Post Office, there will be a total of two qualifying properties participating in the City's two year Pilot Mills Act Program, which concludes at the end of this year unless extended by the City Council.

The application for a Mills Act Contract provides an estimate of likely tax savings as well as an estimate of the City's property tax reduction. Since this estimate is based on financial data submitted by the applicant, the City will work with the County Assessor to verify all calculations prior to final tax assessments. By executing a Mills Act contract, the City does not corroborate the applicant's submitted financial statement, but authorizes tax abatement for the property.

If approved for the City's Pilot Mills Act Program, City staff and the County Tax Assessor's office will use specific formulae to determine the value of the historic property based upon net operating income rather than upon the traditional assessed valuation method, to calculate the tax reduction. In exchange for the tax reduction, the Wallis Annenberg Center for the Performing Arts agrees to protect, and maintain this fully restored historic landmark property. The Mills Act contract is for a ten (10) year period with automatic yearly extension as discussed above. The applicant plans to use Mills Act Contract savings for:

- Ongoing preventative maintenance of upgraded HVAC systems.
- Ongoing preventative maintenance of newly installed electrical systems
- Ongoing preventative maintenance of newly installed plumbing systems.
- Ongoing security monitoring systems.
- Ongoing janitorial maintenance.
- Ongoing landscape beautification and maintenance.
- Ongoing maintenance of structural systems to prevent water intrusion

The Rehabilitation and Maintenance Plan for this property is a part of the Mills Act application and will be incorporated into the Mills Act contract, including the list of property maintenance

expenditures to be completed by the Wallis Annenberg Center for the Performing Arts during the initial ten year contract term.

In this case the extensive and historically accurate restoration of the historic Post Office has been completed as part of the Wallis Annenberg Center for the Performing Arts project and was guided by the Historic Structures Report produced by Hardy Holzman Pfeiffer and Associates, July 2002. Although the Mills Act Program does not retroactively include the cost of restoration work already completed, the ongoing cost of maintaining a valuable and accurately restored historic resource is appropriately included under the Mills Act Program.

CULTURAL HERITAGE COMMISSION

The Cultural Heritage considered the Mills Act application for Beverly Hills Post Office – Wallis Annenberg Center for the Performing Arts at their meeting on October 9, 2013. On that occasion the Cultural Heritage Commission adopted a resolution recommending approval of a Mills Act Contract provided the applicant provides an offer of public benefit to the Beverly Hills Unified School District (BHUSD) to offset the BHUSD's lost property / possessory interest tax revenue resulting from any Mills Act Contract awarded to the Wallis Annenberg Center for the Performing Arts.¹

This property has not, until recently, generated significant property tax income for either the City or BHUSD. However, the creation of the legal framework of property ownership necessary for the Annenberg to qualify for the Federal Historic Tax Credit Program to help offset significant construction costs associated with the adaptive re-use of the Historic Post Office building, has, as a consequence, also made the newly created ownership entity subject to property tax.

Accordingly, the Wallis Annenberg Center for the Performing Arts has pointed out to City staff that their voluntary participation in the Federal Historic Tax Credit Program was for the purpose of generating important funding, not to encumber the Annenberg with the additional expense of property taxation. The Wallis Annenberg Center for the Performing Arts points out that neither the City or BHUSD should feel restrained over the loss of property tax income from a property that, until recently, has not generated any significant property tax income.

Various options are available to the City Council to address the Commission's recommendation regarding the offer of public benefit by the applicant to BHUSD, including:

- Approving the Agreement without a formal requirement that the applicant offset the BHUSD's loss of potential tax revenue
- Approving the Agreement contingent on the Annenberg providing annual programming for the benefit of the BHUSD
- Approving the Mills Act Contract with a specific requirement that the Annenberg provide programming or other services to the BHUSD in a dollar amount of comparable value to the tax revenue the District otherwise would have received had the Annenberg and the City not entered into the Agreement.

¹ See "Fiscal Impacts" section of this report for a detailed explanation of the applicable tax benefits to the City and Beverly Hills Unified School District.

ANALYSIS

The development of the Wallis Annenberg Center for the Performing Arts in the City of Beverly Hills provides a major new cultural and artistic center with state of the art facilities for education and entertainment. The creative inclusion into this new facility of the Old Post Office represents an outstanding example of adaptive re-use of one of the City's significant historic landmark buildings back into the fabric of everyday life. The application for a Mills Act contract in this instance is also in line with the City's desire to include provision in the City's Pilot Mills Act Program to assist privately owned, non-exempt, commercial property constructed as a public theater as a primary use through property tax reduction.

To qualify as a historic property eligible for participation in the City's Mills Act Program a property has to be in private ownership and not exempt from property tax. In this case the applicant, consisting of a non-profit corporation and limited liability companies, is private and is not governmental in nature

The interest in the Post Office Building is a "possessory interest," which is not a "fee interest" but rather is a right to possession of property. In this case, the applicant holds the right to possess and use the Property for 55 years (with two 10-year options to renew). Such interest constitutes "real property" as defined in California Revenue and Taxation Code ("RTC") Section 104. Specifically, RTC Section 104(a) defines "real property" as including the "possession of, claim to, ownership of, or right to the possession of land." Because a "possessory interest" constitutes a "claim to," or right to the possession of land, such interest is taxable for purposes of RTC. A possessory interest is usually not assessed for property tax purposes separately from the fee interest. Exceptions to this general rule include situations such as this where the fee interest is exempt from taxation and the property would otherwise escape taxation entirely. In this case, since the City of Beverly Hills is an exempt governmental entity, the possessory interest held by Center will be assessed separately to avoid such interest escaping property taxation entirely. Thus, the property is not exempt from property taxation, and the applicant and staff believe the Post Office qualifies for participation in the City's Pilot Mills Act Program in light of its property / possessory interest tax obligations.

Although the financial benefits gained by participation in the City's Pilot Mills Act Program cannot be applied retroactively to construction and rehabilitation costs already incurred, there is none the less, significant ongoing maintenance expenses associated with the upkeep of any historically restored property such as the Old Post Office that can be legitimately offset by reduced property taxes. In this case the applicant's Rehabilitation and Maintenance Plan projects a total cost for ongoing rehabilitation and maintenance works scheduled over the initial ten year contract period to be \$1,003,000.00. This figure does represent the fair reinvestment of property tax savings over the ten year period.

GENERAL PLAN CONSISTENCY

Approval of a Mills Act Program for the Beverly Hills Post – Wallis Annenberg Center for the Performing Arts at 9390 North Santa Monica Boulevard, Beverly Hills, is consistent with the objectives, principles, and standards of the General Plan. General Plan Policy "HP 1.3 – Promote National, State, and Local Designation of Historic Resources" encourages the establishment of programs encouraging the nomination of landmarks.

ENVIRONMENTAL DETERMINATION

Approval of a Mills Act Program for the Beverly Hills Post Office – Wallis Annenberg Center for the Performing Arts at 9390 North Santa Monica Boulevard, Beverly Hills, was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. It has been determined that approval of a Mills Act Program for the Beverly Hills Post Office – Wallis Annenberg Center for the Performing Arts would not have a significant environmental impact and is categorically exempt from CEQA pursuant to Sections 15308 and 15331 of Title 14 of the California Code of Regulations because approval of a Mills Act Program for the Beverly Hills Post Office – Wallis Annenberg Center for the Performing Arts is an action of the City to protect and preserve a historic resource.

PUBLIC COMMENT

Notice of the public hearing for consideration of this Mills Act Contract by City Council was provided to the Wallis Annenberg Center for the Performing Arts. As of the writing of this agenda report, no public comments have been received. Additionally, no public comments were received at the public hearing before the Cultural Heritage Commission on October 9, 2013.

FISCAL IMPACT

Based on the estimated tax reduction worksheet as presented by the applicant, execution of this Mills Act contract would result in reduced property tax revenue to the City of approximately \$36,000.00 per annum and to the School District of approximately \$31,500.00. However, it should be noted that this property would not be generating any significant property tax income except for the creation of the necessary legal entities needed to make Federal Historic Tax Credits available to the applicant in an effort to offset the significant construction costs associated with the project. The Historic Preservation Tax Credit Program, administered through the National Office of Historic Preservation, yields up to 20% of the cost of construction back to the applicant in tax credits.

Another ancillary benefit of this necessary legal framework is that participation by the applicant in the City's Pilot Mills Act Program also becomes available. Under a Mills Act contract the annual property taxes would be reduced each year over the period of the contract. The current annual property tax for this property is \$204,930.00 which would be reduced under the Mills Act Program by approximately \$203,896.00 to \$1,003.00. The actual yearly revenue loss is subject to annual review and determined by the County Tax Assessor once the contract has been executed and recorded with the County. The applicant's Rehabilitation and Maintenance Plan projects a total cost for ongoing rehabilitation and maintenance works scheduled over the initial ten year contract period to be \$1,003,000.00.

The City recently approved the first Mills Act contract under the current two year Pilot Mills Act Program with Fox Wilshire - Saban Theatre at 8440 Wilshire Blvd., Beverly Hills. The annual reduction to property tax revenue to the City as a result of the Fox Wilshire - Saban Theatre Mills Act Contract, is estimated to be \$10,400.00. If the City also awards a Mills Act Contract to the Beverly Hills Post Office- Wallis Annenberg Center for the Performing Arts, the total yearly loss of property tax revenue to the city resulting from both participating properties is estimated to be \$46,400.00 per annum. The City's Pilot Mills Act Program caps the total property tax losses to the City at a maximum of \$50,000.00 per annum.

Meeting Date: December 5, 2013
Mills Act Contract for Beverly Hills Post – Annenberg Center for the Performing Arts.

No other properties will be considered as part of the initial two year Pilot Program, and there are no other applications pending.

Susan Healy Keene
Director of Community Development

Approved By

A handwritten signature in black ink that reads "Susan Healy Keene". The signature is written in a cursive, flowing style.