

City of Encinitas
Planning and Building Department
505 S. Vulcan Avenue
Encinitas, CA 92024
(760) 633-2710

MILLS ACT

Historical Property Preservation Agreement

Application Process

PURPOSE

The purpose of an "Historical Property Preservation Agreement" is to provide an opportunity for owners of qualified historic structures to potentially receive property tax relief through the use of the Mills Act. The owner agrees to preserve, maintain and, if necessary, restore and or rehabilitate the historic property. In return for rehabilitation and continued preservation of the property, the owner is eligible for a different method of property valuation and property tax assessment which may reduce the property taxes each year the Agreement is in effect (minimum of 10 years). Use of the Mills Act will help offset the higher costs involved in restoration and ongoing maintenance required for historic structures which have been recently purchased or have been reassessed as a result of prior rehabilitation improvements. Although the City and the property owner enter into the Agreement, the County Tax Assessor is responsible for administering the valuation terms of the Agreement.

Owners of any qualified historic property that is privately owned and not exempt from property taxation, and is individually designated or within a designated district, which is listed as a contributing historic structure on the National Register of Historic Places, California Register of Historical Resources or Register of Historical Landmarks, California Points of Historical Interest, or in the Encinitas Register of Historic Property, may apply to enter into an "Historic Property Preservation Agreement."

In reviewing and processing the application, the Planning and Building Department will evaluate whether or not the proposed work meets the minimum required standards and conditions for the maintenance, use, and preservation of the qualified historic property according to the conditions of the of the "Historic Property Preservation Agreement." Further, the City Council will review the proposed work to determine that it serves a purpose for the community. A priority will be given for improvement of basic structural systems (roof, foundation, electrical, termite control, painting, etc.). Improvements to landscape, hardscape, room additions and interior renovations will not normally be allowed as part of the program. Note that only new work done after approval of the agreement will be considered as part of the program. The City Council makes the final decision for the City to approve and accept the "Historic Property Preservation Agreement."

PROCESS

Step 1 Applicant Consideration of Long Term Goals for Property

Early in the consideration of whether to apply for an "Historic Property Preservation Agreement," the property owner should determine what the goals are for the property, and develop a proposed work and/or maintenance schedule. Documentation by a Historic/Preservation Consultant showing property history is necessary prior to submittal of any

application materials. In addition, the owners shall employ a qualified preservation architect, to be approved by the Planning and Building Department Director, with experience in the restoration of historic architecture, rehabilitation, and reuse of historic sites, if substantial structural alterations are considered. Since the intent of the Agreement is preservation of the property, long term goals, which include significant modifications that would negatively impact the integrity of the building, may not be consistent with the goals and requirements of the Agreement and state law.

Step 2 Pre-Application Assistance

Prior to submitting a formal application, the property owner shall make an appointment with the Planning and Building Department, who will explain the program requirements and the "Historic Property Preservation Agreement." Staff will discuss the specific details of the Agreement itself, which is a legal and binding document recorded against the property, and binds successor property owners as well. The property owner will be encouraged to seek the advice and recommendations of his/her own independently selected counsel concerning the nature, extent and duration of his/her rights and obligations under the Agreement.

Upon submittal of the homeowner's proposed work list and current photographs of the property, staff will provide assistance to the homeowner in identifying priorities and specifics of the proposed work, as it relates to the recommendations and or requirements in the "Secretary of the Interior's Guidelines for Rehabilitation," and the State Historic Building Code.

* Application Deadline: City applications for the Mills Act are due no later than October 1st and must be executed no later than December 31st to take effect the following tax year. For example, the tax year beginning July 2004, the Agreement must be executed by December 31, 2003. Therefore, an Agreement executed in January 2004 will not take effect until the 2005-06 tax year.

Step 3 Site Meeting

City staff or a Consultant will contact the owner to schedule a site meeting. The purpose of this meeting is to inspect the property including any previously completed restoration work or improvements, examine those areas where proposed work, or needed improvements will be installed, and to identify any ongoing items which may need long-term maintenance.

Because the Agreement requires adherence to the "Secretary of the Interior's Standards and Guidelines for Rehabilitation," any inappropriate changes to the property in the past that are not consistent with guidelines or property maintenance and code deficiencies needing repair or correction will be identified and included in the list of work specified in the contract of improvements.

Step 4 Review of Application

City staff will review the application for completeness and review the (type, order, and list) potential restoration improvements to determine if such improvements conform to the required standards. Documentation by a Historic/Preservation Consultant showing property history is necessary prior to submittal. The applicant will be notified after filing as to whether the application is complete or what additional information is required.

Step 5 Improvements Requiring Review

Prior to consideration of the application by City Council, all proposed improvements must be reviewed and approved by the City. Projects proposing new additions and major exterior

renovations may be subject to review and approval by the City. Minor exterior restoration and interior alterations and improvements will be reviewed and approved by the Planning and Building Department.

For those projects requiring review by City staff or a Historic Consultant, staff will review the type of potential improvements and determine if such work conforms to the required standards. At the conclusion of the discussion, City staff will make a recommendation regarding the proposed work and forward its recommendation to the City Council for consideration at the public meeting regarding acceptance of the Mills Act Agreement.

Step 6 City Council Review

The City Council shall hold at least one public meeting on the “Historic Property Preservation Agreement” application and the “Encinitas Register of Historic Property” application.

At the public meeting, staff will present a report, with their recommendation or the recommendation from a Historic Consultant. In considering a request for an Agreement, Council will place a priority on improvement of basic structural systems such as roof, foundation, electrical, termite control and painting protection. Costs for landscape, hardscape, room additions and interior renovations (not associated with basic systems) will not normally be allowed as part of the program. The City Council makes a decision approving or conditionally approving the Agreement, denying the Agreement, or postponing the decision to a later date. The City Council’s decision on an “Historic Property Preservation Agreement” is final.

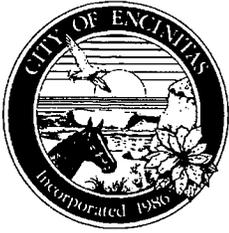
Step 7 Execution of Approved Agreement

Once the City Council has approved the Agreement, the property owner is required to execute the Agreement. Staff will then coordinate the execution of the Agreement by the City. Within 20 days after the Agreement is executed, the City will forward the Agreement to the County Recorder for recordation. Upon receipt of the recorded copy from the County, the City will then forward the recorded Agreement to the County Tax Assessor’s office for implementation.

Step 8 Owner’s Notice to Office of Historic Preservation

The owner or owner’s agent shall provide written notice of the Agreement to the following agency within 6 months of entering into the Agreement.

California Office of Historic Preservation
Department of Parks and Recreation
PO Box 942896
Sacramento, California 94296-0001



CITY OF ENCINITAS
**HISTORIC PROPERTY PRESERVATION AGREEMENT
CHECKLIST**
PLANNING AND BUILDING DEPARTMENT

505 South Vulcan Avenue
Encinitas, California 92024
(760) 633-2710

Please submit the items listed below for consideration of a Historic Property Preservation Agreement. Incomplete application submittals will not be accepted.

Completed Application

Property/Site Photographs:

Minimum 4x6 black & white prints
Digital Images (specify format)
Exterior: front, back, both sides
Interior: all rooms, views from the site
Any other defining historic characteristics.
Label with date photo was taken, site name, and description of what is shown in the photo.
Photos should be numbered.

Floor Plan:

Numbered floor plan matching numbered photos.

Site Map:

Drawn to scale
Indicate location of all buildings on property
Street names
North arrow

Grant Deed

Preliminary Title Report:

Including complete legal description.

Restoration/Maintenance Plan:

Including proposed work/maintenance list, cost estimates for work listed, and schedule of work to be completed.

Documentation by a Historic/Preservation Consultant showing property history:

Not necessary if the property is already on the State or National Historic Register.

Note to Applicants:

Preservation Agreements are limited to properties listed on the Encinitas Register of Historical Property. If interested in a Preservation Agreement for property not listed on the Register, application for a Register listing may be considered concurrent with an application for a Preservation Agreement (see attached).



**CITY OF ENCINITAS
APPLICATION FOR MILLS ACT
HISTORIC PROPERTY PRESERVATION AGREEMENT
PLANNING AND BUILDING DEPARTMENT**

505 South Vulcan Avenue
Encinitas, California 92024
(760) 633-2710

Application No. _____
Date of Application: _____
Accepted By: _____

**** Appointment Required Prior To Submittal****

HISTORIC PROPERTY INFORMATION

Address: _____

Property Name: _____

Legal Description: _____

Assessor's Parcel No.: _____

Current Use (check one): _____ Residential _____ Commercial/Industrial _____ Other

Proposed Use (if different than above): _____

Property is listed on the Encinitas Local Register? : ___ Yes ___ No National Register? ___ Yes ___ No

OWNER INFORMATION

Owner(s): _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Email: _____ Fax: _____

Contact Name (if different from Owner): _____

Contact Phone No.: _____ Fax: _____

PROPOSED STRUCTURE IMPROVEMENTS/MAINTENANCE

Describe any rehabilitation work or maintenance proposed for the site over the next 10 years. Attach separate sheet(s) if necessary.

Year	Improvement
_____	_____
_____	_____
_____	_____

I am (we are) the owner(s) of the property described above and hereby apply for consideration of a historical property preservation agreement.

Owner Signature: _____ Date: _____

Owner Signature: _____ Date: _____

To be completed by City staff.

___ Building ___ Code ___ Preliminary Title Report ___ Grant Deed Encinitas Local Register # _____
 ___ Fire ___ Engineering ___ Property/Site Photos ___ Photo Location Map National Register # _____



City of Encinitas
Planning and Building Department
505 S. Vulcan Avenue
Encinitas, CA 92024
(760) 633-2710

ENCINITAS REGISTER OF HISTORIC PROPERTY

I. What is the Encinitas Register of Historical Property?

In December of 2003, the City Council by resolution approved and adopted the creation of the Encinitas Register of Historic Property commonly referred to as the local Register. The local Register is a comprehensive inventory of historic structures and properties that exemplify the cultural heritage of Encinitas.

II. Why is the local Register important?

The local Register identifies historic and architecturally significant properties, which have been determined to be important cultural resources to the City of Encinitas. Based upon the significance of the contribution that these structures provide to the City, the City Council has deemed that special efforts shall be made to preserve these structures for the benefit of the community for years to come. As a result, anyone wishing to propose an exterior modification, relocation, or demolition of any structure on the local Register must first have that request reviewed by the Planning and Building Department and the City Council.

III. How does a property get added to the local Register?

In order to have a historic property added to the local Register, an application (see attached) must be completed and submitted to the Planning and Building Department. Additionally, the property must meet the criteria for significance (see attached).

IV. Processing Procedure

Once the completed application and any additional submittal requirements are submitted, the Planning and Building Department will review the information for completeness. Documentation by a Historic/Preservation Consultant showing property history is necessary prior to submittal. Once the application is reviewed and determined to be complete, a staff member will schedule an appointment for an on-site inspection. Once staff approves a request, a recommendation will be made to the City Council for final approval.

For additional information, please contact the Planning and Building Department at (760) 633-2710.



CITY OF ENCINITAS
ENCINITAS REGISTER OF HISTORICAL PROPERTY
APPLICATION FORM
PLANNING AND BUILDING DEPARTMENT

505 South Vulcan Avenue
Encinitas, California 92024
(760) 633-2710

Application No. _____
Date of Application: _____
Accepted By: _____

HISTORIC PROPERTY INFORMATION

Address: _____

Property Name: _____ Year Built: _____

Legal Description: _____

Assessor's Parcel No.: _____ Approximate Acreage (in feet): _____

Current Use (check one): _____ Residential _____ Commercial/Industrial _____ Other

Proposed Use (if different than above): _____

OWNER INFORMATION

Owner(s): _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Email: _____ Fax: _____

Contact Name (if different from Owner): _____

Contact Phone No.: _____ Fax: _____

OWNER APPROVAL IS REQUIRED

Name: _____ Name: _____

Signature: _____ Signature: _____

Date: _____ Date: _____

HISTORIC/LANDMARK INFORMATION

A separate piece of paper may be attached for question 1-3.

1. Please describe, in detail, historical aspects of the site or structure as well as any other significant factors, which may determine the property as a historic site/landmark (i.e. special aesthetics; cultural architectural or engineering factors; and any dates, events, or persons associated with the site or structure). **See established criteria for designation (attached checklist).**
2. Has the site or structure been altered in any way from its original design?
_____ Yes _____ No (if yes, explain)
3. Briefly describe the present physical condition of the property include a rating of poor, fair, good, or excellent.



CITY OF ENCINITAS
ENCINITAS REGISTER OF HISTORICAL PROPERTY
APPLICATION CHECKLIST
PLANNING AND BUILDING DEPARTMENT

505 South Vulcan Avenue
Encinitas, California 92024
(760) 633-2710

Please submit the items listed below for consideration to be listed on the Encinitas Register of Historical Property. Incomplete application submittals will not be accepted.

Completed Application

Grant Deed

Complete legal description of the property

Property/Site Photographs:

Minimum 4x6 black & white prints (Exterior: front, back, both sides Interior: all rooms, views from the site).

Label with date photo was taken, site name, and description of what is shown in the photo.

Photos of any other defining historic characteristics.

Any documentation from qualified Historic/Preservation Consultant to support that the site meets the outlined criteria below:

All historical resources must demonstrate their significance by meeting one of the following requirements in this section and, additionally, must be fifty (50) years of age or older. Resources less than fifty (50) years old will be considered for designation only if they possess exceptional design merit or historical significance that transcends the fifty-year age requirement. Landmarks must be visibly accessible from a public thoroughfare.

- **The property is the first, last, only, or most significant historical property of its type within the City.** If a property has lost its historic appearance (integrity) it may be listed as a site.
- **The property is associated with an individual or group having a profound influence on the history of Encinitas.** The primary influence should be the place(s) of achievement of an individual. Birthplace, death place, or place of interment shall not be a consideration unless something of historical importance is connected with his/her birth or death. If a property has lost its historic appearance (integrity) it may be listed as a site.
- **The property is a prototype of, or an outstanding example of, a period, style, architectural movement, or construction, or it is one of the more notable works, or the best surviving work in a region of a pioneer architect, designer, or master builder.** An architectural landmark must have excellent physical integrity, including integrity of location. An architectural landmark generally will be considered on its original site, particularly if its significance is basically derived from its design relationship to its site.
- **The property is in a unique location and contains exceptional architectural characteristics representing an established and familiar visual feature of a neighborhood, community, or the city.** The resource value of a property is defined by its location such that, if located elsewhere, would not be considered historically significant, or the property is an integral part of the physical, aesthetic and historical character of its surrounding environment, or its presence significantly contributes to an understanding of the history of Encinitas. As an example, automobile-related uses (motor courts, inns, and gas stations) along Coast Highway 101 that provide important past examples of the advent of the automobile era reinforce the highway heritage of Encinitas.
- **Resources moved from their original locations will not qualify for landmark designation unless they are significant for architectural value, or if they are the surviving structure most importantly associated with a prominent person or historic event.** Two sites cannot be recognized for identical significance. Only one location, either the original site or new site of the moved resource, shall be designated. The City Council will determine which location is more appropriate for the designation.

RECORDING REQUESTED BY: (
Deborah Cervone (
(
AFTER RECORDING MAIL TO: (
City Clerk (
City of Encinitas (
S. Vulcan Avenue (
Encinitas, CA 92024 (

Above Space for Recorder's Use Only.

HISTORIC PROPERTY PRESERVATION AGREEMENT

THIS AGREEMENT is made and entered into by and between the CITY OF ENCINITAS, a municipal corporation ("CITY"), and _____, ("Owner(s)").

Recitals

WHEREAS, California Government Code Section 50280, et seq. Authorizes cities to enter into contracts with the owner(s) of qualified historical property to provide for the use, maintenance and restoration of such historical property so as to retain its characteristics as a property of historical significance.

WHEREAS, Owner(s) possesses fee title in and to that certain real property, together with associated structures and improvements thereon, Assessor Parcel No. _____, located at the street address _____, Encinitas, California (the "Historic Property").

WHEREAS, On _____, the City Council of the City of Encinitas adopted Resolution 2003-__ thereby declaring and designating the above property as a Historical Property pursuant to the terms and provisions of Resolution 2003-68, Administration of the Mills Act Contracts.

WHEREAS, both the City and Owner(s), for their mutual benefit, now desire to enter into this agreement both to protect and preserve the characteristics of historical significance of the Historical Property and to qualify the Historic Property for an assessment of valuation pursuant to the Provisions of Chapter 3, of Part 2, of Division 1 of the California Revenue and Taxation Code.

Agreement

NOW, THEREFORE, both the City and Owner(s), in consideration of the mutual covenants and conditions set forth herein and the substantial public benefits derived therefrom, do hereby agree as follows:

1. Compliance with Council Policy. Owner(s) shall comply with City Council Resolution number 2003-XX incorporated herein by this reference.

2. Applicability of Government Code and Revenue and Taxation Code. This Agreement is made pursuant to Article 12 (commencing with section 50280) of Chapter 1, of Part 1, of Division 1, of Title 5 of the California Government Code and Article 1.9 (commencing with section 439) of Chapter 3, of part 2, of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of these statutes.

3. Preservation of Property. The Owner(s) agree to preserve and maintain the designated historic resource on the Historic Property, and when necessary, to restore and rehabilitate the property to conform to the rules and regulations published by the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. In particular, the Owner(s) agree to make all of the improvements identified in Attachment "A" during the initial term of this Agreement. The Owner(s) shall obtain a Historic Resource Alteration permit from the Historic Resource Commission prior to obtaining a building permit for any addition to, or alteration to the exterior of the Historic Resource.

4. Inspections. The Owner(s) agree to permit the periodic examination of the Historic Property, by prior appointment, by the City, The County Assessor, the Department of Parks and Recreation, and the State Board of Equalization as may be necessary to determine the Owner(s)' compliance with this Agreement.

5. Visibility of Property. The Owner(s) agree to allow for the visibility of the historic resource on the Historic Property from the public right-of-way(s).

6. Term of Agreement. This Agreement shall be effective and shall commence on the date this Agreement is approved by the City Council and shall remain in effect for a term of ten (10) years thereafter.

7. Automatic Renewal. Each year on the anniversary of the effective date of this Agreement ("Renewal Date"), a year shall automatically be added to the initial term of this Agreement unless notice of non-renewal is mailed as provided herein.

8. Notice of Nonrenewal. If either Owner(s) or City desires in any year not to renew the Agreement, that party shall serve written notice of non-renewal on the other party. If the Owner(s) elect to serve a notice of nonrenewal, the notice must be served on the City at least ninety (90) days prior to the Renewal Date, otherwise one (1) additional year shall automatically be added to the term of this Agreement. Conversely, if the City elects to serve a notice of nonrenewal, the notice must be served on the Owner(s) at least sixty (60) days prior to the Renewal Date, otherwise one (1) additional year shall automatically be added to the term of this Agreement. Upon receipt by the Owner(s) of a notice of nonrenewal from the City, the Owner(s) may make a written protest of the nonrenewal. The City may, at any time prior to the Renewal Date, withdraw its notice of nonrenewal.

9. Effect of Notice of Nonrenewal. If, in any year, either party serves a notice of nonrenewal as provided in Paragraph 8 above, this Agreement shall remain in effect for: (1) the balance of the period remaining under the initial term of this Agreement; or (2) the balance of the period remaining since the last automatic renewal, whichever the case may be.

10. Cancellation. The City, following a duly notice public hearing as set forth in California Government Code Section 50280; et seq., may cancel this Agreement if it determines that the Owner(s) has breached any of the conditions of this Agreement or has allowed the property to deteriorate to the point that is no longer meets the standards for a qualified historic property. In addition, the City may cancel this Agreement if it determines that the Owner(s) has failed to restore or rehabilitate the property in the manner specified in this Agreement. In the event of cancellation, Owner(s) shall pay a cancellation fee as set forth in the California Government Code Section 50280, et seq. (fees are currently equal to 12.5% of the current fair market value of the property).

11. Enforcement of Agreement. In lieu of and/or in addition to any provisions to cancel the Agreement as referenced herein, City may specifically enforce, or enjoin the breach of, the terms of this Agreement. In the event of the default under the provisions of this Agreement by Owner(s), City shall give written notice to Owner(s) by registered or certified mail addressed to the address stated in this Agreement, and if such a violation is not corrected to the reasonable satisfaction of the 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 thirty (30) days and must thereafter be diligently pursued to completion by Owner(s), 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 Owner(s) growing out of the terms of this Agreement, apply to any court, state or federal for injunctive relief against any violation by Owner(s) or apply for such relief as may be appropriate.

City does not waive any claim of default by Owner(s) if City does not enforce or cancel this Agreement. All other remedies at law or in equity, which are not otherwise provided for in this Agreement or in City's regulations governing historic properties are available to the City to pursue in the event that there is a breach of this Agreement. No waiver by City of any breach or default under this Agreement shall be deemed to be a waiver of any other subsequent breach thereof or default hereunder.

12. Binding Effect of Agreement. The Owner(s) hereby subjects the Historic Property to the covenants, conditions, and restrictions as set forth in this Agreement. City and Owner(s) hereby declare their specific intent that the covenants, conditions, and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner(s)' successors and assigns in title or interest to the Historic Property. Each and every contract, deed or other instrument herein executed, covering on conveying the Historic Property, or any portion thereof, shall conclusively be held to have been executed, delivered, and accepted subject to the covenants, conditions, and restrictions expressed in this Agreement regardless of whether such covenants, conditions, and restrictions are set forth in such contract, deed or other instrument.

City and Owner(s) hereby declare their understanding and intent that the burden of covenants, conditions, and restrictions set forth herein touch and concern the land in that Owner(s) legal interest in the Historic Property in rendered less valuable thereby. City and Owner(s) hereby further declare their understanding and intent that the benefit of such covenants, conditions, and restrictions touch and concern the land by enhancing and maintaining the historic characteristics and significance of the Historic Property or benefit of the public and Owner(s).

13. Notice. Any notice required to be given by the terms of this Agreement shall be provided at the address of the respective parties as specified below or at any other address as may be later specified by the parties hereto.

To City: City Clerk
 City of Encinitas
 505 S. Vulcan Avenue
 Encinitas, CA 92024

To Owner(s):

14. General Provisions.

a. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties the parties 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.

b. Owner(s) agrees to and shall hold City and its elected officials, officers, agents, and employees harmless from liability for damage or claims for damage for personal injuries, including death, and claims for property damage which may arise from the direct or indirect use or operations of Owner(s) or those of his contractor, subcontractor, agent, employee or other person acting on his behalf which relate to the use, operation and maintenance of the Historical Property. Owner(s) hereby agrees to and

shall defend the City and its elected officials, officers, agents, and employees with respect to any and all actions for damages suffered, or alleged to have been suffered, by reason of the operations referred to in this Agreement regardless of whether or not the City prepared, supplied or approved the plans, specifications or other documents for the Historic Property.

c. All of the agreements, rights, covenants, conditions, and restrictions contained in this Agreement shall be binding upon and shall inure to the benefit of the parties herein, their heirs, successors, legal representatives, assigns, and all persons acquiring any part or portion of the Historic Property, whether by operation of law or in any manner whatsoever.

d. In the event legal proceedings are brought by any party or parties to enforce or restrain a violation of any of the covenants, conditions or restrictions contained herein, or to determine the rights and duties of any party hereunder, the prevailing party in such proceeding may recover all reasonable attorney's fees to be fixed by the court, in addition to, court costs and other relief ordered by the court.

e. In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, or by subsequent preemptive legislation, the validity and enforceability of the remaining provisions, or portions thereof, shall not be effected thereby.

f. This Agreement shall be constructed and governed in accordance with the laws of the State of California.

15. Recordation. No later than twenty (20) days after the parties execute and enter into this Agreement, City shall cause this Agreement to be recorded in the office of the County Recorder of the County of San Diego.

16. Amendments. This Agreement may be amended, in whole or in part, only by a written-recorded instrument executed by the parties hereto.

IN WITNESS WHEREOF, CITY and OWNER(S) have executed this Agreement as of the date set forth below.

CITY OF ENCINITAS, a Municipal Corporation

Dated: _____

By: _____
Mayor

ATTEST:

Deborah Cervone, City Clerk

Date

OWNER(S)

Dated: _____

By: _____

Dated: _____

By: _____

OWNER(S) PLEASE HAVE NOTARY PUBLIC ATTACH A SEPARATE PROOF OF NOTARY PAGE WITH SIGNATURE AND SEAL.

RESOLUTION NO. 2003-68

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ENCINITAS
ESTABLISHING THE ADMINISTRATION OF THE MILLS ACT CONTRACTS,
AS REQUIRED BY GOVERNMENT CODE SECTION 50280.**

WHEREAS, the General Plan of the City of Encinitas states that the City will pursue the development of a historic resources program to assist in the identification, preservation, and restoration of those buildings, structures, and places within the City that have historic significance; and

WHEREAS, California Government Code Section 50280, et seq. authorizes cities to enter into Mills Act contracts with the property owner(s) of a "Qualified Historical Property" as defined by the Government Code Section 50280.1 to provide a property tax reduction in exchange for the appropriate use, maintenance, preservation, restoration, and rehabilitation of said Historic Property such that the historic property retains its historic character and integrity in accordance with the Office of Historic Preservation of the Department of Parks and Recreation, and the State Historic Building Code; and

WHEREAS, the City Council of the City of Encinitas has determined that preservation of cultural resources is important to the City and that these cultural resources contribute to the City's quality of life and to the welfare of current and future generations; and

WHEREAS, the City of Encinitas is dedicated to the protection and stabilization of property values through maintaining and upgrading its older housing stock, through the use of incentives such as the Mills Act; and

WHEREAS, the City maintains a "List of Identified Historic Sites in Encinitas" as approved by the City Council, which identifies places that may be eligible for the Mills Act program; and

WHEREAS, historical designations and contracts are categorically exempt from the California Environmental Quality Act as provided by Section 15308; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Encinitas, hereby authorizes the implementation of the Mills Act program pursuant to State law in accordance with the following:

1. An "Official Register of Historic Places in Encinitas" shall be established.
2. Mills Act contracts shall be permitted only for "Qualified Historical Property" as defined by Government Code Section 50280.1, shall meet the terms described in Exhibit "A" of this Resolution, and shall incorporate all

the requirements for administration, cancellation, and renewal prescribed by California Government Code Sections 50280 et. seq. and California Revenue and Taxation Code Section 439.2 et. Seq.

3. Applications for Mills Act contracts shall be made to the Planning and Building Department on a form prescribed by the Planning and Building Director, and shall include documentation demonstrating the need for a Mills Act contract for the property, photos of the structure, and a maintenance/ restoration plan along with other information deemed necessary by the Planning and Building Department.
4. Administration of Mills Act contracts shall be conducted as follows:

SEE EXHIBIT "A"

5. Applications for Mills Act contracts must be submitted by August 31 to affect the next assessment period.
6. The City Council shall have approval authority for each contract.

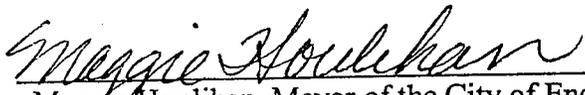
PASSED AND ADOPTED this day of December 10, 2003, by the following vote, to wit;

AYES: Dalager, Guerin, Houlihan, Stocks.

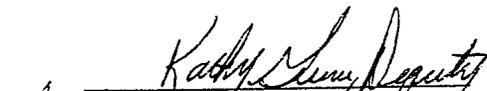
NAYS: None.

ABSENT: Bond.

ABSENT: Bond.


Maggie Houlihan, Mayor of the City of Encinitas

ATTEST:


for Deborah Cervone, City Clerk

CITY OF ENCINITAS

MILLS ACT CONTRACTS

A. PURPOSES

1. The City of Encinitas wishes to encourage the voluntary maintenance, preservation, restoration, and rehabilitation of historic properties such that the historic property retains its historic character and integrity. Providing property tax relief by means of Mills Act contracts is an appropriate incentive.
2. A Mills Act contract is an agreement between the City of Encinitas and the owner of a qualified historic landmark. The agreement requires the owner of the property to undertake specific restoration tasks specified in the contract and to properly maintain the historic landmark. In exchange for this commitment, the property owner benefits from a reduction in property taxes. A Mills Act contract requires that the County Tax Assessor's Office assess the value of the historic landmark based on its current rental income, or potential rental income.
3. The City of Encinitas wishes to provide a method of preservation and protection of its historically significant sites under Mills Act contracts in a manner consistent with the City goals, policies, and objectives, as well as authorizing the creation of new Mills Act contracts within the City's present and future incorporated boundaries.
4. The City of Encinitas wishes to comply with the requirements of the Mills Act by adopting policies for the administration of Mills Act contracts, and to provide a framework for local interpretation and application of the provisions of the Mills Act, as a means of maximizing local control of, and confidence in, the program.

B. POLICIES

The following policies are intended to address Mills Act issues that may be unique to the use of the Mills Act in the City of Encinitas

1. The Mills Act is a self-directed, economic incentive program designed to provide property owners the opportunity to actively participate in the restoration of their properties while receiving property tax relief.
2. These rules and determinations made herein are intended to be in conformity with the Mills Act as of the date of their adoption. It is the

City's intent to amend both the rules and Mills Act contracts from time to time as necessary to conform to any changes in the statute or its judicial interpretation. Nevertheless, no amendment shall be made to the rules without notice to all participating property owners, and no amendment made to the Mills Act contract for purposes of conformity shall be effective during the then current life of the Mills Act contract without the consent of the property owner, unless the City determines, after so advising the property owner, that without the amendment the Mills Act contract will lose its status as an enforceable restriction under Article XIII, Section 8 of the California Constitution.

3. The City determines that these rules are sufficient to provide the basic authority and ability to make determinations necessary to administer Mills Act contracts. They should be interpreted to supplement, rather than supersede, statutory requirements and Mills Act contract obligations. In addition, City staff may develop, and the City Council may approve, any guidelines or specific practices or procedures deemed necessary or desirable to assist property owners, the public, and the City in the administration of the program.

C. MILLS ACT CONTRACTS

1. Assessment of Valuation.
 - a. Property tax relief afforded to the owner(s) pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code will be determined solely by the San Diego County Assessor. The City makes no representations regarding the actual tax savings any person may realize by entering into the contract.
2. Renewal.
 - a. Each year on the anniversary of the effective date of the contract, a year shall automatically be added to the initial ten (10) year term of the contract unless written notice of nonrenewal is served as provided herein.
 - b. If the owner(s) or the City wish(es) in any year not to renew the contract, that party shall serve written notice of nonrenewal of the contract on the other party. Unless such notice is served by the owners to the City at least ninety (90) days prior to the annual renewal date, or served by the City to the owners at least sixty (60) days prior to the annual renewal date, one (1) year shall be automatically be added to the term of the contract as provided herein.

- c. The owners may make a written protest of the notice. The City may, at any time prior to the annual renewal date of the contract, withdraw its notice to the owners of nonrenewal.
 - d. If either the owner of the City serves notice to the other of nonrenewal, in any year, the contract shall remain in effect for the balance of the term then remaining, either from its original execution or from the last renewal of the contract, whichever may apply.
3. Standards and Conditions. During the term of the contract, the historic property shall be subject to the following conditions:
- a. The owners shall employ a qualified preservation architect, to be approved by the Planning and Building Department Director, with experience in the restoration of historic architecture, rehabilitation, and reuse of historic sites, to design a preservation plan for the site.
 - b. The plan shall be consistent with all applicable City regulations, the United States Secretary of Interior's Standards and Guidelines for Historic Preservation Projects, and shall be subject to approval of the Planning and Building Director and attached to the contract. The plan shall be approved within (1) year of the effective date of the contract. All subsequent changes shall be subject to approval by the Planning and Building Director, and all repairs, construction, and other changes to the property shall conform to the approved plan.
 - c. A view corridor enabling the general public to see the property from the public right-of-way shall be maintained and shall be established as a performance standard in the plan.
 - d. The Planning and Building Director shall be notified of changes to the property prior to their execution.
 - e. Owners shall allow reasonable periodic examination, by prior appointment, of the interior and exterior of the historic property by representatives of the County Assessor, the State Department of Parks and Recreation, the State Board of Equalization, and the City of Encinitas, as may be necessary to determine the owners' compliance with the terms and provisions of the contract. For it to be binding upon, and inure to the benefit of, all successors in interest of the owner, a successor in interest shall have the same rights and obligations under the contract as the original owner who entered into the contract.

- f. The owner shall preserve the qualified historical property and when necessary restore and rehabilitate the property. All changes shall comply with applicable City Specific Plans, ordinances, regulations, and guidelines and conform to the rules and regulations of the Office of Historic Preservation of the Department of Parks and Recreation, the United States Secretary of the Interior's Standards for Rehabilitation, and the State Historical Building Code.
 - g. If the historic property is destroyed by earthquake, fire, or other natural disaster such that in the opinion of the City Building Official more than 60% of the original fabric of the structure must be replaced, the contract agreement shall be canceled because in effect the historic value of the structure will have been destroyed. No fee shall be imposed in the case of destruction by acts of natural disaster.
4. Furnishing of information. The owners shall agree to furnish the City with any and all information requested which may be necessary or advisable to determine compliance with the terms and provisions of the contract.
5. Cancellation.
- a. The City may cancel a contract if it determines that the owner has breached any of the conditions of the contract or has allowed the property to deteriorate to the point that it no longer meets the standards for a qualified historical property.
 - b. The city 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.
 - c. If there is a default of the agreement, the City will give written notice to the owner by registered or certified mail to the owner address given. If the violation is not corrected to the satisfaction of the City within 30 days, the City may declare a default and may bring any action necessary to enforce the obligations of the owner.
 - d. If a contract is canceled under California Government Code Section 50284, the owner shall pay a cancellation fee equal to 12.5% of the current fair market value of the property, as determined by the County Assessor as though the property were free of the contractual restriction.
 - e. The cancellation fee shall be paid to the County Auditor, at the time and in the matter that the County Auditor shall prescribe, and

shall be allocated by the County Auditor to each jurisdiction in the tax rate area in which the property is located in the same manner as the Auditor allocates the annual tax increment in that tax rate area in that fiscal year.

- f. In the event that property is acquired in whole or in part by eminent domain, and the acquisition is determined to frustrate the purpose of the contract, such contract shall be cancelled and no fee shall be imposed under California Government Code Section 50286. Such contract shall be deemed null and void for all purposes of determining the value of the property so acquired.
- g. In the event that the property restricted by a contract with the County is annexed to the City, the City shall succeed to all rights, duties, and powers of the County under such contract.

6. Enforcement of Contract.

- a. As an alternative to cancellation of the contract for breach of any condition, the County, City, or any landowner may bring any action in court necessary to enforce a contract including, but not limited to, an action to enforce the contract by specific performance or injunction.
- b. In lieu of and/or in addition to any provisions to cancel the contract, the City may specifically enforce or enjoin the breach of the terms of the contract.

7. Binding Effect of Contract.

- a. The contracts run with the land and shall pass to and be binding upon the owners' successors.

8. Authority.

- a. The City Council is the final authority on the authorization and approval of Mills Act contract agreements with owners of qualified historical properties in accordance with Section 50280 et seq. of the Government Code and Sections 439.2 et seq. of the revenue and Taxation Code.

9. Notice.

- a. The owner or agent of an owner shall provide written notice of the contract to the Office of Historic Preservation within six months of entering into the contract.

- b. No contract shall be cancelled under California Government Code Section 50284 until after the legislative body has given notice of, and has held, a public hearing on the matter. Notice of the hearing shall be mailed to the last known address of each property owner within the historic zone and shall be published pursuant to California Government Code Section 6061. For the purpose of this section, historic zone includes all properties located within one hundred (100) feet of the historic site.

10. Recordation.

- a. No later than twenty (20) days after the City and the property owner enter into a contract agreement, the City Clerk shall record a copy of the contract with the County Recorder. From and after the time of recordation, the contract shall impart a notice thereof to all persons as is affected by the recording laws of the State of California.

11. Definitions.

- a. "Qualified Historical Property" means privately owned property or which is not exempt from property taxation and which is either: listed in the National Register of Historic Places or in a registered historic district as defined in Section 1.191-2(b) of Title 26 of the Code of Federal Regulations, or is listed in any State, City, or County official register of historical or architecturally significant sites, places, or landmarks.

12. Criteria. The basis for these landmark criteria may be found in Section 5031(a) of the Public Resources Code. All historical resources must demonstrate their significance by meeting one of the following requirements in this section and, additionally, must be fifty (50) years of age or older. Resources less than fifty (50) years old will be considered for designation only if they possess exceptional design merit or historical significance that transcends the fifty-year age requirement. Landmarks must be visibly accessible from a public thoroughfare.

- a. *The property is the first, last, only, or most significant historical property of its type within the City.* If a property has lost its historic appearance (integrity) it may be listed as a site.
- b. *The property is associated with an individual or group having a profound influence on the history of Encinitas.* The primary influence should be the place(s) of achievement of an individual.

Birthplace, death place, or place of interment shall not be a consideration unless something of historical importance is connected with his/her birth or death. If a property has lost its historic appearance (integrity) it may be listed as a site.

- c. *The property is a prototype of, or an outstanding example of, a period, style, architectural movement, or construction, or it is one of the more notable works, or the best surviving work in a region of a pioneer architect, designer, or master builder.* An architectural landmark must have excellent physical integrity, including integrity of location. An architectural landmark generally will be considered on its original site, particularly if its significance is basically derived from its design relationship to its site.
- d. *The property is in a unique location and contains exceptional architectural characteristics representing an established and familiar visual feature of a neighborhood, community, or the city.* The resource value of a property is defined by its location such that, if located elsewhere, would not be considered historically significant, or the property is an integral part of the physical, aesthetic and historical character of its surrounding environment, or its presence significantly contributes to an understanding of the history of Encinitas. As an example, automobile-related uses (motor courts, inns, and gas stations) along Coast Highway 101 that provide important past examples of the advent of the automobile era reinforce the highway heritage of Encinitas.
- e. *Resources moved from their original locations will not qualify for landmark designation unless they are significant for architectural value, or if they are the surviving structure most importantly associated with a prominent person or historic event.* Two sites cannot be recognized for identical significance. Only one location, either the original site or new site of the moved resource, shall be designated. The City Council will determine which location is more appropriate for the designation.

13. Application.

- a. All applications must be accompanied by sufficient research and substantiated by historical proof and bibliographical documentation.
- b. All applications will be reviewed by the Planning and Building Director before they are presented to the City Council.

MILLS ACT APPLICATION PROCESS:

1. Fill out a completed Mills Act Contract Request application form and include:
 - A. Photographs –
 - Minimum 4x6 black & white prints
 - Digital Images (specify format)
 - Exterior: front, back, both sides
 - Interior: all rooms, views from the site
 - Any other defining historic characteristics
 - Labeled with date photo was taken
 - Labeled with site name and description of what is shown in the picture
 - Photos should be numbered. Numbers to be shown on floor plan.
 - B. Floor plan –
 - Photo numbering shown to match photos as noted above
 - D. Site map –
 - Drawn to scale
 - Indicate location of all buildings on property
 - Street names
 - North arrow
 - E. Grant deed
 - F. Preliminary title report including complete legal description
 - G. Restoration/ Maintenance plan –
 - Proposed work/ maintenance list
 - Cost estimates for work listed
 - Schedule of work to be completed
 - H. Documentation of property history
2. Schedule a site meeting/ site inspection with the City's Planning and Building Department in order to verify code compliance and general condition of property.
3. Application is reviewed for completeness and accuracy.
4. Public notice packet prepared for 100' property owners around site.
3. Resolution, completed application, estimated fiscal impact on the City, and contract are taken to City Council for adoption. Resolution includes City Council's designation of the site as an historic site and that it is to be added to the "List of Historical Sites in Encinitas" as well as adoption of the contract agreement between the City and the property owner.

4. City Council approves, conditionally approves, continues, or denies resolution to adopt Mills Act contract.
5. Once the resolution is approved, the City Clerk will file the approved contract with the County Recorder within 20 days after the execution date. Applicant is responsible for filing fee. The fee is normally \$7 for the first sheet and \$3 for each additional sheet thereafter.
6. City receives recorded contract and sends it to the County Tax Assessor's office.
7. Property owner is required to notify the State Office of Historic Preservation that the contract has been concluded within 6 months of the execution date.

State Office of Historic Preservation
Department of Parks and Recreation
P.O. Box 942896
Sacramento, CA 94296-0001