



JERRY SANDERS  
MAYOR

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SAN DIEGO  
COUNTY GRAND JURY

June 18, 2008

Honorable Kenneth So  
Presiding Judge  
San Diego County Superior Court  
Main Courthouse, Third Floor  
220 West Broadway  
San Diego, CA 92101

Dear Judge So:

Subject: 2007-2008 San Diego County Grand Jury Report entitled "History Hysteria: Historical Resources in the City of San Diego".

## **Findings**

*1. Finding: The criteria for determining whether a building deserves to be designated as historic in the City of San Diego are overly inclusive and extremely vague.*

**Response:** Disagree, the City's adopted designation criteria are in line with both the California and National Register listing criteria. The criteria were adopted by the City Council as part of the municipal code update and have been in effect since January 2000. The criteria incorporate sound historic preservation principles and are supported by the State Office of Historic Preservation (OHP), recognized as the statewide authority on matters concerning historic preservation.

*2. Finding: There are too few personnel in the Planning Department to keep up with the flow of applications much less to conduct annual inspections of properties designated as historical to ensure compliance with conditions put on the designation, or with the rules and regulations governing preservation.*

**Response:** Disagree, the City has recently filled two vacancies in City Planning & Community Investment (CPCI) and one vacancy in Development Services (working under CPCI supervision), bringing the Historic Preservation staffing level to four Senior Planners and one Associate Planner. In addition, a potential fee schedule for historical designations, Mills Act contracts and inspections has been proposed for consideration which would provide full cost recovery for the current level of staffing.

The City will continue to monitor workload for Historical Preservation Staff through the City's Annual budget process. In addition, the Fiscal Year 2009 Proposed Budget includes department performance measures related to the processing of historic designations.

*3. Finding: Even with all staffing slots filled, the processing of applications can just about keep up with submissions, and there still would be no provision for regular inspections.*

**Response:** Partially disagree, provision for regular inspections will be accommodated with the current level of staffing and funded by a proposed new fee. However, the ability to process applications at the current level of submissions is unlikely due to other aspects of the work program. Project review and referrals from Development Services and CCDC account for a number of items on the Board agenda each month. These reviews are mandated by the City's Municipal Code and must be taken to the Board within specified time frames. When there are a significant number of referrals for projects, the ability to review owner submittals for designation is reduced. The average number of owner nominations taken to the Board is about 4-5 per month for about 45-50 per year, over 11 meetings. There have been in excess of 70 owner nominations submitted on a yearly basis during the last few years, so there is always a backlog of submittals. The Board has to review the consultant report, staff report and visit the site for every property they review for designation. The meetings are typically 4-6 hours long, often extending past 5 pm. While additional staff helps greatly with the overall work program, there is a limit to how much a voluntary Board can be asked to do each month.

The City will continue to monitor workload for Historical Preservation Staff through the City's Annual budget process. In addition, the Fiscal Year 2009 Proposed Budget includes department performance measures related to the processing of historic designations.

*4. Finding: The City of San Diego is too liberal in designating individual properties and districts as historical.*

**Response:** Disagree, the City's designation criteria, adopted by the City Council, are consistent with both the California and National Register listing criteria. There are approximately 2,000 historically designated properties in the City of San Diego (1,150 district contributors in 15 districts and 850 individual sites.) This number of designated properties is very similar to numbers of designated resources in San Francisco which has 10 historic districts with approximately 2,000 district contributors, and 259 individually designated properties. San Diego's numbers are far fewer than other large California cities. For example, the city of Los Angeles has over 9,000 individually designated properties and more than 13,000 properties within 22 districts; San Jose has more than 3,400 designated properties and nine historic districts; and Sacramento has nearly 900 individually designated resources and 27 historic districts with more than 700 district contributors.

*5. Finding: There are far too many properties that receive Mills Act property tax reassessments every year in the City of San Diego.*

**Response:** Partially disagree, the Mills Act program is an important tool for the preservation and when necessary the restoration or rehabilitation of significant historic sites in San Diego. The Mayor has proposed changes to the Mills Act program that will be reviewed through a public process in order to determine whether annual limits for fiscal planning purposes and additional eligibility requirements are warranted. But given that the Mills Act tax reduction program is the only financial incentive available to historic homeowners, it is not surprising that the program is highly popular. Along with studying the Mills Act program, the City is looking comprehensively at historic preservation incentives that do not result in fiscal impacts.

The City Council agrees with the Mayor that the Mills Act program is an important tool for the preservation and when necessary the restoration or rehabilitation of significant historic sites in San Diego. This sentiment is captured in City Council Policy 700-46 – Mills Act Agreements for Preservation of Historic Property which states “It is the policy of the City of San Diego to foster and encourage the preservation, maintenance, rehabilitation and restoration of historically designated property within the City of San Diego.” However, the City Council also agrees that a comprehensive review of the City’s Mills Act program and other historic preservation incentives is warranted.

*6. Finding: Only elected officials should determine matters of taxation and expenditures.*

**Response:** Agree. The process for entering into a Mills Act contract with a qualifying property owner was established by the elected City Council. Authority for individual contracts was given to the City Manager and rests with the Mayor or designee, under the current form of government.

*7. Finding: If most of the properties currently under Mills Act contracts were reassessed on the basis of just the shell of the building, then tax losses to the City would be significantly less.*

**Response:** Disagree, the Mills Act and regular tax assessment process is prescribed in state law (California Revenue and Taxation Code.) The shell of the structure cannot be separated for tax valuation, as proposed. The whole of the structure is assessed as an economic unit, there is not specific value assessed for individual elements of the structure. However, if an identifiable portion of the structure, such as a room addition or garage, is excluded from the historic designation because it is non-historic, it is valued at current tax rates. In these cases, a blended valuation is prepared by the Tax Assessor, thus allowing the tax reduction only for the qualifying historic resource.

8. *Finding: There need to be both regular inspections of all designated properties and those with Mills Act contracts, and procedures for de-listing them in order to ensure that their historicity is properly maintained.*

**Response:** Agree. The legal requirements for de-listing, or rescision, of a historic designation is provided in the Municipal Code (Section 123.0205 – Amendment or Rescision of Historical Resource Designation). The Mayor has proposed changes to the Mills Act program that will be reviewed through a public process and will consider regular inspections, as warranted.

To date the Mayor’s proposed changes to the Mills Act Program have not been heard by the City Council or Council Committee. The Mayor is planning to present his proposed changes to the Land Use and Housing Committee and then the City Council prior to the end of the calendar year.

### **Recommendations (City Council)**

**08-16:** *Enact a moratorium of one and a half years on the acceptance of new applications for historical designation in order to eliminate the current backlog, to allow time to fill vacancies, and to give time for all relevant bodies to assemble significant changes in the City’s designation regulations.*

**Response:** This recommendation requires further analysis. The Mayor supports a comprehensive review of the City’s Mills Act program and development of guidelines for applying the adopted designation criteria rather than a moratorium on new applications. All vacancies have been filled and it is anticipated that proposed revisions to the Mills Act program will be taken to the City Council for consideration prior to the end of the calendar year.

**08-17:** *Restrict the number of properties designated as historical resources to three per month after the backlog has been cleared.*

**Response:** This recommendation requires further analysis. The Mayor supports a comprehensive review of the City’s Mills Act program and development of guidelines for applying the adopted designation criteria rather than setting an arbitrary number of historical designations on a monthly basis, which is not consistent with sound historic preservation principles.

**08-18:** *Establish much more precise and concrete criteria for determining historicity.*

**Response:** This recommendation requires further analysis. The Mayor partially supports this recommendation. Although the City’s designation criteria are consistent with California and National Register listing criteria, guidelines for applying those criteria are being prepared by staff and the Historical Resources Board.

**08-19:** *Designate a separate entity to review all properties currently designated as historical resources to determine if they meet new criteria.*

**Response:** This recommendation requires further analysis. However, the Mayor does not support this recommendation. Each decision to designate a property as a historical resource is made at a noticed public hearing and based on a research report, staff recommendation and public testimony. This process is mandated by the Municipal Code and is consistent with due process. Review of properties already designated to determine consistency with new criteria would require a public hearing to address each property, consistent with the Municipal Code.

**08-20:** *Establish restrictions on the number of exemplars of a housing type and of historical district types to what is truly needed for the City of San Diego.*

**Response:** This recommendation requires further analysis. The Mayor supports a comprehensive review of the City's Mills Act program and development of guidelines for applying the adopted designation criteria rather than establishing a numerical restriction on historic districts or individually significant historic properties. The current review of the Mills Act program includes possible recommendations for annual limits on new contracts and additional eligibility requirements, as warranted.

Setting an arbitrary number of designations is not consistent with sound preservation principles and not an effective way to protect and preserve the important historical resources of the City.

To date the Mayor's proposed changes to the Mills Act Program have not been heard by the City Council or Council Committee. The Mayor plans to present proposed changes to the Land Use and Housing Committee and then the City Council prior to the end of the calendar year.

**08-21:** *Establish an annual fee on designees that will cover the cost of annual inspections, and to conduct such inspections.*

**Response:** This recommendation requires further analysis. A potential fee schedule for historical designations, Mills Act contracts and inspections has been proposed for consideration which would provide full cost recovery for the current level of staffing to ensure compliance with regulations and contract specifications as part of the comprehensive review of the Mills Act program. The establishment of new or revised fees will be reviewed through public meetings, including with the City Council Committee on Land Use and Housing. It is anticipated that proposed revisions will be taken to the City Council for adoption prior to the end of the calendar year.

The City Council is also supportive of cost recovery fees for City services. The City's Administrative Regulation 95.25 outlines the City's procedures to establish fees to recover the cost of providing City Services.

## **Recommendations (Mayor)**

**08-22:** *Fill empty slots for staff in the City Planning and Community Investment Department that work with the HRB, and add at least one new staff member to allow for inspections of designated properties to be paid for by receipts from the annual inspection fee.*

**Response:** The recommendation to fill empty slots has been implemented. The recommendation to add at least one new staff member will not be implemented because it is not reasonable at this time due to significant budgetary constraints facing the City. A potential fee schedule for historical designations, Mills Act contracts and inspections has been proposed for consideration which would provide full cost recovery for the current level of staffing to ensure compliance with regulations and contract specifications.

**08-23:** *Immediately undertake the repair work necessary to ensure the safety and integrity of the Villa Montezuma to allow for its continued use by the San Diego Historical Society.*

**Response:** This recommendation requires further analysis. The City will initially perform the analysis via a comprehensive facility condition assessment of Villa Montezuma to be undertaken during the summer of 2008 to determine the nature and extent of the required repairs. After completion of the condition assessment, the City will better understand what repairs must be completed on an emergent basis, and the level of funding that will be required for the repairs. The City currently has a total backlog of deferred maintenance that has been estimated at \$800-900 million. Unfortunately, there are no excess funds readily available to perform needed repairs at Villa Montezuma. However, Councilmember Ben Hueso, City Staff, the San Diego Historical Society and Friends of Villa Montezuma are actively pursuing available funding in addition to securing permits to undertake work already funded through a State grant. This funding includes:

- \$50,000 District Eight CDBG grant (allocation granted)
- \$25,000 District Eight's Infrastructure Improvement Fund (allocation in process)
- \$500,000 Redevelopment Funds from CCDC (proposal in process)

In addition, Councilmember Ben Hueso, City Staff, community members, the San Diego Historical Society, and the Friends of Villa Montezuma has worked diligently to ensure the safety of the home. In February of 2006, the San Diego Historical Society closed the museum in order to address structural foundation concerns in the western foundation wall. The following provides a summary of actions taken to provide safety at Villa Montezuma:

- Officers from the San Diego Police Department and members of the Retired Senior Volunteer Patrol (RSVP) are aware of the historical significance of the Villa and check in on the security of the facility as part of their patrols.

- The San Diego Historical Society personnel make multiple visits to the Villa each week to inspect the Villa’s interior and exterior.
- The Friends of the Villa Montezuma members make at least twice-weekly visits to the Villa to remove any litter that may blow onto the property.

## **Recommendations (Mayor and City Council)**

**08-24:** *Establish qualifying criteria for allowing Mills Act contracts that are separate from those used in determining historical designations.*

**Response:** This recommendation requires further analysis. The Mayor has proposed changes to the Mills Act program that will be reviewed through a public process in order to determine whether additional criteria are warranted for a property owner to participate. The analysis includes research on other cities’ programs, including the use of historic preservation incentives that do not result in fiscal impacts. The City’s Historical Resources Board held a workshop in April and has another workshop scheduled for June 6<sup>th</sup> this year. Any potential revisions to the existing program will be further reviewed through public meetings, including with the City Council Committee on Land Use and Housing. It is anticipated that proposed revisions will be taken to the City Council for consideration prior to the end of the calendar year.

**08-25:** *Establish the City Council as the entity for final approval of Mills Act contracts.*

**Response:** This recommendation requires further analysis. The requirement for City Council approval of all Mills Act contracts will be reviewed through public meetings, including with the City Council Committee on Land Use and Housing. It is anticipated that proposed revisions will be taken to the City Council for consideration prior to the end of the calendar year.

**08-26:** *Unless the owner applies for and receives historical designation for significant portions of the interior, designate as historic and grant Mills Act contracts only for the exterior shell of a building.*

**Response:** This recommendation has been implemented and is the current process. It is unusual for the interior of a structure to be designated as part of the historical resource. Non-historic portions of the building’s exterior are excluded from the historic designation and the current tax valuation rather than the Mills Act valuation is used for these areas. The Mills Act contract covers only the designated resource.

**08-27:** *Establish procedures for de-listing designations and cancelling Mills Act contracts when inspections show properties are not being maintained according to law.*

**Response:** This recommendation requires further analysis. The legal requirements for de-listing, or rescinding, a historic designation is provided in the Municipal Code (Section 123.0205 – Amendment or Recision of Historical Resource Designation).

Although State law provides for cancelling a Mills Act contract under certain conditions, the City currently has no specific procedures to guide this process. If designation is rescinded for breach of contract, the property would not longer qualify for Mills Act property tax reduction. Procedures for non-renewal and cancellation of Mills Act contracts will be reviewed through public meetings, including with the City Council Committee on Land Use and Housing. It is anticipated that proposed revisions will be taken to the City Council for consideration prior to the end of the calendar year.

The City Council is also supportive of cost recovery fees for City services. The City's Administrative Regulation 95.25 outlines the City's procedures to establish fees to recover the cost of providing City Services.

Please contact William Anderson, Deputy Chief, City Planning and Development at (619) 236-6361 if you have additional questions.

Sincerely,



JERRY SANDERS  
Mayor

cc: San Diego County Grand Jury  
Chief Operating Officer  
San Diego City Council  
Deputy Chief, City Planning and Development  
City Clerk  
Administration Department Director