David Cutaia

From: David Cutaia
Sent: Tuesday, November 23, 2021 3:48 PM
To: David Cutaia
Subject: FW: archaeological proposal

From: Rich Moser <rich@transcendentalastrology.com>
Sent: Tuesday, November 23, 2021 11:39 AM
To: Lisa Prasse <lprasse@cityofgoleta.org>
Subject: archaeological proposal

Greetings Ms. Prasse,

Regarding the new proposal that would require property owners to be tremendously involved with archeological items that might be beneath their topsoil:

I live in Noleta, but this is a completely overreaching proposal. It is an example of why more and more people are really starting to hate the government.

Instead of putting everything on the property owner to investigate the mere possibility of archeologically valuable items beneath the surface, why don't you make it something sensible in the form of a simple collaborative process, for instance:

* Inform the owners of the things that might be found in the soil.

* Give them an incentive to report things when they are found, as opposed to taking vast precautions in case they find something. How about the city paying to have the object(s) removed once they are found by the owner?

Come on folks, if planting a tree is going to trigger all this proposed paperwork, people just. won't. do it. You'll never see most of those artifacts.

Work with us, not against us. Please respond—and share the idea with your team.

Thank you, Rich

Rich Moser
rich@transcendentalastrology.com
(805) 845-4805

David Cutaia

From: Lisa Prasse
Sent: Monday, November 29, 2021 11:31 AM
To: City Clerk Group
Cc: Peter Imhof
Subject: FW: A vote against the Historic Preservation Ordinance

-----Original Message-----
From: Debbie Kaska <debbie.kaska@lifesci.ucsb.edu>
Sent: Wednesday, November 24, 2021 1:56 PM
To: Lisa Prasse <lprasse@cityofgoleta.org>
Subject: A vote against the Historic Preservation Ordinance

Dear Ms. Prasse,

This new ordinance will place an undue and expensive burden on all Goleta Property owners, and will result in properties not being maintained in order to avoid the cost of permits. The consequences will be reduction in the quality of the city and reduced property values as potential buyers discover they cannot upgrade a Goleta property without excessive expense.

Deborah Kaska
991 Via Bolzano, Goleta

Ksen~Sku~Mu
Frank Arredondo ~Chumash MLD
Po Box 161
Santa Barbara Ca, 93102

December 3, 2021

Honorable Mayor, and Counsel members,
City of Goleta
130 Cremona, Suite B, Goleta, CA 93117

Re: Archaeological and Tribal Cultural Resources Ordinance

Honorable Chair Maynard and Commissioners,

Thank you for the opportunity to comment on the above referenced project. My name is Frank Arredondo. I am of Chumash decent. I am a member of the Native American Heritage Commission Most Likely Descendants List (MLD) for the Chumash Territory and listed on the Native American Contact list for Santa Barbara County. I also hold a MA. degree in Archaeology and have been working in Cultural Resource management since 2006. My comments today are of my own.

Being of Native American descendant, from the Chumash territory, I have a strong vested interest in the activities that take place in my ancestral homeland. Over the years I have provided comments on several projects in the surrounding areas that have/or have the potential to impact cultural resources. I've been an advocate for the preservation of those Cultural Resources as well as placing an emphasis on local governments adhering to policies and procedures and laws that have been established by all forms of Government. To this end, with my education and vast experience I've acquired under the subject, I hope that you will take my comments seriously.

I have included specific comments that were presented during the planning commission meeting.

1. **Regulatory reporting requirements**

Under proposed section 17.43.030 site assessment and permit requirements for non-exempt development include 3 proposed report types to be submitted to the City of Goleta for review and determination if the proposal is subject to a Minor CUP.

- A Preliminary Archaeological Assessment (PAA),
- Phase I report,
- Extended Phase I

Currently the field of Archaeology takes its direction for complying with the federal government Section 106, under the National Historic Preservation Act of 1966. The state of California Office of Historic Preservation (OHP) in 1990 publicized the "Archaeological Resource Management Reports (ARMR), and the Department of Parks and Recreation follows suit with the release of "The Guidelines for Archaeological Research Designs" 1991, by the Resources Agency. In addition, the National Register bulletin (technical information on the National Register of Historic Places: survey, evaluation, registration, and preservation of cultural resources (Guidelines for evaluating and registering archaeological properties and the National Register Bulletin 24, Guidelines for Local Surveys: A basis for preservation Planning establish the formats for conducting surveys.

Secretary of the Interior's Standards for Archeological Documentation
Archeological documentation is a series of actions applied to properties of archeological interest. Documentation of such properties may occur at any or all levels of planning, identification, evaluation or treatment. The nature and level of documentation is dictated by each specific set of circumstances. Archeological documentation consists of activities such as archival research, observation and recording of above-ground remains, and observation (directly, through excavation, or indirectly, through remote sensing) of below-ground remains. Archeological documentation is employed for the purpose of gathering information on individual historic properties or groups of properties. It is guided by a framework of objectives and methods derived from the planning process, and makes use of previous planning decisions, such as those on evaluation of significance.

In selecting study methods, consideration should be given to: (a) collecting enough data to meet the needs of the investigation in an efficient manner; (b) making allowances for future research needs through conservation of the archaeological property(ies) under investigation (i.e., limiting destructive analyses to the extent possible), adequate documentation of study methods, and maintenance of any collected data and/or materials; and (c) planning for unanticipated discoveries (ACHP 1980:28-29).(https://www.achp.gov/digital-library-section-106-landing/treatment-archeological-properties-handbook-1980)

All these documents follow the same process of regulatory fulfillment by caring out site assessments under the directive of Section 106 (NHPA). The industry standard has been to use

- Phase I for site Identification - involves **historical research, environmental context review, and field inspection**.
- Phase II for Evaluation - **defines the spatial boundaries and significance** of an archaeological site, which is required for National Register determination.
- Phase III for Data recovery and Site Mitigation.

The proposed Ordinance is taking a Phase I study and breaking it down into 3 independent report types. PAA, Phase1, Extended phase I.

PAA is uses historical research, environmental context review with no field inspection. This falls barely under the criteria of a "Reconnaissance" survey but without the "walkover-field inspection" act. The elimination of the "walkover" act in this study prevents the possibility of an "Intensive" study to be carried out. It relies solely on the history of development driven archaeological reports housed at UCSB Info center. Most of which are only Phase I studies presented by Greenwood associates in the cultural resources review in 2017. In fact, very little subsurface investigations have taken place in the Goleta city limits. This PAA assumes that the industry has learned everything that is known of the number of resources possible to warrant just a cursory review such as a "Reconnaissance" survey without a field inspection.

The PAA dangerously presents the condition for abuse by "check-box" archaeology to thrive in with no qualified review by industry professionals.

An Extended Phase 1 falls in-between a Phase I study and a Phase II study. An extended phase I is often carried out at the end of the investigations of a Phase I. It is an attempt to determine presence or absence of a resource if the previous acts are inconclusive. The extended Phase I does not attempt to evaluate the significances of the find or to define its boundaries (which is part of a Phase II)

Over the years the use of an extended phase I has been an informal way to determine the presence or absence of buried resources. Conducted with shovel test pits, randomly placed and excavated to depths of potential disturbance by development. The Extended Phase I reports can be helpful to determine the areas for further investigations such as a phase II study. They can also identify the type of soil condition is in the area, if it is disturbed from development or the type of soil types found such as alluvial. Alluvial soils are common location where often buried cultural resources are found within the city boundaries.

This activity has always been apart of a Phase I study and used informally to supplement the work carried out during a Phase I. Logistically speaking it fits in best during Phase I work as part of the overall study goals to identification of buried subsurface resources. Adding this to the ordinance raises the question of its ability to meet regulatory Standards for archaeological documentation.

I pose these questions for the city to ponder:

- Does conducting a reconnaissance survey without a "walkover" employ sufficient information necessary to determine National Register of Historic Places (NRHP) eligibility of archaeological sites and achieve the phase goals in meeting section 106 obligations?

- Is the elimination of an intensive study in line with meeting section 106 obligations under NRHP?
- The bulk of review will be done as PAA, what is the goal of this type of research design, to focus on faster permitting process, or detection of resources.
- How will this type of research design impact future studies and research needs?

A public comment made by Dr.Glassow Professor Emiratis of UCSB, (item No. B1 – Public comment No.1 PC Meeting of Aug 23, 2021)stated:

> "A preliminary Archaeological Assessment and Phase I report are treated as comparable. They are generally not. A PAA typically is made for all land development projects by a jurisdiction's planning staff (often in consultation with a qualified archaeologist or historian), and the PAA may or may not lead to recommending a Phase I report. PAA's are not restricted to proposed disturbance areas that have no exposed ground surface (e.g., paved, or covered with a building). This distinction between a PAA and a Phase I project is spurious."

The fact that it is pointedly pointed out that this comparability between the two types of reports is false or fake leads me to believe that there are some unresolved questions to be answered as to its ability to meet regulatory standards.

Due to the potential significant impact that may arise from this type of authorizing a Phase 1 Study to be broken down into the 3. The Ordinance should stick with industry standards of using Phase I study and seek an amendment of the ordinance later down the line once further review is carried out by the planning commission.

2. **Extended Phase I,** the purpose is not defined.

The Extended Phase I in the ordinance only sets out to describe the "act" or "actions" that is carried out. The description does not identify the purpose of an Extended Phase I. A simple fix would be to add the wording that:

> "…an Extended phase I is used to determine presence or absence of cultural resources."

If the presence of resources is found then the next logical step is the determination of significance. Which is carried out during a Minor CUP.

3. **Section K – Terms 20. Native American Consultant/Monitor**

The ordinance wording contains this listing:

- 20. Native American Consultant/Monitor. A person who has been designated or authorized by a Chumash Native American Tribe to monitor construction activities and to serve as an on-site representative of the Tribe; has been trained to work around construction equipment; and has been trained to recognize potential Tribal Cultural Resources.

Recommended Revision of "List of Terms", Words in *Italic* and **Bold Red** are suggested changes

- 20.Native American Consultant/Monitor. ***A person who is of Chumash Descent and is qualified to monitor construction activities and serves as an on-site representative of the Chumash Community****;* has been trained to work around construction equipment; and has been trained to recognize potential Tribal Cultural Resources***; maintains daily field notes, photo logs and preparation of a final report that will be distributed to local tribal groups upon request.***

4. **Creation of a Native American consultant/monitors list.**

The creation of a Native American consultant/monitor list should be as other industry professions. The list should be as transparent as any requirement to be a part of any agency or organization. Archaeology firms, environmental firm, biologist firms, including professional plumbers, electricians and roofers are not required to apart of any agency or organization. The County of Santa Barbara Native American consultants list, the City of Santa Barbara Chumash monitors list do not require a Native American consultant/monitor to be designated or authorized by any Tribe to monitor construction activities. It has not been established why a Native American consultant/monitor is required to be "designated or authorized" by any tribal group?

Words **Highlighted** indicate focus on wording to be commented on.

5. **17.43.40 Development Standards**

A. The following standards are applicable to all permits issued under this chapter:

1. If unanticipated discovery of Archaeological and/or Tribal Cultural Resources occurs during earth disturbing activities, earth disturbing activities must be stopped immediately until a Qualified Archaeologist can evaluate the significance of the Archaeological Resources pursuant to standards set forth in Council Resolution No. 08-40, Environmental Thresholds and Guidelines Manual as amended and local Chumash Tribal Representative can evaluate the importance of the find.,

The adoption of this Ordinance will replace this Resolution No. 08-40. Why would it be cited here if the Environmental Thresholds and Guidelines Manual will no longer be used?

Words in *Italic* and **Bold Red** are suggested changes

6. **17.43.020 Applicability A. Exempt Development, 4. A city infrastructure project that does not involve earth disturbance beyond the footprint of the existing facility.**

Or any disturbance into Native soils below previously disturbed soils.

The rational for this modification is to address the potential of intact subsurface resources located below the surface of an existing building. Archaeological studies would not have taken place to buildings constructed before the 1980's so no development driven archaeological survey report would be available. A majority of modern development takes place in the late 1960's and not subject to CEQA review. Most of the developments of the time period did not involve major grading of surface soils rather limited leveling done by manual labor. This would leave intact subsurface native soils from 12inches of the surface. A majority of intact subsurface cultural resources are found at approximately 18in below the surface. Infrastructure projects for water, gas and electrical all would have been placed in low level subsurface soils from 0 to 12in, leaving future infrastructure projects such as waterlines or sewage having to excavate far below previous excavated lines. Previous construction standards must be contrasted with modern day regulations and how they impact cultural resources. A water line installed in the 1950's might have been placed as low as 18 inches below the surface whereas current standards require a waterline to be placed approximately 4 feet below the surface. Sewage lines are 5 ft or more. All of which are highly likely to disturb subsurface resources found at 18inchs or more. Further considerations to encroachment of native soils below the footprint of an existing facility should take place.

7. **17.43.030 Site Assessment and Permit Requirements for Non-Exempt Development**

A. **Assessment Level Requirements.** Non-exempt developments are subject to the following:

1. A PAA shall be required when the proposed earth disturbing area is located within a paved, developed, or ornamental landscaped area.

As stated previously the history of development and construction practices must be taken into account. Even with paved areas the potential of intact resources remains a high potential and should not be discounted so easily. During the Burrows project in 1980's the parking lot was paved over. In 2008, the Marriot hotel project archaeology oversight contractor carried out by CRMS in 2011 conducted shovel test pits outside the hotel project parcel into the neighboring parking lot of the old Burrows building and intact buried cultural resources were found. The parking lot was paved, developed and contained ornamental landscaped areas. The PAA issued at that time would have been a violation of the CEQA exception to an exemption California codes regulation, title 14, section 15300.2 (f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

Since the history of development driven archaeology survey reports are limited. Even though the passing of the California Environmental Quality Act took place in 1970, the California Register of Historic Places (CRHR) was not established till 1992 and only then was CEQA amended to clarify what historic resources are significant and what types of impacts would be considered to be significant.

Between 1948 to 1975 various organizations attempted to house survey reports done by researchers in academia and in the private sector. In 1975 the Office of Historic Preservation (OHP) is established within the Dept. of Parks and Recreation. This allows OHP to initiate a State archaeological site survey in 1976.

In 1986 The County of Santa Barbara created Cultural Resource Guidelines. These were used to direct the process of identification and evaluation of cultural resources in conjunction of development projects.

It is important to note that the author of the Historic Preservation report conducted by greenwood associates for the City of Goleta in 2017 wrote about the archaeological efforts for evaluation and identification…

> " The intensity and efforts to evaluate for the presence of buried archaeological deposits, however, has been less consistent. In general, if existing archaeological survey reports are older than ten years, the results may not reflect current standards for the accurate identification of subsurface

archaeological deposits in areas where prehistoric living surfaces could be buried be alluvial erosion processes (i.e., adjacent slope wash, flooding, etc.)."

Also included in this report is the estimation of data potential of documented sites located within the City of Goleta Boundaries. It found 67 sites recorded within the Central Coast Information Center records. Of those 67 found;

> " At least 22 sites are regarded as potentially eligible based on observed remains with the potential to address questions of importance to the region. Three are probably not eligible. One prehistoric site is on the National Register of Historic Places."

The use of a PAA assumes that the area in question has been thoroughly surveyed for cultural resources and concludes that if the property is "paved, developed, or ornamental landscaping" there is a less than likely chance for cultural resources to be present. The reality is that the area itself has had very little archaeological subsurface surveys done associated with development. It assumes that just because a property was developed before the adoption of CEQA in the 1970's, a survey report will let city officials know if any resource is there. It assumes that a paved, developed and ornamental landscaping will have already reduced the amount of potentially eligible resources to be found. And omits the fact that a majority of subsurface intact cultural resources in the Goleta region can be found at 18inches below the surface, far below impacts from pavement or ornamental landscaping.

8. The term used for "Native American Monitor" is not consistent throughout the document.

17.43.030 Site Assessment and Permit Requirements for Non-Exempt Development

A. Assessment Level Requirements

3. An Extended Phase 1 Report shall be required, if it is determined in the judgment of Qualified Archaeologist when preparing a PAA or Phase 1 report, that Archaeological and/or Tribal Cultural Resources could be present. **A local Chumash monitor** shall be invited to observe the Extended Phase 1 field work at the applicant's expense.

17.43.40 Development Standards

B. The following standards are applicable to all permits issued under this chapter:
   2. If unanticipated discovery of Archaeological and/or Tribal Cultural Resources occurs during earth disturbing activities, earth disturbing activities must be stopped immediately until a Qualified Archaeologist can evaluate the significance of the Archaeological Resources pursuant to standards set forth in Council Resolution No. 08-40, Environmental Thresholds and Guidelines

Manual as amended and **local Chumash Tribal Representative** can evaluate the importance of the find.,

C. For development that is subject to the Minor CUP requirement of subsection 17.43.030(B)(2), on-site monitoring by a qualified Archaeological Monitor and **local Chumash Native American consultant/monitor** shall be required for all grading, excavation, and site preparation that involves earth disturbing activity.

SECTION K. Chapter 17.73 List of Terms and Definitions of Title 17 is amended as follows:

20. Native American Consultant/Monitor. A person who …

Modification of TERMS to be transparent and allow for the consultant/monitor to be a universal contact to all tribal groups. The suggested wording for this is:

"Native American Consultant/Monitor of Chumash Descent"

The use of Chumash Descent, requires the Native American to be of the Chumash heritage. It prevents other Native American consultants/monitors, yaqaui, gabralino, salinan tribe, Fernandeño Tataviam tribes or any other Tribe from encroaching on Chumash Lands. It closes the door on a developer or any CRM firm from bringing in their own Native American monitor. This wording choice also provides transparency for the city. This way they will not need to engage in inter-tribal squabbles over which monitor is used for a project. The wording of "descent" then becomes a qualifier in addition to other professional qualifications listed in my previous comment letter. (Oct 22nd 2021)

Given the limited history of the area tribal groups, this wording choice is not limited by the future status of any tribal groups ability to maintain cohesion.

9. 17.43.030 Site Assessment and Permit Requirements for Non-Exempt Development

A. Assessment Level Requirements

3.a If the Extended Phase 1 report reveals that the proposed earth disturbance area does not contain ~~a documented~~ Archaeological and/or Tribal Cultural Resources and the proposed earth disturbance area has little or no potential to contain subsurface Archaeological and/or Tribal Cultural Resources, no further review is necessary, and the development is subject to the permit outlined in subsection 17.43.030(B)(1).

Strike-out "a documented" Add "s"

10. 17.43.040 Development Standards

A. The following standards are applicable to all permits issued under this chapter:

3. If unanticipated discovery of Archaeological and/or Tribal Cultural Resources occurs during earth disturbing activities, earth disturbing activities must be stopped immediately until a Qualified Archaeologist can evaluate the significance of the Archaeological Resources pursuant to standards set forth in Council Resolution No. 08-40, Environmental Thresholds and Guidelines Manual as amended and local Chumash Tribal Representative can **evaluate** the importance of the find.,

The use of EVALUATE associated with Chumash Tribal Representative.

The National Historic Preservation Act (NHPA) Section 112 and the Section 106 regulations, at §800.2(a)(1), require agencies responsible for protecting historic properties to ensure that all actions taken by their employees or contractors meet professional standards as determined by the Secretary of the Interior.

These standards do not apply to entry level positions. Rather, they outline the minimum education, experience, and products that together provide an assurance that the program and project manager, applicant, employee, consultant, or advisor will be able to perform competently on the job and be respected within the larger historic preservation community.

The minimum professional qualifications in archeology are a graduate degree in archeology, anthropology, or closely related field plus:

> "At least one year of full-time professional experience or equivalent specialized training in archeological research, administration, or management; At least four months of supervised field and analytic experience in general North American archeology, and Demonstrated ability to carry research to completion. In addition to these minimum qualifications, a professional in prehistoric archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the prehistoric period."

These qualifications define the minimum education and experience required to perform identification, evaluation, registration, and treatment activities.

To include the term "evaluate" in connection with "Local Chumash Tribal Representative" will require the local Chumash representative to acquire and meet the same professional qualifications as an Archaeologist. A Master's Degree in Archaeology.

The suggested change in wording for this section is"

…***can investigate and document the importance of the find so that they may relay back to the affiliated Tribes of the area of the discovery.***

Thank you for your time and efforts in this matter.

Best wishes, Frank Arredondo
Ksen~Sku~Mu
Chumash MLD
Po Box 161
Santa Barbara, Ca 93102
Email Ksen_Sku_Mu@yahoo.com

Public Comment No. 1

Item B.1 - Historic Preservation and Archaeological and Tribal Cultural Ordinance; Case No. 2016-092 OA; City Wide

Planning Commission Meeting of November 8, 2021

From: glassow@anth.ucsb.edu
To: Kim Dominguez
Subject: Proposed Changes to 17.43 Based on Public Comments Received
Date: Thursday, November 04, 2021 2:05:42 PM

I have two comments on the Proposed Changes to 17.43 Based on Public Comments Received. In section 17.43.020-A Exempt Development, items 4 and 5 are ambiguous.

Item 4: In some circumstances, construction of an existing facility may have caused little earth disturbance, but proposed construction of a new facility within the same footprint may cause extensive disturbance, and may therefore potentially disturb significant cultural resources if present.

Item 5: Previous emplacement of a buried utility line may have been in a narrow trench, but the proposed new utility project may be in a broader trench and therefore has the potential of disturbing previously disturbed soils. For that matter, the new utility project may be in a completely different location within the road right-of-way. Some roads in Goleta do pass over known archaeological sites, and below the roadbed undisturbed archaeological deposits may exist.

Consequently, Items 4 and 5 need to be clarified or simply eliminated.

Michael A. Glassow
Professor Emeritus and Research Professor
Department of Anthropology
University of California
Santa Barbara, CA 93106-3210
805-962-3304

From: glassow@anth.ucsb.edu
To: Lisa Prasse
Subject: Archaeological and Tribal Resources Preliminary Regulations
Date: Tuesday, July 06, 2021 3:59:19 PM

Dear Ms. Prasse:

A colleague forwarded to me the City of Goleta's Archaeological and Tribal Resources Preliminary Regulations, and I have the following comments.

Regarding exemptions from further review, some historic and prehistoric sites are considerably less than 250 feet in size. Some are less than 50 feet in maximum dimension—e.g., the remains of an historically significant dwelling or a small prehistoric campsite. An exemption criterion based on distance to known cultural resources makes no sense.

A Preliminary Archeological Assessment and Phase 1 Report are treated as comparable. They generally are not. A PAA typically is made for all land development projects by a jurisdiction's planning staff (often in consultation with a qualified archaeologist or historian), and the PAA may or may not lead to recommending a Phase 1 project and report. PAAs are not restricted to proposed disturbance areas that have no exposed ground surface (e.g., paved or covered with a building). This distinction between a PAA and a Phase 1 project is spurious.

Regarding Section 8. Amendment of Section 17.50.060(A)(15), there is no indication that a list/map would be based on data obtained from the state Office of Historic Preservation's Central Coast Information Center, housed at the Santa Barbara Museum of Natural History. This Information Center houses all official archaeological and historic site records and reports for Santa Barbara County (and also San Luis Obispo County).

Sincerely,

Michael A. Glassow
Professor Emeritus and Research Professor
Department of Anthropology
University of California
Santa Barbara, CA 93106-3210
805-962-3304

David Cutaia

From: David Cutaia
Sent: Monday, December 06, 2021 1:01 PM
To: David Cutaia
Subject: FW: public comment below on the Historic Resources Ordinance. Please share it with Council and staff

---

From: Justin Ruhge <jaruhge@hotmail.com>
Sent: Monday, December 06, 2021 10:04 AM
To: Michelle Greene <mgreene@cityofgoleta.org>
Subject: History

Hello City Manager M. Greene
About your History Preservation Commission
When deciding historic sites, consider "Dos Pueblos" This is the oldest recorded site maybe in the US , having been called so by Cabrillo in 1542 when his expedition stopped by this site . There is a historical sign there for that reason.
Also, consider the Barnsdahl-ReoGrande filling station on West Hollister. My latest book " History All Around US" covers much of Goleta history as does "Looking Back." Available for consultations on Goleta History. Thanks
Justin M. Ruhge, 805-7379536

Todd A. Amspoker
Kristen M. R. Blabey
Shannon D. Boyd
Timothy M. Cary
Melissa J. Fassett
Ian M. Fisher
Arthur R. Gaudi
Cameron Goodman
Christopher E. Haskell
James H. Hurley, Jr.
Eric P. Hvolbøll
Mark S. Manion
Steven K. McGuire

Our File Number:
8998-00059

PRICE, POSTEL & PARMA LLP

Counsellors at Law

200 East Carrillo Street, Suite 400
Santa Barbara, CA 93101-2190

Mailing Address: P.O. Box 99
Santa Barbara, CA 93102-0099

www.ppplaw.com

Ph (805) 962-0011 Fax (805) 965-3978

E-mail: cew@ppplaw.com

Timothy E. Metzinger
Shereef Moharram
Craig A. Parton
Kenneth J. Pontifex
Hana Princip
Paul A. Roberts
Douglas D. Rossi
Peter D. Slaughter
Jeremy D. Stone
David W. Van Horne
C.E. Chip Wullbrandt
Ryan D. Zick

CAMERON PARK OFFICE
3330 Cameron Park Drive, Suite 100
Cameron Park, CA 95682-7652
Ph (805) 962-0011
Fax (805) 965-3978

December 6, 2021

VIA E-MAIL ONLY

Mayor Paula Perotte
City of Goleta
pperotte@cityofgoleta.org

Councilmember Pro Tempore James Kyriaco
jkyriaco@cityofgoleta.org

Councilmember Roger S. Aceves
raceves@cityofgoleta.org

Councilmember Stuart Kasdin
skasdin@cityofgoleta.org

Councilmember Kyle Richards
krichards@cityofgoleta.org

Re: Bishop Ranch (APN: 077-020-045) Landmark Issues; Historic Preservation and Archaeological and Tribal Cultural Ordinance

Dear Madam Mayor and Councilmembers:

This firm represents the University Exchange Corporation ("UEC"), owner of the Corona Del Mar/Bishop Ranch (APN 077-020-045) ("Bishop Ranch"). We have represented UEC for over 50 years and are thus well acquainted with the landmark issues presented by the Bishop Ranch.

The Historic Preservation and Archaeological and Tribal Cultural Ordinance (the "Ordinance") and the City of Goleta's ("City") attempt to designate the Bishop Ranch a Historic Landmark by adopting the Resolution Adopting the Historic Context Statement and Designating the Historic Landmarks List and Historic Resources Inventory (the "Resolution") is

impermissible, and represents a brazen attempt to impose development restrictions and maintenance obligations on UEC without adequate justification.

This is not the first attempt to declare the Bishop Ranch a Historic Landmark. On July 16, 1992 the County of Santa Barbara's ("County") Historical Landmark Advisory Committee recommended that the Bishop Ranch be declared a Historical Landmark. After a September 14, 1992 site visit, the committee withdrew its recommendation and adopted a resolution recommending that a 33-acre portion of the Bishop Ranch be landmarked. Neither Bishop Ranch or the 33-acre portion of the property were declared a Historic Landmark. Instead, some portion of the ranch house or the Bishop Ranch was designated a Place of Historic Merit by the County's Landmarks Advisory Commission in or about 1993.

As was the case in 1992, the City's proposed action raises serious concerns, many of which are discussed below.

1. **The City's Last-Minute Notice**

Despite the lengthy "project background" set out in Mr. Imhof's staff report regarding the upcoming December 7, 2021 hearing, the first notice UEC received regarding the proposed Ordinance and its impact on the Bishop Ranch was dated November 22, 2021. This is especially surprising in light of the significance of the City's proposed action and the fact that it would have been very simple to notify UEC of the proposed at an earlier time.

The City's actions, or lack thereof, tends to undermine the well-established constitutional requirement of notice.

2. **The City Lacks a Factual Basis to Declare the Bishop Ranch a Historic Landmark**

The City's attempt to collectively reclassify several properties, including the Bishop Ranch, by way of the Ordinance and the Resolution, without an adequate review, is fundamentally arbitrary. Determinations of historical significance are fact-specific, guided by the characteristics of the given building, object, or site. To our knowledge, no recent factual analysis has been prepared by the City to elevate the Bishop Ranch's historic status. Rather, the basis for the City's automatic redesignation is the County of Santa Barbara's designation of the Bishop Ranch, or some portion or structures thereon, as a "Place of Historic Merit" in or about 1993.

The 1993 designation, however, poses its own problems. It is unclear what portion of the Bishop Ranch, or structures thereon, were designated a Place of Historic Merit; whether such designated structures, buildings, or objects still exist; and what process the County of Santa Barbara carried out to make the designation. To the extent the "Ranch house, stone pergola, and adjacent grounds" (General Plan, VH 5.2, Table 6-1) were designated as Places of Historic

Merit, one wonders why the City believes it has the authority to declare the entire Bishop Ranch a Historic Landmark. We would welcome an explanation.

Despite this glaring lack of information and the fact that over 25 years have passed since the Place of Historic Merit designation, the City assumes, without an evidentiary basis, that a heightened historical designation is warranted. Needless to say, much has changed since 1993. For example, the "historic" Hollister House was demolished pursuant to County permits. Time has taken a toll on the Bishop Ranch. Until the City inventories the current condition of the property, its landscape, and its structures, the City has no basis for its proposed action. The City's designation of the Bishop Ranch as a Historic Landmark would not be supported by relevant, substantial evidence.

Designating the Bishop Ranch as a Historic Landmark with the passage of the Ordinance and the Resolution also impetuously ignores the designation process and required findings the City intends to establish in Section 17.33. It would be more appropriate for the City to specifically identify a proposed Historic Landmark, then determine whether the Bishop Ranch satisfies the criteria set out in Section 17.33.040, subdivision (A). For example, it is unclear what the "proposed Historic Landmark" is, let alone whether "[t]he Proposed Historic Landmark retains those aspects of historic integrity that convey the reason for its significance" considering its location, design, setting, materials, workmanship, feeling, and association. If the City were not solely relying on a 1993 Place of Historic Merit designation, it would recognize that the Bishop Ranch, in its current state and considering the structures on it today, does not warrant a Historic Landmark designation. Designation as a "Point of Historical Interest," if anything, would be more appropriate.

3. **Landmarking Vacant Land is Inappropriate**

Landmarking an entire 252-acre parcel contradicts the conventional understanding of landmarking, which typically applies to buildings, structures, objects or relatively discrete physical forms. We are of the opinion that it is inappropriate to designate landmark status to an entire legal or assessor parcel. It is irrelevant that certain structures, such as a house, barn or outbuilding, once existed and had historical significance. The historical significance ceased to exist when the structure ceased to exist. Further, the presence of a few derelict structures does not merit landmarking. Nor is there a factual basis to support the imposition of landmark status on the Bishop Ranch due to the presence of archeological materials. To the extent the City disagrees, this disagreement further underscores the importance of identifying a proposed Historic Structure and carrying out the proposed procedure contained in Section 17.33.040, subdivision (B). The fact that the City wants to ignore its own proposed process is alarming.

Please understand that this letter is not intended to contain an exhaustive list of challenges UEC intends to make if the Ordinance is adopted or the City declares the Bishop

Ranch a Historic Landmark. UEC reserves the right to raise additional arguments at a later date, including, but not limited to, arguments that the Ordinance is overbroad and vague, the City's action is arbitrary and capricious, or the City's action constitutes a deprivation or property without due process of law or a taking of private property without just compensation.

Ultimately, the City has not identified specific, existing features of the Bishop Ranch which legally justify the imposition of landmark status. We intend to take all actions necessary to block this unjustified attempt to declare the Bishop Ranch a Historic Landmark. In an effort to avoid protracted litigation and an adverse result for the City, we would welcome a meeting to discuss this matter.

Thank you for your attention to this matter.

Very truly yours,

C.E. Chip Wullbrandt
for PRICE, POSTEL & PARMA LLP

CC: UEC; Dawn Christensen, City Executive Assistant (dchristensen@cityofgoleta.org)

David Cutaia

From: kitnjon <kitnjon@aol.com>
Sent: Monday, December 06, 2021 5:18 PM
To: City Clerk Group
Subject: December 7, 2021, City Council Meeting, Item C!

Mayor Perotte and Councilmembers,

The Historic Preservation and Archeological and Tribal Cultural Ordinance is an impressive document that reflects the dedicated work of the Planning Commission, staff, consultants, and community members. We owe them our thanks for their efforts. This letter addresses some remaining issues.

(1) The language related to proposed exemptions is potentially confusing to the average layperson. They are not exemptions as a lay person would understand the term. In lay terms, an exemption means that there is no need to contact the city about a proposed project or development as long as one follows any relevant zoning requirements (e.g, fence height).

Under the provisions of the proposed ordinance, however, a property owner cannot proceed under either the four-cubic-foot rule in Section 17.43.020(A)1 or the newly added exemption for landscaping, fencing, and other minor accessory projects in Section 17.43.020(A)(2)(d) without first checking with the city to see if the proposed activity is "located within a documented archaeological site and/or Tribal Cultural Resource." There may or may not be a charge at this step in the process, but it is an additional step and one that a layperson would not expect.

(2) The proposed ordinance equates development with any earth-disturbing activity. Strict literal interpretation of that definition would encompass even weed pulling or setting gopher traps, and such small non-exempt "developments" could be subject to considerable fees in relation to their size. If a Preliminary Archeological Assessment (PAA) is required, a property owner could pay $1500 to $2500 before pulling a single weed or catching a single gopher. If a Phase 1 study is required the cost could go as high as $2500 to $5000. An Extended Phase 1 Study ranges from $5,000-$7,000, and site monitoring would add another layer of costs for the applicant (data from staff report of August 23, 2021, Planning Commission meeting). Additional costs for city clearance would add even more expense. As of August, an Entitlement Zoning Clearance cost $864 and the initial deposit for a Minor Conditional Use Permit was $2540. No non-exempt project would require all those studies or fees, of course, but even one or two fees would add significant cost to a project.

Is it rational even to consider the possibility of a homeowner's paying thousands of dollars to pull weeds, to eliminate pests, to plant and maintain a vegetable garden, or to uproot sod and replace it with more drought-tolerant plants? Considering fence building or the planting of one or two trees in the same category as erecting a two-story building, building an addition, or adding a swimming pool likewise boggles the mind. These and similar activities should be exempted entirely from the ordinance. Otherwise, property owners are likely to reach for the Roundup or ignore the ordinance altogether.

(3) There is no exemption for emergency earth-disturbing activities on private property—for example, repairing or replacing a ruptured underground water pipe. Language should be added to the ordinance, exempting emergency excavations on private properties from the ordinance.

(4) Section 17.43,929(A)3 which refers to previous grading, would seem to exempt completely any property—even one within a documented site or resource—as long as a property owner submits as-built plans, previous grading plans, or other documentary evidence of previous earth disturbance affecting depths equal to or greater than the development being considered.

As-built plans and grading plans are not normally in the hands of the property owner who buys a finished house. They are in the keeping of the developer, the project engineer, or the original owner of the tract being developed. Copies may have originally been filed with the County of Santa Barbara prior to the incorporation of the City of Goleta, but apparently the County routinely destroyed residential building plans once the property was developed until the local architects started the Architectural Archives (email from Lisa Prasse).

This could leave the property owner in an older development with the task of tracking down the original owners, the original developer, the project engineer, or their successors in interest. This be a considerable task after fifty or sixty years, and could involve additional expense if a firm charges for a search of its records in addition to providing copies.

(The ordinance does allow for the submission of other documentary evidence, but leaves open what that evidence might be.)

I do not understand the requirement in Section 17.43.030(A)(2) regarding non-exempt projects that a “Phase 1 Report shall be required when the proposed earth disturbing area is located within an area that is not paved, developed, or is not located in an ornamental landscaped area. This applies even if the earth surface has sustained previous disturbances from grading, vegetation clearance, or other modifications.” Proof of grading is normally an exemption. Why impose this exception even on a portion of a non-exempt property?

To quote from an earlier staff report to the planning commission: “This ordinance must strike a balance between protecting resources and imposing an acceptable burden to the public. Regulations that impose too great a burden can lead to noncompliance, which would defeat the goal of protecting resources.” At this point, for this ordinance, all the pieces are not in place.

Thank you for considering my comments.

Kitty Bednar
5701 Gato Avenue
Goleta, CA 93117

David Cutaia

From: SHERRON L PAGLIOTTI <pagliotti5@sbcglobal.net>
Sent: Tuesday, December 07, 2021 8:51 AM
To: City Clerk Group
Subject: Tribal Cultural Ordinance

This sounds like a very expensive ordinance for property owners to deal with. More red tape and expenses for us. If a property has already been built on…leave it alone. This proposal should not pertain to land that is already developed!

Sent from my iPhone

David Cutaia

From: Chris Noddings <chrisnoddings@gmail.com>
Sent: Tuesday, December 07, 2021 12:17 PM
To: Paula Perotte; James Kyriaco; Roger Aceves; Stuart Kasdin; Kyle Richards
Cc: City Clerk Group; Lisa Prasse; Peter Imhof
Subject: Comments on Historic and Archaeological Resource Protection Ordinance
Attachments: Historic and Arch Resources Preservation - CC Hearing 12-7-21.pdf

Dear Mayor Perotte, Mayor Pro Tempore Kyriaco, Councilmember Acevez, Councilmember Kasdin, and Councilmember Richards,

Please find attached my comments for the subject hearing.

I am available to discuss the comments and concerns if you would like to do so.

Respectfully,
Chris

Chris Noddings

Master of Environmental Science and Management
Class of 2009
Bren School of Environmental Science and Management
University of California, Santa Barbara

December 7, 2021

Subject: **Public Comment on Historic Preservation Ordinance (Case Number 16-092-OA)**
City of Goleta City Council
Hearing Date: December 7, 2021
Agenda Item: C.1

Dear Mayor Perotte, Mayor Pro Tempore Kyriaco, Councilmember Acevez, Councilmember Kasdin, and Councilmember Richards:

I am writing to provide comments on the subject Ordinance for your consideration. I have only been able to provide comments on the ordinance publicly, as a resident of the City of Goleta (City), since late September of this year when I began a new position as a Senior Planner at another jurisdiction.

In general, I am very supportive of protecting archaeological and tribal cultural resources. For this reason, I want to be one of the biggest advocates for the ordinance. However, as detailed in Attachment 1, there are multiple issues with both the product, as well as the process, which makes it impossible for me to develop an informed opinion. Similarly, it is impossible for the City's residents, business owners, and property owners to provide meaningful input.

Some people have suggested that we can and should approve the ordinance now and "fix it later if problems arise." This approach, however, has been done before – please see comments about Environmentally Sensitive Habitat Area (ESHA) in the attached. In brief: more than 20 months after Title 17 was adopted, property owners continue to pay hundreds to thousands of dollars for Biological Studies for minor projects that Current Planning Staff, Advance Planning Staff, and staff at the Environmental Defense Council (EDC) agree will have no impact on such resources. This is overly-burdensome and wholly unnecessary requirement. Without additional information, it is impossible to make an informed decision as to what is "right" for Goleta.

For the many reasons provided above and detailed in the attached, I strongly recommend that the City Council return the archaeological and tribal cultural resource portion of the ordinance to the Planning Commission for further development.

I hope you will carefully consider these comments, and also consider comments that have been left by residents on Nextdoor. These comments (and additional information supporting Attachment 1) are available at: https://nextdoor.com/p/txr8zmTTSZxs?utm_source=share&extras=MTkyMjQ5Nzg%3D. In addition to these publicly-posted comments, I have received supportive comments from multiple individuals that have not posted publicly.

Respectfully,

Chris Noddings
City of Goleta Resident

Attachment 1: Detailed Questions, Comments, and Recommendations

A) What is the benefit of the proposed ordinance within previously-developed areas? Does the ordinance go too far, or does it need to go even further?

It is not clear to me what the likelihood is of finding resources in previously-developed properties.

On the one hand, given that (1) most subdivisions were graded en masse; (2) the large number of small projects (additions, irrigation, planting, etc.) completed within the City of Goleta and throughout the region every year; and (3) the apparent lack of reports of finding sensitive resources in local newspapers (the only source of information publicly available) for the past two decades (i.e., I believe only three accounts of inadvertent discovery of graves has been reported since 2020 in the South Coast area, with none from Goleta), what is the real threat to these resources from small projects such as an addition in the vicinity of an existing house in such a mass development?

On the other hand, some experts have said that resources can be within the top 18 inches of soil (or the top 2-4 feet, as stated at the Planning Commission hearing on November 8, 2021), *even on previously-developed properties*. To date, there has been no public discussion (let alone written analysis) of the amount of grading that is typically performed when constructing buildings (residential, commercial, industrial, or other), or how that may have changed over the course of the past several decades. Late last night, I received the following from an interested party that knows more about the subject than I do:

> Most tract homes are built with a pier blocking system where the outer building footprint is set in concrete 4 to 6 inches wide and 12 inches deep. Stone blocks are used in the middle of the home and beams are run across the open space. This means very little of the top 18 inches are disturbed during home development projects of the 1960s and 1970s.
>
> As for grading, most of the tract homes were placed on the natural grade of the slopes. Driveways are cut into the hill and you see the step pattern of home next to home going down the street, the grading for those areas are very minimal. In fact, just the cut of the drive was all that was needed. Surface contouring took place before the cut, which involves very little surface disturbances.
>
> Not to mention no archaeological survey was done leaving most of Goleta an unknown vast area of mystery under this top soil.

Today, I received this information:

> We have seen an uptic in burial discoveries each year since 2015. Pools exposing bodies, additions to homes. Roughly 3 to 4 finds a year. Yes they have been south of Goleta, but the issue with Goleta and why we haven't had a lot of inadvertent discovery is most likely because folks do not know what a resource is, so they don't report it.
>
> Things have been found but no one on site knew what they were looking at was a resource. Artifacts, midden deposit, features isolets. All they look for are bodies but these resources are equally important.

Given all of the above, it is critical that we have additional, written analysis and discussion (as recommended below), to better understand both the potential benefits and costs of proposed regulations, as well as having an opportunity to increase or decrease regulatory requirements depending on the area in question and past earth-disturbing activities on developed properties.

Recommendations:

1. Direct staff to commence working with tribes to roughly (and confidentially) identify the areas that are deemed sensitive, if tribes are so willing.
2. Provide written analysis to carefully characterize (without giving out confidential information) what data is available and what is known and or not known about both existing resources and past grading activities. To characterize past disturbance, an analysis of grading plans for a variety of existing development, spanning all zoning designations and decades should be performed (see my comments for the November 8, 2021 Planning Commission hearing for additional details). The analysis should include information on:
    a. How deep grading was performed under structures, near structures, and at the existing property line.
    b. Whether any particular developments are more or less likely to have intact resources near the soil surface. If this is the case, recommendations to increase or decrease the regulation's requirements should be adjusted accordingly.
3. Subsequently, analyze varying options (or levels of protection) that could be adopted. Characterize the likely outcome, in terms of individual and collective costs (both time and money) and resource protection benefits. Additional, specific recommendations on the cost analysis are provided in my comments for the November 8, 2021 Planning Commission Hearing.
4. Widely advertise the analysis and invite public input on the proposed ordinance.
5. Revise the ordinance to reflect public input and return to the Planning Commission for comment following broad notification of the hearing.

B) What is the cost of the proposed ordinance for projects within previously-developed areas?

It is not clear to me what the likely cost of the proposed ordinance is, but it could be extensive. The most recent change related to landscaping and footings for fences should help reduced the potential costs, especially if the language in 17.43.020(A)(2) and (A)(3) is clarified as recommended herein, but the costs may still be substantial. Based on the analysis provided in my comments for the November 8, 2021 Planning Commission Hearing, costs to property owners and the City could be on the order of millions of dollars.

In my experience, grading plans for most residences are not available, and if they are available, then finding them frequently requires a large amount of time by staff, specialized knowledge on how to perform permit history research, and access to all available all available tools. For example:

- The City frequently does not have approved Grading Plans for past projects.
    - For single-family dwelling projects approved by the County, there are virtually no such plans for single-family residential development at City Hall.

- Even large, non-residential projects approved by the City in the last 10 years, including one at 909 S. Kellogg Avenue and another at 1 S. Los Carneros, do not have approved grading plans available at City Hall. These appear to have been "oversights" and it is not known how many such "oversights" have occurred since City incorporation.

- Large-format sheets at the Santa Barbara American Institute of Architects (AIA) Archives are not available electronically, may not be available at all, and can cost hundreds of dollars to obtain a copy.

It is evident that not enough work has been done to characterize the cost that would be imposed on the "everyday" property owner and/or City staff (e.g., to perform permit history research).

Recommendation: provide a cost-benefit analysis as described above.

C) Related: How much of the City would be subject to the ordinance's requirements?

During conversation with Ms. Prasse, it was stated that approximately 45% of the City is considered as being "archaeologically sensitive."

However, the Context Statement (previously accepted by the City Council) provides the following statement:

> One of the most obvious factors regarding archaeological resources in Goleta is the extremely high density of sites within city boundaries. It can be said, with little exaggeration, that the entire city is archaeologically sensitive. Another pertinent factor is the extremely high number of discreet "villages" or "habitation" sites within the city. This is due to the presence of the numerous environmentally favorable habitats and topography. Many of the "village" sites also contain numerous burial components (12) which highlights the need for sensitive treatment. Appropriate recommendations will be developed with the input of the public, archaeologists, and Native Americans as the ordinance process continues.

I asked Ms. Prasse to clarify which was correct (roughly 45% or nearly 100%) and to point me to where members of the public could read about this in a Staff Report or other document for more information. Her response is as follows:

> In regards to the percentage of land within the City that contains an archaeological resource, it is a rough estimate. The percentage was estimated based on the archaeological sensitivity map that was prepared several years ago by the original archaeological consultant on the project based on documented sources. The map was produced based on information on the location and sizes of documented cultural resources within the city at that time the initial groundwork was done for this project. Due to the confidential nature of the location of archaeological resources, the archaeological sensitivity map is not available to the public.
>
> It should be noted that the map does not account for unknown resources that may exist in areas where no archaeological surveys have been conducted or buried archaeological sites that may exist throughout the city. Furthermore, the map does not account for tribal cultural resources, which are typically not formally documented due to the sensitive

nature of the resources. Therefore, it is possible that a larger percentage of the city may contain archaeological and/or tribal cultural resources than what was estimated based on the existing map.

Most recently it was stated in response to a direct inquiry from the Planning Commission at either the June 28, 2021 or August 23, 2021 meeting. It was also verbally shared in the early workshops on the project. I do not believe this information is stated in writing in any of the documents.

Given the above response, it is not at all clear how much of the City would ultimately fall under the proposed ordinance's regulations; it could be *every* property. Moreover, there is no written analysis that the public can review and comment on, nor has the potentially sweeping nature of the proposed ordinance, restrictions, and associated costs been advertised to invite public comment. Instead, the public is expected to have viewed and understood information provided verbally during one or two key hearings.

It is impossible to develop a coherent opinion on the subject with the contradicting and scant information provided.

Recommendations: as described above.

D) Revise 17.43.020(A)(2) and (A)(3) For Clarity

Section (A)(2) and (A)(3) conflict with one another and must be revised for clarity. Section (A)(2) reads Earth-disturbing activities that will not disturb native soils, unless located within a documented archaeological site and/or Tribal Cultural Resource" (and then lists four examples of such work). If one stopped reading the exemptions here, that would appear to be the end of it.

(A)(3), however, requires a project proponent to provide "evidence, as documented in as-builts plans, previous grading plans, or other documentary evidence… that the previous earth disturbance affected depths equal to or greater than the development being considered."

Restated: one line of text exempts development within previously-disturbed soil without further need to provide evidence of existing depth, and the other line requires evidence of existing depth. So, which requirement will "rule" at the end of the day if a project is proposed that would have impacts similar to the examples provided in (A)(2), but is not one of the projects listed, and would be located within previously disturbed soil?

Recommendation:

6. Combine the language in (A)(2) and (A)(3) to read as follows (or similar):

   The proposed earth-disturbing activity is located within a previously disturbed area where evidence, as documented in as-builts plans, previous grading plans, or other documentary evidence, is provided that the previous earth disturbance affected depths equal to or greater than the development being considered. Photographs and/or review of aerial imagery shall suffice for earth-disturbing activities that would have impacts commensurate with those associated the following activities:

a. Ongoing, active agricultural operations in areas continuously used for crop cultivation.

b. Landscaping and footings for fences, patio covers, and similar minor accessory improvements particularly those that.

c. Additions adjacent to existing development.*

*Note: I cannot develop an opinion on whether item "c" above should be included or rejected until after the necessary analysis described above has been provided. It is possible this suggestion should not be included, or perhaps it should be limited in scope (area or depth).

E) Poor Ordinance Language Has Been Used Before, Created Undue Hardship, and Has Not Been Fixed

Existing requirements related to Environmentally Sensitive Habitat Area (ESHA) provided in Chapter 17.30 of the City's Municipal Code have cost several homeowners hundreds to thousands of dollars to perform Biological Studies for tiny projects (e.g., a patio cover) located within 300 feet of ESHA. Current Planning Staff, Advance Planning Staff, and Brian Trautwein at the Environmental Defense Council (EDC) agree will have no impact on such resources. During a call with Brian Trautwein on the subject, he was surprised to learn that this issue hadn't yet been resolved.

During the second round of Title 17 proposed Amendments, Staff recommended some changes related to ESHA and accessory structures to the Planning Commission. The Planning Commission rejected these proposed changes in their recommendation to the City Council, and the City Council accepted the Planning Commission's recommendation.

This regulation still on the books, unchanged more than 20 months after it was initially adopted, and I am not aware of an effort to change it in the near future. Meanwhile, small property owners continue to spend hundreds or thousands of dollars on Biological Studies for projects that are universally understood to not have an impact on biological resources.

Recommendation:

7. Learn from past mistakes and do not approve the proposed ordinance without further refinement and public input.

F) The Ordinance Must Include an Enforcement Mechanism

Given the City's rightful statements about the importance of protecting and preserving archaeological resources, why is enforcement is proposed for historic resources and not proposed for archaeological resources? Lack of enforcement – or even discussion about including enforcement – sends the wrong message to those who do not wish to comply with the new ordinance's requirements.

Furthermore, without such a provision or discussion, it is entirely unclear what would happen in the event that a property owner performs unpermitted and non-exempt work. Unlike biological habitat, once archaeological/tribal cultural resources (and historic resources, to a lesser extent) are lost, they cannot be restored or recovered. Do not make it easy for people to disregard the requirements.

When discussing the idea with City staff, staff stated that "the hope" is that people would comply with the regulations voluntarily. While is always something that one should hope for, the City's code enforcement staff has more than doubled in the last two years, growing from a single, full-time officer to two and a half full-time-equivalent personnel. In addition, both Building & Safety and Public Works manage responsibilities for code compliance. If it were reasonable to expect people to voluntarily comply with regulations, such an increase in staff requirements would not be necessary.

Additionally, regulations that make it onerous to comply, may or may not offer a tangible benefit, and are easy to disregard, are abhorrent. In such instances, "bad actors" are rewarded and "good actors" are effectively punished.

Recommendations**:**

8. Provide written analysis, and subsequently advertise and discuss, various enforcement options and scenarios.
9. Include enforcement language and penalties in the Ordinance that is robust enough to deter bad behavior.

G) The Staff Report, Public Notification, and Staff Responses Must Provide Accurate Information, and City Infrastructure Must be Treated Equally to Private Development to Protect Undisturbed Archaeological Resources

It is impossible for the public to provide proper input when they are given factually incorrect information. The following discusses three overarching examples during which inaccurate information was provided by City staff.

First, the staff report states (emphasis added) "*Just like private development*, City projects are exempt only if they do not disturb more than 4 cubic feet of native soils and if earth disturbance is done within the existing footprint of the facility." This statement is false: the exemption under 17.43.020(A)(2)(b) is for "*A city infrastructure project* that does not involve earth disturbance beyond the footprint of the existing facility." This exemption language does not apply to private development, nor does any other exemption give carte blanche to private property owners to disturb soil within existing footprints.

For example, as staff, it was common practice to require that projects for new elevators on existing properties either (1) demonstrate that the bottom of the ground disturbance for the elevator would not exceed existing ground disturbance depth or (2) follow standard monitoring protocols. This was a requirement for one of the other four City Hall "sister" buildings in the same 1980s Development Plan and must be similarly considered when the City eventually adds an elevator to City Hall. The proposed exemption language, however, would allow an elevator to go into City Hall without further review or consideration for resources underneath. Moreover, city roads extend across hundreds of miles – the resources that have not been previously disturbed underneath these facilities must be protected. The lack of such language undermines the importance of preserving the resources that the City rightly acknowledges as irreplaceable.

The proposed language can also be considered in these ways:

- To make the statement in the Staff Report accurate, why not amend 17.43.020(A)(2)(b) to read "A ~~city infrastructure~~ project that does not involve earth disturbance beyond the footprint of the existing structure or facility"? I do not think professional archaeologists or members of tribes would be too supportive of such a change, however, so why does the City receive this exemption?
- Section 17.43.020(A)(2)(c), for utility projects, and Section 17.43.020(A)(3), both include a reference to depth. Why not keep the City exemption language consistent? For example, "A city infrastructure project that does not involve earth disturbance beyond the footprint of the existing facility where evidence, as documented in as-builts plans, previous grading plans, or other documentary evidence, is provided that the previous earth disturbance affected depths equal to or greater than the development being considered."

Any of the above changes would make the Staff Report's statement that the City is subject to the same regulations as private development (in non-emergency circumstances) correct. I suspect that not all potential changes mentioned above are appropriate, however.

Second, City Staff suggested that property owners can ask the Central Coast Information Center (CCIC) to provide information specific to their property, for free, to help resolve whether their proposed project would require a PAA (or greater). I asked the CCIC if this was correct, and receiving a response to this seemingly simple question required two follow-up inquiries. Ultimately, I received the following response which, in my experience, is a lot to ask of a typical property owner to understand and resolve:

> As a property owner you are entitled to request the information pertaining to historical resources located on your property. The request incurs a flat Copy Request fee of $40 plus a 0.15c per page fee charged in the event of reports or resources being present on the property. The request should be accompanied by the following:
>
> - a statement of the purpose for which the information is needed,
> - a reference for the request (e.g., project name or number, title of study, or street address if applicable),
> - a Vicinity Map (USGS 7.5 Quad) depicting the parcel in a larger context,
> - a proof of ownership (such as a deed or current tax statement which clearly links their name with an Assessor's Parcel Map depicting property boundaries.). Note; you may wish to redact some of the sensitive information.
>
> At this point I would like to inform you that depending on the purpose of your request, the Copy Request route might not be the most appropriate for your potential need/s. If this is relating to a proposed development, and depending on whether state or federal regulations would apply, there might be better options that we can provide you with. Your local planning office can file a Non-Confidential search with the IC at a cost of $75 or you might wish to employ a consultant who is a qualified individual and they can carry out a Records Search on your behalf, the cost of which would be determined by a variety of factors.

Third, the public notification (e.g., Press Release) for tonight's hearing stated the following (emphasis added):

> Section 17.43.020(A) of the draft ordinance includes a list of *eight* categories of exempt activities that do not require permits or site assessment. For example, *disturbance of up to 4 cubic feet of native soil* (soil that has not been previously disturbed in the past), which *could be for planting a tree*, moving a fence post, etc., would generally be considered exempt and the requirements for additional studies would not be triggered.

When I inquired about the above text, City Staff stated that there are actually 10 exemptions (not eight); staff did not explain why this number appears to have changed since the Press Release was issued.

More importantly, however, the language clearly states that 4 cubic feet of soil is sufficient to allow planting of a tree in native soil. Trees are typically planted in 15-gallon containers (and sometimes larger when planted from boxed containers) which typically involve nearly 16 cubic feet of soil disturbance.

When I inquired with Ms. Prasse about this statement and how it was determined that four cubic feet is sufficient to plant a tree, the response provided on November 30th was "*Yes, I know that if someone is planting a tree and follows the recommended guidelines for digging a hole it is much bigger than 4 cubic feet*."

When I did not see an update to the press release after five days, I inquired if a retraction or update would be issued. As of time of writing, I have not received a response.

I wish to make it clear that I do not have an opinion as to whether 4 cubic feet of native soil disturbance is too much, too little, or just right. My deep concern here is with respect to the misinformation provided to the public, which robs the public of their ability to provide meaningful input on this important, and sweeping, ordinance.

Recommendations**:**

10. This ordinance must be re-advertised with correct information that acknowledges and corrects earlier misinformation.
11. City infrastructure must be treated equally to private development (except in the case of an emergency).

H) The Ordinance Development Process Appears Rushed

Several other issues, in addition to the items noted above, appear to indicate that the Ordinance development process has been rushed. For example, when a document is prepared too quickly, formatting and typographic errors are created and not corrected. *Every* version of the proposed text in Section 17.43.020(A), Exempt Development, since the October 25, 2021 Planning Commission hearing has had such errors. In fact, the version of the language provided ahead of the October 25, 2021 Planning Commission hearing had so many errors, with so many incorrect or incomplete sentences, that it was not possible to understand what was ultimately being proposed. Despite comments identifying these errors, and staff's correction of other text elsewhere in the ordinance, the language was unchanged for the November 8, 2021 hearing. Please refer to my comment letters on these hearings for details.

Furthermore, the proposed exemption language in Section 17.43.020(A) for this hearing includes the two errors highlighted below. Considering the amount of attention on the exemption language during and

since the November 8, 2021 Planning Commission hearing, the importance of this language, and the large number of staff typically involved in the review of such documents, this is surprising.

> c. A utility project within an existing road right-of-way that does not exceed the depth of the lowest utility line found within the affected block of road right-of-way were the project is located.
>
> d. Landscaping and footings for fences, patio covers, and similar minor accessory improvements ~~particularly those~~ that.

In addition, the City's website identifying the various meetings had not been updated to include the last two Planning Commission scheduled hearings until recently, well after the two hearings were held.

Recommendation**:**

12. Return the project to the Planning Commission as above, with direction that Staff slow the process as needed to ensure a robust analysis and proposed ordinance text.

I) The Ordinance Must Include Regular Public Education Efforts Following Adoption

Page 12 of the Staff Report states that one of the three purposes of the proposed ordinance is to "Foster awareness, recognition, and stewardship of the City's Archaeological and/or Tribal Cultural Resources." Given this, why does the ordinance not include regular (e.g., annual or twice-annual) public outreach/notification? It appears the only way that the ordinance fosters awareness is through its existence – and notifying prospective applicants at the City's public counter when they attempt to apply for a permit.

Recommendations:

13. The ordinance must include requirements for staff to widely advertise its restrictions and permit processes. This includes:
    a. Posting within social media, the Monarch Press, and newspapers;
    b. Highlighting on the City's website; and
    c. Directly contacting businesses such as general contractors, realtors, pool installation companies, handymen and handywomen, and etc.
14. A list of people and businesses to contact must be developed and regularly updated by utilizing information readily available in the City's Business License program as well as online searches for people performing this work that may not yet have a business license with the City.
15. A record of the outreach must be kept in the event that a notified entity performs work that requires a permit without first obtaining a permit. Such records may be useful in subsequent enforcement actions.

J) Additional Questions to Consider

- What information will be provided to a prospective property owner that is interested in purchasing a specific, previously-developed property? This prospective buyer may be interested in new landscaping, a new addition, and/or a new pool.

- Will the highlighted typo in the Historic Context Statement (see Page 141; or page 207 of the PDF packet) be corrected? Text reads “In general, if existing archaeological survey reports are older than ten years, the results may not reflect current standards for the accurate identification of subsurface archaeological deposits in areas where prehistoric living surfaces could be buried be alluvial erosion processes (i.e., adjacent slope wash, flooding, etc.).”

David Cutaia

From: kitnjon <kitnjon@aol.com>
Sent: Tuesday, December 07, 2021 12:00 PM
To: City Clerk Group
Subject: The Historic Preservation and Archeological and Tribal Cultural Ordinance - Clarification.

Mayor Perotte and councilmembers:

I cannot attend this evening's meeting, so I am clarifying comments on The Historic Preservation and Archeological and Tribal Cultural Ordinance that I submitted yesterday. I have included the entire sections that I wish to clarify, but the bold print contains the new language and should explain the harsh language in my comments yesterday regarding costs.

(1) The language related to proposed exemptions is potentially confusing to the average layperson. They are not exemptions as a lay person would understand the term. In lay terms, an exemption means that there is no need to contact the city about a proposed project or development as long as one follows any relevant zoning requirements (e.g, fence height).

Under the provisions of the proposed ordinance, however, a property owner cannot proceed under either the four-cubic-foot rule in Section 17.43.020(A)1 or the newly added exemption for landscaping, fencing, and other minor accessory projects in Section 17.43.020(A)(2)(d) without first checking with the city to see if the proposed activity is "located within a documented archaeological site and/or Tribal Cultural Resource." There may or may not be a charge **by the city** at this step in the process, but it is an additional step and one that a layperson would not expect.

Further, and the point that keeps getting lost in the discussion, the reason for the check is to determine if the property where the proposed activity is located lies within a documented archaeological site and/or Tribal Cultural Resource. The property owner likely will not know this, because it is not public information.

If the property is within a documented site it is subject to 17.43.020(B), notwithstanding the language in 17.43.020(A) about exemptions. That result is stated or implied in the introductory statement for Section 17.43.020(A), in the language of Section 17.43.020(A)1, and in the introductory statement to the four exemptions listed in Section 17.43.020(A)(2)d.

Once a property is determined to lie within a documented site, the provisions of 17.43.020(B) apply, and the project cannot proceed without meeting those provisions, which could result in considerable costs. Those are costs for outside experts and monitors and cannot be controlled by the city.

(2) I**n practical terms for a property owner, if not in statutory language,** the proposed ordinance equates development with any earth-disturbing activity. Strict literal interpretation of that definition would encompass even weed pulling or setting gopher traps, and such small non-exempt "developments" could be subject to considerable fees in relation to their size. If a Preliminary Archeological Assessment (PAA) is required, a property owner could pay $1500 to $2500 before pulling a single weed or catching a single gopher. If a Phase 1 study is required the cost could go as high as $2500 to $5000. An Extended Phase 1 Study ranges from $5,000-$7,000, and site monitoring would add another layer of costs for the applicant (data from staff report of August 23, 2021, Planning Commission meeting). Additional costs for city clearance would add even more expense. As of August, an Entitlement Zoning Clearance cost $864 and the initial deposit for a Minor Conditional Use Permit was $2540. No non-exempt project would require all those studies or fees, of course, but even one or two fees would add significant cost to a project.

Thank you for the second reading.

Kitty Bednar

5701 Gato Avenue,Goleta

David Cutaia

From: C. Dave G <cdg55@earthlink.net>
Sent: Tuesday, December 07, 2021 3:24 PM
To: City Clerk Group
Cc: Deborah Lopez; Liana Campos; Dave G
Subject: Opposition to Parts of Agenda Item C.1 21-463 Historic Preservation, Archaeological, Tribal Cultural Ordinance; meeting date 12/07/21
Attachments: Opposition to Parts of Agenda Item C.1 21-463 Historic Preservation, Archaeological, Tribal CulturalOrdinance 12 07 21.pdf

Dear City Clerk – I respectfully request the distribution of my attached written opposition to several parts of Agenda Item "C.1 21-463 Historic Preservation and Archaeological and Tribal Cultural Ordinance; Case Number 16-092 OA; City Wide," meeting date 12/07/21.

My name is C. Dave Gaughen, email address of cdg55@earthlink.net (mailto:cdg55@earthlink.net), and phone number of (805) 275-6457.

At present, I do not plan on speaking on Agenda Item "C.1 21-463 Historic Preservation and Archaeological and Tribal Cultural Ordinance; Case Number 16-092 OA; City Wide."

Thank you,

Respectfully, C. Dave Gaughen

C. DAVE GAUGHEN
7456 Evergreen Drive
Goleta, CA 93117
Telephone: (805) 275 – 6457
Email: cdg55@earthlink.net

December 07, 2021

To: The Mayor and Council Members
130 Cremona Drive, Suite B
Goleta, CA 93117

Subj: Opposition to Several Parts of Agenda Item "C.1 21-463 Historic Preservation and Archaeological and Tribal Cultural Ordinance; Case Number 16-092 OA; City Wide."

Ref. (1) Agenda Item C.1, Meeting Date: December 7, 2021, "SUBJECT: Historic Preservation and Archaeological and Tribal Cultural Ordinance; Case Number 16-092 OA; City Wide (463 pages)."

Dear Madam Mayor and Council Members (the "Approving Board"):

RECOMMENDATIONS

I respectfully request the Approving Board: 1) Deny and reject in its' entirety "City Council Ordinance No. 21-__ entitled "An Ordinance of the City Council of the City of Goleta, California, adding Chapter 2.16, entitled Historic Preservation Commission," 2) Direct the Planning Commission, Planning and Environmental Review Director, Planning Manager, and all other appropriate personnel to: (a) incorporate each relevant public comment, and (b) submit a simplified alternative plan representing the minimum required amendments for updating the General Plan regarding the historic and cultural resources policies adopted over 14 years ago (followed by a public hearing), or 3) Per Reference 1 under the heading of ALTERNATIVES (see Page 17), either alternative option number 1 or alternative option number 2 are acceptable with a preference towards option 2 [i.e., "1) continue the matter for additional information/revision. If additional work is needed, an additional budget allocation may be needed; 2) not adopt the proposed Ordinance and General Plan Amendment"].

BACKGROUND AND DISCUSSION

Total Cost of Effort $159.2K: Did the residents of Goleta request this effort, or was there an increase in code violations, private sector/residential complaints, permitting issues, etc., to support the funding of this effort?

Out of all the pressing and urgent needs for the City of Goleta, why was this non-critical effort selected to proceed forward with funding? For example, one critical issue is the City's looming drought crisis with an urgent need for the planning of new reservoirs, rainwater runoff capture/collection, and other appropriate solutions.

Additionally, I do not understand the need for over-regulating a select few of our older properties that appear to just be aged rather than of historic significance through the formation of a Historic Preservation Commission with annual funding.

Enclosure 1 is off topic but presents California Drought Conditions Map, November 30, 2021, cropped and enlarged showing Goleta (i.e., extreme drought) and Gov. Newsom's Executive Order N-10-21 calling on all California to voluntary reduce their water usage by 15 % from their 2020 levels, executed July 08, 2021.

How are the Proposed Amendments Deemed to be in the Public Interest? Overall, the proposed Amendments appear to Create an Unfair Burden on the Owners of Historic Landmarks

Reference 1 reads in relevant part,

> "2. *The amendment is deemed to be in the public interest.*
> The proposed GPA is deemed to be in the public interest. The amendment will have no material effect on the community or the General Plan. The GPA will not change the intent of the Visual and Historic Resources Element policies but will foster clarity and harmony between the General Plan and the proposed Ordinance. The amendment will make revisions and updates to the General Plan Policies related to historic and cultural resources based on the additional information resulting from the work of the City's historic resources consultant. The historic and cultural resources policies were adopted over 14 years ago without the benefit of a detailed study of the City by a historic consultant.
>
> Further, the amendment will make revisions and updates to the General Plan policies related to historic and cultural resources based on the additional information resulting from the work of the City's historic resources consultant. These policies were adopted over 14 years ago without the benefit of a detailed study of the City by a historic consultant. The benefit to the City is to have updated policies that are in keeping with both National and State historic resource practices (see Page 23)."

In short, I do not understand how the proposed amendments can possible be deemed to be in the public interest specifically for the residences, such as myself, residing on Evergreen Drive.

Thank you for your time and continued hard work.

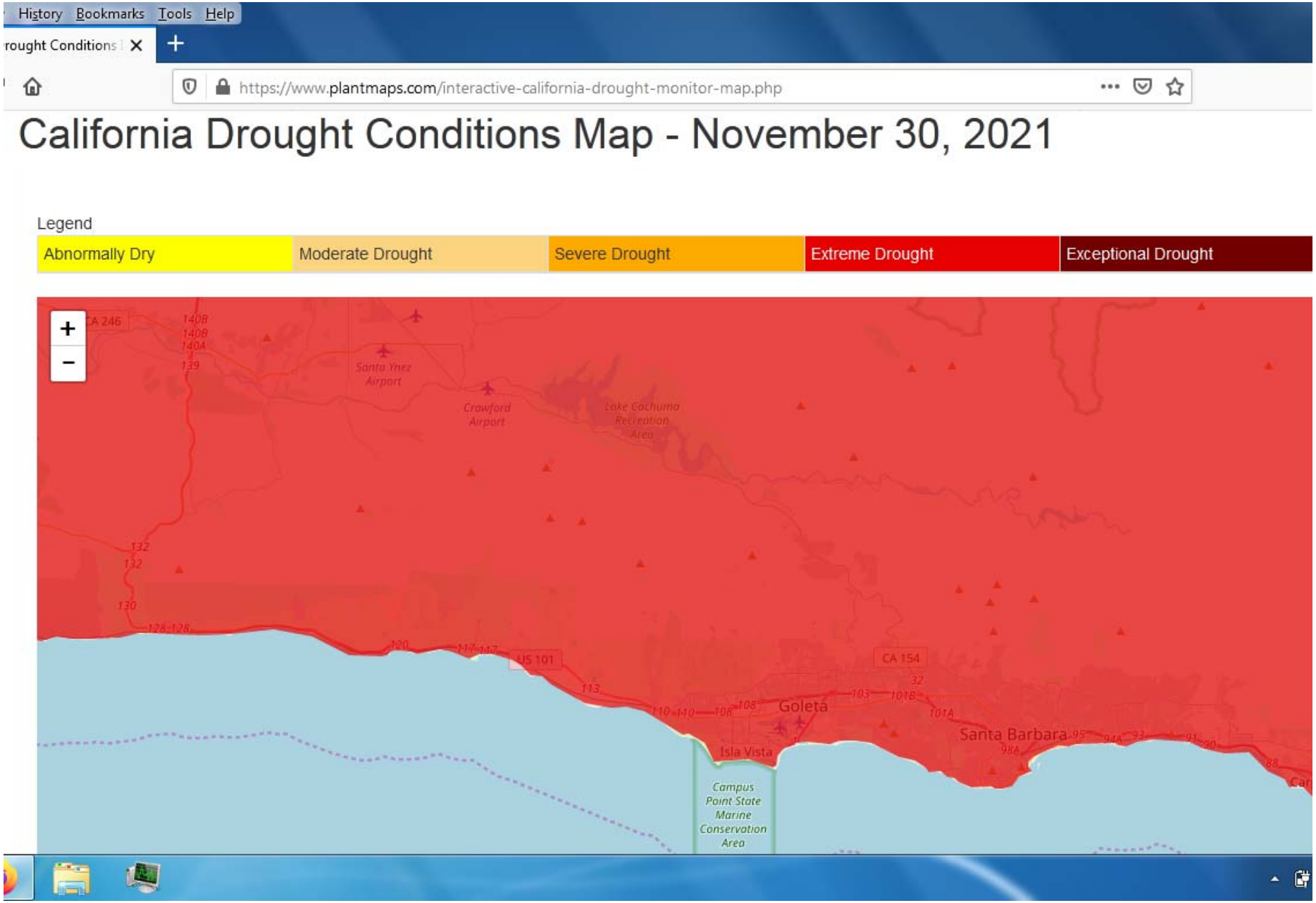
Respectfully,

C. Dave Gaughen

ENCLOSURE 1

ENCLOSURE 1

See https://www.plantmaps.com/interactive-california-drought-monitor-map.php



EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

EXECUTIVE ORDER N-10-21

WHEREAS communities across California are experiencing more frequent, prolonged, and severe impacts of climate change including catastrophic wildfires, extreme heat and unprecedentedly dry conditions that threaten the health of our people, habitat for species and our economy; and

WHEREAS severe drought afflicts the American West and increasingly warming temperatures driven by climate change exacerbate harmful drought effects including disruption of drinking water and irrigation supplies, degradation of fish and wildlife habitat, and heightened flammability of wildland vegetation; and

WHEREAS on April 21 and May 10, 2021, I issued proclamations that a state of emergency exists in a total of 41 counties due to severe drought conditions and directed state agencies to take immediate action to preserve critical water supplies and mitigate the effects of drought and ensure the protection of health, safety, and the environment; and

WHEREAS today, I issued a further proclamation of a state of emergency due to drought conditions in nine additional counties (Inyo, Marin, Mono, Monterey, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, and Santa Cruz), and directed state agencies to take further actions to bolster drought resilience and prepare for impacts on communities, businesses, and ecosystems; and

WHEREAS drought conditions present urgent challenges, including the risk of drinking water shortages in communities, greatly increased wildfire activity, diminished water for agricultural production, adverse impacts on fisheries, and additional water scarcity if drought conditions continue into next year; and

WHEREAS agriculture is an important economic driver in California that has made significant investments in irrigation efficiencies such that nearly 70 percent of the nation's farmland using drip and micro-irrigation is located in California, and despite that investment, many agricultural producers are experiencing severe reductions in water supplies and are fallowing land in response to current dry conditions; and

WHEREAS action by Californians now to conserve water and to extend local groundwater and surface water supplies will provide greater resilience if the drought continues in future years; and

WHEREAS during the 2012-2016 drought, Californians did their part to conserve water, with many taking permanent actions that continue to yield benefits; per capita residential water use statewide declined 21 percent between the years 2013 and 2016, and has remained on average 16 percent below 2013 levels as of 2020; and

WHEREAS local water suppliers and communities have made strategic and forward-looking investments in water recycling, stormwater capture and reuse, groundwater storage and other strategies to improve drought resilience; and

WHEREAS there is now a need to augment ongoing water conservation and drought resilience investments with additional action to extend available supplies, protect water reserves in case drought conditions extend to a third year and maintain critical flows for fish and wildlife.

NOW THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, do hereby issue the following order to become effective immediately.

IT IS HEREBY ORDERED THAT:

1) To preserve the State's surface and groundwater supplies and better prepare for the potential for continued dry conditions next year, and to join existing efforts by agricultural water users, public water systems, and governmental agencies to respond to water shortages, I call on all Californians to voluntarily reduce their water use by 15 percent from their 2020 levels. Commonsense measures Californians can undertake to save water and money include:

    a. Irrigating landscapes more efficiently. As much as 50 percent of residential water use goes to outdoor irrigation, and much of that is wasted due to evaporation, wind, or runoff caused by inefficient irrigation methods and systems. Watering one day less per week, not watering during or immediately after rainfall, watering during the cooler parts of the day and using a weather-based irrigation controller can reduce irrigation water use, saving nearly 8,800 gallons of water per year.

    b. Running dishwashers and washing machines only when full. Full laundry loads can save 15–45 gallons per load. Full dishwasher cycles can save 5–15 gallons per load.

    c. Finding and fixing leaks. A leaky faucet that drips at the rate of one drip per second can waste nearly 3,200 gallons per year.

    d. Installing water-efficient showerheads and taking shorter showers. Keeping showers under five minutes can save 12.5 gallons per shower when using a water-efficient showerhead.

    e. Using a shut-off nozzle on hoses and taking cars to commercial car washes that use recycled water.

    The State Water Resources Control Board (Water Board) shall track and report monthly on the State's progress toward achieving a 15-percent reduction in statewide urban water use as compared to 2020 use.

2) State agencies, led by the Department of Water Resources and in coordination with local agencies, shall encourage actions by all Californians, whether in their residential, industrial, commercial, agricultural, or institutional use, to reduce water usage, including through the statewide Save Our Water conservation campaign at SaveOurWater.com, which provides simple ways for Californians to reduce water use in their everyday lives.

3) The Department of Water Resources shall monitor hydrologic conditions such as cumulative precipitation, reservoir storage levels, soil moisture and other metrics, and the Water Board shall monitor progress on voluntary

conservation as ongoing indicators of water supply risk that may inform future drought response actions.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 8th day of July 2021.

GAVIN NEWSOM
Governor of California

ATTEST:

SHIRLEY N. WEBER, PH.D.
Secretary of State

From: lannyebenstein@aol.com <lannyebenstein@aol.com>
Sent: Tuesday, December 7, 2021 5:00 PM
To: Paula Perotte <pperotte@cityofgoleta.org>; Roger Aceves <raceves@cityofgoleta.org>; Kyle Richards <krichards@cityofgoleta.org>; Stuart Kasdin <skasdin@cityofgoleta.org>; James Kyriaco <jkyriaco@cityofgoleta.org>; Michelle Greene <mgreene@cityofgoleta.org>; Kristy Schmidt <kschmidt@cityofgoleta.org>; Peter Imhof <pimhof@cityofgoleta.org>
Subject: Agenda Item C.1, Historic Preservation Ordinance

Dear Mayor Perotte and Members of the Council,

This letter is to provide enthusiastic endorsement of Agenda Item C.1, the Historic Preservation Ordinance and related materials.

Historic preservation is vital! There are so many good things about the ordinance, including the possibility to designate historic districts and points of historical interest as well as historic landmarks. All such designations are valuable.

The attached report with the agenda item, "City of Goleta Citywide Historic Context Statement", is a fantastic document that will be of much use for many years.

I especially appreciate the inclusion of provisions and protection for historic landscaping--this is a key historic element.

Thank you for your consideration and service.

--Lanny

David Cutaia

From: Chris Noddings <chrisnoddings@gmail.com>
Sent: Tuesday, December 07, 2021 9:30 PM
To: Paula Perotte; James Kyriaco; Roger Aceves; Stuart Kasdin; Kyle Richards
Cc: City Clerk Group; Lisa Prasse; Peter Imhof
Subject: Fwd: SB18, AB52, and Consultation Options for Tribes not on the NAHC List

Dear Mayor Perotte, Mayor Pro Tempore Kyriaco, Councilmember Acevez, Councilmember Kasdin, and Councilmember Richards,

Thank you for the opportunity to provide input tonight. I apologize if I came off a little too "energetic" - that was not my intention. Three minutes is a very short amount of time to speak on a complex and nuanced project like this.

What I was going to share at the end was this email chain with the NAHC below. Per the NAHC, "tribal consultation" is only protected as confidential if done under CEQA, AB52, or SB18. As we've heard tonight, this ordinance is "modeled" on these laws and they are not applicable. As such, my understanding is that any tribal consultation would not be confidential and would be discoverable via a Public Records Act.

Tribes should be made aware of this - we wouldn't want their information intended to be confidential to be released publicly.

Thank you,
Chris

Chris Noddings

Master of Environmental Science and Management
Class of 2009
Bren School of Environmental Science and Management
University of California, Santa Barbara

---------- Forwarded message ---------
From: **Freeborn, Justin@NAHC** <Justin.Freeborn@nahc.ca.gov>
Date: Tue, Dec 7, 2021 at 1:45 PM
Subject: RE: SB18, AB52, and Consultation Options for Tribes not on the NAHC List
To: Chris Noddings <chrisnoddings@gmail.com>

Yes that sums it up pretty much.

Take care,

Justin Freeborn

Enforcement Attorney

Native American Heritage Commission

1550 Harbor Blvd., Ste 100

West Sacramento, CA 95691

(916) 373-3716

STATE OF CALIFORNIA
NATIVE AMERICAN
HERITAGE COMMISSION

From: Chris Noddings <chrisnoddings@gmail.com>
Sent: Tuesday, December 7, 2021 1:44 PM
To: Freeborn, Justin@NAHC <Justin.Freeborn@nahc.ca.gov>
Subject: Re: SB18, AB52, and Consultation Options for Tribes not on the NAHC List

Thank you, Justin.

Much appreciated! It sounds like my contact is correct, then - confidentiality regarding tribal cultural resources is only guaranteed under AB52 (or SB18), and if a tribe is not on the NAHC contact list, they cannot participate in confidential consultation under 52/18. Therefore, any such consultation would be subject to the Public Records Act.

Does that sum it up?

Happy to discuss with you (definitely could be helpful), but I've already spent far too much time on this topic for the day. Lots going on over here in our City!

Cheers,

Chris

Chris Noddings

Master of Environmental Science and Management
Class of 2009
Bren School of Environmental Science and Management
University of California, Santa Barbara

On Tue, Dec 7, 2021 at 12:43 PM Freeborn, Justin@NAHC <Justin.Freeborn@nahc.ca.gov> wrote:

> Hello Mr. Noddings:
>
> Thank you for your email. Local jurisdictions can choose to consult with tribes that are not on the NAHC Contact List for purposes of CEQA, but that would not qualify for tribal consultation under AB-52 since the definition of a tribe for purposes of that law requires the tribe be on the NAHC contact list. It's likely that AB-52's confidentiality provisions (PRC section 21083.2(c)) would not apply to a tribe that is not on the NAHC Contact List.
>
> Hope that helps. Let me know if you would like to talk and we can set up a time.
>
> **Justin Freeborn**
>
> **Enforcement Attorney**
>
> **Native American Heritage Commission**
>
> **1550 Harbor Blvd., Ste 100**
>
> **West Sacramento, CA 95691**
>
> **(916) 373-3716**
>
> STATE OF CALIFORNIA
> NATIVE AMERICAN
> HERITAGE COMMISSION
>
> ---
>
> **From:** Chris Noddings <chrisnoddings@gmail.com>
> **Sent:** Tuesday, December 7, 2021 8:47 AM
> **To:** NAHC@NAHC <NAHC@nahc.ca.gov>
> **Subject:** Re: SB18, AB52, and Consultation Options for Tribes not on the NAHC List
>
> Hello NAHC,

Please see the email inquiry below. Are you able to provide a response?

Please note that the email sent to Mr. Robinson bounced back immediately. Given this, I am not certain if the email to Mr. Wood went through.

Thank you,

Chris

Chris Noddings

Master of Environmental Science and Management
Class of 2009
Bren School of Environmental Science and Management
University of California, Santa Barbara

On Tue, Dec 7, 2021 at 8:42 AM Chris Noddings <chrisnoddings@gmail.com> wrote:

> Hello,
>
> I was hoping you could resolve a question for me. I believe I read, years ago, that local jurisdictions can choose to consult with Tribes under AB52 (and/or SB18?) that are not on the NAHC's list. Is that correct?
>
> In other words: I understand the NAHC's list represents a metaphorical floor for consultation, but does it also represent a ceiling? As in, an agency cannot consult with a tribe that is culturally affiliated with an area (even if the tribe requests this of the agency in writing prior to an applicant's submittal of a project) if it is not on the NAHC's list?
>
> I tried looking at available resources this morning and I couldn't find exactly what I thought I read previously. I did find a statement in the NAHC's "AB52 Tribal Consultation Requirements and Best Practices Revised 3/9/16" PPT presentation (on page 5) that " Failure to request notification does not preclude non-AB 52 tribal consultation (more on this later)." However, I don't see the additional discussion on this scenario later in the document. Can you point me to where I can find the additional discussion later in the document?
>
> Thank you,

Chris

Chris Noddings

Master of Environmental Science and Management
Class of 2009
Bren School of Environmental Science and Management
University of California, Santa Barbara