

**CITY OF OJAI**

**RESOLUTION NO. 15-48**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OJAI ADDING A REQUIREMENT FOR A PRELIMINARY ARCHAEOLOGICAL ASSESSMENT FOR CERTAIN DEVELOPMENT PROJECTS AND CITY PROJECTS INVOLVING EARTH DISTURBING ACTIVITIES.**

**WHEREAS**, the City of Ojai's General Plan designates cultural resources for protection and provides that the City's goal is to ensure the long-term preservation and proper scientific investigation of all known and potentially extant cultural resources. The Conservation Element of the City of Ojai's General Plan further provides that the City "shall develop programs to identify and analyze known cultural resources, attempt to discover potential resources and plan for their appropriate examination and disposition" and provides that the City shall formulate and implement appropriate programs to identify and mitigate cultural resources anticipated to be encountered during the course of a development project.

**WHEREAS**, state law and the Ojai Municipal Code section 10-2.103 require that all development within the City be consistent with the General Plan. Under the Conservation Element of the City's General Plan, the City must therefore evaluate and seek to mitigate the impact of development on cultural and historical resources located in the City.

**WHEREAS**, the City of Ojai has a distinctive physical character and a rich history, reflected in its many cultural resources. Cultural resources are a nonrenewable resource and encompass a wide variety of sites which were, and are, significant in local and American history, regional architecture, archaeology and culture. These irreplaceable resources are important to the community's economic vitality, quality of life, and sense of place, and need preservation and protection. Their management and preservation is the responsibility of present generations for use and appreciation by future generations.

**WHEREAS**, the entire Ojai Valley is an archaeologically sensitive area with significant prehistoric and historic resources associated with indigenous (Native American) peoples presently known as Chumash, including several known and mapped archaeological sites in the City's boundaries. Given the known information regarding the City and its history, additional unknown sites with significant prehistoric and historic resources associated with indigenous peoples and Ojai's history likely exist within the City. Cultural resources sites have a spiritual and cultural significance for the Chumash Tribe and constitute part of the community's archaeological and historical heritage. Historic resources sites similarly constitute the community's historical heritage and provide important information regarding Ojai's rich history.

**WHEREAS**, protecting these cultural, historic, and prehistoric resources from adverse impacts is necessary to preserve the public's health and welfare because these resources embody the history of the indigenous peoples and are the history of the previous and present inhabitants of this community. Without adequate analysis and mitigation of the potential impacts of development projects on these cultural resources, the resources, and their accompanying spiritual, historical, and archaeological values would be permanently lost. Whenever possible, cultural resources should be preserved in an undisturbed state for the benefit of future generations.

**WHEREAS**, in recognition of the statewide importance of cultural resources, the Legislature amended the California Environmental Quality Act to recognize a new resource type requiring evaluation under CEQA, tribal cultural resources, defined in Public Resources Code section 21074, and provided in Public Resources Code section 21084.2 that a project subject to CEQA which may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment, thereby requiring the City to evaluate projects subject to CEQA for potential impacts to tribal cultural resources.

**WHEREAS**, to ensure evaluation and identification of potential cultural and historic resources located on the site of proposed development projects or on the site of the City's own projects, the City Council adopts this policy to require the City to prepare and consider a preliminary archaeological assessment of the site of a project for certain projects that require a City-approved permit that authorizes earth-disturbing activity, including but not limited to, a land use permit under the Zoning Regulations in Chapter 2 of Title 10 of the Ojai Municipal Code, including all permits listed in Table 4-1 of Ojai Municipal Code section 10-2.1801, a building or grading permit under Title 9 of the Ojai Municipal Code, an encroachment permit under Chapter 1 of Title 7 of the Ojai Municipal Code, or a tree permit under Ojai Municipal Code section 4-11.04. The City Council also adopts this policy to require the City to prepare and consider a preliminary archaeological assessment of the site of a project for certain City-sponsored or initiated projects that involve earth disturbing activity.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF OJAI DOES HEREBY RESOLVE AS FOLLOWS:**

**SECTION 1.** That the City Council determines that the above set forth recitals are true and correct.

**SECTION 2.** Adoption of Policy Adding a Requirement for a Preliminary Archaeological Assessment for Certain Projects Involving Earth Disturbing Activities.

(A) Unless exempt as provided below in section 2(G) of this Resolution, as part of evaluating all applications for a City-approved permit that authorizes earth-disturbing activities, including but not limited to, the following types of permits:

- 1) land use permits under the Zoning Regulations in Chapter 2 of Title 10 of the Ojai Municipal Code, including all permits listed in Table 4-1 of Ojai Municipal Code section 10-2.1801, which are: applicant-initiated General Plan amendments,

applicant-initiated Zoning Code amendments, conditional use permits, design review permits (including design review permits approved by the Community Development Director under the Director's Exemption provided for by Ojai Municipal Code section 10-2.2003(b)), development agreements, home occupation permits, applicant-initiated formal code interpretations, lot line adjustments, minor conditional use permits, minor variances, development permits, planned development permits, sign permits, specific plans, temporary use permits, tentative, parcel, and final maps, variances, and zoning clearances;

- 2) building or grading permits under Title 9 of the Ojai Municipal Code;
- 3) encroachment permits under Chapter 1 of Title 7 of the Ojai Municipal Code; and
- 4) tree permits under Ojai Municipal Code section 4-11.04;

for projects that involve earth disturbing activity the City must have prepared or cause to have prepared and consider a preliminary archaeological assessment of the site of the proposed project as part of the application materials required under Ojai Municipal Code section 10-2.1805, subdivision (a)(3) for land use permits, under Ojai Municipal Code section 7-1.104 for encroachment permits, under the Building Code for building or grading permits, or under Ojai Municipal Code section 4-11.05 for tree permits. The City must also have prepared and consider a preliminary archaeological assessment for its own projects that involve earth disturbing activity, unless exempt as provided below in section 2(G) of this Resolution.

(B) The City may comply with this requirement in one of four ways: 1) the applicant may have a Registered Professional Archaeologist prepare a Preliminary Archaeological Assessment or other archaeological analysis that provides equivalent information as included in a Preliminary Archaeological Assessment as defined in section 2(C) of this Resolution and submit this analysis to the City; or 2) the applicant may ask the City to have a Registered Professional Archaeologist prepare a Preliminary Archaeological Assessment as defined in section 2(C) of this Resolution and include the Preliminary Archaeological Assessment in the applicant's application materials considered by the City, or 3) the applicant may hire a Registered Professional Archaeologist or ask the City to have a Registered Professional Archaeologist conduct a "Quick Check" through the California Historical Records Information System (CHRIS) and submit the Quick Check recommendation to the City, or 4) the applicant may submit an archaeological records search and physical (pedestrian) archaeological survey of the site with recommendations as warranted. At the Community Development Director's option, the City may secure and consider a further opinion of a Registered Professional Archaeologist if the applicant submits its own archaeological analysis of a project. The fee to be paid by the applicant for any archaeological analyses prepared by the City for the applicant's development project will be charged as set by the City Council by Resolution.

(C) A Preliminary Archaeological Assessment is a site-specific assessment prepared by a Registered Professional Archaeologist of the site's potential for cultural, prehistoric, and historic resources and will recommend the necessity for a Phase 1 archaeological survey with recommendations as warranted. The assessment shall include review of all of the following for

subject parcel and surrounding area: (1) prior archaeological survey(s) and reports; (2) known archaeological site(s) including distance to subject parcel, nature and type; (3) environmental factors including geology; geomorphology; ecotones; water sources; availability and types of potentially exploited or used resources; and potential for caves, rock shelters, and mountain peaks; (4) known and potential historical resources including distance to subject parcel; nature; location relative to historical town core and historical transportation routes (including rail, road, and trails); potential for privies based on date of sewer line installation; and locations of structures and infrastructure assessed by inspection of historical maps; and (5) Google Earth aerial photographs to determine presence of other potential factors affecting the presence or absence of either a prehistoric or historical site (e.g., parcel is in a river bottom). Record searches shall have been performed within six months of the project application date. A Preliminary Archaeological Assessment is not a Phase 1 archaeological survey of a parcel and therefore will not include a pedestrian (ground surface) survey or an evaluation of limited shovel test pits or other subsurface surveys.

(D) The Preliminary Archaeological Assessment is not a substitute for a Native American Heritage Commission Sacred Lands Files Search or tribal consultation as required by state law and the City's Municipal Code and applicable policies. The City will conduct a records search with the Native American Heritage Commission Sacred Lands Files Search for all projects which require a Phase I archaeological survey. The City will continue to consult with the Chumash tribe as required by state law and the City's Municipal Code and applicable policies. The information contained in the Preliminary Archaeological Assessment, the Native American Heritage Commission Sacred Lands Files Search response, and any information received from the Chumash tribe via a consultation process will all be considered as part of the City's permitting process, even when these information sources and analyses contain conflicting information.

(E) A Preliminary Archaeological Assessment must be conducted by a Registered Professional Archaeologist qualified in both pre-historic and historical archaeology, who has at least five years of professional archaeology experience in Ventura County, and is familiar with the local Chumash culture. To avoid potential conflicts of interest, an archaeologist who prepares a Preliminary Archaeological Assessment may not perform the Phase 1 archaeological survey on the subject parcel.

(F) The City will provide the results of the Preliminary Archaeological Assessment to the Chumash Tribe as part of tribal consultations as required by state law and the City's Municipal Code and applicable policies. The City will also provide the results of the Preliminary Archaeological Assessment to the applicant, as part of a confidential information exchange required by this resolution and by the applicable provisions of the Ojai General Plan, Ojai Municipal Code, and, if a project is subject to its provisions, CEQA. The City will not release Preliminary Archaeological Assessments to the general public and will maintain them separate from publically accessible and available records, as these records are exempt from disclosure under the Public Records Act under Government Code section 6254, subdivision (r) and section 6254.10. Any disclosure to the applicant is not a disclosure to the general public within the meaning of Government Code section 6254.5, because the City is required to confidentially provide this information to the applicant to enable a complete evaluation of the proposed project

and any potential impacts on cultural, prehistoric, and historic resources while maintaining confidentiality as specific information on these resources is protected by state law. The City will include a general description of the results of the Preliminary Archaeological Assessment in any Administrative Report and formal approval documentation as necessary to inform the public of the basis of the City's decisions, and to document the City's completion of this evaluation as it considers development projects subject to this Resolution.

(G) Exemptions. The following categories of proposed development projects do not require preparation or consideration of a Preliminary Archaeological Assessment before approval:

i. Emergency Repairs: This requirement does not apply when, in the judgment of the Community Development Department, an emergency exists and that emergency requires immediate review of a proposed development project to protect public health and safety and respond to an emergency as defined by Public Resources Code section 21060.3. Notwithstanding this exemption, the City may, at its option, require the preparation of a Preliminary Archaeological Assessment and archaeological monitoring of an emergency repair in areas of known heightened archaeological sensitivity.

### **SECTION 3. Environmental Determination.**

The City Council determines that the following findings reflect the independent judgment of the City Council. The City Council finds that the adoption of the following amendments to the Ojai Municipal Code is exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines sections 15378 and 15061(b)(3) for the following reasons:

(a) Under CEQA Guidelines Section 15061(b)(3), CEQA review is not required because there is no possibility that the adoption of this policy adding to the application requirements for certain earth-disturbing activities or projects may have a significant effect upon the environment. Under CEQA Guidelines Section 15061(b)(3), a project is exempt when there is no possibility that it may have a significant effect on the environment. This resolution adopts additional application requirements for certain earth-disturbing activities or projects in the City, but does not approve any activity or development project. Any decision to approve or deny an activity or project will occur after the receipt of an application and its processing via the City's existing development review process and will require a further evaluation of the project under CEQA. Because this resolution adds a new application requirement for certain earth-disturbing activities or projects, but does not approve any such activities or projects, there is no possibility that this resolution will have a significant effect on the environment. Accordingly, the City finds that this resolution is exempt from CEQA under Guidelines Section 15061(b)(3).

(b) Under CEQA Guidelines Section 15378(b)(5), the adoption of this policy adding to the application requirements for certain earth-disturbing activities or projects is not a project under CEQA because it will not cause a "direct physical change in the environment" or a "reasonably foreseeable indirect physical change in the environment" because the policy modifies the City's application requirements for certain activities and projects involving earth-disturbance and does not approve any changes on the ground. Any proposed new activities and projects will require independent review by the City, including appropriate CEQA review.

Accordingly, the City finds that these amendments do not qualify as a “project” under CEQA Guidelines Section 15378(b)(5) because they constitute administrative activities of government that do not directly or indirectly result in any physical changes in the environment.

**SECTION 4. Public Notification and Addition to City’s Application Materials.**

The Community Development Director is hereby directed to notify the public of the adoption of this policy via an appropriate mechanism, calculated to ensure that the public is aware that this is a new application requirement for certain activities and projects involving earth-disturbance. The Community Development Director, Public Works Director, and Building Official are also hereby directed to add this requirement to the publically available lists of application requirements, including on the City’s website.

**PASSED, APPROVED and ADOPTED this 8<sup>th</sup> day of December 2015 by the following vote:**

**AYES: Blatz, Clapp, Haney, Lara, Weirick**  
**NOES: None**  
**ABSENT: None**  
**ABSTAIN: None**

CITY OF OJAI, CALIFORNIA



Paul Blatz, Mayor

ATTEST:



Rhonda K. Basore, City Clerk

APPROVED AS TO FORM:



Matthew Summers, City Attorney