



## **Staff Report and Recommendations Agenda of March 14, 2022, Item 7a**

### **County of Ventura • Resource Management Agency**

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**Subject: Public Hearing to Consider the Proposed County-Initiated Repeal and Reenactment of Article 5 of Chapter 3 of Division 1 of the Ventura County Ordinance Code, Beginning at Section 1360, Addressing Cultural Heritage (PL21-0102, County of Ventura, Applicant).**

#### **I. REQUEST:**

Planning Division staff request that the Cultural Heritage Board (“CHB”) review this staff report and its attachments and take the following actions:

a) adopt a resolution (See Exhibit 4 for a draft resolution) recommending that the Board of Supervisors adopt the staff recommended actions stated in Section VII of this report, which include approval of the proposed text amendments repealing and re-enacting Article 5 of Chapter 3 of Division 1 of the Ventura County Ordinance Code, beginning at Section 1360, addressing cultural heritage (“Ordinance” or “CHO”). The draft text amendments are intended to provide needed clarity and promote effective implementation of the Ordinance; and

b) provide comments to the Board of Supervisors for other potential changes to the Ordinance.

#### **II. LOCATION:**

The proposed text amendments to the Ordinance would be applicable to all parcels located within the unincorporated Ventura County. In addition, the text amendments would be applicable to all parcels within any city under contract with the County for cultural heritage services that subsequently adopts the text by reference. Currently, the cities of Fillmore, Oxnard, Port Hueneme, Simi Valley, and Thousand Oaks are under contract with the County for cultural heritage services. Of these cities, only the City of Oxnard has adopted the County’s current Ordinance by reference; the other cities have adopted their own historic preservation ordinances.

#### **III. REVIEW/DECISION-MAKING AUTHORITY:**

These amendments to the CHO are proposed in accordance with the Ventura County Cultural Heritage Ordinance No. 4225, enacted by the Board of Supervisors in 2000. Pursuant to Ordinance Section 1364-9, the CHB is to provide recommendations to the Board of Supervisors regarding amendments to the Ordinance. Under the CHO, the CHB is requested to review, conduct a public hearing on, consider, and make recommendations to the Board of Supervisors regarding the proposed text amendments. The Board of Supervisors, at a subsequent public hearing, will consider the Cultural Heritage Board’s recommendations and decide whether to adopt, not

adopt, or adopt with modifications the proposed Ordinance amendments. The CHB may also make comments to the Board of Supervisors regarding possible additional Ordinance amendments.

#### **IV. HISTORY AND BACKGROUND:**

The Cultural Heritage Ordinance (CHO) was originally adopted by the Board of Supervisors in 1968 (Ordinance No. 2026) to create procedures for designation and protection of “items of special historical or aesthetic character or interest” within Ventura County. Since adoption, the CHO has been amended several times. Most recently, the CHO was amended in December 2000 after the County adopted a Historic Preservation Plan. The CHO, as adopted, emphasizes education of the public as to the importance of designated and potentially eligible cultural resources and contains delay provisions to allow potential partnership and collaboration between the CHB, community stakeholders, County representatives, and project applicants to preserve important resources or implement project modifications (Refer to Exhibit 1 – Cultural Heritage Ordinance No. 4225).

Over time, it has become apparent to the CHB and to CHB staff that the CHO needs to be updated to reflect changes in historic preservation. Thus, in January 2016, the CHB requested a study session be held to discuss potential revisions to the CHO. On September 26, 2016, the CHB held the first study session aimed at addressing a number of issues, including but not limited to, aligning CHO definitions and terminology with California Environmental Quality Act (CEQA) definitions and terminology, clarifying the County’s procedures and standards for issuance of Certificates of Appropriateness, aligning the CHO eligibility criteria for County Landmarks with the National Register of Historic Places (National Register) and California Register of Historical Resources (State Register) criteria by requiring integrity as a criterion, clarifying the process of CHB review for proposed demolitions and alterations, and adding information regarding the County’s existing preservation incentives to property owners of designated historic properties (refer to Exhibit 6 – Previous CHB Meeting Minutes).

At the September 2016 study session, the CHB identified desired revisions and established an Ad Hoc Committee consisting of two CHB members to assist CHB staff in identifying issues, receiving feedback, and reporting back to the full CHB with their recommendations. On August 7, 2017, a second study session was held with the Ad Hoc Committee, Assistant County Counsel, and CHB staff. The committee members provided direction regarding new and revised procedures and language. In addition, the Ad Hoc Committee proposed a number of policy changes, including a maintenance obligation on certain cultural heritage sites, strengthening the Ordinance’s enforcement and penalties provisions, and creating a permanent preservation requirement for certain cultural heritage sites.

On May 29, 2018, a third study session was held with the Ad Hoc Committee to discuss potential CHO revisions in keeping with the current education, delay, and collaboration approach of the Ordinance, the purpose of the CHO and how to achieve its goals without the burden of excessive regulation, and the need to outline the interplay between CHO and CEQA with respect to discretionary project reviews.

On January 28, 2019, a fourth and final study session was held whereupon the Ad Hoc Committee identified issue areas associated with the CHO. Following the study session, at the February 11, 2019 hearing of the CHB, CHB staff presented a summary of the following Ad Hoc Committee's four issue areas to the full CHB: 1) the need to eliminate the 180-day delay provision outlined in CHO Section 1366-8 to prevent the loss of cultural resources due to alteration or demolition activities that are inconsistent with recommended treatment; 2) the need to strengthen the CHO's enforcement provisions by enabling the CHB to adopt enforceable conditions on proposed projects as opposed to recommendations; 3) the need to strengthen and clarify provisions of the CHB review process for proposed demolition, substantial alterations, and additions to cultural heritage sites and potentially eligible cultural heritage sites; and 4) the need to establish a mechanism for the downgrading/delisting of cultural heritage sites when there are instances, such as fires, when a site is destroyed and is no longer eligible for listing. At the February 11, 2019 hearing, the CHB concurred with exploring these four areas and directed CHB staff to schedule a work session with representatives of the contract cities that receive cultural heritage services from the County in order to receive their feedback on proposed amendments. At the March 11, 2019 hearing, the CHB conducted an outreach meeting and discussed the identified issue areas with representatives from the cities of Oxnard, Simi Valley, and Santa Paula.

Due to changes in Planning Division and CHB staff and competing work assignments and priorities, no further action on this effort occurred until 2021. In February 2021, the Board of Supervisors approved the Planning Division's Work Plan, which included studying and considering amendments to the CHO. The Planning Director's February 2021 Division Work Plan reference was intended to make the Board of Supervisors aware of the Ordinance update. The Work Plan specifically establishes that Planning Division staff shall "study and consider" potential Ordinance revisions to address the identified issue areas in anticipation of further direction from the Board of Supervisors.

Beginning in June 2021, staff began studying and considering potential ordinance changes to address the aforementioned issue areas. Prior to this, in late 2020, the County had received grant funding from the State Office of Historic Preservation (OHP) to further historic preservation efforts in the County as part of our designation as a Certified Local Government pursuant to the National Historic Preservation Act of 1966 (54 U.S.C, § 300101 et seq.). A portion of the staff work to conduct the Ordinance update during 2021 was thus funded by this grant provided by OHP. As part of this effort, Planning Division staff reviewed the CHB's prior study efforts, proposed revisions, and previously-identified issue areas. In light of this information, CHB staff

researched both model historic preservation ordinances and those adopted by jurisdictions across the State of California. In addition, CHB staff considered guidance offered in the California Office of Historic Preservation’s Technical Assistance Series, #14, entitled “Drafting Effective Historic Preservation Ordinances” and applicable National Park Service “National Register Bulletins,” and received review and feedback from the Planning Division management team and County Counsel’s Office regarding potential revisions.

Following this effort, CHB staff prepared draft text amendments to the Ordinance that are intended to address the CHB’s proposed revisions to the extent feasible without a departure from the long-standing “education, delay, and project partnership approach” policy direction of the current Ordinance, provide needed clarity, and promote effective implementation of the Ordinance. The draft Ordinance before the CHB today was revised to the extent such revisions did not effectuate significant policy and structural changes to the Ordinance that would first require initiation from the Board of Supervisors. If the CHB would like the Board of Supervisors to consider additional proposed revisions that would result in significant policy or structural changes to the Ordinance, the CHB may propose such changes at your meeting. These proposed revisions would be provided in the staff report to the Board of Supervisors for further consideration.

## **V. DISCUSSION:**

### **Proposed Text Amendments**

The current Cultural Heritage Ordinance No. 4225 is shown in Exhibit 1. The proposed text amendments to the CHO are illustrated in legislative format with staff comments in Exhibit 2. The clean version of the proposed CHO text amendments is contained in Exhibit 3. Section numbers referenced in this section correspond to the draft revised Ordinance in legislative and clean formats, unless stated otherwise. The draft text amendments are summarized as follows:

1. Reorganization and Cleanup (throughout): Various Ordinance provisions are grouped and ordered logically (i.e., definitions are moved to the beginning of Ordinance); miscellaneous corrections are provided in terms of grammar, syntax and wording; and all defined terms are italicized.
2. Section 1361: This section now links Purpose and Findings of the Ordinance to the County’s 2040 General Plan.
3. Section 1363: Adds a number of new definitions for key terms used in the field of historic preservation in order to provide clarity and promote effective implementation of the Ordinance. In addition, some existing definitions are revised for additional clarity. New definitions consist of the following:

- a) Alteration. Language was adapted from researching of other jurisdictions, with further input provided by the Planning Division management team. This language is intended to capture both exterior changes at designated and potentially eligible Cultural Heritage Sites and interior changes to character-defining features of properties subject to a Mills Act contract. This revision was requested at the September 26, 2016 CHB hearing.
  - b) Board of Supervisors. Added for clarity.
  - c) Certificate of Review. Added for clarity.
  - d) Certified Local Government. Added for clarity.
  - e) Character-Defining Features. Language was adapted from research of other jurisdictions and added for clarity based on input provided by Planning Division management team.
  - f) Demolition. Language was adapted from research of other jurisdictions and added for clarity based on input provided by Planning Division management team. The definition will assist Planning Division staff in determining when a Certificate of Appropriateness is required (current CHO Section 1366). This revision was requested at the September 26, 2016 CHB hearing.
  - g) District Contributor. Added for clarity.
  - h) District Non-Contributor. Added for clarity.
  - i) Downgrade. A mechanism for the Downgrade of a Cultural Heritage Site and a definition for this term was requested at the September 26, 2016 and March 11, 2019 CHB hearings.
  - j) Historical Context. Added for clarity.
  - k) Integrity. This revision was requested at the September 26, 2016 CHB hearing.
  - l) Preservation. Language was aligned with the latest Secretary of the Interior's Standards.
  - m) Reconstruction. Language was aligned with the latest Secretary of the Interior's Standards.
  - n) Rehabilitation. Language was aligned with the latest Secretary of the Interior's Standards.
  - o) Relocation. This revision was requested at the September 26, 2016 CHB hearing.
  - p) Restoration. Language was aligned with the latest Secretary of the Interior's Standards.
  - q) Secretary of the Interior's Professional Qualification Standards. Added for clarity.
4. Section 1364-2: Changes the process for how the two CHB At-Large Members are appointed. At their February 1, 2022 hearing regarding Repeal and Filing of a Report on Various Boards, Commissions, and Committees, and Provision of Further Direction to Staff Regarding Additional Analysis or Follow-Up, the Board of Supervisors directed Planning Division staff to include this revision in the Draft Ordinance. This revision transfers the ability to appoint the two CHB At-Large Members from the five Supervisorial-appointed CHB members to the Board of

Supervisors. This revision is intended to align the appointment process with the general practice of other County boards and commissions. Upon adoption of the revised Ordinance, the CHB's Bylaws shall be updated to reflect this revision.

5. Section 1365-11: Clarifies that notification is required to all affected property owners prior to the acceptance of cultural resource surveys by the CHB.
6. Section 1365-13: Clarifies the Certificate of Review (COR) process (review and comment) at Sites of Merit and potentially eligible Cultural Heritage Sites to specify that a COR is only required in conjunction with another action requiring a permit from a County agency. This clarification is intended to address the concern of many property owners who are unaware of their property's historic status.
7. Section 1365-14: Clarifies the CHB's role in the review of environmental documents is pursuant to the County's adopted Initial Study Assessment Guidelines.
8. Section 1366: Clarifies who may initiate designation of a Cultural Heritage Site.
9. Section 1367: Aligns the criteria for a Ventura County Landmarks closely with the National and State Registers and establishes integrity as a required criterion. In addition, this section provides clarification for Site of Merit, Point of Interest, and District eligibility criteria. This revision was requested at the September 26, 2016 CHB hearing.
10. Section 1368: Establishes a mechanism whereby the designation status of a property as a Cultural Heritage Site may be downgraded by the CHB. For example, a Ventura County Landmark may be downgraded to a Site of Merit if the property has been defaced, added to, altered, moved, or damaged by natural disaster. This revision was requested at the September 26, 2016 and March 11, 2019 CHB hearings.
11. Section 1369: Adds a new category to the Ordinance that contains miscellaneous Cultural Heritage Program Requirements and Prohibitions.
12. Section 1369-1: Aligns the local register provision with current Planning Division practice regarding the maintenance of a local register of designated and potential Cultural Heritage Sites.
13. Section 1369-6: Requires the recordation of Cultural Heritage Sites with the County Clerk and Recorder, consistent with State law and current Planning Division practice. This revision was requested at the September 26, 2016 CHB hearing.

14. Section 1369-7: Identifies existing maintenance requirements for owners of historic properties as outlined in the International Property Maintenance Code (as adopted by the Board of Supervisors on November 5, 2019 and enforced by the Ventura County Code Compliance Division). Among other provisions, the International Property Maintenance Code identifies the necessary requirements in maintaining the exterior of a structure in good repair. The creation of a Cultural Heritage Site maintenance requirement was requested at the September 26, 2016 CHB hearing.
15. Section 1370: Creates new overall category identifying available incentives for owners of historic properties. This revision was requested at the September 26, 2016 CHB hearing.
16. Section 1371: Clarifies the Certificate of Appropriateness (COA) process by establishing standards for approval and eliminating findings for disapproval. In addition, establishes acceptable evidence of a hardship waiver. This revision was requested at a CHB hearing. Moreover, this revision adds the requirement for a COA for projects at District Contributors and removes the requirement for a COA at Point of Interest (as these sites are no longer extant by definition). Lastly, this revision adds a standard for approval concerning projects for which the request for a Certificate of Appropriateness is pre-empted by State or federal law.
17. Section 1371-7 and Section 1372: Clarifies the Certificate of Review (COR) process (review and comment) at Sites of Merit and potentially eligible Cultural Heritage Sites to specify that a COR is only required in conjunction with another action requiring a permit from a County agency. This clarification is intended to address the concern of many property owners who are unaware of their property's historic status.
18. Section 1373. Adds a new category identifying the existing opportunities to appeal CHB or CHB staff actions, in addition to an appeal opportunity for the newly proposed downgrade mechanism.
19. Section 1379. Adds a new category identifying the existing enforcement mechanisms for violations of the Ordinance. This revision was requested at the September 26, 2016 CHB hearing.

#### **Four Ordinance Issue Areas to Explore**

The following four issue areas to be explored with the update to the CHO were identified in the February 2021 Planning Division Work Plan to the Board of Supervisors:

- (1) elimination of the 180-day delay provision outlined in CHO Section 1366-8 to prevent the loss of cultural resources due to alteration or demolition activities that are inconsistent with recommended treatment;
- (2) strengthening of the CHO's enforcement provisions by enabling the CHB to adopt enforceable conditions on proposed projects as opposed to recommendations;
- (3) strengthening and clarification of the CHB review process for proposed demolition, substantial alterations, and additions to Cultural Heritage Sites and potentially eligible Cultural Heritage Sites; and
- (4) establishing a mechanism for the downgrading/delisting of Cultural Heritage Sites when there are instances, such as fires, when a site is destroyed and is no longer eligible for listing.

These Ordinance issue areas are described in detail in Exhibit 5 – Comparative Matrix of Ordinance Issue Areas to Explore. It's worth noting that the first three of these issue areas would require restructuring the current framework used by the Planning Division and the CHB to review and permit alterations to historic resources. Amending the Ordinance to incorporate this restructuring would require further direction from the Board of Supervisors as it would be a significant departure from existing policies and practice. As a result, the draft Ordinance does not integrate revisions to address the first three issue areas. The fourth issue area, to allow downgrading of Cultural Heritage Sites, has been incorporated into the proposed text amendments.

Currently, any impacts to known or potential historic resources are reviewed using the County's Initial Study Assessment Guidelines when the project is discretionary. A historic resource report may be requested and project conditions and mitigation pursuant to CEQA are required and applied. In contrast, projects that come in through the Building & Safety Division or the Planning Division for a ministerial over-the-counter permit are evaluated through a different lens, because they are exempt from CEQA review. This includes projects as diverse as demolition of a structure, window replacement, re-roof permit requests, new fencing or accessory structures on the site, new additions, or other alterations, where there is potential for the project to impact a known or potential Cultural Heritage Site.

County staff first assesses whether the site is a designated Landmark or a Site of Merit (the Cultural Heritage Ordinance establishes criteria for the following types of Cultural Heritage Sites in Ventura County: Landmarks, Sites of Merit, Points of Interest, and Districts). If not, County staff evaluates whether there are any structures over 50 years old on the site that may be impacted in a potentially significant way. If the structure is not already designated, other sources are consulted as needed to determine whether the property appears potentially eligible as a Cultural Heritage Site, including whether a master builder or architect may have designed or constructed the structure in question. Sometimes a historic resource report is requested from the applicant to provide further information. For projects at designated Cultural Heritage Sites or those



determined eligible for designation, a Certificate of Appropriateness (COA) or Certificate of Review (COR) is required, depending on the type of property and the project scope of work. Ultimately, some of these projects will be approved by Planning Division staff administratively if it can be determined that the scope of work is consistent with the administrative approval or exemption authority granted by the CHB to staff per CHB Resolution 2017-2.1, adopted July 24, 2017. Pursuant to the Ordinance, others will rise to the level of needing review by the CHB.

When this occurs, a CHB hearing is scheduled and a staff report and presentation prepared that evaluates the proposed project based on the Secretary of the Interior's Standards for the Treatment of Historic Properties ("Secretary of Interior's Standards"). The applicant is invited to the hearing and a dialogue opens between Planning Division staff, the CHB, and the applicant and his/her representatives. Most often this engagement with the applicant results in a project with voluntary recommendations that more closely follows the Secretary of Interior's Standards. The existing Ordinance is structured on the model of educating the applicant on the importance of the historic structure, providing potential alternatives that may be more in keeping with the period of significance, and emphasizing the value of maintaining character defining features. In addition, the Ordinance requires a 180-day delay to issuance of a zoning clearance for the proposed project if the applicant chooses not to follow CHB recommendations and the COA is denied. Since 2010, approximately 90 projects have been reviewed by the CHB. Of these, approximately six cases involved situations wherein CHB recommendations were not followed and approximately three consisted of cases wherein a designated or potentially eligible Cultural Heritage Site was demolished after an applicant waited out the 180-day delay period. This delay is a motivator, but it does not have the same "teeth" as a permit with conditions or denial would. In addition, pursuant to the Ordinance, applicants for projects at Sites of Merit or potentially eligible Cultural Heritage Sites (except in the case of demolition) are provided as voluntary recommendations through the COR process.

It is within this context that the four issue areas were raised by the CHB in 2019 and then studied and considered by Planning Division staff while modernizing the Ordinance.

- (1) Make the issuance of a COA a discretionary action;
- (2) Remove the 180-day delay following COA denial;
- (3) Create a Discretionary Demolition and Substantial Alteration Permit for Cultural Heritage Sites; and
- (4) Create a Downgrading/Delisting Mechanism for Cultural Heritage Sites.

## **VI. CEQA COMPLIANCE AND EXEMPTION DETERMINATION:**

Pursuant to the requirements of the California Environmental Quality Act (Public Resources Code, Division 13 §21000-21178, “CEQA”), and State CEQA Guidelines (Title 14, California Code of Regulations, §15000-15387), the proposed ordinance amendment was evaluated for compliance with CEQA.

Planning Division staff has determined, and recommends that the CHB find, that the adoption of the proposed Ordinance (Exhibit 3) is exempt from CEQA review pursuant to CEQA Guidelines section 15061(b)(3), because it can be seen with certainty that there is no possibility the Ordinance amendment will cause a significant effect on the environment, and CEQA Guidelines section 15308 (Actions by Regulatory Agencies for the Protection of the Environment) as an action taken by a regulatory agency to ensure the “maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment.” Actions are proposed to provide needed clarity and promote more effective implementation of the Ordinance. Planning Division staff has also determined and recommends that the CHB finds that no substantial evidence exists precluding the use of the above categorical exemptions based on the presence of unusual circumstances or any other exception set forth in CEQA Guidelines section 15300.2.

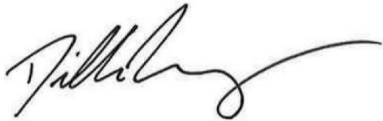
## **VII. RECOMMENDED ACTIONS:**

Based upon the analysis and information provided above, CHB staff recommends that the Cultural Heritage Board take the following actions. In addition, your Board may have comments on the ordinance issue areas identified previously or other potential changes to the Ordinance. CHB staff will forward any additional comments to the Board of Supervisors for their review and consideration.

1. **CONDUCT** public hearing, **RECEIVE** oral and written testimony, and **CONSIDER** the Planning Division staff report and all exhibits and attachments hereto;
2. **CERTIFY** that the Cultural Heritage Board has reviewed and considered this staff report and all exhibits hereto, and has considered all comments received during the public comment process;
3. **ADOPT** a Resolution (Exhibit 4) recommending that the Board of Supervisors take the following actions regarding the proposed amendments to the Ventura County Cultural Heritage Ordinance:
  - a. **CERTIFY** that the Board of Supervisors has reviewed and considered the Board letter, the Cultural Heritage Board staff report and all exhibits thereto and has considered all comments received during the public comment process;

- b. **FIND** on the basis of the entire record and as set forth in Section VI of this Cultural Heritage Board staff report that the adoption of the proposed Ordinance (Exhibit 3) repealing and reenacting Article 5 of Chapter 3 of Division 1 of the Ventura County Ordinance Code, beginning at Section 1360, addressing cultural heritage, is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility the project may cause a significant effect on the environment, and CEQA Guidelines section 15308 because the Ordinance amendment consists of regulations intended to benefit the environment, and find that no substantial evidence exists precluding the use of the categorical exemption based on the presence of unusual circumstances or any other exception set forth in CEQA Guidelines section 15300.2;
- c. **ADOPT** the proposed Ordinance repealing and reenacting Article 5 of Chapter 3 of Division 1 of the Ventura County Ordinance Code, beginning at Section 1360, addressing cultural heritage (Exhibit 3); and
- d. **SPECIFY** the Clerk of the Board of Supervisors at 800 S. Victoria Avenue, Ventura, CA 93009 as the custodian and location of the documents and materials that constitute the record of proceedings upon which these decisions are based.

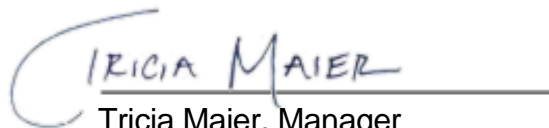
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Exhibits:

- Exhibit 1 – Cultural Heritage Ordinance No. 4225
- Exhibit 2 – Draft CHO Amendment (Legislative Version, with Staff Comments)
- Exhibit 3 – Draft CHO Amendment (Clean Version)
- Exhibit 4 – Draft CHB Resolution No. 2022-3 to the Board of Supervisors
- Exhibit 5 – Comparative Matrix of Ordinance Issue Areas to Explore
- Exhibit 6 – Previous CHB Meeting Minutes (September 26, 2016, February 11, 2019, and March 11, 2019)