



Agenda

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ARCHAEOLOGICAL REVIEW COMMITTEE HEARING

THURSDAY, February 4, 2016 at 4:30 PM

CITY COUNCILORS CONFERENCE ROOM

CITY HALL - 200 LINCOLN AVENUE, SANTA FE, NM

- A. CALL TO ORDER
- B. ROLL CALL
- C. APPROVAL OF AGENDA
- D. APPROVAL OF MINUTES: January 21, 2016
- E. MATTERS FROM THE FLOOR
- F. ACTION ITEMS
 - 1. Case #AR-08-88. 330 Garcia Street. Historic Downtown Archaeological Review District. Doug Boggess, agent for Parks Construction, Inc., owner, requests approval for a Reconnaissance Report for 0.32 acres for development.
- G. DISCUSSION ITEMS
 - 1. Discussion of the Santa Fe Archaeological Review Districts Overlay Zoning Ordinance Draft (Section 14-3.13).
- H. MATTERS FROM THE COMMITTEE
- I. ADMINISTRATIVE MATTERS AND COMMUNICATIONS
- J. ADJOURNMENT

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 Thursday, February 4, 2016**

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**MINUTES OF THE
CITY OF SANTA FE
ARCHAEOLOGICAL REVIEW COMMITTEE HEARING
City Councilors Conference Room
February 4, 2016**

A. CALL TO ORDER

The Archaeological Review Committee Hearing was called to order by David Eck, Chair, at approximately 4:30 p.m., on February 4, 2016, in the Historic Preservation Conference Room, City Hall, Santa Fe, New Mexico.

B. ROLL CALL

Members Present

David Eck, Chair
James Edward Ivey
Derek Pierce
Gary Funkhouser

Members Excused

Tess Monahan, Vice-Chair

Others Present

David Rasch, Historic Preservation Division
Lani McCulley, Historic Preservation Division
Zachary Shandler, Assistant City Attorney
Elizabeth Martin for Melessia Helberg, Stenographer

NOTE: All items in the Committee packet for all agenda items are incorporated herewith to these minutes by reference, and the original Committee packet is on file in, and may be obtained from, the City of Santa Fe Historic Preservation Division.

C. APPROVAL OF AGENDA

MOTION: Derek Pierce moved, seconded by Gary Funkhouser, to approve the Agenda as presented.

VOTE: The motion was approved unanimously on a voice vote.

D. APPROVAL OF MINUTES: JANUARY 21, 2016

There were no minutes for approval.

E. MATTERS FROM THE FLOOR

There were no matters from the floor

F. ACTION ITEMS

- 1) **CASE #AR-08-88. 330 GARCIA STREET, HISTORIC DOWNTOWN ARCHAEOLOGICAL REVIEW DISTRICT. DOUG BOGCESS, AGENT FOR PARKS CONSTRUCTION, INC., OWNER, REQUESTS APPROVAL FOR A RECONNAISSANCE REPORT FOR 0.32 ACRES FOR DEVELOPMENT.**

BACKGROUND & SUMMARY:

In 1988, the 0.32 acre lot at 330 Garcia Street was surveyed by Southwest Archaeological Consultants, Inc., in anticipation of residential construction. Prior to ARC review, the case was withdrawn from the agenda and no archaeological clearance was issued. The previous survey resulted in the recovery of 1,760 artifacts and the identification of a segment of the Acequia de Analco (LA 67063). New residential construction is now proposed for the property and archaeological clearance is required. Lone Mountain Archaeological Services resurveyed the lot, excavated additional test units and a backhoe trench across the previously identified ditch, finding no remains of the site. No further research is recommended; however, should any cultural deposits be encountered during construction, it is recommended that work cease temporarily, pending notification of the City and further evaluation.

STAFF RECOMMENDATION:

Staff recommends approval of the reconnaissance report, as it meets the intent of the City of Santa Fe Archaeological Review District Ordinance (14-5.3), the requirements of Archaeological Clearance Permits (14-3.13(B)(1) and the requirements of performing reconnaissance (14-3.13(C)(5).

Chair Eck thanked Ms. McCulley for the Staff Report. He asked Mr. Rasch if he has anything to add.

David Rasch said this was put on the agenda because we were unsure about the 2% testing.

Mr. Boggess said, "In looking at what LA 67063 was intended to be when it was originally altered, I have changed my thinking since the original report. It was originally plotted well outside my lot along the [inaudible] feature. And one document said a ditch, but as it is listed in ARMS, it is the ditch with historic scatter, so I went to that interpretation of the material I encountered in the lot."

Gary Funkhouser

Mr. Funkhouser said, regarding your confidence that the subsurface cultural deposits are messed up totally, it was not clear to him that there was not enough depth in any case to make that conclusion. He wants assurance that Mr. Bogges is confident that his conclusion on that is correct.

Mr. Bogges said everywhere he did dig he found modern amber glass below whatever aboriginal, actually historic material there was there, pipes. In most places he dug, he also hit some form of the old irrigation system, so there were plastic pipes, and in one case there was a pipe down about 1½ meters. However, most of the pipes were in the first 30-60 centimeters of stuff where materials were found. He said when he looked at the neighboring lots across the streets, they found buried features and such, and he thought they were so interesting they needed to be in the report. He said they found some filled-in ponds at about 1½ meters, but he thinks the deepest prehistoric material they found was between 60-80 cm, and it seemed to be the same sort of soil change that he was hitting at his depth.

Derek Pierce

Mr. Pierce said he was going to ask the same question, noting there are a lot of artifacts, but he wants to be certain there is no subsurface, and it sounds like Mr. Bogges is confident of that. He said he would commend Shannon for the archival research which was very good, as usual. He appreciates that Mr. Bogges worked the nearby sites into the narrative.

Jake Ivey

Mr. Ivey said on packet page 12, there is something confusing about the way the dates work in paragraphs 3 and 4.

Chair Eck said the time sequence is strange.

Mr. Bogges said he doesn't think it's a major mistake. He thinks he "started the concept over with that paragraph and restated the date, but it didn't quite work. Kind of a never mind, but I thought I'd mention it."

Mr. Ivey, referring to packet page 26, paragraph 2, lines 1 and 2, correct as follows: "...occupies four-square leagues..." and correct the second reference in like manner.

Chair Eck

Chair Eck, referring to packet page 13, paragraph 4, line 7, the word "illegally" seems inappropriate.

Mr. Bogges said he took that directly from the site card. He said he will put a citation there to indicate such.

Chair Eck said packet page 47, under Archival Results, paragraph 1, line 4, says, "The property is located in and is a contributing resource to the Santa Fe Eastside Historic District." He asked if this is included in terms of the intent for National Register eligibility.

Mr. Bogges said it should say that 334 Garcia is listed as a contributing resource in the nomination.

Chair Eck said, "It might usefully also mention the City of Santa Fe's Downtown and Eastside Historic District."

Mr. Rasch said, "I believe it is a contributing resource in our District, but I certainly don't know what it is on the State district."

Responding to a question from Ms. Helberg, Mr. Rasch said the correction should be, "The property is located in and is a contributing resource to the Santa Fe Downtown and Eastside Historic Districts."

Chair Eck said on page 43, paragraph 2, line 2 under LA 148067, 331 Garcia Street, says, "... an undisclosed number of grayware sherds..." He said the report doesn't enumerate the grayware sherds, however page 5 of the site form does, but there are 3. He said that could be changed. The same thing is on packet page 61, in Table 2.5. He said Mr. Bogges can change it if he wants to do so.

MOTION: Gary Funkhouser moved, seconded by Derek Pierce, with respect to Case #AR-08-1988, to approve the Reconnaissance Report for 330 Garcia Street, Historic Downtown Archaeological Review District, as requested by Doug Bogges, agent for Parks Construction, inc., with the corrections from the Committee, as it meets the intent of the City of Santa Fe Archaeological Review District Ordinance (14-5.3), the requirements of Archaeological Clearance Permits (14-3.13(B)(1) and the requirements of performing reconnaissance (14-3.13(C)(5).

VOTE: The motion was approved unanimously on a voice vote.

G. DISCUSSION ITEMS

1. DISCUSSION OF THE SANTA FE ARCHAEOLOGICAL REVIEW DISTRICTS OVERLAY ZONING ORDINANCE DRAFT (SECTION 14-3.13)

A copy of *The Santa Fe Archaeological Review Districts Overlay Zoning Ordinance Draft (Sections 14-2.7 and 14-3.13)*, prepared by Zachary Shandler, Assistant City Attorney, is incorporated herewith to these minutes as Exhibit "1."

A copy of an email Memorandum from Isaac J. Pino, Director, Public Works Department, dated February 4, 2016, to Zachary A. Shandler, Lisa Martinez, David Rasch, David Pfeifer, Jason Kluck, David Catanach, Robert Carter and Richard Thompson, regarding City Archaeological Committee Code rewrite, in response to Zachary Shandler's email Memorandum of February 3, 2016, is incorporated herewith to these minutes as Exhibit "2"

Zachary Shandler, Assistant City Attorney, said the Committee has covered just about everything, and this [Exhibit "1"] is a summation of the Committee's work in a legislative format. He noted there is one typo on packet page 12, line 19, which adds at the end of the sentence "over 10 acres."

Mr. Shandler said 3 Ordinances are being amended: Section 14-2.7 Adopting internal policy, striking "reconnaissance" and replacing it with "inventory"; Section 14-5.3, is a clarifying statement of when you need to forward to the State; and Section 14-3.13 where the Committee has done heavy streamlining, beginning on packet page 9.

Mr. Shandler reviewed the changes to the Ordinance:

- Page 9. A purpose section was added.
- Page 10. (B) Applicability – clarification for a layperson at the permit counter, if they are getting a building permit, or secondary permit, they may be subject to this Ordinance, 12-3.13(E)(1) which is the Santa Fe Trails Requirement. Makes clear to City staff and its contractors that even on City-owned property there is no exception to that.
- Page 12. Streamlines the activities needing a permit, which is 2,500 sq. feet disturbance or the installation of 60 feet or more.
- Page 13. For Rivers and Trails for subdivision application or rezoning application and is over 10 acres and a utility of 550 feet. For Suburban for subdivision application or building application it is two acres. *Mr. Shandler said he needs to recheck that.*
- Page 13. Exemptions.
- Page 14. Lay-out of procedures for all projects except utility projects. Line 20 provides the applicant, if he qualifies, must hire an archaeologist who has to meet qualifications. The qualifications are more severe for Historic Downtown. Description of what the Inventory Report includes, and incorporates a lot of your internal policies

Mr. Ivey said on page 14, line 20 under (a) Inventory procedures to add "an" before archaeologist.

- Chair Eck said someone could be qualified and not be certified and they have to be approved by the Archaeological Review Committee. He asked if the certification needs to refer to the approved list of archaeologists and historians.

Mr. Shandler said he will make that change.

- Page 15. Lists everything that needs to be in an Inventory Report.
- Page 16. Provides that the approval of the Inventory Report has to come back to the ARC, and be on the agenda for review and approval or disapproval.
- Page 17. Provides the ARC decides if it is significant or not. If it is not significant, no further treatment is required and the permit is issued. If the ARC determines it is significant, then they pick up the language from treatment and they have to hire a certified archeologist to write a Treatment Plan.
- Page 18. Explains what needs to be in the Treatment Plan.
- Page 19 provides the Treatment Plan to the ARC which votes to approve or disapprove the Treatment Plan. If the Plan is approved, the Applicant commences work on the project, and when it is done, they submit their Treatment Reports to ARC for review and approval.
- Page 20 incorporates the current funding limits, which isn't new language and was moved from another section to include here. Ms. Monahan's recommendation is don't touch the dollar figures. Overview at the bottom of the page. Procedures for utility projects are now separated out or alternative means of compliance. Language for the layperson of when this procedure is needed.
- Page 21. The ARC must approve a Monitoring Plan prior to commencement of ground disturbing activities by the private sector, the City or City contractor. The City must approve the Monitoring Plan as an alternative means of compliance, and provides the steps.
- Page 22 describes what needs to be in the Monitoring Plan, which then is brought forward to the ARC for approval. The Monitoring Plan can allow boring on case by case basis.
- Page 23 provides the ARC shall review the Report. This is all existing language which was moved to a different place calling out the procedures for the Santa Fe Trail.
- Page 25 and 26 is language wanted by Michele Ensey.
- Chair Eck said on page 26, line 20, it says "shall be performed by an archaeologist." He said that would constitute certification because they have to be listed in the directory in order to be listed on the permit.

Mr. Shandler said the goal today was to give the Committee an overview. If you have edits or typos, please email either him, Mr. Rasch or Ms. McCulley directly. He would like the Committee to note anything that still needs to be hashed-out today, noting he didn't come prepared to do that today.

Discussion on Exhibit "2"

Mr. Shandler noted the handout [Exhibit "2"]. He said this is related to the shade structure issue. He said he reached out to the Public Works and Parks Departments, noting Isaac Pino is the Director of the Public Works Department, to advise them of this project, and provided a table of the key points. He said only the Parks project language was changed. On packet page 13, lines 9-11, provides this exemption does not apply to a Park project on multiple parcels whose sum is under one acre in size in the River & Trails District.

Mr. Shandler continued saying Mr. Pino responded saying, "I don't get it. Help me understand."

Mr. Rasch observed that the language seems more lenient.

Mr. Shandler said it appears this may be the most contentious issue among City staff. He said staff doesn't have to answer now, but perhaps can talk about this at the next meeting.

Mr. Funkhouser said he thinks this is a case where we worded something less than well, and we were trying to cut the City a break and now it's being thrown back at us. He said we got to this point by making interpretations benefitting the City entirely, so now, it's not enough.

Mr. Pierce said the way it reads it is counter-intuitive. The intent was that the exemption does not apply if the sum of the parcels is greater than one acre, but it reads if the sum of the parks is less than one acre.

Chair Eck said it seems to be a mirror image of what we were saying.

Mr. Pierce said what it boils down to, is if the proposed project involves either a single parcel of one acre or more, or several parcels that add up to one acre, then the exception does not apply. If the parcel itself is less, or all of the parcels combined are less than one acre then the exemption would apply.

Mr. Shandler said he will correct the language on page 13, to "greater."

Mr. Rasch said this is how we interpreted when the project moved forward.

Mr. Shandler said he will correct the language, and see if that addresses the issue.

The Committee commented and asked questions as follows:

- Chair Eck said he thinks the wordsmithing should solve the issue.
- Mr. Pierce said on page 12 of the Ordinance, line 10, the language should be changed to read, "This exemption does not apply to a park project on multiple parcels if greater than one acre."

- Mr. Funkhouser said Mr. Pino's email says, "Now, if we went ahead with those projects on an individual basis...." He said it's not their call to make and part of the problem we've had all along is to define what that is.

- Chair Eck said it does not need to be the decision of "the fox as to whether or not he is allowed to live in the hen house."

Mr. Rasch asked if the loopholes have to be identified on a fiscal year basis.

Mr. Shandler said if there is a loophole, it needs to be closed, and this can be done perhaps by reinserting the word "individual" in its place.

- Mr. Funkhouser said it might have to be on a case by case basis, commenting large projects can be broken into smaller units. He said, in general, we are talking about a common plan and funding, and you could make the case that it is not a similar project.

Mr Rasch said it could extend over fiscal years.

- Mr. Funkhouser said that's true, but it still would be part of the same project.

Mr. Rasch said the amendment needs to include an exhaustive description of "the project," and say it includes nothing else.

- Chair Eck said a really good definition of what constitutes an individual project, would solve the issue. He asked Mr. Funkhouser if he might have example language from Federal policy.

- Mr. Funkhouser said there really is no other statutory definition for this. He said we can't leave it to the people coming before the Committee to define their projects.

- Chair Eck said so this is the one item that rose to the attention of the Committee, but there's no predicting what other items might rise to an elevated level of concern later.

Mr. Rasch said once this Ordinance is approved, Lisa Martinez, Land Use Director, should say in front of other directors in a meeting that when they're doing work that will disturb ground, to think of the expense for archaeology out front. He thinks that's all that needs to be done.

- Chair Eck said most of the problems he has run into, are the peoples' scoping of the project.

- Mr. Funkhouser said he understood that we would leave the subcommittee work to staff.

Mr. Rasch asked, referring to Ordinance page 11, Items 4 & 5, if we are keeping language as it was in the Code, and if so, this is not our practice. He said this suggests that in both Districts you need clearance only if there is a subdivision or a rezoning, noting that is not the way we operate now.

- Mr. Pierce asked if it is the same as lines 18-22 on the previous pages.

Mr. Rasch said this is his question. This says these two Districts require only Planning Commission approval to require archaeology. He asked if this was discussed.

- Chair Eck he doesn't remember discussing it at all in the Subcommittee. However, in the case we had at the last meeting, where somehow there was something that was Planning Commission related, it was well over 18 acres, but it became a bunch of little things and nobody did anything according to *[inaudible]*. His impression of the way this was written, was to emphasize that downtown is a really big deal because it is jam packed with archaeology, and everything is less of a big deal because there is less archaeology. And the theory was that as parcels that are large became parcels that were smaller the archaeology would happen. So the archaeology was way ahead of the details and would exempt them from anything.

Mr. Rasch said he would have to search the Current Code, but believes the only exemption is a family transfer, and asked if we are still interested in family transfers in the 21st Century.

- Chair Eck said he is interested, because he thinks about 95% of them aren't real.

Mr. Shandler there was some discussion at the Subcommittee, but they couldn't come up with a better answer, so kept the matter closed. He asked what is the current practice.

- Mr. Rasch said if there is a property over 10 acres in Suburban, and more than 2 acres in River & Trails, no matter the project, a person is required to do archaeological clearance on the entire property. The only way to do partial clearance is to track it on a plat, noting that is the way the State does it, but the City does not do that. He said the Code provides that it has to be a Planning Commission case. He said in his experience, staff has used the threshold no matter the ground disturbance.

Mr. Shandler said we should memorialize the practice.

Mr. Rasch said for example, under this provision, if there was a 3-acre home site in River & Trails, and they are building a 200 sq. ft. addition, and they had to clear the entire 3 acres, that would be cumbersome.

- Mr. Pierce said it is, but you could have the reverse situation, where a 2 ½ acre lot could be turned into a parking lot where you would grade the entire thing, but it's not a subdivision, in that case it would be exempt. He said perhaps we could broaden the types of activities that would trigger archaeology for minimal disturbance.

Mr. Rasch said that would be great, with monitoring for minimal disturbance, instead of clearing the entire lot. He said we are looking to not impose a big financial burden for a small ground disturbance.

- Mr. Pierce said a survey is much cheaper than monitoring, so he is unsure the applicant is saving money by doing that.

- Mr. Funkhouser said you can easily do 20-40 acres per person per day.

Mr. Rasch asked the cost to do a plat of the area that is cleared each time.

Mr. Pierce said it would be substantial and cost way more than a survey.

Mr. Rasch said so that's not a solution.

- Mr. Funkhouser said surveying 3 acres in town in the great scheme isn't a lot of money.

Mr. Rasch said then perhaps clearing the whole lot is the way to go.

Mr. Shandler said he and Mr. Rasch can come up with reasonable exception language for a small project, or not.

- *[Mr. Funkhouser's remarks are inaudible due to noise overlay]*

Mr. Rasch said we are working on the archaeological data base, where in that data base we can cover these partial clearances. He said they aren't entering the Downtown Historic District, but eventually they will get to River & Trails and Suburban and it will be in the data base where it can be tracked.

- Chair Eck said that, and with the understanding that the City's GIS is not accurate enough. If we're starting to clear sub-sets of larger things whose definitional integrity is in question, we are filing error on error.

Mr. Rasch said that's true, although the City currently is in a very big strategic planning effort to go digital and tie everything to the GIS layer – permits, archaeological clearance, historic, inventories, financial things we're tying to the parcel. There will be one central location for all data that relates to the parcel. He said once we go there, those parcels will have to be corrected because it will be critical at that point.

- Mr. Pierce said philosophically, he doesn't disagree with the idea of exemptions for very small projects, but practically, it would be very difficult to track and possibly more expensive than just going out and doing the survey in the first place. He said he is unsure if we do ourselves or the applicant a favor by listing an exemption. He suggests that the current practice that you have to get a permit for any kind of disturbance, requires clearing the lot.

- Chair Eck said the surveys we have for outlying districts were for whole lots and just pedestrian survey and seemed quick and easy for the archaeologist to produce, therefore they shouldn't be very expensive. He said that is the practice in a nutshell, but it is not in keeping with the strict language of the existing Ordinance.

Mr. Rasch said that is correct, or in keeping with the draft Ordinance as well. He said, with regard to family transfers, he has seen other Ordinances which put a moratorium on inappropriate activities in the future – a family transfer must remain in the family for 10 years.

Mr. Shandler said, "My advice would be to not touch that." He said that could lead to an hour long discussion.

Mr. Rasch said he is unsure the City Council would like to remove that language.

- Mr. Pierce said there is another area we should consider [page 27], because we know it is forthcoming as a discussion item or a case, which is funding from the Archaeological Fund. He asked if the language is specific enough to deal with the case we already see coming forth.

Mr. Rasch asked if he is looking at potential language that establishes a funding limit of a percentage of the overall cost of the project.

- Mr. Funkhouser said he thinks these funds are to be used as a contingency for very rare cases when the cost is prohibitive, and wasn't for a hit because somebody wanted to do something. It is to protect the landowner from having to incur outrageous costs for stumbling on something of incredible significance.

Mr. Rasch said it is not for just regular costs, but for significant issues.

- Mr. Pierce said he thinks it should be in the 4 sub-items under (b) lines 10-21 on page 27. He asked if these definitions are adequate. His biggest concern is keeping the intent of the fund in the first place that would give relief to private landowners, and not City projects or utility companies. Those who would be unduly burdened by the cost.

- Chair Eck said the funding comes from fees paid by those very people. He asked if any arms of the City pay any fees for projects they do – does the City contribute to the fund.

Mr. Rasch said no, it comes from a fees paid by private individuals which is a percentage of construction.

- Mr. Pierce said the preliminary caption of the case which appeared on the agenda some time ago and was postponed, would have requested \$88,000, which is more than 2/3 of the available funding for an applicant who didn't contribute to the fund.

Mr. Rasch said that will be coming back in March.

- Mr. Pierce and Mr. Funkhouser agreed we need to beef up that language – adding what a survey or study of City-wide scope means. He said to him it has to contribute to knowledge about the City.

Mr. Rasch said it is not only the City-wide significance of the project, it's the City-wide significance to archaeology. He said the fiber is extremely significant to the City, but not to City archaeologists.

- Mr. Pierce said, barring discovery of some really significant resource, he doesn't think it qualifies for the funding, observing that the particular definition on line 21 is vague. He gets the reason they are attempting to use it, but with a different interpretation than he might take.
- Chair Eck thanked him for pointing that out, because we definitely do want to think about that.
- Mr. Pierce said it doesn't need to be resolved tonight, but we need to think about that and then revisit that. He said it might be good to put as a limitation a percentage of the project, otherwise it could wipe out the fund, and there would be no funds left for landowners that might be burdened by other projects.
- Chair Eck said and it wouldn't be available for projects of true City-wide significance such as the data base.

Mr. Rasch said his fear is, especially in strained budget years, this pot of money might be considered for use by the City for something else. He worries about carrying a big limit in the amount that keeps getting rolled forward and it not being used.

- Mr. Pierce asked the reason we don't see more application for the funds. He asked if there are no projects that exceed the threshold.
- Chair Eck said, for example, a recent case had expenditures which were well in excess of what the landowner would have been required to expend, but the landowner was willing to do so, with no mention of requesting those funds.

Mr. Rasch said perhaps it needs to be publicized more.

- Mr. Pierce thinks that is the case, but people who could have asked for the funds probably would have received funding just didn't ask for it for some reason.
- Mr. Funkhouser said if it gets hit heavily, it will disappear and will take a decade to rebuild it to the point where it could help anyone.
- Chair Eck said it has been in place for a very long time, and its creation is outside any of these ordinances, and asked where it is created.

Mr. Rasch doesn't know because it was before his time, but a percentage of all construction permits that come into the City automatically go to this fund.

- Chair Eck asked the genesis for how it was put in place and what project caused it. He said there are 2 or 3 examples where people used money from it. One was a subdivision project that Southwest was working on that disturbed some pit houses that were completely unanticipated, therefore they received funding for the excavation.

Mr. Rasch asked if the fund was used for the project on Grant for a sewer line replacement.

- Chair Eck said no, commenting the utility company wrote us a check for that small project. He said some of it was used before his time for something involving Ft. Marcy. So he knows of two.

Mr. Rasch said that was for an educational display, and we used it for the data base, both of which are not digging projects.

- Chair Eck agreed, but said both are of City-wide significance and scope.

- Mr. Pierce said City-wide scope it is a vague term, because it could be interpreted as the applicant is intending to do, which is anything which seems to stretch across a large part of Santa Fe.

- Chair Eck asked what is "a large part of Santa Fe."

- Mr. Pierce said it could be rephrased as something that contributes to the greater body of knowledge of Santa Fe's pre-history, rather than just of City-wide scope. He said it has multiple meanings.

- Mr. Funkhouser asked if we could collapse it and make it more simple, and then limit the use with the decision to be made by this Committee.

- Chair Eck said on page 27, Section iii. is an attempt to grandfather something that was needed, and Section iv. was trying to anticipate people doing grand things in the future.

- Mr. Pierce said Sections ii and i can be collapsed into one another.

- Chair Eck agreed.

- Mr. Pierce said he isn't saying the language is vague, it was just that we need to take another look since we know this is coming.

- Mr. Funkhouser said this is a modified version of National Register eligibility. He said it doesn't lend itself to archaeology very well.

- Chair Eck said archaeology is the red-headed stepchild of historic building preservation.
- Mr. Funkhouser agreed, saying the model is set up for buildings in the northeast part of the country, and when we try to move it over, it loses something.

Mr. Rasch said we can be more restrictive than the State.

- Chair Eck said currently we are less restrictive.
- Mr. Pierce said line 17, page 28, provides, " Appeals. Any aggrieved person may appeal a final action of the Archaeological Review Committee to the Governing Body pursuant to Section 14-3.17." He asked what Governing Body means.

Mr. Rasch said it is the City Council and the Mayor.

- Chair Eck said this Committee may recommend expenditures and asked if that can be appealed.

Mr. Rasch said any decision of this Committee is appealable. So if someone requests funds for a project and you deny it, it goes to the City Council on appeal for a *de novo* hearing in which the Council has full jurisdiction. He said this is the case with all Boards and Committees of the City.

- Chair Eck asked if the Governing Body is required to apply the criteria as set out in the Ordinance, and if they are qualified to understand the criteria.

Mr. Rasch said the staff advises the Governing Body and would be providing our reports.

Mr. Shandler said he and Mr. Rasch would provide a written report and then an oral report to the Governing Body.

Mr. Shandler said if the Committee has individual items to email him, and call him if they have big issues and need to talk it through in advance or want to bring it back to the Committee. He said if he doesn't hear from the members he will presume you are comfortable with the way it is written. The next step would be to have an advertised meeting and invite the public.

Mr. Rasch said once the Ordinance is approved formally by this Committee, it becomes public knowledge and is available to the public. He said we need to have the public meeting before it goes to the Governing Body.

Chair Eck asked the mechanism to get word on the public meeting.

Mr. Rasch said we contact the applicant and interested parties and formally provide it to all interested parties. He said only when it is posted for a public hearing can anyone come and talk about it.

Mr. Pierce said so interested parties would be City departments and divisions, and everybody on the list.

Mr. Rasch said yes, and it would include all archaeological societies and committees as well. He said the entire next session will be devoted entirely to the final draft. He asked when the Ordinance will go to publication.

Ms. McCulley said it will go to publication on February 11th for the meeting on February 18th.

Mr. Rasch said we may want to get all comments by Monday.

Chair Eck said he would rather do it first meeting in March 3rd, so we can submit our comments by February 20th, with posting of the packet on February 25th. He asked that the members provide comment to Mr. Shandler by February 20, 2016, in order to be included in the packet.

H. MATTERS FROM THE COMMITTEE

There were no matters from the Committee.

I. ADMINISTRATIVE MATTERS AND COMMUNICATIONS

There were no Administrative Matters and Communications.

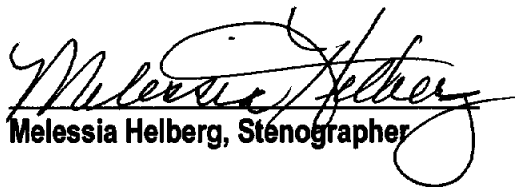
I. ADJOURNMENT

There was no further business to come before the Committee.

MOTION: Jake Ivey moved, seconded by Gary Funkhouser, to adjourn the meeting.

VOTE: The motion was approved unanimously on a voice vote, and the Committee was adjourned at approximately 5:50 p.m.


David Eck, Chair 03 March 2016


Melessia Helberg, Stenographer

**The Santa Fe
Archaeological
Review Districts
Overlay Zoning
Ordinance Draft
(Sections 14-2.7 and 14-3.13)**

Exhibit "1"

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CITY OF SANTA FE, NEW MEXICO

BILL NO. 2016

INTRODUCED BY:

AN ORDINANCE

AMENDING SUBSECTION 12-2.7 TO CLARIFY QUALIFICATIONS OF
ARCHAEOLOGISTS, HISTORICAL ARCHAEOLOGISTS, HISTORIANS; AMENDING
SUBSECTION 14-3.13 TO PROVIDE A "PURPOSE" SECTION; TO CLARIFY THE
APPLICABILITY OF AN ARCHAEOLOGICAL CLEARANCE PERMIT; TO CLARIFY
THE PERMIT PROCEDURES FOR PROJECTS; TO REPLACE THE TERM
"RECONNAISSANCE REPORT" WITH "INVENTORY REPORT"; TO CLARIFY THE
PERMIT PROCEDURES FOR UTILITY PROJECTS; TO REQUIRE
ARCHAEOLOGICAL WORK TO BE DONE CONSISTENT WITH STATE
ADMINISTRATIVE CODE REQUIREMENTS; TO STREAMLINE CODE PROVISIONS
AND ELIMINATE DUPLICATIVE LANGUAGE; AND AMENDING SUBSECTION 14-5.3
TO CLARIFY WHEN ACTIONS ARE FORWARDED TO THE STATE HISTORIC
PRESERVATION OFFICE.

14-2.7 ARCHAEOLOGICAL REVIEW COMMITTEE

(A) Designation

There shall be an archaeological review committee of the city, which shall be referred to as the "archaeological review committee" or the "ARC".

(B) Delegation

The governing body and the planning commission hereby delegate their authority, as

Handwritten signature

1 set forth generally in Chapter 3, Articles 19 through 21 NMSA 1978, to the ARC as
2 described in this section, except for those powers retained by the *governing body* and
3 the planning commission in the Santa Fe City Code.

4 **(C) Powers and Duties**

5 (1) The ARC shall meet at least once a month, unless there are no agenda items,
6 and at such other times as the chair may determine. The ARC shall have the
7 review and decision-making responsibilities set forth in Table 14-2.1-1, to be
8 carried out in accordance with the terms of Chapter 14. In addition, the ARC
9 shall:

10 (a) in accordance with Section 14-3.13, hold hearings to review
11 inventory or monitoring reports, the recommended *significance*
12 status of archaeological sites, the recommended treatment plan of
13 *cultural remains* and final reports. The ARC may review and act on
14 stages or portions of on-going archaeological studies. The ARC
15 shall vote to approve, conditionally approve or disapprove requests
16 for archaeological clearance *permits*;

17 (b) qualify or disqualify persons for inclusion on the *city's* list of
18 approved archaeologists, historical archaeologists and historians
19 upon review of resumes and related documents as set forth in this
20 section;

21 (c) establish a *city* register of recognized *archaeological sites* and shall
22 establish criteria for such a register; and

23 (d) hear appeals of *final actions* of the *land use director* interpreting or
24 applying archaeological review district regulations pursuant to
25 Section 14-5.3.

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- (2) The ARC may:
 - (a) advise the HDRB in regard to *applications* to that board for new construction, exterior *alteration*, demolition or on other matters relating to archaeology within the historic districts;
 - (b) direct *applicants* to the *state* historic preservation division for information regarding *state* or federal law and regulations on the tax benefits of donating archaeological *properties* or easements;
 - (c) recommend to the *governing body* that land containing *archaeological sites* of major interest to the *city* be purchased as part of the *city's* parks, recreation and *open space* system; and
 - (d) recommend the expenditure of money from the *city* archaeological fund for projects meeting the criteria for archaeological fund projects set forth in Section 14-3.13 (Archaeological Permits). Expenditures of one thousand dollars (\$1,000) or less may be approved by the *land use director*. Expenditures over one thousand dollars (\$1,000) must be approved by the *governing body*.
- (3) When both a HDRB and an ARC review are required of a single project, the reviews may occur at the same time.

(D) Membership and Procedures

- (1) Composition
The ARC consists of five members. One member shall be a historian, three members shall be archaeologists or historical archaeologists and one member shall be a representative of the construction, *development* or real estate community.
- (2) Appointment and Term

1 The mayor, with the consent of the *governing body*, shall appoint each
2 member of the ARC. Members of the ARC serve two-year overlapping
3 terms, maintaining the original overlap of ARC terms. Members serve until
4 their successors have been appointed and qualified.

5 **(E) Qualifications for ARC Members; Qualifications for Archaeologists, Historical**
6 **Archaeologists and Historians**

7 **(1) ARC Members**

8 All archaeologists, historical archaeologists and historians appointed as ARC
9 members shall meet the qualifications set forth in this section.

10 **(2) Archaeologists**

11 All archaeologists in actual direct charge of archaeological inventory or
12 monitoring or treatment required for an archaeological *permit* shall meet the
13 following minimum qualifications, as provided in a resume or by other
14 means:

- 15 (a) hold a master's degree in archaeology, anthropology or a closely
16 related field with a specialization in archaeology or have equivalent
17 training or field experience the sufficiency of which is determined by
18 the ARC;
- 19 (b) have at least two years' experience in directing archaeology projects,
20 including at least six months of field experience in the southwestern
21 United States; and
- 22 (c) be listed in the *state* historic preservation division directory of
23 archaeologists as a principal investigator or supervisory
24 archaeologist. This requirement shall not apply to archaeologists
25 who are currently on the *city's* list of approved archaeologists as of

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the effective date of Ordinance No. 2007-9 (April 23, 2007) or to
archaeologists appointed as members of the ARC and;

(d) hold a current New Mexico state burial excavation permit for any
location where human remains of historic age are found.

(3) Historical Archaeologists

All historical archaeologists in actual direct charge of *excavation* of historic
period sites shall:

- (a) meet the minimum qualifications for an archaeologist set forth in
Subsection 14-2.7(E)(2);
- (b) have a minimum of one year of experience in directing historical
archaeology projects or equivalent training or field experience the
sufficiency of which is determined by the ARC;
- (c) have demonstrated experience in the historic downtown
archaeological review district; and
- (d) hold a current New Mexico *state* burial excavation *permit* for any
location where human remains of historic age are found. (Ord. No.
2012-11 § 2)

(4) Historians

All historians in actual direct charge of *archival research* and analyses of
land titles or historic maps shall meet the following minimum qualifications:

- (a) hold a master's degree in history or have equivalent professional
experience or demonstrate equivalent training, the sufficiency of
which is determined by the ARC; and
- (b) demonstrate the ability to carry out *archival research*.

(5) Waiver of Qualifications

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Qualifications for archaeologists ~~and~~ historical archaeologists and historians may be waived by the ARC in its discretion for good cause shown.

(6) List of Qualified Individuals

Archaeologists, historical archaeologists and historians qualified by the ARC as meeting the qualifications provided in this section and those qualifications set forth by the State Historic Preservation Division shall be placed on a list maintained by the *land use director*. Guidelines for documenting applicable experience and education for meeting the requirements of this section are as follows: Archaeologists, historical archaeologists or historians who wish to be included on the City's list of qualified individuals must provide the following items to City staff for review and approval by the Archaeological Review Committee:

- (i) a current curriculum vitae, including names and contact information of supervisory personnel and/or clients familiar with their job performance for all employment listed on the curriculum vitae;
- (ii) proof of education, including transcripts, certified copies of degrees or training certificates, or other evidence acceptable to the Committee;
- (iii) a table or chart summarizing in terms of days, months or years, all professional experience conducting archaeological and/or historical

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investigations in the Historic Downtown

Archaeological Review District; and

(iv) certified copies of all current archaeological permits.

(b) Archaeologists, historical archaeologists or historians who wish to remain on the City's list of qualified individuals must provide a current vitae to City staff on an annual basis, in lieu of submitting an updated vitae with every report submittal.

(7) Standards

(a) Archaeologists, historical archaeologists and historians are responsible for reports and performance that exhibit a high standard of professionalism and competence, including the following standards:

- (i) any inventory and monitoring reports, treatment plans and final reports that are accepted by the ARC with minor typographical, formatting or content errors and upon which an archaeological clearance *permit* is approved shall be returned with corrections to the *land use director* within forty-five days of the date the *permit* was approved. Failure to fulfill this requirement shall result in refusal by the *land use director* of any new *application* for an archaeological clearance *permit* until a corrected report has been submitted;
- (ii) ~~reconnaissance~~ inventory and monitoring reports, treatment plans and final reports that are not approved by the

1 ARC and resubmitted to the *land use director* without the
2 necessary corrections shall be rejected by the *land use*
3 *director* and no new *application* for an archaeological
4 clearance *permit* shall be accepted by the *land use director*
5 until a corrected report has been accepted and an
6 archaeological clearance *permit* has been approved by the
7 ARC;

8 (iv) (iii) rejection of three or more inventory and monitoring
9 reports, treatment plans or final reports in a twelve-month
10 period may result in the ARC removing the archaeologist,
11 historical archaeologist or historian from the list of qualified
12 archaeologists, historical archaeologists and historians for
13 twelve months;

14 (v) failure to submit a final report within the one-year time limit,
15 or any extension of time provided by the ARC as set forth in
16 Section 14-3.13, may result in the ARC removing the
17 archaeologist, historical archaeologist or historian from the
18 list of qualified archaeologists, historical archaeologists and
19 historians; and

20 (vi) if an archaeologist, historical archaeologist or historian is
21 removed from the City's list of approved archaeologists,
22 historical archaeologists and historians, the consultant may
23 re-apply to the Archaeological Review Committee for
24 inclusion on the City's list of approved consultants after
25 previous obligations have been met.

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- (b) The *land use director* shall notify the following, in writing, of the actions taken in Subsection 14-2.7(E)(7)(a):
 - (vii) (i) the state historic preservation officer;
 - (viii) (ii) the affected archaeologist, historical archaeologist or historian; and
 - (ix) (iii) the property owner and the applicant.
- (c) The affected archaeologist, historical archaeologist or historian may submit a written appeal to the ARC of the *final actions* taken by the *land use director* in Subsection 14-2.7(E)(7)(a).
- (d) Decisions of the ARC may be appealed to the *governing body* as set forth in Section 14-3.17.

14-3.13 ARCHAEOLOGICAL CLEARANCE PERMITS

(A) Purpose and Intent

(1) The City of Santa Fe created Archaeological Clearance Permits for the purpose of preserving Santa Fe's valuable archaeological resources, providing the means for identifying sites and mitigating any adverse effects of development. These requirements pertain to both private and public development activities and are in addition to pertinent State and Federal requirements.

(2) The purpose of the permitting process is to:

- (a) recognize the value of archaeological resources from all periods of history and prehistory, including prehistoric Native American settlements, Spanish colonization and settlement and the settlement and developments under Mexican and American governments;
- (b) provide the means for identifying archaeological sites by requiring

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- surveys and test excavations, depending on the district, through the development review and construction permit process;
- (c) provide the means by which archaeological sites may be evaluated for their potential contribution to cultural, educational, historic, economic and scientific concerns;
- (d) establish a procedure for treatment of archaeological resources on private and public land, thereby mitigating the information loss from the sometimes unavoidable destruction of archaeological resources and providing for the treatment of those resources that can be preserved; and
- (e) provide methods for the emergency treatment of archaeological resources found through unexpected discovery.

(3) Three archaeological review districts are established to be known as the Historic Downtown, the River and Trails, and the Suburban Archaeological Review Districts. The boundaries of these districts are established as set forth in Section 14-5.3(C).

(B) Applicability

(1) An applicant submitting a request for following permits may also need to submit a request for an Archaeological Clearance Permit subject to Subsections 14-3.13 (B)(3)-(5) or Subsection 14-3.13(E)(1):

- _____ (a) Building permit;
- _____ (b) Grading permit;
- _____ (c) Excavation permit; or
- _____ (d) Secondary permit.

(2) City staff or its contractors conducting activities on City-owned property may also need to submit a request for an Archaeological Clearance Permit subject to Subsections 14-3.13 (B)(3)-(5) or Subsection 14-3.13(E)(1).

1 (3) Historic Downtown Archaeological Review District

2 In this district, an archaeological clearance *permit* shall be required:

3 (a) The requested activity will involve ground disturbance of more than
4 two thousand five hundred (2,500) square.

5 (b) The requested activity will involve utility installation of sixty (60)
6 feet or more.

7 (c) No archaeological clearance *permit* is required for a demolition
8 *permit* except as follows: For demolition requests for *structures* which are more than
9 seventy-five years old and which are part of a project requiring an archaeological
10 clearance *permit*, staff for the Archaeological Review Committee shall issue a report
11 to the historic districts review board as set forth in Section 14-3.14. The report shall
12 state whether demolition will damage possible archaeological resources. If the Board
13 determines that damage may occur, then it may refer the case to the Archaeological
14 Review Committee requesting that requirements for an archaeological clearance
15 *permit* be met before a demolition *permit* is issued.

16 (4) River and Trails Archaeological Review District

17 In this district, an archaeological clearance *permit* shall be required:

18 (a) The requested activity will be done in conjunction with a subdivision
19 application or rezoning application, which involves a lot that is (b) The
20 requested activity will involve utility installation of five hundred and fifty
21 (550) feet or more.

22 (5) Suburban Archaeological Review District

23 In this district, an archaeological clearance *permit* shall be required:

24 (a) The requested activity will be done in conjunction with a subdivision
25 application or rezoning application, which involves a lot that is over

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ten (10) acres.

- (b) The activity requested will involve utility installation of five hundred and fifty (550) feet or more.

(6) Exemptions

- (a) A City Project on a parcel that is under two (2) acres in size in the Rivers and Trails or the Suburban Archaeological Review District.

- (b) A City Park Project on a parcel that is under one (1) acre in size in the Rivers and Trails or the Suburban Archaeological Review District. This exemption does not apply to a Park Project on multiple parcels whose sum is under one (1) acre in size in the Rivers and Trails or the Suburban Archaeological Review District.

- (c) *Applicants* who are requesting archaeological approval from federal agencies are exempted from requirements of the Archaeological Review Districts Ordinance, except that *applicants* must submit evidence to *city* staff of the *application* to the federal agency. In addition the applicant shall submit to *city* staff the inventory or monitoring report and other reports made to the federal agencies.

- (d) ~~(e)~~ In the river and trails or suburban districts, *applicants* with inheritance transfer *subdivisions* are ~~also~~ exempted.

- (e) ~~(d)~~ *Applicants* whose land is in areas where archaeological inventory or monitoring report-*excavation*, or other treatment has previously been completed, are exempted from the inventory or monitoring report excavation, or other treatment as required, upon submitting evidence for such work to *city* staff.

- (f) In the historic downtown district, no clearance *permit* is required for

1 projects for which a construction *permit application* was made
2 before September 30, 1987. In the river and trails and suburban
3 districts, no clearance *permit* is required for projects for which
4 *application* has been made for review by the Planning Commission
5 before September 30, 1987. (Ord. No. 2012-11 § 7)

6 (7) Environmental Assessments or Impact Statements

7 All environmental assessment or impact statements produced by or for the
8 city for city projects shall include an archaeological element containing as a
9 minimum, an archaeological inventory or monitoring report as required for
10 the archaeological review districts in which the project is located.

11 **(C) Procedures for All Projects Besides Utility Projects**

12 **(1) Pre-Application Conference**

13 Prior to submission of any *application* for an archaeological clearance
14 *permit*, an *applicant* shall request a *pre-application* conference, to be
15 conducted pursuant to Section 14-3.1(E).

16 **(2) Inventory Procedures**

17 The *applicant* shall meet the following procedures before an archaeological
18 clearance *permit* is issued:

19 **(a) Inventory Procedures**

20 The applicant shall hire archaeologist to complete an Inventory
21 Report. The archaeologist shall meet the professional qualifications
22 set forth by the State Historic Preservation Division and City
23 requirements when the project is in the Historic Downtown District.
24 The archaeologist shall meet the professional qualifications set forth
25 by the State Historic Preservation Division when the project is in the

1 River and Trails and Suburban Districts. An Inventory Report
2 requiring archaeology dealing with historic period sites shall be
3 completed by person qualified as a historical archaeologist and as a
4 historian. As a minimum, an Inventory Report is a written document
5 that shall consist of:

- 6 (i) Statement of cultural history and setting based upon
7 previously completed and accepted archaeological and
8 documentary research, including a summary of relevant
9 cultural/historic periods with bibliographical references and
10 a summary table and map of previous archaeological
11 activities in the vicinity;
- 12 (ii) Archival research and analysis of land titles, historic maps,
13 the archaeological records management systems (ARMS)
14 files of the state of New Mexico, and other existing data;
- 15 (iii) Visual survey of the *property* for evidence of *archaeological*
16 *features, artifacts* or *culturally altered landscapes* at least
17 seventy-five years old. Visual surveys must adhere to the
18 State of New Mexico Standards for Survey and Inventory,
19 NMAC 4.10.15;
- 20 (iv) Test *excavations* encompassing a minimum of two percent
21 of the total *lot* area, when the project is in the Historic
22 Downtown District. At least eighteen (18) square feet shall
23 be dug by hand after which further *excavations* may be made
24 by mechanical equipment. *Excavations* shall proceed to a
25 depth where no *archaeological features* or *artifacts* are

1 encountered, or until the maximum depth to which
2 excavations can be safely made. Test excavations must
3 adhere to the State of New Mexico Standards for Excavation
4 and Test Excavation, NMAC 4.10.16. The Committee may
5 also consider on a case-by-case basis the option of
6 alternatives for the two percent testing requirement based on
7 an evaluation of whether at least one percent of the lot can be
8 test excavated, the timing of the proposed excavation,
9 whether the remainder of the required excavations may be
10 made during trenching for foundations or utilities and
11 whether there is also a need for a Monitoring Plan and
12 Report; and

13 (v) Sufficient documentation, which complies with State of New
14 Mexico Standards and including NMCRIS Investigation
15 Abstract Form, Laboratory Anthropology Site Record Forms
16 (if applicable), Historic Cultural Properties Inventory Forms
17 (if applicable) and other relevant State documents.

18 (b) Committee Meeting to Approve Inventory Report

19 Upon the completion of the Inventory Report, the applicant shall
20 request to be on the Committee's agenda for approval of the report
21 and the report shall be submitted by the applicant to the Committee.

22 (c) Review and Decision by Committee

23 At a hearing the Committee shall review the applicant's Inventory
24 Report and vote to approve or disapprove the recommended
25 significance status and if required, the recommended treatment of

1 archaeological resources. The determination made by the Committee
2 for treatment shall be a condition of approval for the archaeological
3 clearance *permit*.

4 (i) If the project site is determined by the Committee not to be
5 *significant*, then no further treatment is required and an
6 archaeological clearance *permit* shall be issued.

7 (ii) If the project site is determined by the Committee to be
8 *significant* and the Committee determines that the data
9 potential of the site is exhausted because a sufficient sample
10 has been taken and no subsurface cultural remains exist, then
11 no further treatment is required and an archaeological
12 clearance *permit* shall be issued.

13 (iii) If the project site is determined to be *significant*, then the
14 applicant is subject to the requirements of Subsection 14-
15 3.13(C)(2)(d).

16 (d) Treatment

17 If the project site is determined by the committee to be *significant*
18 and to contain further potential data, the applicant needs to hire an
19 archaeologist to write a Treatment Plan. The archaeologist shall
20 meet the professional qualifications set forth by the State Historic
21 Preservation Division and City requirements when the project is in
22 the Historic Downtown District. The archaeologist shall meet the
23 professional qualifications set forth by the State Historic
24 Preservation Division when the project is in the River and Trails and
25 Suburban Districts. The Treatment Plan is a written document that

1 shall include the following proposed plans and procedures:

2 (i) A plan with procedures that if additional surface remains
3 exist, then additional collections shall be made; and/or if
4 subsurface *cultural remains* do exist then the test pits shall
5 be expanded, *artifacts* shall be collected, and an *excavation*
6 shall be made of *archaeological features* such as hearths,
7 living surfaces, or other non-portable *cultural remains*. In
8 addition further archival research shall be conducted
9 concerning human occupation and the land use of the project
10 site; or

11 (ii) ~~(iii)~~ A plan that the site will be treated with a protective open
12 space designation, such that no subsurface disturbance takes
13 place. The procedure is intended as an alternate to paragraph
14 (i) above. The designation—should be done in accordance
15 with the New Mexico Cultural Properties Preservation
16 Easement Act (NMSA 1978, Section 47-12A-3), where a
17 Cultural Properties Preservation Easement is dedicated and
18 recorded on a scaled plat of survey, prepared by a licensed
19 New Mexico surveyor with the open space described by
20 metes and bounds and labeled on the final plat. A note shall
21 be placed on the final plat to state, “No Activity Which
22 Disturbs Ground Surface Shall Occur Within the Boundaries
23 of the Cultural Properties Preservation Easement on this
24 Plat.” If the applicant pursues this course of action, the
25 applicant shall submit a copy of the final plat to the

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Committee for its file records.

(e) Treatment Plan to the Committee

(i) Upon the completion of the Treatment Plan the applicant shall request to be on the Committee's agenda for approval of the Plan and the Plan shall be submitted by the applicant to the Committee.

(ii) At a hearing the Committee shall review the applicant's Plan and vote to approve or disapprove it. If the Committee approves the Plan, the applicant can commence work on the project.

(iii) Following implementation of the treatment plan, a treatment report is required containing a description of the collection, excavation, research, and other procedures, and a summary of the findings.

(F) Treatment Report to the Committee

(vi) Upon the completion of the Treatment Report, the applicant shall request to be on the Committee's agenda for approval of the Report and the Report shall be submitted by the applicant to the Committee.

(vii) At a hearing the Committee shall review the applicant's Report and vote to approve or disapprove it. If the Committee approves the Report, the an archaeological clearance permit is issued. A final report with correct citations and typographical corrections is due within one year of the date of the issuance of the clearance

1 permit. Upon request of the archaeologist, the committee
2 may grant a one-year's extension.

3 (viii) A mapped and written record shall be kept by city staff of all
4 surveyed areas and test excavations.

5 (g) Maximum Funding Limit

6 In the historic downtown archaeological review districts, in no case
7 shall the applicant be required to spend more than one percent of the
8 valuation of the property shown on the building permit in providing
9 reports and other information requested by the Archaeological
10 Review Committee. In the River and Trails District, in no case shall
11 the applicant be required to spend more than three thousand dollars
12 (\$3,000) dollars plus one hundred dollars (\$100) per acre for the
13 treatment of an archaeological site. In the Suburban District, in no
14 case shall the applicant be required to spend more than four thousand
15 dollars (\$4,000) plus one hundred dollars (\$100) per acre for the
16 treatment of an archaeological site.

17 (f) Maximum Time for Excavations and for Excavation of Significant
18 Sites in the Historical Downtown District

19 In the historic downtown archaeological review district, in no case
20 shall the archaeologist be required to spend more than 15 eight hour
21 equivalent days in carrying out test excavations, or an additional 20
22 eight hour equivalent days in carrying out additional excavation of
23 significant sites.

24 (D) Procedures for Utility Projects or Alternative Means of Compliance

25 (1) Pre-Application Conference

1 Prior to submission of any application for an archaeological clearance
2 permit, an applicant shall request a pre-application conference, to be
3 conducted pursuant to Section 14-3.1(E).

4 (2) Requests for Archaeological Monitoring. The Committee must approve the
5 Monitoring Plan prior to the commencement of ground disturbing activities
6 by the private sector, the City or City contractors. An Archaeological
7 Monitoring process occurs when:

8 (i) An applicant who needs an Archaeological Clearance Permit for
9 utility project or utility installations would like to submit a
10 Monitoring Plan as opposed to an Inventory Report; or

11 (ii) An applicant who needs an Archaeological Clearance Permit for
12 any type of project, but would like to submit a Monitoring Plan as
13 opposed to an Inventory Report as a form of alternative means of
14 compliance.

15 (3) Procedures for Monitoring Plan

16 (i) The applicant shall hire an archaeologist to complete a
17 Monitoring Plan and Report. The archaeologist shall meet the
18 professional qualifications set forth by the State Historic
19 Preservation Division and City requirements if in the Historic
20 Downtown District. The archaeologist shall meet the professional
21 qualifications set forth by the State Historic Preservation Division if
22 in the River and Trails and Suburban Districts.

23 (ii) As a minimum, the Monitoring Plan is a written document that
24 shall satisfy the State of New Mexico Standards for Archaeological
25 Monitoring, NMAC 4.10.7.

1 (iii) The applicant who needs a staged, phased or partial approval
2 shall notate this information on the plan. The applicant is
3 encouraged to notify staff and the Committee early in the process if
4 such request is anticipated.

5 (4) Committee Meeting to Approve Monitoring Plan

6 Upon the completion of the Monitoring Plan, the applicant shall request to be on the
7 Committee's agenda for approval of the plan and the plan shall be submitted by the
8 applicant to the Committee. The Committee may approve a Monitoring Plan for a
9 project that requests utility boring on a case-by-case basis, but utility boring should
10 be minimized.

11 (5) Review and Decision by Committee of Monitoring Plan

12 At a hearing the Committee shall review the applicant's plan and vote to approve or
13 disapprove the plan. If the Committee approves the plan, then the project can
14 commence concurrent with the archaeological monitoring activities.

15 (6) Committee Meeting to Approve Monitoring Report

16 (i) Following implementation of the Monitoring Plan, a
17 Monitoring Report is required to prepared for the
18 Committee.

19 (ii) As a minimum, the Monitoring Report is a written document
20 that shall satisfy the State of New Mexico Standards for
21 Archaeological Monitoring, NMAC 4.10.7.

22 (iii) Upon the completion of the Monitoring Report, the applicant
23 shall request to be on the Committee's agenda for approval
24 of the Report and the Report shall be submitted by the
25 applicant to the Committee.

1 (7) Review and Decision by Committee of Monitoring Report

2 At a hearing the Committee shall review the applicant's report and vote to approve or
3 disapprove the recommended significance status and if required, the recommended
4 treatment of archaeological resources. The determination made by the Committee for
5 treatment shall be a condition of approval for the archaeological clearance permit

6 (i) If the project site is determined by the Committee not to be
7 significant, then no further treatment is required and an
8 archaeological clearance permit shall be issued.

9 (ii) If the project site is determined by the Committee to be significant
10 and the Committee determines that the data potential of the site is
11 exhausted because a sufficient sample has been taken and no
12 subsurface cultural remains exist, then no further treatment is
13 required and an archaeological clearance permit shall be issued.

14 (iii) If the project site is determined by the committee to be significant
15 and to contain further potential data, the applicant needs to hire an
16 archaeologist to write a Treatment Plan and Treatment Report in
17 accordance with the procedures in Subsection 14-3.13(C)(2).

18 E) **Other General Provisions**

19 (1) Procedures for Santa Fe Trail

20 (a) The tracks of the Santa Fe Trail are shown on the map located in the
21 city land use department and incorporated herein by reference.

22 (b) For development within such an area as set forth by Subsection (a)
23 above, the applicant is required to submit an Inventory report which
24 identifies on an aerial map of at least a scale of one inch equals four
25 hundred (400) feet the precise location of the tracks, and which

1 recommends measures for the on-site preservation of the tracks. The
2 committee shall approve the Inventory report before the issuance of
3 an archaeological clearance permit.

4 (c) In no case shall the tracks of the Santa Fe Trail be disturbed by the
5 development, except upon the approval of the archaeological review
6 districts committee. Criteria for approval by the Committee for
7 allowing disturbance of the tracks shall be as follows:

8 (i) The tracks have been mapped and photographed and such
9 information has been provided to city staff; and

10 (ii) The portion of the tracks to be disturbed is ten percent or less
11 of the total square footage of tracks on the applicant's site; or

12 (iii) The square footage of the tracks constitutes more than sixty
13 percent of the total square footage of the lot and preservation
14 of all of the tracks would constitute a "taking" of the lot.

15 (2) Ownership of Artifacts

16 All *artifacts* discovered as a result of an inventory or monitoring report or
17 further treatment, with the exception of human remains, are the property of
18 the *property owner*. *Property owners* are encouraged to donate *artifacts* to
19 the museum of New Mexico or a similar repository.

20 ~~(2)~~ (3) Human Remains

21 (a) If human remains are discovered, compliance with Section 18-6-11.2
22 NMSA 1978 is required in addition to the requirements of this
23 section. *Persons* making the discovery shall contact the *city* police
24 department to ensure compliance with state law and the *city* land use
25 department to ensure compliance with *city* law and the New Mexico

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State Historic Preservation Office to ensure compliance with State and Federal law.

(b) All unmarked human remains, regardless of their age, discovered on private or public property, fall under the jurisdiction of the New Mexico State Historic Preservation Office. A Treatment Plan and Report meeting the requirements of City Code and NMAC 4.10.11 shall be approved by the Committee and the State Historic Preservation Office prior to the initiation of treatment activities.

(c) Any treatment plan dealing with human remains shall include consideration of local Native American or other religious concerns, if applicable.

(d) If the remains represent an unplatted cemetery from the historical period, they may not be disturbed unless a district court order is granted authorizing their removal in conformance with state law.

(4) Unexpected Discoveries

(a) Any *cultural remains* that are discovered during construction activities shall be reported to *city* staff. Construction activities shall immediately cease within the area of the discovery for a maximum of twenty-four hours from time of discovery. Sunday hours may not be included in the twenty-four hour time period. No construction activity shall continue that in any way endangers the *cultural remains*. Every effort should be made by the *city* to prevent unnecessary construction delays. Designated *city* staff and one archaeologist from the Archaeological Review Committee shall visit the site and shall determine the archaeological *significance* and the

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data potential of the site. If the site is determined to be *significant* and to have data potential, then:

(i) Designated *city* staff and one archaeologist from the Archaeological Review Committee shall determine a buffer area in which construction activities shall temporarily cease; and

(ii) The *property owner* shall present a treatment plan to the committee for their approval. The treatment plan shall meet the requirements of City Code.

(b) Failure to report such finds can result in a suspension of construction *permits*.

(c) If human remains are discovered, *city officials* and the State Historic Preservation Office must be contacted. If remains are determined to be deposited less than seventy-five years ago, determination of jurisdiction will be made by the New Mexico Office of the Medical Investigator. If the remains are determined to be prehistoric or isolated burials of early historical age, consultation with the Archaeological Review Committee shall be undertaken to identify an appropriate treatment plan. The Treatment Plan and all treatment activities shall be performed by an archaeological with a State of New Mexico Permit to Excavate Unmarked Human Burials and shall conform with all standards outlined in NMAC 4.10.11

(4) Emergency Actions

Nothing in this Section 14-3.13 shall be construed as preventing or delaying emergency actions as needed to protect human health or well being, or public

1 or private *property*. However, if *cultural remains* are uncovered or disturbed
2 as a consequence of such emergency actions, the disturbed *remains* will be
3 treated as unexpected discoveries in accordance with Subsection (D)(3)
4 above once a state of emergency has ceased to exist.

5 ~~(S)~~ (6) Archaeological Fund and Projects

6 (a) An archaeological fund shall be established to receive revenue from
7 construction *permits*, the general fund and other sources.

8 (b) The Archaeological Review Committee may recommend
9 expenditure of money from this fund for the following projects:

10 (i) Additional analysis or other treatment of a site of
11 citywide *significance* when the funding limit for treatment of
12 a site as set forth in this section has been reached;

13 (ii) Additional analysis or other treatment of a site designated as
14 an "unexpected discovery" by the Archaeological Review
15 Districts Ordinance, when the funding limit for treatment of
16 a site as set forth in this section has been reached and the site
17 is determined to have citywide *significance*;

18 (iii) Analysis of *artifacts* from a site of citywide *significance*
19 collected prior to adoption of the Archaeological Review
20 Districts Ordinance; or

21 (iv) Archaeological surveys or studies of a citywide scope.

22 (c) For the purpose of this section, citywide *significance* means:

23 (i) An outstanding example of a certain category of site or of a
24 type not adequately documented; or

25 (ii) A site associated with a person or event of special historical

1 traditions, prehistory and history of Santa Fe, which attract tourists and residents
2 alike, be preserved by establishing three archaeological review districts. The purpose
3 of these districts is to:

- 4 (1) recognize the value of archaeological resources from all periods of history
5 and prehistory, including prehistoric Native American settlements, Spanish
6 colonization and settlement and settlement and *developments* under Mexican
7 and American governments;
- 8 (2) provide the means for identifying *archaeological sites* by requiring surveys
9 and test *excavations*, depending on the district, through the *development*
10 review and construction *permit* process;
- 11 (3) provide the means by which *archaeological sites* may be evaluated for their
12 potential contribution to cultural, educational, historic, economic and
13 scientific concerns;
- 14 (4) establish a procedure for treatment of archaeological resources on private and
15 public land, thereby mitigating the information loss from the sometimes
16 unavoidable destruction of archaeological resources and providing for the
17 treatment of those resources that can be preserved; and
- 18 (5) provide methods for the emergency treatment of archaeological resources
19 found through unexpected discovery.

20 (B) **Application to State and Its Agencies, Political Subdivisions or Instrumentalities**
21 Pursuant to Sections 3-22-1 through 3-22-6 NMSA 1978 (Historic Districts and
22 Landmarks), the provisions of this section apply to the *state* and its agencies, political
23 subdivisions and instrumentalities, as well as to any other entity or activity in the
24 archaeological review districts. Whenever the Archaeological Review Committee is
25 considering a case on city property, public right-of-way or otherwise on State

1 jurisdiction, the Committee's action shall be forwarded to the New Mexico State
2 Historic Preservation Office for final approval before work proceeds.

3 (C) **Establishment of Districts; Boundaries**

4 (1) **Districts Established**

5 Three archaeological review districts are established, to be known as the
6 historic downtown, the river and trails and the suburban archaeological
7 review districts.

8 (2) **Boundaries**

9 The boundaries of the historic downtown, the river and trail and the suburban
10 archaeological review districts are as shown on the official zoning map. The
11 boundaries are determined by the following criteria:

12 (a) **Historic Downtown Archaeological Review District**

13 The center of Santa Fe since 1610 and occupied by Native
14 Americans prior to that time, land within the historic downtown
15 archaeological review district has a high potential of containing
16 *significant cultural remains* and is part of the historic core of Santa
17 Fe;

18 (b) **River and Trails Archaeological Review District**

19 An area of prehistoric Native American occupation, settled by early
20 Spanish colonists, and being primary transportation routes important
21 to the settlement of Santa Fe, the river and trails archaeological
22 review district has a high potential of containing *significant cultural*
23 *remains* and is part of the Santa Fe river *floodplain*, escarpment, or
24 ridges above the escarpment, and land adjacent to those areas, and
25 contains historic trails such as Santa Fe Trail, Galisteo Road and

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Agua Fria;

(c) Suburban Archaeological Review District

Land within the suburban archaeological review district has a moderate potential of containing *significant cultural remains* and is not a part of the historic downtown or river and trails archaeological review districts.

(3) Map Revisions

The archaeological review districts may be revised upon a recommendation of the archaeological review committee as approved by the *governing body*. In revising the district boundaries the committee shall follow the criteria set forth in Subsection 14-5.3(C)(2).

(D) Archaeological Clearance Permit Required

An archaeological clearance *permit* is required for certain types of *development* activity within the archaeological review districts, as described in Section 14-3.13.
(Ord. No. 2014-31 § 9)

APPROVED AS TO FORM:

KELLEY A. BRENNAN, CITY ATTORNEY

M/Legislation/Bills 2015/Archaeological Revisions

SHANDLER, ZACHARY A.

From: PINO, ISAAC J.
Sent: Thursday, February 04, 2016 2:10 PM
To: SHANDLER, ZACHARY A.; MARTINEZ, LISA D.; RASCH, DAVID A.; PFEIFER, DAVID J.; KLUCK, JASON M.; CATANACH, DAVID R.; CARTER, ROBERT P.; THOMPSON, RICHARD C.
Subject: RE: City Archaeological Committee Code re-write

OK, looking at the fifth row, the proposed language would not exempt projects with multiple sites whose sum is under one acre. Now, if we went ahead with those projects on an individual basis, then the exemption would apply. But aggregating them somehow removes the exemption even if their total area is under one acre. I don't get it. Help me understand.

From: SHANDLER, ZACHARY A.
Sent: Wednesday, February 03, 2016 2:46 PM
To: PINO, ISAAC J.; MARTINEZ, LISA D.; RASCH, DAVID A.; PFEIFER, DAVID J.; KLUCK, JASON M.; CATANACH, DAVID R.; CARTER, ROBERT P.; THOMPSON, RICHARD C.
Cc: SHANDLER, ZACHARY A.
Subject: City Archaeological Committee Code re-write

Dear Director Pino, Director Martinez, Director Carter and Others:

Good afternoon. The City's Archaeological Review Committee is working with the City Attorney's Office to re-write and streamline its somewhat confusing and repetitive code. Hopefully by the spring it will be ready to be introduced and go through the Council committee process.

Before it goes too far along, I wanted to write a short email to you about one key change that may impact your staff's work. Based on the chart below, you will see the first four rows, the language is basically identical to the existing code. The fifth row, however, regarding park projects attempts to clarify if, and when, a clearance permit is required for a multiple park situation (i.e. state money to install shade structures).

If you don't have any issue with the language (or you think the state is broke and we'll never have shade structure \$\$ scenario repeat itself again), **you don't have to email me.**

However, it is my understanding there was some dispute over this issue when it went to the Committee and if you don't like how it is being proposed to be re-written, then please contact me by **March 1**. I would hate for the bill to get all the way to Council and then your departments raise an objection at that point. I would like to keep, negotiate, modify or strike this language before we get too far along.

(In case you are curious about other sections of the bill, I have enclosed a rough draft of the bill).

District	Current Code requirements for City staff to get an Archaeological Clearance Permit	Proposed language
Downtown Archaeological District	City Utility Projects that need a Clearance permit: "With an extension of sixty (60) feet or more."	City Utility Projects that need a Clearance permit: " <u>The requested activity will involve utility installation of sixty (60) feet or more.</u> "
Downtown Archaeological District	City Projects that need a Clearance permit: "For all city projects over two thousand five hundred (2,500) square feet in gross lot coverage."	City Projects that need a Clearance permit: " <u>The requested activity will involve ground disturbance of more than two thousand five hundred (2,500) square feet</u> "
Suburban AND Rivers/Trails Archaeological District	City Utility Projects that need a Clearance permit: "With an extension	City Utility Projects that need a Clearance permit: " <u>The requested activity will involve utility installation of</u>

Exhibit "2"

	of five hundred fifty (550) or more.”	five hundred and fifty (550) feet or more.”
Suburban AND Rivers/Trails Archaeological District	City Projects that need a Clearance permit: “All <i>city</i> projects over two (2) acres in size” require a permit.	City Projects that will be exempt from getting a Clearance permit: “ <u>City Project on a parcel that is under two (2) acres in size.</u> ”
Suburban AND Rivers/Trails Archaeological District	City Park Projects that need a Clearance permit: “All <i>city</i> park projects over one (1) acre in size.	City Park Projects that will be exempt from getting a Clearance permit: “ <u>A City Park Project on a parcel that is under one (1) acre in size. This exemption does not apply to a Park Project on multiple parcels whose sum is under one (1) acre in size.</u> ”

Thank you,
Zachary Shandler
City Attorney's Office
(505) 955-6303