

April 26, 2017

Via Email and U.S. Mail

Douglas Holland, City Attorney
City of Palm Springs,
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Palm Springs, California 92262
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RE: The City's ongoing obligation to evaluate historical site designation applications

Dear Mr. Holland,

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I write on behalf of the Palm Springs Preservation Foundation ("PSPF") to urge the City to act on PSPF's application for historical designation of the Schwartz Residence, which is located on historically tribal land but within the City. It appears that following the Agua Caliente Band of Cahuilla Indians' (the "Tribe's") assertion of authority over historic resources, the City may now believe that it has lost its responsibility and discretion under the Municipal Code to designate local sites as historically significant. However, for reasons that I explained in a legal memorandum that PSPF submitted to the City and as described below, the City retains the authority and continues to be responsible for acting on applications for historic resource designation under its own Municipal Code. The City must therefore assume responsibility for the historical designation process and appropriately process PSPF's application as has been the City's practice.

Please note that in preparing this correspondence and the legal opinions contained herein, I have considered the Tribe's Interim Ordinance No. 49, the Tribe's letters to the City dated June 29, 2015 and December 2, 2015, as well as Appendix 2 to the Palm Springs Municipal Code.

Under the existing agreement between the City and the Tribe, the City has responsibility for evaluating applications for historical designation of property on Tribal lands.

As more fully set forth in the above-referenced memorandum, pursuant to the agreement between the City and the Tribe, the City assumed full responsibility and authority for the administration of the City's planning regulations, including the authority to evaluate the historical significance of properties consistent with the City's own Municipal Code. Contrary to the Tribe's claim, there is no evidence to suggest the Tribe reserved the right to evaluate the historical significance of privately-owned properties, as the Tribe now contends. Thus, to the extent that the Tribe's claim is based on the contents of the agreement between the Tribe and the City, these arguments are not well-taken.

The Tribe has no authority to administer local regulations in connection with land not owned by the Tribe.

Even if the Tribe had attempted to specifically carve out an exception to the general delegation of planning authority to the City, the Tribe would have no regulatory or legal authority over privately-owned land owned by non-Indians and not maintained in trust for the Tribe.

The Tribal Council's March 14, 2017 adoption of Interim Ordinance No. 49 does not compel a different conclusion. To the contrary, the unambiguous language of the Ordinance makes it clear that the Tribe itself does not intend to circumvent or supplant the City's authority under the Municipal Code to review and designate historic resources. By adopting the Ordinance, the Tribe intends merely to protect, preserve, and regulate the uses and disposition of "Tribal Property", which clearly does not include privately-owned sites such as the Schwartz Residence.

The Ordinance also recognizes that the Tribe, through its Tribal Historic Preservation Officer, has assumed certain responsibilities of the State Historic Preservation Officer on Tribal lands, including the responsibilities to identify and nominate eligible properties to the National Register and "otherwise administer applications for listing historic properties in the National Register." Significantly, the Tribe makes no claim to have assumed the responsibility to administer applications for historic designation or listing under the City's Municipal Code. In fact, the Ordinance admits that the City has approved historic properties on Tribal lands for "local designation."

Unambiguous language of the Ordinance makes it also clear that the Tribe intends to suspend only the filing and submission of applications for nominations to the National Register or listing on the Tribal Register. The Interim Ordinance does not attempt to extend this moratorium to applications for historic designation under the Municipal Code. Accordingly, on its face, Interim Ordinance No. 49 has no bearing on the City's responsibility to consider and process PSPF's application for nomination of the Schwartz Residence at this time.

In any event, as the Schwartz residence is privately owned, and is not held in Trust by the Tribe, the Tribe has no regulatory authority to decide whether the residence should be considered a historically significant resource according to the City's criteria. Nor can the Tribe assert any authority to determine historic designations pursuant to the National Historic Preservation Act ("NHPA"). According to the NHPA, the Tribe may assume the responsibilities of a State Historic Preservation Officer only if the Tribe has developed an approved plan for discharging the responsibilities assigned to the State Officer. Even if the Tribe here has an approved plan, the NHPA does not specifically grant the Tribe the responsibility or jurisdiction over privately-owned land not held in trust by the Tribe.

Moreover, nothing in the NHPA gives the Tribe the authority to step into the shoes of a local agency, such as the City of Palm Springs, in order to assume the responsibility for administering local programs and regulations as they relate to evaluation of the significance of historical resources or authorization for demolition of same.

We see no reason why the Tribe cannot participate in the City's well-defined process of evaluating the historical significance of the Schwartz Residence by submitting comments, providing testimony or engaging consultants to participate in the process.

Should the City continue to insist that the Tribe has properly assumed the responsibility to evaluate PSPF's application, we see no alternative but to bring suit in the Superior Court to compel the City to officially commence the process of evaluating PSPF's Class 1 Historic Site application for the Schwartz Residence forthwith.

Sincerely,


Babak Naficy,
PSPF