

MONTEREY COUNTY PLANNING COMMISSION

Meeting: June 25, 2014	Agenda Item No.: 2
Project Description: Recommend that the Board of Supervisors adopt an Ordinance amending Section 21.66.050 (Archaeological Resources Standards) of Title 21 (non-coastal zoning) of the Monterey County Code to establish new policies and procedures for the protection of archaeological resources and amending Title 2 of the Monterey County Code to add Chapter 2.95 to establish a Native Californian Advisory Panel consistent with 2010 General Plan Goals OS-6 and OS-8.	
Project Location: County-wide	APN: N/A
Planning File Number: REF110065	Owner: N/A Agent:
Planning Area: County-wide	Flagged and staked: N/A
Zoning Designation: : County-wide	
CEQA Action: Categorically Exempt per Section 15308	
Department: RMA – Planning Department	

RECOMMENDATION:

Staff recommends that the Planning Commission adopt a resolution recommending that the Board of Supervisors adopt an Ordinance amending Section 21.66.050 (Archaeological Resources Standards) of Title 21 (non-coastal zoning) of the Monterey County Code to establish new policies and procedures for the protection of archaeological resources and amending Title 2 of the Monterey County Code to add Chapter 2.95 to establish a Native Californian Advisory Panel consistent with 2010 General Plan Goals OS-6 and OS-8.

PROJECT OVERVIEW:

A draft ordinance, updating the archaeological protection standards (Section 21.66.050 of the Monterey County Code) and establishing a Native Californian Advisory Panel to implement the 2010 General Plan, has been prepared. The 2010 General Plan contains policies that provide guidance on what issues need to be addressed in updating the Archaeological Resources Standards. The following is a summary of the components required by policy of the General Plan:

- Definition and research protocols for Phase I, II, and III archaeological reports;
- Standards and practices for surveys to address natural resources related to cultural resources;
- Filing Phase I, II, and III reports with the appropriate agencies to aid in data collection efforts;
- Define when reports are required;
- Establish Policies and procedures that encourage development to avoid impacts to sensitive archaeological sites;
- Establish guidelines for consultation with Native Californian descendants;
- Require preservation in place to the greatest extent possible of cemeteries, burials, shrine sites, and sacred places;
- Update Archaeological sensitivity maps; and
- Establish a technical advisory committee.

With the exception of updating the sensitivity maps, the items listed above are addressed within the draft ordinance.

On June 27, 2012, the Planning Commission held a workshop to consider amendments to the Archaeological Resource standards (Section 21.66.050 of the Monterey County Code) to implement the 2010 General Plan. At the workshop, staff outlined the General Plan requirements, the applicable State and Federal laws, and the preliminary direction of the archaeological standards update. At the workshop, the Planning Commission provided direction to staff to consider the following items in drafting the ordinance:

1. Keep the big picture in mind;
2. Identify what it means to exempt routine and ongoing agricultural activities; and
3. Review exemptions from archaeological survey requirements and clarify what “previously disturbed” means.

Staff believes that the ordinance addresses the big picture by incorporating avoidance of impacts to archaeological resource throughout the ordinance, by outlining a process that provides the flexibility to rule out likelihood of a project impacting resources based on site conditions, project types and locations, and based on survey results, and by incorporating appropriate review by key professionals and Native American groups when necessary. Staff has considered the routine and ongoing agriculture activity exemption. General Plan Policy AG-3.3 provides a list of activities that may fall under the “Routine and Ongoing Agricultural Activities” definition. While there may be some potential for the listed activities to disturb archaeological resources, the General Plan direction clearly states that “Routine and Ongoing Agricultural Activities” are exempt from the archaeological survey requirements. This exemption would not relieve property owners and agricultural employees from complying with State and Federal laws protecting burial sites. Staff has begun work on an ordinance establishing a list of “Routine and Ongoing Agricultural Activities” that will be coming to the Planning Commission in the near future. Staff has also updated and clarified other archaeological survey exemptions including the “previously disturbed” criteria.

Following the Planning Commission workshop, staff met separately with local archaeologists, Native American representatives, and the Permit Streamlining Task Force, and provided the draft language to the inland Land Use Advisory Committees for review and comment. Each group provided valuable feedback that was incorporated and addressed within the ordinance where possible.

Staff has incorporated the General Plan direction, the requirements of the California Environmental Quality Act (CEQA), applicable State and Federal laws, and direction received during the workshop and stakeholder meetings within the draft ordinance and recommends that the Planning Commission adopt the attached resolution (Attachment 1) recommending that the Board of Supervisors adopt the ordinance updating the archaeological protection standards and establishing a Native Californian Advisory Panel.

This ordinance is categorically exempt pursuant to Section 15308 of the California Environmental Quality Act (CEQA), which exempts actions taken by regulatory agencies to assure the maintenance, restoration, or enhancement of the environment where the regulatory process involves procedures for protection of the environment. Unique archaeological resources are considered significant environmental resources pursuant to Section 21083.2 of CEQA. The proposed ordinance would update procedures and regulations for the protection of archaeological resources including updating survey requirements and standards, clarifying survey exemption criteria, updating impact avoidance measures, and establishing a technical advisory committee to review and comment on

projects involving archaeological resources. All future development projects will continue to be evaluated pursuant to the requirements of CEQA irrespective of this ordinance.

/S/ Craig W. Spencer



Craig W. Spencer, Associate Planner
(831) 755-5233, spencerc@co.monterey.ca.us
May 19, 2014

cc: Front Counter Copy; Planning Commission; Parks Department; Native American Heritage Commission; California Office of Historic Preservation; Jacqueline R. Onciano, Planning Services Manager; Craig Spencer, Project Planner; The Open Monterey Project; LandWatch (Amy White); John H. Farrow; Janet Brennan; Gary Brechini; Lynn Mounday; Ruben Mendoza; Susan Morely; John W. Burch; Fredrick Segovia; Valentin Lopez; Irene Zwierlein; Tony Cerda; Ann Marie Sayers; Louise Miranda-Ramirez; Donna Haro; Planning File REF110065

Attachments: Attachment 1	Draft Resolution, including; Exhibit A: Draft Ordinance
Attachment 2	Draft Ordinance in strikeout and underline

This report was reviewed by Jacqueline R. Onciano, Planning Services Manager.



REF110065

Attachment 1

Draft Resolution

Including

Exhibit A:

Draft Ordinance

Before the Planning Commission of the County of Monterey

Resolution No.

Resolution of the Planning Commission to)
recommend that the Board of Supervisors)
adopt an Ordinance amending Section)
21.66.050 (Archaeological Resources)
Standards) of Title 21 (non-coastal zoning) of)
the Monterey County Code to establish new)
policies and procedures for the protection of)
archaeological resources and amending Title 2)
of the Monterey County Code to add Chapter)
2.95 to establish a Native Californian)
Advisory Panel consistent with 2010 General)
Plan Goals OS-6 and OS-8.)

WHEREAS, Title 21 (Inland Zoning Ordinance), Section 21.66.050 contains “Standards for Archaeological Resources Area”; and

WHEREAS, the 2010 General Plan Policy LU-9.2 requires adoption of guidelines necessary for implementation of cultural resource protection including definitions and research protocols for Phase I, II, and III cultural resource and native Californian resource inventory and data recovery programs and standards and practices for surveys to address natural resources related to cultural resources; and

WHEREAS, the 2010 General Plan Policies OS-8.5 and OS-8.7 require the establishment of a technical advisory committee consisting of appropriate tribal representatives and qualified archaeologists to provide assistance to staff in determining how best to address monitoring and site treatment consistent with the policies of the General Plan; and

WHEREAS, unique archaeological resources are considered significant environmental resources under State and Federal laws; and

WHEREAS, amendments to the standards for archaeological resource areas would update regulations for the protection of archaeological resources consistent with the 2010 General Plan and State and Federal laws; and

WHEREAS, the proposed ordinance, modifying Title 21, Section 21.66.050 and adding Chapter 2.95 to the Monterey County Code is attached hereto as Exhibit A; and

WHEREAS, this ordinance is categorically exempt pursuant to Section 15308 of the California Environmental Quality Act (CEQA), which exempts actions taken by regulatory agencies to assure the maintenance, restoration, or enhancement of the environment where the regulatory process involves procedures for protection of the environment. Unique archaeological resources are considered significant environmental resources pursuant to Section 21083.2 of the Public Resources Code, a part of CEQA. The proposed ordinance would update procedures and regulations for the protection of archaeological resources including updating survey requirements and standards, clarifying survey exemption criteria, updating impact avoidance measures, and establishing a technical advisory committee to review and comment on projects involving archaeological

resources. All future development projects will continue to be evaluated pursuant to the requirements of CEQA irrespective of this ordinance; and

WHEREAS, On June 25, 2014 the Monterey County Planning Commission held a duly noticed public hearing to consider a recommendation to the Board of Supervisors on the amendments to the Standards for Archaeological Resources Areas and creation of the Native Californian Advisory Panel. At least 10 days before the public hearing, notices of the hearing before the Planning Commission were published in the Monterey County Weekly and were mailed to interested parties.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission does hereby recommend that the Board of Supervisors adopt the ordinance, attached hereto as Exhibit A, amending the Standards for Archaeological Resources Areas (Section 21.66.050 of the Monterey County Code) and adding Chapter 2.95 to the Monterey County Code to create a Native Californian Advisory Panel.

PASSED AND ADOPTED on this 25th day of June, 2014, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

Dated:

A T T E S T:

Mike Novo, Planning Commission Secretary

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AMENDING TITLE 21 (INLAND ZONING ORDINANCE) OF THE MONTEREY COUNTY CODE TO AMEND REGULATIONS FOR ARCHAEOLOGICAL RESOURCE PROTECTION AND ADDING CHAPTER 2.95 TO THE MONTEREY COUNTY CODE TO ESTABLISH A NATIVE CALIFORNIAN ADVISORY PANEL.

County Counsel Summary

This ordinance amends Section 21.66.050 of the Inland Zoning Ordinance (Title 21) of the Monterey County Code to update “Standards for Archaeological Resource Areas” pursuant to direction within the 2010 Monterey County General Plan including establishing definitions and protocols for Phase I, II, and III archaeological reports, updating standards and regulations for the protection of archaeological resources, and establishing guidelines for consultation with Native Californian descendants. This ordinance also adds Chapter 2.95 to the Monterey County Code to establish a Native Californian Advisory Panel whose duties will include providing technical assistance to staff in determining how best protect archaeological resources.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Findings and Purpose

- A. Pursuant to Article XI of the California Constitution, the County of Monterey (“County”) may adopt and enforce ordinances and regulations to protect and promote the public health, safety, and welfare of its citizens.
- B. Archaeological resources are significant public resources for their cultural and religious ties to people associated with them and for the potential of a resource to yield important information about history or prehistory.
- C. On October 25, 2010, the County adopted the 2010 General Plan. The 2010 General Plan Policy LU-9.2 and Goals OS-6 and OS-8, inclusive of implementing Policies, require updating County standards for the protection of archaeological resources. This ordinance would update the archaeological resource protection standards consistent with the 2010 General Plan.
- D. This ordinance has been prepared in consultation with local Native American representatives. Letters dated March 26, 2012 and January 18, 2013 were sent to all parties designated as “Most Likely Descendants” for the Monterey County area by the Native American Heritage Commission inviting comments on a previous draft of the ordinance. The letters also invited all MLDs to meetings that were held on April 20, 2012 and February 13, 2013 respectively. Comments provided have been considered in the proposed ordinance.

E. This ordinance will apply prospectively from the date of its adoption and permits preceding the adoption of these standards shall not be considered non-conforming for the purposes of archaeological resource protection.

F. This ordinance is categorically exempt pursuant to Section 15308 of the California Environmental Quality Act (CEQA), which exempts actions taken by regulatory agencies to assure the maintenance, restoration, or enhancement of the environment where the regulatory process involves procedures for protection of the environment. Unique archaeological resources are considered significant environmental resources under CEQA (Public Resources Code Section 21083.2.) The proposed ordinance would update procedures and regulations for the protection of archaeological resources including updating survey requirements and standards, clarifying survey exemption criteria, updating impact avoidance measures, and establishing a technical advisory committee to review and comment on projects involving archaeological resources. All future development projects will continue to be evaluated pursuant to the requirements of CEQA irrespective of this ordinance.

SECTION 2. Section 21.66.050 of the Monterey County Code is amended to read as follows:

21.66.050 Standards for archaeological resource protection.

A. Purpose: The purpose of this Section is to provide development standards which assure the maintenance and protection of the County's archaeological resources. New land uses and development, both public and private, shall be considered compatible with this intent only where they incorporate all site planning and design features necessary to avoid or mitigate impacts to archaeological resources.

B. Applicability: The regulations of this Section are applicable in all zoning districts.

C. Archaeological Report Requirements:

1. A Phase I Inventory of Cultural Resources, meeting the standards contained in Subsection D of this Chapter, shall be required for any development located within the following areas:

a. "High Archaeological Sensitivity Zone" as mapped on current County resource maps;

b. "Moderate Archaeological Sensitivity Zone", as mapped on current County resource maps, which requires environmental assessment;

c. "Low Archaeological Sensitivity Zone" where specific information is already known to exist which states that archaeological resources are present; or

d. Within two hundred fifty (250) feet of a known archaeological resource.

2. Report Waiver Criteria: The Phase I Inventory may be waived by the Director of Planning under the following circumstances:

a. The development involves Routine and On-going Agricultural Activities only.

b. A previous report was prepared for the site by a qualified archaeologist, and the report clearly and adequately included the proposed development site within the scope of its survey and the results of that survey were negative;

c. The development is located within a previously disturbed area where substantial evidence is provided that the previous ground disturbance affected depths equal to or greater than the project being considered; or

d. The development involves minimal soil disturbance, except as provided in subsection vi, such as:

i. Replacement of post holes for fences, decks and similar improvements

ii. Repair and maintenance of underground utilities;

iii. Well drilling, not including excavation for discharge pits;

iv. Small ground-mounted photovoltaic systems; and

v. Other development of a similar character to those listed above;

vi. Waivers pursuant to this subsection shall not be granted in circumstances where a project is located within 250 feet of known archaeological resources, or where evidence exists that archaeological resources may be present on the site.

D. Report Standards and Contents: When a Phase I Inventory is required pursuant to Section 21.66.050, the following standards shall apply:

1. Phase I: A Phase I Inventory of Cultural Resources shall include, at a minimum, a records search of available State resource information at the Northwest Information Center of the California Historic Resources Information System (CHRIS). This records search will, at a minimum, determine whether a part or all of the project area has been previously surveyed for cultural resources, whether any known cultural resources have already been recorded on or adjacent to the project area, and whether the probability is low, moderate, or high that cultural resources are located within the project area. Following the background research, a field survey by a professional archaeologist shall be conducted in accordance with accepted standards and practices. The field survey shall include at a minimum an inspection of the site for evidence of: surface and, if appropriate, subsurface resources; sacred plants; traditional cultural landscapes; natural resources used for food and ceremonies; and traditional crafts.

a. If the Phase I Inventory of Cultural Resources investigation reveals that the site does not contain cultural resources, no further review is necessary unless otherwise noted by the archaeologist.

b. If the Phase I Inventory of Cultural Resources investigation reveals any information indicating that the site is likely to contain cultural resources, a Phase II Evaluation of Cultural Resources shall be required unless either of the following apply:

i. There is substantial evidence, absent the Phase II Evaluation, that the project will have a significant impacts on archaeological resources and those impacts cannot be avoided pursuant to Section E of this Chapter, in which case a Phase III plan may be prepared without a Phase II Evaluation, provided that Phase III plan is prepared; or

ii. If the location of resources can reasonably be determined based on the Phase I Inventory and all development is located to avoid impacts to those identified resources, then conditions recommended by the archaeologist shall be applied to the project and no further evaluations are necessary.

2. Phase II: The Phase II Evaluation of Cultural Resources shall be prepared with the goal of determining site boundaries, an evaluation of the site's significance pursuant to Section 15064.5 of the California Environmental Quality Act Guidelines, and an evaluation of avoidance measures pursuant to subsection E.2 of Section 21.66.050, if applicable. A Phase II evaluation may include test excavations when adequate data from previous reports are not available to assess a site's significance; however, prior to recovering any cultural materials for testing and/or carbon dating, the archaeologist shall consider the appropriate disposition of cultural materials in consultation with the Ohlone, Coastanoan, Esselen Nation (OCEN), the County Planning Department, and the property owner. This consultation does not relieve an owner from following the process mandated by law when human remains are involved.

a. If no significant or unique resources are found during the Phase II investigation, no further archaeological documentation is necessary unless the Director of Planning determines that there is substantial evidence in the record that significant resources may be affected by the project despite the negative Phase II findings. Despite a negative finding in the Phase II Evaluation, conditions recommended by the archaeologist and/or the Native Californian Advisory Panel shall be applied to the project as appropriate.

b. If the Phase II Evaluation of Cultural Resources determines that significant cultural resources may be present, the Phase II Evaluation shall include consideration of the avoidance measures required in subsection E.2 of Section 21.66.050. If significant resources cannot be avoided, a Phase III Data Recovery Plan shall be prepared.

3. Phase III: A Phase III Data Recovery Plan (*Treatment of Impacted, Significant Cultural Resources*) shall evaluate a project's impacts on significant resources and shall set forth the reasons why avoidance measures required in subsection E.2 are not feasible under the circumstance of the case. A Data Recovery Plan shall follow the Secretary of the Interior's Guidelines for Archeological Documentation. The OCEN and/or other appropriate Native American representatives, as designated by the Native American Heritage Commission, shall be provided a reasonable opportunity to participate in the development of the Phase III report. Whenever sacred sites or human remains are involved, the appropriate steps shall be followed in conformance with state and federal laws including contacting the County Coroner immediately upon discovery.

4. Report Format and Standards:

a. In all cases, written reports shall be prepared consistent with the report format requirements contained in the State Office of Historic Preservation Archaeological Resource Management Reports (ARMR): Recommended Contents and Format guidelines. A single report may incorporate more than one Phase where appropriate to minimize redundancy and expense. All reports shall be filed with appropriate state agencies and OCEN.

b. Submittal of the applicable report(s), to the Director of Planning, shall be required prior to an application being considered complete.

c. The report(s) shall be prepared, at the applicant's expense, by a qualified archaeologist, from the County's list of archaeological consultants or by a member of the Register of Professional Archaeologists. The applicant shall also be responsible for paying for the costs of data recovery and curation of recovered materials, if applicable.

E. Development Standards.

1. All projects involving potential impacts to archaeological resources shall be referred to the Native Californian Advisory Panel for review and recommendation to the Appropriate Authority prior to approval of any permits or land use entitlements.

2. Impacts to archaeological resources shall be avoided whenever feasible. In all cases where significant archaeological resources are identified, the following avoidance measures shall be considered:

- a. Placing the area within an Open Space or Conservation Easement;
- b. Clustering Development to avoid known resources;
- c. Revised project size, design, and location;
- d. Capping a site with fill material;
- e. Limitation of Public Access; and/or
- f. Other appropriate methods of avoidance.

3. A Data Recovery Plan (Phase III report) will be considered appropriate only upon a showing by the project applicant, based on substantial evidence, that avoidance is not feasible. Prior to the Data Recovery Plan being accepted as complete by the Director of Planning, evidence shall be submitted demonstrating that the Data Recovery Plan has been prepared in compliance with the requirements of this Section.

4. The results of all data recovery activities shall be compiled into a final report. The final report shall be prepared by a qualified archaeologist and submitted to the Planning Department for review and approval prior to final grading or building inspections.

F. Notwithstanding the foregoing, if during the course of construction, previously unidentified archaeological resources are discovered, earth-disturbing activities shall stop within the vicinity of the find, and the project planner and a qualified archaeologist shall be contacted to assess the appropriate course of action. Where human remains are involved, the County Coroner shall also be contacted as required by law. Work shall not resume in the area until the find can be evaluated and an appropriate mitigation plan is developed.

G. Prior to adoption of any General Plan or Specific Plan or an amendment thereto, consultation with Native American representatives shall be carried out consistent with California Government Code Section 65352.3 in a manner consistent with the Tribal Consultation Guidelines published by the Governor's Office of Planning and Research.

H. Nothing in this Section shall be interpreted to supersede or in anyway alter or lessen the effect of any state or federal laws dealing with the protection of human remains.

SECTION 3. Chapter 2.95 is added to the Monterey County Code to read as follows:

Chapter 2.95 – NATIVE CALIFORNIAN ADVISORY PANEL

Sections:

- 2.95.010 – Creation of panel
- 2.95.020 – Members
- 2.95.030 – Terms of office
- 2.95.040 – Officers – Meetings – Rules and records
- 2.95.050 – Conflicts of Interest
- 2.95.060 – Powers and duties

2.95.010 – Creation of panel.

There is created an advisory panel in the County of Monterey to be known as the Native Californian Advisory Panel.

2.95.020 – Members.

The Native Californian Advisory Panel shall be composed of five members all of whom shall be appointed by the Board of Supervisors. The Board of Supervisors shall seek nominations and appoint members meeting the following minimum qualifications:

- A. Professional in the field of archaeology or closely related field;
- B. An individual listed as a Most Likely Descendant for the Monterey County area by the Native American Heritage Commission or an individual who is appointed by a group, tribe, or organization representing Native Americans in the area; or
- C. A member of the public who has demonstrated special interest, competence, experience, or knowledge in the preservation and treatment of archaeological resources.

2.95.030 – Terms of office.

Each member shall serve for a term of two years from the date of appointment and shall continue to serve thereafter until a successor is appointed.

2.95.040 – Officers-Meetings-Rules and records.

A. The Native Californian Advisory Panel shall elect from its members a Chair and Vice-chair to serve in such capacities for a term of one year and, subject to other provisions of law, may elect such other officers as it may determine.

B. The Director of the Resource Management Agency – Planning Department, or the designee of the Director, shall serve as Secretary to the Native Californian Advisory Panel and shall be custodian of the Panel's records. The Secretary shall also generally supervise the technical and clerical work of the archaeological resources review and perform such other duties as the Native Californian Advisory Panel may assign and the Board of Supervisors may authorize.

C. The Native Californian Advisory Panel shall annually adopt a regular meeting schedule. The meeting schedule shall provide for a reasonable number of regular meeting dates to avoid undue delays in permit processing timeframes.

D. The Native Californian Advisory Panel shall adopt rules for the transaction of business, consistent with the Ralph M. Brown Act and the County Code.

2.95.050 – Conflict of Interest.

A. During their term on the Advisory Panel, appointees shall not conduct archaeological work for an applicant or permittee for a development project within the unincorporated area of Monterey County.

B. The Advisory Panel shall be included within the Resource Management Agency conflict of interest code consistent with the California Political Reform Act.

2.95.060 – Powers and duties.

The Native Californian Advisory Panel shall have the following powers and duties:

A. Review and make recommendations on project applications involving potential impacts to archaeological resources, as referred by the Director of Planning.

B. Provide technical assistance to staff relating to protection of archaeological resources upon the request of the Director of Planning.

C. Review surveys of archaeological resources in the unincorporated areas of the County, in conformance with state and federal standards, as may be authorized by the Board of Supervisors.

D. Recommend to the Board of Supervisors revisions of standards for the protection of archaeological resources, upon referral by the Director of Planning, the Planning Commission, or the Board of Supervisors. .

E. Recommend to the Board of Supervisors mechanisms for the purpose of preserving significant archaeological resources in Monterey County.

F. Investigate and report to the Board of Supervisors on the use of various state, federal, and local or private funding sources and mechanisms available to promote preservation of significant archaeological resources in Monterey County.

G. Advise and assist property owners, on request and upon approval by the Director of Planning, on the avoidance of significant archaeological resources or the proper treatment of impacted resources where avoidance is not feasible.

H. Encourage and render advice and guidance to property owners, on request and upon approval of the Director of Planning, on procedures for inclusion of significant archaeological resources on the California Register of Historical Resources or the National Register of Historic Places.

I. Participate in, promote, and conduct public information, educational, and interpretive programs pertaining to archaeological resource preservation, if authorized by the Director of Planning

J. Perform such other duties as may otherwise be required pursuant to the County Code or as may be directed by the Board of Supervisors.

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence,

clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 4. EFFECTIVE DATE. This Ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED on this ____ day of _____, 2014, by the following vote:

AYES: Supervisors

NOES:

ABSENT:

ABSTAIN:

Louis R. Calcagno, Chair
Monterey County Board of Supervisors

A T T E S T:

GAIL T. BORKOWSKI
Clerk of the Board

By: _____
Deputy

APPROVED AS TO FORM:

Wendy S. Strimling
Senior Deputy County Counsel

REF110065
Attachment 2
Draft Ordinance
Redline Version

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AMENDING TITLE 21 (INLAND ZONING ORDINANCE) OF THE MONTEREY COUNTY CODE TO AMEND REGULATIONS FOR ARCHAEOLOGICAL RESOURCE PROTECTION AND ADDING CHAPTER 2.95 TO THE MONTEREY COUNTY CODE TO ESTABLISH A NATIVE CALIFORNIAN ADVISORY PANEL.

County Counsel Summary

This ordinance amends Section 21.66.050 of the Inland Zoning Ordinance (Title 21) of the Monterey County Code to update "Standards for Archaeological Resource Areas" pursuant to direction within the 2010 Monterey County General Plan including establishing definitions and protocols for Phase I, II, and III archaeological reports, updating standards and regulations for the protection of archaeological resources, and establishing guidelines for consultation with Native Californian descendants. This ordinance also adds Chapter 2.95 to the Monterey County Code to establish a Native Californian Advisory Panel whose duties will include providing technical assistance to staff in determining how best protect archaeological resources.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Findings and Purpose

- A. Pursuant to Article XI of the California Constitution, the County of Monterey ("County") may adopt and enforce ordinances and regulations to protect and promote the public health, safety, and welfare of its citizens.
- B. Archaeological resources are significant public resources for their cultural and religious ties to people associated with them and for the potential of a resource to yield important information about history or prehistory.
- C. On October 25, 2010, the County adopted the 2010 General Plan. The 2010 General Plan Policy LU-9.2 and Goals OS-6 and OS-8, inclusive of implementing Policies, require updating County standards for the protection of archaeological resources. This ordinance would update the archaeological resource protection standards consistent with the 2010 General Plan.
- D. This ordinance has been prepared in consultation with local Native American representatives. Letters dated March 26, 2012 and January 18, 2013 were sent to all parties designated as "Most Likely Descendants" for the Monterey County area by the Native American Heritage Commission inviting comments on a previous draft of the ordinance. The letters also invited all MLDs to meetings that were held on April 20, 2012 and February 13, 2013 respectively. Comments provided have been considered in the proposed ordinance.

E. This ordinance will apply prospectively from the date of its adoption and permits preceding the adoption of these standards shall not be considered non-conforming for the purposes of archaeological resource protection.

F. This ordinance is categorically exempt pursuant to Section 15308 of the California Environmental Quality Act (CEQA), which exempts actions taken by regulatory agencies to assure the maintenance, restoration, or enhancement of the environment where the regulatory process involves procedures for protection of the environment. Unique archaeological resources are considered significant environmental resources under CEQA (Public Resources Code Section 21083.2.) The proposed ordinance would update procedures and regulations for the protection of archaeological resources including updating survey requirements and standards, clarifying survey exemption criteria, updating impact avoidance measures, and establishing a technical advisory committee to review and comment on projects involving archaeological resources. All future development projects will continue to be evaluated pursuant to the requirements of CEQA irrespective of this ordinance.

SECTION 2. Section 21.66.050 of the Monterey County Code is amended to read as follows:

21.66.050 Standards for archaeological resource ~~areas~~ protection.

A. Purpose: The purpose of this Section is to provide development standards which assure the maintenance and protection of the County's archaeological resources. New land uses and development, both public and private, shall be considered compatible with this intent only where they incorporate all site planning and design features necessary to avoid or mitigate impacts to archaeological resources.

B. Applicability: The regulations of this Section are applicable in all zoning districts.

~~A.C. Regulations: Archaeological Survey Reports Requirement~~Requirements:

1. A Phase I Inventory of Cultural Resources, meeting the standards contained in Subsection D of this Chapter, shall be required for any development located within the following areas:~~An archaeological survey report shall be required for any development project located within:~~

a. "High Archaeological Sensitivity Zone" as mapped on current County resource maps;

b. "Moderate Archaeological Sensitivity Zone", as mapped on current County resource maps, which requires environmental assessment; ~~according to Monterey County CEQA Guidelines; and;~~

c. "Low Archaeological Sensitivity Zone" where specific information is already known to exist which states that archaeological resources are present; ~~or~~

d. ~~Development w~~Within ~~twoseven~~ hundred fifty (~~750~~250) feet of a known archaeological resource; ~~or.~~

2. Report Waiver Criteria: The Phase I **Inventory** may be waived by the Director of Planning under the following circumstances:

a. The development involves Routine and On-going Agricultural Activities only.

b. A previous report was prepared for the site by a qualified archaeologist, and the report clearly and adequately included the proposed development site within the scope of its survey and the results of that survey were negative;

c. The development is located within a previously disturbed area where substantial evidence is provided that the previous ground disturbance affected depths equal to or greater than the project being considered; or

d. The development involves minimal soil disturbance, except as provided in subsection vi, such as:

i. Replacement of post holes for fences, decks and similar improvements

ii. Repair and maintenance of underground utilities;

iii. Well drilling, not including excavation for discharge pits;

iv. Small ground-mounted photovoltaic systems; and

v. Other development of a similar character to those listed above;

vi. Waivers pursuant to this subsection shall not be granted in circumstances where a project is located within 250 feet of known archaeological resources, or where evidence exists that archaeological resources may be present on the site.

D. Report Standards and Contents: When a Phase I **Inventory** is required pursuant to **Section 21.66.050**, the following standards shall apply:
~~e. In an area of suspected archeological resources, as determined through the planner's on-site investigation or other available information.~~

1. Phase I: A Phase I Inventory of Cultural Resources shall include, at a minimum, a records search of available State resource information at the Northwest Information Center of the California Historic Resources Information System (CHRIS). This records search will, at a minimum, determine whether a part or all of the project area has been previously surveyed for cultural resources, whether any known cultural resources have already been recorded on or adjacent to the project area, and whether the probability is low, moderate, or high that cultural resources are located within the project area. Following the background research, a field survey by a professional archaeologist shall be conducted in accordance with accepted standards and practices. The field survey shall include at a minimum an inspection of the site for evidence of: surface and, if appropriate, subsurface resources; **sacred plants**; traditional cultural landscapes; natural resources used for food and ceremonies; **and** traditional crafts.

a. If the Phase I Inventory of Cultural Resources investigation reveals that the site does not contain cultural resources, no further review is necessary **unless otherwise noted by the archaeologist.**

b. If the Phase I Inventory of Cultural Resources investigation reveals any information indicating that the site is likely to contain cultural resources, a Phase II Evaluation of Cultural Resources shall be required unless either of the following apply:

i. There is substantial evidence, absent the Phase II Evaluation, that the project will have a significant impacts on archaeological resources and those impacts cannot be avoided pursuant to Section E of this Chapter, in which case a Phase III plan

may be prepared without a Phase II Evaluation, provided that Phase III plan is prepared;
or

ii. If the location of resources can reasonably be determined based on the Phase I Inventory and all development is located to avoid impacts to those identified resources, then conditions recommended by the archaeologist shall be applied to the project and no further evaluations are necessary.

2. Phase II: The Phase II Evaluation of Cultural Resources shall be prepared with the goal of determining site boundaries, an evaluation of the site's significance pursuant to Section 15064.5 of the California Environmental Quality Act Guidelines, and an evaluation of avoidance measures pursuant to subsection E.2 of Section 21.66.050, if applicable. A Phase II evaluation may include test excavations when adequate data from previous reports are not available to assess a site's significance; however, prior to recovering any cultural materials for testing and/or carbon dating, the archaeologist shall consider the appropriate disposition of cultural materials in consultation with the Ohlone, Coastanoan, Esselen Nation (OCEN), the County Planning Department, and the property owner. This consultation does not relieve an owner from following the process mandated by law when human remains are involved.

a. If no significant or unique resources are found during the Phase II investigation, no further archaeological documentation is necessary unless the Director of Planning determines that there is substantial evidence in the record that significant resources may be affected by the project despite the negative Phase II findings. Despite a negative finding in the Phase II Evaluation, conditions recommended by the archaeologist and/or the Native Californian Advisory Panel shall be applied to the project as appropriate.

b. If the Phase II Evaluation of Cultural Resources determines that significant cultural resources may be present, the Phase II Evaluation shall include consideration of the avoidance measures required in subsection E.2 of Section 21.66.050. If significant resources cannot be avoided, a Phase III Data Recovery Plan shall be prepared.

3. Phase III: A Phase III Data Recovery Plan (*Treatment of Impacted, Significant Cultural Resources*) shall evaluate a project's impacts on significant resources and shall set forth the reasons why avoidance measures required in subsection E.2 are not feasible under the circumstance of the case. A Data Recovery Plan shall follow the California Secretary of the Interior's Guidelines for Archeological Documentation. The OCEN and/or other appropriate Native American representatives, as designated by the Native American Heritage Commission, shall be provided a reasonable opportunity to participate in the development of the Phase III report. Whenever sacred sites or human remains are involved, the appropriate steps shall be followed in conformance with state and federal laws including contacting the County Coroner immediately upon discovery.

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2. The archaeological survey report shall be required and approved by the Director of Planning prior to an application being considered complete.

3. The survey report shall be prepared, at the applicant's expense, by a qualified archaeologist, from the County's list of archaeological consultants or by a member of the Society of Professional Archaeologists.

4. The report shall be prepared according to the report standards of the Society of Professional Archaeologists and include, at a minimum, a field survey by the archaeologist, survey of available State resource information at the Northwest Regional Information Center of the California Archaeological Inventory, description of the site's sensitivity and any identified archaeological resources, appropriate levels of development on the site, and recommended mitigation measures.

4. Report Format and Standards:

a. In all cases, written reports shall be prepared consistent with the report format requirements contained in the State Office of Historic Preservation Archaeological Resource Management Reports (ARMR): Recommended Contents and Format guidelines. A single report may incorporate more than one Phase where appropriate to minimize redundancy and expense. All reports shall be filed with appropriate state agencies and OCEN.

5. The archaeological survey report shall be waived by the Director of Planning under the following circumstances:

a. A previous report was prepared for the site by a qualified archaeologist, as included on the County's list of archaeological consultants or as a member of the Society of Professional Archaeologists; and

b. The report clearly and adequately included the currently proposed development site within the scope of its survey; or

c. The proposed development does not involve land clearing or land disturbance; or

d. Minor projects on previously disturbed sites; or

e. Other acceptable evidence from an archaeologist.

b. Submittal of the applicable report(s), to the Director of Planning, shall be required prior to an application being considered complete.

c. The report(s) shall be prepared, at the applicant's expense, by a qualified archaeologist, from the County's list of archaeological consultants or by a member of the Register of Professional Archaeologists. The applicant shall also be responsible for paying for the costs of data recovery and curation of recovered materials, if applicable.

E. Development Standards.

1. Development on parcels with an archaeological site, as identified through an archaeological report prepared for the site, shall include the recommended mitigation measures contained in the archaeological survey report prepared for the site as conditions of approval. All projects involving potential impacts to archaeological resources shall be referred to the Native Californian Advisory Panel for review and recommendation to the Appropriate Authority prior to approval of any permits or land use entitlements.

2. Impacts to archaeological resources shall be avoided whenever feasible. In all cases where significant archaeological resources are identified, the following avoidance measures shall be considered:

a. Placing the area within an Open Space or Conservation Easement;

b. Clustering Development to avoid known resources;

- c. Revised project size, design, and location;
- d. Capping a site with fill material;
- e. Limitation of Public Access; and/or
- f. Other appropriate methods of avoidance.

23. Development proposed on parcels with an identified archaeological site shall be designed and located so as to avoid development on or impacts to the site. Alternative siting or location, reduction of project size, and other techniques, such as limiting of public access and requiring archaeological easements as conditions of project approval, shall be utilized where resulting in reduced impact to or avoidance of the archaeological site. A Data Recovery Plan (Phase III report) will be considered appropriate only upon a showing by the project applicant, based on substantial evidence, that avoidance is not feasible. Prior to the Data Recovery Plan being accepted as complete by the Director of Planning, evidence shall be submitted demonstrating that the Data Recovery Plan has been prepared in compliance with the requirements of this Section.

43. Where development on or development impacts to an identified archaeological or paleontological site cannot be avoided, a mitigation plan shall be required for the project. Prior to the application being considered complete, the plan shall be submitted to, and approved by the Director of Planning. The mitigation plan shall be prepared at the applicant's expense by a qualified archaeologist, either from the County's list of archaeological consultants or by a member of the Society of Professional Archaeologists. Included in the mitigation plan shall be recommended preservation measures in accordance with the guidelines of the State Office of Historic Preservation and the State of California Native American Heritage Commission. consulting archaeologist shall file the mitigation plan with the State Office of Historic Preservation. The results of all data recovery activities shall be compiled into a final report. The final report shall be prepared by a qualified archaeologist and submitted to the Planning Department for review and approval prior to final grading or building inspections.

4. Where a mitigation plan has been prepared for a proposed development, a condition of project approval shall be that:

- a. The preservation measures shall be undertaken and completed prior to the issuance of building or grading permits; or
- b. Where appropriate according to the recommendation contained in the mitigation plan, the preservation measures shall be undertaken concurrent with grading or other soil-disturbing activities and shall be undertaken in accordance with mitigation plan, as a condition of the grading or building permit; and
- c. The results of the preservation activities shall be compiled into a final report prepared by the archaeologist and submitted to the Planning Department.

F. Notwithstanding the foregoing, if during the course of construction, previously unidentified archaeological resources are discovered, earth-disturbing activities shall stop within the vicinity of the find, and the project planner and a qualified archaeologist shall be contacted to assess the appropriate course of action. Where human remains are involved, the County Coroner shall also be contacted as required by law. Work shall not resume in the area until the find can be evaluated and an appropriate mitigation plan is developed.

G. Prior to adoption of any General Plan or Specific Plan or an amendment thereto, consultation with Native American representatives shall be carried out consistent with California Government Code Section 65352.3 in a manner consistent with the Tribal Consultation Guidelines published by the Governor's Office of Planning and Research.

H. Nothing in this Section shall be interpreted to supersede or in anyway alter or lessen the effect of any state or federal laws dealing with the protection of human remains.

SECTION 3. Chapter 2.95 is added to the Monterey County Code to read as follows:

Chapter 2.95 – NATIVE CALIFORNIAN ADVISORY PANEL

Sections:

- 2.95.010 – Creation of panel
- 2.95.020 – Members
- 2.95.030 – Terms of office
- 2.95.040 – Officers – Meetings – Rules and records
- 2.95.050 – Conflicts of Interest
- 2.95.060 – Powers and duties

2.95.010 – Creation of panel.

There is created an advisory panel in the County of Monterey to be known as the Native Californian Advisory Panel.

2.95.020 – Members.

The Native Californian Advisory Panel shall be composed of five members all of whom shall be appointed by the Board of Supervisors. The Board of Supervisors shall seek nominations and appoint members meeting the following minimum qualifications:

- A. Professional in the field of archaeology or closely related field;
- B. An individual listed as a Most Likely Descendant for the Monterey County area by the Native American Heritage Commission or an individual who is appointed by a group, tribe, or organization representing Native Americans in the area; or
- C. A member of the public who has demonstrated special interest, competence, experience, or knowledge in the preservation and treatment of archaeological resources.

2.95.030 – Terms of office.

Each member shall serve for a term of two years from the date of appointment and shall continue to serve thereafter until a successor is appointed.

2.95.040 – Officers-Meetings-Rules and records.

A. The Native Californian Advisory Panel shall elect from its members a Chair and Vice-chair to serve in such capacities for a term of one year and, subject to other provisions of law, may elect such other officers as it may determine.

B. The Director of the Resource Management Agency – Planning Department, or the designee of the Director, shall serve as Secretary to the Native Californian Advisory Panel and shall be custodian of the Panel’s records. The Secretary shall also generally supervise the technical and clerical work of the archaeological resources review and perform such other duties as the Native Californian Advisory Panel may assign and the Board of Supervisors may authorize.

C. The Native Californian Advisory Panel shall annually adopt a regular meeting schedule. The meeting schedule shall provide for a reasonable number of regular meeting dates to avoid undue delays in permit processing timeframes.

D. The Native Californian Advisory Panel shall adopt rules for the transaction of business, consistent with the Ralph M. Brown Act and the County Code.

2.95.050 – Conflict of Interest.

A. During their term on the Advisory Panel, appointees shall not conduct archaeological work for an applicant or permittee for a development project within the unincorporated area of Monterey County.

B. The Advisory Panel shall be included within the Resource Management Agency conflict of interest code consistent with the California Political Reform Act.

2.95.060 – Powers and duties.

The Native Californian Advisory Panel shall have the following powers and duties:

A. Review and make recommendations on project applications involving potential impacts to archaeological resources, as referred by the Director of Planning.

B. Provide technical assistance to staff relating to protection of archaeological resources upon the request of the Director of Planning.

C. Review surveys of archaeological resources in the unincorporated areas of the County, in conformance with state and federal standards, as may be authorized by the Board of Supervisors.

D. Recommend to the Board of Supervisors revisions of standards for the protection of archaeological resources, upon referral by the Director of Planning, the Planning Commission, or the Board of Supervisors. .

E. Recommend to the Board of Supervisors mechanisms for the purpose of preserving significant archaeological resources in Monterey County.

F. Investigate and report to the Board of Supervisors on the use of various state, federal, and local or private funding sources and mechanisms available to promote preservation of significant archaeological resources in Monterey County.

G. Advise and assist property owners, on request and upon approval by the Director of Planning, on the avoidance of significant archaeological resources or the proper treatment of impacted resources where avoidance is not feasible.

H. Encourage and render advice and guidance to property owners, on request and upon approval of the Director of Planning, on procedures for inclusion of significant

archaeological resources on the California Register of Historical Resources or the National Register of Historic Places.

I. Participate in, promote, and conduct public information, educational, and interpretive programs pertaining to archaeological resource preservation, if authorized by the Director of Planning

J. Perform such other duties as may otherwise be required pursuant to the County Code or as may be directed by the Board of Supervisors.

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 4. EFFECTIVE DATE. This Ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED on this ____ day of _____, 2014, by the following vote:

AYES: Supervisors

NOES:

ABSENT:

ABSTAIN:

Louis R. Calcagno, Chair
Monterey County Board of Supervisors

A T T E S T:

| GAIL T. BORKOWSKI
Clerk of the Board

By: _____
Deputy

APPROVED AS TO FORM:

Wendy S. Strimling
Senior Deputy County Counsel