

## MONTEREY COUNTY PLANNING COMMISSION

<b>Meeting:</b> June 27, 2012 Time: 10:00 A.M	<b>Agenda Item No.:</b> 4
<b>Project Description:</b> Hold a workshop to consider amending Section 21.66.050 (Standards for Archaeological Resource Areas) of Title 21 (inland zoning ordinance) of the Monterey County Code to establish new policies and procedures implementing the 2010 Monterey County General Plan Goals OS-6 and OS-8 and provide direction to staff.	
<b>Project Location:</b> County-wide, Inland	<b>APN:</b> County-wide, Inland
<b>Planning File Number:</b> REF110065	<b>Owner:</b> N/A <b>Agent:</b> N/A
<b>Planning Area:</b> North County (Inland) Area Plan, Greater Salinas Area Plan, Toro Area Plan, Cachagua Area Plan, Greater Monterey Peninsula Area Plan, Central Salinas Valley Area Plan, South County Area Plan, Carmel Valley Master Plan, and the Fort Ord Master Plan	<b>Flagged and staked:</b> N/A
<b>Zoning Designation:</b> : County-wide	
<b>CEQA Action:</b> Statutorily Exempt per 15262	
<b>Department:</b> RMA - Planning Department	

### RECOMMENDATION:

Hold a workshop to consider amending Section 21.66.050 (Standards for Archaeological Resource Areas) of Title 21 (inland zoning ordinance) of the Monterey County Code to establish new policies and procedures implementing the 2010 Monterey County General Plan Goals OS-6 and OS-8 and provide direction to staff.

### PROJECT OVERVIEW:

Policy LU-9.2 requires the County to adopt guidelines necessary for the protection of cultural resources within one (1) year of adoption of the General Plan. Additional Policy direction on the treatment of archaeological resources are contained under Goal OS-6 and Goal OS-8 of the Conservation and Open Space Element of the General Plan. The draft ordinance is intended to satisfy the requirements and policy direction of the 2010 General Plan. The subject ordinance is on the General Plan implementation work program list (Table 6, item No.'s 10 and 20).

Within the Inland areas of Monterey County, archaeological resources are currently regulated by the Monterey County Zoning Ordinance, Title 21, Section 21.66.050. Staff is proposing that this section be revised to address the standards required by the General Plan policies. Additional related tasks will require establishing an Advisory Panel (Policy OS-8.5) and to negotiating a Memorandum of Understanding with local tribal representatives regarding standard procedures for consultation (Policy OS-8.7) following consideration of an updated Ordinance.

Leading up to this workshop, staff consulted with local professional archaeologists on February 23, 2012, and Native American representatives on April 20, 2012. Only one interested group, out of the approximately 20 Native American representatives, participated in the April 20<sup>th</sup> meeting. Additionally, the Native American Heritage Commission was given the opportunity to participate but due to staffing limitations they have been unable to comment. Comments and concerns expressed by each of the participating individuals have been noted and will be considered in the drafting of this ordinance. Staff is now seeking public comment and direction prior to bringing an ordinance back for consideration.

This action, Public outreach/workshop, is Statutorily exempt per Section 15262 of the California Environmental Quality Act (CEQA), because the Planning Commission is not considering approving, adopting, or funding the draft ordinance at this time and there will be no legally binding effects of the actions of the Commission on this item. Once prepared, the ordinance will be evaluated pursuant to CEQA prior to taking official action.

For more detail see the discussion in Exhibit A.

/S/ Craig W. Spencer



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June 8, 2012

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; Gary Brechini; Lynn Mounday; Ruben Mendoza; Susan Morely; John W. Burch; Planning File REF110065

Attachments: Exhibit A      Discussion  
                  Exhibit B      Applicable General Plan Policies

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

**REF110065**

**ATTACHMENT A**

**EXHIBIT A**  
**DISCUSSION**  
**REF110065 (Archaeological Resources)**

**Archaeology**

Archaeology is the scientific study of material remains of past human life and activities. Archaeological resources are significant not just for the study and understanding of past human activities; but also because living descendants of Native Americans still have strong emotional and physical connections to their history. Archaeological resources can include items such as Native American graves and artifacts; traditional cultural landscapes; natural resources used for food, ceremonies or traditional crafts; and places that have special significance because of the spiritual power associated with them. Each one of these resources can provide information to help us better understand the culture, customs, technology, and general way of life of different tribes, in different geographic areas, and how they have changed or adapted over time. These resources also carry with them deep rooted traditions that have remained essential to the Native American way of life for thousands of years. The first known existence of human habitation, in what is now known as Monterey County, dates back 10,000 to 12,000 years ago.

Likely around 7,500 to 8,000 B.C., Native Americans transitioned from nomadic groups that followed herds for subsistence to small villages that took advantage of surrounding resources for subsistence. The size of the villages depended largely on the available resources in the area. Monterey County has several areas that had excellent access to game, fish, marine resources, acorns, wild berries, and nuts that resulted in relatively large settlements and therefore is now home to a good deal of archaeological resources. There are three primary tribal groups known to have occupied different but sometimes overlapping portions of Monterey County. These groups include:

- The Coastanoan (now commonly referred to as Ohlone) tribe;
- The Esselen tribe; and
- The Salinan tribe

There are currently several individuals and groups that have documented a cultural link to these tribes and are considered Most Likely Descendants by the Native American Heritage Commission. Several of these groups have petitioned the Bureau of Indian Affairs for Federal recognition but none of the local groups have gained Federal recognition to date.

**Background**

During the drafting of the 2010 Monterey County General Plan, formal consultation with local tribal representatives was conducted as required by Senate Bill 18 (SB18). SB18, now codified in Government Code §65352.3, requires local governments to consult with California Native American tribes, identified by the Native American Heritage Commission (NAHC), during the preparation of any General Plan, General Plan Amendment, or Specific Plan, for the purpose of protecting, and/or mitigating impacts to cultural places. As a result of consultation with local tribal representatives during the drafting of the 2010 General Plan, policies were added requiring the following implementation:

- An update of our archaeological resource protection guidelines to better protect resources;

- Updating archaeological inventories, mapping, and records;
- Establishment of a technical advisory committee to review and make recommendations on projects involving archaeological resources;
- Public outreach; and
- Tribal representative consultation.

As part of the General Plan implementation, staff is now in the process of drafting an update to our Standards for Archaeological Resource Areas within the inland Zoning Ordinance (Title 21). Prior to this workshop staff has met separately with local archaeologists and Native American tribal representatives to gain a better understanding of the issues and concerns surrounding the protection and treatment of archaeological resources. Staff has also attempted to coordinate with the Native American Heritage Commission and the State Office of Historic Preservation in understanding the State's role in resource protection.

There are a number of existing State and Federal laws and policies dealing with the protection of archaeological resources. The following laws have key regulations for the consideration of Archaeological protection standards:

- The Native American Graves Protection and Repatriation Act of 1990
  - Protects Native American resources on Federal or Tribal lands.
- The Secretary of the Interior's Standards
  - Sets National Register criteria for Archaeological sites (Criterion D)
  - Establishes guidelines for Archaeological Documentation
- California Code of regulations
  - Government Code – Required consultation (SB18)
  - Penal Code – It is a Misdemeanor to willfully injure, disfigure, deface, or destruct any object or thing of archeological or historical interest or value, whether situated on private or public lands.
  - Health and Safety Code – Protects human remains.
- California Environmental Quality Act (CEQA)
  - Establishes Archaeological materials as a significant environmental resources and requires the consideration of impacts to those resources as part of a "project"

In addition to the laws considered above, there are numerous publications and guidelines from the Native American Heritage Commission and the State Office of Historic Preservation on topics such as archaeological report standards, Tribal Consultation standards, and issues facing the Archaeological resource protection.

### **Required Provisions and Process of a new Ordinance**

The 2010 General Plan contains policies that provide guidance on what issues need to be addressed in updating the Archaeological Resources Standards. The following list 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 descendents; and
- Require preservation in place to the greatest extent possible of cemeteries, burials, shrine sites, and sacred places;

Other related requirements include updating GIS maps, creating a memorandum of understanding for consultation, and establishing a technical advisory committee. These tasks will be considered during drafting of the updated Ordinance but will be pursued a separate effort.

### **Preliminary Direction/Outline**

Staff is anticipating incorporating the following elements into the Archaeological Resource Standards contained in Section 21.66.050 of our Zoning Ordinance (Title 21) (the descriptions are summaries and not full draft language):

- Purpose: To protect archaeological resources
- Applicability: All Zoning Districts within the Inland areas
  - Routine and Ongoing Agriculture activities are exempt
- Regulations
  - Report Requirements
    - High Sensitivity
    - Moderate Sensitivity when environmental review under CEQA is required
    - Within 150 feet of known sites
    - Where suspected resources are present based on site-visits or other documentation
  - Report Types:
    - Phase I - Inventory of Cultural Resources (including natural resources)
    - Phase II - Evaluation of Cultural Resources
    - Phase III - Data Recovery Plan
  - Report Format/Standards – Follow the Office of Historic Preservation Archaeological resource Management Reports (ARMR): Recommended Contents and Format
  - Timing – Reports are required prior to the application being deemed complete
  - Report Waiver Criteria
    - Previous Report prepared for the site that is adequate for review of current project
    - Previously disturbed site
    - Projects that do not require digging
- Development Standards
  - Avoid impacts where feasible by:
    - Open Space easements
    - Clustering Development
    - Revising project design or location
    - Capping site with fill material
    - Limiting Public Access; or
    - Other means
  - Justification for infeasibility of avoidance required
  - Criteria for projects involving impacts to archaeological resources

- Data Recovery Plan must satisfy Secretary of the Interior's Standards
- CEQA
- Consultation with Native American representatives
- Conditions and Mitigations for "unexpected" discovery during construction
  - Human remains – Contact the Corner as required by law
  - Other Resources – Contact the Planning Department and an Archaeologist to develop a plan

This basic outline would satisfy the policy direction of the General Plan and is in keeping with the discussions at the stakeholder meetings. As part of this workshop, staff is open to any additional input or direction for consideration as part of the ordinance update.

### **Next Steps**

Staff will compile all of the information from the background research, the General Plan, the stakeholder meetings, and this Planning Commission workshop and return to the Planning Commission in July of this year with a draft ordinance. Because this ordinance is behind schedule, staff will bring the ordinance to the Board of Supervisors as soon as practicable after Planning Commission review and recommendation.

**REF110065**

**ATTACHMENT B**



## *ARCHAEOLOGICAL RESOURCES*

### GOAL OS-6

#### ENCOURAGE THE CONSERVATION AND IDENTIFICATION OF THE COUNTY'S ARCHAEOLOGICAL RESOURCES.

##### *Policies*

- OS-6.1 Important representative and unique archaeological sites and features shall be identified and protected for all parcels with undisturbed natural conditions (i.e., ungraded properties), consistent with State Office of Historic Preservation guidelines and definitions employed on a statewide basis, including Phase I, II, and III studies.
- OS-6.2 Information on the location and significance of the County's archaeological resources shall be compiled and used in the environmental and development review process. The County shall rely on and participate in the statewide inventory work of the California Native American Heritage Commission and the State Office of Historic Preservation. All Phase I, II, and III studies, and records of Native Californian consultation, shall be filed with appropriate state agencies and local tribes as well as local data source compilations maintained by the County. The County shall work with local tribes to update County GIS maps showing high, moderate, and low archaeological sensitivity areas.
- OS-6.3 New development proposed within moderate or high sensitivity zones, or within 150 feet of a known recorded archaeological and/or cultural site, shall complete a Phase I survey including use of the regional State Office of Historic Preservation or the California Native American Heritage Commission's list of sacred and traditional sites. Routine and Ongoing Agricultural Activities shall be exempted from this policy in so far as allowed by state or federal law.
- OS-6.4 Development proposed in low sensitivity zones are not required to have an archaeological survey unless there is specific additional information that suggests archaeological resources are present.
- OS-6.5 Policies and procedures shall be established that encourage development to avoid impacts to sensitive archaeological sites including:
- a. designing or clustering development to avoid archaeological site deposits, historic sites and resources, and Native Californian cultural sites;
  - b. requiring dedication of permanent conservation easements where subdivisions and other developments can be planned to provide for such protective easements.

- OS-6.6 Efforts by historical, educational or other organizations to improve the public's recognition of the County's cultural heritage and the citizen's responsibilities for archaeological or cultural resource preservation shall be encouraged. The County shall adopt a uniform set of guidelines to define Phase I, II, and III significance assessment and data recovery programs. Similar guidelines shall be created to set standards for requirements for consultation with Native Californian descendents to establish procedures for determining the presence or absence of sacred or traditional sites. These guidelines shall address monitoring requirements and participation in cultural resource data recovery programs.

## ***PALEONTOLOGICAL RESOURCES***

### **GOAL OS-7**

#### **ENCOURAGE THE CONSERVATION AND IDENTIFICATION OF THE COUNTY'S PALEONTOLOGICAL RESOURCES.**

##### ***Policies***

- OS-7.1 Important representative and unique paleontological sites and features shall be identified and protected. Developers shall be required to complete Phase I (reconnaissance level) paleontological reviews in any formation known to yield important elements of the fossil record. If significant fossil deposits are found during grading activities, data recovery shall be required to obtain a sample of materials from such deposits prior to their systematic destruction.
- OS-7.2 Information on the location and significance of the County's paleontological resources shall be compiled and used in the environmental and development review process. This compilation process shall involve consulting with knowledgeable academic professionals.
- OS-7.3 Development proposed within high and moderate sensitivity zones and known fossil bearing formations shall require a paleontological field inspection prior to approval. Routine and Ongoing Agricultural Activities are exempted from this policy in so far as allowed by state or federal law.
- OS-7.4 Development proposed in low sensitivity zones are not required to have a paleontological survey unless there is specific additional information that suggests paleontological resources are present.
- OS-7.5 Policies and procedures shall be established that encourage development to avoid impacts to sensitive paleontological sites including:

- a. designing or clustering development to avoid paleontological deposits;
- b. requiring dedication of permanent conservation easements where subdivisions and other developments can be planned to provide for such protective easements.

***NATIVE CALIFORNIAN CULTURAL SITES, SACRED PLACES,  
AND BURIAL SITES***

**GOAL OS-8**

**ENCOURAGE THE CONSERVATION AND IDENTIFICATION OF THE COUNTY'S NATIVE CALIFORNIAN CULTURAL SITES, SACRED PLACES, AND BURIAL SITES.**

***Policies***

- OS-8.1 Unique burial sites shall be identified and protected. All Native Californian cemeteries, burials, shrine sites, and sacred place locations shall be preserved in place to the greatest extent possible and as permitted by law. In cases where such sites and locations cannot be retained in place without modification, governing requirements in the Government Code, Health and Safety Code, California Environmental Quality Act and Native American Religious Freedom Act shall be taken into account in consulting with local Native Californian Tribal Groups with documented aboriginal ties to the study area and shall be carried out, as necessary, with the assistance and input of the California Native American Heritage Commission. Documentation of descent shall be based on Genealogical Proof Standards.
- OS-8.2 Information on the location and significance of the County's burial sites shall be compiled and used in the environmental and development review process. All such data sources shall be recorded with the State Office of Historic Preservation coincident with development review.
- OS-8.3 Development proposed at sites where known burials or human cemeteries are located shall in no case modify, disturb, excavate, or develop within such locations until all steps in compliance with CEQA, Native American Heritage Commission, Health and Safety Code and Government Code, and in accordance with any completed MOU with a local tribe, have been completed. Routine and Ongoing Agricultural Activities are exempted from this policy in so far as allowed by state or federal law. In the case of any conflict of interpretation, state requirements for the protection of burial sites are applicable and shall be implemented in good faith.

- OS-8.4 Policies and procedures shall be established that encourage development to avoid impacts to burial sites including:
- a. designing or clustering development to avoid archaeological deposits that typically contain human remains and to avoid any known cemeteries or other concentrations of human remains;
  - b. requiring dedication of permanent conservation easements if subdivisions and other developments can be planned to provide for such protective easements;
  - c. In all cases where human remains are identified through CEQA review, archaeological research, ethnohistoric research, inadvertent grading disturbance, or historic record research, the County shall consult with the designated “most likely descendents” as identified by any Memorandum of Understanding (MOU) adopted pursuant to *Policy OS-8.7*. In the event no MOU is executed, the Native American Heritage Commission shall be consulted to help determine the appropriate Tribal Group in that portion of the County where the burial remains are identified.
- OS-8.5 Efforts by historical, educational or other organizations to improve the public’s recognition of the County’s cultural heritage and the citizen’s responsibilities for burial site preservation shall be encouraged. The County shall establish a Native Californian Advisory Panel that could provide technical assistance to staff in determining how best to address monitoring and site treatment consistent with the policies in this General Plan. Decisions about human remains and heritage resources shall be made in consultation with Tribal representatives consistent with procedures established in *Policy OS-8.1*.
- OS-8.6 Tribal representatives will be consulted, consistent with state preservation law, about the location of sacred places, ancestral sites, archaeological remains of village sites, burial and cemetery sites, and other significant cultural resources during the preparation of any General Plan amendment, Master Plan, Community Plan, or Specific Plan.
- OS-8.7 While all interested Native Americans shall be encouraged to participate in the CEQA data review and evaluation stages of cultural resource policy implementation, the Ohlone/Coastanoan/Esselen Nation (OCEN) is a designated *Most Likely Descendent* group identified by the Native American Heritage Commission of the State of California. An Implementation Plan for this General Plan shall include, but not be limited to:
- a. Designating OCEN as the clearinghouse group for the coordination of data recovery monitoring and the disposition of human remains in Monterey County.

- b. Creating a Memorandum of Understanding adopted to implement California's Local Government Tribal Inter-Governmental Consultation Act (SB18) consistent with this General Plan.
- c. Establishing a technical advisory committee pursuant to *Policy OS-8.5* and consisting of appropriate tribal representatives and qualified archaeologists.