

MONTEREY COUNTY PLANNING COMMISSION

Meeting: December 10, 2014	Agenda Item No.: 11
Project Description: Review and consider a draft ordinance amending Section 21.66.050 (Standards for Archaeological Resources Areas) of Title 21 (non-coastal zoning) of the Monterey County Code to establish new policies and procedures for the protection of tribal cultural resources and adding Chapter 2.95 to the Monterey County Code establishing a Native American Advisory Panel.	
Project Location: Inland Areas	APN: N/A
Planning File Number: REF110065	Owner: N/A Agent:
Planning Area: Inland Areas	Flagged and staked: N/A
Zoning Designation: : Inland Areas	
CEQA Action: Categorically Exempt per Section 15308	
Department: RMA – Planning Department	

RECOMMENDATION:

Staff recommends that the Planning Commission review a draft ordinance amending Section 21.66.050 (Standards for Archaeological Resources Areas) of Title 21 (non-coastal zoning) of the Monterey County Code to establish new policies and procedures for the protection of archaeological resources and adding Chapter 2.95 to the Monterey County Code establishing a Native American Advisory Panel.

PROJECT OVERVIEW:

The 2010 General Plan requires the County to adopt guidelines necessary for cultural resource protection consistent with the goals and policies of the General Plan. A draft ordinance, updating the archaeological protection standards (Section 21.66.050 of the Monterey County Code) has been prepared to implement the 2010 General Plan in the inland area only. 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 descendents;
- 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.

In addition to complying with the direction of the 2010 General Plan, this ordinance has been influenced by various State and Federal laws, most notably Assembly Bill 52 (AB 52). These

influences have resulted in two distinct yet complimentary components to this draft ordinance. The first component includes an update to the existing archaeological protection standards in the zoning ordinance (Title 21). This includes:

1. Updates to when an archaeological survey is required;
2. It establishes new definitions and protocols for three Phases of archaeological reports;
3. It updates procedures for the protection of archaeological resources, and
4. It refers to, and remains consistent with, the requirements of applicable State and Federal Laws including the California Environmental Quality Act.

The second main component of the draft ordinance involves implementing the new requirements of AB 52. AB 52 amends State Law, including the California Environmental Quality Act (CEQA), to require notification and the opportunity for consultation with local Native American representatives with ties to the area affected by a project. The updates to the archaeological resource standards stemming from the General Plan requirements work together with the new Native American notification/consultation process to identify and protect cultural resources early in the project review process. The updates help to identify archaeological resources through an academic-type survey, prepared by a professional archaeologist, that is intended to identify visible or buried remains and artifacts at a site, while the Native American notification/consultation process broadens considerations of resource identification to include affiliations with Native American tribes and traditions. The new term “tribal cultural resources” provided in AB52, is inclusive of the term archaeological resource however both terms are used in strategic ways to refer to the applicable sections of state law and to distinguish between archeologist related activities and other types of cultural resources that take into account the importance of the resource to the Native American tribes.

This ordinance has been reviewed and edited in a number of public hearings and stakeholder meetings including a workshop at the Planning Commission and several stakeholder meetings with local Native American representatives and archaeologists. The following is a summary of those meetings:

- June 27, 2012 –Planning Commission workshop
- November 28, 2012 – Meeting with Local Archaeologists
- February 21, 2013 – Meeting with Native American representatives
- March 27, 2013 – Second meeting with Native American representatives
- June 25, 2014 – Planning Commission hearing on draft ordinance continued (work with stakeholders to address concerns)
- July 18, 2014 – Meeting with Native Americans and Archaeologists
- August 27, 2014 – Planning Commission hearing continued (in process of making revisions)
- October 8, 2014 – Planning Commission hearing continued (additional revisions made necessary by the passing of Assembly Bill 52)
- October 29, 2014 – Second Meeting with Native Americans and Archaeologists
- November 12, 2014 – Planning Commission hearing continued (in process of reviewing the revised ordinance with stakeholders)

Following the Planning Commission workshop on June 27, 2012, staff met separately with local archaeologists, Native American representatives. Comments received at these meetings were considered in the draft ordinance that was presented to the Planning Commission on June 25, 2014. On June 25, the Planning Commission considered the draft ordinance and directed staff to work

with interested parties to further refine the ordinance. The Planning Commission continued the public hearing to August 27, 2014. On July 18, 2014, staff met with local Native American descendants and archeologists to discuss revisions to the draft ordinance. As of the August 27, 2014 Planning Commission hearing, staff was still in the process of making revisions to the ordinance in consultation with stakeholders. Shortly after the August 27, 2014 Planning Commission hearing, the State legislature passed Assembly Bill 52 - Native Americans: Californian Environmental Quality Act (AB 52). AB 52 contains new requirements for local governments involving the review and protection of tribal cultural resources and thereby necessitated significant revisions to the draft ordinance. Staff has been working on incorporating the new requirements in the ordinance and reviewing this updated ordinance with stakeholders.

The current draft attached as Exhibit A to this report, incorporates the General Plan direction, the requirements of the California Environmental Quality Act (CEQA), AB 52, and direction received during the workshop and stakeholder meetings. At the last Planning Commission, staff requested that the hearing be continued to the December 10, 2015 in order to provide time for additional review and comment on the draft ordinance. At this point, staff is requesting that the Planning Commission hold a public hearing to consider the draft ordinance. Consideration of the draft will provide for open public comments from the commission and any members of the public on this updated draft before returning for a formal recommendation to the Board of Supervisors.

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

/S/ Craig W. Spencer

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December 2, 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 Ordinance
Attachment 2 Draft Ordinance in strikeout and underline

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