



Monterey County

Item No.

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: ORD 20-015

July 28, 2020

Introduced: 7/14/2020

Current Status: Agenda Ready

Version: 1

Matter Type: Ordinance

- a. Find that adoption of this ordinance is categorically exempt from the California Environmental Quality Act as an action to preserve and protect the environment pursuant to Title 14 California Code of Regulations Section 15308 and as the establishment of additional enforcement actions by a regulatory agency pursuant to Section 15321; and
- b. Adopt an ordinance adding new Section 1.22.105 to Chapter 1.22 of the Monterey County Code relating to administrative remedies for violations of requirements to monitor and protect archeological and cultural resources in the unincorporated area of Monterey County.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Find that adoption of this ordinance is categorically exempt from the California Environmental Quality Act as an action to preserve and protect the environment pursuant to Title 14 California Code of Regulations Section 15308, and as the establishment of additional enforcement actions by a regulatory agency pursuant to Section 15321; and
- b. Adopt an ordinance adding new Section 1.22.105 to Chapter 1.22 of the Monterey County Code relating to administrative remedies for violations of requirements to monitor and protect archeological and cultural resources in the unincorporated area of Monterey County.

SUMMARY/DISCUSSION:

Standard conditions of approval are added to development projects in areas of the county with high archaeological sensitivity that are meant to protect tribal and other cultural resources. On June 16, 2020, the Board of Supervisors provided direction for staff to prepare an ordinance that strengthens Monterey County's enforcement and increase fines related to non-compliance with conditions to protect cultural resources. On July 7, 2020, the Board introduced, waived reading and set July 28th as the date to adopt the ordinance on the consent calendar. The ordinance would become effective the 31st day after adoption (August 28, 2020).

County Code Section 1.22 currently allows staff to assess financial penalties for non-compliance with any project conditions of approval on a daily basis for each day that a violation exists. Pursuant to section 1.22.100, for all violations except those pertaining to local building and safety codes, an Administrative Citation may be levied to impose the following fines:

- First day: A fine not exceeding one hundred dollars (\$100.00)
- Second day: A fine not exceeding two hundred dollars (\$200.00)
- Third day and beyond: A fine not exceeding five hundred dollars per day (\$500.00)

Limitations arise in certain cases where the County may want to impose more severe penalties based on the nature of the violation. The draft ordinance adds a section specifically establishing the amount which the County can impose to penalize those who violate requirements (i.e.: conditions of approval) to monitor and protect archeological and cultural resources.

RMA has consulted with the Office of the County Counsel and determined that an ordinance may be adopted to increase the amount of fine beyond the amounts included in Monterey County Code Chapter 1.22, as a civil penalty rather than an infraction or misdemeanor. In determining the extent to which administrative penalties can be increased or added staff considered various factors, including how to create equity in the amount of fines where the value of property could result in a takings if a penalty above the value of the property were to be assessed.

The draft ordinance would allow a County Enforcement Official to issue an administrative citation that imposes the following fines in the event that that a requirement to monitor and protect archeological and cultural resources is violated:

1. A fine not exceeding two-thousand dollars (\$2,000.00) for the first violation (Day 1);
2. A fine not exceeding three-thousand dollars (\$3,000.00) for the second violation (Day 2); and
3. A fine not exceeding five-thousand dollars (\$5,000.00) for the third violation and beyond (Day 3, and each day following).

A key consideration for creating equity with varying property values is that the cumulative amount of fines imposed shall not exceed fifty-thousand dollars (\$50,000.00). This maximum fine amount is necessary to ensure that the total penalty imposed on a property will not encumber a parcel beyond its assessed value which would potentially constitute a government taking of the property.

On July 6, 2020, staff received correspondence from Stamp Erickson, attorneys at law regarding the draft ordinance (Attachment B). In summary, the letter expresses concern that the draft ordinance is vague and is not exempt from CEQA. The draft ordinance is not vague as it clearly specifies the prohibited conduct and the associated penalty amounts. As to CEQA, the draft ordinance is categorically exempt from review pursuant to Title 14 California Code of Regulations CEQA Section 15308 as it is designed to enhance the protection of resources. The draft ordinance is also exempt under CEQA Section 15321 as it establishes additional enforcement mechanisms for a regulatory agency. Further, there is no evidence of unusual circumstances which would require exceptions to these exemptions under CEQA Guidelines Section 15300.2.

CEQA:

As previously stated, consideration of an ordinance is a project subject to CEQA. This ordinance would add regulations to help preserve and protect the environment (cultural resources) and establish additional enforcement mechanisms for a regulatory agency. Therefore, adoption of this ordinance is categorically exempt from the California Environmental Quality Act pursuant to Title 14 California Code of Regulations CEQA Sections 15308 and 15321 respectively.

OTHER AGENCY INVOLVEMENT:

Office of County Counsel has approved the draft ordinance as to form.

FINANCING:

Funding for staff time associated with bringing this Ordinance to the Board is included in the FY2020-21 Adopted Budget for RMA. County Counsel does not charge their time directly to County General Fund Units as these costs are accumulated and allocated through the Countywide Cost Allocation Plan (COWCAP).

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

This Referral is intended to ensure proper management of our land resources, including archaeological and Tribal cultural resources.

Check the related Board of Supervisors Strategic Initiatives:

- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

Prepared by: Carl P. Holm, AICP, RMA Director

Attachments on file with the Clerk of the Board:

- Attachment A - Ordinance Cultural Resource Monitoring Penalties
- Attachment B - Correspondence dated July 6, 2020, from Stamp Erickson

cc: Front Counter Copy; The Open Monterey Project (Molly Erickson); LandWatch (Executive Director); John H. Farrow; Janet Brennan; OCEN Tribe