

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 AMERICAN ADVISORY PANEL.

County Counsel Summary

This ordinance amends Section 21.66.050 of Title 21 (non-coastal zoning) of the Monterey County Code to update development standards for archaeological and tribal cultural resource protection. The ordinance establishes protocols for Phase I, II, and III archaeological reports for applications for discretionary land use entitlements and establishes guidelines for consultation with California Native American tribes consistent with newly enacted state law. This ordinance also adds Chapter 2.95 to the Monterey County Code to establish a Native American Advisory Panel whose duties would include providing public outreach and education, technical assistance to staff, and advice on development of land use policies and procedures for the protection of archaeological and tribal cultural resources. This ordinance implements 2010 Monterey County General Plan policies and is applicable only in the non-coastal unincorporated area of Monterey County.

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 26, 2010, the County adopted the 2010 Monterey General Plan. The 2010 General Plan Policy LU-9.2 and Goals OS-6 and OS-8 and the General Plan policies implementing those goals 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. New state law (AB52, enacted in 2014) provides procedures for the identification and protection of tribal cultural resources as part of environmental review under the California Environmental Quality Act (CEQA). This ordinance is intended to complement and implement the tribal cultural resource protection standards and procedures of AB52 and CEQA.

E. This ordinance has been prepared in consultation with local Native American representatives. These stakeholders have provided technical assistance to staff in determining how best to address tribal cultural resources in the proposed ordinance. The stakeholders have also identified the need to provide targeted outreach and education and to update the County's archaeological sensitivity maps.

F. This ordinance would update procedures and regulations for the protection of archaeological resources including updating survey requirements and standards, clarifying survey exemption criteria, and updating impact avoidance measures, consistent with CEQA and the new state law amendments to CEQA. This ordinance also establishes a Native American Advisory Panel pursuant to Policy OS-8.5 of the General Plan which, among other duties, would assist the County in public education and outreach and in updating archaeological sensitivity maps.

G. This ordinance is intended to apply prospectively.

H. This ordinance is categorically exempt pursuant to Section 15308 of the CEQA Guidelines, 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. In AB 52, the Legislature explicitly recognized that a substantial adverse change to a tribal cultural resource has a significant effect on the environment. This ordinance protects the environment by putting in place procedures for protection of tribal cultural resources in the County's land use permit application process.

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

21.66.050 Standards for archaeological and tribal cultural 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 and tribal cultural 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 and tribal cultural resources to the greatest extent possible and as permitted by law.

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

C. Report Requirements:

1. A Phase I Inventory of Archaeological Resources, meeting the standards contained in Subsection D of this Section, 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 and if the development requires environmental assessment according to CEQA;

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

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

2. Report Waiver Criteria: The Director of Planning may waive the Phase I Inventory under the following circumstances, provided the waiver is permissible under state and federal law:

- 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 Section 21.66.050.C.2.e, 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;
- e. Excepting activities described in Section 21.66.050.C.2.a, 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.
- f. In all cases, whether the Phase I report is waived or not, all state and federal laws and regulations protecting burial sites and Native American resources shall be followed. In addition, nothing in this section is intended to supersede or in any way alter or lessen the effect of the California Native American tribal notification and consultation process required in subsection F of Section 21.66.050.

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 Archaeological Resources shall include, at a minimum, a records search of available 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 archaeological resources, whether any known archaeological resources have already been recorded on or adjacent to the project area, and whether the probability is low, moderate, or high that archaeological 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 archaeological resources.
 - a. If the Phase I Inventory of Archaeological Resources investigation reveals that the site does not contain archaeological resources, no further review is necessary unless otherwise noted by the archaeologist.

b. If the Phase I Inventory of Archaeological Resources investigation reveals any information indicating that the site is likely to contain archaeological resources, a Phase II Evaluation of Archaeological 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 impact on archaeological resources and those impacts cannot be avoided pursuant to Section E of this Section, in which case a Phase III Plan may be prepared without a Phase II Evaluation; 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, no further archaeological reports are necessary if the conditions recommended by the archaeologist are applied to the project.

2. Phase II Evaluation of Archaeological Resources: A Phase II Evaluation shall be prepared with the goal of determining site boundaries, an evaluation of the site's significance pursuant to Public Resources Code Section 21083.2(g), 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 archaeological materials for testing and/or carbon dating, the archaeologist shall consider the appropriate disposition of materials in consultation with the Director of Planning and the property owner. This consultation does not relieve an owner or owner's representative from following the process mandated by law when human remains are involved.

a. If no unique archaeological resources are found during the Phase II Evaluation, no further reports are 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 the California Native American tribe through the consultation process shall be applied to the project as appropriate.

b. If the Phase II Evaluation of Archaeological Resources determines that unique archaeological 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.

c. This section does not prohibit the Director of Planning from making a determination, based on substantial evidence, that non-unique archaeological resources are significant tribal cultural resources. In making such a determination, the Director of Planning shall consider the importance of the resource to the California Native American Tribe.

3. Phase III Data Recovery Plan: A Phase III Data Recovery Plan shall evaluate a project's impacts on unique archaeological resources and shall set forth the reasons, based on substantial evidence, 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 Phase III Plan shall include treatment of archaeological resources with culturally appropriate dignity taking into account the tribal cultural values and meaning of the resource, including but not limited to the following:

- a. Protecting the cultural character and integrity of the resource;
 - b. Protecting the traditional use of the resource; and
 - c. Protecting the confidentiality of the resource.
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.

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

c. The report(s) 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 Register of Professional Archaeologists who is familiar with California Central Coast archaeology. 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. Impacts to unique archaeological resources and tribal cultural resources shall be avoided to the extent feasible. In all cases where unique archaeological resources or tribal cultural resources are identified, the following avoidance measures shall be considered:

a. Avoidance and preservation of the resources in place, including but not limited to revising the project design or location to protect the resources and their natural context including through use of green spaces, parks or other open space to incorporate the resources with culturally appropriate protection and management criteria;

b. Placing the area within a permanent conservation easement or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places;

c. Limitation of public access; and

d. Other feasible methods of avoidance and protection of the resource.

2. Mitigation based on a Data Recovery Plan (Phase III Plan) is allowed 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 avoidance is not feasible. 3. 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 Director of Planning for review and approval prior to final grading or building inspections.

F. California Native American Tribal Consultation

1. In addition to the archaeological report requirements of this Section, the Director of Planning or his or her designee shall provide formal written notification in accordance with Public Resources Code section 21080.3.1 and the procedures in this Section to the California Native American tribe or tribes that are traditionally and culturally affiliated with the project area if that tribe(s) has requested notification from the County of proposed projects.

2. The Director's notification of the tribe(s) shall occur as early as possible in the project review process but no later than 14 days after determining an application for a project complete. Notification pursuant to this section shall not be required for the following types of projects:

a. Ministerial projects that are not subject to the California Environmental Quality Act (CEQA);

b. Projects that are statutorily exempt from CEQA; and
c. Projects that have filed a notice of preparation of an environmental impact report or a notice of intent to adopt a negative declaration or mitigated negative declaration on or before June 30, 2015.

3. For the purposes of this Section, the County will rely upon the list maintained by the California Native American Heritage Commission to identify the California Native American tribe or tribes that are traditionally and culturally affiliated with the project area.

4. Formal written notification shall include at a minimum the following:

a. A description of the proposed project and its location;
b. The planner's contact information, and
c. A notification to the tribe(s) that they have 30 days from the date of receipt of the notice to request formal consultation.

5. This Section does not prohibit any California Native American tribe or individual from participating in the project review process, apart from the consultation process, on any issue of concern as an interested California Native American tribe, person, citizen, or member of the public.

6. If the California Native American tribe requests consultation within 30 days of the notification, the County shall consult with the designated tribal representative within 30 days of the request for consultation. Consultation, if requested, shall be carried out prior to the release of any document required to be prepared under the California Environmental Quality Act and prior to any final determination by the Appropriate Authority to approve the project.

7. The purpose of the consultation shall be to determine if the project may have a significant effect on a tribal cultural resource and, if the project is determined to have a potentially significant effect on tribal cultural resources, to discuss appropriate avoidance, minimization, and mitigation measures.

8. As part of the consultation, the parties may propose mitigation measures capable of avoiding or substantially lessening potential significant impacts to a tribal cultural resource. The consultation may include discussion concerning the type of environmental review necessary, the significance of tribal cultural resources, the significance of the project's impacts on the tribal cultural resources and, if necessary, project alternatives or appropriate measures for preservation of tribal cultural resources or mitigation of impacts upon those resources.

9. All parties to the consultation shall act in good faith and with appropriate dignity and respect for other parties involved.

10. Any mitigation measure(s) agreed upon in the consultation shall be discussed in the environmental document prepared for the project pursuant to the California Environmental Quality Act and included in the mitigation monitoring and reporting plan if applicable. If no environmental review is required, the measures shall be incorporated in the design of the project or as conditions of approval if feasible.

11. Consultation shall be considered concluded when either of the following occur:

a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.

12. If measures are not identified in the consultation process and the project may cause a substantial adverse change to a tribal cultural resource, mitigation measures that avoid or

minimize adverse impacts shall be considered. Mitigation measures that, if feasible, may be considered include:

- a. Avoidance and preservation of the resources in place, including but not limited to, planning and construction to avoid the resources and protect the cultural and natural context;
- b. Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the preservation and utilization of resources or places.
- c. Treating the resource with culturally appropriate dignity taking into account the tribal cultural values and meaning of the resource, including, but not limited to:
 - i. Protecting the cultural character and integrity of the resource;
 - ii. Protecting the traditional use of the resource; and
 - iii. Protecting the confidentiality of the resource.

G. Regulations applicable to all development: If at any time 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.

H. 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 and the Tribal Consultation Guidelines published by the Governor's Office of Planning and Research.

I. Nothing in this Section shall be interpreted to supersede or in any way alter or lessen the effect of any state or federal laws governing the protection of human remains or the California Environmental Quality Act.

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

Chapter 2.95 – NATIVE AMERICAN ADVISORY PANEL

Sections:

- 2.95.010 – Creation of panel.
- 2.95.020 – Purpose and duties.
- 2.95.030 – Members.
- 2.95.040 – Meetings, rules, and records.

2.95.010 – Creation of panel.

A technical advisory panel in the County of Monterey to be known as the Native American Advisory Panel (hereinafter referred to as Advisory Panel) applicable to the area of the County of Monterey outside the Coastal Zone is hereby created.

2.95.020 – Purpose and Duties.

The purpose of the Advisory Panel is to:

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

B. Assist the Director of Planning in reviewing, updating, and maintaining archaeological sensitivity maps within the unincorporated area outside of the Coastal Zone of Monterey County.

C. Make recommendations to the Director of Planning regarding policies and procedures relating to the protection of archaeological and tribal cultural resources.

D. Perform such other duties as may otherwise be requested by the Director of Planning, the Planning Commission, or the Board of Supervisors.

2.95.030 – Members.

A. The Advisory Panel shall be comprised of up to fifteen members with a demonstrated interest in tribal cultural resource preservation. Members shall be appointed to the Advisory Panel by the Monterey County Planning Commission based on the criteria set forth in this section.

B. Advisory Panel members shall meet at least one of the following minimum qualifications:

1. An individual appointed by a California Native American Tribe to serve on the Advisory Panel;

2. A Most Likely Descendant for Monterey County on the list maintained by the California Native American Heritage Commission; or

3. A professional archaeologist familiar with Central Coast archaeology.

C. Interested individuals shall submit a written statement of interest to the Secretary of the Planning Commission. The written statement of interest shall include the person's qualifications to serve on the Advisory Panel and commitment to serve and attend meetings during the term of office.

D. The term of office for each member shall be two years. Members may serve more than one term.

E. Members shall receive no monetary compensation from the County for serving on the Advisory Panel.

2.95.040 –Meetings, rules, and records.

A. The Director of Planning, or the designee of the Director, shall serve as Secretary to the Advisory Panel and shall be custodian of the Advisory Panel's records. The Secretary shall generally supervise the technical and clerical work of the Advisory Panel.

B. The Advisory Panel shall meet at least twice per calendar year. The Advisory Panel shall annually adopt a regular meeting schedule. A quorum shall consist of a majority of the appointed members.

C. The Advisory Panel meetings shall be noticed, held, and conducted in accordance with the Ralph M. Brown Act.

D. The Advisory Panel shall act only on matters referred to it by the Board of Supervisors, the Planning Commission, or Director of Planning.

E. The Advisory Panel is an advisory body. It shall have no authority to grant permits and no permit enforcement authority.

F. Advisory Panel members shall treat all members of the Advisory Panel, Monterey County staff, and the public in a respectful and courteous manner.

G. Advisory Panel members with any financial interest in a matter before the Advisory Panel must disqualify themselves from participation in any discussion or vote on such a matter.

SECTION 4. 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 5. EFFECTIVE DATE. This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED on this ____ day of _____, 2015, by the following vote:

AYES: Supervisors

NOES:

ABSENT:

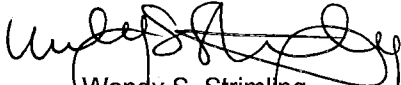
ABSTAIN:

Simon Salinas, 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