



County of Monterey

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

Board Report

File #: ORD 15-004, **Version:** 1

Public Hearing, continued from April 14, 2015, to consider:

- a. Finding the ordinance described below categorically exempt under the California Environmental Quality Act; and
- b. Adopting 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 and tribal cultural resources, and amending Title 2 of the Monterey County Code to add Chapter 2.95 establishing a Native American Advisory Panel consistent with 2010 Monterey County General Plan Goals OS-6 and OS-8.
(REF110065/Archaeological and Tribal Cultural Resources Ordinance)

PROJECT INFORMATION:

Planning File Number: REF110065

Owner: N/A

Project Location: Inland Areas

APN: multiple

Agent: N/A

Plan Area: Inland Areas

Flagged and Staked: N/A

CEQA Action: Categorically Exempt per CEQA Guidelines Section 15308

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Find the ordinance described below categorically exempt under the California Environmental Quality Act; and
- b. Adopt an ordinance (Attachment C) 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 and tribal cultural resources, and amending Title 2 of the Monterey County Code to add Chapter 2.95 establishing a Native American Advisory Panel consistent with 2010 Monterey County General Plan Goals OS-6 and OS-8.

SUMMARY:

The 2010 Monterey County General Plan requires the County to adopt guidelines for cultural resource protection consistent with the goals and policies of the General Plan. A draft ordinance, updating the archaeological protection standards in the non-coastal zoning ordinance, and adopting a new Chapter of the Monterey County Code to create an advisory panel, has been prepared to implement the 2010 General Plan in the inland area only. 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 inland zoning ordinance (Section 21.66.050 of Title 21). This effort is directly related to implementation of the 2010 General Plan. Key updates to the ordinance include:

1. Updates to when an archaeological survey is required;
2. Establishment of new definitions and protocols for three Phases of archaeological reports;
3. Update procedures for the protection of archaeological resources; and
4. Reference to the requirements of applicable state and federal laws including the California Environmental Quality Act.

The second component of the draft ordinance implements the new requirements of AB 52. AB 52 amends 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. AB 52 also amends CEQA to require evaluation of project impacts on “tribal cultural resources”. The term “tribal cultural resources” is defined to include sites that are important to a California Native American Tribe. In order to assess potential impacts to tribal cultural resources pursuant to AB52 and CEQA, the County will be required to provide notification of a “project” (as defined in CEQA) to the California Native American Tribe with cultural ties to the geographic area affected by the project before preparing any environmental documentation for the project. California Native American Tribe is defined in AB52 as a tribe that is on the list maintained by the Native American Heritage Commission (NAHC), for the purposes of consultation. The requirements of AB52 have been incorporated in the attached ordinance.

Altogether, the zoning ordinance will require an applicant for a project to submit a Phase I Archaeological Survey report, prepared by a professional archaeologist, unless exempted from doing so under the ordinance. The need for additional archaeological reports (Phase II and/or III) will depend on the results of the Phase I report. These reports generally focus on the issue of whether or not a project will impact “unique archaeological resources” as defined in CEQA. Separately, under AB 52, the County is tasked with notifying the California Native American Tribe of the County’s consideration of a project, and in doing so, offer to consult with a representative from the tribe. If the tribe requests consultation, the County has 30 days from such request to consult with the tribal representative. The consultation will generally include a discussion of the resources, the project’s impacts on resources, and potential avoidance or mitigation measures. The AB52 consultation is similar to Senate Bill 18 (SB18) consultation requirements, but SB18 applies to amendments to General Plans and specific plans whereas AB52 applies to individual projects. SB18 consultation requirements cannot be changed by local ordinance and will not change as a result of this ordinance. The ordinance also does not change state law requirements regarding appointment and duties of a Most Likely Descendant when human remains are discovered.

In addition to updating the archaeological and tribal cultural resource standards within the zoning ordinance, the attached ordinance also adds a new chapter to the Monterey County Code (Chapter 2.95) to establish a Native American Advisory Panel, pursuant to General Plan Policies OS-8.5 and OS-8.7. Chapter 2.95 will create a technical advisory panel whose duties will include providing outreach and education regarding tribal cultural resources, providing technical advice to staff in updating the archaeological sensitivity maps, and providing input in the drafting of new ordinances as applicable. This advisory panel will include a wide representation of Native American descendants, members of California Native American tribes, and local archaeologists, as directed in Policies OS-8.5 and OS-8.7 of the General Plan. This advisory panel will not be involved in review of specific project applications since that function is intended to be provided as part of the AB52 notification/consultation process. Because the Advisory Panel is being established pursuant to the 2010 Monterey County General Plan which applies only outside of the coastal zone, the Native American Advisory

Panel's work will apply only in the non-coastal area. The Board could in the future, by ordinance, expand the Panel's jurisdiction to include the coastal zone.

This ordinance has been reviewed and edited in a number of public hearings and stakeholder meetings including two workshops at the Planning Commission and several stakeholder meetings with local Native American representatives and archaeologists. On February 25, 2015, the Planning Commission voted 8-2 to recommend approval of the ordinance to the Board of Supervisors. The two "no" votes were due to a desire to change the wording in the archaeological report waiver exemption to allow exemptions for postholes and to be more inclusive in the required Native American tribe notification and consultation process. More explanation of concerns surrounding the ordinance is provided in the discussion attached as Attachment A to this report. Some minor clarifications have been made to the ordinance since the Planning Commission recommended adoption. These edits clarify language within the ordinance and do not change the effect of the ordinance.

On April 14, 2015, the Board of Supervisors introduced, waived reading, and held a public hearing to consider the ordinance. Due to late distribution of the staff report, staff requested that the Board continue the public hearing to April 21 to provide an additional opportunity for public comment on the ordinance. Accordingly, the Board continued the public hearing on the ordinance to April 21, 2015 at 1:30 p.m., at which time the Board complete the public hearing and take final action on the ordinance.

Staff also recommends that the Board find that the ordinance is categorically exempt pursuant to Section 15308 of the California Environmental Quality Act (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. This ordinance puts in place procedures to enhance protection of archaeological and tribal cultural resources. All future development projects will continue to be evaluated pursuant to the requirements of CEQA irrespective of this ordinance.

DISCUSSION:

Detailed discussion is provided in **Attachment A**.

OTHER AGENCY INVOLVEMENT:

This ordinance has been reviewed and approved as to form by County Counsel.

FINANCING:

Funding for staff time associated with this project is included in the FY14-15 Adopted Budget for RMA-Planning.

Prepared by: Craig W. Spencer, Associate Planner ext. 5233

Approved by: Mike Novo, Director, RMA-Planning, ext. 5192

Carl P. Holm, AICP, Acting Director Resource Management Agency

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

cc: Front Counter Copy; Jacqueline R. Onciano, RMA Services Manager; 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 Morley; John W. Burch; Fredrick Segobia; Valentin Lopez; Irene Zwierlein; Tony Cerda; Ann Marie Sayers; Louise Miranda-Ramirez; Tom "Little Bear" Nason; Donna Haro; Planning File REF110065

The following attachments are on file with the Clerk of the Board: Attachment A-Discussion; Attachment B-Draft Ordinance (redline); Attachment C-Draft Ordinance (clean version); Attachment D-Planning Commission Resolution; Attachment E-Assembly Bill 52