

Draft Findings of the Monterey County LCP Periodic Review

CHAPTER 8: Archaeological, Cultural & Paleontological Resources

Table of Contents

CHAPTER 8: Archaeological, Cultural & Paleontological Resources.....	413
A. Overview.....	413
B. Coastal Act Policy Framework.....	414
C. Monterey County Certified Local Coastal Program.....	414
1. Resource Background.....	414
2. Local Coastal Program Provisions.....	415
C. Local Coastal Program Implementation.....	418
D. Analysis of Coastal Act Conformance	420

This page intentionally left blank.

CHAPTER 8: Archaeological, Cultural & Paleontological Resources

A. Overview

Issue scoping revealed a general concern to ensure that all archaeological and historic resources were appropriately protected. At the time of Spanish contact Monterey County was occupied by three distinct aboriginal tribal groups which include the Esselen, Ohlone/Coastanoans and Salinans. As a result, each of Monterey County's four coastal planning areas contains rich and diverse archaeological resources that remain as cultural evidence of these Native American groups.

The LCP's key archaeological policy requires that such resources be maintained and protected for their scientific and cultural heritage values. To accomplish this, the LCP contains additional policies that require early evaluation of sites during conceptual design phase, a determination as to whether or not a previous report has been conducted, and if no such a survey has been conducted, requires one be conducted, that includes recommendations for mitigation measures consistent with protection of the resource(s). The LCP further indicates that new land uses should be considered compatible with archaeological resource protection requirements only where they incorporate all site planning and design necessary to avoid or mitigate impacts to archaeological resources, and states that no development proposals in archaeologically sensitive areas shall be categorically exempt from environmental review. While consultation with Native Americans is not explicit in current LCP policy language, LCP policies do contain reference to compliance with Native American Heritage Commission (NAHC) guidelines, which include directions for selecting on-site cultural resource monitors and for coordinating with the NAHC in the event burial remains are discovered. Coastal Act policy 30244 is embodied in County provisions requiring archaeological surveys and avoidance or mitigation of any adverse impacts. However, all LCP segments, with the exception of Del Monte Forest area, also allow waivers of the archaeological survey requirement when the development does not involve land clearing or land disturbance.

Since LCP certification, Monterey County has had a good record with regard to implementing its local coastal program in a manner consistent with the Coastal Act archaeology policy. The County has processed permits involving archaeological resources according to the LCP standards, has required archaeology reports, as mandated by the LCP for development in high archaeological sensitivity zones, and has made reasonable decisions for requiring or waiving archaeological surveys, and follow-up on-site monitoring. While such waivers seemed appropriate once more of the details were known, consistency evaluation of such determinations would be made easier if findings clearly stated when archaeological survey reports were waived and for what reason. Similarly, evaluation would be made easier if all permits for development in high sensitive areas had an archaeology finding, even if it only briefly stated that given the nature of the development, there was no likelihood of resource presence and hence no need permit conditions requiring surveys or mitigation measures.

In addition, since certification of the LCP, the Coastal Commission has focused increased attention on the protection of archaeological resources that include significant Native American sacred sites and the importance of consultation with local Native American representatives. Under current Coastal Act provisions, the Monterey County Local Coastal Program provides that all available measures be explored to avoid development on significant archaeological sites and requires that mitigation measures be developed in accordance with guidelines of the State Office of Historic Preservation and the Native American heritage Commission. However, the County's condition language as applied to several permits, as noted above, does not explicitly reference either required onsite monitoring or consultation with qualified Native American representatives regarding identification of sites or in review of the results of archaeological surveys. In addition, the LCP contains outdated references to Monterey County CEQA guidelines. Thus, there is a need to update the LCP. Recommendations are also made to avoid disturbing archaeological sites where possible, to limit access to archaeological sites, to prepare mitigation plans when impacts to impacted archaeological sites are unavoidable, to require archaeological reports in review of subdivision applications, and to require the County to adopt archaeological findings for all coastal permits issued in high archaeological sensitivity areas.

In addition to the following analysis that provides the basis for these recommendations, see also Issue SR-1: Historic Resource Protection in Appendix A.

B. Coastal Act Policy Framework

Coastal Act Section 30244 states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

Laws for the protection of archaeological resources on state and federal lands in California include, but are not limited to: 1) the *Archaeological Resource Protection Act* (ARPA); 2) *Public Resources Code* (PRC) Section 5097.5; 3) *California Code of Regulations* (CCR) Section 1427; and 4) *Penal Code* (PC) Section 622.5.¹

C. Monterey County Certified Local Coastal Program

1. Resource Background

Each of Monterey County's four coastal planning areas - the North Coast, Del Monte Forest, Carmel, and Big Sur Coast planning areas- contain rich and diverse archaeological resources. At the time of Spanish contact, three distinct aboriginal tribal groups – the Esselen, Ohlone/Coastanoans and Salinans - occupied Monterey County. Each of these groups subsisted on natural foods provided

¹ Department of Parks and Recreation Office of Historic Preservation, *Comprehensive Statewide Historic Preservation Plan 2000-2005*, May 2001.

by the region, and coastal areas of Monterey County contain some of the densest concentrations of shellfish gathering activities in Central California. Several known archaeological sites also have special religious value to local Native Americans. Surveys and reports regarding known archaeological sites in Monterey County are entered in the California Historical Resources File System at the Regional Historical Resources Information Center, located at Sonoma State University in Rohnert Park, California. The regional centers have agreements with the Office of Historic Preservation to maintain these files. Monterey County also maintains resource maps identifying areas of high archaeological sensitivity throughout the County.

2. Local Coastal Program Provisions

Each Monterey County coastal land use plan provides essentially the same key archaeological policy that reads:

...archaeological resources, including those areas considered to be archaeologically sensitive but not yet surveyed and mapped, shall be maintained and protected for their scientific and cultural heritage values. New land uses, both public and private, should be considered compatible with this objective only where they incorporate all site planning and design necessary to avoid or mitigate impacts to archaeological resources.

Each area's Land Use Plan (LUP) policies were developed at different times and are mostly, though not entirely, uniform. The LUPs also address distinct characteristics of their individual planning areas.

All coastal LUPs have policies that require early evaluation of sites during the conceptual design phase of planning to determine whether the site is located in an area of archaeological sensitivity, whether a prior archaeological survey has already been conducted for the site, and, if not, to require such a survey, if needed. The surveys describe the resource, if any, and recommend mitigation measures consistent with protection of the resource. Where resources are identified, the project is to be designed to avoid impacts to the site. The *Del Monte Forest Land Use Plan* says that where the site has religious significance, emphasis should be placed on preserving the entire site. It also notes that, where the site is of known regional significance, consideration shall be given to nominating the site to the National Register and preserving it. The LUPs require that when other site planning constraints do not permit avoidance of construction on archaeological or other types of cultural sites, mitigation shall be designed in accord with guidelines of the State Office of Historic Preservation (SOHP) and the State of California Native American Heritage Commission (NAHC). The LUPs also have a policy that states that no development proposals in archaeologically sensitive areas shall be categorically exempt from environmental review. While consultation with Native Americans is not explicit in the current policy language, the policies contain reference to compliance with NAHC guidelines. These guidelines include directions for selecting on-site cultural resource monitors and for coordinating with the NAHC in the event burial remains are discovered.²

² California Native American Heritage Commission, *Guidelines for Monitors/Consultants Native American Cultural, Religious and Burial Sites*, at <http://ceres.ca.gov/nahc/guidelines4mon.html>.

The Monterey County Local Coastal Program Archaeological Resources Development Standards in *County Code* Sections 20.144.110 for North Monterey County, 20.147.080 for Del Monte Forest; 20.146.090 for Carmel Area; and 20.145.120 for Big Sur Coast are also, in most significant respects, in accord. There are some differences in wording, and the development standards also address distinct characteristics found in each of the individual coastal planning areas.

- With regards to archaeological surveys, implementation standards require the following:
- *County Code* Section 20.147.080 B.1 for the Del Monte Forest planning area requires archaeological surveys for all development.
- *County Code* Section 20.146.090 B.1 for the Carmel planning area requires archaeological surveys for the following: 1) development located in the High Archaeological Sensitivity Zone; 2) development located in Low or Moderate Sensitivity Zones when an environmental assessment is required by CEQA Guidelines; 3) all projects of 2.5 acres or larger; 4) within 750 feet of known resources; 5) in areas of suspected resources identified through planner on-site investigation or through other available information; and 6) in all new subdivisions.
- Both *County Code* Section 20.144.110 B.1 for the North Monterey County planning area and *County Code* Section 20.145.120 for the Big Sur Coast planning area are consistent with the Carmel Area regulation except they do not require surveys in all projects of 2.5 acres or larger nor in all new subdivisions.

All LCP segments have requirements that the archaeological survey: 1) be completed and approved by the County prior to considering the permit application complete; 2) be prepared by a qualified archaeologist on the county's list of consultants or a member of the Society of Professional Archaeologists and in accordance with the standards of the Society of Professional Archaeologists, 3) at a minimum include a field survey and a document survey of information at the Northwest Regional Information Center of the California Archaeological Inventory; and 4) describe the site's sensitivity and any identified archaeological resources, appropriate levels of development on site and recommended mitigation measures.

The LCP also allows the Director of Planning to waive the requirement for an archaeological survey if a previous survey for the same area exists and was prepared by a qualified archaeologist using current survey standards. All LCP segments with the exception of Del Monte Forest area allow for waivers when the development does not involve land clearing or land disturbance.

Throughout the coastal zone, all development proposed on parcels with known archaeological resources as identified in the survey shall be subject to environmental assessment under Monterey County CEQA guidelines.

Implementation regulations for North Monterey County Section 20.144.110 D.1 Development Standards, Del Monte Forest Section 20.147.080 D.1 General Development Standards; Carmel Area Section 20.146.090 D.1 General Development Standards, and Big Sur Coast Section 20.145.120 D.1.

Development Standards are presumably the guiding development standard for each planning area, though regulations vary significantly. The following chart summarizes the regulations by segment:

Table AR-8.1 Summary of Monterey County LCP Archaeological Requirements

Planning Area / County Code Section	Requirements to protect archaeological resources	If of known religious significance	If of regional significance
<i>North Monterey Co.</i> 20.144.110 D.1	Development proposed on parcel with archaeologic site shall be designed and located to avoid or reduce impacts by alternate siting, reduced size, and other techniques such as limiting public access and requiring easements.	-	-
<i>Del Monte Forest</i> 20.147.080 D.1.	Development permitted on parcels with archaeological or other sensitive cultural resources must be designed to avoid impacts to those sites.	Emphasis on preserving the entire site.	Nominate to National register
<i>Carmel Area</i> 20.146.090 D.1	To avoid development on sensitive prehistoric or archaeological sites explore all available measures including purchase of easement, dedication to county, purchase of development rights, tax relief.	-	-
<i>Big Sur Coast</i> 20.145.120 D.1	Development proposed on parcels with an archaeological site shall be designed and located to avoid development on or impacts to the site Alternative siting or location, reduced size, other techniques to avoid or reduce impact.	-	-

Other criteria applicable to all four coastal planning areas require that an applicant request a rezoning to add an “HR” Historic Resources Zoning District overlay to the parcel and dedicate an archaeological easement to protect the resource.

With the exception of the Del Monte Forest Implementation Plan, all LCP segments require that mitigation measures must be undertaken and completed prior to issuance of the building and grading permit; or concurrently, if appropriate. Except for the Carmel Area, mitigation results must be compiled in a final report and submitted to the County prior to issuance of building and grading permits. The North Monterey County and the Big Sur Implementation Plans require that where construction impacts to an identified archaeological or paleontological site cannot be avoided, a mitigation plan be prepared by a qualified archaeologist at the applicant’s expense, submitted to and approved by the County prior to the application being considered complete. The mitigation measures shall include recommendations for preservation measures in accordance with the State Office of Historic Preservation guidelines and the California Native American Heritage Commission. The Carmel planning area does not require submittal of the mitigation plan to the County prior to the application being considered complete nor that it be prepared by a qualified archaeologist.

Provisions in County Code Section 20.147.080 D.3 for Del Monte Forest state that, when construction on archeological or other types of cultural sites cannot be avoided, adequate preservation measures be required consistent with Society of Professional Archaeologists guidelines

and designed by a qualified archaeologist. This regulation lacks the specificity of the corresponding standards in the other segments.

Specific Development Standards of the Del Monte Forest and the Carmel Area LCP segments also prohibit activities that could destroy or damage archaeological sites and provide that public access be limited to designated easements. These provisions do not appear in the Big Sur or North Monterey County LCP segments.

C. Local Coastal Program Implementation

Monterey County has issued many permits raising archaeological resource protection concerns. Review and analysis of local coastal development permits through the post-certification monitoring process and the Periodic Review, as well as evaluation of the certified LCP and public comments during Issue Scoping revealed that County actions regarding archaeology were not of major concern. Therefore, this analysis concentrates on general review procedures coastal zone wide. Some inconsistencies were discovered among provisions in different segments. To clarify various provisions and provide a comprehensive set of updated standards, recommendations are made for some ordinance revisions.

To review the effectiveness of Monterey County's implementation of its archaeological policies, 30 local coastal development permits were randomly chosen from within high archaeologically sensitive areas as mapped by Monterey County. All four coastal planning areas of the County were represented in this permit review. The permits, which span the period from 1988 through 2002, were reviewed for consistency with the policies and development standards of the Local Coastal Program.

Of the thirty coastal development permit applications reviewed, Monterey County required archaeological surveys for nineteen (63%). Fourteen (or 74%) of the archaeological surveys required found no evidence of cultural, archaeological, historical or paleontological resources. Five (26%) of the nineteen archaeological survey reports required on-site archaeological monitoring during any earth altering activities to assure no resources would be disturbed. One permit application was denied for reasons other than archaeology.

The County applied a standard discovery condition to the other 13 permits as follows:

If, during the course of construction, cultural, archaeological, historical or paleontological resources are uncovered at the site (surface or subsurface resources) work shall be halted immediately within 50 meters (165 feet) of the find until it can be evaluated by a qualified professional archaeologist. The Monterey County Planning and Building Inspection Department and a qualified archaeologist (i.e., an archaeologist registered with the Society of Professional Archaeologists) shall be immediately contacted by the responsible individual on site. When contacted the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for the discovery.

One survey located a midden on the project site that had been mapped and recorded with the Regional Information Center. Another survey found small traces of archaeological resources. One survey reported previously located resources that were now buried by a road. The two other surveys had found no resources on site but because of their siting in an area of high archaeological sensitivity, recommended on-site monitoring be required during construction.

Eleven (37%) of the Monterey County coastal development permits did not report a requirement for an archaeology survey. One of these was a 1993 Carmel Highlands permit for a tennis court, tree removal, and grading.³ Though this permit had no survey, finding or condition on archaeology, a subsequent 1994 permit⁴ for development on the same site reported that a survey had been done in January 1993 and no resources were located. The 1994 permit did include a discovery condition.

Another permit⁵ had findings indicating that the archaeology report requirement was waived due to existing site disturbance. Four others had no such findings, but from the project descriptions (e.g., 2nd story addition with no impacts to existing terrain;⁶ habitat restoration of previously graded area;⁷ existing disturbed site where previous dwelling was destroyed;⁸ conversion of deck to habitable area, no grading proposed⁹) it appears that the survey requirement was waived in accordance with the cited County Code provisions. In two of these cases, a discovery condition was imposed.

For two coastal permits the status of the review of archaeological resources is not clear. One permit¹⁰ was for an after-the-fact guesthouse. It included a finding that the project was consistent with the LCP resource map on archaeology. Since the resource sensitivity map is used to determine when surveys are required, this finding is unclear. The other permit¹¹ was for development of previously subdivided lots that had a long history. Although the findings for this permit did not address archaeology, it is likely that the matter was covered during an earlier EIR for the site.

Three permits had no archaeological findings or conditions: one for the installation of a senior citizen unit in a mobile home park¹²; one for an emergency permit for a replacement well¹³; and one for a 60-square foot addition to an employee housing complex.¹⁴

³ County coastal permit ZA 93006 (3-MCO-93-054).

⁴ County coastal permit PC 93185 (3-MCO-94-029).

⁵ County coastal permit PLN 980134 (3-MCO-98-124).

⁶ County coastal permit PLN 990155 (3-MCO-99-156).

⁷ County coastal permit PC 93101 (3-MCO-95-078).

⁸ County coastal permit PLN 990042 (3-MCO-99-165).

⁹ County coastal permit PC 94171 (3-MCO-94-116).

¹⁰ County coastal permit ZA 07577 (3-MCO-92-029).

¹¹ County coastal permits PLN 990055-68 (3-MCO-99-102).

¹² County coastal permit 965382 (3-MCO-98-04).

¹³ County coastal permit 980583 (3-MCO-98-179).

¹⁴ County coastal permit PLN 990216 (3-MCO-01-476).

Copies of all archaeology surveys for Monterey County are forwarded to the Northwest Regional Historic Resources Information Center at Sonoma State University where they are integrated into the California Historical Resources File System. Under agreement with the Office of Historic Preservation the regional centers are repositories and distributors of archaeological information (available on a justifiable need-to-know basis). The Information Centers do not evaluate the adequacy of the surveys.

The Local Coastal Program implementation standards require that the archaeology surveys be completed and submitted to the Monterey County Planning Director prior to issuance of the coastal development permit. Any mitigation measures must be completed and final archaeology reports submitted to the County before, or concurrently with, the grading. It is the responsibility of the archaeologist to fulfill the standards of the State Office of Historic Preservation (SOHP) and the responsibility of Monterey County to review the archaeologist's surveys and implementation of any mitigation measures. Monterey County has a staff Management Specialist who is an archaeologist, who reviews all surveys and archaeological activities. If an issue cannot be resolved, the County can require third party review.

Commission staff contacted one of the most widely used archaeological consulting firms in the County and Monterey County staff to solicit their observations on how successful the County's implementation of the SOHP standards has been in the coastal zone of Monterey County. The archaeological consultant reported that in almost all cases the process worked.¹⁵ The consultant indicated that the Monterey County staff was knowledgeable, permit applicants generally cooperated, and the archaeological resources were protected. The County Planning staff reported no significant problems.¹⁶ Commission staff also consulted an adopted member of the Esselen Tribe who has represented Native American interests (and who is currently a Monterey County Planning Commissioner).¹⁷ He reports that the implementation of the County's archaeological standards appears to work well and in cases where archaeological issues have arisen, they have been effectively resolved.

D. Analysis of Coastal Act Conformance

Monterey County appears to have a good record with regard to implementing its local coastal program in a manner consistent with the Coastal Act archaeology policy. The Coastal Act policy 30244 is embodied in County provisions requiring archaeology surveys and avoidance or mitigation of any adverse impacts.

Review of coastal development permits revealed that they were processed according to the LCP standards. In high archaeological sensitivity zones, archaeology reports were generally required as mandated by the LCP. It appears that reasonable decisions were made as to when archaeological surveys were waived and when follow-up on-site monitoring was required. However, with regard to

¹⁵ Personal communication, Gary Breschini, Archaeology Consulting, Inc., May 16, 2003.

¹⁶ Personal communication, Luis Osorio, Senior Planner, and Michael Rhoades, Associate Planner, May, 2003.

¹⁷ Personal communication, John Brennan, May 28, 2003.

the waivers, evaluation would be made easier if findings clearly stated when reports were waived and for what reason. Similarly, evaluation would be made easier if all permits for development in high sensitive areas had an archaeology finding, even if it only briefly stated that given the nature of the development, there was no likelihood of resource presence and hence no need for any surveys or permit conditions (see Recommendation AR-8).

Although this brief review did not uncover problems with archaeological resource protection in conformance with the Coastal Act, the LCP policies do not reflect the most up-to-date policy framework for protecting resources. In addition, the policies and implementing standards vary slightly throughout the four area plans. When compared with each other, some inconsistencies in LCP provisions have been noted, leading to the chance that full protection may not be achieved. There is thus the opportunity to revise LCP policies in a consistent and comprehensive manner, as detailed in Recommendations AR-2 through AR-7. It would also be helpful that procedures and resulting reports be periodically reviewed by professionals to ensure that the LCP policies continue to be implemented in a manner consistent with the Coastal Act (see Recommendations AR-9 and AR-10).

In addition, since certification of the LCP the Commission has focused increased attention on the protection of archaeological resources that include significant Native American sacred sites and the importance of consultation with local Native American representatives.¹⁸ Under current Coastal Act provisions, the Monterey County Local Coastal Program provides that all available measures be explored to avoid development on significant archaeological sites and requires that mitigation measures be developed in accordance with guidelines of the SOHP and the NAHC. However, the County's condition language as applied to several permits, as noted above, does not explicitly reference either required onsite monitoring or consultation with qualified Native American representatives regarding identification of sites or in review of the results of archaeological surveys. Thus, there is a need to update the LCP, as detailed in Recommendations AR-1 through AR-6 for Native American consultation.

¹⁸ For example, see *City of Malibu Local Coastal Program* and Coastal Commission coastal permit 5-97-367 to Hellman Properties.

This page intentionally left blank.