

## INTERPRETATION REQUEST

### **Requirements for a Coastal Development Permit When Development Is Located Within 750 Feet of a Known Archaeological Resource (Update to the November 5, 2008 Interpretation)**

#### **Code Sections:**

- Land Use Plan Policies regarding Archaeological Resources:
  - North County LUP – Section 2.9
  - Big Sur LUP – Section 3.11
  - Carmel Area LUP – Section 2.8
  - Del Monte Forest LUP – Chapter 2 Policies 57-63
- Coastal Implementation Plan Part 1 (Title 20 – Coastal Zoning Ordinance):
  - 20.70.025 (Coastal Development Permits)
    - 20.06.310 (Definition of Development)
    - 20.76.010.A (Coastal Administrative Permits)
  - 20.70.115 (Determination of Permit Requirement)
  - 20.70.120 (Exemptions)
  - 20.\_\_. 030 (Nonexempt Development) – Chapters 20.10 through 20.17 and 20.30 through 20.40
  - 20.\_\_. 040 (Nonexempt Development) – Chapters 20.18 through 20.28
- Coastal Implementation Plan Part 2 (Regulations for development in North County)
  - 20.144.110.A.1
- Coastal Implementation Plan Part 3 (Regulations for development in Big Sur)
  - 20.145.120.A.1
- Coastal Implementation Plan Part 4 (Regulations for development in the Carmel Area)
  - 20.146.090.A.1
- Coastal Implementation Plan Part 5 (Regulations for development in the Del Monte Forest)
  - 20.147.080.A.1
- California Coastal Act Section 30244

**Date:** Revised 5/24/2012

**Requested by:** Craig W. Spencer and Laura Lawrence

**Subject:** Update to the Interpretation regarding development within 750 feet of known archaeological resources

#### **What is the Question?**

- 1) If proposed development is within 750 feet of a known archaeological resource, is a Coastal Development Permit (CST) required?
- 2) If there is a positive archaeological report for the project site, is there any way to avoid a CST?
- 3) When the project meets exemption criteria in Section 20.70.120, is a CST still required?
- 4) If I receive a negative archaeological report, is the project exempt from a CST?
- 5) If improvements have no ground disturbance, but are located within 750 feet of a known resource, is a CST required?

6) Is a CST required for tree removal within 750 feet of a known resource?

**Short Answer:**

- 1) Not necessarily. Projects located within 750 feet of known archaeological resources are defined as development, thereby necessitating a permit; however, projects within 750 feet of known resources are not included on the list of "Nonexempt Development" in the zoning district regulations. Therefore development may be exempt pursuant to 20.70.120 provided that the archeological survey for the subject site is negative. Because the list of "Nonexempt Development" also includes "Development which will cause a Significant Environmental Impact" and CEQA tells us that "A project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment." We may need to determine with reasonable certainty (i.e. archaeological testing in most cases) that there will be no impacts to unique archaeological resources (see CEQA guidelines Section 15064.5).
- 2) Possibly. Projects that involve development with positive archaeological reports are listed as "Nonexempt Development" and cannot be exempted pursuant to Section 20.70.120. However, in keeping with the 750 feet criteria, a large parcel containing a known resource may be able to be developed at a distance of more than 750 feet from the known site. If the resource is more the 750 feet from the proposed development at a site and an archaeologist report identifies that no resources exist in the development area, exemptions in Section 20.70.120 still apply.
- 3) No. However, see answers 1 and 4.
- 4) Possibly. If a project within 750 feet of a known resource receives a negative archaeological report, it can still be exempt pursuant to Section 20.70.120. We must review the text of the report to determine the applicability of an exemption, particularly when the results say "See Text." Exemptions do not apply within recorded sites (including but not limited to CAMNT – 16 or 17) even if a specific parcel within that site has a negative report (although this should not happen). In the case where no resources are identified but it cannot be determined with reasonable certainty that unique resources are not present, a Coastal Administrative Permit (CAP) can be processed pursuant to Chapter 20.76 provided no other resource issues or controversy exist.
- 5) No. However, pursuant to Section 20.70.115, documentation and concurrence from the Director of Planning or a Planning Services Manager is required.
- 6) Possibly. If the tree removal involves removal of the root system or removal/grinding of the stump, an archaeological report shall be prepared prior to removal of the tree to assess impacts to resources. If resources will be affected, a CST shall be required.

**Discussion:**

*Land Use Plans*

The four different Land Use Plans (LUPs) contain similar language within the Archaeological sections. The Key Policy or Policy Guidance Statement of each of the LUPs is generally stated as follows:

*"The intent of this section is to insure that those areas considered to be archaeologically sensitive, including those not yet survey 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 features necessary to minimize or avoid impacts to archaeological resources."*

Policies are provided in the LUP to implement this goal including the following:

*“The timely identification and evaluation of archaeological, historical, and paleontological resources is encouraged, in order that these resources be given full consideration during the conceptual design phase of land use planning for project development.”*

*“Whenever development is proposed, it shall be determined whether the affected property has received an archaeological survey. If not, such a survey shall be conducted to determine if archaeological resources exist...”*

The two policies above deal with the identification of resources through survey requirements. Policies then continue to move into the implementation of protective measures if resources are present.

*“No development proposals with the potential to damage an archaeological site or an archaeologically sensitive area shall be categorically exempt from environmental review.”*

*“Where significant archaeological resources are identified, all available measures including open space easements, dedication of scenic easements, and purchase of development rights shall be considered to avoid development on significant prehistoric or historic archaeological sites.”*

*“When developments are permitted on parcels where archaeological or other cultural resource sites are located, project design shall be required which avoids impacts to such sites...”*

*“When sufficient planning flexibility does not permit avoiding construction on archaeological or other types of cultural sites, adequate preservation measures shall be required. Preservation measures shall be designed by a qualified archaeologist in accordance with current accepted guidelines.”*

This series of policies establishes survey requirements and the basic principal of making every effort to protect and preserve archaeological sites first and if preservation is not possible then design measures must be developed to protect the resources to the extent feasible. Finally, mitigation may be applied if the resource cannot be avoided or the project cannot be designed to avoid impacts. This review and discussion should be disclosed in an environmental document consistent with LCP policy requirements.

### *Coastal Implementation Plans*

Within the Coastal Implementation Plans (CIPs), the Coastal Development Permit requirement is established for projects within 750 feet of known archaeological resources. Additional detailed information on survey requirements, environmental assessment requirements, and general development standards are also provided consistent with the LCP goals and policies. Permits and Surveys are required within 750 feet of known resources because this area is established as a buffer in which there is a higher potential for sensitive archaeological resources. While these

areas have a higher potential to produce resources, they are not always “positive” or “sensitive” sites requiring permitting and environmental review.

This is consistent with the Zoning Ordinance, Title 20 (Coastal Implementation Plan Part 1), that lists projects within 750 feet of known archaeological resources in the definition of “development.” Pursuant to Section 20.70.025 all “development” requires a Coastal Development Permit unless exempted by Section 20.70.120. There are a number of circumstances under which these exemptions do not apply including specified locations and projects involving “Nonexempt Development.” Development with positive archaeological reports and projects that will cause a significant environmental impact are considered “Nonexempt Development” and therefore cannot be exempted pursuant to Section 20.70.120. Nonexempt Development does not include projects within 750 feet of known archaeological resources, but additional information may be necessary to determine if the project may have a significant environmental impact through adverse effects to archaeological resources as described in Section 15064.5 of CEQA.

Generally, a negative report is not absolutely definitive but it does provide some evidence that the project will not cause a substantial adverse environmental impact consistent with CEQA guidelines Section 15064.5. If it can be reasonably demonstrated that the project will not involve impacts to archaeological resources, Coastal Development Permit exemptions contained in Section 20.70.120 can apply.

**Facts of the situation:**

It is important to protect archaeological resources for the cultural and religious value to Native Americans and their value in understanding history. Our area is rich in archaeological resources. Many areas along the coast and near streams and rivers were used as village sites and hunting and gathering grounds for the Ohlone/Costanoan Indians and for the Esselen Indians in areas south of Point Sur. The name Costanoan is derived from the existence along the coast but Ohlone is more commonly used. The Ohlone Native Americans are believed to have practiced shamanism with a probable belief in bear shamans. They lived off the land and buried their dead near their village sites. Their artifacts and their buried ancestors are sacred to them and are protected under the Federal Native American Graves Protection and Repatriation Act. Native Americans hold unique rights as sovereign bodies, leading to their relations to be controlled by their own laws and customs. The relationship between the people and their dead is an internal relationship, to be understood as under the sovereign jurisdiction of the tribe. There are numerous other State and Federal Laws protecting cultural resources. A list of these laws can be found on the Native American Heritage Commission website (see the link below).

<http://www.nahc.ca.gov/slc.html>

Our Land Use Plans and implementing plans establish permitting authority and development standards to provide an appropriate level of review of land use projects and to establish criteria designed to protect archaeological resources. To this end, development within 750 feet of known resources requires a Coastal Development Permit because of the higher potential for resources in these locations. The requirement for a Coastal Development Permit is intended to provide discretionary authority for development projects in areas where there are concerns which, in-turn, requires CEQA review of the projects impacts.

A discretionary permit such as a Coastal Development Permit may not always be required because Section 20.70.120 renders certain minor developments ministerial. There are exceptions to the exemptions such as development with a positive archaeological report. Development within 750 feet of known archaeological resources is not one of these exceptions. We need to pay particular attention to the sensitivity of sites within 750 feet of known archaeological resources; however, minor development projects on lots without evidence of resources need not be unduly constrained by permitting requirements. Development activities such as small fence posts, plumbing repairs, and flat work on previously developed sites are not likely to cause a significant adverse impact to archaeological resources particularly when these activities are accomplished through hand excavation with a shovel as opposed to excavation with heavy machinery.

**Interpretation Prepared By:** Craig Spencer and Laura Lawrence

**Interpretation/Opinion Confirmed by Managers:**  \_\_\_\_\_  
**Mike Novo, Director**