



-MENDOCINO COUNTY COASTAL ELEMENT-



APPENDIX 7

CHAPTER 22.12 – NATIVE AMERICAN ARCHEOLOGICAL SITES.

DIVISION I GENERAL

Sec. 22.12.010 Purpose and Findings.

The Board of Supervisors of the County of Mendocino hereby finds and declares that there exist in the County of Mendocino areas of great importance for the study of the past of the native Indian of California, hereinafter referred to as 'Native American,' said areas hereinafter referred to as 'Native American archeological sites,' and that such sites are unique, irreplaceable phenomena of significance in the history of the County and in the understanding of the cultural heritage of our land and of all humankind; that the character of such sites has attracted and can attract visitors and scientific interest to the County, thereby augmenting the economy and general welfare of the County and its residents; that such sites constitute a precious archeological, paleontological, paleoecological, and historical heritage which is fast disappearing as a result of public and private land development and other undertakings of land modification, and as a result of excessive and uncontrolled excavations for Native American artifacts; that the total efforts of government to preserve and salvage these sites and resources is fragmented and uncoordinated; that the preservation and enhancement of these sites is essential to the economic and cultural life of the County; and that, in order to promote the public welfare, it is necessary to provide regulations for the protection, enhancement, and perpetuation of such sites. (Ord. No. 1681, adopted 1976.)

Sec. 22.12.020 Definitions.

For purposes of this chapter, the following definitions shall apply:

(A) Native American Archeological Site. A 'Native American archeological site' shall mean any mound, cave, midden, place of settlement, burial ground, ceremonial ground, mine, trail, rock art, or other feature or location which in fact contains the human or cultural remains or artifacts of native California Indians in existence prior to the year 1876. Whenever in this Chapter reference is made to one hundred (100) years of age, such date shall be calculated from the effective date of this Chapter, to wit, 1976. Whenever the word 'site' or the phrase 'archeological site' is used in this chapter, it shall be deemed to mean a Native American archeological site. (Ord. No. 1681, adopted 1976.)

(B) Person. 'Person' shall mean any individual, firm, corporation, partnership, joint venture, association, society, fraternal organization, trust, concert of interest, conspiracy, or any other group or combination acting as a unit. (Ord. No. 1681, adopted 1976.)

(C) CEQA Project. 'CEQA project' shall mean any project for which an environmental impact report is required by the California Environmental Quality Act (Public Resources Code,



-MENDOCINO COUNTY COASTAL ELEMENT-



commencing with Section 21000), by the State EIR Guidelines, or by County regulations adopted pursuant thereto; provided, however, that a project for which an environmental impact report would be required except for the issuance of a negative declaration shall be deemed a CEQA project for the purpose of requiring the preparation of an archeological element if the Archeological Commission has determined that the project may have a significant effect on archeological resources and has objected in writing to the negative declaration within the time provided by law for members of the public to respond to the finding of a negative declaration that a proposed project will not have a significant effect on the environment. 'CEQA project' shall not mean a timber harvesting plan adopted pursuant to the Z'berg-Negedly Forest Practice Act of 1973) (Public Resources Code, commencing with Section 4511) nor any timber harvesting authorized by such plan. (Ord. No. 1681, adopted 1976.)

(D) Public Lands. 'Public lands' shall mean lands owned by, leased by, or otherwise under the jurisdiction of, the state, or any city, county, district, authority, or public corporation, or any agency thereof. (Ord. No. 1681, adopted 1976.)

(E) Interment. 'Interment' shall mean the disposition of human remains by inurement, entombment, or burial. (Ord. No. 1681, adopted 1976.)

(F) Human Remains. 'Human remains' shall mean the body of a deceased human being and shall include the body in any stage of decomposition, including one or more bones only. (Ord. No. 1681, adopted 1976.)

(G) Burial. 'Burial' shall mean the placement of human remains in a grave inside or outside a burial park. (Ord. No. 1681, adopted 1976.)

(H) Knowingly. 'Knowingly' shall mean and import only a knowledge that the facts exist which bring the act or omission within the provisions of this Chapter and does not require any knowledge of the unlawfulness of such act or omission. A person who disturbs, excavates, or causes to be disturbed or excavated a Native American archeological site shall be deemed to have done so 'Knowingly' if he actually knows, observes on the site, would as a reasonable person know, or has brought to his attention, the following: That the site contains or is likely to contain evidence of the presence of a Native American archeological site, including artifacts, flakes of stone, fire-fractured rocks, bones, discolored soil, paintings or carvings on rock surfaces, mounds, and caves. (Ord. No. 1681, adopted 1976.)

Sec. 22.12.030 Archeological Commission.

(A) There is hereby established the Mendocino County Archeological Commission, hereinafter referred to as 'Commission.' The Commission shall consist of seven (7) regular members and one (1) alternate member, each member to serve without compensation except for travel and other out-of-pocket costs. The County Administrative Officer or a representative designated by him shall serve as the executive officer of the Commission. The Board of Supervisors shall appoint the following persons to the Commission:



-MENDOCINO COUNTY COASTAL ELEMENT-



(1) The Director of the Mendocino County Museum. (Ord. No. 1681, adopted 1976, as amended by Ord. No. 1850, adopted 1977, as amended by Ord. No. 3221, adopted 1978.)

(2) A Native American who is a resident of the County of Mendocino and has an interest in the knowledge of the protection of Native American archeological sites. (Ord. No. 1681, adopted 1976, as amended by Ord. No. 1850, adopted 1977, as amended by Ord. No. 3221, adopted 1978.)

(3) The Chief Planner of Mendocino County. (Ord. No. 1681, adopted 1976, as amended by Ord. No. 1850, adopted 1977, as amended by Ord. No. 3221, adopted 1978.)

(4) A qualified, professional archeologist as determined by the standards set by appropriate professional societies; if such person is not available, the Board of Supervisors may appoint, in lieu thereof, a person having professional training in the Field of archeology. (Ord. No. 1681, adopted 1976, as amended by Ord. No. 1850, adopted 1977, as amended by Ord. No. 3221, adopted 1978.)

(5) Three (3) representatives of a Native American Tribe, council, or group in Mendocino County, one of which shall be designated by the Board as an 'alternate member', to serve when a regular Native American at-large representative is unable for any reason to attend or participate in Commission proceedings. (Ord. No. 1681, adopted 1976, as amended by Ord. No. 1850, adopted 1977, as amended by Ord. No. 3221, adopted 1978.)

(6) A representative of an industry such as timber, cattle, sheep, or other type likely to be affected by this Chapter. (Ord. No. 1681, adopted 1976, as amended by Ord. No. 1860, adopted 1977, as amended by Ord. No. 3221, adopted 1978.)

(B) The Commission shall consult with, and keep advised, the Mendocino County Sheriff-Coroner and the Mendocino County Superintendent of Schools. The Commission shall make all rules and regulations necessary or convenient for carrying out its duties and powers under this Chapter. Such rules and regulations shall, within six (6) months after the effective date of this Chapter, include a standard for determining whether or not a Native American archeological site is one of 'archeological significance.' Any person aggrieved may appeal from the adoption of any rule or regulation by filing, within thirty (30) days thereafter, a letter with the Clerk of the Board of Supervisors specifying the rule or regulation appealed from and the grounds for appeal; no rule or regulation shall go into effect until the lapse of thirty (30) days or, if appealed, upon approval by the Board of Supervisors. The Board of Supervisors may appoint an alternate for each member of the Commission, such alternate to represent the same interest or organization as the respective member. Unless otherwise required, all actions of the Commission shall require an affirmative vote of four (4) members. A decision of the Commission may be made by telephone or other verbal agreement if there is insufficient time for a meeting to be called; any decision so made shall be deemed effective unless the Commission fails to ratify the same at a regular or special meeting within thirty (30) days thereafter. (Ord. No. 1681, adopted 1976, as amended by Ord. No. 3221, adopted 1978.)



-MENDOCINO COUNTY COASTAL ELEMENT-



(C) All members of the Commission except for the Director of the Mendocino County Museum and the Chief Planner of Mendocino County shall be appointed for a term of two (2) years. At the First regular meeting following January 1 of each year the Commission members shall elect from among themselves a chairman and vice-chairman. (Ord. No. 1681, adopted 1976, as amended by Ord. No. 1850, adopted 1977, as amended by Ord. No. 3221, adopted 1978.)

(D) The Commission may appoint or designate representatives to act in the name of the Commission whenever such representatives are authorized to act by the provisions of this Chapter. Each such representative shall be subject to removal by the Board of Supervisors upon good cause shown. (Ord. No. 1681, adopted 1976, as amended by Ord. No. 3221, adopted 1978.)

(E) Appeals from the action of the Archeological Commission may be made only to the Board of Supervisors. Appeals must be filed with the Clerk of the Board within thirty (30) days of the action. (Ord. No. 3221, adopted 1978.)

DIVISION II EXCAVATION REGULATIONS

Sec. 22.12.040 Projects requiring permits.

(A) Any person who proposes to, or in fact does, excavate or disturb earth, either during the course of a CEQA project, or on public lands, or for archeological purposes, shall first obtain an excavation permit as provided for by this Chapter. (Ord. No. 1681, adopted 1976, as amended by Ord. No. 3221, adopted 1987.)

(B) It shall be unlawful, prohibited, and a misdemeanor for any of the following persons knowingly to disturb, or cause to be disturbed, in any fashion whatsoever, or to excavate or cause to be excavated, to any extent whatsoever, any Native American archeological site unless done in strict compliance with an excavation permit which has been issued in advance by the Archeological Commission:

(1) A person whose disturbance or excavation occurs during the course of CEQA project. (Ord. No. 1681, adopted 1976, as amended by Ord. No. 3221, adopted 1978.)

(2) A person engaged in such disturbance or excavation for archeological purposes or as part of an archeological project. (Ord. No. 1681, adopted 1976, as amended by Ord. No. 3221, adopted 1978.)

(3) A person engaged in such disturbance or excavation on public lands. (Ord. No. 1681, adopted 1976, as amended by Ord. No. 3221, adopted 1978.)

(C) Any act committed under the authority of an excavation permit issued hereunder shall be in accordance with its terms and conditions, including those pertaining to removal of artifacts of human remains. (Ord. No. 1681, adopted 1976, as amended by Ord. No. 3221, adopted 1978.)



-MENDOCINO COUNTY COASTAL ELEMENT-



(D) It shall be unlawful, prohibited, and a misdemeanor for any person to proceed under any excavation permit in a manner which constitutes a material variance from the terms of the permit or any representation in the application for said permit. In the event of such variance or violation, the permit may be cancelled forthwith by the Archeological Commission or, upon their referral, by the Board of Supervisors. (Ord. No. 1681, adopted 1976, as amended by Ord. No. 3221, adopted 1978.)

(E) Any person who encounters an unanticipated archeological site during the course of construction or excavation activities for which an excavation permit has been issued pursuant to this section shall halt, and order to be halted, all further work in the area within two hundred (200) feet of the discovery and shall not resume work in the area until he has followed the same procedures as are required of a person making a discovery under Section 22.12.050 of this Chapter. The Archeological Commission shall, in such case follow the same procedure as required of it in Section 22.12.050 of this Chapter. (Ord. No. 1681, adopted 1976, as amended by Ord. No. 3221, adopted 1978.)

(F) Excavations or earth disturbance on public lands for utility purposes only shall be exempt from this section and from the requirement of obtaining an excavation permit. (Ord. No. 1681, adopted 1976, as amended by Ord. No. 3221, adopted 1978.)

(G) Excavations or earth disturbances on public lands conducted or approved by the County of Mendocino or other governmental entities which do not constitute a CEQA project, as defined in this Chapter, shall be exempt from this section and from the requirement of obtaining an excavation permit. (Ord. No. 1712, adopted 1976, as amended by Ord. No. 3221, adopted 1978.)

Sec. 22.12.050 Discoveries Generally.

(A) Any person who, at any time in the preparation for or process of excavating or otherwise disturbing earth, discovers any human remains of any age, or any artifact or other evidence of a Native American archeological site which reasonable appears to exceed one hundred (100) years of age, shall take all of the following actions:

(1) Cease and desist from all further excavations and disturbances within two hundred (200) feet of the discovery. (Ord. No. 1681, adopted 1976, as amended by Ord. No. 3221, adopted 1978.)

(2) Arrange for staking completely around the area of discovery by visible stakes no more than ten (10) feet apart, forming a circle having a radius of no less than one hundred (100) feet from the point of discovery; provided, however, that such staking need not take place on adjoining property whose owner or person in possession does not authorize such staking thereon, in which case the boundary line within such circle shall be staked. (Ord. No. 1681, adopted 1976, as amended by Ord. No. 3221, adopted 1978.)

(3) Make notification of the discovery to the Sheriff-Coroner. (Ord. No. 1681, adopted 1976, as amended by Ord. No. 3221, adopted 1978.)



-MENDOCINO COUNTY COASTAL ELEMENT-



(4) Grant any duly authorized representative of the Commission or the Sheriff-Coroner permission to enter onto the lands of the discovery which are under the jurisdiction of the person making the discovery and to take all actions consistent with this Chapter and otherwise permitted by law. (Ord. No. 1681, adopted 1976, as amended by Ord. No. 3221, adopted 1978.)

(B) Upon being notified or otherwise becoming aware of the discovery of any evidence of a Native American archeological site, the Sheriff-Coroner shall forthwith notify the Executive Officer of the Archeological Commission and whatever designated representatives of the Commission he deems appropriate. The Commission shall arrange for an on-site inspection of the area of discovery by one or more of its representatives within seventy-two (72) hours of the time of such notification of the Sheriff-Coroner. The Commission shall give notice of the time of the on-site inspection to the owner, or other person who made notification of the discovery, who shall be entitled to accompany the Commission representatives at all times on the property in question. The purpose of the inspection shall be to determine whether the site is one of archeological significance. In the event that such inspection does not take place within such seventy-two (72) hour period and the Commission has not, within such time, issued an order to cease and desist for a longer period of time, the excavation and disturbance of the site may be resumed; provided, however, that if a human remain was discovered, no further excavation or disturbance of the site may take place until specifically authorized by the Sheriff-Coroner.

(C) If the Commission determines that the site of the discovery is one of archeological significance, it shall, within seventy-two (72) hours of being notified of the discovery, notify the person making the discovery of such determination, the apparent boundaries of the site, and its specific recommendations for the preservation of the site from destructive disturbance or excavation; and the Commission shall issue an order to cease and desist from all further excavation or disturbance of the site for a specified period of time not to exceed thirty (30) days; provided, however, that the period may be extended up to forty-five (45) additional days by minute order of the Board of Supervisors. In issuing such a cease and desist order, the Commission shall take into account both the need for preserving the site and the need for avoiding unnecessary financial hardships to any person engaged in construction work on the site. The cease and desist order shall be subject to whatever conditions the Commission determines will promote the purposes of this Chapter. During the period such cease and desist order is in effect, the site shall be open to physical inspection, photographing, supervised excavation, study, and all other reasonable related activities by any person duly authorized by the Commission or by the Sheriff-Coroner. The landowner, or the person making the original notification of discovery, shall be kept advised of the times at which any such duly authorized person is on the site and shall be given the opportunity to accompany any person while on the site. (Ord. No. 1681, adopted 1976, as amended by Ord. No. 3221, adopted 1978.)

(D) The Archeological Commission shall, for the purpose of giving or receiving notifications under this Chapter, designate as its representatives one or more residents of each Supervisorial district having expertise or experience in the evaluation of Native American archeological sites. A list of such representatives and their telephone numbers shall be provided to, and kept available with, the office of the Dispatcher Unit of the Sheriff-Coroner. (Ord. No. 1681, adopted 1976, as amended by Ord. No. 3221, adopted 1978.)



-MENDOCINO COUNTY COASTAL ELEMENT-



(E) It shall be unlawful, prohibited, and a misdemeanor for any person knowingly to disturb, or cause to be disturbed, in any fashion whatsoever, or to excavate, or cause to be excavated, to any extent whatsoever, a Native American archeological site without complying with the provisions of this section. (Ord. No. 1681, adopted 1976, as amended by Ord. No. 3221, adopted 1978.)

(F) It shall be unlawful, prohibited, and a misdemeanor for any person knowingly to disturb, or cause to be disturbed, in any fashion whatsoever, or to excavate, or cause to be excavated, to any extent whatsoever, any Native American archeological site (1) in violation of any order to cease and desist issued pursuant to this section or (2) during the seventy-two (72) hour period commencing from the time of the required notification of discovery. (Ord. No. 1681, adopted 1976, as amended by Ord. No. 3221, adopted 1978.)

(G) The owner, or other person in lawful possession, of land on which a discovery of a Native American archeological site has been made shall grant a license for entry thereon by every person authorized by the Archeological Commission or Sheriff-Coroner. (Ord. No. 1681, adopted 1976, as amended by Ord. No. 3221, adopted 1978.)

Sec. 22.12.060 Discoveries of Human Remains.

(A) The provisions of this section shall apply in addition to the provisions of Section 22.12.050 of this Chapter whenever any human remains are discovered. (Ord. No. 1681, adopted 1976.)

(B) Any person who, while excavation or otherwise disturbing earth, discovers any bones or other human remains, whether or not as part of a Native American archeological site, shall immediately cease and desist from all further excavation and disturbance and shall immediately telephone or otherwise notify the Sheriff-Coroner of Mendocino County. If a Native American archeological site is involved, the Sheriff-Coroner shall thereupon notify a designated representative of the Mendocino County Archeological Commission for the particular geographical area involved. (Ord. No. 1681, adopted 1976.)

(C) It shall be unlawful, prohibited, and a misdemeanor for any person not specifically authorized by the Archeological Commission or its designated representative to do so, to excavate or otherwise disturb any such area of discovery within one hundred (100) feet of the point of discovery until the lapse of thirty (30) days or written approval of the Commission, whichever occurs first. The Commission may extend the period of thirty (30) days by written order, in which case all persons having actual notice thereof shall be prohibited from any further excavation or disturbance within such 100-foot area. (Ord. No. 1681, adopted 1976.)

(D) The Sheriff-Coroner and the Commission representative shall make, and are authorized to enter onto the lands where the discovery was made to make, in on-site inspection, for the purpose of determining (1) whether such human remains are less than one hundred (100) years old and (2) whether they are the result of any criminal or other act bringing such within the custody of the Sheriff-Coroner under the laws of the State of California. If the Sheriff-Coroner determines he does have jurisdiction, he shall take such remains into his custody or make such other order as will insure the preservation of such remains. The Sheriff-Coroner may designate any Native



-MENDOCINO COUNTY COASTAL ELEMENT-



Americans who are affiliated with recognized tribes or councils, and who have been specifically authorized by the Commission for such purpose, to reinter such remains in their own burial grounds or to otherwise act as his agent in the removal, storage, and preservation of such remains. (Ord. No. 1681, adopted 1976.)

(E) All human remains of any age discovered as part of a Native American archeological site shall be subject to the jurisdiction and custody of the Sheriff-Coroner, who may designate the Archeological Commission to take such human remains into custody for scientific analysis and reinterment, to the extent no Native American, or tribe or council of Native Americans, has a legal claim thereto. The owner or other person claiming lawful title to or possession of the land on which such human remains are found shall not, by that fact alone, be entitled to keep or possess such remains. The Sheriff-Coroner and the Commission may submit human remains in their respective custody to the University of California or other similar recognized institution for scientific analysis before reinterment. (Ord. No. 1681, adopted 1976.)

(F) It shall be unlawful, prohibited, and a misdemeanor for any person to mutilate, disinter, or remove from the place of interment any human remains without first obtaining the approval of the Sheriff-Coroner and all other permits required by the California Health and Safety Code and this Chapter and without first notifying in writing the Archeological Commission. (Ord. No. 1681, adopted 1976.)