

STATE ATTORNEY GENERAL COMPLAINT
AGAINST THE CITY OF MORRO BAY FOR
VIOLATIONS OF THE
CALIFORNIA ENVIRONMENTAL QUALITY ACT
(PUBLIC RESOURCES CODE 21000 ET SEQ.)

EXECUTIVE SUMMARY

In 2005 and 2006, the City of Morro Bay ignored the requirements of the California Environmental Quality Act (CEQA) in granting development permits for the construction of 4 duplexes and 2 single-family homes on the largest prehistoric site within the City. The permits were granted without requiring any scientific data recovery as required by CEQA (sec. 15126.4C). By not providing for the mitigation of impacts caused by construction grading, at least 1,148 cubic meters of archaeological deposits were destroyed. The estimated monetary value of these deposits and the public information they contained is a minimum of \$9,000,000.

All local legal remedies have been explored with no results.

A resolution to this problem requires three actions;

- 1) The public needs to be reimbursed for the value of the information that was lost due to the City violations and
- 2) A building moratorium needs to be instituted within the City of Morro Bay until the Planning Department brings its policies and procedures in line with the requirements of the California Environmental Quality Act and
- 3) To prevent bad planning advise in the future, the City needs to pass a resolution requiring all archaeological reports to be prepared by Registered Professional Archaeologists.

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INTRODUCTION

During 2005 and 2006, the City of Morro Bay issued development permits for the construction of 4 duplexes and 2 single-family homes within the boundaries of the largest, and most significant archaeological site in the City. These permits were issued without requiring any scientific archaeological data recovery as required by the California Environmental Quality Act (CEQA sec. 15126.4C). The resulting grading and trenching destroyed at least 1,148 cubic meters of archaeological site soils causing a loss of public information valued at ~\$9,000,000.



Sequence of Events and Attempts to Resolve the Issue

August 2006, we began receiving calls from archaeologists in the county asking what was happening at CA-SLO-165 (a large prehistoric site located along HWY 41 in the City of Morro Bay). We drove the 2 blocks from our house to look at Rockview Street, and witnessed several pieces of heavy equipment grading and trenching through the cultural deposit.

Since we had conducted four archaeological studies on other parts of that site, we were well aware of the amount and value of information that was being destroyed (see pg. 5). Yet no archaeological data recovery work had been done before the grading and trenching began.

The California Environmental Quality Act (CEQA) is very specific when it comes to allowing development and ground disturbance on significant archaeological sites. CEQA states:

“archaeological sites that cannot be preserved in place shall be mitigated through the excavation and analysis of the scientifically consequential information from and about the resource.” Such a data recovery plan “shall be prepared and adopted prior to any excavation being undertaken” (CEQA sec. 15126.4C).

On September 8th 2006, we called and left messages with Morro Bay Code Enforcement Officer Clyde Ganes and City Planner Mike Prater asking what was happening and why no archaeological data recovery had taken place before construction began. We got no response.

October 16th 2006, we reviewed the planning file with Mike Prater. He showed us an archaeological mitigation plan that was developed for a single-family home to be built on caissons. Caissons are like pilings, they are pounded or drilled into the ground to support concrete beams upon which a structure is built. This type of foundation is frequently used where normal foundation trenching would cause extensive damage to archaeological sites. Rather than extensive trenching for normal footings, the caissons create small holes every 10 to 15 feet around the base of the house. This foundation and mitigation plan was designed to protect the archaeological site and indicated that the cultural soils on the rest of the parcel would be protected by fill.

Even a caisson footing plan would require that ~5% of the drilled holes be hand excavated and analyzed for archaeology before the construction took place. But, in this case, the archaeologist gave the developer a break by recommending that only archaeological monitoring of the construction be conducted.

We pointed out to Mr. Prater that what we saw occurring on Rockview Street was much more than a single house and that no caisson construction was being used. He indicated that the City had issued permits for 4 duplexes and two single-family homes to be built on 5 lots and that standard perimeter foundations were being

used. When we asked to see the archaeological mitigation plan that dealt with those projects, he just pointed at the original archaeologist's report that called for monitoring of a single-family home being built on caissons.

We couldn't believe it. Not only does CEQA require archaeological data recovery before a significant site is damaged, but CEQA is also very specific in stating that impact mitigation plans designed for one project cannot be used for another project if the impacts to the environment are different. The archaeological mitigation plan written for a single house on caissons had been illegally used by the City to grant permits for 4 duplexes and two houses that were to be built on standard footings, causing massive damage to the archaeological site. How could the City approve 4 duplexes and two homes on normal footings by using an archaeological mitigation plan for a small house that would have been built on caissons?

When we discovered the problem, we called and left a message with Morro Bay Mayor Janice Peters.

October 20th 2006, Janice Peters returned our call and indicated that she had heard that the problem was due to a disagreement between archaeologists. We explained what we had found during our review of the planning files along with the CEQA requirements and she said she would look into it and get back to us. We haven't heard from her since.

We decided that a closer examination of the planning documents was in order and we returned to the City offices where we spent 4 hours reviewing all the paperwork for the 6 projects approved on Rockview Street (see page 11 for results). The extensive review clarified how the City arrived at their decision.

Once we became aware of the magnitude of the problem, we explored the possibility of approaching the State Attorney General's office hoping that the AG could step in and issue a building moratorium within the City of Morro Bay. The AG web site indicated that local remedies must first be exhausted.

On December 1st 2006, we filed a formal complaint with the County Grand Jury. Several similar complaints were sent to the Grand Jury by other concerned citizens and an investigation began. Several of us were called in for questions and to present information.

January 30th 2007, the Morro Bay City Attorney filed a memorandum (see attached) trying to explain to the City Council and the Grand Jury that the actions taken by the Planning Department complied with CEQA requirements. To make his point, the City Attorney selectively mis-quoted several professional archaeologists.

February 13th 2007, we made a formal written request to the City Council to be added to their agenda to give a presentation concerning this issue. We were never granted a hearing.

In April 2007, the mis-quoted archaeologists were finally able to obtain a copy of the City Attorney's memorandum and filed a response, effectively making the City Attorney's arguments mute (see attached).

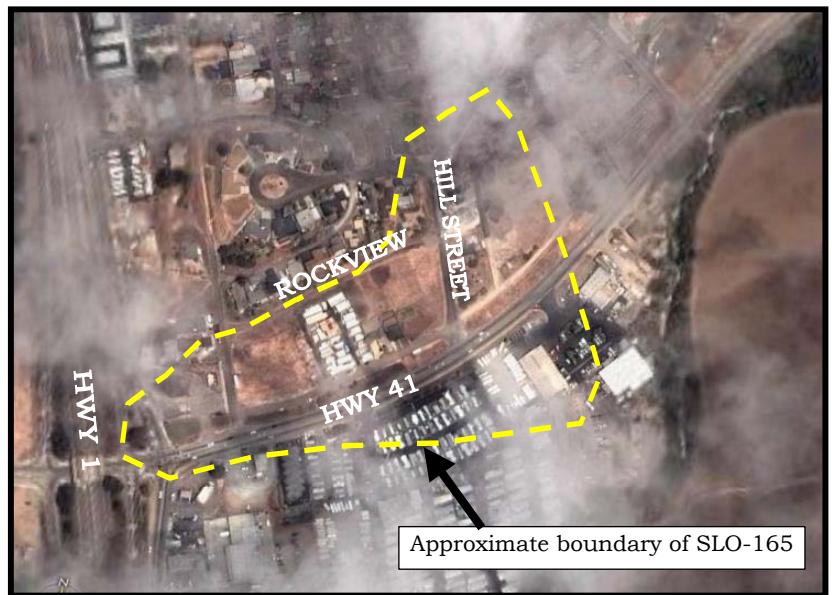
On July 9th 2007, we discovered that the 2006-2007 Grand Jury investigation into the illegal activities of the Morro Bay Planning Department was not made a part of the Grand Jury Annual Report.

As of the date of this filing, all local remedies have been exhausted.

THE ARCHAEOLOGICAL SITE (all artifacts pictured are from CA-SLO-165 and found directly across the street from the project areas discussed)

CA-SLO-165 was first recorded as an extensive village site by State Park Archaeologist Fritz Riddell in 1960. In 1983, the site was described as an extensive shell midden covering 95,700m² and at least 150cm (5 feet) deep.

The first small archaeological excavation at the site occurred in 1983 when Robert Gibson excavated 6 auger holes along a proposed waterline trench on the south side of HWY 41. His work discovered cultural material mixed with creek gravels at a depth of 100-130cm. Additional small testing and monitoring work was conducted along HWY 41 in conjunction with city waterline work. These projects recovered several hundred artifacts as well as human remains.



In 1993, the State Historic Preservation Officer made the determination that SLO-165 was eligible for listing in the National Register of Historic Places (the highest level of significance that can be applied to any historic or prehistoric site).

The first major archaeological work at SLO-165 was performed in 1994 and 1997 in conjunction with the Caltrans widening of HWY 41. Far Western Archaeological Group conducted extensive test and mitigation excavations within the Caltrans right-of-way. They recovered cultural material ranging in age from 8,500 B.P. to 1,000 B.P. (before present). Their work has been published by the San Luis Obispo County Archaeological Society under the title ***Prehistoric Adaptations on the Shores of Morro Bay*** (Mikkelsen et al 2000). Their analysis of thousands of artifacts and several human burials outlines several thousand years of cultural change and adaptation at SLO-165.

Parker & Associates (2000, 2001, 2004a, 2004b, 2004c) has conducted extensive excavation and analysis on portions of SLO-165 in conjunction with both commercial and residential development. These projects have unearthed and analyzed thousands of artifacts as well as human remains from parcels along HWY 41 from the corner of North Main Street to just beyond Hill Street.

All of these studies were the result of data recovery mitigation requirements prompted by CEQA through the Caltrans and the Morro Bay City permit process.

SLO-165 can be described as a book; a book about people living with, and adjusting to changes in their environment. It contains information about their successes as well as their failures. Because they were using local natural resources, that book also contains information about how their local environment (now our environment) was changing during the past 8,000 years. Such a large archaeological deposit was created by many villages of people inhabiting the same spot over and over during a period of at least 8,000 years. To put this in a time perspective, the people at SLO-165 had already been living on the shores of Morro Bay for 2,000 years before the Egyptians decided to build their first pyramid. The native people of Morro Bay continued living at the site for 5,000 years after the Great Pyramid was built.

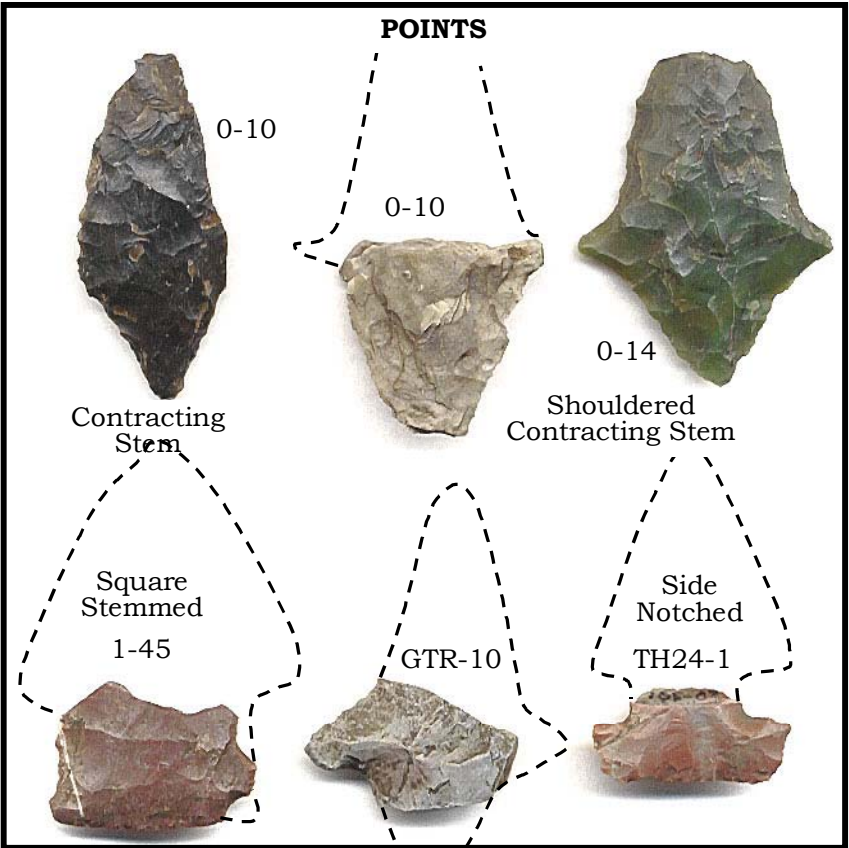
Although most of the SLO-165 book is closed and has never been read, we have managed to read a few pages, made possible through the limited archaeological excavation and analysis required to mitigate impacts created by past construction projects. Those few pages have told us that following the last ice age; SLO-165 was a bay shore village. Archaeological sites around Morro Bay indicate that the bay was much deeper and 4 times larger than today. By 8,000 B.P., the bay extended up the Morro Creek valley past the City limits. At that time, villagers at SLO-165 were using the bay for netting fish and gathering shellfish. Studying bird and fishbone from the site, we have learned that ~7,000 years ago, the bay began to silt in. When sediment turned that arm of the bay into a salt marsh, the villagers no longer had access to schooling fish but had more access to shore birds (found in the salt marsh area). As fishbone in the site dwindled, bird bone increased (about 6,600 years ago). As the bay continued to silt in, the

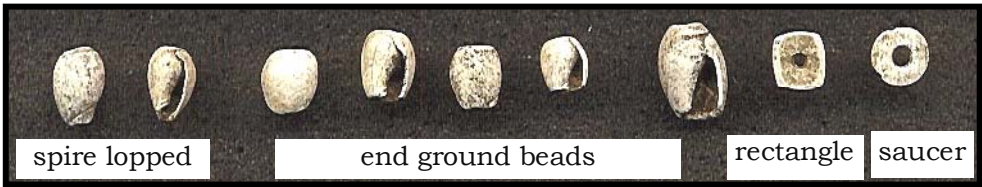
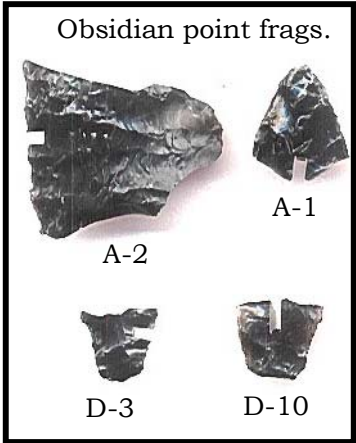
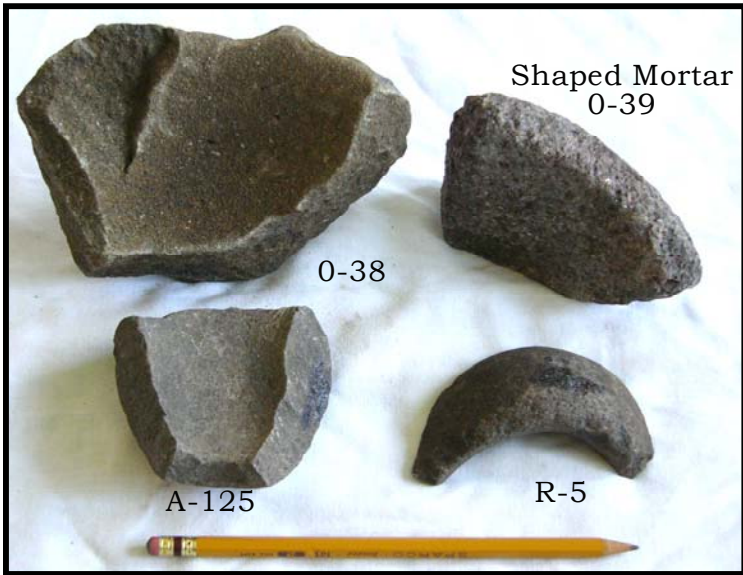
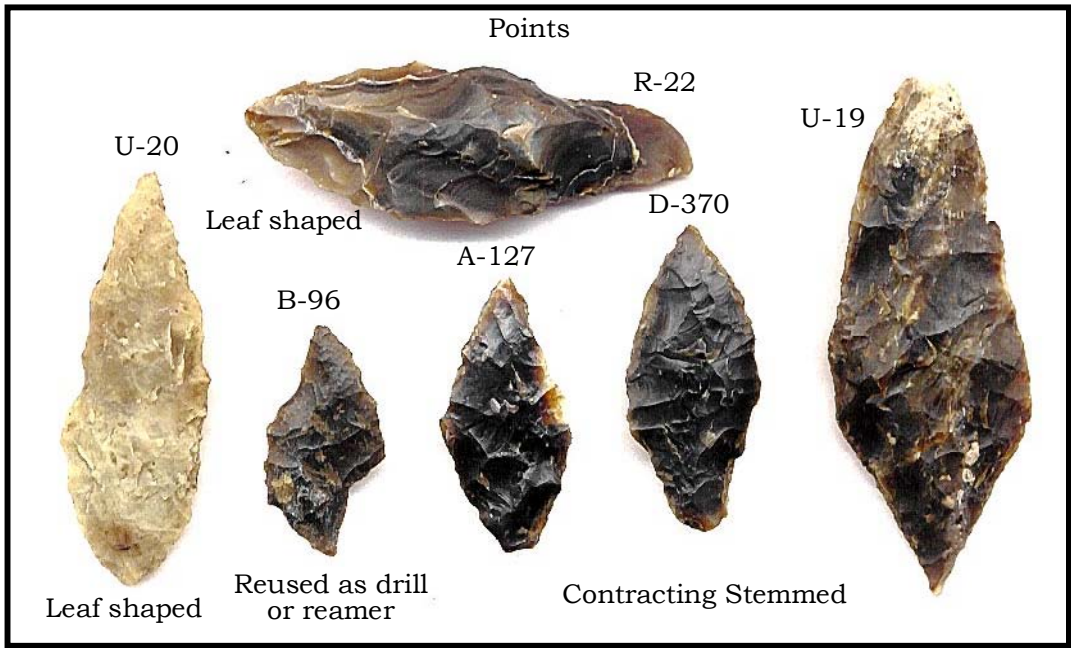


marsh became a dry valley with Morro Creek flowing through. That is when we find turtle shell in the site soils (caught by villagers in a freshwater creek environment).

So far, analysis of SLO-165 has provided us with information about when prehistoric people in this area first established permanent territorial boundaries, how far back in time the shell-bead prehistoric money economy can be traced, how far exotic trade items have traveled to end up on the shores of Morro Bay, and how people in general deal with over-fishing and over-harvesting of bay resources.

SLO-165 contains lots of information, not only important for reconstructing the history of the Chumash people and Morro Bay's past, but information about how people in general adapt and respond to environmental change... even to environmental changes that they caused themselves. This is information important to all of us as we try to adjust to world-wide changes that we have caused.





At every location where archaeological work has occurred at SLO-165, completely different information about the past has been found. This is to be expected. Imagine opening a book several times and reading one random page each time. During the demolition of an old Shell gas station at HWY 41 and North Main Street, the cultural deposit was 6 feet deep and contained information about the village as it existed between 4,000 and 4,500 years ago. The parcel just east of the Shell station (currently undeveloped) contained cultural material 8,500 years old. The site area at the corner of Hill and Mimosa Streets (where site soil was preserved under fill during the construction of three duplexes) contained evidence of the bay silting in between 7,000 and 6,000 years ago. Between Mimosa Street and HWY 41 (where site soil was preserved under fill during the construction of 4 homes) the site contained evidence of the village, as it existed between 4,500 and 2,500 years ago.

SLO-165 is a book of information important to all of us.

Imagine taking a book about human and environmental history that no one has had a chance to read and ripping out and burning several chapters of that book. That is the damage that has occurred on Rockview Street due to the illegal permits issued by the City of Morro Bay. We will never know what those chapters about the past contained. The California Environmental Quality Act (CEQA) was passed by the voters in 1970 to protect the public information that is contained in archaeological sites.

LEGAL FRAMEWORK

California Environmental Quality Act (CEQA)

Sections Dealing with Archaeology

CEQA applies to all discretionary projects; those projects where an agency has the discretion to approve, disapprove, or require changes before granting a permit (CEQA Sec. 21080).

Cultural Resources (historic and archaeological sites) are one of the resources which require a “mandatory finding of significance” under CEQA law (Sec. 15065a).

When a “unique” or “significant” cultural resource is involved, the California Environmental Quality Act requires that the permitting agency (Morro Bay) first consider project alternatives that will allow the “resources to be preserved in place and left in an undisturbed state” (sec. 21083.2 [b]). The following alternatives are listed in CEQA to accomplish this goal (see actual CEQA text next page):

1. The project shall be designed to “avoid archaeological sites.”(CEQA sec. 21083.2 (b1))

2. The project shall protect the resource by “deeding archaeological sites into a permanent conservation easement.”(Sec. 21083.2 (b2))
3. The project shall protect the resource by “Capping or covering the archaeological sites with a layer of soil before building on the sites.” (Sec. 21083.2 (b3))
4. The project shall protect the resource by ”Planning parks, greenspace, or other open space to incorporate archaeological sites.”(Sec. 21083.2 (b4))

CEQA goes on to say that, as a last resort, archaeological sites that cannot be preserved in place **shall be mitigated through the excavation and analysis of the “scientifically consequential information from and about the resource”**. Such a data recovery plan “shall be prepared and adopted prior to any excavation being undertaken” (CEQA sec. 15126.4c).

Using a Single Mitigation Plan for Multiple Projects

Although CEQA does allow a single environmental document and mitigation plan to be used for several projects, such a plan can only be used if all the projects have the same impact to the environment (CEQA sec. 15175).

In this case, the archaeological mitigation plan written for a single house being built on caissons was not designed to mitigate the major impact of trenching required for standard footings. CEQA is very specific in this area and indicates that the City must address:

“whether the subsequent project may cause any additional significant effect on the environment which was not previously examined...(CEQA sec. 15177 b, 2)”

The citizens of Morro Bay place their trust in the elected City Council, appointed Planning Commission, and hired staff, to make sure that the City’s resources are protected as required by law.

(A) Preservation in place is the preferred manner of mitigating impacts to archaeological sites. Preservation in place maintains the relationship between artifacts and the archaeological context. Preservation may also avoid conflict with religious or cultural values of groups associated with the site.

(B) Preservation in place may be accomplished by, but is not limited to, the following:

1. Planning construction to avoid archaeological sites;
2. Incorporation of sites within parks, greenspace, or other open space;
3. Covering the archaeological sites with a layer of chemically stable soil before building tennis courts, parking lots, or similar facilities on the site.
4. Deeding the site into a permanent conservation easement.

(C) When data recovery through excavation is the only feasible mitigation, a data recovery plan, which makes provision for adequately recovering the scientifically consequential information from and about the historical resource, shall be prepared and adopted prior to any excavation being undertaken. Such studies shall be deposited with the California Historical Resources Regional Information Center. Archaeological sites known to contain human remains shall be treated in accordance with the provisions of Section 7050.5 Health and Safety Code.

(D) Data recovery shall not be required for an historical resource if the lead agency determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the archaeological or historical resource, provided that the determination is documented in the EIR and that the studies are deposited with the California Historical Resources Regional Information Center.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21002, 21003, 21100, and 21084.1, Public Resources Code; *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553; *Laurel Heights Improvement Association v. Regents of the University of California*, (1988) 47 Cal.3d 376; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; and *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112; *Sacramento Old*

This trust was violated and continues to be violated when it comes to the protection of cultural resources within the City.

CITY PLANNING STEPS LEADING TO THE VIOLATIONS

In 1998, the City was processing a permit for two single-family houses on Lots 1 and 2 (the corner of Hill and Rockview Streets). City planners knew that the project was located within the boundaries of SLO-165 when they received an archaeological report indicating that:

”This particular portion of SLO-165 does not seem to contain any intact prehistoric deposits or recognizable features, and therefore may not qualify as a significant cultural resource...” (Singer 1998)



City staff felt that there must be some mistake and decided to send Mr. Singer’s report out for a peer review by a qualified archaeologist (the head archaeologist for Vandenberg Air force Base) who had no financial ties to the area.

This archaeologist suggested that Singer’s findings were not supported by the evidence and recommended that test excavations take place to determine what actually existed within the project area (Spanne 1999). Nancy Farrell of Cultural Resource Management Services conducted test excavations and concluded that intact cultural soils and artifacts existed to a depth of 1.4 meters (4 ½ feet) throughout the project area (Farrell 1999).

In July of 2000, the Morro Bay City Planning Department Initial Study checklist for two homes on Lots 1 and 2 indicated:

“These two properties are located within the archaeologically sensitive area of SLO-165”.

Pg. 17, para 2 of the Initial Study checklist says:

“If construction is to proceed at the 490 and 492 Rockview sites, construction impacts will be mitigated through data recovery.”

In 2001, after Nancy Farrell’s test excavations, a new owner hired Mr. Singer to develop a mitigation plan for a proposed house on Lot 2. Singer’s plan stipulated:

”Construction of a single family house is planned for Lot 2: the home is to be built with little or no damage to the archaeological deposits. (Singer 2001)” Singer’s report also indicated that no archaeological data recovery was necessary, just monitoring of grading and trenching.

Again the City of Morro Bay sent Mr. Singer’s recommendations out for peer review, this time by a Registered Professional Archaeologist who worked for the Santa Barbara County Planning Department. This archaeologist disagreed with Singer’s mitigation plan and, using CEQA requirements as his guide, indicated that:

“Monitoring by itself will not allow for mitigation of impacts to these extensive deposits. (Stone 2001)”

This project was never built, but by now, City planners should have had a pretty good idea that Mr. Singer’s archaeological mitigation plans were often “client oriented” and frequently did not follow the legal requirements of CEQA.

In 2002, another single-family home was proposed on Lot 1. Realizing that he had bought a lot on a significant archaeological site, owner John Moore agreed to build his house on caissons drilled into the ground rather than using standard concrete footings that would require major trenching and grading. In addition, he decided to place fill over other portions of his parcel to protect the cultural deposit.

Singer was hired as the project archaeologist and recommended that monitoring of the caisson drilling would suffice as adequate mitigation of impacts to the prehistoric site. Singer cited Nancy Farrell’s limited testing on the parcel as “adequate data recovery” for the project (Singer 2002).

Although Mr. Singer is not a Registered Professional Archaeologist, his mitigation plan for the single-family house being built on caissons did meet CEQA requirements for data recovery and mitigation.

This project was never built.

City CEQA Violation #1

A new landowner decided to split Lot #1 and build two single-family homes. The new project did not call for the houses to be built on caissons to protect the archaeological site. The two houses were approved by the City to be built on standard foundations requiring the excavation and destruction of at least 80 cubic meters of archaeological site soil. Following Mr. Singer’s recommendation, the City used the same mitigation plan that had been designed for a house on caissons even though the new project would cause substantially more damage to the prehistoric site. This is the first known violation of CEQA by the City.

City CEQA Violation #2

A duplex project for Lot 4 (using standard footings) was approved with no archaeological data recovery, just monitoring using the same mitigation plan designed for a house on caissons.

City CEQA Violation #3

In 2004, Cameron Financial drew up plans for three duplexes on lots 2, 3, and 5 using standard footings. A letter from Clay Singer to architect Ravatt Albrecht states:

“This plan seemed to work for lot 4, why not for Lots 2, 3, and 5? Now, if the 2002 Phase III plan is acceptable to your client, and if the basic plan is still acceptable to the City of Morro Bay, then we are (on) good ground, that is bedrock. (Singer 7-29-04)”

The 2002 Phase III plan Singer is referring to is the plan developed for the single house to be built on caissons with fill covering the rest of the parcel. This plan (which only required archaeological monitoring) was now being put forward as adequate mitigation for 3 duplexes with standard perimeter foundation footings.

The January 3rd, 2005 Staff report for the Planning Commission stated:

”Singer and Assoc. has since confirmed that the same Phase III mitigation plan prepared for Lot 1 is appropriate and may be applied to Lots 2, 3, and 5 as well. (City of Morro Bay 2005)”

Statement of Facts

1. The archaeologist involved in each of these projects is not a Registered Professional Archaeologist, yet is listed with both the City of Morro Bay and County of San Luis Obispo as a “qualified archaeological consultant”.
2. The City had evidence in the form of several peer reviews that this archaeologist’s mitigation recommendations often did not comply with CEQA’s legal requirements.
3. Ignoring the above information and flying in the face of the specific legal wording in CEQA, there was complete agreement within the city that the mitigation plan written for a house on caissons was appropriate to mitigate the extensive damage that would occur as the result of trenching and grading for four duplexes and 2 single-family homes on standard footings.

To reiterate:

CEQA requires that archaeological sites that cannot be preserved in place shall be mitigated through data recovery excavation and analysis of the “scientifically

consequential information from and about the resource” (CEQA sec. 15126.4c) prior to construction.

Archaeological monitoring while construction grading and trenching is occurring, does not satisfy the archaeological impact mitigation requirement of CEQA and does not mitigate the impact of the destruction of cultural soils or the artifacts and features contained within those soils. That is why CEQA requires data recovery (archaeological excavation and analysis) from the proposed impact areas before project construction begins.

WHY NO ONE ATTENDED THE PUBLIC HEARINGS

When we first moved to Morro Bay 15 years ago, we made appearances at public hearings and offered our expertise to the Planning Commission and staff concerning cultural resources. We had just left our position at UCLA where we managed the State data center that housed all archaeological records for Los Angeles, Ventura, and Orange Counties. 119 city and county planning agencies relied on our office for planning information concerning archaeological and historic sites. We had also held positions as an archaeological planner with the San Jose Public Works Dept., Caltrans, and several federal agencies. We had also served as a Planning Commissioner for the City of Clearlake.

To insure that there would be no conflict of interest, we agreed to not conduct any archaeological contract work within the City of Morro Bay. That way the city staff could use our expertise without worrying about conflicts. Over a period of 5 years, we received no calls from the city for advice or information. During that period, there were a few projects that were proposed within archaeological site areas. We attended those hearings and provided expertise. Our suggestions fell on deaf ears. After three or four of these occasions, it became clear that the staff and planning commission were not interested in complying with CEQA, nor in paying any attention to public input at hearings. That is when we decided to stop attending commission meetings. That is also when we decided to withdraw our agreement to not do archaeological contract work in Morro Bay.

We put in one more appearance at the City in 2004, when the City’s general plan and coastal land use plan were being drafted. These plans did not comply with CEQA and we wrote a letter to the Planning Director pointing out the problems and suggesting ways to bring the plans into compliance. The Planning Director, City Attorney and staff arranged for a meeting and we all sat and discussed the situation. We presented several ways that the city could alter the plan to take care of the problem without undue changes to the permit process. We thought the meeting went well and there was general agreement that the changes needed to be made. At the following public hearing, we presented the problem and recommendations for minor changes to the General Plan wording that would fix the shortcomings. When we took our seat, one of the Commission members asked the Planning Director how they should go about making the change. The Planning

Director said that his interpretation of CEQA was different and that no changes were needed.

When someone with our credentials and expertise goes out of their way to voluntarily help an agency in dealing with a planning problem, and is ignored, it is pretty much a waste of time for anyone to attend a public hearing held by that agency.

WHY IT DIDN'T HAVE TO HAPPEN

What is baffling to us is that in 2001, the City did require proper CEQA mitigation of archaeological resources when the Shell Station at the corner of North Main and HWY 41 was decommissioned. Before trenching and drilling occurred to remove the MTBE problem, archaeological excavation and analysis of the proposed trench areas was completed.

Again in 2004, the City did require proper mitigation of archaeological impacts when the 4 single-family homes and three duplexes were built on fill just east of Hill Street (as recommended by CEQA Sec. 21083.2 (b3)). The fill was thick enough to incorporate all foundation footings and most utility trenches. In those areas where trenching had to occur below the fill soil, archaeological excavation and analysis was completed before the trenching took place. Archaeological monitoring did occur on these projects, but only after the data had been collected from the impact areas.



In the past, the City has required proper archaeological mitigation. What happened?

The duplexes and houses on Rockview were not good candidates for construction on fill due to the slope. However, these could have been built on caissons with a percentage of the caisson holes being hand excavated to recover the archaeological data before construction. What happened?

CALCULATING THE ECONOMIC VALUE OF THE DAMAGE DONE

By December 2006, at least 728 cubic meters of cultural soil had been destroyed by grading and trenching for three of the proposed four duplexes and one of the proposed two houses planned for Rockview (on lots 1, 2, 3, and 5). See picture on pg. 2.

By March 2007, another ~259 cubic meters had been destroyed. While pacing and measuring this damage within the public right-of-way, the construction foreman called Morro Bay Police to run me off.

By the end of June 2007, another 161 cubic meters of site soil had been destroyed.

It is likely that much more damage was done to the archaeological site than has been presented herein. The 1,148 cubic meters listed here should be considered a bare minimum volume of the amount of cultural soil that was destroyed.

How much information was contained in that soil? How much information has been lost? What was the value of that information... not only to us today, but to those who come after us?

There is no way of placing a monetary value on knowledge. However, when looters are brought to trial and found guilty of damaging archaeological sites on federal land, the Archaeological Resource Protection Act is used to calculate the monetary value of the damage for court ordered reparations. This monetary value is based on what it would have cost to archaeologically excavate and analyze the volume of soil that was destroyed. Using today's figures of ~\$8,000 per cubic meter for archaeological work, the destruction of 1,148 cubic meters of cultural soil caused a loss of public information valued at ~\$9,000,000.



WHAT IS NEEDED TO RIGHT THE WRONG?

It is critical that the City of Morro Bay immediately bring its planning policies and procedures into compliance with the requirements of the California Environmental

Quality Act. Until these policies are in compliance, a permit moratorium should be put in place, preventing any new discretionary permits from being issued.

In addition, as a way of reimbursing the public for the value of the information destroyed by failed planning policies, we believe it is appropriate for the City of Morro Bay to purchase the remaining undeveloped portions of SLO-165 to be set aside for preservation. Although this will not bring back the information that has already been lost, and will not prove that the City cares about its historic and prehistoric resources, it will at least preserve the rest of the information contained in SLO-165 and show that Morro Bay takes its legal mandate under the California Environmental Quality Act seriously.

In the absence of a State Licensing Program for archaeologists, it is essential that all city and county agencies revise their lists of “qualified archaeological consultants” to include only Registered Professional Archaeologists. If a City or County planning department does not employ a Registered Professional Archaeologist to review incoming archaeological reports, then they must require that those reports be produced by Registered Professional Archaeologists. There is no legal recourse against an unregistered archaeological consultant who makes illegal recommendations that then find their way into a planning document through planning staff ignorance. Because a Registered Professional Archaeologist can lose their registered status if they do not follow the legal requirements, such illegal recommendations will rarely occur.

IN CONCLUSION

In this complaint, we have outlined the sequence of events that led to our discovery of Morro Bay’s illegal permitting activities and the actions that we have taken to bring the City in line with the legal requirements. We have outlined the sequence of events that led to the City’s granting of unmitigated development permits that caused \$9,000,000 in damage to the most significant archaeological site within the City limits. We have explained the reason why no one from the historical preservation community showed up at public hearings concerning these projects, or any other project proposed within the City. And we have shown how this loss of cultural information need not have happened.

Please take whatever action you can to bring the City of Morro Bay into compliance with the requirements of the California Environmental Quality Act, to reimburse the public for the \$9,000,000 in lost information, and to insure that such atrocities do not occur in other City and County jurisdictions throughout California.

Feel free to contact us if you have any questions or concerns. Thank you for your time and consideration.

Sincerely,

Dr. John W. Parker

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