

CONCERNED CULTURAL RESOURCE PROFESSIONALS

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Joanna Hamburg
San Luis Obispo County Grand Jury
County Government Center
San Luis Obispo, CA 93408

April 25, 2007

RE: Review of Morro Bay City Attorney's memorandum (dated 1-30-2007)
concerning Morro Bay's treatment of cultural resources.

Dear Ms. Hamburg and Members of the Grand Jury,

We apologize for this late review of Mr. Schultz' memorandum. His January memorandum was only made available to us last week. In order to properly review the Morro Bay document, it is best to read this analysis side-by-side with Mr. Schultz' memorandum. We are including a copy of his memorandum for your convenience.

Review of Mr. Schultz Memorandum

Our general impressions of Mr. Schultz' memorandum are that he looked at the same letters and planning files that we reviewed at the City office late last year. His first page and a half describing the California Environmental Quality Act (CEQA) process to the City Council and staff was well written and covered the mark.

Mr. Schultz' memorandum begins to stray off-course in the last paragraph on page 2. He suggests that if saving a significant resource involves "substantial delays of the project" or the "cost of redesign is excessive" then the resource must take a back seat to the developer. CEQA and the land-use planning process never consider project delays or financial hardship as a valid argument for damaging or destroying a critical resource.

In that last paragraph, Mr. Schultz (an attorney) continues to remain off-course when he makes a statement about a subject that only a professional archaeologist would be able to address. He states, "capping or covering sites with soil may not be a practical solution where it might interfere with later carbon-14 or pollen dating procedures." (Schultz 2007)

As professional archaeologists with a combined 137 years of academic, research, and field experience, we know that in order for fill soil to adversely affect radiocarbon samples, the fill soil would have to be laden with enough petrochemicals to make it toxic to humans. Pollen grains are virtually indestructible, and we are aware of no fill soil that could possibly damage them.

If Mr. Schultz does not accept preserving an archaeological site in place by project redesign or capping with fill soil, then we are left to assume that Mr. Schultz advocates his final alternative (destroying the site) as a way of leaving radiocarbon samples and pollen grains intact.

To his credit, Mr. Schultz does say, in the last sentence on page 2, "When avoidance is not possible, excavation may be the only feasible alternative or mitigation measure." Read this sentence twice, as you will never encounter it again in the memorandum. The rest of the document is focused on making the point that "construction monitoring" provides sufficient mitigation for the destruction of cultural resources. This is a critical concept, because if Mr. Schultz is unable to make this point, it becomes clear that Morro Bay is not in compliance with CEQA law. Simply put, "Construction Monitoring" is allowing the archaeologist to watch as the heavy equipment grades and trenches through the cultural soils. It does not involve the scientific recovery and analysis of cultural materials. At best, the archaeologist is able to quickly recover what few artifacts are exposed as the site is being destroyed, but even these are of limited scientific value, having been ripped from their cultural setting.

Page 3 of the City Memorandum seeks to "teach" the City Council and staff about the CEQA process concerning archaeological resources. Any professional archaeologist will look at this page and immediately see what is wrong with Mr. Schultz analysis. However, most public servants will take it at face value. All archaeologists and most land-use planners know that there are three "phases" to archaeological studies. These are:

Phase I: Identifying whether resources exist within a project area. This is required for all discretionary projects by CEQA sec. 21084.1.

Phase II: If necessary, testing the resource (through excavation) to determine its significance. This is also required by CEQA sec. 21084.1 and CEQA Guidelines sec. 15064.5.

Phase III: If a significant resource is encountered, this Phase is for carrying out a plan to either protect the resource in place, or recover the data (through excavation), if damage can't be avoided. CEQA states, resources that cannot be preserved in place shall be mitigated by recovering the "scientific and consequential information from or about the resource" (CEQA Guidelines sec. 15126.4 c).

CEQA says nothing about a "monitoring during construction" phase. In fact the word "monitoring" is never mentioned in CEQA or in the CEQA Guidelines.

Mr. Schultz correctly describes Phase I in paragraph 2 on pg. 3. However, he has incorrectly lumped Phase II and Phase III together under his second highlighted item.

Mr. Schultz' "third" highlighted item is not Phase III data recovery, but "Archaeological Monitoring During Construction". It is listed as if it were a way to mitigate impacts to an archaeological site. He even states, "archaeological monitoring is frequently recommended to mitigate adverse affects to an archaeological site".

Again, as professional archaeologists with more than 137 years of training and experience, we have NEVER seen "monitoring" listed as a way of mitigating adverse affects or damage to an archaeological site.

What **IS** "monitoring" used for? There are two basic instances during which archaeological monitoring is recommended:

1. When there are no archaeological sites within the project area, however geology suggests the possibility that buried (unseen on the ground surface) cultural artifacts or features may exist in the area. It is recommended as a precaution.
2. AFTER DATA RECOVERY MITIGATION HAS TAKEN PLACE, construction monitoring is required as a way of recording special features and artifacts that could not be retrieved during the data recovery process.

The rest of Mr. Schultz' memorandum tries to make the point that what he calls "mitigation monitoring" or as he calls it "A Mitigation Monitoring Plan (Phase III)" constitutes adequate mitigation for damage to archaeological sites. To support his "view" of how cultural sites should be mitigated, Mr. Schultz quotes statements and recommendations out of context, from Morro Bay planning letters and archaeological reports. He uses recommendations and quotes from our reports, out of context, which make them sound as if we were also recommending "construction monitoring" as mitigation for site damage.

His first "quote" is from a letter written by Laurence Spanne (archaeologist for Vandenberg Air force Base). The City of Morro Bay asked Mr. Spanne to review the work of Clay Singer (local Cambria archaeologist). In 1998, the City had received two letters from Mr. Singer stating,

"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)

As Mr. Schultz' memorandum is responding to complaints filed by the Northern Chumash Tribal Council, he recounts Mr. Spanne's writings that Native American's should be involved in the site mitigation process. Mr. Schultz fails to include that portion of Mr. Spanne's review in which he lists the parameters

necessary for the residence project to comply with CEQA and the Morro Bay Coastal Land Use Plan:

1. site preservation
2. project redesign to avoid impacts to the site.
3. preservation of the site under fill.
4. data recovery of site information followed by monitoring of disturbance.

Spanne's list makes a clear distinction that data recovery is necessary before monitoring of construction (Spanne 1999a).

In the 3rd paragraph on page 4, Mr. Schultz quotes Mr. Spanne again in his July 10th, 1999 letter to the City. Spanne recommended Phase II testing to determine the significance of site deposits. What Mr. Schultz left out was Mr. Spanne's statement that, "I would strongly recommend against Mr. Singer being employed as the project archaeologist for the same reasons as stated above." (Spanne 1999)

In the 4th paragraph on page 4, Mr. Schultz quotes archaeologist Nancy Farrell's discussion of "controlled grading monitoring" that she outlined in her December 10th, 1999 mitigation plan. Mr. Schultz leaves out the fact that Ms. Farrell recommended at least a 1% hand excavated data recovery excavation before the controlled grading monitoring (Farrell 1999).

In the 5th paragraph on page 4, Mr. Schultz miss-quotes from Mr. Spanne's July 29th, 2000 letter to the City. In his letter discussing Nancy Farrell's recommendations, Mr. Spanne agreed with Ms. Farrell's recommendation of at least 1% data recovery excavation as well as "controlled grading monitoring". Mr. Schultz seems to have left out the 1% data recovery part that Mr. Spanne indicated should take place prior to "controlled grading monitoring" (Spanne 2000).

It is also apparent that Mr. Schultz didn't understand what the phrase "controlled grading monitoring" meant. "Controlled grading monitoring" is completely different than an archaeologist "monitoring construction excavation". Controlled grading monitoring means that the archaeologist is using the heavy equipment operator to excavate archaeological soil samples and to grade soil layers that the archaeologist then uses as part of the data recovery operation. It is grading for data recovery purposes, not for construction purposes.

The last paragraph on pg. 4 is from another peer review letter, this time by archaeologist David Stone (Santa Barbara Planning Staff) who was also asked by the City to review Mr. Singer's recommendations. In recounting Mr. Stone's letter, Mr. Schultz suggests that this letter states that monitoring could be used as mitigation. However, Mr. Schultz missed the point again. Two months earlier, in David Stone's 5-27-2001 peer review letter to the City, he disagrees with

Singer's "monitoring only" mitigation plan and states,

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

By 2001, at least three separate archaeologists had indicated to the City of Morro Bay that construction monitoring within the boundaries of archaeological site CA-SLO-165 would not meet CEQA requirements as mitigation for damage to the cultural resource. In addition, it should have been apparent to the City that Mr. Singer's recommendations that "construction monitoring" would suffice as mitigation went against specific CEQA wording indicating that the "scientific and consequential information from or about the resource" needed to be recovered prior to construction (CEQA sec. 15126.4 c).

By 2001, Caltrans archaeologists had conducted data recovery for HWY 41 widening through the site, and the City had approved a data recovery plan to handle part of the site that was to be disturbed by the decommissioning of a Shell Service Station (Mikkelsen et. al. 2000, Parker 2000, 2001).

Yet, when the city received yet another report from Mr. Singer (2-25-02) indicating that construction monitoring alone would adequately mitigate proposed damage to the archaeological site, they accepted it (Singer 2002).

Pages 5 through 9 of Mr. Schultz' memorandum list several projects within and outside the boundaries of SLO-165. When discussing each of these projects, he paints the picture that construction monitoring was the mitigation program approved and carried out. This was not the case.

On the bottom of pg. 5, Mr. Schultz talks about a Parker & Associates archaeological mitigation project on Mimosa Street where "All grading activities shall then be field monitored and supervised by the project archaeologist." This sounds like Parker & Associates recommended "monitoring" as mitigation.

What Mr. Schultz fails to indicate in his memorandum is that the developer had agreed to place three feet of fill over the cultural deposit before beginning project construction. Capping the site with fill was the mitigation and served to preserve the site intact. In this case, construction monitoring was just a precaution to make sure that the construction crew didn't accidentally excavate beneath the fill layer (Parker 2004).

On page 6, Mr. Schultz lists another of Mr. Singer's projects (Hill Street) in which construction monitoring was recommended as mitigation. This mitigation plan was developed for a house that was to be constructed on caissons (pilings drilled into the soil designed to minimize damage to the archaeological site) (Singer 2002). Monitoring may have sufficed as mitigation under those circumstances, however, when a new owner decided to change the design and build the house using standard foundation footing trenches, Mr. Singer told the City that construction monitoring would also suffice as mitigation for that project even

though at least one hundred cubic meters of cultural soils would be destroyed (Singer 2004). By this time, the City should have realized that Mr. Singer only recommends construction monitoring regardless of what damage will occur to the resource or what CEQA law requires.

On Page 7, Mr. Schultz lists a project on Main Street that was monitored by Parker & Associates Archaeological Research. He presents this as if construction monitoring was used to mitigate impacts to an archaeological site. In this particular case, no archaeological site existed within the project area, therefore no impacts were going to occur and no archaeological mitigation plan was needed. However, there was a recorded archaeological site 100 feet away. Parker & Associates recommended monitoring of initial grading and trenching as a precaution, just to make sure that the boundary of the nearby site didn't extend into the project area (Parker 2003, 2005).

On pages 8, 9, and 10, Mr. Schultz lists how Mr. Singer's "monitoring" plan for the house on Hill Street (see above) was applied by the City to mitigate damage that was to occur to the archaeological site by the construction of four new duplexes and two single-family homes on five separate lots within the boundaries of SLO-165.

The Damage Done to Archaeological Site CA-SLO-165

It is difficult to calculate the total amount of cultural soils that have been destroyed by these projects. However, an examination of foundation plans, along with field photos and measurements suggest that something between 800 and 1,000 cubic meters of cultural soils have been destroyed; all without any data recovery. Whatever cultural information, cultural activities, and whatever time periods of site use were represented by those soils have all been destroyed. We will never be able to replace this resource and we will never know what took place within this part of SLO-165.

Why Was This Part of SLO-165 Important?

The part of SLO-165 destroyed by the four duplexes and two single-family homes, likely contained information from a period of site use that doesn't exist anywhere else in the site.

On the east side of Hill Street (just east of the approved projects), site soils contained cultural material dating between 4,000 and 7,000 years old. A study of these materials demonstrated that Morro Bay once extended up the Morro Creek Valley and that the site was a bay shore village. Recovered artifacts showed us that this arm of Morro Bay silted in around 6,300 years ago. The data recovered told us that villages in the area had distinct territorial boundaries by 6,000 years ago and that a shell bead money economy was in use as early as 5,000 years ago.

Closer to HWY 41 (just southeast of the approved projects), the Caltrans data recovery work discovered that this part of the site was inhabited between 4,000

and 2,000 years ago. Those artifacts told us that around 2,000 years ago the village was abandoned (most likely because Morro Bay resources could no longer support large villages of people).

On the east side of Sunset Ave. (immediately west of the approved projects), Caltrans data recovery work discovered the oldest part of the site (8,000 to 9,000 years old). There are very few sites of this age in San Luis Obispo County. Any information from this period is critical in piecing together the early development of the Chumash culture as well as changes in Morro Bay's natural habitat.

So on three different projects, surrounding the recently disturbed area, three completely different periods of use and different information about the past has been recovered. What cultural activities and what time periods were represented by the cultural soils within the five city lots that are currently being developed? We have no idea. Due to the fact that no data recovery was required, we will never know. Those soils and the relationships between the artifacts and cultural material within them have now been destroyed. They can never be replaced and the information they once contained is gone forever.

The Value of the Damage Done

This is information that belongs to the public. It is like taking a book about the history of Morro Bay and burning it without letting anyone read it. It is not just a "historical" book, it also contained information about how people relate to each other and their environment, information about Morro Bay ecology, information about past climate change and how people, wildlife, and plant communities reacted to that change. This is knowledge that would have benefited all of us.

When damage to archaeological sites occurs on Federal lands, the National Archaeological Resource Protection Act requires that the public be reimbursed for the value of the damage. Under this act the value of the damage is based on what it would have cost to scientifically recover the information contained in the site. At the current rate of \$5,000 to \$8,000 per cubic meter, the 800 cubic meters of damage in Morro Bay would be valued at between \$4,000,000 and \$6,400,000.

Should Morro Bay be held accountable for reimbursing the public for the value of the information lost as a result of the City's non-compliance with CEQA? If not, then who?

In Mr. Schultz' conclusion, he states that the City of Morro Bay will continue to allow development to occur on archaeological site SLO-165 while requiring only "mitigation monitoring". In other-words, under current City policy, we will never learn anything more from this one-of-a-kind and valuable resource as we watch it be destroyed for residential and commercial development.

Little-by-little, parcel-by-parcel, all the past cultural and environmental information contained within the soils of SLO-165 is being destroyed.

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 that 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 show that Morro Bay takes its legal mandate under the California Environmental Quality Act seriously.

In his conclusion, Mr. Schultz states “The CEQA process does not allow for complaints after projects have already been approved and building permits issued.” This may be true, however, the CEQA process does not preclude members of the public from filing a civil suit against a public agency for the destruction of public information.

Just last year, the County Board of Supervisors required a developer to pay \$900,000 to offset damage that he did to archaeological resources near Mission San Miguel.

Thank you for your time and consideration.

Sincerely,

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Nancy Farrell (Cultural Resource Management Services)
Dr. John Parker (Parker & Associates Archaeological Research)
Laurence W. Spanne, M.A. (Archaeological Assessment and Management)

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