

# Hopland Tribal Historic Preservation Program

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# CEQA and Native American Cultural Sites Questions

- 1. How are Native American cultural sites currently addressed by CEQA?
- 2. What are the roles of the Native American Heritage Commission and the Office of Historic Preservation in CEQA review for Native American cultural resources?
- 3. What are the State Clearinghouse and OPR (Office of Planning and Research); what is their role in the CEQA process?

# CEQA

## A Brief Overview

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# CEQA

- Enacted in 1970, modeled after NEPA
- Law was conceived to require public agencies decision makers to **document & consider** the environmental implications of their actions
- Applies to **all** governmental agencies at **all** levels in California

# CEQA Act

- Authority is codified in Statute §§ 21000-21177, California Public Resources Code
- CEQA Guidelines written by Office of Planning and Research (OPR) 14 Cal. Code Regs. § 15000 et. seq.; the last revision occurred in 1998.
- Biennial Review of Guidelines required by OPR; proposed changes to be recommended to Secretary of the Resources Agency § 21087

# Purpose of CEQA

- **Protection of the Environment**
- Enacted to in response to the well-documented failure of state and local governments to consider fully the environmental implications of their actions
- CEQA is to be interpreted liberally “to afford the fullest possible protection of the environment within the reasonable scope of the statutory language” (Friends of Mammoth v. Board of Supervisors)

# Four general principles

- 1. **Information** : Inform decision makers & public about significant environmental effects of proposed activities
- 2. **Identification**: Identify ways that environmental damage can be avoided or significantly reduced

- **3. Prevention:** Prevent significant, avoidable damage to the environment by requiring changes in projects through use of alternatives or mitigation measures when the agency finds changes to be feasible
- **4. Disclosure:** Disclose to the public the reasons why an agency approved the project in the manner the agency chose if significant environmental effects are involved (Code § 21001 (d); Guidelines §15002)

# CEQA: Procedural and Substantive

- Is primarily procedural...

**BUT**

- also is **substantive**

**That means:**

- Public agencies **must** deny approval of projects with significant environmental effects if “there are feasible alternatives or mitigations measures” that can substantially lessen or avoid those effects

# What CEQA Does Not Do

- CEQA does not prevent projects
- CEQA does not prevent the demolition or alteration of a historical resource





# When does CEQA Apply?

- All projects undertaken by a public agency
- **Discretionary** projects undertaken by private parties
- BUT: Presence of a historical resource does not “trigger” CEQA



## When does CEQA not apply?

- CEQA does not apply to **ministerial** projects—even if the project will adversely impact a historical resource

# In the Beginning. . . Is it a Project?



- A project is an activity which may cause either a direct **physical change** in the environment, or a reasonably foreseeable indirect physical change in the environment
- If it is not, no further action required under CEQA



# Is the Project Ministerial?

- A ministerial project is one that requires only conformance with a fixed standard and requires little or no personal judgment by a public official
- It is an exemption
  - Ministerial projects require no further action under CEQA

# Are there Statutory Exemptions from CEQA?



- Projects exempted by the Legislature
- Statutory exemption makes a project ministerial
- A project that falls within a statutory exemption is not subject to CEQA even if it has the potential to significantly affect the environment
  - 14 different actions, i.e., emergency actions

# Is there a Categorical Exemption from CEQA?



- Classes of projects identified by the Resources Agency that should be exempt from CEQA
  - 32 classes of categorical exemptions
- No further action is required under CEQA
  - **However, a categorical exemption cannot be used if the project will significantly adversely impact a historical resource – Exception Rule**

# Categorical Exemptions

- The Use of the Secretary of the Interior's Standards is a Categorical Exemption



# Initial Study

- This is the point that the lead agency determines if there is a historical resource that **could** be significantly impacted by the project
  - Project description
  - Environmental setting
  - Potential Environmental Effects
  - Mitigations

# Initial Study: The Two-Part Test

- Is there a historical resource ?
- Would the project cause a substantial adverse change in the significance of the resource?
- If the answers to both are yes, then agency must decide how to proceed: Negative Declaration, Mitigated Negative Dec or Notice or Preparation for an EIR



# What is a Historical Resource?



- Historical resources are recognized as part of the environment under CEQA
- The term historical resource is given a broad definition
  - CEQA Guidelines §15064.5

# Draft Environmental Impact Report/EIR

- Must include alternatives that would reduce or eliminate environmental effects
- Must describe all reasonable alternatives
- Must include “no project” scenario
- If historical resources are present, one alternative must be to preserve the resource
  - Public comment period for DEIR
    - 30, 45, or 60 days

# Public Notice and Review of Draft Environmental Impact Report (DEIR)

- Public must be noticed that DEIR is available and being circulated for review and comment
  - Public notice must provide location where DEIR can be reviewed.
  - Public notice must provide location where document can be reviewed

# Public Notice and Review of Draft DEIR

- Public notice must be issued to County Clerk, trustee and responsible agencies, and **any person or organization requesting, or who previously requested, a copy.**
- Public notice must be issued in at least one of the following: newspaper, posting on and off project site, direct mailing to owners and occupants of contiguous sites.

# Closing CEQA

- Lead agency must demonstrate it has prepared a ND, MND, or EIR
- Takes comments into account
- Makes findings
- Certifies the EIR



# Enforcement of CEQA

CEQA is a Self-executing statute  
What does that mean?

# Self-Executing means

- Public agencies are entrusted with compliance of CEQA and its provisions are enforced, as necessary, **by the public** through **litigation** and the threat thereof.
- Who can/does sue: private citizens, organizations, and public agencies

- The Resources Agency interprets CEQA Guidelines , but does not **review** the facts and exercise of discretion by public agencies in individual situations. It does not **enforce** CEQA, nor **review** for compliance with CEQA the many state and local agencies actions that are subject to CEQA.

## Question 1

- How are Native American cultural sites currently addressed by CEQA?

# CEQA's Definition of an Historical Resource:

- In general : very broad, very inclusive
- Includes Archeological and Cultural Resources
  - **Public Resources Code 21084.1 and CEQA Guidelines § 15064.5**



# Historical Resources

- A. The State's declared policy is to "take all action necessary to provide the people of this State with . . . enjoyment of aesthetic, natural, scenic, and historic environment. . . ." (Code § 21001 (b))
- B. another legislative goal is to "preserve for future generations . . . examples of the major periods of California history."

## Code § 21084.1 Historical Resources

- A project that may cause a substantial change in the significance of an historical resource is a project that may have a significant effect on the environment. For purposes of this section, an historical resource is a resource listed in, or determined to be eligible for listing in, the California Register. Historical resources included in a local register of historical resources as defined in subdivision (k) of Section 5020.1, or deemed significant pursuant to criteria set forth

- in subdivision (g) of Section 5024.1 are presumed to be historically or culturally significant for purposes of this section, unless the preponderance of the evidence demonstrates that the resource is not historically or culturally significant. The fact that a resource is not listed in, or determined to be eligible for listing in the California Register, not included in a local register, or not deemed significant pursuant to criteria set forth in subdivision (g) of Section 5024.1 shall not preclude a lead agency from determining whether the resource may be a historical resource for purposes of this section.

## Appendix G

### Environmental Checklist Form Cultural Resources

Would the project:

- a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?
- b) Cause a substantial adverse change in the significance of an archeological resource pursuant to § 15064.5
- d) Disturb any human remains, including those interred outside formal cemeteries?

# **CEQA's Benchmark:**

The California Register  
of Historical Resources



# California Register Criteria are association with either

- Events
  - Patterns of Events
  - Repeated Activities
  - Historic Trends
- (Criterion 1)

- **OR**
- Significant Persons  
(Criterion 2)

- Embodies distinctive characteristics of a type, represents the work of a master, possesses high artistic values
- (Criterion 3)

**Or**

- Has yielded or has the potential to yield important information
- (Criterion 4)

## CEQA defines:

- Significant effect on the environment as **substantial**, or potentially substantial, **adverse change** in any of the **physical** conditions within the area affected by the project including. . . objects of historic or aesthetic significance. (Public Resources Code 21068; CEQA Guidelines §15382)
- **adverse change** as: Physical Demolition, Destruction, Relocation, or Alteration of the resource or its immediate surroundings such that the significance of the historical resource would be materially impaired.

## In General: MITIGATION & Historical Resources

A lead agency **must** identify any potentially feasible measures to mitigate significant adverse changes in the significance of an historical resource

Any adopted mitigation measures **must** be made fully enforceable through permits, conditions, agreements, or other measures (CEQA Guidelines § 15064.5 (b) (3-5))

# AUTHORITY TO MITIGATE

- PUBLIC AGENCY HAS AUTHORITY TO REQUIRE FEASIBLE CHANGES IN ANY OR ALL ACTIVITIES TO LESSEN OR AVOID SIGNIFICANT EFFECTS ON THE ENVIRONMENT

(CEQA GUIDELINES §15041)

# Commenting

- Comment on Notice of Preparations (NOP)
- § 21104 Lead Agency shall consult with certain agencies and may consult with person who has special expertise, i. e. [SB 18]
- § 21104 ( c) substantive comments regarding those activities involved in a project that are within the area of expertise of the agency. Those comments should be supported by specific documentation.

# Contents of CEQA Comments

Public is free to comment on any aspect of proposed project

## **However:**

Comments should focus on sufficiency of document regarding identification of impacts and on methods to avoid or mitigate those impacts (§ 15204)

# Effective Comments

- Focus your comments on substantive points
- “I don’t like the project”
- Explain the basis for your comments & support them with substantial evidence such as data, facts, expert opinion, references, etc.
- Focus on the “document” not the project
- Adequacy **yes!** of what is reasonable

# Role of Experts

- Do you have to be an expert in order to comment?
- **NO.**

**BUT!**

- When bringing in someone to buttress your point, **an authority with recognizable credentials**, the Expert, should be substantiating your points

# “Comments” vs. Advocacy

(News)Paper/Public Advocacy:  
informs/engages/often will take sides

VS.

Comments on CEQA documents have to  
address the document, its adequacy & the  
basic purpose of CEQA

## Question 2

- What are the roles of the Native American Heritage Commission (NAHC) and Office of Historic Preservation (OHP) in review for Native American cultural resources?

# Comments by an Agency

- A public agency is limited to comments on only those aspects of a project within their area of expertise or which are required to be carried out or approved by the agency
- Comments must be supported by substantial evidence (§15204(f), 15209)



*The Office  
Of  
Historic*

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 Welcome to *California*
[OHP Home](#)[About OHP](#)[CHRIS - Info Centers](#)[HP Workshop Materials](#)[Publications and Forms](#)[Staff Contacts](#)[State Historical Resources Commission](#)[State Parks Home](#)**Related Links**[OHP Outreach in Southern California](#)[California Main Street Program](#)[FCC Wireless Communication Facilities Section 106 Review](#)[Preservation Partners](#)[Historic Preservation Awards](#)[Preservation Grants](#)[Preservation Incentives](#)[Environmental Review](#)[State & Federal Registration Programs](#)[Local Government](#)

## Office of Historic Preservation



### Office of Historic Preservation Welcome to OHP

The Office of Historic Preservation (OHP) is responsible for administration of federally and state mandated historic preservation programs in California. The mission of the Office of Historic Preservation and the State Historical Resources Commission, in partnership with the people of California and governmental agencies, is to preserve and enhance California's irreplaceable historic heritage as a matter of public interest so that its vital legacy of cultural, educational, recreational, aesthetic, economic, social, and environmental benefits will be maintained and enriched for present and future generations.

[More About OHP](#)**OHP/CPF WORKSHOPS**

 **SACRAMENTO** - City of Sacramento, co-sponsor  
*Historical Resources Surveys for Local Governments*  
Wednesday, October 27, 2004

*Infill Design in Historic Districts*  
Thursday, October 28, 2004

*Making CEQA Work!*  
Friday, October 29, 2004

**SAI FRANCISCO**

*Financial Incentives for Historic Preservation*  
Thursday, November 18, 2004

*Housing in Historic Buildings: A Good Fit*  
*Retrofitting Historic Buildings for Housing - Enhancing Existing Communities*

[Flier Registration Form](#)

 
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[FIVE VIEWS - AN ETHNIC SITE SURVEY FOR CALIFORNIA](#)

[CALIFORNIA HISTORICAL LANDMARKS](#)

[STATEWIDE HISTORIC PRESERVATION PLAN](#)

[Click Here](#) to learn how you can be involved in the Preservation Plan Update now underway

[2002 CULTURAL HERITAGE RESOURCES SUMMIT PROCEEDINGS](#)

[HPS HISTORIC PRESERVATION LINKS](#)

- [The Secretary of the Interior's Standards and Guidelines for Treatment of Historic Properties \(1995\)](#)
- [Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines \(amended\)](#)
- [Federal Historic Preservation Tax Incentives](#)
- [National Register Bulletins](#)

# OHP Mission

- The mission of the **Office of Historic Preservation (OHP)** and the **State Historical Resources Commission (SHRC)**, in partnership with the people of California and governmental agencies, is to preserve and enhance California's irreplaceable historic heritage as a matter of public interest so that its vital legacy of cultural, educational, recreational, aesthetic, economic, social, and environmental benefits will be maintained and enriched for present and future generations.

California is characterized by a rich historical past and a bright, promising future. The State's historical resources represent the contributions and collective human experiences of a diversified population spanning 10,000-12,000 years of occupancy in California. This heritage is embodied in the cultural and historical landscapes of California as evidenced by archaeological remains, historic buildings, traditional customs, tangible artifacts, historical documents, and public records extant in California. All these evidences of the past contribute to the sum total of California's history. Such historical resources provide continuity with our past and enhance our quality of life.

# CALIFORNIA OFFICE OF HISTORIC PRESERVATION

CURRENT 16 September 2008

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Alberto Bertoli, AIA  
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State Historic Preservation Officer  
SHRC Executive Secretary

## Stephen D. Mikesell\*

Deputy State Historic Preservation Officer

## Twila Willis-Hunter

Executive Secretary I

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# About OHP:

- The **California State Office of Historic Preservation (OHP)** is responsible for administering federally and state mandated historic preservation programs to further the identification, evaluation, registration and protection of California's irreplaceable archaeological and historical resources under the direction of the **State Historic Preservation Officer (SHPO)**, a gubernatorial appointee, and the **State Historical Resources Commission**.

OHP's responsibilities include:

- Identifying, evaluating, and registering historic properties;
- Ensuring compliance with federal and state regulatory obligations;
- Encouraging the adoption of economic incentives programs designed to benefit property owners;
- Encouraging economic revitalization by promoting a historic preservation ethic through preservation education and public awareness and, most significantly, by demonstrating leadership and stewardship for historic preservation in California.

# Architectural Review

The **Architectural Review and Incentives Unit** administers the **Federal Historic Preservation Tax Incentives Program**. Unit staff also provide architectural review based on conformance with the **Secretary of the Interior's Standards for the Treatment of Historic Properties** (Standards), technical assistance, and consultation for projects involving qualified historic properties in which the OHP has a regulatory role. These include:

- **Section 106** of the National Historic Preservation Act, including HUD projects involving historic properties;
- **California Public Resources Code, Sections 5024, 5024.5, and 5028;**
- **CEQA**; and
- **Governor's Executive Order W-26-92.**
- Staff also provide guidance and assistance in the following areas:
- Interpretation and application of the **Secretary of the Interior's Standards for the Treatment of Historic Properties;**
- **Incentives for Historic Preservation in California;**
- General assistance with and interpretation of the **California Historical Building Code** and provisions for qualified historic properties under the Americans with Disabilities Act;
- Outreach and educational presentations on the Standards and Incentives available for historic properties.

# Project Review

OHP's Project Review Unit is charged with ensuring that projects and programs carried out or sponsored by federal and state agencies comply with federal and state historic preservation laws and that projects are planned in ways that avoid or minimize adverse effects to heritage resources. OHP reviews and comments on several thousand projects annually.

Federal and federally-sponsored programs and projects are reviewed pursuant to Sections 106 and 110 of the National Historic Preservation Act. **Section 106** of the **National Historic Preservation Act (NHPA)**, as amended, requires federal agencies to consider the effects of proposed federal undertakings on historic properties. NHPA's implementing regulations found in 36 CFR Part 800, require federal agencies (and their designees, permittees, licensees, or grantees) to initiate consultation with the State Historic Preservation Officer (SHPO) as part of the Section 106 review process.

State programs and projects are reviewed pursuant to **Sections 5024 and 5024.5** of the **California Public Resources Code**. Additionally, Section 5024 requires consultation with OHP when a project may impact historical resources located on State-owned land.

OHP also reviews and comments on a select number of projects pursuant to the **California Environmental Quality Act (CEQA)**. CEQA requires that public agencies consider the effects of their actions on historical resources eligible for listing in the California Register of Historical Resources.

Many local governments throughout California have ordinances that require the review of projects at the local level that may adversely impact historical resources. For information on these types of programs, contact the local government with jurisdiction over the resource in question.

# Local Government Assistance

The Office of Historic Preservation provides technical assistance to California's city and county governments to aid them in developing and implementing historic preservation programs within the broader context of overall community planning and development. Historic preservation programs and projects are most effective when integrated and coordinated with other community programs and activities, including land use planning procedures and project approval decision making. Communities derive the most benefits from a comprehensive approach that combines identification, evaluation, and registration of historical resources with strong local planning powers, economic incentives, and informed public participation.

A neighborhood or community's historic resources give it its special character and cultural depth and provide tangible links to the community's historical and cultural heritage. Each historic building and structure represents an investment that should not be discarded lightly; maintaining, and rehabilitating older buildings and neighborhoods can mean savings in energy, time, money, and raw materials. There is growing recognition by citizens and local governments that a community's historic resources have multiple values and should be retained as functional parts of contemporary life.

OHP also administers the Certified Local Government Program, a national program designed to encourage the direct participation of a local government in the identification, registration, and preservation of historic properties located within the jurisdiction of the local government. A local government may become a CLG by developing and implementing a comprehensive local historic preservation program based on federal and state standards. OHP distributes at least 10% of its annual federal Historic Preservation Fund allocation to CLG through a competitive grant program to assist CLGs in achieving their historic preservation goals.

OHP provides guidance and assistance to local governments in the following areas:

- Drafting or updating preservation plans and ordinances
- Planning for and conducting architectural, historical, and archeological surveys
- Developing criteria for local designation programs, historic districts, historic preservation overlay zones (HPOZs), and conservation districts
- Developing design guidelines using the Secretary of the Interior's Standards
- Developing economic incentives for historic preservation
- Training local commissions and review boards
- Meeting CEQA responsibilities with regard to historical resources

# Registration Programs

Historic preservation has four essential components: identification, evaluation, registration and protection. The Office of Historic Preservation (OHP) offers four different registration programs:

- **California Historical Landmarks**
- **California Points of Historical Interest**
- **California Register of Historical Resources**
- **National Register of Historic Places**

Each registration program is unique in the benefits offered and procedures required. If a resource meets the criteria for registration, it may be nominated by any individual, group, or local government to any program at any time. Resources do not need to be locally designated before being nominated to a state program nor do they need to be registered at the state level before being nominated to the National Register.

Resources listed in the National Register, California Historical Landmarks #770 and above are automatically listed in the California Register. Points of Historical Interest designated after December 1997 and recommended by the State Historical Resources Commission are also listed in the California Register.

As of January 2008, there are 1,044 California Historical Landmarks, 851 Points of Historical Interest, 2,380 National Register listings, and more than 25,000 resources listed in the California Register.

Many local governments in California also offer local designation/registration programs. Check with the local government with jurisdiction over the particular resource you are considering registering to learn more about the benefits of local designation.

# OHP's Role in CEQA process:

- Is the State's recognized authority on Preservation and Historical and Cultural Resources
- By definition a Commenting Agency under CEQA
- OHP receives between 13,000 to 14,000 CEQA documents annually from State Clearinghouse
- OHP comments under PRC 5024 & PRC 5024.5 on State Projects
- OHP comments on Local Government projects: City, County, Special Districts

# OHP

- Commenting Criteria
- Has no state mandate/authority; therefore only one paid position for CEQA review exists
- But: Since 12/2004 there has been an increase in OHP's comment letters dealing with archeological/cultural resource issues (over 2/3 of letters)

# Native American Heritage Commission (NAHC) Role

- Was created in 1976 to act as liaison in disseminating and interpreting laws, rules and procedures affecting the large number of federally recognized tribes and other tribal groups
- Is to identify the most likely descendants in determining the treatment and disposition of Native American human remains
- Comments under PRC § 5097.98

- Manages the Sacred Lands File
- Administers the application of PRC § 5097.9 et. al and the Health and Safety Code §7050.5
- <http://www.ceres.ca.gov/nahc>

## Question 3

- What are the State Clearinghouse and OPR (Office of Planning and Research)?
- What is their role in the CEQA process?

# Governor's Office of Planning and Research (OPR) [www.opr.ca.gov](http://www.opr.ca.gov)

- The Governor's Office of Planning and Research (OPR) plays a critical role in the Schwarzenegger Administration, providing legislative and policy research support for the Governor's office. OPR also assists the Governor and the Administration in land-use planning and manages the Office of the Small Business Advocate.  
OPR encompasses five main units:
- The State Clearinghouse
- The Legislative Unit
- The Policy and Research Unit
- The Office of Small Business Advocate
- Advisory for Military Affairs

# OPR deals with:

- State-wide Planning: General Plan assistance and resources
- SB 18: provides training; OPR's Tribal Consultation Policies
- Provides legislative analysis for Governor's Office
- Policy and Research unit (policy research for Governor & his cabinet)
- Has liaison role between state & local governments and various state agencies to encourage collaboration in achieving land use goals & objectives

# State Clearinghouse (SCH)

- Provides state-level review of CEQA Documents
- Coordinates CEQA document submittal and review process at the state level
- Maintains CEQA-net database
- Provides on-line link to CEQA Statute & Guidelines
- Provides announcements and technical assistance about CEQA
- Federal Grant review

# General CEQA Resources:

- CEQA and CEQA Guidelines printed copies:
- CELSOC (Consulting Engineers and Land Surveyors of California)
- 1303 J Street, Suite 450
- Sacramento, CA 95814
- 916-441-7991
- staff@celsoc.org
- Published annually-\$30.00 per copy plus tax and shipping for non-members

# Web-based resources:

[http://ceres.ca.gov/topic/env\\_law/ceqa/](http://ceres.ca.gov/topic/env_law/ceqa/)

Law, guidelines, CEQA case law, proposed rulemaking

[www.ceqanet.ca.gov/](http://www.ceqanet.ca.gov/)

CEQA database, history, and publications

<http://ceres.ca.gov/ceqa/guidelines>

CEQA Guidelines

[www.ohp.parks.ca.gov](http://www.ohp.parks.ca.gov)

CEQA and historical resources and other historic preservation topics

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