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California Office of Historic Preservation
Department of Parks & Recreation
Technical Assistance Series

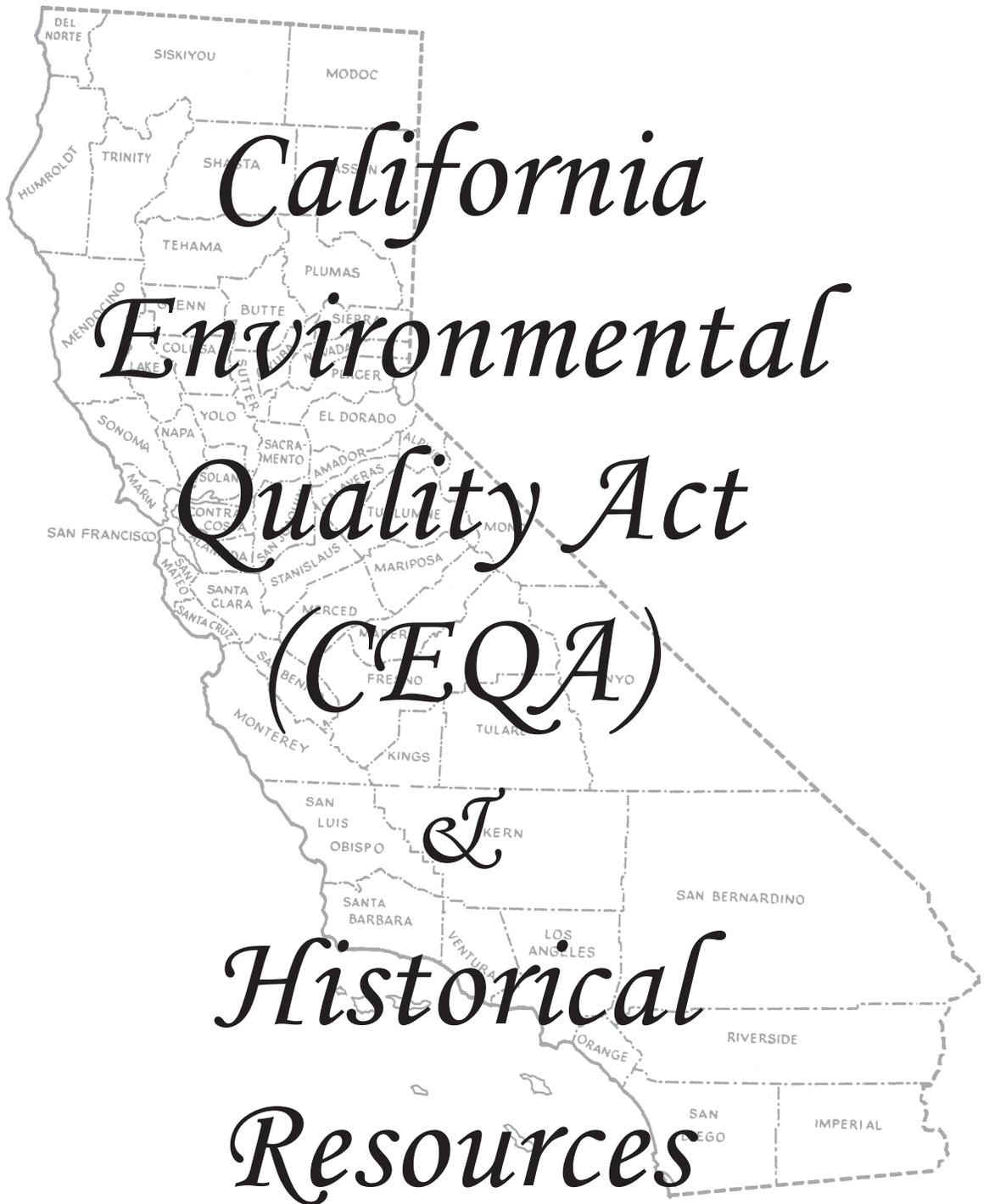


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This publication has been financed in part with Federal funds from the National Park Service, Department of the Interior, under the National Historic Preservation Act of 1966, as amended, and administered by the California Office of Historic Preservation. The contents and opinions do not necessarily reflect the views or policies of the Department of the Interior, nor does the mention of trade names or commercial products constitute endorsement or recommendation by the Department of the Interior. Under Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, the U.S. Department of the Interior strictly prohibits unlawful discrimination on the basis of race, color, national origin, age, or handicap in its federally- assisted programs. If you believe you have been discriminated against in any program, activity, or facility as described above, or if you desire further information, please write to Office for Equal Opportunity, U.S. Department of the Interior, National Park Service, Box 37127, Washington DC 20013-7127.

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INTRODUCTION

The California Environmental Quality Act (CEQA – pronounced see' kwa) is the principal statute mandating environmental assessment of projects in California. The purpose of CEQA is to evaluate whether a proposed project may have an adverse effect on the environment and, if so, if that effect can be reduced or eliminated by pursuing an alternative course of action or through mitigation. CEQA is part of the Public Resources Code (PRC), Sections 21000 et seq.

The CEQA Guidelines are the regulations that govern the implementation of CEQA. The CEQA Guidelines are codified in the California Code of Regulations (CCR), Title 14, Chapter 3, Sections 15000 et seq. and are binding on state and local public agencies.

The basic goal of CEQA is to develop and maintain a high-quality environment now and in the future, while the specific goals of CEQA are for California's public agencies to:

1. Identify the significant environmental effects of their actions; and, either
2. Avoid those significant environmental effects, where feasible; or
3. Mitigate those significant environmental effects, where feasible.

CEQA applies to "projects" proposed to be undertaken or requiring approval by state and local public agencies. "Projects" are activities which have the potential to have a physical impact on the environment and may include the enactment of zoning ordinances, the issuance of conditional use permits and variances and the approval of tentative subdivision maps.

Where a project requires approvals from more than one public agency, CEQA requires one of these public agencies to serve as the "lead agency."

A "lead agency" must complete the environmental review process required by CEQA.

The most basic steps of the environmental review process are:

1. Determine if the activity is a "project" subject to CEQA;
2. Determine if the "project" is exempt from CEQA;
3. Perform an Initial Study to identify the environmental impacts of the project and determine whether the identified impacts are "significant". Based on its findings of "significance", the lead agency prepares one of the following environmental review documents:
 - Negative Declaration if it finds no "significant" impacts;
 - Mitigated Negative Declaration if it finds "significant" impacts but revises the project to avoid or mitigate those significant impacts;
 - Environmental Impact Report (EIR) if it finds "significant" impacts.

The purpose of an EIR is to provide State and local agencies and the general public with detailed information on the potentially significant environmental effects that a

proposed project is likely to have, to list ways that the significant environmental effects may be minimized and to indicate alternatives to the project.

Throughout this handout you will find references to various sections of the California Public Resources Code and the Code of Regulations. The various State statutes and regulations can all be accessed on-line at the following websites:

Statutes - <http://www.leginfo.ca.gov/calaw.html>

Regulations - <http://ccr.oal.ca.gov/>

This handout is intended to merely illustrate the process outlined in CEQA statute and guidelines relative to historical and cultural resources. These materials on CEQA and other laws are offered by the State Office of Historic Preservation for informational purposes only. This information does not have the force of law or regulation. This handout should not be cited in legal briefs as the authority for any proposition. In the case of discrepancies between the information provided in this handout and the CEQA statute or guidelines, the language of the CEQA statute and Guidelines (PRC § 21000 et seq. and 14 CCR § 15000 et seq.) is controlling. Information contained in this handout does not offer nor constitute legal advice. You should contact an attorney for technical guidance on current legal requirements.

QUESTIONS AND ANSWERS

When does CEQA apply?

Resources listed in, or determined to be eligible for listing in, the California Register are resources that must be given consideration in the CEQA process.

All projects undertaken by a public agency are subject to CEQA. This includes projects undertaken by any state or local agency, any special district (e.g., a school district), and any public college or university.

CEQA applies to discretionary projects undertaken by private parties. A discretionary project is one that requires the exercise of judgement or deliberation by a public agency in determining whether the project will be approved, or if a permit will be issued. Some common discretionary decisions include placing conditions on the issuance of a permit, delaying demolition to explore alternatives, or reviewing the design of a proposed project. Aside from decisions pertaining to a project that will have a direct physical impact on the environment, CEQA also applies to decisions that could lead to indirect impacts, such as making changes to local codes, policies, and general and specific plans. Judgement or deliberation may be exercised by the staff of a permitting agency or by a board, commission, or elected body.

CEQA does not apply to ministerial projects. A ministerial project is one that requires only conformance with a fixed standard or objective measurement and requires little or no personal judgment by a public official as to the wisdom or manner of carrying out the project. Generally ministerial permits require a public official to determine only that the project conforms with applicable zoning and building code requirements and that applicable fees have been paid. Some examples of projects that are generally ministerial include roof replacements, interior alterations to residences, and landscaping changes.

For questions about what types of projects are discretionary and ministerial within your community, you must contact your local government; usually the local Planning Department handles such issues.

What is the California Register and what does it have to do with CEQA?

Historical resources are recognized as part of the environment under CEQA (PRC § 21002(b), 21083.2, and 21084.1). The California Register is an authoritative guide to the state's historical resources and to which properties are considered significant for purposes of CEQA.

The California Register includes resources listed in or formally determined eligible for listing in the National Register of Historic Places, as well as some California State Landmarks and Points of Historical Interest. Properties of local significance that have been designated under a local preservation ordinance (local landmarks or landmark districts) or that have been identified in a local historical resources inventory may be eligible for listing in the California Register and are presumed to be significant resources for purposes of CEQA unless a preponderance of evidence indicates otherwise (PRC § 5024.1, 14 CCR § 4850).

The California Register statute (PRC § 5024.1) and regulations (14 CCR § 4850 et seq.) require that at the time a local jurisdiction *nominates* an historic resources survey for listing in the California Register, the survey must be updated if it is more than five years old. This is to ensure that a *nominated survey* is as accurate as possible at the time it is listed in the California Register. However, this does not mean that resources identified in a survey that is more than five years old need not be considered “historical resources” for purposes of CEQA. Unless a resource listed in a survey has been demolished, lost substantial integrity, or there is a preponderance of evidence indicating that it is otherwise not eligible for listing, a lead agency should consider the resource to be potentially eligible for the California Register.

However, a resource does not need to have been identified previously either through listing or survey to be considered significant under CEQA. In addition to assessing whether historical resources potentially impacted by a proposed project are listed or have been identified in a survey process, lead agencies have a responsibility to evaluate them against the California Register criteria prior to making a finding as to a proposed project’s impacts to historical resources (PRC § 21084.1, 14 CCR § 15064.5(3)).

Are archeological sites part of the California Register?

An archeological site may be considered an historical resource if it is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military or cultural annals of California (PRC § 5020.1(j)) or if it meets the criteria for listing on the California Register (14 CCR § 4850).

CEQA provides somewhat conflicting direction regarding the evaluation and treatment of archeological sites. The most recent amendments to the CEQA Guidelines try to resolve this ambiguity by directing that lead agencies should first evaluate an archeological site to determine if it meets the criteria for listing in the California Register. If an archeological site is an historical resource (i.e., listed or eligible for listing in the California Register) potential adverse impacts to it must be considered, just as for any other historical resource (PRC § 21084.1 and 21083.2(l)).

If an archeological site is not an historical resource, but meets the definition of a “unique archeological resource” as defined in PRC § 21083.2, then it should be treated in accordance with the provisions of that section.

What is “substantial adverse change” to an historical resource?

Substantial adverse change includes demolition, destruction, relocation, or alteration such that the significance of an historical resource would be impaired (PRC § 5020.1(q)).

While demolition and destruction are fairly obvious significant impacts, it is more difficult to assess when change, alteration, or relocation crosses the threshold of substantial adverse change. The CEQA Guidelines provide that a project that demolishes or alters those physical characteristics of an historical resource that convey its historical significance (i.e., its character-defining features) can be considered to materially impair the resource’s significance.

How can “substantial adverse change” be avoided or mitigated?

A project that has been determined to conform with the *Secretary of the Interior’s Standards for the Treatment of Historic Properties* can generally be considered to be a project that will not cause a significant impact (14 CCR § 15126.4(b)(1)). In fact, in most cases if a project meets the *Secretary of Interior’s Standards for the Treatment of Historic Properties* it can be considered categorically exempt from CEQA (14 CCR § 15331).

Mitigation of significant impacts must lessen or eliminate the physical impact that the project will have on the historical resource. This is often accomplished through redesign of a project to eliminate objectionable or damaging aspects of the project (e.g., retaining rather than removing a character-defining feature, reducing the size or massing of a proposed addition, or relocating a structure outside the boundaries of an archeological site).

Relocation of an historical resource may constitute an adverse impact to the resource. However, in situations where relocation is the only feasible alternative to demolition, relocation may mitigate below a level of significance provided that the new location is compatible with the original character and use of the historical resource and the resource retains its eligibility for listing on the California Register (14 CCR § 4852(d)(1)).

In most cases the use of drawings, photographs, and/or displays does not mitigate the physical impact on the environment caused by demolition or destruction of an historical resource (14 CCR § 15126.4(b)). However, CEQA requires that all feasible mitigation be undertaken even if it does not mitigate below a level of significance. In this context,

recordation serves a legitimate archival purpose. The level of documentation required as a mitigation should be proportionate with the level of significance of the resource.

Avoidance and preservation in place are the preferable forms of mitigation for archeological sites. When avoidance is infeasible, a data recovery plan should be prepared which adequately provides for recovering scientifically consequential information from the site. Studies and reports resulting from excavations must be deposited with the California Historical Resources Regional Information Center (see list in Appendix G). Merely recovering artifacts and storing them does not mitigate impacts below a level of significance.

What are “exemptions” under CEQA and how are they used?

There are basically two types of exemptions under CEQA: statutory and categorical. Statutory exemptions are projects specifically excluded from CEQA consideration as defined by the State Legislature. These exemptions are delineated in PRC § 21080 et seq. A statutory exemption applies to any given project that falls under its definition, regardless of the project’s potential impacts to the environment. However, it is important to note that any CEQA exemption applies only to CEQA and not, of course, to any other state, local or federal laws that may be applicable to a proposed project.

Categorical exemptions operate very differently from statutory exemptions. Categorical exemptions are made up of classes of projects that generally are considered not to have potential impacts on the environment. Categorical exemptions are identified by the State Resources Agency and are defined in the CEQA Guidelines (14 CCR § 15300-15331). Unlike statutory exemptions, categorical exemptions are not allowed to be used for projects that may cause a substantial adverse change in the significance of an historical resource (14 CCR § 15300.2(f)). Therefore, lead agencies must first determine if the project has the potential to impact historical resources and if those impacts could be adverse prior to determining if a categorical exemption may be utilized for any given project.

If it is determined that a statutory or categorical exemption could be used for a project, the lead agency may produce a notice of exemption, but is not required to do so. If a member of the public feels that a categorical exemption is being improperly used because the project could have a significant adverse impact on historical resources, it is very important that any appeals be requested and comments be filed making the case for the exemption’s impropriety. If a notice of exemption is filed, a 35-day statute of limitations will begin on the day the project is approved. If a notice is not filed, a 180-day statute of limitations will apply. As a result, lead agencies are encouraged to file notices of exemption to limit the possibility of legal challenge.

What are local CEQA Guidelines?

Public agencies are required to adopt implementing procedures for administering their responsibilities under CEQA. These procedures include provisions on how the agency will process environmental documents and provide for adequate comment, time periods for review, and lists of permits that are ministerial actions and projects that are considered categorically exempt. Agency procedures should be updated within 120 days after the CEQA Guidelines are revised. The most recent amendments to the CEQA Guidelines occurred in November 1998 and included specific consideration of historical resources. An agency's adopted procedures are a public document (14 CCR § 15022).

Additionally, local governments will often produce materials for distribution to the public explaining the local CEQA process. The OHP strongly recommends the creation of such documents to further aid the public in understanding how CEQA is implemented within each local government's jurisdiction. Often a local historic preservation ordinance will also come into play in that process. In such instances, the OHP further recommends that the local ordinance procedures be explained in a straightforward public document. The materials distributed by the City of San Diego are included in this booklet in Appendix H as an example.

Who ensures CEQA is being followed properly?

In a way, the people of California bear this responsibility. But, ultimately, it is the judicial system that ensures public agencies are fulfilling their obligations under CEQA. There is no CEQA "police" agency as many members of the public mistakenly assume. Rather it is any individual or organization's right to pursue litigation against a public agency that is believed to have violated its CEQA responsibilities.

Although the OHP can, and often does, comment on documents prepared for CEQA purposes (or the lack thereof), it is important that the public be aware that such comments are merely advisory and do not carry the force of law. Comments from state agencies and other organizations with proven professional qualifications and experience in a given subject can, however, provide valuable assistance to decision-makers as well as provide substantive arguments for consideration by a judge during CEQA litigation.

How should a citizen approach advocating for historical resources under CEQA?

1. Familiarize yourself with CEQA. CEQA is a complex environmental consideration law, but the basics of it can be mastered with some concerted education. There is a large amount of information available on the subject of CEQA. Please refer to the following section of this publication for some suggested information sources.

Additionally, contact your local government and request a copy of their local CEQA guidelines as well as any public informational handouts they may have available.

Finally, familiarize yourself with the local codes related to historical resources. Find out if there is a local historic preservation ordinance that would serve to provide protection for the historical resource in question. If so, find out how the review process under that ordinance works. Research ways you can make your opinion heard through that process as well as the general CEQA environmental review process. Usually local ordinances will allow for greater protection for historical resources than CEQA's requirement of consideration. Therefore this is a very important step.

It cannot be emphasized enough the importance of educating yourself prior to an actual preservation emergency arising. CEQA puts in place very strict time controls on comment periods and statutes of limitations on litigation. These controls do not allow much time to learn CEQA in the heat of an impending project. It is far, far better to have at least a cursory understanding of CEQA and local codes related to historical resources well in advance of having to take on a preservation advocacy battle.

2. If and when there is an "action" or a "project" that would invoke CEQA, you should contact the local government undertaking the action. First rule, don't give up if you get shuffled from person to person. Stick with it. Ultimately, you want to get to the person in charge of the project (usually that's a planner in the Planning Department, but it might also be someone with Parks and Recreation, Public Works, Building and Safety, etc.). When you get to the right person, ask where they are in terms of CEQA compliance (using an exemption, preparing initial study or preparing CEQA document).

If the lead agency is using an exemption, ask if they have filed or intend to file a notice of exemption. If so, obtain a copy of it and move to step 3. If not, and you question the use of the exemption, investigate how you go about requesting an appeal of the decision and do so. Additionally, contact OHP to discuss submitting written comments. See step 4 for further information on ensuring your right to initiate litigation.

Once the initial study is finished, the lead agency should know what type of CEQA document they're going to prepare (negative declaration, , mitigated negative declaration, or environmental impact report). If the document has already been prepared, ask to have a copy mailed to you or ask where you can pick up a copy. If the document has not been prepared yet, ask to be placed on mailing list to receive a copy when it's done. If they don't keep a mailing list, then you need to keep an eye on the public postings board (usually at the Clerk's office) for when it does come out and then get a copy (some local governments also post on the internet, so you don't have to go in person or call in every week).

If the local government says they didn't do a CEQA document, ask why. Then call OHP to discuss where to go from there.

If the local government says that they prepared a CEQA document but the comment period on it is closed then there may not be much you can do (see litigation information in step 4); still, ask to have a copy of it sent to you. Then call OHP to discuss how best to proceed.

3. When you get a copy of the document, read it and call OHP to discuss. Then prepare your comments (don't dally, comment periods are usually for 45 days, but are sometimes only 30 days). Also, contact OHP as soon as possible to inform us when a document has come out so we can get a copy and comment on it as well. OHP does its best to respond to all citizens' requests for comments on CEQA documents. However, we cannot guarantee that we will be able to comment on a document with only a few days notice. Therefore, contacting us as soon as possible at the beginning of a comment period on a document, or, even better, prior to the release of the document, will help ensure that we are able to provide substantive written comments within the allotted time period.
4. Submit your comments and attend public hearings. Make sure all your concerns are on record (if the decision does go to litigation, the only thing the judge will be looking at is what's in the public record). Appeal any decision that doesn't go your way (you must exhaust all administrative remedies or your lawsuit—if it comes to that—won't be heard). Even if you do not intend to or want to initiate litigation, don't let the local government know that. You need to appear ready to take the matter to court, because often that's the only thing that will get their attention. If you know in advance that litigation will probably result, you should strongly consider hiring an attorney as early in the process as possible. An attorney will probably be able to provide much stronger arguments in commenting on the adequacy of a CEQA document than you as a member of the public would, and he or she can help ensure that your right to initiate litigation is protected.
5. Often you will find that CEQA doesn't provide you with a mechanism to protect a particular historical resource. This may be the case for a number of reasons, including that the project is private and ministerial (i.e., involves no discretion on the part of a public agency), is subject to a statutory exemption, or has been approved as a result of CEQA documents already having been prepared and circulated prior to your learning of the project. In these instances, you may find that a public relations campaign is your only recourse. In such situations, do not give up hope. There are many examples of citizens utilizing such means as the media, informational mailings and meetings, and dialogue with project developers to halt or alter a project even in the absence of legal remedies. This is an especially useful course of action when the proposed project involves a business that needs to build or retain a positive image in the minds of citizens in the local community in order to succeed.

What information is useful to have on hand when contacting OHP about a CEQA project?

Information about the project:

- Where is the project located? City, county, street address.
- Is there a project name? Often having the project name will make it easier for OHP to find out more information about the project when we contact the lead agency.
- What does the project propose to do? Demolish, alter, relocate an historical resource? Build housing, commercial offices, retail?

Information about the historic property (or properties) potentially impacted:

- Where is the property located? City, county, and a street address
- What is its name? If the property has an historic name, or even what it is generally known as in the local community, it may be easier for us to locate information on it.
- What do you know about the property? Why do you think it's significant?

Lead agency contact information:

- Who is the lead agency for the project? That is, who is undertaking the project (if it's a public project) or permitting it (if it's a private project)? Ideally this should include both the name of the public agency as well as the department or division handling the project.
- Can you obtain a specific contact person's name? Do you have a phone number and/or email address for him or her?

Information on the development of the CEQA process thus far:

- What has the lead agency told you about the environmental review process so far?
- Do they know what type of CEQA document they're going to prepare?
- Have they already prepared one, and, if so, what is the public comment period on it?

Please refer to Appendix A for a sample form you can use to collect this information.

CEQA INFORMATION SOURCES

CEQA Statute and Guidelines

California Resources Agency

The CEQA Statutes and Guidelines with Office of Planning and Research (OPR) commentary are available to download in Adobe Acrobat (PDF) format at the California Environmental Resources Evaluation System (CERES) website at <http://ceres.ca.gov/ceqa>. The Secretary of the Interior's Standards for Historic Preservation are also available at this website.

Governor's Office of Planning and Research

Statutes and Guidelines with OPR Commentary (Sacramento: State Printing Office, June 1995).

Available through State Department of General Services, Publications Section PO Box 1015, North Highlands CA 95660. Orders should include title, stock number (7540-931-1022-0), number of copies, and remittance (\$18.00 per copy, includes UPS delivery). Make checks payable to State of California. No phone orders accepted.

Consulting Engineers and Land Surveyors of California (CELSOC)

California Environmental Quality Act/CEQA Guidelines

This handy pocket edition is updated annually. Cost is \$6.50 for CELSOC members, \$9.50 for public agencies, and \$19.50 for non-members. Shipping is an additional \$3.00 and California residents must include sales tax at 7.25%. Available through CELSOC, 1303 J St, Ste 370, Sacramento CA 95814, phone: (916) 441-7991, fax: (916) 441-6312, email: staff@celsoc.org, website: <http://www.celsoc.org>.

State Office of Historic Preservation

California State Law and Historic Preservation: Statutes, Regulations and Administrative Policies Regarding Historic Preservation and Protection of Cultural and Historical Resources, 1999.

This complete compilation of all state codes, regulations and executive orders pertaining to historic preservation is available at no cost through the State Office of Historic Preservation, PO Box 942896, Sacramento CA 94296-0001, phone: (916) 653-6624, fax: (916) 653-9824, email: calshpo@ohp.parks.ca.gov. It can be found on the internet at <http://ohp.parks.ca.gov/register/ts10ca.pdf>.

Technical Assistance Publications and General Information

Governor's Office of Planning and Research

CEQA and Historical Resources

CEQA and Archaeological Resources

Circulation and Notice under CEQA

Thresholds of Significance: Criteria for Defining Environmental Significance

This useful series of publications provides assistance in interpreting the CEQA statutes, guidelines and case law. It is available at no cost at <http://ceres.ca.gov/ceqa> or through the State Office of Historic Preservation (first two publications only) at the address and contact information above.

Solano Press

CEQA Deskbook: A Step-by-Step Guide on How to Comply with the California Environmental Quality Act, Ronald Bass, Albert Herson, and Kenneth Bogdan (Point Arena: Solano Press Books).

A very handy guide, which is updated annually, to preparing and evaluating CEQA documents and understanding the CEQA process. Available through Solano Press Books, PO Box 773, Point Arena CA 95468, phone: (800) 931-9373, fax: (707) 884-4109, email: spbooks@solano.com, website: <http://www.solano.com>.

California Preservation Foundation

The Preservationist's Guide to the California Environmental Quality Act, Jack Rubens and Bill Delvac (Oakland: California Preservation Foundation, 1993).

The Guide is a step-by-step tour of CEQA requirements, useful case law and appropriate strategies you might use in your community. [Updated and expanded after the 1993 Annual Statewide Conference in Long Beach.] \$14. Available through the California Preservation Foundation, 1611 Telegraph Avenue, Suite 820, Oakland CA 94612, phone (510)763-0972, fax (510) 763-4724, email: cpf_office@californiapreservation.org, website: <http://www.californiapreservation.org>.

Recent Case Law and CEQA Issues

Solano Press

Guide to the California Environmental Quality Act, Michael Remy, Tina Thomas, et al. (Point Arena: Solano Press Books).

This publication is updated annually and provides general information as well as analysis of CEQA case law. Available through Solano Press Books at the address and contact information above.

California Resources Agency

The CERES website at <http://ceres.ca.gov/ceqa> provides copies of recent CEQA decisions, 1995-1998.

Historic Preservation Advocacy

National Trust for Historic Preservation (NTHP)

A Layperson's Guide to Preservation Law: Federal, State, and Local Laws Governing Historic Resources

A look at the various laws and regulations that protect historic resources, as well as laws governing nonprofit organizations and museum properties.

Non-member \$10.00 / NTHP member \$9.00 / NT Forum \$7.50

Organizing for Change

Five in-depth case studies on how citizens worked through the political process to change preservation planning decisions.

Non-member \$6.00 / NTHP member \$5.40 / NT Forum \$4.50

Rescuing Historic Resources: How to Respond to a Preservation Emergency

The steps to take when faced with a preservation crisis.

Non-member \$6.00 / NTHP member \$5.40 / NT Forum \$4.50

The above titles represent only a few of the many publications the National Trust has available in its series of Historic Preservation Information Booklets. Each of these publications as well as other books, videos, and journals can be purchased through the National Trust's website at <http://www.nthp.org> or by calling (202) 588-6189.

California Preservation Foundation

A Preservationist's Guide to the Development Process, edited by William F. Delvac, Christy McAvoy and Elizabeth Morton (Oakland: California Preservation Foundation, 1992).

This guide is based on CPF's popular 1992 workshop series. Chapters by statewide experts provide valuable overviews of the development process, real estate economics, tax credits, easements, property tax incentives, the State Historical Building Code, CEQA and more. \$12

Avoiding the Bite: Strategies for Adopting and Retaining Local Preservation Programs, edited by Lisa Foster (Oakland: California Preservation Foundation, 1994).

This book contains presentations made during CPF's 1994 workshops on preservation commissions. Includes sections on making allies in City Hall and with Redevelopment staff, maintaining programs in times of budget cuts, building public and political support for local preservation programs, and creating an adoptable ordinance. \$12

Both publications, as well as many others dealing with other preservation subjects, are available through the California Preservation Foundation, 1611 Telegraph Avenue, Suite 820, Oakland CA 94612, phone (510)763-0972, fax (510) 763-4724, email: cpf_office@californiapreservation.org, website: <http://www.californiapreservation.org>.

APPENDIX A: FORM FOR COLLECTION OF INFORMATION ABOUT A PROJECT

The form that follows on the next page is intended to allow you to collect and have readily available pertinent information about a project both for your own personal use as well as for instances when you choose to contact OHP. Although it can readily be argued that collecting even more information is often useful, the attempt herein was to create an easily readable one-page form that can be quickly referenced for particularly pertinent information about a project.

Project Information

Project Name	
City/County Address (if applicable)	
Project Description	

Historical Resources Information

Name of Property	
Street Address	
City/County	
Property Description/ Significance	

Lead Agency Information

Lead Agency	
Contact Person	
Phone/Fax Email	
Mailing Address	
Other Agencies Involved (if applicable)	

CEQA Process

Document Type	
Comment Period	
Notes on Process	

General Notes

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APPENDIX B: STATE CODES AND REGULATIONS RELATED TO CEQA AND HISTORICAL RESOURCES

California Public Resources Code

21083.2. Archeological Resources.

(a) As part of the determination made pursuant to Section 21080.1, the lead agency shall determine whether the project may have a significant effect on archaeological resources. If the lead agency determines that the project may have a significant effect on unique archaeological resources, the environmental impact report shall address the issue of those resources. An environmental impact report, if otherwise necessary, shall not address the issue of nonunique archaeological resources. A negative declaration shall be issued with respect to a project if, but for the issue of nonunique archaeological resources, the negative declaration would be otherwise issued.

(b) If it can be demonstrated that a project will cause damage to a unique archaeological resource, the lead agency may require reasonable efforts to be made to permit any or all of these resources to be preserved in place or left in an undisturbed state. Examples of that treatment, in no order of preference, may include, but are not limited to, any of the following:

- (1) Planning construction to avoid archaeological sites.
- (2) Deeding archaeological sites into permanent conservation easements.
- (3) Capping or covering archaeological sites with a layer of soil before building on the sites.
- (4) Planning parks, greenspace, or other open space to incorporate archaeological sites.

(c) To the extent that unique archaeological resources are not preserved in place or not left in an undisturbed state, mitigation measures shall be required as provided in this subdivision. The project applicant shall provide a guarantee to the lead agency to pay one-half the estimated cost of mitigating the significant effects of the project on unique archaeological resources. In determining payment, the lead agency shall give due consideration to the in-kind value of project design or expenditures that are intended to permit any or all archaeological resources or California Native American culturally significant sites to be preserved in place or left in an undisturbed state. When a final decision is made to carry out or approve the project, the lead agency shall, if necessary, reduce the specified mitigation measures to those which can be funded with the money guaranteed by the project applicant plus the money voluntarily guaranteed by any other person or persons for those mitigation purposes. In order to allow time for interested persons to provide the funding guarantee referred to in this subdivision, a final decision to carry out or approve a project shall not occur sooner than 60 days after completion of the recommended special environmental impact report required by this section.

(d) Excavation as mitigation shall be restricted to those parts of the unique archaeological resource that would be damaged or destroyed by the project. Excavation as mitigation shall not be required for a unique archaeological resource if the lead agency determines that testing or studies already completed have adequately

recovered the scientifically consequential information from and about the resource, if this determination is documented in the environmental impact report.

(e) In no event shall the amount paid by a project applicant for mitigation measures required pursuant to subdivision (c) exceed the following amounts:

(1) An amount equal to one-half of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of a commercial or industrial project.

(2) An amount equal to three-fourths of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of a housing project consisting of a single unit.

(3) If a housing project consists of more than a single unit, an amount equal to three-fourths of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of the project for the first unit plus the sum of the following:

(A) Two hundred dollars (\$200) per unit for any of the next 99 units.

(B) One hundred fifty dollars (\$150) per unit for any of the next 400 units.

(C) One hundred dollars (\$100) per unit in excess of 500 units.

(f) Unless special or unusual circumstances warrant an exception, the field excavation phase of an approved mitigation plan shall be completed within 90 days after final approval necessary to implement the physical development of the project or, if a phased project, in connection with the phased portion to which the specific mitigation measures are applicable. However, the project applicant may extend that period if he or she so elects. Nothing in this section shall nullify protections for Indian cemeteries under any other provision of law.

(g) As used in this section, "unique archaeological resource" means an archaeological artifact, object, or site about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it meets any of the following criteria:

(1) Contains information needed to answer important scientific research questions and that there is a demonstrable public interest in that information.

(2) Has a special and particular quality such as being the oldest of its type or the best available example of its type.

(3) Is directly associated with a scientifically recognized important prehistoric or historic event or person.

(h) As used in this section, "nonunique archaeological resource" means an archaeological artifact, object, or site which does not meet the criteria in subdivision (g). A nonunique archaeological resource need be given no further consideration, other than the simple recording of its existence by the lead agency if it so elects.

(i) As part of the objectives, criteria, and procedures required by Section 21082 or as part of conditions imposed for mitigation, a lead agency may make provisions for archaeological sites accidentally discovered during construction. These provisions may include an immediate evaluation of the find. If the find is determined to be a unique archaeological resource, contingency funding and a time allotment sufficient to allow recovering an archaeological sample or to employ one of the avoidance measures may be required under the provisions set forth in this section. Construction work may continue on other parts of the building site while archaeological mitigation takes place.

(j) This section does not apply to any project described in subdivision (a) or (b) of Section 21065 if the lead agency elects to comply with all other applicable provisions of this division. This section does not apply to any project described in subdivision (c) of Section 21065 if the applicant and the lead agency jointly elect to comply with all other applicable provisions of this division.

(k) Any additional costs to any local agency as a result of complying with this section with respect to a project of other than a public agency shall be borne by the project applicant.

(l) Nothing in this section is intended to affect or modify the requirements of Section 21084 or 21084.1.

21084. Guidelines shall list classes of projects exempt from Act.

(e) No project that may cause a substantial adverse change in the significance of an historical resource, as specified in Section 21084.1, shall be exempted from this division pursuant to subdivision (a).

21084.1. Historical Resources Guidelines.

A project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment. For purposes of this section, an historical resource is a resource listed in, or determined to be eligible for listing in, the California Register of Historical Resources. 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 of Historical Resources, not included in a local register of historical resources, 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 an historical resource for purposes of this section.

California Code of Regulations, Title 14, Chapter 3

15064.5. Determining the Significance of Impacts to Archeological and Historical Resources

(a) For purposes of this section, the term "historical resources" shall include the following:

(1) A resource listed in, or determined to be eligible by the State Historical Resources Commission, for listing in the California Register of Historical Resources (Pub. Res. Code SS5024.1, Title 14 CCR, Section 4850 et seq.).

(2) A resource included in a local register of historical resources, as defined in section 5020.1(k) of the Public Resources Code or identified as significant in an historical resource survey meeting the requirements section 5024.1(g) of the Public Resources Code, shall be presumed to be historically or culturally significant. Public agencies must

treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant.

(3) Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California may be considered to be an historical resource, provided the lead agency's determination is supported by substantial evidence in light of the whole record. Generally, a resource shall be considered by the lead agency to be "historically significant" if the resource meets the criteria for listing on the California Register of Historical Resources (Pub. Res. Code SS5024.1, Title 14 CCR, Section 4852) including the following:

(A) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;

(B) Is associated with the lives of persons important in our past;

(C) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or

(D) Has yielded, or may be likely to yield, information important in prehistory or history.

(4) The fact that a resource is not listed in, or determined to be eligible for listing in the California Register of Historical Resources, not included in a local register of historical resources (pursuant to section 5020.1(k) of the Public Resources Code), or identified in an historical resources survey (meeting the criteria in section 5024.1(g) of the Public Resources Code) does not preclude a lead agency from determining that the resource may be an historical resource as defined in Public Resources Code sections 5020.1(j) or 5024.1.

(b) A project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.

(1) Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired.

(2) The significance of an historical resource is materially impaired when a project:

(A) Demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources; or

(B) Demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources pursuant to section 5020.1(k) of the Public Resources Code or its identification in an historical resources survey meeting the requirements of section 5024.1(g) of the Public Resources Code, unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant; or

(C) Demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its eligibility for inclusion in the California Register of Historical Resources as determined by a lead agency for purposes of CEQA.

(3) Generally, a project that follows the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings or the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (1995), Weeks and Grimmer, shall be considered as mitigated to a level of less than a significant impact on the historical resource.

(4) A lead agency shall identify potentially feasible measures to mitigate significant adverse changes in the significance of an historical resource. The lead agency shall ensure that any adopted measures to mitigate or avoid significant adverse changes are fully enforceable through permit conditions, agreements, or other measures.

(5) When a project will affect state-owned historical resources, as described in Public Resources Code Section 5024, and the lead agency is a state agency, the lead agency shall consult with the State Historic Preservation Officer as provided in Public Resources Code Section 5024.5. Consultation should be coordinated in a timely fashion with the preparation of environmental documents.

(c) CEQA applies to effects on archaeological sites.

(1) When a project will impact an archaeological site, a lead agency shall first determine whether the site is an historical resource, as defined in subsection (a).

(2) If a lead agency determines that the archaeological site is an historical resource, it shall refer to the provisions of Section 21084.1 of the Public Resources Code, and this section, Section 15126.4 of the Guidelines, and the limits contained in Section 21083.2 of the Public Resources Code do not apply.

(3) If an archaeological site does not meet the criteria defined in subsection (a), but does meet the definition of a unique archeological resource in Section 21083.2 of the Public Resources Code, the site shall be treated in accordance with the provisions of section 21083.2. The time and cost limitations described in Public Resources Code Section 21083.2 (c-f) do not apply to surveys and site evaluation activities intended to determine whether the project location contains unique archaeological resources.

(4) If an archaeological resource is neither a unique archaeological nor an historical resource, the effects of the project on those resources shall not be considered a significant effect on the environment. It shall be sufficient that both the resource and the effect on it are noted in the Initial Study or EIR, if one is prepared to address impacts on other resources, but they need not be considered further in the CEQA process.

(d) When an initial study identifies the existence of, or the probable likelihood, of Native American human remains within the project, a lead agency shall work with the appropriate native americans as identified by the Native American Heritage Commission as provided in Public Resources Code SS5097.98. The applicant may develop an agreement for treating or disposing of, with appropriate dignity, the human remains and any items associated with Native American burials with the appropriate Native Americans as identified by the Native American Heritage Commission. Action implementing such an agreement is exempt from:

(1) The general prohibition on disinterring, disturbing, or removing human remains from any location other than a dedicated cemetery (Health and Safety Code Section 7050.5).

(2) The requirements of CEQA and the Coastal Act.

(e) In the event of the accidental discovery or recognition of any human remains in any location other than a dedicated cemetery, the following steps should be taken:

(1) There shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:

(A) The coroner of the county in which the remains are discovered must be contacted to determine that no investigation of the cause of death is required, and

(B) If the coroner determines the remains to be Native American:

1. The coroner shall contact the Native American Heritage Commission within 24 hours.

2. The Native American Heritage Commission shall identify the person or persons it believes to be the most likely descended from the deceased native american.

3. The most likely descendent may make recommendations to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code Section 5097.98, or

(2) Where the following conditions occur, the landowner or his authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further subsurface disturbance.

(A) The Native American Heritage Commission is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 24 hours after being notified by the commission.

(B) The descendant identified fails to make a recommendation; or

(C) The landowner or his authorized representative rejects the recommendation of the descendant, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.

(f) As part of the objectives, criteria, and procedures required by Section 21082 of the Public Resources Code, a lead agency should make provisions for historical or unique archaeological resources accidentally discovered during construction. These provisions should include an immediate evaluation of the find by a qualified archaeologist. If the find is determined to be an historical or unique archaeological resource, contingency funding and a time allotment sufficient to allow for implementation of avoidance measures or appropriate mitigation should be available. Work could continue on other parts of the building site while historical or unique archaeological resource mitigation takes place.

Note: Authority: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21083.2, 21084, and 21084.1, Public Resources Code; *Citizens for Responsible Development in West Hollywood v. City of West Hollywood* (1995) 39 Cal.App.4th 490.

15126.4 Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects

(a) Mitigation Measures in General.

(1) An EIR shall describe feasible measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy.

(A) The discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures proposed by the lead, responsible or trustee agency or other persons which are not included but the lead agency determines could reasonably be expected to reduce adverse impacts if required as conditions of approving the project. This discussion shall identify mitigation measures for each significant environmental effect identified in the EIR.

(B) Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.

(C) Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant. Examples of energy conservation measures are provided in Appendix F.

(D) If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed but in less detail than the significant effects of the project as proposed. (*Stevens v. City of Glendale*(1981) 125 Cal.App.3d 986.)

(2) Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments. In the case of the adoption of a plan, policy, regulation, or other public project, mitigation measures can be incorporated into the plan, policy, regulation, or project design.

(3) Mitigation measures are not required for effects which are not found to be significant.

(4) Mitigation measures must be consistent with all applicable constitutional requirements, including the following:

(A) There must be an essential nexus (i.e. connection) between the mitigation measure and a legitimate governmental interest. *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); and

(B) The mitigation measure must be "roughly proportional" to the impacts of the project. *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Where the mitigation measure is an *ad hoc* exaction, it must be "roughly proportional" to the impacts of the project. *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854.

(5) If the lead agency determines that a mitigation measure cannot be legally imposed, the measure need not be proposed or analyzed. Instead, the EIR may simply reference that fact and briefly explain the reasons underlying the lead agency's determination.

(b) Mitigation Measures Related to Impacts on Historical Resources.

(1) Where maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of the historical resource will be conducted in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer, the project's impact on the historical resource shall generally be considered mitigated below a level of significance and thus is not significant.

(2) In some circumstances, documentation of an historical resource, by way of historic narrative, photographs or architectural drawings, as mitigation for the effects of demolition of the resource will not mitigate the effects to a point where clearly no significant effect on the environment would occur.

(3) Public agencies should, whenever feasible, seek to avoid damaging effects on any historical resource of an archaeological nature. The following factors shall be considered and discussed in an EIR for a project involving such an archaeological site:

(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 City Assn. v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011.

15325. Transfers of Ownership of Interest In Land to Preserve Existing Natural Conditions and Historical Resources

Class 25 consists of transfers of ownership in interests in land in order to preserve open space, habitat, or historical resources. Examples include but are not limited to:

(a) Acquisition, sale, or other transfer of areas to preserve existing natural conditions, including plant or animal habitats.

(b) Acquisition, sale, or other transfer of areas to allow continued agricultural use of the areas.

(c) Acquisition, sale, or other transfer to allow restoration of natural conditions, including plant or animal habitats.

(d) Acquisition, sale, or other transfer to prevent encroachment of development into flood plains.

(e) Acquisition, sale, or other transfer to preserve historical resources.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21084, Public Resources Code.

15300.2 Exceptions

(a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located – a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

(b) Cumulative impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

(d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

(f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

15331. Historical Resource Restoration/Rehabilitation

Class 31 consists of projects limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer.

Note: Authority cited: Section 21083 and 21087, Public Resources Code. Reference: Section 21084, Public Resources Code.

APPENDIX C: CALIFORNIA REGISTER OF HISTORICAL RESOURCES

The California Register was created by the State Legislature in 1992 and is intended to serve as an authoritative listing of significant historical and archeological resources in California. Additionally, the eligibility criteria for the California Register (codified in PRC § 5024.1 and further amplified in 14 CCR § 4852) are intended to serve as the definitive criteria for assessing the significance of historical resources for purposes of CEQA. In this way establishing a consistent set of criteria to the evaluation process for all public agencies statewide.

Resources can be nominated directly to the California Register or can be listed automatically as defined in PRC § 5024.1(d). Resources that are listed automatically in the California Register include:

- Resources listed in the National Register of Historic Places (this includes individual properties as well as historic districts and properties that contribute to the significance of an historic district);
- Resources that have been formally determined eligible for listing in the National Register of Historic Places (formal determinations of eligibility are made during federal review processes under Section 106 of the National Historic Preservation Act, during reviews conducted for projects taking advantage of the federal rehabilitation tax credits program, or when a private property being nominated for listing has been opposed by the property owner);
- California Historical Landmarks beginning with #770;
- California Points of Historical Interest beginning with those designated in January 1998 (the time at which the program was revised to reflect requirements for listing in the California Register).

For further information on applying and interpreting the California Register criteria, please refer to the handout entitled *California Register and National Register: A Comparison* and *National Register Bulletin 15: How to Apply the National Register Criteria for Evaluation*. Both can be found online at http://ohp.cal-parks.ca.gov/careqs/ts6ca_nat.htm and http://www.cr.nps.gov/nr/publications/bulletins/nr15_toc.htm, respectively.

Eligibility Criteria

An historical resource must be significant at the local, state, or national level, under one or more of the following four criteria:

1. It is associated with events that have made a significant contribution to the broad patterns of local or regional history, or the cultural heritage of California or the United States; or
2. It is associated with the lives of persons important to local, California, or national history; or
3. It embodies the distinctive characteristics of a type, period, region, or method or construction, or represents the work of a master, or possesses high artistic values; or
4. It has yielded, or has the potential to yield, information important to the prehistory or history of the local area, California, or the nation.

Integrity

Integrity is the authenticity of an historical resource's physical identity evidenced by the survival of characteristics that existed during the resource's period of significance. Historical resources eligible for listing in the California Register must meet one of the criteria of significance described above and retain enough of their historic character or appearance to be recognizable as historical resources and to convey the reasons for their significance. Historical resources that have been rehabilitated or restored may be evaluated for listing.

Integrity is evaluated with regard to the retention of location, design, setting, materials, workmanship, feeling, and association. It must also be judged with reference to the particular criteria under which a resource is proposed for eligibility. Alterations over time to a resource or historic changes in its use may themselves have historical, cultural, or architectural significance.

It is possible that historical resources may not retain sufficient integrity to meet the criteria for listing in the National Register, but they may still be eligible for listing in the California Register. A resource that has lost its historic character or appearance may still have sufficient integrity for the California Register if it maintains the potential to yield significant scientific or historical information or specific data.

Special Considerations

Moved buildings, structures, or objects The State Historical Resources Commission encourages the retention of historical resources on site and discourages the non-historic grouping of historic buildings into parks or districts. However, it is recognized that moving an historic building, structure, or object is sometimes necessary to prevent its destruction. Therefore, a moved building, structure, or object that is otherwise eligible may be listed in the California Register if it was moved to prevent its demolition at its former location and if the new location is compatible with the original character and use of the historical resource. An historical resource should retain its historic features and compatibility in orientation, setting, and general environment.

Historical resources achieving significance within the past fifty years In order to understand the historic importance of a resource, sufficient time must have passed to obtain a scholarly perspective on the events or individuals associated with the resource. A resource less than fifty years old may be considered for listing in the California Register if it can be demonstrated that sufficient time has passed to understand its historical importance.

Reconstructed buildings Reconstructed buildings are those buildings not listed in the California Register under the criteria stated above. A reconstructed building less than fifty years old may be eligible if it embodies traditional building methods and techniques that play an important role in a community's historically rooted beliefs, customs, and practices; e.g., a Native American roundhouse.

APPENDIX D: SECRETARY OF THE INTERIOR'S STANDARDS FOR PROFESSIONALS IN HISTORIC PRESERVATION

The OHP recommends that public agencies seeking to contract with outside consultants to conduct evaluations of the significance of historical resources and proposed project impacts ensure that such consultants meet professional qualifications standards. In the absence of state promulgated standards for such professionals, it is recommended that public agencies consider adopting the standards put forward by the Secretary of the Interior.

In the September 29, 1983, issue of the Federal Register, the National Park Service published the following Professional Qualification Standards as part of the larger Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. These Professional Qualification Standards are in effect currently. Since 1983, the National Park Service has not issued any revisions for effect, although the National Park Service is in the process of drafting such revisions.

The following requirements are those used by the National Park Service, and have been previously published in the Code of Federal Regulations, 36 CFR Part 61. The qualifications define minimum education and experience required to perform identification, evaluation, registration, and treatment activities. In some cases, additional areas or levels of expertise may be needed, depending on the complexity of the task and the nature of the historic properties involved. In the following definitions, a year of full-time professional experience need not consist of a continuous year of full-time work but may be made up of discontinuous periods of full-time or part-time work adding up to the equivalent of a year of full-time experience.

History

The minimum professional qualifications in history are a graduate degree in history or closely related field; or a bachelor's degree in history or closely related field plus one of the following:

1. At least two years of full-time experience in research, writing, teaching, interpretation, or other demonstrable professional activity with an academic institution, historical organization or agency, museum, or other professional institution; or
2. Substantial contribution through research and publication to the body of scholarly knowledge in the field of history.

Archeology

The minimum professional qualifications in archeology are a graduate degree in archeology, anthropology, or closely related field plus:

1. At least one year of full-time professional experience or equivalent specialized training in archeological research, administration or management;
2. At least four months of supervised field and analytic experience in general North American archeology; and
3. Demonstrated ability to carry research to completion.

In addition to these minimum qualifications, a professional in prehistoric archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the prehistoric period.

A professional in historic archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the historic period.

Architectural History

The minimum professional qualifications in architectural history are a graduate degree in architectural history, art history, historic preservation, or closely related field, with coursework in American architectural history; or a bachelor's degree in architectural history, art history, historic preservation or closely related field plus one of the following:

1. At least two years of full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or
2. Substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

Architecture

The minimum professional qualifications in architecture are a professional degree in architecture plus at least two years of full-time experience in architecture; or a State license to practice architecture.

Historic Architecture

The minimum professional qualifications in historic architecture are a professional degree in architecture or a State license to practice architecture, plus one of the following:

1. At least one year of graduate study in architectural preservation, American architectural history, preservation planning, or closely related field; or

2. At least one year of full-time professional experience on historic preservation projects.

Such graduate study or experience shall include detailed investigations of historic structures, preparation of historic structures research reports, and preparation of plans and specifications for preservation projects.

APPENDIX E: SECRETARY OF THE INTERIOR'S STANDARDS FOR THE TREATMENT OF HISTORIC PROPERTIES

The information contained in this appendix is provided solely for informational purposes due to the fact that the CEQA Guidelines make reference to the Secretary of the Interior's Standards for the Treatment of Historic Properties (14 CCR § 15064.5(b)(3), 15126.4(b)(1) and 15331). It is the responsibility of the lead agency under CEQA, not the OHP as is often mistakenly assumed, to assess whether or not a proposed project meets these standards, and it is the right of any individual or organization to offer comments relative to the findings of a lead agency regarding the application of these standards.

The following information is reprinted from the National Park Service's website. This information as well as additional publications, including the illustrated version of the standards and guidelines (which is referenced in the CEQA Guidelines), can be found on the internet at <http://www2.cr.nps.gov/tps/tpscat.htm>.

Rooted in over 120 years of preservation ethics in both Europe and America, The Secretary of the Interior's Standards for the Treatment of Historic Properties are common sense principles in non-technical language. They were developed to help protect our nation's irreplaceable cultural resources by promoting consistent preservation practices. The Standards may be applied to all properties listed in the National Register of Historic Places: buildings, sites, structures, objects, and districts.

It should be understood that the Standards are a series of concepts about maintaining, repairing and replacing historic materials, as well as designing new additions or making alterations; as such, they cannot, in and of themselves, be used to make essential decisions about which features of a historic property should be saved and which might be changed. But once an appropriate treatment is selected, the Standards provide philosophical consistency to the work.

Four Treatment Approaches

There are Standards for four distinct, but interrelated, approaches to the treatment of historic properties--preservation, rehabilitation, restoration, and reconstruction.

Preservation focuses on the maintenance and repair of existing historic materials and retention of a property's form as it has evolved over time. (Protection and Stabilization have now been consolidated under this treatment.)

Rehabilitation acknowledges the need to alter or add to a historic property to meet continuing or changing uses while retaining the property's historic character.

Restoration depicts a property at a particular period of time in its history, while removing evidence of other periods.

Reconstruction re-creates vanished or non-surviving portions of a property for interpretive purposes.

Choosing an Appropriate Treatment

Choosing an appropriate treatment for a historic building or landscape, whether preservation, rehabilitation, restoration, or reconstruction is critical. This choice always depends on a variety of factors, including its historical significance, physical condition, proposed use, and intended interpretation.

The questions that follow pertain specifically to historic buildings, but the process of decisionmaking would be similar for other property types:

Relative importance in history. Is the building a nationally significant resource--a rare survivor or the work of a master architect or craftsman? Did an important event take place in it? National Historic Landmarks, designated for their "exceptional significance in American history," or many buildings individually listed in the National Register often warrant *Preservation* or *Restoration*. Buildings that contribute to the significance of a historic district but are not individually listed in the National Register more frequently undergo *Rehabilitation* for a compatible new use.

Physical condition. What is the existing condition--or degree of material integrity--of the building prior to work? Has the original form survived largely intact or has it been altered over time? Are the alterations an important part of the building's history? *Preservation* may be appropriate if distinctive materials, features, and spaces are essentially intact and convey the building's historical significance. If the building requires more extensive repair and replacement, or if alterations or additions are necessary for a new use, then *Rehabilitation* is probably the most appropriate treatment. These key questions play major roles in determining what treatment is selected.

Proposed use. An essential, practical question to ask is: Will the building be used as it was historically or will it be given a new use? Many historic buildings can be adapted for new uses without seriously damaging their historic character; special-use properties such as grain silos, forts, ice houses, or windmills may be extremely difficult to adapt to new uses without major intervention and a resulting loss of historic character and even integrity.

Mandated code requirements. Regardless of the treatment, code requirements will need to be taken into consideration. But if hastily or poorly designed, code-required

work may jeopardize a building's materials as well as its historic character. Thus, if a building needs to be seismically upgraded, modifications to the historic appearance should be minimal. Abatement of lead paint and asbestos within historic buildings requires particular care if important historic finishes are not to be adversely affected. Finally, alterations and new construction needed to meet accessibility requirements under the Americans with Disabilities Act of 1990 should be designed to minimize material loss and visual change to a historic building.

Standards for Preservation

Preservation is defined as the act or process of applying measures necessary to sustain the existing form, integrity, and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction. New exterior additions are not within the scope of this treatment; however, the limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project.

1. A property will be used as it was historically, or be given a new use that maximizes the retention of distinctive materials, features, spaces, and spatial relationships. Where a treatment and use have not been identified, a property will be protected and, if necessary, stabilized until additional work may be undertaken.
2. The historic character of a property will be retained and preserved. The replacement of intact or repairable historic materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place, and use. Work needed to stabilize, consolidate, and conserve existing historic materials and features will be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.
6. The existing condition of historic features will be evaluated to determine the appropriate level of intervention needed. Where the severity of deterioration requires repair or limited replacement of a distinctive feature, the new material will match the old in composition, design, color, and texture.

7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

Preservation as a Treatment. When the property's distinctive materials, features, and spaces are essentially intact and thus convey the historic significance without extensive repair or replacement; when depiction at a particular period of time is not appropriate; and when a continuing or new use does not require additions or extensive alterations, Preservation may be considered as a treatment.

Standards for Rehabilitation

Rehabilitation is defined as the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.
6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
10. New additions and adjacent or related new construction will be undertaken in a such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Rehabilitation as a treatment. When repair and replacement of deteriorated features are necessary; when alterations or additions to the property are planned for a new or continued use; and when its depiction at a particular period of time is not appropriate, Rehabilitation may be considered as a treatment.

Standards for Restoration

Restoration is defined as the act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a restoration project.

1. A property will be used as it was historically or be given a new use which reflects the property's restoration period.
2. Materials and features from the restoration period will be retained and preserved. The removal of materials or alteration of features, spaces, and spatial relationships that characterize the period will not be undertaken.
3. Each property will be recognized as a physical record of its time, place, and use. Work needed to stabilize, consolidate and conserve materials and features from the restoration period will be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.
4. Materials, features, spaces, and finishes that characterize other historical periods will be documented prior to their alteration or removal.

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize the restoration period will be preserved.
6. Deteriorated features from the restoration period will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials.
7. Replacement of missing features from the restoration period will be substantiated by documentary and physical evidence. A false sense of history will not be created by adding conjectural features, features from other properties, or by combining features that never existed together historically.
8. chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
9. Archeological resources affected by a project will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
10. Designs that were never executed historically will not be constructed.

Restoration as a treatment. When the property's design, architectural, or historical significance during a particular period of time outweighs the potential loss of extant materials, features, spaces, and finishes that characterize other historical periods; when there is substantial physical and documentary evidence for the work; and when contemporary alterations and additions are not planned, Restoration may be considered as a treatment. Prior to undertaking work, a particular period of time, i.e., the restoration period, should be selected and justified, and a documentation plan for Restoration developed.

Standards for Reconstruction

Reconstruction is defined as the act or process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location.

1. Reconstruction will be used to depict vanished or non-surviving portions of a property when documentary and physical evidence is available to permit accurate reconstruction with minimal conjecture, and such reconstruction is essential to the public understanding of the property.

2. Reconstruction of a landscape, building, structure, or object in its historic location will be preceded by a thorough archeological investigation to identify and evaluate those features and artifacts which are essential to an accurate reconstruction. If such resources must be disturbed, mitigation measures will be undertaken.
3. Reconstruction will include measures to preserve any remaining historic materials, features, and spatial relationships.
4. Reconstruction will be based on the accurate duplication of historic features and elements substantiated by documentary or physical evidence rather than on conjectural designs or the availability of different features from other historic properties. A reconstructed property will re-create the appearance of the non-surviving historic property in materials, design, color, and texture.
5. A reconstruction will be clearly identified as a contemporary re-creation.
6. Designs that were never executed historically will not be constructed.

Reconstruction as a treatment. When a contemporary depiction is required to understand and interpret a property's historic value (including the re-creation of missing components in a historic district or site); when no other property with the same associative value has survived; and when sufficient historical documentation exists to ensure an accurate reproduction, Reconstruction may be considered as a treatment.

APPENDIX F: A GUIDE TO PLANNING IN CALIFORNIA

STATE OF CALIFORNIA
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March 1988, Revised August 1990

Introduction

This is a citizen's guide to land use planning as it is practiced in California. Its purpose is to explain, in general terms, how local communities regulate land use and to define some commonly used planning terms. The booklet covers the following topics:

- State Law and Local Planning
- The General Plan
- Zoning
- Subdivisions
- Other Ordinances and Regulations
- Annexation and Incorporation
- The California Environmental Quality Act
- A Glossary of Planning Terms
- Bibliography

Cities and counties "plan" in order to identify important community issues (such as new growth, housing needs, and environmental protection), project future demand for services (such as sewer, water, roads, etc.), anticipate potential problems (such as overloaded sewer facilities or crowded roads), and establish goals and policies for directing and managing growth. Local governments use a variety of tools in the planning process including the general plan, specific plans, zoning, and the subdivision ordinance.

The examples to be discussed here represent common procedures or methods, but are by no means the only way of doing things. State law establishes a framework for local planning procedures, but cities and counties adopt their own unique responses to the issues they face. The reader is encouraged to consult the bibliography for more information on planning in general and to contact your local planning department for information on planning in your community.

State and Local Planning

State law is the foundation for local planning in California. The California Government Code (Sections 65000 et seq.) contains many of the laws pertaining to the regulation of land uses by local governments including: the general plan requirement, specific plans, subdivisions, and zoning.

However, the State is seldom involved in local land use and development decisions; these have been delegated to the city councils and boards of supervisors of the individual cities and counties. Local decisionmakers have adopted their own sets of land use policies and regulations based upon the state laws.

Plan and Ordinances

There are currently 456 incorporated cities and 58 counties in California. State law requires that each of these jurisdictions adopt "a comprehensive, long-term general plan for [its] physical development." This general plan is the official city or county policy regarding the location of housing, business, industry, roads, parks, and other land uses, protection of the public from noise and other environmental hazards, and for the conservation of natural resources. The legislative body of each city (the city council) and each county (the board of supervisors) adopts zoning, subdivision and other ordinances to regulate land uses and to carry out the policies of its general plan.

There is no requirement that adjoining cities or cities and counties have identical, or even similar, plans and ordinances. Cities and counties are distinct and independent political units. Each city, through its council and each county, through its supervisors, adopts its own general plan and development regulations. In turn, each of these governments is responsible for the planning decisions made within its jurisdiction.

Hearing Bodies

In most communities, the city council or board of supervisors has appointed one or more hearing bodies to assist them with planning matters. The titles and responsibilities of these groups vary from place-to-place, so check with your local planning department regarding regulations in your area. Here are some of the more common types of hearing bodies and their usual responsibilities:

The Planning Commission: considers general plan and specific plan amendments, zone changes, and major subdivisions.

The Zoning Adjustment Board: considers conditional use permits, variances, and other minor permits.

Architectural Review or Design Review Board: reviews projects to ensure that they meet community aesthetic standards. In some cities and counties, these bodies simply advise the legislative body on the proposals that come before them, leaving actual approval to the council or board of supervisors. More commonly, these bodies have the power to approve proposals, subject to appeal to the council or board of supervisors. These hearing bodies, however, do not have final say on matters of policy such as zone changes and general or specific plan amendments.

Hearings

State law requires that local governments hold public hearings prior to most planning actions. At the hearing, the council or supervisors or advisory commission will explain the proposal, consider it in light of local regulations and environmental effects, and listen to testimony from interested parties. The council, board, or commission will vote on the proposal at the conclusion of the hearing.

Depending upon each jurisdiction's local ordinance, public hearings are not always required for minor land subdivisions, architectural or design review or ordinance interpretations. The method of advertising hearings may vary. Counties and general law cities publish notice of general plan adoption and amendment in the newspaper. Notice of zone change, conditional use permit, variance, and subdivision tracts is published in the newspaper and mailed to nearby property owners. Charter cities may have other notification procedures.

The General Plan

The Blueprint

The local general plan can be described as the city's or county's "blueprint" for future development. It represents the community's view of its future; a constitution made up of the goals and policies upon which the city council, board of supervisors, or planning commission will base their land use decisions. To illustrate its importance, all subdivisions, public works projects, and zoning decisions (except in charter cities other than Los Angeles) must be consistent with the general plan. If inconsistent, they must not be approved.

Long-Range Emphasis

The general plan is not the same as zoning. Although both designate how land may be developed, they do so in different ways. The general plan and its diagrams have a long-term outlook, identifying the types of development that will be allowed, the spatial relationships among land uses, and the general pattern of future development. Zoning regulates present development through specific standards such as lot size, building setback, and a list of allowable uses. In counties and general law cities, the land uses

shown on the general plan diagrams will usually be reflected in the local zoning maps as well. Development must not only meet the specific requirements of the zoning ordinance, but also the broader policies set forth in the local general plan.

Contents

State law requires that each city and each county adopt a general plan containing the following seven components or "elements": land use, circulation, housing, conservation, open-space, noise, and safety (Government Code Sections 65300 et seq.). At the same time, each jurisdiction is free to adopt a wide variety of additional elements covering subjects of particular interest to that jurisdiction such as recreation, urban design, or public facilities.

Most general plans consist of: (1) a written text discussing the community's goals, objectives, policies, and programs for the distribution of land use; and, (2) one or more diagrams or maps illustrating the general location of existing and future land uses. Figure 1 is an example of a general plan diagram.

Each local government chooses its own general plan format. The plan may be relatively short or long, one volume or ten volumes, depending upon local needs. Some communities, such as the City of San Jose, have combined the required elements into one document and most communities have adopted plans which consolidate the elements to some extent. State law requires that local governments make copies of their plans available to the public for the cost of reproduction.

Planning Issues

Although state law establishes a set of basic issues for consideration in local general plans, each city and county determines the relative importance of each issue to local planning and decides how they are to be addressed in the general plan. As a result, no two cities or counties have plans which are exactly alike in form or content. Here is a summary of the basic issues, by element:

The **land use element** designates the general location and intensity of housing, business, industry, open space, education, public buildings and grounds, waste disposal facilities, and other land uses.

The **circulation element** identifies the general location and extent of existing and proposed major roads, transportation routes, terminals, and public utilities and facilities. It must be correlated with the land use element.

The **housing element** is a comprehensive assessment of current and projected housing needs for all economic segments of the community and region. It sets forth local housing policies and programs to implement those policies.

The **conservation element** addresses the conservation, development, and use of natural resources including water, forests, soils, rivers, and mineral deposits.

The ***open-space element*** details plans and measures for preserving open-space for natural resources, the managed production of resources, outdoor recreation, public health and safety, and the identification of agricultural land.

The ***noise element*** identifies and appraises noise problems within the community and forms the basis for distributing new noise-sensitive land uses.

The ***safety element*** establishes policies and programs to protect the community from risks associated with seismic, geologic, flood, and wildfire hazards.

Approving the Plan

The process of adopting or amending a general plan encourages public participation. Cities and counties must hold public hearings for such proposals. Advance notice of the place and time of the hearing must be published in the newspaper or posted in the vicinity of the site proposed for change. Prior to approval, hearings will be held by the planning commission and the city council or board of supervisors.

Community and Specific Plans

"Community plans" and "specific plans" are often used by cities and counties to plan the future of a particular area at a finer level of detail than that provided by the general plan. A community plan is a portion of the local general plan focusing on the issues pertinent to a particular area or community within the city or county. It supplements the policies of the general plan.

Specific plans describe allowable land uses, identify open space, and detail infrastructure availability and financing for a portion of the community. Specific plans implement, but are not technically a part of the local general plan. In some jurisdictions, specific plans take the place of zoning. Zoning, subdivision, and public works decisions must be in accordance with the specific plan.

Zoning

The general plan is a long-range look at the future of the community. A zoning ordinance is the local law that spells out the immediate, allowable uses for each piece of property within the community. In all counties, general law cities, and the city of Los Angeles, zoning must comply with the general plan. The purpose of zoning is to implement the policies of the general plan.

Zones

Under the concept of zoning, various kinds of land uses are grouped into general categories or "zones" such as single-family residential, multi-family residential, neighborhood commercial, light industrial, agricultural, etc. A typical zoning ordinance describes 20 or more different zones which may be applied to land within the community. Each piece of property in the community is assigned a zone listing the kinds of uses that will be allowed on that land and setting standards such as minimum lot size, maximum building height, and minimum front yard depth. The distribution of residential,

commercial, industrial, and other zones will be based on the pattern of land uses established in the community's general plan. Maps are used to keep track of the zoning for each piece of land.

Zoning is adopted by ordinance and carries the weight of local law. Land may be put only to those uses listed in the zone assigned to it. For example, if a commercial zone does not allow five-story office buildings, then no such building could be built on the lands which have been assigned that zone. A zoning ordinance has two parts: (1) a precise map or maps illustrating the distribution of zones within the community; and, (2) a text which both identifies the specific land uses allowed within each of those zones and sets forth development standards.

Rezoning

The particular zone determines the uses to which land may be put. If a landowner proposes a use that is not allowed in the zone, the city or county must approve a rezoning (change in zone) before development of that use can begin. The local planning commission and the city council or county board of supervisors must hold public hearings before property may be rezoned. The hearings must be advertised in advance. The council or board is not obligated to approve requests for rezoning and, except in charter cities, must deny such requests when the proposed zone conflicts with the general plan.

Overlay Zones

In addition to the zoning applied to each parcel of land, many cities and counties use "overlay zones" to further regulate development in areas of special concern. Lands in historic districts, downtowns, floodplains, near earthquake faults or on steep slopes are often subject to having additional regulations "overlain" upon the basic zoning requirements. For example, a lot that is within a single-family residential zone and also subject to a steep-slope overlay zone, must meet the requirements of both zones when it is developed.

Prezoning

Cities may "prezone" lands located within the surrounding county in the same way that they approve zoning. Prezoning is usually done before annexation of the land to the city in order to facilitate its transition into the city boundaries. Prezoning does not change the allowable uses of the land nor the development standards until such time as the site is officially annexed to the city. Likewise, land that has been pre-zoned continues to be subject to county zoning regulations until annexation is completed.

Variances

A variance is a limited waiver of development standards. The city or county may grant a variance in special cases where: (1) application of the zoning regulations would deprive property of the uses enjoyed by nearby, similarly zoned lands; and (2) restrictions have been imposed to ensure that the variance will not be a grant of special privilege. A city or county may not grant a variance that would permit a use that is not otherwise allowed in that zone (for example, a commercial use could not be approved in a residential zone

by variance). Typically, variances are considered when the physical characteristics of the property make it difficult to develop. For instance, in a situation where the rear half of a lot is a steep slope, a variance might be approved to allow the house being built to be closer to the street than usually allowed. Variance requests require a public hearing and neighbors are given the opportunity to testify. The local hearing body then decides whether to approve or deny the variance.

Conditional Use Permits

Most zoning ordinances identify certain land uses which do not precisely fit into existing zones, but which may be allowed upon approval of a conditional use permit (sometimes called a special use permit or a CUP) at a public hearing. These might include community facilities (such as hospitals or schools), public buildings or grounds (such as fire stations or parks), temporary or hard-to-classify uses (such as Christmas tree sales or small engine repair), or land uses with potentially significant environmental impacts (hazardous chemical storage or building a house in a floodplain). The local zoning ordinance specifies those uses for which a conditional use permit may be requested, which zones they may be requested in, and the public hearing procedure. If the local planning commission or zoning board approves the use, it will usually do so subject to certain conditions being met by the permit applicant. Alternatively, it may deny uses which do not meet local standards.

Subdivisions

In general, land cannot be divided in California without local government approval. Dividing land for sale, lease or financing is regulated by local ordinances based on the State Subdivision Map Act (commencing with Government Code Section 66410). The local general plan, zoning, subdivision, and other ordinances govern the design of the subdivision, the size of its lots, and the types of improvements (street construction, sewer lines, drainage facilities, etc.). In addition, the city or county may impose a variety of fees upon the subdivision, depending upon local and regional needs, such as school impact fees, park dedications, etc. Contact your local planning department for information on local requirements and procedures.

Subdivision Types

There are basically two types of subdivisions: parcel maps, which are limited to divisions resulting in fewer than five lots (with certain exceptions), and final map subdivisions (also called tract maps), which apply to divisions resulting in five or more lots. Applications for both types of subdivisions must be submitted to the local government for consideration in accordance with the local subdivision ordinance and the Subdivision Map Act.

Processing

Upon receiving an application for a subdivision map, the city or county staff will examine the design of the subdivision to ensure that it meets the requirements of the general plan, the zoning ordinance, and the subdivision ordinance. An environmental impact

analysis must be prepared and a public hearing held prior to approval of a tentative tract map. Parcel maps may also be subject to a public hearing, depending upon the requirements of the local subdivision ordinance.

Final Approval

Approval of a subdivision map generally means that the subdivider will be responsible for installing improvements such as streets, drainage facilities or sewer lines to serve the subdivision. These improvements must be installed or secured by bond before the city or county will grant final approval of the map and allow the subdivision to be recorded in the county recorder's office. Lots within the subdivision cannot be sold until the map has been recorded. The subdivider has at least two years (and depending upon local ordinance, usually more) in which to comply with the improvement requirements, gain final administrative approval, and record the final map. Parcel map requirements may vary dependent upon local ordinance requirements.

Other Ordinances and Regulations

Cities and counties often adopt other ordinances besides zoning and subdivision to protect the general health, safety, and welfare of their inhabitants. Contact your local planning department for information on the particular ordinances in effect in your area. Common types include: flood protection, historic preservation, design review, hillside development control, growth management, impact fees, traffic management, and sign control.

Local ordinances may also be adopted in response to state requirements. Examples include: Local Coastal Programs (California Coastal Act); surface mining regulations (Surface Mining and Reclamation Act); earthquake hazard standards (Alquist-Priolo Special Studies Zone Act); and hazardous material disclosure requirements. These regulations are generally based on the applicable state law.

Annexation and Incorporation

The LAFCO

Annexation (the addition of territory to an existing city) and incorporation (creation of a new city) are controlled by the Local Agency Formation Commission (LAFCO) established in each county by the state's Cortese-Knox Act (commencing with Government Code Section 56000). The commission is made up of elected officials from the county, cities, and, in some cases, special districts. LAFCO duties include: establishing the "spheres of influence" that designate the ultimate service areas of cities and special districts; studying and approving requests for city annexations; and, studying and approving proposals for city incorporations. Below is a very general discussion of annexation and incorporation procedures. For detailed information on this complex subject, contact your county LAFCO.

Annexation

When the LAFCO receives an annexation request, it will convene a hearing to determine the worthiness of the proposal and may deny or conditionally approve the request based on the policies of the LAFCO and state law. Annexation requests which receive tentative approval are delegated to the affected city for hearings and, if necessary, an election. Annexations which have been passed by vote of the inhabitants or which have not been defeated by protest (in cases where no election was required) must be certified by the LAFCO as to meeting all its conditions before they become final. It is the LAFCO, not the city, that is ultimately responsible for the annexation process.

Incorporation

When the formation of a new city is proposed, the LAFCO studies the economic feasibility of the proposed city, its impact on county and special districts, and the provision of public services. If the feasibility of the proposed city cannot be shown, the LAFCO can terminate the proceedings. If the proposed city appears to be feasible, LAFCO will refer the proposal to the county board of supervisors for hearing along with a set of conditions to be met upon to incorporation. If the supervisors do not receive protests from a majority of the involved voters, an election will be held to create the city and elect city officials.

The California Environmental Quality Act (CEQA)

The California Environmental Quality Act (commencing with Public Resources Code Section 21000) requires local and state governments to consider the potential environmental effects of a project before deciding whether to approve it or not. CEQA's purpose is to disclose the potential impacts of a project, suggest methods to minimize those impacts, and discuss alternatives to the project so that decision makers will have full information upon which to base their decision. CEQA is a complex law with a great deal of subtlety and local variation.

The following discussion is *extremely* general. The basic requirements and administrative framework for local governments' CEQA responsibilities are described in the *California Environmental Quality Act: Law and Guidelines*. For more information, readers should contact their local planning department or refer to the CEQA listings in the bibliography.

Lead Agency

The "lead agency" is responsible for seeing that environmental review is done in accordance with CEQA and that environmental analyses are prepared when necessary. The agency with the principal responsibility for issuing permits to a project (or for carrying out the project) is deemed to be the "lead agency". As lead agency, it may prepare the environmental analysis itself or it may contract for the work to be done under its direction. In practically all local planning matters (such as rezoning, conditional use permits, and specific plans) the planning department is the lead agency.

Analysis

Analyzing a project's potential environmental effect is a multistep process. Many minor projects are exempt from the CEQA requirements. These include single-family homes, remodeling, accessory structures, and some lot divisions (for a complete list refer to *California Environmental Quality Act: Law and Guidelines*). No environmental review is required when a project is exempt from CEQA.

When a project is subject to review under CEQA, the lead agency prepares an "initial study" to assess the potential adverse physical impacts of the proposal. When the project will not cause a "significant" impact on the environment or when it has been revised to eliminate all such impacts, a "negative declaration" is prepared. The negative declaration describes why the project will not have a significant impact and may require that the project incorporate a number of measures ensuring that there will be no such impact. If significant environmental effects are identified, then an Environmental Impact Report (EIR) must be written before the project can be considered by decision makers.

The EIR

An EIR discusses the proposed project, its environmental setting, its probable impacts, realistic means of reducing or eliminating those impacts, its cumulative effects, and alternatives to the project. CEQA requires that Negative Declarations and EIRs be made available for review by the public and other agencies prior to consideration of the project. The review period allows concerned citizens and agencies to comment on the completeness and adequacy of the environmental review prior to its completion. When the decision making body (the city council, board of supervisors, or other board or commission) approves a project, it must certify the adequacy of the environmental review. If its decision to approve a project will result in unavoidable significant impacts, the decision making body must state, in writing, its overriding reasons for granting the approval and how the impacts are to be addressed.

An EIR is an informational document. It does not, in itself, approve or deny a project. Environmental analysis must be done as early as possible in the process of considering a project and must address the entire project. There are several different types of EIRs that may be prepared, depending upon the project. They are described in the *California Environmental Quality Act: Law and Guidelines* written by the Governor's Office of Planning and Research and the Resources Agency.

Glossary

These are some commonly used planning terms. This list includes several terms that are not discussed in this booklet.

Board of Supervisors

A county's legislative body. Board members are elected by popular vote and are responsible for enacting ordinances, imposing taxes, making appropriations, and

establishing county policy. The board adopts the general plan, zoning, and subdivision regulations.

CEQA

The California Environmental Quality Act (commencing with Public Resources Code Section 21000). In general, CEQA requires that all private and public projects be reviewed prior to approval for their potential adverse effects upon the environment.

Charter City

A city which has been incorporated under its own charter rather than under the general laws of the state. Charter cities have broader powers to enact land use regulations than do general law cities.

City Council

A city's legislative body. The popularly elected city council is responsible for enacting ordinances, imposing taxes, making appropriations, establishing policy, and hiring some city officials. The council adopts the local general plan, zoning, and subdivision ordinance.

COG

Council of Governments. There are 25 COGs in California made up of elected officials from member cities and counties. COGs are regional agencies concerned primarily with transportation planning and housing; they do not directly regulate land use.

Community Plan

A portion of the local general plan that focuses on a particular area or community within the city or county. Community plans supplement the policies of the general plan.

Conditional Use Permit

Pursuant to the zoning ordinance, a conditional use permit (CUP) may authorize uses not routinely allowed on a particular site. CUPs require a public hearing and if approval is granted, are usually subject to the fulfillment of certain conditions by the developer. Approval of a CUP is not a change in zoning.

Density Bonus

An increase in the allowable number of residences granted by the city or county in return for the project's providing low- or moderate-income housing (see Government Code Section 65915).

Design Review Committee

A group appointed by the city council to consider the design and aesthetics of development within design review zoning districts.

Development Fees

Fees charged to developers or builders as a prerequisite to construction or development approval. The most common are: (1) impact fees (such as parkland acquisition fees,

school facilities fees, or street construction fees) related to funding public improvements which are necessitated in part or in whole by the development; (2) connection fees (such as water line fees) to cover the cost of installing public services to the development; (3) permit fees (such as building permits, grading permits, sign permits) for the administrative costs of processing development plans; and, (4) application fees (rezoning, CUP, variance, etc.) for the administrative costs of reviewing and hearing development proposals.

Downzone

This term refers to the rezoning of land to a more restrictive zone (for example, from multi-family residential to single-family residential or from residential to agricultural).

EIR

Environmental Impact Report. A detailed review of a proposed project, its potential adverse impacts upon the environment, measures that may avoid or reduce those impacts, and alternatives to the project.

Final Map Subdivision

Final map subdivisions (also called tract maps or major subdivisions) are land divisions which create five or more lots. They must be consistent with the general plan and are generally subject to stricter requirements than parcel maps. Such requirements may include installing road improvements, the construction of drainage and sewer facilities, parkland dedications, and more.

Floor Area Ratio

Abbreviated as FAR, this is a measure of development intensity. FAR is the ratio of the amount of floor area of a building to the amount of area of its site. For instance, a one-story building that covers an entire lot has an FAR of 1. Similarly, a one-story building that covers 1/2 of a lot has an FAR of 1/2.

General Law City

A city incorporated under and run in accordance with the general laws of the state.

General Plan

A statement of policies, including text and diagrams setting forth objectives, principles, standards, and plan proposals, for the future physical development of the city or county (see Government Code Sections 65300 et seq.).

"Granny" Housing

Typically, this refers to a second dwelling attached to or separate from the main residence that houses one or more elderly persons. California Government Code 65852.1 enables cities and counties to approve such units in single-family neighborhoods.

Impact Fees

See Development Fees.

Infrastructure

A general term describing public and quasi-public utilities and facilities such as roads, bridges, sewers and sewer plants, water lines, power lines, fire stations, etc.

Initial Study

Pursuant to CEQA, an analysis of a project's potential environmental effects and their relative significance. An initial study is preliminary to deciding whether to prepare a negative declaration or an EIR.

Initiative

A ballot measure which has been placed on the election ballot as a result of voter signatures and which addresses a legislative action. At the local level, initiatives usually focus on changes or additions to the general plan and zoning ordinance. The right to initiative is guaranteed by the California Constitution.

LAFCO

Local Agency Formation Commission. The Cortese-Knox Act (commencing with Government Code Section 56000) establishes a LAFCO made up of elected officials of the county, cities, and, in some cases, special districts in each county. LAFCOs establish spheres of influence for all the cities and special districts within the county. They also administer incorporation and annexation proposals.

Mitigation Measure

The California Environmental Quality Act requires that when an environmental impact or potential impact is identified, measures must be proposed that will eliminate, avoid, rectify, compensate for or reduce those environmental effects.

Negative Declaration

When a project is not exempt from CEQA and will not have a significant effect upon the environment a negative declaration must be written. The negative declaration is an informational document that describes the reasons why the project will not have a significant effect and proposes measures to mitigate or avoid any possible effects.

Overlay Zone

A set of zoning requirements that is superimposed upon a base zone. Overlay zones are generally used when a particular area requires special protection (as in a historic preservation district) or has a special problem (such as steep slopes, flooding or earthquake faults). Development of land subject to overlay zoning requires compliance with the regulations of both the base and overlay zones.

Parcel Map

A minor subdivision resulting in fewer than five lots. The city or county may approve a parcel map when it meets the requirements of the general plan and all applicable ordinances. The regulations governing the filing and processing of parcel maps are found in the state Subdivision Map Act and the local subdivision ordinance.

Planned Unit Development (PUD)

Land use zoning which allows the adoption of a set of development standards that are specific to the particular project being proposed. PUD zones usually do not contain detailed development standards; these are established during the process of considering the proposals and adopted by ordinance if the project is approved.

Planning Commission

A group of residents appointed by the city council or board of supervisors to consider land use planning matters. The commission's duties and powers are established by the local legislative body and might include hearing proposals to amend the general plan or rezone land, initiating planning studies (road alignments, identification of seismic hazards, etc.), and taking action on proposed subdivisions.

Referendum

A ballot measure challenging a legislative action by the city council or county board of supervisors. Referenda petitions must be filed before the action becomes final and may lead to an election on the matter. The California Constitution guarantees the right to referendum.

School Impact Fees

Proposition 13 put a limit on property taxes and thereby limited the main source of funding for new school facilities. California law allows school districts to impose fees on new developments to offset their impacts of area schools.

Setback

A minimum distance required by zoning to be maintained between two structures or between a structure and property lines.

Specific Plan

A plan addressing land use distribution, open space availability, infrastructure, and infrastructure financing for a portion of the community. Specific plans put the provisions of the local general plan into action (see Government Code Sections 65450 et seq.).

Tentative Map

The map or drawing illustrating a subdivision proposal. The city or county will approve or deny the proposed subdivision based upon the design depicted by the tentative map. A subdivision is not complete until the conditions of approval imposed upon the tentative map have been satisfied and a final map has been certified by the city or county and recorded with the county recorder.

Tract Map

See final map subdivision.

Transportation Systems Management (TSM)

A transportation plan that coordinates many forms of transportation (car, bus, carpool, rapid transit, bicycle, walking, etc.) in order to distribute the traffic impacts of new development. Rather than emphasizing road expansion or construction (as does traditional transportation planning), TSM examines methods of increasing the efficiency of road use.

Variance

A limited waiver from the requirements of the zoning ordinance. Variance requests are subject to public hearing, usually before a zoning administrator or board of zoning adjustment. Variances may only be granted under special circumstances.

Zoning

Local codes regulating the use and development of property. The zoning ordinance divides the city or county into land use districts or "zones", represented on zoning maps, and specifies the allowable uses within each of those zones. It establishes development standards such as minimum lot size, maximum height of structures, building setbacks, and yard size.

Zoning Adjustment Board

A group appointed by the local legislative body to consider minor zoning adjustments such as conditional use permits and variances. It is empowered to conduct public hearings and to impose conditions of approval. Its decisions may be appealed to the local legislative body.

Zoning Administrator

A planning department staff member responsible for hearing minor zoning permits. Typically, the zoning administrator considers variances and conditional use permits and may interpret the provisions of the zoning ordinance when questions arise. His/her decision may be appealed to the local legislative body.

Bibliography: A Few Good Books

The reader is encouraged to refer to the following books for a better understanding of planning in California.

Alternative Techniques for Controlling Land Use: A Guide to Small Cities and Rural Areas in California, by Irving Schiffman (University Center for Economic Development and Planning, California State University, Chico) 1982, revised 1989. *This book discusses, in detail, concepts such as hillside development standards, planned unit development, and specific plans.*

California Environmental Quality Act: Statutes and Guidelines (Governor's Office of Planning and Research, Sacramento, California) 1996, 301 pp. The CEQA Guidelines describe the requirements for evaluating environmental impacts. Out of Print, check in the government documents section of your local library.

California Land Use and Planning Law, by Daniel J. Curtin Jr., (Solano Press, Pt. Arena, California) revised annually. A look at the planning, zoning, subdivision, and environmental quality laws that is illustrated by references to numerous court cases.

The General Plan Guidelines (Governor's Office of Planning and Research, Sacramento, California) 1987, 368 pp. *The Guidelines discuss local planning activities and how to write or revise a general plan.*

Guide to California Government, (League of Women Voters of California, Sacramento, California) 13th Edition, 1986, 167 pp. An excellent summary of the processes of local and state government.

Guide to the Cortese/Knox Local Government Reorganization Act of 1985, by the Assembly Local Government Committee (Joint Publications Office, Sacramento, California), 1985, 228 pp. A compilation of the law that authorizes annexations and other local government reorganizations. It contains a flowchart illustrating the annexation process.

Planning Commission Handbook (League of California Cities, Sacramento, California) 1984. A well-written overview of the role of the planning commission and California planning law.

Subdivision Map Act Manual, by Daniel J. Curtin, Jr., (Solano Press, Pt. Arena, California), revised annually. A practitioner's guide to the Map Act, including pertinent legal precedents.

Your Guide to Open Meetings, The Ralph M. Brown Act, by the Senate Local Government Committee (Joint Publications Office, Sacramento, California), 1989. An easy to read explanation of the state's open meeting laws and the responsibilities of local government with regard to public meetings.

APPENDIX G: INFORMATION CENTER CONTACT LIST

The following institutions are under agreement with the Office of Historic Preservation to:

1. Integrate information on new Resources and known Resources into the California Historical Resources Information System.
2. Supply information on resources and surveys to government, institutions, and individuals who have a need to know.
3. Supply a list of consultants qualified to do historic preservation fieldwork within their area.

COORDINATOR: John Thomas, Historian II, (916) 653-9125

Northwest Information Center

Counties: **Alameda, Colusa, Contra Costa, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Yolo**

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Northeast Information Center

Counties: **Butte, Glenn, Lassen, Modoc, Plumas, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity**

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North Central Information Center

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Central Coastal Information Center

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Southern San Joaquin Valley Information Center

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San Bernardino Archeological Information Center

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South Central Coastal Information Center
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Eastern Information Center

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South Coastal Information Center

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Southeast Information Center

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North Coastal Information Center

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APPENDIX H: CITY OF SAN DIEGO SAMPLE INFORMATION

The information contained in this appendix is included as an illustration of the type of materials that are often distributed by local governments throughout California concerning their management of their CEQA responsibilities. For those readers who are preservation advocates, we would suggest you inquire with your local government as to the availability of such explanatory documents. For those readers who represent local governments that don't distribute such useful documents, we suggest you consider developing such guidance as the City of San Diego has produced.

APPENDIX I: STATE CLEARINGHOUSE HANDBOOK