

# CEQA & Historical Resources

## Historical Resources Workshop

Organized by Humboldt Heritage Professionals  
Network

Arcata, Humboldt County

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# CEQA and Historical Resources

What is an “historical resource” for purposes of CEQA?



# The 3 Key Questions

- 1. **Identification**: Is there a historical resource?
- 2. Would the project **cause a substantial adverse change** in the significance of the resource?
- 3. Can the impact be **avoided or mitigated?**, i.e. Secretary of Interior Standards or otherwise, i.e. (relocation)?

# The Environmental Checklist Form for the Initial Study (IS)

## Appendix G asks:

- 1.) will the project cause a substantial adverse change in the significance of an historical resource as defined in § 15064.5?
- 2.) cause a substantial adverse change in the significance of an archeological resource pursuant to § 15064.5 ?  
and
- 3.) disturb human remains, including those interred outside of formal cemeteries?

## Two – Part Test

- Lead Agency has to determine whether there is a **significant impact** to an historic resource by a project

Question 1: is resource “historically significant”

Question 2: would project cause a “substantial adverse change” in its significance

# CEQA's definition of an Historical Resource:

- Very broad, very inclusive
  - CEQA Guidelines §15064.5 and PRC 21084.1
- Historical resources are recognized as part of the environment under CEQA

**(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 (SHRC), for listing in the California Register of Historical Resources.

# California Register

- Listed in the California Register includes:
  - direct listing by the SHRC;
  - properties listed in the National Register of Historic Places;
  - determined eligible for inclusion in the NR by the Keeper of the NR;
  - determined eligible for inclusion in the NR through the Section 106 process;

# California Register

- determined eligible for inclusion in the NR through the Part 1 of the federal historic preservation tax credit process;
- California Historical Landmarks beginning with #770; and
- California Points of Historical Interest and CHL prior to #770 may be on California Register upon action by State Historical Resources Commission

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

- (2) A resource included in a **local register** of historical resources. . . . or identified as significant in an historical resources **survey** . . . . 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.**

## Local Designation

- “Local register of historical resources” means a list of properties officially designated or recognized as historically significant by a local government pursuant to a local ordinance or resolution

# Surveys

- A resource identified as significant in an historical resources **survey** may be listed in the California Register if the survey meets all of the following criteria:
  - (1) The survey has been or will be included in the State Historic Resources Inventory
  - (2) The survey and the survey documentation were prepared in accordance with office procedures and requirements.
  - (3) The resource is evaluated and determined by the office to have a significance rating of Category 1 to 5 on DPR Form 523.

## Surveys

- What about surveys that are over 5 years of age?
  - The reference in the CEQA Guidelines is confusing.
    - If a survey is **nominated** to the California Register it must be updated if it is more than 5 years old.

# Surveys

- This does **not** mean that resources identified in an older survey 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.

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

- (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.

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

- (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, or identified in an historical resources survey does not preclude a lead agency from determining that the resource may be an historical resource. . . .

# CEQA & Archeological Resources

- “the lead agency must determine whether the project may have a significant effect on archaeological resources”

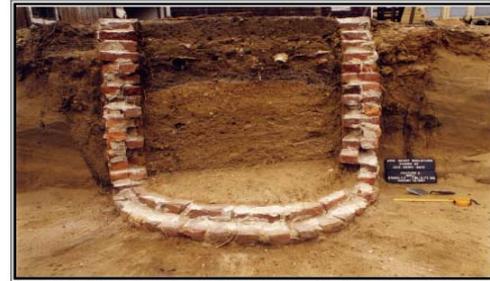


Figure 8: 2216 Geary Street, Feature 8, upper portion cleared; note strata and surface.



Figure 9: 2216 Geary Street, Feature 8 exposed before interior excavation.

# How does CEQA define archeological resources

- CEQA discusses two types of archeological resources:
  - a “unique archaeological resource”
  - an archeological resource that qualifies as a “historical resource”



# Unique vs. archaeological resource”?

## **An unique archeological resource is one that:**

- 1) contains information needed to answer important scientific research questions
- 2) has a special and particular quality such as being the oldest of its type
- 3) is directly associated with a prehistoric or historic event or person

## **An archeological resource that is an “historical resource:**

- 1) One that is listed or determined eligible for listing on the California Register of Historical Resources
- 2) listed in a “local register of historical resources”
- 3) listed in an “historical resource survey

## How is an archeological resource determined to be an historical resource?

Generally an archeological resource is determined to be an historical resource due to its eligibility for listing to the California Register because of its scientific information value or Criterion D

“Has yielded, or may be likely to yield information important in prehistory and history”

## Can an archeological resource be eligible to the CRHR under Criterion other than D?

- Yes. An archeological resource can be eligible to the CRHR under Criterion
  - A association with events that have made a significant contribution to the broad patterns of history
  - B association with the lives of historically important persons
  - C association with the characteristics of type, period, region, or method of construction

## How to assess whether an archeological resource can yield information important in prehistory and history

- Archaeological Resource Management Reports. OHP. 1989
- Guidelines for Archaeological Research Designs. OHP. 1991
- Reports components should include:
  - Objectives
  - Study area or Area of Potential Effect (APE)
  - Prehistoric & historic setting
  - Research design
  - Description of methodology for field investigation
  - Curation arrangements

# Integrity

integrity = “retains physical characteristics that convey its historical significance” (§ 15064.5 (b))

integrity for archeological resource = (generally) resource sufficiently intact to yield the expected important information

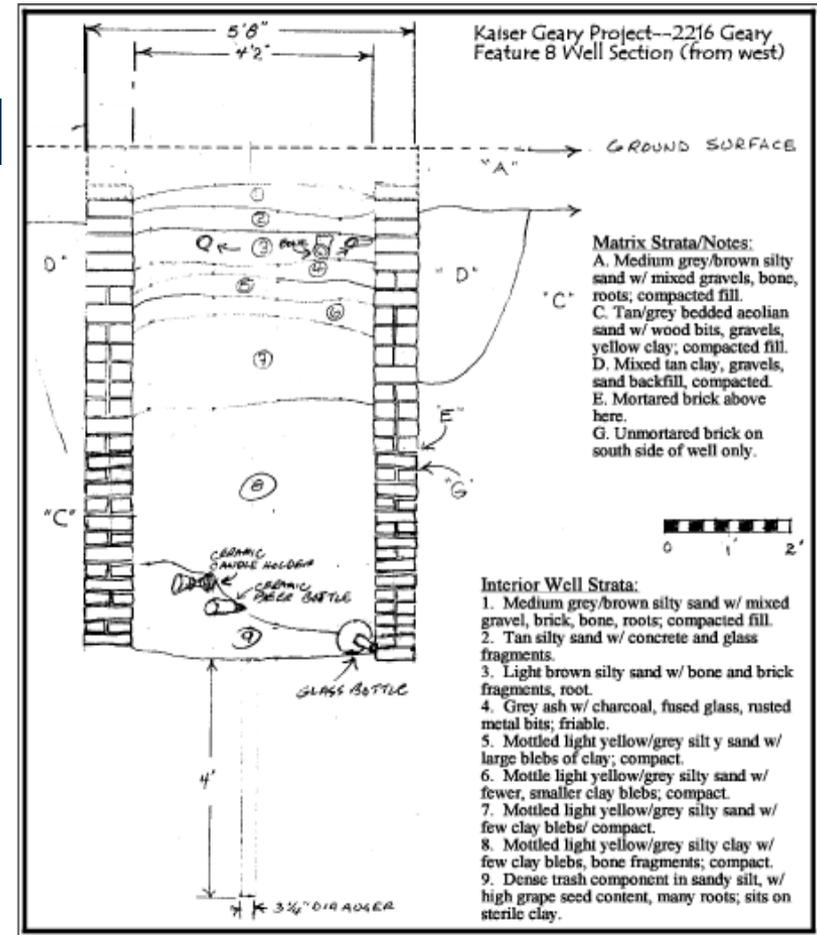


Figure 14: 2216 Geary Street, Feature 8, portion of field drawing, 15 August 1997.

# What is the relationship between a unique and historical resource?

“When a project will impact an archaeological site, a lead agency shall **first** determine whether the site is an historical resource”

(§ 15064.5 (c)(1))



# What are adequate efforts to identify an archeological resource?

- Record search at Information Center
- Archival research (historic maps, building, assessor & water connection records, city directories, U.S. Census population, industrial, institutional, agricultural schedules, historic photographs)
- Sacred lands search at NAHC, Native American and descendent group contacts
- Geotechnical & soil characterization studies
- Archeological field survey
- Archeological testing program (presence/absence, identification, evaluation)

## What is a significant adverse effect to an archeological resource?

- The “significance” of the resource must be “materially impaired”
- “materially impaired” = “demolishes or materially alters in an adverse manner those physical characteristics ...that convey its historical significance that justify its inclusion in” the CRHR or local register of historical resources
- generally this is the destruction of scientific data

# First Steps for adequate Identification

- Selection of a qualified archeologist in the RFP process or from list maintained by Information Center or local government
- Some Questions to ask would be:
  - Does he/she meet the Secretary of Interior's Professional Qualifications?
  - Do they have professional memberships?
  - Past experience in dealing with appropriate resources ( historic archeology, marine, urban, prehistoric vs. ethno-historic, ethnographic, etc.) Request resumes of key personnel or company information
  - Experience with local Native American tribes

# Phases of Cultural Resources Studies under CEQA

## Three Phases:

Phase I: Inventory of Cultural Resources

Phase II: Evaluation of Cultural Resources

Phase III: Treatment of Cultural Resources  
impacted by a project

All of these should be implemented by a qualified professional archeologist who meets the Secretary of Interior's Standards

# Phase I – Inventory

- The three steps of this phase are:
- Records Search
- Field Survey
- Written Report

Additionally, consultation with local California Native Americans is highly recommended. The NAHC keeps lists of tribes, groups and individuals.

# Records Search for Cultural Resources

- When providing the boundary area for project or APE to an IC, at most, only the following will be determined:
  1. Whether project area or part of it have been **previously surveyed**.
  1. Whether any **known** cultural resources have already been recorded on or adjacent to project area.
  2. Whether probability for existence of cultural resources is **low, moderate, or high**.
  3. Whether a field survey is **required** to determine whether previously unrecorded cultural resources are present.

# Field Survey

- In most cases, a field survey by a professional archeologist will be required
- **PURPOSE:** Survey the entire property for cultural resources

# Site Forms & Written Report

- Proper recordation of found cultural resources on DPR 523
- Written report which describes how survey was conducted with recommendations for further work, if needed.

(Copies of site forms and report must be filed with appropriate local IC)

# Phase II: Evaluation of Cultural Resources

- **Purpose:** to determine whether a cultural resource is significant according to §15064.5 (historical resource) .
- If resource is not important, no further work is needed per CEQA.
- If the resource is **significant**, then the impacts must be mitigated.

## Types of sites :

Some can be evaluated during course of a Phase I survey.

Others can be evaluated during an extended Phase I survey with a few shovel test pits to determine the existence of a subsurface deposit.

# More on Sites:

- Most habitation sites may require more formal test excavations.
- Test excavations have limited goals & should be limited in scope.
- Those goals would be:
- Determination of site boundaries
- Assessment of site's integrity (intactness)
- Evaluation of site's significance through a study of its features & artifacts

**But, large scale excavations are not necessary during the evaluation stage**



## Phase III: Treatment of Cultural Resources impacted by project

- If Phase I & II (inventory & evaluation) determined that significant resources exist, CEQA requires mitigation of these impacts.
- EIR vs. MND

# Mitigation of Cultural Resources

- CEQA Guidelines § 15126.4 (b) (3):

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

# Preservation in Place

- ✓ preferred manner of mitigating impacts to archeological sites.
- ✓ maintains the relationship between artifacts and the archeological context.
- ✓ May also avoid conflict with religious or cultural values of groups associated with the site.

## Preservation in place may be accompanied by, but is not limited to the following:

- Avoidance: Planning construction to avoid sites
- Incorporation within parks, green-space, or other open space by re-designing project using open space or undeveloped lands
- **These are the least costly mitigation measures**
- Conservation Easements
- Deeding of site into a permanent conservation easement

# Site Capping

- Covering the sites with a layer of chemically stable soil before building such things as tennis courts, parking lots, etc.
- Before capping occurs: 1. the site's significance should be evaluated; 2. the boundaries have been adequately mapped.
- **Why?** so city planners, archeologists and Native Americans know what has been buried & where
- Sometimes soil conditions do not allow for capping
- Deed restrictions should be considered to restrict owners from excavating below fill for any future improvements

# And Data Recovery.

“(C) When data recovery through excavation is the only feasible mitigation, a data recovery plan, which makes provisions 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. Archeological sites known to contain human remains shall be treated in accordance with the provisions of Section 7050.5 Health and Safety Code. If an artifact must be removed during project excavation or testing, curation may be an appropriate mitigation. “

§15126.4(b)(C)

# What is Data Recovery ?

- The documentation, recordation, and removal of the archeological deposit from a project site in a manner consistent with professional ( and regulatory) standards; and the subsequent inventorying, cataloguing, analysis, identification, dating, interpretation of the artifacts and “ecofacts” & the production of a report of findings.
- Data Recovery is the most time consuming & most costly form of mitigation.

# Accidental Discovery of Cultural Resources

- Lead Agency shall make provisions for accidental finds like the immediate evaluation (historical vs. unique) of the archeological resource
- Work should continue at other parts of project area but stop at least within a 100-foot radius of site
- Time & money should be allocated for appropriate mitigation such as avoidance

§15064.5 (f)

# BUT:

- Discovery of Cultural Resources during Construction.....**without** the appropriate level of identification
- **Should be avoided.**

## Phase III

### What then is adequate mitigation for an adverse effect?

Responsible mitigation should require preparation of a research design and testing plan in advance of the project.

- **Why?**
- To identify the scientifically important information and recover it, in a timely manner & without risk to preventable project impacts

# Not appropriate Mitigation:

- Archeological Monitoring as a mitigation is typically not a preferred mitigation for archeological resources
- **Why?**
- It may put the resource at risk to project impacts before appropriate archeological intervention can occur

## Very Important:

**If there is evidence in the record that an archeological resource may be affected by a project, a mitigation measure applicable to accidental discovery is not appropriate.**

So, now you have a historical resource...

What is CEQA's definition of a Significant Effect?

- Significant effect on the environment means a **substantial**, or potentially substantial, **adverse change** in any of the **physical** conditions within the area affected by the project including. . . objects of historic or aesthetic significance. (PRC 21068; CEQA Guidelines §15382)

## **CEQA defines adverse change as:**

**Physical Demolition, Destruction, Relocation, or Alteration of the resource or its immediate surroundings such that the significance of the historical resource would be materially impaired.**

# What is 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.

Seven aspects: Location, Design, Setting, Materials, Feeling, Workmanship, Association

## So, the Significance of a historical resource is materially impaired when a project:

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, Local Register, or its identification in a survey,

or

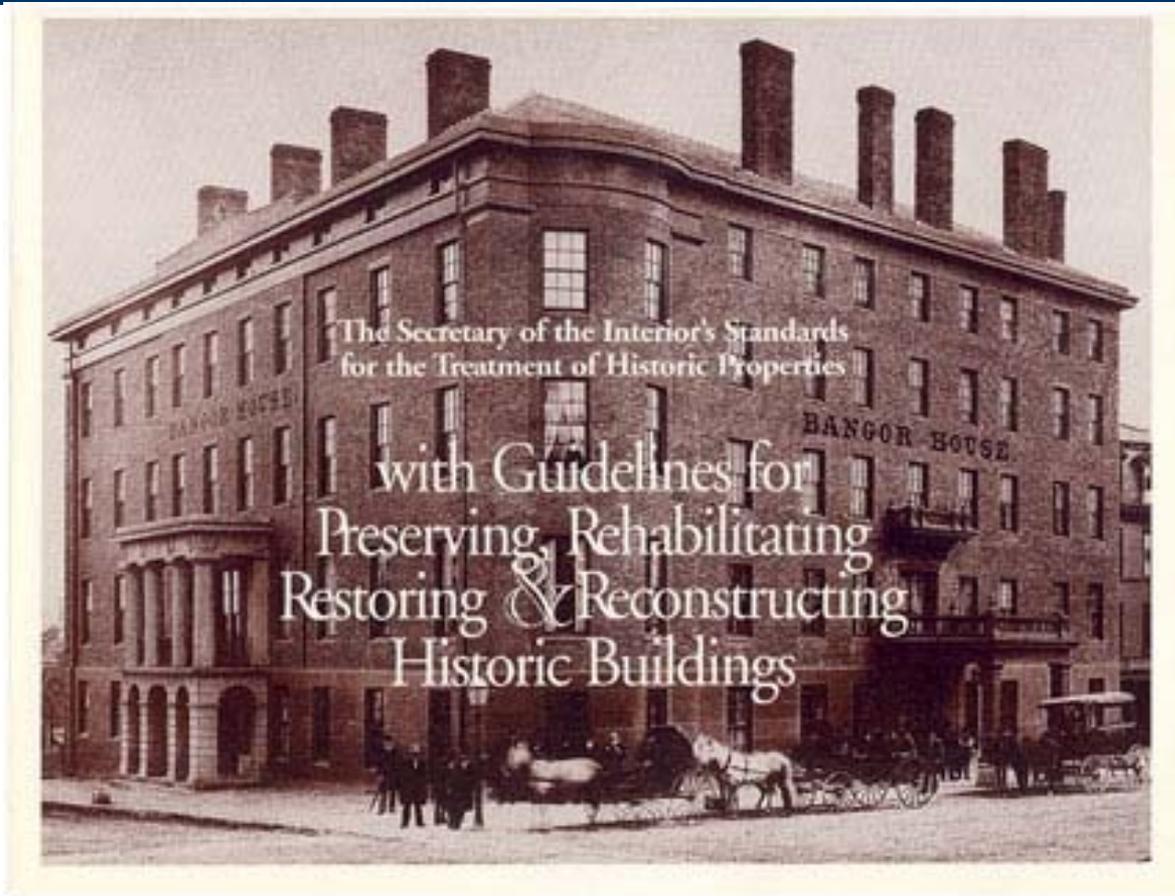
demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its eligibility for inclusion in the California register as determined by a lead agency for purposes of CEQA.

§15064.5(b)(1-2)(A-C)

**Now, can substantial adverse change in an historical resource be avoided?**



# Secretary of Interior Standards



# Pursuant to CEQA

## §15064.5 (3)

- (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.

# Rehabilitation Treatment



## And CEQA says further:

- (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. (§15064.5(b)(5))

# Relocation

- The confusion:
- It can be an Impact
  - Or
- It can be Mitigation

## In General:

For **each** significant impact identified in the EIR, feasible measures to **avoid or substantially reduce** the project's environmental effect **must be discussed**

(CEQA Guidelines §15126.4(a))

# What is Adequate Mitigation??

- **Adequate means**

specific, feasible **actions** that will actually improve adverse environmental conditions

# Feasibility Definition

- Public Resources Code section 21061.1:

“**Feasible**” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

# How is Mitigation Action defined?

- **Avoid**

the impact altogether by not taking certain actions or parts of actions

- **Minimize**

impacts by limiting the degree or magnitude of the action and its implementation

# Mitigation Action

- **Rectify**  
the impact by repairing, rehabilitating or restoring the affected environment
- **Reduce or Eliminate**  
the impact over time by preservation and maintenance during the life of the action
- **Compensate** for the impact by replacing or providing substitute resources or environments

# Effective Mitigation means:

- In practice to clearly explain the **objective** of the mitigation measures.
- And **how** they will be implemented, **who** is responsible for implementation, **where** and **when** will they occur.

# Questions to ask when developing mitigation measures:

## Who?

Identify the agency, organization, or individual responsible for implementing it.

## What?

Explain the specifics of the mitigation measure & how it will be implemented. Mitigation measures need to be measurable to allow monitoring their implementation.

## Where?

Identify the specific location for the mitigation measure

## When?

Develop a schedule for implementation

## Why?

What's the objective of the mitigation & why is it being recommended?

# QUESTIONABLE MITIGATION MEASURES

- DO NOTHING
- ACCOMPLISH **NOTHING**
- **DON'T** MINIMIZE THE ENVIRONMENTAL EFFECTS

# QUESTIONABLE MITIGATION MEASURES SUCH AS:

- PROVIDE FUNDING FOR
- HIRE STAFF
- MONITOR OR REPORT
- COMPLY WITH EXISTING REGULATIONS OR ORDINANCES
- PRESERVE ALREADY EXISTING NATURAL AREA

# INADEQUATE MITIGATION MEASURES

- CONSULT WITH
- SUBMIT FOR REVIEW
- COORDINATE WITH
- STUDY FURTHER
- INFORM
- ENCOURAGE OR DISCOURAGE
- FACILITATE
- STRIVE TO

# Mitigation May Not Be Deferred !!

MAY NOT BE  
DEFERRED TO SOME  
FUTURE TIME....



# AUTHORITY TO MITIGATE

- PUBLIC AGENCY HAS AUTHORITY TO REQUIRE FEASIBLE CHANGES IN ANY OR ALL ACTIVITIES TO LESSEN OR AVOID SIGNIFICANT EFFECTS ON THE ENVIRONMENT(CEQA GUIDELINES §15041)

## HISTORICAL RESOURCES & MITIGATION

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

Any adopted mitigation measures **must** be made fully enforceable through permits, conditions, agreements, or other measures

(CEQA Guidelines § 15064.5 (b) (3-5))

# ALTERNATIVES

- CEQA requires an EIR to describe a range of **reasonable alternatives** to a project, or to the **location** of a project, which would **feasibly attain most of the basic objectives** of the project but would **avoid or substantially lessen any** of the significant effects of the project, and to evaluate the comparative merits of the alternatives. (CEQA Guidelines § 15126.6)

# Alternatives

- Discussion within EIR must focus on alternatives “which are capable of avoiding or substantially lessening any significant effect of the project, even if such alternatives would impede to some degree the attainment of the project objectives, or would be more costly”

(CEQA Guidelines § 15126.6(b))

# Alternatives

- An EIR must not only identify but discuss alternatives, and this discussion must “contain facts and analysis, not just the agency’s bare conclusions and opinions,” that is, it must provide “meaningful detail” to assist the public in its role. (Laurel Heights Improvement Ass’n of San Francisco v. Regents of the Univ. of California (1988) 47 Cal.3d 376, 404,406)

- “The fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project.” Citizens of Goleta Valley v. Board of Supervisors (Goleta I) (1988) 197 Cal.App. 3d 1167, 1181)

## More on Alternatives:

- Factors to consider are site suitability, economic viability, infrastructure availability, jurisdictional boundaries (regional context), can project proponent acquire, control or access site
- Relate to project “as a whole”, not to the various parts of a project
- Need only be potentially feasible

- Rule of Reason governs the nature & scope of the discussion of alternatives within an EIR
- “CEQA establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR. Each case must be evaluated on its own facts, which in turn must be reviewed in light of the statutory purpose.”

(Save San Francisco Bay Association v. San Francisco Bay Conservation and Development Commission (1<sup>st</sup> Dist. 1992) 10 Cal.App.4<sup>th</sup> 908,919 [13Cal. Rptr.2<sup>nd</sup> 117])

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