

California Environmental Quality Act (CEQA)

Workshop: Preserving Lake County's
Historically Significant Resources
Sponsored by The Lake County
Heritage Commission

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IOOF Hall Upper Lake

What is CEQA? What does it have to do with historical resources?



Statute: Public Resources Code §§21000-21178

Guidelines: California Code of Regulations

Title 14, Chapter 3

§§15000-15387

The Basic Purposes of CEQA

- **Inform** governmental decision makers and the public about the potential, significant environmental effects of proposed activities
- **Identify** ways that environmental damage can be avoided or significantly reduced

The Basic Purposes of CEQA

- **Prevent** significant, avoidable damage to the environment by alternatives or mitigation
- **Disclose** to public the reasons why a government agency approved the project if significant environmental effects are involved



What CEQA Does Not Do

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



In the Beginning. . . Is it a Project?



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

When does CEQA Apply?



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

When does CEQA not apply?

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

Is the Project Ministerial?



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

Are there Statutory Exemptions from CEQA?



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

Is there a Categorical Exemption from CEQA?



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

Categorical Exemptions

- Use of the Secretary of the Interior's Standards are a categorical exemption



- Notice of Exemption **may** be filed—not required

Is the Project Discretionary?



- If there is a project. . .
- If the project is not ministerial. . .
- If exemptions do not apply. . .
- Then, the project is discretionary and the lead agency evaluates project to determine if there is a possibility that the project may have a significant effect on environment

Coordinate Historic Preservation Ordinance with CEQA

- Important for local historic preservation ordinance to specify actions that are discretionary
 - Demolitions
 - Alterations
 - Infill

Coordinate Historic Preservation Ordinance with CEQA

- Important to use terms, criteria and definitions that are easily applied to CEQA



Initial Study

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

Initial Study: The Two-Part Test

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

What is a Historical Resource?



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

(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.

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.

Surveys

- (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

- **However. . .**



- 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. . . .

Historical Resources also Includes Archeological Resources

- CEQA applies to effects on archaeological sites.
 - When a project will impact an archaeological site, a lead agency shall first determine whether the site is an historical resource.
 - If it is, potential adverse impacts to it must be considered.



Archeological Resources

May be Unique Archeological Resources, §15064.5(c)

- CEQA is confusing!
- If an archaeological site does not meet the criteria of an historical resource, but does meet the definition of an “unique archeological resource” as defined in PRC §21083.2 the site shall be treated in accordance with the provisions of that section.

So, you have a historical resource...

What is 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.

Will there be a significant effect ?



- There must be some “substantial evidence” in the record that an adverse change may occur.
- If a party disagrees with the lead agency’s finding of “no significant effect” to historical resources, the party may assemble a “**fair argument**” from all available evidence that a project will negatively impact a significant historical resource and present it to the lead agency.

Will there be a Substantial Adverse Effect on the Significance of a Historical Resource?



- If the project will have no substantial adverse effect, the agency must issue a **Negative Declaration**
- Public comment period
 - 20 days or 30 days

Will there be a Substantial Adverse Effect on the Significance of a Historical Resource?



- If the project will have a potentially adverse effect on historical resources, as determined in the IS, the lead agency **may** avoid an Environmental Impact Report if it develops mitigation measures to clearly avoid or mitigate the significant effects.
 - **Mitigated Negative Declaration**
 - Public Comment Period
 - 20 days or 30 days

Will there be a Substantial Adverse Effect on the Significance of a Historical Resource?



- If the project involves an unmitigated significant adverse change on a historical resource, the lead agency will issue a Notice of Preparation for an EIR
- Scoping Meetings
 - Lead agency shall provide notice of scoping meeting for any organization or individual who has filed a written request for the notice

Draft Environmental Impact Report/EIR

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

Public Notice and Review of Draft DEIR

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

Public Notice and Review of Draft DEIR

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

CEQA: Procedural and Substantive

- CEQA is primarily procedural
- CEQA is also substantive
 - Lead agencies are not permitted to approve environmental impacts if feasible alternatives or feasible mitigation measures addressing those impacts are available.



Closing CEQA

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



2005 CEQA documents at State Clearinghouse

Total of **13,690**
environmental documents

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