

This document contains numerous references to government code sections. Depending on the code section and the purpose of the reference, only a portion of the government code section may be relevant to the subject being presented. In such cases, only the relevant portion of the code is presented, so for example, you may see a section “c” presented, but no section “a” or “b” (See for example Section 1.2 of this document).

GUIDELINES FOR DETERMINING THE SIGNIFICANCE OF AND IMPACTS TO CULTURAL RESOURCES- ARCHAEOLOGICAL, HISTORIC, AND TRIBAL CULTURAL RESOURCES

SIGNIFICANCE EVALUATION, IMPACT ASSESSMENT, AND MITIGATION

INTRODUCTION

This document provides thresholds and guidance for evaluating potential adverse environmental effects that a proposed project may have on cultural resources. Planners and decision makers should use this document in the evaluation of potential impacts to cultural resources as part of the environmental review of discretionary permit project applications and other projects required by the California Environmental Quality Act (CEQA). Projects that require a permit, but are usually exempt from CEQA review, are not exempt if the project for which the permit will be issued may have substantial adverse impacts to significant historical resources. This document also provides essential guidance to professional consultants who prepare detailed technical reports addressing cultural resources and sections on cultural resources in CEQA documents, such as Environmental Impact Reports. Finally, this document is an essential reference for stakeholders with interests in the proper treatment of cultural resources, including, but not limited to Native Americans, historical preservation organizations, and other community groups.

The following discussion of Thresholds and Guidelines is divided into three parts. The first part identifies those characteristics or criteria that qualify a resource as a significant archaeological, historic, or tribal cultural resource. The second part addresses how to evaluate the *severity* of potential impacts to those resources. This is key to evaluating if an adverse change to a resource is substantial and significant. The third part of the document provides a discussion of mitigation, including some examples of mitigation measures which may avoid or lessen a potentially substantial adverse change.

Unlike most resource classes that are required to be considered during environmental review pursuant to CEQA, the CEQA Statute and CEQA Guidelines themselves contain numerous and detailed regulations and guidance specific to cultural resources. This document mainly relies on that guidance and those regulations. Many of the criteria in CEQA that address the significance and appropriate treatment of cultural resources derive from Federal, State, and Local registers of historical resources, including the National Register of Historic Places (NRHP), the California Register of Historical Resources (CRHR), and local registers of historical resources.

Additional guidance and requirements are also provided by the numerous goals, policies, and standards contained in local Comprehensive Plans, Community Plans, and Zoning Ordinances that address the treatment of local cultural resources in the context of discretionary land use permit projects. If a discretionary permit is being issued in a context where such plans and ordinances apply, projects must be designed and/or mitigation measures included such that findings of consistency can be made for those goals, policies and standards. Planners should consult the appropriate documents for these goals, policies, and standards in circumstances where they apply.

Cultural resources are the tangible or intangible remains or traces left by prehistoric or historic peoples who inhabited California. These typically include prehistoric and historic archaeological sites. Although most people think of Native Americans when they think about local archaeology, archaeological sites may also be the material remains of past non-native behavior, such as historical ruins, old trash dumps, and even shipwrecks. Another type of cultural resource includes historic resources, the most common form of which is the existing built environment. Historic resources (not to be confused with *historical* resources as used in CEQA, and defined below), include old houses, buildings, structures, roads, walls, and other important historic features. Cultural resources also include areas such as traditional cultural places and landscapes, and may even include objects, records, and manuscripts. A recently defined type of cultural resource that was added to CEQA in 2015 is the tribal cultural resource, resources with cultural value to a California Native American Tribe. Tribal cultural resources may include Native American archaeological sites, but they may also include other types of resources such as cultural landscapes or sacred places. The identification and appropriate treatment of tribal cultural resources is determined through consultation with tribes.

Initial Study Questions

Specifically, this document addresses the threshold questions contained in CEQA's Initial Study section on cultural resources, which are based on CEQA Guidelines Appendix G (Environmental Checklist Form), but have been altered slightly here to more clearly differentiate archaeological from historic (i.e. the built environment) resources, both of which are considered *historical* resources by CEQA. Please refer to Appendix A to this document for a suggested set of CEQA Initial Study questions that pertain to cultural resources. Alternatively, you may use the cultural resources Initial Study questions as written in CEQA Appendix G. If the Initial Study determination is that there are only Class III impacts, a CEQA exemption or Negative Declaration may be the appropriate CEQA document from the perspective of cultural resources. If the Initial Study determines that there are Class II impacts, a Mitigated Negative Declaration may be the appropriate CEQA document from the perspective of cultural resources. If after redesign and/or mitigation, it is determined that the impact is a significant Class I impact, preparation of an Environmental Impact Report is required. Many lead agencies (i.e. state agencies, local governments, other local jurisdictions, etc.) have additional guidance on the discussion of existing setting, impacts, mitigation, Native American Consultation, and the application of these thresholds. Such guidance documents should be consulted when available.

1.0 EVALUATING THE SIGNIFICANCE (i.e., *IMPORTANCE*) OF CULTURAL RESOURCES

As discussed in more detail in Section 1.3.3, below, the first step in determining a project's impacts to cultural resources is to identify whether or not cultural resources are present. Assuming such resources are present, there are a number of different perspectives when evaluating the importance or significance of a cultural resource during CEQA review, all of them equally valid. From the perspective of a historian, for example, the importance of a historical resource, such as a building, structure, object, or historic district, is what it can tell us about history. Such a resource may be associated with important events that contributed significantly to California history, associated with persons who were important in our past, embody distinctive historic characteristics, or represent the work of an important individual, such as a famous architect. To an archaeologist, the significance of a cultural resource most commonly lies in the information that it can provide about the past, which is important for reconstructing past cultures and testing hypotheses and models that seek to understand culture change. And for a Native American, significance includes resources that have cultural significance to a tribe, including but not limited to sacred places and cultural landscapes. Keep in mind that a single resource may be significant from more than one perspective. For example, an archaeological site may be significant both to archaeologists and Native Americans, but for very different reasons.

What follows is a discussion of the significance evaluation for the various kinds of cultural resources, as contained in CEQA Statute and CEQA Guidelines, as well as federal, state, and local codes and guidance. Depending on the nature of the cultural resource that is the subject of environmental review, one or more of these significance evaluation procedures may be appropriate.

1.1 California Register of Historical Resources

During environmental review, one of the most commonly encountered cultural resource types is the *historical resource*. Historical resources are broadly defined as those cultural resources that are considered significant under CEQA and may include sites, objects, structures, buildings, etc. Historical resources may be prehistoric or historic in age and may be archaeological resources, part of the existing built environment, other important historic resources, or a tribal cultural resource, such as a sacred place. The CEQA Guidelines contain specific direction as to what qualifies as a significant historical resource. CEQA Guidelines Section 15064.5(a) of the State CEQA Guidelines provides a definition of "historical resources." Resources that meet this definition are significant. Public Resources Code Sections 5020-5029.5 also contain many important definitions of terms used in the code section below, including historical resources, the California Register of Historical Resources, the State Historical Resources Commission, the State Office of Historic Preservation, and others.

Historical Resources (CEQA Guidelines Section 15064.5 (a))

- (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 of 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, 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 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 Resource Code) does not preclude a lead agency from determining that the resource may be an historical resource as defined in Public Resources Code Section 5020.1(j) or 5024.1.

1.2 National Register of Historic Places Criteria as Referenced in CEQA

National Register eligibility is also relevant to listing in the California Register. National Register criteria may also be applied to determine if a resource may be listed in the California Register of Historical Resources, and therefore significant pursuant to CEQA. Public Resources Code Section 5024.1(c) lists the National Register of Historic Places criteria that would also qualify a resource to be listed in the California Register of Historical Resources. Normally, most evaluations are done with the California Register criteria themselves, which are similar; but if a resource has already been formally evaluated as meeting National Register criteria, it may simplify the significance evaluation process. Please note that the following section of the CEQA Guidelines references the National Register criteria, but the specific wording of the criteria has been altered in order to apply specifically to resources from California. For the exact wording of the National Register criteria, go to National Register Bulletin 15 (<https://www.nps.gov/nr/publications/bulletins/nrb15/>).

National Register of Historic Places Criteria (CEQA Guidelines Section 5024.1(c))

- (c) A resource may be listed as an historical resource in the California Register if it meets any of the following National Register of Historic Places criteria:
 - (1) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage.
 - (2) Is associated with the lives of persons important in our past.
 - (3) 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.
 - (4) Has yielded, or may be likely to yield, information important in prehistory or history.

1.3 Archaeological Sites

Archaeological sites may be historic or prehistoric in age. As treated by CEQA, archaeological sites may qualify as historical resources or tribal cultural resources, or both. CEQA provides additional guidance specific to archaeological sites. The determination as to whether an archaeological site qualifies as an historical resource or a unique archaeological resource should be based on the evidence gathered and presented for each specific site and should be made by a trained professional archaeologist. CEQA Guidelines Section 15064.5(c)(2) makes it clear that if an archaeological site is determined to be an historical resource, the limitations on mitigation contained in CEQA Statute Section 21083.2 do not apply, and instead mitigation should be guided by CEQA Guidelines Section 15126.4. Additionally, CEQA Guidelines Section 15064.5 (c)(3) clarifies that if an archaeological site is not an historical resource, but does meet the definition of a unique archaeological resource, it should be treated according to CEQA Statute Section 21083.2 , but that the time and cost limitations for survey and evaluation activities contained in CEQA Statute Section 21083.2 (c-f) do not apply to surveys and site evaluation activities. If an archaeological site is neither an historical resource nor a unique archaeological site, the effects of the project on that site shall not be considered a significant effect on the environment.

1.3.1 Archaeological Sites (CEQA Guidelines Section 15064.5 (c))

- (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 archaeological 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.

1.3.2 Unique and Non-Unique Archaeological Sites

Prior to the adoption of CEQA Guidelines Section 15064.5 in 1998 that defined and addressed the definition and treatment of historical resources, archaeological resources were primarily addressed in Appendix K to the Guidelines, which no longer exists. Appendix K was developed partly in response to CEQA Section 21083.2 that defined “unique” and “non-unique” archaeological resources. It placed significant time and cost limitations on the evaluation and mitigation of unique archaeological resources, and required no mitigation for a non-unique archaeological resource (see Section 3.6 of this document). You will see references to the old Appendix K related to archaeological resources in old reports and publications, but it no longer exists and has been replaced by CEQA Section 15064.5 that addresses historical resources.

As discussed above, the time and cost limitations for significance evaluation and mitigation for unique and non-unique archaeological resources (i.e., sites) have largely been obviated by the statute and guideline sections that address historical resources, archaeological sites, and tribal cultural resources. So if that is the case, why even discuss them in this document? CEQA recognizes the possibility that an archaeological site may not meet the definition of an historical resource but may meet the definition of a unique archaeological resource. In that case, the site shall be treated in accordance with the provisions of Section 21083.2. It is also necessary to discuss unique archaeological resource because unique archaeological resources may qualify as either tribal cultural resources or historical resources, so the definitions for unique and non-unique archaeological sites are presented here.

Unique and Non-Unique Archaeological Sites (CEQA Statute Section 21083.2 (g))

(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 non-unique archaeological resource need

be given no further consideration, other than the simple recording of its existence by the lead agency if it so elects.

1.3.3 Significance Determination Process for Archaeological and Historic Sites

A detailed discussion of the requirements for archaeological and historic resource investigations and the format and content of technical documents that are to be submitted to lead agencies as part of the CEQA review process is included in a separate guidance document, *Fieldwork and Reporting Guidelines for Cultural Resources*. A brief summary of the archaeological and historic fieldwork and analysis process is included here. These activities are carried out by professional consultants and the results incorporated into CEQA documents, including Initial Studies, Exemptions, Negative Declarations, Mitigated Negative Declarations, and Environmental Impact Reports. Many lead agencies maintain a list of qualified professional consultants from which applicants may choose should a technical study be required. All reports, including those produced for Phase 1, 2, and 3 investigations, must be submitted to the appropriate California Information Center as well as the lead agency. An additional requirement for archaeological investigations involves the curation (See CEQA Guidelines Section 15126.4(b)(3)(C)) in perpetuity of excavated materials and associated documents from Extended Phase 1, Phase 2, and Phase 3 excavations, at a qualified curation facility, at the applicant's cost. Refer to *Fieldwork and Reporting Guidelines for Cultural Resources* and the discussion below of mitigation and design considerations for guidance and information on other requirements and possible mitigation measures. Note that all archaeological reports that disclose site locations will remain confidential (not distributed to the public).

Phase 1

Archaeological Resources

The first phase of the process, Phase 1, is an inventory to determine whether or not any archaeological sites exist within the project area. This most often begins with records search requests. One request is made to the appropriate Information Center, which maintains maps and records of all recorded sites, both historic and archaeological, as well as locations of past archaeological surveys. In addition, a Sacred Lands Search Request is submitted to the Native American Heritage Commission (NAHC) to find out if any sacred lands within or near the project site have been registered with the NAHC.¹ Once records have been obtained, a pedestrian survey of the project site is conducted by a qualified archaeologist who examines the ground surface to check for cultural materials such as chipped stone, shellfish remains, bone, groundstone, dark organic-rich midden soil, or other tell-tale signs of the presence of an archaeological site.

Sometimes, an Extended Phase 1 is conducted if there is limited visibility due to dense vegetation cover, or the project is in an area likely to have buried remains due to the post-occupation deposition of soils by alluvial or other processes. An Extended Phase 1 essentially extends the examination to beneath the ground surface, and usually involves the use of shovel test pits or, on occasion, controlled backhoe trenching, with screening of soils to make sure cultural materials are not missed. If no archaeological materials are discovered, the conclusion is that no archaeological sites exist within the project area. In that case, the Initial Study question on archaeological sites would indicate that there is no impact and would be identified as a Class III impact in the CEQA document for the project.

¹ Note that in many cases, recorded cultural resources that have not been registered with the NAHC exist in any given area.

If an archaeological site is determined to be present, then a Phase 2 significance evaluation is usually conducted, unless project redesign can avoid the site, in which case Phase 2 test excavations would not be necessary. If a site is avoided through project redesign, there would be no impact (Class III). In rare cases, an Extended Phase 1 investigation may generate enough information to establish that a site is significant and preclude the need for a Phase 2 investigation. If a site is determined not to be significant based on the results of an Extended Phase 1 investigation, the Initial Study question on archaeological sites would indicate that there is a less than significant impact and would be identified as a Class III impact in the CEQA document for the project. In some cases, monitoring of ground disturbance in or near to a less than significant site may be made a condition of project approval in order to ensure that undiscovered significant deposits are properly treated if found.

Historic Resources

Phase 1 investigations of historic resources (i.e., the built environment) include both an inventory and significance evaluation of the resources. The purpose of this investigation is to analyze and present the data relevant for determining if the resource is a significant historical resource based on the relevant criteria (e.g., CEQA Guidelines Section 15064.5 (a)(3)(A-D)), including a careful evaluation of the seven aspects of integrity. Phase 1 investigations of historic resources include historical research, an inspection of the property, and a preliminary evaluation of the potential presence of significant historic resources. Historical research includes review of all appropriate documents, including site records, maps, and other appropriate archival materials including pertinent grantor-grantee land ownership title record data for the period of historical significance. Institutions that may have pertinent maps and information include Information Centers, university departments of History, map and Imagery Libraries, historical societies, county and city halls of records, historic preservation organizations, and others. Institutions that may have pertinent archival materials, including written documents and photographs, include library special collections departments, historical societies, county and city halls of records, missions, other local historical society archives, and others. If no significant historic resources are present, a report of that determination, supported by appropriate evidence, is prepared and submitted (Phase 1 report). If the Phase 1 work results in the identification of potentially significant historic resources, then a Phase 2 investigation is conducted to assess the impacts of the proposed project and formulate appropriate mitigation measures. It is sometimes appropriate to conduct a combined Phase 1/Phase 2 investigation and prepare a single report that presents the results of both phases.

If no significant historic resources are identified, the Initial Study question on historic resources would indicate that there is no impact and would be identified as a Class III impact in the CEQA document for the project.

Phase 2

Archaeological Resources

The purpose of Phase 2 is twofold: (1) to evaluate the significance of any discovered archaeological resources that cannot be avoided by project design or redesign, and (2) to assess project impacts and formulate mitigation measures for resources that are evaluated as significant under CEQA (i.e., historical resources). Fieldwork usually includes controlled and limited archaeological excavation by a qualified archaeologist, referred to as site testing. There are however some circumstances where significance determination may be made without excavation, such as a deflated archaeological site. Site testing follows a plan reviewed and approved by the jurisdiction or agency to gather and analyze data as necessary to evaluate the significance of the site pursuant to CEQA. Although significance evaluation is generally made for the site as a whole, in some cases there may be specific areas of a significant site that may lack the characteristics that impart importance or confer significance to the site due to the loss of integrity

from prior disturbance, extremely low density of deposits, or other reasons. For archaeological sites determined to be significant by Phase 2 test excavations and analysis, mitigation is likely required. Avoidance of significant sites through project redesign is always the first choice, and is required by some jurisdictions and agencies if avoidance is possible. Most archaeological sites which retain their integrity can be placed within a temporal framework, and have sufficient density of material to answer research questions, are considered significant, and as such the preferred mitigation is avoidance and preservation in place. In some cases, in addition to avoidance, capping the site with sterile chemically neutral soil, geofabric, and some form of shallow-rooted landscaping may also be appropriate mitigation. A sample of the archaeological deposit should be recovered prior to capping. Additional mitigation should include analysis of the recovered materials in an analytical report. In rare cases a Phase 2 investigation may generate enough information to qualify as adequate mitigation and preclude the need for a Phase 3 investigation.

If a significant archaeological site is avoided through project redesign, and possibly capped, based on the results of a Phase 2 investigation, the Initial Study question on archaeological sites would indicate that there is a less than significant impact with mitigation and would be identified as a Class II impact in the CEQA document for the project. Please note that if a project will affect a significant site (e.g., one that is eligible for inclusion on a federal, state or local list or register), then the project is not exempt from CEQA (CEQA Guidelines Section 15300.2(f); the “exception to the exemption”). This is the case even if the project only requires a simple or ministerial permit for construction or grading that would otherwise qualify for a CEQA categorical exemption. In such instances, an Initial Study should be prepared.

Historic Resources

If a potentially significant historic resource is identified in Phase 1, a Phase 2 investigation is conducted to assess project impacts and formulate appropriate mitigation measures. Avoidance and preservation in place is always the preferred mitigation. CEQA (CEQA Guidelines Section 15064.5(b)(3)) recognizes that 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 Building* 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. In addition, Historic American Buildings Survey /Historic American Engineering Record (HABS/HAER) documentation, or documentation similar to HABS/HAER may also be appropriate mitigation. See also the discussion of mitigation of impacts to significant historic structures in Section 2.3.3 of Appendix B.

If impacts to a significant historic resource are avoided through project redesign and preservation in place based on the results of a Phase 2 investigation, the Initial Study question on historic sites would indicate that there is a less than significant impact with mitigation and would be identified as a Class II impact in the CEQA document for the project. Note that if a project will affect a significant historical (e.g., one that is eligible for inclusion on a federal, state or local list or register), then the project is not exempt from CEQA (CEQA Guidelines Section 15300.2(f); the “exception to the exemption”). This is the case even if the project only requires a simple or ministerial permit (e.g., a Land Use Permit or Coastal Development Permit for demolition of a structure). In such instances, an Initial Study should be prepared.

Phase 3

Archaeological Resources

The purpose of a Phase 3 archaeological investigation is to carry out mitigation measures, including such measures as temporary fencing during construction, capping, or even dedication of a conservation easement over the site. The avoidance of significant archaeological sites is always the preferred mitigation and is required whenever possible by the policies of many jurisdictions and agencies. For significant sites that cannot be avoided through redesign, additional excavations may be appropriate mitigation. This type of mitigation is often referred to as data recovery. While information is obtained from a data recovery project, the excavated portion of the site, as well as the entire area impacted by the project, is destroyed. The purpose of Phase 3 is to recover, analyze, interpret, report, curate, and preserve archaeological data that would otherwise be lost due to unavoidable impacts to a significant resource. The method usually involves an archaeologist excavating in a controlled manner part of the site that will be impacted using a Lead Agency-approved data recovery plan that is informed by the results of the Phase 2 test excavations. The recovered materials are analyzed pursuant to specific research issues or questions and the results are included in an analytical report. If Phase 3 data recovery excavations are proposed, the Initial Study question on archaeological sites should indicate that there is a less than significant impact after mitigation and would be identified as a Class II impact in the CEQA document for the project, or that there is a potentially significant impact resulting in a Class I impact. Conducting Phase 3 data recovery excavations may not reduce the impact to the resource to less than significant. The determination whether the impact is Class II or remains Class I after data recovery depends on the nature of the site and the amount that is being destroyed. This determination should be based on careful consideration by professional archaeologists and consultation with the Native American community.

Historic Resources

Phase 3 work for historic resources which are not completely avoided involves carrying out the mitigation proposed in the Phase 2 report. Mitigation measures may include, but are not limited to, preservation in place, restoration, rehabilitation, reconstruction, relocation, and documentation through drawings, plans, and photographs. Phase 3 historic resource reports document the mitigation measures that were carried out and include the documentation produced.

If Phase 3 mitigation is proposed, the Initial Study question on historic resources should indicate that there is a less than significant impact after mitigation and would be identified as a Class II impact in the CEQA document for the project, or that there is a potentially significant impact resulting in a Class I impact. The determination whether the impact is Class II or Class I depends on the condition of the resource after mitigation. For example, a historic house that is relocated offsite may or may not constitute a Class I impact due to loss of integrity even though it is being preserved. Also, HABS/HAER documentation as mitigation may not fully mitigate the impact to a historic resource if, after such documentation, the resource is not preserved in place. This determination should be based on careful consideration by and consultation with professional historians and historical architects.

1.4 Tribal Cultural Resources (AB52)

A resource type recently added to CEQA is the *tribal cultural resource*. This resource type was added to CEQA as a result of the passage of Assembly Bill 52 (Gato) in 2014 that took effect in July 2015. CEQA Statute Section 21074 contains guidance for determining what constitutes a tribal cultural resource. If a resource meets the definition of a tribal cultural resource, then it is a significant historical resource pursuant to CEQA. In addition, the statute contains direction concerning meaningful consultation regarding tribal cultural resources that must take place with California Native American tribes, should they request such consultation, on a project-by-project basis (CEQA Statute Section 21080.3.1). It is the obligation of the lead agency, not a professional consultant, to carry out the consultation process. Professional consultants may be involved in the process, but the lead agency is obligated to take the lead. A lead agency staff person will be identified as having the responsibility to conduct consultation with tribes. This consultation, which is confidential, recognizes that the tribes have expertise in determining if a tribal cultural resource is present within a project area, as well as proposing and determining the adequacy of mitigation measures proposed to avoid or substantially lessen potential significant impacts to a tribal cultural resource (CEQA Statute Section 21080.3.2). Required AB 52 consultation is carried out with tribes, not individuals, that have been recognized by the Native American Heritage Commission and who have requested to have such consultation with the lead agency.

1.4.1 Tribal Cultural Resource Definition

Tribal cultural resources may be sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe (CEQA Statute Section 21074). While CEQA contains guidance regarding the identification and determination of the significance of some of these resource types (e.g., CEQA Guidelines Sections 15064.5), CEQA contains little to no guidance regarding cultural landscapes or sacred places. CEQA recognizes the expertise of tribes in identifying all tribal cultural resources, but additional guidance may be provided by the Native American Heritage Commission, which keeps an inventory of sacred lands, to the extent that tribes wish such lands to be included in that inventory. Additional guidance may also be found in *National Register Bulletin 38, Guidelines for Evaluating and Documenting Traditional Cultural Properties*. Although the National Register process uses evaluation criteria that are somewhat different than those used in CEQA, the general guidance provided in this bulletin is quite useful in the determination of significance of tribal cultural resources such as cultural landscapes.

Tribal Cultural Resources (CEQA Statute Section 21074)

- (a) “Tribal cultural resources” are either of the following:
- (1) Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either of the following:
 - (A) Included or determined to be eligible for inclusion in the California Register of Historical Resources.
 - (B) Included in a local register of historical resources as defined in subdivision (k) of Section 5020.1.
 - (2) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Section 5024.1.

In applying the criteria set forth in subdivision (c) of Section 5024.1 for the purposes of this paragraph, the lead agency shall consider the significance of the resource to a California Native American tribe.

- (b) A cultural landscape that meets the criteria of subdivision (a) is a tribal cultural resource to the extent that the landscape is geographically defined in terms of the size and scope of the landscape.
- (c) A historical resource described in Section 21084.1, a unique archaeological resource as defined in subdivision (g) of Section 21083.2, or a “nonunique archaeological resource” as defined in subdivision (h) of Section 21083.2 may also be a tribal cultural resource if it conforms with the criteria of subdivision (a).

1.4.2 Consultation with Tribes Regarding Tribal Cultural Resources

A critically important aspect of the evaluation and treatment of tribal cultural resources is consultation with tribes, who are recognized as experts for this type of resource. Once formally requested by a tribe, the lead agency must offer that tribe the opportunity for consultation on any project for which a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report will constitute the CEQA document. Additional guidance documents exist, including a tribal consultation process timeline that details how and when a tribe must be given the opportunity to consult, and the Governor’s Office of Planning and Research Tribal Consultation Guidelines (2005).

Three sections of the Public Resource Code discuss the requirements for consultation.

Tribal Consultation (CEQA Statute Section 21080.3.1)

- (a) The Legislature finds and declares that California Native American tribes traditionally and culturally affiliated with a geographic area may have expertise concerning their tribal cultural resources.
- (b) Prior to the release of a negative declaration, mitigated negative declaration, or environmental impact report for a project, the lead agency shall begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project if: (1) the California Native American tribe requested to the lead agency, in writing, to be informed by the lead agency through formal notification of proposed projects in the geographic area that is traditionally and culturally affiliated with the tribe, and (2) the California Native American tribe responds, in writing, within 30 days of receipt of the formal notification, and requests the consultation. When responding to the lead agency, the California Native American tribe shall designate a lead contact person. If the California Native American tribe does not designate a lead contact person, or designates multiple lead contact people, the lead agency shall defer to the individual listed on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004. For purposes of this section and Section 21080.3.2, “consultation” shall have the same meaning as provided in Section 65352.4 of the Government Code.
- (c) To expedite the requirements of this section, the Native American Heritage Commission shall assist the lead agency in identifying the California Native American tribes that are traditionally and culturally affiliated with the project area.
- (d) Within 14 days of determining that an application for a project is complete or a decision by a public agency to undertake a project, the lead agency shall provide formal notification to the designated

contact of, or a tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, which shall be accomplished by means of at least one written notification that includes a brief description of the proposed project and its location, the lead agency contact information, and a notification that the California Native American tribe has 30 days to request consultation pursuant to this section.

- (e) The lead agency shall begin the consultation process within 30 days of receiving a California Native American tribe's request for consultation.

Tribal Consultation (CEQA Statute Section 21080.3.2.)

- (a) As a part of the consultation pursuant to Section 21080.3.1, the parties may propose mitigation measures, including, but not limited to, those recommended in Section 21084.3, capable of avoiding or substantially lessening potential significant impacts to a tribal cultural resource or alternatives that would avoid significant impacts to a tribal cultural resource. If the California Native American tribe requests consultation regarding alternatives to the project, recommended mitigation measures, or significant effects, the consultation shall include those topics. The consultation may include discussion concerning the type of environmental review necessary, the significance of tribal cultural resources, the significance of the project's impacts on the tribal cultural resources, and, if necessary, project alternatives or the appropriate measures for preservation or mitigation that the California Native American tribe may recommended to the lead agency.
- (b) The consultation shall be considered concluded when either of the following occurs:
 - (1) The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource.
 - (2) A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.
- (c)
 - (1) This section does not limit the ability of a California Native American tribe or the public to submit information to the lead agency regarding the significance of the tribal cultural resources, the significance of the project's impact on tribal cultural resources, or any appropriate measures to mitigate the impact.
 - (2) This section does not limit the ability of the lead agency or project proponent to incorporate changes and additions to the project as a result of the consultation, even if not legally required.
- (d) If the project proponent or its consultants participate in the consultation, those parties shall respect the principles set forth in this section.

Tribal Consultation (CEQA Statute Section 21082.3.)

- (a) Any mitigation measures agreed upon in the consultation conducted pursuant to Section 21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to paragraph (2) of subdivision (b), and shall be fully enforceable.
- (b) If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:
 - (3) Whether the proposed project has a significant impact on an identified tribal cultural resource.
 - (4) Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource.
- (c) (1) Any Information, including, but not limited to, the location, description, and use of the tribal cultural resources, that is submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with subdivision (r) of Section 6254 of, and Section 6254.10 of, the Government Code, and subdivision (d) of Section 15120 of Title 14 of the California Code of Regulations, without the prior consent of the tribe that provided the information. If the lead agency publishes any information submitted by a California Native American tribe during the consultation or environmental review process, that information shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. This subdivision does not prohibit the confidential exchange of the submitted information between public agencies that have lawful jurisdiction over the preparation of the environmental document.
 - (2) (A) This subdivision does not prohibit the confidential exchange of information regarding tribal cultural resources submitted by a California Native American tribe during the consultation or environmental review process among the lead agency, the California Native American tribe, the project applicant, or the project applicant's agent. Except as provided in subparagraph (B) or unless the California Native American tribe providing the information consents, in writing, to public disclosure, the project applicant or the project applicant's legal advisers, using a reasonable degree of care, shall maintain the confidentiality of the information exchanged for the purposes of preventing looting, vandalism, or damage to tribal cultural resources and shall not disclose to a third party confidential information regarding tribal cultural resources.

(B) This paragraph does not apply to data or information that are or become publicly available, are already in the lawful possession of the project applicant before the provision of the information by the California Native American tribe, are independently developed by the project applicant or the project applicant's agents, or are lawfully obtained by the project applicant from a third party that is not the lead agency, a California Native American tribe, or another public agency.

- (3) This subdivision does not affect or alter the application of subdivision (r) of Section 6254 of the Government Code, Section 6254.10 of the Government Code, or subdivision (d) of Section 15120 of Title 14 of the California Code of Regulations.
 - (4) This subdivision does not prevent a lead agency or other public agency from describing the information in general terms in the environmental document so as to inform the public of the basis of the lead agency's or other public agency's decision without breaching the confidentiality required by this subdivision.
- (d) In addition to other provisions of this division, the lead agency may certify an environmental impact report or adopt a mitigated negative declaration for a project with a significant impact on an identified tribal cultural resource only if one of the following occurs:
- (1) The consultation process between the California Native American tribe and the lead agency has occurred as provided in Sections 21080.3.1 and 21080.3.2 and concluded pursuant to subdivision (b) of Section 21080.3.2.
 - (2) The California Native American tribe has requested consultation pursuant to Section 21080.3.1 and has failed to provide comments to the lead agency, or otherwise failed to engage, in the consultation process.
 - (3) The lead agency has complied with subdivision (d) of Section 21080.3.1 and the California Native American tribe has failed to request consultation within 30 days.
- (e) If the mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of the consultation or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to subdivision (b) of Section 21084.3.
- (f) Consistent with subdivision (c), the lead agency shall publish confidential information obtained from a California Native American tribe during the consultation process in a confidential appendix to the environmental document and shall include a general description of the information, as provided in paragraph (4) of subdivision (c) in the environmental document for public review during the public comment period provided pursuant to this division.
- (g) This section is not intended, and may not be construed, to limit consultation between the state and tribal governments, existing confidentiality provisions, or the protection of religious exercise to the fullest extent permitted under state and federal law.

1.5 Historic Resources

Historic resources are typically structures and properties that make up the historically built environment. Most frequently, these include buildings constructed during the historic period, but historic resources may also include cultural landscapes, objects, places, linear features such as roads or walls, records, or even manuscripts that are historically significant. In general, a property or site must be at least 50 years of age to be considered for an assessment of significance. There are exceptions for properties that are less than 50 years of age that are of exceptional significance.

Significant historic resources qualify as historical resources. In order for a resource to be a significant historical resource pursuant to CEQA, it must meet one of the four significance criteria listed in CEQA Guidelines Section 15064.5(a)(3)(A-D) and retain integrity. Integrity is the authenticity of the resource’s physical identity and usually applies to historic resources. Resources must retain enough of their historic character or appearance to be recognizable as historical resources and convey the reasons for their significance. Districts, sites, buildings, structures and objects that retain integrity of location, design, setting, materials, workmanship, feeling, and association, and meet the one or more of the four significance criteria qualify as significant historical resources. Historic properties either retain integrity or they do not. To retain integrity, a historic property should have several of the seven elements of integrity listed above. Guidance for evaluating integrity may be found in National Register Bulletin 15 (<https://www.nps.gov/nr/publications/bulletins/nrb15/>).

Generally, a historic resource is significant if it meets the significance criteria for listing in the California Register of Historical Resources, whether the resource is formally listed or not. Additionally, historic resources are considered significant if they are listed in or eligible for listing in a local register of historical resources (CEQA Guidelines Section 15064.5(a)(2)). Also, please refer to the document, *Fieldwork and Reporting Guidelines for Cultural Resources* for additional information.

1.5.1 Local Register of Historical Resources

In addition to the California Register of Historical Resources, a resource listed in or eligible for listing in a local register also qualifies as a significant historical resource. CEQA Statute Section 21074(a)(1)(B) and CEQA Guidelines Section 15064.5(a)(2) indicate that resources included in a local register of historical resources are presumed to be significant historical resources. Public Resources Code Section 5020.1(k) provides the following definition of local register of historical resources:

Local Register of Historical Resources (Public Resources Code Section 5020.1(k))

(k) “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.

1.5.2 Historic Landmarks Advisory Commissions

Many local jurisdictions have historic landmarks advisory commissions that nominate properties to local registers of historical resources. A designated Landmark is usually preserved and protected by conditions restricting its demolition, removal, alteration, or use. The specific conditions for each landmarked property are usually spelled out in the official resolutions about the property, which finalized the property’s Landmark status. Plans for alterations to Landmarks are often required to be reviewed by historic landmarks advisory commissions for approval. A benefit of obtaining Landmark status is the applicability of the provisions of the Historic Building Code, which may waive certain requirements such as those for parking and ADA improvements.

In addition to proposing landmark designation of historic properties or historic landmarks, advisory commissions may also play an important advisory role in the treatment of historic resources in the review of development projects.

1.5.3 Local Historical Resource Surveys

Historical resources listed in or eligible for listing in the California Register of Historical Resources or included in a local register. However, there are some circumstances where a resource identified in a local historical resource survey, but not included in a register, may also be significant. Specifically, historical resources that were identified as significant in an historical resource survey meeting the requirements of 5024.1(g) are presumed to be significant. Local historical resource surveys are previously existing formal inventories and evaluations of multiple historic properties and buildings located in a defined geographic area such as a neighborhood or community. Such surveys must have been carried out pursuant to the criteria listed in Public Resources Code Section 5024.1(g). Although resources identified in such surveys are presumed to be significant historical resources, these criteria are not requirements for determining that a particular resource is significant. These guidelines discuss additional methods for significance determination.

Requirements for Historical Resource Surveys (Public Resources Code Section 5024.1(g))

- (g) A resource identified as significant in an historical resource 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.
 - (3) The survey and the survey documentation were prepared in accordance with office procedures and requirements.
 - (4) The resource is evaluated and determined by the office to have a significance rating of Category 1 to 5 on DPR Form 523.
 - (5) If the survey is five or more years old at the time of its nomination for inclusion in the California Register, the survey is updated to identify historical resources which have become eligible or ineligible due to changed circumstances or further documentation and those which have been demolished or altered in a manner that substantially diminishes the significance of the resource.

1.5.4 Historic Districts and Landscapes

Although historic districts and historic landscapes are most commonly encountered in the context of nominations to and listing in the National Register of Historic Places, historical resources as defined by CEQA Guidelines Section 15064.5(a)(3) include “places” and “areas.” Also, the definition of tribal cultural resource includes cultural landscapes. A cultural landscape is a geographic area, including both cultural and natural resources and the wildlife or domestic animals therein, associated with a historic event, activity, or person, or exhibiting other cultural or esthetic values. There are four non-mutually exclusive types of cultural landscapes: historic sites, historic designed landscapes, historic vernacular landscapes, and ethnographic landscapes.

Whether formally listed in the National Register of Historic Places or not, places and areas that may qualify as historical resources need to be evaluated and considered in the CEQA process. In the event that a place or area does qualify as a historical resource, CEQA provides little guidance as to their evaluation. Useful guidance may be found in the National Register Bulletins, including but not limited to:

- National Register Bulletin 15- How to apply National Register Criteria for Evaluation
- Bulletin 16- Guidelines for Completing National Register of Historic Places Form
- Bulletin 18- How to Evaluate and Nominate Designed Historic Landscapes
- Bulletin 30- Guidelines for Evaluating and Documenting Rural Historic Landscapes

2.0 DETERMINING THE SEVERITY OF IMPACTS TO CULTURAL RESOURCES

2.1 Typical Adverse Effects

Significant cultural resources are non-renewable; therefore, they cannot be replaced. The disturbance or alteration of a cultural resource causes an irreversible loss of significant information from the perspective of science and history, and also the loss of sacred places, objects and traditional cultural properties from the perspective of Native Americans and other groups. Regionally, the loss of cultural resources results in the loss of our identity and our connection with the past. More specifically, these losses include the demolition, destruction, relocation, or the material alteration of a cultural resource or its immediate surroundings such that the significance of a cultural resource would be materially impaired. Typical impacts to cultural resources include:

- The non-scientific surface collection or subsurface excavation of an archaeological site, often called pot hunting.
- The destruction of cultural resources through project development (e.g., grading, clearing, demolition, trenching, road and utility construction, staging areas).
- The destruction of cultural resources through off-site improvements (e.g., road construction, utilities expansion, staging areas) associated with project development.
- An increase in development intensity which adversely affects cultural sites or landscapes (e.g., placement of a subdivision within a vacant parcel adjacent to/or surrounding a cultural resource where behavior patterns occur beyond the boundaries of a site).
- The introduction of visual, audible, or atmospheric effects that are out of character with the cultural resource or alter its setting when the setting contributes to the resources' significance (e.g. the construction of a large-scale building, structure, or object that has the potential to cast shadows patterns on a historic structure, intrude into its viewshed, generate substantial noise, or substantially increase air pollution or wind patterns).
- Damage to cultural resources or landscapes by human encroachment resulting in vandalism or site destruction (e.g., graffiti).
- The relocation of a historic structure such that its significance is reduced to a level whereby the resource no longer is considered significant.
- Modifications (e.g., remodeling, alteration, addition, demolition) to a historic resource that is not in conformance with the Secretary of Interior Standards .
- A change in use that is not compatible with the authenticity of a resource (e.g., the use of a historic house as a dollar retail store).
- Development that changes the significance of a historic structure or the surrounding historic landscape.
- Deterioration of a resource by neglect.

Two types (direct, indirect) of typical adverse effects occur in relation to cultural resources. Direct impacts are caused by and are immediately related to a project. Examples of direct impacts would be the disturbance of an archaeological site by grading, or the demolition of a historic building. Indirect impacts are not immediately related to the project, but they are caused indirectly by a project. An indirect impact is to be considered only if it is a reasonably foreseeable impact that may be caused by the project. An example of an indirect impact would be the placement of trails in open space which has the potential to impact archaeological resources indirectly through the surface collection of artifacts by hikers.

2.2 Guidelines for Determining Impact Significance

CEQA Statute Section 21084.1 and CEQA Guidelines Section 15064.5(b)) define what constitutes substantial adverse change to the significance of an historical resource and that such adverse changes may constitute a significant effect on the environment.

2.2.1 Substantial Adverse Change to a Historical Resource (CEQA Statute Section 21084.1)

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.

2.2.2 Substantial Adverse Environmental Impact to an Historical Resource (CEQA Guidelines Section 15064.5(b))

- (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 an 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.

CEQA Statute Section 21084.2 defines what constitutes substantial adverse changes to the significance of a tribal cultural resource and that such adverse changes may constitute a significant effect on the environment:

2.2.3 Substantial Adverse Change to a Tribal Cultural Resource (CEQA Statute Section 21084.2.)

A project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment.

3.0 MITIGATION AND DESIGN CONSIDERATIONS

Cultural resource mitigation measures and design considerations used in the planning approval process depend on the specifics of a project and resources under consideration. A few examples of mitigation measures are provided in Table 1. The kinds of mitigation measures appropriate for archaeological sites are generally different than those appropriate for the historic built environment. This section will provide guidance contained in CEQA. Many lead agencies have policies and standards defining appropriate mitigation measures. Some jurisdictions have manuals of boilerplate mitigation conditions that may be used as-is or amended to fit the individual circumstances of a project.

Table 1
Examples of Mitigation Measures/Conditions

Resource Type	Typical Measures Applied to Reduce Impacts to Below Significant
Archaeological Resources	Avoidance and Preservation in Place
	Archaeological Open Space Easement
	Data Recovery
	Temporary Fencing
	Site Capping
	Staging Area Limitation for Construction Activities
	Curation of Archaeological Collections ²
	Agreement by Developer to Mitigation Conditions That Result From Consultation Between the County and a Tribe
	Public Displays/Media

² State guidance is provided by CEQA Guidelines Section 15126.4.

Built Environment	Avoidance and Preservation in Place
	Historic Conservation Easement
	Historic Landscape Screening Plan
	Use, Maintenance, and Repair Easement
	Setback Easement for Lots Adjacent to a Historic Structure
	Historic Landscape Tree Preservation
	Historic Structure Rehabilitation Program
	Regulations of Uses in a Historic Structure
	Curation of Historic Collections
	Staging Area Limitation for Construction Activities
	Landmarking
	Public Displays/Media
	HABS/HAER Documentation, or Documentation Similar to HABS/HAER
	Secretary of Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings
Secretary of Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Weeks and Grimmer 1995)	

The ideal treatment for cultural resources is avoidance of impacts to and preservation in place of the resource. CEQA and the Coastal Act do not require avoidance of cultural resources. However, some lead agencies, such as Counties, have community or regional plans with policies that require avoidance of significant cultural resources if possible. Avoidance measures can be incorporated into project design. However, if a project has the potential to cause a significant adverse change in the significance of an historical or tribal cultural resource, then reasonable efforts must be made to mitigate the impact to a level below significant. Cultural resource mitigation may include data recovery, analysis, interpretation, reporting, and curation of collections and associated documents at a qualified curation facility, at the applicant’s cost, thereby preserving what would otherwise have been destroyed and lost due to construction and development activities. The primary guidance on mitigation in the context of a CEQA review of a development project is found in CEQA guidelines Section 15064.5 (see also CEQA Statute Sections 21082.3 and 21083.2):

3.1 Mitigation (CEQA Guidelines Section 15064.5(b))

- (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.
 - (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 Building 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.

3.2 Mitigation (CEQA Guidelines Section 15126.4(b))

Further detail concerning mitigation measures for historical resources, including both Archaeological and Historic Resources, is provided by CEQA Guidelines Section 15126.4(b):

(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 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.
- (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.

The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), has recently been updated and may be found at <https://www.nps.gov/tps/standards/treatment-guidelines-2017.htm>.

3.3 Tribal Cultural Resource Mitigation

CEQA Statute Section 21084.3 identifies appropriate mitigation for a Tribal Cultural Resource:

3.3.1 Mitigation for Tribal Cultural Resources (CEQA Statute Section 21084.3)

- (a) Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource.
- (b) If the lead agency determines that a project may cause a substantial adverse change to a tribal cultural resource, and measures are not otherwise identified in the consultation process provided in Section 21080.3.2, the following are examples of mitigation measures that, if feasible, may be considered to avoid or minimize the significant adverse impacts:
 - (1) Avoidance and preservation of the resources in place, including, but not limited to, planning and construction to avoid the resources and protect the cultural and natural context, or planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
 - (2) Treating the resource with culturally appropriate dignity taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - (A) Protecting the cultural character and integrity of the resource.
 - (B) Protecting the traditional use of the resource.
 - (C) Protecting the confidentiality of the resource.
 - (3) Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
 - (4) Protecting the resource.

3.4 Treatment of Native American Human Remains

CEQA Guidelines Section 15064.5(d) addresses development of an agreement between the applicant and the appropriate Native Americans regarding treatment of human remains with appropriate dignity in circumstances where an initial study identifies the existence or probable likelihood of Native American human remains within the project.

3.4.1 Human Remains (CEQA Guidelines Section 15064.5(d))

(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 requirement of CEQA and the Coastal Act.

3.4.2 Accidental Discovery of Human Remains (CEQA Guidelines Section 15064.5(e))

CEQA Guidelines Section 15064.5 (e) specifically addresses what to do in the event that human remains are accidentally discovered in any location other than a dedicated cemetery:

(e) In the event of an 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 recommendation 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 48 hours after being notified by the commission.
 - (B) The descendent identified fails to make a recommendation; or
 - (C) The landowner or his authorized representative reject the recommendation of the descendent, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.

3.5 Accidental Discovery of Non-Human Remain Archaeological Materials During Construction

CEQA Guidelines Section 15064.5 (f) specifically addresses provisions a lead agency should make regarding accidental discovery of historical or unique archaeological resources during construction.

3.5.1 Accidental Discovery of Historical or Unique Archaeological Resources (CEQA Guidelines Section 15064.5(f))

- (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 in other parts of the building site while historical or unique archaeological resource mitigation takes place.

3.6 Limitations on Mitigation for Unique Archaeological Resources

The following is the section of the CEQA Statute that establishes limitations on the time and money that can be spent evaluating and mitigating unique archaeological resources. These limitations are not applicable to historical resources and are rarely applied. See Section 1.3.2 of this document for additional discussion.

3.6.1 Archaeological Resources; Determination of effect of Project; EIR Or Negative Declaration; Mitigation Measures (CEQA Statute Section 21083.2.)

- (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.