

THE ENVIRONMENTAL REVIEW PROCESS MANDATED BY CEQA:

***A SUMMARY OF THE REQUIREMENTS FOR EVALUATING
IMPACTS TO ARCHEOLOGICAL RESOURCES***

Edited by:

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December 1992

for:

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A Summary of the Requirements for Evaluating Impacts to Archeological Resources

PREFACE

This paper is a product of contributions made by numerous individuals. In 1989, California Department of Forestry and Fire Protection's (CDF) Deputy Director, Ken Delfino requested that CDF staff conduct an analysis of requirements contained in the California Environmental Quality Act (CEQA) in order to guide the Department in its development of procedures for the protection of archeological and historical resources. The results of the completed study are presented herein. The terms "archeological resources" and "historical resources" are used throughout the paper. It is important to clarify that both historic-era and prehistoric-era resources are included in the definition provided by CEQA, Forest Practice Rules, and State policy (Executive Order W-26-92). A recently-adopted Assembly Bill provided the following guidance:

"Historical resource" includes, but is not limited to, any object, building, structure, site, area, place, record, or manuscript which is historically or archeologically significant, or is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California. (PRC Section 5020.1(j))

The primary research for this study was conducted by Eric Kauffman, a graduate student enrolled at California State University, Sacramento, who was employed by the CDF Archeology Office as a student assistant. His draft report was reviewed, edited, and extensively re-written by CDF staff which included Archeologists, the Environmental Coordinator, and the Legal Office. Department of Parks and Recreation (DPR) Archeologists John Foster, Jim Woodward, and Michael Sampson reviewed the draft report and made many improvements to it. This final report was edited by CDF Archeology Program Manager Daniel G. Foster incorporating the contributions and comments developed by CDF staff and other reviewing contributors. The initial draft report submitted by Eric Kauffman in 1989 is on file at CDF, Archeology Office, Sacramento, California.

I. STUDY INTRODUCTION

The California State legislature required government agencies to formally consider the effects of environmental impacts resulting from certain projects they proposed or approved by enacting the California Environmental Quality Act (CEQA) of 1970. When first adopted, the act led some agencies to question whether or not it applied to archeological resources because its focus was on the "physical" environment. That uncertainty was settled however in 1977 when the California Supreme Court held that CEQA did indeed apply to archeological resource impacts (Society for California Archeology v. County of Butte 65 CAL. APP. 3d 832).

With the resolution that environmental impact reviews must include archeological resources, another problem arose, namely--what standards does CEQA describe to analyze impacts to archeology?

These standards have not been crystallized by either the courts or codified law. This paper attempts to clarify the relationship between CEQA and CDF's responsibility to protect archeological resources. This research is intended to provide the basis for rendering a judgment concerning the adequacy of archeological review procedures employed by the California Department of Forestry and Fire Protection (CDF) before commencement of CDF land management activities.

CEQA PROCESS

The CEQA environmental review process is comprised of four principal steps. The first two are information gathering steps: identification of potential significant adverse impacts from a project; and consultation with the public and other state agencies concerning the potential significant effects.

The two remaining steps involve the department's responsibility to render discretionary assessments and determinations concerning the project's environmental effects: determining whether the proposed project would result in significant environmental impacts; and, when necessary, incorporation of feasible mitigation measures and alternatives.

These steps can be broken down further in order to describe a process for evaluating archeological impacts (see Table 1).

Lead agencies are required to follow a basic process for evaluating impacts to archeology no matter what type of environmental impact document is used. CDF uses four kinds of CEQA documents:

(1) Environmental Impact Reports (EIR):

- A. "project specific" EIRs (e.g. the department may initiate a specific timberland aerial spraying project); or
- B. "programmatic" EIRs (e.g. the department's VMP project is implemented pursuant to a programmatic EIR).

(2) Timber Harvesting Plan (THP)

(3) Negative Declaration (ND)

(4) Categorical Exemption (CE)

CEQA environmental reviews under each of these documents can be broken down into the same four steps discussed above. When the department performs environmental reviews pursuant to CEQA, there are many specific resources which must be considered both individually and cumulatively. However, the following discussion focuses narrowly upon the steps and standards which guide CDF's responsibility to protect archeological resources.

Throughout this discussion, particular attention is given to CEQA review under the THP process and Vegetation Management Program (VMP) because the Forest Practice Rules and VMP EIR provide specific standards for the protection of archeological resources, however these requirements apply to all CDF projects and programs subject to CEQA. This includes State Forests, CFIP, and all Engineering projects.

II. INFORMATION GATHERING:

A. Identification of Project's Potential Significant Impacts.

(1) General CEQA Approach:

All project proponents are required to conduct an Initial Study, unless the project is exempt, or an environmental review is included in a THP. The Initial Study of a project is intended to:

- a. Identify archeological resources located within the project; and
- b. Identify any significant adverse effects that the project may cause to the archeological resource, and
- c. Assess the significance of identified adverse impacts.

(PRC Sections 21002.1(a), 21080.5(d)(3), 21083(b), 21100; 14 CCR Sections 15002(a), 15064, 15071, 15082(a)(1)(c), 15126, 15130, 15250, 15252, 15253(b)(3)).

(2) THP Process:

The project proponent must comply with 14 CCR Section 929.1(a)(1) which requires a Registered Professional Forester (RPF) to have conducted a current record search, consulted with local Native Americans, and carried out an archeological survey of the THP area to determine if any archeological resources exist. The RPF must have received archeological training to identify archeological resources (14 CCR Section 929.4).

(3) VMP Program:

Conformance with the Chaparral Management Program EIR requires that the project proponent (i.e., CDF) must perform an archeological survey of all areas within the project where archeological resources could be harmed if not identified.

(4) Discussion:

While CEQA does not specifically require the submittal of archeological site records to the California Archeological Inventory as part of the CEQA documentation process, there is strong justification for requiring that they be prepared for all CEQA project evaluations which the department prepares and/or reviews. PRC Section 21003 (b) states that it is the policy of the state that "documents prepared pursuant to ...[CEQA] be organized and written in such a

manner that they will be meaningful and useful to decision makers and to the public". In addition, information developed in individual environmental impact reports can be incorporated into the data base which can be used to reduce delay and duplication in preparation of subsequent environmental impact reports.

The two ways to document the results of an archeological survey are: (1) through archeological site records; and (2) a survey report which also contains site records. Common to both practices are the archeological site records, which were developed by the State Office of Historic Preservation (SHPO) and the California Archeological Inventory. Standards and guidelines for completing archeological site records (form DPR 422 or equivalent) were adopted by the State Historical Resource Commission in February 1989, pursuant to PRC Section 5020.4(c). These guidelines are available through the State Office of Historic Preservation in Sacramento. Site records fulfill legislative policy because they are standardized forms which make data useful to decision makers, landowners, developers, and future researchers. The information contained on site record forms is incorporated into a state-wide data base of site locations. This data base is used in significance evaluations and when future EIRs and FEs (Functional Equivalents) are written thus benefiting the general public. Therefore, by completing an archeological site record, an archeologist or trained professional is complying with legislative policy and PRC Sections 21003, and 5020.4, as well as 14 CCR 929.5, 949.5, and 969.5.

B. Consultation With Public and Other Agencies

(1) Interdisciplinary Approach:

CEQA provides a few specific guidelines for conducting archeological research. The most important of these guidelines is the requirement that agencies use an interdisciplinary approach in decision making and impact analysis (PRC Section 21080.5; 14 CCR Section 15142). An interdisciplinary approach will ensure the integrated use of the natural and social sciences. PRC Section 21080.5(d) includes the interdisciplinary approach as part of any decision making process, and 14 CCR Section 15142 adds that the approach will ensure the consideration of quantitative factors.

To ensure an interdisciplinary approach is used, a professional archeologist should be utilized when cultural resources might be impacted. The problem, however, is that no official licensing process exists to register professional archeologists in California. The State utilizes the following guidelines to evaluate a reviewer's qualifications and the professional standards employed for CEQA archeological reviews:

1. Guidelines of the Society of Professional Archeologists (SOPA)
2. Minimum qualifications established for State Archeologist civil service classifications
3. Secretary of the Interior's Professional Qualifications Standards (published in Federal Register Vol. 48, no. 190; 1983)
4. Forest Practice Rules (14 CCR Sections 929, 949, 969)

The person conducting the study should adhere to the common practices of archeologists who regularly work in the project region. The methods should also be consistent with the ethical standards of the archeological community. It is up to the lead agency to verify the expertise and capabilities of the person relied upon for archeological evaluations. CDF relies heavily on the surveys and observations made by professional resource managers (non-archeologists who have received archeological training) to identify and evaluate impacts to archeological resources. It is incumbent upon CDF to ensure that a professional archeologist has reviewed the analysis and any conclusions made by a non-archeologist who conducted the CEQA study.

This approach as applied to EIRs does not spell out what methods or topics a project evaluation is to use or discuss. Use of a CDF staff archeologist to review the impact evaluation study for archeological resources is imperative in order to insure the defensibility and adequacy of the final decisions made. This observation will apply to site inspections and review of impact evaluation studies under the VMP, CFIP, and State Forest Programs which require full CEQA review.

(a) THP Review Process:

For a regulatory program such as Forest Practice to be considered an equivalent of a full EIR requirement, the agency must use an interdisciplinary approach which will ensure the integrated use of the natural and social sciences in decision-making (PRC Section 21080.5(d)). The approach must include protection of the environment among its principal purposes (PRC Section 21080.5(d)(1)(i)). Rules and regulations must be created and implemented with the purpose of protecting important archeological sites since these sites fall under CEQA's definition of the environment. This suggests that an archeologist or archeologically trained resource professional must be used to conduct studies and render discretionary determinations which require professional judgment of potential resource impacts.

The Forest Practice rules address some of these concerns by requiring that an archeologist or trained individual conduct the field survey.

Archeological Training Requirements

To fulfill the requirement of 14 Section CCR 929.1, (946.1, 969.1), archeological surveys of timber harvesting plan areas for archeological or historical sites shall be conducted only by a professional archeologist or a person who has attended training program approved by the Director within the past five years. The training program must meet the following standards:

- a. The course shall use education materials approved by the Director which address the contents of this article.
- b. The course shall require that the applicant demonstrate, in the field, the ability to identify archeological or historical sites covered in the course.
- c. The Director may conduct the archeological training courses (in addition to or in-lieu of approving programs conducted by others) at least annually (14 CCR Section 929.4).

(2) Public Disclosure and Comment

CEQA documents require public disclosure and comment during the review process. However, in implementing CEQA, other State policies must also be considered, including limiting public disclosure of archeological information as necessary for the protection of sensitive resources. The purpose of the confidentiality policy (whereby exact site locations are not disclosed to the general public) is to minimize the risk of artifact collecting and unauthorized site excavations due to such disclosure. This confidentiality policy was approved as State policy by the State Historical Resources Commission under authority of PRC Section 5020.4(c).

Recent case law has provided CDF and other agencies with direction on how to resolve this apparent conflict. During review of a THP in coastal Mendocino county that contained an important archeological site, CDF denied release of an archeological study designed to mitigate adverse impacts from subsequent logging operations. CDF chose not to provide this report to the public since it disclosed the exact location of the archeological site on several maps and throughout the text. The resulting lawsuit contesting CDF's approval of this THP (*EPIC v. JOHNSON*, 1985; 170 CAL. APP. 3d) rendered a decision by the court that CDF erred in not disclosing to the public enough information to justify the decisions CDF made concerning project approval and adequacy of mitigations. While the court did not state that complete reports of archeological studies need to be provided for public review, it's decision required lead agencies to disclose an appropriate summary of the archeological information used to render a decision. This can be accomplished without disclosing exact site locations or other confidential information.

Both the public and other state, and certain review agencies have authority to make comments on a project (14 CCR Section 15205; *EPIC v. JOHNSON*, Supra). The Native American Heritage Commission (NAHC) is one of many agencies with an interest in cultural resources, and has statutory authority to review EIRs for projects that "may cause severe or irreparable damage to a Native American sanctified cemetery, place of worship, religious or ceremonial site" on public property and sacred places (PRC Section 5097.95-7). Other state agencies with expertise and jurisdiction in cultural resource impact evaluations are the State Office of Historic Preservation (SHPO) and the State Department of Parks and Recreation (DPR). These agencies are valuable informational resources and should be utilized by the department.

After comments are received, the lead agency conducting the review must develop a good faith, reasoned analysis in response to the major environmental issues raised (14 CCR 15088(b)). Comments can also be addressed by changing the project or mitigating the potential impacts.

Substantial Evidence:

Having finished the discussion of the informational gathering elements of the CEQA process and before discussing decision making elements, the concept of substantial evidence should be addressed. Lead agencies are required to gather data in order to:

- 1) Make well informed decisions; and
- 2) Form a basis for the agency's reasoning.

The substantial evidence standard measures whether the agency has relied on sufficient information and documentation to justify their decision and reasoning. CEQA and the CEQA Guidelines provides guidance for meeting the substantial evidence test as defined in the original act and subsequent case laws. According to CEQA, substantial evidence means:

"...enough information and reasonable inferences from this information that a fair argument can be made to support a conclusion..." (CCR Section 15384)

Substantial evidence must be judged in light of the whole record (PRC Section 21168). "Mere uncorroborated opinion or rumor does not constitute substantial evidence" and is not acceptable to support a decision (CCR Section 15384(a)). With the definition given above, both quantitative and qualitative data are very important in the CEQA process.

There is a related standard, often referred to as the **reasonable effort standard**, which addresses the degree and type of data which an agency must collect before rendering its discretionary decisions. Regarding this standard, the CEQA guidelines state that:

"[t]he courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure" (14 CCR Section 15151).

A great deal of case law has also addressed the level of investigation necessary to satisfy the reasonable effort standard. Case law has settled that not all research that could be conducted must be accomplished to determine severity of impacts. However, a conclusionary statement unsupported by empirical or experimental data, or scientific authorities, or explanatory information, is not acceptable. Issues must be crystallized. There must be full disclosure of the "analytical route. . .from evidence to action" and the agency must utilize "detail sufficient to enable those who did not participate in its preparation to understand and consider meaningful the issues raised by the proposed project" (Society for California Archeology v. Butte, Supra; People v. Kern, 115 Cal. Rptr. 67, 75; Laurel Heights v. U.C., 39 CAL. APP. 3d 830; 14 CCR Sections 15037 and 15042).

Finally, it should be emphasized that proper use of the interdisciplinary approach goes a long way toward satisfying the substantial evidence concerns.

Proper implementation of the CEQA process as a whole requires the lead agency gather adequate information in terms of the standards discussed above before going on to the decision making elements of the CEQA process, described below.

III. DECISION MAKING

A. Determination if Significant Effects to Archeological Resources May Result from the Project as Proposed:

The threshold determination within the CEQA process is whether or not the proposed project may result in significant adverse environmental effects.

(1) General CEQA Approach:

According to CEQA, significant effects on the environment means, "...a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project" (PRC Section 21068; CCR Section 15002(g), 15382). Public agencies must consider effects upon many resources, "including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance" (14 CCR Section 15382). Note that under SCA v. Butte, supra, archeological sites fall within the scope of objects of historic or aesthetic significance.

Appendices G and K of the CEQA guidelines provide useful standards to make this determination when considering archeological resources.

Appendix G (14 Section CCR 15064(e)) contains examples of physical impacts which cross the threshold of significance. Appendix K outlines a process for determining if the affected archeological resource itself is important. Adequate consideration of each of these interrelated issues is very important because CEQA environmental review only addresses significant physical impacts (PRC Sections 21080.5(d)(2)(i), 21082.2, 21083.2, 21100) and the extent of mitigation which is required to adequately address significant physical impacts to archeological resources will depend upon whether or not the impacted site is considered as "important" under the criteria listed within Appendix K.

According to Appendix G, subparagraph (j), the physical impacts to an archeological site are normally considered significant if the project will:

"[d]isrupt or adversely affect a prehistoric or historic archeological site or property of historic or cultural significance to communities or ethnic or social groups, or to a paleontological site except as a part of a scientific study".

Thus, given the broad interpretation which must be afforded to the phrase "disrupt or adversely affect," Appendix G establishes a broad standard for purpose of triggering analysis and review under CEQA.

However, Appendix K provides more specific standards for review and mitigation than the guidance provided in Appendix G, depending upon evaluation of the importance of the archeological site itself. Appendix K defines an "important archeological resource" using criteria which were adopted within the Forest Practice Rules. 14 CCR Section 895.1 provides the following guidance:

"Significant archeological or historical site" means a location which may contain artifacts, or objects about which there is a high probability that it meets one of the following criteria:

- (a) Contains information needed to answer important scientific research questions;

- (b) Has a special and particular quality such as the oldest of its type or best available example of its type;
- (c) Is directly associated with a scientifically recognized important prehistoric event or person, or historic event or person;
- (d) Involves important research questions that historical research has shown can be answered only with archeological methods; or
- (e) Has significant cultural or religious importance to California Indians as determined by the Native American Heritage Commission (NAHC) or local federally recognized tribal governments.

(2) THP Review Process:

Under the Forest Practice Rules, 14 CCR 929.1(c) requires that the RPF initially, and the reviewing agency ultimately, make a determination as to whether proposed timber operations may have a significant effect on a significant/important archeological or historical site.

(3) VMP EIR:

Under the VMP EIR, the CDF forester, archeologist, and project manager together must determine whether the proposed project "could harm ... [any archeological, cultural, or historical] resources".

IV. Consideration of Feasible Alternatives and Mitigation Measures Which Would Lessen Significant Effects Upon the Environment

A. Authority to Require Feasible Mitigations:

The department has a great deal of authority to require feasible mitigation or alternatives to the project which would lessen significant environmental impacts. PRC Section 21004 provides that a public agency may use its discretionary powers for the purpose of mitigating or avoiding a significant effect on the environment subject to the express or implied constraints or limitations that may be provided by law. 14 CCR Section 15041 establishes that a lead agency for a project has authority to require changes in any or all activities involved in the project in order to lessen or avoid significant effects on the environment.

B. Mandate to Consider and Incorporate Feasible Alternatives and Mitigations:

CEQA extends a duty upon public agencies to avoid or minimize environmental damage where feasible (14 CCR 15021). PRC Section 21002 establishes the "policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or mitigation measures available which would substantially lessen the significant environmental effects of such projects".

Regarding the department's duty to protect archeological resources, the application of these general CEQA policies and mandates differs slightly depending on: 1) the project type and according environmental review document; and 2) the importance of the archeological site in question.

Where an EIR is being completed, 14 CCR Section 15091(a) requires public agencies to make specific, reasoned findings that either:

- 1) "changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect[s] ...;" and/or
- 2) "specific economic, social, or other conditions make infeasible the mitigation measures or project alternatives."

Appendix K speaks specifically to the issue of implementing feasible alternatives and mitigations to protect archeological impacts. Under paragraph II, the Appendix states that "[p]ublic agencies should seek to avoid damaging effects on [any] archeological site whenever feasible" (emphasis added). Only where avoidance of such damage is infeasible should public agencies evaluate the "importance" (or "significance") of an archeological resource. The threshold determination of significant environmental impacts is crossed where a project may cause damage to an important archeological resource (para. III of Appendix K).

PRC 21080.5 (d)(2)(i) states that a lead agency which administers certified regulatory programs, such as the department's role within the THP process, cannot approve or adopt a project as proposed if there are feasible alternatives or mitigation measures available which would substantially lessen any significant environmental impact which the activity may have on the environment. Again, because archeological resources are part of the environment, feasible alternatives or mitigation measure must be incorporated to protect "important (or "significant" as defined in the Forest Practice Rules) archeological resources."

(1) THP Review Process:

The Forest Practice Rules address these concerns. 14 CCR Section 929.2 (949.2/969.2) requires that proposed timber operations include protection measures designed to protect significant archeological or historical sites from significant disturbance. 14 CCR Section 929.1 (949.1/969.1(c)) provides that, unless a THP includes adequate protection measures to protect identified sites, a technical survey and report of the site must be performed by a professional archeologist.

(2) VMP EIR Process:

The VMP EIR makes it incumbent upon the CDF forester in charge of the project to ensure that "[a]reas necessary for the protection of archeological, cultural, historical resources will not be harmed".

(3) Determining Feasibility:

Section 21061.1 of CEQA defines feasible as,

"...capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors."

This definition of feasible has often been misinterpreted with respect to the economic criteria. It is well settled that a mitigation measure may result in direct costs to the lead agency or project applicant so long as the expected costs are reasonable.

C. Authority to Deny Plans or Projects Where Significant Impacts Cannot be Feasibly Mitigated

Even if all feasible mitigations are incorporated, a lead agency may have the authority to disapprove a project. 14 CCR Section 15042 states that a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.

D. Authority to Approve a Project Where all Feasible Mitigations and/or Alternatives Have Been Incorporated and Significant Environmental Impacts Remain

(1) General CEQA Approach:

Where an EIR has been completed for a project which identifies one or more significant environmental impacts which cannot be at least substantially mitigated, the project can still be approved on the basis of overriding considerations. This option requires that the agency make specific, reasoned findings as to why "... the benefits of a proposed project outweigh the unavoidable adverse environmental effects.." (14 CCR 15093 (a)).

(2) THP Review Process:

The Forest Practice Act also includes language which enables the department to approve plans where significant environmental impacts remain based on a finding of overriding public benefits (see 14 CCR Section 898.1(g) and (h)).

CONCLUSION

It is clear that CEQA requires lead agencies to consider the potential physical impacts to archeological resources during the environmental review process mandated by the Act. Archeological review procedures vary greatly among lead agencies in California. CDF, with its unique mission of landowner assistance, forest practice regulation, and resource management activities on both private and state lands often utilizes a forester or other resource professional to conduct the archeological review of a project. CDF must ensure that an adequate effort is made to identify, evaluate, and protect significant cultural resources with appropriate

documentation for every project subject to CEQA requirements. When CDF uses a non-archeologist to conduct an archeological review pursuant to CEQA, that person must meet the archeological training requirements outlined in the Forest Practice Rules (14 CCR Section 929.4). A professional archeologist must review and approve finalized project plans and review documents prior to commencement of a project. Such a review is especially important for those projects submitted under a programmatic EIR, or for those in which the archeological impact evaluation study is made by a non-archeologist who has received archeological training. CDF should periodically review the existing procedures employed for project reviews to achieve compliance with the requirements outlined in this paper and ensure that archeological resources are adequately protected.

Table 1

PROCEDURAL OUTLINE OF THE REVIEW PROCESS (See text for complete discussion)	
Description	References
Describe project activities including those that may significantly affect archeological resources. Cumulative effects must be included.	PRC 21002.1, 210805(d)(3), 2100; 14 CCR 15002, 15121, 15124, 15125, 15126, 15130
Determine if any archeological resources might be affected. This usually requires a record search and archeological survey, or exclusion of sensitive areas based on an assumption that resources are likely to exist within the excluded area.	Ibid
Make project documentation available to the public, State, and other review agencies to provide comments regarding the potential impacts of a project.	PRC 21080.3, 21080.5(d)(2), 21104, 21153; 14 CCR 15144, 15063(g), 15083, 15086, 15205
Determine if impacts to archeological resources are or have the potential to be physically significant.	14 CCR 15064(2)(e); Appendix G
Of the site(s) receiving significant physical impacts, determine whether the impacts can be feasibly mitigated and whether sites are or can be assumed to be an important archeological resource (consistent with App. K)	PRC 21082, 21082.5; Appendix K; 14 CCR 895.1
Give a good faith, reasoned analysis in response to the major environmental issues raised.	PRC 21080.5(d)(2), 15088(b); <u>EPIC v. JOHNSON</u> (216 Cal. Rptr. 502, 516-518)
Discuss alternatives and mitigation measures that would lessen the impacts to a level that is below the threshold of significant.	PRC 21002.1, 21061, 21080.5, 21100; 14 CCR 15002, 15121, 15126, 152
Incorporate feasible alternatives and mitigation measures before the project is approved.	PRC 21002.1, 21080.5

NOTES

There is one reference not fully cited in text. The full reference is given below:

Duggan, Sharon and James G. Moose and Tina Thomas. 1988 Guide to the California Environmental Quality Act (CEQA). Second Edition Berkeley: Solano Press

The source for the Public Resources Code (PRC) was West's Annotated California Codes, Public Resources Code Sections 9501 to 29999. St. Paul, MN: West Publishing Company (1986, plus updates).

The source for the California Code of Regulations (CCR) was CEQA: California Environmental Quality Act. Statutes and Guidelines 1992. Sacramento, California: Office of Planning and Research, Office of Permit Assistance.



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December 9, 1992

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Dear Dan:

Thank you for the opportunity to review "The Environmental Review Process Mandated by CEQA: A Summary of the Requirements for Evaluating Impacts to Archaeological Resources". It appears to me that you and the other individuals involved in the work did a good job of researching, reconciling and presenting the similarities and differences between CEQA and Forest Practice Regulations, as they both relate to archaeology and cultural resources.

As you know, I work primarily with federal laws rather than state requirements, but my experience over the years has given me some insights into the CEQA process, and to a lesser extent the Forest Practice regulations. I believe that you have provided a fair and accurate discussion of CEQA as I understand it. As for the specifics of CDF policies for Timber Harvest Plans and Vegetation Management Programs, I do not have copies of any CDF manuals or regulations, so I can only comment on this aspect of the work in a limited way.

Perhaps of most concern to me is the manner in which personnel qualifications are presented and discussed in the document. The statement on Page 4 suggesting that most archaeologists possess at least a Bachelor's Degree in Anthropology and field experience may be true, but most people with only a Bachelor's Degree work under the supervision of an archaeologist with an advanced degree in Anthropology which provided them with specialized instruction and training in archaeology. A Bachelor's Degree generally does not provide the specialized instruction and training necessary for assuming the full duties and responsibilities of an archaeologist. Obviously we can both point to specific exceptional cases, but an advanced degree is required by most federal agencies (ie. Secretary of Interior Standards), by State agencies like the Department of Transportation, and is required to become a member of the Society of Professional Archaeologists.

I bring up this point because the document, after seeming to establish a Bachelor's Degree as the basic qualifying degree to be considered an archaeologist, goes a step further and infers that a professional with a degree in another discipline can achieve equivalent status by virtue of completing a CDF archaeology course. As indicated on Page 5, however, this course is designed to train individuals in how to identify archaeological sites, not to become an archaeologist capable of evaluating the significance of archaeological sites or evaluating whether a project will impact archaeological values. This is an important distinction that the summary, and perhaps CDF regulations, fail to recognize.

Page 8 of the document indicates that THP regulations require a Registered Professional Forester to determine if a project could harm archaeological resources. To do this requires an ability to understand what makes the resource significant, and whether the project will impact the qualities that make the site significant. The knowledge and judgement required to do this is not learned in a short course. If I can use an analogy, this is like training someone to recognize rocks and geologic formations, and then expecting them to provide a professional judgement about slope stability or earthquake risk.

I understand from the document that a CDF archaeologist reviews the work of the RPF and provides some measure of professional quality control. But, in reality there are far too many THP's being completed, and too few professional archaeologists in CDF to do the job. The result is that professional archaeological decisions are being made by non-archaeologists.

I raise this concern because the quality of a decision, whether it be in the context of CEQA or Forest Practice Regulations, is only as good as the information and analysis it is based upon. I believe that the document needs to be strengthened to clarify that there are professional standards for archaeologists, that for some activities like inventory and recording, a trained resource professional may be adequate, but that decisions on significance and potential effects require professional archaeological judgement and expertise. While the Forest Practice Regulations may not stipulate this, I believe that CEQA assumes the involvement of qualified professional archaeologists, geologists, biologists, etc. in the interdisciplinary process.

I believe that your statements in the "Conclusion" acknowledge the importance of professional archaeological involvement, but the preceding sections would seem to indicate otherwise, or at minimum do not build a foundation for the conclusion drawn. To the extent that this document may be used for guidance by local agencies and other state agencies, it is crucial that the importance of assuring that environmental decisions benefit from professional archaeological input, is not understated.

Unfortunately in the past several weeks, there have been two cases brought to my attention where CEQA decisions affecting the fate of significant archaeological resources were made based on the advice, in one of the cases, of an "archaeologist" who had taken one anthropology course, but felt qualified to backhoe a prehistoric midden and then judge it not significant.

One final note. On Page 9 (last paragraph under IV. (B)), there is reference to important or "significant" archaeological resources as defined in the Forest Practice Rules. Since you include the definition of significance as defined by CEQA, it would be helpful to include the Forest Practice Rule definition too.

Thank you for the opportunity to review the document. Please do not let my comments on the issue of qualifications obscure the fact that I believe that you have done an excellent job of characterizing the legal requirements of both CEQA and the Forest Practice Rules as they relate to archaeological resources.

Sincerely,



Dick Markley
President
Society for California Archaeology

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December 15, 1992
R26

Mr. Dick Markley, President
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15910 Tippy Way
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RE: REVIEW OF CEQA REPORT

Dear Dick:

I want to express our sincere appreciation for taking the time to review and comment on our CEQA report. The section describing professional standards has been revised as you suggested. The conclusion was also strengthened to read : **"a professional archeologist must review and approve finalized project plans and review documents prior to project commencement."** I am not sure that CEQA actually requires this, but I think sufficient support for this can be found in CEQA's discussion of the concept of the interdisciplinary approach. You are correct to point out that CDF can not possibly do this with only three archeologists on staff and over 1200 THPs to review each year, but perhaps this document may help us get a few more positions. It is my hope to have a CDF archeologist at each region in order to review regional projects. If the state ever recovers from the current budget crisis, we stand a good chance to create a few more positions.

Thanks again for submitting helpful revisions to the document and for your kind words in general about the report. A copy of the final report will be sent to approximately 250 archeologists and review agencies throughout California. You should receive yours in about two weeks.

Thanks again for your comments.

Sincerely,

Daniel G. Foster, Manager
CDF Archeology Program
Associate State Archeologist

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