Regulatory Compliance and Cultural Resources

Unit 6(1)
CAL FIRE Certified Archaeological Surveyor Training
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Purpose of Cultural Resources Compliance

To consider and, when feasible, protect significant cultural resources. It’s all about historic preservation.
Really? Do We Need All of the Detail?

• CAL FIRE cultural resources staff hasn’t just made up the regulatory programs which we oversee

• You will eventually find yourself explaining cultural resources regulatory programs to others

• The better you understand the regulatory programs, the less time you have to spend working through them
Basic **Regulatory Compliance** Framework

- Know which regulatory program to comply with
- Know what that program’s regulations are
- Know the **process** that the regulations prescribe
- Know the regulatory roles of decision makers, stakeholders, Native Americans, and the public
- Follow that regulatory **process**
- Document compliance with that **process**
Key Module Objectives

• Introduce the broader universe of regulatory programs that deal with cultural resources
• Convey which regulatory programs apply to the consideration of cultural resources for CAL FIRE projects
• Introduce how those programs work
• Begin to provide a sense of how to work through the process for each program
Glossary Interlude 1

What’s a Cultural Resource?

cul•tur•al re•source (kŭl'chër-ĕl rē'sôrs') n. 1. physical evidence of or a place of past human activity: site, object, landscape, structure; or a site, structure, landscape, object or natural feature of significance to a group of people traditionally associated with it.

(https://www.nps.gov/acad/learn/management/rm_culturalresources.htm)
What’s a Cultural Resource?

Types of Cultural Resources

- Archaeological resources
- Prehistoric and historic structures
- Ethnographic resources
- Cultural landscapes
- Prehistoric and historic objects
What’s a Regulatory Program?

**Regulatory Program** (rēg’yē-lătō’rē prō’grăm’) n. 1. a prescribed process that fulfills statutory intent through the implementation of formal regulations; key elements include a jurisdictional scope, clear definitions, guidelines, and regulations, assignments of responsibilities and procedures, and a method for assuring compliance.
The Universe of Regulatory Programs for Cultural Resources

- Forest Practice Rules (PRC § 5097.5 and EPA Guidelines)
- SB 1034 (14 CCR § 895 et seq.)
- CEQA (43 CFR Part 7)
- ARPA (43 CFR Part 7)
- Federal?
- State?
- HSC § 8011 et seq.
- Section 11014
- PRC § 5066 USC § 14012 (36 CFR Part 800)
- NEPA Regulations § 524.5
- NAGPRA (43 CFR Part 10)
- PRC § 5097.98
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The Universe of Regulatory Programs for Cultural Resources

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## Cultural Resources Regulatory Programs under State Jurisdiction

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Cultural Resources Regulatory Programs for CAL FIRE Projects

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Where Do the **CEQA Guidelines** and the **Forest Practice Rules** Come From?

- **Z’berg-Nejedly Forest Practice Act**
  (PRC § 4511 et seq.)
  
  ↓

  **Forest Practice Rules**
  (14 CCR § 895 et seq.)

- **California Environmental Quality Act**
  (PRC § 21000 et seq.)
  
  ↓

  **CEQA Guidelines**
  (14 CCR § 15000 et seq.)
Which Parts Cover Cultural Resources for CAL FIRE Projects?

Z’berg-Nejedly Forest Practice Act (PRC § 4511 et seq.)

Forest Practice Rules (14 CCR § 895 et seq.)

Article 14 Archaeological and Historical Resource Protection (14 CCR §§ 929, 949, 969 et seq.)

California Environmental Quality Act (PRC § 21000 et seq.)

CEQA Guidelines (14 CCR § 15000 et seq.)

Archaeological Review Procedures for CAL FIRE Projects (Agency Guidance)
Do the CEQA Guidelines and the Forest Practice Rules Overlap? They do not!

- **CEQA, the Act**
  - (PRC § 21080.5)
- **Forest Practice Rules**
  - (Certified regulatory program under CEQA)
- **CEQA Guidelines**
  - *Archaeological Review Procedures for CAL FIRE Projects*
- **Article 14, Archaeological and Historical Resource Protection**
Do the CEQA Guidelines and the Forest Practice Rules Overlap? Not even!

Timber Industry Regulation (Plan preparation)

Article 14 Archaeological and Historical Resource Protection, Forest Practice Rules (Certified regulatory program under CEQA)

Grant-funded Work Capital Outlays Land Management Other

Archaeological Review Procedures for CAL FIRE Projects (Straight up CEQA)
California Environmental Quality Act (CEQA)

California Environmental Quality Act
Public Resources Code
Division 13. Environmental Quality
§§ 21000 et. seq.

CEQA Guidelines
California Code of Regulations
Title 14, Chapter 3
§§ 15000 et. seq.
The Intent of CEQA

• Inform government decisionmakers and the public about potential significant project effects

• Identify ways that environmental damage could be avoided or significantly reduced

• Prevent significant damage to the environment by requiring consideration of alternatives or use of mitigation measures, when feasible

• Disclose to the public the reasons why a governmental agency will approve a project with significant environmental effects

CEQA Guidelines §15002(a)
Guidance on CEQA Compliance (Where Life Is Often Gray)

CEQA compliance process does not come from one source. It is based upon

• The Act (CEQA)
• The CEQA Guidelines
• CEQA case law, court decisions
• Legislative intent
• Department procedures
• Department in-house council recommendations
• The judgment of the planning staff
CEQA Applies to “Projects”

Projects are

• “discretionary” decisions (as opposed to “ministerial” actions) by “governmental agencies”
• to approve, permit, fund, facilitate, or actually carry-out any activity
• that may effect the physical environment, either
• directly, or indirectly
CEQA Applies to

“Discretionary” Decisions vs.

• Require an exercise of judgment or deliberation to approve or disapprove a particular activity (i.e., timber harvest plan)

“Ministerial” Actions

• determine whether there has been conformity with applicable statutes, ordinances, or regulations (i.e., mushroom collecting permit)

CEQA Guidelines §15357
CEQA Applies Only to Certain Governmental Agencies

- **Yes**
  - State Agencies
  - County and City
  - CA Universities
  - Special Districts
    - RCD
    - Cemetery
    - Irrigation

- **No**
  - Federal Agencies
  - Other States
  - Corporations
  - Non-profit groups
  - Pvt. Organizations
  - Pvt. Land Owners
  - Fire Safe Councils
CEQA Only Applies Where the Physical Environment May Be Impacted

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<td>• Biological Resources</td>
<td><strong>Cultural/Historic Resources</strong></td>
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<tr>
<td>• Air Quality</td>
<td>• Aesthetics</td>
</tr>
<tr>
<td>• Agriculture</td>
<td>• Noise</td>
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<tr>
<td>• Hazardous Materials</td>
<td>• Population/Housing</td>
</tr>
<tr>
<td>• Water Quality</td>
<td>• Public Services Recreation</td>
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<tr>
<td>• Geology and Soils</td>
<td>• Traffic</td>
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CEQA Applies to Direct and Indirect Impacts

**Direct Impacts**
- Cutting old growth trees
- Yarding through an archaeological site

**Indirect Impacts**
- Destroying wildlife habitat
- Creating fugitive dust or smoke
- Abandoning an historic building

**Cumulative Impacts**
- Similar or interrelated successive actions over time
Lead Agencies Must Comply With CEQA

"Lead Agency" means the governmental agency which has the principal responsibility for carrying out or approving a project.

CAL FIRE is typically lead for:

- its own projects
- non-governmental agencies whose projects CAL FIRE may fund (CCI, VMP, CFIP, other grant-funded projects)
- projects it permits (THPs, TCPs)
Responsible Agency

“Responsible Agencies” have secondary authority for projects where another agency is lead and that Lead Agency is preparing an EIR or Negative Declaration.

CAL FIRE is typically a responsible agency for:

- TCPs where a local permit or zoning change is needed, or
- Another governmental agency’s project that CAL FIRE funds or assists (CCI, VMP, CFIP, other grant-funded projects)
The CEQA Analysis

CEQA Analysis Documents

- Environmental Review Report ("ERRF," a CAL FIRE document)
- "Initial Study"
- Environmental Impact Report ("EIR")

CEQA Process of Analysis

- Scoping
- Data gathering
- Effects analyses
- Determination of significance of identified effects
- Development of mitigation
- Analyses of mitigation’s viability and feasibility
- Conclusory statement of environmental effects
Mitigation under CEQA

**Avoid**
- Modify a project to avoid any effects to resource values

**Minimize**
- Minimize the degree or magnitude of a project’s potential effects

**Rectify**
- Repair, rehabilitate, or restore any effects to resource values

**Reduce**
- Reduce or eliminate a project’s potential effects through preservation and ongoing maintenance

**Compensate**
- Replace or provide substitute resource values

CEQA Guidelines §15370
Summary CEQA Documents

Notice of Exemption ("NOE")
- Project “fits” a statutory or categorical exemption

Negative Declaration ("Neg Dec")
- No potentially significant effects

Mitigated Negative Declaration ("Mitigated Neg Dec")
- Potentially significant effects have been avoided or reduced to “a point where clearly no significant effect on the environment would occur.”

Environmental Impact Report ("EIR")
- Potentially significant effects remain or there is disagreement amongst experts
To Which Lines of CAL FIRE Business Does CEQA Apply?

Our own projects
  • Construction, fuels reduction, training

Issuance of permits or approvals
  • TCPs

Grant-funded projects carried out by others
  • Urban forestry grants, VMP, CFIP, CCI

When CAL FIRE assists other’s
  • CAL FIRE lends crews and equipment
CEQA and Cultural Resources

CEQA focuses on a subset of cultural resources which are technically referred to as

“Historical Resources”

A “historical resource” is any cultural resource which

• is listed in or eligible for listing in the California Register of Historical Resources,
• is listed in a local register or historical resources survey,
• or any object, building, structure, site, area, place, record or manuscript which a lead agency determines to be of historical significance

CEQA Guidelines 15064.5(a)
Historical Resources

A cultural resource is *historically significant* and therefore qualifies as a “historical resource” under CEQA if the resource possesses significant

- **Associative values** (Important events or people)
- **Design values** (Important buildings, structures, or objects)
- **Information values** (Important information)

CEQA Guidelines 15064.5(a)(3)
Historical Resources

CEQA Threshold for **Significant Effects**

- CEQA says that a project which may cause a “substantial adverse change” in the significance of a historical resource is a project that may have a significant effect on the environment.

- A “substantial adverse change” is when a project has the potential to so damage a historical resource that it would no longer qualify for listing in the California Register of Historical Resources.

CEQA Guidelines 15064.5(b)
Historical Resources

Project Actions Which May Cause a “Substantial Adverse Change” in the Significance of a Historical Resource

- Demolition
- Destruction
- Relocation
- Any alteration of a historical resource or its surroundings in a manner which material impairs the ability of the resource to convey its historical significance

CEQA Guidelines 15064.5(b)(2)
Historical Resources

Well, That’s All Good and Everything, but What’s This Got To Do With Me?

Lead agencies (and their proxies) are required to

- identify feasible measures to mitigate significant effects to historical resources, and
- ensure that adopted measures are fully enforceable through permit conditions and agreements

CEQA Guidelines 15064.5(b)(4)
Archaeological Review Procedures

CAL FIRE Has Developed Procedures for the CEQA Analysis of Cultural Resources on CAL FIRE Projects

• Defines roles of “archaeologically trained resource professionals” and CAL FIRE archaeologists
• Lays out a CEQA-compliant process for cultural resources analyses
• Identifies 41 Exempt Practices
• Provides guidance on development of field survey strategy and report preparation

Forest Practice Rules, Article 14

California Forest Practice Rules
California Code of Regulations
Title 14, Chapter 4
§§ 895 et. seq.

Archaeological and Historical Resource Protection
California Code of Regulations
Title 14, Chapter 4, Subchapters 4–6, Article 14
§§ 929, 949, 969–929.7, 949.7, 969.7
 Article 14 of the Forest Practice Rules and Cultural Resources

Cultural Resources Protection in Timber Harvesting Areas

• Board of Forestry adopts Article 14 as part of the Forest Practice Rules
• Defines roles for RPFs, LTOs, “persons with archaeological training,” and CAL FIRE archaeologists
• Prescribes different CEQA-compliant processes to analyze cultural resources for the preparation of THPs and Emergency Notices
• Provides instructions to RPFs and LTOs on the implementation of cultural resources mitigation measures prior to and during timber operations
Wrap-up

Question:
At the end of the day, why do I need to know all of this?

Answer:
Because as archaeologically trained resource professionals and persons with archaeological training, you have significant roles to help CAL FIRE’s archaeologists analyze project effects on cultural resources under regular CEQA, and under the Forest Practice Rules.
Where Exactly Do I Come In?

You may become involved in the protection of cultural resources

• During the preparation, review, approval, and administration of THPs
• Carrying out timber operations under a FPR exemption
• Applying for and carrying out grant-funded projects
• Developing and implementing fuels reduction projects
• Managing CAL FIRE actions on State Forests
• Planning and carrying out fire control operations or fire suppression repair tasks
Questions?