

*PRESENTED TO*  
City of Encinitas

# Cultural Resources Considerations and Approach During the CEQA Planning Process

*JANUARY 2024*

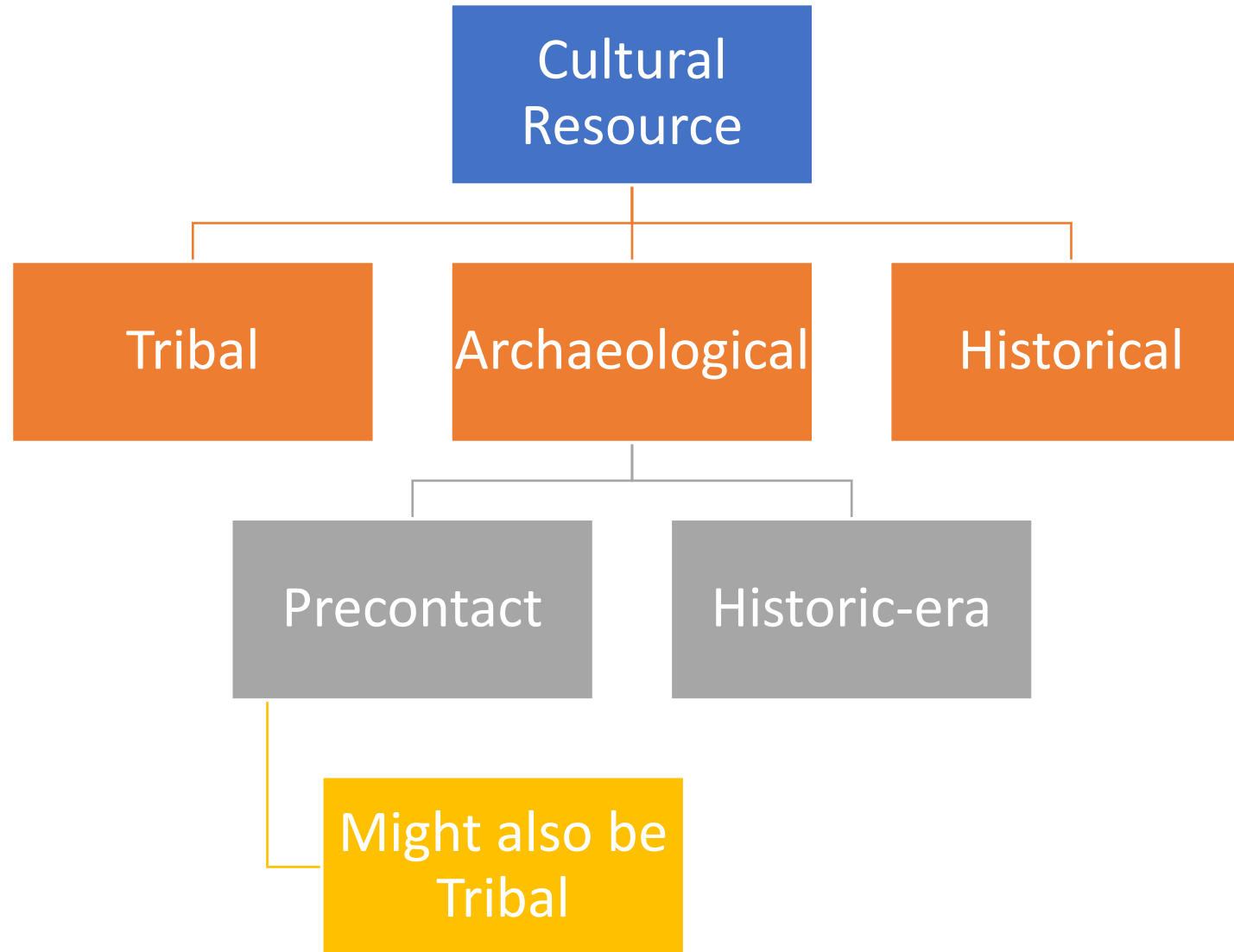
# AGENDA

- ▶ Understanding the Terms
- ▶ Thresholds of Significance
- ▶ Statutory Definitions
- ▶ Existing Conditions
- ▶ Tribal Consultation
- ▶ Surveys and Reports
- ▶ Impact Analysis
- ▶ Mitigation
- ▶ When to Call the Experts





# Cultural Resource Types





# What are Tribal Cultural Resources

- ▶ **Resource Collection Location:** This is a location where Native Americans have historically gone, and are known or believed to go today, to collect resources, such as plant material or fishing locations.
- ▶ **Spiritual Location:** This is a location where Native American religious practitioners perform ceremonial activities in accordance with traditional cultural rules of practice.
- ▶ **Traditional Location:** This is a location associated with the traditional beliefs of a Native American group about its origins, its cultural history, or the nature of the world.



# CEQA Guidelines and Appendix G

# Thresholds of Significance – Cultural Resources

The project would result in a significant impact on cultural resources if it would:

- ▶ cause a substantial adverse change in the significance of a historical resource pursuant to Section 15064.5 of the State CEQA Guidelines;
- ▶ cause a substantial adverse change in the significance of a unique archaeological resource pursuant to Section 15064.5 of the State CEQA Guidelines; or
- ▶ disturb any human remains, including those interred outside of dedicated cemeteries.



# Thresholds of Significance – Tribal Cultural Resources

Would the project cause a substantial adverse change in the significance of a tribal cultural resource that is:

- ▶ Listed or eligible for listing in the California Register, or in a local register of historical resources; or
- ▶ 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 PRC section 5024.1. In applying the criteria set forth in subdivision (c) of PRC section 5024.1, **the lead agency shall consider the significance of the resource to a California Native American tribe.**





The image shows a vertical strip on the left side of the slide, featuring a stylized, semi-transparent image of the California State Capitol building. The building's dome and classical columns are visible, with a grid pattern overlaid on the image. The top of the image shows the dome and the American flag flying from a tall pole.

## PRC Section 5024.1

### California Register Significance Criteria

1. It is associated with events that have made a **significant contribution to** the broad patterns of local or regional **history**, or the cultural heritage of California or the United States;
2. It is associated with the lives of **persons important** to local, California, or national history;
3. It embodies the **distinctive characteristics** of a type, period, region, or method of construction, or represents the work of a master or possesses high artistic values; or
4. It has yielded, or has the potential to yield, **information important** to the prehistory or history of the local area, California, or the nation.



# “Historical” and “Unique Archaeological”

## ▶ Historical Resources - Section 15064.5

- A resource listed in or determined to be eligible for listing in the CRHR
- A resource included in a local register of historical resources or identified as significant in a historical resource survey.
- Any object, building, structure, site, area, place, record, or manuscript that a lead agency determines to be historically significant, provided the lead agency’s determination is supported by substantial evidence in light of the whole record (PRC Section 5024.1).

## ▶ Unique Archaeological Resources - PRC Section 21083.2(g)

- Contains information needed to answer important scientific research questions, and there is a demonstrable public interest in that information.
- Has a special and particular quality such as being the oldest of its type or the best available example of its type.
- Is directly associated with a scientifically recognized important prehistoric or historic event or person.



# Approach to Existing Conditions

# General Process for Resources Analysis

- ▶ Initiate CHRIS and NAHC records searches
- ▶ Develop basic project description
- ▶ Initiate AB 52 consultation
  - Including discussion of records search results
- ▶ Site survey(s) and reporting
- ▶ Impact analysis
- ▶ Public draft CEQA report





# Tribal Consultation

PRC Section 21080.3.1 (AB 52) includes specific timeframes for consultation

- ▶ Tribal notification letters should be on lead agency letterhead, 14 days after application is complete (or concurrent with NOP)
- ▶ The tribe has 30 days to reply and request consultation.
- ▶ Lead agency shall begin consultation within 30 days of receiving request for consultation from tribe.
- ▶ During consultation, a tribe may express general concerns, ask to participate in the archaeological survey, request records search results, or state there are tribal cultural resources on the site.



# Consultation Best Practices

- ▶ Start early and build the relationship.
  - Select the appropriate lead agency representative.
  - Be responsive and consistent.
- ▶ Keep consultation government-to-government.
  - Agency-to-tribe contact is more respectful (generally) than Consultant-to-tribe contact
- ▶ Respect Confidentiality per Pub. Resources Code 21082.3
  - Do not share one tribe's confidential information with another tribe.
- ▶ Use proper terminology; ask if you don't know.
- ▶ Know who will be representing the tribe and follow protocol for meeting governmental officials.
- ▶ Pause for answers; allow silence. Practice active listening. Be sincere.

# Site-Specific Surveys

- ▶ Was it conducted by a qualified professional?
- ▶ Does it cover the full project area including offsite utilities?
- ▶ Is it less than 5 years old?
- ▶ Were identified historic features or archaeological sites avoided or evaluated?
- ▶ Do not include archaeological reports as appendices to EIR or post on agency website.





# Archaeological vs Ethnographic Reports

## ▶ Archaeology

- CHRIS records search for previously recorded archaeological sites.
- Pedestrian survey of the project area for surface finds.
- Possibly some auger testing or ground penetrating radar.

## ▶ Tribal Cultural Resources

- CHRIS search, sacred lands search, pedestrian survey, possible canine forensic survey or ground penetrating radar.
- Archival research for information on traditional territories, traditional beliefs, and practices.
- Interviews with Tribal cultural bearers.
- Development of an ethnographic and ethnohistoric context with an emphasis on past and present cultural use and traditional practices.





# Methodology

# What does the project entail?

- ▶ Demolition or alteration of historic age structures
- ▶ Ground disturbing activities
  - Previously disturbed does not mean not sensitive for resources.
  - Vibration
- ▶ Limiting access to a tribal resource
- ▶ Operational effects
  - Increased visitors
- ▶ Adjacent
  - Intrusion on a historic district





# Impact Analysis – Historical Resources

- ▶ Application of evaluation criteria in CEQA Guidelines Section 15064.5
  - Substantial adverse change in the significance of an historical resource from demolition, destruction, relocation, or alteration of the resource or its immediate surroundings
  - Significance of resource would be “materially impaired”, such that a project demolishes or materially alters in an adverse manner:
    - Physical characteristics that convey historical significance and that justify its inclusion in or eligibility for inclusion in the CRHR
    - Physical characteristics that account for its inclusion in a local register (unless agency determines that resource is not significant)
    - Physical characteristics that convey its historical significance and that justify its eligibility for inclusion in the CRHR as determined by lead agency



# Impact Analysis – Archaeological Resources

- ▶ When a project will impact an archaeological site, a lead agency shall first determine whether the site is an historical resource, as defined in CEQA Guidelines 15064.5(a) or a unique archeological resource under PRC Section 21083.2.
- ▶ If an archaeological site is neither a unique archaeological resource 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 site 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.



## Impact Analysis – Tribal Cultural Resources

- ▶ PRC Section 21084.2 establishes that “[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.”
- ▶ PRC Section 21080.3.2 - 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.

Tribal traditional knowledge is expert opinion (California Health and Safety Code § 8012(p)).

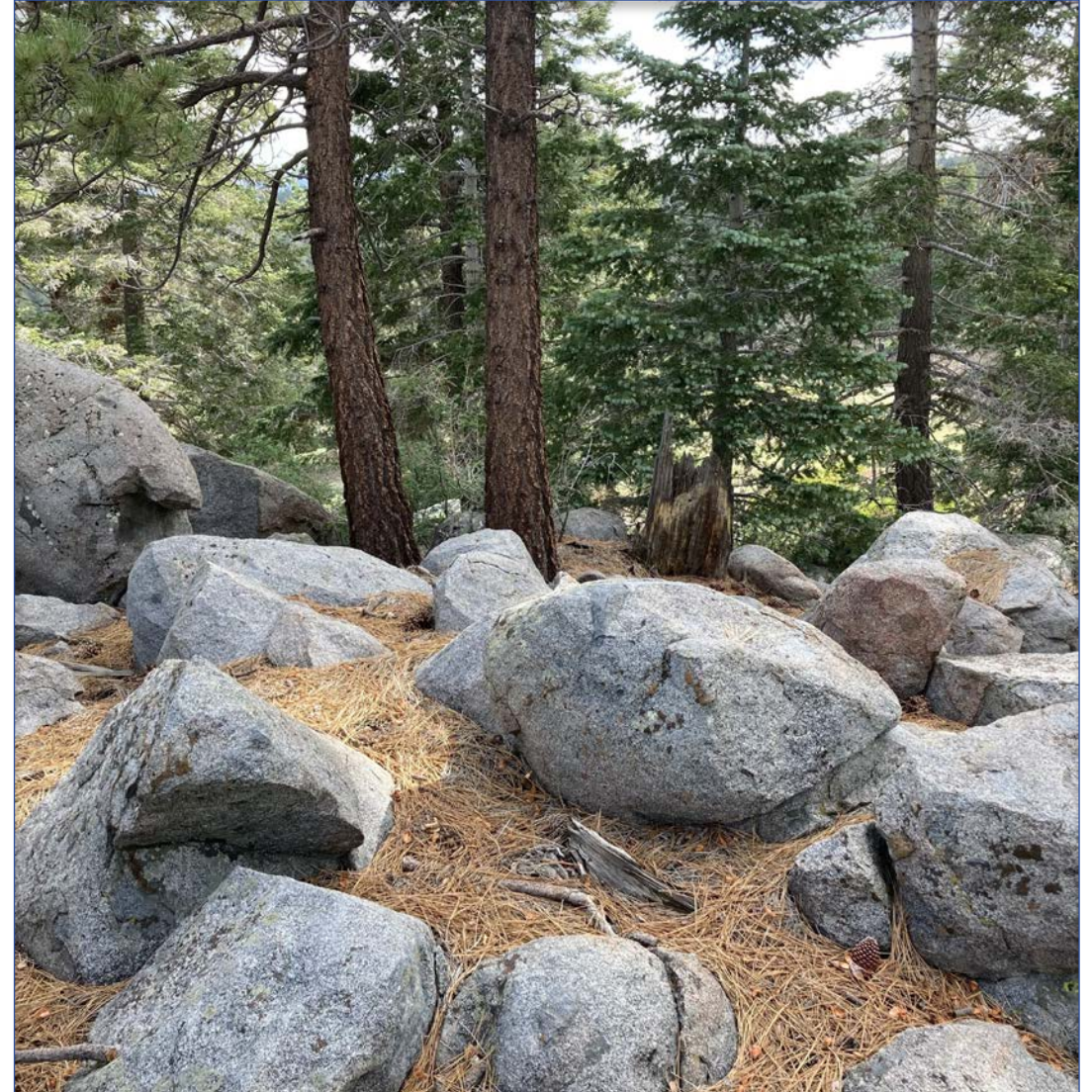


# Mitigation – Historical Resources

- ▶ If minor alterations or modifications?
  - Application of Secretary of the Interior Standards for the Treatment of Historic Properties (Secretary's Standards)
    - PRC Section 15126.4(b)(1), if a project adheres to the Secretary's Standards, the project's impact on historical resources, "will generally be considered mitigated below the level of a significance and thus is not significant."
- ▶ If demolition?
  - HABS/HAER Documentation
  - Digital Interpretive Presentations
  - Because the historically eligible structure would no longer exist, impacts would remain significant and unavoidable.

# Mitigation – Archaeological and Tribal Cultural Resources

- ▶ Archaeology
  - Avoidance or data recovery
  - Archaeological monitor
  - Accidental discovery measures
- ▶ Tribal Cultural Resources
  - Avoidance or reburial
  - Tribal monitor
  - Reestablishment of habitat: wetland restoration, native plant areas, cultural burns
  - Long-term management: easement for tribal activities, educational programs, vegetation management plans





## Mitigation – Human Remains

- ▶ The procedures for the treatment of human remains are contained in Health and Safety Code section 7050.5 and PRC Section 5097.
  - County coroner shall be notified immediately. (If qualified osteologist on site, can determine not human, then no coroner)
  - If the remains are determined by the coroner to be Native American, NAHC shall be notified within 48 hours.
  - Following the coroner's findings, the NAHC-designated MLD and the landowner shall determine the ultimate treatment and disposition of the remains.
- ▶ There is no need for compliance with regs to be mitigation. Unless the lead agency is adamant.



# When to ask for help

- ▶ Prior to the release of the NOP.
- ▶ If the cultural report or records search is more than 5 years old.
- ▶ If the cultural report has NRHP- or CRHR-eligible resources.
- ▶ If the cultural report for the site states the pedestrian survey found something, but it wasn't evaluated for CRHR-eligibility. (and wasn't avoided)
- ▶ When more than one tribe wants to consult.





## Reminders

- ▶ Initiate records searches (including Native American Heritage Commission search) as soon as possible.
  - Consider using list provided by NAHC for invitation-to-consult letters if no tribes have requested consultation.
- ▶ Initiate Native American consultation as early as possible.
- ▶ A project area that has been previously developed does not mean it is less likely to contain archaeological resources – consider privies, former settlements (i.e., Chinatown), old water/sewer conveyance.
- ▶ A feature may be significant due to important people or events and not the architectural style, which takes some research and investigations.



# Thank You!

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