
From: Sam Cohen
Sent: Thursday, February 13, 2014 4:14 PM
To: CEQA Guidelines
Cc: Sam Cohen
Subject: Second request to Update CEQA guidelines to protect TCPs

We should update the CEQA guidelines to include Traditional Cultural Places (TCPs) under the rules for historical resources of an archaeological nature. In this Madera Oversight Coalition case, TCPs were considered only as part of the affected environment and not as historical resources of an archaeological nature which left them will less protection than the milling stones in the same area. We will provide additional comments before the Sept. 30, 2013 deadline.

Sincerely,
Sam Cohen
Government and Legal Specialist
Santa Ynez Band of Chumash Indians
P.O. Box 517
Santa Ynez, CA 93460
Cell: 805-245-9083

MADERA OVERSIGHT COALITION CASE CITATION AND ABSTRACT:
http://www.narf.org/nill/bulletins/state/documents/madera_oversight_v_madera.html

Court of Appeal, Fifth District, California.
MADERA OVERSIGHT COALITION, INC., et al., Plaintiffs and Appellants,
v.
COUNTY OF MADERA, Defendant and Appellant;
Tesoro Viejo, Inc., et al., Real Parties in Interest and Appellants.

No. F059153.Sept. 13, 2011.

* * *

CEQA requires consideration of project impacts on either archaeological sites or historical sites deemed to be historical resources. If the project will cause a substantial adverse change to the characteristics of an historical resource that conveys its significance or justifies its eligibility for inclusion in the California Register, the project is judged to have a significant effect upon the environment, according to Section 15064.5 of the CEQA guidelines. Five of the seven resources in the Project Area are considered historical resources: CA-MAD-295/827, 826, 2392, 2394 and P-20-002308. In addition, there are areas that are of special religious or social significance to the Native Americans (e.g., Traditional Cultural Properties) in the Project Area. [¶] Based on the current project design, all historical resources and the sites of special religious or social significance within the Project Site may be impacted by the proposed development, either directly or indirectly.

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2. Specific rules for historical resources of an archaeological nature

Guidelines section 15126.4 , subdivision (b) addresses mitigation measures related to impacts on historical resources. When the particular historical resource is archaeological in nature, the discussion contained in the EIR is governed by subdivision (b)(3) of that guideline, which provides in part:

"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 archeological 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.

*84 "(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 provision for adequately recovering the scientifically consequential information from and about the historical resource, shall **653 be prepared and adopted prior to any excavation being undertaken...." FN16

FN16. These provisions apply to archaeological sites that are historical resources. Archaeological sites that are not historical resources are subject to different requirements. For example, when a site meets the definition of a unique archaeological resource and is not an historical resource, it is treated in accordance with the provisions in section 21083.2 , not Guidelines section 15126.4 , subdivision (b)(3). (Guidelines, § 15064.5 , subd. (c)(3).) As a result, unique archaeological sites that are not historical resources are subject to less stringent requirements regarding mitigation of impacts.