CEQA and Historic Resources: The Local Government Perspective

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The Three Key Questions on CEQA and Historic Resources

1. Does CEQA apply?: Is it a “project”?

2. Identification: Is there a “Historical Resource” as defined by CEQA?

3. Impacts: If there is a resource, would the project cause a substantial adverse change in the significance of the resource?
First, is it a “Project?”

- Project is any activity that could cause direct or indirect change in the environment
- CEQA applies to “discretionary” actions by government
- Not “ministerial”
- Demolition in many cities often ministerial; not subject to review
Is it a Project? Demolition of Mole-Richardson Building
Is it a Project? Demolition of Mole-Richardson Building
Is it a Project?  Proposed Demolition of 14999 La Cumbre Dr., Pacific Palisades
Second: Is there a “Historical Resource?”

- In CEQA Statute and Guidelines, “Historical Resources” include properties listed in or formally determined eligible for listing in the California Register of Historical Resources.
- (Note: all properties formally determined eligible for the National Register of Historic Places are thereby listed in the California Register and are historical resources pursuant to CEQA.)
Additional Categories of “Historical Resources”

- “Historical Resources” also include properties:
- **Listed in an adopted local historic register** (for City of L.A., that means designated Historic-Cultural Monuments, contributing structures in HPOZs) OR
- **Identified as significant in a historical resource survey** meeting minimal requirements
- Public agencies must treat these resources as significant unless a preponderance of evidence demonstrates otherwise (clear errors, past demolition, etc.)
Other “Historical Resources”

- Even if a property is not already listed, determined eligible, or identified in a survey, it may still be a historical resource
- Lead agency needs to consider carefully whether the property may contain historical resources – even if they haven’t previously been identified
John Lautner: AbilityFirst Paul Weston Work Center, Woodland Hills
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Battle brewing over Lautner building in Woodland Hills
Nation’s first Israeli-American community center to open in Woodland Hills
So, you have a “Historical Resource”…

- Triggers the third question:
- Would the project cause a “substantial adverse change to the significance of an historical resource?”
What is a “substantial adverse change?”

- “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.”

- Significance is “materially impaired” when a project “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 the California Register, local register or historic resource survey.
If the proposed project will not cause a substantial adverse change...

- A Mitigated Negative Declaration or categorical exemption would be appropriate
- CEQA Guidelines make available a categorical exemption for projects consistent with Secretary of the Interior’s Standards for the Treatment of Historic Properties
- CEQA considers historical resource impacts to be fully mitigated if project conforms to the Standards
- Converse not always true: lack of strict compliance with all 10 Standards may or may not “materially impair” significance
Is There “Material Impairment”?:
Century Plaza Hotel
Is There “Material Impairment”?: Century Plaza Hotel
Options to Mitigate Potential Impacts

- Demolition cannot typically be fully mitigated through documentation (photos, drawings) of the historic structure.
- Can reconfigure or redesign project to avoid demolition or major alteration of the resource.
- Relocation: may move a resource to avoid demolition and avoid impacts.
- New location should be compatible with original character and use; resource should retain its historic features, compatibility.
Avoiding Significant Impacts by Redesigning the Project: Mission Hills Bowl
Avoiding Significant Impacts: Mission Hills Bowl
Avoiding Significant Impacts:
920 Superba - Venice
Avoiding Significant Impacts:
920 Superba - Venice (Original Proposal)
Avoiding Significant Impacts: 920 Superba: Venice (Revised Proposal)
Without mitigation measures...

- An EIR will be required to study and analyze the significant historical resource impacts.
- The alternatives analysis is particularly critical on historic resource EIRs.
- Need to analyze feasibility of preservation alternative(s).
- Provides information to preservation advocates; time and opening for advocacy.
EIRs and Mitigation Measures: Demolition of Sixth Street Bridge
EIRs Can Lead to Preservation Outcomes: The Barry Building -- Brentwood

- Mid-Century Modern commercial building
- Former site of Dutton’s Bookstore
- Charles Munger proposed demolition: Green Hollow Square Project
- Sought demo permit: Planning required EIR
EIRs Can Lead to Preservation Outcomes: The Barry Building -- Brentwood
Green Hollow Square Project
EIRs Can Lead to Preservation Outcomes: The Barry Building -- Brentwood
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Preservation.lacity.org
SurveyLA.org
HistoricPlacesLA.org
CEQA: How it Really Works
California Preservation Foundation
Golden State Mutual Life Insurance Building Auditorium
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Historical Resources From the Legal Perspective
Historic Preservation Law in California

• Most historic preservation carried out by local governments

• State Historical Resources Commission, led by the State Historic Preservation Officer (SHPO) also involved
  • Evaluates applications for National Register of Historic Places, maintains statewide inventory of historic places, establishes criteria for preservation and rehabilitation, designates historical landmarks, and develops grant criteria

• Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to identify and protect historic resources on federal lands
CEQA on Historical Resources

- Public Resources Code § 21060.5: Objects of historic significance fall within the definition of the environment that a project can affect.

- Public Resources Code § 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.”

- CEQA Guidelines § 15064.5: Used to determine significant effects on historical resources.

- Public Resources Code § 21081.6: Ensures implementation of mitigation.

- Public Resources Code § 21074(a): CEQA also applies to “tribal cultural resources”, including places and objects with cultural value to a California Native America tribe (AB 52, Stats 2014, ch 532).
CEQA on Historical Resources: Discretionary versus Ministerial Actions

• Public agencies do not exercise discretion over all buildings on official inventories of historic resources
  • Absent a discretionary action, use or demolition may occur without government approval, i.e., without CEQA
  • Listing a property on the California Historical Resources Inventory does not necessarily restrict owner’s use of the property

- 1987 - City designated the Juana Briones House as historic landmark
- 1998 – Owners applied for demolition permit
- 2007 – Demolition permit issued
- Court found issuance of demolition permit was a ministerial act under the City’s Municipal Code
- CEQA does not apply to ministerial acts
CEQA on Historical Resources: Discretionary versus Ministerial Actions (cont’d)

• Local agencies can enact ordinances giving them discretionary authority over alterations or demolition of historic structures

• Discretionary action will trigger CEQA if there is a perceptible physical impact on the environment
CEQA on Historical Resources: Categorical and Emergency Exemptions

- Restoration/rehabilitation may be exempt from CEQA if consistent with U.S. Secretary of the Interior’s standards (Guidelines § 15331.)

- Categorical exemptions may not be used for any project that may cause a substantial adverse change in the significance of a historical resource (Guidelines § 15300.2(f.).)
  - Whether or not an object or building is a historical resource for purposes of this exception to the exemptions is reviewed under the substantial evidence test
The historical resources exception to categorical exemptions does not affect statutory exemptions, e.g., for emergency repairs or demolition following a disaster.

However, demolition or alteration of listed historical resources following a disaster is restricted by state historical resources law (Guidelines § 15269(a).)
Historic Resources under CEQA

Three categories of historical resources (Pub. Resources Code § 21084.1):

1. **Mandatory** – a resource formally listed in, or determined to be eligible for, the California Register of Historical Resources

2. **Presumptive** – resources included in a local register of historical resources, or identified as significant in a historic resources survey meeting state criteria

3. **Discretionary** – resources determined by the lead agency to be historically significant
Mandatory (example)

- Union Station, National Register-listed, 1980
- Formally determined eligible for the National Register
- California State Landmark
- Listed in the California Register by the State Historical Resources Commission
Presumptive (example)

- Jensen’s Recreation Center, Echo Park
- Identified as significant in an historical resource survey meeting the requirements of PRC section 5024.1(g)
- Survey has been or will be in State Historic Resources Inventory maintained by Office of Historic Preservation (OHP)
- Survey prepared in accordance with OHP procedures and requirements
Discretionary Historical Resources

• When site is not mandatorily or presumptively a historical resource, the lead agency may independently determine whether the property should be treated as a historical resource under CEQA

• CEQA does not limit a lead agency’s discretion in making this determination

• Agency’s determination need only be supported by substantial evidence
  • True regardless of whether in the context of an EIR or a negative declaration
  • Absence of evidence that a structure is historic is sufficient to support agency’s determination that it is not historic
Discretionary (example)

- The Greek Theatre
- CEQA lead agency found it to meet California Register Criteria 1, 2, and 3, even though it was a “not eligible” in the State inventory.
- The visible alterations that led to the “not eligible” status code were easily reversible.
- Now it has historical resource status as a contributing element of the Griffith Park Historic-Cultural Monument
Assessing Impacts to Historical Resources

• Substantial adverse change in the significance of a historical resource = a significant impact on the environment (Guidelines § 15064.5(b).)
  
  • Substantial adverse changes means demolition, destruction, relocation, or alteration of the resource or its immediate surroundings resulting in the significance of the resource being materially impaired
  
  • Significance of a resource materially impaired when the physical characteristics that convey its historical significance and that justify its designation as a historical resource are demolished or materially altered in an adverse manner
  
  • Actions that affect a historic resource but do not result in a tangible, perceptible change are not environmental impacts subject to CEQA
Interior Modifications Not Visible to General Public, Not Subject to CEQA

• 1032 Broadway – San Francisco Landmark #97 (The Atkinson House)
• One of the oldest structures in San Francisco
• Owners proposed destruction of portions of Willis Polk-designed redwood interior
• “Destruction of an irreplaceable antiquity not being perceived by the public does not qualify as a significant effect.”
• Martin v. City and County of San Francisco (2005) 135 Cal.App.4th 392
Mitigating Impacts to Historical Resources

• Actions consistent with Secretary of Interior’s Standards for Treatment of Historic Properties with Guidelines for Preserving, Restoring, and Reconstructing Historic Buildings are generally accepted as mitigation.

• Moving the historical resource to an appropriate receiver site may mitigate the effect to less than significant, because the moved resource can still be eligible for the California Register.

• Documentation of historical resources by narrative, drawings, or photos will not necessarily mitigate demolition/destruction to a less-than-significant level. (Guidelines § 15126.4(b)(2).)
Thank you!

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