

# 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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Los Angeles Daily News

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### Battle brewing over Lautner building in Woodland Hills



The photograph shows the interior of a modern building with a curved, white reception desk in the foreground. The space is bright and open, with large windows and a high ceiling. In the background, there are several people working at desks. The overall atmosphere is professional and contemporary.



# John Lautner: AbilityFirst Paul Weston Work Center, Woodland Hills


Los Angeles Daily News

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### Nation's first Israeli-American community center to open in Woodland Hills



Preview of the Israeli-American Council (IAC) opening of the IAC Shepher Community Center in Woodland Hills, which will serve as a hub for the Israeli-American and Jewish communities in Los Angeles. It will be the first Israeli-American community center in the United States. (File photo by Hans Gutknecht/Los Angeles Daily News)

# 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



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# 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



# Contact Information

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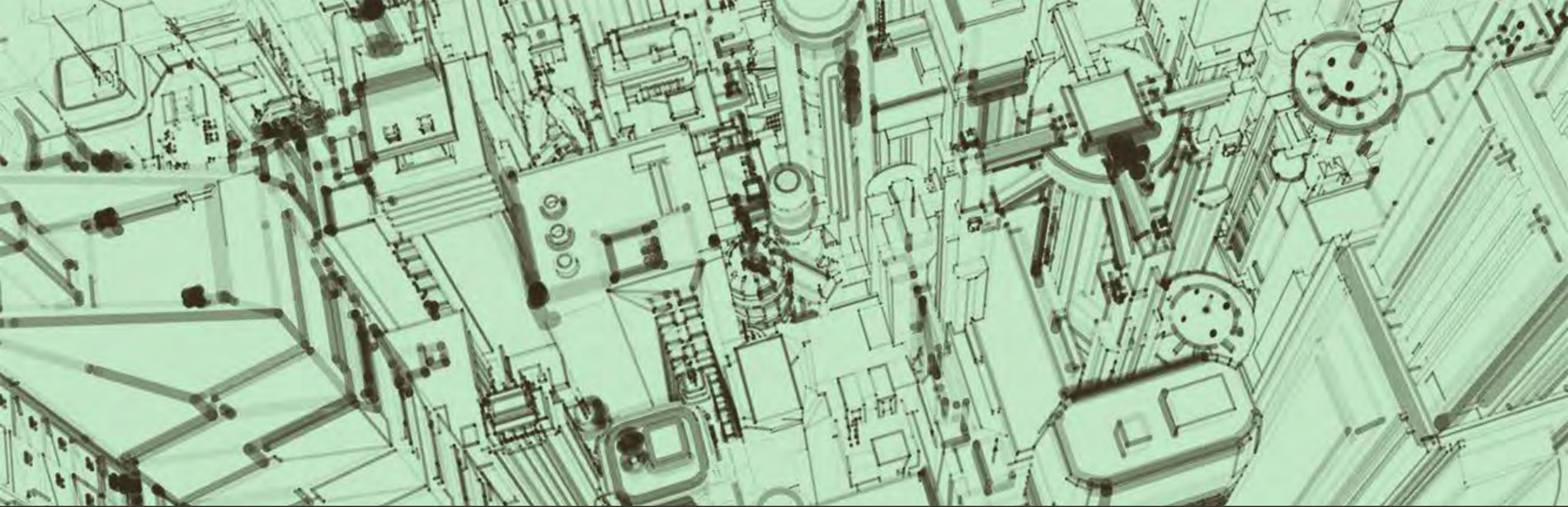


CEQA: How it Really Works  
California Preservation Foundation  
Golden State Mutual Life Insurance Building Auditorium  
May 25, 2016

Nicole Gordon, Partner, The Sohagi Law Group, PLC







# 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

## Case example: *Friends of Juana Briones House v. City of Palo Alto* (2010) 190 Cal.App.4th 286



- 1987 - City designated the Juana Briones House as historic landmark
- Historic Preservation Contract with owners under the Mills Act from 1988-1997
- 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
  - *Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4<sup>th</sup> 1039

## CEQA on Historical Resources: Categorical and Emergency Exemptions (cont'd)

- 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.4<sup>th</sup> 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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