

CITY OF CALABASAS GENERAL PLAN:

AGENDA FOR THE 21ST CENTURY

**APPENDIX C
ARCHAEOLOGICAL IMPACTS
(CEQA Guidelines 1993)**

September 6, 1995

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(CEQA Guidelines 1993)

ARCHAEOLOGICAL IMPACTS

- I. CEQA applies to effects on historic and prehistoric archaeological resources.
- II. Public agencies should seek to avoid damaging effects on an archaeological resource whenever feasible. If avoidance is not feasible, the importance of the site shall be evaluated using the criteria outlined in Section III.
 - A. In-situ preservation of a site is the preferred manner of avoiding damage to archaeological resources. Preserving the site is more important than preserving the artifacts alone because the relationship of the artifacts to each other in the site provides valuable information than can be lost when the artifacts are removed. Further, preserving the site keeps it available for more sophisticated future research methods. Preservation may also avoid conflict with religious or cultural values of groups associated with the site.
 - B. Avoiding damage may be accomplished by many approaches, including:
 1. Planning construction to miss archaeological sites;
 2. Planning parks, greenspace, or other open space to incorporate archaeological sites;
 3. "Capping" or covering archaeological sites with a layer of soil before building tennis courts, parking lots, or similar facilities. Capping may be used where:
 - a. The soils to be covered will not suffer serious compaction;
 - b. The covering materials are not chemically active;
 - c. The site is one in which the natural processes of deterioration have been effectively arrested; and
 - d. The site has been recorded.
 4. Deeding archaeological sites into permanent conservation easements.
- III. If the Lead Agency determines that a project may affect an archaeological resource, the agency shall determine whether the effect may be a significant effect on the environment. If the project may cause damage to an important archaeological resource, the project may have a significant effect on the environment. For the purposes of CEQA, and "important archaeological resource" is one which:
 - A. Is associated with an event or person of:
 1. Recognized significance in California or American history, or
 2. Recognized scientific importance in prehistory.
 - B. Can provide information which is both of demonstrable public interest and useful in addressing scientifically consequential and reasonable or archaeological research questions;
 - C. Has a special or particular quality such as oldest, best example, largest, or last surviving example of its kind;
 - D. Is at least 100 years old and possesses substantial stratigraphic integrity; or
 - E. Involves important research questions that historical research has shown can be answered only with archaeological methods.
- IV. If an archaeological resource is not an important archaeological resource, both the resource and the effect on it shall be noted in the Initial Study or EIR but need not be considered further in the CEQA process.

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- V. If avoidance of the important archaeological resource is not feasible, the Lead Agency should include an excavation plan for mitigating the effect of the project on the qualities which make the resource important under Section III.
- A. If an excavation plan is prepared, it shall:
1. Be a brief summary of the excavation proposed as part of a mitigation plan;
 2. Be available for review only a need-to-know basis;
 3. Not include the specific location of any archaeological resources if the plan will be made known to the general public.
- B. An excavation plan may:
1. List and briefly discuss the important information the archaeological resources contain or are likely to contain;
 2. Explain how the information should be recovered to be useful in addressing scientifically valid research questions and other concerns identified in subdivision (a);
 3. Explain the methods of analysis and, if feasible, display of excavated materials;
 4. Provide for final report preparation and distribution; and
 5. Explain the estimated cost of and time required to complete all activities undertaken under the plan.
- C. The Lead Agency may require a mitigation plan to be carried out as a condition of approval of the project.
- VI. A public agency following the federal clearance process under the National Historic Preservation Act or the National Environmental Policy Act may use the documentation prepared under the federal guidelines in the place of documentation called for in this appendix.

VII. Limitations on Mitigation

Special rules apply to mitigating significant effects on important archaeological resources.

- A. If it is not feasible to revise the project to avoid an important archaeological resource, the Lead Agency shall require the project applicant to guarantee to pay one half of the cost of mitigating the significant effect of the project on important archaeological resources.
1. In determining the payment to be required from the applicant, the Lead Agency shall consider the in-kind value of project design or expenditures intended to permit any or all important archaeological resources or California Native American culturally significant sites to be undisturbed or preserved in place.
 - a. Consideration of in-kind values does not require a dollar for dollar set-off against the payment by the project applicant.
 - b. In deciding on an appropriate set-off, the Lead Agency shall consider such factors as whether the project design or expenditures would provide other benefits to the applicant and whether the design or expenditures required special changes in the project plans.
 2. When it decides to carry out or approve the project, the Lead Agency shall, if necessary, reduce the mitigation measures specified in the EIR to those which can be funded with:
 - a. The money guaranteed by the project applicant, and
 - b. Money voluntarily guaranteed by any other person or persons for the mitigation.
 3. In order to allow time for interested persons to provide a voluntary funding guarantee, the Lead Agency shall not decide to carry out or approve a project having a significant effect on important archaeological resources until 60 days after completing the final EIR on the project.
 4. In no event shall the Lead Agency require the applicant to pay more for mitigation within the site of the project than the following amounts:

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- a. One half of one percent of the projected cost of the project, if the project is a commercial or industrial project.
 - b. Three fourths of one percent of the projected cost of the project for a housing project consisting of one unit.
 - c. If a housing project consists of more than one unit, three fourths of one percent of the projected cost of the first unit plus the sum of the following:
 - (i) \$200 per unit for any of the next 99 units,
 - (ii) \$150 per unit for any of the next 400 units,
 - (iii) \$100 per unit for units in excess of 500.
- B. Unless special or unusual circumstances warrant an exception, the field excavation phase of an approved mitigation plan shall be completed within 90 days after the applicant receives the final approval necessary to begin physical development of the project.
1. With a phased project, the mitigation measures shall be completed within 90 days after approval is granted for the phased portion to which the specific mitigation measures apply.
 2. The project applicant can elect to extend the time limits for completing the field excavation phase of the approved mitigation plan.
 3. A mitigation plan shall not authorize violation of any law protecting American Indian cemeteries.
- C. Excavation as part of a mitigation plan shall be restricted to those parts of an important archaeological resource that would be damaged or destroyed by the project unless special circumstances require limited excavation of an immediately adjacent area in order to develop important information about the part of the resource that would be destroyed.
- D. Excavation as mitigation shall not be required for an important archaeological resource if the Lead Agency determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the resource, provided that the determination is documented in the EIR.
- E. The limitations on mitigation shall not apply to:
1. A public project if the Lead Agency decides to comply with other provisions of CEQA that apply to mitigation of significant effects, and
 2. A private project if the applicant and the Lead Agency jointly elect to comply with other provisions of CEQA that apply to mitigation of significant effects.
- F. The time and cost limitations described in this section do not apply to surveys and site evaluation activities intended to determine whether the project location contains archaeological resources, and if so, whether the archaeological resources are important as defined in this appendix.

VIII. Discovery of Human Remains

- A. In the event of discovery or recognition of any human remains in any location other than a dedicated cemetery, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:
1. The coroner of the county in which the remains are discovered has been informed and has determined that no investigation of the cause of death is required, and
 2. If remains are of Native American origin,
 - a. The descendants from the deceased Native Americans have made a recommendation to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code Section 5097.98, or

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- b. The Native American Heritage Commission was unable to identify a descendant or the descendant failed to make a recommendation within 24 hours after being notified by the commission.
- B. Where the following conditions occur, the landowner or his authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further subsurface disturbance.
1. The Native American Heritage Commission is unable to identify a descendant;
 2. The descendant identified fails to make a recommendation; or
 3. The landowner or his authorized representative rejects the recommendation of the descendant, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.
- C. If the human remains are discovered before the Lead Agency has finished the CEQA process, the Lead Agency shall work with the Native American Heritage Commission and the applicant to develop an agreement for treating or disposing, with appropriate dignity, of the human remains and any associated grave goods. Action implementing such an agreement is exempt from:
1. The general prohibition on disintering, disturbing, or removing human remains from any location other than a dedicated cemetery (Health and Safety Code Section 7050.5).
 2. The requirements of CEQA and the Coastal Act.
- IX. As part of the objectives, criteria, and procedures required by Section 21082 or as part of conditions imposed for mitigation, a Lead Agency should make provisions for archaeological sites accidentally discovered during construction. These provisions should include an immediate evaluation of the find. If the find is determined to be an important archaeological resource, contingency funding and a time allotment sufficient to allow recovering an archaeological sample or to employ one of the avoidance measures should be available. Construction work could continue on other parts of the building site while archaeological mitigation takes place.

Note:

Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 7050.5, Health and Safety Code; Sections 5097.98, 21001(b) and (c), and 21083.2, Public Resources Code; *Society for California Archaeology v. County of Butte*, (1977) 65 Cal. App. 3d 832.

Discussion:

This appendix responds to problems that have arisen in applying CEQA to archaeological resources. In some areas of the state, full excavations of archaeological sites have been required for nearly every site discovered within the tract where a project would be located regardless of the importance of the sites. As a result, federal officials have noted that in CEQA documents they have found descriptions of archaeological excavations of sites that would not be regarded as important enough to call for excavation under federal law. This experience has shown a need for establishing standards to guide agencies in deciding whether a site would be important enough to call for analysis under CEQA.

While there have been problems in some parts of the state, archaeological impacts have been handled well in other areas. Mendocino County and Santa Barbara County especially have been noted for the excellence of their methods for dealing with archaeological resources. This appendix does not mandate a uniform system statewide so that successful local programs can continue.

The unnecessarily large number of excavations has also involved an unnecessary conflict with Native American values. Native Americans have been upset by people digging up the remains of their ancestors. While archaeology can be carried out in conjunction with Native Americans, and has been done successfully to help Native Americans learn about their ancestors, too often excavations have been carried out without concern for the sensitivities of Native Americans. The approaches described in this appendix should reduce the conflict with Native American values concerning protection of burial sites.

An important principle in this appendix is the emphasis on avoidance of archaeological sites. Avoidance is discussed as a way of avoiding a significant impact in the first place, thereby enabling a project to qualify for a Negative

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Declaration. Where the proposed project includes a potential impact on a site, avoidance is suggested as a preferred mitigation measure where all other factors are equal. If a project can be altered to avoid a site, the costs and delays involved in an archaeological excavation may also be avoided, and there would be no interference with Native American sensitivities. Possible methods of avoidance are listed in order to give people ideas of how to proceed. These methods are not exclusive and could be supplemented by other methods at the option of the Lead Agency.

The appendix also identifies standards for determining the importance of the archaeological site and provides that a project would have a significant effect on the environment if it would cause damage to an important archaeological site. These standards are in keeping with the efforts in CEQA to focus on significant effects rather than on all effects. The standards are an effort to focus on archaeological resources that people would generally agree are important rather than requiring protection of all archaeological resources. The standards are consistent with the standards included in AB 952 (Deddeh), Chapter 1623 of the Statutes of 1982. The appendix uses the term "important" archaeological resources rather than "unique" archaeological resources in order to use terminology more closely related to accepted scientific usage. The substance of the standards remains consistent with the bill despite the change in label.

The appendix encourages the preparation of an excavation plan in an EIR as one of several possible mitigation measures for destruction or damage to an archaeological site. The excavation plan is an effort to achieve greater precision in the ways in which any necessary excavation would be carried out. The excavation plan would put a burden on the archaeologist to explain the importance of the site and to demonstrate how the proposed excavation would serve some public interest. The elements listed for an excavation plan are suggested but not required. This approach allows Lead Agencies to take various approaches in excavation plans. The plans are intended to shift the burden to the archaeologist to demonstrate the necessity for an excavation rather than requiring a staff worker in the Lead Agency to deal with unfocused claims of the importance of the site. The Resources Agency has received information suggesting that planners working for Lead Agencies have had difficulty in evaluating claims from expert archaeologists demanding that excavation be allowed. The excavation plan requirement is designed to alleviate that problem.

To conform to the recently enacted Assembly Bill 952, Chapter 1623 of the Statutes of 1982, the appendix identifies various restrictions on archaeological mitigation and cost limitations on archaeological mitigation. These restrictions apply to the CEQA process, and people implementing the Act need to be made aware of them. The appendix reorganizes and clarifies the limitations and adds interpretations with a few subjects from the bill such as offsets and the 60-day delay in approval after completing the EIR.

The appendix also suggests ways for Lead Agencies to standardize their methods of dealing with archaeological resources. The methods could be included within mitigation measures in EIRs or included in the CEQA procedures which an agency is required to adopt by Section 21082 of the Public Resources Code. The appendix also encourages Lead Agencies to deal with the problem of unexpected sites which may be discovered during construction. The appendix does not mandate any particular way to deal with this situation.

The appendix also reflects the protections recently enacted in Senate Bill 297 (Garamendi), Chapter 1492 of the Statutes of 1982, for human remains discovered during excavation. If the human remains are of Native American origin, special rules and procedures apply. The rules and procedures are included here because they are so closely related to the archaeological activities discussed in this appendix.

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