

Legal Opinion provided to the Lake County Planning Staff Sept. 2, 1983, following the passage of Assembly Bill 952 that changed the California Environmental Quality Act. Opinion provided by County Council Bob Bridges. Letterhead and signature blanked out per Mr. Bridges request.

MEMORANDUM OF LEGAL OPINION
PRESENTED TO THE LAKE COUNTY PLANNING STAFF
BY THE COUNTY COUNCIL

RE: CEQA/Archaeological Impact Evaluation

Dear Bill:

You have orally requested the opinion of this office on a question concerning CEQA procedures for archaeological resources. Specifically you desire to know if A.B. 952 requires the lead agency to assess archaeological impacts before project approval.

The Legislature enacted A.B. 952 during its 1982 session. This bill added Section 21083.2 to the Public Resources Code. The new law requires the lead agency to determine whether a project may have a significant effect on archaeological resources. Archaeological resources have been divided into the two categories of "unique" and "nonunique". "Unique" is defined to mean,

"... an archaeological artifact, object, or site about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it meets any of the following criteria:

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

"Nonunique" is defined to mean,

"... an archaeological artifact, object, or site which does not meet the criteria set forth in subdivision (e)."

If an agency determines that an archaeological resource is nonunique, the agency may proceed to issue a negative declaration, and the nonunique resource need be given no further consideration. If the lead agency determines that the project may have a significant effect on a unique archaeological resource, then an EIR must be prepared. The law then goes on to describe various methods for preserving archaeological resources in place. It also sets up a framework and limit for the funding of mitigation measures for resources that cannot be left undisturbed if the project goes forward.

The most significant aspect of this law as it affects the Planning Department pertains to the determination of whether a resource is unique or nonunique. It would seem that a person having expertise in archaeology would have to be retained in order to make this determination. Otherwise, you have no basis on which to proceed to your ultimate CEQA action, whatever it may be. It is apparent to this office that such an approach has not been used by the Planning Department/Planning Commission over the preceding eight months. The new law definitely requires a lead agency to assess the archaeological resource which may be affected by a project before the project is approved.

It is interesting to note that the new law specifically provides as an additional measure the same type of approach which is favored by the Planning Commission; that being the onsite evaluation of an archaeological site if one is accidentally discovered during construction.

If you have any further questions concerning this matter, please feel free to contact this office.