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INTRODUCTION

When California was discovered by Spanish settlers more than 450 years ago, the area contained an estimated 275,000 to 300,000 Indians.[1] These Indians represented a rich and varied culture,[2] which was a consequence of the dependence of the Indians upon the variable geographic, ecologic and climatic California regions which they populated.[3]

The California Indians kept no chronicles. A knowledge of their ancient heritage can be gained only from a detailed study of abandoned villages, ceremonial places, burial grounds, rock art, and other remains which have survived the depredations of time, nature and, later, man. Archaeology, therefore, is the only informational source of over 95 percent of California's cultural history.[4]

That the cultural heritage of California Indians is not currently being preserved is evidenced by the small amount of

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1. Cook, *The Aboriginal Population of Upper California*, in THE CALIFORNIA INDIANS 72 (2d ed. R. Heizer & M. Whipple 1971).

2. *See* Kroeber, *Elements of Culture in Native California*, in THE CALIFORNIA INDIANS 3-65 (2d ed. R. Heizer & M. Whipple 1971).

3. *See* Beals & Hester, *A New Ecological Typology of the California Indians*, in THE CALIFORNIA INDIANS 73-85 (2d ed. R. Heizer & M. Whipple 1971).

4. History includes both written and unwritten past:

> [I]t is true that we normally use the word history in two senses, as when we say the history of man, meaning the whole of man's past, and history sense stricto, when we mean the part of man's past which we know about because he has written down details of it.

D. GLYN, THE IDEA OF PREHISTORY 14-15 (1963). *See also* STATE ARCHAEOLOGICAL, HISTORICAL, AND PALEONTOLOGICAL TASK FORCE, THE STATUS OF CALIFORNIA'S HERITAGE: A REPORT TO THE GOVERNOR AND LEGISLATURE OF CALIFORNIA iv (1973) [hereinafter cited as TASK FORCE REPORT].

California land set aside for Indian reservations[5] and the therefore limited opportunity to maintain Indian culture. Further demonstration of the lack of concern for preserving relics and evidences of the Indian cultures is the annual destruction of approximately 1400 archaeological sites in California.[6] As the main centers of Indian culture were near bays, lake shores, river valleys and stream banks, and since these locations are also prime centers of urban development, an estimated 80 percent of the large and important Indian sites has been entirely destroyed.[7]

Implicit in the idea of preserving these archaeological sites[8] are the

> assumptions that the traditions of a people have value, that cultural patterns of the past are worth remembering and that they are best remembered when their tangible accomplishments remain intact and visible.[9]

The presence of visible evidence of history gives to a community, state or nation a special quality of stability and enhances a people's sense of identity and direction. Some say that the opportunity to know and understand the cultural, historical and natural values of one's people may help to provide an answer to man's psychological and spiritual needs.[10] The descendants of the aboriginal California Indians have a need and perhaps a right to gain an understanding of their lost culture.

Since the land which is now California was for many years peopled by the California Indians, all Californians are affected by the cultural history of the land these Indians have settled. That is, the history of the land is intimately connected with the history of

5. There are 82 reservations and rancherias in California, comprising a total of 550,775 acres. Only 18 of the 82 reservations are used as homesites for 100 or more Indians. In 1960, 7,400 California Indians lived on or adjacent to reservation lands. Heizer & Whipple, *Number and Condition of California Indians Today*, in THE CALIFORNIA INDIANS 581 (2d ed. R. Heizer & M. Whipple 1971).

6. TASK FORCE REPORT, *supra* note 4, at 2.

7. *Id.* at 1.

8. "Archaeological site" will be used here to include any mound midden settlement location, burial ground, rock art or other location containing evidence of human activities. "Archaeological site" will also include Indian cemeteries such as burial grounds, crematory places or other places used by Indians for disposal of their dead. Archaeological sites are distinguishable from natural resources: most natural resources are renewable, whereas archaeological sites are unique and non-renewable. Whenever an archaeological site is destroyed, its priceless story is permanently and irreversibly erased.

9. Wilson & Zingg, *What is America's Heritage? Historic Preservation and American Indian Culture*, 22 KAN. L. REV. 413, 414 (1974).

10. *Id.*

the people who populated that land, and the Indians populated California long before the European settlers. Therefore, an understanding of the development of California requires some knowledge of the early California Indian culture; and archaeological sites—the only physical source of past culture—are essentially the only means of acquiring this knowledge.

Although a number of state statutes relate to the preservation of Indian archaeological sites, the unabated destruction of such sites indicates that these statutes are inadequate.[11] Archaeological sites on public lands are protected by California Public Resources Code section 5097.5 from knowing and willful destruction;[12] however, such destruction is only a misdemeanor. California Penal Code section 622.5 makes it a crime for anyone, other than the owner of private land upon which the object or thing of archaeological interest or value is located, willfully to injure, disfigure, deface or destroy such object.[13] Thus, archaeological sites on public lands are afforded minimal protection, whereas archaeological sites on privately-owned land are offered protection only against a non-owner of the land.

Numerous federal historical preservation acts provide protection for historical sites.[14] To date, however, none of the federal statutes adequately provides for protection of archaeological sites.[15]

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11. The California Legislature has recently declared its intent to preserve archaeological sites:

> The Legislature hereby finds and declares that California's archaeological, paleontological, and historical heritage is fast disappearing as a result of public and private land development and that the state's total effort to preserve and salvage these precious resources is fragmented and uncoordinated.

CAL. PUB. RES. CODE § 5097.9 (West 1970).

Consistent with this finding, the Legislature required the establishment of a task force to study the preservation of archaeological, paleontological and historical resources, *id.* § 5097.91, and a moratorium upon the archaeological excavation of any California Indian burial site. *Id.* § 5097.93. The moratorium is enforceable by the California Attorney General acting upon his own initiative or at the request of the Secretary of the Resources Agency. Cal. Att'y Gen., Opinion Letter No. SO 73/32 (Mar. 19, 1974). Although expressly limited to burial sites, the moratorium is probably still in effect because the Legislature has yet to act upon the report of the task force. *See* CAL. PUB. RES. CODE § 5097.93 (West Supp. 1975).

12. CAL. PUB. RES. CODE § 5097.5 (West Supp. 1975).

13. CAL. PENAL CODE § 622.5 (West 1970).

14. American Antiquities Act of 1906, 16 U.S.C. §§ 431-33 (1974); Historic Sites Act of 1935, 16 U.S.C. §§ 461-67 (1974); National Historic Preservation Act of 1966, 16 U.S.C. §§ 470 *et seq.* (1974); Department of Transportation Act of 1966, 49 U.S.C. §§ 1651-59 (1975).

15. Wilson & Zingg, *supra* note 9, at 421-34. "[The] N[ational] E[nvironmental] P[olicy] A[ct] is clearly relevant to the preservation of Indian sites." *Id.* at 435. NEPA is

In 1970, the California Legislature approved the California Environmental Quality Act (CEQA).[16] Patterned after the National Environmental Policy Act (NEPA), CEQA requires an environmental impact report for any proposed project which would have a significant effect on the environment.[17] The purpose of this article is to consider the applicability of the California Environmental Quality Act to the preservation of archaeological sites in California. It will be shown that an environmental impact report should be required for any public or private project that will have a significant effect on the environment, including the destruction of an archaeological site. If the environmental impact report shows adverse or irreversible environmental consequences, the decision-making agency should consider alteration of the project when such alterations will mitigate the adverse environmental impact. The courts must review the decision of the state or local agency in approving or disapproving a project; that review will extend only to whether there was a prejudicial abuse of discretion.

I. PUBLIC AND PRIVATE PROJECTS

Since many of the archaeological sites in California are located on private property and hence not protected by Public Resources Code section 5097.5 or by Penal Code section 622.5 from destruction by the property owner, it is important to determine whether CEQA requires a landowner to submit an environmental impact report (EIR) when a proposed project will destroy an archaeological site on private land. Additionally, since the statute protecting archaeological sites on public land (Public Resources Code section 5097.5) provides only minimal protection, CEQA may provide added protection by requiring an EIR prior to undertaking a project on state lands where that project will destroy such a site.

As originally enacted, the applicability of CEQA to private projects was unclear. The California Supreme Court's landmark decision of *Friends of Mammoth v. Board of Supervisors*[18] interpreted

codified at 42 U.S.C. §§ 4321-47 (1971). *See also* Schull, *New Inroads for Historic Preservation*, 26 ADMIN. L. REV. 357 (1974).

16. Ch. 1433, § 1, [1970] Cal. Stat. 2780.

17. CAL. PUB. RES. CODE § 21151 (West Supp. 1975).

18. 8 Cal. 3d 247, 502 P.2d 1049, 104 Cal. Rptr. 761 (1972).

the Act as applying to private projects. Assembly Bill 889,[19] a legislative response to *Mammoth*, codified the holding of *Mammoth* and clarified much of CEQA. Since *Mammoth*, it is clear that an EIR will be required for any private project which will have a significant effect on the environment and which requires local agency approval.[20] Agency approval occurs "upon the earliest commitment to issue or the issuance of a lease, permit, license, certificate or other entitlement for use . . . ." [21]

CEQA also clearly requires that a state agency prepare or cause to be prepared an EIR for any project proposed to be carried out or approved by that agency, if the project will have a significant effect on the environment.[22] This requirement applies regardless of whether the state agency project requires local agency approval. Additionally, no state agency, board or commission may authorize or allocate funds for any project which may have a significant effect on the environment, unless such authorization or allocation is accompanied by an EIR.[23]

Thus, CEQA goes beyond section 5097.5, and protects archaeological sites on public lands whenever the project will have a significant effect on such sites, if it is undertaken by, approved by, or if funds are allocated to a local agency by any state agency, board or commission; CEQA requires that any such project be preceded by an EIR. CEQA provides added protection to archaeological sites on private land by requiring an EIR for any private project which requires local agency approval, whenever the project will have a significant effect on the environment.

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19. Ch. 1154, § 1, [1972] Cal. Stat. 2271. For a discussion of the *Friends of Mammoth* decision and the 1972 amendments to CEQA see Seneker, *The Legislative Response to Friends of Mammoth–Developers Chase the Will-o'-the-Wisp*, 48 CAL. ST. B.J. 127 (1973).

20. CAL. PUB. RES. CODE § 21151 (West Supp. 1975); 14 CAL. ADMIN. CODE §§ 15012, 15085(f) (1975). California Public Resources Code section 21065(c) makes explicit the holding in *Mammoth* that CEQA applies to private projects.

21. 14 CAL. ADMIN. CODE § 15021 (1975).

22. CAL. PUB. RES. CODE § 21100 (West Supp. 1975). A "project," as defined in CEQA, includes any activity directly undertaken by a public agency. *Id.* § 21065(a) (West Supp. 1975). *See also* Plan for Arcadia, Inc. v. Arcadia City Council, 42 Cal. App. 3d 712, 117 Cal. Rptr. 96 (1974), where the widening of an avenue was held to constitute a public work and not a private project. *Id.* at 726, 117 Cal. Rptr. at 104-05. A "public agency" is any state agency, board or commission, any county, city and county, city or regional agency, public district, redevelopment agency or political subdivision. CAL. PUB. RES. CODE § 21063 (West Supp. 1975). *See also* Note, *Duty of Private Parties to File Environmental Statement*, 61 CALIF. L. REV. 559, 576 (1973).

23. CAL. PUB. RES. CODE §§ 21102, 21105 (West Supp. 1975).

II. SIGNIFICANT EFFECT ON THE ENVIRONMENT

If an EIR is required for any private or public project which may have a significant effect on the environment, the phrase "significant effect on the environment" must be defined. It is the thesis of this article that "significant effect on the environment" applies to any project which will have a significant effect on an archaeological site because environment, as used in CEQA, expressly includes sites of historic and aesthetic value.[24]

The phrase "significant effect on the environment" is at the same time one of the most important and one of the most difficult in the Act to define. In analyzing the phrase, one must first examine the legislative intent and policy of CEQA, which is to:

> [T]ake all action necessary to provide the people of this state with . . . enjoyment of aesthetic, natural, scenic and historic environmental qualities;[25] and preserve for future generations representations of all plant and animal communities and examples of major periods of California history.[26]

The Guidelines[27] reiterate this policy. In *Mammoth*, the supreme court emphasized legislative intent and concluded

> that the Legislature intended [CEQA] to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of statutory language.[28]

A. MEANING OF "ENVIRONMENT"

The precise meaning of "significant effect on the environment" must be determined in the light of this legislative intent.

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24. *See* note 30 *infra* and accompanying text.

25. This policy is reflected in CAL. PUB. RES. CODE § 21001(b) (West Supp. 1975). Also see 14 CAL. ADMIN. CODE § 15011(b) (1975).

26. CAL. PUB. RES. CODE § 21001(c). *See also* 14 CAL. ADMIN. CODE § 15011(c) (1975).

27. CAL. PUB. RES. CODE § 21083 (West Supp. 1975), part of CEQA, mandates that the Office of Planning and Research prepare and develop guidelines for implementation of CEQA by public agencies. These guidelines are published in 14 CAL. ADMIN. CODE §§ 15011 *et seq*. (1975).

28. Friends of Mammoth v. Board of Supervisors, 8 Cal. 3d 247, 259, 502 P.2d 1049, 1056, 104 Cal. Rptr. 761, 768 (1972). *See also* Environmental Defense Fund, Inc. v. Coastside County Water Dist., 27 Cal. App. 3d 695, 104 Cal. Rptr. 197 (1972), where the court stated: "[T]he declaration justifies, if indeed it does not demand, that the operative parts of the act be construed liberally." *Id*. at 701, 104 Cal. Rptr. at 200.

Indeed, in *Mammoth*, while not resolving whether the project in that case had a significant effect on the environment, the supreme court stated:

> We recognize that the reach of the statutory phrase, "significant effect on the environment," is not immediately clear. To some extent this is inevitable in a statute which deals, as [CEQA] must, with questions of degree . . . . As with other questions of statutory interpretation, the "significant effect" language of the act will thus be fleshed out by the normal process of case-by-case adjudication.[29]

In applying the phrase "significant effect on the environment" to the preservation of archaeological sites, it must be shown that archaeological sites are part of the environment. "Environment" is defined in CEQA as encompassing

> the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, *objects of historic or aesthetic significance.*[30]

Two specific examples of physical conditions of the environment which are included within the definition of environment, as found in CEQA and the Guidelines,[31] are places of historic and aesthetic significance.[32] Archaeological sites may be included within either of these headings.[33] Archaeological sites are clearly

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29. Friends of Mammoth v. Board of Supervisors, 8 Cal. 3d 247, 271, 502 P.2d 1049, 1065, 104 Cal. Rptr. 761, 777 (1972).

30. CAL. PUB. RES. CODE § 21061.5 (West Supp. 1975) (emphasis added).

31. The Guidelines state:

> (a) The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved based to the extent possible on scientific and factual data. An ironclad definition of significant effect is not possible because the significance of an activity may vary with the setting. There may be a difference of opinion on whether a particular effect should be considered adverse or beneficial, but where there is, or anticipated to be, a substantial body of opinion that considers or will consider the effect to be adverse, the lead agency should prepare an environmental impact report to explore the environmental effects involved.

14 CAL. ADMIN. CODE § 15081 (1975).

32. CAL. PUB. RES. CODE § 21061.5 (West Supp. 1975).

33. To some extent, the preservation of archaeological sites, because of their inherent

of historic significance: if, as has been estimated,[34] Indians have occupied California for as long as 10,000 years, then, numerically, Indians account for about 95 percent of the history of people in California. An understanding and appreciation of the history of California can, therefore, be gained only through knowledge of Indian culture. Since Indian cultural practices are in large measure extinct (due in part to the destructive efforts of the early non-Indian settlers of California),[35] archaeological sites provide the only physical source for understanding past Indian culture. Hence, the Indian way of life is an essential aspect of California history both because of the great number of years during which Indians occupied the area which is now the state and because of the instructional value of their life style.

"Environment" as used in CEQA expressly includes places of aesthetic significance as well.[36] Although aesthetic is strictly defined as "of or pertaining to beauty,"[37] its use by the Legislature as encompassing a broader definition is significant, and clearly indicates a recognition of the variety of meanings that the term connotes. "Archaeological site," as used herein, generally refers to Indian sites of primarily historic significance; but the term also includes Indian burial sites and ceremonial places, many of which continue to have a special religious and spiritual significance to the few remaining California Indians. These special sites are not historically valuable in the sense of providing relics or evidence of California Indian history, but rather for the extraordinary spiritual significance attendant in the sites themselves. To those spiritualists who frequent these sites, the benefits are apparently extreme.[38]

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historic value, also promotes aesthetic values:

> Historic preservation promotes aesthetic values by adding to the variety, the beauty and quality of life . . . . [F]or "a high civilization must . . . give full value and support to the . . . great branches of man's scholarly and cultural activity in order to achieve a better understanding of the past, a better analysis of the present and a better view of the future.

Lutheran Church v. City of New York, 35 N.Y.2d 121, 135 n.4, 316 N.E.2d 305, 314 n.4, 359 N.Y.S.2d 7, 19 n.4 (1974) (Jansen, J., dissenting), *quoting* National Foundation on the Arts and Humanities Act of 1965, *codified at* 20 U.S.C. § 951 (1971).

34. E. Davis, D. Brott & D. Weide, The Western Lithic Co-Tradition (undated) (No. 6 in a series of papers published by the San Diego Museum of Man).

35. *See generally* R. Heizer, The Destruction of California Indians (1974).

36. Cal. Pub. Res. Code § 21060.5 (West Supp. 1975) ("environment means the physical conditions . . . of historic or aesthetic significance"). *See also* 14 Cal. Admin. Code § 15026 (1975).

37. Webster's New International Dictionary 32 (2d ed. 1948) (unabridged).

38. United States Forest Service, Final Environmental Statement, Eight Mile and Blue

Another factor to consider in the interpretation of the "significant effect on the environment" language of CEQA is the line of cases under the National Environmental Policy Act (NEPA).[39] That the California courts should look to the cases under NEPA in interpreting CEQA was first enunciated in *Environmental Defense Fund, Inc. v. Coastside County Water District:*[40]

> The two statutes are so parallel in content and so nearly identical in words that judicial interpretation of the federal law is strongly persuasive in our deciding the meaning of our state statute.[41]

This viewpoint was accepted by the California Supreme Court in *Mammoth*, where it stated that "the timing and the titles of the two acts tend to indicate that [CEQA] was patterned on the federal act."[42]

Numerous federal cases stand for the proposition that the term "environment" is to be broadly interpreted.[43] As stated in *Hanly v. Mitchell*,[44]

> The National Environmental Policy Act contains no exhaustive list of so-called "environmental considerations," but without question its aims extend beyond sewage and garbage and even beyond water and air pollution.[45]

That "environment" as used in NEPA includes archaeological sites is clear from *Indian Lookout Alliance v. Volpe*,[46] where NEPA was held applicable to the preservation of an Indian site of archaeological, historical and cultural significance. There the court upheld an injunction against a highway project which en-

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Creek Units, Six Rivers National Forest 16-49 (undated). The adequacy of the Final Environmental Statement is being questioned. *See In re* Dillon-Flint Section, G-O Road, Six Rivers National Forest (Forest Service Hearing, filed July 11, 1975).

39. 42 U.S.C §§ 4321-47 (1971).

40. 27 Cal. App. 3d 695, 104 Cal. Rptr. 197 (1972).

41. *Id.* at 701, 104 Cal. Rptr. at 200 (citations omitted).

42. Friends of Mammoth v. Board of Supervisors, 8 Cal. 3d 247, 260, 502 P.2d 1049, 1057, 104 Cal. Rptr. 761, 769 (1972).

43. Scherr v. Volpe, 466 F.2d 1027, 1033 (7th Cir. 1972); Conservation Soc'y of S. Vermont, Inc. v. Volpe, 343 F. Supp. 761, 765 (D. Vt. 1972); Ely v. Verde, 451 F.2d 1130 (4th Cir. 1971); Goose Hollow Foothills League v. Romney, 334 F. Supp. 877 (D. Ore. 1971).

44. 460 F.2d 640 (2d Cir. 1972), *cert. denied*, 409 U.S. 990 (1972). The "no impact" statement which was prepared in response to *Hanly v. Mitchell* was challenged in Hanly v. Kleindienst, 471 F.2d 823 (2d Cir. 1972), *cert. denied*, 412 U.S. 908 (1973).

45. *Id.* at 647.

46. 484 F.2d 11 (8th Cir. 1973).

dangered a "geological Indian Lookout." The lower court found that the lookout possessed "outstanding scenic, geologic, historical and archaeological features."[47] The Indian lookout was rather obscure and the effect of the proposed project upon the lookout was unclear, thus emphasizing the tendency of the court to protect Indian cultural places.

"Environment," as used in NEPA, has also been held to include a cultural setting. In *Ely v. Verde*,[48] a suit to prevent funds for construction of a state penal facility in rural Louisa County, Virginia, the court held that an environmental impact statement was required where a "uniquely historical and architecturally significant rural community" was threatened.[49] Although the architecturally significant homes (built in the nineteenth century and maintained in substantially the same condition) and the cultural setting were not as old as most Indian archaeological sites, the court, by requiring the preservation of the cultural setting, was broadly interpreting "environment."

B. Significant Effect

Even if "environment" is given a broad interpretation, so as to include archaeological sites, the legislative mandate to provide the fullest possible protection to the environment would be subverted by requiring an environmental impact report only when the environmental effects are substantial or major rather than merely significant. In *No Oil, Inc. v. County of Los Angeles*,[50] the California Supreme Court elaborated on the meaning of the phrase "significant effect on the environment," with emphasis on the magnitude or significance of the effect:

> Thus we conclude, as did the court in *County of Inyo v. Yorty*, that an agency should prepare an EIR whenever it perceives "some substantial evidence that the project 'may have a significant effect' environmentally." As stated by Judge J. Skelly Wright in *Students Challenging Reg. Agency Pro. v. United States*, an environmental impact report should be prepared

47. Indian Lookout Alliance v. Volpe, 345 F. Supp. 1167, 1170 (D. Iowa 1972), *remanded*, 484 F.2d 11 (8th Cir. 1973).

48. 451 F.2d 1130 (4th Cir. 1971), *aff'g* 321 F. Supp. 1088 (E.D. Va. 1970).

49. *Id.* at 1133-34.

50. 13 Cal. 3d 68, 118 Cal. Rptr. 34, 529 P.2d 66 (1974).

> "whenever the action *arguably* will have an adverse environmental impact."[51]

Applying the "may arguably have an adverse effect on the environment" standard to the preservation of archaeological sites, it is clear that any project which may arguably destroy an archaeological site, partially or wholly, must be preceded by an EIR. This result is particularly compelling where the endangered archaeological site has not been fully studied, because every archaeological site is potentially of historic significance. Any impact on the archaeological site, howsoever slight, would be adverse. Thus, whenever the responsible agency perceives some substantial evidence of the mere existence of an archaeological site which may arguably be affected by the proposed project, the agency should require an EIR.

The California Supreme Court, in *No Oil, Inc.*, continued:

> Furthermore, the existence of serious public controversy concerning the environmental effect of a project in itself indicates that preparation of an EIR is desirable.[52]

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51. *Id.* at 85-86 (citations and footnotes omitted). In adopting the standard enunciated by Judge J. Skelly Wright in Students Challenging Regulatory Agency Procedures (S.C.R.A.P.) v. United States, 346 F. Supp. 189, 201 (D.D.C. 1972), *rev'd on other grounds*, 412 U.S. 669 (1972), the California Supreme Court commendably took a position providing more protection for the environment than some federal courts require. The philosophy underlying this decision may be found in a subsequent California appellate court decision: "While economic and environmental values may be given equal weight under [NEPA], . . . the state statute, on the other hand, suggests that environmental protection is of paramount concern." San Francisco Ecology Center v. City & County of San Francisco, 48 Cal. App. 3d 584, 590, 122 Cal. Rptr. 100 (1975).

In Hanly v. Kleindienst, 471 F.2d 823 (2d Cir. 1972), the majority opinion of this three-judge court rejected the position that an environmental impact statement be prepared for a project the environmental impact of which is likely to be controversial, at least where the controversy refers only to neighborhood opposition and not as to the size, nature or effect of the project. *Id.* at 830. Chief Judge Friendly, in dissent, stated: "We would better serve the purposes of Congress by keeping the threshold [for determination of whether an EIS is to be prepared] low enough to insure that impact statements are prepared for actions in this grey area . . . ." *Id.* at 837. *See also* Friends of Mammoth v. Board of Supervisors, 8 Cal. 3d 247, 502 P.2d 1049, 104 Cal. Rptr. 761 (1972), where the court stated:

> [I]n view of the clearly expressed legislative intent to preserve and enhance the quality of the environment (§§ 21000, 21001), the courts will not countenance abuse of the "significant effect" qualification as a subterfuge to excuse the making of impact reports otherwise required by the act . . . .

Id. at 271, 502 P.2d at 1065, 104 Cal. Rptr. at 777.

52. No Oil, Inc. v. County of Los Angeles, 13 Cal. 3d 68, 85-86, 529 P.2d 66, 78, 118

Although dictum, this statement underscores the importance of citizen input under CEQA,[53] and indicates that an EIR may be required when there is serious public controversy concerning the environmental effects of a project. Thus, as with all projects involving CEQA, members of the public and citizen groups concerned with the preservation of archaeological sites can and should take an active role in reviewing local agency actions.[54]

If it is determined that a project which would otherwise require an EIR will not have a significant effect on the environment,

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Cal. Rptr. 34, 46 (1974). Federal guidelines for NEPA, prepared by the Council on Environmental Quality, provide that:

> Proposed major actions, the environmental impact of which is likely to be highly controversial, should be covered in all cases.

Council of Environmental Quality, Guidelines on Preparation of Environmental Impact Statements § 1500.6, 38 Fed. Reg. 20551 (1973). Title 14 of the California Administrative Code provides at section 15001:

> Where there is, or anticipated to be a substantial body of opinion that considers or will consider the effect of the project to be adverse, the lead agency should prepare an EIR to explore the environmental effects involved.

In *No Oil, Inc.*, the California Supreme Court stated:

> The need for a full report to provide information and quiet public apprehension is at least as great in cases . . . where the controversy concerns the risk of an admittedly adverse effect as in cases in which the controversy concerns whether a predicted effect is adverse or benign.

13 Cal. 3d at 86 n.21, 529 P.2d at 78 n.21, 118 Cal. Rptr. at 46 n.21. Thus, the court affirmed the conclusion that where the adverse environmental consequences of a project are controversial, an environmental impact report shall be prepared.

53. *See* authorities cited at note 81 *infra* and accompanying text.

54. Public participation in environmental review is required by the Administrative Code. 14 CAL. ADMIN. CODE § 15164 (1975). In pertinent part, section 15164 states:

> While the Environmental Quality Act of 1970 does not require formal public hearings at any stage of the environmental review procedure, it is a *widely accepted desirable goal of this process to encourage public participation. All public agencies* adopting implementing procedures in response to these Guidelines *should make provisions in their procedures for wide public involvement, formal and informal*, consistent with their existing activities and procedures, in order to properly receive and evaluate public reactions, adverse and favorable, based on environmental issues.

Id. (emphasis added). In People v. County of Kern, 39 Cal. App. 3d 830, 115 Cal. Rptr. 67 (1974), it was held that the agency must give meaningful consideration to public comments, and absent that consideration the environmental impact report was deemed inadequate.

that determination must take the form of a Negative Declaration.[55] The Negative Declaration must describe the project, state the finding that the project will not have a significant effect on the environment, and state the reasons in support of that finding.[56]

III. CONTENTS OF THE EIR

If, as has been shown, an EIR is required for any project that will have a significant effect on an archaeological site, the next point of inquiry is: what must be included in the EIR?

CEQA details the specific requirements for an EIR.[57] The EIR must be a detailed report which sets forth the environmental impact of the proposed action;[58] any adverse environmental effects which cannot be avoided if the proposal is implemented;[59] proposed mitigation measures to minimize the impact;[60] alternatives to the project,[61] including the alternative of no project;[62] the

55. No Oil, Inc. v. County of Los Angeles, 13 Cal. 3d 68, 80-81, 529 P.2d 66, 73-74, 118 Cal. Rptr. 34, 41-42 (1974). *See also* Hanly v. Mitchell, 460 F.2d 640 (2d Cir. 1972); Hanly v. Kleindienst, 471 F.2d 823 (2d Cir. 1972); 14 CAL. ADMIN. CODE § 15033 (1975).

56. 14 CAL. ADMIN. CODE § 15083; *cf.* Hixon v. County of Los Angeles, 38 Cal. App. 3d 370, 380, 113 Cal. Rptr. 433, 438-39 (1974).

57. CAL. PUB. RES. CODE § 21100 (West Supp. 1975).

58. *Id.* § 21100(a) (West Supp. 1975); 14 CAL. ADMIN. CODE § 15143(a) (1975).

59. CAL. PUB. RES. CODE § 21100(b) (West Supp. 1975); 14 CAL. ADMIN. CODE § 15143(b) (1975).

60. CAL. PUB. RES. CODE § 21100(c) (West Supp. 1975); 14 CAL. ADMIN. CODE § 15143(c) (1975). *See also* Friends of Mammoth v. Board of Supervisors, 8 Cal. 3d 247, 263 n.8, 502 P.2d 1049, 1059 n.8, 104 Cal. Rptr. 761, 771 n.8 (1972).

61. CAL. PUB. RES. CODE § 21100(d) (West Supp. 1975); 14 CAL. ADMIN. CODE § 15143(d) (1975).

62. Under NEPA there must be a consideration of reasonable alternatives to the project, Life of the Land v. Brinegar, 485 F.2d 460, 471 (9th Cir. 1973), *cert. denied*, 416 U.S. 961 (1974), but not every conceivable alternative, Friends of the Earth v. Coleman, 513 F.2d 295 (9th Cir. 1975).

Under NEPA, the environmental impact statement must provide a discussion of impacts and alternatives, Sierra Club v. Froehlke, 359 F. Supp. 1289, 1341 (S.D. Tex. 1973); Natural Res. Defense Council, Inc. v. Morton, 458 F.2d 827, 836 (D.C. Cir. 1972); Calvert Cliffs Coordinating Comm. v. United States Atomic Energy Comm'n, 449 F.2d 1109, 1114 (D.C. Cir. 1971), and sufficient information for a reasoned choice of alternatives, Iowa Citizens for Environmental Quality, Inc. v. Volpe, 487 F.2d 849, 852 (8th Cir. 1973); Natural Res. Defense Council v. Morton *supra* at 836. The discussion of alternatives cannot be superficial and the alternatives must be thoroughly explored. Natural Res. Defense Council, Inc. v. Morton, 337 F. Supp. 165, 167 (D.D.C. 1971), *motion for summary rev'l of prelim. inj. denied*, 458 F.2d 827 (D.C. Cir. 1972); Environmental Defense Fund, Inc. v. Corps of Engineers, 325 F. Supp. 749, 761-62 (E.D. Ark. 1971). The agency must consider the alternatives to the "fullest extent possible," 42 U.S.C. § 4332 (1971), but the search for appropriate alternatives need be neither ex-

relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity;[63] any irreversible environmental changes;[64] and the growth-inducing impact of the project.[65] Additionally the EIR must include any agency or public comment obtained pursuant to the requirements of CEQA.[66]

"Environment" as used in CEQA should be given a broad, non-exclusive interpretation and therefore include archaeological sites.[67] Thus an EIR, in discussing adverse and irreversible *environmental* effects, should consider adverse and irreversible *archaeological* effects and changes. After it has been determined that a project will have a significant effect on the environment, and hence that an EIR must be prepared, adverse environmental or archaeological effects need not be significant to be included in an EIR.[68]

The Guidelines, with reference to the contents of an EIR, require that special emphasis be placed on environmental resources that are rare or unique to the region.[69] The EIR must describe impacts on aesthetically valuable surroundings[70] and the cumulative and long-term effect of proposed projects.[71] Since archaeological sites are a non-renewable, unique resource, the ultimate long-term effect of the destruction of individual sites will be a complete absence of sources of knowledge about extinct Indian cultures, and an absence of Indian spiritual sites.

IV. AGENCY CONSIDERATION OF THE EIR

The environmental impact report must be prepared by the

haustive, Natural Res. Defense Council, Inc. v. Morton, 458 F.2d 827, 836 (D.C. Cir. 1972), nor speculative and remote. *Id.* at 837-38.

63. CAL. PUB. RES. CODE § 21100(e) (West Supp. 1975); 14 CAL. ADMIN. CODE § 15143(e) (1975).

64. CAL. PUB. RES. CODE § 21100(f) (West Supp. 1975); 14 CAL. ADMIN. CODE § 15143(f) (1975).

65. CAL. PUB. RES. CODE § 21100(g) (West Supp. 1975); 14 CAL. ADMIN. CODE § 15143(g) (1975).

66. CAL. PUB. RES. CODE §§ 21104, 21153, 21061 (West Supp. 1975).

67. *See* note 42 *supra* and accompanying text.

68. "There is no requirement that these adverse effects be considered 'significant' before they are to be listed." Friends of Mammoth v. Board of Supervisors, 8 Cal. 3d 247, 263 n.8, 502 P.2d 1049, 1059 n.8, 104 Cal. Rptr. 761, 771 n.8 (1972).

69. 14 CAL. ADMIN. CODE § 15142 (1975).

70. *Id.* § 15143(b) (1975).

71. *Id.* § 15143(e) (1975). *See also* Plan for Arcadia, Inc. v. Arcadia City Council, 42 Cal. App. 3d 712, 726, 117 Cal. Rptr. 96, 105 (1974).

72. California Public Resources Code section 21165 discusses the lead agency concept:

lead agency[72] before the responsible agency proceeds to carry out the project,[73] so that meaningful review of the EIR can be had. A primary function of the EIR is to disclose to the agency the adverse environmental consequences of the project:

> These reports compel state and local agencies to consider the possible adverse consequences to the environment of the proposed activity and to record such impact in writing. In an era of commercial and industrial expansion in which the environment has been repeatedly violated by those who are oblivious to the ecological well-being of society, the significance of this legislative act cannot be understated.[74]

The environmental impact report, and the environmental consequences detailed therein, must be "regularly included in the decision-making process,"[75] so that the "highest priority [can] be given to environmental considerations."[76] The California Supreme Court has affirmed the role of CEQA in the decision-making process:

> The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind. CEQA does not, indeed cannot, guarantee that these decisions will always be those which favor environmental considerations. At the very least however, the People have a right to expect that those who

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> When a project is to be carried out or approved by two or more agencies, the determination of whether the project may have a significant effect on the environment shall be made by the lead agency and such agency shall prepare or cause to be prepared by contract, the environmental impact report for the project if such a report is required by this division.

See also 14 CAL. ADMIN. CODE §§ 16000-41 (1974). The determination of which agency is the lead agency is crucial in the situation where the project of one agency is discretionary, thus falling within the requirements of CEQA (CAL. PUB. RES. CODE § 21080), whereas the project of the other agency is ministerial, and hence *not* within the EIR requirements of CEQA.

73. People *ex rel.* Dep't of Public Works v. Bosio, 47 Cal. App. 3d 495, 121 Cal. Rptr. 375 (1975). *See also* No Oil, Inc. v. County of Los Angeles, 13 Cal. 3d 68, 79-80, 529 P.2d 66, 73, 118 Cal. Rptr. 34, 41 (1974).

74. Friends of Mammoth v. Board of Supervisors, 8 Cal. 3d 247, 254-55, 502 P.2d 1049, 1053, 104 Cal. Rptr. 761, 765 (1972).

75. *Id.* at 257. *See also* CAL. PUB. RES. CODE §§ 21000-01 (West Supp. 1975).

76. County of Inyo v. Yorty, 32 Cal. App. 3d 795, 804, 108 Cal. Rptr. 377 (1973).

> must decide will approach their task neutrally with no parochial interest at stake.[77]

Thus, it is clear that the adverse environmental consequences enumerated in the report must be given meaningful consideration by the decision-making agency, and that consideration must be consistent with the overriding mandate of CEQA to protect the environment:

> Only if such careful and balanced review precedes their [public agencies'] action can they assure that the inheritance of nature from man's yesterday is not subjected to the unintended abuse of today to the irreversible loss of tomorrow.[78]

When the EIR details adverse environmental consequences which can be mitigated, the agency must require implementation of the mitigating alternatives:

> Obviously if the adverse consequences to the environments can be mitigated, or if feasible alternatives are available, the proposed activity, such as the issuance of a permit, should not be approved.[79]

If the adverse environmental consequences cannot be mitigated by alteration of the project, then the decision-maker must consider the alternative of no project[80] and balance the benefits of the proposed project against its unavoidable environmental risks in determining whether to approve the project.[81] A failure to

77. Bozung v. Local Agency Formation Comm'n, 13 Cal. 3d 263, 283, 529 P.2d 1017, 118 Cal. Rptr. 249 (1975) (emphasis added).

78. County of Inyo v. Yorty, 32 Cal. App. 3d 795, 814, 108 Cal. Rptr. 377, 390 (1973).

79. Friends of Mammoth v. Board of Supervisors, 8 Cal. 3d 247, 263 n.8, 502 P.2d 1049, 1059 n.8, 104 Cal. Rptr. 761, 771 n.8 (1972). *See also* Burger v. County of Mendocino, 45 Cal. App. 3d 322, 326, 119 Cal. Rptr. 568, 570 (1975), where the EIR recommended that alteration of the project would mitigate the adverse environmental consequences. The court, in holding that the agency had not proceeded in the manner required by law, nullified the agency decision, which was to permit the development of the project as proposed rather than the recommended alternative.

80. Since the EIR must include a consideration of alternatives to the proposed project, including the alternative of no project, note 60 *supra*, and since the decision-makers must give meaningful consideration to the EIR, note 73 *supra* and accompanying text, it follows that the decision-maker must consider the alternative of no project.

81. San Francisco Ecology Center v. City & County of San Francisco, 48 Cal. App. 3d 584, 589, 122 Cal. Rptr. 100, 103 (1975). *See also* 14 CAL. ADMIN. CODE § 15012 (1975); CAL. PUB. RES. CODE § 21001(a) (West Supp. 1975).

employ this balancing analysis may be grounds for nullifying the administrative decision.[82]

If the EIR shows adverse archaeological consequences which can be feasibly mitigated, the decision-maker should require that such mitigation measures be taken. If, for example, proposed plans for the construction of a building can be altered so as to maintain the archaeological site in open space rather than beneath the building, then the agency should require such alteration. When an EIR details unavoidable adverse archaeological effects they must, as with all such effects, be balanced in the decision-making process. And, as with other environmental factors, a failure to so balance unavoidable adverse archaeological factors may result in the nullification of the administrative decision.

Additionally, CEQA requires that the agency solicit informed comment on the environmental effects of the proposed project from other agencies and individuals with particular expertise or concern.[83] In holding that a failure to respond to comments from experts and other agencies rendered the EIR fatally defective, the court in *People v. County of Kern*[84] stated:

> [W]here comments from responsible experts and sister agencies disclose new or conflicting data or opinions which cause concern that the agency may not have fully evaluated the project and its alternatives, these comments may not simply be ignored. *There must be a good faith, reasoned analysis in response.*[85]

Federal case law under NEPA also holds that the environmental impact statement must fully disclose the environmental effects and be given meaningful consideration in the agency decision-making process.[86] In the leading federal case, *Calvert*

82. San Francisco Ecology Center v. City & County of San Francisco, 48 Cal. App. 3d 584, 589, 122 Cal. Rptr. 100, 103 (1975), *citing* Burger v. County of Mendocino, 45 Cal. App. 3d 322, 326, 119 Cal. Rptr. 568, 570 (1975); Friends of Mammoth v. Board of Supervisors, 8 Cal. 3d 247, 263 n.8, 502 P.2d 1049, 1059 n.8, 104 Cal. Rptr. 761, 771 n.8 (1972). *See also* Robie, *California's Environmental Quality Act: A Substantive Right to a Better Environment?* 49 L.A.B. BULL. 17, 42-43 (1973).

83. 14 CAL. ADMIN. CODE §§ 15085(d), 15161. *See also* People v. County of Kern, 39 Cal. App. 3d 830, 841-42, 115 Cal. Rptr. 67, 74-75 (1974).

84. 39 Cal. App. 3d 830, 115 Cal. Rptr. 67 (1974).

85. *Id.* at 842, 115 Cal. Rptr. at 75, *quoting* Silva v. Lynn, 482 F.2d 1282, 1285 (1st Cir. 1973).

86. Zabel v. Tabb, 430 F.2d 199, 211-13 (5th Cir. 1970); Ely v. Verde, 451 F.2d 1130,

Cliffs Coordinating Committee v. United States Atomic Energy Commission,[87] the court held that:

> NEPA, first of all, makes environmental protection a part of the mandate of every federal agency and department.
>
> . . . .
>
> NEPA mandates a rather finely tuned and systematic balancing analysis in each instance.
>
> . . . .
>
> NEPA mandates a particular sort of careful and informed decision-making process and creates judicially enforceable duties.[88]

In *Environmental Defense Fund, Inc. v. Corps of Engineers (Gilham Dam)*,[89] the circuit court stated,

> NEPA was intended to effect substantive changes in decision-making.
>
> . . . .
>
> The unequivocal intent of NEPA is to require agencies to consider and give effect to the environmental goals set forth in the Act, not just to file detailed impact studies which will fill governmental archives.[90]

And finally, in another leading federal case, *Committee to Stop Route 7 v. Volpe*,[91] the court stated:

> The whole point of NEPA is that certain careful considerations respecting the environment are to be weighed *before* federal decision-making occurs.
>
> . . . .
>
> It [NEPA] also requires an agency decision, informed as to all pertinent environmental factors, as to whether or not a major federal

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1138 (4th Cir. 1971); National Helium v. Morton, 455 F.2d 650, 656 (10th Cir. 1971); Natural Res. Defense Council, Inc. v. Morton, 458 F.2d 827, 836 (D.C. Cir. 1972); Scherr v. Volpe, 466 F.2d 1027, 1033-34 (7th Cir. 1972); Environmental Defense Fund, Inc. v. T.V.A. (Tellico Dam), 468 F.2d 1164, 1174 (6th Cir. 1972); Committee for Nuclear Respons. v. Seaborg, 463 F.2d 783, 787 (D.C. Cir. 1972), *aff'g* 339 F. Supp. 806 (E.D. Tenn. 1972); Silva v. Lynn, 482 F.2d 1282, 1284-85 (1st Cir. 1973); Cape Henry Bird Club v. Laird, 359 F. Supp. 404, 414-20 (W.D. Va. 1973).

87. 449 F. 2d 1109 (D.C. Cir. 1971).

88. *Id.* at 1112-13, 1115.

89. 470 F.2d 289 (8th Cir. 1972), *cert. denied*, 412 U.S. 931 (1973).

90. *Id.* at 297-98.

91. 346 F. Supp. 731 (D.C. Cir. 1972).

action should be taken at all.[92]

NEPA, too, requires the informed comment of outside agencies and individuals with special expertise or concern.[93]

Since the EIR must contain, and the public agency must consider, the informed comment of citizens on the proposed project, citizen participation in agency decision-making is crucial. Thus, citizen groups with special interests in archaeological sites can protect those sites, or at least be assured that meaningful consideration is given to preserving the sites, by participating in public hearings, reading environmental impact reports and attending meetings of local boards, agencies and commissions.

V. JUDICIAL REVIEW

CEQA provides for judicial review of the decision or determination of a public agency.[94] Where the agency decision was the result of a proceeding in which by law a hearing was required, an action or proceeding for noncompliance with the provisions of CEQA must be brought according to California Code of Civil Procedure section 1094.5.[95] The evidence is required to be taken in the public hearing,[96] and in review of the agency decision the court must inquire into whether there was a prejudicial abuse of discretion.[97] A prejudicial abuse of discretion is established if the agency has not proceeded in the manner required by law, or if the decision or determination is not supported by the findings or the findings are not supported by the evidence.[98] CEQA expressly

92. *Id.* at 736, 738 (emphasis added).

93. Environmental Defense Fund, Inc. v. Corps of Engineers (Tennessee-Tombigbee), 348 F. Supp. 916, 933 (N.D. Miss. 1972); Natural Res. Defense Council, Inc. v. Morton, 458 F.2d 827, 836 (D.C. Cir. 1972); Environmental Defense Fund, Inc. v. T.V.A. (Tellico Dam), 339 F. Supp. 806, 810 (E.D. Tenn. 1972), *aff'd* 468 F.2d 1164 (6th Cir. 1972).

94. CAL. PUB. RES. CODE §§ 21168, 21168.5, 21168.7 (West Supp. 1975). Failure by members of the public to exhaust administrative remedies will rarely be a bar to judicial remedies under CEQA. Environmental Law Fund, Inc. v. Town of Corte Madera, 49 Cal. App. 3d 105, 114, 122 Cal. Rptr. 282 (1975).

95. CAL. PUB. RES. CODE § 21168 (West Supp. 1975).

96. CAL. CODE CIV. PROC. § 1094.5(a) (West Supp. 1975); CAL. PUB. RES. CODE § 21168 (West Supp. 1975). This requirement underscores the importance of citizen participation in the agency decision-making process. To be considered in the judicial review of the agency decision, any evidence must have been introduced at the public hearing. Members of the public can and should attend such hearings and be prepared to provide meaningful input. Additionally, interested citizens should insure that there is an adequate record of the public hearing prepared, inasmuch as judicial review is limited to the evidence there presented.

97. CAL. CODE CIV. PROC. § 1094.5(b) (West Supp. 1975).

98. *Id.*

prohibits the court from exercising its independent judgment on the evidence.[99]

In the absence of a required public hearing, in any action or proceeding to attack, review, set aside, void or annul the agency decision the inquiry can extend to whether there was a prejudicial abuse of discretion.[100] Here an abuse of discretion can be established if the agency has not proceeded in the manner required by law or if the agency decision is not supported by substantial evidence.[101] The court is not limited to review of the administrative record, but may receive additional evidence.[102]

The cases under the California Environmental Quality Act fall largely into two categories: (1) those in which the agency did not proceed in the manner required by law; and (2) those in which the agency decision was not supported by substantial evidence. In the former category of cases, the court will determine whether the statutory requirements of CEQA have been complied with; inquiry will include, for example, whether an EIR has been properly prepared, circulated and considered by the responsible agency. In the latter category of cases the courts will examine the adequacy and sufficiency of the environmental impact report[103]

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99. In Strumsky v. San Diego County Employees Retirement Ass'n, 11 Cal. 3d 28, 520 P.2d 29, 112 Cal. Rptr. 805 (1974), the California Supreme Court enunciated the rule for review of agency decisions:

> If the order or decision of the agency substantially affects a fundamental vested right, the trial court, in determining . . . whether there has been an abuse of discretion, . . . must exercise its independent judgment on the evidence and find an abuse of discretion if the findings are not supported by the weight of the evidence.

Id. at 32.

In California Public Resources Code section 21168, the Legislature has precluded the use of the independent judgment test in cases arising under CEQA. The constitutionality of this preclusion has been questioned. *See, e.g.*, Friends of Lake Arrowhead v. Board of Supervisors, 38 Cal. App. 3d 497, 113 Cal. Rptr. 539, (1974), where the court stated:

> We, therefore, need not consider the intriguing question whether the Legislature could nevertheless validly prescribe the substantial evidence scope of review as it has done in sections 21168 and 21168.5.

Id. at 518 n.18, 113 Cal. Rptr. at 553 n.18. *See also* San Francisco Ecology Center v. City & County of San Francisco, 48 Cal. App. 3d 584, 592-93, 122 Cal. Rptr. 100, 105 (1975).

100. CAL. PUB. RES. CODE § 21168.5 (West Supp. 1975).

101. *Id.*

102. Felt v. Waughop, 193 Cal. 498, 504, 225 P. 862, 867 (1924); Lassen v. City of Alameda, 150 Cal. App. 2d 44, 48, 309 P.2d 520, 523 (1957).

103. Environmental Defense Fund, Inc. v. Coastside Water Dist., 27 Cal. App. 3d 695, 705, 104 Cal. Rptr. 197, 202 (1972).

and the basis, provided by that report, for the agency decision.[104]

The importance of public participation in the processes mandated by CEQA and the applicability of CEQA to preserving archaeological sites are underscored by two recent examples. In the town of Danville, in Contra Costa County, the planning agency required the alteration of a proposed development plan where such alteration would preserve archaeological sites on the property. The alteration involved relocating the proposed building to another portion of the lot, thereby avoiding disruption of the archaeological site, even though the archaeological sites were only discovered *after* the preparation of the EIR.[105]

In Orange County, aboriginal Indian remains and artifacts were discovered at a high school construction site. Although no EIR had been prepared, a preliminary phase of project construction had begun. Suit was brought and, because the school site includes a prehistoric archaeological site containing remains, artifacts and other cultural materials, the defendants have been permanently enjoined pending the preparation, review, circulation and approval of an EIR in accordance with CEQA.[106]

CONCLUSION

In preserving archaeological sites, it is clear that the political and the judicial processes play a determinative role. Once it is ascertained that a project will have a significant effect on an archaeological site and that therefore an EIR is required for that project, then before the public agency approves or disapproves the project, the EIR must be given meaningful consideration. If the adverse consequences of the project can be mitigated the project must be altered. If the EIR does not adequately support the decision of the public agency or if the agency has not proceeded in the manner required by law, the court may find that the agency decision was a prejudicial abuse of discretion.

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104. San Francisco Ecology Center v. City & County of San Francisco, 48 Cal. App. 3d 584, 594, 122 Cal. Rptr. 100, 106 (1975); *cf.* Concerned Citizens of Palm Desert, Inc. v. Board of Supervisors, 38 Cal. App. 3d 272, 288, 113 Cal. Rptr. 338, 349 (1974); Friends of Lake Arrowhead v. Board of Supervisors, 38 Cal. App. 3d 497, 516, 113 Cal. Rptr. 539, 551 (1974).

105. Telephone conversation with an official at the Contra Costa County Planning Agency, Oct. 22, 1975.

106. People v. Huntington Beach Union High School, No. 231647 (Super. Ct., Orange County, Aug. 14, 1975).