



AB 52: A CEQA Guidelines Update for Tribal Cultural Resources

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July 7, 2016



AB 52 Presentation Overview

- Context
- Brief Summary
- Definition of Tribal Cultural Resources
- Notice and Timing
- Mitigation Measures
- AB 52 Implementation Timelines
- Consultation Process Explained
- Agency Requirements
- Discussion Questions and Contact Info



AB 52 in Context: Predecessors

- SB 18 (Burton, 2004)
 - Local Governments must Contact and Consult with California Native American Tribes (Tribes)
 - prior to amendment or adoption of General Plan, Specific Plan, or designation of Open Space.
- Gov. Brown Executive Order B-10-11 (2011)
 - Established the Governor's Tribal Advisor
 - Established Administration Policy to encourage State Agencies to Communicate and Consult with California Indian Tribes



AB 52 in brief: Include Tribal Cultural Resources in CEQA

- Establishes a consultation process with all California Native American Tribes on the Native American Heritage Commission List
- New class of resources: Tribal Cultural Resources
 - Consideration of Tribal Cultural Values in determination of project impacts and mitigation
 - Required Tribal notice and meaningful consultation
- PRC 21080.3.2(b) Consultation ends when either
 - Parties agree to MMs or avoid a significant effect on TCR
 - A party, acting in **good faith** and after **reasonable effort** concludes that mutual agreement cannot be reached



Definition of a Tribal Cultural Resource

- A Tribal Cultural Resource is:
 - A site feature, place, cultural landscape, sacred place or object, which is of cultural value to a Tribe
 - AND is either: On or eligible for the CA Historic Register or a local historic register,
 - OR the lead agency, at its discretion, chooses to treat the resource as a TCR
 - Apply historic register criteria AND take into account value of the resource to the Tribe
 - See: PRC 21074 (a)(1)(A)-(B)
 - Importance of Tribal Knowledge



Notice and Timing

- Tribe requests to be on the Agency's Notice List
- Within 14 days of a decision to undertake a project or determination that a project application is complete, lead agency shall provide written notification to the tribes that requested placement on notice list
- Notice to Tribes shall include brief project description, location, lead agency contact info., and statement that Tribe has 30 days to request consultation
- Lead agency shall begin the consultation process within 30 days of receiving Tribe's request for consultation



Mitigation Measures

- Public agencies shall, when feasible, avoid damaging effects to TCR.
- Consultation at Tribal request
- Mitigation measures agreed upon during consultation shall be recommended for inclusion in environmental document /MMRP
- Examples of mitigation measures include:
 - Avoidance and preservation of the resources in place
 - Treating resource with culturally appropriate dignity
 - Permanent conservation easements
 - Protecting the resource



AB 52 Implementation Timelines

- Law went into effect on July 1, 2015.
 - After July 1, 2015, if requested by a California Native American Tribe, lead agencies must begin consultation prior to the release of a ND, MND or DEIR.
 - CEQA Guidelines update to Appendix G must be drafted by OPR, and adopted by Resources Agency
 - NAHC must create lead agency contact list for Tribal Governments



OPR Requirements

OPR shall develop, & Resources shall adopt, revisions to Appendix G of the CEQA Guidelines to:

- a) Separate the consideration of paleontological resources from Tribal Cultural Resources and update the relevant sample questions; and
- b) Add consideration of Tribal Cultural Resources with relevant sample questions.



OPR's Process

- Informal Outreach and Listening
- Workshops around the State
- Extensive Technical Assistance
- Development of free tools: flow chart, technical advisory, template letter, training videos
- Collaboration with NAHC and CNRA
- Release of 3 options for public comment
- OPR transmitted proposed package to CNRA in January
- Sign up on CEQA Guidelines Listserve at www.opr.ca.gov for updates



CNRA Process

- Natural Resources Agency has its own administrative process for adoption of changes to the CEQA Guidelines- CA Administrative Procedures Act
- Regular and Sufficiently Related changes complete (45-15-Final)
- Currently reviewing comments, Appendix G update expected in July.
- Current language available at:
<http://resources.ca.gov/ceqa/>



Proposed App. G Language

Procedural Reminder for Consultation- At the beginning of the Environmental Checklist Form in Appendix G: general description of the proposed project

- 11. Have California Native American Tribes traditionally and culturally affiliated with the project area requested consultation pursuant to Public Resources Code section 21080.3.1? If so, has consultation begun?
- Note: Conducting consultation early in the CEQA process allows tribal governments, public lead agencies, and project proponents to discuss the level of environmental review, identify and address potential adverse impacts to tribal cultural resources, and to reduce the potential for delay and conflict in the environmental review process. Information is also available from the Native American Heritage Commission's Sacred Lands File per Public Resources Code section 5097.94 and the California Historical Resources Information System administered by the California Office of Historic Preservation. Please also note that Public Resources Code section 21082.3(c) contains provisions specific to confidentiality.



Current App. G Language

XVII. TRIBAL CULTURAL RESOURCES

a) Would the project cause a substantial adverse change in the significance of a Tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American Tribe, and that is:

Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k), or

A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code Section 5024.1 for the purposes of this paragraph, the lead agency shall consider the significance of the resource to a California Native American tribe.



Discussion Questions

- Is further guidance needed?
- Where are there points of confusion?
- Examples of consultation processes have gone well?
- Use of AB 52 and SB 18 together?
- Use of AB 52 and Section 106 together?
- Other Tribal and Local Government collaboration?
- Creative mitigation measures?



Keep in touch

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