Comment 1-6

FW: Blue Lake Tribe comments to Resources Agency re: AB 52 draft Appendix G

Holly Roberson [Holly.Roberson@OPR.CA.GOV]
Sent: Monday, April 04, 2016 4:12 PM
To: Baugh, Heather@CNRA; CEQA Guidelines@CNRA
Cc: Christopher Calfee [Christopher.Calfee@opr.ca.gov]
Attachments: AB 52 App G comments Blue ~1.pdf (611 KB)

Just making sure this gets in the file.

From: Janet Eidsness [mailto:JEidsness@bluelakerancheria-nsn.gov]
Sent: Tuesday, March 29, 2016 12:38 PM
To: heather.baugh@RESOURCES.CA.GOV; Holly Roberson
Cc: Adrian Praetzellis (adrian.praetzellis@sonoma.edu); shpo@parks.ca.gov; nahc@nahc.ca.gov; nwic@sonoma.edu; Allison, Eric@Parks (Eric.Allison@parks.ca.gov); Anmarie Medin (Anmarie.Medin@parks.ca.gov); katy.sanchez@nahc.ca.gov; Janet Eidsness (jpeidsness@yahoo.com)
Subject: Blue Lake Tribe comments to Resources Agency re: AB 52 draft Appendix G

All,

Please see attached comment letter sent in the spirit of government-to-government consultation. I will not be attending the tribal consultation meeting hosted by the Resources Agency in Sacramento on April 4th, which is the deadline for these comments.

Best regards,

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March 29, 2016

Heather Baugh, Assistant General Counsel
California Natural Resources Agency
Via email to Heather.Baugh@resources.ca.gov

Re: Blue Lake Rancheria THPO comments on (AB 52) draft Appendix G, Natural Resources Agency

Dear Heather:

This letter follows up on my comments and discussion with you by telephone on 3/25/16.

The ancestral homeland and culturally affiliated area for the Blue Lake Rancheria (Tribe) has been mapped to include the Wiyot ethnographic territory (see map). It encompasses the greater Humboldt Bay area, cities of Eureka, Arcata, McKinleyville and Blue Lake, and is the largest population center in Humboldt County and north coastal California. Consequently, the Tribe consults on numerous CEQA projects with various local lead agencies to identify and protect the newly defined (Wiyot) Tribal Cultural Resources (TCR) pursuant to AB 52.

A CEQA Guidelines update of Appendix G (Chapter 3 of Div 6 of Ch 4 of the CCR) is among the requirements of AB 52 and must be in place by July 1, 2016. Presently, the California Natural Resources Agency (CNRA) requests tribal and stakeholder review and comment on the subject, due no later than April 4, 2016. The "Proposed Language for Tribal cultural resources update to Appendix G" (CNRA 2/9/16, online at http://resources.ca.gov/ceqa) builds on the work of the Governor's Office of Planning and Research (OPR) and takes into consideration comments received from tribes and others parties by OPR and CNRA to-date.

Notably, this "Proposed Language..." suggests adding a statement regarding tribal consultation to the beginning of Appendix G under EVALUATION OF ENVIRONMENTAL IMPACTS, "which provides guidance on completing the checklist and environmental analysis," which states in the last sentence:

> 10. Tribal consultation ... Prior to beginning consultation, lead agencies may request information from the Native American Heritage Commission [NAHC] regarding its Sacred Lands File [SLF] ... as well as the California Historical Resources Information System [CHRIS] administered by the California Office of Historic Preservation [COHP].

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My concerns focus on the CHRIS and NAHC response letters that a CEQA lead agency may request and obtain comments on, their confidentiality under law, how such information may be misinterpreted by a lead agency, and the need for tribal access to the confidential information provided by such responses. 1.6-1

My comments here are directed to provide insights to the CNRA and OPR legal staff as the parties responsible for meeting the statutory requirements of AB 52. Most importantly, these comments are a call to action to the NAHC (for SLF) and to the COHP (for CHRIS). While the COHP may not have statutory requirements under AB 52, my comments are important to its operational efficiency and best practices of CHRIS where AB 52 and the CHRIS intersect.

I have 40 years experience working at a deep level with the CHRIS and SLF, as a cultural resource consultant with emphasis on working with California Indian communities. I have a long view and considerable institutional knowledge of these databases, generally how they were compiled, and how lead agencies sometimes misinterpret the information received. I currently serve as the Tribal Historic Preservation Officer (THPO) for the Blue Lake Rancheria, and have been authorized by the Tribal Council to comment on their behalf.

1. I recommend the above cited introductory language be adopted in its entirety. I have some serious reservations, however, I will try to explain here how the seemingly simple suggestion (lead agencies request information about the SLF and the CHRIS) may be misinterpreted and misused.

CHRIS: NON-CONFIDENTIAL SUMMARY SEARCHES, AGREEMENTS WITH LEAD AGENCIES, TRIBAL ACCESS

2. CHRIS information may be obtained by CEQA lead agencies under a fairly standard "Memorandum of Agreement (MOA) for the jurisdiction's Project Review Program" (cf. Humboldt County and City of Arcata MOAs with NWIC; Bryan Much, NWIC Coordinator pers. Comm.. 3/24/16). Most CEQA lead agencies do not have staff that qualify for *access to confidential data* (archaeological site locations) as defined by the CHRIS (Information Center Rules of Operation, or ICROM, Section III A B, on OHP website). Consequently, lead agencies receive *non-confidential summary search responses* (per ICROM, Section III F) (Eric Allison, CHRIS Coordinator at OHP, pers. Comm. 3/25/16). 1.6-2

There are no set written standards for what is contained in the *non-confidential summary search responses* to lead agencies (Eric Allison, pers. Comm.. 3/25/16). They do NOT contain all the information that is cited in the NAHC's Template Letter "California Native American Tribe to Lead Agency requesting consultation" (see Section IV Bibliography, C, 1,

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pp. 22-23 of CNRA 2/9/16 statement of reasons...). They DO NOT contain copies of any confidential cultural resources records and study reports pertaining to archaeological sites or TCR. They do include file reference numbers (trinomials for recorded sites; report S-numbers for formal reports). The responses do generally include: (1) listing of cultural resources recorded on or adjacent to the Area of Potential Effects (APE); (2) listing of formal cultural resources reports for the APE (some survey reports dating back 10-20-30-40 years and not meeting today's standards for identification); (3) IC staff predictions of unrecorded archaeological cultural resources sensitivity of the APE; and (4) a statement either recommending or not recommending a cultural resources identification study be conducted. The response letters may comment on the nature of the known information – whether a survey that covered thousands of acres and was completed in one week's time (cf. Benson 1977), was "complete" or adequate for purposes of the current CEQA review; but this may and has often been missed by non-expert lead agency planners in my area.

The worst case scenario I've experienced first-hand is that lead agencies believe they've met the record search requirements by simply asking and receiving a response from an IC. Importantly, most lack staff with sufficient background to interpret what the responses really mean. Negative site findings for an APE may be assumed by lead agency staff to mean there are no resources present; whereas, it may in fact indicate no surveys have ever been conducted or located sites recorded. Also commonly misinterpreted by planners is that older surveys were adequate for the purposes of the identifying archaeological sites for the current CEQA project under review.

3. My suggestion is that AB 52 consulting tribes request from lead agencies the responses to the *non-confidential summary searches*, and then turn to the issuing IC to request the confidential information be sent to the tribal contact (e.g., THPO). This would provide an opportunity for checks and balances between individual tribal cultural resources databases (which vary greatly in scope, technology and being current or not) and the CHRIS system that is the mother of all cultural resources databases for the state (evolving and accruing data since the 1950s or earlier). 1.6-1

4. Further, this will head off any potential conflicts where a project applicant has hired a professional consultant, who conducts a confidential CHRIS records search on his/her client's dime, and is asked by the tribe for copies of said records and reports. Such a tribal request and handing over confidential documents by the consultant is a violation of the CHRIS access policy (ICROM Section III). Of course, entering into AB 52 government-to-government consultation about a TCR in a project area will likely disclose lots of confidential information shared among the tribe, the lead agency, the applicant and his/her consultant, for the tribe to make its case and lead agency to make an informed decision. This highlights the need to get confidentiality protocols 1.6-2

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in place among this group of key players to the CEQA review (clearly, these are NOT the public); and the extra care needed to not disclose confidential information to the general public, but give them enough to feel a fair decision can be reached. 1.6-3

5. For the above to be most effective, OHP's on-going effort to establish written standards for Tribal Access to the CHRIS (see http://www.ohp.parks.ca.gov/?page_id=28036) needs to take this circumstance into account. 1.6-4

6. As a possible model, I will file the confidential access agreement form with the NWIC (for Humboldt County), naming myself as the qualified person for the Tribe; standing MOAs between the City of Arcata and Humboldt County with NWIC will be attached; and the package copied to these two CEQA lead agencies. I will request in writing that these lead agencies provide me with a copy of the non-confidential summary searches, and after checking tribal database may then request the confidential information be provided by NWIC to me, at no cost (assume PDF files). With these data in hand, I can then double back and verify the tribal database and the IC records, and analyze for myself the potential or known TCR sensitivity and basis for requesting a cultural resources identification study be conducted for any particular CEQA review (taking into account the anticipated depth and area of ground disturbance, and record of prior disturbance). 1.6-5

7. Also, CHRIS is encouraged to standardize these non-confidential summary response letters, especially with an eye to educating and explaining what the information reveals and in really clear language non-technical planners can understand. Full report citations are requested. 1.6-6

NAHC RESPONSES TO SACRED LANDS FILE SEARCHES, UPDATING CONTACTS, TRIBAL ACCESS

8. The NAHC needs to dedicate staff and e-data systems to maintain, update and access the SLF, while maintaining the integrity and confidentiality of the database. With only ca. 2000 SLF listings to-date (Katie Sanchez, NAHC, pers. Comm. 3/25/16), this is a very incomplete database of the potential number of actual sacred sites in the state. Given the SLF maintained by the NAHC was established by legislation in _1976?, the SLF has not been well received or supported by the wider tribal community for a variety of reasons. From my 40 years working with tribes, I would say concern for maintaining confidentiality of computerized information is a top concern. I would anticipate that with AB 52, tribes may find it prudent to submit SLF forms to the NAHC to help facilitate protection through consultation (existing lists of potential TRC may be supportive). Since many of the NAHC SLF search 1.6-7

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responses are negative, and most sacred sites are not (yet?) listed there, it is imperative that the NAHC inform the requesters about what a 'negative' response means. As of 3/25/16, there is no reference to the SLF on the NAHC website, nor posting of forms for SLF submittals or a requested SLF search.

9. With AB 52 Appendix G coming on line soon, NAHC policies for maintaining and updating the SLF need to be vetted and put in place, especially with regard to contacts listed on individual SLF filings and tribal access to SLF records on file for their own ancestral lands. Of the hundreds of SLF search requests I've made throughout my career as a consultant, only two NAHC responses were positive "hits." For these, the NAHC recommended I contact the person listed on the SLF form; in both cases, the individuals were deceased. Further, as a THPO I was told that I could not request a search for the Blue Lake Rancheria mapped area of concern for TCR; I could only request copies of filings the Tribe had made in the past (Katie Sanchez, NAHC, pers. Comm.. 3/25/16). Currently, there is no NAHC policy about who can submit a SLF listing, and this needs to be addressed (tribes and individuals?); in the early years of the SLF, I understand most were submitted by individuals. 1-6.8

Sincerely,

Janet P. Eidsness

Janet P. Eidsness, THPO
Blue Lake Rancheria

Attachment: Blue Lake Rancheria's mapped area of concern

Cc: (by email)
Holly Roberson, Governor's Office of Planning & Research
Adrian Praetzellis, SHRC and Information Center Procedural Advisory Committee (ICPAC)
Cynthia Gomez, Executive Secretary NAHC
Julianne Polanco, California SHPO
Bryan Much, NWIC Coordinator
Eric Allison, CHRIS OHP Coordinator
THPO Advisory Committee on OHP CHRIS Tribal Access Policy, c/o E. Allison
Anmarie Medin, OHP Tribal Liaison
Katie Sanchez, NAHC staff
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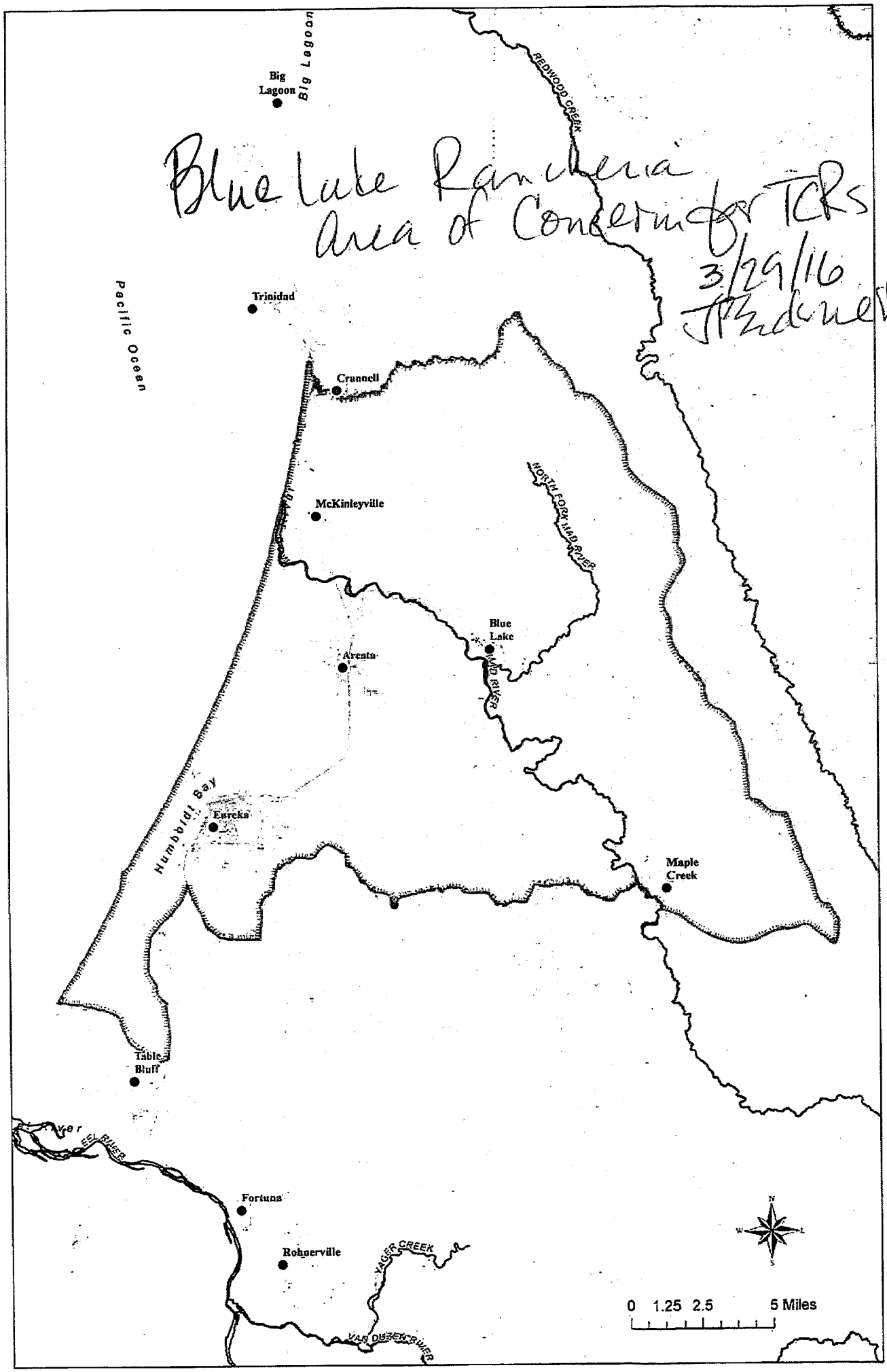
REFERENCES

California Natural Resources Agency (CNRA)
2016 Initial Statement of Reasons for Regulatory Action...Implementing AB 52 Regarding Tribal Cultural Resources. Dated 2/9/16



Blue Lake Rancheria
Area of Concern for TCRs
3/29/16
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