

Comment 1-4

Comments on the NOP Rulemaking Amending Guidelines Implementing the CEQA to Include Conserationof Impacts to Tribal Cultural Resources

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To: CEQA Guidelines@CNRA

Attachments: Final Letter_CA Natural Re~1.pdf (2 MB)

Attached is the comment letter for CA Natural Resources Agency-Tribal Cultural Resources

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THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

April 1, 2016

Submitted electronically

Heather Baugh
California Natural Resource Agency
1416 Ninth Street
Sacramento, CA 95814
CEQA.Guidelines@resources.ca.gov

Dear Ms. Baugh:

Comments on the Notice of Proposed
Rulemaking Amending Guidelines Implementing the California
Environmental Quality Act to Include Consideration of Impacts to Tribal Cultural Resources

The Metropolitan Water District of Southern California (Metropolitan) reviewed the proposed amendments in language for the tribal cultural resources update to Appendix G of the CEQA Guidelines. The passage of Assembly Bill 52 established a new category of resources under the California Environmental Quality Act (CEQA) called "tribal cultural resources" that considers tribal cultural values in addition to the scientific and archaeological values when determining impacts and mitigation. As such, the Office of Planning and Research (OPR) has transmitted proposed changes to Appendix G of the CEQA Guidelines to the California Natural Resource Agency for additional public comment on the proposed rulemaking.

Metropolitan is a public agency and regional water wholesaler. It is comprised of 26 member public agencies serving approximately 19 million people in portions of six counties in Southern California, including Los Angeles, Ventura, Orange, Riverside, San Bernardino, and San Diego Counties. Metropolitan's primary sources of imported water come from the California State Water Project (SWP) and from the Colorado River via the Colorado River Aqueduct (CRA). Metropolitan's mission is to provide its 5,200 square mile service area with adequate and reliable supplies of high-quality water to meet present and future needs in an environmentally and economically responsible way.

Metropolitan appreciates the opportunity to remain engaged in the updates to Appendix G of the CEQA Guidelines and offers the following comments in response to the February 19, 2016 solicitation for feedback:

Amendment of Appendix G section on Evaluation of Environmental Impacts

It is unnecessary and inappropriate to add a discussion of tribal consultation to the Evaluation of Environmental Impacts section of Appendix G. The addition of a statement regarding tribal consultation to the beginning of Appendix G under the Evaluation of Environmental Impacts heading provides an undue emphasis on tribal cultural resources when no other CEQA impact category is afforded any guidance or discussion in this section. For example, no guidance is provided in the Evaluation of Environmental Impacts section for information that may inform a lead agency on determining the significance of Biological Resources, Greenhouse Gas Emissions, Hazards and Hazardous Materials, or Transportation/Traffic, even though information or guidance on those topics is available. 1.4-1

The rationale provided in the Initial Statement of Reasons Section III(A) that the inclusion of the detailed requirements on tribal consultation is because some planners tend to rely on the Appendix G checklist, rather than look to the Public Resources Code is conclusory and speculative. The Office of Planning Research and the California Natural Resource Agency should not assume that professional planners are not capable of or do not already review and interpret both the Code and Guidelines, as well as multiple other source authorities.

For the reasons cited above, Metropolitan recommends that the Natural Resource Agency not add a statement regarding tribal consultation to the beginning of Appendix G under the Evaluation of Environmental Impacts section.

Proposed Amendments to Section V(d)

While Metropolitan supports the change in language to describe cemeteries as “dedicated” instead of “formal,” this proposal is outside the scope of Assembly Bill 52, and therefore should not be amended as part of the incorporation of tribal cultural resources into Appendix G. It may be appropriate to include in a separate, general update of the guidelines. 1.4-2

Addition of Section V(e)

As proposed, Section V(e) inserts text from Section 21074 of the Public Resources Codes into the Appendix G checklist in a manner that is inconsistent with how other cultural resource categories are treated. For example, the definitions of archaeological and historical resources are not provided, only citations to the respective code sections. Additionally, the listing of examples of potential types of tribal cultural resources as described in Section V(e)(1) is not comprehensive. Providing examples gives weight to those listed at the expense of those that are undefined. Metropolitan recommends citing the relevant sections of code in keeping with the 1.4-3

format and style of the existing questions in the Cultural Resources section instead of providing examples.

Recommended Amendments to Section V

Metropolitan recommends the following amendments to Section V of Appendix G:

V. CULTURAL RESOURCES

Would the project:

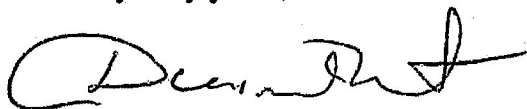
- a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?
- b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5?
- c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?
- d) Disturb any human remains, including those interred outside of formal cemeteries?
- e) Cause a substantial adverse change in the significance of a tribal cultural resource defined in Public Resources Code section 21074 ~~as either?~~
 - 1) ~~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, that is listed or eligible for listing on the California Register of Historical Resources, or on a local register of historical resources as defined in Public Resources Code section 5020.1(k), or~~
 - 2) ~~a resource determined by a lead agency, in its discretion and supported by substantial evidence, to be significant according to the historical register criteria in Public Resource Code section 5024.1(e), and considering the significance of the resource to the California Native American tribe.~~

For the foregoing reasons, Metropolitan recommends that no amendments to the Evaluation of Environmental Impacts section occur, the amendment from dedicated to formal cemeteries not take place as part of the incorporation of tribal cultural resources into Appendix G, and the incorporation of tribal cultural resources be consistent with the current format of Appendix G.

Ms. Baugh
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Metropolitan appreciates this opportunity to provide input to your process and welcomes further opportunity to continue to engage in this process. If you have any questions on the comments contained in this letter, please contact Ms. Michelle Morrison at (213) 217-7906.

Very truly yours,



Deirdre West
Manager, Environmental Planning Team

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