Comment 1-3

Santa Barbara County Planning Department Director Comments on Draft Appendix G Checklist for AB52

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To: CEQA Guidelines@CNRA
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I began my analysis of the draft checklist for Cultural Resources V (d) and (e) by printing out every code section listed in the draft checklist and every code section referenced in the listed sections. Of course, every code section relevant to the issue of the definition and determination of Tribal Cultural Resources (Section e) is listed or referenced, so you are not missing any code sections. Here are my comments:

Section d- (Disturb and human remains....)- I have no comments. It seems fine.

Section e- (1) and (2)- (tribal cultural resources)- I see the potential for some confusion between #1 and #2. In fact, we saw juts the type of confusion that I am thinking about at the recent SCA Annual Meeting session on AB 52. #1 focuses on listing or eligibility for listing in the California Register of Historical Resources. #2 focuses on PRC 5024.1 (c), which lists criteria for listing in the California Register of Historical Resources. Some practitioners will see this as redundant and wonder what the real difference is between #1 and #2, given that they are both about the California Register. Perhaps the real difference is that #1 refers to the formal process of listing or determining eligibility for listing and #2 refers to the less formal process of local agency discretion (i.e. judgment in the absence of a formal listing or eligibility determination).

A contributor to potential confusion is the lead in that states ".....a tribal cultural resource defined in Public Resources Code section 21074 as *either*:" This sets up the expectation of a binary definition and I am not so sure that 21074 defines tribal cultural resources as "either" in the way that the draft checklist does. 21074 defines tribal cultural resources as a series of different things, including unique and non-unique archaeological resources, which I am not sure are adequately referenced in the current draft checklist. Should they be? Perhaps this "unique" vs. "non-unique" distinction is really out of date and should not be explicitly referenced. I know that I basically ignore the distinction between "unique" and "non-unique" archaeological resources when making significance determinations. But they are explicitly referenced in the 21074 definitions. 1-3.1 1-3.2

I understand that this is very tricky given all the various relevant code sections that are referenced in 21074 that are al slightly different. I will now try my best to make a suggestion, which is based on what I think the real difference is between #1 and #2. I like simplicity, so I think there should not be a #1 and a #2. Try this out:

e) Cause a substantial adverse change in the significance of a tribal cultural resource as defined in Public Resources Code section 21074. A tribal cultural resource must be listed or eligible for listing in the California Register of Historical Resources, included in a local register of historical resources as defined in subdivision (k) of Public Resources Code Section 5020.1 or, based on the discretion of a lead agency and supported by substantial evidence, is (would be?) eligible for listing in the California Register of Historical Resources considering the significance of the resource to a California Native American tribe.

Here is a slightly different version:

e) Cause a substantial adverse change in the significance of a tribal cultural resource as defined in Public Resources Code section 21074. A tribal cultural resource must be listed or eligible for listing in the California Register of Historical Resources, included in a local register of historical resources as defined in subdivision (k) of Public Resources Code Section 5020.1 or, based on the discretion of a lead agency supported by substantial evidence, and considering the significance of the resource to a California Native American tribe, is a tribal 1-3.3

cultural resource as defined in Public Resources Code section 21074.

I hope this helps. See you all soon!

Glenn

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