

Comment 2-6

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## Comments from the Agua Caliente Band of Cahuilla Indians

Barragan, Leslie (TRBL) [lbarragan@aguacaliente.n...

To: [CEQA Guidelines@CNRA](mailto:CEQA.Guidelines@CNRA)

Attachments: [ACBCI's Comments re Propos~1.pdf \(1 MB\)](#) [Open as Web Page]

Monday, June 20, 2016 5:03 PM

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To Whom It May Concern:

Attached please find comments from the Agua Caliente Band of Cahuilla Indians regarding the proposed revisions to Appendix G of CEQA Guidelines.

Thank you,

Leslie Barragan-Scott  
Legal Secretary  
Agua Caliente Band of Cahuilla Indians  
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# AGUA CALIENTE BAND OF CAHUILLA INDIANS



LEGAL DEPARTMENT

*Please respond to: John T. Plata  
General Counsel  
(760) 699-6837*

June 20, 2016

Ms. Heather Baugh  
The California Natural Resources Agency  
1416 Ninth Street, Suite 1311  
Sacramento, California 95814

RE: Proposed Revisions to Appendix G of the CEQA Guidelines

Dear Ms. Baugh:

The Agua Caliente Band of Cahuilla Indians ("Tribe") greatly appreciates the opportunity to participate in the current rulemaking process to amend Appendix G of the California Environmental Quality Act ("CEQA") Guidelines ("Appendix G"). Prior to certification and adoption of revisions to Appendix G, the Tribe hopes to provide final input on the three revisions that the Office of Planning and Research originally proposed and that the Natural Resources Agency has subsequently amended.

## **I. Evaluation of Environmental Impacts**

The Natural Resources Agency ("Agency") has proposed adding to the Evaluation of Environmental Impacts section of Appendix G: (i) two questions regarding tribal consultation; and (ii) an explanatory paragraph to describe why early tribal consultation is necessary.

The Tribe supports the two questions regarding tribal consultation with minor non-substantive revision. The first question the Agency has proposed requires that a lead agency indicate whether a California Native American tribe has requested consultation. The second question the Agency has proposed requires that a lead agency explain whether consultation has begun if the lead agency has answered the first question in the affirmative. The Tribe fully supports the Agency's effort to request that lead agencies affirmatively indicate whether a California Native American tribe has requested consultation and whether consultation has begun. This is consistent with the intent of AB 52 (Gatto) to "establish a meaningful consultation process between California Native American tribal governments and lead agencies, respecting the interests and roles of all California Native American tribes and project proponents..." Consultation can only be meaningful if it occurs early in the environmental review process. For this reason, the Tribe believes a series of questions within Appendix G, which ascertain whether tribal consultation has occurred or commenced is the best approach since lead agencies rely on Appendix G (or some form thereof) to meet the requirements of an initial study during the preliminary environmental review phase.



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The Agency has also proposed adding an explanatory paragraph to describe why early tribal consultation is necessary. The Tribe greatly appreciates this approach, but believes California Native American tribes, lead agencies and project proponents would be better served if the Agency included additional language that clearly describes when tribal consultation is required. The Tribe supports this alternative approach because it provides clear direction to lead agencies on the new tribal consultation requirement under CEQA and, for this reason, better assists lead agencies in their CEQA compliance. The text the Tribe wishes to propose mirrors the text of Public Resources Code section 21080.3.1. 2-6.1

Finally, the Tribe proposes to add text that would “strongly encourage” lead agencies to retain written documentation of their compliance with CEQA’s new tribal consultation requirement. The Tribe believes the proposed text fosters a more adequate administrative record while at the same time promoting a mechanism that ensures that the intent of AB 52 is carried out. 2-6.2

For the reasons set forth above, the Tribe proposes the following revision to the Evaluation of Environmental Impacts section of Appendix G:

EVALUATION OF ENVIRONMENTAL IMPACTS:

104. Prior to the release of a negative declaration, mitigated negative declaration, or environmental impact report for a project, lead agencies are required to consult with a Have California Native American Tribes that is traditionally and culturally affiliated with the geographic area of the proposed project if: (1) the California Native American tribe requested to the lead agency, in writing, to be informed by the lead agency through formal notification of proposed projects in the geographic area that is traditionally and culturally affiliated with the tribe, and (2) the California Native American tribe responds, in writing, within 30 days of receipt of the formal notification, and requests the consultation. When consultation is required, lead agencies are strongly encouraged to include written documentation of their consultation with a California Native American tribe. the project area requested consultation pursuant to Public Resources Code section 21080.3.1? if so, has consultation begun? 2-6.1

<u>Yes</u>	<u>No</u>	
<input type="checkbox"/>	<input type="checkbox"/>	<u>Has a California Native American tribe traditionally and culturally affiliated with the geographic area of the proposed project requested consultation pursuant to Public Resources Code section 21080.3.1?</u>
<input type="checkbox"/>	<input type="checkbox"/>	<u>If the answer to the previous question is “Yes,” has consultation begun?</u>





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Note: Conducting consultation early in the CEQA process allows ~~tribal governments~~ California Native American tribes, 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-pursuant to~~ Public Resources Code sections and 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 21080.3(c) contains provisions specific to confidentiality.

**II. Cultural Resources**

The Tribe supports the current proposal to delete the word "formal" and insert the word "dedicated" in subdivision (d) of section V of Appendix G since many Tribal burials have occurred outside of dedicated cemeteries. For this reason, the Tribe is not proposing any additional revision to subdivision (d) of section V of Appendix G.

**III. Tribal Cultural Resources**

The Tribe supports the current proposal to add new section XVII to Appendix G since this is a requirement of Public Resources Code section 21083.09. However, the Tribe proposes the following minor non-substantive revision to new section XVII of Appendix G:

<p>XVII. <u>TRIBAL CULTURAL RESOURCES.</u></p> <p><u>Would the project:</u></p>	<p><b>Potentially Significant Impact</b></p>	<p><b>Less Than Significant Impact with Mitigation Incorporated</b></p>	<p><b>Less Than Significant Impact</b></p>	<p><b>No Impact</b></p>
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2-6.3

a) ~~Would the project e~~ 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:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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- [ ] 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 Resources Code Section 5024.1 for purposes of this paragraph, the lead agency shall consider the significance of the resource to a California Native American tribe.

The Tribe would like to thank the Agency for providing an opportunity to comment on the proposed revisions to Appendix G. The Tribe hopes to work with the Agency on future updates to Appendix G that may impact tribal interests. Should you have any questions or concerns, please do not hesitate to contact me at the number listed above.

Sincerely,

John T. Plata  
General Counsel  
AGUA CALIENTE BAND OF CAHUILLA INDIANS