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Comment 2-9

## Final Pechanga Comments Modifications to Appendix G CEQA

Andrea Fernandez [afernandez@pechanga-nsn.g...

**To:** CEQA Guidelines@CNRA; Baugh, Heather@CNRA; Gibson, Thomas@CNRA;  
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**Attachments:** Final Pechanga Comments Mo~1.pdf (308 KB) [Open as Web Page]

Tuesday, June 21, 2016 2:05 PM

You forwarded this message on 6/21/2016 2:58 PM.

Dear Ms. Baugh:

Electronically attached please find the Pechanga Tribe's comments pertaining to the above referenced matter.

Should you have any questions or concerns, please contact Steve Bodmer at (951) 770-6171 or at [sbodmer@pechanga-nsn.gov](mailto:sbodmer@pechanga-nsn.gov) or Laura Miranda at [lmiranda@pechanga-nsn.gov](mailto:lmiranda@pechanga-nsn.gov)

Thank You,

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**PECHANGA INDIAN RESERVATION**  
*Temecula Band of Luiseño Mission Indians*

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June 21, 2016

VIA ELECTRONIC MAIL

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

Re: Pechanga Tribe Comments on Modifications to Text of Proposed CEQA Regulations Appendix G pursuant to CNRA Notice dated June 6, 2016

Dear Ms. Baugh:

These comments are submitted on behalf of the Pechanga Band of Luiseño Indians (the "Tribe"), a federally-recognized and sovereign Indian nation. We appreciate the opportunity to provide comments during this official rulemaking process on the proposed modifications to the originally noticed language for the CEQA Appendix G Checklist.

The Tribe thanks you and Mr. Gibson for receiving our comments submitted through our written correspondence dated April 8, 2016, the consultation meeting between your office and Pechanga representatives, and through our testimony at the April 4, 2016 hearing on the Regulations. We would like to further thank you for the time and effort your office put into considering our concerns with the original noticed language. The Modified language is greatly improved from the original draft.

There are, however, a few issues with the currently proposed language the Tribe would like to identify for the record. We request that Natural Resources give meaningful consideration to our requested edits below and we are available to consult further on these comments.

**I. SEPARATION OF TCRS FROM CULTURAL RESOURCES**

The Tribe thanks your office for separating out Tribal Cultural Resources from the Cultural Resources category, giving it a stand-alone section. We believe this not only mirrors the intent and language of AB 52, but will provide assistance to document preparers in understanding the necessity of conducting a resource analysis specifically tailored to TCRs that includes tribal information and expertise, rather than relying predominately on archaeological standards and assessments. We are not sure if this was an oversight, but we suggest adding a line item and checkbox for "Tribal Cultural Resources" in the ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED section of the checklist, so planners and consultants clearly identify that this category of resources requires specific and different attention from other resources assessed under the Cultural Resources category. This change is also consistent with the rest of the checklist as each category of resources has a line item and checkbox associated with it in this Section of the Checklist.

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## II. INITIATION OF TRIBAL CONSULTATION

The Tribe thanks the Agency for including a specific question about initiating tribal consultation to the cover sheet of Appendix G that must be completed at the outset of project processing. We believe this will greatly assist document preparers concerning the timing and obligations of consultation and clarify the role of tribal consultation early in the CEQA process. Also, the addition of the paragraph below the question on consultation is helpful. However, we are not sure it upholds the language and intent of AB 52. In particular the language, "Conducting consultation early in the CEQA process allows...." seems to suggest that these parties are permitted to engage in the actions if they so choose. Actually AB 52 *requires* the parties to do the following:

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- 1) "Prior to the release of a negative declaration, mitigation negative declaration, or environmental impact report for a project, the lead agency *shall begin* consultation with a California Native American tribe...." (Public Resources Code section 21080.3.1(b))
- 2) If the California Native American tribe requests consultation regarding alternatives to the project, recommended mitigation measures, or significant effects the consultation shall include those topics." (Public Resources Code section 21080.3.2(a)).

In addition, we continue to believe it is crucial to include actual language or a citation to the statute to clarify that consultation is to be initiated prior to the preparation and release of environmental documents. Early consultation was such an integral piece of AB 52 because prior to its implementation, tribal information was largely sought out at the end of the environmental review process, if at all, and well after major project decisions concerning impacts, alternatives and project designs were already invested in and finalized. In addition, parties involved in these processes have varying ideas of what constitutes "early consultation." This is why AB 52 specifically states when the consultation is to begin - prior to the release of the environmental documents. If this is not clear in either the checklist question on consultation or in the paragraph below, the fulfillment of "early consultation" will continue to be problematic. We see no reason not to define this as clearly as the statute does. This will help alleviate misunderstandings and assist planners in completing the myriad of regulatory obligations, in defined timelines, with which they must comply.

We reiterate our request that language be incorporated into the checklist to underscore one of the main intentions of AB 52 - that tribal expertise about their resources be acknowledged, incorporated and given the weight and consideration it is due in the environmental assessment process. For all the reasons stated in our April 8, 2016 letter, this is crucial to a document preparer's understanding of the role tribal information plays in determining whether there is a TCR, assessment of impacts thereto and determination of culturally appropriate mitigation. This would also help with the substantial evidence determination in terms of ensuring the level of importance the tribal information would play in meeting substantial evidence.

2-9.2

Lastly, as we have communicated previously, one object of AB 52 was to NOT require a listing of tribal sacred places on a register, the NAHC Sacred Lands File or any list under the administration of a public agency. As AB 52 is implemented, we do not want to mislead agencies into thinking that all the information they need in order to comply will be found in a State public agency listing or a register. When agencies or applicants submit a request for places listed on the NAHC's SLF, they may get a list of sites and they may not. If there are no sites listed or registered this does not mean that sacred sites do not exist on the project property. Culturally affiliated tribes should be consulted for the best information, which is exactly why

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tribal consultation is a requirement of AB 52. The NAHC has had to insert language to this effect in their response letters to requests for SLF searches. Therefore, to state that information is available from the NAHC SLF is a bit misleading because there may not be any information through that mechanism. We have made edits below to reflect this reality and to help ensure tribal consultation is not circumvented in lieu of records searches.

Based on our comments and concerns identified above, we suggest the following edits to the modified language:

II. 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 pursuant to Public Resources Code section 21080.3.1(b)?

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Note: Since California Native American tribes traditionally and culturally affiliated with a geographic area may have expertise concerning their tribal cultural resources, Conducting beginning consultation early in the CEQA process prior to the release of a negative declaration, mitigated negative declaration, or environmental impact report for a project is required pursuant to Public Resources Code section 21080.3.1(b). This provides tribal governments, public lead agencies, and project proponents the opportunity early in the CEQA process to discuss in consult regarding 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 may also be available from the Native American Heritage Commission's Sacred Lands File per Public Resources Code sections 5097.9 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 21082.3(c) contains provisions specific to confidentiality.

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### III. PUBLIC RESOURCES CODE SECTION 5097.9

We continue to advocate for the addition of a question under the TCR category that asks whether the project potentially disturbs any resources or places defined in Public Resources Code section 5097.9. Our suggestion language is below.

b) Would the project potentially disturb any resource or place defined in Public Resources Code 5097.9 et seq?

2-9.4

The human remains question, which you have included in the Cultural Resources section, and the above question are directly related to and overlap with the questions concerning TCRs. These resources are essentially the very same resources that would be considered by a tribe to be TCRs. The difference being they are on public lands. Since these resources must be considered in a CEQA process, and are the same resources that are targeted by AB 52, we contend that adding this question will make the CEQA process more effective for all involved when it comes to the early identification and addressing of sacred sites. Since this was a main objective of AB 52, we believe this falls squarely within the scope of the AB 52 mandates. In the alternative, it does not deter or counter the mandates and is consistent with the Public Resources Code.

If the Agency does not choose to include the above question concerning resources defined at 5097.9, we suggest that your agency work with tribes on preparing practice tips or another type of guidance document (such as the SB 18 Guidelines) that could be posted on your website and associated agency websites concerning the execution of AB 52, in conjunction with SB 18, related Public Resources Code requirements

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and other interrelated legal requirements. As a Tribe that is extremely active in assisting agencies, document preparers and applicants in understanding AB 52 through trainings, workshops and other formal meetings, we have heard time and time again that more guidance and practical tips, including best practices, is not only welcomed but enthusiastically requested. Through these conversations, we have concluded that individuals responsible for compliance with these new CEQA requirements, including tribal consultation, would greatly benefit from such guidance. We welcome further discussion concerning our experiences with lead agencies, consultants and project proponents and our ideas on how to approach a practical, useful guidance document.

In closing, the Tribe thanks the Natural Resource Agency for offering us an opportunity to provide further comments on these Modifications to Appendix G. Should you have any questions, please contact Michele Hannah, Deputy General Counsel at (951) 770-6179 or mhannah@pechanga-nsn.gov or Laura Miranda, Esq. at lmiranda@pechanga-nsn.gov.

Sincerely,



Steve Bodmer  
General Counsel



Laura Miranda  
Attorney for the Pechanga Tribe

cc: Assemblyman Mike Gatto  
Cynthia Gomez, Executive Director, Native American Heritage Commission  
Pechanga Tribal Council  
Pechanga Cultural Resources Department  
Paula Treat, Lobbyist for the Pechanga Tribe