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Chris Calfee
Deputy Secretary and General Counsel
California Natural Resources Agency
CEQA.Guidelines@resources.ca.gov (by email only)

July 19, 2018

Re: UAIC Comments in Notice of 15-Day Revisions to the CEQA Guidelines

Dear Mr. Calfee:

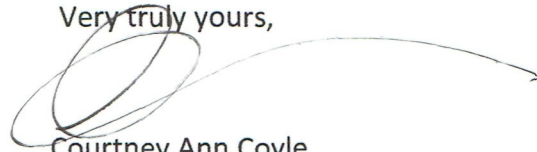
Through this letter, the United Auburn Indian Community of the Auburn Rancheria, a federally-recognized California Tribe, timely submits its comments on the Notice of 15-Day Revisions to the CEQA Guidelines (15-Day Revisions). This letter supplements our prior letters to and communications with the California Natural Resources Agency (CNRA).

There is an attachment to this letter that contains suggested edits to the proposed 15-Day Revisions. We hope that these edits will be fully considered. The attachment also indicates where we support or disagree with certain 15-Day Revisions; where we disagree, we tried to provide productive edits. We hope that these perspectives are useful to you as you complete the rulemaking process.

We appreciate the efforts made to date to consider our comments and concerns, and appreciate that some revisions have been made. However, to the extent they have not been incorporated to date, we carry forward the suggested revisions, comments, rationales, and proposed solutions from our comment letter dated March 15, 2018, on the initial proposed updates to the CEQA Guidelines (November 2017). We also continue to believe that the Guidelines update effort would have benefited from additional efforts by CNRA to communicate and consult with California Tribes to both solicit updates to the Guidelines and to vet the proposed updates.

Finally, we continue to have concerns that some of the proposed updates could impair AB 52 implementation. We will continue to track the rulemaking process, and hope that additions may be made by CNRA in the final Statement of Reasons that clarify the intent of the revisions not to limit the participation of California Native American Tribes in the CEQA process or interfere with protections for tribal cultural resources (TCRs) that may be found in urban or rural environments as well as those TCRs present in already developed or natural areas. We are available for any questions you might have on the attachment and for further consultation.

Very truly yours,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Courtney Ann Coyle

Attorney at Law

CC:

John Laird, Secretary, CNRA

Brian Guth, UAIC, Acting Administrator/General Counsel

Terrie Robinson, NAHC, General Counsel

Julianne Polanco, SHPO

UAIC Suggested Edits and Comments on the 15-Day Revisions (Dated July 2, 2018)

Section 15004: Support clarification that factors described in the proposed addition are not exclusive and the addition that an agreement should not prevent an agency from deciding not to pursue or to reject a project.

Section 15062: Support addition of requiring the identity of the persons undertaking the project.

Section 15063: Support clarification that documents prepared by consultants must reflect the independent judgment of the lead agency.

Section 15064: Disagree with removing the provision suggesting that, when relying on thresholds of significance, a lead agency should describe the substantial evidence that supports the conclusion that compliance with the threshold ensures the impact is less than significant. Substantial evidence is the cornerstone of CEQA and transparency. Simply stating that that it would be "too burdensome" is an insufficient rationale for its removal and risks sending the wrong message to lead agencies regarding government accountability and the robustness of the administrative record. Consider revising to that a lead agency should *summarize* the substantial evidence that supports the conclusion that compliance with the threshold ensures the impact is less than significant.

Section 15064.4: Support the addition that the agency's analysis must reasonably reflect evolving scientific knowledge and state regulatory schemes regarding determining the significance of a project's greenhouse gas emissions.

Section 15064.7: Generally support the revisions to Thresholds of Significance. Recommend retaining "avoid", so (d) fifth line would read ". . .shall explain how the particular requirements of that environmental standard avoid or reduce . . ." This is particularly important for cultural resources where avoidance and preservation in place must be analyzed including pursuant to CEQA caselaw. UAIC still recommends that any thresholds for significance related to TCRs should demonstrate they have been developed through consultation with tribes.

Section 15075: Support addition of requiring the identity of the persons undertaking the project.

Section 15094: Support addition of requiring the identity of the persons undertaking the project.

Section 15125: Agree that historic conditions can provide a method for justifying a baseline.

Section 15126.2: Consider adding reference to faults so that (a) line 19 reads: ". . . (e.g., floodplains, coastlines, wildfire risk areas, earthquake faults) . . ."

Section 15126.4: Agree that mitigation measures must be identified before project approval and that a measure will achieve an adopted performance standard. However, UAIC still has concerns that there may be abuse by lead agencies and project applicants regarding what is characterized as a "detail" of a measure that gets deferred or when it is truly impractical or infeasible to identify potentially affected resources as part of the CEQA document. In general, UAIC does not support deferring until after project approval surveys to identify tribal cultural resources (TCRs) as this approach results in fewer opportunities for project alternatives and design to avoid TCRs which in turn results in unnecessary adverse impacts and effects to TCRs that are often left unaccounted for in project environmental documents or cumulative effects analyses.

Section 15168: Generally agree with revisions to clarify whether a later activity is within the scope of a program EIR. However, UAIC recommends adding reference to evolving state regulatory schemes (e.g., whether the base document was subject to AB 52) to the list of factors an agency may consider in making that determination.

Section 15269: Disagree with the language proposed at (b) and (c) regarding excluding emergency repairs (including those that require a reasonable amount of planning to address an anticipated emergency) and specific actions to prevent or mitigate an emergency if the anticipated period of time to conduct environmental review of such a project would create a risk to public, health, safety, or welfare or if they are in response to an emergency at a similar existing facility. The proposed language lacks definitions or common usages in CEQA (e.g., "reasonable amount" of planning, "anticipated" emergency, "anticipated" period of time, a "risk" to public health, safety or welfare, "similar" existing facility). Recommend tightening the language, including adding the word "significant" before risk. Also, note that agencies would need to be reminded that the jurisdiction of the Native American Heritage Commission regarding burials and grave goods and their respectful and culturally-appropriate treatment is outside of the CEQA statute and would still apply to CEQA-exempt emergency actions.

Appendix G Checklist Form Question: Support adding reference to developing a tribal consultation plan. Revision should help agencies and tribes more effectively plan and execute the consultation process. Suggest adding more examples of what topics could be in plan to better track AB 52 language, such as alternatives, preservation in place, mitigation measures, and conclusion of consultation. UAIC also recommends adding a second question, such as, "If tiering, demonstrate that the base EIR was developed in compliance with AB 52."

Appendix G Aesthetic Considerations: Generally support clarification that certain aesthetic considerations may apply differently in urban settings. However, we still have concerns that there may be abuse by lead agencies and project applicants regarding the role of visual and aesthetic impacts to TCR integrity leading to a lack of consideration for these issues during project review and AB 52 consultations. Please explain the rationale behind the reference to "public views"; components of historic properties may include either private or public views. As written, the revision appears inconsistent with the National Historic Preservation Act and the criteria and guidance used for both the California Register of Historical Resources and the National Register of Historic Places.

Appendix N: Support update to reflect the changes proposed for Appendix G and to reflect enactment of AB 52.