

Proposed CEQA Guidelines Amendments

Attachment to Form 399

ECONOMIC IMPACT STATEMENT

INTRODUCTION

This package proposes limited changes to Appendix G of the CEQA Guidelines. Appendix G is a sample environmental checklist form, designed to assist lead agencies in carrying out an environmental analysis under CEQA (Public Resources Code § 21000 *et seq.*). Lead agencies may tailor the form as they see fit. (CEQA Guidelines § 15063(f).) Assembly Bill 52 (Chapter 532, Statutes 2014), hereafter AB 52, added new substantive and procedural requirements to CEQA regarding the analysis of tribal cultural resources. It also required the Natural Resources Agency to update Appendix G with appropriate sample questions. This proposed rulemaking contains those updates to Appendix G. These changes do not add any new requirements. Therefore, the proposed regulatory changes have no economic impact.

Notably, the Governor's Office of Planning and Research, which developed these changes, conferred with the Department of Finance regarding potential economic impacts of the proposal. According to the Department of Finance, it "appears that there would not be fiscal or economic impacts from the proposed regulations. The statute (AB 52) that directs OPR to add items on Tribal Cultural resources seems to have enough details to be self-implementing, and the proposed regulations merely remind people going through the CEQA process to comply with those existing requirements. As there would be no additional work needed as a result of the checklist addition, there would be no cost or benefit associated with the proposal." (Email communication, Department of Finance Chief Economist to OPR Staff, November 20, 2015.)

This attachment provides additional detail regarding answers on the Form 399.

A: ESTIMATED PRIVATE SECTOR COST IMPACTS

1. h. None of the above (Explain below.)

No Estimated Private Sector Cost Impacts

The Resources Agency, in its proposed action to amend certain guidelines implementing CEQA, pursuant to Public Resources Code section 21083.09, enacted as part of AB 52 has initially determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting business. The amendments required by section 21083.09 effectuate existing requirements in the Public Resources Code. The Resources Agency has initially determined that the proposed changes in this action have no impacts on business.

The Public Resources Code contains requirements regarding analysis of cultural resources. The California courts have previously determined that CEQA requires analysis and mitigation of impacts to historical and archeological resources, some of which may also be related to California Native American tribes,

independent of the AB 52 amendments to the Public Resources Code. (See e.g. Pub. Resources Code, § 21004 (“a public agency may use discretionary powers ... for the purpose of mitigating or avoiding a significant effect on the environment”), *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 207 (approval of project conditioned on redesign to protect prehistoric Native American artifacts) (*Clover Valley*); *People v. Van Horn* (1990) 218 Cal.App.3d 1378, 1384 (conducting archaeological survey for Environmental Impact Report revealed ancient grave containing skeletons and artifacts dating from pre-colonial times).) The new law created a definition of tribal cultural resources and changed CEQA such that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resources is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.2.) AB 52 further added Public Resources Code section 21083.09 requiring OPR to develop and the Resources Agency to adopt additional questions in the CEQA Guidelines, Appendix G, to address tribal cultural resources. The detailed procedural requirements in the law are self-implementing.

Appendix G is an optional, sample checklist that lead agencies are free to customize. (State CEQA Guidelines § 15063(f).) Thus, the proposed amendments to the CEQA Guidelines developed pursuant to AB 52 do not create any new requirements.

The Resources Agency is aware that certain requirements that AB 52 added to the Public Resources Code, that are related to this proposed action, may potentially have an economic impact on business. Among other things, project proponents could incur costs in assisting lead agencies to comply with the requirement for analysis of tribal cultural resources and consultation if properly requested. On the other hand, by clarifying the scope and timing of tribal consultation in the CEQA process, the provisions added by AB 52 may reduce current uncertainty and delays experienced by project proponents and lead agencies. (See, Assembly Floor Analysis of AB 52, August 27, 2014.) The proposed amendments to the Guidelines do not add to those requirements

Additionally, the Resources Agency has determined that the amendments included in this proposed action may reduce the costs of environmental review to lead agencies and project applicants by directing them to sources of information regarding potential tribal cultural resources, including consultation with Tribal Governments traditionally and culturally affiliated with the proposed project area. Moreover, the proposed changes may reduce compliance costs by clarifying which tribal cultural resources must be studied in a CEQA analysis and by standardizing the initial study checklist form. Early identification and appropriate mitigation of tribal cultural resources can save time and money during the project development process by avoiding inadvertent discoveries of gravesites or other tribal cultural resources, which could affect construction timelines.

4. There are no businesses that will be created by this proposed regulation. The proposed changes are to an optional, sample checklist. The underlying statute is self-implementing. Any businesses that have increased business, such as cultural resource management firms, will be a result of the statute and not these regulations.

B: ESTIMATED COSTS

5. CEQA applies to the activities of state and local agencies.

The amendments do not duplicate or conflict with any federal statutes or regulations. CEQA is similar in some respects to the National Environmental Policy Act (“NEPA”), 42 U.S.C. sections 4321-4343. Federal agencies are subject to NEPA, which requires environmental review of federal actions. State and local agencies are subject to CEQA, which requires environmental review before state and local agencies may approve or decide to undertake discretionary actions and projects in California. A state or local agency must complete a CEQA review even for those projects for which NEPA review is also applicable, although Guidelines sections 15220-15229 allow state, local, and federal agencies to coordinate review when projects are subject to both CEQA and NEPA. Because the activities of state and local agencies are subject to CEQA unless exemptions apply, and because CEQA and NEPA are not identical, guidelines for CEQA are necessary to interpret and make specific provisions of AB 52 and do not duplicate the Code of Federal Regulations.

C: ESTIMATED BENEFITS

1. There are estimated, non-monetary benefits to the proposed regulation.

The proposed action would add a new statement related to tribal consultation in the Evaluation of Environmental Impact section of Appendix G. Doing so creates three potential procedural and practical benefits. It may help lead agencies avoid a procedural error in CEQA by inadvertently neglecting consultation. The addition might also potentially protect tribal cultural resources, which have value to a California Native American tribe and which may help prevent costly litigation over project impacts. Finally, the additions may allow projects to move forward with more certainty and less potential delay from unanticipated discovery of tribal cultural resources during construction.

The language of the proposed questions in Appendix G that detail the two ways that a lead agency can find that a resource is a tribal cultural resource, are intended to provide a clear record of the basis for the determination that a project may or may not have a potentially significant impact on a tribal cultural resource. This additional clarity will be beneficial because lead agencies, tribal governments, and project applicants will all know that tribal cultural resources are a new, distinct resource in CEQA with the same protections as any other type of resource and the two specific ways to find that a tribal cultural resource is potentially impacted by a project.

2. Benefits come from specific statutory requirements which are not regulatory.

The benefits from the additional checklist statement and questions stem from the form of the checklist, but the requirements to analyze whether there are potentially significant impacts to tribal cultural resources and for lead agencies to consult with Tribal Governments, if requested, come directly from the statute.

Therefore, the estimated benefits are not quantifiable, and are the results of the statute, not the proposed regulation. The proposed regulation merely clarifies the statute in the sample environmental checklist form.

D: ALTERNATIVES TO THE REGULATION

1. The Agency considered reasonable alternatives.

The Resources Agency considered reasonable alternatives to the amendments. OPR developed three alternative sets of questions that could respond to the directive in AB 52, and sought public input on those alternatives. Based on that input, OPR developed a proposal for changes which it submitted to the Resources Agency on January 29, 2016. Having considered the alternatives originally developed by OPR, the public input it received, and OPR's final recommendation, the Resources Agency has determined that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed or would be as effective as, and less burdensome to affected private persons than, the proposed amendments. This conclusion is based on the Resources Agency's determination that the amendments are necessary to implement the Legislature's directive in AB 52. Thus, the amendments add no additional substantive requirements; rather, the Guidelines merely assist lead agencies in complying with CEQA's requirements, as updated in AB 52. The Resources Agency rejected the no action alternative because it would not respond to the Legislature's directive in AB 52. There are no alternatives available that would lessen any adverse impacts on small businesses, as any impacts are due to statutory additions to CEQA and not these proposed amendments.

E. MAJOR REGULATIONS

The proposal does not meet the definition of a major regulation.

FISCAL IMPACT STATEMENT

A: FISCAL EFFECT ON LOCAL GOVERNMENT

6. Other:

Local Government

Please see the explanation in section 1(h), above.

B: FISCAL EFFECT ON STATE GOVERNMENT

4. Other:

Please see the explanation in section 1 (h), above.

C: FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS

4. Other:

CEQA applies to the activities of State and local agencies, but not to the activities of Federal Agencies. Federal agencies are subject to similar environmental analysis requirements pursuant to the National Environmental Policy Act, but the amendments are not expected to be relevant to Federal funding to the state. The proposed action does not itself impose any costs, non-discretionary costs, or savings on lead agencies, local agencies or school districts. The proposed changes do not result in any savings to local agencies and school districts, and do not result in any effect on federal funding.