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Comment 2-1

Proposed Language for Tribal resources update to Appendix G.

Martz, Patricia [pmartz@calstatela.edu]

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

Cc: tattnlaw@gmail.com

Saturday, June 04, 2016 1:05 PM

Dear Heather Baugh,

I have reviewed the above mentioned update and am concerned that the proposed language does not meet the intent and letter of AB 52 in that the guidance does not include tribal cultural resources, sacred places, and Native American traditions that have been overlooked or marginalized under CEQA. The language should not delete language mentioning and defining tribal cultural resources as a site, feature, place, cultural landscape with cultural value to a California Native American Tribe. An archaeological site that does not meet scientific criteria for significance may still hold spiritual value for Native Americans and this should be taken into consideration.

Sincerely,

Patricia Martz, Ph.D.
Professor Emerita
Dept of Anthropology
California State University, Los Angeles

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Proposed Language for Tribal cultural Resources Update to Appendix G

Martz, Patricia [pmartz@calstatela.edu]

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

Cc: tattnlaw@gmail.com

Saturday, June 04, 2016 2:09 PM

Dear Heather,

I wish to clarify my previous comment. My concern is the requirement that the site be listed in the California Register of historic Resources, or in a local register as defined in Public Resources Code section 5020.1, which refers to a local register by a local government. It should also include the Sacred Lands Inventory kept by the Native American Heritage Commission and sites that are considered by a reliable tribal representative as a Traditional Cultural Property or Landscape.

2-1.1

Sincerely,

Patricia Martz, Ph.D.

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Notice of Modifications to Text

Bryan Araki [BryanA@ci.clovis.ca.us]

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

Monday, June 06, 2016 7:23 AM

Hi Heather:

I received your letter which was addressed to the Director, John Wright regarding text changes to Appendix G per AB52. The City of Clovis would like to thank you for the opportunity to review. We do not have any comments. Could you also please change the contact person as John Wright is no longer with the City? Dwight Kroll is the Director and his information is as follows:

Dwight Kroll, AICP
Director of Planning and Development Services
1033 Fifth Street
Clovis, CA 93612
(559)324-2343
[dwightk@cityofclovis.com](mailto:dwrightk@cityofclovis.com)

Sincerely,

Bryan Araki
City Planner

*City of Clovis Planning Division
1033 Fifth Street
Clovis, California 93612
Ph. (559) 324-2346
bryana@cityofclovis.com*

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Proposed changes to AB52

Comment 2-3

John Helmer [jhelmer@escondido.org]

To: [CEQA Guidelines@CNRA](mailto:CEQA.Guidelines@CNRA)
Cc: 'John Helmer' [jwhelmer4@gmail.com]

Monday, June 06, 2016 10:57 AM

I would suggest adding the word draft as a clarification as below to avoid confusion as to which version of the environmental document triggers the beginning of consultations:

2-3.1

10. Tribal consultation, if requested as provided in Public Resources Code Section 21080.3.1, must begin prior to release of a draft negative declaration, mitigated negative declaration, or environmental impact report for a project.

John Helmer
Consultant
(760) 839-4543
Planning Division
201 North Broadway
Escondido, CA 92025
www.escondido.org



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Comment 2-4

Proposed changes to appendix G of the CEQA guide lines

Rollie Fillmore SR [rfillmore@JacksonCasino.com]

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

Friday, June 10, 2016 9:45 AM

Good morning

I'd like to get more information if i could please. I don't see any environmental protection for medicine plants that might be affected

2-4.1

Rollie Fillmore
Cultural preservation department representative
Jackson rancheria band of miwuk Indians

Sent from my iPhone

Comment 2-5

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Notice of Modifications to Text of Proposed Regulations - CSAC Comments

Chris Lee [clee@counties.org]

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

Cc: [Kiana Valentine \[kvalentine@counties.org\]](mailto:kvalentine@counties.org)

Attachments: [CSAC Comments on Revised A~1.pdf \(141 KB\)](#) [Open as Web Page]

Thursday, June 16, 2016 3:40 PM

You forwarded this message on 6/21/2016 2:56 PM.

Please see attached comments from the California State Association of Counties.

Christopher A. Lee

Legislative Analyst – Housing, Land Use & Transportation

California State Association of Counties®

(916) 650-8180 desk | (916) 956-1856 cell

clee@counties.org | www.csac.counties.org



June 16, 2016

Comment 2-5

1100 K Street
Suite 101
Sacramento
California
95814

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

Telephone
916.327.7500

Facsimile
916.441.5507

By Electronic Mail

Re: Notification of Modifications to Text of Proposed Regulations

Dear Ms. Baugh:

The California State Association of Counties (CSAC) appreciates the opportunity to comment on the proposed changes to the text of the regulation to implement Assembly Bill 52 (Chapter 532, Statute of 2014). CSAC has concerns with the proposed changes to the Appendix G checklist included under "XVII. Tribal Cultural Resources." Specifically, the formatting of the two questions misstates the law, as paragraph (a) contains language ("site, feature, place, cultural landscape ...") that applies to the first bullet point below it, but not to the second.

2-5.1

Accordingly, the text of the proposed language should be modified as follows:

- a) Would the project 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 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 Resource Code Section 5024.1 for the purposes of this paragraph, the lead agency shall consider the significance of the resource to a California Native American tribe.

Thank you for your consideration of our comments. Should you have any questions, please do not hesitate to contact me at 916-327-7500, ext. 566, or kvalentine@counties.org.

Sincerely,

A handwritten signature in blue ink that reads "Kiana L. Valentine".

Kiana Valentine
Legislative Representative

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

You forwarded this message on 6/21/2016 2:56 PM.

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
5401 Dinah Shore Drive
Palm Springs, CA 92264
T: (760) 699-6952
F: (760) 699-6865

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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.



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

Yes

No

☐☐

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?

☐☐

If the answer to the previous question is “Yes,” has consultation begun?



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:

XVII. <u>TRIBAL CULTURAL RESOURCES.</u>	Potentially Significant Impact	Less Than Significant Impact with Mitigation Incorporated	Less Than Significant Impact	No Impact	2-6.3
<u>Would the project:</u>					
a) Would the project <u>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:</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Ms. Heather Baugh
The California Natural Resources Agency
June 20, 2016
Page 4



- [] 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

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Comment 2-7

San Joaquin County Comments for the Notice of Modifications to Text of Proposed Regulations

McGinnis, Ashlen [atmcginnis@sjgov.org]

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

Cc: [Spitzer, Amy \[aspitzer@sjgov.org\]](mailto:aspitzer@sjgov.org); [Vohra, Firoz \[fvohra@sjgov.org\]](mailto:fvohra@sjgov.org)

Attachments: [SJCDPW Comments to CNRA fo-1.PDF \(187 KB\)](#) [[Open as Web Page](#)]

Tuesday, June 21, 2016 12:20 PM

You forwarded this message on 6/21/2016 2:57 PM.

Dear Ms. Heather Baugh,

Please see the attachment for the County's comments for the Notice of Modifications to Text of Proposed Regulations and let me know if you have any questions.

Thank you,

Ashlen McGinnis

Environmental Coordinator

San Joaquin County Public Works – Transportation Engineering Division

PO Box 1810, Stockton CA 95201

Tel: (209) 468-3085; Fax: (209) 468-2999

atmcginnis@sjgov.org





KRIS BALAJI
DIRECTOR

MICHAEL SELLING
DEPUTY DIRECTOR

FRITZ BUCHMAN
DEPUTY DIRECTOR

JIM STONE
DEPUTY DIRECTOR

ROGER JAMES
BUSINESS ADMINISTRATOR



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STOCKTON, CALIFORNIA 95201
(209) 468-3000 FAX (209) 468-2999
www.sjgov.org/pubworks

June 21, 2016

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

SUBJECT: NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS

Dear Ms. Baugh:

The San Joaquin County Department of Public Works has reviewed the Notice of Modifications for the above referenced project and has no comments at this time. However, the County does request to be included on the circulation list for any additional project documents.

Thank you for the opportunity to review and comment. Should you have questions please contact me at atmcginnis@sjgov.org or (209) 468-3085.

Sincerely,

A handwritten signature in blue ink that reads "Ashlen McGinnis".

ASHLEN MCGINNIS
Environmental Coordinator

AM:as

c: Firoz Vohra, Senior Engineer

Comment 2-8

[Reply](#) [Reply All](#) [Forward](#) [Chat](#)

Comments on proposed modifications to the Environmental Checklist relative to Tribal Cultural Resources

Barbara Radlein [bradlein@aqmd.gov]

To: CEQA Guidelines@CNRA
Cc: Ian MacMillan [imacmillan@aqmd.gov]; Barbara Baird [BBaird@aqmd.gov];
Ryan Stromar [rstromar@aqmd.gov]
Attachments: SCAQMDAB52CommentLetter-Ju~1.pdf (294 KB) [Open as Web Page]

Tuesday, June 21, 2016 4:19 PM

Hi Heather,
Attached are SCAQMD's comments regarding OPR's latest proposed modifications to the Environmental Checklist relative to Tribal Cultural Resources.
Thank you.
Regards,
Barbara

Barbara Radlein
Program Supervisor, CEQA Special Projects
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765
(t) 909.396.2716
(f) 909.396.3324
(e) bradlein@aqmd.gov



South Coast Air Quality Management District

21865 Copley Drive, Diamond Bar, CA 91765-4178
(909) 396-2000 • www.aqmd.gov

June 21, 2016

Heather Baugh
The California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814
Transmitted via email to: ceqa.guidelines@resources.ca.gov

Re: Modifications to Text of Proposed Regulations Relative to Tribal Cultural Resources

Dear Ms. Baugh,

The South Coast Air Quality Management District (SCAQMD) appreciates the opportunity to comment on the latest proposed changes to the Environmental Checklist in Appendix G of the CEQA Guidelines to address Assembly Bill (AB) 52 and Tribal Cultural Resources in accordance with Public Resources Code §§ 21074 and 21080.3.1 (d).

When AB 52 went into effect on July 1, 2015, the Office of Planning and Rules (OPR) had not finalized the implementation guidance for implementing these requirements in CEQA evaluations. Nonetheless, agencies were required to comply with AB 52 in the interim. As such, the SCAQMD revised its own Environmental Checklist and significance criteria to address Tribal Cultural Resources, as shown in underlined text:

	Potentially Significant Impact	Less Than Significant With Mitigation	Less Than Significant Impact	No Impact
V. CULTURAL RESOURCES. Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Cause a substantial adverse change in the significance of an archaeological resource as defined in §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Directly or indirectly destroy a unique paleontological resource, site, or feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- | | | | | |
|--|--------------------------|--------------------------|--------------------------|--------------------------|
| d) Disturb any human remains, including those interred outside formal cemeteries? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| e) <u>Cause a substantial adverse change in the significance of a tribal cultural resource as defined in Public Resources Code §21074?</u> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Significance Criteria

Impacts to cultural resources will be considered significant if:

- The project results in the disturbance of a significant prehistoric or historic archaeological site or a property of historic or cultural significance, or tribal cultural significance to a community or ethnic or social group or a California Native American tribe.
- Unique paleontological resources or objects with cultural value to a California Native American tribe are present that could be disturbed by construction of the proposed project.
- The project would disturb human remains.

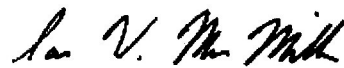
In addition, as part of releasing a CEQA document for public review and comment, the SCAQMD also provides a formal notice of all proposed projects to all California Native American Tribes (Tribes) that requested to be on the Native American Heritage Commission's (NAHC) notification list per Public Resources Code §21080.3.1 (b)(1).

After reviewing OPR's latest proposed changes to the Environmental Checklist contained within Appendix G of the CEQA Guidelines, the SCAQMD staff is unsure that it will be able to satisfactorily answer the proposed Environmental Checklist questions under #17a for many of our projects. The proposed questions in #17a are posed in a way that seems only applicable to land use projects and require the lead agency to check individual addresses in order to establish whether the project could have an impact on Tribal Cultural Resources. While this makes sense for projects that will occur at one location, many of the CEQA documents the SCAQMD prepares as lead agency are for regulatory actions (e.g., the adoption, amendment or the occasional repeal of a rule or regulation) that are implemented at a program level and typically cover the entire SCAQMD jurisdiction. SCAQMD has jurisdiction over much or all of the counties of Los Angeles, Orange, Riverside, and San Bernardino, which includes about one half of the state's population. Thus, having to check every address within SCAQMD's jurisdiction against the addresses 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) is an impractical exercise that does not make sense for regulatory actions regularly considered by our agency. Further, even if we were able to check all addresses on the lists for each

rule, it would often be speculative as to whether the rule might affect any particular property.

As such, the SCAQMD is seeking guidance from OPR as to how lead agencies preparing CEQA documents for regulatory projects that are not tied to an individual address should answer Environmental Checklist question #17a should the proposed revisions become finalized. We would like to schedule a call to discuss this in more detail with you at your convenience. You may contact either myself at (909) 396-3244, or Barbara Radlein at (909) 396-2716.

Sincerely,

A handwritten signature in black ink, appearing to read "Ian V. MacMillan". The signature is fluid and cursive, with the first name "Ian" and last name "MacMillan" being clearly legible, and the middle initial "V." in the center.

Ian MacMillan
Planning and Rules Manager

IM:BR

[Reply](#) [Reply All](#) [Forward](#) [Chat](#)

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;
Laura Miranda [lmiranda@pechanga-nsn.gov]; Paula Treat [mslobby@earthlink.net]
Cc: Anna Hoover [ahoover@pechanga-nsn.gov]; Ebru Ozdil [eozdil@pechanga-nsn.gov]
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 or Laura Miranda at lmiranda@pechanga-nsn.gov

Thank You,

Andrea Fernandez
Legal Assistant
Pechanga Office of the General Counsel
P.O. Box 1477
Temecula, CA 92592
Main: (951) 770-6000
Direct Dial: (951) 770-6173
Fax: (951) 587-2248

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PECHANGA INDIAN RESERVATION

Temecula Band of Luiseno Mission Indians

OFFICE OF THE GENERAL COUNSEL

Post Office Box 1477 • Temecula, CA 92593
Telephone (951) 770-6000 Fax (951) 695-7445

General Counsel
Steve Bodmer

Deputy General Counsel
Michele Hannah

Associate General Counsel
Breann Nuruhiwa
Lindsey Fletcher

Of Counsel
Frank Lawrence

June 21, 2016

VIA ELECTRONIC MAIL

Ceqa.guidelines@resources.ca.gov
Heather.baugh@resources.ca.gov
Thomas.gibson@resources.ca.gov

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 Luiseno 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.

2-9.1

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:

2-9.2

- 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

2-9.3

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)?

2-9.2

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.

2-9.3

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

Ms. Heather Baugh
California Natural Resources Agency
June 21, 2016
Page 4

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

Comment 2-10

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UAIC Comments re Modifications to Appendix G

Brian Guth [bguth@auburnrancheria.com]

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

Cc: [Roberson, Holly@OPR](mailto:Roberson,Holly@OPR); 'cynthia.gomez@gov.ca.gov'

Attachments: [2016-06-21 Whitehouse to C~1.PDF \(54 KB\)](#) [Open as Web Page]

Tuesday, June 21, 2016 4:45 PM

Dear Ms. Baugh:

Attached is a letter from Chairman Whitehouse on behalf of UAIC, commenting on the revisions to Appendix G.

Sincerely,

Brian Guth

Brian R. Guth

Interim Tribal Administrator

United Auburn Indian Community

10720 Indian Hill Road | Auburn, CA 95603

Direct: (530) 883-2375 | Fax: (530) 883-2380

bguth@auburnrancheria.com

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MIWOK
MAIDU

United Auburn Indian Community
of the Auburn Rancheria

Gene Whitehouse
Chairman

John L. Williams
Vice Chairman

Danny Rey
Secretary

Jason Camp
Treasurer

Calvin Moman
Council Member

June 21, 2016

Comment 2-10

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

Dear Ms. Baugh:

On behalf of the United Auburn Indian Community, I would like to thank you and your colleagues for taking Tribal comments and AB 52's intent into account in developing the proposed revisions to Appendix G of the California Environmental Quality Act Guidelines. We believe the revised regulation better reflects Tribal concerns and captures the essence of AB 52.

2-10.1

Moving forward, we urge you to consider developing a guidance document similar to OPR's SB 18 consultation guidance to help all responsible parties successfully implement AB 52 and to reflect aspects of Tribal comments that were not incorporated into the Appendix G guidelines language such as those related to the Native American Heritage Commission sections of the Public Resources Code. We believe such a document would be extremely helpful to those responsible for implementing AB 52.

2-10.2

We also wish to thank OPR and the Office of the Tribal Advisor for facilitating the intertribal consultation meeting. We strongly encourage similar consultations in the future to promote further understanding between the affected parties.

Sincerely,



Gene Whitehouse
Chairman

cc: Holly Roberson, Office of Planning and Research
Cynthia Gomez, Office of the Tribal Advisor

[Reply](#) [Reply All](#) [Forward](#) [Chat](#)

Comment 2-11

Comments, Appendix G

Robinson, Terrie@NAHC [terrie.robinson@nahc.c...

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

Tuesday, June 21, 2016 5:01 PM

You forwarded this message on 6/22/2016 10:37 AM.

On behalf of the Native American Heritage Commission, I provide the following comments:

XVII Tribal Cultural Resources -- checklist should also include:

A cultural landscape that meets the criteria of subdivision (a) to the extent that the landscape is geographically defined in terms of the size and scope of the landscape;

A "nonunique" archaeological resource as defined in subdivision (h) of Section 21083.2.

Terrie L. Robinson
General Counsel
Native American Heritage Commission
1550 Harbor Blvd, Suite 100
West Sacramento, CA 95691
[\(916\) 373-3716](tel:(916)373-3716) (voice)
[\(916\) 373-5471](tel:(916)373-5471) (fax)
terrie.robinson@nahc.ca.gov

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Comment 2-12

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CCEEB Comment Letter RE: Proposed Language for Tribal Cultural Resources Update to Appendix G

Tomas Garza [Tomas_Garza@gualcogroup.com]

To: [CEQA Guidelines@CNRA](#)

Cc: [Kendra Daijogo \[Kendra_Daijogo@gualcogroup.com\]](#)

Attachments: [CCEEB AB 52 Comments June ~1.pdf \(152 KB\) \[Open as Web Page\]](#)

Tuesday, June 21, 2016 5:03 PM

Good Afternoon,

Attached you will find a comment letter from our client, California Council for Environmental and Economic Balance ("CCEEB"), regarding Proposed Language for Tribal Cultural Resources Update to Appendix G.

Do not hesitate to contact us if you have any questions or need further information.

Thank you,

Tomas Garza
The Gualco Group, Inc.
500 Capitol Mall, Suite 2600
Sacramento, CA 95814-4752
916/441-1392
@gualcogroup
<http://www.gualcogroup.com>





California Council for Environmental and Economic Balance

101 Mission Street, Suite 1440, San Francisco, California 94105
415-512-7890 phone, 415-512-7897 fax, www.cceeb.org

Transmitted Via E-mail to: ceqa.guidelines@resources.ca.gov

June 21, 2016

Ms. Heather Baugh
The California Natural Resources Agency
1416 9th Street, Suite 1311
Sacramento, CA 95814

Re: Comment on the Proposed Language for Tribal Cultural Resources Update to Appendix G

Dear Ms. Baugh:

The California Council for Environmental and Economic Balance ("CCEEB") appreciates the opportunity to provide comments on the proposed changes to the proposed language for Tribal cultural resources update to Appendix G of the California Environmental Quality Act Guidelines.

CCEEB is a coalition of California business, labor and public leaders that works to advance strategies to achieve a sound economy and a healthy environment. Founded in 1973, CCEEB is a non-profit and non-partisan organization.

CCEEB has reviewed the new draft and supports the change to what is now proposed checklist XVII(a), second bullet. This change clarifies that, when the lead agency is "considering the significance of the resource to a California Native American tribe", it must do so by applying the established criteria of Public Resources Code Section 5024.1(c).

We believe this proposed change is an improvement to the draft document and encourage the agency to retain this change in the final document.

Sincerely,

GERALD D. SECUNDY
President

Cc: Honorable Edmund G. Brown, Jr.
Honorable John Laird
Honorable Ken Alex
Ms. Heather C. Baugh
Ms. Holly Roberson

From: Herrmann, Myra <MHerrmann@sandiego.gov>
Sent: Tuesday, June 21, 2016 6:33 PM
To: CEQA Guidelines@CNRA
Cc: Herrmann, Myra
Subject: City of San Diego comments on Proposed Amendments to the CEQA Guidelines, Appendix G
Attachments: City of San Diego comments on Proposed Amendments to the CEQA Guidelines, Appendix G
Importance: High

To whom it may concern:

The City of San Diego appreciates the opportunity to provide additional comments to your office on the proposed amendments to the CEQA Guidelines, Appendix G. We have reviewed the additional proposed amendments and have the following comments:

We concur with the proposal to add question #11 regarding the tribal consultation process to the beginning of Appendix G under the heading "Evaluation of Environmental Impacts". We agree that adding the question will ensure that planners of all levels have complied with the provisions of CEQA at the earliest point in the process for their respective projects and that the results of the tribal consultation process then be included in the initial study discussion to support the significance determination box that would be checked. 2-13.1

There appears to be an error in Section V.b) which shows a deletion of the "1" in CEQA section 15064.5. This should be corrected before approval of the amendments to the checklist. 2-13.2

We support the edit to question "d" replacing the word "formal" with "dedicated" and agree that the change will provide clarity to agency staff, applicants and consultants when completing the initial study checklist. 2-13.3

While we support the addition of a new Section in the Initial Study checklist specific to Tribal Cultural Resources, we are unclear as to why this new section is being moved to the back of the Initial Study Checklist. Having the new section either directly before or after the Cultural Resources section would provide flow of discussion since some of the information would be sourced from a cultural report or other source materials and would be supported in both section discussions. We also do not believe that the new question "a" needs to be expanded as proposed. No other CEQA sections are further described as shown in the Cultural Resources section. For the sake of consistency, the City believes that the question can stand alone as follows: "Would the project cause a substantial adverse change in the significance of a tribal cultural resource as further defined in Public Resources Code Section 21074?" The expanded language can already be easily found in the CEQA statutes for further reference, clarification or direction and does not necessarily require repeating herein. 2-13.4

Thank you for the opportunity to provide additional comments on this item. I have included our previous comments for reference. We look forward to seeing the final version.

Please feel free to contact me if you have any questions in response to my comments.

Myra Herrmann
Senior Planner/Archaeologist/Tribal Liaison
City of San Diego

Planning Department

T (619) 446-5372

www.sandiego.gov

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Proposed Language for Tribal cultural resources update to Appendix G

1. Add a statement ~~regarding tribal consultation to the beginning of Appendix G under EVALUATION OF ENVIRONMENTAL IMPACTS~~Environmental Checklist Form at the beginning of Appendix G, which provides guidance on completing the checklist and environmental analysis provides a general description and cover sheet for a proposed project:

[...]

11. 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?

Note: Conducting consultation early in the CEQA process allows tribal governments, 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 Public Resources Code sections 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.

2-14.1

~~10. Tribal consultation, if requested as provided in Public Resources Code Section 21080.3.1, must begin prior to release of a negative declaration, mitigated negative declaration, or environmental impact report for a project. Information provided through tribal consultation may inform the lead agency's assessment as to whether tribal cultural resources are present, and the significance of any potential impacts to such resources. Prior to beginning consultation, lead agencies may request information from the Native American Heritage Commission regarding its Sacred Lands File, per Public Resources Code sections 5097.9 and 5097.94, as well as the California Historical Resources Information System administered by the California Office of Historic Preservation.~~

2. Changes to the language of Section V to include Tribal cultural resources, with proposed additions in **Bold and Underline**.

V. CULTURAL RESOURCES

Would the project:

- a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?
- b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5?
- c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?
- d) Disturb any human remains, including those interred outside of ~~formal~~ dedicated cemeteries?

e) Cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either:

~~1) 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, that is listed or eligible for listing on the California Register of Historical Resources, or on a local register of historical resources as defined in Public Resources Code section 5020.1(k), or~~

~~2) a resource determined by a lead agency, in its discretion and supported by substantial evidence, to be significant according to the historical register criteria in Public Resources Code section 5024.1 (c), and considering the significance of the resource to a California Native American tribe~~

XVII. ~~UTILITIES AND SERVICE SYSTEMS- TRIBAL CULTURAL RESOURCES~~

a) Would the project 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:

Potentially
Significant
Impact

Less Than
Significant
with
Mitigation

Less Than
Significant
Impact

No
Impact

2-14.2

☐
☐
☐
☐

☐ 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 Resource Code Section 5024.1 for the purposes of this paragraph, the lead agency shall consider the significance of the resource to a California Native American tribe.

2-14.3

XVIII. ~~MANDATORY FINDINGS OF SIGNIFICANCE- UTILITIES AND SERVICE SYSTEMS~~

XIX ~~MANDATORY FINDINGS OF SIGNIFICANCE~~