AB 52: A CEQA Guidelines Update for Tribal Cultural Resources

Holly Roberson, JD
Land Use Counsel
Governor’s Office of Planning and Research

AB 52 Presentation Overview

- Context
- Brief Summary
- Definition of Tribal Cultural Resources
- Notice and Timing
- Mitigation Measures
- AB 52 Implementation Timelines
- Consultation Process Explained
- OPR Requirements
- Discussion Questions and Contact Info
AB 52 in Context

- Key Concepts:
  - Respect Tribal Sovereignty
  - Respect Confidentiality per Pub. Resources Code 21082.3
  - Capacity: Tribal Governments and Lead Agencies vary in the amount of resources they have available to address these issues
  - SB 18 (Burton, 2004)

- Prior to amendment or adoption of General Plan, Specific Plan, or designation of Open Space:
  - Local Governments must contact and consult with California Native American Tribes (Tribes)
  - Prior to amendment or adoption of General Plan, Specific Plan, or designation of Open Space.
  - Gov. Code, Planning not CEQA

  - Established the Governor’s Tribal Advisor position
  - Established Administration Policy to encourage State Agencies to Communicate and Consult with California Tribes

AB 52 in Brief: Include Tribal Cultural Resources in CEQA

- Establishes a consultation process with all California Native American Tribes on the Native American Heritage Commission List-> Fed. And Non Fed. Recognized Tribes
- New class of resources: Tribal Cultural Resources
- Consideration of Tribal Cultural Values in determination of project impacts and mitigation
- Required Tribal notice and meaningful consultation
- PRC 21080.3.2(b) Consultation ends when either
  - Parties agree to MMs or avoid a significant effect on TCR
  - A party, acting in good faith and after reasonable effort concludes that mutual agreement cannot be reached
Definition of a Tribal Cultural Resource

• A Tribal Cultural Resource is:
  – A site feature, place, cultural landscape, sacred place or object, which is of cultural value to a Tribe
  – AND is either: On or eligible for the CA Historic Register or a local historic register,
  – OR the lead agency, at its discretion, chooses to treat the resource as a TCR
  – See: PRC 21074 (a)(1)(A)-(B)

Notice and Timing

• Tribe requests to be on the Agency’s Notice List
• Within **14 days** of a decision to undertake a project or determination that a project application is complete, lead agency shall provide written notification to the tribes that requested placement on notice list
• Notice to Tribes shall include brief project description, location, lead agency contact info., and statement that Tribe has **30 days** to request consultation
• Lead agency shall begin the consultation process within **30 days** of receiving Tribe’s request for consultation
Mitigation Measures

• Public agencies shall, when feasible, avoid damaging effects to TCR.
• Consultation at Tribal request
• Mitigation measures agreed upon during consultation shall be recommended for inclusion in environmental document / MMRP
• Examples of mitigation measures include:
  – Avoidance and preservation of the resources in place
  – Treating resource with culturally appropriate dignity
  – Permanent conservation easements
  – Protecting the resource

AB 52 Implementation Timelines

• Law goes into effect on July 1, 2015.
  – After July 1, 2015, if requested by a California Native American Tribe, lead agencies must begin consultation prior to the release of a ND, MND or DEIR. See flowchart for timing.
• CEQA Guidelines update to Appendix G must be drafted by OPR, and adopted by Resources Agency by July 1, 2016
OPR Requirements

By July 1, 2016, OPR shall develop, & Resources shall adopt, revisions to Appendix G of the CEQA Guidelines to:

a) Separate the consideration of paleontological resources from Tribal Cultural Resources and update the relevant sample questions; and

b) Add consideration of Tribal Cultural Resources with relevant sample questions.

OPR’s Process

• Informal Outreach and Listening
• Collaboration with Native American Heritage Commission
• Sign up on CEQA Guidelines Update Listserve at www.opr.ca.gov to stay informed
• California Natural Resources Agency has its own formal process for adoption of changes to the CEQA Guidelines
Discussion Questions

- Other considerations or things which need clarification, and which are within the scope of the statute?
- Examples of consultation processes that have gone well?

Keep in touch

Contact information:
Holly Roberson, Land Use Counsel
Governor’s Office of Planning and Research
Phone: 916-322-0476
Email: holly.robereson@opr.ca.gov