



AB 52: A CEQA Guidelines Update for Tribal Cultural Resources

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Deliberative Process Discussion Draft



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

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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)
 - 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
- Gov. Brown Executive Order B-10-11 (2011)
 - Established the Governor's Tribal Advisor position
 - Established Administration Policy to encourage State Agencies to Communicate and Consult with Californian Tribes

DISCUSSION DRAFT MAY 2015



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 MIMs or avoid a significant effect on TCR
 - A party, acting in **good faith** and after **reasonable effort** concludes that mutual agreement cannot be reached

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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)

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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

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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

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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

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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.

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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

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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?

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Keep in touch

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