From: Beth Bagwell
Sent: Friday, December 18, 2015 4:30 PM
To: CEQA Guidelines@CNRA
Subject: AB 52 Appendix G Revisions

Hello,

I would like to enter a comment regarding the changes to Appendix G significance criteria required by AB 52. The OPR Discussion Draft Technical Advisory: AB 52 and Tribal Cultural Resources in CEQA (May 2015, p.9) states that the "statute directs OPR to develop proposed updates to the sample initial study checklist in Appendix G of the CEQA Guidelines to do both of the following: (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."

The document entitled Discussion Draft of Proposed Changes to Appendix G of the CEQA Guidelines

Incorporating Tribal Cultural Resources (Discussion Draft), presents three alternatives (p.5-6).

The comments I have provided on these alternatives are intended to improve clarity, usability, the technical accuracy of the language, and determine if the alternatives meet the requirements listed above.

(a) separate the consideration of paleontological resources from tribal cultural resources

The Discussion Draft suggests that all three alternatives provided successfully separate paleontological resources from tribal resources. This interpretation suggests that a sufficient "separation" is achieved by placing a question about human remains between paleontology and tribal cultural resources. I disagree with this assessment. My interpretation of this requirement is that to be "separate" a question must be moved from it's main heading (in this case V. Cultural Resources). Alternatives 1 and 2 keep paleontology within the Cultural Resources heading, and therefore in my view do not meet the requirement. Alternative 3 creates a new independent heading just for tribal cultural resources. This meets the requirement, but I do not recommend this change.

In order to identify the appropriate interpretation of "separation" I think it is useful to examine why this change was required. In my professional experience, CEQA lead agencies tend to view all Appendix G resources listed under the heading "V. Cultural Resources" to actually be cultural resources. They further assume that all of the analyses associated with this heading can be done by cultural resources specialists. Both of these assumptions are inaccurate. Cultural resources specialists are qualified to analyze historical resources, archaeological resources and human remains. We are not qualified to identify or analyze paleontological resources. This situation is further complicated by the fact that some cultural resources (for example a prehistoric rock art site) may also be tribal cultural resources. A cultural resources specialist is qualified to identify and analyze a prehistoric rock art site, however we

are not qualified to determine if the resource is also a tribal cultural resource (only tribal representatives are qualified to do so).

Given the overlap between cultural resources and tribal cultural resources, I think that the clarity, usability and technical accuracy of Appendix G will be enhanced if paleontology is moved to it's own section, not in cultural resources and not part of geology.

Further, I recommend that "V. Cultural Resources" be revised to "V. Cultural Resources and Tribal Cultural Resources."

(a)… and update the relevant sample questions

Based on the discussion above, I recommend the following update to the paleontology question:

Would the project:

Have a substantial adverse effect on a paleontological resource?

In my view the requirement to update the relevant sample questions, includes all of the sample questions that are currently part of "V. Cultural Resources." In my professional experience, there is a great deal of confusion about the difference between "historical resources" (question a) and "archaeological resources" (question b). Frequently cultural resources professional assume that question "a" refers to cultural resources that date to the historic era (1750s to 1950s) and that question "b" refers to cultural resources that are buried and must be excavated to be understood. A close reading of the CEQA guidelines shows this to be an inaccurate interpretation. Unique archaeological resources are by definition not eligible for listing in the California Register of Historic Resources.

I recommend the following updates to enhance the clarity, usability, and technical accuracy of Appendix G: Would the project:

a) Cause a substantial adverse change in the significance of a historic resource (eligible for listing in the California Register of Historic Resources) as defined in Section 15064.5?

b) Cause a substantial adverse change in the significance of a unique archaeological resource as defined in PRC 21083.2?

I recommend against the language update proposed for question “d” which adds the term “dedicated” as it is a vague term with no clear definition.

(b) add consideration of tribal cultural resources with relevant sample questions

The Discussion Draft proposes three alternatives for the relevant sample questions for tribal cultural resources. Alternatives 1 and 2 are both acceptable, however I recommend the adoption of Alternative 2 for clarity. Most people are unware of tribal concerns.

I recommend against Alternative 3. Consultation is not a resource and the way it is described in this alternative is confusing. Further, the three questions identify distinctions that are not mutually exclusive. In other words, one resource can be both eligible for the CRHR and listed on a local register.

Finally, I would like to point out that we were requested to support our suggestions with CEQA legal decisions. However, there are very few CEQA legal decisions associated with cultural resources and none related to paleontology (to the best of my knowledge). Most of cultural resources decisions relate to historic buildings, a type of resource that by definition will rarely be also considered a tribal cultural resource, and are therefore unlikely to be relevant to the issues at hand. Finally, as tribal cultural resources are a new category there is no relevant CEQA case law. Essentially your requirement is impossible to comply with.

I submit as a professional cultural resources specialist with more than 20 years of experience, and a PHD in my field – that I am qualified to make statements about technical accuracy and professional best practices for cultural resources. Further, I submit that these qualifications are more important for questions of technical accuracy and clarity which are key for revisions to Appendix G.

In summary, I request that OPR reconsider all three alternatives and put forward a new set for public

discussion. The current three are, as written, not sufficient for release and for public discussion.

Thank you for your time and consideration.

Elizabeth A. Bagwell, PhD, RPA