



May 29, 2015

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Mr. Ken Alex
Director, Governor's Office of Planning and Research
1400 Tenth Street
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Re: Discussion Draft Technical Advisory: AB 52 and Tribal Cultural Resources in CEQA

Dear Mr. Alex,

On behalf of the California State Association of Counties (CSAC), I write to offer the Governor's Office of Planning and Research feedback on the Discussion Draft Technical Advisory: AB 52 and Tribal Cultural Resources in CEQA (Discussion Draft). California's counties support positive intergovernmental relationships between local governments and California Native American tribes and seek to promote policies that incentivize cooperation and collaboration. As such, CSAC appreciates the opportunity to assist in ensuring smooth and effective implementation of these significant changes to CEQA.

Overall, CSAC finds the Discussion Draft to be very effective in condensing and summarizing the critical components of AB 52 as it relates to new requirements for consultation between lead agencies and tribes. The Discussion Draft also provides additional guidance on some elements of AB 52, including referencing the existing guidance on SB 18 and clarifying that "substantial evidence" is required to support a determination that a resource is a tribal cultural resource (TCR).

We believe that the Discussion Draft would also benefit from additional clarification on the following issues:

Confidentiality

Under AB 52, the information a tribe may submit during the environmental review process may not be included in the environmental document or disclosed to the public without prior consent of the tribe. The Discussion Draft states that the lead agency may describe the tribal cultural information in a general way "so that the public is informed about the basis for the decision, while confidentially is maintained". CSAC believes the Discussion Draft would be improved if OPR would provide examples of permissible general discussions of TRCs in environmental documents.

Further clarification is also requested with respect to what information is covered by confidentiality requirements. Do the confidentiality protections apply to any information submitted by a tribe as a part of the AB 52 consultation process, even if there is no discussion of a TRC or historical resources in the information (e.g. a letter declining consultation)?

Standard of Review

We echo the request for further clarification related to standards of review that was raised in the May 29 letter from the California Chamber of Commerce and others. Specifically, the technical advisory should clarify that the standard of review for the determination of whether a resource is a tribal cultural resource is subject to the substantial evidence standard. The advisory should further clarify that this determination is separate from the agency's determination of whether the proposed project may cause a substantial adverse change in the significance of a tribal cultural resource request, and the standard for review for the latter determination will vary depending on the type of document the lead agency is preparing for the project.

Exemption Determinations

We also echo the request of the California Chamber of Commerce and others in the previously mentioned May 29 letter that the technical advisory clarify that AB 52 is not applicable to projects that are exempt from CEQA.

List of Public Agencies

AB 52 requires the Native American Heritage Commission (NAHC) to develop, by July 1, 2016, a list of public agencies "that may be a lead agency within the geographic area with which the tribe is traditionally and culturally affiliated." How does this impact implementation of AB 52 which begins July 1, 2015 – one year prior to the NAHC list? How might the AB 52 list differ from the list the NAHC develops for SB 18 implementation? SB 18 requires lead agencies to contact tribes whereas AB 52 requires tribes to contact lead agencies. Will tribes notify a lead agency of very specific areas they want to be consulted on or will they make a blanket request for all notice of projects within the jurisdiction?

Once again, thank you for the opportunity to provide input into the Discussion Draft. Please do not hesitate to contact 916/650.8185 or kbuss@counties.org me at should you have any questions or want to discuss our feedback in greater detail.

Sincerely,



Kiana Buss
Legislative Representative

Cc: Holly Roberson, Governor's Office of Planning and Research