

December 17, 2015

Holly Roberson
Land Use Counsel
The Governor's Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814

SUBJECT: DISCUSSION DRAFT OF PROPOSED CHANGES TO APPENDIX G OF THE CEQA GUIDELINES INCORPORATING TRIBAL CULTURAL RESOURCES

Dear Ms. Roberson:

This letter includes the City of Carlsbad's comments and responses to the Notice of Availability of a Discussion Draft of Proposed Changes to Appendix G of the CEQA Guidelines Incorporating Tribal Cultural Resources dated November 17, 2015. Thank you for the opportunity to comment on the draft changes to the initial study checklist in Appendix G during the public comment period ending December 18, 2015.

Section 1.b(2) of Assembly Bill (AB) 52 states that its intent is to "Establish a new *category* of resources in the California Environmental Quality Act called 'tribal cultural resources' that considers the tribal cultural values in addition to the scientific and archaeological values when determining impacts and mitigation" (emphasis added). Section 8 of AB 52 states in part that the Office of Planning and Research shall "add consideration of tribal cultural resources *with relevant sample questions*" (emphasis added). Together, these sections make a strong case that a separate section within Appendix G should be created, rather than simply adding Tribal Cultural Resources as a sample question under the existing Cultural Resources section.

Therefore, the City of Carlsbad supports the concept of the proposed Alternative 3. However, the following comments suggest revisions to portions of Alternative 3, with changes shown in ~~strikeout~~ and underline for deletions and additions, respectively:

1. The following changes to the introductory section on Tribal Cultural Resources are suggested in order to fully incorporate and address Public Resources Code (PRC) Section 21074.b:

"TRIBAL CULTURAL RESOURCES.

Consultation with a California Native American Tribe that has requested such consultation may assist a lead agency in determining whether the project may adversely affect tribal cultural resources, and if so, how such effects may be avoided or mitigated. Whether or not consultation has been requested, would the project cause a substantial adverse change in a site, feature, place, cultural landscape that is geographically defined in terms of size and scope, sacred place, or object, with cultural value to a California Native American Tribe, which is any of the following . . ."

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2. The definition of a Tribal Cultural Resource in Section 4 of AB 52 requires the lead agency to apply the California Register criteria in PRC Section 5024.1(c) *in light of* the potential significance to California Native American Tribes. The way Alternative 3 sample question (c) is currently proposed implies a two-step process in the application of California Register criteria and the consideration of significance to California Native American Tribes. The following changes to sample question (c) are suggested in order to more accurately reflect that significance to California Native American Tribes is part of the consideration under AB 52 as to whether the resource meets California Register eligibility criteria:

“c. Determined by the lead agency, in its discretion and supported by substantial evidence, to be a Tribal Cultural Resource, after applying the criteria in Public Resources Code § 5024.1(c), ~~and~~ while considering the significance of the resource to a California Native American Tribe?”

3. The three proposed questions in Alternative 3 do not address PRC Section 21074.c. A new sample question (d) should be added as follows to ensure all aspects of the Tribal Cultural Resource definition are addressed and to reinforce the fact that a Tribal Cultural Resource as defined by CEQA is not required to be a “unique” archaeological resource:

“(d) Is a “historical resource” described in Section 21084.1, or a “unique archaeological resource” as defined in subdivision (g) of Section 21083.2, or a “nonunique archaeological resource” as defined in the first sentence in subdivision (h) of Section 21083.2, and is also a “Tribal Cultural Resource” as defined in subdivision (a) of Section 21074.”

Thank you again for the opportunity to provide these comments and responses to the Discussion Draft of Proposed Changes to Appendix G of the CEQA Guidelines Incorporating Tribal Cultural Resources. If you would like to discuss these comments in greater detail, the contact at the City of Carlsbad is Senior Planner Teri Delcamp who can be reached at (760) 602-4611 or teri.delcamp@carlsbadca.gov.

Sincerely,



DON NEU, AICP
City Planner

DN:TD:fn

c: David de Cordova, Principal Planner
Van Lynch, Principal Planner
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