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Response to OPR Solicitation for Input: Revisions to the Guidelines Implementing CEQA

Dear Mr. Calfee:

These comments are timely submitted on behalf of Carmen Lucas, Kwaaymii Laguna Band of Indians (San Diego). They are informed by her over twenty years as a Native American Monitor, Consultant and Educator. It is her hope that these top priorities for improving the CEQA Guidelines will assist OPR in its scoping for comprehensive review of the Guidelines.

While resources of concern to Tribal Peoples are included within the current CEQA statute, Guidelines and technical guidance,[1] such resources are often not well addressed in the environmental documentation produced pursuant to CEQA. This has resulted in disputes and such resources not being timely or meaningfully considered in decision making.

The following revisions to the Guidelines would provide for **process improvements** in implementing the current CEQA statute:

1. Tribal cultural expertise and tribal interpretations should be specifically referenced in the Guidelines to ensure that more than just archaeological scientific value is considered in the CEQA documents regarding the identification, significance determinations and culturally-appropriate treatment of these kinds of cultural resources.

[1] See, for example, Public Resources Code section 21084.1; CEQA Guidelines sections 15064.5, 15126.4(b)(3); and California Office of Historic Preservation Technical Assistance Series 6 and 7.

2. Resource identification efforts, technical reports and significance determinations must be completed prior to a decision being made on the project so that decision makers, tribes and the public[2] can be fully informed. Too often these important studies and analyses have been deferred until after project approval, when avoidance and redesign can be more difficult and costly, thereby resulting in significant impacts and conflicts that could have otherwise been prevented.

The following revisions would provide **substantive improvements** in implementing the current CEQA statute:

1. Tribal Cultural Resources, including Traditional Cultural Properties (TCPs) and Cultural Landscapes, should be mentioned as specific types of historic resources in the Guidelines including the Appendix G sample questions. This would better respect tribes, who often feel their voice is excluded from the CEQA framework as presently practiced, and help ensure that these kinds of historic properties will be properly considered within the CEQA process at both the project and cumulative levels.

2. The Cultural Resource and Paleontological Resource/Geologic Features section in Appendix G should be separated. While archaeological, paleontological and geologic resources often may be found below ground, the professional qualifications to identify the three kinds of resources and to respond to the respective Appendix G sample questions, are very different. Separation into their own distinct sections would ensure the complete, fair and respectful consideration of these environmental resources.

The following items offer **practical planning considerations**, perhaps too detailed or technical in nature for the statute, that should be considered for inclusion in the Guidelines or technical guidance regarding cultural resources:

1. Noninvasive tools, such as geoarchaeology, ground penetrating radar and historic human remains detection canines, should be part of the standard cultural resources survey and identification toolkit. Being less invasive, they may be more culturally-appropriate than excavation, as well as more cost effective. CEQA documentation should take full advantage of such advances in technology.

2. Qualified Native American monitors must be part of initial cultural resource surveys. This participation is critical for the early identification of ceremonial sites, sacred places and some forms of burials, particularly cremations. Archaeologists are not qualified to fully identify or understand the cultural significance of these types of historic resources.

In conclusion, Ms. Lucas feels that given the nature of these concerns, combined with Governor Brown's Executive Order B-10-11 (Tribal Consultation), that OPR should make a special effort to consult with tribes throughout the state on the upcoming comprehensive revisions to the Guidelines.

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[2] While recognizing the need for confidentiality pursuant to CEQA Guidelines section 15120(d) and the California Public Records Act sections 6254.10 and 6254(r), among other authority.

Thank you for considering these views. We would be pleased to discuss any of these suggestions and their rationale and legal basis in more detail with OPR staff. Please place my office on the list for future notices and actions on the Guidelines update.

Very truly yours,

Courtney Ann Coyle

Courtney Ann Coyle
Attorney at Law

cc:
Heather Baugh, Natural Resources Agency
Dave Singelton, Native American Heritage Commission
Susan Stratton, California SHPO
Interested Parties
Client File