

# Discussion Draft of Proposed Changes to Appendix G of the CEQA Guidelines Incorporating Tribal Cultural Resources

*Pursuant to Assembly Bill 52 (Gatto, 2014)*

Governor's Office of Planning and Research  
11/17/2015



## Introduction

The Governor's Office of Planning and Research is pleased to invite public input on this update to the Guidelines Implementing the California Environmental Quality Act (CEQA Guidelines) to address tribal cultural resources. This update implements the Legislature's directive in Public Resources Code section 21083.09 (enacted as part of Assembly Bill 52 (Chapter 532, Statutes 2014)) to add tribal cultural resources to the sample initial study form found in Appendix G of the Guidelines. This document provides background on AB 52, Appendix G, and an explanation of the three alternatives put forth as draft questions about Tribal Cultural Resources for inclusion in the initial study form, as well as information about effective public comment.

## Background on AB 52 (Gatto, 2014)

On July 1, 2015 [AB 52](#) (Gatto, 2014) went into effect. According to its author:

[E]xisting laws lack a formal process for tribes to be involved in the CEQA process as tribal governments. CEQA projects that impact tribal resources have experienced uncertainty and delays as lead agencies attempt to work with tribes to address impacts on tribal resources. With this bill, it is the author's intent to "Set forth a process and scope that clarifies California tribal government involvement in the CEQA process, including specific requirements and timing for lead agencies to consult with tribes on avoiding or mitigating impacts to tribal cultural resources."

(Assembly Floor Analysis, August 27, 2014.)

AB 52 established a new category of resources in the California Environmental Quality Act called Tribal Cultural Resources. (Public Resources Code § 21074.)

*"Tribal cultural resources" are either of the following:*

*(1) Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either of the following:*

*(A) Included or determined to be eligible for inclusion in the California Register of Historical Resources.*

*(B) Included in a local register of historical resources as defined in subdivision (k) of Section 5020.1.*

*(2) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Section 5024.1. In applying the criteria set forth in subdivision (c) of Section 5024.1 for the purposes of this paragraph, the lead agency shall consider the significance of the resource to a California Native American tribe.*

AB 52 also created a process for consultation with California Native American Tribes in the CEQA process. Tribal Governments can request consultation with a lead agency and give input into potential impacts to tribal cultural resources before the agency decides what kind of environmental assessment is appropriate for a proposed project. The Public Resources Code now requires avoiding damage to tribal cultural resources, if feasible. If not, lead agencies must mitigate impacts to Tribal Cultural Resources to the extent feasible.

AB 52 also directed the Governor's Office of Planning and Research (OPR) to prepare, and the California Natural Resources Agency to adopt, questions regarding Tribal Cultural Resources in the CEQA Guidelines Environmental Checklist Form, found in Appendix G. (Public Resources Code § 21083.09.) The statute also directs OPR to separate the consideration of paleontological resources from Tribal Cultural Resources.

Additional information on the new provisions added by AB 52 is provided in a [draft Technical Advisory](#) that OPR released in May 2015.

## Background on Appendix G

The CEQA Guidelines are administrative regulations that implement the California Environmental Quality Act. As regulations, the CEQA Guidelines implement, interpret and make specific the terms in the Public Resources Code. The CEQA Guidelines cannot add new requirements, nor can they remove any requirements found in the statute.

Appendix G in the CEQA Guidelines contains a sample initial study form. The purpose of an initial study is to assist lead agencies in determining whether a project may cause a significant impact on the environment. (State CEQA Guidelines, § 15063.) To help guide that determination, Appendix G asks a series of questions regarding a range of environmental resources and potential impacts. Appendix G's questions are not an exhaustive list of all potential impacts. (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1109-1112 (seasonal reduction of surface flow in local streams may be an impact on the environment, even though that particular impact is not specifically listed in Appendix G).) Appendix G further advises that its environmental checklist is only a *sample* form that can be tailored to address local conditions and project characteristics.

Because CEQA now provides that a project that may cause a substantial adverse change in a Tribal Cultural Resource is a project that may have a significant effect on the environment, changes must be made to the sample environmental checklist form to include questions about tribal cultural resources. The provisions of the statute for avoidance and mitigation of potential effects on tribal cultural resources will not be affected by the CEQA Guidelines Appendix G update process.

## Explanation of the Alternatives

Since Governor Brown signed AB 52, OPR has engaged in intensive outreach to California Native American Tribes, local governments, CEQA practitioners and others. Through participation in workshops and conferences, OPR has solicited informal input into the possible content of this CEQA Guidelines update. That input suggested a range of approaches for new questions to Appendix G. Some suggested only minimal changes, while others suggested that, because some lead agencies may not be familiar with the full breadth of tribal cultural resources, the new Appendix G questions should be very detailed.

To encourage a robust public process and thorough consideration of different interests, this document presents three alternative sets of draft Appendix G questions regarding tribal cultural resources. Each of these three options include tribal cultural resources and separate out paleontological resources, as required by statute, but they do so in increasingly detailed ways.

Alternative one is minimal; it merely cites the definition of Tribal Cultural Resources in the Public Resources Code, and asks the preparer of the checklist to indicate what level of potential impact a proposed project might have to that resource. Alternative one adds tribal cultural resources to the existing Cultural Resources section, which also includes historical, paleontological, and archaeological resources as separate and individual questions.

Alternative two paraphrases the definition of Tribal Cultural Resources, rather than simply providing a citation to the Public Resources Code. Doing so makes clear that a variety of objects and places may be tribal cultural resources. It also changes the description of cemeteries from formal to dedicated, in accordance with Public Resources Code, Ch. 1.75, § 5097.98, and Health and Safety Code § 7050.5(b). The checklist continues to ask a separate question regarding paleontology. These changes would also occur within the broader umbrella of the Cultural Resources section of Appendix G.

Alternative three contains the most detail. It includes introductory language for context, similar to the agricultural resources and air quality sections of Appendix G. The introductory text refers to procedural requirements related to consultation. It also provides the definition of Tribal Cultural Resources, separated to indicate sources of authority for such resource. Alternative three creates a new section of Appendix G, titled Tribal Cultural Resources.

These three alternatives present a range of possible options, though there are certainly others. If there are other options that OPR should consider, please feel free to submit your suggestions. Further, in reviewing the options presented, please let us know if terms are confusing, whether these questions will result in any unintended consequences, and whether there are additional resources that would be helpful in implementation.

### How Can I Provide Input?

We hope that you will share your thoughts and expertise in this effort to update Appendix G. Input may be submitted electronically to [ceqa.guidelines@resources.ca.gov](mailto:ceqa.guidelines@resources.ca.gov). While electronic submission is preferred, suggestions may also be mailed or hand delivered to:

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

Please submit all suggestions before **December 18, 2014 at 5:00 p.m.** Once the comment period closes, OPR will review all written input and revise the proposal as appropriate. Once OPR finalizes the draft, it will submit the draft to the Natural Resources Agency, which will then commence a formal rulemaking process. Once the Natural Resources Agency adopts the changes, they undergo review by the Office of Administrative Law.

Please note, the update to Appendix G to add consideration of tribal cultural resources is separate from two other pending updates to the CEQA Guidelines (a comprehensive update and an update regarding transportation analysis). We ask that you focus comments on these potential questions in Appendix G. Future activity on the other CEQA Guidelines updates will be announced through the CEQA Guidelines listserv and on OPR's website.

## Tips for Providing Effective Input

OPR would like to encourage robust engagement in this update process. We expect that participants will bring a variety of perspectives. While opposing views may be strongly held, discourse can and should proceed in a civil and professional manner. To maximize the value of your input, please consider the following:

- In your comment(s), please clearly identify the specific issues on which you are commenting. If you are commenting on a particular word, phrase, or sentence, please provide the page number and paragraph citation.
- Explain why you agree or disagree with OPR's proposed changes. Where you disagree with a particular portion of the proposal, please suggest alternative language.
- Describe any assumptions and support assertions with legal authority and factual information, including any technical information and/or data. Where possible, provide specific examples to illustrate your concerns.
- When possible, consider trade-offs and potentially opposing views.
- Focus comments on the issues that are covered within the scope of the proposed changes. Avoid addressing rules or policies other than those contained in this proposal.
- Consider quality over quantity. One well-supported comment may be more influential than one hundred form letters.
- Please submit any comments within the timeframe provided.

**Alternative 1**

**V. CULTURAL RESOURCES. Would the project:**

- a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?
- b) Cause a substantial adverse change in the significance of an archaeological resources pursuant to § 15064.5?
- c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?
- d) Disturb any human remains, including those interred outside of formal cemeteries?
- e) Cause a substantial adverse change in the significance of a Tribal Cultural Resource as defined in Public Resources Code § 21074?**

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Cause a substantial adverse change in the significance of an archaeological resources pursuant to § 15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Disturb any human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b><u>e) Cause a substantial adverse change in the significance of a Tribal Cultural Resource as defined in Public Resources Code § 21074?</u></b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Alternative 2**

**V. CULTURAL RESOURCES. Would the project:**

- a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?
- b) Cause a substantial adverse change in the significance of an archaeological resources pursuant to § 15064.5?
- c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?
- d) Potentially disturb any human remains, including those interred outside of **formal dedicated** cemeteries **(see Public Resources Code, Ch. 1.75, § 5097.98, and Health and Safety Code § 7050.5(b)).**
- e) Cause a substantial adverse change in the significance of a site, feature, place, cultural landscape, sacred place, or object with cultural value to a California Native American Tribe that is listed or determined eligible for listing on the California register of historical resources, listed on a local historical register, or otherwise determined by the lead agency to be a tribal cultural resource.**

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Cause a substantial adverse change in the significance of an archaeological resources pursuant to § 15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Potentially disturb any human remains, including those interred outside of <b><u>formal dedicated</u></b> cemeteries <b><u>(see Public Resources Code, Ch. 1.75, § 5097.98, and Health and Safety Code § 7050.5(b)).</u></b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b><u>e) Cause a substantial adverse change in the significance of a site, feature, place, cultural landscape, sacred place, or object with cultural value to a California Native American Tribe that is listed or determined eligible for listing on the California register of historical resources, listed on a local historical register, or otherwise determined by the lead agency to be a tribal cultural resource.</u></b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Alternative 3

**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, sacred place, or object, with cultural value to a California Native American Tribe, which is any of the following:**

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b><u>a) Included or determined to be eligible for inclusion in the California Register of Historical Resources?</u></b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b><u>b) Included in a local register of historical resources</u></b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b><u>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 considering the significance of the resource to a California Native American Tribe?</u></b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>