From: Lanny Fisk
Sent: Friday, December 18, 2015 6:56 PM
To: CEQA Guidelines@CNRA
Subject: Comments on Discussion Draft of Proposed Changes to Appendix G of the CEQA Guidelines Incorporating Tribal Cultural Resources

Governor's Office of Planning and Research:

I have reviewed the Discussion Draft of Proposed Changes to Appendix G of the CEQA Guidelines Incorporating Tribal Cultural Resources and offer the following comments/suggestions:

Assembly Bill (AB) 52, to which these "Proposed Changes to Appendix G" are responding, in Section 21083.09 directs the Governor's Office of Planning and Research (OPR) "to do" the following:

(1) "Separate the consideration of paleontological resources from tribal cultural resources",
(2) "update the relevant sample questions", and
(3) "Add consideration of tribal cultural resources with relevant tribal questions" (emphases added).

Separate, update, and add, that is the directive in AB 52. The three alternative sets of draft Appendix G questions provided by OPR do not, in my opinion, complete this "to do" list. Nor do they fully address what I interpret as the true intent of AB 52.

First, Alternatives 1 and 2 do not separate consideration of paleontological resources from tribal cultural resources, except for separating them into separate line items. I seriously doubt that was the intent of AB 52. Alternative 3 does separate paleontological resources from tribal cultural resources but in a way I believe AB 52 did not intend. Alternative 3 separates tribal cultural resources from paleontological resources and also from other cultural resources, resulting in there now being two sections of the Checklist dealing with cultural resources. Including all cultural resources into one section separate from paleontological resources would seem to be a more reasonable arrangement and more in line with what I suspect was the actual intent of AB 52. The specific language of AB 52 is to "[s]eparate the consideration of paleontological resources from tribal cultural resources", not the reverse. Because of my bias as a paleontologist, I read into this wording an intent to "[s]eparate the consideration of paleontological resources from ... cultural resources", rather than "[s]eparate the consideration of tribal cultural resources from other cultural resources." Thus, Alternative 3, which creates a new CEQA Checklist section entitled Tribal Cultural Resources, does not appear to be consistent with the intent of AB 52.

Second, AB 52 directs OPR to "update the relevant sample questions". None of the three alternatives provided by OPR accomplish this directive. The only suggested "update" is in Alternative 2 where the word "formal" is suggested to be replaced with the word "dedicated". Maybe I am reading more into the wording of AB 52 than is intended. However, if I received a clearly stated directive to "update the relevant sample questions", I would propose changes to update more than one word in one question. Although AB 52 uses the plural "questions", the proposed Alternatives provide only a single word update to a single question.

Third, AB 52 directs OPR to "[a]dd consideration of tribal cultural resources with relevant tribal questions." All three alternatives proposed by OPR do "[a]dd consideration of tribal cultural resources" to the Checklist. Alternatives 1 and 2 "[a]dd consideration of tribal cultural resources" specifically to the Cultural Resources section of the Checklist. I suspect that this was the original intent of the author of AB 52. The word "add" implies adding to something that already exists, rather than creating a new, separate section of the Checklist for Tribal Cultural Resources. Also note that AB 52 uses the plural "questions", while of the three proposed Alternatives, only Alternative 3 provides more than a single question.

In summary, my initial read of AB 52 was that the intent was to "[a]dd consideration of tribal cultural resources" to the existing Cultural Resources section of the Checklist and "[s]eparate the consideration of paleontological resources" into a separate section. I clearly read this intent because to me these changes made the most sense and resulted in the logical arrangement of disparate topics -- cultural resources (historical, archaeological, and tribal) in the section entitled Cultural Resources and paleontological resources in a separate section entitled Paleontological Resources.

If the intent of AB 52 was to mandate that paleontological resources be moved out of the section entitled Cultural Resources, where should it be moved? Moving paleontological resources to the Checklist section on Geology and Soils, along with the question: "Would the project...[d]irectly or indirectly destroy a...unique geologic feature?", would be a better placement than with Cultural Resources. However, questions in the Geology and Soils portion of the Checklist deal primarily with geologic hazards, erosion, and loss of top soil; paleontological resources do not fit well there either. Like cultural resource specialists, most geologists and soil scientists are ill prepared to deal with potential adverse impacts to paleontological resources. Including paleontological resources with Biological Resources is also an alternative, since fossils are after all the remains of prehistoric biological resources or paleobiological resources. However, like most cultural resource specialists, geologists, and soil scientists, most biologists are also ill prepared to deal with potential adverse impacts to paleontological resources. It takes a knowledgeable specialist to deal with specialty topics. Therefore, I suggest that the best way to handle paleontological resources is to include them as a separate section, equal in rank with both Biological and Cultural Resources and with Geology and Soils. Paleontology is an interdisciplinary science including both biology and geology. However, it is a distinct science separate from each of these other fields. It is time that the CEQA Checklist stop treating paleontology as a bastard step-child to some other resource by placing it under some other category in which it does not naturally fit. Instead, include Paleontological Resources as an equal member of the "family". In the attached version of the Checklist, I have suggested a new section for Paleontological Resources, as well as suggested necessary changes to other sections. To be easily found, my suggested changes are in red text highlighted in yellow.

Alternatives 1 and 2 proposed by OPR, like the current CEQA Checklist, apply unequal criteria regarding the severity of potential impacts that need to be considered to biological, historical, archaeological, tribal cultural, and paleontological resources. In the Biological Resources section, the criterion is "have a substantial adverse effect on" biological resources. In the Cultural Resources section, the criterion is "cause a substantial adverse change in the significance of" an historical, archaeological, or tribal cultural resource. In stark contrast, for paleontological resources, the criterion is "destroy a unique paleontological resource". In other words, to be considered a potentially significant impact, paleontological resources must not be just adversely affected as must biological resources or adversely changed as must cultural resources; they must be destroyed! In addition, the only significant impacts to be considered are impacts to "unique" paleontological resources, rather than adverse impact to any or all paleontological resources. (Incidentally, the word "unique" is not defined in CEQA when applied to paleontological resources.) To be consistent, the Checklist should consider only adverse impacts that have the potential to "destroy unique" biological and cultural resources. Of course, this language is absurd, but it is just as absurd to use this criterion for paleontological resources. To correct this unequal treatment of equally significant resources and to be consistent, I suggest that the Checklist language for paleontological resources simply be changed to "cause a substantial adverse change in the significance of paleontological resources." The attached revised version of the Checklist uses this proposed language. Making this change now is consistent with the AB 52 mandate to "update the relevant sample questions."

Thank you for considering my comments/suggestions above. I would be pleased to have the opportunity to discuss these items further with persons involved in making changes to the CEQA Initial Study Checklist.

Dr. Lanny H. Fisk, PhD, PG

Proposed Changes to CEQA Appendix G
by Dr. Lanny H. Fisk, PhD, PG
18 December 2015

APPENDIX G

Environmental Checklist Form

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

π	Aesthetics	π	Agriculture Resources	π	Air Quality
π	Biological Resources	π	Cultural Resources	π	Geology / Soils
π	Hazards & Hazardous Materials	π	Hydrology / Water Quality	π	Land Use / Planning
π	Mineral Resources	π	Noise	π	Paleontological Resources
π	Population / Housing	π	Public Services	π	Recreation
π	Transportation/Traffic	π	Utilities / Service Systems	π	Mandatory Findings of Significance

	Potentially Significant Impact	**Less Than Significant with Mitigation Incorporation**	**Less Than Significant Impact**	**No Impact <u>or</u> <u>Does Not Apply</u>**
V. CULTURAL RESOURCES -- Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?	π	π	π	π
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?	π	π	π	π
~~c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature~~? *[Note: This question moved to section VI and a new section XII.]*	~~π~~	~~π~~	~~π~~	~~π~~

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporation	Less Than Significant Impact	No Impact or Does Not Apply
~~d)~~ c) Disturb any human remains, including those interred outside of formal cemeteries?	π	π	π	π
d) Cause a substantial adverse change in the significance of a tribal cultural resource as defined in Public Resources Code §21074?	π	π	π	π

Responses to individual questions/items:

a)

b)

c)

d)

VI. GEOLOGY AND SOILS --

Would the project:

f) Have a substantial adverse effect on a unique geologic feature?	π	π	π	π

Responses to individual questions/items:

f)

XII. PALEONTOLOGICAL RESOURCES --

Would the project:

a) Cause a substantial adverse change in the significance of a paleontological resource or site?	π	π	π	π
b) Substantially impact sediments or rock layers with the potential to contain paleontological resources?	π	π	π	π

Responses to individual questions/items:

a)

b)