

San Manuel Band of Mission Indians

October 13, 2015

Christopher Calfee, Senior Counsel
Governor's Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814
[Via email to: CEQA.Guidelines@resources.ca.gov]

Re: Comments on Proposed Updates to the CEQA Guidelines (August 11, 2015)

Dear Mr. Calfee:

The San Manuel Band of Mission Indians, a federally recognized Indian tribe located in Highland, California (the "Tribe"), respectfully submits the following comments based upon our review of the Proposed Updates to the CEQA Guidelines (August 11, 2015): Preliminary Discussion Draft (the "Proposed Updates").

Background of the Tribe

The San Manuel Band of Mission Indians is a tribe of Serrano Indians with its reservation located in San Bernardino County. The people of San Manuel call themselves the Yuhaviatam, which means "People of the Pines." The Yuhaviatam is one of several bands of the greater Serrano Indian Nation.

The aboriginal lands of the greater Serrano Indian Nation consists of a large, historically-established geography that stretches from east of Los Angeles to Twenty-nine Palms, and from a region that is north, west and east of Barstow to the San Bernardino Valley. This aboriginal area includes much of the western portion of present-day San Bernardino, eastern Los Angeles, and a smaller portion of southeastern Kern Counties in southern California and encompasses more than 11,000 square miles.

The Tribe maintains an active cultural resource management program that endeavors to preserve these Serrano aboriginal land and its cultural resources through such involvements as monitoring and providing input on city and county general plans, and consultations with various federal agencies, which are a matter of public record and demonstrate the Tribe's ongoing commitment to preserving its cultural integrity and fulfilling its role as Most Likely Descendant when inadvertent discoveries of human remains are made within the Tribe's aboriginal territory.

General Comments

While the Tribe appreciates the desire to update the CEQA Guidelines, releasing the Proposed Updates without addressing the impacts of AB 52 is premature in our view and could cause wide-spread confusion as to how Tribal Cultural Resources (as defined in Pub. Resources Code § 21074) should be treated under the CEQA Guidelines if amended at this time and in this manner. The Tribe understands that the Santa Ynez Band of Chumash Indians has submitted

detailed comments on several areas that could impact the treatment of Tribal Cultural Resources in the Proposed Updates. The Tribe generally agrees with and adopts the points made in their comment letter and will not reiterate each point in our letter. However, the Tribe feels it is important to also note that the Proposed Updates touch on many areas of great importance to tribes and yet, the Tribe is not aware of any requests made by OPR to tribes in the state for government-to-government consultation prior to the release of the Proposed Updates. While the Tribe would have preferred to participate in consultations prior to the release of the Proposed Updates, the Tribe respectfully requests that OPR adopt a policy of engaging in government-to-government consultations with Indian tribes in the state prior to the release of any final drafts of the CEQA Guidelines and future policy initiatives that impact tribes. Such a tribal consultation policy would fulfill the terms of Executive Order B-10-11, which was issued in September 2011 and requires all State of California agencies to encourage communication and consultation with California Indian Tribes.

As you are aware, the Tribe is involved in the CEQA/AB 52 Focus Group and will continue to participate in that process. The Tribe has been assured that comments to the CEQA Guidelines on issues affected by the passage of AB 52 will not be precluded by this deadline to submit comments to the Proposed Updates and that the Tribe may continue to address the need for clarification on the treatment of Tribal Cultural Resources in the AB 52 Technical Advisory or through additional changes to the CEQA Guidelines through this forum. As such, while the Tribe finds this guidance somewhat confusing, the Tribe reserves the right to further comment on the CEQA Guidelines on issues regarding AB 52 and the treatment of Tribal Cultural Resources under CEQA, whether that be through government-to-government consultations or the CEQA/AB 52 Focus Group.

Finally, The Tribe notes that there are many unaddressed issues in the Discussion Draft Technical Advisory: AB 52 and Tribal Cultural Resources in CEQA that was circulated with the Proposed Updates. Rather than reiterate our previous comments, which were submitted on May 29, 2015, I have included our previous comment letter as an attachment hereto.

Conclusion

Indian tribal nations in California and across the United States have traditionally held their aboriginal lands in the highest religious/spiritual reverence and respect. These lands are the places of our creation, places where our sacred and religious sites and cultural resources are located, places where our ancestors are buried, and places where our cultural sovereignty is deeply rooted. Even if most of our aboriginal lands are no longer under the direct control and governance of the Indian nations, we continue to hold them as respected tribal cultural resources that hold the essence of our continuity as indigenous peoples.

While the Tribe understands that our collective future will require new developments, Indian tribes are also mindful of the need to approach development in a responsible manner. Tribes have a particular need to act responsibly out of respect for cultural resources that are located across the state, which provides the motive for the Tribe to engage in this process of providing

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comments on the Proposed Updates to the CEQA Guidelines and to encourage ongoing consultations on a government-to-government basis. Through open and mutually respectful engagement, the various stakeholders in the state should be able to reach agreement on how best to solve development challenges that provides for our collective future.

Based on the foregoing and on behalf of the Tribe, I urge you carefully consider and address our concerns. Please contact me directly at 909-864-8933, if you have questions regarding this important matter.

Sincerely,



Jerry J. Paresa
Chief Executive Officer

cc: John Ferrero, Chief of Staff, Assemblyman Gatto
Terrie Robinson, General Counsel, Native American Heritage Commission
Jenan Saunders, Deputy State Historic Preservation Officer, Office of Historic Preservation

San Manuel Band of Mission Indians

May 29, 2015

California Office of Planning and Research
Sacramento, CA 95814

Dear Sir/Madam:

The San Manuel Band of Mission Indians welcomes this opportunity to provide comments on the draft technical advisory for tribal cultural resources and CEQA (AB 52).

San Manuel Band of Mission Indians

The San Manuel Band of Mission Indians (the “Tribe”) is a federally recognized American Indian tribe located near the city of Highland, San Bernardino County, California. Since 1891, the Tribe has been recognized as a sovereign nation with the right of self-government by the United States Federal Government. The Tribe, also known as the Yuhaviatam Clan, or “People of the Pines”, is one of several clans of the greater Serrano Indian Nation whose aboriginal territories encompass much of present-day San Bernardino County, southeast Kern County, Eastern Los Angeles County and northwestern Riverside County. The Tribe has maintained a close connection with its ancestral territories and has been designated as the Most Likely Descendants by the California Native American Heritage Commission on numerous occasions when inadvertent discoveries of human remains and cultural resources were made within its ancestral territory.

Comments and Concerns Related to the Technical Advisory

The Tribe is pleased that tribal cultural resources will now be included early in the CEQA process and submits these comments in an effort to aid the Governor’s Office of Planning and Research in developing these guidelines.

Identification of Public Agency Notice Party

The Tribe requests that the advisory identify a notice party (i.e., Planning Director, Chief Environmental Officer, General Manager) that is consistent across public agencies to receive notifications that the Tribe wishes to be notified of projects within its traditionally and culturally affiliated area. AB 52 now requires tribes to put public agencies on notice that it wishes to receive notifications of projects within its traditionally and culturally affiliated area to begin the consultation process, but it does not specify to which party in the lead agency such notice should be sent. As you are aware, the NAHC is tasked with providing a list of lead agencies, but that list is not due until 2016. As such, because there is no list and the advisory does not provide guidance on this issue, tribes are left with the option to send notices to all possible agency officials (i.e. mayors, city planners, attorneys, etc.) or risk that notification not be effectuated. To eliminate confusion and needless duplication, the Tribe respectfully requests the advisory identify a key official or officials of public agencies to accept these notices.

Provision of Maps and Records Searches to Assist in Consultation Decision

Determining whether consultation is appropriate will be most effective when tribes have a clear understanding of the exact location of the project. When agencies request information from tribes about Tribal Cultural Resources, it is often unclear exactly where the project is to be located. This makes it very difficult for the tribe to determine whether consultation is appropriate. Moreover, with over 10,000 years of prehistory, the assumption that tribes know the location of all their cultural sites is presumptuous and tribes likely do not have the results of records searches from the Archaeological Information Center readily available to assist in identifying such sites when presented with requests for consultation. To assist tribes in determining whether consultation is appropriate on a project-by-project basis, the Tribe respectfully requests that the advisory require that lead agencies provide (i) a project location map on the appropriate portion of the U.S.G.S. topographic map with the area of the project clearly defined, and (ii) the results of a Records Search from the appropriate Archaeological Information Center.

Government-to-Government Consultation on Proposed Regulations

Finally, the Tribe understands that regulations concerning AB 52 are currently being drafted. The Tribe wishes to work together in developing such regulations and believes we can provide insight and guidance on matters pertaining to the implementation of CEQA (AB 52) and how regulations can best assist our respective governments in achieving the goal of reducing adverse impacts to tribal cultural resources. In keeping with the spirit of government-to-government relations and consultation, the Tribe respectfully requests that tribal leaders be provided an opportunity to review and comment on any regulations relating to tribal cultural resources prior to the public comment period.

I invite your staff to consult with the Tribe toward further developing policy language for tribal cultural resources and CEQA (AB 52).

Sincerely,



Lynn R. Valbuena
Chairwoman