

SAN LUIS REY BAND OF MISSION INDIANS

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June 1, 2015

Christopher Calfee
Senior Counsel
Governor's Office of Planning & Research
1400 Tenth Street
Sacramento, CA 95814

VIA EMAIL
CEQA.Guidelines@resources.ca.gov

**RE: COMMENTS REGARDING THE DISCUSSION DRAFT TECHNICAL
ADVISORY: AB 52 AND TRIBAL CULTURAL RESOURCES IN CEQA (MAY
2015)**

Dear Mr. Calfee:

On behalf of the San Luis Rey Band of Mission Indians ("SLR" or "Tribe"), thank you for the opportunity to provide comments regarding the Governor's Office of Planning and Research's ("OPR's") Discussion Draft Technical Advisory: AB 52 and Tribal Cultural Resources in CEQA¹ (May 2015) ("Technical Advisory"). The Tribe understands that the Technical Advisory will provide guidance to California lead agencies and California Native American tribal governments for the implementation of AB 52. The Tribe further understands that the Technical Advisory is not required to be provided until July 2016, a full year after the commencement of the law. SLR appreciates and commends OPR's efforts in providing the draft Technical Advisory prior to both of these dates.

After reviewing the Technical Advisory, SLR respectfully requests that three (3) areas of the law discussed within the Technical Advisory be further addressed by OPR for the benefit of both California Native American tribal governments and California lead agencies. These requests upon OPR are the following: (1) provide additional guidance to lead agencies on developing a best practice for introducing themselves to California Native American tribes within their geographic and/or jurisdictional areas if said lead agency is "unknown"; (2) provide additional guidance on developing a best practice for lead agencies in contacting a California Native American tribe prior to the determination of a CEQA exemption applicability; and (3) to provide additional guidance on developing a best practice in maintaining a tribal cultural resource's confidentiality for non-lead agency individuals and/or entities.

¹ CEQA is the acronym for the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.).

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In accordance with the law², if a California Native American tribe wishes to be consulted on projects that may negatively impact a tribal cultural resource, they must first contact the California lead agencies within the geographic area with which the tribe is traditionally and culturally affiliated and provide a written request stating that they wish to be notified of said projects. The Tribe has become increasingly concerned about this requirement upon the tribes. SLR believes that there may be lead agencies that are either “dormant”, or are simply “unknown” to OPR and the Native American Heritage Commission (“NAHC”). In these situations, California Native American tribes will be unable to notify these lead agencies of their wish to be consulted in accordance with AB 52 prior to the public review process. Without the NAHC being able to provide “unknown” lead agency contact information, the Tribe respectfully requests that OPR provide further guidance to lead agencies in developing a “best practice” for these types of lead agencies by informing the California Native American tribes within their geographic/jurisdictional areas of their existence. Without being informed of these “unknown” lead agencies in a timely manner, either through a best practice of the lead agencies introducing themselves to the tribes or an advanced notice by the lead agencies emerging existence to the NAHC or OPR, California Native American tribes will not be able to consult with the lead agencies prior to the public review of their projects, thereby defeating the purpose and intent of AB 52.

SLR’s second concern regarding the Technical Advisory is in regards to OPR providing guidance to lead agencies on developing a best practice when determining a project’s CEQA applicability. California Public Resources Code Section 21080.3.1 provides that consultation between the lead agency and California Native American tribe must take place prior to the determination of whether a negative declaration, mitigated negative declaration, or environmental impact report is required for a project. What remains unclear and requires additional guidance to be provided by OPR, are for projects that may appear to be CEQA exempt, but for the negative impact to tribal cultural resources. For instance, currently there is an exemption in CEQA for in-fill projects. However, what has been discovered throughout the state is that tribal cultural resources exist in these “in-fill” areas and have been negatively impacted by these projects. Therefore, SLR respectfully requests that OPR provide guidance to the lead agencies that regardless of a project’s potential to be exempt under CEQA, if a California Native American tribe has requested to be consulted, that those lead agencies contact those tribes in accordance with California Public Resources Code Section 21080.3.1(b) prior to any determination of how the project will be evaluated under CEQA.

SLR’s final concern involves OPR providing additional guidance to lead agencies on developing a best practice on how to maintain the confidentiality of tribal cultural resources by non-Lead Agency individuals and/or entities. SLR appreciates OPR’s incorporation of Clover Valley Foundation v. City of Rocklin (2011), 197 Cal.App.4th 200, within the Technical Advisory; however, desires a more clarified guidance for AB 52’s requirement of confidentiality of tribal cultural resources on non-lead agency individuals and/or entities. The current laws on confidentiality are clear in regards to public agencies, yet remain unacceptably vague on private individuals, or in this instance, that of a project proponent. Without clear and definite guidance on how these non-public agency individuals are to treat and maintain the confidentiality attached to tribal cultural resources, the Tribe is apprehensive on these resources’ locations and whereabouts being secure from desecration and/or looting. Therefore the Tribe respectfully requests that OPR provide additional guidance regarding the applicability of the requirement of confidentiality within the law to non-lead agency individuals.

² See Public Resources Code Section 21080.3.1(b) and 5097.94(m).

Thank you for the opportunity to provide comments regarding the Governor's Office of Planning and Research's Discussion Draft Technical Advisory: AB 52 and Tribal Cultural Resources in CEQA³ (May 2015). We look forward to continuing this discussion with the Governor's Office of Planning and Research.

Sincerely,

A handwritten signature in black ink, appearing to read "Merri Lopez-Keifer". The signature is fluid and cursive, with a large initial "M" and "L".

Merri Lopez-Keifer
Chief Legal Counsel

cc: Mel Vernon, SLR Captain
Carmen Mojado, SLR Secretary of Government Relations
Jenan Saunders, Deputy State Historic Preservation Officer (via email)

³ CEQA is the acronym for the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.).
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