



October 13, 2015

State of California Governor's Office of Planning and Research
Attn: Holly Roberson
1400 Tenth Street
Sacramento, CA 95814
Holly.Roberson@opr.ca.gov

VIA E-MAIL

Re: Wishtoyo Foundation Comments on May 2015 AB-52 Draft Advisory and CEQA Guidelines Implementing AB-52

Dear Mrs. Roberson:

On behalf of the Wishtoyo Foundation ("Wishtoyo"), we submit the following comments to best ensure the May 2015 Discussion Draft Technical Advisory: AB-52 and Tribal Cultural Resources in CEQA ("Draft Advisory") and the California Quality Act ("CEQA") Guidelines ("CEQA Guidelines" or "Guidelines") implementing AB-52 accurately capture AB-52's plain meaning requirements and mechanisms as intended by the legislature within the context CEQA's statutory framework. Please note that these comments do not reflect Wishtoyo's advocacy positions pertaining to the protection of Native American cultural resources, and do not modify, or attempt to modify, CEQA, the existing CEQA Guidelines, or AB-52 as adopted.

I. The Draft Advisory and Guidelines Implementing AB-52 Must Provide Guidance on AB-52 sections 11(b) and 6(c)(1) Regarding the Rights for California Native American Tribes and Individuals who are not Involved in Consultation to Participate in and Contribute to CEQA's Environmental Review Process

The Draft Advisory is silent in regards to the participation of California Native American tribes or individuals who are not involved in the consultation process set forth in Sections 5-7 of AB-52 and provided in Public Resources Code Sections 21080.3.1, 21080.3.2, 21082.3 (hereinafter "consultation"). Guidance for the Draft Advisory and provisions in the Guidelines are needed to ensure agencies do not misinterpret AB-52 to impermissibly silence the voice of California Native American tribes and individuals that do not participate in consultation.

Section 11(b) of AB-52 provides that "(t)his act does not prohibit any California Native American tribe or individual from participating in the California Environmental Quality Act on any issue of concern as an interested California Native American tribe, person, citizen, or

member of the public.” Further, Public Resources Code 21080.3.2(c)(1) (AB-52 Section 6 (c)(1)) pertaining to the scope of consultation and the mitigation proposed for tribal cultural resources during consultation expressly provides, “This section does not limit the ability of a California Native American tribe or the public to submit information to the lead agency regarding the significance of the tribal cultural resources, the significance of the project’s impact on tribal cultural resources, or any appropriate measures to mitigate the impact.”

The plain language of AB-52 Sections 11(b) and 6(c)(1) are clear: if a Native American tribe or individual does not participate in consultation, then that tribe or individual, regardless of MLD status, NAHC contact list status, or status as a “California Native American tribe” retains all rights to provide substantial evidence regarding the sufficiency of surveys and studies to used to identify tribal cultural resources, impacts to tribal cultural resources, and the sufficiency of mitigation measures for tribal cultural resources. Thus, a lead agency must certainly consider information timely submitted by a Native American tribe or individual that did not participate in consultation during the public comment opportunities in the environmental review process and public hearings otherwise provided by CEQA.

AB-52 Section 7(a) and (b) (Public Resources Code Section 21082.3(a) and (b)) are also consistent with and support this plain reading of Section 11(b). AB-52 Section 7(a) clearly provides that mitigation measures agreed upon in consultation shall only be *recommended* for inclusion in the environmental review document and AB-52 Section 7(b)(2) expressly provides that a lead agency’s environmental review document shall discuss whether the feasible alternatives or measures that may be agreed to during consultation actually avoid or substantially lessen the impact on tribal cultural resources. Taken together considering AB-52 Section 11(b) and Section 6(c)(1), AB-52 Section (7)(a) and (7)(b) provide for the mitigation developed during consultation to be included in the environmental review document, but not to the exclusion of substantial evidence of alternative or more protective mitigation measures provided by a Native American tribe or individual that did not participate in consultation.

The Legislative Council Digest summarizing AB-52 is also consistent with this plain meaning interpretation, as the Digest provides that “(b)y requiring the lead agency to consider these effects relative to tribal cultural resources and to conduct consultation with California Native American tribes, this bill would impose a state-mandated local program.” This language summarizing AB-52 clearly demonstrates that the requirements to consult and to consider effects relative to cultural resources are two stand-alone mechanisms in the CEQA process. Thus, the Legislative Council Digest summarizing AB-52 provides additional support that the information gathered from consultation does diminish the right of an Native American tribe or individual, that does not participate in consultation, to provide substantial evidence regarding impacts to, and the sufficiency of mitigation measures for, tribal cultural resources that must be considered and analyzed by the lead agency.

Section 10(b) of AB-52 (Public Resources Code Section 21084.3(b)) does not provide any authority that indicates that a lead agency does not have to consider information timely submitted by a Native American tribe or individual that did not participate in consultation. It states that:

If the lead agency determines that a project may cause a substantial adverse change to a tribal cultural resource, and measures are not otherwise identified in the consultation

process provided in Section 21080.3.2, the following are examples of mitigation measures that, if feasible, may be considered to avoid or minimize the significant adverse impacts. AB-52 Section 10(b) (Public Resources Code Section 21084.3(b))

Thus, Section 10(b) merely provides guidance as to what a lead agency could consider as mitigation should the avoidance method of preservation in place mitigation not be feasible and should mitigation measures not be identified during consultation. AB-52 Section 10(b) (Public Resources Code Section 21084.3(b)) does not provide that only the impacts to tribal cultural resources identified during consultation, or that only the mitigation measures considered during consultation, should be considered or adopted. Thus, the integration of AB-52 Section 10(b) (Public Resources Code Section 21084.3(b)) into CEQA and the CEQA guidelines must and should not alter the requirement for lead agencies to consider and analyze impacts to, and mitigation measures for, tribal cultural resources provided by California Native American tribes or individuals that do not participate in consultation provided by AB-52.

II. The Draft Advisory and Guidelines Must Express that AB-52 Provides that Avoidance, if Feasible, is the Preferred Mitigation Method for Preservation in Place

Section 10(a) of AB-52 (Public Resources Code Section 21084.3(a)) provides that “(p)ublic agencies shall, when feasible, avoid damaging effects to any tribal cultural resource.” Thus, the Draft Advisory and CEQA Guidelines must express that AB-52 provides that avoidance, if feasible, is the preferred mitigation method for preservation in place. As provided in section IV. of this letter below, the avoidance method of preservation in place must still be analyzed to determine its sufficiency for avoiding and preserving impacts to tribal cultural resources. For instance, without a discussion in the environmental review document as to whether avoidance achieves preservation in place, avoidance of a tribal cultural resources could occur without a sufficient buffer to maintain the cultural, religious, and or spiritual integrity of tribal cultural resources for the local tribes and or could subject tribal cultural resources to desecration due to ease of public access.

III. The Draft Advisory and Guidelines Must Express that AB-52 Maintains CEQA’s Existing Mitigation Preference of Preservation in Place for Tribal Cultural Resources

Sections 1(b)(2) and (b)(3) of AB-52 provide:

it is the intent of the Legislature, in enacting this act, to accomplish all of the following:...

(2) Establish a new category of resources in the California Environmental Quality Act called “tribal cultural resources” that considers the tribal cultural values in addition to the scientific and archaeological values when determining impacts and mitigation.

(3) Establish examples of mitigation measures for tribal cultural resources that uphold the existing mitigation preference for historical and archaeological resources of preservation in place, if feasible.

Section 1(b)(3) clearly provides that in enacting AB-52, it was the legislature’s intent to maintain

CEQA's existing mitigation preference of preservation in place for tribal cultural resources. Read in conjunction with Section 10(b)(3), Section 10(b)(2) provides further clarity that purpose of AB-52 is to maintain CEQA's preference for preservation in place for tribal cultural resources that were previously considered and treated as historical and or archeological resources under CEQA.

AB-52 Section 10(b) (Public Resources Code Section 21084.3(b)) does not alter CEQA's existing requirements to analyze and adopt feasible mitigation measures that may achieve preservation in place. It merely provides guidance as to what a lead agency could consider as mitigation should the avoidance method of preservation in place mitigation not be feasible and should mitigation measures not be identified during consultation. Importantly, while Section 10(b)(1) provides examples of methods that may achieve preservation in place, the presence of other examples of mitigation in Sections 10(b)(2)(3)(4) provide examples of enhancements and considerations for feasible preservation in place mitigation, as well as guidance as to other methods of mitigation should preservation in place not be feasible.

Likewise AB-52 Section 7(a) and (b) (Public Resources Code Section 21082.3(a) and (b)) do not alter and are consistent with CEQA's existing requirements to analyze and adopt feasible mitigation measures that may achieve preservation in place. AB-52 Section 7(a) clearly provides that mitigation measures agreed upon in consultation, regardless if they achieve preservation in place, shall only be *recommended* for inclusion in the environmental document and AB-52 Section 7(b)(2) expressly provides that a lead agency's environmental document shall discuss whether the feasible alternatives or measures that may be agreed to during consultation actually avoid or substantially lessen the impact on tribal cultural resources. Taken together considering AB-52 Sections 1(b)(2) and (b)(3), AB-52 Section (7)(a) and (7)(b) provide for the mitigation developed during consultation to be included in the environmental review document, but not to the exclusion of analyzing or adopting more protective mitigation measures that achieve preservation in place that are provided by a Native American tribe or individual that did not participate in consultation.

IV. The Draft Advisory and Guidelines Must Express that AB-52 Upholds CEQA's Requirement to Analyze All Measures that "May" Achieve Preservation in Place, Including "Avoidance"

AB-52 Section 7(b) (Public Resources Code Section 21082.3(b)) provides:

If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following: (1) Whether the proposed project has a significant impact on an identified tribal cultural resource. (2) Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource.

As detailed in Section III. of this letter above, AB-52 maintains CEQA's existing mitigation preference of preservation in place for tribal cultural resources. Because AB-52 maintains CEQA's existing mitigation preference of preservation in place, Section 7 (b) clearly indicates

CEQA's existing requirements to thoroughly discuss and analyze all mitigation measures that may achieve preservation in place gathered as a result of consultation and as a result of information timely provided during the environmental review process by Native American Tribes and individuals that did not participate in consultation.

Thus, AB-52 thus does not change CEQA's current requirement to analyze all measures that may achieve preservation in place, including the need to analyze whether an avoidance mitigation measure actually achieves preservation in place.¹ Instead, AB-52 maintains CEQA's requirement that the mitigation derived from consultation, and from Native American tribes and individuals outside of consultation during CEQA's public comment periods and hearings, must be analyzed and considered by lead agencies in the environmental review documents. This is exceptionally important because in order to achieve avoidance or other methods of preservation in place for tribal cultural resources as preferred by the legislature, a lead agency must conduct a thorough analysis of all methods of proposed mitigation from a tribal perspective to ensure the applicable tribe(s) feel and certify that tribal cultural resources are actually preserved in place. Without such analysis informed from a tribal perspective, lead agencies cannot determine which measures achieve preservation in place and which measures do not.

AB-52 Section 10 (b) provides additional support that AB-52 thus does not change the CEQA's requirement to analyze all measures that may achieve preservation in place. It provides that "If the lead agency determines that a project may cause a substantial adverse change to a tribal cultural resource, and measures are not otherwise identified in the consultation process provided in Section 21080.3.2, the following are examples of mitigation measures that, if feasible, may be considered to avoid or minimize the significant adverse impacts..." Thus, Section 10(b), because it also provides examples of mitigation for lead agencies to consider, further supports the need for lead agencies to analyze all mitigation measures that may achieve preservation in place and their respective feasibility

CEQA's existing requirements for lead agencies to analyze preservation in place, as solidified by California Courts and as unchanged by AB-52, are clear. CEQA and CEQA Guidelines 15126.4(3), require lead agencies, to consider all mitigation methods that may achieve preservation in place. See *Madera Oversight*, 199 Cal.App.4th 48,84-87; *Ballona Wetlands*, 201 Cal.App.4th 455, 469-71; *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal. App. 4th 200, 236-237; *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260-61; *Sacramento Old City Assn.*, 229 Cal.App.3d 1011, 1028-30; *Laurel Heights*, 47 Cal.3d 376, 418; Guidelines §§ 15126.4(a)(1), 15126.4(b)(3) (A-D). Further, once Native American tribes or Native American individuals comment on mitigation measures necessary to achieve preservation in place, the lead agency's Environmental Impact Report must discuss whether the measures proposed by Native American tribes and individuals, and whether the measures included in AB-52 and the CEQA Guidelines as examples, achieve preservation in place (Guidelines §§ 15126.4(a)(1)(B), 15126.4(b)(3)(A-D); *Madera Oversight*, 199 Cal.App.4th 48,84-86; *Ballona Wetlands*, 201 Cal.App.4th 455, 469-71 [holding that the four enumerated

¹ As detailed in Section II. of this letter above, a determination as to whether an avoidance mitigation measures achieves preservation in place could and would likely need to include an analysis as to whether a suitable buffer is provided around the tribal cultural resource, and or other additional mitigation components or measures are provided, to protect its integrity, use, and function to a local tribe.

methods in Guidelines § 15126.4 (b)(3)(B) are merely “potential means for preservation in place.”].) California Courts have uniformly held that CEQA Guidelines section 15126.4 (b)(3)(B) does not provide that each of the four methods enumerated as examples of measures that may achieve preservation in place *automatically* achieves preservation in place. (*Id.*) AB-52’s listing of example measures that “may” achieve preservation in place does not change this interpretation. “May be accomplished by” is not “is accomplished by” – in other words, AB-52 and the current Guidelines do not assume that each of the measures currently provided in the Guidelines or as examples in AB-52 will necessarily accomplish preservation in place. (Guidelines § 15126.4 (b)(3)(B); AB-52 section 10(b)(1); AB-52 section (1)(b)(3), AB-52 section 7(b)) Instead, CEQA requires a discussion of each of the methods that may achieve preservation in place. (AB-52 section 10(b)(1); AB-52 section (1)(b)(3), AB-52 section 7(b); Guidelines §§ 15126.4(a)(1)(B), 15126.4(b)(3) (A-D).)

V. The Draft Advisory and Guidelines Must Express that AB-52 Upholds CEQA’s Requirement for Lead Agencies to Analyze the Feasibility of Preservation in Place Mitigation Measures for Tribal Cultural Resources, and to Commit to Feasible Preservation in Place Mitigation for Tribal Cultural Resources

AB-52 Section 1(b)(3) provides: “it is the intent of the Legislature, in enacting this act, to accomplish all of the following: ... (3) Establish examples of mitigation measures for tribal cultural resources that uphold the existing mitigation preference for historical and archaeological resources of preservation in place, if feasible.”

While AB-52 Section 1(b)(3) upholds CEQA’s existing requirement to implement mitigation measures that achieve preservation in place, if feasible, AB-52 Section 10 (b) reinforces CEQA’s existing requirement for a lead agency to conduct a thorough analysis in CEQA’s environmental review documents regarding the feasibility of mitigation measures that may achieve preservation in place by providing that “the following are examples of mitigation measures that, if feasible, may be considered to avoid or minimize the significant adverse impacts..”

As currently provided by CEQA, and as unchanged by AB-52, the EIR’s discussion of preservation in place must state whether each of the methods that actually achieve preservation in place as determined by tribes are feasible and the reasons for its determination of feasibility. (Guidelines §§ 15126.4(b)(3), 15126.4 (a)(1); *Madera Oversight*, 199 Cal.App.4th 48, 85.) This requires that a feasibility analysis of the measures that actually achieve preservation in place as determined by the Tribe is conducted at the EIR phase and not left to the future unbound discretion of a developer or agency.

In regards to the requirements pertaining to a lead agency’s duty to commit to feasible preservation in place mitigation at the time of EIR certification, that, as AB-52 Section 1(b)(3) makes clear, has not been altered by the passage of AB-52, California Courts have clearly interpreted CEQA and CEQA Guidelines section 15126.4(3), to require lead agencies, to commit to *implementing feasible* preservation in place mitigation for Native American historic cultural resources. See *Madera Oversight*, 199 Cal.App.4th 48,84-87; *Ballona Wetlands*, 201 Cal.App.4th 455, 469-71; *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal. App. 4th 200, 236-237; *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83

Cal.App.4th 1252, 1260-61; *Sacramento Old City Assn.*, 229 Cal.App.3d 1011, 1028-30; *Laurel Heights*, 47 Cal.3d 376, 418; Guidelines §§ 15126.4(a)(1), 15126.4(b)(3) (A-D). This commitment to implement feasible preservation in place mitigation requires one of two things. The lead agency, in its environmental review document, must either a.) determine what preservation in place measures are feasible and commit to those feasible preservation in place measures if they are feasible, or, b.) only when impacts cannot not be known until a future date, provide criteria to determine whether preservation in place is feasible in the future in order to comply with CEQA's requirement that the environment review document (EIR) set forth enforceable, effective mitigation measures. CEQA, forbids impermissible deferral of preferred mitigation, such as preservation in place, and thus requires a determination of feasibility or specific criteria / performance standards defining feasibility to protect against private interests or agencies having the unbounded discretion to determine whether preservation in place is feasible down the road. (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal. App. 4th 200, 236-237; *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260-61; *Sacramento Old City Assn.*, 229 Cal.App.3d 1011, 1028-30; see *Laurel Heights*, 47 Cal.3d 376, 418 [upholding a mitigation measure by which project noise levels will be kept within performance standards].) CEQA Guidelines Section 15126.4 (a)(1)(B) is clear:

Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.

Thus, the lead agencies can only adopt destructive Phase III Data Recovery via excavation or other mitigation that does not achieve preservation in place if preservation in place mitigation is demonstrated in the environmental review documents to be infeasible or if according to specific feasibility criteria or performance standards adopted by the lead agency after public review at the time of EIR certification, future preservation in place is determined to be infeasible. (Guidelines §§ 15126.4 (b)(3)(A-D); AR:6673-74, 6691-93, 114418, 114433-42; *Madera Oversight*, 199 Cal.App.4th 48, 86-87; *Ballona Wetlands*, 201 Cal.App.4th 455, 470-71.)

VI. The Draft Advisory and CEQA Guidelines Implementing AB-52 Should Provide Guidance that Natural Cultural Resources can be Tribal Cultural Resources

AB-52 Section 4(a)(2) (Pub. Resources Code, § 21074 (a)(2)) provides that "Tribal cultural resources" are:

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 §5024.1. In applying the criteria set forth in subdivision (c) of §5024.1 for the purposes of this paragraph, the lead agency shall consider the significance of the resource to a California Native American tribe.

Public Resources Code Section §5024.1(c) provides that a resource may be listed as an historical resource in the California Register if it meets any of the following National Register of Historic

Places criteria:

- (1) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage.
- (2) Is associated with the lives of persons important in our past.
- (3) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values.
- (4) Has yielded, or may be likely to yield, information important in prehistory or history.

Natural tribal cultural resources, such as willow needed to make Chumash houses called *aps*, unpolluted water from a sacred stream or waterbody, or the habitat needed to support a condor or eagle whose presence is critical to a sacred site, ceremonial site, or the ability of a tribe to conduct religious or cultural practices at a particular site where tribal cultural resources are present, have been found eligible to meet the criteria for National Register of Historic Places criteria.

For example, in *Hatmaker v. Georgia Dept. of Transp.*, 973 F. Supp. 1047 (M.D. Ga. 1995) an oak tree associated with historical events was found to be an eligible property and thus was deemed eligible for listing in the National Register of Historic Places.

In addition, the habitat of wildlife sacred to Tribes, such as the habitat of eagles, such as a ridgeline, canyon, nesting place, lakeshore, river valley, mesa, mountain, or other landform or landscapes known for eagle habitation, have been considered eligible for listing in the National Register of Historic Places according to the criteria in Public Resources Code Section §5024.1(c) because they constitute a contributing feature or element of a property of historic, religious, sacred, and or cultural importance to Native American Tribes. (See Appendix A and B to this letter for consideration and determination of eagle habitat areas sacred to Native Americans as eligible for listing in the National Register of Historic Places.)

Therefore, because natural tribal cultural resources (including the habitat need to support wildlife whose presence is critical to a sacred site, ceremonial site, or the ability of a tribe to conduct religious or cultural practices at a particular site) have been found eligible to meet the criteria for listing in the National Register of Historic Places, the Draft Advisory and CEQA Guidelines Implementing AB-52 should provide guidance that natural cultural resources, and habitat for wildlife that a tribe considers to be a natural cultural resource, can be a tribal cultural resource.

VII. The Appendix G Checklist in the CEQA Guidelines Used by Lead Agencies for Assistance in Identifying Impacts to Tribal Cultural Resources at the Early Stages of Projects Should be Broadened

Instead of asking: “Would the project cause a substantial adverse change in the significance of a tribal cultural resource as defined in Public Resources Code 21074”, Wishtoyo suggests broadening the Appendix G checklist surveying whether there are significant impacts to tribal cultural resources by expanding Appendix G to a.) list as many potential types of tribal cultural resources that could be impacted, including impacts to natural tribal cultural resources, and b.) by also asking whether these impacts would occur absent mitigation. Furthermore, the Appendix

G checklist surveying impacts to tribal cultural resources should encompass impacts identified by a California Native American tribe, California Native American individual, or member of the public.

For example, the question in Appendix G to assist lead agencies in determining whether there are impacts to tribal cultural resources could be phrased as follows:

Would the project, absent avoidance or mitigation, have a significant or damaging impact on any of the following tribal cultural resources in (a) – (z) below identified by either a California Native American tribe, California Native American individual, or member of the public?

(a)....

(b)

(z) any other natural, sacred, religious, historic, or cultural tribal historic resources.

VIII. The Draft Technical Advisory Should Identify that Input as to the Sufficiency of a Lead Agency’s Surveys and Studies to Identify Tribal Cultural Resources are Topics that May be Addressed During Consultation and During CEQA’s Public Review Process

The Draft Advisory provides:

The new provisions in the Public Resources Code enumerate topics that may be addressed during consultation, including tribal cultural resources, the potential significance of project impacts, the type of environmental document that should be prepared, possible mitigation measures and project alternatives. (Pub. Resources Code, § [21080.3.2\(a\)](#).)

AB-52 Section. 6(a) (Public Resources Code Section 21080.3.2(a) provides:

The consultation may include discussion concerning the type of environmental review necessary, the significance of tribal cultural resources, the significance of the project’s impacts on the tribal cultural resources, and, if necessary, project alternatives or the appropriate measures for preservation or mitigation that the California Native American tribe may recommended to the lead agency.

By specifically stating that consultation may include “discussion concerning the type of environmental review necessary” in AB-52 section 6(a), the legislature clearly provides that during consultation a California Native American tribe may provide input as to the sufficiency of a lead agency’s surveys and studies to identify tribal cultural resources. The Draft Advisory and the CEQA guidelines should reflect this because cultural resources studies and surveys conducted or overseen by lead agencies without input from California Native American tribes and individuals are often too narrow in scope and or are otherwise inadequate.

For instance, many lead agencies, when feasible, do not use or require canine forensics to detect

the location of ancestral burials nor use ground penetrating radar to identify and detect tribal cultural resources in combination with walking surveys, information from knowledgeable local Native Americans individuals and tribes, and other important tools used to locate tribal cultural resources. Because AB-52 clearly provides that a topic of consultation can be input as to the adequacy of a lead agency's studies and surveys to identify tribal cultural resources, and because this input that often is necessary to identify the location of tribal cultural resources is a critical first step before adequate preservation in place mitigation measures can be developed and established, the Draft Advisory and Guidelines must be amended to reflect that during consultation, a California Native American tribe can provide input as to the type of studies and surveys necessary to identify tribal cultural resources. The Draft Advisory and Guidelines should also reflect that AB-52 sections 11(b) and 6(c)(1) provide that Native American tribes or individuals that did not participate in consultation, also have the right and ability to provide input as to the adequacy of a lead agency's studies and surveys to identify tribal cultural resources during the public comment periods and hearings provided by CEQA. Without first identifying and locating tribal cultural resources, tribal cultural resources are left exposed to irreversible impacts from excavation and other ground disturbing activities, and left only with mitigation measures such as Phase III data recovery that desecrate and do not preserve cultural resources in place.

IX. Conclusion

About Wishtoyo: Wishtoyo is a 501(c)(3) non-profit organization with over 700 members composed primarily of Chumash Native Americans, Native Americans throughout California, Los Angeles County residents, and Ventura County residents. Wishtoyo's mission is to preserve, protect, and restore Chumash culture, the culture of all diverse communities, and the environment. Wishtoyo also shares traditional Chumash beliefs, cultural practices, songs, dances, stories, and value with the public to instill environmental awareness and responsibility for sustaining the health of our land, air, and water for the benefit of future generations.

Thank you for your time and consideration in reviewing our comments. Please feel free to contact us with any questions.

Sincerely,



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Chumash Ceremonial Elder
Executive Director, Wishtoyo Foundation



Luhui Isha
Cultural Resources & Education Director
Wishtoyo Foundation



Jason Weiner
General Counsel
Wishtoyo Foundation