

May 29, 2015

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

Sent electronically to: CEQA.Guidelines@resources.ca.gov

Subject: Discussion Draft Technical Advisory – AB 52 and Tribal Cultural Resources in CEQA

Dear Mr. Calfee and Ms. Roberson:

AECOM thanks you for the opportunity to submit comments regarding the Office of Planning and Research's ("OPR") May 2015 Discussion Draft Technical Advisory ("Technical Advisory"). Assembly Bill ("AB") 52 amended the California Environmental Quality Act ("CEQA") to require lead agencies to consult with Native American tribes that are geographically and culturally affiliated with an area in which there is a proposed project and analyze whether a project with an environmental effect may cause a substantial adverse change in the significance of a new resource, "tribal cultural resources ('TCR')." AECOM's senior archaeologists have reviewed the Technical Advisory and have the following questions.

- Regarding the statement that "consultation must take place prior to the determination of whether a negative declaration, mitigated negative declaration, or environmental impact report is required for a project" (California Public Resources Code, § 21080.3.1.). The normal environmental planning process generally begins with a notice of preparation that includes the anticipated document type, without any consultation from interested parties. Since AB 52 states that consultation may include "the type of environmental review necessary" (California Public Resources Code, § 21080.3.2.a), it seems that agencies must provide for a consultation period with Tribes before they start the CEQA process. Is that the intent?
- CEQA does not allow disclosing impacts outside of the CEQA team prior to the public release of the draft environmental impact report (DEIR); however, AB 52 directs the lead agency to discuss potentially significant impacts and possible mitigation measures with the tribe(s) (California Public Resources Code, § 21080.3.2.a). How can the lead agency adhere to the intent of AB 52 without violating CEQA?
- Does the agency have a responsibility to consult if a tribe responds after the 30-day period? As part of this process is the agency required to follow-up with phone calls, etc. prior to or after the 30-day period has expired? Is the letter sufficient?
- If a tribe submits a statement that they do not wish or no longer desire to be included in the consultation process, is consultation with that tribe considered complete even if they later state that they wish to be included in the process?
- What defines a tribe's traditional and culturally affiliated area? Who makes the determination on a tribe's affiliated area? Is that based upon historic ethnographic data or the tribe's interpretation? If it is the tribe's interpretation, do they need to provide evidence to the extent of their culturally affiliated area? The lead agency should have access to the data that

determines a tribe's affiliation with a geographic area so that the lead agency may verify the data.

- If the tribe does not respond to the agency prior to the July 1, 2016 date, does that mean that the agency no longer has the responsibility of consulting with them for future projects and that the agency no longer is required to consult with the Native American Heritage Commission (NAHC) for a list of interested parties, but can rely upon those tribes that have contacted them?
- OPR's guidelines omitted that the lead agency may request assistance from NAHC. What is the recourse if a lead agency requests NAHC's assistance in identifying geographically affiliated tribes and NAHC does not respond within a timely manner?
- Will the current list of Native Americans by County distributed by the NAHC become the list of people agencies will need to consult with under AB 52?
- If NAHC or a tribe fails to provide substantial evidence that a resource is a TCR, then is it up to the lead agency to determine if a resource is a TCR?
- What is a lead agency's recourse if NAHC or Native Americans do not inform a lead agency of a potential TCR until after the CEQA document is certified?
- If NAHC fails to assist the lead agency in identifying geographically affiliated tribes within the initial 14-day period and no other tribes request consultation within the 30-day period, is tribal consultation considered complete?
- If there is more than one tribe affiliated with a geographic area and the tribes have differing opinions regarding a resource and whether or not it is a TCR, what is the proper procedure?
- Is there any reason why a resource could not be determined to be two or more types of cultural resources (historical resource, unique archaeological resource, and a tribal cultural resource)?
- Is there any guidance regarding instances where a mitigation measure for a unique archaeological resource or a historical resource could potentially result in a significant impact to the same resource if it is also considered a tribal cultural resource? What about instances where a mitigation measure for a tribal cultural resource could be insufficient mitigation for the same resource as an unique archaeological resource?
- If an environmental document was prepared prior to the implementation of AB 52 and there is a supplemental EIR, subsequent EIR, or an addendum, does the addendum have to take into consideration TCRs?
- Is consultation required if the project is exempt from CEQA?

Thank you for considering our questions and providing clarification. If you would like to discuss any of our questions or comments you may contact me at denise.jurich@aecom.com or 916.414.5848.

Sincerely,

A handwritten signature in blue ink, appearing to read "Denise M. Jurich". The signature is fluid and cursive, with a large initial "D" and "J".

Denise M. Jurich, RPA
Senior Archaeologist