From: Lisa Westwood [Lwestwood@ecorpconsulting.com]
Sent: Thursday, May 28, 2015 5:19 PM
To: CEQA Guidelines@CNRA
Subject: RE: Comments on Draft AB 52 Technical Advisory

Good afternoon:
I have a couple of additional questions that I feel would be helpful to see addressed in the technical advisory.

1. **Emergency Projects**: There exists some disagreement among some of the agencies I work with regarding emergency projects, and for the same general reason as Cat Ex's (see item 1 below). Section 15269 states that emergency projects are "exempt from the requirements of CEQA." It does not say that they are exempt from CEQA altogether; yet ministerial projects (Section 15268) are also "exempt from the requirements of CEQA" and agencies normally do not go through CEQA review when issuing business licenses or other ministerial actions. It would seem logical that emergency projects are, therefore, not subject to the requirements of AB 52. Is that correct?

2. **Defining the start of the 14-day initial notification period**: Agencies each handle their decision to initiate CEQA review differently. Some define it as when a staff member or a project number is assigned to the project; others define it as when a project application is complete, or when they have funding, and some don't memorialize that start date in any form at all – they just start it when their workload permits. However, with the new requirement to initiate consultation within 14 days, some kind of formal "start date" will need to be determined. This can be particularly problematic to define when it comes to programmatic or annual programs that normally are subject to CEs/NOEs (like pothole filling), and for Capital Improvement Projects (where the specific project has been identified and defined, but funding is a couple of years away). Do you have any guidance as to how the start of the 14-day notification period must be defined and recognized formally in order to be compliant? Or is it enough to say that agencies must make their own determination, set their own protocols, and then follow them consistently?

Thank you, again, for the opportunity to provide some additional feedback as you finalize your technical advisory! I look forward to your responses.

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From: Lisa Westwood
Sent: Monday, May 18, 2015 1:56 PM
To: 'CEQA.Guidelines@resources.ca.gov'
Subject: Comments on Draft AB 52 Technical Advisory

Good afternoon!
Thank you so much for issuing some draft guidance on the implementation of AB 52. After reviewing the guidance and in speaking with all of my agency clients, there are three issues that

are arising as concerns among the local agencies and regulated community, which I believe would benefit from some comment and/or clarity from OPR:

1. **Cat Ex**: Do projects that otherwise qualify for Cat Ex's require AB 52 consultation prior to determining that the project qualifies for a CE? Many agencies and their legal counsel say that CEs do not mean that the project is exempt from CEQA – it means that the project is just exempt from having to do an IS or EIR (that a CE is just one of many ways in which a project complies with CEQA). As one example, there is concern that there is an expectation that they need to carry out tribal consultation before installing handicap grab bars in modern buildings, for example.

2. **Supplemental Docs**: If an existing certified EIR needs to be amended or supplemented, does that subsequent environmental document require AB 52 consultation? There are questions being raised about a supplemental EIR being an extension of an existing CEQA document, and not a new CEQA review altogether.

3. **Blanket Requests**: It is well understood that, at the start of CEQA, agencies need only contact tribes that have requested such notification after having submitted a blanket request letter to the agency. However the NAHC has an additional year beyond the effective date to assemble the master list of agencies, and that said list is a prerequisite to tribes being able to request lists and send blanket notification letters in the first place. There is concern among many agencies about this discrepancy between the effective date of the bill and the fact that the very first step is predicated on an action that has another year to come into being. It would seem logical that agencies are only obligated to consult under AB 52 with tribes who send blanket request letters, regardless of the status of the NAHC master list assembly, and that tribes can, should they choose, send blanket consultation letter requests now. However, if agencies don't receive any blanket consultation requests because the NAHC has another year to do their part, then could it be the case that the agency will be found to be non-compliant with the requirement to consult with California Native American tribes because they didn't send out project notification letters to anyone? Guidance or clarity on how agencies are to be compliant with the consultation requirement between 7/1/2015 and the time at which NAHC assembles their master list of agencies for tribes to draw from would be appreciated.

4. **Substantial Evidence**: Some guidance about how to define "substantial evidence" for TCRs that do not have a physical manifestation would be appreciated, in order to avoid having this tested in the courts whenever possible.

Thank you for the technical advisory and for the opportunity to provide comments!

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