



*Ksen' SKu' Mu' Chumash*

Ksen~Sku~Mu  
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Po Box 161  
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May 31, 2015

Governor's Office of Historic Preservation  
1725 23rd Street, Suite 100,  
Sacramento, CA 95816

Re: AB52 Tribal Cultural Resources and CEQA, Draft AB52 Technical Advisory

To Whom It May Concern:

I thank you for the opportunity to comment on the Draft AB52 Technical Advisory document. My name is Frank Arredondo. I am Chumash/Coastanoan. I am a member of the Native American Heritage commission Most Likely Descendants List (MLD) for the Chumash Territory and listed on the Native American Contact list for Santa Barbara County. My comments today are of my own.

Being of Native American descendant, from the Chumash territory, I have a strong vested interest in this document. I currently provide comment on several Planning and Development projects with local lead agencies in the surrounding areas that have cultural resources impacts. I have been an advocate for the preservation of those Cultural Resources within my community and for over 8 years now as well as placing an emphasis on local governments adhering to policies and procedures. I thank you for taking the time to review my comments.

This draft technical advisory fails to provide valid and reliable consideration of sacred places. The bases of protection for sacred places is first based on the requirement that they must conform to the criteria set forth in subdivision (c) of §5024.1. A sacred place which typically contains intangible elements that can never meet the four (4) criteria listed in the subdivision. It requires substantial evidence which is stated to mean fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact, all terminology based on the review of the lead agency regardless of a Tribes expertise concerning their tribal cultural resources. This contradicts the authority stated by §5097.96 where the Native American Heritage Commission (NAHC) is to inventory sacred places. If a lead agency is required to evaluate sacred places against subdivision (c) of §5024.1 then the true authority then becomes the lead agency and not the NAHC or Native Americans.



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In this section, *III. Summary of New Requirements for Consultation and Tribal Cultural Resources B. Consultation* it is mentioned that OPR's *Tribal Consultation Guidelines* provide further explanation as to what "consultation" means, it should also include some terminology that states more clearly the need for lead agencies to provide all documents to consulting parties. The issue is that in some cases the Lead agency has been known to cite confidentially of documents and refused to release documents to consulting Native Americans. Under section 5 (page 7) when a lead agency begins consultation all pertinent documents need to be provided. It will good to review *Quechan Tribe v. U.S. Dep't of Interior* (S.D. Cal. 2010) where it was determined that the lead agency failed to provide relevant documents to constitute consultation. It needs to be stated clearly that consulting parties are provided with all documents directly or either on request and with no restrictions.

In the last section where Mitigation is discussed, on page 9, the document does not include the items found in the bill it self. During the bill's conception I personally worked very hard to get the writers of the bill to include the wording for this section. The Draft Technical Advisory document does not include SEC.11 (b). Found throughout the Advisory document is SEC.11 (a),(c) and SEC 12 referenced. It is unclear why SEC.11 (b) is not listed.

SEC.11 (b) states: *This 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.*

A main rational for including this section into the bill was for the ability for Californian Native American Most Likely Descendants (MLD's) to have the ability to participate in this process. Since it is codified in section 5097.97, 5097.98. and bears significant legal authority to the disposition of human remains. Many Mld's are often consistent participants in the consultation process and should remain as participants. If this section is not included it will require lead agencies to refer back to the bill itself. It is common for lead agencies to make the claim they are not required to decipher a bill nor qualified too but rather follow OHP's directives and technical documents. If it is not in the technical document it will not be used.

I wish to thank you in advance for your time and the review of my comment letter.

*Best wishes, Frank Arredondo*  
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