



June 1, 2015

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

Sent via email to: CEQA.Guidelines@resources.ca.gov

Re: Large-scale Solar Association Comments on Discussion Draft AB 52 Technical Advisory

Dear Mr. Calfee and Ms. Roberson:

The Large-Scale Solar Association (LSA) is a non-partisan, solar advocacy association with member companies who are leaders in the utility-scale solar industry, and share a common understanding of the issues facing development of the solar industry. This includes supporting the responsible development of utility-scale solar projects in a manner that takes into account impacts on environmental and tribal cultural resources pursuant to the California Environmental Quality Act ("CEQA"). It is in this spirit of responsible development that LSA respectfully submits the following comments and concerns on the Technical Advisory made available by your office on May 1, 2015 regarding the implementation of AB 52 (Gatto, 2014).

Our comments center around several key issues, many of which were raised in the initial negotiations for the bill during the 2013-2014 legislative session but remain worthy of consideration as the Governor's Office of Planning and Research (OPR) implements this policy. Below are the key concerns and areas of continued uncertainty offered by LSA.

1. Consultation requirements and timelines remain unclear in the Technical Advisory (Section III.B). Specifically:
 - a. What is the consultation requirement for an unanticipated finding of historical information during construction?
 - b. What are the timeframes between the formal establishment of consultation (Step 5) the conclusion of consultation (Step 6)?
2. The requirement for what qualifies as a "local register of historic places" is not well defined (Section III.A.1).

3. The mitigation of impacts to Tribal Cultural Resources does not explicitly include data recovery or any other best-practice and professionally accepted mitigation alternatives (Section III.E).

LSA also supports the comments of the California Chamber of Commerce, and signed on to the Chamber's comments with a number of other organizations. That comment letter seeks additional clarity that (1) the lead agency's threshold determination regarding whether a resource is a "tribal cultural resource" under Public Resources Code section 21074 subdivision (a)(2) is a separate and distinct determination from the secondary (and in some instances unnecessary) determination regarding whether an impact to a "tribal cultural resource" is significant, and (2) AB 52's consultation provisions do not trigger when the lead agency determines that a project is exempt from review under CEQA.

In addition to the specific points summarized above, some of which are described in greater detail below, LSA remains concerned that defining entire landscapes as tribal cultural resources may in effect become a zoning exercise, precluding responsible solar development across vast areas of land, thereby impeding the progress toward lowering greenhouse gas emissions. LSA cautions CEQA lead agencies against setting this type of precedent.

1. Section III.B, Consultation

- a. Section III.B of the technical advisory discusses implementation of PRC §21080.3.1(a), however it does not address consultation requirements for unanticipated discoveries during the construction phase of land development projects. The guidelines are not clear on whether existing policy will be applied to unanticipated findings. LSA suggests additional information on (1) how the CEQA lead agency will determine the significance of a tribal cultural resource encountered during construction, (2) whether and how the CEQA lead agency will reinitiate consultation, and (3) whether the CEQA lead agency will have free and clear discretion to determine the significance of the finding without reinitiating consultation.

Given the extensive tribal consultation and cultural resource survey work that takes place during the initial CEQA study process, LSA requests that the new Guidelines explicitly state whether and under what circumstances re-initiation of consultation is required for unanticipated discoveries after certification of the CEQA document. While current practice is for lead agencies to make this determination regarding consultation, LSA requests that OPR set some practical limit to additional consultation.

- b. While the Draft Technical Advisory has explicitly defined the timeframes for initiating consultation in Section III.C.Steps1-4, the timeframes between the formal establishment of consultation (Step 5) and the conclusion of consultation (Step 6) are not well defined. This omission is likely to adversely affect the timeline for resolution of mitigation requirements and approval of projects. Presumably the time limit considerations in PRC §21083.6 and 21151.5 still apply, however further clarification is necessary.

LSA requests that the time considerations be explicitly stated in the forthcoming update to the Guidelines, or suggests that a negotiated schedule for completing the CEQA-related consultation within the expected CEQA licensing timeline should be developed within 15 days after the initial 30 day consultation start period. This timeline should not cause the CEQA process to take longer than it would otherwise take in the absence of AB 52 consultation. Once formal consultation starts, timely responses are expected to maintain meaningful contact. If a Tribe fails to respond within 30 calendar days to a consultation request/response, then consultation will be deemed complete.

2. Section III.A.1, Local Register of Historic Places

The requirement for what qualifies as a “local register of historic places” in Section III.A.1 is not well defined. LSA recommends restricting the definition or using local registers maintained by the following groups, organizations and local governments:

- Tribal Historic Preservation Offices (THPOs)
- California Native American tribes (as defined by the NAHC)
- Certified Local Governments (CLGs)

3. Section III.E, Mitigation

The mitigation of impacts to Tribal Cultural Resources described in Section III.E does not explicitly include data recovery or any other best-practice and professionally accepted mitigation alternatives.

LSA recommends that in Section III.E the Advisory, a provision be added making it clear that for resources deemed important for their informational value, data recovery will be the presumed mitigation measure.

Thank you for your careful consideration of these comments.

Regards,



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