AB 52:
A CEQA Guidelines Update for Tribal Cultural Resources

Holly Roberson, JD
Land Use Counsel
Governor’s Office of Planning and Research
AB 52 Presentation Overview

- Context
- Brief Summary
- Definition of Tribal Cultural Resources
- Notice and Timing
- Mitigation Measures
- AB 52 Implementation Timelines
- Consultation Process Explained
- OPR Requirements
- Discussion Questions and Contact Info
AB 52 in Context

• Key Concepts:
  – Respect Tribal Sovereignty
  – Respect Confidentiality per Pub. Resources Code 21082.3
  – Capacity: Tribal Governments and Lead Agencies vary in the amount of resources they have available to address these issues

• SB 18 (Burton, 2004)
  – Local Governments must Contact and Consult with California Native American Tribes (Tribes)
    • Prior to amendment or adoption of General Plan, Specific Plan, or designation of Open Space.
    • Gov. Code, Planning not CEQA

  – Established the Governor’s Tribal Advisor position
  – Established Administration Policy to encourage State Agencies to Communicate and Consult with Californian Tribes
AB 52 in brief: Include Tribal Cultural Resources in CEQA

- Establishes a consultation process with all California Native American Tribes on the Native American Heritage Commission List-> Fed. And Non Fed. Recognized Tribes

- New class of resources: Tribal Cultural Resources
  - Consideration of Tribal Cultural Values in determination of project impacts and mitigation
  - Required Tribal notice and meaningful consultation

- PRC 21080.3.2(b) Consultation ends when either
  - Parties agree to MMs or avoid a significant effect on TCR
  - A party, acting in **good faith** and after **reasonable effort** concludes that mutual agreement cannot be reached
Definition of a Tribal Cultural Resource

• A Tribal Cultural Resource is:
  – A site feature, place, cultural landscape, sacred place or object, which is of cultural value to a Tribe
  – AND is either: On or eligible for the CA Historic Register or a local historic register,
  – OR the lead agency, at its discretion, chooses to treat the resource as a TCR
  – See: PRC 21074 (a)(1)(A)-(B)
Notice and Timing

• Tribe requests to be on the Agency’s Notice List
• **Within 14 days** of a decision to undertake a project or determination that a project application is complete, lead agency shall provide written notification to the tribes that requested placement on notice list
• Notice to Tribes shall include brief project description, location, lead agency contact info., and statement that Tribe has **30 days** to request consultation
• Lead agency shall begin the consultation process **within 30 days** of receiving Tribe’s request for consultation
Mitigation Measures

• Public agencies shall, when feasible, avoid damaging effects to TCR.
• Consultation at Tribal request
• Mitigation measures agreed upon during consultation shall be recommended for inclusion in environmental document / MMRP
• Examples of mitigation measures include:
  – Avoidance and preservation of the resources in place
  – Treating resource with culturally appropriate dignity
  – Permanent conservation easements
  – Protecting the resource
AB 52 Implementation Timelines

• Law goes into effect on July 1, 2015.
  – After July 1, 2015, if requested by a California Native American Tribe, lead agencies must begin consultation prior to the release of a ND, MND or DEIR. See flowchart for timing.

• CEQA Guidelines update to Appendix G must be drafted by OPR, and adopted by Resources Agency by July 1, 2016
OPR Requirements

By July 1, 2016, OPR shall develop, & Resources shall adopt, revisions to Appendix G of the CEQA Guidelines to:

a) Separate the consideration of paleontological resources from Tribal Cultural Resources and update the relevant sample questions; and

b) Add consideration of Tribal Cultural Resources with relevant sample questions.
OPR’s Process

• Informal Outreach and Listening
• Collaboration with Native American Heritage Commission
• Sign up on CEQA Guidelines Update Listserve at www.opr.ca.gov to stay informed
• California Natural Resources Agency has its own formal process for adoption of changes to the CEQA Guidelines
Discussion Questions

- Other considerations or things which need clarification, and which are within the scope of the statute?

- Examples of consultation processes that have gone well?
Keep in touch

Contact information:
Holly Roberson, Land Use Counsel
Governor’s Office of Planning and Research
Phone: 916-322-0476
Email: holly.roberson@opr.ca.gov