

AB 52 Amends CEQA by Creating a New Category of Cultural Resources and New Requirements for Consultation with Native American Tribes

On September 25, Governor Brown signed Assembly Bill No. 52, which creates a new category of environmental resources that must be considered under the California Environmental Quality Act: "tribal cultural resources." The legislation imposes new requirements for consultation regarding projects that may affect a tribal cultural resource, includes a broad definition of what may be considered to be a tribal cultural resource, and includes a list of recommended mitigation measures.

New category of resources

AB 52 adds tribal cultural resources to the categories of cultural resources in CEQA, which had formerly been limited to historic, archaeological, and paleontological resources. "Tribal cultural resources" are defined as either (1) "sites, features, places cultural landscapes, sacred places and objects with cultural value to a California Native American tribe" that are included in the state register of historical resources or a local register of historical resources, or that are determined to be eligible for inclusion in the state register; or (2) resources determined by the lead agency, in its discretion, to be significant based on the criteria for listing in the state register.

Under AB 52, a project that may cause a substantial adverse change in the significance of a tribal cultural resource is defined as a project that may have a significant effect on the environment. Where a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document must discuss the impact and whether feasible alternatives or mitigation measures could avoid or substantially lessen the impact.

Consultation with tribes

Recognizing that tribes may have expertise with regard to their tribal history and practices, AB 52 requires lead agencies to provide notice to tribes that are traditionally and culturally affiliated with the geographic area of a proposed project if they have requested notice of projects proposed within that area. If the tribe requests consultation within 30 days upon receipt of the notice, the lead agency must consult with the tribe. Consultation may include discussing the type of environmental review necessary, the significance of tribal cultural resources, the significance of the project's impacts on the tribal cultural resources, and alternatives and mitigation measures recommended by the tribe.

The parties must consult in good faith, and consultation is deemed concluded when either the parties agree to measures to mitigate or avoid a significant effect on a tribal cultural resource (if such a significant effect exists) or when a party concludes that mutual agreement cannot be reached.

Mitigating adverse changes to tribal cultural resources

Mitigation measures agreed upon during consultation must be recommended for inclusion in the environmental document. AB 52 also identifies mitigation measures that may be considered to avoid significant impacts if

there is no agreement on appropriate mitigation. Recommended measures include:

- preservation in place
- protecting the cultural character and integrity of the resource
- protecting the traditional use of the resource
- protecting the confidentiality of the resource
- permanent conservation easements with culturally appropriate management criteria.

Conclusion

AB 52 contains several important changes to CEQA. Environmental documents must now consider tribal cultural resources in their analyses, and additional consultation requirements may apply to certain projects. Project proponents should be aware of these new requirements, and tribes should be similarly aware of their consultation rights under the new legislation.

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