An Interpretation of AB 52 Native American Consultation Procedures Under CEQA

**Outside of the CEQA Process**

- NAHC assembles master list of all agencies by 7/1/2016
- Tribe contacts NAHC to request agency contact lists
- NAHC responds to tribe with agency lists
- Tribe sends blanket consultation request letters to agency, including contact person

**Inside the CEQA Process**

- Applicant submits application to CEQA lead agency
- Lead Agency reviews application and determines it complete; the CEQA process begins
- Agency notifies tribe’s contact person of project in writing, with map and project description, and notifies the tribe that it has 30 days to respond. Agency does not need to contact tribes that did not request consultation in writing first.

**Tribe does not respond to indicate desire to consult or does not wish to consult**

- Lead agency documents such in the administrative record / CEQA document and proceeds
- Tribe may consult with other members/elders/experts
- Lead agency evaluates evidence for being eligible for CRHR, local registry, or NRHP based on “substantial evidence” and being geographically defined relative to the project area
- Confidential information must be withheld from public distribution
- What alternatives to avoid TCRs are feasible? (Discussion shall be included in consultation if tribe specifically requests so)
- What are appropriate mitigation measures?

**Tribe responds in writing to indicate desire to consult**

- Lead agency initiates consultation within 30 days of receiving request
- Initial meeting with tribe to present the project
- Agency/applicant may host project area tour
- Does tribe express concern for TCRs in project area?
  - Yes
  - No
- Are there TCRs present in the project area?
  - Yes
  - No
  - Document such in CEQA document and proceed
- What type of CEQA document is appropriate?
  - Document such in CEQA document and proceed
  - Consult on impacts to TCRs
  - Will the project impact TCRs?
    - Yes
    - No
    - Document such in CEQA document and proceed

**Incorporate alternatives considered and mitigation measures into selected CEQA document and MMRP. Become legally enforceable**

**Agency certifies the EIR or adopts the ND/IMND**

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This draft graphic of the AB52 procedures has been developed by ECORP to assist our clients in understanding and following the new requirements under CEQA for consultation with Native American tribes. It is an ECORP product and is proprietary to ECORP. This is not a legal document and has not been reviewed or approved by any agency of the State of California.

1. In accordance with 21080.3.1(b)(1), consultation is triggered by a tribe notifying the Lead Agency in writing of its desire to consult. This is independent of the status of the NAHC issuing a master list of agencies to tribes. However, 21080.3.1(c) states that the NAHC shall assist the Lead Agency in identifying tribes, suggesting that the Agency should request a contact list from the NAHC even if it has not received formal request letters.

2. E.g., preservation and avoidance; protecting cultural character, traditional use, and confidentiality; and use of conservation easements.