

## **TRIBAL CONSULTATION, SAN DIEGO COUNTY EXAMPLES (CEQA, SB-18)**

From Donna Beddow, County of San Diego Planning and Development Services  
to Janet Eidsness (10/17/13)

Below are the links to and pertinent language from San Diego County documents that require tribal consultation. The two links are the *Significance Guidelines* and *Report Format and Content Guidelines* (specific requirements identified in Section 2.2).

At [http://www.sdcountry.ca.gov/pds/docs/Cultural\\_Guidelines.pdf](http://www.sdcountry.ca.gov/pds/docs/Cultural_Guidelines.pdf) (*Significance Guidelines*):

### **1.1.3 Native American Perspective**

In addition to the point of view discussed above, the County acknowledges that other perspectives exist to explain the presence of Native Americans in the region. The Native American perspective is that they have been here from the beginning as described by their creation stories. Similarly, they do not necessarily agree with the distinction that is made between different archaeological cultures or periods, such as “La Jolla” and “San Dieguito”. They instead believe that there is a continuum of ancestry, from the first people to the present Native American populations of San Diego. To acknowledge this perspective, consultation with affected Native American communities can be beneficial to fully understand the impact to cultural resources. The consultation is typically administered pursuant to Senate Bill 18 (see Section 2.2).

### **2.2 State Regulations and Standards**

#### **Traditional Tribal Cultural Places, 2004<sup>3</sup>**

[[http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb\\_0001-0050/sb\\_18\\_bill\\_20040930\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0001-0050/sb_18_bill_20040930_chaptered.pdf)]

The Traditional Tribal Cultural Places Bill of 2004 requires local governments to consult with Native California groups at the earliest point in the local government land use planning process. The consultation intends to establish a meaningful dialogue regarding potential means to preserve Native American places of prehistoric, archaeological, cultural, spiritual, and ceremonial importance. It allows for tribes to hold conservation easements and for tribal cultural places to be included in open space planning.

### **4.2 Guidelines for Determining Impact Significance**

Section 15064.5(b) of the State CEQA Guidelines identifies an adverse environmental impact to historical resources as:

#### **Substantial Adverse Environmental Impact**

(b) A project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.

(1) Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired.

(2) The significance of an historical resource is materially impaired when a project:

(A) Demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources; or

(B) Demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources pursuant to section 5020.1(k) of the Public Resources Code or its identification in an historical resources survey meeting the requirements of section

5024.1(g) of the Public Resources Code, unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant; or (C) Demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its eligibility for inclusion in the California Register of Historical Resources as determined by a lead agency for purposes of CEQA.

**As discussed in these Guidelines, any of the following will be considered a potentially significant environmental impact to cultural resources:**

- 1. The project causes a substantial adverse change in the significance of a historical resource as defined in §15064.5 of the State CEQA Guidelines. This shall include the destruction, disturbance or any alteration of characteristics or elements of a resource that cause it to be significant in a manner not consistent with the Secretary of Interior Standards.**
- 2. The project causes a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5 of the State CEQA Guidelines. This shall include the destruction or disturbance of an important archaeological site or any portion of an important archaeological site that contains or has the potential to contain information important to history or prehistory.**
- 3. The project disturbs any human remains, including those interred outside of formal cemeteries.**
- 4. The project proposes activities or uses damaging to significant cultural resources as defined by the Resource Protection Ordinance and fails to preserve those resources.**

The Guidelines listed above have been selected for the following reasons: Guidelines 1 and 2 are derived directly from CEQA. Sections 21083.2 of CEQA and 15064.5 of the State CEQA Guidelines recommend evaluating historical and archaeological resources to determine whether or not a proposed action would have a significant effect on unique historical or archaeological resources.

Guideline 3 is included because human remains must be treated with dignity and respect and CEQA requires consultation with the “Most Likely Descendant” as identified by the Native American Heritage Commission (NAHC) for any project in which human remains have been identified.

At [http://www.sdcountry.ca.gov/pds/docs/Cultural\\_Report\\_Format.pdf](http://www.sdcountry.ca.gov/pds/docs/Cultural_Report_Format.pdf) (*Report Format and Content Guidelines*) –

## **2.2 Native American Participation**

Native American involvement in development projects is required and consists of consultation and monitoring.

### **2.2.1 Consultation**

Consultation is required pursuant to Section 65352.3 of the Government Code (Senate Bill 18 [2004]). This is a government to government consultation and the County is responsible for conducting the consultation. This regulation requires that consultation take place for any project that involves a General Plan Amendment, Specific Plan, or Specific Plan Amendment. Consultation may include but is not limited to written

correspondence (letters, e-mails) and formal meetings. Additionally, the County consults with Native American groups outside of the requirements of SB-18.

Specifically, the County conducts consultations for projects that have a positive finding for the presence of cultural resources, but are not associated with a General Plan Amendment, Specific Plan, or Specific Plan Amendment. Consultants are to be provided with a copy of the correspondence and any agreements made between local Native American groups, the applicant, and the County for inclusion in cultural resource studies.

### **2.2.2 Monitoring**

A Native American monitor (monitor) is required for surface and subsurface investigations (survey, significance testing, and data recovery). Additionally, a monitor is required to be present for any grading monitoring for the potential presence of cultural resources. A local Tribe may request in writing that the Native American monitor be a representative of their tribe if a project is located within the general vicinity of their ancestral lands. The monitor shall be consulted during the investigations. Native American groups shall be given a minimum notice of two weeks that a monitor is required. If a monitor is not available, work may continue without the monitor. The Principal Investigator shall include in the report any concerns or comments that the monitor has regarding the project and shall include as an appendix any written correspondence or reports prepared by the monitor.

At [http://www.sdcounty.ca.gov/pds/gpupdate/docs/BOS\\_Aug2011/C.1-4\\_Conservation\\_and\\_Open\\_Space.pdf](http://www.sdcounty.ca.gov/pds/gpupdate/docs/BOS_Aug2011/C.1-4_Conservation_and_Open_Space.pdf) (*San Diego County General Plan* has consultation policies in the Conservation and Open Space element)

**COS - 7.4 Consultation with Affected Communities.** Require consultation with affected communities, including local tribes to determine the appropriate treatment of cultural resources. *Consultation should take place with the affected communities concerning the appropriate treatment of cultural resources, including archaeological sites, sacred places, traditional cultural properties, historical buildings and objects, artifacts, human remains, and other items. The County is required by law, Senate Bill 18 Protection of Traditional Tribal Cultural Places (SB - 18), to consult with the appropriate tribes for projects that may result in major land use decisions including General Plans, General Plan Amendments, Specific Plans and Specific Plan Amendment. In addition to these types of permits, it is County policy to consult with the appropriate tribes on all other projects that contain or are likely to contain, archaeological resources. Consultation may also include active participation by the tribes as monitors in the survey, testing, excavation, and grading phases of the project.*

**COS - 7.5 Treatment of Human Remains.** Require human remains be treated with the utmost dignity and respect and that the disposition and handling of human remains will be done in consultation with the Most Likely Descendant (MLD) and under the requirements of Federal, State and County Regulations.

*Human remains, including ancestral Native American remains, should be left undisturbed and preserved in place whenever possible. For most development permits, this is required by the County's Resource Protection Ordinance. In the event that human remains are discovered during any phase of an archaeological investigation, the requirements of State and local laws and ordinances, including notification of and consultation with appropriate tribal members, must be followed in determining what constitutes appropriate treatment of those remains.*

**COS - 7.6 Cultural Resource Data Management.** Coordinate with public agencies, tribes, and institutions in order to build and maintain a central database that includes a notation whether

collections from each site are being curated, and if so, where, along with the nature and location of cultural resources throughout the County of San Diego.

*This database should be accessible to all qualified individuals while maintaining the confidentiality of the location and nature of sensitive cultural resources, such as archaeological sites. The County maintains a partnership with the local repository of the database, the South Coastal Information Center at San Diego State University, which provides direct access by qualified County personnel to the database so that the information it contains may be used to design development projects to avoid cultural resources at an early point in the process.*