



NATIVE AMERICAN HERITAGE COMMISSION

April 26, 2021

Jennifer Osborn, Acting Director
Department of General Services
707 3rd Street, 8th Floor
West Sacramento, California 95605

Governor's Office of Planning & Research
APR 30 2021
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Submitted via Electronic and USPS Mail

Re: Capitol Annex Project

Dear Acting Director Osborn,

The California Native American Heritage Commission (NAHC) writes to express its concern regarding the proposed Capitol Annex Project ("Project"). This item was duly noticed on our April 16, 2021, regular meeting agenda, after hearing concerns from the tribal community. While not taking a position on the proposed Project itself, the Commission has concerns related to the process and completeness of the AB 52 tribal consultation being undertaken by the Department of General Services (DGS) pursuant to CEQA/AB 52 and other applicable authority.

The NAHC applauds the efforts of DGS over the last year to consult with the four consulting tribes in the difficult circumstances that the COVID-19 pandemic has presented to all California governmental entities. However, the NAHC would like to take this opportunity to highlight its concerns with regard to DGS's apparent failure to accord tribal evidence from culturally affiliated tribes with expertise in their own culture and heritage its proper weight in this Project approval process. These are crucial concerns given the prominence and significance of the State Capitol to California's tribes and the precedent this Project will set for CEQA/AB 52 tribal consultations across the State of California.

NAHC staff has confirmed that a Sacred Lands File (SLF) form for Vesnak, was submitted by the THPO for the United Auburn Indian Community on March 31, 2020. It has been Commission practice since its founding to recognize the expertise, self-determination, and agency of California tribes to file submittals of sacred and other significant heritage places to the SLF maintained by the NAHC pursuant to Cal Pub Res Code §5097.94. The Commission encourages DGS to also consider applying similar recognitions when consulting with tribal governments affiliated with the locations of DGS's projects especially when they are associated with locations on the SLF, as is the case regarding the proposed Capitol Annex Project, in recognition of and respect for the government-to-government relationship between the State of California and tribal governments.

Moreover, it is the Commission's understanding that several lines of evidence in support of the tribal cultural resource landscape of Vesnak have been provided by the consulting tribal governments to DGS. This includes tribal testimony regarding the location and cultural significance of Vesnak from three culturally affiliated Tribal Historic Preservation Officers (THPOs) (Shingle Springs Rancheria, United Auburn Indian Community of the Auburn Rancheria, and Wilton Rancheria) and the Preservation Committee Chair for the lone Band of Miwok Indians. The Commission confirms that each of these Tribes is on the NAHC's AB 52 tribal notification and Most Likely Descendent (MLD) lists, both of which are maintained by the NAHC pursuant to California State law.

Regarding the evidentiary value of THPO and Tribal Preservation Committee testimony, the Commission, as an educating State Agency on AB 52 best practices, takes note of the Governor's Office of Planning and Research's Technical Advisory: AB 52 and Tribal Cultural Resources in CEQA (June 2017) to which the NAHC maintains a link on its website at: <http://nahc.ca.gov/2017/06/technical-advisory-ab52-and-tribal-cultural-resources-in-ceqa/>. The Advisory states that the testimony of a THPO may be evidence to support a lead agency's factual determination that a resource is a Tribal Cultural Resource. The plain reading of the Advisory places information gathered during the AB 52 consultation process within the evidentiary context of CEQA's substantial evidence standard found within the state CEQA Guidelines.¹

Unfortunately, we understand that DGS may be taking the position that the testimony of THPOs and Preservation Committee Chairs does not meet the substantial evidence standard of CEQA, not because of technical issues with the information, but simply because it is not from sources recognizable or trustworthy to the staff managing the CEQA process for the Project. This is exactly why AB 52 was enacted – to finally recognize and give due weight to the expertise that tribes have with regard to their own heritage and culture. Furthermore, the NAHC is unaware of any authority to support such a cramped interpretation of AB 52. The Commission strongly urges DGS to revisit its draft finding in light of the legislative intent of AB 52, CEQA's definition of substantial evidence, State guidance, including the NAHC's Tribal Consultation Under AB 52: Requirements and Best Practices found at its website at: http://nahc.ca.gov/wp-content/uploads/2015/04/AB52TribalConsultationRequirementsAndBestPractices_Revised_3_9_16.pdf, and, of overarching importance, Governor Newsom's Executive Order N-15-19.

Sincere, respectful and effective tribal consultation reflects a spiralic interactive discussion between the lead agency (DGS) and the consulting tribal governments, such that tribes should not be surprised about a governmental decision regarding the very identification and findings related to a Tribal Cultural Resource. Relative to the Capitol Annex Project, we understand that consulting tribes had not been made aware of the analytical requirements and thresholds upon which DGS would be making its discretionary determinations on Tribal Cultural Resources prior to receiving your recent determination. Had tribes been timely apprised regarding your Agency's concerns about resource boundaries and registration criteria, we understand the tribes would have participated in additional discussion and provided additional information and resources, if appropriate.

We hope that DGS will continue to work with the consulting tribes so that the tribal cultural resource landscape of Vesnak can be accorded proper acknowledgement and consideration in both the proposed Capitol Annex Project and long term management of the capitol grounds.

Sincerely,



Laura Miranda, Chairperson

Cc:

Scott Morgan, Chief Deputy Director, OPR

Julianne Polanco, SHPO

Daniel Fonseca, THPO, Shingle Springs

Matthew Moore, THPO, United Auburn Indian Rancheria

Steven Hutchason THPO, Wilton Rancheria

Jereme Dutschke, Preservation Committee Chair, Lone Band of Miwok Indians

¹ California Code of Regulations, Title 14, Division 6, Chapter 3 section 15384(b), which defines substantial evidence as including facts, reasonable assumptions predicated on facts, and expert opinion supported by facts.