



City of San Clemente Planning Division

Notice of Preparation of an Environmental Impact Report

Date: February 12, 2021

To: Responsible and Trustee Agencies, Organizations, and Interested Parties

Lead Agency: City of San Clemente, Community Development
Contact: Jennifer Savage, Planning Division
910 Calle Negocio, San Clemente CA 92673

Subject: City of San Clemente Safety and Housing Element Update

The City of San Clemente (City) will be the Lead Agency and will prepare an Environmental Impact Report (EIR) for the project described below. The purpose of this Notice of Preparation (NOP) is to provide responsible agencies and interested stakeholders with information describing the project and to request feedback on the on the scope and content of the environmental document, the potential environmental effects that are of most concern, and what alternatives to the project should be analyzed within the EIR.

Scoping Meeting:

Consistent with Section 21083.9 of the California Environmental Quality Act (CEQA) Statute, a public scoping meeting will be held to solicit comments regarding the scope and analysis of the EIR. The scoping meeting will provide information about the CEQA process and will enable interested stakeholders to provide meaningful comments that identify environmental issues and alternatives that are recommended for consideration in the EIR. Public comments received at the Scoping Meeting and/or in writing during the NOP scoping process will be included as part of the EIR.

Zoom Virtual Meeting

Date: February 25, 2021

Time: 5:30 p.m. to 6:30 p.m.

You may participate on your computer or via telephone, as follows:

On your computer:

Link: <https://us02web.zoom.us/j/86916740891?pwd=Y0xDeHZ6U0ZiSURrdkgzUHJKQ1Jidz09>

Meeting ID: 869 1674 0891

Passcode: 599569

Via telephone:

Dial: +1 669 900 9128 or find your local number at: <https://us02web.zoom.us/j/keJZL1qiRg>

Meeting ID: 869 1674 0891

Passcode: 599569

Project Location:

The City of San Clemente is located in Orange County about 26 miles south of Irvine, California. San Clemente is bordered on the east and southeast by the County of San Diego, Camp Pendleton, and unincorporated portions of Orange County, on the west by the Pacific Ocean and Dana Point, on the north by the City of San Juan Capistrano and unincorporated portions of Orange County (Figures 1 and 2). The City is about 18 square miles in size and has a population of about 67,000 people with approximately 27,500 housing units. The City has two Metrolink stations: San Clemente and San Clemente Pier. The locations of specific potential rezones sites are shown on Figure 3.

Project Description:

The project includes an update to two General Plan elements, the Safety Element, and the Housing Element. The project would additionally implement rezoning necessary to achieve the City’s Regional Housing Needs Assessment (RHNA). A summary of each project element is provided below.

Safety Element

The City’s General Plan Safety Element Update will include revisions needed to comply with the latest planning guidance related to wildfire planning and will provide general updates with currently available data. Additionally, recent legislative changes (Government Code 65302(g)(4)) require Safety Elements, “be reviewed and updated as necessary to address climate adaptation and resiliency strategies.” The Safety Element update is expected to include the following mapping updates:

- Critical Facilities
- Flood Hazard
- Geologic, Seismic and Soils Hazards
- Tsunami Inundation Risk
- High Fire Hazard Severity Zones
- Hazardous Materials Sites

In addition to various updates to maps within the Safety Element, the update will include policy and information addressing emergency evacuation, climate vulnerability and adaptation, and wildfire. Results from the City’s Sea Level Rise Vulnerability Assessment will be incorporated by reference. Parallel efforts are underway with current efforts to update the City’s Local Hazard Mitigation Plan, which will additionally be incorporated by reference.

Housing Element

State law requires each jurisdiction to demonstrate in their Housing Element that its land inventory is adequate to accommodate its share of the region’s projected growth. The Housing Element is a required element of the City’s General Plan that sets citywide goals,

objectives and policies for housing and identifies housing conditions and needs within the community. The Housing Element must be updated every eight years. The project will evaluate adoption of the City’s 2021-2029 Housing Element, including rezones that will be necessary to implement the Housing Element and achieve the City’s RHNA allocation. Although various potential rezone sites will be evaluated in the EIR, the City does not intend to adopt the rezones concurrent with the Housing Element Update (HEU) adoption. Future rezones will be undertaken as a separate action but will rely on the environmental analysis completed with the current environmental document. The HEU will ensure the City’s General Plan is internally consistent and in compliance with State housing law.

The City’s RHNA allocation is approximately 978 total units, with specific allocations identified for each income group (Table 1). Housing required to meet the RHNA is anticipated to occur from Accessory Dwelling Unit (ADU) construction, reusing sites from prior Housing Element cycles, and rezoning additional sites. Approximately 401 units are anticipated from ADU construction and reuse of prior Housing Element cycle sites. Approximately 577 units are proposed to come from rezone sites that will allow housing in new areas.

Table 1 RHNA 2021-2029		
Income Group (% of County AMI)	Total Housing Units Allocated	Percentage of Units
Extremely Low (30% or less)/Very Low (31–50%)	281	28.70%
Low (51–80% AMI)	163	16.70%
Moderate (81%–120% AMI)	187	19.10%
Above Moderate (>120% AMI)	347	35.50%
Total RHNA Allocation	978	100%
AMI = area median income		

Candidate rezone sites (Table 2) were identified based on the following factors:

- The existence of high vacancy/turnover rates, declining/marginal operations, outdated business models.
- Age and condition of structure.
- Underutilized existing land use, e.g., number of units and/or Floor Area Ratio.
- Expressed interest of property owners or developers for redevelopment.
- Areas exhibiting active development activity.

All housing sites are considered draft as they are subject to further environmental review and approval by City and the California Department of Housing and Community Development.

**Table 2
Candidate Sites for Rezoning**

Assessor Parcel Number	Address	Acres	Current Zoning	Proposed Zone (dwelling units per acre)	Potential Units*	Affordability
679-021-05	Calle Frontera	5.31	MISP (I)	RMH (30.0)	127	Affordable
688-161-04	190 Avenida La Pata	2.17	RSCSP (Business Park)	RMH (30.0)	52	Affordable
678-161-02	990 Avenida Vista Hermosa	1.6	FRSP (NC)	RMH (30.0)	38	Affordable
688-021-36	907 Avenida Pico	10.75	RSCSP (MU)	Housing Overlay RM or RSCSP RH (24.0)	206	Moderate
688-021-37		0.83	RSCSP (MU)	Housing Overlay RM (24.0)	16	Moderate
688-021-33	911 Avenida Pico	0.69	RSCSP (MU)	Housing Overlay RM (24.0)	13	Moderate
688-021-34	915 Avenida Pico	0.68	RSCSP (MU)	Housing Overlay RM (24.0)	13	Moderate
688-021-30	937 Avenida Pico	2.36	RSCSP (MU)	Housing Overlay RM (24.0)	45	Moderate
688-021-14	957 Avenida Pico	0.79	RSCSP (MU)	Housing Overlay RM (24.0)	15	Moderate
688-021-31	943 Avenida Pico	2.18	RSCSP (MU)	Housing Overlay RM (24.0)	42	Moderate
688-021-15	951 Avenida Pico	10.48	RSCSP (MU)	Housing Overlay RM (24.0)	201	Moderate
688-021-16	959 Avenida Pico	0.53	RSCSP (MU)	Housing Overlay RM (24.0)	10	Moderate
688-021-17	963 Avenida Pico	0.56	RSCSP (MU)	Housing Overlay RM (24.0)	11	Moderate
688-131-22	979 Avenida Pico	2.43	RSCSP (MU)	Housing Overlay RM (24.0)	47	Moderate
688-131-21	989 Avenida Pico	6.42	RSCSP (MU)	Housing Overlay RM (24.0)	123	Moderate
688-021-18	965 Avenida Pico	0.74	RSCSP (MU)	Housing Overlay RM (24.0)	14	Moderate
688-131-20	993 Avenida Pico	2	RSCSP (MU)	Housing Overlay RM (24.0)	38	Moderate
692-351-09	101 Pico Plaza	7.46	WPCSP (CC2)	Housing Overlay RMH (30.0)	178	Affordable
692-351-05	85 Pico Plaza	3.03	WPCSP (CC2)	Housing Overlay RMH (30.0)	73	Moderate
692-351-10	91 Pico Plaza	0.37	WPCSP (CC2)	Housing Overlay RMH (30.0)	9	Moderate
057-020-68	416 E Ave Pico	0.48	WPCSP (CC2)	Housing Overlay RMH (30.0)	12	Moderate
701-043-09	Pico	14.47	TSP (C & OS)	TSP RH (40.0)	462	Affordable
701-041-59	Pico	7.5	TSP (OS)	TSP RH (40.0)	240	Affordable
679-152-03	Camino Vera Cruz	3.33	MISP (OS)	RMH (30.0)	79	Affordable
TOTAL					2,066	

*Total does not add due to rounding.

Affordable includes the categories of Extremely/Very Low and Low. Moderate includes categories of Moderate and Above Moderate.

The HEU will include City policies, strategies, and actions to facilitate the construction of new housing and preservation of existing housing to meet the needs of the population during the planning period for all economic segments. The following programs will continue under the 2021-2029 Housing Element Cycle:

- The City's Inclusionary Housing Program requires developers building six or more units to provide 4 percent of the total number of units for very low-income households, on-site, off-site, or pay an in-lieu fee, donation of land, or a combination recommended by the Community Development Director. The project includes an update to the inclusionary housing program including establishing a new, streamlined in-lieu fee methodology.
- The Neighborhood Revitalization Program provides loans for qualified rental properties and owner-occupied properties, provides special neighborhood clean-ups, public education of laws and services, and code enforcement.
- The Social Services Grant Program supports grants related to housing, homelessness, health, and youth.
- The Affordable Housing Program provides funds for non-profit agencies to acquire and rehabilitate older apartment buildings or construct new apartments for long term affordable housing for very low-income households (persons earning less than 50 percent of median income).

In addition, the HEU will introduce new programs, including the following as mandated by State law:

- Rezoning for RHNA: The HEU will establish a schedule for rezoning to provide adequate sites for the RHNA.
- Housing by Right: The HEU will require that the Zoning Code be amended to permit housing by right without discretionary review on reuse and rezone sites when a project sets aside 20 percent of the units as affordable to lower income households.
- Accessory Dwelling Units (ADUs): The HEU will identify the actions that the City will undertake to facilitate the development of ADUs.
- Affirmatively Furthering Fair Housing Choice: The HEU will outline the City's efforts in promoting fair housing.

Public Comment Period

Comments on this NOP will be accepted for 30 days following issuance of this notice and must be received no later than March 15, 2021 at 4:00 p.m. Comments on the NOP document can be emailed or sent via mail to Jennifer Savage, Project Manager.

E-mail: SavageJ@san-clemente.org
Address: City of San Clemente, Planning Division
Attn: Jennifer Savage
910 Calle Negocio
San Clemente, CA 92673

CEQA Requirements

CEQA requires that public agencies consider the potentially significant adverse environmental effects of projects over which they have discretionary approval authority before acting on those projects (Public Resources Code Section 21000 et. seq.). According to California Code of Regulations Section 15064(f)(1), preparation of an EIR is required whenever a project may result in a significant adverse environmental effect. An EIR is an informational document that is used to inform public agency decision makers and the general public about the significant environmental effects of a project, identify possible ways to mitigate or avoid the significant effects, and describe a range of reasonable alternatives to the project that could feasibly attain most of the basic objectives of the project while substantially lessening or avoiding any of the significant environmental impacts. Public agencies are required to consider the information presented in the EIR when determining whether to approve a project.

Potential Environmental Effects

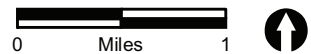
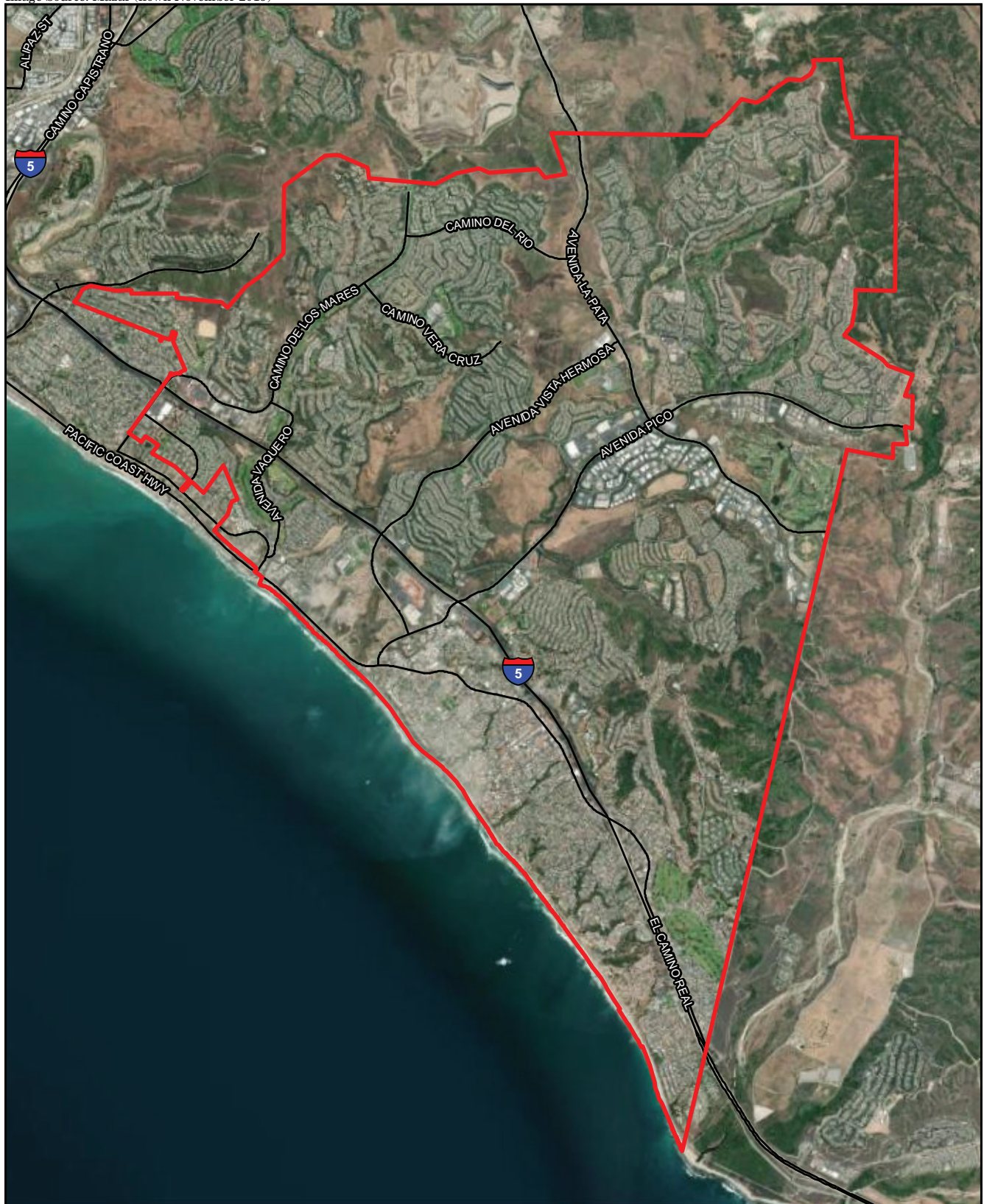
The following is a list of the subject areas to be analyzed in the EIR consistent with the 2021 CEQA Guidelines.

- | | |
|------------------------------------|-------------------------------|
| Aesthetics | Land Use and Planning |
| Agriculture and Forestry Resources | Mineral Resources |
| Air Quality | Noise |
| Biological Resources | Population and Housing |
| Cultural Resources | Public Services |
| Energy | Recreation |
| Geology and Soils | Transportation |
| Greenhouse Gas Emissions | Tribal Cultural Resources |
| Hazards and Hazardous Materials | Utilities and Service Systems |
| Hydrology and Water Quality | Wildfire |



 Project Boundary

FIGURE 1
Regional Location



-  Project Boundary
-  Arterial Roadways

FIGURE 2
Project Location on Aerial Photograph



- Project Boundary
- Arterial Roadways
- Existing Housing Sites
- Potential Rezone Sites

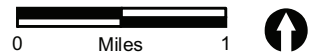


FIGURE 3
Housing Element Sites -
Existing and Potential Rezone Sites

DEPARTMENT OF TRANSPORTATION

DISTRICT 12
1750 EAST FOURTH STREET, SUITE 100
SANTA ANA, CA 92705
PHONE (657) 328-6000
FAX (657) 328-6522
TTY 711

www.dot.ca.gov/caltrans-near-me/district12



Making Conservation
a California Way of Life.

Governor's Office of Planning & Research

Mar 15 2021

March 12, 2021

STATE CLEARINGHOUSE

Ms. Jennifer Savage
City of San Clemente
910 Calle Negocio, Suite 100
San Clemente, CA 92673

File: IGR/CEQA
SCH#: 2021020256
12-ORA-2021-01584
I-5, PM 0.045-6.681

Dear Ms. Savage,

Thank you for including the California Department of Transportation (Caltrans) in the review of the Safety and Housing Element Update Notice of Preparation document in the City of San Clemente. The mission of Caltrans is to provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability.

The project proposes an update to the Safety Element and Housing Element in the City's General Plan. Regional access to the project area is provided by Interstate 5 (I-5). Caltrans is a responsible agency for this project and upon review, we have the following comments:

Transportation Planning

1. We recognize and support the City of San Clemente's continued commitment to include programs relating to homelessness and low-income communities in the 2021-2029 Housing Element Cycle.

Caltrans recognizes our responsibility to assist communities of color and under-served communities by removing barriers to provide a more equitable transportation system for all.

The Department firmly embraces racial equity, inclusion, and diversity. These values are foundational to achieving our vision of a cleaner, safer, and more accessible and more connected transportation system.

Please consider including a discussion on equity in the Environmental Impact Report (EIR).

2. The project is to increase housing and infill development, which may increase traffic congestion and number of single occupancy vehicle

(SOV) trips. Please encourage the use of transit among future visitors, residents, and workers of the proposed rezone areas.

As Caltrans seeks to promote safe, accessible multimodal transportation, please ensure the EIR includes the discussion relating to the City's Multimodal Mobility Strategies on transit connectivity and opportunities to connect bus services to include the nearby train stations for regional connectivity.

Providing improved multimodal connections to housing will improve public health and can encourage residents, future visitors, and workers to utilize alternative transportation options, thus reducing Greenhouse Gas (GHG) emissions, congestion, and Vehicle Miles Traveled (VMT).

3. Please continue coordination with Orange County Transportation Authority (OCTA) for opportunities to enhance multimodal transit strategies.

Coordinate with OCTA relating to the most recent climate change study along the railroad tracks in San Clemente. The project study is titled "Orange County Rail Infrastructure Defense Against Climate Change Plan."

4. The City of San Clemente has two designated train stations: San Clemente Metrolink Station and San Clemente Pier served by Amtrak Pacific Surfliner.

Consider discussing opportunities to connect housing to rail and/or transit and to maximize the safety of railroad crossings for bicycles and pedestrians to accommodate access to the Metrolink stations as part of the Safety Element update.

5. Consider including a discussion on general transportation safety improvements, especially for vulnerable road users such as bicyclists and pedestrians.

Encroachment Permit

6. Any project work proposed in the vicinity of the State Right-of-Way (ROW) would require an encroachment permit and all environmental concerns must be adequately addressed. If the environmental documentation for the project does not meet Caltrans's requirements for work done within

City of San Clemente

March 12, 2021

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State ROW, additional documentation would be required before approval of the encroachment permit. Please coordinate with Caltrans to meet requirements for any work within or near State ROW. For specific details for Encroachment Permits procedure, please refer to the Caltrans's Encroachment Permits Manual at:

<http://www.dot.ca.gov/hq/traffops/developserv/permits/>

Please continue to keep us informed of this project and any future developments that could potentially impact State transportation facilities. If you have any questions or need to contact us, please do not hesitate to contact Joseph Jamoralin at (657) 328-6276 or Joseph.Jamoralin@dot.ca.gov

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Shelley". The signature is fluid and cursive, with the first name "Scott" being more prominent than the last name "Shelley".

SCOTT SHELLEY
Branch Chief, Regional-IGR-Transit Planning
District 12

NATIVE AMERICAN HERITAGE COMMISSION

February 17, 2021

Governor's Office of Planning & Research

February 19, 2021

Jennifer Savage
City of San Clemente
910 Calle Negocio
San Clemente, CA 92673

STATE CLEARINGHOUSE

Re: 2021020256, City of San Clemente Safety and Housing Update Project, Orange County

Dear Ms. Savage:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, §15064.5 (b) (CEQA Guidelines §15064.5 (b))). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1))). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.



CHAIRPERSON
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Luiseño

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Julie Tumamait-Stenslie
Chumash

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Pomo

NAHC HEADQUARTERS
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(916) 373-3710
nahc@nahc.ca.gov
NAHC.ca.gov

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

- 1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project:** Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:
 - a.** A brief description of the project.
 - b.** The lead agency contact information.
 - c.** Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
 - d.** A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).

- 2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report:** A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subs. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1 (b)).
 - a.** For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).

- 3. Mandatory Topics of Consultation If Requested by a Tribe:** The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:
 - a.** Alternatives to the project.
 - b.** Recommended mitigation measures.
 - c.** Significant effects. (Pub. Resources Code §21080.3.2 (a)).

- 4. Discretionary Topics of Consultation:** The following topics are discretionary topics of consultation:
 - a.** Type of environmental review necessary.
 - b.** Significance of the tribal cultural resources.
 - c.** Significance of the project's impacts on tribal cultural resources.
 - d.** If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).

- 5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process:** With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).

- 6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document:** If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:
 - a.** Whether the proposed project has a significant impact on an identified tribal cultural resource.
 - b.** Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

- 7. Conclusion of Consultation:** Consultation with a tribe shall be considered concluded when either of the following occurs:
- a.** The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
 - b.** A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).
- 8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document:** Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).
- 9. Required Consideration of Feasible Mitigation:** If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).
- 10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:**
- a.** Avoidance and preservation of the resources in place, including, but not limited to:
 - i.** Planning and construction to avoid the resources and protect the cultural and natural context.
 - ii.** Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
 - b.** Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - i.** Protecting the cultural character and integrity of the resource.
 - ii.** Protecting the traditional use of the resource.
 - iii.** Protecting the confidentiality of the resource.
 - c.** Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
 - d.** Protecting the resource. (Pub. Resource Code §21084.3 (b)).
 - e.** Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
 - f.** Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).
- 11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource:** An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
- a.** The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
 - b.** The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
 - c.** The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf

SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf.

Some of SB 18's provisions include:

1. **Tribal Consultation:** If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation.** There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation:** Consultation should be concluded at the point in which:
 - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
 - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>.

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (http://ohp.parks.ca.gov/?page_id=1068) for an archaeological records search. The records search will determine:
 - a. If part or all of the APE has been previously surveyed for cultural resources.
 - b. If any known cultural resources have already been recorded on or adjacent to the APE.
 - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
 - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
 - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
 - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
 - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.

4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
 - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, §15064.5(f) (CEQA Guidelines §15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
 - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
 - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code §7050.5, Public Resources Code §5097.98, and Cal. Code Regs., tit. 14, §15064.5, subdivisions (d) and (e) (CEQA Guidelines §15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address:
Andrew.Green@nahc.ca.gov.

Sincerely,



Andrew Green
Cultural Resources Analyst

cc: State Clearinghouse