JUN 24 2021

LASSEN COUNTY DEPARTMENT OF PLANNING AND BUILDING SERVICES

County of Lassen
Department of Planning and Building Services

• Planning • Building Permits • Code Enforcement • Surveyor • Surface Mining

Maurice L. Anderson, *Director*
707 Nevada Street, Suite 5
Susanville, CA 96130-3912
Phone: 530 251-8269
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email: landuse@co.lassen.ca.us
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Zoning & Building
Inspection Requests
Phone: 530 257-5263

April 28, 2021

FILED
APR 28 2021
JULIE BUSTAMANTE
LASSEN COUNTY CLERK
By _____, Deputy

NOTICE OF PREPARATION OF A DRAFT SUBSEQUENT ENVIRONMENTAL IMPACT REPORT

TO: Responsible and Trustee Agencies

FROM: Maurice Anderson, Director
Lassen County Department of Planning and Building Services
707 Nevada Street, Suite 5
Susanville, CA 96130

SUBJECT: EIR #2021-001, Ward Lake Pit Expansion

The County of Lassen will be the Lead Agency and will prepare a Draft Subsequent Environmental Impact Report (DSEIR) for the proposed Ward Lake Pit Expansion project. This Notice of Preparation (NOP) has been prepared to solicit comments from interested agencies as to the scope and content of the environmental information that is germane to your agency's statutory responsibilities in connection with the proposed project. When (and if) approved, your agency may need to use this SEIR when considering permits or other approvals for the project.

VESTA Resources, Inc. has prepared a Preliminary DSEIR, which includes a detailed project description, location map, and discussion of probable environmental impacts (attached). Additional documents, including the full Use Permit and Reclamation applications, are available upon request.

Due to the time limits mandated by State law, responses to this NOP must be sent at the earliest possible date, but no later than 30 days after receipt of this notice. Please send written responses to Cortney Flather, Natural Resources Technician, Lassen County Department of Planning and Building Services, at the above address or via email to cflather@co.lassen.ca.us. Please provide a contact person for your agency in the written response.

This Notice of Preparation, attachments, and the project file are available for review at the Lassen County Department of Planning and Building Services, located at 707 Nevada Street, Susanville, CA 96130. The department is open from 7 a.m. to 12 p.m. and 1 p.m. to 4 p.m., Monday through Friday, excepting holidays. These documents are also available on our website at www.lassencounty.org.

1.0 Project Location

The Ward Lake Quarry is located in Litchfield in Lassen County, California. The site lies on the southwest side of Shaffer Mountain. It is located approximately three miles east of Ward Lake and 13 miles east of Susanville, CA off of Ward Lake Road A.P.N.: 109-100-059-000 and 109-100-060-000. Access is by way of paved Ward Lake Road and paved Wells Drive, off Center Road (A-27).

2.0 PROJECT DESCRIPTION

The project is a proposal to expand mining operations at the Ward Lake Pit (CA mine ID #91-18-0008). If approved, the Use Permit would allow for an expansion of approximately 51 acres, an associated additional volume of 5,000,000 tons of material, an extension of the life of the mine from 2030 to 2050, and increase of maximum volume per year from 100,000 to 200,000 tons per year.

The Ward Lake Pit currently occupies 160 acres on a 442-acre parcel, owned by TLT Enterprises LLC. The surface mining operation is presently permitted for the mining of rock, crushing, screening, washing, material stockpiling, fuel storage; operation of a cement plant (12,000 cubic-yard annual limit) and asphalt plant; and the use of settling ponds, scales, an office, and a truck shop. The mine operates on a 24-hour schedule Monday through Saturday except from January 31 to March 31 every year (7:00 p.m. to 6:00 a.m.).

Grading, excavating, and blasting are prohibited onsite between January 1 and March 31 annually, except in a state of emergency, as declared by the local Emergency Services Director and/or the Board of Supervisors and/or the City of Susanville. Annual site production in excess of the permitted 100,000 tons is allowable during declared emergencies. The current life of the mine is until 2030.

The detonation of explosives is prohibited between the hours of 6:00 p.m. and 7:00 a.m. year-round. Current noise standards for the operation, as measured at the nearest affected residentially designated lands, require that daytime noise levels stay below 70 dBA and nighttime noise levels stay below 65 dBA (noise level standard varies with the cumulative number of minutes the noise lasts in any one-hour time period, see Lassen County Noise Element, Table III). The currently permitted activities and all associated conditions and restrictions serve as the baseline for review, as described in the Preliminary DSEIR. All existing ground disturbance associated with the mining operation was previously considered in an Environmental Document during the mines permitting process.

3.0 PROJECT SITE CHARACTERISTICS

The project area consists mainly of shrub communities, including sagebrush, bitterbrush, and rabbitbrush. Approximately 120 acres of the project site, out of 160 permitted acres, has been cleared of vegetation. The project area is considered important wintering range for mule deer (*Odocoileus hemionus*) and pronghorn (*Antilocapra americana*), and also serves resident chukar (*Alectoris chukar*). Special status wildlife species that are known to occur, or have the potential to occur, within the project area include the golden eagle (*Aquila chrysaetos*), northern harrier (*Circus cyaneus*), Swainson's hawk (*Buteo swainsoni*), greater sage-grouse (*Centrocercus urophasianus*), burrowing owl (*Athene cunicularia*), long-eared owl (*Asio otus*), short-eared owl (*Asio flammeus*), loggerhead shrike (*Lanius ludovicianus*), gray wolf (*Canis lupus*), American badger (*Taxidea taxus*), pallid bat (*Antrozous pallidus*), Townsend's big-eared bat (*Corynorhinus townsendii*), pygmy rabbit (*Brachylagus idahoensis*), and white-tailed jackrabbit (*Lepus townsendii townsendii*). Special status plant species that are known to occur, or have the potential to occur, within the project area include ornate dalea (*Dalea ornata*), spiny milkwort (*Polygala subspinosa*), and Susanville beardtongue (*Penstemon sudans*).

There are no existing streams or bodies of water within the boundaries of the project site, and the site is not within the 100-year floodplain. Several permitted settling ponds are located at the north end of the project site, which drain into intermittent channels. The project site is located within the Honey Lake Valley Groundwater Basin, which has been identified as a "low priority basin" by the Department of Water Resources, signifying that it is not currently at risk for overdraft. The area surrounding the site is primarily used for agriculture and open space. The nearest residence is approximately 470 feet from the west property line of the existing quarry and is also the closest residence to the expansion area being 4,600 feet to the south.

4.0 POTENTIAL ENVIRONMENTAL IMPACTS

VESTRA Resources, Inc. was hired by TLT Enterprises to oversee the Use Permit and CEQA process. VESTRA Inc. elected to forgo the Initial Study process, and instead prepared a Preliminary DSEIR, which was submitted with the Use Permit and Reclamation Plan Amendments. Pursuant to 15060 (d) of the CEQA Guidelines, Lassen County concurs that an EIR is clearly required for this project and will begin work directly on the EIR process. The Preliminary DSEIR prepared by VESTRA Resources Inc. identifies potentially significant impacts in the following categories:

- Air Quality
- Biological Resources
- Cultural and Tribal Cultural Resources
- Geology and Soils
- Land Use and Planning

Mitigation measures have been proposed that may reduce some impacts to a less than significant level. However, Biological Resources could have significant and unavoidable impacts that cannot be mitigated to a level of less than significant (see the attached Preliminary DSEIR for more information).

This project poses potentially significant environmental effects, primarily due to the size of the expansion. Mitigation measures that have been identified to reduce these effects include covering trucks, filtering and containment of dust, dust suppression, good housekeeping, setting land aside from future development, buffer zones for sensitive flora/fauna, habitat enhancement, avoidance of cultural and tribal resources, avoidance of paleontological resources, consulting with archeologists/paleontologists if there are any unanticipated discoveries, and all operating conditions of approval for Use Permit #2018-003. A review of the Preliminary DSEIR is necessary to determine if the proposed mitigations are sufficient to reduce any of the above-mentioned impacts to a less than significant level.

MLA:clf

Distribution: Supervisor Hammond (5); Perry Thompson (Applicant); VESTRA Resources (Consultant); Co. Assessor's Office; County Counsel; Co. Fire Warden/CAL FIRE; Co. Environmental Health Dept.; Co. Public Works/Road Div.; Lassen Co. Fish & Game Com.; CA Dept. of Fish & Wildlife (Redding/Wendel); Caltrans; Lahontan RWQCB (email); Department of Water Resources (DWR); Division of Mine Reclamation; Office of Historic Preservation; Department of Parks and Recreation; California Highway Patrol; Air Resources Board; Department of Toxic Substances Control; Native American Heritage Commission; State Lands Commission; Bureau of Land Management -Susanville; Pit River Tribe of California; Greenville Rancheria of Maidu Indians; Susanville Indian Rancheria; Honey Lake Maidu; Washoe Tribe of Nevada and California; Standish-Litchfield Fire Protection District; Co. Air Pollution Control Officer; Shaffer Elementary School

S:\PLA\Planning\2021\MP#2021-001, Perry Thompson\EIR#2021-001\NOP

Julie M Bustamante
COUNTY CLERK-RECORDER
REGISTRAR OF VOTERS
CLERK FOR THE BOARD OF
SUPERVISORS

220 S Lassen St Suite 5
Susanville CA 96130
(530) 251-8217
FAX (530) 257-3480
Email lcclerk@co.lassen.ca.us
Website www.lassencounty.org

Office of the County Clerk-Recorder
Lassen County Courthouse
Susanville CA 96130

Lassen County Planning and Building
707 Nevada St Suite 5
Susanville, CA 96130

RE: Notice of Preparation of a Draft Subsequent Environmental Impact Report- Ward Lake Expansion

To Whom It May Concern:

I certify the attached notice was filed at Lassen County Historic Courthouse on 04/28/2021, located at 220 S Lassen Street, Suite #5, Susanville, CA 96130 and was posted for public inspection from the date of 04/28/2021 through 6/18/2021.

Best Regards,

Hollie Gilbert
Deputy Clerk

Enc.

RECEIVED
JUN 24 2021
LASSEN COUNTY DEPARTMENT OF
PLANNING AND BUILDING SERVICES

S:\CLK\Clerk Admin\Postings-Notice of return Letter

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State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Northern Region
601 Locust Street
Redding, CA 96001
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

RECEIVED
JUN 01 2021
LASSEN COUNTY DEPARTMENT OF
PLANNING AND BUILDING SERVICES

May 26, 2021

Cortney Flather
Natural Resources Technician
Lassen County Department of Planning and Building
707 Nevada Street
Susanville, CA 96130

SUBJECT: REVIEW OF NOTICE OF PREPARATION FOR WARD LAKE PIT EXPANSION ENVIRONMENTAL IMPACT REPORT #2021-001, STATE CLEARINGHOUSE NUMBER 2021040627, ASSESSOR PARCEL NUMBERS 109-100-059-000 AND 109-100-060-000, NEAR THE CITY OF SUSANVILLE, LASSEN COUNTY

Dear Cortney Flather:

The California Department of Fish and Wildlife (Department) has reviewed the Notice of Preparation (NOP) and a preliminary draft Subsequent Environmental Impact Report (DSEIR) dated February 2021, and prepared by VESTRA Resources, Inc. for the above-referenced project (Project). As a trustee for the State's fish and wildlife resources, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and their habitat. As a responsible agency, the Department administers the California Endangered Species Act and other provisions of the Fish and Game Code that conserve the State's fish and wildlife public trust resources. The Department offers the following comments and recommendations on this Project in our role as a trustee and responsible agency pursuant to the California Environmental Quality Act (CEQA), California Public Resources Code §21000 et seq.

Project Description

The Project "*includes modifications to existing permitted operations at the Ward Lake Quarry. The Project includes to following changes to existing operations:*

- *Expansion of approximately 51 acres, with an associated additional volume of 5,000,000 tons of material*
- *Extension of life of the mine from 2030 to 2050*
- *Increase of maximum volume per year from 100,000 tons to 200,000 tons per year*"

Comments and Recommendations

The Department has the following recommendations and comments as they pertain to biological resources:

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General Comments:

The Department recommends changing California Department of Fish and Game to California Department of Fish and Wildlife and to include updated scientific names with both genus and species.

Per CEQA Guidelines section 21082.2(a), "*the Lead Agency shall determine whether a project may have a significant effect on the environment based on substantial evidence in light of the whole record.*" The Department recommends the forthcoming DSEIR look at impacts to the entire project and not just special status species or habitats. Currently, the preliminary DSEIR focuses almost solely on special status species with no common species or habitats described. Reptiles, for instance, are not even discussed in the preliminary DSEIR.

California Natural Diversity Database (CNDDB)

The California Natural Diversity Database (CNDDB) is a positive sighting database. It does not predict where something may be found. The Department maps occurrences only where we have documentation that the species was found at the site. There are many areas of the state where no surveys have been conducted and therefore there is nothing on the map. That does not mean that there are no special status species present. The next step is to conduct surveys to document what is present and submit the information on special status species to the Department and CNDDB. All surveys should be conducted prior to approval of the Project and survey results should be sent to the Department at R1CEQARedding@wildlife.ca.gov.

Many of the wildlife and botanical descriptions repeatedly state that based on the CNDDB, there are no records and/or observations of a specific species. The Department recommends these descriptions be based on habitat present currently on site, current survey results, CNDDB, and other incidental information and not based solely on CNDDB records.

Habitats and Sensitive Natural Communities

The Department strongly recommends a thorough assessment of rare plants, and natural communities follow the Department's March 2018 "*Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities.*" The preliminary DSEIR described the habitat(s) using the Department's California Wildlife Habitat Relationships (CWHR). This document is useful for determining which wildlife species utilize what habitats, but it cannot be used for vegetation mapping. CWHR is not specific enough and can not determine sensitive natural communities. The Department recommends *A Manual of California Vegetation* (https://www.cnps.org/vegetation/manual-of-california-vegetation) along with the Department's March 2018 protocols be used to describe habitats present onsite.

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Golden Eagle (*Aquila chrysaetos*)

The preliminary DSEIR states, "*according to CNDDB, there are no known golden eagle occurrences within five miles of the proposed expansion area.*" The Department's website has several references that could be of use to the consultant to determine impacts to this species. Threats to this species are varied but include loss of foraging areas, loss of nesting habitat, pesticide poisoning, lead poisoning, and collision with man-made structures such as wind turbines. Since this Project proposes the loss of 51 acres of foraging habitat, the Department strongly encourages the consultant contact the Department for further information and to conduct golden eagle surveys to ensure they are not utilizing the area.

Hydrology

Section 4.11.1 in the preliminary DSEIR states:

> *There are no existing streams or bodies of water within the boundaries of the proposed expansion area or current mining area. The Project is not located within a 100-year floodplain. The closest bodies of water to the Project site include an unnamed tributary to Secret Creek, Secret Creek, Willow Creek, Eagle Lake Ditch located 375 feet west of the Project site, and Ward Lake located 0.5 miles southwest of the Project site. Willow Creek is approximately 1 mile west of the site and the Susan River is approximately 2 miles south of the site. Hydrology is shown on Figure 3-5.*
>
> *The Project site contains several permitted settling basins near the north end of the existing mining area which drain into intermittent channels. The quarry site is made up of mostly fractured and weathered rock; therefore, the site is pervious and a majority of stormwater infiltrates. Concentrated flows are observed only during heavy rain events. The flows within the existing mine area are contained and slowed by berms and benches and ultimately directed into settling basins.*
>
> *The current mining operation on the Project site does not discharge stormwater. A Notice of Non-Applicability (NONA) for the* General Permit for Storm Water Discharges Associated with Industrial Activities *(NPDES No. CAS000001) was submitted for the current mining operation in 2015. Standard soil erosion control protocols are currently practiced throughout the site include the use of berms, water bars, or rolling dips, rock check dams on roadway ditches, diverting run-on away from stockpile areas, installing stabilizers as necessary (silt fence, wattles, etc.), and directing runoff within quarry to detention ponds.*

These paragraphs appear to conflict and should be clarified. There are settling basins, which are small bodies of water, located on the existing mine. These basins discharge into intermittent streams according to paragraph #2 above, but then paragraph #3 states there is no stormwater discharge. The Department recommends revising the hydrology section and include information on whether or not additional basins will be needed to offset the drainage from the expansion area.

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Mitigation

Impacting 51 acres of intact sagebrush scrub will have a significant impact on both common and special status species utilizing that area. The preliminary DSEIR states mammals or birds will go elsewhere once the area is impacted, however fails to acknowledge the permanent habitat loss and assumes that the remaining habitat has the carrying capacity to accept the displaced animals. The loss of foraging habitat is a potential significant impact and should be mitigated. Restoration of the area decades later should not be considered mitigation due to the temporal impact. The DSEIR states that the project applicant may choose to employ one of five proposed mitigation measures because the expansion will not have a significant adverse effect on special status wildlife or their habitat. The Department does not have enough information to concur with this conclusion and recommends the completion of additional field surveys to confirm this.

If the project applicant decides to acquire land for permanent protection, the parcel should be identified and evaluated. The Department requests a site visit to the proposed parcel and that they will have the ability to approve the use of the parcel for mitigation.

If you have any questions, please contact Amy Henderson, Senior Environmental Scientist, at (530) 225-2779, or by email at Amy.Henderson@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Donna L. Cobb
1AFB1E1AEF314DD...

Curt Babcock
Habitat Conservation Program Manager

ec: Cortney Flather, Natural Resources Technician
Lassen County Department of Planning and Building
cflather@co.lassen.ca.us

Adam McKannay, Amy Henderson
California Department of Fish and Wildlife
Adam.McKannay@wildlife.ca.gov, Amy.Henderson@wildlife.ca.gov

State Clearinghouse
State.clearinghouse@opr.ca.gov

Habitat Conservation Planning Branch
CEQACommentLetters@wildlife.ca.gov

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California
Department of Conservation
Division of Mine Reclamation

Gavin Newsom, Governor
David Shabazian, Director

May 12, 2021

Cortney Flather
Lassen County
Planning and Building Services
707 Nevada Street, Suite 5
Susanville, CA 96130

Copy sent via email: CFlather@co.lassen.ca.us

SUBJECT: WARD LAKE PIT EXPANSION PROJECT; NOTICE OF PREPARATION; STATE CLEARING HOUSE NO. 2018022056

Dear Ms. Flather:

Thank you for including the Department of Conservation's Division of Mine Reclamation (Division) in the environmental review process for the Ward Lake Pit Expansion Project (Proposed Project) Notice of Preparation (NOP). The NOP indicates that Lassen County (County), as lead agency under the California Environmental Quality Act (CEQA), will prepare a Draft Subsequent Environmental Impact Report (SEIR) for the Proposed Project.

As described in the NOP, the Proposed Project will amend the existing use permit and reclamation plan amendment (RPA) for the Ward Lake Pit Mine (CA Mine ID# 91-18-0008) to allow for a mine boundary expansion of approximately 51 acres to a total of 160 disturbed acres, increase the maximum volume per year from 100,000 to 200,000, and extend the end date of mining to 2050.

The Division's primary focus is on active surface mining operations; however, the Division also addresses issues related to abandoned (pre-1976) legacy mines. Additionally, the Division has review responsibilities associated with lead agency implementation of SMARA. SMARA provides a comprehensive surface mining and reclamation policy to assure that:

- Adverse environmental effects of surface mining operations are prevented or minimized and mined lands are reclaimed to a usable condition which is readily adaptable for alternative land uses.
- Production and conservation of minerals are encouraged, while giving consideration to values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment.
- Residual hazards to the public health and safety are eliminated.

Division staff has reviewed the subject NOP pursuant to CEQA Statutes and Guidelines and offers the following comments at this time:

- Division staff will provide comments on the RPA for this proposed mining activity once the Division receives the complete RPA and any supporting documents,

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along with the statement from the County that certifies the submission as complete and in accordance with PRC Section 2772.1(a)(3)(A-C).

- Division staff will provide comments on the FACE for the Proposed Project in accordance with PRC Section 2773.4(a-d).

The Division requests to be included on the distribution list for this Proposed Project. Additionally, the Division requests that any subsequent project documents (e.g., the Draft SEIR, hearing notices for the Draft and Final SEIRs, and any supplemental environmental documents), as well as a copy of the certified Final SEIR, be sent to the Division at DMR-Submittals@conservation.ca.gov or the mailing address on the bottom of page 1 of this letter. If you have any questions, please contact me at (916) 323-9198.

Sincerely,

DocuSigned by:
Carol E. Atkins
73ECCB6738194DA...

Carol E. Atkins, Manager
Environmental Services Unit

ec: State Clearinghouse, state.clearinghouse@opr.ca.gov

Department of Conservation, Office of Legislative and Regulatory Affairs, OLRA@conservation.ca.gov

NATIVE AMERICAN HERITAGE COMMISSION

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PLANNING AND BUILDING SERVICES

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nahc@nahc.ca.gov
NAHC.ca.gov

April 28, 2021

Cortney Flather
Lassen County
707 Nevada Street, Suite 5
Susanville, CA 96130

Re: 2021040627, Ward Lake Pit Expansion Project, Lassen County

Dear Ms. Flather:

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.

AB 52

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, subds. (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: Nancy.Gonzalez-Lopez@nahc.ca.gov.

Sincerely,

Nancy Gonzalez-Lopez
Cultural Resources Analyst

cc: State Clearinghouse