



# AB 52 (Gatto—D-Silver Lake) Native Americans: California Environmental Quality Act

Communications and Legislation Committee  
Item 8-8  
August 20, 2013

# Background

- Cultural resources currently protected under state and federal law, including CEQA
  - Provides for identification, evaluation and mitigation of project impacts on significant cultural resources
  - Requires consideration of Native American concerns during project design, environmental clearance, and mitigation implementation
- Prior legislation was proposed by tribes to stop projects they believed did not adequately address concerns

# Summary of AB 52

- Intended by tribes to ensure “meaningful participation” by tribes during all phases of project planning, clearance and implementation
- Creates new category of cultural resources under CEQA—“tribal cultural resources”
- All tribal cultural resources deemed “unique” requiring an EIR

# Summary of AB 52

- Requires formal consultation process with tribes to:
  - Determine appropriate CEQA clearance for projects
  - Identify, evaluate, and determine appropriate mitigation for impacts on “tribal cultural resources”
  - Require responsible agencies to confirm lead agency consultation obligations prior to project approvals

# AB 52 would not:

- Identify or define “tribal cultural resources”
  - AB 52 would defer to tribes to identify resources during project planning, design, environmental clearance, and construction phases
- Identify significance thresholds to evaluate impacts to “tribal cultural resources”
  - AB 52 would defer to tribes to determine significance of impacts and appropriate mitigation

# AB 52 would not:

- Provide time frames for consultation process
  - AB 52 obligates only the lead agency and specifies no time frames during which this obligation may be satisfied
- Provide dispute resolution measures or time frames
  - AB 52 specifies no process for tribes and lead agencies to resolve disagreements prior to litigation

# AB 52 is inconsistent with the following CEQA Policy Principles

- Increased project costs
- Project delays
- Duplicative environmental review
- Risk of litigation abuse

# AB 52 Impacts on Metropolitan

- Increased Project Costs
  - Analysis of new, undefined category of environmental resources at any project phase would result in increased costs that Metropolitan would be unable to control or predict
- Longer Project Schedules
  - Absence of consultation time frames would result in project timelines that Metropolitan would be unable to control or predict
- Increased Risk of Litigation
  - Potential disagreements over CEQA documentation or presence, evaluation or appropriate mitigation for impacts on “tribal cultural resources” would result in greater scrutiny and risk of litigation to resolve disputes



# Recommended Amendments

- Define “tribal cultural resources” and significance criteria on the basis of current laws
- Remove requirement that all “tribal cultural resources” be considered unique cultural resources requiring preparation of a project EIR
- Remove provisions for further CEQA review for potentially significant “tribal cultural resources” not known to the lead agency at the time of project CEQA approval

# Recommended Amendments (cont'd)

- Include reasonable time frames for each phase of consultation process
- Remove duplicative consultation requirements for projects subject jointly to CEQA and NEPA
- Identify process to resolve disputes between lead agency and tribes
- Remove requirement for responsible agency involvement in lead agency consultation obligations

# Options

- Option #1
  - Adopt the CEQA recommendation
  - Oppose unless amended
- Option #2
  - Take no position

# Recommendation

- Option #1



# Questions