ECORP Consulting, Inc.
ENVIRONMENTAL CONSULTANTS

Procedural Challenges

...affecting your project schedules, costs, and risks

Top Issues Affecting Developers

- Late arriving general request letters
- Addressing TCRs when no tribes wish to consult
- Unexpected general request letters from new tribes
- Late responses to 14-day notice and offer to consult
- Leapfrogging
- Substantial evidence and significant impacts
- Integrating with Permit Streamlining Act

Procedural Challenges

- 1. Late arriving general request letters
  - Arrival of general request letters after 14-days into CEQA, but before NOP or NOI published or doc certified/adopted
    - Stop and restart?
      - Have you already released your environmental document?
      - Literal interpretation: yes.
        - » 21080.3.1 (b): "Prior to the release of a ND, MND, or EIR for a project, the lead agency shall begin consultation..."
        - » *Cannot release environmental document until consultation, if requested, has been initiated.*
        - » *Cannot certify your environmental document until consultation, if initiated, has been concluded.*

Procedural Challenges

2. When no tribes wish to consult

- No general request letters received yet. Proactive vs. reactive?
  - 21080.3.1(c): "to expedite the requirements of this section, the NAHC shall assist the lead agency in identifying the California NA tribes that are traditionally and culturally affiliated with the project area."
  - NAHC has been sending out lists of tribal contacts to agencies for AB 52 consultation – however, *this is not part of the procedures in AB 52*.
  - *Current trend*: more agencies are being reactive, taking a literal interpretation of the bill
- If no letters were received and you are ready to publish your NOP or NOI, document that in the TCR section!
  - -role of Sacred Lands File information in CEQA docs
- NAHC: "failure to request notification does not preclude non-AB 52 tribal consultation"

Procedural Challenges

- 3. Unexpected general request letters from new tribes
  - California Native American tribes have moved around over time or have been relocated by the government
  - Not necessarily physically located near your project
    - » See maps at http://calepa.ca.gov/Tribal/Resources.htm
    - » When in doubt, contact NAHC

Procedural Challenges

- 4. Late responses to offers to consult
  - After the 30-day response window closes, an acceptance letter arrives
    - Pay attention to postmarks
  - If lead agency complied with the noticing requirements and the tribe failed to request consultation within 30 days, then the agency may certify the environmental document without consulting (PRC 21082.3(d)(2)).
    - However: PRC 21080.3.2(c) allows tribes or the public to submit information on TCRs, impacts, and MMs to the agency anyway; and
    - CEQA public comment periods and public meetings may elicit comments from tribes
    - These other mechanisms are not subject to AB 52 thresholds

Procedural Challenges

5. Leapfrogging

- Skipping over the identification of resources, assessment of impact, and jumping straight to recommendations for mitigation
- Remember: MMs are to lessen or avoid significant impacts
- 15126.4 (a)(3): "Mitigation measures are not required for effects which are not found to be significant"
- 15126.4(a)(4)(B): "The mitigation measure must be "roughly proportional" to the impacts of the project.
- Step 1: identify a resource
- Step 2: assess the impact of the project on the resource
- Step 3: develop mitigation to lessen or avoid the impact on the resource
- If no impacts can be determined, you could recommend external "mitigation"