

Date of Hearing: May 1, 2019

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 168 (Aguiar-Curry) – As Introduced January 8, 2019

SUBJECT: Housing: streamlined approvals

SUMMARY: Excludes housing developments on lands with a tribal, cultural resource from being eligible for a streamlined, ministerial approval process under SB 35 (Wiener), Chapter 366, Statutes of 2017. Specifically, **this bill:** Adds a site that is a tribal, cultural resource to the list of sites that are not eligible for a streamlined, ministerial approval process under the provisions of Government Code Section 65913.4.

EXISTING LAW:

- 1) Defines a “California Native American tribe” to mean a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004 (Public Resources Code Section 21073).
- 2) Defines “Tribal cultural resources” to mean either of the following:
 - a) Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either of the following:
 - i. Included or determined to be eligible for inclusion in the California Register of Historical Resources; and,
 - ii. Included in a local register of historical resources as defined in subdivision (k) of Section 5020.1.
 - b) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be a significant resource to a California Native American tribe.
 - c) A cultural landscape, to the extent that the landscape is geographically defined in terms of the size and scope of the landscape.(Public Resources Code Section 21074).
- 3) Requires the lead agency responsible for reviewing a project under the California Environmental Quality Act (CEQA), prior to the release of certain CEQA reports for a project, to consult with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project, as requested by the tribe. As a part of this consultation, the parties may propose mitigation measures capable of avoiding or substantially lessening potential significant impacts to a tribal cultural resource or alternatives that would avoid significant impacts to a tribal cultural resource. (Public Resources Code Sections 21080.3.1 – 21080.3.2).

- 4) Declares 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, and that public agencies must, when feasible, avoid damaging effects to any tribal cultural resource (Public Resources Code Sections 21084.2 – 21084.3).
- 5) Allows a development proponent to submit an application for a development that is subject to a streamlined, ministerial approval process, and not subject to a conditional use permit, provided that:
 - a) The development contains two or more residential units and satisfies specified objective planning standards, including being located on an urban infill site that is zoned for residential or residential mixed-use, with at least two-thirds of the square footage designated for residential use.
 - b) If the development includes units that are subsidized, the development proponent must record a long-term affordability covenant on the units, as specified.
 - c) The development is located in a jurisdiction that has been determined by the state Department of Housing and Community Development (HCD) to have issued insufficient building permits to meet its share of the regional housing need assessment (RHNA), and the development is subject to a requirement mandating a minimum percentage of below market rate housing, as specified.
 - d) The development proponent has certified to the locality that either the entirety of the development is a public work, or that all construction workers employed by the project will be paid at least prevailing wage, as specified. For specified developments, a skilled and trained workforce must be used.
 - e) The development is not located in environmentally unsafe or sensitive areas, including a coastal zone, wetlands, a high or very fire severity zone, a hazardous waste site, an earthquake fault zone, a flood plain or floodway, lands identified for conservation in an adopted natural community conservation plan, and lands under conservation easement;

FISCAL EFFECT: None.

COMMENTS:

Purpose of the Bill: According to the author, “AB 168 is consistent with California laws, which protect tribal lands. Without this bill, tribal sacred sites may be subject to unwanted destruction and desecration in favor of housing developments. To honor California’s history and diversity, it is important that we continue to protect Tribal Cultural Resources. Protecting these sacred places will ensure that generations of Californians to come can value the sovereignty of Native American tribes and communities.”

Background: In 2017, SB 35 (Wiener), Chapter 366, created a streamlined, ministerial approval process for infill developments in localities that have failed to meet their regional housing needs assessment (RHNA) numbers. A number of lands were exempted from this streamlined development process, including lands located in a coastal zone, wetlands, a high or very fire severity zone, a hazardous waste site, an earthquake fault zone, a flood plain or floodway, lands

identified for conservation in an adopted natural community conservation plan, and lands under conservation easement.

Tribal Cultural Resources: According to the 2010 Census, California has the highest Native American population in the country, with approximately 720,000 people in the state who identify as Native American. There are currently 109 federally recognized Indian tribes in California and 78 entities petitioning for recognition. California tribes currently have nearly 100 separate reservations or Rancherias.

The phrase “Tribal Cultural Resources” in California was first legally recognized and defined in 2013 under AB 52. The primary intent of AB 52 was to include California Native American Tribes early in the environmental review process and to establish a new category of resources related to Native Americans that require consideration under CEQA, known as tribal cultural resources.

Tribal cultural resources are sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe. Tribal cultural resources are sometimes referred to as “sacred sites” more generally. Sacred sites may be burial grounds, important archaeological areas, or religious objects. They are like churches, and are often sites of special ceremonies and healing.

Tribal cultural resources are of central importance to Native American nations because Native religion and culture is essential to the survival of Native American/American Indian nations as a distinctive cultural and political group. Many Native Americans have land-based religions, meaning they practice their religion within specific geographic locations; their faith renders that land is itself a sacred, living being.

Staff Comments: Developers can determine in advance if a development site is eligible for the streamlined, ministerial approval process created by SB 35. Those sensitive sites that are exempt from the bill – the coastal zone, wetlands, a high or very fire severity zone, a hazardous waste site, an earthquake fault zone, a flood plain or floodway, lands identified for conservation in an adopted natural community conservation plan, and lands under conservation easement – can be identified via published maps, lists, and other resources. This bill would add tribal, cultural resources to the list of exempt sites.

In some instances, tribal cultural resources have been publicly identified, such as those included or determined to be eligible for inclusion in the California Register of Historical Resources or a local registry of historical resources. However, this is not always the case. Identification may require additional analysis and process or a tribe may choose to not publicly disclose locations due to a concerns that the sites may be at risk for desecration, whether purposeful or not.

To address the issues discussed above, the Committee may wish consider adding language stating the intent of the Legislature to maintain the ministerial nature of the SB 35 process, including that the process utilized to define a tribal cultural resource must occur before the development proponent submits their application. Moving forward, the author should consider strategies that facilitate certainty for the development proponent, but require a consultation with California’s Native American tribes as established by AB 52 before the development proponent submits their application for streamlining.

Committee Amendments: To address the issues raised above, the Committee may wish to consider the following amendment:

- Adding language stating the intent of the Legislature to maintain the ministerial nature of the SB 35 process, including that the process utilized to define a tribal cultural resource must occur before the development proponent submits their application.

Related Legislation:

SB 35 (Wiener, Mitchell), Chapter 366, Statutes of 2017: This bill creates a streamlined, ministerial approval process for infill developments in localities that have failed to meet their regional housing needs assessment (RHNA) numbers.

AB 52 (Gatto), Chapter 532, Statutes of 2014: This bill establishes procedures and requirements under the California Environmental Quality Act (CEQA) for the purpose of avoiding or minimizing impacts to tribal cultural resources.

REGISTERED SUPPORT / OPPOSITION:

Support

Habematolel Pomo of Upper Lake
Middletown Rancheria of Pomo Indians of California
Pala Band of Mission Indians
Yocha Dehe Wintun Nation
Wilton Rancheria

Opposition

None on file.

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