

ASSEMBLY THIRD READING

AB 168 (Aguiar-Curry)

As Amended May 8, 2019

Majority vote

SUMMARY:

Excludes housing developments on lands with a tribal, cultural resource from eligibility for a streamlined, ministerial approval process under SB 35 (Wiener), Chapter 366, Statutes of 2017.

Major Provisions

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

COMMENTS:

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 (Gatto), Chapter 532. The primary intent of AB 52 (Gatto) 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 the California Environmental Quality Act.

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.

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.

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

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 bill includes language stating that it is the intent of the Legislature that the process utilized to determine the presence of a tribal cultural resource must occur before the development proponent submits their application, that this process involves a consultation process with California's Native American tribes as established by AB 52 (Gatto), and that the determination can be made ministerially.

According to the Author:

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."

Arguments in Support:

According to the Mooretown Rancheria, "California tribes understand the need for affordable housing. But we do not believe it is necessary for developers to choose sites that contain important Tribal Cultural Resources for such development. We strongly support AB 168 because it will fix the oversight of SB 35, and thus prevent great confusion with regard to the implementation of AB 52 going forward."

Arguments in Opposition:

None on file

FISCAL COMMENTS:

None. This bill has been keyed non-fiscal by the Legislative Counsel.

VOTES:

ASM HOUSING AND COMMUNITY DEVELOPMENT: 7-0-1

YES: Chiu, Diep, Gabriel, Gloria, Limón, Maienschein, Quirk-Silva

ABS, ABST OR NV: Kiley

UPDATED:

VERSION: May 8, 2019

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