

AMENDED IN ASSEMBLY JUNE 10, 2004
AMENDED IN ASSEMBLY SEPTEMBER 12, 2003
AMENDED IN ASSEMBLY SEPTEMBER 5, 2003
AMENDED IN ASSEMBLY AUGUST 25, 2003
AMENDED IN ASSEMBLY AUGUST 18, 2003
AMENDED IN ASSEMBLY JULY 9, 2003

SENATE BILL

No. 18

Introduced by Senators Burton, Chesbro, and Ducheny

December 2, 2002

~~An act to amend Section 815.3 of the Civil Code, to amend Sections 65040.2, 65351, 65453, and 65560 of, and to add Sections 65351.1 and 65562.5 to, the Government Code, to amend Sections 7050.5 and 7054 of the Health and Safety Code, and to amend Sections 5097.9, 5097.91, 5097.92, 5097.94, 5097.96, 5097.97, 5097.98, 5097.99, and 5097.995 of, to add Sections 5097.10, 5097.96.1, 5097.96.2, 5097.96.3, 5097.96.4, 5097.96.5, 5097.993, 21084.3, 21097, and 21097.5 to, and to amend the heading of Chapter 1.75 (commencing with Section 5097.9) of Division 5 of, the Public Resources Code, relating to Traditional Tribal Cultural Sites. An act to amend Section 815.3 of the Civil Code, to amend Sections 65040.2, 65092, 65351, 65560 of, and to add Sections 65351.1, 65351.2, and 65562.5 to the Government Code, relating to traditional tribal cultural places.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 18, as amended, Burton. Traditional tribal cultural ~~Sites~~ places.



(1) Existing law establishes the Native American Heritage Commission and authorizes the commission to bring an action to prevent severe and irreparable damage to, or assure appropriate access for Native Americans to, a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property.

~~This bill would establish the Traditional Tribal Cultural Site (TTCS) Register and would require the commission to develop, maintain, and administer it, as specified. The bill would declare various powers and duties of the commission, including the duty to determine whether a proposed development project may cause a substantial adverse change in a TTCS. The bill would exempt specified projects, including those involving negligible expansion of use, replacement of an existing structure, and construction of small utility extensions, from the various requirements involved in that duty. The bill would establish procedures for challenging and reviewing the commission's determinations, including procedures to protect the confidentiality of any information that would create a risk of harm to a TTCS. The bill would exempt the TTCS Register from disclosure as a public record. The bill would make it a misdemeanor to intentionally release information about a TTCS, knowing that it is required to be held confidential, thereby creating a new crime and imposing a state-mandated local program.~~

(2) ~~The existing California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, as defined, or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also generally requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA provides some exemptions from its requirements for specified projects.~~

~~This bill would create additional exemptions from CEQA, but would prohibit an exemption from CEQA for a project that the commission determines may cause a substantial adverse change in a TTCS. The bill would specify certain unique procedures that a lead agency must follow when a project may adversely affect a TTCS. By imposing these~~



~~additional duties on lead agencies, the bill would impose a state-mandated local program.~~

~~(3)~~

Existing law authorizes only specified entities or organizations, including certain tax-exempt nonprofit organizations, and local government entities to acquire and hold conservation easements, if those entities and organizations meet certain conditions.

This bill would include a federally recognized California Native American tribe or a nonfederally recognized California Native American tribe, band, or nation that is listed on a specified catalog maintained by the Native American Heritage Commission, among those entities and organizations that may acquire and hold conservation easements.

(2) Existing law requires the Office of Planning and Research to implement various long range planning and research policies and goals that are intended to shape statewide development patterns and significantly influence the quality of the state's environment and, in connection with those responsibilities, to adopt guidelines for the preparation and content of the mandatory elements required in city and county general plans.

This bill would require that the guidelines contain advice for consulting with California Native American tribes for the preservation of specified Native American places, features, and objects, and prescribe procedures for continuing to protect the confidentiality of information concerning the specific identity, location, character, and use of those places, features, and objects. The bill would define a California Native American tribe as a "person" for purposes of provisions relating to public notice of hearings relating to local planning issues.

(3) Existing law requires a planning agency during the preparation or amendment of the general plan, to provide opportunities for the involvement of citizens, public agencies, public utility companies, and civic, education, and other community groups, through public hearings and any other means the city or county deems appropriate.

This bill would require the planning agency to also conduct consultation with California Native American tribes. The bill would require that, prior to the adoption or amendment of a city or county's general plan, the city or county conduct consultations with California Native American tribes or bands for the purpose of preserving specified places, features, and objects that are located within the city or county's



jurisdiction. The bill would define the term “consultation” for purposes of those provisions. By imposing new duties on local governments with respect to consultations regarding the protection and preservation of California Native American historical, cultural, and sacred sites, the bill would impose a state-mandated local program.

This bill would include open space for the protection of California Native American historical, cultural, and sacred sites within the definition of “local open-space plan” for purposes of provisions governing the preparation of the open-space element of a city and county general plan.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares all of the
 2 following:
 3 ~~(1) Native Americans have used, and continue to use, natural~~
 4 *(1) Current state law provides a limited measure of protection*
 5 *for California Native American prehistoric, archaeological,*
 6 *cultural, spiritual, and ceremonial places.*
 7 *(2) Existing law provides limited protection for Native*
 8 *American sanctified cemeteries, places of worship, religious,*
 9 *ceremonial sites, sacred shrines, historic or prehistoric ruins,*
 10 *burial grounds, archaeological or historic sites, inscriptions made*
 11 *by Native Americans at those sites, archaeological or historic*



1 *Native American rock art, and archaeological or historic features*
2 *of Native American historic, cultural, and sacred sites.*

3 *(3) Native American places of prehistoric, archaeological,*
4 *cultural, spiritual, and ceremonial importance reflect the tribes’*
5 *continuing cultural ties to the land and to their traditional*
6 *heritages.*

7 *(4) Many of these historical, cultural, and religious sites are*
8 *not located within the current boundaries of California Native*
9 *American reservation and rancherias, and therefore are not*
10 *covered by the protectionist policies of tribal governments.*

11 *(b) In recognition of California Native American tribal*
12 *sovereignty and the unique relationship between California local*
13 *governments and California tribal governments, it is the intent of*
14 *the Legislature, in enacting this act, to accomplish all of the*
15 *following:*

16 *(1) Recognize that California Native American prehistoric,*
17 *archaeological, cultural, spiritual, and ceremonial places are*
18 *essential elements in tribal cultural traditions, heritages, and*
19 *identities.*

20 *(2) Establish meaningful consultations between California*
21 *Native American tribal governments and California local*
22 *governments at the earliest possible point in the local government*
23 *land use planning process so that these places can be identified*
24 *and considered.*

25 *(3) Establish government-to-government consultations*
26 *regarding potential means to preserve those places, determine the*
27 *level of necessary confidentiality of their specific location, and*
28 *develop proper treatment and management plans.*

29 *(4) Ensure that local and tribal governments have information*
30 *to avoid potential conflicts over the preservation of California*
31 *Native American prehistoric, archaeological, cultural, spiritual,*
32 *and ceremonial places before development entitlements vest and*
33 *investments are made.*

34 *(5) Enable California Native American tribes to manage and*
35 *act as caretakers of California Native American prehistoric,*
36 *archaeological, cultural, spiritual, and ceremonial places.*

37 *(6) Encourage local governments to consider preservation of*
38 *California Native American prehistoric, archaeological, cultural,*
39 *spiritual, and ceremonial places in their land use planning*
40 *processes by placing them in open space.*



1 (7) *Encourage local governments to consider cultural aspect of*
2 *California Native American prehistoric, archaeological, cultural,*
3 *spiritual, and ceremonial places early in land use planning*
4 *processes.*

5 *SEC. 2. Section 815.3 of the Civil Code is amended to read:*

6 815.3. Only the following entities or organizations may
7 acquire and hold conservation easements:

8 (a) Tax-exempt nonprofit organization qualified under Section
9 501(c)(3) of the Internal Revenue Code and qualified to do
10 business in this state which has as its primary purpose the
11 preservation, protection, or enhancement of land in its natural,
12 scenic, historical, agricultural, forested, or open-space condition
13 or use.

14 (b) The state or any city, county, city and county, district, or
15 other state or local governmental entity, if otherwise authorized to
16 acquire and hold title to real property and if the conservation
17 easement is voluntarily conveyed. No local governmental entity
18 may condition the issuance of an entitlement for use on the
19 applicant's granting of a conservation easement pursuant to this
20 chapter.

21 (c) *A federally recognized California Native American tribe or*
22 *a nonfederally recognized California Native American tribe,*
23 *band, or nation that is listed on the catalog of places of special*
24 *religious or social significance to Native Americans maintained by*
25 *the Native American Heritage Commission pursuant to*
26 *subdivision (a) of Section 5097.94 of the Public Resources Code.*

27 *SEC. 3. Section 65040.2 of the Government Code is amended*
28 *to read:*

29 65040.2. (a) In connection with its responsibilities under
30 subdivision (l) of Section 65040, the office shall develop and adopt
31 guidelines for the preparation and content of the mandatory
32 elements required in city and county general plans by Article 5
33 (commencing with Section 65300) of Chapter 3. For purposes of
34 this section, the guidelines prepared pursuant to Section 50459 of
35 the Health and Safety Code shall be the guidelines for the housing
36 element required by Section 65302. In the event that additional
37 elements are hereafter required in city and county general plans by
38 Article 5 (commencing with Section 65300) of Chapter 3, the
39 office shall adopt guidelines for those elements within six months



1 of the effective date of the legislation requiring those additional
2 elements.

3 (b) The office may request from each state department and
4 agency, as it deems appropriate, and the department or agency
5 shall provide, technical assistance in readopting, amending, or
6 repealing the guidelines.

7 (c) The guidelines shall be advisory to each city and county in
8 order to provide assistance in preparing and maintaining their
9 respective general plans.

10 (d) The guidelines shall contain the guidelines for addressing
11 environmental justice matters developed pursuant to Section
12 65040.12.

13 (e) The guidelines shall contain advice including
14 recommendations for best practices to allow for collaborative land
15 use planning of adjacent civilian and military lands and facilities.
16 The guidelines shall encourage enhanced land use compatibility
17 between civilian lands and any adjacent or nearby military
18 facilities through the examination of potential impacts upon one
19 another.

20 (f) The guidelines shall contain advice for addressing the
21 effects of civilian development on military readiness activities
22 carried out on all of the following:

- 23 (1) Military installations.
- 24 (2) Military operating areas.
- 25 (3) Military training areas.
- 26 (4) Military training routes.
- 27 (5) Military airspace.
- 28 (6) Other territory adjacent to those installations and areas.

29 (g) *The guidelines shall contain advice for consulting with*
30 *California Native American tribes for the preservation of places,*
31 *features, and objects described in Sections 5097.9 and 5097.995*
32 *of the Public Resources Code, and shall prescribe procedures for*
33 *continuing to protect the confidentiality of information concerning*
34 *the specific identity, location, character, and use of those places,*
35 *features, and objects.*

36 (h) The office shall provide for regular review and revision of
37 the guidelines established pursuant to this section.

38 *SEC. 4. Section 65092 of the Government Code is amended to*
39 *read:*



1 65092. (a) When a provision of this title requires notice of a
2 public hearing to be given pursuant to Section 65090 or 65091, the
3 notice shall also be mailed or delivered at least 10 days prior to the
4 hearing to any person who has filed a written request for notice
5 with either the clerk of the governing body or with any other
6 person designated by the governing body to receive these requests.
7 The local agency may charge a fee which is reasonably related to
8 the costs of providing this service and the local agency may require
9 each request to be annually renewed.

10 (b) *As used in this chapter "person" includes a California*
11 *Native American tribe.*

12 SEC. 5. *Section 65351 of the Government Code is amended to*
13 *read:*

14 65351. During the preparation or amendment of the general
15 plan, the planning agency shall provide opportunities for the
16 involvement of citizens, public agencies, public utility companies,
17 and civic, education, and other community groups, through public
18 hearings and any other means the city or county deems
19 appropriate. *The planning agency shall also conduct consultations*
20 *with California Native American tribes.*

21 SEC. 6. *Section 65351.1 is added to the Government Code, to*
22 *read:*

23 65351.1. (a) *Prior to the adoption or amendment of a city or*
24 *county's general plan, the city or county shall conduct*
25 *consultations with California Native American tribes or bands for*
26 *the purpose of preserving places, features, and objects described*
27 *in Sections 5097.9 and 5097.995 of the Public Resources Code that*
28 *are located within the city or county's jurisdiction.*

29 (b) *Consistent with the guidelines developed and adopted by*
30 *the Office of Planning and Research pursuant to Section 65040.2,*
31 *the city or county shall protect the confidentiality of information*
32 *concerning the specific identity, location, character, and use of*
33 *those places, features, and objects.*

34 SEC. 7. *Section 65351.2 is added to the Government Code, to*
35 *read:*

36 65351.2. *For purposes of Section 65351, 65351.1, and*
37 *65562.5, "consultation" means the meaningful and timely process*
38 *of seeking, discussing, and considering carefully the views of*
39 *others, in a manner that is cognizant of all parties' cultural values*
40 *and, where feasible, seeking agreement. Consultation between*



1 *government agencies and Native American tribes shall be*
2 *conducted in a way that is mutually respectful of each party's*
3 *sovereignty. Consultation shall also recognize the tribes' potential*
4 *needs for confidentiality with respect to places that have*
5 *traditional tribal cultural significance.*

6 SEC. 8. Section 65560 of the Government Code is amended to
7 read:

8 65560. (a) "Local open-space plan" is the open-space
9 element of a county or city general plan adopted by the board or
10 council, either as the local open-space plan or as the interim local
11 open-space plan adopted pursuant to Section 65563.

12 (b) "Open-space land" is any parcel or area of land or water
13 that is essentially unimproved and devoted to an open-space use
14 as defined in this section, and that is designated on a local, regional
15 or state open-space plan as any of the following:

16 (1) Open space for the preservation of natural resources
17 including, but not limited to, areas required for the preservation of
18 plant and animal life, including habitat for fish and wildlife
19 species; areas required for ecologic and other scientific study
20 purposes; rivers, streams, bays and estuaries; areas adjacent to
21 military installations, military training routes, and restricted
22 airspace that can provide additional buffer zones to military
23 activities and complement the resource values of the military
24 lands; and coastal beaches, lakeshores, banks of rivers and
25 streams, and watershed lands.

26 (2) Open space used for the managed production of resources,
27 including but not limited to, forest lands, rangeland, agricultural
28 lands and areas of economic importance for the production of food
29 or fiber; areas required for recharge of ground water basins; bays,
30 estuaries, marshes, rivers and streams which are important for the
31 management of commercial fisheries; and areas containing major
32 mineral deposits, including those in short supply.

33 (3) Open space for outdoor recreation, including but not
34 limited to, areas of outstanding scenic, historic and cultural value;
35 areas particularly suited for park and recreation purposes,
36 including access to lakeshores, beaches, and rivers and streams;
37 and areas which serve as links between major recreation and
38 open-space reservations, including utility easements, banks of
39 rivers and streams, trails, and scenic highway corridors.



1 (4) Open space for public health and safety, including, but not
2 limited to, areas which require special management or regulation
3 because of hazardous or special conditions such as earthquake
4 fault zones, unstable soil areas, flood plains, watersheds, areas
5 presenting high fire risks, areas required for the protection of water
6 quality and water reservoirs and areas required for the protection
7 and enhancement of air quality.

8 (5) *Open space for the protection of places, features, and*
9 *objects described in Sections 5097.9 and 5097.995 of the Public*
10 *Resources Code.*

11 *SEC. 9. Section 65562.5 is added to the Government Code, to*
12 *read:*

13 *65562.5. If land designated, or proposed to be designated as*
14 *openspace contains a place, feature, or object described in*
15 *Sections 5097.9 and 5097.995 of the Public Resources Code, the*
16 *city or county in which the place, feature, or object is located shall*
17 *conduct consultations with the California Native American tribe,*
18 *if any, that has given notice pursuant to Section 65092 for the*
19 *purpose of determining the level of confidentiality required to*
20 *protect the specific identity, location, character, or use of the place,*
21 *feature, or object and for the purpose of developing proper*
22 *treatment of the place, feature, or object in any corresponding*
23 *management plan.*

24 ~~settings, referred to as “Traditional Tribal Cultural Sites”, in the~~
25 ~~conduct of ceremonies and spiritual practices that provide the~~
26 ~~moral and ethical foundation of native societies and are essential~~
27 ~~elements in tribal cultural traditions.~~

28 ~~(2) Native American places of spiritual and ceremonial~~
29 ~~importance reflect the tribes’ continuing cultural ties to the land~~
30 ~~and to their ancestral heritage.~~

31 ~~(3) These sites are used for prayer, vision quests,~~
32 ~~medicine-making, and traditional ceremonies. They are~~
33 ~~considered holy and sacrosanct by California’s Native American~~
34 ~~people. Many are significant to the tribes’ cultural society and to~~
35 ~~their continued existence as a people.~~

36 ~~(4) To further and perpetuate the cultural tradition and spiritual~~
37 ~~practices of California tribes, these Traditional Tribal Cultural~~
38 ~~Sites require preservation.~~

39 ~~(5) California had the largest aboriginal population in North~~
40 ~~America before contact with non-Native Americans. Yet,~~



1 ~~California Native American tribes suffered the greatest losses~~
2 ~~from termination, removal and assimilation policies, including the~~
3 ~~loss of a majority of their lands and Traditional Tribal Cultural~~
4 ~~Sites. This devastation debilitated tribal cultural identity and~~
5 ~~threatened the survival of California Native American people.~~

6 ~~(6) In addition to the lingering effects of these historic policies,~~
7 ~~the continued loss of Traditional Tribal Cultural Sites for more~~
8 ~~than the past three centuries has caused further debilitating impacts~~
9 ~~on the cultural traditions and tribal identity of California Native~~
10 ~~Americans.~~

11 ~~(b) In recognition of Native American tribal sovereignty and~~
12 ~~the unique relationship between California state government and~~
13 ~~California tribal governments, it is the intent of the Legislature, in~~
14 ~~enacting this act, to accomplish all of the following:~~

15 ~~(1) Recognize that Traditional Tribal Cultural Sites are~~
16 ~~essential elements in tribal cultural tradition and identity.~~

17 ~~(2) Provide protection for Traditional Tribal Cultural Sites~~
18 ~~through listing on a confidential registry overseen by the Native~~
19 ~~American Heritage Commission, and establish a legal framework~~
20 ~~by which sites listed on, or eligible for listing on, the Traditional~~
21 ~~Tribal Cultural Sites Registry may be defended and preserved.~~

22 ~~(3) Protect the access to and ability of Native Americans to~~
23 ~~engage in cultural and traditional practices in a meaningful way at~~
24 ~~Traditional Tribal Cultural Sites through the facilitation of access~~
25 ~~agreements and other methods of providing legal assurances to~~
26 ~~both landowners and Native American tribes.~~

27 ~~(4) Require meaningful consultation among the Native~~
28 ~~American Heritage Commission, property owners, public~~
29 ~~agencies, project proponents, and Native American tribes at the~~
30 ~~earliest possible point in the planning, acquisition, and the~~
31 ~~environmental review of a proposed development project that~~
32 ~~might adversely impact a Traditional Tribal Cultural Site.~~

33 ~~(5) Provide for the development of treatment agreements,~~
34 ~~programmatic agreements, and mutually acceptable mitigation~~
35 ~~agreements, and promote the avoidance of development of~~
36 ~~Traditional Tribal Cultural Sites.~~

37 ~~(6) Provide a measure of protection to Traditional Tribal~~
38 ~~Cultural Sites on public lands and state-managed federal lands.~~

39 ~~(c) The Legislature does not intend by the enactment of the act~~
40 ~~adding this section to substantially alter, change, or interfere with~~



1 the existing process of the California Environmental Quality Act
2 (Division 13 (commencing with Section 21000) of the Public
3 Resources Code), except to formalize a process for the
4 consideration of the impacts of a development on a Traditional
5 Tribal Cultural Site.

6 SEC. 2. Section 815.3 of the Civil Code is amended to read:
7 815.3. Only the following entities or organizations may
8 acquire and hold conservation easements:

9 (a) A tax exempt nonprofit organization qualified under
10 Section 501(c)(3) of the Internal Revenue Code and qualified to
11 do business in this state, that has as its primary purpose the
12 preservation, protection, or enhancement of land in its natural,
13 scenic, historical, agricultural, forested, or open-space condition
14 or use.

15 (b) The state or a city, county, city and county, district, or other
16 state or local governmental entity, if otherwise authorized to
17 acquire and hold title to real property and if the conservation
18 easement is voluntarily conveyed. No local governmental entity
19 may condition the issuance of an entitlement for use on the
20 applicant's granting of a conservation easement pursuant to this
21 chapter.

22 (c) A federally recognized California Indian tribe or a
23 nonfederally recognized California Indian tribe, band, or nation
24 listed on the Native American Contact List maintained by the
25 Native American Heritage Commission pursuant to subdivision
26 (d) of Section 5097.94 of the Public Resources Code.

27 SEC. 3. Section 65040.2 of the Government Code is amended
28 to read:

29 65040.2. (a) In connection with its responsibilities under
30 subdivision (l) of Section 65040, the office shall develop and adopt
31 guidelines for the preparation and content of the mandatory
32 elements required in city and county general plans by Article 5
33 (commencing with Section 65300) of Chapter 3 of Division 1 of
34 Title 7. For purposes of this section, the guidelines prepared
35 pursuant to Section 50459 of the Health and Safety Code shall be
36 the guidelines for the housing element required by Section 65302.
37 In the event that additional elements are hereafter required in city
38 and county general plans by Article 5 (commencing with Section
39 65300) of Chapter 3, the office shall adopt guidelines for those



1 ~~elements within six months of the effective date of the legislation~~
2 ~~requiring those additional elements.~~

3 ~~(b) The office may request from each state department and~~
4 ~~agency, as it deems appropriate, and the department or agency~~
5 ~~shall provide, technical assistance in readopting, amending, or~~
6 ~~repealing the guidelines.~~

7 ~~(c) The guidelines shall be advisory to each city and county in~~
8 ~~order to provide assistance in preparing and maintaining their~~
9 ~~respective general plans.~~

10 ~~(d) The guidelines shall contain the guidelines for addressing~~
11 ~~environmental justice matters developed pursuant to Section~~
12 ~~65040.12.~~

13 ~~(e) The guidelines shall contain advice including~~
14 ~~recommendations for best practices to allow for collaborative land~~
15 ~~use planning of adjacent civilian and military lands and facilities.~~
16 ~~The guidelines shall encourage enhanced land use compatibility~~
17 ~~between civilian lands and any adjacent or nearby military~~
18 ~~facilities through the examination of potential impacts upon one~~
19 ~~another.~~

20 ~~(f) The guidelines shall contain advice for addressing the~~
21 ~~effects of civilian development on military readiness activities~~
22 ~~carried out on all of the following:~~

23 ~~(1) Military installations.~~

24 ~~(2) Military operating areas.~~

25 ~~(3) Military training areas.~~

26 ~~(4) Military training routes.~~

27 ~~(5) Military airspace.~~

28 ~~(6) Other territory adjacent to those installations and areas.~~

29 ~~(g) The guidelines shall contain advice for consulting with~~
30 ~~Native American tribes for the preservation of sites listed in the~~
31 ~~Traditional Tribal Cultural Site Register established under~~
32 ~~subdivision (a) of Section 5097.96 of the Public Resources Code,~~
33 ~~including procedures for protecting the confidentiality of~~
34 ~~information concerning the specific identity, location, character or~~
35 ~~use of those sites. “Native American tribe” and “Traditional~~
36 ~~Tribal Cultural Site Register” shall have the meanings provided~~
37 ~~in Section 5097.10 of the Public Resources Code.~~

38 ~~(h) The office shall provide for regular review and revision of~~
39 ~~the guidelines established pursuant to this section.~~



1 ~~SEC. 4.—Section 65351 of the Government Code is amended~~
2 ~~to read:~~

3 ~~65351.—During the preparation or amendment of the general~~
4 ~~plan, the planning agency shall provide opportunities for the~~
5 ~~involvement of citizens, public agencies, public utility companies,~~
6 ~~Native American tribes identified on the Native American Contact~~
7 ~~List maintained by the Native American Heritage Commission~~
8 ~~pursuant to subdivision (d) of Section 5097.94 of the Public~~
9 ~~Resources Code, and civic, education, and other community~~
10 ~~groups, through public hearings and any other means the city or~~
11 ~~county deems appropriate.~~

12 ~~SEC. 5.—Section 65351.1 is added to the Government Code, to~~
13 ~~read:~~

14 ~~65351.1.—Prior to adoption, revision, amendment, or update of~~
15 ~~a city or county’s general plan, the city or county shall consult with~~
16 ~~any appropriate Native American tribes identified on the Native~~
17 ~~American Contact List maintained by the commission for the~~
18 ~~purpose of preserving the sites listed in the Traditional Tribal~~
19 ~~Cultural Site Register (“TTCS Register”) that are located within~~
20 ~~the city or county’s jurisdiction. An “appropriate Native~~
21 ~~American tribe” and “TTCS Register” shall have the meanings~~
22 ~~provided in Section 5097.10 of the Public Resources Code.~~
23 ~~Consistent with the guidelines developed by the Office of Planning~~
24 ~~and Research pursuant to Section 65040.2, cities and counties shall~~
25 ~~protect the confidentiality of information concerning the specific~~
26 ~~identity, location, character, or use of the listed sites.~~

27 ~~SEC. 6.—Section 65453 of the Government Code is amended~~
28 ~~to read:~~

29 ~~65453.—(a) A specific plan shall be prepared, adopted, and~~
30 ~~amended in the same manner as a general plan, except that a~~
31 ~~specific plan may be adopted by resolution or by ordinance and~~
32 ~~may be amended as often as deemed necessary by the legislative~~
33 ~~body. Adoption or amendment of a specific plan shall be subject~~
34 ~~to the consultation requirements of Section 65351.1.~~

35 ~~(b) A specific plan may be repealed in the same manner as it is~~
36 ~~required to be amended.~~

37 ~~SEC. 7.—Section 65560 of the Government Code is amended~~
38 ~~to read:~~

39 ~~65560.—(a) “Local open space plan” is the open space~~
40 ~~element of a county or city general plan adopted by the board or~~



1 council, either as the local open-space plan or as the interim local
2 open-space plan adopted pursuant to Section 65563.

3 (b) “Open-space land” is a parcel or area of land or water that
4 is essentially unimproved and devoted to an open-space use as
5 defined in this section, and that is designated on a local, regional
6 or state open-space plan as any of the following:

7 (1) Open space for the preservation of natural resources,
8 including, but not limited to, sites listed in the Native American
9 Traditional Tribal Cultural Site Register established under Section
10 5097.96 of the Public Resources Code, areas required for the
11 preservation of plant and animal life, including habitat for fish and
12 wildlife species; areas required for ecological and other scientific
13 study purposes; rivers, streams, bays and estuaries; areas adjacent
14 to military installations, military training routes, and restricted
15 airspace that can provide additional buffer zones to military
16 activities and complement the resource values of the military
17 lands; and coastal beaches, lakeshores, banks of rivers and
18 streams, and watershed lands.

19 (2) Open space used for the managed production of resources,
20 including, but not limited to, forest lands, rangeland, agricultural
21 lands and areas of economic importance for the production of food
22 or fiber; areas required for recharge of groundwater basins; bays,
23 estuaries, marshes, rivers and streams which are important for the
24 management of commercial fisheries; and areas containing major
25 mineral deposits, including those in short supply.

26 (3) Open space for outdoor recreation, including, but not
27 limited to, areas of outstanding scenic, historic and cultural value;
28 areas particularly suited for park and recreation purposes,
29 including access to lakeshores, beaches, and rivers and streams;
30 and areas that serve as links between major recreation and
31 open-space reservations, including utility easements, banks of
32 rivers and streams, trails, and scenic highway corridors.

33 (4) Open space for public health and safety, including, but not
34 limited to, areas that require special management or regulation
35 because of hazardous or special conditions such as earthquake
36 fault zones, unstable soil areas, flood plains, watersheds, areas
37 presenting high fire risks, areas required for the protection of water
38 quality and water reservoirs, and areas required for the protection
39 and enhancement of air quality.



1 ~~SEC. 8.—Section 65562.5 is added to the Government Code, to~~
2 ~~read:~~

3 ~~65562.5.—If land designated, or proposed to be designated, as~~
4 ~~open space contains a site listed in the Traditional Tribal Cultural~~
5 ~~Site Register established under Section 5097.96 of the Public~~
6 ~~Resources Code, the city or county in which the site is located shall~~
7 ~~consult the appropriate Native American tribe, as defined by~~
8 ~~Section 5097.10 of the Public Resources Code, for the purposes of~~
9 ~~determining the level of confidentiality required to protect the~~
10 ~~specific identity, location, character, or use of the listed site, and~~
11 ~~developing proper treatment of the site in any corresponding~~
12 ~~management plan, if one will be developed for the listed area.~~

13 ~~SEC. 9.—Section 7050.5 of the Health and Safety Code is~~
14 ~~amended to read:~~

15 ~~7050.5.—(a) Every person who knowingly mutilates or~~
16 ~~disinters, wantonly disturbs, or willfully removes any human~~
17 ~~remains in or from any location other than a dedicated cemetery~~
18 ~~without authority of law is guilty of a misdemeanor, except as~~
19 ~~provided in Section 5097.99 of the Public Resources Code. This~~
20 ~~subdivision does not apply to any person carrying out an~~
21 ~~agreement developed pursuant to subdivision (e) of Section~~
22 ~~5097.94 of the Public Resources Code or to any person authorized~~
23 ~~to implement Section 5097.98 of the Public Resources Code.~~

24 ~~(b) In the event of discovery or recognition of any human~~
25 ~~remains in any location other than a dedicated cemetery, there shall~~
26 ~~be no further excavation or disturbance of the site or any nearby~~
27 ~~area reasonably suspected to overlie adjacent remains until the~~
28 ~~coroner of the county in which the human remains are discovered~~
29 ~~has determined, in accordance with Chapter 10 (commencing with~~
30 ~~Section 27460) of Part 3 of Division 2 of Title 3 of the Government~~
31 ~~Code, that the remains are not subject to the provisions of Section~~
32 ~~27491 of the Government Code or any other related provisions of~~
33 ~~law concerning investigation of the circumstances, manner and~~
34 ~~cause of any death, and the recommendations concerning the~~
35 ~~treatment and disposition of the human remains have been made~~
36 ~~to the person responsible for the excavation, or to his or her~~
37 ~~authorized representative, in the manner provided in Section~~
38 ~~5097.98 of the Public Resources Code. The coroner shall make his~~
39 ~~or her determination within two working days from the time the~~
40 ~~person responsible for the excavation, or his or her authorized~~



1 representative, notifies the coroner of the discovery or recognition
2 of the human remains.

3 (c) If the coroner determines that the remains are not subject to
4 his or her authority and if the coroner recognizes the human
5 remains to be those of a Native American, or has reason to believe
6 that they are those of a Native American, he or she shall contact,
7 by telephone within 24 hours, the Native American Heritage
8 Commission.

9 SEC. 10. Section 7054 of the Health and Safety Code is
10 amended to read:

11 7054. (a) (1) Except as authorized pursuant to the sections
12 referred to in subdivision (b), every person who deposits or
13 disposes of any human remains in any place, except in a cemetery,
14 is guilty of a misdemeanor.

15 (2) Every licensee or registrant pursuant to Chapter 12
16 (commencing with Section 7600) or Chapter 19 (commencing
17 with Section 9600) of Division 3 of the Business and Professions
18 Code and the agents and employees of the licensee or registrant,
19 or any unlicensed person acting in a capacity in which a license
20 from the Cemetery and Funeral Bureau is required, who, except as
21 authorized pursuant to the sections referred to in subdivision (b),
22 deposits or disposes of any human remains in any place, except in
23 a cemetery, is guilty of a misdemeanor that shall be punishable by
24 imprisonment in a county jail not exceeding one year, by a fine not
25 exceeding ten thousand dollars (\$10,000), or both that
26 imprisonment and fine.

27 (b) Cremated remains may be disposed of pursuant to Sections
28 7054.6, 7116, 7117, and 103060.

29 (c) Subdivision (a) of this section does not apply to the reburial
30 of Native American remains under an agreement developed
31 pursuant to subdivision (o) of Section 5097.94 of the Public
32 Resources Code, or implementation of a recommendation or
33 agreement made pursuant to Section 5097.98 of the Public
34 Resources Code.

35 SEC. 11. The heading of Chapter 1.75 (commencing with
36 Section 5097.9) of Division 5 is amended to read:
37



1 CHAPTER 1.75. ~~NATIVE AMERICAN HERITAGE AND TRADITIONAL~~
2 ~~TRIBAL CULTURAL SITES~~

3
4 SEC. 12. ~~Section 5097.9 of the Public Resources Code is~~
5 ~~amended to read:~~

6 ~~5097.9. A public agency and a private party using or~~
7 ~~occupying public property, or operating on public property, under~~
8 ~~a public license, permit, grant, lease, or contract made on or after~~
9 ~~July 1, 1977, may not in any manner whatsoever interfere with the~~
10 ~~free expression or exercise of Native American religion as~~
11 ~~provided in the United States Constitution and the California~~
12 ~~Constitution; nor shall any such agency or party cause significant~~
13 ~~and irreparable damage to a Native American sanctified cemetery,~~
14 ~~place of worship, religious or ceremonial site, or sacred shrine~~
15 ~~located on public property, except on a clear and convincing~~
16 ~~showing that the public interest and necessity so require. The~~
17 ~~provisions of this chapter shall be enforced by the commission,~~
18 ~~pursuant to Sections 5097.94 and 5097.97.~~

19 ~~This chapter may not be construed to limit the requirements of~~
20 ~~the California Environmental Quality Act (Division 13~~
21 ~~(commencing with Section 21000)).~~

22 ~~Nothing in this section may be construed to nullify protections~~
23 ~~for Native American cemeteries under other statutes.~~

24 SEC. 13. ~~Section 5097.10 is added to the Public Resources~~
25 ~~Code, to read:~~

26 ~~5097.10. As used in this chapter, the following terms have the~~
27 ~~following meanings:~~

28 ~~(a) “Appropriate Native American tribe” means a Native~~
29 ~~American tribe determined by the commission to have attached~~
30 ~~traditional tribal cultural significance to the TTCS at issue.~~

31 ~~(b) “Commission” means the Native American Heritage~~
32 ~~Commission.~~

33 ~~(c) “Consultation” means the meaningful and timely process~~
34 ~~of seeking, discussing, and considering carefully the views of~~
35 ~~others, in a manner that is cognizant of all parties’ cultural values,~~
36 ~~and where feasible, seeking agreement. Consultation between~~
37 ~~government agencies and Native American tribes shall be~~
38 ~~conducted in a way that is mutually respectful of each party’s~~
39 ~~sovereignty. Consultation shall also recognize the tribe’s potential~~



1 need for confidentiality with respect to sites that have traditional
2 tribal cultural significance.

3 (d) “Consulting parties” means the appropriate Native
4 American tribes, owners of property within the site’s boundaries,
5 the project proponent, the lead agency, and public agencies with
6 jurisdiction over the area in which the effects of a project may
7 occur or having principal responsibility for carrying out or
8 approving a project.

9 (e) “Final determination” means a final decision issued by the
10 commission regarding the listing of a site in the TTCS Register,
11 whether a TTCS may be affected by a proposed project, or whether
12 a proposed project may result in a substantial adverse change to a
13 TTCS.

14 (f) “Eligible for listing in the TTCS Register” means a site that
15 is not listed in the TTCS Register, but if the commission were to
16 consider the site for listing pursuant to Section 5097.96, it would
17 likely find that the site meets the criteria for listing. The
18 determination of eligibility may be delegated to the executive
19 secretary. The executive secretary shall comply with criteria
20 adopted pursuant to subdivision (b) of Section 5097.96 and with
21 procedures set forth in Section 5097.96.1.

22 (g) “Gathering site” means an area where traditional food,
23 plants, or other materials or cultural objects, including, but not
24 limited to, baskets, tools, ropes, nets, ceremonial items, clothing,
25 and personal adornments that are used in a traditional practice by
26 a Native American tribe, are gathered, collected, assembled, or
27 maintained.

28 (h) “Lead agency” has the same meaning as the definition in
29 Section 21067.

30 (i) “Native American Contact List” means the list developed
31 and maintained by the commission pursuant to subdivision (d) of
32 Section 5097.94 that identifies those Native American tribes to be
33 notified and consulted pursuant to this chapter and the
34 requirements of the California Environmental Quality Act
35 (Division 13 (commencing with Section 21000)).

36 (j) “Native American tribe” means a federally recognized
37 California Indian tribe listed on the Federal Register and any
38 nonfederally recognized California Indian tribe, band, or nation
39 listed on the Native American Contact List maintained by the
40 commission.



1 ~~(k) “Project” has the same meaning as the definition in Section~~
2 ~~21065.~~

3 ~~(l) “Substantial adverse change in a TTCS” means a direct or~~
4 ~~reasonably foreseeable indirect change to the physical~~
5 ~~characteristics of a TTCS in a manner that would diminish the~~
6 ~~traditional cultural significance of the TTCS.~~

7 ~~(m) “Traditional Tribal Cultural Site” or “TTCS” means a site~~
8 ~~listed in, or determined by the commission to be eligible for listing~~
9 ~~in, the TTCS Register based on the criteria for listing established~~
10 ~~by the commission through regulations adopted pursuant to~~
11 ~~subdivision (b) of Section 5097.96. These criteria shall identify a~~
12 ~~TTCS as a site that is traditionally associated with, or has served~~
13 ~~as the site for engaging in activities related to, the traditional~~
14 ~~beliefs, cultural practices, or ceremonies of a Native American~~
15 ~~tribe. A TTCS shall be a reasonably delineated physical location~~
16 ~~identifiable by physical characteristics. The TTCS Register is in~~
17 ~~no way intended to infringe on Native American tribes’ sovereign~~
18 ~~rights to define their own sites of religious and cultural~~
19 ~~significance for their own purposes. The fact that a tribe has not~~
20 ~~nominated a site for inclusion in the TTCS Register may not be~~
21 ~~evidence that the site is not sacred or significant.~~

22 ~~(n) “Traditional Tribal Cultural Site Register” or “TTCS~~
23 ~~Register” means the Native American Traditional Tribal Cultural~~
24 ~~Site Register established and maintained by the commission~~
25 ~~pursuant to Section 5097.96.~~

26 ~~SEC. 14. Section 5097.91 of the Public Resources Code is~~
27 ~~amended to read:~~

28 ~~5097.91. There is in state government a Native American~~
29 ~~Heritage Commission, consisting of nine members appointed by~~
30 ~~the Governor with the advice and consent of the Senate. The~~
31 ~~executive secretary of the commission shall be appointed by the~~
32 ~~Governor.~~

33 ~~SEC. 15. Section 5097.92 of the Public Resources Code is~~
34 ~~amended to read:~~

35 ~~5097.92. (a) The nine member commission shall be~~
36 ~~composed of all the following members:~~

37 ~~(1) Six members shall be elders, traditional people, or spiritual~~
38 ~~leaders of California Native American tribes, nominated by Native~~
39 ~~American organizations, tribes, or groups within the state. Two~~
40 ~~members shall be from the northern region of the state, two~~



1 ~~members from the central region, and two from the southern~~
2 ~~region.~~

3 ~~(2) Two members shall be recognized professionals in one or~~
4 ~~more of the following disciplines: ethnohistory, archaeology,~~
5 ~~anthropology, ethnography, or other related disciplines.~~

6 ~~(3) One member shall represent the public or possess expertise~~
7 ~~in fields of expertise the Governor deems necessary or desirable~~
8 ~~to enable the commission to carry out its responsibilities.~~

9 ~~(b) Each member of the commission shall have one vote.~~
10 ~~Except as provided in subdivision (c), a majority of the total~~
11 ~~appointed membership of the commission shall constitute a~~
12 ~~quorum. Any action taken by the commission under this chapter~~
13 ~~requires a majority vote of the members present at the meeting of~~
14 ~~the commission, with a quorum being present, unless otherwise~~
15 ~~specifically provided for in this chapter.~~

16 ~~(c) (1) The commission may appoint regional committees of~~
17 ~~three members of the commission to carry on investigations,~~
18 ~~inquiries, or hearings pursuant to Sections 5097.96, 5097.96.1,~~
19 ~~5097.96.2, and 5097.96.3. Each regional committee shall be~~
20 ~~comprised of the two tribal commission members representing the~~
21 ~~region where the subject TTCS or proposed TTCS is located. The~~
22 ~~final determination of the three-member committee shall become~~
23 ~~the final determination of the commission unless appealed to the~~
24 ~~full commission.~~

25 ~~(2) An appeal of a final determination by the regional~~
26 ~~committee may be filed by any party to the procedure within 30~~
27 ~~days of issuance of the regional committee's final determination.~~

28 ~~(3) All actions of the regional committee are subject to Section~~
29 ~~5097.96.5.~~

30 ~~SEC. 16. Section 5097.94 of the Public Resources Code is~~
31 ~~amended to read:~~

32 ~~5097.94. The commission shall have the following powers~~
33 ~~and duties:~~

34 ~~(a) To identify and catalog places of special religious or social~~
35 ~~significance to Native Americans, and known graves and~~
36 ~~cemeteries of Native Americans on private lands. The~~
37 ~~identification and cataloging of known graves and cemeteries~~
38 ~~shall be completed on or before January 1, 1984. The commission~~
39 ~~shall notify landowners on whose property those graves and~~
40 ~~cemeteries are determined to exist, and shall identify the Native~~



1 ~~American tribe most likely descended from those Native~~
2 ~~Americans who may be interred on the property.~~

3 ~~(b) To make recommendations relative to sites listed in the~~
4 ~~TTCS Register that are located on private lands, and are~~
5 ~~inaccessible to Native Americans, and have cultural significance~~
6 ~~to Native American tribes for acquisition by the state or other~~
7 ~~public agencies for the purpose of facilitating or assuring access~~
8 ~~thereto by the appropriate Native American tribes.~~

9 ~~(c) To develop and maintain the Native American Contact List.~~
10 ~~That list shall identify those Native American tribes eligible to be~~
11 ~~notified or consulted pursuant to this chapter and the California~~
12 ~~Environmental Quality Act (Division 13 (commencing with~~
13 ~~Section 21000)). The list shall include all Native American tribes,~~
14 ~~as defined in subdivision (j) of Section 5097.10, and a designated~~
15 ~~representative contact person and address for each tribe. For~~
16 ~~purposes of this chapter, the commission shall develop criteria to~~
17 ~~identify and include Native American tribes that do not have~~
18 ~~federal recognition. For the purpose of complying with~~
19 ~~requirements relating to notice and consultation, the list shall be~~
20 ~~organized by counties or portions of counties to identify the Native~~
21 ~~American tribe or tribes that have attached traditional cultural~~
22 ~~significance to each county or portion thereof.~~

23 ~~(d) To make recommendations to the Legislature relative to~~
24 ~~procedures and incentives that will voluntarily encourage private~~
25 ~~property owners to preserve and protect sites listed in the TTCS~~
26 ~~Register and to allow appropriate access to Native American tribes~~
27 ~~for traditional tribal cultural activities.~~

28 ~~(e) To employ and prescribe duties for staff members as~~
29 ~~necessary to carry out the provisions of this chapter.~~

30 ~~(f) To employ an attorney at law and assistant attorneys as~~
31 ~~necessary. The attorney shall act as the attorney and legal adviser~~
32 ~~of the commission, and shall have duties, including, but not limited~~
33 ~~to, representing the commission before public agencies. If the~~
34 ~~Attorney General is unable to represent the commission in a~~
35 ~~judicial proceeding due to a conflict of interest or other reason, the~~
36 ~~commission may be represented by the commission's attorney or~~
37 ~~a private attorney pursuant to Section 11040 of the Government~~
38 ~~Code.~~

39 ~~(g) To accept grants or donations, real or in kind, to carry out~~
40 ~~the purposes of this chapter.~~



1 ~~(h) To make recommendations to the Director of Parks and~~
2 ~~Recreation and the California Arts Council relative to the~~
3 ~~California State Indian Museum and other Indian matters touched~~
4 ~~upon by department programs.~~

5 ~~(i) To bring an action to prevent significant and irreparable~~
6 ~~damage to, or assure appropriate access for Native Americans to,~~
7 ~~a Native American sanctified cemetery, place of worship, religious~~
8 ~~or ceremonial site, sacred shrine, or sites listed in the TTCS~~
9 ~~Register located on public property, pursuant to Section 5097.97.~~
10 ~~If the court finds that significant and irreparable damage will occur~~
11 ~~or that appropriate access will be denied, and appropriate~~
12 ~~mitigation measures are not available, it shall issue an injunction,~~
13 ~~unless it finds, on clear and convincing evidence, that the public~~
14 ~~interest and necessity require otherwise. The Attorney General~~
15 ~~shall represent the commission and the state in litigation~~
16 ~~concerning affairs of the commission, unless the Attorney General~~
17 ~~has determined to represent the agency against whom the~~
18 ~~commission's action is directed, in which case the commission~~
19 ~~shall be authorized to represent itself or employ other counsel as~~
20 ~~needed. In any action to enforce the provisions of this subdivision~~
21 ~~the commission shall introduce evidence showing that a cemetery,~~
22 ~~place, site, or shrine has been historically regarded as a sacred or~~
23 ~~sanctified place by Native American people and represents a place~~
24 ~~of unique historical and cultural significance to a Native American~~
25 ~~tribe.~~

26 ~~(j) To request and utilize the advice and service of all federal,~~
27 ~~state, local, and regional agencies.~~

28 ~~(k) To assist Native American tribes in obtaining appropriate~~
29 ~~access to and protection for sites listed in the TTCS Register that~~
30 ~~are located on public or private lands for ceremonial or spiritual~~
31 ~~activities.~~

32 ~~(l) To assist state agencies in any negotiations with agencies of~~
33 ~~the federal government for the protection of TTCSs that are~~
34 ~~located on federal lands.~~

35 ~~(m) To mediate, upon application of either of the parties,~~
36 ~~disputes arising between landowners and known descendents~~
37 ~~relating to the treatment and disposition of Native American~~
38 ~~human burials, skeletal remains, and items associated with Native~~
39 ~~American burials.~~



1 ~~(n) To assist interested landowners in developing agreements~~
2 ~~with appropriate Native American tribes for leaving in place,~~
3 ~~treating or disposing of, with appropriate dignity, the human~~
4 ~~remains and any items associated with Native American burials.~~
5 ~~The agreements shall provide protection to Native American~~
6 ~~human burials and skeletal remains from vandalism and~~
7 ~~inadvertent destruction and provide, where remains are not left in~~
8 ~~place, for sensitive treatment and disposition of Native American~~
9 ~~burials, skeletal remains, and associated grave goods consistent~~
10 ~~with the planned use of, or the approved project on, the land. The~~
11 ~~commission shall adopt guidelines governing the process and~~
12 ~~requirements for Native American monitoring.~~

13 ~~(o) To adopt criteria and procedures for the TTCS Register and~~
14 ~~oversee the administration of the TTCS Register.~~

15 ~~(p) To oversee the administration of, and participate in the~~
16 ~~consultation process pursuant to, this chapter and adopt, as~~
17 ~~necessary, consultation process criteria and procedures.~~

18 ~~(q) To assist Native American tribes in obtaining access to and~~
19 ~~protection for gathering sites that are not included in the TTCS~~
20 ~~Register, and to develop criteria to assist in the identification of~~
21 ~~feasible or potentially feasible measures to avoid or mitigate~~
22 ~~potential impacts to gathering sites.~~

23 ~~(r) To develop and maintain a site records check service for the~~
24 ~~purpose of providing limited information, consistent with the~~
25 ~~confidentiality requirements of Section 5097.96.5, on the~~
26 ~~presence or absence of a site on the TTCS Register or a site that~~
27 ~~has been nominated for listing. The Native American Heritage~~
28 ~~Commission shall identify the appropriate Native American tribes~~
29 ~~on the Native American Contact List for the site.~~

30 ~~(s) To adopt rules and regulations, as necessary, to carry out the~~
31 ~~provisions of this chapter in conformity with the provisions of~~
32 ~~Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
33 ~~Division 3 of Title 2 of the Government Code. The commission~~
34 ~~may not begin listing TTCSs on the TTCS Register, or make a~~
35 ~~determination about whether a site is eligible to be listed in the~~
36 ~~TTCS Register, until the 30th day after the date of filing with the~~
37 ~~Secretary of State the initial set of regulations to implement~~
38 ~~subdivision (d) of Section 5097.94, subdivisions (b) and (c) of~~
39 ~~Section 5097.96, or subdivision (a) of Section 5097.96.5,~~
40 ~~whichever occurs last. The commission may not make a~~



1 ~~determination pursuant to Section 5097.96.1 or 5097.96.2, or~~
2 ~~identify project changes or mitigation measures pursuant to~~
3 ~~Section 5097.96.3 until the 121st day after the date of filing with~~
4 ~~the Secretary of State the initial set of regulations to implement~~
5 ~~subdivision (d) of Section 5097.94, subdivisions (b) and (c) of~~
6 ~~Section 5097.96, or subdivision (a) of Section 5097.96.5,~~
7 ~~whichever occurs last. The commission shall adopt these initial~~
8 ~~sets of regulations within one year of the effective date of the act~~
9 ~~that amended this section during the 2003-04 Regular Session of~~
10 ~~the Legislature. In drafting and promulgating rules and regulations~~
11 ~~that may have substantial effects on the Native American tribes,~~
12 ~~the commission shall consult with, and allow for, active~~
13 ~~participation by the Native American tribes.~~

14 ~~SEC. 17. Section 5097.96 of the Public Resources Code is~~
15 ~~amended to read:~~

16 ~~5097.96. (a) The Traditional Tribal Cultural Site Register or~~
17 ~~TTCS Register is hereby established and shall be maintained and~~
18 ~~administered by the commission. The TTCS Register is in no way~~
19 ~~intended to infringe on Native American tribes' sovereign rights~~
20 ~~to define their own sites of religious and cultural significance for~~
21 ~~their own purposes. The fact that a tribe has not nominated a site~~
22 ~~for inclusion in the TTCS Register may not be evidence that the~~
23 ~~site is not sacred or significant.~~

24 ~~(b) Consistent with the definition of TTCS in Section 5097.10,~~
25 ~~the commission shall adopt regulations establishing criteria to list~~
26 ~~sites in the TTCS Register. The commission shall acknowledge~~
27 ~~that Native American tribes possess special expertise in~~
28 ~~identifying TTCSs and shall consult with them and encourage~~
29 ~~active participation in developing the criteria consistent with~~
30 ~~subdivision (t) of Section 5097.94.~~

31 ~~(c) The commission on its own initiative, or any appropriate~~
32 ~~Native American tribe, may nominate a site for listing in the TTCS~~
33 ~~Register. The commission shall adopt regulations establishing~~
34 ~~procedures for the nomination and listing of sites in the TTCS~~
35 ~~Register in a manner that shall protect the confidentiality concerns~~
36 ~~of Native American tribes. The procedures shall provide the~~
37 ~~following:~~

38 ~~(1) All requests to the commission for nomination of sites in the~~
39 ~~TTCS Register shall be supported by sufficient evidence to~~
40 ~~facilitate meaningful review of the request.~~



1 ~~(2) Prior to acting on the nomination of a site to be added to the~~
2 ~~TTCS Register, the commission shall notify the Native American~~
3 ~~tribe nominating the site, all owners of property within the site's~~
4 ~~boundaries, and other appropriate Native American tribes, and~~
5 ~~provide not less than 30 days for written comments on the~~
6 ~~nomination. The commission shall accept and consider these~~
7 ~~comments and any other comments it receives during the comment~~
8 ~~period, and other appropriate information in determining whether~~
9 ~~to list the site in the TTCS Register.~~

10 ~~(3) Except where appropriate to maintain the confidentiality of~~
11 ~~information concerning the specific identity, location, character,~~
12 ~~or use of the proposed TTCS, the commission may seek and~~
13 ~~consider the views of the public.~~

14 ~~(4) The commission may hold a hearing to accept additional~~
15 ~~comments regarding the requested nomination. Any hearing by~~
16 ~~the commission to accept additional comments may be closed to~~
17 ~~the public to maintain the confidentiality of information~~
18 ~~concerning the specific identity, location, character, or use of the~~
19 ~~site.~~

20 ~~(5) The commission shall prepare proposed written findings to~~
21 ~~support its proposed determination concerning the site nominated~~
22 ~~for listing in the TTCS Register. The proposed findings shall~~
23 ~~describe in general terms the traditional cultural significance of the~~
24 ~~site, define its boundaries, and identify any appropriate Native~~
25 ~~American tribes. The commission shall provide notice of its~~
26 ~~proposed determination and findings to the parties identified in~~
27 ~~paragraph (2), and shall provide those parties 30 days to submit~~
28 ~~written comments to the commission regarding the proposed~~
29 ~~determination and findings. The commission's proposed~~
30 ~~determination and findings shall constitute a final determination~~
31 ~~by the commission if no comments are submitted to the~~
32 ~~commission during the 30-day comment period. If written~~
33 ~~comments are submitted to the commission during that comment~~
34 ~~period, the commission shall consider the comments, and may~~
35 ~~modify the proposed determination and findings before making a~~
36 ~~final determination.~~

37 ~~(d) The commission, in accordance with procedures it adopts,~~
38 ~~shall provide notice of a final determination to list a site in the~~
39 ~~TTCS Register to the Native American tribe nominating the site,~~
40 ~~all owners of property within the site's boundaries, and other~~



1 appropriate Native American tribes. The commission shall record
2 in the office of the county recorder of the county in which the site
3 is located, and the county recorder shall accept for recording, a
4 written notice of a registered TTCS in the form to be prescribed
5 by the commission. That notice may only refer generally and
6 without specificity to the identity, location, character, and use of
7 the registered TTCS on the property. Recording of a notice of a
8 registered TTCS shall satisfy any legal duty of the owner to
9 disclose material facts with respect to the registered TTCS. The
10 commission shall be exempt from liability for any act or omission
11 in connection with the recordation of this notice.

12 (e) The commission shall maintain a list of the sites on the
13 TTCS Register. The list and all documents pertaining to the list
14 shall be exempt from disclosure as a public record pursuant to
15 subdivision (r) of Section 6254 of the Government Code.

16 (f) Notwithstanding subdivisions (c) and (d), the commission
17 shall develop an expedited procedure to list eligible sites identified
18 under subdivisions (g) and (h) on a priority basis in the TTCS
19 Register. The commission shall acknowledge that Native
20 American tribes possess special expertise in identifying TTCSs
21 and shall consult with them and encourage active participation in
22 developing the expedited procedure.

23 (g) Within two years of the date of filing with the Secretary of
24 State the initial set of regulations to implement subdivision (d) of
25 Section 5097.94, subdivisions (b) and (c) of Section 5097.96, or
26 subdivision (a) of Section 5097.96.5, whichever occurs last, the
27 commission shall complete the evaluation of the eligibility for
28 listing in the TTCS Register of any site previously identified,
29 catalogued, or listed by the commission as a site with traditional
30 cultural significance to Native Americans. If the commission
31 makes a proposed determination not to include on the TTCS
32 Register any site previously so identified, catalogued, or listed by
33 the commission, it shall consult with the appropriate Native
34 American tribe before making a final determination.

35 (h) The commission may recommend sites listed in the TTCS
36 for listing by the State Historic Preservation Officer for inclusion
37 in the California Register. The commission may also determine
38 that a site that is listed in the National Register of Historic Places
39 or the California Register of Historical Resources may be eligible
40 for listing in the TTCS Register. In making this determination, the



1 ~~commission shall consult with the State Historic Preservation~~
2 ~~Officer, and the State Historic Preservation Officer shall cooperate~~
3 ~~and assist the commission.~~

4 ~~(i) Any determination by the commission to list a site on the~~
5 ~~TTCS Register shall be exempt from the California~~
6 ~~Environmental Quality Act (Division 13 (commencing with~~
7 ~~Section 21000)).~~

8 ~~(j) The listing of a TTCS in the TTCS Register, or the~~
9 ~~determination that a site is eligible for listing pursuant to Section~~
10 ~~5097.96.1, does not in itself create an interest in real property.~~

11 ~~SEC. 18. Section 5097.96.1 is added to the Public Resources~~
12 ~~Code, to read:~~

13 ~~5097.96.1. (a) Upon receipt of a timely written request for~~
14 ~~consultation pursuant to paragraph (1) of subdivision (d) of~~
15 ~~Section 21097 by an appropriate Native American tribe or the~~
16 ~~project proponent, the commission shall promptly initiate~~
17 ~~consultation with the consulting parties to determine whether the~~
18 ~~proposed project may cause a substantial adverse change in a~~
19 ~~TTCS, and if so, whether there are project changes or mitigation~~
20 ~~measures that will avoid or reduce the substantial adverse change.~~
21 ~~In making this determination, the commission shall ascertain~~
22 ~~whether the site is listed or is eligible for listing in the TTCS~~
23 ~~Register. Except where appropriate to maintain the confidentiality~~
24 ~~of information concerning the specific identity, location,~~
25 ~~character, or use of the TTCS, the commission may consider the~~
26 ~~views of the public.~~

27 ~~(b) If the site is not registered in the TTCS Register, an~~
28 ~~appropriate Native American tribe may ask the commission for a~~
29 ~~determination that the site is eligible for listing in the TTCS~~
30 ~~Register. The determination of eligibility may be delegated to the~~
31 ~~executive secretary. The executive secretary shall, if the power is~~
32 ~~delegated by the commission, provide a signed statement setting~~
33 ~~forth his or her opinion as to whether the site likely meets the~~
34 ~~criteria for listing established pursuant to subdivision (b) of~~
35 ~~Section 5097.96. In making this determination, the executive~~
36 ~~secretary shall comply with criteria adopted by the commission.~~
37 ~~The executive secretary shall seek the input of, and consult with,~~
38 ~~appropriate consulting parties in making a determination pursuant~~
39 ~~to this subdivision. An appeal of the executive secretary's~~
40 ~~determination to the commission shall be made within 10 days of~~



1 ~~the executive secretary's issuance of the determination, and the~~
2 ~~appeal shall be heard and decided by the commission within 30~~
3 ~~days of the appeal. An appeal may not be made to a regional~~
4 ~~committee.~~

5 ~~(e) If the commission determines that there is no TTCS present,~~
6 ~~or that a TTCS is present, but the proposed project will not alter~~
7 ~~the physical characteristics of the TTCS, that determination shall~~
8 ~~constitute a final determination by the commission that the~~
9 ~~proposed project will not cause a substantial adverse change in the~~
10 ~~TTCS, and the commission's responsibilities under this section as~~
11 ~~to that TTCS are fully discharged.~~

12 ~~(d) In the absence of a final determination by the commission~~
13 ~~pursuant to subdivision (c), the commission shall, not later than 45~~
14 ~~days after receiving the notice required by subdivision (d) of~~
15 ~~Section 21097, notify in writing, the lead agency, the project~~
16 ~~proponent, and any appropriate Native American tribes that~~
17 ~~consulted with the commission pursuant to this section, of its final~~
18 ~~determination as to whether the proposed project may result in a~~
19 ~~substantial adverse change in a TTCS and, if so, whether there are~~
20 ~~project changes or mitigation measures that, if implemented, will~~
21 ~~avoid or reduce any substantial adverse change to below a level of~~
22 ~~significance.~~

23 ~~(e) If the commission determines that the notice provided by~~
24 ~~the lead agency does not include all of the information required by~~
25 ~~subdivision (d) of Section 21097, the commission shall, within~~
26 ~~five days of receipt of the notice, notify the lead agency that the~~
27 ~~45-day review period has not begun and identify the necessary data~~
28 ~~and information that is missing. The 45-day review period shall~~
29 ~~begin when the commission notifies the lead agency that the~~
30 ~~missing data and information have been received. The 45-day~~
31 ~~period may be extended 15 days upon request by the commission~~
32 ~~to the lead agency. Approval of longer or additional extension~~
33 ~~requests is in the discretion of the lead agency. If the commission~~
34 ~~has not issued its written determination or requested an extension~~
35 ~~within the time prescribed by this subdivision, the commission's~~
36 ~~inaction shall be deemed a final determination by the commission~~
37 ~~that the proposed project will not result in a substantial adverse~~
38 ~~change in a TTCS.~~

39 ~~(f) The commission shall proceed in accordance with Section~~
40 ~~5097.96.2 in the absence of a final determination pursuant to~~



1 ~~subdivision (c) or a final determination that any substantial~~
2 ~~adverse change in a TTCS will be avoided or reduced to below a~~
3 ~~level of significance as a result of project changes or mitigation~~
4 ~~measures agreed to by the commission, appropriate Native~~
5 ~~American tribes that participated in the consultation process, the~~
6 ~~lead agency, and the project proponent.~~

7 ~~(g) The baseline conditions by which the commission makes~~
8 ~~the determination pursuant to this section shall be the physical~~
9 ~~environmental conditions as they exist, from both a local and~~
10 ~~regional environmental perspective, at the time of making the~~
11 ~~request for consultation with the commission or the filing of the~~
12 ~~application for a proposed project with the lead agency, whichever~~
13 ~~occurs earlier.~~

14 ~~(h) This section does not apply to the following projects:~~

15 ~~(1) The operation, repair, maintenance, permitting, leasing,~~
16 ~~licensing, or minor alteration of an existing public or private~~
17 ~~structure, facility, mechanical equipment, or topographical~~
18 ~~feature, involving negligible or no expansion of use beyond that~~
19 ~~existing at the time of the lead agency's determination, and~~
20 ~~consisting of one of the following:~~

21 ~~(A) An existing facility of both investor and publicly owned~~
22 ~~utilities used to provide electric power, telecommunications,~~
23 ~~natural gas, sewerage, or other public utility services.~~

24 ~~(B) Maintenance of a fish screen, fish ladder, wildlife habitat~~
25 ~~area, artificial wildlife waterway device, streamflow, spring or~~
26 ~~waterhole, and stream channel (clearing of debris) to protect fish~~
27 ~~and wildlife resources.~~

28 ~~(2) The replacement or reconstruction of an existing structure~~
29 ~~or facility where the new structure will be located on the same site~~
30 ~~as the structure replaced, will have substantially the same purpose~~
31 ~~and capacity as the structure replaced, and will consist of one of~~
32 ~~the following:~~

33 ~~(A) The replacement or reconstruction of an existing utilities~~
34 ~~system or facility involving negligible or no expansion of capacity.~~

35 ~~(B) The conversion of an overhead distribution system facility~~
36 ~~to underground, including the connection to existing overhead~~
37 ~~distribution lines where the surface is restored to the condition~~
38 ~~existing prior to the undergrounding.~~

39 ~~(3) The construction and location of water main, sewage,~~
40 ~~electrical, telecommunications, gas, and other utility extensions;~~



1 including street improvements of reasonable length to serve the
2 construction, so long as the construction consists of limited
3 numbers of new, small facilities or structures, installation of small
4 new equipment and facilities in small structures, and the
5 conversion of existing small structures from one use to another
6 where only minor modifications are made in the exterior of the
7 structure.

8 SEC. 19.—Section 5097.96.2 is added to the Public Resources
9 Code, to read:

10 5097.96.2. (a) If, pursuant to Section 5097.96.1, the
11 commission proceeds to act pursuant to this section, then not later
12 than 75 days thereafter, the commission shall notify in writing, the
13 lead agency, the project proponent, and any appropriate Native
14 American tribes that consulted with the commission, of its final
15 determination as to whether a proposed project will result in a
16 substantial adverse change to a TTCS. The 75-day period may be
17 extended 15 days upon request by the commission to the lead
18 agency. Approval of longer or additional extension requests is in
19 the discretion of the lead agency. If the commission has not issued
20 its written determination or requested an extension within the time
21 prescribed by this subdivision, the commission's inaction shall be
22 deemed a final determination by the commission that the proposed
23 project will not result in a substantial adverse change in a TTCS.

24 (b) Prior to making a final determination pursuant to
25 subdivision (a), the commission shall seek the input of and consult
26 with appropriate consulting parties. The commission shall initiate
27 that consultation by providing notice to appropriate consulting
28 parties within five days after determining to proceed pursuant to
29 this section. The consulting parties shall have 30 days from receipt
30 of the notice to provide written comments to the commission
31 regarding the potential for the proposed project to result in a
32 substantial adverse change in a TTCS. The commission shall
33 acknowledge that the appropriate Native American tribes possess
34 special expertise in participating in this comment process. Except
35 where appropriate to protect the confidentiality of information
36 concerning the specific identity, location, character, or use of the
37 TTCS, the commission may seek and consider public comment
38 and input.

39 (c) The commission shall accept and consider written
40 comments submitted to the commission pursuant to subdivision



~~1 (b), prior to making a final determination whether a proposed
2 project will result in a substantial adverse change to a TTCS. The
3 commission, in its discretion, may hold a hearing to accept
4 additional comments. A hearing by the commission to accept
5 additional comments may be closed to the public to maintain the
6 confidentiality of information concerning the specific identity,
7 location, character, or use of a TTCS.~~

~~8 (d) The commission shall prepare proposed written findings to
9 support its proposed determination pursuant to subdivision (a).
10 The proposed findings shall describe the basis for the proposed
11 determination by the commission. The commission shall provide
12 notice of its proposed determination and findings to the consulting
13 parties who were given notice pursuant to subdivision (b), and
14 shall provide those consulting parties with 10 days to submit
15 written comments to the commission regarding the proposed
16 determination and findings. The commission's proposed
17 determination and findings shall constitute a final determination
18 by the commission if no comments are submitted to the
19 commission during the comment period. If written comments are
20 submitted to the commission during the comment period, the
21 commission shall consider the comments, and modify the
22 proposed determination and findings, in its discretion, before
23 making a final determination consistent with procedures adopted
24 by the commission.~~

~~25 (e) A determination by the commission pursuant to this section
26 is exempt from the California Environmental Quality Act
27 (Division 13 (commencing with Section 21000)).~~

~~28 (f) The baseline conditions by which the commission makes
29 the determination pursuant to this section shall be the physical
30 environmental conditions as they exist, from both a local and
31 regional perspective, at the time of making the request for
32 consultation with the commission or the filing of the application
33 for a proposed project with the lead agency, whichever occurs
34 earlier.~~

~~35 SEC. 20. Section 5097.96.3 is added to the Public Resources
36 Code, to read:~~

~~37 5097.96.3. (a) Where all appropriate Native American tribes
38 who participated in the consultation process and the project
39 proponent agree to incorporate project changes or mitigation
40 measures that would avoid or reduce substantial adverse changes~~



1 in a TTCS to a less than significant level, the commission shall
2 identify those project changes or mitigation measures in its
3 findings and notice to the lead agency pursuant to Section
4 5097.96.2.

5 (b) Where all appropriate Native American tribes who
6 participated in the consultation process and the project proponent
7 do not agree to project changes or mitigation measures that would
8 avoid or reduce substantial adverse changes to a TTCS, the
9 commission shall identify project changes or mitigation measures,
10 if any, that would avoid or reduce substantial adverse changes to
11 a TTCS to a less than significant level in its findings and notice to
12 the lead agency pursuant to Section 5097.96.2. The identified
13 changes or measures shall be based on information provided by the
14 consulting parties or developed by the commission.

15 (c) Identification of project changes or mitigation measures by
16 the commission pursuant to this section is exempt from the
17 California Environmental Quality Act (Division 13 (commencing
18 with Section 21000)).

19 SEC. 21. Section 5097.96.4 is added to the Public Resources
20 Code, to read:

21 5097.96.4. (a) An appropriate Native American tribe
22 nominating a site to the TTCS Register, owners of property within
23 the site's boundaries, or other consulting parties may seek judicial
24 review of a final determination by the commission within 90 days
25 of a final determination regarding the listing of a site in the TTCS
26 Register and within 30 days of any other final determination. That
27 action shall be brought against the commission as a petition for a
28 writ of mandate pursuant to Section 1094.5 of the Code of Civil
29 Procedure.

30 (b) In a proceeding, whether in a trial or appellate court,
31 challenging a final determination of the commission, the court
32 shall protect the confidentiality of any information that would
33 create a risk of harm to the TTCS by disclosing, for example, its
34 specific identity, location, character, or use. If and to the extent
35 there is a risk of harm, the court shall conduct its proceedings in
36 camera and shall seal records of the proceeding and papers filed
37 with the court. In deciding whether there is a risk of harm to a
38 TTCS, the court may ask the commission to file a brief addressing
39 that issue and may, in the interim, seal records and papers and



1 conduct any hearings in camera until it makes a decision on the risk
2 of harm issue.

3 ~~SEC. 22. Section 5097.96.5 is added to the Public Resources~~
4 ~~Code, to read:~~

5 ~~5097.96.5. (a) The commission shall adopt regulations~~
6 ~~establishing procedures to maintain the confidentiality of~~
7 ~~information concerning the specific identity, location, character,~~
8 ~~or use of a TTCS.~~

9 ~~(b) Notwithstanding the California Public Records Act~~
10 ~~(Chapter 3.5 (commencing with Section 6250) of Division 7 of~~
11 ~~Title 1 of the Government Code), the Bagley-Keene Open Meeting~~
12 ~~Act (Article 9 (commencing with Section 11120) of Chapter 1 of~~
13 ~~Part 1 of Division 3 of Title 2 of the Government Code), or any~~
14 ~~other law, no information obtained as a result of, or in connection~~
15 ~~with, a nomination or consultation under this chapter that contains~~
16 ~~a reference pertaining to the specific identity, location, character,~~
17 ~~or use of a TTCS, may be released, except as provided in~~
18 ~~subdivision (c). For purposes of this section, "information"~~
19 ~~includes, but is not limited to, documents, records, the TTCS~~
20 ~~Register itself, nomination forms, declarations, reports, maps,~~
21 ~~letters, transcripts, minutes, comments, determinations, and~~
22 ~~findings.~~

23 ~~(c) The commission, owners of property within the site's~~
24 ~~boundaries, the project proponent, the appropriate Native~~
25 ~~American tribes, other consulting parties authorized under this~~
26 ~~chapter, and their respective attorneys and representatives may,~~
27 ~~consistent with any procedures the commission adopts, access and~~
28 ~~share with each other information for the purpose of participating~~
29 ~~in the consultation process pursuant to this chapter.~~

30 ~~(d) A person described in subdivision (c) who, in violation of~~
31 ~~a regulation adopted pursuant to subdivision (a), intentionally~~
32 ~~releases information, knowing that it is required to be held~~
33 ~~confidential pursuant to this section, is guilty of a misdemeanor~~
34 ~~punishable by a fine of ten thousand dollars (\$10,000) or by~~
35 ~~imprisonment in the county jail for not more than one year, or both.~~

36 ~~(e) This section does not apply in a case in which all appropriate~~
37 ~~Native American tribes waive the application of this section.~~

38 ~~SEC. 23. Section 5097.97 of the Public Resources Code is~~
39 ~~amended to read:~~



1 ~~5097.97.— In the event that a Native American organization,~~
2 ~~tribe, group, or individual advises the commission that a proposed~~
3 ~~action by a public agency may cause significant and irreparable~~
4 ~~damage to a Native American sanctified cemetery, place of~~
5 ~~worship, religious or ceremonial site, or sacred shrine located on~~
6 ~~public property, or may bar appropriate access thereto by Native~~
7 ~~Americans, the commission shall conduct an investigation as to the~~
8 ~~effect of the proposed action. Where the commission finds, after~~
9 ~~a public hearing, that the proposed action would result in damage~~
10 ~~or interference, the commission may recommend mitigation~~
11 ~~measures for consideration by the public agency proposing to take~~
12 ~~the action. If the public agency fails to accept the mitigation~~
13 ~~measures, and if the commission finds that the proposed action~~
14 ~~would do significant and irreparable damage to a Native American~~
15 ~~sanctified cemetery, place of worship, religious or ceremonial site,~~
16 ~~or sacred shrine located on public property, the commission may~~
17 ~~ask the Attorney General to take appropriate legal action pursuant~~
18 ~~to Section 5097.94.~~

19 ~~SEC. 24.— Section 5097.98 of the Public Resources Code is~~
20 ~~amended to read:~~

21 ~~5097.98.— (a) Whenever the commission receives notification~~
22 ~~of a discovery of Native American human remains from a county~~
23 ~~coroner pursuant to subdivision (c) of Section 7050.5 of the Health~~
24 ~~and Safety Code, it shall immediately notify those persons it~~
25 ~~believes to be most likely descended from the deceased Native~~
26 ~~American. The descendants may, with the permission of the owner~~
27 ~~of the land, or his or her authorized representative, inspect the site~~
28 ~~of the discovery of the Native American remains and may~~
29 ~~recommend to the owner or the person responsible for the~~
30 ~~excavation work means for avoiding, treating, or disposing of,~~
31 ~~with appropriate dignity, the human remains and any associated~~
32 ~~grave goods. The descendants shall complete their inspection and~~
33 ~~make their recommendation within 24 hours of their notification~~
34 ~~by the Native American Heritage Commission. The~~
35 ~~recommendation may include the scientific removal and~~
36 ~~nondestructive analysis of human remains and items associated~~
37 ~~with Native American burials.~~

38 ~~(b) Whenever the commission is unable to identify a~~
39 ~~descendent, or the descendent identified fails to make a~~
40 ~~recommendation, or the landowner or his or her authorized~~



1 ~~representative rejects the recommendation of the descendent, and~~
2 ~~the mediation provided for in subdivision (n) of Section 5097.94~~
3 ~~fails to provide measures acceptable to the landowner, the~~
4 ~~landowner or his or her authorized representative shall reinter the~~
5 ~~human remains and items associated with Native American burials~~
6 ~~with appropriate dignity on the property in a location not subject~~
7 ~~to further subsurface disturbance.~~

8 ~~(c) Notwithstanding the provisions of Section 5097.9, the~~
9 ~~provisions of this section, including those actions taken by the~~
10 ~~landowner or his or her authorized representative to implement~~
11 ~~this section and any action taken to implement an agreement~~
12 ~~developed pursuant to subdivision (o) of Section 5097.94, shall be~~
13 ~~exempt from the requirements of the California Environmental~~
14 ~~Quality Act (Division 13 (commencing with Section 21000)).~~

15 ~~(d) Notwithstanding the provisions of Section 30244, the~~
16 ~~provisions of this section, including those actions taken by the~~
17 ~~landowner or his or her authorized representative to implement~~
18 ~~this section, and any action taken to implement an agreement~~
19 ~~developed pursuant to subdivision (o) of Section 5097.94 shall be~~
20 ~~exempt from the requirements of the California Coastal Act of~~
21 ~~1976 (Division 20 (commencing with Section 30000)).~~

22 ~~SEC. 25. Section 5097.99 of the Public Resources Code is~~
23 ~~amended to read:~~

24 ~~5097.99. (a) A person may not obtain or possess any Native~~
25 ~~American artifacts or human remains that are taken from a Native~~
26 ~~American grave or cairn on or after January 1, 1984, except as~~
27 ~~otherwise provided by law or in accordance with an agreement~~
28 ~~reached pursuant to subdivision (o) of Section 5097.94 or pursuant~~
29 ~~to Section 5097.98.~~

30 ~~(b) A person who knowingly or willfully obtains or possesses~~
31 ~~any Native American artifacts or human remains that are taken~~
32 ~~from a Native American grave or cairn after January 1, 1988,~~
33 ~~except as otherwise provided by law or in accordance with an~~
34 ~~agreement reached pursuant to subdivision (o) of Section 5097.94~~
35 ~~or pursuant to Section 5097.98, is guilty of a felony that is~~
36 ~~punishable by imprisonment in the state prison.~~

37 ~~(c) A person who removes, without authority of law, any~~
38 ~~Native American artifacts or human remains from a Native~~
39 ~~American grave or cairn with an intent to sell or dissect or with~~



1 ~~malice or wantonness is guilty of a felony that is punishable by~~
2 ~~imprisonment in the state prison.~~

3 ~~SEC. 26. Section 5097.993 is added to the Public Resources~~
4 ~~Code, to read:~~

5 ~~5097.993. If any provision of this chapter or the application~~
6 ~~thereof to any person or circumstance is held invalid, that~~
7 ~~invalidity may not affect other provisions or applications of this~~
8 ~~chapter that can be given effect without the invalid provision or~~
9 ~~application thereof, and to this end the provisions of this chapter~~
10 ~~are severable.~~

11 ~~SEC. 27. Section 5097.995 of the Public Resources Code is~~
12 ~~amended to read:~~

13 ~~5097.995. (a) (1) Any person who unlawfully and~~
14 ~~maliciously excavates upon, removes, destroys, injures, or defaces~~
15 ~~a Native American historic, cultural, or sacred site, that is listed or~~
16 ~~may be eligible for listing in the California Register of Historic~~
17 ~~Resources pursuant to Section 5024.1 or the TTCS Register~~
18 ~~pursuant to Section 5097.96, including any historic or prehistoric~~
19 ~~ruins, any burial ground, any archaeological or historic site, any~~
20 ~~inscriptions made by Native Americans at such a site, any~~
21 ~~archaeological or historic Native American rock art, or any~~
22 ~~archaeological or historic feature of a Native American historic,~~
23 ~~cultural, or sacred site is guilty of a misdemeanor if the act was~~
24 ~~knowingly committed with specific intent to vandalize, deface,~~
25 ~~destroy, steal, convert, possess, collect, or sell a Native American~~
26 ~~historic, cultural, or sacred artifact, art object, inscription, or~~
27 ~~feature, or site and the act was committed as follows:~~

28 ~~(A) On public land.~~

29 ~~(B) On private land, by a person, other than the landowner, as~~
30 ~~described in subdivision (b).~~

31 ~~(2) A violation of this section is punishable by imprisonment~~
32 ~~in the county jail for up to one year, by a fine not to exceed ten~~
33 ~~thousand dollars (\$10,000), or by both that fine and imprisonment.~~

34 ~~(b) This section does not apply to any of the following:~~

35 ~~(1) Any act taken in accordance with, or pursuant to, an~~
36 ~~agreement entered into pursuant to subdivision (o) of Section~~
37 ~~5097.94.~~

38 ~~(2) Any action taken pursuant to Section 5097.98.~~



1 ~~(3) Any act taken in accordance with Section 21097 and other~~
2 ~~applicable sections of the California Environmental Quality Act~~
3 ~~(Division 13 (commencing with Section 21000)).~~

4 ~~(4) Any act taken in accordance with the National~~
5 ~~Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.).~~

6 ~~(5) Any act authorized under the Z'berg-Nejedly Forest~~
7 ~~Practice Act of 1973 (Chapter 8 (commencing with Section 4511)~~
8 ~~of Part 2 of Division 4).~~

9 ~~(6) Any action taken with respect to a conservation easement~~
10 ~~in accordance with Chapter 4 (commencing with Section 815) of~~
11 ~~Division 2 of the Civil Code, or any similar nonperpetual~~
12 ~~enforceable restriction that has as its purpose the conservation,~~
13 ~~maintenance, or provision of physical access of Native Americans~~
14 ~~to one or more Native American historic, cultural, or sacred sites,~~
15 ~~or pursuant to a contractual agreement for that purpose to which~~
16 ~~most likely descendants of historic Native American inhabitants~~
17 ~~are signatories.~~

18 ~~(7) Any otherwise lawful act undertaken by the owner, or an~~
19 ~~employee or authorized agent of the owner acting at the direction~~
20 ~~of the owner, of land on which artifacts, sites, or other Native~~
21 ~~American resources covered by this section are found, including,~~
22 ~~but not limited to, farming, ranching, forestry, improvements,~~
23 ~~investigations into the characteristics of the property conducted in~~
24 ~~a manner that minimizes adverse impacts unnecessary to that~~
25 ~~purpose, and the sale, lease, exchange, or financing of real~~
26 ~~property.~~

27 ~~(8) Research conducted under the auspices of an accredited~~
28 ~~postsecondary educational institution or other legitimate research~~
29 ~~institution on public land in accordance with applicable permitting~~
30 ~~requirements or on private land in accordance with otherwise~~
31 ~~applicable law.~~

32 ~~SEC. 28. Section 21084.3 is added to the Public Resources~~
33 ~~Code, to read:~~

34 ~~21084.3. (a) A project that may cause a substantial adverse~~
35 ~~change, as defined in subdivision (l) of Section 5097.10, in a site~~
36 ~~that is listed in the Traditional Tribal Cultural Site Register~~
37 ~~established pursuant to Section 5097.95 may not be exempted~~
38 ~~from this division pursuant to subdivision (a) of Section 21084.~~

39 ~~(b) This section shall become operative on the 121st day after~~
40 ~~the date of filing with the Secretary of State the initial set of~~



1 ~~regulations adopted by the Native American Heritage~~
2 ~~Commission to implement subdivision (d) of Section 5097.94,~~
3 ~~subdivisions (b) and (c) of Section 5097.96, or subdivision (a) of~~
4 ~~Section 5097.96.5, whichever occurs last.~~

5 ~~SEC. 29. Section 21097 is added to the Public Resources~~
6 ~~Code, to read:~~

7 ~~21097. (a) A project that may cause a substantial adverse~~
8 ~~change in a TTCS, as defined in subdivision (m) of Section~~
9 ~~5097.10, is a project that may have a significant effect on the~~
10 ~~environment. For purposes of this section, a TTCS is a site listed~~
11 ~~in, or determined by the Native American Heritage Commission~~
12 ~~to be eligible for listing in, the Traditional Tribal Cultural Site~~
13 ~~Register established under Section 5097.96. A site that is not listed~~
14 ~~in the TTCS Register is not precluded from being afforded~~
15 ~~protection under this division so long as the commission~~
16 ~~determines that the site is eligible for listing pursuant to~~
17 ~~subdivision (b) of Section 5097.96.1.~~

18 ~~(b) As used in this section, “substantial adverse change in a~~
19 ~~TTCS” has the same meaning as in subdivision (l) of Section~~
20 ~~5097.10.~~

21 ~~(c) For purposes of this section, “Native American tribes” and~~
22 ~~“appropriate Native American tribes” have the meaning provided~~
23 ~~in subdivisions (a) and (j), respectively, of Section 5097.10.~~

24 ~~(d) At the time that a lead agency determines that an activity is~~
25 ~~a project and is not exempt from this division, the lead agency shall~~
26 ~~provide written notice of the proposed project to the Native~~
27 ~~American tribes identified on the Native American Contact List~~
28 ~~pursuant to subdivision (d) of Section 5097.94 and to the Native~~
29 ~~American Heritage Commission. The notice shall do all of the~~
30 ~~following:~~

31 ~~(1) Inform Native American tribes of their right to request~~
32 ~~consultation, including for a determination of a site’s eligibility for~~
33 ~~listing in the TTCS Register pursuant to 5097.96.1, within 20 days~~
34 ~~of the receipt of notice by certified mail.~~

35 ~~(2) Provide sufficient information describing the proposed~~
36 ~~project, including a project map, to enable the Native American~~
37 ~~tribes to consult with the commission to identify any TTCS that~~
38 ~~may be affected by the proposed project.~~

39 ~~(3) Include a copy of the service list.~~



1 ~~(e) Upon receipt of a timely written request for consultation~~
2 ~~pursuant to paragraph (1) of subdivision (d), the consultation~~
3 ~~pursuant to subdivision (d) shall promptly be initiated consistent~~
4 ~~with Section 5097.96.1. Nothing in this section precludes the~~
5 ~~Native American tribes from electing to participate through the~~
6 ~~regular public comment process afforded by this division.~~

7 ~~(f) After receiving notice from the lead agency pursuant to~~
8 ~~subdivision (d), the commission shall notify the lead agency and~~
9 ~~any appropriate Native American tribes that consulted with the~~
10 ~~commission, in writing of its final determination not later than the~~
11 ~~expiration of the period determined pursuant to subdivision (e) of~~
12 ~~Section 5097.96.1. Any written notice by the commission~~
13 ~~determining that the proposed project will not cause a substantial~~
14 ~~adverse change in a TTCS shall be a final determination and no~~
15 ~~further consultation is required under this division.~~

16 ~~(g) Whenever the Native American Heritage Commission~~
17 ~~determines pursuant to Section 5097.96.1 that the proposed~~
18 ~~project may cause a substantial adverse change in a TTCS and that~~
19 ~~there are no project changes or mitigation measures agreed to that~~
20 ~~will avoid or reduce the adverse change to below a level of~~
21 ~~significance, the commission shall proceed with consultation, in~~
22 ~~accordance with Section 5097.96.2. Any written notice by the~~
23 ~~commission of its final determination pursuant to Section~~
24 ~~5097.96.2 that a proposed project will not result in a substantial~~
25 ~~adverse change to a TTCS shall constitute substantial evidence~~
26 ~~upon which the lead agency may rely.~~

27 ~~(h) To facilitate the consultation process, the lead agency shall~~
28 ~~arrange for a visit to the project site by authorized representatives~~
29 ~~of appropriate Native American tribes (as determined by the~~
30 ~~commission) if the following conditions are met:~~

31 ~~(1) The appropriate Native American tribe requests, in writing,~~
32 ~~lead agency assistance to arrange for a visit to the project site.~~

33 ~~(2) The request demonstrates that the visit is necessary to show~~
34 ~~the location or boundaries of a TTCS, evaluate the potential for~~
35 ~~substantial adverse change to a TTCS, or assist in the development~~
36 ~~of project changes or mitigation measures.~~

37 ~~(3) The request is submitted to the lead agency prior to the close~~
38 ~~of public comment period.~~



1 ~~(4) The lead agency secures permission from the landowner or~~
2 ~~can escort the authorized representative onto the property within~~
3 ~~existing authority to carry out inspections on the property.~~

4 ~~(i) Where the commission makes a final determination that a~~
5 ~~proposed project will result in a substantial adverse change to a~~
6 ~~TTCS, the lead agency shall do the following:~~

7 ~~(1) If the project proponent and all appropriate Native~~
8 ~~American tribes who participated in the consultation process~~
9 ~~agree, as a result of the consultation required by subdivision (g),~~
10 ~~to incorporate project changes or mitigation measures that will~~
11 ~~avoid or reduce potential adverse changes to a TTCS to below a~~
12 ~~level of significance, the lead agency shall conclude that any~~
13 ~~adverse changes to a TTCS are less than significant. The project~~
14 ~~changes or mitigation measures that provide the basis for the lead~~
15 ~~agency's determination shall be identified in a confidential~~
16 ~~appendix to the final environmental impact report or mitigated~~
17 ~~negative declaration. The project changes or mitigation measures~~
18 ~~identified in the final environmental impact report or mitigated~~
19 ~~negative declaration, together with the concurrence of the~~
20 ~~appropriate Native American tribes who participated in the~~
21 ~~consultation process and the project proponent shall constitute~~
22 ~~substantial evidence supporting the lead agency's conclusion that~~
23 ~~adverse changes in a TTCS are less than significant.~~

24 ~~(2) If the project proponent, the commission, and all~~
25 ~~appropriate Native American tribes who participated in the~~
26 ~~consultation process do not agree to project changes or mitigation~~
27 ~~measures, as a result of the consultation required by subdivision~~
28 ~~(g), the commission shall evaluate and provide a written~~
29 ~~recommendation to the lead agency identifying project changes or~~
30 ~~mitigation measures, if any, that would avoid or reduce potential~~
31 ~~adverse changes to a TTCS. The lead agency, when making~~
32 ~~findings required by paragraph (1) of subdivision (a) of Section~~
33 ~~21081, or when adopting a mitigated negative declaration~~
34 ~~pursuant to paragraph (2) of subdivision (c) of Section 21080, shall~~
35 ~~consider the recommendation of the commission and shall adopt~~
36 ~~all project changes or mitigation measures necessary to avoid or~~
37 ~~reduce substantial adverse changes to any TTCS identified~~
38 ~~pursuant to this section that the lead agency determines, based on~~
39 ~~substantial evidence in light of the whole record, are feasible.~~



1 ~~(j) (1) When making the findings required by subdivision (b)~~
2 ~~of Section 21081, a public agency may not approve or carry out a~~
3 ~~project that will result in a substantial adverse change in a TTCS~~
4 ~~unless it has provided notice to, and made a good faith effort to~~
5 ~~consult with all appropriate Native American tribes, and unless the~~
6 ~~public agency finds that all feasible means identified by the Native~~
7 ~~American Heritage Commission or a tribe for preserving the~~
8 ~~TTCS have been considered to the maximum extent practicable.~~

9 ~~(2) If a project located on state lands or federal lands managed~~
10 ~~by the state will result in a substantial adverse change in a TTCS,~~
11 ~~a public agency may not approve, carry out, or subsidize the~~
12 ~~project unless the lead agency, based on substantial evidence in the~~
13 ~~record, does one of the following:~~

14 ~~(A) Makes the finding described in paragraph (1) or (2) of~~
15 ~~subdivision (a) of Section 21081, or both, with respect to the~~
16 ~~project's affect on the TTCS.~~

17 ~~(B) Finds there is no legal or feasible way to accomplish the~~
18 ~~project purpose without causing the substantial adverse change, all~~
19 ~~feasible mitigation or avoidance measures have been incorporated~~
20 ~~into the project, and there is an overriding environmental, public~~
21 ~~health, or public safety reason to approve the project.~~

22 ~~The findings described in subparagraphs (A) and (B) may be~~
23 ~~made only after the lead agency provides 30 days notice to any~~
24 ~~appropriate Native American tribes and an opportunity for those~~
25 ~~tribes to comment on the proposed finding. For purposes of this~~
26 ~~paragraph, "federal lands" means any land or interest in land~~
27 ~~owned by the United States, including a leasehold interest held by~~
28 ~~the United States, except for Indian trust lands. "Indian trust~~
29 ~~lands" are lands held in trust by the United States on behalf of~~
30 ~~tribal governments or individuals. Indian trust lands are~~
31 ~~predominantly, though not solely, reservation lands.~~

32 ~~(3) Paragraph (2) does not apply to any of the following:~~

33 ~~(A) Any replacement, repair, or reconstruction project for the~~
34 ~~production or transport of crude oil, natural gas, liquified natural~~
35 ~~gas, or other fuels.~~

36 ~~(B) Any replacement, repair, or reconstruction project for the~~
37 ~~manufacture, storage, or supply of petroleum products or other~~
38 ~~fuels.~~

39 ~~(C) Any replacement, repair, or reconstruction project for the~~
40 ~~lease renewal or modification of docks, wharves, ports, or related~~



1 ~~petroleum facilities, including facilities to receive, regasify, or~~
2 ~~store liquified natural gas.~~

3 ~~(D) Any project for the construction or modification of~~
4 ~~facilities to receive, regasify, or store liquified natural gas.~~

5 ~~However, this paragraph may not be construed to exempt these~~
6 ~~projects from any other requirement of this division.~~

7 ~~(k) The lead agency and any responsible agency for the~~
8 ~~proposed project may issue a permit for a project with a significant~~
9 ~~impact on a TTCS if the affected tribe has received notice of, and~~
10 ~~has failed to comment on the proposed mitigation measures during~~
11 ~~the consultation process provided in Section 5097.96.1 or~~
12 ~~5097.96.2, the comment period established in Section 21091, or~~
13 ~~any public hearing required pursuant to this division.~~

14 ~~(l) (1) On or before January 1, 2005, any state agency that~~
15 ~~administers, as a lead agency, a regulatory program certified by the~~
16 ~~Secretary of the Resources Agency pursuant to Section 21080.5~~
17 ~~shall comply with the requirements set forth in this section unless~~
18 ~~the agency submits to the secretary an explanation detailing how~~
19 ~~the certified regulatory program meets the criteria in paragraph (2)~~
20 ~~and therefore should remain unchanged. The explanation shall~~
21 ~~include all of the following:~~

22 ~~(A) A written summary and overview of the certified~~
23 ~~regulatory program, including a detailed description of its analysis~~
24 ~~of impacts to TTCSs or Native American archaeological~~
25 ~~resources.~~

26 ~~(B) Citations to the program's provisions for notice and~~
27 ~~consultation with appropriate Native American tribes and the~~
28 ~~Native American Heritage Commission.~~

29 ~~(C) Citations to the program's provisions incorporating the~~
30 ~~Native American Heritage Commission's final determinations of~~
31 ~~substantial adverse change in TTCSs.~~

32 ~~(D) A written summary of how a meaningful consultation~~
33 ~~process, as defined in Section 5097.10, was incorporated.~~

34 ~~If a state agency administering a certified regulatory program~~
35 ~~makes a timely submittal pursuant to this paragraph, the regulatory~~
36 ~~program is not subject to Chapter 1.75 (commencing with Section~~
37 ~~5097.9) of Division 5 and any other applicable provision of this~~
38 ~~division that pertains to TTCSs, pending completion of the~~
39 ~~secretary's review pursuant to paragraph (2).~~



1 ~~(2) On or before January 1, 2006, the Secretary of the~~
2 ~~Resources Agency shall notify the state agency that makes the~~
3 ~~submittal pursuant to paragraph (1) as to whether its program~~
4 ~~provides all of the following:~~

5 ~~(A) An adequate analysis of impacts to TTCSs.~~

6 ~~(B) Adequate notice to, and consultation with, appropriate~~
7 ~~Native American tribes and the Native American Heritage~~
8 ~~Commission.~~

9 ~~(C) Provisions for incorporating, to the maximum extent~~
10 ~~practicable, final determinations of substantial adverse change in~~
11 ~~a TTCS by the Native American Heritage Commission.~~

12 ~~(D) A meaningful consultation process.~~

13 ~~(3) Upon receipt of notice from the secretary that the state~~
14 ~~agency's program provides all the elements listed in this~~
15 ~~paragraph, the program shall be deemed to meet the objectives of~~
16 ~~Chapter 1.75 (commencing with Section 5097.9) of Division 5 and~~
17 ~~any other applicable provisions of this division that pertain to~~
18 ~~TTCSs, and the program is therefore exempt from Chapter 1.75~~
19 ~~(commencing with Section 5097.9) of Division 5 and from~~
20 ~~subdivision (d) through (k), inclusive, (p), and (q) of this section.~~
21 ~~If the secretary decides that the program does not provide all of the~~
22 ~~elements listed in this paragraph, the secretary shall notify the state~~
23 ~~agency that the program is not exempt and suggest changes to the~~
24 ~~program. The secretary shall specify in writing the reasons for his~~
25 ~~or her decision.~~

26 ~~(4) A state agency administering a certified regulatory program~~
27 ~~that receives notice pursuant to paragraph (3) that its program is~~
28 ~~not exempt may resubmit a new explanation for consideration by~~
29 ~~the secretary pursuant to paragraph (3).~~

30 ~~(5) The secretary shall consult with the Native American~~
31 ~~Heritage Commission in carrying out this subdivision.~~

32 ~~(m) In the case of a project described in subdivision (e) of~~
33 ~~Section 21065, prior to the filing of an application with the lead~~
34 ~~agency, the project proponent may expedite the process by~~
35 ~~requiring the lead agency to provide notice pursuant to subdivision~~
36 ~~(d) and by providing the information required by paragraph (3) of~~
37 ~~subdivision (d). Under this expedited notice procedure, the time~~
38 ~~period determined pursuant to subdivision (e) of Section~~
39 ~~5097.96.1 shall commence on the date the lead agency provided~~
40 ~~notice pursuant to subdivision (d).~~



1 ~~(n) Any proceeding or finding under this section is subject to~~
2 ~~the confidentiality provisions of Section 5097.96.5.~~

3 ~~(o) In all actions or proceedings brought pursuant to this~~
4 ~~section, including the hearing of an action or proceeding on appeal~~
5 ~~from the decision of a lower court, all courts shall protect the~~
6 ~~confidentiality of information that would create a risk of harm to~~
7 ~~the TTCS by disclosing, for example, its specific identity, location,~~
8 ~~character, or use. If and to the extent there is a risk of harm, the~~
9 ~~court shall conduct its proceedings in camera and shall seal records~~
10 ~~of the proceeding and papers filed with the court. In deciding~~
11 ~~whether there is a risk of harm to a TTCS, the court may ask the~~
12 ~~commission to file a brief addressing that issue and may, in the~~
13 ~~interim, seal records and papers and conduct hearings in camera~~
14 ~~until it makes a decision on the risk of harm issue.~~

15 ~~(p) Any person who consulted with the Native American~~
16 ~~Heritage Commission pursuant to Section 5097.96.1, 5097.96.2,~~
17 ~~or 5097.96.3 and presented to the Native American Heritage~~
18 ~~Commission and the lead agency an objection to the approval of~~
19 ~~the project and the alleged grounds for noncompliance with this~~
20 ~~division, orally or in writing during the comment period, is~~
21 ~~deemed to have complied with Section 21177; provided, however,~~
22 ~~that any action or proceeding to challenge a final determination of~~
23 ~~the Native American Heritage Commission pursuant to Chapter~~
24 ~~1.75 (commencing with Section 5097.09) of Division 5 shall be~~
25 ~~brought pursuant to Section 5097.96.4.~~

26 ~~(q) (1) For a project defined by subdivision (c) of Section~~
27 ~~21065, the lead agency shall, prior to a determination pursuant to~~
28 ~~Section 21080.1, consult with the appropriate Native American~~
29 ~~tribes to identify the existence of, or the probable likelihood of,~~
30 ~~Native American human remains and associated grave goods.~~

31 ~~(2) If, as a result of the consultation required by paragraph (1),~~
32 ~~the lead agency determines that Native American human remains~~
33 ~~and associated grave goods may be disturbed, the lead agency shall~~
34 ~~ensure that the following steps are completed prior to approval of~~
35 ~~the project:~~

36 ~~(A) Develop an avoidance and mitigation plan in consultation~~
37 ~~with any appropriate Native American tribes to prevent or~~
38 ~~minimize destruction, removal, or reburial of the Native American~~
39 ~~human remains and associated grave goods. The plan shall address~~
40 ~~the potential discovery of Native American human remains and~~



1 ~~associated grave goods, and potential reburial onsite and~~
2 ~~disposition of cultural resources.~~

3 ~~(B) The project proponent shall employ a Native American~~
4 ~~monitor to monitor ground disturbance activities associated with~~
5 ~~the proposed project in areas where Native American human~~
6 ~~remains, associated grave goods, and cultural resources may be~~
7 ~~discovered. Guidelines for monitoring adopted pursuant to~~
8 ~~subdivision (e) of Section 5097.94 may be adopted by the Native~~
9 ~~American Heritage Commission. In selecting a Native American~~
10 ~~monitor, the project proponent shall give preference to Native~~
11 ~~Americans with traditional ties to the project area.~~

12 ~~(r) This section shall become operative on the 121st day after~~
13 ~~the date of filing with the Secretary of State the initial set of~~
14 ~~regulations adopted by the Native American Heritage~~
15 ~~Commission to implement subdivision (d) of Section 5097.94,~~
16 ~~subdivisions (b) and (c) of Section 5097.96, or subdivision (a) of~~
17 ~~Section 5097.96.5, whichever occurs last.~~

18 ~~(s) If any provision of this section or the application thereof to~~
19 ~~any person or circumstance is held invalid, that invalidity may not~~
20 ~~affect other provisions or applications of this section that can be~~
21 ~~given effect without the invalid provision or application thereof,~~
22 ~~and to this end the provisions of this section are severable.~~

23 ~~(t) If the lead agency determines that a proposed project is~~
24 ~~within the scope of a prior completed notice and consultation~~
25 ~~process pursuant to this section, the lead agency shall include in the~~
26 ~~notice provided pursuant to subdivision (d) a request that the~~
27 ~~Native American Heritage Commission consult with the~~
28 ~~appropriate Native American tribes and confirm that~~
29 ~~determination not later than 20 days after receiving the notice.~~
30 ~~Following consultation with the appropriate Native American~~
31 ~~tribes, if the Native American Heritage Commission determines~~
32 ~~that the prior notice and consultation process fully considered the~~
33 ~~proposed project's impacts on any TTCS, it shall notify the lead~~
34 ~~agency that it may rely on the prior completed consultation and~~
35 ~~notice process, and that prior completed consultation shall~~
36 ~~constitute a final determination by the Native American Heritage~~
37 ~~Commission pursuant to Section 5097.96.1 or 5097.96.2.~~

38 ~~(u) This section does not apply to a project that the United~~
39 ~~States Secretary of Defense, or his or her designee, has determined~~
40 ~~is necessary for national security.~~



1 ~~(v) This section does not apply to the following projects:~~

2 ~~(1) The operation, repair, maintenance, permitting, leasing,~~
3 ~~licensing, or minor alteration of an existing public or private~~
4 ~~structure, facility, mechanical equipment, or topographical~~
5 ~~feature, involving negligible or no expansion of use beyond that~~
6 ~~existing at the time of the lead agency's determination, and~~
7 ~~consisting of one of the following:~~

8 ~~(A) An existing facility of both investor and publicly owned~~
9 ~~utilities used to provide electric power, telecommunications,~~
10 ~~natural gas, sewerage, or other public utility services.~~

11 ~~(B) Maintenance of a fish screen, fish ladder, wildlife habitat~~
12 ~~area, artificial wildlife waterway device, streamflow, spring or~~
13 ~~waterhole, and stream channel to protect fish and wildlife~~
14 ~~resources.~~

15 ~~(2) The replacement or reconstruction of an existing structure~~
16 ~~or facility where the new structure will be located on the same site~~
17 ~~as the structure replaced, will have substantially the same purpose~~
18 ~~and capacity as the structure replaced, and will consist of one of~~
19 ~~the following:~~

20 ~~(A) The replacement or reconstruction of an existing utilities~~
21 ~~system or facility involving negligible or no expansion of capacity.~~

22 ~~(B) The conversion of an overhead distribution system facility~~
23 ~~to underground, including the connection to existing overhead~~
24 ~~distribution lines where the surface is restored to the condition~~
25 ~~existing prior to the undergrounding.~~

26 ~~(3) The construction and location of water main, sewage,~~
27 ~~electrical, telecommunications, gas, and other utility extensions,~~
28 ~~including street improvements of reasonable length to serve the~~
29 ~~construction, so long as the construction consists of limited~~
30 ~~numbers of new, small facilities or structures, installation of small~~
31 ~~new equipment and facilities in small structures, and the~~
32 ~~conversion of existing small structures from one use to another~~
33 ~~where only minor modifications are made in the exterior of the~~
34 ~~structure.~~

35 ~~SEC. 30. Section 21097.5 is added to the Public Resources~~
36 ~~Code, to read:~~

37 ~~21097.5. No lead agency and no responsible agency may~~
38 ~~approve a project in any area that is designated as Class C~~
39 ~~(Controlled Use) or Class L (Limited Use) lands, or designated as~~
40 ~~an Area of Critical Environmental Concern under the California~~



1 ~~Desert Conservation Area Plan, as amended, by the Bureau of~~
 2 ~~Land Management of the United States Department of the Interior,~~
 3 ~~pursuant to Section 1781 of Title 43 of the United States Code, in~~
 4 ~~any case where, not later than September 1, 2003, the federal~~
 5 ~~Advisory Council on Historic Preservation, pursuant to Section~~
 6 ~~106 of the National Historic Preservation Act of 1966 (16 U.S.C.~~
 7 ~~Sec. 470 et seq.), has recommended to any federal agency that~~
 8 ~~approval for the project be denied because the project would~~
 9 ~~effectively destroy the historical resources in the project area.~~

10 ~~SEC. 31.~~

11 *SEC. 10.* No reimbursement is required by this act pursuant
 12 to Section 6 of Article XIII B of the California Constitution for
 13 certain costs that may be incurred by a local agency or school
 14 district because in that regard this act creates a new crime or
 15 infraction, eliminates a crime or infraction, or changes the penalty
 16 for a crime or infraction, within the meaning of Section 17556 of
 17 the Government Code, or changes the definition of a crime within
 18 the meaning of Section 6 of Article XIII B of the California
 19 Constitution.

20 However, notwithstanding Section 17610 of the Government
 21 Code, if the Commission on State Mandates determines that this
 22 act contains other costs mandated by the state, reimbursement to
 23 local agencies and school districts for those costs shall be made
 24 pursuant to Part 7 (commencing with Section 17500) of Division
 25 4 of Title 2 of the Government Code. If the statewide cost of the
 26 claim for reimbursement does not exceed one million dollars
 27 (\$1,000,000), reimbursement shall be made from the State
 28 Mandates Claims Fund.

29 _____

30 CORRECTIONS

31 **Text — Page 10.**

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