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AMENDED IN SENATE SEPTEMBER 5, 2013
AMENDED IN SENATE AUGUST 26, 2013
AMENDED IN ASSEMBLY MAY 30, 2013
AMENDED IN ASSEMBLY APRIL 19, 2013
AMENDED IN ASSEMBLY APRIL 8, 2013
AMENDED IN ASSEMBLY MARCH 19, 2013
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 52

**Introduced by Assembly Member Gatto
(Principal coauthor: Assembly Member Alejo)
(Coauthors: Assembly Members Chesbro and Lowenthal)**

December 21, 2012

An act to add Sections 21073, 21074, 21080.3.1, *21080.3.2*, *21082.3*, *21083.09*, *21084.2*, ~~*21084.3*~~, and ~~*21097*~~ and *21084.3* to the Public Resources Code, relating to Native Americans.

LEGISLATIVE COUNSEL'S DIGEST

AB 52, as amended, Gatto. Native Americans: California Environmental Quality Act.

Existing law, the Native American Historic Resource Protection Act, establishes a misdemeanor for unlawfully and maliciously excavating upon, removing, destroying, injuring, or defacing a Native American historic, cultural, or sacred site, that is listed or may be eligible for listing in the California Register of Historic Resources.

The California Environmental Quality Act, referred to as CEQA, requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also 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 requires the lead agency to provide a responsible agency with specified notice and opportunities to comment on a proposed project. CEQA requires the Office of Planning and Research to prepare and develop, and the Secretary of the Natural Resources Agency to certify and adopt, guidelines for the implementation of CEQA that include, among other things, criteria for public agencies to following in determining whether or not a proposed project may have a significant effect on the environment.

This bill would specify that a project having a potential to cause a substantial adverse change ~~in the significance of~~ to a tribal *cultural* resource, as defined, to be a project that may have a significant effect on the environment. ~~The bill would require the implementation, if feasible, of specified mitigation measures if the lead agency determines that a project will have a substantial adverse change on a tribal cultural resource. For a tribal cultural resource that is a sacred place, the bill would prohibit severe or irreparable damage to that resource, or interference with the free expression or exercise of a Native American religion unless a clear and convincing showing that the public interest and necessity so require. The bill would require a lead agency to consult with Native American tribes that are traditionally and culturally affiliated with the geographic area of the proposed project that and have requested to the lead agency or the California Native American Heritage Commission, in writing, to be informed by the lead agency of proposed projects in that geographic area prior to determining whether a negative declaration, mitigated negative declaration, or environmental impact report is required for a project. The bill would require the Native American tribe wishing to consult the lead agency regarding a project to notify the lead agency, as specified. project. The bill would also require the lead agency to consult with Native American tribes on the adequacy of the proposed negative declaration, mitigated negative~~

declaration, or environmental impact required for the project. The bill would specify examples of mitigation measures that may be considered to avoid or minimize impacts on tribal cultural resources. The bill would make the above provisions applicable to projects that have filed a notice of preparation or a notice of negative declaration or mitigated negative declaration on or after January 1, ~~2014~~, 2015. The bill would require the Office of Planning and Research to revise the guidelines to separate the consideration of cultural resources from that for paleontological resources and add consideration of tribal cultural resources. By requiring the lead agency to consider these effects relative to Native Americans and to conduct additional consultations, this bill would impose a state-mandated local program.

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.

This bill would provide that no reimbursement is required by this act for a specified reason.

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) Current state law provides a limited measure of protection
4 for sites, features, places, objects, and landscapes with cultural
5 value to California Native American tribes.

6 (2) Existing law provides limited protection for Native American
7 sacred places, including, but not limited to, places of worship,
8 religious or ceremonial sites, and sacred shrines.

9 (3) The California Environmental Quality Act (Division 13
10 (commencing with Section 21000) of the Public Resources Code)
11 does not readily or directly include California Native American
12 tribes' knowledge and concerns. This has resulted in significant
13 environmental impacts to tribal cultural resources and sacred
14 places, including cumulative impacts, to the detriment of California
15 Native American tribes and California's environment.

16 (4) As California Native Americans have used, and continue to
17 use, natural settings in the conduct of spiritual practices, religious
18 observances, ceremonies, *and* cultural ~~practices~~, *practices* and

1 beliefs, these resources reflect the tribes' continuing cultural ties
2 to the land and their traditional heritages.

3 (5) Many of these archaeological, historical, cultural, and sacred
4 sites are not located within the current boundaries of California
5 Native American reservations and rancherias, and therefore are
6 not covered by the protectionist policies of tribal governments.

7 (b) In recognition of California Native American tribal
8 sovereignty and the unique relationship of California local
9 governments and public agencies with California Native American
10 tribal governments, and respecting the interests and roles of project
11 proponents, it is the intent of the Legislature, in enacting this act,
12 to accomplish all of the following:

13 (1) Recognize that California Native American prehistoric,
14 historic, archaeological, cultural, and sacred places are essential
15 elements in tribal cultural traditions, heritages, and identities.

16 (2) Establish that federally recognized ~~California~~ Native
17 American tribes *in California* have a tribal government role in the
18 California Environmental Quality Act.

19 (3) Establish a new category of resources in the California
20 Environmental Quality Act called "tribal cultural resources" that
21 considers the tribal cultural values in addition to the scientific and
22 archaeological ~~values~~: *values when determining impacts and*
23 *mitigation*.

24 (4) Recognize *that* California Native American tribes have
25 expertise with regard to their tribal history and practices, which
26 concern the tribal cultural resources *and associated environment*
27 with which they are traditionally and culturally affiliated. Because
28 the California Environmental Quality Act calls for a sufficient
29 degree of analysis, tribal knowledge about the ~~land and~~ *land*, tribal
30 cultural ~~resources~~ *resources, and associated environment* at issue
31 should be included in environmental assessments for projects that
32 may have a significant impact on those resources.

33 (5) Establish a meaningful consultation process between
34 California Native American tribal governments and lead agencies,
35 respecting the interests and roles of project proponents and the
36 level of required confidentiality concerning tribal cultural
37 resources, at the earliest possible point in the California
38 Environmental Quality Act environmental review process, so that
39 tribal cultural resources can be identified, and culturally appropriate

1 mitigation and mitigation monitoring programs can be considered
2 by the decisionmaking body of the lead agency.

3 (6) Ensure that local and tribal governments, public agencies,
4 and project proponents have information available, early in the
5 California Environmental Quality Act environmental review
6 process, for purposes of identifying and addressing potential
7 adverse impacts to tribal cultural resources and to reduce the
8 potential for delay and conflicts in the environmental review
9 process.

10 (7) Enable California Native American tribes to manage and
11 accept conveyances of, and act as caretakers of, tribal cultural
12 resources.

13 (8) Establish that a substantial adverse change to a tribal cultural
14 resource has a significant effect on the environment.

15 SEC. 2. Section 21073 is added to the Public Resources Code,
16 to read:

17 21073. “Native American tribe” means a federally recognized
18 Indian tribe located in California.

19 SEC. 3. Section 21074 is added to the Public Resources Code,
20 to read:

21 21074. (a) ~~“Tribal”~~ (1) *Unless a preponderance of the evidence*
22 *demonstrates that the resources are not culturally significant,*
23 *“tribal cultural resources” means are either of the following:*

24 ~~(1)~~

25 (A) Sites, features, places, objects with cultural value to
26 descendant communities, or cultural landscapes that are consistent
27 with the guidance of the United States National Park Service and
28 the federal Advisory Council on Historic Preservation, that are
29 ~~listed in or determined to be eligible for listing~~ *included* in any of
30 the following:

31 ~~(A)~~

32 (i) The California Register of Historical Resources.

33 ~~(B)~~

34 (ii) A local register of historical resources as defined in
35 subdivision (k) of Section 5020.1.

36 ~~(C)~~

37 (iii) A resource deemed to be significant pursuant to *criteria*
38 *set forth in* ~~subdivision (g) (c)~~ (c) of Section 5024.1.

39 ~~(2)~~

1 (B) Sacred places including, but not limited to, Native American
 2 sanctified cemeteries, places of worship, religious or ceremonial
 3 sites, or sacred shrines that meet either of the following criteria:

4 (A)

5 (i) Listed on the California Native American Heritage
 6 Commission’s Sacred Lands File pursuant to Section 5097.94 or
 7 5097.96.

8 (B)

9 (ii) Listed or determined *pursuant to criteria set forth in*
 10 *subdivision (g) of Section 5024.1* to be eligible for listing in the
 11 California Register of Historical Resources.

12 (2) *The fact that a resource is not included in the California*
 13 *Register of Historic Places, not listed in California Native*
 14 *American Heritage Commission’s Sacred Lands File, not included*
 15 *in a local register of historical resources, not deemed significant*
 16 *pursuant to criteria set forth in subdivision (c) of Section 5024.1,*
 17 *or not deemed eligible pursuant to criteria set forth in subdivision*
 18 *(g) of Section 5024.1 for listing in the California Register of*
 19 *Historic Places shall not preclude a lead agency from determining*
 20 *whether the resource is a tribal cultural resource for the purposes*
 21 *of this division.*

22 (b) A historical resource described in Section 21084.1, a unique
 23 archaeological resource as defined in subdivision (g) of Section
 24 21083.2, or a “nonunique archaeological resource” as defined in
 25 subdivision (h) of Section 21083.2, may *also* be a tribal cultural
 26 resource if it conforms with the criteria of *paragraph (1) of, or the*
 27 *lead agency determines the resource to be a tribal cultural resource*
 28 *pursuant to paragraph (2) of, subdivision (a).*

29 SEC. 4. Section 21080.3.1 is added to the Public Resources
 30 Code, to read:

31 21080.3.1. (a) ~~Prior~~—*Native American tribes that are*
 32 *traditionally and culturally affiliated with a geographic area may*
 33 *have expertise concerning their tribal cultural resources in*
 34 *identifying, interpreting, and determining significance of tribal*
 35 *cultural resources and whether an impact of a proposed project*
 36 *to a tribal cultural resource is significant.*

37 (b) *Prior* to determining whether a negative declaration,
 38 mitigated negative declaration, or environmental impact report is
 39 required for a project, the lead agency shall ~~initiate consultation~~
 40 *consult, regarding the appropriate level of environmental review*

1 *for a project*, with Native American tribes that are traditionally
 2 and culturally affiliated with the geographic area of the proposed
 3 project ~~that and have requested to the lead agency or the Native~~
 4 ~~American Heritage Commission~~, in writing, to be informed by the
 5 lead agency *through formal notification* of proposed projects in
 6 that geographic area. ~~For an activity directly undertaken by a public~~
 7 ~~agency~~, the lead agency may also provide for early consultation
 8 as described in Section 21097 to identify alternatives, mitigation
 9 measures, and significant effects regarding issues of concern to
 10 the Native American tribe to be analyzed in depth in the
 11 environmental documents. *If the Native American tribe responds*
 12 *to the formal notification, the consultation shall proceed and shall*
 13 *be deemed concluded as described in subdivision (d) of Section*
 14 *21080.3.2. For purposes of this section, “Consultation” shall have*
 15 *the same meaning as provided in Section 20180.3.2.*

16 ~~(b) Because Native American tribes that are traditionally and~~
 17 ~~culturally affiliated with a geographic area may have expertise~~
 18 ~~concerning their tribal lands and resources in identifying,~~
 19 ~~interpreting, and determining significance of tribal cultural~~
 20 ~~resources and whether an impact of a proposed project to a tribal~~
 21 ~~cultural resource is significant, the lead agency shall consult with~~
 22 ~~Native American tribes, as set forth in subdivision (a), in making~~
 23 ~~a determination pursuant to subdivision (a) and as set forth in~~
 24 ~~Sections 21084.2 and 21097.~~

25 (c) To expedite the requirements of this section, the Native
 26 American Heritage Commission shall assist the lead agency in
 27 identifying the traditionally and culturally affiliated Native
 28 American tribes. *The lead agency formal notification to the*
 29 *traditionally and culturally affiliated Native American tribes that*
 30 *have requested notice shall be accomplished by means of at least*
 31 *one written notification that includes information about the project*
 32 *and the project location and description, consistent with the*
 33 *information about the project required to be provided under*
 34 *paragraph (1) of subdivision (b) of Section 21092, and shall be*
 35 *deemed sufficient to qualify as formal notification pursuant to*
 36 *subdivision (b).*

37 ~~(d) (1)~~

38 *SEC. 5. Section 21080.3.2 is added to the Public Resources*
 39 *Code, to read:*

1 21080.3.2. (a) For the purposes of this section and Section
2 ~~21097, 21080.3.1~~, “consultation” means the meaningful and timely
3 process of *acting in good faith* in seeking, discussing, and
4 considering carefully the view of others, ~~in a manner that is~~
5 ~~cognizant of all parties’ cultural values~~ and, where feasible, seeking
6 agreement. Consultation between public agencies and Native
7 American tribes shall be conducted in a way that is mutually
8 respectful of each party’s sovereignty. ~~Consultation shall recognize~~
9 ~~the tribes’ potential needs for confidentiality with respect to places~~
10 ~~that have traditional tribal cultural significance. sovereignty, tribal~~
11 ~~cultural values, and confidentiality as provided in Section 21082.3.~~
12

13 (b) (1) *If the lead agency has distributed a proposed negative*
14 *declaration or mitigated negative declaration, the lead agency*
15 *shall engage in consultation with a Native American tribe that*
16 *responded to the formal notification described in Section 21080.3.1*
17 *no later than the comment period described in Section 21091.*

18 (2) *If the lead agency has distributed a notice of preparation of*
19 *an environmental impact report, the lead agency shall engage in*
20 *consultation with a Native American tribe that responded to the*
21 *formal notification described in Section 21080.3.1 prior to the end*
22 *of the comment period described in Section 21091.*

23 (c) *As a part of the consultation process, the parties may propose*
24 *mitigation measures, including, but not limited to, those*
25 *recommended in Section 21084.3, capable of avoiding or*
26 *substantially lessening potential significant impacts to a tribal*
27 *cultural resource or alternatives that would avoid significant*
28 *impacts to a tribal cultural resource. If the Native American tribe*
29 *requests consultation regarding alternatives to the project,*
30 *recommended mitigation measures, significant effects, or ranges*
31 *of action to be analyzed, the consultation shall include those topics.*
32 *The consultation may include discussion concerning the*
33 *significance of tribal cultural resources, the significance of the*
34 *project’s impacts on the tribal cultural resources, and, if necessary,*
35 *project alternatives or the appropriate measures for preservation*
36 *or mitigation that the Native American tribe may recommended*
37 *to the lead agency.*

38 ~~(2)~~

39 (d) *The consultation shall be considered concluded at the point*
40 *at which the parties to the consultation come to a mutual agreement*

1 concerning the appropriate measures for preservation or mitigation
2 that will be recommended to the lead agency, or either the
3 authorized representative of the lead agency participating in the
4 consultation or the Native American tribe, acting in good faith and
5 after reasonable effort, *faith*, concludes that mutual agreement
6 cannot be reached concerning recommended appropriate measures
7 of preservation or mitigation. *reached.*

8 (3) If the project proponent or its consultants participate in the
9 consultation, those parties shall respect the principles set forth in
10 this subdivision.

11 (e) (1) *This section does not limit the ability of a Native
12 American tribe or the public to submit information to the lead
13 agency regarding the significance of the tribal cultural resources,
14 the significance of the project's impact on tribal cultural resources,
15 or any appropriate measures to mitigate the impact.*

16 (2) *This section does not limit the ability of the lead agency or
17 project proponent to incorporate changes and additions to the
18 project as a result of the consultation, even if not legally required.*

19 (3) *This section is not intended to replace the existing mitigation
20 preference for historical and archaeological resources requiring
21 the lead agency, when feasible, to first consider preservation in
22 place.*

23 (f) *If the project proponent or its consultants participate in the
24 consultation, those parties shall respect the principles set forth in
25 this section.*

26 (g) *It is the intent of the Legislature that the lead agency shall
27 engage in early and meaningful consultation with Native American
28 tribes that begins at the scoping period prior to the determination
29 of project alternatives and before the public review period for the
30 environmental documents. Each party shall act in good faith in
31 compliance with these provisions and their compliance shall be
32 governed by a rule of reason.*

33 (e)

34 (h) This section shall apply only to a project that has a notice
35 of preparation or a notice of negative declaration or mitigated
36 negative declaration filed on or after January 1, ~~2014~~. 2015.

37 SEC. 6. Section 21082.3 is added to the Public Resources Code,
38 to read:

39 21082.3. (a) Any mitigation measures agreed upon in the
40 consultation conducted pursuant to Section 21080.3.2 shall be

1 *recommended for inclusion in the environmental document and in*
2 *an adopted mitigation monitoring program, if determined to avoid*
3 *or lessen the impact pursuant to paragraph (2) of subdivision (b),*
4 *and shall be fully enforceable through conditions, agreements, or*
5 *measures.*

6 *(b) If a project may have a significant impact on a tribal cultural*
7 *resource, the lead agency's environmental document shall discuss*
8 *both of the following:*

9 *(1) Whether the proposed project has a significant impact on*
10 *an identified tribal cultural resource.*

11 *(2) Whether feasible alternatives or mitigation measures,*
12 *including those measures that may be agreed to pursuant to*
13 *subdivision (a), avoid or substantially lessen the impact to the*
14 *identified tribal cultural resource.*

15 *(c) (1) Any information, including, but not limited to, the*
16 *location, nature, and use of the tribal cultural resource that is*
17 *submitted by a Native American tribe during the consultation*
18 *process may not be included in the environmental document or*
19 *otherwise disclosed by the lead agency or any other public agency*
20 *to the public without the prior consent of the tribe that provided*
21 *the information. If the lead agency publishes any information*
22 *submitted by a Native American tribe during the consultation*
23 *process, that information shall be published in a confidential*
24 *appendix to the environmental document unless the tribe that*
25 *provided the information consents, in writing, to the disclosure of*
26 *some or all of the information to the public. This subdivision does*
27 *not prohibit the confidential exchange of the submitted information*
28 *between public agencies that have lawful jurisdiction over the*
29 *preparation of the environmental document.*

30 *(2) This subdivision does not affect or alter the application of*
31 *subdivision (r) of Section 6254 of the Government Code.*

32 *(3) This subdivision does not prevent a lead agency or other*
33 *public agency from describing the information in general terms*
34 *in the environmental document so as to inform the public of the*
35 *basis of the lead agency's or other public agency's decision without*
36 *breaching the confidentiality required by this subdivision.*

37 *(d) The lead agency may issue a permit or grant an approval*
38 *for a project with a significant impact on an identified tribal*
39 *cultural resource only if one of the following occurs:*

1 (1) Mitigation measures agreed to during the consultation
2 process pursuant to subdivision (a) or another agreement have
3 been recommended to the decisionmaking body of the lead agency
4 as mitigation measures in the final environmental document and
5 mitigation monitoring program.

6 (2) The Native American tribe accepts the mitigation measures
7 proposed in the draft or final environmental document and
8 mitigation monitoring and reporting program.

9 (3) Consultation between the Native American tribes and the
10 lead agency has occurred pursuant to Section 21080.3.2.

11 (4) The Native American tribe has received notice of, and has
12 failed to comment on or reject, the proposed mitigation measures
13 during the public comment period established in Section 21091
14 and any public hearing on the project required by or held pursuant
15 to this division.

16 (e) If the mitigation measures recommended by the staff of the
17 lead agency as a result of the consultation process are not included
18 in the environmental document or if there are no agreed upon
19 mitigation measures at the conclusion of the consultation, and if
20 substantial evidence demonstrates that a project will cause a
21 significant effect to a tribal cultural resource, the lead agency
22 shall consider feasible mitigation pursuant to subdivision (a) of
23 Section 21084.3.

24 (f) This section is not intended, and may not be construed, to
25 limit consultation between the state and tribal governments,
26 existing confidentiality provisions, or the protection of religious
27 exercise to the fullest extent permitted under state and federal law.

28 (g) This section shall apply only to a project that has a notice
29 of preparation or a notice of negative declaration or mitigated
30 negative declaration filed on or after January 1, 2015.

31 ~~SEC. 5.~~

32 SEC. 7. Section 21083.09 is added to the Public Resources
33 Code, to read:

34 21083.09. On or before January 1, ~~2015~~, 2016, the Office of
35 Planning and Research shall prepare and develop, and the Secretary
36 of the Natural Resources Agency shall certify and adopt, revisions
37 to the guidelines that ~~revise~~ update Appendix G of Chapter 3
38 (commencing with Section 15000) of Division 6 of Title 4 of the
39 California Code of Regulations to do both of the following:

1 (a) Separate the consideration of paleontological resources from
 2 cultural resources and update the relevant sample questions.

3 (b) Add consideration of tribal cultural resources with relevant
 4 sample questions.

5 ~~SEC. 6.~~

6 *SEC. 8.* Section 21084.2 is added to the Public Resources Code,
 7 to read:

8 21084.2. (a) A project may have a significant effect on the
 9 environment if the project has the potential of causing a substantial
 10 adverse change ~~in the significance of~~ to a tribal cultural resource.

11 (b) This section shall apply only to a project that has a notice
 12 of preparation or a notice of negative declaration or mitigated
 13 negative declaration filed on or after January 1, ~~2014~~, 2015.

14 ~~SEC. 7.~~

15 *SEC. 9.* Section 21084.3 is added to the Public Resources Code,
 16 to read:

17 21084.3. (a) If the lead agency determines that a project may
 18 cause a substantial adverse change to a tribal cultural resource,
 19 *and measures are not otherwise identified in the consultation*
 20 *process provided in Section 21080.3.2, the following are examples*
 21 *of mitigation measures are recommended, in order of preference,*
 22 ~~that that, if feasible, may be considered to avoid or minimize the~~
 23 ~~significant adverse impacts and shall be considered, if feasible:~~
 24 *impacts:*

25 (1) ~~Planning~~ *Avoidance and preservation of the resources in*
 26 *place, including, but not limited to, planning and construction to*
 27 *avoid the resources and protect the cultural and natural context,*
 28 *or planning greenspace, parks, or other open space, to incorporate*
 29 *the resources with culturally appropriate protection and*
 30 *management criteria.*

31 (2) ~~Consideration of project alternatives that protect the~~
 32 ~~resources.~~

33 (2) *Treating the resource with culturally appropriate dignity*
 34 *taking into account the tribal cultural values and meaning of the*
 35 *resource, including, but not limited to, the following:*

36 (A) *Protecting the cultural character and integrity of the*
 37 *resource.*

38 (B) *Protecting the traditional use of the resource.*

39 (C) *Protecting the confidentiality of the resource.*

1 (3) ~~Conveyance of resources into permanent~~ *Permanent*
2 ~~conservation easements or other interests in real property, with~~
3 ~~culturally appropriate management criteria for the purposes of~~
4 ~~preserving or utilizing the resources or places.~~

5 (4) ~~Adopting mitigation measures that treat the resources with~~
6 ~~culturally appropriate dignity taking into account the tribal value~~
7 ~~and meaning of the resource including, but not limited to, the~~
8 ~~following:~~

9 (A) ~~Mitigation that protects the cultural character and integrity~~
10 ~~of the resource.~~

11 (B) ~~Mitigation that protects the traditional use of the resource.~~

12 (C) ~~Mitigation that protects the confidentiality of the resource.~~

13 (4) *Protecting the resource.*

14 (5) (a) Any of the examples of treatments set forth in Section
15 21083.2, ~~if executed with culturally appropriate dignity.~~ *they do*
16 *not conflict with paragraphs (1) to (4), inclusive.*

17 (b) *Public agencies shall, when feasible, seek to avoid damaging*
18 *effects to any tribal cultural resource.*

19 (b)

20 (c) This section shall apply only to a project that has a notice
21 of preparation or a notice of negative declaration or mitigated
22 negative declaration filed on or after January 1, ~~2014.~~ *2015.*

23 ~~SEC. 8. Section 21097 is added to the Public Resources Code,~~
24 ~~to read:~~

25 21097. (a) ~~A Native American tribe that is traditionally and~~
26 ~~culturally affiliated with the geographic area of the proposed project~~
27 ~~wishing to consult with the lead agency to discuss potentially~~
28 ~~feasible means by which potentially significant impacts on a tribal~~
29 ~~cultural resources can be feasibly avoided or minimized to less~~
30 ~~than significant, shall notify the lead agency prior to the public~~
31 ~~review period established by Section 21091, but no later than 30~~
32 ~~days after receipt of the lead agency's notice of preparation of an~~
33 ~~environmental impact report or 20 days after receipt of the lead~~
34 ~~agency's notice of a negative declaration or mitigated negative~~
35 ~~declaration. The lead agency shall provide to the Native American~~
36 ~~tribe copies of any environmental document or technical report~~
37 ~~relied on by the lead agency. The Native American tribe may~~
38 ~~request or consent to the project proponent, Native American~~
39 ~~Heritage Commission, the State Office of Historic Preservation,~~
40 ~~and other relevant agencies or entities participating in portions of~~

1 the consultation process to seek mutually agreeable methods of
2 avoiding or otherwise mitigating the potential adverse effects. As
3 part of the consultation process, the parties may propose mitigation
4 measures capable of avoiding or substantially lessening potential
5 significant impacts to a tribal cultural resource.

6 ~~(b) Any mitigation measures agreed upon in the consultation~~
7 ~~shall be recommended by the lead agency staff to the~~
8 ~~decisionmaking body of the lead agency participating in the~~
9 ~~consultation as mitigation measures in the final environmental~~
10 ~~document and the mitigation monitoring program, if determined~~
11 ~~to avoid or lessen the impact pursuant to paragraph (2) of~~
12 ~~subdivision (c), and shall be fully enforceable through conditions,~~
13 ~~agreements, or measures.~~

14 ~~(c) If a project may have a significant impact on a tribal cultural~~
15 ~~resource, the lead agency's environmental document shall discuss~~
16 ~~both of the following:~~

17 ~~(1) Whether the proposed project has a significant impact on~~
18 ~~an identified tribal cultural resource.~~

19 ~~(2) Whether feasible alternatives or mitigation measures,~~
20 ~~including those measures that may be agreed to pursuant to~~
21 ~~subdivision (a), avoid or substantially lessen the impact to the~~
22 ~~identified tribal cultural resource.~~

23 ~~(d) (1) Any information, including, but not limited to, the tribal~~
24 ~~cultural resource that is submitted by a Native American tribe~~
25 ~~during the consultation process may not be included in the~~
26 ~~environmental document or otherwise disclosed by the lead agency~~
27 ~~or any other public agency to the public without the prior consent~~
28 ~~of the tribe that provided the information. Any information~~
29 ~~submitted by a Native American tribe during the consultation~~
30 ~~process shall be published in a confidential appendix to the~~
31 ~~environmental document unless the tribe consents, in writing, to~~
32 ~~disclosure of all or some of the information to the public. This~~
33 ~~subdivision is not intended, and may not be construed, to prohibit~~
34 ~~the confidential exchange of the submitted information between~~
35 ~~public agencies that have lawful jurisdiction over the preparation~~
36 ~~of the environmental document.~~

37 ~~(2) This subdivision does not affect or alter the application of~~
38 ~~subdivision (r) of Section 6254 of the Government Code.~~

39 ~~(3) This subdivision does not prevent a lead agency or other~~
40 ~~public agency from describing the information in general terms in~~

1 the environmental document so as to inform the public of the basis
2 of the lead agency's or other public agency's decision without
3 breaching the confidentiality required by this subdivision.

4 (e) ~~The lead agency for the proposed project may issue a permit
5 or grant an approval for a project with a significant impact on an
6 identified tribal cultural resource only if one of the following
7 occurs:~~

8 (1) ~~Mitigation measures agreed to during the consultation
9 process pursuant to subdivision (b) or another agreement have
10 been recommended to the decisionmaking body of the lead agency
11 as mitigation measures in the final environmental document and
12 mitigation monitoring program.~~

13 (2) ~~The Native American tribe accepts the mitigation measures
14 proposed in the draft or final environmental document and
15 mitigation monitoring and reporting program.~~

16 (3) ~~Consultation between the Native American tribes and the
17 lead agency has occurred pursuant to Section 65352.4 of the
18 Government Code and Section 21080.3.1.~~

19 (4) ~~The Native American tribe has received notice of, and has
20 failed to comment on or reject, the proposed mitigation measures
21 during the public comment period established in Section 21091
22 and any public hearing on the project required by or held pursuant
23 to this division.~~

24 (f) ~~If the mitigation measures recommended by the staff of the
25 lead agency as a result of the consultation process are not included
26 in the environmental document or if there are no agreed upon
27 mitigation measures at the conclusion of the consultation, and if
28 substantial evidence demonstrates that a project will cause a
29 significant effect to a tribal cultural resource, the lead agency shall
30 consider feasible mitigation pursuant to subdivision (a) of Section
31 21084.3.~~

32 (g) ~~It is the intent of the Legislature that the lead agency engage
33 in early consultation with the Native American tribe before the
34 public review period for the environmental documents commences.~~

35 (h) ~~This section is not intended, and may not be construed, to
36 limit consultation between the state and tribal governments,
37 existing confidentiality provisions, or the protection of religious
38 exercise to the fullest extent permitted under state and federal law.~~

1 (i) ~~This section shall apply only to a project that has a notice of~~
2 ~~preparation or a notice of negative declaration or mitigated negative~~
3 ~~declaration filed on or after January 1, 2014.~~

4 ~~SEC. 9.~~

5 *SEC. 10.* (a) This act does not alter or expand the applicability
6 of the California Environmental Quality Act (Division 13
7 (commencing with Section 21000) of the Public Resources Code)
8 concerning projects occurring on Native American tribal
9 reservations or rancherias.

10 (b) This act does not prohibit any Native American tribe or
11 nonfederally recognized tribe from participating in the California
12 Environmental Quality Act on any issue of concern as an interested
13 person, citizen, or member of the public.

14 (c) *This act does not prohibit any lead agency from consulting*
15 *with nonfederally recognized Native American tribes.*

16 ~~SEC. 10.~~

17 *SEC. 11.* No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 a local agency or school district has the authority to levy service
20 charges, fees, or assessments sufficient to pay for the program or
21 level of service mandated by this act, within the meaning of Section
22 17556 of the Government Code.