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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 amend Section 5097.94 of, and to add Sections 21073, 21074, 21080.3.1, 21080.3.2, 21082.3, 21083.09, 21084.2, 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 with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource, as defined, is a project that may have a significant effect on the environment. The bill would require a lead agency to begin consultation with a *federally recognized California* Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project, if the tribe requested to the lead agency, in writing, to be informed by the lead agency of proposed projects in that geographic area and the tribe requests consultation, prior to determining whether a negative declaration, mitigated negative declaration, or environmental impact report is required for a 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 a notice of preparation or a notice of negative declaration filed or mitigated negative declaration on or after January 1, 2015. The bill would require the Office of Planning and Research to revise the

guidelines to separate the consideration of *tribal* 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~~ *tribal cultural resources* and to conduct ~~additional consultations~~, *consultation with federally recognized California Native American tribes*, this bill would impose a state-mandated local program.

Existing law establishes the Native American Heritage Commission and vests the commission with specified powers and duties.

This bill would additionally require the commission to provide each *federally recognized California* Native American tribe, as defined, on or before July 1, 2016, with a list of all public agencies that may be a lead agency within the geographic area in which the tribe is traditionally and culturally affiliated, the contact information of those agencies, and information on how the tribe may request those public agencies to notify the tribe of projects within the jurisdiction of those public agencies for the purposes of requesting consultation.

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

1 places, including cumulative impacts, to the detriment of California
2 Native American tribes and California's environment.

3 (4) As California Native Americans have used, and continue to
4 use, natural settings in the conduct of religious observances,
5 ceremonies, and cultural practices and beliefs, these resources
6 reflect the tribes' continuing cultural ties to the land and their
7 traditional heritages.

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

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

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

21 ~~(2) Establish a consultation process for federally recognized~~
22 ~~Native American tribes in California in the California~~
23 ~~Environmental Quality Act.~~

24 ~~(3)~~

25 (2) Establish a new category of resources in the California
26 Environmental Quality Act called "tribal cultural resources" that
27 considers the tribal cultural values in addition to the scientific and
28 archaeological values when determining impacts and mitigation.

29 (3) *Establish examples of mitigation measures for tribal cultural*
30 *resources that uphold the existing mitigation preference for*
31 *historical and archaeological resources of preservation in place,*
32 *if feasible.*

33 (4) Recognize that California Native American tribes may have
34 expertise with regard to their tribal history and practices, which
35 concern the tribal cultural resources with which they are
36 traditionally and culturally affiliated. Because the California
37 Environmental Quality Act calls for a sufficient degree of analysis,
38 tribal knowledge about the land and tribal cultural resources at
39 issue should be included in environmental assessments for projects
40 that may have a significant impact on those resources.

1 (5) ~~Establish~~—*In recognition of their governmental status,*
2 *establish a meaningful consultation process between federally*
3 *recognized California Native American tribal governments and*
4 *lead agencies, respecting the interests and roles of—project*
5 ~~proponents~~ *all California Native American tribes and project*
6 *proponents, and the level of required confidentiality concerning*
7 *tribal cultural resources, at the earliest possible point in the*
8 *California Environmental Quality Act environmental review*
9 *process, so that tribal cultural resources can be identified, and*
10 *culturally appropriate mitigation and mitigation monitoring*
11 *programs can be considered by the decisionmaking body of the*
12 *lead agency.*

13 (6) *Recognize the unique history of California Native American*
14 *tribes and uphold existing rights of all California Native American*
15 *tribes to participate in, and contribute their knowledge to, the*
16 *environmental review process pursuant to the California*
17 *Environmental Quality Act (Division 13 (commencing with Section*
18 *21000) of the Public Resources Code).*

19 ~~(6)~~

20 (7) *Ensure that local and tribal governments, public agencies,*
21 *and project proponents have information available, early in the*
22 *California Environmental Quality Act environmental review*
23 *process, for purposes of identifying and addressing potential*
24 *adverse impacts to tribal cultural resources and to reduce the*
25 *potential for delay and conflicts in the environmental review*
26 *process.*

27 ~~(7)~~

28 (8) *Enable California Native American tribes to manage and*
29 *accept conveyances of, and act as caretakers of, tribal cultural*
30 *resources.*

31 ~~(8)~~

32 (9) *Establish that a substantial adverse change to a tribal cultural*
33 *resource has a significant effect on the environment.*

34 SEC. 2. Section 5097.94 of the Public Resources Code is
35 amended to read:

36 5097.94. The commission shall have the following powers and
37 duties:

38 (a) *To identify and catalog places of special religious or social*
39 *significance to Native Americans, and known graves and*
40 *cemeteries of Native Americans on private lands. The identification*

1 and cataloguing of known graves and cemeteries shall be completed
2 on or before January 1, 1984. The commission shall notify
3 landowners on whose property such graves and cemeteries are
4 determined to exist, and shall identify the Native American group
5 most likely descended from those Native Americans who may be
6 interred on the property.

7 (b) To make recommendations relative to Native American
8 sacred places that are located on private lands, are inaccessible to
9 Native Americans, and have cultural significance to Native
10 Americans for acquisition by the state or other public agencies for
11 the purpose of facilitating or assuring access thereto by Native
12 Americans.

13 (c) To make recommendations to the Legislature relative to
14 procedures which will voluntarily encourage private property
15 owners to preserve and protect sacred places in a natural state and
16 to allow appropriate access to Native American religionists for
17 ceremonial or spiritual activities.

18 (d) To appoint necessary clerical staff.

19 (e) To accept grants or donations, real or in kind, to carry out
20 the purposes of this chapter.

21 (f) To make recommendations to the Director of Parks and
22 Recreation and the California Arts Council relative to the California
23 State Indian Museum and other Indian matters touched upon by
24 department programs.

25 (g) To bring an action to prevent severe and irreparable damage
26 to, or assure appropriate access for Native Americans to, a Native
27 American sanctified cemetery, place of worship, religious or
28 ceremonial site, or sacred shrine located on public property,
29 pursuant to Section 5097.97. If the court finds that severe and
30 irreparable damage will occur or that appropriate access will be
31 denied, and appropriate mitigation measures are not available, it
32 shall issue an injunction, unless it finds, on clear and convincing
33 evidence, that the public interest and necessity require otherwise.
34 The Attorney General shall represent the commission and the state
35 in litigation concerning affairs of the commission, unless the
36 Attorney General has determined to represent the agency against
37 whom the commission's action is directed, in which case the
38 commission shall be authorized to employ other counsel. In any
39 action to enforce the provisions of this subdivision the commission
40 shall introduce evidence showing that such cemetery, place, site,

1 or shrine has been historically regarded as a sacred or sanctified
2 place by Native American people and represents a place of unique
3 historical and cultural significance to an Indian tribe or community.

4 (h) To request and utilize the advice and service of all federal,
5 state, local, and regional agencies.

6 (i) To assist Native Americans in obtaining appropriate access
7 to sacred places that are located on public lands for ceremonial or
8 spiritual activities.

9 (j) To assist state agencies in any negotiations with agencies of
10 the federal government for the protection of Native American
11 sacred places that are located on federal lands.

12 (k) To mediate, upon application of either of the parties, disputes
13 arising between landowners and known descendents relating to
14 the treatment and disposition of Native American human burials,
15 skeletal remains, and items associated with Native American
16 burials.

17 The agreements shall provide protection to Native American
18 human burials and skeletal remains from vandalism and inadvertent
19 destruction and provide for sensitive treatment and disposition of
20 Native American burials, skeletal remains, and associated grave
21 goods consistent with the planned use of, or the approved project
22 on, the land.

23 (l) To assist interested landowners in developing agreements
24 with appropriate Native American groups for treating or disposing,
25 with appropriate dignity, of the human remains and any items
26 associated with Native American burials.

27 (m) To provide each *federally recognized California* Native
28 American tribe, ~~as defined in Section 21073~~, on or before July 1,
29 2016, with a list of all public agencies that may be a lead agency
30 pursuant to Division 13 (commencing with Section 21000) within
31 the geographic area with which the tribe is traditionally and
32 culturally affiliated, the contact information of those public
33 agencies, and information on how the tribe may request the public
34 agency to notify the tribe of projects within the jurisdiction of
35 those public agencies for the purposes of requesting consultation
36 pursuant to Section 21080.3.1.

37 SEC. 3. Section 21073 is added to the Public Resources Code,
38 to read:

39 21073. ~~“Native~~ “*California Native American tribe*” means a
40 federally recognized ~~Indian~~ *Native American tribe located in*

1 *California or a nonfederally recognized Native American tribe*
 2 *located in—California. California that is on the contact list*
 3 *maintained by the Native American Heritage Commission for the*
 4 *purposes of Chapter 905 of the Statutes of 2004.*

5 SEC. 4. Section 21074 is added to the Public Resources Code,
 6 to read:

7 21074. (a) “Tribal cultural resources” are either of the
 8 following:

9 (1) Sites, features, places, and objects with cultural value to
 10 descendant communities or cultural landscapes, that are any of the
 11 following:

12 (A) Included in the California Register of Historical Resources.

13 (B) Included in a local register of historical resources as defined
 14 in subdivision (k) of Section 5020.1.

15 (C) ~~A resource deemed~~ *Deemed* to be significant pursuant to
 16 criteria set forth in subdivision (c) of Section 5024.1.

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

20 (A) Listed on the California Native American Heritage
 21 Commission’s Sacred Lands File pursuant to Section 5097.94 or
 22 5097.96 ~~for which a~~ *and a California* Native American tribe has
 23 submitted sufficient evidence *to the lead agency* demonstrating
 24 that the sacred places are of special religious or ~~social~~ *cultural*
 25 significance to the *California* Native American tribe or contain
 26 known graves and cemeteries of *California* Native Americans.

27 (B) Listed or determined pursuant to criteria set forth in
 28 subdivision (g) of Section 5024.1 to be eligible for listing in the
 29 California Register of Historical Resources.

30 (b) A cultural landscape that meets the criteria of subdivision
 31 (a) is a tribal cultural resource to the extent that the landscape is
 32 geographically defined in terms of the size and scope of the
 33 landscape.

34 (c) A historical resource described in Section 21084.1, a unique
 35 archaeological resource as defined in subdivision (g) of Section
 36 21083.2, or a “nonunique archaeological resource” as defined in
 37 subdivision (h) of Section 21083.2 may also be a tribal cultural
 38 resource if it conforms with the criteria of subdivision (a).

39 SEC. 5. Section 21080.3.1 is added to the Public Resources
 40 Code, to read:

1 21080.3.1. (a) *The Legislature finds and declares that Native*
2 *American tribes that are traditionally and culturally affiliated with*
3 *a geographic area may have expertise concerning their tribal*
4 *cultural resources. resources that may inform the lead agency in*
5 *its identification and determination of the significance of tribal*
6 *cultural resources and whether an impact of a proposed project*
7 *to a tribal cultural resource is significant.*

8 (b) Prior to determining whether a negative declaration,
9 mitigated negative declaration, or environmental impact report is
10 required for a project, the lead agency shall begin consultation
11 with a *federally recognized California* Native American tribe that
12 is traditionally and culturally affiliated with the geographic area
13 of the proposed project if: (1) the *federally recognized California*
14 Native American tribe requested to the lead agency, in writing, to
15 be informed by the lead agency through formal notification of
16 proposed projects in the geographic area that is traditionally and
17 culturally affiliated with the tribe, and (2) the *federally recognized*
18 *California* Native American tribe responds, in writing, within 30
19 days of receipt of the formal notification, and requests the
20 consultation. For purposes of this section and Section 21080.3.2,
21 “consultation” shall have the same meaning as provided in Section
22 65352.4 of the Government Code.

23 (c) To expedite the requirements of this section, the Native
24 American Heritage Commission shall assist the lead agency in
25 identifying the ~~traditionally and culturally affiliated~~ *California*
26 *Native American tribes within that are traditionally and culturally*
27 *affiliated with the project area.* ~~Within~~

28 (d) *Within* 14 days of determining that an application for a
29 project is complete or a decision by a public agency to undertake
30 a project, the lead agency shall provide formal notification to the
31 designated contact of, or a tribal representative of, traditionally
32 and culturally affiliated *federally recognized California* Native
33 American tribes that have requested notice, which shall be
34 accomplished by means of at least one written notification that
35 includes a brief description of the proposed project and its location,
36 the lead agency contact information, and a notification that the
37 *federally recognized California Native American* tribe has 30 days
38 to request consultation pursuant to this section.

39 (e)

1 (e) The lead agency shall begin the consultation process within
2 ~~14~~ 30 days of receiving a *federally recognized California* Native
3 American tribe's request for consultation.

4 SEC. 6. Section 21080.3.2 is added to the Public Resources
5 Code, to read:

6 21080.3.2. (a) As a part of the consultation pursuant to Section
7 21080.3.1, the parties may propose mitigation measures, including,
8 but not limited to, those recommended in Section 21084.3, capable
9 of avoiding or substantially lessening potential significant impacts
10 to a tribal cultural resource or alternatives that would avoid
11 significant impacts to a tribal cultural resource. If the *federally*
12 *recognized California* Native American tribe requests consultation
13 regarding alternatives to the project, recommended mitigation
14 measures, or significant effects, the consultation shall include those
15 topics. The consultation may include discussion concerning the
16 significance of tribal cultural resources, the significance of the
17 project's impacts on the tribal cultural resources, and, if necessary,
18 project alternatives or the appropriate measures for preservation
19 or mitigation that the *federally recognized California* Native
20 American tribe may recommended to the lead agency.

21 (b) The consultation shall be considered concluded when either
22 of the following occurs:

23 (1) The parties agree to measures to mitigate or avoid a
24 significant-effect *effect, if a significant effect exists*, on a tribal
25 cultural resource.

26 (2) A party, acting in good faith and after reasonable effort,
27 concludes that mutual agreement cannot be reached concerning
28 appropriate measures to be taken that would mitigate or avoid a
29 significant-effect *effect, if a significant effect exists*, on a tribal
30 cultural resource.

31 (c) (1) This section does not limit the ability of a *California*
32 Native American tribe or the public to submit information to the
33 lead agency regarding the significance of the tribal cultural
34 resources, the significance of the project's impact on tribal cultural
35 resources, or any appropriate measures to mitigate the impact.

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

39 ~~(3) This section is not intended to replace the existing mitigation~~
40 ~~preference for historical and archaeological resources requiring~~

1 ~~the lead agency, when feasible, to first consider preservation in~~
2 ~~place.~~

3 (d) If the project proponent or its consultants participate in the
4 consultation, those parties shall respect the principles set forth in
5 this section.

6 (e) This section shall apply only to a project that has a notice
7 of preparation or a notice of negative declaration or mitigated
8 negative declaration filed on or after January 1, 2015.

9 SEC. 7. Section 21082.3 is added to the Public Resources Code,
10 to read:

11 21082.3. (a) Any mitigation measures agreed upon in the
12 consultation conducted pursuant to Section 21080.3.2 shall be
13 recommended for inclusion in the environmental document and
14 in an adopted mitigation monitoring program, if determined to
15 avoid or lessen the impact pursuant to paragraph (2) of subdivision
16 (b), and shall be fully enforceable.

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

20 (1) Whether the proposed project has a significant impact on
21 an identified tribal cultural resource.

22 (2) Whether feasible alternatives or mitigation measures,
23 including those measures that may be agreed to pursuant to
24 subdivision (a), avoid or substantially lessen the impact on the
25 identified tribal cultural resource.

26 (c) (1) Any information, including, but not limited to, the
27 location, ~~nature~~, *description*, and use of the tribal cultural resources,
28 that is submitted by a *California* Native American tribe during the
29 ~~consultation environmental review process~~ *may* shall not be
30 included in the environmental document or otherwise disclosed
31 by the lead agency or any other public agency to the public,
32 *consistent with subdivision (r) of Section 6254 of, and Section*
33 *6254.10 of, the Government Code, and subdivision (d) of Section*
34 *15120 of Title 14 of the California Code of Regulations*, without
35 the prior consent of the tribe that provided the information. If the
36 lead agency publishes any information submitted by a *California*
37 Native American tribe during the *consultation or environmental*
38 *review* process, that information shall be published in a confidential
39 appendix to the environmental document unless the tribe that
40 provided the information consents, in writing, to the disclosure of

1 some or all of the information to the public. This subdivision does
2 not prohibit the confidential exchange of the submitted information
3 between public agencies that have lawful jurisdiction over the
4 preparation of the environmental document.

5 (2) (A) *This subdivision does not prohibit the confidential*
6 *exchange of information regarding tribal cultural resources*
7 *submitted by a California Native American tribe during the*
8 *consultation or environmental review process among the lead*
9 *agency, the California Native American tribe, the project applicant,*
10 *or the project applicant's legal adviser with attorney-client*
11 *confidentiality. Except as provided in subparagraph (B) or unless*
12 *the California Native American tribe providing the information*
13 *consents, in writing, to public disclosure, the project applicant or*
14 *the project applicant's legal advisors, using a reasonable degree*
15 *of care, shall maintain the confidentiality of the information*
16 *exchanged for the purposes of preventing looting, vandalism, or*
17 *damage to a tribal cultural resources and shall not disclose to a*
18 *third party confidential information regarding tribal cultural*
19 *resources.*

20 (B) *This paragraph does not apply to data or information that*
21 *are or become publicly available, are already in the lawful*
22 *possession of the project applicant before the provision of the*
23 *information by the California Native American tribe, are*
24 *independently developed by the project applicant or the project*
25 *applicant's agents, or are lawfully obtained by the project*
26 *applicant from a third party that is not the lead agency, a*
27 *California Native American tribe, or another public agency.*

28 (2)

29 (3) This subdivision does not affect or alter the application of
30 subdivision (r) of Section 6254 of the Government Code.

31 (3)

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

37 (d) ~~The~~ *In addition to other requirements of this division, the*
38 *lead agency may certify an environmental impact report or adopt*
39 *a mitigated negative declaration for a project with a significant*

1 impact on an identified tribal cultural resource only if one of the
2 following occurs:

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

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

11 ~~(3) Consultation between the Native American tribes and the~~
12 ~~lead agency has occurred pursuant to Section 21080.3.2.~~

13 *(1) The consultation process between the federally recognized*
14 *California Native American tribe and the lead agency has occurred*
15 *as provided in Sections 21080.3.1 and 21080.3.2 and concluded*
16 *pursuant to subdivision (b) of Section 21080.3.2.*

17 *(2) The federally recognized California Native American tribe*
18 *has requested consultation pursuant to Section 21080.3.1 and has*
19 *failed to provide comments to the lead agency, or otherwise failed*
20 *to engage, in the consultation process.*

21 *(3) The lead agency has complied with subdivision (c) of Section*
22 *21080.3.1 and the federally recognized California Native American*
23 *tribe has failed to request consultation within 30 days.*

24 (e) 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;~~
28 *consultation or if consultation does not occur*, and if substantial
29 evidence demonstrates that a project will cause a significant effect
30 to a tribal cultural resource, the lead agency shall ~~consider~~ *evaluate*
31 *and select* feasible mitigation pursuant to subdivision (b) of Section
32 21084.3.

33 *(f) Consistent with subdivision (c), the lead agency shall publish*
34 *confidential information obtained from a California Native*
35 *American tribe during the consultation process in a confidential*
36 *appendix to the environmental document and may include a general*
37 *description of the information, as provided in paragraph (3) of*
38 *subdivision (c) in the environmental document for public review*
39 *during the public comment period provided pursuant to this*
40 *division.*

1 ~~(f)~~
 2 (g) This section is not intended, and may not be construed, to
 3 limit consultation between the state and tribal governments,
 4 existing confidentiality provisions, or the protection of religious
 5 exercise to the fullest extent permitted under state and federal law.

6 ~~(g)~~
 7 (h) This section shall apply only to a project that has a notice
 8 of preparation or a notice of negative declaration or mitigated
 9 negative declaration filed on or after January 1, 2015.

10 SEC. 8. Section 21083.09 is added to the Public Resources
 11 Code, to read:

12 21083.09. On or before January 1, 2016, the Office of Planning
 13 and Research shall prepare and develop, and the Secretary of the
 14 Natural Resources Agency shall certify and adopt, revisions to the
 15 guidelines that update Appendix G of Chapter 3 (commencing
 16 with Section 15000) of Division 6 of Title 4 of the California Code
 17 of Regulations to do both of the following:

- 18 (a) Separate the consideration of paleontological resources from
- 19 *tribal* cultural resources and update the relevant sample questions.
- 20 (b) Add consideration of tribal cultural resources with relevant
- 21 sample questions.

22 SEC. 9. Section 21084.2 is added to the Public Resources Code,
 23 to read:

24 21084.2. (a) A project with an effect that may cause a
 25 substantial adverse change in the significance of a tribal cultural
 26 resource is a project that may have a significant effect on the
 27 environment.

28 (b) 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. 10. Section 21084.3 is added to the Public Resources
 32 Code, to read:

33 21084.3. (a) Public agencies shall, when feasible, ~~seek to~~ avoid
 34 damaging effects to any tribal cultural resource.

35 (b) If the lead agency determines that a project may cause a
 36 substantial adverse change to a tribal cultural resource, and
 37 measures are not otherwise identified in the consultation process
 38 provided in Section 21080.3.2, the following are examples of
 39 mitigation measures that, if feasible, may be considered to avoid
 40 or minimize the significant adverse impacts:

1 (1) Avoidance and preservation of the resources in place,
2 including, but not limited to, planning and construction to avoid
3 the resources and protect the cultural and natural context, or
4 planning greenspace, parks, or other open space, to incorporate
5 the resources with culturally appropriate protection and
6 management criteria.

7 (2) Treating the resource with culturally appropriate dignity
8 taking into account the tribal cultural values and meaning of the
9 resource, including, but not limited to, the following:

10 (A) Protecting the cultural character and integrity of the
11 resource.

12 (B) Protecting the traditional use of the resource.

13 (C) Protecting the confidentiality of the resource.

14 (3) Permanent conservation easements or other interests in real
15 property, with culturally appropriate management criteria for the
16 purposes of preserving or utilizing the resources or places.

17 (4) Protecting the resource.

18 (c) *This section is not intended to replace the existing mitigation*
19 *preference for historical and archaeological resources pursuant*
20 *to Section 21083.2 for tribal cultural resources that are also*
21 *historical and archaeological resources.*

22 (e)

23 (d) This section shall apply only to a project that has a notice
24 of preparation or a notice of negative declaration or mitigated
25 negative declaration filed on or after January 1, 2015.

26 SEC. 11. (a) This act does not alter or expand the applicability
27 of the California Environmental Quality Act (Division 13
28 commencing with Section 21000) of the Public Resources Code)
29 concerning projects occurring on Native American tribal
30 reservations or rancherias.

31 (b) This act does not prohibit any *California* Native American
32 ~~tribe or nonfederally recognized tribe~~ *tribe, either federally*
33 *recognized or nonfederally recognized*, from participating in the
34 California Environmental Quality Act on any issue of concern as
35 an interested *California Native American tribe*, person, citizen, or
36 member of the public.

37 (c) This act does not prohibit any lead agency from consulting
38 with nonfederally recognized *California* Native American ~~tribes~~.
39 *tribes that are on the contact list maintained by the Native*

1 *American Heritage Commission for the purposes of Chapter 905*
2 *of the Statutes of 2004.*

3 SEC. 12. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 a local agency or school district has the authority to levy service
6 charges, fees, or assessments sufficient to pay for the program or
7 level of service mandated by this act, within the meaning of Section
8 17556 of the Government Code.

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