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AMENDED IN SENATE AUGUST 19, 2014
AMENDED IN SENATE JULY 2, 2014
AMENDED IN SENATE JUNE 16, 2014
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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~~ July 1, 2015. The bill would require the Office of Planning and Research to revise *on or before July 1, 2016*, 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 tribal cultural resources and to conduct 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)

1 does not readily or directly include California Native American
2 tribes' knowledge and concerns. This has resulted in significant
3 environmental impacts to tribal cultural resources and sacred
4 places, including cumulative impacts, to the detriment of California
5 Native American tribes and California's environment.

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

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

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

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

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

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

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

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

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

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

25 (8) Enable California Native American tribes to manage and
26 accept conveyances of, and act as caretakers of, tribal cultural
27 resources.

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

30 SEC. 2. Section 5097.94 of the Public Resources Code is
31 amended to read:

32 5097.94. The commission shall have the following powers and
33 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 identification
37 and cataloguing of known graves and cemeteries shall be completed
38 on or before January 1, 1984. The commission shall notify
39 landowners on whose property such graves and cemeteries are
40 determined to exist, and shall identify the Native American group

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

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

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

14 (d) To appoint necessary clerical staff.

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

17 (f) To make recommendations to the Director of Parks and
18 Recreation and the California Arts Council relative to the California
19 State Indian Museum and other Indian matters touched upon by
20 department programs.

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

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

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

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

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

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

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

24 (m) To provide each ~~federally recognized~~ California Native
25 American tribe, *as defined in Section 21073*, on or before July 1,
26 2016, with a list of all public agencies that may be a lead agency
27 pursuant to Division 13 (commencing with Section 21000) within
28 the geographic area with which the tribe is traditionally and
29 culturally affiliated, the contact information of those public
30 agencies, and information on how the tribe may request the public
31 agency to notify the tribe of projects within the jurisdiction of
32 those public agencies for the purposes of requesting consultation
33 pursuant to Section 21080.3.1.

34 SEC. 3. Section 21073 is added to the Public Resources Code,
35 to read:

36 21073. "California Native American tribe" means a ~~federally~~
37 ~~recognized Native American tribe located in California or a~~
38 ~~nonfederally recognized~~ Native American tribe located in
39 California that is 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. 4. Section 21074 is added to the Public Resources Code,
4 to read:

5 21074. (a) “Tribal cultural resources” are either of the
6 following:

7 (1) Sites, features, places, *cultural landscapes*, *sacred places*,
8 and objects with cultural value to ~~descendant communities or~~
9 ~~cultural landscapes~~, a *California Native American tribe* that are
10 ~~any~~ *either* of the following:

11 (A) *Included or determined to be eligible for inclusion* in the
12 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) Deemed to be significant pursuant to criteria set forth in~~
16 ~~subdivision (e) 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 and a California Native American tribe has submitted~~
23 ~~sufficient evidence to the lead agency demonstrating that the sacred~~
24 ~~places are of special religious or cultural significance to the~~
25 ~~California Native American tribe or contain known graves and~~
26 ~~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 *(2) A resource determined by the lead agency, in its discretion*
31 *and supported by substantial evidence, to be significant pursuant*
32 *to criteria set forth in subdivision (c) of Section 5024.1. In applying*
33 *the criteria set forth in subdivision (c) of Section 5024.1 for the*
34 *purposes of this paragraph, the lead agency shall consider the*
35 *significance of the resource to a California Native American tribe.*

36 (b) A cultural landscape that meets the criteria of subdivision
37 (a) is a tribal cultural resource to the extent that the landscape is
38 geographically defined in terms of the size and scope of the
39 landscape.

1 (c) A historical resource described in Section 21084.1, a unique
2 archaeological resource as defined in subdivision (g) of Section
3 21083.2, or a “nonunique archaeological resource” as defined in
4 subdivision (h) of Section 21083.2 may also be a tribal cultural
5 resource if it conforms with the criteria of subdivision (a).

6 SEC. 5. Section 21080.3.1 is added to the Public Resources
7 Code, to read:

8 21080.3.1. (a) The Legislature finds and declares that
9 *California* Native American tribes traditionally and culturally
10 affiliated with a geographic area may have expertise concerning
11 their tribal cultural resources that may inform the lead agency in
12 its identification and determination of the significance of tribal
13 cultural resources and whether an impact of a proposed project to
14 a tribal cultural resource is significant. *resources.*

15 (b) Prior to ~~determining whether the release of~~ a negative
16 declaration, mitigated negative declaration, or environmental
17 impact report is required for a project, the lead agency shall begin
18 consultation with a ~~federally recognized~~ California Native
19 American tribe that is traditionally and culturally affiliated with
20 the geographic area of the proposed project if: (1) the ~~federally~~
21 ~~recognized~~ California Native American tribe requested to the lead
22 agency, in writing, to be informed by the lead agency through
23 formal notification of proposed projects in the geographic area
24 that is traditionally and culturally affiliated with the tribe, and (2)
25 the ~~federally recognized~~ California Native American tribe responds,
26 in writing, within 30 days of receipt of the formal notification, and
27 requests the consultation. *When responding to the lead agency,*
28 *the California Native American tribe shall designate a lead contact*
29 *person. If the California Native American tribe does not designate*
30 *a lead contact person, or designates multiple lead contact people,*
31 *the lead agency shall defer to the individual listed on the contact*
32 *list maintained by the Native American Heritage Commission for*
33 *the purposes of Chapter 905 of the Statutes of 2004. For purposes*
34 *of this section and Section 21080.3.2, “consultation” shall have*
35 *the same meaning as provided in Section 65352.4 of the*
36 *Government Code.*

37 (c) To expedite the requirements of this section, the Native
38 American Heritage Commission shall assist the lead agency in
39 identifying the California Native American tribes that are
40 traditionally and culturally affiliated with the project area.

1 (d) Within 14 days of determining that an application for a
2 project is complete or a decision by a public agency to undertake
3 a project, the lead agency shall provide formal notification to the
4 designated contact of, or a tribal representative of, traditionally
5 and culturally affiliated ~~federally recognized~~ California Native
6 American tribes that have requested notice, which shall be
7 accomplished by means of at least one written notification that
8 includes a brief description of the proposed project and its location,
9 the lead agency contact information, and a notification that the
10 ~~federally recognized~~ California Native American tribe has 30 days
11 to request consultation pursuant to this section.

12 (e) The lead agency shall begin the consultation process within
13 30 days of receiving a ~~federally recognized~~ California Native
14 American tribe's request for consultation.

15 SEC. 6. Section 21080.3.2 is added to the Public Resources
16 Code, to read:

17 21080.3.2. (a) As a part of the consultation pursuant to Section
18 21080.3.1, the parties may propose mitigation measures, including,
19 but not limited to, those recommended in Section 21084.3, capable
20 of avoiding or substantially lessening potential significant impacts
21 to a tribal cultural resource or alternatives that would avoid
22 significant impacts to a tribal cultural resource. If the ~~federally~~
23 ~~recognized~~ California Native American tribe requests consultation
24 regarding alternatives to the project, recommended mitigation
25 measures, or significant effects, the consultation shall include those
26 topics. The consultation may include discussion concerning *the*
27 *type of environmental review necessary*, the significance of tribal
28 cultural resources, the significance of the project's impacts on the
29 tribal cultural resources, and, if necessary, project alternatives or
30 the appropriate measures for preservation or mitigation that the
31 ~~federally recognized~~ California Native American tribe may
32 recommend to the lead agency.

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

35 (1) The parties agree to measures to mitigate or avoid a
36 significant effect, if a significant effect exists, on a tribal cultural
37 resource.

38 (2) A party, acting in good faith and after reasonable effort,
39 concludes that mutual agreement cannot be ~~reached concerning~~
40 ~~appropriate measures to be taken that would mitigate or avoid a~~

1 ~~significant effect, if a significant effect exists, on a tribal cultural~~
2 ~~resource. reached.~~

3 (c) (1) This section does not limit the ability of a California
4 Native American tribe or the public to submit information to the
5 lead agency regarding the significance of the tribal cultural
6 resources, the significance of the project's impact on tribal cultural
7 resources, or any appropriate measures to mitigate the impact.

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

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

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

17 SEC. 7. Section 21082.3 is added to the Public Resources Code,
18 to read:

19 21082.3. (a) Any mitigation measures agreed upon in the
20 consultation conducted pursuant to Section 21080.3.2 shall be
21 recommended for inclusion in the environmental document and
22 in an adopted mitigation monitoring *and reporting* program, if
23 determined to avoid or lessen the impact pursuant to paragraph
24 (2) of subdivision (b), and shall be fully enforceable.

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

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

30 (2) Whether feasible alternatives or mitigation measures,
31 including those measures that may be agreed to pursuant to
32 subdivision (a), avoid or substantially lessen the impact on the
33 identified tribal cultural resource.

34 (c) (1) Any information, including, but not limited to, the
35 location, description, and use of the tribal cultural resources, that
36 is submitted by a California Native American tribe during the
37 environmental review process shall not be included in the
38 environmental document or otherwise disclosed by the lead agency
39 or any other public agency to the public, consistent with
40 subdivision (r) of Section 6254 of, and Section 6254.10 of, the

1 Government Code, and subdivision (d) of Section 15120 of Title
2 14 of the California Code of Regulations, without the prior consent
3 of the tribe that provided the information. If the lead agency
4 publishes any information submitted by a California Native
5 American tribe during the consultation or environmental review
6 process, that information shall be published in a confidential
7 appendix to the environmental document unless the tribe that
8 provided the information consents, in writing, to the disclosure of
9 some or all of the information to the public. This subdivision does
10 not prohibit the confidential exchange of the submitted information
11 between public agencies that have lawful jurisdiction over the
12 preparation of the environmental document.

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

28 (B) This paragraph does not apply to data or information that
29 are or become publicly available, are already in the lawful
30 possession of the project applicant before the provision of the
31 information by the California Native American tribe, are
32 independently developed by the project applicant or the project
33 applicant's agents, or are lawfully obtained by the project applicant
34 from a third party that is not the lead agency, a California Native
35 American tribe, or another public agency.

36 (3) This subdivision does not affect or alter the application of
37 subdivision (r) of Section 6254 of the Government ~~Code~~ Code,
38 Section 6254.10 of the Government Code, or subdivision (d) of
39 Section 15120 of Title 14 of the California Code of Regulations.

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

6 (d) In addition to other ~~requirements~~ *provisions* of this division,
7 the lead agency may certify an environmental impact report or
8 adopt a mitigated negative declaration for a project with a
9 significant impact on an identified tribal cultural resource only if
10 one of the following occurs:

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

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

19 (3) The lead agency has complied with subdivision ~~(e)~~ *(d)* of
20 Section 21080.3.1 and the ~~federally recognized~~ California Native
21 American tribe has failed to request consultation within 30 days.

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

30 (f) Consistent with subdivision (c), the lead agency shall publish
31 confidential information obtained from a California Native
32 American tribe during the consultation process in a confidential
33 appendix to the environmental document and ~~may~~ *shall* include a
34 general description of the information, as provided in paragraph
35 ~~(3)~~ *(4)* of subdivision (c) in the environmental document for public
36 review during the public comment period provided pursuant to
37 this division.

38 (g) This section is not intended, and may not be construed, to
39 limit consultation between the state and tribal governments,

1 existing confidentiality provisions, or the protection of religious
2 exercise to the fullest extent permitted under state and federal law.

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

6 SEC. 8. Section 21083.09 is added to the Public Resources
7 Code, to read:

8 21083.09. On or before ~~January~~ *July* 1, 2016, the Office of
9 Planning and Research shall prepare and develop, and the Secretary
10 of the Natural Resources Agency shall certify and adopt, revisions
11 to the guidelines that update Appendix G of Chapter 3
12 (commencing with Section 15000) of Division 6 of Title 4 of the
13 California Code of Regulations to do both of the following:

14 (a) Separate the consideration of paleontological resources from
15 tribal cultural resources and update the relevant sample questions.

16 (b) Add consideration of tribal cultural resources with relevant
17 sample questions.

18 SEC. 9. Section 21084.2 is added to the Public Resources Code,
19 to read:

20 21084.2. ~~(a)~~—A project with an effect that may cause a
21 substantial adverse change in the significance of a tribal cultural
22 resource is a project that may have a significant effect on the
23 environment.

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

27 SEC. 10. Section 21084.3 is added to the Public Resources
28 Code, to read:

29 21084.3. (a) Public agencies shall, when feasible, avoid
30 damaging effects to any tribal cultural resource.

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

37 (1) Avoidance and preservation of the resources in place,
38 including, but not limited to, planning and construction to avoid
39 the resources and protect the cultural and natural context, or
40 planning greenspace, parks, or other open space, to incorporate

1 the resources with culturally appropriate protection and
2 management criteria.

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

6 (A) Protecting the cultural character and integrity of the
7 resource.

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

9 (C) Protecting the confidentiality of the resource.

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

13 (4) Protecting the resource.

14 ~~(e) This section is not intended to replace the existing mitigation~~
15 ~~preference for historical and archaeological resources pursuant to~~
16 ~~Section 21083.2 for tribal cultural resources that are also historical~~
17 ~~and archaeological resources.~~

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

21 SEC. 11. (a) This act does not alter or expand the applicability
22 of the California Environmental Quality Act (Division 13
23 commencing with Section 21000) of the Public Resources Code)
24 concerning projects occurring on Native American tribal
25 reservations or rancherias.

26 (b) This act does not prohibit any California Native American
27 ~~tribe, either federally recognized or nonfederally recognized, tribe~~
28 ~~or individual~~ from participating in the California Environmental
29 Quality Act on any issue of concern as an interested California
30 Native American tribe, person, citizen, or member of the public.

31 ~~(e) This act does not prohibit any lead agency from consulting~~
32 ~~with nonfederally recognized California Native American tribes~~
33 ~~that are on the contact list maintained by the Native American~~
34 ~~Heritage Commission for the purposes of Chapter 905 of the~~
35 ~~Statutes of 2004.~~

36 *(c) This act shall apply only to a project that has a notice of*
37 *preparation or a notice of negative declaration or mitigated*
38 *negative declaration filed on or after July 1, 2015.*

39 SEC. 12. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

- 1 a local agency or school district has the authority to levy service
- 2 charges, fees, or assessments sufficient to pay for the program or
- 3 level of service mandated by this act, within the meaning of Section
- 4 17556 of the Government Code.

O