



**Agenda Item C.1**  
**DISCUSSION/ACTION ITEM**  
**Meeting Date: June 24, 2019**

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**TO:** Planning Commissioner Chair and Members

**FROM:** Peter Imhof, Planning and Environmental Review Director

**CONTACT:** Lisa Prasse, Current Planning Manager

**SUBJECT:** Historic Preservation Ordinance Discussion – Workshop #3

**RECOMMENDATION:**

Conduct a workshop and provide feedback related to cultural/Native American and archaeological resources associated with Historic Preservation.

**BACKGROUND/DISCUSSION:**

Earlier this year both the Planning Commission and the City Council reviewed the Context Statement and found it to be acceptable. The Context Statement is not a comprehensive history of the community but instead highlights the trends and patterns critical to the understanding of the setting of development within the appropriate historic, social, and architectural context and is the basis for the development of the regulations and process. Information/materials regarding the Historic Preservation project, including the latest version of the Context Statement, is accessible on the City's website at [www.historicgoleta.org](http://www.historicgoleta.org).

The City is now moving on to the substance of the project, namely, the development of the ordinance. The topics will include, but may not be limited to:

1. Identification of eligibility criteria;
2. Development of regulations for historic properties, including archaeological resources; and
3. Development of a review process to list and delist historic resources and regulate changes to designated properties; review process will consider whether owner consent may be required.

On April 22, 2019, HRG (the consultant firm assisting the City) gave an introduction/overview as to the purpose and typical provisions of a Historic Preservation Ordinance. On May 13, 2019, the Planning Commission conducted a workshop regarding primary questions associated with regulating built resources.

## DISCUSSION

Before developing a draft ordinance, staff and HRG want to get input on relevant topics necessary to shape the contents of the future regulations. The focus of the June 24<sup>th</sup> meeting is to get input on the questions below that will aid in shaping the draft ordinance. For reference, both ministerial and discretionary permit types can have significant impacts on archaeological resources. Generally only projects seeking a discretionary permit that involve soil disturbance are being reviewed for archaeological resources.

1. *What level of Native American consultation should be conducted beyond what is already mandated by State Law?*

*The City follows the provisions of both Assembly Bill 52 (AB 52) and Senate Bill 18 (SB 18) regarding when and how to engage in consultation with the local Native American tribes. SB 18 is applicable when a General Plan Amendment is proposed, and AB 52 is applicable to all other discretionary projects that are subject to California Environmental Quality Act (CEQA) provisions. The City must contact the Native American Heritage Commission (NAHC) to obtain the current list of recognized Tribes affiliated with the Goleta area and consultation is to occur between recognized Tribal Groups and the City, as one government entity with another. Native American groups are given either 90 days (SB 18) or 30 days (AB 52) to respond to the letters sent by the City offering to consult on a given project.*

*Consultation does not have to begin or end within the designated timeframe and proceeds as long as necessary until a resolution is agreed upon or no further progress can be made. Only general information gathered through consultation process can be shared with the public. Any information of a sensitive nature must be kept confidential. Individuals or other Tribal groups not recognized by NAHC can participate in the project review and CEQA process like any interested citizen or group.*

*If the City can allow for additional consultation, staff is curious as to the types of ministerial projects that might warrant consultation and who should be contacted.*

*Copies of the Tribal Cultural Consultation Guidelines developed by the Governor's Office of Planning and Research regarding SB 18 and AB 52 are attached as reference materials and can be viewed at the following link: [http://opr.ca.gov/docs/09\\_14\\_05\\_Updated\\_Guidelines\\_922.pdf](http://opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf) (SB 18) and [http://opr.ca.gov/docs/Revised\\_AB\\_52\\_Technical\\_Advisory\\_March\\_2017.pdf](http://opr.ca.gov/docs/Revised_AB_52_Technical_Advisory_March_2017.pdf) (AB 52).*

2. *When is archaeological monitoring required and under what circumstances?*

*Currently archaeological monitoring occurs whenever there is ground disturbance (e.g., grading, utility trenching, foundations, etc.), associated a discretionary project where an impact on an archaeological resource may occur. Monitoring occurs with both a professional archaeologist and a Native American consultant present during all ground disturbance activities. If a site is located where the presence of archaeological resources*

*has not been known to occur, then archaeological monitoring has not been required. Monitoring is always required when discretionary development occurs in a known archaeological area or where a Phase 1 or Extended Phase 1 archaeological report indicates monitoring is warranted.*

*Staff is not intending to change the City's practice of requiring monitoring associated with discretionary projects when warranted. However, one question is what about monitoring with a ministerial project subject only to a building permit, such as a sewer line or irrigation line replacement, at a single-family home or a commercial property? Requiring monitoring would mean added costs to a property owner, who might make the repairs without the benefit of a permit or feel that a monitor could be an intrusion on his or her property rights for a minor/routine improvement.*

3. *When is peer review of archaeological reports required?*

*Not all archaeological reports submitted to the City as part of a discretionary application package are peer reviewed. Depending on the type and size of the project, the sensitivity of the location/context, and the qualifications/reputation of the preparer factor into whether peer review is sought by the City. For projects proposed within a known sensitive area, such as adjacent to the slough/historic slough boundaries or that will be the used as part of a CEQA analysis, these documents are almost always subject to peer review. Lastly, when archaeological reports are required as a Mitigation Measure, those are always peer reviewed before acceptance. Staff is interested in input regarding this practice.*

4. *What circumstances/criteria warrant the requirement for archaeological investigations?*

*The City's current practice/thresholds for conducting archaeological investigations with discretionary projects include: projects on known archaeological sites, when Sacred Lands file indicates potential archaeological resources are associated, and when Native American consultation indicates a high level of concern. Are there other factors that should be used to as a requirement for archaeological investigations?*

Lastly, staff has provided the Cultural Resources provisions of the City's existing CEQA Guidelines adopted in 2008 (last revised by the Santa Barbara County in 2002) for reference. A link to the entire CEQA Guidelines is as follows:

<https://www.cityofgoleta.org/city-hall/planning-and-environmental-review/ceqa-review/city-ceqa-guidelines-and-thresholds>. As is evident, the entire document does need to be revised and updated and is a future project for the Planning and Environmental Review Department.

## NEXT STEPS

After the input on these topics, staff will commence developing a draft Historic Preservation Ordinance before commencing the formal public hearing process.

**Prepared By:**

  
\_\_\_\_\_  
Lisa Prasse  
Current Planning Manager

**Approved By:**

  
\_\_\_\_\_  
Peter Imhof  
Planning Commission Secretary

## ATTACHMENTS:

1. Governor's Office of Planning and Research, Tribal Consultation Guidelines (SB 18), dated November 14, 2005
2. Governor's Office of Planning and Research, Technical Advisory AB 52 and Tribal Cultural Resources in CEQA, dated June 2017
3. Native American Heritage Commission State Laws and Code, June 17, 2019
4. Cultural Resources Section excerpt from County of Santa Barbara Environmental Thresholds and Guidelines Manual adopted by Council Resolution 08-04

## ATTACHMENT 1

Governor's Office of Planning and Research  
Tribal Consultation Guidelines (SB 18)  
November 14, 2005



STATE OF CALIFORNIA

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# **Tribal Consultation Guidelines**

SUPPLEMENT TO GENERAL PLAN GUIDELINES

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November 14, 2005

GOVERNOR'S OFFICE OF PLANNING AND RESEARCH







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November 2005

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This document is available on the Internet at <http://www.opr.ca.gov/SB182004.html>.





## Director's Message

November 14, 2005

The Governor's Office of Planning and Research (OPR) is proud to announce the publication of this November 2005 Supplement to the *General Plan Guidelines*. The 2005 Supplement (also known as Tribal Consultation Guidelines) provides advisory guidance to cities and counties on the process for consulting with Native American Indian tribes during the adoption or amendment of local general plans or specific plans, in accordance with the statutory requirements of Senate Bill 18 (Chapter 905, Statutes of 2004). It reflects recent changes to the California Public Records Act which will facilitate this consultation process.

It is our hope that this 2005 Supplement will be useful not only to city and county planning staffs for implementing the provisions of SB 18, but also to local elected officials, planning consultants, landowners, and tribal members who are involved in the general plan process.

In all of its work, OPR attempts to encourage more collaborative and comprehensive land use planning at the local, regional, and statewide levels. These goals are consistent with the goals of Senate Bill 18, which for the first time in the nation, requires cities and counties to consult with Native American tribes when adopting and amending their general plans or specific plans.

The development of this 2005 Supplement would not have been possible without the advice and assistance of many organizations and individuals, whose support OPR acknowledges and appreciates. These organizations and individuals include the Native American Heritage Commission and its staff, the members and representatives of numerous California Native American tribes, many city and county governments, state agency representatives, professional associations and academic institutions. We appreciate their assistance in preparing this 2005 Supplement, including participation at several meetings and public workshops.

OPR met the statutory deadline of March 1, 2005, to publish these guidelines by issuing interim guidelines on March 1. In developing the interim guidelines, OPR consulted with a wide range of stakeholders and experts. We consulted with city and county representatives (planners, legislative staff and legal counsels); tribal representatives and associations; staff of the Native American Heritage Commission (NAHC), including attendance at two NAHC commission meetings; federal agencies with experience in tribal consultation; academic institutions; and professional associations that deal with archaeological and cultural resource protection. In addition, we consulted with numerous tribal liaisons within state government and sought the input of the League of California Cities and the California State Association of Counties.

Based upon this consultation, OPR issued Draft Tribal Consultation Guidelines on February 22, 2005 for public review and comment. OPR conducted a public workshop on February 25, 2005, which was well attended and resulted in a productive discussion of the process envisioned by SB 18, as well as many specific recommendations for improvements to the 2005 Supplement.

In response to requests from many parties for additional time to consult with OPR regarding the 2005 Supplement, OPR continued to reach out to stakeholders for an additional 45 days to ensure that their interests were heard. Between March 1 and April 15, OPR held four meetings throughout the State to receive additional comments. The meetings were held in Klamath, Corning, Sonora, and Temecula. On April 15, OPR published the guidelines reflecting the comments and concerns expressed at those four meetings, as well as written comments received by OPR.

This November edition of the guidelines reflects recent changes to the Public Records Act that exempt from public disclosure certain documents pertaining to Native American cultural places.

We hope that you will find this 2005 Supplement to be an informative guide and a useful tool in the practice of local planning. I invite your suggestions on ways to improve OPR's *General Plan Guidelines* and this 2005 Supplement, as OPR continues to refine and update all of its guidance to city and county planning agencies.

Sean Walsh  
Director, OPR

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## **Part A**

### **SB 18 Context and Basic Requirements**

Sections I through III of the 2005 Supplement provide background information to familiarize local government agencies with the intent of Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) and the importance of protecting California Native American traditional tribal cultural places. Local governments will be better prepared to enter into consultations with tribes if they have a basic knowledge of tribal concerns and the value of cultural places to tribes. The key provisions of SB 18 are also outlined in table and text form.

#### **I. Introduction**

This 2005 Supplement to the *2003 General Plan Guidelines* addresses the requirements of SB 18, authored by Senator John Burton and signed into law by Governor Arnold Schwarzenegger in September 2004. SB 18 requires local (city and county) governments to consult with California Native American tribes to aid in the protection of traditional tribal cultural places (“cultural places”) through local land use planning. SB 18 also requires the Governor’s Office of Planning and Research (OPR) to include in the *General Plan Guidelines* advice to local governments for how to conduct these consultations.

The intent of SB 18 is to provide California Native American tribes an opportunity to participate in local land use decisions at an early planning stage, for the purpose of protecting, or mitigating impacts to, cultural places. The purpose of involving tribes at these early planning stages is to allow consideration of cultural places in the context of broad local land use policy, before individual site-specific, project-level land use decisions are made by a local government.

SB 18 requires local governments to consult with tribes prior to making certain planning decisions and to provide notice to tribes at certain key points in the planning process. These consultation and notice requirements apply to adoption and amendment of both general plans (defined in Government Code §65300 et seq.) and specific plans (defined in Government Code §65450 et seq.). Although SB 18 does not specifically mention consultation or notice requirements for adoption or amendment of specific plans, existing state planning law requires local governments to use the same processes for adoption and amendment of specific plans as for general plans (see Government Code §65453). Therefore, where SB 18 requires consultation and/or notice for a general plan adoption or amendment, the requirement extends also to a specific plan adoption or amendment. Although the new law took effect on January 1, 2005, several of its provisions regarding tribal consultation and notice did not take effect until March 1, 2005.

The *General Plan Guidelines* is an advisory document that explains California legal requirements for general plans.<sup>1</sup> The *General Plan Guidelines* closely adheres to statute and case law. It also relies upon commonly accepted principles of contemporary planning practice.

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<sup>1</sup> California Government Code §65040.2

When the words “shall” or “must” are used, they represent a statutory or other legal requirement. “May” and “should” are used when there is no such requirement. The 2005 Supplement:

- Provides background information regarding California Native American cultural places and tribes.
- Outlines the basic requirements of SB 18.
- Provides step-by-step guidance to local governments on how and when to consult with tribes.
- Offers advice to help local governments effectively engage in consultation with tribes.
- Provides information about preserving, or mitigating impacts to, cultural places.
- Discusses methods to protect confidentiality of information regarding cultural places.
- Presents ways of encouraging voluntary landowner involvement in the preservation of cultural places.

## **II. Background Information**

The principal objective of SB 18 is to preserve and protect cultural places of California Native Americans. SB 18 is unique in that it requires local governments to involve California Native Americans in early stages of land use planning, extends to both public and private lands, and includes both federally recognized and non-federally recognized tribes. This section provides an overview of California Native American cultural places and California Native Americans.

### ***California Native American Cultural Places***

SB 18 refers to Public Resources Code §5097.9 and 5097.995 to define cultural places:<sup>2</sup>

- Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine (Public Resources Code §5097.9).
- Native American historic, cultural, or sacred site, that is listed or may be eligible for listing in the California Register of Historic Resources pursuant to Section 5024.1, including any historic or prehistoric ruins, any burial ground, any archaeological or historic site (Public Resources Code §5097.995).<sup>3</sup>

These definitions can be inclusive of a variety of places. Archaeological or historic sites may include places of tribal habitation and activity, in addition to burial grounds or cemeteries. Some examples are village sites and sites with evidence (artifacts) of economic, artistic, or other cultural activity. Religious or ceremonial sites and sacred shrines may include places associated with creation stories or other significant spiritual history, as well as modern day places of worship. Collection or gathering sites are specific places where California Native Americans access certain plants for food, medicine, clothing, ceremonial objects, basket making, and other

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<sup>2</sup> Due to a drafting error, SB 18 contains multiple references to Public Resources Code (PRC) §5097.995 which is no longer in existence. In 2004, PRC §5097.995 was amended and renumbered to PRC §5097.993 by Senate Bill 1264 (Chapter 286). Local governments should refer to PRC §5097.993 when looking for PRC §5097.995.

<sup>3</sup> *Ibid.*



crafts and uses important to on-going cultural traditions and identities; these places may qualify as religious or ceremonial sites as well as sites that are listed or eligible for listing in the California Register of Historic Resources.

Native American cultural places are located throughout California because California Native American people from hundreds of different tribes made these lands their home for thousands of years. Due to the forced relocation of tribes by the Spanish, Mexicans, and Americans, most tribes do not currently control or occupy the lands on which many of their cultural places are located. As a result, California Native Americans have limited ability to maintain, protect, and access many of their cultural places.

A number of federal and state laws have been enacted to preserve cultural resources and have enabled some Native American tribes to promote the preservation and protection of their cultural places. The National Historic Preservation Act (NHPA), which established historic preservation as a national policy in 1966, includes a Section 106 review process that requires consultation to mitigate damage to "historic properties" (defined per 36 CFR 800.16(1) as places that qualify for the National Register of Historic Places), including Native American traditional cultural places (TCPs, as described in National Register Bulletin 38) whenever any agency directs a project, activity or program using any federal funds or requiring a federal permit, license or approval (36CFR800.16). The National Environmental Policy Act (NEPA) requires every federal project to include in an Environmental Impact Statement documentation of environmental concerns, including effects on important historic, cultural, and natural aspects of our national heritage. Presidential Executive Order 13007, "Indian Sacred Sites," ensures that federal agencies are as responsive as possible to the concerns of Native American tribes regarding their cultural places. The Archaeological Resources Protection Act (ARPA) makes desecration of Native American cultural places on federal lands a felony.

California state law includes a variety of provisions that promote the protection and preservation of Native American cultural places. A number of these provisions address intentional desecration or destruction of cultural places and define certain of such acts as misdemeanors or felonies punishable by both fines and imprisonment. These include the Native American Historic Resource Protection Act (PRC §5097.995-5097.996<sup>4</sup>), Public Resources Code §5097.99, Penal Code §622.5 and Health and Safety Code §7050.5, §7052. Other provisions require consideration of potential impacts of planned projects on cultural resources, which may include Native American cultural places. Public Resources Code 5097.2 requires archaeological surveys to determine the potential impact that any major public works project on state land may have on archaeological resources. The California Environmental Quality Act (CEQA) requires project lead agencies to consider impacts, and potential mitigation of impacts, to unique archaeological and historical resources.<sup>5</sup> California Executive Order W-26-92 affirms that all state agencies shall recognize and, to the extent possible, preserve and maintain the significant heritage resources of the State. Public Resources Code §5097.9, which mandates noninterference of free expression or exercise of Native American religion on public lands, promotes preservation of certain Native American cultural places by ensuring tribal access to these places.

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<sup>4</sup> *Ibid.*

<sup>5</sup> CEQA Statutes at Public Resources Code §21083.2-21084.1; CEQA Guidelines at 14 CCR 15064.5-15360.

While these and other laws permit Native Americans to have some say in how impacts to cultural places could be avoided or mitigated, the laws rarely result in Native American input at early stages of land use planning. Generally, these laws provide protection only to those sites located on public or Native American trust lands and address only the concerns of Native Americans who belong to federally recognized tribes, with no official responsibility to non-federally recognized tribes. The intent of SB 18 is to provide all California Native American tribes, as identified by the NAHC, an opportunity to consult with local governments for the purpose of preserving and protecting their cultural places.

### ***California Native American Tribes***

SB 18 uses the term, California Native American tribe, and defines this term as “a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the Native American Heritage Commission” (NAHC). “Federal recognition” is a legal distinction that applies to a tribe’s rights to a government-to-government relationship with the federal government and eligibility for federal programs. All California Native American tribes, whether officially recognized by the federal government or not, represent distinct and independent governmental entities with specific cultural beliefs and traditions and unique connections to areas of California that are their ancestral homelands. SB 18 recognizes that protection of traditional tribal cultural places is important to all tribes, whether federally recognized or not, and it provides all California Native American tribes with the opportunity to participate in consultation with city and county governments for this purpose. As used in this document, the term “tribe(s)” refers to a California Native American tribe(s).

California has the largest number of tribes and the largest Native American population of any state in the contiguous United States. California is home to 109 federally recognized tribes and several dozen non-federally recognized tribes. According to a 2004 California Department of Finance estimate, the Native American population in California is 383,197.

Tribal governments throughout California vary in organizational forms and size. Some tribes use the government form established under the Indian Reorganization Act of 1934 (25CFR81) with an adopted constitution and bylaws. Other tribes have adopted constitutions and bylaws that incorporate traditional values in governing tribal affairs. Many tribal governments are comprised of a decision making body of elected officials (tribal governing body) with an elected or designated tribal leader. Some tribes use lineal descent as the means of identifying the tribe’s leader. In general, tribal governing bodies and leaders serve for limited terms and are elected or designated by members of the tribe. Tribal governments control tribal assets, laws/regulations, membership, and land management decisions that affect the tribe.

### **III. Basic Requirements of SB 18**

This section provides a brief summary of the statutory requirements of SB 18. Later sections of the Supplement provide additional detail regarding these requirements and offer advice to local governments on how to fulfill the notification and consultation requirements of SB 18. (Please refer to Section IV and Section V of these guidelines for additional information regarding the responsibilities outlined below.)

#### ***Responsibilities of OPR***

Government Code §65040.2(g) requires the Governor's Office of Planning and Research (OPR) to amend the *General Plan Guidelines* to contain advice to local governments on the following:

- Consulting with tribes on the preservation of, or the mitigation of impacts to, cultural places.
- Procedures for identifying through the Native American Heritage Commission (NAHC) the appropriate California Native American tribes with whom to consult.
- Procedures for continuing to protect the confidentiality of information concerning the specific identity, location, character, and use of cultural places.
- Procedures to facilitate voluntary landowner participation to preserve and protect the specific identity, location, character, and use of cultural places.

#### ***Responsibilities of Local Governments***

SB 18 established responsibilities for local governments to contact, provide notice to, refer plans to, and consult with tribes. The provisions of SB 18 apply only to city and county governments and not to other public agencies. The following list briefly identifies the contact and notification responsibilities of local governments, in sequential order of their occurrence.

- Prior to the adoption or any amendment of a general plan or specific plan, a local government must notify the appropriate tribes (on the contact list maintained by the NAHC) of the opportunity to conduct consultations for the purpose of preserving, or mitigating impacts to, cultural places located on land within the local government's jurisdiction that is affected by the proposed plan adoption or amendment. Tribes have 90 days from the date on which they receive notification to request consultation, unless a shorter timeframe has been agreed to by the tribe (Government Code §65352.3).<sup>6</sup>
- Prior to the adoption or substantial amendment of a general plan or specific plan, a local government must refer the proposed action to those tribes that are on the NAHC contact list and have traditional lands located within the city or county's jurisdiction. The referral must allow a 45 day comment period (Government Code §65352). Notice must be sent

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<sup>6</sup> SB 18 added this new provision to state planning law. It applies to any amendment or adoption of a general plan or specific plan, regardless of the type or nature of the amendment. Adoption or amendment of a local coastal program by a city or county constitutes a general plan amendment.

regardless of whether prior consultation has taken place. Such notice does not initiate a new consultation process.<sup>7</sup>

- Local governments must send notice of a public hearing, at least 10 days prior to the hearing, to tribes who have filed a written request for such notice (Government Code §65092).<sup>8</sup>

Under SB 18, local governments must consult with tribes under two circumstances:

- On or after March 1, 2005, local governments must consult with tribes that have requested consultation in accordance with Government Code §65352.3. The purpose of this consultation is to preserve, or mitigate impacts to, cultural places that may be affected by a general plan or specific plan amendment or adoption.
- On or after March 1, 2005, local governments must consult with tribes before designating open space, if the affected land contains a cultural place and if the affected tribe has requested public notice under Government Code §65092. The purpose of this consultation is to protect the identity of the cultural place and to develop treatment with appropriate dignity of the cultural place in any corresponding management plan (Government Code §65562.5).

### ***Responsibilities of NAHC***

The NAHC is charged with the responsibility to maintain a list of California Native American tribes with whom local governments must consult or provide notices (as required in Government Code §65352.3, §65352, and §65092). The criteria for defining “tribe” for the purpose of inclusion on this list are the responsibility of the NAHC. The list of tribes, for the purposes of notice and consultation, is distinct from the Most Likely Descendent (MLD) list that the NAHC maintains.

Upon request, the NAHC will provide local governments with a written contact list of tribes with traditional lands or cultural places located within a city’s or county’s jurisdiction. These are the tribes that a local government must contact, for purposes of consultation, prior to adoption or amendment of a general plan or specific plan. The NAHC will identify the tribes that must be contacted, based on NAHC’s understanding of where traditional lands are located within the State.

For more information on the NAHC’s roles and responsibilities, contact the NAHC. (See also Part F: Additional Resources)

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<sup>7</sup> Government Code §65352 was amended by SB 18 to include tribes among the entities to whom the proposed action must be referred. The term “substantial amendment” has been in the statute for many years and was not modified by SB 18.

<sup>8</sup> Government Code §65092 was modified by SB 18 to include certain tribes as “persons” that are eligible to request and receive notices of public hearing. “Person” now includes a California Native American tribe that is on the contact list maintained by the NAHC.

***Other Elements of SB 18***

In addition to the notice and consultation requirements outlined above, SB 18 amended Government Code §65560 to allow the protection of cultural places in the open space element of the general plan. (*See Section X.*) Open space is land designated in the city or county open space element of the general plan for one or more of a variety of potential purposes, including protection of cultural places.

SB 18 also amended Civil Code §815.3 and adds California Native American tribes to the list of entities that can acquire and hold conservation easements. Tribes on the contact list maintained by the NAHC now have the ability to acquire, on terms mutually satisfactory to the tribe and the landowner, conservation easements for the purpose of protecting their cultural places. (*See Section IX.*)

**Process Overview: General Plan or Specific Plan Adoption or Amendment**

As discussed above, SB 18 establishes responsibilities for local government to contact, refer plans to, and consult with tribes. The following table provides an overview of SB 18 requirements related to the adoption or amendment of a general plan or specific plan. All statutory references are to the Government Code (GC).

**Overview of SB 18 Consultation and Notice Requirements**

<i>Step</i>	<i>OPR Guidelines (GDL) Section and Statutory Reference</i>
Adoption or amendment of any general plan (GP) or specific plan (SP) is proposed on or after March 1, 2005.	GDL Section IV GC §65352.3(a)(1)
Local government sends proposal information to NAHC and requests contact information for tribes with traditional lands or places located within the geographical areas affected by the proposed changes.	GDL Section IV GC §65352.3(a)(2)
NAHC provides tribal contact information.	GDL Section IV
<ul style="list-style-type: none"> <li>OPR recommends that NAHC provide written information as soon as possible but no later than 30 days after receiving a local government's request</li> </ul>	
Local government contacts tribe(s) identified by NAHC and notifies them of the opportunity to consult.	GDL Section IV
<ul style="list-style-type: none"> <li>Pursuant to Government Code §65352.3, local government must consult with tribes on the NAHC contact list.</li> </ul>	
Tribe(s) responds to a local government notice within 90 days, indicating whether or not they want to consult with the local government.	GDL Section IV GC §65352.3(a)(2)
<ul style="list-style-type: none"> <li>Consultation does not begin until/unless a tribe requests it within 90 days of receiving a notice of the opportunity to consult.</li> <li>Tribes can agree to a shorter timeframe (less than 90 days) to request consultation.</li> </ul>	

<b>Step</b>	<b>OPR Guidelines (GDL) Section and Statutory Reference</b>
<p>Consultation begins, if requested by tribe. No statutory limit on the duration of the consultation.</p> <ul style="list-style-type: none"> <li>– Consultation may continue through planning commission or board of supervisors/city council deliberation on plan proposal.</li> </ul> <p>Local government continues normal processing of GP/SP adoption or amendment. (CEQA review, preparation of staff reports, consultation, etc., may be ongoing.)</p> <p>At least 45 days before local government adopts or substantially amends GP/SP, local government refers proposed action to agencies, including tribe(s).</p> <ul style="list-style-type: none"> <li>– Referral required regardless of whether or not there has been prior consultation.</li> <li>– This does not initiate a new consultation process.</li> <li>– This opens 45 day comment period before approval by board of supervisors/city council.</li> <li>– Referral required on or after March 1, 2005.</li> </ul> <p>At least 10 days before public hearing, local government provides notice of hearing to tribes and any other persons who have requested such notice.</p> <p>Public hearing of board of supervisors/city council to take final action on the GP/SP.</p>	<p>GDL Section IV</p> <p>GDL Section III GC §65352(a)(8)</p> <p>GDL Section III GC §65092</p>

*Note: The Permit Streamlining Act (PSA) (GC §65920 et seq.) establishes time limits for public agencies to take action on privately initiated development projects. Some general plan amendments may involve a private applicant for a development project. The PSA does not apply to a project that requires approval by a legislative act, such as a general plan amendment or rezoning, even if there is a quasi-judicial approval involved (such as a use permit or subdivision map). Therefore, time limits for project approval under the PSA should not interfere with a local government's process for consultation.*

## **Part B**

### **When and How to Consult with California Native American Tribes**

Sections IV and V of the 2005 Supplement provide step-by-step guidance to local government agencies on how and when to consult with tribes, including when to provide certain types of notices during the planning process. It is very important to review the information in Part C (Pre-Consultation) before undertaking consultation on a general plan or specific plan proposal.

#### **IV. Consultation: General Plan and Specific Plan Adoption or Amendment**

Each time a local government considers a proposal to adopt or amend the general plan or specific plan, they are required to contact the appropriate tribes identified by the NAHC. If requested by tribes, local governments must consult for the purpose of preserving or mitigating impacts to cultural places. The following section provides basic guidance to local governments on the notification and consultation requirements in Government Code §65352.3.

##### ***What Triggers Consultation?***

Government Code §65352.3 requires local governments to consult with tribes prior to the adoption or amendment of a general plan or specific plan proposed on or after March 1, 2005. Local governments should consider the following when determining whether a general plan or specific plan adoption or amendment is subject to notice and consultation requirements:

- In the case of an applicant-initiated plan proposal, if the local government accepts a complete application (as defined in Government Code §65943) on or after March 1, 2005, the proposal is subject to Government Code §65352.3.
- In the case of a general plan or specific plan amendment initiated by the local government, any proposal introduced for study in a public forum on or after March 1, 2005 is subject to Government Code §65352.3. A legislative body must take certain actions to initiate, or propose, a general plan or general plan amendment. These actions must be taken in a duly noticed public meeting, and may include, but are not limited to, any of the following: appropriation of funds, adoption of a work program, engaging the services of a consultant, or directing the planning staff to begin research on the activity.

Under Government Code §65352.3, only if a tribe is identified by the NAHC, and that tribe requests consultation after being contacted by a local government, must a local government consult with the tribe on the plan proposal.

Local governments are encouraged to consult with tribes as early as possible and may, if appropriate, begin consultation even before a formal proposal is submitted by an applicant or initiated by the local government.



### ***Identifying Tribes through the NAHC***

Once a local government or private applicant initiates a proposal to adopt or amend a general plan or specific plan, the local government must send a written request to the NAHC asking for a list of tribes with whom to consult. OPR recommends that the written request be sent to the NAHC as soon as possible. Local governments should consider the following points when submitting a request to the NAHC:

- All written requests should be sent to the NAHC via certified mail or by fax.
- Requests to the NAHC should include the specific location of the area that is subject to the proposed action, preferably with a map clearly showing the area of land involved.
- Requests should clearly state that the local government is seeking information about tribes that are on the “SB 18 Consultation List.”
- Contact information for the NAHC:

Native American Heritage Commission  
915 Capitol Mall, Room 364  
Sacramento, CA 95814  
Phone: 916-653-4082  
Fax: 916-657-5390  
<http://www.nahc.ca.gov>

A sample form for submitting a request to the NAHC is provided in Exhibit A. The tribal consultation list request form is also available on the NAHC website.

The NAHC will provide local governments with a written contact list of tribes with traditional lands or cultural places located within the local government’s jurisdiction. For each listed tribe, the NAHC will provide the tribal representative’s name, name of tribe, address, and phone number (if available, fax and email address). Although there is no statutory deadline for NAHC to respond to the local government, OPR recommends that the NAHC provide written contact information as soon as possible but no later than 30 days after receiving a written request from the local government.

### ***Contacting Tribes Pursuant to Government Code §65352.3***

Once a tribal contact list is received from the NAHC, local governments must contact the appropriate tribe(s) and invite them to participate in consultation. OPR suggests that local governments contact tribes as soon as possible upon receiving the tribal contact list. While the statute does not specify by what means tribe(s) should be contacted, OPR suggests that local governments send a written notice by certified mail with return receipt requested. Sending a written notice does not preclude a local government from also contacting the tribe by telephone, FAX, or e-mail.

Notices should be concise, clear, and informative so that tribes understand what they are receiving. Try to avoid using a standard public notice format to invite a tribe to consult, as most public notices do not contain sufficient information about the proposed action to enable a tribe to

respond. Keep in mind that the purpose of this notice is to invite a tribe to request consultation. Notices sent from a local government to a tribe, inquiring whether consultation is desired, should contain the following information:

- A clear statement of purpose, inviting the tribe to consult and declaring the importance of the tribe's participation in the local planning process.
- A description of the proposed general plan or specific plan being considered, the reason for the proposal, and the specific geographic area(s) that will be affected by the proposal. Relevant technical documents should be provided with a concise explanation that clearly describes the proposed general plan or specific plan amendment and its potential impacts on cultural resources, if known.
- Maps that clearly detail the geographic areas described in the explanation. Maps should be in a reasonable scale with sufficient references for easy identification of the affected areas.
- The deadline (date) by which the tribe must request a consultation with the local government. By law, tribes have 90 days from the date of receipt of the notice to request consultation (Government Code §65352.3(a)(2)).
- Contact information for representatives of the local government to whom the tribe should respond.
- Contact information for the project proponent/applicant and landowner(s), if applicable.
- Technical reports, including summaries of cultural resource reports and archaeological reports applicable to that tribe's cultural place(s), if available.
- Information on proposed grading or other ground-disturbing activities, if applicable. (This may be included in the project description.)

Subject to confidentiality procedures, both parties should maintain clear records of communications, including letters, telephone calls, and faxes. Both parties may send notices by certified mail and keep logs of telephone calls and faxes. Any returned or unanswered correspondence should be retained in order to verify efforts to communicate. Documentation of notification and consultation requests should be included in the local government's public record.

In addition to the above recommendations, local governments may, in cooperation with tribes, develop notification procedures as a part of consultation protocols established in cooperation with a tribal government. Local governments should be aware that some tribes already have consultation protocols. In addition, local governments may adopt policies regarding consultation with a tribal government. (*See Section VI.*)

#### ***After Notification is Sent to the Tribe***

Once local governments have sent notification, tribes are responsible for requesting consultation. Pursuant to Government Code §65352.3(a)(2), each tribe has 90 days from the date on which they receive notification to respond and request consultation. Some key points to consider include:

- The time period for consultation (undefined) is independent of the time period for tribes to request consultation (90 days).
- Local governments should be aware that tribes may require the entire 90-day period allowed by law to respond to a consultation request. Tribal governing bodies may need to meet to take a formal position on consultation.
- Local governments and tribal governments may consider addressing the method and timing of a tribe's response to a consultation request in a jointly-developed consultation protocol. *(See Section VI.)*
- At their discretion, tribes can agree to a shorter timeframe (less than 90 days) to respond and request consultation.
- After the information about a proposed plan or plan amendment is received by the tribe, local governments should cooperate to provide any additional pertinent information about the proposed plan or plan amendment that the tribe may request. Local governments may consider extending the 90 day timeframe for the tribe to review the new information and respond accordingly.
- If the tribe does not respond within 90 days or declines consultation, consultation is not required under Government Code §65352.3.

#### ***Conducting Consultation on General Plan or Specific Plan Adoption or Amendment***

Once a tribe requests consultation, consultation for the purpose of preserving or mitigating impacts to cultural places should begin within a reasonable time. Consultation should focus on how the proposed general plan or specific plan amendment or adoption might impact cultural places located on land affected by the plan proposal. The objectives of consultation, according to the legislative intent of SB 18, include:

- Recognizing that cultural places are essential elements in tribal culture, traditions, heritages and identities.
- Establishing meaningful dialogue between local and tribal governments in order to identify cultural places and consider cultural places in local land use planning.
- Avoiding potential conflicts over the preservation of Native American cultural places by ensuring local and tribal governments have information available early in the land use planning process.
- Encouraging the preservation and protection of Native American cultural places in the land use process by placing them in open space.
- Developing proper treatment and management plans in order to preserve cultural places.
- Enabling tribes to manage and act as caretakers of their cultural places.

Consultation is a process in which both the tribe and local government invest time and effort into seeking a mutually agreeable resolution for the purpose of preserving or mitigating impacts to a cultural place, where feasible. Government Code §65352.4 provides a definition of consultation for use by local governments and tribes:

*Consultation means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural significance.*

Effective consultation is an ongoing process, not a single event. The process should focus on identifying issues of concern to tribes pertinent to the cultural place(s) at issue – including cultural values, religious beliefs, traditional practices, and laws protecting California Native American cultural sites – and on defining the full range of acceptable ways in which a local government can accommodate tribal concerns.

#### Items to Consider When Conducting Consultation

The following list identifies recommendations for how local governments and tribes may approach consultation on general plan and specific plan proposals.

- As defined in Government Code §65352.4, consultation is to be conducted between two parties: the local government and the tribe. Both parties to the consultation are required to carefully consider the views of the other.
- Consultation does not necessarily predetermine the outcome of the plan or amendment. In some instances, local governments may be unable to reach agreement due to other state laws or competing public policy objectives.
- Local governments must consult with each tribe who is identified by the NAHC and requests consultation. The NAHC will identify whether there are, in fact, any tribes with whom the local government must consult. One or more tribes may have traditional cultural ties to land within the local government's jurisdiction and have an interest in preserving cultural places on those lands. Therefore, local governments may have to consult with more than one tribe on any particular plan proposal.
- OPR recommends that local governments consult with tribes one at a time (individually). If multiple tribes are involved and willing to jointly consult, local governments may consult with more than one tribe at a time.
- When a local government first contacts a tribe, its initial inquiry should be made to the tribal representative identified by the NAHC. OPR recommends that a local government department head or other official of similar or higher rank make the initial contact.
- Government leaders of the two consulting parties may consider delegating consultation responsibilities (such as attending meetings, sharing information, and negotiating the needs and concerns of both parties) to staff. Designated representatives should maintain direct relationships with and have ready access to their respective government leaders. These individuals may, but are not required to, be identified in a jointly-developed consultation protocol. (See Section VI.) In addition, the services of other professionals (attorneys,

contractors, or consultants) may be utilized to develop legal, factual, or technical information necessary to facilitate consultation.

- Simply notifying a tribe of a plan proposal is not the same as consultation.<sup>9</sup>
- Local governments should be aware of the potential for vast differences in tribal governments' level of staffing and other resources necessary to participate in the manner required by Government Code §65352.3 and §65352.4. Some may be able to respond more promptly and efficiently than others. Local governments should keep this in mind if and when developing a consultation protocol with a tribe. (*See Section VI.*)
- As a part of consultation, local governments may conduct record searches through the NAHC and California Historic Resources Information System (CHRIS) to determine if any cultural places are located within the area(s) affected by the proposed action. Local governments should be aware, however, that records maintained by the NAHC and CHRIS are not exhaustive, and a negative response to these searches does not preclude the existence of a cultural place. A tribe may be the only source of information regarding the existence of a cultural place.
- Local governments should be aware that the confidentiality of cultural places is critical to tribal culture and that many tribes may seek confidentiality assurances prior to divulging information about those sites. (*See Section VIII.*)
- Tribal consultation should be done face-to-face. If acceptable to both parties, local and tribal governments may wish to define circumstances under which parts of the consultation process can be carried out via conference calls, e-mails, or letters. (*See Section VIII.*)
- Tribal consultations should be conducted in a setting that promotes confidential treatment of any sensitive information that is shared about cultural places. Consultation should not take place in public meetings or public hearings.
- The time and location of consultation meetings should be flexible to accommodate the needs of both the local government and tribe. Local governments should recognize that travel required for in-person consultation may be time-consuming, due to the rural location of a tribe. Local governments should also take into account time zone changes when setting meeting times. Local governments should offer a meeting location at the city hall, county administrative building, or other appropriate location. Local governments should also be open to a tribe's invitation to meet at tribal facilities.
- The local government and tribe can agree to mutually invite private landowners to participate in consultation, if both parties feel that landowner involvement would be appropriate.
- Local governments are encouraged to establish a collaborative relationship with tribes as early as possible, prior to the need to consult on a particular general plan or specific plan

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<sup>9</sup> In *Pueblo of Sandia v. United States*, 50 F.3d 856 (10th Cir. 1995), the court held that the U.S. Forest Service had not fulfilled its consultation responsibilities under the National Historic Preservation Act by merely sending letters to request information from tribes. The court ruling held that written correspondence requesting consultation with a tribe was not sufficient for the purpose of conducting consultation as required by law, and that telephone calls or more direct forms of contact may be required.

amendment or adoption. Local governments may consider conducting pre-consultation meetings and developing consultation protocols in cooperation with tribes. (*See Section VI.*)

- Both parties should attempt to document the progress of consultation, including letters, telephone calls, and direct meetings, without disclosing sensitive information about a cultural place. Local governments may also want to document how the local government representative(s) fulfilled their obligations under Government Code §65352.3 and §65352.4.

### ***When is Consultation Over?***

Alan Downer, of the Advisory Council on Historic Preservation, described consultation as “conferring between two or more parties to identify issues and make a good faith attempt to find a mutually acceptable resolution of any differences identified.”<sup>10</sup> Differences of opinion and of priorities will arise in consultation between local and tribal governments. Whenever feasible, both local and tribal governments should strive to find mutually acceptable resolutions to differences identified through consultation.

When engaging in consultation, local government and tribal representatives should consider leaving the process open-ended to allow every opportunity for mutual agreement to be reached. Some consultations may involve highly sensitive and complex issues that cannot be resolved in just one discussion. Consultation may require a series of meetings before a mutually acceptable agreement may be achieved. Consultation must be concluded prior to the formal adoption or amendment of a general plan or specific plan.

Consultation, pursuant to Government Code §65352.3 and §65352.4, should be considered concluded at the point in which:

- the parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
- either the local government or tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning appropriate measures of preservation or mitigation.

## **V. Consultation: Cultural Places Located in Open Space**

On and after March 1, 2005, if land designated, or proposed to be designated as open space contains a cultural place, and if an affected tribe has requested notice of public hearing under Government Code §65092, then local governments must consult with the tribe. The purpose of this consultation is to determine the level of confidentiality required to protect the specific identity, location, or use of the cultural place, and to develop treatment with appropriate dignity of the cultural place in any corresponding management plan (Government Code §65562.5). This consultation provision does not apply to lands that were designated as open space before March 1, 2005.

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<sup>10</sup> From “The Navajo Nation Model: Tribal Consultation Under the National Historic Preservation Act” (2000).

### ***What Triggers Consultation?***

Government Code §65562.5 applies to land that is designated, or proposed to be designated, as open space, on or after March 1, 2005. Local governments must consider several criteria when determining whether consultation is required, prior to designating open space on or after March 1, 2005.

Local governments must first learn whether the land designated, or proposed to be designated, as open space contains a cultural place. The following are methods by which local governments may be informed if a cultural place is located on designated or proposed open space:

- Conduct a record search through the NAHC to learn whether any listed cultural places are located on land proposed to be designated as open space. The local government should provide maps of lands proposed as open space to the NAHC with a request to identify whether there are any cultural places on the property. Because the NAHC's sacred lands file is confidential, the commission will only divulge the presence or absence of a listed site and will direct the local government to the appropriate tribe(s) for more information.
- Conduct a record search through CHRIS to learn whether any listed cultural places are located on land proposed to be designated as open space. Local governments should enter into agreements with CHRIS information centers to establish procedures and protocols for requesting searches of historical resource records.
- Request that tribes identify the existence of any cultural places on the proposed open space land. Local governments should send a written request to the NAHC asking for a written list of tribes that have traditional cultural ties to the proposed open space. The NAHC will provide tribal contact information. Local governments should contact each tribe on the list provided by the NAHC to learn whether any cultural places are located on the land proposed as open space. Local government should provide the tribe with a sufficiently detailed map of the open space together with a concise notice as to why the tribe is being contacted. (Note: This contact is strictly for the purpose of identifying whether a cultural place is or may be located on the proposed open space land. It does not start consultation with a tribe.)

Local governments should be aware that records maintained by the NAHC and CHRIS are not exhaustive, and a negative response to searches does not preclude the existence of a cultural place. In most instances, and especially because of associated confidentiality issues, it is likely that tribes will be the only source of information regarding certain cultural places.

After a local government learns that a cultural place is or may be located on land designated or proposed to be designated as open space, the local government must notify the appropriate tribes of the opportunity to participate in consultation. The appropriate tribes are those which have: (1) been identified by the NAHC, and (2) requested notice of public hearing from the local government pursuant to Government Code §65092.

### ***Conducting Consultation Regarding Open Space***

The purpose of this consultation is to determine the level of confidentiality required to protect the specific identity, location, character, or use of the cultural place and to develop treatment with appropriate dignity of the cultural place in any corresponding open space management plan. The reference to “any corresponding management plan” is not meant to imply that there is such a plan or that the local government must develop such a management plan. This language is intended to encourage consideration of management policies and practices which may be discussed between the local government and tribe and incorporated into a new or existing management plan for the cultural place.

The following are examples of appropriate items to consider and discuss during consultation:

- Encourage tribal involvement in the treatment and management of the cultural place through contracting, monitoring, co-management, and other forms of joint local-tribal participation.
- Tribes may only wish to disclose a sufficient amount of information to protect the site and to allow for the proper treatment and management of the cultural place. *(See Section VIII.)*
- Tribes may wish to have access to cultural places located on open space for gathering, performing ceremonies and/or helping maintain the site.
- Tribes may want to recommend management practices that avoid disturbing or impacting the cultural place.
- Tribes may wish to discourage certain land uses (e.g. recreation) within the open space that could adversely impact the cultural place. Local governments may be asked to consider appropriate land uses in the open space designation that would avoid direct impacts to the cultural place.

The designation of open space, as provided in Government Code §65562.5, may but does not always, involve amending the general plan. In some jurisdictions, designation of open space may occur through rezoning of land from one zone designation to an open space zone designation, without the need for a general plan amendment. However, for proposals to designate open space that require a general plan or specific amendment, the local government should consider the above recommendations as well as the recommendations outlined in Section IV of these guidelines.

### ***When is Consultation Over?***

Please refer to Section IV for additional information regarding the meaning of consultation.



## **Part C**

### **Pre-Consultation**

Section VI provides advice to local governments that is intended to help them more effectively engage in consultation with tribes. This part of the 2005 Supplement provides information that may help local governments establish working relationships with tribes prior to entering into the required consultation pursuant to Government Code §65352.3 and §65562.5.

#### **VI. Preparing for Consultation**

As discussed above, Government Code §65352.3 requires consultation during the process of amending or adopting general plans or specific plans. In addition, Government Code §65562.5 requires consultation to determine the proper level of confidentiality to protect and treat a cultural place with appropriate dignity, where such places are located on lands to be designated as open space. Before engaging in consultation in either of these cases, local governments may want to consider developing relationships with tribes that have traditional lands within their jurisdiction. Although not required by law, these pre-consultation efforts may develop a foundation for a mutually respectful and cooperative relationship that helps to ensure more smooth and effective communication in future consultations.

Local governments may wish to consider the following when undertaking pre-consultation meetings:

- Contact the NAHC to obtain a list of all appropriate tribes with whom to pre-consult. Because this list may be revised over time by the NAHC, local governments should periodically request updated contact lists.
- Contact the NAHC and CHRIS to learn if any historical or cultural places are located within the city's or county's jurisdiction. (Note that the NAHC and CHRIS have different procedures for searching information about cultural sites. See Part F for more information about each organization and how to contact them. As previously noted, NAHC and CHRIS records pertaining to cultural places are not exhaustive, and a negative response to these searches does not preclude the existence of a cultural place.)
- Invite each tribal government's leaders to meet with local government leaders for the purpose of establishing working relationships and exchanging information about respective governmental structures, practices, and processes. Pre-consultation meetings may include discussion about community goals, planning priorities, and how cultural places play a role in the tribal culture.
- Hold informational workshops or meetings with the tribe(s) to discuss the general plan process, the existing general plan, and any contemplated amendments. Local governments should not expect or ask a tribe to share confidential information in a meeting with other tribes or the general public.
- Ask tribes whether they have existing consultation protocols.

- Develop a consultation protocol that addresses how a cooperative relationship can be maintained and how future consultations should be conducted. Some tribes may already have established protocols through working with other agencies, such as state and federal entities, that can be used as models.

If a tribe and local government decide to develop a consultation protocol, both parties should suggest topics that they believe will facilitate consultation. The following are examples of items that may be appropriate to discuss and include in a jointly-developed consultation protocol:

- Representative(s) from each consulting party who will be designated to participate in consultations and manage the information resulting from the consultations.
- Key points in the consultation process when elected government leaders may need to be directly involved in consultation.
- Method(s) of contact preferred by the tribal government and additional tribal representatives that the local government should contact regarding a proposed action.
- Procedures for giving and receiving notice, including method and timing.
- Preferred method(s) of consultation. While in-person consultation is recommended, it may be acceptable to both parties that certain aspects of consultation occur through conference calls, e-mails, or letters.
- Preferred locations of consultation meetings.
- The tribe's willingness to participate in joint consultation, should a specific site be of interest to more than one tribe.
- Procedures to allow tribal access to the local government's consultation records.
- Procedures for maintaining accurate, up-to-date contact information.

Over time, the initial approach to consultation may need to be updated. Both parties should be open to identifying and agreeing on changes to their consultation protocol.

## **Part D**

### **Preservation, Mitigation, Confidentiality, and Landowner Participation**

Sections VII through IX provide advice to local governments for considering issues such as appropriate means to preserve, or mitigate impacts to, cultural places; methods to protect the confidentiality of cultural places; and ways to encourage the participation of landowners in voluntary preservation efforts.

#### **VII. Preservation of, or Mitigation of Impacts to, Cultural Places**

Government Code §65352.3 requires local governments to conduct consultations with tribes (when requested) for the purpose of “preserving or mitigating impacts” to California Native American cultural places. In the course of adopting or amending a general plan or specific plan, local governments may be informed of the existence of a cultural place within the affected area. Should a tribe request consultation to discuss any impacts to the cultural place, local governments should consider a variety of factors when participating in the consultations, including: the history and importance of the cultural place, the adverse impact the local government action may have on the cultural place, options for preserving the cultural place, and options for mitigating impacts of the proposal to the cultural place.

When participating in consultations, it is important that local governments consider that, because of philosophical differences, mitigation will not always be viewed as an appropriate option to protect cultural, and often irreplaceable, places. Many tribes may determine that impacts to a cultural place cannot be mitigated; that the only appropriate treatment may be to preserve the cultural place without impact to its physical or spiritual integrity. Of course, this is not to say that tribes will not engage in discussions regarding mitigation of impacts to their cultural places, but local governments should consider the vastly different perspectives that tribes may have. What a local government may consider to be acceptable treatment under current environmental, land use, and cultural resource protection laws, may not be considered by a tribe to be acceptable treatment for a sacred or religious place.

The following is a discussion of preservation and mitigation, as mentioned in Government Code §65352.3. Local governments should check with their legal counsels to identify any other legal obligations to preserve or mitigate impacts to Native American cultural resources.

#### ***What are Preservation and Mitigation?***

Preservation is the conscious act of avoiding or protecting a cultural place from adverse impacts including loss or harm. Mitigation, on the other hand, is the act of moderating the adverse impacts that general plan or specific plan adoption or amendment may have on a cultural place.

While local governments should strive to help preserve the integrity of, access to, and use of cultural places<sup>11</sup>, mitigation may often be achieved through a broad range of measures:

- Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- Rectifying the impact by repairing, rehabilitating, or restoring the impacted cultural place.
- Reducing or eliminating the impact over time through monitoring and management of the cultural place.

Other methods of mitigation may include:

- Designation of open space land in accordance with Government Code §65560(b).
- Enhancement of habitat or open space properties for protection of cultural place.
- Development of an alternate site suitable for tribal purposes and acceptable to the tribe.
- Other alternative means of preserving California Native American cultural features, where feasible.

It is important that local governments consider that mitigation measures may largely differ depending on customs of a particular tribe, the characteristics and uses of a site or object, the cultural place's location, and the importance of the site to the tribe's cultural heritage. Where a cultural place is affected by a proposed general or specific plan adoption or amendment, consultations with tribes should focus on preserving, or mitigating the impacts to, that specific cultural place.

### ***Seeking Agreement Where Feasible***

Although Government Code §65352.3(a) requires consultation for the purpose of preserving or mitigating against the adverse impacts that a general plan or specific plan adoption or amendment may have on a cultural place, there is no requirement to preserve a cultural place or adopt mitigation measures, if agreement cannot be reached. Under the definition of "consultation" within Government Code §65352.4, local governments and tribes are required to carefully consider each other's views and are required to seek an agreement, "where feasible." For the purposes of Government Code §65352.4, agreements should be considered "feasible" when capable of being accomplished in a successful manner within a reasonable time taking into account economic, environmental, social and technological factors.<sup>12</sup> If, after conducting consultations in good faith and within the spirit of the definition, the tribe or local government cannot reach agreement on preservation or mitigation of any impact to a California Native American cultural place, neither party is required to take any action under Government Code §65352.3(a).

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<sup>11</sup> Cultural Places referring to places, features, and objects under Government Code §65352.3(a) and described in Government Code §§5097.9 and 5097.995.

<sup>12</sup> See *State of California General Plan Guidelines*, Governor's Office of Planning & Research, Glossary, page 261.

### ***Monitoring and Management***

During consultations, local governments should consider the involvement of tribes in the ongoing treatment and management of cultural places, objects, or cultural features through a specific monitoring program, co-management, or other forms of participation.

Where a cemetery, burial ground, or village site may be present, the planning of treatment and management activities should address the possibility that California Native American human remains may be involved when protecting cultural features. Local governments should consider working with tribes to develop an appropriate plan for the identification and treatment of such discoveries in accordance with Public Resources Code §5097.98.

### ***Private Landowner Involvement***

During consideration of a proposed general plan adoption or amendment, a local government may discover or be informed of a cultural place that exists on privately owned land within an affected area. In such an instance, local governments should first contact the appropriate tribe or tribes to offer consultations and determine an acceptable level of landowner involvement. Local governments should be aware that there may be some occasions where a tribe may prefer to maintain strict confidentiality without the inclusion of a private, third party landowner.

If a tribe is interested in involving the landowner in preservation or mitigation activities, the local government should consider facilitating such involvement. It is important that local governments and tribes understand that there is no statutory requirement to include private landowners under the government-to-government consultations requirements of Government Code §65352.3(a). However, because landowner participation is encouraged, local governments may consider suggesting the following methods to facilitate landowner involvement:

- Suggesting that the tribe contact the private landowner directly to facilitate discussions between the tribe and landowner.
- Offering to contact the private landowner directly on behalf of the tribe.
- Suggesting that the private landowner be included as a party to the consultations.

## **VIII. Confidentiality of Information**

Protecting the confidentiality of California Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places is one of the most important objectives of SB 18. This is clearly evidenced by SB 18's legislative intent as well as its statutory additions and amendments which address the issue of confidentiality and requires "each city and county to protect the confidentiality of information concerning" cultural places.<sup>13</sup> By maintaining the confidentiality of a cultural place, including its location, traditional uses, and characteristics, local governments can help assure tribes of continued access and use of these cultural places, in addition to aiding in the preservation of a cultural place's integrity. However, local governments should take into consideration other state and federal laws which may impose conflicting public policy priorities or requirements.

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<sup>13</sup> See SB 18 §1(b)(3), (Burton, Ch. 905, Stat. 2004); Govt. Code §§ 65040.2(g)(3), 65352.3, 65352.4, and 65562.5.

### ***Public Disclosure Laws***

The California Public Records Act (Government Code §6250 et. seq.) and California's open meeting laws applying to local governments (The Brown Act, Government Code §54950 et. seq.) both have implications with regard to maintaining confidentiality of California Native American cultural place information. Local governments are encouraged to carefully consider these laws in greater detail, and adopt or incorporate these recommendations into their own confidentiality procedures in order to avoid the unintended disclosure of confidential cultural place information.

#### **The California Public Records Act (CPRA)**

Subject to specified exemptions, the CPRA provides that all written records maintained by local or state government are public documents and are to be made available to the public, upon request. Written records include all forms of recorded information (including electronic) that currently exist or that may exist in the future. The CPRA requires government agencies to make records promptly available to any citizen who asks, unless an exemption applies.

The CPRA contains two exemptions which aid in the protection of records relating to Native American cultural places. Amended in October of 2005 for broad application, these exemptions now permit any state or local agency to deny a CPRA request and withhold from public disclosure:

- 1) "records of Native American graves, cemeteries, and sacred places and records of Native American places, features, and objects described in Section 5097.9 and 5097.993 of the Public Resources Code maintained by, or in the possession of, the Native American Heritage Commission, another state agency, or a local agency" (GC § 6254(r)); and
- 2) "records that relate to archaeological site information and reports maintained by, or in the possession of, the Department of Parks and Recreation, the State Historical Resources Commission, the State Lands Commission, another state agency, or a local agency, including the records that the agency obtains through a consultation process between a California Native American tribe and a state or local agency" (GC § 6254.10).

With these two CPRA exemptions in place, information related to Native American cultural places is specifically protected from mandatory public disclosure. Such protections are intended to facilitate the free exchange of information between Native American tribes and California local governments when conducting tribal consultations. Even with this protection, however, it is important for local governments to understand that some tribes may withhold information during consultations due to conflicts with their cultural beliefs and practices. Local governments and Native American tribes should discuss such issues early in consultations, or during pre-consultation, so that each has an understanding of what information can and cannot be divulged. Additionally, it is important for all parties to recognize that a legislative body of a city or county must have access to certain information in order to make an informed decision regarding the given plan adoption or amendment.

### The Brown Act

The Brown Act governs the legislative bodies of all local agencies within California. It requires that meetings held by these bodies be “open and public.” Under this Act, no local legislative body may take an action in secret, nor will the body’s action be upheld if it is in violation of California’s open meeting laws. The Brown Act defines a “meeting” as a gathering of a majority of the members of a applicable body to hear, discuss, or deliberate on matters within the agency’s or board’s jurisdiction.

While the Brown Act does contain some exceptions for “closed meetings,” none of these exceptions would allow the quorum of a local legislative body to participate in tribal consultations within a closed meeting. Should a local legislative body participate in confidential tribal consultations, it is important that they do so as an advisory committee with *less than a* quorum, so as to not invoke the Brown Act’s requirements of public participation (see Government Code §54952(b)). Otherwise, the Brown Act will require that the consultations be held in public, thereby defeating the purpose of confidentiality, or, alternatively, any decisions made by the quorum of the body within a closed meeting would be rendered invalid.

In order to efficiently conduct tribal consultation meetings, in addition to maintaining confidentiality at all times, local governments are encouraged to develop procedures in advance that would designate a committee or agency in charge. In doing so, local governments should consider the problems associated with elected official participation within tribal consultations, and should tailor their procedures accordingly.

### ***Public Hearings***

General plan amendments, specific plan amendments, and the adoption of a general or specific plan each require both a planning commission and a city council or board of supervisors to conduct public hearings. The decision to approve or deny these proposals must be based in reason and upon evidence in the record of the public hearing. When addressing an adoption or amendment involving a cultural place, elected officials will need to be apprised of the cultural site implications in order to make informed decision. However, to maintain the confidentiality of this cultural place information, local governments and tribes, during consultations, should agree on what non-specific information may be disclosed during the course of a public hearing. Additionally, local governments should avoid including any specific cultural place information within CEQA documents (such as Environmental Impact Reports, Negative Declaration, and Mitigated Negative Declarations) or staff reports which are required to be available at a public hearing. In such cases, confidential cultural resource inventories or reports generated for environmental documents should be maintained under separate cover and shall not be available to the public.

### ***Additional Confidentiality Procedures***

Additionally, local governments should consider the following items when considering steps to be taken in order to maintain confidentiality:

- Local governments should develop “in-house” confidentiality procedures.

- Procedures should be established to allow for tribes to share information with local government officials in a confidential setting.
- Only those tribal designees, planning officials, qualified professional archaeologists, and landowners involved in the particular planning activity should obtain information about a specific site.
- Participating landowners should be asked to sign a non-disclosure agreement with the appropriate tribe prior to gaining access to any specific site information.
- Local governments should not include detailed (confidential) information about cultural places in any of its public documents.
- Possible procedures to require local government to notify participating tribes and landowners whenever records containing specific site information have been requested for public disclosure.

Local governments should also keep in mind that the terms for confidentiality may differ depending upon the nature of the site, the tribe, the local government, the landowner, or who proposes to protect the site. Local governments should collaborate with tribes to develop informational materials to educate landowners regarding the cultural sensitivity of divulging site information, explaining the tribe's interest in maintaining the confidentiality and preservation of a site. Landowners should be informed of criminal penalties within the law for the unlawful and intentional destruction, degradation or removal of California Native American cultural or spiritual places located on public or private lands (Public Resources Code §5097.995).<sup>14</sup>

#### ***Confidentiality Procedures for Private Landowner Involvement***

In order to successfully preserve or mitigate impacts to a California Native American cultural place, local governments and tribes may find it necessary or advantageous to involve private landowners early in the consultation process. Often, landowners may not be aware that a cultural place exists on their property, or alternatively, may not realize that the site has become subject to a general plan adoption or amendment. Due to the confidential nature of certain information involved, local governments should consider working with tribes to adopt procedures that would balance the value of landowner involvement with the need for cultural place confidentiality. Local governments and California Native American tribes may wish to consider the following procedures that would inform and potentially involve landowners in the consultation process, without compromising the confidentiality of a cultural place:

- Local governments, at the request of a tribe, may consider contacting a landowner directly and, without disclosing the exact location or characteristics of the site, inform the landowner of the existence of a culturally significant place on their property. A local government may consider inquiring as to whether the landowner would be willing to further discuss the matter directly with the appropriate tribal representative under a non-disclosure agreement.

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<sup>14</sup> Due to a drafting error, SB 18 contains multiple references to Public Resources Code (PRC) §5097.995 which is no longer in existence. In 2004, PRC §5097.995 was amended and renumbered to PRC §5097.993 by Senate Bill 1264 (Chapter 286). Local governments should refer to PRC §5097.993 when looking for PRC §5097.995.



- Local governments may consider giving the landowner's contact information to a tribe so that the tribe may contact the landowner directly. Discussion about conservation easements is an example of a case in which a tribe and landowner may wish to meet without the direct participation of the local government.
- Local governments may also consider informing a landowner of the ability of landowners to access CHRIS for cultural resource information specific to their land. Local governments should keep in mind that the CHRIS system does not contain a catalog of every cultural place within California.

## **IX. Procedures to Facilitate Voluntary Landowner Protection Efforts**

In addition to their own consultation with tribes, local governments may help facilitate landowner participation in preserving and protecting cultural places. While each city and county should develop its own policies on landowner participation, general strategies for encouraging landowner awareness of and participation in cultural place protection may include:

- Collaborating with local tribes to offer cultural awareness and other educational events for landowners.
- Encouraging landowner participation in discussions about appropriate preservation and mitigation measures.
- Promoting the use of conservation easements and other private conservation efforts.

It should be noted that SB 18 does not require landowners to dedicate or sell conservation easements for the purpose of cultural place preservation. Neither are local governments required to play a direct role in any private conservation activity. Government Code §65040.2(g), however, does require OPR to recommend procedures to facilitate voluntary landowner participation in the preservation and protection of cultural places.

### ***Landowner Education and Participation***

Public workshops, seminars, and other educational sessions may provide forums for tribal representatives to share tribal and cultural information and discuss general protection concerns with landowners. These sessions may build cultural awareness, develop landowner understanding of the importance of cultural places, and also encourage further dialogue between tribes and landowners. These sessions should generally inform landowners of the importance of cultural places and should not compromise the confidentiality of a specific cultural place.

Local governments may also encourage landowner participation in discussions about preserving or mitigating impacts to a cultural place located on a landowner's private property. (*See Section VII and Section VIII for further information.*)

### ***Private Conservation Efforts***

Although local governments are not required to play a direct role in any private conservation activity, they can promote the use of conservation easements and other conservation programs to protect cultural places. Local governments may consider adoption of a policy to encourage voluntary landowner participation in protection programs. Local governments may also develop and distribute informational materials about potential incentives for private conservation efforts, such as Mills Act tax credits or the tax benefits of donating or selling conservation easements.

A conservation easement is a voluntary agreement between a landowner and an authorized party (including a tribe pursuant to Civil Code 815.3(c)) that allows the easement holder to limit the type or amount of development on the property while the landowner retains title to the land. The landowner is compensated for voluntarily giving up some development opportunities. The easement is binding upon successive owners of the land. It is common for a conservation

easement to be recorded against the property as a way to inform future purchasers of the existence of an easement. Granting of a conservation easement may qualify as a charitable contribution for tax purposes.

Should a landowner choose to sell a conservation easement, the landowner should first consult with all tribes affiliated with the land on which the easement is proposed. It is also recommended that tribes hold conservation easements only within their areas of cultural affiliation.

As an alternative to conservation easements, local governments may also promote private preservation of cultural places through the use of Memoranda of Understanding (MOU). As a direct agreement between a landowner and tribe, a MOU allows a tribe and landowner to agree on appropriate treatment of cultural places located on the landowner's private property and may give certain privileges to tribes, such as access to perform ceremonial rituals. MOUs may also be used to facilitate co-management by tribes, landowners, and conservation organizations. For example, if a conservation easement established for wildlife protection also contains a cultural place, the landowner, conservation entity, and tribe could agree on co-management (in the MOU) that protects both the habitat and cultural place.

## **Part E**

### **Open Space**

Section X provides information for incorporating the protection of cultural places into the open space element of the general plan.

#### **X. Open Space for the Protection of Cultural Places**

SB 18 amended Government Code §66560 to include open space for the protection of cultural places as an allowable purpose of the open space element. Local governments may, but are not required to, consider adopting open space policies regarding the protection of cultural places. Local governments may wish to consider the following when and if they develop such policies:

- Limiting the types of land uses allowed in an open space designation in order to protect the cultural place from potentially harmful uses.
- Facilitating access to tribes for maintenance and traditional use of cultural places.
- Protecting the confidentiality of cultural places by not disclosing specific information about their identity, location, character, or use.
- Giving developers incentives to protect cultural places through voluntary measures.
- Incorporating goals for protection of cultural places in open space that is also part of a regional habitat conservation and protection program, for example, a local or regional Habitat Conservation Plan (HCP) or Natural Community Conservation Program (NCCP).
- Reviewing and conforming other elements of the general plan that deal with conservation of natural and cultural resources to the open space element.

The development of open space policies for the protection of cultural places should be done in consultation with culturally-affiliated tribes. It is important to note that the importance of cultural places is not solely rooted in the land or other physical features or objects related to the land on which the cultural place is located. The sense of “place” is often as important as any physical or tangible characteristic. It may be important to a tribe to preserve a certain non-material aspect of a cultural place, such as views or vantage points from or to the cultural place. Cultural interpretation and importance of the place to the tribe should be taken into consideration, in addition to any potential archaeological importance of the place. With this in mind, local governments should be prepared to consider creative solutions for preservation and protection of cultural places.

Neither Government Code §65560(b)(5) nor Government Code §65562.5 mandate local review or revision of the existing open space element of the general plan to inventory and/or protect cultural places. However, local governments should consider doing so in future updates of or comprehensive revisions to the open space element.

## **Part F**

### **Additional Resources**

#### **XI. Additional Resources**

In addition to the information provided in the 2005 Supplement to the *General Plan Guidelines*, local governments may wish to investigate additional resources that can provide more detailed information about Native American people, cultural places, tribal governments, consultation, confidentiality, conservation easements, and other issues related to SB 18. Sources of additional information include federal and state government agencies that have previous experience with tribal consultations, colleges and universities, private organizations and foundations, and the literature and web sites associated with these groups. Although it is not intended to be a comprehensive list, some potentially useful resources are included below.

It is important that local governments keep in mind that Native American tribes are often the best source of information concerning a cultural place's location and characteristics. Local governments are encouraged to seek this information, if available, directly from the tribes themselves.

#### **State Agencies**

##### **California Native American Heritage Commission (NAHC)**

The NAHC is the state commission responsible for advocating preservation and protection of Native American human remains and cultural resources. NAHC maintains confidential records concerning places of special religious or social significance to Native Americans, including graves and cemeteries and other cultural places. The NAHC reviews CEQA documents to provide recommendations to lead agencies about consulting with tribes to mitigate potential project impacts to these sites.

The NAHC maintains a list of California tribes and the corresponding contacts that local governments should use for the purpose of meeting SB 18 consultation requirements.

The NAHC web site also provides a number of links to information about federal and state laws, local ordinances and codes, and cultural resources in relation to Native Americans.

Native American Heritage Commission  
915 Capitol Mall, Room 364  
Sacramento, CA 95814  
Phone: (916) 653-4082  
Fax: (916) 657-5390  
<http://www.nahc.ca.gov>

**California Office of Historic Preservation (OHP)**

**California Historical Resources Information System (CHRIS)**

Pursuant to state and federal law, the California Office of Historic Preservation (OHP) administers the California Historical Resources Information system (CHRIS). The CHRIS is organized by county and managed by regional information centers (posted on the OHP website). These CHRIS centers house records, reports, and other documents relating to cultural and archaeological resources, and provide information and recommendations regarding such resources on a fee-for-service basis. Local governments may enter into agreements with CHRIS information centers to establish procedures and protocols for requesting searches of historical resource records.

The OHP also provides assistance to local governments to encourage direct participation in historic preservation. OHP provides technical assistance to local governments including training for local commissions and review boards, drafting of preservation plans and ordinances, and developing archaeological and historical surveys.

Office of Historic Preservation  
P.O. Box 942896  
Sacramento, CA 94296-0001  
Phone: (916) 653-6624  
Fax: (916) 653-9824  
<http://www.ohp.parks.ca.gov>

**California Department of Conservation**

**Division of Land Resource Protection (DLRP)**

The DLRP works with landowners, local governments, and researchers to conserve productive farmland and open spaces.

California Department of Conservation  
Division of Land Resource Protection  
801 K Street, MS 18-01  
Sacramento, CA 95814-3528  
Phone: (916) 324-0850  
<http://www.consrv.ca.gov/DLRP/index.htm>

**California Department of Housing and Community Development**

**California Indian Assistance Program (CIAP)**

The California Indian Assistance Program's primary role is to assist tribal governments with obtaining and managing funds for community development and government enhancement. CIAP's *2004 Field Directory of the California Indian Community* is a good reference for California Native American tribes, including location of Indian lands, federal recognition status of tribes, history of laws affecting tribes, and other programs and agencies involved in tribal relationships.

California Indian Assistance Program  
1800 Third Street, Room 365  
Sacramento, CA 95814  
Phone: (916) 445-4727  
<http://www.hcd.ca.gov/ca/ciap/>

**California Department of Transportation (DOT)**

**Native American Liaison Branch**

The California DOT administers most of its projects with some federal funding and is therefore subject to Section 106 consultation requirements under NHPA. The department has a Native American Liaison Branch (NALB), with headquarters in Sacramento and Native American Liaisons in each of its twelve districts. The NALB web site contains policy statements and links to other useful resources.

Office of Regional and Interagency Planning  
Native American Liaison Branch  
1120 N Street, MS 32  
Sacramento, CA 95814  
Phone: (916) 651-8195  
Phone: (916) 654-2389  
Fax: (916) 653-0001  
[http://www.dot.ca.gov/hq/tpp/offices/orip/na/native\\_american.htm](http://www.dot.ca.gov/hq/tpp/offices/orip/na/native_american.htm)

**Federal Agencies**

**Federal Highway Administration – AASHTO (American Association of State Highway and Transportation Officials) Center for Environmental Excellence**

The AASHTO Center for Environmental Excellence provides a web site designed to provide tools for Section 106 of the National Historical Preservation Act (NHPA) tribal consultation. This site contains documents and links to web sites that address key aspects of tribal consultation relevant to SB 18. Information also includes federal, tribal, and state policies and protocols, case law, and best practices as implemented by federal and state agencies and tribes.

[http://environment.transportation.org/environmental\\_issues/tribal\\_consultation/overview.htm](http://environment.transportation.org/environmental_issues/tribal_consultation/overview.htm)

**U.S. Army Corps of Engineers**

The U.S. Army Corps of Engineers has lasting and positive relations with many tribal governments. The “Tribal Affairs and Initiatives” section of their web site provides information regarding the U.S. Army Corps of Engineers’ approach to tribal consultation and preservation of cultural resources.

<http://www.usace.army.mil/inet/functions/cw/cecwp/tribal/index.htm>

### **USDA Forest Service**

The Forest Service has extensive experience in consulting with Native American tribes. The Forest Service's *Forest Service National Resource Book on American Indian and Alaska Native Relations* is an excellent resource book on tribal beliefs and practices, tribal consultation, and laws affecting Native Americans. The Forest Service's *Report of the National Tribal Relations Program Implementation Team* (June 2003) reviews relationships between the Forest Service and tribes, identifying pervasive problems and concerns and making recommendations to improve the effectiveness of the program at maintaining long-term collaborative relationships with tribal governments.

USDA Forest Service  
Regional Office of Tribal Relations  
Sonia Tamez  
1323 Club Drive  
Vallejo, CA 95492  
Phone: (707) 562-8919  
[www.r5.fs.fed.us](http://www.r5.fs.fed.us)

### **USDA National Sustainable Agriculture Information Service (ATTRA)**

The ATTRA provides information and other technical assistance to farmers, ranchers, Extension agents, educators, and others involved in sustainable agriculture in the United States. The ATTRA publication, *Conservation Easements, Resource Series (2003)*, provides an overview of what holding and selling conservation easements entail.

ATTRA - National Sustainable Agriculture Information Service  
PO Box 3657  
Fayetteville, AR 72702  
Phone: (800) 346-9140  
Fax: (479) 442-9842  
<http://attra.ncat.org/>

### **USDA Natural Resources Conservation Service (NRCS)**

The mission of the NRCS is to address natural resource conservation on private lands. The web site contains links to various conservation technical resources and to additional contact information for area offices and service centers.

California NRCS State Office  
430 G Street #4164  
Davis, CA 95616-4164  
Phone: (530) 792-5600  
Fax: (530) 792-5610  
<http://www.ca.nrcs.usda.gov/>

### **U.S. Department of Interior – Bureau of Indian Affairs**

The Bureau of Indian Affairs (BIA) is responsible for the administration and management of 55.7 million acres of land held in trust by the United States for American Indians, Indian tribes, and Alaska Natives. Developing forestlands, leasing assets on these lands, directing agricultural



programs, protecting water and land rights, developing and maintaining infrastructure, and economic development are all agency responsibilities. The BIA web site includes links to other federal agencies, inter-tribal organizations, environmental organizations, and cultural resources.

Bureau of Indian Affairs

Phone: (202) 208-3710

<http://www.doi.gov/bureau-indian-affairs.html>

#### **U.S. Department of Interior – Bureau of Land Management**

The Bureau of Land Management manages 261 million acres of land and has staff whose duties include coordination and consultation with Native Americans. The Bureau publishes *Native American Coordination and Consultation, Manual Section 8160 with Handbook H-8160-1*. The handbook is devoted to providing general guidance for tribal consultation, and can be found online at: <http://www.blm.gov/nhp/efoia/wo/handbook/h8160-1.html>.

Bureau of Land Management

California State Office

2800 Cottage Way, Suite W-1834

Sacramento, CA 95825-1886

Phone: (916) 978-4400

Phone: (916) 978-4416

TDD: (916) 978-4419

<http://www.ca.blm.gov/>

#### **U.S. Department of Interior- National Park Service**

The following National Park Service web site specifically focuses on cultural resource preservation. The site includes links to tools for cultural resource preservation, different areas of cultural resource protection and different offices of the National Park Service that handle cultural preservation issues. Included among these offices is the American Indian Liaison Office, the web site of which contains a number of information resources that are potentially useful to local governments learning how to consult with Native American tribes on land use policy.

<http://www.cr.nps.gov>

#### **U.S. Department of Interior – Office of Collaborative Action and Dispute Resolution**

This web site provides links to federal agencies' policies on tribal consultation:

<http://mits.doi.gov/cadr/main/G2GAgencyPolicies.cfm>

### **Colleges and Universities**

#### **Humboldt State University**

##### **The Center for Indian Community Development (CICD)**

The CICD primarily focuses on Indian language education, but also acts in the capacity of a liaison between Native American tribes and the community. The CICD includes a cultural resource facility where information about Native American burial grounds and cultural resource monitoring can be found. The CICD offers useful publications on tribal governments and cultural approaches to environmental protection of Native American lands on its web site.

Humboldt State University  
Center for Indian Community Development  
#1 Harpst Street  
Arcata, CA 95521  
Phone: (707) 826-3711  
<http://www.humboldt.edu/~cicd/>

**University of California, Los Angeles  
American Indian Studies Center (AISC)**

The AISC has spent a number of years conducting research on issues affecting Native American Indian communities. The center has sponsored conferences on issues including California tribes, repatriation, federal recognition, and Indian gaming. The AISC offers a number of publications on issues ranging from Contemporary Native American Issues and Native American Politics to Native American Theater and Native American Literature.

UCLA American Indian Studies Center  
3220 Campbell Hall  
Los Angeles, CA 90095-1548  
Phone: (310) 825-7315  
Fax: (310) 206-7060  
<http://www.aisc.ucla.edu/>

**University of California, Los Angeles School of Law  
Native Nations Law and Policy Center (NNLPC)**

The mission of NNLPC at UCLA Law is to support Native nations throughout the United States, with a special focus on California tribes, in developing their systems of governance and in addressing critical public policy issues and to apply the resources of state-supported education together with tribal expertise to address contemporary educational needs for California Tribes. The Research and Publications division secures grants, carries out research, and sponsors conferences and roundtables drawing together scholars, tribal leaders, and federal/state policy-makers.

UCLA School of Law  
P.O. Box 951476  
Los Angeles, CA 90095-1476  
Phone: (310) 825-4841  
<http://www.law.ucla.edu/students/academicprograms/nativenations/nnlapc.htm>

**Private Organizations and Foundations**

**American Farmland Trust (AFT)**

Since its founding in 1980, the AFT has helped to achieve permanent protection for over a million acres of American farmland. The AFT focuses its strategies on protecting land through publicly funded agricultural conservation easement programs and encouraging conservation practices in community planning and growth management.

American Farmland Trust  
1200 18th Street NW  
Washington, D.C. 20036  
Phone: (202) 331-7300  
Fax: (202) 659-8339  
<http://www.farmland.org/>

**Inter-Tribal Council of California, Inc. (ITCC)**

The key role of the Inter-Tribal Council of California (ITCC) is to assist in bridging relationships between California tribal governments and other organizations, including local government agencies. The ITCC offers workshops on Native American cultural proficiency and tribal governments for the purpose of educating non-Native Americans on how to effectively communicate with tribal governments, in addition to other training and technical assistance. The ITCC is experienced in assisting the development of Memoranda of Understanding and Agreement, protocols, and educational outreach materials.

Inter-Tribal Council of California, Inc.  
2755 Cottage Way, Suite 14  
Sacramento, CA 95825  
Phone: (916) 973-9581  
Fax: (916) 973-0117

**Land Trust Alliance (LTA)**

The Land Trust Alliance promotes voluntary land conservation by offering training, conferences, literature, reports, and other information on land conservation. The LTA has several publications discussing conservation techniques. Their web site addresses different conservation options for landowners and includes questions and answers about conservation easements, land donation, and bargain sale of land.

Land Trust Alliance  
1331 H Street NW, Suite 400  
Washington D.C. 20005-4734  
Phone: (202) 638-4725  
Fax: (202) 638-4730  
<http://www.lta.org/consERVE/options.htm>

**Native American Land Conservancy**

The Native American Land Conservancy is a nonprofit corporation formed for the conservation and preservation of Native American sacred lands.

Native American Land Conservancy  
Kurt Russo, Executive Director  
PO Box 1829  
Indio, CA 92202  
Phone: (800) 6770-6252

**The Nature Conservancy (TNC)**

The Nature Conservancy is a non-profit organization that works with communities, businesses, and individuals to preserve lands with natural and cultural resources.

The Nature Conservancy  
4245 North Fairfax Drive, Suite 100  
Arlington, VA 22203-1606  
<http://nature.org/>

**Southern California Tribal Chairmen's Association (SCTCA)**

The Southern California Tribal Chairmen's Association (SCTCA) is a multi-service non-profit corporation established in 1972 for a consortium of 19 Federally recognized Indian tribes in Southern California. The Primary goals and objectives of SCTCA are the health, welfare, safety, education, culture, economic and employment opportunities for its tribal members. A board of directors comprised of tribal chairpersons from each of its member tribes governs SCTCA.

Southern California Tribal Chairmen's Association  
Denis Turner  
Executive Director  
Phone: (760) 742-8600 x100  
<http://www.sctca.net/>

**Trust for Public Land (TPL)**

The Trust for Public Land (TPL) is a national, nonprofit, land conservation organization that conserves land for people to enjoy as parks, community gardens, historic sites, rural lands, and other natural places, ensuring livable communities for generations to come. Since 1972, TPL has worked with willing landowners, community groups, and national, state, and local agencies to complete more than 2,700 land conservation projects in 46 states, protecting nearly 2 million acres.

Trust for Public Land National Office  
116 New Montgomery St., 4th Floor  
San Francisco, CA 94105  
Phone: (415) 495-4014  
Fax: (415) 495-4103  
<http://www.tpl.org>

**Exhibit A: Sample Request to the NAHC for Tribal Contact Information**

	<p style="text-align: center;"><b><u>LOCAL GOVERNMENT</u></b> <b><u>TRIBAL CONSULTATION LIST REQUEST</u></b> <b>NATIVE AMERICAN HERITAGE COMMISSION</b> 915 CAPITOL MALL, ROOM 364 SACRAMENTO, CA 95814 (916) 653-4082 (916) 657-5390 - Fax</p>	
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**Project Title:** \_\_\_\_\_

**Local Government/Lead Agency:** \_\_\_\_\_ **Contact Person:** \_\_\_\_\_

\_\_\_\_\_ **Phone:** \_\_\_\_\_

**Street Address:** \_\_\_\_\_ **Fax:** \_\_\_\_\_

**City:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Project Location:**

**County:** \_\_\_\_\_ **City/Community:** \_\_\_\_\_

**Local Action Type:**

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> General Plan                   | <input type="checkbox"/> General Plan Element    | <input type="checkbox"/> Specific Plan |
| <input type="checkbox"/> General Plan Amendment         | <input type="checkbox"/> Specific Plan Amendment |  |
| <input type="checkbox"/> Pre-planning Outreach Activity |  |  |

**Project Description:**

***NAHC Use Only***

Date Received: \_\_\_\_\_

Date Completed \_\_\_\_\_

Native American Tribal Consultation lists are only applicable for consulting with California Native American tribes per Government Code Section 65352.3.



## ATTACHMENT 2

Governor's Office of Planning and Research  
Technical Advisory AB 52 and Tribal Cultural Resources in CEQA  
June 2017





# **TECHNICAL ADVISORY**

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## AB 52 AND TRIBAL CULTURAL RESOURCES IN CEQA

June, 2017







**Technical Advisory:**  
**AB 52 and Tribal Cultural Resources in CEQA**  
**(June, 2017)**

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## I. Purpose

This technical advisory is one in a series of advisories provided by the Governor's Office of Planning and Research (OPR) as a service to professional planners, land use officials and California Environmental Quality Act (CEQA) practitioners. OPR creates and updates technical advisories as needed on current issues in environmental law and land use planning that broadly affect the practice of CEQA and land use planning in California.

The purpose of this technical advisory is to provide guidance to lead agencies regarding recent changes to CEQA requiring consultation with California Native American tribes and consideration of tribal cultural resources. It summarizes the reasons for the legislative changes, and explains the substantive and procedural requirements that go into effect on July 1, 2015. Finally, it summarizes relevant case law, and provides a list of additional resources.

## II. Legislative Intent

The legislature added the new requirements regarding tribal cultural resources in Assembly Bill 52 (Gatto, 2014). By including tribal cultural resources early in the CEQA process, the legislature intended to ensure that local and Tribal governments, public agencies, and project proponents would have information available, early in the project planning process, to identify and address potential adverse impacts to tribal cultural resources. By taking this proactive approach, the legislature also intended to reduce the potential for delay and conflict in the environmental review process. ((AB 52 § 1 (b)(7).)<sup>1</sup>

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<sup>1</sup> Assembly Bill 52 (Gatto, 2014). Section 1 of the bill states the legislature's intent as follows:

In recognition of California Native American tribal sovereignty and the unique relationship of California local governments and public agencies with California Native American tribal governments, and respecting the interests and roles of project proponents, it is the intent of the Legislature, in enacting this act, to accomplish all of the following:(1) Recognize that California Native American prehistoric, historic, archaeological, cultural, and sacred places are essential elements in tribal cultural traditions, heritages, and identities.(2) Establish a new category of resources in the California Environmental Quality Act called "tribal cultural resources" that considers the tribal cultural values in addition to the scientific and archaeological values when determining impacts and mitigation.(3) Establish examples of mitigation measures for tribal cultural resources that uphold the existing mitigation preference for historical and archaeological resources of preservation in place, if feasible.(4) Recognize that California Native American tribes may have expertise with regard to their tribal history and practices, which concern the tribal cultural resources with which they are traditionally and culturally affiliated. Because the California Environmental Quality Act calls for a sufficient degree of analysis, tribal knowledge about the land and tribal cultural resources at issue should be included in environmental assessments for projects that may have a significant impact on those resources.(5) In recognition of their governmental status, establish a meaningful consultation process between California Native American tribal governments and lead agencies, respecting the interests and roles of all California Native American tribes and project proponents, and the level of required confidentiality concerning tribal cultural resources, at the earliest possible point in the California Environmental Quality Act environmental review process, so that tribal cultural resources can be identified, and culturally appropriate mitigation and mitigation monitoring programs can be considered by the decision making body of the lead agency.(6) Recognize the unique history of California Native American tribes and uphold existing rights of all California Native American tribes to participate in, and contribute their knowledge to, the environmental review process pursuant to the California Environmental Quality Act (Division 13 (commencing with § 21000) of the Public Resources Code).(7) Ensure that local and tribal governments, public agencies, and project proponents have information available, early in the California Environmental Quality Act environmental review process, for purposes of identifying and addressing potential adverse impacts to tribal cultural resources and to reduce

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To accomplish those goals, the legislature added or amended the following sections in the Public Resources Code: 21073, 21074, 21080.3.1, 21080.3.2, 21082.3, 21083.09, 21084.2, and 5097.94. These changes are summarized in Section III.

### III. Summary of New Requirements for Consultation and Tribal Cultural Resources

The Public Resources Code now establishes that “[a] project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment.” (Pub. Resources Code, § 21084.2.)

To help determine whether a project may have such an effect, the Public Resources Code requires a lead agency to consult with any California Native American tribe that requests consultation and is traditionally and culturally affiliated with the geographic area of a proposed project. That consultation must take place prior to the release of a negative declaration, mitigated negative declaration, or environmental impact report for a project. (Pub. Resources Code, § 21080.3.1.)

If a lead agency determines that a project may cause a substantial adverse change to tribal cultural resources, the lead agency must consider measures to mitigate that impact. Public Resources Code §21084.3 (b)(2) provides examples of mitigation measures that lead agencies may consider to avoid or minimize impacts to tribal cultural resources.

Specific provisions of the new law are described in more detail below.

#### A. Definition of Tribal Cultural Resources

New section 21074 of the Public Resources Code defines “tribal cultural resources.” In brief, a resource is a “tribal cultural resource” if it is either:

- (1) Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a tribe that are listed, or determined to be eligible for listing, in the national or state register of historical resources, or listed in a local register of historic resources; or
- (2) a resource that the lead agency determines, in its discretion, is a tribal cultural resource.<sup>2</sup>

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the potential for delay and conflicts in the environmental review process.(8) Enable California Native American tribes to manage and accept conveyances of, and act as caretakers of, tribal cultural resources.(9) Establish that a substantial adverse change to a tribal cultural resource has a significant effect on the environment.

<sup>2</sup> Pub. Resources Code, § 21074

(a) “Tribal cultural resources” are either of the following:

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Technical Advisory: AB 52 and Tribal Cultural Resources in CEQA.

When a lead agency chooses to treat a resource as a tribal cultural resource, that determination shall be supported with substantial evidence,<sup>3</sup> applying the criteria in the historical register,<sup>4</sup> and considering the significance of the resource to a California Native American Tribe. (PRC § 5024.1, PRC § 21074). California Native American tribes traditionally and culturally affiliated with the geographic area of a project may have expertise concerning their tribal cultural resources. (PRC § 21080.3.1). Courts will defer to a lead agency's factual determination that a resource is a tribal cultural resource if that decision is supported by substantial evidence in the record.<sup>5</sup>

Evidence that may support such a finding could include, among other evidence, elder testimony, oral history, tribal government archival information, testimony of a qualified archaeologist certified by the relevant tribe, testimony of an expert certified by the Tribal Government, official tribal government declarations or resolutions, formal statements from a certified Tribal Historic Preservation Officer, and historical notes, such as those found in the Harrington Papers and other anthropological records<sup>6</sup>.

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(1) Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either of the following:

(A) Included or determined to be eligible for inclusion in the California Register of Historical Resources.

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

(2) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of §5024.1. In applying the criteria set forth in subdivision (c) of §5024.1 for the purposes of this paragraph, the lead agency shall consider the significance of the resource to a California Native American tribe.

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

(c) A historical resource described in §21084.1, a unique archaeological resource as defined in subdivision (g) of §21083.2, or a "nonunique archaeological resource" as defined in subdivision (h) of §21083.2 may also be a tribal cultural resource if it conforms with the criteria of subdivision (a).

<sup>3</sup> Public Resources Code § 21080 (e)(1) states "...substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact."

<sup>4</sup> Pub. Resources Code § 5024.1 (c): A resource may be listed as historical resources in the California Register if it meets any of the following National Register of Historic Places criteria:

(1) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage.

(2) Is associated with the lives of persons important in our past.

(3) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual or possesses high artistic values.

(4) Has yielded, or may be likely to yield, information important in prehistory or history.

<sup>5</sup> *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal. 4th 1086, 1117; *Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039, 1072.

<sup>6</sup> For example, the Harrington Papers are a collection of linguistic and cultural materials in the National Anthropological Archives housed in the Smithsonian National Museum of Natural History. The collection represents ethnological and linguistic fieldwork in California and with Native people.

Federal law also provides examples of potential sources of tribal knowledge. For example, the federal Native American Graves Repatriation Act recognizes the following types of evidence of cultural affiliation: geographical, kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical, or other relevant information or expert opinion. (43 C.F.R. § 10.14 (d).) Similarly, the Tenth Circuit discussed tribal knowledge in the *Pueblo of Sandia* case. Specifically, the court in *Pueblo of Sandia* observed that the affidavit of a tribal elder and religious leader which listed religious practices and alluded to sacred sites, minutes of a working group meeting that showed a site was used for ceremonial, religious, and medicinal purposes, and an anthropologists' report on a tribe's religious and cultural affiliation with a site that noted ceremonial paths and herbs uses, were all forms of evidence. (*Pueblo of Sandia v. United States* (1995) 50 F.3d 856.)

## B. Consultation

Public Resources Code § 21080.3.1(a) defines “consultation” with a cross-reference to Government Code § 65352.4, which applies when local governments consult with tribes on certain planning documents. That section states:

“consultation” means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural significance. (Gov. Code, § 65352.4.)

OPR's SB 18 *Tribal Consultation Guidelines* provide further explanation of what “consultation” means.<sup>7</sup> For example, the *Guidelines* explain that consultation “is a process in which both the

tribe and local government invest time and effort into seeking a mutually agreeable resolution for the purpose of preserving or mitigating impacts to a cultural place, where feasible.” (At p. 15.) It further states:

Effective consultation is an ongoing process, not a single event. The process should focus on identifying issues of concern to tribes pertinent to the cultural place(s) at issue – including cultural values, religious beliefs, traditional practices, and laws protecting California Native American cultural sites – and on defining the full range of acceptable ways in which a local government can accommodate tribal concerns. (At p. 16.)

The new provisions in the Public Resources Code enumerate topics that may be addressed during consultation. If the California Native American Tribe requests consultation regarding alternatives to the project, recommended mitigation measures, or significant effects, the consultation shall include those topics. (Pub. Resources Code, § 21080.3.2(a).)

## C. Timing in the CEQA Process and Consultation Steps

The new provisions in the Public Resources Code proscribe specific steps and timelines governing the notice and consultation process.

Those steps are summarized below and in the graphic entitled Compliance Timeline and Consultation Process Flowchart in Section V.

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<sup>7</sup> Since 2004, cities and counties have had to consult with California Native American Tribes before adoption or amendment of a general plan, specific plan or designation of open space. (Gov. Code, § 65352.4., “Senate Bill 18” (Burton, Chapter 905, Statutes of 2004).) The Tribal Consultation Guidelines explain those requirements in detail. The new requirements in the Public Resources Code do not change those ongoing responsibilities. In instances in which the requirements of both the Government Code and the Public Resources Code apply to a project, while there may be substantial overlap, the lead agency must ensure that it complies with the requirements of both statutes.



- 1) The Native American Heritage Commission will provide each tribe with a list of all public agencies that may be lead agencies under CEQA within the geographic area with which the tribe is traditionally and culturally affiliated, the contact information of those public agencies, and information on how the Tribe may request consultation. This list must be provided on or before July 1, 2016. (Pub. Resources Code, § 5097.94 (m).)
- 2) If a tribe wishes to be notified of projects within its traditionally and culturally affiliated area, the tribe must submit a written request to the relevant lead agency. (Pub. Resources Code, § 21080.3.1 (b).) The Native American Heritage Commission website includes a sample template for an AB 52 notice list request letter from a California Native American tribe to a lead agency.
- 3) Within 14 days of determining that a private project application is complete, or to undertake a public agency project, the lead agency must provide formal notification, in writing, to the tribes that have requested notification of proposed projects as described in step 2, above. The 14 day notification must include a description of the project, its location, and must state that the tribe has 30 days to request consultation. OPR's AB 52 website includes a sample template for an AB 52 notice letter from a lead agency to a California Native American tribe.
- 4) If it wishes to engage in consultation on the project, the tribe must respond to the lead agency within 30 days of receipt of the formal notification described in step 3, above. The tribe's response must designate a lead contact person. If the tribe does not designate a lead contact person, or designates multiple people, the lead agency shall defer to the individual listed on the contact list maintained by the Native American Heritage Commission. The NAHC website includes a sample template for an AB 52 response letter from a California Native American tribe to a lead agency and other implementation resources for tribal governments and lead agencies.
- 5) The lead agency must *begin* the consultation process with the tribes that have requested consultation within 30 days of receiving the request for consultation.
- 6) Consultation concludes when either: 1) the parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource, or 2) a party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code, § 21080.3.2 (b)(1) & (2).) Note that consultation can also be ongoing throughout the CEQA process.

#### D. Confidentiality

Under existing law, environmental documents must not include information about the location of an archeological site or sacred lands or any other information that is exempt from public disclosure pursuant to the Public Records Act. (Cal. Code Regs. § 15120(d); *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 220).<sup>8</sup> Native American graves,

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<sup>8</sup> In *Clover Valley*, the trial court denied petitions for writ of mandate challenging a city's approval of a subdivision project. Revisions to the project included transferring prehistoric Native American artifacts for preservation. The city prepared a recirculated draft environmental impact report to analyze the revised project. The locations and specific characteristics of the cultural resources were not described. The city provided additional information briefly describing the characteristics of the cultural resources, the project's effects on them, and

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cemeteries, and sacred places and records of Native American places, features, and objects are also exempt from disclosure. (Pub. Resources Code, §§ 5097.9, 5097.993.) This exclusion reflects California's strong policy in favor of protecting Native American artifacts. Confidential cultural resource inventories or reports generated for environmental documents should be maintained by the lead agency under separate cover and shall not be available to the public. (*Clover Valley* at 221, citing Governor's Office of Planning and Research, Cal. Tribal Consultation Guidelines, (Nov. 14, 2005 supp. p. 27).)

The new provisions in the Public Resources Code include additional rules governing confidentiality during tribal consultation. (Pub. Resources Code, §21082.3(c).)

First, information submitted by a California Native American tribe during the environmental review process may not be included in the environmental document or disclosed to the public without the prior written consent of the tribe. Consistent with current practice, confidential information may be included in a confidential appendix. A lead agency may exchange information confidentially with other public agencies that have jurisdiction over the environmental document. (Pub. Resources Code, § 21082.3(c)(1).) This confidentiality protection extends to a tribe's comment letter on an environmental document. A lead agency can summarize tribal comment letters in a general way, while still maintaining confidentiality consistent with the holding in *Clover Valley Foundation v. City of Rocklin* (2011) 197Cal.App.4th 200.

Second, an exception to the general rule prohibiting disclosure is that the lead agency and the tribe may agree to share confidential information regarding tribal cultural resources with the project applicant and its agents. In that case, the project applicant is responsible for keeping the information confidential, unless the tribe consents to disclosure in writing, in order to prevent looting, vandalism, or damage to the cultural resource. The project applicant must use a reasonable degree of care to protect the information. Additionally, information that is already publically available, developed by the project applicant, or lawfully obtained from a third party that is not the tribe, lead agency, or another public agency may be disclosed during the environmental review process. (Pub. Resources Code, § 21082.3(c)(2).)

Third, the new law does not affect any existing cultural resource or confidentiality protections. (Pub. Resources Code, § 21082.3(c)(3).)

Fourth and finally, the lead agency or another public agency may describe the information in general terms in the environmental document. This is so that the public is informed about the basis of the decision, while confidentiality is maintained. (Pub. Resources Code, § 21082.3(c)(4).) The decision in *Clover Valley* provides a useful description of how a lead agency may balance the need for confidentiality with disclosure obligations under CEQA.

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planned mitigation measures. The Court of Appeal affirmed the trial court's ruling, holding that the changes were not significant in light of disclosure restrictions pertaining to cultural resources. (Gov. Code, § 6254(r); Pub. Resources Code, §§ 5097.9, 5097.993; Cal. Code Regs., (d)).

## E. Mitigation

Public agencies shall, when feasible, avoid damaging effects to any Tribal cultural resource. (Pub. Resources Code, §21084.3 (a).)

Culturally appropriate mitigation for a Tribal cultural resource is different than mitigating impacts to archeological resources and appropriate mitigation measures should be identified through consultation with the tribal government. If the lead agency determines that a project may cause a substantial adverse change to a tribal cultural resource, and measures are not otherwise identified in the consultation process, new provisions in the Public Resources Code describe mitigation measures that, if determined by the lead agency to be feasible, may avoid or minimize the significant adverse impacts. (Pub. Resources Code, § 21084.3 (b).) Examples include:

- (1) Avoidance and preservation of the resources in place, including, but not limited to, planning and construction to avoid the resources and protect the cultural and natural context, or planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
- (2) Treating the resource with culturally appropriate dignity taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
  - (A) Protecting the cultural character and integrity of the resource
  - (B) Protecting the traditional use of the resource
  - (C) Protecting the confidentiality of the resource
- (3) Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places
- (4) Protecting the resource (*Ibid.*)

## IV. Updating Appendix G

The statute directs OPR to develop, and the California Natural Resources Agency to adopt, proposed updates to the sample initial study checklist in Appendix G of the CEQA Guidelines to do both of the following: (a) separate the consideration of paleontological resources from tribal cultural resources and update the relevant sample questions, and (b) add consideration of tribal cultural resources with relevant sample questions.

As noted above, the substantive and procedural requirements added in AB 52 went into effect on July 1, 2015. Because the environmental checklist in Appendix G is a *sample* checklist and not mandatory, lead agencies need not wait for the Appendix G update before updating their own procedures.

In January 2016, OPR transmitted a draft update to Appendix G of the CEQA Guidelines related to tribal cultural resources to the California Natural Resources Agency. On June 3, 2016 the agency

released a revised proposal to include tribal cultural resources in Appendix G. Up to date information can be found here: <http://resources.ca.gov/ceqa/>.

On September 27, 2016 the Office of Administrative Law endorsed/approved the suggested changes. Appendix G now contains a statement in the Environmental Checklist Form at the beginning of Appendix G regarding notice and consultation between lead agencies and California Native American Tribes. Appendix G also has a new section called Tribal Cultural Resources, which asks two questions related to the presence of tribal cultural resources. One question asks whether there is a potential adverse change in the significance of a listed tribal cultural resource, and the other asks whether there is a substantial adverse change in the significance of a resource determined by a lead agency to be a tribal cultural resource. In making the second determination, a lead agency must use its discretion while supporting the decision with substantial evidence, applying the criteria of the historic register, and taking into account the significance of the resource to a California Native American Tribe. Consultation with California Native American Tribes is a key way to obtain the information necessary to understand the significance of the resource.

Appendix G contains the following prompt for lead agencies to consider whether the substantive and procedural requirements for consultation with tribal governments have been followed in accordance with the changes to CEQA made by AB 52.

11. Have California Native American tribes traditionally and culturally affiliated with the project area requested consultation pursuant to Public Resources Code section 21080.3.1? If so, has consultation begun?

Note: Conducting consultation early in the CEQA process allows tribal governments, lead agencies, and project proponents to discuss the level of environmental review, identify and address potential adverse impacts to tribal cultural resources, and reduce the potential for delay and conflict in the environmental review process. (See Public Resources Code section 21083.3.2.) Information may also be available from the California Native American Heritage Commission's Sacred Lands File per Public Resources Code section 5097.96 and the California Historical Resources Information System administered by the California Office of Historic Preservation. Please also note that Public Resources Code section 21082.3(c) contains provisions specific to confidentiality.

Appendix G of the CEQA Guidelines now contains the following questions:

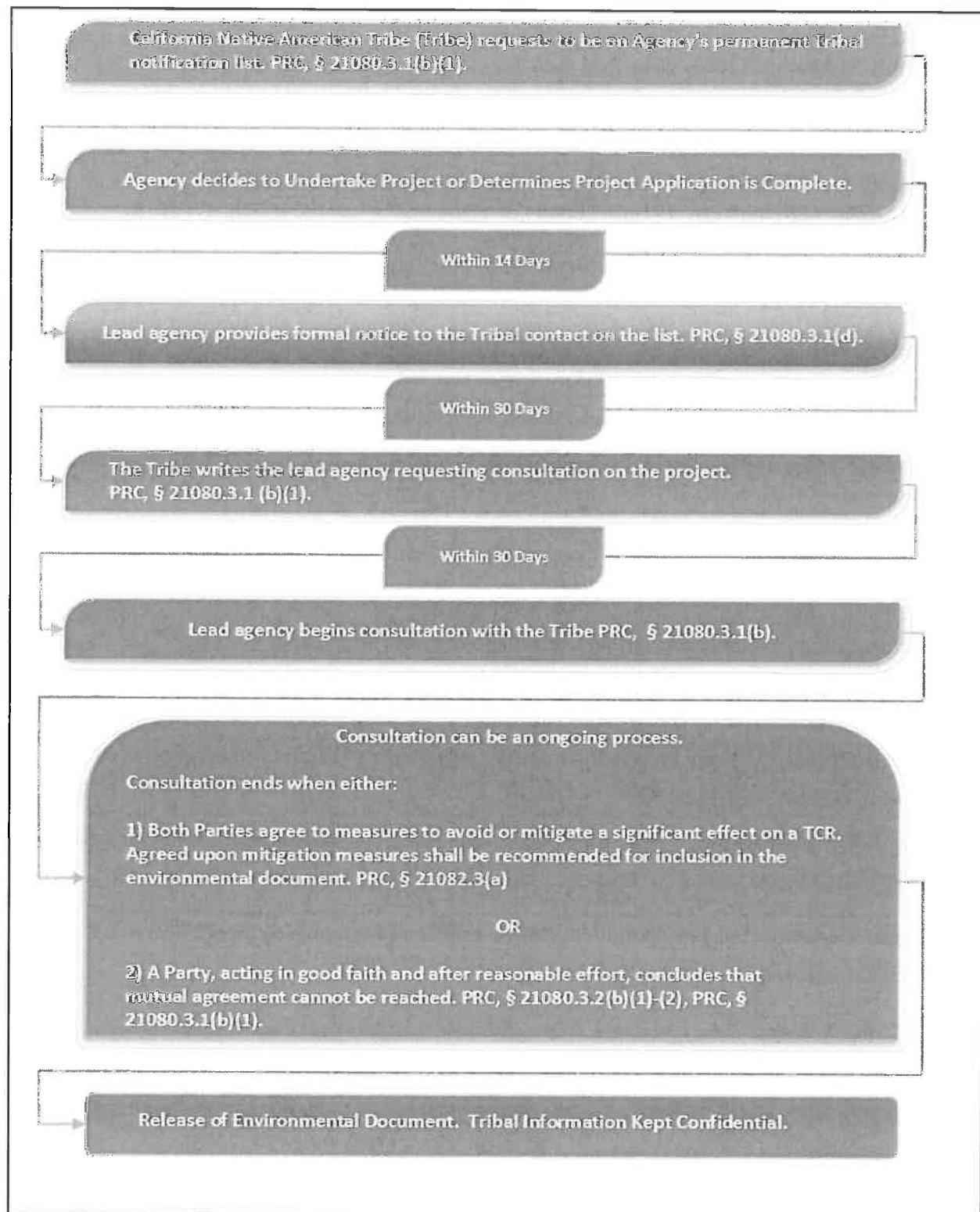
## XVII. TRIBAL CULTURAL RESOURCES

a) Would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:

- i) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k), or
- ii) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources

Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

## V. Compliance Timeline and Consultation Process Flowchart



## VI. Bibliography of Resources

### A. California Government Resources

Assembly Bill No. 52 (2013- 2014 Reg. Sess.)

<[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140AB52](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB52)> (as of Feb. 17, 2015).

Senate Bill No. 18 (2003-2004 Reg. Sess.) <[http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb\\_0001-0050/sb\\_18\\_bill\\_20040930\\_chaptered.html](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0001-0050/sb_18_bill_20040930_chaptered.html)> (as of Feb. 17, 2015).

Governor's Exec. Order No. B-10-11 (Sept. 19, 2011) <<http://gov.ca.gov/news.php?id=17223>> (as of Feb. 17, 2015).

Governor's Office of Planning and Research, Tribal Consultation Guidelines: Supplement to General Plan Guidelines (Nov. 14, 2005)

<[http://www.opr.ca.gov/docs/011414\\_Updated\\_Guidelines\\_922.pdf](http://www.opr.ca.gov/docs/011414_Updated_Guidelines_922.pdf)> (as of Feb. 17, 2015).

Governor's Office of Planning and Research Tribal Cultural Resources and CEQA website and Implementation Resources (2016) <[https://www.opr.ca.gov/s\\_ab52.php](https://www.opr.ca.gov/s_ab52.php)> (as of Jul. 14, 2016).

California Native American Heritage Commission Web Site and Implementation Resources (2015) <<http://www.nahc.ca.gov>> (as of Jul. 14, 2016).

California Energy Commission, Tribal Consultation Policy (Nov. 2014)

<[http://www.energy.ca.gov/Tribal/documents/2014-11-12\\_Draft\\_Tribal\\_Consultation\\_Policy.pdf](http://www.energy.ca.gov/Tribal/documents/2014-11-12_Draft_Tribal_Consultation_Policy.pdf)> (as of Feb. 17, 2015).

California Office of Historic Preservation, California Office of Historic Preservation Web Site (2015) <[www.ohp.parks.ca.gov](http://www.ohp.parks.ca.gov)> (as of Feb. 17, 2015).

California Office of Historic Preservation, California Historical Resources Information System (2015) <[http://ohp.parks.ca.gov/?page\\_id=1068](http://ohp.parks.ca.gov/?page_id=1068)> (as of Feb. 17, 2015).

California Department of Transportation, Native American Liaison Web Site (2007)

<<http://dot.ca.gov/hq/tpp/offices/ocp/nalb/>> (as of Feb. 17, 2015).

### B. Federal Government Resources

Executive Order 13175, 65 Federal Register 67249 (Nov. 9, 2009) regarding Consultation and Coordination with Indian Tribal Governments <<http://www.whitehouse.gov/the-press-office/memorandum-Tribal-consultation-signed-president>> (as of Feb. 17, 2015).

Executive Order 13007, 61 Federal Register 26771 (May 24, 1996), regarding Tribal Sacred Sites <<http://www.achp.gov/EO13007.html>> (as of Feb. 17, 2015).

U.S. Department of the Interior, National Parks Service, Guidelines for Evaluating and Registering Archeological Properties (2000) (“Bulletin 36”) <http://www.nps.gov/nr/publications/bulletins/pdfs/nrb36.pdf> (as of Feb. 17, 2015).

U.S. Department of the Interior, National Parks Service, Guidelines for Evaluating and Documenting Traditional Cultural Properties (1990, revised 1998) (“Bulletin 38”) <http://www.nps.gov/nr/publications/bulletins/pdfs/nrb38.pdf> (as of Feb. 17, 2015).

Advisory Council on Historic Preservation, Working With §106 Web Site (Feb. 13, 2015) <http://www.achp.gov/work106.html> (as of Feb. 17, 2015).

### C. Selected California Cases

*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal. 4th 1086, 1117 [holding that an agency’s factual determination of whether unusual circumstances exist is reviewed under the substantial evidence standard, and favorably citing the holding in *Valley Advocates*].

*Citizens for the Restoration of L Street v. City of Fresno* (2014) 229 Cal.App.4th 340 [holding that the fair argument standard does not apply to a lead agency’s discretionary determination of whether a non-listed building or district is an historical resource for purposes of CEQA]

*Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48 [holding that the phrase “preservation in place is the ‘preferred manner’ of mitigating impacts to archaeological sites” means that feasible preservation in place must be adopted to mitigate impacts to historical resources of an archaeological nature unless the lead agency determines that another form of mitigation is available and provides superior mitigation of impacts. Preservation in place maintains the relationship between artifacts and the archaeological context. Preservation may also avoid conflict with religious or cultural values of groups associated with the site. (Cal. Code Regs. § 15126.4(b)(3)(A)). Overruled in part on other grounds.]

*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200 [holding that CEQA does not require a lead agency to disclose confidential information regarding the location and nature of cultural resources sites and that a lead agency need only provide a general description of those resources and mitigation measures in an EIR.]

*Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039 [holding that the substantial evidence standard of review applies to an agency’s determination of whether a building that is not listed, or eligible for listing, in a historic register qualifies as an historical resource, and further holding that once a lead agency determines the resource to be an historical resource, the fair argument standard applies to the question of whether the proposed project may cause a substantial adverse change in the significance of that historical resource].



## D. Selected Federal Cases

*Pueblo of Sandia v. United States* (1995) 50 F.3d 856 [Federal case regarding traditional cultural properties under the National Historic Preservation Act and the National Environmental Policy Act, including an example of a reasonable and good faith effort at consultation between a lead agency and a tribe. This case includes a discussion on cumulative impact analysis and a reasonable range of alternatives analysis under NEPA and Section 106 of the NHPA. This case recognizes as evidence the affidavit of a tribal elder and religious leader.]

*Muckleshoot Indian Tribe v. United States Forest Service* (1999) 177 F. 3d 800 [Federal case regarding traditional cultural properties under the National Historic Preservation Act and the National Environmental Policy Act, including a discussion of how adequate mitigation for a tribally significant historic property may be different than mitigation for an historic resource. This case includes examples of tribal evidence



## ATTACHMENT 3

Native American Heritage Commission State Laws and Code  
June 17, 2019



# Native American Heritage Commission

## State Laws and Codes

### State Preservation Laws

#### *Administrative Code, Title 14, Section 4307*

No person shall remove, injure, deface or destroy any object of paleontological, archaeological, or historical interest or value.

#### *CCR Section 1427*

Recognizes that California's archaeological resources are endangered by urban development and population growth and by natural forces. The Legislature further finds and declares that these resources need to be preserved in order to illuminate and increase public knowledge concerning the historic and prehistoric past of California. Every person, not the owner thereof, who willfully injures, disfigures, defaces, or destroys any object or thing of archaeological or historical interest or value, whether situated on private lands or within any public park or place, is guilty of a misdemeanor. It is a misdemeanor to alter any archaeological evidence found in any cave, or to remove any materials from a cave.

#### *Senate Concurrent Resolution Number 43*

Requires all state agencies to cooperate with programs of archaeological survey and excavation, and to preserve known archaeological resources whenever this is reasonable.

#### *Senate Concurrent Resolution Number 87 – Resolution Chapter 104, filed with Secretary of State September 1, 1978*

Provides for the identification and protection of traditional Native American resource gathering sites on State land.

### Government Codes

#### *§ 6254 (r): California Public Records Act Exemption from Disclosure*

Exempts from disclosure public records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

#### *§ 65092: Public notice to California Native American Indian Tribes*

Includes California Native American tribe that is on the contact list maintained by the Native American Heritage Commission in the definition of "person" to whom notice of public hearings shall be sent by local governments.

#### *§ 65351: Native American Involvement in General Plan Proposals*

Requires local planning agencies to provide opportunities for involvement of California Native American tribes on the contact list maintained by the Native American Heritage Commission, and others, in the preparation or amendment of the general plan

#### *§ 65352: Referral of Action on General Plan Changes to Native Americans*

Requires local planning agencies to refer proposed actions of general plan adoption or amendment to California Native American tribes on the contact list maintained by the Native American Heritage Commission, and others, with a 45 day opportunity for comments.

#### *§ 65352.3- 65352.4: Consultation with Native Americans on General Plan Proposals*

Requires local governments to conduct meaningful consultation with California Native American tribes on the contact list maintained by the Native American Heritage Commission prior to the adoption or amendment of a city or county general plan for the purpose of protecting cultural places on lands affected by the proposal.

**§ 65560, 65562.5: Consultation with Native Americans on Open Space**

Includes protection of Native American cultural places as an acceptable designation of open space. Requires local governments to conduct meaningful consultation with California Native American tribes on the contact list maintained by the Native American Heritage Commission for the purpose of protecting cultural places located within open space.

**§ 12600-12612: Attorney General- Environmental Action**

Permits the attorney general to intervene in any judicial or administrative proceeding concerning pollution or adverse effects on the environment. Authorizes the attorney general to maintain an action for equitable relief in the name of the people of the state against any person for the protection of the natural resources of the state from pollution, impairment or destruction. Includes historic sites in the definition of natural resources. Authorizes the court to hold the defendant accountable for the protection of natural resources of the state from pollution, impairment or destruction.

**§ 25373, 37361: City/County Protection of Historic Resources**

Allows city and county legislative bodies to acquire property for the preservation or development of an historic landmark. Allows local legislative bodies to enact ordinances to provide special conditions or regulations for the protection or enhancement of places or objects of special historical or aesthetic interest or value.

**§ 50280-50290: Mills Act (Historical Property Contracts)**

Allows the negotiation of contracts between a private owner of a "qualified historical property" and provides additional guidelines for such contracts.

**Public Resources Code**

**§ 5020.5: State Historical Resources Commission**

Directs the State Historical Resources Commission to develop criteria and methods for determining the significance of archeological sites, for selecting the most significant sites, and for determining whether the most significant sites should be preserved intact or excavated and interpreted. Directs the commission to develop guidelines for the reasonable and feasible collection, storage, and display of archeological specimens.

**§ 5020.7: Public promotion of historical resource protection**

Directs public agencies to encourage owners of both identified and unidentified historical resources to perceive historical resources as assets and to elicit the support of owners and of the general public for the preservation of historic resources.

**§ 5024: State-owned historical resources**

Directs all state agencies to preserve and maintain all state-owned historical resources with the assistance of the State Historic Preservation Officer.

**§ 5024.1: California Register of Historical Resources**

Establishes the California Register of Historical Resources, duties of the committee overseeing the administration of the register, and criteria for inclusion of resources on the Register.

**§ 5079.10-5079.15: California Heritage Fund**

Establishes the California Heritage Fund in the State Treasury for implementation of laws providing for historical resource preservation.

**§ 5079.20-5079.28: State acquisition of property to preserve historical resources**

Defines methods by which the State Public Works Board may acquire property, on behalf of the (Treasury), for the purpose of meeting the policies and objectives of the California Register to protect and/or provide public access to cultural or historical resources.

**§ 5079.40-5079.44: Grants for historical resource preservation**

Directs the (Treasury) to provide competitive grants to public agencies and non-profit organizations for historical resource preservation projects, not to exceed \$1,000,000 or 50% of project costs.

*§ 5097.1-5097.6: Parks and Recreation Code and Sites*

Requires state agencies proposing any major public works project on state lands to have plans reviewed by the Department of Parks and Recreation. Authorizes the Department of Parks and Recreation to conduct archeological site surveys for historical features on land affected by projects. Authorizes the state agencies to undertake surveys, excavation, or other operations on the state lands, or request such activities be done on their behalf by the Department of Parks and Recreation. Prohibits any archeological program from delaying state construction projects. Prohibits the removal, destruction, or defacement of any archeological or historical feature situated on public lands, except with the express permission of the public agency having jurisdiction over the lands.

*§ 5097.9: Non-interference with Native American religious expression*

Establishes that public agencies, or private entities using, occupying or operating on public property under public permit, shall not interfere with free expression or exercise of Native American religion and shall not cause severe or irreparable damage to Native American sacred sites, except under special determined circumstances of public interest and necessity.

*§ 5097.91-5097.94: Native American Heritage Commission (NAHC)*

Creates the nine-member Native American Heritage Commission appointed by the governor and directs that at least five members shall be elders, traditional people, or spiritual leaders of California Native American tribes. Directs the commission to identify and catalog places of special religious or social significance to Native Americans, and known graves and cemeteries of Native Americans on private lands, and to perform other duties regarding the preservation and accessibility of sacred sites and burials and the disposition of Native American human remains and burial items.

*§ 5097.95: State and local agency cooperation with the NAHC*

Directs all state and local agencies to cooperate with the Native American Heritage Commission in transmitting to the commission copies of appropriate sections of all CEQA environmental impact reports related to property identified by the commission as of special religious significance to Native Americans, or which is reasonably foreseeable as such property.

*§ 5097.96: The NAHC inventory of Native American sacred places*

Authorizes the Native American Heritage Commission to prepare an inventory of sacred places located on public lands and to review the administrative and statutory protections accorded to such places. Directs the commission to submit a report to the Legislature recommending actions, as the commission deems necessary, to preserve such sacred places and to protect the free exercise of Native American religions.

*§ 5097.97: NAHC investigations*

Enables the Native American Heritage Commission to investigate the effect of proposed actions by a public agency if such action may cause severe or irreparable damage to a Native American sacred site located on public property or may bar appropriate access thereto by Native Americans. Authorizes the commission to recommend mitigation measures for consideration by the agency if the commission finds, after a public hearing, that the proposed action would result in such damage or interference. Allows the commission to ask the attorney general to take appropriate action if the agency fails to accept the mitigation measures.

*§ 5097.98: NAHC identifying most likely descendant*

Requires the Native American Heritage Commission, upon notification by a county coroner, to notify the most likely descendants regarding the discovery of Native American human remains. Enables the descendants, within 48 hours of notification by the commission, to inspect the site of the discovery of Native American human remains and to recommend to the landowner or the person responsible for the excavation work means for treating or disposition, with appropriate dignity, the human remains and any associated grave goods. Requires the owner of the land upon which Native American human remains were discovered, in the event that no descendant is identified, or the descendant fails to make a recommendation for disposition, or the land owner rejects the recommendation of the descendant, to reinter the remains and burial items with appropriate dignity on the property in a location not subject to further disturbance.

*§ 5097.99: Prohibition of possession of Native American artifacts and remains*

Prohibits acquisition or possession of Native American artifacts or human remains taken from a Native American grave or cairn after January 1, 1984, except in accordance with an agreement reached with the Native American

Heritage Commission.

*§ 5097.991: Repatriation of Native American remains*

States that the policy of the state is that Native American remains and associated grave artifacts shall be repatriated.

*§ 5097.993-5097.994: Native American Historic Resource Protection Act*

Establishes as a misdemeanor, punishable by up to a \$10,000 fine or both fine and imprisonment, the unlawful and malicious excavation, removal or destruction of Native American archeological or historic sites on public lands or on private lands. Exempts certain legal acts by landowners. Limits a civil penalty to \$50,000 per violation.

*§ 21083.2: California Environmental Quality Act-Archeological Resources*

Directs the lead agency on any project undertaken, assisted, or permitted by the state to include in its environmental impact report for the project a determination of the project's effect on unique archeological resources. Defines unique archeological resource. Enables a lead agency to require an applicant to make reasonable effort to preserve or mitigate impacts to any affected unique archeological resource. Sets requirements for the applicant to provide payment to cover costs of mitigation. Restricts excavation as a mitigation measure.

*§ 21084.1: California Environmental Quality Act- Historic Resources*

Establishes that adverse effects on an historical resource qualifies as a significant effect on the environment. Defines historical resource. 6254 (r): California Public Records Act Exemption from Disclosure Exempts from disclosure public records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

*§ 65092: Public notice to California Native American Indian Tribes*

Includes California Native American tribe that is on the contact list maintained by the Native American Heritage Commission in the definition of "person" to whom notice of public hearings shall be sent by local governments.

*§ 65351: Native American Involvement in General Plan Proposals*

Requires local planning agencies to provide opportunities for involvement of California Native American tribes on the contact list maintained by the Native American Heritage Commission, and others, in the preparation or amendment of the general plan

*§ 65352: Referral of Action on General Plan Changes to Native Americans*

Requires local planning agencies to refer proposed actions of general plan adoption or amendment to California Native American tribes on the contact list maintained by the Native American Heritage Commission, and others, with a 45 day opportunity for comments.

*§ 65352.3- 65352.4: Consultation with Native Americans on General Plan Proposals*

Requires local governments to conduct meaningful consultation with California Native American tribes on the contact list maintained by the Native American Heritage Commission prior to the adoption or amendment of a city or county general plan for the purpose of protecting cultural places on lands affected by the proposal.

*§ 65560, 65562.5: Consultation with Native Americans on Open Space*

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*§ 12600-12612: Attorney General- Environmental Action*

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**Penal Code**



**§ 622 \_: Destruction of Sites**

Establishes as a misdemeanor the willful injury, disfiguration, defacement, or destruction of any object or thing of archeological or historical interest or value, whether situated on private or public lands.

**§ 623: Destruction of Caves**

(a)(2) Establishes as a misdemeanor the disturbing or alteration of any archeological evidence in any cave without the written permission of the owner of the cave, punishable by up to one year in the county jail or a fine not to exceed \$1,000, or both.

**California Health and Safety Code****7050.5 Disturbance of human remains**

Establishes intentional disturbance, mutilation or removal of interred human remains as a misdemeanor. Requires that further excavation or disturbance of land, upon discovery of human remains outside of a dedicated cemetery, cease until a county coroner makes a report. Requires a county coroner to contact the Native American Heritage Commission within 24 hours if the coroner determines that the remains are not subject to his or her authority and if the coroner recognizes the remains to be those of a Native American.

**7051 Removal of human remains**

Establishes removal of human remains from internment, or from a place of storage while awaiting internment or cremation, with the intent to sell them or to dissect them with malice or wantonness as a public offense punishable by imprisonment in a state prison.

**7052: Felony offenses related to human remains**

States that willing mutilation of, disinternment of, removal from a place of disinternment of, and sexual penetration of or sexual contact with any remains known to be human are felony offenses.

**7054 Depositing human remains outside of cemetery**

Exempts reburial of Native American remains pursuant to Section 5097.94 from definition of a misdemeanor.

**8010-8011: California Native American Graves Protection and Repatriation Act**

Establishes a state repatriation policy intent that is consistent with and facilitates implementation of the federal Native American Graves Protection and Repatriation Act. Strives to ensure that all California Indian human remains and cultural items are treated with dignity and respect. Encourages voluntary disclosure and return of remains and cultural items by publicly funded agencies and museums in California. States an intent for the state to provide mechanisms for aiding California Indian tribes, including non-federally recognized tribes, in filing repatriation claims and getting responses to those claims.

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## ATTACHMENT 4

Cultural Resources Section excerpt from County of Santa Barbara  
Environmental Thresholds and Guidelines Manual  
adopted on August 19, 2008 by Goleta Council as Resolution No. 08-04



**County of Santa Barbara**

**Environmental Thresholds and Guidelines Manual**

*Published May 1992*

*Revised January 1995, October 2001 and October 2002*

**Planning and Development Department**

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## 8. CULTURAL RESOURCES GUIDELINES<sup>1</sup> ARCHAEOLOGICAL, HISTORICAL, AND ETHNIC ELEMENTS

### Introduction

This document discusses in general the cultural resource review process used by DER. A technical document, Regulations Governing Cultural Resource Projects Undertaken in Conformance with Federal and State Environmental Protection Acts, provides procedures for cultural resource consultants to follow in preparing their investigations. These Regulations are available at DER.

#### A. Phase 1: Literature Search and Preliminary Assessment

As part of the environmental review process, DER reviews archaeological site maps to determine if a recorded cultural resource is located within the project site or whether there is a high potential for its presence onsite based on recorded site distribution patterns or historical accounts. If this determination is positive and the project site is not developed, a Phase I archaeological investigation including a systematic inspection of the ground surface is carried out by DER staff or a County approved professional archaeologist (depending on the size of the parcel) and sub-surface testing to define the presence of archaeological artifacts or site boundaries when vegetation obscures ground visibility. If historical remains are suspected, a professional historian will be retained to evaluate more fully the resource. The Phase I investigation and report will follow the specifications defined in the Cultural Resource Regulations defined above.

#### B. Phase 2: Cultural Resource Significance Determination

If an archaeological or historical site is observed, DER will work with the applicant to modify project plan descriptions such that direct impacts on cultural resources are avoided. Avoiding damage may be accomplished by many approaches, including the following:

1. Planning construction to miss cultural resource sites;
2. Planning parks, greenspace or other open space to incorporate archaeological or historical sites;
3. "Capping" or covering prehistoric or historic archaeological sites with a layer of fill soil before building tennis courts, parking lots, or similar facilities. Capping may be used in the following cases:
  - a. The soils to be covered will not suffer serious compaction.

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<sup>1</sup> Santa Barbara County Department of Resource Management, Division of Environmental Review, 1989.

- b. The covering materials are not chemically active.
- c. The site is one in which the natural processes of deterioration have been effectively arrested; and
- d. The site has been recorded.

Although the placement of fill on top of an archaeological site may reduce direct impacts of construction, indirect impacts will possibly result from the loss of access to the site for research purposes and scarification and compaction of soils. To mitigate this impact, a sample of the cultural resource shall be excavated and appropriately curated for research purposes.

4. Deeding archaeological or historical sites into permanent conservation easements.

If the above avoidance measures cannot be used, a Phase 2 excavation program is funded by the applicant and performed by a County approved archaeologist and/or historian if necessary to determine if the cultural resource is "important" as defined in Appendix K of CEQA. If the project would cause damage to an important cultural resource, the project is considered to have a significant effect on the environment. For the purposes of CEQA, an "important archaeological resource" can be defined by one of several criteria listed below. Such a resource may have the following characteristics:

- a. Is associated with an event or person of:
  - 1. Recognized significance in California or American history; or
  - 2. Recognized scientific importance in prehistory.
- b. Can provide information which is of both demonstrable public interest and useful in addressing scientifically consequential and reasonable or archaeological research questions,
- c. Has a special or particular quality such as oldest, best example, largest, or last surviving example of its kind.
- d. Is at least 100 years old and possesses substantial stratigraphic integrity; or
- e. Involves important research questions that historical research has shown can be answered only with archaeological methods.

The Archaeological Element of the County Guidelines provides a variety of relevant research questions for use in addressing significance criterion 4.e.

The Phase 2 investigation and report must follow the specifications defined in the Cultural Resource Guidelines defined above. The report must include significance assessments and propose ways to avoid impacting the important



resource. The report shall also include a suggested excavation plan for mitigating the effect of the project on the qualities which make the resource important if avoidance is considered infeasible.

The excavation plan shall include the following:

- a. A brief summary of the excavation proposed as part of a mitigation plan.
- b. Be available for review only on a need-to-know basis;
- c. Shall not include the specific location of any archaeological resources if the plan would be made known to the general public.

An excavation plan shall also mention the following:

1. List and briefly discuss the important information the archaeological or historical resources contain or are likely to contain;
2. Explain how the information should be recovered to be useful in addressing scientifically valid research questions and other concerns identified in subdivision (a);
3. Explain the estimated cost of time required to complete all activities undertaken under the plan.

A list of significance criteria for evaluation of historical resources is found in the Historic Element of the County Guidelines and is summarized below. Any structure 50 years or older is considered potentially significant and shall be subjected to the following criteria:

A significant resource a) possesses integrity of location, design, workmanship, material, and/or setting; b) is at least fifty years old<sup>2</sup>; and c) demonstrates one or more of the following:

- 1) Is associated with an event, movement, organization, or person that/who has made an important contribution to the community<sup>3</sup>, state, or nation;
- 2) Was designed or built by an architect, engineer, builder, artists, or other designer who has made an important contribution to the community, state, or nation;
- 3) Is associated with a particular architectural style or building type important to the community, state, or nation;
- 4) Embodies elements demonstrating a) outstanding attention to design, detail, craftsmanship, or b) outstanding use of a particular structural material, surface material, or method of construction or technology;

---

<sup>2</sup> A historic resource less than fifty years old may be considered significant if it is unique or possesses extraordinary elements of integrity, design, construction, or association.

<sup>3</sup> Community is defined as a neighborhood, town, city or district.

- 5) Is associated with a traditional way of life important to an ethnic, national, racial, or social group, or to the community-at-large;
- 6) Illustrates broad patterns of cultural, social, political, economic, or industrial history;
- 7) Is a feature<sup>4</sup> or a cluster of features which convey a sense of time and place that is important to the community, state, or nation;
- 8) Is able to yield information important to the community or is relevant to the scholarly study of history, historical archaeology, ethnography, folklore, or cultural geography.

The level of significance for these criteria are established by rating each significance attribute of the resource (detailed below) according to the following scale:

E = exceptional  
 3 = high; very good  
 2 = good  
 1 = little

A rating of E for any significance attribute marks a resource as possessing extraordinary or exceptional importance and indicates that it should receive special consideration in the planning process regardless of the numeric rating for other significance attributes. For instance, a resource may be of extreme antiquity,

And therefore be rated E in the aspect of age, but achieve an average numeric rating of, say, 1.7 in all other attributes of significance.

The following guidelines shall govern the assignment of significance level ratings for each aspect:

- a. Integrity  
 E = pristine integrity in all 5 categories  
 3 = good integrity in at least 3 categories  
 2 = good integrity in at least 1 category  
 1 = fair to poor integrity in all categories

Integrity means that the resource retains the essential qualities of its historic character. These guidelines recognize five components of integrity: location, design, setting, materials, and workmanship.

Integrity of location means that the resource remains at its original location.

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<sup>4</sup> A feature may be defined as a structure, building, structural element, object, tree, garden, etc.

Integrity of design, strictly applied, means that the resource accurately reflects its original plan. However, it is rare to find intact structures that have never undergone change.

Thus, design integrity often infers that the components of the structure as a whole reflect design compatibility. For example, building additions that accurately incorporate design elements found in the original structure (e.g., roof pitch and covering, window placement and form, or exterior wall treatment) would not compromise integrity of design.

Integrity of setting means that buildings, structures, or features associated with a later development period have not intruded upon the surrounding area to the extent that the original context is lost. For instance, an old barn now in the midst of suburban residential development might retain integrity of setting if the immediately surrounding area still reflects a rural setting (e.g., open space, fencing, water troughs, etc.).

Integrity of materials means that the physical elements present during the historic period are still present or, if materials have been replaced, the replacement(s) have been based on the original. For instance, a Victorian style wood-frame dwelling that has been covered with stucco has lost its integrity of materials. Conversely, an adobe wall that has been reconstructed with similar adobe mud, as opposed to adobe-simulate concrete, would retain its integrity of materials.

Integrity of workmanship means that the original character of construction details is still present. These elements cannot have deteriorated or been disturbed to the extent that their value as examples of craftsmanship has been lost. For example, if the surface of a carved sandstone gate post has been seriously eroded, the feature will have lost much of its integrity of workmanship because its ability to provide information concerning older designs and techniques of stonecarving has been lost. Conversely, a steel superstructure may hide unreinforced brick walls of an old commercial building which can provide a valuable record of 19th century solid-wall brick construction techniques.

b. Age

E = 125 years old or older

3 = 100 " " " "

2 = 75 " " " "

1 = 50 " " " "

Comment: An E designation is based on the premise that any manmade feature which survives for 125 years or more is intrinsically exceptional and therefore subject to special consideration by virtue of its age, irrespective of other ratings.

c. Association

1. Association with an event, movement, organization, or person important to the community, state or nation:

E = resource has a central or continuous association with an event. . .

3 = resource has a direct association with. . .

2 = resource has an indirect association with. . .

1 = resource has a distant association with. . .

Comment: The significance of the event, movement, organization, or person must be established before this criterion is applied.

2. Designer

- E = a designer who has made important contributions to the community and to the state or nation
- 3 = a designer who has made important contributions to the community
- 2 = an "attributed to" designer who has made important contributions to the community
- 1 = the designer is unknown.

Comment: This significance attribute focuses on overall designer contributions rather than on the aesthetic merits of the design itself.

3. Architectural Style or Building Type

- E = retains all the attributes associated with its style or type or is a good example of its style or type if few survive
- 3 = retains most of the attributes associated with its style or type or is remodeled in a recognizable style that does not destroy the original style or type
- 2 = retains few, but sufficient attributes associated with its style or type
- 1 = undecipherable as a style or type or is one of many examples of its style or type

Comment: Vernacular building types and industrial architecture are equal in resource value to well-defined and studied architectural styles.

4. Construction materials

- E = outstanding or very early example if few survive
- 3 = outstanding or very early example if many survive; good example if few survive
- 2 = good example if there are many examples of any material(s) and/or method(s) not generally in current use
- 1 = common example of any method(s) and/or material(s)

Comment: Examples of outstanding construction methods or structural materials include those which successfully address challenging structural problems, or which are treated as visible elements that contribute significantly to the resource's overall design quality, or which exhibit fine craftsmanship.

## 5. Traditional Lifeways

- E = resource has a central association with a tradition spanning three or more generations
- 3 = resource has a direct association with a tradition spanning three or more generations
- 2 = resource has a direct association with a tradition spanning two generations or an indirect association with a tradition spanning two or more generations
- 1 = resource has a distant association with a tradition spanning two or more generations

Comment: Traditional lifeways, as used here, pertain to cultural patterns which have attained antiquity commensurate with the age requirement to which tangible resources are held. A central association ("E" rating) implies a quality of uniqueness between the resource and the tradition.

## 6. Association with Broad Themes of Local, State, or National History.

- E = resource has a central association with theme(s)
- 3 = resource has a direct association with theme(s)
- 2 = resource has an indirect association with theme(s)
- 1 = resource has a distant association with theme(s)

Comment: The theme and its significance must be established before this criterion is applied. A helpful measure of this criterion is to consider how useful the resource would be for teaching or writing about cultural history.

## 7. Conveys Important Sense of Time and Place

- E = an individual resource or a unified urban or rural landscape which defines a period of 100 or more years ago
- 3 = an individual resource or a unified urban or rural landscape which defines a period of 75 or more years ago
- 2 = an individual resource or a unified urban or rural landscape which defines a period of 50 or more years ago
- 1 = a unified urban or rural landscape which is less than 50 years old

Comment: A useful measure of this criterion is to consider whether the resource(s) has/have a prominence which contributes to a historic, visual, or environmental continuity. Would a typical resident of the area notice the resource(s) and remember it/them?

## 8. Ability to Yield Important Information

This attribute of significance is not quantifiable. Generally, when this criterion is invoked, it is an indication that the resource under study

requires further examination by a professional from a related discipline. Nevertheless, it is incumbent upon the historical specialist to consider what qualities of the resource or the project area might enable it to yield information that is important to another scholarly discipline.

For instance, the presence of building foundations or of a well, privy, trash pit, drain, sump, or cistern indicates that the project area may possess historic archaeological research potential. Similarly, is there archival evidence (maps, written documents, etc.) that the project area was occupied before or during some transitional period, either naturally occurring (e.g., fire, flood, drought, or earthquake) or culturally induced (e.g., highway or city street construction, the laying of water or sewer mains, or new building construction)? As a corollary, is there evidence that these earlier features may have survived to the present as subsurface resources?

In a different vein, is there evidence, gained through archival research, site inspection, or consultation with community groups or individuals, that the project area has a tangible or intangible quality of tradition that is important to an identifiable cultural group? For instance, there might be evidence that Italian immigrant stonemasons had cut stone from a sandstone outcropping occurring in the project area or that the area might be the site of a legendary event. If so, even if the data are sufficient, to determine a significance level under C-5, it would be appropriate to discuss additional research potential here.

If a cultural resource is determined not to be "important", both the resource and the effect on it shall be noted in the project file Initial Study or EIR but need not be considered further in the CEQA process. The project applicant is responsible for the complete funding of Phase 2 investigations. Phase 2 investigations are not limited by cost; however, costs are limited to providing services defined in scopes of work which are developed by DER.

## C. Phase 3: Mitigation

### 1. Introduction

Once it is determined that an important archaeological or historical site may be significantly impacted by a project, the County may require preparation of an EIR.

The EIR discussion must include the following work: (1) document the justification for the "importance" determination; (2) determine what type of information is necessary to evaluate the "scientifically consequential information from and about the resource," and if this information has already been gathered during previous investigation phases. The consultant developing the mitigation program consider that excavation as part of a mitigation plan shall be restricted to areas of direct and indirect impact unless special circumstances require limited

excavation or an immediately adjacent area in order to develop important information about the part of the resource that would be destroyed.

## 2. Mitigation of Important Archaeological or Historical Sites and Timing

There are special timing and deadline issues on mitigation programs required in CEQA Appendix K. Important timing issues state that unless special or unusual circumstances warrant an exception, the field excavation phase of an approved mitigation plan shall be completed within 90 days after final approval necessary to implement the physical development of the project, or, if a phased project, the excavation should take place in connection with the phased portion to which the specified mitigation measures are applicable, provided that the project applicant may extend that period if he/she so elects. A mitigation plan shall not authorize violations of any law protecting Native American cemeteries. This means that the County must apply a standard condition to insure that the applicant performs all applicable archaeological mitigation within 90 days after receiving approval on final development plans, or after subdivision (TPM or TM) map records unless phasing or special circumstances change this "deadline." The County has the responsibility to wait at least 60 days after the EIR is completed before making a final decision on the project. This time is required in order that persons interested in providing funding agree to do so before the decision is made which would implement any specific mitigation measure.

## 3. Information Regarding Project Costs and Mitigation

CEQA Appendix K designates limits on an applicant's responsibility to fund mitigation programs. These limits follow:

- a. An amount equal to one-half of one percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of a commercial or industrial project.
- b. An amount equal to three-fourths of one percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of a housing project.
- c. If a housing project consists of more than a single unit, an amount equal to three-fourths of one percent of the project cost of the project for mitigation measures undertaken within the site boundaries of the project for the first unit plus the sum of the following:
  - (1) Two hundred dollars (\$200) per unit for any of the next 99 units.
  - (2) One hundred fifty dollars (\$150) per unit for any of the next 400 units.
  - (3) One hundred dollars (\$100) per unit in excess of 500.

Where an important archaeological site is involved, the applicant must provide the County with documented, itemized, and projected total project

costs, and if applicable, any project phasing information which could more adequately accommodate the timing and implementation of the field excavation portion of the work beyond the 90 day deadline.

The applicant must also provide an itemized cost estimate of all project design expenditures necessary to preserve portions of all or any archaeological site from disturbance. The County may give credit for these costs in computing the applicant's mitigation costs.

The archaeological consultant must provide several sets of mitigation programs. One will be the estimate of the excavation costs and timing along with the laboratory analysis and report preparation costs and time necessary to fulfill the requirements of the research design. In addition, the consultant should present an alternative mitigation program in case funds guaranteed by the applicant and voluntarily guaranteed by any other persons or persons are less than the original mitigation estimate.

#### 4. Land Use Element and Local Coastal Plan Policies and Mitigation

Historical and Archaeological sites policies in the County Land Use Element and Local Coastal Plan specify that if "sufficient planning flexibility does not permit avoiding construction on.... cultural sites, adequate mitigation shall be required. Mitigation shall be designed in accord with guidelines of the State Office of Historical Preservation and The Native American Heritage Commission." It is possible that adequate mitigation costs based on this policy may exceed limits imposed by CEQA Appendix K defined above. In these cases, use of the Appendix K funding limit would cause an inconsistency with these County Land Use Element and Local Coastal Plan policies.

#### 5. Sites Discovered During Construction

CEQA Appendix K provides for an archaeological evaluation of the "surprise" find during construction. Construction shall cease in the area of the find but may continue on other parts of the building site while evaluation and necessary mitigation takes place. The applicant would be responsible for funding an immediate evaluation of the find's potential importance. If the find is determined to be an important archaeological resource under CEQA Appendix K, contingency funding and a time allotment sufficient to allow recovering a data recovery sample or to employ one of the avoidance measures shall be implemented.

These provisions shall be included as project conditions where there is some likelihood of an archaeological impact during construction. For example, this would apply to an area near an adjacent recorded site or where no cultural resources were discovered during a field survey, or within a site area previously tested and mitigated by a sample excavation.



D. Curation of Collections

All non-burial related artifacts collected during Phase 1, 2, and 3 investigations must be curated at an institution within Santa Barbara County. Qualified institutions are those with proper facilities and staffing for insuring research access to the collections. The UCSB Department of Anthropology is currently the only qualified local institution providing this service to the public and scientific community. In addition to artifacts, all supporting archaeological documentation must be submitted with the artifact collection. Curation arrangements with a qualified institution must be established prior to archaeological proposal preparation. Artifacts curated at the institution may be borrowed by qualified individuals and groups for educational use, display, ceremonies, etc.

The disposition of burial-related artifacts is covered by state law concerning burial remains (see Ethnic Impacts, Discovery of Human Remains).

E. Ethnic Impacts

1. Ethnic Impact Assessment

Appendix G, Significant Effects, of CEQA defines the need for evaluating the impacts a project may have on a community, ethnic, or social group.

A project will normally have a significant effect on the environment if it will cause one of the following:

- j. Disrupt or adversely affect a prehistoric or historical archaeological site or a property or historical or cultural significance to a community or ethnic or social group.
- w. Conflict with established recreational, educational, religious, or scientific uses of the area.

In order to evaluate these potential impacts, the County requires that appropriate representatives of affected community groups be contacted to assess their concerns and viewpoints concerning measures to mitigate those impacts. Ethnologists approved by DER are to carry out this research in accordance with requirements and procedures for assessing ethnic cultural resources and concerns in compliance with the California Environmental Quality Act (Susan Brown n.d.) adopted by the DER, and the Native American Heritage Commission's Guidelines for the Protection of the Native American Heritage Resources. Contact should be made early in the evaluation process during the Phase I investigation as well as subsequent phases of work.

If the affected community does not consider to mitigation measures proposed by consulting archaeologists and incorporated in the project description by the applicant, the project may be considered to result in a significant impact and an EIR (or EIR section) may be prepared.

There are currently four recognized Native American groups in Santa Barbara County representing local Native American individuals of Chumash descent. The United Chumash Council represents various Chumash groups of the South Coast. The Santa Ynez Federally Recognized Elders Council represents Chumash living on the Santa Ynez Reservation. The Santa Ynez Kit Wo' N' Unio represents particular families on the Reservation, and the Candelaria American Indian Council represents South Coast documented Chumash. DER will contact all groups if prehistoric archaeological sites are to be impacted to evaluate this effect on their ethnic values.

2. Discovery of Human Remains

The County policy regarding disposition of human remains disturbed during project construction is defined in CEQA Appendix K, Section VIII. If remains are encountered at any time, the County Coroner shall be contacted to determine the age and the origin of the bones. A qualified physical anthropologist will assist the coroner to make the determination whether human remains are prehistoric or not. If human remains are considered Native American, the individuals most likely to have descended from the individuals represented by the remains will then be contacted who will make recommendations regarding the treatment and reinterment of the remains and associated grave goods. If no descendants can be identified, the Native American Heritage Commission shall select the representative responsible for the disposition of the remains. These arrangements will be made with the landowner and will include an appropriate period of time for a DER approved physical anthropologist to analyze and record the remains and a DER approved archaeologist to analyze the associated grave goods.

3. Native American Consulting

Native Americans are retained during all sub-surface investigations and disturbances of archaeological sites to insure compliance with Appendix K, Section VIII. They may be involved in Phase I fieldwork investigation as well.

F. Sequential Steps for Implementation of CEQA Appendix K.

1. Determination by DER staff during Initial Study process that a project site may have a potential archaeological, or historical, or Native American culturally significant resource.
2. Professional fieldwork and documentation that a project will or will not have a direct or indirect physical impact on such a resource (Phase 1 investigation).
3. If the project does not have such potential, a finding of "significant impact" is not made and EIR is not prepared (specifically for "cultural resource reasons"). The project may also be redesigned or "self conditioned" at this stage to avoid the resource or to guarantee its protection.

4. If the project does have the potential to impact significantly a resource and the project cannot be revised to avoid the resource, the site must be evaluated in order to determine whether it meets the criteria to be defined as important (Phase 2 investigation). Evaluations are performed by DER approved archaeologists, historians, and/or ethnographers and may or may not require field excavation as well as laboratory analysis but such reports do require, at a minimum, a historical records search when the site has been previously disturbed.
5. If the resource is found to be unimportant, no further professional work is required and a negative declaration may be issued if the only issue is cultural resource impacts.
6. If a determination is made that the resource is important, the applicant will be requested to work closely with the County and the cultural resource consultant to provide for appropriate mitigation either by avoidance of the deposit, adoption of development restrictions to preserve them, or special construction techniques (e.g., covering, etc.) to protect them. To the extent that direct impacts cannot be avoided, mitigation measures shall be required. The development of such measures will be the task of the consultant working in conjunction with the county and the applicant, which would require additional archaeological excavation of a sample of the area to be impacted (Phase 3 investigation).
7. The consultant will need to be provided the cost-estimates of each project if the analysis reaches this stage. According to CEQA the amount paid by a project applicant for mitigation depends upon the kind of project and the number of units. The mitigation cost formula are the following:
  - a. Commercial or industrial projects:  

$$\text{Mitigation Costs (MC)} = \text{Total project cost (TPC)} \times 0.005$$
  - b. Residential Projects:
    - (1) One Unit:  $\text{MC} = \text{TPC} \times 0.0075$
    - (2) One - 99 units :  $\text{MC} = \text{Project costs for one unit (PC1)} \times 0.0075 + \$200 \times (\text{total number of units less one (TNU-1)})$
    - (3) 99-499 Units:  $\text{MC} = \text{PC1} \times 0.0075 + \$200 \times \text{TNU-1 (up to 99)} + 150 \times (\text{number of units from 99 up to 499})$
    - (4) Over 500 units:  $\text{MC} = \text{formula (3) above} + \$100 \times (\text{number of units in excess of 500})$

This total may be determined to be inadequate to fully mitigate cultural resource impacts and be inconsistent with the County Land Use Element and Local Coastal Plan policies.

8. After the consultant prepares a report substantiating the importance of the resource together with an appropriate mitigation program(s) detailing full mitigation costs and maximum applicable costs to the applicant (using (7) above), the County will enter the data into an EIR to allow for full public and applicant comment, and certify the document.

The consultant must state and the County must decide whether previous studies of the resource have "... adequately recovered the scientifically consequential information from and about the resource." The County and the consultant are required to present the evidence for such a finding in the EIR. In such a case, no further mitigation would be required. In some cases, previous information concerning a site may provide only partial information and more research may be needed.

9. If necessary, the County must seek out private donations for the unpaid one-half of the proposed mitigation program within 60 days of the certification of the EIR and before the discretionary decision on the project application.

G. References

These references are available through the County of Santa Barbara, Division of Environmental Review.

County Resource Management Department, Conservation Element of the County Comprehensive Plan, April 1979. pp. 13 - 14, 224 - 256.

County Resource Management Department, Land Use Element of the County Comprehensive Plan, August 1982. pp. 89 - 90, 109.

County of Santa Barbara, Coastal Plan. Section 3.10, Archaeological and Historical Resources, pp. 140-143, March 1981

County of Santa Barbara, Zoning Ordinance. Article III of Chapter 35, Zoning of the Santa Barbara County Code. Sec. 35 - 211.