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AMENDED IN ASSEMBLY MAY 30, 2013
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AMENDED IN ASSEMBLY APRIL 8, 2013
AMENDED IN ASSEMBLY MARCH 19, 2013
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 52

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

December 21, 2012

An act to amend Sections 21080.3, 21083, 21083.2, and 21104 of, and to add Sections 21073, 21074, 21080.3.1, 21083.09, 21084.2, 21084.3, and 21097 to, the Public Resources Code, relating to Native Americans.

LEGISLATIVE COUNSEL'S DIGEST

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

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

The California Environmental Quality Act, referred to as CEQA, requires a lead agency, as defined, to prepare, or cause to be prepared,

and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA requires the lead agency to provide a responsible agency with specified notice and opportunities to comment on a proposed project. ~~CEQA defines “unique archaeological resource” for the purposes of CEQA.~~ CEQA requires the Office of Planning and Research to prepare and develop, and the Secretary of the Natural Resources Agency to certify and adopt, guidelines for the implementation of CEQA that include, among other things, criteria for public agencies to following in determining whether or not a proposed project may have a significant effect on the environment.

~~The~~

This bill would specify that a project having a potential to cause a substantial adverse change in the significance of a tribal resource, as defined, to be a project that may have a significant effect on the environment. The bill would require the implementation, if feasible, of specified mitigation measures if the lead agency determines that a project will have a substantial adverse change on a tribal cultural resource. For a tribal cultural resource that is a sacred place, the bill would prohibit severe or irreparable damage to that resource, or interference with the free expression or exercise of a Native American religion unless a clear and convincing showing that the public interest and necessity so require. The bill would require a lead agency to make best efforts to avoid, preserve, and protect specified Native American resources. The bill would require the lead agency to undertake specified actions if a project may adversely affect tribal cultural resources. The bill would additionally define “unique archaeological resource” to include archaeological artifacts, objects, or sites, including those that are tribal cultural resources. consult with Native American tribes that are traditionally and culturally affiliated with the geographic area of the proposed project that have requested, in writing, to be informed by the lead agency of proposed projects in that geographic area prior to determining whether a negative declaration, mitigated negative declaration, or environmental impact report is required for a project.

The bill would authorize the Native American tribe wishing to consult the lead agency regarding a project to notify the lead agency, as specified. The bill would make the above provisions applicable to projects that have filed a notice of preparation or a notice of negative declaration or mitigated negative declaration on or after January 1, 2014. The bill would require the ~~office~~ Office of Planning and Research to revise the guidelines to include among the criteria for determining whether a proposed project has a significant effect on the environment the effects on tribal cultural resources, including sacred places. The bill would require the office to prepare and develop, and the secretary to certify and adopt, revisions to the guidelines relating to the identification and treatment of tribal cultural resources. By requiring the lead agency to consider these effects relative to Native Americans and to conduct additional consultations, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

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

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

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:
3 (a) California had the largest aboriginal population in North
4 America before contact with non-Native Americans. ~~Yet, California~~
5 ~~Native American tribes suffered the greatest losses from~~
6 ~~termination, removal, and assimilation policies, including the loss~~
7 ~~of a majority of their lands and tribal cultural resources, including~~
8 ~~sacred places. This devastation debilitated tribal religious practices~~
9 ~~and cultural identity, and threatened the survival of California~~
10 ~~Native Americans. *Spiritual integrity, community identity, political*~~
11 ~~*sovereignty, and governance processes are intertwined in the*~~
12 ~~*lifeways and identity of the California Native American tribes.*~~
13 (b) ~~Spiritual integrity, community identity, political sovereignty,~~
14 ~~and governance processes are intertwined in the lifeways and~~
15 ~~identity of the California Native American tribes.~~

1 ~~(e) California Native American tribes possess original natural~~
2 ~~rights, from time immemorial, recognized in over 200 years of~~
3 ~~federal jurisprudence, the Federal Constitution, federal and state~~
4 ~~laws and administrative policies, and state actions, including,~~
5 ~~tribal-state agreements.~~

6 ~~(d) Included in these original natural rights is the right of tribal~~
7 ~~governments to enact their own laws and be governed by them~~
8 ~~and to engage in their own cultural and spiritual practices. It is a~~
9 ~~fundamental obligation of each generation of California Native~~
10 ~~Americans to cherish and protect these rights for their children~~
11 ~~and for generations to come.~~

12 ~~(e)~~

13 ~~(b) California Native Americans have used, and continue to use,~~
14 ~~natural settings in the conduct of spiritual practices, religious~~
15 ~~observances, ceremonies, and cultural uses and beliefs that are~~
16 ~~essential elements in tribal communities. Tribes consider these~~
17 ~~sacred and cultural places, used by generations, as vital to their~~
18 ~~existence, well-being, and identity.~~

19 ~~(f) In addition to the lingering effects of historic termination,~~
20 ~~removal, and assimilation policies, the continued loss of tribal~~
21 ~~cultural resources, including sacred places and tribal lands in the~~
22 ~~past 200 years, has caused further debilitating impacts on the~~
23 ~~religious practices, cultural traditions, tribal identity, and~~
24 ~~self-governance rights of California Native American tribes.~~

25 ~~(g) To uphold California Native American tribes' original natural~~
26 ~~rights with regard to religious practices, cultural traditions, tribal~~
27 ~~identity, and self-governance, it is essential that the natural setting~~
28 ~~and essential integrity of these tribal cultural resources be protected~~
29 ~~and the sacred places be preserved.~~

30 ~~(h)~~

31 ~~(c) Traditional tribal lands were diminished to reservations and~~
32 ~~rancherias that exist today in California with local governments,~~
33 ~~state lands, federal lands, and privately owned lands located~~
34 ~~adjacent to, and in the vicinity of, tribal government reservations~~
35 ~~and rancherias. The land use decisions concerning lands adjacent~~
36 ~~to, and in the vicinity of, California Native American reservations~~
37 ~~and rancherias affect those tribal communities in terms of~~
38 ~~environmental impacts and tribal self-governance rights *with tribes*~~
39 ~~*losing a majority of their tribal cultural resources and sacred*~~
40 ~~*places.*~~

1 (d) Honoring the rights of California Native American tribes'
 2 efforts to protect the natural setting and integrity of sacred places
 3 is essential.

4 (i)

5 (e) The California Environmental Quality Act, which is the
 6 primary environmental protection law in California, does not
 7 readily or directly solicit, include, or accommodate California
 8 Native American tribes' concerns and ~~issues, which~~ issues. This
 9 has resulted in significant environmental impacts to tribal cultural
 10 resources, including sacred places and tribal government
 11 reservations and rancherias, leaving them unanalyzed and
 12 unmitigated. The result has been significant and unmitigated
 13 cumulative impacts to those resources ~~and California Native~~
 14 ~~American reservations and rancherias~~ to the detriment of those
 15 communities and California's environment.

16 (j)

17 (f) California Native American tribes are experts concerning
 18 their *traditionally and* culturally affiliated resources, tribal history,
 19 and practices concerning those resources. Tribal knowledge about
 20 the land and the resources should be included in environmental
 21 assessments pursuant to state environmental laws for projects that
 22 have a potentially significant impact or effect on those resources.

23 (k)

24 (g) State environmental law should not only take into account
 25 the scientific or archaeological value of cultural resources, but also
 26 the tribal cultural values, tribal interpretations, and culturally
 27 appropriate treatment when decisions are made concerning whether
 28 or how to approve a project that may significantly impact or affect
 29 those places and resources.

30 SEC. 2. Section 21073 is added to the Public Resources Code,
 31 to read:

32 21073. "Native American tribe" means a federally recognized
 33 Indian tribe located in California.

34 ~~SEC. 3. Section 21074 is added to the Public Resources Code,~~
 35 ~~to read:~~

36 ~~21074. (a) "Tribal cultural resource" means a resource that is~~
 37 ~~any of the following:~~

38 ~~(1) A resource listed in, or determined to be eligible for listing~~
 39 ~~in, the California Register of Historical Resources, a local register~~

1 of historical resources, as defined in subdivision (k) of Section
2 5020.1.

3 (2) A resource deemed to be significant pursuant to subdivision
4 (g) of Section 5024.1.

5 (3) A resource deemed by the lead agency after a public hearing
6 to be a tribal cultural resource based upon substantial evidence
7 presented to the lead agency.

8 (b) Tribal cultural resources include, but are not limited to, sites,
9 features, places, or objects with cultural value to descendant
10 communities, traditional cultural properties, or tribal cultural
11 landscapes consistent with the guidance of the federal National
12 Park Services' Advisory Council on Historic Preservation.

13 (c) A tribal cultural resource may also be a historic resource or
14 a unique archaeological resource.

15 (d) A tribal cultural resource does not include a resource
16 demonstrated by clear and convincing evidence to be historically
17 or culturally not significant.

18 SEC. 4. Section 21080.3 of the Public Resources Code is
19 amended to read:

20 21080.3. (a) Prior to determining whether a negative
21 declaration or environmental impact report is required for a project,
22 the lead agency shall consult with all responsible agencies, trustee
23 agencies, and affected Native American tribes. Prior to that required
24 consultation, the lead agency may informally contact any of those
25 agencies or tribes.

26 (b) In order to expedite the requirements of subdivision (a), the
27 Office of Planning and Research, upon request of a lead agency,
28 shall assist the lead agency in determining the various responsible
29 agencies and trustee agencies, for a proposed project. In the case
30 of a project described in subdivision (e) of Section 21065, the
31 request may also be made by the project applicant.

32 SEC. 5. Section 21083 of the Public Resources Code is
33 amended to read:

34 21083. (a) The Office of Planning and Research shall prepare
35 and develop proposed guidelines for the implementation of this
36 division by public agencies. The guidelines shall include objectives
37 and criteria for the orderly evaluation of projects and the
38 preparation of environmental impact reports and negative
39 declarations in a manner consistent with this division.

1 ~~(b) The guidelines shall specifically include criteria for public~~
2 ~~agencies to follow in determining whether or not a proposed project~~
3 ~~may have a “significant effect on the environment.” The criteria~~
4 ~~shall require a finding that a project may have a “significant effect~~
5 ~~on the environment” if one or more of the following conditions~~
6 ~~exist:~~

7 ~~(1) A proposed project has the potential to degrade the quality~~
8 ~~of the environment, curtail the range of the environment, or to~~
9 ~~achieve short-term, to the disadvantage of long-term, environmental~~
10 ~~goals.~~

11 ~~(2) The possible effects of a project are individually limited but~~
12 ~~cumulatively considerable. As used in this paragraph,~~
13 ~~“cumulatively considerable” means that the incremental effects of~~
14 ~~an individual project are considerable when viewed in connection~~
15 ~~with the effects of past projects, the effects of other current projects,~~
16 ~~and the effects of probable future projects.~~

17 ~~(3) The environmental effects of a project will cause substantial~~
18 ~~adverse effects on human beings, either directly or indirectly.~~

19 ~~(4) A proposed project may have a significant effect on a tribal~~
20 ~~cultural resource, including a sacred place, or a tribal reservation~~
21 ~~or rancheria community.~~

22 ~~(e) The guidelines shall include procedures for determining the~~
23 ~~lead agency pursuant to Section 21165.~~

24 ~~(d) The guidelines shall include criteria for public agencies to~~
25 ~~use in determining when a proposed project is of sufficient~~
26 ~~statewide, regional, or areawide environmental significance that~~
27 ~~a draft environmental impact report, a proposed negative~~
28 ~~declaration, or a proposed mitigated negative declaration shall be~~
29 ~~submitted to appropriate state agencies, through the State~~
30 ~~Clearinghouse, for review and comment prior to completion of the~~
31 ~~environmental impact report, negative declaration, or mitigated~~
32 ~~negative declaration.~~

33 ~~(e) The Office of Planning and Research shall develop and~~
34 ~~prepare the proposed guidelines as soon as possible and shall~~
35 ~~transmit them immediately to the Secretary of the Natural~~
36 ~~Resources Agency. The Secretary of the Natural Resources Agency~~
37 ~~shall certify and adopt the guidelines pursuant to Chapter 3.5~~
38 ~~(commencing with Section 11340) of Part 1 of Division 3 of Title~~
39 ~~2 of the Government Code, which shall become effective upon the~~
40 ~~filing of the adopted guidelines. However, the guidelines shall not~~

1 ~~be adopted without compliance with Sections 11346.4, 11346.5,~~
2 ~~and 11346.8 of the Government Code.~~

3 ~~(f) The Office of Planning and Research shall, at least once~~
4 ~~every two years, review the guidelines adopted pursuant to this~~
5 ~~section and shall recommend proposed changes or amendments~~
6 ~~to the Secretary of the Natural Resources Agency. The Secretary~~
7 ~~of the Natural Resources Agency shall certify and adopt guidelines,~~
8 ~~and any amendments to the guidelines, at least once every two~~
9 ~~years, pursuant to Chapter 3.5 (commencing with Section 11340)~~
10 ~~of Part 1 of Division 3 of Title 2 of the Government Code, which~~
11 ~~shall become effective upon the filing of the adopted guidelines~~
12 ~~and any amendments to the guidelines. However, guidelines may~~
13 ~~not be adopted or amended without compliance with Sections~~
14 ~~11346.4, 11346.5, and 11346.8 of the Government Code.~~

15 *SEC. 3. Section 21074 is added to the Public Resources Code,*
16 *to read:*

17 *21074. (a) "Tribal cultural resources" means either of the*
18 *following:*

19 *(1) Sites, features, places, objects with cultural value to*
20 *descendant communities, or cultural landscapes that are consistent*
21 *with the guidance of the United States National Park Service and*
22 *the federal Advisory Council on Historic Preservation, that are*
23 *listed in or determined to be eligible for listing in any of the*
24 *following:*

25 *(A) The California Register of Historical Resources.*

26 *(B) A local register of historical resources as defined in*
27 *subdivision (k) of Section 5020.1.*

28 *(C) A resource deemed to be significant pursuant to subdivision*
29 *(g) of Section 5024.1.*

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

33 *(A) Listed on the California Native American Heritage*
34 *Commission's Sacred Lands File pursuant to Section 5097.94 or*
35 *5097.96.*

36 *(B) Listed or determined to be eligible for listing in the*
37 *California Register of Historical Resources.*

38 *(b) A tribal cultural resource may also be a historical resource*
39 *pursuant to Section 21084.1 or a unique archaeological resource*
40 *pursuant to subdivision (g) of Section 21083.2. A tribal cultural*

1 *resource classified as a “nonunique archaeological resource”*
2 *remains a tribal cultural resource and shall be given consideration*
3 *pursuant to this division.*

4 *SEC. 4. Section 21080.3.1 is added to the Public Resources*
5 *Code, to read:*

6 *21080.3.1. (a) Prior to determining whether a negative*
7 *declaration, mitigated negative declaration, or environmental*
8 *impact report is required for a project, the lead agency shall*
9 *consult with Native American tribes that are traditionally and*
10 *culturally affiliated with the geographic area of the proposed*
11 *project that have requested, in writing, to be informed by the lead*
12 *agency of proposed projects in that geographic area. For an*
13 *activity directly undertaken by a public agency, the lead agency*
14 *may provide for early consultation to identify alternatives,*
15 *mitigation measures, and significant effects regarding issues of*
16 *concern to the Native American tribe to be analyzed in depth in*
17 *the environmental impact report.*

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

26 *(c) To expedite the requirements of this section, the Native*
27 *American Heritage Commission shall assist the lead agency in*
28 *identifying the traditionally and culturally affiliated Native*
29 *American tribes.*

30 *(d) (1) For the purposes of this section and Section 21097,*
31 *“consultation” means the meaningful and timely process of*
32 *seeking, discussing, and considering carefully the view of others,*
33 *in a manner that is cognizant of all parties’ cultural values and,*
34 *where feasible, seeking agreement. Consultation between public*
35 *agencies and Native American tribes shall be conducted in a way*
36 *that is mutually respectful of each party’s sovereignty. Consultation*
37 *shall recognize the tribes’ potential needs for confidentiality with*
38 *respect to places that have traditional tribal cultural significance.*
39 *Consultation shall also recognize the need for the exchange and*

1 *provision of project information essential to the topic of the*
2 *consultation.*

3 *(2) The consultation shall be considered concluded at the point*
4 *at which the parties to the consultation come to a mutual agreement*
5 *concerning the appropriate measures for preservation or*
6 *mitigation, or either the lead agency or Native American tribe,*
7 *acting in good faith and after reasonable effort, concludes that*
8 *mutual agreement cannot be reached concerning appropriate*
9 *measures of preservation or mitigation.*

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

13 *(e) This section shall apply only to a project that has a notice*
14 *of preparation or a notice of negative declaration or mitigated*
15 *negative declaration filed on or after January 1, 2014.*

16 ~~SEC. 6.~~

17 *SEC. 5.* Section 21083.09 is added to the Public Resources
18 Code, to read:

19 21083.09. On or before January 1, 2015, the Office of Planning
20 and Research shall prepare and develop, and the Secretary of the
21 Natural Resources Agency shall certify and adopt, revisions to the
22 guidelines that do all of the following:

23 (a) Provide guidance on the implementation of Sections 21084.2
24 and 21084.3.

25 (b) Provide advice developed in consultation with the Native
26 American Heritage Commission, Native American tribes, related
27 to tribal cultural resources, including sacred places, for all of the
28 following:

29 (1) The preservation and protection of, or culturally appropriate
30 measures to mitigate significant impacts to, tribal cultural
31 resources.

32 (2) Procedures for the protection of the confidentiality of
33 information concerning the specific identity, location, character,
34 and use of tribal cultural resources.

35 (3) Procedures to facilitate the voluntary participation of
36 landowners to preserve and protect the specific identity, location,
37 character, and use of tribal cultural resources.

38 (4) Procedures to facilitate the identification of, and culturally
39 appropriate treatment of, tribal cultural resources.

1 (c) Revising Appendix G of Chapter 3 (commencing with
2 Section 15000) of Division 6 of Title 14 of the California Code of
3 Regulations to do both of the following:

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

6 (2) Add consideration of tribal cultural resources, including
7 sacred places, with relevant sample questions.

8 ~~SEC. 7. Section 21083.2 of the Public Resources Code is~~
9 ~~amended to read:~~

10 ~~21083.2. (a) As part of the determination made pursuant to~~
11 ~~Section 21080.1, the lead agency shall determine whether the~~
12 ~~project may have a significant effect on archaeological resources.~~
13 ~~If the lead agency determines that the project may have a significant~~
14 ~~effect on unique archaeological resources, the environmental~~
15 ~~impact report shall address the issue of those resources. An~~
16 ~~environmental impact report, if otherwise necessary, shall not~~
17 ~~address the issue of nonunique archaeological resources. A negative~~
18 ~~declaration shall be issued with respect to a project if, but for the~~
19 ~~issue of nonunique archaeological resources, the negative~~
20 ~~declaration would be otherwise issued.~~

21 ~~(b) If it can be demonstrated that a project will cause damage~~
22 ~~to a unique archaeological resource, the lead agency may require~~
23 ~~reasonable efforts to be made to permit any or all of these resources~~
24 ~~to be preserved in place or left in an undisturbed state. Examples~~
25 ~~of that treatment, in no order of preference, may include, but are~~
26 ~~not limited to, any of the following:~~

27 ~~(1) Planning construction to avoid archaeological sites.~~

28 ~~(2) Deeding archaeological sites into permanent conservation~~
29 ~~easements.~~

30 ~~(3) Capping or covering archaeological sites with a layer of soil~~
31 ~~before building on the sites.~~

32 ~~(4) Planning parks, greenspace, or other open space to~~
33 ~~incorporate archaeological sites.~~

34 ~~(e) To the extent that unique archaeological resources are not~~
35 ~~preserved in place or not left in an undisturbed state, mitigation~~
36 ~~measures shall be required as provided in this subdivision. The~~
37 ~~project applicant shall provide a guarantee to the lead agency to~~
38 ~~pay one-half the estimated cost of mitigating the significant effects~~
39 ~~of the project on unique archaeological resources. In determining~~
40 ~~payment, the lead agency shall give due consideration to the in-kind~~

1 value of project design or expenditures that are intended to permit
2 any or all archaeological resources or California Native American
3 culturally significant sites to be preserved in place or left in an
4 undisturbed state. When a final decision is made to carry out or
5 approve the project, the lead agency shall, if necessary, reduce the
6 specified mitigation measures to those which can be funded with
7 the money guaranteed by the project applicant plus the money
8 voluntarily guaranteed by any other person or persons for those
9 mitigation purposes. In order to allow time for interested persons
10 to provide the funding guarantee referred to in this subdivision, a
11 final decision to carry out or approve a project shall not occur
12 sooner than 60 days after completion of the recommended special
13 environmental impact report required by this section.

14 (d) Excavation as mitigation shall be restricted to those parts of
15 the unique archaeological resource that would be damaged or
16 destroyed by the project. Excavation as mitigation shall not be
17 required for a unique archaeological resource if the lead agency
18 determines that testing or studies already completed have
19 adequately recovered the scientifically consequential information
20 from and about the resource, if this determination is documented
21 in the environmental impact report.

22 (e) In no event shall the amount paid by a project applicant for
23 mitigation measures required pursuant to subdivision (c) exceed
24 the following amounts:

25 (1) An amount equal to one-half of 1 percent of the projected
26 cost of the project for mitigation measures undertaken within the
27 site boundaries of a commercial or industrial project.

28 (2) An amount equal to three-fourths of 1 percent of the
29 projected cost of the project for mitigation measures undertaken
30 within the site boundaries of a housing project consisting of a
31 single unit.

32 (3) If a housing project consists of more than a single unit, an
33 amount equal to three-fourths of 1 percent of the projected cost of
34 the project for mitigation measures undertaken within the site
35 boundaries of the project for the first unit plus the sum of the
36 following:

37 (A) Two hundred dollars (\$200) per unit for any of the next 99
38 units.

39 (B) One hundred fifty dollars (\$150) per unit for any of the next
40 400 units.

1 ~~(C) One hundred dollars (\$100) per unit in excess of 500 units.~~

2 ~~(f) Unless special or unusual circumstances warrant an~~
3 ~~exception, the field excavation phase of an approved mitigation~~
4 ~~plan shall be completed within 90 days after final approval~~
5 ~~necessary to implement the physical development of the project~~
6 ~~or, if a phased project, in connection with the phased portion to~~
7 ~~which the specific mitigation measures are applicable. However,~~
8 ~~the project applicant may extend that period if he or she so elects.~~
9 ~~Nothing in this section shall nullify protections for Indian~~
10 ~~cemeteries under any other provision of law.~~

11 ~~(g) As used in this section, "unique archaeological resource"~~
12 ~~means an archaeological artifact, object, or site about which it can~~
13 ~~be clearly demonstrated that, without merely adding to the current~~
14 ~~body of knowledge, there is a high probability that it meets any of~~
15 ~~the following criteria:~~

16 ~~(1) Contains information needed to answer important scientific~~
17 ~~research questions and that there is a demonstrable public interest~~
18 ~~in that information.~~

19 ~~(2) Has a special and particular quality such as being the oldest~~
20 ~~of its type or the best available example of its type.~~

21 ~~(3) Is directly associated with a scientifically recognized~~
22 ~~important prehistoric or historic event or person.~~

23 ~~(4) Is a tribal cultural resource.~~

24 ~~(h) As used in this section, "nonunique archaeological resource"~~
25 ~~means an archaeological artifact, object, or site which does not~~
26 ~~meet the criteria in subdivision (g). A nonunique archaeological~~
27 ~~resource need be given no further consideration, other than the~~
28 ~~simple recording of its existence by the lead agency if it so elects.~~

29 ~~(i) As part of the objectives, criteria, and procedures required~~
30 ~~by Section 21082 or as part of conditions imposed for mitigation,~~
31 ~~a lead agency may make provisions for archaeological sites~~
32 ~~accidentally discovered during construction. These provisions may~~
33 ~~include an immediate evaluation of the find. If the find is~~
34 ~~determined to be a unique archaeological resource, contingency~~
35 ~~funding and a time allotment sufficient to allow recovering an~~
36 ~~archaeological sample or to employ one of the avoidance measures~~
37 ~~may be required under the provisions set forth in this section.~~
38 ~~Construction work may continue on other parts of the building site~~
39 ~~while archaeological mitigation takes place.~~

1 ~~(j) This section does not apply to any project described in~~
2 ~~subdivision (a) or (b) of Section 21065 if the lead agency elects~~
3 ~~to comply with all other applicable provisions of this division.~~
4 ~~This section does not apply to any project described in subdivision~~
5 ~~(e) of Section 21065 if the applicant and the lead agency jointly~~
6 ~~elect to comply with all other applicable provisions of this division.~~

7 ~~(k) Any additional costs to any local agency as a result of~~
8 ~~complying with this section with respect to a project of other than~~
9 ~~a public agency shall be borne by the project applicant.~~

10 ~~(l) Nothing in this section is intended to affect or modify the~~
11 ~~requirements of Section 21084 or 21084.1.~~

12 ~~SEC. 8.~~

13 ~~SEC. 6.~~ Section 21084.2 is added to the Public Resources Code,
14 to read:

15 21084.2. (a) A project may have a significant effect on the
16 environment if the project has the potential of causing a substantial
17 adverse change in the significance of a tribal cultural resource.

18 (b) Because Native American tribes may have expertise in
19 identifying, interpreting, and determining *the* significance of tribal
20 cultural resources and whether an impact of a proposed project to
21 a tribal cultural resource is significant, the lead agency shall consult
22 with the relevant Native American tribes in making a determination
23 pursuant to subdivision (a).

24 (c) *This section shall apply only to a project that has a notice*
25 *of preparation or a notice of negative declaration or mitigated*
26 *negative declaration filed on or after January 1, 2014.*

27 ~~SEC. 9.~~ Section 21084.3 is added to the Public Resources Code,
28 to read:

29 21084.3. ~~If the lead agency determines that a project will have~~
30 ~~a significant effect on places, features, and objects described in~~
31 ~~Section 5097.9 or 5097.995 and listed in the California Native~~
32 ~~American Heritage Commission Sacred Lands File pursuant to~~
33 ~~Section 5097.993 or 5097.994, the lead agency shall make its best~~
34 ~~effort to ensure that these resources be avoided, preserved, and~~
35 ~~protected in place or left in an undisturbed state.~~

36 ~~SEC. 10.~~ Section 21097 is added to the Public Resources Code,
37 to read:

38 21097. (a) ~~If a Native American tribe notifies a lead agency~~
39 ~~prior to the commencement of the public review period established~~
40 ~~by Section 21091, or if the lead agency determines pursuant to~~

1 Section 21084.3, that a project may adversely affect a tribal cultural
2 resource, including a sacred place, or a tribal reservation or
3 rancheria and that the tribe wishes to consult to resolve the
4 potentially adverse impacts, the lead agency shall engage in early
5 consultation with the affected tribe before or during the
6 environmental review process. The lead agency shall provide to
7 the affected tribe copies of any environmental document and its
8 technical reports. The affected tribe may request the Native
9 American Heritage Commission, the State Office of Historic
10 Preservation, and other relevant agencies or entities to participate
11 in the consultation process and to seek mutually agreeable methods
12 of avoiding or otherwise resolving the potential adverse effects.
13 As part of the consultation process, the parties may propose
14 mitigation measures capable of avoiding or substantially lessening
15 potential impacts to a tribal cultural resource, including a sacred
16 place. Any binding agreement reached in this consultation shall
17 be incorporated as mitigation measures in the final environmental
18 document.

19 (b) If no agreement is reached pursuant to subdivision (a), or if
20 an affected tribe identifies significant effects on a tribal cultural
21 resource, including a sacred place, or the affected tribe's reservation
22 or rancheria during the public comment period, the environmental
23 document shall include both of the following analyses:

24 (1) Whether the proposed project has a significant impact on
25 an identified tribal cultural resource, including a sacred place.

26 (2) Whether the alternatives or mitigation measures proposed
27 by the parties pursuant to subdivision (a) or during the public
28 comment period avoid or substantially lessen the impact to the
29 identified cultural resource, including a sacred place, or a tribal
30 reservation or rancheria.

31 (c) (1) Any information, including, but not limited to, the
32 location, nature, and use of the place, feature, site, or object that
33 is submitted by an affected tribe regarding a tribal cultural resource,
34 including a sacred place, may not be included in the environmental
35 impact report or otherwise disclosed by the lead agency or any
36 other public agency to the public without the prior consent of the
37 tribe that provided the information. The submitted information
38 shall be published in a confidential appendix to the environmental
39 document. This subdivision is not intended, and may not be
40 construed, to prohibit the confidential exchange of the submitted

1 information between public agencies that have lawful jurisdiction
2 over the preparation of the environmental document.

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

5 ~~(d) The lead agency and any responsible agency for the proposed~~
6 ~~project may issue a permit for a project with a significant impact~~
7 ~~on an identified tribal cultural resource, including a sacred place,~~
8 ~~only if one of the following occurs:~~

9 ~~(1) Meaningful consultation between the affected Native~~
10 ~~American tribes and the lead agency has occurred pursuant to~~
11 ~~Section 65352.4 of the Government Code and Sections 21080.3~~
12 ~~and 21104. The lead agency has given major consideration to~~
13 ~~preventing impacts to tribal cultural resources and has demonstrated~~
14 ~~best efforts to protect and preserve sacred places in a culturally~~
15 ~~appropriate manner with dignity so as not to further debilitate tribal~~
16 ~~religious practices, traditions, and identities.~~

17 ~~(2) The affected tribe has received notice of, and has failed to~~
18 ~~comment on, the proposed mitigation measures during the comment~~
19 ~~period established in Section 21091 and any public hearing required~~
20 ~~by or held pursuant to this division.~~

21 ~~(3) The lead agency determines that there is no legal or feasible~~
22 ~~way to accomplish the project's purpose without causing a~~
23 ~~significant effect upon the sacred place, that all feasible mitigation~~
24 ~~or avoidance measures have been incorporated, and that specific~~
25 ~~overriding economic, legal, social, technological, or other benefits~~
26 ~~of the project outweigh the significant effects on the environment.~~
27 ~~These findings may be made only after the lead agency provides~~
28 ~~30 days' notice of hearing to the affected tribe and an opportunity~~
29 ~~for the affected tribe to review and comment on the proposed~~
30 ~~finding.~~

31 ~~(e) If an agreement is not reached pursuant to subdivision (a)~~
32 ~~and if it can be demonstrated that a project will cause significant~~
33 ~~effect to a tribal cultural resource, including a sacred place, the~~
34 ~~lead agency may require all reasonable efforts to be made to treat~~
35 ~~the tribal cultural resource, including a sacred place, in a culturally~~
36 ~~sensitive manner. Examples of culturally sensitive treatment~~
37 ~~include, but are not limited to, the following:~~

38 ~~(1) Planning construction to avoid those resources or places.~~

39 ~~(2) Deeding resources or places into permanent conservation~~
40 ~~easements.~~

1 ~~(3) Planning parks, greenspace, or other open space to~~
2 ~~incorporate those resources or places.~~

3 ~~(4) Adopting culturally appropriate mitigation measures that~~
4 ~~take into account the tribal value and meaning of the resource or~~
5 ~~place.~~

6 ~~(f) In determining the presence of tribal cultural resources,~~
7 ~~including sacred places, the lead agency shall use the most current~~
8 ~~and up-to-date technology, research, and resources including, but~~
9 ~~not limited to, tribal, local, state, and national registers, the Native~~
10 ~~American Heritage Commission Sacred Lands File, mapping and~~
11 ~~Geographic Information System data, current cultural resources~~
12 ~~reports, foot surveys, ethnographic assessment, noninvasive study~~
13 ~~techniques, and information submitted by an affected tribe. The~~
14 ~~lead agency shall make all reasonable efforts and complete the~~
15 ~~research and identification efforts prior to the release of the draft~~
16 ~~environmental document and, in any case, no later than the~~
17 ~~finalization of the environmental document.~~

18 ~~(g) This section is not intended, and may not be construed, to~~
19 ~~do either of the following:~~

20 ~~(1) Prohibit any person or entity from seeking any damages or~~
21 ~~injunction authorized by law.~~

22 ~~(2) Limit consultation between the state and tribal governments,~~
23 ~~existing confidentiality provisions, or the protection of religious~~
24 ~~exercise to the fullest extent permitted under state and federal law.~~

25 ~~SEC. 11. Section 21104 of the Public Resources Code is~~
26 ~~amended to read:~~

27 ~~21104. (a) Prior to completing an environmental impact report,~~
28 ~~the state lead agency shall consult with, and obtain comments~~
29 ~~from, each responsible agency, trustee agency, affected Native~~
30 ~~American tribes, any public agency that has jurisdiction by law~~
31 ~~with respect to the project, and any city or county that borders on~~
32 ~~a city or county within which the project is located unless otherwise~~
33 ~~designated annually by agreement between the state lead agency~~
34 ~~and the city or county, and may consult with any person who has~~
35 ~~special expertise with respect to any environmental impact~~
36 ~~involved. In the case of a project described in subdivision (c) of~~
37 ~~Section 21065, the state lead agency shall, upon the request of the~~
38 ~~applicant, provide for early consultation to identify the range of~~
39 ~~actions, alternatives, mitigation measures, and significant effects~~
40 ~~to be analyzed in depth in the environmental impact report. The~~

1 state lead agency may consult with persons identified by the
2 applicant who the applicant believes will be concerned with the
3 environmental effects of the project and may consult with members
4 of the public who have made a written request to be consulted on
5 the project. A request by the applicant for early consultation shall
6 be made not later than 30 days after the determination required by
7 Section 21080.1 with respect to the project.

8 (b) The state lead agency shall consult with, and obtain
9 comments from, the State Air Resources Board in preparing an
10 environmental impact report on a highway or freeway project, as
11 to the air pollution impact of the potential vehicular use of the
12 highway or freeway.

13 (c) A responsible agency or other public agency shall only make
14 substantive comments regarding those activities involved in a
15 project that are within an area of expertise of the agency or that
16 are required to be carried out or approved by the agency. Those
17 comments shall be supported by specific documentation.

18 *SEC. 7. Section 21084.3 is added to the Public Resources Code,*
19 *to read:*

20 *21084.3. (a) If the lead agency determines that a project will*
21 *have a substantial adverse change on a tribal cultural resource,*
22 *the following mitigation measures, in order of preference, that*
23 *may avoid or minimize the significant adverse impacts shall be*
24 *implemented, if feasible:*

25 *(1) Planning construction to avoid the resources and protect*
26 *the cultural and natural context, or planning greenspace, parks,*
27 *or other open space, to incorporate the resources with culturally*
28 *appropriate protection and management criteria.*

29 *(2) Consideration of project alternatives that protect the*
30 *resources.*

31 *(3) Protecting resources or places through conveyance to an*
32 *appropriate Native American tribe of permanent easements, or*
33 *other interests in real property, with culturally appropriate*
34 *management criteria for the purpose of preserving or utilizing the*
35 *resources or places.*

36 *(4) Adopting mitigation measures that treat the resources with*
37 *culturally appropriate dignity taking into account the tribal value*
38 *and meaning of the resource including, but not limited to, the*
39 *following:*

1 (A) Mitigation that protects the cultural character and integrity
2 of the resource.

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

4 (C) Mitigation that protects the confidentiality of the resource.

5 (5) Any of the examples of treatments set forth in Section
6 21083.2.

7 (b) If the lead agency determines that a project will have a
8 significant adverse impact on a tribal cultural resource that is a
9 sacred place as described in paragraph (2) of subdivision (a) of
10 Section 21074, no severe or irreparable damage shall occur and
11 no interference with the free expression or exercise of a Native
12 American religion as provided in the United States Constitution
13 and the California Constitution shall occur with regard to this
14 place except on a clear and convincing showing that the public
15 interest and necessity so require.

16 (c) This section shall apply only to a project that has a notice
17 of preparation or a notice of negative declaration or mitigated
18 negative declaration filed on or after January 1, 2014.

19 SEC. 8. Section 21097 is added to the Public Resources Code,
20 to read:

21 21097. (a) A Native American tribe that is traditionally and
22 culturally affiliated with the geographic area of the proposed
23 project wishing to consult with the lead agency to discuss
24 potentially feasible means by which potentially significant impacts
25 on a tribal cultural resources can be feasibly avoided or minimized
26 to less than significant, may notify the lead agency prior to the
27 public review period established by Section 21091, but no later
28 than 30 days after receipt of the lead agency's notice of
29 preparation of an environmental impact report or 20 days after
30 receipt of the lead agency's notice of a negative declaration or
31 mitigated negative declaration. The lead agency shall provide to
32 the Native American tribe copies of any environmental document
33 or technical report relied on by the lead agency. The Native
34 American tribe may request the project proponent, Native
35 American Heritage Commission, the State Office of Historic
36 Preservation, and other relevant agencies or entities to participate
37 in the consultation process and to seek mutually agreeable methods
38 of avoiding or otherwise resolving the potential adverse effects.
39 As part of the consultation process, the parties may propose

1 mitigation measures capable of avoiding or substantially lessening
2 potential significant impacts to a tribal cultural resource.

3 (b) Any mitigation measures agreed upon by the lead agency
4 and Native American tribe in the consultation shall be incorporated
5 as mitigation measures in the final environmental document and
6 fully enforceable through conditions, agreements, or measures.

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

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

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

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

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

33 (e) The lead agency for the proposed project may issue a permit
34 or grant an approval for a project with a significant impact on an
35 identified tribal cultural resource only if one of the following
36 occurs:

37 (1) Mitigation measures agreed to during the consultation
38 process pursuant to subdivision (b) or another agreement have
39 been incorporated into the final environmental document and
40 mitigation monitoring program.

1 (2) *The Native American tribe accepts the mitigation measures*
2 *proposed in the draft or final environmental document and*
3 *mitigation monitoring and reporting program.*

4 (3) *Consultation between the Native American tribes and the*
5 *lead agency has occurred pursuant to Section 65352.4 of the*
6 *Government Code and Section 21080.3.1.*

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

12 (f) *If an agreement is not reached pursuant to this section and*
13 *if substantial evidence demonstrates that a project will cause a*
14 *significant effect to a tribal cultural resource the lead agency shall*
15 *require feasible mitigation pursuant to subdivision (a) of Section*
16 *21084.3 and, if applicable, mitigation pursuant to subdivision (b)*
17 *of Section 21084.3.*

18 (g) *It is the intent of the Legislature that the lead agency engage*
19 *in early consultation with the Native American tribe before the*
20 *public review period for the environmental documents commences.*

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

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

28 ~~SEC. 12.~~

29 *SEC. 9. (a) This act does not alter or expand the applicability*
30 *of the California Environmental Quality Act (Division 13*
31 *(commencing with Section 21000) of the Public Resources Code)*
32 *for concerning projects occurring on Native American tribal*
33 *reservations or rancherias.*

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

38 ~~SEC. 13.~~

39 *SEC. 10. No reimbursement is required by this act pursuant to*
40 *Section 6 of Article XIII B of the California Constitution because*

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