

AMENDED IN ASSEMBLY MARCH 10, 2025

CALIFORNIA LEGISLATURE—2025–26 REGULAR SESSION

**ASSEMBLY BILL**

**No. 52**

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**Introduced by Assembly Member Aguiar-Curry**

December 2, 2024

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~~An act to amend Section 5097.94 of the Public Resources Code, relating to Native American tribes. An act to amend Section 815.3 of the Civil Code, to amend Sections 65040.2, 65092, 65351, 65352, 65352.3, 65560, and 65562.5 of, and to repeal and add Section 65352.4 of, the Government Code, and to amend Sections 5097.9, 5097.94, 5097.95, 5097.98, 21073, 21074, 21080.3.1, 21080.3.2, 21082.3, and 21084.3 of, to repeal Section 5097.96 of, and to repeal and add Section 21083.09 of, the Public Resources Code, relating to Native American resources.~~

LEGISLATIVE COUNSEL’S DIGEST

AB 52, as amended, Aguiar-Curry. ~~Native American Heritage Commission: powers and duties: resources.~~

(1) Existing law finds and declares it to be the public policy and in the public interest of California to encourage the voluntary conveyance of conservation easements to qualified nonprofit organizations. Existing law defines the term “conservation easement” for these purposes, and authorizes certain entities and organizations to acquire and hold conservation easements, including a federally recognized California Native American tribe or a nonfederally recognized California Native American tribe that is on the contact list maintained by the Native American Heritage Commission, to protect a California Native American prehistoric, archaeological, cultural, spiritual, or ceremonial place, if the conservation easement is voluntarily conveyed.

*This bill would instead authorize a California Native American tribe that is on the above-described contact list, to protect a California Native American prehistoric, archaeological, cultural, spiritual, or ceremonial place, to acquire and hold conservation easements, if the conservation easement is voluntarily conveyed or otherwise conveyed pursuant to the California Environmental Quality Act.*

*(2) Existing law establishes the Office of Land Use and Climate Innovation to serve the Governor and the Governor's cabinet as staff for long-range planning and research and to constitute as the comprehensive state planning agency. Existing law requires the office to, among other things, encourage the formation and proper functioning of, and provide planning assistance to, city, county, district, and regional planning agencies. In connection with these responsibilities, existing law requires the office to develop and adopt guidelines for the preparation of and the content of the mandatory elements required in city and county general plans, as prescribed. By March 1, 2005, existing law requires the guidelines to contain advice, developed in consultation with the Native American Heritage Commission, for consulting with California Native American tribes, as specified.*

*This bill would instead require, by March 1, 2026, the guidelines to contain advice, developed in consultation with California Native American tribes that are on the contact list administered and maintained by the Native American Heritage Commission, as described, and the Native American Heritage Commission, for consulting with and obtaining tribal information and knowledge from California Native American tribes, as specified. The bill would make related conforming changes.*

*(3) Existing law, the Planning and Zoning Law and the Subdivision Map Act, requires local governments to hold public hearings regarding various land use actions contemplated by those governments and provide notice of those public hearings, as specified. Existing law requires specified notices to be mailed or delivered at least 10 days prior to the hearing to any person who has filed a written request for notice with either the clerk of the governing body or with any other person designated by the governing body to receive these requests. Existing law defines a "person" to include a California Native American tribe that is on the contact list maintained by the Native American Heritage Commission.*

*This bill would instead require notice to be given, as described above, to any California Native American tribe that is on the contact list*

*administered and maintained by the Native American Heritage Commission, as specified, that has filed a written request, as described above.*

*(4) Existing law, the Planning and Zoning Law, requires a city, county, or city and county to prepare a general plan for its jurisdiction that contains certain mandatory elements and requires the local planning agency to provide opportunities for the involvement of citizens, California Native American Indian tribes, public agencies, public utility companies, and civic, education, and other community groups through public hearings and other appropriate means during the preparation or amendment of a general plan. Existing law also requires a city or county, prior to the adoption or any amendment of a general plan, to conduct consultations with California Native American tribes, as specified, for the purpose of preserving or mitigating impacts to places, features, and objects, as described, that are located within the city's or county's jurisdiction. Existing law defines "consultation" for these purposes and requires, among other things, the consultation between governmental agencies and Native American tribes to be conducted in a way that is mutually respectful of each party's sovereignty.*

*This bill would revise the definition of "consultation" to mean, among other things, a formal 2-way government-to-government process and dialogue between governmental agencies and federally recognized Native American tribes and would require the consultation to be conducted in a way that is mutually respectful of each party's sovereignty, with deference to federally recognized tribes' expertise, tribal knowledge, and information concerning resources to which they are culturally affiliated. The bill would require tribal consultation for specified purposes, including to identify and determine tribal resources, places, features, and objects, as described. The bill would authorize a California Native American tribal group that is not federally recognized and is on the contact list administered and maintained by the Native American Heritage Commission, as specified, to participate in the review process related to a consultation, as provided. The bill would recast certain provisions and make related conforming changes for these purposes. By imposing additional duties on local governmental agencies, the bill would impose a state-mandated local program.*

*(5) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) 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 a lead agency, before releasing an environmental review document for a project, to begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project, as provided. CEQA authorizes the parties, as a part of the consultation, to propose mitigation measures capable of avoiding or substantially lessening potential significant impacts to a tribal cultural resource or alternatives that would avoid significant impacts to a tribal cultural resource. CEQA requires public agencies, when feasible, to avoid damaging effects to tribal cultural resources and specifies mitigation measures that should be considered to avoid or minimize significant adverse impacts on tribal cultural resources. CEQA specifies that the consultation is considered to be concluded if the parties agree to the mitigation measures or if a party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. CEQA authorizes the lead agency to certify the EIR or adopt a negative declaration or mitigation negative declaration for a project with a significant impact on an identified tribal cultural resource if the consultation process with a California Native American tribe has concluded or if the California Native American tribe fails to provide comments to the lead agency or otherwise fails to engage in the consultation process.*

*This bill would revise and recast provisions related to the consultation process between the lead agency and California Native American tribes to, among other things, specify that the purpose of the consultation process is for the identification and determination of tribal cultural resources and identification of mitigation measures, among other purposes. The bill would specify that the duration of the consultation is from the point in time when the California Native American tribe requests the consultation to the completion of the implementation of the mitigation measures for the project. The bill would specify that the first step of the consultation is considered completed if the parties agree to the mitigation measure or a party, in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. The bill*

would authorize a lead agency to certify an EIR or adopt a negative declaration or mitigated negative declaration for the project if the first step of the consultation is completed. The bill would revise and recast mitigation measures that a public agency should take to avoid or minimize the significant adverse impacts on tribal cultural resources if the consultation process fails to result in agree-upon mitigation measures, as provided. By imposing additional duties on local agencies in their implementation of CEQA, this bill would impose a state-mandated local program.

(6) Existing law establishes the Native American Heritage Commission and requires the commission to perform various duties related to Native American matters, including the identification and the cataloging of places of special religious or social significance to Native Americans, and known graves and cemeteries of known Native Americans on private properties. Existing law defines “California Native American tribe” to be a federally recognized or a nonfederally recognized Native American tribe in California that is on the contact list maintained by the commission. Existing law requires state and local agencies to cooperate with the commission in carrying out the commission’s duties, including transmitting, at the commission’s expense, copies of appropriate sections of all EIRs of projects relating to property identified by the commission as of special religious significance to Native Americans or that is reasonably foreseeable to be that type of property.

This bill would require the commission to prepare and maintain a verified inventory of Native American sacred places, to be known as the California Sacred Lands File, on public and private lands. The bill would require the commission to administer and maintain the contact list of California Native American tribes and would require the contact list to include delineation of lands and geographic areas that are culturally affiliated with California Native American tribes. The bill would instead specify the cooperation provided by state or local agencies includes transmitting copies, electronic or physical, of certain information related to projects relating to property identified by the commission as of special religious significance or that is reasonably foreseeable to be that type of property and would require state and local agencies to appear at commission meetings when a matter within their authority is on the commission’s agenda. By imposing additional duties on local agencies, this bill would impose a state-mandated local program.

*Existing law prohibits a public agency or private party using or occupying public property or operating on public property from interfering with the free expression or exercise of Native American religion or causing severe or irreparable damage to Native American sanctified cemeteries, places of worship, religious or ceremonial sites, or sacred shrines located on public property, except as provided. Existing law, upon the discovery of Native American human remains, imposes certain requirements on the landowner. Existing law exempts public properties of all cities, counties, and cities and counties located within the limits of the city, county, and city and county from the above prohibition and requirements, except for parklands in excess of 100 acres.*

*This bill would repeal the exemption for public properties of cities, counties, and cities and counties. The bill would, upon the discovery of multiple Native American human remains during ground-disturbing land development activities, prohibit the disturbance, impairment, or harm to the location of the discovery. The bill would require the landowner to engage in conferral with the most likely descendant to include culturally appropriate treatment of those human remains, as provided. For discovery occurring during activities related to projects that are subject to CEQA, the bill would require the project to contain an open-space preservation area with an appropriate buffer for the preservation in place and protection of those human remains and the burial area site. The bill would require the landowner to take certain actions to protect the site.*

*The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.*

*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 with regard to certain mandates no reimbursement is required by this act for a specified reason.*

*With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.*

~~Existing law establishes the Native American Heritage Commission and vests the commission with specified powers and duties relative to Native American cultural resources.~~

~~This bill would make a nonsubstantive change to that provision.~~

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

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

1     SECTION 1. (a) *The Legislature finds and declares all of the*  
2     *following:*  
3     (1) *Current state law provides a limited measure of protection*  
4     *for Native American human remains, burial sites, and sanctified*  
5     *Indian cemeteries.*  
6     (2) *Existing law provides limited protection for Native American*  
7     *sacred places, including, but not limited to, places of worship,*  
8     *religious or ceremonial sites, and sacred shrines.*  
9     (3) *In 2011, California Governor Brown issued Executive Order*  
10    *No. B-10-11, which affirmed the state's relationship with Indian*  
11    *tribes under both federal and state law, including federally*  
12    *recognized tribes' inherent authority, committing the State of*  
13    *California to sustaining and strengthening*  
14    *government-to-government relationships and engaging in tribal*  
15    *consultation on policies that affect both federally recognized tribes*  
16    *and other California Native Americans.*  
17    (4) *In 2019, Governor Newsom issued Executive Order No.*  
18    *N-15-19 wherein, on behalf of the state, the Governor*  
19    *acknowledged the state's history of extermination policies and*  
20    *apologized for these atrocities. The executive order also reaffirmed*  
21    *Executive Order No. B-10-11, affirming the state's commitment*  
22    *to California Indians away from discriminatory and paternalistic*  
23    *policies.*  
24    (5) *Native American sacred places, burial areas, and tribal*  
25    *cultural resources are vital to the cultural and spiritual well-being*  
26    *of Indian tribes and people. These physical places and remaining*  
27    *resources are directly tied to the cultural identity and sovereign*  
28    *self-determination of Indian tribes. Impacts to or destruction of*  
29    *such places can interrupt, eliminate, or adversely affect integral*  
30    *cultural practices and beliefs, and thus obstruct tribal sovereignty.*

1     (6) As California Native Americans have used and continue to  
2     use natural settings in the conduct of religious observances,  
3     ceremonies, and cultural practices and beliefs, these resources  
4     reflect the tribes' continuing cultural ties to the land and their  
5     traditional heritages. Those sites, including tribal ancestral burial  
6     areas, are being lost at an alarming rate because lead agencies  
7     are not performing cumulative impact assessments and are  
8     approving land use development projects that do not consider  
9     avoidance and preservation in place.

10    (7) Many of these tribal cultural resources, archaeological,  
11    historical, cultural, burial, and sacred sites, are not located within  
12    the current boundaries of tribal government reservations and  
13    rancherias, and therefore are not covered by the protectionist  
14    policies of tribal governments.

15    (8) As part of the State of California's environmental  
16    protectionist policies, the California Environmental Quality Act  
17    (CEQA) (Division 13 (commencing with Section 21000) of the  
18    Public Resources Code) includes procedures for addressing  
19    impacts to the environment caused by development projects.

20    (9) In 2014, the Legislature enacted Chapter 532 of the Statutes  
21    of 2014 (Assembly Bill 52), a measure that included amendments  
22    to CEQA, to address the rapidly disappearing Native American  
23    cultural sites, sacred places, and heritage resources that were  
24    being lost due to land use development involving both private and  
25    public development projects in the state. Assembly Bill 52  
26    established that an adverse impact to a tribal cultural resource is  
27    a significant environmental impact in CEQA.

28    (10) A new category of CEQA resources called "tribal cultural  
29    resources" was established in CEQA. Assembly Bill 52 also  
30    enacted mandatory Native American government-to-government  
31    tribal consultation processes, including processes for adopting  
32    culturally appropriate mitigation measures, with avoidance and  
33    preservation in place being the preference, confidentiality  
34    standards, and findings required by a lead agency when a CEQA  
35    project will cause adverse impacts to tribal cultural resources.

36    (11) Apart from Appendix G, the CEQA Guidelines were not  
37    updated by the Office of Land Use and Climate Innovation or other  
38    state agencies to reflect the amendments to CEQA made by  
39    Assembly Bill 52. The sole state guidance to lead agencies was a  
40    brief technical advisory issued by the former Office of Planning



1 *and Research, which is inadequate to accomplish proper*  
2 *implementation.*

3 *(12) Since the enactment of the 2014 Assembly Bill 52 10 years*  
4 *ago, the provisions of the law have been misunderstood and*  
5 *incorrectly effectuated by lead agencies, state and local*  
6 *governments, land use developers, and consultants.*

7 *(13) Lack of state guidance along with a failure to update the*  
8 *CEQA Guidelines contributed to lead agency misunderstandings*  
9 *of Assembly Bill 52. These misunderstandings have resulted in*  
10 *state and local government practices concerning tribal cultural*  
11 *resources and tribal consultation that were never intended by the*  
12 *Legislature, such as tribal consultation treated as a simple*  
13 *procedural step rather than the substantive*  
14 *government-to-government consultation that was intended. Most*  
15 *concerning, it has become common practice for archaeological*  
16 *and historic properties standards to be used for tribal cultural*  
17 *resources, including the very identification of tribal cultural*  
18 *resources determined by archaeologists and consultants, while*  
19 *lead agencies and consultants dismiss critical tribal government*  
20 *information.*

21 *(b) In recognition of California Native American tribal*  
22 *sovereignty and the unique relationship of state and local*  
23 *governments and public agencies with California Native American*  
24 *tribal governments, and respecting the interests and roles of project*  
25 *proponents, it is the intent of the Legislature, in enacting this act,*  
26 *to accomplish all of the following:*

27 *(1) Protect tribal cultural resources, which is in the public*  
28 *interest of the State of California.*

29 *(2) Clarify that the category of “tribal cultural resources” is*  
30 *distinct and separate from “archaeological resources” and historic*  
31 *properties, and that tribal methods and solutions, rather than*  
32 *archaeological methods, must be the foremost and principal*  
33 *information used to identify tribal cultural resources and define*  
34 *culturally appropriate treatment or mitigation, with a deference*  
35 *for avoidance.*

36 *(3) Clarify that “tribal cultural resources” may include or be*  
37 *primarily composed of a sacred site, Native American human*  
38 *remains, or burial areas, and that federal government tribal*  
39 *registries, maintained by Tribal Historic Preservation Officers,*

1 *shall serve as substantial evidence for a lead agency finding of a*  
2 *tribal cultural resource.*

3 *(4) Clarify the substance, steps, and purposes of tribal*  
4 *consultation, to ensure that lead agencies engage in and actively*  
5 *seek practicable and culturally appropriate solutions with tribes*  
6 *early in planning and environmental review processes and*  
7 *throughout these processes until the mitigation measures or*  
8 *planning agreements have been completed.*

9 *(5) Clarify that good faith and meaningful tribal consultation*  
10 *includes providing tribes with project information that is necessary*  
11 *to the purposes of the consultation to arrive at tribally focused*  
12 *solutions for avoidance and mitigation of tribal cultural resources,*  
13 *including Native American human remains and burial areas.*

14 *(6) Clarify the purpose and steps of meaningful*  
15 *government-to-government consultation between tribal*  
16 *governments and lead agencies, that culturally appropriate*  
17 *mitigation requires avoidance consideration, and that tribally*  
18 *directed methods and solutions for protecting significant tribal*  
19 *cultural resources, including burial areas and sacred sites, to*  
20 *which Native American tribes are culturally affiliated, shall be*  
21 *granted deference.*

22 *(7) Clarify that tribal information and knowledge is the primary*  
23 *basis for the identification of tribal cultural resources, and that*  
24 *archaeological information and methods will be supplementary*  
25 *to tribal methods and solutions.*

26 *(8) Clarify that lead agencies shall engage in discussions with*  
27 *tribes concerning project alternatives, cumulative impacts,*  
28 *inadvertent discoveries, and culturally appropriate mitigation if*  
29 *the tribe requests.*

30 *(9) Clarify that only federally recognized tribes are legally*  
31 *entitled to government-to-government consultation with lead*  
32 *agencies and institutions under federal and state law.*

33 *(10) Clarify that the term “California Native American tribe”*  
34 *includes both federally recognized tribes and lineal descendent*  
35 *groups that are not federally recognized because there is a legal*  
36 *distinction between tribes that are federally recognized and tribal*  
37 *groups that are not federally recognized. The term California*  
38 *Native American tribe is for ease of reference only and does not*  
39 *grant political status, or state or federal recognition, to tribal*  
40 *groups that are not federally recognized.*

1    (11) Clarify the role of the Native American Heritage  
2    Commission in administering and maintaining the contact list of  
3    California Native American tribes to preserve federally recognized  
4    tribal sovereignty, and to allow for the inclusion of verified  
5    nonfederally recognized tribal groups to participate in state  
6    cultural resources protection laws.

7    (12) Clarify that tribal lineal descendants and nonfederally  
8    recognized tribal groups that are included on the Native American  
9    Heritage Commission's contact list may participate in state cultural  
10   protection laws as additional consulting parties, a construct used  
11   in federal law, so there is no violation of federal law by the State  
12   of California or any of its political entities or subdivisions.

13   (13) As provided in federal law, clarify in state law that  
14   deference shall be provided to federally recognized tribal  
15   governments concerning tribal information and knowledge,  
16   including the identification of tribal cultural resources, Native  
17   American burial sites, and sacred sites.

18   SEC. 2. Section 815.3 of the Civil Code is amended to read:

19   815.3. Only the following entities or organizations may acquire  
20   and hold conservation easements:

21   (a) A tax-exempt nonprofit organization qualified under Section  
22   501(c)(3) of the Internal Revenue Code and qualified to do business  
23   in this state which has as its primary purpose the preservation,  
24   protection, or enhancement of land in its natural, scenic, historical,  
25   agricultural, forested, or open-space condition or use.

26   (b) The state or any city, county, city and county, district, or  
27   other state or local governmental entity, if otherwise authorized  
28   to acquire and hold title to real property and if the conservation  
29   easement is voluntarily conveyed. No local governmental entity  
30   may condition the issuance of an entitlement for use on the  
31   applicant's granting of a conservation easement pursuant to this  
32   chapter section.

33   (c) ~~A federally recognized California Native American tribe or~~  
34   ~~a nonfederally recognized California Native American tribe that~~  
35   is on the contact list *administered and maintained* by the Native  
36   American Heritage ~~Commission~~ *Commission*, pursuant to  
37   subdivision (n) of Section 5097.94 of the Public Resources Code,  
38   to protect a California Native American prehistoric, archaeological,  
39   cultural, spiritual, or ceremonial place, if the conservation easement  
40   is voluntarily ~~conveyed~~ *conveyed or otherwise conveyed pursuant*

1 *to the California Environmental Quality Act (Division 13*  
2 *(commencing with Section 21000) of the Public Resources Code).*

3 *SEC. 3. Section 65040.2 of the Government Code is amended*  
4 *to read:*

5 65040.2. (a) In connection with its responsibilities under  
6 subdivision (I) of Section 65040, the office shall develop and adopt  
7 guidelines for the preparation of and the content of the mandatory  
8 elements required in city and county general plans by Article 5  
9 (commencing with Section 65300) of Chapter 3. For purposes of  
10 this section, the guidelines prepared pursuant to Section 50459 of  
11 the Health and Safety Code shall be the guidelines for the housing  
12 element required by Section 65302. In the event that additional  
13 elements are hereafter required in city and county general plans  
14 by Article 5 (commencing with Section 65300) of Chapter 3, the  
15 office shall adopt guidelines for those elements within six months  
16 of the effective date of the legislation requiring those additional  
17 elements.

18 (b) The office may request from each state department and  
19 agency, as it deems appropriate, and the department or agency  
20 shall provide, technical assistance in readopting, amending, or  
21 repealing the guidelines.

22 (c) The guidelines shall be advisory to each city and county in  
23 order to provide assistance in preparing and maintaining their  
24 respective general plans.

25 (d) The guidelines shall contain the guidelines for addressing  
26 environmental justice matters developed pursuant to Section  
27 65040.12.

28 (e) The guidelines shall contain advice including  
29 recommendations for best practices to allow for collaborative land  
30 use planning of adjacent civilian and military lands and facilities.  
31 The guidelines shall encourage enhanced land use compatibility  
32 between civilian lands and any adjacent or nearby military facilities  
33 through the examination of potential impacts upon one another.

34 (f) The guidelines shall contain advice for addressing the effects  
35 of civilian development on military readiness activities carried out  
36 on all of the following:

- 37 (1) Military installations.
- 38 (2) Military operating areas.
- 39 (3) Military training areas.
- 40 (4) Military training routes.

1 (5) Military airspace.

2 (6) Other territory adjacent to those installations and areas.

3 (g) By March 1, ~~2005~~, 2026, the guidelines shall contain advice,  
4 developed in consultation with *California Native American tribes*  
5 *that are on the contact list administered and maintained by the*  
6 *Native American Heritage Commission pursuant to subdivision*  
7 *(n) of Section 5097.94 of the Public Resources Code and the Native*  
8 *American Heritage Commission, for consulting with ~~California~~*  
9 *~~Native American tribes~~ and obtaining tribal information and tribal*  
10 *knowledge from “California Native American tribes” for all of*  
11 *the following:*

12 (1) The preservation of, or the mitigation of impacts to, places,  
13 features, and objects described in Sections 5097.9 and 5097.993  
14 of the Public Resources Code.

15 (2) Procedures for identifying ~~through the Native American~~  
16 ~~Heritage Commission the appropriate California Native American~~  
17 ~~tribes; the culturally affiliated “California Native American tribes”~~  
18 *that are on the contact list administered and maintained by the*  
19 *Native American Heritage Commission pursuant to subdivision*  
20 *(n) of Section 5097.94 of the Public Resources Code.*

21 (3) ~~Procedures~~ *In compliance with federal and state law,*  
22 *culturally appropriate procedures* for continuing to protect the  
23 confidentiality of information concerning the specific identity,  
24 location, character, and use of those places, features, and objects.

25 (4) Procedures to facilitate voluntary landowner participation  
26 to preserve and protect the specific identity, location, character,  
27 and use of those places, features, and objects.

28 (h) Commencing January 1, 2009, but no later than January 1,  
29 2014, upon the next revision of the guidelines pursuant to  
30 subdivision (i), the office shall prepare or amend guidelines for a  
31 legislative body to accommodate the safe and convenient travel  
32 of users of streets, roads, and highways in a manner that is suitable  
33 to the rural, suburban, or urban context of the general plan, pursuant  
34 to subdivision (b) of Section 65302.

35 (1) In developing guidelines, the office shall consider how  
36 appropriate accommodation varies depending on its transportation  
37 and land use context, including urban, suburban, or rural  
38 environments.

39 (2) The office may consult with leading transportation experts  
40 including, but not limited to, bicycle transportation planners,

1 pedestrian planners, public transportation planners, local air quality  
2 management districts, and disability and senior mobility planners.

3 (i) The office shall provide for regular review and revision of  
4 the guidelines established pursuant to this section.

5 *SEC. 4. Section 65092 of the Government Code is amended to*  
6 *read:*

7 65092. (a) When a provision of this title requires notice of a  
8 public hearing to be given pursuant to Section 65090 or 65091,  
9 the notice shall also be mailed or delivered at least 10 days prior  
10 to the hearing to any person who has filed a written request for  
11 notice with either the clerk of the governing body or with any other  
12 person designated by the governing body to receive these requests.  
13 The local agency may charge a fee which is reasonably related to  
14 the costs of providing this service and the local agency may require  
15 each request to be annually renewed.

16 (b) ~~As used in this chapter, "person" includes a California Native~~  
17 ~~American tribe. Notice shall be given as described in subdivision~~  
18 ~~(a) to any California Native American tribe that is on the contact~~  
19 ~~list administered and maintained by the Native American Heritage~~  
20 ~~Commission. Commission pursuant to subdivision (n) of Section~~  
21 ~~5097.94 of the Public Resources Code who has filed a written~~  
22 ~~request as described in subdivision (a).~~

23 *SEC. 5. Section 65351 of the Government Code is amended to*  
24 *read:*

25 65351. During the preparation or amendment of the general  
26 plan, the planning agency shall provide opportunities for the  
27 involvement of citizens, ~~California Native American Indian tribes,~~  
28 *California Native American Indian tribes that are on the contact*  
29 *list administered and maintained by the Native American Heritage*  
30 *Commission pursuant to subdivision (n) of Section 5097.94 of the*  
31 *Public Resources Code, public agencies, public utility companies,*  
32 *and civic, education, and other community groups, through public*  
33 *hearings and any other means the planning agency deems*  
34 *appropriate.*

35 *SEC. 6. Section 65352 of the Government Code is amended to*  
36 *read:*

37 65352. (a) Before a legislative body takes action to adopt or  
38 substantially amend a general plan, the planning agency shall refer  
39 the proposed action to all of the following entities:

1 (1) A city or county, within or abutting the area covered by the  
2 proposal, and any special district that may be significantly affected  
3 by the proposed action, as determined by the planning agency.

4 (2) An elementary, high school, or unified school district within  
5 the area covered by the proposed action.

6 (3) The local agency formation commission.

7 (4) An areawide planning agency whose operations may be  
8 significantly affected by the proposed action, as determined by the  
9 planning agency.

10 (5) A federal agency, if its operations or lands within its  
11 jurisdiction may be significantly affected by the proposed action,  
12 as determined by the planning agency.

13 (6) The branches of the United States Armed Forces that have  
14 provided the Office of ~~Planning and Research~~ *Land Use and*  
15 *Climate Innovation* with a military point of contact pursuant to  
16 subdivision (d) of Section 65944, if the proposed action is within  
17 1,000 feet of a military installation, or lies within special use  
18 airspace, or beneath a low-level flight path, as defined in Section  
19 21098 of the Public Resources Code.

20 (7) A public water system, as defined in Section 116275 of the  
21 Health and Safety Code, with 3,000 or more service connections,  
22 that serves water to customers within the area covered by the  
23 proposal. The public water system shall have at least 45 days to  
24 comment on the proposed plan, in accordance with subdivision  
25 (b), and to provide the planning agency with the information set  
26 forth in Section 65352.5.

27 (8) Any groundwater sustainability agency that has adopted a  
28 groundwater sustainability plan pursuant to Part 2.74 (commencing  
29 with Section 10720) of Division 6 of the Water Code or local  
30 agency that otherwise manages groundwater pursuant to other  
31 provisions of law or a court order, judgment, or decree within the  
32 planning area of the proposed general plan.

33 (9) The State Water Resources Control Board, if it has adopted  
34 an interim plan pursuant to Chapter 11 (commencing with Section  
35 10735) of Part 2.74 of Division 6 of the Water Code that includes  
36 territory within the planning area of the proposed general plan.

37 (10) The Bay Area Air Quality Management District for a  
38 proposed action within the boundaries of the district.

39 (11) A California Native American tribe that is on the contact  
40 list *administered and* maintained by the Native American Heritage

~~Commission~~ Commission, pursuant to subdivision (n) of Section 5097.94 of the Public Resources Code, and that has traditional is culturally affiliated with lands located within the city's or county's jurisdiction.

(12) The Central Valley Flood Protection Board for a proposed action within the boundaries of the Sacramento and San Joaquin Drainage District, as set forth in Section 8501 of the Water Code.

(13) (A) The State Board of Forestry and Fire Protection and every local agency that provides fire protection to territory in the city or county, if the proposed action includes either of the following:

(i) The adoption or amendment of the safety element of its general plan for any county that contains a state responsibility area.

(ii) The adoption or amendment of the safety element of its general plan for any city or county that contains a very high fire hazard severity zone, as defined in subdivision (i) of Section 51177.

(B) A referral made pursuant to this paragraph shall be made no later than the date on which the county or city sends notice of preparation pursuant to Section 21080.4 of the Public Resources Code, if any, for the project.

(b) An entity receiving a proposed general plan or amendment of a general plan pursuant to this section shall have 45 days from the date the referring agency mails it or delivers it to comment unless a longer period is specified by the planning agency.

(c) (1) This section is directory, not mandatory, and the failure to refer a proposed action to the entities specified in this section does not affect the validity of the action, if adopted.

(2) To the extent that the requirements of this section conflict with the requirements of Chapter 4.4 (commencing with Section 65919), the requirements of Chapter 4.4 shall prevail.

SEC. 7. Section 65352.3 of the Government Code is amended to read:

65352.3. (a) (1) Prior to the adoption or any amendment of a city's or county's general plan, proposed on or after March 1, 2005, the city or county shall conduct consultations with California Native American tribes that are on the contact list administered and maintained by the Native American Heritage Commission Commission, pursuant to subdivision (n) of Section 5097.94 of the Public Resources Code, for the purpose of preserving identifying,



1 *evaluating, preserving, or mitigating impacts to places, features,*  
2 *and objects described in Sections 5097.9 and 5097.993 of the*  
3 *Public Resources Code that are located within the*~~city~~ *city's or*  
4 *county's jurisdiction.*

5 (2) From the date on which a California Native American tribe  
6 *that is on the contact list administered and maintained by the*  
7 *Native American Heritage Commission, pursuant to subdivision*  
8 *(n) of Section 5097.94 of the Public Resources Code, is contacted*  
9 *by a city or county pursuant to this subdivision, the tribe has 90*  
10 *days in which to request a consultation, unless a shorter timeframe*  
11 *has been agreed to by that tribe.*

12 (b) Consistent with the guidelines developed and adopted by  
13 the Office of ~~Planning and Research~~ *Land Use and Climate*  
14 *Innovation* pursuant to Section 65040.2, the city or county shall  
15 protect the confidentiality of information concerning the specific  
16 identity, location, character, and use of those places, features, and  
17 objects.

18 *SEC. 8. Section 65352.4 of the Government Code is repealed.*

19 ~~65352.4. For purposes of Section 65351, 65352.3, and 65562.5,~~  
20 ~~“consultation” means the meaningful and timely process of seeking,~~  
21 ~~discussing, and considering carefully the views of others, in a~~  
22 ~~manner that is cognizant of all parties’ cultural values and, where~~  
23 ~~feasible, seeking agreement. Consultation between government~~  
24 ~~agencies and Native American tribes shall be conducted in a way~~  
25 ~~that is mutually respectful of each party’s sovereignty. Consultation~~  
26 ~~shall also recognize the tribes’ potential needs for confidentiality~~  
27 ~~with respect to places that have traditional tribal cultural~~  
28 ~~significance.~~

29 *SEC. 9. Section 65352.4 is added to the Government Code, to*  
30 *read:*

31 *65352.4. (a) The Legislature finds and declares all of the*  
32 *following:*

33 (1) *Federally recognized California Native American tribes*  
34 *traditionally and culturally affiliated with a geographic area may*  
35 *have cultural knowledge and information concerning their own*  
36 *ancestry, religion, and cultural practices, and hold the foremost*  
37 *expertise concerning their tribal cultural resources in those*  
38 *geographic areas.*

39 (2) *California Native American prehistoric, archaeological,*  
40 *cultural, spiritual, and tribal cultural resources, traditional cultural*

1 *places, and ceremonial places are essential elements in tribal*  
2 *cultural traditions, heritages, present-day practices, and identities.*

3 *(3) As such, it is necessary for lead agencies to engage in tribal*  
4 *consultation for the purposes of obtaining and applying tribal*  
5 *information and tribal knowledge concerning places, features, and*  
6 *objects, described in Section 5097.9 of the Public Resources Code,*  
7 *to which they are culturally affiliated, and tribal cultural resources,*  
8 *for fulfillment of required environmental assessments and*  
9 *processes, pursuant to paragraph (1) of subdivision (a) of Section*  
10 *65352.3.*

11 *(b) For purposes of Sections 65351, 65352.3, and 65562.5,*  
12 *“consultation” means all of the following:*

13 *(1) The meaningful and timely process of seeking, discussing,*  
14 *and considering carefully the views of others, in a manner that is*  
15 *cognizant of all parties’ cultural values and, where feasible,*  
16 *seeking agreement.*

17 *(2) Consultation is a formal two-way government-to-government*  
18 *process and dialogue between governmental agencies and federally*  
19 *recognized Native American tribes.*

20 *(3) Tribal government consultation shall be conducted in a way*  
21 *that is mutually respectful of each party’s sovereignty, with*  
22 *deference to federally recognized tribes’ expertise, tribal*  
23 *knowledge, and information concerning resources to which they*  
24 *are culturally affiliated.*

25 *(4) Consultation is not meaningful or transparent if the tribe is*  
26 *not provided with requested technical information, including*  
27 *project information and constraints, data, maps, administrative*  
28 *drafts of environmental documents and technical studies, and any*  
29 *information concerning project activities as they relate to tribal*  
30 *cultural resources protection.*

31 *(5) Consultation shall also recognize the federally recognized*  
32 *tribes’ need for confidentiality with respect to places that have*  
33 *traditional tribal cultural significance and may adopt any*  
34 *additional confidentiality requirements applicable to the*  
35 *consultation.*

36 *(c) Federally recognized tribes, including their tribal*  
37 *information and tribal knowledge of their culturally affiliated*  
38 *geographic areas and resources, as sovereign nations with the*  
39 *inherent rights of self-governance, shall be afforded deference*  
40 *over other tribal groups that are not federally recognized.*

1     (d) Tribal consultation is required for all of the following  
2     purposes, including, but not limited to, all of the following:

3     (1) Identifications and determinations of tribal cultural  
4     resources, places, features, and objects described in Section 5097.9  
5     of the Public Resources Code.

6     (2) Identification of preservation, avoidance, and protective  
7     measures for tribal cultural resources, places, features, and objects  
8     described in Section 5097.9 of the Public Resources Code early  
9     in the planning process, including consideration of the cultural  
10    aspects and purposes of the sites.

11    (3) Identification of standards, methods, and measures for  
12    environmental assessment of tribal cultural resources, places,  
13    features, and objects described in Section 5097.9 of the Public  
14    Resources Code, including technical studies.

15    (4) Providing local governments with tribal information and  
16    knowledge to use early in the land use planning processes to avoid  
17    potential conflicts over the preservation of tribal cultural  
18    resources, places, features, and objects described in Section 5097.9  
19    of the Public Resources Code at later planning stages.

20    (5) Providing tribes the opportunity to manage and caretake  
21    tribal cultural resources, places, features, and objects described  
22    in Section 5097.9 of the Public Resources Code.

23    (e) (1) A California Native American tribal group that is not  
24    federally recognized and is on the contact list administered and  
25    maintained by the Native American Heritage Commission pursuant  
26    to subdivision (n) of Section 5097.94 of the Public Resources Code  
27    may participate in the review process for Sections 65351, 65352.3,  
28    and 65562.5 as additional consulting parties, based on a  
29    demonstrated interest in a project's effects on tribal cultural  
30    resources to which they are affiliated.

31    (2) The decision to invite a nonfederally recognized tribal group  
32    to participate in any of the processes of Sections 65351, 65352.3,  
33    and 65562.5 is a discretionary decision by the lead agency or local  
34    government and shall not be deemed government-to-government  
35    consultation.

36    (3) Inviting nonfederally recognized tribes to participate in the  
37    process shall not in any way diminish or alter federally recognized  
38    Indian tribes' unique legal and political status, the legal and  
39    political relationship between federal agencies, other governmental

1 *entities and federally recognized Indian tribes, or the rights of*  
2 *federally recognized Indian tribes.*

3 *SEC. 10. Section 65560 of the Government Code is amended*  
4 *to read:*

5 65560. For purposes of this chapter:

6 (a) “Amount of land converted to agricultural use” means those  
7 lands that were brought into agricultural use or reestablished in  
8 agricultural use and were not shown as agricultural land on  
9 Important Farmland Series maps maintained by the department in  
10 the most recent biennial report.

11 (b) “Amount of land converted from agricultural use” means  
12 those lands that were permanently converted or committed to urban  
13 or other nonagricultural uses and were shown as agricultural land  
14 on Important Farmland Series maps maintained by the department  
15 and in the most recent biennial report.

16 (c) “Category of agricultural land” means prime farmland,  
17 farmland of statewide importance, unique farmland, and farmland  
18 of local importance, as defined pursuant to the United States  
19 Department of Agriculture’s land inventory and monitoring criteria,  
20 as modified for California, and grazing land. “Grazing land” means  
21 land on which the existing vegetation, whether grown naturally or  
22 through management, is suitable for grazing or browsing of  
23 livestock.

24 (d) “Department” means the Department of Conservation.

25 (e) “Interim Farmland maps” means those maps prepared by  
26 the department for areas that do not have the current soil survey  
27 information needed to compile Important Farmland Series maps.  
28 The Interim Farmland maps shall indicate areas of irrigated  
29 agriculture, dry-farmed agriculture, grazing lands, urban and  
30 built-up lands, and any areas committed to urban or other  
31 nonagricultural uses.

32 (f) “Important Farmland Series maps” means those maps  
33 compiled by the United States Soil Conservation Service and  
34 updated and modified by the department’s Farmland Mapping and  
35 Monitoring Program pursuant to Section 65570.

36 (g) “Local open-space plan” means the open-space element of  
37 a county or city general plan adopted by the board or council, either  
38 as the local open-space plan or as the interim local open-space  
39 plan adopted pursuant to Section 65563.

1 (h) “Open-space land” means any parcel or area of land or water  
2 that is devoted to an open-space use as defined in this section, and  
3 that is designated on a local, regional, or state open-space plan as  
4 any of the following:

5 (1) Open space for the preservation of natural resources,  
6 including, but not limited to, areas required for the preservation  
7 of plant and animal life, including habitat for fish and wildlife  
8 species; areas required for ecologic and other scientific study  
9 purposes; rivers, streams, bays, and estuaries; and coastal beaches,  
10 lakeshores, banks of rivers and streams, and watershed lands.

11 (2) Open space used for the managed production of resources,  
12 including, but not limited to, forest lands, rangeland, agricultural  
13 lands, and areas of economic importance for the production of  
14 food or fiber; areas required for recharge of groundwater basins;  
15 bays, estuaries, marshes, rivers, and streams that are important for  
16 the management of commercial fisheries; and areas containing  
17 major mineral deposits, including those in short supply.

18 (3) Open space for outdoor recreation, including, but not limited  
19 to, areas of outstanding scenic, historic, and cultural value; areas  
20 particularly suited for park and recreation purposes, including  
21 access to lakeshores, beaches, and rivers and streams; and areas  
22 that serve as links between major recreation and open-space  
23 reservations, including utility easements, banks of rivers and  
24 streams, trails, and scenic highway corridors.

25 (4) Open space for public health and safety, including, but not  
26 limited to, areas that require special management or regulation  
27 because of hazardous or special conditions such as earthquake  
28 fault zones, unstable soil areas, flood plains, watersheds, areas  
29 presenting high fire risks, areas required for the protection of water  
30 quality and water reservoirs, and areas required for the protection  
31 and enhancement of air quality.

32 (5) Open space in support of the mission of military installations  
33 that comprises areas adjacent to military installations, military  
34 training routes, and underlying restricted airspace that can provide  
35 additional buffer zones to military activities and complement the  
36 resource values of the military lands.

37 (6) Open space for the protection of *tribal cultural resources*,  
38 places, features, and objects described in Sections 5097.9 and  
39 5097.997 of the Public Resources Code.

(i) “Priority land” means any part, or all of a category of, agricultural or open space lands, identified by a local government in that local government’s agricultural land component of its open-space element or agricultural land element of the general plan, that are prioritized for conservation, taking into consideration the need to balance competing land uses.

*SEC. 11. Section 65562.5 of the Government Code is amended to read:*

~~65562.5. On and after March 1, 2005, if~~ *If* land designated, or proposed to be designated as open space, contains a place, feature, or object described in Sections 5097.9 and 5097.993 of the Public Resources Code, the city or county in which the place, feature, or object is located shall conduct consultations with the ~~California Native American tribe, if any,~~ *California Native American tribe that is on the contact list administered and maintained by the Native American Heritage Commission, pursuant to subdivision (n) of Section 5097.94 of the Public Resources Code*, that has given notice pursuant to Section 65092 for the purpose of determining the level of confidentiality required to protect the specific identity, location, character, or use of the place, feature, or object and for the purpose of developing treatment with appropriate dignity of the place, feature, or object in any corresponding management plan.

*SEC. 12. Section 5097.9 of the Public Resources Code is amended to read:*

~~5097.9. No~~ *(a)* A public agency, and ~~no~~ private party using or occupying public property, or operating on public property, under a public license, permit, grant, lease, or contract made on or after July 1, 1977, shall *not* in any manner whatsoever interfere with the free expression or exercise of Native American religion as provided in the United States Constitution and the California Constitution; nor shall any such agency or party cause severe or irreparable damage to any Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, except on a clear and convincing showing that the public interest and necessity so require. The provisions of this chapter shall be enforced by the commission, pursuant to Sections 5097.94 and 5097.97.

~~The provisions of this~~

1 ~~(b) This chapter shall not be construed to~~ *does not* limit the  
2 requirements of the *California Environmental Quality Act of 1970*;  
3 ~~Division 13 (commencing with Section 21000). (Division 13~~  
4 ~~(commencing with Section 21000)).~~

5 ~~The public property of all cities, counties, and city and county~~  
6 ~~located within the limits of the city, county, and city and county,~~  
7 ~~except for all parklands in excess of 100 acres, shall be exempt~~  
8 ~~from the provisions of this chapter. Nothing in this section shall,~~  
9 ~~however, nullify protections for Indian cemeteries under other~~  
10 ~~statutes.~~

11 *SEC. 13. Section 5097.94 of the Public Resources Code is*  
12 *amended to read:*

13 5097.94. The commission shall have the following powers and  
14 duties:

15 ~~(a) To identify and catalog places of special religious or social~~  
16 ~~significance to Native Americans, and known graves and~~  
17 ~~cemeteries of Native Americans on private lands. The identification~~  
18 ~~and cataloguing of known graves and cemeteries shall be completed~~  
19 ~~on or before January 1, 1984. The commission shall notify~~  
20 ~~landowners on whose property the graves and cemeteries are~~  
21 ~~determined to exist, and shall identify the Native American group~~  
22 ~~most likely descended from those Native Americans who may be~~  
23 ~~interred on the property.~~

24 *(a) (1) To prepare and maintain a verified inventory of Native*  
25 *American sacred places, based on substantial evidence, located*  
26 *on public and private lands that shall be known as the California*  
27 *Sacred Lands File. The California Sacred Lands File shall include*  
28 *both of the following:*

29 *(A) Places with special religious, cultural, or social significance*  
30 *to California Native American tribes, including Native American*  
31 *human remains, graves, and cemeteries of Native Americans.*

32 *(B) Tribal cultural resources, as defined in Section 21074, and*  
33 *sites as identified by California Native American tribes, including*  
34 *places, features, objects, sacred sites, burials, cemeteries, and*  
35 *landscapes as described in Section 5097.9.*

36 *(2) The commission shall review regulatory and statutory*  
37 *protections accorded to those places identified in the California*  
38 *Sacred Lands File. Notwithstanding Section 10231.5 of the*  
39 *Government Code, beginning no later than January 1, 2027, the*  
40 *commission, in accordance with Section 9795 of the Government*

1 *Code, shall submit to the Legislature periodic reports that include,*  
2 *but are not limited to, all of the following:*

3 *(A) Inventories, catalogues, findings, and actions as a result of*  
4 *actions taken under this subdivision and recommended actions the*  
5 *commission deems necessary to preserve these sacred places and*  
6 *to protect the free exercise of the Native American religions.*

7 *(B) For purposes of providing a baseline to address cumulative*  
8 *impacts, pursuant to Section 15355 of Title 14 of the California*  
9 *Code of Regulations, findings pursuant to this subdivision*  
10 *concerning the number of resources, including tribal cultural*  
11 *resources listed on the California Sacred Lands File, the resources,*  
12 *including tribal culture resources, identified in environmental*  
13 *documents submitted to the commission pursuant to Section*  
14 *5097.95, and archaeological resources, cultural resources, historic*  
15 *properties, and traditional cultural places on the California*  
16 *Register of Historical Resources that are presently in existence,*  
17 *and the number of resources that have been negatively affected*  
18 *by becoming part of the built environment.*

19 *(C) Recommendations concerning monetary incentives for local*  
20 *governments and landowners to preserve and protect resources*  
21 *listed on the California Sacred Lands File and tribal cultural*  
22 *resources.*

23 *(D) Recommendations concerning state actions that would assist*  
24 *in preservation and protection of resources listed on the California*  
25 *Sacred Lands File and tribal cultural resources.*

26 *(3) The commission shall notify landowners on whose property*  
27 *graves and cemeteries of Native Americans are determined to exist*  
28 *and shall identify the California Native American tribe most likely*  
29 *descended from those Native Americans interred on the property.*

30 *(4) On or before July 1, 2028, the commission, in consultation*  
31 *with federally recognized tribal governments, Tribal Historic*  
32 *Preservation Officers, and California Native American tribal*  
33 *groups that are not federally recognized but are verified for*  
34 *inclusion in the contact list required pursuant to subdivision (n),*  
35 *shall adopt regulations for the implementation of this subdivision.*

36 *(5) This subdivision does not alter confidentiality provisions in*  
37 *law protecting public disclosure of protected resource information,*  
38 *including, but not limited to, Sections 7927.000 and 7927.005 of*  
39 *the Government Code or subdivision (d) of Section 15120 of Title*  
40 *14 of the California Code of Regulations.*



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

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

12 (d) To appoint necessary clerical staff.

13 (e) To accept grants or donations, real or in kind, to carry out  
14 the purposes of this chapter and the California Native American  
15 Graves Protection and Repatriation Act of 2001 (Chapter 5  
16 commencing with Section 8010) of Part 2 of Division 7 of the  
17 Health and Safety Code).

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

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

1 (h) To request and use the advice and service of all federal,  
2 state, local, and regional agencies, including for purposes of  
3 carrying out the California Native American Graves Protection  
4 and Repatriation Act of 2001 (Chapter 5 (commencing with Section  
5 8010) of Part 2 of Division 7 of the Health and Safety Code).

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

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

12 (k) (1) To mediate, upon application of either of the parties,  
13 disputes arising between landowners and known descendants  
14 relating to the treatment and disposition of Native American human  
15 burials, skeletal remains, and items associated with Native  
16 American burials.

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

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

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

36 (n) (1) *To administer and maintain the contact list of California*  
37 *Native American tribes that consists of all of the following:*

38 (A) *Federally recognized California Native American tribes as*  
39 *defined in Section 11019.81 of the Government Code.*

1 (B) California Native American tribal groups that are not  
2 federally recognized, are verified for inclusion on the contact list  
3 by the commission.

4 (C) Delineation of lands and geographic areas that are  
5 culturally affiliated with California Native American tribes,  
6 including verified most likely cultural affiliations.

7 (2) The sole purpose of the Native American Heritage  
8 Commission contact list of California Native American tribes is  
9 for tribal consultation and participation in review processes to  
10 provide cultural information and tribal knowledge pursuant to  
11 Section 65352.4 of the Government Code, Sections 21080.3.1,  
12 21080.3.2, and 21084.3 of this code, the California Native  
13 American Graves Protection and Repatriation Act of 2001 (Chapter  
14 5 (commencing with Section 8010) of Part 2 of Division 7) of the  
15 Health and Safety Code, and other state cultural resources  
16 protection laws. Any other use of the contact list that is not  
17 authorized by law is prohibited. Native American tribal groups in  
18 California shall not be entitled to participate in review processes  
19 if the tribal group is not on the contact list and culturally affiliated.  
20 Inviting nonfederally recognized Indian tribes to participate in  
21 review and administrative processes shall not in any way diminish  
22 or alter federally recognized Indian tribes' unique legal and  
23 political status, the legal relationship between federal agencies  
24 and federally recognized Indian tribes, or the rights of federally  
25 recognized Indian tribes. Federally recognized Indian tribes,  
26 including their tribal information and tribal knowledge of their  
27 culturally affiliated geographic areas and resources, as sovereign  
28 nations with the inherent rights of self-governance, shall be  
29 afforded deference over other tribal groups that are not federally  
30 recognized.

31 ~~(n)~~

32 (o) (1) To assume the powers and duties of the former  
33 Repatriation Oversight Commission and meet, when necessary  
34 and at least quarterly, to perform all of the following duties:

35 (A) Order the repatriation of human remains and cultural items  
36 in accordance with the act.

37 (B) Establish mediation procedures and, upon the application  
38 of the parties involved, mediate disputes among tribes and  
39 museums and agencies relating to the disposition of human remains  
40 and cultural items. The commission shall have the power of

1 subpoena for purposes of discovery and may impose civil penalties  
2 against any agency or museum that intentionally or willfully fails  
3 to comply with the act. Members of the commission and  
4 commission staff shall receive training in mediation for purposes  
5 of this subparagraph. The commission may delegate its  
6 responsibility to mediate disputes to a certified mediator or  
7 commission staff.

8 (C) Establish and maintain an internet website for  
9 communication among tribes and museums and agencies.

10 (D) Upon the request of tribes or museums and agencies, analyze  
11 and make decisions regarding providing financial assistance to aid  
12 in specific repatriation activities.

13 (E) Make recommendations to the Legislature to assist tribes  
14 in obtaining the dedication of appropriate state lands for the  
15 purposes of reinterment of human remains and cultural items.

16 (F) (i) Prepare and submit to the Legislature an annual report  
17 detailing commission activities, disbursement of funds, and dispute  
18 resolutions relating to the repatriation activities under the act.

19 (ii) A report submitted to the Legislature pursuant to this  
20 subparagraph shall be submitted in compliance with Section 9795  
21 of the Government Code.

22 (G) Refer any known noncompliance with the federal Native  
23 American Graves Protection and Repatriation Act (25 U.S.C. Sec.  
24 3001 et seq.) to the United States Attorney General and the  
25 Secretary of the Interior.

26 (H) Impose administrative civil penalties pursuant to Section  
27 8029 of the Health and Safety Code against an agency or museum  
28 that is determined by the commission to have violated the act.

29 (I) Establish those rules and regulations the commission  
30 determines to be necessary for the administration of the act.

31 (2) For purposes of this subdivision, the following terms have  
32 the following meanings:

33 (A) “Act” means the California Native American Graves  
34 Protection and Repatriation Act (Chapter 5 (commencing with  
35 Section 8010) of Part 2 of Division 7 of the Health and Safety  
36 Code).

37 (B) “Tribe” means a “California Indian tribe” as that term is  
38 used in the act.

39 (⊖)

1 (p) (1) To establish and assess a fee on a person or public or  
2 private entity that is reasonably related to the cost of conducting  
3 a search of catalogs, described in subdivision (a), inventories,  
4 described in Section 5097.96, or lists, described in Section 21073,  
5 for that person or entity, which funds shall be available to the  
6 commission upon appropriation by the Legislature.

7 (2) The Legislature finds that, pursuant to subdivision (b) of  
8 Section 3 of Article XIII A of the California Constitution, the fees  
9 established pursuant to paragraph (1) are not taxes. To the extent  
10 that these fees are appropriated through the Budget Act for the  
11 purposes for which they are collected to provide services to the  
12 people of the State of California, the Legislature finds that these  
13 fees are not subject to Article XIII B of the California Constitution.

14 (p)

15 (q) Review and provide comment and guidance on all policies  
16 and procedures proposed pursuant to Article 3 (commencing with  
17 Section 8025) and Article 3.5 (commencing with Section 8028.7)  
18 of Chapter 5 of Part 2 of Division 7 of the Health and Safety Code.

19 *SEC. 14. Section 5097.95 of the Public Resources Code is*  
20 *amended to read:*

21 5097.95. Each state and local agency shall cooperate with the  
22 commission in carrying out its duties under this chapter. ~~Such~~ The  
23 cooperation shall include, but is not limited to, transmitting copies,  
24 ~~at the commission's expense, electronic or physical, of appropriate~~  
25 ~~sections of all environmental impact reports project information~~  
26 *and constraints, data, including maps, environmental documents*  
27 *and technical studies, and any information concerning project*  
28 *activities relating to property identified by the commission as of*  
29 *special religious significance to Native Americans or* ~~which that~~  
30 *is reasonably foreseeable as such property. that type of property*  
31 *and appearing at commission meetings when matters within the*  
32 *authority of the state or local agency are on the commission's*  
33 *agenda.*

34 *SEC. 15. Section 5097.96 of the Public Resources Code is*  
35 *repealed.*

36 ~~5097.96. The commission may prepare an inventory of Native~~  
37 ~~American sacred places that are located on public lands and shall~~  
38 ~~review the current administrative and statutory protections accorded~~  
39 ~~to such places. The commission shall submit a report to the~~  
40 ~~Legislature no later than January 1, 1979, in which the commission~~

1 ~~shall report its findings as a result of these efforts and shall~~  
2 ~~recommend such actions as the commission deems necessary to~~  
3 ~~preserve these sacred places and to protect the free exercise of the~~  
4 ~~Native American religions.~~

5 *SEC. 16. Section 5097.98 of the Public Resources Code is*  
6 *amended to read:*

7 5097.98. (a) Whenever the commission receives notification  
8 of a discovery of Native American human remains from a county  
9 coroner pursuant to subdivision (c) of Section 7050.5 of the Health  
10 and Safety Code, it shall immediately notify those persons it  
11 believes to be most likely descended from the deceased Native  
12 American. The descendants may, with the permission of the owner  
13 of the land, or ~~his or her~~ *the landowner's* authorized representative,  
14 inspect the site of the discovery of the Native American human  
15 remains and may recommend to the owner or the person  
16 responsible for the excavation work means for treatment or  
17 disposition, with appropriate dignity, of the human remains and  
18 any associated grave goods. The descendants shall complete their  
19 inspection and make recommendations or preferences for treatment  
20 within 48 hours of being granted access to the site.

21 (b) Upon the discovery of Native American remains, the  
22 landowner shall ensure that the immediate vicinity, according to  
23 generally accepted cultural or archaeological standards or practices,  
24 where the Native American human remains are located, is not  
25 damaged or disturbed by further development activity until the  
26 landowner has discussed and conferred, as prescribed in this  
27 section, with the most likely descendants regarding their  
28 recommendations, if applicable, taking into account the possibility  
29 of multiple human remains. The landowner shall discuss and confer  
30 with the descendants all reasonable options regarding the  
31 descendants' preferences for treatment.

32 (1) The descendants' preferences for treatment may include the  
33 following:

34 (A) The nondestructive removal and analysis of human remains  
35 and items associated with Native American human remains.

36 (B) Preservation of Native American human remains and  
37 associated items in place.

38 (C) Relinquishment of Native American human remains and  
39 associated items to the descendants for treatment.

40 (D) Other culturally appropriate treatment.

1 (2) The parties may also mutually agree to extend discussions,  
2 taking into account the possibility that additional or multiple Native  
3 American human remains, as defined in this section, are located  
4 in the project area, providing a basis for additional treatment  
5 measures.

6 (c) For the purposes of this section, “conferral” or “discuss and  
7 confer” means the meaningful and timely discussion and careful  
8 consideration of the views of each party, in a manner that is  
9 cognizant of all parties’ cultural values, and where feasible, seeking  
10 agreement. Each party shall recognize the other’s needs and  
11 concerns for confidentiality of information provided to the other.

12 (d) (1) Human remains of a Native American may be an  
13 inhumation or cremation, and in any state of decomposition or  
14 skeletal completeness.

15 (2) Any items associated with the human remains that are placed  
16 or buried with the Native American human remains are to be treated  
17 in the same manner as the remains, but do not by themselves  
18 constitute human remains.

19 (e) Whenever the commission is unable to identify a descendant,  
20 or the descendants identified fail to make a recommendation, or  
21 the landowner or ~~his or her~~ *the landowner’s* authorized  
22 representative rejects the recommendation of the descendants and  
23 the mediation provided for in subdivision (k) of Section 5097.94,  
24 if invoked, fails to provide measures acceptable to the landowner,  
25 the landowner or ~~his or her~~ *landowner’s* authorized representative  
26 shall reinter the human remains and items associated with Native  
27 American human remains with appropriate dignity on the property  
28 in a location not subject to further and future subsurface  
29 disturbance. To protect these sites, the landowner shall do one or  
30 more of the following:

31 (1) Record the site with the commission or the appropriate  
32 Information Center.

33 (2) ~~Utilize~~ *Use* an open-space or conservation zoning designation  
34 or easement.

35 (3) Record a document with the county in which the property  
36 is located. The document shall be titled “Notice of Reinterment of  
37 Native American Remains” and shall include a legal description  
38 of the property, the name of the owner of the property, and the  
39 owner’s acknowledged signature, in addition to any other

1 information required by this section. The document shall be  
2 indexed as a notice under the name of the owner.

3 (f) Upon the discovery of multiple Native American human  
4 remains during ~~a ground-disturbing~~ *ground-disturbing* land  
5 development activity, the activities, all of the following apply:

6 (1) *The location of discovery shall not be disturbed, impaired,*  
7 *or harmed.*

8 (2) ~~The landowner may agree that shall engage in additional~~  
9 ~~conferral with the descendants is necessary~~ *most likely descendant*  
10 ~~to consider~~ *include* culturally appropriate treatment of multiple  
11 Native American human remains. Culturally appropriate treatment  
12 of the discovery ~~may shall~~ be ascertained from a review of the site  
13 ~~utilizing using tribal cultural and archaeological standards. Where~~  
14 ~~the parties are unable to agree on the appropriate treatment~~  
15 ~~measures the human remains and items associated and buried with~~  
16 ~~Native American human remains shall be reinterred with~~  
17 ~~appropriate dignity, pursuant to subdivision (e): standards,~~  
18 ~~methods, and measures.~~

19 (3) *If the discovery occurs during activities related to a project,*  
20 *as defined in Section 21065, the project shall contain an*  
21 *open-space preservation area with an appropriate buffer for the*  
22 *preservation in place and protection of the Native American human*  
23 *remains and the entire burial area site so that it is not adversely*  
24 *affected or harmed. To protect the site, the landowner shall do all*  
25 *of the following:*

26 (A) *Use an open-space or conservation zoning designation or*  
27 *easement for preservation and protection of the site.*

28 (B) *Record the site with the commission or the appropriate*  
29 *information center.*

30 (C) *Record a document with the county in which the property*  
31 *is located using the most protective method available to protect*  
32 *the specific location and nature of the site.*

33 (g) Notwithstanding Section 5097.9, this section, including  
34 those actions taken by the landowner or ~~his or her~~ *the landowner's*  
35 authorized representative to implement this section and ~~any an~~  
36 action taken to implement an agreement developed pursuant to  
37 subdivision (l) of Section 5097.94, shall be exempt from the  
38 requirements of the California Environmental Quality Act (Division  
39 13 (commencing with Section ~~21000~~)). *21000*)), except for



1 *discoveries of Native American human remains that occur during*  
2 *the implementation of a project subject to that act.*

3 (h) Notwithstanding Section 30244, this section, including those  
4 actions taken by the landowner or ~~his or her~~ *the landowner's*  
5 authorized representative to implement this section and any action  
6 taken to implement an agreement developed pursuant to subdivision  
7 (l) of Section 5097.94, shall be exempt from the requirements of  
8 the California Coastal Act of 1976 (Division 20 (commencing with  
9 ~~Section 30000~~)), *except for discoveries of Native*  
10 *American human remains that occur during the implementation*  
11 *of a project subject to that act.*

12 SEC. 17. Section 21073 of the Public Resources Code is  
13 amended to read:

14 21073. (a) “California Native American tribe” means a  
15 *federally recognized California Native American tribe located in*  
16 *California that is on the annual list published under the Federally*  
17 *Recognized Indian Tribe List Act of 1994 (25 U.S.C. Sec. 5131)*  
18 *in the Federal Register or a Native American tribe that is not*  
19 *federally recognized and is descended from lands located in*  
20 *California that is on the contact list administered and maintained*  
21 *by the Native American Heritage Commission for the purposes of*  
22 ~~Chapter 905 of the Statutes of 2004, pursuant to Section 5097.94.~~

23 (b) *A lead agency decision to invite a nonfederally recognized*  
24 *tribal group to participate in the process shall not in any way*  
25 *diminish or alter the unique legal and political relationship*  
26 *between federal agencies and federally recognized Indian tribes*  
27 *or the legal rights of federally recognized Indian tribes. Federally*  
28 *recognized tribes, including their tribal information and knowledge*  
29 *of their culturally affiliated geographic areas and resources, as*  
30 *sovereign nations with the inherent rights of self-governance, shall*  
31 *be afforded deference over other tribal groups that are not*  
32 *federally recognized.*

33 SEC. 18. Section 21074 of the Public Resources Code is  
34 amended to read:

35 21074. ~~(a) “Tribal cultural resources” are either of the~~  
36 ~~following:~~

37 ~~(1) Sites,~~

38 21074. (a) “Tribal cultural resources” means *sites, features,*  
39 *places, cultural landscapes, sacred places, including Native*  
40 *American sanctified cemeteries, Indian cemeteries, or Indian burial*

1 areas, and objects with cultural value to a California Native  
2 American tribe that are either of the following:

3 (A)

4 (1) Included or determined to be eligible for inclusion in the  
5 California Register of Historical Resources. *In applying criteria*  
6 *set forth in subdivision (c) of Section 5024.1, deference shall be*  
7 *given to the tribal information, tribal knowledge, and the*  
8 *significance of the resources to a California Native American tribe.*

9 (B)

10 (2) Included in a local register of historical resources as defined  
11 in subdivision (k) of Section ~~5020.1~~. *5020.1 or a tribal government*  
12 *register maintained by the federal Tribal Historic Preservation*  
13 *Officer.*

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

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

24 (c) A historical resource described in Section 21084.1, a unique  
25 archaeological resource as defined in subdivision (g) of Section  
26 21083.2, or a “nonunique archaeological resource” as defined in  
27 subdivision (h) of Section 21083.2 may also be a tribal cultural  
28 resource if it conforms with the criteria of subdivision (a).

29 (d) *If a site is a tribal cultural resource, or a possible tribal*  
30 *cultural resource, archaeological standards, methods, measures,*  
31 *conditions, and evaluations may only be used as supplemental*  
32 *information in determining identification, substantial adverse*  
33 *impacts, mitigation, and treatment for tribal cultural resources.*  
34 *Tribal information, standards, methods, measures, and conditions*  
35 *shall be given deference in determining identification, substantial*  
36 *adverse impacts, mitigation, and culturally appropriate treatment*  
37 *for tribal cultural resources.*

38 (e) *A lead agency shall not make a determination or finding*  
39 *that a resource is not a tribal cultural resource if tribal information*

1 *and tribal knowledge meet substantial evidence standards showing*  
2 *that the resource is a tribal cultural resource.*

3 *SEC. 19. Section 21080.3.1 of the Public Resources Code is*  
4 *amended to read:*

5 21080.3.1. (a) The Legislature finds and declares that *federally*  
6 *recognized* California Native American tribes traditionally and  
7 culturally affiliated with a geographic area ~~may~~ have cultural  
8 knowledge and information concerning their own ancestry,  
9 religion, and cultural practices, and hold the foremost expertise  
10 concerning their tribal cultural ~~resources~~. *resources in those*  
11 *geographic areas. California Native American prehistoric,*  
12 *archaeological, cultural, spiritual, and tribal cultural resources,*  
13 *traditional cultural places, and ceremonial places are essential*  
14 *elements in tribal cultural traditions, heritages, present-day*  
15 *practices, and identities. As such, it is necessary for lead agencies*  
16 *to engage in government-to-government tribal consultation for*  
17 *the purposes of including tribal information and tribal knowledge*  
18 *concerning tribal cultural resources to which they are culturally*  
19 *affiliated.*

20 (b) (1) *Tribal consultation shall be for the following purposes,*  
21 *including, but not limited to:*

22 (A) *Identification and determination of tribal cultural resources.*

23 (B) *Identification of mitigation measures.*

24 (C) *Standards, methods, and measures for environmental*  
25 *assessment of tribal cultural resources, including technical studies*  
26 *and the checklist for the implementation of this division.*

27 (D) *Implementation of mitigation measures.*

28 (2) *Consultation is not meaningful or transparent if the tribe is*  
29 *not provided with requested technical information, including*  
30 *project information and constraints, data, maps, administrative*  
31 *drafts of environmental documents and technical studies, and any*  
32 *information concerning project activities as they relate to tribal*  
33 *cultural resources protection.*

34 ~~(b) Prior to~~

35 (c) *Before* the release of a negative declaration, mitigated  
36 negative declaration, or environmental impact report for a project,  
37 the lead agency shall begin consultation with a California Native  
38 American tribe that is traditionally and culturally affiliated with  
39 the geographic area of the proposed project if: (1) the California  
40 Native American tribe requested to the lead agency, in writing, to

1 be informed by the lead agency through formal notification of  
2 proposed projects in the geographic area that is traditionally and  
3 culturally affiliated with the tribe, and (2) the California Native  
4 American tribe responds, in writing, within 30 days of receipt of  
5 the formal notification, and requests the consultation. When  
6 responding to the lead agency, the California Native American  
7 tribe shall designate a lead contact person. If the California Native  
8 American tribe does not designate a lead contact person, or  
9 designates multiple lead contact people, the lead agency shall defer  
10 to the individual listed on the contact list maintained by the Native  
11 American Heritage Commission for the purposes of Chapter 905  
12 of the Statutes of 2004. ~~For purposes of this section and Section~~  
13 ~~21080.3.2, “consultation” shall have the same meaning as provided~~  
14 ~~in Section 65352.4 of the Government Code.~~

15 ~~(e) To expedite the requirements of this section, the Native~~  
16 ~~American Heritage Commission shall assist the lead agency in~~  
17 ~~identifying the California Native American tribes that are~~  
18 ~~traditionally and culturally affiliated with the project area.~~

19 *(d) A California Native American tribe that is not federally*  
20 *recognized and is on the contact list administered and maintained*  
21 *by the Native American Heritage Commission pursuant to Section*  
22 *5097.94 may participate in the review process pursuant to this*  
23 *division as an additional consulting party based on a demonstrated*  
24 *interest in a project’s effects on tribal cultural resources to which*  
25 *the tribe is affiliated. The decision to invite a nonfederally*  
26 *recognized tribal group to participate in any of the statutory*  
27 *processes pursuant to this division is a discretionary decision by*  
28 *the lead agency or local government and shall not be deemed*  
29 *government-to-government consultation. Inviting nonfederally*  
30 *recognized tribes to participate in the process shall not in any way*  
31 *diminish or alter federally recognized Indian tribes’ unique legal*  
32 *and political status, the legal and political relationship between*  
33 *federal agencies, other governmental entities, and federally*  
34 *recognized Indian tribes, or the rights of federally recognized*  
35 *Indian tribes. Federally recognized Indian tribes, including their*  
36 *tribal information and tribal knowledge of their culturally affiliated*  
37 *geographic areas and resources, as sovereign nations with the*  
38 *inherent rights of self-governance, shall be afforded deference*  
39 *over other tribal groups that are not federally recognized.*

40 (d)

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

11 (e)

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

15 (g) *For purposes of this section and Section 21080.3.2,*  
16 *"consultation" shall have the same meaning as provided in Section*  
17 *65352.4 of the Government Code.*

18 SEC. 20. *Section 21080.3.2 of the Public Resources Code is*  
19 *amended to read:*

20 21080.3.2. (a) As a part of the consultation pursuant to Section  
21 21080.3.1, the parties ~~may~~ *shall* propose mitigation measures,  
22 including, but not limited to, those recommended in Section  
23 21084.3, capable of avoiding or ~~substantially lessening~~ *reducing*  
24 potential significant impacts to a tribal cultural resource or  
25 alternatives that would avoid *or reduce potentially* significant  
26 impacts to a tribal cultural resource. If the California Native  
27 American tribe requests consultation regarding *the type of*  
28 *environmental review necessary, the significance of tribal cultural*  
29 *resources, project impacts on tribal cultural resources,* alternatives  
30 to the project, ~~recommended~~ mitigation measures, ~~or cumulative~~  
31 *impacts, significant effects, or substantial adverse changes,* the  
32 consultation shall include those ~~topics~~. ~~The consultation may~~  
33 ~~include discussion concerning the type of environmental review~~  
34 ~~necessary, the significance of tribal cultural resources, the~~  
35 ~~significance of the project's impacts on the tribal cultural resources,~~  
36 ~~and, if necessary, project alternatives or the appropriate measures~~  
37 ~~for preservation or mitigation that the California Native American~~  
38 ~~tribe may recommended to the lead agency.~~ *topics and a summary*  
39 *of the consultation that adheres to confidentiality shall be reflected*  
40 *in the environmental review document.*

1     (b) (1) *Duration of tribal government consultation is from the*  
2 *point in time when the California Native American tribe requests*  
3 *the consultation pursuant to Section 21080.3.1 to the completion*  
4 *of the implementation of the mitigation measures for the project.*

5     (2) *California Native American tribes shall be afforded the*  
6 *opportunity to participate in technical studies relating to tribal*  
7 *cultural resources, archaeological resources, historic property,*  
8 *traditional cultural places, and cultural resources during project*  
9 *scoping, before the initial study and before the environmental*  
10 *review documents are drafted.*

11     ~~(b)~~

12     (c) *The first step of consultation shall be considered ~~concluded~~*  
13 *completed when either of the following occurs:*

14     (1) *The parties agree to measures to ~~mitigate or avoid or mitigate~~*  
15 *a significant effect, if a significant effect exists, effect on a tribal*  
16 *cultural resource; resources and the measures are documented in*  
17 *an enforceable agreement between the lead agency and the*  
18 *California Native American tribe.*

19     (2) *A party, acting in good faith and after reasonable effort,*  
20 *concludes that mutual agreement cannot be reached. If a party*  
21 *asserts the application of this paragraph, the party shall provide,*  
22 *in writing, a notice of the assertion to the other party.*

23     (d) *The second step of consultation shall be considered*  
24 *completed when mitigation measures and state or local government*  
25 *conditions of approval have been fully implemented in consultation*  
26 *with the California Native American tribe.*

27     ~~(e)~~

28     (e) (1) *This section does not limit the ability of a California*  
29 *Native American tribe or the public to submit information to the*  
30 *lead ~~agency~~ agency, at any point in time, regarding the*  
31 *identification and significance of the tribal cultural resources, the*  
32 *significance of the project's impact on tribal cultural resources, or*  
33 *any appropriate measures to mitigate the ~~impact~~. impact, including*  
34 *avoidance.*

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

38     (f) *Federally recognized tribes, including their tribal information*  
39 *and knowledge of their culturally affiliated geographic areas and*  
40 *resources, as sovereign nations with the inherent rights of*

1 *self-governance, shall be afforded deference over other tribal*  
2 *groups that are not federally recognized.*

3 ~~(d)~~

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

7 *SEC. 21. Section 21082.3 of the Public Resources Code is*  
8 *amended to read:*

9 21082.3. (a) Any mitigation measures agreed upon in the  
10 consultation conducted pursuant to Section 21080.3.2 shall be  
11 recommended for inclusion in the environmental document and  
12 in an adopted mitigation monitoring and reporting program, if  
13 determined to avoid or lessen the impact pursuant to paragraph  
14 (2) of subdivision (b), and shall be fully enforceable.

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

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

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

24 (c) (1) Any information, including, but not limited to, the  
25 location, description, and use of the tribal cultural resources, that  
26 is submitted by a California Native American tribe during the  
27 environmental review process shall not be included in the  
28 environmental document or otherwise disclosed by the lead agency  
29 or any other public agency to the public, consistent with Sections  
30 7927.000 and 7927.005 of the Government Code, and subdivision  
31 (d) of Section 15120 of Title 14 of the California Code of  
32 Regulations, without the prior consent of the tribe that provided  
33 the information. If the lead agency publishes any information  
34 submitted by a California Native American tribe during the  
35 consultation or environmental review process, that information  
36 shall be published in a confidential appendix to the environmental  
37 document unless the tribe that provided the information consents,  
38 in writing, to the disclosure of some or all of the information to  
39 the public. This subdivision does not prohibit the confidential  
40 exchange of the submitted information between public agencies

1 that have lawful jurisdiction over the preparation of the  
2 environmental document.

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

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

25 (3) This subdivision does not affect or alter the application of  
26 Section 7927.000 or 7927.005 of the Government Code, or  
27 subdivision (d) of Section 15120 of Title 14 of the California Code  
28 of Regulations.

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

34 (d) In addition to other provisions of this division, the lead  
35 agency may certify an environmental impact report or adopt a  
36 mitigated negative declaration for a project with a significant  
37 impact on an identified tribal cultural resource only if ~~one of the~~  
38 ~~following occurs:~~ *the first step of the consultation process between*  
39 *the California Native American tribe and the lead agency has*



1 occurred as provided in Sections 21080.3.1 and 21080.3.2 and  
2 completed pursuant to subdivision (c) of Section 21080.3.2.

3 ~~(1) The consultation process between the California Native~~  
4 ~~American tribe and the lead agency has occurred as provided in~~  
5 ~~Sections 21080.3.1 and 21080.3.2 and concluded pursuant to~~  
6 ~~subdivision (b) of Section 21080.3.2.~~

7 ~~(2) The California Native American tribe has requested~~  
8 ~~consultation pursuant to Section 21080.3.1 and has failed to provide~~  
9 ~~comments to the lead agency, or otherwise failed to engage, in the~~  
10 ~~consultation process.~~

11 ~~(3) The lead agency has complied with subdivision (d) of Section~~  
12 ~~21080.3.1 and the California Native American tribe has failed to~~  
13 ~~request consultation within 30 days.~~

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

23 (f) Consistent with subdivision (c), the lead agency shall publish  
24 confidential information obtained from a California Native  
25 American tribe during the consultation process in a confidential  
26 appendix to the environmental document and shall include a  
27 general description of the information, as provided in paragraph  
28 (4) of subdivision (c) in the environmental document for public  
29 review during the public comment period provided pursuant to  
30 this division.

31 (g) This section is not intended, and ~~may~~ *shall* not be construed,  
32 to limit consultation between the state and tribal governments,  
33 existing confidentiality provisions, or the protection of religious  
34 exercise to the fullest extent permitted under state and federal law.

35 SEC. 22. *Section 21083.09 of the Public Resources Code is*  
36 *repealed.*

37 ~~21083.09. On or before July 1, 2016, the Office of Planning~~  
38 ~~and Research shall prepare and develop, and the Secretary of the~~  
39 ~~Natural Resources Agency shall certify and adopt, revisions to the~~  
40 ~~guidelines that update Appendix G of Chapter 3 (commencing~~

1 with Section 15000) of Division 6 of Title 4 of the California Code  
2 of Regulations to do both of the following:

3 (a) ~~Separate the consideration of paleontological resources from~~  
4 ~~tribal cultural resources and update the relevant sample questions.~~

5 (b) ~~Add consideration of tribal cultural resources with relevant~~  
6 ~~sample questions.~~

7 SEC. 23. Section 21083.09 is added to the Public Resources  
8 Code, to read:

9 21083.09. (a) On or before July 1, 2026, the Office of Land  
10 Use and Climate Innovation, along with the Native American  
11 Heritage Commission and the State Office of Historic Preservation,  
12 shall prepare and develop, and the Secretary of the Natural  
13 Resources Agency shall certify and adopt, revisions to the  
14 guidelines that update Sections 15064.5 and 15126.4, add new  
15 sections concerning identification and evaluation of tribal cultural  
16 resources with deference to tribal information and knowledge, the  
17 procedural and substantive steps of the tribal consultation process,  
18 culturally appropriate mitigation, accidental discoveries of tribal  
19 cultural resources, including Native American human remains,  
20 burial areas, Indian cemeteries, and update Appendix G of Chapter  
21 3 (commencing with Section 15000) of Division 6 of Title 14 of  
22 the California Code of Regulations to do both of the following:

23 (1) Relocate and revise questions concerning Native American  
24 human remains and Indian cemeteries from the Cultural Resources  
25 section to the Tribal Cultural Resources section.

26 (2) Revise questions in the Tribal Cultural Resources section  
27 to include tribal information as a basis for answers to those  
28 questions.

29 (b) Updates to the guidelines under this section shall be  
30 developed in government-to-government consultation with tribal  
31 governments.

32 SEC. 24. Section 21084.3 of the Public Resources Code is  
33 amended to read:

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

36 (b) If the lead agency determines that a project may cause a  
37 substantial adverse change to a tribal cultural resource, and  
38 measures are not otherwise identified in the *first step of the tribal*  
39 *consultation process provided in subdivision (c) of Section*  
40 *21080.3.2, the following are examples of mitigation measures that,*

1 ~~if feasible, may shall be considered adopted~~ to avoid or minimize  
2 the significant adverse impacts: *impacts and may include, but are*  
3 *not limited to, any of the following:*

4 (1) Avoidance and preservation of the resources in place,  
5 including, but not limited to, planning and construction to avoid  
6 the resources and protect the cultural and natural context, or  
7 planning greenspace, parks, or other open space, to incorporate  
8 the resources with culturally appropriate protection and  
9 management ~~criteria~~. *criteria and include reference to those*  
10 *provisions in the project's environmental documents. Avoidance*  
11 *and preservation in place shall be the default treatment for tribal*  
12 *cultural resources and may include California Native American*  
13 *tribe access to the resources for purposes of cultural practices,*  
14 *continued heritage teachings, stewardship, and comanagement of*  
15 *lands.*

16 (2) ~~Treating~~ *If, after consultation with the federally recognized*  
17 *tribe or discussions with the participating nonfederally recognized*  
18 *tribal group, avoidance is demonstrated to be infeasible, the*  
19 *resource shall be treated with culturally appropriate dignity taking*  
20 *into account the using tribal cultural values and meaning of the*  
21 *resource, including, but not limited to, the following:*

22 (A) ~~Protecting the cultural character and integrity of the~~  
23 ~~resource.~~

24 (B) ~~Protecting the traditional use of the resource.~~

25 (C) ~~Protecting the confidentiality of the resource.~~

26 (3) ~~Permanent conservation easements or other interests in real~~  
27 ~~property, with culturally appropriate management criteria for the~~  
28 ~~purposes of preserving or utilizing the resources or places.~~

29 (4) ~~Protecting the resource.~~

30 (A) *Relinquishing the ownership of the resources to the*  
31 *consulting federally recognized tribe or participating nonfederally*  
32 *recognized tribal group for appropriate treatment as agreed upon*  
33 *by the federally recognized tribes or nonfederally recognized tribal*  
34 *groups.*

35 (B) *Reburying or relocating the resources on the project*  
36 *property in a location that will be protected from further*  
37 *disturbance or harm in perpetuity by using permanent conservation*  
38 *easements or other interests in real property, with culturally*  
39 *appropriate management criteria.*

1 (C) California Native American tribe access to the resources  
2 for purposes of cultural practices, continued heritage teachings,  
3 stewardship, and comanagement of lands.

4 (c) As part of the objectives, criteria, and procedures required  
5 by Section 21082, a lead agency shall make provisions for possible  
6 tribal cultural resources inadvertently or accidentally discovered  
7 during construction that include any of the following:

8 (1) No further excavation or disturbance of the site or any  
9 nearby area reasonably suspected to relate to the discovery.

10 (2) An evaluation of the discovery by the consulting federally  
11 recognized tribe or participating nonfederally recognized tribal  
12 group.

13 (3) If the discovery is determined to be a tribal cultural resource  
14 based upon substantial evidence, contingency funding and a time  
15 allotment sufficient to allow for implementation of avoidance  
16 measures or other culturally appropriate mitigation shall be made  
17 available. Work may continue on other parts of the project site  
18 while tribal cultural resources mitigation takes place. If the  
19 discovery contains or may contain multiple Native American human  
20 remains, subdivision (f) of Section 5097.98 shall apply.

21 SEC. 25. The Legislature finds and declares that Sections 4,  
22 5, 6, 7, 11, 12, 14, 16, 19, 20, 21, and 24 of this act amending  
23 Sections 65092, 65351, 65352, 65352.3, and 65562.5 of the  
24 Government Code and Sections 5097.9, 5097.95, 5097.98,  
25 21080.3.1, 21080.3.2, 21082.3, and 21084.3 of the Public  
26 Resources Code, and Section 9 of this act adding Section 65352.4  
27 to the Government Code, address a matter of statewide concern  
28 rather than a municipal affair as that term is used in Section 5 of  
29 Article XI of the California Constitution. Therefore, Sections 4, 5,  
30 6, 7, 9, 11, 12, 14, 16, 19, 20, 21, and 24 of this act apply to all  
31 cities, including charter cities.

32 SEC. 26. No reimbursement is required by this act pursuant  
33 to Section 6 of Article XIII B of the California Constitution because  
34 a local agency or school district has the authority to levy service  
35 charges, fees, or assessments sufficient to pay for the program or  
36 level of service mandated by this act, within the meaning of Section  
37 17556 of the Government Code.

38 However, if the Commission on State Mandates determines that  
39 this act contains other costs mandated by the state, reimbursement  
40 to local agencies and school districts for those costs shall be made

1 *pursuant to Part 7 (commencing with Section 17500) of Division*  
2 *4 of Title 2 of the Government Code.*

3 ~~SECTION 1. Section 5097.94 of the Public Resources Code~~  
4 ~~is amended to read:~~

5 ~~5097.94. The commission shall have the following powers and~~  
6 ~~duties:~~

7 ~~(a) To identify and catalog places of special religious or social~~  
8 ~~significance to Native Americans, and known graves and~~  
9 ~~cemeteries of Native Americans on private lands. The identification~~  
10 ~~and cataloguing of known graves and cemeteries shall be completed~~  
11 ~~on or before January 1, 1984. The commission shall notify~~  
12 ~~landowners on whose property the graves and cemeteries are~~  
13 ~~determined to exist, and shall identify the Native American group~~  
14 ~~most likely descended from those Native Americans who may be~~  
15 ~~interred on the property.~~

16 ~~(b) To make recommendations relative to Native American~~  
17 ~~sacred places that are located on private lands, are inaccessible to~~  
18 ~~Native Americans, and have cultural significance to Native~~  
19 ~~Americans for acquisition by the state or other public agencies for~~  
20 ~~the purpose of facilitating or assuring access to those sacred places~~  
21 ~~by Native Americans.~~

22 ~~(c) To make recommendations to the Legislature relative to~~  
23 ~~procedures that will voluntarily encourage private property owners~~  
24 ~~to preserve and protect sacred places in a natural state and to allow~~  
25 ~~appropriate access to Native American religionists for ceremonial~~  
26 ~~or spiritual activities.~~

27 ~~(d) To appoint necessary clerical staff.~~

28 ~~(e) To accept grants or donations, real or in kind, to carry out~~  
29 ~~the purposes of this chapter and the California Native American~~  
30 ~~Graves Protection and Repatriation Act of 2001 (Chapter 5~~  
31 ~~(commencing with Section 8010) of Part 2 of Division 7 of the~~  
32 ~~Health and Safety Code).~~

33 ~~(f) To make recommendations to the Director of Parks and~~  
34 ~~Recreation and the California Arts Council relative to the California~~  
35 ~~State Indian Museum and other Indian matters touched upon by~~  
36 ~~department programs.~~

37 ~~(g) To bring an action to prevent severe and irreparable damage~~  
38 ~~to, or assure appropriate access for Native Americans to, a Native~~  
39 ~~American sanctified cemetery, place of worship, religious or~~  
40 ~~ceremonial site, or sacred shrine located on public property,~~

~~pursuant to Section 5097.97. If the court finds that severe and irreparable damage will occur or that appropriate access will be denied, and appropriate mitigation measures are not available, it shall issue an injunction, unless it finds, on clear and convincing evidence, that the public interest and necessity require otherwise. The Attorney General shall represent the commission and the state in litigation concerning affairs of the commission, unless the Attorney General has determined to represent the agency against whom the commission's action is directed, in which case the commission shall be authorized to employ other counsel. In an action to enforce this subdivision, the commission shall introduce evidence showing that a cemetery, place, site, or shrine has been historically regarded as a sacred or sanctified place by Native American people and represents a place of unique historical and cultural significance to an Indian tribe or community.~~

~~(h) To request and use the advice and service of all federal, state, local, and regional agencies, including for purposes of carrying out the California Native American Graves Protection and Repatriation Act of 2001 (Chapter 5 (commencing with Section 8010) of Part 2 of Division 7 of the Health and Safety Code).~~

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

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

~~(k) (1) To mediate, upon application of either of the parties, disputes arising between landowners and known descendants relating to the treatment and disposition of Native American human burials, skeletal remains, and items associated with Native American burials.~~

~~(2) The agreements shall provide protection to Native American human burials and skeletal remains from vandalism and inadvertent destruction and provide for sensitive treatment and disposition of Native American burials, skeletal remains, and associated grave goods consistent with the planned use of, or the approved project on, the land.~~

~~(l) To assist interested landowners in developing agreements with appropriate Native American groups for treating or disposing,~~

1 with appropriate dignity, of the human remains and any items  
2 associated with Native American burials.

3 (m) To provide each California Native American tribe, as  
4 defined in Section 21073, on or before July 1, 2016, with a list of  
5 all public agencies that may be a lead agency pursuant to Division  
6 13 (commencing with Section 21000) within the geographic area  
7 with which the tribe is traditionally and culturally affiliated, the  
8 contact information of those public agencies, and information on  
9 how the tribe may request the public agency to notify the tribe of  
10 projects within the jurisdiction of those public agencies for the  
11 purposes of requesting consultation pursuant to Section 21080.3.1.

12 (n) (1) To assume the powers and duties of the former  
13 Repatriation Oversight Commission and meet, when necessary  
14 and at least quarterly, to perform all of the following duties:

15 (A) Order the repatriation of human remains and cultural items  
16 in accordance with the act.

17 (B) Establish mediation procedures and, upon the application  
18 of the parties involved, mediate disputes among tribes and  
19 museums and agencies relating to the disposition of human remains  
20 and cultural items. The commission shall have the power of  
21 subpoena for purposes of discovery and may impose civil penalties  
22 against any agency or museum that intentionally or willfully fails  
23 to comply with the act. Members of the commission and  
24 commission staff shall receive training in mediation for purposes  
25 of this subparagraph. The commission may delegate its  
26 responsibility to mediate disputes to a certified mediator or  
27 commission staff.

28 (C) Establish and maintain an internet website for  
29 communication among tribes and museums and agencies.

30 (D) Upon the request of tribes or museums and agencies, analyze  
31 and make decisions regarding providing financial assistance to aid  
32 in specific repatriation activities.

33 (E) Make recommendations to the Legislature to assist tribes  
34 in obtaining the dedication of appropriate state lands for the  
35 purposes of reinterment of human remains and cultural items.

36 (F) (i) Prepare and submit to the Legislature an annual report  
37 detailing commission activities, disbursement of funds, and dispute  
38 resolutions relating to the repatriation activities under the act.

1     (ii) ~~A report submitted to the Legislature pursuant to this~~  
2 ~~subparagraph shall be submitted in compliance with Section 9795~~  
3 ~~of the Government Code.~~

4     (G) ~~Refer any known noncompliance with the federal Native~~  
5 ~~American Graves Protection and Repatriation Act (25 U.S.C. Sec.~~  
6 ~~3001 et seq.) to the United States Attorney General and the~~  
7 ~~Secretary of the Interior.~~

8     (H) ~~Impose administrative civil penalties pursuant to Section~~  
9 ~~8029 of the Health and Safety Code against an agency or museum~~  
10 ~~that is determined by the commission to have violated the act.~~

11     (I) ~~Establish those rules and regulations the commission~~  
12 ~~determines to be necessary for the administration of the act.~~

13     (2) ~~For purposes of this subdivision, the following terms have~~  
14 ~~the following meanings:~~

15     (A) ~~“Act” means the California Native American Graves~~  
16 ~~Protection and Repatriation Act (Chapter 5 (commencing with~~  
17 ~~Section 8010) of Part 2 of Division 7 of the Health and Safety~~  
18 ~~Code).~~

19     (B) ~~“Tribe” means a “California Indian tribe” as that term is~~  
20 ~~used in the act.~~

21     (o) (1) ~~To establish and assess a fee on a person or public or~~  
22 ~~private entity that is reasonably related to the cost of conducting~~  
23 ~~a search of catalogs, described in subdivision (a), inventories,~~  
24 ~~described in Section 5097.96, or lists, described in Section 21073,~~  
25 ~~for that person or entity, which funds shall be available to the~~  
26 ~~commission upon appropriation by the Legislature.~~

27     (2) ~~The Legislature finds that, pursuant to subdivision (b) of~~  
28 ~~Section 3 of Article XIII A of the California Constitution, the fees~~  
29 ~~established pursuant to paragraph (1) are not taxes. To the extent~~  
30 ~~that these fees are appropriated through the Budget Act for the~~  
31 ~~purposes for which they are collected to provide services to the~~  
32 ~~people of the State of California, the Legislature finds that these~~  
33 ~~fees are not subject to Article XIII B of the California Constitution.~~

34     (p) ~~Review and provide comment and guidance on all policies~~  
35 ~~and procedures proposed pursuant to Article 3 (commencing with~~  
36 ~~Section 8025) and Article 3.5 (commencing with Section 8028.7)~~  
37 ~~of Chapter 5 of Part 2 of Division 7 of the Health and Safety Code.~~