

# 15. Tribal Cultural Resources

## 15.1 BACKGROUND AND CONTEXT

*Tribal cultural resources* include sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe. This section evaluates the potential impacts on known and unknown *tribal cultural resources*. On July 1, 2015, California Assembly Bill 52 of 2014 (AB 52) was enacted. Under AB 52, if a California Native American tribe requests in writing to the *Lead Agency* to be informed of proposed projects in a geographic area that is traditionally and culturally affiliated with the tribe, and the tribe requests consultation prior to determining which CEQA document would be required for a project, the *Lead Agency* shall begin consultation with that tribe. The bill makes these provisions applicable to projects that have a notice of preparation, a notice of negative declaration, or mitigated negative declaration on or after July 1, 2015.

## 15.2 THRESHOLDS OF SIGNIFICANCE

The determination of significance shall be made on a case-by-case basis and evaluated using the following threshold of significance specified below.

**TRI-1** A project may have a significant impact if it would cause a substantial adverse change in the significance of a *tribal cultural resource*.

## 15.3 IMPACT ANALYSIS

Guidance on addressing the questions from the Initial Study Checklist is provided below. In order to determine whether project impacts exceed or meet the criteria of the thresholds of significance in Section 15.2, the level of impact shall be evaluated based on the appropriate assessment methodologies as outlined below. These guidelines are not intended, and may not be construed, to limit consultation between the state and tribal governments, existing confidentiality provisions, or the protection of religious exercise to the fullest extent permitted under state and federal law.

### Tribal Consultation

A critically important aspect of the evaluation and treatment of *tribal cultural resources* is consultation with Native American tribes that have been recognized by the Native American Heritage Commission, and that have requested to have such consultation with the *Lead Agency*. It is the obligation of the *Lead Agency*, not a professional consultant, to carry out the consultation process when a tribe has formally requested consultation. If the project applicant or professional consultants participate in the consultation, those parties shall respect the principles of the consultation as set forth in as set forth in Public Resources Code (PRC) Section 21080.3.1.

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The process to initiate tribal consultation shall be consistent with PRC Section 21080.3.1 and 21080.3.2, which generally consists of the following steps:

- a. Within 14 days of determining that an application for a project is complete or a decision by a public agency to undertake a project, the *Lead Agency* shall provide formal notification to the California Native American tribe(s) that has requested to the *Lead Agency*, in writing, to be informed of proposed projects in the geographic area that is traditionally and culturally affiliated with the tribe(s). The *Lead Agency* may contact the Native American Heritage Commission to request assistance with identifying the California Native American tribes that are traditionally and culturally affiliated with the project area.
- b. Formal notification shall be accomplished by means of at least one written notification that includes a brief description of the proposed project and its location, the *Lead Agency* contact information, and a notification that the California Native American tribe has 30 days to request consultation.
- c. The California Native American tribe shall respond in writing within 30 days of receipt of the formal notification to request the consultation. When responding to the *Lead Agency*, the California Native American tribe may designate a lead contact person. If the California Native American tribe does not designate a lead contact person, or designates multiple lead contact people, the *Lead Agency* may defer to the individual listed on the contact list maintained by the Native American Heritage Commission. The *Lead Agency* shall begin the consultation process within 30 days of receiving a California Native American tribe's request for consultation.
- d. The California Native American tribe may request consultation regarding topics such as the type of environmental review necessary, alternatives to the project, recommended mitigation measures, or significant effects. During the consultation process, tribes may determine whether a *tribal cultural resource* is present within a project impact area (see Section 14.3.2), the significance of the *tribal cultural resource*, identify impacts on the significance of *tribal cultural resources*, or propose mitigation measures to avoid, preserve, or substantially lessen potential significant impacts to a *tribal cultural resource* (PRC Section 21080.3.2). Additional guidance on the tribal consultation process is found in the Technical Advisory Report on AB 52 and Tribal Cultural Resources dated June 2017, prepared by the Governor's Office of Land Use and Climate Innovation (LCI), formerly known as the Office of Planning and Research.
- e. Should a California Native American Tribe confirm the presence of *tribal cultural resources* that may potentially be impacted by the project, the findings may be integrated into a Phase 1 Inventory and/or Phase II Evaluation, as applicable (see Section 14, Archaeological Resources), to determine the range of potential impacts to cultural resources that may be affected by the project, including historical resources, archaeological resources, and *tribal cultural resources*. More specific guidance about the evaluation of historical resources and archaeological resources is provided in Section 13, Historical Resources, and Section 14, Archaeological Resources.
- f. The consultation shall be considered concluded when either (1) the parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a *tribal cultural resource*; or (2) a party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.

Consultation does not limit the ability of California Native American tribe or the public to submit information to the *Lead Agency* regarding the significance of the *tribal cultural resources*, the significance of the project's impact on *tribal cultural resources*, or any appropriate measures to mitigate the impact. In addition, consultation does not limit the ability of the *Lead Agency* or project proponent to incorporate changes and additions to the project as a result of the consultation, even if not legally required.

In addition, any General Plan amendment or Specific Plan requires a 90-day notice to Native American tribes pursuant to Government Code Section 65352.3(a). Contact the Native American Heritage Commission to obtain the latest list of tribes that have requested notification (do not use a previously prepared list from another project). A form for this purpose can be found online (see Section 15.4). Tribes may request a formal consultation during this 90-day period. The County is required to negotiate in good faith, but is not required to agree with the tribes. A resolution strategy for project environmental impact concerns can include mitigation measures and conditions. See additional guidelines provided by LCI in its Tribal Consultation Guidelines Supplement to its General Plan Guidelines.

### Confidentiality

PRC Section 21082.3 provides for the confidentiality of information submitted by the California Native American Tribe to the *Lead Agency*, which generally states the following:

- a. The California Native American tribe may engage in the confidential exchange of information regarding *tribal cultural resources* during the consultation or environmental review process among the *Lead Agency*, the California Native American tribe, the project applicant, or the project applicant's agent.
- b. Unless the California Native American tribe providing the information consents in writing to public disclosure, the project applicant or the project applicant's legal advisers, using a reasonable degree of care, shall maintain the confidentiality of the information exchanged for the purposes of preventing looting, vandalism, or damage to *tribal cultural resources* and shall not disclose to a third party confidential information regarding *tribal cultural resources*.
- c. Confidentiality does not apply to data or information that are or become publicly available, are already in the lawful possession of the project applicant before the provision of the information by the California Native American tribe, are independently developed by the project applicant or the project applicant's agents, or are lawfully obtained by the project applicant from a third party that is not the *Lead Agency*, a California Native American tribe, or another public agency.
- d. Any information, including, but not limited to, the location, description, and use of the *tribal cultural resources*, that is submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the *Lead Agency* to the public, consistent with Government Code Section 6254(r) and Section 6254.10, and CCR Title 14, Section 15120(d), without the prior consent of the tribe that provided the information.
- e. If the *Lead Agency* publishes any information submitted by a California Native American tribe during the consultation or environmental review process, that information shall be published in a confidential appendix to the environmental document for public review during the public comment period, unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. The confidential appendix shall

include a general description of the information in the environmental document so as to inform the public of the basis of the *Lead Agency's* decision without breaching the confidentiality provisions under PRC Section 21082.3.

### Mitigation Measures

Mitigation measures may be addressed as part of a Phase III Mitigation as outlined in Section 14, Archaeological Resources. The *Lead Agency* shall, whenever *feasible*, avoid damaging effects to any *tribal cultural resource*. If the *Lead Agency* determines that a project may cause a substantial adverse change to a *tribal cultural resource*, and measures are not otherwise identified in the consultation process, the following are examples of mitigation measures that, if *feasible*, may be considered to avoid or minimize the significant adverse impacts consistent with PRC Section 21084.3(b):

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

If a project may have a significant impact on a *tribal cultural resource*, the *Lead Agency's* environmental document shall discuss both of the following pursuant to PRC Section 21082.3:

- a. Whether the proposed project has a significant impact on an identified *tribal cultural resource*.
- b. Whether *feasible* alternatives or mitigation measures, including those measures that may be agreed upon in the consultation process, that avoid or substantially lessen the impact on the identified *tribal cultural resource*. Mitigation measures should be included in an adopted mitigation monitoring and reporting program and shall be fully enforceable.

If the mitigation measures recommended by the staff of the *Lead Agency* as a result of the consultation process are not included in the environmental document, or if there are no agreed upon mitigation measures at the conclusion of the consultation, or if consultation does not occur, and if *substantial evidence* demonstrates that a project will cause a significant effect to a *tribal cultural resource*, the *Lead Agency* shall consider *feasible* mitigation pursuant to PRC Section 21084.3(b) as described above.

### Preparation of Initial Study Checklist

The Initial Study Checklist includes the following questions pertaining to environmental impacts on the significance of *tribal cultural resources*.

- (a) *Would the project cause a substantial adverse change in the significance of a tribal cultural resource?*

A determination of **Less Than Significant Impact (LS)** shall be made if there is no request for tribal consultation from any tribe and supporting evidence in the record that there is no potential for impacts on *tribal cultural resources*; or after tribal consultation and agreement by the applicable tribal entity that the project does not have the potential for impacts to *tribal cultural resources*.

If the tribal consultation process and/or the *Lead Agency* has determined that there would be a substantial adverse change or a substantial adverse cumulative impact to the significance of a *tribal cultural resource*, but mitigation measures have been developed that would reduce the impact to less than significant, then a determination of **Less Than Significant with Mitigation Incorporated (LS-M)** shall be made.

A determination of **Potentially Significant Impact (PS)** shall be made and further analysis shall be addressed in an environmental impact report if there is *substantial evidence* that the project would cause a substantial adverse change in the significance of a *tribal cultural resource*.

**Environmental Document Certification**

The *Lead Agency* may certify an environmental impact report or adopt a mitigated negative declaration for a project with a significant impact on an identified *tribal cultural resource* only if one of the following occurs:

- a. The consultation process between the California Native American tribe and the *Lead Agency* has occurred and concluded.
- b. The California Native American tribe has requested consultation and has failed to provide comments to the *Lead Agency*, or otherwise failed to engage, in the consultation process.
- c. The *Lead Agency* has provided formal notification to the California Native American tribe within 14 days of determining that an application for a project is complete or a decision by a public agency to undertake the project, and the California Native American tribe has failed to request consultation within 30 days.

**15.4 RESOURCES & REFERENCES**

Source	Managing Agency/Organization	Online Access
<b>Resources</b>		
Ventura County CEQA Implementation Manual	Ventura County Resource Management Agency (RMA) Planning Division	PDF   Website
Ventura County Initial Study Assessment Guidelines, Introduction	Ventura County RMA Planning Division	PDF   Website
Ventura County Initial Study Checklist Template	Ventura County RMA Planning Division	PDF   Website
<b>References</b>		
Assembly Bill 52 (AB 52)	State of California	<a href="#">Website</a>

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Source	Managing Agency/Organization	Online Access
AB 52 and Tribal Cultural Resources in CEQA	California Governor's Office of Land Use and Climate Innovation (LCI), formerly Office of Planning and Research	<a href="#">PDF</a>   <a href="#">Website</a>
Native American Heritage Commission Forms	Native American Heritage Commission	<a href="#">Website</a>
Tribal Consultation Guidelines, Supplement to General Plan Guidelines	LCI	<a href="#">PDF</a>   <a href="#">Website</a>
Tribal Cultural Resources (AB 52) Resource Page	LCI	<a href="#">Website</a>