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**SENATE COMMITTEE ON ENVIRONMENTAL QUALITY**

**Senator Blakespear, Chair**

**2025 - 2026 Regular**

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<b>Bill No:</b>	SB 1326	<b>Hearing Date:</b>	4/22/2026
<b>Author:</b>	Wahab	<b>Fiscal:</b>	Yes
<b>Version:</b>	2/20/2026		
<b>Urgency:</b>	No		
<b>Consultant:</b>	Brynn Cook		

**SUBJECT:** California Environmental Quality Act: tribal cultural resources: mitigation measures

**DIGEST:** This bill adds several points of clarity to tribal consultation process for tribal cultural resource (TCR) protections under the California Environmental Quality Act, including specifying that TCRs are distinct from archeological resources and that if lead agencies opt not to use tribal methods, standards, or tribal traditional knowledge to identify TCRs, they will explain their decision with substantial evidence, among other changes.

**ANALYSIS:**

Existing law:

- 1) Requires, pursuant to CEQA, lead agencies with the principal responsibility for carrying out or approving a project to prepare a negative declaration (ND), mitigated negative declaration (MND), or environmental impact report (EIR) for the project, unless the project is exempt from CEQA. (Public Resources Code (PRC) §21000 et seq.). If a project may have a significant effect on the environment, the lead agency must prepare a draft EIR. (CEQA Guidelines §15064(a)(1), (f)(1))
- 2) Defines “Tribal Cultural Resources” (TCR) as either sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe, a resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to specified criteria. Requires the lead agency to consider the significance of the resource to a California Native American tribe. (PRC §21074)
- 3) Requires, prior to the release of a ND, MND, or EIR for a project, the lead agency to begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project if: (1) the California Native American tribe requested to the lead agency, in writing, to be informed by the lead agency through formal

notification of proposed projects in the geographic area that is traditionally and culturally affiliated with the tribe, and (2) the California Native American tribe responds, in writing, within 30 days of receipt of the formal notification, and requests the consultation. (PRC 21080.3.1)

- 4) Authorizes, as part of the consultation, the parties to propose mitigation measures, including, but not limited to, those recommended capable of avoiding or substantially lessening potential significant impacts to a TCR or alternatives that would avoid significant impacts to a TCR. If the California Native American tribe requests consultation regarding alternatives to the project, recommended mitigation measures, or significant effects, the consultation shall include those topics. (PRC 21080.3.2)
- 5) Authorizes the lead agency to certify an EIR or adopt a MND for a project with a significant impact on an identified TCR only if the first step of the consultation process between the California Native American tribe and the lead agency has occurred and was completed. (PRC 21082.3)
- 6) Requires the Office of Land Use and Climate Innovation (LCI) to prepare and develop, and the Secretary of the Natural Resources Agency (NRA) to certify and adopt, revisions to the CEQA guidelines that update regulations to do both of the following: separate the consideration of paleontological resources from TCRs and update the relevant sample questions; or, add consideration of TCRs with relevant sample questions. (PRC 21083.09)

This bill:

- 1) Expands what is identified as a TCR to specifically include a sanctified cemetery, cemetery, or burial area of a California Native American tribe and to include TCRs identified in the National Register of Historical Places Native American Heritage Commission as a sacred place or included in a local tribal register.
- 2) Specifies that TCRs are a separate category from cultural resources and archaeological resources (and that certain archaeological methods and standards may not be appropriate for TCRs). Further:
  - a) Specifies that if a lead agency elects not to use tribal methods and standards or tribal traditional knowledge to identify TCRs, it shall explain its decision, supported by substantial evidence, in the environmental documents for the project.

- 3) Clarifies that the lead agency shall adopt mitigation measures if the project may cause substantial adverse change to TCRs and adds further direction to that process, including:
  - a) Prioritizing avoidance of harm and preservation of the TCR in place and providing evidence, if requested by the consulting California Native American tribe to demonstrate if preservation in place is not an option.
  - b) Authorizing the consulting California Native American tribe to suggest culturally appropriate mitigation measure to the lead agency.
  - c) Specifying that curation of a TCR at private or public repository facility may only occur if agreed upon by the consulting California Native American tribe.

## Background

- 1) *Indigenous peoples in California.* In the early decades of California's statehood, the relationship between the state and Native Americans Tribes was fraught with violence, exploitation, dispossession, and the attempted destruction of tribal communities, as expressed by Governor McDougall in his 1851 address to the Legislature: "[t]hat a war of extermination will continue to be waged between the two races until the Indian race becomes extinct must be expected." Historian Benjamin Madley estimates that from 1846 to 1873, state-aided militias and settlers killed at least 9,492 to 16,092 California Indians, with over 370 documented massacres.

During this time, Native American Tribes were enslaved by settlers and coerced to live in hastily organized reservations that provided little in the way of support, lacking game and suitable agricultural lands and water. Despite every effort to remove them, many Native American Tribes prevailed.

- 2) *State policies on Native American inclusion.* California Native American Tribes and tribal communities have sovereign authority over their members and territories and a unique relationship with California's resources.

On September 19, 2011, Governor Brown issued Executive Order (EO) B-10-11 to direct state agencies and departments to implement effective government consultation with California Native American Tribes. The EO established a tribal advisor under the Governor. Furthermore, the EO requires the California Natural Resources Agency (CNRA) and its departments to identify Native American Tribes to consult at the earliest possible time in the planning process and allow a reasonable opportunity for tribes to respond and participate.

On June 18, 2019, Governor Newsom issued EO N-15-19 acknowledging and apologizing on behalf of the state for the historical “violence, exploitation, dispossession and the attempted destruction of tribal communities” which dislocated California Native Americans from their ancestral land and sacred practices and establishes the California Truth and Healing Council. The destructive impacts of this forceful separation persist today, and meaningful, reparative action from the state can begin to address these wrongs in an effort to heal its relationship with California Native Americans.”

On September 25, 2020, Governor Newsom released a Statement of Administration Policy on Native American Ancestral Lands to encourage state entities to seek opportunities to support California Tribes’ co-management of and access to natural lands that are within a California tribe’s ancestral land and under the ownership or control of the state of California, and to work cooperatively with California tribes that are interested in acquiring natural lands in excess of State needs.

On October 7, 2020, Governor Newsom issued Executive Order No. N-82-20, which directed CNRA to collaborate with tribal partners to incorporate tribal expertise and traditional ecological knowledge to better understand our biodiversity and the threats it faces. As a result, CNRA appointed an assistant Secretary for Tribal Affairs to help cultivate and ensure the participation and inclusion of tribal governments and communities within the work of CNRA, supporting the effective integration of these governments’ and communities’ interests in environmental policymaking. The assistant secretary also works to further support and expand the NRA’s effort to institutionalize tribal consultation practices into its program planning.

- 3) *Tribal consultation under CEQA*. AB 52 (Gatto), Chapter 532, Statutes of 2014, established a process for a California Native American tribe to engage in the CEQA review process to avoid significant effects on TCRs. Under CEQA, TCRs are defined as sites, features, places, cultural landscapes, sacred places, or objects with cultural value to a California Native American tribes. Prior to AB 52, impacts of new development and projects on TCRs were not considered under CEQA. AB 52 also enacted mandatory Native American government-to-government tribal consultation processes, including processes for adopting culturally appropriate mitigation measures, with avoidance and preservation in place being the preference, confidentiality standards, and findings required by a lead agency when a CEQA project will cause adverse impacts to TCRs. By requiring consideration of TCRs early in the CEQA process, the legislative intent was to ensure that local and tribal governments, public agencies, and project proponents would have information available early

in the project planning process to identify and address potential adverse impacts to TCRs. AB 52 also required a meaningful consideration of Tribal Cultural Values in determination of project impacts and mitigation measures on TCRs.

- 4) *AB 52 in practice.* According to the State of California Native American Heritage Commission, there are three main steps for developers and lead agencies to follow to comply with AB 52. These steps are: (1) taking an inventory of cultural resources (2) evaluating cultural resources (3) handling impacted, significant cultural resources.

*Phase I – Finding TCRs.* This phase generally involves a records search, a field survey, and a written report. While not required, “consultation with local California Native Americans is highly recommended.” More specifically:

*Records Search.* A professional archaeologist can request a records search for the project site to determine: Whether a part or all of the project area has been previously surveyed for cultural resources; Whether any known cultural resources have already been recorded on or adjacent to the project area; Whether the probability is low, moderate, or high that cultural resources are located within the project area; and, Whether a field survey is required to determine whether previously unrecorded cultural resources are present.

*Field Survey.* In most instances, a field survey by a professional archaeologist will be required. The purpose of the field survey is to survey the entire property for cultural resources.

*Site Forms and Written Report.* If cultural resources are identified, these TCRs and the methods of the survey must be filed with the Regional Archaeological Information Center.

*Phase II - Evaluation of Cultural Resources.* The purpose of this phase is to determine whether a cultural resource is “important” (significant). If it is not “important” according to the criteria outlined in CEQA, there will be no significant environmental effect, and no further work is needed. If the resource is “important,” then impacts to the resource must be mitigated.

*Phase III – Treatment of Impacted, Significant Cultural Resources*  
If “important” resources are identified, the lead agency must avoid or mitigate impacts for those projects. Avoidance is the preferred mitigation measure

under CEQA, where the project can be redesigned so as to avoid TCRs altogether. If that fails, mitigation measures can be adopted, including:

*Site Capping.* In those instances where avoidance is not possible, one solution is to bury the site with a layer of fill prior to development (and after thorough identification of the TCR and mapping of the site)

*Conservation Easements.* In some instances, it may be possible to deed that portion of the property containing the “important” cultural resource to avoid affecting it directly.

*Data Recovery.* This includes excavations at prehistoric or historic archaeological sites or data recovery through archival and photographic documentation of historic buildings.

- 4) *TCRs in museums and status of repatriation in California.* The California Native American Graves Protection and Repatriation Act of 2001 (CalNAGPRA) requires state agencies and museums that receive state funding to complete inventories and summaries of human remains and cultural items, and to provide a process for the identification and repatriation of these items to the appropriate tribes, overseen by the Repatriation Oversight Commission. CalNAGPRA was created to ensure timely responses from agencies and museums to repatriation claims and facilitates dispute resolutions.

However, a 2023 audit of Cal State and a 2020 audit of University of California (UC) found neither system complied with CalNAGPRA. Cal State campuses collectively returned only 6% of the 698,000 Native remains and artifacts to local tribes. UC campuses collectively returned around 35% of 17,000 human remains as of October 2023, according to UC spokesperson Stett Holbrook, with an additional 30% in the process of being returned.

## Comments

- 1) *Purpose of Bill.* According to the author, “California has taken significant steps to protect Native American culture and Tribal Cultural Resources including artifacts and objects, sacred places, and landscapes. However, California Environmental Quality Act (CEQA) project lead agencies have interpreted the law related to the handling of TCR narrowly, disrespecting a California Native American tribe’s knowledge and failing to identify and protect TCRs. California Native American tribes, not CEQA project lead agencies, are best positioned to identify their own TCRs and how best to protect them. Relying on a project lead agency to determine the cultural

significance of a TCR is problematic, insensitive, and can disregard tribal knowledge and Native American culture.

SB 1326 provides much needed clarity for CEQA lead agencies when identifying TCRs by reframing CEQA tribal consultation and revising the definition of a TCR to empower California Native American tribes, clarify qualifying resources, and reprioritize TCR avoidance and preservation. This vital bill provides uniformity for CEQA lead agencies to ensure TCR mitigation is developed by California Native American tribes that are best positioned to identify their own TCRs and know best how to protect the resource and preserve their culture.”

- 2) *What are the problems with AB 52 today?* According to the Federated Indians Graton Rancheria, United Auburn Indian Community Habematolel Pomo of Upper Lake, Picayune Rancheria of the Chukchansi Indians, sponsors of SB 1326, there are several outstanding problems with the AB 52 consultation process: the majority of these problems center on the issue that tribes with heritage connections to TCRs do not have adequate say in processes that disrupt TCRs from a given Native American tribal heritage.

When handling and mitigating impacts on TCRs, lead agencies may rely on protocols and expert opinions from certified archaeologists, deferring to those processes rather than consideration of handling and protecting TCRs from the tribes that have historical and cultural connections to those TCRs. Taken across the board, this can also mean that stock measures are taken when handling TCRs and mitigating impacts, rather than adopting individualized mitigation measures informed by consultation with the affected tribe. For example, in *Save the Agoura Cornell Knoll v. City of Agoura Hills* (February 24, 2020) 2020 Cal. App. LEXIS 222, the Second District Court of Appeal found that excavating and avoidance measures related to TCRs were inadequate because the lead agency simply provided a generalized list of measures to be undertaken by a qualified archaeologist and Native American monitor. It further failed to set performance standards or guidelines to ensure that the measures would actually be effective.

- 5) *How does SB 1326 change existing processes?* SB 1326 addresses concerns that AB 52 does not adequately defer to tribes in identifying and handling TCRs within their tribal heritage. SB 1326 does this most substantively by creating a clear demarcation between TCRs and other cultural and archeological resources that CEQA considers. This makes it clear that lead agencies should look to tribes for direction on appropriate ways to view and

handle TCRs, as certain archaeological methods may not be appropriate for TCRs.

SB 1326 asks for more transparency from the lead agency to make sure that these requirements are being met. Specifically, SB 1326 requires a lead agency that elects not to use tribal methods and standards or tribal traditional knowledge to identify TCRs to explain why it didn't need to do so, supported by substantial evidence. It also requires lead agencies to provide evidence if they determine that that preservation in place—the best practice for avoiding impacts on TCRs—is not an option.

SB 1326 also clarifies that certain types of sites should be deemed TCRs, that mitigation measures are required if a project causes significant harm to a TCR, and that that curation of a TCR at private or public repository facility may only occur if agreed upon by the consulting California Native American tribe.

- 3) *AB 52: a retrospective.* In the dozen years since AB 52 was signed into law, it has served as a keystone to facilitating important consultation process for state and local agencies to follow when creating new development that could impact TCRs, and has provided important protections for TCRs. However, there is room for improvement and course correction: tribes in support of SB 1326 have clearly articulated several key areas where AB 52 does not provide appropriate or sufficient deference to tribes in protecting TCRs. SB 1326 recenters AB 52 on deferring to tribes in TCR consultation.

### **Related/Prior Legislation**

AB 52 (*Gatto*, Chapter 532, Statutes of 2014) establishes the current procedures under CEQA for avoiding and minimizing impacts to TCRs and added sections 21074 and 21084.3 to the Public Resources Code.

AB 168 (*Aguiar-Curry*, Chapter 166, Statutes of 2020) requires a pre-consultation process with a California Native American tribe prior to the submission of a SB 35 (Wiener, 2017, Ch. 366) permit, which entitles a developer to a streamlined housing approval process, in order to identify and protect TCRs.

### **SOURCE:**

Federated Indians Graton Rancheria  
United Auburn Indian Community  
Habematolel Pomo of Upper Lake  
Picayune Rancheria of the Chukchansi Indians

**SUPPORT:**

California Teachers Association  
Federated Indians of Graton Rancheria  
Pechanga Band of Indians  
Picayune Rancheria of the Chukchansi Indians  
United Auburn Indian Community

**OPPOSITION:**

Association of California Water Agencies (ACWA)  
California Building Industry Association  
California State Association of Counties (CSAC)  
League of California Cities  
Rural County Representatives of California (RCRC)

**-- END --**