
SENATE COMMITTEE ON APPROPRIATIONS

Senator Sabrina Cervantes, Chair
2025 - 2026 Regular Session

SB 1326 (Wahab) - California Environmental Quality Act: tribal cultural resources: mitigation measures

Version: February 20, 2026

Urgency: No

Hearing Date: May 4, 2026

Policy Vote: E.Q. 7 - 0

Mandate: Yes

Consultant: Ashley Ames

Bill Summary: This bill would add several points of clarity to tribal consultation process for tribal cultural resource (TCR) protections under the California Environmental Quality Act (CEQA), 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 things.

Fiscal Impact:

- The Governor's Office of Land Use and Climate Innovation (LCI) estimates one-time costs of about \$128,000 spread over two years to coordinate and work with the Native American Heritage Commission, Tribes, and the public, as well as update the appropriate guidance documents.
- The California Air Resources Board (CARB) estimates unknown but potentially significant ongoing costs, possibly in the hundreds of thousands of dollars annually (General Fund) to expand its environmental impact analyses of the kinds of mitigation measures recommended for tribal cultural resources impacts, among other things.
- The California Natural Resources Agency, Department of Fish and Wildlife, and Department of Water Resources anticipate any costs would likely be minor and absorbable.

Background: 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.

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.

Proposed Law: This bill would:

1. Expand 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. Specify 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. Specify 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. Clarify 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.

Related 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.

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