
THIRD READING

Bill No: SB 1326
Author: Wahab (D)
Introduced: 2/20/26
Vote: 21

SENATE ENVIRONMENTAL QUALITY COMMITTEE: 7-0, 4/22/26
AYES: Blakespear, Valladares, Allen, Dahle, Gonzalez, Hurtado, Menjivar

SENATE APPROPRIATIONS COMMITTEE: 7-0, 5/14/26
AYES: Cervantes, Seyarto, Cabaldon, Dahle, Grayson, Richardson, Wahab

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

SOURCE: Author

DIGEST: This bill adds 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 changes.

ANALYSIS:

Existing law:

- 1) Requires, pursuant to the 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.
- 5) *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 this bill, 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.

- 3) *How does this bill change existing processes?* This bill 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.

This bill 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.

This bill 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.

- 4) *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 this bill have clearly articulated several key areas where AB 52 does not provide appropriate or sufficient deference to tribes in protecting TCRs. This bill recenters AB 52 on deferring to tribes in TCR consultation.

Related/Prior Legislation

AB 52 (Gatto, Chapter 532, Statutes of 2014) established 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) required a pre-consultation process with a California Native American tribe prior to the submission of a SB 35 (Wiener, Chapter 366, Statutes of 2017) permit, which entitled a developer to a streamlined housing approval process, in order to identify and protect TCRs.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- 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.

SUPPORT: (Verified 5/14/26)

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

OPPOSITION: (Verified 5/14/26)

Association of California Water Agencies
California Building Industry Association
California State Association of Counties

League of California Cities
Rural County Representatives of California

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