

## MONTEREY COUNTY PLANNING COMMISSION

<b>Meeting:</b> February 25, 2015	<b>Agenda Item No.:</b> 6
<b>Project Description:</b> Consider adoption of a resolution recommending that the Board of Supervisors adopt an ordinance amending Section 21.66.050 (Standards for Tribal Cultural Resources Areas) of Title 21 (non-coastal zoning) of the Monterey County Code to establish new policies and procedures for the protection of archaeological resources and adding Chapter 2.95 to the Monterey County Code establishing a Native American Advisory Panel.	
<b>Project Location:</b> Inland Areas	<b>APN:</b> N/A
<b>Planning File Number:</b> REF110065	<b>Owner:</b> N/A <b>Agent:</b>
<b>Planning Area:</b> Inland Areas	<b>Flagged and staked:</b> N/A
<b>Zoning Designation:</b> : Inland Areas	
<b>CEQA Action:</b> Categorically Exempt per Section 15308	
<b>Department:</b> RMA – Planning Department	

### RECOMMENDATION:

Staff recommends that the Planning Commission adopt a resolution recommending that the Board of Supervisors adopt an ordinance amending Section 21.66.050 (Standards for Archaeological Resources Areas) of Title 21 (non-coastal zoning) of the Monterey County Code to establish new policies and procedures for the protection of archaeological resources and adding Chapter 2.95 to the Monterey County Code establishing a Native American Advisory Panel.

### PROJECT OVERVIEW:

The 2010 General Plan requires the County to adopt guidelines for cultural resource protection consistent with the goals and policies of the General Plan. A draft ordinance, updating the archaeological protection standards (Section 21.66.050 of the Monterey County Code) has been prepared to implement the 2010 General Plan in the inland area only. In addition to complying with the direction of the 2010 General Plan, this ordinance has been influenced by various State and Federal laws, most notably Assembly Bill 52 (AB 52). These influences have resulted in two distinct yet complimentary components to this draft ordinance.

The first component includes an update to the existing archaeological protection standards in the inland zoning ordinance (Title 21, Section 21.66.050). This effort is directly related to implementation of the 2010 General Plan. Key updates to the ordinance include:

1. Updates to when an archaeological survey is required;
2. Establishment of new definitions and protocols for three Phases of archaeological reports;
3. Update procedures for the protection of archaeological resources; and
4. Refers to, and remains consistent with, the requirements of applicable State and Federal Laws including the California Environmental Quality Act.

The second main component of the draft ordinance involves implementing the new requirements of AB 52. AB 52 amends State Law, including the California Environmental Quality Act (CEQA), to require notification and the opportunity for consultation with local Native American representatives with ties to the area affected by a project. AB 52 also amends CEQA to require evaluation of impacts on “tribal cultural resources”. The term tribal cultural resource is defined to include sites that are important to a California Native American Tribe. In order to access potential impacts to tribal cultural resources pursuant to AB52 and CEQA, the County will be required to provide

notification of a “project” (as defined in CEQA) to the California Native American Tribe with cultural ties to the geographic area affected by the project before preparing any environmental documentation for the project. California Native American Tribe is defined in AB52 as a tribe that is on the list maintained by the Native American Heritage Commission (NAHC), for the purposes of consultation. The requirements of AB52 have been incorporated in the ordinance attached as Attachment 4.

Altogether, the zoning ordinance will require an applicant for a project to submit a Phase I Archaeological Survey report, prepared by a professional archaeologist, unless exempted from doing so under the ordinance. The need for additional archaeological reports (Phase II and/or III) will depend on the results of the Phase I report. These report requirements and standards are usually referred to using the terms unique or non-unique “*archaeological resources*” as defined in CEQA (inclusive of the AB52 update). Separately, the County is tasked with notifying the California Native American Tribe of our consideration of a project, and in so doing, offer to consult with a representative from the tribe. If the tribe requests consultation, the County has 30 days from such request to consult with the tribal representative. The consultation will generally include a discussion of the resources, the projects impacts on resources, and potential avoidance or mitigation measures. The AB52 notification/consultation process usually is accompanied by the term “*tribal cultural resources*” as defined by AB52 (and in the near future, as defined in CEQA). The AB52 consultation is similar to Senate Bill 18 (SB18) consultation requirements but SB18 applies to changes in the General Plan amendments and/or specific plans whereas AB52 applies to individual projects. SB18 consultation requirements cannot be changed by local ordinance will not change as a result of this ordinance. The same is true for the requirements involving appointment and duties of a Most Likely Descendant when human remains are involved.

In addition to updating the archaeological/tribal cultural resource standards within the zoning ordinance, the attached ordinance also adds a new Chapter to the Monterey County code (Chapter 2.95). Chapter 2.95 will create a technical advisory panel whose duties will include providing outreach and education regarding tribal cultural resources, providing technical advice to staff in updating the archaeological sensitivity maps, and providing input in the drafting of new ordinances as applicable. This advisory panel will include a wide representation of Native American descendants, members of California Native American tribes, and local archaeologists, as directed in Policies OS-8.5 and OS-8.7 of the General Plan. This advisory panel will not be involved in review of specific project applications since that function is intended to be provided as part of the AB52 notification/consultation process.

This ordinance has been reviewed and edited in a number of public hearings and stakeholder meetings including two workshops at the Planning Commission and several stakeholder meetings with local Native American representatives and archaeologists. At the last Planning Commission hearing on December 10, 2014, there were still several concerns surrounding the ordinance. More explanation of concerns and changes made to the ordinance since that hearing are provided in the discussion attached as Attachment 1 to this report.

This ordinance is categorically exempt pursuant to Section 15308 of the California Environmental Quality Act (CEQA), which exempts actions taken by regulatory agencies to assure the maintenance, restoration, or enhancement of the environment where the regulatory process involves procedures for protection of the environment. All future development projects will continue to be evaluated pursuant to the requirements of CEQA irrespective of this ordinance.

/S/ Craig W. Spencer



Craig W. Spencer, Associate Planner  
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January 13, 2014

cc: Front Counter Copy; Planning Commission; Parks Department; Native American Heritage Commission; California Office of Historic Preservation; Jacqueline R. Onciano, Planning Services Manager; Craig Spencer, Project Planner; The Open Monterey Project; LandWatch (Amy White); John H. Farrow; Janet Brennan; Gary Brechini; Lynn Mounday; Ruben Mendoza; Susan Morley; John W. Burch; Fredrick Segobia; Valentin Lopez; Irene Zwierlein; Tony Cerda; Ann Marie Sayers; Louise Miranda-Ramirez; Tom "Little Bear" Nason; Donna Haro; Planning File REF110065

Attachments:	<b>Exhibit A</b>	Discussion
	<b>Exhibit B</b>	Draft Resolution including: Attachment 1 - Draft Ordinance
	<b>Exhibit C</b>	Draft Ordinance showing changes made since December 10, 2014
	<b>Exhibit D</b>	Assembly Bill 52

This report was reviewed by Jacqueline R. Onciano, Planning Services Manager.

**Before the Planning Commission of the County of Monterey**

**Resolution No.**

Resolution of the Planning Commission to )  
recommend that the Board of Supervisors )  
adopt an Ordinance amending Section )  
21.66.050 (Archaeological Resources )  
Standards) of Title 21 (non-coastal zoning) of )  
the Monterey County Code to establish new )  
policies and procedures for the protection of )  
archaeological resources and tribal cultural )  
resources and amending Title 2 of the )  
Monterey County Code to add Chapter 2.95 )  
establishing a Native Californian Advisory )  
Panel consistent with 2010 General Plan Goals )  
OS-6 and OS-8. )

WHEREAS, Title 21 (Inland Zoning Ordinance), Section 21.66.050 contains “Standards for Archaeological Resources Area”; and

WHEREAS, the 2010 General Plan Policy LU-9.2 requires adoption of guidelines necessary for implementation of cultural resource protection including definitions and research protocols for Phase I, II, and III cultural resource and native Californian resource inventory and data recovery programs and standards and practices for surveys to address natural resources related to cultural resources; and

WHEREAS, the 2010 General Plan Conservation and Open Space Policies OS-8.5 and OS-8.7 require the establishment of a technical advisory committee consisting of appropriate tribal representatives and qualified archaeologists to provide assistance to staff in determining how best to address monitoring and site treatment consistent with the policies of the General Plan; and

WHEREAS, unique archaeological resources are considered significant environmental resources under State and Federal laws; and

WHEREAS, amendments to the standards for archaeological resource areas would update regulations for the protection of archaeological resources consistent with the 2010 General Plan and State and Federal laws; and

WHEREAS, the proposed ordinance, modifying Title 21, Section 21.66.050 and adding Chapter 2.95 to the Monterey County Code is attached hereto as Exhibit A; and

WHEREAS, this ordinance is categorically exempt pursuant to Section 15308 of the California Environmental Quality Act (CEQA), which exempts actions taken by regulatory agencies to assure the maintenance, restoration, or enhancement of the environment where the regulatory process involves procedures for protection of the environment. Unique archaeological resources are considered significant environmental resources pursuant to Section 21083.2 of the Public Resources Code, a part of CEQA. The proposed ordinance would update procedures and regulations for the protection of archaeological resources including updating survey requirements and standards, clarifying survey exemption criteria, updating impact avoidance measures, and establishing a technical advisory committee to provide advice and guidance to staff. All future development

projects will continue to be evaluated pursuant to the requirements of CEQA irrespective of this ordinance; and

WHEREAS, On February 25, 2015 the Monterey County Planning Commission held a duly noticed public hearing to consider a recommendation to the Board of Supervisors on the amendments to the Standards for Archaeological Resources Areas and creation of the Native Californian Advisory Panel. At least 10 days before the public hearing, notices of the hearing before the Planning Commission were published in the Monterey County Weekly and were mailed to interested parties.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission does hereby recommend that the Board of Supervisors adopt the ordinance, attached hereto as Exhibit A, amending the Standards for Archaeological Resources Areas (Section 21.66.050 of the Monterey County Code) and adding Chapter 2.95 to the Monterey County Code to create a Native American Advisory Panel.

PASSED AND ADOPTED on this 25<sup>th</sup> day of February, 2015, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

Dated:

A T T E S T:

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Mike Novo, Planning Commission Secretary

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AMENDING TITLE 21 (INLAND ZONING ORDINANCE) OF THE MONTEREY COUNTY CODE TO AMEND REGULATIONS FOR ARCHAEOLOGICAL RESOURCE PROTECTION AND ADDING CHAPTER 2.95 TO THE MONTEREY COUNTY CODE TO ESTABLISH A NATIVE AMERICAN ADVISORY PANEL.**

**County Counsel Summary**

*This ordinance amends Section 21.66.050 of Title 21 (non-coastal zoning) of the Monterey County Code to update development standards for archaeological and tribal cultural resource protection. The ordinance establishes protocols for Phase I, II, and III archaeological reports for applications for discretionary land use entitlements and establishes guidelines for consultation with California Native American tribes consistent with newly enacted state law. This ordinance also adds Chapter 2.95 to the Monterey County Code to establish a Native American Advisory Panel whose duties would include providing public outreach and education, technical assistance to staff, and advice on development of policies and procedures for the protection of archaeological resources. This ordinance implements 2010 Monterey County General Plan policies and is applicable only in the non-coastal unincorporated area of Monterey County.*

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Findings and Purpose

A. Pursuant to Article XI of the California Constitution, the County of Monterey (“County”) may adopt and enforce ordinances and regulations to protect and promote the public health, safety, and welfare of its citizens.

B. Archaeological resources are significant public resources for their cultural and religious ties to people associated with them and for the potential of a resource to yield important information about history or prehistory.

C. On October 26, 2010, the County adopted the 2010 Monterey General Plan. The 2010 General Plan Policy LU-9.2 and Goals OS-6 and OS-8 and the General Plan policies implementing those goals require updating County standards for the protection of archaeological resources. This ordinance would update the archaeological resource protection standards consistent with the 2010 General Plan.

D. New state law (AB52, enacted in 2014) provides procedures for the identification and protection of tribal cultural resources as part of environmental review under the California Environmental Quality Act (CEQA). This ordinance is intended to complement and implement the tribal cultural resource protection standards and procedures of AB52 and CEQA.

E. This ordinance has been prepared in consultation with local Native American representatives. These stakeholders have provided technical assistance to staff in determining how best to address tribal cultural resources in the proposed ordinance. The stakeholders have also identified the need to provide targeted outreach and education and to update the County's archaeological sensitivity maps.

F. This ordinance would update procedures and regulations for the protection of archaeological resources including updating survey requirements and standards, clarifying survey exemption criteria, and updating impact avoidance measures, consistent with CEQA and the new state law amendments to CEQA. This ordinance also establishes a Native American Advisory Panel pursuant to Policy OS-8.5 of the General Plan which, among other duties, would assist the County in public education and outreach and in updating archaeological sensitivity maps.

G. This ordinance is intended to apply prospectively.

H. This ordinance is categorically exempt pursuant to Section 15308 of the CEQA Guidelines, which exempts actions taken by regulatory agencies to assure the maintenance, restoration, or enhancement of the environment where the regulatory process involves procedures for protection of the environment. In AB 52, the Legislature explicitly recognized that a substantial adverse change to a tribal cultural resource has a significant effect on the environment. This ordinance protects the environment by putting in place procedures for protection of tribal cultural resources in the County's land use permit application process.

SECTION 2. Section 21.66.050 of the Monterey County Code is amended to read as follows:

**21.66.050 Standards for archaeological and tribal cultural resource ~~areas~~ protection.**

A. Purpose: The purpose of this Section is to provide development standards which assure the maintenance and protection of the County's archaeological and tribal cultural resources. New land uses and development, both public and private, shall be considered compatible with this intent only where they incorporate all site planning and design features necessary to avoid or mitigate impacts to archaeological and tribal cultural resources to the greatest extent possible and as permitted by law.

B. Applicability: The regulations of this Section are applicable in all zoning districts.

A.C. ~~Regulations: Archaeological Survey Report Requirement~~ Requirements:

1. A Phase I Inventory of Archaeological Resources, meeting the standards contained in Subsection D of this Section, shall be required for any development located within the following areas: ~~An archaeological survey report shall be required for any development project located within:~~

a. "High Archaeological Sensitivity Zone" as mapped on current County resource maps;

b. “Moderate Archaeological Sensitivity Zone”, as mapped on current County resource maps, which requires environmental assessment; ~~according to Monterey County CEQA Guidelines; and;~~

c. “Low Archaeological Sensitivity Zone” where specific information is already known to exist which states that archaeological or tribal cultural resources are present; ~~or~~

d. ~~Development w~~Within ~~two~~seven hundred fifty (~~750~~250) feet of a known archaeological or tribal cultural resource; ~~or.~~

2. Report Waiver Criteria: The Director of Planning may waive the Phase I Inventory under the following circumstances, provided the waiver is permissible under state and federal law:

a. The development involves Routine and On-going Agricultural Activities only.

b. A previous report was prepared for the site by a qualified archaeologist, and the report clearly and adequately included the proposed development site within the scope of its survey and the results of that survey were negative;

c. The development is located within a previously disturbed area where substantial evidence is provided that the previous ground disturbance affected depths equal to or greater than the project being considered; or

d. The development involves minimal soil disturbance, except as provided in subsection e, such as:

i. Replacement of post holes for fences, decks and similar improvements

ii. Repair and maintenance of underground utilities;

iii. Well drilling, not including excavation for discharge pits;

iv. Small ground-mounted photovoltaic systems; and

v. Other development of a similar character to those listed above;

e. Excepting activities described in Section 21.66.050.C.2.a, waivers pursuant to this subsection shall not be granted in circumstances where a project is located within 250 feet of known archaeological resources, or where evidence exists that archaeological resources may be present on the site.

f. In all cases, whether the Phase I report is waived or not, all state and federal laws and regulations protecting burial sites and Native American resources shall be followed. In addition, nothing in this section is intended to supersede or in any way alter or lessen the effect of the California Native American Tribe notification and consultation process required in subsection F of Section 21.66.050.

D. Report Standards and Contents: When a Phase I Inventory is required pursuant to Section 21.66.050, the following standards shall apply:~~e. In an area of suspected archeological resources, as determined through the planner’s on-site investigation or other available information.~~

1. Phase I: A Phase I Inventory of Archaeological Resources shall include, at a minimum, a records search of available resource information at the Northwest Information Center of the California Historic Resources Information System (CHRIS). This records search will, at a minimum, 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, and whether the probability is low, moderate, or high that cultural resources are located within the project area. Following the background research, a field survey by a professional archaeologist shall be conducted in accordance with accepted standards and practices. The field survey shall include at a minimum an inspection of the site for evidence of surface and, if appropriate, subsurface archaeological resources.

a. If the Phase I Inventory of Archaeological Resources investigation reveals that the site does not contain cultural resources, no further review is necessary unless otherwise noted by the archaeologist.

b. If the Phase I Inventory of Cultural Resources investigation reveals any information indicating that the site is likely to contain cultural resources, a Phase II Evaluation of Archaeological Resources shall be required unless either of the following apply:

i. There is substantial evidence, absent the Phase II Evaluation, that the project will have a significant impact on archaeological resources and those impacts cannot be avoided pursuant to Section E of this Section, in which case a Phase III plan may be prepared without a Phase II Evaluation; or

ii. If the location of resources can reasonably be determined based on the Phase I Inventory and all development is located to avoid impacts to those identified resources, no further archaeological reports are necessary if the conditions recommended by the archaeologist are applied to the project.

2. Phase II Evaluation of Archaeological Resources: A Phase II Evaluation shall be prepared with the goal of determining site boundaries, an evaluation of the site's significance pursuant to Public Resources Code Section 21083.2(g), and an evaluation of avoidance measures pursuant to subsection E.2 of Section 21.66.050, if applicable. A Phase II evaluation may include test excavations when adequate data from previous reports are not available to assess a site's significance; however, prior to recovering any cultural materials for testing and/or carbon dating, the archaeologist shall consider the appropriate disposition of materials in consultation with the Director of Planning and the property owner. This consultation does not relieve an owner or owner's representative from following the process mandated by law when human remains are involved.

a. If no unique archaeological resources are found during the Phase II investigation, no further reports are necessary unless the Director of Planning determines that there is substantial evidence in the record that significant resources may be affected by the project despite the negative Phase II findings. Despite a negative finding in the Phase II Evaluation, conditions recommended by the archaeologist and the California Native American tribe through the consultation process shall be applied to the project as appropriate.

b. If the Phase II Evaluation of Archaeological Resources determines that unique archaeological resources may be present, the Phase II Evaluation shall include consideration of the avoidance measures required in subsection E.2 of Section 21.66.050. If significant resources cannot be avoided, a Phase III Data Recovery Plan shall be prepared.

c. This section does not prohibit the Director of Planning from making a determination, based on substantial evidence, that non-unique archaeological resources

are significant tribal cultural resources. In making such a determination, the Director of Planning shall consider the importance of the resource to the California Native American Tribe.

3. Phase III Data Recovery Plan (*Treatment of Impacted, Significant Cultural Resources*): A Phase III plan shall evaluate a project's impacts on unique archaeological resources and shall set forth the reasons why avoidance measures required in subsection E.2 are not feasible under the circumstance of the case. A Data Recovery Plan shall follow the California Secretary of the Interior's Guidelines for Archeological Documentation. The Phase III Plan shall include treatment of archaeological resources with culturally appropriate dignity taking into account the tribal cultural values and meaning of the resource, including but not limited to the following:

- a. Protecting the cultural character and integrity of the resource;
- b. Protecting the traditional use of the resource; and
- c. Protecting the confidentiality of the resource.

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~~2. The archaeological survey report shall be required and approved by the Director of Planning prior to an application being considered complete.~~

~~3. The survey report shall be prepared, at the applicant's expense, by a qualified archaeologist, from the County's list of archaeological consultants or by a member of the Society of Professional Archaeologists.~~

~~4. The report shall be prepared according to the report standards of the Society of Professional Archaeologists and include, at a minimum, a field survey by the archaeologist, survey of available State resource information at the Northwest Regional Information Center of the California Archaeological Inventory, description of the site's sensitivity and any identified archaeological resources, appropriate levels of development on the site, and recommended mitigation measures~~

#### 4. Report Format and Standards:

a. In all cases, written reports shall be prepared consistent with the report format requirements contained in the State Office of Historic Preservation Archaeological Resource Management Reports (ARMR): Recommended Contents and Format guidelines. A single report may incorporate more than one Phase where appropriate to minimize redundancy and expense. All reports shall be filed with appropriate state agencies.

~~5. The archaeological survey report shall be waived by the Director of Planning under the following circumstances:~~

~~a. A previous report was prepared for the site by a qualified archaeologist, as included on the County's list of archaeological consultants or as a member of the Society of Professional Archaeologists; and~~

~~b. The report clearly and adequately included the currently proposed development site within the scope of its survey; or~~

~~e. The proposed development does not involve land clearing or land disturbance; or~~

~~d. Minor projects on previously disturbed sites; or~~

~~e. Other acceptable evidence from an archaeologist.~~

b. Submittal of the applicable report(s), to the Director of Planning, shall be required prior to a project application being considered complete.

c. The report(s) shall be prepared, at the applicant's expense, by a qualified archaeologist, from the County's list of archaeological consultants or by a member of the Register of Professional Archaeologists who is familiar with California Central Coast archaeology. The applicant shall also be responsible for paying for the costs of data recovery and curation of recovered materials, if applicable.

E. Development Standards.

1. Development on parcels with an archaeological site, as identified through an archaeological report prepared for the site, shall include the recommended mitigation measures contained in the archaeological survey report prepared for the site as conditions of approval. Impacts to unique archaeological resources and tribal cultural resources shall be avoided to the extent feasible. In all cases where unique archaeological resources or tribal cultural resources are identified, the following avoidance measures shall be considered:

a. Avoidance and preservation of the resources in place, including but not limited to revising the project design or location to protect the resource and its natural context including through use of green spaces, parks or other open space to incorporate the resources with culturally appropriate protection and management criteria;

b. Placing the area within a permanent Conservation Easement or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places;

c. Limitation of Public Access; and

d. Other feasible methods of avoidance and protection of the resource.

22. Development proposed on parcels with an identified archaeological site shall be designed and located so as to avoid development on or impacts to the site. Alternative siting or location, reduction of project size, and other techniques, such as limiting of public access and requiring archaeological easements as conditions of project approval, shall be utilized where resulting in reduced impact to or avoidance of the archaeological site. A Data Recovery Plan (Phase III report) will be considered appropriate only upon a showing by the project applicant, based on substantial evidence, that avoidance is not feasible. Prior to the Data Recovery Plan being accepted as complete by the Director of Planning, evidence shall be submitted demonstrating that the Data Recovery Plan has been prepared in compliance with the requirements of this Section.

33. Where development on or development impacts to an identified archaeological or paleontological site cannot be avoided, a mitigation plan shall be required for the project. Prior to the application being considered complete, the plan shall be submitted to, and approved by the Director of Planning. The mitigation plan shall be prepared at the applicant's expense by a qualified archaeologist, either from the County's list of archaeological consultants or by a member of the Society of Professional Archaeologists. Included in the mitigation plan shall be recommended preservation measures in accordance with the guidelines of the State Office of Historic Preservation and the State of California Native American Heritage Commission. consulting archaeologist shall file the mitigation plan with the State Office of Historic

Preservation. The results of all data recovery activities shall be compiled into a final report. The final report shall be prepared by a qualified archaeologist and submitted to RMA - Planning for review and approval prior to final grading or building inspections.

4. Where a mitigation plan has been prepared for a proposed development, a condition of project approval shall be that:

a. The preservation measures shall be undertaken and completed prior to the issuance of building or grading permits; or

b. Where appropriate according to the recommendation contained in the mitigation plan, the preservation measures shall be undertaken concurrent with grading or other soil-disturbing activities and shall be undertaken in accordance with mitigation plan, as a condition of the grading or building permit; and

e. The results of the preservation activities shall be compiled into a final report prepared by the archaeologist and submitted to the Planning Department.

F. California Native American Tribal Consultation

1. In addition to the archaeological report requirements of this Section, the Director of Planning or his or her designee shall provide formal written notification pursuant to Public Resources Code section 21080.3.1 to the California Native American tribe or tribes that are traditionally and culturally affiliated with the project area if that tribe has requested notification from the County of proposed projects.

2. The Director's notification of the tribe(s) shall occur as early as possible in the project review process but no later than 14 days after determining an application for a project complete. Notification pursuant to this section shall not be required for the following types of projects:

a. Ministerial projects that are not subject to the California Environmental Quality Act (CEQA);

b. Projects that are statutorily exempt from CEQA; and

c. Projects that have filed a notice of preparation or a notice of intent to adopt a negative declaration or mitigated negative declaration on or before June 30, 2015.

3. For the purposes of this Section, the County will rely upon the list maintained by the California Native American Heritage Commission to identify the California Native American Tribes that are traditionally and culturally affiliated with the project area.

4. Formal written notification shall include at a minimum the following:

a. A description of the proposed project and its location;

b. The planner's contact information, and

c. A notification to the tribe that they have 30 days from the date of receipt of the notice to request formal consultation.

5. This Section does not prohibit any California Native American tribe or individual from participating in the project review process, apart from the consultation process, on any issue of concern as an interested California Native American tribe, person, citizen, or member of the public.

6. If the California Native American tribe requests consultation within 30 days of the notification, the County shall consult with the designated tribal representative within 30 days of the request for consultation. Consultation, if requested, shall be carried out prior to the release of any document required to be prepared under the California

Environmental Quality Act and prior to any final determination by the Appropriate Authority to approve the project.

7. The purpose of the consultation shall be to determine if the project may have a significant effect on a tribal cultural resource and, if the project is determined to have a potentially significant effect on tribal cultural resources, to discuss appropriate avoidance, minimization, and mitigation measures.

8. As part of the consultation, the parties may propose mitigation measures capable of avoiding or substantially lessening potential significant impacts to a tribal cultural resource. The consultation may include discussion concerning the type of environmental review necessary, the significance of tribal cultural resources, the significance of the project's impacts on the tribal cultural resources and, if necessary, project alternatives or appropriate measures for preservation of tribal cultural resources or mitigation of impacts upon those resources.

9. All parties to the consultation shall act in good faith and with appropriate dignity and respect for other parties involved.

10. Any mitigation measure(s) agreed upon in the consultation shall be discussed in the environmental document prepared for the project pursuant to the California Environmental Quality Act and included in the mitigation monitoring and reporting plan if applicable. If no environmental review is required, the measures shall be incorporated in the design of the project or as conditions of approval if feasible.

11. Consultation shall be considered concluded when either of the following occur:

a. The parties agree to measures to mitigate or avoid a significant effect; or  
b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.

12. If measures are not identified in the consultation process and the project may cause a substantial adverse change to a tribal cultural resource, feasible mitigation measures that avoid or minimize adverse impacts shall be considered. Measures to be considered include:

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;

b. Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the preservation and utilization of resources or places.

c. Treating the resource with culturally appropriate dignity taking into account the tribal cultural values and meaning of the resource, including, but not limited to:

- i. Protecting the cultural character and integrity of the resource;
- ii. Protecting the traditional use of the resource; and
- iii. Protecting the confidentiality of the resource.

G. Regulations applicable to all development. If at any time during the course of construction, previously unidentified archaeological resources are discovered, earth-disturbing activities shall stop within the vicinity of the find, and the project planner and

a qualified archaeologist shall be contacted to assess the appropriate course of action. Where human remains are involved, the County Coroner shall also be contacted as required by law. Work shall not resume in the area until the find can be evaluated and an appropriate mitigation plan is developed.

H. Prior to adoption of any General Plan or Specific Plan or an amendment thereto, consultation with Native American representatives shall be carried out consistent with California Government Code Section 65352.3 in a manner consistent with the Tribal Consultation Guidelines published by the Governor's Office of Planning and Research.

I. Nothing in this Section shall be interpreted to supersede or in any way alter or lessen the effect of any state or federal laws dealing with the protection of human remains or the California Environmental Quality Act.

SECTION 3. Chapter 2.95 is added to the Monterey County Code to read as follows:

### **Chapter 2.95 – NATIVE AMERICAN ADVISORY PANEL**

Sections:

- 2.95.010 – Creation of panel.
- 2.95.020 – Purpose and duties.
- 2.95.030 – Members
- 2.95.040 – Meetings, rules, and records

#### **2.95.010 – Creation of panel.**

A technical advisory panel in the County of Monterey to be known as the Native American Advisory Panel (hereinafter referred to as Advisory Panel) is hereby created.

#### **2.95.020 – Purpose and Duties:**

The purpose of the Advisory Panel is to:

- A. Participate in, promote, and conduct public information, educational, and interpretive programs pertaining to archaeological and tribal cultural resource preservation, if authorized by the Director of Planning.
- B. Assist the Director of Planning in reviewing, updating, and maintaining archaeological sensitivity maps within the unincorporated area of Monterey County.
- C. Make recommendations to the Director of Planning regarding policies and procedures relating to the protection of archaeological and tribal cultural resources.
- D. Perform such other duties as may otherwise be requested by the Director of Planning, the Planning Commission, or the Board of Supervisors.

#### **2.95.030 – Members.**

A. The Advisory Panel shall be comprised of up to fifteen individuals with a demonstrated interest in tribal cultural resource preservation. Members shall be appointed to the Advisory Panel by the Planning Commission based on the criteria set forth in this section.

B. Advisory Panel members shall meet at least one of the following minimum qualifications:

1. An individual appointed by a California Native American Tribe to serve on the Advisory Panel;

2. A Most Likely Descendant for Monterey County on the list maintained by the California Native American Heritage Commission; or

3. A professional archaeologist familiar with Central Coast archaeology.

C. Interested individuals shall submit a written statement of interest to the Secretary of the Planning Commission. The written statement of interest shall include the person's qualifications to serve on the Advisory Panel and commitment to serve and attend meetings during the term of office.

D. The term of office for each member shall be two years. Members may serve more than one term.

E. Members shall receive no monetary compensation from the County for serving on the Advisory Panel.

#### **2.95.040 –Meetings, rules, and records**

A. The Director of Planning, or the designee of the Director, shall serve as Secretary to the Advisory Panel and shall be custodian of the Advisory Panel's records. The Secretary shall generally supervise the technical and clerical work of the Advisory Panel.

B. The Advisory Panel shall meet at least twice per calendar year. The Advisory Panel shall annually adopt a regular meeting schedule. A quorum shall consist of a majority of the appointed members.

C. The Advisory Panel meetings shall be noticed, held, and conducted in accordance with the Ralph M. Brown Act.

D. The Advisory Panel shall act only on matters referred to it by the Board of Supervisors, the Planning Commission, or Director of Planning.

E. The Advisory Panel is an advisory body. It shall have no authority to grant permits and no permit enforcement authority.

F. Advisory Panel members shall treat all members of the Advisory Panel, Monterey County staff, and the public in a respectful and courteous manner.

G. Advisory Panel members with any financial interest in a matter before the Advisory Panel must disqualify themselves from participation in any discussion or vote on such a matter.

SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 5. EFFECTIVE DATE. This Ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED on this \_\_\_\_ day of \_\_\_\_\_, 2015, by the following vote:

AYES: Supervisors

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Simon Salinas, Chair  
Monterey County Board of Supervisors

A T T E S T:

| GAIL T. BORKOWSKI  
Clerk of the Board

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

Wendy S. Strimling  
Senior Deputy County Counsel



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AMENDING SECTION 21.66.050 OF THE MONTEREY COUNTY CODE TO AMEND REGULATIONS FOR ARCHAEOLOGICAL RESOURCE PROTECTION AND ADDING CHAPTER 2.95 TO THE MONTEREY COUNTY CODE TO ESTABLISH A NATIVE CALIFORNIAN AMERICAN ADVISORY PANEL.

**County Counsel Summary**

*This ordinance amends Section 21.66.050 of Title 21 (non-coastal zoning) of the Monterey County Code to update development standards for archaeological and tribal cultural resource protection. The ordinance establishes protocols for Phase I, II, and III archaeological reports for applications for discretionary land use entitlements and establishes guidelines for consultation with California Native American tribes consistent with newly enacted state law. This ordinance also adds Chapter 2.95 to the Monterey County Code to establish a Native Californian American Advisory Panel whose duties would include providing public outreach and education, technical assistance to staff, and advice on development of policies and procedures for the protection of archaeological resources. This ordinance implements 2010 Monterey County General Plan policies and is applicable only in the non-coastal unincorporated area of Monterey County.*

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Findings and Purpose

A. Pursuant to Article XI of the California Constitution, the County of Monterey (“County”) may adopt and enforce ordinances and regulations to protect and promote the public health, safety, and welfare of its citizens.

B. Archaeological resources are significant public resources for their cultural and religious ties to people associated with them and for the potential of a resource to yield important information about history or prehistory.

C. On October 26, 2010, the County adopted the 2010 Monterey General Plan. The 2010 General Plan Policy LU-9.2 and Goals OS-6 and OS-8 and the General Plan policies implementing those goals require updating County standards for the protection of archaeological resources. This ordinance would update the archaeological resource protection standards consistent with the 2010 General Plan.

D. New state law (AB52, enacted in 2014) provides procedures for the identification and protection of “tribal cultural resources” as part of environmental review under the California Environmental Quality Act (CEQA). This ordinance is intended to

complement and [work together with implement](#) the tribal cultural resource protection standards and procedures of AB52 and CEQA.

E. This ordinance has been prepared in consultation with local Native American representatives. These stakeholders have provided technical assistance to staff in determining how best to address [tribal](#) cultural resources in the proposed ordinance. The stakeholders have also identified the need to provide targeted outreach and education and to update the County's archaeological sensitivity maps.

F. This ordinance would update procedures and regulations for the protection of archaeological resources including updating survey requirements and standards, clarifying survey exemption criteria, and updating impact avoidance measures, consistent with CEQA and the new state law amendments to CEQA. This ordinance also establishes a Native American Advisory Panel pursuant to Policy OS-8.5 of the General Plan -which, among other duties, would assist the County in public education and outreach and in updating archaeological sensitivity maps.

G. This ordinance is intended to apply prospectively.

H. This ordinance is categorically exempt pursuant to Section 15308 of the [California Environmental Quality Act \(CEQA\) Guidelines](#), which exempts actions taken by regulatory agencies to assure the maintenance, restoration, or enhancement of the environment where the regulatory process involves procedures for protection of the environment. In AB 52, the Legislature explicitly recognized that a substantial adverse change to a tribal cultural resource has a significant effect on the environment. This ordinance protects the environment by putting in place procedures for protection of tribal cultural resources in the County's land use permit application process.

SECTION 2. Section 21.66.050 of the Monterey County Code is amended to read as follows:

**21.66.050 Standards for [archaeological and](#) tribal cultural resource protection.**

A. Purpose: The purpose of this Section is to provide development standards which assure the maintenance and protection of the County's [archaeological and](#) tribal cultural resources. New land uses and development, both public and private, shall be considered compatible with this intent only where they incorporate all site planning and design features necessary to avoid or mitigate impacts to [archaeological and](#) tribal cultural resources [to the greatest extent possible and as permitted by law](#).

B. Applicability: The regulations of this Section are applicable in all zoning districts.

C. Report Requirements:

1. A Phase I Inventory of Archaeological Resources, meeting the standards contained in Subsection D of this Section, shall be required for any development located within the following areas:

a. "High Archaeological Sensitivity Zone" as mapped on current County resource maps;

- b. “Moderate Archaeological Sensitivity Zone”, as mapped on current County resource maps, which requires environmental assessment;
  - c. “Low Archaeological Sensitivity Zone” where specific information is already known to exist which states that [archaeological or](#) tribal cultural resources are present; or
  - d. Within two hundred fifty (250) feet of a known [archaeological or](#) tribal cultural resource.
2. Report Waiver Criteria: The [Director of Planning may waive the](#) Phase I Inventory [may be waived by the Director of Planning](#) under the following circumstances, [provided the waiver is permissible under state and federal law](#):

- a. The development involves routine and on-going agricultural activities only.
- b. A previous report was prepared for the site by a qualified archaeologist, and the report clearly and adequately included the proposed development site within the scope of its survey and the results of that survey were negative;
- c. The development is located within a previously disturbed area where substantial evidence is provided that the previous ground disturbance affected depths equal to or greater than the project being considered; or
- d. The development involves minimal soil disturbance, except as provided in subsection e, such as:
  - i. Replacement of post holes for fences, decks and similar improvements;
  - ii. Repair and maintenance of underground utilities;
  - iii. Well drilling, not including excavation for discharge pits;
  - iv. Small ground-mounted photovoltaic systems; and
  - v. Other development of a similar character to those listed above;
- e. [Waivers Excepting activities described in subsection a Section 21.66.050.C.2.a, waivers](#) pursuant to this subsection shall not be granted in circumstances where a project is located within 250 feet of known ~~tribal-cultural~~ [archaeological](#) resources, or where evidence exists that archaeological resources may be present on the site.
- f. In all cases, whether the Phase I report is waived or not, all state and federal laws and regulations protecting burial sites and Native American resources shall be followed. In addition, nothing in this section is intended to supersede or in any way alter or lessen the effect of the California Native American Tribe notification and consultation process required in subsection F [of Section 21.66.050](#).

D. Report Standards and Contents: When a Phase I Inventory is required pursuant to this Section, the following standards shall apply:

- 1. Phase I Inventory of Archaeological Resources: A Phase I Inventory shall include, at a minimum, a records search of available resource information at the Northwest Information Center of the California Historic Resources Information System (CHRIS). This records search will, at a minimum, 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, and whether the probability is low, moderate, or high that cultural resources are located within the project area. Following the background research, a field survey by a

professional archaeologist shall be conducted in accordance with accepted standards and practices. The field survey shall include at a minimum an inspection of the site for evidence of surface and, if appropriate, subsurface archaeological resources.

a. If the Phase I Inventory of Archaeological Resources investigation reveals that the site does not contain archaeological resources, no additional reports are necessary unless otherwise noted by the archaeologist ~~or unless otherwise determined as part of the consultation process provided in subsection F.~~

b. If the Phase I Inventory of Archaeological Resources investigation reveals any information indicating that the site is likely to contain archaeological resources, a Phase II Evaluation of Archaeological Resources shall be required unless either of the following apply:

i. There is substantial evidence, absent the Phase II Evaluation, that the project will have a significant impacts on archaeological resources and those impacts cannot be avoided pursuant to Section E of this Section, in which case a Phase III plan may be prepared without a Phase II Evaluation; or

ii. If the location of archaeological resources can reasonably be determined based on the Phase I Inventory and all development is located to avoid impacts to those identified resources, no further archaeological reports are necessary if the then conditions recommended by the archaeologist shall be are applied to the project, ~~and no further archaeological reports are necessary. Conditions or mitigations agreed to as part of the California Native American Tribe consultation process shall be added to the conditions recommended by the archaeologist and in the event that such conditions conflict, conditions or mitigations agreed to through the consultation process shall apply.~~

2. Phase II Evaluation of Archaeological Resources: A Phase II Evaluation shall be prepared with the goal of determining site boundaries, an evaluation of the site's significance pursuant to Public Resources Code Section 21083.2(g), and an evaluation of avoidance measures pursuant to subsection E.2 of ~~this~~ Section 21.66.050, if applicable. A Phase II evaluation may include test excavations when adequate data from previous reports are not available to assess a site's significance; however, prior to recovering any cultural materials for testing and/or carbon dating, the archaeologist shall consider the appropriate disposition of materials in consultation with the Director of Planning and the property owner. This consultation does not relieve an owner or owner's representative from following the process mandated by law when human remains are involved.

a. If no unique archaeological resources are found during the Phase II investigation, no further reports are necessary unless the Director of Planning determines that there is substantial evidence in the record that significant resources may be affected by the project despite the negative Phase II findings. Despite a negative finding in the Phase II Evaluation, conditions recommended by the archaeologist and the California Native American tribe through the consultation process shall be applied to the project as appropriate. ~~In the event that such conditions conflict, conditions or mitigations agreed to through the consultation process shall apply.~~

b. If the Phase II Evaluation of Archaeological Resources determines that unique archaeological resources may be present, the Phase II Evaluation shall include consideration of the avoidance measures required in subsection E.2 of Section 21.66.050.

If significant resources cannot be avoided, a Phase III Data Recovery Plan shall be prepared.

c. This section does not prohibit the Director of Planning from making a determination, based on substantial evidence, that ~~non-~~unique archaeological resources are significant tribal cultural resources. In making such a determination, the Director of Planning shall consider the importance of the resource to the California Native American Tribe.

3. Phase III Data Recovery Plan (*Treatment of Impacted, Significant Cultural Resources*): A Phase III plan shall evaluate a project's impacts on unique archaeological resources and shall set forth the reasons why avoidance measures required in subsection E.2 are not feasible under the circumstance of the case. A Data Recovery Plan shall follow the California Secretary of the Interior's Guidelines for Archaeological Documentation. The Phase III Plan shall include treatment of archeological resources with culturally appropriate dignity taking into account the tribal cultural values and meaning of the resource, including but not limited to the following:

- a. Protecting the cultural character and integrity of the resource;
- b. Protecting the traditional use of the resource; and
- c. Protecting the confidentiality of the resource.

4. Report Format and Standards:

a. In all cases, written reports shall be prepared consistent with the report format requirements contained in the State Office of Historic Preservation Archaeological Resource Management Reports (ARMR): Recommended Contents and Format guidelines. A single report may incorporate more than one Phase where appropriate to minimize redundancy and expense. All reports shall be filed with appropriate state agencies.

b. Submittal of the applicable report(s), to the Director of Planning, shall be required prior to an project application being considered complete.

c. The report(s) shall be prepared, at the applicant's expense, by a qualified archaeologist, from the County's list of archaeological consultants or by a member of the Register of Professional Archaeologists who is familiar with California Central eCoast archaeology. The applicant shall also be responsible for paying for the costs of data recovery and curation of recovered materials, if applicable.

E. Development Standards.

1. Impacts to unique archaeological resources and tribal cultural resources shall be avoided to the extent feasible. In all cases where significant-unique archaeological resources or tribal cultural resources are identified, the following avoidance measures shall be considered:

a. Avoidance and preservation of the resources in place, including but not limited to revising the project design or location to protect the resource and its natural context including through use of green spaces, parks or other open space to incorporate the resources with culturally appropriate protection and management criteria;

- b. Placing the area within a permanent Conservation Easement or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places;
  - c. Limitation of Public Access; and
  - d. Other feasible methods of avoidance and protection of the resource.
2. A Data Recovery Plan (Phase III report) will be considered appropriate only upon a showing by the project applicant, based on substantial evidence, that avoidance is not feasible. Prior to the Data Recovery Plan being accepted as complete by the Director of Planning, evidence shall be submitted demonstrating that the Data Recovery Plan has been prepared in compliance with the requirements of this Section.
  3. The results of all data recovery activities shall be compiled into a final report. The final report shall be prepared by a qualified archaeologist and submitted to ~~the RMA - Planning Department~~ for review and approval prior to final grading or building inspections.

F. California Native American ~~tribal~~ Tribal Consultation

1. In addition to the archaeological report requirements of this Section, the Director of Planning or his or her designee shall provide formal written notification pursuant to Public Resources Code section 21080.3.1 to the California Native American tribe ~~or tribes~~ that ~~is~~ ~~are~~ traditionally and culturally affiliated with the project area if that tribe has requested notification from the County of proposed projects.

2. The Director's notification of the tribe(s) shall occur as early as possible in the ~~development project~~ review process but no later than 14 days after determining an ~~application for a~~ project complete. Notification pursuant to this section shall not be required for the following types of projects:

- a. Ministerial projects that are not subject to the California Environmental Quality Act (CEQA);
- b. Projects that are statutorily exempt from CEQA; and
- c. Projects that have ~~a~~ filed a notice of preparation or a notice of intent to adopt a negative declaration or mitigated negative declaration on or before June 30, 2015.

23. For ~~contact information for~~ the purposes of this Section, the County will rely upon the list maintained by the California Native American Heritage Commission ~~for to identify the California Native American Tribes that are traditionally and culturally affiliated with the project area. notification and contact information. pursuant to California Public Resources Code section 21073.~~

34. Formal written notification shall include at a minimum the following:
  - a. A description of the proposed project and its location;
  - b. The planner's contact information, and
  - c. A notification to the tribe that they have 30 days from the date of receipt of the notice to request formal consultation.

45. This Section does not prohibit any California Native American tribe or individual from participating in the project review process, ~~apart from the consultation process,~~ on any issue of concern as an interested California Native American tribe, person, citizen, or member of the public. ~~Such participation will be considered outside of the notification and consultation process required by this Section.~~

56. If the California Native American tribe requests consultation within 30 days of the notification, the County shall consult with the designated tribal representative within 30 days of the request for consultation. Consultation, if requested, shall be carried out prior to the release of any document required to be prepared under the California Environmental Quality Act and prior to any final determination by the Appropriate Authority to approve the project.

67. The purpose of the consultation shall be to determine if the project may have a significant effect on a tribal cultural resource and, if the project is determined to have a potentially significant effect on tribal cultural resources, to discuss appropriate avoidance, minimization, and mitigation measures.

78. As part of the consultation, the parties may propose mitigation measures capable of avoiding or substantially lessening potential significant impacts to a tribal cultural resource. The consultation may include discussion concerning the type of environmental review necessary, the significance of tribal cultural resources, the significances of the project's impacts on the tribal cultural resources and, if necessary, project alternatives or appropriate measures for preservation of tribal cultural resources or mitigation of impacts upon those resources.

89. All parties to the consultation shall act in good faith and with appropriate dignity and respect for other parties involved.

910. Any mitigation measure(s) agreed upon in the consultation shall be discussed in the environmental document prepared for the project pursuant to the California Environmental Quality Act and included in the mitigation monitoring and reporting plan if applicable. If no environmental review is required, the measures shall be incorporated in the design of the project or as conditions of approval if feasible.

1011. Consultation shall be considered concluded when either of the following occur:

- a. The parties agree to measures to mitigate or avoid a significant effect; or
- b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.

1112. If measures are not identified in the consultation process and the project may cause a substantial adverse change to a tribal cultural resource, feasible mitigation measures that avoid or minimize adverse impacts shall be considered. Measures to be considered include:

- 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;
- b. Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the preservation and utilization of resources or places.
- c. Treating the resource with culturally appropriate dignity taking into account the tribal cultural values and meaning of the resource, including, but not limited to:
  - i. Protecting the cultural character and integrity of the resource;
  - ii. Protecting the traditional use of the resource; and
  - iii. Protecting the confidentiality of the resource.

**FG.** Regulations applicable to all development. If at any time during the course of construction, previously unidentified archaeological resources are discovered, earth-disturbing activities shall stop within the vicinity of the find, and the project planner and a qualified archaeologist shall be contacted to assess the appropriate course of action. Where human remains are involved, the County Coroner shall also be contacted as required by law. Work shall not resume in the area until the find can be evaluated and an appropriate mitigation plan is developed.

**GH.** Prior to adoption of any General Plan or Specific Plan or an amendment thereto, consultation with Native American representatives shall be carried out consistent with California Government Code Section 65352.3 in a manner consistent with the Tribal Consultation Guidelines published by the Governor's Office of Planning and Research.

I. Nothing in this Section shall be interpreted to supersede or in any way alter or lessen the effect of any state or federal laws dealing with the protection of human remains or the California Environmental Quality Act.

SECTION 3. Chapter 2.95 is added to the Monterey County Code to read as follows:

### **Chapter 2.95 – NATIVE AMERICAN ADVISORY PANEL**

Sections:

- 2.95.010 – Creation of panel.
- 2.95.020 – Purpose and duties.
- 2.95.030 – Members
- 2.95.040 – Meetings, rules, and records

#### **2.95.010 – Creation of panel.**

~~There is created a~~ technical advisory panel in the County of Monterey to be known as the Native American Advisory Panel (hereinafter referred to as Advisory Panel) ~~is hereby created.~~

#### **2.95.020 – Purpose and Duties:**

The purpose of the Advisory Panel is to:

- A. Participate in, promote, and conduct public information, educational, and interpretive programs pertaining to archaeological and tribal cultural resource preservation, if authorized by the Director of Planning.
- B. ~~Assist the Director of Planning in~~ reviewing, updating, and maintaining a list and/or maps of tribal cultural resources archaeological sensitivity maps within the unincorporated area of Monterey County ~~in coordination with the Director of Planning.~~
- C. Make recommendations to the Director of Planning regarding policies and procedures relating to the protection of archaeological and tribal cultural resources.
- D. Perform such other duties as may otherwise be requested by the Director of Planning, the Planning Commission, or the Board of Supervisors.



### **2.95.030 – Members.**

A. ~~The Advisory Panel shall be composed-comprised of any up to 15 fifteen interested member of the public individuals with a demonstrated interest in tribal cultural resource preservation. Members shall be appointed to the Advisory Panel by the Planning Commission based on the criteria set forth in this section. who has submitted a written statement of interest to the Director of Planning and whose membership has been approved by the Director of Planning.~~

B. ~~Advisory Panel members shall meet at least one of the following minimum qualifications:~~

~~1. An individual appointed by a California Native American Tribe to serve on the Advisory Panel;~~

~~2. A Most Likely Descendant for the Monterey County area on the list maintained by the California Native American Heritage Commission; or~~

~~3. A professional archaeologist familiar with Ceentral eCoast archaeology. The term shall be two years.~~

C. ~~Interested individuals shall submit a written statement of interest to the Secretary of the Planning Commission. The written statement of interest shall include the person's qualifications to serve on the Advisory pPanel and commitment to serve and attend meetings during the term of office. Members shall have at least one of the following qualifications: member of a California Native American tribe, professional experience as archaeologist, or demonstrated interest in tribal cultural resource protection.~~

D. ~~The term of office for each member's terms shall be two years. Member's may serve more than one term. terms may be renewed by the Planning Commission. The written statement of interest shall include the person's qualification to serve on the panel and commitment to serve and attend meetings during the term of office.~~

E. Members shall receive no monetary compensation from the County for serving on the Advisory Panel.

### **2.95.040 –Meetings, rules, and records**

A. The Director of Planning, or the designee of the Director, shall serve as Secretary to the Advisory Panel and shall be custodian of the Advisory Panel's records. The Secretary shall generally supervise the technical and clerical work of the Advisory Panel.

B. The Advisory Panel shall meet at least twice per calendar year. The Advisory Panel shall annually adopt a regular meeting schedule. A quorum shall consist of a majority of the appointed members.

C. The Advisory Panel meetings shall be noticed, held, and conducted in accordance with the Ralph M. Brown Act.

D. The Advisory Panel shall act only on matters referred to it by the Board of Supervisors, the Planning Commission, or Director of Planning.

E. The Advisory Panel is an advisory body. It shall have no authority to grant permits and no permit enforcement authority.

F. Advisory Panel members shall treat all members of the Advisory Panel, Monterey County staff, and the public in a respectful and courteous manner.

G. Advisory Panel members with any financial interest in a matter before the Advisory Panel must disqualify themselves from participation in any discussion or vote on such a matter.

SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 5. EFFECTIVE DATE. This Ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED on this \_\_\_\_ day of \_\_\_\_\_, 2015, by the following vote:

AYES: Supervisors  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Chair,  
Monterey County Board of Supervisors

A T T E S T:

GAIL T. BORKOWSKI  
Clerk of the Board

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
  
Wendy S. Strimling  
Senior Deputy County Counsel



*California.*  
LEGISLATIVE INFORMATION

**AB-52 Native Americans: California Environmental Quality Act.** (2013-2014)

**Assembly Bill No. 52**

CHAPTER 532

An act to amend Section 5097.94 of, and to add Sections 21073, 21074, 21080.3.1, 21080.3.2, 21082.3, 21083.09, 21084.2, and 21084.3 to, the Public Resources Code, relating to Native Americans.

[ Approved by Governor September 25, 2014. Filed with Secretary of State September 25, 2014. ]

LEGISLATIVE COUNSEL'S DIGEST

AB 52, Gatto. Native Americans: California Environmental Quality Act.

Existing law, the Native American Historic Resource Protection Act, establishes a misdemeanor for unlawfully and maliciously excavating upon, removing, destroying, injuring, or defacing a Native American historic, cultural, or sacred site, that is listed or may be eligible for listing in the California Register of Historic Resources.

The California Environmental Quality Act, referred to as CEQA, requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report 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 the lead agency to provide a responsible agency with specified notice and opportunities to comment on a proposed project. CEQA requires the Office of Planning and Research to prepare and develop, and the Secretary of the Natural Resources Agency to certify and adopt, guidelines for the implementation of CEQA that include, among other things, criteria for public agencies to following in determining whether or not a proposed project may have a significant effect on the environment.

This bill would specify that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource, as defined, is a project that may have a significant effect on the environment. The bill would require a 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 the tribe requested to the lead agency, in writing, to be informed by the lead agency of proposed projects in that geographic area and the tribe requests consultation, prior to determining whether a negative declaration, mitigated negative declaration, or environmental impact report is required for a project. The bill would specify examples of mitigation measures that may be considered to avoid or minimize impacts on tribal cultural resources. The bill would make the above provisions applicable to projects that have a notice of preparation or a notice of negative declaration filed or mitigated negative declaration on or after July 1, 2015. The bill would require the Office of Planning and Research to revise on or before July 1, 2016, the guidelines to separate the consideration of tribal cultural resources from that for paleontological resources and add consideration of tribal cultural resources. By requiring the lead agency to consider these effects relative to tribal cultural resources and to conduct consultation with California Native American tribes, this bill would impose a state-mandated local program.

Existing law establishes the Native American Heritage Commission and vests the commission with specified powers and duties.

This bill would additionally require the commission to provide each California Native American tribe, as defined, on or before July 1, 2016, with a list of all public agencies that may be a lead agency within the geographic area in which the tribe is traditionally and culturally affiliated, the contact information of those agencies, and information on how the tribe may request those public agencies to notify the tribe of projects within the jurisdiction of those public agencies for the purposes of requesting consultation.

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 no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** (a) The Legislature finds and declares all of the following:

(1) Current state law provides a limited measure of protection for sites, features, places, objects, and landscapes with cultural value to California Native American tribes.

(2) Existing law provides limited protection for Native American sacred places, including, but not limited to, places of worship, religious or ceremonial sites, and sacred shrines.

(3) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) does not readily or directly include California Native American tribes' knowledge and concerns. This has resulted in significant environmental impacts to tribal cultural resources and sacred places, including cumulative impacts, to the detriment of California Native American tribes and California's environment.

(4) As California Native Americans have used, and continue to use, natural settings in the conduct of religious observances, ceremonies, and cultural practices and beliefs, these resources reflect the tribes' continuing cultural ties to the land and their traditional heritages.

(5) Many of these archaeological, historical, cultural, and sacred sites are not located within the current boundaries of California Native American reservations and rancherias, and therefore are not covered by the protectionist policies of tribal governments.

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

(1) Recognize that California Native American prehistoric, historic, archaeological, cultural, and sacred places are essential elements in tribal cultural traditions, heritages, and identities.

(2) Establish a new category of resources in the California Environmental Quality Act called "tribal cultural resources" that considers the tribal cultural values in addition to the scientific and archaeological values when determining impacts and mitigation.

(3) Establish examples of mitigation measures for tribal cultural resources that uphold the existing mitigation preference for historical and archaeological resources of preservation in place, if feasible.

(4) Recognize that California Native American tribes may have expertise with regard to their tribal history and practices, which concern the tribal cultural resources with which they are traditionally and culturally affiliated. Because the California Environmental Quality Act calls for a sufficient degree of analysis, tribal knowledge about the land and tribal cultural resources at issue should be included in environmental assessments for projects that may have a significant impact on those resources.

(5) In recognition of their governmental status, establish a meaningful consultation process between California Native American tribal governments and lead agencies, respecting the interests and roles of all California Native American tribes and project proponents, and the level of required confidentiality concerning tribal cultural resources, at the earliest possible point in the California Environmental Quality Act environmental review

process, so that tribal cultural resources can be identified, and culturally appropriate mitigation and mitigation monitoring programs can be considered by the decisionmaking body of the lead agency.

(6) Recognize the unique history of California Native American tribes and uphold existing rights of all California Native American tribes to participate in, and contribute their knowledge to, the environmental review process pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(7) Ensure that local and tribal governments, public agencies, and project proponents have information available, early in the California Environmental Quality Act environmental review process, for purposes of identifying and addressing potential adverse impacts to tribal cultural resources and to reduce the potential for delay and conflicts in the environmental review process.

(8) Enable California Native American tribes to manage and accept conveyances of, and act as caretakers of, tribal cultural resources.

(9) Establish that a substantial adverse change to a tribal cultural resource has a significant effect on the environment.

**SEC. 2.** Section 5097.94 of the Public Resources Code is amended to read:

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

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

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

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

(d) To appoint necessary clerical staff.

(e) To accept grants or donations, real or in kind, to carry out the purposes of this chapter.

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

(g) To bring an action to prevent severe and irreparable damage to, or assure appropriate access for Native Americans to, a Native American sanctified cemetery, place of worship, religious or 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 any action to enforce the provisions of this subdivision the commission shall introduce evidence showing that such 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 utilize the advice and service of all federal, state, local, and regional agencies.

(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) 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.

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

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

**SEC. 3.** Section 21073 is added to the Public Resources Code, to read:

**21073.** "California Native American tribe" means a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004.

**SEC. 4.** Section 21074 is added to the Public Resources Code, to read:

**21074.** (a) "Tribal cultural resources" are either of the following:

(1) Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either of the following:

(A) Included or determined to be eligible for inclusion in the California Register of Historical Resources.

(B) Included in a local register of historical resources as defined in subdivision (k) of Section 5020.1.

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

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

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

**SEC. 5.** Section 21080.3.1 is added to the Public Resources Code, to read:

**21080.3.1.** (a) The Legislature finds and declares that California Native American tribes traditionally and culturally affiliated with a geographic area may have expertise concerning their tribal cultural resources.

(b) Prior to the release of a negative declaration, mitigated negative declaration, or environmental impact report for a project, the lead agency shall 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. When responding to the lead agency, the California Native American tribe shall 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 shall defer to the individual listed on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter

905 of the Statutes of 2004. For purposes of this section and Section 21080.3.2, "consultation" shall have the same meaning as provided in Section 65352.4 of the Government Code.

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

(d) 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 designated contact of, or a tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, which 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 pursuant to this section.

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

**SEC. 6.** Section 21080.3.2 is added to the Public Resources Code, to read:

**21080.3.2.** (a) As a part of the consultation pursuant to Section 21080.3.1, the parties may propose mitigation measures, including, but not limited to, those recommended in Section 21084.3, 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. 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. The consultation may include discussion concerning the type of environmental review necessary, the significance of tribal cultural resources, the significance of the project's impacts on the tribal cultural resources, and, if necessary, project alternatives or the appropriate measures for preservation or mitigation that the California Native American tribe may recommended to the lead agency.

(b) The consultation shall be considered concluded when either of the following occurs:

(1) The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource.

(2) A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.

(c) (1) This section does not limit the ability of a 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.

(2) This section 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.

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

**SEC. 7.** Section 21082.3 is added to the Public Resources Code, to read:

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

(b) 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:

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

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

(c) (1) 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 or any other public

agency to the public, consistent with subdivision (r) of Section 6254 of, and Section 6254.10 of, the Government Code, and subdivision (d) of Section 15120 of Title 14 of the California Code of Regulations, without the prior consent of the tribe that provided the information. 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 unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. This subdivision does not prohibit the confidential exchange of the submitted information between public agencies that have lawful jurisdiction over the preparation of the environmental document.

(2) (A) This subdivision does not prohibit the confidential exchange of information regarding tribal cultural resources submitted by a California Native American tribe 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. Except as provided in subparagraph (B) or 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 a tribal cultural resource and shall not disclose to a third party confidential information regarding tribal cultural resources.

(B) This paragraph 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.

(3) This subdivision does not affect or alter the application of subdivision (r) of Section 6254 of the Government Code, Section 6254.10 of the Government Code, or subdivision (d) of Section 15120 of Title 14 of the California Code of Regulations.

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

(d) In addition to other provisions of this division, 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:

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

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

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

(e) 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 subdivision (b) of Section 21084.3.

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

(g) This section is 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.

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



**21083.09.** On or before July 1, 2016, the Office of Planning and Research shall prepare and develop, and the Secretary of the Natural Resources Agency shall certify and adopt, revisions to the guidelines that update Appendix G of Chapter 3 (commencing with Section 15000) of Division 6 of Title 4 of the California Code of Regulations to do both of the following:

- (a) Separate the consideration of paleontological resources from tribal cultural resources and update the relevant sample questions.
- (b) Add consideration of tribal cultural resources with relevant sample questions.

**SEC. 9.** Section 21084.2 is added to the Public Resources Code, to read:

**21084.2.** A project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment.

**SEC. 10.** Section 21084.3 is added to the Public Resources Code, to read:

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

(b) 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 provided in Section 21080.3.2, the following are examples of mitigation measures that, if feasible, may be considered to avoid or minimize the significant adverse impacts:

- (1) 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.
- (2) Treating the resource with culturally appropriate dignity taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
  - (A) Protecting the cultural character and integrity of the resource.
  - (B) Protecting the traditional use of the resource.
  - (C) Protecting the confidentiality of the resource.
- (3) Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
- (4) Protecting the resource.

**SEC. 11.** (a) This act does not alter or expand the applicability of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) concerning projects occurring on Native American tribal reservations or rancherias.

(b) This act does not prohibit any California Native American tribe or individual from participating in the California Environmental Quality Act on any issue of concern as an interested California Native American tribe, person, citizen, or member of the public.

(c) This act shall apply only to a project that has a notice of preparation or a notice of negative declaration or mitigated negative declaration filed on or after July 1, 2015.

**SEC. 12.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.