

# Cultural Resources Management Plan

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## Placer County Conservation Program Placer County, California

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## **LIST OF ACRONYMS**

AB	Assembly Bill
ACHP	Advisory Council on Historic Preservation
APE	Area of Potential Effects
ARMR	Archaeological Resource Management Report
ARPA	Archaeological Resources Protection Act
BLM	Bureau of Land Management
BP	years Before the Present
BSO	Building, Structure, and Object record
CARP	Countywide Aquatic Resources Program
CCR	Code of California Regulations
CDFW	California Department of Fish and Wildlife
CEQA	California Environmental Quality Act
CFR	Code of Federal Regulations
CHRIS	California Historical Resources Information System
CONUS	Continental United States
CRCM	Cultural Resources Compliance Manager
CRHR	California Register of Historical Resources
CRMP	Cultural Resources Management Plan
CVRWQCB	California Regional Water Quality Control Board, Central Valley Region
CWA	Clean Water Act
DPR	Department of Parks and Recreation
EIR	Environmental Impact Report
EIS	Environmental Impact Statement
EP	Evaluation Plan
ESA	Endangered Species Act
FOE	Finding of Effect
GIS	Geographic Information System
GLO	General Land Office
GPS	Global Positioning System
HABS	Historic American Building Survey
HAER	Historic American Engineering Record
HALS	Historic American Landscape Survey
HCP	Habitat Conservation Plan
HPDF	Historic Property Data File
HPTP	Historic Property Treatment Plan
IC	Information Center
MLD	Most Likely Descendant
MOA	Memorandum of Agreement

NAD	North American Datum
NAHC	Native American Heritage Commission
NAGPRA	Native American Graves Protection and Repatriation Act
NCCP	Natural Community Conservation Plan
NCIC	North Central Information Center
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NMFS	National Marine Fisheries Service
NPS	National Park Service
NRHP	National Register of Historic Places
OHP	Office of Historic Preservation
OSHA	Occupational Safety and Health Administration
PA	Programmatic Agreement
PCA	Placer Conservation Authority
PCCP	Placer County Conservation Program
PCWA	Placer County Water Agency
PGP	Programmatic General Permit
PI	Principal Investigator
PQS	Professional Qualification Standards
RGP	Regional General Permit
ROD	Record of Decision
CSH	Center for Sacramento History
SB	Senate Bill
SHPO	State Historic Preservation Officer
SOI	Secretary of the Interior
SOQ	Statement of Qualifications
SPRTA	South Placer Regional Transit Authority
STP	Shovel Test Pits or Shovel Test Probes
TCP	Traditional Cultural Property
TCR	Tribal Cultural Resource
THPO	Tribal Historic Preservation Officer
UAIC	United Auburn Indian Community of the Auburn Rancheria
USA	Underground Service Alert
USACE	U.S. Army Corps of Engineers
USFWS	U.S. Fish and Wildlife Service
UTM	Universal Transverse Mercator

## **1.0 INTRODUCTION**

### **1.1 Description of the Undertaking**

The Placer County Conservation Program (PCCP) was proposed by the County of Placer to manage natural resources in Western Placer County (Figures 1-1 and 1-2) over the next 50 years as a Habitat Conservation Plan (HCP) under the federal Endangered Species Act (ESA) and a Natural Community Conservation Plan (NCCP) under the California Natural Community Conservation Planning Act. The purpose of the PCCP is to coordinate and streamline, to the greatest extent allowable, the environmental review and permitting process by integrating compliance with federal, state, and local laws. The PCCP will be implemented, in part, through the Countywide Aquatic Resources Program (CARP). The newly formed Placer Conservation Authority (PCA) will be a joint exercise of powers agency created by the County and the City of Lincoln to implement the PCCP on behalf of the Permittees, which are the County, City, Placer County Water Agency (PCWA), South Placer Regional Transportation Authority (SPRTA), and the PCA itself. These agencies, along with private-sector applicants and project proponents, are also “permittees” under various federal permits, including those under the federal ESA, California Natural Community Conservation Planning Act, and the Federal Clean Water Act. They are also subject to related review under the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA).

Environmental review and permitting under these laws and regulations also require compliance with cultural resources procedures to ensure that the individual projects that participate in the PCCP consider the effects that the projects will have on cultural resources. Issuance of federal funding, permit, license, approval, or assistance requires compliance with Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended. Section 106 requires that the federal lead agencies take into account the effects that their undertakings have on historic properties in advance, and that they consult with federally recognized tribes and the State Historic Preservation Officer (SHPO). Compliance with CEQA includes requirements to consider impacts to historical resources, as well as a mandatory tribal consultation process established by Assembly Bill 52 (AB 52).

This Cultural Resources Management Plan (CRMP) provides a set of standards and procedures to ensure that individual projects, as they are brought forth under the PCCP, are consistently and efficiently compliant with all federal, state, and local laws and regulations as they relate to cultural resources. This CRMP will be updated from time to time based on new information or changes in relevant state or federal guidance or requirements as deemed appropriate by the County, in consultation with the other responsible agencies.



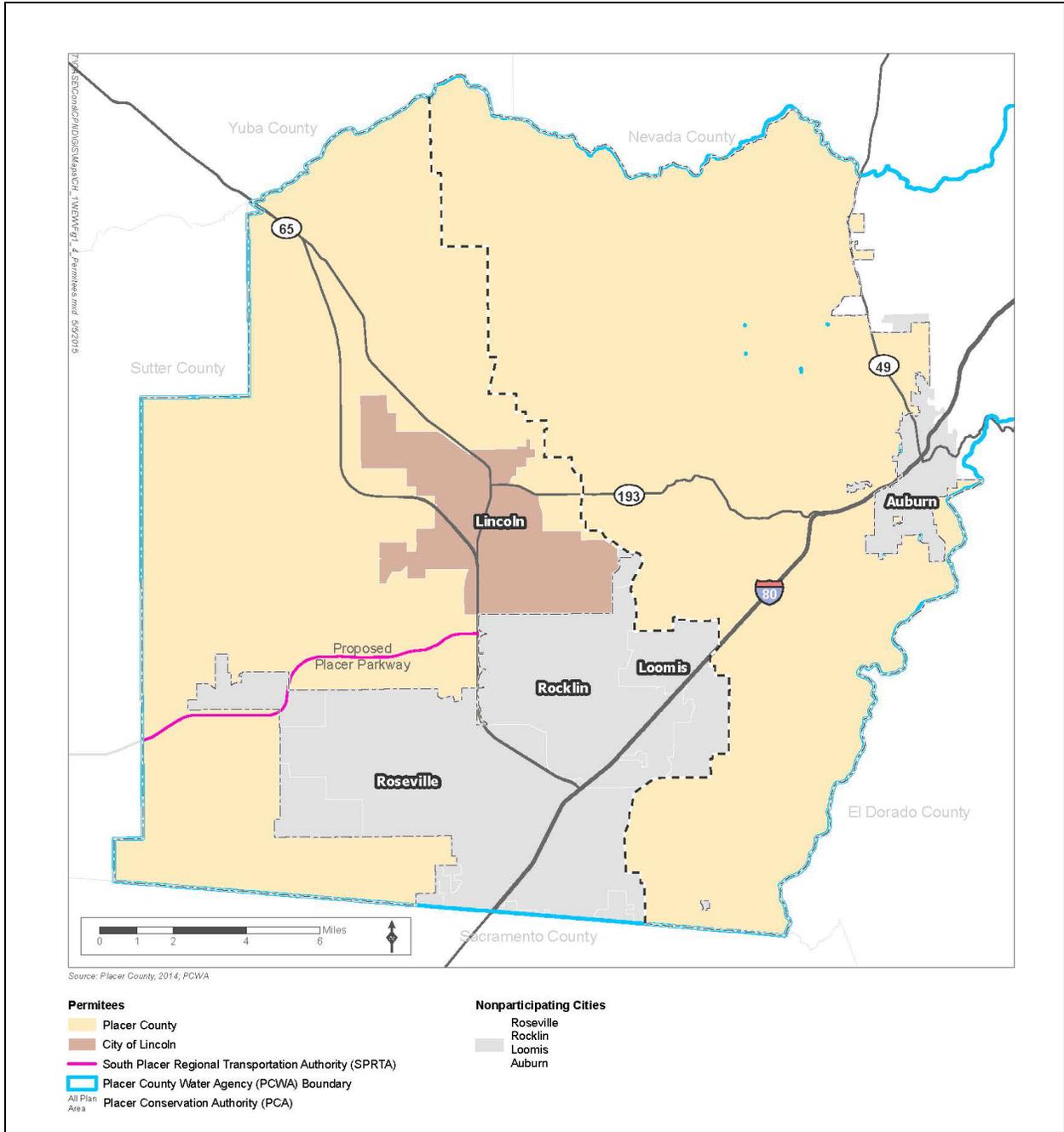


Figure 1-2. PCCP Map (courtesy of MIG/TRA).

## 1.2 Regulatory Context

The adoption of the PCCP HCP/NCCP and the CARP require compliance with both NEPA and CEQA. A joint Environmental Impact Statement (EIS) / Environmental Impact Report (EIR) was prepared to fulfill the requirements of NEPA and CEQA. The USFWS is the lead agency on the EIS (for the issuance of an incidental take permit based on the HCP) and Placer County is the lead agency on the EIR (for the approval and adoption of the HCP/NCCP and CARP as a whole). The USACE is a cooperating agency.

The EIS/EIR evaluated the environmental effects of the adoption and implementation of the HCP/NCCP and CARP and the issuance of related state and federal permits. These impacts include potential impacts to species, habitat, and aquatic resources resulting from development projects that could be permitted under the HCP/NCCP. However, the adoption of the HCP/NCCP and CARP does not include the adoption or approval of specific development projects. Individual project proposals will be evaluated and permitted separately under the HCP/NCCP and CARP after the HCP/NCCP and CARP are adopted. Therefore, the EIS/EIR, the HCP/NCCP and CARP do not identify project-specific impacts or prescribe project-specific mitigation measures; rather, they analyze the potential environmental impacts of the range of projects and activities that could be covered under the HCP/NCCP and the CARP and identify environmental review procedures, mitigation measures, and mitigation standards that will apply to individual projects when they are proposed. As individual project proposals are submitted for review and permitting under the HCP/NCCP and CARP, the environmental impacts of each project will be evaluated pursuant to CEQA and NEPA, as well as the HCP/NCCP and the CARP, and project-specific avoidance, minimization, and mitigation measures will be identified.

As part of the EIS/EIR's environmental review procedures and standards, the EIS/EIR must include appropriate procedures and standards for evaluating potential impacts to cultural resources. This CRMP provides the procedures and standards that will be used to evaluate and address the potential impacts to cultural resources that may result from projects and activities permitted under the HCP/NCCP and CARP.

### 1.2.1 Federal Laws and Regulations

As federal lead agency for the EIS, the USFWS has two statutory obligations regarding the potential effects to cultural resources that may result from issuance of an incidental take permit. Under NEPA, the USFWS must determine whether or not the issuance of an incidental take permit for HCP/NCCP covered activities will result in a direct or indirect effect to Historic Properties, as defined in 36 CFR 800.16(l)(1), as well as the broader class of cultural resources, which include sacred sites, non-significant or non-NRHP-eligible sites, and archaeological collections. In addition, the USFWS must comply with Section 106 of the NHPA of 1966, as amended, which requires a comparable assessment as it relates to issuance of federal approvals<sup>1</sup>.

The goal of Section 106 of the NHPA and its implementing regulations in 36 CFR Part 800 et seq. is to develop and maintain a high-quality environment that serves to identify the adverse effects of the actions of a proposed project on Historic Properties and, through a formal consultation process, to either avoid

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<sup>1</sup> In 2014, the NHPA moved to title 54 of the U.S. Code, starting with section 300101; however, it is still referred to as Section 106 in reference to the section in the original public law that enacted the NHPA, as opposed to its legal citation on the U.S. Code. It is also a reference that has been in constant use for almost 50 years.

or resolve those adverse effects where feasible. Historic Properties are defined as any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places (NRHP) maintained by the Secretary of the Interior (36 CFR 800.16(l)). Eligibility for inclusion in the NRHP is recognized when a cultural resource meets at least one of four criteria that define eligibility for listing on the NRHP (36 CFR 60.4) and retains sufficient integrity.

The two statutory obligations of NEPA and Section 106 NHPA pertain to the Area of Potential Effects (APE) for the PCCP, which is defined in 36 CFR 800.16(d) as the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. "Effect" is defined as alteration to the characteristics of a Historic Property qualifying it for inclusion in or eligibility for the NRHP (36 CFR 800.16(i). Adverse effect (36 CFR 800.5) may also include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance, or be cumulative. Because of the statutory requirement to address indirect effect, for the purposes of NEPA and Section 106, the APE is the PCCP area shown in Figures 1 and 2. This means that the EIS must address the reasonably foreseeable direct and indirect effects that approval and implementation of the PCCP will have on Historic Properties and cultural resources. Because effects during implementation (on a project-level basis) cannot be determined at the time of the issuance of the ROD on the EIS, and can't be determined until specific projects come forward under the PCCP, the USFWS must identify the specific procedures by which it agrees to carry out project-level reviews. Those procedures, among others, are incorporated into this CRMP.

In addition, by statute, the Section 106 process must conclude before the environmental analysis for a federal action is completed pursuant to NEPA (54 USC 306108). For the HCP/NCCP EIS/EIR, where the specific direct and indirect effects of HCP/NCCP covered activities cannot be determined fully at the time the ROD is issued, the Section 106 process can conclude with an agreement by the USFWS to comply with the nine-step process described below, as specified in 36 CFR 800.14(b), and with the execution of one or more Programmatic Agreements (PA)<sup>2</sup> or Memoranda of Agreement (MOA).

The nine-step NHPA compliance process is composed of the basic steps outlined in 36 CFR Part 800, as follows:

1. Define the Area of Potential Effects.
2. Conduct a records search with the Information Center (IC) of the California Historical Resources Information System (CHRIS) for previous surveys and documented cultural resources in the area.
3. Conduct a sacred-lands search with the Native American Heritage Commission (NAHC).
4. Provide written notification of the proposed project to the Native American contacts obtained from the NAHC.
5. Conduct a cultural resources field survey commensurate with the level of the undertaking's potential to affect historic properties.
6. Record newly identified cultural resources.

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<sup>2</sup> The number of PAs that would be executed to allow for the implementation of this CRMP is currently under consideration by the affected federal lead agencies and has yet to be resolved. In August 2016, the USACE published its intent to execute a PA with SHPO for its undertakings under the PCCP. The USFWS has not communicated its intention to execute a PA at this time.

7. Determine eligibility of newly identified sites under the criteria for inclusion in the NRHP.
8. Develop a report that includes survey and site descriptions, site inventory forms, determinations of eligibility of cultural resources under the NRHP, and management recommendations. The report shall also include a project location map specifically identifying where the proposed activities will occur to support a determination of effect; map(s) of the area surveyed and where previously and newly identified sites are located; figures; tables; photographs; and copies of Information Center, NAHC, and tribal correspondence.
9. Identify avoidance, other protection measures, or mitigation measures for sites determined significant.

By regulation, this nine-step process is required of all federal agencies who will consider issuance of federal permits, approvals, funding, or licenses for compliance with Section 106 NHPA. Under the PCCP, this nine-step process is detailed in this CRMP and is designed to address this process for each applicable federal agency. This includes the 2014 *Sacramento District Regulatory Branch Guidelines for Compliance with Section 106 of the National Historic Preservation Act of 1966, as amended* of the USACE Sacramento District Regulatory Division.

### **1.2.2 State Laws**

#### **CEQA**

The County, as lead agency for the EIR, is similarly bound to comply with applicable sections of CEQA (Pub. Res. Code §21000 et seq.) as it relates to cultural resources. Likewise, the City of Lincoln, PCWA, SPRTA, and the County may serve as CEQA lead agencies during implementation of the PCCP. CEQA pertains to all proposed projects that require state or local government agency approval, including the enactment of zoning ordinances, the issuance of conditional use permits, and the approval of development project maps.

CEQA (Title 14, CCR, Article 5, §15064.5) applies to cultural resources of the historical and prehistoric periods. Any project with an effect that may cause a substantial adverse change in the significance of a cultural resource, either directly or indirectly, is a project that may have a significant effect on the environment. As a result, such a project would require avoidance or mitigation of impacts to those affected resources. Significant cultural resources must meet at least one of four criteria that define eligibility for listing on either the California Register of Historical Resources (CRHR) (Pub. Res. Code §5024.1, Title 14 CCR, §4852) or the NRHP (36 CFR 60.4). Cultural resources eligible for listing on the NRHP are considered Historic Properties under 36 CFR Part 800 and are automatically eligible for the CRHR. Resources listed on or eligible for inclusion in the CRHR are considered Historical Resources under CEQA.

#### **AB 52**

In addition, effective July 1, 2015, AB 52 amended CEQA to require that: 1) a lead agency provide notice to any California Native American tribes that have requested notice of projects proposed by the lead agency; and 2) for any tribe that responded to the notice within 30 days of receipt with a request for consultation, the lead agency must consult with the tribe. Topics that may be addressed during consultation include tribal cultural resources, the potential significance of project impacts, type of

environmental document that should be prepared, and possible mitigation measures and project alternatives.

Pursuant to AB 52, Section 21073 of the Public Resources Code defines California Native American tribes as “a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of the Statutes of 2004.” This includes both federally and non-federally recognized tribes.

Section 21074(a) of the Public Resource Code defines Tribal Cultural Resources for the purpose of CEQA as:

- 1) Sites, features, places, cultural landscapes (geographically defined in terms of the size and scope), 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; and/or
  - b. included in a local register of historical resources as defined in subdivision (k) of Section 5020.1; and/or
  - c. 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.

Recognizing that California tribes are experts in their tribal cultural resources and heritage, AB 52 requires that CEQA lead agencies initiate consultation with tribes at the commencement of the CEQA process to identify Tribal Cultural Resources. Furthermore, because a significant effect on a Tribal Cultural Resource is considered a significant impact on the environment under CEQA, consultation is required to develop appropriate avoidance, impact minimization, and mitigation measures.

**California Public Resources Code 5097.9**

Public Resources Code 5097.9 establishes that no public agency or private party using or occupying public property or operating on public property, under a public license, permit, grant, lease, or contract made on or after July 1, 1977 shall interfere with the free expression or exercise of Native American religion. This code also prohibits damage to a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, except on a clear and convincing showing that the public interest and necessity so require.

**California Health and Safety Code 7050.5**

Health and Safety Code 7050.5 establishes the intentional disturbance, mutilation, or removal of interred human remains a misdemeanor. This code also requires that upon the discovery of human remains outside of a dedicated cemetery excavation or disturbance of land cease until a county coroner makes a report. The code also requires that the County coroner contact the NAHC within 24-hours if he or she determines the remains to be of Native American origin.

## **SB 18**

Senate Bill (SB) 18 was signed into law in September 2004 and became effective in March 2005. SB 18 (Burton, Chapter 905, Statutes of 2004) requires city and county governments to consult with California Native American tribes early in the planning process with the intent of protecting traditional tribal cultural places. The purpose of involving tribes at the early stage of planning efforts is to allow consideration of tribal cultural places in the context of broad local land use policy before project-level land use decisions are made by a local government. As such, SB 18 applies to the adoption or substantial amendment of general or specific plans. The process by which consultation must occur in these cases was published by the Governor's Office of Planning and Research through its Tribal Consultation Guidelines: Supplement to General Plan Guidelines (November 14, 2005).

### **1.2.3 Local Plans and Policies**

#### **County General Plan**

The Placer County General Plan affords consideration for the preservation of cultural resources. Following are relevant sections of Section 5 of the General Plan, *Recreation and Cultural Resources*:

Goal 5.A: To develop and maintain a system of conveniently located, properly-designed parks and recreational facilities to serve the needs of present and future residents, employees, and visitors.

Policy 5.A.3. The County shall require new development to provide a minimum of 5 acres of improved parkland and 5 acres of passive recreation area or open space for every 1,000 new residents of the area covered by the development. The park classification system... should be used as a guide to the type of the facilities to be developed in achieving these standards.

The park classification system includes the designation of Conservancy Areas, which provide "protection and management of the natural/cultural environment with recreation use as a secondary objective."

Goal 5.D: To identify, protect, and enhance Placer County's important historical, archaeological, paleontological, and cultural sites and their contributing environment.

Policy 5.D.1. The County shall assist the citizens of Placer County in becoming active guardians of their community's cultural resources.

Policy 5.D.2. The County shall solicit the cooperation of the owners of cultural and paleontological resources, encourage those owners to treat these resources as assets rather than liabilities, and encourage the support of the general public for the preservation and enhancement of these resources.

Policy 5.D.3. The County shall solicit the views of the Native American Heritage Commission, State Office of Historic Preservation, North Central Information Center, and/or the local Native American community in cases where development may result in disturbance to sites containing evidence of Native American activity and/or to sites of cultural importance.

Policy 5.D.4. The County shall coordinate with the cities and municipal advisory councils in the County to promote the preservation and maintenance of Placer County's paleontological and archaeological resources.

Policy 5.D.5. The County shall use, where feasible, incentive programs to assist private property owners in preserving and enhancing cultural resources.

Policy 5.D.6. The County shall require that discretionary development projects identify and protect from damage, destruction, and abuse, important historical, archaeological, paleontological, and cultural sites and their contributing environment. Such assessments shall be incorporated into a Countywide cultural resource data base, to be maintained by the Division of Museums.

Policy 5.D.7. The County shall require that discretionary development projects are designed to avoid potential impacts to significant paleontological or cultural resources whenever possible. Unavoidable impacts, whenever possible, shall be reduced to a less than significant level and/or shall be mitigated by extracting maximum recoverable data. Determinations of impacts, significance, and mitigation shall be made by qualified archaeological (in consultation with recognized local Native American groups), historical, or paleontological consultants, depending on the type of resource in question.

Policy 5.D.8. The County shall, within its power, maintain confidentiality regarding the locations of archaeological sites in order to preserve and protect these resources from vandalism and the unauthorized removal of artifacts.

Policy 5.D.9. The County shall use the State Historic Building Code to encourage the preservation of historic structures.

Policy 5.D.10. The County will use existing legislation and propose local legislation for the identification and protection of cultural resources and their contributing environment.

Policy 5.D.11. The County shall support the registration of cultural resources in appropriate landmark designations (i.e., National Register of Historic Places, California Historical Landmarks, Points of Historical Interest, or Local Landmark). The County shall assist private citizens seeking these designations for their property.

Policy 5.D.12. The County shall consider acquisition programs (i.e. Placer Legacy Open Space and Agricultural Conservation Program) as a means of preserving significant cultural resources that are not suitable for private development. Organizations that could provide assistance in this area include, but are not limited to, the Archaeological Conservancy, the Native American community, and local land trusts.

These policies require the implementation of the following programs:

5.4 The County shall prepare, adopt, and implement procedures for review and approval of all County-permitted projects involving ground disturbance and all building and/or demolition permits that will affect buildings, structures, or objects 45 years of age or older. (Responsibility: CDRA Planning Services Division Museums Division Board of Supervisors Time Frame: FY 94-95; ongoing Funding: Mitigation fees Permit fees)

5.5 The County shall develop preservation incentive programs for owners of important cultural and paleontological resources, using such mechanisms as the Mills Act, the Historic Preservation Easement program, the Certified Local Government program, and the Heritage

Tourism program. (Responsibility: CDRA Planning Services Division Museums Division Assessor  
Time Frame: FY 94-95; ongoing Funding: Grants General Fund)

5.6 The County shall establish a formal Placer County Register of Historical Properties to facilitate preservation of the locally significant historical properties that do not qualify for State or Federal listings. (Responsibility: Museums Division Time Frame: FY 94-95; ongoing Funding: General Fund Grants)

5.7 The County shall consider pursuing the following cultural resources management programs and shall explore possible funding sources to support these programs:

- a. Pursuit of status as a Certified Local Government to facilitate state funding and technical assistance from the State Office of Historic Preservation;
- b. Preparation, adoption, and implementation of a cultural resources ordinance that provides definitions and standards for identification and protection of cultural resources and provides penalties for their disturbance; and,
- c. Establishment of the staff position of cultural resources coordinator. The coordinator would provide archaeological and architectural historian expertise to the activities outlined above and would maintain a countywide cultural resource database. The coordinator would also provide assistance to the public in understanding cultural resource concerns and in fulfilling cultural resource legislative requirements. (Responsibility: Museums Division Time Frame: FY 94-95 and as funds become available Funding: Grants Permit fees General Fund)

### **City of Lincoln General Plan**

The City of Lincoln's General Plan (2008) provides the following goals and policies:

Goal LU-2: To designate, protect, and provide land to ensure sufficient residential development to meet community needs and projected population growth.

Policy LU-2.5: Protect Historic Structures. The City shall encourage preservation and adaptive reuse of significant historic structures.

Goal LU-3: To preserve Lincoln's character and scale, including its traditional urban design form and historic character.

Policy LU-13.2: Adaptive Reuse. The City shall encourage and promote the adaptive reuse of Lincoln's historic resources, in order to preserve the historic resources that are a part of Lincoln's heritage.

Policy LU-13.3: Historic Buildings and Areas. The City shall preserve buildings and areas with special and recognized historic, architectural, or aesthetic value especially in the Downtown area. New development should respect architecturally or historically significant buildings and areas.

Policy LU-13.7: Historic Preservation. The City shall work with local preservation groups and Downtown property owners to improve building facades and exteriors consistent with the historic and visual character of Downtown.

Policy LU-13.9: Cultural and Historic Resources Protection. The City shall provide code enforcement that protects the cultural and historic value of existing places and buildings. Code enforcement guidelines should address demolition by neglect, inappropriate renovations, lack of maintenance, overgrown landscaping, and inappropriate storage.

Goal OSC-6: To preserve and protect existing archaeological, historical, and paleontological resources for their cultural values.

Policy OSC-6.1: Evaluation of Historic Resources. The City shall use appropriate State and Federal Standards in evaluating the significance of historical resources that are identified in the City.

Policy OSC-6.2: Historic Structures and Sites. The City shall support public and private efforts to preserve, rehabilitate, and continue the use of historic structures, sites, and districts. Where applicable, preservation efforts shall conform to the current Secretary of the Interior's Standards for the Treatment of Historic Properties and Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings.

Policy OSC-6.3: Archaeological Resources. The City shall support efforts to protect and/or recover archaeological resources.

Policy OSC-6.4: Historical Resources Inventory. The City shall prepare a historical resources inventory and use State and Federal Standards in evaluating historical resources for their significance.

Policy OSC-6.5: Mitigation Monitoring for Historical Resources. The City shall develop standards for monitoring of mitigation measures established for the protection of historical resources prior to development.

Policy OSC-6.6: State Historic Building Code. The City shall establish construction standards for the protection of historic resources during development and use the State Historic Building Code for designated properties.

Policy OSC-6.7: Discovery of Archaeological / Paleontological Resources. In the event that archaeological / paleontological resources are discovered during ground disturbing activities, the City shall require that grading and construction work within 100 feet of the find shall be suspended until the significance of the features can be determined by a qualified professional archaeologist / paleontologist as appropriate. The City will require that a qualified archeologist / paleontologist make recommendations for measures necessary to protect the find; or to undertake data recovery, excavation, analysis, and curation of archaeological/paleontological materials, as appropriate.

Policy OSC-6.8: Archaeological Resource Surveys. Prior to project approval, the City shall require project applicant to have a qualified professional archeologist conduct the following activities within the area of potential effects (APE): (1) conduct a record search at the North Central Information Center located at California State University Sacramento and other appropriate historical repositories to determine the extent of previously recorded sites and surveys within the project area, and to develop a historical context within which sites can be evaluated for significance, (2) conduct a field survey to locate, map, and record prehistoric and

historic resources, and (3) prepare cultural resource inventory and evaluation reports meeting California Office of Historic Preservation Standards to document the results of the record search and field survey, and to provide significance evaluations and management recommendations for any identified historical resources within the APE.

Policy OSC-6.9: Native American Resources. The City shall consult with Native American representatives, including appointed representatives from United Auburn Indian Community, to discuss concerns regarding potential impacts to cultural resources and to identify locations of importance to Native Americans, including archeological sites and traditional cultural properties. Coordination with the Native American Heritage Commission should begin at the onset of the review of a proposed project.

Policy OSC-6.10: Discovery of Human Remains. Consistent with CEQA Guidelines (Section 15064.5), if human remains are discovered during project construction, it is necessary to comply with state laws relating to prohibitions on disinterring, disturbing, or removing human remains from any location other than a dedicated cemetery (California Health and Safety Code Section 7050.5). If any human remains are discovered or recognized in any location on the project site, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:

- A. The Placer County Coroner / Sheriff has been informed and has determined that no investigation of the cause of death is required; and if the coroner determines that the remains are of Native American origin,
  - 1. The coroner shall contact the Native American Heritage Commission (NAHC) within 24 hours.
  - 2. The NAHC shall identify the person or persons it believes to be the most likely descendent (MLD) from the deceased Native American.
  - 3. The MLD shall have an opportunity to make a recommendation to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code Section 5097.98.
- B. Native American Heritage Commission was unable to identify a descendant or the descendant failed to make a recommendation within 24 hours after being notified by the commission.
- C. The County has notified the United Auburn Indian Community (UAIC) Tribal Council and solicited their input.

Policies OSC-6.1 through 6.7 require the City to adopt construction standards for the protection of cultural and historic resources in the City.

#### **PCCP**

The PCCP is intended to streamline the permit process for covered activities, of which cultural resources compliance is a part. A procedure is, therefore, needed by which impacts to cultural resources are assessed and managed in a manner that is compliant with all applicable laws, and that can be conducted in step with

the PCCP. The USACE is required to consider potential impacts on cultural resources under Section 106 on the NHPA (16 United States Code [U.S.C.] 470) before issuing a CWA Section 404 permit. The NHPA created the Advisory Council on Historic Preservation (ACHP) to review and comment upon activities sponsored or licensed (permitted) by the federal government (e.g., USACE) that may have an effect on resources listed or eligible for listing on the NRHP. Compliance through Section 106 involves a demarcation of the area to be affected and may include surveys to ascertain the presence of artifacts that are eligible for NRHP listing. The ACHP, State Historic Preservation Officer/Tribal Historic Preservation Officer (SHPO/THPO), and other consulting parties advise and assist the federal agency official in this effort. This consultation ordinarily occurs between federal agencies. This consultation can take a considerable amount of time, depending upon the circumstances. Figure 1-3 illustrates the process as it typically occurs.

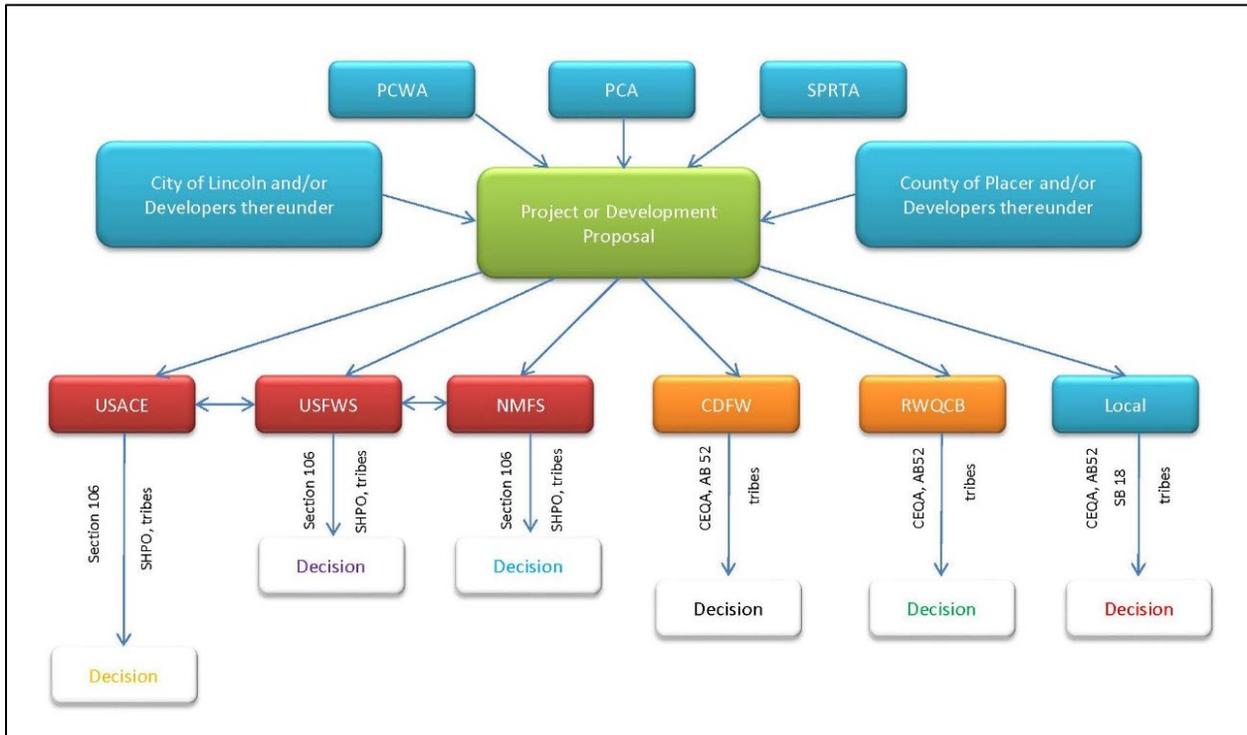


Figure 1-3. Cultural resources compliance process without the CRMP.

Figure 1-4 illustrates the procedure that the CRMP is intended to implement, once a PA is in place, which is intended to align with project review and permitting procedures under the HCP/NCCP and the CARP.

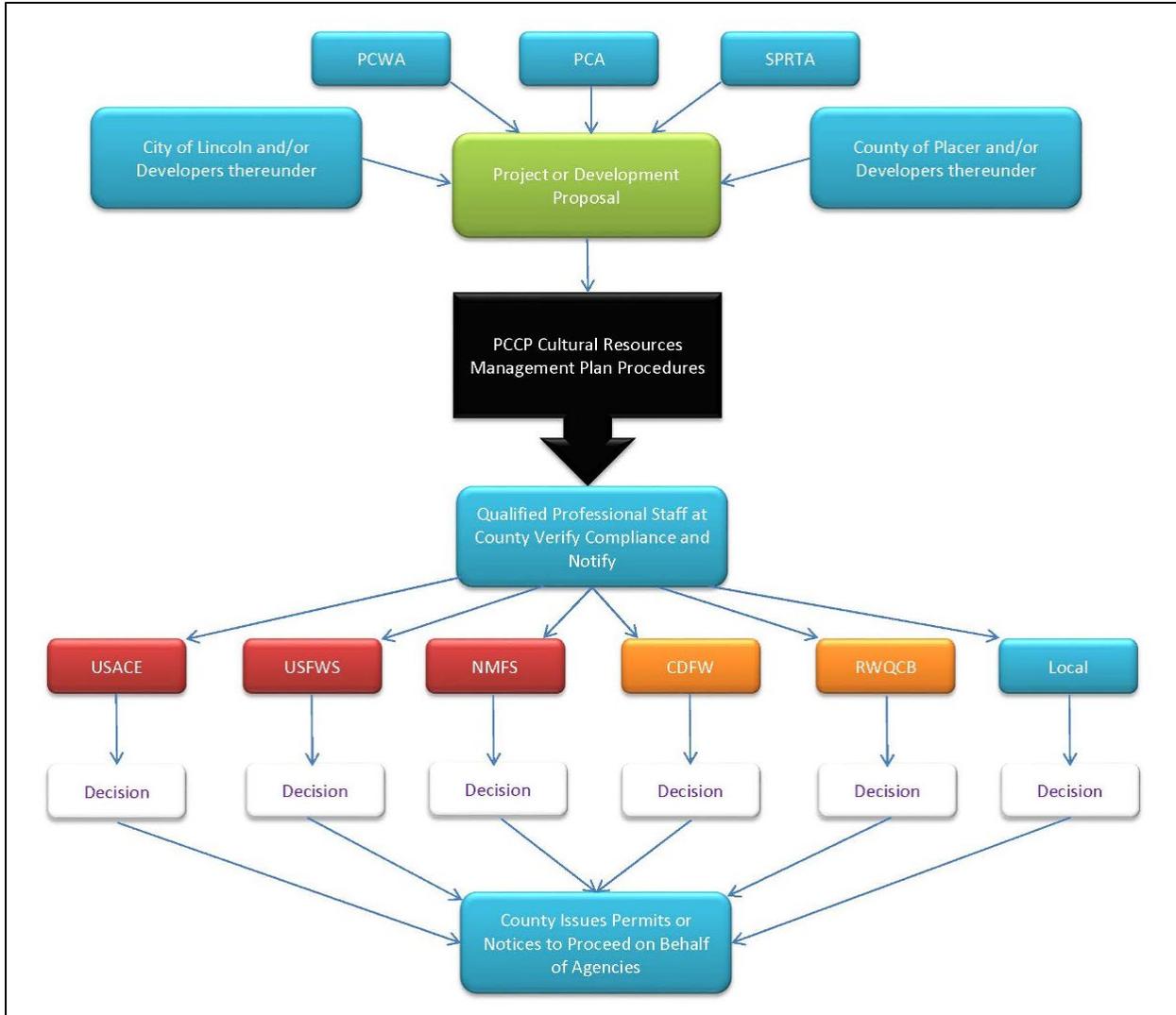


Figure 1-4. Cultural resources compliance process under the CRMP.

### 1.3 Roles and Responsibilities

As discussed in Section 1.0 and detailed in the CARP, the U.S. Army Corps of Engineers (USACE) regulates activities in Waters of the United States pursuant to Section 404 of the federal Clean Water Act (CWA). The California Regional Water Quality Control Board, Central Valley Region (CVRWQCB) provides Water Quality Certifications pursuant to Section 401 of the CWA and, pursuant to the Porter-Cologne Water Quality Act, also regulates activities that impact waters of the State, including certain wetlands and waters not otherwise regulated by the USACE. The California Department of Fish and Wildlife (CDFW) regulates activities that impact streams, rivers, lakes, and ponds under Section 1602 of the California Fish and Game Code. All proposed development projects are potentially subject to these regulations and are generally required to submit individual applications separately to each agency for permits to comply with these regulations.

There are several federal agencies that may be issuing federal approvals, permits, licenses, or funding for projects utilizing the PCCP, which will trigger compliance with Section 106 NHPA:

- USACE: issuance of a Clean Water Act Section 404 Programmatic General Permit (PGP) and possibly, for PCWA projects, under a Regional General Permit (RGP), and a Letter of Permission procedure, all intended to establish standard permitting processes and protocols for temporary and permanent discharge of fill into Waters of the United States, in accordance with Section 404 of the Clean Water Act
- U.S. Fish and Wildlife Service (USFWS): the USFWS will issue a biological opinion for the PCCP as a whole, but must comply with Section 106 NHPA on a project-by-project basis
- National Marine Fisheries Service (NMFS): the NMFS will issue a biological opinion for the PCCP as a whole, but must comply with Section 106 NHPA on a project-by-project basis
- Federal Highways Administration, and its designee, California Department of Transportation (Caltrans): any use of Federal pass-through funds will require separate compliance with the Caltrans Section 106 PA, or for encroachment permits, will require separate review by Caltrans, and as such, these agency approvals are not covered by the PCCP or this CRMP. Only in the event that Caltrans agrees in advance to utilize the procedures in this CRMP will this document take precedence over Caltrans' Section 106 PA.

Under state law, a number of agencies will be expected to comply with state laws and regulations as they consider approval of projects under CEQA:

- County of Placer: CEQA; Senate Bill 18; Assembly Bill 52
- City of Lincoln: CEQA; Senate Bill 18; Assembly Bill 52
- PCWA: CEQA; Senate Bill 18; Assembly Bill 52
- SPRTA: CEQA; Senate Bill 18; Assembly Bill 52

Agencies that would rely on compliance with these procedures but are not typically CEQA lead agencies include:

- PCA: responsible for implementing the PCCP and for the creation and long-term stewardship of the PCCP reserve system
- CVRWQCB: Water Quality Certification under Section 401 of the Clean Water Act
- CDFW: Section 1602 of the California Fish and Game Code, issuance of a Streambed Alteration Agreement

Consulting agencies that do not have direct approval of projects under the PCCP, but will be consulted at various points in the process may include:

- California Office of Historic Preservation (OHP)
- Advisory Council on Historic Preservation (ACHP)

Consulting parties under this CRMP are expected to include, but are not limited to:

- California Native American tribes, as defined in Section 21073 of the California Public Resources Code and Chapter 905 of the Statutes of 2004

- Federally recognized tribes, as defined in 25 CFR Part 83 and as identified by the Bureau of Indian Affairs
- Placer County Historical Advisory Board
- Historical societies and organizations
- Professional societies and academia
- Developers, landowners, and builders
- Applicants<sup>3</sup> for federal, state, or local permits, environmental approvals, or authorizations
- The general public through circulation of environmental documents

Consistent with the goal of the PCCP—to streamline and standardize environmental review and permitting for projects utilizing the program—the central regulatory authorities responsible for ensuring compliance with all applicable laws and regulations are the County and City; the Permittee is responsible for providing information to the County that is consistent with these requirements. This is achieved through a delegation of authority under state law by non-federal agencies and a system of compliance verification in which the County carries out and directs compliance with federal law, and requests compliance verification from the federal agency, which retains legal responsibility to comply with federal laws and regulations. This process must include a system of checks and balances and a clearly defined set of procedures by which each project utilizing the PCCP must follow. These procedures are specified in the current CRMP and pertain to the entire PCCP, as shown in Figure 1-2. Moreover, the clarity of the process allows for individual Applicants to proceed with pre-project planning cultural resources studies as a part of due diligence prior to engagement by agencies and consulting parties without jeopardizing the utility of the studies conducted prior to submission of an application.

This CRMP was developed in consultation between the County and various agency and resource stakeholders. The County solicited input from USACE, OHP, ACHP, USFWS, CDFW, NMFS, the City of Lincoln, PCWA, the United Auburn Indian Community (UAIC), and the Biological Stakeholder Working Group of the PCCP, which is composed local stakeholders including active real estate developers, land use attorneys, biological and permitting professionals, the Sierra Club, education and agricultural interests, local agency staff, and PCWA. The intent of soliciting early input on the scope of the CRMP, prior to its drafting, was to identify key elements of the process that would be important to integrate into the most comprehensive, yet largely singular, approach to cultural resources compliance. There was early agreement that such a process would be articulated in a CRMP, and that each agency would require implementation of that CRMP via its own legally-binding mechanism, such as a PA, mitigation measures in the EIR/EIS, or other compliance procedure. The result was that while each agency has its own instrument for adopting the compliance process, the steps for that process would be provided in a CRMP that all agencies agreed, in advance, would implement their own specific needs. This CRMP provides those steps.

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<sup>3</sup> Depending on the project, the applicant for any given project may be either a public agency or a private entity, such as a developer, but the process by which both must follow for cultural resources compliance is the same. For the purpose of this CRMP, the term “applicant” pertains to any entity – public or private – that is covered under the PCCP for a specified activity.

In the anticipation that the procedures in this CRMP will be reviewed and implemented by members of the public, this document was prepared to exclude confidential information about cultural resources that are protected by law. In particular, Sections 6253, 6254, and 6254.10 of the California Code authorize state agencies to exclude archaeological site information from public disclosure under the Public Records Act. In addition, the California Public Records Act (Government Code §6250 et seq.) and California's open meeting laws (The Brown Act, Government Code §54950 et seq.) protect the confidentiality of Native American cultural place information. Section 21082.3(c)(1) of the Public Resources Code prohibits the inclusion of information about tribal cultural resources in public environmental documents. Under Exemption 3 of the federal Freedom of Information Act (5 USC 5), because the disclosure of cultural resources location information on federal lands is prohibited by the Archaeological Resources Protection Act of 1979 (16 USC 470hh) and Section 307103 of the NHPA, it is also exempted from disclosure under the Freedom of Information Act. Likewise, the Information Centers of the CHRIS maintained by the OHP prohibit public dissemination of records search information. All technical documentation for surveys, evaluations, and analysis will be subject to these same provisions.

## **1.4 Definitions of Cultural Resources**

This CRMP pertains to "cultural resources" within the PCCP, which are broadly defined as anything made, modified, or moved by a human in the past, and as such, they take many forms. Cultural resources can be described in terms of time period (prehistoric, ethnographic, and historic), culture (for example, Native American, Euroamerican, or Chinese American), physical state (archaeological, built environment, landscape level, and sacred), and significance, which is defined as meeting certain criteria and age thresholds specified in the regulations. Below are general descriptions of each; additional examples of expected resources types are provided in greater detail in the following section.

### **1.4.1 Time Periods**

*Prehistoric* archaeological sites are places that contain the material remains of activities conducted by the native population of the area (Native Americans) prior to the arrival of Europeans in California. Artifacts found in prehistoric sites include flaked stone tools such as projectile points, knives, scrapers, drills, and the resulting waste flakes from tool production; ground stone tools such as manos, metates, mortars, pestles for grinding seeds and nuts; bone tools such as awls ceramic vessels or fragments; and shell or stone beads. Prehistoric features include hearths or rock rings bedrock mortars and milling slicks, rock shelters, rock art, and burials.

*Ethnographic* resources are typically considered to be associated with Native American culture, although can be associated with other groups, like Chinese, Japanese, or other populations that migrated to California in historic times. Ethnographic resources often reflect a blending or co-occurrence of European and non-European contact, such as the presence of glass beads, woven cloth, and trade goods.

*Historic* resources are places that contain the structures or material remains of activities conducted by people after the arrival of Europeans. Historic archaeological material usually consists of domestic refuse, for instance bottles, cans, ceramics, and food waste, disposed of either as roadside dumps or near structure foundations. Archaeological investigations of historic-period sites are usually supplemented by historical research using written records. Historic structures include houses, garages, barns, commercial structures, industrial facilities, community buildings, dams, levees, and other structures and facilities that are usually more than 50 years old. Historic structures may also have associated archaeological deposits,

such as abandoned wells, cellars, and privies, refuse deposits, and foundations of former outbuildings. Note that the use of “historic” instead of “historical” is deliberate in this context, as explained in Section 1.4.4, below.

### **1.4.2 Cultural Association**

*Native American* cultural resources are those that are reasonably considered or confirmed (with or without tribal consultation) to be associated with Native American cultures that predated the arrival of Europeans to California. As it pertains to the PCCP, this is generally composed of the Penutian-speaking Nisenan and their ancestors. This includes the range of cultural expressions summarized in the following section.

*Euroamerican* resources are those associated with people of European origin and descent, who first arrived in California in the mid-sixteenth century. These include, but are not limited to, Spanish missionaries, fur trappers, gold miners, ranchers, and farmers.

Other non-European cultural groups, such as the Chinese, Japanese, and indigenous groups from Mexico, may also have presence in the Placer County area.

### **1.4.3 Physical Characteristics**

In terms of physical composition, there are four general categories of resources recognized in this CRMP: archaeological, built environment, landscape, and sacred sites.

*Archaeological* resources are composed of the remnants of past human activity, and include, but are not limited to, surface or subsurface artifact scatters, midden deposits, subsurface features, and human remains associated with any culture. According to National Register Bulletin 15, a “site” is the “location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historic, cultural, or archeological value regardless of the value of any existing structure. They include village sites, cemeteries, rock art, habitation sites, camp sites, and other archaeological features.” *Archaeological districts* are further defined as “a significant concentration, linkage, or continuity of sites important in history or prehistory” (Keller and Keller, n.d.). Examples of historic archaeological districts may consist of ranches, farms, mining landscapes, and historic town sites that contain a subsurface element. The same criteria are applied to prehistoric districts, which may consist of interconnected village sites, temporary camping sites, and a combination of archaeological sites, ethnographic landscapes, and/or traditional cultural properties.

The *built environment* generally is considered to describe extant architecture and structures that are above-ground and can still be utilized for the purpose it was originally intended, even if not effectively due to a loss of integrity. Sections IV and VIII of National Register Bulletin 15 (How to Apply the National Register Criteria for Evaluation) further define a building as “a house, barn, church, hotel, or similar construction, is created principally to shelter any form of human activity. ‘Building’ may also be used to refer to a historically and functionally related unit, such as a courthouse and jail or a house and barn. If a building has lost any of its basic structural elements, it is usually considered a “ruin” and is categorized as a site.” Bulletin 15 also defines the term ‘structure’ “to distinguish from buildings those functional constructions made usually for purposes other than creating human shelter and include dams and earthworks.” The built environment may also include roads, agricultural irrigation systems, and similar features.

A *cultural landscape* is recognized for the relationship between cultural and natural features on a broad scale. These can be prehistoric or historic, and can be associated with specific cultures. Examples include large areas of historic mine tailings, prehistoric or ethnographic hunting and gathering locations, historic agricultural areas, and archaeological or historic districts. A rural historic landscape is defined as “a geographical area that historically has been used by people, or shaped or modified by human activity, occupancy, or intervention, and that possesses a significant concentration, linkage, or continuity of areas of land use, vegetation, buildings and structures, roads and waterways, and natural features” (McClelland *et al.* 1999). Cultural landscapes may include historic homesteads, ranching and grazing lands, or agricultural facilities and fields that have persisted for generations. An *ethnographic landscape* is defined as a cultural landscape, composed of natural and cultural features, which an associated population defines as a heritage resource. In either case, the individual elements that compose the cultural landscapes (or districts) are always recognized for being related in time and function.

The National Park Service (NPS) initially identified ethnographic landscapes within the grouping of four types of “historical landscapes” (historic site, historic vernacular, historic designed, and ethnographic). The NPS defined ethnographic landscapes as: “a landscape containing a variety of natural and cultural resources that associated people define as heritage resources. Examples are contemporary settlements, sacred religious sites, and massive geological structures. Small plant communities, animals, subsistence and ceremonial grounds are often components” (NPS 2000).

The NPS’s Applied Ethnography program believed the initial definition of ethnographic landscapes to be too broad, thus expanded the definition to include: “a relatively contiguous area of interrelated places that contemporary cultural groups define as meaningful because it is inextricably and traditionally linked to their own local or regional histories, cultural identities, beliefs and behaviors. Present-day social factors such as people’s class, ethnicity, and gender may result in the assignment of diverse meanings to a landscape and its component places” (Evans *et al.* 2001).

A *prehistoric landscape* falls under the NPS’s definition of a “cultural landscape” which includes several types of historic landscapes. The NPS defines a historic landscape as: “a geographic area, including both natural and cultural resources, including the wildlife or domestic animals therein, that has been influenced by or reflects human activity or was the background for an event or person significant in human history” (Melnick 1984). Prehistoric landscapes are similar to ethnographic and historic landscapes, in that they may include the natural and cultural resources within a designated area. But unlike ethnographic landscapes, they do not contain landscape features associated with cultural practices or beliefs of a living community which have been passed down from generation. Prehistoric landscapes may consist of prehistoric travel routes, quarry sites, or groups of sites associated by archaeological deposits and/or features within a geographic region.

A *rural historic landscape* is defined as “a geographical area that historically has been used by people, or shaped or modified by human activity, occupancy, or intervention, and that possesses a significant concentration, linkage, or continuity of areas of land use, vegetation, buildings and structures, roads and waterways, and natural features” (McClelland *et al.* 1999).

*Sacred sites* include Traditional Cultural Properties (TCPs) and Tribal Cultural Resources (TCRs) that are identified as such by Native American tribes or communities. A TCP, which is a term that applies to federal undertakings and Section 106, “is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community’s history, and (b) are important in maintaining the continuing cultural identity of the community” (Parker and King

1998). It is often referenced within the context of Native American culture, but is not exclusive to that culture. A TCR is a term that applies to CEQA and is defined in Section 21074(a) of the Public Resources Code as a site, feature, place, geographically defined cultural landscape, sacred place, or object with cultural value to a California Native American tribe, as defined further below. TCPs and TCRs may or may not exhibit noticeable signs of their presence unless called out by those who identify with them as being cultural resources and may include natural landforms, such as mountain peaks, rivers, or ridge tops.

#### **1.4.4 Significance**

Only those cultural resources that meet certain criteria or definitions are afforded consideration during project planning under environmental laws and regulations. However, Section 106 NHPA, CEQA, and NEPA each address and reference “important” or “significant” cultural resources differently.

First, under federal regulations implementing Section 106 of the NHPA (36 CFR 800), cultural resources identified in the APE must be evaluated using NRHP and eligibility criteria. The eligibility criteria for the NRHP are as follows (36 CFR 60.4): the quality of significance in American history, architecture, archaeology, and culture is present in districts, sites, buildings, structures, and objects of state and local importance that possess aspects of integrity of location, design, setting, materials, workmanship, feeling, association, and:

- a) is associated with events that have made a significant contribution to the broad patterns of our history;
- b) is associated with the lives of a person or persons significant in our past;
- c) embodies the distinctive characteristics of a type, period or method of construction, or represents the work of a master, or possesses high artistic value, or represents a significant and distinguishable entity whose components may lack individual distinction; or
- d) has yielded or may be likely to yield information important in prehistory or history.

In addition, the resource must be at least 50 years old, except in exceptional circumstances (36 CFR 60.4).

Under Section 106 NHPA, a resource that meets one or more of the eligibility criteria and retains sufficient integrity is one that is considered a Historic Property. Therefore, the term *Historic Property* is defined in the regulations implementing Section 106 as any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places (NRHP) maintained by the Secretary of the Interior (36 CFR 800.16(l)). Historic Properties, as defined therein, are not restricted to resources from the historic period.

Next, under state law (CEQA) cultural resources are evaluated using CRHR eligibility criteria in order to determine whether any of the sites are *Historical Resources*, as defined by CEQA. CEQA requires that impacts to Historical Resources be identified and, if the impacts would be significant, that mitigation measures to reduce the impacts be applied.

Under CEQA, a Historical Resource is a resource that 1) is listed in or has been determined eligible for listing in the CRHR by the State Historical Resources Commission; 2) is included in a local register of historical resources, as defined in Public Resources Code 5020.1(k); 3) has been identified as significant in an historical resources survey, as defined in Public Resources Code 5024.1(g); or 4) is determined to

be historically significant by the CEQA lead agency [CCR Title 14, Section 15064.5(a)]. In making this determination, the CEQA lead agency usually applies the CRHR eligibility criteria. The eligibility criteria for the CRHR are as follows [CCR Title 14, Section 4852(b)]:

1. It is associated with events that have made a significant contribution to the broad patterns of local or regional history, or the cultural heritage of California or the United States;
2. It is associated with the lives of persons important to local, California, or national history.
3. It embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of a master or possesses high artistic values; or
4. It has yielded, or has the potential to yield, information important to the prehistory or history of the local area, California, or the nation.

In addition, the resource must retain integrity. Integrity is evaluated with regard to the retention of location, design, setting, materials, workmanship, feeling, and association [CCR Title 14, Section 4852(c)]. Under CEQA, a resource that meets one or more of the eligibility criteria and retains sufficient integrity is one that is considered a Historical Resource. Historical Resources are not limited to those from the historic time period.

Lastly, NEPA requires that a federal lead agency address historic and cultural resources (40 CFR 1508.8). The term *Cultural Resources*—within the context of NEPA—covers a wider range of resources than “historic properties,” including sacred sites, archaeological sites not eligible for the NRHP, and archaeological collections. NEPA must analyze the effects of these resources as well, not just those that meet the eligibility criteria for inclusion in the NRHP.

## 2.0 CONTEXT

### 2.1 Environmental Context

Western Placer County, the area covered by the PCCP, measures nearly 210,000 acres and is roughly defined by Highway 49 and the American River on the east, the Sacramento County boundary to the south, the Sacramento and Sutter County boundaries to the west, and the Yuba and Nevada County boundaries (the Bear River) to the north (Figures 1-1 and 1-2). As such, the environmental and geological contexts of the PCCP area are very diverse along a northeast-to-southwest axis through the county. On its southwestern end, the PCCP is characterized by the grassy plains and farmlands of the eastern margins of the Sacramento Valley. From there, leading northeast, the PCCP rises in elevation towards the foothills of the Sierra Nevada.

Today, the plains are partially developed or are in active ranching or agriculture, and the foothills are dotted with clusters of residences. However, prior to European contact, this area was home to numerous Native American groups who embarked on seasonal migrations between the valley in the winter and the foothills and mountains to the east in the summer, taking advantage of the seasonal plants and movements of animals, not to mention the climate—the PCCP is situated within a Mediterranean climate, characterized by cool, wet winters and hot dry summers.

A number of rivers and drainages bisect the PCCP, which provided resources for prehistoric Native Americans, nineteenth century gold miners, and more recently, farmers and ranchers. Dry Creek and its major tributaries of Linda Creek, Strap Ravine, Miners Ravine, Secret Ravine, Antelope Creek, Clover Valley Creek, and Cirby Creek form the Lower American watershed. The Upper Bear watershed, also located within the PCCP, includes Racoon Creek, Yankee Slough, and the lower Bear River. Portions of the North Fork American River and its watershed, and the Upper Coon-Upper Auburn watershed—including portions of Racoon Creek, Markham Ravine, Auburn Ravine, Pleasant Grove, and Curry Creek—are also situated within the PCCP. Many of these contain heavy fraction gravel sources that were mined in historic times, but also accommodate fish passage that would have been sources of food for prehistoric and historic people. Permanent water sources were also locations along which humans have historically aggregated over thousands of years, even to present day.

Flora and fauna of the PCCP area have changed over time, largely due to long-term climate change and conversion of natural landscapes into agriculture, ranching, and development. Today, habitats within the PCCP vary widely and include valley oak woodlands, valley foothill riparian, and blue oak woodlands. According to Jones & Stokes (2004), mixed hardwood and ponderosa pine forest also occur. Annual grasslands, vernal pool complexes, foothill chaparral, seasonal wetland, and fresh emergent wetlands are some of the native landscapes present within the PCCP, which would have provided numerous food and material sources for humans prehistorically and historically. Species of fauna include various species and subspecies of salamander, rattlesnake, egrets, geese, ducks, hawks, eagles, falcons, owls, opossums, moles, and bats. Cottontail rabbits, jackrabbits, squirrel, foxes, black bears, badgers, wild pig, mule deer, salmon, and trout, were likely food sources that still remain in the PCCP area today. Placer County is currently home to over 1,500 plant taxa and 268 regularly occurring native vertebrates, 35 introduced faunal species, and 40 extremely rare species of fauna (Jones & Stokes 2004). More recent agricultural and urban habitats have replaced native flora and fauna, precipitating the need for the conservation elements of the PCCP.

Underlying this is the geology and soil composition of the PCCP, which is just as diverse as the flora and fauna. On its northeastern end, the PCCP is situated within the foothills of the Sierra Nevada, a large fault block composed of granitic and metamorphic rocks tilted from the summit near Donner Lake to the west and through the PCCP, where the block folds under the sedimentary and alluvial units of the Sacramento Valley. Broad classes of geologic units mapped in Placer County by the USGS (2016) include:

- Nonmarine rocks (sandstone, shale, conglomerate, and fanglomerate from the Eocene to Pleistocene)
- Gabbroic rocks (gabbro and dark dioritic rocs from the Triassic through Cretaceous)
- Granitic rocks (granite, quartz monzonite, granodiorite, and quartz diorite from the Permian to Cretaceous)
- Marine rocks (shale, sandstone, minor conglomerate, chert, slate, limestone, quartzite, schist, and minor pyroclastic rocks from the Ordovician to Devonian to Late Jurassic)
- Metasedimentary and metavolcanic rocks (slate, quartzite, hornfels, chert, phyllite, mylonite, schist, gneiss, and minor marble from the Early Proterozoic to Cretaceous)
- Volcanic rocks (andesite, rhyolite, greenstone, breccia, basalt from the Late Permian to Jurassic)
- Alluvium and marine deposits (alluvium, lake, playa, and terrace deposits from the Pliocene to Holocene)
- Glacial deposits (glacial till and moraines from the Pleistocene)

The geology and soils of Placer County have been influenced by mountain uplift and volcanic activity in the Sierra Nevada and subsequent erosion. For millions of years, the Sierra Nevada range has been subject to mountain uplift and periodic volcanic activity from vents near the crest or further east. During the periods of uplift, stream erosion resulted in the formation of a variety of sedimentary rock units, the erosion of which has resulted in alluvial deposits now present along former and existing stream channels. Alluvium from erosion or transported by flooding events has a potential to bury archaeological sites that were once present on ancient living surfaces.

In addition, much of Placer County and the PCCP are underlain by granitic rocks ranging from 299 to 65 million years old. Through a variety of geological processes, these were metamorphosed into amphibolite, greenstone, slates, and phyllites. This band of metamorphic rocks has been called the “Mother Lode” because of the gold-rich quartz veins that were intruded along steep faults in the metamorphic rocks. These quartz veins, and the erosion thereof into streams, was the target of mid-nineteenth century through early twentieth century gold miners.

Special geologic formations and soils present in the PCCP include late Pleistocene sediments like Riverbank Formation deposits, deposited 300,000 to 100,000 years before present (BP), Turlock Lake Formation deposits, dating to 700,000 to 500,000 years before present, as well as Mehrten Formation, Gabbrodiorite, and Serpentine.

## 2.2 Cultural Context

### 2.2.1 Prehistoric Archaeology

A commonly held belief is that human occupation of California began at least 10,000 years BP. The archaeological record indicates that between approximately 10,000 and 8,000 years BP, a predominantly hunting economy existed, characterized by archaeological sites containing numerous projectile points and butchered large animal bones. Animals that were hunted probably consisted mostly of large species still alive today. Bones of extinct species have been found, but cannot definitely be associated with human artifacts. Although small animal bones and plant grinding tools are rarely found within archaeological sites of this period, small game and floral foods were probably exploited on a limited basis. A lack of deep cultural deposits from this period suggests that groups included only small numbers of individuals who did not often stay in one place for extended periods (Wallace 1978).

Around 8,000 years BP, there was a shift in focus from hunting towards a greater reliance on plant resources. Archaeological evidence of this trend consists of a much greater number of milling tools (e.g., metates and manos) for processing seeds and other vegetable matter. This period, which extended until around 5,000 years BP, is sometimes referred to as the “Millingstone Horizon” (Wallace 1978). Projectile points are found in archaeological sites from this period, but they are far fewer in number than from sites dating to before 8,000 years BP. An increase in the size of groups and the stability of settlements is indicated by deep, extensive middens at some sites from this period (Wallace 1978).

Evidence from archaeological sites dating from approximately 5,000 years BP indicates a continuation from the previous period of reliance on both plant gathering and hunting, with more specialized adaptation to particular environments. Mortars and pestles were added to metates and manos for grinding seeds and other vegetable material. Flaked-stone tools became more refined and specialized, and bone tools were more common. The introduction of the bow and arrow into the region sometime around 1,000 years BP is indicated by the presence of small projectile points (Wallace 1978; Elsasser 1978; Moratto 1984).

The earliest evidence of the prehistoric inhabitants of the region including the PCCP comes from a single, deeply buried site in the bank of Arcade Creek, north of Sacramento, containing grinding tools and large, stemmed projectile points. The points and grinding implements suggest an occupation date of sometime between 8,000 and 5,000 BP (Wallace 1978). However, it was not until after about 5,500 BP, in the Late Archaic Period, when people began to move into the San Joaquin and Sacramento Valleys in any significant numbers. This earliest permanent settlement of the Delta region of the Sacramento River is called the Windmill Tradition and is known primarily from burial sites containing relatively elaborate grave goods (Ragir 1972; Wallace 1978). The Windmill Tradition reflects the amplification of cultural trends begun in the Middle Archaic, as seen in the proliferation of finished artifacts such as projectile points, shell beads and pendants, and highly polished charmstones. Stone mortars and pestles, milling stones, bone tools such as fishhooks, awls, and pins, are also present. It is probable that people during this time subsisted on deer and other game, salmon, and hard seeds. They also were apparently the first Californians to discover the process for leaching the tannins out of acorns, thus making them edible by humans. Based on linguistic evidence, it has been suggested that the Windmill culture was ancestral to several historic tribes in the Central Valley, including the Penutian-speaking Nisenan (Elsasser 1978). The Windmill Tradition lasted until about 3,000 BP.

Around 3,000 BP, subsistence strategies in the Delta region became noticeably more “focal,” with a clear increase in the reliance on acorns and salmon (Elsasser 1978). Culturally, this has been dubbed the Cosumnes Tradition (3,700 to 1,000 BP), and appears to be an outgrowth of the Windmill Tradition (Ragir 1972). People in this time continued to occupy knolls or similar high spots above the floodplain of the Sacramento River and the terraces of tributaries such as the Cosumnes and American Rivers, flowing out of the foothills of the Sierra Nevada Mountains located to the east. Populations increased and villages became more numerous than before, with more milling tools and specialized equipment for hunting and fishing. Trade appears to have increased, with burials containing larger amounts of seashell and obsidian. Burial styles, too, became more varied, with the addition of flexed interments along with the extended ones of the Windmill period. Projectile points found embedded in the bones of excavated skeletons suggest that warfare was on the rise, possibly as a result of increased competition over available resources and trade (Beardsley 1954; Lillard et al. 1939; Ragir 1972).

The next, and final, discrete prehistoric culture is the Hotchkiss Tradition (1,000 to 181 BP [AD 1769]) that persisted until the arrival of European settlers in central California (Beardsley 1954; Ragir 1972). During this period, use of acorns and salmon reached its peak, along with hunting of deer. Diet was supplemented with the addition of waterfowl, hard seeds, and other resources. Large sedentary villages along the lower Sacramento and San Joaquin Rivers, and their tributaries and delta were common. The size and density of these settlements suggest a further increase in population from Cosumnes times. Trade goods were plentiful, and burials exhibit a marked stratification of society with wide differences in the amount and variety of funerary objects. Cremation of the dead appears, along with the flexed inhumations of the previous period (Ragir 1972). While ornamental or ritual artifacts, such as large, fragile projectile points and trimmed bird bone increase during this period, milling tools are rare or absent. Shell beads are found in large numbers, and there are numerous utilitarian artifacts of bones such as awls, needles, and barbed harpoon points. Polished charmstones are rare during this time, but ground stone pipes become more abundant. In addition, fired and unfired clay objects begin to appear.

Palumbo (1966) studied 32 prehistoric archaeological sites along Dry Creek between Roseville on the east and the American Basin on the west. She concluded that most of these sites represented temporary/seasonal camps, while four of the sites appear to represent permanent villages. Palumbo noted that site density apparently was greater in the upper (eastern) part of the Dry Creek drainage than in its lower reaches.

Archaeological evidence suggests that sedentary villages were established in the western Sierra by around 1 A.D. Utian populations appear to have occupied the Sacramento Delta and the hills on the eastern and western sides of the Sacramento Valley as much as 2,000 years prior to this time. The Berkeley Pattern, a cultural florescence sometimes referred to as the Middle Horizon, apparently grew out of cultural interchange or fusion between Utian speakers and the Hokan and Yukian speakers resident around San Francisco Bay. Palumbo suggested that large stemmed projectile points found at Dry Creek sites may represent a Late Period cultural trait that persisted from Middle Horizon times. These dating inferences are somewhat speculative, however, as there has been little substantive archaeological investigation in the project vicinity during the past several decades, and no absolute dating of any of the Dry Creek sites.

### **2.2.2 Ethnographic Context**

Ethnographically, the Plan Area is in the southwestern portion of the territory occupied by the Penutian-speaking Nisenan. The territory extended from the area surrounding the current City of Oroville on the north to a few miles south of the American River in the south. The Sacramento River bounded the territory on the west, and in the east, it extended to a general area located within a few miles of Lake Tahoe. As a language, Nisenan (meaning “from among us” or “of our side”) has three main dialects— Northern Hill, Southern Hill, and Valley Nisenan, with three or four subdialects (Kroeber 1976; Placer County 1992; Shipley 1978; Wilson and Towne 1978). The Valley Nisenan lived along the Sacramento River, primarily in large villages with populations of several hundred each. Between there and the foothills, the grassy plains were largely unsettled, used mainly as a foraging ground by both valley and hill groups (Placer County 1992). Individual and extended families “owned” hunting and gathering grounds, and trespassing was discouraged (Kroeber 1976; Wilson and Towne 1978). Residence was generally patrilocal, but couples actually had a choice in the matter (Wilson and Towne 1978).

Politically, the Nisenan were divided into “tribelets,” made up of a primary village and a series of outlying hamlets, presided over by a more-or-less hereditary chief (Kroeber 1976; Wilson and Towne 1978). Villages typically included family dwellings, acorn granaries, a sweathouse, and a dance house, owned by the chief. The chief had little authority to act on his or her own, but with the support of the shaman and the elders, the word of the chief became virtually the law (Wilson and Towne 1978).

Subsistence activities centered on the gathering of acorns (tan bark oak and black oak were preferred), seeds, and other plant resources. The hunting of animals such as deer and rabbits, and fishing were also an important part of normal subsistence activities. Large predators, such as mountain lions were hunted for their meat and skins, and bears were hunted ceremonially. Although acorns were the staple of the Nisenan diet, they also harvested roots like wild onion and “Indian potato,” which were eaten raw, steamed, baked, or dried and processed into flour cakes to be stored for winter use (Wilson and Towne 1978). Wild garlic was used as soap/shampoo, and wild carrots were used medicinally (Littlejohn 1928). Seeds from grasses were parched, steam dried, or ground and made into a mush. Berries were collected, as were other native fruits and nuts. Game was prepared by roasting, baking, or drying. In addition, salt was obtained from a spring near modern-day Rocklin (Wilson and Towne 1978).

Hunting of deer often took the form of communal drives, involving several villages, with killing done by the best marksmen from each village. Snares, deadfalls, and decoys were used as well. Fish were caught by a variety of methods including use of hooks, harpoons, nets, weirs, traps, poisoning, and by hand (Wilson and Towne 1978).

Trade was important, with goods traveling from the coast and valleys up into the Sierra Nevada Mountains and beyond to the east, and vice versa. Coastal items like shell beads, salmon, salt, and Foothill pine nuts were traded for resources from the mountains and farther inland, such as bows and arrows, deer skins, and sugar pine nuts. In addition, obsidian was imported from a variety of sources to the north (Wilson and Towne 1978).

The Spanish arrived on the central California coast in 1769 and by 1776 the Miwok territory bordering the Nisenan on the south had been explored by José Canizares. In 1808, Gabriel Moraga crossed Nisenan territory, and in 1813, a major battle was fought between the Miwok and the Spaniards near the mouth of the Cosumnes River. Though the Nisenan appear to have escaped being removed to missions by the Spanish, they were not spared the ravages of European diseases. In 1833, an epidemic—probably

malaria—raged through the Sacramento Valley, killing an estimated 75 percent of the native population. When John Sutter erected his fort at the future site of Sacramento in 1839, he had no problem getting the few Nisenan survivors to settle nearby. The discovery of gold in 1848 at Sutter's Mill, near the Nisenan village of Colluma (now Coloma) on the South Fork of the American River, drew thousands of miners into the area, and led to widespread killing and the virtual destruction of traditional Nisenan culture. By the Great Depression, no Nisenan remained who could remember the days before the arrival of the Euro-Americans (Wilson and Towne 1978).

### **2.2.3 Historic Context**

The first significant European settlement of California began during the Spanish Period (1769 to 1821) when 21 missions and four presidios were established between San Diego and Sonoma. Although located primarily along the coast, the missions dominated the majority of the California region during this period. The purpose of the missions and presidios was to establish Spanish economic, military, political, and religious control over the Alta California territory. This included the forced movement of much of the native population to the missions where they were converted to Catholicism (Castillo 1978; Cleland 1941). The nearest missions to the Delta region were Mission San Rafael established near San Rafael in 1817 and Mission San Francisco Solano, established in Sonoma in 1823 (Castillo 1978).

Although the Spanish had made forays into the Central Valley since about 1769, it was not until 1808 that Captain Gabriel Moraga explored and named the Sacramento area. The Spanish took little interest in the area and did not establish any missions or settlements in the Central Valley. California became part of Mexico in 1822 when Mexico achieved its independence from Spain. In 1827, American trapper Jedediah Smith traveled along the Sacramento River and into the San Joaquin Valley to meet other trappers of his company who were camped there, but no permanent settlements were established by the fur trappers (Thompson and West 1880).

After Mexico became independent from Spain in 1822, the Mexican government closed the missions in the 1830s. Former mission lands were granted to soldiers and other Mexican citizens for use as cattle ranches. Much of the land along the coast and in the interior valleys became part of Mexican land grants or "ranchos" (Robinson 1948). The rancho owners lived in towns, such as San Francisco or Monterey, or in an adobe house on the rancho. The Mexican Period includes the years 1822 to 1848.

John Sutter, a European immigrant, built a fort at the confluence of the Sacramento and American Rivers in 1839 and petitioned the Mexican governor of Alta (Upper) California for a land grant which he received in 1841. Sutter built a flour mill and grew wheat near the fort (Bidwell 1971). Gold was discovered in the flume of Sutter's lumber mill at Coloma on the South Fork of the American River in January 1848 (Marshall 1971). That same year, the Treaty of Guadalupe Hidalgo ended the Mexican-American War and marked the beginning of the American Period (1848 to present). California became a U. S. territory in 1848 and a state in 1850. The discovery of gold initiated the 1849 California Gold Rush, bringing thousands of miners and settlers to California.

The first substantial nonnative population incursions into the region were triggered by the discovery of gold in the Sierra foothills in 1848, at which time the City of Sacramento was laid out and a major population influx into the region began. During the Gold Rush, numerous claims were worked along the American River. However, the streams running through western Placer County were not as heavily exploited because they did not cross gold-bearing deposits; for this reason, the Roseville area did not experience the population boom that occurred in Sacramento and extended into the Sierra foothills. The

Roseville area provided some agricultural support of the burgeoning Gold Rush population, but thin soils and a paucity of water supported only marginal farming and ranching in the vicinity of the PCCP. Other portions of western Placer County supported stronger agricultural pursuits. During this period, much of the land that makes up the PCCP area was given by the United States government to the (new) State of California, or to the railroads. There was some private settlement of these areas by the 1860s, however. The project vicinity was used primarily for grazing and dry farming of crops such as wheat and hay. The historic archaeological record for this area would be expected to include a relatively sparse scattering of late nineteenth and twentieth century residences, farm and ranch support buildings, and ancillary features such as privy pits, wells, windmills, cisterns, fence lines and corrals.

Following the Gold Rush, the dominant economic force in the County has historically been agricultural production. The historic context of agricultural production, described below, is directly associated with the ranching and farming activities that have been historically conducted in the County.

According to historical county maps and assessor maps, the agricultural land was divided into large tracts with many acres for farming or for grazing livestock. Expansive grasslands, annual winter rains, and unending miles of land throughout California made cattle ranching a profitable business. Cattle had historically been raised for hides and tallow prior to the Gold Rush. During the Gold Rush, however, they were primarily used to supply miners with fresh meat, which was in high demand. Cattle became a significant commodity in California as prices jumped from \$4.00 per head prior to the Gold Rush to several hundred per head for the highest quality steer by 1849 (Jelinek 1982). This new booming industry required significant tracts of land to raise crops and livestock.

During the 1850s, cattle were primarily raised using free-range methods on large open ranches, for raising cattle or sheep. In the 1860s cattle ranching moved from the free-range style of the early ranches to the European style of feedlots and fenced areas. A “no-fence” law was passed in 1872, which made ranchers responsible for the damages caused by their livestock if they were unfenced (Jelinek 1982).

The earliest agriculture in Placer County began nearly a decade before the Gold Rush with the development of wheat farms. Agricultural growth during the early years was slow until technological advances and the high demand of breadstuffs during the Gold Rush changed the shape of California’s agricultural future. Placer County’s farmers utilized new technologies such as the American plow (1846), the fanning-mill (1846), and the threshing machine (1852) to grow the farming industry in the area. In addition, after the initial rush to the gold fields was over, many miners were left with nothing. These miners purchased or homesteaded public land and gradually started building their own wheat farms. Eventually, the production of wheat grown in California reduced the need for imported grain (Thompson and West 1882).

Though the earliest years of Placer County’s agriculture consisted primarily of wheat production, it was the transition into planting nuts and fruits, rather than wheat and other grains, that was the County’s most profitable agricultural endeavor. Placer County is adjacent to the Sierra Nevada foothills and has an abundance of fertile soil drained by rivers and streams. Orchard crops, particularly plums, peaches, and pears, became more economical because of the terrain and soil that were more suited for this purpose (Jelinek 1982).

Fruit had been grown in Placer County, particularly the foothill regions, for decades. Early success of the county’s fruit growers is primarily due to a favorable micro-climate known as the thermal belt. The thermal belt in Placer County results in a yearly low mean temperature that is above freezing and which

promotes successful citrus and other fruit cultivation. Though freezing temperatures occasionally occur, frosts have historically not been substantial enough to significantly harm fruit trees in the area. According to an 1888 publication from Resources of California, as the sun sets and the air grows cold, the heavier cooler air sinks to the valleys while the warmer air rises to the hillsides. Early fruit growers utilized the warmer air from the thermal belt for the successful cultivation of their fruit and citrus crops along the hillsides of Placer County (Gittings 2014).

The introduction of the transcontinental Central Pacific Railroad into the county allowed ranchers an easily available means of selling and marketing their fruit produce. The Central Pacific Railroad from Sacramento was built to Roseville in southern Placer County in 1864 and reached Promontory Point, Utah in 1869 where it connected with the Union Pacific Railroad to become the first transcontinental railroad (Robertson 1998). By 1886 greater competition among the railroads resulted in lower transportation fees. When the railroad lowered its costs, the fruit industry in Placer County greatly expanded as they were able to ship fruit to more markets at lower costs. Several other advancements in the 1880s helped increase the fruit industry during that decade. New forms of irrigation encouraged growth of orchards as water was transported efficiently long distances. Refrigerated fruit railroad cars were also introduced, which enabled growers to ship their products when ripe and full-flavored, thus increasing demand. In addition, fruit dryers introduced in the 1870s were able to salvage excess fruit, allowing for increased profit margins for growers (Gittings 2014).

In 1886, a Citrus Fair was held in Sacramento and the Placer County citrus growers who entered oranges in the competition won the five highest awards. By 1886, Placer County ranked among the top counties in California for quantity of producing citrus trees. In 1887, Placer County organized a Board of Trade to capitalize on the vast expansion of agricultural land holdings in the county and promote the agricultural industry. One of the primary goals of the Board was to promote Placer County in becoming a leader in citrus fruit growing in California (Brock and Lardner 1924).

As orchard crops from Placer County were being sold throughout the United States and world markets, fruit quickly became the most valuable cash crop in the county. Wheat prices slowly declined and the vast acreages of wheat fields were subdivided for use for orchard crops. Although wheat was declining, rice production in the lowlands along rivers in adjacent Sacramento County, was highly profitable during this period, as shipment of the rice was quick and easy utilizing shipping freighters and ports along the Sacramento River. Access to these ports allowed shipment of Sacramento County grain across vast distances and highly efficient costs and speed. The increase in grain crop sales and production in Sacramento County meant a lower demand for grain crops from Placer County, which also contributed to increased fruit and nut orchard crop production and sales (Gittings 2014).

Agriculture and farming continued to develop in Placer County into the early and mid-1900s, particularly with the expansion of vegetable crops. In the early 1900s, new canning techniques increased the efficiency of preserving foods, particularly fruits and vegetables, from Placer County. Other new techniques in farming, including the use of gasoline engine-powered tractors, reduced the need for horses on ranch and farm properties. These new technologies and the overall success of farmers and ranchers in the early 1900s led to an increase in farming families and properties. Many of the large thousand-acre or multi-hundred-acre farming and ranching properties began to be divided and subdivided into smaller tracts of 160 acres or less. Previously, farming and ranching was often restricted to those who could afford to buy large tracts of land, but technological advances made farming smaller properties more efficient, resulting in more farmers on smaller more numerous tracts of land. The first several decades of the twentieth

century were represented by moderate agricultural growth in Placer County. The foothill regions of the County became prominent agricultural centers and agricultural production remained the economic backbone of the area (Gittings 2014).

The agricultural industry continued to thrive in Placer County throughout the twentieth century and into the twenty-first century. According to Placer County Agricultural Crop Reports, prepared by the county's Agricultural Commissioner, the largest cash crops produced and sold in the county between 1940 and 1960 remained primarily plums, pears, peaches, rice, and wheat.

The town of Lincoln was surveyed and platted in 1864 on the Central California Railroad (CCRR) line from Folsom to Marysville. The town was named after Charles Lincoln Wilson who had built the CCRR, which reached the town of Lincoln on October 31, 1861. During the next few years, the town prospered, climbing to approximately 500 residents, with several trains passing through daily. However, in 1866 the rail stop was moved to Wheatland, cutting off most of the shipping that Lincoln had relied on (Thompson and West 1882; Lardner and Brock 1924).

Although the railroad and freight economy declined, fruit crops, dry land agriculture, and cattle ranching continued to comprise a large part of the early economy in Lincoln. In 1873, several coal beds were discovered, leading to such mines as the Lincoln Coal Mine and the Clipper Coal Mine. Large amounts of clay were found within the Lincoln Coal Mine, and when word spread, Charles Gladding, who was visiting from Chicago, took the clay back home to have it tested by ceramics experts. The quality of the clay was so great that Gladding came back to Lincoln and started Gladding, McBean and Company, which eventually made and shipped sewer pipe throughout California. By the 1890s, the company was also making fire brick, ornamental pottery, chimney pipes, and world-renowned terra cotta facades (Gladding McBean 2014). In recent times, Gladding, McBean has been a major contributor to the economy of Lincoln, along with Sierra Pacific Industries' sawmill, located just north of Lincoln.

#### **2.2.4 Sensitivity Model and Predicted Property Types**

Cultural resources come in a variety of forms, and range from historic, extant architecture to deeply buried archaeological resources. The very nature of the latter makes identification and avoidance difficult, as some archaeological sites do not manifest on the surface, such that they would be detectable by typical surface or near-surface methods alone. The ability to predict the presence of cultural resources is not always possible; however, the use of predictive modeling to produce sensitivity and compliance status maps can be very helpful in long range planning efforts like the PCCP. There are a number of benefits and uses for a sensitivity model for the PCCP including:

- serving as a screening tool for planners and developers to determine if cultural resources surveys and evaluations have already been completed for a project area, thereby reducing the effort necessary to inventory for cultural resources;
- serving as a planning tool to identify to developers particularly sensitive areas that have a high potential for cultural resources, which may result in greater avoidance and preservation;
- identifying areas that may require additional or more specialized studies, such as geoarchaeological investigations;
- identifying areas that may require consultation with specific special interest groups, like Native American tribes, historical societies, or ethnic groups;

- serving as a model for predicting the types of cultural resources that may be expected in a project area;
- allowing for the development of research themes and questions, guidelines for treatment, and an overall compliance framework that can be applied in a consistent manner over time; and
- being housed in a Geographic Information System (GIS) database and continually updated and refined, as information generated through implementation of the PCCP is fed back into the model.

The initial sensitivity model for the PCCP was developed through a broad and high-level records search and literature review at the NCIC of the CHRIS, a review of geological maps and soils data, aerial photograph review, and from professional expertise in cultural resources management efforts throughout the PCCP. Figure 2-1 presents the initial sensitivity model, which illustrates four categories, as described below.

The four types of areas depicted on Figure 2-1 are High Sensitivity, Moderate Sensitivity, Low Sensitivity, and Non-Participating Properties.

High Sensitivity: areas shown in red in Figure 2-1 represent those areas that are situated along major water courses and drainages, or for which signatures of cultural resources (such as mine tailings and historic towns still occupied) are visible from aerial photography, or for which there is a higher concentration of previously recorded cultural resources on file with the CHRIS.

Low Sensitivity: areas shown in yellow in Figure 2-1 represent areas that are reflected in the files at CHRIS for having been previously surveyed, and/or have lower frequencies of previously recorded sites, or have recently been fully developed (as determined from historic through modern aerials), or have no visible indication of cultural resources on aerial photographs, or are set back from major water courses, such that the potential for cultural resources is relatively low.

Moderate Sensitivity: areas shown in blue in Figure 2-1 represent those areas that can be classified neither as high nor low, because they have not been surveyed for cultural resources or do not otherwise fall into either the high or low categories.

Non-participating Areas: these areas within the overall PCCP boundary include the cities of Rocklin, Roseville, and Auburn, and the Town of Loomis, and remain in gray. No cultural resources sensitivity was generated for these areas, as they are not part of the PCCP and will not be tracked in the model.

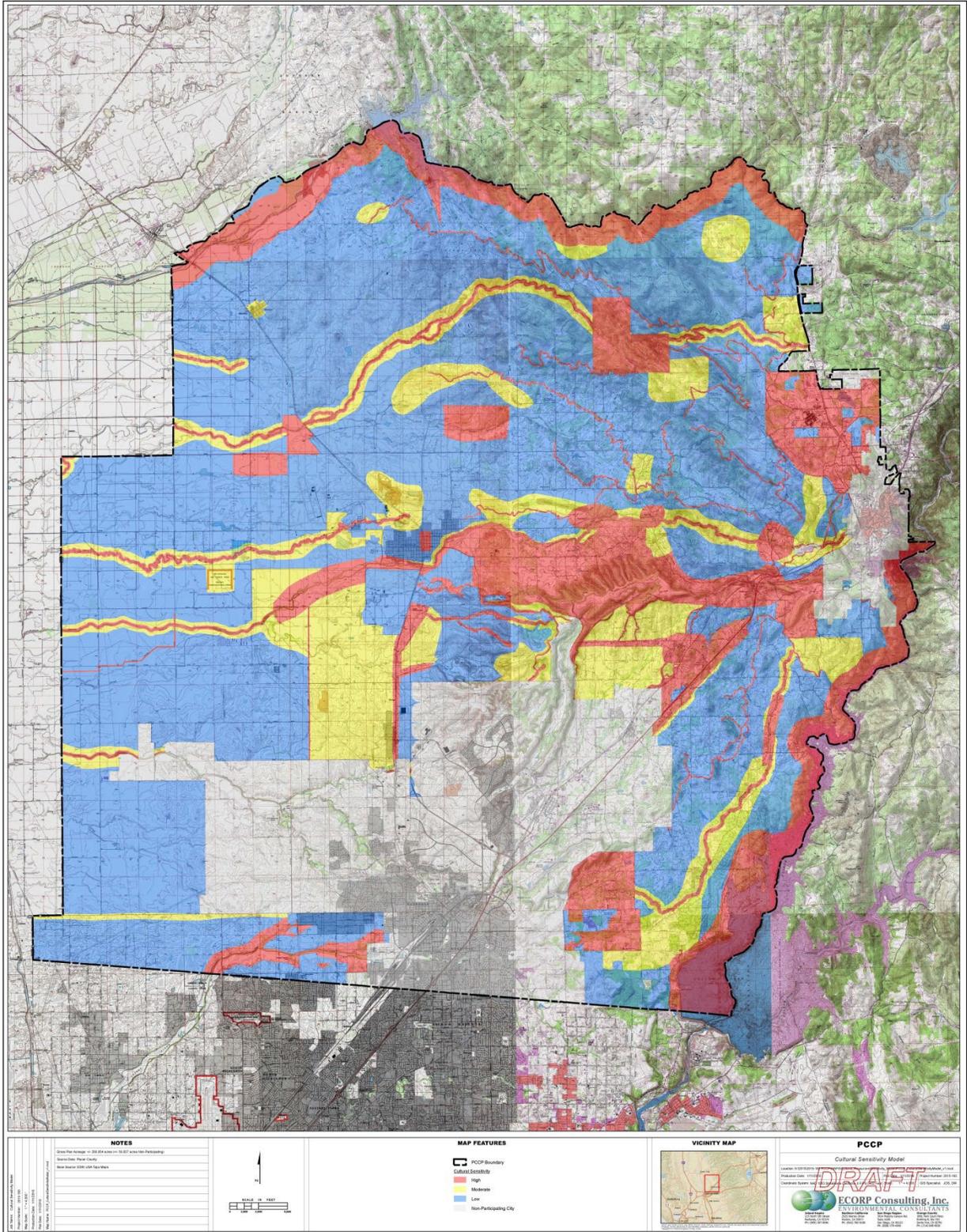


Figure 2-1. Sensitivity Model for the PCCP.

The categories presented above and in Figure 2-1 are considered preliminary only, and are expected to shift over time. For example, where a property is currently situated in an area of high sensitivity, and such property utilizes the PCCP and this CRMP for identification, evaluation, and treatment of cultural resources, it will eventually be surveyed. If the survey concludes, with agency concurrence, that there are no cultural resources located within its boundaries, then the model would be updated by the County to reflect a low sensitivity, regardless if the development were to proceed; the color would change from red to yellow. If development of that property is delayed, the classification of low sensitivity would alert the County to require, perhaps, a field visit to confirm ground conditions, but not necessarily a full re-survey. Over time, over the course of the implementation of the PCCP, the sensitivity model would more accurately reflect the actual inventory of cultural resources. As such, this model will not be available in its entirety to the public, but will be utilized and maintained by qualified County staff. However, at any time, a potential applicant for a project within the PCCP can submit a shapefile of a project boundary to the County and request information about whether the project is located in a high, moderate, or low sensitivity area. While the County cannot release confidential information to the requesting party, knowledge of the relative sensitivity of the project location may help make a determination about whether development or conservation is the appropriate land use.

As noted above, the draft sensitivity model, in combination with the preliminary records search conducted for the PCCP, is also useful in predicting the types of cultural resources that may be encountered, which, in turn, can be used to pre-define research themes and topics. It can also be used to develop standard treatment methods when avoidance or mitigation of significant cultural resources is necessary.

Based on the information gathered to date, the following property types are expected to occur within the PCCP. Research questions and standard treatments are presented later in this document.

Prehistoric Archaeological Sites. Prehistoric archaeological sites have prehistoric artifacts and features. They may be divided into residential and non-residential sites.

*Residential sites* (camps, residential bases, villages) have fire-affected rock (indicating overnight stays) and have a variety of types of flaked stone and ground stone tools, as well as debitage. Subsistence waste (burned animal bone, charred seeds, nuts, or organic residue on ground stone tools) is usually present.

*Non-residential sites* lack fire-affected rock and have a limited number and variety of tools. Debitage may be present. Non-residential sites are called locations by Binford (1980) and are places where a limited number of activities occurred, such as processing acorns or seeds (bedrock milling sites or sites with mostly ground stone tools) or maintaining or manufacturing flaked stone tools during hunting trips (sites consisting mostly of debitage).

Prehistoric Isolates. Prehistoric isolates consist of one or two prehistoric artifacts, which may or may not be *in situ* (in primary context). In some cases, isolates indicate the presence of more extensive subsurface archaeological deposits. In other cases, particularly where the isolate is not in primary context, the presence of an isolate may indicate a more extensive prehistoric site in the vicinity, or simply reflects the general sensitivity of the area.

Historic Archaeological Sites. Historic archaeological sites consist of artifacts and features from the historic period (at least 50 years old) which may be on the surface or subsurface. Historic artifacts can include domestic refuse (food containers such as cans and bottles, ceramic and glass vessels for preparing and serving food and beverages, utensils, food waste, cosmetic and grooming items [perfume and

cosmetics jars, combs brushes, mirrors], and clothing fasteners), building material (brick, concrete, concrete blocks, lumber, window glass, water and sewer pipe, nails, screws, bolts, and other metal fasteners), auto parts and oil cans, tools, and other miscellaneous items. Historic features include privies, pits, wells, and structure foundations. Features can contain historic artifacts as well.

Historic archaeological sites can be classified as:

- refuse dumps along roads or drainages with domestic refuse and/or building material;
- refuse dumps and deposits of domestic refuse and/or building material associated with a farmstead, ranch, residence, or commercial establishment;
- features and dumps/deposits associated with a historic-period farmstead, ranch, residence, or commercial establishment; or
- one or more features only, such as foundations or privies.

Dumps along roads or drainages are a separate property type because they usually lack historical context. They usually cannot be associated with any persons or families for which there is historical information. Such sites are usually not eligible for the NRHP or CRHR.

Historic Buildings and Structures. This property type includes buildings and structures that are at least 50 years old, including houses, garages, barns, outbuildings, corrals, fences, watering troughs for animals, irrigation features (standpipes, canals, ditches, drains), dams, reservoirs, levees, utility poles and towers, buildings and structures associated with airports, commercial buildings, industrial buildings, religious buildings, government buildings, and military buildings. These are resources of the built environment, which have extant structure.

Historic buildings and structures may also have historic archaeological material associated with them (refuse dumps/deposits and features). Such properties should be recorded as one resource with multiple property types. Properties originally recorded as only consisting of historic buildings and structures should be investigated to determine if they also contain historic archaeological sites.

Transportation Structures and Facilities. Structures and facilities associated with transportation include roads, highways, bridges, railroad grades and tracks, airfields and runways that are at least 50 years old. Linear features may have since been paved over or graded, but may retain their original alignments, thereby possessing some aspects of integrity.

Historic Isolates. Historic isolates consist of one or two historic artifacts, as well as abandoned vehicles, trailers, tractors, and other farm implements that are at least 50 years old. Like prehistoric isolates, discussed above, historic-era isolates may or may not be in primary context. In some cases, historic isolates indicate the presence of more extensive subsurface archaeological deposits, or represent the location of a former historic structure or activity. In other cases, particularly where the isolate is not in primary context, the presence of an isolate may indicate a more extensive historic archaeological site in the vicinity, or simply reflects the general sensitivity of the area.

In addition, it is possible that traditional cultural properties (TCPs), tribal cultural resources (TCRs), ethnographic landscapes, and rural cultural landscapes could occur in the PCCP area. A traditional cultural property “is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community’s history, and (b) are important in

maintaining the continuing cultural identity of the community” (Parker and King 1998). An ethnographic landscape is defined as a cultural landscape, composed of natural and cultural features, which an associated population defines as a heritage resource. A rural historic landscape is defined as “a geographical area that historically has been used by people, or shaped or modified by human activity, occupancy, or intervention, and that possesses a significant concentration, linkage, or continuity of areas of land use, vegetation, buildings and structures, roads and waterways, and natural features” (McClelland *et al.* 1999). TCPs and cultural landscapes are generally identified in consultation with members of the community, including, but not limited to, Native American tribes and individuals, historical societies, and local residents. TCPs and cultural landscapes may or may not exhibit noticeable signs of their presence unless called out by those who identify with them as being cultural resources. TCPs may include natural landforms, such as mountain peaks, rivers, or ridge tops. Cultural landscapes may include historic homesteads, ranching and grazing lands, or agricultural facilities and fields that have persisted for generations.

## 3.0 GENERAL STANDARDS OF PERFORMANCE

There are numerous standards and guidelines that currently apply to cultural resources management. While modifications to these standards are expected to occur over the lifetime of the PCCP and its individual projects, the fundamental standards for professional cultural resources management will always apply.

These fundamental standards and guidelines include:

- Section 106 of the NHPA and its implementing regulations at 36 CFR Part 800;
- CEQA and applicable sections of the Guidelines and Public Resources Code;
- The USACE Sacramento District, Regulatory Division Guidelines for Compliance with Section 106 of the NHPA (Appendix A);
- Archaeological Resource Management Reports: Recommended Contents and Format (February 1990), published by the California OHP;
- Instructions for Recording Historical Resources (March 1995), published by the OHP;
- Standards for curation of archaeological collections in 36 CFR Part 79;
- Ethical and professional standards of the Society for California Archaeology and the Society of American Archaeology; and
- Secretary of Interior's Standards and Guidelines for the identification, evaluation, and treatment of archaeological and historical resources as appropriate.

The following sections present the specifications for project work that meet the standards and guidelines above. These specifications are also based on standard practice by the NPS for similar projects. Deviation from any standards, guidelines, or work plan specifications must be approved by the County, in consultation with applicable federal agencies, in advance of implementation.

### 3.1 Professional Qualifications

#### 3.1.1 *Education and Experience*

Principal Investigators. The Principal Investigator (PI) is the professional that is primarily responsible for the design, preparation, execution, and results of the study, and is the individual responsible for ensuring that the study is conducted in accordance with the terms of this CRMP and all applicable laws and regulations. PIs implementing this CRMP shall meet the Secretary of the Interior's Professional Qualification Standards (PQS) that pertain to the particular area of study. The PQS standards are published in 36 CFR Part 61 and Volume 62, No 119 of the Federal Register (June 20, 1997) and state:

The qualifications define minimum education and experience required to perform identification, evaluation, registration, and treatment activities. In some cases, additional areas or levels of expertise may be needed, depending on the complexity of the task and the nature of the historic properties involved. In the following definitions, a year of full-time professional experience need not consist of a continuous year of full-time work but

may be made up of discontinuous periods of full-time or part-time work adding up to the equivalent of a year of full-time experience.

The NPS (NPS n.d.) published more detailed and comprehensive professional qualifications standards that apply to this CRMP. Standards are provided for the following disciplines and can be found in their entirety at <https://www.nps.gov/history/local-law/gis/html/quals.html>. All of the following standards also require a demonstrated ability to carry out applicable research or work, and education and experience must be in the relevant field:

- Prehistoric Archaeologist: graduate degree plus 2.5 years' experience
- Historical Archaeologist: graduate degree plus 2.5 years' experience
- Architectural Historian: graduate degree plus 2 years' experience or an undergraduate degree plus 4 years' experience
- Conservator: graduate degree plus 3 years' experience or an undergraduate degree plus 3 years' experience and another 3 years of full-time apprenticeship
- Cultural Anthropologist: graduate degree plus 2 years' experience or an undergraduate degree plus 4 years' experience
- Curator: graduate degree plus 2 years' experience or an undergraduate degree plus 4 years' experience
- Historic Engineer: licensed civil engineer plus 2 years' experience or a Masters of Civil Engineering plus 2 years' experience or a Bachelors of Civil Engineering plus 2 years' experience
- Folklorist: graduate degree plus 2 years' experience or an undergraduate degree plus 4 years' experience
- Historical Architect: licensed architect plus 2 years' experience, or a Masters of Architecture degree plus 2 years' experience or a Bachelors of Architecture with 2 years' experience
- Historical Landscape Architect: licensed landscape architect plus 2 years' experience, or a Masters of Architecture degree plus 2 years' experience or a Bachelors of Architecture with 3 years' experience
- Historic Preservation Planner: licensed land use planner plus 2 years' experience or a graduate degree in planning plus 2 years' experience, or an undergraduate degree plus 4 years' experience
- Historic Preservationist: graduate degree plus 2 years' experience or an undergraduate degree plus 4 years' experience
- Historian: graduate degree plus 2 years' experience or an undergraduate degree plus 4 years' experience

The Secretary of the Interior's Professional Qualification Standards allow for lead agencies to use some discretion in the combination of education and experience required for each specialty. Consultants who may not definitively meet the standards presented above must obtain approval from the County, in consultation with applicable agencies, prior to acceptance of work products intended to be utilized under

this CRMP. Technical staff working under the direct supervision of the PI need not meet the above standards.

**Cultural Resources Compliance Manager.** Instrumental to this CRMP is a centralized, qualified professional who will: review applications and technical submittals and environmental documents after deemed complete by County planning staff; serve as a liaison with and between federal, state, and local agencies; and verify compliance with the terms of this CRMP. To meet these requirements, the PCCP's cost model includes a minimum 0.5 Full Time Equivalent (FTE) in-house Cultural Resources Compliance Manager (CRCM) for the duration of the permit term. The CRCM will be an employee of the Placer County Museums and shall meet at least one of the SOI PQS standards plus applicable NPS standards cited above. In the event that the CRCM deems it necessary to seek specialized expertise in order to review or consult on the technical adequacy of submitted documentation, he or she may utilize pre-selected consultations from the County's PCCP consultant's list (see Section 3.1.2, below).

### **3.1.2 Certification**

All PIs who wish to prepare technical studies and analyses under this CRMP and PCCP are required to participate in an orientation program at the County. The purpose of the orientation is to ensure that PIs are aware of the requirements, standards, and processing of technical documentation prepared for the PCCP. Successful completion of the orientation will result in the PI being certified under this CRMP and certification is valid until this CRMP is materially changed or amended. Future modifications that do not affect actions by the PI shall not require re-certification.

Technical reports prepared *prior to the approval of the PCCP and CARP* by uncertified PIs may be accepted for use as long as the PI meets the professional qualifications standards in Section 3.1.1 and the reports meet the requirements of this CRMP, including but not limited to the timeliness and methods of surveys and technical analyses.

Technical staff working under the direction of the PI need not be certified.

### **3.1.3 Peer Reviewer Consultants List**

The professional focus of the CRCM may not always be aligned with specific needs for any given project. In cases where the CRCM determines that his or her qualifications cannot accommodate a need to review or assess the adequacy of a technical report or document, or in other cases where external expertise is warranted, the County shall maintain a list of qualified consultants that can be contracted on an as-needed basis by the County or the applicant. Consultants meeting the PQS and NPS standards cited in Section 3.1.1 can petition the County to be added to the list of qualified consultants by: submitting a Statement of Qualifications (SOQ) that addresses the applicable standards; demonstrating compliance with the certification process specified in Section 3.1.2; and willingness to accept the terms of the County's standard consulting contract, with or without modification by mutual agreement. Consultants on the list shall be required to renew their listing every five years.

## **3.2 Mapping and Spatial Data**

The County will maintain a GIS database to track, in parallel fashion with the CHRIS, the status of cultural resources studies and recorded resources within the PCCP. Consultants carrying out cultural resources studies under this CRMP will be required to submit GIS shapefiles to the County upon submission of the

reports. In order to ensure that all data are provided in the correct format and are mapped at a level of precision and accuracy that will contribute to the goals and objectives of the GIS database and CRMP, the following standards shall apply.

- Site and resource boundary mapping will use a GPS receiver with five-meter or better accuracy and locations will be shown on 1:24,000 topographic maps for survey.
- As GPS systems utilize ITRF00 and commonly display coordinates in WGS84, the project will utilize a standard coordinate system for all project-wide data storage and analysis. All digital geospatial data should be in Universal Transverse Mercator Zone 10 North Projection (UTM10 North) *on the datum described on the applicable USGS 7.5' Quad*. Care must be taken when importing GIS data collected in WGS84 onto topographic location maps that were created under a different datum, such as NAD27, to ensure that site polygons are correctly plotted on site records and location maps.
- Each consultant is expected to record the external boundary of each site, and clearly label the feature by temporary site number, P#, and/or trinomial using attribute data.
- Once field-collected data have been differentially corrected and post-processed, it must be exported to a modern standard GIS file type (i.e. shapefile or geodatabase).

### 3.3 Curation

Should permanent curation be necessary, archaeological specimens, including their associated documentation (i.e., field notes, photographs, maps, and all environmental materials such as pollen, soils, sediments, bone, and shell) shall be curated using the standards set out in 36 CFR Part 79 to the greatest extent that facilities in northern California meet such standards. The Placer County Museum is the preferred location for curated collections of historic (non-Native American) artifacts; however, should space or other limitations prevent the County from accepting the collections, the nearest approved facility is the Anthropological Studies Center at Sonoma State University. Other curation facilities may become available in the future, during the lifetime of the PCCP and this CRMP. Approval for the use of alternate facilities is at the discretion of the County, in consultation with the applicable federal agencies and SHPO.

Native American human remains, grave goods, items of cultural patrimony, and sacred objects encountered during the undertaking that are located on state or private land shall be treated in accordance with the requirements of Section 7050.5 of the California State Health and Safety Code and Section 5097.98 of the California Public Resources Code, which collectively penalize the intentional disturbance or removal of human remains and require that activity stop in the event of a discovery of human remains so that the Coroner and, if applicable, NAHC, can determine the identity and/or historical significance of the find.

If such material is located on federal land, it will be treated in accordance with the requirements of the Native American Graves Protection and Repatriation Act (NAGPRA) and the Archaeological Resources Protection Act (ARPA). Repatriation and reburial are the preferred treatment methods for Native American artifacts and should be explored as a viable option prior to permanent curation.

## 4.0 IDENTIFICATION AND EVALUATION STANDARDS AND PROCEDURES

### 4.1 Archival Research

All archival research conducted as part of identification efforts for a particular project area within the boundaries of the PCCP shall begin with a record search and literature review at the NCIC located at the California State University, Sacramento. The NCIC is a clearinghouse that contains previous cultural resource reports, site records, historic maps, text, and lists of historically important sites, buildings, districts, and other locations. All records searches must be no more than one year old at the time of submission to the County.

The records search must include the project area or APE under consideration. The Principal Investigator, meeting the applicable Professional Qualifications Standards published by the Secretary of the Interior, shall utilize best judgment for the review of a radius around the project area.

In addition to the site records and reports on file at the NCIC, the *Office of Historic Preservation's Historic Property Data File for Placer County* (HPDF), on file at the NCIC, should be consulted to obtain an inventory of evaluated resources from the historic period. The California Historical Resource Status Codes (OHP 2004, plus updates) for each inventoried resource in the records search radius should be consulted to determine if the resource has been determined eligible for, or listed on, the NRHP or the CRHR.

In addition to information from the records search at the NCIC, the following sources should be consulted, if available:

- *California Inventory of Historic Resources*
- The National Register Information System
- *California Historical Landmarks*
- *Historic Spots in California* (Kyle 2002)
- Historic GLO land patent records available on the BLM's General Land Office Records
- BLM plat maps that show the land as originally surveyed into sections in the nineteenth century, as well as land grant boundaries. Houses and other buildings are sometimes shown (<http://www.blm.gov/ca/forms/mtp/index.html>)
- Placer County Assessor's Office records to obtain year-built information for buildings and structures
- The Placer County Cultural Resource Inventory
- Caltrans Bridge Local and State Inventories
- *Handbook of North American Indians* (Wilson and Towne 1978) for lists and maps of nearby Native American villages

- Local historical societies
- Historical aerial photographs and historical maps to provide information on the past land uses of the property and locations of historical buildings.

In addition to research using the records listed above, historical texts, maps, and photographs may be found at the following repositories:

- Placer County Museum
- Center for Sacramento History (CSH): Clearinghouse of historic information with a large archival collection of texts, maps, county, and city records for the Sacramento area.
- Sacramento County Historical Society: Works directly with the CSH to provide historic information for the Sacramento area.
- Sacramento Room at the Sacramento Central Library: Contains historic texts, maps, and records of the Sacramento area.
- California State Library: Contains historic texts and records for all regions within California.

All archival research efforts, regardless of outcome and particularly if such research failed to yield information on cultural resources, should be documented in the technical report, including the name of repository and any personnel assisting in the research, the date that the research was conducted, the individual conducting the research, and what sources were consulted or reviewed.

The reporting of records search results within technical reports must include the title and author of each report, its NCIC report number, author, and date. In addition, technical reports must include an accounting of all previously-recorded resources within the records search radius, and whether or not each is located within the Permit APE. Given privacy concerns surrounding the distribution of records search information for property that is not included in the APE or project, the results of the records search for the radius around the project area shall not be transmitted to the County or any third party.

As part of the identification efforts, the NAHC should be requested to carry out a Sacred Lands File search. The NAHC holds files containing information about sacred lands and other cultural resources of importance to Native Americans. The NAHC will also provide lists of Native American contacts that may be able to provide information about Native American cultural resources in and near the APE. Specific procedures specific to tribal consultation and involvement in records searches are provided in Section 5.0 of this CRMP.

## **4.2 Survey and Site Recording**

All surveys must be conducted using the Secretary of the Interior's standards for the identification of Historic Properties, including any future updates, and in accordance with this CRMP. Surveys must be systematic and pedestrian, using parallel transects no more than 15 meters apart, unless wider transect widths are approved in advance with concurrence from SHPO. Vehicular, All Terrain Vehicle, or horseback surveys are not acceptable for survey or identification; however, consultants who are only using such means to transport themselves to a site location for a site-specific investigation may utilize any method of transportation that is acceptable to the private landowner, if applicable.

Site recording shall include any physical evidence of human activities over 45 years old. Any cultural resource that contains at least three artifacts in a 10-square-meter area or consists of one or more features should be considered a site. Any indications of cultural presence in the APE that fail to meet the definition of a site should be recorded as isolates or noted on a location map. The PI shall exercise professional judgment when drawing site boundaries and in recording resources, which must be justified in the technical report.

Site recording shall be conducted using the most current revision of the California OHP's DPR 523 series Historical Resources Inventory forms following the *Instructions for Recording Historical Resources* (OHP 1995). A site datum (permanent, unmovable object) should be established and mapped in relation to each site. UTM coordinates should be taken at the datum location using a Global Positioning System (GPS) unit with at least 5-meter accuracy and using the mapping datum that corresponds to the USGS topographic quad (specify either NAD 83 or NAD 27 CONUS). The site boundaries, and any other features, concentrations, or artifacts shown on the sketch map should be mapped using a handheld survey grade GPS receiver, and sketched as necessary to document their presence.

Digital images will be taken of all aspects of the field investigation. Photographs will be cataloged and labeled and accompanied by a photographic log. Each resource, including sites, buildings, structures, linear features, and isolates, should be photographed from several angles in order to identify their location in relation to the surrounding environment, including all features and any diagnostic artifacts mentioned in the site record.

For previously recorded resources, the PI shall update site records to reflect any changes since the previous recording. If the previous survey of the property is more than two years old, all sites in the survey area will be revisited and updates will be made on OHP's DPR 523 forms, if necessary. Site sketch and location maps shall accurately delineate site boundaries.

Survey or inventory reports for all required surveys of a Permit APE shall be prepared in a manner consistent with the California OHP's Archaeological Resource Management Reports: Recommended Contents and Format, the "Secretary of the Interior's Standards and Guidelines for Identification" (48 FR 44720-23; NPS 1998), and the NPS's publication, "The Archeological Survey: Methods and Uses" (1978: GPO stock #024-016-00091). Survey reports shall include background cultural information about the survey area, the results of the records search, the Sacred Lands File search, and other research, the field survey methods and results, a description of all cultural resources identified in the survey area, and recommendations for sites that will need to be evaluated. DPR 523 site records for all cultural resources in the survey area will be attached as an appendix to the survey report.

If a PI for a particular Permit APE wishes to rely on a previous survey where methods were used that do not conform to the methods required in this CRMP, or if the PI wishes to use field methods other than those prescribed above for a field survey, the PI must prepare a research design that provides justification for use of the alternate methods. The County shall consult with applicable federal agencies and the SHPO. If the alternate methods in the research design are not approved, the area will be surveyed or re-surveyed using the methods prescribed above.

## 4.3 Evaluation

### 4.3.1 *Properties Exempt from Evaluation of Eligibility*

Buildings, structures, and facilities less than 45 years old at the time of study are exempt from evaluation as modern resources, unless determined to be of exceptional significance and meet Criterion Consideration (g) of the NRHP (“A property achieving significance within the past 50 years” and is thereby subject to the guidance in *National Register Bulletin 22* (Sherfy and Luce 1979, rev. 1998). Historic archaeological sites that consist of refuse dumps containing only surface items that are less than 45 years old are also exempt from evaluation.

### 4.3.2 *Evaluation Criteria and Plans*

All evaluations of eligibility shall be conducted relative to all four of the NRHP eligibility criteria set forth in 36 CFR Part 60.4, regardless of the type of resource. In all cases where evaluation of eligibility of cultural resources cannot be ascertained from survey-level data alone, the PI shall prepare an Evaluation Plan (EP) to guide evaluation of cultural resources within the Permit APE. EPs will be consistent with the “Secretary of the Interior’s Standards and Guidelines for Evaluation” (48 FR 44723-26; NPS 1998). Separate EPs will be developed to address different categories of potentially eligible resources (prehistoric archaeological sites; historic archaeological sites; buildings, structures, and facilities; and districts) within a Permit APE but may be reported in a single document.

An EP should be prepared according to the type of site or resource that is being evaluated and take into account accessibility, function, and type of site. The EP should provide the prehistoric context or historic context, as appropriate for the resources being evaluated. For archaeological sites, research topics or questions from this CRMP that could be addressed using data from the sites must be used. Additional research topics or questions may be appropriate, as information and data from the site is gathered. The EP will also provide the field methods to be used to determine the boundaries and data potential of the resource. Excavation for evaluation, if necessary, cannot begin until the EP has been approved with SHPO concurrence, unless the responsible lead federal agency has verified that the SHPO was afforded at least 30 days to comment on the EP and failed to respond.

### 4.3.3 *Subsurface Testing of Prehistoric and Historic Archaeological Sites*

Prior to the initiation of subsurface excavation, the PI shall review utility maps, when appropriate, to determine what areas lack subsurface integrity due to utility trenches or past earth-moving activities. The PI shall utilize Underground Service Alert (USA) North services (<http://www.usanorth.org/>; 1-800-227-2600) to assist in the identification of subsurface utility lines, in accordance with State law.

Any archaeological testing shall be limited to disturbing no more than 5 percent of the surface area of the resource or four cubic meters, whichever is less without additional SHPO consultation and shall be just sufficient to determine a site’s eligibility for inclusion in the NRHP. If the evaluation of significance through archaeological testing cannot be ascertained from less than 5 percent impact, then the variance must be approved in advance by the County and applicable federal agency, in consultation with the SHPO. No complete (100 percent) surface collections are allowed under this CRMP without concurrence from SHPO.

The methods for subsurface excavation shall be at the discretion of the PI; however, it is recommended that shovel test pits (STPs) be first used to ascertain the presence and distribution of subsurface cultural

material and to define subsurface boundaries. STPs should be placed systematically at regular intervals across the site. The interval will be defined and justified in the EP. The boundary of subsurface material will have been defined when there is at least one negative STP beyond each positive STP in the direction away from the site center. STPs should be excavated in 20-cm arbitrary levels, unless cultural stratigraphy is observed. STPs should be excavated until there is at least one sterile level, although it may not be practical to excavate an STP more than 80 cm deep because the narrow width of deeper STPs restricts the angle through which the shovel handle can move. To determine whether cultural deposits extend beyond 80 cm, hand-auguring is recommended.

If STPs indicate there is subsurface cultural material, one or more hand-excavated units should be placed. The number and size of units will be based on parameters specified in the EP. Units for subsurface testing should be excavated in arbitrary 10-cm levels unless cultural stratigraphy is evident. Unique stratigraphy must be profiled to scale. Stratigraphic levels will be described in terms of their soil color (use a Munsell soil color chart) and sediment grain size (classified as clay, silt, sand, or gravel). Once stratigraphic levels have been defined during testing, they can be used during excavation of units during data recovery, if applicable. All units must be excavated into culturally sterile sediments. Alternate definitions of sterile may be proposed and justified in the EP, especially in consideration of the potential for deeply buried deposits. Units that extend below 153 cm (five feet) shall be stabilized with appropriate shoring equipment per OSHA trench safety standards. All excavated material should be screened using mesh no larger than ¼ inch. Prehistoric sites will require, at minimum, a sample screened using 1/8-inch mesh. All cultural material, if collected, should be placed in bags labeled with the proper provenience. The PI may elect to carry out in-field analysis during testing and rebury the materials on site.

Exploratory backhoe trenching may be appropriate to locate historic-period features or to remove deep layers of overburden or imported fill. However, once a feature is encountered, use of the backhoe will stop and the feature will be further investigated using hand excavation.

All materials recovered during the archeological excavations shall have some form of horizontal and vertical provenience control that will be attached to the material through all phases of recovery and analysis. Horizontal control shall be referenced from a primary datum point permanently affixed on, or set into, the ground so that it will not be altered or destroyed. Secondary provenience data, such as unit datum corners, may be used as long as their location is referenced to the primary site datum. The locations of features, burials, or artifacts discovered in situ, shall be recorded in three dimensions from the excavation unit datum. All distances, depth, and height information shall be recorded in metric units. The provenience of both cultural and non-cultural material shall be documented in the form of notes and other recording methods as deemed necessary and appropriate, such as charts, graphs, maps, profiles, and photo-documentation (unless specifically objected to by any consulting party). Recording of datum proveniences using GPS units with at least five-meter accuracy is required and sub-meter accuracy is recommended.

Topographic maps of the site will be prepared using at least a one-meter contour interval. Maps or map overlays shall depict all archeological features, excavation units, STPs, relevant environmental features, and infrastructure.

The following documentation should be prepared during all excavation work: (1) general site photographs taken before, during, and at the completion of excavation work; (2) photographs of at least one wall of every excavation unit and all features; (3) excavation records and field notes for each unit, level, and feature; (4) individual feature records; (5) scale profile drawings of unit walls with associated

Munsell soil color readings; and (6) photograph record forms, field catalog forms, and sample artifact catalog forms (may be combined with field catalog forms).

At the end of each day of excavation, each open unit should be covered to prevent wildlife, humans, or livestock from falling in or entering the open unit. The following measures should be used depending on the situation:

- Cover units with ½-inch or thicker plywood at the end of the workday. If this is not possible and/or there are no large animals on the property (e.g., cows, horses), leave unit open and place a 2-by-4 or 2-by-6 board in the unit leaning against one side wall to allow exit by any small animals that may fall into unit.
- Fences can be used to prevent animal access to an area with several open units. Steel posts with strands of barbed wire will keep large animals out.
- In trenches, a shallow ramp should be left at one end to allow animals to exit.
- Upon completion of fieldwork, the work areas, back-dirt piles, and physical settings of the sites must be returned to a state similar to that which existed at the onset of the fieldwork. All flagging shall be removed at end of project.

## 4.4 Research Topics and Questions

The California OHP requires the use of a research design that “should present important research questions recognized for the region and relevant to the study, based on previous research” (OHP 1989:9). Research questions serve to guide research methods and to assess the potential for the recovery of scientifically valid data, ethnographic background, or oral history that are likely to satisfy any of the four NRHP criteria, provided below. Sources of data sought in the evaluations of eligibility shall be selected by the PI, using professional judgment, as appropriate for the nature and type of the resource being evaluated and may vary according to NRHP criterion and resource. Sources may include, but are not limited to: archaeological data; architectural style; records, maps, and historical accounts in the archival record; oral history information; and ethnographic and prehistoric contexts.

Under federal regulations implementing Section 106 of the NHPA (36 CFR 800), cultural resources identified in the Project APE must be evaluated using NRHP and eligibility criteria. The eligibility criteria for the NRHP are as follows (36 CFR 60.4):

“The quality of significance in American history, architecture, archaeology, and culture is present in districts, sites, buildings, structures, and objects of state and local importance that possess aspects of integrity of location, design, setting, materials, workmanship, feeling, association, and

- a) is associated with events that have made a significant contribution to the broad patterns of our history;
- b) is associated with the lives of a person or persons significance in our past;
- c) embodies the distinctive characteristics of a type, period or method of construction, or represents the work of a master, or possesses high artistic value, or represents a significant and distinguishable entity whose components may lack individual distinction; or

d) has yielded or may be likely to yield information important in prehistory or history.

In addition, the resource must be at least 50 years old, except in exceptional circumstances (36 CFR 60.4).

Effects to NRHP-eligible resources (historic properties) are adverse if the project may alter, directly or indirectly, any of the characteristics of an historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.

Similarly, under state law (CEQA) cultural resources are evaluated using CRHR eligibility criteria in order to determine whether any of the sites are Historical Resources, as defined by CEQA. CEQA requires that impacts to Historical Resources be identified and, if the impacts would be significant, that mitigation measures to reduce the impacts be applied.

An Historical Resource is a resource that 1) is listed in or has been determined eligible for listing in the CRHR by the State Historical Resources Commission; 2) is included in a local register of historical resources, as defined in Public Resources Code 5020.1(k); 3) has been identified as significant in an historical resources survey, as defined in Public Resources Code 5024.1(g); or 4) is determined to be historically significant by the CEQA lead agency [CCR Title 14, Section 15064.5(a)]. In making this determination, the CEQA lead agency usually applies the CRHR eligibility criteria.

The eligibility criteria for the CRHR are as follows [CCR Title 14, Section 4852(b)]:

1. It is associated with events that have made a significant contribution to the broad patterns of local or regional history, or the cultural heritage of California or the United States;
2. It is associated with the lives of persons important to local, California, or national history.
3. It embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of a master or possesses high artistic values; or
4. It has yielded, or has the potential to yield, information important to the prehistory or history of the local area, California, or the nation.

In addition, the resource must retain integrity. Integrity is evaluated with regard to the retention of location, design, setting, materials, workmanship, feeling, and association [CCR Title 14, Section 4852(c)].

Impacts to a Historical Resource (as defined by CEQA) are significant if the resource is demolished or destroyed or if the characteristics that made the resource eligible are materially impaired [CCR Title 14, Section 15064.5(a)].

#### **4.4.1 Prehistoric Sites**

Research topics for the prehistoric sites in the Project APE include activities and site function, internal site organization, subsistence patterns, and chronology and temporal patterning. The following research themes and questions exemplify those that may be appropriate for prehistoric sites under multiple criteria. The PI shall apply any of these—or develop new questions—as deemed appropriate for the resource on an individual basis.

Activities and Site Function. Collecting site function and activities data is an important research theme in regard to explaining the past. Cultural material and feature data could explain the relationship between humans and their environment. Research questions include:

- Is there a full range of activities represented, such as would be characteristic of a habitation site, or is there only a limited set of activities characteristic of a location? For example, are activities limited to resource procurement, or do they represent more permanent occupation?
- Is there evidence of flaked stone tool use?
- Is there evidence of flaked stone tool manufacturing?
- Is there evidence of food processing?
- Is there evidence of food preparation and cooking?
- Is there evidence of overnight stays?
- Is there evidence for flaked stone tool production and what techniques were used?
- Is there evidence for ceremonial activity?
- Do the site activities suggest a contribution to broad settlement patterns or mobility patterns?

Data requirements to address these questions include tools classified functionally and debitage classified technologically. If subsurface features (hearths, ovens) are present, the type and number of features will also help address these questions.

Internal Site Organization. Habitation sites are often composed of features that can be ascribed to living, food processing, refuse, religion or ceremonial functions, and many other aspects of prehistoric society. Identification of such features, and analysis of the internal site organization, can give insight into the social organization. Pertinent research questions can include:

- Are there distinct manufacturing, processing, food preparation, or ceremonial areas within the site?
- Were male and female activities conducted in different areas of a site?
- If bedrock milling features are present, are distinct activity areas associated with each outcrop containing bedrock milling features, or was a single activity area used by everyone using any of the bedrock milling features at the site?
- Does the arrangement of the features within the site suggest a broader prehistoric community design or sense of planning?

Data requirements include maps of the spatial distribution of tools, debitage, subsistence remains, and features. If the site is small and there are few categories that do not vary spatially, this domain cannot be addressed.

Subsistence Patterns. How prehistoric populations acquired food and water is a fundamental question studied by archaeology. While reflections of subsistence patterns are found in various features within habitation sites, such as hearths and midden deposits, reconstruction of subsistence systems often require

information from multiple sites. These kinds of patterns may be indicative of eligibility under NRHP Criterion A. Research questions include:

- Where were the food procurement locations utilized by the occupants of the site?
- What resources were brought to the sites, and were they processed, prepared, or consumed at the site?
- Is there evidence for specialization or intensification of resource use?
- Are subsistence strategies narrowly focused on a few resources, or are they broad-based?
- Do subsistence strategies change through time?
- Can changes in the natural or cultural environment account for change?
- Do the site activities suggest a contribution to broad subsistence patterns or mobility patterns?

Specialization would be indicated by large numbers of the remains of a few species. Intensification would be indicated by reliance on resources that require greater amounts of labor to procure or process. Data categories necessary to address these questions include faunal remains, protein and blood residue analysis, artifact use-wear analysis, and landscape-site associations.

Chronology and Temporal Patterning. In order for archaeologists to study cultural similarities and differences in cultures of the past, they must first put sites in temporal order. Patterns may be indicative of eligibility under NRHP Criterion A.

- Can the site be assigned to a particular period, complex, or phase?
- Were the sites used at the same time as other nearby sites or sequentially?
- Were the sites used continuously for a short or long period of time?
- Were there periods of time when the sites were not used (continuous occupation or periodic abandonment)?
- What portions of local chronological sequences are represented by cultural resources in the project area?
- What are the chronological ranges for particular projectile point types?
- Can we identify chronological patterns in lithic raw material procurement practices or flaking technologies? If so, can these be used to date sites lacking other diagnostic artifacts?
- Do significant correlations exist between the timing of climatic shifts and technological innovations?
- Do the sites suggest a contribution to broad cultural change?

Chronological dating of sites often relies on the presence of subsurface material rather than surface material alone. Substantial subsurface material combined with a necessary degree of site integrity and preservation may aid in the dating of the archaeological site. Sites most likely to contribute to this theme include habitation sites that may contain thermal features, refuse deposits, and stratified middens. These

sites may contain stone artifacts, such as projectile points, with temporally indicative stylistic characteristics. Also, charcoal, animal bone, and shell may be dated by radiocarbon assay. Some indication of the time range (relative dating) for obsidian artifacts may be obtained from measurement of obsidian hydration rinds.

Trade and Exchange. Archaeological information about trade and exchange comes mostly from exotic lithic and shell materials. These are materials with no known local source that must have been obtained from elsewhere through trade or exchange. One of the most studied exotic materials is obsidian. Obsidian found in archaeological sites in this area usually comes from a known source of obsidian, such as Bodie Hills or Mt. Hicks on the eastern side of the Sierra Nevada Mountains or Napa Valley and Borax Lake in the coastal mountains. Each obsidian source has a unique trace element composition that can be compared to the trace element composition of the obsidian artifact from a site. Patterns of trade and exchange may contribute to broader patterns of cultural change, mobility, and political settings that should be considered under NRHP Criterion A as well.

- Obsidian from which sources were traded into the project area and when?
- What inferences about mode of exchange can be made between the site area and the source area(s)?
- Do exotic artifacts present at the site reflect inter-tribal relationships or broad patterns of mobility or settlement?

Because the chemical composition of all the obsidian sources are known, the origins of the obsidian found in PCCP sites can be determined using x-ray fluorescence or neutron activation analysis. Whether obsidian arrived in the PCCP area as finished artifacts or raw material and inferring the mode of exchange (e.g., direct access, down the line trade, exchange through middlemen) requires data from a regional study (Hughes and Milliken 2007). However, information from the obsidian artifacts from the PCCP area can contribute to such a regional study. Samples of obsidian that can be sourced, using either neutron activation analysis, x-ray fluorescence, and in some cases, visual indicators, are needed. These samples should also be large enough to provide good surfaces for hydration measurement, so that a relative date (time period) can be obtained for use of the obsidian.

#### **4.4.2 Historic Archaeological Sites**

Material from rural archaeological sites from the nineteenth and early twentieth centuries can provide information about the developing domestic economy of farmsteads and ranches, changes in socio-economic status, and changes in the spatial organization of activities within the farmstead. Early settlers may have been relatively self-sufficient, producing most food for their own consumption on the farm. Over time they may have increasingly participated in the developing market economy, exchanging their agricultural products for manufactured goods obtained from towns. Some farmers/ranchers may have specialized in a single crop or product and ceased to produce food for domestic consumption, obtaining all food from stores in the nearest town. The socio-economic status of rural residents may also have changed, based on increased access to markets for their agricultural products and changing commodity prices. By about 1920, most rural residents fully participated in the national economic system and agriculture had become mechanized. For the period after about 1920, there is little information that historical archaeology can provide about rural ranching and farming that is not already known from historical sources.

Research topics include:

- Self-sufficiency versus participation in a market economy. Were food and household items produced on the farm or obtained from local, regional, or national sources? Did the degree of self-sufficiency decrease over time?
- Socio-economic status. What was the socio-economic status of rural residents, as reflected in material possessions? Did socio-economic status change over time?
- Organization of activities. What was the spatial organization of activities within the farmstead and did this change over time in conjunction with increased production for the market?

More specific research questions should be developed based on the historic context for the resource being evaluated.

Data categories necessary to address the research topics and questions include artifacts from before 1920 classified functionally. Technological attributes will provide a date range. Features, such as foundations, wells, privies, pits, walls, and fences will provide information on the organization of activities.

## 4.5 Documentation

### 4.5.1 Office of Historic Preservation DPR 523 Forms

DPR 523 form sets will be completed when recording archaeological sites during survey. Forms will be completed following the guidance in *Instructions for Recording Historical Resources* (OHP 1995). Temporary field numbers should be assigned to sites that do not yet have a primary number and trinomial. At a minimum for archaeological sites, the primary record, archaeological site record, sketch map, and location map will be completed. Other forms should be added as applicable. When updating the record for a previously-recorded site, continuation sheets are acceptable, if there is already an accurate primary record on file at the NCIC. If the existing DPR or site form is outdated or inaccurate, the appropriate forms should be completed to rectify the situation. For example if the site boundary or distribution of features in the site has changed, a new sketch map would be required. Upon completion of subsurface testing, the results of testing should be added to the DPR 523 form set for the site. The locations of the STPs and units should be shown on the sketch map.

For buildings, structures, and facilities, a primary record, sketch map, and location map should be completed during survey. The Building, Structure and Object (BSO) DPR 523 form may be completed by the Architectural Historian during evaluation, or may be completed by another qualified professional.

All completed DPR 523 forms should be sent to the NCIC as soon as possible, so that primary numbers and trinomials (if appropriate) can be assigned, which will then be included in the technical reports in place of the temporary numbers assigned in the field. All recorded sites must have P#s or trinomials at the time of submission to the County, and all documentation must cross-reference all assigned numbers (including field numbers).

### 4.5.2 Cataloging and Analysis

All artifacts collected for analysis will be cleaned and sorted as appropriate by provenience first, and then by material class. Materials will be stabilized as necessary to protect from deterioration. All artifacts and

other samples collected from these sites will be fully cataloged. Catalog numbers will be assigned in numerical order once artifacts are properly sorted and shall use a binomial scheme (site number, hyphen, catalog number).

Catalog information will be entered into a spreadsheet or database and printed on computer-generated tags and inserted into archival-quality artifact bags. References to artifacts and other samples in the draft and final report and appendices must be by permanent catalog number. Below is the minimum information required for each specimen in the catalog:

- Site number (P# or Trinomial, or both)
- Field site number
- Provenience/collection unit
- Accession number
- Catalog number
- Object name
- Object description
- Material of manufacture
- Form (object type)
- Quantity
- Measurements (when needed, e.g. weight, length, circumference)
- Conservation and condition
- Cataloger name and date collected
- Location in temporary repository
- State and county
- UTM coordinates
- Remarks

All information will be entered into a database or spreadsheet, along with each artifact's provenience, a catalog number, and any other pertinent information. A copy of the database shall be included as an attachment to all technical reports, at minimum, in hard copy or PDF format, to ensure that the information is accessible by future researchers, once the software becomes obsolete.

All artifacts will be placed in archival quality 4-mil plastic zip bags with acid-free card stock paper tags labeled with archival quality ink. Artifact identification and analysis shall be conducted so that the recorded attributes and artifact types can be used to address the research topics and questions in this CRMP. The recovered artifacts will be identified and cataloged by qualified archaeologists. Each artifact will be examined to identify the material, artifact type, manufacturer (if applicable), function, and approximate date. A representative sample of diagnostic artifacts, not to exceed 20 percent of the total diagnostic artifact collection, will be documented using photography, illustration, or a comparable method of recording.

A form will be completed for all artifacts and samples sent to outside labs for analysis. The form will provide the catalog number of the artifact or sample, the artifact or sample type, the contact information for the laboratory where the sample was sent, the type of analysis requested, and the date sent. It should also be noted if the sample will be returned or destroyed during analysis. If returned, a date will be provided on the returned form.

#### **4.5.3 Survey Reports**

The results of each study conducted under the CRMP will be documented in a technical report that provides at a minimum, an environmental and cultural context, methods employed, results, and

recommendations for further work. Reports of subsurface testing will include a discussion of the field and laboratory methods employed, describe the recovered artifacts, and provide a site map showing the locations of STPs, units, and features, along with the site boundary. A catalog of the recovered artifacts will be provided in a report appendix.

Results of the cultural resources study should be presented in an Archaeological Resource Management Report (ARMR) format which follows the California OHP, Department of Parks and Recreation *Recommended Contents and Format* (OHP 1990). The report should include:

- Title Page
- Table of Contents
- Management Summary/Abstract
- Undertaking Information/Introduction
- Environmental Setting
- Cultural Context/History
- Research Design/Project Description
- Methods
- Results
- Discussion/Interpretation/Evaluation
- Management Considerations
- References
- Appendices
- Confidential Appendices

Not all sections listed are applicable to each kind of report. Different sections will be included depending on whether the report is a survey report, a supplemental survey report, or an evaluation report. Each survey report must contain one of the following findings, which is subject to concurrence by the agencies and SHPO:

- If the results of the survey indicate that there are no cultural resources present within the project area, then the report shall specify a finding of “No Historic Properties Affected.” This would result in the survey report being the capstone technical study for the project, as long as there is agency concurrence on the finding.
- If there are cultural resources present that could be evaluated based on survey-level data alone, and such evaluation indicated that there are no resources within the project area that are eligible for the NRHP or CRHR, then the report shall specify a finding of “No Historic Properties Affected, with Evaluation.” This would result in the survey report being the terminal technical study for the project, as long as there is agency concurrence on the finding.
- If there are cultural resources that could be evaluated based on survey-level data alone, and such evaluation indicates that there are resources within the project area that are eligible for the NRHP or CRHR, then the report shall clearly state that a Finding of Effect must be prepared. This will require preparation of additional documentation, as specified in the following section.
- If there are cultural resources that could not be evaluated based on survey-level data alone, then the report shall clearly state that an evaluation of eligibility must be conducted. This will require preparation of additional documentation, as specified in the following section.

Review of the report shall be handled in accordance with the procedures in Section 8.0 of this CRMP.

#### **4.5.4 Evaluation Reports**

Evaluation reports for archaeological sites will provide a prehistoric or historic context for the resource(s) evaluated, the methods employed, the results of archival research, the results of subsurface testing, and an evaluation of the resource using all four NRHP and CRHR eligibility criteria. Some specific requirements relative to property types are described below.

When applying Criterion D to archaeological sites, the data recovered during the subsurface testing should be analyzed to determine whether it can be used to address the research topics and questions presented earlier. The PI will assess whether the types and quantity of data are sufficient, whether the number of addressable research topics or questions is sufficient to assess the site as eligible, and whether the site possesses sufficient integrity.

A traditional cultural property “is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community” (Parker and King 1998). Potential traditional cultural properties will be evaluated using the guidance in National Register Bulletin 38 (Parker and King 1998) and in consultation with the appropriate traditional cultural groups. Traditional cultural groups may include, but are not limited to, Native American tribes and individuals, Chinese community members, and generational farming and agriculture families.

Historic buildings, structures, and facilities must be evaluated by a qualified individual who meets the applicable Secretary of the Interior’s Professional Qualification Standards. Evaluation reports will contain a historic context based on archival research and a description of the architectural or engineering characteristics of the building, structure, or facility.

As with TCPs, ethnographic landscapes are identified, defined, and recognized by the members of the cultural groups who are historically associated with the landscape rather than professional archaeologists and historic preservation professionals. Ethnographic landscapes can exist without depending on NRHP eligibility criteria. Unlike other cultural landscapes where significance is based on criteria set out by the NPS, the significance of ethnographic landscapes is determined by the importance the landscapes have had on the history and culture of the group or community associated with the landscape.

An ethnographic landscape “is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community” (Parker and King 1998). Potential ethnographic landscapes will be evaluated using the guidance in National Register Bulletin 38 (Parker and King 1998) and in consultation with the appropriate traditional cultural groups and the USACE. Traditional cultural groups may include, but are not limited to, Native American tribes and individuals, Chinese community members, and generational farming and agriculture families.

Evaluation reports for prehistoric landscapes will provide a prehistoric or historic context for the resource(s) evaluated, the methods employed, the results of archival research, the results of subsurface testing, and an evaluation of the resource using all four NRHP and CRHR eligibility criteria.

Each evaluation report must contain one of the following findings, which is subject to concurrence by the agencies and SHPO:

- If there are cultural resources within the project area that are not eligible for the NRHP or CRHR, then the report shall specify a finding of “No Historic Properties Affected.” This would result in the evaluation report being the capstone technical study for the project, as long as there is agency concurrence on the finding.
- If there are cultural resources within the project area that are eligible for the NRHP or CRHR, then the report shall clearly state that a Finding of Effect must be prepared. This will require preparation of additional documentation, as specified in the following chapter.

In sum, all evaluation of eligibility must ultimately contain justified and supported eligibility statements under all four NRHP and CRHR criteria, regardless if they are archaeological, from the built environment, landscape-level, or sacred sites. All conclusions must be clearly stated. Review of the report shall be handled in accordance with the procedures in Section 8.0 of this CRMP.

Note that tribal consultation by the agency may be required in order to complete the evaluations, and so any partial evaluations advanced by consultants during pre-project planning studies must clearly identify any resources that require consultation to complete. Section 5.0 of this CRMP outlines the roles, responsibilities, and procedures for tribal consultation.

## 5.0 ASSESSMENT OF EFFECTS

In the event that any cultural resources are found to be eligible for either the CRHR or NRHP or both (hereafter, “eligible cultural resources”), then an impact assessment must be conducted, as described below. Assessment of impacts to non-significant cultural resources, as required by CEQA (unique archaeological resources) and NEPA will be addressed separately by the project’s CEQA and NEPA documentation. The procedures below relate to the CARP.

Title 36 CFR Part 800.5, *Assessment of adverse effects*, requires that the federal agency, in consultation with SHPO, apply the criteria of adverse effect to Historic Properties within the APE. According to 36 CFR 800.5(a)(1): “an adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a Historic Property that qualify the property for inclusion in the NRHP in a manner than would diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling or association.” The regulations further define adverse effects to be those that include reasonably foreseeable effects caused by the undertaking, or those that may occur later in time or those that may be cumulative. Examples of adverse effects include, but are not limited to: physical destruction or damage to all or part of the property; alteration, restoration, rehabilitation, repair, maintenance, stabilization, or remediation; removal of the property from its historic location; change of the character or physical features; introduction of visual, atmospheric, or audible elements; neglect; or transfer, lease, or sale out of federal ownership (36 CFR 800.5[a][2] et seq.).

Adverse effects on historic properties include, but are not limited to:

- (i) Physical destruction of or damage to all or part of the property;
- (ii) Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation, and provision of handicapped access, that is not consistent with the SOI’s standards for the treatment of historic properties (36 CFR part 68) and applicable guidelines;
- (iii) Removal of the property from its historic location;
- (iv) Change of the character of the property’s use or of physical features within the property’s setting that contribute to its historic significance;
- (v) Introduction of visual, atmospheric or audible elements that diminish the integrity of the property’s significant historic features;
- (vi) Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe or Native Hawaiian organization; and
- (vii) Transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property’s historic significance.

In addition, impacts to a Historical Resource (as defined by CEQA) are significant if the resource is demolished or destroyed or if the characteristics that made the resource eligible are materially impaired [CCR Title 14, Section 15064.5(a)].

Accordingly, the specific effect that each project will have on cultural resources can only be assessed once those projects have been designed. At that time, the PI or professionally qualified County staff will prepare a Finding of Effect (FOE) for the project. The FOE may be combined with an evaluation of eligibility report if sufficient information exists for the PI to make a determination of effect.

The FOE document will include a detailed project description, a brief summary of public outreach efforts, a brief summary of the results of identification and evaluation, a description of the historic properties, and a discussion of the Project's effects on each Historic Property or Historical Resource. The effects must be illustrated with an exhibit overlaying the boundary of each resource on the Project development plans that show all temporary and permanent limits of ground disturbance. The PI shall apply the criteria of adverse effect described above and determine why the effect on the Historic Property would or would not be adverse.

Each FOE report must contain one of the following findings, which is subject to concurrence by the agencies and SHPO:

- If there are eligible cultural resources within the project area that will not be affected by the project because the criteria for adverse effect are not met, then the report shall specify a finding of "No Adverse Effect to Historic Properties" for Section 106 and/or "No Significant Impact to Historical Resources" under CEQA. This would result in the FOE report being the terminal technical study for the project, as long as there is applicable lead agency concurrence on the finding. For determinations under Section 106, the agency concurrence must come from the lead federal agency. For determinations under CEQA, the agency concurrence must come from Placer County.
- If there are eligible cultural resources within the project area that will not be affected by the project because of the incorporation of Standard Conditions presented in the following section, then the report shall specify a finding of "No Adverse Effect to Historic Properties, with Standard Conditions" and/or "No Significant Impact to Historical Resources, with Standard Conditions." This finding applies only to complete avoidance and preservation of eligible resources. The standard conditions must be included in the FOE report and will become permit conditions or conditions of approval. This would result in the FOE report being the terminal technical study for the project, as long as there is agency concurrence on the finding. For determinations under Section 106, the agency concurrence must come from the lead federal agency. For determinations under CEQA, the agency concurrence must come from Placer County.
- If there are eligible cultural resources within the project area that will be adversely affected by the project and the Applicant has determined that one or more of the Standard Treatment Measures provided in the following section will minimize or mitigate adverse effect, then the report shall specify a finding of "Adverse Effect to Historic Properties, with Standard Treatment Measures" and/or "Significant Impact to Historical Resources, with Standard Treatment Measures." The standard treatment measures must be included in the FOE report and will become permit conditions or conditions of approval. No separate Historic Property Treatment Plan (HPTP) or Memorandum of Agreement (MOA) will be required. This would result in the FOE report being the terminal technical study for the project, as long as there is agency concurrence on the finding. For determinations under Section 106, the agency concurrence must come from

the lead federal agency. For determinations under CEQA, the agency concurrence must come from Placer County.

- If there are eligible cultural resources within the project area that will be adversely affected by the project, and the Applicant has determined that non-standard treatment measures are required to minimize or mitigate adverse effect, then the report shall specify a finding of “Adverse Effect to Historic Properties, with Non-Standard Treatment Measures” and/or “Significant Impact to Historical Resources, with Non-Standard Treatment Measures.” A HPTP must be prepared to specify the non-standard mitigation, phased mitigation, or other circumstances not accounted for in the standard treatment measures.

Review of the report shall be handled in accordance with the procedures in Section 8.0 of this CRMP.

## 6.0 RESOLUTION OF ADVERSE EFFECTS

When the preparation of a FOE indicates that there will or may be an adverse effect to eligible cultural resources, the agencies must make reasonable, feasible, and appropriate efforts to avoid, minimize, or mitigate adverse effects to those resources. For the purpose of this CRMP, there are three categories of measures: Standard Conditions (for complete avoidance and preservation); Standard Treatment Measures (agreed-upon mitigation that will minimize or mitigate adverse effect without further review); and Non-Standard Treatment Measures (for other mitigation measures that are atypical, require phased implementation, or are otherwise not accounted for herein). Each is described below. In the absence of a PA, use of any Standard Conditions or treatments is subject to approval by the USACE.

### 6.1 Standard Conditions

Avoidance is the preferred treatment method for all eligible cultural resources, including archaeological sites, TCPs, TCRs, historic structures, and ethnographic landscapes. The project proponent for a specific Permit APE must consider redesigning the development project to avoid adverse effects to resources. This could include converting a lot that had been planned for residential development to open space designation or redesigning a road to curve around a Historic Property. However, not all eligible cultural resources can be avoided; if such redesign is not feasible, then the Applicant may be asked to justify why that is the case prior to project approval or permit issuance.

#### 6.1.1 *Standard Condition 1: Conservation Easement*

Avoidance and preservation of eligible cultural resources can only be accomplished when a legal mechanism prevents future development and there are appropriate measures in place for long-term maintenance. For archaeological resources within the PCCP, this will require the dedication of either a conservation easement or Declaration of Covenants and Restrictions over the site, recorded with the County, to restrict development in perpetuity. Management of the conservation easement will be the responsibility of a qualified third-party preserve manager with sufficient long-term funding and shall include but is not limited to the following measures, as deemed appropriate: fence and gate repair; sign replacement; regular monitoring and associated reporting by a professional archaeologist for damage; erosion control; trash removal; vegetation and weed control; security patrols; vandalism abatement; and removal of trespassers. No signs indicating the presence of cultural resources shall be permitted. In addition, the following activities are prohibited within the boundaries of preserved sites, even if such activities are permissible in other areas of larger biological preserves, within which the site may be located):

- Unseasonable watering; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals
- Use of off-road vehicles and use of other motorized vehicles except on existing roadways
- Agricultural cultivation activity of any kind
- Recreational activities, including, but not limited to, camping, with the exception of the use of a pedestrian trail adjacent to the site boundaries

- Construction, reconstruction, erecting or placement of any building, billboard or sign (except for that which is designed to keep the public out), or any other structure or improvement
- Depositing or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials
- Lighting fires, incendiary devices, or flammable substances
- Planting, introduction or dispersal of nonnative or exotic plant or animal species (animal grazing is permitted for fire control)
- Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting artifacts, minerals, loam, soil, sand, gravel, rock or other material on or below the surface of the sites, or granting or authorizing surface entry for any of these purposes
- Altering the surface or general topography of the sites, including but not limited to any alterations to habitat, building roads or trails, over paving or otherwise covering the sites with concrete, asphalt or any other impervious material, except for capping as described below
- Removing, destroying, or cutting of trees, shrubs, or other vegetation, except as required by law for fire control and prevention or treatment of disease
- Mechanical or chemical weed abatement activities (hand and grazing methods are acceptable)
- Manipulating, impounding or altering any natural water course, body of water or water circulation on the sites, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters
- Engaging in any use or activity that may violate, or may fail to comply with, relevant federal, state, or local laws, regulations, permit conditions, or applicable policies

Conservation mechanisms may also be used to preserve resources of the built environment, and the terms and limitations of such easements will need to reflect the type of resources being preserved.

The Applicant shall provide a copy of the County-recorded document that includes the preserved sites (referenced by P# and trinomial) as proof of the restriction of future activities that could affect the integrity of the site. Proof of compliance must be submitted to the lead agencies prior to ground-disturbing activities.

## **6.2 Standard Treatment Measures**

If avoidance and preservation of eligible cultural resources is not possible, then implementing one of the following Standard Treatment Measures may minimize or mitigate adverse effects. If a project will implement one or more of these measures without modification (except where allowed, below), and the agencies determine that no other mitigation is necessary, then the standard treatment measures will be specified in a FOE and become permit conditions or conditions of approval without the need for developing a separate HPTP or MOA. The agencies that will consult on treatment measures and implement an HPTP or MOA will vary depending on the type of project.

In this case, the FOE must be explicit about the site-specific requirements for each treatment measure, include a schedule for implementation relative to pre-construction, construction, and post-construction

phases, and provide the means by which proof of compliance will be provided. If the County, federal agency, or SHPO review the FOE with Standard Treatment Measures and conclude that enough modifications to the measures have occurred that change the following pre-approved measures in a manner than could alter the purposes for which they are intended, then a separate HPTP and MOA may be required to negotiate Non-Standard Treatment Measures (see Section 6.3).

### **6.2.1 Standard Treatment Measure 1: Capping**

In certain cases, the use of capping with natural materials will be desirable as a supplement to a conservation easement. This could include sites that are located in highly visible areas where public access could otherwise present a risk to the preservation of the site, where existing topography or future grade differentials could cause erosion and stabilization issues, or where there is not sufficient horizontal separation from project activities, but that vertical separation could be achievable. In these scenarios, the use of capping with soil, vegetation, and/or geotextile fabric may be preferred over complete exposure of the site. Figure 6-1 illustrates this in concept.

Where capping is considered an appropriate treatment measure, the following guidelines will be employed:

- The thickness of the soil cap must take into consideration the size and shape of the site, particularly the elevation of above-surface features like bedrock outcrops.
- Caps shall be covered with vegetation to discourage erosion and unauthorized digging.
- No buildings or structures shall be placed on top of the cap.
- Non-motorized pedestrian paths may be placed over the cap, but only when constructed of natural materials such as bark or pea gravel (i.e., no pavement, brick, imported stone) and only when the entire site is capped by at least 18 inches of soil.
- No signage to indicate the location of a site beneath the cap shall be installed.
- Design and final implementation of the capping plan will be developed and monitored by a qualified professional archaeologist.
- The area subject to capping must be legally restricted from future development, in perpetuity (with a conservation easement); however, long-term management can be scaled accordingly.

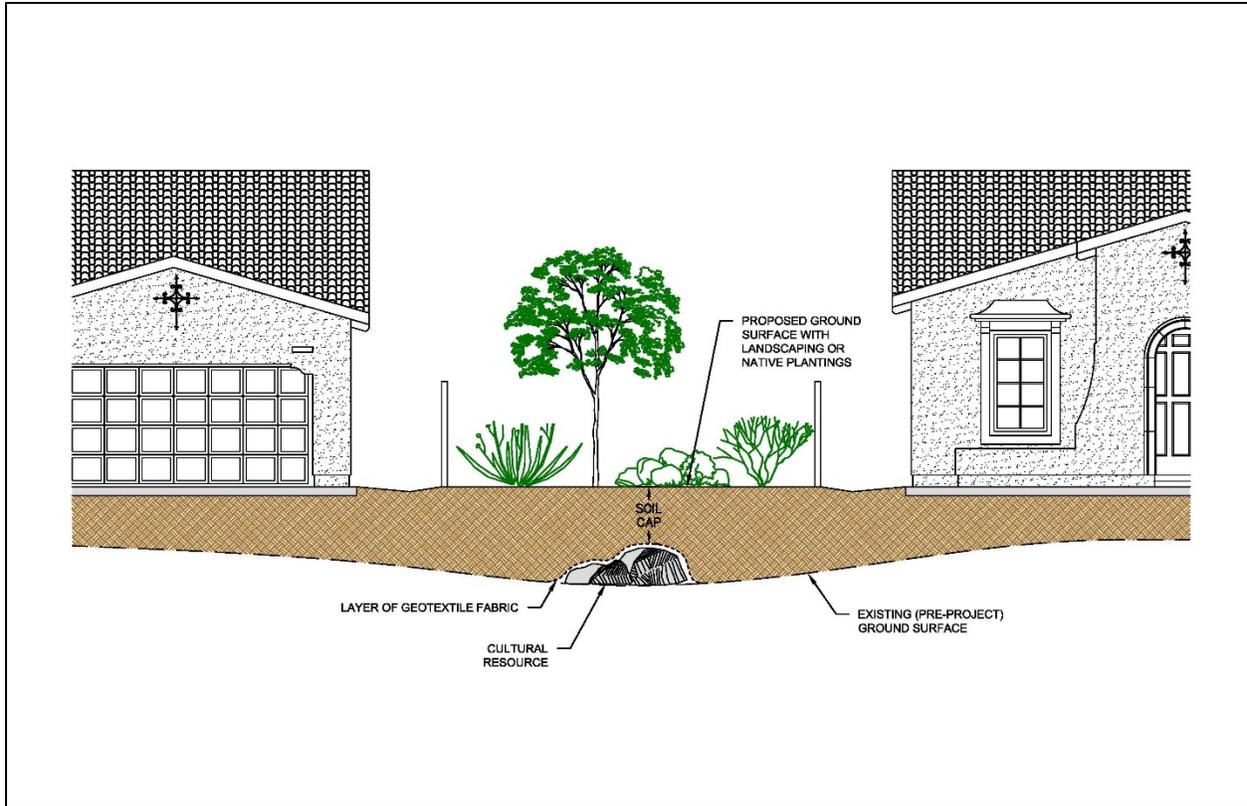


Figure 6-1. Conceptual capping of a site, in conjunction with a deed restriction (illustration courtesy of Bonadelle Neighborhoods).

### 6.2.2 Standard Treatment Measure 2: Data Recovery Excavation

Archaeological sites that are eligible under NRHP Criterion D / CRHR Criterion 4, at minimum, were significant because they possess information that is important in history or prehistory. In such a case, data recovery excavations are one method of mitigating for adverse effect. Data recovery may not be appropriate for TCPs or TCRs and shall not be employed over the objection of the tribe or cultural group that associates with the resource.

Should data recovery be an appropriate mitigation, the FOE shall specify the specific sites, number and size of units, and volume of excavation and is subject to agency approval, with SHPO concurrence, prior to implementing the plan. In addition, the following general standards for data recovery shall apply. Note that these methods vary slightly from excavations being conducted for evaluations of eligibility and may be modified by the PI using professional judgement to meet the specific needs of the site.

- All temporally and technologically diagnostic artifacts will be collected from the surface of the site, regardless of whether or not it will be subjected to data recovery excavations. Non-diagnostic artifacts shall be mapped individually or as concentrations on the site, but not collected from the surface.
- Subsurface data recovery will consist of the placement of controlled excavation units measuring no smaller than one meter by one meter. Adjacent units may be placed to expand and explore subsurface features at the discretion of the professional archaeologist.

- Unit locations will be mapped within an excavation unit grid and tied to the site datum and sketch map.
- At least one detailed cross section of one unit will be drawn to scale and photographed from the same angle.
- If artifacts from each unit number 100 or more, or are anticipated to be more than 100, then a 25 percent sampling strategy for non-diagnostic artifacts shall be employed. Non-collected artifacts shall be immediately reburied in the same unit and recorded on unit level records, or upon request, provided to the legal landowner.
- At least one 10 cubic centimeter soil sample will be collected from a cultural stratum of each unit. Additional scientific samples will be collected as appropriate, using best professional judgment.
- All collected artifacts will be identified and cataloged. Each artifact will be examined to identify the material, artifact type, manufacturer (if applicable), function, and approximate date of manufacture.
- A representative sample of diagnostic artifacts, not to exceed 20 percent of the total diagnostic artifact collection, will be further documented using photography, illustration, or a comparable or better method of recording.
- All information will be entered into a database or equivalent tracking system, along with each artifact's provenience, a catalog number, and any other pertinent information. The database will be printed and attached to the report.
- All collected artifacts will be placed in archival quality 4-mil plastic zip bags with acid-free card stock paper tags labeled with archival ink.
- The data recovery will be documented in a confidential technical report that provides a discussion of the research topics that guided data recovery, discusses the field and laboratory methods employed, describes the recovered artifacts, updates the feature sketch map, and discusses how the recovered material contributed to addressing the research topics. A catalog of the recovered artifacts will be provided in a report appendix.
- A sample of artifacts recovered from each site, not to exceed 10 percent of the collection, shall be permanently curated at an approved curation facility. The sampling should not be restricted to diagnostics only, but shall represent the full spectrum of cultural materials observed at the site. The remaining 90 percent of collected artifacts shall be offered to a local historical society for incorporation into publicly accessible or educational collections. Unclaimed collections will remain in the possession of the applicant and may be used as appropriate for public display within the facilities in the development.

### **6.2.3 Standard Treatment Measure 3: Project-Specific Public Interpretation and Education**

Any eligible cultural resource may be interpreted for the benefit of the general public through the development and installation of one or more interpretive panels in parks, along trails, or at scenic overlooks. The number, location, and content of the panels shall be specified in the FOE and shall not disclose the locations of confidential archaeological sites. Panels will measure approximately two feet by

three feet and will be displayed along newly constructed trails within the permit area, as illustrated in Figure 6-2. Panels may be upright (as shown in Figure 6-2) or may be lower and angled.

Panels will be printed, manufactured, and installed by appropriate and experienced professionals. Immediately following installation, photographs and GPS coordinates of the installed signs will be provided to the USACE as proof of compliance with this requirement.



Figure 6-2. Example of an interpretive panel.

#### **6.2.4 Standard Treatment Measure 4: Construction Monitoring**

Monitoring by a qualified professional or tribal representative shall only be used after reasonable and good-faith efforts, as determined by the County, have been made to identify eligible cultural resources prior to project approval. Monitoring is appropriate in the following circumstances:

- When buried archaeological or tribal resources are located in the vicinity, but cannot be located
- When ground-disturbing activities will come within 100 feet of a recorded eligible cultural resource
- When installing or verifying the placement and integrity of temporary exclusionary (orange barrier) fencing around resources that must be avoided

Monitoring is considered a last resort to minimizing or mitigating adverse effects and is not the default treatment for all projects. Any monitoring required must be justified in the FOE and balanced by a reporting schedule.

Should the City, County, federal agencies, or SHPO determine that monitoring is not an appropriate mitigation, then the City or County, with permission from the landowner, may extend an opportunity to members of the public or consulting parties to visit the project during construction on a volunteer basis, provided that the visitors receive safety training and sign liability release waivers. The City or County shall not have the authority to grant property access to private property above the objections of the landowner, but may impose alternate treatment requirements in lieu of monitoring.

#### **6.2.5 Standard Treatment Measure 5: HABS/HAER/HALS**

The Historic American Building Survey (HABS), Historic American Engineering Record (HAER), and Historic American Landscape Survey (HALS) programs are administered by the NPS, in consultation with the federal agency and SHPO. Use of these programs as mitigation requires the development of a MOA; however, a separate HPTP is not required as long as the specifications are outlined in the FOE. Preparation of HABS/HAER/HALS documentation must be conducted by a historian, architectural historian, or historic architect, as appropriate, who meets the Secretary of the Interior's Professional Qualifications Standards.

In order to determine the appropriate level of documentation necessary, the County shall first consult with the NPS through the submission of the DPR site record, a copy of a signed MOA from the federal agency, and copies of applicable technical reports, along with a request for review and issuance of a stipulation letter. Upon receipt of the stipulation, the instructions for documentation, including level of documentation, shall be implemented.

If the HABS/HAER/HALS documentation is not being proposed for a project with a federal undertaking, then the County will require comparable documentation with the following exceptions: 1) photographic prints may be produced from digital images; and 2) NPS will not be consulted or involved in the scope or level of documentation required.

#### **6.2.6 Standard Treatment Measure 6: CC&Rs**

The collecting, digging, disturbance, or removal of any artifact or other prehistoric or historic object located in an open space area, conservation easement, a lot subject to a deed restriction, or to any archaeological site or Historic Property that may become unearthed in the future, is prohibited. Notification of such restrictions shall be included in a restrictive type of covenant recorded on each parcel. Homeowners shall not be provided the locations of known cultural resources and archaeological sites, as these are confidential and restricted from public dissemination under state and federal law. A copy of the recorded covenant shall be provided to the City or County as proof of compliance.

#### **6.2.7 Standard Treatment Measure 7: Tribal Access Agreements**

Upon the transfer of any portion of a conservation easement that is intended to preserve confidential Native American or tribal resources, and upon request from a federally recognized and/or California native tribe to gain access to the tribal resource for visitation, the City or County shall develop a right-of-access authorization for requesting tribes, in cooperation with the landowner. The authorization shall specify the terms under which tribal access can be legally achieved and shall define the acceptable and

prohibited uses thereof, and appropriate liability waivers. Use of this Standard Treatment Measure cannot occur above the objection of the private landowner, if applicable.

**6.2.8 Standard Treatment Measure 8: Contractor Awareness Training**

There always remains a possibility that unanticipated discoveries may occur during project construction. For this reason, an archaeological sensitivity training program (Contractor Awareness Training) will be developed and delivered by a qualified professional archaeologist during a pre-construction meeting for construction supervisors prior to beginning any ground-disturbing work in the project. The sensitivity training program will provide information about notification procedures when potential archaeological material is discovered, procedures for coordination between construction personnel and monitoring personnel, and information about other treatment or issues that may arise if cultural resources (including human remains) are discovered during project construction. This protocol shall be communicated to all new construction personnel during orientation, prior to the employee beginning ground-disturbing work on the project, and on a poster that is placed in a visible location inside the construction job trailer.

**6.2.9 Standard Treatment Measure 9: Post-Review Discoveries**

There always remains the potential for ground-disturbing activities to expose previously unrecorded cultural resources, even for phases that do not have known Historic Properties present. If subsurface deposits believed to be cultural or human in origin are discovered during construction, then all work must halt within a 100-foot radius of the discovery and the following procedures apply.

A qualified professional archaeologist, meeting the Secretary of the Interior's Professional Qualification Standards for prehistoric and historic archaeologist, shall be retained to evaluate the significance of the find, and shall have the authority to modify the no-work radius as appropriate, using professional judgment. The following notifications shall apply, depending on the nature of the find:

If the professional archaeologist determines that the find does not represent a cultural resource, then work may resume immediately, and no agency notifications are required.

If the professional archaeologist determines that the find does represent a cultural resource from any time period or cultural affiliation, then he or she shall immediately notify the County and applicable landowner. The County shall consult with the other permitting agencies on a finding of eligibility and implement appropriate treatment measures, if the find is determined to be eligible for inclusion in the NRHP or CRHR. Work cannot resume within the no-work radius until the County, through consultation as appropriate, determine that the site either: 1) is not eligible for the NRHP or CRHR; or 2) that the treatment measures have been completed to their satisfaction.

If the find includes human remains, or remains that are potentially human, then he or she shall ensure reasonable protection measures are taken to protect the discovery from disturbance (AB 2641). The archaeologist shall notify the Placer County Coroner (per Section 7050.5 of the Health and Safety Code). The provisions of Section 7050.5 of the California Health and Safety Code, Section 5097.98 of the California Public Resources Code, and Assembly Bill 2641 will be implemented. If the Coroner determines the remains are Native American and not the result of a crime scene, then the Coroner will notify the Native American Heritage Commission, which then will designate a Native American Most Likely Descendant (MLD) for the project (Section 5097.98 of the Public Resources Code). The designated MLD will have 48 hours from the time access to the property is granted to make recommendations concerning treatment of

the remains. If the landowner does not agree with the recommendations of the MLD, then the NAHC can mediate (Section 5097.94 of the Public Resources Code). If no agreement is reached, the landowner must rebury the remains where they will not be further disturbed (Section 5097.98 of the Public Resources Code). This will also include either recording the site with the NAHC or the appropriate Information Center; using an open space or conservation zoning designation or easement; or recording a reinternment document with the County in which the property is located (AB 2641). Work cannot resume within the no-work radius until the lead agencies, through consultation as appropriate, determine that the treatment measures have been completed to their satisfaction.

## **6.3 Non-Standard Treatment Measures**

Based on the number and type of resources within a project, or based on the construction timing of the project, there may be a need to develop and negotiate certain types of mitigation that are not provided for above. These may be alternate ways of resolving adverse effect (e.g., Section 6.3.1, below), or may require the phased implementation of mitigation measures for long-term buildout. In such circumstances, the Applicant shall propose mitigation measures in a HPTP that is submitted to the County for review and consultation with the other applicable agencies. An MOA between the lead agencies involved in that undertaking may be required as a result.

### **6.3.1 Non-Standard Treatment Measure 1: In-Lieu Fee Program**

In-lieu fee programs for cultural resources mitigation projects are not typically standard treatment measures outside of the context of this PCCP for a number of reasons. Primarily, these reasons relate to the uniqueness of all cultural resources and the need to mitigate (or resolve adverse effect) under the law and its implementing regulations. For example, in the case of archaeological sites, an NRHP-eligible site (a Historic Property) that will be adversely affected is typically subjected to either preservation in perpetuity or data recovery excavation. In both cases, those treatment measures preserve the unique, site-specific data and the integrity of the site that conveyed its significance; in other words, the qualities that made the significant in the first place are retained either physically or through careful documentation and recovery of the archaeological record. Payment of a fee in lieu of preservation or data recovery does not directly mitigate for the loss of that site or its information. As such, in-lieu fee programs should not be used as a sole method by which impacts to significant sites are mitigated.

However, in the federal context of Section 106 NHPA, the federal agency is not restricted from use of in-lieu fees by regulation, as much as it is by practice. A federal agency may utilize *any* method for resolving adverse effect that all consulting parties (signatories) agree resolves said effect. Under CEQA, lead agencies are required to select mitigation to balance significant effects, and that mitigation measure must be roughly proportional to the impacts of the project. Establishing a dollar value, particularly one that is formulaic, is counterintuitive in the case where resources are unique and priceless. Accordingly, proposing in-lieu fee programs requires consultation with responsible agencies and, in some cases, cultural groups who ascribe significance to the resource in question. Because use of an in-lieu fee mechanism is neither intended to be a standard treatment, nor precedent-setting for projects that do not fall under this CRMP, the following procedures shall apply.

If an Applicant wishes to propose an in-lieu fee as part of a mitigation plan for a project, it may propose such in a HPTP, written by a qualified professional, which will be subject to review and comment by the responsible lead agencies. Written proposals need not be lengthy, but shall contain, at minimum:

- A description of the historic property(ies), particularly with regard to the character-defining features, contributing elements, and aspects of integrity that convey said significance;
- An explanation as to why an in-lieu fee is an appropriate form of mitigation and why other standard treatment measures are either wholly or partly inadequate for the historic property(ies) subject to this measure;
- A proposed dollar amount and accompanying explanation; and
- Any other mitigation measures that the in-lieu fee will supplement, if applicable.

If adopted as a mitigation measure or permit condition, all in-lieu fee payments shall be paid directly to the Placer County Museum for exclusive and sole use in museum and public education programs or exhibits that relate to Placer County or City of Lincoln. In-lieu fees, if approved as a Non-Standard Treatment Measure, shall not be paid to any other entity, tribe, person, organization, or agency.

The CRCM shall be responsible for preparing an annual report of the receipt and use of in-lieu fees to demonstrate its use as intended. A copy of the report shall be submitted to each responsible lead agency subject to this CRMP, and made available to the public.

## 7.0 NATIVE AMERICAN CONSULTATION PROCEDURES

Placer County and the state and federal agencies each have special relationships with Native American tribes that afford a higher level of government-to-government consultation, as well as that which is mandated under Section 106 NHPA and CEQA. The tribal consultation policies for both are hereby incorporated by reference. The following procedures are designed to implement these policies to the greatest extent that they apply to the PCCP. Unless authorized otherwise in a PA or delegated to the County in advance, Section 106 tribal consultation must be carried out by the lead federal agency.

Tribal consultation, including written correspondence, face-to-face meetings or site tours, phone calls, and discussions under Section 106 NHPA, AB 52, and SB 18 must occur between tribes and the County and/or federal agencies. No delegation of consultation of authority to Applicants or consultants is provided by this CRMP, although these parties may be asked to provide technical and administrative support.

### 7.1 General Consultation Procedures

Consultation between agencies and tribes must be in good faith and documented, and should also include face-to-face discussions and meetings to the greatest extent possible. At the discretion of the County, responding or requesting members of the Native American community may be invited to participate in a project meeting or field tour of the project area, or both. The invitation to meet shall be sent by the County either in writing or by email two weeks prior to the anticipated meeting date to reasonably accommodate schedules. All meetings and tours shall be documented by a roster of attendees and meeting minutes. A template is provided in Attachment C.

Tribes will be asked to submit written comments to ensure that tribal concerns are properly framed and addressed. Written comments may be submitted either by email, fax, handwritten letter, or formal comments on tribal letterhead, at the discretion of the commenting party. The agencies shall allow 30 days for written comments to be submitted. Upon request, the agencies may extend the comment period for another 30 days to accommodate tribal schedules. After 60 days, the agencies shall evaluate the body of information received.

Upon receipt of written comments from tribes, the agencies shall acknowledge by email or letter to each commenting party its receipt of the written comments for the Undertaking and copy the SHPO. The USACE shall review and evaluate the written comments to determine:

- if the comments provide specific information about potential adverse effects to previously known or unknown historic properties within the APE for the specific Undertaking;
- if the comments suggest a change to the NRHP eligibility of resources within the APE for the specific Undertaking;
- if additional research is warranted and would lead to important information prior to the Undertaking as opposed to being conducted as part of any resolution of adverse effect;
- if the information presented is both credible and consistent with applicable guidance; and
- if further consultation is necessary in order to come to a decision on the Undertaking.

Within 30 days of initiating its evaluation of written comments, the agencies shall notify the commenting parties and SHPO of the results of its evaluation and allow 30 days for the recipients to respond to its findings. After 30 days, if no comments are received, then the agencies may proceed.

If comments are received after the prescribed comment period, then the agencies shall evaluate those comments, but are not obligated to halt the project review and approval process in the meantime. Evaluation and notification of determinations following the receipt of late-arriving comments shall follow the same procedure above.

## **7.2 Regulatory-Specific Consultation Procedures**

There are three regulatory mechanisms by which government-to-government consultation between tribes and agencies may occur: Section 106 NHPA; AB 52; and SB 18. Not all three will apply for any given project; however, the following procedures will be conducted when applicable, and documentation of compliance with these procedures shall be kept separate. In the event that general procedures in Section 7.1 conflict with those in the regulations, then the latter shall take precedence. All applicable consultation procedures must be completed to the satisfaction of the County, through a verification of the consultation record and confirmation that there are no conflicting outcomes of each applicable consultation mechanism, prior to a project proceeding with authorized activities under the PCCP.

### **7.2.1 Section 106 NHPA**

Unless authorized otherwise in a PA or delegated to the County in advance, Section 106 tribal consultation must be carried out by the lead federal agency, following receipt of a permit application. Applicants will be required to submit documentation to the County from the federal lead agency that indicates that its Section 106 consultation process has been concluded. Once a PA is developed and executed, the PA will contain more specific tribal and SHPO consultation procedures that must be followed by the County before it can issue a permit on behalf of the federal lead agency.

### **7.2.2 AB 52**

Each CEQA lead agency maintains its own file of general request letters from California Native American tribes under AB 52. For projects where the City or County is the lead agency, the City or County shall first review project applications and within 14 days of determining that it is ready to undertake CEQA review, it shall notify in writing those tribes that specifically requested notification under CEQA. The tribes notified will be different than the tribes being consulted under Section 106, although some overlap may occur. For tribes that respond within 30 days with a request to consult, the County or City shall initiate consultation within 30 days of receiving the written request to consult. The procedures outlined in AB 52 shall be conducted as specified in the California Public Resources Code and in Attachment C to this CRMP.

### **7.2.3 SB 18**

If a project will require a General Plan or Specific Plan adoption or amendment, the City or County must comply with SB 18, which requires local agencies, including cities and counties, to contact and consult with California Native American tribes prior to amending or adopting a general plan or specific plan, or designating land as open space. The consultation that is conducted under SB 18 is different than that which is normally conducted in conjunction with cultural resources studies under Section 106 of the NHPA. In addition, consultation under SB 18 must be government-to-government, between the Native

American community and the local agency and in accordance with the Governor's Office of Planning and Research's Tribal Consultation Guidelines (2005).

First, the City or County or its designee will obtain the list of applicable Native American groups and organizations to contact for SB 18 consultation for the project from the NAHC. Each listed group will be contacted by letter to provide them with information about the project and ask if they wish to consult with the City or County. Follow-up phone calls will be made to each group and the results of all correspondence will be documented in a summary report. Native American consultation meetings will be conducted by City or County staff with technical assistance from the Applicant or its consultants, if requested. Attachment D to this CRMP includes procedures for compliance with SB 18.

## 8.0 APPLICATIONS, PROCESSING, AND COMPLIANCE VERIFICATION

As discussed earlier, the PCA is ultimately responsible for the PCCP and the County’s CRCM will serve as the central point-of-contact for all cultural resources compliance procedures under the PCCP. As such, the County and CRCM will be responsible for receiving applications, reviewing documentation generated under this CRMP, carrying out non-federal Native American consultation, coordinating with applicable state and federal agencies for compliance verifications, and, ultimately, permit issuance.

Although the process by which compliance with the PCCP and CARP is demonstrated procedurally may differ between Permittees (County of Placer, City of Lincoln, PCWA, SPRTA, and the PCA), private project proponents, and Participating Special Entities, all will be subject to the standards specified within this CRMP. Furthermore, because the CRMP entails the use of a CRCM (which is specific to cultural resources only), the procedures to implement the compliance verification portion of the CRMP will proceed in a parallel fashion with the CARP process, as shown in Figure 8-1 and as described in the following section.

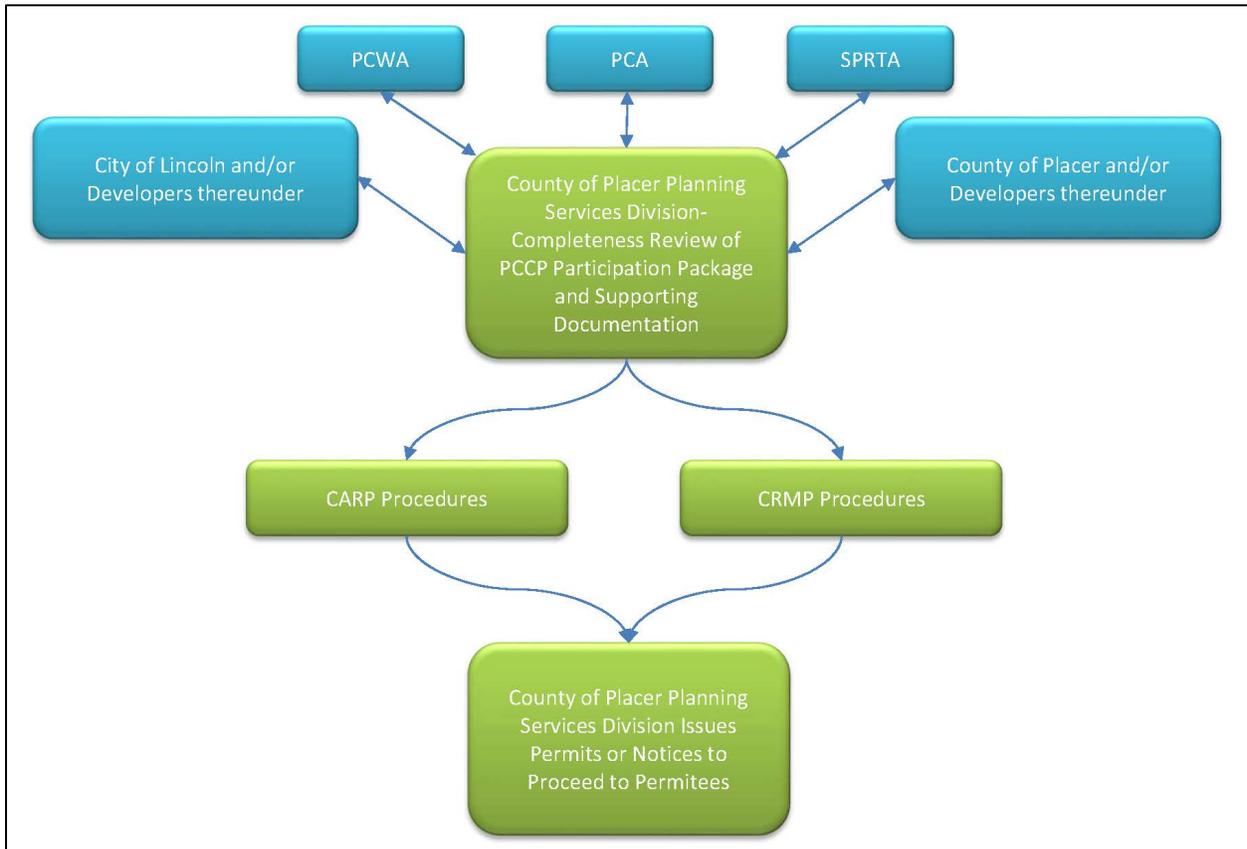


Figure 8-1. Simplified Processing for Compliance Verification by the County.

### **8.1 Application Requirements**

Any entity wishing to utilize the PCCP must first submit a PCCP Participation Package (Package) to either the County Planning Services Division or the City of Lincoln Planning Division. For PCCP Permittees and private project proponents in the County or City, this Package will be submitted directly to the County. For private project proponents in the City of Lincoln, this Package will first be submitted to the City of Lincoln Planning Division, which will perform a completeness review and then forward the Package to the County Planning Services Division. For covered activities that are also subject to CEQA review, the Package will be submitted concurrently with the application for the first discretionary action needed for the covered activity.

The Package requires that each applicant provide basic information about the proposed project and a summary of screening-level information about natural and cultural resources that may be affected by the project. Its contents include:

- an initial project application form;
- a project description and location map showing proposed impacts;
- land-cover types and baseline consistency documentation;
- HCP/NCCP aquatic features documentation;
- a biological resources effects assessment;
- the results of applicable species surveys, pre-construction, and construction monitoring requirements for biological resources;
- a proposed land dedication assessment; and
- additional avoidance and minimization requirements documentation.

In addition, to specifically allow for review and processing by the CRCM, submittal of a Package must be accompanied by:

- a project location map on a 7.5' USGS topographic quadrangle map;
- GIS shapefiles of the project boundaries so that they can be fed into the sensitivity model;
- one bound copy and one PDF on a CD of each cultural resources technical document or report prepared for the project area under this CRMP;
- unless a PA is executed to delegate Section 106 consultation to the County, written documentation from the lead federal agency that it has completed its review under Section 106 through the Determination of Effect, at minimum; and
- copies of previous federal agency determinations and SHPO concurrence for the project, if applicable (this does not preclude the need for additional Section 106 consultation, however).

## **8.2 Completeness Review by Planning Departments**

A completeness review of the Package will be conducted by the County Planning Division for all Permittees and private project proponents under the County. For private project proponents under the City of Lincoln, the completeness review will be conducted by the City Planning Division and forwarded to the County Planning Services Division for further processing or for relaying to the CRCM. If the package is not complete, it will be returned to the project proponent with an explanation and request for additional information. No CEQA documentation or consultation under this CRMP can commence until the Package is deemed complete. Review of the Package will be subject to the processing time and other requirements of the California Permit Streamlining Act (Section 65920 et seq.), which requires public agencies to follow standardized time limits and procedures when making specific types of land use decisions.

As part of the overall completeness review, the agency reviewer will complete a Cultural Resources Checklist form (Attachment A), which will serve not only to verify that the required cultural resources information is included in the Package, but also as a transmittal to the CRCM for processing under this CRMP.

Following the completeness review, the complete Package will be forwarded to the PCA for entry into the PCCP database, at which time a unique identification number will be assigned. Upon receipt of the identification number, the Package and Cultural Resources Checklist form will be forwarded to the CRCM for further processing and consultation.

## **8.3 Processing by CRCM**

Upon receipt of the Package, the CRCM shall first acknowledge in writing the date on which the application materials identified above were received. This begins a 30-day review period for the CRCM staff to review the submitted materials and identify any additional technical information that is necessary, for which the completeness reviewer would not be typically qualified to assess. The review will be guided by the Cultural Resources Compliance Review Checklist provided in Attachment B, which prompts the CRCM to verify specific information. This includes:

- Does the project boundary provided by the applicant take into account all areas of ground disturbance, conservation, construction staging, infrastructure, and off-site mitigation?
- Is the records search and literature review less than one year old?<sup>4</sup>
- Has a search of the sacred lands file with the NAHC been conducted within the past year?
- Has the project area and any off-site improvement areas been surveyed for cultural resources in accordance with the methods in the CRMP?
- Are all identified cultural resources recorded and evaluated under all four NRHP and CRHR criteria?
- Have the criteria of adverse effect been applied to all significant cultural resources?
- Have Standard Conditions, Standard Treatment Measures, or Non-Standard Treatment Measures been proposed, if applicable?

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<sup>4</sup> The USACE requires that records searches be no more than one year old at the time of submission to the USACE.

- What federal agency approvals or permits will be required?
- Has the lead federal agency completed its Section 106 consultation through Determination of Effect, in the absence of a PA that delegates authority to the County?
- What state agency approvals or permits will be required?
- What local agency approvals will be required?

If the review identifies missing information, the CRCM shall respond to the applicant within 30 days of receipt to request information. Until the requested information is submitted to the CRCM, processing of the cultural resources compliance will pause.

### **8.3.1 Consultation**

Upon verification that all information identified on the Cultural Resources Compliance Review Checklist has been received and that no additional information is required at that time, the CRCM shall issue a written Notice of Completeness to the applicant and shall initiate the following actions within 14 days:

- The CRCM shall notify the point-of-contact for each agency that is expected to issue a federal, state, or local approval or permit for the project by letter (or other agreed upon notification method). The notice shall serve to alert the agencies that project documentation and requests for compliance verification are forthcoming. The SHPO shall be copied on the letter. A copy of the Cultural Resources Application Checklist for PCCP Compliance with identification number shall be included with the notice.
- The CRCM shall mail project notification letters to each tribe who requested notification letters under AB 52 (Attachment C) and afford them an opportunity to consult on the project if they respond affirmatively within 30 days.
- If the project requires a federal permit, approval, or funding, and a PA is in place to delegate authority to the County, the CRCM shall follow the tribal consultation procedures in the PA.
- If the project requires a General Plan or Specific Plan adoption or amendment, or the dedication of open space that includes a tribal resource within it, the CRCM shall mail separate project notification letters to the tribes identified on the SB 18 list obtained from the NAHC, and offer them an opportunity to consult if they respond within 90 days (Attachment D).
- The CRCM shall notify any other consulting parties it feels appropriate.

The CRCM shall carry out the consultation in accordance with the regulatory requirements, which may require meetings, field visits, providing copies of or making revisions to cultural resources technical reports and documents, or both.

### **8.3.2 Request for Compliance Verification**

No sooner than the conclusion of the tribal consultation windows under AB 52 and, if applicable, SB 18, and no later than 30 days thereafter, and assuming that all technical documentation has been prepared in accordance with this CRMP and related PAs (if applicable), the CRCM shall transmit its Determination of Effect to the applicable federal, state, and local agencies and SHPO, and copy the applicant, consulting tribes, and other consulting parties. In a brief cover letter, the transmittal shall summarize the project,

boundaries of the APE, efforts made to identify cultural resources, findings of eligibility and effect, history of Section 106 consultation by the lead federal agency (in the absence of a PA), and proposed treatment measures. The CRCM will request that the reviewing agency evaluate the enclosed consultation and compliance record (including copies of all cultural resources technical reports, tribal correspondence, and other documentation generated as the County came to its finding) and provide one of the following responses back to the CRCM within 45 days:

1. The agency reviewed the consultation record and concurs with the County's findings and considers its own obligations complete to its satisfaction;
2. The agency reviewed the consultation record and will carry out supplemental tribal consultation due to the nature of the resources identified or to satisfy its own government-to-government consultation requirements; or
3. The agency reviewed the consultation record and requires additional information in order to issue comment or concurrence, which may include, but is not limited to, additional analysis, execution of a MOA, or other information.

#### **8.4 Permit Issuance and Post-Issuance Compliance Verification**

Upon receipt of a written compliance verification from the state or federal agency that its obligations for compliance have been met through the County process, and following compliance with all other non-cultural permit requirements, the CRCM shall notify either the City Planning Division or the County Planning Services Division, depending on which has jurisdiction over the project, of the compliance verification, which will allow for permit issuance under the CARP.

The CRCM shall be responsible for ensuring that any mitigation or permit conditions are implemented as specified in the FOE or MOA/HPTP, as appropriate. Upon verification that all requirements are satisfied in full, and unless the mitigation requires further coordination and review by other agency staff, the CRCM shall issue a written notice to the other lead agencies to notify them of the completion of mitigation requirements.

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## **LIST OF ATTACHMENTS**

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Attachment A – Cultural Resources Checklist

Attachment B – Cultural Resources Compliance Review Form

Attachment C – Standard Operating Procedures for Compliance with AB 52

Attachment D – Standard Operating Procedures for Compliance with SB 18

**ATTACHMENT A**

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Cultural Resources Checklist

# CULTURAL RESOURCES CHECKLIST

Please complete all fields.

Date of Transmittal to CRCM: \_\_\_\_\_

## Project Information

Project Name: \_\_\_\_\_

Project Size: \_\_\_\_\_

Project Location: \_\_\_\_\_

Project Description: \_\_\_\_\_

Applicant Name: \_\_\_\_\_

PCCP Database Identification Number: \_\_\_\_\_

## Anticipated CEQA Document

Mitigated Negative Declaration (IS)    Negative Declaration (IS)    Notice of Exemption

Notice of Determination (EIR)

## Anticipated Planning Actions

General Plan Amendment    Specific Plan Adoption    Specific Plan Amendment

None    Other \_\_\_\_\_

## Attachments

PCCP Participation Package (date of completeness review: \_\_\_\_\_)

Project location map on 7.5' topographic quadrangle map

Cultural Resources Technical Documentation (list author, title, year):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Agency Reviewer Contact Information

Name \_\_\_\_\_

Email \_\_\_\_\_

Cultural Resources Compliance Review Form

# CULTURAL RESOURCES COMPLIANCE REVIEW

Date of Receipt by CRCM: \_\_\_\_\_ PCCP Database Number: \_\_\_\_\_

## Project Information

Project Name: \_\_\_\_\_

Project Area Size: \_\_\_\_\_ Project Location: \_\_\_\_\_

Project Type: \_\_\_\_\_

Applicant Name: \_\_\_\_\_

## Technical Verification

- Cultural resources study area takes into account all areas of ground disturbance, conservation, construction staging, infrastructure, and off-site mitigation
- Records search/ literature review performed within the past year (date: \_\_\_\_\_; CHRIS No. \_\_\_\_\_)
- Sacred lands file search requested from the NAHC within the past year (date: \_\_\_\_\_; results were  positive or  negative)
- Cultural resources study area has been surveyed in accordance with the CRMP by a qualified professional (date of survey: \_\_\_\_\_; results were  positive or  negative)
- If the survey results were positive, all identified cultural resources have been recorded on DPR records and evaluated under all four NRHP and CRHR criteria
- If evaluation of eligibility resulted in significant resources, the criteria of adverse effect were applied.
- Section 106 consultation:  Programmatic Agreement procedures apply  Applicant provided written verification from lead agency that Section 106 has been completed (use only when no PA applies)
- Which conditions have been applied:  Standard Condition (number(s) \_\_\_\_\_)  Standard Treatment Measure (number(s) \_\_\_\_\_)  Non-Standard Treatment Measure (number(s) \_\_\_\_\_)  other \_\_\_\_\_)

## Consultation Required

- AB 52 tribal consultation  Section 106 per PA procedures  SB 18 tribal consultation
- County verification that no conflicting treatments, mitigations, or outcomes of tribal consultation occur

## Agency Notifications Required

- USACE  USFWS  USEPA  SHPO  CDFW  RWQCB

## CRCM Verification

- Technical Documentation is Complete, Ready for Consultation
- Request for Additional Information Submitted to Applicant

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Standard Operating Procedures for Compliance with AB 52

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- e. Phone Log
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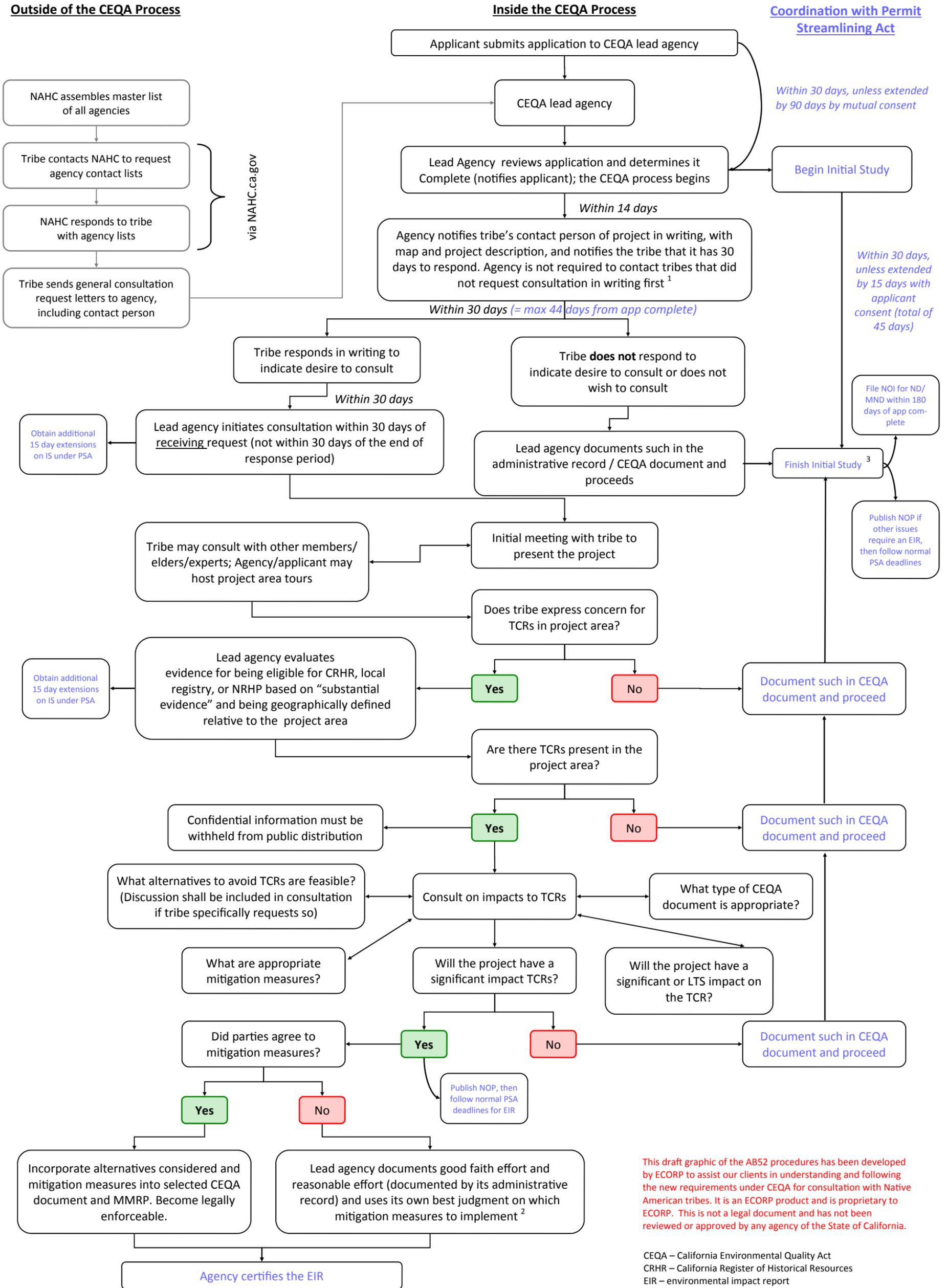
### **III. Quality Control and Compliance Verification**

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- b. How to Modify Form-based Word Documents
- c. OPRs Draft Technical Advisory for AB 52 (May 2015)
- d. OPRs Power Point Presentation on AB 52 (May 2015)
- e. ACHP Tribal Consultation Guidelines for Section 106
- f. National Register Bulletin 38 for Traditional Cultural Properties (Section 106)

# An Interpretation of AB 52 Native American Consultation Procedures Under CEQA



This draft graphic of the AB52 procedures has been developed by ECORP to assist our clients in understanding and following the new requirements under CEQA for consultation with Native American tribes. It is an ECORP product and is proprietary to ECORP. This is not a legal document and has not been reviewed or approved by any agency of the State of California.

CEQA – California Environmental Quality Act  
 CRHR – California Register of Historical Resources  
 EIR – environmental impact report  
 NAHC – Native American Heritage Commission  
 ND/MND – negative declaration/mitigated negative declaration  
 MMRP – mitigation monitoring and reporting program  
 TCR – tribal cultural resources

<sup>1</sup> in accordance with 21080.3.1(b)(1), consultation is triggered by a tribe notifying the Lead Agency in writing of its desire to consult. This does not preclude optional tribal consultation with tribes who did not send a general request letter, but in such a case, said consultation does not technically fall under AB 52.

<sup>2</sup> e.g., preservation and avoidance; protecting cultural character, traditional use, and confidentiality; and use of conservation easements.

<sup>3</sup> even absent formal tribal consultation, the CEQA document must still address impacts to TCRs, which should, at minimum, include results of a search of the Sacred Lands File by the NAHC.

# AB 52 Screening Process

Is this a "Project" as defined by CEQA?

CEQA Section 15378 defines a "Project" as the whole of an action, which has a potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and is any of the following:

1. An activity directly undertaken by a public agency; and/or
2. An activity which is supported in whole or in part through public agency grants, subsidies, loans, or other forms of assistance; and/or
3. An activity requiring the issuance of an entitlement by a public agency (e.g., lease, permit, license, etc.)

NO

YES

The action **is not** subject to AB 52 consultation.

Is the Project described in a Statutory Exemption?

The Legislature has established a variety of statutory exemptions. These exemptions are delineated in PRC § 21080 et seq. A statutory exemption applies to any given project that falls under its definition, regardless of the project's potential impacts to the environment. Examples of Statutory Exemptions are: ministerial projects; projects that are not approved by an agency; the establishments of rates, tolls, and fares; and projects located outside of California, for example.

NO

YES

Is the Project subject to a Categorical Exemption?

The action **is not** subject to AB 52 consultation.

Categorical Exemptions are classes of projects that generally are considered not to have potential impacts on the environment (CEQA Guidelines Sections 15300-15331). They are not allowed to be used for: 1) projects with unusual circumstances that may result in a significant impact (CEQA Guidelines Section 15300.2), such as the project's location in an area with a sensitive environmental resource; and 2) for projects that may cause a substantial adverse change in the significance of a historical resource (CEQA Guidelines Section 15300.2(f), which includes but is not limited to Tribal Cultural Resources). Therefore, lead agencies must first determine if there is a potential to significantly impact a historical resource or Tribal Cultural Resource prior to determining if a categorical exemption may be used for any given project.

NO

YES

Was a Notice of Preparation for an EIR, or a Notice of Intent to Adopt an ND or MND, published for this project prior to July 1, 2015?

Consult with Agency Legal Counsel to determine if AB 52 applies for this specific category of projects.

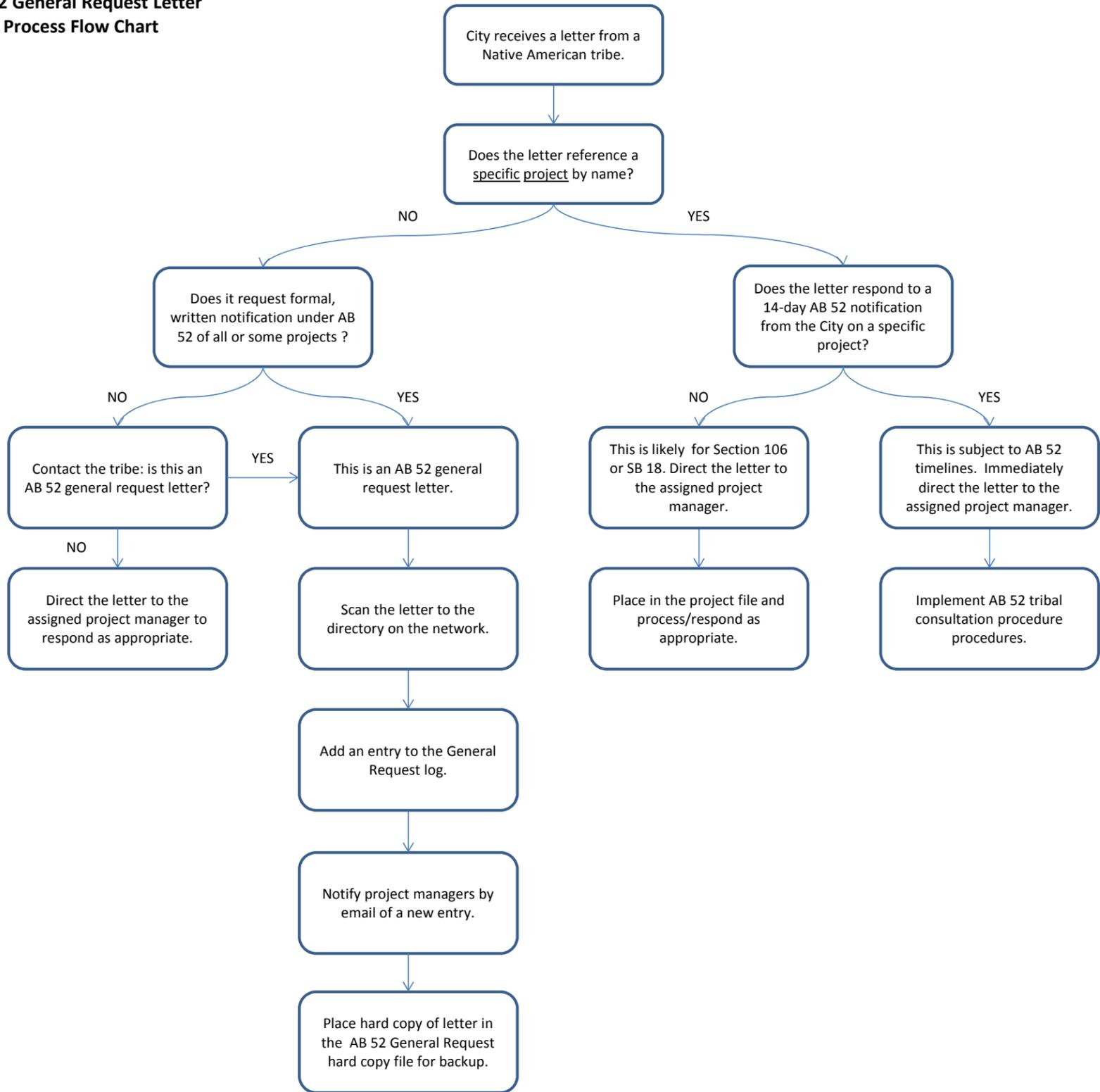
NO

YES

The action **is** subject to AB 52 consultation.

The action **is not** subject to AB 52 consultation.

**AB 52 General Request Letter  
Process Flow Chart**





A digital file structure for the tribal consultation administrative record will:

- ensure a consistent and organized mechanism across projects;
- allow for ease in assembling a legally defensible administrative record for use in staff packets presented to elected and appointed officials;
- allow for faster assembly of summaries for authoring sections in CEQA documents;
- provide another level of quality assurance for the system;
- take correspondence out of individual staff emails and files and place them into an accessible venue with backup capabilities; and
- in the unlikely event of a lawsuit, allow for exporting of the entire directory in a zip file.

The file structure presented below is suggested as a “module” directly that can be plugged into every project directory on the network. The contents of each folder will vary by project, depending on the nature of the consultation, but the structure should remain consistent. Staff are discouraged from keeping these directors on C:/ drives of their workstations or maintaining hard-copy-only consultation records (hard copy originals should be kept in the paper project files, but only after scanning to the directory).

The primary (highest) level of the directory is called “**AB 52 Tribal Consultation Record**” and it contains six secondary directories, as illustrated below in Figure 1.

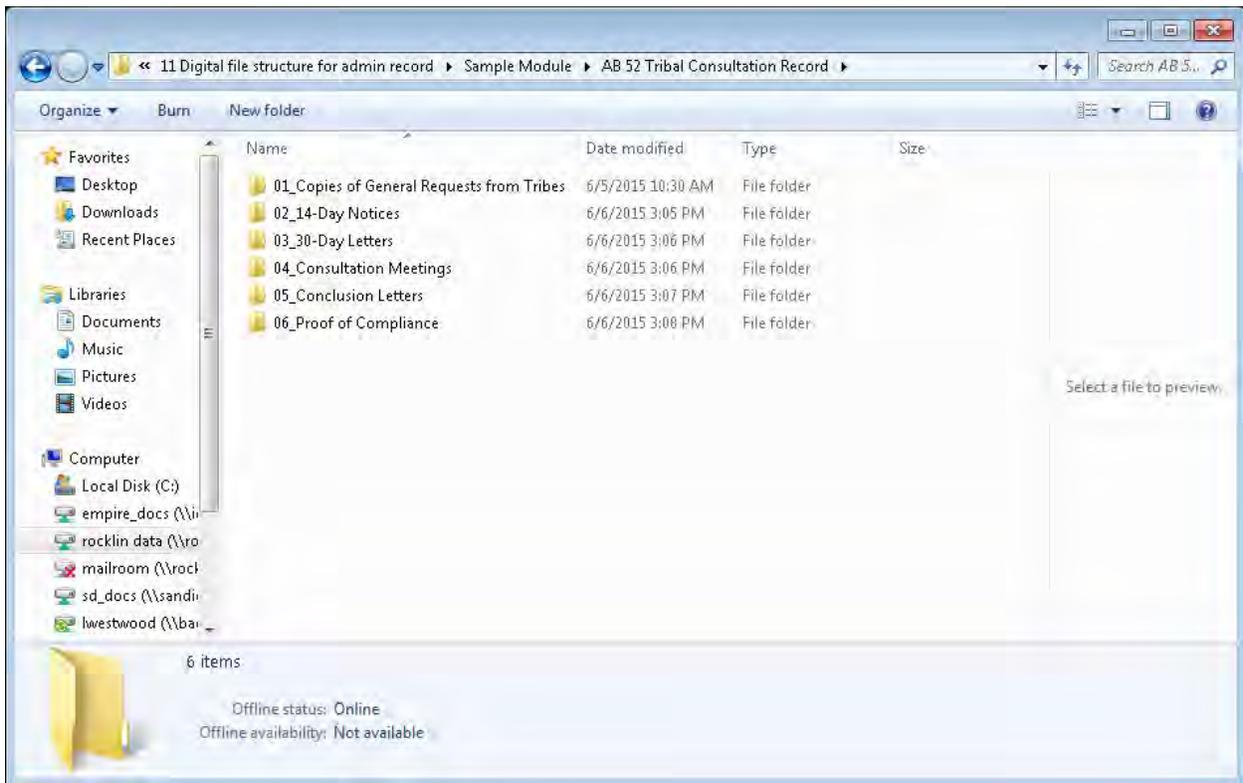
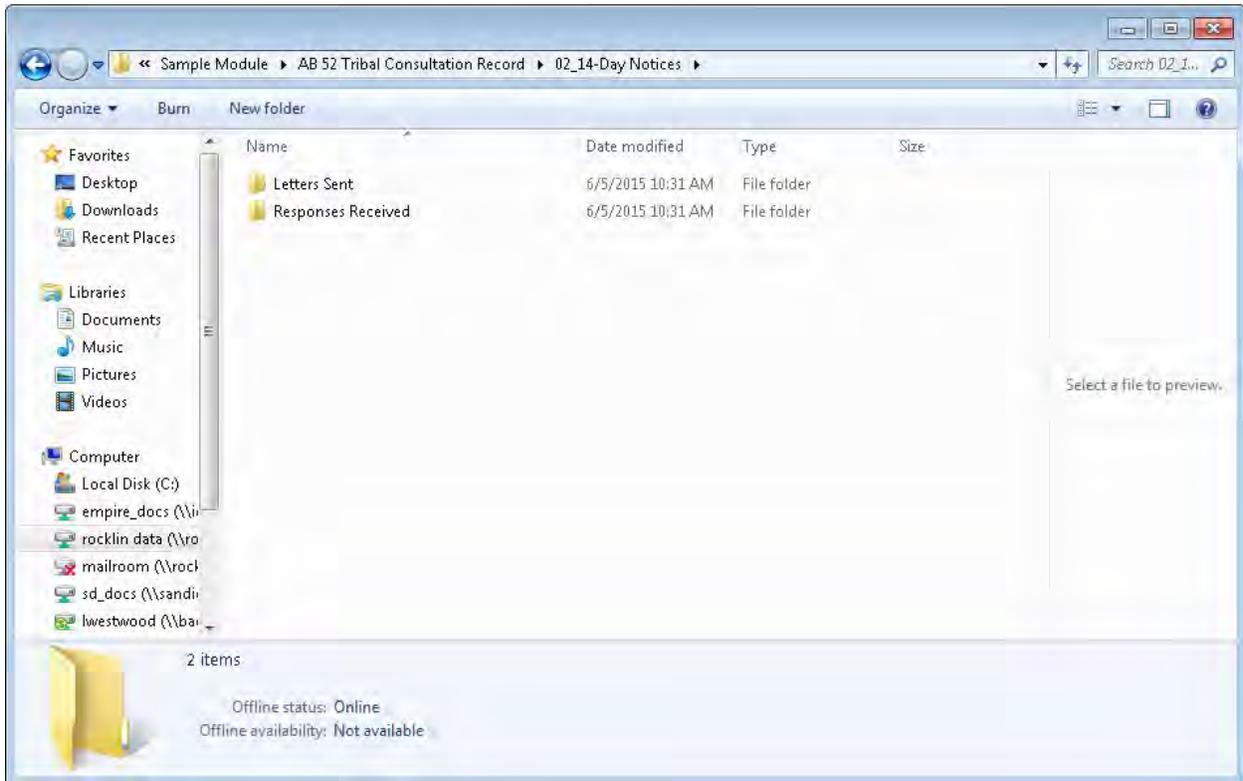


Figure 1. Overall File Structure

**01\_Copies of General Requests from Tribes:** this directory will be used to store duplicate copies (preferably) or shortcuts to all relevant general requests from tribes that pertain to the project. The purpose of this folder is not only for ease in assembling the consultation record for the project, but also to document which tribes had general request letters on file at the time CEQA began. This may become more important to document as time goes on, particularly because general request letters may be received long after a CEQA process has begun.

**02\_14-Day Notices:** this directory will store two sets of documentation – copies of letters sent and all incoming correspondence. The basic file structure provided allows for two subdirectories, as shown in Figure 2; however, further subdivision of each folder may be necessary when numerous tribes are being contacted. Organization of the consultation record is critical because it is always possible that a challenge to the AB 52 process for any given project will occur after the assigned staff departs the County’s employment.

The contents of the “**Letters Sent**” directory should include: 1) the project description and location map that was enclosed with each letter; 2) the Word version of each letter sent; 3) a scanned (PDF) copy of each letter after it was printed on letterhead and signed and before mailing OR if the letter is placed on digital letterhead and a digital signature is inserted, a PDF of the letter as it was printed; and 4) copies of certified mail / return receipts to verify delivery.

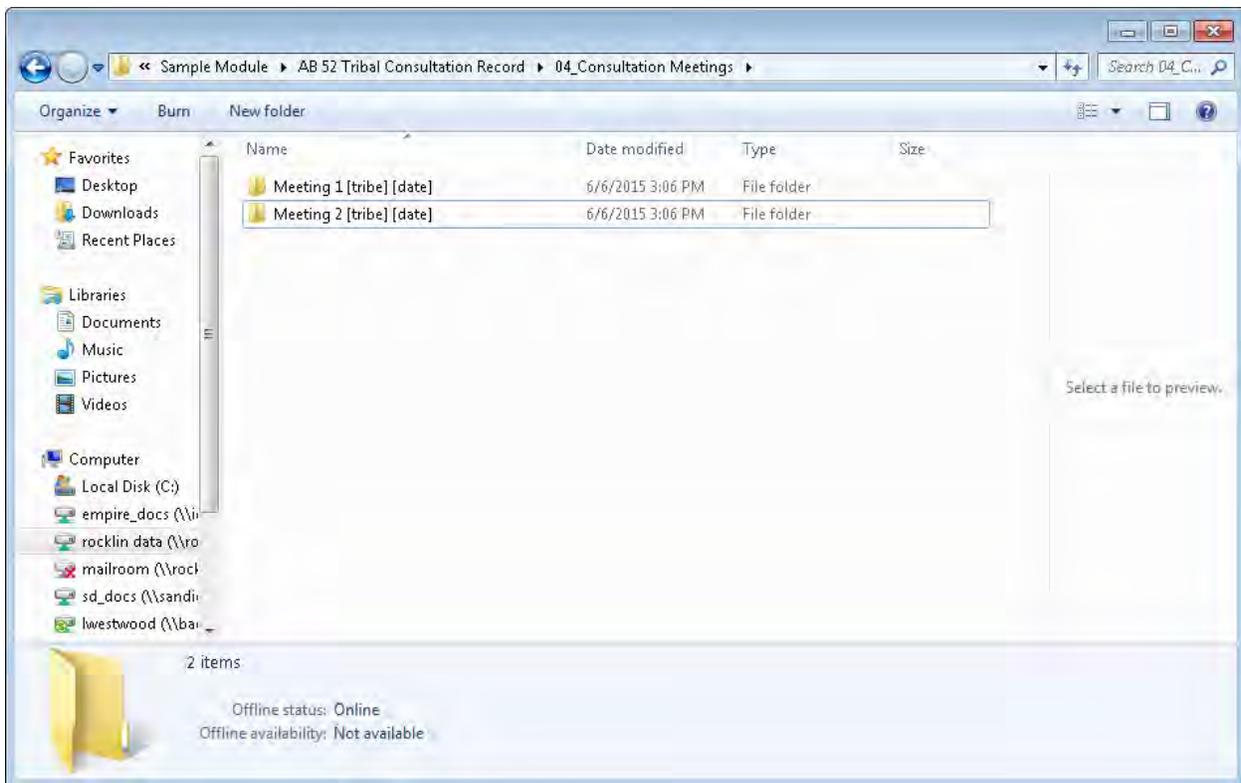


**Figure 2. Internal Structure of 14-day Notices Directory**

The contents of the “**Letters Received**” directory should include: 1) a scan of each hard copy letter received including a scan of the postmarked envelope (in case there is a discrepancy between the date of the letter and the day it was received); 2) a PDF of each email response received; and 3) a scan of each returned-to-sender envelope and the letter contained therein. Once the initial responses are received and placed into this directory, subsequent correspondence will be placed in other subdirectories shown in Figure 1.

**03\_30-Day Letters:** this directory is structured in a similar manner to the 14-day directory (Figure 2). This directory will store two sets of documentation – copies of letters sent and all incoming correspondence (refer to the paragraphs in the section above for examples of correspondence included in these folders). The only difference is that this directory will not include any project description information; that is only sent with the initial 14-day letters.

**04\_Consultation Meetings:** this directory will store and organize correspondence and documentation on a meeting-by-meeting basis. Internal subdirectories, like the one shown in Figure 3, will serve to sort by meeting date.



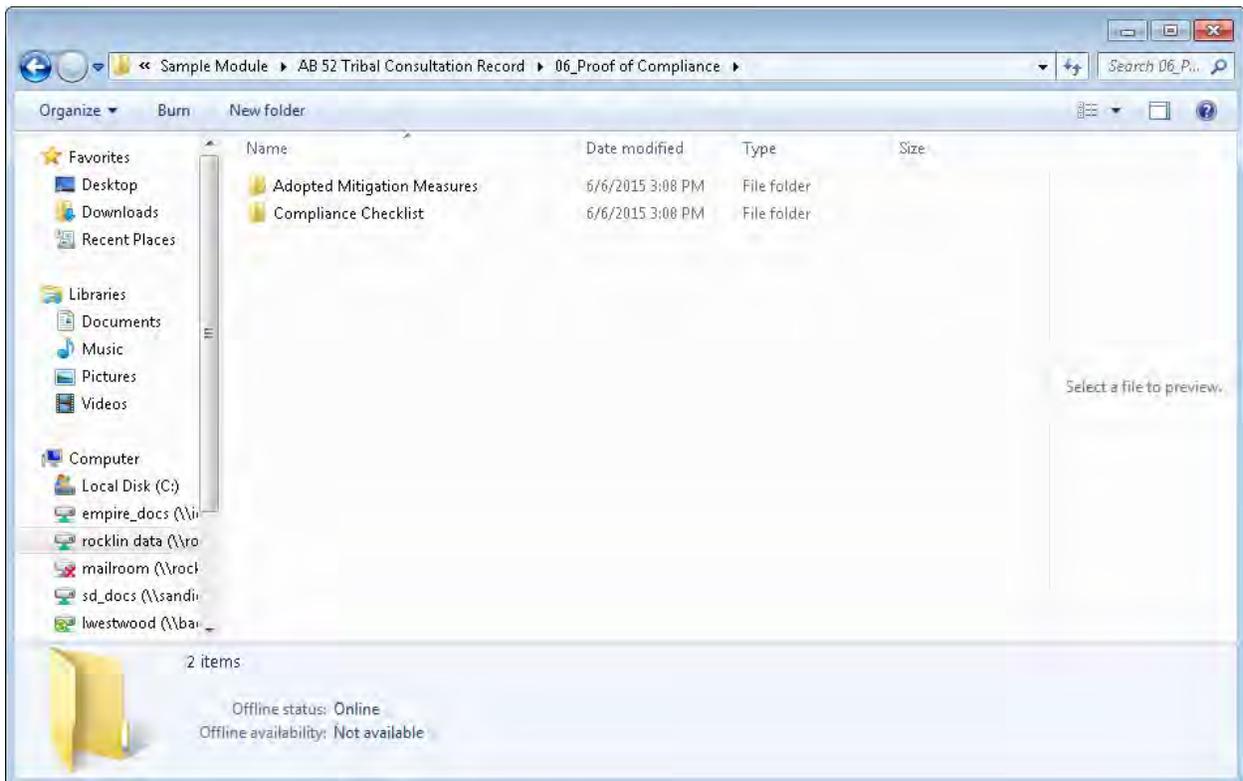
**Figure 3. Internal structure of Consultation Meetings directory (note: insert the name of the tribe and date of the meeting where indicated in brackets)**

The contents of each meeting folder will vary, but would be expected to include: meeting attendance rosters; agendas; minutes or notes; records of conversation for phone meetings; documentation as to whether or not the tribe requested a discussion of alternatives and if so,

the details of that discussion; confidential information about tribal cultural resources provided by a tribe; and any other pertinent documentation. The folders shown in Figure 3 could, if necessary, be placed into a single folder with the name of the tribe, or could be renamed to "ROC" (Record of Conversation) if the correspondence was not in a typical meeting format. As long as the contents of this directory are well organized, variations are acceptable and encouraged.

**05\_Conclusion Letters:** this directory will keep the final letters that terminate consultation under AB 52 when one of the two criteria for termination is met. The documentation stored in this directory will only consist of outgoing letters to consulting tribes, as no responses are expected or requested in the termination of consultation letter. The contents of this directory would include: 1) the Word version of each letter sent; 2) a scanned (PDF) copy of each letter after it was printed on letterhead and signed and before mailing OR if the letter is placed on digital letterhead and a digital signature is inserted, a PDF of the letter as it was printed; and 3) copies of certified mail / return receipts to verify delivery.

**06\_Proof of Compliance:** this directory will house the adopted (or to-be-adopted) mitigation measures (if any) and the compliance verification checklist, at a minimum, as illustrated in Figure 4. Depending on the project, additional management tools, such as internal notes and justifications for certain actions, may be appropriate.



**Figure 4. Structure of the Proof of Compliance directory**

Click here to enter a date.

Click here to enter text.

RE: Notice of Opportunity to Consult for the Click here to enter text. (PCCP Identification Number Click here to enter text.)

Dear Click here to enter text.:

On Click here to enter a date., the Choose an item. initiated environmental review under the California Environmental Quality Act (CEQA) for the Click here to enter text., a Click here to enter text., specifically located Click here to enter text.. A project location map and detailed project description are enclosed for your information.

In accordance with Assembly Bill 52 (AB 52) and Section 21080.3.1(d) of the California Public Resources Code (PRC), we are responding to your request to be notified of projects in our jurisdiction that will be reviewed under CEQA. Your name was provided to us as the point of contact for your tribe. We are hereby notifying you of an opportunity to consult with us regarding the potential for this project to impact Tribal Cultural Resources, as defined in Section 21074 of the PRC. The purposes of tribal consultation under AB 52 are to determine, as part of the CEQA review process, whether or not Tribal Cultural Resources are present within the project area, and if so, whether or not those resources will be significantly impacted by the project. If Tribal Cultural Resources may be significantly impacted, then consultation will also help to determine the most appropriate way to avoid or mitigate those impacts.

In accordance with Section 21080.3.1(d) of the PRC, you have 30 days from the receipt of this letter to either request or decline consultation in writing for this project. Please send your written response before Click here to enter a date. to Click here to enter text. or by email to Click here to enter text.. In your response, please reference the following project number: Click here to enter text.. If we do not receive a response within 30 days, we will proceed. Thank you and we look forward to your response.

Respectfully,

Click here to enter text.

cc: Project File

[DATE]

*Via Electronic Mail  
Hardcopy to Follow via  
U.S. Postal Service Certified Mail and Return Receipt*

[TRIBAL CONTACT  
NAME/ADDRESS]

RE: Initiation of Consultation for the XXXX Project in XXXX County, California

Dear Chairman XXXX:

On [DATE], the [AGENCY NAME] formally notified you of an opportunity to consult under AB 52 for the proposed XXXX Project in XXXX County. On [DATE], we received a response from XXXXX, indicating a desire to consult with us regarding potential impacts to Tribal Cultural Resources associated with the proposed project. We look forward to consulting with the [TRIBE NAME] on this project.

In accordance with AB 52 and Section 21080.3.1(e) of the California Public Resources Code, we are hereby initiating consultation with you. We would like to invite you to a project orientation meeting on [DATE, TIME] to discuss the project and determine the best way to continue consultation. Our office is located at XXXXX. Additional contact information can be found on our website, XXXXXX.

If you or your representatives are unable to attend, please contact me to schedule an alternate date. In addition, if you are not able to personally participate in the consultation, I respectfully request that you provide me with a written delegation of authority to those who will consult with us on your behalf.

If you have any questions, you may contact me by mail at the address noted in the letterhead above, or by phone at XXXXX. Thank you and we look forward to consulting with you.

Respectfully,

XXXX

cc: XXXX



## AB 52 Tribal Consultation Record of Conversation

**Project:** Click here to enter text.

**Project Number:** Click here to enter text.

**Date:** Click here to enter a date.

**Participants (Name/Affiliation):** Click here to enter text.

**Meeting Venue:** Click here to enter text.

---

**Summary of discussion:** Click here to enter text.

---

Check here if the tribe requested a discussion on **alternatives**, pursuant to PRC 21080.3.2(a).

Summarize alternatives discussion, if it was requested: Click here to enter text.

---

Check here if the tribe recommended **mitigation measures**

Summarize the mitigation measures discussed: Click here to enter text.

---

### Action Items:

City: Click here to enter text.

Target Deadline: Click here to enter a date.

Tribe: Click here to enter text.

Target Deadline: Click here to enter a date.

## AB 52 Tribal Consultation Phone Log

**Project:** Click here to enter text.

**Project Number:** Click here to enter text.

**Date:** Click here to enter a date.

**Time:** Click here to enter text.

**Caller:** Click here to enter text.

**Person Called:** Click here to enter text.

**Phone Number:** Click here to enter text.

---

Check here if a detailed voicemail was left.

Check here if telephone contact with the recipient was made.

Summary of discussion: Click here to enter text.

Click here to enter a date.

Click here to enter text.

RE: Conclusion of Consultation for the Click here to enter text. (PCCP Identification Number Click here to enter text.)

Dear Click here to enter text.:

Thank you for the opportunity to consult with you on potential impacts to Tribal Cultural Resources for the Click here to enter text. project. I am writing to you to summarize and conclude the consultation under Assembly Bill (AB) 52 and notify you of our intention to Choose an item. for this project, pursuant to Section 21082.3(d) of the California Public Resources Code (PRC).

On Click here to enter a date., we received a written request from you to be consulted on projects within our jurisdiction. On Click here to enter a date., within 14 days of determining that an application was complete, we notified you by letter of the opportunity to consult on this project. On Click here to enter a date., we received a written request from you to consult. We subsequently initiated consultation with you on Click here to enter a date.. As part of that consultation, which included a meeting on Click here to enter a date., we determined that Tribal Cultural Resources are located within the project area and could be significantly impacted by the project. Through consultation, we came to consensus about appropriate mitigation measures. Therefore, we have incorporated the following mitigation measures into the CEQA document:

Click here to enter text.

Therefore, pursuant to Section 21082.3.2(b)(1), we hereby conclude consultation under CEQA and AB 52 for this project, and appreciate the opportunity to consult with you.

Respectfully,

Click here to enter text.

cc: Project File

Click here to enter a date.

Click here to enter text.

RE: Conclusion of Consultation for the Click here to enter text. (PCCP Identification Number Click here to enter text.)

Dear Click here to enter text.:

Thank you for the opportunity to consult with you on potential impacts to Tribal Cultural Resources for the Click here to enter text. project. I am writing to you to summarize and conclude the consultation under Assembly Bill (AB) 52 and notify you of our intention to Choose an item. for this project, pursuant to Section 21082.3(d) of the California Public Resources Code (PRC).

On Click here to enter a date., we received a written request from you to be consulted on projects within our jurisdiction. On Click here to enter a date., within 14 days of determining that an application was complete, we notified you by letter of the opportunity to consult on this project. On Click here to enter a date., we received a written request from you to consult. We subsequently initiated consultation with you on Click here to enter a date.. As part of that consultation, which included a meeting on Click here to enter a date., we sought information about Tribal Cultural Resources that could be significantly impacted by the project. Although we were not able to come to consensus, we have incorporated the following mitigation measures into the CEQA document:

Click here to enter text.

Therefore, pursuant to Section 21080.3.2(b)(2), we hereby conclude consultation under CEQA and AB 52 for this project, and appreciate the opportunity to consult with you.

Respectfully,

Click here to enter text.

cc: Project File

Click here to enter a date.

Click here to enter text.

RE: Conclusion of Consultation for the Click here to enter text. (PCCP Identification Number Click here to enter text.)

Dear Click here to enter text.:

Thank you for the opportunity to consult with you on potential impacts to Tribal Cultural Resources for the Click here to enter text. project. I am writing to you to summarize and conclude the consultation under Assembly Bill (AB) 52 and notify you of our intention to Choose an item. for this project, pursuant to Section 21082.3(d) of the California Public Resources Code (PRC).

On Click here to enter a date., we received a written request from you to be consulted on projects within our jurisdiction. On Click here to enter a date., within 14 days of determining that an application was complete, we notified you by letter of the opportunity to consult on this project. On Click here to enter a date., we received a written request from you to consult. Our attempts to Choose an item. were not successful, and therefore, we have reviewed the information available to us about Tribal Cultural Resources and have determined that there Choose an item. be a significant impact. Therefore, we have incorporated the following mitigation measures into the CEQA document:

Click here to enter text.

Therefore, pursuant to Section 21082.3(d)(3), we hereby conclude consultation under CEQA and AB 52 for this project, and appreciate the opportunity to consult with you.

Respectfully,

Click here to enter text.

cc: Project File

## AB 52 Compliance Verification

**Project Name:** Click here to enter text.

**Project Number:** Click here to enter text.

---

### Screening Checklist

**Result:** project  **is**  **is not** subject to AB 52 consultation

**Date determined:** Click here to enter a date.

**Staff:** Click here to enter text.

**Comments:** Click here to enter text.

---

**Date of Decision to Initiate CEQA:** Click here to enter a date. **Staff:** Click here to enter text.

(reminder: 14-day notification letters must be sent by Click here to enter a date.)

---

### Review of General Consultation Request Directory

**Date reviewed:** Click here to enter a date.

**Staff:** Click here to enter text.

The following letters are on file with the County and pertain to this project, and constitute the tribes that will be consulted under AB 52 for this project:

**Tribe:** Click here to enter text.

**Letter date:** Click here to enter a date.

**Tribe:** Click here to enter text.

**Letter date:** Click here to enter a date.

**Tribe:** Click here to enter text.

**Letter date:** Click here to enter a date.

**Tribe:** Click here to enter text.

**Letter date:** Click here to enter a date.

**Tribe:** Click here to enter text.

**Letter date:** Click here to enter a date.

---

### 14-day Notification Letters

**Letter date:** Click here to enter a date. **Mailed date:** Click here to enter a date.

**Method:** Choose an item.  
CEQA.

**Mailed date is:** Click here to enter text.days past start of

**30-day response window ends:** Click here to enter a date.

**Comments:** Click here to enter text.

---

### Responses Received from 14-day Notification Letters

**Tribe:** Click here to enter text.

**Date:** Click here to enter a date. **Response:** Choose an item.

**Tribe:** Click here to enter text.

**Date:** Click here to enter a date. **Response:** Choose an item.

**Tribe:** Click here to enter text.

**Date:** Click here to enter a date. **Response:** Choose an item.

**Tribe:** Click here to enter text.

**Date:** Click here to enter a date. **Response:** Choose an item.

**Tribe:** Click here to enter text.

**Date:** Click here to enter a date. **Response:** Choose an item.

*Note: for tribes accepting consultation invitation, initiation must occur within 30 days of receiving the response, not 30 days from the end of the 30-day response period.*

---

### Initiation of Consultation

check here if no tribes requested consultation

The following letters were sent to consulting tribes to initiate consultation:

**Tribe:** Click here to enter text. **Date:** Click here to enter a date.

**Tribe:** Click here to enter text. **Date:** Click here to enter a date.

**Tribe:** Click here to enter text. **Date:** Click here to enter a date.

**Tribe:** Click here to enter text. **Date:** Click here to enter a date.

**Tribe:** Click here to enter text. **Date:** Click here to enter a date.

---

### Consultation

Indicate for each tribe consulted whether or not it requested a discussion on alternatives and whether or not it recommended mitigation measures. Refer to consultation record for details.

**Tribe:** Click here to enter text.  
measures

requested alternatives

recommended mitigation

**Tribe:** Click here to enter text.  
measures

requested alternatives

recommended mitigation

**Tribe:** Click here to enter text.  
measures

requested alternatives

recommended mitigation

**Tribe:** Click here to enter text.  
measures

requested alternatives

recommended mitigation

**Tribe:** Click here to enter text.  
measures

requested alternatives

recommended mitigation

---

### Conclusion of Consultation

**Tribe:** Click here to enter text.

Concurrence:  **was**  **was not** achieved with the County for the following reason: Click here to enter text.

**Tribe:** Click here to enter text.

Concurrence:  **was**  **was not** achieved with the County for the following reason: Click here to enter text.

**Tribe:** Click here to enter text.

Concurrence:  **was**  **was not** achieved with the County for the following reason: Click here to enter text.

**Tribe:** Click here to enter text.

Concurrence:  **was**  **was not** achieved with the County for the following reason: Click here to enter text.

**Tribe:** Click here to enter text.

Concurrence:  **was**  **was not** achieved with the County for the following reason: Click here to enter text.

---

### Required Mitigation Measures

MM-TCR 1: Click here to enter text.

MM-TCR 2: [Click here to enter text.](#)

MM-TCR 3: [Click here to enter text.](#)

---

### **Consultation Termination Letters**

**Letter date:** [Click here to enter a date.](#) **Mailed date:** [Click here to enter a date.](#)

**Method:** Choose an item.

---

## 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.

*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 descendents 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 recommend 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 resources 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.

If you wish to modify the structure of any form, please follow these instructions.

Make sure your Developer tab is on the ribbon at the top of the screen. If not, then first go to File, Options, Customize Ribbon, and on the right side, find Developer and check the box.

On the Developer tab, make sure you are not in Design Mode. Then click Restrict Editing. In the window that pops up on the right, click Stop Protection. In the Password box, type **PCCP**.

Click Design Mode and make the desired changes to the form.

In order to use the form again, go to the Developer tab, click Restrict Editing, and in the Editing restrictions area, check the box and select Filling in forms from the drop down list. Then click Yes, Start Enforcing Protection and enter a password (you can either use **PCCP** again, or you can enter a new one).

To make changes to the drop-down lists in some of the letters (e.g., the names of divisions within departments), follow these instructions:

Make sure your Developer tab is on the ribbon at the top of the screen. If not, then first go to File, Options, Customize Ribbon, and on the right side, find Developer and check the box.

On the Developer tab, make sure you are not in Design Mode. Then click Restrict Editing. In the window that pops up on the right, click Stop Protection. In the Password box, type **PCCP**.

Click Design Mode. Click on the field that you wish to add drop-down options to. Click the Properties button. In the pop-up window, look toward the bottom. Click on the item and then either Modify or Remove, or click Add to add a new option. Click OK, then click off the Design Mode button.

In the Restrict Formatting and Editing window, click Yes, Start Enforcing Protection, and enter a password (you can either use **PCCP** again, or you can enter a new one).

Note: upon submission, the default password was "**PCCP**" without quotes.



**Discussion Draft Technical Advisory:  
AB 52 and Tribal Cultural Resources in CEQA  
(May 2015)**

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## I. Purpose

The purpose of this advisory is to provide guidance to lead agencies regarding recent changes to the California Environmental Quality Act requiring consultation with California Native American tribes and consideration of tribal cultural resources. It summarizes the reasons for the legislative changes, and explains the substantive and procedural requirements that go into effect on July 1, 2015. Finally, it summarizes relevant case law, and provides a list of additional resources.

## II. Legislative Intent

The legislature added the new requirements regarding tribal cultural resources in [Assembly Bill 52 \(Gatto, 2014\)](#). By including tribal cultural resources early in the CEQA process, the legislature intended to ensure that local and Tribal governments, public agencies, and project proponents would have information available, early in the project planning process, to identify and address potential adverse impacts to tribal cultural resources. By taking this proactive approach, the legislature also intended to reduce the potential for delay and conflicts in the environmental review process. ((AB 52 § 1 (b)(7).)<sup>1</sup>

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<sup>1</sup> [Assembly Bill 52 \(Gatto, 2014\)](#). Section 1 of the bill states the legislature’s intent as follows: 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

(AB 52, § 1(b).) To accomplish those goals, the legislature added or amended the following sections in the Public Resources Code: [21073](#), [21074](#), [21080.3.1](#), [21080.3.2](#), [21082.3](#), [21083.09](#), [21084.2](#), and [5097.94](#). These changes are summarized below.

### **III. Summary of New Requirements for Consultation and Tribal Cultural Resources**

The Public Resources Code now establishes that “[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.” ([Pub. Resources Code, § 21084.2](#).)

To help determine whether a project may have such an effect, the Public Resources Code requires a lead agency to consult with any California Native American tribe that requests consultation and is traditionally and culturally affiliated with the geographic area of a proposed project. That consultation must take place prior to the determination of whether a negative declaration, mitigated negative declaration, or environmental impact report is required for a project. ([Pub. Resources Code, § 21080.3.1](#).)

If a lead agency determines that a project may cause a substantial adverse change to tribal cultural resources, the lead agency must consider measures to mitigate that impact. [Public Resources Code §20184.3 \(b\)\(2\)](#) provides examples of mitigation measures that lead agencies may consider to avoid or minimize impacts to tribal cultural resources.

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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 § 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.

These new rules apply to projects that have a notice of preparation for an environmental impact report or negative declaration or mitigated negative declaration filed on or after July 1, 2015. Specific provisions of the new law are described in more detail below.

### **A. Definition of Tribal Cultural Resources**

New § [21074](#) of the Public Resources Code defines “tribal cultural resources.” In brief, in order to be considered a “tribal cultural resource,” a resource must be either:

- (1) listed, or determined to be eligible for listing, on the national, state, or local register of historic resources, or
- (2) a resource that the lead agency chooses, in its discretion, to treat as a tribal cultural resource.<sup>2</sup>

In the latter instance, the lead agency must determine that the resource meets the criteria for listing in the state register of historic resources<sup>3</sup>. In applying those criteria, a lead agency must

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<sup>2</sup> [Pub. Resources Code, § 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 [§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 [§5024.1](#). In applying the criteria set forth in subdivision (c) of [§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 [§21084.1](#), a unique archaeological resource as defined in subdivision (g) of [§21083.2](#), or a “nonunique archaeological resource” as defined in subdivision (h) of [§21083.2](#) may also be a tribal cultural resource if it conforms with the criteria of subdivision (a).

<sup>3</sup> Pub. Resources Code [§ 5024.1](#) (c): A resource may be listed as an historical resources in the California Register if it meets any of the following National Register of Historic Places criteria:

(1) Is associated with events that have made a significant contribution to the broad patterns of California’s history and cultural heritage.

(2) Is associated with the lives of persons important in our past.

consider the value of the resource to the tribe. For example, in considering the criterion that a resource is “associated with the lives of persons important in our past,” a lead agency would ask whether the resource is associated with the lives of persons important to the *relevant tribe*’s past. That determination must be supported with substantial evidence.<sup>4</sup> Note that because the statute gives lead agencies discretion regarding how to treat non-listed resources, evidence of a fair argument is insufficient by itself to compel a lead agency to treat it as a tribal cultural resource if the lead agency determines otherwise. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal. 4th 1086, 1117 (“the fair argument standard does not govern ...’ an agency’s determination of whether a building qualifies as a ‘historical resource’”) (quoting *Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039, 1072).)

## B. Consultation

Public Resources Code [§ 21080.3.1\(a\)](#) defines “consultation” with a cross-reference to [Government Code § 65352.4](#), which applies when local governments consult with tribes on certain planning documents. That section states:

“consultation” means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties’ cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party’s sovereignty. Consultation shall also recognize the tribes’ potential needs for confidentiality with respect to places that have traditional tribal cultural significance. (Gov. Code, [§ 65352.4](#).)

OPR’s [Tribal Consultation Guidelines](#) provide further explanation of what “consultation” means.<sup>5</sup> For example, the *Guidelines* explain that consultation “is a process in which both the

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(3) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual or possesses high artistic values.

(4) Has yielded, or may be likely to yield, information important in prehistory or history.

<sup>4</sup> Public Resources Code [§ 21080](#) (e) defines “substantial evidence” to mean “fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.” Notably, new [§ 21080.3.1\(a\)](#) states: “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.”

<sup>5</sup> Since 2004, cities and counties have had to consult with California Native American Tribes before adoption or amendment of a general plan, specific plan or designation of open space. (Gov. Code, [§ 65352.4](#), “Senate Bill 18” (Burton, Chapter 905, Statutes of 2004).) The Tribal Consultation Guidelines explain those requirements in detail. The new requirements in the Public Resources Code do not change those ongoing responsibilities. In instances in which the

tribe and local government invest time and effort into seeking a mutually agreeable resolution for the purpose of preserving or mitigating impacts to a cultural place, where feasible.” (At p. 15.) It further states:

Effective consultation is an ongoing process, not a single event. The process should focus on identifying issues of concern to tribes pertinent to the cultural place(s) at issue – including cultural values, religious beliefs, traditional practices, and laws protecting California Native American cultural sites – and on defining the full range of acceptable ways in which a local government can accommodate tribal concerns. (At p. 16.)

The new provisions in the Public Resources Code enumerate topics that may be addressed during consultation, including tribal cultural resources, the potential significance of project impacts, the type of environmental document that should be prepared, possible mitigation measures and project alternatives. (Pub. Resources Code, [§ 21080.3.2\(a\)](#).)

### **C. Timing in the CEQA Process and Consultation Steps**

The new provisions in the Public Resources Code proscribe specific steps and timelines governing the notice and consultation process.

Those steps are summarized below and in the graphic entitled Compliance Timeline and Consultation Process Flowchart in Section V.

- 1) The Native American Heritage Commission will provide each tribe with a list of all public agencies that may be lead agencies under CEQA 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 consultation. This list must be provided on or before July 1, 2016. (Pub. Resources Code, [§ 5097.94](#) (m).)
- 2) If a tribe wishes to be notified of projects within its traditionally and culturally affiliated area, the tribe must submit a written request to the relevant lead agency. (Pub. Resources Code, [§ 21080.3.1](#) (b).)
- 3) Within 14 days of determining that a project application is complete, or to undertake a project, the lead agency must provide formal notification, in writing, to the tribes that have requested notification of proposed projects as described in step 2, above. That notice must include a

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requirements of both the Government Code and the Public Resources Code apply to a project, while there may be substantial overlap, the lead agency must ensure that it complies with the requirements of both statutes.

description of the project, its location, and must state that the tribe has 30 days to request consultation.

4) If it wishes to engage in consultation on the project, the tribe must respond to the lead agency within 30 days of receipt of the formal notification described in step 3, above. The tribe's response must designate a lead contact person. If the tribe does not designate a lead contact person, or designates multiple people, the lead agency shall defer to the individual listed on the contact list maintained by the Native American Heritage Commission.

5) The lead agency must *begin* the consultation process with the tribes that have requested consultation within 30 days of receiving the request for consultation.

6) Consultation concludes when either: 1) the parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource, or 2) a party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code, [§ 21080.3.2](#) (b)(1) & (2).) Note that consultation can also be ongoing throughout the CEQA process.

#### **D. Confidentiality**

Under existing law, environmental documents must not include information about the location of an archeological site or sacred lands or any other information that is exempt from public disclosure pursuant to the Public Records Act. ([Cal. Code Regs. § 15120\(d\)](#); *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 220).<sup>6</sup> Native American graves, cemeteries, and sacred places and records of Native American places, features, and objects are also exempt from disclosure. ( Pub. Resources Code, [§§ 5097.9, 5097.993](#).) This exclusion reflects California's strong policy in favor of protecting Native American artifacts. Confidential cultural resource inventories or reports generated for environmental documents should be maintained by the lead agency under separate cover and shall not be available to the public. (*Clover Valley* at 221, citing Governor's Office of Planning and Research, Cal. Tribal Consultation Guidelines, (Nov. 14, 2005 supp. p. 27).)

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<sup>6</sup> In *Clover Valley*, the trial court denied petitions for writ of mandate challenging a city's approval of a subdivision project. Revisions to the project included transferring prehistoric Native American artifacts for preservation. The city prepared a recirculated draft environmental impact report to analyze the revised project. The locations and specific characteristics of the cultural resources were not described. The city provided additional information briefly describing the characteristics of the cultural resources, the project's effects on them, and planned mitigation measures. The Court of Appeal affirmed the trial court's ruling, holding that the additional information did not require recirculation because the changes were not significant in light of disclosure restrictions pertaining to cultural resources. (Gov. Code, [§ 6254\(r\)](#); Pub. Resources Code, [§§ 5097.9, 5097.993](#); Cal. Code Regs., (d)).

The new provisions in the Public Resources Code include additional rules governing confidentiality during tribal consultation. (Pub. Resources Code, [§21082.3\(c\)](#).)

First, information submitted by a California Native American tribe during the environmental review process may not be included in the environmental document or disclosed to the public without the prior written consent of the tribe. Consistent with current practice, confidential information may be included in a confidential appendix. A lead agency may exchange information confidentially with other public agencies that have jurisdiction over the environmental document. (Pub. Resources Code, [§ 21082.3 \(c\)\(1\)](#).) This confidentiality protection extends to a tribe's comment letter on an environmental document. A lead agency can summarize tribal comment letters in general way, while still maintaining confidentiality consistent with the holding in *Clover Valley*.

Second, an exception to the general rule prohibiting disclosure is that the lead agency and the tribe may share confidential information regarding tribal cultural resources with the project applicant and its agents. In that case, the project applicant is responsible for keeping the information confidential, unless the tribe consents to disclosure in writing, in order to prevent looting, vandalism, or damage to the cultural resource. The project applicant must use a reasonable degree of care to protect the information. Additionally, information that is already publically available, developed by the project applicant, or lawfully obtained from a third party that is not the tribe, lead agency, or another public agency may be disclosed during the environmental review process. (Pub. Resources Code, [§ 21082.3\(c\)\(2\)](#).)

Third, the new law does not affect any existing cultural resource or confidentiality protections. (Pub. Resources Code, [§ 21082.3 \(c\)\(3\)](#).)

Fourth and finally, the lead agency or another public agency may describe the information in general terms in the environmental document. This is so that the public is informed about the basis of the decision, while confidentiality is maintained. (Pub. Resources Code, [§ 21082.3\(c\)\(4\)](#).) The decision in *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200 provides a useful description of how a lead agency may balance the need for confidentiality with disclosure obligations under CEQA.

## **E. Mitigation**

Public agencies shall, when feasible, avoid damaging effects to any Tribal cultural resource. (Pub. Resources Code, [§21084.3 \(a\)](#).)

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, new provisions in the Public Resources Code describe mitigation measures that, if determined by the lead agency to be feasible, may avoid or minimize the significant adverse impacts. (Pub. Resources Code, [§ 21084.3 \(b\)](#).) Examples include:

- (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 (*Ibid.*)

#### **IV. Updating Appendix G**

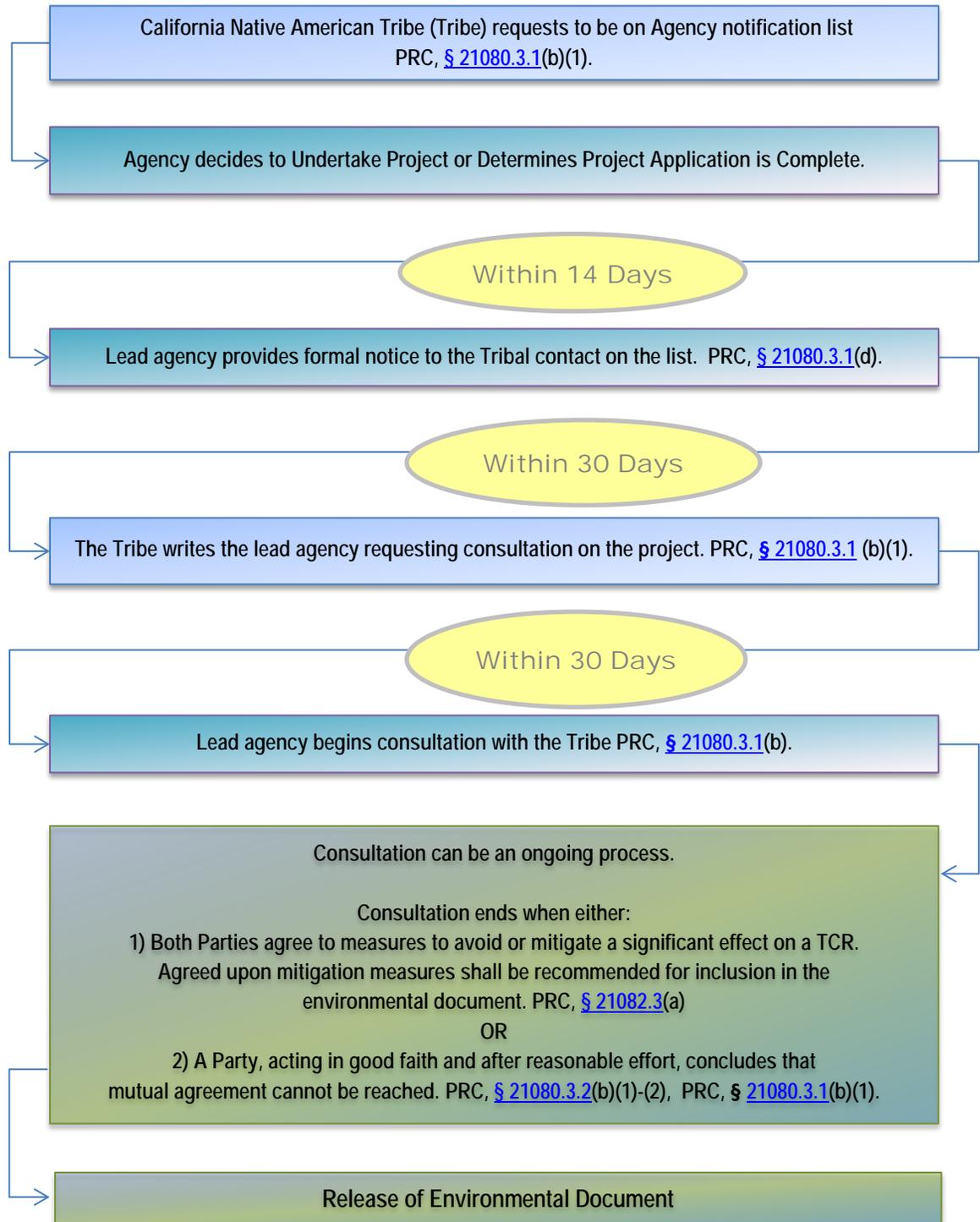
The statute directs OPR to develop proposed updates to the sample initial study checklist in Appendix G of the CEQA Guidelines to do both of the following: (a) separate the consideration of paleontological resources from tribal cultural resources and update the relevant sample questions, and (b) add consideration of tribal cultural resources with relevant sample questions. The Natural Resources Agency must complete its regulatory process for adoption of updates on or before July 1, 2016.

As noted above, the substantive and procedural requirements added in AB 52 go into effect on July 1, 2015. Because the environmental checklist in Appendix G is a *sample* and not mandatory, lead agencies need not wait for the Appendix G update before updating their own procedures.

In this interim period, OPR suggests that lead agencies consider asking the following question in their environmental documents:

*Would the project cause a substantial adverse change in the significance of a tribal cultural resource as defined in Public Resources Code [21074](#)?*

## V. Compliance Timeline and Consultation Process Flowchart



## VI. Bibliography of Resources

### A. California Government Resources

Assembly Bill No. 52 (2013- 2014 Reg. Sess.)

<[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140AB52](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB52)> (as of Feb. 17, 2015).

Senate Bill No. 18 (2003-2004 Reg. Sess.) <[http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb\\_0001-0050/sb\\_18\\_bill\\_20040930\\_chaptered.html](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0001-0050/sb_18_bill_20040930_chaptered.html)> (as of Feb. 17, 2015).

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California Energy Commission, Tribal Consultation Policy (Nov. 2014)

<[http://www.energy.ca.gov/Tribal/documents/2014-11-12\\_Draft\\_Tribal\\_Consultation\\_Policy.pdf](http://www.energy.ca.gov/Tribal/documents/2014-11-12_Draft_Tribal_Consultation_Policy.pdf)> (as of Feb. 17, 2015).

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<<http://dot.ca.gov/hq/tpp/offices/ocp/nalb/>> (as of Feb. 17, 2015).

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California Native American Heritage Commission, California Native American Heritage Commission Web Site (2015) <<http://www.nahc.ca.gov>> (as of Feb. 17, 2015).

### B. Federal Government Resources

Executive Order 13007, 61 Federal Register 26771 (May 24, 1996), regarding Tribal Sacred Sites <<http://www.achp.gov/EO13007.html>> (as of Feb. 17, 2015).

Executive Order 13175, 65 Federal Register 67249 (Nov. 9, 2009) regarding Consultation and Coordination with Indian Tribal Governments <<http://www.whitehouse.gov/the-press-office/memorandum-Tribal-consultation-signed-president>> (as of Feb. 17, 2015).

Advisory Council on Historic Preservation, Working With §106 Web Site (Feb. 13, 2015)

<<http://www.achp.gov/work106.html>> (as of Feb. 17, 2015).

U.S. Department of the Interior, National Parks Service, Guidelines for Evaluating and Registering Archeological Properties (2000) (“Bulletin 36”)

<<http://www.nps.gov/nr/publications/bulletins/pdfs/nrb36.pdf>> (as of Feb. 17, 2015).

U.S. Department of the Interior, National Parks Service, Guidelines for Evaluating and Documenting Traditional Cultural Properties (1990, revised 1998) (“Bulletin 38”)

<<http://www.nps.gov/nr/publications/bulletins/pdfs/nrb38.pdf>> (as of Feb. 17, 2015).

### **C. Cases Interpreting Provisions in the Public Resources Code Governing Analysis of Historic Resources**

*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200 [holding that CEQA does not require a lead agency to disclose confidential information regarding the location and nature of cultural resources sites and that a lead agency need only provide a general description of those resources and mitigation measures in an EIR]

*Citizens for the Restoration of L Street v. City of Fresno* (2014) 229 Cal.App.4th 340 (holding that the fair argument standard does not apply to a lead agency’s discretionary determination of whether a non-listed building or district is an historical resource for purposes of CEQA) (see also *Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039)]



# **AB 52:** A CEQA Guidelines Update for Tribal Cultural Resources

Holly Roberson, JD

Land Use Counsel

Governor's Office of Planning and Research



# AB 52 Presentation Overview

- Context
- Brief Summary
- Definition of Tribal Cultural Resources
- Notice and Timing
- Mitigation Measures
- AB 52 Implementation Timelines
- Consultation Process Explained
- OPR Requirements
- Discussion Questions and Contact Info



# AB 52 in Context

- Key Concepts:
  - Respect Tribal Sovereignty
  - Respect Confidentiality per Pub. Resources Code 21082.3
  - Capacity: Tribal Governments and Lead Agencies vary in the amount of resources they have available to address these issues
- SB 18 (Burton, 2004)
  - Local Governments must Contact and Consult with California Native American Tribes (Tribes)
    - Prior to amendment or adoption of General Plan, Specific Plan, or designation of Open Space.
    - Gov. Code, Planning not CEQA
- Gov. Brown Executive Order B-10-11 (2011)
  - Established the Governor's Tribal Advisor position
  - Established Administration Policy to encourage State Agencies to Communicate and Consult with Californian Tribes



# AB 52 in brief: Include Tribal Cultural Resources in CEQA

- Establishes a consultation process with all California Native American Tribes on the Native American Heritage Commission List-> Fed. And Non Fed. Recognized Tribes
- New class of resources: Tribal Cultural Resources
  - Consideration of Tribal Cultural Values in determination of project impacts and mitigation
  - Required Tribal notice and meaningful consultation
- PRC 21080.3.2(b) Consultation ends when either
  - Parties agree to MMs or avoid a significant effect on TCR
  - A party, acting in **good faith** and after **reasonable effort** concludes that mutual agreement cannot be reached



# Definition of a Tribal Cultural Resource

- A Tribal Cultural Resource is:
  - A site feature, place, cultural landscape, sacred place or object, which is of cultural value to a Tribe
  - AND is either: On or eligible for the CA Historic Register or a local historic register,
  - OR the lead agency, at its discretion, chooses to treat the resource as a TCR
  - See: PRC 21074 (a)(1)(A)-(B)



# Notice and Timing

- Tribe requests to be on the Agency's Notice List
- Within 14 days of a decision to undertake a project or determination that a project application is complete, lead agency shall provide written notification to the tribes that requested placement on notice list
- Notice to Tribes shall include brief project description, location, lead agency contact info., and statement that Tribe has 30 days to request consultation
- Lead agency shall begin the consultation process within 30 days of receiving Tribe's request for consultation



# Mitigation Measures

- Public agencies shall, when feasible, avoid damaging effects to TCR.
- Consultation at Tribal request
- Mitigation measures agreed upon during consultation shall be recommended for inclusion in environmental document /MMRP
- Examples of mitigation measures include:
  - Avoidance and preservation of the resources in place
  - Treating resource with culturally appropriate dignity
  - Permanent conservation easements
  - Protecting the resource



# AB 52 Implementation Timelines

- Law goes into effect on July 1, 2015.
  - After July 1, 2015, if requested by a California Native American Tribe, lead agencies must begin consultation prior to the release of a ND, MND or DEIR. See flowchart for timing.
- CEQA Guidelines update to Appendix G must be drafted by OPR, and adopted by Resources Agency by July 1, 2016



# OPR Requirements

By July 1, 2016, OPR shall develop, & Resources shall adopt, revisions to Appendix G of the CEQA Guidelines to:

- a) Separate the consideration of paleontological resources from Tribal Cultural Resources and update the relevant sample questions; and
- b) Add consideration of Tribal Cultural Resources with relevant sample questions.



# OPR's Process

- Informal Outreach and Listening
- Collaboration with Native American Heritage Commission
- Sign up on CEQA Guidelines Update Listserve at [www.opr.ca.gov](http://www.opr.ca.gov) to stay informed
- California Natural Resources Agency has its own formal process for adoption of changes to the CEQA Guidelines



# Discussion Questions

- Other considerations or things which need clarification, and which are within the scope of the statute?
- Examples of consultation processes that have gone well?



# Keep in touch

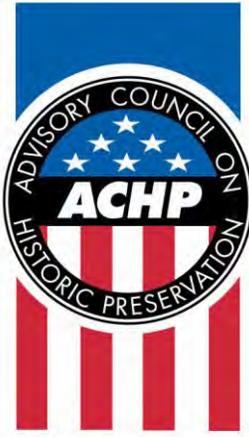
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*Preserving America's Heritage*

CONSULTATION WITH INDIAN TRIBES  
IN THE  
SECTION 106 REVIEW PROCESS:  
A HANDBOOK

December 2012

An independent federal agency, the Advisory Council on Historic Preservation (ACHP) promotes the preservation, enhancement, and productive use of our nation's historic resources and advises the President and Congress on national historic preservation policy. It also provides a forum for influencing federal activities, programs, and policies that affect historic properties. In addition, the ACHP has a key role in carrying out the Administration's Preserve America initiative.

Milford Wayne Donaldson, of Sacramento, California, is chairman of the 23-member council, which is served by a professional staff with offices in Washington, D.C. For more information about the ACHP, contact:

Advisory Council on Historic Preservation  
1100 Pennsylvania Avenue NW, Suite 803  
Washington, D.C. 20004  
Phone: 202-606-8503  
Web site: [www.achp.gov](http://www.achp.gov)

# **Consultation with Indian Tribes in the Section 106 Review Process: A Handbook**

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**Office of Native American Affairs  
Advisory Council on Historic Preservation  
June 2012**



## I. About This Handbook

Many different statutes, regulations, executive orders, and federal policies direct federal agencies to consult with Indian tribes including the National Historic Preservation Act (NHPA), 16 U.S.C. Section 470f). Section 106 of the NHPA requires federal agencies to take into account the effects of their undertakings on historic properties and provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on those undertakings. The ACHP has issued the regulations implementing Section 106 (Section 106 regulations), 36 CFR Part 800, “Protection of Historic Properties.” The NHPA requires that, in carrying out the Section 106 review process, federal agency must consult with any Indian tribe that attaches religious and cultural significance to historic properties that may be affected by the agency’s undertakings.

The ACHP offers this handbook as a reference for federal agency staff responsible for compliance with Section 106. Tribal Historic Preservation Officers (THPOs) and tribal cultural resource managers may also find this handbook helpful. Readers should have a basic understanding of the Section 106 review process as this document focuses only on Section 106 tribal consultation. It is not a source for understanding the full breadth of Section 106 responsibilities, such as consulting with State Historic Preservation Officers (SHPOs), involving the public, or consulting with Native Hawaiian organizations (NHOs).<sup>1</sup>

This handbook will be periodically updated by the ACHP when new information is obtained or laws or policies change. Agencies should also supplement this document with their own agency-specific regulations, directives, policies, and guidance pertaining to tribal consultation. Federal agencies should also be aware that many Indian tribes have their own statutes, regulations, and policies that apply to undertakings on tribal lands.

In addition, federal agency staff may refer questions on the Section 106 review process, and the requirements to consult with Indian tribes within this process, to their agency’s Federal Preservation Officer (FPO).

Finally, agency staff may obtain assistance from the ACHP in understanding and interpreting the requirements of Section 106, including tribal consultation. For general information on the requirements of Section 106, access the ACHP website at <http://www.achp.gov>.

For additional questions about tribal consultation, contact:

Office of Native American Affairs  
Advisory Council on Historic Preservation  
1100 Pennsylvania Ave., NW  
Room 803  
Washington, DC 20004  
[native@achp.gov](mailto:native@achp.gov)

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<sup>1</sup> For information on the requirements to consult with NHOs, visit <http://www.achp.gov>

## **II. Federal Government Consultation with Indian Tribes**

### **A. The Government-to-Government Relationship between the United States and Indian Tribes**

The federal government's unique relationship with each and every Indian tribe is embodied in the U.S. Constitution, treaties, court decisions, federal statutes, and executive orders. This relationship is deeply rooted in history, dating back to the earliest contact between colonial and tribal governments. As the colonial powers did, the United States acknowledges federally recognized Indian tribes as sovereign nations; thus, their interaction takes place on a "government-to-government" basis.

Legally, there is a distinction between Indian tribes who are federally recognized and those who are not. Federal recognition signifies that the U.S. government acknowledges the political sovereignty and Indian identity of a tribe and from that recognition flows the obligation to conduct dealings with that tribe's leadership on a "government-to-government" basis. When federally recognized tribes speak of "government-to-government" consultation, they are often referring to consultation between a designated tribal representative and a designated representative of the federal government.

Executive Order 13175 (2000), *Consultation and Coordination with Tribal Governments* lists as one of its purposes "to strengthen the United States' government-to-government relationships with Indian tribes..." Thus, the government-to-government consultation process continues to embody the unique relationship between the United States and Indian tribes.

Federal agency staff responsible for carrying out tribal consultation should be familiar with the history of the relationship between the U.S. government and Indian tribes because that history may influence the context of consultation.

### **B. The Federal Trust Responsibility Toward Indian Tribes**

The federal government's trust responsibility emanates from the Constitution, Indian treaties, statutes, case law, executive orders, and the historic relationships between the federal government and Indian tribes. It applies to all federal agencies. Each agency defines the scope of its own trust responsibility towards tribes.

This trust responsibility is rooted, in large part, in the treaties through which Indian tribes ceded large portions of their aboriginal lands to the United States in return for promises to protect tribal rights as self-governing nations within the reserved lands (reservations) and certain reserved rights (i.e. aboriginal hunting, fishing, and gathering rights) to resources outside of those reserved lands.

Trust responsibility is legally construed in different forms, depending on the context in which it is invoked and includes: full fiduciary, which arises in the context of federal agency management of tribal assets; the "Indian canons of statutory construction," by which ambiguities in legislation dealing with tribal issues are to be construed liberally in favor of tribes; and, general, which is fulfilled by a federal agency's compliance with general regulations and statutes.

Each agency defines the scope of its trust responsibility to Indian tribes. The ACHP's trust responsibility is to ensure that its regulations implement the requirements of Section 106 of the National Historic Preservation Act and that such regulations incorporate the procedural requirement that federal agencies consult with Indian tribes that attach religious and cultural significance to historic properties that may be affected by their undertakings.

Questions regarding your agency's trust responsibility to Indian tribes should be directed to your tribal liaison/Native American coordinator or office of general counsel. The ACHP neither defines such a scope for others nor advises agencies on this issue.

## C. Legal Requirements and Directives to Consult with Indian Tribes

### 1) Statutes

A number of federal statutes require federal agencies to consult or coordinate with Indian tribes.<sup>2</sup> This section will address only those applicable in the areas of historic preservation, natural resource protection, and cultural resource protection. It is useful to be familiar with these various statutory requirements not only to ensure compliance, but also to explore opportunities to maximize consultation opportunities. For instance, if a project requires compliance with both the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA), it may be helpful to carry out consultation in a comprehensive manner by including discussions about historic properties and natural resources in the same meetings. (Note: The ACHP regulations at 36 CFR. Section 800.8 set out principles and requirements for coordinating or combining NHPA and NEPA procedures.)

In addition, federal agencies should talk with interested Indian tribes as *early in the planning process as possible* to identify any special legal authorities that carry additional requirements for consultation or consideration, such as a treaty that reserves certain tribal rights that could be impinged upon by a proposed project.

### Historic Preservation, Natural Resource Protection, and Cultural Resource Protection Statutes

The following are broad summaries of key federal historic preservation, natural resource protection, and cultural resource protection statutes that require agencies to consult with Indian tribes or accommodate tribal views and practices. This is not an exhaustive list of requirements, nor does it imply that each of these statutes is applicable to each proposed project.

- Amended in 1992, the **National Historic Preservation Act of 1966 (NHPA)** is the basis for tribal consultation in the Section 106 review process. The two amended sections of NHPA that have a direct bearing on the Section 106 review process are:
  - Section 101(d)(6)(A), which clarifies that properties of religious and cultural significance to Indian tribes may be eligible for listing in the National Register of Historic Places; and
  - Section 101(d)(6)(B), which requires that federal agencies, in carrying out their Section 106 responsibilities, consult with any Indian tribe that attaches religious and cultural significance to historic properties that may be affected by an undertaking.

The Section 106 regulations incorporate these provisions and reflect other directives about tribal consultation from executive orders, presidential memoranda, and other authorities.

- Section 106 requires federal agencies to consider the effects of their undertakings on historic properties and to provide the ACHP an opportunity to comment. Also known

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<sup>2</sup> A list of federal authorities that require tribal consultation was compiled by an interagency working group and is available on the ACHP's webpage at [www.achp.gov](http://www.achp.gov).

as the Section 106 review process, it seeks to avoid unnecessary harm to historic properties from federal actions. The procedure for meeting Section 106 requirements is defined in the Section 106 regulations, 36 CFR. Part 800, “Protection of Historic Properties.”<sup>3</sup>

The Section 106 regulations include both general direction regarding tribal consultation and specific requirements at each stage of the review process. (Section 106 is discussed more fully in the next section, “Consultation with Indian Tribes under Section 106 of NHPA.”)

For more information about the NHPA and the ACHP’s regulations, visit [www.achp.gov](http://www.achp.gov)

- **The National Environmental Policy Act of 1969 (NEPA)** requires the preparation of an environmental impact statement (EIS) for any proposed major federal action that may significantly affect the quality of the human environment. While the statutory language of NEPA does not mention Indian tribes, the Council on Environmental Quality (CEQ) regulations<sup>4</sup> and guidance<sup>5</sup> do require agencies to contact Indian tribes and provide them with opportunities to participate at various stages in the preparation of an environmental assessment or EIS. CEQ has issued a Memorandum for Tribal Leaders encouraging tribes to participate as cooperating agencies with federal agencies in NEPA reviews.<sup>6</sup>
- **The American Indian Religious Freedom Act of 1978 (AIRFA)** establishes the policy of the federal government “to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including, but not limited to, access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.”
- **The Native American Graves Protection and Repatriation Act of 1990 (NAGPRA)**, Section 3(c) requires federal land-managing agencies to consult with federally recognized Indian tribes prior the intentional removal or excavation of Native American human remains and other cultural items as defined in NAGPRA from federal lands.
  - On tribal lands, planned excavation requires the consent of the appropriate Indian tribe (43 CFR § 10.3).

In instances where a proposed project that is funded or licensed by a federal agency may cross federal or tribal lands, it is the federal land managing agency that is responsible for compliance with NAGPRA. Detailed information about NAGPRA and its implementing regulations is available at the National Park Service (NPS) National NAGPRA Web site.<sup>7</sup>

## 2) Executive Orders

In many instances, presidential executive orders apply to agencies on an agency-wide or program-wide basis rather than on a project-by-project basis. However, staff responsible for working or coordinating with Indian tribal governments should be familiar with the applicable executive orders and act in accordance with the intent of the directives. Several of the orders specific to consultation with federally recognized Indian tribes include:

<sup>3</sup> Available at <http://www.achp.gov/regs-rev04.pdf>

<sup>4</sup> Available at <http://ceq.hss.doe.gov/nepa/regs/ceq/1506.htm>

<sup>5</sup> Available at <http://ceq.hss.doe.gov/nepa/regs/ej/justice.pdf>

<sup>6</sup> Available at <http://ceq.hss.doe.gov/nepa/regs/cooperating/cooperatingagenciesdistributionmemo.html>

<sup>7</sup> Available at <http://www.cr.nps.gov/nagpra/>

- **Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments”** (2000), directs federal agencies to respect tribal self-government and sovereignty, tribal rights, and tribal responsibilities whenever they formulate policies “significantly or uniquely affecting Indian tribal governments.” The executive order applies to all federal agencies other than those considered independent federal agencies, encouraging “meaningful and timely” consultation with tribes, and consideration of compliance costs imposed on tribal governments when developing policies or regulations that may affect Indian tribes.
- **Executive Order 13007, “Indian Sacred Sites”** (1996), applies to all federally owned lands except “Indian trust lands.” It encourages land managing agencies to:
  - accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners; and
  - avoid adversely affecting the physical integrity of such sites.
- **Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”** (1994), is designed to focus federal attention on the environmental and human health conditions in minority communities and low-income communities. It is also designed to promote non-discrimination in federal programs substantially affecting human health and the environment.
  - Section 6-606 of the order states that, “each federal agency responsibility set forth under this order shall apply equally to Native American programs.”

### III. Consultation with Indian Tribes in the Section 106 Process

*Consultation means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the Section 106 process.* (36 CFR Section 800.16 (f)).

Consultation constitutes more than simply notifying an Indian tribe about a planned undertaking. The ACHP views consultation as a process of communication that may include written correspondence, meetings, telephone conferences, site visits, and e-mails.

The requirements to consult with Indian tribes in the Section 106 review process are derived from the specific language of Section 101(d)(6)(B) of NHPA. They are also based on the unique legal relationship between federally recognized Indian tribes and the federal government embodied in the U.S. Constitution, treaties, court decisions, federal statutes, and executive orders.

Agencies are required to consult with Indian tribes at specific steps in the Section 106 review process. A common misunderstanding is that tribal consultation is only required for undertakings on tribal lands, when, in fact, consultation is also required for undertakings that occur off tribal lands. Tribal consultation for projects off tribal lands is required because the NHPA does not restrict tribal consultation to tribal lands alone and those off tribal lands may be the ancestral homelands of an Indian tribe or tribes, and thus may contain historic properties of religious and cultural significance to them.

#### A. Role of the Tribal Historic Preservation Officer (THPO)<sup>8</sup> in the Section 106 Process

NHPA's 1992 amendments include provisions for Indian tribes to assume the responsibilities of the State Historic Preservation Officer (SHPO) *on tribal lands*, and establish the position of a Tribal Historic Preservation Officer (THPO). The Section 106 regulations use the term "THPO" to mean the Tribal Historic Preservation Officer under Section 101(d)(2) of the NHPA. *Tribal lands* are defined in the NHPA and the ACHP's regulations (36 CFR Part 800) as, 1) all lands within the exterior boundaries of any Indian reservation; and 2) all dependent Indian communities.<sup>9</sup>

As the tribal counterpart to the SHPO, the THPO may assume some or all of the duties for historic preservation *on tribal lands* that the SHPO performs on private, state, or federal lands. These responsibilities may include maintaining an inventory of historic properties under its jurisdiction and assisting federal agencies in the review of federal undertakings.

THPOs have been delegated authority by the Secretary of the Interior to serve as the historic preservation officer for tribal lands; however, they may not have been designated by their tribal governments to function as the sole point of contact for federal undertakings on and off tribal lands. Therefore, agencies should contact both the tribal governmental leaders and the THPO prior to formal initiation of Section 106 consultation in order to determine the appropriate point(s) of contact.

<sup>8</sup> The National Park Service (NPS) administers the national THPO program and maintains an up-to-date listing of all tribes who have established 101(d)(2) Tribal Historic Preservation Officers and the contact information of their Tribal Historic Preservation Officers, available at [www.nps.gov/history/hps/tribal/thpo.htm](http://www.nps.gov/history/hps/tribal/thpo.htm)

<sup>9</sup> The U.S. Supreme Court decision in *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998) held that "dependent Indian communities" refers to a limited category of Indian lands that are neither reservations nor allotments and that must satisfy two requirements: first, they must have been set aside by the federal government for the use of the Indians as Indian land; second, they must be under federal superintendence.

Under the Section 106 regulations, a THPO who has assumed Section 106 review functions is subject to the time frames set forth in the Section 106 regulations for responding to requests to review an agency's Section 106 findings and determinations *for undertakings on or affecting tribal lands*. Failure of a THPO to respond when there is such a time frame permits an agency to proceed with its finding or determination, or to consult with the ACHP in the THPO's absence in accordance with the Section 106 regulations. Subsequent involvement by the THPO is not precluded, but the agency is not required reopen a finding or determination that a THPO failed to respond to in a timely manner earlier in the process.

Once a tribe has established a THPO, the SHPO may still participate in consultation for undertakings on tribal lands if: 1) the THPO requests SHPO participation; 2) the undertaking takes place on tribal lands but affects historic properties located off tribal lands; or 3) a non-tribal member who owns lands within the exterior boundaries of a reservation requests that the SHPO participate in Section 106 consultation. This provision, located at Section 101(d)(2)(D)(iii) of NHPA and in the Section 106 regulations at 36 CFR Section 800.3(c)(1), is intended to provide a property owner an opportunity to include the SHPO in the consultation if that property owner feels that his/her interests in historic preservation may not necessarily be represented by the THPO. This inclusion of the SHPO in the consultation *does not*, however, replace the role of the THPO, who still participates fully and retains its Section 106 role. .

### **B. Role of the THPO: *Off Tribal Lands***

The THPO's role for federal undertakings *off tribal lands* (in other words, on non-tribal lands such as private, state, or federal lands) is different from its role on its own tribal lands. If the proposed undertaking's area of potential effect (APE) is *located outside of the tribal lands it oversees*, the THPO does not supplant the jurisdiction or have the same rights as the SHPO, but rather may serve as the official representative designated by his/her tribe to represent its interests as a consulting party in Section 106 consultation.

### **C. When there is no THPO**

For proposed undertakings *on or affecting the tribal lands* of an Indian tribe that *has not* assumed THPO responsibilities, the federal agency carries out consultation with that tribe's designated representative in addition to—and *on the same basis as*—consultation with the SHPO. The tribe retains the same consultation rights regarding agency findings and determinations, and to execute a Memorandum of Agreement (MOA) or Programmatic Agreement (PA), as it would if it had a THPO.

For proposed undertakings *off tribal lands*, a tribe designates who will represent it in consultation regarding historic properties of religious and cultural significance to it. A tribe that does not have a THPO has the same rights to be a consulting party as tribes that do have THPOs when the proposed federal undertaking is not on or affecting tribal lands.

### **D. Regulatory Principles and General Directions for Section 106 Tribal Consultation**

The procedures for meeting Section 106 requirements are defined in the Section 106 regulations, "Protection of Historic Properties" (36 CFR Part 800).<sup>10</sup> Under the NHPA, "historic properties" are defined as those properties that are listed on the National Register of Historic Places, or are eligible for such listing.

The regulations provide both overall direction as well as specific requirements regarding consultation at each step of the Section 106 review process. The Section 106 regulations at 36 CFR Section 800.2(c)(2)

<sup>10</sup> Available at <http://www.achp.gov/regs-rev04.pdf>

outline the following important principles and general directions to federal agencies regarding consultation with tribes:

- The agency shall ensure that consultation provides the Indian tribe a reasonable opportunity to identify its concerns about historic properties; advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance to them; articulate its views on the undertaking's effects on such properties; and participate in the resolution of adverse effects.
- Tribal consultation should commence early in the planning process, in order to identify and discuss relevant preservation issues and plan how to address concerns about confidentiality of information obtained during the consultation process.
- Historic properties of religious and cultural significance to an Indian tribe may be located on ancestral (also referred to as aboriginal) homelands, or on officially ceded lands (lands that were ceded to the U.S. government by the tribe via treaty). In many cases, because of migration or forced removal, Indian tribes may now be located far away from historic properties that still hold such significance for them. Accordingly, the regulations require that agencies make a *reasonable and good-faith effort*<sup>11</sup> to identify Indian tribes that may attach religious and cultural significance to historic properties that may be affected by the undertaking, even if tribes are now located a great distance away from such properties and undertakings.
- The agency official shall ensure that consultation under the Section 106 review process is respectful of tribal sovereignty in conducting consultation and must recognize the government-to-government relationship that exists between the federal government and federally recognized Indian tribes.
- An Indian tribe may enter into an agreement with a federal agency regarding any aspect of tribal participation in the review process. The agreement may specify a tribe's geographic area of interest, types of projects about which they wish to be consulted, or provide the Indian tribe with additional participation or concurrence in agency decisions under Section 106 provided that no modification is made to the roles of other parties without their consent.

The Section 106 regulations recognize an Indian tribe's sovereign authority regarding proposed undertakings *on or affecting its tribal lands* in several ways. The regulations require the federal agency to provide the THPO, as appropriate,<sup>12</sup> an opportunity to review, and thus to concur with or object to, agency findings and determinations. The regulations also require federal agencies to invite the THPO (or designated tribal representative, if the tribe has not assumed THPO duties) to sign a Memorandum Of Agreement (MOA) as well as a Programmatic Agreement (PA). If the THPO/tribe terminates consultation, the ACHP must provide comment to the head of the agency rather than execute an agreement without the tribe.

While the Section 106 regulations are fairly prescriptive in nature, they only direct agencies on what to do and at which stages of the process to engage in consultation. They do not provide direction on how to

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<sup>11</sup> Tips on how to fulfill this requirement are provided under the heading "How do I identify tribes that must be invited to consult," at Section V(A)(3) of this handbook.

<sup>12</sup> Note that the regulations clarify that THPOs and those tribes that do not have a 101(d)(2) THPO have the same rights in the process for undertakings on or affecting tribal lands, for purposes of Section 106. The difference is whether the SHPO participates. Where there is a THPO, the SHPO only participates in consultation if the THPO invites the SHPO to participate, if an undertaking on tribal lands affects a historic property off tribal lands, or if a non-tribal member who owns a parcel within the exterior boundaries of the reservation so requests. For undertakings on tribal lands where there is no THPO, the agency consults with both the designated tribal official and the SHPO.

carry out consultation. Thus, the following questions and answers are intended to clarify the most common questions and issues regarding tribal consultation under the Section 106 review process.

## V. General Questions and Answers

The following list of questions is meant to address general issues that commonly arise in the Section 106 review process, typically before an agency begins the review process or very early in the process. Section V addresses questions that might arise at each step of the Section 106 review process.

### 1) When are federal agencies required to consult with Indian tribes?

The 1992 amendments to NHPA require federal agencies, in carrying out the Section 106 review process, to consult with Indian tribes when a federal undertaking may affect historic properties of traditional religious and cultural significance to them. An “undertaking” means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those carried out by or on behalf of a federal agency; those carried out with federal financial assistance; or those requiring a federal permit, license or approval. This requirement applies to all undertakings regardless of whether they are located on or off tribal lands.

### 2) Which Indian tribes must be consulted?

Federally recognized tribes that attach religious and cultural significance to historic properties that may be affected by undertakings must be consulted. Federal agencies must make “a reasonable and good faith” effort<sup>13</sup> to identify each and every such Indian tribe and invite them to be consulting parties.

This includes Indian tribes that no longer reside in a given area but may still have ancestral ties to an area. Many Indian tribes were removed from their homelands, while others traditionally moved from place to place. Consequently, an Indian tribe may very well attach significance to historic properties located in an area where they may not have physically resided for many years. If an Indian tribe that may attach significance to a historic property that may be affected by the undertaking has not been invited by the agency to consult, the tribe may request in writing to be a consulting party. The NHPA and the Section 106 regulations require that the agency grant consulting party status to such a tribe.

### 3) How would I know if an Indian tribe is federally recognized?

Consult the list maintained by the U.S. Department of the Interior’s Bureau of Indian Affairs (BIA).<sup>14</sup> The list is regularly published in the *Federal Register*. Another way to determine if a tribe is federally recognized is to contact BIA headquarters in Washington, D.C. or one of the BIA regional offices throughout the United States.

### 4) If there are no federally recognized Indian tribes in the state where the project is located, does the agency still have to consult with any tribes?

Even when there are no federally recognized Indian tribes with tribal lands in the state where the project is located, the agency must still make a reasonable and good faith<sup>15</sup> effort to identify and consult with any Indian tribes that attach religious and cultural significance to historic properties that may be affected by the undertaking. The circumstances of history may have resulted in an Indian tribe now being located a great distance from its ancestral homelands and places of importance. Therefore, agencies are required to

<sup>13</sup> Tips on how to fulfill this requirement are provided under the heading “How do I identify tribes that must be invited to consult,” at Section V(A)(3) of this handbook.

<sup>14</sup> Available at <http://library.doi.gov/internet/native.html>

<sup>15</sup> Tips for fulfilling this requirement are provided under the heading “How do I identify tribes that must be invited to consult,” at Section V(A)(3) of this handbook.

identify Indian tribes that may attach religious and cultural significance to historic properties in the area of the undertaking, even if there are no tribes near the area of the undertaking or within the state.

**5) What is the federal agency’s responsibility to consult with state recognized Indian tribes or tribes who have neither federal nor state recognition?**

Under the Section 106 regulations at 36 CFR Section 800.2(c)(5), a federal agency *may* invite such groups to participate in consultation as “additional consulting parties” based on a “demonstrated interest” (discussed below) in the undertaking’s effects on historic properties. However, the term “Indian tribe” as it appears in the NHPA refers only to federally recognized Indian tribes, which includes Alaska Native Villages and Village and Regional Corporations. In other words, only federally recognized Indian tribes that attach religious and cultural significance to historic properties that may be affected by the proposed undertaking have a statutory right to be consulting parties in the Section 106 process.

The question of inviting non-federally recognized tribes to participate in consultation can be both complicated and sensitive and thus deserves careful consideration. For example, some tribes may not be federally recognized but may have ancestral ties to an area. Other non-federally recognized tribes may have lost their recognition as a result of federal government actions in the 1950s to terminate relationships with certain tribes.<sup>16</sup> In other cases, such as in California,<sup>17</sup> the situation is complicated because there are more than 100 federally recognized tribes and more than 100 non-federally recognized tribes; again, the result of historical circumstances.

While non-federally recognized tribes do not have a statutory right to be consulting parties in the Section 106 process, the agency may invite them to consult as an “additional consulting party” as provided under the ACHP’s regulations at 36 CFR Section 800.2(c)(5), if they have a “demonstrated interest.”

The agency should consider whether the non-federally recognized tribe can meet the threshold of a “demonstrated interest”—for example, whether the tribe can demonstrate it has ancestral ties to the area of the undertaking, or that it is concerned with the effects of the undertaking on historic properties for other reasons. In some cases, members of a non-federally recognized tribe may be direct descendants of indigenous peoples who once occupied a particular Native American site to be affected by the undertaking, or they might be able to provide the federal agency with additional information regarding historic properties that should be considered in the review process.

The inclusion of non-federally recognized groups in consultation may raise objections from some federally recognized tribes. Yet, there are other tribes who routinely support the invitation of non-recognized tribes into consultation, recognizing their interests as well.

The ultimate decision on whether to consult with non-federally recognized tribes, however, rests with the federal agency. The decision should be given careful consideration and made in consultation with the SHPO (or if on or affecting tribal lands, with the THPO or designated tribal official). In addition, the federal agency may elicit input on the question from any federally recognized Indian tribes that are consulting parties. If the agency decides that it is inappropriate to invite non-federally recognized tribes to consult as “additional consulting parties,” those tribes can still provide their views to the agency as members of the public under 36 CFR Section 800.2(d).

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<sup>16</sup> During the “Termination Period” of the 1950s, Congress ended the federal government’s relationship with more than 100 tribes in an attempt to assimilate members of Indian tribes into the broader society. Many, but not all, tribes regained their recognition. Some Indian tribes, however, are still seeking restoration of their federal recognition. For more information on this topic, visit [www.epa.gov/indian](http://www.epa.gov/indian)

<sup>17</sup> For more information about Indian tribes in California, their history, and a list of federally and state recognized tribes, visit the California Native American Heritage Commission website at <http://ceres.ca.gov/nanc>

**6) The federal agency believes a state recognized tribe should be included in the consultation process, but the federally recognized tribes object. How should the agency proceed?**

It is important to remember that the federal agency ultimately makes the decision regarding the involvement of other consulting parties, including non-federally recognized tribes. However, reasonable objections raised by any parties should always be considered.

Not granting consulting party status to parties that have a demonstrated interest in the affected historic properties (see 36 CFR Section 800.2(d)) is legally allowable but may not be consistent with the spirit and intent of the Section 106 process. The Section 106 process is intended to provide both the public and certain individuals or groups with the opportunity to provide their views so that the federal agency can make an informed decision. Because non-federally recognized tribes may have information that assists the Section 106 process, consulting with them may enhance the agency's decision-making process.

Rather than denying a party the opportunity to participate in consultation, there may be ways in which every party can be accommodated. For instance, separate consultation meetings can be held, with information and views shared amongst all the consulting parties, as appropriate. However, there may be instances where an Indian tribe's leadership is only willing to share sensitive information with the federal agency (as part of the government-to-government relationship) and not with the other consulting parties, including other tribes. If confidentiality concerns are foreseeable, the federal agency should have a plan in place for how to handle these concerns in accordance with applicable law as the Section 106 process moves forward. Such a plan would also provide parties with clear expectations on how these issues will be handled. The issue of confidentiality is a very important one in Section 106 tribal consultation and is discussed in greater detail at Section V(B)(4) of this handbook.

**7) What are appropriate consultation methods for individual undertakings?**

The consultation process must provide an Indian tribe a reasonable opportunity to identify its concerns about historic properties; advise on the identification and evaluation of historic properties, including those of religious and cultural significance to the tribe; articulate views on the undertaking's effects on such properties; and participate in the resolution of adverse effects. (See 36 CFR Section 800.2(c)(2)(ii)(A).

Once it has accepted the agency's invitation to consult, the tribal leadership may find it acceptable for consultation to take place between the agency and designated tribal staff, such as the THPO or, if the tribe has not established a THPO, the cultural resource officer, for instance. In some cases tribal leadership may want to remain directly involved in the consultation process as well.

Face-to-face meetings or on-site visits may be the most practical way to conduct consultation. In all cases, consultation should be approached with flexibility that respects the tribe's role within the overall project planning process and facilitates its full participation.

A federal agency and an Indian tribe may enter into an agreement in accordance with the Section 106 regulations at 36 CFR Section 800.2(c)(2)(ii)(E) regarding how Section 106 consultation will take place. Such agreements can cover all potential agency undertakings, or apply only to a specific undertaking. They can establish protocols for carrying out tribal consultation, including how the agency will address tribal concerns about confidentiality of sensitive information. Such agreements also can cover all aspects of the Section 106 process, provided that no modification is made in the roles for other parties to the Section 106 process without their consent. Determining the types of undertakings and the potential geographic project areas on which a tribe wants to be consulted, and how that consultation will take place can lead to tremendous efficiencies for both the federal agency and the Indian tribe. Filing such

agreements with both the appropriate SHPO and the ACHP is required per 36 CFR Section 800.2(c)(2)(ii)(E), and can eliminate questions about tribal consultation when either the SHPO or the ACHP is reviewing a proposed undertaking.

Documentation of consultation is important because it allows consulting parties to more accurately track the stages of the Section 106 process. Federal agencies should document all efforts to initiate consultation with an Indian tribe or tribes, as well as documenting the consultation process once it has begun. Such documentation, in the form of correspondence, telephone logs, e-mails, etc., should be included in the agency's official Section 106 record. Agencies should also keep notes so that the consultation record documents the *content* of consultation meetings, site visits, and phone calls in addition to information about dates and who participated. Doing so allows agencies and consulting parties to review proceedings and correct any errors or omissions, thus facilitating better overall communication. Keeping information confidential can present unique challenges (see Section V(B)(4) of this handbook.

#### **8) Can a federal agency pay for expenses that facilitate consultation with Indian tribes?**

Yes, the ACHP encourages federal agencies to take the steps necessary to facilitate tribal participation at all stages of the Section 106 process. These steps may range from scheduling meetings in places and at times that are convenient for Indian tribes, to paying travel expenses for participating tribal representatives. Indeed, agencies are strongly encouraged to use available resources to help overcome financial impediments to effective tribal participation in the Section 106 process. Likewise, if a tribe has consented (in advance and in writing) to allow an applicant for federal assistance or federal permit to carry out tribal consultation, the applicant is encouraged to use available resources to facilitate and support tribal participation. However, federal agencies should not expect to pay a fee to an Indian tribe or any consulting party to provide comments or concurrence in an agency finding or determination.

#### **9) Can a federal agency pay a fee to an Indian tribe for services provided in the Section 106 process?**

Yes, though it should be noted that while the ACHP encourages agencies to utilize their resources to facilitate consultation with Indian tribes, this encouragement is not a legal mandate; nor does any portion of the NHPA or the ACHP's regulations require an agency or an applicant to pay for any form of tribal involvement.

However, during the identification and evaluation phase of the Section 106 process when the agency or applicant is carrying out its duty to identify historic properties that may be significant to an Indian tribe, it may ask a tribe for specific information and documentation regarding the location, nature, and condition of individual sites, or even request that a survey be conducted by the tribe. In doing so, the agency or applicant is essentially asking the tribe to fulfill the duties of the agency in a role similar to that of a consultant or contractor. In such cases, the tribe would be justified in requesting payment for its services, just as is appropriate for any other contractor. Since Indian tribes are a recognized source of information regarding historic properties of religious and cultural significance to them, federal agencies should reasonably expect to pay for work carried out by tribes. The agency or applicant is free to refuse just as it may refuse to pay for an archaeological consultant, but the agency still retains the duties of obtaining the necessary information for the identification of historic properties, the evaluation of their National Register eligibility, and the assessment of effects on those historic properties, through reasonable methods.

#### **10) What specific activities might be reimbursed?**

Examples of reimbursable costs may include those costs associated with expert consultants to identify and evaluate historic properties as outlined in the immediately preceding answer. This may include field visits

to provide information about specific places or sites, monitoring activities, research associated with historical investigation, documentation production costs, and related travel expenses.

For more information, see “Fees in the Section 106 Review Process” on the ACHP Web site.<sup>18</sup>

**11) Aside from applicable federal statutes, are there specific tribal laws the agency must comply with for undertakings on tribal lands?**

The agency should be aware that the sovereign status of Indian tribes on their tribal lands may dictate other obligations and requirements in addition to those outlined in Section 106 and other federal laws. Many tribes have developed their own statutes, regulations, and policies that may apply to undertakings on their own lands and federal agency officials, staff, applicants, and contractors must comply with them as applicable. Inquiring about such legal requirements early in the planning process demonstrates a respect for tribal sovereignty.

**12) If a proposed undertaking is on tribal lands, but the tribe has not assumed THPO duties, does the agency consult with the tribe’s designated representative and the SHPO?**

Yes, the agency carries out consultation with the non-THPO Indian tribe regarding undertakings on or affecting that tribe’s lands *in addition to—and on the same basis as—*consultation with the SHPO. If the SHPO withdraws from consultation, the agency and the tribal representative may complete the review process with any other consulting parties. While the SHPO may participate in consultation, the tribe maintains the same rights of consultation for agency findings and determinations, and the same rights to be signatories to MOAs and PAs that would apply on their tribal lands, as it would if it had a THPO.

Be aware that some Indian tribes may not wish to consult with the SHPO, thus, requiring the agency to approach consultation with flexibility and understanding. In fact, some tribes may not welcome the SHPO to meetings or site visits on tribal lands, and they are within their rights to do so. However, the agency will still be responsible for carrying out consultation with the SHPO.

**13) Can Indian tribes, as well as federal agencies, request ACHP involvement in the Section 106 review process?**

Yes. Any party, including Indian tribes, may request that the ACHP review the substance of any federal agency’s finding, determination, or decision or the adequacy of an agency’s compliance with the Section 106 regulations.

An Indian tribe may request that the ACHP enter the Section 106 review process for any number of reasons, including concerns about the identification, evaluation or assessment of effects on historic properties of religious and cultural significance to them. It may also request ACHP involvement in the resolution of adverse effects or where there are questions about policy, interpretation, or precedent under Section 106. The ACHP has discretion in determining whether to become involved in the process.

**14) Does the ACHP have a policy on the treatment of burials that are located on state or private lands (and thus not subject to the disinterment provisions of NAGPRA)?**

Yes. On February 23, 2007, the members of the Advisory Council on Historic Preservation unanimously adopted its revised “Policy Statement Regarding the Treatment of Burial Sites, Human Remains and Funerary Objects.” This policy is designed to guide federal agencies in making decisions about the

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<sup>18</sup> Available at <http://www.achp.gov/regs-fees.html>

identification and treatment of burial sites, human remains, and funerary objects encountered in the Section 106 process in various instances including those where federal or state law does not prescribe a course of action. The policy is not exclusively directed toward Native American burials, human remains or funerary objects, but those would be included under the policy. In accordance with Section 106, the policy does not recommend a specific outcome from the consultation process, but rather focuses on issues and perspectives that federal agencies ought to consider when making their Section 106 decisions. The policy is available at <http://www.achp.gov/docs/hrpolicy0207.pdf>

## V. Consultation with Indian Tribes for Proposed Undertakings Off—and On—Tribal Lands

As noted earlier in the handbook, under the NHPA, tribal consultation is required for *all* federal undertakings, regardless of whether the undertaking’s Area of Potential Effect (APE) includes federal, tribal, state, or private lands so long as the undertaking may affect historic properties of religious and cultural significance to an Indian tribe. However, different Section 106 consultation requirements do exist, depending on whether the proposed undertaking may affect non-tribal, or tribal, lands.

This section outlines tribal consultation requirements for proposed undertakings that will occur:

- “off” tribal lands (in other words, on non-tribal land such as federal, state, or private lands outside tribal lands);
- “on” or affecting tribal lands. Tribal lands are defined in the NHPA and the Section 106 regulations (36 CFR Part 800) as all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.<sup>19</sup>
- Where the required steps are the same both off and on (or affecting) tribal lands, a single response is provided.

This section of the handbook is presented to correspond with the Section 106 review process’s four steps of initiation, identification, assessment, and resolution.

### A. Initiation of the Section 106 Process

#### 1) How would I know if historic properties of traditional religious and cultural significance to Indian tribes may be affected by the proposed undertaking?

Unless such properties have already been identified and the information is readily available, you probably will not know in advance. As with any undertaking that might affect historic properties, you must determine whether the proposed undertaking is generically the kind that might affect historic properties assuming such properties are present. Therefore, if the undertaking is the kind of action that might affect places such as archaeological sites, burial grounds, sacred landscapes or features, ceremonial areas, or plant and animal communities, then you should consult with Indian tribes that might attach significance to such places. Please note that this list of examples is not all-inclusive, as the histories, cultures, and traditions of Indian tribes vary widely. It is through consultation with Indian tribes themselves that such properties can be properly identified and evaluated.

#### 2) If a federal undertaking will not occur on or affect historic properties on tribal lands, is the agency still required to identify Indian tribes and invite them to consult?

Yes, NHPA requires consultation with Indian tribes that may attach religious and cultural significance to historic properties that may be affected by the proposed undertaking, *regardless of the location of the proposed undertaking*. At this stage of the process, the federal agency identifies any Indian tribes that

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<sup>19</sup> The U.S. Supreme Court decision in *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998) held that “dependent Indian communities” refers to a limited category of Indian lands that are neither reservations nor allotments and that must satisfy two requirements: first, they must have been set aside by the federal government for the use of the Indians as Indian land; second, they must be under federal superintendence.

might attach religious and cultural significance to historic properties that may exist in the proposed undertaking's Area of Potential Effect (APE), and invites them to consult.

### 3) How do I identify the Indian tribes that must be invited to consult?

#### *a) Off Tribal Lands*

Identification of Indian tribes that must be invited to consult could entail a number of initiatives. For instance, it might be useful to check with other federal agencies and their cultural resource specialists in the state or region for a list of tribes with whom they have consulted in past Section 106 reviews. The SHPO and Indian tribes in the region might also be able to suggest which tribes to contact. Other sources for such information may include ethnographies, local histories, experts at local universities, and oral accounts.

While we cannot vouch for their accuracy, certain websites may be useful references as part of a broader agency effort to identify relevant Indian tribes. The National Park Service maintains the Native American Consultation Database (NACD), which may be helpful in identifying Indian tribes with an interest in an area.<sup>20</sup> Other Internet sources include MAPS: GIS Windows on Native Lands, Current Places, and History,<sup>21</sup> which provides maps on current and ancestral locations of Indian lands, and the Library of Congress Indian Land Cessions document Web site,<sup>22</sup> which has information on historic Indian land areas.

National and regional intertribal organizations, such as the National Congress of American Indians,<sup>23</sup> the United South and Eastern Tribes,<sup>24</sup> the National Association of Tribal Historic Preservation Officers,<sup>25</sup> the Michigan Anishinaabek Cultural Preservation and Repatriation Alliance,<sup>26</sup> and the Affiliated Tribes of Northwest Indians<sup>27</sup> may also be able to provide assistance in identifying tribes with ancestral connections to an area.

Keep in mind that identification of Indian tribes with ancestral connections to an area is not a "one stop shopping" endeavor in which any single source can be depended upon to fulfill the agency's legal responsibilities. Agency officials should bear in mind that while Internet sources are convenient and can be useful, their informational content may be incomplete.

Once the agency has identified a tribe or tribes that may attach religious and cultural significance to any historic properties that may exist in the APE, the agency must invite them to consult.

Finally, it is important to remember that documentary or other sources of information that do not clearly support a tribe's assertions should not be used to deny a tribe the opportunity to participate in consultation. A common misunderstanding is that an Indian tribe needs to document its ties to historic properties in the area of the undertaking. Instead, the NHPA requires agencies to consult with any federally recognized Indian tribe that attaches religious and cultural significance to a historic property. It stands to reason that the best source for determining what historic properties have significance for a tribe

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<sup>20</sup> Available at <http://www.cr.nps.gov/nacd/>

<sup>21</sup> Available at <http://www.kstrom.net/isk/maps/mapmenu.html>

<sup>22</sup> Available at <http://www.memory.loc.gov/ammem/amlaw/lwss-ilc.html>

<sup>23</sup> Official Web site at <http://www.ncai.org>

<sup>24</sup> Official Web site at <http://www.usetinc.org>

<sup>25</sup> Official Web site at <http://www.nathpo.org>

<sup>26</sup> Official Web site at <http://www.macpra.org>

<sup>27</sup> Official Web site at <http://www.atntribes.org>

would be the experts designated by the tribe to determine the tribe's own interest. Such experts might include elders, traditional practitioners, tribal historians, the THPO or tribal cultural resource staff. The tribe will designate the appropriate tribal representative(s) to represent its interests in the Section 106 consultation process.

***b) On Tribal Lands***

Undertakings on tribal lands that are carried out by a federal agency, that use federal funds, or that require federal approval/licensing/permitting are also subject to Section 106 review. The federal agency will consult with the THPO, or, if the tribe has not assumed THPO duties, with its cultural resource officer, or another designated tribal official. The tribe may also wish to have one or more representative of its tribal government directly involved in the consultation process.

It may be easy to assume that because the proposed undertaking is located on tribal lands, there is no need to identify additional Indian tribes that may attach religious and cultural significance to historic properties within the APE. However, the responsibility for the agency to identify additional tribes that may attach religious and cultural significance to any historic properties within the APE applies *even when an undertaking is on tribal land*. Therefore, the suggestions given above in part (a) of this question are also applicable here.

The need to identify tribes that may attach significance to sites within an APE on another tribe's lands is rooted in history. When the U.S. government established Indian reservations, it often set boundaries where they did not previously exist. Many tribes were removed to reservations far from their traditional homelands and relocated onto the homelands of other tribes. In other instances, territories that were shared by several tribes became the reservation of one exclusively. The end result is the possibility that an undertaking on Tribe A's tribal lands (within the exterior boundaries of its reservation) may contain historic properties that hold religious and cultural significance for Tribe B and Tribe C, as well.

Therefore, the agency carrying out, or providing the funding or approval/licensing/permitting, for the undertaking on Tribe A's tribal lands still has a responsibility to identify any other tribes that may attach religious and cultural significance to historic properties within the proposed undertaking's APE and invite them to consult. Accordingly, it may be necessary to consult with each tribe individually and to do so off the reservation where the undertaking is proposed.

**4) Who initiates the consultation process with an Indian tribe?**

Consultation with an Indian tribe or tribes should be initiated by the agency official<sup>28</sup> through a letter to the leadership of each tribe, with a copy going to each tribe's THPO, or for a tribe without a THPO, its cultural resource officer. Indian tribes are sovereign nations and their leaders must be shown the same respect and formality given to leaders of other sovereign nations. Since tribal elections often result in changes in leadership, agency officials should contact the tribe prior to executing the letters in order to ascertain that the correspondence is correctly addressed to the appropriate points of contact. It is helpful to follow up such correspondence with direct telephone communication to ensure the letter has been received.

If the agency official has correspondence from tribal leadership designating a person or position within the tribe to act on the tribe's behalf in the Section 106 process, the agency may initiate consultation

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<sup>28</sup> As defined in Section 800.2 of the ACHP regulations, an agency official is one who has jurisdiction over the undertaking and takes legal and financial responsibility for Section 106 compliance.

accordingly. It is good practice, in this instance, to send a copy of all correspondence to tribal leadership as well.

**5) Can applicants for federal permits or contractors hired by the agency initiate and carry out tribal consultation?**

No, federal agencies cannot unilaterally delegate their responsibilities to conduct government-to-government consultation with Indian tribes to non-federal entities. It is important to remember that Indian tribes are sovereign nations and that their relationship with the federal agency exists on a government-to-government basis. For that reason, some Indian tribes may be unwilling to consult with non-federal entities associated with a particular undertaking. Such non-federal entities include applicants<sup>29</sup> for federal permits or assistance (which would include any contractors hired by the applicant), as well as contractors who are not government employees but are hired to perform historic preservation duties for a federal agency. In such cases, the wishes of the tribe for government-to-government consultation must be respected, and the agency must carry out tribal consultation for the undertaking.

However, *if an Indian tribe agrees in advance*, the agency may rely, where appropriate, on an applicant (or the applicant's contractor), or the agency's own historic preservation contractor to carry out day-to-day, project-specific tribal consultation. In order to ensure that the tribe, the agency, and the applicant or contractor all fully understand that the tribe may request the federal agency to step in and assume consultation duties if problems arise, the agency should obtain the tribe's concurrence with the agency's delegation in writing.

Even when an Indian tribe agrees to consult with an applicant, the federal agency remains responsible for ensuring that the consultation process is carried out properly, meeting the letter and spirit of the law, as well as resolving any issues or disputes. Therefore, any agreement between the agency and an Indian tribe documenting the tribe's willingness to consult with a non-federal entity should contain a provision that explains the agency's responsibility to assume consultation responsibilities at the tribe's request. The government-to-government relationship requires that the federal agency is ultimately responsible for tribal consultation.

**6) What are the consultation responsibilities for undertakings that involve more than one federal agency?**

The Section 106 regulations at 36 CFR Section 800.2 (a)(2) provide that, if more than one agency is involved in an undertaking, some or all of the agencies may designate a lead federal agency who will act on their behalf to fulfill their collective responsibilities under Section 106, including tribal consultation. Those agencies that do not designate a lead agency remain individually responsible for their Section 106 compliance; thus, they each would need to initiate and carry out tribal consultation duties for their Section 106 compliance for their undertaking.

**B. Identification of Historic Properties**

**1) Does the federal agency consult with Indian tribes to carry out identification and evaluation of historic properties?**

*a) Off Tribal Lands*

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<sup>29</sup> An applicant may be a state agency, local government, organization, or individual seeking federal assistance, permits, licenses, and other approvals.

Yes, the agency consults with Indian tribes to carry out identification efforts and to evaluate the National Register eligibility of identified properties for proposed undertakings located off tribal lands.

Many agencies assume that agency or contract archaeologists can identify which properties are of significance to which Indian tribes when they conduct archaeological surveys. However, unless an archeologist has been specifically authorized by a tribe to speak on its behalf on the subject, it should not be assumed that the archaeologist possesses the appropriate expertise to determine what properties are or are not of significance to an Indian tribe. The appropriate individual to carry out such a determination is the representative designated by the tribe for this purpose. Identification efforts may include site visits to assist in identifying these types of properties.

The Section 106 regulations state that the agency official shall acknowledge that Indian tribes possess special expertise in assessing the National Register eligibility of historic properties that may possess religious and cultural significance to them (36 CFR § 800.4(c)(1)).

The agency should provide Indian tribes with the same information that is provided to the SHPO during consultation, including information on buildings and other standing structures that may be affected by the proposed undertaking. A common assumption is that Indian tribes are not interested in historic buildings and structures. However, a federal agency should not assume to know what is of significance to a particular tribe unless it has been advised by that tribe. For instance, there may be a historic school in the path of a proposed undertaking. The school might have originally served as an Indian boarding school in its early history and may be of significance to a tribe or tribes.

#### ***b) On Tribal Lands***

The same points made regarding “off tribal lands” above, apply on tribal lands. In addition, on tribal lands, the agency consults with that tribe’s THPO, or other tribal official designated for this purpose. The tribe may also involve other tribal experts that assist the THPO in both the identification and evaluation of the National Register eligibility of any historic properties. When a tribe has a THPO, the SHPO does not participate in the Section 106 process for proposed undertakings on tribal lands. The few exceptions to this rule occur when the THPO invites the SHPO to participate; when an undertaking on tribal lands affects a historic property located off tribal land; and when a non-tribal member who owns land in fee simple within the exterior boundaries of the tribe's reservation so requests. In those limited instances, the SHPO participates in consultation in addition to the THPO.

If the tribe has not assumed THPO responsibilities, the agency will carry out identification and evaluation in consultation with both the tribe’s cultural resource officer (and any other parties designated by the tribe for this purpose) and the SHPO. In this situation, the tribal cultural resource officer (or other such designated tribal official) has the same rights as a THPO would have in eligibility determinations.

As noted in Section V(A)(3) above, it is possible that the APE for a proposed federal undertaking on one tribe's lands may contain historic properties that are of religious and cultural significance to other tribes. To continue the hypothetical model introduced in Section V(A)(3), a proposed undertaking is located on Tribe A’s tribal lands. Once the agency has identified the other tribes that may attach significance to historic properties within the APE and invited them to consult, the agency must determine the best way to afford those tribes an opportunity to participate in the identification and evaluation of any such historic properties. In such cases, it is the prerogative of Tribe A, in keeping with its status as a sovereign nation, whether to grant access to the APE within its tribal lands to other consulting parties. If Tribe A decides not to grant access, the agency must still consult with the other tribes in order to provide them a reasonable opportunity to identify their concerns about historic properties, advise on the identification and evaluation of historic properties, articulate their views on the undertaking’s effects on such properties, and

participate in the resolution of adverse effects. Accordingly, it may be necessary to consult with each tribe individually and to do so off the reservation.

In such cases, concerns may arise about confidentiality and protection of sensitive information that may be provided to the federal agency by one or more of the consulting parties. This issue is a very important one in Section 106 tribal consultation and is discussed in greater detail in Section (V)(B)(4) of this handbook.

## **2) How can I identify historic properties that may possess traditional religious and cultural significance to Indian tribes and determine their National Register eligibility?**

The identification of those historic properties that are of traditional religious and cultural significance to a tribe must be made by that tribe's designated representative as part of the Section 106 consultation process. This is true regardless of whether the proposed undertaking is off or on tribal lands.

## **3) What are Traditional Cultural Properties?**

The term "Traditional Cultural Property" (TCP) is used in the National Park Services (NPS) Bulletin 38, entitled "*Guidelines for Evaluating and Documenting Traditional Cultural Properties.*"<sup>30</sup> That bulletin explains how to identify a property "that is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that a) are rooted in that community's history, and b) are important in maintaining the continuing cultural identity of the community." For a TCP to be found eligible for the National Register, it must meet the existing National Register criteria for eligibility as a building, site, structure, object, or district. TCPs are defined only in NPS guidance and are not referenced in any statute or regulation, and **refer to places of importance to any community, not just to Indian tribes.** Therefore, this terminology may be used when an agency is considering whether any property is eligible for the National Register.

Within the Section 106 process, the appropriate terminology for sites of importance to Indian tribes is "**historic property of religious and cultural significance to an Indian tribe.**" Unlike the term TCP, this phrase appears in NHPA and the Section 106 regulations. **It applies (strictly) to tribal sites, unlike the term TCP.** Furthermore, Section 101(d)(6)(A) of the NHPA reminds agencies that historic properties of religious and cultural significance to Indian tribes may be eligible for the National Register. Thus, it is not necessary to use the term TCP when considering whether a site with significance to a tribe is eligible for the National Register as part of the Section 106 process. The NPS Bulletin 38 guidelines are helpful, however, in providing an overview of how National Register criteria are applied.

Another issue with the term TCP is that Bulletin 38 has sometimes been interpreted as requiring an Indian tribe to demonstrate continual use of a site in order for it to be considered a TCP in accordance with Bulletin 38. This requirement could be problematic in that tribal use of a historic property may be dictated by cyclical religious or cultural timeframes that do not comport with mainstream conceptions of "continuous" use; while in many other cases, tribes have been geographically separated from and/or denied access to historic properties of religious and cultural significance to them. It is important to note that under the NHPA and the Section 106 regulations, the determination of a historic property's religious and cultural significance to Indian tribes is **not** tied to continual or physical use of the property.

## **4) What procedures should be followed if an Indian tribe does not want to divulge information to the federal agency regarding places of traditional religious and cultural significance?**

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<sup>30</sup> Available at <http://www.cr.nps.gov/nr/publications/bulletins/nrb38/nrb38%20introduction.htm>

Many Indian tribes have belief systems that require the location and even the existence of traditional religious and cultural properties not be divulged. It is thus vital that the federal agency work with tribes to identify sensitive locations while respecting tribal desires to withhold specific information about such sites. The ACHP's regulations at 36 CFR Section 800.4(b)(i) state, in part, that "[t]he agency official shall take into account any confidentiality concerns raised by Indian tribes during the identification process."

The NHPA and the Section 106 regulations also provide a vehicle for protecting information that an Indian tribe has disclosed for the purpose of identification and evaluation in the Section 106 process. Section 304 of the NHPA (16 U.S.C. 470w-3(a)) and the regulations at 36 CFR Section 800.11(c)(1) provide that an agency, after consultation with the Secretary of the Interior, "*shall* withhold from disclosure to the public" information about the location, character, or ownership of a historic property when the agency and the Secretary determine that the disclosure of such information may cause a significant invasion of privacy; risk harm to the historic property; or, impede the use of a traditional religious site by practitioners. After such a determination, the Secretary of the Interior will determine who, if anyone, may have access to the information for purposes of the NHPA.

One important caveat: the Section 304 confidentiality provisions only apply to properties that have been determined eligible for the National Register. Thus, it is possible that information disclosed prior to an eligibility determination may not be protected. Therefore, the ACHP suggests that agencies and Indian tribes contact National Register staff for guidance regarding the amount of information and detail needed to make a determination of eligibility when such information might be at risk of disclosure. It may be possible for a tribe to share just enough information for the agency to identify the existence of a site and make a determination of eligibility without compromising the site or the tribe's beliefs. Such information might include general aspects of the historic property's attributes, i.e., that an important yearly ceremony takes place in a certain general location, that quiet is required in an area where spirits reside, that visual impacts will impede the ability to properly perform a required ritual, or that important ceremonial harvesting activities must occur at a particular place, time, or under certain conditions. However, if there are questions about the adequacy of such information in making determinations of eligibility, the National Register staff should be consulted.

Issues of confidentiality and sensitivity of information require flexibility and cooperation among the consulting parties. There may be situations where a tribe is only willing to share information with the federal agency and not with the other non-federal consulting parties. This can challenge the traditional Section 106 process where the federal agency also consults with the SHPO to determine eligibility of properties off tribal lands or on tribal lands where the tribe has not assumed THPO responsibilities. In such cases, it is recommended that the agency promptly talk with the ACHP or the National Register staff about how to resolve such a situation.

**5) Is the federal agency required to verify a tribe's determination of significance with archaeological or ethnographic evidence before making a National Register eligibility determination?**

No. The agency is not required to verify a tribe's determination that a historic property is of religious and cultural significance to the tribe. The ACHP regulations at 36 CFR 800.4(c)(1) state, in part, that "[t]he agency official shall acknowledge that Indian tribes...possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them." The National Register considers the information obtained from a tribe's recognized expert to be a valid line of evidence in

considering determinations of significance. For additional guidance on making eligibility determinations, the agency should consult with the staff of the National Register.<sup>31</sup>

**6) Does the federal agency need to obtain an Indian tribe's concurrence with the agency's determination of National Register eligibility?**

***a) Off Tribal Lands***

No. The agency does not need to obtain an Indian tribe's concurrence with eligibility determinations when the undertaking is not on tribal lands or the affected property is not on tribal lands. The agency only needs the concurrence of the SHPO for a determination and, absent such concurrence, the matter goes to the Keeper of the National Register for final resolution. The federal agency must acknowledge, however, that Indian tribes possess special expertise in assessing the eligibility of historic properties that may be of significance to them, as required in the Section 106 regulations at 36 CFR Section 800.4(c)(1).

Also, if an Indian tribe disagrees with the federal agency's determination of eligibility, the Indian tribe may, per the Section 106 regulations at 36 CFR 800.4(c)(2), ask the ACHP to request that the federal agency obtain a formal eligibility determination from the Keeper of the National Register.

***b) On Tribal Lands***

On tribal lands, the THPO (or the tribe's designated official) have rights of concurrence on National Register eligibility determinations. If the agency and the THPO/tribal official do not agree on a site's eligibility, the ACHP regulations at 800.4(c)(2) state that the agency shall obtain a determination of eligibility from the Keeper of the National Register.

**7) Once the required identification and evaluation efforts are completed, does the federal agency need to consult with an Indian tribe in reaching a finding that there are no historic properties that will be affected by the undertaking, or that there are historic properties present but the undertaking will have no effect on them?**

***a) Off Tribal Lands***

Despite the requirements for tribal consultation up to this point in the process, the agency does not need to consult with an Indian tribe in reaching a finding that there are no historic properties present, or that the proposed undertaking will not affect an identified historic property. However, the agency must provide notification and documentation supporting its finding on these questions to any consulting Indian tribe.

If a consulting tribe disagrees with the agency's finding, it should immediately contact the ACHP and request that the ACHP object to the finding, per CFR 800.4(d)(1)(iii). If, upon the review of the finding, the ACHP also objects to the finding, the ACHP may provide its opinion to the agency official, and, if the ACHP determines the issue warrants it, to the head of the agency. The regulations stipulate that if the ACHP objects to a finding, it must do so within 30 days of the agency's issuance of that finding.

***b) On Tribal Lands***

On tribal lands, a finding of no historic properties present or no historic properties affected requires the agency to provide the THPO (or designated tribal official, if the tribe has not assumed THPO duties)

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<sup>31</sup> Contact information for National Register headquarters in Washington, D.C., available at <http://www.cr.nps.gov/nr/about.htm#contactus>

documentation of this finding. The agency also provides this documentation to other consulting parties. Upon receipt of an adequately documented finding, the THPO/tribe has 30 days to object. If the THPO/tribe does not object within 30 days, the agency's Section 106 responsibilities have been fulfilled. If the THPO/tribe does object to the finding, the agency shall either consult with the THPO/tribe to resolve the disagreement, or forward the finding to the ACHP and request that it be reviewed. When the agency makes such a request, it is also required to concurrently notify all consulting parties of the request and make the request and documentation available to the public. The ACHP then has 30 days to review the finding and provide the agency official, and, if the ACHP determines the issue warrants it, the head of the agency, with the ACHP's opinion regarding the finding.

### **C. Assessment of Adverse Effects**

#### **1) Which parties does the federal agency consult with to apply the criteria of adverse effect to historic properties within the APE?**

##### ***a) Off Tribal Lands***

The agency consults with the SHPO and Indian tribes in applying the criteria of adverse effect to historic properties within the APE. Again, federal agencies must recognize the special expertise of Indian tribes to determine the religious and cultural significance of historic properties to them per 36 CFR 800.4(c)(1), and 36 CFR 800.5(a) requires that agencies apply the criteria of adverse effect in consultation with Indian tribes. Therefore, in assessing how a proposed undertaking might affect historic properties of religious and cultural significance to tribes located off tribal lands, federal agencies need to consider the views of tribes.

##### ***b) On Tribal Lands***

On tribal lands, the agency consults with the THPO (or the designated tribal representative and the SHPO if the tribe has not assumed THPO duties)—and with any other Indian tribe that attaches religious and cultural significance to identified historic properties within the APE—in applying the criteria of adverse effect to historic properties, as is required by 36 CFR 800.5(a).

#### **2) When proposing a finding of “no adverse effect,” does the federal agency consult with Indian tribes?**

##### ***a) Off Tribal Lands***

No, the agency consults with the SHPO in proposing a finding of “no adverse effect,” but notifies consulting parties such as Indian tribes, and provides them with documentation supporting that finding. The agency is encouraged, but not required, to seek the concurrence of Indian tribes that attach religious and cultural significance to the historic property subject to the finding.

##### ***b) On Tribal Lands***

The agency consults with the THPO (or designated tribal official and the SHPO if the tribe has not assumed THPO duties) in proposing a finding of “no adverse effect,” and provides other consulting parties with documentation supporting that finding, as described above.

#### **3) What happens if an Indian tribe disagrees with a finding of “no adverse effect”?**

##### ***a) Off Tribal Lands***

If a consulting Indian tribe disagrees with a proposed agency finding of “no adverse effect,” it must specify the reasons for its objection in writing within 30 days of receipt of the agency’s issuance of the proposed finding. Once a timely written objection is received, the agency must either consult with the objecting tribe to resolve the disagreement or request ACHP review of the “no adverse effect” finding, per 36 CFR 800.5(c)(2)(i). The agency must concurrently notify all other consulting parties that it has requested ACHP review of the finding.

Consulting Indian tribes can make a direct request to the ACHP to review the finding, specifying, in writing and within the 30 day review period, the reasons for its objection, per 36 CFR 800.5(c)(2)(iii).

After review of the objection, the ACHP may provide its opinion to the agency official, and, if the ACHP determines the issue warrants it, to the head of the agency. The regulations stipulate that if the ACHP objects to a finding on its own initiative, it must do so within 30 days of receipt of the agency’s issuance of that finding.

#### ***b) On Tribal Lands***

If the THPO (or designated tribal official if the tribe has not assumed THPO duties) disagrees with a finding of “no adverse effect” within the 30 day review period, the THPO notifies the agency in writing that it disagrees and specifies the reasons for the disagreement like any other consulting party. Once a timely written objection is received, the agency must either consult with the THPO to resolve the disagreement or request ACHP review of the “no adverse effect” finding. The agency must concurrently notify all other consulting parties that it has requested ACHP review of the finding.

Consulting parties have the same rights to disagree with a “no adverse effect” finding on tribal lands as they do off tribal lands. Should another Indian tribe that is a consulting party (i.e., a tribe who attaches religious and cultural significance to a historic property located on another tribe’s lands) object to a finding of “no adverse effect,” that tribe may, just as in the case for non-tribal lands (above), file an written objection with the federal agency within the 30 day review period. Again, once a timely written objection is received from any consulting party, the agency must either consult with the objecting tribe to resolve the disagreement or request ACHP review of the “no adverse effect” finding, per 36 CFR 800.5(c)(2)(i). The agency must concurrently notify all other consulting parties that it has requested ACHP review of the finding.

Just as is the case off tribal lands, consulting Indian tribes can also make a direct request to the ACHP to review the finding, specifying, in writing and within the 30 day review period, the reasons for its objection, per 36 CFR 800.5(c)(2)(iii).

Regardless of whether the THPO (or designated tribal official) or a consulting party makes the objection to the agency finding, the ACHP’s response is the same: after review of the finding, the ACHP may provide its opinion to the agency official, and, if the ACHP determines the issue warrants it, to the head of the agency. The regulations stipulate that if the ACHP objects to a finding on its own initiative, it must do so within 30 days of receipt of the agency’s issuance of that finding.

### **D. Resolution of Adverse Effects**

#### **1) Which parties does the federal agency consult with to develop and evaluate alternatives or modifications to the undertakings to avoid, minimize, or mitigate adverse effects?**

##### ***a) Off Tribal Lands***

The agency consults with the SHPO, Indian tribes, and other consulting parties at this phase of the Section 106 process. The agency must provide project documentation to all consulting parties and invite the ACHP into consultation. Any consulting party may request ACHP participation in consultation to facilitate the resolution of adverse effects.

In fact, the Section 106 regulations at 36 CFR Section 800.2(b) stipulate that the ACHP may enter into the consultation at any point in the Section 106 process without invitation when it determines that its involvement is necessary to ensure that the purposes of Section 106 are met. As specified in Appendix A to 36 CFR Part 800, the ACHP may elect to enter the consultation if, among other things, an undertaking presents issues of concern to Indian tribes.

***b) On Tribal Lands***

On tribal lands, the process and requirements are the same as for proposed undertakings off tribal lands, except that agency consults with the THPO (or designated tribal official and SHPO if the tribe has not assumed THPO duties), and other consulting parties. Again, the agency should continue to be cognizant of any confidentiality issues—see the discussion of confidentiality at Section V(B)(4) of this handbook.

**2) What happens if agreement is reached on how to resolve adverse effects?**

***a) Off Tribal Lands***

If agreement is reached, the agency, SHPO and consulting parties, including Indian tribes, develop a Section 106 memorandum of agreement (MOA) or programmatic agreement (PA) outlining how the adverse effects will be addressed

***b) On Tribal Lands***

The agency and the THPO (or designated tribal official and the SHPO, if the tribe has not assumed THPO duties) and consulting parties develop an MOA or a PA outlining how the adverse effects will be addressed (the decision to prepare a PA requires the agency to invite the ACHP to participate). The agency must invite the THPO/tribe to be a signatory to an MOA or PA. 36 CFR 800.2(c)(2)(ii)(F) provides that an Indian tribe that has not assumed THPO duties may notify the agency in writing that it is waiving its rights to execute an MOA for undertakings on its tribal lands.

**3) Is the federal agency obligated to invite an Indian tribe to be a signatory or a concurring party to an MOA or PA?**

***a) Off Tribal Lands***

No, the agency may, but is not required to, invite an Indian tribe to become a signatory or concurring party when the undertaking or affected historic properties are not on tribal lands. A signatory to an MOA or PA possesses the same rights with regard to seeking amendments to or terminating the agreement as all other signatories, which include the agency official, the SHPO, and the ACHP, if participating. Those that sign as a concurring party do not have such rights to amend or terminate the MOA or PA. Refusal by an Indian tribe to become a signatory or concurring party to an MOA or PA for an undertaking on non-tribal lands, however, does not invalidate it. Certainly, agencies are encouraged to invite Indian tribes that attach religious and cultural significance to affected historic properties to sign the agreement. If a tribe is assuming review or other responsibilities under the MOA or PA, the agency should consider inviting the tribe to become a signatory.

***b) On Tribal Lands***

MOAs and PAs for undertakings on tribal lands require that the THPO (or the designated tribal official if the tribe has not assumed THPO duties) be a signatory, with the same rights to seeking amendments to or terminating the agreement as all other signatories. The agency and the signatories may invite other consulting parties to be signatories or sign as concurring parties. Those that sign as a concurring party do not have such rights to amend or terminate the MOA or PA. 36 CFR 800.2(c)(2)(ii)(F) provides that an Indian tribe that has not assumed THPO duties may notify the agency in writing that it is waiving its rights to execute an MOA for undertakings on its tribal lands.

**4) What happens if agreement is not reached on how to resolve adverse effects?*****a) Off Tribal Lands***

If agreement is not reached, the agency, the SHPO, or the ACHP (if participating), may terminate consultation. Other consulting parties, including Indian tribes, may decline to participate, but they cannot terminate consultation. After consultation is terminated, the ACHP prepares its formal comments to the head of the agency, who must consider the ACHP's comments in reaching a final decision. Per the Section 106 regulations at 36 CFR Section 800.7 (c), the ACHP must provide an opportunity for the agency, all consulting parties, and the public to provide their views to the ACHP during the time in which the comments are being developed. When the ACHP issues comments, it means the full ACHP membership issues the comments, not the ACHP staff. In addition to providing the comments to the head of the agency, the ACHP shall provide copies of those comments to each of the consulting parties. Once the head of the agency has received the ACHP's comments, he or she is required to prepare a summary of his or her final decision regarding the proposed federal undertaking that contains both the rationale for its decision as well as evidence that it had considered the ACHP's comments when making that decision. In addition, the agency must provide copies of this summary to all consulting parties.

***b) On Tribal Lands***

If the agency and the THPO (or designated tribal official, if the tribe has not assumed THPO duties) fail to agree, the agency must invite the ACHP to join the consultation.

The THPO/tribe may determine that further consultation will not be productive and terminate consultation. The THPO/tribe must then notify the agency and other consulting parties of the determination and the reasons for terminating. The ACHP must then issue its comments to the head of the agency when the THPO/tribe terminates consultation because the federal agency and the ACHP cannot execute an agreement without the THPO/tribe for undertakings on or affecting historic properties on tribal lands. The procedure for the development of the ACHP's comments and the requirements to provide copies of both ACHP comments and the agency's summary of its final decision to consulting parties is identical to that explained in answer A) (above) for undertakings affecting historic properties off tribal lands.

**5) When an undertaking takes place or affects historic properties on tribal lands, can a Section 106 agreement be concluded between the federal agency and the Indian tribe when the SHPO opts out of consultation, even though the designated tribal representative is not a THPO?**

Yes, an agreement can be concluded in this circumstance because such a tribe has the same rights as a THPO, per 36 CFR 800.2(c)(2)(i)(B). An Indian tribe may reach agreement with a federal agency on the terms of a Section 106 agreement (MOA or PA). Execution of the agreement by a designated tribal

representative and the agency (along with filing the agreement with the ACHP), and agency compliance with the terms of the agreement, would complete the Section 106 process.

## **VI. Consultation Tools**

While federal authorities direct agencies to consult and coordinate with Indian tribes on proposed actions, little guidance exists on how to carry out such consultation. On a national level, such guidance is general because of the differences between federal agencies, Indian tribes, and local circumstances.

### **Agreements**

The Section 106 regulations at 36 CFR Section 800.2©(2)(ii)(E) provide for agreements between federal agencies and Indian tribes that tailor how consultation will be carried out. Such agreements are not project-specific but, instead, are more general and are focused on the relationship between an agency and an Indian tribe. An agreement can cover all aspects of the consultation process and could grant an Indian tribe additional rights to participate or concur in agency decisions in the Section 106 process beyond those specified in the regulations. The only restriction on the scope of such agreements is that the role of other parties in the process may not be modified without their consent.

A common misunderstanding is that such agreements are required before an agency and a tribe can enter into Section 106 consultation for individual undertakings. In fact, consultation agreements are not required but are meant to facilitate consultation.

A number of federal agencies have entered into such agreements with Indian tribes as a means not only to ensure that consultation would be carried out to the satisfaction of both parties but also as a workload management tool. Agreements can outline the areas of a state or region in which a tribe has an interest or the types of undertakings that might not require consultation with the tribe.

If an Indian tribe agrees in advance to such delegation, an agreement with the tribe would be the vehicle through which an agency could delegate the day-to-day consultation and coordination with the tribe to an applicant.<sup>32</sup> The agreement itself illustrates recognition of the government-to-government relationship between the federal agency and an Indian tribe. However, absent prior agreement by a tribe, an agency cannot delegate its government-to-government consultation responsibilities to an applicant.

The negotiation process to develop an agreement with an Indian tribe does not require participation by any other parties outside of the agency (there may be other entities within the agency, such as the agency's office of legal counsel that must participate). These agreements are, in fact, between the federal government and a sovereign nation. Therefore, unless the tribe agrees, it would be inappropriate to invite another party to participate. The only requirements for such agreements under the ACHP's regulations are that:

- the role of other parties is not modified without their consent; and
- the agreement is filed with both the ACHP and appropriate SHPO.

### **Summits and Meetings**

Some agencies have hosted summits with Indian tribes and continue to do so on a regular basis. These meetings provide a means for agencies to share information about proposed undertakings and for Indian

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<sup>32</sup> An applicant may be a state agency, local government, organization, or individual seeking federal assistance, permits, licenses, and other approvals.

tribes to voice their views and talk with agency personnel. They also serve to develop trust and build relationships.

Some agencies host annual or regular meetings with Indian tribes to ensure that the consultation relationships are working and to address any outstanding issues. These gatherings are separate from Section 106 consultation meetings. They provide a forum for airing more general concerns, a means for recharging the relationship, and an opportunity to meet new agency personnel and tribal representatives.

### **Guidance Materials and Training**

Many agencies have published or are currently developing various guidance materials for their staff and leadership on consultation with Indian tribes. Most of these materials are intended to serve as department or agency-wide guidance.

Training is also extremely useful in that it ensures that both federal agencies and Indian tribes have a common understanding of legal requirements, organizational structures, decision-making, and other important mechanics of the consultation relationship. Training can also address cultural issues to help foster greater mutual understanding. Some agencies have hosted joint training sessions, while others require new personnel to receive training specific to their new duties. For instance, the ACHP has an internal requirement to train all staff and members regarding tribal consultation within the Section 106 process.

On-line training resources are also becoming more prevalent. The ACHP played a large role, along with several other departments and agencies,<sup>33</sup> in the development of the “Working Effectively With Tribal Governments” on-line training program that is available through the U.S. Office of Personnel Management’s GoLearn website.<sup>34</sup> This course provides content useful to all federal employees, including information essential to understanding the unique political status of federally recognized Indian tribes, an overview of federal Indian law and policies, and cultural information that can increase the quality of cross-cultural communications. Other agencies have developed agency specific on-line training, such as the course that the Federal Emergency Management Agency (FEMA) has developed for its employees on working with Indian tribes.

## **VII. Principles and Tips for Successful Consultation**

The key to success in any consultation relationship is building trust, having common goals, and remaining flexible. There is no “one size fits all” model for consultation with Indian tribes—all tribes are unique, and different undertakings present different challenges. There are, however, central principles that should be kept in mind when conducting tribal consultation and this final section of the Tribal Consultation Handbook provides helpful tips on how to put them into practice.

### **Respect is Essential**

- Be respectful of tribal sovereignty.

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<sup>33</sup> Other federal departments and agencies involved in the development of the “Working Effectively With Tribal Governments” on-line training course include the Environmental Protection Agency, the Department of Justice, the Department of Interior, the U.S. Forest Service, the Small Business Administration, the General Services Administration, the Department of Health and Human Services and the Department of Energy.

<sup>34</sup> Available at: <http://www.golearn.gov>

- Become aware of tribal conventions and protocols and follow them; respect tribal customs.
- Dress respectfully. Do not wear shorts, short skirts, sleeveless shirts, or shirts with plunging necklines to meetings. Check with your tribal contact as to appropriate dress for site visits or tribal events.
- Do not take photographs without obtaining permission first.
- Behavior you may perceive as normal may be insulting or offensive to others. For example, some tribes consider pointing one's finger to be offensive, and consider a gentle handshake a sign of respect instead of a sign of weakness. Consider native perspectives and values. When in doubt, ask respectfully.
- Tribal leaders have many duties; be aware of this fact and do not demand that everyone adhere to your deadline. Instead, explain why your deadline exists, who set it, and why it is important. Above all, strive to be as flexible as possible. Look for ways to work cooperatively, because this is your undertaking and consultation is your responsibility.
- Be sensitive to time and costs. A tribe's lack of human and financial resources may impede its representatives' ability to respond quickly or travel to meetings. Make an effort to facilitate and support consultation with available agency resources.
- Do not voice your opinion on what is best for the tribe; that is for tribal leaders to determine.
- Be mindful of the significance of history. The history of U.S. government relations with Indian tribes may color current perceptions and attitudes and cause distrust or suspicion. Take the time to learn about the unique history of the tribe you are consulting with.

### **Communication is Key**

- Communicate with tribal representatives directly whenever possible—do not rely solely on letters. Follow up written correspondence by phone or in person. Create documentation of your communications, such as notes on the content of discussions, keep phone logs, etc.
- Do not expect quick answers. Tribal officials may need time to consult with others, including tribal councils or the head of the tribal government. Make sure you understand the timelines for tribal decision-making.
- Do not assume silence means concurrence; it could signal disagreement. Always verify views with the official tribal representative.
- Always ask tribal representatives about their preferred way of doing business and any specific tribal protocols for meetings. Be aware that the cultural norms of tribal citizens may be different from yours, and that each of the more than 560 Indian tribes has a unique culture and heritage.
- Do not assume everyone is the same. For example, traditional cultural authorities may sometimes have perspectives that differ from those of their tribal governments. It is important to listen to all consultation participants, but also to be sure that you understand the position of the elected tribal leadership on every issue.

- Develop points of contact through the tribal government. Do research ahead of time to find out whom you will be consulting with and their tribal positions, then make the effort to get to know them. Tribal governments may consist of elected leadership (tribal leader, tribal council, tribal courts), traditional leaders (treaty councils, tribal elders, spiritual leaders), and tribal administration (program managers, administrators, and staff).
- Be mindful of appropriate behaviors—be sure to demonstrate respect to tribal leaders just as you would to a leader of a foreign nation. Always show deference toward tribal elders and allow them plenty of time to speak first. Do not interrupt or raise your voice. Learn by observation and by talking to others. Again, when in doubt, ask respectfully.

### **Consultation: Early and Often**

- Make sure you identify and initiate consultation with tribes at the *start* of the planning process for your agency's undertaking.
- Suggest a process for consultation and discuss it with the tribes. Collaborate in a way that accommodates tribal protocols and schedules. The ACHP regulations at 36 CFR Section 800.2(c)(2)(ii)(E) provide for agreements with tribes that set out procedures for Section 106 consultation and can address tribal concerns about confidentiality of information.
- Consider establishing an on-going working group that can provide continuity for future undertakings by your agency.
- Focus on partnerships rather than on project-by-project coordination.
- Remember to document all correspondence, follow-up telephone calls, consultation meetings and visits to project sites and reservations. Be sure to include the content of your communications in your documentation.
- Find out if the tribal leadership wants to receive additional copies of all the consultation materials and documentation that you are providing to the tribe's designated representative (THPO, or cultural resources staff person) as part of your consultation.
- Ask tribal representatives to keep you up-to-date on any changes to tribal postal or email addresses and contact information for new tribal leadership.

### **Effective Meetings are a Primary Component of Successful Consultation**

- Develop an understanding of the tribe's decision-making process and get to know its decision makers.
- Offer to go on-site with traditional authorities. Some people may be uncomfortable relying solely on maps, and site visits may stimulate consideration of alternatives.
- Do not create expectations or make commitments that you are unable or unwilling to fulfill. Before entering into consultation, be certain that what you are negotiating is supported by the Office of General Counsel or Solicitor of your agency, and anyone else who will need to review and approve your position.

- Do not set your own meeting agenda without consulting with tribal representatives to learn what they expect the process and substance to be. Tribes may have their own ways of conducting meetings.
- Inform tribal representatives in advance of the meeting's goal and what needs to be accomplished in the time you have, so that participants can stay focused. Like you, tribal representatives are there to work and accomplish results.
- Give plenty of notice beforehand so that tribal representatives have adequate time to prepare. Provide participants with maps, hotel information, a list of all attendees, an agenda, and most importantly, complete project documentation.
- Speak to tribal members by phone beforehand so that you know who will be attending the meeting. Allow tribes to send as many representatives as they wish, but explain any limitations that your agency may have with funding travel.
- Check if anyone has special needs. Some tribal elders may need special accommodations.
- Offer the tribal participants the opportunity to make an opening or welcoming statement.
- Make sure you invite tribal representatives to sit at the table with you, and introduce all participants with their proper titles. Check with your tribal contact beforehand so you know if certain officials or elders should be introduced and acknowledged first.
- Review your agency's mission and operations at the start of the meeting. Do not assume that everyone knows how your agency functions or is familiar with all of the programs it oversees.
- Take accurate notes during the meeting, or, *if the tribe agrees in advance*, arrange for meetings to be recorded (it is still advisable to take notes to avoid problems should a recording be lost or damaged). It is important to document not only that you have consulted with the tribe, but the substance of the meeting and the views and concerns expressed by the tribe, as well. Be sensitive to the issue of confidentiality, which may require that you switch the recorder off, or to omit certain sensitive information from your notes if the tribe so requests. Documenting meeting content ensures that participants can later review and correct any inaccuracies, and also provides the agency with a solid consultation record.
- Remember that consent by one tribal member does not necessarily mean consent by the tribe. Make sure that the tribe's governing body has approved final decisions.
- Be prepared on the issues and be open to tribal perspectives.

## Conclusion

We hope this handbook has been helpful. If needed, you may obtain further assistance from the ACHP in understanding and interpreting the requirements of Section 106, including tribal consultation. For general information, please visit the ACHP web site at [www.achp.gov](http://www.achp.gov).





*Preserving America's Heritage*

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# NATIONAL REGISTER BULLETIN

Technical information on the the National Register of Historic Places:  
survey, evaluation, registration, and preservation of cultural resources



U.S. Department of the Interior  
National Park Service  
Cultural Resources  
National Register, History and Education

## Guidelines for Evaluating and Documenting Traditional Cultural Properties



The mission of the Department of the Interior is to protect and provide access to our Nation's natural and cultural heritage and honor our trust responsibilities to tribes.

This material is partially based upon work conducted under a cooperative agreement with the National Conference of State Historic Preservation Officers and the U.S. Department of the Interior.

***Cover photographs:***

*Many traditional cultural properties are used for practical purposes by those who value them. This sedge preserve in northern California, for example, is tended and harvested by Pomo Indian basketmakers as a vital source of material for making their world famous baskets. The preserve was established at Lake Sonoma by the U.S. Army Corps of Engineers. (Richard Lerner)*

*This bedrock mortar in central California plays an essential role in processing Black Oak acorns. (Theodoratus Cultural Research)*

# NATIONAL REGISTER BULLETIN

## GUIDELINES FOR EVALUATING AND DOCUMENTING TRADITIONAL CULTURAL PROPERTIES

BY

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U.S. DEPARTMENT OF THE INTERIOR  
NATIONAL PARK SERVICE  
NATIONAL REGISTER, HISTORY AND EDUCATION  
NATIONAL REGISTER OF HISTORIC PLACES

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# I. INTRODUCTION

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## WHAT ARE TRADITIONAL CULTURAL PROPERTIES?

The National Register of Historic Places contains a wide range of historic property types, reflecting the diversity of the nation's history and culture. Buildings, structures, and sites; groups of buildings, structures or sites forming historic districts; landscapes; and individual objects are all included in the Register if they meet the criteria specified in the National Register's Criteria for Evaluation (36 CFR 60.4). Such properties reflect many kinds of significance in architecture, history, archeology, engineering, and culture.

There are many definitions of the word "culture," but in the National Register programs the word is understood to mean the traditions, beliefs, practices, lifeways, arts, crafts, and social institutions of any community, be it an Indian tribe, a local ethnic group, or the people of the nation as a whole.<sup>1</sup>

One kind of cultural significance a property may possess, and that may make it eligible for inclusion in the Register, is *traditional cultural significance*. "Traditional" in this context refers to those beliefs, customs, and practices of a living community of people that have been passed down through the generations, usually orally or through practice. The traditional cultural significance of a historic property, then, is significance derived from the role the property plays in a community's historically rooted beliefs, customs, and practices. Examples of properties possessing such significance include:

- a location where Native American religious practitioners have historically gone, and are known or thought to go today, to perform ceremonial activities in accordance with traditional cultural rules of practice; and
  - a location where a community has traditionally carried out economic, artistic, or other cultural practices important in maintaining its historic identity.
- A traditional cultural property, then, can be defined generally as one that is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community. Various kinds of traditional cultural properties will be discussed, illustrated, and related specifically to the National Register Criteria later in this bulletin.
- a location associated with the traditional beliefs of a Native American group about its origins, its cultural history, or the nature of the world;
  - a rural community whose organization, buildings and structures, or patterns of land use reflect the cultural traditions valued by its long-term residents;
  - an urban neighborhood that is the traditional home of a particular cultural group, and that reflects its beliefs and practices;

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<sup>1</sup> For a detailed definition, see Appendix I.



Numerous African Americans left the South to migrate to the Midwest. The A.M.E. Church (on left) and District No. 1 School remain in Nicodemus Historic District in Nicodemus, Kansas, which was declared a National Historic Landmark by the Secretary of the Interior in 1976. (Clayton B. Fraser for the Historic American Buildings Survey)

## PURPOSE OF THIS BULLETIN

Traditional cultural values are often central to the way a community or group defines itself, and maintaining such values is often vital to maintaining the group's sense of identity and self respect. Properties to which traditional cultural value is ascribed often take on this kind of vital significance, so that any damage to or infringement upon them is perceived to be deeply offensive to, and even destructive of, the group that values them. As a result, it is extremely important that traditional cultural properties be considered carefully in planning; hence it is important that such properties, when they are eligible for inclusion in the National Register, be nominated to the Register or otherwise identified in inventories for planning purposes.

Traditional cultural properties are often hard to recognize. A traditional ceremonial location may look like merely a mountaintop, a lake, or a stretch of river; a culturally important neighborhood may look like any other aggregation of houses, and an area where culturally important economic or artistic activities have been carried out may look like any other building, field of grass, or piece of forest in the area. As a result, such places may not necessarily come to light through the conduct of archeological, historical, or architectural surveys. The existence and significance of such locations often can be ascertained only through interviews with knowledgeable users of the area, or through other forms of ethnographic research. The subtlety with which the significance of such locations may be expressed makes it easy to ignore them; on the other hand it makes it difficult to distinguish between properties having real significance and those whose putative significance is spurious. As a result, clear guidelines for evaluation of such properties are needed.

In the 1980 amendments to the National Historic Preservation Act, the Secretary of the Interior, with the American Folklife Center, was directed to study means of:

preserving and conserving the intangible elements of our cultural heritage such as arts, skills, folklife, and folkways. . .



*The German Village Historic District in Columbus, Ohio, reflects the ethnic heritage of 19th century German immigrants. The neighborhood includes many simple vernacular brick cottages with gable roofs. (Christopher Cline)*

and to recommend ways to:

preserve, conserve, and encourage the continuation of the diverse traditional prehistoric, historic, ethnic, and folk cultural traditions that underlie and are a living expression of our American heritage. (NHPA 502; 16 U.S.C. 470a note)

The report that was prepared in response to 502, entitled *Cultural Conservation*, was submitted to the President and Congress on June 1, 1983, by the Secretary of the Interior. The report recommended in general that traditional cultural resources, both those that are associated with historic properties and those without specific property referents, be more systematically addressed in implementation of the National Historic Preservation Act and other historic preservation authorities. In transmitting the report, the Secretary directed the National Park Service to take several actions to implement its recommendations. Among other actions, the Service was directed to prepare guidelines to assist in the documentation of intangible cultural resources, to coordinate the incorporation of provisions for the consideration of such resources into Departmental planning documents and administrative manuals, and to encourage the identification and documentation of such resources by States and Federal agencies.

This bulletin has been developed as one aspect of the Service's response to the *Cultural Conservation* report and the Secretary's direction. It is intended to be an aid in determining whether properties thought or alleged to have traditional cultural significance are eligible for inclusion in the National Register. It is meant to assist Federal agencies, State Historic Preservation Officers (SHPOs), Certified Local Governments, Indian Tribes, and other historic preservation practitioners who need to evaluate such properties when nominating them for inclusion in the National Register or when considering their eligibility for the Register as part of the review process prescribed by the Advisory Council on Historic Preservation under 106 of the National Historic Preservation Act. It is designed to supplement other National Register guidance, particularly *How to Apply the National Register Criteria for Evaluation and Guidelines for Completing National Register of Historic Places Forms*. It should be used in conjunction with these two Bulletins and other applicable guidance available from the National Register, when applying the National Register Criteria and preparing documentation to support nominations or determinations that a given property is or is not eligible for inclusion in the Register.

This Bulletin is also responsive to the American Indian Religious Free-

dom Act (AIRFA) of 1978, which requires the National Park Service, like other Federal agencies, to evaluate its policies and procedures with the aim of protecting the religious freedoms of Native Americans (Pub. L. 95341 2). Examination of the policies and procedures of the National Register suggests that while they are in no way intended to be so interpreted, they can be interpreted by Federal agencies and others in a manner that excludes historic properties of religious significance to Native Americans from eligibility for inclusion in the National Register. This in turn may exclude such properties from the protections afforded by 106, which may result in their destruction, infringing upon the rights of Native Americans to use them in the free exercise of their religions. To minimize the likelihood of such misinterpretation, this Bulletin gives special attention to properties of traditional cultural significance to Native American groups, and to discussing the place of religion in the attribution of such significance.

The fact that this Bulletin gives special emphasis to Native American properties should not be taken to imply that only Native Americans ascribe traditional cultural value to historic properties, or that such ascription is common only to ethnic minority groups in general. Americans of every ethnic origin have properties to

which they ascribe traditional cultural value, and if such properties meet the National Register criteria, they can and should be nominated for inclusion in the Register.

This Bulletin does not address cultural resources that are purely “intangible”—i.e. those that have no property referents—except by exclusion. The Service is committed to ensuring that such resources are fully considered in planning and decision making by Federal agencies and others. Historic properties represent only some aspects of culture, and many other aspects, not necessarily reflected in properties as such, may be of vital importance in maintaining the integrity of a social group. However, the National Register is not the appropriate vehicle for recognizing cultural values that are purely intangible, nor is there legal authority to address them under 106 unless they are somehow related to a historic property.

The National Register lists, and 106 requires review of effects on, tangible cultural resources—that is, historic properties. However, the attributes that give such properties significance, such as their association with historical events, often are intangible in nature. Such attributes cannot be ignored in evaluating and managing historic properties; properties and their intangible attributes of significance must be considered together.

This Bulletin is meant to encourage its users to address the intangible cultural values that may make a property historic, and to do so in an evenhanded way that reflects solid research and not ethnocentric bias.

Finally, no one should regard this Bulletin as the only appropriate source of guidance on its subject, or interpret it rigidly. Although traditional cultural properties have been listed and recognized as eligible for inclusion in the National Register since the Register’s inception, it is only in recent years that organized attention has been given to them. This Bulletin represents the best guidance the Register can provide as of the late 1980s, and the examples listed in the bibliography include the best known at this time.<sup>2</sup> It is to be expected that approaches to such properties will continue to evolve. This Bulletin also is meant to supplement, not substitute for, more specific guidelines, such as those used by the National Park Service with respect to units of the National Park System and those used by some other agencies, States, local governments, or Indian tribes with respect to their own lands and programs.

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<sup>2</sup> It is notable that most of these examples are unpublished manuscripts. The literature pertaining to the identification and evaluation of traditional cultural properties, to say nothing of their treatment, remains a thin one.



*These sandbars in the Rio Grande River are eligible for inclusion in the National Register because they have been used for generations by the people of Sandia Pueblo for rituals involving immersion in the river’s waters. (Thomas F. King)*

# ETHNOGRAPHY, ETHNOHISTORY, ETHNOCENTRISM

Three words beginning with “ethno” will be used repeatedly in this Bulletin, and may not be familiar to all readers. All three are derived from the Greek *ethnos*, meaning “nation;” and are widely used in the study of anthropology and related disciplines.

*Ethnography* is the descriptive and analytic study of the culture of particular groups or communities. An ethnographer seeks to understand a community through interviews with its members and often through living in and observing it (a practice referred to as “participant observation”).

*Ethnohistory* is the study of historical data, including but not necessarily limited to, documentary data pertaining to a group or community, using an ethnographic perspective.

Ethnographic and ethnohistorical research are usually carried out by specialists in cultural anthropology, and by specialists in folklore and folklife, sociology, history, archeology and related disciplines with appropriate technical training.<sup>3</sup>

*Ethnocentrism* means viewing the world and the people in it only from the point of view of one’s own culture and being unable to sympathize with the feelings, attitudes, and beliefs of someone who is a member of a different culture. It is particularly important to understand, and seek to avoid, ethnocentrism in the evaluation of traditional cultural properties. For ex-

ample, Euroamerican society tends to emphasize “objective” observation of the physical world as the basis for making statements about that world. However, it may not be possible to use such observations as the major basis for evaluating a traditional cultural property. For example, there may be nothing observable to the outsider about a place regarded as sacred by a Native American group. Similarly, such a group’s belief that its ancestors emerged from the earth at a specific location at the beginning of time may contradict Euroamerican science’s belief that the group’s ancestors migrated to North America from Siberia. These facts in no way diminish the significance of the locations in question in the eyes of those who value them; indeed they are irrelevant to their significance. It would be ethnocentric in the extreme to say that “whatever the Native American group says about this place, I can’t see anything here so it is not significant” or “since I know these people’s ancestors came from Siberia, the place where they think they emerged from the earth is of no significance.” It is vital to evaluate properties thought to have traditional cultural significance from the standpoint of those who may ascribe such significance to them, whatever one’s own perception of them, based on one’s own cultural values, may be. This is not to say that a group’s assertions about the significance of a place should not be questioned or subjected to critical analysis, but they should not be rejected based on the premise that the beliefs they reflect are inferior to one’s own.

# EVALUATION, CONSIDERATION, AND PROTECTION

One more point that should be remembered in evaluating traditional cultural properties—as in evaluating any other kind of properties—is that establishing that a property is eligible for inclusion in the National Register does not necessarily mean that the property must be protected from disturbance or damage. Establishing that a property is eligible means that it must be considered in planning Federal, federally assisted, and federally licensed undertakings, but it does not mean that such an undertaking cannot be allowed to damage or destroy it.

Consultation must occur in accordance with the regulations of the Advisory Council (36 CFR Part 800) to identify, and if feasible adopt, measures to protect it, but if in the final analysis the public interest demands that the property be sacrificed to the needs of the project, there is nothing in the National Historic Preservation Act that prohibits this.

This principle is especially important to recognize with respect to traditional cultural properties, because such properties may be valued by a relatively small segment of a community that, on the whole, favors a project that will damage or destroy it. The fact that the community as a whole may be willing to dispense with the property in order to achieve the goals of the project does not mean that the property is not significant, but the fact that it is significant does not mean that it cannot be disturbed, or that the project must be foregone.

<sup>3</sup> For a detailed discussion of the qualifications that a practitioner of ethnography or ethnohistory should possess, see Appendix II.

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# II. TRADITIONAL CULTURAL VALUES IN PRESERVATION PLANNING

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Traditional cultural properties, and the beliefs and institutions that give them significance, should be systematically addressed in programs of preservation planning and in the historic preservation components of land use plans. One very practical reason for this is to simplify the identification and evaluation of traditional cultural properties that may be threatened by construction and land use projects. Identifying and evaluating such properties can require detailed and extensive consultation, interview programs, and ethnographic fieldwork as discussed below. Having to conduct such activities may add considerably to the time and expense of compliance with 106, the National Environment Policy Act, and other authorities. Such costs can be reduced significantly, however, by early, proactive planning that identifies significant properties or areas likely to contain significant properties before specific

projects are planned that may affect them, identifies parties likely to ascribe cultural value to such properties, and establishes routine systems for consultation with such parties.

The *Secretary of the Interior's Standards for Preservation Planning* provide for the establishment of "historic contexts" as a basic step in any preservation planning process be it planning for the comprehensive survey of a community or planning a construction project. A historic context is an organization of available information about, among other things, the cultural history of the area to be investigated, that identifies "the broad patterns of development in an area that may be represented by historic properties" (48 FR 44717). The traditions and traditional lifeways of a planning area may represent such "broad patterns," so information about them should be used as a basis for historic context development.

The *Secretary of the Interior's Guidelines for Preservation Planning* emphasize the need for organized public participation in context development (48 FR 44717). The Advisory Council on Historic Preservation's *Guidelines for Public Participation in Historic Preservation Review* (ACHP 1988) provide detailed recommendations regarding such participation. Based on these standards and guidelines, groups that may ascribe traditional cultural values to an area's historic properties should be contacted and asked to assist in organizing information on the area. Historic contexts should be considered that reflect the history and culture of such groups as the groups themselves understand them, as well as their history and culture as defined by Euroamerican scholarship, and processes for consultation with such groups should be integrated into routine planning and project review procedures.

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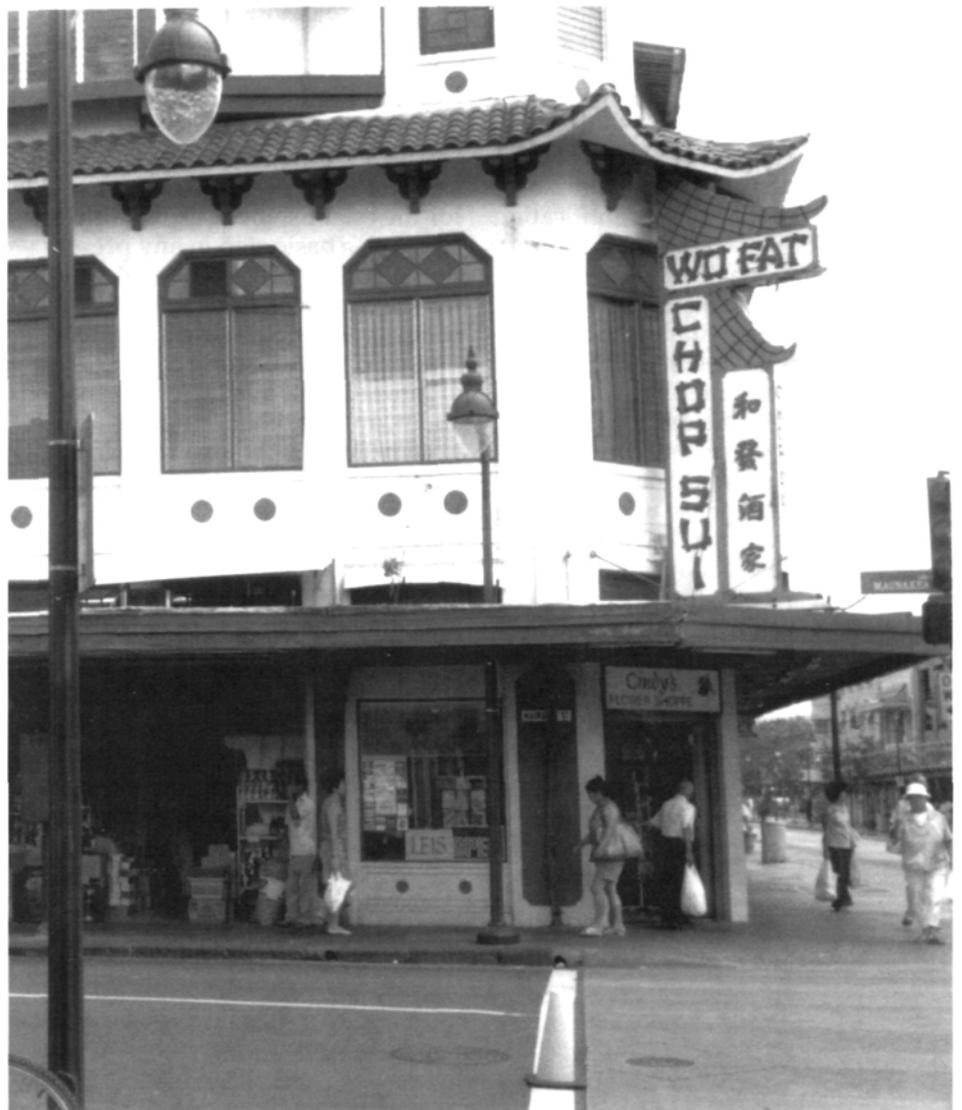
# III. IDENTIFYING TRADITIONAL CULTURAL PROPERTIES

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Some traditional cultural properties are well known to the residents of an area. The San Francisco Peaks in Arizona, for example, are extensively documented and widely recognized as places of extreme cultural importance to the Hopi, Navajo, and other American Indian people of the Southwest, and it requires little study to recognize that Honolulu's Chinatown is a place of cultural importance to the city's Asian community. Most traditional cultural properties, however, must be identified through systematic study, just as most other kinds of historic properties must be identified. This section of the Bulletin will discuss some factors to consider in identifying traditional cultural properties.<sup>4</sup>

## ESTABLISHING THE LEVEL OF EFFORT

Any comprehensive effort to identify historic properties in an area, be the area a community, a rural area, or the area that may be affected by a construction or land-use project, should include a reasonable effort to identify traditional cultural properties. What constitutes a "reasonable" effort depends in part on the likelihood that such properties may be present. The likelihood that such properties may be present can be reliably assessed only on the basis of background knowledge of the area's history, ethnography, and contemporary society developed through preservation planning. As a general although not in-



*Honolulu's Chinatown reflects the cultural values and traditions of its inhabitants not only in its architectural details but also in its organization of space and the activities that go on there. (Ramona K. Mullahey)*

<sup>4</sup> For general guidelines for identification see the *Secretary of the Interior's Standards and Guidelines for Identification* (48 FR 44720-23), *Guidelines for Local Surveys: A Basis for Preservation Planning* (National Register of Historic Places bulletin) and *Identification in Historic Preservation Review: a Decisionmaking Guide* (ACHP/DOI 1988).

variable rule, however, rural areas are more likely than urban areas to contain properties of traditional cultural importance to American Indian or other native American communities, while urban areas are more likely to contain properties of significance to ethnic and other traditional neighborhoods.

Where identification is conducted as part of planning for a construction or land-use project, the appropriate level of effort depends in part on whether the project under consideration is the type of project that could affect traditional cultural properties. For example, as a rule the rehabilitation of historic buildings may have relatively little potential for effect on such properties. However, if a rehabilitation project may result in displacement of residents, "gentrification" of a neighborhood, or other sociocultural impacts, the possibility that the buildings to be rehabilitated, or the neighborhood in which they exist, may be ascribed traditional cultural value by their residents or others should be considered. Similarly, most day-to-day management activities of a land managing agency may have little potential for effect on traditional cultural properties, but if the management activity involves an area or a kind of resource that has high significance to a traditional group—for example, timber harvesting in an area where an Indian tribe's religious practitioners may continue to carry out traditional ceremonies—the potential for effect will be high.

These general rules of thumb aside, the way to determine what constitutes a reasonable effort to identify traditional cultural properties is to consult those who may ascribe cultural significance to locations within the study area. The need for community participation in planning identification, as in other forms of preservation planning, cannot be over-emphasized.

## CONTACTING TRADITIONAL COMMUNITIES AND GROUPS

An early step in any effort to identify historic properties is to consult with groups and individuals who have special knowledge about and in-

terests in the history and culture of the area to be studied. In the case of traditional cultural properties, this means those individuals and groups who may ascribe traditional cultural significance to locations within the study area, and those who may have knowledge of such individuals and groups. Ideally, early planning will have identified these individuals and groups, and established how to consult with them. As a rule, however, the following steps are recommended:

### BACKGROUND RESEARCH

An important first step in identifying such individuals and groups is to conduct background research into what is already recorded about the area's history, ethnography, sociology, and folklife. Published and unpublished source material on the historic and contemporary composition of the area's social and cultural groups should be consulted; such source material can often be found in

the anthropology, sociology, or folklife libraries of local universities or other academic institutions. Professional and nonprofessional students of the area's social and cultural groups should also be consulted—for example, professional and avocational anthropologists and folklorists who have studied the area. The SHPO and any other official agency or organization that concerns itself with matters of traditional culture—for example, a State Folklorist or a State Native American Commission—should be contacted for recommendations about sources of information and about groups and individuals to consult.

### MAKING CONTACT

Having reviewed available background data, the next step is to contact knowledgeable groups and individuals directly, particularly those groups that are native to the area or have resided there for a long time. Some such groups have official repre-

Federal agencies and others have found a variety of ways to contact knowledgeable parties in order to identify and evaluate traditional cultural properties. Generally speaking, the detail and complexity of the methods employed depend on the nature and complexity of the properties under consideration and the effects the agency's management or other activities may have on them. For example:

- The Black Hills National Forest designated a culturally sensitive engineer to work with local Indian tribes in establishing procedures by which the tribes could review Forest Service projects that might affect traditional cultural properties;
- The Air Force sponsored a conference of local traditional cultural authorities to review plans for deployment of an intercontinental missile system in Wyoming, resulting in guidelines to ensure that effects on traditional cultural properties would be minimized.
- The New Mexico Power Authority employed a professional cultural anthropologist to consult with Native American groups within the area to be affected by the Four Corners Power Project.
- The Ventura County (California) Flood Control Agency consulted with local Native American groups designated by the State Native American Heritage Commission to determine how to handle human remains to be exhumed from a cemetery that had to be relocated to make way for a flood control project.
- The Utah State Historic Preservation Officer entered into an agreement with the American Folklife Center to develop a comprehensive overview of the tangible and intangible historic resources of Grouse Creek, a traditional Mormon cowboy community.
- The Forest Service contracted for a full-scale ethnographic study to determine the significance of the Helkau Historic District on California's Six Rivers National Forest.

sentatives—the tribal council of an Indian tribe, for example, or an urban neighborhood council. In other cases, leadership may be less officially defined, and establishing contact may be more complicated. The assistance of ethnographers, sociologists, folklorists, and others who may have conducted research in the area or otherwise worked with its social groups may be necessary in such cases, in order to design ways of contacting and consulting such groups in ways that are both effective and consistent with their systems of leadership and communication.

It should be clearly recognized that expertise in traditional cultural values may not be found, or not found solely, among contemporary community leaders. In some cases, in fact, the current political leadership of a community or neighborhood may be hostile to or embarrassed about traditional matters. As a result, it may be necessary to seek out knowledgeable parties outside the community's official political structure. It is of course best to do this with the full knowledge and cooperation of the community's contemporary leaders; in most cases it is appropriate to ask such leaders to identify members of the community who are knowledgeable about traditional cultural matters, and use these parties as an initial network of consultants on the group's traditional values. If there is serious hostility between the group's contemporary leadership and its traditional experts, however, such cooperation may not be extended, and efforts to consult with traditional authorities may be actively opposed. Where this occurs, and it is necessary to proceed with the identification and evaluation of properties—for example, where such identification and evaluation are undertaken in connection with review of an undertaking under 106—careful negotiation and mediation may be necessary to overcome opposition and establish mutually acceptable ground rules for consultation. Again, the assistance of anthropologists or others with training and experience in work with the community, or with similar communities, may be necessary.

## FIELDWORK

Fieldwork to identify properties of traditional cultural significance involves consultation with knowledgeable



*The Helkau Historic District, in the Six Rivers National Forest of California, is eligible for inclusion in the National Register because of its association with significant cultural practices of the Tolowa, Yorok, Karuk, and Hoopa Indian tribes of the area, who have used the district for generations to make medicine and communicate with spirits. (Theodoratus Cultural Research)*

able parties, coupled with field inspection and recordation of locations identified as significant by such parties. It is often appropriate and efficient to combine such fieldwork with surveys to identify other kinds of historic properties, for example archeological sites and properties of architectural significance. If combined fieldwork is conducted, however, the professional standards appropriate to each kind of fieldwork should be adhered to, and appropriate expertise in each relevant discipline should be represented on the study team. The kinds of expertise typically needed for a detailed ethnographic study of traditional cultural properties are outlined in Appendix II. Applicable research standards can be found in *Systematic Fieldwork, Volume 2: Ethnographic Analysis and Data Management*. (Werner and Schoepfle 1986)

## CULTURALLY SENSITIVE CONSULTATION

Since knowledge of traditional cultural values may not be shared readily with outsiders, knowledgeable parties should be consulted in cultural contexts that are familiar and reasonable to them. It is important to understand the role that the information being solicited may play in the culture of those

from whom it is being solicited, and the kinds of rules that may surround its transmittal. In some societies traditional information is regarded as powerful, even dangerous. It is often believed that such information should be transmitted only under particular circumstances or to particular kinds of people. In some cases information is regarded as a valued commodity for which payment is in order, in other cases offering payment may be offensive. Sometimes information may be regarded as a gift, whose acceptance obligates the receiver to reciprocate in some way, in some cases by carrying out the activity to which the information pertains.

It may not always, or even often, be possible to arrange for information to be sought in precisely the way those being consulted might prefer, but when it is not, the interviewer should clearly understand that to some extent he or she is asking those interviewed to violate their cultural norms. The interviewer should try to keep such violations to a minimum, and should be patient with the reluctance that those interviewed may feel toward sharing information under conditions that are not fully appropriate from their point of view.

Culturally sensitive consultation may require the use of languages other than English, the conduct of

community meetings in ways consistent with local traditional practice, and the conduct of studies by trained ethnographers, ethnohistorians, sociologists, or folklorists with the kinds of expertise outlined in Appendix II. Particularly where large projects or large land areas are involved, or where it is likely that particularly sensitive resources may be at issue, formal ethnographic studies should be carried out, by or under the supervision of a professionally qualified cultural anthropologist.

## FIELD INSPECTION AND RECORDATION

It is usually important to take knowledgeable consultants into the field to inspect properties that they identify as significant. In some cases such properties may not be discernible as such to anyone but a knowledgeable member of the group that ascribes significance to them; in such cases it may be impossible even to find the relevant properties, or locate them accurately, without the aid of such parties. Even where a property is readily discernible as such to the outside observer, visiting the property may help a consultant recall information about it that he or she is unlikely to recall during interviews at a remote location, thus making for a richer and more complete record.

Where the property in question has religious significance or supernatural connotations, it is particularly important to ensure that any visit is carried out in accordance with appropriate modes of behavior. In some cases, ritual purification is necessary before a property can be approached, or spirits must be propitiated along the way. Some groups forbid visits to such locations by menstruating women or by people of inappropriate ages. The taking of photographs or the use of electronic recording equipment may not be appropriate. Appropriate ways to approach the property should be discussed with knowledgeable consultants before undertaking a field visit.

To the extent compatible with the cultural norms of the group involved, traditional cultural properties should be recorded on National Register of Historic Places forms or their equivalent.<sup>5</sup> Where items normally included in a National Register nomination or request for a determination of eligibility cannot be included (for ex-

ample, if it is culturally inappropriate to photograph the property), the reasons for not including the item should be explained. To the extent possible in the property's cultural context, other aspects of the documentation (for example, verbal descriptions of the property) should be enhanced to make up for the items not included.

If making the location of a property known to the public would be culturally inappropriate, or compromise the integrity of the property or associated cultural values (for example, by encouraging tourists to intrude upon the conduct of traditional practices), the "Not for Publication" box on the National Register form should be checked; this indicates that the reproduction of locational information is prohibited, and that other information contained in the nomination will not be reproduced without the permission of the nominating authority. In the case of a request for a determination of eligibility in which a National Register form is not used, the fact that the information is not for publication should be clearly speci-

fied in the documentation, so that the National Register can apply the same controls to this information as it would to restricted information in a nomination.<sup>6</sup>

## RECONCILING SOURCES

Sometimes an apparent conflict exists between documentary data on traditional cultural properties and the testimony of contemporary consultants. The most common kind of conflict occurs when ethnographic and ethnohistorical documents do not identify a given place as playing an important role in the tradition and culture of a group, while contemporary members of the group say the property does have such a role. More rarely, documentary sources may indicate that a property does have cultural significance while contemporary sources say it does not. In some cases, too, contemporary sources may disagree about the significance of a property.



*Much of the significance of traditional cultural properties can be learned only from testimony of the traditional people who value them, like this old man being interviewed in Truk. (Micronesia Institute)*

<sup>5</sup> For general instructions on the completion of National Register documentation, see *How to Complete the National Register of Historic Places Form*.

<sup>6</sup> Section 304 of the National Historic Preservation Act provides the legal authority to withhold National Register information from the public when release might "create a substantial risk of harm, theft, or destruction." For detailed guidelines concerning restricting access to information see the National Register bulletin entitled, *Guidelines for Restricting Information About Historic and Prehistoric Resources*.

Where available documents fail to identify a property as culturally significant, but contemporary sources identify it as such, several points should be considered.

- (a) Ethnographic and ethnohistorical research has not been conducted uniformly in all parts of the nation; some areas are better documented than others simply because they have been the focus of more research.
- (b) Ethnographic and ethnohistorical documents reflect the research interests of those who prepared them; the fact that one does not identify a property as culturally important may reflect only the fact that the individual who prepared the report had research interests that did not require the identification of such properties.
- (c) Some kinds of traditional cultural properties are regarded by those who value them as the loci of supernatural or other power, or as having other attributes that make people reluctant to talk about them. Such properties are not likely to be recorded unless someone makes a very deliberate effort to do so, or unless those who value them have a special reason for revealing the information—for example, a perception that the property is in some kind of danger.

Particularly because properties of traditional cultural significance are often kept secret, it is not uncommon for them to be “discovered” only when something threatens them—for example, when a change in land-use is proposed in their vicinity. The sudden revelation by representatives of a cultural group which may also have other economic or political interests in the proposed change can lead quickly to charges that the cultural significance of a property has been invented only to obstruct or otherwise influence those planning the change. This may be true, and the possibility that traditional cultural significance is attributed to a property only to advance other, unrelated interests should be carefully considered. However, it also may be that until the change was proposed, there simply was no reason for those who value the property to reveal its existence or the significance they ascribe to it.

Where ethnographic, ethnohistorical, historical, or other sources identify a property as having cultural significance, but contemporary sources say that it lacks such significance, the interests of the contemporary sources should be carefully considered. Individuals who have economic interests in the potential development of an area may be strongly motivated to deny its cultural significance. More subtly, individuals who regard traditional practices and beliefs as backward and contrary to the

best contemporary interests of the group that once ascribed significance to a property may feel justified in saying that such significance has been lost, or was never ascribed to the property. On the other hand, of course, it may be that the documentary sources are wrong, or that the significance ascribed to the property when the documents were prepared has since been lost.

Similar consideration must be taken into account in attempting to reconcile conflicting contemporary sources. Where one individual or group asserts that a property has traditional cultural significance, and another asserts that it does not or where there is disagreement about the nature or extent of a property’s significance, the motives and values of the parties, and the cultural constraints operating on each, must be carefully analyzed.

In general, the only reasonably reliable way to resolve conflict among sources is to review a wide enough range of documentary data, and to interview a wide enough range of authorities to minimize the likelihood either of inadvertent bias or of being deliberately misled.

Authorities consulted in most cases should include both knowledgeable parties within the group that may attribute cultural value to a property and appropriate specialists in ethnography, sociology, history, and other relevant disciplines.<sup>7</sup>

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<sup>7</sup> For excellent examples of studies designed in whole or in part to identify and evaluate traditional cultural properties based on both documentary sources and the testimony of consultants, see Bean and Vane 1978; Carroll 1983; Johnston and Budy 1983; Stoffle and Dobyns 1982, 1983; Theodoratus 1979.

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# IV. DETERMINING ELIGIBILITY: STEP BY STEP

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Whether a property is known in advance or found during an identification effort, it must be evaluated with reference to the National Register Criteria for Evaluation (36 CFR Part 60) in order to determine whether it is eligible for inclusion in the Register. This section discusses the process of evaluation as a series of sequential steps. In real life of course, these steps are often collapsed into one another or taken together.

## STEP ONE: ENSURE THAT THE ENTITY UNDER CONSIDERATION IS A PROPERTY

Because the cultural practices or beliefs that give a traditional cultural property its significance are typically still observed in some form at the time the property is evaluated, it is sometimes perceived that the intangible practices or beliefs themselves, not the property, constitute the subject of evaluation. There is naturally a dynamic relationship between tangible and intangible traditional cultural resources, and the beliefs or practices associated with a traditional cultural property are of central importance in defining its significance. However, it should be clearly recognized at the outset that the National Register does not include intangible resources themselves. The entity evaluated must be a tangible property—that is, a district, site, building, structure, or object.<sup>8</sup> The relationship between the property and the beliefs or practices associated with it should be carefully considered, however, since it is the beliefs and practices that may give the property its significance and make it eligible for inclusion in the National Register.

Construction by human beings is a necessary attribute of buildings and structures, but districts, sites, and objects do not have to be the products

of, or contain, the work of human beings in order to be classified as properties. For example, the National Register defines a “site” as “the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historic, cultural, or archeological value regardless of the value of any existing structure.”<sup>9</sup> Thus a property may be defined as a “site” as long as it was the location of a significant event or activity, regardless of whether the event or activity left any evidence of its occurrence. A culturally significant natural landscape may be classified as a site, as may the specific location where significant traditional events, activities, or cultural observances have taken place. A natural object such as a tree or a rock outcrop may be an eligible object if it is associated with a significant tradition or use. A concentration, linkage, or continuity of such sites or objects, or of structures comprising a culturally significant entity, may be classified as a district.

In considering the eligibility of a property that contains no observable evidence of human activity, however, the documentary or oral evidence for the association of the property with traditional events, activities or observances should be carefully weighed and assessed. The National Register discourages the nomination of natural features without sound documentation of their historical or cultural significance.

## STEP TWO: CONSIDER THE PROPERTY’S INTEGRITY

In order to be eligible for inclusion in the Register, a property must have “integrity of location, design, setting, materials, workmanship, feeling, and association” (36 CFR Part 60).

In the case of a traditional cultural property, there are two fundamental questions to ask about integrity. First, does the property have an integral relationship to traditional cultural practices or beliefs; and second, is the condition of the property such that the relevant relationships survive?

## INTEGRITY OF RELATIONSHIP

Assessing the integrity of the relationship between a property and the beliefs or practices that may give it significance involves developing some understanding about how the group that holds the beliefs or carries out the practices is likely to view the property. If the property is known or likely to be regarded by a traditional cultural group as important in the retention or transmittal of a belief, or to the performance of a practice, the property can be taken to have an integral relationship with the belief or practice, and vice-versa.

For example, imagine two groups living along the shores of a lake. Each group practices a form of baptism to mark an individual’s acceptance into the group. Both carry out baptism in the lake. One group, however, holds that baptism is appropriate in any body of water that is available; the lake happens to be available, so it is used, but another lake, a river or creek, or a swimming pool would be just as acceptable. The second group regards baptism in this particular lake as essential to its acceptance of an individual as a member. Clearly the lake is integrally related to the second group’s practice, but not to that of the first.

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<sup>8</sup> See *How to Apply the National Register Criteria for Evaluation* for discussion of property types.

<sup>9</sup> See *How to Complete the National Register Form*.

## INTEGRITY OF CONDITION

Like any other kind of historic property, a property that once had traditional cultural significance can lose such significance through physical alteration of its location, setting, design, or materials. For example, an urban neighborhood whose structures, objects, and spaces reflect the historically rooted values of a traditional social group may lose its significance if these aspects of the neighborhood are substantially altered.

In some cases a traditional cultural property can also lose its significance through alteration of its setting or environment. For example, a location used by an American Indian group for traditional spirit questing is unlikely to retain its significance for this purpose if it has come to be surrounded by housing tracts or shopping malls.

A property may retain its traditional cultural significance even though it has been substantially modified, however. Cultural values are dynamic, and can sometimes accommodate a good deal of change. For example, the Karuk Indians of northwestern California continue to carry on world renewal rites, ancient ceremonies featuring elaborate dances, songs, and other ritual activities, along a stretch of the Klamath River that is now the site of a highway, a Forest Service Ranger Station, a number of residences, and a timber cutting operation. Specific locations important in aspects of the ceremony remain intact, and accommodation has been reached between the Karuk and other users of the land. The State Department of Transportation has even erected "Ritual Crossing" signs at locations where the Karuk religious practitioners cross the highway, and built shallow depressions into the roadway which are filled with sand in advance of the ceremony, so the feet of the practitioners need not be profaned by contact with man-made macadam. As this example shows, the integrity of a possible traditional cultural property must be considered with reference to the views of traditional practitioners; if its integrity has not been lost in their eyes, it probably has sufficient integrity to justify further evaluation.

Some kinds of traditional cultural significance also may be retained regardless of how the surroundings of a



*Cannonball Island, off Cape Alava on the coast of Washington State, is a traditional cultural property of importance to the Makah Indian people. It was used in the past, and is still used today, as a navigation marker for Makah fisherman, who established locations at sea by triangulation from this and other landmarks. It also was a lookout point for seal and whale hunters and for war parties, a burial site, and a kennel for dogs raised for their fur. (Makah Cultural and Research Center Archives)*

property may be changed. For example, the First African Baptist Church Cemetery in Philadelphia, re-discovered during archeological work in advance of highway construction in 1985, has considerable cultural significance for the congregation that traces descent from those interred in the Cemetery, and for Philadelphia's African American community in general, even though its graves had been buried under fill and modern construction for many decades.

It should also be recalled that even if a property has lost integrity as a possible traditional cultural property, it may retain integrity with reference to some other aspect of significance. For example, a property whose cultural significance has been lost through disturbance may still retain archeological deposits of significance for their information content, and a neighborhood whose traditional residents no longer ascribe significance to it may contain buildings of architectural importance.

## STEP THREE: EVALUATE THE PROPERTY WITH REFERENCE TO THE NATIONAL REGISTER CRITERIA

Assuming the entity to be evaluated is a property, and that it retains

integrity, it is next necessary to evaluate it against the four basic National Register Criteria set forth in the National Register regulations (36 CFR Part 60). If the property meets one or more of the criteria, it may be eligible; if it does not, it is not eligible.<sup>10</sup>

### CRITERION (A): ASSOCIATION WITH EVENTS THAT HAVE MADE A SIGNIFICANT CONTRIBUTION TO THE BROAD PATTERNS OF OUR HISTORY.

The word "our" in this criterion may be taken to refer to the group to which the property may have traditional cultural significance, and the word "history" may be taken to include traditional oral history as well as recorded history. For example, Mt. Tonaachaw on Moen Island in Truk, Federated States of Micronesia, is in the National Register in part because of association with oral traditions about the establishment of Trukese society.

"Events" can include specific moments in history of a series of events reflecting a broad pattern or theme.

<sup>10</sup> For general guidelines, see *How to Apply the National Register Criteria for Evaluation*.

For example, the ongoing participation of an ethnic or social group in an area's history, reflected in a neighborhood's buildings, streetscapes, or patterns of social activity, constitutes such a series of events.

The association of a property with significant events, and its existence at the time the events took place, must be documented through accepted means of historical research. The means of research normally employed with respect to traditional cultural properties include ethnographic, ethnohistorical, and folklore studies, as well as historical and archeological research. Sometimes, however, the actual time a traditional event took place may be ambiguous; in such cases it may be impossible, and to some extent irrelevant, to demonstrate with certainty that the property in question existed at the time the traditional event occurred. For example, events recounted in the traditions of Native American groups may have occurred in a time before the creation of the world as we know it, or at least before the creation of people. It would be fruitless to try to demonstrate, using the techniques of history and science, that a given location did or did not objectively exist in a time whose own existence cannot be demonstrated scientifically. Such a demonstration is unnecessary for purposes of eligibility determination; as long as the tradition itself is rooted in the history of the group, and associates the property with traditional events, the association can be accepted.

**CRITERION (B):  
ASSOCIATION WITH THE  
LIVES OF PERSONS  
SIGNIFICANT IN OUR PAST.**

Again, the word "our" can be interpreted with reference to the people who are thought to regard the property as traditionally important. The word "persons" can be taken to refer both to persons whose tangible, human existence in the past can be inferred on the basis of historical, ethnographic, or other research, and to "persons" such as gods and demigods who feature in the traditions of a group. For example, Tahquitz Canyon in southern California is included in the National Register in part because of its association with Tahquitz,

a Cahuilla Indian demigod who figures importantly in the tribe's traditions and is said to occupy an obsidian cave high in the canyon.

**CRITERION (C)(1):<sup>11</sup>  
EMBODIMENT OF THE  
DISTINCTIVE  
CHARACTERISTICS OF A  
TYPE, PERIOD, OR METHOD  
OF CONSTRUCTION.**

This subcriterion applies to properties that have been constructed, or contain constructed entities—that is, buildings, structures, or built objects. For example, a neighborhood that has traditionally been occupied by a particular ethnic group may display particular housing styles, gardens, street furniture or ornamentation distinctive of the group. Honolulu's Chinatown, for example, embodies the distinctive cultural values of the City's Asian community in its architecture, landscaping, signage, and ornamentation.

<sup>11</sup> Note: Criterion (C) is not subdivided into subcriteria (1), (2), etc. in 36 CFR Part 60.4. The subdivision given here is only for the convenience of the reader.

**CRITERION (C)(2):  
REPRESENTATIVE OF THE  
WORK OF A MASTER.**

A property identified in tradition or suggested by scholarship to be the work of a traditional master builder or artisan may be regarded as the work of a master, even though the precise identity of the master may not be known.

**CRITERION (C)(3):  
POSSESSION OF HIGH  
ARTISTIC VALUES.**

A property made up of or containing art work valued by a group for traditional cultural reasons, for example a petroglyph or pictograph site venerated by an Indian group, or a building whose decorative elements reflect a local ethnic groups distinctive modes of expression, may be viewed as having high artistic value from the standpoint of the group.



*In Trukese tradition, the Tonaachaw Historic District was the location to which Sowukachaw, founder of the Trukese society, came and established his meetinghouse at the beginning of Trukese history. The mountain, in what is now the Federated States of Micronesia, is a powerful landmark in the traditions of the area. (Lawrence E. Aten)*

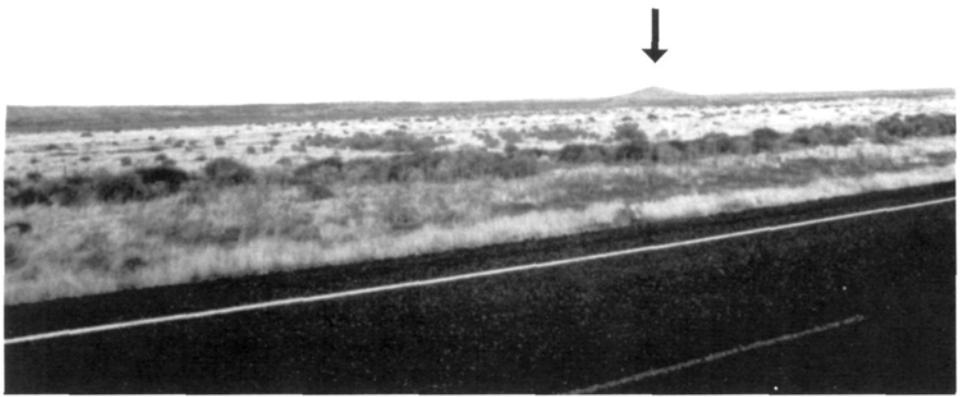
**CRITERION (C)(4):  
REPRESENTATIVE OF A  
SIGNIFICANT AND  
DISTINGUISHABLE ENTITY  
WHOSE COMPONENTS  
MAY LACK INDIVIDUAL  
DISTINCTION.**

A property may be regarded as representative of a significant and distinguishable entity, even though it lacks individual distinction, if it represents or is an integral part of a larger entity of traditional cultural importance. The larger entity may, and usually does, possess both tangible and intangible components. For example, certain locations along the Russian River in California are highly valued by the Pomo Indians, and have been for centuries, as sources of high quality sedge roots needed in the construction of the Pomo's world famous basketry.

Although the sedge fields themselves are virtually indistinguishable from the surrounding landscape, and certainly indistinguishable by the untrained observer from other sedge fields that produce lower quality roots, they are representative of, and vital to, the larger entity of Pomo basketmaking. Similarly, some deeply venerated landmarks in Micronesia are natural features, such as rock outcrops and groves of trees; these are indistinguishable visually (at least to the outside observer) from other rocks and trees, but they figure importantly in chants embodying traditional sailing directions and lessons about traditional history. As individual objects they lack distinction, but the larger entity of which they are a part—Micronesian navigational and historical tradition—is of prime importance in the area's history.

**CRITERION (D): HISTORY  
OF YIELDING, OR  
POTENTIAL TO YIELD,  
INFORMATION  
IMPORTANT IN  
PREHISTORY OR HISTORY.**

Properties that have traditional cultural significance often have already yielded, or have the potential to yield, important information through ethnographic, archeological, sociological, folkloric, or other stud-



*Many traditional cultural properties look like very little on the ground. The small protuberance in the center of this photo, known to residents of the Hanford Nuclear Reservation in Washington State as Goose Egg Hill, is regarded by the Yakima Indians of the area as the heart of a goddess who was torn apart by jealous compatriots. They scattered her pieces across the landscape, creating a whole complex of culturally significant landforms. (Thomas F. King)*

ies. For example, ethnographic and ethnohistorical studies of Kaho'olawe Island in Hawai'i, conducted in order to clarify its eligibility for inclusion in the National Register, have provided important insights into Hawai'ian traditions and culture and into the history of twentieth century efforts to revitalize traditional Hawai'ian culture.

Similarly, many traditional American Indian village sites are also archeological sites, whose study can provide important information about the history and prehistory of the group that lived there. Generally speaking, however, a traditional cultural property's history of yielding, or potential to yield, information, if relevant to its significance at all, is secondary to its association with the traditional history and culture of the group that ascribes significance to it.

**STEP 4:  
DETERMINE WHETHER ANY  
OF THE NATIONAL  
REGISTER CRITERIA  
CONSIDERATIONS (36 CFR  
60.4) MAKE THE PROPERTY  
INELIGIBLE**

Generally speaking, a property is not eligible for inclusion in the Register if it represents a class of properties to which one or more of the six "criteria considerations" listed in 36 CFR 60.4 applies, and is not part of a district that is eligible.

In applying the criteria considerations, it is important to be sensitive to

the cultural values involved, and to avoid ethnocentric bias, as discussed below.

**CONSIDERATION A:  
OWNERSHIP BY A  
RELIGIOUS INSTITUTION  
OR USE FOR RELIGIOUS  
PURPOSES.**

A "religious property," according to National Register guidelines, requires additional justification (for nomination) because of the necessity to avoid any appearance of judgement by government about the merit of any religion or belief.<sup>12</sup> Conversely, it is necessary to be careful not to allow a similar judgement to serve as the basis for determining a property to be ineligible for inclusion in the Register. Application of this criteria consideration to traditional cultural properties is fraught with the potential for ethnocentrism and discrimination. In many traditional societies, including most American Indian societies, the clear distinction made by Euroamerican society between religion and the rest of culture does not exist. As a result, properties that have traditional cultural significance are regularly discussed by those who value them in terms that have religious connotations. Inyan Karan Mountain, for example, a National Register property in the Black Hills of South Dakota, is sig-

<sup>12</sup> *How to Complete the National Register Form.*

nificant in part because it is the abode of spirits in the traditions of the Lakota and Cheyenne. Some traditional cultural properties are used for purposes that are definable as religious in Euroamerican terms, and this use is intrinsic to their cultural significance.

Kootenai Falls on the Kootenai River in Idaho, part of the National Register-eligible Kootenai Falls Cultural Resource District, has been used for centuries as a vision questing site by the Kootenai tribe. The Helkau Historic District in northern California is a place where traditional religious practitioners go to make medicine and commune with spirits, and Mt. Tonaachaw in Truk is an object of spiritual veneration. The fact that such properties have religious connotations does not automatically make them ineligible for inclusion in the Register.

Applying the "religious exclusion" without careful and sympathetic consideration to properties of significance to a traditional cultural group can result in discriminating against the group by effectively denying the legitimacy of its history and culture. The history of a Native American group, as conceived by its indigenous cultural authorities, is likely to reflect a kind of belief in supernatural beings and events that Euroamerican culture categorizes as religious, although the group involved, as is often the case with Native American groups, may not even have a word in its language for "religion." To exclude from the National Register a property of cultural and historical importance to such a group, because its significance tends to be expressed in terms that to the Euroamerican observer appear to be "religious" is ethnocentric in the extreme.

In simplest terms, the fact that a property is used for religious purposes by a traditional group, such as seeking supernatural visions, collecting or preparing native medicines, or carrying out ceremonies, or is described by the group in terms that are classified by the outside observer as "religious" should not by itself be taken to make the property ineligible, since these activities may be expressions of traditional cultural beliefs and may be intrinsic to the continuation of traditional cultural practices. Similarly, the fact that the group that owns a property—for example, an American Indian tribe—describes it in

religious terms, or constitutes a group of traditional religious practitioners, should not automatically be taken to exclude the property from inclusion in the Register. Criteria Consideration A was included in the Criteria for Evaluation in order to avoid allowing historical significance to be determined on the basis of religious doctrine, not in order to exclude arbitrarily any property having religious associations. National Register guidelines stress the fact that properties can be listed in or determined eligible for the Register for their association with religious history, or with persons significant in religion, if such significance has "scholarly, secular recognition."<sup>13</sup> The integral relationship among traditional Native American culture, history, and religion is widely recognized in secular scholarship.<sup>14</sup> Studies leading to the nomination of traditional cultural properties to the Register should have among their purposes the application of secular scholarship to the association of particular properties with broad patterns of traditional history and culture. The fact that traditional history and culture may be discussed in religious terms does not make it less historical or less significant to culture, nor does it make properties associated with traditional history and culture ineligible for inclusion in the National Register.

## CONSIDERATION B: RELOCATED PROPERTIES.

Properties that have been moved from their historically important locations are not usually eligible for inclusion in the Register, because "the significance of (historic properties) is embodied in their locations and settings as well as in the (properties) themselves" and because "one basic purpose of the National Register is to encourage the preservation of historic properties as living parts of their communities."<sup>15</sup> This consideration is relevant but rarely applied formally to traditional cultural properties; in most cases the property in question is a site or district which cannot be relocated in any event. Even where the property can be relocated, maintaining it on its original site is often crucial to maintaining its importance in traditional culture, and if it has been moved, most traditional authorities would regard its significance as lost.

Where a property is intrinsically portable, however, moving it does not

<sup>13</sup> *How to Complete the National Register Form.*

<sup>14</sup> For example see U.S. Commission on Civil Rights 1983; Michaelson 1986.

<sup>15</sup> *How to Complete the National Register Form.*



*The fact that a property has religious connotations does not automatically disqualify it for inclusion in the National Register. This Shaker community in Massachusetts, for example, while religious in orientation, is included in the Register because it expresses the cultural values of the Shakers as a society. (Historic American Buildings Survey)*



*Some traditional cultural properties may be moveable, like this traditional war canoe still in use in the Republic of Palau. (Papua Historic Preservation Officer)*

destroy its significance, provided it remains "located in a historically appropriate setting."<sup>16</sup> For example, a traditionally important canoe or other watercraft would continue to be eligible as long as it remained in the water or in an appropriate dry land context (e.g., a boathouse). A property may also retain its significance if it has been moved historically.<sup>17</sup> For example, totem poles moved from one Northwest Coast village to another in early times by those who made or used them would not have lost their significance by virtue of the move. In some cases, actual or putative relocation even contributes to the significance of a property. The topmost peak of Mt. Tonaachaw in Truk, for example, is traditionally thought to have been brought from another island; the stories surrounding this magical relocation are parts of the mountains cultural significance.

In some cases it may be possible to relocate a traditionally significant property and still retain its significance, provided the property's "historic and present orientation, immediate setting, and general environment" are carefully considered in planning and executing the move.<sup>18</sup> At Lake Sonoma in California, for example, the U.S. Army Corps of Engineers relocated a number of boulders contain-

ing petroglyphs having artistic, archeological, and traditional cultural significance to protect them from inundation. The work was done in consultation with members of the local Pomo Indian tribe, and apparently did not destroy the significance of the boulders in the eyes of the tribe.<sup>19</sup>

### **CONSIDERATION C: BIRTHPLACES AND GRAVES.**

Birthplaces and graves of famous persons are not usually eligible for inclusion in the Register as such. If the birthplace or gravesite of a historical person is significant for reasons other than its association with that person, however, the property can of course be eligible.<sup>20</sup> Thus in the case of a traditional cultural property, if someone's birth or burial within the property's boundaries was incidental to the larger traditional significance of the property, the fact that it occurred does not make the property ineligible. For example, in South Texas, the burial site of Don Pedrito Jaramillo, a well documented folk healer who practiced at the turn of the century, has for more than seventy years been a culturally significant site for the performance of traditional healing rituals

by Mexican American folk healers. Here the cultural significance of the site as a center for healing is related to the intangible belief that Don Pedrito's spirit is stronger there than in other places, rather than to the fact of his burial there.

On the other hand, it is possible for the birth or burial itself to have been ascribed such cultural importance that its association with the property contributes to its significance.

Tahquitz Canyon in southern California, for example, is in a sense the traditional "birthplace" of the entire Cahuilla Indian people. Its status as such does not make it ineligible; on the contrary, it is intrinsic to its eligibility. Mt. Tonaachaw in Truk is according to some traditions the birth-

<sup>16</sup> *How to Complete the National Register Form.*

<sup>17</sup> *How to Complete the National Register Form.*

<sup>18</sup> *How to Complete the National Register Form.*

<sup>19</sup> The location to which a property is relocated, and the extent to which it retains its integrity after relocation, must be carefully considered in judging its continued eligibility for inclusion in the National Register. See *How to Complete the National Register Form* for general guidelines.

<sup>20</sup> *How to Complete the National Register Form.*

place of the culture hero Souwoonirras, whose efforts to organize society among the islands of Truk Lagoon are the stuff of Trukese legend. The association of his birth with the mountain does not make the mountain ineligible; rather, it contributes to its eligibility.

#### **CONSIDERATION D: CEMETERIES.**

Cemeteries are not ordinarily eligible for inclusion in the Register unless they "derive (their) primary significance from graves of persons of transcendent importance, from age, from distinctive design values, or from association with historic events."<sup>21</sup> Many traditional cultural properties contain cemeteries, however, whose presence contributes to their significance.

Tahquitz Canyon, for example, whose major significance lies in its association with Cahuilla traditional history, contains a number of cemeteries that are the subjects of great concern to the Cahuilla people. The fact that they are present does not render the Canyon ineligible; on the contrary, as reflections of the long historical association between the Cahuilla and the Canyon, the cemeteries reflect and contribute to the Canyon's significance. Thus the fact that a traditional cultural property is or contains a cemetery should not automatically be taken to render it ineligible.

#### **CONSIDERATION E: RECONSTRUCTION.**

A reconstructed property—that is, a new construction that ostensibly reproduces the exact form and detail of a property or portion of a property that has vanished, as it appeared at a specific period in time—is not normally eligible for inclusion in the Register unless it meets strict criteria.<sup>22</sup> The fact that some reconstruction has occurred within the boundaries of a traditional cultural property, however, does not justify regarding the property as ineligible for inclusion in the Register. For example, individuals involved in the revitalization of traditional Hawai'ian culture and religion have reconstructed certain religious structures on the island of Kaho'olawe; while the structures themselves might not be eligible for inclusion in the Register, their con-

struction in no way diminishes the island's eligibility.

#### **CONSIDERATION F: COMMEMORATION.**

Like other properties, those constructed to commemorate a traditional event or person cannot be found eligible for inclusion in the Register based on association with that event or person alone.<sup>23</sup> The mere fact that commemoration is involved in the use or design of a property should not be taken to make the property ineligible, however. For example, traditional meetinghouses in the Republic of Palau, included in the National Register, are typically ornamented with "story boards" commemorating traditional events; these derive their design from traditional Palauan aesthetic values, and thus contribute to the cultural significance of the structures. They connect the structures with the traditional history of the islands, and in no way diminish their cultural, ethnographic, and architectural significance.

#### **CONSIDERATION G: SIGNIFICANCE ACHIEVED WITHIN THE PAST 50 YEARS.**

Properties that have achieved significance only within the 50 years preceding their evaluation are not eligible for inclusion in the Register unless "sufficient historical perspective exists to determine that the property is exceptionally important and will continue to retain that distinction in the future."<sup>24</sup> This is an extremely important criteria consideration with respect to traditional cultural values. A significance ascribed to a property only in the past 50 years cannot be considered traditional.

As an example, consider a mountain peak used by an Indian tribe for communication with the supernatural. If the peak has been used by members of the tribe for many years, or if it was used by members of the tribe in prehistory or early history, it may be eligible, but if its use has begun only within the past 50 years, it is probably not eligible.

<sup>21</sup> *How to Complete the National Register Form.*

<sup>22</sup> *How to Complete the National Register Form.*

<sup>23</sup> *How to Complete the National Register Form.*

<sup>24</sup> *How to Complete the National Register Form.*



*Several hundred persons visit this shrine to Don Pedrito Jaramillo, curandero (faith healer), yearly to seek his healing spirit. (Curtis Tunnell, Texas Historical Commission)*



*Tahquitz Canyon, in southern California, is included in the National Register because of its association with the traditions of the Cahuilla Indians. The ancestors of the Cahuilla came into this world from a lower one at the beginning of time, and an evil spirit, named Tahquitz, is believed to live in the upper reaches of the canyon. (Thomas F. King)*

The fact that a property may have gone unused for a lengthy period of time, with use beginning again only recently, does not make the property ineligible for the Register. For example, assume that the Indian tribe referred to above used the mountain peak in prehistory for communication with the supernatural, but was forced to abandon such use when it was confined to a distant reservation, or when its members were converted to Christianity. Assume further that a revitalization of traditional religion has be-

gun in the last decade, and as a result the peak is again being used for vision quests similar to those carried out there in prehistory. The fact that the contemporary use of the peak has little continuous time depth does not make the peak ineligible; the peak's association with the traditional activity reflected in its contemporary use is what must be considered in determining eligibility.

The length of time a property has been used for some kinds of traditional purposes may be difficult to es-

tablish objectively. Many cultural uses may have left little or no physical evidence, and may not have been noted by ethnographers or early visitors to the area. Some such uses are explicitly kept from outsiders by members of the group ascribing significance to the property. Indirect evidence and inference must be weighed carefully, by or in consultation with trained ethnographers, ethnohistorians, and other specialists, and professional judgements made that represent one's best, good-faith interpretation of the available data.

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# V. DOCUMENTING TRADITIONAL CULTURAL PROPERTIES

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## GENERAL CONSIDERATIONS

Generally speaking, documentation of a traditional cultural property, on a National Register nomination form or in eligibility documentation, should include a presentation of the results of interviews and observations that systematically describe the behavior, beliefs, and knowledge that are germane to understanding the property's cultural significance, and an organized analysis of these results. The data base from which the formal nomination or eligibility determination documents are derived should normally include appropriate tape recordings, photographs, field notes, and primary written records.

Obtaining and presenting such documentation can present special challenges, however. First, those who ascribe significance to the property may be reluctant to allow its description to be committed to paper, or to be filed with a public agency that might release information about it to inappropriate people. Second, documentation necessarily involves addressing not only the physical characteristics of the property as perceived by an outside observer, but culturally significant aspects of the property that may be visible or knowable only to those in whose traditions it is significant. Third, boundaries are often difficult to define. Fourth, in part because of the difficulty involved in defining boundaries, it is important to address the setting of the property.

## THE PROBLEM OF CONFIDENTIALITY

Particularly where a property has supernatural connotations in the minds of those who ascribe significance to it, or where it is used in ongoing cultural activities that are not readily shared with outsiders, it may be strongly desired that both the nature and the precise location of the property be kept secret. Such a desire on the part of those who value a property should of course be respected, but it presents considerable problems for the use of National Register data in planning. In simplest terms, one cannot protect a property if one does not know that it is there.

The need to reveal information about something that one's cultural system demands be kept secret can present agonizing problems for traditional groups and individuals. It is one reason that information on traditional cultural properties is not readily shared with Federal agencies and others during the planning and environmental review of construction and land use projects. However concerned one may be about the impacts of such a project on a traditional cultural property, it may be extremely difficult to express these concerns to an outsider if one's cultural system provides no acceptable mechanism for doing so. These difficulties are sometimes hard for outsiders to understand, but they should not be underrated. In some cultures it is sincerely believed that sharing information inappropriately with outsiders will lead to death or severe injury to one's family or group.

As noted above, information on historic properties, including traditional cultural properties, may be kept

confidential under the authority of 304 of the National Historic Preservation Act.<sup>25</sup> This may not always be enough to satisfy the concerns of those who value, but fear the results of releasing information on, traditional cultural properties. In some cases these concerns may make it necessary not to nominate such properties formally at all, or not to seek formal determinations of eligibility, but simply to maintain some kind of minimal data in planning files. For example, in planning deployment of the MX missile system in Wyoming, the Air Force became aware that the Lakota Indian tribe in the area had concerns about the project's impacts on traditional cultural properties, but was unwilling to identify and document the precise locations and significance of such properties. To resolve this problem, Air Force representatives met with the tribe's traditional cultural authorities and indicated where they wanted to construct the various facilities required by the deployment; the tribe's authorities indicated which of these locations were likely to present problems, without saying what the nature of the problems might be. The Air Force then designed the project to minimize use of such areas. In a narrow sense, obviously, the Air Force did not go through the process of evaluation recommended by this Bulletin; no specific properties were identified or evaluated to determine their eligibility for inclusion in the National Register. In a broader sense, however, the Air Force's approach represents excellent practice in the identification and treatment of traditional cultural prop-

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<sup>25</sup> For details regarding maintaining confidentiality, see *Guidelines for Restricting Information About Historic and Prehistoric Resources*.

erties. The Air Force consulted carefully and respectfully with those who ascribed traditional cultural significance to properties in the area, and sought to accommodate their concerns. The tribe responded favorably to this approach, and did not take undue advantage of it. Presumably, had the tribe expressed concern about such expansive or strategically located areas as to suggest that it was more interested in impeding the deployment than in protecting its valued properties the Air Force would have had to use a different approach.

In summary: the need that often exists to keep the location and nature of a traditional cultural property secret can present intractable problems. These must be recognized and dealt with flexibly, with an understanding of the fact that the management problems they may present to Federal agencies or State Historic Preservation Officers may pale into insignificance when compared with the wrenching cultural conflicts they may present to those who value the properties.

## DOCUMENTING VISIBLE AND NON-VISIBLE CHARACTERISTICS

Documentation of a traditional cultural property should present not only its contemporary physical appearance and, if known, its historical appearance, but also the way it is described in the relevant traditional belief or practice. For example, one of the important cultural locations on Mt. Tonaachaw in Truk is an area called "Neepisaram," which physically looks like nothing but a grassy slope near the top of the mountain. In tradition, however, it is seen as the ear of "kuus," a metaphorical octopus identified with the mountain, and as the home of "Saraw," a warrior spirit/barracuda. Obviously a nomination of "Neepisaram" would be incomplete and largely irrelevant to its significance if it identified it only as a grassy slope near the top of the mountain.

## PERIOD OF SIGNIFICANCE

Describing the period of significance for a traditional cultural property can be an intellectual challenge, particularly where the traditions of a Native American or Micronesian group are involved. In such cases

there are often two different kinds of "periods." One of these is the period in which, in tradition, the property gained its significance—the period during which the Cahuilla people emerged from the lower world through Tahquitz Canyon, or the period when civilization came to Truk through the magical arrival of the culture-bearer Sowukachaw on Mt. Tonaachaw. Such periods often have no fixed referent in time as it is ordinarily construed by Euroamerican scholarship.<sup>26</sup> To the Cahuilla, their ancestors simply emerged from the lower world at the beginning of human life on earth, whenever that may have been. A Trukese traditional authority will typically say simply that Sowukachaw came to Truk "*nóómw nóómw nóómw*" (long, long ago). It is usually fruitless, and of little or no relevance to the eligibility of the property involved for inclusion in the National Register, to try to relate this sort of traditional time to time as measured by Euroamerican history. Traditional "periods" should be defined in their own terms. If a traditional group says a property was created at the dawn of time, this should be reported in the nomination or eligibility documentation; for purposes of National Register eligibility there is no need to try to establish whether, according to Euroamerican scholarship or radiocarbon age determination, it really was created at the dawn of time.

The second period that is often relevant to a traditional property is its period of use for traditional purposes. Although direct, physical evidence for such use at particular periods in the past may be rare in the case of properties used by native American groups, it is usually possible to fix a period of use, at least in part, in ordinary chronological time. Establishing the period of use often involves the weighing of indirect evidence and inference. Interviews with traditional cultural authorities are usually the main sources of data, sometimes, supplemented by the study of historical accounts or by archeological investigations. Based on such sources of data it should be possible at least to reach supportable inferences about whether generations before the present one have used a property for traditional

purposes, suggesting that it was used for such purposes more than fifty years ago. It is seldom possible to determine when the traditional use of property began, however—this tends to be lost, as it were, in the mists of antiquity.

## BOUNDARIES

Defining the boundaries of a traditional cultural property can present considerable problems. In the case of the Helkau Historic District in northern California, for example, much of the significance of the property in the eyes of its traditional users is related to the fact that it is quiet, and that it presents extensive views of natural landscape without modern intrusions.

These factors are crucial to the medicine making done by traditional religious practitioners in the district. If the boundaries of the district were defined on the basis of these factors, however, the district would take in a substantial portion of California's North coast Range. Practically speaking, the boundaries of a property like the Helkau District must be defined more narrowly, even though this may involve making some rather arbitrary decisions. In the case of the Helkau District, the boundary was finally drawn along topographic lines that included all the locations at which traditional practitioners carry out medicine-making and similar activities, the travel routes between such locations, and the immediate viewshed surrounding this complex of locations and routes.

In defining boundaries, the traditional uses to which the property is put must be carefully considered. For example, where a property is used as the Helkau District is used, for contemplative purposes, viewsheds are important and must be considered in boundary definition. In an urban district significant for its association with a given social group, boundaries might be established where residence or use by the group ends, or where such residence or use is no longer reflected in the architecture or spatial organization of the neighborhood. Changes in boundaries through time should also be taken into consideration.

For example, archeological evidence may indicate that a particular cultural practice occurred within particular boundaries in the past, but the practice today may occur within dif-

<sup>26</sup> Except, perhaps, by some of the more esoteric subfields of cosmology and quantum mechanics.

ferent boundaries perhaps larger, perhaps smaller, perhaps covering different areas. The fact that such changes have taken place, and the reasons they have taken place, if these can be ascertained, should be documented and considered in developing a rationale for the boundaries identified in the nomination or eligibility documentation.

## DESCRIBING THE SETTING

The fact that the boundaries of a traditional cultural property may be drawn more narrowly than they would be if they included all significant viewsheds or lands on which

noise might be intrusive on the practices that make the property significant does not mean that visual or auditory intrusions occurring outside the boundaries can be ignored. In the context of eligibility determination or nomination, such intrusions if severe enough may compromise the property's integrity. In planning subsequent to nomination or eligibility determination, the Advisory Council's regulations define "isolation of the property from or alteration of the character of the property's setting" as an adverse effect "when that character contributes to the property's qualification for the National Register" (36 CFR 800.9(b)(2)). Similarly, the

Council's regulations define as adverse effects "introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting" (36 CFR 800.9(b)(3)).

To assist in determining whether a given activity outside the boundaries of a traditional cultural property may constitute an adverse effect, it is vital that the nomination form or eligibility documentation discuss those qualities of a property's visual, auditory, and atmospheric setting that contribute to its significance, including those qualities whose expression extends beyond the boundaries of the property as such into the surrounding environment.



*Individual structures can have traditional cultural significance, like this Yapese men's house, used by Yapese today in the conduct of deliberations on matters of cultural importance. (Yap State Historic Preservation Office)*

# COMPLETING REGISTRATION FORMS

The following discussion is organized with reference to the National Register of Historic Places Registration Form (NPS 10-900), which must be used in nominating properties to the National Register. To the extent feasible, documentation supporting a request for a determination of eligibility should be organized with reference to, and if possible using, the Registration Form as well. Where the instructions given in the National Register bulletin entitled *How to Complete the National Register Registration Form*, are sufficient without further discussion, this is indicated.

## 1. Name of Property

The name given a traditional cultural property by its traditional users should be entered as its **historic name**. Names, inventory reference numbers, and other designations ascribed to the property by others should be entered under **other names/site number**.

## 2. Location

Follow *How to Complete the National Register Registration Form*, but note discussion of the problem of confidentiality above.

## 3. Classification

Follow *How to Complete the National Register Registration Form*.

## 4. State/Federal Agency Certification

Follow *How to Complete the National Register Registration Form*.

## 5. National Park Service Certification

To be completed by National Register.

## 6. Function or Use

Follow *How to Complete the National Register Registration Form*.

## 7. Description

Follow *How to Complete the National Register Registration Form* as applicable. It may be appropriate to address both visible and non-visible aspects of the property here, as discussed under General Considerations above; alternatively, non-visible aspects of the property may be discussed in the statement of significance.

## 8. Statement of Significance

Follow *How to Complete the National Register Registration Form*, being careful to address significance with sensitivity for the viewpoints of those who ascribe traditional cultural significance to the property.

## 9. Major Bibliographical References

Follow *How to Complete the National Register Registration Form*. Where oral sources have been employed, append a list of those consulted and identify the locations where field notes, audio or video tapes, or other records of interviews are housed, unless consultants have required that this information be kept confidential; if this is the case, it should be so indicated in the documentation.

## 10. Geographical Data

Follow *How to Complete the National Register Registration Form* as applicable, but note the discussion of boundaries and setting under **General Considerations** above. If it is necessary to discuss the setting of the property in detail, this discussion should be appended as accompanying documentation and referenced in this section.

## 11. Form Prepared By

Follow *How to Complete the National Register Registration Form*.

## Accompanying Documentation

Follow *How to Complete the National Register Registration Form*, except that if the group that ascribes cultural significance to the property objects to the inclusion of photographs, photographs need not be included. If photographs are not included, provide a statement explaining the reason for their exclusion.

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# VI. CONCLUSION

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The National Historic Preservation Act, in its introductory section, establishes that “the historical and cultural foundations of the Nation should be preserved as a living part of our community life in order to give a sense of orientation to the American people”<sup>27</sup> (16 U.S.C. 470(b)(2)). The cultural foundations of America’s ethnic and social groups, be they Native American or historical immigrant, merit rec-

ognition and preservation, particularly where the properties that represent them can continue to function as living parts of the communities that ascribe cultural value to them. Many such properties have been included in the National Register, and many others have been formally determined eligible for inclusion, or regarded as such for purposes of review under 106 of the Act. Federal agencies, State

Historic Preservation Officers, and others who are involved in the inclusion of such properties in the Register, or in their recognition as eligible for inclusion, have raised a number of important questions about how to distinguish between traditional cultural properties that are eligible for inclusion in the Register and those that are not. It is our hope that this Bulletin will help answer such questions.

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<sup>27</sup> 16 U.S.C. 470(b)(2).

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# VIII. APPENDIX I

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## A DEFINITION OF "CULTURE"

Early in this Bulletin a shorthand definition of the word "culture" is used. A longer and somewhat more complex definition is used in the National Park Service's internal cultural resource management guidelines (NPS-28). This definition is consistent

with that used in this Bulletin, and may be helpful to those who require further elucidation of the term. The definition reads as follows:

"Culture (is) a system of behaviors, values, ideologies, and social arrangements. These features, in addition to tools and expressive elements such as graphic arts, help humans interpret their universe as well as deal with features of their environments, natural and social.

Culture is learned, transmitted in a social context, and modifiable. Synonyms for culture include "lifeways," "customs," "traditions," "social practices," and "folkways." The terms "folk culture" and "folklife" might be used to describe aspects of the system that are unwritten, learned without formal instruction, and deal with expressive elements such as dance, song, music and graphic arts as well as storytelling."

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# IX. APPENDIX II

## PROFESSIONAL

### QUALIFICATIONS:

#### ETHNOGRAPHY

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When seeking assistance in the identification, evaluation, and management of traditional cultural properties, agencies should normally seek out specialists with ethnographic research training, typically including, but not necessarily limited to:

I. Language skills: it is usually extremely important to talk in their own language with those who may ascribe value to traditional cultural properties. While ethnographic fieldwork can be done through interpreters, ability in the local language is always preferable.

II. Interview skills, for example:

- The ability to approach a potential informant in his or her own cultural environment, explain and if necessary defend one's research, conduct an interview and minimize disruption, elicit required information, and disengage from the interview in an appropriate manner so that further interviews are welcome; and
- The ability to create and conduct those types of interviews that are appropriate to the study being carried out, ensuring that the questions asked are meaningful to those being interviewed, and that answers are correctly understood through the use of such techniques as translating and back-translating. Types of interviews normally carried out by ethnographers, one or more of which may be appropriate during evaluation and documentation of a traditional cultural property, include:
  - semi-structured interview on a broad topic;
  - semi-structured interview on a narrow topic;
  - structured interview on a well defined specific topic; open ended life history/life cycle interview; and
  - genealogical interview.

III. Skill in making and accurately recording direct observations of human behavior, typically including:

- The ability to observe and record individual and group behavior in such a way as to discern meaningful patterns; and
- The ability to observe and record the physical environment in which behavior takes place, via photography, mapmaking, and written description.

IV. Skill in recording, coding, and retrieving pertinent data derived from analysis of textual materials, archives, direct observation, and interviews.

Proficiency in such skills is usually obtained through graduate and post-graduate training and supervised experience in cultural anthropology and related disciplines, such as folklore/folklife.

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# X. APPENDIX III LIST OF NATIONAL REGISTER BULLETINS

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## **The Basics**

How to Apply National Register Criteria for Evaluation \*

Guidelines for Completing National Register of Historic Places Form

Part A: How to Complete the National Register Form \*

Part B: How to Complete the National Register Multiple Property Documentation Form

Researching a Historic Property \*

## **Property Types**

Guidelines for Evaluating and Documenting Historic Aids to Navigation \*

Guidelines for Identifying, Evaluating and Registering America's Historic Battlefields

Guidelines for Evaluating and Registering Historical Archeological Sites

Guidelines for Evaluating and Registering Cemeteries and Burial Places

How to Evaluate and Nominate Designed Historic Landscapes \*

Guidelines for Identifying, Evaluating and Registering Historic Mining Sites

How to Apply National Register Criteria to Post Offices \*

Guidelines for Evaluating and Documenting Properties Associated with Significant Persons

Guidelines for Evaluating and Documenting Properties That Have Achieved Significance Within the Last Fifty Years

Guidelines for Evaluating and Documenting Rural Historic Landscapes \*

Guidelines for Evaluating and Documenting Traditional Cultural Properties \*

Nominating Historic Vessels and Shipwrecks to the National Register of Historic Places

## **Technical Assistance**

Contribution of Moved Buildings to Historic Districts; Tax Treatments for Moved Buildings; and Use of Nomination Documentation in the Part I Certification Process

Defining Boundaries for National Register Properties\*

Guidelines for Local Surveys: A Basis for Preservation Planning \*

How to Improve the Quality of Photographs for National Register Nominations

National Register Casebook: Examples of Documentation \*

Using the UTM Grid System to Record Historic Sites

The above publications may be obtained by writing to the National Register of Historic Places, National Park Service, 1849 C Street, NW, Washington, D.C. 20240. Publications marked with an asterisk (\*) are also available in electronic form on the World Wide Web at [www.cr.nps.gov/nr](http://www.cr.nps.gov/nr), or send your request by e-mail to [nr\\_reference@nps.gov](mailto:nr_reference@nps.gov).

Standard Operating Procedures for Compliance with SB 18

# Local Government Tribal Consultation List Request

## Native American Heritage Commission

1550 Harbor Blvd, Suite 100  
West Sacramento, CA 95691  
916-373-3710  
916-373-5471 – Fax  
[nahc@nahc.ca.gov](mailto:nahc@nahc.ca.gov)

### Type of List Requested

CEQA Tribal Consultation List (AB 52) – *Per Public Resources Code § 21080.3.1, subs. (b), (d), (e) and 21080.3.2*

General Plan (SB 18) - *Per Government Code § 65352.3.*

#### Local Action Type:

\_\_\_ General Plan \_\_\_ General Plan Element \_\_\_ General Plan Amendment

\_\_\_ Specific Plan \_\_\_ Specific Plan Amendment \_\_\_ Pre-planning Outreach Activity

### Required Information

Project Title: \_\_\_\_\_

Local Government/Lead Agency: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

#### Specific Area Subject to Proposed Action

County: \_\_\_\_\_ City/Community: \_\_\_\_\_

#### Project Description:

### Additional Request

Sacred Lands File Search - *Required Information:*

USGS Quadrangle Name(s): \_\_\_\_\_

Township: \_\_\_\_\_ Range: \_\_\_\_\_ Section(s): \_\_\_\_\_

DATE

Name  
Address  
Address

**RE: Specific Plan Amendment to Support the \_\_\_\_\_ Project, City of \_\_\_\_\_**

Dear \_\_\_\_\_,

The [agency] is currently considering a request from [applicant] to amend/adopt the \_\_\_\_\_ Specific/General Plan [because]. The Project will entail the construction of \_\_\_\_\_. The Project is situated \_\_\_\_\_, in Placer County. A project location map is attached for your reference.

In accordance with Senate Bill 18 (SB 18), we contacted the California Native American Heritage Commission (NAHC) on \_\_\_\_\_ to request a list of Native American tribes and individuals who may wish to consult with the City under SB 18. Your name and contact information was provided to us by the NAHC in its response, which we received on \_\_\_\_\_.

The purposes of consultation under SB 18 are to consult on the preservation of, or the mitigation of impacts to, Native American Cultural Places, as defined in Public Resources Code 5097.993, and to protect the confidentiality of information concerning the same. Tribal participation is, therefore, important and we are hereby notifying you of the opportunity to consult with the City under SB 18 during our consideration of the \_\_\_\_\_.

In accordance with Government Code 65352.3(a)(2), we request a written response from you indicating your intent to consult on this proposed Specific Plan Amendment within 90 days from the date of this letter. You may contact me by mail in care of the \_\_\_\_\_. You may also reach me by phone at \_\_\_\_\_ or by email at \_\_\_\_\_.

Thank you and we look forward to your response.

Respectfully,

DATE

Name  
Address  
Address

**RE: Notification of Close of 90-day Consultation Period for Senate Bill 18 Consultation Regarding the Specific/ General Plan Adoption/ Amendment to Support the \_\_\_ Project, City of \_\_\_**

Dear \_\_\_,

On \_\_\_, I contacted you by letter to inquire about your interest in consulting with the [agency] under Senate Bill 18 for the above-referenced project. The [agency] is currently considering a request from [applicant] to amend the \_\_\_ General/Specific Plan [because].

In accordance with Government Code 65352.3(a)(2), we requested a written response from you indicating your intent to consult on this proposed Specific Plan Amendment within 90 days from the date of our \_\_\_ letter. As of \_\_\_, the consultation period has closed. Although I did not receive any written response from you during the 90-day consultation period, I will be sending you a 45-day referral notice in advance of the City Council meeting for your information.

If you have any questions, you may contact me by mail in care of \_\_\_\_\_. You may also reach me by phone at \_\_\_\_\_ or by email at \_\_\_\_\_.

Respectfully,

Sig

Date

Name  
Address  
Address

**RE: 45-day Referral Notice for Adoption of the \_\_\_\_\_ to Support the \_\_\_\_\_ Project, City of \_\_\_\_\_**

Dear \_\_\_\_\_,

In continuing our outreach to you that began in \_\_\_\_\_, and in accordance with Government Code 65352(a)(11), I am notifying you at least 45 days prior to the adoption of a Specific Plan Amendment of the \_\_\_\_\_ Specific Plan.

This referral notice is to inform you that this Specific Plan Amendment is expected to be heard and considered for adoption by the City Council on \_\_\_\_\_. In accordance with Government Code 65092, an additional notice with specific details on the hearing will be provided to you no less than 10 days prior to the actual hearing date.

The City will accept written comments from you within 45 days of the date of this letter. Any written comments received will be taken under advisement by the City Council in making its decision to adopt the Specific Plan Amendment. You may contact me by mail in care of \_\_\_\_\_. You may also reach me by phone at \_\_\_\_\_ or by email at \_\_\_\_\_.

Respectfully,

sig

Date

Name

Address

Address

**RE: 10-day Referral Notice for Adoption of the \_\_\_\_\_ to Support the \_\_\_\_\_ Project,  
City of \_\_\_\_**

Dear \_\_\_\_\_,

In continuing our outreach to you that began in \_\_\_\_\_, and in accordance with Government Code §65092, I am notifying you 10 days prior to the adoption of a Specific Plan Amendment of the \_\_\_\_\_ Specific Plan. On \_\_\_\_\_, the Planning Commission voted to recommend that the City Council adopt Specific Plan Amendment.

This referral notice is to inform you that this Specific Plan Amendment will be heard and considered for adoption by the City Council on \_\_\_\_\_. The City Council meeting will be held at 6:30pm in the Council Chambers, located at \_\_\_\_\_.

If you have any questions, you may contact me by mail in care of \_\_\_\_\_. You may also reach me by phone at \_\_\_\_\_ or by email at \_\_\_\_\_.

Respectfully,

sig

**Reconciliation with the Tribal Consultation Guidelines: Supplement to General Plan Guidelines  
(November 14, 2005) for Implementing SB 18 (Governor's Office of Planning and Research)  
for**

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<b>Step</b>	<b>OPR Guidelines (GDL) Section and Statutory Reference</b>	<b>Date Completed</b>
Adoption or amendment of any general plan or specific plan is proposed on or after March 1, 2005	GDL Section IV GC § 65352.3 (a)(1)	
Local government sends proposal information to NAHC and requests contact information for the tribes with traditional lands or places located within the geographical areas affected by the proposed changes.	GDL Section IV GC § 65352.3 (a)(2)	
NAHC provides tribal contact information. OPR recommends that the NAHC provide written information as soon as possible but no later than 30 days after receiving a local government's request.	GDL Section IV	
Local government contacts tribe(s) identified by NAHC and notifies them of the opportunity to consult. Pursuant to Government Code § 65352.3, local government must consult with tribes on the NAHC contact list.	GDL Section IV	
Tribe(s) responds to a local government notice within 90 days, indicating whether or not they want to consult with the local government. Consultation does not begin until/unless a tribe requests it within 90 days of receiving a notice of the opportunity to consult. Tribes can agree to a shorter timeframe (less than 90 days) to request consultation.	GDL Section IV GC § 65352.3 (a)(2)	
Consultation begins, if requested by tribe. No statutory limit on the duration of the consultation. Consultation may continue through planning commission or board of supervisors/city council deliberation on plan proposal.	GDL Section IV	
Local government continues normal processing of GP/SP adoption or amendment. (CEQA review, preparation of staff reports, consultation, etc. may be ongoing.)		
90-day consultation period ends		
At least 45 days before local government adopts or substantially amends GP/SP, local government refers proposed action to agencies, including tribe(s). Referral is required regardless of whether or not there has been prior consultation. This does not initiate a new consultation process. This opens a 45-day comment period before approval by board of supervisors/city council.	GDL Section III GC § 65352 (a)(11)	
At least 10 days before public hearing, local government provides notice of hearing to tribes and any other persons who have requested such notice.	GDL Section III GC § 65092	
Public hearing of board of supervisors/city council to take final action on the GP/SP.		