



ASSOCIATION OF  
ENVIRONMENTAL  
PROFESSIONALS

June 11, 2014

The Honorable Jerry Hill  
Chair, Senate Environmental Quality Committee  
State Capitol Sacramento, CA 95814

**Re: Assembly Bill 52 (as revised June 4, 2014) - Oppose**

Dear Chairman Hill and Members of the Committee,

On behalf of the Association of Environmental Professionals (AEP), we appreciate the opportunity to provide additional comments on the proposed Assembly Bill No. 52, most recently amended on June 4, 2014. AEP previously provided comments regarding AB 52 as it was revised on August 26, 2013 (attached hereto as Exhibit A for convenient reference).

While AEP understands and appreciates the need for meaningful tribal consultation when developing project documents in support of the California Environmental Quality Act (CEQA), AEP's previously expressed concerns remain. As such, AEP regrettably opposes AB 52 as currently drafted.

AEP offers the following general comments regarding AB 52's current provisions:

- The definition of "tribal cultural resource" is extremely broad. Arguably, any change to a vista, viewshed, hill, landform, *etc.* of asserted importance to any Native American tribe would be considered a significant environmental impact under CEQA (*see* proposed Preamble Section 1(b)(3); Section 6 (21082.3(b)); Section 8 (21084.2)). As defined by AB 52, impacts to "tribal cultural resources" (sacred places, *etc.*) are more akin to infringements on religious practices than physical environmental impacts. While of understandable importance to Native Americans, AEP does not believe CEQA's statutes are the appropriate legislative vehicle to limit such impacts.
- Native American tribes seem to be codified as the only groups with sufficient expertise to identify and determine impacts to "tribal cultural resources" (*see* proposed Section 1(b)(4), Section 4 (21080.3.1(a))). This creates the potential for abuse as well as potentially significant conflicts if and when more than one Native American tribe asserts expertise (*see* below).
- AB 52 has no provisions to deal with potentially competing and/or conflicting interests where more than one Native American tribe considers a particular resource to be culturally important. AB 52 appears to statutorily codify relevant expertise within Native American tribes only and mandates consultation with all Native American tribes who assert an interest in a particular resource (*see* proposed Section 1(b)(4), Section 4 (21080.3.1(a))).
- AB 52 purports to create complicated consultation and "formal notification" procedures increasing the likelihood of procedural challenges in court (*see* proposed Preamble, Section 4 (21080.3.1), Section 5 (21080.3.2)).
- "Tribal cultural resources" are granted a legal status superior to all other environmental categories considered under CEQA, underscoring AEP's belief that CEQA's statutes are not appropriate to accomplish the aims of this legislation (*see* proposed Section 3 (21074(a) (preponderance of evidence standard on applicant to demonstrate cultural resources are not significant); Section 6 (21082.3(d))



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(statement of overriding considerations (SOC) for significant impacts to tribal cultural resources only under certain conditions)).

These general comments are offered in addition to specific comments attached as Exhibit B hereto.

Unfortunately, AEP believes AB 52, as drafted, will have the unintended effect of further complicating already complex issues and is inconsistent with CEQA. AEP appreciates the continued opportunity to comment on this important legislation.

Should you have any questions or need additional information regarding our comments, please do not hesitate to contact Will Gonzales at [will@gqhobby.com](mailto:will@gqhobby.com) or (916) 930 - 0796, or Steve Noack at [snoack@placeworks.com](mailto:snoack@placeworks.com) or (510) 848-3815.

Sincerely,

C. Eugene Talmadge  
AEP President  
Association of Environmental Professionals

Cc: Assembly Member Mike Gatto

**Exhibit A**

*AEP Letter to Assemblyman Mike Gatto (September 5, 2013)*



September 5, 2013

Assemblyman Mike Gatto  
State Capitol  
P.O. Box 942849  
Sacramento, CA. 94249-0043

**Re: Assembly Bill 52**

Dear Assemblyman Gatto,

On behalf of the Association of Environmental Professionals (AEP), we appreciate the opportunity to provide comments on the proposed Assembly Bill No. 52 (AB 52), most recently amended on August 26, 2013. AEP understands that there are currently two alternate versions of AB 52 being circulated by the Offices of Governor Jerry Brown (“Brown Version”) and by a coalition of authors including Assembly Members Gatto, Alejo, Chesbro, and Lowenthal (“Coalition Version”). Where possible, AEP has attempted to indicate where its comments offered herein correspond with the Brown and Coalition Versions. Of the three versions of AB 52 currently under consideration, AEP prefers the Brown Version.

AEP is a non-profit organization of California’s environmental professionals. AEP members are involved in every stage of the evaluation, analysis, assessment, and litigation of projects subject to the California Environmental Quality Act (CEQA). For over thirty years, AEP has dedicated itself to improving the technical expertise and professional qualifications of its membership, as well as educating the public on the value of California’s laws protecting the environment, managing our natural resources, and promoting responsible land use and urban growth. AEP’s membership is broad and diverse, incorporating representatives from public agencies, the private sector and non-governmental organizations.

As a threshold matter, AEP believes that the proper application of CEQA’s current provisions adequately provides for the robust protection of cultural resources, including those associated with Native American tribes. As proposed on August 26, 2013, AB 52 may have the unintended effect of complicating what may be considered already complex issues. Should AB 52 move forward as proposed on August 26, 2013, AEP offers the following comments regarding its provisions:

- **Preamble & Section 7 (proposed Pub. Res. Code 21084.3(b))** provide “For a tribal cultural resource that is a sacred place, the *bill would prohibit severe or irreparable damage to that resource*, or interference with the free expression or exercise of a Native American religion *unless a clear and convincing showing that the public interest and necessity so require*. The bill would require a lead agency to make *best efforts* to avoid, preserve, and protect specified Native American resources” (emphasis added).<sup>1</sup> These proposed requirements go considerably beyond CEQA’s current requirement that mitigation measures be implemented if feasible. CEQA treats the various environmental resources under its purview equally. AEP questions why tribal cultural resources should be subject to a different standard as compared with other environmental resources addressed under CEQA.

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<sup>1</sup> See Coalition Version preamble (containing the “clear and convincing showing that the public interest and necessity so require” language but striking the “best efforts” language). AEP notes and agrees with the Brown Version of AB 52 which removes this disparate standard and places all resource categories on equal footing under CEQA.



- **Section 1 (e)** provides “The California Environmental Quality Act, *which is the primary environmental protection law in California*, does not...”(emphasis showing added text).<sup>2</sup> The emphasized language is not necessary to advance the core principles of AB 52 and is arguably inaccurate. AEP recommends striking the emphasized language.
- **Section 1 (f), Section 7 (proposed Pub. Res. Code § 21080.3.1(a) – (d)), & Section 8 (proposed Pub. Res. Code § 21097(a))** provide, in relevant part, “California Native American tribes are experts concerning their *traditionally and* culturally affiliated resources, tribal history, and practices concerning those resources” and propose mitigation to protect “the *cultural character* and integrity...[and] *traditional use* of the resource” (emphasis showing text added via August 26, 2013 amendments).<sup>3</sup> AEP notes that the purpose of CEQA is to address environmental impacts, not impacts to “traditions” *per se*. Disclosing the environmental impacts associated with a particular project is an exercise rooted in scientific inquiry. It would be problematic for CEQA documents to go beyond the relatively objective description of environmental impacts in an attempt to describe what effects those impacts may have on traditional tribal practices, or how “significant” such impacts may be (a key inquiry under CEQA). CEQA’s current inquiries focus on objective conclusions regarding environmental impacts, leaving any subjective determinations resulting from these environmental impacts to be discussed by interested parties and responsible agencies.<sup>4</sup> AEP understands that impacts to the environment may arguably inhibit certain tribal traditions, but CEQA’s mandate is not so broad as to address impacts to tribal traditions associated with physical spaces. Protecting such traditions should be the function of other statutory provisions of the California Government Code and/or Public Resources Code if desired.
- **Section 4 (proposed Pub. Res. Code 21080.3.1(d)(1))** provides “Consultation shall recognize the tribes’ potential needs for confidentiality with respect to places that have traditional tribal cultural significance.”<sup>5</sup> AEP notes that maintaining the confidential location of particular cultural sites is understandable, but, depending on how this language is ultimately interpreted, its terms may run contrary to the essence of CEQA as a public disclosure statute. Existing statutory provisions already mandate that cultural resources professionals keep the locations of certain resources confidential.<sup>6</sup>

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<sup>2</sup> See Brown Version § 1(e). Similar language does not appear to be contained in the Coalition Version.

<sup>3</sup> See Brown Version § 1(f); Coalition Version preamble, § 4 (proposed Pub. Res. Code § 21080.3.1(a) – (d)), § 7 (proposed Pub. Res. Code § 21084.3(a)(4)), § 8 (proposed Pub. Res. Code § 21097(a)).

<sup>4</sup> CEQA Guidelines Appx. G, Sect. V lists questions designed to elicit information concerning potential impacts to cultural resources: "a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5? [;] b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5? [;] c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature [;] d) Disturb any human remains, including those interred outside of formal cemeteries?"

<sup>5</sup> See Brown Version § 3 (proposed Pub. Res. Code § 21074(c)); Coalition Version § 4 (proposed Pub. Res. Code § 21080.3.1(d)), § 8 (proposed Pub. Res. Code § 21097(d)).

<sup>6</sup> For example, the California Public Records Act provides for the nondisclosure of archeological site information and reports and recognizes the confidentiality principles established under the U.S. Archeological Resources Protection Act (16 U.S.C. §§ 470w-3, 470hh). See California Government Code §§ 6254(k), 6254.10.





- **Section 4 (proposed Pub. Res. Code 21080.3.1(d)(2) & (3))** provides “The consultation shall be considered concluded at the point at which the parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation, or either the lead agency or Native American tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached ... If the project proponent or its consultants participate in the consultation, those parties shall respect the principles set forth in this subdivision.”<sup>7</sup> This provision implies that the project applicant may be left out of any discussions between the tribe(s) and lead agency. Given the typical role project applicants have in developing and implementing mitigation measures, AEP suggests that project applicants should be included as participants in these discussions should they so choose. While such project applicants may not be accorded signatory status to any agreement between the tribe and lead agency, AEP foresees that project applicants would make important contributions regarding the feasibility and likely success of contemplated mitigation measures.
  
- **Section 7 (proposed Pub. Res. Code 21084.3(a))** provides “If the lead agency determines that a project will have a substantial adverse change on a tribal cultural resource, the following mitigation measures, *in order of preference*, that may avoid or minimize the significant adverse impacts *shall* be implemented, if feasible ...” (emphasis added).<sup>8</sup> AEP recommends striking the emphasized language and changing the “shall” to “may.” The order of preference for any mitigation can be expressed during the tribal discussions with the lead agency. To mandate a statutory order of preference within CEQA, or to require certain types of mitigation regardless of the scope of the proposed project will inhibit flexibility with regard to the development of these mitigation measures. This may have negative repercussions on mutually agreed upon resolutions supporting the project’s development. For example, a third-party may challenge a mitigation scheme jointly developed by the tribe and lead agency on the premise that statutorily preferred mitigation, while feasible, was not selected.
  
- **Section 8 (proposed Pub. Res. Code 21097(a))** provides that “The lead agency shall provide to the Native American tribe copies of any environmental document or technical report relied on by the lead agency.”<sup>9</sup> AB 52 should allow the option to provide copies of relevant documents to interested parties electronically and/or via the internet.
  
- **Section 8 (proposed Pub. Res. Code 21097(b))** provides that “Any mitigation measures agreed upon by the lead agency and Native American tribe in the consultation shall be incorporated as mitigation measures in the final environmental document and fully enforceable through conditions, agreements, or measures.”<sup>10</sup> AEP notes that the timing of these tribal discussions may lead to project delays as they are envisioned to occur *after* the initial circulation of draft environmental document. If the tribal discussions generate new mitigation measures and/or alternatives that have not been evaluated and/or

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<sup>7</sup> See Coalition Version § 4 (proposed Pub. Res. Code 21080.3.1(d)(2) & (3)). Similar language does not appear to be contained in the Brown Version.

<sup>8</sup> See Coalition Version § 7 (proposed Pub. Res. Code 21084.3(a)) . Similar language does not appear to be contained in the Brown Version.

<sup>9</sup> See Coalition Version § 8 (proposed Pub. Res. Code 21097(a)) . Similar language does not appear to be contained in the Brown Version.

<sup>10</sup> See Coalition Version § 8 (proposed Pub. Res. Code 21097(b)). Similar language does not appear to be contained in the Brown Version.





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may result in additional impacts not addressed by the draft environmental document, recirculation of that draft environmental document may be required.

- **Section 8 (proposed Pub. Res. Code 21097(d))** provides “Any information submitted by a Native American tribe during the consultation process shall be published in a confidential appendix to the environmental document unless the tribe consents to disclosure of all or some of the information to the public.”<sup>11</sup> As discussed previously, the breadth of this provision may be contrary to CEQA's focus on public disclosure. Existing statutory provisions already mandate that cultural resources professionals keep the locations of certain resources confidential.

AEP appreciates the continued opportunity to comment on legislation with important impacts to CEQA.

Should you have any questions or need additional information regarding our comments, please do not hesitate to contact Will Gonzales at [will@gqhlobby.com](mailto:will@gqhlobby.com) or (916) 930 - 0796, or Bill Halligan at [whalligan@planningcenter.com](mailto:whalligan@planningcenter.com) or (714) 966 - 9220.

Sincerely,

C. Eugene Talmadge  
AEP President  
Association of Environmental Professionals

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<sup>11</sup> See Coalition Version § 8 (proposed Pub. Res. Code 21097(d)). Similar language does not appear to be contained in the Brown Version.

**Exhibit B**

*AEP Comments regarding AB 52's provisions (as revised June 4, 2014)*



1. **Preamble.**

- a. **“This bill would specify that a project having a potential to cause a substantial adverse change in the significance of to a tribal *cultural resource*, as defined, to be a project that may have a significant effect on the environment.”** (See *also* Section 1, (b)(3); Section 6, 21082.3). The purpose of CEQA is to address physical environmental impacts. Disclosing the environmental impacts associated with a particular project is an exercise rooted in scientific inquiry. It would be problematic for CEQA documents to go beyond the relatively objective description of environmental impacts in an attempt to describe how a “substantial adverse change” may impact the value(s) associated with a “tribal cultural resource,” or how “significant” such impacts may be (a key inquiry under CEQA). CEQA’s current inquiries focus on objective conclusions regarding environmental impacts, leaving any subjective determinations resulting from these environmental impacts to be discussed by interested parties and responsible agencies. Impacts to the environment may arguably inhibit certain tribal traditions and uses of sacred places, but CEQA’s mandate is not so broad as to address impacts to tribal traditions associated with physical spaces. Protecting such traditions should be the function of other statutory provisions of the California Government Code and/or Public Resources Code if desired.
- b. **“The bill would require a lead agency to consult with Native American tribes that are traditionally and culturally affiliated with the geographic area of the proposed project ~~that~~ and have requested to the lead agency or the California Native American Heritage Commission, in writing, to be informed by the lead agency of proposed projects in that geographic area prior...”** (See *also* Sect. 4, 21080.3.1(b)). A tribal request to the California Native American Heritage Commission to be informed by the lead agency of projects proposed in the area will *not* necessarily ensure timely consultation. The lead agency must be directly informed of the tribe’s desire to be engaged in consultation.

2. **Section 1**

- a. **(a)(1) & (2)** – Generally asserts that existing California law provides limited measures of protection for Native American cultural resources, begging the question why CEQA (which is meant to address environmental impacts) should be broadened to provide additional protections. Focus of additional protections, if any are warranted, should be with those other statutes specifically meant to protect Native American practices already referenced in AB 52.
- b. **Section 1, (b)(3)** – **New category of resources “called ‘tribal cultural resources’ that considers the tribal cultural values in addition to the scientific and archaeological values.”** Consideration of “tribal cultural resources” as defined in AB 52 greatly expands CEQA’s scope into an extremely subjective resource category (see comments re Section 3 (defining “Tribal Cultural Resource”).
- c. **Section 1, (b)(4)** – **“Recognize that California Native American tribes have expertise with regard to their tribal history and practices, which concern the tribal cultural resources and associated environment 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 land, tribal cultural resources resources, and associated environment at issue should be included in environmental assessments for projects that may have a significant impact on those resources.”** (See *also* Sect. 4 § 21080.3.1(a)). This provision effectively establishes the tribes as the only groups with sufficient expertise to provide analyses on “tribal cultural resources” and the environments associated with them. Thus presumably, any analysis under CEQA which either: (a) does not engage the local Native American tribes to perform the tribal cultural resources analysis; and/or (b) declines to adhere to the conclusions, findings, and recommended mitigation proposed by the tribe, would be potentially vulnerable to assertions that it proceeded in an arbitrary and capricious manner given the statutorily codified expertise the Native American tribes purportedly possess. Further, this section does nothing to govern potential conflicts where two tribes assert claims / expertise regarding the same alleged resource.

### 3. Section 3, sect. 21074(a) (defining “Tribal Cultural Resources”)

- a. **“~~Tribal~~(1) Unless a preponderance of the evidence demonstrates that the resources are not culturally significant, ‘tribal cultural resources’ means are either of the following:...**” The introduction of a “preponderance of the evidence” standard is foreign and contrary to CEQA. The reference to this standard limits the discretion afforded lead agencies in determining thresholds of significance and the “substantial evidence” typically required to justify lead agency determinations. Further, this language makes the CEQA standard for “tribal cultural resources” more stringent, begging the question why such resources should be considered any more important than other environmental resources?
- b. **A tribal cultural resource is broadly defined to include: (1) all sites “included” in CA Register of Historic Resources, local register of historic resources, or satisfying criteria under 5024.1(c) (including any “sites, features, places, objects with cultural value to descendant communities” or “cultural landscapes that are consistent with the guidance of the United States National Park Service and the federal Advisory Council on Historic Preservation”); and/or (2) “Sacred places,” including but not limited to those listed on the California Native American Heritage Commission’s Sacred Lands File pursuant to Section 5097.94 or 5097.96 and/or listed or determined pursuant to criteria set forth in subdivision (g) of Section 5024.1 to be eligible for listing in the California Register of Historical Resources (such as “Native American sanctified cemeteries, places of worship, religious or ceremonial sites, or sacred shrines”).** (See *also* Section 1, (b)(3)). Extremely broad definition without objective limits, in particular with reference to “sacred places.”
  - i. **“[s]ites... that are ~~listed in or determined to be eligible for listing~~ included in any of the following...”** – This change seemingly lowers the bar for sites that should be considered as cultural resources. For example, if the California Register of Historic Resources tracks “other” cultural sites (not listed and not eligible for listing), than the change above would seem to capture them as resources that must be considered.
  - ii. **“...A resource deemed to be significant pursuant to *criteria set forth in subdivision (g) (c) of Section 5024.1...*”** This change seems to also lower the

bar for resources to be considered as subdivision (c)'s requirements are more subjective (e.g., "associated with lives of persons important in our past", "has yielded, or may be likely to yield, information important in prehistory or history", etc.) than those of subdivision (g) (e.g., surveys for resources must be included in State Historic Resources Inventory, be prepared in accordance with specific requirements, evaluated by regulatory agency, etc.).

- c. ***"(2) The fact that a resource is not included in the California Register of Historic Places, not listed in California Native American Heritage Commission's Sacred Lands File, not included in a local register of historical resources, not deemed significant pursuant to criteria set forth in subdivision (c) of Section 5024.1, or not deemed eligible pursuant to criteria set forth in subdivision (g) of Section 5024.1 for listing in the California Register of Historic Places shall not preclude a lead agency from determining whether the resource is a tribal cultural resource for the purposes of this division."*** Effectively mandates consideration of "tribal cultural resource" (as broadly defined above and the importance/significance of which is determined by the tribe designating it) regardless of prior documentation and/or listing in State surveys and registers of such resources.

#### 4. Section 4, Amendments to sect. 21080.3.1

- a. ***"(b) Prior to determining whether a negative declaration, mitigated negative declaration, or environmental impact report is required for a project, the lead agency shall ~~initiate consultation~~ consult, regarding the appropriate level of environmental review for a project..."*** Elevates Native American tribes to the level of the CEQA Lead Agency contrary to discretion and independence afforded Lead Agency under CEQA. Again begs the question of why AB 52 proposes to treat tribal cultural resources differently than other environmental resources under CEQA. As a practical matter, mandates consultation with Native American tribes affiliated with the project's geographic area concerning level of environmental review without considering lack of responsiveness or willingness to participate by the tribes.
- b. ***(b) References to CA. Public Resources sect. "20180.3.2" appear to be in error. Section 21080.3 addresses "Consultation with responsible agencies".***
- c. ***"(c)...The lead agency formal notification to the traditionally and culturally affiliated Native American tribes that have requested notice shall be accomplished by means of at least one written notification that includes information about the project and the project location and description, consistent with the information about the project required to be provided under paragraph (1) of subdivision (b) of Section 21092, and shall be deemed sufficient to qualify as formal notification pursuant to subdivision (b)."*** Additional "formal notification" procedures increase likelihood of legal challenge.

#### 5. Section 5, 21080.3.2

- a. **(b) & (c)** – Mandate specific procedural checks regarding consultation (e.g., prior to end of comment period for EIR, during comment period for ND, *etc.*) and increase likelihood of legal challenge.
- b. **“(d) The consultation shall be considered concluded at the point at which the parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation that will be recommended to the lead agency, or either the authorized representative of the lead agency participating in the consultation or the Native American tribe, acting in good faith and after reasonable effort, faith, concludes that mutual agreement cannot be reached concerning recommended appropriate measures of preservation or mitigation. reached.”** Edits define conclusion of consultation in a manner that assumes no agreement will be reached.
- c. **(e) (asserting tribes may submit information regarding the asserted significance of any particular resource)**. Section is not necessary as CEQA allows and encourages the submission of information relative to a project’s impacts. Lead agencies must already consider such information provided it is submitted prior to the close of the public comment period. See CA. Public Resources Code (PRC) 21177 (requiring presentation of comments prior to close of comment period); CEQA Guidelines 15384 (defining substantial evidence).
- d. **“(g) It is the intent of the Legislature that the lead agency shall engage in early and meaningful consultation with Native American tribes....”** Early consultation is not required in any context under CEQA unless the project applicant requests it of the lead agency (see PRC 21104). In all other contexts, early consultation by the lead agency is allowed, but not required (see PRC 21153(b); CEQA Guidelines 15083 (generally allowing early consultation or “scoping” if warranted)).

## 6. Section 6, 21082.3

- a. **(a) (requiring mitigation measures to be included within the environmental document and be fully enforceable)** – Language unnecessary. CEQA already requires inclusion of mitigation measures or alternatives to reduce environmental impacts if feasible and outlines standards for such mitigation measures, including enforceability by the lead agency (see PRC 21081.6(b)(agency will provide that mitigation fully enforceable); CEQA Guidelines 15091(d) (mitigation monitoring and reporting program), 15126.4 (describing requirements for consideration of mitigation measures).
- b. **(b) (determining whether proposed project has a significant impact on tribal cultural resources)** – See Preamble comments above.
- c. **(c) (Confidentiality provisions regarding “any information” provided by the Tribe during consultation)** - Maintaining the confidential location of particular cultural sites is understandable, but, depending on how the tribes interpret it, this provision may run contrary to the essence of CEQA as a public disclosure document. Pursuant to existing California Code, cultural resources professionals already must keep the locations of certain resources confidential.

- d. **(d) (limiting approval of project with significant impact on tribal cultural resources only if: (1) agreed mitigation implemented; (2) tribe accepts mitigation in CEQA document; (3) tribal consultation has occurred; or (4) notice given without comment).** Subjects tribal cultural resources to a different and heightened scrutiny, curbing the availability of Statements of Overriding Considerations to only where one of certain enumerated conditions has occurred. Again begs the question of why AB 52 proposes to treat tribal cultural resources differently than other environmental resources under CEQA.
  - e. **(e) (requiring mitigation if substantial impact)** – Not necessary. Already required by CEQA.
7. **Section 8, 21084.2, “A project may have a significant effect on the environment if the project has the potential of causing a substantial adverse change ~~in the significance of~~ to a tribal cultural resource.”** CEQA practitioners and existing precedent not available to objectively determine what would constitute a “substantial adverse change” to the broadly defined “tribal cultural resource.” See Preamble comments above.
8. **Section 9, 21084.3 (providing examples of mitigation measures which may be employed).** CEQA already mandates mitigation be considered and implemented if feasible. It is unclear how, if at all, the examples offered here aid that analysis. Further, as a practical matter, the codification of exemplary mitigation measures, even if optional, tends to restrain lead agency discretion by creating a *de facto* mitigation list that that must be considered.
9. **Section 10 (no prohibition against consulting with nonfederally recognized Native American tribes)** – Not necessary. Subject to the provisions of the Brown Act, CEQA contains no prohibition against consulting with any member of the public, including but not limited to nonfederally recognized tribes.