

PROTECTING TRIBAL CULTURAL RESOURCES (AS MUCH AS POSSIBLE) POST-AB 52

Presenter

Merri Lopez-Keifer

Secretary, NAHC




What To Ask For And Discuss During Consultation To Protect Your TCRs

- Archaeological records search and past archaeological reports
- Archaeological and Native American monitor pedestrian survey results
- Geotechnical or Soils Reports
- Hydrology Reports
- Historical Aerial Maps
- Land Use of the Project Area
- Grading Plans
- Placement and depths of infrastructure



Does Your TCR meet the definition under CEQA/AB 52? What if it doesn't?

- ▶ 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 and supported with substantial evidence, chooses to treat the resource as a TCR
- ▶ See: PRC 21074 (a)(1)(A)-(B)



Using The California Historic Register To Preserve and Protect the TCR

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

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


(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. = *Avoidance*

(4) Has yielded, or may be likely to yield, information important in prehistory or history. = *Data Recovery/ Destruction*

(See PRC § 5024.1(c)(1-4))





Using Tribal Knowledge in Qualifying a TCR under CEQA

- Qualifying a tribal elder in establishing cultural value of a TCR to establish substantial evidence
 - The foundational predicate for admission of the expert testimony: will the testimony assist the trier of fact to evaluate the issues it must decide?
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Common Forms of Preservation

- Avoidance & Placement into Cultural Conservation Easement or Protective Open Space
 - Relocation of TCR to area free from impact and placement into Cultural Conservation Easement
 - Incorporation of TCR into landscape design, protective measures placed upon it, and placement into Cultural Conservation Easement
 - *Issues to keep in mind:* appropriate buffer zones, trail placements, subsurface impacts, vandalism, erosion, attracting the wrong kind of attention, use of the Sacred Lands File, and recording of easements.
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What About “Potential” TCRs When There Are No Known TCRs Within The Project Area?

- ▶ Potentially significant negative impacts must be addressed by the Lead Agency under CEQA (Guidelines §15065)
- ▶ Use the Tribal Perspective or Tribal Knowledge in “Painting the picture” for the Lead Agency.
 - ▶ Use the type of evidence they are comfortable with to explain why there are potential TCRs that may be negatively impacted by the proposed project.
 - ▶ Archaeological reports
 - ▶ Soils Reports (Geotechnical Reports)
 - ▶ Hydrology Reports
 - ▶ Historical Aerial Photos
 - ▶ Biological & Wildlife Reports
 - ▶ Help the Lead Agency use their discretion in finding that a potential TCR may be significantly negatively impacted.



Protecting TCRs In Known And Uncertain Locations

- ▶ Mitigating Potential Negative Impact to TCRs
 - ▶ Treatment of TCRs – handling of TCRs in the field through final disposition
 - ▶ Role of the Native American monitor and archaeological monitor
 - ▶ Utilization of less impactful construction methods
 - ▶ Role of the Tribe in developing a treatment plan for inadvertent discoveries and determining significance of discoveries
 - ▶ Role of the Tribe in developing a preservation plan for TCRs or data recovery (i.e. testing methods)
 - ▶ Potential Areas for Reburial of Repatriated TCRs, if appropriate
 - ▶ Tribal preference on protocol for the unearthing of ancestral remains – prior to NAHC MLD Designation



Thank You and Parting Thoughts

Always remember,

“Where history can be uncovered with the simple turn of a shovel, it can also be obliterated with the bucket of a backhoe.”

*Merri Lopez-Keifer, Commissioner
Native American Heritage Commission
lopezkeifer@gmail.com*

