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# California Code, Public Resources Code - PRC § 21082.3

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(a) Any mitigation measures agreed upon in the consultation conducted pursuant to [Section 21080.3.2 \(https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000220&refType=LQ&originatingDoc=18c7d6da01a1011e9a89d8c1249eb3\)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000220&refType=LQ&originatingDoc=18c7d6da01a1011e9a89d8c1249eb3) 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 \(https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=SP&originatingDoc=18c7dbbc01a1011e9a89d8c1249eb3\)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=SP&originatingDoc=18c7dbbc01a1011e9a89d8c1249eb3) of, and [Section 6254.10 of, the Government Code \(https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=18c7dbbc11a1011e9a89d8c1249eb3\)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=18c7dbbc11a1011e9a89d8c1249eb3), and [subdivision \(d\) of Section 15120 of Title 14 of the California Code of Regulations \(https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000937&refType=LQ&originatingDoc=18c7dbbc21a1011e9a89d8c1249eb3\)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000937&refType=LQ&originatingDoc=18c7dbbc21a1011e9a89d8c1249eb3), 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.

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(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 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 (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=SP&originatingDoc=I8c7de2d01a1011e9a89d8c1249eb>), Section 6254.10 of the Government Code (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=I8c7de2d11a1011e9a89d8c1249eb>), or subdivision (d) of Section 15120 of Title 14 of the California Code of Regulations (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000937&refType=LQ&originatingDoc=I8c7de2d21a1011e9a89d8c1249eb>).

(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 (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000220&refType=LQ&originatingDoc=I8c7e30f01a1011e9a89d8c1249eb>) and 21080.3.2 (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000220&refType=LQ&originatingDoc=I8c7e30f11a1011e9a89d8c1249eb>) and concluded pursuant to subdivision (b) of Section 21080.3.2 (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000220&refType=SP&originatingDoc=I8c7e30f21a1011e9a89d8c1249eb>).

(2) The California Native American tribe has requested consultation pursuant to Section 21080.3.1 (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000220&refType=LQ&originatingDoc=I8c7e58001a1011e9a89d8c1249eb>) 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 (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000220&refType=SP&originatingDoc=I8c7e58011a1011e9a89d8c1249eb>) 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 (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000220&refType=SP&originatingDoc=I8c7e7f101a1011e9a89d8c1249eb3>).

(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.

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