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April 7, 2026

VIA ELECTRONIC MAIL
AND UPLOAD

Planning and Land Use Management Committee
Los Angeles City Council
200 N. Spring Street, Room 395
Los Angeles, CA 90012
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Re: Further Supplemental Appeal Justification; Appearance Under Protest; Barry Building (Historic-Cultural Monument #887); Case Nos. ENV-2019-6645-EIR-1A; CHC-2007-1585-HCM; Council File No. 25-1518

Honorable Members of the PLUM Committee:

This Firm represents Angelenos for Historic Preservation ("AHP" or "Appellant") regarding the pending CEQA appeal for the proposed demolition of the Barry Building at 11973-11975 W. San Vicente Boulevard ("Project"). AHP submits this comprehensive Further Supplemental Appeal Justification ahead of the April 14, 2026 PLUM Committee hearing to thoroughly detail the profound procedural, legal, and environmental defects in the City's handling of this matter.

We incorporate by reference our February 11, 2026, letter regarding objections to the PLUM Committee proceedings, our Supplemental Objections dated February 16, 2026, our 55-page Supplemental Appeal Letter submitted on February 17, 2026, and all prior submissions, expert reports, and public comments in the administrative record.

Furthermore, this letter serves as AHP's formal, point-by-point rebuttal to both the Department of City Planning's Staff Report dated February 19, 2026, and the Applicant's correspondence dated February 19, 2026.

I. APPEARANCE STRICTLY UNDER PROTEST: THE EXPIRATION OF JURISDICTION

As a threshold matter, AHP appears at this April 14, 2026, PLUM hearing strictly under protest. As detailed in our correspondence to the City Council dated March 13, 2026, and March 31, 2026, the City Council's jurisdiction to act on this CEQA appeal irrevocably expired on March 6, 2026.

Under Los Angeles Municipal Code ("LAMC") § 13B.11.1.F.7.a, the City had a mandatory 75-day final date to take action. While the Applicant and the Council President's Councilmember designee previously exercised their authority under Ordinance 184833 in a January 20, 2026, filing to timely extend the City Council's original last date to act from February 14, 2026, to March 6, 2026, the City had ample opportunity between the City Council's March 4, 2026 reconsideration and the March 6, 2026 deadline to obtain timely, mutual written consent for a further extension. Having failed to do so, the deadline passed without a valid hearing or determination.

Consequently, the appeal was deemed denied by operation of law. The City's own CEQA Appeal Form verifies AHP's interpretation of law. It states as follows:

> "If the appellate body is unable to come to a consensus or is unable to hear and consider the appeal prior to the last day to act, **the appeal is automatically deemed denied, and the original decision will stand.** The last day to act as defined in the LAMC may only be extended if formally agreed upon by the applicant." (Bold emphasis added.)

Jurisdiction cannot be retroactively manufactured. The City has no legal authority to hold this April 14, 2026, hearing, and AHP's participation today does not waive our right to seek judicial relief regarding this fatal jurisdictional defect.

II. REBUTTAL TO APPLICANT'S AND CITY PLANNING'S FEBRUARY 19, 2026 SUBMISSIONS

On February 19, 2026, both the Applicant's counsel (Alston & Bird) and the Department of City Planning ("DCP") submitted documents attempting to retroactively justify the deeply flawed record. Both documents rely on legal fictions and mischaracterizations of AHP's expert evidence.

A. The City Cannot Weaponize Its Own Denial of Access to Discredit AHP's Experts

Both the DCP Staff Report and the Applicant attempt to dismiss AHP's expert structural engineer report (Alpha Structural) as unreliable and lacking substantial evidence. The Staff Report points out that the Alpha Structural Observation Letter states it is a "rough estimate," that no structural integrity was evaluated, and that visibility was limited because "the building was enclosed with temporary fences and inaccessible."

This argument cannot withstand scrutiny. The only reason Alpha Structural's estimate had to be based on limited visibility is because the Applicant deliberately fenced off the structure and refused to provide physical access to AHP's experts. Furthermore, the Staff Report attempts to excuse this by claiming "The City cannot legally compel access to private property for inspection by a third party." This is a red herring. While the City cannot arbitrarily force entry onto private land, the Applicant is seeking a highly discretionary, highly contested entitlement - the destruction of a designated Historic-Cultural Monument based on an EIR. The City absolutely possesses the authority to condition the processing of the Applicant's CEQA clearance on allowing the Appellant's experts to physically verify the Applicant's financial and structural claims. The City and the Applicant cannot actively obstruct physical and documentary access to the site, and then rely on that manufactured lack of access to disqualify AHP's expert report.

Despite these manufactured hurdles, Alpha Structural accurately estimated the mandatory Soft-Story Retrofit at approximately $379,000. This was fully validated by David Cocke of Structural Focus, an undisputed expert who actually served on Mayor Garcetti's Technical Task Force to write the City's mandatory seismic retrofit ordinances.

B. LADBS Lacks the Legal Authority to Certify the EIR

The Staff Report erroneously argues that because LADBS is required to make a finding under LAMC § 91.106.4.5, it is automatically the decisionmaker required to certify the EIR. As detailed in the November 17, 2025, letter by Susan Brandt-Hawley, this misinterprets the Code. LAMC § 91.106.4.5 does not give the Board authority to undertake CEQA analysis nor approve CEQA documents. It only dictates that LADBS cannot issue a demolition permit without a specific finding. The proper procedure dictates that LADBS must refer the project for CEQA review and decision-making to an *authorized* City body (like City Planning) equipped to conduct the EIR process.

C. The City and Applicant Improperly Dismissed Tribal Cultural Resources and Violated AB 52 Consultation Requirements

In its January 20, 2026, letter, the Applicant attempts to justify the City's unilateral closure of tribal consultation by arguing there was no substantial evidence of Tribal Cultural Resources on the site. The February 19, 2026, Staff Report echoes this, claiming consultation was properly concluded under Public Resources Code (PRC) Section 21080.3.2. This position relies on a fundamental misrepresentation of the physical project impacts and a blatant violation of state law.

As thoroughly detailed in the February 5, 2026, comment letter submitted by Sieglinde Kruse Blue, the City and Applicant have failed to comply with AB 52 in several fatal ways:

1. **Concealing Impacts to Native Alluvial Soils:** The City and Applicant have repeatedly downplayed the demolition by claiming the soil was previously disturbed. This is factually misleading. The SCWA Environmental Consultants technical report acknowledges that the proposed demolition requires excavation up to five feet below grade. Crucially, the same report identifies that the known artificial fill at the site *only extends to two feet below grade.* Therefore, *the Project will excavate at least three feet*

into virgin, native alluvial soils. The City cannot sweep the disturbance of undocumented TCRs in native soil under the rug simply by labeling the project a demolition.

2. **Dismissal of the Kizh Nation's Expert Evidence:** During the consultation process, the Gabrieleño Band of Mission Indians – Kizh Nation provided oral testimony and documented evidence that the Project Site is located within and around the Village of Kuruvungna, adjacent to sacred waterways and trade routes that qualify as cultural landscapes. Rather than accept this tribal expertise, the City issued a pre-closure letter on July 6, 2022, dismissing the Tribe's history because it lacked physical, archaeological proof.

3. **Violation of the *Koi Nation* Decision:** The City's demand for physical scientific evidence over the Tribe's documented oral history is the exact error recently struck down in *Koi Nation of Northern California v. City of Clearlake* (2025) 109 Cal.App.5th 815. State law requires that tribes be treated as the experts on their own cultural resources. By prioritizing its own narrow archaeological survey over the Kizh Nation's identification of a cultural landscape, the City failed to conduct the good faith consultation required by law before unilaterally closing the consultation on July 21, 2022.

4. **The Tribe's Express Objection to Premature Closure:** The City's claim that consultation was properly concluded is directly contradicted by the Tribe itself. In a letter submitted on the date of the previous PLUM Committee hearing on February 24, 2026, the Gabrieleño Band of Mission Indians – Kizh Nation explicitly confirmed and made clear that they agree the AB 52 consultation was closed prematurely[1]. The City's unilateral termination of the process without reaching mutual agreement, and over the ongoing, documented objections of the consulting Tribe, renders the City's consultation process legally indefensible.

Additionally, the applicant's consultant's report states in part: "The analysis and conclusions stated herein are based on the expertise and professional judgment of SWCA's qualified archaeologists and are intended as a means of presenting evidence to be used in assessing the potential for tribal cultural resources under CEQA, and should **not** be considered a replacement for tribal expertise or assumed to represent tribal cultural values."[2] (emphasis

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[1] More information regarding the consultation process can be found in the SB 18 Tribal Consultation Guidelines published by the Governor's Office of Planning and Research available at https://nahc.ca.gov/wp-content/uploads/2019/04/SB-18-Tribal-Consultation-Guidelines.pdf (see **Exhibit C)** and the Technical Advisory on AB 52 available at https://lci.ca.gov/ceqa/docs/20200224-AB_52_Technical_Advisory_Feb_2020.pdf (see **Exhibit D)**.

[2] SWCA Environmental Consultants, *Tribal Cultural Resources Assessment for the 11973 San Vicente Boulevard Barry Building Demolition Project, Los Angeles, Los Angeles County, California*, Draft Environmental Impact Report, Appendix F-3 (November 2022), Management Summary, p. 2 (Study Constraints and Disclaimer); see also Introduction, p. 7 and Conclusion, p. 32 (reiterating the same disclaimer and study constraints).

added). Again, the Applicant's own expert has specifically stated that their analysis should **not** be considered a replacement for tribal expertise.

Because the City unlawfully dismissed the Tribe's substantial evidence and prematurely closed consultation without reaching mutual agreement on proper mitigation for the deep excavation, the EIR is legally inadequate. A standard inadvertent discovery condition of approval is not an adequate substitute for meaningful, good-faith mitigation under AB 52 when native soils are actively being disturbed.

First, an inadvertent discovery condition is inherently reactive; it applies only after a potential Tribal Cultural Resource has already been struck, disturbed, or damaged by heavy machinery. As the Kizh Nation explained in its correspondence, the very purpose of CEQA's mitigation framework is to avoid or minimize impacts before they occur, not merely to respond after irreversible harm has been inflicted. Second, relying exclusively on a post-hoc inadvertent discovery protocol completely forecloses the opportunity to implement project alternatives. Once consultation is prematurely closed and ground-disturbing activities are authorized, it becomes impossible to consider alternatives to demolition or ground disturbance that might have entirely avoided the cultural resource in the first place. This reactive approach subverts the core legislative intent of AB 52, which is to identify proactive, culturally appropriate mitigation, such as requiring qualified tribal monitors with the authority to halt work prior to discovery, before a project is ever approved

D. The Applicant's "Separate LLC" Argument is a Legal Fiction

The Applicant's February 19, 2026 letter claims it is clearly unreasonable to expect the EIR's alternatives analysis to consider the adjacent parcels because they are owned by a different LLC. The Staff Report parrots this, insisting that *"... the Project does not include future development, and is not piecemealed or "segmented. ""*

This is a subversion of CEQA's requirement to look at the "whole of an action." As AHP proved in AHP's February 17, 2026 Supplemental Letter, the official Statements of Information from the California Secretary of State completely pierce this corporate veil. Both "11973 San Vicente, LLC" (the Barry Building parcel) and "11991 San Vicente, LLC" (the adjacent parcels) are managed by the exact same individuals: William Harold Borthwick and Charles T. Munger Jr. They share the same principal office address, the same mailing address, and the same agent for service of process.

CEQA Guidelines § 15126.6(f)(1) explicitly requires the lead agency to consider whether the proponent "can reasonably acquire, control or otherwise have access to the alternative site." Because the exact same individuals manage the adjacent 73,000+ square foot land assemblage, the Applicant unequivocally has access to the alternative site.

E. AHP Timely Objected to the EIR and Alternatives Analysis

In its February 19, 2026, letter, the Applicant falsely asserts that AHP did not object to the alternatives analysis or the certification of the EIR in its original July 2025 appeal, claiming it is now "too late" to raise these issues.

This is factually incorrect. As AHP explicitly pointed out in our February 16, 2026, Supplemental Objections, the original July 8, 2025, Appeal Justification Letter clearly and unequivocally stated: *"The EIR is inadequate and should not be certified, and The statement of overriding considerations is not supported by substantial evidence."* The adequacy of the EIR and its alternatives have been the central, contested issues of this appeal from day one.

F. The Staff Report's Defense of BBSC Bias is Unavailing

The February 19, 2026, DCP Staff Report attempts to excuse the disqualifying bias exhibited by BBSC Commissioner Rosales during the November 18, 2025, hearing. The Staff Report claims Commissioner Rosales relied on his "18 years of experience in the general construction industry, specializing in electrical engineering" to dismiss AHP's expert structural report. An electrical engineer's personal opinion on seismic soft-story retrofit costs does not constitute substantial evidence sufficient to override the technical findings of licensed structural engineers on that same subject. This disparity in expertise, and the Commissioner's willingness to substitute personal opinion for the expert record, demonstrates an unacceptable probability of actual bias under *Petrovich Development Co., LLC v. City of Sacramento* (2020) 48 Cal.App.5th 963.

G. All Five Statement of Overriding Considerations Fail

The Staff Report attempts to sustain the Statements of Overriding Considerations ("SOC") by arguing AHP failed to specifically contest findings #4 (housing/RHNA goals) and #5 (construction jobs). AHP explicitly rebuts both: a vacant dirt lot does not advance the City's RHNA obligations. Moreover, a preservation and rehabilitation project would inherently generate *more* construction employment than a demolition-only scope. Neither finding is supported by substantial evidence in the record, and neither is sufficient to override the permanent loss of a designated Historic-Cultural Monument.

H. The City Cannot Claim the Benefits of Future Development While Refusing to Analyze its Environmental Impacts

The City's reliance on Statement of Overriding Considerations (SOC) #4 exposes a fatal contradiction in its CEQA analysis. In SOC #4, the City attempts to justify the destruction of the Barry Building by claiming the vacant site "could accommodate housing or other commercially viable development in the future" and contribute to the City's Regional Housing Needs Assessment (RHNA) allocations.

Yet, when AHP demands that the City analyze the environmental impacts of this future development, the Staff Report and the Applicant suddenly reverse course, claiming that future development is "unspecified and uncertain" and that analyzing it would be "sheer speculation." The City cannot have it both ways. It cannot weaponize the supposed benefits of future housing to override the destruction of a Historic-Cultural Monument, while simultaneously refusing to consider the environmental consequences that will inevitably flow from that exact same redevelopment.

The Applicant has explicitly admitted in the record that their intention is to clear the site and sell it. Therefore, the sale of this property (as well as the others controlled by the Applicant) is a reasonably foreseeable consequence of the demolition. If future development is foreseeable enough to serve as the foundational justification for an SOC, it is absolutely foreseeable enough to require environmental analysis in the EIR.

The Applicant's excuse that they do not yet have a specific building design is irrelevant. The City is fully capable of analyzing reasonably foreseeable consequences by evaluating maximum build-out scenarios based on the site's underlying zoning. By relying on the benefits of future housing in the SOC while intentionally blinding itself to the environmental impacts of that housing in the EIR, the City is engaging in textbook piecemealing in violation of CEQA.

I. HABS Documentation is Not Adequate Mitigation

The February 19, 2026 City Planning Staff Report attempts to brush off concerns regarding the loss of the Barry Building by pointing out that a Mitigation Measure requires a Historic American Building Survey (HABS) be submitted prior to the issuance of a demolition permit. However, archival documentation does not reduce impacts to insignificance. As perfectly stated in the July 8, 2025 appeal letter submitted by Susan Brandt-Hawley, case law dictates that "drawing a chalk mark around a dead body is not mitigation." (*Architectural Heritage Association v. County of Monterey* (2004) 122 Cal.App.4th 1095, 1019). The promise of taking deferred photographs before bulldozing the site does not excuse the physical destruction of the monument.

J. Failure to Analyze Cumulative Impacts to the Coral Trees (HCM #148)

The EIR fails to properly evaluate the cumulative historical impacts of the Project, particularly regarding the adjacent Coral Trees on the San Vicente median (HCM #148). The Historic Resources Group (HRG) memo incorrectly claimed there is no historic association between the Barry Building and the Coral Trees. However, the record, including evidence submitted by Robert and Sieglinde Blue, proves that David Barry Jr. was the director of the "Los Angeles Beautiful" project and was instrumental in the installation of those exact Coral Trees. The City's failure to analyze the historical association and cumulative impacts to both of these linked monuments is a fatal flaw in the EIR.

K. Rebuttal to Specific Claims in the Applicant's February 19, 2026 Letter

The Applicant's counsel makes several granular, misleading arguments in their February 19, 2026 correspondence that demand direct refutation.

1. The Bad-Faith Attack on the Preservation Architect's Report

The Applicant attempts to completely discredit AHP's preservation architect, Frances Offenhauser, by claiming her analysis of economic infeasibility is limited to a single paragraph (Paragraph 21 of her Declaration) and lacks any supporting evidence. This is a deliberate misrepresentation of the administrative record. The Applicant attacks the sworn declaration (Exhibit K to our February 17, 2026, submission) while purposefully ignoring Exhibit A of that exact same submission, which is a highly detailed, 30+ page line-by-line cost analysis authored

by Offenhauser/Mekeel Architects. Her expert opinion is not unsubstantiated; it is backed by an exhaustive technical report that reverse-engineers and dismantles the Applicant's inflated figures.

To cure any alleged doubts regarding Ms. Offenhauser's expertise, AHP is attaching a Supplemental Declaration of Frances Offenhauser to this letter, which includes her full biography, formally documenting her 45+ years of experience and specialized expertise in historic preservation. See **Exhibit A.**

2. Information Was Unlawfully Hidden from Public Review

The Applicant argues that AHP's claims of missing information are untrue, asserting that the technical appendices within the EIR satisfy the required analysis. However, as AHP has repeatedly noted, Los Angeles Administrative Code § 22.171.14(b) specifically requires a Reuse Feasibility Study.

Furthermore, the Applicant's recent submission of a 500+ page document dump is a smokescreen. While the Applicant points to the inclusion of the Draft EIR's structural and historic technical appendices (Appendices C, G, H-2, 3, 4, 7, and 9) to claim no information is missing, this massive submission completely fails to provide the actual underlying reports used to justify their grossly inflated rehabilitation costs. Specifically, the record is still devoid of the mold reports, hazardous material abatement reports, and HVAC studies that account for millions of dollars in the Hill International estimate. The Department of City Planning's own February 19, 2026, Staff Report essentially admits these documents are missing by attempting to excuse their absence as unrelated studies that do not change structural stability findings.

The City cannot have it both ways: it cannot rely on millions of dollars in undocumented HVAC and hazardous material abatement costs to manufacture economic infeasibility for the SOC, while simultaneously claiming the underlying reports for those exact costs are "unrelated" and therefore unnecessary for public review. By admitting these reports are missing, the City confirms that its financial feasibility findings are based on unsubstantiated, hidden data.

3. The Misapplication of the California Historical Building Code (CHBC):

The Applicant claims their structural engineer, Englekirk, *did* evaluate the building under the CHBC and concluded the same massive retrofit recommendations applied. This is false. As David Cocke of Structural Focus (who served on the Mayor's task force to write the City's seismic ordinances) pointed out, Englekirk's Phase 2 scheme is a full-building ASCE 41-13 retrofit, which is entirely voluntary. The CHBC focuses on load path continuity and specifically allows seismic forces to not exceed 75% of standard code. Englekirk ignored these historical code allowances and applied massive, full-scale overstress standards to artificially inflate the cost to manufacture infeasibility.

4. Fencing a Building is Not Maintenance

The Applicant relies on Appendix O of the Final EIR to claim they have been performing ongoing maintenance and points to Appendix I to argue the seismic flaws aren't caused by

neglect. This completely misses the point. While the 1951 structural design is inherent, the attractive nuisance and blight arguments, which the City relies upon heavily in the SOC, are 100% self-created. Putting a chain-link fence around an abandoned building and occasionally clearing the lot is not maintenance of a historic resource; it is a calculated strategy of demolition by neglect.

The Applicant's own May 1, 2016, eviction letter to tenants proves this was an orchestrated scheme, explicitly stating: "After careful consideration, we have decided to close the Barry Bldg. as soon as reasonably possible and no later than December 31, 2016... Our decisions are final. We will not negotiate for more money or more time. We can and will resort to legal process if we are forced to." The City cannot cite a self-created, intentional nuisance as an overriding consideration to destroy an HCM.

III. THE CITY'S OWN HISTORIC EXPERTS UNANIMOUSLY REJECTED THE DEMOLITION JUSTIFICATION

The Board of Building and Safety Commissioners' (BBSC) decision to adopt the SOC and certify the EIR directly contradicts the unanimous recommendation of the City's own historic resources expert body, the Cultural Heritage Commission (CHC).

After reviewing the EIR on September 5, 2024, the CHC unanimously recommended that the Department of Building and Safety **not** adopt the Statement of Overriding Considerations. OHR Staff Planner Melissa Jones forcefully testified that the proposed benefits of demolition are "not supported with substantial evidence" and that a vacant lot "frequently contributes to additional community problems, serving as a further detriment."

Furthermore, CHC Commission President Barry Milofsky stated that the project is an egregious example of "demolition by neglect" and that rewarding it sets a "very bad precedent for the city." By rejecting the unanimous, expert opinion of the CHC and the City Planning Department's OHR, the BBSC acted outside the scope of its institutional competence.

IV. ECONOMIC INFEASIBILITY IS BASED ON INFLATED, VOLUNTARY COSTS

The single most critical flaw in the EIR/SOC is the unsubstantiated finding that preserving the Barry Building is economically infeasible. This finding is entirely unsupported by substantial evidence and is based on grossly overstated cost estimates that purposefully conflate the minimum mandatory retrofit with voluntary, non-required, full-scale rehabilitations.

- **Mandatory vs. Voluntary Scope:** The Soft-Story Ordinance only mandates retrofitting the "soft, weak, or open-front" wall lines, which is limited to the first story of the south wing. Any work beyond this, including retrofitting all four wings to address non-mandated overstress concerns or upper stories, is entirely voluntary.

- **Voluntary ADA Upgrades:** The Applicant's inflated cost included full upgrades for ADA compliance, which is not required for a vacant building undergoing mandated seismic work and can be deferred.

- **Failure to Evaluate Preservation Funding Mechanisms:** The City's finding of economic infeasibility is further invalidated by the EIR's complete failure to address available financial mechanisms designed specifically to assist with the restoration of historic resources. The establishment of a private fund, or the use of the Mills Act and Historic Tax Credits, should have been evaluated in the alternatives analysis. The City cannot legally declare the preservation of the Barry Building financially infeasible when it intentionally ignored the very financial lifelines established by law to make historic preservation projects viable.

- **The "Impossibility" Narrative is Defeated by a 95% Compliance Rate:** The Applicant's narrative that retrofitting this specific building is an impossible or financially ruinous task is directly contradicted by citywide data. As the Los Angeles Conservancy highlighted, over ninety-five percent (11,820) of all soft-story buildings in Los Angeles have initiated plans, had permits issued, or successfully completed their mandatory retrofits without resorting to demolition. The Applicant falls into the tiny minority of property owners (less than five percent) who have done nothing to comply. This staggering statistic constitutes substantial evidence that similar buildings are routinely and feasibly retrofitted, rendering the Applicant's claims of unique infeasibility entirely hollow.

As validated by David Cocke of Structural Focus, the true cost of mandated safety compliance is approximately **$379,000** - less than 2.3% of the Applicant's lowest preservation alternative estimate. The EIR's conclusion that preservation is economically infeasible is therefore unsupported by substantial evidence and cannot stand.

V. DUE PROCESS VIOLATIONS

The record reveals that Council District 11 staff bypassed independent City review and acted as a private conduit for the Applicant, inserting developer-drafted findings directly into the administrative process. This conduct destroys the quasi-judicial neutrality required under California law.

Internal communications obtained via CPRA requests reveal that Council District 11 (CD-11) staff acted as a private conduit for the Applicant, transmitting the developer's drafted Statement of Overriding Considerations directly to LADBS leadership.

On October 15, 2024, Sean Silva (Deputy/Planning Liaison for Councilmember Traci Park) emailed Devin Myrick (Asst. Deputy Superintendent of Bldg at LADBS) stating: *"Providing you some documents that pertain to the Barry Building, which may assist you with your work."* Attached to this email from the Council Office were documents explicitly drafted by the Applicant's legal counsel, Alston & Bird, including a *"Draft Statement of Overriding Considerations.docx."*

Bypassing the independent, professional vetting of City Planning and LADBS staff to insert developer-written legal findings via a political office is a fatal violation of due process (*Petrovich Development Co., LLC v. City of Sacramento* (2020) 48 Cal.App.5th 963).

VI. DUE PROCESS VIOLATIONS: PRE-JUDGMENT AND IMPROPER CONDUIT COMMUNICATIONS

The certification of an EIR and the adoption of an SOC are quasi-judicial acts requiring strict adherence to fair hearing standards and a neutral decision-maker under California Code of Civil Procedure § 1094.5. The record here demonstrates both disqualifying pre-judgment and an improper ex parte conduit, each of which independently taints the proceedings.

A. Disqualifying Pre-judgment by the Appellate Decision-Maker.

The City Council, acting through the PLUM Committee, serves as the final appellate body for this CEQA appeal and is legally required to review the evidence impartially. However, the transcript from the September 5, 2024 Cultural Heritage Commission (CHC) hearing demonstrates absolute pre-judgment and improper coordination between the Applicant and Council District 11 (CD-11).

At the CHC hearing, the Applicant's lobbyist, Aaron Green, publicly revealed that the developer had been negotiating off-the-record mitigations directly with the Council Office. Mr. Green testified: *"And in working with the council office, we have proposed a voluntary covenant that will reside on this property if ... the demolition is granted. And what that covenant will require is the safe removal and storage of the two ... curved staircases in the courtyard of the building,"* along with the benches.

Immediately following this admission, Sean Silva (CD-11 Planning Liaison) testified to corroborate this unvetted deal and announced Councilmember Traci Park's predetermined position. Mr. Silva stated on the record: "I'm here to relay our office's support for the certification of the EIR and a recommendation to adopt a Statement of Overriding Consideration for the property known as the Barry Building." He further justified this by referencing the backroom deal, stating that the stairs and benches "are to be used in the site's future development," and concluded by actively lobbying the Commission: "We respectfully request that this Commission certify the EIR and recommend – recommend certification of the EIR and a support for a Statement of Overriding Considerations, to acknowledge the potential for this site to be transformed into something that better serves the community."

This public declaration of support, and the admission of private negotiations resulting in a "phantom" voluntary covenant, occurred nine months before LADBS officially certified the EIR, and long before the Appellant even filed this CEQA appeal. By relying on this illusory, unvetted agreement (which is absent from the formal Conditions of Approval) to lobby for the demolition, the City committed a prohibited deferral of mitigation under Sundstrom v. County of Mendocino (1988) 202 Cal.App.3d 296.

More importantly, a Councilmember cannot legally act as a predetermined, active advocate for the developer's demolition during the environmental review process, and then subsequently sit as a neutral, quasi-judicial arbiter evaluating the legal adequacy of that exact same environmental review on appeal.

B. CD-11 Acted as an Improper Conduit for the Applicant's Findings.

Following this public pre-judgment, internal communications obtained via CPRA requests reveal that CD-11 staff subsequently acted as a private back-channel for the Applicant. On October 15, 2024, Mr. Silva emailed Devin Myrick (Asst. Deputy Superintendent of Bldg at LADBS) stating: *"Providing you some documents that pertain to the Barry Building, which may assist you with your work."* Attached to this email were documents explicitly drafted by the Applicant's legal counsel, including a *"Draft Statement of Overriding Considerations.docx."*

Bypassing the independent, professional vetting of City staff to insert developer-written legal findings via a political office that had already publicly pre-judged the outcome strips this entire proceeding of the required quasi-judicial neutrality.

C. Disparate Treatment and Information Sharing by City Staff.

The unacceptable probability of actual bias is further demonstrated by the City's disparate treatment of the parties. Not only did the Council Office act as a conduit to feed the Applicant's documents to LADBS, but City staff also actively transmitted the Appellant's confidential hearing materials directly to the Applicant. Prior to the November 18, 2025, BBSC hearing, AHP submitted its materials - including a November 14, 2025, rebuttal letter and a PowerPoint presentation - directly to the BBSC Board Secretary. These documents were shared with City Planner Jason McCrea, who, under the subject line "Supplemental Correspondence - Barry Building," proactively forwarded AHP's entire submission to the Applicant's representative. At no point during this multi-year administrative process did any City department forward unsolicited information from the Applicant to the Appellant. This systematic, one-sided information sharing violates the fundamental requirements of a fair, impartial quasi-judicial hearing. See **Exhibit B.**

VII. CONCLUSION AND REQUESTED ACTIONS

The EIR fails as an informational document, improperly rejects feasible preservation alternatives based on overstated and unsubstantiated cost data, relies on a piecemealed project description that conceals the full scope of the proposed development, and incorporates an SOC drafted by the Applicant's own counsel and transmitted to the decision-maker through a political back-channel. Each of these defects is independently sufficient to warrant reversal. Taken together, they render the City's approval legally indefensible.

To protect the integrity of the City's historic preservation program, prevent the reward of intentional demolition by neglect, and avoid inevitable judicial reversal, AHP respectfully requests that the PLUM Committee and the City Council take the following actions:

1. **Acknowledge Jurisdictional Loss:** Affirm that the City's jurisdiction to act expired on March 6, 2026, resulting in a deemed denial by operation of law.

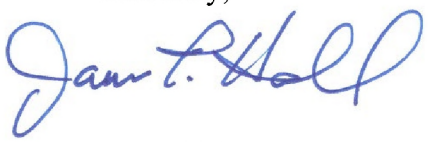
2. **Grant the CEQA Appeal:** Acknowledge that the current record is poisoned by improper conduit communications and a lack of substantial evidence.

3. **Reject the EIR and SOC:** Find that LADBS and BBSC erred and abused their discretion in certifying the EIR and adopting the developer-drafted Statement of Overriding Considerations.

4. **Deny the Demolition Permit:** Void the BBSC's action of November 18, 2025, and direct LADBS not to issue a demolition permit for the Barry Building (HCM #887).

Thank you for your consideration of this matter. I may be contacted at jamie.hall@channellawgroup.com if you have any questions, comments or concerns.

Sincerely,



Jamie T. Hall

Encls.

Exhibit A:	Declaration of Francis Offenhauser
Exhibit B:	November 11, 2025, Email from City Planner Jason McCrea to Applicant Representative Ed Casey
Exhibit C:	State of California Tribal Consultation Guidelines (cited via link in Footnote 1)
Exhibit D:	Technical Advisory: AB 52 and Tribal Cultural Resources in CEQA (cited via link in Footnote 1)

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EXHIBIT A

DECLARATION OF FRAN OFFENHAUSER

I, Frances Offenhauser, declare as follows.

I am a principal of Offenhauser/Mekeel Architects ("OMA") and am competent to testify to the matters set forth herein.

Offenhauser/Mekeel Architects is a firm with over 50 years of experience in critical disciplines relevant to the Barry Building Cost Estimates and Appraisals. OMA's expertise encompasses seismic retrofits and seismic design in historic and other buildings; State and local building codes for existing and historic buildings; code requirements for disabled access and life safety upgrades in historic buildings; construction cost estimating; construction management; real estate development appraisals; and compliance with Historic Cultural Monument and CEQA procedures in Los Angeles.

OMA's Report reviewed and evaluated the Cost Estimates and Appraisals submitted by the Barry Building Owner's team, focusing on the underlying assumptions regarding construction scope, building systems, and required levels of intervention. OMA's critique assessed whether those underlying assumptions were adequately documented, valid, and correct. OMA did not challenge unit pricing for labor and materials; rather, OMA challenged the validity of the scope, systems, and levels of intervention reflected in the Owner's construction costs.

Offenhauser/Mekeel Architects is uniquely qualified to review the Owner's documents for validity for the following reasons:

- The OMA Report does NOT challenge unit pricing for labor and materials—it ONLY challenges the validity of the inclusions relative to EIR Alternatives and LOD statements.

- The determination of what construction work is "required" at the Barry Building—particularly with respect to building systems, code compliance, and the distinction between repair, rehabilitation, and replacement—is a matter of architectural judgment, not contractor pricing.

- It is the "industry standard" for Architects to be expressly responsible for preparing and updating estimates of the Cost of the Construction Work at each phase of design, and thus required to evaluate materials, building systems, and other design components that form the basis of construction cost estimates. Architects must routinely recommend adjustments to scope,

quality, or systems to maintain consistency with a budget, as evidenced by AIA Standard Contracts defining roles and responsibilities (B101 §6.6; see also §§3.2.2, 3.3.2).

- It is industry standard, and part of OMA's ongoing practice as architect of record, to retain and/or review construction cost estimates.

- Offenhauser/Mekeel Architects possesses unique expertise in each of the component issues addressed in their report, providing the foundation for the report's calculations and conclusions.

Examples of OMA's experience in these areas include the following:

- I was retained by the State of California to engage with specialist structural engineers in devising seismic retrofits for State-owned buildings funded by the Seismic Bond Act, including the Santa Barbara Armory; the Mt. Whitney Fish Hatchery; the former Hotel Norconian, and others.

- For 30 years, I was architect for the Academy of Motion Picture Arts and Sciences, and led the team of production personnel in developing the first purpose-built live broadcast theater (for the Oscars).

- OMA's experience is highly specialized due to complying with the wide spectrum of building, structural, and disabled access codes for new and existing construction. I have directed preservation projects for many of Southern California's most important landmarks, including: Los Angeles' Union Station; the Olympic Swim Stadium; the California Museum of Science and Industry facade reconstruction; the Beverly Hills Waterworks (Margaret Herrick Library); the Mutual Don Lee Studios (Pickford Center for Motion Picture Study); the Armory in Exposition Park; Glendale's Brand Library; and Frank Lloyd Wright's La Miniatura.

- At Catlett Construction, I directed a crew of 50 in performing seismic retrofits and certified rehabilitations of multiple large National Register properties, including the Culver Hotel, the Hollywood Tower, the Ojai Apartments, and the Melrose Building, as well as multiple adaptive reuse and retrofit projects in Queen Anne homes in North University Park.

- At Catlett Construction, I directed a crew of 50 in performing seismic retrofits and certified rehabilitations of multiple large National Register properties, including the Culver Hotel, the Hollywood Tower, the Ojai

Apartments, and the Melrose Building, as well as multiple adaptive reuse and retrofit projects in Queen Anne homes in North University Park.

- Most of my preservation work is in major historic buildings, but my experience with small wood framed buildings like the Barry Building is also extensive both as an architect and developer-over 100 similar projects, all of which included seismic engineering, and 39 of which were completed as architect/developer and sold.

- I do not stand on the sidelines. I bought and restored two Historic Cultural Monuments-Buckland Studios and LA Mayor James Toberman's home-and for 40 years has served as Architect of Record for the Hollywood Heritage Museum (Lasky DeMille Barn).

- I also purchased and restored two Historic Cultural Monuments-Buckland Studios and LA Mayor James Toberman's home-and for 40 years have served as Architect of Record for the Hollywood Heritage Museum (Lasky DeMille Barn).

- I received my architectural education at MIT. I have practiced architecture for over 60 years, have been licensed for 45 years, and have received numerous honors and awards.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge and belief.

Executed on April 7, 2026, at Los Angeles, California.

/s/ Frances Offenhauser

Frances Offenhauser
Offenhauser/Mekeel
Architects

Encl.

FRANCES OFFENHAUSER, Principal









Education:

Bard College, Bachelor of Arts (1972)
Massachusetts Institute of Technology (MIT), Master of Architecture program (1972-76)
University of California at Los Angeles School of Architecture and Planning, post-graduate courses in construction administration, development and financing.

Registration:

Registered architect in California.

Experience:

Frances Offenhauser has built a significant practice in California, restoring landmarks from major public buildings to private estates. This starts from her love for and knowledge of the region's architectural styles. Her firm has extensive experience with the specifics of these historic buildings – their styles, ornament, massing, structural design, retrofit needs, archaic materials, compatible landscape and interior design, fancies, and flaws. This knowledge carries into the firm's restoration and new construction work.

Frances Offenhauser's architectural practice draws on 40 years of experience in every aspect of construction - from large scale master planning and entitlements, to real estate development, to building design, to construction contracting. Her award-winning work combines strong aesthetics with a practicality won from having worked in every role in the building team.

Hollywood-Based: With an office in West Hollywood, most of the firm's work is in Southern California, centered principally in Hollywood. Ms. Offenhauser was a founder and often serves as a Board Member of Hollywood Heritage, which for 40 years has been the voice of historic preservation in Hollywood. The Community Plan and zoning which are the laws in effect in Hollywood today are her work—stemming from the years when she worked at Gruen Associates.

Luxury Residential Market: Her firm has built and renovated many luxury homes and estates in the Los Angeles area for clients from the film, music, and related industries. Much of this work is confidential, but the firm recently completed the first-ever private IMAX Theater in the world as a part of an estate in Beverly Hills.







Academy Projects: For the Academy of Motion Picture Arts and Sciences, Frances Offenhauser transformed the derelict Spanish Revival "Beverly Hills Waterworks" into the Fairbanks Center for Motion Picture Study -- the world's premier library of print materials about film. She brought a unique background of hands-on construction experience combined with large scale project management experience to this difficult project. Construction was competitively bid and built with only 1% change orders.

The 40,000 sf library includes reading and research spaces for patrons; archival storage for photographs, print files, scripts, posters, etc; collections processing; reception and conference space; and librarian offices.

For the Oscars, Ms. Offenhauser led the Academy team for the "build-to-suit" $90 million first-ever live broadcast theater in Hollywood, coordinating with the developers of theater, mall, and hotel as well as the City of Los Angeles. Offenhauser and her staff prepared the Kodak (later Dolby) Theater project program; negotiated the complex lease agreement; and coordinated telecast production staff and consultants in developing and reviewing plans and specifications for suitability for the theater live broadcast, the arrivals sequence, the press rooms, and the Governors Ballroom.

From 2001 to 2013, Ms. Offenhauser master planned and transformed another historic building for the Academy's archival uses – this time the post-war concrete "Mutual Don Lee" television studios, which were curiously well-suited for film vault use. Ms. Offenhauser led the team of specialists in developing state-of-the-art film vaults, preservation workrooms, offices, conference rooms, and the Linwood Dunn Theater in this 120,000 sf Hollywood building. The existing building was expanded to 175,000 sf, within its original shell.

For 30 years Ms. Offenhauser assisted the Academy in successive renovations of its headquarters office building, including creating a new Board Room in a fast-tracked schedule. In one stretch, she renovated the executive office floors while the group was producing the Academy Awards.

Landmark Projects: Ms. Offenhauser directed design and construction as architect for many of the region's most important landmarks shown here:

- **Los Angeles Union Station**: Upgrades to landmark train station to improve the pedestrian experience in the waiting area, tunnel and rest rooms, including new signage, lighting and landscape restoration at the South Patio and studies for new First Class Lounge and retail court.
- **California Science Center:** Total reconstruction based on a photograph of the missing section of the 1910 terra cotta/brick/cast iron historic entrance facade at









the California Science Center in Exposition Park, Los Angeles (for Zimmer Gunsul Frasca).

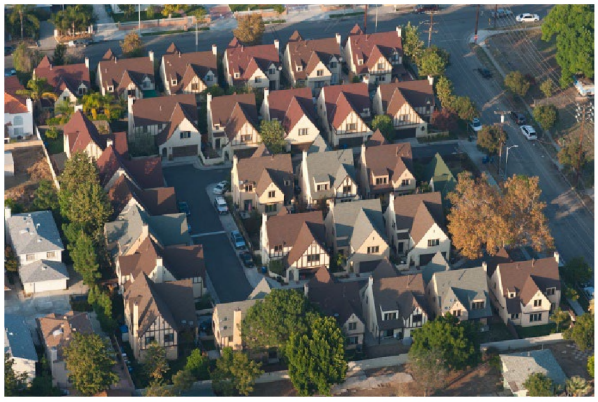
- **Los Angeles Olympic Swim Stadium:** Restoration of deteriorated cast-in-place façade of 1932 Olympic Swim Stadium façade (for Zimmer Gunsul Frasca).
- **Brand Library:** Library planning for 21st century change, and restoration of principal public rooms, for Glendale's storied Brand Library, a specialty library and gallery/concert venue for music and art.

Other Landmark Projects:

- **Culver Hotel, Hollywood Tower, and Ojai Apartments** Certified rehabilitations and seismic retrofits for National Register high-rise apartments (and hotel conversion)
- **Hollywood Deco Towers:** Façade restoration for two Art Deco landmark cast-in-place concrete office towers in Hollywood, for American Musical and Dramatic Academy and for World of Wonder Productions.
- **UCLA:** Fast tracked renovation/restoration of the historic Chancellor's Residence; seismic retrofit design development of UCLA's Lombardy Romanesque Men's Gym; and concept studies for restoration of UCLA's Clark Library
- **State of California:** Los Angeles downtown Broadway department store (now State Office Building) design development criteria package; the Hotel Norconian resort (now California Rehabilitation Center) seismic bond design criteria package; the Mt. Whitney Fish Hatchery seismic retrofit consulting; and the Santa Barbara Armory seismic retrofit consulting.
- **LAUSD:** L.A. Armory Building in Exposition Park (now Science High School) seismic retrofit consulting.
- **Hollywood Heritage Museum:** Moving the 90' long Lasky DeMille Barn – a State Historic Landmark and Hollywood's first feature length motion picture studio – to the Hollywood Bowl and re-use as a museum of silent film.

Real Estate Development: Ms. Offenhauser maintains a real estate development business, restoring historic buildings and designing new residences in authentic historic styles.

- Prior to developing on her own, she rehabilitated National Register apartment and hotel properties at Catlett Construction, responsible for all design and employing a fifty-man construction crew. Projects included seven design/build renovations of National Register and locally-designated buildings
- Ms. Offenhauser and her husband Michael Mekeel have bought and saved the home of LA's two-time mayor James Toberman from demolition, converting it to apartments; built Tupper Tobias Village, 28 authentic Tudor-styled single family homes; approximately $12 million of new homes and $6 million of restored historic homes
- In total Ms. Offenhauser has developed, built and sold 42 single family homes; owned, developed and sold 23









other homes and apartment buildings; and currently owns 17 properties including 60 apartments and condos and 9 homes, with 3 homes just completed.

New Buildings in Authentic Styles: The firm has built projects in authentic regional styles, or a modern "take" on authentic period styles.

Starting in the 1980's with the compatible addition of a new wing to the Beverly Hills Water Treatment Plant — transforming it into the stacks and storage for the Academy's library — the firm brought authenticity to new buildings. California's regional styles had been lost after World War II by a rush to embrace "international style" modernity. Where they remained - altered beyond recognition in fast food buildings and tract homes - they earned derision.

Some marvelous post-war architecture resulted, but what was lost was craftsmanship, solidity, respect for context, appropriateness of materials to our region and a thorough grounding in Western culture, ornament, and symbolism.

- **Execuflite/Peterson Aviation:** The firm designed a fixed-base operation (private airport) at Van Nuys Airport, with 100,000 sf of hangars including a Bell Helicopter maintenance facility. The owner wanted customers to know they had arrived in the Golden State, and a new Spanish Revival building with an observation tower welcomes them. The faciloity handles up to 727s.

- **Mercury Aviation:** A fixed base operation with hangers was also designed by the firm for Mercury Aviation at Burbank Airport. With a nod to the Pan Pacific Auditorium, a landmark project of the partners which was sadly lost to a fire, Mercury has lines referencing streamline modern and holds all the varied support services ands amenities for pilots, crew, and clients.

- **Biola University Cinema and Media Studies Building:** in 2016 the firm was selected to design the 52,000 sf film production building at Biola University. Not a typical classroom building, Biola trains undergraduates in studio production work with a hands-on curriculum. The building puts recording studios, sound stages, post production labs, screening and QC rooms, and a Dolby Atmos Screening Theatre in an on-campus building. The site was not advantageously located, so a new Arrivals Court creates a signature space for South Campus and puts media production between the new Business and Science schools. The project is finishing construction.

Offenhauser/Mekeel Architects is amongst a growing nationwide group of architects who work with respect for historical styles and proper inclusion of today's needs, technology, and building types.

Channel Law Group, LLP

April 7, 2026

Further Supplemental Appeal Justification; Appearance Under Protest; Barry Building (Historic-Cultural Monument #887); Case Nos. ENV-2019-6645-EIR-1A; CHC-2007-1585-HCM; Council File No. 25-1518

EXHIBIT B

Date : 11/17/2025 12:14:37 PM
From : "Jason McCrea"
To : "Casey, Ed"
Cc : "Mindy Nguyen" , "Milena Zasadzien"
Subject : Supplemental Correspondence - Barry Building
Attachment : BF 250851 - rebuttal presentaion.pdf;BF 250851 - Correspondence.2_11.14.2025.pdf;

Hi Ed,

We received this correspondence from LABDS and wanted to pass it along to you.

Thanks.

--

LOS ANGELES CITY PLANNING

Jason McCrea
City Planner
Major Projects
Los Angeles City Planning
221 N. Figueroa St., Room 1350
Los Angeles, CA 90012
T: (213) 847-3672| Planning4LA.org
E-NEWS

Los Angeles Department of Building and Safety

LADBS Board of Commissioners Meeting

Tuesday, November 18, 2025

Rebuttal to LADBS Staff Report

BF 250851 | HCM #887 (The Barry Building)

Presented by Bob Blue and Ziggy Kruse Blue

Introduction and Context

Rebuttal to the LADBS Staff Report's "Findings" regarding the 07-20-2025 Public Comment Letter

This presentation serves as a formal public comment and rebuttal to the LADBS Staff Report dated October 15, 2025.

We will address the fundamental, procedural, and environmental flaws in the Department's actions and justifications.



Finding 1:
Lack of CEQA Authority

LADBS's action to certify the EIR/SOC is procedurally unsound.

Rebuttal to Finding 1

- **Lead vs. Responsible Agency**: LADBS is a "Responsible Agency" (per CEQA Guidelines) with a limited role. It lacks the authority of a "Lead Agency" (like Planning Dept.) to certify a complex EIR and adopt an SOC.
- **"First of its kind" is a Flaw**: The Department's admission of "no precedent" confirms its lack of institutional experience and framework to handle this major environmental policy action.
- **Conflict with City Experts**: The LADBS signatory overrode the City's own subject matter experts (OHR and CHC) without possessing the commensurate CEQA-related qualifications.

Finding 2:
A Dangerous Precedent

The justification for demolition fails, and the action creates significant legal threats.

Rebuttal to Finding 2 (Part A): Insufficient SOC

LADBS Justification

The SOC is justified by the "speculative future benefit of a vacant site that could accommodate housing or other commercially viable development."

Our Rebuttal

This is not substantial evidence. CEQA § 15093 requires specific, evidence-based findings, not generic potential. This weak justification cannot override the **certain, significant, and unavoidable** loss of an irreplaceable HCM.

Rebuttal to Finding 2 (Part B): Legal Threats

- **Threatens All HCMs**: This "first ever" approval to demolish an HCM without a replacement project fundamentally weakens preservation policy city-wide.
- **Creates "Abuse of Discretion"**: If the City approves this, how can it legally deny a similar request from another HCM owner citing financial hardship? This creates an inconsistent and challengeable standard.
- **Invites "Regulatory Taking" Claims**: A future owner, if denied, will make a 5th Amendment claim, citing this case as precedent that seismic retrofit costs render the property economically unviable.

Finding 3:
Due Process Violations

The public's right to a fair and accessible process was violated.

Rebuttal to Finding 3



Inappropriate Appeal Form

Forcing a complex CEQA appeal onto a building code modification form (PC-Build.Mod 00) created an unreasonable and confusing hurdle.



Restriction of Comments

The official LOD stated "No additional information will be accepted." This had an institutional "chilling effect" on public participation.



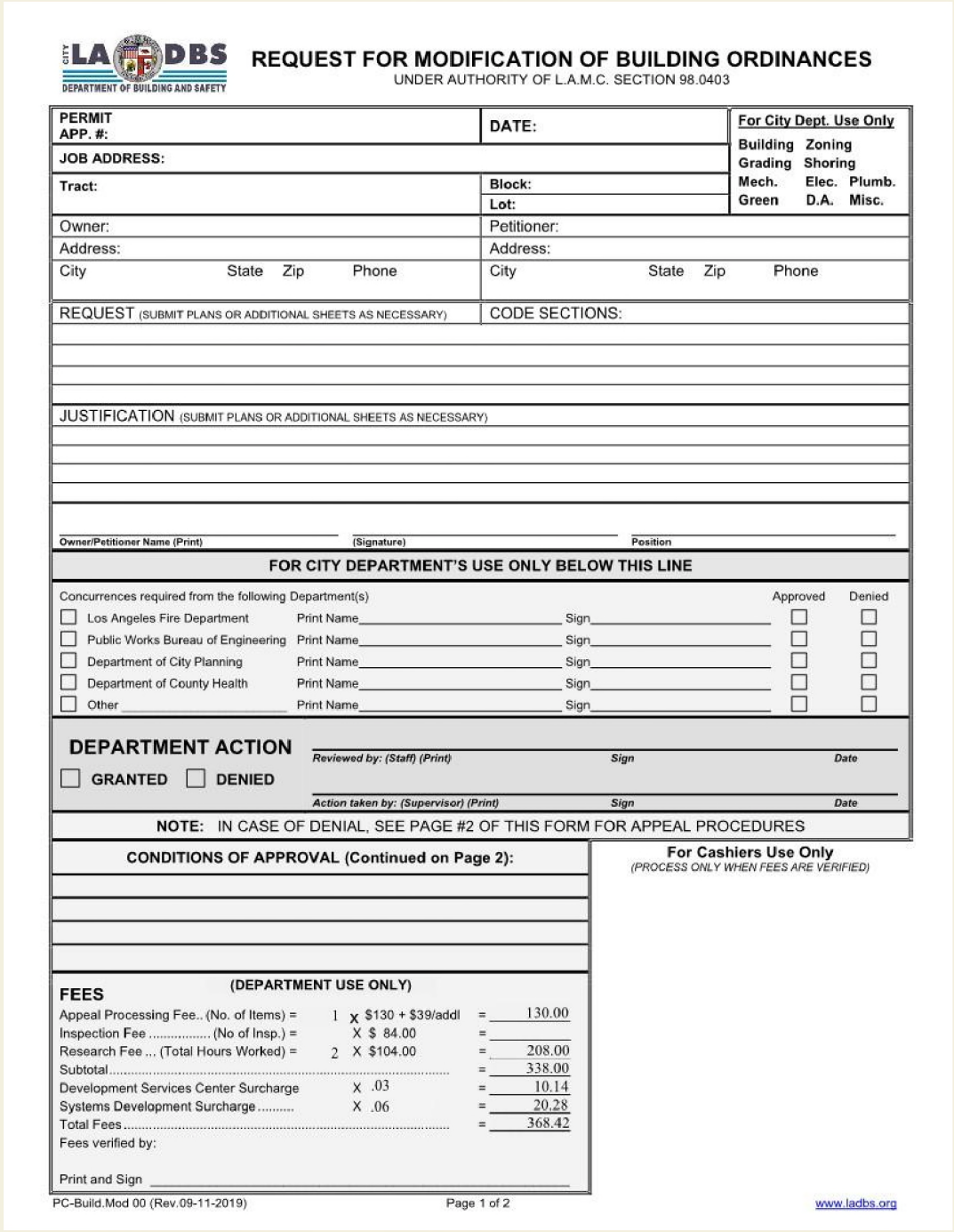
Councilmember Bias

The City Council must act in a quasi-judicial capacity. Demonstrated bias (per *Petrovich v. Sacramento*) is grounds for invalidating the final decision.

Rebuttal to Finding 3

Inappropriate Appeal Form

Forcing a complex CEQA appeal onto a building code modification form (PC-Build.Mod 00) created an unreasonable and confusing hurdle.



LA DBS DEPARTMENT OF BUILDING AND SAFETY

REQUEST FOR MODIFICATION OF BUILDING ORDINANCES
UNDER AUTHORITY OF L.A.M.C. SECTION 98.0403

PERMIT APP. #:	DATE:	For City Dept. Use Only: Building Zoning; Grading Shoring; Mech. Elec. Plumb.; Green D.A. Misc.
JOB ADDRESS:		
Tract:	Block: / Lot:	
Owner:	Petitioner:	
Address:	Address:	
City State Zip Phone	City State Zip Phone	

REQUEST (SUBMIT PLANS OR ADDITIONAL SHEETS AS NECESSARY) — CODE SECTIONS:

JUSTIFICATION (SUBMIT PLANS OR ADDITIONAL SHEETS AS NECESSARY)

Owner/Petitioner Name (Print) (Signature) Position

FOR CITY DEPARTMENT'S USE ONLY BELOW THIS LINE

Concurrences required from the following Department(s)		Approved	Denied
☐ Los Angeles Fire Department	Print Name Sign	☐	☐
☐ Public Works Bureau of Engineering	Print Name Sign	☐	☐
☐ Department of City Planning	Print Name Sign	☐	☐
☐ Department of County Health	Print Name Sign	☐	☐
☐ Other	Print Name Sign	☐	☐

DEPARTMENT ACTION
☐ GRANTED ☐ DENIED
Reviewed by: (Staff) (Print) Sign Date
Action taken by: (Supervisor) (Print) Sign Date

NOTE: IN CASE OF DENIAL, SEE PAGE #2 OF THIS FORM FOR APPEAL PROCEDURES

CONDITIONS OF APPROVAL (Continued on Page 2):

For Cashiers Use Only
(PROCESS ONLY WHEN FEES ARE VERIFIED)

FEES (DEPARTMENT USE ONLY)

Appeal Processing Fee.. (No. of Items) =	1	X $130 + $39/addl	= 130.00
Inspection Fee ..... (No of Insp.) =		X $ 84.00	=
Research Fee ... (Total Hours Worked) =	2	X $104.00	= 208.00
Subtotal			= 338.00
Development Services Center Surcharge		X .03	= 10.14
Systems Development Surcharge		X .06	= 20.28
Total Fees			= 368.42

Fees verified by:

Print and Sign

PC-Build.Mod 00 (Rev.09-11-2019) Page 1 of 2 www.ladbs.org

Rebuttal to Finding 3

Restriction of Comments

The official LOD stated "No additional information will be accepted." This had an institutional "chilling effect" on public participation.

instruct the appellant how to complete the form.

The appellant must itemize the grounds for the appeal, along with applicable LAMC sections, on the Appeal Form. The Request for Modification Form and any evidence supporting the appeal, such as photographs and correspondence should be submitted as an attachment to the appeal form.

No additional information will be accepted by the Department after the appeal form has been submitted unless a new appeal form is filed and applicable fees are paid.

3. REVIEW OF APPEAL FORMS AND FEE FOR WRITTEN REPORT

The Manager shall review the appeal package for completeness. If the Manager determines that the form and all attachments clearly state the grounds for the appeal and cannot be approved administratively, the Manager shall complete the fees portion on page two of the Request for Modification form as outlined in LAMC Section 98.0403 (b) and refer the customer to cashiers with (3) copies. Filling fees are based on the subject of the request as set forth in Tables 4A or 4B plus $104.00 for (1) hour of research.

4. ROUTE ORIGINAL APPEAL PACKAGE

After the fees are paid, the appellant shall return the original appeal package and a copy of the paid request for modification form to the Manager. The Manager shall ensure that the appellant's original appeal package is hand delivered to the Commission Office. The Commission staff shall log the appeal by assigning a case number, creating a case file and assigning the case to the responsible manager.

5. WRITTEN DETERMINATION

The Manager assigned to the case shall prepare a report and presentation setting forth the justifications and findings for LADBS's determination, specifically addressing the appellant's issues. The report shall be completed within 60 days from the date of the appeal's submittal and the item shall be scheduled for the next available BBSC hearing date. For complex requests, additional time may be required to complete the report.

6. NOTIFICATION OF PUBLIC HEARING

When the appeal is scheduled for a hearing before the BBSC, the Commission staff shall notify the appellant through a written notice at least ten days prior to the date of the hearing. The notice shall be given by email or U.S. mail.

As a covered entity under Title II of the Americans with Disabilities Act, the City of Los Angeles does not discriminate on the basis of disability and, upon request, will provide reasonable accommodation to ensure equal access to its programs, services and activities. For efficient handling of information internally and in the internet, conversion to this new format of code related and administrative information bulletins including MGD and RGA that were previously issued will allow flexibility and timely distribution of information to the public.

Rebuttal to Finding 3

Councilmember Bias

The City Council must act in a quasi-judicial capacity. Demonstrated bias (see ***Petrovich v. Sacramento***) is grounds for invalidating the final decision.

Excerpts from Councilmember Traci Park's (CD-11) Venice Field Deputy Sean Silva **prior** to hearing from the Commissioners at the 09-05-2024 Cultural Heritage Commission hearing:

"… I'm here to relay our office's support for the certification of the EIR and a ***recommendation to adopt a Statement of Overriding Consideration*** *for the property known as the Barry Building."*

"… ***We have worked with the property owners*** *to establish a preservation covenant that ensures the safeguarding of the site's iconic elements, including the staircases and benches. These elements are to be used in* ***the site's future development****, paying homage to the Barry Building."*

Summary & Request for Action

The LADBS's actions are invalid and must be reversed.

Our Formal Request (The "Ask")

We request the Board of Commissioners take the following 6 actions:

- **REVERSE** the 06/06/2025 Letter of Determination (LOD).
- **RESCIND** the EIR Certification.
- **RESCIND** the SOC Adoption.
- **RESCIND** the Mitigation Monitoring Program (MMP).
- **REJECT** the LADBS Staff Report's recommendation.
- **DENY** the demolition permit.

Thank You

Veronica Lopez <veronica.lopez@lacity.org>

RE: The Barry Building Demolition Project - 11973-11975 WEST SAN VICENTE BOULEVARD; BOARD FILE NO. 250851 ... For the November 18, 2025 LADBS Board of Commissioners Meeting (Item C-1) ...

1 message

Ziggy Kruse <ziggykruse2005@yahoo.com> Fri, Nov 14, 2025 at 3:42 PM
Reply-To: Ziggy Kruse <ziggykruse2005@yahoo.com>
To: Veronica Lopez <veronica.lopez@lacity.org>
Cc: "kenneth.fong@lacity.org" <kenneth.fong@lacity.org>, "kathryn.phelan@lacity.org" <kathryn.phelan@lacity.org>, Faruk Sezer <faruk.sezer@lacity.org>, "Esq. Coryn Kahn" <clkesq@outlook.com>, "osama.younan@lacity.org" <osama.younan@lacity.org>, Bob Blue <bob.blue@live.com>, Ziggy Kruse <ziggykruse2005@yahoo.com>, Hydee Feldstein-Soto <hydee.feldsteinsoto@lacity.org>

Dear Ms. Lopez:

Please add the attached document "*2025-11-14_Comment Letter on ENTIRE LADBS Staff Report_Final with signature*" to the Agenda Package for the November 18, 2025 LADBS Board of Commissioners Meeting (Item C-1), as well as to the Administrative Record regarding BF 250851.

Please email acknowledgement of this email and the attachment to ziggykruse2005@yahoo.com and bob.blue@live.com.

Thank you.

Sincerely,
Sieglinde Kruse Blue and Robert Blue

2025-11-14_Comment Letter on ENTIRE LADBS Staff Report_Final with signature.pdf
250K

Robert Blue & Sieglinde Kruse Blue
Los Angeles, CA 90049
bob.blue@live.com ziggykruse2005@yahoo.com

November 14, 2025

VIA EMAIL ONLY

Board of Building and Safety Commissioners
Attn: Veronica Lopez, Board Secretary
201 North Figueroa Street, Suite 1030
Los Angeles, CA 90012
veronica.lopez@lacity.org

LADBS NO.:	BF 250851
CASE NO.:	CHC-2007-1585-HCM
RELATED CASE NO:	ENV-2019-6645-EIR
CEQA:	SCH#2020110210 (EIR)
Location:	11973-11975 W. San Vicente Boulevard
Applicant:	11973 San Vicente, LLC
Council District:	11 – Park
Community Plan Area:	Brentwood – Pacific Palisades

Subject: Public Comment Letter Rebutting the October 15, 2025 LADBS Staff Report Regarding the Appeal of the June 6, 2025 Letter of Determination (LOD) for the Demolition of Historic-Cultural Monument No. LA-887

Dear Board President Stevens and Commissioners:

This letter serves as our formal public comments and full rebuttal to the findings and recommendations contained within the Los Angeles Department of Building and Safety (LADBS) Staff Report dated October 15, 2025, which was prepared in response to the Appeal filed on July 8, 2025, by Angelenos for Historic Preservation (BF 250851).

The Staff Report improperly concluded that the proposed demolition of the **Barry Building (Historic-Cultural Monument No. LA-887)** is legally justifiable. We contend the report is fundamentally flawed, lacks substantial evidence, and sets a dangerous legal precedent.

I. Requested Action

We request that the Board of Building and Safety Commissioners take the following actions:

1. **REVERSE** the actions taken by LADBS in their Letter of Determination (LOD) dated 06/06/2025 in their entirety,
2. **RESCIND** the certification of the EIR,
3. **RESCIND** the adoption of the SOC, and

4. **RESCIND** the adoption of the Mitigation Monitoring Program (MMP).

Therefore, we ask that Board of Building and Safety Commissioners to:

1. **REJECT** the LADBS Staff Report's recommendation to approve the demolition, and

2. **DENY** the demolition permit application under the authority of LAMC §91.106.4.5.

II. CEQA Violation: The Statement of Overriding Considerations (SOC) is Unsubstantiated and Invalid

The LADBS Staff Report's finding that the benefits of the project outweigh the unavoidable harm is unsupported by substantial evidence and violates CEQA Guidelines §15093.

A. Fatal Lack of Public Benefit

The SOC relies on highly speculative and hypothetical future benefits, which is insufficient to override the *certain, significant, and irreversible* loss of a designated Historic-Cultural Monument.

- **SOC is Based on a Vacant Lot:** LADBS admits that no subsequent development project is currently proposed, approved, or guaranteed. The SOC therefore rests on the idea that the removal of the building to create a **vacant, fenced-off dirt lot** constitutes a public social, economic, or legal benefit.
- **Expert Rebuttal to Social Benefit:** As testified by City Planner Melissa Jones (Office of Historic Resources) at the 09/05/2024 Cultural Heritage Commission (CHC) hearing, a vacant lot frequently contributes to **additional community problems**, including increases in crime, vagrancy, and negative health impacts, thus serving as a further detriment rather than conferring a benefit. The decision solely prioritizes vague future financial gain for the applicant, which does not meet the high public necessity threshold required by CEQA.
- **Harm is Unquestionably Overriding:** The loss of the Barry Building (LA-HCM #887) is the most severe and irreversible cultural resource impact possible. To override this requires a demonstrable, immediate public necessity (e.g., critical housing), which is entirely absent here.

B. Failure of Institutional Authority and Expertise

LADBS acted outside of its institutional capacity as a Responsible Agency when it unilaterally certified the Environmental Impact Report (EIR) and adopted the SOC, despite acknowledging this was the **"first of its kind"** action for the department. This unprecedented action:

- Demonstrates a fundamental **lack of experience and institutional framework** to handle the procedural rigor of certifying a complex EIR related to a Historic-Cultural Monument.
- Shows a disregard for the City's subject matter experts, as the LADBS signatory overrode the recommendations of both the **Office of Historic Resources (OHR) and the Cultural Heritage Commission (CHC)**, who recommended **against** adopting the SOC.

III. LAMC Violation: Preservation Infeasibility is Not Proven

LAMC §91.106.4.5 mandates that a demolition permit for an HCM shall not be issued unless the Department first finds that "*specific economic, social or other considerations make infeasible the preservation of the building or structure*." The Staff Report's finding of economic infeasibility is based on an arbitrary and legally insufficient reliance on the owner's self-generated cost estimates.

A. Unsubstantiated and Inflated Cost Estimates

The owner's evidence is insufficient to meet the burden of proof for infeasibility:

- **Lack of Independent Verification:** The Staff Report fails to require or cite a truly **independent, neutral third-party peer review** of the owner's cost estimates, relying solely on the applicant's figures.
- **Scope Overstatement:** The cost breakdown appears to include non-essential or luxury upgrades well beyond the minimum compliance scope required by the Soft-Story Retrofit Ordinance (LAMC §91.9300 et seq.) and basic ADA accessibility. The true, mandated cost of preservation is significantly lower than the claimed "infeasible" maximum. [1]
- **Ignoring Alternatives:** The owner's estimate assumes the most expensive structural solution. The Staff Report failed to evaluate less destructive, lower-cost engineering methods routinely used on other HCMs in the City. Furthermore, the economic analysis failed to provide the cost estimates based on the **minimum scope of work for only the South Structure** (South Wing) when the compliance order was issued in March 2018.

[1] The building is fenced off and inaccessible, and building drawings are not available since LADBS does not retain drawings for 3-story or less commercial buildings built before 1978. This makes it infeasible for the public to obtain an accurate expert counter cost estimate. However, we reserve our right to submit such an estimate if and when it becomes available.

B. Self-Imposed Economic Hardship

The applicant has allowed the building to remain vacated and neglected for over eight years (since 2016). Granting demolition now effectively **rewards demolition by neglect**—allowing structural decay to create issues that are then used to justify destruction, circumventing the very protection HCM status is meant to provide.

IV. Procedural and Segmentation Flaws in the EIR Process

The EIR and subsequent LADBS determination are procedurally flawed due to **segmenting/piecemealing** the project and other due process issues.

- **Improper Segmentation (Piecemealing):** The EIR artificially limited the project scope to only the Barry Building parcel (APN No. 4404-025-008) while ignoring the surrounding assemblage of parcels that are **all owned by the same Applicant entity** (11973 San Vicente, LLC and 11991 San Vicente, LLC).
  - Testimony at the 09/05/2024 CHC hearing confirmed all surrounding parcels are under the exact same ownership.
  - The Applicant's control over the entire area, and public comments alluding to a **foreseeable future development project** (e.g., the Green Hollow Square footprint mentioned by Ms. Jones; comments by Sean Silva, CD 11 Field Deputy, regarding a Preservation Covenant for future development), and LADBS's own 10/15/2025 Staff Report demonstrates that the project was improperly segmented.
  - This prevented a thorough analysis of the cumulative environmental effects of the entire undertaking.
  - LADBS Staff itself alluded to a **foreseeable** future project when it mentions *"The removal would result in an additional vacant site that could accommodate housing or other commercially viable development in the future, built to more energy-efficient and structurally safer modern building codes, contributing to the City's Regional Housing Needs Assessment (RHNA) allocations and the City's critical housing need, or providing new commercial uses in line with smart growth policies and transit-oriented development".* (***10-15-2025 Staff Report, pp 8-9***)
- **Due Process Errors:** LADBS's initial use of the incorrect appeal form (PC-Build.Mod 00) and the restrictive language in the official LOD ("No additional information will be accepted...") created an **institutional chilling effect** on public participation, constituting a fundamental due process error.

V. Policy and Precedent

The approval of this demolition establishes a destructive City-wide precedent:

- If a designated landmark can be destroyed solely to create a speculative vacant lot for the private financial gain of an owner who allowed the property to decay, the City's entire historic preservation ordinance is rendered moot.
- This creates a **"vacant lot loophole"** that endangers all other designated historical resources facing mandatory code upgrades.

VI. Conclusion

The LADBS Staff Report dated 10-15-2025 fails to meet the legal requirements of CEQA and the Los Angeles Municipal Code.

We urge the Board to reject the Staff recommendation, recognize the procedural and substantive flaws in the determination, and protect the Barry Building (HCM #887) with the following actions:

1. **REVERSE** the actions taken by LADBS in their Letter of Determination (LOD) dated 06/06/2025 in their entirety,
2. **RESCIND** the certification of the EIR,
3. **RESCIND** the adoption of the SOC, and
4. **RESCIND** the adoption of the Mitigation Monitoring Program (MMP)
5. **REJECT** the LADBS Staff Report's recommendation to approve the demolition, and
6. **DENY** the demolition permit application under the authority of LAMC §91.106.4.5.

Thank you for your time and consideration.

Sincerely,

Robert Blue — Robert Blue

Sieglinde Kruse Blue — Sieglinde Kruse Blue

Veronica Lopez <veronica.lopez@lacity.org>

BF 250851, LADBS Board of Commissioners Meeting for 11/18/2025, Agenda Item C-1, 11973 San Vicente Blvd, Los Angeles (Barry Building HCM #887)

1 message

Bob Blue <bob.blue@live.com> Sun, Nov 16, 2025 at 6:06 PM
To: Veronica Lopez <veronica.lopez@lacity.org>
Cc: Kenneth Fong <kenneth.fong@lacity.org>, "kathryn.phelan@lacity.org" <kathryn.phelan@lacity.org>, Faruk Sezer <faruk.sezer@lacity.org>, "Corin L Kahn, Esq." <clkesq@outlook.com>, "osama.younan@lacity.org" <osama.younan@lacity.org>, Bob Blue <bob.blue@live.com>, Ziggy Kruse <ziggykruse2005@yahoo.com>, Hydee Feldstein-Soto <hydee.feldsteinsoto@lacity.org>

Subject: BF 250851, LADBS Board of Commissioners Meeting for 11/18/2025, Agenda Item C-1, 11973 San Vicente Blvd, Los Angeles (Barry Building HCM #887)

Hello Veronica,

Please add the following PDF documents to the Agenda Package for the November 18, 2025 LADBS Board of Commissioners Meeting (Item C-1), as well as to the Administrative Record regarding BF 250851.

"*2025-11-15_Alpha Structural,11973 San Vicente Blvd, OBS Estimate.pdf*"

"2025-11-15_Alpha Structural,11973 San Vicente Blvd, BACKGROUND of Alpha Structural and Albert Biskalis.pdf"

Please note that these documents are being submitted prior to the 11/18/2025 meeting and before action is taken by the LADBS Board on the Agenda Item referenced above.

Please email acknowledgement of this email and the attachment to bob.blue@live.com and ziggykruse2005@yahoo.com .

Thank you.

Sincerely,
Robert Blue and Sieglinde Kruse Blue

2 attachments

2025-11-15_Alpha Structural,11973 San Vicente Blvd, OBS Estimate.pdf
419K

2025-11-15_Alpha Structural,11973 San Vicente Blvd, BACKGROUND.pdf
123K

ALPHA STRUCTURAL INC.
LIC. #663409

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info@alphastructural.com

O: 323-258-5482
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OBSERVATION LETTER

Bob Blue
Email: bob.blue@live.com

November 15, 2025

Re: 11973 San Vicente Blvd. Los Angeles CA, 90049

This letter has been prepared for Bob Blue, as a follow-up to our site visit on November 12th, 2025, and summarizes the findings of our visit.

This letter is limited to the confirmation of mandatory retrofitting upgrades and preliminary potential costs (soft story seismic retrofitting) and is not intended to analyze the overall ability of the structure(s) to withstand future loading conditions. It should also be noted that this site visit did not include a review of original or renovation structural plans, or the benefit of a current subsurface investigation (soils report), as they were not made available. The observation was conducted on a visual basis, and no instruments were used to measure plumb or level conditions of floors or walls.

Regardless of opinions stated, written, or implied by any representative of Alpha Structural Inc., no building elements or structure obscured or covered by anything may be commented relied upon in any email, report or Observation Letter issued. This includes but is not limited to floor structures or slabs covered by carpeting or any floor covering, retaining walls covered by foliage, pools filled with water, etc. If comment is requested of us, please have these areas exposed entirely for observation.

Rough estimates were requested for the various repair options. It should be noted that these estimates are given on a "plus or minus" basis and are not actual bids. In order to acquire an exact price, an option would need to be chosen, and an accurate bid undertaken in order to ascertain the price therein.

GENERAL:

- The subject property is an 13,301 sq. ft. (approximately) two-story commercial office building originally built in 1951 according to the Los Angeles County Assessor records.
- The building is located on a relatively flat pad.
- The building is constructed on a concrete slab on grade foundation system and is separated by a courtyard in the center of the building with four wings along the northerly, southerly, easterly and westerly sides of the building. The southerly wing of the building is almost entirely open on the first level, and the above framing is supported by a series of pipe columns that support the above beams and floor framing.
- A review of a letter prepared by Russell Tanouye of Englekirk Structural Engineers, Inc., dated June 1, 2021, was performed prior to preparing this letter. The purpose of this letter was to provide retrofit schemes to bring the building into compliance with the Soft-Story retrofit ordinance. The general retrofit scheme consists of steel moment frames along the southerly wing as phase one, and strengthening walls via shear walls along the northerly, easterly, and westerly wings as phase two.

- A search into City of Los Angeles LADBS online services specifies that this building does fall into the Soft-Story retrofit program with an order to comply (OTC) date of 3/1/2018. https://www.ladbsservices2.lacity.org/OnlineServices/?service=plr

OBSERVATIONS:

- At the time of observation, the building was enclosed with temporary fences and inaccessible and only visible from the location of the enclosure fences. As a result, visibility was limited, primarily at the courtyard and northerly rear of the building.

- It was observed that both sides of the southerly wing of the building are generally open below, with pipe columns that support the above beams and floor system. This area of the structure appears to have a soft story condition. A soft story is when office/ living space occurs over a soft or weak plane.

- The easterly plane of building appears to also have a soft or weak condition as most of the wall line below appears to consist of covered openings. Photos provided by client, dated June 2015 does verify that the currently boarded up exterior walls consist of storefront/ window openings.

- The northerly plane of the building within the courtyard appears to possibly have a soft or weak plane.

- The northerly rear appears to not have a soft story condition based on limited observation, although it will need to be confirmed during the engineering and exploration phase to visually confirm all openings occurring along the lower and upper levels. Photos provided by the client provide insight to the northeasterly section/ corner of the building, however the northwesterly corner will still need to be confirmed.

RECOMMENDATIONS:

- A Soft-Story seismic retrofit is recommended. The retrofit is considered a mandatory structural upgrade per the City of Los Angeles Mandatory Retrofitting Ordinance #183893 (Mandatory Standards for Earthquake Hazard Reduction in Existing Wood-Frame Buildings with Soft, Weak, or Open-Front Walls). This would consist of complete seismic analysis to entire building, targeting (4) identifiable soft and/ or weak plane on the subject site. The retrofit would consist of implementing lateral resistant systems consisting of multiple special cantilever column systems (SCCS) with drag and shear transfer systems with concrete grade beams. Columns can be designed for offset or replacement columns. Preliminary design accounts for a total of approximately (6) columns to contain both sides of the southerly wing and approximately (4) columns to contain the easterly plane and shear walls/ strong walls will likely be sufficient to contain the northerly plane at the courtyard.
    - Estimated cost approximately, +/-$14,000. (Engineering and permit expediting.)
    - Estimated cost approximately, +/-$365,000. (Estimated construction costs are contingent upon final engineered specifications, plans and city requirements. It should be noted that the estimated cost does not include finished cosmetics of any kind as this is to be done by others.)

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F: 323-344-9366

Thank you for the opportunity to be of service. Should you or any of your authorized agents have any questions, please feel free to call or email anytime.

Sincerely,



Albert Biskalis
Alpha Structural, Inc.
General Engineering Contractors – Structural Engineers
CSLB License #663409 – Class A, B, C-8
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BACKGROUND & EXPERIENCE of Albert Biskalis, provided by:

Albert Biskalis, VP DEVELOPMENT and Structural Assessor

Mr. **Biskalis** has approximately 18 years of structural design/ drafting and has an Associates of Science degree in CAD Drafting/ Design. Five of those years operating in Alpha Structural' s engineering department and 3 years as a Structural Assessor. He has helped develop many soft story plans with Alpha Structural' s engineering department. HIS Registration number is 144101 SP. This license is held under Alpha Structural' s contractor license #66340

BACKGROUND & EXPERIENCE OF COMPANY

The information below is available on Alpha Structural's Website:

https://www.alphastructural.com

Servicing Los Angeles County, Orange County, Ventura County and Santa Barbara County

For over 30 years, Alpha Structural, Inc. has developed a powerful reputation as the **#1 Design/Build firm in Los Angeles and surrounding counties**. With over 850 years of combined professional experience in our engineering department alone, we can design any and all of your structural repairs and upgrades, in addition to building them. Whether it's a single-family home, a multi-family apartment building or a commercial building, we engineer and build ANY needed repairs to keep your building safe.



Source: https://www.alphastructural.com/

The Only One to Engineer & Build

We're the ONLY **Los Angeles foundation repair company** licensed to ENGINEER and BUILD any type of repair project. Whether it’s a **residential, multi-family, commercial or industrial property**, we can do any structural or geotechnical repair required. You'll work with us through the whole project, not unknown sub-contractors that you didn't hire and cannot control or predict. We can custom design the exact right solutions for you and your budget, whatever that is. We'll help you to find the right balance of achieving your goal and cost.

Soft Story Retrofitting Los Angeles

At Alpha Structural, we specialize in comprehensive **soft story retrofitting**, offering tailored solutions that meet compliance requirements while ensuring long-term structural stability. With decades of experience in *seismic retrofitting and foundation repair*, we provide property owners with expert guidance, cost-effective engineering, and seamless execution from start to finish. If your building falls under the city’s retrofitting ordinance, now is the time to take action. Strengthen your property before the next earthquake strikes.

Veronica Lopez <veronica.lopez@lacity.org>

RE: The Barry Building Demolition Project - 11973-11975 WEST SAN VICENTE BOULEVARD; BOARD FILE NO. 250851 ... For inclusion to the November 18, 2025 LADBS Board of Commissioners Meeting (Item C-1) ...

1 message

Ziggy Kruse <ziggykruse2005@yahoo.com> Sun, Nov 16, 2025 at 8:03 PM
Reply-To: Ziggy Kruse <ziggykruse2005@yahoo.com>
To: Veronica Lopez <veronica.lopez@lacity.org>
Cc: "kenneth.fong@lacity.org" <kenneth.fong@lacity.org>, "kathryn.phelan@lacity.org" <kathryn.phelan@lacity.org>, Faruk Sezer <faruk.sezer@lacity.org>, "Esq. Coryn Kahn" <clkesq@outlook.com>, "osama.younan@lacity.org" <osama.younan@lacity.org>, Ziggy Kruse <ziggykruse2005@yahoo.com>, Bob Blue <bob.blue@live.com>, Hydee Feldstein-Soto <hydee.feldsteinsoto@lacity.org>

Dear Ms. Lopez:

Please add the attached document "*2025-11-16_Blue's Rebuttal Ltr on LADBS 10-15-2025 Staff Report_FINAL*" to the Agenda Package for the November 18, 2025 LADBS Board of Commissioners Meeting (Item C-1), as well as to the Administrative Record regarding BF 250851.

Please email acknowledgement of this email and the attachment to ziggykruse2005@yahoo.com and bob.blue@live.com.

Thank you.

Sincerely,
Sieglinde Kruse Blue and Robert Blue

2025-11-16_Blue's Rebuttal Ltr on LADBS 10-15-2025 Staff Report_FINAL.pdf
174K

Robert Blue & Sieglinde Kruse Blue
Los Angeles, CA 90049
bob.blue@live.com ziggykruse2005@yahoo.com

November 16, 2025

VIA EMAIL ONLY

Board of Building and Safety Commissioners
Attn: Veronica Lopez, Board Secretary
201 North Figueroa Street, Suite 1030
Los Angeles, CA 90012
veronica.lopez@lacity.org

LADBS NO.:	**BF 250851**
CASE NO.:	CHC-2007-1585-HCM
RELATED CASE NO:	ENV-2019-6645-EIR
CEQA:	SCH#2020110210 (EIR)
Location:	11973-11975 W. San Vicente Boulevard
Applicant:	11973 San Vicente, LLC
Council District:	11 – Park
Community Plan Area:	Brentwood – Pacific Palisades

Subject: Formal Comment Letter and Objections to 10-15-2025 Staff Report in response to our July 20, 2025 Comment letter in support of the July 8, 2025 Appeal (Historic-Cultural Monument No. LA-887) of the Letter of Determination

Dear Board President Stevens and Commissioners:

I. Introduction and Context

This letter serves as our formal public comments and full rebuttal to the findings and recommendations contained within the Los Angeles Department of Building and Safety (LADBS) Staff Report dated October 15, 2025, which was prepared in response to the Appeal filed on July 8, 2025, by Angelenos for Historic Preservation (BF 250851).

II. Objections to LADBS Actions and Rebuttal of LADBS Staff Responses to our July 20, 2025 public comment letter, which was submitted in support of the July 08, 2025 appeal

The following sections address the fundamental, procedural, and environmental flaws in the LADBS's actions documented in the June 6,

2025, Letter of Determination, and provide our counter-response to the Department's justifications provided in the LADBS Staff Report dated 10/15/2025 response.

A. Finding 1: Lack of Institutional and Signatory Authority for CEQA Actions (Countering LADBS Response to Supplemental Issue No. 1)

LADBS Staff Report Response to Supplemental Issue No. 1: LADBS is the decision-maker per LAMC 91.106.4.5 and is therefore responsible for the CEQA actions (EIR Certification/SOC Adoption).

Rebuttal:

1. **Certification Authority vs. Permit Finding: LADBS as Responsible Agency:** The role of certifying a complex Environmental Impact Report (EIR) and adopting a Statement of Overriding Considerations (SOC) belongs to the "Lead Agency," defined by **Public Resources Code (PRC) § 21067** and **CEQA Guidelines § 15051** as the agency with the principal responsibility for approving the project *as a whole* (usually the Planning Department). LADBS's responsibility under LAMC 91.106.4.5 is a limited, specific finding, making it a "Responsible Agency" under CEQA Guidelines, not the certifying Lead Agency.

2. **Unprecedented Action as Policy Flaw:** The Department's admission that this is the "first of its kind" is precisely the problem. It demonstrates LADBS's lack of experience and institutional framework to handle the procedural rigor and policy implications of certifying an EIR and adopting an SOC related to a Historic-Cultural Monument. The lack of precedent means this decision creates an environmental policy that should be made by a lead agency with relevant, demonstrated expertise.

3. **Conflict with City Experts:** The LADBS signatory overrode the City's subject matter experts (OHR and CHC) without possessing the commensurate CEQA-related qualifications, rendering the certification and SOC adoption procedurally unsound and void of necessary environmental expertise.

B. Finding 2: Establishment of a Dangerous and Unprecedented Precedent and Insufficient SOC Justification (Countering LADBS Justification for SOC)

LADBS Staff Report Response to Supplemental Issue No. 2: The LOD effectively authorizes the demolition of a Historic Cultural Monument (HCM #887, the Barry Building) *without* an approved replacement project.

Rebuttal:

1. **SOC Justification is Insufficient (Lack of Substantial Evidence):** The LADBS's justification for the Statement of Overriding Considerations (SOC) is weak, stating the unavoidable impact (loss of HCM) is outweighed by the **speculative future benefit** of a "vacant site that could accommodate housing or other commercially viable development." **CEQA Guidelines § 15093** and **PRC § 21081(b)** require that the SOC be supported by **substantial evidence in the record.** A generic claim of potential future housing or commercial use on a vacant lot, without an approved, specific project, does not meet the high threshold of "specific economic, legal, social, technological, or other considerations" required to override the certain, significant, and unavoidable loss of a unique, irreplaceable cultural resource under CEQA.

2. **"First Ever" Action & Threat to HCMs:** The approval establishes a dangerous precedent that immediately threatens the integrity and future viability of all Historic Cultural Monuments across the City. The very act of demolishing an HCM without a replacement project fundamentally alters the policy landscape and makes future demolitions easier to justify, contrary to the City's preservation goals.

3. **Abuse of Discretion:** If the City of Los Angeles granted a demolition permit for one HCM due to documented financial hardship related to seismic compliance but then **denied an identical request** from a different HCM owner, the denial could be challenged as an **abuse of discretion.** The owner would argue that the

City's decision-making process was **inconsistent** and that the denial was not based on substantial evidence or clear policy, especially when a similar, precedent-setting case was approved.

4. **Regulatory Taking:** A more direct and powerful challenge is a claim of a **regulatory taking** under the Fifth Amendment of the U.S. Constitution, which requires "just compensation" if private property is taken for public use. The owner would argue that the City's denial of the demolition permit, coupled with the prohibitive cost of mandated seismic retrofitting, effectively deprives them of all economically viable use of the property. They are being forced to preserve the HCM for the public's benefit without just compensation for the significant financial burden. The fact that the City previously acknowledged the financial hardship in a similar case (by granting the first demolition) would be a critical piece of evidence supporting the second owner's claim that the cost does render the property economically unviable.

5. **Socio-Economic Flaw:** The decision prioritizes a vague future financial benefit to the applicant over the certified cultural value of the resource, which is inherently contrary to the stated goals of historic preservation and environmental protection.

C. Finding 3: Due Process, Bias, and Procedural Impediments (Countering LADBS Responses to Supplemental Issues No. 2a, 2b, and 2c)

LADBS Staff Report Response to Supplemental Issue No. 2a, 2b, and 2c: The LOD provided a flawed process for public appeal and the decision-making process was compromised by bias.

Rebuttal:

1. **Inappropriate Appeal Form (Countering Response 2a):** LADBS's use of the **PC-Build.Mod 00** form is a fundamental due process error. Forcing appellants to use a *building code modification* form for a **CEQA Appeal** created an unreasonable and confusing hurdle. The fact

that an appeal was ultimately filed does not remedy the procedural flaw that violated the public's right to fairness and access.

2. **Restriction of Comments (Countering Response 2b):** The initial, restrictive language in the official LOD ("No additional information will be accepted...") created an institutional chilling effect on public participation and comment. An *after-the-fact email clarification* is an inadequate remedy for a serious procedural defect embedded in the official appeal document itself.

3. **Councilmember Bias Must Be Addressed (Countering Response 2c):** When the City Council hears the CEQA appeal, it acts in a **quasi-judicial** capacity, requiring neutrality and impartiality. The bias and prejudgment demonstrated by Councilmember Traci Park (via prior public statements and actions supporting demolition) are highly relevant. This behavior is grounds for invalidating the final decision, even if the vote is not outcome-determinative, under the common law bias rule affirmed in California case law such as ***Petrovich Development Company, LLC v. City of Sacramento***. LADBS's dismissal of this issue ignores the full legal scope of the due process concern for the future appeal process.

III. Summary and Request for Action

Based on the evidence of flawed procedure, institutional lack of authority, violation of due process rights, and significant threat to the City's historic resources, we believe the actions taken by LADBS in the June 6, 2025 Letter of Determination are invalid and must be reversed.

We therefore request that the LADBS Board of Commissioners do the following:

1. **REVERSE** the actions taken by LADBS in their Letter of Determination (LOD) dated 06/06/2025 in their entirety,
2. **RESCIND** the certification of the EIR,
3. **RESCIND** the adoption of the SOC, and
4. **RESCIND** the adoption of the Mitigation Monitoring Program

(MMP)

5. **REJECT** the LADBS Staff Report's recommendation to approve the demolition, and

6. **DENY** the demolition permit application under the authority of LAMC §91.106.4.5.

Thank you for your consideration.

Sincerely,

Robert Blue
Robert Blue

Sieglinde Kruse Blue
Sieglinde Kruse Blue

Channel Law Group, LLP

April 7, 2026

Further Supplemental Appeal Justification; Appearance Under Protest; Barry Building (Historic-Cultural Monument #887); Case Nos. ENV-2019-6645-EIR-1A; CHC-2007-1585-HCM; Council File No. 25-1518

EXHIBIT C

STATE OF CALIFORNIA

Tribal Consultation Guidelines

SUPPLEMENT TO GENERAL PLAN GUIDELINES

November 14, 2005

GOVERNOR'S OFFICE OF PLANNING AND RESEARCH



State of California
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November 2005

Please feel free to reproduce all or part of this document. You need not secure permission; we ask that you print it accurately and give credit to the Governor's Office of Planning and Research.

This document is available on the Internet at http://www.opr.ca.gov/SB182004.html.

Director's Message

November 14, 2005

The Governor's Office of Planning and Research (OPR) is proud to announce the publication of this November 2005 Supplement to the *General Plan Guidelines*. The 2005 Supplement (also known as Tribal Consultation Guidelines) provides advisory guidance to cities and counties on the process for consulting with Native American Indian tribes during the adoption or amendment of local general plans or specific plans, in accordance with the statutory requirements of Senate Bill 18 (Chapter 905, Statutes of 2004). It reflects recent changes to the California Public Records Act which will facilitate this consultation process.

It is our hope that this 2005 Supplement will be useful not only to city and county planning staffs for implementing the provisions of SB 18, but also to local elected officials, planning consultants, landowners, and tribal members who are involved in the general plan process.

In all of its work, OPR attempts to encourage more collaborative and comprehensive land use planning at the local, regional, and statewide levels. These goals are consistent with the goals of Senate Bill 18, which for the first time in the nation, requires cities and counties to consult with Native American tribes when adopting and amending their general plans or specific plans.

The development of this 2005 Supplement would not have been possible without the advice and assistance of many organizations and individuals, whose support OPR acknowledges and appreciates. These organizations and individuals include the Native American Heritage Commission and its staff, the members and representatives of numerous California Native American tribes, many city and county governments, state agency representatives, professional associations and academic institutions. We appreciate their assistance in preparing this 2005 Supplement, including participation at several meetings and public workshops.

OPR met the statutory deadline of March 1, 2005, to publish these guidelines by issuing interim guidelines on March 1. In developing the interim guidelines, OPR consulted with a wide range of stakeholders and experts. We consulted with city and county representatives (planners, legislative staff and legal counsels); tribal representatives and associations; staff of the Native American Heritage Commission (NAHC), including attendance at two NAHC commission meetings; federal agencies with experience in tribal consultation; academic institutions; and professional associations that deal with archaeological and cultural resource protection. In addition, we consulted with numerous tribal liaisons within state government and sought the input of the League of California Cities and the California State Association of Counties.

Based upon this consultation, OPR issued Draft Tribal Consultation Guidelines on February 22, 2005 for public review and comment. OPR conducted a public workshop on February 25, 2005, which was well attended and resulted in a productive discussion of the process envisioned by SB 18, as well as many specific recommendations for improvements to the 2005 Supplement.

In response to requests from many parties for additional time to consult with OPR regarding the 2005 Supplement, OPR continued to reach out to stakeholders for an additional 45 days to ensure that their interests were heard. Between March 1 and April 15, OPR held four meetings throughout the State to receive additional comments. The meetings were held in Klamath, Corning, Sonora, and Temecula. On April 15, OPR published the guidelines reflecting the comments and concerns expressed at those four meetings, as well as written comments received by OPR.

This November edition of the guidelines reflects recent changes to the Public Records Act that exempt from public disclosure certain documents pertaining to Native American cultural places.

We hope that you will find this 2005 Supplement to be an informative guide and a useful tool in the practice of local planning. I invite your suggestions on ways to improve OPR's *General Plan Guidelines* and this 2005 Supplement, as OPR continues to refine and update all of its guidance to city and county planning agencies.

Sean Walsh
Director, OPR

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Part A
SB 18 Context and Basic Requirements

Sections I through III of the 2005 Supplement provide background information to familiarize local government agencies with the intent of Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) and the importance of protecting California Native American traditional tribal cultural places. Local governments will be better prepared to enter into consultations with tribes if they have a basic knowledge of tribal concerns and the value of cultural places to tribes. The key provisions of SB 18 are also outlined in table and text form.

I. Introduction

This 2005 Supplement to the *2003 General Plan Guidelines* addresses the requirements of SB 18, authored by Senator John Burton and signed into law by Governor Arnold Schwarzenegger in September 2004. SB 18 requires local (city and county) governments to consult with California Native American tribes to aid in the protection of traditional tribal cultural places ("cultural places") through local land use planning. SB 18 also requires the Governor's Office of Planning and Research (OPR) to include in the *General Plan Guidelines* advice to local governments for how to conduct these consultations.

The intent of SB 18 is to provide California Native American tribes an opportunity to participate in local land use decisions at an early planning stage, for the purpose of protecting, or mitigating impacts to, cultural places. The purpose of involving tribes at these early planning stages is to allow consideration of cultural places in the context of broad local land use policy, before individual site-specific, project-level land use decisions are made by a local government.

SB 18 requires local governments to consult with tribes prior to making certain planning decisions and to provide notice to tribes at certain key points in the planning process. These consultation and notice requirements apply to adoption and amendment of both general plans (defined in Government Code §65300 et seq.) and specific plans (defined in Government Code §65450 et seq.). Although SB 18 does not specifically mention consultation or notice requirements for adoption or amendment of specific plans, existing state planning law requires local governments to use the same processes for adoption and amendment of specific plans as for general plans (see Government Code §65453). Therefore, where SB 18 requires consultation and/or notice for a general plan adoption or amendment, the requirement extends also to a specific plan adoption or amendment. Although the new law took effect on January 1, 2005, several of its provisions regarding tribal consultation and notice did not take effect until March 1, 2005.

The *General Plan Guidelines* is an advisory document that explains California legal requirements for general plans.[1] The *General Plan Guidelines* closely adheres to statute and case law. It also relies upon commonly accepted principles of contemporary planning practice.

[1] California Government Code §65040.2

When the words "shall" or "must" are used, they represent a statutory or other legal requirement. "May" and "should" are used when there is no such requirement. The 2005 Supplement:

- Provides background information regarding California Native American cultural places and tribes.
- Outlines the basic requirements of SB 18.
- Provides step-by-step guidance to local governments on how and when to consult with tribes.
- Offers advice to help local governments effectively engage in consultation with tribes.
- Provides information about preserving, or mitigating impacts to, cultural places.
- Discusses methods to protect confidentiality of information regarding cultural places.
- Presents ways of encouraging voluntary landowner involvement in the preservation of cultural places.

II. Background Information

The principal objective of SB 18 is to preserve and protect cultural places of California Native Americans. SB 18 is unique in that it requires local governments to involve California Native Americans in early stages of land use planning, extends to both public and private lands, and includes both federally recognized and non-federally recognized tribes. This section provides an overview of California Native American cultural places and California Native Americans.

California Native American Cultural Places

SB 18 refers to Public Resources Code §5097.9 and 5097.995 to define cultural places:[2]

- Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine (Public Resources Code §5097.9).
- Native American historic, cultural, or sacred site, that is listed or may be eligible for listing in the California Register of Historic Resources pursuant to Section 5024.1, including any historic or prehistoric ruins, any burial ground, any archaeological or historic site (Public Resources Code §5097.995).[3]

These definitions can be inclusive of a variety of places. Archaeological or historic sites may include places of tribal habitation and activity, in addition to burial grounds or cemeteries. Some examples are village sites and sites with evidence (artifacts) of economic, artistic, or other cultural activity. Religious or ceremonial sites and sacred shrines may include places associated with creation stories or other significant spiritual history, as well as modern day places of worship. Collection or gathering sites are specific places where California Native Americans access certain plants for food, medicine, clothing, ceremonial objects, basket making, and other

[2] Due to a drafting error, SB 18 contains multiple references to Public Resources Code (PRC) §5097.995 which is no longer in existence. In 2004, PRC §5097.995 was amended and renumbered to PRC §5097.993 by Senate Bill 1264 (Chapter 286). Local governments should refer to PRC §5097.993 when looking for PRC §5097.995.
[3] *Ibid.*

crafts and uses important to on-going cultural traditions and identities; these places may qualify as religious or ceremonial sites as well as sites that are listed or eligible for listing in the California Register of Historic Resources.

Native American cultural places are located throughout California because California Native American people from hundreds of different tribes made these lands their home for thousands of years. Due to the forced relocation of tribes by the Spanish, Mexicans, and Americans, most tribes do not currently control or occupy the lands on which many of their cultural places are located. As a result, California Native Americans have limited ability to maintain, protect, and access many of their cultural places.

A number of federal and state laws have been enacted to preserve cultural resources and have enabled some Native American tribes to promote the preservation and protection of their cultural places. The National Historic Preservation Act (NHPA), which established historic preservation as a national policy in 1966, includes a Section 106 review process that requires consultation to mitigate damage to "historic properties" (defined per 36 CFR 800.16(1) as places that qualify for the National Register of Historic Places), including Native American traditional cultural places (TCPs, as described in National Register Bulletin 38) whenever any agency directs a project, activity or program using any federal funds or requiring a federal permit, license or approval (36CFR800.16). The National Environmental Policy Act (NEPA) requires every federal project to include in an Environmental Impact Statement documentation of environmental concerns, including effects on important historic, cultural, and natural aspects of our national heritage. Presidential Executive Order 13007, "Indian Sacred Sites," ensures that federal agencies are as responsive as possible to the concerns of Native American tribes regarding their cultural places. The Archaeological Resources Protection Act (ARPA) makes desecration of Native American cultural places on federal lands a felony.

California state law includes a variety of provisions that promote the protection and preservation of Native American cultural places. A number of these provisions address intentional desecration or destruction of cultural places and define certain of such acts as misdemeanors or felonies punishable by both fines and imprisonment. These include the Native American Historic Resource Protection Act (PRC §5097.995-5097.996[4]), Public Resources Code §5097.99, Penal Code §622.5 and Health and Safety Code §7050.5, §7052. Other provisions require consideration of potential impacts of planned projects on cultural resources, which may include Native American cultural places. Public Resources Code 5097.2 requires archaeological surveys to determine the potential impact that any major public works project on state land may have on archaeological resources. The California Environmental Quality Act (CEQA) requires project lead agencies to consider impacts, and potential mitigation of impacts, to unique archaeological and historical resources.[5] California Executive Order W-26-92 affirms that all state agencies shall recognize and, to the extent possible, preserve and maintain the significant heritage resources of the State. Public Resources Code §5097.9, which mandates noninterference of free expression or exercise of Native American religion on public lands, promotes preservation of certain Native American cultural places by ensuring tribal access to these places.

[4] *Ibid.*

[5] CEQA Statutes at Public Resources Code §21083.2-21084.1; CEQA Guidelines at 14 CCR 15064.5-15360.

While these and other laws permit Native Americans to have some say in how impacts to cultural places could be avoided or mitigated, the laws rarely result in Native American input at early stages of land use planning. Generally, these laws provide protection only to those sites located on public or Native American trust lands and address only the concerns of Native Americans who belong to federally recognized tribes, with no official responsibility to non-federally recognized tribes. The intent of SB 18 is to provide all California Native American tribes, as identified by the NAHC, an opportunity to consult with local governments for the purpose of preserving and protecting their cultural places.

California Native American Tribes

SB 18 uses the term, California Native American tribe, and defines this term as "a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the Native American Heritage Commission" (NAHC). "Federal recognition" is a legal distinction that applies to a tribe's rights to a government-to-government relationship with the federal government and eligibility for federal programs. All California Native American tribes, whether officially recognized by the federal government or not, represent distinct and independent governmental entities with specific cultural beliefs and traditions and unique connections to areas of California that are their ancestral homelands. SB 18 recognizes that protection of traditional tribal cultural places is important to all tribes, whether federally recognized or not, and it provides all California Native American tribes with the opportunity to participate in consultation with city and county governments for this purpose. As used in this document, the term "tribe(s)" refers to a California Native American tribe(s).

California has the largest number of tribes and the largest Native American population of any state in the contiguous United States. California is home to 109 federally recognized tribes and several dozen non-federally recognized tribes. According to a 2004 California Department of Finance estimate, the Native American population in California is 383,197.

Tribal governments throughout California vary in organizational forms and size. Some tribes use the government form established under the Indian Reorganization Act of 1934 (25CFR81) with an adopted constitution and bylaws. Other tribes have adopted constitutions and bylaws that incorporate traditional values in governing tribal affairs. Many tribal governments are comprised of a decision making body of elected officials (tribal governing body) with an elected or designated tribal leader. Some tribes use lineal descent as the means of identifying the tribe's leader. In general, tribal governing bodies and leaders serve for limited terms and are elected or designated by members of the tribe. Tribal governments control tribal assets, laws/regulations, membership, and land management decisions that affect the tribe.

III. Basic Requirements of SB 18

This section provides a brief summary of the statutory requirements of SB 18. Later sections of the Supplement provide additional detail regarding these requirements and offer advice to local governments on how to fulfill the notification and consultation requirements of SB 18. (Please refer to Section IV and Section V of these guidelines for additional information regarding the responsibilities outlined below.)

Responsibilities of OPR

Government Code §65040.2(g) requires the Governor's Office of Planning and Research (OPR) to amend the *General Plan Guidelines* to contain advice to local governments on the following:

- Consulting with tribes on the preservation of, or the mitigation of impacts to, cultural places.
- Procedures for identifying through the Native American Heritage Commission (NAHC) the appropriate California Native American tribes with whom to consult.
- Procedures for continuing to protect the confidentiality of information concerning the specific identity, location, character, and use of cultural places.
- Procedures to facilitate voluntary landowner participation to preserve and protect the specific identity, location, character, and use of cultural places.

Responsibilities of Local Governments

SB 18 established responsibilities for local governments to contact, provide notice to, refer plans to, and consult with tribes. The provisions of SB 18 apply only to city and county governments and not to other public agencies. The following list briefly identifies the contact and notification responsibilities of local governments, in sequential order of their occurrence.

- Prior to the adoption or any amendment of a general plan or specific plan, a local government must notify the appropriate tribes (on the contact list maintained by the NAHC) of the opportunity to conduct consultations for the purpose of preserving, or mitigating impacts to, cultural places located on land within the local government's jurisdiction that is affected by the proposed plan adoption or amendment. Tribes have 90 days from the date on which they receive notification to request consultation, unless a shorter timeframe has been agreed to by the tribe (Government Code §65352.3).[6]
- Prior to the adoption or substantial amendment of a general plan or specific plan, a local government must refer the proposed action to those tribes that are on the NAHC contact list and have traditional lands located within the city or county's jurisdiction. The referral must allow a 45 day comment period (Government Code §65352). Notice must be sent

[6] SB 18 added this new provision to state planning law. It applies to any amendment or adoption of a general plan or specific plan, regardless of the type or nature of the amendment. Adoption or amendment of a local coastal program by a city or county constitutes a general plan amendment.

regardless of whether prior consultation has taken place. Such notice does not initiate a new consultation process.[7]

- Local governments must send notice of a public hearing, at least 10 days prior to the hearing, to tribes who have filed a written request for such notice (Government Code §65092).[8]

Under SB 18, local governments must consult with tribes under two circumstances:

- On or after March 1, 2005, local governments must consult with tribes that have requested consultation in accordance with Government Code §65352.3. The purpose of this consultation is to preserve, or mitigate impacts to, cultural places that may be affected by a general plan or specific plan amendment or adoption.
- On or after March 1, 2005, local governments must consult with tribes before designating open space, if the affected land contains a cultural place and if the affected tribe has requested public notice under Government Code §65092. The purpose of this consultation is to protect the identity of the cultural place and to develop treatment with appropriate dignity of the cultural place in any corresponding management plan (Government Code §65562.5).

Responsibilities of NAHC

The NAHC is charged with the responsibility to maintain a list of California Native American tribes with whom local governments must consult or provide notices (as required in Government Code §65352.3, §65352, and §65092). The criteria for defining "tribe" for the purpose of inclusion on this list are the responsibility of the NAHC. The list of tribes, for the purposes of notice and consultation, is distinct from the Most Likely Descendent (MLD) list that the NAHC maintains.

Upon request, the NAHC will provide local governments with a written contact list of tribes with traditional lands or cultural places located within a city's or county's jurisdiction. These are the tribes that a local government must contact, for purposes of consultation, prior to adoption or amendment of a general plan or specific plan. The NAHC will identify the tribes that must be contacted, based on NAHC's understanding of where traditional lands are located within the State.

For more information on the NAHC's roles and responsibilities, contact the NAHC. (See also Part F: Additional Resources)

[7] Government Code §65352 was amended by SB 18 to include tribes among the entities to whom the proposed action must be referred. The term "substantial amendment" has been in the statute for many years and was not modified by SB 18.

[8] Government Code §65092 was modified by SB 18 to include certain tribes as "persons" that are eligible to request and receive notices of public hearing. "Person" now includes a California Native American tribe that is on the contact list maintained by the NAHC.

Other Elements of SB 18

In addition to the notice and consultation requirements outlined above, SB 18 amended Government Code §65560 to allow the protection of cultural places in the open space element of the general plan. *(See Section X.)* Open space is land designated in the city or county open space element of the general plan for one or more of a variety of potential purposes, including protection of cultural places.

SB 18 also amended Civil Code §815.3 and adds California Native American tribes to the list of entities that can acquire and hold conservation easements. Tribes on the contact list maintained by the NAHC now have the ability to acquire, on terms mutually satisfactory to the tribe and the landowner, conservation easements for the purpose of protecting their cultural places. *(See Section IX.)*

Process Overview: General Plan or Specific Plan Adoption or Amendment

As discussed above, SB 18 establishes responsibilities for local government to contact, refer plans to, and consult with tribes. The following table provides an overview of SB 18 requirements related to the adoption or amendment of a general plan or specific plan. All statutory references are to the Government Code (GC).

Overview of SB 18 Consultation and Notice Requirements

Step	*OPR Guidelines (GDL) Section and Statutory Reference*
Adoption or amendment of any general plan (GP) or specific plan (SP) 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 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 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)

Step	*OPR Guidelines (GDL) Section and Statutory Reference*
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.)	
At least 45 days before local government adopts or substantially amends GP/SP, local government refers proposed action to agencies, including tribe(s). – Referral required regardless of whether or not there has been prior consultation. – This does not initiate a new consultation process. – This opens 45 day comment period before approval by board of supervisors/city council. – Referral required on or after March 1, 2005.	GDL Section III GC §65352(a)(8)
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.	

Note: The Permit Streamlining Act (PSA) (GC §65920 et seq.) establishes time limits for public agencies to take action on privately initiated development projects. Some general plan amendments may involve a private applicant for a development project. The PSA does not apply to a project that requires approval by a legislative act, such as a general plan amendment or rezone, even if there is a quasi-judicial approval involved (such as a use permit or subdivision map). Therefore, time limits for project approval under the PSA should not interfere with a local government's process for consultation.

Part B
When and How to Consult with California Native American Tribes

Sections IV and V of the 2005 Supplement provide step-by-step guidance to local government agencies on how and when to consult with tribes, including when to provide certain types of notices during the planning process. It is very important to review the information in Part C (Pre-Consultation) before undertaking consultation on a general plan or specific plan proposal.

IV. Consultation: General Plan and Specific Plan Adoption or Amendment

Each time a local government considers a proposal to adopt or amend the general plan or specific plan, they are required to contact the appropriate tribes identified by the NAHC. If requested by tribes, local governments must consult for the purpose of preserving or mitigating impacts to cultural places. The following section provides basic guidance to local governments on the notification and consultation requirements in Government Code §65352.3.

What Triggers Consultation?

Government Code §65352.3 requires local governments to consult with tribes prior to the adoption or amendment of a general plan or specific plan proposed on or after March 1, 2005. Local governments should consider the following when determining whether a general plan or specific plan adoption or amendment is subject to notice and consultation requirements:

- In the case of an applicant-initiated plan proposal, if the local government accepts a complete application (as defined in Government Code §65943) on or after March 1, 2005, the proposal is subject to Government Code §65352.3.
- In the case of a general plan or specific plan amendment initiated by the local government, any proposal introduced for study in a public forum on or after March 1, 2005 is subject to Government Code §65352.3. A legislative body must take certain actions to initiate, or propose, a general plan or general plan amendment. These actions must be taken in a duly noticed public meeting, and may include, but are not limited to, any of the following: appropriation of funds, adoption of a work program, engaging the services of a consultant, or directing the planning staff to begin research on the activity.

Under Government Code §65352.3, only if a tribe is identified by the NAHC, and that tribe requests consultation after being contacted by a local government, must a local government consult with the tribe on the plan proposal.

Local governments are encouraged to consult with tribes as early as possible and may, if appropriate, begin consultation even before a formal proposal is submitted by an applicant or initiated by the local government.

Identifying Tribes through the NAHC

Once a local government or private applicant initiates a proposal to adopt or amend a general plan or specific plan, the local government must send a written request to the NAHC asking for a list of tribes with whom to consult. OPR recommends that the written request be sent to the NAHC as soon as possible. Local governments should consider the following points when submitting a request to the NAHC:

- All written requests should be sent to the NAHC via certified mail or by fax.
- Requests to the NAHC should include the specific location of the area that is subject to the proposed action, preferably with a map clearly showing the area of land involved.
- Requests should clearly state that the local government is seeking information about tribes that are on the "SB 18 Consultation List."
- Contact information for the NAHC:

  Native American Heritage Commission
  915 Capitol Mall, Room 364
  Sacramento, CA 95814
  Phone: 916-653-4082
  Fax: 916-657-5390
  http://www.nahc.ca.gov

A sample form for submitting a request to the NAHC is provided in Exhibit A. The tribal consultation list request form is also available on the NAHC website.

The NAHC will provide local governments with a written contact list of tribes with traditional lands or cultural places located within the local government's jurisdiction. For each listed tribe, the NAHC will provide the tribal representative's name, name of tribe, address, and phone number (if available, fax and email address). Although there is no statutory deadline for NAHC to respond to the local government, OPR recommends that the NAHC provide written contact information as soon as possible but no later than 30 days after receiving a written request from the local government.

Contacting Tribes Pursuant to Government Code §65352.3

Once a tribal contact list is received from the NAHC, local governments must contact the appropriate tribe(s) and invite them to participate in consultation. OPR suggests that local governments contact tribes as soon as possible upon receiving the tribal contact list. While the statute does not specify by what means tribe(s) should be contacted, OPR suggests that local governments send a written notice by certified mail with return receipt requested. Sending a written notice does not preclude a local government from also contacting the tribe by telephone, FAX, or e-mail.

Notices should be concise, clear, and informative so that tribes understand what they are receiving. Try to avoid using a standard public notice format to invite a tribe to consult, as most public notices do not contain sufficient information about the proposed action to enable a tribe to

respond. Keep in mind that the purpose of this notice is to invite a tribe to request consultation. Notices sent from a local government to a tribe, inquiring whether consultation is desired, should contain the following information:

- A clear statement of purpose, inviting the tribe to consult and declaring the importance of the tribe's participation in the local planning process.
- A description of the proposed general plan or specific plan being considered, the reason for the proposal, and the specific geographic area(s) that will be affected by the proposal. Relevant technical documents should be provided with a concise explanation that clearly describes the proposed general plan or specific plan amendment and its potential impacts on cultural resources, if known.
- Maps that clearly detail the geographic areas described in the explanation. Maps should be in a reasonable scale with sufficient references for easy identification of the affected areas.
- The deadline (date) by which the tribe must request a consultation with the local government. By law, tribes have 90 days from the date of receipt of the notice to request consultation (Government Code §65352.3(a)(2)).
- Contact information for representatives of the local government to whom the tribe should respond.
- Contact information for the project proponent/applicant and landowner(s), if applicable.
- Technical reports, including summaries of cultural resource reports and archaeological reports applicable to that tribe's cultural place(s), if available.
- Information on proposed grading or other ground-disturbing activities, if applicable. (This may be included in the project description.)

Subject to confidentiality procedures, both parties should maintain clear records of communications, including letters, telephone calls, and faxes. Both parties may send notices by certified mail and keep logs of telephone calls and faxes. Any returned or unanswered correspondence should be retained in order to verify efforts to communicate. Documentation of notification and consultation requests should be included in the local government's public record.

In addition to the above recommendations, local governments may, in cooperation with tribes, develop notification procedures as a part of consultation protocols established in cooperation with a tribal government. Local governments should be aware that some tribes already have consultation protocols. In addition, local governments may adopt policies regarding consultation with a tribal government. *(See Section VI.)*

After Notification is Sent to the Tribe

Once local governments have sent notification, tribes are responsible for requesting consultation. Pursuant to Government Code §65352.3(a)(2), each tribe has 90 days from the date on which they receive notification to respond and request consultation. Some key points to consider include:

- The time period for consultation (undefined) is independent of the time period for tribes to request consultation (90 days).
- Local governments should be aware that tribes may require the entire 90-day period allowed by law to respond to a consultation request. Tribal governing bodies may need to meet to take a formal position on consultation.
- Local governments and tribal governments may consider addressing the method and timing of a tribe's response to a consultation request in a jointly-developed consultation protocol. *(See Section VI.)*
- At their discretion, tribes can agree to a shorter timeframe (less than 90 days) to respond and request consultation.
- After the information about a proposed plan or plan amendment is received by the tribe, local governments should cooperate to provide any additional pertinent information about the proposed plan or plan amendment that the tribe may request. Local governments may consider extending the 90 day timeframe for the tribe to review the new information and respond accordingly.
- If the tribe does not respond within 90 days or declines consultation, consultation is not required under Government Code §65352.3.

Conducting Consultation on General Plan or Specific Plan Adoption or Amendment

Once a tribe requests consultation, consultation for the purpose of preserving or mitigating impacts to cultural places should begin within a reasonable time. Consultation should focus on how the proposed general plan or specific plan amendment or adoption might impact cultural places located on land affected by the plan proposal. The objectives of consultation, according to the legislative intent of SB 18, include:

- Recognizing that cultural places are essential elements in tribal culture, traditions, heritages and identities.
- Establishing meaningful dialogue between local and tribal governments in order to identify cultural places and consider cultural places in local land use planning.
- Avoiding potential conflicts over the preservation of Native American cultural places by ensuring local and tribal governments have information available early in the land use planning process.
- Encouraging the preservation and protection of Native American cultural places in the land use process by placing them in open space.
- Developing proper treatment and management plans in order to preserve cultural places.
- Enabling tribes to manage and act as caretakers of their cultural places.

Consultation is a process in which both 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. Government Code §65352.4 provides a definition of consultation for use by local governments and tribes:

> *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.*

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.

Items to Consider When Conducting Consultation

The following list identifies recommendations for how local governments and tribes may approach consultation on general plan and specific plan proposals.

- As defined in Government Code §65352.4, consultation is to be conducted between two parties: the local government and the tribe. Both parties to the consultation are required to carefully consider the views of the other.
- Consultation does not necessarily predetermine the outcome of the plan or amendment. In some instances, local governments may be unable to reach agreement due to other state laws or competing public policy objectives.
- Local governments must consult with each tribe who is identified by the NAHC and requests consultation. The NAHC will identify whether there are, in fact, any tribes with whom the local government must consult. One or more tribes may have traditional cultural ties to land within the local government's jurisdiction and have an interest in preserving cultural places on those lands. Therefore, local governments may have to consult with more than one tribe on any particular plan proposal.
- OPR recommends that local governments consult with tribes one at a time (individually). If multiple tribes are involved and willing to jointly consult, local governments may consult with more than one tribe at a time.
- When a local government first contacts a tribe, its initial inquiry should be made to the tribal representative identified by the NAHC. OPR recommends that a local government department head or other official of similar or higher rank make the initial contact.
- Government leaders of the two consulting parties may consider delegating consultation responsibilities (such as attending meetings, sharing information, and negotiating the needs and concerns of both parties) to staff. Designated representatives should maintain direct relationships with and have ready access to their respective government leaders. These individuals may, but are not required to, be identified in a jointly-developed consultation protocol. *(See Section VI.)* In addition, the services of other professionals (attorneys,

contractors, or consultants) may be utilized to develop legal, factual, or technical information necessary to facilitate consultation.

- Simply notifying a tribe of a plan proposal is not the same as consultation.[9]
- Local governments should be aware of the potential for vast differences in tribal governments' level of staffing and other resources necessary to participate in the manner required by Government Code §65352.3 and §65352.4. Some may be able to respond more promptly and efficiently than others. Local governments should keep this in mind if and when developing a consultation protocol with a tribe. *(See Section VI.)*
- As a part of consultation, local governments may conduct record searches through the NAHC and California Historic Resources Information System (CHRIS) to determine if any cultural places are located within the area(s) affected by the proposed action. Local governments should be aware, however, that records maintained by the NAHC and CHRIS are not exhaustive, and a negative response to these searches does not preclude the existence of a cultural place. A tribe may be the only source of information regarding the existence of a cultural place.
- Local governments should be aware that the confidentiality of cultural places is critical to tribal culture and that many tribes may seek confidentiality assurances prior to divulging information about those sites. *(See Section VIII.)*
- Tribal consultation should be done face-to-face. If acceptable to both parties, local and tribal governments may wish to define circumstances under which parts of the consultation process can be carried out via conference calls, e-mails, or letters. *(See Section VIII.)*
- Tribal consultations should be conducted in a setting that promotes confidential treatment of any sensitive information that is shared about cultural places. Consultation should not take place in public meetings or public hearings.
- The time and location of consultation meetings should be flexible to accommodate the needs of both the local government and tribe. Local governments should recognize that travel required for in-person consultation may be time-consuming, due to the rural location of a tribe. Local governments should also take into account time zone changes when setting meeting times. Local governments should offer a meeting location at the city hall, county administrative building, or other appropriate location. Local governments should also be open to a tribe's invitation to meet at tribal facilities.
- The local government and tribe can agree to mutually invite private landowners to participate in consultation, if both parties feel that landowner involvement would be appropriate.
- Local governments are encouraged to establish a collaborative relationship with tribes as early as possible, prior to the need to consult on a particular general plan or specific plan

[9] In *Pueblo of Sandia v. United States*, 50 F.3d 856 (10th Cir. 1995), the court held that the U.S. Forest Service had not fulfilled its consultation responsibilities under the National Historic Preservation Act by merely sending letters to request information from tribes. The court ruling held that written correspondence requesting consultation with a tribe was not sufficient for the purpose of conducting consultation as required by law, and that telephone calls or more direct forms of contact may be required.

amendment or adoption. Local governments may consider conducting pre-consultation meetings and developing consultation protocols in cooperation with tribes. *(See Section VI.)*

- Both parties should attempt to document the progress of consultation, including letters, telephone calls, and direct meetings, without disclosing sensitive information about a cultural place. Local governments may also want to document how the local government representative(s) fulfilled their obligations under Government Code §65352.3 and §65352.4.

When is Consultation Over?

Alan Downer, of the Advisory Council on Historic Preservation, described consultation as "conferring between two or more parties to identify issues and make a good faith attempt to find a mutually acceptable resolution of any differences identified."[10] Differences of opinion and of priorities will arise in consultation between local and tribal governments. Whenever feasible, both local and tribal governments should strive to find mutually acceptable resolutions to differences identified through consultation.

When engaging in consultation, local government and tribal representatives should consider leaving the process open-ended to allow every opportunity for mutual agreement to be reached. Some consultations may involve highly sensitive and complex issues that cannot be resolved in just one discussion. Consultation may require a series of meetings before a mutually acceptable agreement may be achieved. Consultation must be concluded prior to the formal adoption or amendment of a general plan or specific plan.

Consultation, pursuant to Government Code §65352.3 and §65352.4, should be considered concluded at the point in which:

- the parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
- either the local government or tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning appropriate measures of preservation or mitigation.

V. Consultation: Cultural Places Located in Open Space

On and after March 1, 2005, if land designated, or proposed to be designated as open space contains a cultural place, and if an affected tribe has requested notice of public hearing under Government Code §65092, then local governments must consult with the tribe. The purpose of this consultation is to determine the level of confidentiality required to protect the specific identity, location, or use of the cultural place, and to develop treatment with appropriate dignity of the cultural place in any corresponding management plan (Government Code §65562.5). This consultation provision does not apply to lands that were designated as open space before March 1, 2005.

[10] From "The Navajo Nation Model: Tribal Consultation Under the National Historic Preservation Act" (2000).

What Triggers Consultation?

Government Code §65562.5 applies to land that is designated, or proposed to be designated, as open space, on or after March 1, 2005. Local governments must consider several criteria when determining whether consultation is required, prior to designating open space on or after March 1, 2005.

Local governments must first learn whether the land designated, or proposed to be designated, as open space contains a cultural place. The following are methods by which local governments may be informed if a cultural place is located on designated or proposed open space:

- Conduct a record search through the NAHC to learn whether any listed cultural places are located on land proposed to be designated as open space. The local government should provide maps of lands proposed as open space to the NAHC with a request to identify whether there are any cultural places on the property. Because the NAHC's sacred lands file is confidential, the commission will only divulge the presence or absence of a listed site and will direct the local government to the appropriate tribe(s) for more information.
- Conduct a record search through CHRIS to learn whether any listed cultural places are located on land proposed to be designated as open space. Local governments should enter into agreements with CHRIS information centers to establish procedures and protocols for requesting searches of historical resource records.
- Request that tribes identify the existence of any cultural places on the proposed open space land. Local governments should send a written request to the NAHC asking for a written list of tribes that have traditional cultural ties to the proposed open space. The NAHC will provide tribal contact information. Local governments should contact each tribe on the list provided by the NAHC to learn whether any cultural places are located on the land proposed as open space. Local government should provide the tribe with a sufficiently detailed map of the open space together with a concise notice as to why the tribe is being contacted. (Note: This contact is strictly for the purpose of identifying whether a cultural place is or may be located on the proposed open space land. It does not start consultation with a tribe.)

Local governments should be aware that records maintained by the NAHC and CHRIS are not exhaustive, and a negative response to searches does not preclude the existence of a cultural place. In most instances, and especially because of associated confidentiality issues, it is likely that tribes will be the only source of information regarding certain cultural places.

After a local government learns that a cultural place is or may be located on land designated or proposed to be designated as open space, the local government must notify the appropriate tribes of the opportunity to participate in consultation. The appropriate tribes are those which have: (1) been identified by the NAHC, and (2) requested notice of public hearing from the local government pursuant to Government Code §65092.

Conducting Consultation Regarding Open Space

The purpose of this consultation is to determine the level of confidentiality required to protect the specific identity, location, character, or use of the cultural place and to develop treatment with appropriate dignity of the cultural place in any corresponding open space management plan. The reference to "any corresponding management plan" is not meant to imply that there is such a plan or that the local government must develop such a management plan. This language is intended to encourage consideration of management policies and practices which may be discussed between the local government and tribe and incorporated into a new or existing management plan for the cultural place.

The following are examples of appropriate items to consider and discuss during consultation:

- Encourage tribal involvement in the treatment and management of the cultural place though contracting, monitoring, co-management, and other forms of joint local-tribal participation.
- Tribes may only wish to disclose a sufficient amount of information to protect the site and to allow for the proper treatment and management of the cultural place. *(See Section VIII.)*
- Tribes may wish to have access to cultural places located on open space for gathering, performing ceremonies and/or helping maintain the site.
- Tribes may want to recommend management practices that avoid disturbing or impacting the cultural place.
- Tribes may wish to discourage certain land uses (e.g. recreation) within the open space that could adversely impact the cultural place. Local governments may be asked to consider appropriate land uses in the open space designation that would avoid direct impacts to the cultural place.

The designation of open space, as provided in Government Code §65562.5, may but does not always, involve amending the general plan. In some jurisdictions, designation of open space may occur through rezoning of land from one zone designation to an open space zone designation, without the need for a general plan amendment. However, for proposals to designate open space that require a general plan or specific amendment, the local government should consider the above recommendations as well as the recommendations outlined in Section IV of these guidelines.

When is Consultation Over?

Please refer to Section IV for additional information regarding the meaning of consultation.

Part C
Pre-Consultation

Section VI provides advice to local governments that is intended to help them more effectively engage in consultation with tribes. This part of the 2005 Supplement provides information that may help local governments establish working relationships with tribes prior to entering into the required consultation pursuant to Government Code §65352.3 and §65562.5.

VI. Preparing for Consultation

As discussed above, Government Code §65352.3 requires consultation during the process of amending or adopting general plans or specific plans. In addition, Government Code §65562.5 requires consultation to determine the proper level of confidentiality to protect and treat a cultural place with appropriate dignity, where such places are located on lands to be designated as open space. Before engaging in consultation in either of these cases, local governments may want to consider developing relationships with tribes that have traditional lands within their jurisdiction. Although not required by law, these pre-consultation efforts may develop a foundation for a mutually respectful and cooperative relationship that helps to ensure more smooth and effective communication in future consultations.

Local governments way wish to consider the following when undertaking pre-consultation meetings:

- Contact the NAHC to obtain a list of all appropriate tribes with whom to pre-consult. Because this list may be revised over time by the NAHC, local governments should periodically request updated contact lists.
- Contact the NAHC and CHRIS to learn if any historical or cultural places are located within the city's or county's jurisdiction. (Note that the NAHC and CHRIS have different procedures for searching information about cultural sites. See Part F for more information about each organization and how to contact them. As previously noted, NAHC and CHRIS records pertaining to cultural places are not exhaustive, and a negative response to these searches does not preclude the existence of a cultural place.)
- Invite each tribal government's leaders to meet with local government leaders for the purpose of establishing working relationships and exchanging information about respective governmental structures, practices, and processes. Pre-consultation meetings may include discussion about community goals, planning priorities, and how cultural places play a role in the tribal culture.
- Hold informational workshops or meetings with the tribe(s) to discuss the general plan process, the existing general plan, and any contemplated amendments. Local governments should not expect or ask a tribe to share confidential information in a meeting with other tribes or the general public.
- Ask tribes whether they have existing consultation protocols.

- Develop a consultation protocol that addresses how a cooperative relationship can be maintained and how future consultations should be conducted. Some tribes may already have established protocols through working with other agencies, such as state and federal entities, that can be used as models.

If a tribe and local government decide to develop a consultation protocol, both parties should suggest topics that they believe will facilitate consultation. The following are examples of items that may be appropriate to discuss and include in a jointly-developed consultation protocol:

- Representative(s) from each consulting party who will be designated to participate in consultations and manage the information resulting from the consultations.
- Key points in the consultation process when elected government leaders may need to be directly involved in consultation.
- Method(s) of contact preferred by the tribal government and additional tribal representatives that the local government should contact regarding a proposed action.
- Procedures for giving and receiving notice, including method and timing.
- Preferred method(s) of consultation. While in-person consultation is recommended, it may be acceptable to both parties that certain aspects of consultation occur through conference calls, e-mails, or letters.
- Preferred locations of consultation meetings.
- The tribe's willingness to participate in joint consultation, should a specific site be of interest to more than one tribe.
- Procedures to allow tribal access to the local government's consultation records.
- Procedures for maintaining accurate, up-to-date contact information.

Over time, the initial approach to consultation may need to be updated. Both parties should be open to identifying and agreeing on changes to their consultation protocol.

Part D
Preservation, Mitigation, Confidentiality, and Landowner Participation

Sections VII through IX provide advice to local governments for considering issues such as appropriate means to preserve, or mitigate impacts to, cultural places; methods to protect the confidentiality of cultural places; and ways to encourage the participation of landowners in voluntary preservation efforts.

VII. Preservation of, or Mitigation of Impacts to, Cultural Places

Government Code §65352.3 requires local governments to conduct consultations with tribes (when requested) for the purpose of "preserving or mitigating impacts" to California Native American cultural places. In the course of adopting or amending a general plan or specific plan, local governments may be informed of the existence of a cultural place within the affected area. Should a tribe request consultation to discuss any impacts to the cultural place, local governments should consider a variety of factors when participating in the consultations, including: the history and importance of the cultural place, the adverse impact the local government action may have on the cultural place, options for preserving the cultural place, and options for mitigating impacts of the proposal to the cultural place.

When participating in consultations, it is important that local governments consider that, because of philosophical differences, mitigation will not always be viewed as an appropriate option to protect cultural, and often irreplaceable, places. Many tribes may determine that impacts to a cultural place cannot be mitigated; that the only appropriate treatment may be to preserve the cultural place without impact to its physical or spiritual integrity. Of course, this is not to say that tribes will not engage in discussions regarding mitigation of impacts to their cultural places, but local governments should consider the vastly different perspectives that tribes may have. What a local government may consider to be acceptable treatment under current environmental, land use, and cultural resource protection laws, may not be considered by a tribe to be acceptable treatment for a sacred or religious place.

The following is a discussion of preservation and mitigation, as mentioned in Government Code §65352.3. Local governments should check with their legal counsels to identify any other legal obligations to preserve or mitigate impacts to Native American cultural resources.

What are Preservation and Mitigation?

Preservation is the conscious act of avoiding or protecting a cultural place from adverse impacts including loss or harm. Mitigation, on the other hand, is the act of moderating the adverse impacts that general plan or specific plan adoption or amendment may have on a cultural place.

While local governments should strive to help preserve the integrity of, access to, and use of cultural places[11], mitigation may often be achieved through a broad range of measures:

- Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- Rectifying the impact by repairing, rehabilitating, or restoring the impacted cultural place.
- Reducing or eliminating the impact over time through monitoring and management of the cultural place.

Other methods of mitigation may include:

- Designation of open space land in accordance with Government Code §65560(b).
- Enhancement of habitat or open space properties for protection of cultural place.
- Development of an alternate site suitable for tribal purposes and acceptable to the tribe.
- Other alternative means of preserving California Native American cultural features, where feasible.

It is important that local governments consider that mitigation measures may largely differ depending on customs of a particular tribe, the characteristics and uses of a site or object, the cultural place's location, and the importance of the site to the tribe's cultural heritage. Where a cultural place is affected by a proposed general or specific plan adoption or amendment, consultations with tribes should focus on preserving, or mitigating the impacts to, that specific cultural place.

Seeking Agreement Where Feasible

Although Government Code §65352.3(a) requires consultation for the purpose of preserving or mitigating against the adverse impacts that a general plan or specific plan adoption or amendment may have on a cultural place, there is no requirement to preserve a cultural place or adopt mitigation measures, if agreement cannot be reached. Under the definition of "consultation" within Government Code §65352.4, local governments and tribes are required to carefully consider each other's views and are required to seek an agreement, "where feasible." For the purposes of Government Code §65352.4, agreements should be considered "feasible" when capable of being accomplished in a successful manner within a reasonable time taking into account economic, environmental, social and technological factors.[12] If, after conducting consultations in good faith and within the spirit of the definition, the tribe or local government cannot reach agreement on preservation or mitigation of any impact to a California Native American cultural place, neither party is required to take any action under Government Code §65352.3(a).

[11] Cultural Places referring to places, features, and objects under Government Code §65352.3(a) and described in Government Code §§5097.9 and 5097.995.

[12] See *State of California General Plan Guidelines*, Governor's Office of Planning & Research, Glossary, page 261.

Monitoring and Management

During consultations, local governments should consider the involvement of tribes in the ongoing treatment and management of cultural places, objects, or cultural features through a specific monitoring program, co-management, or other forms of participation.

Where a cemetery, burial ground, or village site may be present, the planning of treatment and management activities should address the possibility that California Native American human remains may be involved when protecting cultural features. Local governments should consider working with tribes to develop an appropriate plan for the identification and treatment of such discoveries in accordance with Public Resources Code §5097.98.

Private Landowner Involvement

During consideration of a proposed general plan adoption or amendment, a local government may discover or be informed of a cultural place that exists on privately owned land within an affected area. In such an instance, local governments should first contact the appropriate tribe or tribes to offer consultations and determine an acceptable level of landowner involvement. Local governments should be aware that there may be some occasions where a tribe may prefer to maintain strict confidentiality without the inclusion of a private, third party landowner.

If a tribe is interested in involving the landowner in preservation or mitigation activities, the local government should consider facilitating such involvement. It is important that local governments and tribes understand that there is no statutory requirement to include private landowners under the government-to-government consultations requirements of Government Code §65352.3(a). However, because landowner participation is encouraged, local governments may consider suggesting the following methods to facilitate landowner involvement:

- Suggesting that the tribe contact the private landowner directly to facilitate discussions between the tribe and landowner.
- Offering to contact the private landowner directly on behalf of the tribe.
- Suggesting that the private landowner be included as a party to the consultations.

VIII. Confidentiality of Information

Protecting the confidentiality of California Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places is one of the most important objectives of SB 18. This is clearly evidenced by SB 18's legislative intent as well as its statutory additions and amendments which address the issue of confidentiality and requires "each city and county to protect the confidentiality of information concerning" cultural places.[13] By maintaining the confidentiality of a cultural place, including its location, traditional uses, and characteristics, local governments can help assure tribes of continued access and use of these cultural places, in addition to aiding in the preservation of a cultural place's integrity. However, local governments should take into consideration other state and federal laws which may impose conflicting public policy priorities or requirements.

[13] See SB 18 §1(b)(3), (Burton, Ch. 905, Stat. 2004); Govt. Code §§ 65040.2(g)(3), 65352.3, 65352.4, and 65562.5.

Public Disclosure Laws

The California Public Records Act (Government Code §6250 et. seq.) and California's open meeting laws applying to local governments (The Brown Act, Government Code §54950 et. seq.) both have implications with regard to maintaining confidentiality of California Native American cultural place information. Local governments are encouraged to carefully consider these laws in greater detail, and adopt or incorporate these recommendations into their own confidentiality procedures in order to avoid the unintended disclosure of confidential cultural place information.

The California Public Records Act (CPRA)

Subject to specified exemptions, the CPRA provides that all written records maintained by local or state government are public documents and are to be made available to the public, upon request. Written records include all forms of recorded information (including electronic) that currently exist or that may exist in the future. The CPRA requires government agencies to make records promptly available to any citizen who asks, unless an exemption applies.

The CPRA contains two exemptions which aid in the protection of records relating to Native American cultural places. Amended in October of 2005 for broad application, these exemptions now permit any state or local agency to deny a CPRA request and withhold from public disclosure:

1) "records of Native American graves, cemeteries, and sacred places and records of Native American places, features, and objects described in Section 5097.9 and 5097.993 of the Public Resources Code maintained by, or in the possession of, the Native American Heritage Commission, another state agency, or a local agency" (GC § 6254(r)); and
2) "records that relate to archaeological site information and reports maintained by, or in the possession of, the Department of Parks and Recreation, the State Historical Resources Commission, the State Lands Commission, another state agency, or a local agency, including the records that the agency obtains through a consultation process between a California Native American tribe and a state or local agency" (GC § 6254.10).

With these two CPRA exemptions in place, information related to Native American cultural places is specifically protected from mandatory public disclosure. Such protections are intended to facilitate the free exchange of information between Native American tribes and California local governments when conducting tribal consultations. Even with this protection, however, it is important for local governments to understand that some tribes may withhold information during consultations due to conflicts with their cultural beliefs and practices. Local governments and Native American tribes should discuss such issues early in consultations, or during pre-consultation, so that each has an understanding of what information can and cannot be divulged. Additionally, it is important for all parties to recognize that a legislative body of a city or county must have access to certain information in order to make an informed decision regarding the given plan adoption or amendment.

The Brown Act

The Brown Act governs the legislative bodies of all local agencies within California. It requires that meetings held by these bodies be "open and public." Under this Act, no local legislative body may take an action in secret, nor will the body's action be upheld if it is in violation of California's open meeting laws. The Brown Act defines a "meeting" as a gathering of a majority of the members of a applicable body to hear, discuss, or deliberate on matters within the agency's or board's jurisdiction.

While the Brown Act does contain some exceptions for "closed meetings," none of these exceptions would allow the quorum of a local legislative body to participate in tribal consultations within a closed meeting. Should a local legislative body participate in confidential tribal consultations, it is important that they do so as an advisory committee with *less than* a quorum, so as to not invoke the Brown Act's requirements of public participation (see Government Code §54952(b)). Otherwise, the Brown Act will require that the consultations be held in public, thereby defeating the purpose of confidentiality, or, alternatively, any decisions made by the quorum of the body within a closed meeting would be rendered invalid.

In order to efficiently conduct tribal consultation meetings, in addition to maintaining confidentiality at all times, local governments are encouraged to develop procedures in advance that would designate a committee or agency in charge. In doing so, local governments should consider the problems associated with elected official participation within tribal consultations, and should tailor their procedures accordingly.

Public Hearings

General plan amendments, specific plan amendments, and the adoption of a general or specific plan each require both a planning commission and a city council or board of supervisors to conduct public hearings. The decision to approve or deny these proposals must be based in reason and upon evidence in the record of the public hearing. When addressing an adoption or amendment involving a cultural place, elected officials will need to be apprised of the cultural site implications in order to make informed decision. However, to maintain the confidentiality of this cultural place information, local governments and tribes, during consultations, should agree on what non-specific information may be disclosed during the course of a public hearing. Additionally, local governments should avoid including any specific cultural place information within CEQA documents (such as Environmental Impact Reports, Negative Declaration, and Mitigated Negative Declarations) or staff reports which are required to be available at a public hearing. In such cases, confidential cultural resource inventories or reports generated for environmental documents should be maintained under separate cover and shall not be available to the public.

Additional Confidentiality Procedures

Additionally, local governments should consider the following items when considering steps to be taken in order to maintain confidentiality:

- Local governments should develop "in-house" confidentiality procedures.

- Procedures should be established to allow for tribes to share information with local government officials in a confidential setting.
- Only those tribal designees, planning officials, qualified professional archaeologists, and landowners involved in the particular planning activity should obtain information about a specific site.
- Participating landowners should be asked to sign a non-disclosure agreement with the appropriate tribe prior to gaining access to any specific site information.
- Local governments should not include detailed (confidential) information about cultural places in any of its public documents.
- Possible procedures to require local government to notify participating tribes and landowners whenever records containing specific site information have been requested for public disclosure.

Local governments should also keep in mind that the terms for confidentiality may differ depending upon the nature of the site, the tribe, the local government, the landowner, or who proposes to protect the site. Local governments should collaborate with tribes to develop informational materials to educate landowners regarding the cultural sensitivity of divulging site information, explaining the tribe's interest in maintaining the confidentiality and preservation of a site. Landowners should be informed of criminal penalties within the law for the unlawful and intentional destruction, degradation or removal of California Native American cultural or spiritual places located on public or private lands (Public Resources Code §5097.995).[14]

Confidentiality Procedures for Private Landowner Involvement

In order to successfully preserve or mitigate impacts to a California Native American cultural place, local governments and tribes may find it necessary or advantageous to involve private landowners early in the consultation process. Often, landowners may not be aware that a cultural place exists on their property, or alternatively, may not realize that the site has become subject to a general plan adoption or amendment. Due to the confidential nature of certain information involved, local governments should consider working with tribes to adopt procedures that would balance the value of landowner involvement with the need for cultural place confidentiality. Local governments and California Native American tribes may wish to consider the following procedures that would inform and potentially involve landowners in the consultation process, without compromising the confidentiality of a cultural place:

- Local governments, at the request of a tribe, may consider contacting a landowner directly and, without disclosing the exact location or characteristics of the site, inform the landowner of the existence of a culturally significant place on their property. A local government may consider inquiring as to whether the landowner would be willing to further discuss the matter directly with the appropriate tribal representative under a non-disclosure agreement.

[14] Due to a drafting error, SB 18 contains multiple references to Public Resources Code (PRC) §5097.995 which is no longer in existence. In 2004, PRC §5097.995 was amended and renumbered to PRC §5097.993 by Senate Bill 1264 (Chapter 286). Local governments should refer to PRC §5097.993 when looking for PRC §5097.995.

- Local governments may consider giving the landowner's contact information to a tribe so that the tribe may contact the landowner directly. Discussion about conservation easements is an example of a case in which a tribe and landowner may wish to meet without the direct participation of the local government.
- Local governments may also consider informing a landowner of the ability of landowners to access CHRIS for cultural resource information specific to their land. Local governments should keep in mind that the CHRIS system does not contain a catalog of every cultural place within California.

IX. Procedures to Facilitate Voluntary Landowner Protection Efforts

In addition to their own consultation with tribes, local governments may help facilitate landowner participation in preserving and protecting cultural places. While each city and county should develop its own policies on landowner participation, general strategies for encouraging landowner awareness of and participation in cultural place protection may include:

- Collaborating with local tribes to offer cultural awareness and other educational events for landowners.
- Encouraging landowner participation in discussions about appropriate preservation and mitigation measures.
- Promoting the use of conservation easements and other private conservation efforts.

It should be noted that SB 18 does not require landowners to dedicate or sell conservation easements for the purpose of cultural place preservation. Neither are local governments required to play a direct role in any private conservation activity. Government Code §65040.2(g), however, does require OPR to recommend procedures to facilitate voluntary landowner participation in the preservation and protection of cultural places.

Landowner Education and Participation

Public workshops, seminars, and other educational sessions may provide forums for tribal representatives to share tribal and cultural information and discuss general protection concerns with landowners. These sessions may build cultural awareness, develop landowner understanding of the importance of cultural places, and also encourage further dialogue between tribes and landowners. These sessions should generally inform landowners of the importance of cultural places and should not compromise the confidentiality of a specific cultural place.

Local governments may also encourage landowner participation in discussions about preserving or mitigating impacts to a cultural place located on a landowner's private property. (*See Section VII and Section VIII for further information.*)

Private Conservation Efforts

Although local governments are not required to play a direct role in any private conservation activity, they can promote the use of conservation easements and other conservation programs to protect cultural places. Local governments may consider adoption of a policy to encourage voluntary landowner participation in protection programs. Local governments may also develop and distribute informational materials about potential incentives for private conservation efforts, such as Mills Act tax credits or the tax benefits of donating or selling conservation easements.

A conservation easement is a voluntary agreement between a landowner and an authorized party (including a tribe pursuant to Civil Code 815.3(c)) that allows the easement holder to limit the type or amount of development on the property while the landowner retains title to the land. The landowner is compensated for voluntarily giving up some development opportunities. The easement is binding upon successive owners of the land. It is common for a conservation

easement to be recorded against the property as a way to inform future purchasers of the existence of an easement. Granting of a conservation easement may qualify as a charitable contribution for tax purposes.

Should a landowner choose to sell a conservation easement, the landowner should first consult with all tribes affiliated with the land on which the easement is proposed. It is also recommended that tribes hold conservation easements only within their areas of cultural affiliation.

As an alternative to conservation easements, local governments may also promote private preservation of cultural places through the use of Memoranda of Understanding (MOU). As a direct agreement between a landowner and tribe, a MOU allows a tribe and landowner to agree on appropriate treatment of cultural places located on the landowner's private property and may give certain privileges to tribes, such as access to perform ceremonial rituals. MOUs may also be used to facilitate co-management by tribes, landowners, and conservation organizations. For example, if a conservation easement established for wildlife protection also contains a cultural place, the landowner, conservation entity, and tribe could agree on co-management (in the MOU) that protects both the habitat and cultural place.

Part E
Open Space

Section X provides information for incorporating the protection of cultural places into the open space element of the general plan.

X. Open Space for the Protection of Cultural Places

SB 18 amended Government Code §66560 to include open space for the protection of cultural places as an allowable purpose of the open space element. Local governments may, but are not required to, consider adopting open space policies regarding the protection of cultural places. Local governments may wish to consider the following when and if they develop such policies:

- Limiting the types of land uses allowed in an open space designation in order to protect the cultural place from potentially harmful uses.
- Facilitating access to tribes for maintenance and traditional use of cultural places.
- Protecting the confidentiality of cultural places by not disclosing specific information about their identity, location, character, or use.
- Giving developers incentives to protect cultural places through voluntary measures.
- Incorporating goals for protection of cultural places in open space that is also part of a regional habitat conservation and protection program, for example, a local or regional Habitat Conservation Plan (HCP) or Natural Community Conservation Program (NCCP).
- Reviewing and conforming other elements of the general plan that deal with conservation of natural and cultural resources to the open space element.

The development of open space policies for the protection of cultural places should be done in consultation with culturally-affiliated tribes. It is important to note that the importance of cultural places is not solely rooted in the land or other physical features or objects related to the land on which the cultural place is located. The sense of "place" is often as important as any physical or tangible characteristic. It may be important to a tribe to preserve a certain non-material aspect of a cultural place, such as views or vantage points from or to the cultural place. Cultural interpretation and importance of the place to the tribe should be taken into consideration, in addition to any potential archaeological importance of the place. With this in mind, local governments should be prepared to consider creative solutions for preservation and protection of cultural places.

Neither Government Code §65560(b)(5) nor Government Code §65562.5 mandate local review or revision of the existing open space element of the general plan to inventory and/or protect cultural places. However, local governments should consider doing so in future updates of or comprehensive revisions to the open space element.

Part F
Additional Resources

XI. Additional Resources

In addition to the information provided in the 2005 Supplement to the *General Plan Guidelines*, local governments may wish to investigate additional resources that can provide more detailed information about Native American people, cultural places, tribal governments, consultation, confidentiality, conservation easements, and other issues related to SB 18. Sources of additional information include federal and state government agencies that have previous experience with tribal consultations, colleges and universities, private organizations and foundations, and the literature and web sites associated with these groups. Although it is not intended to be a comprehensive list, some potentially useful resources are included below.

It is important that local governments keep in mind that Native American tribes are often the best source of information concerning a cultural place's location and characteristics. Local governments are encouraged to seek this information, if available, directly from the tribes themselves.

State Agencies

California Native American Heritage Commission (NAHC)

The NAHC is the state commission responsible for advocating preservation and protection of Native American human remains and cultural resources. NAHC maintains confidential records concerning places of special religious or social significance to Native Americans, including graves and cemeteries and other cultural places. The NAHC reviews CEQA documents to provide recommendations to lead agencies about consulting with tribes to mitigate potential project impacts to these sites.

The NAHC maintains a list of California tribes and the corresponding contacts that local governments should use for the purpose of meeting SB 18 consultation requirements.

The NAHC web site also provides a number of links to information about federal and state laws, local ordinances and codes, and cultural resources in relation to Native Americans.

Native American Heritage Commission
915 Capitol Mall, Room 364
Sacramento, CA 95814
Phone: (916) 653-4082
Fax: (916) 657-5390
http://www.nahc.ca.gov

California Office of Historic Preservation (OHP)
California Historical Resources Information System (CHRIS)
Pursuant to state and federal law, the California Office of Historic Preservation (OHP) administers the California Historical Resources Information system (CHRIS). The CHRIS is organized by county and managed by regional information centers (posted on the OHP website). These CHRIS centers house records, reports, and other documents relating to cultural and archaeological resources, and provide information and recommendations regarding such resources on a fee-for-service basis. Local governments may enter into agreements with CHRIS information centers to establish procedures and protocols for requesting searches of historical resource records.

The OHP also provides assistance to local governments to encourage direct participation in historic preservation. OHP provides technical assistance to local governments including training for local commissions and review boards, drafting of preservation plans and ordinances, and developing archaeological and historical surveys.

Office of Historic Preservation
P.O. Box 942896
Sacramento, CA 94296-0001
Phone: (916) 653-6624
Fax: (916) 653-9824
http://www.ohp.parks.ca.gov

California Department of Conservation
Division of Land Resource Protection (DLRP)
The DLRP works with landowners, local governments, and researchers to conserve productive farmland and open spaces.

California Department of Conservation
Division of Land Resource Protection
801 K Street, MS 18-01
Sacramento, CA 95814-3528
Phone: (916) 324-0850
http://www.consrv.ca.gov/DLRP/index.htm

California Department of Housing and Community Development
California Indian Assistance Program (CIAP)
The California Indian Assistance Program's primary role is to assist tribal governments with obtaining and managing funds for community development and government enhancement. CIAP's *2004 Field Directory of the California Indian Community* is a good reference for California Native American tribes, including location of Indian lands, federal recognition status of tribes, history of laws affecting tribes, and other programs and agencies involved in tribal relationships.

California Indian Assistance Program
1800 Third Street, Room 365
Sacramento, CA 95814
Phone: (916) 445-4727
http://www.hcd.ca.gov/ca/ciap/

California Department of Transportation (DOT)
Native American Liaison Branch
The California DOT administers most of its projects with some federal funding and is therefore subject to Section 106 consultation requirements under NHPA. The department has a Native American Liaison Branch (NALB), with headquarters in Sacramento and Native American Liaisons in each of its twelve districts. The NALB web site contains policy statements and links to other useful resources.

Office of Regional and Interagency Planning
Native American Liaison Branch
1120 N Street, MS 32
Sacramento, CA 95814
Phone: (916) 651-8195
Phone: (916) 654-2389
Fax: (916) 653-0001
http://www.dot.ca.gov/hq/tpp/offices/orip/na/native_american.htm

Federal Agencies

Federal Highway Administration – AASHTO (American Association of State Highway and Transportation Officials) Center for Environmental Excellence
The AASHTO Center for Environmental Excellence provides a web site designed to provide tools for Section 106 of the National Historical Preservation Act (NHPA) tribal consultation. This site contains documents and links to web sites that address key aspects of tribal consultation relevant to SB 18. Information also includes federal, tribal, and state policies and protocols, case law, and best practices as implemented by federal and state agencies and tribes.
http://environment.transportation.org/environmental_issues/tribal_consultation/overview.htm

U.S. Army Corps of Engineers
The U.S. Army Corps of Engineers has lasting and positive relations with many tribal governments. The "Tribal Affairs and Initiatives" section of their web site provides information regarding the U.S. Army Corps of Engineers' approach to tribal consultation and preservation of cultural resources.
http://www.usace.army.mil/inet/functions/cw/cecwp/tribal/index.htm

USDA Forest Service
The Forest Service has extensive experience in consulting with Native American tribes. The Forest Service's *Forest Service National Resource Book on American Indian and Alaska Native Relations* is an excellent resource book on tribal beliefs and practices, tribal consultation, and laws affecting Native Americans. The Forest Service's *Report of the National Tribal Relations Program Implementation Team* (June 2003) reviews relationships between the Forest Service and tribes, identifying pervasive problems and concerns and making recommendations to improve the effectiveness of the program at maintaining long-term collaborative relationships with tribal governments.

USDA Forest Service
Regional Office of Tribal Relations
Sonia Tamez
1323 Club Drive
Vallejo, CA 95492
Phone: (707) 562-8919
www.r5.fs.fed.us

USDA National Sustainable Agriculture Information Service (ATTRA)
The ATTRA provides information and other technical assistance to farmers, ranchers, Extension agents, educators, and others involved in sustainable agriculture in the United States. The ATTRA publication, *Conservation Easements, Resource Series (2003)*, provides an overview of what holding and selling conservation easements entail.

ATTRA - National Sustainable Agriculture Information Service
PO Box 3657
Fayetteville, AR 72702
Phone: (800) 346-9140
Fax: (479) 442-9842
http://attra.ncat.org/

USDA Natural Resources Conservation Service (NRCS)
The mission of the NRCS is to address natural resource conservation on private lands. The web site contains links to various conservation technical resources and to additional contact information for area offices and service centers.

California NRCS State Office
430 G Street #4164
Davis, CA 95616-4164
Phone: (530) 792-5600
Fax: (530) 792-5610
http://www.ca.nrcs.usda.gov/

U.S. Department of Interior – Bureau of Indian Affairs
The Bureau of Indian Affairs (BIA) is responsible for the administration and management of 55.7 million acres of land held in trust by the United States for American Indians, Indian tribes, and Alaska Natives. Developing forestlands, leasing assets on these lands, directing agricultural

programs, protecting water and land rights, developing and maintaining infrastructure, and economic development are all agency responsibilities. The BIA web site includes links to other federal agencies, inter-tribal organizations, environmental organizations, and cultural resources.

Bureau of Indian Affairs
Phone: (202) 208-3710
http://www.doi.gov/bureau-indian-affairs.html

U.S. Department of Interior – Bureau of Land Management
The Bureau of Land Management manages 261 million acres of land and has staff whose duties include coordination and consultation with Native Americans. The Bureau publishes *Native American Coordination and Consultation, Manual Section 8160 with Handbook H-8160-1.* The handbook is devoted to providing general guidance for tribal consultation, and can be found online at: http://www.blm.gov/nhp/efoia/wo/handbook/h8160-1.html.

Bureau of Land Management
California State Office
2800 Cottage Way, Suite W-1834
Sacramento, CA 95825-1886
Phone: (916) 978-4400
Phone: (916) 978-4416
TDD: (916) 978-4419
http://www.ca.blm.gov/

U.S. Department of Interior- National Park Service
The following National Park Service web site specifically focuses on cultural resource preservation. The site includes links to tools for cultural resource preservation, different areas of cultural resource protection and different offices of the National Park Service that handle cultural preservation issues. Included among these offices is the American Indian Liaison Office, the web site of which contains a number of information resources that are potentially useful to local governments learning how to consult with Native American tribes on land use policy.
http://www.cr.nps.gov

U.S. Department of Interior – Office of Collaborative Action and Dispute Resolution
This web site provides links to federal agencies' policies on tribal consultation:
http://mits.doi.gov/cadr/main/G2GAgencyPolicies.cfm

Colleges and Universities

Humboldt State University
The Center for Indian Community Development (CICD)
The CICD primarily focuses on Indian language education, but also acts in the capacity of a liaison between Native American tribes and the community. The CICD includes a cultural resource facility where information about Native American burial grounds and cultural resource monitoring can be found. The CICD offers useful publications on tribal governments and cultural approaches to environmental protection of Native American lands on its web site.

Humboldt State University
Center for Indian Community Development
#1 Harpst Street
Arcata, CA 95521
Phone: (707) 826-3711
http://www.humboldt.edu/~cicd/

University of California, Los Angeles
American Indian Studies Center (AISC)
The AISC has spent a number of years conducting research on issues affecting Native American Indian communities. The center has sponsored conferences on issues including California tribes, repatriation, federal recognition, and Indian gaming. The AISC offers a number of publications on issues ranging from Contemporary Native American Issues and Native American Politics to Native American Theater and Native American Literature.

UCLA American Indian Studies Center
3220 Campbell Hall
Los Angeles, CA 90095-1548
Phone: (310) 825-7315
Fax: (310) 206-7060
http://www.aisc.ucla.edu/

University of California, Los Angeles School of Law
Native Nations Law and Policy Center (NNLPC)
The mission of NNLPC at UCLA Law is to support Native nations throughout the United States, with a special focus on California tribes, in developing their systems of governance and in addressing critical public policy issues and to apply the resources of state-supported education together with tribal expertise to address contemporary educational needs for California Tribes. The Research and Publications division secures grants, carries out research, and sponsors conferences and roundtables drawing together scholars, tribal leaders, and federal/state policy-makers.

UCLA School of Law
P.O. Box 951476
Los Angeles, CA 90095-1476
Phone: (310) 825-4841
http://www.law.ucla.edu/students/academicprograms/nativenations/nnlapc.htm

Private Organizations and Foundations

American Farmland Trust (AFT)
Since its founding in 1980, the AFT has helped to achieve permanent protection for over a million acres of American farmland. The AFT focuses its strategies on protecting land through publicly funded agricultural conservation easement programs and encouraging conservation practices in community planning and growth management.

American Farmland Trust
1200 18th Street NW
Washington, D.C. 20036
Phone: (202) 331-7300
Fax: (202) 659-8339
http://www.farmland.org/

Inter-Tribal Council of California, Inc. (ITCC)
The key role of the Inter-Tribal Council of California (ITCC) is to assist in bridging relationships between California tribal governments and other organizations, including local government agencies. The ITCC offers workshops on Native American cultural proficiency and tribal governments for the purpose of educating non-Native Americans on how to effectively communicate with tribal governments, in addition to other training and technical assistance. The ITCC is experienced in assisting the development of Memoranda of Understanding and Agreement, protocols, and educational outreach materials.

Inter-Tribal Council of California, Inc.
2755 Cottage Way, Suite 14
Sacramento, CA 95825
Phone: (916) 973-9581
Fax: (916) 973-0117

Land Trust Alliance (LTA)
The Land Trust Alliance promotes voluntary land conservation by offering training, conferences, literature, reports, and other information on land conservation. The LTA has several publications discussing conservation techniques. Their web site addresses different conservation options for landowners and includes questions and answers about conservation easements, land donation, and bargain sale of land.

Land Trust Alliance
1331 H Street NW, Suite 400
Washington D.C. 20005-4734
Phone: (202) 638-4725
Fax: (202) 638-4730
http://www.lta.org/conserve/options.htm

Native American Land Conservancy
The Native American Land Conservancy is a nonprofit corporation formed for the conservation and preservation of Native American sacred lands.

Native American Land Conservancy
Kurt Russo, Executive Director
PO Box 1829
Indio, CA 92202
Phone: (800) 6770-6252

The Nature Conservancy (TNC)
The Nature Conservancy is a non-profit organization that works with communities, businesses, and individuals to preserve lands with natural and cultural resources.

The Nature Conservancy
4245 North Fairfax Drive, Suite 100
Arlington, VA 22203-1606
http://nature.org/

Southern California Tribal Chairmen's Association (SCTCA)
The Southern California Tribal Chairmen's Association (SCTCA) is a multi-service non-profit corporation established in 1972 for a consortium of 19 Federally recognized Indian tribes in Southern California. The Primary goals and objectives of SCTCA are the health, welfare, safety, education, culture, economic and employment opportunities for its tribal members. A board of directors comprised of tribal chairpersons from each of its member tribes governs SCTCA.

Southern California Tribal Chairmen's Association
Denis Turner
Executive Director
Phone: (760) 742-8600 x100
http://www.sctca.net/

Trust for Public Land (TPL)
The Trust for Public Land (TPL) is a national, nonprofit, land conservation organization that conserves land for people to enjoy as parks, community gardens, historic sites, rural lands, and other natural places, ensuring livable communities for generations to come. Since 1972, TPL has worked with willing landowners, community groups, and national, state, and local agencies to complete more than 2,700 land conservation projects in 46 states, protecting nearly 2 million acres.

Trust for Public Land National Office
116 New Montgomery St., 4th Floor
San Francisco, CA 94105
Phone: (415) 495-4014
Fax: (415) 495-4103
http://www.tpl.org

Exhibit A: Sample Request to the NAHC for Tribal Contact Information

LOCAL GOVERNMENT
TRIBAL CONSULTATION LIST REQUEST
NATIVE AMERICAN HERITAGE COMMISSION
915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
(916) 653-4082
(916) 657-5390 - Fax

Project Title: _____

Local Government/Lead Agency: _____ Contact Person: _____

_____ Phone: _____

Street Address: _____ Fax: _____

City: _____ Zip: _____

Project Location:

County: _____ City/Community: _____

Local Action Type:

___ General Plan ___ General Plan Element ___ Specific Plan

___General Plan Amendment ___ Specific Plan Amendment

___ Pre-planning Outreach Activity

Project Description:

NAHC Use Only

Date Received: _____

Date Completed _____

Native American Tribal Consultation lists are only applicable for consulting with California Native American tribes per Government Code Section 65352.3.

Channel Law Group, LLP

April 7, 2026

Further Supplemental Appeal Justification; Appearance Under Protest; Barry Building (Historic-Cultural Monument #887); Case Nos. ENV-2019-6645-EIR-1A; CHC-2007-1585-HCM; Council File No. 25-1518

EXHIBIT D

TECHNICAL ADVISORY

AB 52 AND TRIBAL CULTURAL RESOURCES IN CEQA



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I. Purpose

This technical advisory is part of a series of advisories provided by the Governor's Office of Planning and Research (OPR) as a service to professional planners, land use officials and California Environmental Quality Act (CEQA) practitioners. OPR creates and updates technical advisories as needed on current issues in environmental law and land use planning that broadly affect the practice of CEQA and land use planning in California.

The purpose of this technical advisory is to provide guidance to lead agencies regarding recent changes to CEQA 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 went into effect on July 1, 2015. Finally, it summarizes relevant case law and provides a list of additional resources related to tribal cultural resources and CEQA.

II. Legislative Intent

The legislature added the new requirements regarding tribal cultural resources in Assembly Bill 52 (Gatto, 2014). By requiring consideration of 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 conflict in the environmental review process. AB 52 § 1 (b)(7).[1]

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[1] 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 identified, and culturally appropriate mitigation and mitigation monitoring programs can be considered by the decision making 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

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 in Section III.

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

The Public Resources Code now states 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. Res. Code § 21084.2.

To 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 release of a negative declaration, mitigated negative declaration, or environmental impact report for a project. Pub. Res. 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. Pub. Res. Code § 20184.3 (b)(2) provides examples of mitigation measures that lead agencies may consider to avoid or minimize impacts to tribal cultural resources.

Specific provisions of the new law are described in more detail below.

A. Definition of Tribal Cultural Resources

Section 21074 of the Public Resources Code states that "tribal cultural resources" are:

(1) sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a tribe that are listed, or determined to be eligible for listing, in the national or state register of historical resources, or listed in a local register of historic resources; or

(2) resources that the lead agency determines, in its discretion, are tribal cultural resources. [2]

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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."

[2] Pub. Res. Code § 21074

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

Any lead agency determination that a resource should be treated as a tribal cultural resource must be made using the criteria set forth in subdivision (c) of § 5024.1 of the historical register.[3] The agency must also consider the significance of the resource to a California Native America tribe. Pub. Res. Code §§ 5024.1, 21074. California Native American tribes traditionally and culturally affiliated with the geographic area of a project may have expertise concerning their tribal cultural resources. Pub. Res. Code § 21080.3.1. Courts will defer to a lead agency's factual determination that a resource is a tribal cultural resource if that decision is supported by substantial evidence in the record.[4]

Evidence that may support such a finding could include elder testimony, oral history, tribal government archival information, testimony of a qualified archaeologist certified by the relevant tribe, testimony of an expert certified by the tribal government, official tribal government declarations or resolutions, formal statements from a certified Tribal Historic Preservation Officer, or historical/anthropological records.

Federal law also provides examples of potential sources of tribal knowledge. The federal Native American Graves Repatriation Act recognizes the following types of evidence of cultural affiliation: geographical, kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical, or other

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(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).

[3] Pub. Resources Code § 5024.1 (c): A resource may be listed as 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.

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

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

[4] *Berkeley Hillside Preservation v. City of Berkeley*, 60 Cal. 4th 1086, 1117 (2015); *Valley Advocates v. City of Fresno*, 160 Cal.App.4th 1039, 1072 (2008).

relevant information or expert opinion. 43 C.F.R. § 10.14 (d). Similarly, in *Pueblo of Sandia v. United States*, the Tenth Circuit held that meeting minutes, anthropological reports, and tribal elder affidavits were all admissible evidence of a resource's tribal significance. *See Pueblo of Sandia v. United States*, 50 F.3d 856 (10th Cir. 1995).

B. Consultation

Public Resources Code § 21080.3.1(b) states that a "consultation" with a California Native American tribe (as defined in Government Code § 65352.4) means:

[T]he 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.

OPR's SB 18 *Tribal Consultation Guidelines* provide further explanation of what counts as tribal consultation.[5] The guidelines state that consultation "is a process in which both 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." *Tribal Consultation Guidelines*, 15. The guidelines go on to say that:

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. *Id.* at 16.

The new provisions in the Public Resources Code suggest topics that may be addressed during consultation. If the California Native American tribe requests consultation regarding alternatives to the project, recommended mitigation measures, or significant effects, the consultation must include those topics. Pub. Res. Code § 21080.3.2 (a).

[5] 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 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.

C. Timing in the CEQA Process and Consultation Steps

The new provisions in the Public Resources Code set out specific steps and timelines for the notice and consultation process.

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

(1) The Native American Heritage Commission will provide each tribe with: (i) 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; (ii) the contact information of those public agencies; and (iii) information on how the Tribe may request consultation. This list must be provided on or before July 1, 2016. Pub. Res. Code § 5097.94 (m).

(2) If a tribe wishes to be notified of projects within its geographic area, the tribe must submit a written request to the relevant lead agency. Pub. Res. Code § 21080.3.1 (b). The Native American Heritage Commission website includes a sample template for an AB 52 notice list request letter from a California Native American tribe to a lead agency.

(3) Within 14 days of determining that a private project application is complete, the lead agency must provide written notification to the tribes as described in step 2. The 14-day notification must include a description of the project, its location, and must state that the tribe has 30 days to request consultation. OPR's AB 52 website includes a sample template for an AB 52 notice letter from a lead agency to a California Native American tribe.

(4) If the tribe wishes to engage in consultation on the project, it must respond to the lead agency within 30 days of receipt of the formal notification described in step 3. 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. The NAHC website includes a sample template for an AB 52 response letter from a California Native American tribe to a lead agency.

(5) The lead agency must begin the consultation process within 30 days of receiving the request for consultation.

(6) Consultation concludes when either: 1) the parties agree to measures to mitigate or avoid significant effects on the tribal cultural resources; or 2) a party, acting in good faith and after reasonable effort, concludes that a mutual agreement cannot be reached. Pub. Res. Code § 21080.3.2 (b)(1) & (2).[6]

[6] Note that the consultation can continue throughout the CEQA process.

D. Confidentiality

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); *see also Clover Valley Foundation v. City of Rocklin*, 197 Cal. App. 4th 200, 220 (2011).[7] Native American graves, cemeteries, and sacred places and records of Native American places, features, and objects are also exempt from disclosure. Pub. Res. Code, §§ 5097.9, 5097.993. 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. *See Clover Valley Foundation*, 197 Cal. App. 4th at 221 (citing Governor's Office of Planning and Research, Cal. Tribal Consultation Guidelines (Nov. 14, 2005 supp. p. 27)).

The new provisions in the Public Resources Code include additional rules governing confidentiality during tribal consultation. Pub. Res. 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. However, confidential information may be included in a confidential appendix or exchanged confidentially with other public agencies that have jurisdiction over the environmental review documents. Pub. Res. Code § 21082.3 (c)(1). This confidentiality protection extends to a tribe's comment letter on an environmental document. A lead agency can write general summaries of tribal comment letters without violating this confidentiality mandate. *See Clover Valley Foundation*, 197 Cal. App. 4th at 222.

Second, the lead agency and the tribe may agree to share confidential information regarding tribal cultural resources with the project applicant and its agents. If this occurs, the project applicant becomes 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. Res. Code § 21082.3 (c)(2).

---

[7] 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 changes were not significant in light of disclosure restrictions pertaining to cultural resources. Gov. Code § 6254 (r); Pub. Res. Code §§ 5097.9, 5097.993; Cal. Code Regs., tit. 14, § 15120, subd. (d).

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

Fourth, the lead agency or another public agency may describe the confidential information in general terms in the environmental document. This is done to ensure that confidentiality is maintained while the public is informed about the basis of the decision. Pub. Res. Code § 21082.3(c)(4). The decision in *Clover Valley* provides a useful description of how a lead agency may balance the need for confidentiality with disclosure obligations under CEQA.

E. Mitigation

Public agencies must, when feasible, avoid damaging effects to any tribal cultural resource. Pub. Res. Code § 21084.3 (a). Appropriate mitigation for a tribal cultural resource is different than mitigation for archeological resources. If the lead agency determines that a project may cause a substantial adverse change to a tribal cultural resource, mitigation measures should be identified through consultation with the tribal government. If measures are not otherwise identified in the consultation process, the Public Resources Code describes mitigation measures that may avoid or minimize the significant adverse impacts. Pub. Res. Code § 21084.3 (b). Examples include:

(1) Avoidance and preservation of the resources in place, including 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 the following:
   (A) Protecting the cultural character and integrity of the resource;
   (B) Protecting the traditional use of the resource; or
   (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. *Id*.

IV. Updating Appendix G

The new provisions direct OPR to update the sample initial study checklist in Appendix G of the CEQA Guidelines to do the following: (1) separate the consideration of paleontological resources from tribal cultural resources and update the relevant sample questions; and (2) add consideration of tribal cultural resources with relevant sample questions.

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

In January 2016, OPR transmitted a draft update to Appendix G to the California Natural Resources Agency. On June 3, 2016 the agency released a revised proposal to include tribal cultural resources in Appendix G. Up to date information can be found here: http://resources.ca.gov/ceqa/.

On September 27, 2016 the Office of Administrative Law endorsed/approved the suggested changes. Appendix G now contains a statement in the Environmental Checklist Form at the beginning of Appendix G regarding notice and consultation between lead agencies and California Native American Tribes.

Appendix G also has a new section called Tribal Cultural Resources, which asks two questions related to the presence of tribal cultural resources. The first asks whether there is a potential adverse change in the significance of a listed tribal cultural resource. The second asks whether there is a substantial adverse change in the significance of a resource determined by a lead agency to be a tribal cultural resource. As noted in Section III.A, when answering the second question, a lead agency must use its discretion while supporting the decision with substantial evidence, applying the criteria of the historic register, and taking into account the significance of the resource to a California Native American Tribe. Consultation with California Native American Tribes is a key way to obtain the information necessary to understand the significance of the resource.

Appendix G contains the following prompt for lead agencies to consider whether the substantive and procedural requirements for consultation with tribal governments have been followed in accordance with the changes to CEQA made by AB 52:

Have California Native American tribes traditionally and culturally affiliated with the project area requested consultation pursuant to Public Resources Code section 21080.3.1? If so, has consultation begun?

Appendix G was also updated to contain the following questions:

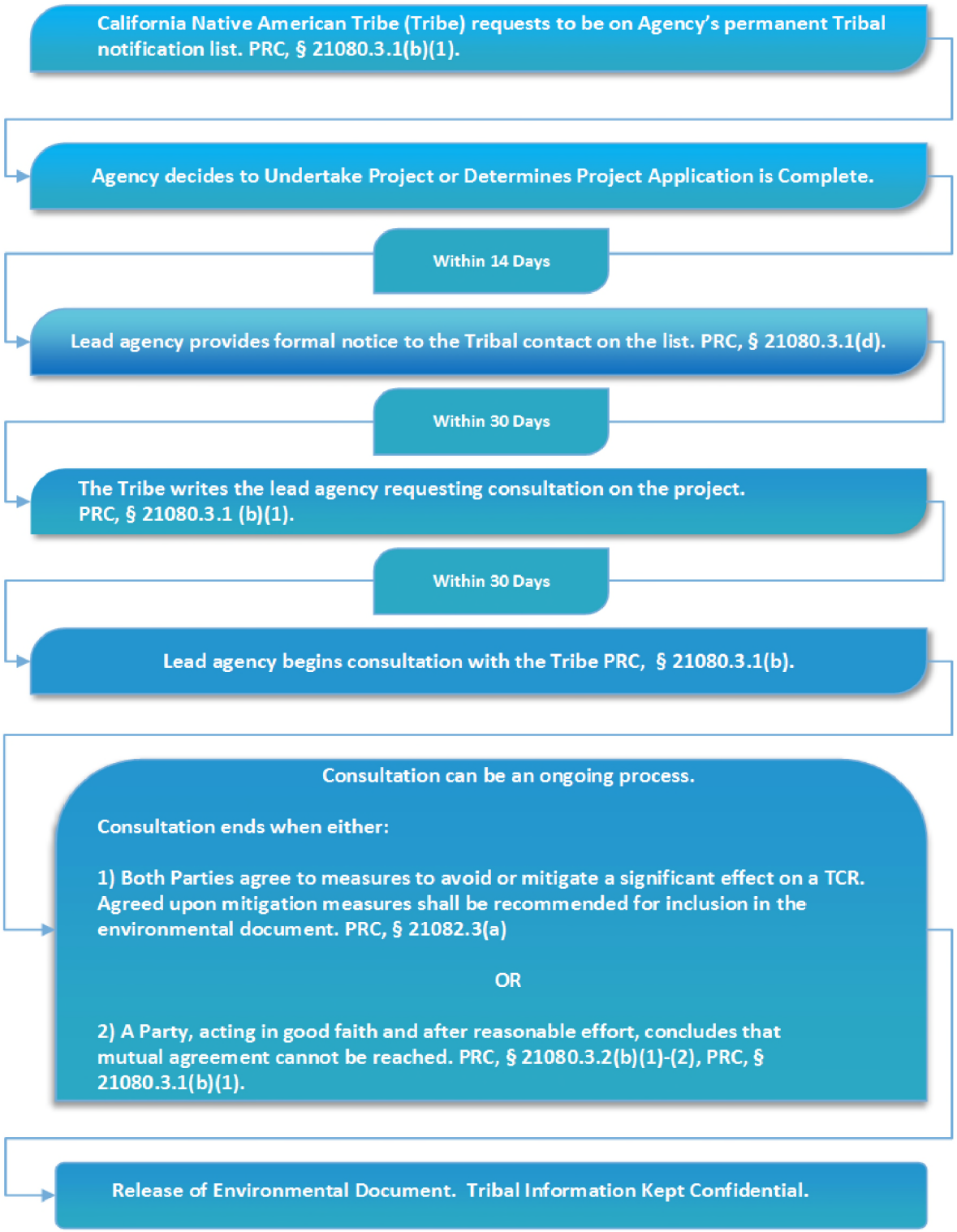
Would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:

i) listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k); or

ii) 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 Public Resources

Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

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> (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> (as of Feb. 17, 2015).

Governor's Exec. Order No. B-10-11 (Sept. 19, 2011) <http://gov.ca.gov/news.php?id=17223> (as of Feb. 17, 2015).

Governor's Office of Planning and Research, Tribal Consultation Guidelines: Supplement to General Plan Guidelines (Nov. 14, 2005) <http://www.opr.ca.gov/docs/011414_Updated_Guidelines_922.pdf> (as of Feb. 17, 2015).

Governor's Office of Planning and Research Tribal Cultural Resources and CEQA website and Implementation Resources (2016) < https://www.opr.ca.gov/s_ab52.php> (as of Jul. 14, 2016).

California Native American Heritage Commission Web Site and Implementation Resources (2015) <http://www.nahc.ca.gov> (as of Jul. 14, 2016).

California Energy Commission, Tribal Consultation Policy (Nov. 2014) <http://www.energy.ca.gov/Tribal/documents/2014-11-12_Draft_Tribal_Consultation_Policy.pdf> (as of Feb. 17, 2015).

California Office of Historic Preservation, California Office of Historic Preservation Web Site (2015) <www.ohp.parks.ca.gov> (as of Feb. 17, 2015).

California Office of Historic Preservation, California Historical Resources Information System (2015) <http://ohp.parks.ca.gov/?page_id=1068> (as of Feb. 17, 2015).

California Department of Transportation, Native American Liaison Web Site (2007) <http://dot.ca.gov/hq/tpp/offices/ocp/nalb/> (as of Feb. 17, 2015).

B. Federal Government Resources

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).

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).

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).

Advisory Council on Historic Preservation, Working With §106 Web Site (Feb. 13, 2015) <http://www.achp.gov/work106.html> (as of Feb. 17, 2015).

C. Selected California Cases

Berkeley Hillside Preservation v. City of Berkeley, 60 Cal. App. 4th 1086 (2015) (holding that an agency's factual determination of whether unusual circumstances exist is reviewed under the substantial evidence standard, and favorably citing the holding in *Valley Advocates*).

Citizens for the Restoration of L Street v. City of Fresno, 229 Cal. App. 4th 340 (2014) (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).

Madera Oversight Coalition, Inc. v. County of Madera, 199 Cal. App. 4th 48 (2011) (holding that the phrase "preservation in place is the 'preferred manner' of mitigating impacts to archaeological sites" means that feasible preservation in place must be adopted to mitigate impacts to historical resources of an archaeological nature unless the lead agency determines that another form of mitigation is available and provides superior mitigation of impacts. Preservation in place maintains the relationship between artifacts and the archaeological context. Preservation may also avoid conflict with religious or cultural values of groups associated with the site.) (Overruled in part on other grounds).

Clover Valley Foundation v. City of Rocklin, 197 Cal. App. 4th 200 (2011) (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).

Valley Advocates v. City of Fresno, 160 Cal. App. 4th 1039 (2008) (holding that the substantial evidence standard of review applies to an agency's determination of whether a building that is not listed, or eligible for listing, in a historic register qualifies as an historical resource, and further holding that once a lead agency determines the resource to be an historical resource, the fair argument standard applies to the question of whether the proposed project may cause a substantial adverse change in the significance of that historical resource).

D. Selected Federal Cases

Pueblo of Sandia v. United States, 50 F.3d 856 (10th Cir. 1995) (federal case regarding traditional cultural properties under the National Historic Preservation Act and the National Environmental Policy Act, including an example of a reasonable and good faith effort at consultation between a lead agency and a tribe. This case includes a discussion on cumulative impact analysis and a reasonable range of alternatives analysis under NEPA and Section 106 of the NHPA. This case recognizes as evidence the affidavit of a tribal elder and religious leader.).

Muckleshoot Indian Tribe v. United States Forest Service, 177 F. 3d 800 (9th Cir. 1999) (Federal case regarding traditional cultural properties under the National Historic Preservation Act and the National Environmental Policy Act, including a discussion of how adequate mitigation for a tribally significant historic property may be different than mitigation for an historic resource. This case includes examples of tribal evidence).