



Table Bluff Reservation

Wiyot Tribe



September 6, 2017

State Water Resources Control Board, Sacramento, CA
Comments submitted via email to: commentletters@waterboards.ca.gov

Re: **Comment letter – Cannabis Policy and Staff Report**

Greetings:

The Wiyot Tribe, a federally-recognized Indian tribe in Humboldt County, California, submits these comments to the Board for its consideration. Specifically, we are commenting on the “DRAFT Cannabis Cultivation Policy: Attachment A – July 7, 2017,” Items #19 and #20, shared by Tribal Liaison Gita Kapahi in her letter of August 9, 2017 to Wiyot Tribal Historic Preservation Officer (THPO) Ted Hernandez. Janet P. Eidsness, Blue Lake THPO has been in contact with the Wiyot Tribe and we to concur with her on the recommended changes.

This cover letter provides general comments on Items #19 and #20. The Attachment provides specific language for these two items, intended to replace that provided in Draft in the 8/9/17 letter.

General Comments, Item #19:

1. The draft appears to address two issues: (1) assurance to the Board that consultation with geographically and culturally affiliated Tribe(s) has occurred and Tribal Cultural Resources (TCRs) will not be significantly impacted by “new or expanded cannabis cultivation activities”; and (2) establishing a protocol so that previously unknown or unidentified archaeological resources important to tribes will not be inadvertently damaged or destroyed as a result of new or expanded cannabis cultivation activities. Please see ATTACHMENT (#19) for suggested language to address each of these two issues.
2. The CHRIS is not a “one-stop shop” that contains records of ALL possible tribal and other cultural resources that may indeed exist in California. It is an incomplete record because not all lands have been systematically inventoried. The CHRIS houses records of past archaeological surveys and other studies, and maintains confidential archaeological records of known sites and other types of cultural resources.
3. A “CHRIS potential discovery” is not in common usage in historic preservation as practiced in the state of California under a variety of state and federal laws, policies and guidelines. The CHRIS maintains records of places that are known (although resource conditions may change over time).
4. Tribes are reluctant and object to the concept of formal “consultation” with individuals (e.g., cannabis cultivators), as formal consultation is between governments (e.g., a County’s

Board of Supervisors and a Tribe; the Board and a Tribe). In common usage, a Tribe may agree to share confidential information with a professional cultural resource management (CRM) consultant under a legal structure (e.g., AB 52 and protection of TCRs), for purposes of documenting the inventory and advancing written measures to protect important tribal cultural places in a legal framework.

5. The Tribe, or the CRM consultant (or professional archaeologist) working in coordination with the geographically and culturally affiliated Indian tribe(s), and not the Cannabis Cultivator, would be the party responsible for submitting recommendations to avoid, minimize or mitigate significant impacts to tribal archaeological sites or TCRs to the SWRCB's Appropriate Person. The Cannabis Cultivator is the applicant, or person who is proposing cannabis cultivation activities; a Plot Plan of anticipated ground disturbances is what they provide to the Tribe and CRM consultant.

6. Measures to "conserve archaeological resources" go beyond Native American monitoring to include, but not be limited to, preservation in place, archaeological data recovery, or other mitigation measures deemed acceptable by the Tribe (and made a permit or project condition by the Appropriate Person).

7. The policy needs to add language consistent with state laws concerning penalties for violations.

General Comments, Item #20:

1. The Draft policy misidentifies the cannabis cultivator, rather than the landowner or his/her designated representative, as the responsible authority under PRC 5097. Please see ATTACHMENT (#20) for suggested language, plus citation of the full regulations for your information.

We at Wiyot Tribe look forward to meeting with SWRCB staff to consult further on this important policy. Per my email to Ms. Kapahi on 8/30/17, we have invited staff to come to Blue Lake where we are willing to host an intertribal meeting that includes other interested Tribes of the North Coast region. I will be the lead contact person to help arrange a successful meeting. Please suggest several dates so that I may confer with my tribal colleagues.

Sincerely,



Ted Hernandez THPO, Wiyot Tribe

ATTACHMENT - Wiyot Tribe Edits/Comments on SWRCB Draft Cannabis Policy...

DRAFT POLICY, Item #19:

Record of Tribal and Cultural Resources Review. Prior to land disturbance activities (grading of 50 cubic yards or greater [per Hum Co Grading Ordinance “threshold”]) for new or expanded cannabis cultivation activities, the cannabis cultivator shall provide evidence that no known Tribal Cultural Resources (TCR) (FN 9) or other historical resources (new FN 9-A) will be significantly impacted by the land disturbing activities.

Such evidence may include:

1. Evidence of TCR and cultural resources review by a CEQA lead agency (e.g., County Planning Department) of the proposed cannabis cultivation activities, including record of consultation with the culturally and geographically affiliated Native American Tribe(s), and including mitigation or protection measures as appropriate (e.g., archaeological survey report, tribal correspondence, etc.); OR
2. Written results of formal records searches for the proposed cannabis activity areas of the Native American Heritage Commission *Sacred Lands Inventory* (FN 9-A1), and at the regional Information Center of the California Historical Resources Information System (IC of CHRIS) (FN 9B), evidencing the area has been archaeologically surveyed to current standards (within past ten years) and no TCR or other historical resources are present, as confirmed by a “no significant effects on TCR concurrence letter” from the Indian Tribe(s) that is geographically and culturally affiliated with the area (FN 9-C) ; OR
3. If the *Sacred Lands Inventory* and/or CHRIS records search reports reveal the area does contain a TCR or other historic resource, submittal of a written plan to avoid, minimize or mitigate significant impacts to such that has been agreed to in writing by the geographically and culturally affiliated Native American tribe(s) (FN 9-C); OR
4. If a CHRIS records search report reveals the proposed activity area has not been archaeologically surveyed to current standards (e.g., within past ten years), and there is no record of prior consultation with culturally and geographically affiliated tribe(s) (see FN 9-C), then the Cannabis Applicant must retain the services of a qualified professional archaeologist (FN 11) to conduct an initial cultural resources study of the proposed cannabis activity areas, to include a complete inventory of resources, a record of consultation with the geographically and culturally affiliated tribe(s), and management recommendations including tribal concurrence that no TCR will be significantly impacted by the proposed operations.

Inadvertent Archaeological Discoveries. If any buried archeological materials or indicators (FN 10) are uncovered or discovered during any cannabis cultivation activities, all ground-disturbing activities shall immediately cease within 100 feet of the find.

The cannabis cultivator shall notify the Appropriate Person within 48 hours of any discovery. The Appropriate Person is the Deputy Director for Water Rights (Deputy Director) if the cannabis cultivator is operating under the Cannabis SIUR, the Executive

Officer of the applicable Regional Water Board (Executive Officer) if the cannabis cultivator is operating under the Cannabis General Order or Cannabis General Water Quality Certification, or both if the cannabis cultivator is operating under both programs.

In the event that prehistoric archeological materials or indicators are discovered, the cannabis cultivator shall also notify the Native American Heritage Commission (FN-9C) within 48 hours of any discovery and request a list of any California Native American tribes that are potentially geographically and culturally affiliated with the discovery. The cannabis cultivator shall notify all potentially culturally affiliated California Native American tribe(s) of the discovery within 48 hours of receiving a list from the Native American Heritage Commission.

The cannabis cultivator shall promptly retain a professional archeologist (FN 11) to evaluate the discovery and recommend appropriate conservation measures. The archaeologist shall submit proposed conservation measures directly to the appropriate person(s) (Deputy Director for the Cannabis SIUR and Executive Officer for the Cannabis General Order or Cannabis General Water Quality Certification) for written approval. The appropriate person may require all appropriate measures necessary to conserve archeological resources, including but not limited to preservation in place, Native American monitoring of construction, archaeological data recovery, or other mitigation measures deemed acceptable to a tribe.

In the event that prehistoric archeological materials or indicators are discovered, the cannabis cultivator shall also provide a copy of the proposed conservation measures to any culturally affiliated California Native American Tribe(s) identified by the Native American Heritage Commission. The appropriate person will carefully consider any comments submitted by culturally affiliated California Native American Tribe(s) with the goal of conserving prehistoric archeological resources with appropriate dignity. Ground-disturbing activities shall not resume within 100 feet of the discovery until all approved measures have been completed to the satisfaction of the Deputy Director and/or Executive Officer, as applicable.

Footnotes, Item 19:

Footnote 9 Identified tribal cultural resource site means a tribal cultural resource that meets the requirements of section 21074, subdivision (a)(1) of the Public Resources Code.

BELOW IS LEGAL CITATION, NOT NECESSARILY INTENDED FOR FULLY QUOTING IN POLICY.

- (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).

Footnote 9-A Historical resource as defined under CEQA.

BELOW IS LEGAL CITATION, NOT INTENDED FOR FULLY QUOTING IN POLICY.

(per 8/31/17 search of

[https://govt.westlaw.com/calregs/Document/IA0E0C760D48811DEBC02831C6D6C108E?originationContext=Search+Result&listSource=Search&viewType=FullText&navigatonPath=Search%2fv3%2fsearch%2fresults%2fnavigation%2fi0ad7140b0000015e3a8d096f03a3cd3c%3fstartIndex%3d1%26Nav%3dREGULATION_PUBLICVIEW%26contextData%3d\(sc.Default\)&rank=1&list=REGULATION_PUBLICVIEW&transitionType=SearchItem&contextData=\(sc.Search\)&t_T2=15064.5&t_S1=CA+ADC+s](https://govt.westlaw.com/calregs/Document/IA0E0C760D48811DEBC02831C6D6C108E?originationContext=Search+Result&listSource=Search&viewType=FullText&navigatonPath=Search%2fv3%2fsearch%2fresults%2fnavigation%2fi0ad7140b0000015e3a8d096f03a3cd3c%3fstartIndex%3d1%26Nav%3dREGULATION_PUBLICVIEW%26contextData%3d(sc.Default)&rank=1&list=REGULATION_PUBLICVIEW&transitionType=SearchItem&contextData=(sc.Search)&t_T2=15064.5&t_S1=CA+ADC+s)

14 CCR § 15064.5 Determining the Significance of Impacts to Archaeological and Historical Resources.

(a) For purposes of this section, the term “historical resources” shall include the following:

(1) A resource listed in, or determined to be eligible by the State Historical Resources Commission, for listing in the California Register of Historical Resources (Pub. Res. Code §5024.1, Title 14 CCR, Section 4850 et seq.).

(2) A resource included in a local register of historical resources, as defined in section 5020.1(k) of the Public Resources Code or identified as significant in an historical resource survey meeting the requirements section 5024.1(g) of the Public Resources Code, shall be presumed to be historically or culturally significant. Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant.

(3) Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California may be considered to be an historical resource, provided the

lead agency's determination is supported by substantial evidence in light of the whole record. Generally, a resource shall be considered by the lead agency to be "historically significant" if the resource meets the criteria for listing on the California Register of Historical Resources (Pub. Res. Code, § 5024.1, Title 14 CCR, Section 4852) including the following:

(A) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;

(B) Is associated with the lives of persons important in our past;

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

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

(4) The fact that a resource is not listed in, or determined to be eligible for listing in the California Register of Historical Resources, not included in a local register of historical resources (pursuant to section 5020.1(k) of the Public Resources Code), or identified in an historical resources survey (meeting the criteria in section 5024.1(g) of the Public Resources Code) does not preclude a lead agency from determining that the resource may be an historical resource as defined in Public Resources Code sections 5020.1(j) or 5024.1.

(b) A project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.

(1) Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired.

(2) The significance of an historical resource is materially impaired when a project:

(A) Demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources; or

(B) Demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources pursuant to section 5020.1(k) of the Public Resources Code or its identification in an historical resources survey meeting the requirements of section 5024.1(g) of the Public Resources Code, unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant; or

(C) Demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its eligibility for inclusion in the California Register of Historical Resources as determined by a lead agency for purposes of CEQA.

(3) Generally, a project that follows the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings or the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (1995),

Weeks and Grimmer, shall be considered as mitigated to a level of less than a significant impact on the historical resource.

(4) A lead agency shall identify potentially feasible measures to mitigate significant adverse changes in the significance of an historical resource. The lead agency shall ensure that any adopted measures to mitigate or avoid significant adverse changes are fully enforceable through permit conditions, agreements, or other measures.

(5) When a project will affect state-owned historical resources, as described in Public Resources Code Section 5024, and the lead agency is a state agency, the lead agency shall consult with the State Historic Preservation Officer as provided in Public Resources Code Section 5024.5. Consultation should be coordinated in a timely fashion with the preparation of environmental documents.

(c) CEQA applies to effects on archaeological sites.

(1) When a project will impact an archaeological site, a lead agency shall first determine whether the site is an historical resource, as defined in subdivision (a).

(2) If a lead agency determines that the archaeological site is an historical resource, it shall refer to the provisions of Section 21084.1 of the Public Resources Code, and this section, Section 15126.4 of the Guidelines, and the limits contained in Section 21083.2 of the Public Resources Code do not apply.

(3) If an archaeological site does not meet the criteria defined in subdivision (a), but does meet the definition of a unique archeological resource in Section 21083.2 of the Public Resources Code, the site shall be treated in accordance with the provisions of section 21083.2. The time and cost limitations described in Public Resources Code Section 21083.2 (c-f) do not apply to surveys and site evaluation activities intended to determine whether the project location contains unique archaeological resources.

(4) If an archaeological resource is neither a unique archaeological nor an historical resource, the effects of the project on those resources shall not be considered a significant effect on the environment. It shall be sufficient that both the resource and the effect on it are noted in the Initial Study or EIR, if one is prepared to address impacts on other resources, but they need not be considered further in the CEQA process.

(d) When an initial study identifies the existence of, or the probable likelihood, of Native American human remains within the project, a lead agency shall work with the appropriate Native Americans as identified by the Native American Heritage Commission as provided in Public Resources Code section 5097.98. The applicant may develop an agreement for treating or disposing of, with appropriate dignity, the human remains and any items associated with Native American burials with the appropriate Native Americans as identified by the Native American Heritage Commission.” Action implementing such an agreement is exempt from:

(1) The general prohibition on disinterring, disturbing, or removing human remains from any location other than a dedicated cemetery (Health and Safety Code Section 7050.5).

(2) The requirements of CEQA and the Coastal Act.

(e) In the event of the accidental discovery or recognition of any human remains in any location other than a dedicated cemetery, the following steps should be taken:

(1) There shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:

(A) The coroner of the county in which the remains are discovered must be contacted to determine that no investigation of the cause of death is required, and

(B) If the coroner determines the remains to be Native American:

1. The coroner shall contact the Native American Heritage Commission within 24 hours.
2. The Native American Heritage Commission shall identify the person or persons it believes to be the most likely descended from the deceased Native American.
3. The most likely descendent may make recommendations to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code section 5097.98, or

(2) Where the following conditions occur, the landowner or his authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further subsurface disturbance.

(A) The Native American Heritage Commission is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 24 hours after being notified by the commission.

(B) The descendant identified fails to make a recommendation; or

(C) The landowner or his authorized representative rejects the recommendation of the descendant, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner.

(f) As part of the objectives, criteria, and procedures required by Section 21082 of the Public Resources Code, a lead agency should make provisions for historical or unique archaeological resources accidentally discovered during construction. These provisions should include an immediate evaluation of the find by a qualified archaeologist. If the find is determined to be an historical or unique archaeological resource, contingency funding and a time allotment sufficient to allow for implementation of avoidance measures or appropriate mitigation should be available. Work could continue on other parts of the building site while historical or unique archaeological resource mitigation takes place.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21083.2, 21084 and 21084.1, Public Resources Code; and *Citizens for Responsible Development in West Hollywood v. City of West Hollywood* (1995) 39 Cal.App.4th 490.

HISTORY

1. New section filed 10-26-98; operative 10-26-98 pursuant to Public Resources Code section 21087 (Register 98, No. 44).

2. Change without regulatory effect amending subsections (c)(1), (c)(3), (d) and (e)(1)(B)2.-3. and amending Note filed 10-6-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 40).

This database is current through 8/18/17 Register 2017, No. 33 [end quote from website 8/31/17]

Footnote 9-A1 *Sacred Lands Inventory* maintained by the Native American Heritage Commission (NAHC). Info at <http://nahc.ca.gov/wp-content/uploads/2015/04/Sacred-Lands-File-NA-Contact-Form.pdf>

Footnote 9-B CHRIS, go to http://www.ohp.parks.ca.gov/?page_id=1068. Deeded and named property owners may obtain records from CHRIS for their land; see Requirements for Accessing the CHRIS Inventory on OHP (Office of Historic Preservation) website.

Footnote 9-C Governor's Office - Native American Heritage Commission (NAHC) at www.nahc.ca.gov, is the responsible agency for maintaining lists of culturally and geographically affiliated Native American tribes for purposes of consultation under SB 18 and AB 52.

Footnote 10 Prehistoric archeological indicators include, but are not limited to: obsidian and chert flakes and chipped stone tools; bedrock outcrops and boulders with mortar cups; ground stone implements (grinding slabs, mortars, and pestles) and locally darkened midden soils containing some of the previously listed items plus fragments of bone, fire affected stones, shellfish, or other dietary refuse. Historic period site indicators generally include, but are not limited to: fragments of glass, ceramic and metal objects; milled and split lumber; and structure and feature remains such as building foundations, privy pits, wells and dumps; and old trails.

Footnote 11 A professional archeologist is one that meets the qualification standards for Archaeologist-Principal Investigator (Prehistory and/or History) prescribed by: the Secretary of the Interior (<https://www.gpo.gov/fdsys/pkg/CFR-1998-title36-vol1/pdf/CFR-1998-title36-vol1-part61-appA.pdf> Title 36 Code of Federal Regulations Part 61, and 48 Federal Regulation 44716); the Society for California Archaeology (<https://scahome.org/professional-qualifications-standards-2/professional-qualifications-principal-investigator-archaeology/>); or the California Historical Resources Information System (CHRIS) (<http://www.chrisinfo.org/>).

ADD PENALTIES FOR NOT REPORTING INADVERTENT DISCOVERY.

DRAFT POLICY, Item #20:

Discovery of Native American Remains. Upon discovery of any human remains, cannabis cultivators and landowners shall immediately comply with Health and Safety Code section 7050.5 and Public Resources Code section 5097.98. The following actions shall be taken immediately upon the discovery of human remains:

All ground-disturbing activities in the vicinity of the discovery shall stop immediately. The cannabis cultivator shall immediately notify the county coroner. Ground disturbing activities shall not resume until the requirements of Health and Safety Code section 7050.5 and Public Resources Code section 5097.98 have been met. The cannabis cultivator shall ensure that the human remains are treated with appropriate dignity.

Per Health and Safety Code section 7050.5, the coroner has two working days to examine human remains after being notified by the responsible person. If the remains are Native American, the coroner has 24 hours to notify the Native American Heritage Commission.

Per Public Resources Code section 5097.98, the Native American Heritage Commission will immediately notify the person it believes to be the most likely descendent of the deceased Native American. The most likely descendent has 48 hours to make recommendations to the landowner, or his or her authorized representative, for the treatment or disposition, with proper dignity, of the human remains and any grave goods. If the most likely descendent does not make recommendations within 48 hours, the landowner, or his or her authorized representative, shall reinter the remains in an area of the property secure from further disturbance. If the landowner does not accept the descendant's recommendations, the landowner or the descendent may request mediation by the Native American Heritage Commission. If mediation fails, the landowner shall reinter the human remains and any grave goods with appropriate dignity on the property in a location not subject to future subsurface disturbance.

BELOW IS LEGAL DESCRIPTION, NOT NECESSARILY INTENDED FOR FULL CITATION. PRC 5097.98 is quoted below (from: <http://codes.findlaw.com/ca/public-resources-code/prc-sect-5097-98.html> downloaded on 8/30/17) -

(a) Whenever the commission receives notification of a discovery of Native American human remains from a county coroner pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, it shall immediately notify those persons it believes to be most likely descended from the deceased Native American. The descendants may, with the permission of the owner of the land, or his or her authorized representative, inspect the site of the discovery of the Native American human remains and may recommend to the owner or the person responsible for the excavation work means for treatment or disposition, with appropriate dignity, of the human remains and any associated grave

goods. The descendants shall complete their inspection and make recommendations or preferences for treatment within 48 hours of being granted access to the site.

(b) Upon the discovery of Native American remains, the landowner shall ensure that the immediate vicinity, according to generally accepted cultural or archaeological standards or practices, where the Native American human remains are located, is not damaged or disturbed by further development activity until the landowner has discussed and conferred, as prescribed in this section, with the most likely descendants regarding their recommendations, if applicable, taking into account the possibility of multiple human remains. The landowner shall discuss and confer with the descendants all reasonable options regarding the descendants' preferences for treatment.

(1) The descendants' preferences for treatment may include the following:

(A) The nondestructive removal and analysis of human remains and items associated with Native American human remains.

(B) Preservation of Native American human remains and associated items in place.

(C) Relinquishment of Native American human remains and associated items to the descendants for treatment.

(D) Other culturally appropriate treatment.

(2) The parties may also mutually agree to extend discussions, taking into account the possibility that additional or multiple Native American human remains, as defined in this section, are located in the project area, providing a basis for additional treatment measures.

(c) For the purposes of this section, “conferral” or “discuss and confer” means the meaningful and timely discussion and careful consideration of the views of each party, in a manner that is cognizant of all parties' cultural values, and where feasible, seeking agreement. Each party shall recognize the other's needs and concerns for confidentiality of information provided to the other.

(d)(1) Human remains of a Native American may be an inhumation or cremation, and in any state of decomposition or skeletal completeness.

(2) Any items associated with the human remains that are placed or buried with the Native American human remains are to be treated in the same manner as the remains, but do not by themselves constitute human remains.

(e) Whenever the commission is unable to identify a descendant, or the descendants identified fail to make a recommendation, or the landowner or his or her authorized representative rejects the recommendation of the descendants and the mediation provided for in subdivision (k) of Section 5097.94, if invoked, fails to provide measures acceptable

to the landowner, the landowner or his or her authorized representative shall reinter the human remains and items associated with Native American human remains with appropriate dignity on the property in a location not subject to further and future subsurface disturbance. To protect these sites, the landowner shall do one or more of the following:

- (1) Record the site with the commission or the appropriate Information Center.
- (2) Utilize an open-space or conservation zoning designation or easement.
- (3) Record a document with the county in which the property is located. The document shall be titled “Notice of Reinternment of Native American Remains” and shall include a legal description of the property, the name of the owner of the property, and the owner's acknowledged signature, in addition to any other information required by this section. The document shall be indexed as a notice under the name of the owner.

(f) Upon the discovery of multiple Native American human remains during a ground disturbing land development activity, the landowner may agree that additional conferral with the descendants is necessary to consider culturally appropriate treatment of multiple Native American human remains. Culturally appropriate treatment of the discovery may be ascertained from a review of the site utilizing cultural and archaeological standards. Where the parties are unable to agree on the appropriate treatment measures the human remains and items associated and buried with Native American human remains shall be reinterred with appropriate dignity, pursuant to subdivision (e).

(g) Notwithstanding Section 5097.9, this section, including those actions taken by the landowner or his or her authorized representative to implement this section and any action taken to implement an agreement developed pursuant to subdivision (l) of Section 5097.94, shall be exempt from the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

(h) Notwithstanding Section 30244, this section, including those actions taken by the landowner or his or her authorized representative to implement this section and any action taken to implement an agreement developed pursuant to subdivision (l) of Section 5097.94, shall be exempt from the requirements of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000)).

**ADD PENALTIES FOR NOT ADHERING TO LEGAL PROCESS, OR
MALICIOUSLY DEFILEING A GRAVE, OR POSSESSING HUMAN REMAINS, ETC.,
UNDER CALIFORNIA STATE LAWS**