

CULTURAL RESOURCE DEFINITIONS COMPARISON

There are three cultural resource designations relevant to California Native American Tribes: **Traditional Cultural Properties**, **Traditional Tribal Cultural Places**, and **Tribal Cultural Resources**.

	Traditional Cultural Properties	Traditional Tribal Cultural Places	Tribal Cultural Resources
Origin	National Register Bulletin 38 ¹	Senate Bill 18 ²	Assembly Bill 52 ³
Consultation	Federal Action; Section 106	Land Use Planning	CEQA Review
Definition	Any building, structure, object, site, or district that is eligible for inclusion in the National Register of Historic Places because of its association with cultural practices or beliefs of a living community that are (a) rooted in the community's history and (b) important in maintaining the community's cultural identity. ⁴	1. Any Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property; ⁵ 2. And any Native American historic, cultural, or sacred site, including any historic or prehistoric ruins, any burial ground, any archaeological or historic site, that a. is listed on the California Register , b. or may be eligible for listing on the California Register . ⁶	1. Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American Tribe that a. are listed on the California Register of Historic Resources ; b. are determined to be eligible for listing on the California Register ; c. or are listed on a local register of historic places; 2. And resources determined to be significant using the California Register criteria. ⁷

The term "**Traditional Cultural Properties**" is not found in the National Historic Preservation Act of 1966 ("NHPA"). Rather, the National Park Service developed the term in

¹ NATIONAL PARK SERVICE, NATIONAL REGISTER BULLETIN 38: GUIDELINES FOR EVALUATING AND DOCUMENTING TRADITIONAL CULTURAL PROPERTIES, 1 (1992). At the time of writing this report, the National Park Service was in the process of revising Bulletin 38 to enhance plain language of the text and include successful TCP nominations, among other things. The Draft Revision proposes to change the term from Traditional Cultural Properties to Traditional Cultural Places, while keeping the definition. See Appendix for more information.

² Sen. Bill 18, 2003-2004 Reg. Sess. (Cal. 2004).

³ Assem. Bill 52, 2013-2014 Reg. Sess. (Cal. 2014).

⁴ National Park Service, *supra* note 1, at 1.

⁵ CAL. PUB. RES. CODE § 5097.9 (West). The Native American Heritage Commission maintains a confidential catalog of Native American sacred and cultural sites on public and private lands in its Sacred Lands Inventory.

⁶ CAL. PUB. RES. CODE § 5097.993 (West).

⁷ CAL. PUB. RES. CODE § 21074(a)(2) (West).

National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Places (“Bulletin 38”) in response to the 1980 NHPA amendments that mandated the study and conservation of properties with “traditional cultural significance” to living communities, not only Native American Tribes.⁸ A **Traditional Cultural Property** must be tangible property, such as a **site** (including natural landscapes) where cultural activities have taken place or an **object** associated with a “significant tradition or use.”⁹

Definitionally, **Traditional Cultural Properties** must be eligible for inclusion on the **National Register of Historic Places**.¹⁰ Under the NHPA, the term **historic property** “means any prehistoric or historic district, site, building, structure, or object included on, or eligible for inclusion on, the **National Register**, including artifacts, records, and material remains relating to the district, site, building, structure, or object.”¹¹ Bulletin 38 provides guidance on assessing the eligibility of properties with traditional cultural significance for inclusion on the **National Register** as part of the Section 106 review process. Eligibility for the **National Register** requires **integrity of relationship**—the property has an integral relationship to the traditional cultural group’s history, practices, or beliefs.¹² A property must also meet one of the four **National Register** criteria in order to be eligible; for example, the property could be associated with important events, people, or artistic styles from history or it could yield important information from prehistory or history.¹³ Bulletin 38 explains how **Traditional Cultural Properties** relate to each criterion.¹⁴ See sidebar for criteria.¹⁵

During land use planning in California, SB 18 requires local governments to consult with California Native American Tribes in order to identify, preserve, and mitigate damage to **Traditional Tribal Cultural Places** within the local government’s jurisdiction.¹⁶ **Traditional Tribal Cultural Places** include **religious or ceremonial sites and sacred shrines**, such as places of worship and sites associated with spiritual and cultural traditions, on public property,

REGISTER CRITERIA

The **California Register** mostly adopts the **National Register** criteria. The black text is shared by both criteria. Text only in the **California** criteria is red, and text only in the **National** criteria is purple.

- a. Are associated with events that have made a significant contribution to the broad patterns of our [or California’s] history [and cultural heritage]; or
- b. Are associated with the lives of persons significant in our past; or
- c. Embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, [or that represent a significant and distinguishable entity whose components may lack individual distinction]; or
- d. Have yielded, or may be likely to yield, information important in prehistory or history.

⁸ National Park Service, *supra* note 1, at 1-2.

⁹ *Id.* at 9.

¹⁰ *Id.* at 1.

¹¹ 54 U.S.C.A. § 300308 (West).

¹² National Park Service, *supra* note 1, at 10. “Integrity of condition” is a more nuanced analysis since a place that has lost integrity can still be considered a Traditional Cultural Property. Consult Bulletin 38 for more information.

¹³ *Id.* at 11-12. See 36 C.F.R. § 60.4 (West).

¹⁴ National Park Service, *supra* note 1, at 11-12.

¹⁵ See CAL. PUB. RES. CODE § 5024.1(c) (West); see also 36 C.F.R. § 60.4.

¹⁶ CAL. GOV. CODE § 65352.3 (West).

regardless of their eligibility for inclusion on the **California Register of Historic Resources**. **Traditional Tribal Cultural Places** also include **archaeological or historic sites**, such as burial sites, cemeteries, or sites with evidence of tribal habitation and activity, and cultural or sacred sites that are listed on or “may be eligible” for the **California Register**.¹⁷ While the Native American Heritage Commission maintains a list of sacred and cultural sites on public and private lands in its Sacred Lands Inventory, local governments must still consult with local Tribes because the Tribe may be the only source of information regarding the existence of a **Traditional Tribal Cultural Place**.¹⁸ **Traditional Tribal Cultural Places** do not include objects but may include places where “California Native Americans access certain plants for food, medicine, clothing, ceremonial objects, basket making, and other crafts.”¹⁹

AB 52 amended the California Environmental Quality Act (“CEQA”) to establish that a substantial adverse change to a **Tribal Cultural Resource** has a significant effect on the environment.²⁰ For the purposes of environmental review under CEQA, **Tribal Cultural Resources** include **features**, which are minor, discrete components of a historical resource, such as a “carved tree associated with a site,” **objects**, which are distinguished from buildings and landscapes since they may be movable while maintaining an association with a specific setting, and **cultural landscapes**, which must be geographically defined in terms of the size and scope of the landscape.²¹

The lead agency conducting the CEQA review must evaluate whether to treat an unlisted resource as a **Tribal Cultural Resource**, using the **California Register** criteria (previous page) and considering the resource’s significance to a California Native American Tribe.²² Like all lead agency determinations under CEQA, the agency’s determination of a discretionary **Tribal Cultural Resource** must be supported by **substantial evidence**, a determination that the agency makes.²³ Substantial evidence requires facts and reasonable assumptions based on those facts, as well as expert opinions supported by facts.²⁴

Since the **California Register** criteria are derived from the **National Register** criteria, all three designations relate to the eligibility criteria for listing on the **National Register**. The most significant difference between the designations is that **Traditional Cultural Properties** and **Tribal Cultural Resources** encompass objects and resources while **Traditional Tribal Cultural Places** are limited to sites. As the graph below shows, all three designations overlap in one

¹⁷ GOVERNOR’S OFF. OF PLAN. AND RSCH., TRIBAL CONSULTATION GUIDELINES: SUPPLEMENT TO GENERAL PLAN GUIDELINES, 4-5 (November 14, 2005).

¹⁸ *Id.* at 17.

¹⁹ *Id.* at 4-5.

²⁰ Assem. Bill 52, *supra* note 3.

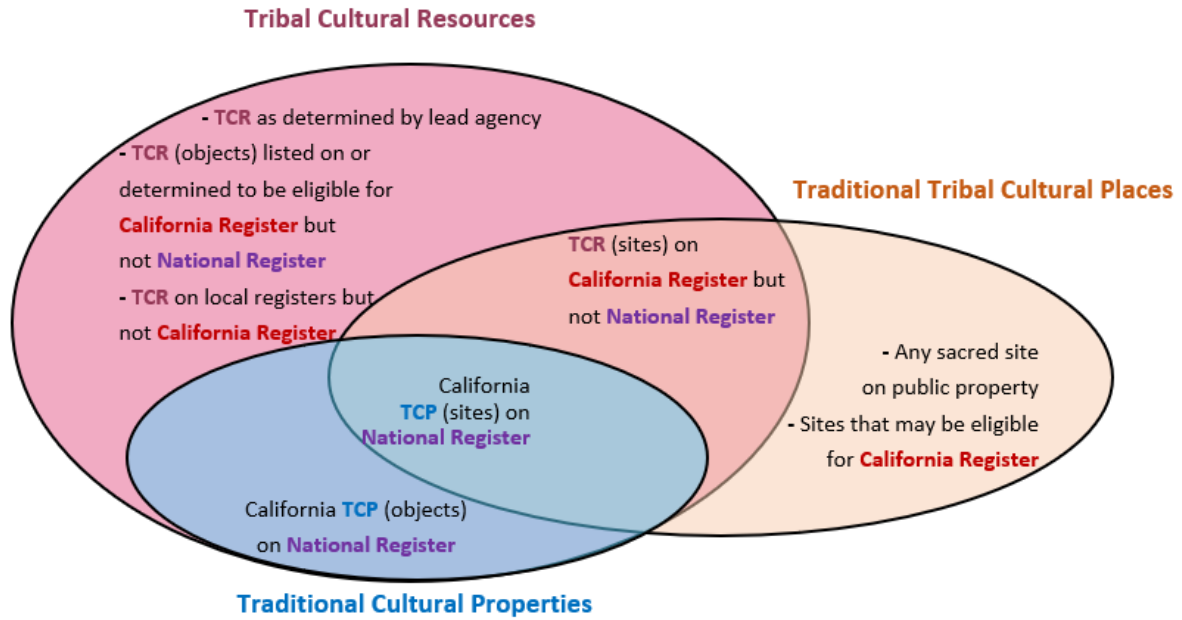
²¹ See OFF. OF HIST. PRESERVATION, INSTRUCTIONS FOR RECORDING HISTORICAL RESOURCES, 3 (March 1995); see also CAL. PUB. RES. CODE § 21074(b) (West).

²² *What is the California Register and What Does It Have to Do With CEQA?* OFF. OF HIST. PRESERVATION, https://ohp.parks.ca.gov/?page_id=21724 (last accessed June 28, 2023); CAL. PUB. RES. CODE § 21074(a)(2) (West).

²³ CAL. PUB. RES. CODE § 21074(a)(2) (West); CAL. PUB. RES. CODE § 21168 (West).

²⁴ CAL. PUB. RES. CODE § 21082.2(c) (West).

instance: a California site on the **National Register** with traditional cultural significance to a California Native American Tribe.



Overall, the most expansive designation is **Tribal Cultural Resources**. It fully encompasses **Traditional Cultural Properties**, automatically including California properties that are on the **National Register**.²⁵ Specifically for sites, however, the broadest designation is **Traditional Tribal Cultural Places**. Like **Tribal Cultural Resources**, **Traditional Tribal Cultural Places** include sites listed on the **California Register**; additionally, **Traditional Tribal Cultural Places** are not required to be “determined to be eligible” for inclusion on the **California Register**. **Traditional Tribal Cultural Places** also include all Native American sacred sites on public property *regardless* of their eligibility for the **California Register**.

²⁵ CAL. PUB. RES. CODE § 5024.1(d)(1) (West).