

LISTENING SESSION ON IMPROVING TRIBAL CONSULTATION UNDER AB 52 & SB 18

SUMMARY OF VIRTUAL SESSION HOSTED ON:
OCTOBER 29, 2024

BACKGROUND

Engagement between planning agencies and tribal nations is critical in the context of environmental and land use planning. However, current practices often introduce both challenges and opportunities. Building effective relationships among planners and Native American tribes requires a profound understanding of tribal sovereignty and the cultural significance of land, which has historically been overlooked in planning programs and practice.

California's (CA) Assembly Bill 52 (AB 52, 2014)¹ and Senate Bill 18 (SB 18, 2004)², establish legislative frameworks requiring public and private agencies to consult with Native American tribes on projects that could affect their cultural resources. These laws ensure that tribal perspectives are integrated early in the planning process.

These engagements are not merely procedural but are essential for acknowledging historical injustices and integrating tribal leader perspectives into contemporary land use planning and natural resources conservation

efforts. As such, maintaining momentum and prioritizing these policy issues are crucial for ensuring ongoing adaptation, innovation, and genuine collaboration during tribal consultation. Despite the legal procedures, the practice of meaningful tribal engagement continues to evolve, necessitating ongoing research and new strategies to ensure effective consultation and outcomes.

On September 19, 2024, the Environmental Law Institute hosted a virtual public webinar, *Advancing Tribal Sovereignty: Tribal Consultation Laws in California*, which featured speakers from the Humboldt County Planning Department, the CA Department of Justice, and the Tribal Historic Preservation Officer from Fort Independence Indian Reservation. They discussed the critical practices of government-to-government consultation with Indigenous peoples.

Key takeaways from the session included the importance of early consultation, relationship building, trust-building exercises, and staff

training on local tribal knowledge.

At the 2024 American Planning Association California Conference, also in September, a two-part session called *The Benefits of Tribal Consultation: Indigenous and Agency Perspectives* covered the legalities and best practices for tribal consultation.

Panelists, including tribal members and agency representatives, initiated the session by answering the question, “What does meaningful tribal consultation mean to you?” The collective response underscored the need for early and proactive

consultation and emphasized moving away from a one-size-fits-all approach. For example, approaches to tribal consultation may be different given the varying issues tribal communities experience throughout California’s urban and rural regions. This requires different and contextual strategies.

These seminars highlighted a consensus among planners and tribal leaders regarding the challenges posed by AB 52 and SB 18. Overwhelmingly, participants noted that these laws were crafted by legal advisors, not land use planners.

PURPOSE OF THE LISTENING SESSION

On October 29, 2024, Andrea Ouse, then President of the American Planning Association - California Chapter, and Bernadette Austin, President of the California Planning Roundtable, co-hosted a virtual listening session called *Improving Tribal Consultation Under AB 52 & SB 18*. The session was facilitated by Dr. Michelle Zuñiga from the University of North Carolina at Charlotte and Dr. Michael Méndez from the University of California, Irvine. The listening session aimed to understand the experiences of CA planners in developing equitable land-use policies with neighboring Native American Nations, tribes, and communities.

At the opening of the listening session, Dr. Clint Carroll, from the University of Colorado Boulder and a citizen of the Cherokee Nation, shared indigenous perspectives on natural resources and conservation. Such as, the dynamic of traditional ecological knowledge (TEK) evolving as communities adapt to environmental changes and integrate new experiences to understand the relationship with natural resources. Understanding TEK is a fundamental step toward meaningful tribal engagement, as it involves respecting the cultural and spiritual value of tribal land and practices in consulting processes.

Planners from across the state were then invited to share their experiences (e.g., success stories, challenges, recommendations, resources needed, etc.) consulting with tribes under AB 52 and SB 18 through a series of questions asked in breakout groups. The goal was to further explore perspectives and identify constraints experienced to improve consultation. The findings of this listening session can be used to help inform the future work of practitioners and policymakers to uplift Native American perspectives within the field of urban and rural planning.

EVENT OVERVIEW

Over 70 registered attendees affiliated with APA CA and the Planning Roundtable. Participants in the listening session were split into five breakout rooms, each led by a facilitator. Each group ranged from 7 to 15 participants. Participants discussed a series of questions posed by the facilitators. These questions included:

1. What does meaningful tribal consultation mean to you?
2. Are there any constraints that keep you and your team from deeper engagement with local tribal communities? What might those constraints be?
3. Can you talk specifically about your relationship with local tribal communities? Any success stories?
4. What additional resources or capacities can the state provide to improve engagement with tribal communities?

Additionally, attendees had the option to digitally write their responses into a Google spreadsheet, filtered by the CA region they represent. A total of 135 responses were documented on the Google spreadsheet.

METHODOLOGY

To analyze the data collected from the Listening Session, a qualitative coding methodology was employed to systematically categorize responses into distinct themes for each question.

Responses were then coded based on their primary focus or intent (i.e., relations, challenges, success stories, etc.), ensuring each response was associated with only one overarching theme to prevent overlap. Themes were derived inductively, meaning they emerged naturally from the data, rather than pre-determined.

KEY INSIGHTS

QUESTION 1: PERSPECTIVES OF MEANINGFUL CONSULTATION

A total of 45 individuals responded to the first question, “**What does meaningful tribal consultation mean to you?**” on the Google spreadsheet. Most attendees emphasized the need to understand what defines meaningful consultation from both tribal and agency perspectives, characterized by:

- **Early and proactive engagement:** Emphasizing early outreach, continuous engagement (beyond projects), and proactive measures and solutions to establish meaningful consultation. (11/45 responses)
- **Tribal sovereignty:** Respecting and ensuring tribal autonomy and self-determination in consultation. (8)
- **Acknowledgement and respect:** Recognizing and respecting tribal culture, history, and values. (5)
- **Collaboration beyond compliance:** Moving beyond legal obligations to foster deeper partnerships. (5)

Attendees also defined meaningful tribal consultation as **building trust and relationships with interested tribes** (5), having **open and transparent communication** (5), **flexibility and adaptability** (3), and providing **compensation for time and resources** (3). Planners further shared:

“THERE IS AN OPEN EXCHANGE OF INFORMATION AND LEARNING, WITH THE UNDERSTANDING OF PRIVILEGED INFORMATION AND TREATING THAT INFORMATION WITH RESPECT AND CARE.”

“...MEANINGFUL ENGAGEMENT COULD MEAN A CO-STEWARDSHIP OF THE LAND AND PROJECT, FOR EXAMPLE ON A PARK DESIGN OR A RESTORATION PROJECT, TRIBES CAN HAVE A ROLE IN THE DESIGN AND IMPLEMENTATION OF THE PROJECT.”

Q1: IMPLICATIONS

Responses highlighted that planners understand the importance of tribal autonomy in governance and the need for ongoing engagement to foster trust, collaboration, and genuine relationships beyond policy requirements. Meaningful consultation, described by several attendees, transcends the legal definition, which calls for, “recognition of the cultural values of all parties involved and makes a concerted effort to reach an agreement” (Cal. Gov’t Code § 65352.4, 2004).³ Meaningful consultation, as highlighted by the attendees, not only meets but exceeds legal expectations by fostering a deeper understanding and respect for tribal perspectives and participation.

QUESTION 2: CONSTRAINTS TO DEEPER ENGAGEMENT

For the second question, “Are there any constraints that keep you and your team from deeper engagement with local tribal communities? What might those constraints be?” 39 participants responded. These responses highlighted that several challenges impact the effectiveness of current tribal engagement efforts, which attendees emphasized as:

- **Lack of resources:** Limited staff (both local agency & Tribe), training, outreach, capacity building, tribal ecological knowledge, and budget constraints (e.g., cost-intensive mitigations). (11/39 responses)
- **Cultural differences:** Differences in cultural perspectives and values that can lead to misunderstandings in consultation processes, such as differing opinions of physical (e.g., informational deficit of TCRs) vs. cultural. (7)
- **Time constraints:** Insufficient time to schedule for thoughtful consultation causing pressure on both sides and lengthening the permitting process. (7)
- **Legal and bureaucratic barriers:** Challenges related to navigating legal frameworks and bureaucratic procedures, including CEQA requirements. (7)

Attendees also mentioned constraints of **administrative delays** (4) and a **lack of trust** between tribal leaders and public officials (3). Planners further shared:

“...TRIBES DIVIDE THEIR TIME ACROSS SO MANY PROJECTS AND JURISDICTIONS... THIS OFTEN LEADS TO THE INABILITY TO RESPOND TO REQUESTS FOR FOLLOW-UP CONSULTATION, OR CLOSE CONSULTATION.”

“SOCIAL CONSTRAINTS- RELATIONSHIP DYNAMICS AMONG TRIBAL COMMUNITIES AND LOCAL GOVERNMENTS.”

Q2: IMPLICATIONS

Responses indicated the multifaceted challenges for deeper engagement and the significance of addressing the procedural gaps during consultation. By ensuring principles of respect and mutual benefit, relationships among parties are given space for growth and understanding. A similar research study by the Environmental Law Institute underscores this, revealing the importance of refining existing institutional procedures and enhancing agency-wide understanding of these protocols to support capacity building at all levels.⁴

KEY INSIGHTS

QUESTION 3: RELATIONSHIPS AND SUCCESS STORIES

20 participants responded to the third question, “Can you talk specifically about your relationship with local tribal communities? Any success stories?”

Attendees mentioned their relationships with local tribes as:

- **Coordination & active communication:** Respectful engagement, active and inviting communication. (5/20 responses)
- **Project-based interactions:** Relationships primarily formed/utilized during specific projects, often driven by legal or procedural requirements. (4)
- **Communication challenges:** Discussions about coming to an agreement, dialogue dynamics, different interpretations of goals of projects, and historical context. (4)
- **Limited or no engagement:** Mentions of minimal or no interactions (3)
- **Success stories with assistance in funding applications:** Mentions of successful stories in assisting tribes to qualify for housing funding programs. (2)
- **Achievements through staff educational initiatives:** Efforts by jurisdictions to educate their staff or community about tribal cultures, histories, and best practices for engagement. (2)

Planners also described relationships and success stories:

“...THE COUNTY INVITED ABOUT SIX TRIBES. TWO RESPONDED AND PROVIDED COMMENTS REQUESTING CONDITIONS BE INCLUDED IN ENVIRONMENTAL DOCUMENTS.”

“TRIBAL HOUSING IS A BIG NEED IN OUR JURISDICTION, WE HAVE HELPED TO PROCESS APPLICATIONS WITHIN GRANT TIMELINES TO ENSURE SUCCESSFUL OUTCOMES...”

Q3: IMPLICATIONS

Attendees highlighted the need for strengthening ongoing relationships with tribal communities beyond project-based interactions, emphasizing regular and respectful communication. Additionally, success stories, such as those involving assistance with funding applications for tribes, demonstrate a model outside of consultation to support a range of tribal needs more effectively. In addition, responses indicted the efficacy of educating planning staff on Indigenous land-use issues.

KEY INSIGHTS

QUESTION 4: SUPPORT NEEDED TO IMPROVE TRIBAL ENGAGEMENT

A total of 31 individuals responded to the last question, “**What additional resources or capacities can the state provide to improve engagement with Tribal communities?**” Responses reflected common recommendations such as:

- **Tailored engagement strategies:** Recognizing the unique needs of tribes and contextually adapting engagement processes to maximize effectiveness by collaborating to develop tribal-approved timelines, procedures, and definitions. (7/31 responses)
- **Training and education:** Training for staff and public agencies to build awareness of tribal sovereignty, history, and best practices for engagement. (7)
- **Centralized Communication System:** Establishing a centralized platform or system to streamline communications between state agencies and tribes with examples of successful mitigation measures and policy templates for use in similar projects. (5)

Attendees also discussed **data resource sharing** (4), **financial & logistical support** (4), and **clarity and guidelines in procedures** (4). Planners further shared:

“TRIBE-APPROVED RESOURCES TO IDENTIFY BEST PRACTICES FOR ENGAGEMENT, IDEAL REVIEW TIMELINES, AND PLAN CREATION AND CONTENT”

“CAPACITY BUILDING AND TECHNICAL TRAINING TO SHOW HOW THIS PROCESS CAN BE MAXIMIZED OR BEST LEVERAGED AS A TOOL TO PROTECT TRIBAL INTERESTS...”

Q4: IMPLICATIONS

Attendees responded with critical suggestions for improvement in tribal engagement such as staff training on best practices, the need for free and prior informed consent from tribes,⁵ and a centralized communication system for information sharing of successful cases, consultation guidelines, and tribal contacts. Furthermore, planners indicated engagement strategies should be tailored to meet the unique needs of different tribal communities, ensuring that these strategies are flexible and adaptable to various contexts. Documentation of such processes can provide evidence of the gaps between parties and how to address them in future consultation engagements.⁶

CONCLUSION

October's listening session on improving tribal consultation under AB 52 and SB 18 was a critical step toward enhancing collaboration and understanding between California agencies and Native American tribes. It provided a platform to discuss both the challenges and opportunities inherent in meaningful tribal consultation. Through discussions and breakout sessions, participants identified key areas requiring attention. These included the need for early and continuous engagement, the importance of understanding cultural perspectives, staff training on Indigenous land use issues, and the necessity of contextual engagement strategies to respect tribal sovereignty and cultural heritage.

NEXT STEPS

To build on the insights gathered during this listening session, the research team will complete a document analysis of relevant local government land use plans, and conduct follow-up interviews with both tribal leaders and planning officials. These research methods will delve deeper into specific challenges and success stories identified during the breakout sessions, offering more detailed narratives and perspectives that could inform future policies. Additionally, this research will help in formulating a set of best practices for tribal consultation that respect tribal needs and priorities, fostering a more equitable and effective engagement process moving forward.

SUGGESTED CITATION

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REFERENCES

1. California Legislative Information (2014). AB-52 Native Americans: California Environmental Quality Act. https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB52
2. California Legislative Information (2004). SB-18 Traditional Tribal Cultural Places. https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200320040SB18
3. California Legislative Information (2004). Cal. Gov't Code § 65352.4. https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&ionNum=65352.4.#:~:text=Consultation%20between%20government%20agencies%20and,have%20traditional%20tribal%20cultural%20significance
4. Environmental Law Institute (2024). Analysis of Tribal Consultation Under California SB 18 and AB 52. https://www.eli.org/sites/default/files/files-pdf/Tribal%20Hub%20Report%20Cover-combined_1.pdf
5. Dadashi, H (2021). CEQA Tribal Cultural Resource Protection: Gaps in the Law and Implementation. *UCLA Journal of Environmental Law and Policy*, 39(2).
6. Coyle, C.A. (2015). OHP CEQA Training for Tribal Nations: A Tribally Focused Point of View. <https://perma.cc/58RW-8JYP>