

SB 18: Law and Definitions CEQA: Opportunities for Tribes

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General Overview

In general SB 18(2004) requires cities and counties to consult with California Tribal Governments anytime a city or county amends or adopts its General Plan. The requirements of SB 18 are separate from the CEQA process.

Overview of SB 18

- Added 3 Sections to the State Planning Law (Consultation) Government Code
- Amended 5 Sections of State Planning Law (Notice) Government Code
- Amended One Section of the Civil Code (Conservation Easements)

What is a General Plan/Planning Process?

- Each City and County is required to adopt a General Plan which is meant to guide future development. (§65300)
- Long term (20years)
- “Planning Process”, process associated with General Plan adoption and amendment
- “Planning Law”, state statutes associated with the General Plan and the planning process and is separate from the CEQA statute and processes.

New Government Code Sections

- GC 65352.3 Consultation: General Plan or Specific Plan adoption or amendment.
- GC 65562.5 Consultation: Designation of Open Space.
- GC65352.4 Definition of Consultation.

Consultation: General Plan Adoption/Amendment

- GC 65352.3 Prior to the adoption or any amendment to a General Plan, proposed on or after March 1, 2005, the city or county shall conduct consultations with California Native American tribes for the purpose of preserving or mitigating impacts to *Cultural Places*.
- Tribes have 90 days to reply to contact (notice) to request consultation.

Definition of Consultation

- GC 65352.4 For the purposes of Section 65351, 65352.3, and 65562.5, “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.

Definition of Consultation, con't

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.

Amended Government Code Sections

- GC 65040.2 OPR's General Plan Guidelines shall contain advice for consulting with tribes (2005 Tribal Consultation Guidelines)
- GC 65092 10 day notice of public hearing.
- GC 65351 Provide opportunities during GP preparation/amendment.
- GC 65352 45 day referral of action.
- GC 65560 Open Space for Cultural Places.

California Native American Tribe

SB 18 requires notice to and consultation with “California Native American Tribes that are on the contact list maintained by the California Native American Heritage Commission”.

California Native American Tribe

Intent Language

- California Native American tribal governments
- Government to Government
- Tribal Governments

Civil Code 815.3 A federally recognized California Native American tribe or a non-federally recognized California Native American tribe.....

California Native American Tribe

GC 65352 California Native American tribe,
with traditional lands within the city or
county's jurisdiction.

NAHC's Contact List

Cultural Places

SB 18 refers to “places, features, and objects described in Sections 5097.9 and 5097.995 of the Public Resources Code.”

PRC 5097.9 Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine.

Cultural Places

PRC 5097.995 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.

Overview of SB 18 Process

- Local Government or applicant makes proposal that involves a general plan amendment or adoption.
- Local Government sends notice requesting consultation regarding the GP amendment or adoption at hand. (GC 65352.3)
- Tribe has 90 days to respond to notice requesting consultation. (GC 65352.3)

Process

- Tribes requests or does not request consultation. Local government and tribe engage in consultation for the purpose of preserving a cultural place.
- Local government sends notice 45 days prior to taking action on the GP adoption or amendment (GC 65352)

Process

- Local government sends notice 10 day prior to public hearing on the GP adoption or amendment. (GC65092)
- Local government makes decision to approve or deny GP adoption or amendment.

Current CEQA Opportunities

- Tribes and members can request notice of projects.(PRC 21092(b)(3) & 21092.2)
- Tribes and members can request consultation as persons with “special expertise” (PRC 21104 & 21153)
- Tribes and members can comment on projects(CCR 15044)

CEQA & Archaeological Resources

- PRC 21083.2 requires lead agencies to determine effects on archaeological resources. Recommends mitigation:
 - Planning construction to avoid
 - Deeding sites in permanent easements
 - Capping or covering before building
 - Planning parks, open space to incorporate sites.

CEQA & Historic Resources

- PRC 21084.1: Substantial adverse change in a historical resource is a significant effect on the environment. Historic resource includes:
 - Resource listed or eligible to be listed in the California or a local registry.
 - Not being listed or eligible for listing does not preclude a lead agency from determining something may be a historical resource.

CEQA Guidelines Update

- OPR & Resources Agency will be updating the CEQA Guidelines in 2014.
- General Comprehensive Update plus Specific Statutorily Required Update:
 - SB 743, Transportation Analysis
 - AB 1241, CEQA Checklist Fire Hazards

General Authorities & Limitations

- General Authority - PRC 21083
 - OPR “shall prepare and develop proposed guidelines for the implementation of this division by public agencies. The guidelines shall include objectives and criteria for the orderly evaluation of projects and the preparation of environmental impact reports and negative declarations in a manner consistent with this division.”

General Authority

- The Guidelines must also “include criteria for public agencies to follow in determining whether or not a proposed project may have a ‘significant effect on the environment’.”
- OPR “shall, at least once every two years, review the guidelines adopted pursuant to this section and shall recommend proposed changes or amendments to the Secretary of the Resources Agency.”

Limitations-Administrative Procedures Act

- • The CEQA Guidelines are administrative regulations (California Code of Regulations) and amendments must follow the procedures set forth in the California Administrative Procedures Act in Government Code sections 11340.

Administrative Procedures Act

- GC 11340.2 Requires the following:
 - • “[N]o regulation adopted is valid or effective unless [it is] [1] consistent and not in conflict with the statute and [2] reasonably necessary to effectuate the purpose of the statute.”
 - “The question is whether the regulation alters or amends the governing statute or case law, or enlarges or impairs its scope. In short, the question is whether the regulation is within the scope of the authority conferred; if it is not, it is void.” (CBE v. CNRA, *supra*, 103 Cal.App.4th at 108.)

Courts & CEQA Guidelines

- • “At a minimum, ... courts should afford great weight to the Guidelines except when a provision is clearly unauthorized or erroneous under CEQA.” (Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal. 3d 376, 391, n. 2.)

Solicitation for Input Goals for Update

- Make the environmental review process more efficient and meaningful
- Reflect California's adopted policy priorities, including, among others, addressing climate change, promoting of infill development, and conserving natural and fiscal resources
- Reflect statutory changes to CEQA and cases interpreting CEQA.

Input Sought

- Mandatory Updates
- Process Improvements
- Substantive Improvements
- Technical Updates

Potential Guideline Topics

- Environmental Setting and Use of Future Baselines
 - Define “projected” versus “hypothetical” conditions
- Exposure to Environmental Hazards/Adverse Conditions
 - Update Guidance to reflect Ballona and related decisions.
 - Strengthen public health protections in 15126.2(a)

Potential Topics

- Clarify the Feasibility of Alternatives
 - Define criteria for potential feasibility to define a reasonable range
 - Define criteria for dismissal as infeasible in CEQA findings
 - Discuss type and detail of evidence needed

Potential Topics

- Improving Supplemental Review
 - Update Appendix J (Tiering EIRs)
 - Provide a Supplemental Review Checklist
 - Provide guidance on “within the scope” finding for later activities after program EIRs and when the fair argument applies
 - Provide guidance on exemption for infill projects consistent with a specific plan and SCS (per SB 743)

Potential Topics

- Mitigation
 - Provide guidance on mitigation for agricultural resources, habitat connectivity, etc.
 - Provide guidance on appropriate deferral of mitigation details

Update Appendix G: IS Checklist

- Agricultural Resources
- Fire Hazards
- Paleontology
- Vector-related hazards
- Habitat connectivity
- Greenhouse gas emissions
- Cultural Resources

Potential Topics

Cultural Resources Issues

- Preparation of cultural resources assessments
- Incorporating tribal expertise
- Tribal monitors
- Other?

Natural Resources Agency Tribal Consultation Policy

- Policy adopted by Secretary John Laird in April 2012
- Decentralized Implementation by Resources Agency Departments, Boards and Commission
- Working closely with Governor's Tribal Advisor Cynthia Gomez on Implementation
- Key goal is improving routine contacts with tribes

Governor's Executive Order

- Executive Order B-10-11 was signed on September 19, 2011
- Established the position of Governor's Tribal Advisor in the Office of the Governor.
- Established policy that state agencies and departments under executive control shall encourage communication and consultation with California Indian Tribes.