



The Sovereign Next Door: California Native American Tribal Governments 101

(MCLE Specialty Credit for Recognition and Elimination of Bias)

Friday, May 4, 2018 General Session; 10:30 a.m. – 12:15 p.m.

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A PRIMER ON TRIBAL GOVERNMENT RELATIONS FOR CITY ATTORNEYS

Developed for the League of California Cities, City Attorneys' Conference

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Tribal Government Relations for City Attorneys: Overview of Materials

1. Introduction: A Note About the Role of a City Attorney in Constructive Tribal Government Relations
2. Checklist: Tribal Government Relations for City Attorneys
3. Appendix: Resources

Part I: Knowledge Baseline

- A. [California Tribal Court-State Court Forum FAQ](#)
- B. [Prof. Edward D. Castillo, Cahuilla-Luiseno. California Indian History](#)
- C. Selected Sources on California's History with Native People
 1. Madley, Ben. *An American Genocide: The United States and the California Indian Catastrophe, 1846-1873*. Yale University Press. 2017.
 2. Phillips, George Harwood. *Chiefs and Challengers: Indian Resistance and Cooperation in Southern California, 1769-1906*. University of Oklahoma, Norman Press. 2014.
 3. Carrico, Richard. *Strangers in a Stolen Land*. Sunbelt Publications, Inc. 2008
 4. Miranda, Deborah. *Bad Indians: A Tribal Memoir*. Heyday. 2013.

Part II: Legal Background

- D. California Statutes
 1. [AB 52 \(Tribal Cultural Resources and CEQA\)](#)
 2. [SB 18 \(Tribal Consultation and General Plans\)](#)
- E. Selected Case Law
 1. [Desert Water Agency v. Agua Caliente Band of Cahuilla Indians, 138 S. Ct. 469](#)
 2. [Berkeley Hillside Preservation v. City of Berkeley \(2015\) 60 Cal. 4th 1086, 1117](#)
 3. [Citizens for the Restoration of L Street v. City of Fresno \(2014\) 229 Cal.App.4th 340](#)

4. [Madera Oversight Coalition, Inc. v. County of Madera \(2011\) 199 Cal.App.4th 48](#)
5. [Clover Valley Foundation v. City of Rocklin \(2011\) 197 Cal.App.4th 200](#)
6. [Valley Advocates v. City of Fresno \(2008\) 160 Cal.App.4th 1039](#)
7. [Pueblo of Sandia v. United States \(1995\) 50 F.3d 856](#)
8. [Muckleshoot Indian Tribe v. United States Forest Service \(1999\) 177 F. 3d 800](#)

Part III: Tools

F. Selected Websites

1. [California Office of Historic Preservation \(OHP\)](#)
2. [California Native American Heritage Commission \(NAHC\)](#)
3. [NAHC's Compilation of State Laws and Codes Relevant to California Native American Tribes](#)
4. [The Governor's Office of Planning and Research \(OPR\) AB 52 Trainings and Materials](#)

G. State Agency Guidance Documents

1. [AB 52 Governor's Office of Planning and Research Technical Advisory](#)
2. [SB 18 Tribal Consultation Guidelines, Supplement to the General Plan Guidelines](#)
3. [NAHC Tribal Consultation Under AB 52: Legal Requirements and Best Practices for Tribes](#)
4. [DWR Guidance Document for the Sustainable Management of Groundwater Engagement with Tribal Governments](#)

H. Maps

1. [California Indian Pre-Contact Tribal Territories](#)
2. [California Indian Tribal Homelands and Trust Land Map](#)

I. Examples from Tribal Governments and Local Governments

1. [Northern California: Karuk Tribe Consultation Policy](#)
2. [Central California: Santa Barbara County](#)
3. [Southern California: City of Carlsbad Guidelines](#)

4. Creative Mitigation Measures (See: 2018 League of Cities, City Attorney Conference PowerPoint Presentation, Lopez-Keifer and Roberson)
5. Creative Non-Invasive Assessment Techniques (See: 2018 League of Cities, City Attorney Conference PowerPoint Presentation, Lopez-Keifer and Roberson)
6. Standard mitigation measures (See: 2018 League of Cities, City Attorney Conference PowerPoint Presentation, Lopez-Keifer and Roberson)



Introduction: A Note About the Role of a City Attorney in Constructive Tribal Government Relations

This primer on Tribal Government relations (Primer) was developed for use by California's City Attorneys as a practical reference guide. This Primer is not legal advice.

The authors have years of experience working constructively with California Native American Tribal Governments and Cities throughout the State. Merri and Holly have spoken together on Tribal Cultural Resources issues pertaining to the California Environmental Quality Act (AB 52) many times.

Merri Lopez-Keifer is Luiseño and a member of the San Luis Rey Band of Mission Indians. She is the Chief Legal Counsel for the San Luis Rey Band of Mission Indians and has successfully fought for the protection and preservation of her tribe's Native American tribal cultural resources and burial grounds. Merri has also been instrumental in building meaningful relationships with local, state and federal government agencies within her tribe's traditionally and culturally affiliated territory. In her role as Chief Legal Counsel, Merri has successfully conducted hundreds of government-to-government consultations with CEQA lead agencies, local governments, state government agencies and federal government agencies. In June of 2015, Merri was appointed by Governor Brown as a Commissioner to the Native American Heritage Commission, a 9-member, all California Native American commission charged with the responsibility of protecting California's Native American tribal cultural resources and sacred places. On September 23, 2016, Merri was honored with a Resolution by the California Legislature for her exemplary service as a Commissioner and her diligent efforts in protecting and preserving California's tribal cultural resources. In 2017, Merri became the Secretary of the Native American Heritage Commission.

Holly Roberson is an Attorney at Kronick, Moskowitz, Tiedemann and Girard, a full service law firm. Prior to joining the firm, Holly was appointed by Governor Brown as Land Use Counsel at the California Governor's Office of Planning and Research (OPR). At OPR, she lead the effort to incorporate tribal cultural resources into the California Environmental Quality Act (CEQA) Guidelines and develop the OPR AB 52 Technical Advisory. She also worked on General Plan Guidelines, military land use compatibility planning, infill streamlining, utility scale solar siting, complex mediation, drought issues, and the Sustainable Groundwater Management Act (SGMA), with a focus on intergovernmental law. Holly has experience working with environmental laws on the National, State, and Local level. She has provided technical assistance and training to lead agencies, the private sector, and tribal governments throughout the state. Holly works with Cities to help them with implementation of AB 52 (Gatto, 2014). She believes passionately that a better understanding of California's history with Native people and understanding of the importance of cultural resource protection will allow Cities to make better informed decisions and have more collaborative working relationships with California Native American Tribes- the Sovereigns Next Door- for the betterment of both governments.

This Primer goes beyond AB 52. It is designed to give City Attorneys with a basic understanding of planning and environmental law an overview of not just what their City should be doing to comply with the law, but also a sense of why it is important, and the history of California's



treatment of Native people that informs the context of tribal relations today. Importantly, this Primer also goes beyond the past to highlight ways that local and tribal governments can work collaboratively today to benefit their citizens. For example, fire safety, mutual aid agreements, economic development, and groundwater management are of concern to both Tribal and City governments.

This Primer assumes that City Attorneys have a working knowledge of CEQA and General Plan law. Please note that Tribal governments are diverse, just like California's Cities. This is not an attempt to characterize all Tribal governments in the State, but rather to give helpful pointers to City governments to assist in their own relationship development with the Tribal governments with which they interact.

First, we provide a checklist that City Attorneys can use to assess their City's readiness for constructive Tribal relations. These items are not requirements in AB 52 so much as practical suggestions based on our experience that should help your City meet both the intent and the spirit of the law, reduce risk, improve confidentiality, and increase consistency across projects in your Tribal government relations.

In part one, the Primer's Appendix provides an overview of sources for information on California's history with Native people. Understanding this historical context is important for the development of constructive relationships moving forward. This Primer provides key facts and figures to help create a baseline of understanding for tribal government relations.

In part two this Primer provides the key laws City Attorneys need to understand for tribal government relations: AB 52 and SB 18. Relevant case law is provided, although there may be other relevant cases and you should conduct timely research in your own practice.

In part three we provide a curated list of websites, tools, and public resources to assist with tribal relations. Detailed guidance documents are available for these topics from OPR and the California Native American Heritage Commission. We also provide examples from jurisdictions in Northern, Central, and Southern California to give examples of AB 52 implementation in practice.

Feel free to reach out to us with any questions at:

Merri Lopez-Keifer, lopezkeifer@gmail.com, 925-457-3395
Holly Roberson, hroberson@kmtg.com, 916-321-4517

Good Luck!

City Attorney Checklist for Tribal Government Relations

CEQA (AB 52 implementation)

- ☐ Identify Tribal Government's areas of traditional and cultural affiliation that overlap with City boundaries, get contact list from Native American Heritage Commission
- ☐ Create process for appropriate staff to track incoming consultation letters, including postmark dates on envelopes and the date of response to comply with CEQA
- ☐ Establish confidentiality protocols for handling sensitive cultural information and train relevant staff in management of confidential information
- ☐ Identify a process for new listings and updates to the City's local register of historic resources
- ☐ Cultural awareness training for employees working with tribal governments on tribal cultural resources issues
- ☐ Identify consultation participants to represent City Government
- ☐ Develop consultation policy and protocols
- ☐ Decide how the costs of AB 52 compliance be will absorbed by the City or Development Applicants
- ☐ Determine process for assessing feasibility of proposed mitigation measures, such as monitoring expenses and land preservation or avoidance measures to ensure consistency across projects.
- ☐ Develop creative off-site mitigation measures for when tribal cultural resources may be impacted, such as contributing to tribal cultural resource databases, cultural centers, language or cultural programs.
- ☐ Coordinate with tribal governments for identification, avoidance, and protection of sensitive areas within the City for tribal cultural resources. Decide whom on City staff will have access to such information and train them in confidentiality protocols.

General Plan (SB 18 Implementation)

- ☐ Update General Plan to include SB 18 if not previously done (Note: SB 18 requirement originated in 2004)
- ☐ Understand and implement consultation process for SB 18 compliance
- ☐ Determine the City's process for handling of sensitive confidential cultural information
- ☐ Consider whether the City should develop internal and confidential overlays for its General Plan if there are sensitive tribal cultural resource areas within the City in consultation with traditionally and culturally affiliated tribal governments.



Water (SGMA Implementation)

- Tribal government Memorandum of Understanding (MOU) or Joint Powers Authority (JPA), if needed for participation in Groundwater Sustainability Agency work
- Data for Groundwater Sustainability Plan (GSP) includes Tribal water amounts and uses, if necessary
- Applications for grant funding from State- including engagement funds
- Apply for facilitation funding from Department of Water Resources, if needed
- Include tribal engagement in GSP engagement plan
- Plan for AB 52 consultation for GSP implementation, when CEQA applies during GSP implementation

Other

- Curriculum Development Partnerships
- Economic Development Partnerships
- Emergency Preparedness Partnerships