

TRIBAL CONSULTATION PROCESS AND TIMELINES

With whom should lead agencies or local governments consult?

SB 18: With federally recognized California Native American tribes, or non-federally recognized California Native American tribes, that are within the local government's jurisdiction, are on the contact list maintained by the Native American Heritage Commission (NAHC), and are affected by the proposed plan adoption or amendment. [Gov. Code §65352.3](#).

AB 52: A tribe that is traditionally and culturally affiliated to the geographic area where a project is located and requested that the lead agency in question provide, in writing, notification to the tribe of projects in the tribe's area of traditional and cultural affiliation. [Pub. Res. Code § 21080.3.1\(b\)\(1\)](#).

How is tribal consultation initiated? When?

SB 18: First, the local government should contact tribes about the opportunity to consult. Then, tribes have 90 days to request consultation. [Gov. Code § 65352.3\(a\)\(2\)](#).

AB 52: First, the lead agency should contact tribes that have requested notification of projects within 14 days of a completed application or of the lead agency's decision to undertake a project. Then, tribes have 30 days to request consultation. [Pub. Res. Code § 21080.3.1\(d\)](#).

What actions does each law apply to?

SB 18: The adoption or amendment of general plans or specific plans, or designation of open space. [Gov. Code § 65352.3\(a\)\(1\)](#).

AB 52: All CEQA projects for which a Notice of Preparation, Notice of Mitigated Negative Declaration, or Notice of Negative Declaration is filed or issued. [Pub. Res. Code § 21080.3.1](#).

What triggers SB 18 or AB 52?

SB 18: Proposed amendment or adoption of a general plan or a specific plan, or the designation of open space. The local government sends proposal information to the NAHC and requests contact information for tribes with traditional lands or places located in geographic area affected by proposed changes. [Gov. Code § 65352.3\(a\)\(1\)](#).

AB 52: Written request for notification of projects by in their areas of traditional or cultural affiliation. [Pub. Res. Code § 21080.3.1\(b\)](#).

How long does tribal consultation last?

Under [SB 18](#) and [AB 52](#), consultation ends when (1) the parties reach mutual agreement concerning appropriate measures for preservation or mitigation; or (2) either party, acting in good faith or after reasonable effort, concludes that mutual agreement cannot be reached concerning appropriate measures of preservation or mitigation. [Pub. Res. Code § 21082.3\(a\)-\(b\)\(1\)](#).

Additional References & Resources

- [E.O. B-10-11](#) (Brown, 2011)
- [E.O. N-15-19](#) (Newsom, 2019)
- See generally City of Carlsbad [Tribal, Cultural, and Paleontological Guidelines](#) for example of collaborative development of agency guidelines for the treatment and protection of cultural resources.

Tribal Consultation Process and Timeline

AB 52 Consultation Process		Complete
1.	Lead agency determines that a private project application is complete.	
2.	Lead agency then has 14 days to provide written notice to tribal contact on their list. (PRC, § 21080.3.1(d))	
3.	14-day notification must include project description, project location, and must state that the tribe has 30 days to request consultation.	
4.	If the tribe does wish to engage in consultation, the tribe must respond to 14-day notice within 30 days of receipt, otherwise consultation requirement ends here. (PRC, § 21080.3.1(b)(1))	
5.	Lead agency must begin consultation process within 30 days of consultation request. (PRC, § 21080.3.1(b))	
6.	Consultation concludes when either: 1) the parties agree to mitigation measures or to avoid significant effects on the tribal cultural resources (PRC, § 21082.3(a)); or 2) a party, acting in good faith and after reasonable effort, concludes that a mutual agreement cannot be reached. (PRC, § 21080.3.2(b)(1)-(2); PRC, § 21080.3.1(b)(1))	
7.	Release of environmental document with tribal information kept confidential.	

SB 18 Consultation Process		Complete
1.	Proposed adoption or amendment of any General Plan (GP) or Specific Plan (SP), or designation of open space. (GC, § 65352.3(a)(1))	
2.	Local government sends proposal information to Native American Heritage Commission (NAHC) and requests contact information for tribes with traditional lands or places located within the geographical areas affected by the proposed changes. (GC, § 65352.3(a)(2))	
3.	NAHC provides tribal contact information to local government within 30 days of receiving request. (GDL* Section IV)	
4.	Local government contacts tribe(s) and notifies them of the opportunity to consult. (GDL Section IV)	
5.	Tribes have 90 days to request consultation. (GC, § 65352.3(a)(2))	
6.	Consultation is an ongoing process without a defined end point.	
7.	Local government continues normal processing of GP/SP adoption or amendment.	
8.	Prior to adoption or substantial amendment of a GP or SP, local government must refer proposed action to appropriate tribes. (GC, § 65352(a)(8))	
9.	Local government must allow a 45-day comment period and notice must be sent regardless of whether prior consultation took place. (GC, § 65352(a)(8))	
10.	Local governments must send notice of a public hearing, at least 10 days prior to the hearing, to tribes who have filed a written request for such notice. (GC, § 65092)	
11.	Public hearing of board of supervisors/city council to take final action on the GP/SP.	

*OPR Tribal Consultation Guidelines: Supplement to General Plan Guidelines (November 14, 2005)