

Tribal Consultation

AB-52 & SB 18 (Process & Best Practices)

Introduction

1

INTRODUCTION



Name: **Ethan**

Family: **Lawton**

Native: **“Red Eagle”**

Birth: **Anchorage, AK**

INTRODUCTION



Tribe: **Iñupiat/Iñupiaq**

Ethnic: **Inuit (First Nation)**

Region: **Northwest AK**

Village: **Kotzebue**

INTRODUCTION



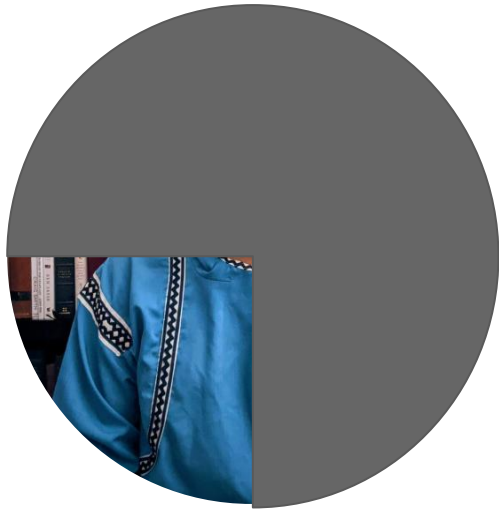
Tribe: **Sioux**

Clan: **Oglala**

Region: **Dakota's**

Note: **7 Council Fires**

INTRODUCTION



Tribe: **Navajo/Navaho**

Clan: **Bitterwater**

Region: **Four-Corners**

Note: **Diné**

INTRODUCTION



Tribe: **Tohono O'odham**

Region: **Southern AZ**

Village: **Gaga, Hickiwan**

Note: **Papago**

INTRODUCTION



14 ys: **Intercultural Sp.**

9 ys: **Tribal Liaison**

5 ys: **SHN Planner**

+50: **Tribal Gov.**

+100: **Reservations**

+150: **Tribes**

6-PART TRIBAL SERIES:



01	Tribal Etiquette & Ethics	<input type="checkbox"/>
02	Tribal Sovereignty & Government	<input type="checkbox"/>
03	Tribal Consultation	<input type="checkbox"/>
04	Tribal Lands	<input type="checkbox"/>
05	Tribal Resources & Mitigations	<input type="checkbox"/>
06	Tribal Confidentiality	<input type="checkbox"/>

DISCLAIMER #1



I am not speaking on behalf of all “the Tribes.”

This is a general introduction into Tribal consultation for the purposes of enhancing your provision of services to the local Tribal communities with the intention of improving Government-to-Government relationships.

DISCLAIMER #2



This is for training and general educational purposes only, and is **not intended to provide legal advice.**



California Indian Legal Services

Address: 324 F St, Eureka, CA 95501

Phone: (707) 443-8397

Website: <https://www.calindian.org/>

DISCLAIMER #3



“Results may vary.” It’s an Art not just Science.

These recommendations and guidance may be adjusted according to the individual's level of tribal culture, traditional customs, assimilation, cross-cultural expertise and experience.

DISCLAIMER #4



Not Being Political!

All facts, opinions, and experiences in this presentation is designed to be an aid in bridging the gap, in knowledge and understanding, and is not meant to be political in any way.

DISCLAIMER #5



10% of Content/Context

This presentation is an oversimplification and overview of SB-18 and AB-52 tribal consultation.

Does not include specifics on definitions, human remains, tribal cultural resources, mitigations, confidentiality, public comments, etc.

PRESENTATION PURPOSE



The primary purpose is to provide guidance and recommendations to non-Native entities developing or improving their Tribal Consultation Protocol (TCP). This presentation will briefly cover communication, coordination, cooperation, collaboration, and dispute resolution. Q&A will follow the presentation.

PRESENTATION OUTLINE



- 1. Introduction/Disclaimers (2-mins)**
- 2. Tribal Consultation Types (2-mins)**
- 3. AB-52 Process (2-mins)**
- 4. SB-18 Process (2-mins)**
- 5. AB-52 vs SB-18 (4-mins)**
- 6. Tribal Consultation Process (4-mins)**
- 7. Best Practices (4-mins)**

Tribal Consultation Types



2

TRIBAL CONSULTATION TYPES:



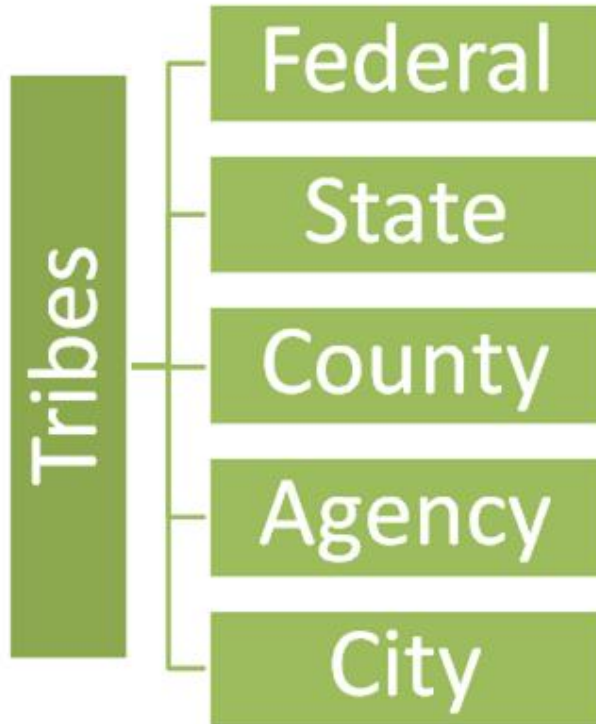
FORMAL	INFORMAL
Section 106	Outside of Formal
AB-52	As Agreed, Upon
SB-18	MOU/MOA

TRIBAL CONSULTATION TYPES:



GOV-2-GOV	STAFF-2-STAFF
Section 106 & SB 18	AB-52
Tribal Council Members	THPO/Cultural/Etc.
Designee	Designee

TRIBAL CONSULTATION TYPES:



GOV-2-GOV UNDERSTANDING

Tribes are Equals
(Not over/under)

AB-52 Process

3

AB-52 BACKGROUND



- Approved: **September 25, 2014**
- Effective: **July 1, 2015**
- AB-52: **Assembly Bill 52**
- Purpose: Include tribes in identifying and addressing potential adverse impacts to **Historical Resources** [PRC 5024.1(g)]; **Unique Archaeological Resources** [PRC 15064.5(g)]; and **Tribal Cultural Resources** [PRC 21074(a)]

AB-52 PROCESS



- **Step 1:** California Native American Tribe(s) requests to be on Agency's permanent Tribal notification list [PRC 21080.3.1(b)(1)].
- **Step 2:** Agency decides to Undertake Project or Determines Project Application is Complete
- **Step 3:** [Within 14 Days] Lead agency provides formal notice to the Tribal contact on the list [PRC 21080.3.1(d)].
 - Description of Project
 - Location
 - 30 Day Tribal response time

AB-52 PROCESS



- **Step 4:** [Within 30 Days] The Tribe writes the lead agency requesting consultation on the project [PRC 21080.3.1(b)(1)].
- **Step 5:** [Within 30 Days] Lead agency begins consultation with the Tribe [PRC 21080.3.1(b)].
- **Step 6:** Consultation ends by both parties:
 - Agree on mitigations [PRC 21082(a)]; or
 - Disagree (good faith/reasonable effort) [PRC 21080.3.2(b)(1)-(2), PRC 21080.3.1(b)(1)]
- **Step 7:** Release Environmental Document

SB-18 Process

4

SB-18 BACKGROUND



- Approved: **September 29, 2004**
- Effective: **March 1, 2005**
- SB-18: **Senate Bill 18**
- Purpose: Provide CNAT an opportunity **to participate in local land use decisions at an early planning stage**, for the purpose of protecting, or mitigating impacts to, cultural places.

SB-18 PROCESS



- **Step 1:** A local government decides to adopt or amend a GP/SP [GC 65352.3(a)(1)].
- **Step 2:** Local government send proposal information to 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)].
- **Step 3:** [Within 30 days] NAHC provides tribal contact information.

SB-18 PROCESS



- **Step 4:** Local government must contact tribe(s) identified by NAHC and notifies them of the opportunity to consult [GC 65353.2].
 - A clear statement of purpose
 - A description of the proposed General or Specific Plan, or amendment, the reason for the proposal, and the specific geographic areas affected
 - Detailed maps to accompany the description
 - Deadline date for the tribes to respond
 - Government representative(s) contact information
 - Contact information for project proponent/applicant, if applicable
- **Step 5:** Confirm by phone call/email/fax that it was received by tribe.

SB-18 PROCESS



- **Step 6:** [Within 90 days] Tribe(s) responds to local government indicating whether or not they want to consult [GC 65352(a)(2)].
- **Step 7:** Consultation begins, if requested by tribe.
- **Step 8:** Local government continues normal GP/SP adoption/amendment.
- **Step 9:** [45 days prior to adoption] Local government sends notification referral to tribe(s) [GC 65352(a)(8)].
- **Step 10:** [45 days prior to adoption] Tribe(s) are invited to comment period [GC 652(a)(8)].

SB-18 PROCESS



- **Step 11:** [10 days prior to adoption] Local government provides notice of hearing to tribe(s) [GC 65092].
- **Step 12:** Public hearing of board of supervisors/city council to take action on the GP/SP.
- **Step 13:** SB-18 Process is concluded.

AB-52 vs SB-18 Process

5

AB-52 vs SB 18 Consultation (1/3)



CATEGORIES	AB-52	SB-18
Agency	State/Local	Local (Cities/Counties)
Tribes	CNAT	CNAT
Applies	CEQA	GP/SP
Initiating Party	Tribes	Local Agency
Pro/Re-active	Proactive	Proactive

AB-52 vs SB-18 Consultation (2/3)



CATEGORIES	AB-52	SB-18
CNAT List	Local Agency	NAHC
Initiate	14 Days	Decision (GP/SP)
Response Window	30 Days	90 Days
Consultation	No Timeframe	No Timeframe
Noticing	N/A	45 & 10 Days -PN

AB-52 vs SB-18 Consultation (3/3)



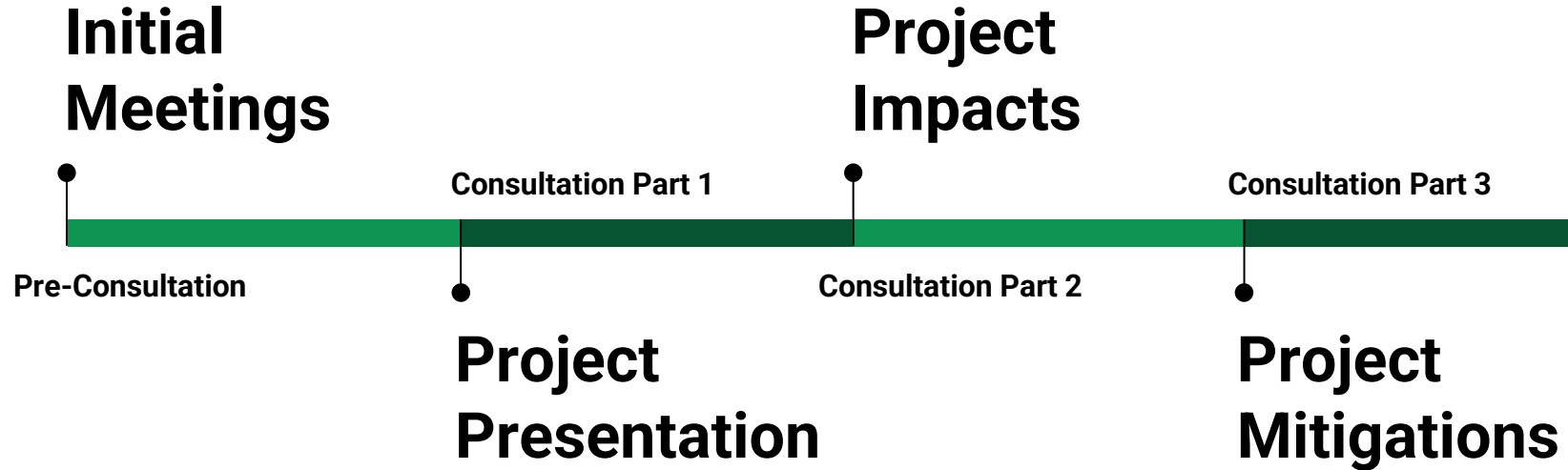
CATEGORIES	AB-52	SB-18
Discussion Area	Project Area	Planning Area
Consultation Type	Staff-2-Staff	Gov-2-Gov
Purpose	CR/TCR	Policy
Outcome	Potential Mitigations	Potential Alternatives

Tribal Consultation Process

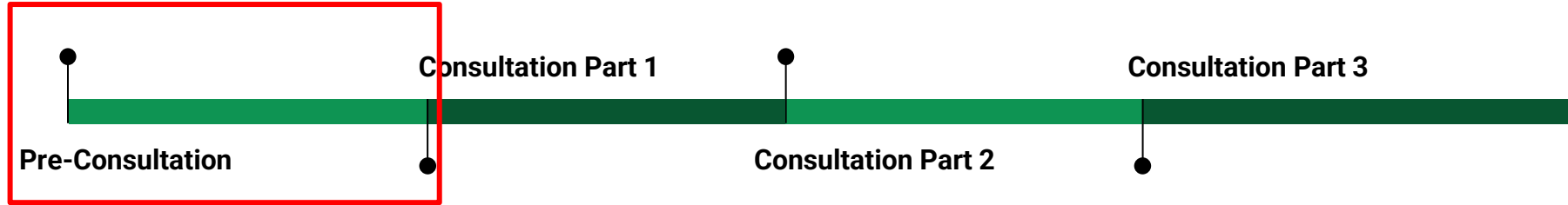


6

TRIBAL CONSULTATION PROCESS:

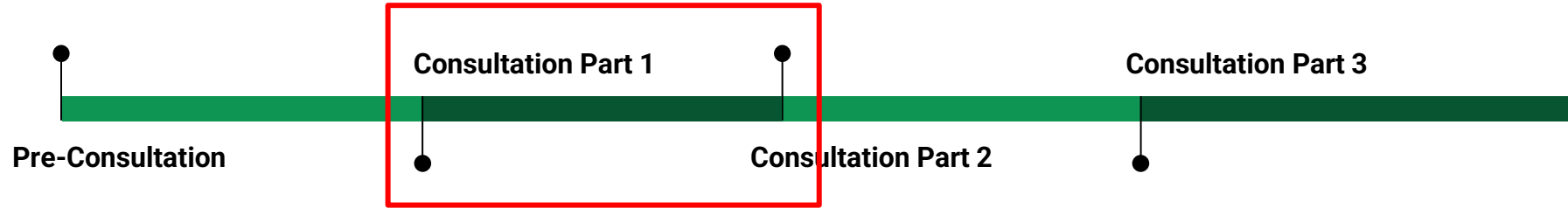


TRIBAL PRE-CONSULTATION:



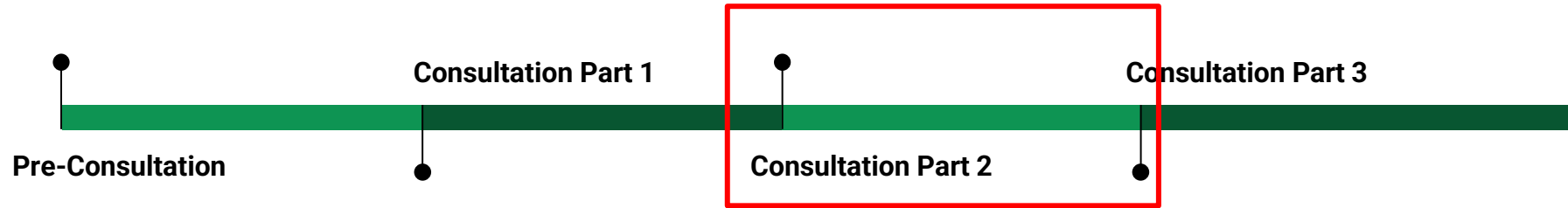
- **Initial Meeting(s) (Pre-consultation meetings)**
 - Timing / Financing / Location
 - Meeting format/process (Formal/Field/Informal (between Staff))

TRIBAL CONSULTATION PART 1:



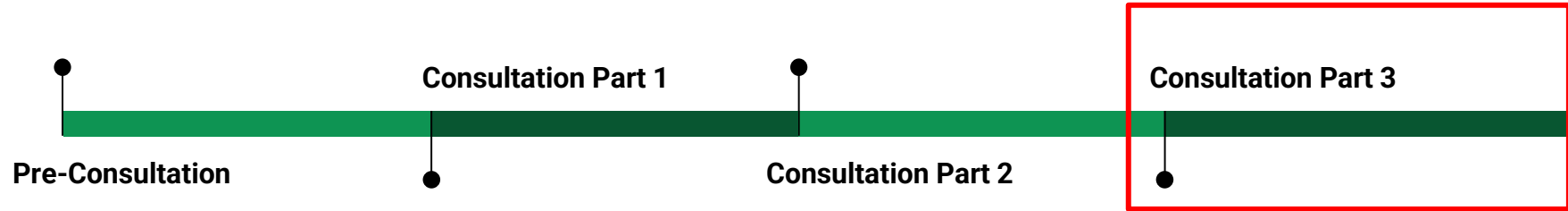
- **(Part 1) Lead Agency Meeting(s)**
 - Review Draft Scope
 - Maps
 - Summary Description
 - Potential Timeline

TRIBAL CONSULTATION PART 2:



- **(Part 2) Tribal Impact(s) Meeting(s)**
- Cultural Resources / Tribal Cultural Resources
- Sacred Sites / Historic Properties
- Trust Assets / Contemporary practices Trust Assets
People under Tribal jurisdiction

TRIBAL CONSULTATION PART 3:



- **(Part 3) Mutual Mitigation(s) Meeting(s)**
 - Discuss
 - Agree
- Standard/Creative Mitigations/Alternatives

TRIBAL CONSULTATION OUTCOME:



- The parties agree to measures to mitigate or avoid a significant effect, is a significant effect exists, on a tribal cultural resources.
- A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.

TRIBAL CONSULTATION PROCESS:



**Tribal
Consultation
Best Practices**

7

TCP BEST PRACTICES:



- Communication:
 - **Early effort**
 - (Concept/Proposed/Official)
 - **Consistent contact people**
 - **Multiple contacts (cc'd)**
 - **Agency Tribal Liaison**
 - **Fostering a relationship with Tribal staff**

TCP BEST PRACTICES:



- Meetings:
 - **Multiple Venues**
 - (Agency/Field/Tribe/Third Party)
 - **Alternating Facilitators**
 - (Agency/Tribe/Third Party)
 - **Participation in developing meeting agendas**
 - **Open-ended flexible agenda**

TCP BEST PRACTICES:



- Decisions
 - Get to know your elected decisionmakers.
 - Support of all levels of Tribal Government.
- Resource limitations for both governments.
- Know ordinances, General Plans, Goals and Policies.
- Build creative agreements, protocol, participation arrangements, ordinances, and SOPs.

Conflict Management:



1. Identify what is being said
2. Learn more about true needs
3. Ask clarifying questions
4. Brainstorm possible solutions
5. Discuss solution affects
6. Agree / implement / re-evaluate

Questions & Answers

8

QUESTIONS?



Ethan "Red Eagle" Lawton

elawton@shn-engr.com

(707) 822-5785 ext. 210

THANK YOU!



Ethan "Red Eagle" Lawton

elawton@shn-engr.com

(707) 822-5785 ext. 210