



1



2



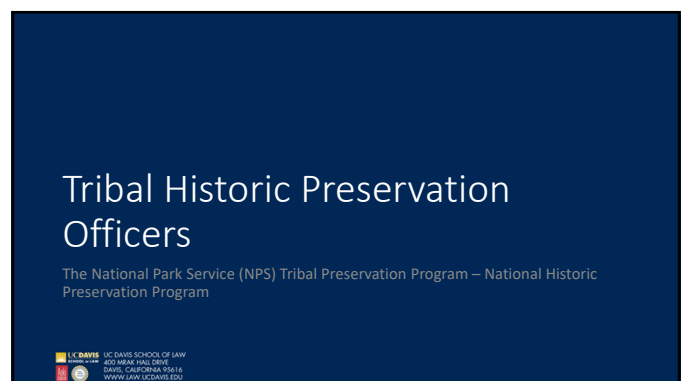
3



4



5



6

Tribal Historic Preservation Officers

- The National Park Service (NPS) Administers:
- Tribal Preservation Program assists Indian tribes in preserving their historic properties and cultural traditions through the designation of Tribal Historic Preservation Officers (THPO).

7

Funding

- Annual funding available through the Historic Preservation Fund (HPF)
- There are the formula grants to the Tribal Historic Preservation Offices, and
- Competitive Tribal Project Grants

8

National Historic Preservation Program - Tribes

- (54 U.S.C. § 302701)
- a) Establishment of program to assist Indian tribes in preserving their historic property.
- b) Foster communication and cooperation between Indian tribes and State Historic Preservation Officers
- c) Tribal values are considered in program development to the extent feasible
- d) The scope of tribal programs may vary as determined by each Indian tribe's chief governing authority.
- e) Consult with tribes concerning the program under subsection (a).

9

Assuming the Functions of the State

- (54 U.S.C. § 302702)
- An Indian tribe may assume all or any part of the functions of a State Historic Preservation Officer in accordance with sections 302302 and 302303 of this title, with respect to tribal land, as those responsibilities may be modified for tribal programs through regulations issued by the Secretary

10

Functions of a State Historic Preservation Officer (1/3)

- (54 U.S.C. § 302303 (b))
- Particular Responsibilities.—It shall be the responsibility of the State Historic Preservation Officer to—
- 1) In cooperation with Federal and State agencies, local governments, and private organizations and individuals, survey and maintain inventories of the historic property;
- 2) Identify and nominate eligible property to the National Register and otherwise administer applications for listing historic property on the National Register;

11

Functions of a State Historic Preservation Officer (2/3)

- (54 U.S.C. § 302303 (b))
- 3) Prepare and implement a comprehensive statewide historic preservation plan;
- 4) Administer the State program of Federal assistance for historic preservation within the State;
- 5) Advise and assist Federal and State agencies and local governments in carrying out their historic preservation responsibilities;
- 6) Cooperate with the Federal and State agencies, local governments, private organizations and individuals to ensure that historic property is taken into consideration at all levels of planning and development;

12

Functions of a State Historic Preservation Officer (3/3)

- (54 U.S.C. § 302303 (b))
- 7) Provide public information, education, and training and technical assistance in historic preservation;
- 8) Assist local governments in the development of local historic preservation programs and in becoming certified to receive grant funds;
- 9) Consult with appropriate Federal agencies on:
 - A. Federal undertakings that may affect historic property; and
 - B. The content and sufficiency of any plans developed to protect, manage, reduce or mitigate harm to that property; and
- 10) Advise and assist in the evaluation of proposals for rehabilitation projects that may qualify for Federal assistance.

13

Conservation Easements

CA Civil Code, §§ 815 – 816: Dealing with Real Property

14

Real Property - Explained

- The term “real property” refers to land
- Includes all things growing on it or erected on it that can not be detached without injury to the land
- This is different from other things that can also be owned under the law
- Conservation easements deal in real property, and restrictions or requirements for that real property

15

Open Space

- (Gov. Code, § 65560, subd. (b))
- Open space is defined as any parcel or area of land or water that is essentially unimproved and devoted to open-space use

16

CA Policy for Open-Space Conservation

- (Civ. Code, § 815)
- The Legislature finds and declares that the preservation of land in its natural, scenic, agricultural, historical, forested, or open-space condition is among the most important environmental assets of California.
- The Legislature further finds and declares it to be the public policy and in the public interest of this state to encourage the voluntary conveyance of conservation easements to qualified nonprofit organizations.

17

What is a Conservation Easement?

- (Civ. Code, § 815.1)
- “Conservation easement” means any limitation in a deed, will, or other instrument in the form of an easement, restriction, covenant, or condition,
 - ✓ Which is or has been executed by or on behalf of the owner of the land, and
 - ✓ Is binding upon successive owners of such land, and
 - ✓ The purpose is to retain land predominantly in its natural, scenic, historical, agricultural, forested, or open-space condition.

18

Characteristics of a Conservation Easement

- (Civ. Code, § 815.2)
- A conservation easement:
 - a) Is an interest in real property voluntarily created and freely transferable for the purposes of maintaining land as open space.
 - b) Shall be perpetual in duration, meaning it lasts forever, unless it is terminated.
 - c) Shall not be deemed personal in nature and shall constitute an interest in real property even though it may be negative in character.
 - d) The specifics of a conservation easement shall be those granted or specified in the instrument creating or transferring the easement.



19

Recording the Conservation Easement

- (Civ. Code, § 815.5)
- Conservation easements shall be recorded in the office of the county recorder of the county where the land is situated, in whole or in part, and such instruments shall be subject in all respects to the recording laws.



20

Tribes Can Hold Conservation Easements

- (Civ. Code, § 815.3 (c))
- Only the following entities or organizations may acquire and hold conservation easements: ...
- A federally recognized California Native American tribe or a nonfederally recognized California Native American tribe that is on the contact list maintained by the Native American Heritage Commission to protect a California Native American prehistoric, archaeological, cultural, spiritual, or ceremonial place, if the conservation easement is voluntarily conveyed.



21

Enforcement – Injunctions and Damages

- (Civ. Code, § 815.7)
- a) Parties to the easement can enforce conservation easements, even if the enforcement language in the easement is unclear.
- b) Actual or threatened injury or threatened violation of the easement terms may be prohibited or restrained, by injunctive relief granted by any court of competent jurisdiction in a proceeding initiated by the grantor or by the owner of the easement.
- c) Additionally, the holder of a conservation easement shall be entitled to recover money damages including: the cost of restoration, the loss of scenic, aesthetic, or environmental value.
- d) The court may award litigation costs and attorneys fees.



22

Conservation Easements – Lower Property Tax

- Generally, any restrictions on “real property”, land, will lower the value of that land for the calculation of the property tax that will be due
- This is an incentive for property owners to grant these easements that restrict land use to conservation purposes



23

Land Value for Property Tax Assessment

- (Rev. & Tax. Code, § 402.1, subd. (a) (8))
- (a) In the assessment of the value of the land for property tax purposes, the assessor shall consider the effect on value of any enforceable restrictions to which the use of the land may be subjected.
- These restrictions shall include, but are not limited to, all of the following...including...
- A recorded conservation easement, as described in Section 815.1 of the Civil Code has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use.



24

Tribal Consultation on Development Projects

Mitigation of significant effects on Tribal Cultural Resources – See Unit 3

25

Consultation Required – General Planning

- (Gov. Code, § 65352.3)
- Prior to the adoption or any amendment of a city or county's general plan, the city or county shall conduct consultations with California Native American tribes that are on the contact list maintained by the Native American Heritage Commission for the purpose of preserving or mitigating impacts to tribal cultural resources
- (This process is covered in depth in Unit 3)

26

Consultation Required – CEQA Review Process

- (Pub. Resources Code, § 21080.3.1)
- Declares that California Native American tribes traditionally and culturally affiliated with a geographic area may have expertise concerning their tribal cultural resources
- Requires consultation prior to the release of a CEQA negative declaration, mitigated negative declaration, or environmental impact report for a project
- Sets requirements and timelines for initiating the consultation process.

27

EIR – The Heart of the CEQA Process

- The EIR is used to determine if a project is approved or denied.
- It must go through public review and, if tribal cultural resources are involved, tribal consultation before being certified as complete.
- Most consultation will revolve around what will be included in the EIR.
- If the mitigation measures are included, it is important to understand what they are and ensure that they are being followed.

28

Designated Lead Tribal Contact Person

- (Pub. Resources Code, § 21080.3.1)
- Under CEQA - When responding to the lead agency, the tribe shall designate a lead contact person
- If the tribe does not designate a lead contact person, or designates multiple lead contact people, the lead agency shall defer to the individual listed on the contact list maintained by the Native American Heritage Commission

29

Cultural Monitors

To monitor and manage mitigation plans – See Unit 4

30

CA Policy on Mitigating Environmental Effects

- It is CA policy that public agencies should not undertake or approve project without considering and attempting to mitigate significant environmental effects. (Pub. Resources Code, § 21002).
- The environmental review process in the California Environmental Quality Act (CEQA) is intended to ensure public agencies follow this policy and provide for transparency and participation to the general public.

31

CA Policy on Tribal Consultation

- Projects that may cause a substantial adverse change in the significance of a tribal cultural resource may have a significant effect on the environment. (Pub. Resource Code, § 21084.2)
- For public agencies to determine if projects have a significant effect on the environment based on a potential change in a tribal cultural resource, they must consider information regarding the resource and the change that the project may cause.
- CA policy recognizes that “California Native American tribes ... may have expertise concerning their tribal cultural resources.” (Pub. Resource Code, § 21080.3.1, subd. (a))
- The Tribal Consultation process is the way public agencies access and consider tribal expertise.

32

Consultation on Mitigation Measures

- (Pub. Resources Code, § 21080.3.2, subd. (a))
- (a) As a part of the consultation pursuant to Section 21080.3.1, the parties may propose mitigation measures, including, but not limited to, those recommended in Section 21084.3, capable of avoiding or substantially lessening potential significant impacts to a tribal cultural resource or alternatives that would avoid significant impacts to a tribal cultural resource.
- The NAHC has form letters on its website for tribes to use to request consultation.

33

Mitigation Measures & Monitoring

- (Pub. Resources Code, § 21082.3, subd. (a)).
- If mitigation measures agreed upon in the consultation process are determined to avoid or lessen the impacts to tribal cultural resources under the EIR report requirements,
- The measures shall be recommended for inclusion in the environmental document (EIR) and,
- In an adopted mitigation monitoring and reporting program.
- The mitigation measures are fully enforceable.

34

Cultural Monitoring

- (Pub. Resources Code, § 21082.3, subd. (a)).
- When mitigation measures are indicated an “adopted mitigation monitoring and reporting program” may be included in the EIR
- Use the consultation process to agree on and “adopt” a program to provide for the monitoring and reporting of the mitigation measures of the project.
- This process has come to be known as “cultural monitoring”

35

Discovery of Human Remains

Participating in the process required when Native American human remains are discovered – See Unit 5

36

Tribal Consultation - Required

- (Pub. Resources Code, § 5097.98, subds. (b) & (c))
- Tribal Consultation is legally required between the landowner and the descendants whenever human remains that have been determined by the coroner to be Native American are discovered.

37

Tribal Consultation on Preferred Treatment

- (Pub. Resources Code, § 5097.98, subds. (b) & (c))
- Tribal Consultation may include:
 - A. The nondestructive removal and analysis of the human remains and burial items.
 - B. Preservation of the human remains and associated items in place.
 - C. Relinquishment of the human remains and associated items to the descendants for treatment.
 - D. Other culturally appropriate treatment.
- The parties may also agree to extend discussions, considering the possibility that additional Native American human remains, are located in the project area. (See Pub. Resources Code § 5097.98, subd. (f))

38

Repatriation Process Participation

Request and accept human remains and cultural items – see Unit 7

39

Federal Repatriation Policy

- (NAGPRA, 25 U.S.C. § 3005)
- Subsection (a): The language throughout this section states that museums receiving repatriation requests for remains and cultural items “shall expeditiously return” such remains and cultural items.
- Subsection (c): This subsection makes it clear that there is a presumption that evidence submitted by relatives and tribes showing the museum does not have the right of possession proves this claim and shifts the burden to the Museum to show they have the right of possession.

40

California Repatriation Policy

- (Pub. Resources Code, § 5097.991)
- Enacted in 1991 by AB 12
- Added a section to the CA Public Resources Code (§ 5097.991)
- “It is the policy of the state that Native American remains and associated grave artifacts shall be repatriated.”
- This policy statement remains in the law today, unamended

41

Inventory and Summary of Collection

- (NAGPRA, 25 U.S.C. §§ 3003 & 3004; Health & Saf. Code, § 8013)
- All museums are required to create:
 - An inventory (simple itemized list) of human remains and associated funerary objects, and
 - A summary (instead of object by object inventory) of unassociated funerary objects, sacred objects and objects of cultural patrimony of their collections containing Native American human remains and cultural items.

42

Consultation

- (Health & Saf. Code, § 8013, subds. (b)(1)(E)(2) and (c))
- Museums must engage in consultation with tribes as part of the completion of the inventory and summary
- While not required, participating in this process may create better repatriation claims for tribe and a smoother process

43

Claims Process – Tribally Initiated

- All repatriation efforts begin with a claim or request from a tribe (or lineal descendant)
- Museums and agencies can not just give items back
- There is a process, and it starts with a representative from the tribe making a claim or request

44

Work with the NAHC

Collaborate with the NAHC on land affiliation determinations, mediations and litigations

45

NAHC - Background

- (Pub. Resources Code, § § 5097.91, 5097.92, 5097.93)
- NAHC is a state government commission with 9 members
- At least five of the nine members shall be elders, traditional people, or spiritual leaders of California Native American tribes, nominated by Native American organizations, tribes, or groups within the state
- NAHC has an executive Director (and other staff)
- All appointed by the governor
- The commission members are not paid for their time

46

Collaborate with the NAHC

- (Pub. Resources Code, § 5097.94, subd. (n))
- The NAHC has many powers and duties
- There are several areas in the law that provide for tribes to provide input to the NAHC and request assistance from the NAHC
- These are dedicated members of our community, please support them
- They welcome collaboration with tribes and museums in the name of tribal cultural resources protection and preservation

47

NAHC Repatriation Compliance Assistance

- (Pub. Resources Code, § 5097.94, subds. (n)(1))
- Tribes can request assistance with repatriation compliance by:
 - ✓ Mediating disputes relating to the disposition of human remains and cultural items
 - ✓ Making decisions regarding financial assistance for specific repatriation activities
 - ✓ Recommending to the legislature the dedication of state lands for the purposes of reinterment of human remains and cultural items

48

NAHC Repatriation Enforcement Assistance

- (Pub. Resources Code, § 5097.94, subds. (n)(1))
- Tribes can request assistance with repatriation enforcement by:
 - ✓ Ordering the repatriation of human remains and cultural items
 - ✓ Referring any non-compliance with federal NAGPRA to the U.S. Attorney General and the Secretary of the Interior
 - ✓ Imposing civil penalties against any museum or agency determined to have violated the act (Health & Saf. Code § 8029).

49

NAHC List of Tribes

- (Health & Saf. Code, § 8013)
- NAHC is required to maintain a list of Federally recognized and Non-Federally Recognized Native American Tribes in California and their corresponding aboriginal territories
- This list is critical in repatriation claims
- Work with the NAHC to assist them in keeping the list up to date and accurate with respect to your tribal territories
- When the NAHC requests input from your tribe, try to respond if resources permit

50

Statutory Program Funding

Funds and Grants available to Tribes for Environmental Preservation in the California Public Resources Code

51

Fire Prevention Activities Grants

- (Pub. Resources Code, § 4124.5, subd. (a))
- The department of Forestry and Fire Protection shall establish a local assistance grant program for fire prevention activities in California.
- Groups eligible for grants shall include, but are not limited to, local agencies, resource conservation districts, fire safe councils, the California Conservation Corps, certified local conservation corps, University of California Cooperative Extension, [Native American tribes](#), and qualified nonprofit organizations.
- The department may establish a cost-share requirement for one or more categories of projects.

52

Department of Forestry Burning Agreements

- (Pub. Resources Code, § 4475)
- The director of the department of Forestry and Fire Protection may enter into an agreement, including a grant agreement, for prescribed burning or other hazardous fuel reduction with a [Native American Tribe](#) that is consistent with this chapter and the regulations of the board with any person to conduct prescribed burning operations and joint prescribed burning operations that serve the public interest and are beneficial to the state.

53

Timber Regulation and Forest Restoration Fund Grants

- (Pub. Resources Code, § 4629.6, subd. (h))
- The department may provide grants to local agencies responsible for fire protection, qualified nonprofits, [recognized tribes](#), local and state governments, and resources conservation districts...to reduce the costs of wildland fire suppression, reduce greenhouse gas emissions, promote adaptation of forested landscapes to changing climate, improve forest health, and protect homes and communities.
- (Pub. Resources Code, § 4629.3, subd. (b) (8))
- "Recognized tribe" means those entities recognized as eligible to receive service from the United States Bureau of Indian Affairs, as listed in the Federal Register, and those tribes designated in the list of nonrecognized tribes for California by the Native American Heritage Commission.

54

Forest Resources Improvement Grants

- (Pub. Resources Code, § 4799.05, subd. (a) (1))
- The director of the department of Forestry and Fire Protection may provide grants to, or enter into contracts or other cooperative agreements with, entities, including, but not limited to, private or nongovernmental entities, Native American tribes, or local, state, and federal public agencies, for the implementation and administration of projects and programs to improve forest health and reduce greenhouse gas emissions.

55

Off-Highway Motor Vehicle Recreation

- (Pub. Resources Code, § 5090.50, subds. (a) & (b) (2) (E))
- The Division of Off-Highway Motor Vehicle Recreation shall develop and implement a grant and cooperative agreement program to support the planning, acquisition, development, maintenance, administration, operation, enforcement, restoration, and conservation of trails, trailheads, areas, and other facilities associated with the use of off-highway motor vehicles, and programs involving off-highway motor vehicle safety or education.
- Eligible applicants include local, state, and federal agencies, federally or state recognized Native American tribes, educational institutions, certified community conservation corps, resource conservation districts, and other eligible nonprofit organizations.

56

California Watershed Protection and Restoration Act

- (Pub. Resources Code, § 5808.1)
- Efforts to conserve, maintain, restore, protect, enhance, and utilize California's rivers and streams for habitat, recreation, water supply, public health, economic development, and other purposes have a greater likelihood of being successful when governments, including federal and tribal governments, work in partnership with citizens to combine community resources, local initiative, and state agency support.

57

Sacramento-San Joaquin Delta Conservancy

- (Pub. Resources Code, § 32378)
- (a) The conservancy may expend funds and award grants and loans to facilitate collaborative planning efforts and to develop projects and programs that are designed to further the purposes of this division.
- (b) The conservancy may provide and make available technical information, expertise, and other nonfinancial assistance to public agencies, nonprofit organizations, and tribal organizations, to support program and project development and implementation.

58

San Diego River Conservancy Grants

- (Pub. Resources Code, § 32649, subd. (a))
- (a) The San Diego River Conservancy may award grants to any local public agency, state agency, joint powers agency, special district, tribal nation, and nonprofit organization consistent with the purposes of this division.
- (Pub. Resources Code § 32632)
- (h) "Tribal nation" means a federally recognized tribe traditionally and culturally affiliated with the County of San Diego.

59

Sierra Nevada Conservancy Grants

- (Pub. Resources Code, § 33343, subd. (a))
- The conservancy may make grants or loans to public agencies, nonprofit organizations, and tribal organizations in order to carry out the purposes of this division, including grants or loans provided to acquire an interest in real property, including a fee interest in that property.
- Grant or loan funds shall be disbursed to a recipient entity only after the entity has entered into an agreement with the conservancy, on the terms and conditions specified by the conservancy.
- After approving a grant, the conservancy may assist the grantee in carrying out the purposes of the grant.

60

Farm and Ranch Solid Waste Cleanup and Abatement Grant Program

- (Pub. Resources Code, § 48101, subd. (a))
- The grant program shall be established to make grants available to public entities and Native American tribes for the purposes of cleaning up and abating the effects of illegally disposed solid waste in an amount not to exceed the sum of two hundred thousand dollars (\$200,000) per year for any single public entity or Native American tribe, and not to exceed fifty thousand dollars (\$50,000) for any single cleanup or abatement project.
- The board shall give priority to the provision of grants to public entities and Native American tribes that have established innovative and cost-effective programs designed to discourage the illegal disposal of solid waste and to encourage the proper disposal of solid waste in permitted solid waste disposal facilities.



61

Environmental Justice Grants

- (Pub. Resources Code, § 71116, subd. (a))
- The Environmental Justice Small Grant Program is hereby established under the jurisdiction of the California Environmental Protection Agency.
- Both of the following are eligible to receive moneys from the fund:
 - (A) A nonprofit entity.
 - (B) A federally recognized tribal government.



62

Transformative Climate Communities Program – Strategic Growth Council Grants

- (Pub. Resources Code, § 75241 subd. (a))
- The Strategic Growth Council shall award competitive grants to eligible entities through an application process.
- An eligible entity, including, but not limited to ... or a tribal government, shall demonstrate multistakeholder partnerships with local agencies, community-based organizations, labor groups, workforce investment boards, and other stakeholders, as appropriate.
- The Strategic Growth Council shall award grants for projects that demonstrate community engagement in all phases.



63

California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Act of 2018

- (Pub. Resources Code, § 80001)
- Funds public projects to preserve and enhance open areas, parks, recreation areas, and outdoor infrastructure.
- The public agencies that receive funds pursuant to this division will consider a range of actions that include, but are not limited to, the following:
 - Conducting active outreach to diverse populations, particularly minority, low-income, and disabled populations and tribal communities, to increase awareness within those communities and the public generally about specific programs and opportunities.
 - Creating new partnerships with state, local, tribal, private, and nonprofit organizations to expand access for diverse populations.
 - Identifying and implementing improvements to existing programs to increase visitation and access by diverse populations, particularly minority, low-income, and disabled populations and tribal communities.



64

Statutory Program Funding

Funds and Grants available to Tribes in other the California Codes



65

Drought Relief – Water Code

- (Wat. Code, § 13198.4)
- Grant funds and direct expenditures to or on behalf of affected public and private entities to provide interim or immediate relief.
- Awards are eligible to go to: to public agencies, nonprofit organizations, public utilities, mobilehome parks, mutual water companies, farmers and ranchers, federally recognized California Native American tribes, nonfederally recognized Native American tribes on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004 (SB 18), administrators, and groundwater sustainability agencies that have demonstrated cashflow problems according to the satisfaction of the implementing agency.



66

Regional Early Action Planning Grants Program of 2021 – Health and Safety Code

- (Health and Saf. Code, § 50515.08)
- Provides funding for transformative planning and implementation activities.
- Eligible entities within the counties listed or tribal entities may apply directly to the department for funds pursuant to the program.