

Regional Planning Tribal Consultation Procedures (for projects seeking approval under SB 35)

1. Start from a place of respect.
 - A. Regional Planning staff shall give tribal representatives the same professional courtesy they give to other agency representatives (state agency, municipalities, etc.).
 - B. Regional Planning staff shall respect tribal oral tradition by welcoming storytelling as a way of establishing the importance of a proposed project location. Tribal representatives may offer reasons that a particular location would be more likely to contain tribal cultural resources, or they may discuss why the subject location is part of a cultural landscape that is important to the tribe.
2. Use the Regional Planning designated representative from your respective group. This representative will be the primary point of contact for tribal consultations.
 - A. Current Planning:
 - LDCC/Field and Land Divisions: Josh Huntington
 - Permits: Samuel Dea
 - B. Advance Planning: Alejandrina Baldwin

For projects seeking streamlined approval under SB 35, check GIS-NET to see if any tribes have requested formal project notification for the project site location that is traditionally and culturally affiliated with the California Native American tribes that have requested notice.

The assigned planner must use the SB 35 Tribal Cultural Resources Compliance Checklist to document key steps as part of the administrative record, throughout the process.

3. Complete the compliance process as follows:
 - A. Request a Sacred Lands file search from the California Native American Heritage Commission (NAHC).
 - B. Complete and submit the [Cal State Fullerton, Quick Check Form](#) and [Cal State Fullerton, Billing Form](#) to the South Central Coastal Information Center of California State University Fullerton (SCCIC) if grading is proposed.
 - C. Direct the applicant to fill out an **SB 35 Preliminary Application**. If the applicant discloses in Section C.2.b of the form that the site contains a tribal cultural resource that is on a national, state, tribal, or local historic register list, the project is not eligible for streamlined ministerial review under SB 35.
 - D. Send the **SB 35 Tribal Notification of Intent to Submit Letter** to the tribe(s) within 30 calendar days of acceptance of the complete SB 35 Preliminary Application.
 - E. If the tribe submits a written request for consultation within 30 calendar days of receipt of project notification, then place a follow-up call to the tribe to schedule a consultation meeting/call with the date and time that is acceptable to the tribe,

planner, and the Regional Planning representative. DRP must initiate the consultation process within 30 days of receiving the request for consultation.

- F. For all projects requiring consultation, both the Regional Planning representative and the planner should participate in consultation meeting(s) with the tribe. The project applicant and the applicant's consultants may also participate with the tribe's approval. If the applicant does not participate in initial discussions with the tribe, and it becomes evident that an agreement is needed on mitigation measures, staff should expressly request that the applicant be included in subsequent consultation meetings, since the applicant is an essential party to any agreement that is reached.
- G. If more than one tribe requests a consultation, then more than one tribe can attend the same consultation, or the tribes can request a separate consultation.
- H. Participants in the scoping consultation must observe the confidentiality requirements in Sections 6254(r) and 6254.10 of the Government Code, Section 21082.3(c) of the Public Resources Code, Section 15120(d) of the California Code of Regulations, and any additional confidentiality standards adopted by the California Native American tribe(s) participating in the scoping consultation.
- I. The discussion may include the identification and significance of tribal cultural resource, the project's impacts on those resources, and the recommended methods, measures, and conditions to avoid or address impacts to tribal cultural resources that are or may be present. Additional meeting(s) may be scheduled, as needed, to discuss any further issues that have not been resolved. The consultation meeting(s) may be done in person or by conference call.
- J. Prepare a meeting agenda and assign a minutes taker (Regional Planning representative or planner) at each meeting unless there is consensus to audio record the call/meeting.
- K. Within four business days of the consultation meeting, the Regional Planning representative will send the draft minutes that summarize key points from the meeting to the tribe to provide them with an opportunity for any clarification within 10 calendar days of receipt. Staff will need to follow up with tribal representative regarding the minutes as necessary if they do not respond.
- L. Within two weeks after the consultation meeting, the Regional Planning representative and planner will review and incorporate the tribe's comments as applicable and the Regional Planning representative will send the tribe the final meeting minutes.
- M. Within one week of finalizing the minutes, the planner prepares the proposed methods, measures, and conditions to avoid or address impacts to tribal cultural resources that are or may be present, in consultation with the Regional Planning representative for consensus. If additional information or study is needed to complete the methods, measures and conditions, notify the tribe and provide an estimated completion date if possible. A follow up meeting or call can be scheduled with the tribe if necessary, to reach consensus with the tribe.
- N. Once cleared, the Regional Planning representative emails the proposed methods, measures and conditions to the tribe and:

- Asks for the tribe's agreement that the methods, measures and conditions would avoid or address impacts to tribal cultural resources that are or may be present.
- O. If Regional Planning agrees to modify any methods, measures or conditions per the tribe's comments, the Regional Planning representative will share the revised methods, measures or conditions with the tribe for their concurrence.
- P. Even if not present for the scoping consultation, the applicant must review, approve, and consent to the methods, measures or conditions. If the applicant does not do this, the application is not eligible for streamlined approval.
- Q. The agreed-upon methods, measures or conditions for tribal cultural resource treatment will constitute an enforceable agreement between the California Native American tribe, DRP, and the applicant.
- R. The enforceable agreement is a comprehensive, stand-alone agreement that is enforceable by its own terms and provisions.
- S. The notes of approval for the project can reference the enforceable agreement, and the agreement can be attached to the approval.
- T. The applicant must record a covenant for the enforceable agreement when the project is approved under the streamlined ministerial review. Use the "Tribal Resource Preservation" template language and attach the enforceable agreement.
- U. Complete the SB 35 Tribal Cultural Resources Compliance Checklist for the file to document the compliance process and retain a copy of any meeting agenda(s) and minutes along with relevant correspondences for the administrative record. Do not include any confidential information regarding cultural resources into the administrative records.