



AB 168 – Tribal Cultural Resources

SUMMARY

AB 168 ensures that “tribal cultural resources,” which are sometimes referred to as “sacred sites,” will not be sacrificed under streamlined housing development in our goals to create more housing in California.

BACKGROUND

California is home to over 700,000 people of Native American/Alaska Native heritage, the most of any state in the nation. There are 109 federally recognized tribes in California, and nearly 100 separate reservations or Rancherias. Many of these tribes have lived on the land since before recorded history and have deep connections to the areas they inhabit.

Historically, the US government and the California state government have not respected Native American tribal sovereignty, which is the idea that indigenous tribes have inherent authority to govern themselves within the border of the United States. Tribes have sued government entities, held protests, and garnered media attention when unwanted development has encroached on their land or sacred sites.

In recent years, California has made some progress toward protecting and respecting tribal cultural resources. One major step was the passage of AB 52 (Gatto) in 2014, which requires a consultation process with a California Native American tribe, as requested, as part of the California Environmental Quality Act (CEQA). Exemptions, consultations, and protections are now weaved into various California laws and allow Native Americans the opportunity to safeguard their tribal cultural resources.

PROBLEM

In 2017, SB 35 (Wiener), Chapter 366, fast-tracked approval processes for housing projects. Under existing law, certain land is exempted from this streamlined development process, including historic structures, wetlands, and hazardous waste sites.

However, tribal cultural resources were not included in the original bill’s list of exemptions, and therefore, are not protected. There is also no requirement to consult with California Native American tribes as part of the streamlined housing application, leaving tribes out of the conversation on projects that may impact their tribal cultural resources. Often times, this makes litigation the de facto way for tribes to express their concerns on these projects.

Tribal cultural resources are irreplaceable sites, features,

places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe. Sacred sites may be burial grounds, important archaeological areas, or religious objects. These lands must be protected by adding a consultation process and exemption to this new law.

THIS BILL

AB 168 (Aguiar-Curry) was introduced in 2019 in order to retain the tribal government role in consulting on and protecting tribal cultural resources in a manner consistent with existing law. In recognition of the housing crisis, tribes have constructed a proposal which respects tribal sovereignty while attempting to allow projects to potentially avail themselves of housing streamlining, even though those projects may impact tribal cultural resources.

This bill adds tribal cultural resources (as defined in Section 21074 of the Public Resources Code) to the list of exemptions that were originally included in SB 35, and requires an AB 52-style consultation process before the submission of an SB 35 application.

AB 168 includes documentation requirements to preserve a project applicant’s right to challenge a local government decision on a housing streamlining application. It also adds TCRs to existing local government general plan reporting requirements to support early planning to identify and protect these resources up front before development applications are submitted. Projects that do not impact TCRs, or for which an agreement can be reached with an impacted tribe, would still be able to utilize the SB 35 process. Only in cases where a TCR is on a registry, or where no agreement with the tribe can be reached, would a project not be eligible for housing streamlining.

This bill is consistent with California laws, which aim to protect tribal lands and promote consultation between the State and various Tribal Nations. Without AB 168, tribal sacred sites may be subject to unwanted destruction and desecration in favor of housing developments.

SUPPORT

- Agua Caliente Band of Cahuilla Indians
- Augustine Band of Cahuilla Indians
- California Nations Indian Gaming Association
- Chemehuevi Indian Tribe
- Barona Band of Mission Indians
- Bear River Band of the Rohnerville Rancheria
- Bishop Paiute Tribe



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Blue Lake Rancheria
Buena Vista Rancheria
Cahuilla Band of Indians
Chicken Ranch Rancheria
Coyote Valley Band of Pomo Indians
Dry Creek Rancheria Band of Mission Indians
Elk Valley Rancheria
Enterprise Rancheria
Federated Indians of Graton Rancheria
Greenville Rancheria
Habematolel Pomo of Upper Lake
Ione Band of Miwok Indians
Laytonville Rancheria
Mooretown Rancheria
Morongo Band of Mission Indians
North Fork Rancheria
Pechanga Band of Luiseño Indians
Picayune Rancheria of the Chukchansi Indians
Pit River Tribe
Redding Rancheria
Rincon Band of Luiseño Indians
San Manuel Band of Mission Indians
San Pasqual Band of Mission Indians
Santa Rosa Tachi Tribe
Santa Ynez Band of Chumash Indians
Sherwood Valley Band of Pomo Indians
Shingle Springs Band of Miwok Indians
Soboba Band of Luiseño Indians
Sycuan Band of the Kumeyaay Nation
Table Mountain Rancheria
Tolowa Dee-Ni'Nation
Torres Martinez Desert Cahuilla Indians
Tribal Alliance of Sovereign Indian Nations
Tule River Tribe
Tuolumne Band of Me-Wuk Indian
Twenty Nine Palms Band of Mission Indians
United Auburn Indian Community
Wilton Rancheria
Yocha Dehe Wintun Nation