

STAFF REPORT

SUBJECT: SJCOG Consultation Procedures with
Indian Tribal Governments

RECOMMENDED ACTION: Recommend the SJCOG Board Adopt the
Report

DISCUSSION:

SUMMARY:

SJCOG was informed by the Federal Highway Administration of the need to prepare a documented process that outlines the roles, responsibilities, and key decision points for consulting with federally recognized Tribal governments in San Joaquin County.

Federal and state law requires local agencies to consult with federally recognized Tribal governments prior to making transportation decisions, taking actions, or implementing programs that may impact their communities. Although consultation is not mandated for non-federally recognized tribes, SJCOG routinely consults with known tribes when plans or activities might impact cultural values or the community.

This report outlines SJCOG's process for consultation with federally and non-federally recognized Tribal governments in San Joaquin County.

RECOMMENDATION:

Staff recommends the Board approve the SJCOG Consultation Procedures with Indian Tribal Governments report.

FISCAL IMPACT:

None. The attached report does not add any new requirements to what SJCOG is already doing.

BACKGROUND:

The United States Department of Transportation (U.S. DOT) Order 5301.1 ensures that programs, policies, and procedures administered by the U.S. DOT are responsive to the needs and concerns of Native American Tribal Governments. This Order provides a very thorough overview of the various federal regulations and Executive Orders on this subject. This Order is available at:

<http://environment.fhwa.dot.gov/guidebook/vol2/5301.1.pdf>

US Code Title 23 Sec 135 (e and f) generally state that Tribal government concerns

should be considered in developing planning documents. Specifically, the applicable provisions concerning the documented process from the U.S.DOT joint FHWA/FTA planning regulations at 23 CFR 450.316 state:

(c) When the MPO includes Indian Tribal lands, the MPO shall appropriately involve the Indian Tribal government(s) in the development of the metropolitan transportation plan and the TIP.

(e) MPOs shall, to the extent practicable, develop a documented process(es) that outlines roles, responsibilities, and key decision points for consulting with Indian Tribal governments and agencies, which may be included in the agreement(s) developed under §450.314.

The reference to the metropolitan transportation plan would be SJCOG's long-range Regional Transportation Plan / Sustainable Communities Strategy (RTP/SCS). The reference to the "TIP" would be SJCOG's Federal Transportation Improvement Program (FTIP).

Although SJCOG already includes Tribal governments in these planning activities as part of the process outlined in the Public Participation Plan, a documented process is now required to comply with federal regulation. Attached is the report prepared by staff to fulfill this requirement.

Upon approval, this report will be mailed to each of the Tribal Governments in San Joaquin County, added as appendix to SJCOG's Public Participation Plan, and posted on the agency website.

Prepared by: Nicole Gorham, Public Information Officer



RESOLUTION SAN JOAQUIN COUNCIL OF GOVERNMENTS

R-18-28

RESOLUTION ADOPTING THE CONSULTATION PROCEDURES WITH INDIAN TRIBAL GOVERNMENTS IN SAN JOAQUIN COUNTY

WHEREAS, the San Joaquin Council of Governments (SJCOG) is a Regional Transportation Planning Agency and a Metropolitan Planning Organization (MPO), pursuant to State and Federal designation; and

WHEREAS, 23 CFR Part 450.316(e) states MPOs shall, to the extent practicable, develop a documented process(es) that outlines roles, responsibilities, and key decision points for consulting with Indian Tribal governments and agencies, which may be included in the agreement(s) developed under §450.314; and

WHEREAS, the Federal Highway Administration requires a documented process that outlines the roles, responsibilities, and key decision points for consultation with federally recognized Tribal Governments in San Joaquin County.

NOW, THEREFORE, BE IT RESOLVED that the San Joaquin Council of Governments does hereby adopt the Consultation Procedures with Indian Tribal Governments in San Joaquin County.

PASSED AND ADPTED THIS 22ND day of March, 2018 by the following vote of the San Joaquin Council of Governments, to wit:

AYES:

NOES:

ABSENT:

KATHERINE MILLER
Chair

SJCOG Consultation Procedures With Indian Tribal Governments

Information, history, and legal requirements
on tribal consultation in San Joaquin County.

March 2018



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"Consultation

is a collaborative process where the thoughts, ideas, and beliefs of another cultural group are taken into careful consideration; and if feasible seek an agreement for future transportation decision."

Introduction

The San Joaquin Council of Governments (SJCOG) is the federally designated Metropolitan Planning Organization (MPO) and the state designated Regional Transportation Planning Agency (RTPA) serving San Joaquin County. SJCOG is responsible for developing all state and federal transportation plans and programming documents that are necessary to secure and program transportation funds within the region.

SJCOG routinely consults with Native American Tribal Governments on activities that may impact their communities. Although consultation is not mandated for non-federally recognized Tribes, this does not preclude SJCOG from consulting with local Tribes when plans or activities might impact cultural values or the community. In addition to non-federally recognized Tribes, staff notifies and consults with the California Tribal TANF Partnership for government-to-government consultation throughout the regional planning process.

In 2010 SJCOG worked with 47 Tribes (15 federally recognized and 32 non-federally recognized), Caltrans Districts 10 and 6, Kern Council of Government, and the Tribal Council of California to create the CA Central Valley Tribal Environmental Justice Transportation Grant Project. The purpose of the program was to address the transportation needs of Tribal governments and promote their participation for future government planning. It included cultural sensitive resource mapping, which aided in the preservation of vital Tribal areas.

SJCOG is committed to strengthening relationships with California Tribal Governments within the San Joaquin County region. This policy was developed to document SJCOG's procedures for consultation with federally and non-federally recognized Native American Tribal Governments in San Joaquin County.

Requirement to Consult

Consultation provides Tribal governments' knowledge and a voice for major transportation decisions. Consultation with Tribal governments not merely a suggestion to a lead agency it is also a federal requirement. Here is a list of different federal requirements regarding consultation:

Order 5301.1

The United States Department of Transportation (U.S. DOT) Order 5301.1 ensures that programs, policies, and procedures administered by the U.S. DOT are responsive to the needs and concerns of Native American Tribal Governments. This Order provides a very thorough overview of the various federal regulations and Executive Orders on this subject. This Order is available at:

<http://environment.fhwa.dot.gov/guidebook/vol2/5301.1.pdf>

Exec. Order 13175

Consultation and Coordination with Indian Tribal Governments (November 6, 2000), establishes regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies with tribal implications. The goals of this order are to strengthen government to government relationships with Indian tribes and to reduce the imposition of unfunded mandates upon local tribes.

Title 23 Sec 135

US Code Title 23 Sec 135 (e and f) generally state that Tribal government concerns should be considered in developing planning documents. Specifically, the applicable provisions concerning the documented process from the U.S.DOT joint FHWA/FTA planning regulations at 23 CFR 450.316 state: (c) When the MPO includes Indian Tribal lands, the MPO shall appropriately involve the Indian Tribal government(s) in the development of the metropolitan transportation plan and the TIP. (e) MPOs shall, to the extent practicable, develop a documented process(es) that outlines roles, responsibilities, and key decision points for consulting with Indian Tribal governments and agencies, ...which may be included in the agreement(s) developed under §450.314.

CA Law AB 52

California law AB-52 requires consultation on Tribal Cultural Resources under CEQA. As defined by the California Legislature:

"The bill would require a lead agency to begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project, if the tribe requested to the lead agency, in writing, to be informed by the lead agency of proposed projects in that geographic area and the tribe requests consultation, prior to determining whether a negative declaration, mitigated negative declaration, or environmental impact report is required for a project... requiring the lead agency to consider these effects relative to tribal cultural resources and to conduct consultation with California Native American tribes."

Federal vs. Non-Federally Recognized Tribes

It is important to recognize the difference between federal and non-federally recognized Tribes in terms of the consultation process. Government planning agencies are only required by state and federal law to consult with Tribes that are federally recognized when it comes to transportation decisions. Although consultation is not mandated for non-federally recognized Tribes, this does not preclude SJCOG from consulting with local Tribes when plans and activities might impact cultural values or the community.

A contact list of California Native American Tribes that are both federally and non-federally recognized is maintained by the Native American Heritage Commission.

In San Joaquin County there is one federally recognized Tribe:

- California Valley Miwok Tribe (CVMT) - previously known as the Sheep Ranch Rancheria or the Sheep Ranch Rancheria of Me-Wuk Indian

In San Joaquin, specifically, they are considered a “landless” Tribe. Meaning, although they are federally recognized, they do not have land held in trust by the Bureau of Indian Affairs (i.e. no reservation or Rancheria). The CVMT not only oversees the San Joaquin County, they also have establishments in nine other counties that are in aboriginal Miwok territory/boundaries: Alameda County, Alpine County, Calaveras County, Contra Costa County, Fresno County, Madera County, Merced County, Solano County, and Stanislaus County.

Federal recognition is a legal distinction that applies to a Tribe’s right to a government-to-government relationship with the federal government and eligibility for federal programs. Federal and state laws require local agencies to consult with federally recognized Tribal governments prior to making transportation decisions, taking actions, or implementing programs that may impact their communities. This activity is separate from, and precedes the public participation process. Protocol should be flexible and dynamic with respect to initiation of communication and discussion format. Determining the degree and adequacy of consultation will vary depending on a number of factors including the scope of the proposed activities, whether the activity is short or long-term, the cultural or political sensitivity of the issue at hand, and the number of potential stakeholders.

As defined by the United States Government a federally recognized tribe is: “An American Indian or Alaska Native tribal entity that is recognized as having a government-to-government relationship with the United States, with the responsibilities, powers, limitations, and obligations attached to that designation, and is eligible for funding and services from the Bureau of Indian Affairs.”

SJCOG routinely notifies and consults with the North Valley Yokuts Tribe, a non-federally recognized Tribe in the San Joaquin County, and with the California Tribal TANF Partnership. While they are not recognized under the federal government, California law AB-52 requires consultation on Tribal Cultural Resources under CEQA. They are as well considered a minority group, and federal executive orders require consultation with minority or disadvantaged groups. An example of this would be Presidential Executive Order 12898 about Environmental Justice. It, places special emphasis on communication with these groups. SJCOG has procedures for coordination with minority and disadvantaged groups in its Public Participation Plan.

Consultation Efforts

The Executive Director or his/her designee is the designated SJCOG official with principal responsibility for the commission's implementation of consultation requirements. During the planning phase, contact shall be initiated directly with the Federal Land Management Agencies and tribal chairs to inquire as to protocols in place. This may include cultural resource contacts, procedures, time limits and restrictions affecting communication. Development of mutually agreed-upon protocols may result in more effective consultation efforts with Federal Land Management Agencies and individual tribes.

Consultation is simply not just a notification from SJCOG. Rather it is a process of communication that should continue until the project or plan is complete. Consultation requests should include a clear statement of purpose, explaining the reason for the request and declaring the importance of participation in the planning process. Location should be specified in the request as well. Documentation of the consultation process should be maintained, this includes how SJCOG comes to a final decision.

In 2017, SJCOG staff commenced the development of the 2018 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) for San Joaquin County and reached out to the local Tribes for input and involvement. Below is a snapshot of the specific outreach efforts:

- January 2017 - Invitation was extended for a representative to join the RTP/SCS working group (Buana Vista Miwok chapter).
- March 2017 - Notice of Preparation of a Program EIR for the 2018 RTP/SCS was mailed to local tribal governments.
- July - August 2017 – Three emails and two voice messages sent to the California Valley Miwok tribe requesting a lunch meeting with the Executive Director to discuss tribal engagement in the



regional planning process. A follow-up letter was sent when no response was received by email/phone. There was no response and no meeting was ever scheduled.

SJCOG Organizational Structure

History	Mission	Organization
Created in 1968, the San Joaquin Council of Governments (SJCOG) is a joint-powers authority comprised of the County of San Joaquin and the cities of Stockton, Lodi, Manteca, Tracy, Ripon, Escalon, and Lathrop. The role of SJCOG is to foster intergovernmental coordination - within San Joaquin County - and with neighboring jurisdictions; the other regional agencies for in the San Joaquin Valley; the state of California; and various Federal agencies.	The mission of SJCOG is to partner with local governments, the private sector, and community groups as the forum, facilitator, and administrator of regional programs, and to advocate for regional and inter-regional issues in the development of a comprehensive strategy to achieve resolutions.	<p>The Commission is organized into a Board of Directors supported by the Policy Advisory Committee and the Technical Advisory Committee. The Commission staff includes an Executive Director; a Fiscal Supervisor; a Planning Supervisor; three Regional Planners; a Grants Analyst; and an Office Assistant.</p> <p>There is currently one standing committee - the Social Services Transportation Advisory Council (SSTAC) which reports through the Technical Advisory Committee. The relationship between the Board and the committees is illustrated in Figure 1.</p>

Figure 1: Relationship of Board and committees

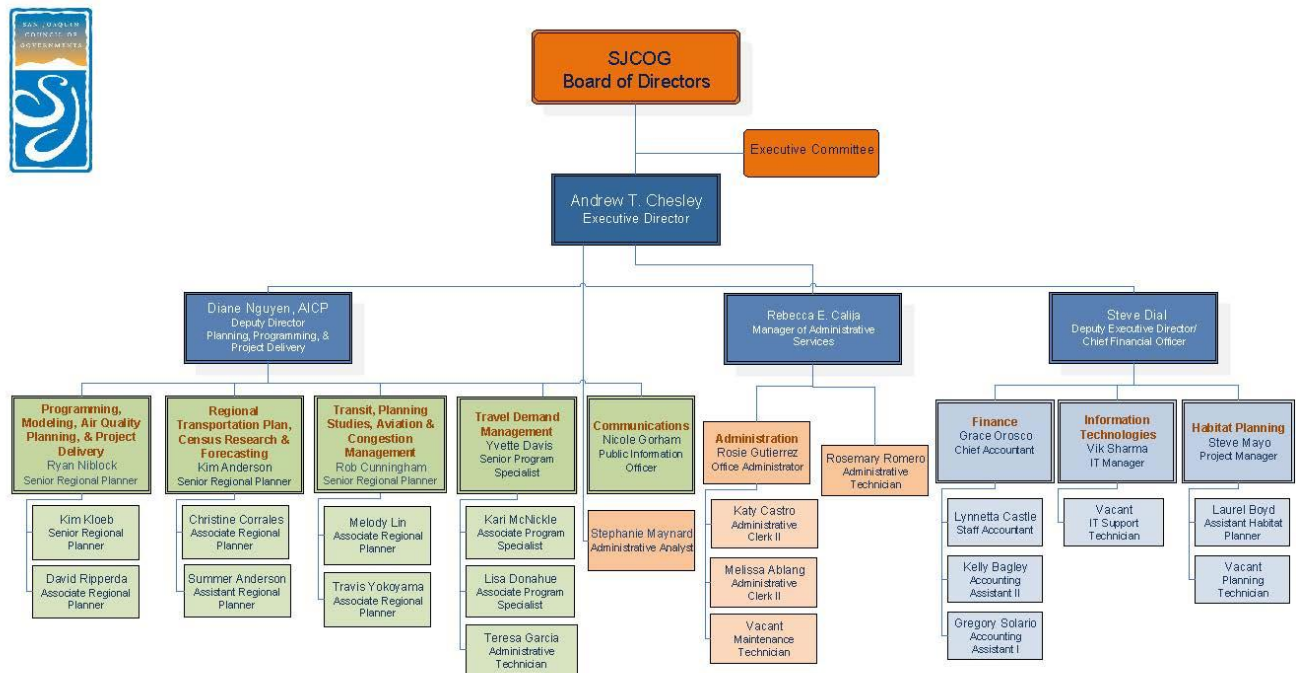


Figure 2: Detailed view of SCOG's organization structure

Agency Activities

SJCOG aims to consult with Tribal Governments on an ongoing basis, to maintain healthy communication with Tribes, and better reflect their perspectives in planning documents and projects.

To support the development of the following documents (see documents under Planning Documents below), SJCOG will consult with Federal Land Management Agencies and Federally Recognized Native American Tribal Governments in preparation of planning studies and programs affecting the agency and Tribe:

- Initiate consultation by letter from the executive director or his/her designee to the agency and tribal chairperson.
- Offer to meet to discuss the agency and tribal needs and concerns regarding impacts within their jurisdiction prior to the beginning of preparation of documents. If the agency, tribal chairperson and/or their representatives elect not to meet, send a copy of the draft report for their review.

- Consult with agency and tribal governments while developing the RTP, addressing agency and tribal concerns regarding impacts within their jurisdiction and again prior to adoption of the RTP.
- Invite representatives of the agency and tribe to public meetings.

Planning Documents



Planning Documents, Studies, Transportation Improvement Programs, Plans, and Other Documents

- Federal Transportation Improvement Program (FTIP)
- State Transportation Improvement Program (STIP)
- Regional Transportation Improvement Program (RTIP)
- Regional Transportation Plan / Sustainable Communities Strategy (RTP/SCS)
- Overall Work Program (OWP)
- Final Reports that have come out of the Caltrans Transportation Planning Grant Program such as the Central California Tribal Transportation Environmental Justice Collaborative Project (2010).



Transit Studies, Unmet Transit Needs Hearing, Transit Needs Assessment

Consult with the tribal governments on transit needs in their area:

- Initiate consultation and invitation to the unmet transit needs hearing by letter from the executive director or his/her designee to tribal chairperson with copies to the CEO, Administrator, and Cultural Department representatives.
- Offer to meet to discuss the tribe's transit needs and concerns.
- Outreach to members of the tribe through local newspapers, Native American newsletters, tribal events, or trust lands meeting places.

Grant Programs and Funding



Grant Programs: Federal Transit Administration Transit Grant Programs, etc.

Coordinate with the tribal governments to provide information and technical assistance on grant programs administered by the MPO, RTPA, or other agencies:

- Initiate consultation by letter from the executive director or his/her designee to the tribal chairperson with copies to the Tribal Administrator, and Cultural Department representatives.
- Provide notice of each grant and its application deadlines.

- Invite representatives of the tribe to training or public meetings regarding the grants.
- Coordinate between the tribe and MPO or RTPA member agencies.
- Consult with and consider the interests of the tribal government.

Tribal Transportation Program (TTP) – Highway Trust Fund Planning & Programming



Coordinate amongst planners and engineers in local agencies and tribes:

- Offer to meet to discuss the tribe's needs and concerns when contacted by the tribal representatives.
- Provide assistance in TTP planning.
- Coordinate with federal entities as requested by the tribe.
- Collaborate on funds awarded to the Tribe through the Active Transportation Program.

Native American Tribal Contact List for San Joaquin County

A contact list of California Native American Tribes that are both federally and non-federally recognized is maintained by the Native American Heritage Commission (NAHC). The following Tribes are identified for San Joaquin County:

California Valley Miwok Tribe (federally recognized)
 4620 Shippee Lane
 Stockton, CA 95212
 209-931-4567 Phone
 209-931-4333 Fax

North Valley Yokuts Tribe
 Katherine Erolinda Perez, Chairperson
 PO Box 717
 Linden, CA 95236
 209-887-2415
canutes@verizon.net

California Tribal TANF Partnership
 Lisa Martin, Regional Manager
 2291 W. March Lane, Suite D-210
 Stockton, CA 95207
 209-474-6890 Phone
 209-474-3890 Fax
lmartin@cttp.net

Regionally significant tribes (consultation upon request):

Buena Vista Rancheria Mi-Wuk Indians
Rhonda Morningstar Pope, Chairperson
1418 20th Street, Suite 200
Sacramento, CA 95811
916-491-0011 Phone
rhonda@buenavistatribe.com

Ione Band of Miwok Indians (federally recognized)
Randy Yonemura, Cultural Committee Chair
P.O. Box 699
Plymouth, CA 95669
209-245-5800 Phone
randy_yonemura@yahoo.com

Wilton Rancheria (Miwok)
Raymond Hitchcock, Chairperson
9728 Kent Street
Elk Grove, CA 95624
916-683-6000 Phone
rhitchcock@wiltonrancheria-nsn.gov

Southern Sierra Miwuk Nation
Lois Martin, Chairperson
P.O. Box 186
Mariposa, CA 95338
209-742-6867 Office

United Auburn Indian Community of the Auburn Rancheria
Gene Whitehouse, Chairperson
10720 Indian Hill Road
Auburn, CA 95603
530-883-2390 Phone

To contact SJCOC please refer to SJCOC's website
(www.sjcog.org) for the current Public Information Officer who
is the Agency Staff contact regarding Federal Land
Management Agencies and Federally Recognized Native
American Tribal Governments consultation.