

# Tribal Appendix to the Technical Assistance Guidelines for State Agencies

Deliberative Draft

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## Appendix A - Tribal Technical Assistance Guidance

This document is an appendix to the [Technical Assistance Guidelines for State Agencies](#), which are intended to serve as a resource for State agency staff who are designing a new TA program for under-resourced communities, or who aim to expand or improve their current TA services.

Unique considerations, including California Native American Tribes' sovereign status and the historical relationship between the State of California and Tribes, necessitate a separate discussion to help inform the design and effective implementation of technical assistance (TA). This appendix provides information and resources to support agency staff seeking to provide TA to Tribes or organizations that serve Tribes.

SGC staff worked in partnership with Tribal liaisons from a number of State agencies to inform the content of this document. Their partnership has been indispensable in the development of this document and SGC is profoundly grateful for their support. SGC would also like to thank in advance the individuals who provide public comment to continue to improve the utility of this document.

### Background & Framing

#### *California's Unique Tribal Diversity*

There are more Federally recognized Tribes within California than almost any other state and, according to the 2010 U.S. Census, the largest Native American population in the United States. California Tribes vary considerably in population size, with membership ranging from a few dozen to several thousand.<sup>1</sup> At one point, as many as 135 distinct dialects were spoken by California Native Americans.<sup>2</sup> Some Tribes have reservation lands and are accorded Federal recognition status, while others do not have lands or recognition. Tribes may have many, few, or no staff, which influences the degree to which they are able to carry out government functions and provide services to their members. Similarly, Tribal economies vary widely, with some Tribes holding business enterprises including gaming, hotel, and recreation operations, while others have limited to no economic enterprises. Tribal-serving governmental entities and organizations, such as health clinics, housing authorities, and labor and business development consortia, vary in size, focus, and Tribal representation and membership. When discussing Tribes and Tribal needs in the context of State programs, it is crucial to keep this diversity in mind.

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<sup>1</sup> State of California, California Native American Heritage Commission, *Short Overview of California Indian History*, State of California, 2020, <http://nahc.ca.gov/resources/california-indian-history/>.

<sup>2</sup> "The First Peoples of California: Early California History" *Library of Congress*, [www.loc.gov/collections/california-first-person-narratives/articles-and-essays/early-california-history/first-peoples-of-california/](http://www.loc.gov/collections/california-first-person-narratives/articles-and-essays/early-california-history/first-peoples-of-california/)

### *State's Historical Actions toward Tribes*

Following the Spanish invasion, California Tribal Communities were subject to oppressive treatment under both the Spanish Empire and Mexican rule and decimated by diseases brought by colonists. Decades of State-sanctioned violence, exploitation, and dispossession<sup>3</sup> of Tribal communities marked the period during which California was incorporated into the United States.<sup>4</sup> Shortly after California's admission into the U.S. in 1850, the State carried out a series of militia expeditions in an effort to "wage a war of extermination"<sup>5</sup> against Native Americans. These actions coincided with legislation that facilitated removing California Native Americans from their traditional lands and the indentured servitude to white settlers of Native American children and adults.<sup>6</sup>

### *Tribes' Unique Status*

During the United States' founding and expansion into Tribal homelands, the Federal government negotiated settlement by establishing processes that recognized Tribes as sovereign governments, established a formal relationship between Tribes and the Federal government, and established reservation lands held in trust for Tribes by the Federal government. The Federal government took these actions through treaties ratified by Congress, executive orders, Congressional acts, Federal statutory process, and the Federal courts. Some Tribes that existed prior to the formation of the United States are not currently recognized by the Federal government but nevertheless maintain their unique sovereign statuses. Tribes that are not Federally recognized can petition to become recognized through one of the Federal actions listed above.

The State of California does not have a recognition authority or process for Tribes, therefore, there are no State-recognized Tribes. In California, there are Federally recognized Tribal governments, non-Federally recognized tribal governments, and Tribal communities.

### *Shift in Relationship between Tribes and the State*

In 2011, Governor Edmund G. Brown, Jr. issued Executive Order (EO) B-10-11 that established the Governor's Office of the Tribal Advisor and required all State agencies and departments to encourage early communication and consultation with California Tribes in developing legislation, regulations, rules, and policies on matters that may affect Tribes and their

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<sup>3</sup> State of California, Executive Department [Governor Gavin Newsom], Executive Order N-15-19

<sup>4</sup> State of California, California Native American Heritage Commission, *Short Overview of California Indian History*, State of California, 2020, <http://nahc.ca.gov/resources/california-indian-history/>.

<sup>5</sup> Peter H. Burnett, "Governor's Annual Message to the Legislature, January 7, 1851," in *Journals of the Senate and Assembly of the State of California, at the Second Session of the Legislature, 1851-1852*, (San Francisco: G.K. Fitch & Co., and V.E. Geiger & Co., State Printers, 1852), 15.

<sup>6</sup> Kimberly Johnston-Dodds, *Early California laws and policies related to California Indians* (Sacramento, CA: California State Library, California Research Bureau, 2002), 1173.

communities. The EO provided a broad policy goal and general guidance to encourage cooperative relationships between Tribes and State agencies.<sup>7</sup>

In 2014, the California Legislature passed Assembly Bill 52 (AB 52), which amended the California Environmental Quality Act (CEQA) to require lead agencies to consider the potential impacts that a project subject to CEQA's requirements would have on Tribal cultural resources and to consult with Tribes concerning these impacts.<sup>8</sup> Generally, the State requires formal consultation with California Native American Tribes about:

- Issues of local government general plan development and amendment;<sup>9</sup>
- Project impacts to Tribal cultural resources; and
- The development of legislation, regulations, rules and policies that may affect Tribal governments and related communities.

In addition to instituting a process for the consideration of Tribal impacts, consultation requirements created a mechanism to build positive and enduring relations with Tribes.

In 2019, Governor Newsom issued EO N-15-19, reaffirming EO B-10-11 and adding a formal apology to California Native Americans for atrocities committed by the State of California against California Native communities in the early days of Statehood. The EO established a Truth and Healing Council that will be responsible for examining and producing a written report of the historical relationship between California Native Americans and the State from the Native perspective. This marked a step forward in the State's commitment to acknowledge past wrongdoings and build relationships with Tribes in California.

Building on these steps, State agencies are developing Tribal policies, employing Tribal liaisons, and creating Tribal programs. Increasingly, Tribes are eligible applicants for State funding programs. However, some Tribes may not have access to the information and resources needed to develop competitive applications, and some may rely on consultants to apply for and manage projects. Technical assistance can support Tribes and other under-resourced communities in applying for and implementing State funding, and help to build their capacity to take advantage of State funding opportunities in the future as well. While Tribal applicants may face many of the same barriers as other under-resourced applicants, the unique status of Tribes requires additional, specific considerations in the design and implementation of TA.

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<sup>7</sup> State of California, California Environmental Protection Agency, *Tribal Consultation Protocol*, State of California, 2020.

<sup>8</sup> Native Americans: California Environmental Quality Act. Assembly Bill 52, 2014, [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140AB52](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB52).

<sup>9</sup> Traditional tribal cultural places. Senate Bill 18, 2004, [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=200320040SB18](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200320040SB18).

## Core Principles

The principles listed below are broadly applicable to your agency's work and coordination with Tribes, including any TA efforts.

### *Trust-Building*

The legacy of violence, exploitation, dispossession, and attempted destruction<sup>10</sup> of Tribes has important ramifications for the present-day relationship between Tribes and the State. State leaders, officials, and program managers need to know about, consider, and honor this history when building relationships with Tribes. Trusting relationships with Tribal members are not built around one project or program; they must be forged over time, through many respectful and accountable interactions across many projects and programs. Making space to hear directly from Tribes and maintaining continuity of State personnel are two important components of the trust building process.

Open-ended meetings to get to know one another can help build trust before diving into program implementation. Additionally, instead of telling Tribal governments about a program or TA opportunity and how it will benefit them right away, it is best to first approach Tribes through a format in which you take an active listening role to better understand needs, challenges, and other considerations for program design. However, keep in mind that repeated "getting to know one another" outreach with no substantial and apparent benefit can waste Tribes' limited resources and set relationships back.

Maintaining continuity of personnel and program direction are particularly important for building relationships with Tribes. Turnover of State officials, staff, and TA providers requires Tribes to repeat the early phases of relationship building, which can be time-consuming and erode trust. In addition, changes in personnel can result in repeated changes in program direction due to differences in personality, philosophy, or experience; this can jeopardize your ability to develop trusting relationships with Tribes and undermine your ability to achieve beneficial results. One way to ensure staff continuity is to create dedicated positions, such as Tribal liaisons or offices, that can coordinate between Tribes and your agency's staff on relevant programs and policies.

### *Cultural Humility and Understanding the State's Legal and Historical Relationship*

In building relationships with Tribes and pursuing Tribal program development, State agency staff must gain an understanding of Tribes' respective histories, cultures, and formations. Many resources, including Tribal government websites, provide information that can help you gain historical and cultural background on specific Tribes (*see Resources section below*). It is

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<sup>10</sup> State of California, Executive Department [Governor Gavin Newsom], Executive Order N-15-19.

important to do this research before engaging with Tribes, not simply to make conversation, but to understand how it may affect your efforts to build relationships. For example, Tribal members may express anger, frustration, or resentment towards State officials due to the State’s historic ill-treatment of Tribes. Understanding this history and meaningfully demonstrating transparency, accountability, and follow-through speaks volumes when developing relationships with Tribes.

#### *Appreciate and Acknowledge Tribes’ Connection with their Lands and Cultural Practices*

For Tribes and related communities, connection to the land is synonymous with their culture, history, and identity as Native American people. Tribal cultural resources, including cultural landscapes – a major focus of the AB 52 consultation process - are heavily informed by Tribes’ connection to their ancestral territories. European settlers, who did not hold this core value, “could not fathom the intensity and depth of the Indians spiritual attachment to their territories.”<sup>11</sup> The policies and actions of State and local governments – which have regulatory roles over lands subject to their ownership or jurisdiction – do not typically align with this core value. This lack of alignment is often the root of misunderstandings and disputes between Tribes and agency staff. Therefore, all agency program staff and TA providers must have an understanding of Tribal connections to the landscape before beginning any engagement.

#### *Engagement with Tribes: Communication, Information Sharing, Outreach, and Consultation*

Tribes’ sovereign status necessitates communication structures and processes that respect the government-to-government relationship. Many State agencies have adopted Tribal consultation policies and Tribal engagement strategies that detail when and how to communicate with Tribes. You should first refer to these policies when seeking to understand the appropriate level of Tribal engagement for your program.

Engagement with Tribes typically falls into the following categories:

#### *Communication or Information Sharing*

Communicating or sharing information with Tribes includes basic correspondence, such as sending notices about opportunities or updates, but may include more complicated transactions such as sharing data, which may have attached confidentiality provisions. Basic communications to share information or make minor decisions with Tribes can be informal and conducted with all levels of agency management and staff. This process does not necessarily require involving high-level officials, unless there is a need to negotiate confidentiality agreements.

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<sup>11</sup> State of California, California Native American Heritage Commission, *Short Overview of California Indian History*, State of California, 2020, <http://nahc.ca.gov/resources/california-indian-history/>.

## Outreach

Outreach lies somewhere between information sharing and consultation. While not a formal process, outreach may be focused on relationship building or providing opportunities for discussion and feedback about a State agency's policy or program. A State-Tribe listening session is a form of outreach but does not constitute government-to-government consultation. A Tribe may decide to request a consultation as a result of discussion that arises from outreach.

## Consultation

Consultation is a formal, government-to-government process, with a clear protocol, among Tribal government officials and State agency officials. Many agencies have a Tribal consultation policy that directs when and how Tribal consultation should take place, in accordance with any relevant State statute. Consultations take place at the executive level, not the management, staff, or TA provider level. It is not appropriate to have TA providers leading Tribal consultation efforts on behalf of government officials. However, such providers may have a supporting role.

The terms consultation and communication are often confused in use. Communications with senior management that are decision-makers of their respective programs or offices are not consultations.

When conducting outreach or engagement with Tribes, clearly communicating the intent, purpose, and levels of engagement proposed is very important. In addition, due to the vast diversity of California Native American Tribes, designing and implementing effective Tribal programs requires State agency representatives to demonstrate understanding and patience throughout outreach, engagement, and program implementation.

## *Respecting the Government-to-Government Relationship*

State government representatives should build relationships with Tribal governments, rather than Tribal communities or members. Once proper government-to-government protocols are established, Tribal government representatives will likely direct State staff to work with key staff, committees, authorities, organizations, consultants, members, and others. Often, delegation of work comes with the requirement to report back or check in with Tribal government leadership to keep them abreast of program or project implementation and to maintain the government-to-government relationship.

The following sections (*Determining Needs and Gaps*, *Selecting a Contractor*, and *Communications*) focus on the specific factors you should take into consideration when developing a Tribal TA initiative.

### Determining Needs and Gaps

One of the clearest ways to assess program barriers is to ask Tribes directly, through surveys and conversations with Tribal government leadership and staff. However, if agency staff do not have existing Tribal relationships, reaching out may yield few meaningful results. One option is to ask to attend regularly scheduled Tribal government meetings to ask for feedback. You should also seek to coordinate with others at the State who have built those relationships and may have already had similar conversations, so as not to burden Tribes with duplicate requests. Many departments have Tribal liaisons or Tribal advisory committees with members who can help you share information and provide introductions to the appropriate Tribal government leadership or staff.

The State Tribal Liaisons Workgroup, convened by the Governor's Tribal Advisor and attended by Tribal liaisons from a variety of agencies, can provide advice on how to seek feedback from Tribes, as well as provide information on barriers already identified. The most appropriate way to access this forum is through your agency's Tribal liaison. Coordination with your agency's liaison ensures that Tribes aren't approached by different agencies with duplicative requests and will allow your program to build stronger relationships with your designated Tribal liaison.

When creating any TA program, distinguish which barriers can be addressed with TA and which are a matter of program design. A common program design barrier faced by Tribal applicants is that eligibility requirements designed for local government applicants – related to planning, zoning, and environmental review, for example – often don't apply to Tribal governments. Such oversights reflect a lack of understanding of Tribal sovereignty on the part of State agencies. Another common program design issue is a lack of agency or department process for contracting with Tribes.

However, TA can address many barriers faced by Tribal applicants, such as:

- Limited staff resources or reliance on contractors to apply for and implement grant funds;
- Limited access to matching funds;
- Lack of established relationships with local, regional, or academic partners; and
- State assessment tools that rely on data with significant gaps for Tribal communities.



TA can support Tribes in many ways, for example:

- Augmenting staff capacity to apply for and implement funds;
- Helping Tribes identify opportunities to secure matching funds;
- Bringing together and coordinating partners for grant application or administration;
- Assisting with data collection tools or processes to ensure that agencies have access to data that accurately demonstrates Tribal needs.

### Selecting a Contractor

As with any TA program, you should first weigh the pros and cons of providing TA through a third party vs. agency staff (see the table on page 23 of the [TA Guidelines](#)). Should you decide to provide TA through a third party, consider the skills, relationships, and affiliations necessary to successfully carry out the scope of work. State selection of contractors should carefully weigh the ability of the contractor to engage with Tribes, deliver services, and consider partnerships and/or affiliations. Even when TA is provided by a third party, agency staff should stay engaged in the work to build their own relationships with Tribes.

#### *Relationships with CA Tribal Governments*

A key consideration when selecting a contractor is existing relationships with Tribal governments. Prioritizing contractors that have built relationships and a strong reputation with Tribes may facilitate the work. If your program seeks to reach Tribes of a certain size or type, or in a certain geographic area, consider these factors when evaluating the relationships a contractor has already established.

#### *Understanding of Contracting Process between Tribes and State*

Consider the contractor's experience navigating the legal and policy relationship between Tribes and the State. For example, some State grant programs require Federally recognized Tribes to provide a limited waiver of sovereign immunity for State-funded projects. The decision whether to include this requirement is made on an individual program basis, but the requirement is often a barrier for Tribes. Tribal lands and jurisdiction can add a layer of complication to grant applications designed for local government planning and zoning processes. A contractor providing application assistance should have enough familiarity with these topics to help Tribes navigate requirements and build time into the application process to address them.

In order to assess these core competencies, it may be helpful to ask contractors to provide previous work experience and references from Tribes as well as any current Tribal affiliations. Contractors that have been hired by Tribes to provide relevant services and have strong

references are more likely to successfully execute the scope of work than contractors that have worked tangentially with Tribes and did not build lasting relationships.

#### *Activities with Federal Partners - Understanding Relationships and Roles*

Many Federally recognized Tribes work closely with Federal agencies and have established relationships with those partners. These relationships are often built on Federal agencies' trust responsibility towards Tribes as well as the related principles of self-governance and Public Law 93-638 on contracting and compacting.<sup>12</sup> If the activities of TA providers intersect with that of Federal partners, it can also help to have a contractor that understands the relationships and roles of Tribal, State, and Federal partners, so that they can identify gaps or areas of misalignment, as well as opportunities to leverage resources.

#### Communications

If creating materials as part of a TA initiative, you should gear them specifically to Tribal governments or Tribal-serving organizations. The relationship between the State and Tribes is distinct from local government or other organizations, and these materials can demonstrate that your agency has taken Tribal considerations into account by providing tangible examples of Tribal projects or covering key requirements specific to Tribal applicants. If the materials are created by a third-party TA provider, State staff can continue to use and distribute these materials as they carry out their own Tribal outreach and relationship building after the end of the TA contract.

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<sup>12</sup> U.S. Department of the Interior, Bureau of Trust Funds Administration, *Public Law 93-638 Contracting and Compacting*, U.S. Department of the Interior, 2018, [www.doi.gov/ost/tribal\\_beneficiaries/contracting](http://www.doi.gov/ost/tribal_beneficiaries/contracting).

## Resources

Several offices and people within State government may be able to point you toward resources or provide recommendations as you design a Tribal TA program. The list below provides a starting point:

- Governor's Tribal Advisor
- Native American Heritage Commission staff
- State Tribal Liaisons Workgroup
- Tribal Advisory Committee members at various state agencies (e.g., Caltrans Native American Liaison Branch, Tribal Advisory Committees at CalEPA, Department of Water Resources, California Energy Commission)
- U.S. Bureau of Indian Affairs, Pacific Region

### *Documents and Websites:*

- Governor's Office of the Tribal Advisor: <https://tribalaffairs.ca.gov/>
- Native American Heritage Commissions: <http://nahc.ca.gov/>
- Executive Order N-15-19: <https://www.gov.ca.gov/wp-content/uploads/2019/06/6.18.19-Executive-Order.pdf>
- State agency Tribal Policies: <https://tribalaffairs.ca.gov/> (scroll to bottom of page)
- Laws and Regulations concerning California Native American Tribes: <https://tribalaffairs.ca.gov/laws-regulations/>

### *Consultation*

- Executive Order B-10-11: <https://www.ca.gov/archive/gov39/2011/09/19/news17223/index.html>
- Assembly Bill 52 (2014): [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140AB52](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB52)
- Senate Bill 18 (2004): [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=200320040SB18](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200320040SB18)
- OPR SB 18 Guidance: <http://nahc.ca.gov/wp-content/uploads/2019/04/SB-18-Tribal-Consultation-Guidelines.pdf>

## Glossary

### *California Native American Tribes*

Per State law, a California Native American Tribe is a Native American Tribe located in California that is on the contact list maintained by the Native American Heritage Commission.<sup>13</sup> This list includes both Federally recognized California Tribal governments listed on the most recent notice of the Federal Register, as well as many non-Federally recognized California Tribal governments. This may also include Tribes with ancestrally affiliated lands inside California's boundaries, whose main offices are outside of State boundaries.

State agencies are inconsistent with capitalization of the terms 'Tribe' and 'Tribal'. Review your agency's Tribal Policy or contact your agency's Tribal liaison to determine when and whether these terms should be capitalized in your documents and correspondence.

### *Federally Recognized and Non-Federally Recognized Tribes*

**Federally recognized Tribes:** Tribal entities that are recognized as having government-to-government relationship with the United States, with the responsibilities, powers, limitations, and obligations attached to that designation. This includes eligibility for programs, services, and protection because of their relationship with the Federal government.<sup>14</sup>

**Non-Federally recognized Tribes:** Indigenous communities which, although they existed prior to the formation of the United States, are not currently recognized as sovereign by the Federal government. Many non-Federally recognized Tribes are still viewed as Tribal governments by the State of California, for the purposes of government-to-government consultation. These Tribes are not considered State-recognized Tribes, as California does not have an official process for State recognition.<sup>15</sup>

### *Government-to-Government Consultation*

Consultation is broadly defined as the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American Tribes should be conducted in a way that is mutually respectful of each party's sovereignty. Consultation should also recognize the Tribes' potential needs for

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<sup>13</sup> *Definitions*, Public Resources Code § 21073 (2015), [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=21073.&lawCode=PRC](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=21073.&lawCode=PRC).

<sup>14</sup> *Procedures for Federal Acknowledgement of Indian Tribes*, Title 25 U.S. Code, § 83 (1994), <https://www.law.cornell.edu/cfr/text/25/part-83>.

<sup>15</sup> Martha Salazar, "State Recognition of American-Indian Tribes," *National Conference of State Legislatures* 24, no. 39 (Oct. 2016), [www.ncsl.org/research/state-tribal-institute/state-recognition-of-american-indian-tribes.aspx](http://www.ncsl.org/research/state-tribal-institute/state-recognition-of-american-indian-tribes.aspx).

confidentiality with respect to places that have traditional Tribal cultural significance.<sup>16</sup> State guidance additionally describes consultation as “an ongoing process, not a single event. The process should focus on identifying issues of concern to Tribes pertinent to the cultural place(s) at issue [...] and on defining the full range of acceptable ways in which a [...] government can accommodate Tribal concerns.”<sup>17</sup> As detailed in the introduction of this appendix, several State laws mandate government-to-government consultation under varying circumstances. You should follow your agency’s Tribal consultation policy to determine when consultation is needed, and the scope and type of consultation that should be done.

### *Native American*

The U.S. Census defines a Native American as “a person having origins in any of the original peoples of North and South America (including Central America) and who maintain Tribal affiliation or community attachment.”<sup>18</sup>

For the purposes of this document, California Native Americans refers to people indigenous to the area of California at the time of European colonization. It should be noted that many Native American people residing in California have origins in Tribes outside of the State.

Additionally, the term “American Indians” to describe Native Americans is still regularly used in legal context, however the term Native American is broadly used today in general practice in California.

### *Public Law 93-638 Contracting and Compacting*

The Indian Self Determination and Education Assistance Act of 1975 encoded the principles of Tribal self-determination and self-governance by making it so that Tribes and Tribal organizations could acquire increased control over the management of Federal programs that impact their members, resources, and governments. These agreements are referred to as 638 compacts and contracts.

Contracts and compacts are very similar. Self-Determination contracts are authorized under the 1975 Indian Self Determination and Education Assistance Act. Self-Governance compacts are

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<sup>16</sup> *Preparation, Adoption, and Amendment of the General Plan*, Government Code § 65352.4 (2005), [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=65352.4](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=65352.4).

<sup>17</sup> State of California, *Tribal Consultation Guidelines: Supplement to General Plan Guidelines*, 2005, [https://opr.ca.gov/docs/011414\\_Updated\\_Guidelines\\_922.pdf](https://opr.ca.gov/docs/011414_Updated_Guidelines_922.pdf)

<sup>18</sup> U.S. Census Bureau, Population Estimates Program, *Race*, 2019, [www.census.gov/quickfacts/fact/note/US/RHI625218](http://www.census.gov/quickfacts/fact/note/US/RHI625218)

made possible by 1994 amendments to the 1975 Indian Self Determination and Education Assistance Act.<sup>19</sup>

### *Self-Governance*

Self-governance is a concept intertwined with the concept of sovereignty and refers to a nation's right to determine its own destiny and the means of realizing that destiny through self-defined governance. The right to self-governance for Tribes was encoded in the Indian Self Determination and Education Assistance Act of 1975, and means that Tribes have the right to determine their social, economic, political and cultural future without external interference.<sup>20</sup> Components of self-governance, often stated in Tribal constitutions, can include: territory, membership, structure and function of government, government leadership including methods of election, management of assets, and related Tribal laws, ordinances, codes and policy.

### *Sovereignty*

The concept of sovereignty, broadly, is the inherent right of a people to determine their social, economic, and political governance.

Under Federal law, Federally recognized Tribes possess certain inherent rights of self-governance, which enables Tribes to exercise certain jurisdiction and governmental powers over activities and Tribal members within their respective territories. Because of Federally recognized Tribes' unique relationship with the United States they are additionally entitled to receive certain Federal benefits, services, and protections.<sup>21</sup>

### *Tribal Ancestral Territory*

A Tribe's ancestral territory (sometimes also referred to as aboriginal territory) is the geographic area that a Tribe occupied prior to European contact. Adjacent Tribal territories often overlap, and these overlapping areas can be mutually agreed to or disputed among neighboring Tribes. Various records provide maps depicting California Native Ancestral territories.<sup>22</sup> However the boundaries provided in these sources are grossly depicted and subject to debate. Some Tribes generally adhere to the boundaries as defined in the

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<sup>19</sup> U.S. Department of the Interior, Bureau of Trust Funds Administration, *Public Law 93-638 Contracting and Compacting*, U.S., Washington D.C.: 2018, [www.doi.gov/ost/tribal\\_beneficiaries/contracting](http://www.doi.gov/ost/tribal_beneficiaries/contracting).

<sup>20</sup> *Self-Governance: A New Partnership* (Lummi Nation Self-Governance Communication and Education Project, 1995).

<sup>21</sup> U.S. Department of the Interior, Bureau of Indian Affairs, *Frequently Asked Questions*, [www.bia.gov/frequently-asked-questions](http://www.bia.gov/frequently-asked-questions).

<sup>22</sup> William C. Sturtevant, *Handbook of North American Indians* (Washington, D.C.: Smithsonian Institution, 1978), Vol. 8, 9. Smithsonian Institution, 1978.

Alfred Kroeber, *Handbook of the Indians of California* (Berkeley, CA: U.C. Berkeley, 1926).

handbooks, others provide ancestral boundary definitions in their constitutions, and other Tribes choose to not define their territories.

### *Tribal Lands*

'Tribal lands' has the same meaning as the term 'Indian country' in United States Code of Federal Regulations, title 18, section 1151, that states: "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

For more information on determining what constitutes Tribal Lands, see the Federal EPA webpage, [Definition of Indian Country](#).

### *Tribal-Serving Organizations*

A tribal-serving organization is an organization that does not represent the entirety of a Tribal government but serves Tribes or native people. These may include government entities such as Tribal housing authorities and Tribal health clinics, or entities such as Tribal businesses, consortia, associations, and non-profits.

### *Trust Responsibility*

The trust responsibility is the legal principle that the United States government has a responsibility to support tribal self-government and economic prosperity, stemming from the Federal government's treaty guarantees to protect Tribes and respect their sovereignty. This includes the provision of services required to protect and enhance Tribal lands, resources, and self-government, as well as economic and social programs to support Native people.<sup>23</sup>

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<sup>23</sup> U.S. Department of Health and Human Services, Administrative for Children and Families, *American Indians and Alaska Natives - The Trust Responsibility*, <https://bit.ly/3ddfX0Y>.