

February 10, 2005

Oversight Hearing: Implementation of Senate Bill 18 (Burton, 2004)

On Wednesday, February 16, 2005, the Senate Local Government Committee will hold an oversight hearing, inquiring into the implementation of Senate Bill 18 (Burton, 2004).

As signed by Governor Schwarzenegger on September 29, 2004, SB 18 imposed new requirements on counties and cities. They must notify and consult with California Native American tribes about proposed local land use planning decisions. Starting on March 1, 2005, counties and cities must send their plan proposals to the California Native American tribes that are on the Native American Heritage Commission's contact list if the tribes have traditional lands within the county or city. Also starting on March 1, counties and cities must conduct consultations with these tribes before local officials adopt or amend their general plans or specific plans.

To help local officials meet these new obligations, SB 18 required the Governor's Office of Planning and Research (OPR) to consult with the Native American Heritage Commission, and then add advice to OPR's General Plan Guidelines. The statutory deadline for OPR to revise its advisory General Plan Guidelines is also March 1.

OPR reports that it may not be ready to revise the General Plan Guidelines by March 1.

The absence of reliable advice from OPR will make it hard for counties and cities to comply with their new statutory duties. The resulting uncertainty and confusion could lead to lawsuits challenging local planning actions and local officials' decisions on development projects. The February 16 hearing is an opportunity for state officials, local officials, and tribal officials to gain a better understanding of the mutual obligations that SB 18 created. Legislative oversight of statutory implementation helps to avoid uncertainty, confusion, and costly lawsuits.

Invited Witnesses

- Jan Boel, Chief Deputy Director, Governor's Office of Planning and Research
- Larry Myers, Executive Secretary, Native American Heritage Commission
- Dennis Barry, President, California County Planning Directors Association
- Daniel Carrigg, Legislative Director, League of California Cities
- Courtney Coyle, Tribal Attorney, Quechan Indian Nation

- Laura Y. Miranda, Deputy General Counsel, Pechanga Tribe

Background and Current Law

Every county and city must adopt a general plan with seven required elements (land use, circulation, housing, open space, conservation, noise, safety). The Planning and Zoning Law spells out the procedures that local officials must follow when adopting and amending their general plans. These procedures include public notices, public hearings, and consultations with interest groups, public utilities, and other governments.

To help counties and cities prepare and maintain their general plans, state law requires the Governor's Office of Planning and Research (OPR) to develop, adopt, and regularly revise the General Plan Guidelines. Other state agencies must provide OPR with technical assistance with its advisory General Plan Guidelines.

The Native American Heritage Commission identifies and catalogs places of special religious or social significance to California Native American tribes. The Commission maintains a contact list of California Native American tribes, including nonfederally recognized tribes.

California's continuing population growth and suburban expansion threaten California Native Americans' tribal cultural places with conversion to developed uses. New subdivisions and public works can impose on prehistoric, archeological, cultural, spiritual, and ceremonial places that are not located on tribal reservations or rancherias. Tribal officials want counties and cities to recognize the importance of traditional tribal cultural places when they make local land use planning and development decisions.

Senate Bill 18

Senate Bill 18 made six changes to the state laws affecting local land use planning and development decisions regarding California Native American places, features, and objects:

I. Consultations. Starting March 1, 2005, **Senate Bill 18** requires cities and counties to conduct consultations with California Native American tribes before the local officials adopt or amend their general plans. These consultations are for preserving or mitigating impacts to Native American historic, cultural, sacred sites, features, and objects located within the city or county. The city or county must protect the confidentiality of information about the specific identity, location, character, and use of those places, features, and objects, consistent with the General Plan Guidelines issued by the Governor's Office of Planning and Research.

The California Native American tribe must be on the Native American Heritage Commission's contact list. A tribe has 90 days from the date of contact to request a consultation, unless the tribe agrees to a shorter timeframe. SB 18 defines "consultation."

Starting on March 1, 2005, if land designated or proposed to be designated as open space contains Native American historic, cultural, sacred sites, features, and objects, **Senate Bill 18**

requires a city or county to conduct consultations with any California Native American tribe that has asked the city or county for notice to determine the level of confidentiality required to protect the specific identity, location, or use of the place, feature, or object and to develop dignified treatment of the place, feature, or object in any corresponding management plan.

II. General Plan Guidelines. The Governor's Office of Planning and Research (OPR) must adopt advisory guidelines for the preparation and content of local general plans. **Senate Bill 18** requires OPR, by March 1, 2005, to add advice to its General Plan Guidelines for consulting with California Native American tribes about:

- Preserving or mitigating impacts to Native American historic, cultural, sacred sites, features, and objects.
- Procedures for identifying appropriate California Native American tribes.
- Procedures for continuing to protect the confidentiality of information about the specific identity, location, character, and use of those places, features, and objects.
- Procedures to facilitate voluntary landowner participation to preserve and protect the specific identity, location, character, and use of those places, features, and objects.

OPR must develop its advice in consultation with the Native American Heritage Commission.

III. Public Notices. The Planning and Zoning Law requires local officials to mail and publish public notices about public hearings on the adoption and amendment of general plans, specific plans, and zoning ordinances. In addition, local officials must mail these public notices to any person who has requested mailed notices. **Senate Bill 18** explicitly states that a California Native American tribe that is on the Native American Heritage Commission's contact list is a "person" who can request these public notices.

IV. Plan Referrals. The Planning and Zoning Law requires local officials to refer proposals to adopt or amend their general plans to a list of local, regional, and federal agencies. These other groups have 45 days to comment. These requirements also apply to specific plans. Starting on March 1, 2005, **Senate Bill 18** requires local officials to send their plan proposals to California Native American tribes that are on the Native American Heritage Commission's contact list if the tribes have traditional lands within the city or county.

V. Open Space Element. Every local general plan must contain an open space element which focuses local officials' attention on open space land for:

- Preservation of natural resources.
- Managed production of resources.
- Outdoor recreation.
- Public health and safety.
- Military missions (bases, training routes, airspace, buffer zones).

Senate Bill 18 adds another category to the open space element --- open space land for the protection of Native American historic, cultural, sacred sites, features, and objects.

VI. Conservation Easements. State law limits the types of organizations that can acquire and hold conservation easements to nonprofit organizations organized to preserve and protect open space, and to public agencies if they have the statutory authority to own real property and if the

easements are voluntarily conveyed. **Senate Bill 18** adds California Native American tribes to the list of organizations that can acquire and hold conservation easements. A tribe must be federally recognized or must be on the Native American Heritage Commission's contact list, and the easement must be voluntarily conveyed.

VII. Declarations. **Senate Bill 18** also contains legislative findings and declarations, and makes seven statements of legislative intent.

Questions for Witnesses

Legislators may wish to raise these questions with the witnesses at the February 16 hearing:

What has the Governor's Office of Planning and Research done to implement SB 18?

Will OPR revise its advisory General Plan Guidelines by the March 1 statutory deadline?

What are the procedures for counties and cities to identify the appropriate California Native American tribes?

What are the procedures for continuing to protect the confidentiality of information about the specific identity, location, character, and use of California Native American places, features, and objects?

What are the procedures to facilitate voluntary landowner participation to preserve and protect the specific identity, location, character, and use of California Native American places, features, and objects?

What has the Native American Heritage Commission done to implement SB 18?

Does the Native American Heritage Commission have a current contact list of California Native American tribes that have traditional lands in each county and city?

How will counties and cities conduct their consultations with California Native American tribes if OPR does not revise its General Plan Guidelines by the March 1 statutory deadline?

How will counties and cities protect the confidentiality of information about the specific identity, location, character, and use of California Native American places, features, and objects, if OPR does not revise its General Plan Guidelines by the March 1 deadline?

Will lawsuits challenge development decisions if counties and cities are unable to identify the appropriate California Native American contacts?

Can OPR give counties and cities reliable interim advice by March 1?