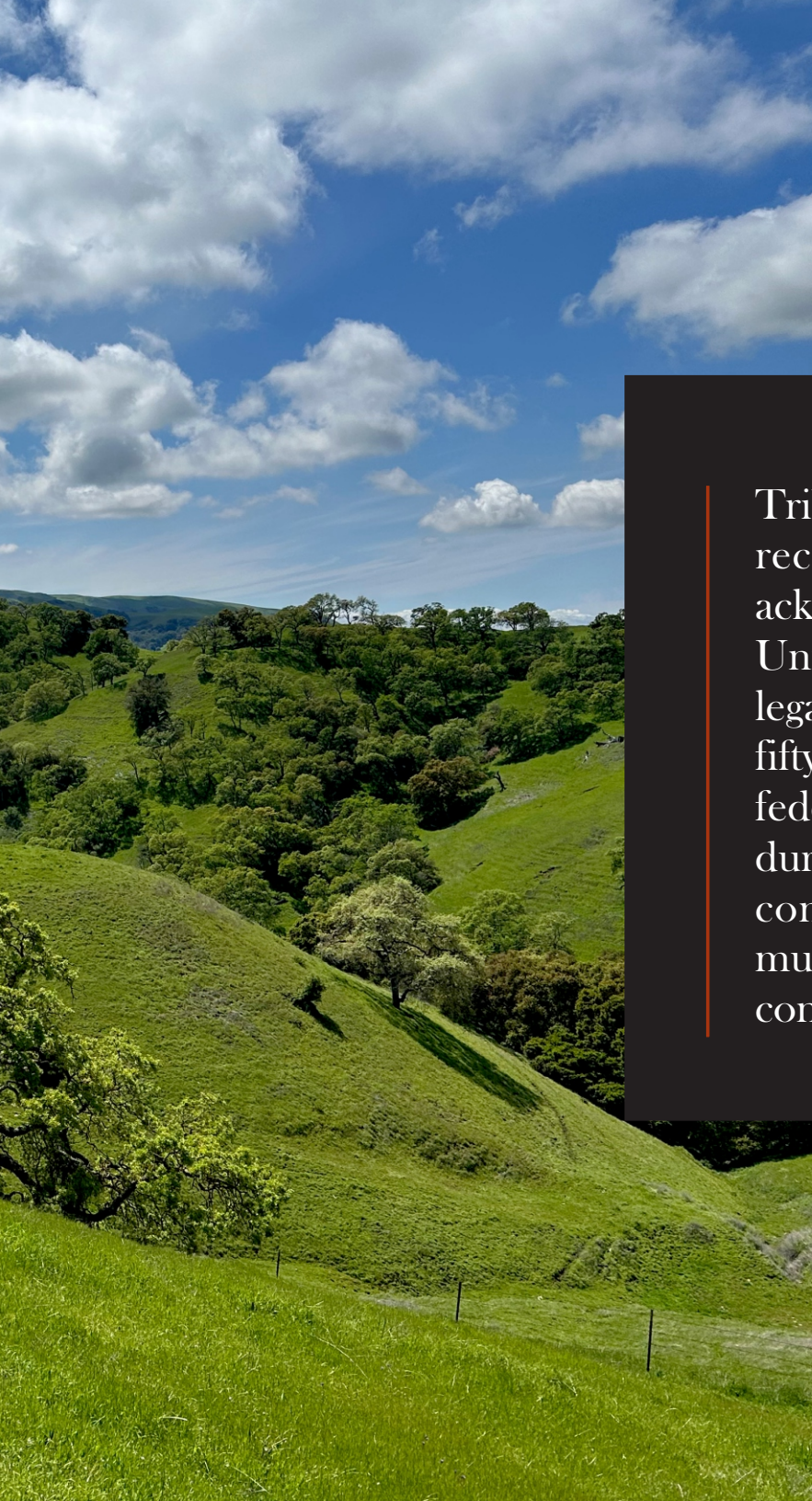




TRIBAL CONSULTATION IN CALIFORNIA FACT SHEET

UNDERSTANDING IDENTITY, LAND STATUS, AND RECOGNITION

Supplement to the By Tribes for Tribes Tribal Consultation Policy Template



INTRODUCTION

Tribal existence and identity do not depend on federal recognition or acknowledgment. Federal recognition acknowledges social and political entities that predate the United States, creating a trust relationship and triggering legal protections, but it does not create Tribes. More than fifty-five tribes in California remain unrecognized by the federal government, and twelve tribes were terminated during the 1950s-1960s and have not been restored. This complex landscape requires agencies to understand multiple categories of Tribal identity and land status to conduct meaningful consultation.



WHAT IS A TRIBE?

KEY TERMS AND CATEGORIES

Federally Recognized Tribe

A Tribe with a government-to-government relationship with the U.S., listed by the BIA in the Federal Register, eligible for federal funding and consultation rights.

Non-Federally Recognized Tribe (including State Recognized)

Tribal communities that maintain political organization, cultural continuity, and ancestral connections but lack federal acknowledgment. Some but not all non-federally recognized tribes are state recognized. Their political existence and cultural authority remain legitimate regardless of recognition status.

Rancherías

Reservations unique to California, established primarily from 1906-1934 for "homeless Indians" after the failure to ratify eighteen treaties in 1852. Rancherías and Federally recognized Bands are "Tribes" and have the same federal recognition and sovereign rights as Tribes who have Tribe in their title. Because Rancherías were often comprised of members of several to many Tribes, Rancherías can be Bands, and are thus often multi-cultural with multiple Tribal affiliations—and may be federally recognized as Tribes of more than one affiliation. Some were terminated in 1958, with many later restored through the Tillie Hardwick Supreme Court case of 1984.

Affiliated Tribes

Different Tribal nations sharing linguistic, cultural, or historical connections, or Tribal people of multiple affiliations living together informally or as a Band in the same Reservation or Rancheria (see above). Multiple Tribes may have legitimate interests and rights in the same geographical area.

LAND STATUS

UNDERSTANDING THE COMPLEX LANDSCAPE

Trust Land: Held by the federal government for a Tribe or Tribal member; cannot be sold, taxed, or mortgaged without federal approval. Trust land is not subject to the majority of state permitting regulations and requirements. Creates the strongest framework for Tribal jurisdiction and federal consultation obligations.

Fee Land (Fee Simple): Owned outright by a Tribe or individual, subject to state/local taxes and regulation. Cultural sites and Tribal interests may exist on fee land regardless of ownership and may be under state or federal protection regardless of ownership status. 11 States have their own environmental impact assessment process in addition to the federal NEPA assessment process and these processes include cultural resource guidelines and regulations regardless of Tribe ownership status.

Restricted Fee Land: Owned by a Tribe or individual but cannot be sold without federal approval. Hybrid status providing some protections while maintaining private ownership characteristics.

Allotted Lands: Individual trust lands created under the 1887 General Allotment Act, often with fractionated ownership due to inheritance. Federal trust responsibilities apply despite individual ownership.

Public Domain Allotments (PDAs): Small parcels (40-160 acres) granted to landless California Indians on federal lands, remaining in trust status. Fewer than 200 remain today.

Rancheria Lands: Trust land associated with California's unique small reservations, though legal status varies based on termination/restoration history. May include both trust and fee lands within boundaries.

Former Ranchería Lands: Lands once part of terminated Rancherías that have not been restored to trust status. May retain cultural significance despite current fee status.

Off-Reservation Trust Land: Trust land acquired outside original reservation boundaries through federal trust acquisition process. Enjoys same protections as reservation-based trust land.

Ancestral Territory/Traditional Use Areas: Vast areas throughout California where Tribes maintain cultural, spiritual, and political connections regardless of current ownership. Federal and state environmental laws require Tribal involvement and consideration of impacts to these areas.

WHY RECOGNITION STATUS DOESN'T CAPTURE THE FULL PICTURE

The federal government's 1852 rejection of eighteen treaties with California Tribes created lasting injustices affecting recognition today. The current Federal Acknowledgment Process, established in 1978, imposes criteria many California Tribes cannot meet due to historical disruptions.

Many non-recognized Tribes maintain sophisticated governance systems and cultural authority. Some were named in unratified treaties, providing historical evidence of federal acknowledgment. Recognition status affects eligibility for federal funding and certain consultation requirements, but should not determine an agency's willingness to engage with Tribal communities that often possess essential knowledge about cultural sites and traditional practices.



OVERLAPPING TERRITORIES AND MULTIPLE INTERESTS

California's geography and history create situations where multiple Tribes have legitimate interests in the same area. Linguistic and cultural boundaries rarely align with modern political boundaries or current land holdings. Federal policies often placed different groups together while separating others from traditional territories.

Agencies should assume any significant cultural site may interest multiple Tribal communities. Consultation should be inclusive, engaging all potentially affected groups rather than determining which Tribe has the "strongest" claim to an area.

IMPLICATIONS FOR MEANINGFUL CONSULTATION

Identify Consulting Parties Broadly: Base outreach on traditional territories and cultural connections, not just federal recognition or current land holdings. The Native American Heritage Commission can assist with identifying appropriate parties.

Maintain Government-to-Government Relationships: Engage all Tribes as political entities regardless of recognition status—non-recognized Tribes often maintain sophisticated governance systems.

Go Beyond Legal Minimums: Legal mandates represent minimum requirements. Consider the spirit of consultation requirements: protecting Tribal cultural resources and respecting sovereignty.

Respect Cultural Authority: Tribes may possess cultural authority about areas where they lack formal land rights. This knowledge should be respected in consultation processes.

Address Capacity Constraints: Non-recognized Tribes often lack resources for extensive consultation. Consider providing technical assistance and flexible timelines.



CONCLUSION

Effective consultation requires moving beyond legal minimums to embrace respect, recognition, and relationship-building with the full spectrum of California Tribal communities.

The federal government's failure to address historical injustices should not excuse agencies from broad consultation obligations. Instead, agencies should model respectful government-to-government relationships and ensure Tribal voices are heard in decisions affecting ancestral territories and cultural resources. Understanding these complexities provides the foundation for meaningful consultation that respects Tribal sovereignty and improves project outcomes.

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