

Understand Your ETEP Rights

PRESENTED BY:

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Disclaimer

This workshop is sponsored by Prosper Sustainably, a for-profit business that assists individuals, organizations, and communities develop and implement lasting solutions to meet environmental and sustainability needs.

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Presenter Introduction

Joshua M. Simmons



➤ Founding President of Prosper Sustainably

- Assist individuals, organizations, and tribes develop and implement lasting solutions to meet environmental and sustainability needs
 - ETEP Development, Strategic Planning, Grant Writing, Program Development
 - Project Management, Environmental Codes Drafting, Feasibility Studies, Plans

➤ Former SYCEO Director (2007 – 2014)

- Transformed the Santa Ynez Chumash Environmental Office (SYCEO) into a nation leading tribal environmental agency
- Secured 42 grants for \$4.3 million in funding

➤ Training Instructor – ETEPs, Grants Writing, Codes

- Instructed on behalf of ITEP, ITCA, OVIWC, etc.



Tribal Consulting Experience

- **ETEP Consulting Projects**
 - Rincon Band of Luiseño Indians
 - Pala Band of Mission Indians
 - La Jolla Band of Luiseño Indians
 - Buena Vista Rancheria
- **GAP Work Plan Development**
 - Chemehuevi Indian Tribe
- **Drafting Environmental Codes**
 - Cabazon Band of Mission Indians
 - Pala Band of Mission Indians
- **DOE Grant Writing Assistance (funding secured)**
 - Pala Band of Mission Indians

Workshop Agenda

- **My ETEP Journey**
- **Webinar Objectives**
- **ETEP Background and Context**
- **ETEP Concerns, Requirements, Rights, and Recommendations**
 - **Format Concerns**
 - A “living” and “usable” ETEP that is a “management tool”
 - “The specific format and approach to developing ETEPs may vary”
 - “Maximum flexibility is provided as to how the ETEPs are developed”
 - **Prosper Sustainably’s ETEP Strategic Work Plan Examples**
 - **“ETEP should have the support of [EPA and Tribal] senior officials”**
 - **GAP Work Plan ETEP Component**
 - **“Capacity Development is a Continuing Programmatic Need”**
- **Conclusion - ETEP Rights and Recommendations**



ETEP Experience

➤ ETEP Consulting Projects

- Rincon Band of Luiseño Indians
- Pala Band of Mission Indians
- La Jolla Band of Luiseño Indians
- Buena Vista Rancheria

➤ ETEP Trainings

- 2014 Tribal-EPA Annual Conference Session
- ETEP Training Webinar
- OVIWC Full Day Workshop
- ITCA Half Day Workshop
- **2015 Tribal-EPA Annual Conference Session**

Workshop Objectives

- Understanding of ETEP Requirements per GAP Guidance
- Understanding of Evolving ETEP Issues and Concerns
- Understanding of an ETEP's benefits and potential
- Catalyst to Consistent and Productive Resolution of Issues
 - Avoid inefficient, piecemeal tribe by tribe approach
- Remove Barriers to Maximizing ETEP Benefits
 - In meeting Tribal and EPA goals and objectives
- **This webinar is not a training focused on understanding, developing, and implementing an ETEP**
 - See future trainings and past resources (on website)

ETEP Background & Context

- **OIG Audit determinations (2008):**
 - Tribes don't have plans w/ goals for building environmental capacity
 - Where tribes have plans, progress toward meeting goals not tracked
 - Unclear how GAP is helping tribes meet environmental program goals
 - No framework had been provided by the EPA to develop goals and track progress
- **GAP Guidance developed by EPA headquarters (May 2013)**
 - Provides ETEP purpose, goals, and requirements
- **ETEPs being developed and implemented by Regions and Tribes**
 - EPA HQ (AIEO) to provide ETEP technical assistance to regions
 - **Tribes and Regions going through challenge of understanding ETEPs**

What is an ETEP?

2013 GAP Guidance

- **EPA-Tribal Environmental Plan (ETEP)**
- **ETEP Purpose and Goals**
 - Define mutual roles and responsibilities for program implementation
 - Establish a joint EPA-tribal planning process to address tribal environmental priorities and ensure federal programs are fully implemented
 - Identify tribal plans to manage authorized environmental programs
 - Identify need for environmental programs assistance and resources
 - Establish intermediate and long-term goals
 - Track GAP progress against long-term goals
 - Ensure linkage of GAP work plan tasks to long-term goals

ETEP Requirements / Format

2013 GAP Guidance

➤ Four (4) Required Components:

1. Identification of tribal environmental program priorities, including capacity building and program implementation goals
 - Short description of priority
 - Tribe's long-term environmental program goals
 - GAP Work Plans must be aligned with ETEP-long-term goals
 - Intermediate program development milestones / objectives
 - Tribe's plans to manage authorized environmental programs
 - Needed Assistance to achieve goals and milestones/objectives
2. Identification of EPA program priorities and management requirements (**determined by EPA**)
3. Inventory of regulated entities (**initially provided by EPA**)
4. Identification of mutual roles and responsibilities

****2013 GAP Guidance – ETEP References version**



ETEP Format – A Living Tool

- “ETEPs are intended to be living, usable documents for both tribes and EPA as environmental partners to use in planning and guiding our work”
- “The ETEP should be a living document that is actively used as a management tool by both EPA and the tribe to ensure work is being done in support of agreed upon priorities and that progress is being made over time”
- “EPA has developed this streamlined approach for a long-term planning tool that can be modified as needed”
- “Capacity development indicators and completion dates should be revised as appropriate when a tribe’s needs and priorities change”

ETEP Format – Maximum Flexibility

- “The specific format and approach to developing ETEPs may vary from tribe to tribe and region to region”
- “Maximum flexibility is provided as to how the ETEPs are developed”
- “FOR EXAMPLE,”
 - a tribe and region may decide to develop a streamlined document that succinctly addresses the four components of an ETEP
 - TEAs may be developed, or modified if necessary, to ensure the four components are addressed
 - “tribes and regions may update existing documents...to ensure they address the four ETEP components, and memorialize in a written memo or through specific correspondence, the shared understanding of how those documents comprise the ETEP”
 - (examples of some existing documents include Tribal Environmental Plans, Tribal Environmental Agreements (TEAs), Tribal Strategic Environmental Plans, etc.)”

ETEP Format Concerns

- Tribes may not be aware of ETEP flexibility and variability
- Tribes may be steered toward static ETEP documents
 - E.g. a completely narrative document in MS Word format
- ETEPs will not become “usable,” “management tools”
- If not streamlined, ETEPs will become too cumbersome
 - **Recommendation – combine ETEP elements where possible**
- ETEPs will be treated as just another EPA requirement
 - Unlikely to benefit tribes or EPA in meeting environmental goals
- Tribes may be concerned about *committing* to ETEP milestones
- **Address by ensuring that ETEPs are approached with flexibility and treated as living and usable management tools**

Prosper Sustainably's ETEP Strategic Work Plan Examples

ETEP Requirements / Format

2013 GAP Guidance

➤ Four (4) Required Components:

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Mutual Roles & Responsibilities

#4 - Mutual Roles and Responsibilities for Tribal Program Development Milestones and Environmental Program Implementation

- “ETEP should define the actual activities that the tribe and EPA anticipates conducting during the time period of the agreement”
- “ETEPs should indicate which environmental protection program capacity indicators a tribe intends to establish and a general time line for establishing them.”

Prosper Sustainably's ETEP Strategic Work Plan Examples

Authorizing an ETEP

- “The ETEP should have the support of senior officials in both EPA and the tribal government, as they will be used to help prioritize the work that is funded under GAP and the work that EPA is conducting in the tribal area.”
- Concerns:
 - May need a Tribal Council resolution (can be difficult to obtain)
 - This is not required by the GAP Guidance
 - Senior officials vary from tribe to tribe
 - ❖ Determine who is authorized to provide this support
 - Signed document means a commitment to complete specific milestones
 - Recommend focusing commitment on joint planning process rather than the plan
 - Signed document produces a static, inflexible ETEP
 - GAP Guidance requires “support,” not commitment

GAP Work Plan – ETEP Component

➤ Concerns:

- Tribes provided language by GAP Project Officer (unaware of options)
- Inadvertent commitment to tribal council resolution approval
- Inadvertent commitment to a narrative document

➤ GAP Guidance Appendix III

- Sample GAP Work Plan: Developing or Updating a Joint ETEP
- Deliverable: “Joint Planning Agreement approved by both the legally authorized tribal leadership and the EPA Regional Administrator”
 - This is an example output, not a required output

Ongoing Capacity Building

- Concern – GAP (mainly) funds capacity building. If capacity is built (the purpose of an ETEP), tribes will lose GAP funding
- “Capacity Development is a Continuing Programmatic Need”
 - “Developing, establishing, and maintaining environmental program capacities is an on-going effort requiring capacities to evolve as the tribal environmental program itself expands and undertakes additional challenges.”
 - “EPA also recognizes that GAP resources provide a significant foundation for maintaining tribal environmental program capacities over time.”
 - “Tribes that have successfully developed capacity in a given area can continue to receive GAP funding to expand, enhance, or evolve their capacity.”
 - “GAP Guidance establishes...ETEPs...to document the tribe’s program development goals...Tribes should reevaluate their program capacity development goals on a regular basis to ensure that their systems, procedures, and policies are still appropriate...and to determine if additional capacities are needed...”

Examples of Evolving Capacity

➤ GAP Guidance Examples

- “A tribe with a community education program may continue to receive GAP funds to expand the program by adding new features, such as outreach strategies for vulnerable groups (i.e., children, the elderly, people in poor health, and expectant mothers) or identifying new media outlets to reach target audiences.”
- “A tribe with basic water program capacity may continue to receive GAP funds to expand their water program by adding new baseline data to their existing program, developing additional laboratory analysis quality assurance plans, or adding capacity to share additional water quality data across multiple data platforms.”

Examples of Evolving Capacity

- **Prosper Sustainably Example – Waste Management E&O**
 - 2016 – Develop and test E&O focused on composting
 - 2017 – Develop and test E&O focused on illegal dumping
 - 2018 – Develop and test E&O focused on source reduction
 - 2019 – Develop and test E&O focused on recycling
 - 2020 – Develop and test E&O focused on HHW
- **Waste Mgmt E&O is outdated after 5 years and must be updated**
 - 2021 – Develop and test E&O focused on composting
 - 2022 – Develop and test E&O focused on illegal dumping
 - 2023 – Develop and test E&O focused on source reduction
 -

ETEP Rights and Recommendations

- Create widespread awareness of essential ETEP knowledge
 - Especially that an ETEP should be a “living” and “usable” “management tool” that is developed with “maximum flexibility” and only requires the “support of senior officials” – **per GAP Guidance**
 - Share this information with all tribes (Tribe→Tribe, EPA→Tribe)
 - Tribes have a right to expect consistency in how ETEP requirements are communicated
- Expect questions from EPA about how GAP Guidance requirements are being met in the ETEP
 - May need to provide a written explanation
- Expect EPA to accept reasonable justification varied approaches
 - If EPA does not accept justification, request their reasons in writing

ETEP Rights and Recommendations

- **Involve EPA GAP Managers, HQ, and Officials (as needed)**
 - **Contact and discuss concerns directly and/or copy on emails**
 - **AIEO Contact: gap@epa.gov / (202) 564-0303**
 - ❖ <http://www2.epa.gov/aboutepa/about-office-international-and-tribal-affairs-oita#aieo>
 - **Consider involving tribal officials and leadership**
- **Engage in widespread and high level ETEP policy conversations**
 - **Effectively advocate for constructive changes**
- **Expect an ETEP that is a powerful and valuable strategic planning and management tool for advancing tribal environmental goals**
 - **Settle for nothing less**

Thank You! Questions?

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