

# Developing Tribal Environmental Laws

**PRESENTED BY:**

**Josh Simmons**

**Attorney / Consultant / Collaborative Strategist**

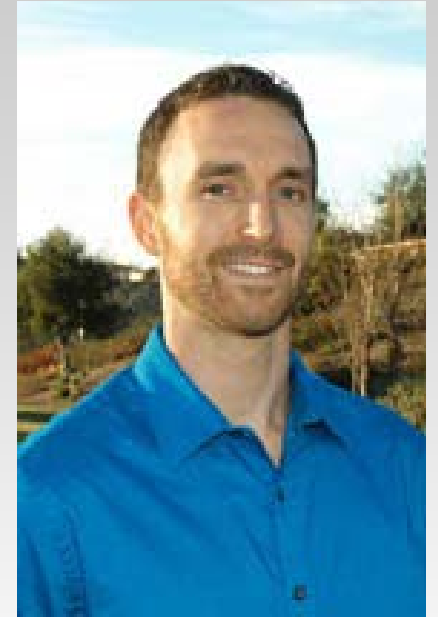
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# Presenter Introduction

## 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

### ➤ **Code Development & Grant Writing Instructor**

- Instructed on behalf of ITEP, FWS, USBR, UCSB



# Tribal Consulting Experience

- **Drafting Environmental Codes**
  - Cabazon Band of Mission Indians
    - Env Review, Air, Water, Waste, USTs, Chemicals & Haz Substances
- **Tribal Waste Codes Development Workshop Instructor**
  - Institute for Tribal Environmental Professionals
- **Three ETEP Development Consulting Projects**
  - Rincon Band of Luiseño Indians
  - Pala Band of Mission Indians
  - La Jolla Band of Luiseño Indians
- **GAP Work Plan Development**
  - Chemehuevi Indian Tribe
- **DOE Grant Writing Assistance (funding secured)**
  - Pala Band of Mission Indians

# Legal Disclaimer

The information provided in this webinar is intended to help you better understand the process and available resources for drafting tribal environmental laws. Any person seeking to draft or enact a law, develop or implement any regulatory mechanisms pursuant to a law, or otherwise apply the educational information provided during this webinar should seek the advice of a licensed and qualified attorney.

# Webinar Objectives

- Provide overview of how to develop a tribal environmental law
  - Describe step-by-step law development process
  - Provide and demonstrate how to use templates and other resources
    - Many resources have been recently improved
  - **Legal considerations not covered (e.g. jurisdiction)**
- Review draft Cabazon Environmental Code
  - Covering Permitting, Enforcement, Environmental Review, Air, Water, Waste, USTs, Hazardous Substances, etc.
  - Describe the approach and considerations
  - Show Environmental Review Checklist

# Terminology

**This is how the following words will be used during this webinar:**

- **Law = Code, Ordinance, Statute, Regulation**
- **Code = A Series of Laws**
- **Statute / Ordinance = Law Adopted by a Legislative Body**
  - E.g. A law adopted by the Tribal Council (if they have that authority)
- **Regulation = Rules Adopted Under an Ordinance or Statute**
  - Must be consistent with the Ordinance/Statute
  - May cover gaps or provide more detailed requirements

# Tribal Environmental Law Development Steps

- **Scoping**
  - Identify Issues and Objectives to be Addressed
  - Identify and Consider Enforcement Options and Capabilities
  - Consider Available and Needed Tribal Resources
- **Review Tribal Constitution and other governing documents**
- **Research and Review Similar Laws**
- **Draft or Revise Tribal Environmental Law**
- **Presentation & Review**
  - Including Council and Legal Review
- **Enact Tribal Environmental Law**
- **Implement Tribal Environmental Law**

# Tribal Environmental Law Development Steps

- **Scoping – ongoing process**
  - **Identify Issues and Objectives to be Addressed**



# Identifying Issues & Objectives

## ➤ Specific or General

- **Area Specific Issues and Objectives**
  - E.g. Open Burning, Roadside Illegal Dumping
- **General Issues and Objectives**
  - These can be cultural, social, economic, etc.
    - ❖ E.g. Promoting Economic Development

# Identifying Issues & Objectives

- **Specific or General**
- **Current & Potential Issues**
- **Community Objectives for Resources**
- **Methods for Identifying Issues & Obj:**
  - **Review Documents (e.g. Env Inventory, IWMP)**
  - **Community Surveys / Workshops**
  - **Discuss w/ Leaders, Staff, Supervisors, Partners, Stakeholders, etc.**
- **Track Sources and List Findings**
- **First opportunity to engage tribal community – USE IT WELL**

# Tribal Environmental Law Development Steps

- **Scoping – ongoing process**
  - **Identify Issues and Objectives to be Addressed**
  - **Identify and Consider Enforcement Options and Capabilities**

# Identifying Enforcement Options

- **Consider Enforcement Options**
  - E.g. Penalties & Remedies
- **Consider Other Enforcement Alternatives**
  - Including other legal and non-legal means
    - E.g. Community Education & Outreach

# Tribal Environmental Law Development Steps

## ➤ Scoping – ongoing process

- Identify Issues and Objectives to be Addressed
- Identify and Consider Enforcement Options and Capabilities
- Consider Available and Needed Tribal Resources

# Consider Available & Needed Resources

- **Consider Available and Needed Resources for Implementation and Enforcement of Tribal Waste Laws**
  - **E.g. Funding, Enforcement Officers, etc.**

# Tribal Environmental Law Development Steps

## ➤ Scoping

- Identify Issues and Objectives to be Addressed
- Identify and Consider Enforcement Options and Capabilities
- Consider Available and Needed Tribal Resources

## ➤ Review Tribal Constitution and other governing documents

- What is the process for enacting tribal laws? Who needs to approve?

# Tribal Environmental Law Development Steps

## ➤ Scoping

- Identify Issues and Objectives to be Addressed
- Identify and Consider Enforcement Options and Capabilities
- Consider Available and Needed Tribal Resources

## ➤ Review Tribal Constitution and other governing documents

## ➤ Research and Review Similar Laws



# Conducting Research Tribal Environmental Laws

- **Review Tribal Constitution and other governing laws/documents**
  - Articles of Organization, Treaties, Tribal-State Compacts, etc.
- **Review Tribal Laws – from your own tribe**
  - Look for Potential Conflicts, Model Language/Provisions/Sections, etc.
- **Review Similar Env Laws – from other tribes and municipalities**
  - Models/Templates, Language, Provisions, Sections
  - Note relevance (contact other tribes/municipalities for feedback)
- **Maintain a Research Log**

# Tribal Environmental Law Development Steps

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- **Draft or Revise Tribal Environmental Law**

# Drafting Your Tribal Env Law

- **Review Relevant Laws and Templates in Detail**
  - Identify useful language, provisions, and sections
- **Cut and Paste Language, Provisions, and Sections into the Outline**
  - The fewer models/templates you use the better
  - Edit language as needed
- **Review and Revise Drafts**
  - If not being drafted by a qualified attorney, have regular legal review
- **Optional: Simultaneous research, review, and draft**

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# Prosper's Assistance with Env Codes: Considerations & Benefits

## ➤ Considerations (High Need / Good Fit)

- No Access to an Attorney with Environmental & Tribal Law Expertise
- Limited Staff Time and Capabilities (time consuming, complex process)
- Available Funding for Environmental Codes
- Desire to Draft and Adopt Environmental Code Quickly

## ➤ Benefits

- Qualified Attorney with On-The-Ground Environmental Experience
- Develop Highest Quality Env Code Possible in Shortest Time Possible
  - Expertly Crafted the First Time; Avoid Ineffective Code & Need for Major Update
- Thorough Documentation and Valuable Compliance Tools & Templates

# Prosper Sustainably's Services

- Environmental Codes Drafting
- Planning & Strategy Development
  - Developing and Implementing a Strategic Plan
  - EPA-Tribal Environmental Plan
- Grant Writing & Management
- Program Development & Management
- Project Management: Planning & Coordination
- Feasibility Studies & New Ventures Planning



<http://www.prospersustainably.com/services/>

# Thank You! Questions?

[jsimmons@prospersustainably.com](mailto:jsimmons@prospersustainably.com)

(805) 694-8089 (office) / (805) 617-5685 (cell)

