March Legislative Reporting:

AB 52 – Gatto. Native Americans: California Environmental Quality Act Chaptered Sept. 25, 2014 Effective July 1, 2015

This bill would specify that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource, as defined, is a project that may have a significant effect on the environment.

*The bill would require a lead agency to begin consultation with a California Native American tribe that is traditionally and culturally affiliated (*can be a tribe anywhere within the State of California*) with the geographic area of the proposed project, if the tribe requested to the lead agency, in writing, to be informed by the lead agency of proposed projects in that geographic area and the tribe requests consultation, prior to determining whether a negative declaration, mitigated negative declaration, or environmental impact report is required for a project.*

As the title hints, this is an additional requirement of lead agencies, and their project proponents in the CRQA process. This is only the first portion of the bill. At points it is straight forward, but then it can be difficult and politically challenging.

For example, it is incumbent on a tribe wishing to consult on development projects within a specific area to provide proper notice with the lead agency prior to project application. The lead agency, city or county. Must then invite the tribe(s) within 14 days of project application to participate in consultation on this and all future projects in the local agency's jurisdiction. However, if a tribe fails to provide proper notice or accepts the invite beyond the 30 day window the tribe(s) is limited to comment into the public comment period. Should the lead agency make an exception to a non-complying tribe the lead agency forgoes the protections of the law.

We have attached a power point presentation on our website that may clarify most issues, but will also cause consternation. Our staff recently attended an abbreviated training for AB 52, and is willing to share what we have learned.

Issues:

- What are Tribal Cultural Resources (TCR)?
    - Spiritual and protections against disclosure.
    - Adhere to timeline, any exception eliminates all local agency protections.
    - CEQA document **may not** be made public until there is a resolution and agreement with consulting tribe (if timeline was adhered to).

School Impact Fees – Increased

By law, the California State Allocation Board (SAB) is required to review the cost of school construction in January every year. Each year, the SAB recommends grants on pre-unhoused students. Every two years, the State Allocation Board must include the review and recommendation for the Statutory Level I development impact fee rates on residential and commercial construction. Most of this is based on CCI and actual costs for newly built schools.

The newly adopted development impact fee rate (Level I) for new residential construction is $3.48 per square foot, and $0.56 per square foot of commercial construction. ***New Alternative Level II fees requiring a School Facilities Needs Analysis based on the new annual grant increases have already started to come in from Districts within the DVBA territory.***

Imperial Unified School District has proposed a Level II fee for residential construction in the amount of $4.05 a square foot. This fee is challengeable based on over-valuing the cost of land and artificially limiting the occupancy of school sites.

Enhanced Infrastructure Financing Districts EIFDs) and Community Revitalization and Investment Act (CRIA)

These are two laws that are designed to aid our communities to provide infrastructure, remove blight and decay, and provide assistance to the issue of affordable housing ***"financed by the issuance of bonds serviced by tax increment revenues derived from the project area".*** Unlike the RDA, only a small portion of that tax increment may be sequestered. The laws protect schools from having to share their portion, and the State won't discuss what it can do without, even for a minute.

So what tax increment are we talking about? Because of Proposition 13 our property tax rate is 1% of its value at last sale (plus a limited increase annually, which usually is far less than the tax would be if collected at current true valuation). But, the amount of money returned to the resident city can be as low as 3%. The average is between 10 and 15 percent. That's not a lot of bang for the buck.

We can negotiate with the county. Their share too, is negotiated and may differ from jurisdiction to jurisdiction. Still not as significant as we would like.

There are several government investment/finance consultants trying to work this issue: How do we fund infrastructure in the most straightforward financially feasible manner? As of last week, 48 local agencies and special districts have begun the process of establishing a plan and maybe a commission to start an EIFD or CRIA. There is no beaten path to follow. And, negotiations have been found to be quite complex.

The initiating agency is usually the city. Before they start the process, they have already accepted that they are forgoing future general fund revenues for these planned regions (they appear to work better as non-contiguous property islands). The counties and their various departments served by the collected property tax seem to be the final and most difficult hurdle for the most advanced of the plans in the process. Time is still needed to actually see one of these plans become active.

One additional tidbit: VLF or Vehicle Licensing Funds, which the local agency receives, may be used to fund the formation process of the plan. These funds may also be a way in which to aid in the improvements of a plan area. But, there are limitations and specific procedures to follow.

The Desert Valleys Builders Association hopes that EIFDs and CRIAs will ease the pressures on our local agencies to provide funding assistance for infrastructure, reducing blight, adding safe and affordable housing to our communities.