



# DEPARTMENT OF CONSERVATION

*Managing California's Working Lands*

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## **Native American Tribal Communities Relations and Consultation Policy**

### **STATEMENT OF PURPOSE**

The Department of Conservation's (Department) mission is to balance today's needs with tomorrow's challenges and to foster intelligent, sustainable, and efficient use of California's energy, land, and mineral resources. On September 19, 2011, Governor Edmund G. Brown Jr. issued Executive Order B-10-11, which provides, among other things, that it is the policy of the administration that every State agency and department subject to executive control must implement effective government-to-government consultation with California Native American Tribes.

This policy provides a framework to improve and maintain communication and collaboration between the Department and California Native American Tribes, in order to minimize the impacts of the Department's projects to tribal cultural resources and other natural resource areas of tribal concern.

This policy also provides a commitment to educate appropriate staff, to become informed about the cultural setting of California Native Americans, their environmental issues, and tribal histories, for the purpose of improving the Department's understanding of and connection to California Native American Tribes.

### **GUIDING PRINCIPLES**

To improve communication and collaboration, the Department shall:

- Acknowledge both federally and Native American Heritage Commission (NAHC) recognized tribes as unique and separate entities and/or governments.
- Recognize and respect tribal rights, sites, traditions, and practices.
- Communicate with tribes in a manner that is respectful and considerate.
- Consult with tribes for projects that the Department undertakes or approves that have the potential to impact tribal communities, cultural resources, or sites.

## DEFINITIONS

Consultation: The process whereby the Department provides the tribes with timely notice and opportunity to comment on a proposed project. Consultation is intended to address the identification of sites, site significance evaluation, impacts assessment, and resolution of potentially significant adverse change.<sup>1</sup> Its purpose is to give tribes an opportunity to present their interests and concerns to the Department, usually when the State agency is serving as a lead agency. In this relationship, the Department's obligation is to seek and consider the views of participating tribal groups.

Tribe: A Native American tribal government as used in this policy includes federally recognized tribes and California Native American tribes on the list required to be maintained by the NAHC pursuant to Government Code 65092 (b).

## RESPONSIBILITIES

Director: Works with tribes to achieve the intended results of this policy, both directly and through delegation to the Department's Tribal Liaison. The Director serves as the primary decision-maker for the Department when engaged in tribal consultation. Although the Director retains ultimate authority with respect to all departmental decisions, significant decision-making authority for activities undertaken by divisions may be delegated to the Chief Deputy Director or Division Directors, who would be best positioned to lead consultations on their division's activities.

Tribal Liaison: The Assistant Director, Office of Governmental and Environmental Relations (OGER), is designated as the Department's Tribal Liaison. The Tribal Liaison represents the Director on matters associated with tribal relations. The Tribal Liaison has lead responsibility for the development and implementation of the Department's tribal policy. The Tribal Liaison supports and facilitates the Division Liaisons and Division Directors for projects and actions that entail tribal interaction. Finally, the Tribal Liaison works with the Native American Heritage Commission to ensure the Department is utilizing the most recent tribal contact information, and is the initial point of response for inquiries from tribes.

## POLICY

Each division within the Department will:

1. Promote appropriate collaboration with tribes.
2. Disseminate public documents, notices, and information to tribes, and make these documents accessible to tribes that may not have electronic communication capabilities. The Department will maintain a tribal contact list produced by the NAHC to utilize when statewide or regional activity is proposed, and to distribute notifications and documents separately from any general public notice.

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<sup>1</sup> The Department acknowledges that federally recognized tribes have a unique political status and jurisdiction and exercise governmental powers over activities and members within their territory. Although formal government-to-government consultation is possible only for federally recognized tribes, for purposes of this Policy the Department will communicate and consult with non-federally recognized tribes and tribal communities acknowledged by the NAHC in generally the same manner as it does federally recognized tribes.

3. Conduct meetings, outreach, and workshops, as needed and, where feasible, at times and in locations that facilitate tribal participation. When appropriate and feasible, the tribes may seek to pursue informal staff-to-staff meetings with the Department to discuss proposed activities. Nothing in this policy is designed to discourage or prohibit such meetings.
4. Provide training to appropriate executive staff, managers, supervisors, and employees on how to implement this policy and the Native American Consultation Procedures.
5. Upon request by a tribe, provide information and share data, where appropriate.
6. Encourage collaborative efforts between tribes and federal, State, and local government entities to resolve issues of mutual concern.

## **NATIVE AMERICAN CONSULTATION PROCEDURES**

### INTRODUCTION / LEGAL AUTHORITY

This document describes the procedures for consultation with tribes for all Department projects.

### STATUTORY REFERENCES

Government Code section 11019.8: “All State agencies, as defined in Government Code section 11000, are encouraged and authorized to cooperate with federally recognized California Indian tribes on matters of economic development and improvement for the tribes.”

Public Resources Code section 5024.1: Establishes a California Register of Historical Resources as an authoritative guide in California to be used by State and local agencies, private groups, and citizens to identify the State's historical resources and to indicate what properties are to be protected, to the extent prudent and feasible, from substantial adverse change.

Public Resources Code section 21000 et seq.: California Environmental Quality Act of 1970 (CEQA) declares that public or private projects financed or approved by the State are subject to environmental review by the State. All such projects, unless entitled to an exemption, may proceed only after this requirement has been satisfied. CEQA requires detailed studies that analyze the environmental effects of a proposed project. In the event that a project is determined to have a potentially significant environmental effect, the Act requires that alternative plans and mitigation measures be considered. CEQA includes historic and archaeological resources as integral features of the environment. As of January 1, 2015, CEQA contains a new category for lead agency environmental review, tribal cultural resources, and an affirmative right for tribes to request consultation for CEQA projects that will apply to all projects that have a Notice of Preparation of an Environmental Impact Report or a Notice of (Mitigated) Negative Declaration filed after July 1, 2015.

Public Resources Code section 2773.3 provides that “a lead agency may not approve a reclamation plan for a surface mining operation for gold, silver, copper, or other metallic minerals or financial assurances for the operation, if the operation is located on, or

within one mile of, any Native American sacred site and is located in an area of special concern,” unless certain criteria are met.

## CONSULTATION PROCEDURES STATEMENT

The purpose of the consultation policy is to give tribes an opportunity to present their interests and concerns to the Department, usually when the State agency is serving as a lead agency. In this relationship, the Department’s obligation is to seek and consider the views of participating tribal groups. This means the Department must make a good-faith effort to solicit the views of Native American individuals and groups, and factor these views into the final agency decision. Thus, the consultation requirement gives a tribe the ability to advocate an outcome it would like to see the Department pursue in the final project decision.

Critical to successful consultation is listening to and actively considering the views expressed by tribal individuals and/or groups. A principal goal of consultation is to provide these entities with a reasonable opportunity to express their views on a Department project.

The Department’s division staff should recognize that in many instances, tribal members are being asked to volunteer their time to provide the Department with information. Accordingly, the Department should consider steps to overcome financial impediments that might prevent tribes from effectively participating in the consultation process. These steps may include scheduling meetings in places and at times that are convenient for the consulting parties.

Typically, consultation regarding Department projects can be completed in a series of steps. The first step, called Initial Consultation, is intended to provide notice of a proposed project and request information about cultural resources known or thought to exist within or adjacent to the project area, as well as other natural resource impacts of tribal concern. The second step, called Second Consultation, is taken when known tribal resource impacts are identified within the project.

## ADDITIONAL CONSULTATION EFFORTS

A tribe may request a consultation with the Department at any point when they believe that the Department may have some decision-making authority. This can be consultation beyond the aforementioned Initial and/or Secondary Consultations. The purpose here is to fully evaluate potential effects, and to provide the NAHC and affected tribes with an additional opportunity to participate in the review process.

The Department shall respond promptly to tribes requesting a consultation, and will consider any information and opinion brought to its attention. In addition, the Department shall endeavor to provide affected tribes with information about the Department’s role in a particular project and whether the Department has authority over the impacted resources.