

Draft California Natural Resources Agency Tribal Consultation Policy Update

1) Addressing Historical Wrongs

On June 18, 2019, Governor Gavin Newsom issued [Executive Order N-15-19](#) to formally apologize on behalf of the citizens of the State of California to all California Native Americans for the many instances of violence, maltreatment and neglect that California inflicted on tribes. Through this Executive Order, Governor Newsom reaffirmed Governor Brown's [Executive Order B-10-11](#) and directed his Tribal Advisor and the Administration to engage in government-to-government consultation with California Native American tribes regarding policies that may affect tribal communities.

Tribal consultation is a key component in addressing the historic wrongs against California Native Americans sanctioned by the State. Prior to colonization, the entirety of what is now known today as the State of California was tribal territory. California Native American tribes and people are the original stewards of the lands and waters in California, a relationship that continues to this day.

Today, California is home to the largest number of tribes in the contiguous United States, with 109 federally recognized tribes and approximately 60 non-federally recognized tribes. While this policy applies to consultation, engagement, and communication with all California Native American tribes¹, it does not negate the specific government-to-government² responsibilities that the state holds with respect to federally recognized tribes. In recent years, the state has adopted executive orders and other policy directives to improve communication between public agencies and tribes. The primary objective of these efforts is to ensure that tribes can participate meaningfully in decisions that may affect their communities.

2) Purpose and Background

The California Natural Resources Agency (hereafter CNRA) and its departments, commissions, boards, and conservancies (hereafter departments) are committed to consulting with California Native American tribes (broadly referred to as "tribes" throughout this document) as it works to "restore, protect and manage the state's natural, historical and cultural resources for current and future generations using creative approaches and solutions based on science, collaboration and respect for all communities and interests involved." ([CNRA Mission](#)). In 2012, CNRA adopted a [Tribal Consultation Policy](#) to advance

¹ California Native American tribes are those that are either recognized by the federal government pursuant to the annual list published under the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. Sec. 5131) in the Federal Register or non-federally recognized tribes located in California. For the purposes of the California Environmental Quality Act (CEQA), a California Native American tribe means a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 532 of the Statutes of 2014, Assembly Bill 52,. See Public Resources Code Section 21073.

² Government-to-government consultation is a formal consultation process that occurs between tribal and state or federal governments. This process recognizes the sovereign-to-sovereign relationship and unique responsibilities that exist between recognized tribes and the United States (and by virtue the states within it). Such legal obligations include, but are not limited to, trust responsibility, treaty rights, executive orders, and case law.

Governor Brown's [Executive Order B-10-11](#). However, since then, as the CNRA continues to learn from and partner with tribes, tribes have expressed the need for a modernized consultation policy. This consultation policy is adopted as the new CNRA tribal consultation policy and replaces the CNRA 2012 policy. This new policy incorporates new laws and executive orders to ensure CNRA and its departments are advancing early, often, and meaningful tribal consultations across our work.

The objectives of this policy are as follows:

1. Establish consistent tribal consultation policies and implementation across departments under CNRA. This policy shall serve as a basis upon which CNRA departments, commissions, boards, and conservancies can build additional department-specific tribal consultation policies.
2. To institutionalize CNRA's policy of early, often, and meaningful consultation with California Native American tribes with the goal of collaborative problem-solving and partnership.
3. To encourage collaboration between CNRA and its departments on the tribal consultations for multi-departmental projects.
4. To provide policy for state staff regarding which personnel are designated to represent their department in tribal consultations and the roles and responsibilities of tribal liaisons.

3) Tribal Consultation

It is the policy of CNRA and all entities under CNRA to engage in early, often, and meaningful consultations on a government-to-government basis with federally recognized California Native American tribes, and to consult with nonfederally recognized California Native American tribes and tribal organizations, as appropriate, on policies, processes, programs, and projects that may impact tribal communities.³ CNRA departments, commissions, boards, and conservancies may adopt additional tribal consultation policies building on this policy and to support their specific missions.

a) Definition of Tribal Consultation

Tribal consultation "means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural significance."⁴

Tribal consultations may be conducted before, during, or after a department action. For the purposes of this policy, preliminary tribal consultations and tribal consultations may include but are not limited to all communications, meetings, site visits, informal and formal consultations up to a final decision or action. For the purposes of this policy, a tribal consultation period for an action typically begins when the request for tribal consultation letter is sent and concludes on the date indicated in the letter. Tribal consultation periods are used to clearly communicate start and end times for consultations on

³ Government Code Section 11019.81 (c), Assembly Bill 923.

⁴ Government Code Section 65352.4.

department actions. CNRA and its departments can extend tribal consultation periods and consult outside of set consultation periods.

It is important to note that capacity constraints may prevent a tribe from responding to a request for consultation, even if they are interested in the issue. Moreover, a nonresponse from a tribe does not indicate consent to a project, and CNRA and departments should continue engaging and requesting consultation as the project progresses.

Tribes may not respond to a request for consultation or may decline to consult. If a tribe does not respond to a request for consultation, CNRA and departments will continue to seek consultations and notify tribes of updates as the action progress. If a tribe clearly states they do not want to consult on a particular action, CNRA and departments may no longer contact the tribe on the particular action; however, if, at a later time, a tribe wishes to reengage in consultation regarding the action, CNRA and departments shall include them in future consultations and notifications.

b) Objectives of Consultation:

While the specific issues and desired outcomes for tribal consultation will vary with each situation, the following objectives apply to all consultations. For each consultation, departments shall:

- Share pertinent materials with a tribe in a timely fashion such that tribal leaders, representatives, and/or staff may make an informed decision and provide meaningful comments.
- Provide tribal consultation timelines that allow tribal leaders, representatives, and/or staff to process information, schedule internal and external meetings, make informed decisions, and provide thoughtful comments and feedback.
- Provide opportunities for tribal leadership to express their views and concerns and in so doing, for CNRA and department staff to develop a clear understanding of the tribal perspectives, needs, and concerns.
- Strive for collaborative problem-solving as well as integrating and advancing of tribal priorities and perspectives into CNRA and department decision-making where feasible.

c) Principles of “Early,” “Often,” and “Meaningful”

i) “Early”

“Early” means preferably before department actions and decisions have been made and definitely before an action or decision cannot be changed. CNRA and departments should request consultation as early as possible in the planning process. CNRA and departments are encouraged to implement early consultation periods, during which tribes have the opportunity to learn about and provide feedback on an activity before the project begins and before any major or irreversible decisions have been made. Additional consultations, i.e. consultation on a draft document, may follow early consultations as appropriate. Consulting as early as possible also gives CNRA and departments adequate time and flexibility to incorporate and or address tribal priorities and concerns.

ii) “Often”

CNRA and departments should be building and maintaining relationships with California Native American tribes on an ongoing basis, before consultation is needed. However, for any CNRA or department actions with potential tribal implications, CNRA and departments should offer consultation at a frequency that is conducive to allowing tribes multiple opportunities to provide input throughout the development process of a department’s decision-making.

Roundtables, working groups, email listservs, and other intertribal spaces can be utilized to help provide updates, share information, and support intertribal and department coordination. These practices are helpful to address capacity constraints but cannot be used in lieu of tribal consultation.

iii) “Meaningful”

Meaningful consultation requires that the department hear, understand, respect, and consider tribal feedback and comments; accordingly, consultation must happen well in advance of any major department decisions. “Meaningful” does not imply that both parties will come to consensus and reach agreement; however, a consensus-seeking approach should be sought throughout the consultation process. If consensus is not reached, CNRA and departments should provide a clear explanation of why tribal recommendations were not fully integrated and explore alternative solutions in collaboration with tribal leadership and representatives. Meaningful consultation also requires that CNRA and departments provide tribes with a clear understanding of how their feedback will be used in the development of final decisions, actions, or policies following consultation.

d) Determining When to Seek Consultation

Determining when to seek consultation with tribes requires a two-step analysis: (1) CNRA or a department should first determine whether its action has potential implications for tribes, may be of interest to tribes, or impacts to their ancestral lands, cultural or natural resources, representatives, or tribal communities; and, (2) for actions identified in step (1), tribes, CNRA, or its departments should identify key milestones, needs, and timing associated with the action and identify where in that process to seek consultation with tribes such that tribes have multiple opportunities to provide meaningful and timely input to inform the decision-making of an action.

i) Actions with Tribal Implications

Actions may include, but are not limited to, “the development of policies, regulations, guidelines, processes, programs, and projects”, rulemakings, strategic plans, planning documents, funding and grant opportunities, memorandums of understand, and as required by legislation, with tribal implications.⁵

Tribal implications are “actions that impact one or more federally recognized tribes or nonfederally recognized tribes or tribal organizations, the government-to-government

⁵ Government Code Section 11019.81 (b)(1), Assembly Bill 923.

relationship between the state and federally recognized tribes, or the distribution of power and responsibilities between the state and federally recognized tribes.”⁶ Tribal implications also include actions that are of interest to tribes, including but not limited to, tribal cultural resources, sacred sites and landscapes, natural resources, economic development, access and use of ancestral lands, ancestral land return, increasing the availability of public resources and services to tribes and their communities.

When determining whether an action may have tribal implications, CNRA and departments should take as broad of an approach as feasible.

ii) Determining the Timing of Consultation Initiation and Frequency

As stated above, “early, often, and meaningful” are key principles of the CNRA’s Tribal Consultation Policy. This means that departments should contact potentially affected tribes as early as feasible and on as frequent or as-needed basis that achieves the consultation objectives set forth in this policy and to “allow tribal officials the opportunity to provide meaningful and timely input in the development of policies, processes, programs, and projects that have tribal implications.”⁷ Determining when and how often to consult with a tribe may depend on several factors including, but not limited to:

- (1) State laws and mandates
 - (a) Public Resources Code Section 21080.3.1 (Assembly Bill 52)⁸
 - (b) Government Code Section 11019.81 (Assembly Bill 923)⁹
- (2) Department-specific mandates (e.g. permitting and regulatory actions)
- (3) Size and complexity of a particular project or department action (e.g. permitting, broad policy decisions, emergency actions, etc.)
- (4) Number of tribes, governmental entities, or stakeholders that may be potentially affected by an agency action
- (5) Whether CNRA, a department, or a tribe has requested consultation
- (6) Department meeting schedules
- (7) Tribal council meeting schedules and other tribal events or ceremonies.

Unless otherwise specified in statute, 90-day consultation periods are considered best practice. 60-day consultation periods may be acceptable for time-sensitive matters or projects.

iii) Emergency Consultations

In some cases, consultation periods are truncated, or departments may need to take emergency actions that require quick decisions to protect life, the environment, or property (e.g. wildfire response, flooding from storms, oil spills, emergency regulations, public health, etc.). During these emergency situations, departments may not be able to

⁶ Government Code Section 11019.81 (b)(3), Assembly Bill 923.

⁷ Government Code Section 11019.81 (c), Assembly Bill 923.

⁸ Public Resources Code Section 21080.3.1, Assembly Bill 52.

⁹ Government Code Section 11019.81 (d), Assembly Bill 923.

offer “early” consultation to tribes. However, departments should strive to uphold the principles of this policy (i.e. early, often, and meaningful consultations) to the extent practicable and allowable under the law. Additional local, state, and federal laws may also need to be considered.

For departments that frequently manage or respond to emergency situations, it is recommended that department and deputy department tribal liaisons contact the Native American Heritage Commission to request a Sacred Lands File search for any known records of sacred lands within the area of the emergency and obtain a tribal contact list of culturally affiliated tribes. If applicable, departments can also request a determination from the California Historic Resources Information System (CHRIS) regarding the presence/absence of historical resources, including building, structures, objects, archaeological sites, landscapes, or districts.

Once the contact list and resource searches have been received, the tribal liaison should send an email containing emergency/incident information. Following the email, the tribal liaison should make a phone call to ensure each tribe received the notification and if they have any questions or concerns. Departments should consider having a dedicated tribal liaison email address to be utilized during emergency situations.

Additionally, department and deputy department tribal liaisons should create and maintain a tribal emergency contact list and foster relationships with tribes prior to emergency situations.

4) Designating a Tribal Liaison

This Section includes details concerning tribal consultation authority and how tribal liaisons are designated at one or more department levels.

a) Officials with Authority to Consult with Tribes:

Government Code Section 11019.81, [Assembly Bill 923](#) (Ramos, 2022), states that the following officials within the Executive Branch shall have the authority to represent the state in tribal government-to-government consultations and shall be required to complete a statewide tribal consultation training:¹⁰

- i) The Governor
- ii) The Attorney General
- iii) Each constitutional officer and statewide elected official
- iv) The director of each state agency and department (Note, this includes all conservancies and departments under CNRA)
- v) The chair and the executive officer of each state commission and task force (Note, this includes all commissions and boards under CNRA)
- vi) The chief counsel of any state agency

¹⁰ This Policy does not address or fulfill the statewide training requirement listed in Assembly Bill 923.

Government Code Section 11019.81 further specifies that any of the above officials may formally designate another official to conduct preliminary tribal consultations. These designated officials have the authority to act on behalf of the state during government-to-government consultations, delegate such authority, and are required to complete the statewide tribal consultation per Government Code Section 11019.81.

b) CNRA Tribal Liaison

The CNRA Deputy Secretary for Tribal Affairs is designated as the CNRA tribal liaison and is delegated authority to conduct tribal consultations on behalf of the CNRA Secretary, has the authority to act on behalf of CNRA, and is required to complete tribal consultations per Government Code Section 11019.81 for CNRA.

The CNRA Deputy Director for Tribal Affairs is designated as the CNRA deputy tribal liaison and is delegated authority to conduct tribal consultations on behalf of the CNRA Deputy Secretary for Tribal Affairs.

c) Department Tribal Liaisons

Each department is required to have a department tribal liaison. The department tribal liaison may be one of the positions listed in Section (4) (a) of this policy or a designated official. Pursuant to this policy, CNRA department directors are required to formally designate a department tribal liaison and to provide a formal designation letter at time of the adoption of this policy and as needed. To designate a department tribal liaison, department directors shall send a letter to the CNRA Secretary and the Deputy Secretary for Tribal Affairs. The designation letter should include the 1) name, 2) title, 3) classification, 4) email, 5) phone number, and 6) scope of delegate authority. CNRA will report all formally designated department tribal liaisons to the Secretary for Tribal Affairs to the Governor and post on the CNRA website updated department tribal liaison's contact information.

Department directors are highly encouraged to designate a department tribal liaison at the executive leadership or senior staff level, with authority in the department, and who can act on behalf of the department. Each department is encouraged to have at least one designated full-time department tribal liaison; however, where doing so is not feasible, it is recommended that each designated department tribal liaison should be allotted a minimum of 30% of their working responsibilities to perform the duties associated with the department tribal liaison roles and responsibilities noted below, to the extent such allocation is feasible. It is highly encouraged to include the duties of the department tribal liaison in the job description and duty statement of the position serving as the department tribal liaison.

d) Deputy Department Tribal Liaisons

Department directors may also designate deputy department tribal liaisons for specific regions, programs, or projects within the department. Department directors may designate deputy department tribal liaisons using the same letter as the department tribal liaison or separate letters. The designation letter should include the 1) name, 2) title, 3) classification, 4) email, 5) phone number, and 6) scope of delegate authority. Such designation should occur at time of the adoption of this policy and as needed. For larger departments, deputy department tribal liaisons

may serve as the main point of contact for tribes for their specific region or program. Deputy department tribal liaisons shall coordinate closely with the department tribal liaisons to ensure consistency and clear communication but can represent the department for specific reasons detailed in a delegation letter.

5) Tribal Liaison Roles and Responsibilities

This section defines the minimum roles and responsibilities of the CNRA Deputy Secretary for Tribal Affairs and department and deputy department tribal liaisons. Regardless of classification or position, all CNRA departments and their employees should adhere to statewide tribal affairs policies and goals. CNRA and department staff who are not designated tribal liaisons shall closely coordinate with their department and deputy department tribal liaisons when working on projects that might affect tribes, including working with the tribal liaison on implementation of tribal consultations. Tribal liaisons shall be available to support their colleagues to determine if or when a project or department action may affect a tribe or tribes and to determine the most appropriate pathway(s) for tribal consultation on a given action.

a) CNRA Deputy Secretary for Tribal Affairs Roles and Responsibilities

The Deputy Secretary for Tribal Affairs has the responsibility to ensure consistency of the implementation of this policy. To accomplish this, the Deputy Secretary for Tribal Affairs shall convene all department tribal liaisons on a monthly basis to provide resources, coordinate on shared projects, and trainings as needed. The Deputy Secretary for Tribal Affairs may create tribal affairs working groups to provide additional focus on key tribal affairs policies, including the implementation of this policy. The Deputy Secretary for Tribal Affairs shall conduct an annual training for all department and deputy department tribal liaisons regarding the implementation of this policy and other tribal affairs policies. Further, the Deputy Secretary for Tribal Affairs shall conduct an annual training for all employees at CNRA and departments on this policy and tribal consultation best practices.

b) Department Tribal Liaison Roles and Responsibilities

Department tribal liaisons serve as the main point of contact and act as the department's principal representative to tribes. Department tribal liaisons are generally responsible for responding to requests for information and consultation from tribes, participating in engagement activities and tribal consultations, and providing briefings to the CNRA Deputy Secretary for Tribal Affairs and Tribal Affairs Secretary of the Governor's Office.

Department tribal liaisons ensure the implementation of Agency and department tribal consultations policies and compliance with state mandates regarding tribal consultation. As such, department tribal liaisons shall review and sign all request for consultation letters or send all emails from the department to ensure consistency with this policy and their department's tribal consultation policies. Department tribal liaisons are encouraged to develop and maintain working relationships with tribal leadership and tribal staff.

Department tribal liaisons are required to complete the statewide tribal consultation training provided by the California Department of Human Resources and to attend the Deputy Secretary for Tribal Affairs monthly tribal affairs coordination calls and the Governor Office's quarterly tribal liaison calls

c) Deputy Department Tribal Liaison Roles and Responsibilities

Department tribal liaisons may delegate some of their duties to deputy department tribal liaisons; however, all communications and decisions shall include the department tribal liaison. For the departments with deputy department tribal liaisons, the department tribal liaison is required to host monthly coordination calls with their deputy department tribal liaisons.

Deputy department tribal liaisons shall complete their annual California Department of Human Resources tribal consultation training and be trained on this policy and their department's tribal consultation policies.

6) Limitations of this Policy

This policy is intended solely for the employees of CNRA and entities under CNRA and does not extend to other governmental entities, although CNRA encourages cooperation, education, and communication on the part of all governmental entities. This policy is not intended, and should not be construed, to define the legal relationship between CNRA and entities under CNRA and California Native American tribes or tribal communities. This policy is not a regulation, and it does not create, expand, limit, or waive any laws, legal rights, or obligations, nor is it intended to be punitive such that it alters any existing collectively bargained for employment rights or memorandums of understanding between unions and the state.