



InterTribal Sinkyone Wilderness Council

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InterTribal Cultural Conservation for Sinkyone Indian Lands

June 21, 2012

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Liane Randolph
General Counsel and Deputy Secretary
California Natural Resources Agency
1416 9th Street, Suite 1311
Sacramento, CA 95814

Re: Draft Tribal Consultation Policy

Dear Ms. Randolph:

The InterTribal Sinkyone Wilderness Council (Council) appreciates this opportunity to comment on the Draft Tribal Consultation Policy for the Natural Resources Agency. The Council is a consortium of ten federally-recognized Tribes that are based in Mendocino County and Lake County, California. The Council's member Tribes are: Cahto Indian Tribe of the Laytonville Rancheria; Coyote Valley Band of Pomo Indians; Hopland Band of Pomo Indians; Pinoleville Pomo Nation; Potter Valley Tribe; Redwood Valley Rancheria of Pomo Indians; Robinson Rancheria of Pomo Indians; Round Valley Indian Tribes; Scotts Valley Band of Pomo Indians; and Sherwood Valley Rancheria of Pomo Indians. The Council was established by its member Tribes as a non-profit conservation and cultural preservation organization, and it owns and manages approximately 4,000 acres along the Sinkyone coast in northern Mendocino County according to traditional Tribal conservation values and practices.

The Council has on-going relationships with several departments, commissions and conservancies of the Natural Resources Agency, including the Department of Fish and Game; the Department of Parks and Recreation; the Department of Forestry and Fire Protection; the State Coastal Conservancy; the Parks and Recreation Commission; the State Historical Resources Commission, the Native American Heritage Commission; the California Coastal Commission; and the Fish and Game Commission. The Council has a significant interest in ensuring that the policies of the Resources Agency and its various departments and other divisions fully respect the Tribes' sovereignty and that procedures are in place to facilitate genuine cooperation and collaboration on matters of mutual concern.

We commend Governor Brown and Secretary Laird for taking this constructive step toward improving the relationship between California Indian Tribes and the State. The Draft appropriately bases the need for the Policy on implementing the government-to-government relationship between the Tribes and the State. The relationship is properly characterized in that manner in recognition of the sovereign status of both the Tribes and the State. That is a firm legal foundation on which to base a consultation policy.

InterTribal Sinkyone Wilderness Council is a Nonprofit Consortium of California Indian Tribes

● *Cultural Conservation* ● *Native Stewardship* ● *Watershed Rehabilitation* ● *Cultural Ecology Education*

In general, we believe the Draft contains the essential elements of a sensible consultation process. We have a number of comments that are designed to clarify or elaborate on various aspects of the Policy and its implementation. The Draft goes far in establishing a process by which the departments will obtain and consider the views and information of Tribes, Tribal communities and Tribal consortia. We are committed to working with the Natural Resources Agency and its departments to establish a process of genuine collaboration with the Tribes. Our specific comments on the Draft follow.

First, as you know, the Department of Parks and Recreation, the Department of Forestry and Fire Protection and possibly other departments or divisions of the Resources Agency have policies in place setting out guidelines for Tribal consultation. In our view these policies should be revisited as part of this process, and may indeed benefit by being modified to ensure consistency with the Resource Agency's new umbrella policy.

Second, we believe the scope of the Policy as drafted should be broadened. It appears the Policy is intended to apply to the "development of regulations, rules and policies that may affect tribal communities." Page 1. The scope should be expanded to include departmental "programs, projects, plans, acquisitions, permits, mitigation, and activities." This additional detail is necessary in order to avoid confusion among Tribes and departmental employees about whether the Policy applies in a particular matter. A broader scope is consistent with the intent of the Policy, which is to ensure effective government-to-government consultation, communication and collaboration. In addition, the phrase "tribal communities" (at the end of the first sentence in the third paragraph of page 1) should be revised to "tribes and tribal communities".

Third, on page 1, third paragraph of the draft Tribal Consultation Policy, a major exemption is set forth, i.e., that the consultation efforts under this Policy shall only be pursued "to the extent that a conflict does not exist with applicable law or regulations." To the extent that existing laws or regulations are in conflict with, or fail to acknowledge, the government-to-government relationship between the State of California and the Tribes, the Agency and the departments—in consultation with the Tribes—should review such laws and regulations for possible revision. In addition, when any conflicts arise, the departments and the Tribes shall work together to resolve such conflicts through administrative channels.

Fourth, the Policy needs to include consultation with Tribal consortia, which are organizations formed by and comprised of member Tribes. An example of a Tribal consortium is the InterTribal Sinkyone Wilderness Council, which is comprised of ten federally recognized Tribes. The Policy should explicitly state that it applies to "California Tribes, Tribal communities and Tribal consortia comprised of Tribes." In general, Tribal consortia are intertribal organizations composed of member Tribes that appoint, through Tribal resolution, delegates to represent their Tribes on the consortium. Tribal communication and consultation with the Tribes may be enhanced in some cases if conducted in tandem with Tribal consortia that represent the interests of their member Tribes.

Fifth, although the Policy contains statements that may be interpreted as a definition of consultation, for purposes of clarity, it is advisable to include a single statement that expressly defines the term. We suggest the following definition, which is based on the

consultation policy of the Department of Parks and Recreation: “‘Consultation’ means the timely and active process of respectfully seeking, discussing and considering the views of California Indian Tribes, Tribal communities, and Tribal consortia and the departments of the Agency in an effort to reach a mutually-agreed upon resolution of any concerns expressed by such Tribes, Tribal communities, Tribal consortia or the departments.” This definition recognizes that consultation is a two-way street, and that each party has obligations to respect and consider the views of the other during the process.

Sixth, the timing of consultation should be clarified. The Draft refers to “early consultation,” but a more precise understanding of when consultation should begin should be included. The Policy should include language to the effect that consultation on matters affecting the interests of Indian Tribes, Tribal communities and Tribal consortia should begin “at the earliest practical time in the planning process.” In that way, the process more likely will ensure that Tribal participation will be meaningful.

Seventh, The consultation Policy should specify that the Resources Agency and the departments should work closely with the Tribes to identify those issue or programmatic areas on which the Tribes wish to be consulted. Without identification of specific areas of concern, the Tribes may be inundated with notices and requests for consultation on issues of little or no concern, and the Agency and departmental staff will be burdened with outreach obligations that may not be necessary from the Tribes’ perspective.

Eighth, we also ask you to consider a number of refinements to the process of consultation set out in the Policy. The essential elements of meaningful and genuine consultation are included in the Draft, but additional elaboration of several aspects will make the Policy even stronger. For example, where possible, communication with the Tribes is likely to be more effective when the initial notice of the initiation of consultation is provided in writing to the appropriate contact person or persons by both letter and email. The notice should contain the name of the State’s Tribal liaison and the name(s) of the departmental employees with primary responsibility for the matter that is the subject of the consultation.

Ninth, it is important that the Tribes, Tribal communities, and Tribal consortia identify their own designated representatives for consultation, and notify the Agency and departments of the names and contact information for these persons who will have the primary responsibility for consultation with the Agency and departments. The Agency and the departments also should avail themselves of the Tribal contact list maintained by the Bureau of Indian Affairs, although that list should not be used as the exclusive means to identify Tribal contacts.

Tenth, the Policy should state that when an Indian Tribe, Tribal community or Tribal consortia requests consultation on a particular matter, whether formally in writing or otherwise, the request will be immediately forwarded to the Tribal Liaison person for the department and the responsible departmental employees for consideration. The Policy should also state that unless the request concerns a matter outside the jurisdiction or legal authority of the department to which it is directed, such consultation requests will not be denied. An extremely important element of Tribal consultation is in-person meetings between the Tribes and the Agency’s departments.

Eleventh, with regard to information or documents provided by the Tribes, the Policy should state that the department will hold such information or documents in compliance with applicable confidentiality provisions of State law and policy, and that the department will seek to protect the confidential information of the Tribes to the fullest extent allowed by the law in all aspects of the consultation process.

Twelfth, The Resources Agency should make available sufficient funds to enable Agency and departmental staff to carry out meaningful consultation with California Tribes, Tribal communities and Tribal consortia. Genuine outreach and consultation with the Tribes will require substantial amounts of time and effort by staff, and without adequate funds specifically dedicated for that purpose, there is a risk that the Consultation Policy will not be effectively implemented.

Thirteenth, the Draft appropriately notes that the locations of meetings should “facilitate tribal participation as much as possible.” We believe the Policy should also specifically include a suggestion that at least some of the meetings should occur on Tribal land or offices whenever possible.

Finally, the Policy should indicate the point in the process at which the consultation is completed. Completion may occur when the parties reach agreement on a resolution of Tribal concerns, or, either party, acting in good faith and after reasonable effort concludes that the parties are at an impasse and resolution cannot be reached. The Policy should also provide that for actions, projects or plans that are large and complex, the parties will consider memorializing their understandings in the form of a memorandum of agreement.

We appreciate the opportunity to comment on the Draft Tribal Consultation Policy. The adoption of a Policy is a necessary step toward an improved relationship between the Tribes and the Natural Resources Agency. We are committed to working with Secretary Laird and his staff to find common ground on matters of concern to the Tribes.

Representatives of the InterTribal Sinkyone Wilderness Council will attend the June 26 meeting at Thunder Valley regarding the Consultation Policy, and based on the discussions at that meeting the Sinkyone Council may submit additional comments to you prior to the July 15 deadline for comment.

Sincerely,



Priscilla Hunter
Chairwoman

cc: John Laird, Secretary, Natural Resources Agency
Sonke Mastrup, Executive Director, Fish and Game Commission
Charlton Bonham, Director, Department of Fish and Game