



Ewiiapaayp Tribal Office

Ewiiapaayp Band of Kumeyaay Indians

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VIA Email and USPS
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July 2, 2012

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

re: CaNR Draft Tribal Consultation Policy

Dear Ms. Randolph:

The Ewiiapaayp Band of Kumeyaay Indians (the “Tribe”), a federally recognized Indian Tribe and Reservation, by this letter responds and provides comments to the California Natural Resources Agency (CaNR) draft tribal consultation policy.

First, any California agency or department tribal consultation policy should be founded upon legislation and/or an executive order that provides the mandatory, minimum requirements. The standard should require tribal consultation prior to any state agency/department action, a standard for impact or effect on tribes (e.g., significant, unique, material), and should be coupled with ongoing collaboration activities.

The text of an executive order/legislation that fits this standard would be as follows, which is the recommendation of the Tribe:

[Effected by Legislative Act and/or Governor’s Executive Order] Policy on communication and consultation with Federally Recognized Indian Tribal Governments

Every state agency shall adopt a policy of communication and consultation with federally recognized Indian tribal governments (“tribes”) in the State of California. The policy must provide for timely and meaningful communication and consultation with tribes and permit elected officials and other representatives of such tribal governments to provide meaningful and timely input into the development of legislation, regulations, rules and policies on matters that significantly or uniquely affect the tribes. The policy must require communication and consultation with the tribal governments before the agency may propose, adopt or implement legislation, rules or policies that may materially affect the tribes.

The ongoing collaboration activities would need to include key principles and ongoing activities in support of the duties established by the above standard. The Tribe offers and submits as a recommendation the follow draft policy:

CaNR Tribal Collaboration & Consultation Policy

x1. For purposes of this chapter, the following definitions shall apply:

(a) "American Indian" or "Indian" means:

(1) Any member of a federally recognized Indian tribe or nation pursuant to 25 U.S.C. § 450b(e);
(2) any person meeting the definition of Indian under the Indian Reorganization Act (25 U.S.C. 479) and the regulations promulgated thereunder;

(3) individuals who would meet the definition of "Indian" pursuant to 18 USC 1153; or

(4) individuals who have been deemed eligible for services and programs provided to American Indians and Alaska Natives by the United States public health Service pursuant to 25 U.S.C. § 1601 and 25 U.S.C. § 1679 et. seq., the Bureau of Indian Affairs or other federal programs;

(b) "Indian tribe" or "tribe" or "tribal nation" or "tribal government" means any of the tribes located wholly or partially in the State of California that are recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes, as updated in listings published from time to time in the Federal Register pursuant to section 104 of the act of November 2, 1994 (Pub. L. 103-454; 108 Stat. 4791, 4792), and in exercise of authority delegated to the Assistant Secretary – Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8; and

(c) "state agency" means an agency, department or office of the state of California that is cabinet-level.

x2. (a) On or before September 30, 2013, the Secretary for Natural Resources shall issue an order specifying mandatory tribal consultation principles for each CaNR division that shall require implementation of the State-Tribal Consultation & Collaboration [Act/E.O.] with measures for compliance and administrative consequences for non-compliance. The policy shall provide for timely and meaningful communication and consultation with tribes and permit duly elected officials and their delegees of such tribes to provide meaningful and timely input into the development of regulations, rules and policies on matters that significantly or uniquely affect tribe(s). The policy shall require consultation with and the consent of tribe(s) before any agency may propose, adopt or implement regulations, rules or policies that may materially affect tribe(s). By December 31, 2011, CaNR shall develop and implement an agency-specific policy that:

(1) promotes effective communication and collaboration between the agency and tribes;

(2) promotes positive government-to-government relations between the agency and tribes;

(3) promotes cultural competency in providing effective services to tribes and Indians; and

(4) establishes a method for notifying employees of the agency of the provisions of the State-Tribal Collaboration & Consultation [E.O./Act] and the policy that the agency adopts pursuant to this section.

(b) In the process of developing the policy set forth in subsection (a) of this section, the Agency shall consult with representative(s) designated by the tribe(s).

(c) A agency shall collaborate with tribe(s) in the development and implementation of policies, agreements and programs of the state agency that directly affect tribe(s) and Indians.

(d) An updated list of the names and contact information for the elected officials and chief executives of the Indian tribal governments shall be maintained by agency tribal liaisons.

(e) Each division of the agency shall designate a tribal liaison, who reports directly to the office of the director of the state agency, to:

(1) assist the director of the agency with developing and ensuring the implementation of the policy as set forth in Subsection (a) of this section;

(2) serve as a contact person who shall maintain ongoing communication between the agency and affected Indian tribal governments; and

(3) ensure that training is provided to the staff of the state agency as set forth in Subsection (b) of this section of the State-Tribal Collaboration [E.O./Act]. Nothing in this subsection shall preclude tribal liaisons from providing or facilitating additional training.

x3. (a) The Agency Director and executive officials shall meet with the leaders of Indian tribal governments in the state-tribal summit to address issues of mutual concern.

(b) All agency managers and employees who have significant ongoing communication with tribes shall complete a training provided by the state personnel office with assistance from tribes, which training supports:

(1) the promotion of effective communication and collaboration between the agency and tribes;

(2) the development of positive state-tribal government-to-government relations; and

(3) cultural competency in providing effective services to tribes and Indians.

(c) No later than July 1 of every year, the agency shall submit a report to the Governor and Legislature on the activities of each state agency pursuant to the State-Tribal Collaboration Act, and all such reports shall be submitted to all tribes. The report shall include:

(1) the policy the state agency adopted pursuant to the State-Tribal Collaboration [E.O./Act];

(2) the names of and contact information for the individuals in the state agency who are responsible for developing and implementing programs of the state agency that directly affect tribes or individual Indians;

(3) the current and planned efforts of the state agency to implement the policy set forth in subsection (a) of section 8112 of the State-Tribal Collaboration [E.O./Act];

(4) a certification by the agency personnel office of the number of managers and employees of the agency who have completed the training required by subsection (b) of this section 8113;

(5) a description of current and planned programs and services provided to or directly affecting tribal governments and individual Indians and the amount of funding for each program; and

(6) the method the agency established for notifying employees of the agency of the provisions of the State-Tribal Collaboration [E.O./Act].

x4. If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Thank you for accepting the Tribe's comments. Should you have any questions, please contact the Tribe's CEO, Mr. Will Micklin at (619) 368-4382 or by email at wmicklin@leaningrock.net. Thank you.

Sincerely,



Robert Pinto, Sr.
Ewiiapaayp Band of Kumeyaay Indians