

CALENDAR ITEM

83

A	Statewide	08/19/15
S	Statewide	J. DeLeon

INFORMATIONAL BRIEFING CONCERNING TRIBAL CONSULTATION AND DEVELOPMENT OF A COMMISSION TRIBAL CONSULTATION POLICY

INTRODUCTION

The California State Lands Commission (Commission) manages over 120 rivers and sloughs, 40 lakes, the tidelands and submerged lands along the entire coast of California, as well as desert and other inland parcels that have been granted to the state. These lands are not only valuable to the public, but are also of great value to California Native American Tribes.¹ Projects that occur on these lands, access to these lands, and preservation or restoration of these lands are often of interest to California Native American Tribes. Commission staff currently provides notice to California Native American tribal contacts regarding activities or projects proposed on lands under the Commission's jurisdiction, but the Commission has not yet developed a formal tribal consultation policy. Commission staff believes that developing a tribal consultation policy will provide helpful guidance and consistency in the Commission's interactions with California Native American Tribes.

BACKGROUND AND CONTEXT

The State of California recognizes the importance of tribal engagement and consultation, as evidenced by a number of administrative directives and statutory provisions. Executive Order B-10-11, issued by Governor Brown in September 2011, established a Tribal Advisor in the Governor's office to oversee and implement more effective consultation between the Administration and tribes, facilitate coordination with state agencies, and review relevant legislative and regulatory proposals. The Executive Order further ordered state agencies to encourage communication and consultation with California Indian Tribes, including allowing tribal representatives to provide "meaningful input" into its activities and decisions.

The California Natural Resources Agency (CNRA), which oversees a number of state agencies, finalized its tribal consultation policy in November 2012. Included in its policy is guidance to each department within the CNRA about how to engage in tribal consultation, and the designation of a CNRA Tribal Liaison

¹ "California Native American Tribes" as used in this document means both federally recognized and non-federally recognized Tribes with communities in California.

CALENDAR ITEM NO. 83 (CONT'D)

Committee, which allows the department-designated tribal liaisons to meet on a regular basis to review consultation efforts and opportunities. While the Commission is not overseen directly by the CNRA, Commission staff recognizes the benefit of coordinating with the CNRA and the departments under it, and has been invited by the CNRA to participate on the Tribal Liaison Committee.

Assembly Bill 52 (Stats. 2014, ch. 532), which was enacted in 2014 and became effective July 1, 2015, adds a number of specific provisions to the California Environmental Quality Act (CEQA) related to tribal consultation and consideration of project impacts to tribal cultural resources, including consideration of mitigation and alternatives that may be proposed by the tribal representative(s). The Commission regularly acts as a lead agency under CEQA and intends that its tribal consultation policy will also facilitate compliance with the consultation requirements specified in AB 52.

CURRENT ACTIVITIES

Commission staff currently communicates with California Native American Tribes regarding activities occurring both on the coast and at inland locations. Commission staff receives contact information for tribal representatives that correspond to specific locations where activities are proposed to occur from the Native American Heritage Commission (NAHC). The NAHC's contact lists are then used to provide notice of projects to Native American tribal representatives when the Commission acts as a lead agency. Commission staff also occasionally receives inquiries from tribal representatives or members regarding issues unrelated to specific project proposals but involving use of or activities on sovereign or school land.

CONSULTATION POLICY OVERVIEW

Commission staff is currently developing a draft tribal consultation policy for consideration by the Commission. The purpose of the policy is to promote and ensure effective consultation between the Commission and tribes, in recognition of tribal communities' distinct interests and unique expertise. The proposed policy will highlight four themes, as follows.

- Mutual education will include the training of Commission staff in collaborative engagement, as well as providing information to interested tribal representatives on the Commission and its leasing, CEQA, and regulatory processes.
- Mutual respect in all interactions between Commission staff and California Native American Tribes will recognize the time and effort invested by all parties and to the goal of finding mutually agreeable resolutions to protect tribal cultural resources.
- Outreach will provide ample opportunity for communication to take place early in the planning process, such that there is enough time to consider

CALENDAR ITEM NO. 83 (CONT'D)

the protection of resources of interest to California Native American Tribes when developing alternatives to proposed projects.

- Timely notice and information sharing will be encouraged, allowing substantial time for tribal representatives to consult with their governments prior to providing comments on proposed projects and development, submitting questions, or voicing concerns to the Commission.

PROPOSED PROCESS

The draft tribal consultation policy is planned for release in early October for a 60-day public review period. Commission staff will provide notice of the draft tribal consultation policy and review period to tribal representatives in those regions of the state where the Commission has land management jurisdiction. Commission staff will also conduct a minimum of two in-person consultation meetings to discuss the draft tribal consultation policy with tribal representatives and interested parties.

Staff will provide the Commission with an update on the tribal consultation policy's development at the Commission's December meeting. At the close of the comment period and conclusion of the public workshops, Commission staff will finish reviewing comments and feedback, revise the draft tribal consultation policy where applicable, and finalize it. The final tribal consultation policy is planned to be presented to the Commission for its consideration and possible adoption during the first half of 2016.