

DRAFT
California Natural Resources Agency
Tribal Consultation Policy

Appendix 1:
Tribal Consultation Best Practices

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Executive Summary

[To be added once document content finalized]

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Introduction

The following document is intended to accompany the California Natural Resources Agency's (CNRA) updated Tribal Consultation Policy. This document contains detailed information on the best practices for consulting with California Native American tribes.¹

While this document applies to consultation, engagement, and communication with all California Native American tribes, it does not negate the specific government-to-government relationship and responsibilities that the state has with federally recognized tribes.² In respect of federal Indian law principles and federal law, federally recognized tribes are sovereign nations who pursue self-determination through enactment and enforcement of tribal law, hold regulatory and adjudicatory authority of their tribal members, provide housing and healthcare for their members, control and management of federal trust lands, and many other actions. CNRA and its departments should implement these best practices understanding and respecting the unique government-to-government relationship California has with federally recognized tribes.

Sections of this policy as well as California laws require CNRA and its departments to also consult with non-federally recognized tribes. Further, CNRA and its departments should rely on CNRA's [Environmental Justice Policy](#) to ensure the inclusion of tribal communities throughout their work.

Overview of State Legislation and Guidance Pertinent to Tribal Consultation

In recent decades, both the California State Legislature and multiple governors have adopted new laws and executive orders that focus on building and sustaining stronger partnerships with California Native American tribes and outline tribal consultation requirements. The following section provides a brief background and overview of the relevant laws and guidance documents that are pertinent to tribal consultation. Note, this section does not provide a summary of every law (tribal, state, federal, or local) that may otherwise apply to tribal rights or resources. Please work closely with your legal departments for additional information.

State Laws

- **Senate Bill 18:** In 2004, California passed [Senate Bill 18](#)³ (Burton, Chesbro, and Ducheny, 2004), which requires cities and counties to consult with tribes before adopting or amending a city or county general plan. This bill seeks to preserve and avoid or mitigate impacts to California

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.

³ https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=2003200405B18

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Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places and resources. Further, this law established the Native American Heritage Commission's (NAHC) authority to maintain a contact list of federally and non-federally recognized California Native American tribes for conservation easement and consultations on adopting or amending a city or county general plans for the purposes of preserving or mitigating impacts to places, features, and objects.

- **Assembly Bill 52:** In 2014, California passed [Assembly Bill 52](#)⁴ (Gatto, 2014), which amended the California Environmental Quality Act (CEQA) to include a specific analysis of impacts to tribal cultural resources for projects that have a notice of preparation or a notice of negative declaration filed or mitigated negative declaration on or after July 1, 2015. Assembly Bill 52 specifies that proposed projects with potentially significant adverse impacts to tribal cultural resources are subject to CEQA review. This bill also creates requirements for the lead agency to consult with tribes that are traditionally and culturally affiliated with the geographic area of the proposed project and that have requested in writing to the lead agency to be informed. These amendments further relied on the Native American Heritage Commission's contact list authorized under Senate Bill 18 (Burton, Chesbro, and Ducheny, 2004) for tribal consultation purposes.
- **Assembly Bill 168:** In 2020, California passed [Assembly Bill 168](#)⁵ (Aguiar-Curry, 2020), which created a process for tribal scoping consultation with California Native American tribes for housing development proposals seeking review under the streamlined ministerial approval process created by [Senate Bill 35](#)⁶ (Wiener, 2017). The Bill requires developers to submit a preliminary application with key project details and engage in tribal scoping consultation that potentially influences the project's eligibility for ministerial approval. Assembly Bill 168 (Aguiar-Curry, 2020) uses the Native American Heritage Commission contact list authorized under Senate Bill 18 (Burton, Chesbro, and Ducheny, 2004) for tribal consultation purposes.
- **Assembly Bill 275:** On September 25, 2020, Governor Newsom signed [Assembly Bill 275](#) (Ramos, 2020)⁷ into law, which amended CalNAGPRA (the California Native American Graves and Repatriation Act of 2001).⁸ Assembly Bill 275 added [Section 8318](#) to the Government Code Chapter 5 added by Stats. 1953, Ch. 170),⁹ requiring state agencies "with significant interaction with tribal issues, peoples, or lands" to designate "one or more liaisons for the purpose of engaging in consultation with California Native American tribes on the contact list maintained by the Native American Heritage Commission."

⁴ https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB52&search_keywords=

⁵ Bill text may be found at the following website:

https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB168. Additional tribal consultation requirements and guidance may be found here: https://opr.ca.gov/ceqa/docs/20201202-AB_168_Advisory_FINAL.pdf.

⁶ https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB35

⁷ https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB275

⁸

https://leginfo.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=HSC&division=7.&title=&part=2.&chapter=5.&article

⁹

https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=1.&title=2.&part=&chapter=5.&article=

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- **Assembly Bill 923:** Most recently, the California legislature passed, and Governor Gavin Newsom signed, [Assembly Bill 923](#)¹⁰ (Ramos, 2022), also known as the Government-to-Government Consultation Act. This law encourages state agencies to “consult on a government-to-government basis with federally recognized tribes, and to consult with nonfederally recognized tribes and tribal organizations, as appropriate, in order 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.” The bill further specifies a 60-day timeline over which it suggests consultation should occur when requested by federally recognized tribes. This law does not rely on the NAHC Contact List.

Assembly Bill 923 more broadly encourages agency directors to consider the need for tribal consultation before approving agency actions and lists specific officials that have the authority to conduct government-to-government consultation. These officials may formally designate another “agency official to conduct preliminary tribal consultations, and each designated official may have the authority to act on behalf of the designating official during a government-to-government consultation.”

Lastly, the bill directs the Department of Human Resources to develop a training on the “required elements of training on government-to-government consultations.” Each required agency official shall take this training on an annual basis. Note, this guidance does not specifically address the training required by Assembly Bill 923; however, it does provide additional guidance as to tribal consultation best practices and mechanisms.

Executive Orders

- **Executive Order B-10-11:** In 2011, Governor Edmund G. Brown Jr. signed [Executive Order B-10-11](#),¹¹ which required all state agencies and departments subject to executive control to “encourage communication and consultation with California Indian tribes” on issues that may affect tribal communities. It also established the Governor’s Tribal Advisor (now the Governor’s Office of Tribal Affairs) to “oversee and implement effective government-to-government consultation between [the Administration] and Tribes on policies that affect California tribal communities.” The CNRA adopted its first tribal consultation policy in 2012 in response to Executive Order B-10-11.
- **Executive Order N-15-19:** In 2019, Governor Gavin Newsom signed [Executive Order N-15-19](#),¹² which reaffirmed Executive Order B-10-11. Executive Order N-15-19 issued a formal apology to California Native Americans on behalf of the state for the many instances of violence, maltreatment, and neglect. This Executive Order also established the [Truth and Healing Council](#) to collect and document California Native American narratives regarding the historical relationship between tribes and the State of California.

Together, the above policies and directives encourage, and in some instances, require tribal consultation and highlight the need for continued and more robust collaboration with California Native American tribes and tribal communities. This guidance in combination with the CNRA’s Tribal Consultation Policy is

¹⁰ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB923

¹¹ <https://archive.gov.ca.gov/archive/gov39/2011/09/19/news17223/index.html>

¹² <https://www.gov.ca.gov/wp-content/uploads/2019/06/6.18.19-Executive-Order.pdf>

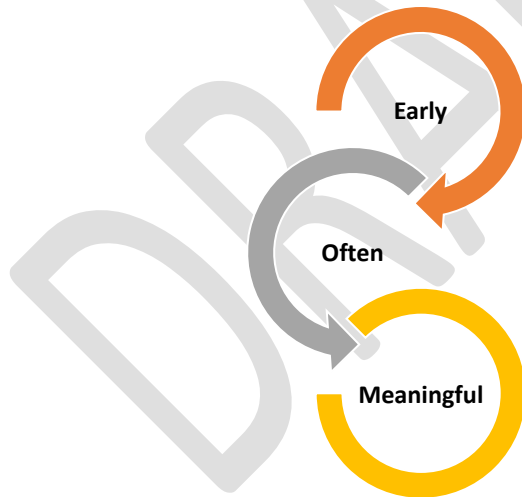
intended to be consistent with and expand upon the policies and directives listed above. As the state seeks to address historical wrongs against California Native American tribes, engaging in early, often, and meaningful tribal consultation is critical.

Tribal Consultation Process

The following section outlines consultation principles, objectives, and best practices; types of consultation; a process for determining when and where to consult as well as with whom to consult; how to send consultation invitations and set consultation agendas; and other basic principles of consultation. These best practices are intended to foster relationships with tribes and support the objectives outlined in CNRA's Tribal Consultation Policy. Please note that the consultation process guidelines listed below are not all-encompassing and may not be appropriate for every single situation; however, they do provide a basis from which CNRA, CNRA departments, and CNRA tribal liaisons and department leadership can build processes that work for them, their department, and the individual tribe with which they are interacting.

Tribal Consultation Principles: "Early," "Often," and "Meaningful"

CNRA's policy is to engage in early, often, and meaningful consultations with California Native American tribes on policies, projects, and programs that may impact tribal communities.



"Early"

"Early", as defined in the CNRA Tribal Consultation Policy, means "from the onset of an agency action, before department actions and decisions have been made, and definitely before an action or decision cannot be changed, with the exception of emergencies... 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

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consultations as appropriate. Consulting as early as possible also gives CNRA and departments adequate time and flexibility to collaborate with tribes and incorporate and address tribal priorities, interests, and concerns into agency decision-making.”

When consulting during the early stage, departments do not have to provide draft work product that is still being reviewed and approved by leadership but are encouraged to share early versions when feasible. That said, departments should ensure tribes have enough information to understand the actions the department is considering taking to help inform the outcome. This information may include project details, PowerPoint presentations, outlines, maps, policy concepts and goals, and laws impacting the decision. Consulting as early as possible should be part of the department’s investigation, scoping, and research stage of any action. This will give departments adequate time and flexibility to incorporate tribal priorities and address concerns to help inform a final draft decision.

“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 and as new information becomes available.” (CNRA Tribal Consultation Policy).

For example, for a development project, departments might offer consultation at the start of project scoping, during a project’s design phase, and during a project’s final review. On the other hand, for permitted projects, departments might be tied to specific statutory deadlines but should notify and seek consultation with potentially affected tribes as soon as the department is aware of an application.

Departments are encouraged to ask tribes what their preferred frequency of meetings and distribution of updates should be based on the tribe’s preferences and capacity as well as the department’s decision-making timeline. 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 departments should continue engaging and requesting consultation as the project progresses.

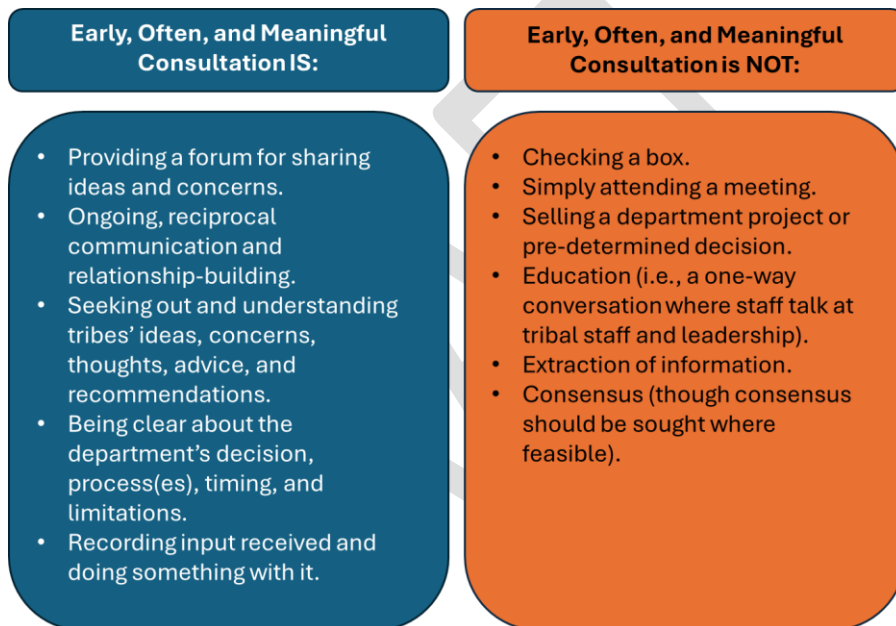
Tribes retain the right to consult (formally or informally) with departments at any time, even after consultation periods have ended; however, early and often consultations will allow departments and tribes the greatest flexibility to incorporate tribal input before final decisions are made. If a tribe requests to consult after a department’s consultation period has closed and a decision has been made, departments should still meet with the tribe to understand any concerns and offer opportunities to provide input on the implementation of the project to the extent feasible or input on future similar decisions.

“Meaningful”

“Meaningful consultation requires that the department prioritize listening with the intent to fully hear, understand, respect, and consider tribal feedback and comments; accordingly, consultation must happen well in advance of any major department decisions.

“Meaningful” should include a process of reciprocal communication and consideration but 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 where feasible. 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.

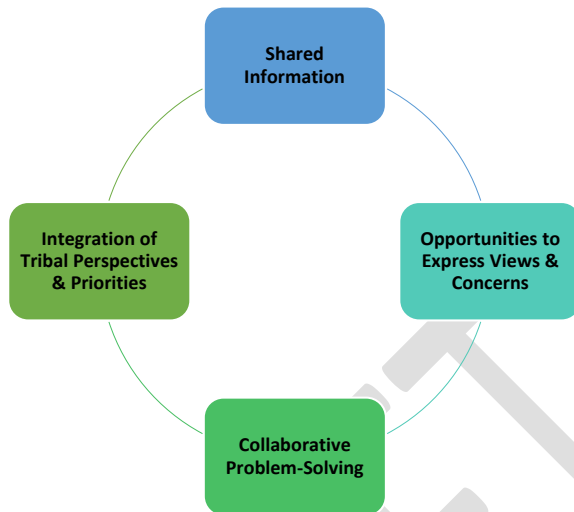
Meaningful consultation also requires that CNRA and departments provide tribes with a clear understanding of how their feedback will be used in the development of final decisions, actions, or policies following consultation” (CNRA Tribal Consultation Policy).



Note: components of the above figure were sourced from the California Department of Conservation's Race and Equity-Focused Public Engagement Model Training.

Consultation Objectives and Best Practices:

Consultation is a conversation and a process, not an outcome. While the specific issue and desired decisions will vary with each situation, the following objectives and best practices apply to all consultations.



1. Ensure the department has shared pertinent materials with a tribe such that tribal leaders, representatives, and/or staff may make an informed decision regarding whether the department action has any tribal implications and if so, to what degree.

- These materials may include, but are not limited to, legislative and legal context, project descriptions, site or project vicinity maps and geospatial files (e.g., shapefiles), blueprints or engineering site plans, applicable technical information (e.g., environmental and cultural resource impact studies), outlines, project proposals, PowerPoint presentations, and other informational materials.
- Provide full and candid information to the extent allowable. Be transparent about the department's abilities and limitations.
- Where feasible, consider opportunities to compensate tribes for services and subject matter expertise to build capacity and participation.

2. Provide opportunities for tribal leadership and staff to express the tribe's priorities, views, and concerns and in so doing, for CNRA and department staff to develop a clear understanding of the tribal perspectives, needs, and concerns.

- Begin consultation early in the conceptual stage or planning process and coordinate with tribal liaisons to identify potential tribal concerns.
- Provide outreach to a tribe using multiple mechanisms (e.g., email, phone call, letter, etc.) and on multiple occasions.
- Consider multiple modes (e.g., in-person, hybrid, virtual) and venues for consultation, including locations close to the tribe or the project area and settings that will facilitate the greatest tribal attendance.
- Practice cultural humility and learn about the customs and etiquette of the tribe with which you are consulting.

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- Practice active listening and acknowledge and respect traditional tribal knowledge (see Agency Actions with Tribal Implications for additional information concerning traditional knowledge).
- When funding is available,¹³ consider compensating a tribe if they provide a service or information that your department has requested.
- Create a feedback mechanism for tribes to submit comments regarding a particular project or the department's general consultation process. This could include a project-specific email address, a designated deputy tribal liaison for the project with whom tribes can closely coordinate, or a general tribal affairs email address for the department.
- Continually develop relationships with tribes to identify future opportunities for engagement and discussion.

3. Strive for collaborative problem-solving as well as the integration and advancement of tribal priorities and perspectives into CNRA and department decision-making where feasible.

- Build and maintain ongoing relationships with California Native American tribes and tribal communities, before an agency action begins and at the start of a project specific consultation.
- View consultation as an opportunity for creative collaboration, relationship building, and problem solving as opposed to a procedural requirement (i.e., do not simply "check the box").
- Consider offering and conducting both formal and informal meetings and communications as appropriate.
- Provide open-ended, flexible, and candid agendas. Ensure tribes can review and provide edits and additions to draft proposed agendas before the meeting.
- Respond to tribal input by following up with tribes to share how their recommendations were incorporated or concerns were addressed in the decision-making process.
- When funding is available, consider contracting or engaging facilitators (who are mutually agreed upon and with permission from the tribe) for particularly difficult discussions. Ideally, utilize facilitators who have tribal affairs experience and feel comfortable working closely with tribes.

Determining When to Consult

The CNRA's Tribal Consultation Policy [\[FILL IN URL for CNRA Tribal Consultation Policy WHEN FINALIZED\]](#) outlines the basic components of tribal consultation (Section 3) as required by [Assembly Bill 923](#)¹⁴ (Ramos, 2022) and other applicable state laws. The following section provides additional guidance for CNRA department staff endeavoring to implement these laws and policies.

As consultation is a two-way conversation, tribal consultation may be initiated by either CNRA departments or by tribes.

¹³ Funding may come from a variety of sources. It is important to build allowances in funding mechanisms early in the process so that they are available as needed at a later date.

¹⁴ https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB923

Tribally Initiated Consultation

Tribes may initiate consultation with a department about a selected topic under the department's purview and may do so independent of a specific department action or request for consultation. In these instances, tribes should reach out to the appropriate department or deputy department tribal liaison with a request for consultation and include any pertinent information for the department's review. Tribes may utilize different forms of communication to request consultation with a department. A best practice is to accept any form of communication and ask clarifying questions if a request is unclear. A list of CNRA tribal liaisons will be posted at [\[FILL IN URL for CNRA Tribal Liaison Contact Page\]](#), and additional information regarding tribal liaison contacts may be found on the individual CNRA department websites.

If a tribe seeks consultation with your department regarding a topic outside of your department's purview, it is a best practice to provide the tribe with the name of the appropriate department and their tribal liaison's contact information.

The remainder of this section and document focus on best practices for department-initiated consultations.

Department-Initiated Tribal Consultation

Determining when your department should consult with tribes requires a two-step analysis:

1. A department should first determine whether its action has tribal implications, and
2. For actions with potential tribal implications, the department needs to identify key milestones, needs, and timing associated with the action.

Agency Actions with Tribal Implications

Agency actions may include, but are not limited to, "the development of policies, regulations, guidelines, processes, programs, and projects with tribal implications".¹⁵

Tribal implications are "agency actions that impact one or more federally recognized tribes or non-federally recognized tribes or tribal organizations, the government-to-government relationship between the state and federally recognized tribes, or the distribution of power and responsibilities between the state and federally recognized tribes".¹⁶

When determining whether an action may have tribal implications, state staff should take a broad approach to be as protective of tribal resources and interests as feasible. Particular attention should be given to actions that have the potential to affect federally recognized tribes' trust lands, tribal membership, water rights, or other reserved rights.

State departments will need to find a healthy balance between over- and under-notifying tribes. For example, a potential strategy to reduce engagement fatigue might be to bundle notices or requests for information for similar project topics or locations if a given tribe is agreeable to this approach.

Note, it is always up to a tribe to define its areas and resources of interest. Tribes and tribal people possess "traditional knowledge" (sometimes referred to as "traditional ecological knowledge" or

¹⁵ Assembly Bill 923 (Ramos, 2022), Section 11019.81 (b)(1)

¹⁶ Assembly Bill 923 (Ramos, 2022), Section 11019.81 (b)(3)

“indigenous knowledge”). Each tribe will have its own definition of traditional knowledge, but this expertise may be generally summarized as observations, practices, and beliefs unique to a particular group of people that are obtained through millennia of interactions and experience with a specific place or environment. This expertise is often passed from generation to generation. Such knowledge “should be recognized as an independent, self-supporting line of evidence meant to support program, policy, and procedural decisions... and recognizes designated representatives of... [tribes]... as the appropriate subject matter experts capable of informing decision making related to such knowledge.”¹⁷ CNRA and its departments should give deference to traditional knowledge as well as tribes’ statements of implications to tribal rights and resources and take great care to avoid defining such things outside of direct input from tribes.

Staff should seek guidance from their department or deputy department tribal liaisons if they are unsure whether an agency action has tribal implications. If the tribal liaison is also unsure whether the action may have tribal implications, the tribal liaison should seek additional input from the CNRA Deputy Secretary for Tribal Affairs.

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 reach out to potentially affected tribes as early as feasible and on a frequent or as-needed basis that achieves the consultation objectives set forth in the CNRA’s Tribal Consultation Policy.

More complex or controversial projects will likely necessitate the need for departments to engage in multiple consultations over an extended period. Consultation is driven by several variables including statutory requirements, state management policy, and informational needs such as, but not limited to, the following:

- (1) Tribal council meeting schedules and other tribal events or ceremonies.¹⁸
- (2) State laws:
 - (a) CEQA, as amended by Assembly Bill 52 (Gatto, 2014)¹⁹: Under this statute, agencies are required to consult with California Native American tribes that are traditionally and culturally affiliated with the geographic area of a project subject to CEQA if : 1) the tribe has requested in writing to the lead agency to be informed of projects in the specified area, and 2) the tribe responds in writing within 30 days of receipt of the formal notification, requesting consultation. If tribes seek consultation during the 30-day period, entities can and should work with the tribe to establish a mutually productive consultation date.
 - (b) Assembly Bill 923 (Ramos, 2022)²⁰: “encourages the State of California and its agencies to consult on a government-to-government basis with federally recognized tribes, and to consult

¹⁷ Advisory Council on Historic Preservation. *Policy Statement on Indigenous Knowledge and Historic Preservation*. March 21, 2024. Accessed February 19, 2025 via <https://www.achp.gov/sites/default/files/policies/2024-03/PolicyStatementonIndigenousKnowledgeandHistoricPreservation21March2024.pdf>.

¹⁸ For example, some Tribal Councils do not meet as frequently or there may be certain times of the year (e.g., summer) that are associated with more frequent tribal ceremonies (e.g., first salmon ceremony, gathering, etc.) and events than others.

¹⁹ Assembly Bill 52 (Gatto, 2014), Section 21080.3.1 (as amended by Assembly Bill 1561)

²⁰ Assembly Bill 923 (Ramos, 2022), Section 11019.81 (d)

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with nonfederally recognized tribes and tribal organizations, as appropriate” and “at the request of a federally recognized tribe for a government-to-government consultation on a specified agency action, the Legislature encourages the state and its agencies to consult with the tribe as to the specified agency action within 60 days of the request.”

- (3) Department-specific policies and mandates.
- (4) Size and complexity of a department action or project. Types of department actions that might affect tribal consultation timing or frequency include but are not limited to:
 - (a) Financial or statutory timelines for permitting decisions.
 - (b) Budgetary timelines.
 - (c) Statutory timelines for regulatory actions.
 - (d) Construction and field work seasonal windows.
 - (e) Policy decisions.²¹
 - (f) Emergency actions.²²
- (5) Number of tribes, governmental entities, or stakeholders that may be potentially affected by an agency action.²³
- (6) Whether a department or a tribe has requested consultation.
- (7) Timing of state board or commission meetings.

Types of Consultation

Tribal consultations can take many different forms, and tribes may have different consultation preferences and styles. If a tribe requests consultation, departments should ensure that there is consistent and clear communication between department staff and the tribe regarding any expectations and attendees. Several types of consultation are listed below:

- **Government-to-government** consultations occur between tribal leaders (or tribal representatives with authority to speak on behalf of their tribe) and department leadership from federally recognized tribes. If tribal leaders are present, it is important that the department representatives present at the consultation have decision-making power related to the agency action. At times, it is a sign of disrespect if department leadership is absent when tribal leaders participate in a consultation.

In some cases, tribal leaders may give authority to a tribal representative (e.g., via resolution or another form of formal delegation) to consult with a department and make decisions on a particular matter. Some federally recognized tribes may have their own consultation policies, adopted either by ordinance or resolution. It is a best practice to ask a tribe if they have their own consultation policy and to incorporate components of the specific tribal law throughout the consultation process to the extent feasible.

²¹ Broad policy decisions may occur over a longer period of time because they generally require more coordination with a number of governments and stakeholders and may necessitate additional consultations at various stages throughout the development of policies.

²² Further information on emergency actions is found in CNRA’s Tribal Consultation Policy (Section 3(d)(iii)).

²³ Additional time should be allotted to schedule meetings with all decision-making entities and potentially affected parties to allow for sufficient opportunities for all parties to converse with one another as desired and express opinions, thoughts, and concerns.

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- **Staff-to-staff** consultations occur between tribal staff and department staff, though tribal and department leadership may also attend. These consultations often involve preliminary information sharing and an opportunity to ask questions so that tribal staff can brief their council and decide whether to continue the consultation process. Discussions that occur during staff-to-staff meetings should not necessarily be taken as a tribe's official response to an agency action, unless the staff member with whom department staff are speaking has been officially delegated the authority to provide a decision on behalf of the tribe.
- **Bilateral consultations** occur between one tribe and one department. Bilateral consultations should be the default unless tribes request or agree to a multilateral consultation.
- **Multilateral consultations** occur between multiple tribes and/or more than one department or one tribe and multiple departments. Multilateral consultations may be appropriate if the proposed action or activity impacts multiple tribes or multiple departments; however, multilateral consultations are not appropriate in all circumstances. The individual tribal priorities, laws, histories, tribal representative preferences, and department needs should all be considered before requesting a multilateral consultation. All tribes involved must agree to a multilateral consultation before it takes place.²⁴

Multiple departments may be involved in one agency action. A tribe may prefer to consult with all departments at the same time. The lead department should ask if a tribe would be interested in consulting with all involved departments and serve in a coordinating role between the tribe(s) and departments. It should not be assumed that a tribe would like to consult with multiple departments at the same meeting.

- **"Formal" and "informal" consultations:** Consultations may be "formal" or "informal" depending on the topic and objectives of consultation as well as the pre-existing relationships between department and tribal representatives. The level of formality in the context of this policy refers to the number and status of decision-making attendees. All input and feedback received during consultations shall be meaningfully considered regardless of the level of "formality."
- **Assembly Bill 52 (Gatto, 2014) consultation** is a process that is specific to actions subject to CEQA with effects "that may cause a substantial adverse change in the significance of a tribal cultural resource." Assembly Bill 52 (Gatto, 2014) requires "a lead agency to begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project, if the tribe requested to the lead agency, in writing, to be informed by the lead agency of proposed projects in that geographic area and the tribe requests consultation, prior to determining whether a negative declaration, mitigated negative declaration, or environmental impact report is required for a project."

²⁴ Agreement need not be formal (e.g., via resolution) but may come from official tribal representatives or staff.

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If the lead agency determines that a project may significantly negatively affect tribal cultural resources, it must consider appropriate avoidance or mitigation measures. For projects where CNRA or one of its departments is the lead agency under CEQA, CNRA or the department will comply with the statutory requirements regarding tribal consultation. The CNRA Tribal Consultation Policy and Best Practices Appendix are intended to provide additional best practices and standards that may go above and beyond the minimum requirements associated with Assembly Bill 52 (Gatto, 2014).²⁵

For more resources on requirements and best practices for Assembly Bill 52 (Gatto, 2014) consultations, please see the California Governor's Office of Land Use and Climate Innovation (previously the Office of Planning and Research) website: <https://lci.ca.gov/ceqa/tribal/>.

- **Section 106 consultation** pursuant to the National Historic Preservation Act,²⁶ as amended, is a process that is specific to federal, federally funded, or federally permitted projects. Under Section 106, the state's Office of Historic Preservation Office (OHP), is responsible for ensuring that projects carried out, sponsored, or permitted by federal agencies comply with federal historic preservation laws²⁷ and that projects are planned in ways that avoid or minimize adverse effects to heritage resources. While consultations that occur pursuant to Section 106 are conducted by the federal government, CNRA and CNRA departments with projects that have a federal nexus are encouraged to reach out to OHP if there are questions about the process. For additional information concerning Section 106 or OHP's role in reviewing, please see the California Park's [Office of Historic Preservation's website](#).²⁸

Regardless of the type of consultation, it is important to clarify with the tribe who will be attending to ensure the appropriate department representatives are present and prepared to discuss relevant topics.

Determining With Whom to Consult

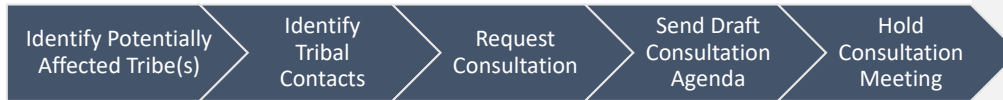
This section outlines how tribal liaisons might determine which potentially affected tribes to notify of a department action, identify appropriate tribal contacts, effectively request consultation, and draft consultation agendas. Please note these best practices are intended to help inform consultation practices with California Native American tribes and officially-appointed tribal government representatives or staff, and meetings with impacted tribal individuals or tribal organizations should follow other state guidelines including the CNRA Environmental Justice or due process policies.

²⁵ [\[INSERT LINK TO TCP once finalized and published\]](#)

²⁶ Pub. L. No. 89-665, as amended by Pub. L. No. 96-515

²⁷ State programs and projects are reviewed pursuant to Sections 5024 and 5024.5 of the California Public Resources Code (PRC)

²⁸ https://ohp.parks.ca.gov/?page_id=1071



Identifying Which Tribe(s) May be Affected by a Department Action.

Determining which tribes to contact depends on the type of decision a department is making. Generally speaking, department actions may be divided into two categories for the purposes of this guidance:

- 1.) Actions that are site-specific, or
- 2.) Actions that are not associated with a particular location but that have the potential to have tribal implications (e.g., statewide policy decisions, grant programs, regulations).

The decision on who to contact will ultimately depend on which tribes have the potential to be affected. For actions that are not site-specific, and depending on a department's jurisdiction as well as the action's geographical reach, a department may need to contact all California Native American tribes. On the other hand, a department may only need to contact a select tribe(s) for actions that are associated with a particular area. In this case, the department will need to identify which tribes have ancestral ties to the area in question.

While it is not the role of the state to define a tribe's ancestral territory, and great care should be taken to avoid doing so, departments need to know which tribes, if any, may be affected by a decision, which requires an understanding of tribal history and ancestral territories. Tribal contacts for a specific location may be identified by several different mechanisms:

- 1.) By using the Native American Heritage Commission's Tribal Contact list(s),
- 2.) By researching appropriate tribal government representatives and staff on tribal websites, and
- 3.) By developing solid relationships with tribes and tribal representatives or staff.

Native American Heritage Commission Tribal Contact List

The California Native American Heritage Commission (NAHC) maintains a list of tribal contacts for tribes that are traditionally and culturally affiliated to various territories throughout the state for the purposes of Senate Bill 18 (Burton, 2004) (tribal consultation in land use planning) and Assembly Bill 52 (Gatto, 2014) (CEQA tribal consultation). Additionally, tribes listed on the NAHC contact list are included on a separate list of tribes created for the purposes of Assembly Bill 275 (Ramos, 2020)²⁹ (California Native American Graves Protection and Repatriation Act).

The NAHC relies upon tribes to inform them when specific contacts need to be updated. For more information concerning the NAHC list, please see the [NAHC's website](#).³⁰ Further, other laws may rely on the NAHC Contact List for the definition of "tribe" or to direct departments to consult with particular

²⁹ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB275

³⁰ <https://nahc.ca.gov/>

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entities for a specific purpose. The department's legal counsel and tribal liaison should review pertinent statutes to determine if the NAHC Contact List should be utilized for an agency action.

While the NAHC list provides tribal contacts for specific areas for the purposes of Senate Bill 18 and Assembly Bill 52, it does so for the express purposes identified above and should not be considered an all-encompassing list nor relied on unless explicitly permitted by the law.

The NAHC Tribal Contact list may not include contacts for other tribal departments (e.g., tribal natural resources departments, tribal legal staff, etc.) and personnel that are tasked with managing or overseeing other tribal resources (e.g., natural resources, tribal treaty rights, etc.). It is the responsibility of the tribal liaisons to learn and understand the governmental structure for each tribe and to create and maintain a good relationship with each tribe.

The NAHC Tribal Contact list is one resource but should not be the only resource. If department leadership, tribal liaison(s), or staff know that particular tribes have an interest in a given action or topic area, they should notify those tribes and offer the opportunity to consult.

Identifying Contacts Within a Tribe

Once it has been determined that a department action has or may have tribal implications and the tribe(s) that may be impacted have been identified, the tribal liaison will need to determine whom to contact within the respective tribe(s). As a best practice, it is common to notify multiple representatives within a tribe: Tribal Chairperson, Tribal Council, and tribal staff from various tribal departments alike. It is important to reiterate that each tribal government has a unique structure, and it is the tribal liaison's responsibility as the delegate between the state and tribal governments to learn and understand said structure, including appropriate points of contact within a tribe for specific department actions or topical areas. Tribal liaisons are encouraged to ask tribes about their preferred means and personnel of contact for varying types of department actions, topics, or geographic areas.

The tribal liaison's responsibility also includes building and maintaining an up-to-date list of tribal contacts. It is recommended that tribal liaisons check in with tribes at least once a year, if not more frequently, to ensure all contact information is up to date. A portion of a tribe's contacts may be supplied by the NAHC; however, the NAHC may not be appropriate for every department action and may not include the appropriate contacts within a tribe depending on the issue.

Many tribes have a public website with contact information for tribal councils or tribal representatives in differing tribal departments (e.g., Environmental Resources, Cultural Resources, Legal Council, etc.). Additionally, the federal government maintains points of contact for federally recognized tribes. This information can be found on the U.S. Department of Interior Indian Affairs website³¹ and the U.S. Environmental Protection Agency's website.³² Tribal liaisons might also find contact information for tribes with Tribal Historic Preservation Office (THPO) status on the California Parks and National Parks Service websites.³³

³¹ <https://www.bia.gov/service/tribal-leaders-directory>

³² <https://www.epa.gov/ust/underground-storage-tank-ust-tribal-contacts#:~:text=Donna%20Prentiss-Meeks%2C,Environmental%20Director>

³³ https://ohp.parks.ca.gov/?page_id=27626 and https://grantsdev.cr.nps.gov/THPO_Review/index.cfm, respectively

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Determining who to contact will depend on the information being requested or transmitted. For example, if a state department is taking an action that will potentially affect a tribe, its government, or its members as a whole, tribal councils and their staff should be contacted using multiple means of communication. If a state department is requesting input from a tribe (whether formal or informal), tribal councils or other tribal decision-maker(s) should always be contacted, and all parties should receive a courtesy copy to know who has been included in the outreach.

However, if tribal liaisons or state staff have a simple question that does not necessitate a definitive response on behalf of a tribe or if they are unsure whom to contact, it may be appropriate to reach out to general tribal staff first to determine the most appropriate tribal contact and method. Note that a response from tribal staff or representatives does not necessarily indicate a response on behalf of the tribal government itself, unless otherwise indicated.

For more details on how to request consultation, please see the section below.

Requesting Consultation

Departments should request consultation with California Native American tribes as early as possible in the planning process. Each tribe has different communication styles and preferences, so departments should aim to learn the unique communication preferences of each tribe and accommodate them to the maximum extent possible. If a tribe's preferred communication style is unknown, the department should use multiple outreach methods, such as phone, email, and hard-copy letter. Some tribes may also have online submission portals through which they prefer to receive consultation requests.

Departments should send both an email and a hard-copy letter to tribes when requesting consultation. Requests for consultation should be signed by the department's final decision-maker and tribal liaison.

Request for Consultation Letter- What to Include

A request for consultation shall include the following items at a minimum:

- A summary of the proposed department action, including the purpose and need for the activity.
- A summary of relevant state processes, policies, and authorities under which consultation is taking place and the department is acting.
- Any pertinent information necessary for a tribe to make an informed decision.
- A summary of potential impacts to tribal interests, if known.
- Department and tribal liaison points of contact.
- A timeline for the proposed action, including a date by which to request consultation.

Relevant information may include, but is not limited to, maps of the project area, blueprints or engineering site plans, legislative and legal context (e.g., links to pertinent laws and regulations driving the decision-making process), and applicable technical information if available (e.g., environmental and cultural resource impact studies).

Best practice is to avoid the use of acronyms as well as to include questions the department would like the tribe to respond to or provide specific feedback on. These questions can also be used during tribal roundtable discussions.

Setting the Consultation Period

When feasible, the consultation period should provide adequate time for a tribe to receive, process, review, and respond to a request (with the exception of emergency actions or other legislative mandates). Tribal liaisons should acknowledge that each tribal government has a different operational structure and timeline (e.g., some tribal councils only meet once every couple of months). Thus, consultation periods that are only 30 or 60 days may not give tribes enough time to respond considering the high volume of consultation requests they receive and the frequency with which their tribal councils meet. Acknowledging this, the best practice is to provide 90 days for each request for consultation.

It is important to note that tribes receive frequent requests for consultation from numerous agencies (i.e., every local, state, and federal agency taking action within a tribe's ancestral territory) and often have limited capacity to respond to each and every request. If a tribe does not respond to a request for consultation, a lack of response should not be interpreted as a lack of interest or lack of potential for tribal impacts resulting from the proposed activity. Whenever possible, if tribes do not respond to a request for consultation, the department should send a follow-up email and in many cases a follow-up phone call.

Tribes can always request consultation on a particular action, even after a consultation period has closed. However, it may not always be possible for a department to meaningfully consider tribal input or modify an action if a decision has already been made. That said, departments should respond to requests for consultation outside of consultation periods and meaningfully consider if or how the department might incorporate a tribe's comments into the decision-making or implementation process to the extent feasible.

Tribes may also request consultation regarding their priorities, projects, or policies and on activities for which a department has not sent a request for consultation. Departments should make every effort to respond to consultation requests within 30 days of receiving them and consult within 60 days of the request.³⁴

Scheduling Consultation

Once a tribe has responded to a department's request for consultation, or initiated its own request with a department, the department or deputy department tribal liaison should respond to set up the logistics for the meeting. A best practice is to send several dates and timing options for the tribe to select from. Department staff should take care to avoid scheduling consultations on or around culturally significant days or seasons as well as dates or times in which other state or federal agencies have already scheduled meetings (to the extent that they are known).

The subsequent sections outline additional best practices for setting up consultation meetings and determining department attendance.

Drafting Consultation Agendas

Departments should send a draft agenda to a tribe prior to a consultation. Depending on the formality of the meeting, the timing of the action, as well as the level of complexity of the consultation topic, the notice time may vary between several weeks to days before a meeting. Department staff are

³⁴ CEQA lead agencies shall begin the consultation process within 30 days of receiving the tribes consultation request (PRC Sec. 21080.3.1.e.).

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encouraged to send an agenda as early as possible. The draft agenda should include the following at a minimum:

- Time for introductions, welcomes, and/or blessings.
- The names, titles, and email addresses of the department staff who will be attending the consultation.
- A proposed meeting location or virtual attendance information.
- Proposed topic(s) of discussion.
- Closing remarks and next steps.

The department should invite a tribe to make edits to the draft agenda and should be open to the tribe's suggestions. The agenda topics should be agreed upon before the start of consultation and confirmed again at the beginning of the consultation meeting with the highest-ranking representative of the tribe who is present.

It is important to remember that tribal consultation meetings are the tribe's meeting. Thus, the highest-ranking person representing the tribe should direct the meeting topics, timing, and tone, unless otherwise expressed at the beginning of the meeting. Tribal liaisons can help facilitate meetings but should defer to the tribe.

Determining Department Attendance

Determining appropriate department staff for attendance during a consultation may depend on the type of consultation, topics of discussion or decisions, or anticipated tribal representation. If department staff are unsure which tribal representatives will be in attendance, a best practice is to respectfully ask who will be attending on behalf of a tribe ahead of time.

If a tribe anticipates tribal leaders attending, it is important that department leadership, or their designated personnel with decision-making authority, is also present. If a tribe does not anticipate tribal leader attendance or the meeting is primarily for informational purposes, it may be appropriate for department staff to attend without department leadership.

If the state department anticipates having an attorney present during the consultation, the department should inform the tribe so they have the opportunity to bring their attorney as well.

It is important to note that departments should strive to reduce the number of attendees to only those necessary for the conversation. It is best practice to keep the number of tribal representatives higher or equal to state representatives to help create a more comfortable conversation. Smaller meetings tend to allow people to be more open and collaborative.

Determining Where to Consult

When drafting an agenda in preparation for the consultation, the department and the tribe will determine the consultation location. Consultations can take place in person or virtually. In-person consultations are usually preferred but may not always be possible due to budget or time constraints. If meetings are held virtually, ensure that all tribal and state participants have access to the internet and can utilize the specific virtual meeting software. When possible, offer in-person consultations, preferably on or near the tribe's lands or center of operations (when agreeable to the tribe), and defer to the tribe's preferences.

It is best practice to meet in-person for consultation meetings longer than two hours or on difficult topics. Further, when consulting on actions that are location-specific and when invited by the consulting tribe, it is a best practice to visit the site with the tribe and “walk the land.” This will allow state representatives the opportunity to learn and see tribal priorities and concerns first-hand.

If a meeting is hosted at a state department building or location, a best practice is to be a good host and accommodate attendees to the extent feasible (e.g., offering free parking opportunities, providing water and snacks, etc.).

Tribes prefer to have consultations on their lands and in their buildings. When feasible, departments should visit tribes. This not only allows for in-person conversations but also shows respect and commitment to meaningful partnerships.

Basic Consultation Meeting Principles

The following section outlines a few basic consultation meeting principles that tribal liaisons should consider and follow when conducting consultation meetings with tribes. The principles are broken down by consultation meeting stage (i.e., pre-consultation, during consultation, and post-consultation), after a request for consultation has been received and a meeting has been scheduled.

Pre-Consultation

Prior to a consultation meeting, the department or deputy department tribal liaison should:

1. Perform background research on the history, customs, location, and ancestral territories of the tribe. Research the tribe’s involvement with the topic of consultation.
2. Determine the appropriate staff to represent the department.
3. Brief other department staff who will be attending the consultation on the consultation topics, any communication with the tribe to date, consultation best practices, and cultural humility.
4. Correspond with tribes requesting consultation to identify a meeting time and location and decide upon the agenda topics and necessary attendees.
5. Send the tribe a draft agenda and invite the tribe to make any edits.
6. Send the tribe any relevant information, including, but not limited to:
 - A detailed project description
 - Potential impacts to tribal interests
 - Current plans for the proposed activity
 - A proposed timeline for the activity
 - A department point of contact (typically the tribal liaison)
 - Maps and blueprints
 - Geographic information system (GIS) shapefiles
 - Clearly defined preliminary area of potential impacts
 - Information on previous environmental and cultural studies and recorded archeological sites or cultural resources within the project area
 - Photographs of the proposed project area from different views and perspectives
 - PowerPoint presentations and other informational items

During Consultation

During consultations, the department and its designated tribal liaison should endeavor to follow the following best practices:

- **Welcome and greet all attendees.**
- **Let the tribe and its leaders speak first:** When the meeting begins, let the tribe and its leaders speak and introduce themselves first. If the tribe is waiting for the department to start the meeting, invite the tribal chair or highest-ranking member of the tribal delegation to open the meeting. Note, some tribes and tribal representatives will prefer to begin meetings with prayer or song. If such is the case, it is customary to stand up, respectfully listen and wait. After the chairperson has introduced themselves, request introductions from other tribal leaders, and then tribal staff, before moving on to department introductions.
- **Use proper titles:** When addressing elected tribal leaders, use proper titles such as Chairperson, President, or Councilmember. It is proper to use gender neutral terms or mirror the titles used by the elected tribal leader. Even if you have a personal relationship with a tribal leader and use first names in casual conversation, it is a best practice to use their formal title in consultation meetings.
- **Confirm the agenda** after introductions and refer to the identified topics. Ask the tribe if they would like to propose any changes to the agenda and accommodate these requests to the maximum extent possible.
- **Be clear and transparent** about agency limitations, such as confidentiality and legal constraints. Specifically, remind everyone in the room about the Public Records Act, how it applies to the consultation and notes taken at the consultation, the department's preference not to receive or hear confidential information from the tribe, and offer to stop taking notes if requested by any of the speakers. If the tribe requests that department staff not take notes, it is good practice to put your writing utensil down and close your laptop or notebook and show that your hands are not occupied (e.g., hands clasped together or in lap). It is best practice to not record meetings or use AI technology to take notes. The tribe must give explicit permission to be recorded or for AI technology to be used during a consultation or roundtable setting.
- **Listen and observe** more than you speak. If there are longer pauses or silences between speakers, avoid automatically interjecting and trying to control the conversation or agenda. Pauses are helpful to allow people to think and process the information they are receiving.
- **Avoid the use of jargon and acronyms.** If someone does use one, it is the tribal liaison's job to remind department speakers to use plain language and to define acronyms verbally and in the chat.
- **Be mindful** of cultural differences, languages, and customs. For example, tribes may refer to Traditional Knowledge (or Traditional Ecological Knowledge). Such knowledge should be elevated to the same status as that of Western science and does not require the validation of Western science to be duly and meaningfully considered. Along these lines, some tribal representatives may prefer to speak using stories. Listen carefully and ask questions once the sharer has finished if the meaning is unclear.
- **Be patient:** Tribal leaders and elders may not speak in a linear way and may use stories or oral histories to support a position or point they would like to make during the consultation. Be

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mindful and respectful of hearing information in a new way and avoid interrupting or insulting the speaker.

- **Share information:** tribal liaisons should coordinate before consultations and send materials that are helpful for the tribe to have and review after the consultation. These materials can be printed and handed out for in-person meetings or shared in the chat for virtual meetings. Electronic copies of all materials shared should be emailed to the tribe after the consultation.
- **Summarize:** Near the end of the meeting, the tribal liaisons should summarize discussion points, areas of agreement or disagreement, identify next steps, and schedule additional consultations as needed.
- **Express gratitude:** At the end of the meeting, be sure to thank the tribe for their time, meaningful comments, discussion, and expertise. Ask the tribe if it is ok to end the meeting, unless there is more they would like to discuss.

Post-Consultation:

After a consultation meeting has ended, tribal liaisons should:

- Provide the tribe with a meeting summary that includes notes, next steps, and timelines.
- Provide electronic copies of materials and information shared during the consultation.
- Follow through with action items identified during the consultation.
- Identify next steps and whether additional consultation meetings are necessary.
- Explain how tribal input was considered and how it will be implemented into the decision-making process. If for some reason a department cannot implement a tribe's requests into its decision-making process, it is a best practice to provide a rationale.

When is Consultation Complete?

Government-to-government consultations should be considered complete when both parties have had an adequate opportunity to share and consider one another's perspectives. This process does not require consensus or consent, though attaining such should be an objective when feasible. A best practice is to notify a tribe when the department believes consultation on a particular agency action has been completed. Ideally, the tribe will agree and affirm this understanding. If not, the department should continue to consult with a tribe to ensure the tribe's priorities and concerns are fully understood.

CEQA consultations are considered completed when either "(1) the parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or (2) a party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached".³⁵

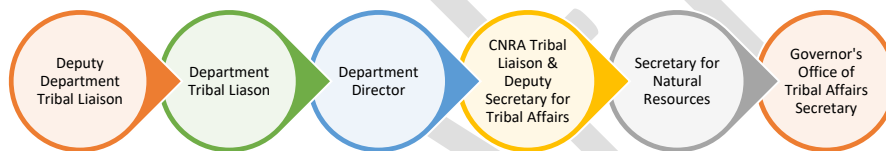
It is a best practice to seek mutual agreement on when consultation is concluded. This may be accomplished by asking a tribe if they wish to discuss a department action or decision further or need additional time to provide comment. In the event the parties do not agree on concluding a consultation, it is a best practice to provide clear written reasoning to the other party explaining why the party is concluding a consultation unilaterally.

³⁵ Assembly Bill 52 (Gatto, 2014), Section 21080.3.2 (b)

Elevating Concerns:

While a goal of tribal consultation is to reach mutual understanding and ideally agreement, agreement may not always be feasible for one or both parties. If a tribe is not satisfied with a particular outcome and wishes to elevate a specific concern, we respectfully request that tribes follow the typical chain of command. Following the typical chain of command will allow departments and CNRA to work through the state's internal process and to address the tribe's concerns on agency actions.

- Step 0: Work with department staff to address any concerns
- Step 1: Request a meeting with the Deputy Department Tribal Liaison (if applicable)
- Step 2: Request a meeting with the Department Tribal Liaison
- Step 3: Request a meeting with the Department Director
- Step 4: Request a meeting with the CNRA Tribal Liaison and Deputy Secretary for Tribal Affairs
- Step 5: Request a meeting with the Secretary for Natural Resources
- Step 6: Request a meeting with the Governor's Office of Tribal Affairs Secretary



Mapping Out Early, Often, and Meaningful Consultation Models

Consultations may occur through a variety of methods. The respective method will depend upon the department action, associated tribal and state timelines, as well as tribal or state preferences. The following section provides a few examples of different consultation models that are frequently used by CNRA departments consulting with tribes. These examples are by no means exhaustive, and CNRA departments should ultimately decide the format of consultation that fits best for their statutory obligations as well as their needs and those of the tribe. Tribal liaisons and department staff are encouraged to ask a tribe if they have a specific preference for how a consultation should occur in the initial stages of outreach.

Regardless of the model or methods used for early, often, and meaningful consultations, departments should always be available for one-on-one formal consultations with a tribe.

Example 1: Multi-Stage Consultation (90-90) Model

The multi-stage consultation model (or the 90-90 model) emphasizes the importance of early consultation and providing tribes with adequate time and multiple opportunities to respond to a request for consultation. The general process for each stage might be as follows:

1. Initiate an early 90-day consultation period with a consultation letter that includes dates for tribal roundtables.

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2. Hold tribal roundtables approximately 45 days into the early consultation period.
3. Create draft deliverable based on early consultations and feedback.
4. Send second (or subsequent) 90-day consultation period with a consultation letter that includes dates for tribal roundtables. With this letter, include the draft agency action (policy, regulations, proposal etc.).
5. Hold second tribal roundtables approximately 45 days into the second consultation period.
6. Either finalize deliverable or hold additional consultation periods and roundtables as necessary.

The following sections outline each of the above steps in greater detail.

Dual Consultation Periods

Under this model, departments would initiate an early consultation period as early as possible in the planning process. Ideally, departments should request early consultation when an agency action is first being considered. The goal of these early consultations is to receive tribal feedback and understand tribal priorities before any key decisions are made.

Tribal Roundtables

Around the midpoint of the early and secondary tribal consultation periods (e.g., if a consultation period is 90 days, around the 45-day mark), departments would host either virtual or in-person roundtable discussions, inviting all potentially affected tribes to participate.³⁶ The goal of these roundtables should be to provide information to tribal representatives so they can brief their leadership, receive initial tribal feedback, answer questions, and understand tribal priorities. The following list contains some best practices for inter-tribal roundtables:

- Offer 2, two-hour roundtables, one during work hours (9am – 5pm) and one after workhours (5:30pm – 7:30pm).³⁷
- These roundtables should only be open to elected tribal leaders and designated tribal representatives; they should not be open to non-tribal entities or the broader public. It is strongly recommended to not post this information online. The tribal liaison can remind people at the top of the roundtable that this is a space for tribes and ask those not officially representing a tribe to please exit the meeting. The tribal liaison can offer to set up a separate meeting or opportunity for unofficial (i.e., not elected or officially designated) tribal members, non-governmental tribal organizations, or members of the public to participate in the agency action.
- At the beginning of the roundtable, provide a quick welcome and ask for introductions. Typically, the tribal liaison facilitates this opening by welcoming elected tribal leaders then tribal staff to introduce themselves. Once all the tribal representatives have been introduced, then department leadership and staff can introduce themselves.

³⁶ A roundtable is a group discussion between two or more parties with a specific topic of focus. Unlike a listening session, where one party does most of the talking, a roundtable format is intended to facilitate equal participation and provide a space for all parties to share their thoughts.

³⁷ A roundtable after work hours can help accommodate tribal leaders, members, and representatives' schedules if they have other jobs or are taking care of family members during the day.

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- After introductions, but before starting the presentation, remind participants that this roundtable doesn't constitute tribal consultation and that your department is available to consult with tribes on this topic. Further, ask participants to not share confidential information during this roundtable.
- Do not record roundtable discussion but inform participants that you are taking notes.
- During these roundtables, departments should give a brief presentation on the proposed activity and leave the rest of the time for tribal feedback, questions, and discussion. For example, if the roundtable time is scheduled for 2 hours, the department's presentation should take no more than 30 minutes (i.e., a fourth of the time) to leave adequate room for listening and discussion.
- Prepare and provide initial questions to help guide the conversation and have a visual to prompt discussion. Provide questions in the request for consultation letter before the roundtable.
- It is important to note these inter-tribal roundtable sessions do not constitute a tribal consultation and cannot be provided in lieu of a consultation. Remind participants that the department is available for a one-on-one consultation at the beginning and end of the roundtable.

Secondary Consultation Period

Once the early consultation period concludes and a draft of an agency action is prepared, the department should incorporate tribal feedback into the decision-making process as feasible. As the project progresses past the initial planning and scoping phases, the department should initiate a second consultation period. The purpose of a second consultation period is to receive feedback concerning how the project or action has progressed, to review draft agency actions, and to illustrate how tribal input has been incorporated.

It is a best practice that each "round" of consultation is 90 days. At the midpoint of the second consultation period, the department should host another roundtable. After this second consultation period concludes, the department should again incorporate tribal feedback into agency action as feasible.

When tribal consultation has concluded, it is important to share with the tribes the final decision, explain how tribal feedback was incorporated, and be available to answer any questions.

Example 2: Memorandum of Understanding (MOUs) or Agreement (MOAs) Model

MOUs are formal but generally nonbinding agreements between two or more parties (e.g., a CNRA department and California Native American tribe(s)) that outline the intentions, roles, and objectives of the partnership. There is no difference between an MOU or MOA. As such, the remainder of this section will refer to both simply as "MOU." These agreements often indicate a commitment to work collaboratively and in good faith to achieve a shared goal or navigate a detailed or difficult process. MOUs can be useful for clarifying the intentions of a partnership, identifying shared priorities and tasks, facilitating transparent and regular communication, and establishing confidentiality protocols, among other purposes.

Either a tribe or the department may request to enter into an MOU. The development of an MOU is initially a time-consuming process but will likely lead to efficiencies for tribes and departments in the long run and provide smoother transitions in the event of leadership and staff changes. MOUs should be

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viewed as a written articulation of a relationship. Creating an MOU will likely require multiple meetings to discuss the scope, goals, and language of the MOU, sharing multiple drafts between the department and tribe, and an in-person signing celebration. It is a best practice for a department to designate one person to manage the department's writing and review of the MOU.

The following best practices should be considered when writing an MOU with a tribe:

- The agreement should be in writing.
- Include the names and descriptions of all parties.
- Provide identification of the area and/or topics covered.
- Provide identification of relevant tribal, federal, state, or local authority.
- Determine an effective date. The effective date is typically the date when the last signature is provided.
- Determine an expiration date or renewal period. Some MOUs have automatic renewal periods and provide check-ins every five years on the terms of the MOU.
- Provide an amendment clause to allow amendment to the agreement through a mutually agreed upon process. Typically, all parties have to agree to the amendment and the agreement has to be amended in writing.
- Provide a termination clause to allow any party to terminate an agreement at will, with a mutually-agreed upon notice, and within a mutually-agreed upon timeframe.
- Provide an articulation of the agreement's objectives, purposes, goals, and scope.
- Provide clauses of the responsibilities and commitments necessary to realize the objectives and purposes of the agreement. This can include how often the parties will meet, where they will meet, meeting topics, shared goals, and shared priorities.
- Signature of authorized representative of the tribe and department.

Example 3: Regular Working Groups or Task Force Model

Some agency actions, such as those that are more complex, involve multiple agencies, or have a long timeline, may benefit from the establishment of a regular working group or task force to focus on specific topics or processes. Working groups provide more opportunities for tribes to help shape agency actions and can be a space where tribal and department staff can work through complex issues together and can help inform leadership of new or updated information as an action progresses. A best practice is to seek early consultation as described in Example 1: Multi-Stage Consultation (90-90 Model), above, and ask tribes if they would like to schedule regular working group meetings.

The following best practices should be considered when developing working groups:

- Designate one department staff to serve as the working group facilitator and meeting coordinator.
- Ask the tribe(s) to provide one point of contact for the working group. That said, if the tribe(s) would like to send more representatives that should be welcomed.
- Develop a work plan and shared goals and objectives with working group participants. The work plan should be mutually agreed upon.

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- Set regular meetings that participants agree to attend and at an interval that is agreeable to all parties. Note, in some cases the frequency of meetings may need to be dictated by statutory timelines and/or staff and leadership availability.
- Host meetings in a manner that is conducive to participation and productive conversations (e.g. virtual, in-person, or hybrid).
- Provide agendas at least one week ahead of the working group meeting.
- Ensure the majority of the time allotted is for discussion. A best practice is to limit state presentations to ¼ of the time provided.

Example 4: Regular Check-Ins Model

Departments may choose to have quarterly, biannual, or annual check-ins with tribes. As opposed to an individualized consultation, which often covers a specific topic, these regular meetings allow a tribe and a department to cover a wide array of topics and upcoming actions. They also give departments an opportunity to build relationships with tribes, discuss any pressing issues, and gain a better understanding of tribal priorities and concerns. Though regular check-ins are highly encouraged, they may not necessarily be considered consultation, wherein a tribe is providing a more formal response to a specific agency action. Even if a department and a tribe have regular check-ins scheduled, the department should still include the tribe on requests for consultations that may affect them and meet outside of a regular check-in meeting if requested.

Potential Consultation Challenges:

Acting as a facilitator between two entities can be an exciting, and sometimes challenging position to be in. The following section outlines several frequent challenges that tribal liaisons have experienced to date. These challenges are not offered as impassible roadblocks, but rather, as important considerations for tribal liaisons as they embark upon tribal consultations and endeavor to build relationships with tribes.

Tribal and State Agency Capacity

It is important to acknowledge that both tribes and departments have limited staff capacity, which impacts their ability to consult and build relationships. Tribes with limited staff and funding may not have the capacity to respond to each consultation request that interests or impacts them. Departments also have limited staff and resources.

To address these capacity challenges, departments should make consultation periods as long as possible to meet tribal needs whenever feasible. A best practice is 90 days.

Confidentiality

During the many different periods of settlement and colonialism, many California Native American tribes had to safeguard information about their cultural resources and traditions because the information would be weaponized to eradicate tribal religions and ways of life. These historical wrongs are still felt today and while California is working to heal those wrongs, it is understandable that tribes may hesitate or outright refuse to share information with the state. Unfortunately, at present there are still individuals who actively review state documents to learn the location of tribal cultural resources to loot or otherwise harm the resources for their benefit. Thus, even if the tribe trusts you, sharing sensitive information may put the tribe and its resources at risk for public disclosure and destruction.

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Maintaining the confidentiality of sensitive tribal information must be a priority for all departments. Often, to protect an important cultural resource, tribes must share a certain amount of sensitive information about that resource (e.g., the location of said resource).

One challenge to keeping sensitive tribal information confidential is the California Public Records Act (PRA).³⁸ The PRA was passed to allow the public to monitor the government's actions and enables members of the public to request access to any government document in the spirit of open transparency. While there are exemptions within the PRA to protect certain sensitive resources, they may not be as protective as a tribe may desire. To avoid breaches of confidentiality, departments should:

- Avoid requesting or receiving confidential information from tribes, unless absolutely necessary to inform decision-making.
- Avoid creating written records of sensitive information that a tribe isn't aware of. Be sure to inform tribes of the PRA and when notes are being taken.
- When possible, support the verbal sharing of sensitive tribal information and discuss what is appropriate and not appropriate to be included in written records with the tribe.
- Request that tribes disclose when sensitive information is shared before sharing it.
- Return sensitive information to the tribe when possible. Do not keep copies of sensitive information unless necessary.
- Be fully transparent with tribes regarding what information the department can or cannot keep confidential according to the Public Records Act at the beginning of consultations.
- Work with tribes to determine what and how information should be shared and presented in public-facing documents.
- If a tribe or department determines that it is necessary to share sensitive information, both the tribe and the respective department should work together with legal staff to identify the most appropriate and protective means to do so.
- Designate a limited number of staff with authority to view, store, and transmit (if necessary) confidential tribal information. Utilize file-sharing platforms that support restricted access to confidential or culturally sensitive information, limited only to those who need access with tribal permission.
- Rely on existing public information when possible.
- Label information and all correspondences as "confidential."
- Consider entering into MOUs or Non-Disclosure Agreements (NDAs) with tribes to outline the department's access to and use of tribal knowledge or other information shared during consultations.

Another challenge many face is the use of Artificial Intelligence (AI) in meetings. California law (Cal. Penal Code Section 632³⁹) prohibits the use of recording without express consent by all attending parties. If a meeting is recorded, said recording or any notes that are generated from the recording may become public records. While it may be tempting to use artificial intelligence or other means to capture

³⁸https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=GOV&division=10.&title=1.&part=2.&chapter=&article=&goUp=Y

³⁹ https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=632&lawCode=PEN

tribal input during consultations, department and tribal staff are strongly encouraged to turn off AI features or other recording devices when meeting.

Funding

As previously noted, in-person meetings are encouraged, and sometimes preferred, by all parties involved in tribal consultations. In-person meetings allow for better communication and oftentimes a better understanding of tribal interests, especially when meetings occur on or near a tribe's ancestral territory. Given the size of the State of California however, as well as limited staff capacity, hosting or attending in-person meetings may not always be practicable due to the financial constraints associated with travel. These constraints may be felt by both state and tribal representatives alike.

State agencies can also try to coalesce meetings around ongoing conferences or other events that have high tribal attendance to minimize travel costs. Lastly, it is always possible to offer virtual meetings.

Language and Cultural Differences

Language and cultural differences can create tension between department and tribal staff, which can hinder relationship building efforts and make consultations less productive. To address these challenges, CNRA and departments can provide cultural humility trainings, host educational events, encourage attendance of tribally organized events, and identify other ways to connect meaningfully with tribal communities. Please see Appendix XX for additional information regarding cultural humility best practices.

Inter-Tribal Conflict

California Native American tribes were exercising their sovereignty long before the creation of the United States and the State of California. While many tribes had clearly defined territories and resources, typically there were not hard jurisdictional borders. Further, the vast trading routes provided interconnection between communities and the sharing of knowledge, cultures, and resources. On occasion there were disagreements or in severe circumstances, war, between neighboring tribes. In addition to long-standing pre-contact inter-tribal conflicts, many tribes were forcibly removed from their ancestral territories and forced onto small areas of land with limited resources. This and other actions taken by the federal and state government caused additional inter-tribal conflicts and competition for limited resources. It is within each tribe's right to self-determine how they will operate and engage with other governments, including other tribes and the State of California.

Inter-tribal conflict and diverging opinions from different tribes (especially those with shared ancestral territories) may make it difficult, or impossible in some cases, to reach agreement and find a solution that satisfies all parties involved. While consensus amongst all parties might not be feasible, departments should:

- Avoid entering into inter-tribal conflict.
- Respect each tribe's sovereignty and position.
- Endeavor to create opportunities for discussion and consensus but ultimately accept if tribes do not want to work together or build shared outcomes.

CNRA staff are encouraged to work closely with their department tribal liaisons, and department tribal liaisons are encouraged to work closely with the CNRA Deputy Secretary for Tribal Affairs if conflicts arise where additional and more nuanced guidance may be needed.

Gifts

Giving before taking is a core principle ingrained in many Native cultures, and as such, gifts are not uncommon. For example, it is commonplace for Native people to bring a gift when visiting another's lands or home, and in some cases, to give gifts to those visiting. Gifts may take the form of food and beverages, jewelry, memorabilia, etc.

Unfortunately, receiving gifts may conflict with the [state's regulations](#) and/or your department's policies, which impose limits on the amount, type, or source of gifts received. It is recommended that CNRA and department staff familiarize themselves with these policies so they know what they can and cannot accept. In some cases, staff may be able to accept a gift of a certain type or under a certain value so long as it is reported. In other cases, the type or amount of the gift may be strictly prohibited. Note, it is considered extremely rude to reject either gifts or food when offered, so if you must decline, a best practice is to be considerate, polite, and gently explain your department's strict gift rules.

Giving gifts on the other hand, especially when the gift is given from personal funds as opposed to state funds, is generally less regulated. The best gifts are food, homemade items of importance, and culturally relevant items. However, as with receiving gifts, please consult with your department and the state's policies on gifts and conflicts of interest before doing so. If in doubt, it is recommended that you work with your human resources department and legal counsel.

Accountability

The CNRA Tribal Consultation Policy and this Best Practices document are intended to provide a framework and standards by which all CNRA departments conduct consultations and engagement with California Native American tribes and may be held accountable. Given the many historic wrongs inflicted by the State of California on California Native Americans, accountability and trust are essential components to rebuilding relationships.

CNRA departments and staff are encouraged to frequently seek feedback from tribes on how consultations are going or how the process of a given consultation is going and to request areas for improvement. To this end, CNRA will endeavor to host an annual consultation policy tribal roundtable, wherein all CNRA department tribal liaisons will be requested to attend and tribes can openly discuss and provide feedback on how CNRA and its departments are doing with respect to implementing this guidance and the CNRA Tribal Consultation Policy.

Addendums to this Guidance

Additional guidance regarding more specific and nuanced department actions with tribal implications may be developed as addendums to this guidance at a later date. If a tribe or department has additional information or questions, please contact CNRA at tribalaffairs@resources.ca.gov.

Limitations of this Guidance

This CNRA Tribal Consultations Best Practices document is intended solely for the guidance of employees of the California Natural Resources Agency and its departments and does not extend to other governmental entities. The California Natural Resources Agency encourages cooperation, education, and communication on the part of all governmental entities. This guidance is not intended, and should not be construed, to define the legal relationship between the Natural Resources Agency and its

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departments and California Native American tribes or tribal communities. This guidance is not a regulation, and it does not create, expand, limit, waive, or interpret any laws, legal rights, or obligations.

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Appendix XX: Cultural Humility Best Practices

Cultural humility is an attitude of humility and respect toward other cultures that pushes one to challenge their own cultural biases, realize they cannot possibly know everything about other cultures and approach learning about other cultures as a lifelong goal and process. Not to be confused with the concept of cultural competency, which may implicitly place non-western cultures as “other” cultures that can possibly be mastered with enough effort. The following non-exhaustive list contains a set of best practices that should be considered and employed by CNRA and department staff to effectively practice cultural humility.

- **Be a good guest:** If you are visiting a tribal community or space, understand that you are a guest—observe and ask questions humbly, when necessary, but remember that you are not entitled to know everything about the community.
- **Listen and observe** more than you speak—learn to be comfortable with long pauses in conversation and narrative-style communication.
- **Give your full attention** to the meeting participants. Do not multitask, email, text, or take other calls during a meeting with tribes.
- **Be honest and clear** about what you are doing. Do not make promises you do not intend to or cannot keep.
- **Practice respectful body language:** Preferred body language, posture and concept of personal space depend on the community norms and nature of the personal relationship—observe others and allow them to initiate or ask for physical contact.
- **Try not to take things personally:** You may experience people expressing their mistrust, frustration, or disappointment from situations outside your control. Learn not to take it personally.
- **Properly honor elders:** Elders or cultural practitioners are often asked to offer such opening and/or closing words and are given a small gift as a sign of respect (honoraria are common). Remember that many elders and cultural practitioners are taking time away from their jobs, families, or communities to offer prayers or blessings at State events—please be sure to accommodate their needs where possible.
- **Show humility:** If community members tease you, understand that this can indicate rapport-building.
- **Respect confidentiality** and the right of the tribe to control information and data. Where confidentiality cannot be guaranteed, be explicit about such limitations. Never use information gained without a tribe's expressed written consent and clarify whether the tribe has agreed to be identified.
- **Avoid intrusive questions** (cultural, personal, etc.). Be careful not to impose your personal values, morals, or beliefs.
- **Explain or limit the use of acronyms.**
- **Be self-aware:** Moderate the tone and speed of your voice when speaking. Tribes may be especially sensitive to government representatives speaking too loud and fast.