

Draft California Natural Resources Agency Tribal Consultation Policy Update

1) Purpose and Objectives

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

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

The objectives of this policy are as follows:

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

2) Application of This Policy

This policy applies to all CNRA departments and serves as a basis from which CNRA departments may adopt addendums. While this policy 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.¹² 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 this policy 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.

In recent years, the state has adopted executive orders and other policy directives to improve communication between public agencies and tribes. The primary objective of these efforts is to ensure that California Native American tribes can participate meaningfully in decisions that may affect their communities, rights, and resources.

3) Background: Addressing Historical Wrongs

On June 18, 2019, Governor Gavin Newsom issued [Executive Order N-15-19](#) to formally apologize on behalf of the citizens of the State of California to all California Native Americans for the many instances of violence, maltreatment, and neglect that California inflicted on tribes³. Through this Executive Order, Governor Newsom reaffirmed Governor Brown's [Executive Order B-10-11](#) and directed his Tribal Advisor and the Administration to engage in government-to-government consultation with California Native American tribes regarding policies that may affect tribal communities.

Tribal consultation is an acknowledgment of respect for California Native American tribes and a key component in addressing the historic wrongs sanctioned by the State against California Native Americans. Prior to colonization, the entirety of what is now known today as the State of California was

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 Note, there is a long and strenuous history between the State of California and California Native American tribes. While this policy does not attempt to outline the full detailed history, it is essential to acknowledge this past in order to provide the foundation for building and improving relationships at present and in the future. For additional information on the history of California Native American narratives regarding the historical relationship between the State and California Native Americans, please see the Truth and Healing Council's webpage at <https://tribalaffairs.ca.gov/cthc/about/>.

comprised of tribal territories. California Native American tribes and people are the original stewards of the lands and waters in California, a relationship that continues to this day.

Today, California is home to the largest number of tribes in the contiguous United States.

4) Tribal Consultation

It is the policy of CNRA and all entities under CNRA to engage in early, often, and meaningful consultations on a government-to-government basis with federally recognized California Native American tribes, and to consult with nonfederally recognized California Native American tribes and tribal organizations, as appropriate, on policies, processes, programs, and projects that may impact tribal communities.⁴ CNRA departments, commissions, boards, and conservancies may adopt additional tribal consultation policies in consultation with tribes to build on this policy and to support their specific missions.

a) Definition of Tribal Consultation

Tribal consultation “means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties’ cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party’s sovereignty. Consultation shall also recognize the tribes’ potential needs for confidentiality with respect to places that have traditional tribal cultural significance.”⁵

Tribal consultations may be conducted before, during, or after a department action but should occur as early and often as feasible in a manner that supports the objectives of this policy. For the purposes of this policy, preliminary tribal consultations and tribal consultations may include but are not limited to all communications, meetings, site visits, informal and formal consultations up to a final decision or action. While tribal consultation should be considered a process and a means of wholistic relationship building, for the purposes of this policy, a tribal consultation period for an action typically begins when the request for tribal consultation is sent (i.e., via phone call, email, or letter). Departments should make every effort to provide a tribal consultation period that provides adequate time and opportunities for both parties to share and consider one another’s perspectives (see Appendix 1: Tribal Consultation Best Practices) and should clearly communicate start and end times for consultations on specific department actions. CNRA and its departments can extend tribal consultation periods and consult outside of set consultation periods. Typically, 90-day consultation periods are a best practice, but 60-day consultation periods may be acceptable for time-sensitive matters or projects. 30-day consultation periods should only be reserved for emergency actions. (See Appendix 1: Tribal Consultation Best Practices).

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, lack of interest, or concerns on impacts to tribal rights, interests, or

⁴ Government Code Section 11019.81 (c), Assembly Bill 923.

⁵ Government Code Section 65352.4. Note, tribes may hold their own definitions for what consultation is and should entail. When feasible, a best practice is to acknowledge and work with a tribe’s requests.

resources. Therefore, CNRA and departments should continue to engage and request consultation as the project progresses.

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

b) Objectives of Consultation:

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

- 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 tribal perspectives, needs, and concerns.
- Share pertinent materials with a tribe in a timely fashion such that tribal leaders, representatives, and/or staff may make an informed decision.
- Provide tribal consultation timelines that allow tribal leaders, representatives, and/or staff to process information, schedule internal and external meetings, make informed decisions, and provide thoughtful comments and feedback.
- Strive for collaborative problem-solving as well as integration and advancement of tribal priorities and perspectives into CNRA and department decision-making where feasible.

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

i) “Early”

“Early” 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 (see section below). CNRA and departments should request consultation as early as possible in the planning process. CNRA and departments are encouraged to implement early consultation periods, during which tribes have the opportunity to learn about and provide feedback on an activity before the project begins and before any major or irreversible decisions have been made. Additional consultations, i.e. consultation on a draft document, may follow early consultations as appropriate. Consulting as early as possible also gives CNRA and departments adequate time and flexibility to collaborate with tribes and incorporate and address tribal priorities, interests, and concerns into agency decision-making.

ii) “Often”

CNRA and departments should be building and maintaining relationships with California Native American tribes on an ongoing basis, before consultation is needed. However, for any CNRA or department actions with potential tribal implications, CNRA and

departments should offer consultation at a frequency that is conducive to allowing tribes multiple opportunities to provide input throughout the development process of a department's decision-making and as new information becomes available.

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

iii) "Meaningful"

Meaningful consultation requires that the department prioritize listening with the intent to 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.

d) Determining When to Seek Consultation

Determining when to seek consultation with tribes requires a two-step analysis:

(1) CNRA or a department should first determine whether its action has potential implications for tribes, may be of interest to tribes, impacts to their ancestral lands, cultural or natural resources, representatives, or tribal communities, or has implications to federally recognized tribes' trust lands, water rights, or other reserved rights; and,

(2) for actions identified in step (1), tribes, CNRA, or its departments should identify key milestones, needs, and timing associated with the action and identify where in that process to seek consultation with tribes such that tribes have multiple opportunities to provide meaningful and timely input to inform the decision-making of an action.

Note, tribes may also initiate consultation outside of agency requests (see Appendix 1: Tribal Consultation Best Practices).

i) Actions with Tribal Implications

Actions may include, but are not limited to, the "development of policies, regulations, guidelines, processes, programs, and projects," rulemakings, strategic plans, planning documents, projects undergoing CEQA review (including projects that may otherwise be

categorically excluded or exempted), funding and grant opportunities, memorandums of understanding, and as required by legislation, with tribal implications.⁶

Tribal implications are “actions that impact one or more federally recognized tribes or nonfederally 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.”⁷ Tribal implications also include actions that are of interest to tribes, including but not limited to, tribal cultural resources, sacred sites, cultural viewsheds and landscapes, natural resources, economic development, access and use of ancestral lands, ancestral land return, increasing the availability of public resources and services to tribes and their communities.

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

ii) Determining the Timing of Consultation Initiation and Frequency

As stated above, “early, often, and meaningful” are key principles of the CNRA’s Tribal Consultation Policy. This means that departments should contact potentially affected tribes as early as feasible and on as frequent or as-needed basis that achieves the consultation objectives set forth in this policy and to “allow tribal officials the opportunity to provide meaningful and timely input in the development of policies, processes, programs, and projects that have tribal implications.”⁸ Determining when and how often to consult with a tribe may depend on several factors including, but not limited to:

- (1) Tribal council meeting schedules and other tribal events or ceremonies
- (2) State laws and mandates
 - (a) Public Resources Code Section 21080.3.1 (Assembly Bill 52)⁹
 - (b) Government Code Section 11019.81 (Assembly Bill 923)¹⁰
- (3) Federal laws and mandates, including but not limited to:
 - (a) Native American Graves Protection and Repatriation Act¹¹ (Pub. L. 101-601; 25 U.S.C. 3001-3013; 104 Stat. 3048-3058)
 - (b) National Environmental Policy Act
 - (c) National Historic Preservation Act
- (4) Department-specific mandates (e.g. permitting and regulatory actions)
- (5) Size and complexity of a particular project or department action (e.g. permitting, broad policy decisions, emergency actions, etc.)

⁶ Government Code Section 11019.81 (b)(1), Assembly Bill 923.

⁷ Government Code Section 11019.81 (b)(3), Assembly Bill 923.

⁸ Government Code Section 11019.81 (c), Assembly Bill 923.

⁹ Public Resources Code Section 21080.3.1, Assembly Bill 52.

¹⁰ Government Code Section 11019.81 (d), Assembly Bill 923.

¹¹ <https://uscode.house.gov/view.xhtml?path=/prelim@title25/chapter32&edition=prelim>

- (6) Number of tribes, governmental entities, or stakeholders that may be potentially affected by an agency action
- (7) Whether CNRA, a department, or a tribe has requested consultation
- (8) Department meeting schedules

Unless otherwise specified in statute, 90-day consultation periods are considered best practice. 60-day consultation periods may be acceptable for time-sensitive matters or projects. Please see the Appendix 1: Tribal Consultation Best Practices for additional guidance regarding when to seek consultation.

Additionally, departments should coordinate with other departments on shared agency actions to identify ways to streamline and collaborate on tribal consultations if appropriate. Please see the Appendix 1: Tribal Consultation Best Practices for additional guidance regarding multilateral consultations.

iii) Emergency Consultations

In some cases, consultation periods are truncated, or departments may need to take emergency actions that require quick decisions for immediate actions needed to protect life, the environment, or property (e.g. wildfire response, flooding from storms, oil spills, emergency regulations, public health, etc.). During these emergency situations, departments may not be able to offer “early” consultation to tribes. However, departments should strive to uphold the principles of this policy to the extent practicable and allowable under the law. Additional local, state, and federal laws may also need to be considered.

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

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

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

5) Designating a Tribal Liaison

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

a) Officials with Authority to Consult with Tribes:

[Government Code Section 8318](#) (Chapter 5 added by Stats. 1953, Ch. 170) requires 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.” Government Code Section 11019.81, [Assembly Bill 923](#) (Ramos, 2022), further states that the following officials within the Executive Branch shall have the authority to represent the state in tribal government-to-government consultations and shall be required to complete a statewide tribal consultation training:¹²

Government Code Section 11019.81

(f) (1) Within the executive branch, the following officials shall have authority to represent the state in a tribal government-to-government consultation:

- (A) The Governor.
- (B) The Attorney General.
- (C) Each constitutional officer and statewide elected official.
- (D) The director of each state agency and department.
- (E) The chair and the executive officer of each state commission and task force.

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

b) CNRA Tribal Liaison

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

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

¹² This policy does not address or fulfill the statewide training requirement listed in Assembly Bill 923.

Tribal Affairs and is required to complete tribal consultations per Government Code Section 11019.81 for CNRA.

c) Department Tribal Liaisons

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

Department directors are highly encouraged to designate a department tribal liaison at the executive leadership or senior staff level, with authority in the department, and who can act on behalf of the department. Each department is encouraged to have at least one designated full-time department tribal liaison; however, where doing so is not feasible, it is recommended that department tribal liaisons or their designees should be allotted a minimum of 30% of their working responsibilities to perform the duties associated with the department tribal liaison roles and responsibilities noted below. Duty statements for all new department tribal liaison hires, regardless of the percentage of tribal affairs duties, shall include the roles and responsibilities noted below. For existing department tribal liaisons, it is highly encouraged to include their liaison roles and responsibilities in the job description and duty statement.

d) Deputy Department Tribal Liaisons

Department directors may also designate deputy department tribal liaisons for specific regions, programs, or projects within the department. Department directors may designate deputy department tribal liaisons using the same letter as the department tribal liaison or separate letters. The designation letter should include the 1) name, 2) title, 3) classification, 4) email, 5) phone number, and 6) scope of delegate authority. Such designation should occur at time of the adoption of this policy and as needed. For larger departments, deputy department tribal liaisons may serve as the main point of contact for tribes for their specific region or program. Deputy department tribal liaisons shall coordinate closely with the department tribal liaisons to ensure consistency and clear communication but can represent the department for specific reasons detailed in a delegation letter.

6) Tribal Liaison Roles and Responsibilities

This section defines the minimum roles and responsibilities of the CNRA Deputy Secretary for Tribal Affairs and department and deputy department tribal liaisons. Regardless of classification or position, all CNRA departments and their employees should adhere to statewide tribal affairs policies and goals. CNRA and department staff who are not designated tribal liaisons shall closely coordinate with their department and deputy department tribal liaisons when working on projects that might affect tribes,

including working with the tribal liaison on implementation of tribal consultations. Tribal liaisons shall be available to support their colleagues to determine if or when a project or department action may affect a tribe or tribes and to determine the most appropriate pathway(s) for tribal consultation on a given action.

a) CNRA Deputy Secretary for Tribal Affairs Roles and Responsibilities

The Deputy Secretary for Tribal Affairs has the responsibility to ensure consistency of the implementation of this policy. To accomplish this, the Deputy Secretary for Tribal Affairs shall convene all department tribal liaisons on a regular basis to provide resources, coordinate on shared projects, and trainings as needed. The Deputy Secretary for Tribal Affairs may create tribal affairs working groups to provide additional focus on key tribal affairs policies, including the implementation of this policy.

b) Department Tribal Liaison Roles and Responsibilities

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

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

c) Deputy Department Tribal Liaison Roles and Responsibilities

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

d) Training

Training is an essential component to the implementation of this policy, Tribal Consultation Best Practices, and building consistent department capacity to respectfully and appropriately engage with tribes. The following outlines the training roles and requirements for various CNRA staff.

- The Deputy Secretary for Tribal Affairs shall conduct an annual training for all department and deputy department tribal liaisons regarding the implementation of this policy and other tribal affairs policies. Further, the Deputy Secretary for Tribal Affairs shall conduct an annual training for all employees at CNRA and departments on this policy and tribal consultation best practices.

- Department and Deputy Department tribal liaisons as well as department archaeologists are required to complete the statewide tribal consultation training provided by the California Department of Human Resources per Government Code Section 11019.81.
- Department and Deputy Department tribal liaisons shall be trained on this policy and their department's tribal consultation policies.
- All CNRA staff are encouraged to seek additional tribal affairs trainings (e.g., cultural humility, history of tribes in California, etc.), especially those curated directly by tribes.

7) Limitations of this Policy

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