

California Energy Commission

POLICY

TRIBAL CONSULTATION POLICY

California Energy Commission

Edmund G. Brown Jr., Governor

December 2017 | CEC-700-2017-002-D



California Energy Commission Tribal Consultation Policy

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The purpose of this policy is to fulfill the requirements of the California Governor's Executive Order B-10-11, the California Natural Resources Agency (Natural Resources Agency) tribal consultation policy, and Assembly Bill 52 (AB 52, Gatto, Chapter 532, Statutes of 2014). This policy ensures effective consultation between the California Energy Commission (Energy Commission) and California Native American tribes (tribes)ⁱ to further the Energy Commission's mission and provide meaningful tribal input into the development of regulations, rules, policies, plans, and activities that may affect California Native American tribes. This policy is not a regulation, and it does not create, expand, limit, waive, or interpret any legal rights or obligations.

WHEREAS Governor Edmund G. Brown Jr. signed Executive Order B-10-11 on September 19, 2011, directing state agencies and departments, including the Natural Resources Agency and Energy Commission, to encourage effective cooperation, collaboration, communication, and consultation with tribes concerning the development of legislation, regulations, rules, and policies on matters that may affect tribes in California.

WHEREAS the Natural Resources Agency has adopted a Final Tribal Consultation Policy (dated November 2012) that implements Executive Order B-10-11 by:

- Recognizing tribal sovereignty over their territories and members.
- Acknowledging that tribes and tribal communities possess distinct cultural, spiritual, environmental, economic and public health interests, and unique traditional cultural knowledge about California resources.
- Recognizing tribal interests concerning various kinds of state resources and the Natural Resources Agency's responsibility for managing the state's natural, historical, and cultural resources.
- Defining effective consultation as open, inclusive, regular, collaborative and implemented in a manner that is respectful, shares responsibility, and provides the free exchange of information concerning Natural Resources Agency regulations, rules, policies, programs, projects, plans, property decisions, and activities.
- Identifying specific actions as follows:
 1. Outreach: Identify the tribes to consult early in the planning process, invite tribes to participate in open dialogue, and exchange information per established mechanisms and do so in a repeated manner as appropriate.
 2. Tribal Liaison: Establish departmentⁱⁱ tribal liaison(s) that, on behalf of a respective department, will act as central points of contact for tribes. The tribal liaison's role is to ensure that department outreach and communications are consistent with the Natural Resources Agency's Tribal

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Consultation Policy. Tribal liaisons are also to develop ongoing and regular communication with tribal representatives.

3. Tribal Liaison Committee: the Governor's Tribal Advisor's committee of agency tribal liaisons (hereafter, "Tribal Liaison Committee"), established to meet on a regular basis to coordinate agencywide tribal consultation efforts.
4. Access to Contact Information: Work with the Native American Heritage Commission (NAHC)ⁱⁱⁱ to maintain a tribal contact list.
5. Training: Provide training that assists departments in implementing tribal consultation policy.

WHEREAS in 2014, the Legislature passed Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014), which amended portions of the Public Resources Code, in recognition of California Native American tribal sovereignty, Native Americans' knowledge of tribal cultural resources, and the unique relationship of California local governments and public agencies with California Native American tribal governments. In June 2017, the Governor's Office of Planning and Research published a *Technical Advisory: AB 52 and Tribal Cultural Resources in CEQA* to guide agencies in their implementation of the California Environmental Quality Act's (CEQA) new consultative and procedural requirements.

THEREFORE the Energy Commission adopts the following Tribal Consultation Policy that:

1. Identifies the responsibilities and organization of the Commission.
2. Identifies the Commission Tribal Liaison and Assistant Tribal Liaisons.
3. Affirms Commission Tribal Liaison participation in the Tribal Liaison Committee.
4. Outlines the Commission's tribal consultation process.
5. Provides mechanisms for exchanging confidential information.
6. Stipulates filing and disclosure requirements concerning Commission tribal communications.
7. Suggests ways for fostering long-term relationships.
8. Lists applicable training opportunities that will assist Commission personnel in implementing the Commission Tribal Consultation Policy.

ENERGY COMMISSION RESPONSIBILITIES AND ORGANIZATION

The Energy Commission is the State's primary energy policy and planning agency. Created by the Legislature in 1974 and located in Sacramento, the Commission has a number of responsibilities, including:

- Forecasting future energy needs in California.

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- Promoting energy efficiency and conservation by setting the state's appliance and building energy efficiency standards.
- Supporting public interest energy research that advances energy science and technology through research, development, and demonstration programs
- Fostering the development of renewable energy resources and alternative renewable energy technologies for buildings, industry, and transportation.
- Certifying and ensuring compliance of thermal power plants 50 megawatts or larger and designating transmission corridors.
- Investing in low-carbon alternative fuels and advanced vehicle technologies.
- Planning for and directing state response to energy emergencies.
- Developing a biennial policy report that identifies and assesses major energy trends and issues in California and contains strategies and policy solutions to address these issues while advancing the State's energy goals.

The Energy Commission implements its responsibilities through seven divisions and two key offices that may have cause to consult with tribes. These organizational units are listed below:

1. Commissioners
2. Executive Office
3. Energy Assessments Division
4. Research and Development Division
5. Efficiency Division
6. Renewable Energy Division
7. Fuels and Transportation Division
8. Siting, Transmission, and Environmental Protection Division
9. Administrative Services Division

The following list provides examples of Energy Commission actions that may require tribal consultation:

- Development of regulations, rules, and policies
- Development of programs
- Development of local, regional, or statewide plans
- Environmental reviews
- Power plant siting and compliance activities

ENERGY COMMISSION TRIBAL LIAISON AND ASSISTANT TRIBAL LIAISONS

The Energy Commission Tribal Liaison shall be the Deputy Director of the Siting, Transmission, & Environmental Protection (STEP) Division, or the Deputy Director's designee. Tribal Liaison responsibilities include:

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- Being the internal and external point of contact for Energy Commission tribal affairs.
- Coordinating with Assistant Tribal Liaisons.
- Reviewing, commenting or, signing as appropriate (determined through the coordination referenced in the previous bullet) all correspondence to tribes on behalf of Commission staff.
- Ensuring Energy Commission leadership is available for government-to-government consultation meetings, as appropriate.
- Being an available participant in government-to-government consultation meetings among tribes and the Commission.
- Leading Commission initiatives for fostering long-term Commission/tribal relationships.

The Deputy Directors from each of the other divisions, or their designees, shall be Assistant Tribal Liaisons.

The Energy Commission Tribal Liaison shall coordinate among the Assistant Tribal Liaisons by holding quarterly meetings for sharing information, discussing action or project-specific tribal issues, planning tribal energy summits, preparing and participating in tribal issues training venues (see “Energy Commission Tribal Consultation Training” below), and conducting “lessons learned” exercises.

ENERGY COMMISSION PUBLIC ADVISER

The Energy Commission values the participation of interested groups and the public in all public meetings, hearings, workshops, and rulemakings. The Commission’s Public Adviser is responsible to ensure that full and adequate participation by the public occurs in Commission proceedings. The Public Adviser can be a resource for Native Americans who wish to participate in Commission proceedings. Contact information for the Public Adviser is provided in Appendix 1 to this policy.

ENERGY COMMISSION TRIBAL LIAISON PARTICIPATION IN THE OFFICE OF THE GOVERNOR’S TRIBAL ADVISOR’S TRIBAL LIAISON COMMITTEE

The Energy Commission Tribal Liaison will be the initial point of contact for participating in the Office of the Governor’s Tribal Advisor’s Tribal Liaison Committee. It is the Commission Tribal Liaison’s responsibility to fully participate in, be aware of, and attend Tribal Liaison Committee meetings, forums, and functions.

The Energy Commission Tribal Liaison may delegate participatory responsibility to an Assistant Tribal Liaison when other duties or circumstances prevent the Commission Tribal Liaison’s participation.

ENERGY COMMISSION'S TRIBAL CONSULTATION PROCESS

The Governor's Executive Order B-10-11 and the Natural Resources Agency Tribal Consultation Policy require tribal consultation to be initiated when state agencies engage in legislation, regulation, rules, policy, programs, projects, plans, property decisions, and activities that may affect tribes. In addition, CEQA requires tribal consultation for discretionary actions.

It is the Energy Commission's policy that its consultations with tribes will occur early and often and be meaningful, respectful, and inclusive. The Commission and its staff will communicate with tribes in varied ways including by letter, telephone, email, online and in-person meetings, and, as mutually established, during any consultation process. When possible, Energy Commission staff will accommodate tribal consultation meetings at tribal government offices. Where deadlines have been established, Commission staff will make all reasonable efforts to accommodate tribal requests to modify schedules.

The Commission and its staff will consider and document tribal input and communicate to tribes when a specific consultation has concluded. The Commission will adhere to the procedures set forth in the AB 52 amendments to CEQA and further clarified in the Governor's Office of Planning and Research *Technical Advisory AB 52 and Tribal Cultural Resource in CEQA* (June 2017).

REVIEW BY EXECUTIVE DIRECTOR

If a tribe does not believe the Energy Commission's consultation efforts met the standards and requirements established by applicable state law, regulation, or this Policy, a tribe may request review by the Executive Director.

INFORMATION CONFIDENTIALITY

During collaboration and communication, Energy Commission staff and California Native American tribes may need to exchange confidential information. The Commission may have confidential information, such as applicant-prepared cultural resources reports that California Native American tribes may wish to review. California Native American tribes may have confidential information, such as cultural resources records and oral history transcripts that Commission staff may wish to review. Information deemed confidential by one or more parties in the exchange will be maintained as confidential in a manner agreed upon by the concerned parties and consistent with applicable federal and state laws.

FILING AND PUBLIC DISCLOSURE OF ENERGY COMMISSION TRIBAL COMMUNICATIONS

The following project-specific consultation information will be filed with the Energy Commission docket or, if there is no docket, filed in the administrative record of the activity:

- The Energy Commission letter to NAHC that requests the list of California Native American tribes interested in the project area and Sacred Lands File check
- The NAHC response letter
- Any tribal letters and Energy Commission response letters transmitted under official letterhead
- Any siting case tribal information sent to a commissioner serving on that same siting case committee
- Any information sent by a tribe to the Energy Commission concerning the tribe's legal actions pertaining to a particular siting case.

JOINT STATE AND FEDERAL TRIBAL CONSULTATION COORDINATION

Projects that are within Energy Commission regulatory authority may also involve other federal, state, and local agencies, such as the Bureau of Land Management, Department of Energy, Western Area Power Administration, California Public Utilities Commission, and the California Department of Fish and Wildlife. The coordination of federal and state tribal consultation provides an efficient use of resources and time and can be beneficial in streamlining tribal and agency communication. However, each agency is subject to its own laws, regulations, and policies, including tribal consultation orders, memoranda, and policies, with which the respective agencies must comply.

FOSTERING LONG-TERM ENERGY COMMISSION/TRIBAL RELATIONSHIPS

In addition to project and action consultations, the Energy Commission wishes to foster long-term positive relations with California Native American tribes and may engage in the following activities:

- Convene short-term tribal task forces
- Host or cohost state-federal-tribal energy summits
- Enter into long-term dialogue with tribes on how best to consult with tribes, exchange information, and exchange technical assistance.

ENERGY COMMISSION TRIBAL CONSULTATION TRAINING

From time to time Energy Commission staff will benefit from training opportunities that may enhance Commission staff performance pursuant to this policy. Such trainings may include:

- Various “Tribal Consultation” trainings provided by other state or federal governments, tribal governments, or private sector training institutions
- Tribal cultural resources, sacred sites, and traditional cultural property training
- Commission staff-generated Tribal trainings.

APPENDIX 1

CONTACT INFORMATION FOR ENERGY COMMISSION TRIBAL LIAISON AND PUBLIC ADVISER

ENERGY COMMISSION TRIBAL LIAISON

Name: Thomas Gates, Designated Tribal Liaison for the California Energy Commission

Title: Supervisor, Cultural Resources Unit, Siting, Transmission, and Environmental Protection Division

Phone: 916/654-5008

Email: thomas.gates@energy.ca.gov

PUBLIC ADVISER'S OFFICE

Name: Alana Mathews

Title: Public Adviser

Phone: 916/653-0387

Email: alana.mathews@energy.ca.gov

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ENDNOTES

ⁱ See definition at Public Resources Code, section 21073.

ⁱⁱ The Natural Resources Agency's policy defines department as "any department, board, commission, council or conservancy subject to [gubernatorial] executive control."

ⁱⁱⁱ The Native American Heritage Commission maintains a list of contacts among California Native American tribes for the purposes of Chapter 905 of the Statutes of 2004 and the California Environmental Quality Act. "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." (Public Resources Code, § 21073).

STATE OF CALIFORNIA

STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION – RE: ADOPTION OF REVISED CALIFORNIA ENERGY COMMISSION
TRIBAL CONSULTATION POLICY

WHEREAS, in September 2011, Governor Edmund G. Brown Jr. signed Executive Order B-10-11 directing state agencies and departments, including the California Natural Resources Agency and the California Energy Commission, to engage in effective cooperation, collaboration, communication, and consultation with California Native American tribes concerning the development of legislation, regulations, rules, and policies on matters that may affect tribes in California; and

WHEREAS, in November 2012, the Resources Agency adopted a Final Tribal Consultation Policy that implements Executive Order B-10-11; and

WHEREAS, in December 2014, the Energy Commission adopted a Tribal Consultation Policy identifying the unique mission of the Energy Commission as guided by the Warren-Alquist Act and implementing regulations, as well as the Energy Commission's experience with tribal consultation; and

WHEREAS, in 2014, the Legislature passed Assembly Bill (AB) 52 (Gatto, Chapter 532, Statutes of 2014), which both added and amended provisions in the Public Resources Code in recognition of California Native American tribal sovereignty, Native Americans' knowledge of tribal cultural resources, and the unique relationship of California local governments and public agencies with California Native American tribal governments; and

WHEREAS, in June 2017, the Governor's Office of Planning and Research published a *Technical Advisory: AB 52 and Tribal Cultural Resources in CEQA* to guide agencies in their implementation of CEQA's new consultative and procedural requirements; and

WHEREAS, the Energy Commission drafted revisions to its Tribal Consultation Policy to reflect the enactment of AB 52 and the publication of the Technical Advisory; and

WHEREAS, in October and November 2017 the Energy Commission contacted tribes on the Native American Heritage Commission consultation list to solicit comments on its proposed revisions to the Tribal Consultation Policy, held three meetings open to

tribes (one in Palm Springs, one in Redding, and one by web conference), and made further revisions in response to comments received by tribes; and

WHEREAS, the Energy Commission recognizes the importance of Tribal Consultation in energy planning and policy and is committed to ensuring California Native American tribes have the opportunity to participate in and benefit from Energy Commission programs;

THEREFORE BE IT RESOLVED, the California Energy Commission hereby adopts staff's proposed revisions to the Tribal Consultation Policy.

CERTIFICATION

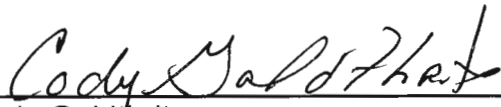
The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of a Resolution duly and regularly adopted at a meeting of the California Energy Commission held on December 13, 2017.

AYE: Weisenmiller, Douglas, McAllister, Hochschild

NAY: None

ABSENT: Scott

ABSTAIN: None



Cody Goldthrite
Secretariat