

California Energy Commission

TRIBAL CONSULTATION POLICY

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Gavin Newsom, Governor

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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 (CNRA) 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 (CEC) and California Native American Tribes (Tribes)ⁱ to further the CEC'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 CNRA and CEC, 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 CNRA 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 CNRA'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 CNRA 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

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and communications are consistent with the CNRA's Tribal 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)^m to maintain a tribal contact list.
5. Training: Provide training that assists departments in implementing tribal consultation policy.

WHEREAS in 2014, the Legislature passed AB 52, 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 CEC adopts the following Tribal Consultation Policy that:

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

CEC RESPONSIBILITIES AND ORGANIZATION

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

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- Forecasting future energy needs in California.
- 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 CEC implements its responsibilities through the Commissioners, seven divisions, and small offices that may have cause to consult with Tribes. These organizational units include the following:

1. Commissioners
2. Executive Office
3. Office of the Public Advisor, Energy Equity and Tribal Affairs
4. Chief Counsel's Office
5. Media and Public Communications Office
6. Office of Governmental and International Affairs
7. Energy Assessments Division
8. Energy Research and Development Division
9. Efficiency Division
10. Renewable Energy Division
11. Fuels and Transportation Division
12. Siting, Transmission and Environmental Protection Division
13. Administrative Services Division

The following list provides examples of CEC 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

CEC PUBLIC ADVISOR

The CEC values the participation of interested groups and the public in all public meetings, hearings, workshops, and rulemakings. The CEC's Public Advisor is responsible to ensure that full and adequate participation by the public occurs in CEC proceedings. The Public Advisor can be a resource for Native Americans who wish to participate in public CEC proceedings. Contact information for the Public Advisor is provided on the Office of the Public Advisor, Energy Equity, and Tribal Affairs webpage on the CEC website.¹

CEC TRIBAL LIAISON AND ASSISTANT TRIBAL LIAISONS

The CEC Tribal Liaison shall be designated by the CEC Lead Commissioner for Tribal Affairs, or the Chair of the CEC if no lead is assigned. Tribal Liaison responsibilities include:

- Being the internal and external point of contact for CEC tribal affairs, with support from the Public Advisor and the Office of the Public Advisor, Energy Equity and 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 CEC staff.
- Ensuring CEC 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 CEC.
- Leading CEC initiatives for fostering long-term CEC/tribal relationships.

The Deputy Directors from each of the divisions, or their designees, shall be Assistant Tribal Liaisons. In addition, the Chief Counsel and other small offices may designate an Assistant Tribal Liaison for the Chief Counsel's Office.

The CEC 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

¹ <https://www.energy.ca.gov/about/divisions-and-offices/office-public-advisor>

participating in tribal issues training venues (see “CEC Tribal Consultation Training” below), and conducting “lessons learned” exercises.

Contact information for the Tribal Liaison is provided on the Tribal Program webpage on the CEC website.²

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

The CEC 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 CEC Tribal Liaison’s responsibility to fully participate in, be aware of, and attend Tribal Liaison Committee meetings, forums, and functions.

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

CEC’S TRIBAL CONSULTATION PROCESS

The Governor’s Executive Order B-10-11 and the CNRA 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 CEC’s policy that its consultations with Tribes will occur early and often and be meaningful, respectful, and inclusive. The CEC and its staff will communicate with Tribes in varied ways including by letter, telephone, email, online, and in virtual and in-person meetings, and, as mutually established, during any consultation process. When possible, CEC staff will accommodate tribal consultation meetings at tribal government offices. Where deadlines have been established, CEC staff will make all reasonable efforts to accommodate tribal requests to modify schedules.

The CEC and its staff will consider and document tribal input and communicate to Tribes when a specific consultation has concluded. The CEC 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).

² <https://www.energy.ca.gov/programs-and-topics/programs/tribal-program>

REVIEW BY EXECUTIVE DIRECTOR

If a Tribe does not believe the CEC'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, CEC staff and California Native American Tribes may need to exchange confidential information. The CEC 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 CEC 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 CEC TRIBAL COMMUNICATIONS

Subject to the Information Confidentiality provisions above, the following project-specific consultation information will be filed with the CEC docket or, if there is no docket, filed in the administrative record of the activity:

- The CEC 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 CEC 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 CEC concerning the tribe's legal actions pertaining to a particular siting case.

JOINT STATE AND FEDERAL TRIBAL CONSULTATION COORDINATION

Projects that are within CEC's regulatory authority may also involve other federal, state, and local agencies. The coordination of federal and state tribal

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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 CEC/TRIBAL RELATIONSHIPS

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

- Convene tribal task forces
- Host or co-host tribal energy summits and conferences
- Dialogue with Tribes on how best to consult with Tribes, exchange information, and exchange technical assistance.

CEC TRIBAL CONSULTATION TRAINING

From time to time CEC staff will benefit from training opportunities that may enhance CEC 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
- CEC staff-generated tribal trainings.

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ENDNOTES

ⁱ See definition at Public Resources Code, section 21073.

ⁱⁱ The California 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).