

STATE OF CALIFORNIA
BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY

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November 18, 2014

BCSH POLICY MEMO

EXPIRES:
Until Rescinded or Amended

TO: **ALL BCSH EMPLOYEES; ALL BCSH
DEPARTMENT DIRECTORS**

SUBJECT: **TRIBAL CONSULTATION POLICY**

REFERENCES:
Executive Order B-10-11
(Sept. 2011)

BACKGROUND

In September 2011, Governor Edmund G. Brown Jr. issued Executive Order B-10-11 which, among other things, reflects the administration's policy to encourage communication and consultation with California Indian Tribes. Accordingly, the Business, Consumer Services and Housing (BCSH) agency adopts this Tribal Consultation Policy to memorialize BCSH's commitment to strengthening and promoting government-to-government relationships between California Indian Tribes and the State of California.

THE BUSINESS, CONSUMER SERVICES & HOUSING AGENCY

BCSH consists of the following departments:

- The Department of Consumer Affairs
- The Department of Housing and Community Development
- The California Housing Finance Agency
- The Department of Fair Employment and Housing
- The Department of Business Oversight
- The Department of Alcoholic Beverage Control
- The Alcoholic Beverage Control Appeals Board
- The California Horse Racing Board
- The Alfred E. Alquist Seismic Safety Commission

TRIBAL CONSULTATION POLICY

This Policy is intended to foster effective consultation and collaboration between BCSH, its departments and federally-recognized California Indian Tribes, and to provide meaningful input into the development of policies, rules, regulations, programs, projects, plans and activities that may affect tribal communities. BCSH's goal is to engage in the timely and interactive process to respectfully seek, discuss and consider Tribes' views in an effort to resolve concerns at the earliest opportunity and in a manner that respects and furthers the interests of Tribes and the State of California.

This Policy broadly describes ways to enhance the consultation processes of BCSH, its departments and Tribes. The principles described in this policy shall be implemented by BCSH and its departments in a manner that facilitates effective communication and consultation practices, and promotes cooperation and efficiencies in tribal consultation.

Policies shall be drafted based on input received from Tribal leaders and their designees. BCSH shall adopt its Policy by December 31, 2014. Each department within BCSH shall adopt its own Tribal Consultation Policy that is specific to each department's programs by January 30, 2015. This Policy shall be considered and acknowledged by BCSH and its departments when drafting, updating or implementing consultation policies pursuant to Executive Order B-10-11.

The BCSH Secretary hereby directs BCSH staff and BCSH's departments to implement this Policy.

DEFINITIONS

For purposes of this policy, the following definitions shall apply:

Tribe: Refers to a California Indian Tribe.

Federally Recognized Tribe: A tribal entity that is recognized as having a government-to-government relationship with the United States; these entities are listed on the Federal Register and the current list is posted on the Governor's Office of the Tribal Advisor's website.

Non-Federally Recognized Indian Tribe: Those Tribes that are not Federally recognized and are on the list maintained by the Native American Heritage Commission.

California Indian Tribe: Refers to a federally-recognized California Indian Tribe, as listed on the Federal Register. Only in situations involving cultural resources will a non-federally recognized California Native American Tribe that is on the list maintained by

the Native American Heritage Commission (NAHC) be included in this definition. The NAHC will provide a list of non-federally recognized California Native American Tribes for each instance.

Tribal Leaders: Refers to elected officials of Indian Tribes and their designees.

Tribal Sovereignty: Refers to the unique political status of federally-recognized Indian tribes. Federally-recognized Indian tribes exercise certain jurisdiction and governmental powers over activities and Tribal members within its territory. Some of these powers are inherent, and some have been delegated by the United States. Existing limitations on Tribal sovereignty are defined through acts of Congress, treaties, and federal court decisions.

Guiding Principles for Implementing this Tribal Consultation Policy:

Agency Tribal Liaison and Tribal Governance Officer; Department Tribal Liaisons

The Secretary shall designate a deputy secretary or assistant secretary to serve as the agency's Tribal Liaison and Tribal Governance Officer for the purposes of policy coordination between BCSH, its departments and tribal leaders.

Whenever possible, BCSH and its departments shall appoint liaisons who have experience dealing with Tribal governments and Tribal affairs.

The agency Tribal Liaison shall act as the Secretary's representative in matters pertaining to this Policy, and shall oversee and implement the duties described in this Policy. The Tribal Liaison and Tribal Governance Officer shall make all necessary efforts to fully participate in the tribal consultation process, ensure continuity and demonstrate the Administration's commitment to the process.

Each department shall designate a liaison to be its first point of contact with Tribes, to act as the department director's representative in matters pertaining to this Policy, and to oversee and implement the duties described in this Policy. Department liaisons shall be high-level department employees who have direct access to the department's executive leadership and shall elevate issues to the executive leadership and BCSH's Tribal Liaison and Governance Officer for resolution when necessary.

Tribal liaisons shall periodically report to the Agency Secretary on tribal consultation efforts and the implementation of this Policy. Reporting may include the scope of consultation efforts and their effectiveness, the topics on which Tribes were consulted, and a summary of the senior leadership engagement in these efforts.

Review of Existing Practices, Implementing Improved Practices

Within 30 days from the date this Policy takes effect, BCSH and its departments shall review their existing practices and guidelines, and revise them as needed in order to implement this Policy.

BCSH and its departments will periodically meet with the Governor's Tribal Advisor and report on the status of consultation processes and the implementation of this policy.

Outreach

BCSH and its departments will consult with Tribes to make relevant information available at the earliest possible time and allow a reasonable opportunity for Tribes to respond and substantively engage in planning, program, regulatory or other processes. Each department is responsible for consulting with Tribes in a manner that promotes regular, substantive and meaningful consultation. Each department will engage participants, including decision-makers and staff with appropriate level of responsibility, to ensure that tribal concerns are addressed.

Relevant and available tribal information, studies or data will be requested when a program or activity could impact tribal interests.

Collaboration

BCSH and its departments shall communicate and work together with Tribes to resolve respective issues of concern and/or mutual interest. This exchange will be conducted by respecting the protocols each respective Tribe has established for contacting its governing body or its delegated official.

BCSH is committed to ensuring a sound and productive relationship with tribal governments by interacting with Tribes in a manner that fosters meaningful dialogue, effective collaboration, mutual respect and informed decision-making. BCSH is committed to engaging in a substantive meet and confer process, exchanging information openly and freely, and compromising to reach understandings that, whenever possible, result in mutually-beneficial policies and sustainable outcomes. BCSH and its departments will work together to identify and coordinate policy when there are issues that may pertain to or impact Tribes. The degree and extent of collaboration will depend on the particular program, regulatory process or policy being considered.

Communication

When appropriate, BCSH and its departments shall engage in early, inclusive and frequent communication with tribal leaders regarding issues pertaining to or impacting Tribes. The types of communication mechanisms used (e.g., telephone conferences, Email, written correspondence, in-person meetings) will be determined on a case-by-case basis with the goal of utilizing the most efficient form of communication for a particular issue. When necessary, liaisons will consult with the Governor's Tribal Advisor to determine an appropriate initial contact mechanism and which Tribes should be contacted.

Liaisons shall be responsible for initiating the consultation process and shall engage agency and/or department executive leadership when necessary to promote collaborative decision-making.

Tribes may initiate consultation with BCSH and/or its departments by contacting the agency and/or department liaison. Liaison contact information shall be maintained on the agency and department websites.

When a consultation process is initiated, liaisons will provide timely information and updates to relevant Tribal leaders and the Governor's Tribal Advisor until the matter is resolved. When a matter involves confidential or culturally sensitive information, BCSH and its departments will work with tribal representatives to address the sensitivity of the information to the fullest extent legally possible.

BCSH and its departments will periodically consult with the Governor's Tribal Advisor to determine whether to hold a meeting with Tribal leaders to provide general updates on agency and department activities, even if there are no currently pending matters that are in the consultation process.

Education

BCSH and its departments will work with the Governor's Tribal Advisor and Tribes to develop training opportunities for BCSH and its departments. BCSH and department directors and liaisons shall attend periodic, ongoing training designed to improve collaboration with Tribes. Education and training should emphasize protocol, communication, tribal sovereignty, the unique distinctions of Tribes, and the skills and tools necessary for collaborative engagement. BCSH and departmental leadership will instill an awareness of tribal culture and respect within their organizations.

BCSH and its departments will consult with the Governor's Tribal Advisor to determine whether to hold periodic training opportunities for Tribes regarding

BCSH and department programs and activities. This training may be held in conjunction with other state agencies and departments.

Process

BCSH and each of its departments will communicate and collaborate with Tribes in a manner that is timely and respectful. Internal processes and timelines will be clearly identified; relevant staff will be available to explain processes and timelines as needed. Consultation with department liaisons and BCSH leadership is encouraged in order to make information available as early as possible.

Timely Notice

BCSH recognizes that Tribes may be located in diverse or remote regions throughout California thereby necessitating the need for clear and adequate notice and/or outreach prior to consultation or meetings that may require travel by tribal representatives. Contact with Tribes shall be initiated as early and as promptly as possible to provide ample time for Tribes to have substantive input. Whenever possible, at least 30-days' written notice shall be given for consultation sessions or in-person meetings; Tribe requests for additional time to prepare for or attend a consultation session or in-person meeting will be honored whenever possible.

Timely Response

An acknowledgment of receipt of official tribal correspondence will be provided within three business days. Whenever possible, a substantive response will be provided within 30 calendar days. If a substantive response will require more than 30 days' turnaround time, the liaison will advise the Governor's Tribal Advisor and the relevant Tribal leaders, and provide an estimated date for the substantive response.

Cooperation with Other Agencies

When appropriate, BCSH shall provide assistance to or seek assistance from other government agencies.

Contact Information

BCSH and its departments will maintain current contact information on their respective websites, along with the finalized Consultation Policies.

This Policy expresses BCSH's respect for tribal sovereign immunity and intent to strengthen the ability of BCSH and its departments to work collaboratively with Tribes to resolve issues of mutual concern. While the communication and collaboration encouraged by this Policy provides opportunities for strengthening and promoting government-to-government relationships between Tribes and the State of California, it may not result in a resolution of all issues. Inherent in this Policy is the right of Tribes and BCSH to elevate an issue to any decision-making authority of another entity including, when appropriate, the highest levels of state and tribal government.

This policy implements B-10-11 and is intended to improve BCSH's internal management and communication; it is not a regulation and does not supersede, create, expand, limit, waive or interpret any state or federal legal rights or obligations including but not limited to treaty rights, immunities or jurisdiction of any Tribe or the State of California.

Effective Date:

BCSH's Tribal Consultation Policy shall take effect immediately and shall be posted on BCSH's website. This Policy shall be subject to periodic review to ensure its provisions remain current and consistent with state law and policy.