

CALIFORNIA COASTAL COMMISSION

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April 20, 2018

To: Coastal Commissioners, Native American Tribal Representatives, and Interested Parties

From: John Ainsworth, Executive Director
Alison Dettmer, Deputy Director
Mark Delaplaine, Manager, Energy, Ocean Resources, and Federal Consistency Division

Subject: **Coastal Commission Staff’s Revised Draft Tribal Consultation Policy, and Supplemental Comments**

Background

On April 11, 2018, the Coastal Commission held an initial public hearing on the Commission’s Draft Tribal Consultation Policy (originally dated August 11, 2017). Based on comments previously received and Commission input, the Commission staff has revised the Draft Policy, now dated April 20, 2018 (and titled Second Draft Tribal Consultation Policy). That Draft is attached, with changes from the initial draft shown in “tracked changes” mode (i.e., with new language underlined, and deleted language shown in ~~strikeout~~ text).

Additional Correspondence

Since the second mailing preceding the April 11, 2018, meeting, the Commission staff has received the following correspondence:

Written Comments by Tribal Representatives identified on the Native American Heritage Commission’s (NAHC’s) “SB-18/AB-52” Consultation List (hereafter “NAHC List”):

1. Gabrieleno Band of Mission Indians-Kizh, Andrew Salas, Chairman, letter dated March 29, 2018.
2. Northern Chumash Tribal Council, Fred Collins, Chair, letter dated April 10, 2018.
3. Elk Valley Rancheria, Dale Miller, Chairman, letters dated April 9, 2018, and April 11, 2018.

Written Comments by other members of Tribes on the NAHC List:

1. Henry Pendregon, Member, Gabrieleno Band of Mission Indians-Kizh, letter dated April 10, 2018.
2. Victoria Jones, Member, 9th Generation Juaneño Band of Mission Indians, Acjachemen Nation, email dated April 10, 2018.

Written Comments by other parties not on the NAHC List:

1. Pete Conejo-Tochtli (Melendez), Tewa Nation member (a New Mexican Tribe), email dated April 9, 2018.
2. Rumsen Ohlone (Rumšen Am:a Tur:ataj Ohlone), Dee Dee Manzanares-Wyatt, letter dated April 10, 2018.
3. Anna Christensen, Protect the Long Beach/Los Cerritos Wetlands, email dated April 10, 2018.

Speaker list from the Commission's April 11, 2018, initial hearing:

Public speakers who presented verbal comments at the Commission's April 11, 2018, hearing are listed below (and identified as to their relationship to the NAHC List): (Note: the testimony and the hearing were video-archived and can be found at this link:

<http://cal-span.org/unipage/?site=cal-span&owner=CCC&date=2018-04-11>)

Speakers who are Tribal Representatives on the NAHC List

1. Valentin Lopez, Chairperson, Amah Mutsen Tribal Band
2. Patrick Tumamait, Barbareno/Ventureno Band of Mission Indians (Chumash)
3. Andrew Salas, Chairman, Gabrieleno Band of Mission Indians – Kizh Nation

Speakers who are other members of Tribes on the NAHC List:

1. Maura Sullivan, Coastal Band of the Chumash Nation
2. Henry Pendregon, Gabrieleno Band of Mission Indians – Kizh Nation
3. Matthew Teutimez, Gabrieleno Band of Mission Indians – Kizh Nation

Speakers who are not on the NAHC List:

1. Johntommy Rosas, Tongva Ancestral Territorial Nation

2. Cheyenne Renajo, Sacred Places Institute for Indigenous Peoples
3. Dr. Gary Sickle, Archaeologist
4. Steve Ray, Banning Ranch Conservancy
5. Anna Christensen, Protect the Long Beach Los Cerritos Wetlands
6. Tahesha Knapp-Christensen, Protect the Long Beach Los Cerritos Wetlands
7. Alfred Cruz, Jr., United Coalition to Protect Pahne

Responses to the above letters, and previous speakers, will be provided in the second mailing for the May 2018 Commission meeting.

Previously received, and responded to, written comments:

Included in the mailing packet for the Commission's April 11, 2018, meeting were the staff's responses to letters previously received. Those responses, as well as the letters themselves, can be found in the reports posted for the April 11, 2018 meeting (the letters and responses can be found at this link): <https://www.coastal.ca.gov/meetings/agenda/#/2018/4>. These letters are also listed below and identified as to their author's relationship to the NAHC List.

Previous Written Comments by Tribal Representatives identified on the NAHC List:

1. La Posta Band of Mission Indians, Gwendolyn Parada, Chairwoman, letter dated August 4, 2018.
2. Cher-Ae Heights Indian Community of the Trinidad Rancheria, Garth Sundberg, Chairman, letter dated September 21, 2017.
3. Jamul Indian Village, Erica Pinto, Chairwoman, letter dated September 25, 2018.
4. Northern Chumash Tribal Council, Fred Collins, Spokesperson, email dated September 19, 2017.
5. Xolon Salinan Tribe, Karen White, Chairperson, letter dated October 20, 2017.
6. Esselen Tribe of Monterey County, Tom Nason, Chairman, letter dated November 12, 2017.

Previous Written Comments on behalf of Tribes on the NAHC List:

1. Lytton Rancheria, Brenda Tomaras, attorney for Lytton Rancheria, letter dated September 26, 2017.

Previous Written Comments by parties not on the NAHC List:

1. Tongva Ancestral Territorial Tribal Nation, Johntommy Rosas, email dated September 17, 2017.
2. Professor Dina Gilio-Whitaker, Policy Director and Senior Researcher, Center for World Indigenous Studies, letter received November 13, 2017.

Attachment – Second Draft Tribal Consultation Policy (April 20, 2018).

Note: the more recent letters received (i.e., those listed on Pages 1-2 above) can be found in the “Correspondence” folder posted on the Commission’s May 2018 agenda website for this item.

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Date: April 20, 2018~~August 18, 2017~~

To: Coastal Commissioners, California Native American Tribes, and Interested Persons

From: California Coastal Commission Staff

Subject: SECOND DRAFT Tribal Consultation Policy

I. BACKGROUND

In recent years, the State of California and the Federal government have adopted a number of executive orders, statutes, guidance documents, and other policy directives intended to improve communications between public agencies and federally- and state-recognized California Native American Tribes (Tribes) and to protect cultural resources.

It is important to recognize that the entirety of the State's Coastal Zone was originally indigenous territory that likely has cultural significance at some level or another. Long before the coastal areas were colonized by white settlers, each coastal area had significance to the local indigenous communities. This significance is part of the State's history, which is full of centuries of land theft, suppression, and aggression, pushing indigenous people from coastal (and other) regions early in the colonization and settlement of the State. For decades, even after native people were already excluded from coastal areas by settlers and state and federal officials, expressions of indigenous culture, religion and values led to aggression and persecution, including periods of genocide. Tribes were forced to abandon many coastal areas.

Once genocidal policies were finally tempered, tribes were still not safe to use traditional areas along the coast, and Tribal communities had to endure Tribal children being taken from families and forced to attend boarding schools. These are some factors that have led to over a century of suppression of knowledge about Tribal cultural areas.

California is home to the largest number of Tribes in the contiguous United States, with the federal government (through the Department of the Interior, Bureau of Indian Affairs (BIA)) currently recognizing 109 California tribes, and with the State of

California (through the Native American Heritage Commission (NAHC)) currently acknowledging 55 additional California tribes and tribal communities. Efforts to improve communication and coordination with Tribes include federal and state laws and guidance documents promoting or requiring tribal consultation in local government planning processes (e.g., the preparation and adoption of general plans), and environmental review document practices (e.g., environmental impact analysis under the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA)). For example, the state Legislature passed AB 52 in 2014, which sets forth tribal consultation requirements for lead agencies that prepare certain environmental documents pursuant to CEQA.¹

In addition, on September 19, 2011, Governor Brown issued Executive Order B-10-11, stating “that it is the policy of this Administration that every state agency and department subject to my executive control shall encourage communication and consultation with California Indian Tribes.” Under this order, on November 20, 2012, the California Natural Resources Agency (CNRA) adopted a Tribal Consultation Policy to govern and ensure effective communication and government-to-government consultation between Tribes and CNRA and its constituent departments that are under executive control.

The Commission recognizes the importance of these state actions and of tribal consultation, and it recognizes that adoption of its own tribal consultation process would be fully consistent with and complementary to the nature of the Commission’s goals, policies, and mission statements. The Commission further believes its mission would be well-served by a more clearly articulated set of procedures to improve such communications. Moreover, the Commission acknowledges Tribal sovereignty and understands that California’s Tribes and their members have long served as stewards of the state’s important coastal resources, and possess unique and valuable knowledge and practices for conserving and managing these resources in a sustainable manner, and in a manner consistent with the spirit and intent of the Coastal Act.

The Commission’s mission is to protect, maintain, and, where feasible, enhance and restore, the resources of California’s coast and ocean for present and future generations, through careful planning and regulation of environmentally-sustainable development, rigorous use of science, strong public participation, education, and effective intergovernmental coordination. Consistent with this mission, the Commission values and encourages expressions of traditional ecological knowledge.

In partnership with coastal cities and counties, the Commission plans and regulates the use of land and water in the coastal zone, in a manner protecting public access and recreation, lower cost visitor accommodations, archaeological and paleontological resources,

¹ The Commission is rarely a lead agency that prepares environmental documents subject to AB 52’s consultation requirements. However, the law still provides useful background to guide the Commission’s Tribal Consultation Policy.

terrestrial and marine habitat protection, visual resources, landform alteration, agricultural lands, commercial fisheries, and coastal water quality. Where land is being placed in Trust (or subsequent activities on those lands trigger “CZMA” review,”² the Tribe (and not the area’s local government) would be the primary partner with the Commission for planning and resources protection purposes. Central to the Commission’s mission is the goal of maximizing public participation in the Commission’s decision-making processes. The Commission believes establishing this Tribal Consultation Policy (Consultation Policy) will improve government-to-government dialogue with the Tribes, improve public participation, and provide a more specific process than currently exists for the Commission to work cooperatively, communicate effectively, and consult with Tribes for the mutual benefit of protecting coastal resources.

The Commission is also currently engaged in a separate, but nevertheless related and parallel, process involving formulation of an “Environmental Justice” policy, pursuant to Government Code Section 65040.12, which was enacted in 2016 under AB 2616 (Burke), and which amended the Coastal Act to provide legislative direction to the Commission to consider environmental justice in its decision-making processes. Information concerning that effort can be found on the Commission’s website at: <https://www.coastal.ca.gov/env-justice/>.

II. DEFINITIONS

For purposes of this policy, the following terms shall mean or be referred to as defined below:

1. Action (or “Commission Action”): Means a discretionary action taken by the Commission that may have an significant impact on Tribal Interests, Resources or Rights. (“Tribal interests” may include other governmental interests besides cultural and natural resources.) These actions include, but are not limited to:

a. Actions on Local Coastal Programs (LCPs) and LCP amendments.

b. Actions on Coastal Development Permits, including locally-issued permits that were appealed to the Commission (Note: These actions include determinations (called “substantial issue” determinations) regarding whether to conduct de novo reviews on appeals of local government-issued coastal development permits.³)

c. Actions on consistency determinations and certifications submitted under the Coastal Zone Management Act.

² “CZMA review” refers to activities under the federal Coastal Zone Management Act (CZMA), proposed, permitted, and or funded by federal agencies. These reviews are also described as “federal consistency reviews.”

³ Note that the Commission is only authorized to consider impacts to Tribal Interests in the “substantial issue” phase of a permit appeal if those issues were raised in the appeal itself.

d. Adoption of guidelines on issues of regional or statewide interest.

e. Actions on other regulatory and planning documents, including, but not limited to Long Range Development Plans (LRDPs) by colleges and universities, Port Master Plans (PMPs), and Public Works Plans (PWP).

f. Adoption of regulations.

2. California Native American Tribe (or simply “Tribe”): Means either a federally-recognized California Tribal government listed on the most recent notice of the Federal Register or a non-federally recognized California Tribe on the California Tribal Consultation List maintained by the California Native American Heritage Commission.

3. Communication: Refers to the dissemination, exchange or sharing of information between the Commission and its staff and California Native American Tribes.

4. Consultation: Means the meaningful and timely process of seeking, discussing, and considering carefully the views of ~~others~~Tribes, in a manner that is cognizant of all parties’ cultural values and, where feasible, seeking agreement. Consultation between government agencies and 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. (Government Code section 65352.4).⁴

5. Cultural Resources:

a. “Cultural resources” are either of the following:

(1) Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either of the following:

(A) Included or determined to be eligible for inclusion in the California Register of Historical Resources.

(B) Included in a local register of historical resources as defined in Public Resources Code Section 5020.1(k).

⁴ Consultation should not be viewed as a “one-time, one-meeting activity,” but rather an iterative process. Moreover, the Commission should conduct an independent review and not rely on other agencies’ conclusions.

(2) A resource determined by the CEQA lead agency or the Commission, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in Public Resources Code Section 5024.1(c). In applying these criteria, the lead agency shall consider the significance of the resource to a California Native American tribe.⁵

b. A cultural landscape that meets the criteria of subdivision (a) is a tribal cultural resource to the extent that the landscape is geographically defined in terms of the size and scope of the landscape.

c. A historical resource described in Public Resources Code Section 21084.1, a unique archaeological resource as defined in Public Resources Code Section 21083.2(c), or a “nonunique archaeological resource” as defined in Public Resources Code Section 21083.2(h) may also be a tribal cultural resource if it conforms to the criteria of subdivision (a).

6. Federal Recognition: Refers to acknowledgement by the federal government that a Tribal government and Tribal members constitute a Tribe with a government-to-government relationship with the United States, and is eligible for the programs, services, and other relationships established for the United States for Indians, because of their status as Indians. (United States Code of Federal Regulations, Title 25, section 83.2)

~~**7. Indian Country or Tribal Lands:** Has the same meaning as the term “Indian country” in United States Code of Federal Regulations, title 18, section 1151, which states: (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.~~

~~**8.7. Tribal Interests:** Include, but are not limited to: (a) Cultural Resources; or (b) fish, wildlife, plant, water, or similar natural resources. These interests may include other governmental interests besides cultural and natural resources.~~

~~**8.9. Tribal Sovereignty:** Refers to the governmental status of federally recognized Tribes, which dictates that State and local governments interact with Tribes on a government-to-government basis. Federally recognized Tribes exercise jurisdiction and governmental authority over Tribal lands and have the inherent authority to govern themselves.~~

⁵ This definition should be interpreted to mean that the lead agency will consider this significance in consultation with the affected tribe(s).

~~Refers to the unique political status of federally-recognized Tribes. A federally-recognized Tribe exercises certain jurisdiction and governmental powers over activities and Tribal members within its territory. Some of these powers are inherent, some have been delegated by the United States, and all are subject to limitations by the United States. Existing limitations are defined through acts of Congress, treaties, and federal court decisions.~~

9. Traditional Cultural Resource. A Traditional Cultural Property (TCP) is a property that is eligible for inclusion in the National Register of Historic Places (NRHP) based on its associations with the cultural practices, traditions, beliefs, lifeways, arts, crafts, or social institutions of a living community. TCPs are rooted in a traditional community's history and are important in maintaining the continuing cultural identity of the community.

The cultural practices or beliefs that give a TCP its significance are, in many cases, still observed at the time a TCP is considered for inclusion in the NRHP. Because of this, it is sometimes perceived that the practices or beliefs themselves, not the property, make up the TCP. While the beliefs or practices associated with a TCP are of central importance, the NRHP does not include intangible resources. The TCP must be a physical property or place - that is, a district, site, building, structure, or object.

III. GUIDING PRINCIPLES

The Commission seeks to establish and maintain a respectful and effective means of communicating and consulting with Tribes and will seek in good faith to:

1. Communicate and consult with Tribes and seek tribal input regarding the identification of potential issues, possible means of addressing those issues, and appropriate actions, if any, to be taken by the Commission.
2. Assess the potential impact of proposed Commission Actions on Tribal Interests and ensure, to the maximum extent feasible, that tribal concerns are considered before such Actions are taken, such that impacts are avoided, minimized, or mitigated in conformity with Coastal Act and other applicable legal requirements.
3. Provide timely and useful information relating to such proposed Actions that may affect Tribal Interests.
4. Communicate with and engage with Tribes at the earliest possible stage in the review and decision-making processes.
5. Communicate with Tribes in a manner that is considerate and respectful.
6. Provide Tribes with meaningful opportunities to respond and participate in decision-making processes that affect Tribal Interests.

7. Acknowledge and respect Cultural Resources regardless of whether those resources are located on or off Tribal lands.

8. Acknowledge and respect both the confidential nature of information concerning cultural practices, traditions, beliefs, tribal histories, and Tribal lands, and legal protections of the confidentiality of certain tribal cultural information (e.g., Gov. Code §§ 6254(r), 6254.10, Pub. Res. Code § 21082.3(c)).⁶ The Commission will take all lawful and necessary steps to ensure confidential information provided by a Tribe is not disclosed without the prior written permission of the Tribe.

9. Encourage collaborative and cooperative relationships with Tribes in matters affecting coastal resources.

10. Acknowledge and seek ways to accommodate the limited financial and staffing resources of Tribes and the Commission to ensure effective communication and consultation, including taking advantage of any joint consultation opportunities as discussed on page 15.

11. Identify and recommend means to remove procedural impediments to working directly and effectively with Tribes.

IV. TRIBAL LIAISON

1. The Executive Director of the Commission will assign a Tribal Liaison for the Commission. The Tribal Liaison will:

- a. Advise the Executive Director on policy matters relating to tribal affairs.

⁶ Gov. Code § 6254. Except as provided in Sections 6254.7 and 6254.13, this chapter does not require the disclosure of any of the following records: ...

(r) Records of Native American graves, cemeteries, and sacred places and records of Native American places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code maintained by, or in the possession of, the Native American Heritage Commission, another state agency, or a local agency.

Gov. Code § 6254.10. Nothing in this chapter requires disclosure of records that relate to archaeological site information and reports maintained by, or in the possession of, the Department of Parks and Recreation, the State Historical Resources Commission, the State Lands Commission, the Native American Heritage Commission, another state agency, or a local agency, including the records that the agency obtains through a consultation process between a California Native American tribe and a state or local agency

Pub. Res. Code § 21082.3(c)(1): Any information, including, but not limited to, the location, description, and use of the tribal cultural resources, that is submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with subdivision (r) of Section 6254 of, and Section 6254.10 of, the Government Code

b. Coordinate: (i) the training of Commission staff with regard to tribal affairs; (ii) the work of Regional Tribal Liaisons; and (iii) the Commission's tribal communication and consultation efforts.

c. Maintain the Commission's Tribal Contact List.

d. Respond to inquiries from, and participate in consultations with, Tribes.

2. The Executive Director of the Commission will also assign staff members as Regional Tribal Liaisons. The Commission's goal is for each of the Commission's six district offices to have a Regional Tribal Liaison, who will assist the Commission's Tribal Liaison and serve as the primary point of contact for Tribes in that District.

V. COMMISSION STAFF TRAINING

The Tribal Liaison shall oversee the training of Commission staff with respect to:

1. Principles of tribal sovereignty, lands, and jurisdiction.
2. Laws and regulations relating to the protection of Cultural Resources, including confidentiality of information regarding Cultural Resources.
3. Implementation of and compliance with this Consultation Policy.

4. Educating staff about the history of land theft, genocide, and other mistreatment of Native Americans by the state and federal governments.

VI. TRIBAL COMMUNICATION

1. **Purpose.** The Commission seeks to establish effective mechanisms for: (a) providing information to Tribes regarding proposed Commission Actions that may affect Tribal Interests; (b) seeking information and input from Tribes; (c) soliciting the collaboration, cooperation, or participation of Tribes; and (d) offering or seeking consultation with affected Tribes.

2. **Procedures.** The communication procedures set forth in this section are intended to serve as the Commission's standard method for communicating with Tribes regarding proposed Commission Actions. Any Tribe may submit to the Commission a written request to institute an alternative process, including the designation of either an alternative contact person for the Tribe (i.e., someone other than those listed on the Consultation contact list provided by the NAHC) or additional contact persons. The Commission will make a good faith effort to work with Tribes requesting such alternative processes; provided, however, that Commission staffing resources may make it difficult or impractical to fully implement all such requests.

3. **Tribal Contact List.** In continuing ~~coordination~~consultation with the NAHC and the Governor's Office of the Tribal Advisor, the Commission's Tribal Liaison will maintain and update a Tribal Contact List to be comprised of Tribes that appear on the NAHC's California Tribal Consultation List.

4. **Contacting Tribes For Commission Actions.** During its review of plans, development proposals, or other activity to be the subject of a Commission Action,⁷ Commission staff in the District office or Commission unit proposing or reviewing the proposed Action will use the procedures below to determine whether and when to contact the Tribes identified on the NAHC's California Tribal Consultation Contact List that have expressed written interest, either to the Commission directly or to the NAHC, in being consulted on Commission Actions on particular matters or in specific geographic areas. Time permitting, the Commission staff will also attempt to contact any other Tribes or Tribal organizations that Commission staff has reason to know may have an interest in the Action; however those contacts would be outside the scope of this formal Tribal Consultation Policy. If warranted, Commission staff will notify the NAHC of the Proposed Action and request a list of interested Tribes, and where also warranted, obtain the results of an NAHC Sacred Lands Files check. Notice to the NAHC will include a brief description of the nature and location of the proposed Action and a map or description of the area, if available. For all types of Commission Actions, notification of interested Tribes and initiation of consultation, if requested, shall occur as early as possible in the review process. The timing and process for consultation concerning the various types of Actions by the Commission shall be as follows:

a. For **planning matters** (Local Coastal Program (LCP), Public Works Plan (PWP), Long Range Development Plan (LRDP), Port Master Plan (PMP), or any amendment to such plan), the following procedures shall be used:

- (1) Upon receipt of such a plan for certification, and prior to determining whether the plan was "properly submitted" (pursuant to, e.g., 14 Cal. Code Regs, §§ 13520, 13553, 13354, 13365, and 13628), review the submittal to determine the degree to which the local government preparing the plan consulted with Tribes regarding Cultural Resource effects pursuant to AB 52 (applicable if local government is lead agency for CEQA review) and/or SB 18 (specifically applicable for general plan, including land use plan, submittals).⁸ Request that

⁷ Unless consultation is legally required (e.g., in unusual circumstances where AB 52 applies because the Commission is a lead agency preparing an environmental impact report pursuant to CEQA), Actions with no or de minimis potential for cultural resource impacts are exempt from these consultation procedures. Examples of such circumstances could include exemption determinations, de minimis waivers, or CDPs for improvements to or redevelopment of structures within existing developed footprints where little or no grading is involved.

⁸ SB 18 requires local governments adopting and amending general plans to notify, consult with, and consider the comments of Tribes concerning the need to protect traditional tribal cultural places. Also, see

the local government submit additional information regarding tribal consultation, as appropriate, although failure to do so would not generally be grounds for determining the submittal incomplete.

Promptly notify affected Tribes in the manner they have requested and initiate consultation if any of the following circumstances apply: a) consultation is appropriate given the nature of the proposed plan and its potential for impacts on Tribal Interests; b) Commission staff has reason to know that particular Tribes may have an interest in the Action (e.g., Commission staff has previously worked with a Tribe on concerns in the geographic area); c) any Tribe(s) expressed ~~significant~~, unresolved concerns about the Action's impacts on Tribal Interests during a local review process or requests consultation with the Commission for the Action; or d) a Tribe has specifically requested that the Commission notify it of this type of Action—e.g., all Actions in this location or of this type.

- (2) Regardless of whether the Commission engages in consultation as described above, provide written public notice to all interested Tribes in accordance with standard Commission notice procedures for upcoming hearings. Where feasible, schedule the item for the hearing in a location convenient to the project site in order to facilitate maximum participation by affected Tribes.
- (3) Include in staff recommendations to the Commission a summary of the results of any local government and/or Commission staff consultations described in this Tribal Consultation Policy, with sensitivity to the Tribal confidentiality needs as described in this Policy, and with publicly available summaries of identified concerns included only if the affected tribes agree to such disclosure in writing.

b. For **permitting matters** (i.e., review of Coastal Development Permits (CDPs), appeals of locally-issued Coastal Development Permits, and Notices of Impending Development (NOID)), the following procedures shall be used:

(1) **CDP applications:**

- (A) For **coastal development permit applications** submitted directly to the Commission, prior to deeming the application “filed” (pursuant to 14 Cal. Code Regs, § 13056), review the project's locally-issued CEQA compliance documents to determine whether they included Tribal Consultation and consideration of Cultural Resource effects.

(2) Appeals:

(A) For **appeals** of locally-issued coastal development permit applications, review the local government file to determine, if possible, whether the local government engaged in Tribal Consultation. Given the short statutory deadlines for Commission review of appeals, any necessary consultation may need to occur more quickly and be less formal than in other instances. In addition, the Commission is only authorized to consider impacts to Tribal Interests in the “substantial issue” phase of a permit appeal if those impacts were raised in the appeal itself.

(3) For both CDPs and appeals:

(A) Promptly notify affected Tribes in the manner they have requested and initiate consultation if any of the following circumstances apply: a) consultation is appropriate given the nature of the proposed development and its potential for impacts on Tribal Interests; b) Commission staff has reason to know that particular Tribes may have an interest in the Action (e.g., Commission staff has previously worked with a Tribe on concerns in the geographic area); c) any Tribe(s) expressed ~~significant~~ unresolved concerns about the Action’s impacts on Tribal Interests during a local review process; or d) a Tribe has specifically requested that the Commission notify it of this type of Action—e.g., all Actions in this location or of this type.

(B) Provide written Public Notice to all interested Tribes in accordance with standard Commission notice procedures for upcoming hearings. Where possible, schedule the item for the hearing in a location that is closest to the project site, or within the city or county limits of the LCP item, in order to facilitate maximum participation by affected Tribes.

(C) Include in staff recommendations to the Commission a summary of the results of any local government or Commission staff consultations described in this Tribal Consultation Policy, with sensitivity to the Tribal confidentiality needs as described in this Policy, and with summaries of identified concerns included only if the affected tribes agree to such disclosure in writing.

(4) For NOIDs

(A) For NOIDs received by Commission staff pursuant to PWP or LRDPs, use the same procedures as above; however, given the short statutory deadlines for Commission review of notices of impending development (generally 30 working days total), any necessary consultation may need to occur more quickly and be less formal than in other instances.

c. For **federal consistency** reviews (under the Coastal Zone Management Act)⁹, the following procedures shall be used:

(1) Projects and Plans Carried out by Federal Agencies

- (A) Review consistency determinations submitted by federal agencies to determine the extent of federal agency consultation with both federally and non-federally recognized Tribes. This review should include (but not be limited to) federal agency consultation pursuant to National Environmental Policy Act (NEPA) guidance for Tribal Consultation, National Historic Preservation Act (NHPA) Section 106 (36 CFR Part 800), and Advisory Council for Historic Preservation (ACHP) guidance for Consulting with Indian Tribes in the Section 106 Review process.
- (B) If a federal agency has only consulted with federally-recognized Tribes, determine, through coordination with the California Native American Heritage Commission (NAHC), the California State Office of Historic Preservation (OHP), and/or any known Tribal Historic Preservation Officers (THPOs) or representative of potentially affected Tribes, which, if any, non-federally recognized Tribes may attach cultural significance to areas potentially affected by the federal project or plan.
- (C) Notify all interested Tribes as early as possible in the review process and initiate consultation, if requested.
- (D) Provide written Public Notice to all interested Tribes in accordance with standard Commission notice procedures for upcoming hearings.
- (E) Include in staff recommendations to the Commission a summary of the results of any consultations described above.

(2) Projects Permitted or Funded by Federal Agencies

- (A) Review submittals by applicants for federal permits, or applicants by state or local governments for federal funding (i.e., consistency certifications) to determine whether any CEQA documents were prepared, and if so, the extent of Tribal Consultation pursuant to AB 52.
- (B) If no CEQA documents were prepared, but NEPA documents were prepared (or are in the process of being prepared) by the permitting or funding agencies, follow the consultation steps outlined in Section 4.c.(1)(A) above.

⁹ 16 U.S.C. Section 1456, with implementing regulations at 15 CFR Part 930.

- (C) Notify all interested Tribes as early as possible in the review process and initiate consultation, if requested.
- (D) Provide written Public Notice to all interested Tribes in accordance with standard Commission notice procedures for upcoming hearings.
- (E) Include in staff recommendations to the Commission a summary of the results of any such consultation.

~~e.d.~~ For **other** actions, if it is unclear which procedure is most appropriate for a different type of Commission Action, or if more than one of the above procedures are combined, contact the Commission's designated Tribal Liaison for further guidance.

5. **Written Notice to Tribes.** Once a list of potentially affected Tribes has been compiled, and when a Tribe has specifically requested written notice, Commission staff in the District or unit reviewing the proposed Action will send written notice to the potentially interested Tribes. The written notice will:

a. Be sent to the Tribal Chairperson or other person listed on the ~~Consultation contact~~ List provided by NAHC, the appointed Tribal Historic Preservation Officer, or any other Tribal officials or employees identified by the Tribe as lead contacts pursuant to Section VI(2) of this Policy. If the Tribe does not clearly designate one or more lead contact people, or if it designates too many contact people for the Commission to feasibly communicate with, the Commission may defer to the individual listed on the ~~Consultation~~ contact List maintained by the NAHC.

b. Be sent in a timely manner to ensure an opportunity to provide input at the earliest possible stage in the review and decision-making process. Whenever feasible, the Commission will seek to provide notice within 14 days of determining that an application for a proposed Action is complete or otherwise beginning its formal review process for the Action.

c. Be drafted and sent separately from any general public notice;

d. Include a brief description of the proposed Action; a map or description of the location or region potentially affected by the proposed Action;

e. Offer to consult with the Tribe regarding the proposed Action, its anticipated impacts on Tribal Interests, and potential ways to minimize or mitigate these impacts, before the Commission takes an Action; and

f. Provide Commission contact information for obtaining further information and for initiating consultation.

g. Request that the Tribe respond within 30 days of receiving the Commission's notice, or sooner if feasible or required due to legal deadlines for Commission Action.

6. **Changes to Proposed Activities.** If, after providing notice to Tribes, there are substantially changed circumstances that could affect Tribal Interests in a manner not contemplated when the original notice was sent, Commission staff in the District or program proposing or reviewing the Action should issue a supplemental notice to affected Tribes. If legal deadlines do not permit formal notice, informal notice should be provided to the extent feasible.

VII. TRIBAL CONSULTATION

1. **Initiation of Consultation.** Consultations may be initiated by either a Tribe or the Commission.

a. All requests by a Tribe for consultation must be submitted in writing to the Tribal Liaison(s) identified in Attachment 1. The request for consultation should indicate if a one-on-one meeting is preferred, or if it is acceptable to schedule a consultation meeting with other affected Tribes present. Upon receipt of a request for consultation, the Commission shall provide the Tribe with a written acknowledgement that it has accepted the request.

b. All requests by the Commission for consultation will be made in writing to the chairperson of the Tribe, or its designated representative.

2. **Preparing for a Consultation.** For a consultation to be effective, prior to holding the consultation Commission staff in the District or unit reviewing the proposed Action should take reasonable steps to work with the Tribe's representatives to:

- a. understand the Tribe's current and historical relationship to the resources that may be affected by the proposed Action;
- b. understand the Tribe's government structure and decision-making process;
- c. identify key issues and concerns;
- d. identify the participants in the consultation;
- e. determine an appropriate location and time for the consultation; and
- f. understand the Tribe's concerns over culturally sensitive information.

3. **Time, Place, and Manner of Consultations.** Whenever feasible and consistent with applicable legal deadlines, the Commission will seek to commence consultations within 30 days after receipt of a written request for consultation from the Tribe. The Commission staff will pursue in-person consultations when feasible given the timing, funding, and travel

constraints of the Tribes and the Commission staff. When feasible, the Commission staff will seek to arrange in-person consultations at the Tribe's offices, or Commission District offices. The Commission staff will work with Tribes, on a case-by-case basis, to determine the appropriate form and manner of consultation. Prior to any consultation, the Commission staff will provide the Tribes with documentation about the proposed Action. In addition, the Commission staff shall make a good faith effort to inform the Tribe in writing of the names and positions of those who will represent the Commission staff during the consultation.

4. Commission Staff Representation at Consultations. The Commission's consultation process is designed to facilitate direct communication between tribal decision makers and the Commission staff bringing recommendations for Commission consideration. Tribes involved in Consultation shall receive written notice of any subsequent Commission hearings where matters that were the subject of Consultation will be decided by the Commission. Tribes will be encouraged to attend or submit written comments to the Commission concerning Commission staff recommendations. Tribes will also be encouraged to notify the Tribal Liaison if a Tribe believes a staff recommendation has not fairly characterized the results of the Consultation. While the Commission staff will consider any Tribal comments in making its recommendation, the Commission retains ultimate authority with respect to all Commission Actions.

5. Substance of Consultations. As a part of the consultation, the parties may propose mitigation measures capable of avoiding or substantially lessening potential **significant** impacts to a tribal Cultural Resource or alternatives that would avoid **significant** impacts to a tribal Cultural Resource. If the Tribe requests consultation regarding alternatives to the project, recommended mitigation measures, or **significant** effects, the consultation shall include those topics. The consultation may also include discussion of any other topics of interest to Tribes and/or related to Coastal Act consistency. If the parties agree on any mitigation measures through the consultation, the Commission staff will normally include those measures in its staff recommendation to the Commission.

6. Informal Staff-to-Staff Meetings. At times, both Tribes and the Commission staff may seek to pursue informal discussions and negotiations concerning a proposed Commission Action. The Commission encourages informal meetings, and nothing in this policy shall be construed to prohibit or otherwise inhibit the Commission staff and a Tribe from pursuing such meetings. In addition, if a Tribe wishes to consult with Commission staff about a potential violation of the Coastal Act of which it has knowledge, it may contact the Tribal Liaison, who will coordinate with Commission enforcement staff to arrange appropriate consultation.

7. Joint Consultation. To conserve limited tribal, federal, state, and local government resources, the Commission will participate in joint consultations with: (a) other federal, state, or local government agencies when all parties agree and there are sufficient issues in common to warrant a joint consultation; or (b) more than one Tribe when all parties agree and there are sufficient issues in common to warrant a joint consultation.

8. Limitations of the Consultation Policy. The Coastal Act, Permit Streamlining Act, and other state and federal law impose various deadlines on Commission Actions. The Commission will strive to conduct tribal consultation, as outlined in this Consultation Policy, within these statutory deadlines; however, the Commission often does not have the authority to modify statutory deadlines for Commission Actions and may, therefore, need to consult in a different manner or timeframe in cases where the Commission must act quickly pursuant to statutory deadlines. Additionally, to the extent that any state, federal, or other applicable law requires the Commission to consult with Tribes in a manner that conflicts with the procedures outlined in this Consultation Policy, the Commission will follow the requirements of that law rather than the procedures in this Policy. This Consultation Policy is not intended to and does not create, expand, limit, or waive any legal rights or obligations of the Commission, a Tribe, or any other party.

9. Reporting and Record-keeping.

a. Commission staff shall keep records of all consultations with Tribes.

b. Commission staff shall not include in any publicly available report prepared pursuant to this Consultation Policy confidential culturally sensitive information received from a Tribe unless the Tribe consents to such disclosure in writing.

VIII. DISPUTE RESOLUTION PROCESS

1. If a Tribe is dissatisfied with how a district or unit of the Commission has conducted the consultation process, it may contact the Tribal Liaison at the contact locations shown on the following pages. ~~or at the following address:~~

2. The Tribal Liaison shall review any complaints submitted pursuant to this section and work with Commission staff and the Tribe to ensure the issue is resolved to the parties' mutual satisfaction. If the Tribal Liaison is unable to resolve the issue, the Tribal Liaison shall refer the matter to the Executive Director or a designee at an appropriate level of authority.

3. If a Tribe believes the Commission staff has not been responsive to its concerns, the Tribe is encouraged to make its concerns known to the Commission during the public hearing on the matter or during Commission meeting times set aside each day of Commission meetings for public statements about items not on the agenda, or in writing to the Commissioners.

Attachment – Commission Staff Tribal Liaison List and Contact Information

Attachment 1

Commission Staff Tribal Liaison and Contact Information

Primary Headquarters Tribal Liaison Contact Information

Headquarters

California Coastal Commission
45 Fremont St, Suite 2000
San Francisco, CA 94105-2219
Phone: (415) 904-5200
Fax: (415) 904-5400

District Office Tribal Liaisons Contact Information, and Counties Covered

California Coastal Commission Counties: Del Norte
North Coast District Office Humboldt
1385 Eighth Street, Suite 130 Mendocino
Arcata, CA 95521
Phone: (707) 826-8950
Fax: (707) 826-8960

California Coastal Commission Counties: Sonoma
North Central Coast District Office Marin
45 Fremont Street, Suite 2000 San Francisco
San Francisco, CA 94105 San Mateo
Phone: (415) 904-5260
Fax: (415) 904-5400

California Coastal Commission Counties: Santa Cruz
Central Coast District Office Monterey
725 Front Street, Suite 300 San Luis Obispo
Santa Cruz, CA 95060
Phone: (831) 427-4863
Fax: (831) 427-4877

California Coastal Commission Counties: Santa Barbara
South Central Coast District Office Ventura
89 S. California Street #200 Los Angeles (Ventura Co. line to
Ventura, CA 93001 Pacific Palisades)
Phone: (805) 585-1800
Fax: (805) 641-1732

California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
Phone: (562) 590-5071
Fax: (562) 590-5084

Counties: Los Angeles (Pacific Palisades to Orange Co. line)
Orange

California Coastal Commission
San Diego Coast District
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4321
Phone: (619) 767-2370
Fax: (619) 767-2384

Counties: San Diego

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