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March 29, 2018

To: Coastal Commissioners and Interested Parties

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

Subject: **Coastal Commission Staff's Initial Response to Comments, California Coastal Commission Draft Tribal Consultation Policy, August 11, 2017**

Background

On August 11, 2017, the Commission staff circulated a Draft Tribal Consultation Policy (dated August 11, 2017) to Tribal Representatives on a list provided by the California Native American Heritage Commission (NAHC). That Draft Tribal Consultation Policy is now being circulated for general public comment, and the Commission staff is continuing to receive and consider comments. The purpose of this memo is to provide initial Commission staff responses to the comments received to date. The use of the terms “we” and “our” in the responses below refer to the views of the Commission staff. Where the staff’s responses indicate modifications to the Draft Tribal Consultation Policy are warranted, such modifications are shown below the response, with the relevant passage from the Policy shown in “tracked changes” mode (i.e., with new language underlined, and deleted language shown in ~~strikeout~~ text).

The Commission staff received comments from the following Tribes and interested persons:

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The comment letters received are attached, with links to the each letter on page 1 of the attachment (electronic version).

Prior to the upcoming May 2018, second Commission public hearing the Commission will be holding in northern California for consideration of comments, the Commission staff will publish a revised Draft Tribal Consultation Policy which reflects proposed changes shows in this memo, and any other changes warranted based on future comments received.

Summary of Comments and Responses

A. La Posta Band of Mission Indians, letter dated August 4, 2017.

Comment 1

The La Posta Band of Mission Indians requested certified mail (with return receipt) notification for matters where the Commission is the lead CEQA agency.

Response 1

This letter was received just before the Draft policy was circulated; therefore it may not have been intended as a comment letter. It is being included for the record. We note that it is very infrequent that the Commission is a lead CEQA agency, but our intent is to work with the La Posta Band of Mission Indians to determine which other types and locations of activities the Commission reviews it is interested in being notified about. Moreover, in the event the Commission is a lead CEQA agency, we intend to notify the Tribe by certified mail as requested.

B. Tongva Ancestral Territorial Tribal Nation, letter/emails dated September 17, 2017.

Comment 1

Page 1, background, paragraph 2 (and footnote 1, same page), concerning AB 52 and the list of non-federally recognized tribes by the NAHC, the Tongva Ancestral Territorial Tribal Nation objects to the “illegal” list created by the Native American Heritage Commission, which it states “does not have the authority under its legislative intent or directives to exclude lineal descendants or SB 18 required consultation. NAHC has recently illegally created illegal determinations on contact list persons and have excluded them.”

Response 1

AB 52 vests the NAHC with specified powers, and defines a California Native American Tribe to mean: “a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004.” [PRC 21073]. The Commission does not have the legal authority or expertise to question the NAHC on these matters. However, the Commission is not bound to “only” consult with tribes on the NAHC list, and the staff intends to continue to coordinate with the Tongva Ancestral Territorial Tribal Nation.

Comment 2

Page 2, paragraph 2, concerning the Commission’s mission - the “CCC past history on protecting tribal resources is poor – only recently has the CCC attempted to be respectful but still short of true legal compliance including implementing “ajr 42 as chaptered = UNDRIP.” When further questioned, the commenter explained these were references to Assembly Joint Resolution (AJR) 42, and the United Nations Declaration on the Rights of Indigenous Peoples. AJR 42 states:

This measure would express the Legislature’s endorsement of the principles of the United Nations Declaration on the Rights of Indigenous Peoples. The measure would, among other things, also call for increased awareness, sensitivity, and respect for issues of sovereignty related to the heritage of Native Americans and indigenous peoples.

...

WHEREAS, The United Nations General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples on September 13, 2007, establishing a new systemic standard of recognition, respect, and protection for the rights of indigenous peoples of the world; and

...

WHEREAS, This resolution is not intended to create, and does not create, any rights or benefits, whether substantive or procedural, or enforceable at law or in equity, against the State of California or its agencies, departments, entities, officers, employees, or any other person; now, therefore, be it

Resolved by the Assembly and the Senate of the State of California, jointly, That the Legislature of California expresses its endorsement of the principles of the United Nations Declaration on the Rights of Indigenous Peoples adopted by the United Nations General Assembly, and recognizes the call for increased awareness, sensitivity, and respect for issues of sovereignty, sacred and historic sites and traditions, and other vital aspects of the heritage of Native Americans and indigenous peoples implicit in those principles, notwithstanding the nonbinding nature of the declaration; ...

Response 2

We view the Commission’s Draft Tribal Consultation Policy as being in alignment with the Assembly Joint Resolution and United Nations Declarations cited by the commenter.

Comment 3

Page 2, paragraph 3, add “tribal resources” after archaeological and paleontological resources as among the resources protected by the Commission.

Response 3

To the extent tribal resources fall within the Coastal Act's resource protection policies (Public Resources Code Section 30200 – 30265.5), the intent of the policy is to include them. However, it must be understood that although archaeological and paleontological resources are specifically protected under the Coastal Act (Public Resources Code Section 30244), not all tribal resources are necessarily coastal resources that are protected under the Coastal Act.

Comment 4

Page 2, Definitions of Commission "Actions." Add "tribal resources and rights" after Tribal Interests.

Response 4

The intent of the Policy was to cover a broad range of interests as tribal interests, so it would be in keeping with the Policy to clarify that "Tribal Interests" should include Tribal Resources and Rights. We will add language this clarification as follows.

Proposed Modification to Policy, Page 2 (near bottom of page):

1. **Action (or "Commission Action")**: Means a discretionary action taken by the Commission that may have a significant impact on Tribal Interests, Resources, or Rights. These actions include, but are not limited to:

Comment 5

Page 3: Definition of "California Native American Tribe." The commenter reiterates that the NAHC process is "illegal" and "recently fabricated," and notes further that it doesn't comply with the "mandatory CZMA federal compliance under SEC 106 NHPA [National Historic Preservation Act]/ACHP [Advisory Council on Historic Preservation]."

Response 5

See Response 1 above concerning the NAHC list. For information about coordinating for activities covered by the CZMA (Coastal Zone Management Act), see the language on pages 11-12 of the Policy, which discusses coordination for federal consistency determinations and certifications. Concerning compliance with ACHP guidance, we will quote relevant language from the ACHP Handbook's advice to federal agencies, which discusses consultation with Tribes that are not federally-recognized¹:

4) If there are no federally recognized Indian tribes in the state where the project is located, does the agency still have to consult with any tribes?

¹ <http://www.achp.gov/regs-tribes2008.pdf>

Even when there are no federally recognized Indian tribes with tribal lands in the state where the project is located, the agency must still make a reasonable and good faith² effort to identify and consult with any Indian tribes that attach religious and cultural significance to historic properties that may be affected by the undertaking. The circumstances of history may have resulted in an Indian tribe now being located a great distance from its ancestral homelands and places of importance. Therefore, agencies are required to identify Indian tribes that may attach religious and cultural significance to historic properties in the area of the undertaking, even if there are no tribes near the area of the undertaking or within the state.

5) What is the federal agency's responsibility to consult with state recognized Indian tribes or tribes who have neither federal nor state recognition?

Under the Section 106 regulations at 36 CFR Section 800.2(c)(5), a federal agency may invite such groups to participate in consultation as "additional consulting parties" based on a "demonstrated interest" (discussed below) in the undertaking's effects on historic properties. However, the term "Indian tribe" as it appears in the NHPA refers only to federally recognized Indian tribes, which includes Alaska Native Villages and Village and Regional Corporations. In other words, only federally recognized Indian tribes that attach religious and cultural significance to historic properties that may be affected by the proposed undertaking have a statutory right to be consulting parties in the Section 106 process.

The question of inviting non-federally recognized tribes to participate in consultation can be both complicated and sensitive and thus deserves careful consideration. For example, some tribes may not be federally recognized but may have ancestral ties to an area. Other non-federally recognized tribes may have lost their recognition as a result of federal government actions in the 1950s to terminate relationships with certain tribes.³ In other cases, such as in California,⁴ the situation is complicated because there are more than 100 federally recognized tribes and more than 100 non-federally recognized tribes; again, the result of historical circumstances.

² Tips for fulfilling this requirement are provided under the heading "How do I identify tribes that must be invited to consult," at Section V(A)(3) of this [ACHP] handbook.

³ During the "Termination Period" of the 1950s, Congress ended the federal government's relationship with more than 100 tribes in an attempt to assimilate members of Indian tribes into the broader society. Many, but not all, tribes regained their recognition. Some Indian tribes, however, are still seeking restoration of their federal recognition.

⁴ For more information on this topic, visit www.epa.gov/indian 16 For more information about Indian tribes in California, their history, and a list of federally and state recognized tribes, visit the California Native American Heritage Commission website at <http://ceres.ca.gov/nanc>

While non-federally recognized tribes do not have a statutory right to be consulting parties in the Section 106 process, the agency may invite them to consult as an “additional consulting party” as provided under the ACHP’s regulations at 36 CFR Section 800.2(c)(5), if they have a “demonstrated interest.” The agency should consider whether the non-federally recognized tribe can meet the threshold of a “demonstrated interest”—for example, whether the tribe can demonstrate it has ancestral ties to the area of the undertaking, or that it is concerned with the effects of the undertaking on historic properties for other reasons. In some cases, members of a non-federally recognized tribe may be direct descendants of indigenous peoples who once occupied a particular Native American site to be affected by the undertaking, or they might be able to provide the federal agency with additional information regarding historic properties that should be considered in the review process.

The inclusion of non-federally recognized groups in consultation may raise objections from some federally recognized tribes. Yet, there are other tribes who routinely support the invitation of nonrecognized tribes into consultation, recognizing their interests as well.

The ultimate decision on whether to consult with non-federally recognized tribes, however, rests with the federal agency. The decision should be given careful consideration and made in consultation with the SHPO (or if on or affecting tribal lands, with the THPO or designated tribal official). In addition, the federal agency may elicit input on the question from any federally recognized Indian tribes that are consulting parties. If the agency decides that it is inappropriate to invite non-federally recognized tribes to consult as “additional consulting parties,” those tribes can still provide their views to the agency as members of the public under 36 CFR Section 800.2(d).

Comment 6

Page 3: Definition of “Communication.” The commenter requests that tribal communications remain confidential unless and until the tribe has agreed to disclosure.

Response 6

This request is satisfied by the language contained later (i.e., after the definition section) in the Policy that does assure that information revealed in tribal communications will be kept confidential unless and until the tribe has agreed to disclosure (see Draft Policy, page 15, Section 9.b.).

Comment 7

Page 4, Definition of Cultural Resources, part c.: “Tribal resources should not be limited to cultural or arch[aeological] resources, but also all our tribal rights and interests that might or could be affected by any ...[Commission] determinations on those without our prior consultation on each project.”

Response 7

The definition of Cultural Resources was not created by the Commission, but comes from Public Resources Code Section 21074. The intent of this policy is to improve consultation practices and, to the degree possible, assure consultation with affected tribes prior to Commission actions affecting such tribes. Also, it was the intent of the statutes cited in this paragraph to broaden the definitions of matters to be considered and included as part of Tribal interests.

Comment 8

“We also have federal acknowledgment – ‘CCC has those documents from TATTN.’”

Response 8

See Responses 1 and 5 above discussing Commission federal consistency reviews and ACHP guidance for consulting with Tribes that are not federally-recognized. We have coordinated and requested that federal agencies coordinate with Tongva Ancestral Territorial Tribal Nation (e.g., during Commission review of federal consistency determinations CD-0006-16, Navy FOCUS cable, and CD-0006-17, Army Corps, removal of Rindge Dam).

Comment 9

Tribal boundaries of historic usage and territories maps may vary – so all possible overlaps should be respected of neighbor tribes.

Response 9

We agree with the commenter, and we intend to be respectful of maps, boundaries, and territories where different tribes may have different understandings of these areas, boundaries, and overlaps.

Comment 10

Consultations should include compliance with “SEC 106 NHPA/ACHP consultations for federal consistency.

Response 10

See Response 5 above.

Comment 11

The Commission is in violation of the Governor’s Executive Order B-10-11, “which has been a long-standing non-compliance violation” of 6 years, which order requires appointment of Tribal liaisons for “every state agency and department subject to my [i.e., the Governor’s] executive control...”

California Coastal Commission
Draft Tribal Consultation Policy
Staff Response to Comments

Response 11

We do not agree that the Commission is in violation of EO-10-11. Nevertheless, this draft Policy will provide for Tribal Liaisons at the Commission staff, and will more generally provide for improved Tribal consultation, as called for in the Executive Order EO-10-11 and the Natural Resources Agency's Tribal Consultation Policy (dated November 20, 2012).

Comment 12

If the Commission adopts the “illegally defective” NAHC list, CCC will be in violation of numerous state and federal laws – which cannot exclude SB18 and AJR.⁵

Response 12

See Response 5 above.

Comment 13

The Commission “has to accept any tribal entity or tribal person as a culturally affiliated contact and should accept that request and use for all tribal claims and territory that can be established by historical genealogy and DNA reports results.”

Response 13

Upon further discussion with the commenter, the comment appears to be focused on a request that the Commission not only consider NAHC determinations, but also any other available scientific genealogy and DNA evidence. Where appropriate for Commission Actions, the Commission will consult with any appropriate Tribal representative, and as noted in Response 1 above, we would not limit consultation to “only” Tribes identified by the NAHC.

C. Cher-Ae Heights Indian Community of the Trinidad Rancheria, letter dated September 21, 2017.

Comment 1

Add, page 2, to the Commission's mission statement: “and Traditional Ecological Knowledge” after the phrase “rigorous use of science.”

Response 1

Because the Commission's mission statement is an agency-wide adoption of the mission statement, it would take considerable effort and discussion to modify it. As an alternative, we would suggest adding a clarifying sentence to the paragraph in the Policy

⁵ “SB 18”, as noted in the Policy, 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.

“AJR,” as noted in Response 2 above, refers to the Assembly Joint Resolution supporting the UN Declaration discussed in that response.

which quotes the mission statement, indicating that is inherent within the mission statement that expressions of traditional ecological knowledge are valued and to be encouraged. We also note that updating the Commission's Strategic Plan includes reviewing and possibly revising the Commission's mission statement. This review would provide a possible avenue for actually amending the mission statement.

Proposed Modification to Policy, Page 2 (paragraph 2):

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.

Comment 2

Add, page 2, to the Commission's partnership with coastal cities and counties “, and in collaboration with Tribes.”

Response 2

The intent of the language in the Background of the Policy concerning its partnership with local governments was to describe the shared planning and regulatory roles inherently set up in the Coastal Act. This language was not intended to imply that any other partnership the Commission may have with other entities was not valuable or necessary. The Commission intends this Policy as a first step (or an improvement to current efforts) for involving Tribal governments in those processes. In light of the Comment, it does appear warranted to clarify and expand the Policy's Background statement to cover situations where lands are being placed in Trust (or are held in Trust). We will add the following language to the Background.

Proposed Modification to Policy, Page 2 (paragraph 3):

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, 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), the Tribe (and not the area's local government) would be the primary partner with the Commission for planning and resource 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.

Comment 3

Add, page 3, to the definition of cultural resources, the language underlined:

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 in consultation with the affected tribe(s).

Response 3

We agree with the statement that significance should be based on consultation with the affected Tribe. A footnote will be added to clarify this intent.

Proposed Modification to Policy, Page 4 (3rd indented paragraph):

(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.³

[The added footnote would read: This definition should be interpreted to mean that the lead agency will consider this significance in consultation with the affected tribe(s).]

D. Jamul Indian Village, letter dated September 25, 2017.

Comment 1

The Jamul Indian Village states that the policy neglects to mention that “the entirety of the State’s coastal zone is in former indigenous lands that likely have Tribal Cultural Resources at some level,” that “This key concept cannot be overstated,” that just because coastal areas have been developed over previously does not mean that those resources are no longer there,” that “The Commission must be educated to recognize that the State’s historic treatment toward Native American communities is one of suppression and aggression, ... [etc]. “... Tribal Cultural Resources were often hidden from public records and governmental knowledge for their own preservation.” “For a meaningful and thoughtful consultation policy, we ask that these thoughts and perspectives be incorporated into the Commission’s consultations with Tribes. Understanding and embracing these perspectives will lead to improved relationships with Tribal communities, and a more effective protection of this part of the State’s public trust resources.”

Response 1

We agree with the spirit and intent of these comments, and the development of this Tribal Consultation Policy is intended to improve the Commission's understanding and embrace these perspectives in a more meaningful way. The following language will be added to the Background section of this Policy to reflect the historic mistreatment of Native American communities. A similar concern was expressed by Professor Gilio-Whitaker below (pages 20-21)).

Proposed Modification to Policy, Page 1 (after the first paragraph):

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.

Comment 2

The statement that the Commission is "rarely a lead agency" under CEQA reflects bias and lack of knowledge, "Unless the Commission is stating that it does not conduct environmental review as a lead agency." Even if the Commission is not a lead agency, "We recommend that the Policy acknowledge the ... statement [that] '... AB52 requires that "a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resources, as defined, is a project that may have a significant effect on the environment" as a condition of past Commission compliance with AB 52, and direct staff to rectify this oversight through implementation of a meaningful and active consultation process in all actions."

Response 2

This statement in the Policy was simply reflecting that the Commission is, in fact, rarely a lead CEQA agency. Regardless of this fact, the Policy does, in fact, help implement "... a meaningful and active consultation process in all actions."

Comment 3

Page 2 of the Policy, which describes the Commission’s relationship and partnership with local governments, should be expanded to describe a similar partnership with Tribal governments, and that “Such consideration should extend beyond consultation to a partnership in planning efforts so that the Commission properly values the present nature and use of tribal Cultural Resources.”

Response 3

See Response C2 (to the Cher-Ae Heights/Trinidad Rancheria comment) above.

Comment 4

The definition of “Consultation” should reflect the time needed to educate Commission staff, any needed research, and assessment of impacts. It should also not be seen as a “one-time, one-meeting activity,” but rather an iterative process. The Commission should conduct an independent review and not rely on other agencies’ conclusions.

Response 4

The intent of the policy is to become more proactive and more independent in consulting with Tribal governments, to not rely on other agencies’ conclusions and to conduct independent investigations, and that the process will not be “one-time” but, as suggested, “iterative.” The following language will be added to clarify this intent.

Proposed Modification to Policy, Page 3 (4. Consultation):

4. Consultation: Means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties’ cultural values and, where feasible, seeking agreement. Consultation between government agencies and 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.)³

[The added footnote would read: 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.

Comment 5

The definition of “Cultural Resources” is overly limited, “wholly excludes the present value of TCRs,” and contains “gross errors” which “should be rectified before the policy is circulated. This limitation also places an increased emphasis on the second half of the definition that includes in the definition a ‘resource determined by the CEQA lead agency or the Commission, in its discretion and supported by substantial evidence.’ With this latter requirement, the

Commission must create a program, and the time necessary to implement it, that is open to developing the substantial evidence necessary to responsibly exercise this discretion through the consultation process.”

Response 5

The definition of Cultural Resources was not created by the Commission, but is taken from Public Resources Code Section 21074, which is part of the CEQA statute. The definition is therefore appropriate for the purpose of this Policy. We agree that the Commission’s decisions regarding Cultural Resources are and will continue to be based on the “substantial evidence” test, and that it will take effort and consultation to determine the significance of Tribal Cultural Resources in particular circumstances.

Comment 6

The definition of Tribal Sovereignty should be revised to state “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.”

Response 6

The definition will be modified as suggested.

Proposed Modification to Policy, Page 5 (9. Tribal Sovereignty):

~~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.~~ 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.

Comment 7

“The guiding principles of the policy lack a key element – the development of a perspective that acknowledges the values of TCRs to the Native American communities. Many of the principles direct one sided actions by staff.... The principles should emphasize that the consultation ... should begin at the earliest possible time to ensure adequate time for review....”

Response 7

The Draft Policy is directed at developing the perspective sought by the commenter, and it is meant to encourage consultation at the earliest time possible. If the commenter has specific suggestions for other language to make this intention more clear, we would be happy to consider such suggestions.

Comment 8

Tribal Liaison positions are often staffed by persons unfamiliar with indigenous past and current cultures and lacking sufficient empathy. “Significant education is required for staff throughout the state to understand the tribal resources that they are seeking to consider. The Tribal Liaison position should emphasize this education element for the Commission and all regional Tribal Liaisons.”

Response 8

The intent of the Policy is to help develop the education sought by the commenter, through the consultation process. We agree that educating the Commission staff should be a high priority for the Tribal Liaison.

Comment 9

The training of Commission staff lacks “... emphasis on cultural understanding, education or perspective. ... Please expand the training program to provide staff the tools and understanding necessary to implement the consultation policy.”

Response 9

The intent of the Policy is to identify, develop, and continually expand the tools, understanding, and perspectives sought by the commenter.

Comment 10

The Commission should not assume it only needs to contact the “nearest” Tribe to an activity; multiple Tribes may have historically used an area; different Tribes may have different values about TCRs. “A robust training program for staff could provide tools to more completely understand potentially impacted tribal communities through understanding those communities, their history and use areas, and their locations today.”

Response 10

We agree and understand that multiple Tribes may have historically used an area, and that different Tribes may have different cultural values. We expect this understanding to improve with the consultation and coordination efforts outlined in the Policy.

Comment 11

The Consultation process should be considered a “works in progress.” Before consultation begins, adequate information needs to be provided to the interested Tribes. Tribal representatives may need to visit a site to determine the existence or value of a TCR. This “level

of vetting of a project ... should occur early in the process, so that, if warranted, impact avoidance of impacts can be imposed through project modifications.”

Response 11

The Consultation Policy is intended to be adaptive and not fixed, and the intent is to consult with Tribes early enough in the process to yield meaningful results (and if warranted, lead to project modifications to avoid, minimize or mitigate impacts). Encouraging site visits by interested Tribes should be folded into the process where feasible.

Comment 12

The commenter warns against “joint consultations” with groups of Tribes.” This “may work in limited circumstances, but should be approached with caution.” “Using joint consultations with multiple tribes assumes that the interests of the Tribes are the same, or that they are not conflicting. This is a false assumption [which] ... may inhibit the viewpoints of one tribe when another is more vocal.” The commenter recommends “Unless joint consultation is proposed by the tribes, individual consultations will provide more useful information for the commission and should be the standard course.”

Response 12

We agree with the concern expressed here. The Policy would limit joint consultations to situations where “all parties agree” and where “there are sufficient issues in common to warrant a joint consultation.”

Comment 13

The commenter expresses disappointment that the Commission seeks an “‘out’ to meaningful consultation where statutory deadlines limit the manner or timeframe of consultation.” The commenter recommends that the Commission “should move the consultation process early enough in the project consideration process that the statutory deadlines do not become a factor in the consultation process.” The commenter further recommends that when statutory deadlines exist, the Commission “... should be required to exhaust its capabilities to gain deadline extensions before abbreviating the consultation process.”

Response 13

We agree that consultation should commence early enough in the process to attempt to avoid statutory deadline problems, and that where flexibility exists, deadlines should be extended before abbreviating the consultation policy. However, experience informs us that statutory deadlines can sometimes make this difficult to achieve in practice. The goal of the Policy is to improve meaningful consultation, but with the understanding that there will be times when statutory deadlines prevail. The goal is to minimize these occurrences, to the degree legally permissible. We are not seeking to be relieved of the responsibility of due diligence, but simply acknowledging that there can be legal constraints on the Commission’s timeframes for decisionmaking.

E. **Lytton Rancheria of California**, letter dated September 26, 2017.

Comment 1

The commenter recommends adding to the definitions (Section 1 page 3), a definition for Traditional Cultural Property, as follows:

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.

Response 1

The State Historic Preservation Office defines Traditional Cultural Properties (TCPs) as follows:

Traditional Cultural Properties are eligible for inclusion to the National Register of Historic Preservation because of their association with cultural practices and beliefs that are: (1) rooted in the history of the community; and, (2) are important to maintaining the continuity of that community's traditional beliefs and practices. National Register Bulletin 38 (TCPs), can be used to define a property as a location associated with the traditional beliefs of a Native American group about its origins, its cultural history, or the natural world. Although not exclusively used in the Native American community, TCPs have been used to protect the beliefs, customs, and practices of California Indian Communities.

We agree that the definition recommended by the commenter would be consistent with this definition, and that it would be useful to include the recommended definition in the Policy, to assist any Commission determination of what properties may constitute a cultural resource.

Proposed Modification to Policy, Page 5 (after 1st paragraph):

10. 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.

Comment 2

1. Section II, Page 8. The commenter recommends expanding "Tribal interests" to include "... other governmental interests besides cultural and natural resources."

Response 2

The definition was intended to be broad enough to include this. We will add this language to the definition of Tribal Interests:

Proposed Modification to Policy, Page 4 (near bottom of page):

8. 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.

Comment 3

Section IV, Pp. 8-12. The commenter recommends reiterating for each Commission process what is stated later in the document - that Tribes should be notified "as early as possible in the process." The commenter also recommends on page 9, first paragraph, adding the following underlined language to subpart c), which would read:

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;

In addition, the commenter requests clarification that such consultation will occur for all types of Commission actions.

Response 3

These changes will be made, as follows.

Proposed Modification to Policy, Page 8 (bottom of page/top of page 9):

4. Contacting Tribes For Commission Actions. During its review of plans, development proposals, or other activity to be the subject of a Commission

Action,⁶ 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 Tribal 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. Commission staff will also attempt to contact any other Tribes that Commission staff has reason to know may have an interest in the Action. 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 initiate 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:

Proposed Modification to Policy, Page 9 (bottom of page):

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.

Comment 4

Section IV, Page 11. There's a reference to a section "4.c.(a) which is not clear.

⁶ 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. *[For clarification – this footnote is not a proposed change, but is contained in the Draft Policy (footnote 4).]*

Response 4

The commenter is correct. The paragraphs were misnumbered in the draft policy, and will be renumbered. The reference was meant to be to the first paragraph under the federal consistency process.

Proposed Modification to Policy, Page 12 (top of page):

(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.

In addition, the numbering “c.” will be added on page 11, near top of page, as follows:

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

Comment 5

Section V, Page 13. Suggests that “It is helpful for as much documentation about the Action as possible to be provided to the Tribes prior to any meetings.”

Response 5

We understand the suggestion, but we note that the extent of documentation will likely vary depending on the specific situation, tribal interests, proposed activity and action, and possibly other factors. We will add the following language.

Proposed Modification to Policy, Page 14 (top of page):

2. **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.

F. **Northern Chumash Tribal Council**, email dated September 19, 2017.

Comment 1

The Northern Chumash Tribal Council supports the Draft Policy and does not recommend changes.

Response 1

No response necessary.

G. **Xolon Salinan Tribe**, letter dated October 20, 2017.

Comment 1

The Xolon Salinan Tribe agrees with the draft policy and does not recommend any changes.

Response 1

No response needed.

H. **Dina Gilio-Whitaker, M.A.**, Policy Director and Senior Researcher, Center for World Indigenous Studies, Adjunct Professor of American Indian Studies, California State University San Marcos, letters and emails received October 29, 2017.

Comment 1

Professor Gilio-Whitaker's comments contained a fairly lengthy discussion of past mistreatments of Native Americans, ending with a recommendation that the Policy include a recitation of some of this history. Rather than attempt to summarize these comments, we will provide a few quotes directly as follows:

It is my contention as a scholar of Native American and Indigenous studies that the reason the federal government failed to create a satisfactory and responsive EJ policy framework for Native nations is that the entire structure of the federal relationship with tribal nations was not designed to impart any great measure of justice. It was in fact designed to constrain their rights and subject them to a hegemonic relationship with the State (the U.S.). Anybody with expertise in federal Indian law or knowledgeable about history knows this. It is a history that resulted in the structure most Native studies scholars now refer to as settler colonialism, in which the project of the settler State is to eliminate the Native population (and this it does physically, culturally, and discursively) to acquire their lands. At no time, however, has the U.S. ever admitted to this historically-created structure. Nowhere has it ever used the language of colonialism to describe its current relationship. Instead, it routinely whitewashes a profoundly violent and unjust history by publicly proclaiming a government-to-government relationship with tribes. Yet, it is not a relationship built on equity or shared power. Native nations don't even have the right to own the title of their own lands. It is a paternalistic relationship dictated by the U.S., and always in violation of the spirit of the hundreds of treaties the U.S. made with Native nations.

The relationship of the State of California to tribes descends from this model of hegemony, and is designed to conform to it. In some ways, however, California (the “state”), has an even more egregious history with tribal people. Contrary to most popular and romanticized historical narratives, historians have documented a history of premeditated genocide and forced labor carried out by the state (Lindsay, 2012; Madley, 2016; Resendez, 2016), and was funded by state and federal dollars. It orchestrated a system of land theft so thorough that only a miniscule percentage is still in Indian hands. Land laws were so corrupt in California’s early days that they were designed to transfer ownership from Mexican landowners (lands stolen from Indians to begin with); my research shows that this is how, for example, coastal lands in Southern California came to be owned predominantly by whites within just a few decades after statehood.

...

I have reviewed the draft Tribal Consultation Policy of August 18, 2017. The proposed policy is an example (as I’ve noted in my draft chapter on the limitations of EJ for tribal nations) of the constraint of any model of meaningful justice by its deferral to federal law. In my opinion, it provides only the smallest measure--a façade, really--of rights to tribes already robbed through the processes of history. As bleak as it sounds, this is a brutally honest assessment of the history that has created the political and legal structure we have today.

...

This is an opportunity for the state of California to acknowledge its dark history toward California Indians, and its complicity with the federal government in the land theft that now makes it necessary to even have a policy of environmental justice. The Coastal Commission is now in a position to help change the paradigm and accord a more just relationship toward tribal people. It can move toward this paradigm shift through the way its policy documents characterize the long arc of these relationships. Even if the legal experts see themselves as constrained by law in its current efforts to create an EJ policy framework, it can begin to acknowledge the structure that constrains it.

My suggestion is to include language at the beginning of the draft that goes beyond acknowledging tribal sovereignty (because this is, after all, a delegated, i.e. hegemonic form of sovereignty in federal law, and many California Indians do not even possess this much). Acknowledge the reality of the 18 treaties the federal government made in bad faith with California Indians. Acknowledge the land theft that makes tribal consultation with the goal of environmental justice necessary. Acknowledge the history by using the terms “colonialism” and “genocide.” End the whitewashing of history.

Response 1

We agree with the comment and, as noted above on page 11, we will add language to the Background section of the Policy to summarize historic information about past atrocities committed against Native Americans by state and federal governments.

Proposed Modification to Policy, Page 1 (after the first paragraph):

[See page 11 above, additional text added to the Background, in response to the Jamul Tribe and Professor Gilio-Whitaker's Comments.]

Comment 2

Page 3, No. 4. Consultation. Replace "others" with "Tribes."

Response 2

That was the intent. We will make this change.

Proposed Modification to Policy, Page 3 (Consultation):

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.

Comment 3

Page 4, No. 7. Indian Country or Tribal Lands. The use of the phrase "dependent Indian communities" in the federal definition of "indian country," and in fact the "entire structure of federal Indian law, with its language of "dependency" was mythological from the beginning (Johnson v. M'Intosh, 1823), and scholars have shown over and over again how it is a colonial system that maintains a non-consensual system of domination."

Response 3

The definition is a direct quote from federal law, which the Commission does not have the authority to modify. We will add a footnote noting that the Commission does not condone the use of this term.

Proposed Modification to Policy, Page 4 (Indian Country or Tribal Land):

3. 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 communities⁸ 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.

[The added footnote would read: This phrase is in the regulation. In quoting it, the Commission does not in any way condone the use of this term.]

Comment 4

Page 5, same paragraph as previous comment. The comment is: “Why can't the state acknowledge that the federal government made 18 treaties with tribes in bad faith, (because they were never ratified), resulting in massive land theft? It might not change anything, but why not at least acknowledge this colonial history? All of the language in this paragraph simply functions to erase this history.”

Response 4

See Response 1 above, as well as the response to Comment D.1 (Jamul Tribe) (page 11 above).

Comment 5

Page 6, Tribal Liaison. The Commission’s Tribal Liaison should be a member of a California Indian Tribe, and if possible, the Commission’s District office liaisons, should be members of tribes from each region.

Response 5

Given the constraints and limitations inherent in the State Personnel requirements for state employment, it may not be possible to incorporate this recommendation, although there is no reason it could not be stated as a goal. We note that a State law was recently adopted that required the California Governor to appoint at least one Commissioner to an upcoming vacancy on the Commission to be a member who would:

“... reside in, and work directly with, communities in the state that are disproportionately burdened by, and vulnerable to, high levels of pollution and issues of environmental justice, as defined. The bill would require that the Governor appoint a member who meets these qualifications to a vacant position from the appointments available no later than the fourth appointment available after January 1, 2017.”

Unlike Commissioner appointments, Commission staff positions are subject to strict State Personnel Board requirements, which may not be flexible enough to enable the Commission to commit to such a policy.

I. Esselen Tribe of Monterey County, letter dated November 12, 2017.

Comment 1

The Esselen Tribe did not recommend changes to the Draft policy, but requests future consultation on matters pertaining to coastal areas of California, and looks forward to meeting the Commission’s tribal liaison when appointed.

California Coastal Commission
Draft Tribal Consultation Policy
Staff Response to Comments

Response 1

We will meet the request for future consultation with the Esselen Tribe.

Attachment - Comment Letters Received to date (also listed on page 1 above)

[Note: Comment letters are attached to the electronic version. Paper copies do not have the comment letters attached. Paper copies were mailed to Commissioners in the first mailing for the April 2018 CCC meeting, and were posted at

<https://www.coastal.ca.gov/meetings/agenda/#/2018/4> See Item W6d, Correspondence folder]

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

W6d

March 22, 2018

Initial Round of Comments on
CCC Draft Tribal Consultation Policy

Commenters Listed in chronological order of when comments were received (with links to their comments which are attached follow):

| | |
|--|-----------|
| A. La Posta Band of Mission Indians..... | 2 |
| B. Tongva Ancestral Territorial Tribal Nation..... | 4 |
| C. Cher-Ae Heights Indian Community of the Trinidad Rancheria..... | 32 |
| D. Jamul Indian Village of California..... | 34 |
| E. Lytton Rancheria..... | 41 |
| F. Northern Chumash Tribal Council..... | 43 |
| G. Xolon Salinan Tribe..... | 44 |
| H. Dina Gilio-Whitaker, Center for World Indigenous Studies/CSU San Marcos..... | 45 |
| I. Esselen Tribe of Monterey County..... | 65 |



**LA POSTA
BAND OF MISSION INDIANS**

8 Crestwood Rd. #1
Boulevard, California 91905
(619) 478-2113 • Fax (619) 478-2125

8/4/2017

California State Coastal Commission
45 Freemont Street
Suite 200
San Francisco CA, 94105

RE: California Environmental Quality Act Public Resources Code section 21080.3, subd. (b) Request for Formal Notification of Proposed Projects within the La Posta Band of Diegueño Mission Indians of the La Posta Indian Reservation's Geographic Area of Traditional and Cultural Affiliation

To whom it may concern,

This letter is written on behalf of the La Posta Band of Mission Indians, a federally recognized sovereign Indian tribe and government, listed in the Federal Register as the La Posta Band of Diegueño Mission Indians of the La Posta Indian Reservation, California (hereinafter, "La Posta Tribe" or "Tribe"). As of the date of this letter, in accordance with Public Resources Code Section 21080.3.1, subd. (b), the La Posta Tribe, which is traditionally and culturally affiliated with a geographic area within your agency's geographic area of jurisdiction, requests formal notice of and information on proposed projects for which your agency will serve as a lead agency under the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq.

Pursuant to Public Resources Code section 21080.3.1, subd. (b), and until further notice, we hereby designate the following person as the tribe's lead contact person for purposes of receiving notices of proposed projects from your agency:

Gwendolyn Parada
Tribal Chairwoman
8 Crestwood Rd.
Office: (619) 478-2113
Fax: (619) 478-2125
Email: lp13boots@aol.com

We request that all notices be sent via certified U.S. Mail with return receipt. Following receipt and review of the information your agency provides, within the 30-day period proscribed by Public Resources Code section 21080.3.1, subd. (d), the La Posta Tribe may request consultation, as defined by Public Resources Code section 21080.3.1, subd. (b), pursuant to Public Resources Code section 21080.3.2 to mitigate any project impacts a specific project may cause to tribal cultural resources.

If you have any questions or need additional information, please contact our lead contact person listed above.

Sincerely,

A handwritten signature in black ink, appearing to read "Gwendolyn Parada". The signature is fluid and cursive, with the first name being more prominent.

Gwendolyn Parada, Tribal Chairwoman

CC: Native American Heritage Commission

JOHN TOMMY ROSAS
TRIBAL ADMINISTRATOR
TRIBAL LITIGATOR -TATTN JUDICIAL # 0001
TONGVA ANCESTRAL TERRITORIAL TRIBAL NATION
A TRIBAL SOVEREIGN NATION UNDER THE UNDRIP AND AS A TREATY [s] SIGNATORIES RECOGNIZED TRIBE, WITH
HISTORICAL & DNA AUTHENTICATION ON CHANNEL ISLANDS AND COASTAL VILLAGES - AND AS A CALIFORNIA NATIVE
AMERICAN TRIBE / SB18-AB 52-AJR 42-ACHP/NHPA - CALIFORNIA INDIANS JURISDICTIONAL ACT U S CONGRESS
APPROVED MAY 18, 1928 45 STAT. L 602

September 17, 2017

Mr. Ainsworth and Mr. Delaphine, all recipients of this email and TATTN document attached-

Please review and respond in a timely manner to our responses and advisory comments-

TATTN also expects the CCC to revise their draft TCP in which we also expect to be included in the revisions as part of this consultation to assist the CCC in their TCP process-

thanks jt

I will also UPS a copy to CCC sf main office to the attn of Mr. Ainsworth EO CCC

on monday asap

Attached are John Tommy Rosas' comments on the Tribal Consultation Policy

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



August 18, 2017

John Tommy Rosas, Tribal Administrator, Tribal Litigator
Tongva Ancestral Territorial Tribal Nation
578 Washington Blvd., #384
Marina Del Rey, CA 90292

Re: Draft California Coastal Commission Tribal Consultation Policy

Dear Tribal Administrator, Tribal Litigator Rosas:

In the spirit of mutual respect and cooperation with California tribal governments, the California Coastal Commission (“Commission”) seeks your input to help us develop a Tribal Consultation Policy to improve and strengthen our working relationships with California Tribes concerning our review of plans and activities in and affecting the California coastal zone. Attached is our initial draft of a Tribal Consultation Policy, which is based on templates used by other California State agencies, and tailored to apply to the Commission’s most common planning and regulatory review procedures. We consider this draft to be preliminary, and we seek feedback from California Tribes before circulating any draft to the general public for comment.

The Commission’s mission is to protect and enhance 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. This mission is carried out in the various ways described on our website at: <https://www.coastal.ca.gov/whoweare.html>.

Our mission is accomplished in partnership with local, state and federal government agencies, with a major emphasis on public participation. While some parts of our mandate are carried out by local governments, the Commission retains statewide oversight through: (1) reviews of Local Coastal Programs; (2) reviews of appeals of certain local government coastal permits; (3) coastal permitting in areas of “original” jurisdiction (e.g., California ocean waters); and (4) reviewing “federal consistency” matters (under federal law). This last authority enables the Commission to review certain activities located outside the California coastal zone (if those activities “affect” the coastal zone). To assist in your understanding the geographic scope of the Commission’s authority, coastal zone boundary maps can be found on our website at: <https://www.coastal.ca.gov/maps/czb/>.

While the Commission has always valued Tribal input, the Commission believes that adopting a Tribal Consultation Policy would strengthen its relationships with California Native American Tribes and further underscore its commitment to Tribal Consultation in accordance with several state and federal government policy directives adopted in recent years.

Coastal Commission Letter Requesting Tribal Comments
Draft Tribal Consultation Policy
August 18, 2017

We would appreciate a response to this Draft Tribal Consultation Policy within 30 days of your receipt of this letter. Once we receive and consider your and other Tribes' comments and respond to them, we will schedule the updated Draft Tribal Consultation Policy for one or more sessions before the Commission, at which you will have an additional opportunity to comment further. Before scheduling, we will provide you formal written notice of the sessions. We intend to schedule at least two such Tribal Consultation meetings - one in northern and one in southern California.

We look forward to your comments. Please send any comments you may have to the Commission staff at the following address:

Mark Delaplaine
Manager, Energy, Ocean Resources
and Federal Consistency Division
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

If you have any questions about this letter, please feel free to contact Mr. Delaplaine at the above address or any of the following:

Telephone: (415) 904-5289 FAX: (415) 904-5400
Email: Mark.Delaplaine@coastal.ca.gov

Thank you for your efforts in helping us strengthen our collaboration with California Tribes.

Sincerely,



JOHN AINSWORTH
Executive Director

Attachment: Draft Tribal Consultation Policy

cc: Coastal Commission District Offices
California Governor's Office of the Tribal Advisor - Cynthia Gomez
California Native American Heritage Commission

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200



Date: August 18, 2017

To: California Native American Tribes

From: California Coastal Commission Staff

Subject: **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.

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.

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.

Summary of Comments on CCC TC P DRAFT DOC TO TATTN COMMENTS QUESTIONS request for responses from CCC.pdf

Page: 3

Number: 1 Author: JT Subject: Sticky Note Date: 9/16/2017 9:26:00 PM

Our tribe called Tongva is a State recognized tribe there is only one Tongva tribe.

Number: 2 Author: JT Subject: Sticky Note Date: 9/16/2017 9:30:31 PM

CCC can not legally adopt or use only the ab 52 act nor can CCC adopt the illegal NAHC fabricated list as the NAHC does not have the authority under its legislative intent or directives to exclude lineal descendants or sb 18 required consultation. NAHC has recently illegally created illegal determinations on contact listed persons and have excluded them .

August 18, 2017 DRAFT

Tribal Consultation Policy

Page 2

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.

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, terrestrial and marine habitat protection, visual resources, landform alteration, agricultural lands, commercial fisheries, and coastal water quality. 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.

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 a significant impact on Tribal Interests. These actions include, but are not limited to:

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

| | | | |
|--|------------|----------------------|----------------------------|
| Number: 1 | Author: JT | Subject: Sticky Note | Date: 9/16/2017 9:51:19 PM |
| CCC past history on protecting tribal resources is poor - only recently has the CCC attempted to be respectful but still short of true legal compliance .Including implementing ajr 42 as chaptered = UNDRIP | | | |
| Number: 2 | Author: JT | Subject: Sticky Note | Date: 9/16/2017 9:52:02 PM |
| tribal resources | | | |
| Number: 3 | Author: JT | Subject: Sticky Note | Date: 9/16/2017 9:53:05 PM |
| TRIBAL RESOURCES AND RIGHTS | | | |


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.²)

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

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, 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.)

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:

² 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.

Number: 1 Author: JT Subject: Sticky Note Date: 9/16/2017 9:55:40 PM

CCC should not be limited to the illegal NAHC list or its process they recently fabricated - it also doesnt comply to the mandatory CZMA federal compliance under SEC 106 NHPA /ACHP-

Number: 2 Author: JT Subject: Sticky Note Date: 9/16/2017 9:57:20 PM

all tribal communications should be deemed confidential and should not be made illegal accessed to the public until the the tribe has agreed to the disclosure.

(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).

(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.

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. **Tribal Interests:** Include, but are not limited to: (a) Cultural Resources; or (b) fish, wildlife, plant, water, or similar natural resources.

| | | | |
|---|------------|----------------------|-----------------------------|
| Number: 1 | Author: JT | Subject: Sticky Note | Date: 9/16/2017 9:59:50 PM |
| tribal resources should not be limited to cultural or arch resources but also all our tribal rights and interests that might or could be affected by any CCC determinations on those without our prior consultation on each project . | | | |
| Number: 2 | Author: JT | Subject: Sticky Note | Date: 9/16/2017 10:03:20 PM |
| we are also have federal acknowledgment CCC has those documents from TATTN | | | |
| Number: 3 | Author: JT | Subject: Sticky Note | Date: 9/16/2017 10:05:02 PM |
| and all rights to all tribal resources we have preexisting -preemptive claims | | | |

9. **Tribal Sovereignty**: 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.

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

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§§ 6254(r), 6254.10, Pub. Res. Code § 21082.3(c)).³ 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 14 below (Item 7. Joint Consultation).

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.
- 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.

³ 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

Number: 1 Author: JT Subject: Sticky Note Date: 9/16/2017 10:06:13 PM
including SEC 106 NHPA / ACHP consultations for federal consistency -

Number: 2 Author: JT Subject: Sticky Note Date: 9/16/2017 10:14:15 PM

CCC is and has been in violation of the governor executive order to appoint a tribal liaison which has been a long standing non compliance of violations by CCC -6 YEARS OF VIOLATION OF THE EXECUTIVE ORDER B-10-11
9-19-2011

IT IS FUTHER ORDERED that the Office of the Governor shall meet regularly with the elected officials of California Indian Tribes to discuss state policies that may affect tribal communities.

IT IS FURTHER ORDERED 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. Agencies and departments shall permit elected officials and other representatives of tribal governments to provide meaningful input into the development of legislation, regulations, rules, and policies on matters that may affect tribal communities.

For purposes of this Order, the terms "Tribe," "California Indian Tribe", and "tribal" include all Federally Recognized Tribes and other California Native Americans.

- 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.

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 the contact listed 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 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.

Number: 1 Author: JT Subject: Sticky Note Date: 9/16/2017 10:16:21 PM
if CCC adopts the illegally defective NAHA list CCC will be in violation of numerous state and federal laws - which can not exclude SB18 and AJR
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4. **Contacting Tribes For Commission Actions.** During its review of plans, development proposals, or other activity to be the subject of a Commission Action,⁴ 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 Tribal 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. Commission staff will also attempt to contact any other Tribes that Commission staff has reason to know may have an interest in the Action. 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. 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).⁵ Request that 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

⁴ 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.

⁵ 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 corresponding guidelines adopted by the Governor's Office of Planning and Research (OPR) November 14, 2005, Tribal Consultation Guidelines.

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.

- (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.

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(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.

For federal consistency reviews (under the Coastal Zone Management Act)⁶, the following procedures shall be used:

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

(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.(A) above.
- (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.
- c. 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 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 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

Number: 1 Author: JT Subject: Sticky Note Date: 9/16/2017 10:20:02 PM

CCC has to accept any tribal entity or tribal person as a culturally affiliated contact and should accept that request and use for all tribal claims and territory that that can be established by historical genealogy and DNA reports results -

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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 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 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

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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

North Coast District Office

1385 Eighth Street, Suite 130

Arcata, CA 95521

Phone: (707) 826-8950

Fax: (707) 826-8960

Counties: Del Norte

Humboldt

Mendocino

California Coastal Commission

North Central Coast District Office

45 Fremont Street, Suite 2000

San Francisco, CA 94105

Phone: (415) 904-5260

Fax: (415) 904-5400

Counties: Sonoma

Marin

San Francisco

San Mateo

California Coastal Commission

Central Coast District Office

725 Front Street, Suite 300

Santa Cruz, CA 95060

Phone: (831) 427-4863

Fax: (831) 427-4877

Counties: Santa Cruz

Monterey

San Luis Obispo

California Coastal Commission

South Central Coast District Office

89 S. California Street #200

Ventura, CA 93001

Phone: (805) 585-1800

Fax: (805) 641-1732

Counties: Santa Barbara

Ventura

Los Angeles (Ventura Co. line to
Pacific Palisades)

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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





Cher-Ae Heights Indian Community of the Trinidad Rancheria



Submitted via email to: Mark.Delaplaine@coastal.ca.gov

September 21, 2017

Mark Delaplaine
Manager, Energy, Ocean Resources
and Federal Consistency Division
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

RE: Tribal Comments to Draft Tribal Consultation Policy

Dear Mr. Delaplaine:

Cher-Ae Heights Indian Community of the Trinidad Rancheria (Trinidad Rancheria) is a federally recognized tribe situated in Humboldt County and is pleased to submit written comment on the California Coastal Commission's (Commission) draft Tribal Consultation Policy, which we received August 21, 2017. Thank you for your efforts to implement Governor Edmond G. Brown Jr.'s Executive Order B-10-11.

Our tribal comments are:

- I. Background, page 2, second paragraph regarding the Commission's mission; we propose adding:
 - "The Commission's mission is to protect...and regulation of environmentally-sustainable development, rigorous use of science **and Traditional Ecological Knowledge...**"
- I. Background, page 2, third paragraph regarding Commission partnership with coastal cities and counties, we propose adding:
 - "In partnership with coastal cities and counties, **and in collaboration with Tribes**, the Commission plans and regulates..."

- II. Definitions, 5. Cultural Resources, (a)(2), page 3, add to the last sentence of the paragraph:
 - “In applying these criteria, the lead agency shall consider the significance of the resource to a California Native American tribe in ***consultation with the affected tribe(s)***.” This addition will provide important and necessary tribal input to the determination of cultural resources along with the CEQA lead agency or the Commission.
- II. Definitions, 8. Tribal Interests, page 4, add:
 - “Include, but are not limited to: ***(a) Tribal Lands***; (b) Cultural Resources; or (c) fish, wildlife...”
- III. Guiding Principles, 6, page 5, add:
 - “Provide Tribes with ***timely and*** meaningful opportunities to respond and participate...”
- V. Commission Staff Training, 1, page 7, add:
 - “Principles of tribal sovereignty, ***tribal trust and fee*** lands, and jurisdiction, ***including a legal foundation that shaped tribal governments in California.***”
- VI. Tribal Communication, 1. Purpose, page 7, add “(a) providing ***timely*** information to tribes regarding...; (b) “seeking information and ***significant*** input from Tribes;”

Thank you for the opportunity to submit tribal comment on the Commission’s proposed Tribal Consultation Policy. Please contact Shirley Laos, Governmental Affairs Coordinator at slaos@trinidadrancheria.com should you have any questions regarding this matter.

Sincerely,



Garth Sundberg
Chairman

Via U.S. Mail and E-mail Mark.Delaplaine@coastal.ca.gov

September 25, 2017

Mr. Mark Delaplaine
Manager of Energy, Ocean Resources and Federal Consistency Division
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Comments on Draft Tribal Coastal Commission Consultation Policy
("Policy")

Dear Mr. Delaplaine:

Thank you for the opportunity for the Jamul Indian Village to provide comments on the draft Policy circulated with your letter received August 22, 2017. We value the effort of the State to improve its understanding of California Tribal communities and their role in the regulatory functions of the Coastal Commission ("CCC" or "Commission").

As your draft Tribal Consultation Policy correctly states, California is the state with the largest number of Tribes in the contiguous United States, and it also has the largest population of those identifying as Native American. The interests of these communities and populations have often been forgotten in coastal development approvals, as the intense development that has occurred in coastal areas over the years has often obscured the Tribal Cultural Resources from consideration by decision-makers. We applaud the Commission's steps to rectify this oversight. Improving the understanding of Tribal perspectives and engaging in effective consultation with Tribes will require that the Commission staff and decision-makers open themselves up to educational perspectives and resources that for years have been in plain sight of the Commission, but were either ignored or unnoticed by staff.



EMAIL info@jamulindianvillage.com

TEL 619.669.4785

FAX 619.669.4817

ADDR P. O. Box 612
Jamul, CA 91935

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Mr. Mark Delaplaine
Manager of Energy, Ocean Resources and Federal Consistency
California Coastal Commission
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An important premise that is missing from your proposed policy that is critical to recognize in all of your regulatory functions is that the entirety of the State's coastal zone is in former indigenous lands that likely have Tribal Cultural Resources at some level. This key concept cannot possibly be overstated, as it has been consistently missed by land use planners in the State. The concept of original indigenous territory was apparently also lost on the original drafters of the State's Coastal Plan, whether statewide, or in local coastal plans, as original indigenous resources are seldom addressed in coastal plan documents. The lack of consideration of coastal Tribal resources is, at some level, understandable given that the resources are not clearly evident to the common eye, due to the overwhelming influence of residential and commercial development in the coastal zone. However, just because coastal areas have been developed over previously does not mean that those resources are no longer there. It merely means that they are physically obscured, and the Commission must take more meaningful steps to recognize them, and to protect them.

This task is made more difficult by the manner in which these Tribal Cultural Resources fell into obscurity. The Commission must be educated to recognize that the State's historic treatment toward Native American communities is one of suppression and aggression, pushing indigenous people from coastal regions early in the colonization and settlement of the State. For decades, even after native people were already excluded from coastal zones by settlers and state and federal officials, expressions of indigenous culture, religion and values led to aggression and persecution, including periods of genocide when bounties were paid by the government for Native American scalps when found off their inland reservations. Many coastal areas were necessarily abandoned by Tribes even for itinerant use due to this aggression.

Once these avert genocidal policies were finally tempered, Tribes were still not safe to use traditional and culturally impacted areas along the coast and Tribal communities were having to endure the cultural genocide of the boarding school era that would lead Tribal children to being taken from families. Indian boarding schools were designed to "kill the Indian to save the child." Even where cultural genocide and physical aggression were not key influences limiting use of Tribal Cultural resources, intentional and unintentional vandalism was a threat to the resources near settling populations. These factors have led to over a century of suppression of knowledge about Tribal cultural areas for the individual's and the community's own protection.

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So when local communities and Commission staff look through previous planning documents and reports, it is not surprising that there would be little information documenting TCRs in the coastal zone areas. To the contrary, Tribal Cultural Resources were often hidden from public records and governmental knowledge for their own preservation. Given that TCRs in the coastal zone are simply not well documented in coastal planning and other governmental records, previous governmental approvals in any particular location along the coastal zone should never be considered as dismissive of the remaining existence of Tribal Cultural resources.

These facts and circumstances emphasize the importance of the Coastal Commission having a meaningful Tribal consultation policy and program, as this is likely the only manner in which staff can learn of the TCRs that are present within the Commission's jurisdiction. The development of a CCC Tribal Consultation Policy is an opportunity to instill protections and honorable treatment to resources through policies and actions in the future.

TCRs should be considered valuable not just as key part of California's history and the State's Public Trust resource, but also as part of the existing, vibrant Native American culture. Sacred and culturally important tribal resources are often seen by their Native communities as a present resource that reflects their lives, practices, mores and culture. They are not merely a historic artifact to be looked at in the past. This present value is often lost in discussions about TCRs and "archaeological resources" as something that should be encapsulated or placed on a shelf to preserve as an image of the past. However, encapsulating (or curating) a resource does not allow for present use.

While the window to historic residents of the coast is an important element of TCRs, present value and active use of a TCR location or item requires a very different perspective regarding resource impacts and protection. When viewing TCRs as present use resources, the value of access and in situ preservation and protection becomes more self-evident, and curation or building over a TCR precludes access for current cultures to use and appreciate those resources. Edge effects are also more likely to affect a present use, than a resource that is merely preserved for posterity.

For a meaningful, and thoughtful consultation policy, we ask that these thoughts and perspectives be incorporated into the Commissions consultations with Tribes. Understanding and embracing these perspectives will lead to improved relationships with Tribal communities, and a more effective protection of this part of the State's public trust resources.

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More specifically, we offer the following comments regarding the draft policy document:

Role of Commission re: AB 52. The draft policy notes on its first page that the Commission “is rarely a lead agency that prepares environmental documents subject to AB 52’s consultation requirements.” Unless the Commission is stating that it does not conduct environmental review as a lead agency, this statement is reflective of the very bias and lack of knowledge that the preceding paragraphs of this letter discuss. Even if not a lead agency, the Commission would be relying on and confirming the findings of another lead agency in order to rely on that agency’s CEQA documentation. AB 52 requires that “a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource, as defined, is a project that may have a significant effect on the environment.” If there is no significant consultation to locate such TCRs, then the Commission cannot possibly comply with this obligation. We recommend that the Policy acknowledge the above statement as a condition of past Commission compliance with AB 52, and direct staff to rectify this oversight through implementation of a meaningful and active consultation process in all actions.

Present Nature of Tribal Cultural Resources. Page 2 of the background for the Policy directs activity to the “Commission’s partnership with coastal cities and counties” in the Commission’s regulation of the coastal zone for public use. This partnership should extend to Tribal governments as well, as the below the surface of residential, commercial and recreational uses of the Coastal zone lie past and current cultural resources that require consideration. Such consideration should extend beyond consultation to a partnership in planning efforts so that the Commission properly values the present nature and use of tribal Cultural Resources.

Definitions: “Consultation”. This definition should acknowledge the time required for appropriate education of staff regarding the nature of Tribal Cultural Resources, research that may be required once a project is proposed and explained, and discussion necessary to properly assess the impact to the resource and avoid or mitigate that impact. As a result, it should direct staff that consultation is not a one-time, one meeting activity. It is often an iterative process that involves multiple meetings among the parties, and should be started as early as possible in the consideration of the proposed project. Moreover, the consultation commitment should be directed as independent for the Commission and an obligation regardless of what other cities, counties or agencies resolve regarding the existence of TCRs. Such other agency findings should not be considered conclusive.

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Definitions: “Cultural Resources”. This definition is very limited in scope, and relies largely on past determinations by state or local entities regarding the nature of historic resources. This definition *wholly excludes the present value of TCRs*, and fails to acknowledge that information sources such as local and state historical registries may be incomplete and inadequate to identify coastal TCRs. These gross errors should be rectified before the policy is circulated. This limitation also places an increased emphasis on the second half of the definition that includes in the definition a “resource determined by the CEQA lead agency or the Commission, in its discretion and supported by substantial evidence.” With this latter requirement, the Commission must create a program, and the time necessary to implement it, that is open to developing the substantial evidence necessary to responsibly exercise this discretion through the consultation process.

Definitions: “Tribal Sovereignty”. This definition should be revised to state “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.”

Guiding Principles. The Guiding Principles of the policy lack a key element—the development of a perspective that acknowledges the values of TCRs to the Native American communities. Many of the principles direct one sided actions by staff rather than developing a mutual understanding of the value of TCRs and methods to ensure their long term preservation and use. The principles should emphasize that the consultation and education process regarding TCRs should begin at the earliest possible time in a project to ensure adequate time for review, development of knowledge, and appropriate consideration of impacts.

Tribal Liaison Position: This position should be designed to educate staff and the Executive Director regarding the nature and value of Tribal Cultural Resources. In the past, state and local agencies have often filled such a position with someone on staff that is unfamiliar with indigenous past and current cultures and as a result they lack perspective to relate to the Tribes with whom they consult. Empathy is a critical quality for a Tribal Liaison, and empathy only comes from understanding, which in turn can only occur after education. However, the consultation policy does not require these qualities of the Tribal Liaison, and it does not include in the Liaison’s duties, the obligation to educate staff and the Commission regarding the nature of the resources being considered. This obligation extends far beyond “advising the Executive Director on policy matters.” As noted earlier in the letter, significant education is required for

Mr. Mark Delaplaine
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staff throughout the state to understand the tribal resources that they are seeking to consider. The Tribal Liaison position should emphasize this education element for the Commission and all regional Tribal Liaisons.

Commission Staff Training. The direction to the Tribal Liaison for training commission staff does not include any emphasis on cultural understanding, education or perspective. While beginning with training staff about the principles of tribal sovereignty, lands and jurisdiction is a start, limiting training to these subjects provides little information to staff regarding TCRs that occur within the coastal zone, since most Tribal lands occur well outside the coastal zone. The training should include information about historical and current uses by Tribal nations and their relationship to the coastal lands. Long before the coastal areas were colonized by white settlers, each coastal area had significance to the local indigenous communities. This significance is a part of the state's history, and it a part of the present culture of Native American communities within the state. In order to seek to protect, regulate or manage these areas, staff must have an adequate understanding of these resources. Please expand the training program to provide staff the tools and understanding necessary to implement the consultation policy.

Contacting Tribes for Commission Actions. In making decisions on which Tribes to contact for projects in specific geographic areas, it is important for the Commission to recognize that any specific location in the coastal zone was not used by just one group of people historically, and TCRs in an area may today have value to several tribes, and those values may vary between Tribes. Moreover, nearly all tribes have been displaced from their ancestral coastal lands, so it is difficult to now discern the most relevant tribe to a resource on the coast. As a result, contacting only the tribe most proximate to a proposed project or action is seldom going to provide the Commission with complete information regarding a coastal TCR. A robust training program for staff could provide tools to more completely understand potentially impacted tribal communities through understanding those communities, their history and use areas, and their locations today.

Tribal Consultation Process. This section should be considered a works in progress, and there should be an initial recognition that before consultation begins, adequate information is provided to the interested Tribes to assess the precise location of the proposed project and the nature of the impacts. Because many of the historic locations of indigenous use have been obscured by development, it is possible that Tribal representatives will be required to visit a site to determine the existence or value of a TCR. The Commission should provide for this level of vetting of a project early in the process so that, if warranted, avoidance of impacts can be imposed through project modifications.

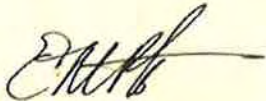
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Much of the initial information in a consultation can be set in place through informal meetings with Tribal staff, Commission staff and experts; however, such informal meetings should not take the place of government to government consultation which shall include Tribal leaders or their designee. In addition, the Commission suggestion to require joint consultations among tribes may work in limited circumstances, but should be approached with caution. It is inappropriate to treat all tribes and tribal representatives as having the same understanding, viewpoint or valuation of any given resource. In fact, they may vary wildly, as each has their own historic connection to the resource. Using joint consultations with multiple tribes assumes that the interests of the Tribes are the same, or that they are not conflicting. This is a false assumption, and holding joint consultations may inhibit the viewpoints of one tribe when another is more vocal. Unless joint consultation is proposed by the tribes, individual consultations will provide more useful information for the commission and should be the standard course.

Limitations of the Consultation Policy. It is disappointing to see that the Commission proposes to provide an “out” to meaningful consultation where statutory deadlines limit the manner or timeframe of consultation. Rather than provide this capability when the Commission runs up against a statutory deadline, the Commission should move the consultation process early enough in the project consideration process that the statutory deadlines do not become a factor in the consultation process. Where the Commission does encounter statutory deadlines, it should be required to exhaust its capabilities to gain deadline extensions before abbreviating the consultation process.

The Jamul Indian Village appreciates the ability to provide these comments to the initial draft Commission Consultation Policy, and we look forward to working with you to develop a robust, meaningful consultation process that serves the people of the State—including the indigenous people—positively for years to come. We look forward to reviewing the next iteration of the Policy. If there is any additional information that we can provide, please do not hesitate to contact my office.

Sincerely,



Erica M. Pinto, Chairwoman
Jamul Indian Village of California



Kathryn Ogas
Brenda Tomaras

Kogas@mtowlaw.com
Btomaras@mtowlaw.com

Via Email

September 26, 2017

Mark Delaplaine
Manager, Energy, Ocean Resources
And Federal Consistency Division
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Re: Comments of the Lytton Rancheria of California on the Draft Tribal Consultation Policy

Mr. Delaplaine:

This comment letter is written on behalf of the Lytton Rancheria of California (hereinafter, "Lytton Rancheria" or "Tribe"), a federally recognized Indian tribe and sovereign government. The Tribe appreciates the opportunity to provide input on this important matter.

As a preliminary matter, it is important to understand that there are a myriad of forms of "consultation" and each tribe has its own methods. Thus, while some tribes rightly require government-to-government consultation to be among equal officials, other tribes have developed systems where some consultation duties are delegated below the Tribal Chairperson or Council. It is important for your agencies and staff to make no judgments as to what form of consultation a tribe may choose.

The Tribe's comments on the draft are as follow:

Section 11. 5 at page 3:

A definition of Traditional Cultural Properties (TCPs) should also be included:

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.

Section II. 8 at page 4:

Tribal interests could actually include other governmental interests besides cultural and natural resources.

Section VI. pages 8-12:

The process described for most of the actions seems to neglect the step of notifying interested Tribes as early in the process (as noted on page 11 at (1)(C) and (2)(C)). The Tribe suggests the processes for the other types of actions include this.

In addition, the Tribe suggests that the notification process for each action at c) be revised to state: "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;"

Finally, at page 11, (2)(B) there is a reference to a section "4.c.(A)" which is not clear.

Section VII at page 13:

It is helpful for as much documentation about the Action as possible to be provided to the Tribes prior to any meetings.

Again, thank you for the opportunity to provide comment, and please let the Tribe know if further requests for comment or consultations are forthcoming. Please do not hesitate to contact me with any questions at (858) 554-0550, ext. 1.

Very Truly Yours,
TOMARAS & OGAS, LLP

A handwritten signature in black ink, reading "Brenda L. Tomaras". The signature is fluid and cursive, with a long horizontal line extending from the end.

Brenda L. Tomaras
Attorneys for the Lytton Rancheria of California

Hello Mark,

NCTC has reviewed CCC consultation policy draft, and we support your efforts to make this document a meaningful tool when communication with California Indigenous Community, we can always do better, this document should be a living document, one that we can tailor to the times and ever changing Indigenous participation, concerning the very important California Coastal issue, the connecting zone of life at our shorelines encompasses deep meaning and spiritual balance for our community. Thank you for your good works.

Fred Collins
NCTC

Fred Collins, Spokesperson
Northern Chumash Tribal Council
P.O. Box 6533
Los Osos, CA 93412

Date: September 19, 2017



XOLON SALINAN TRIBE

"PEOPLE OF THE OAKS"

The Xolon Salinan Tribe are the People who have been referred to as the Salinan Indians from Missions San Miguel, San Antonio and Soledad. We have always called ourselves "Xolon Indians." The Federal government called us the "Salinans," because of the Salinas River that runs through most of our ancient territory; hence, we now call ourselves "The Xolon Salinan Tribe," so that everyone will know who we are. Our ancient People lived (documented) along the Central Coast of California, from the northern part of San Luis Obispo – to the Big Sur area to the north – and inland to the Temblor Range. There have been erroneous writings, regarding Natives observed living along the coast, claiming that this area was inhabited by Indians called the "Playanos." This is incorrect. It was the Salinan People – our families – who would go there on a seasonal basis to fish and collect shells for regalia and trade.

P.O. Box 7045,
Spreckels, Ca. 93962

October 20, 2017

Karen R. White
Council Chair
xolon.salinan.heritage@gmail.com

Re: FOLLOW UP, CA. COASTAL COMMISSION, TRIBAL CONSULTATION POLICY.

Good Day Mr. Ainsworth, Mr. Deleplaine,

We apologize for the delay, we have read the "Draft Tribal Consultation Policy" and find it very detailed and informative.

At this time the Xolon Salinan Council agrees it covers all the pertinent expectations and protections for our tribal lands and ancestors.

If you have any further questions, please feel free to contact us.

Thomas Ball
Council Secretary –
MLD/Monitor Coordinator
tom101999@yahoo.com

*Best Regards,
Karen R. White, Council Chair
Xolon Salinan Tribe
831.238.1488*

George Larson
Council Treasurer
smalltownfolks@sbcglobal.net

Council Members:

Linda Castle - elder
Selena Castle
Blaise Haro
Janet Pura-Martinez

Tribal Headwoman

Donna Haro – elder
"AAKLETSE"
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Dina Gilio-Whitaker, M.A.
3323 Paseo Halcon
San Clemente, Ca. 92672
(949) 612-5276

California Coastal Commission
45 Fremont St., Suite 2000
San Francisco, CA 94105-2219
Attention: Noaki Schwartz, Public Information Officer

Dear Noaki,

I write to you in response to our conversation of October 25, with regard to your request for input in the Commission's expanded tribal consultation policy that can fit into its new mandate for an environmental justice framework as part of the Coastal Act.

As I mentioned, I am currently authoring a book on environmental justice as it relates to Native people in the U.S. (tentatively titled *Defending Our Lands: Indigenous Environmental Justice, from Colonization to Standing Rock*, forthcoming from Beacon Press); this will be my second publication on the heels of my previous book, *"All the Real Indians Died Off" and 20 Other Myths About Native Americans* (Beacon Press, 2016), co-authored with Roxanne Dunbar-Ortiz, the acclaimed author of *An Indigenous Peoples History of the United States*. I have shared with you a draft of the first chapter of *Defending Our Lands*, titled "Environmental Justice Theory and Its Limitations for Indigenous Peoples." It outlines a history of EJ theory and its legal frameworks, and raises troubling issues about the reasons mainstream EJ is inadequate for Native people. The chapter documents the history of the EPA's attempts to reform its EJ policy framework to be more responsive to tribal nations, and after more than two years and at great expense, the results were minimal and largely ineffective.

It is my contention as a scholar of Native American and Indigenous studies that the reason the federal government failed to create a satisfactory and responsive EJ policy framework for Native nations is that the entire structure of the federal relationship with tribal nations was not designed to impart any great measure of justice. It was in fact designed to constrain their rights and subject them to a hegemonic relationship with the State (the U.S.). Anybody with expertise in federal Indian law or knowledgeable about history knows this. It is a history that resulted in the structure most Native studies scholars now refer to as settler colonialism, in which the project of the settler State is to eliminate the Native population (and this it does physically, culturally, and discursively) to acquire their lands. At no time, however, has the U.S. ever admitted to this historically-created structure. Nowhere has it ever used the language of colonialism to describe its current relationship. Instead, it routinely whitewashes a profoundly violent and unjust history by publicly proclaiming a government-to-government relationship with tribes. Yet, it is not a relationship built on equity or shared power. Native nations don't even have the right to own the title of their own lands. It is a paternalistic relationship dictated by the U.S., and always in violation of the spirit of the hundreds of treaties the U.S. made with Native nations.

The relationship of the State of California to tribes descends from this model of hegemony, and is designed to conform to it. In some ways, however, California (the “state”), has an even more egregious history with tribal people. Contrary to most popular and romanticized historical narratives, historians have documented a history of premeditated genocide and forced labor carried out by the state (Lindsay, 2012; Madley, 2016; Resendez, 2016), and was funded by state and federal dollars. It orchestrated a system of land theft so thorough that only a miniscule percentage is still in Indian hands. Land laws were so corrupt in California’s early days that they were designed to transfer ownership from Mexican landowners (lands stolen from Indians to begin with); my research shows that this is how, for example, coastal lands in Southern California came to be owned predominantly by whites within just a few decades after statehood.

This history of land theft and genocide is well documented. See, for example, the state-funded project, [*Early California Laws and Policies Related to California Indians*](#) (2002), in addition to some of the more recent publications cited in the previous paragraph.

The question is, in light of this recent history of brutality, land dispossession, slavery, and a political structure designed to maintain a system of domination over Indian lands and lives, what does environmental justice look like? Is it even possible, or is it just an exercise in futility-- too little, too late? My opinion leans in this direction.

I have reviewed the draft Tribal Consultation Policy of August 18, 2017. The proposed policy is an example (as I’ve noted in my draft chapter on the limitations of EJ for tribal nations) of the constraint of any model of meaningful justice by its deferral to federal law. In my opinion, it provides only the smallest measure--a façade, really--of rights to tribes already robbed through the processes of history. As bleak as it sounds, this is a brutally honest assessment of the history that has created the political and legal structure we have today.

The implication is that history cannot be undone, and this is true; but if the goal of the Coastal Commission is truly to impart environmental justice, or at least to try, it’s not enough to wash our hands of this history without acknowledging the fact that the history has resulted in this structure that maintains an unfair, immoral, and even illegal relationship with tribal people.

In this era of human rights consciousness, it is true that the federal relationship with tribes has evolved to a greater recognition of tribal rights within the last half century or so. And that in the international arena, States are beginning to acknowledge Indigenous rights within the modern colonial state system. There is, however, a very long way to go. In my work as a researcher and writer on Indigenous policy issues at the domestic and international levels, I have learned that these changes could only come about through an honest reframing of history through language, especially in policy documents.

This is an opportunity for the state of California to acknowledge its dark history toward California Indians, and its complicity with the federal government in the land theft that now makes it necessary to even have a policy of environmental justice. The Coastal Commission is now in a position to help change the paradigm and accord a more just relationship toward tribal people. It can move toward this paradigm shift through the way its policy documents characterize the long arc of these relationships. Even if the legal experts see themselves as

constrained by law in its current efforts to create an EJ policy framework, it can begin to acknowledge the structure that constrains it.

My suggestion is to include language at the beginning of the draft that goes beyond acknowledging tribal sovereignty (because this is, after all, a delegated, i.e. hegemonic form of sovereignty in federal law, and many California Indians do not even possess this much). Acknowledge the reality of the 18 treaties the federal government made in bad faith with California Indians. Acknowledge the land theft that makes tribal consultation with the goal of environmental justice necessary. Acknowledge the history by using the terms “colonialism” and “genocide.” End the whitewashing of history.

As simple as these suggestions are, I realize they will likely be seen as controversial. But it needs to be said. If California is to continue to see itself as a progressive state, committed to democracy and justice, it needs to continue to evolve beyond its own egregious history and the first step is to acknowledge its past.

I appreciate the opportunity to voice my opinion.

Sincerely and Respectfully,

A handwritten signature in cursive script, reading "Dina Gilio-Whitaker", written in dark ink on a light-colored background.

Dina Gilio-Whitaker

Policy Director and Senior Researcher, Center for World Indigenous Studies
Adjunct Professor of American Indian Studies, California State University San Marcos

References

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Madley, Benjamin. 2016. *An American genocide: the United States and the California Indian catastrophe, 1846-1873*. New Haven: Yale University Press.

Reséndez, Andrés. 2016. *The other slavery: the uncovered story of Indian enslavement in America*. New York: Houghton Mifflin Harcourt.

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200



Date: August 18, 2017

To: California Native American Tribes

From: California Coastal Commission Staff

Subject: **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.

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.

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.

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.

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, terrestrial and marine habitat protection, visual resources, landform alteration, agricultural lands, commercial fisheries, and coastal water quality. 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.

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 a significant impact on Tribal Interests. 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.²)

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

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 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.)

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:

² 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.

(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).

(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.

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. Tribal Interests: Include, but are not limited to: (a) Cultural Resources; or (b) fish, wildlife, plant, water, or similar natural resources.

9. Tribal Sovereignty: 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.

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

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§§ 6254(r), 6254.10, Pub. Res. Code § 21082.3(c)).³ 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 14 below (Item 7. Joint Consultation).

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.

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.


³ 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

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.

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 the contact listed 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 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,⁴ 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 Tribal 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. Commission staff will also attempt to contact any other Tribes that Commission staff has reason to know may have an interest in the Action. 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. 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).⁵ Request that 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

⁴ 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.

⁵ 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 corresponding guidelines adopted by the Governor’s Office of Planning and Research (OPR) November 14, 2005, Tribal Consultation Guidelines.

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.

- (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.

For **federal consistency** reviews (under the Coastal Zone Management Act)⁶, the following procedures shall be used:

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

(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.(A) above.
- (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.

- c. 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 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 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

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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 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 [\[redacted\]](#) 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

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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 North Coast District Office 1385 Eighth Street, Suite 130 Arcata, CA 95521 Phone: (707) 826-8950 Fax: (707) 826-8960 | Counties: Del Norte Humboldt Mendocino |
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|--|---|
| California Coastal Commission North Central Coast District Office 45 Fremont Street, Suite 2000 San Francisco, CA 94105 Phone: (415) 904-5260 Fax: (415) 904-5400 | Counties: Sonoma Marin San Francisco San Mateo |
|--|---|

| | |
|---|---|
| California Coastal Commission Central Coast District Office 725 Front Street, Suite 300 Santa Cruz, CA 95060 Phone: (831) 427-4863 Fax: (831) 427-4877 | Counties: Santa Cruz Monterey San Luis Obispo |
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| | |
|---|--|
| California Coastal Commission South Central Coast District Office 89 S. California Street #200 Ventura, CA 93001 Phone: (805) 585-1800 Fax: (805) 641-1732 | Counties: Santa Barbara Ventura Los Angeles (Ventura Co. line to Pacific Palisades) |
|---|--|

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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

DRAFT



The local and historic
Esselen Tribe of Monterey County
(Protecting sacred sites since 1881)

Our Mission Statement:

To preserve and to protect our cultural heritage and ancestral sacred sites, namely of the Esselen, Rumsen, Chalone, Sureño and Guatcharrone people, which includes but is not limited to the villages of Achasta, Chalon, Echilat, Ensen, Excelen, Esslenajan, Ixchenta, Jojopan, Kuchen, Pachepas, Sargenta-Ruc, and Soccoronda, located within sacred pre-historic and historic tribal lands of Monterey County, California.

November 12, 2017

California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Re: Tribal Consultation Policy in CCC letter dated August 18, 2017

Dear Sir,

Thank you for providing a draft of your tribal consultation policy.

The Esselen Tribe of Monterey County formally request to be consulted regarding the coastal areas of central California to assist your efforts to protect sacred sites.

We are looking forward to being put in touch with the new tribal liaison.

Sincerely,

Tom Little Bear Nason
Tribal Chair
TribalChair@EsselenTribe.com

Cari Herthel
Tribal Steward
EsselenSpirit@EsselenTribe.com

Lorraine Escobar
Acting Vice-Chair
ViceChair@EsselenTribe.com

Sue Morley
Cultural Resources Specialist
Cultural-Resources@EsselenTribe.com



Esselen Tribe of Monterey County
PO BOX 95
Carmel Valley, CA 93924

Office: (831) 659-2153 Fax: (831) 659-0111
Acting Tribal Chair, Tom Little Bear Nason - Cell: (831) 214-5345



CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

W6d

Date: August 18, 2017

To: California Native American Tribes

From: California Coastal Commission Staff

Subject: **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.

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.

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.

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.

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, terrestrial and marine habitat protection, visual resources, landform alteration, agricultural lands, commercial fisheries, and coastal water quality. 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.

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 a significant impact on Tribal Interests. 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.²)

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

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, 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.)

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:

² 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.

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(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).

(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.

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. Tribal Interests: Include, but are not limited to: (a) Cultural Resources; or (b) fish, wildlife, plant, water, or similar natural resources.

9. Tribal Sovereignty: 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.

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

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§§ 6254(r), 6254.10, Pub. Res. Code § 21082.3(c)).³ 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 14 below (Item 7. Joint Consultation).

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.
- 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.

³ 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

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.

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 the contact listed 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 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,⁴ 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 Tribal 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. Commission staff will also attempt to contact any other Tribes that Commission staff has reason to know may have an interest in the Action. 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. 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).⁵ Request that 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

⁴ 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.

⁵ 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 corresponding guidelines adopted by the Governor’s Office of Planning and Research (OPR) November 14, 2005, Tribal Consultation Guidelines.

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.

- (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.

For **federal consistency** reviews (under the Coastal Zone Management Act)⁶, the following procedures shall be used:

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

(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.(A) above.
- (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.

- c. 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 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 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

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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 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 [\[redacted\]](#) 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

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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

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| California Coastal Commission North Coast District Office 1385 Eighth Street, Suite 130 Arcata, CA 95521 Phone: (707) 826-8950 Fax: (707) 826-8960 | Counties: Del Norte Humboldt Mendocino |
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| California Coastal Commission North Central Coast District Office 45 Fremont Street, Suite 2000 San Francisco, CA 94105 Phone: (415) 904-5260 Fax: (415) 904-5400 | Counties: Sonoma Marin San Francisco San Mateo |
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|---|---|
| California Coastal Commission Central Coast District Office 725 Front Street, Suite 300 Santa Cruz, CA 95060 Phone: (831) 427-4863 Fax: (831) 427-4877 | Counties: Santa Cruz Monterey San Luis Obispo |
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| California Coastal Commission South Central Coast District Office 89 S. California Street #200 Ventura, CA 93001 Phone: (805) 585-1800 Fax: (805) 641-1732 | Counties: Santa Barbara Ventura Los Angeles (Ventura Co. line to Pacific Palisades) |
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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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