Department of General Services
TRIBAL CONSULTATION POLICY

Preface

In 2011, Governor Edmund G. Brown Jr. issued Executive Order B-10-11 requiring all state of California agencies and departments to encourage and facilitate communication and consultation with California Indian tribes, as defined further below. Accordingly, the Department of General Services ("DGS") hereby adopts this Tribal Consultation Policy ("Consultation Policy"), which memorializes its commitment to strengthening and sustaining government-to-government relationships between California Indian tribes and the state.

Background: Department of General Services

The Department of General Services (DGS) serves as business manager for the state of California. DGS helps to better serve the public by providing a variety of services to state agencies. DGS is committed to sustainability in its facilities, fleet and purchasing.

DGS Consultation Policy

It is the policy of DGS to encourage and facilitate communication and consultation with tribes, and to seek meaningful input in the development of policies, rules, regulations, projects, plans and activities that may affect tribal communities. The goal is to engage in a timely and interactive process to respectfully seek, discuss and consider tribes' views in an effort to resolve concerns at the earliest opportunity and in a manner that respects and furthers the interest of tribes and the state of California.

The DGS Consultation Policy broadly defines provisions for enhancing the consultation processes of DGS with tribes. This Consultation Policy shall complement, not supersede, any existing laws, rules, statutes or regulations that guide consultation processes with tribes. The DGS Consultation Policy shall not be construed to displace existing policies of the department.

Definitions

For purposes of this Consultation Policy, the following definitions shall apply:

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

Non-federally recognized Indian tribe: Those tribes that are not federally recognized and are on the list maintained by the Native American Heritage Commission (NAHC).

California Indian tribe: Refers to a federally recognized California Indian tribe, as listed on the Federal Register. Only in situations involving cultural resources will a non-federally recognized California Native American tribe that is on the list maintained by the NAHC be included in this definition. The NAHC will provide a list of non-federally recognized California Native American tribes for each instance.

Tribe: Refers to a California Indian tribe.

Tribal leaders: Refers to elected officials of Indian tribes.

Tribal sovereignty: Refers to the unique political status of federally recognized Indian tribes. Federally recognized Indian tribes exercise certain jurisdiction and governmental powers over activities and tribal members within their individual territories. Existing limitations on tribal sovereignty are defined through treaties, acts of Congress, and federal court decisions.

Consultation Policy Principles

Collaboration. DGS is committed to the principle that interaction with tribes shall be regarded as a "partnership" of mutual respect whereby DGS strives to ensure a sound and productive relationship with tribes through the development and maintenance of a meaningful dialogue.

Consultation is a process whereby parties meet and confer to exchange information, compromise, and reach understanding that, when possible, may result in the adoption of mutually beneficial policies and sustainable outcomes. DGS shall work to identify and coordinate policy when there are issues that may pertain to or impact tribes; disseminate public documents and notices; seek opportunities for collaboration; and maintain an ongoing dialogue with tribes.

Communication. Open and respectful communication with tribal leaders is essential. DGS will engage in early, inclusive, and frequent communication with tribal leaders regarding issues pertaining to or impacting tribes. Such communication shall occur on a regular basis; continue throughout changes in leadership; be inclusive and transparent; provide timely notification (see below) and documentation in a manner that provides an adequate review and response period for the parties involved; and be conducted in a manner that is consistently executed with the utmost level of respect, decorum and diplomacy. When a matter involves confidential or culturally sensitive information, DGS will work with tribal leaders to address the sensitivity of such information to the fullest extent possible. All parties in the process should promote respect, shared responsibility, and an open and free exchange of information.

Tribal Liaisons. The director of DGS shall appoint a tribal liaison to be the central point of contact for all tribes. Current contact information for the tribal liaison shall be maintained on DGS' website and the Governor's Tribal Advisor's website. Whenever possible, DGS shall appoint a tribal liaison who understands tribal issues and has experience dealing with tribal governments. The tribal liaison shall be an executive-level DGS employee who has direct access to DGS' executive leadership. The tribal liaison shall ensure that tribal issues are elevated to DGS' executive leadership and to the tribal liaison for the California Government Operations Agency (GovOps) for resolution whenever necessary. The tribal liaison will oversee and implement this Consultation Policy, and ensure that DGS' outreach and communication efforts are consistent with this Consultation Policy. The tribal liaison will be accessible to tribal leaders and will inform those leaders of issues that may affect tribal communities. DGS' tribal liaison will meet with the GovOps tribal liaison and the Governor's Tribal Advisor to review tribal consultation efforts.

Education. In the same spirit of collaboration and communication, the tribal liaison will be the point of contact if at any time the tribal community would like education or information on the services that DGS provides.

The DGS director will encourage the tribal liaison and staff to seek continued education and training to emphasize communication, tribal sovereignty, the unique distinctions of tribes, and the skills and tools necessary for collaboration.

Process. DGS is responsible for implementing a wide range of intergovernmental services that are subject to federal and state laws, regulations, guidelines and restrictions. Within such mandates every attempt will be made to interrelate with tribes in a manner that is timely and respectful, and which clearly identifies internal processes and timeline expectations for the parties involved. Issues that may involve interaction with tribes include California Environmental Quality Act (CEQA) consultations for DGS projects on culturally-affiliated tribal lands and issues relating to state property. DGS led CEQA consultations will be consistent with the provisions of Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014)

Timely Notice. When appropriate, DGS shall engage in early, inclusive and frequent communications with tribal leaders regarding issues which affect, or may affect, tribes or tribal communities. The communication methods will be determined by DGS on a case-by-case basis, with the goal of using the most efficient form of communication for each particular issue. Communication methods may include mailed letters, electronic mail, telephone conferences, tribal consultation sessions and public announcements, depending on the nature and urgency of the issue.

This Consultation Policy recognizes that tribes are located in diverse and sometimes remote regions throughout the state, thereby necessitating the need for clear and adequate notice/outreach prior to consultation or meetings that may require travel by tribal leaders. Contact with tribes should be initiated as early as possible, preferably with no less than 30 calendar days' notice, to provide adequate time for tribes to respond, particularly on substantive matters, and most importantly, to respect tribal protocol and cultural patterns that require consideration, deliberations and consensus. Tribe requests for additional time to prepare for or attend a consultation session or in-person meeting will be honored whenever possible.

Tribes may initiate communication with DGS by contacting the department or DGS' tribal liaison. Tribal liaison contact information shall be maintained on the DGS website. Whenever tribal leaders initiate communication with DGS, the tribal liaison shall be responsible for providing timely information and updates to the relevant tribal leaders and to the GovOps tribal liaison until the issue is resolved. Acknowledgement of receipt of official tribal communication will be provided within three business days, and whenever possible, a substantive response will be provided within 30 calendar days. If a substantive response will require more than 30 calendar days, the DGS tribal liaison will provide an estimated date for the response to the relevant tribal leaders as well as to the GovOps tribal liaison.

Delivery of Notice to Tribes. Notices for consultation with tribes shall be sent directly to elected tribal leaders, unless explicitly delegated in a written request on tribal letterhead, regarding issues which affect, or may affect, their tribes, tribal communities or culturally-affiliated tribal lands. The notices will be sent via return receipt requested certified mail; notices will be sent via email upon specific request.

Through this Consultation Policy, DGS' intent is to strengthen its ability to resolve issues of mutual concern with tribes. While the communication and collaboration encouraged by this Consultation Policy provides increased ability to solve problems, it may not result in a resolution of all issues. Therefore, inherent in this Consultation Policy is the right of DGS and tribes to elevate an issue of importance to any decision-making authority of another entity including, when appropriate, the highest levels of state and tribal government.

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

Effective Date

The DGS Consultation Policy shall be effective on the date executed by the department director and shall be posted on the DGS website. It shall be subject to periodic review to ensure provisions are current and consistent with state policy and enacted legislation.

Pursuant to Executive Order B-10-11 dated September 19, 2011, the Department of General Services hereby adopts this Tribal Consultation Policy.

Signed:_____ Date: 10/19/16

Daniel C. Kim, Director,
Department of General Services