

CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES
ADMINISTRATIVE MANUAL

SUBJECT		COORDINATOR	
Cal OES Tribal Consultation/Collaboration Policy		Office of Tribal Coordination	
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BACKGROUND

On September 19, 2011, Governor Edmund G. Brown Jr. issued Executive Order B-10-11, which directs, among other things, state agencies and departments to implement effective government-to-government consultation with California Federally Recognized Tribes. When state agencies and departments are developing policies, laws, or regulations that could affect the tribes, they are encouraged to communicate and collaborate with the Tribes in this process. In July 2012, the California Governor's Office of Emergency Services (Cal OES) established the Office of Tribal Coordination (Tribal Office). The Tribal Office is responsible for the coordination of Cal OES' activities necessary to fulfill the intent of this Executive Order and this Consultation/Coordination policy.

Cal OES hosted a consultation session on October 3, 2014, at the United Auburn Indian Community facility in Lincoln, California. In addition, in order to maximize Cal OES' outreach to California Federally Recognized Tribes, Cal OES coordinated three Regional webinars in Inland, Coastal, and Southern Regions. This policy contains input from the participants, and incorporates standard-policy information from various state consultation policies.

POLICY

Cal OES' vision is to be the leader in emergency management and homeland security through dedicated service to all. We will realize our vision by building a safer and more resilient California, leveraging effective partnerships, developing our workforce, enhancing our technology, and maintaining a culture of continuous improvement. Our mission is to protect lives and properties, build capabilities, and support our communities for a resilient California. We achieve our mission by serving the public through effective collaboration in preparing for, protecting against, responding to, recovering from, and mitigating the impacts of all hazards and threats.

To further the Cal OES' mission, this policy provides the framework to facilitate communication and maintain collaboration between Cal OES and California Federally Recognized Tribes. This policy establishes an effective and informed consultation process where all parties contribute to collaborative consensus. All parties in the process should promote respect, shared responsibility, and an open and free exchange of information.

This policy sets forth a commitment to become informed about the cultural setting of California Federally Recognized Tribes, their emergency management/homeland security issues, and Tribal histories for the purpose of developing strong meaningful partnerships with all Tribes.

AUTHORITY

Public Law 103-454 (108 Stat. 4791, 4792)

Public Law 83-280 (67 Stat. 588)

25 U.S.C. § 450 et seq.

25 U.S.C. § 458a et seq.

Federal Code of Regulations 25 C.F.R. Parts 83, 115

Governor's Executive Order B-10-11

Applicable Cal OES Government Codes and regulations sections

DEFINITIONS

For purposes of this policy, the following terms shall be defined as below:

Federally Recognized Tribes: "Indian tribe or Tribe" means an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe. (Act of 1994, 25 U.S.C. §479a.)

Indian Organizations: The unique state-tribal relationship with California Federally Recognized Tribes is based in part on the fundamental concept of government-to-government relations. Other statutes and policies exist that allow for state coordination/collaboration with Indian organizations that, by the nature of their business, serves Indian people who may be affected if excluded from the collaboration or coordination process.

Tribal Officials: Elected or duly appointed officials of Indian tribal governments.

Tribal Sovereignty: Tribal sovereignty refers to the inherent authority of Federally Recognized Tribes to govern themselves within the borders of the United States of America. The federal government recognizes tribal nations as "domestic dependent nations". The Constitution and other federal laws grant local sovereignty to tribal nations, but do not grant full sovereignty equivalent to that of foreign nations, hence the term "domestic dependent nations." Existing limitations to these authorities are defined through acts of Congress, treaties, and federal court decisions.

Indian Country (or Tribal Lands): Indian country includes: a) all land within the limits of an Indian reservation under the jurisdiction of the United States government, b) all dependent Indian communities, and c) all Indian allotments still in trust, regardless of whether they are located within reservations. The term includes land owned by non-Indians, as well as municipalities incorporated by non-Indians if they are within the boundaries of an Indian reservation.

Collaboration: Communicating and working together through mutual respect and cooperation toward a common purpose. Communications between Cal OES and California Federally Recognized Tribes will be conducted with respect for tribal protocols and will strive to achieve consensus in problem solving and issue resolution.

Consultation: A process for government-to-government dialogue between Cal OES and Federally Recognized Tribes regarding proposed state actions in a manner that is intended to secure meaningful and timely tribal input.

GUIDING PRINCIPLES

To the extent feasible and legally permissible, Cal OES shall be guided by the following principles and best practices to improve communication and collaboration with all Federally Recognized Tribes. In order to protect public health and safety, this policy shall not prevent Cal OES from taking timely action to fulfill its legal obligation or to carry out its mandated duties under delegated federal programs.

Cal OES and its representatives shall:

- Acknowledge and respect tribal sovereignty, as defined in this policy
- Understand that Federally Recognized Tribes have a unique government-to-government relationship with federal and state government
- Conduct intergovernmental communications with California Federally Recognized Tribes in a manner that is respectful and considerate
- Understand the importance of communication and collaboration with California Federally Recognized Tribes before, during, and after events
- Encourage collaborative efforts between California Federally Recognized Tribes, local, state, and federal government entities to resolve issues of mutual concern and to foster meaningful partnerships
- Encourage county collaboration with California Federally Recognized Tribes utilizing emergency management and regional forums in order to maximize their inclusion and participation
- Identify and include California Federally Recognized Tribes in the decision-making processes that may affect tribal lands, processes, and rights of self-governance
- When appropriate, Cal OES will coordinate with Indian Organizations for inclusion in the communication process
- When appropriate, consider the potential impact of Cal OES activities or programs on tribal governance, lands, and cultural resources
- Commit to assess and review this policy to ensure it is effective

CONSULTATION PROCESS

The Cal OES consultation process will consist of four phases: **Identification**, **Notification**, **Input**, and **Follow-up**:

1. **Identification Phase:** Cal OES identifies activities that *may* be appropriate for consultation. The identification phase will include a determination of the complexity of the activity, its potential implications for Tribes, and/or any time resource constraints relevant to the

consultation process. This phase should also include an initial identification of the potentially affected tribes.

- 2. Notification Phase:** Cal OES notifies the tribes of activities that may be appropriate for consultation. Notification can occur in a number of ways depending on the nature of the activity and the number of tribes potentially affected. For example, Cal OES may send out a mass mailing to all Tribes, may contact Tribal governments by telephone, or may provide notice through other agreed-upon means. To the extent feasible, Cal OES shall honor tribal preferences regarding the specific mode of contact. Notification includes sufficient information for tribal officials to make an informed decision about the desire to continue with consultation and sufficient information to understand how to provide informed input. Notification should occur sufficiently early in the process to allow for meaningful input by tribes, and to the extent possible use a 45 day notice period.
- 3. Input Phase:** Tribes provide input to Cal OES on the consultation matter. This phase may include a range of interactions such as written communications, phone calls, meetings, and other appropriate interactions depending upon the specific circumstances involved. Cal OES coordinates with tribal officials during this phase to be responsive to their needs for information in order to provide opportunities to receive and discuss input. During this phase, Cal OES considers the input regarding the activity in question. Cal OES may need to undertake subsequent rounds of consultation if there are significant changes in the originally-proposed activity or as new issues arise.
- 4. Follow-up Phase:** Cal OES provides feedback to the tribes involved in the consultation to explain how their input was considered in the final action. This feedback should be a formal, written communication involving the highest-level officials from both Cal OES and Tribes in the consultation process.

In addition to Cal OES deciding what matters require consultation, tribal officials may request a formal consultation with the department on those matters that are deemed consistent with this policy. The process for Tribal Governments is as follows:

- Submit a written request signed by the Tribal Chairman or Council to Cal OES Tribal Advisor, and to the extent possible use a 45 day notice period.
- Include the specific topic to be covered; any relevant background information; who will be attending; and any other key information that can assist Cal OES in ensuring the appropriate program representation to adequately address the matter.
- Cal OES shall evaluate the tribal government's request based in part on the nature of consultation request, past consultation efforts, available resources, and other relevant factors and coordinate the meeting accordingly.

COORDINATION AREAS

Although not all of the areas listed below require a formal consultation session with California Federally Recognized Tribes, there are many areas in which Cal OES can improve its service and inclusion of all Tribes. Cal OES will work to implement the following actions to achieve its guiding principles and better support all Tribes. Cal OES is able to coordinate and collaborate with Indian Organizations individually or collectively when providing proper Resolutions of Authority. Such coordination and collaboration is encouraged to the extent that there is not a conflict of interest with the consultation process with California Federally Recognized Tribes.

Cal OES Office of Tribal Coordination:

- Tribal Office is responsible for the collaboration with Tribes on matters relating to the implementation of the Cal OES mission, EO B-10-11 and this policy
- Cal OES Tribal Advisor is the primary point of contact (POC) for matters relating to improving and maintaining communication and collaboration between Cal OES and California Federally Recognized Tribes and Indian Organizations. Other parts of Cal OES may have direct contact with Tribes and will ensure the Tribal Office is apprised of communications. Cal OES Tribal Advisor will also be responsible for briefing the Director, Executive staff, and the Governor's Tribal Advisor's Office of any significant issues or concerns as they arise
- Within each Cal OES Regions (Inland, Coastal, and Southern), a Tribal Liaison Point of Contact (POC) will be designated to work with the Tribal Office to assist with coordination and collaboration internally and externally to Cal OES. This would include planning, preparedness, response, and recovery initiatives and programs in Tribal communities
- Develop measures of success for Cal OES programs to evaluate progress in implementing the policy

Tribal Representation:

- Encourage representation of Tribal Leadership to participate on existing Emergency Management committees, boards and councils, such as Mutual-Aid Regional Advisory Committees, Public Safety Communication Committees, Standardized Emergency Management Committees, and Local Emergency Planning Committees. The Tribal Office will coordinate with these committees to promote Tribal representation in order to address matters and issues of mutual concern.
- Assist Cal OES with reviewing the Consultation Policy as needed to ensure ongoing analysis of programs and initiatives

Training and Exercises:

- Provide training to Cal OES' executives, managers, and employees on Tribal Cultural Awareness in order to effectively implement the policy
- Upon request by Federally Recognized Tribes and/or eligible Indian Organizations, Cal OES may provide information, training, and technical assistance when appropriate and feasible

Communication and Coordination:

- Develop a Tribal communication protocol that will be followed by Cal OES in order to promote appropriate collaboration with Tribes and Indian Organizations.
- Foster Tribal guidance with local governments to coordinate efforts with the Counties, Tribes, and Indian Organizations
- Ensure public documents, notices, and information to Federally Recognized Tribes and Indian Organizations are readily accessible to Tribes that may not have electronic capabilities
- To the extent possible, conduct meetings, outreach and workshops at times and in locations that facilitate Tribal participation
- Establish a mechanism to obtain relevant and accurate data from Federally Recognized Tribes. This mechanism will be consistent with established communication protocol and guidance with the Federally Recognized Tribes as described in this policy. This tool will be implemented when conducting research that may potentially impact tribal-lands or tribal cultural resources

Eligibility for Financial Assistance Programs:

- Ensure California Federally Recognized Tribes are informed of Federal and State Homeland Security/Emergency Management grant funding opportunities, including grant workshops. Provide links to Cal OES' Grant Management website that include all known grant opportunities

Cooperative Agreements:

- Explore Mutual Aid Agreements (MAA), Memorandums of Understanding (MOUs), Memorandums of Agreement (MOAs), or other cooperative agreements with California Federally Recognized Tribes on specific projects or subject matters as appropriate

DISCLAIMER

This policy is intended solely for the guidance of employees of Cal OES and those political subdivisions acting in accordance with the Emergency Services Act. This policy is not intended, and should not be construed, to define the legal relationship between Cal OES and the California Federally Recognized Tribes. This policy is not a regulation, and it does not create, expand, limit, waive, or interpret any legal rights or obligations.

QUESTIONS

Please direct all questions regarding this policy to the Cal OES Office of Tribal Coordination, at TribalAffairs@caloes.ca.gov.