

DEPARTMENT OF HUMAN RESOURCES

ADMINISTRATIVE MANUAL

TRIBAL CONSULTATION POLICY

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Preface

In 2011, Governor Edmund G. Brown Jr. issued Executive Order B-10-11 requiring all State of California agencies and departments to encourage communication and consultation with California Indian Tribes, as defined further below. Accordingly, the Department of Human Resources (“CalHR”) hereby adopts this Tribal Consultation Policy (“Consultation Policy” or “Policy”), which memorializes its commitment to strengthening and sustaining government-to-government relationships between California Indian Tribes and the state.

Background: Department of Human Resources

CalHR represents the Governor as the “employer” in all matters concerning human resources and employer-employee relations in state civil service. CalHR is responsible for all issues related to employee salaries and benefits, job classifications, civil rights,

training, workforce development, exams, recruitment and retention. For most employees, many of these matters are determined through the collective bargaining process managed by CalHR.

CalHR Consultation Policy

This Tribal Consultation Policy aims to ensure effective government-to-government communication and consultation between CalHR and California Indian Tribes, consistent with the mission of CalHR. CalHR's goal is to engage in the timely and interactive process to respectfully seek, discuss, and consider Tribes' views in an effort to resolve concerns at the earliest opportunity and in a manner that respects and furthers the interests of Tribes and the state.

CalHR will work cooperatively with all Tribes and consult with Tribal representatives on department legislation, regulations, rules, and policies having the potential to affect Tribal communities. CalHR is responsible for meaningful consultation with the Tribes and their representatives in a manner which promotes regular and timely consultation through communication and collaboration.

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

Definitions

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

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

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

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

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 its territory. Existing limitations on Tribal sovereignty are defined through acts of Congress, treaties, and federal court decisions.

Consultation Policy Principles

Collaboration

CalHR is committed to the principle that interaction with Tribes shall be regarded as a “partnership” of mutual respect whereby CalHR 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. CalHR 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 representatives is essential. CalHR 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, CalHR will work with tribal representatives 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 CalHR 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 CalHR’s website and the Governor’s Tribal Advisor’s website. Whenever possible,

CalHR shall appoint a Tribal Liaison who understands Tribal issues and has experience dealing with Tribal governments. The Tribal Liaison shall be an executive-level CalHR employee who has direct access to CalHR's executive leadership. The Tribal Liaison shall ensure that Tribal issues are elevated to CalHR's 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 Policy, and ensure that CalHR's outreach and communication efforts are consistent with this Policy. The Tribal Liaison will be accessible to Tribal representatives and inform those representatives of issues that may affect Tribal communities. CalHR's Tribal Liaison will meet with the GovOps Tribal Liaison and the Tribal Advisor to the Governor 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 CalHR provides such as state civil service salaries and benefits, job classifications, targeted recruitment or online posting of job exams and vacancies.

The CalHR 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

CalHR is responsible for implementing a wide range of inter-governmental 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.

Timely Notice

When appropriate, CalHR shall engage in early, inclusive and frequent communications with Tribal leaders and representatives regarding issues which affect, or may affect, Tribes or tribal communities. The communication methods will be determined by CalHR on a case-by-case basis, with the goal of using the most efficient form of communication for the 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 or representatives. Contact with Tribes should be initiated as early as possible, preferably with no less than thirty 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 CalHR by contacting the department or the CalHR's Tribal Liaison. Tribal Liaison contact information shall be maintained on CalHR's website. Whenever Tribal representatives initiate communication with CalHR, the Tribal Liaison shall be responsible for providing timely information and updates to the relevant Tribal leaders and representatives 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 thirty calendar days. If a substantive response will require more than thirty calendar days, the Tribal Liaison will advise the relevant Tribal leaders and representatives as well as the GovOps Tribal Liaison, to provide an estimated date for the response.


Through this Consultation Policy, the intent of CalHR is to strengthen the ability of CalHR to resolve issues of mutual concern with Tribes. While the communication and collaboration encouraged by this 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 CalHR 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 Policy implements Executive Order B-10-11 and GovOps Tribal Consultation Policy, and is intended to improve CalHR's internal management and communication; it is not a regulation and does not supersede, create, expand, limit, waive or interpret any state or federal legal rights or obligations including but not limited to treaty rights, immunities or jurisdiction of any Tribe or the State of California.

Effective Date

The CalHR Consultation policy shall be effective on the date executed by the Department Director and shall be posted on the CalHR 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 Human Resources hereby adopts this Tribal Consultation Policy.

Signed:  Date: 9/2/16

Richard Gillihan, Director
Department of Human Resources