

CAL/EPA POLICY MEMORANDUM

	NUMBER: CIT-09-01
SUBJECT: CAL/EPA POLICY FOR WORKING WITH CALIFORNIA INDIAN TRIBES	DATE ISSUED: 10/19/09
	EXPIRES: UNTIL RESCINDED
REFERENCES:	CATEGORY: CALIFORNIA INDIAN TRIBES

STATEMENT OF PURPOSE

The mission of the California Environmental Protection Agency (Cal/EPA) is to restore, protect and enhance the environment, to ensure public health, environmental quality and economic vitality.

This policy provides a framework for Cal/EPA and its Boards, Departments and Offices (BDOs) to improve and maintain communication and collaboration between Cal/EPA, its BDOs, and California Indian Tribes to further the mission of Cal/EPA.

This policy also provides a commitment to educate appropriate staff, to become informed about the cultural setting of California Indians, their environmental issues and tribal histories, for the purpose of improving Cal/EPA's understanding of and connection to California Indian Tribes.

DEFINITIONS

For purposes of this policy, the following terms shall have the meanings defined below:

California Indian Tribe: A federally-recognized California Indian Tribe (as listed on the Federal Register). With respect to cultural resources, a federally-recognized Indian Tribe and a non-federally recognized California Native American Tribe that is on the California Tribal Consultation List maintained by the Native American Heritage Commission (NAHC).

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. 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.

Indian Country [or Tribal Lands]: Have the same meaning as the term "Indian country" in title 18 United States Code section 1151 (see Statutory References).

Collaboration: Refers to California Indian Tribes and Cal/EPA and its BDOs communicating and working together to resolve respective issues of concern and/or mutual interest. This exchange is conducted by respecting the protocols each respective tribe has established for contacting its governing body or its delegated official. This exchange is also conducted through the Governor's appointed Agency Secretary, BDO Chairperson or Executive Director, or their delegated representatives.

BACKGROUND

The Office of the Secretary of Cal/EPA oversees and coordinates the activities of the following six BDOs: the Air Resources Board; the Department of Pesticide Regulation; the Department of Toxic Substances Control; the Integrated Waste Management Board; the Office of Environmental Health Hazard Assessment; and the State Water Resources Control Board.

Cal/EPA and its BDOs understand that protecting California's environment is a major undertaking that involves not only communicating and collaborating with federal and state agencies, local governments, and non-governmental organizations but also communicating and collaborating with California Indian Tribes.

California's environmental regulatory system is a complex framework, with training, compliance assistance, inspection, permitting and enforcement activities carried out by a number of federal, state and local government agencies. In order to fulfill Cal/EPA's mission, it is essential to understand the unique history of California Indian Tribes. By learning about tribal history, environmental issues, and cultural places, we can begin to put into context how the laws, programs and processes that Cal/EPA and its BDO's administer relate to California Indian Tribes.

California has the second largest number of federally-recognizedⁱ tribes and, according to the 2000 U.S. Census, the largest Native American population in the United States. In California, there are 109 tribes that are recognized by the federal government. There are also indigenous communities which, although they existed prior to the formation of the United States, are not currently recognized as sovereigns by the federal government. At this time, there are 89 non-federally recognized California Indian Tribes of which 72 are engaged in seeking federal recognition. All California Indian Tribes, whether officially recognized by the federal government or not, may have environmental, economic, and public health concerns that are different from the concerns of other Tribes or from the general public. These differences may exist due to subsistence lifestyles, unique cultural beliefs and traditions, and/or specific connections to areas of California that are their ancestral homelands.

Cal/EPA recognizes that actions outside Indian Country may affect the environment, public health or economic well being of California Indian Tribes and its residents, just as the actions within Indian Country may affect the environment, public health or the economy outside those

ⁱ 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 eligibility for the programs, services, and other relationships established for the United States for Indians, because of their status as Indians. (See 25 C.F.R. § 83.2.)

borders. Cal/EPA also recognizes that federally-recognized tribes may enact tribal civil regulations that affect natural resources, public health and environmental protection, and that they may assume treatment in the same manner as a state under certain federal environmental laws such as the Clean Water Act and the Clean Air Act.

In addition to working with other federal, state, local governments, and non-governmental organizations, Cal/EPA has an interest in working in collaboration with California Indian Tribes to pursue its mission.

GUIDING PRINCIPLES

To improve communication and collaboration, Cal/EPA and its BDOs should, to the extent feasible and legally allowable, be guided by the following principles and best practices. Nothing in this policy shall be construed to prevent Cal/EPA or its BDOs from taking timely action to fulfill their legal obligations to protect the public health and safety, or the environment; or to carry out federally-mandated duties under delegated federal programs. Cal/EPA and its BDOs shall:

1. Acknowledge and respect tribal sovereignty, as defined in this policy.
2. Understand that federally-recognized tribes have a unique relationship with the federal government.
3. Understand the importance of communication and collaboration with California Indian Tribes.
4. Communicate with California Indian Tribes in a manner that is respectful and considerate.
5. Seek to identify and include federally-recognized California Indian Tribes in decision-making processes that affect tribal lands.
6. Seek to identify and include federally-recognized and non-federally recognized California Indian Tribes in decision-making processes that affect cultural resources.
7. Recognize and respect the cultural resources of California Indian Tribes, whether or not on tribal lands.
8. Where appropriate, consider the potential impact of our activities or programs on tribal lands and cultural resources.
9. Encourage collaborative efforts between the California Indian Tribes and federal, state, and local government entities to resolve issues of mutual concern.
10. Promote efforts of California Indian Tribes to develop and expand environmental programs, and to achieve compliance with environmental laws.

ACTION PLAN

Cal/EPA and its BDOs will work together to implement the following actions to achieve its guiding principles, to the extent legal and practicable:

1. Establish a Tribal Stakeholder Group (with rotating membership) to discuss environmental issues and projects involving California Indian Tribes. The Tribal Stakeholder Group will include representatives from federally-recognized and non-federally recognized California Indian Tribes. The Tribal Stakeholder Group will meet with the Secretary of Cal/EPA and the heads of each BDO, or their designees, at least once each calendar year.
2. Designate a tribal liaison within Cal/EPA and within each BDO as a central point of contact for California Indian Tribes.
3. Develop a communication protocol that will be followed by Cal/EPA and its BDOs, and that will promote appropriate collaboration with California Indian Tribes.
4. Establish a process to disseminate public documents, notices and information to California Indian Tribes, and make these documents readily accessible to tribes that may not have electronic capabilities.
5. Establish a process to conduct meetings, outreach and workshops at times and in locations that facilitate tribal participation.
6. Provide training to appropriate executive staff, managers, supervisors, and employees on how to implement this policy.
7. Establish a mechanism to obtain relevant and available information, studies and data from California Indian Tribes when conducting research or environmental studies that relate to, or could impact, tribal lands or cultural resources.
8. Assess eligibility of California Indian Tribes for Cal/EPA financial assistance programs such as grants, loans and scholarships.
9. Upon request by a California Indian Tribe, provide training and technical assistance, and share data, where appropriate.
10. Develop Memorandums of Understanding (MOUs), Memorandums of Agreement (MOAs), or other cooperative agreements with California Indian Tribes on specific projects or subject matters, as appropriate.

DISCLAIMER

This policy is intended solely for the guidance of employees of Cal/EPA and its BDOs and does not extend to other governmental entities. This policy is not intended, and should not be

construed, to define the legal relationship between Cal/EPA or its BDOs and the California Indian Tribes. This policy is not a regulation, and it does not create, expand, limit, waive, or interpret any legal rights or obligations.

STATUTORY REFERENCES

Federal

Title 18 United States Code section 1151: “Except as otherwise provided in sections 1154 and 1156 of this title, the term ‘Indian country’, as used in this chapter, means (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.”

State

Government Code section 11019.8: “All state agencies, as defined in Government Code section 11000, are encouraged and authorized to cooperate with federally recognized California Indian tribes on matters of economic development and improvement for the tribes.”

Government Code section 65040.12(e): Provides a definition of environmental justice with regard to the Office of Planning and Research as the coordinating agency for environmental justice as: “the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.”

Public Resources Code section 5024.1: Establishes a California Register of Historical Resources as an authoritative guide in California to be used by state and local agencies, private groups, and citizens to identify the state's historical resources and to indicate what properties are to be protected, to the extent prudent and feasible, from substantial adverse change.

Public Resources Code section 5097.9 et seq.: “Non-Interference With Native American Religious Expression: No public agency, and no private party using or occupying public property, or operating on public property, under a public license, permit, grant, lease, or contract made on or after July 1, 1977, shall in any manner whatsoever interfere with the free expression or exercise of Native American religion as provided in the United States Constitution and the California Constitution; nor shall any such agency or party cause severe or irreparable damage to any Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, except on a clear and convincing showing that the public interest and necessity so require.” This chapter establishes the Native American Heritage Commission, and specifies its powers and duties.

Public Resources Code section 21000 et seq.: California Environmental Quality Act of 1970 (CEQA) declares that it is state policy to "take all action necessary to provide the people of this state with...historic environmental qualities." It further states that public or private projects financed or approved by the state are subject to environmental review by the state. All such projects, unless entitled to an exemption, may proceed only after this requirement has been satisfied. CEQA requires detailed studies that analyze the environmental effects of a proposed project. In the event that a project is determined to have a potential significant environmental effect, the act requires that alternative plans and mitigation measures be considered. CEQA includes historic and archaeological resources as integral features of the environment.

Public Resources Code section 71110: "The California Environmental Protection Agency, in designing its mission for programs, policies, and standards, shall do all of the following: (a) Conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations of the state. (b) Promote enforcement of all health and environmental statutes within its jurisdiction in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations in the state. (c) Ensure greater public participation in the agency's development, adoption, and implementation of environmental regulations and policies. (d) Improve research and data collection for programs within the agency relating to the health of, and environment of, people of all races, cultures, and income levels, including minority populations and low-income populations of the state. (e) Coordinate its efforts and share information with the United States Environmental Protection Agency. (f) Identify differential patterns of consumption of natural resources among people of different socioeconomic classifications for programs within the agency."

Questions

Please direct all questions regarding this policy to Cynthia Gomez, the Assistant Secretary of Environmental Justice and Tribal Governmental Affairs, at cgomez@calepa.ca.gov or (916) 323-2559.

_____(Original Signed By)_____
LINDA S. ADAMS
Secretary for Environmental Protection