



# Office of Environmental Health Hazard Assessment Policy Memorandum

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<b>Subject</b> Consultation with California Native American Tribes		

## STATEMENT OF PURPOSE

The mission of the Office of Environmental Health Hazard Assessment (OEHHHA) is “to protect and enhance the health of Californians and our state’s environment through scientific evaluations that inform, support and guide regulatory and other actions.”<sup>1</sup>

This policy provides a framework for OEHHHA to establish and maintain effective government-to-government relationships and engage in meaningful consultation with California Native American Tribes.

This policy demonstrates OEHHHA’s commitment to understanding the culture, history and practices of California Native Americans as these relate to their environmental and public health concerns. Such understanding will serve to enhance OEHHHA’s activities, policies, and decision-making processes.

## BACKGROUND

California has the second largest number of federally-recognized Tribes and, according to the 2010 US Census, the largest Native American population in the United States. There are over 180 Tribes in California, more than 100 of which are recognized by the federal government. Federally-recognized Tribes may enact Tribal codes that affect natural resources, public health and environmental protection, and they may apply for treatment in the same manner as a state under certain federal environmental laws such as the Clean Water Act and the Clean Air Act.

All California Native American 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 the general public. These differences may exist due to unique lifestyles, cultural beliefs, traditions, and specific connections to areas of California that are their ancestral homelands.

For definitions of terms, see Appendix A.

<sup>1</sup> About OEHHHA, see <https://oehha.ca.gov/about>.

## **GUIDING PRINCIPLES**

OEHHA will be guided by the California Environmental Protection Agency (CalEPA) Tribal Consultation Policy and by the following principles and best practices to improve and maintain effective government-to-government relationships and consultation with California Native American Tribes:

1. Acknowledge and respect Tribal sovereignty.
2. Understand that federally-recognized Tribes have a unique trust relationship with the federal government.
3. Recognize that all California Native American Tribes represent distinct and independent governmental entities with specific beliefs, traditions and unique connections to areas of California that are their ancestral homelands.
4. Communicate and consult with California Native American Tribes during the initial phase of decision-making processes that may affect Tribal lands, people, or cultural resources.
5. Recognize and respect the cultural resources of California Native American Tribes, whether or not the cultural resources are located on Tribal lands.
6. Acknowledge the need for confidentiality regarding places, land, people and cultural resources with traditional Tribal cultural significance.
7. Consider the potential impact of the OEHHA's activities or programs on Tribal people, lands and cultural resources.
8. Encourage collaborative efforts between California Native American Tribes and federal, state, and local government entities to resolve issues of mutual concern.

## **ACTION PLAN**

OEHHA will work together with CalEPA to implement the following actions to achieve these guiding principles, to the extent legal and practicable:

1. Participate in meetings of and solicit input from the CalEPA Tribal Advisory Committee regarding environmental issues and projects involving California Native American Tribes.
2. Designate a Tribal liaison for OEHHA who will serve as a central point of contact for California Native American Tribes. At least once per year, brief OEHHA managers on Tribal activities and solicit input on projects that may impact Tribes.

3. As specific Tribal-related activities develop, identify a point person to handle communication with interested Tribes and the affected program(s).
4. Follow CalEPA's Tribal consultation protocol.
5. Promote efforts of California Native American Tribes to develop and expand environmental programs through training, outreach, and technical assistance.
6. Provide training to appropriate executive and mid-level managers, supervisors, and staff to improve OEHHA's ability to carry out meaningful consultation and communication efforts with California Native American Tribes.
7. Request relevant and available information, studies and data from California Native American Tribes when conducting research or environmental studies that relate to or could impact Tribal people, lands or cultural resources.
8. Upon request by a California Native American Tribe, provide training and technical assistance, and share data, as resources allow.
9. Develop Memorandums of Understanding (MOUs), Memorandums of Agreement (MOAs), or other cooperative agreements with California Native American Tribes on specific projects or subject matters, as appropriate.
10. Provide input regarding OEHHA's consultation and other Tribal-related activities to CalEPA's annual report on these matters.

## **DISCLAIMER**

This policy is intended solely for the guidance of employees of OEHHA and does not extend to other governmental entities. This policy is not intended, and should not be construed, to define the legal relationship between OEHHA and California Native American Tribes. This policy is not a regulation, and it does not create, expand, limit, waive, or interpret any legal rights or obligations. Nothing in this policy shall be construed to prevent OEHHA from taking timely action to fulfill its legal obligations to protect public health and safety and the environment.

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Director

## APPENDIX A – DEFINITIONS

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

**California Native American 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 Tribal government on the California Tribal Consultation List maintained by the California Native American Heritage Commission.

**Communication:** Refers to the dissemination, exchange or sharing of information between OEHHA and California Native American Tribes.

**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 Native American 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.)<sup>2</sup>

**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. (Title 25 United States Code section 83.2)

**Indian Country or Tribal Lands:** These terms have the same meaning as the term "Indian country" in United States Code of Federal Regulations, title 18, section 1151: (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.

**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.

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<sup>2</sup> For review under the California Environmental Quality Act, a specific consultation process is required for certain proposed projects that have a notice of preparation or a notice of negative declaration or mitigated negative declaration filed on or after July 1, 2015. Public Resources Code sections 21080.3.1, 21080.3.2, 21082.3, and 21084.2. For purposes of this consultation, Public Resources Code section 21083.09 further requires the Office of Planning and Research, by July 1, 2016, to prepare and develop revisions to California Environmental Quality Act guidelines that separate the consideration of paleontological resources from Tribal cultural resources and add consideration of Tribal cultural resources with relevant sample questions.