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**D R A F T**  
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## Tribal Consultation Policy November 2013

### **Preface**

California is proud to be the home of more Native American residents than any other state. The State of California recognizes and reaffirms the inherent right of California Native American Tribes (Tribes) to exercise sovereign authority over their members and territory.

In 2011 Governor Edmund G. Brown Jr. issued Executive Order B-10-11 requiring all State agencies to encourage communication and consultation with Tribes. Accordingly, the California State Transportation Agency (CalSTA or Agency) hereby adopts this Tribal Consultation Policy (Consultation Policy), which memorializes this agency's commitment to strengthening and sustaining government-to-government relationships between Tribes and the State. For purposes of Executive Order B-10-11 and this Consultation Policy, the terms "Tribe," "California Indian Tribe," and "tribal" include all Federally Recognized Tribes and other California Native Americans.

### **Background: California State Transportation Agency (CalSTA)**

Governor Brown proposed the Government Reorganization Plan (GRP2) in 2012 to streamline and reorganize agencies and departments of the Executive Branch of State government. The GRP2, which was approved by the Legislature, placed key transportation functions under one agency, the California State Transportation Agency (CalSTA). The GRP2 went into effect on July 1, 2013, at which time an Agency Secretary was appointed to oversee the new CalSTA and to coordinate policies and programs of the transportation-related entities within the jurisdiction of CalSTA.

CalSTA is comprised of the following departments, programs and entities:

- California Department of Transportation ..... (Caltrans)
- Department of Motor Vehicles ..... (DMV)
- California Highway Patrol ..... (CHP)
- High-Speed Rail Authority ..... (HSRA)
- California Transportation Commission ..... (CTC)
- Office of Traffic Safety ..... (OTS)
- Board of Pilot Commissioners ..... (BOPC)

## **CalSTA Consultation Policy**

CalSTA endorses government-to-government communication with Tribes with a strong emphasis on fostering *mutual respect* among all parties. This Consultation Policy embodies an ongoing process for establishing productive and long-lasting relationships with Tribes and is supported by the Agency Secretary.

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

The CalSTA Consultation Policy was developed with direct input from Tribes. Five guiding principles were identified: collaboration, communication, education, process, and timely notice. The guiding principles are to be executed by CalSTA and department employees in a good-faith manner to facilitate effective consultation practices and promote cooperation and efficiencies relative to tribal consultation. These guidelines are to be acknowledged by CalSTA and its departments when drafting, updating or implementing consultation policies pursuant to Executive Order B-10-11.

### **Consultation Policy Guidelines**

#### *Collaboration.*

CalSTA is committed to the principle that interaction with Tribes shall be regarded as a “partnership” of mutual respect whereby the Agency and its constituent departments strive to ensure a sound and productive relationship with tribal governments through the development and maintenance of a meaningful dialogue.

Consultation is a process whereby parties meet and confer to exchange information, compromise, and reach understandings that, when possible, may result in the adoption of mutually-beneficial policies and sustainable outcomes. CalSTA and its constituent departments will work together to identify and coordinate policy when there are issues that may pertain to or impact Tribes.

#### *Communication.*

Open and respectful communication with tribal representatives is essential. It is strongly recommended that communication take place early and often; occur on a regular basis; continue throughout changes in leadership; and be inclusive and transparent. When a matter involves confidential or culturally sensitive information, CalSTA and its constituent departments will work with tribal representatives to address the sensitivity of such information to the fullest extent possible.

The Secretary may designate a Deputy within the Agency to act as a Native American Liaison for the purpose of policy coordination between CalSTA, departments and tribes.

The Caltrans Native American Advisory Committee (NAAC), an advisory body of elected statewide tribal representatives which holds quarterly meetings annually throughout the state, will continue to operate under its existing Charter under the auspices of the California Department of Transportation and with the oversight and active participation of CalSTA. When applicable, the NAAC will serve as a forum for policy issues relative to CalSTA and its constituent departments. Topics for discussion must be approved by the NAAC Chair in order to be considered as an agenda item.

*Education.*

The CalSTA Native American Liaison will encourage the Native American Liaisons of its constituent departments to seek ongoing training designed to improve each Department’s capacity for promoting collaboration with Tribes. Education and training should emphasize communication, tribal sovereignty, the unique distinctions of Tribes, and the skills and tools necessary for collaborative engagement.

Department leadership shall endeavor to instill an awareness of tribal culture and respect within their organizations.

*Process.*

The core missions of the seven CalSTA constituent departments are extensive. Each Department is responsible for implementing a wide range of transportation, licensing and safety-related core functions that are subject to scores of 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. Consultation at the field, project management, and executive staff level is strongly encouraged so that information is available early in the planning process.

*Timely Notice.*

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 members and/or leaders of Tribes. Contact with Tribes should be initiated as early as possible, preferably with 30-days or more advance notice, to provide ample time for Tribes to respond, particularly on substantive matters.

This Consultation Policy respects the sovereignty of Tribes and shall not be deemed to waive any rights, including treaty rights, immunities, or jurisdiction on the part of CalSTA or Tribes. This Consultation Policy does not diminish any rights or protections afforded Tribes under state or federal law. Through this Consultation Policy, the intent of CalSTA is to strengthen its ability to successfully resolve issues of mutual concern collectively with Tribes. While the relationship described by this policy provides increased ability to solve problems, it likely will not result in a resolution of all issues. Therefore, inherent in this Consultation Policy is the right of CalSTA and Tribes to elevate an issue of importance to any decision-making authority of another entity, including, where appropriate, the highest levels of state and tribal government. This Consultation Policy is intended to govern the process with which CalSTA will engage in consultation with Tribes.

**Effective Date**

The CalSTA Consultation Policy shall be effective on the date executed by the Agency Secretary and shall be posted on the CalSTA 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 California State Transportation Agency hereby adopts this Tribal Consultation Policy.

Signed: \_\_\_\_\_  
Brian P. Kelly  
Secretary, California State Transportation Agency

Date: \_\_\_\_\_