

**State of California
Memorandum**

To: Seismic Safety Commissioners

From: **Karen Cogan**
Seismic Safety Commission
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Date: December 1, 2014

Subject: **Draft Alfred E. Alquist Seismic Safety Commission
California Tribal Consultation Policy
Preliminary Adoption: January 11, 2014
Final Adoption: February 12, 2015.**

Background

In September 2011, Governor Edmund G. Brown Jr. issued Executive Order B-10-11 which reflects the Administration's policy to encourage communication and consultation with California Indian Tribes.

Accordingly, the Commission (SSC) must adopt a Tribal Consultation Policy to memorialize SSC's commitment to strengthening and promoting government-to-government relationships between California Indian Tribes and the State of California.

To date, the Business Consumer Services and Housing Agency (BCSH) has participated in consultation meetings with California Tribal Representatives, along with Mr. McCarthy and myself. The meetings were intended to provide Tribes with an overview of missions and services provided by the State. In addition, these meetings gave the State an opportunity to receive feedback from Tribal Representatives. From those meetings, BCSH drafted a policy which was posted on the internet for public comment. Comments received were considered and the Agency policy was finalized. It is now time for departments and commissions to adopt individual policies.

Recommendation

A draft Tribal Consultation Policy is attached for your review. This draft policy is currently posted on the Commission's web page for comment period of 30 days. Staff requests the Commission provide any comments and upon conclusion of the 30 day public comment period, the policy will be updated and submitted to the commission for approval at the February 12 Commission meeting.

Attachment

DRAFT
Alfred E. Alquist Seismic Safety Commission
Tribal Consultation Policy
Proposed Adoption: February 12, 2015.

BACKGROUND

In September 2011, Governor Edmund G. Brown Jr. issued Executive Order B-10-11 which, among other things, reflects the administration's policy to encourage communication and consultation with California Indian Tribes. Accordingly, the Alfred E. Alquist Seismic Safety Commission (SSC) adopts this Tribal Consultation Policy to memorialize SSC's commitment to strengthening and promoting government-to-government relationships between California Indian Tribes and the State of California.

TRIBAL CONSULTATION POLICY

This Policy is intended to foster effective consultation and collaboration between SSC, and federally-recognized California Indian Tribes, and to provide meaningful input into the development of policies, rules, regulations, programs, projects, plans and activities that may affect tribal communities. SSC'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 of California.

This Policy broadly describes ways to enhance the consultation processes of SSC with the Tribes. The principles described in this policy are to be implemented by SSC in a manner that facilitates effective communication and consultation practices, and promotes cooperation and efficiencies in tribal consultation. Policies were written based on input received from Tribal leaders and their designees. SSC shall post the draft policy on the website for a 30 day comment period. Proposed adoption of final policy is February 12, 2015. This Policy shall be considered and acknowledged by SSC when drafting, updating or implementing consultation policies pursuant to Executive Order B-10-11. The SSC Executive Director hereby directs SSC staff to implement this Policy.

DEFINITIONS

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

Tribe: Refers to a California Indian Tribe.

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.

Tribal Leaders: Refers to elected officials of Indian Tribes and their designees.

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, and some have been delegated by the United States. Existing limitations on Tribal sovereignty are defined through acts of Congress, treaties, and federal court decisions.

Guiding Principles for Implementing this Tribal Consultation Policy:

Commission Tribal Liaison.

The SSC Director shall designate a Commission Tribal Liaison and Tribal Governance Officer for the purposes of policy coordination between SSC and tribal leaders. Whenever possible, SSC shall appoint a liaison who has experience dealing with Tribal governments and Tribal affairs.

The SSC Tribal Liaison shall act as the Director's representative in matters pertaining to this Policy, and shall oversee and implement the duties described in this Policy. The Tribal Liaison and Tribal Governance Officer shall make all necessary efforts to fully participate in the tribal consultation process, ensure continuity and demonstrate the Administration's commitment to the process.

The SSC Tribal liaison will act as the SSC representative in matters pertaining to this Policy, and oversee and implement the duties described in this Policy. The SSC liaison shall be high-level department employee who has direct access to the SSC Director.

Tribal liaison shall periodically report to the SSC Director on tribal consultation efforts and the implementation of this Policy. Reporting may include the scope of consultation efforts and their effectiveness, the topics on which Tribes were consulted, and a summary of the senior leadership engagement in these efforts.

Review of Existing Practices, Implementing Improved Practices

Within 30 days from the date this Policy takes effect, SSC shall review their existing practices and guidelines, and revise them as needed in order to implement this Policy.

SSC will periodically meet with the Governor's Tribal Advisor and report on the status of consultation processes and the implementation of this policy.

Outreach

SSC will consult with Tribes to make relevant information available at the earliest possible time and allow a reasonable opportunity for Tribes to respond and substantively engage in planning, program, regulatory or other processes. SSC is responsible for consulting with Tribes in a manner that promotes regular, substantive and meaningful consultation. SSC will engage participants, including decision-makers and staff with appropriate level of responsibility, to

ensure that tribal concerns are addressed. Relevant and available tribal information, studies or data will be requested when a program or activity could impact tribal interests.

Collaboration

SSC shall communicate and work together with Tribes to resolve respective issues of concern and/or mutual interest. This exchange will be conducted by respecting the protocols each respective Tribe has established for contacting its governing body or its delegated official.

SSC is committed to ensuring a sound and productive relationship with tribal governments by interacting with Tribes in a manner that fosters meaningful dialogue, effective collaboration, mutual respect and informed decision-making. SSC is committed to engaging in a substantive meet and confer process, exchanging information openly and freely, and compromising to reach understandings that, whenever possible, result in mutually-beneficial policies and sustainable outcomes. SSC will work together to identify and coordinate policy when there are issues that may pertain to or impact Tribes. The degree and extent of collaboration will depend on the particular program, regulatory process or policy being considered.

Communication

When appropriate, SSC shall engage in early, inclusive and frequent communication with tribal leaders regarding issues pertaining to or impacting Tribes. The types of communication mechanisms used (e.g., telephone conferences, Email, written correspondence, in-person meetings) will be determined on a case-by-case basis with the goal of utilizing the most efficient form of communication for a particular issue. When necessary, SSC liaison will consult with the Governor's Tribal Advisor to determine an appropriate initial contact mechanism and which Tribes should be contacted. Liaisons shall be responsible for initiating the consultation process and shall engage agency and/or department executive leadership when necessary to promote collaborative decision-making. Tribes may initiate consultation with SSC by contacting the Commission Liaison. Liaison contact information shall be maintained on the Commission website. When a consultation process is initiated, the liaison will provide timely information and updates to relevant to Tribal leaders and the Governor's Tribal Advisor until the matter is resolved. When a matter involves confidential or culturally sensitive information, SSC will work with tribal representatives to address the sensitivity of the information to the fullest extent legally possible. SSC will periodically consult with the Governor's Tribal Advisor to determine whether to hold a meeting with Tribal leaders to provide general updates on SSC activities, even if there are no currently pending matters that are in the consultation process.

Education

SSC will work with the Governor's Tribal Advisor and Tribes to develop training opportunities for SSC. SSC director and liaison shall attend periodic, ongoing training designed to improve collaboration with Tribes. Education and training should emphasize protocol, communication, tribal sovereignty, the unique distinctions of Tribes, and the skills and tools necessary for collaborative engagement. SSC will instill an awareness of tribal culture and respect within their organizations. SSC will consult with the Governor's Tribal Advisor to determine whether to hold periodic training opportunities for Tribes regarding SSC and programs and activities. This training may be held in conjunction with other state agencies and departments.

Process

SSC will communicate and collaborate with Tribes in a manner that is timely and respectful. Internal processes and timelines will be clearly identified; relevant staff will be available to explain processes and timelines as needed. Consultation with SSC leadership is encouraged in order to make information available as early as possible.

Timely Notice

SSC recognizes that Tribes may be located in diverse or remote regions throughout California thereby necessitating the need for clear and adequate notice and/or outreach prior to consultation or meetings that may require travel by tribal representatives. Contact with Tribes shall be initiated as early and as promptly as possible to provide ample time for Tribes to have substantive input. Whenever possible, at least 30-days' written notice shall be given for consultation sessions or in-person meetings; Tribe requests for additional time to prepare for or attend a consultation session or in-person meeting will be honored whenever possible.

Timely Response

An acknowledgment of receipt of official tribal correspondence will be provided within three business days. Whenever possible, a substantive response will be provided within 30 calendar days. If a substantive response will require more than 30 days' turnaround time, the liaison will advise the Governor's Tribal Advisor and the relevant Tribal leaders, and provide an estimated date for the substantive response.

Cooperation with Other Agencies

When appropriate, SSC shall provide assistance to or seek assistance from other government agencies.

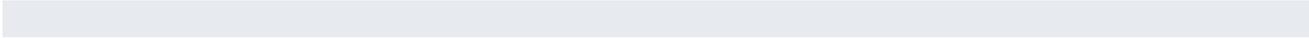
Contact Information

SSC will maintain current contact information on their respective websites, along with the finalized Consultation Policies. This Policy expresses SSC's respect for tribal sovereign immunity and intent to strengthen the ability of SSC to work collaboratively with Tribes to resolve issues of mutual concern. While the communication and collaboration encouraged by this Policy provides opportunities for strengthening and promoting government-to-government relationships between Tribes and the State of California, it may not result in a resolution of all issues. Inherent in this Policy is the right of Tribes and SSC to elevate an issue to any decision-making authority of another entity including, when appropriate, the highest levels of state and tribal government.

This policy implements B-10-11 and is intended to improve SSC 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: Upon Adoption by the Commission Members, proposed at February 12, 2015 meeting.

SSC's Tribal Consultation Policy shall take effect immediately upon adoption of the full commission and shall be posted on SSC's website. This Policy shall be subject to periodic review to ensure its provisions remain current and consistent with state law and policy.



EXECUTIVE ORDER B-10-11

9-19-2011

WHEREAS California is home to many Native American Tribes with whom the State of California has an important relationship, as set forth and affirmed in state and federal law; and

WHEREAS the State of California recognizes and reaffirms the inherent right of these Tribes to exercise sovereign authority over their members and territory; and

WHEREAS the State and the Tribes are better able to adopt and implement mutually-beneficial policies when they cooperate and engage in meaningful consultation; and

WHEREAS the State is committed to strengthening and sustaining effective government-to-government relationships between the State and the Tribes by identifying areas of mutual concern and working to develop partnerships and consensus; and

WHEREAS tribal people, as both citizens of California and their respective sovereign nations, have a shared interest in creating increased opportunities for all California citizens.

NOW, THEREFORE, I, EDMUND G. BROWN JR., Governor of the State of California, by virtue of the power vested in me by the Constitution and the statutes of the State of California, do hereby issue the following orders to become effective immediately:

IT IS ORDERED that the position of Governor's Tribal Advisor shall exist within the Office of the Governor;

IT IS FURTHER ORDERED that the Governor's Tribal Advisor shall oversee and implement effective government-to-government consultation between my Administration and Tribes on policies that affect California tribal communities, and shall:

- Serve as a direct link between the Tribes and the Governor of the State of California.
- Facilitate communication and consultations between the Tribes, the Office of the Governor, state agencies, and agency tribal liaisons.
- Review state legislation and regulations affecting Tribes and make recommendations on these proposals.

IT IS FURTHER ORDERED that the Office of the Governor shall meet regularly with the elected officials of California Indian Tribes to discuss state policies that may affect tribal communities.

IT IS FURTHER ORDERED that it is the policy of this Administration that every state agency and department subject to my executive control shall encourage communication and consultation with California Indian Tribes. Agencies and departments shall permit elected officials and other representatives of tribal governments to provide meaningful input into the development of legislation, regulations, rules, and policies on matters that may affect tribal communities.

For purposes of this Order, the terms "Tribe," "California Indian Tribe", and "tribal" include all Federally Recognized Tribes and other California Native Americans.

This Executive Order is not intended to create, and does not create, any rights or benefits, whether substantive or procedural, or enforceable at law or in equity, against the State of California or its agencies, departments, entities, officers, employees, or any other person.

I FURTHER DIRECT that as soon as hereafter possible, this Order shall be filed with the Office of the Secretary of State and that it be given widespread publicity and notice.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 19th day of September 2011