

STATE OF CALIFORNIA
BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY

DATE ISSUED:
December 1, 2014

HCD POLICY MEMO

EXPIRES:
Until Rescinded or Amended

TO: **ALL HCD EMPLOYEES; ALL HCD DEPARTMENT DIRECTORS**

REFERENCES:
Executive Order B-10-11
(Sept. 2011)

SUBJECT: **TRIBAL CONSULTATION POLICY**

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 (the Tribes). The Business, Consumer Services and Housing (BCSH) agency overseeing the Department of Housing and Community Development (HCD) adopted its Tribal Consultation Policy on November 18, 2014. Similarly, the Department of Housing and Community Development is proposing for adoption the following Tribal Consultation Policy to memorialize its commitment to strengthening and promoting relationships between the Tribes and the State of California.

THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

HCD's mission is to provide leadership, policies and programs to preserve and expand safe and affordable housing opportunities and promote strong communities for all Californians.

To accomplish this, HCD awards loans and grants to hundreds of public and private housing developers and service providers every year. This money supports the construction, acquisition, rehabilitation and preservation of affordable rental and ownership housing, shelters and transitional housing for the homeless, public infrastructure and facilities, and jobs for lower income workers.

HCD's loan and grant programs typically announce the availability of program funds by issuing a Notice of Funding Availability (NOFA) that is posted on HCD's website and offered or sent by email to cities, counties, developers and other interested parties.

TRIBAL CONSULTATION POLICY

This Policy is intended to foster and promote effective consultation and collaboration between HCD and federally-recognized California Indian Tribes and non-federally recognized tribes eligible for HCD's financing programs, regarding development and/or implementation of policies, rules, regulations, programs, projects, plans and activities that may affect tribal communities. HCD's goal is to engage in interactive processes 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 describes the consultation processes between HCD and the Tribes. The principles described in this policy are to be implemented by HCD in a manner that facilitates effective communication and consultation practices, and promotes cooperation and efficiencies in tribal consultation.

HCD shall adopt its Policy by December 31, 2014. This Policy shall be considered and acknowledged by HCD and its agency when drafting, updating or implementing consultation policies pursuant to Executive Order B-10-11.

DEFINITIONS

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

California Indian Tribe: Refers to a federally-recognized California Indian Tribe, as listed on the Federal Register. With respect to cultural resources, the definition refers to 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).

Tribe: Refers to a California Indian Tribe.

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 their 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:

Department Tribal Liaisons

The Director of HCD shall designate a high-level department employee with direct access to department executive leadership to serve as HCD's Tribal Liaison and Tribal Governance Officer, preferably with experience in dealing with Tribal affairs.

HCD's Tribal Liaison shall act as the HCD Director's representative in matters pertaining to this Policy, as well as overseeing and implementing 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.

HCD Tribal Liaison shall periodically report to the HCD Director and Agency Secretary 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 senior leadership engagement in these efforts.

Review of Existing Practices, Implementing Improved Practices

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

The Department and other departments of the Agency will periodically meet with the Governor's Tribal Advisor and report on the status of consultation processes and the implementation of this policy.

Outreach

HCD 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. The consultation will be conducted in a manner that promotes regular, substantive and meaningful consultation. HCD 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

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

HCD 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. HCD 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. HCD will work with the Agency and its other departments 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, HCD shall engage in early, inclusive and frequent communication with tribal leaders regarding issues pertaining to or impacting Tribes. The types of communication mechanisms used 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, HCD's Tribal Liaison will consult with Agency and the Governor's Tribal Advisor to determine an appropriate initial contact mechanism in which Tribes should be contacted.

HCD's Tribal Liaison 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 HCD by contacting the Agency and/or Department Tribal Liaison. Liaison contact information shall be maintained on websites of the Agency and Department.

When a consultation process is initiated, HCD's Tribal Liaison will provide timely information and updates to relevant Tribal leaders, the Agency, and the Governor's Tribal Advisor until the matter is resolved. When a matter involves confidential or culturally sensitive information, HCD will work with tribal representatives to address the sensitivity of the information to the fullest extent legally possible.

HCD will periodically consult with Agency and the Governor's Tribal Advisor to determine whether to hold a meeting with Tribal leaders to provide general updates on Agency and HCD activities, even if there are no matters pending in the consultation process.

Education

HCD will work with Agency and the Governor's Tribal Advisor and Tribes to develop training opportunities.

The HCD Director and Tribal 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.

HCD leadership will instill an awareness of tribal culture and respect within their organizations.

HCD will consult with Agency and the Governor's Tribal Advisor to determine whether to hold periodic training opportunities for Tribes regarding HCD programs and activities.

Training may be held in conjunction with other state agencies and departments.

Process

HCD 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 department liaisons and HCD leadership is encouraged in order to make information available as early as possible.

Timely Notice

HCD recognizes that Tribes may be located in diverse or remote regions throughout California thereby necessitating the need for clear and adequate notice and outreach prior to consultation or meetings that may require travel by tribal representatives.

Whenever possible, contact with Tribes should be initiated as early as 30 days prior to the event or deadline to allow ample time for Tribes to provide substantive input.

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 Tribal Liaison will advise Agency and 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, HCD shall provide assistance to or seek assistance from other government agencies or departments.

Contact Information

HCD will maintain current contact information on its website, along with finalized Consultation Policies.

This Policy expresses HCD's respect for tribal sovereign immunity and intent to strengthen HCD's ability 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 both government-to-government relationships, as well as non-federally recognized tribe relationships with the State of California, it may not result in a resolution of all issues. Inherent in this Policy is the right of Tribes and HCD 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 HCD'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:

HCD's Tribal Consultation Policy shall take effect immediately and shall be posted on HCD's website. This Policy shall be subject to periodic review to ensure its provisions remain current and consistent with state law and policy.