

<p>State of California Department of Fair Employment and Housing</p> <p><i>DFEH POLICY MEMO</i></p> <p>TO: ALL DFEH EMPLOYEES</p> <p>SUBJECT: DFEH TRIBAL CONSULTATION POLICY</p>	<p>Date Issued: November 20, 2014</p> <p>Expires: Until Rescinded or Amended</p> <p>References: Executive Order B-10-11 (Sept. 2011); BCSH Tribal Consultation Policy November 18, 2014</p>
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BACKGROUND

In September 2011, Governor Edmond 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 Department of Fair Employment and Housing (DFEH) adopts this Tribal Consultation Policy to memorialize DFEH’s commitment to strengthening and promoting government-to-government relationships between California Indian Tribes and the State of California.

THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

DFEH is a department within the Business, Consumer Services & Housing Agency (BSCH) and is organized into four functional divisions:

- Enforcement
- Dispute Resolution
- Legal
- Administrative

In addition, the DFEH provides staff support to the California Fair Employment and Housing Council, a body appointed by the Governor, subject to Senate approval.

TRIBAL CONSULTATION POLICY

This Policy is intended to foster effective consultation and collaboration between DFEH, BCSH 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. DFEH’s goal is to engage in the timely and interactive process to respectfully seek, discuss and consider the perspective of California Indian Tribes in an effort to identify and resolve concerns at the earliest

opportunity and in a manner that respects and furthers the interests of the Tribes and the State of California.

This Policy broadly describes ways to enhance the consultation process between the DFEH and Tribes. The principles described in this policy shall be implemented by DFEH in a manner that facilitates effective communication and consultation practices, and promotes cooperation and efficiencies in tribal consultation.

The DFEH Director hereby directs DFEH 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 not on the list maintained by the Native American Heritage Commission.

California Indian Tribe: 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. A federally-recognized Indian tribe has jurisdiction to exercise certain 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:

DFEH Tribal Liaison and Tribal Governance Officer

Consistent with the Tribal Consultation Policy of its parent agency, BCSH, the DFEH Director shall designate a high-level member of the DFEH with direct access to the Director and DFEH executive leadership to serve as the department's Tribal Liaison and Tribal Governance Officer for the purposes of policy coordination between DFEH, BCSH, and tribal leaders. Whenever possible, DFEH shall appoint liaisons who have experience dealing with Tribal governments and Tribal affairs. The DFEH 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 DFEH Tribal Liaison and Tribal Governance Officer shall elevate issues to the Director, DFEH executive leadership and BCSH's Tribal Liaison and Tribal Governance Officer for resolution when necessary.

The DFEH Tribal Liaison and Tribal Governance Officer shall periodically report to the Director on tribal consultation efforts and the implementation of this Policy. Reporting may include the scope and effectiveness of consultation efforts, 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 effective date of this Policy, DFEH shall review its existing practices and guidelines, and revise them as needed in order to implement this Policy.

DFEH will periodically meet with the BCSH Tribal Liaison and Tribal Governance Officer and, as required, the Governor's Tribal Advisor, and report on the status of consultation processes and the implementation of this policy.

Outreach

DFEH 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 DFEH will consult with Tribes in a manner that promotes regular, substantive and meaningful consultation. The DFEH will engage participants, including decision-makers and staff with appropriate levels 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

DFEH shall communicate and work 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(s).

DFEH 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. DFEH 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. DFEH will work with BCSH to identify and coordinate policies 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, DFEH 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, 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, DFEH's Tribal Liaison and Tribal Governance Officer will consult with the BCSH Tribal Liaison and Tribal Governance Officer and with the Governor's Tribal Advisor to determine an appropriate initial contact mechanism and which Tribes should be contacted.

The DFEH Tribal Liaison and Tribal Governance Officer shall be responsible for initiating the consultation process and shall DFEH executive leadership, he BCSH Tribal Liaison and Tribal Governance Officer and with the Governor's Tribal Advisor when necessary to promote collaborative decision-making.

Tribes may initiate consultation with DFEH by contacting the Director or the DFEH Tribal Liaison and Tribal Governance Officer. The contact information for the DFEH Tribal Liaison and Tribal Governance Officer shall be maintained on the DFEH website.

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

DFEH will periodically consult with the BCSH Tribal Liaison and Tribal Governance Officer, and the Governor's Tribal Advisor to determine whether to hold a meeting with Tribal leaders to provide general updates on departmental activities, even if there are no currently pending matters that are in the consultation process.

Education

DFEH will work with the BCSH Tribal Liaison and Tribal Governance Officer, and the Governor's Tribal Advisor to develop training opportunities for DFEH personnel. The Director and the DFEH Tribal Liaison and Tribal Governance Officer 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. The Director and departmental leadership will instill an awareness of tribal culture and respect within the department.

DFEH will consult with the BCSH Tribal Liaison and Tribal Governance Officer, and the Governor's Tribal Advisor to determine whether to hold periodic training opportunities for Tribes regarding DFEH programs and activities. This training may be held in conjunction with other state entities, agencies and departments.

Process

DFEH will communicate with Tribes in a timely and respectful manner. Internal processes and timelines will be clearly identified; relevant staff will be available to explain processes and timelines as needed. Consultation with DFEH leadership and the DFEH Tribal Liaison and Tribal Governance Officer is encouraged in order to make information available as early as possible.

Timely Notice

DFEH 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; requests by Tribes for additional time to prepare for or attend a consultation session or in-person meeting will be honored whenever possible.

Time 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 DFEH Tribal Liaison and Tribal Governance Officer will advise the

BCSH Tribal Liaison and Tribal Governance Officer and Governor's Tribal Advisor and relevant Tribal leaders or their designee(s), and provide an estimated date for the substantive response.

Cooperation with other Agencies and Departments

When appropriate DFEH shall provide assistance to or seek assistance from BCSH and other governmental agencies, departments and entities.

Contact Information

DFEH will maintain the current contact information for the Tribal Liaison and Tribal Governance Officer on its website, along with the finalized Tribal Consultation Policy.

SUMMARY

This Policy expresses DFEH's respect for tribal sovereign immunity and intent to strengthen the ability of DFEH 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 DFEH to evaluate an issue to any decision-making authority of another entity including, when appropriate, the highest levels of state and tribal government.

This policy implements Executive Order B-10-11 and is intended to improve DFEH'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:

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