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| <b>CALIFORNIA Department of Technology</b><br><b>TECHNOLOGY LETTER</b>                         | NUMBER:<br><b>TL 16-09</b>             | DATE ISSUED:<br><b>SEP 2016</b> |
| SUBJECT:<br><b>CALIFORNIA DEPARTMENT OF TECHNOLOGY<br/>         TRIBAL CONSULTATION POLICY</b> | REFERENCES:<br>Executive Order B-10-11 |                                 |

**PREFACE**

In 2011, Governor Edmund G. Brown Jr. issued Executive Order B-10-11 requiring all State of California agencies and departments to encourage communication and consultation with California Indian Tribes, as defined further below. Accordingly, the California Department of Technology (“CDT”) hereby adopts this Tribal Consultation Policy (“Consultation Policy” or “Policy”), which memorializes its commitment to strengthen and sustain government-to-government relationships between Indian Tribes and the State.

**BACKGROUND**

In 2013, as part of Governor Edmund G. Brown Jr.'s Government Reorganization Plan, the California Technology Agency became CDT and now reports through the newly established Government Operations Agency (“GovOps”). CDT is responsible for the approval and oversight of all state information technology projects and supports programs and departments in the delivery of state services and information through agile, cost-effective, innovative, reliable, and secure technology.

**PURPOSE**

This Policy is intended to foster effective consultation and collaboration between CDT and 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. CDT’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.

## **PROCESS**

This Policy shall be implemented by CDT and its representatives in a manner that facilitates effective consultation, promotes cooperation, and supports effective communication. CDT hereby adopts this Tribal Consultation Policy based on input received from Tribal leaders and their designees. This Policy shall be considered and acknowledged when drafting, updating or implementing consultation policies pursuant to Executive Order B-10-11.

This Tribal Consultation Policy broadly defines provisions for enhancing its consultation process with Tribes. This Policy shall complement, not supersede, any existing laws, rules, statutes, or regulations that guide consultation processes with Tribes. This Policy shall not be construed to displace existing department policies.

### **Definitions**

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

**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 ("NAHC").

**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 NAHC be included in this definition. The NAHC will provide a list of non-federally recognized California Native American Tribes for each instance.

**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 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.

## **Consultation Policy Principles**

**Collaboration.** CDT is committed to the principle that interaction with Tribes shall be regarded as a “partnership” of mutual respect whereby CDT strives to ensure a sound and productive relationship with Tribes through the development and maintenance of a meaningful dialogue. CDT will collaborate and encourage input in the development of its policies, rules, regulations, and other matters that may affect California Indian Tribes.

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. CDT will work to identify and coordinate policy when there are issues that may pertain to or impact Tribes, disseminate public documents and notices, seek opportunities for collaboration and maintain an ongoing dialogue with Tribes.

**Communication.** Open and respectful communication with Tribal representatives is essential. CDT will engage in early, inclusive, and frequent communication with Tribal leaders regarding issues pertaining to or impacting Tribes. Such communication shall occur on a regular basis; continue throughout changes in leadership; be inclusive and transparent; provide timely notification and documentation in a manner that provides an adequate review and response period for the parties involved; and, be conducted in a manner that is consistently executed with the utmost level of respect, decorum and diplomacy. When a matter involves confidential or culturally sensitive information, CDT will work with tribal representatives to address the sensitivity of such information to the fullest extent possible. All parties in the process should promote respect, shared responsibility, and an open and free exchange of information.

**Tribal Liaisons.** CDT Director will designate a department Deputy Director to serve as Tribal Liaison. The Tribal Liaison will be responsible for coordinating outreach, communication and other activities affiliated with Tribal interests. CDT will publish on its website, the name and contact information for its Tribal Liaison, along with its Tribal Consultation Policy. Current contact information for the Tribal Liaison will be included on the Governor’s Tribal Advisor’s website.

**Education.** In the same spirit of collaboration and communication, the Tribal Liaison will be the point of contact if at any time the Tribal community would like education or information on the services that CDT provides.

The CDT Director will encourage its Tribal Liaison to seek continued education and training to emphasize communication, tribal sovereignty, the unique distinctions of Tribes, and the skills and tools necessary for collaboration. The Director shall endeavor to instill an awareness of tribal culture and respect within CDT.

**Process.** CDT is responsible for implementing a wide range of inter-governmental projects and services that are subject to federal and state laws, regulations, guidelines and restrictions. Within such mandates CDT will make every attempt to 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. Consultation at the field, project management, and executive staff level involvement is strongly encouraged so that information is available early in the planning process. Consultation may be initiated by either CDT or Tribe(s).

**Timely Notification.** 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 Tribal Leaders. Contact with Tribes should be initiated as early as possible, preferably with no less than thirty calendar days' notice, to provide adequate time for Tribes to respond, particularly on substantive matters, and most importantly, to respect tribal protocol and cultural patterns that require consideration, deliberations, and consensus. Tribe requests for additional time to prepare for or attend a consultation session or in-person meeting will be honored whenever possible.

Tribes may initiate communication with CDT by contacting CDT or CDT's Tribal Liaison. Whenever Tribal representatives initiate communication with CDT, the Tribal Liaison shall be responsible for providing timely information and updates to the relevant Tribal Leaders and representatives and to the GovOps Tribal Liaison until the issue is resolved. Acknowledgement of receipt of official Tribal communication will be provided within three business days, and whenever possible, a substantive response will be provided within thirty calendar days. If a substantive response will require more than thirty calendar days, the Tribal Liaison will advise the relevant Tribal leaders and representatives as well as the GovOps Tribal Liaison, to provide an estimated date for the response.

This Policy expresses CDT's respect for tribal sovereign immunity and intent to strengthen the ability of CDT to work collaboratively with Tribes to resolve issues of mutual concern. While the communication and collaboration encouraged by this Policy provides opportunities to strengthen and promote government-to-government relationships between Tribes and the State, it may not result in a resolution of all issues. Inherent in this Policy is the right of Tribes and the CDT 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 Executive Order B-10-11 and is intended to improve CDT'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.

