

STATE OF CALIFORNIA BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY California Housing Finance Agency  <b>CalHFA POLICY MEMO</b>  TO: <b>ALL CalHFA EMPLOYEES</b>  SUBJECT: <b>TRIBAL CONSULTATION POLICY</b>	DATE ISSUED: April 1, 2016
	EXPIRES: Until Rescinded or Amended
	REFERENCES: Executive Order B-10-11 (Sept. 2011)

**BACKGROUND**

In September 2011, Governor Edmund G. Brown Jr. issued Executive Order B-10-11 (“**Executive Order**”) which, among other things, reflects the administration’s policy to encourage communication and consultation with all Federally Recognized Tribes and other California Native Americans (“**Tribes**”). Accordingly, the California Housing Finance Agency (“**CalHFA**”) adopts this CalHFA Tribal Consultation Policy (“**CalHFA’s Tribal Consultation Policy**” or “**Policy**”) to memorialize CalHFA’s commitment to strengthening and promoting government-to-government relationships between Tribes and the State of California in accordance with the Executive Order.

**TRIBAL CONSULTATION POLICY**

This Policy is intended to foster and promote effective consultation and collaboration between CalHFA and California Indian Tribes (“California Indian Tribe(s)” or “Tribe(s)” as defined below) eligible for CalHFA’s financing programs, regarding development and/or implementation of policies, rules, regulations, programs, projects, plans and activities that may affect tribal communities. CalHFA’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 CalHFA and the Tribes. The principles described in this policy are to be implemented by CalHFA in a manner that facilitates effective communication and consultation practices, and promotes cooperation and efficiencies in tribal consultation.

This Policy shall be considered and acknowledged by Business, Consumer Services and Housing Agency (“**BCSH**”) 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:

**Federally Recognized Tribe:** Refers to a tribal entity, located in the State of California, that is recognized as having a government-to-government relationship with the United States; these entities are listed on the Federal Register and on the Governor's Office of Tribal Advisor's website.

**Non-Federally Recognized Indian Tribe:** Refers to a tribal entity, located in the State of California, that is not a Federally Recognized Tribe and is on the Tribal Consultation list maintained by the Native American Heritage Commission.

**California Indian Tribe:** Refers to Federally Recognized Indian Tribe(s) and Non-Federally Recognized Indian Tribe(s).

**Tribe:** Refers to a California Indian Tribe.

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

**Tribal Sovereignty:** Refers to the unique political status of Federally Recognized Tribes. Federally Recognized 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

### Tribal Liaison:

The Executive Director of CalHFA shall designate the Public Information Officer to serve as the CalHFA Tribal Liaison and Tribal Governance Officer (collectively "**CalHFA Tribal Liaison**"). The CalHFA Tribal Liaison shall act as the Executive Director's representative in matters pertaining to this policy, and shall oversee and implement the duties described in this policy. The Tribal Liaison shall make all necessary efforts to fully participate in the tribal consultation process, ensure continuity and demonstrate CalHFA's commitment to the process. The CalHFA Tribal Liaison will meet, as necessary, with other California State agencies to report on the status of the consultation processes and the implementation of CalHFA's Tribal Consultation Policy if the development of CalHFA legislation, regulations, rules, and policies may affect Tribes. Contact information for the CalHFA Tribal Liaison is listed on the CalHFA website.

### Outreach:

When matters that may affect Tribes arise in connection with the development of CalHFA legislation, regulations, rules, and policies CalHFA will consult with the Tribes. CalHFA will 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. CalHFA 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:

CalHFA shall communicate and work together with Tribes to resolve respective issues of concern and/or mutual interest, engaging BCSH 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.

CalHFA 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. CalHFA 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. CalHFA will work with BCSH and other state agencies to 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:

CalHFA will communicate and collaborate with Tribes in a manner that is timely and respectful. When appropriate, CalHFA 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, CalHFA's Tribal Liaison will consult with BCSH and the Governor's Tribal Advisor to determine an appropriate initial contact mechanism in which Tribes should be contacted. CalHFA's Tribal Liaison shall be responsible for initiating the consultation process and shall engage BCSH when necessary to promote collaborative decision-making.

Tribes may initiate consultation with CalHFA by contacting BCSH and/or the CalHFA Tribal Liaison. Contact information shall be maintained on websites of BCSH and CalHFA.

When a consultation process is initiated, CalHFA's Tribal Liaison will provide timely information and updates to relevant Tribal Leaders, BCSH, and the Governor's Tribal Advisor until the

matter is resolved. When a matter involves confidential or culturally sensitive information, CalHFA will work with tribal representatives to address the sensitivity of the information to the fullest extent legally possible.

Timely Notice:

CalHFA 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 and as promptly as possible to provide ample time for Tribes to provide substantive input. Whenever possible, at least 30 days written notice shall be given for consultation sessions or in-person meetings. If a Tribe requests additional time to prepare for or attend a consultation session or in-person meeting, that request will be honored whenever possible. Relevant staff will be available to explain the processes and timelines as needed.

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 CalHFA Tribal Liaison will advise BCSH 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, CalHFA shall provide assistance to or seek assistance from other government agencies.

Contact Information:

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

This Policy expresses CalHFA's respect for Tribes and the intent 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 CalHFA 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 and is intended to improve CalHFA'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.

Effective Date:

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