



ANNUAL TRIBAL SYMPOSIUM

2020 Joint SANDAG Borders Committee and Southern California Tribal Chairmen's Association Annual Tribal Symposium

Friday, November 20, 2020

12:30 to 2:20 p.m.

****Teleconference Meeting****

This is a joint meeting between the SANDAG Borders Committee and the Southern California Tribal Chairmen's Association to discuss policy issues of mutual concern.

MEETING ANNOUNCEMENT AMIDST COVID-19 PANDEMIC:

This meeting will be conducted virtually in accordance with Governor Newsom's State of Emergency declaration regarding the COVID-19 outbreak, Executive Order N-29-20, and the Guidance for Gatherings issued by the California Department of Public Health. Members will primarily participate in the meeting virtually, while practicing social distancing, from individual remote locations.

There are a few options for public participation:

- At the time of the meeting, listen to the meeting audio stream through sandag.org
- Submit comments via email to clerk@sandag.org
- Observe the meeting via Zoom
- To participate via Zoom webinar, click the link to join the meeting: <https://zoom.us/j/92991817398>
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SANDAG

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Mission Statement

The 18 cities and county government are SANDAG serving as the forum for regional decision-making. SANDAG builds consensus; makes strategic plans; obtains and allocates resources; plans, engineers, and builds public transit; and provides information on a broad range of topics pertinent to the region's quality of life.

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2020

ANNUAL TRIBAL SYMPOSIUM

**2020 Joint Borders Committee and Southern California
Tribal Chairmen’s Association
Annual Tribal Symposium
November 20, 2020**

| Item No. | | Action |
|-----------------|---|---------------|
| 1. | <p>Opening Remarks <i>Chairman Edwin “Thorpe” Romero, Barona Band of Mission Indians and SCTCA Borders Committee Chair Serge Dedina</i></p> | Information |
| 2. | <p>Tribal Land Acknowledgement <i>Borders Committee Chair Serge Dedina Hon. Erica Pinto, SCTCA (Jamul Indian Village of California)</i></p> <p>A Tribal Land Acknowledgement that recognizes and respects Indigenous Peoples as traditional stewards of the region’s land and the enduring relationship that exists between Indigenous Peoples and their traditional territories will be presented.</p> | Information |
| +3. | <p>Work Plan for Memorandum of Understanding between SANDAG and the Southern California Tribal Chairmen’s Association on the Implementation of the Regional Plan <i>Hasan Ikhata, SANDAG Denis Turner, SCTCA</i></p> <p>An overview of the FY 2021-2022 work plan for the Memorandum of Understanding between SANDAG and the Southern California Tribal Chairmen’s Association will be presented.</p> | Information |
| +4. | <p>Evolution of Cultural Resource Legislation <i>Hon. Marcus Cuero, SCTCA (Campo Kumeyaay Nation) Dorothy Alther, California Indian Legal Services</i></p> <p>An overview on several pieces of legislation in California which have strengthened the ability of tribal governments to be consulted regarding land use and other planning efforts will be presented.</p> | Information |
| +5. | <p>California Public Utilities Commission Tribal Land Transfer Policy <i>Hon. Cody Martinez, SCTCA (Sycuan Band of Kumeyaay Nation) Rachel Peterson, California Public Utilities Commission Kenneth Holbrook, California Public Utilities Commission</i></p> <p>An overview of a newly adopted policy and guidelines by the California Public Utilities Commission, which prioritize land transfers from investor-owned utilities to Native American Tribes with a historical interest in the land will be presented.</p> | Information |
| 6. | <p>Best Practice: Tribal Cultural Use Water Standards <i>Hon. Eric LaChappa, SCTCA (La Posta Band of Kumeyaay Nation) Mike Connolly Miskwish, SCTCA</i></p> <p>An overview of the recently enacted Tribal use standards enacted by the California Water Resources Control Board will be presented. The San Diego region has accepted the category of usage and is working with the tribes to determine what standards will be proposed and over which areas and activities.</p> | Information |

7. Public Comments/Communications/Member Comments

Members of the public shall have the opportunity to address the Borders Committee on any issue within the jurisdiction of the Committee that is not on this agenda. Other public comments will be heard during the items under the heading "Reports."

8. Adjournment

November 20, 2020

Work Plan for Memorandum of Understanding between SANDAG and the Southern California Tribal Chairmen's Association on the Implementation of the Regional Plan

Overview

SANDAG and the Southern California Tribal Chairmen's Association (SCTCA) have established a government-to-government framework to engage tribal nations in the regional transportation planning process. Through various regional planning efforts, including the development and update to the Regional Plan, SCTCA and SANDAG have developed several strategies for addressing continued government-to-government relations and regional issues of significance to the tribal nations such as transportation, cultural resource management, environmental preservation, energy, and economic development.

On July 1, 2020, the SCTCA and SANDAG signed a memorandum of understanding to establish a coordinated effort to implement strategies born out of government-to-government dialogues and regional planning efforts (Attachment 1). In particular, the resources provided will allow the SCTCA to implement the Intraregional Tribal Transportation Strategy, building capacity to prioritize and pursue transportation projects of interest to tribal nations. The Work Plan narrative (Attachment 2) and Timeline and Activities (Attachment 3) provide an overview of the collaborative efforts to be undertaken.

Action: **Information**

An overview of the FY 2021-2022 work plan for the Memorandum of Understanding between SANDAG and the Southern California Tribal Chairmen's Association will be presented.

Coleen Clementson, Director of Regional Planning

Key Staff Contacts: Jane Clough, Ph.D. (619) 699-1909, jane.clough@sandag.org
Michael Connolly Miskwish, SCTCA, (619) 307-0160

Attachments:

1. Regional Plan Tribal Collaborative Strategic Objectives
2. Work Plan: Narrative – Tribal Collaboration on Regional Plan Implementation
3. Work Plan: Timeline and Activities – Tribal Collaboration on Regional Plan Implementation

| San Diego Forward: The Regional Plan –Tribal Collaborative Strategic Objectives by Policy Area | |
|---|--|
| Strategic Area | Objective |
| Government-to-Government | <ul style="list-style-type: none"> • Share legislative agendas and explore opportunities to collaborate on legislation of mutual interest that benefits the region |
| Transportation | <ul style="list-style-type: none"> • Coordinate the incorporation of existing Tribal Long-Range Transportation Plans in San Diego Forward: The 2021 Regional Plan • Implement the Intraregional Tribal Transportation Strategy through the Interagency Technical Working Group on Tribal Transportation Issues |
| Cultural Resources | <ul style="list-style-type: none"> • Collaborate on a way to provide information regarding the location of culturally significant resources without compromising the preservation of the resource • Explore ways to collaborate in communicating information to local jurisdictions regarding legal requirements of tribal consultation such as Senate Bill 18 (Burton, 2004) and Assembly Bill 52 (Gatto, 2014) (AB 52) • Develop methodological template Programmatic Agreement or Memorandum of Understanding for tribal consultation pursuant to AB 52 for the 2021 Regional Plan that will be applied to projects as they come through the Regional Transportation Improvement Program |
| Habitat Conservation | <ul style="list-style-type: none"> • Support the protection of habitat from a cultural perspective as well as environmental perspective • Explore opportunities to engage tribal nations in regional habitat conservation efforts • Use SANDAG working groups as regional forums to bring tribes, local jurisdictions, resource agencies, and environmental stakeholders together for better collaboration and coordination |
| Energy | <ul style="list-style-type: none"> • Explore opportunities to engage tribal nations in regional energy planning coordination |
| Public Safety/ Emergency Preparedness | <ul style="list-style-type: none"> • Provide educational opportunities for local and state elected officials and emergency responders on Public Law 280 • Continue exploring opportunities for coordination and collaboration between the Inter Tribal Long Term Recovery Foundation and other established emergency management organizations, based upon mutually-agreed priorities • Identify ways to craft policy and agreements concerning mutual aid opportunities in accordance with tribal public safety laws • Expand efforts to plan, evaluate, and test joint exercises for emergency preparedness |
| Economic Development | <ul style="list-style-type: none"> • Seek funding and partnerships to develop economic impact analysis of tribal enterprises for the regional economy |

Work Plan: Narrative – Tribal Collaboration on Regional Plan Implementation

Regional Plan Implementation – Tribal Collaboration

Background/ Project Description

SANDAG and the Southern California Tribal Chairmen’s Association (SCTCA) have established a government-to-government framework to engage tribal nations in the regional transportation planning process. SCTCA and SANDAG have a Memorandum of Understanding (MOU) since 2007 incorporating the SCTCA as an advisory member of the SANDAG Board and Policy Advisory Committees to engage in policy level dialogue and convene a Regional Tribal Summit between the two intergovernmental councils with each cycle of the Regional Plan. At a technical level, SANDAG coordinates the Interagency Technical Working Group on Tribal Transportation Issues as a forum to discuss transportation issues impacting tribal nations, which reports to the Borders and Transportation Committees. To facilitate tribal consultation for each cycle of the Regional Plan, SANDAG and the SCTCA have an MOU for the development and implementation of the Tribal Consultation Plan for engaging the San Diego region’s tribal nations in developing San Diego Forward: The Regional Plan.

Through various regional planning efforts, including the development and update to the Regional Plan, the SCTCA and SANDAG have developed several strategies for addressing continued government-to-government relations and regional issues of significance to the tribal nations such as transportation, cultural resource management, environmental preservation, energy, and economic development.

It is the purpose of this scope of work to lay out the core functions and essential tasks to be undertaken by the SCTCA through a coordinated effort with SANDAG to implement strategies born out of government-to-government dialogues and regional planning efforts. A review of the scope of work will be undertaken every two years, or more frequently as needed. The review will assess progress in the collaborative strategies and relevancy of tasks and amend accordingly through a coordinated effort between the SCTCA and SANDAG.

Scope of Work/Deliverables

Task 1 – Maintain and enhance government-to-government dialogue and collaboration (30%)

The SCTCA will continue to participate in dialogues with local jurisdictions, federal agencies, state, and SANDAG on regional issues of significance to the tribal nations; and will also seek opportunities to strengthen interagency collaboration and implement strategies to address these issues.

- Task 1.1 – Pursue periodic meetings with jurisdictional decision makers to communicate tribal priorities, identify overlapping regional goals, and build trust and understanding with decision makers

Deliverable: meeting agendas/notes/actions

- Task 1.2 – Identify and pursue relevant policy areas in which SANDAG and SCTCA can collaborate on legislation initiatives of mutual interest that benefit the region

Deliverable: Develop an ongoing docket of legislation flagged for potential collaboration; monitor with status as items are adopted or removed; memo on recommendations for legislative pursuits with specific actions

- Task 1.3 – Develop grant applications for any of the policy area objectives outlined in the Collaborative Strategic Objectives as determined by mutual concern

Deliverable: At least four grant proposals per fiscal year on topic of mutual concern

Task 2 – Coordinate collaborative tribal transportation planning (40%)

The SCTCA will support the tribal nations in the region in implementing the *Intraregional Tribal Transportation Strategy* through technical assistance, grant writing, and intergovernmental coordination.

- Task 2.1 – Develop corridor task forces of the Interagency Technical Working Group on Tribal Transportation Issues and collaborate with SANDAG on Comprehensive Multi-Modal Corridor Planning studies as appropriate
Deliverable: Task force roster, agendas, and meeting minutes
- Task 2.2 – Identify and analyze tribal transportation projects from the unconstrained list of projects in the Tribal Mobility Needs Assessment Survey that have a higher likelihood of finding funding and jurisdictional partners in the near-term and longer term
Deliverable: Strategic Action Plan for near-term action projects and longer-term priorities including funding opportunities
- Task 2.3 – Facilitate the exchange and dissemination of transportation-related data pertinent to implementation of tribal transportation projects and programs
Deliverable: Memo on status of projects/programs in Tribal Mobility Needs Inventory
- Task 2.4 – Support the engagement of tribal nations in the review and update the Tribal Mobility Needs Inventory as transportation needs change
Deliverable: Updated inventory
- Task 2.5 – Coordinate with SANDAG iCommute to increase tribal employer participation in transportation demand management strategies
Deliverable: Facilitate contact with all tribal employers, tracking the effectiveness of the outreach through response tracking

Task 3 – Build capacity to aid in the preservation of cultural resources in the region (15%)

The SCTCA will collaborate with SANDAG to build capacity within the tribes to actively participate in the preservation of tribal cultural resources in the region. This work will be guided by the goal of increasing response capacity and participation in consultations between tribes and local governments per consultation requirements under the National Environmental Policy Act, the California Environmental Quality Act, Senate Bill 18 (SB 18), and Assembly Bill 52 (AB 52).

- Task 3.1 – Identify and document primary contacts and resources available from the tribes (e.g. staff, programs, knowledgebase/expertise, funding, etc.) to engage in the preservation of tribal cultural resources
Deliverable: List of tribal contacts; assessment of available resources from the tribes in preserving tribal cultural resources, including tribally sanctioned monitoring companies/resources
- Task 3.2 – Collaborate in developing an education and outreach strategy to inform local governments of the importance of preserving cultural resources. An education and outreach strategy may include: (1) communicating information regarding legal requirements of tribal consultation for local jurisdictions and consultants pursuant to SB 18 and AB 52 (i.e., develop an AB 52 implementation strategy); and (2) establishing an information exchange program with local governments to mitigate the impediments to early and accurate communication in the project development process
Deliverable: SCTCA facilitates linking governments with appropriate community leaders and sources of expertise

Task 4 – Participate in regional environmental conservation and habitat preservation efforts (5%)

The SCTCA will explore opportunities to engage tribal nations in regional habitat conservation efforts. In particular, support the protection of habitat from a cultural perspective as well as environmental perspective. Tribes have many programs on Reservations that are trans-boundary. Tribes are involved in climate change, forestry protection, invasive species, and other efforts. But the ability of tribes or tribal organizations to work collaboratively in conservation easements and mitigations is really limited, SANDAG can serve as a vehicle for this.

- Task 4.1 – Explore opportunities to engage tribal nations in regional habitat conservation efforts; bring the knowledge and potential for tribal collaborations to SANDAG through participation in the Environmental Mitigation Working Group

Deliverable: Participate in the Environmental Mitigation Working Group and providing at least two relevant tribal presentations; a listing of the scope and range of tribal environmental programs and Tribally managed habitat conservation organizations; present on how tribal environmental knowledge can work into regional mitigation plans

Task 5 – Explore opportunities to engage tribal nations in regional energy planning coordination (5%)

As sovereign nations in the San Diego region, tribes have the ability to develop their own energy development plans. As neighboring land use authorities there are opportunities for collaborating on energy planning – generation and distribution.

- Task 5.1 – The SCTCA will coordinate with SANDAG on identifying the legal constraints to equity in applying for state incentives on tribal lands and develop legislation that SANDAG could support

Deliverable: Legislative proposal for reducing the legal constraints for State incentives on tribal lands

- Task 5.2 – Coordinate with SANDAG on the efforts to integrate transportation-related energy research and development projects such as in-road electric vehicle charging on reservations

Deliverable: Meeting agendas, notes, and actions

Task 6 – Collaborate on ways to integrate tribal nations into regional economy (5%)

The SCTCA will explore economic development opportunities, including opportunities in green energy, eco/cultural tourism, and public services.

- Task 6.1 – Develop scope and budget for a regional study of the full range of economic impacts/benefits from reservation economies, including tax generation, community services, supply chain, labor, public safety, and direct contributions to public agencies

Deliverable: Request for proposals for a Tribal Economic Impact Study

Work Plan: Timeline and Activities – Tribal Collaboration on Regional Plan Implementation

| Tasks | 2020 | | 2021 | | 2022 | | | |
|---|-------------------------|---------|---------|---------|----------|---------|---------|---------|
| | FY 2021 | | | | FY 2022 | | | |
| | Q1 | Q2 | Q3 | Q4 | Q1 | Q2 | Q3 | Q4 |
| | Jul-Sept | Oct-Dec | Jan-Mar | Apr-Jun | Jul-Sept | Oct-Dec | Jan-Mar | Apr-Jun |
| 1. Government to government dialogue/collaboration 1.1. Periodic meetings with jurisdiction decisionmakers (at least 1/qtr) 1.2. Identify/pursue relevant policy areas for legislative initiatives 1.3. Develop grant applications for mutually agreed upon policy objectives | July 27 NTP Sept. 25 | Nov. 20 | X | X | | X | | X |
| 2. Coordination of tribal transportation planning 2.1. Form corridor taskforces/collaborate on CMCPs 2.2. Identify/analyze ITTS* projects for funding opportunities (<i>Strategic Action Plan</i> for near/medium term projects) 2.3. Facilitate exchange/dissemination of transportation related data pertinent to ITTS implementation 2.4. Support engagement of tribes in update of ITTS project inventory 2.5. Coordinate w/ iCommute to increase tribal employer participation in transportation demand management strategies | X | X | X | X | X | X | X | X |
| 3. Build capacity to aid in the preservation of cultural resources in the region 3.1. Identify/document contacts and resources available from tribes to engage in preservation of tribal cultural resources 3.2. Collaborate in developing an education/outreach strategy to inform local governments of the importance of cultural resources | | | | | | X | | X |

Work Plan: Timeline and Activities – Tribal Collaboration on Regional Plan Implementation

| Tasks | 2020 | | 2021 | | 2022 | | | |
|---|----------|---------|---------|---------|----------|---------|---------|---------|
| | FY 2021 | | | | FY 2022 | | | |
| | Q1 | Q2 | Q3 | Q4 | Q1 | Q2 | Q3 | Q4 |
| | Jul-Sept | Oct-Dec | Jan-Mar | Apr-Jun | Jul-Sept | Oct-Dec | Jan-Mar | Apr-Jun |
| 4. Participate in regional environmental conservation/habitat preservation (mitigation) 4.1. Explore opportunities to engage tribal nations in regional habitat conservation efforts. Bring knowledge/potential collaborations to SANDAG | | | | X | | X | | X |
| 5. Explore opportunities to engage tribal nations in regional energy planning coordination 5.1. Coordinate with SANDAG on identifying the legal constraints to equity in applying for State incentives on tribal lands/develop legislation that SANDAG would support 5.2. Coordinate with SANDAG on efforts to integrate transportation-related energy research/development projects such as in-road electric vehicle charging on reservations | | X | X | X | X | X | X | X |
| 6. Collaborate on ways to integrate tribal nations into the regional economy 6.1. Develop scope of work and budget for a regional study on the full range of economic impacts/benefits from reservation economies | | | | X | | | | |

* *Intraregional Tribal Transportation Strategy, 2018. A Caltrans Strategic Partnership Planning Grant. SCTCA-SANDAG.*

Key California Native American/Cultural Preservation Legislation and Policies *

2020 Legislation

- [Assembly Bill 168](#) (Aguiar-Curry) – Planning and zoning: annual report: housing development: streamlined approvals

Requires a pre-consultation process with a California Native American tribe prior to the submission of a Senate Bill 35 (Wiener, Chapter 366, Statutes of 2017) permit, which entitles a developer to a streamlined housing approval process, in order to identify and protect tribal cultural resources.

- [Assembly Bill 1426](#) (Boerner Horvath) – Public resources: San Onofre State Beach: Richard H. and Donna O’Neill Conservancy: road construction

This bill places restrictions on street, road, and highway construction within a specified avoidance area in and around San Onofre State Beach and the Richard H. and Donna O’Neill Conservancy.

- [Assembly Bill 275](#) (Ramos) – Native American cultural preservation

Revises the process for agencies to complete and review their inventories of collections of California Native American human remains and associated funerary objects for repatriation.

2014 Legislation

- [Assembly Bill 52](#) (Gatto) – Native Americans: California Environmental Quality Act

This bill establishes procedures and requirements under the California Environmental Quality Act for the purpose of avoiding or minimizing impacts to tribal cultural resources.

Additional Resources:

Compliance Resources for Land Use/Cultural Preservation – California Office of Planning and Research Site – February 2020 AB 52 Technical Advisory Document:

https://opr.ca.gov/docs/20200224-AB_52_Technical_Advisory_Feb_2020.pdf

2004 Legislation

- [Senate Bill 18](#) (Burton) - Traditional tribal cultural places

This bill now requires a city or county, prior to the adoption or amendment of a general plan, to conduct consultations with California Native American tribes for the purpose of preserving places, features, and objects protected by specified provisions of the Public Resources Code that are within the city's or county's jurisdiction, and requires the city or county to maintain the confidentiality of information concerning the specific identity, location, character, and use of those places, features, and objects consistent with guidelines developed and adopted by the Governor's Office of Planning and Research.

Governor Newsom Executive Orders/Policies

- Native Ancestral Lands Policy – September 25, 2020*

This Policy is to partner with California tribes to facilitate tribal access, use, and co-management of state-owned or controlled natural lands and to work cooperatively with California tribes that are interested in acquiring natural lands.

<https://www.gov.ca.gov/wp-content/uploads/2020/09/9.25.20-Native-Ancestral-Lands-Policy.pdf>

- Executive Order N-15-19 – Apology to Native Americans – June 18, 2019*

Acknowledges and apologizes on behalf of the state for the historical “violence, exploitation, dispossession and the attempted destruction of tribal communities,” which dislocated California Native Americans from their ancestral land and sacred practices. The destructive impacts of this forceful separation persist today, and meaningful, reparative action from the State of California can begin to address these wrongs in an effort to heal its relationship with California Native Americans.

<https://www.gov.ca.gov/wp-content/uploads/2019/06/6.18.19-Executive-Order.pdf>

* *Click on bill number for link to full bill text/information or see links for other referenced documents.*

California Public Utilities Commission

Investor-Owned Utility Real Property- Land Disposition – First Right of Refusal for Disposition of Real Property Within the Ancestral Territories of California Native American Tribes

Introduction:

On April 26, 2018, the California Public Utilities Commission (Commission) adopted a Tribal Consultation Policy. Consistent with the goals of the Tribal Consultation Policy Executive Order B-10-11,¹ and Executive Order N-15-19, this Land Disposition Policy provides guidance on how the Commission will apply the Tribal Consultation Policy to future applications and advice letters submitted by investor-owned utilities (IOUs) requesting permission to dispose² of Real Property³ (including any Real Property contained within the hydro watershed lands retained by Pacific Gas and Electric Company (PG&E) through implementation of its Land Conservation Commitment (LCC)⁴) under Section 851 of the Public Utilities Code. Consistent with this Policy, the Commission will encourage and, where possible, facilitate transfers of Real Property to California Native American Tribes.⁵ In particular, this Policy creates an expectation that, for any future disposition of Real Property, the IOU will offer Tribes a right of first refusal⁶ before putting the property on the market. Following adoption of this Policy, the Commission will hold stakeholder workshops discussing how best to implement this Policy and will, through its Resolution process, adopt formal implementation guidelines.

In short, this Policy works as an overlay over the existing Section 851 process. It does not determine the outcome of any Section 851 submission; rather, it expresses a

¹ Adopted September 19, 2011.

² The use of the terms “dispose of” and “disposition” in this Resolution refer to the transfer, sale, donation or disposition by any other means of a fee simple interest or easement in real property.

³ “Real Property” subject to this policy is defined as any IOU property whose disposition is subject to approval in accordance with California Public Utilities Code Section 851.

⁴ The Land Conservation Commitment (LCC) was established and implemented in accordance with Commission Decisions (D.) 03-12-035 and D.08-11-043.

⁵ “California Native American tribe” means a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004. See Cal. Pub. Res. Code § 21073. California Native American tribes include both federally recognized tribes and tribes that are not recognized by the federal government. Nothing in the policy prevents tribes from consulting with other Native American groups that demonstrate an ongoing connection to a specific place or cultural resource, or issue falling under the jurisdiction of the Commission.

⁶ As we use it here, the term first “right of refusal” means the IOU disposing of the surplus property has to contact the Tribe or Tribes whose ancestral territory surrounds the surplus property and provide such tribe(s) the first right to take/purchase or refuse transfer of the property, before the IOU can seek third party purchasers for such surplus property. The right of first refusal is similar in concept to a call option, in that the Tribe will have the right, but not the obligation, to purchase or accept transfer of the surplus land within a reasonable time period, as determined by the Commission, after notice by the IOU is provided to the Tribe.

preference for the types of dispositions the Commission would like to see, and provides all affected stakeholders, including Tribes, notice and an opportunity to comment.

Background:

Executive Order B-10-11 declares that “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.” The Executive Order directs state executive agencies and departments to “encourage communication and consultation with California Indian Tribes.” It further directs state agencies and departments “to 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.”

As recognized in the Commission’s Tribal Consultation Policy, California is home to over 170 California Native American tribes. Executive Order B-10-11 applies to federally-recognized tribes and other California Native Americans. For purposes of this policy, the terms “tribes” and “tribal governments” refer to elected officials and other representatives of federally-recognized tribes and other California Native Americans consistent with the definitions set forth in A.B. 52.

This policy is to be read consistent with the Commission’s Tribal Consultation Policy, which requires that the Commission provide notification of Commission proceedings to tribes, encourage tribal participation in Commission proceedings, and meaningfully consider tribal interests and the protection of tribal sacred places and cultural resources.

When an IOU plans to dispose of Real Property within a Tribe’s ancestral territory,⁷ the Commission will ensure that the Chairperson, or the Chairperson’s designee, of any appropriate Tribe receives notice of the planned disposition. The Commission will set forth specific notice requirements in the guidelines to be adopted later. This policy establishes a Commission preference for the transfer of Real Property to Tribes,

⁷ Tribal ancestral territory is defined as the territory designated by the Tribe and submitted to the Native American Heritage Commission (NAHC) to provide to state agencies and local government for notice of projects under AB 52. Tribes are the primary source for identification of a Tribe’s ancestral territory. A secondary source for tribal ancestral territory not specifically defined by the Tribe pursuant to AB 52 is the Handbook of North American Indians (1978 Sturtevent, Smithsonian Institution) volumes 8, 10, and 11). IOUs shall attempt to resolve any disputes regarding the Tribe with whom it is required to provide notice and/or the location of the tribal territory within which the subject Real Property is located or to which it is immediately adjacent through discussion with the Tribes identified by the NAHC. Should the IOU be unable to resolve identified disputes, it shall exercise reasonable discretion and best judgement to determine how best to proceed with the required notification. The IOU shall document such discussions, notices, and determinations.

consistent with specific considerations identified here.⁸ This preference can be rebutted by a showing that the transfer would conflict with applicable laws or regulations, or by a Commission finding, after a hearing, that the transfer would not be in the public interest.

The Commission, in adopting this policy, recognizes that:

- The IOUs own Real Property located within Tribes' ancestral territories. This includes lands both within and outside the Federal Energy Regulatory Commission (FERC) licenses. Approximately 140,000 acres of watershed property owned by PG&E was identified in the LCC. Some of this land has been donated to third parties, some is in the process of being donated to third parties, and some will be retained by PG&E consistent with the terms of the LCC.
- California law and policy encourages consultation and cooperation with tribal governments, particularly concerning the protection of Tribal sacred places and cultural resources.⁹
- These Real Properties may hold historical, spiritual and other significance for California Tribes: some of these lands include the remains of California Native Americans; others are places of spiritual and cultural importance where California Native Americans have prayed, held ceremonies, and gathered traditional and medicinal plants.
- Executive Orders, federal and state laws, policies, and regulations acknowledge legal rights of access to certain lands and require state consultation with affected California Native American Tribes prior to taking actions impacting such lands.

Policy Goals: The goals of this policy are as follows:

- Recognize and respect Tribal sovereignty.
- Protect Tribal sacred places and cultural resources.
- Ensure meaningful consideration of Tribal interests and the return of lands within the Tribe's ancestral territory to the appropriate Tribe.

⁸ Specific considerations are identified in this policy and may be added to through development of implementation guidelines to be developed subsequent to the adoption of this policy.

⁹ Consistent with California law and policy, three of the five Commissioners individually expressed that they would like to see more of the Stewardship Council lands donated to Tribes. February 8, 2018 Commission Voting Meeting.

- Encourage and facilitate notice and Tribal participation in matters before the Commission that involve Real Property transfers subject to Section 851 through either applications or advice letter processes.

The Commission's review of an IOU's request to dispose of surplus property may affect Tribes and Tribal members in several ways. For example, the transfer of property may affect land use activities on or near Tribal communities, may affect ability to protect and access Tribal sacred places and cultural resources, and may provide opportunities to return lands to California Tribes that are within their Tribal territories.

Facilitating Tribal Government Access to Information:

The Commission will encourage and facilitate tribal government access to information concerning matters before the Commission that involve disposition of Real Property.

- The Commission will adopt guidelines requiring notification of the Tribal Chairperson or their designee of the IOU's intent to dispose of any Real Property within a Tribe's ancestral territory. The Commission expects that notice will include: (1) identification of the Real Property at issue; (2) the reason for the disposition; and (3) contact information for a representative of the IOU that is able to provide at the Tribe's request enough additional information for the Tribe to determine whether it is interested in the Real Property. If the Real Property is located within or adjacent to a federally recognized Tribe's Indian Country,¹⁰ the Commission will consider the Tribe whose Indian Country the land is in or adjacent to as the sole Tribe for purposes of the right of first refusal.
- The Commission will give special consideration, to Tribal government requests to participate in Commission proceedings involving requests by IOUs to dispose of Real Property under Section 851. A Tribal government may request to become a party in such proceedings, and the Commission will consider the Tribe's comments or protest of the IOU's request for Commission approval of the transaction.¹¹ If the appropriate Tribe(s) does not receive notice before the IOU begins the Section 851 process, the Commission will provide the Tribe reasonable additional time to participate in the proceeding, and will require

¹⁰ The term "Indian Country" means "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same." 18 U.S.C. § 1151.

¹¹ This will include requests made either through the Commission's formal application process, which is resolved via Decision, or through the Commission's less-formal advice letter process, which is resolved via Resolution.

meaningful consultation with the tribal government to determine whether the Tribe is interested in acquiring the Real Property.

- Commission staff and Administrative Law Judges will ensure that relevant information the Commission receives from a Tribe is submitted into the record of a proceeding (including presenting such information to Commissioners where the land transfer is the subject of an advice letter), consistent with the confidentiality provisions set forth in the Commission's Tribal Consultation Policy.
- Where an IOU seeks approval to transfer Real Property within a Tribe's ancestral territory, the Commission expects that the IOU will provide the Tribe a right of first refusal. The Commission will further deem that Tribe the preferred transferee absent a finding supported by evidence (1) that the Tribe is not interested in acquiring the Real Property (e.g., the Tribe declined consultation or confirmed that it is not interested); (2) that the IOU acted in good faith and, after reasonable effort, was unable to agree with the Tribe on reasonable terms to transfer the Real Property consistent with Commission policy; (3) that conveyance of the Real Property to another entity is necessary to achieve IOU operational requirements, or to comply with any law, rule, or regulation; or (4) that conveyance of Real Property to another entity would be in the public interest.
- The Commission shall conduct further Tribal consultation, consult with the Governor's Office of the Tribal Advisor, IOUs, and other stakeholders to develop implementation guidelines for the policy.
- Until implementation guidelines are in place, IOUs shall provide notice of the proposed disposition of Real Property to the appropriate Tribe(s). The Tribe will have 90 days to respond to the notification as to its interest in the subject Real Property. The IOU shall maintain a record of all contacts with the Tribe(s), including the notice, return receipt as proof that the Tribal Chairperson received such notice, response to the notice, and any other communications with the Tribe or third parties regarding disposition of the subject Real Property.

If an IOU submits an application or advice letter consistent with Section 851 and relevant Commission decisions for the disposition of Real Property, the Commission will ensure that the record contains a showing of notice and consultation to the appropriate Tribe(s), consistent with the identified Tribal ancestral territory recognized by the Native American Heritage Commission (NAHC). This includes, but is not necessarily limited to:

- A copy of a written request to the NAHC to identify tribal entities interested in the area where the Real Property being disposed of is located.

- A copy of written notice to the Tribal Chairperson or their designee of the IOU's intent to dispose of the subject Real Property, including an offer to consult with the Tribe regarding the Tribe's interest to acquire the subject Real Property.
- Documentation of communication between the IOU and the Tribe regarding whether the Tribe is interested in acquiring the Real Property.

If those requirements are not met, and if those deficiencies cannot be cured, the Commission may deny the application or advice letter without prejudice.

As part of its review of any disposition of Real Property under Section 851, the Commission will consider any request by a Tribal entity, as well as comments regarding potential impacts on Tribal cultural resources, or suggesting measures that would mitigate those impacts. This applies whether the proposed transfer is to the Tribe or a third party. Such review and consideration of impacts to cultural resources will be consistent with all laws, rules, and regulations governing the protection of cultural resources on the Real Property.

If more than one Tribe seeks ownership of available Real Property, and if the Tribes are unable to resolve the dispute themselves, this Policy creates an expectation that the IOU or the Commission will engage in meaningful consultation with the Tribes to attempt to resolve the dispute. As part of the implementation guidelines to be developed under this Policy, the Commission will work with the Tribes, utilities, and other stakeholders to further develop a dispute resolution policy.

The Commission will maintain a list, to be updated every year, of recent and upcoming IOU Real Property dispositions, as well as a summary of Tribal contacts and consultations (including the outcome of those consultations) undertaken over the previous year. As part of the implementation guidelines to be developed under this Policy, the Commission will seek input from stakeholders on the format of this list, and of its updates.

After this Policy is adopted, the Commission's Energy Division will host workshops to develop the implementation guidelines discussed here. After consideration of the workshop comments and the workshop report, if any, Energy Division will draft a Proposed Resolution setting forth the implementation guidelines.

Comments:

The Commission's Emerging Trends Committee adopted a draft version of this policy in April 2019, and made the draft version available for public comment on the Commission's website. The Commission received comments from the Pacific Forest and Watershed Lands Stewardship Council, the Habematolel Pomo of Upper Lake,

Pacific Gas & Electric Co., the Ewiiapaayp Band of Kumeyaay Indians, the Yocha Dehe Wintun Nation, the Native American Land Conservancy, the Agua Caliente Band of Cahuilla Indians, Southern California Edison Co., San Diego Gas & Electric Co., and the Manzanita Band of the Kumeyaay Nation. The Commission also conducted several workshops, both in person and via webinar, and received informal comments there.

In response to comments, the Commission has made some revisions throughout this document. The Commission also notes that this Policy is just that: a policy. It is meant to be an overarching framework, not a detailed guidance document. The Commission, in consultation with the Tribes, IOUs, and other stakeholders, will be developing more detailed guidelines to implement this broad Policy. Some of the concerns raised in the comments, though well taken, will be better addressed in the implementation guidelines, rather than in this policy.

Tribal Liaison:

Consistent with the Commission's Tribal Consultation Policy, the Commission's tribal liaison will assist in implementing this policy. The tribal liaison will act as a point of contact for tribes to seek advice on participating in proceedings and inquiries regarding pending Section 851 applications/advice letters; filing documents; contacting Commissioners, advisors, or staff; and other related matters. The Tribal Liaison, Stephanie Green, can be contacted at Stephanie.Green@cpuc.ca.gov or (415) 703-5245 Alternatively, tribal governments may contact the Commission's Public Advisor for this assistance (E-mail: Public.Advisor@cpuc.ca.gov or phone: (866) 849-8390).