



**LEGAL LANDSCAPE FOR
STATE AND LOCAL TRIBAL RELATIONS
&
LEGAL TOOLS TO
FOSTER COLLABORATION**

Christina Snider

Dry Creek Rancheria Band of Pomo Indians

Tribal Advisor to Governor Edmund G. Brown Jr.



Introductions

Overview

- Background
- E.O. B-10-11
- Agency and Local Tribal Liaisons and Consultation Policies
- Tribal Consultation Policies
- Tribal-State MOUs
- Intergovernmental Agreements
- Emergency Response Collaboration

Background

- Throughout history, many of the rights of native peoples and Tribes California have been exclusively shaped by federal policies.
 - Executive treaty authority
 - Plenary power of Congress over Tribes under Indian Commerce Clause
 - Supreme Court crafted “domestic dependent nations” / guardian-ward relationship

Background

- Because of the federal government's unique legal relationship with tribes, legislation, caselaw and policy shape the federal consultation obligation toward tribes.
- Interior's Guidelines define consultation as “the process of seeking, discussing, and considering the views of others, and where feasible, seeking agreement with them...”

Background

- The historic relationship between California Tribes and the State has been complicated, and lacks the same robust legal framework.
- Because of the federal trust responsibility toward Tribes, the State has had little legal obligation toward or power over Tribes.
- As a result, most State actions have either explicitly excluded Tribes or simply neglected to include Tribes.

Background

- Over time, Congress has delegated some of its federal obligations to the State (P.L. 280, 1953), required the State and Tribes to reach collaborative agreements (IGRA, 1988) and granted the State the authority to administer federal funds (tax credits, etc.) to Tribes.

Background

- It has generally been accepted that the consultation obligations of the federal government do not apply to the State.
- However, a relatively recent body of law has created a requirement to consult as applied to certain state actions.

CA Tribal Consultation Laws

- SB 18 (2004) requires consultation with California Native American Tribes prior to amending or adopting any general or specific plan or designating open space.
- AB 52 (2015) amended CEQA, requiring lead agencies to contact California Native American Tribes about CEQA projects and to consult with those Tribes if they request consultation on a specific project.

CA Tribal Consultation Laws

- “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 SB 18.

CA Tribal Consultation Laws

- SB 18 defines consultation as “the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties’ cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party’s sovereignty. Consultation shall also recognize the tribes’ potential needs for confidentiality with respect to places that have traditional tribal cultural significance.”

Executive Order B-10-11

- Recognizing the need to strengthen and sustain effective government-to-government relationships between the State and the Tribes, E.O. B-10-11 (2011) called on state agencies to consult with Tribes on policies that affect California tribal communities and created the Office of the Tribal Advisor.

Office of the Tribal Advisor

- The Tribal Advisor oversees and implements government-to-government consultation between the Governor's Administration and California Tribes on policies that affect California tribal communities.
 - Serves as a direct link between the tribes in California and the Governor
 - Facilitates communication and consultations between Tribes and State Agencies
 - Reviews state legislation and regulations affecting Tribes and provide recommendations

Tribal Liaisons

- Under the Executive Order, each agency has designated a tribal liaison.
- Agencies with more facetime with Tribes typically create a full-time tribal liaison position.
- The tribal liaison is responsible for engaging respectfully with Tribes and reporting to the Tribal Advisor.

Agency Consultation Policies

- Each agency has adopted or is in the process of adopting a tribal consultation policy.
- Many departments have adopted policies as well.
- Tribal consultation policies lay out the process and timelines for consultation with Tribes.
- Many consultation policies require consultation and collaboration with Tribes if a State action will impact a tribal interest.

Tribal Consultation Policies

- In addition to agency-framed consultation policies, Tribes can create their own consultation policies.
 - Provides framework for tribal engagement
 - Ensures that consultation is on Tribe's terms
 - Allows Tribe to define what meaningful consultation looks like

Tribal-State MOUs

- A Memorandum of Understanding between a Tribe and the State can memorialize an existing or desired tribal-state relationship.
 - Can be used in many contexts: parks, public works, etc.
 - Provides a formal, written mechanism for tribal input any time there is an action with the potential to impact tribal interests

Intergovernmental Agreements

- Agreements between the Tribe and the County pursuant to the Tribe's compact requirements.
- Typically mitigate off-reservation impacts.
- Sometimes includes provisions for fire protection, increased emergency services, etc. for impacts to public safety.

Commissions, Advisory Bodies and Task Forces

- Many laws and agencies require tribal representation on state commissions, advisory bodies and task forces to ensure that the Native voice is heard.
 - Native American Heritage Commission
 - Cal EPA
 - Cal Fire
 - California Broadband Council
 - Marine Protected Areas
 - Indian Child Welfare

Emergency Response: Cal OES

- Encouraging representation of tribal leadership to participate on existing Emergency Management committees, boards and councils, such as the Mutual-Aid Regional Advisory Committees, Public Safety Communication Committees, Standardized Emergency Management Committees, and Local Emergency Management Committees.
- Exploring Mutual Aid Agreements, Memorandums of Understanding, Memorandums of Agreement with Tribes.

Emergency Response: Cal OES

- Collaborates with Tribes on emergency response planning and preparation, throughout an emergency situation and until the hazard is mitigated.
- Opportunities for grant funding for security and emergency management.

Emergency Response: CDPH

- The Department of Public Health has Zika outreach to different communities, but usually focuses on cross-border travel concentration.
 - San Diego and Imperial Counties
- CDPH generally works through local partners, who are required to work with Tribes during public health emergencies.
- Each county has a different emergency plan, and has to address outreach with Tribes.
- CDPH provides contact info and maps.

Emergency Response: CDPH

- In the event of a public health emergency, you would contact your local Medical Health Operational Area Coordinator (MOHAC).
- The MOHAC is responsible for connecting with everyone to ensure there is adequate information and preparation.
- The MOHAC will also have your local medical emergency handbook.
- Connecting with your MOHAC is the best way to get resources and information quickly during an emergency.

Emergency Response: CDPH

- CDPH is always looking to build relationships with Tribes, and is open to connecting if you would like to reach out for more information.
- The State's Emergency Operations Manual is available at https://emsa.ca.gov/wp-content/uploads/sites/47/2017/07/EOM712011_DMS.pdf.
- CHHS' Consultation Policy is available at http://www.chhs.ca.gov/Press%20Releases/CHHS%20Tribal%20Consultation%20Policy_1.11.17_FINAL_PDF.pdf.

Emergency Response: DHCS

- The Department of Health Care Services Emergency Preparedness & Response Program offers (at no cost):
 - On-site and distance technical assistance for emergency preparedness activities
 - Development of Emergency Operations Plan
 - Psychological First Aid Assistance - Development of incident response plans & training on psychological first aid
- Contact Joshua Standing Horse to discuss the services available: joshua.standinghorse@dhcs.ca.gov.

Emergency Response: DHCS

Works in collaboration with partners to:

- Conduct annual assessments of clinic emergency preparedness
- Conduct quarterly teleconferences to plan annual emergency
- Provide on-site technical assistance and training to Tribes and clinic staff
- Host the Emergency Preparedness Resources for Native Americans website, which disseminates emergency preparedness information

Emergency Response: DHCS

- Provide training to tribal leaders at the IHS Annual Tribal Leaders Meeting
- Provide annual emergency preparedness workshops that focus on unique risks and threats to Indian Country, pandemic influenza, surge capacity and collaboration between Tribes and counties
- Meet with tribal leaders to demonstrate use of family emergency kits and provide recommendations for preparation

Emergency Response: CMS Rule

- If you are a Medicare or Medicaid participating provider, the Emergency Preparedness Final Rule requires you to:
 - Develop an emergency plan focusing on capacities and capabilities that are critical to preparedness for a full spectrum of emergencies specific to location;
 - Develop and implement Emergency Preparedness policies and procedures;
 - Develop and maintain a communication plan that complies with both Federal and State law; and
 - Develop and maintain training and testing programs.



Comments and Questions

Thank you!

For more information and resources,
please contact me at:

christina.snider@gov.ca.gov
(916) 628-1702

Visit the Tribal Advisor website at:
<http://tribalgovtaffairs.ca.gov/>