Memorandum

TAB 52

To: CHAIR AND COMMISSIONERS

CTC Meeting: October 8, 2014

Reference No.: 4. 12
Action

PASSED BY CTC
OCT 0 8 2014
CALIFORNIA
TRANSPORTATION COMMISSION

From: ANDRE BOUTROS
Executive Director

Subject: **TRIBAL COORDINATION AND OUTREACH POLICY RESOLUTION G-14-23**

ISSUE:

Should the Commission reaffirm and reemphasize its existing practice of having Caltrans act as the Commission's liaison for coordination and outreach with Tribal Governments?

RECOMMENDATION:

Staff recommends that the Commission reaffirm and reemphasize the Commission's existing practice of having Caltrans act as the Commission's liaison for coordination and outreach with Tribal Governments.

BACKGROUND:

The Commission has historically relied on Caltrans for ensuring adherence with required coordination and outreach with Tribal Governments on matters within the Commission's purview. This practice is built on the premise that Caltrans, through its local offices and related liaison functions, is the entity with specific knowledge of potential program and project impacts, and for ensuring appropriate and continuous government-to-government communication with Tribal Governments. Similarly, Caltrans also acts as the Commission's liaison with regional and local governments to ensure program and project related funding requests are coordinated, including recommendations for consideration by the Commission during its public meetings.

Reliance on Caltrans for this purpose is consistent with Government Code 14512 which states, in part, that "the commission may request the department, and the department shall have the authority, to perform such work as the commission deems necessary to carry out its duties and responsibilities."

The Commission is aware of and supports the June 2014 Tribal Consultation Policy adopted by the California State Transportation Agency (CalSTA), which states the CalSTA's commitment to

strengthening and sustaining relationships between Tribes and the State. The Commission is committed to working with Caltrans and CalSTA to ensure open and timely communications of its meeting agenda and action items, and welcomes the attendance and participation of Tribal Governments at all its public meetings.

For purposes of the Governor's Executive Order B-10-11, the CalSTA policy and this agenda item, the terms "Tribe," "California Indian Tribe," and "tribal" include all Federally Recognized Tribes and other California Native Americans.

Attachments
1. CalSTA Tribal Consultation Policy

CALIFORNIA STATE TRANSPORTATION AGENCY

Edmund G. Brown Jr.
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Tribal Consultation Policy

As Adopted June 2014

Preface

California is proud to be the home of more Native American residents than any other state. The State of California recognizes and reaffirms the inherent right of California Native American Tribes (Tribes) to exercise sovereign authority over their members and territory.

In 2011 Governor Edmund G. Brown Jr. issued Executive Order B-10-11 requiring all State agencies to encourage communication and consultation with Tribes. Accordingly, the California State Transportation Agency (CalSTA or Agency) hereby adopts this Tribal Consultation Policy (Consultation Policy), which memorializes this agency's commitment to strengthening and sustaining relationships between Tribes and the State. For purposes of Executive Order B-10-11 and this Consultation Policy, the terms "Tribe," "California Indian Tribe," and "tribal" include all Federally Recognized Tribes and other California Native Americans.

Background: California State Transportation Agency (CalSTA)

Governor Brown proposed the Government Reorganization Plan (GRP2) in 2012 to streamline and reorganize agencies and departments of the Executive Branch of State government. The GRP2, which was approved by the Legislature, placed key transportation functions under one agency, the California State Transportation Agency (CalSTA). The GRP2 went into effect on July 1, 2013, at which time an Agency Secretary was appointed to oversee the new CalSTA and to coordinate policies and programs of the transportation-related entities within the jurisdiction of CalSTA.

CalSTA is comprised of the following departments, boards, offices and commissions (constituent agencies):

- Board of Pilot Commissioners ..... (BOPC)
- California Department of Transportation ..... (Caltrans)
- California Highway Patrol ..... (CHP)
- California Transportation Commission ..... (CTC)
- Department of Motor Vehicles ..... (DMV)
- High-Speed Rail Authority ..... (HSRA)
- New Motor Vehicle Board..... (NMVB)
- Office of Traffic Safety ..... (OTS)

CalSTA Consultation Policy

CalSTA endorses government-to-government communication with Tribes with a strong emphasis on fostering *mutual respect* among all parties. This Consultation Policy embodies an ongoing process for establishing productive and long-lasting relationships with Tribes and is supported by the Agency Secretary.

The CalSTA Consultation Policy broadly defines provisions for enhancing the consultation processes of CalSTA and its several constituent agencies with Tribes. This Consultation Policy shall complement, not supersede, any existing laws, rules, statutes or regulations that guide consultation processes with Tribes. The CalSTA Consultation Policy shall not be construed to displace existing policies of its constituent agencies.

The CalSTA Consultation Policy was developed with direct input from Tribes. Five guiding principles were identified: collaboration, communication, education, process, and timely notice. The guiding principles are to be executed by CalSTA and employees of constituent agencies in a good-faith manner to facilitate effective consultation practices and promote cooperation and efficiencies relative to tribal consultation. These guidelines are to be acknowledged by CalSTA and its constituent agencies when drafting, updating or implementing consultation policies pursuant to Executive Order B-10-11.

Consultation Policy Guidelines

Collaboration.

CalSTA is committed to the principle that interaction with Tribes shall be regarded as a "partnership" of mutual respect whereby the Agency and its constituent agencies strive to ensure a sound and productive relationship with tribes through the development and maintenance of a meaningful dialogue.

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. CalSTA and its constituent agencies will work together 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. It is strongly recommended that communication between CalSTA constituent agencies take place early and often, particularly if a project has tribal implications; occur on a regular basis; continue throughout changes in leadership; be inclusive and transparent; provide timely notice (see below) 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, CalSTA and its constituent agencies 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.

The Agency Secretary and CalSTA heads of constituent agencies shall meet with tribal leaders (elected and appointed officials of tribes and their designees) no less than once a year to collegially: 1) review the CalSTA Consultation Policy; 2) discuss transportation and other issues relating to CalSTA constituent agencies; 3) exchange information regarding state and tribal leaders' priorities, projects, events, and/or other matters of mutual interest; 4) continue personal and professional relationships between state and tribal leaders.

Native American Liaisons: The Secretary will designate a Deputy within the Agency to act as a Native American Liaison for the purpose of policy coordination between CalSTA, constituent agencies and tribes. The CalSTA Liaison will ensure that each of the CalSTA constituent agencies whose work may directly impact Native American issues shall designate a Department Liaison to work directly with the Agency and tribes. The CalSTA Liaison will be responsible for coordinating outreach, communication and other activities affiliated with department liaisons and Native American interests. The name and contact information for CalSTA and its constituent agency liaisons will be published on the CalSTA website. Moreover, CalSTA liaisons will participate in CalSTA Listening Sessions with tribes, attend at least the first quarterly Caltrans Native American Advisory Committee (NAAC)[1] of each calendar year, and be available for other Agency-related and NAAC meetings upon request.

Education.

The CalSTA Native American Liaison will encourage the Native American Liaisons of its constituent agencies to seek ongoing training designed to improve each constituent agencies' capacity for promoting collaboration with Tribes. Education and training should emphasize communication, tribal sovereignty, the unique distinctions of Tribes, and the skills and tools necessary for collaborative engagement.

Leadership of the constituent agencies shall endeavor to instill an awareness of tribal culture and respect within their organizations.

Process.

The core missions of CalSTA and its constituent agencies are extensive. Each constituent agency is responsible for implementing a wide range of transportation, licensing and safety-related core functions that are subject to scores of federal and state laws, regulations, guidelines and restrictions. Within such mandates every attempt will be made to interrelate with Tribes in a manner that is timely and respectful and which clearly identifies internal processes and timeline expectations for the parties involved.

Consultation at the field, project management, and executive staff level is strongly encouraged so that information is available early in the planning process. Consultation may be initiated by a constituent agency or Tribe.

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[1] *The Native American Advisory Committee (NAAC) is a chartered body of elected persons who ensure that transportation executives receive direct advice from the Native American community on issues pertaining to all modes of transportation in California. This advisory committee contributes to the Tribal Governments' ability to take advantage of transportation opportunities and to participate in planning, developing and implementing transportation projects and services. The NAAC offers a chance to further government-to-government working relationships. The NAAC holds a minimum of four meetings each calendar year throughout the state.*

Timely Notice.

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 members and/or leaders of Tribes. Contact with Tribes should be initiated as early as possible, preferably with no less than 45 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.

This Consultation Policy respects the sovereignty and self-determination of Tribes and shall not be deemed to waive any rights, including treaty rights, immunities, or jurisdiction on the part of CalSTA or Tribes. This Consultation Policy does not diminish any rights or protections afforded Tribes under state or federal law. Through this Consultation Policy, the intent of CalSTA is to strengthen its ability to successfully resolve issues of mutual concern collectively with Tribes. While the relationship described by this policy provides increased ability to solve problems, it likely will not result in a resolution of all issues. Therefore, inherent in this Consultation Policy is the right of CalSTA and Tribes to elevate an issue of importance to any decision-making authority of another entity, including, where appropriate, the highest levels of state and tribal government. This Consultation Policy is intended to govern the process with which CalSTA and its constituent agencies will engage in consultation with Tribes.

Effective Date

The CalSTA Consultation Policy shall be effective on the date executed by the Agency Secretary and shall be posted on the CalSTA website. It shall be subject to periodic review to ensure provisions are current and consistent with state policy and enacted legislation.

Pursuant to Executive Order B-10-11 dated September 19, 2011, the California State Transportation Agency hereby adopts this Tribal Consultation Policy.

Signed: Brian P. Kelly Date: June 17, 2014

Brian P. Kelly
Secretary, California State Transportation Agency