STATE OF CALIFORNIA GOVERNMENT OPERATIONS AGENCY **GOVOPS POLICY MEMO** TO: **ALL GOVOPS EMPLOYEES; ALL GOVOPS DEPARTMENT DIRECTORS** SUBJECT: **TRIBAL CONSULTATION POLICY**	DATE ISSUED: March 28, 2016 EXPIRES: Until Rescinded or Amended REFERENCES: Executive Order B-10-11 (Sept. 2011)

Preface

In 2011, Governor Edmund G. Brown Jr. issued Executive Order B-10-11 requiring all State of California agencies to encourage communication and consultation with California Indian Tribes, as defined further below. Accordingly, the California Government Operations Agency ("GovOps") hereby adopts this Tribal Consultation Policy ("Consultation Policy" or "Policy"), which memorializes its commitment to strengthening and sustaining government-to-government relationships between California Indian Tribes and the State.

Background: California Government Operations Agency

GovOps was established July 1, 2013, pursuant to the Governor's Government Reorganization Plan No. 2 ("GRP2"). GovOps was created to simplify, strengthen and improve the operation and management of programs that protect and provide services to state agencies and their employees. GovOps is responsible for administering a variety of functions that assist in the general operation of state government, such as procurement, information technology, and human resources. GovOps' goal is to foster state-wide perspectives, improve communication and information sharing, and change departmental cultures that prioritize control over service. GovOps is comprised of the following departments, boards and offices ("Departments"):

- California Department of Human Resources.....CalHR
- California Department of Technology.....Dept. of Tech.
- California Department of General Services.....DGS
- California Franchise Tax Board.....FTB
- California State Personnel Board.....SPB
- California Victim Compensation and Government Claims Board.....VCGCB
- California Office of Administrative Law.....OAL
- California State Teachers' Retirement System.....CalSTRS
- California Public Employees' Retirement System .....CalPERS

GovOps Consultation Policy

This Policy is intended to foster effective consultation and collaboration between GovOps, its Departments 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. The 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 of California.

The principles described in this Policy shall be implemented by GovOps and its Departments in a manner that facilitates effective communication and consultation practices, and promotes cooperation and efficiencies in tribal consultation.

GovOps and each Department within the Agency shall adopt its own Tribal Consultation Policy that is specific to each Department's programs, and based on input received from Tribal Leaders and their designees. This Consultation Policy shall be considered and acknowledged by GovOps and its Departments when drafting, updating or implementing consultation policies pursuant to Executive Order B-10-11.

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

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.

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 Native American Heritage Commission ("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.

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. Existing limitations on Tribal sovereignty are defined through acts of Congress, treaties, and federal court decisions.

Consultation Policy Principles

Collaboration. GovOps is committed to the principle that interaction with Tribes shall be regarded as a "partnership" of mutual respect whereby the Agency and its Departments 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. GovOps and its appropriate Departments 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. GovOps and its Departments 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 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, GovOps and its Departments 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. The Secretary will designate a Deputy Secretary within the Agency to act as a Tribal Liaison for the purpose of policy coordination between GovOps, its Departments and Tribes. The GovOps Tribal Liaison will ensure that each of the Departments whose work may directly impact Tribal issues shall designate a Department Tribal Liaison to work directly with the Agency and Tribes. Department Liaisons shall be high-level department employees who have direct access to the Department's executive leadership. The GovOps Tribal Liaison will be responsible for

coordinating outreach, communication and other activities affiliated with Department Liaisons and Tribal interests. GovOps and its Departments will publish on their respective websites, the names and contact information for their Tribal Liaisons, along with the final Consultation Policies.

Education. The GovOps Tribal Liaison will encourage the Department Liaisons to seek ongoing training designed to improve each Department's 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 Departments shall endeavor to instill an awareness of tribal culture and respect within their organizations.

Process. Each Department is responsible for implementing a wide range of inter-governmental services that are subject to 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 Department or Tribe.

Timely Notice. This Consultation Policy recognizes that there are 109 federally recognized Indian Tribes located in California. 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 30-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.

Through this Consultation Policy, the intent of GovOps is to strengthen its ability to successfully resolve issues of mutual concern collectively with Tribes. While the communication and collaboration encouraged by this Policy provides increased ability to solve problems, it may not result in a resolution of all issues. Therefore, inherent in this Consultation Policy is the right of GovOps 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 implements Executive Order B-10-11 and is intended to improve GovOps' 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.

Effective Date

The GovOps Consultation Policy shall be effective on the date executed by the Agency Secretary and shall be posted on the GovOps 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 Government Operations Agency hereby adopts this Tribal Consultation Policy.

Signed: _____ Date: March 28, 2016

Marybel Batjer
Secretary, California Government Operations