

STAFF REPORT



MEETING DATE:	6/28/11
SUBJECT:	Adopt Policy for Consultation with Native American Tribal Governments
AGENDA ITEM:	4-6
STAFF CONTACT:	Jan Bulinski

SUMMARY:

The RTPA is required to engage in government-to-government consultation with regard to planning documents and other studies prepared by the RTPA. A policy has been prepared in accordance with federal guidance.

STAFF RECOMMENDATION:

It is recommended that the board adopt, by Resolution No. 11-09, Administrative Policy 5-6 on Consultation with Native American Tribal Governments.

DISCUSSION:

Federal and state law requires local agencies to consult with federally recognized tribal governments prior to making transportation decisions, taking actions, or implementing programs that may impact their communities. Native American Tribal Government concerns should be considered when developing documents such as the Federal Transportation Improvement Program (FTIP) and Regional Transportation Plan (RTP). The executive director is the designated RTPA official to consult.

Although consultation is not mandated for non-federally recognized tribes, the RTPA will consult with local tribes when plans or activities might impact cultural values or the community.

ALTERNATIVES:

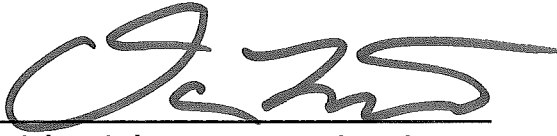
The board may choose not to approve the policy on consultation. This could impact Federal Highway Administration funding.

OTHER AGENCY INVOLVEMENT:

The Pit River and Redding Rancheria tribes were consulted in the development of this policy. Staff appeared at both the Pit River and Redding Rancheria Tribal Council meetings to discuss the draft policy and request feedback. The Tribal councils were pleased that a policy was being developed and provided information to enhance the document. The Technical Advisory Committee (TAC) concurs with the staff recommendation.

FINANCING:

Adequate funds are programmed in the RTPA budget for this activity.

A handwritten signature in dark ink, appearing to read 'D. Little', written over a horizontal line.

Daniel S. Little, AICP, Executive Director

Attachments: Resolution 11-09
 Policy for Consultation with Native American Tribal Governments

RESOLUTION



RESOLUTION NUMBER:	11-09
SUBJECT:	Adopting a Policy for Consultation with Native American Tribal Governments for the Shasta County MPO

WHEREAS, U.S. Code Title 23 Section 135 (e) and (f), and Title 23 Code of Federal Regulations Part 450.316(c) specifies that MPOs involve federally recognized Native American Tribal Governments in the development of the Regional Transportation Plan (RTP) and Federal Transportation Improvement Program (FTIP); and

WHEREAS, the Shasta County Regional Transportation Planning Agency is the designated MPO for Shasta County; and

WHEREAS, a draft policy for consultation with Native American Tribal Governments was prepared that describes the agreed upon consultation requirements, protocol and responsibilities in the planning process; and

WHEREAS, the Pit River and Redding Rancheria tribes have reviewed the draft consultation policy.

NOW, THEREFORE, BE IT RESOLVED that the Shasta County Regional Transportation Planning Agency hereby approves Policy 5-6 for Consultation with Native American Tribal Governments.

PASSED AND ADOPTED this 28th day of June, 2011, by the Shasta County Regional Transportation Planning Agency.

Leonard Moty, Chair
Shasta County Regional Transportation Planning Agency

SHASTA COUNTY RTPA POLICY AND PROCEDURE MANUAL		Number
		5-6
SECTION: Rules of the Shasta County RTPA	Policy for Government-to-Government Consultation with Federally Recognized Native American Tribal Governments	
APPROVAL DATE: 6/28/11		
Page No. 1 of 4		

Policy for Consultation with Native American Tribal Governments

Consultation is 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.

Requirement to Consult

U.S. Department of Transportation Order 5301.1 ensures that programs, policies, and procedures administered by the U.S. DOT are responsive to the needs and concerns of Native American Tribal Governments. This order provides an overview of the various federal regulations and executive orders on this subject. This order is available at: <http://environment.fhwa.dot.gov/guidebook/vol2/5301.1.pdf>

US Code Title 23 Sec 135 (e) and (f) generally state that tribal government concerns should be considered in developing planning documents. Title 23 CFR Part 450.316(c) specifies that Metropolitan Planning Organizations (MPOs) involve federally recognized Native American Tribal Governments in the development of the Regional Transportation Plan (RTP) and Federal Transportation Improvement Program (FTIP).

Federally Recognized Tribes

A contact list of California Native American Tribes that are both federally and non-federally recognized is maintained by the Native American Heritage Commission. The two federally recognized tribes in Shasta County are the Pit River Tribe, and the Redding Rancheria. Although consultation is not mandated for non-federally recognized tribes, this does not preclude the RTPA from consulting with local non-federally recognized tribes when plans or activities might impact cultural values or the community.

Federal recognition is a legal distinction that applies to a tribe's right to a government-to-government relationship with the federal government and eligibility for federal programs.

Government-to-Government Consultation Policy

All California Native American Tribes are distinct and independent governmental entities with specific cultural beliefs and traditions and unique connections to areas of California that are their ancestral homelands.

Federal and state law require local agencies to consult with federally recognized tribal governments prior to making transportation decisions, taking actions or implementing programs that may impact their communities. This activity is separate from, and precedes, the public participation process. Protocol should be flexible and dynamic with respect to initiation of communication and discussion format. More than one tribe may have an affiliation with the area of consideration. Individual consultation may be necessary if a combined consultation format is not preferred by the tribal government. Determining the degree and adequacy of consultation will vary depending on a number of factors including the scope of proposed activities, whether the activity is short-term or long-term, the cultural or political sensitivity of the issue at hand, and the number of potential stakeholders.

The Shasta County Regional Transportation Planning Agency (RTPA) intends to continue consulting with Native American Tribal Governments on activities that may impact their communities.

Consultation

The executive director is the designated RTPA official with principal responsibility for the agency's implementation of consultation requirements. At the appropriate time in the planning phase, contact shall be initiated directly with the tribal chair to inquire as to protocols in place, such as cultural resource contacts, procedures, time limits and restrictions affecting communication. Development of mutually agreed-upon protocols may result in more effective consultation efforts with individual tribes. Consultation should be done face-to-face whenever possible.

Consultation is a process, not a single event, and communication should continue until the project or plan is complete. Notification of tribes is not the same as consultation. Sufficient time should be provided in a request for consultation in order to allow the tribal council to take official action. Consultation requests should include a clear statement of purpose, explaining the reason for the request and declaring the importance of the tribe's participation in the planning process. The request should specify the location of the area of potential effect addressed in the proposal. All aspects of the consultation process should be documented, including how the lead agency reaches a final decision.

In 1999 the California Transportation Commission adopted additional guidelines:

The Regional Transportation Plan process shall meet the federal and state requirements to consult with and consider the interests of Indian Tribal Governments in the development of transportation plans and programs, including funding and programming of transportation projects accessing tribal lands through state and local transportation programs.

Planning Documents

Planning studies, Transportation Improvement Programs (FTIP, STIP, RTIP), Regional Transportation Plan (RTP) and Overall Work Program (OWP)

Consult with tribal governments in preparation of planning studies and programs affecting the tribe:

- ❖ Initiate consultation by letter from the executive director to the tribal chair with copies to the Chief Administrative Officer (CEO), Administrator, and Cultural Department representatives.
- ❖ Offer to meet to discuss the tribe's needs and concerns regarding impacts within their jurisdiction prior to the beginning of preparation of documents. If the tribal chair and/or their representatives elect not to meet, send a copy of the draft report for their review.
- ❖ Consult with tribal governments while developing the RTP, addressing tribal concerns regarding impacts within their jurisdiction and again prior to adoption of the RTP.
- ❖ Invite representatives of the tribe to public meetings.

Transit studies, unmet needs hearing, transit needs assessment

Consult with the tribal governments on transit needs in their area:

- ❖ Initiate consultation and invitation to the unmet needs hearing by letter from the executive director to tribal chair with copies to the CEO, Administrator, and Cultural Department representatives.
- ❖ Offer to meet to discuss the tribe's transit needs and concerns.
- ❖ Outreach to members of the tribe through local newspapers, Native American newsletters, or trust lands meeting places.

Grant Programs: Federal Transit Administration Transit Grant Programs, Transportation Enhancements, JARC, New Freedom, etc.

Coordinate with the tribal governments to provide information and technical assistance on grant programs administered by the RTPA or other agencies:

- ❖ Initiate consultation by letter from the executive director to the tribal chair with copies to the CEO, Administrator, and Cultural Department representatives.
- ❖ Provide notice of each grant and its application deadlines.
- ❖ Offer assistance in completing grant applications.
- ❖ Invite representatives of the tribe to training or public meetings regarding the grants.
- ❖ Coordinate between the tribe and RTPA member agencies.
- ❖ Consult with and consider the interests of the tribal government.

Indian Reservation Road (IRR) Planning and Programming

Coordinate amongst planners and engineers in local agencies and tribes:

- ❖ Offer to meet to discuss the tribes needs and concerns when contacted by the tribal representatives.
- ❖ Provide assistance in IRR planning.
- ❖ Coordinate with federal entities as requested by the tribe.