

Native American Tribal Communities Relations Policy¹

California Department of Forestry and Fire Protection

Approved by Executive Team January 18, 2012

Policy

It is the policy of the California Department of Forestry and Fire Protection (CAL FIRE) to work cooperatively with all recognized Native American tribal governments in all facets of Department activities to minimize impacts of CAL FIRE projects² to cultural resources.

Consistent with this policy, the Department:

- Shall consider ~~recognized~~ Native American tribal governments (hereinafter referred to as ~~tribes~~) to include federally recognized tribes; Native American Heritage Commission (NAHC) recognized tribes; California Native American organizations, and individuals identified on the CAL FIRE Native American contact list.
- Shall acknowledge both federally and NAHC recognized tribes as unique and separate entities and/or governments.
- Shall consult with tribes to ensure that Department programs and activities protect cultural resources through avoidance of those resources or through implementation of protection measures that minimize adverse impacts.
- Shall recognize and respect tribal rights, sites, traditions, and practices.
- Shall consult with tribes for Department projects it undertakes or approves having the potential to impact tribal communities.
- Shall consult with tribes for Department planning efforts, assessments, strategic plans, etc. having the potential to impact tribal communities.
- Shall encourage participation by tribes in obtaining grants, or otherwise conducting activities, for improvement of forest health or community safety.
- Shall work with tribes for protection of cultural resources during fire suppression efforts where practical, based on threat to public safety and situation.

¹ This document provides the overall, high-level policy for the Department. More specific policy and implementation direction is included in other Departmental directives, including *Archaeological Review Procedures for CAL FIRE Projects* and the CAL FIRE Handbook.

² CAL FIRE projects are projects that are initiated, funded, or permitted by CAL FIRE in its role as lead agency under the California Environmental Quality Act (CEQA) and include, but are not limited to, Timber Harvesting Plans, Nonindustrial Timber Management Plans, Timberland Conversions, projects in the Vegetation Management Program (VMP), California Forest Improvement Program (CFIP), Proposition 40 and 84 grants, State Forest timber sales and other demonstration state forest projects, engineering and Pre-Fire (Burn/Mechanical Plan) project areas, and capital outlay projects. Additional examples include, but are not limited to the development of management plans, cultural resource inventories on State Forests, special projects such as archaeological test excavations, design of archaeological interpretive trails and the development of interpretive materials and CAL FIRE brochures.

The policy direction contained herein is intended to be consistent with similar policies developed by the California Natural Resources Agency and the Governor's Office.

Policy Objectives

The mission of the California Department of Forestry and Fire Protection (CAL FIRE) is to serve and safeguard the people and protect the property and resources of California. Among the varied resources to be protected are cultural resources, which include Native American cultural sites (places where religious, ceremonial, and/or resource gathering activities took/take place) and Native American archaeological sites. CAL FIRE, at all levels, will act in a knowledgeable, sensitive, and respectful manner when working with tribes to protect cultural resources.

When projects are in the proposal stage, preplanning and consultation with the culturally affiliated tribes should be part of the planning process. Where appropriate, tribal involvement also should be included during project implementation, fire suppression, fire planning and agreements, etc., when such involvement will facilitate protection of cultural resources, tribal rights, or tribal trust resources. Where there are regulatory, statutory and/or procedural impediments limiting CAL FIRE's ability to work effectively and consistently with tribal communities, CAL FIRE will work with the tribes to resolve such impediments.

Responsibilities

Director: Works with tribes, in cooperation with the Native American Heritage Commission, to achieve the intended results of this policy, both directly and through delegation to executive level staff. The Director will designate a Tribal Historic Preservation Officer, who will have day-to-day responsibility for ensuring implementation of this policy.

Tribal Historic Preservation Officer: Represents the Director on all matters associated with tribal relations. Reports to the Assistant Deputy Director for Resource Protection and Improvement, unless otherwise directed.

Deputy Director for Resource Management: Has lead responsibility for the development and implementation of policy regarding issues impacting tribal communities and coordinates activities of appointed committee(s) should they be appointed by the Director.

Assistant Deputy Director Resource Protection and Improvement: Has lead responsibility in assuring that landowner assistance and other related programs include tribal entities to the extent feasible and consistent with statute and regulation. Provides day-to-day supervision for the Tribal Historic Preservation Officer.

Assistant Deputy Director, Forest Practice: Has lead responsibility to ensure adequate consultation with tribal entities and development of necessary mitigation during the review of timber harvesting projects pursuant to the ZqBerg-Nejedly Forest Practice Act (FPA) and the Board of Forestry and Fire Protection regulations (Forest Practice Rules).

Assistant Deputy Director for Cooperative Fire Protection, Training, and Safety: Has lead responsibility coordinating Fire Protection Reimbursement Agreements.

Assistant Deputy Director for Technical Services: Has lead responsibility for CAL FIRE capital projects and ensuring that this policy is followed as a part of the development and implementation of these projects.

Environmental Protection Forestry and Fire Protection Administrator: Currently serves at the Department's Tribal Historic Preservation Officer. Has lead responsibility for ensuring conformance with this policy for projects other than those subject to the Forest Practice Act; oversight of archaeology program areas and delivery of services; staffing or delegation of staffing of Director appointed committee(s), if any; oversight of tribal relations training for Department managers and personnel; and oversight of training for external stakeholders for the protection of cultural resources on Departmental projects or for projects on which CAL FIRE is the lead agency.

Senior and Associate State Archaeologists: Have lead responsibility for project review to ensure compliance with federal and state law; are responsible for federal and state reporting requirements relative to protection of cultural resources; perform review of work done by external consultants; and conduct of site reviews and surveys for Department projects, as appropriate.

Regional Resource Managers, Forestry and Fire Protection Administrators: Have lead responsibility for providing continuity of policy implementation at the Regional level, to the extent feasible given local needs. Responsible for ensuring that the Region Chief, Assistant Region Chief, Staff and Unit Chiefs are familiar with Department policy, tribal laws, existing agreements and contracts with local tribes, and any impediments to Department authorities and capability to enter into agreements with tribes.

Unit Chiefs: Have lead responsibility for development of Fire Protection Reimbursement Agreements and, with involvement of Department archaeological staff, protection of cultural resources during capital outlay projects and other local Unit projects, and development of local cultural resource protection strategies to be employed during fire suppression activities.

CAL FIRE's Native American Advisory Council

CAL FIRE has a Native American Advisory Council (NAAC) to advise the CAL FIRE Director on Native American issues. The mission of the NAAC is to assist CAL FIRE in establishing a cooperative and meaningful relationship with California tribes. The nine

appointed members are Native Americans and represent Native American interests statewide.

The NAAC has been inactive for several years. The Department will evaluate the need for and appropriate role of the NAAC and take action accordingly.

Native American Consultation Procedures

Introduction/Legal Authority

This document describes the procedures for consultation with Native Americans for all CAL FIRE projects. This set of consultation procedures in combination with existing procedure direction posted on the CAL FIRE website provides direction to CAL FIRE staff on consultation requirements for CAL FIRE projects.

CAL FIRE is required by State law and regulations [ref. Public Resources Code (PRC) § 21104 and 14 California Code of Regulations (CCR) §§ 15064.5, 929.1(a)(2) and 929.1(b)] to consult with the Native American Heritage Commission (NAHC) and recognized local Native American tribes during the development and review of CAL FIRE projects. Fire Protection Reimbursement Agreements are not considered projects requiring consultation with the NAHC. Tribal groups and individuals identified on CAL FIRE's Native American Contact List are the appropriate local points of tribal contact.

Consultation Procedures Statement

CAL FIRE shall consult with the NAHC and listed local tribes for any CAL FIRE project that has the potential to cause significant impacts to a Native American cultural resource. Consultation should proceed pursuant to Government Code §§ 65352.3, 65352.4, 65560 and 65562.5. Resources of concern that require Native American consultation include prehistoric or ethno-historic archaeological sites, and traditional cultural properties such as sacred places and gathering locations. In addition to consulting during specific CAL FIRE projects, CAL FIRE should also initiate consultation during broad-scale program development and activities.

Definition of Consultation

Consultation means providing recognized tribes timely notice and opportunity to comment on a proposed CAL FIRE project in an on-going manner whether the situation is an emergency or planned event. It is also an opportunity for CAL FIRE to request information on specific cultural resources that may be impacted by a proposed project. Consultation is intended to address the identification of sites, site significance evaluation, impacts assessment, and resolution of significant adverse change. Its purpose is to give Native Americans an opportunity to present their interests and concerns to a lead agency. In this relationship, CAL FIRE's obligation is to seek and consider the views of participating Native American groups. This means CAL FIRE must make a good faith effort to solicit the views of Native American individuals and

groups and factor these views into the final agency decision. The consultation requirement, thus, gives a tribe the ability to advocate an outcome it would like to see CAL FIRE take in the final project decision.

Receipt of Native American written or oral comments, views, and concerns while projects are in the planning phase is a key objective of consultation. Where not a requirement of regulations, RPFs and CAL FIRE project managers are encouraged to correspond and provide maps of the location of the proposed project. Direct contacts through telephone calls, email correspondence and face-to-face meetings facilitate the development of mutual trust and encourage the exchange of information. Such meetings and correspondence are strongly encouraged, as a follow-up to the written notifications, as appropriate.

Critical to successful consultation is listening to and actively considering the views expressed by Native American individuals and/or groups. A principal goal of consultation is to provide Native Americans a reasonable opportunity to express their views on a CAL FIRE project. Although face-to-face meetings are not required for every project, the value of personal contact should not be overlooked.

The CAL FIRE project manager should recognize that in many instances, Native American people are being asked to volunteer their time to provide CAL FIRE with information. Accordingly, CAL FIRE should consider steps to overcome financial impediments which might prevent Indian tribes from effectively participating in the consultation process. These steps may include scheduling meetings in places and times that are convenient for the consulting parties.

When CAL FIRE independently discovers that Native American people may have concerns about a proposed CAL FIRE project, the CAL FIRE manager and/or-RPF should investigate and consult. In those instances, telephone calls and face-to-face meetings (in an office or out at the project site) should be completed to gather information, answer questions, listen to concerns, and give consideration to any recommendations provided by concerned/interested Native Americans.

Typically, consultation regarding CAL FIRE projects can be completed in a series of steps. The first step, called Initial Consultation, is intended to provide notice of a proposed project and request information about cultural resources known or thought to exist within or adjacent to the project area. The second step, called Second Consultation, is taken when known cultural resources are located within the project.

Additional Consultation Efforts

CAL FIRE will conduct additional Native American consultation beyond Initial and Second Consultation if it is judged to be appropriate and necessary or requested by the tribe. The purpose here is to fully evaluate potential effects, and provide the NAHC and local listed tribes additional opportunity to participate in the project review process. For example, this type of consultation might include escorts of appropriate Native American persons or groups to inspect archaeological resources and prescribed CAL FIRE treatments.