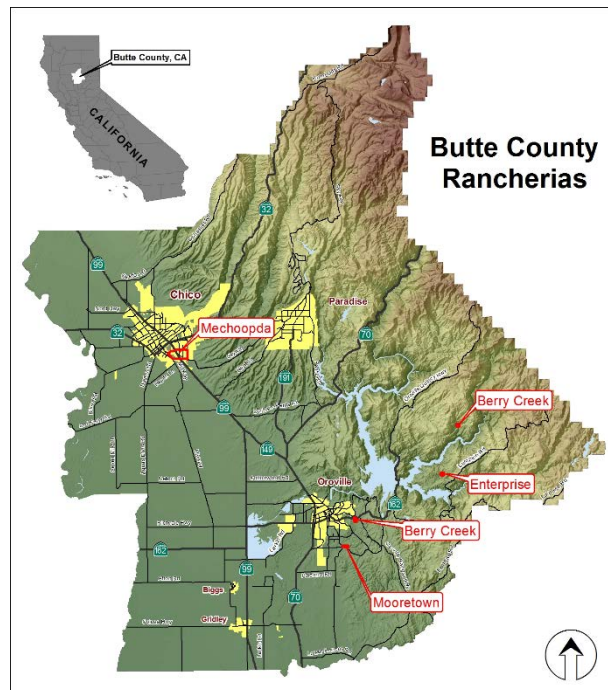


BUTTE COUNTY ASSOCIATION OF GOVERNMENTS

POLICY FOR GOVERNMENT-TO-GOVERNMENT CONSULTATION WITH FEDERALLY RECOGNIZED NATIVE AMERICAN TRIBAL GOVERNMENTS



Adopted: September 22, 2016

Prepared by:



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BCAG BOARD OF DIRECTORS

Item #5 Consent

August 25, 2016

APPROVAL OF POLICY FOR GOVERNMENT-TO-GOVERNMENT CONSULTATION WITH FEDERALLY RECOGNIZED NATIVE AMERICAN TRIBAL GOVERNMENTS

PREPARED BY: Ivan Garcia, Programming Manager

ISSUE: BCAG was informed by the Federal Highway Administration of the need to prepare a policy for government-to-government consultation with federally recognized Native American Tribal Governments in Butte County.

DISCUSSION: The United States Department of Transportation (U.S. DOT) 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 a very thorough 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. Specifically, the applicable provisions concerning the documented process from the U.S.DOT joint FHWA/FTA planning regulations at 23 CFR 450.316 state:

(c) When the MPO includes Indian Tribal lands, the MPO shall appropriately involve the Indian Tribal government(s) in the development of the metropolitan transportation plan and the TIP.

(e) MPOs shall, to the extent practicable, develop a documented process(es) that outlines roles, responsibilities, and key decision points for consulting with Indian Tribal governments and agencies, ...which may be included in the agreement(s) developed under §450.314.

The reference to the metropolitan transportation plan would be BCAG's long-range Regional Transportation Plan / Sustainable Communities Strategy (RTP/SCS). The reference to the "TIP" would be BCAG's Federal Transportation Improvement Program (FTIP).

Although BCAG already includes Tribal Governments in these planning activities in its outreach process a formal documented policy is now required. Attached is the draft Policy (document) prepared by staff to fulfill this new requirement. This policy was mailed to each of the local Native American Tribal Governments in Butte County.

BCAG Board of Directors Item #5
August 25, 2016
Page 2

The Policy is also posted online at BCAG's web page at: <http://www.bcag.org/Planning/-Public-Participation-Plan-PPP/index.html>. The attached policy does not add any new requirements to what BCAG is already doing.

STAFF RECOMMENDATION: Staff recommends the Board approve by vote the Butte County Association of Governments Policy for Government-to-Government Consultation with Federally Recognized Native American Tribal Governments.

Key staff: Ivan Garcia, Programming Manager
Cheryl Massae, Human Resources Manager

Policy for Government-to-Government Consultation with Federally Recognized 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

The United States Department of Transportation (U.S. DOT) 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 a very thorough 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>

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The reference to the metropolitan transportation plan would be BCAG's long-range Regional Transportation Plan / Sustainable Communities Strategy (RTP/SCS). The reference to the "TIP" would be BCAG's short-range programming document known as the Butte County 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. There are five federally recognized Tribes in Butte County including:

- Mechoopda Indian Tribe of the Chico Rancheria, Chico CA
- Berry Creek Rancheria, Oroville CA
- Enterprise Rancheria, Oroville CA
- KonKow Valley Band of Maidu Indians, Oroville CA

- Mooretown Rancheria, Oroville CA

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.

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 Butte County Association of Governments (BCAG) intends to consult with Native American Tribal Governments on activities that may impact their communities. Although consultation is not mandated for non-federally recognized Tribes, this does not preclude the BCAG from consulting with local Tribes when plans or activities might impact cultural values or the community.

Consultation

The Executive Director is the designated Metropolitan Planning Organization/Regional Transportation Planning Agency (MPO/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 by 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/Sustainable Communities Strategy 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

- Federal Transportation Improvement Program (FTIP)
- State Transportation Improvement Program (STIP)
- Regional Transportation Improvement Program (RTIP)
- Regional Transportation Plan / Sustainable Communities Strategy (RTP/SCS)
- 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 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/SCS, addressing Tribal concerns regarding impacts within their jurisdiction and again prior to adoption of the RTP/SCS.
- 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, Indian newsletters, or trust lands meeting places.

Grant Programs: Transit 5311, Transportation Enhancements, JARC, New Freedom, etc.

Coordinate with the Tribal Governments to provide them information and technical assistance on grant programs administered by the RTPA or others:

- 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 any 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.