



HOOPA VALLEY TRIBAL COUNCIL

Hoopa Valley Tribe

Post Office Box 1348 Hoopa, California 95546

PH (530) 625-4211 • FX (530) 625-4594

www.hoopa-nsn.gov



Chairman Joe Davis

HOOPA VALLEY TRIBAL CONSULTATION POLICY FOR USE BY FEDERAL, STATE AND LOCAL AGENCIES

1. AUTHORITY AND PURPOSE

The intent of this policy is to create clear and precise expectations with respect to formal government-to-government consultations with the Hoopa Valley Tribe. This consultation policy clarifies Hoopa Tribal expectations for “meaningful consultation” in a “free, informed, and prior consent forum” while ensuring effective and efficient communication with the Tribal Council. This will also reduce confusion and conflicts when engaging with tribal staff versus the leadership of the Tribe. Receipt of this document is notice to any local, state, or federal government agency or similar governmental entity (“Agency”) of proper government-to-government consultation with the Hoopa Valley Tribe.

This policy does not apply to or constrain communications between departments or entities within the Hoopa Valley Tribe. Nor is this policy meant to inhibit informal discussions between tribal officials and Agency employees on matters that have not yet risen to the level of formal government-to-government consultations concerning official Agency actions.

2. DEFINITIONS

The Hoopa Valley Tribe believes, *Consultation is a process that supports tribal sovereignty and self-determination and recognizes the inherent rights of Indian Tribes to self-governance. If in consent with the tribe, Consultations help ensure that the United States and California are meeting their legal responsibilities to Indian Tribal Governments.*

The US Constitution references tribes several times and exempts them from taxes and empowers Congress to regulate commerce with tribes. In 1831, the Supreme Court issued what is described as the “federal trust doctrine” and upheld tribes as “Domestic Dependent Nations,” declaring them separate from states and recognizing them as nations.

The Hoopa Valley Tribe is in the unique position of holding several congressional actions such as the 1988 Yurok-Settlement Act, 1990 Tribal Authority Rule of Clean Air Act, 1992 Central Valley Project Improvement Act, 2016, Section 518 of the Clean Water Act, the Bugenig v. Hoopa Valley Tribe appellate decision, and 2002 Hoopa Water Quality Control Plan approved and promulgated by the US EPA, all confirming the Hoopa Tribes right to exerting its authority over the Hoopa Valley Indian Reservation.

In 2000, President Clinton issued Presidential Executive Order 13175, which requires that the federal government and its agencies develop policies to strengthen government-to-government relationships with Indian Tribes. This included the development of regulations, legislation and any other policy documents. The order further stated that consultation with Indian Tribes be “meaningful.” It further upheld a Tribe’s inherent sovereign powers over their members and territory.

In 2011, California Governor Brown issued Executive Order B-10-11 recognizing and affirming the inherent rights of tribes within the State and requiring agencies to engage in “meaningful consultation” with Tribes. In 2019, California Governor Newsome issued Executive Order N-15-19 reaffirming B-10-11 to provide meaningful consultation government-to-government with tribes and creating a Truth and Healing Council.

There are many relevant and instructive definitions of consultation. For example, Public Resources Code §21080.3.1 (a) and Government Code §65352.4 define consultation as, “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. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural significance.”

The Tribe has set forth below its formal definition of “Consultation” and related terms:

- a. “**Consultation**” is the ongoing process of seeking, discussing, and seriously considering the views of the Tribe, and reaching an agreement with the Tribe on the development, implementation or mitigation of regulations, policies, programs, projects, property decisions, and other activities that may affect Tribal sovereignty, resources, properties, cultural practices, and those persons under Tribal jurisdiction.
- b. “**Multi-lateral Government-To-Government Consultation**” means meetings among multiple Tribal governments and the Agency when policies or programs with broad application throughout Indian Country are being developed and/or modified by the Agency.
 - For broad decisions, such as development or modification of federal policies that affect all Indian Nations similarly, the Tribe may accept invitations to participate in Multi-lateral Tribal Consultations.
- c. “**Bi-lateral Government-to-Government Consultation**” means authorized individuals of the Tribe meet directly with the Agency in an effort to reach an agreement on a proposed regulation, policy, program, project, property decision, or other activity that would affect the resources, properties, cultural practices, and those persons under the jurisdiction of the Tribe.

- The Tribe may demand Bi-lateral Government-to-Government Consultation whenever a proposed regulation, policy, program, project, property decision, or activity will clearly have a significant and direct effect on Tribal sovereignty, resources, properties, cultural practices, and/or those persons under Tribal jurisdiction.
- d. **“Coordination Meetings”** are regular meetings occurring at an agreed upon interval that serve to clarify how the Tribe and the Agency will continue to consult in order to reach an agreement or end result of the proposed regulation, policy, program, project, property decision, or any other activity that may have an effect on tribal resources, properties cultural practices, and/or those persons under Tribal jurisdiction.
- Coordination meetings will serve as a forum for sharing data or making agreements to share responsibilities about data collection. Coordination meetings will be used as an opportunity for the Tribe to provide input on processes; such as development of agency, government, department, or corporation plans. Coordination meetings will usually involve Tribal staff but may involve Tribal Council or other Tribal decision makers.

3. GUIDING PRINCIPLES

1) Agency Responsibilities

Federal or State agencies are obligated to seek out Tribal input and providing opportunities for meaningful consultation. This requires more than public participation efforts such as sending letters, notices, and copies of documents to Tribe and requesting comments. Whereas many public participation opportunities exist for a set period of time, consultation with the Tribe is ongoing and continuous. Federal agencies must make concerted efforts to provide Tribal involvement in decision-making and follow the consultation procedure in order to fulfill any consultation requirements. It is important to understand that the Tribe may elect not to participate in consultation or may decide to limit its consultation as necessary.

2) Participant Roles

Meaningful consultation requires that the Tribe and the Agency understand their respective roles in the decision-making process. The Tribe and an Agency must understand the legal underpinnings of the government-to-government relationship and the obligations of the federal trust relationship. Tribal governments must understand the policy decision-making authority of the Agency and national politics of the federal or state decision that drive the consultation. An Agency will benefit from an understanding of the Tribes’ unique culture, perspective, governmental infrastructure, and resources.

3) Communication

Communication between the Agency and Tribe will facilitate a joint decision-making process. Regular consistent communication is essential to meaningful and informed consultation.

4. OBJECTIVES OF CONSULTATION

- 1) The objectives to be met by persons participating in a government-to-government consultation process, include, but are not limited to, the following:
 - a) Ensure that the authorized individuals of the Tribe receive proper and advance notice of, and understand, the technical and legal issues necessary to make informed policy decisions;
 - b) Ensure Agency compliance with trust obligations as well as other applicable federal or state laws and policies affecting Tribal rights, resources, culture, religion, subsistence, and commerce;
 - c) Improve policy level decision-making of the Tribal Council and the Agency;
 - d) Achieve bi-lateral decision-making of the Tribal Council and the Agency;
 - e) Ensure the protection of Tribal rights, resources, culture, religion, and economy;
 - f) Ensure compliance with Tribal laws and policies;
 - g) Provide an opportunity for the Tribe to express views and concerns about the issue;
 - h) Develop and achieve mutual decisions through a complete understanding of technical and legal issues; and
 - i) Improve the integrity of federal/state-Tribal decisions.

5. ESTABLISHMENT OF POINT OF CONTACT

The Chairperson of the Tribe is the official point of contact for government-to-government consultation with authorities granted by members of the Tribal Council. All requests will be provided to the Chairperson with additional copies provided to the seven council members. The Tribal Council may choose to designate an alternative point of contact by issuing a written statement signed by the Chairperson of the Tribe.

The Tribe holds elections every two years for Chairperson. It is up to the requesting agency to ensure its request is using the correct name. Currently the Hoopa Tribal Chairman is:

Joe Davis, Chairman
Hoopa Valley Tribe
P.O. Box 1348
Hoopa, CA 95546
Phone: (530) 625-4211

Fax: (530) 625-4594

Email: hoopachairman@gmail.com

6. CONSULTATION PROCEDURE

1) Request for Consultation and Advance Notice

- a) Early in the planning process, any Agency that seeks to develop or implement any regulation, policy, program, project, property decision, or any other activity that may affect Tribal sovereignty or the Tribe's right to self-government, Tribal resources, properties, cultural practices, and/or those persons under Tribal jurisdiction must request a consultation and provide advance notice to the Tribe. An Agency can do this by sending a letter and attachments requesting Consultation or providing notice to the Tribal Chairperson with copies provided to members of the Tribal Council.
- b) This letter must include:
 - a draft or overview of, and need for, the policy, regulation, program or project, its scope and impact, and any applicable maps of the project area;
 - a summary describing how the proposed regulation, policy, program, project, property decision, or activity may affect Tribal sovereignty, resources, properties, cultural practices, and/or those persons under Tribal jurisdiction.
 - a contact person, timeline of the project, and any other relevant information to assist the Tribe in determining if consultation is in the best interest of the Tribe.
- c) Within 30 days after receiving the letter requesting Consultation, the Tribal Council will designate an authorized individual of the Tribe who will then respond to the Agency that the Tribe would like to schedule a pre-consultation meeting.
- d) If an Agency fails to request Consultation on the development of any regulation, policy, program, project, property decision, or any other activity that the Tribe believes may affect Tribal resources, properties, cultural practices, and/or those persons under Tribal jurisdiction, the Tribe may take the initiative to request Consultation. In this event, the Tribe expects a response from the Agency within 15 days of the receipt of the request.

2) Pre-Consultation Meeting

- a) Before the Agency moves past the scoping stage of a project, it must participate in a pre-consultation meeting with the Tribe. This meeting will involve authorized Tribal staff who will be responsible for briefing the Tribal Council before the consultation meeting takes place. Tribal Council members may be involved in this pre-consultation meeting.
- b) The Agency will prepare a review packet for the pre-consultation meeting that presents the proposed regulation, policy, program, project, property decision, or any other

activity of the Agency. The Agency must discuss the need for the proposed Agency action and how it may affect Tribal sovereignty, resources, properties, cultural practices, and/or those persons under Tribal jurisdiction.

- c) The review packet must also include:
- i) Who the responsible agency is, the nature of its involvement, and an agency contact person with his/her address, phone, and e-mail
 - ii) For projects involving construction, infrastructure, or other physical development:
 - Project description, including size and configuration of the proposed action, total acreage, what is known about past and current land use, and the type and extent of the proposed ground disturbance, the location (street address if available);
 - A copy of the current plans;
 - Maps that clearly identify the project location,
 - Clearly defined Area of Potential Effects (APE) for both direct and indirect (visual, audible, atmospheric changes) effects, to be described verbally and drawn on a map;
 - Information on any previous studies and recorded archaeological sites resources within the APE;
 - Sharp, clear photographs of the project area, including views from different perspectives. All photos should be clearly labeled and keyed to the map indicating the location and direction of the view;
- d) The Agency must present any technical and legal issues to the Tribal Council or their designee. The Agency will ensure that the Tribal Council or their designee understand the proposed Agency action.
- e) The Tribal advisors and staff will brief Tribal Council following the pre-consultation meeting. If the Tribal Council determines that it is in the best interest of the Tribe then the authorized Tribal advisor or staff will reach out to the Agency within 30 days to initiate a consultation meeting.

3) Consultation Meeting

- a) The Agency must arrange with the Tribal Chairperson a time, place, and agenda for the consultation meeting.
- b) After the Agency and Tribal Chairperson have made arrangements for a consultation meeting the Agency must confirm the Consultation Meeting with Tribal Chairperson 7 days prior to the arranged date. Confirmation can be in the form of a phone call, email, or any other approved correspondence by Tribal Chairperson.

- c) The Agency must call the Tribal Chairperson 24 hours prior to the arranged meeting date to provide adequate notice and confirmation of the meeting to the Tribe. This notice must include the Agency's representative's name, contact information, and expected time of arrival.
- d) The Agency must prepare a review packet for the Tribal Council similar to the review packet required in the pre-consultation meeting and any additional information that will be necessary for the Tribal Council to reach an agreement.
- e) The Consultation Meeting must also address the following:
 - i) A discussion of any barriers to Tribal participation such as timing, financing, and/or location. The Agency must provide funds for off reservation consultation, if necessary;
 - ii) A discussion of any sensitivities regarding sacred sites affected by the project;
 - iii) A discussion of any technical or legal issues;
 - iv) A mutually agreed upon format for process;
 - v) Development of a Consultation calendar or an agreed upon meeting interval to ensure that enough meetings are planned for adequate meaningful consultation. The Consultation calendar or meeting intervals should take into account the Agency's statutory or regulatory obligations pertinent to the decision; availability of Tribal Council members and staff; and time to gather all necessary information required. The Agency will ensure that the Tribal Council understands the proposed regulation, rule, policy, program, project, plan, property decision, inspection, or any other activity of the Agency.

4) Ongoing Consultation Meetings (if necessary) or Coordination Meetings

- a) Consultation meetings should continue pursuant to the agreed upon Consultation Calendar or meeting interval until an agreement is reached or until the Tribe and Agency decide that an agreement is possible. Some consultation meetings may be in formal settings, while other may include field trips to project locations as needed. Informal meetings between staff, sub-groups, or sub-committees may be formed on an ad hoc basis as needed and agreed upon by Tribal Council.
- b) All ongoing Consultation Meetings and Coordination Meetings require the Agency to confirm the meeting with Tribal Council one week prior to the arranged date. Confirmation can be in the form of a phone call, email, or any other approved correspondence by Tribal Council.
- c) The Agency must call the Tribal Chairperson or their designee 24 hours prior to the arranged meeting date to provide adequate notice and confirmation of the meeting to

the Tribe. This notice must include the Agency's representative's name, contact information, and expected time of arrival.

5) Provide the Tribe with a Consultation Summary Report

- a) The Agency shall provide the Tribe with a detailed report that provides a review of the government-to-government consultation process and all consultation activities after an agreement has been authorized by the Tribal Council and approved by resolution.
- b) This Consultation Summary Report may be used by Tribal Council without the consent of the Agency for any Tribal business matter; including but not limited to Tribal meetings.

6) Certification of Completed Consultation

At the end of the government-to-government consultation process, the Tribal Chairman will offer a letter certifying that Consultation was completed in compliance with this policy or not. In the event that the Tribe deems that the Agency failed to consult properly, a letter from the Tribe will explain this failure and be shared with the director or executive authority of the Agency.

7) Emergency Consultation Process

Consultation should be conducted with advance notice to avoid any devastating impacts to tribal resources. Should an Agency require consultation with a tribe in an emergency situation in which notice cannot be provided 7 to 30 days in advance, the Agency needs to contact the Tribal Chairperson immediately and provide a summary of the actions and potential impacts. The Tribal Chairperson will meet with the Tribal Council and stakeholders to determine if the Tribe can participate in an emergency consultation. Action steps will follow the steps set forth above but with immediate and shortened timelines as mutually agreed upon.

7. BEST PRACTICES

Consultation best management practices for an Agency include:

- a) Advance notice from the Agency to the Tribe of any new policy, regulations, rule, program or other activity;
- b) Communication with the Tribe, beginning early in the planning process and continuing throughout the project;
- c) Multiple venues for consultation;
- d) Formal and informal meetings;
- e) The existence of a Tribal liaison;

- f) The Agency's fostering of a relationship with Tribal Council and Tribal staff;
- g) An early effort of identifying potential areas of concern for the Tribe;
- h) Full and candid information provided to the Tribe prior to the first meeting (in the consultation request letter and at the pre-consultation meeting);
- i) An open-ended and flexible agenda (no surprises or hidden agendas);
- j) Facilitators for the sessions, alternating between the Agency and the Tribe, or an agreed upon the third party;
- k) A successful result is viewed as partners arriving at an agreement, although reaching an agreement is not an end in itself;
- l) Tribal views and concerns are taken into account and implemented;
- m) Agreed upon measures are in place and enforceable;
- n) Implementation of a feedback mechanism;
- o) Tribal participation in the development of agendas for ongoing consultation meetings or coordination meetings; and,
- p) Any other best practices that the Agency and the Tribe agree upon.

8. CONSULTATION RECORD

Meeting notes, minutes, shared documents, and any recorded audio or video files shall be maintained in common between the Tribe and the Agency. Any sensitive information provided by the Tribe shall remain confidential or be returned to the Tribe upon request; unless otherwise agree to, in writing, by the Tribal Council.

9. NO WAIVER OF SOVEREIGN IMMUNITY

Nothing in the policy shall be deemed or construed to be a waiver, in full or in part, of the Tribe's sovereign immunity from unconsented suit.