

TRIBAL POLICY REVISION

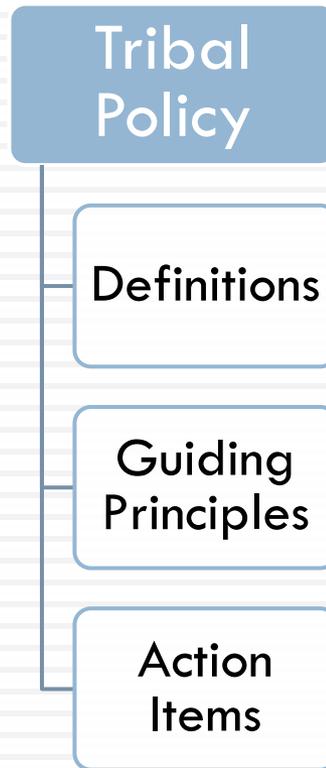
TRIBAL AFFAIRS
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

Regional Tribal Operations Committee
May 7, 2013

Summary of Presentation

- Brief overview of Cal/EPA's Tribal Policy
- Executive Order B-10-11
- Key areas for revision
- Revision process moving forward
- Implementation

Cal/EPA Tribal Policy



Cal/EPA Tribal Policy

- Cal/EPA's first Tribal Policy
- Signed in 2009
- Provides definitions and guiding principles
- Presented specific action items

State of California
California Environmental Protection Agency
Cal/EPA-019 (New 05/18/05)

CAL/EPA POLICY MEMORANDUM	NUMBER:	CIT-09-01
	DATE ISSUED:	10/19/09
	EXPIRES:	UNTIL RESCINDED
	CATEGORY:	CALIFORNIA INDIAN TRIBES

SUBJECT:
CAL/EPA POLICY FOR WORKING WITH CALIFORNIA INDIAN TRIBES

REFERENCES:

STATEMENT OF PURPOSE

The mission of the California Environmental Protection Agency (Cal/EPA) is to restore, protect and enhance the environment, to ensure public health, environmental quality and economic vitality.

This policy provides a framework for Cal/EPA and its Boards, Departments and Offices (BDOs) to improve and maintain communication and collaboration between Cal/EPA, its BDOs, and California Indian Tribes to further the mission of Cal/EPA.

This policy also provides a commitment to educate appropriate staff, to become informed about the cultural setting of California Indians, their environmental issues and tribal histories, for the purpose of improving Cal/EPA's understanding of and connection to California Indian Tribes.

DEFINITIONS

For purposes of this policy, the following terms shall have the meanings defined below:

California Indian Tribe: A federally-recognized California Indian Tribe (as listed on the Federal Register). With respect to cultural resources, a federally-recognized Indian Tribe and a non-federally recognized California Native American Tribe that is on the California Tribal Consultation List maintained by the Native American Heritage Commission (NAHC).

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. Some of these powers are inherent, some have been delegated by the United States, and all are subject to limitations by the United States. Existing limitations are defined through acts of Congress, treaties, and federal court decisions.

Indian Country [or Tribal Lands]: Have the same meaning as the term "Indian country" in title 18 United States Code section 1151 (see Statutory References).

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Cal/EPA Tribal Policy

- Established our Tribal Advisory Committee
- Designated a Tribal Liaison for Cal/EPA and each BDO
- Called for Tribal trainings to help implement policy
- Training and Technical Assistance to Tribes upon request

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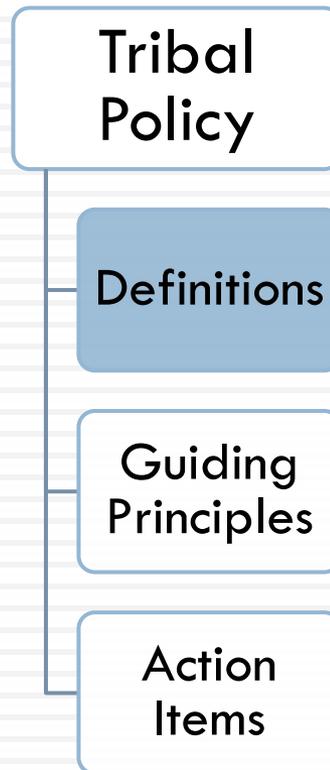
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Cal/EPA Definitions



Cal/EPA Tribal Policy Definitions

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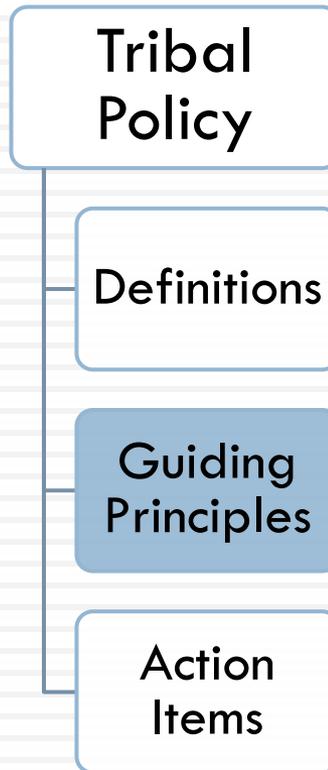
- Includes federally and non-federally recognized Tribes
- Federal Register
- Native American Heritage Commission

Cal/EPA Tribal Policy Definitions

Collaboration: Refers to California Indian Tribes and Cal/EPA and its BDOs communicating and working together to resolve respective issues of concern and/or mutual interest. This exchange is conducted by respecting the protocols each respective tribe has established for contacting its governing body or its delegated official. This exchange is also conducted through the Governor's appointed Agency Secretary, BDO Chairperson or Executive Director, or their delegated representatives.

- Here Collaboration = Consultation with a Little “c.”
- Little information about how information exchange may or may not affect the ultimate decision.

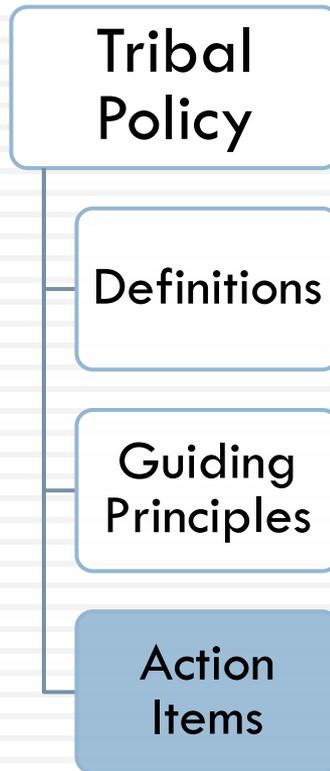
Cal/EPA Guiding Principles



Guiding Principles

1. Acknowledge and respect tribal sovereignty, as defined in this policy.
2. Understand that federally-recognized tribes have a unique relationship with the federal government.
3. Understand the importance of communication and collaboration with California Indian Tribes.
4. Communicate with California Indian Tribes in a manner that is respectful and considerate.
5. Seek to identify and include federally-recognized California Indian Tribes in decision-making processes that affect tribal lands.
6. Seek to identify and include federally-recognized and non-federally recognized California Indian Tribes in decision-making processes that affect cultural resources.
7. Recognize and respect the cultural resources of California Indian Tribes, whether or not on tribal lands.
8. Where appropriate, consider the potential impact of our activities or programs on tribal lands and cultural resources.
9. Encourage collaborative efforts between the California Indian Tribes and federal, state, and local government entities to resolve issues of mutual concern.
10. Promote efforts of California Indian Tribes to develop and expand environmental programs, and to achieve compliance with environmental laws.

Cal/EPA Action Items



Action Items

- Action Items Completed
 - ▣ Tribal Advisory Committee
 - ▣ Tribal Liaisons
 - ▣ Assess eligibility of California Indian Tribes for Cal/EPA financial assistance programs such as grants, loans and scholarships (Needs to be updated).

Action Items

- Action Items In Progress
 - ▣ Communication protocol
 - ▣ Establish a mechanism to obtain relevant and available information, studies and data from California Indian Tribes when conducting research or environmental studies that relate to, or could impact, tribal lands or cultural resources.
 - ▣ Provide training to appropriate executive staff, managers, supervisors, and employees on how to implement this policy.
 - ▣ Upon request by a California Indian Tribe, provide training and technical assistance, and share data, where appropriate.

Executive Order B-10-11



EXECUTIVE ORDER B-10-11

9-19-2011

WHEREAS California is home to many Native American Tribes with whom the State of California has an important relationship, as set forth and affirmed in state and federal law, and

WHEREAS the State of California recognizes and reaffirms the inherent right of these Tribes to exercise sovereign authority over their members and territory, and

WHEREAS the State and the Tribes are better able to adopt and implement mutually-beneficial policies when they cooperate and engage in meaningful consultation, and

WHEREAS the State is committed to strengthening and sustaining effective government-to-government relationships between the State and the Tribes by identifying areas of mutual concern and working to develop partnerships and consensus, and

WHEREAS tribal people, as both citizens of California and their respective sovereign nations, have a shared interest in creating increased opportunities for all California citizens.

NOW, THEREFORE, I, EDMUND G. BROWN JR., Governor of the State of California, by virtue of the power vested in me by the Constitution and the statutes of the State of California, do hereby issue the following order to become effective immediately:

IT IS ORDERED that the position of Governor's Tribal Advisor shall exist within the Office of the Governor;

IT IS FURTHER ORDERED that the Governor's Tribal Advisor shall oversee and implement effective government-to-government consultation between my Administration and Tribes on policies that affect California tribal communities, and shall:

- Serve as a direct link between the Tribes and the Governor of the State of California.
- Facilitate communication and consultations between the Tribes, the Office of the Governor, state agencies, and agency tribal liaisons.
- Review state legislation and regulations affecting Tribes and make recommendations on these proposals.

IT IS FURTHER ORDERED that the Office of the Governor shall meet regularly with the elected officials of California Indian Tribes to discuss state policies that may affect tribal communities.

IT IS FURTHER ORDERED that it is the policy of this Administration that every state agency and department subject to my executive control shall encourage communication and consultation with California Indian Tribes. Agencies and departments shall permit elected officials and other representatives of tribal governments to provide meaningful input into the development of legislation, regulations, rules, and policies on matters that may affect tribal communities.

For purposes of this Order, the terms "Tribe," "California Indian Tribe", and "tribal" include all Federally Recognized Tribes and other California Native Americans.

This Executive Order is not intended to create, and does not create, any rights or benefits, whether substantive or procedural, or enforceable at law or in equity, against the State of California or its agencies, departments, entities, officers, employees, or any other person.

I FURTHER DIRECT that as soon as hereafter possible, this Order shall be filed with the Office of the Secretary of State and that it be given widespread publicity and notice.

Executive Order B-10-11

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- Shall encourage communication and consultation with California Indian Tribes
- Legislation
- Rules and Regulations
- Policies



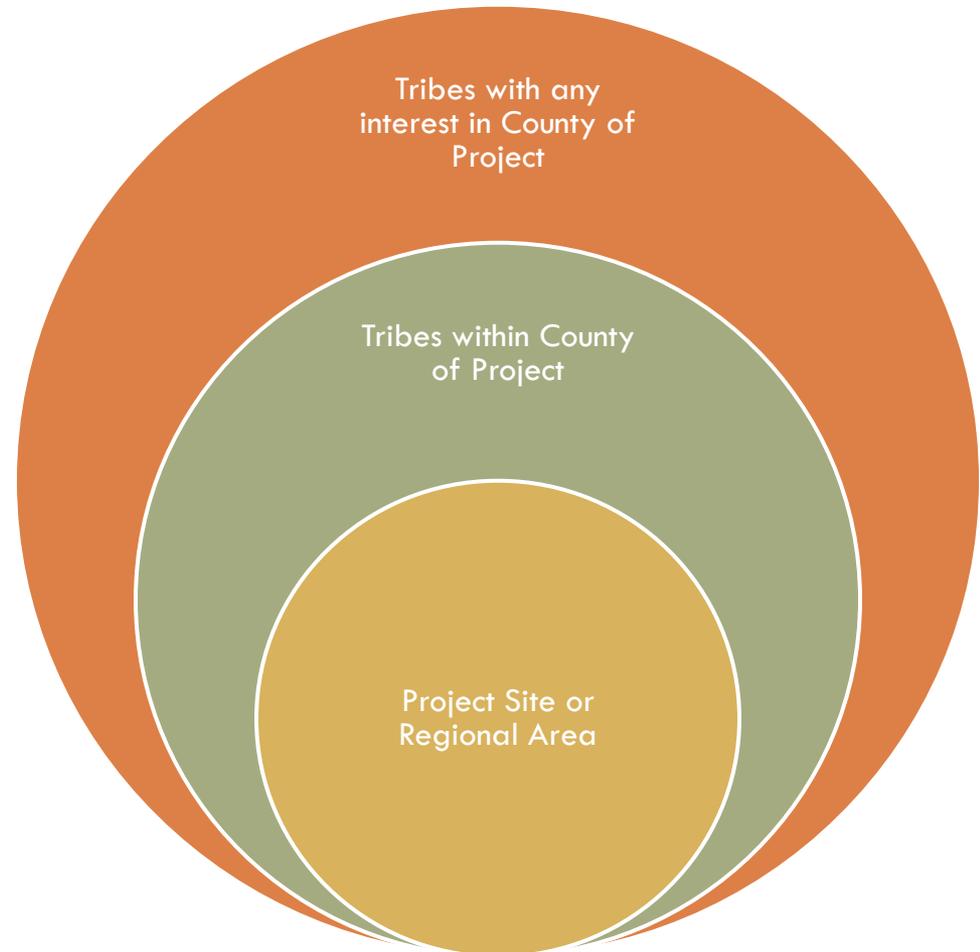
Key Areas for Revision

Key Areas for Revision

- Define Consultation
- Update Action Items
- Communication Protocol
- Consultation Protocol

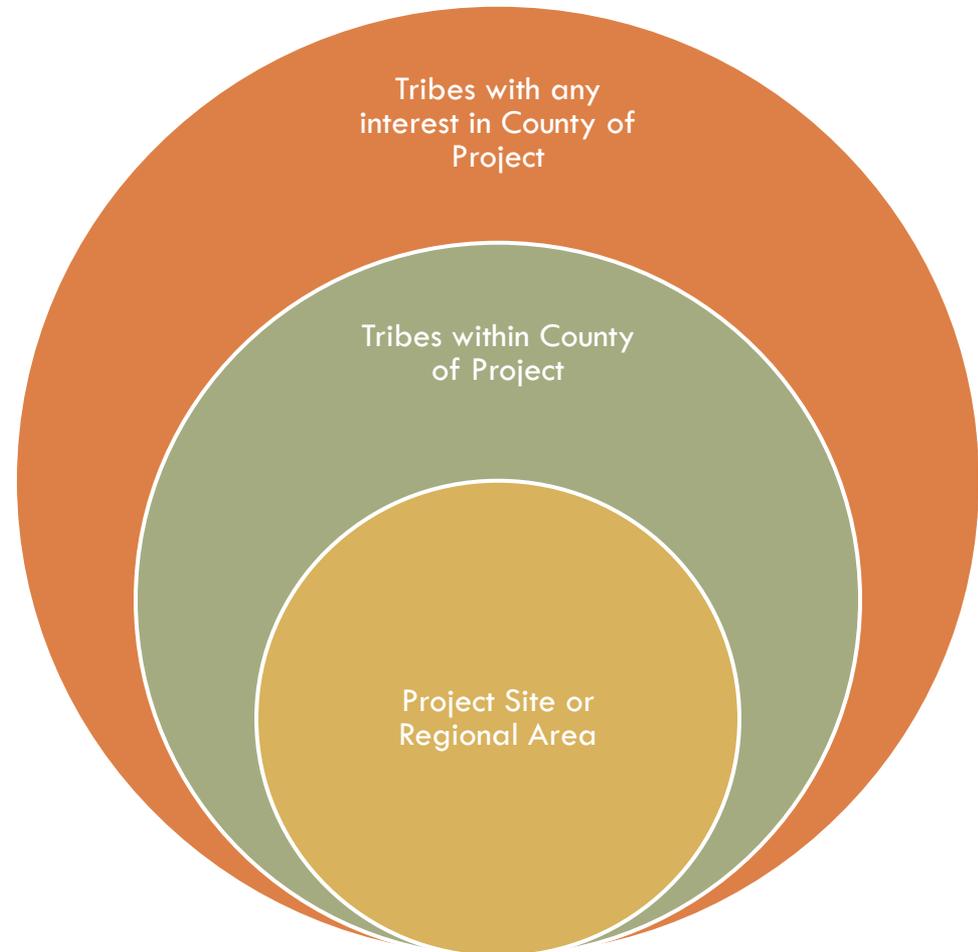
Communication Protocol Steps and Scope

- Refer to Cal/EPA Tribal contact list
- Written request to NAHC Asking for a list tribes to consult with



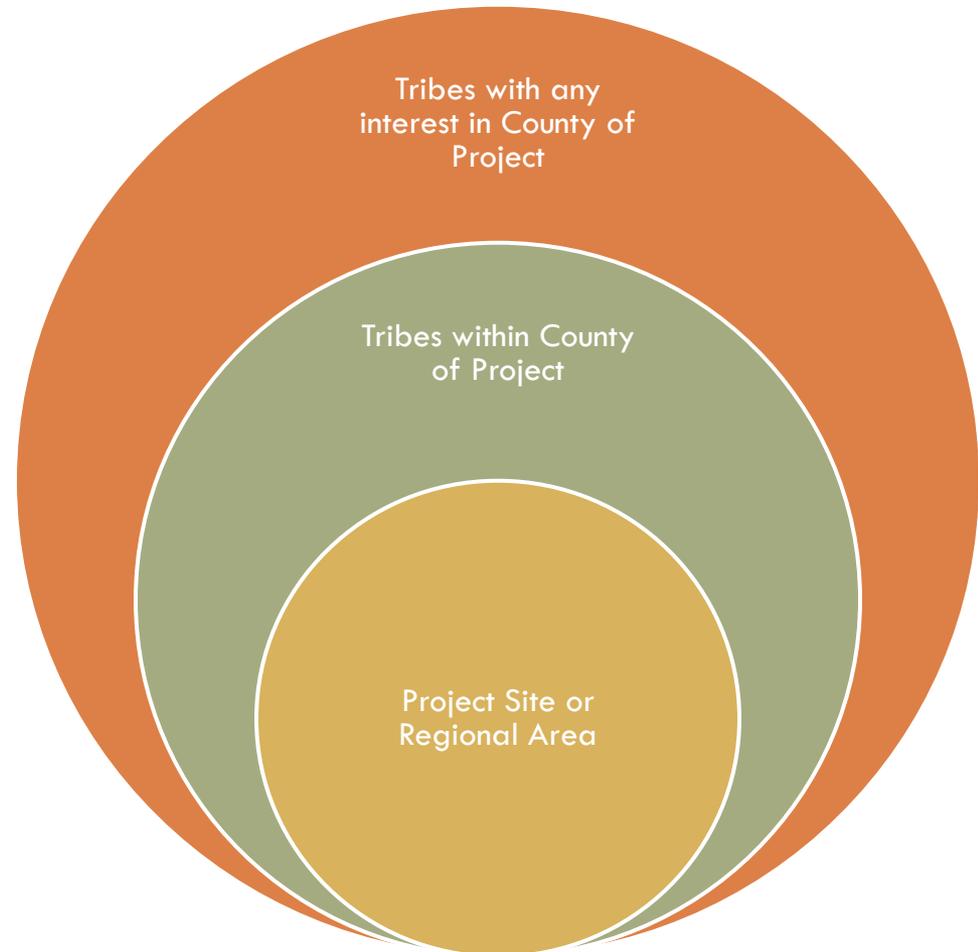
Communication Protocol Steps and Scope

- Initial communication to any Tribe **located** within subject County AND any Tribe with **any interest** in subject county



Communication Protocol Steps and Scope

- ❑ Eliminates worst case scenarios
- ❑ Deals with ancestral, cultural and fee land communication problems



The Road from Communication to Consultation



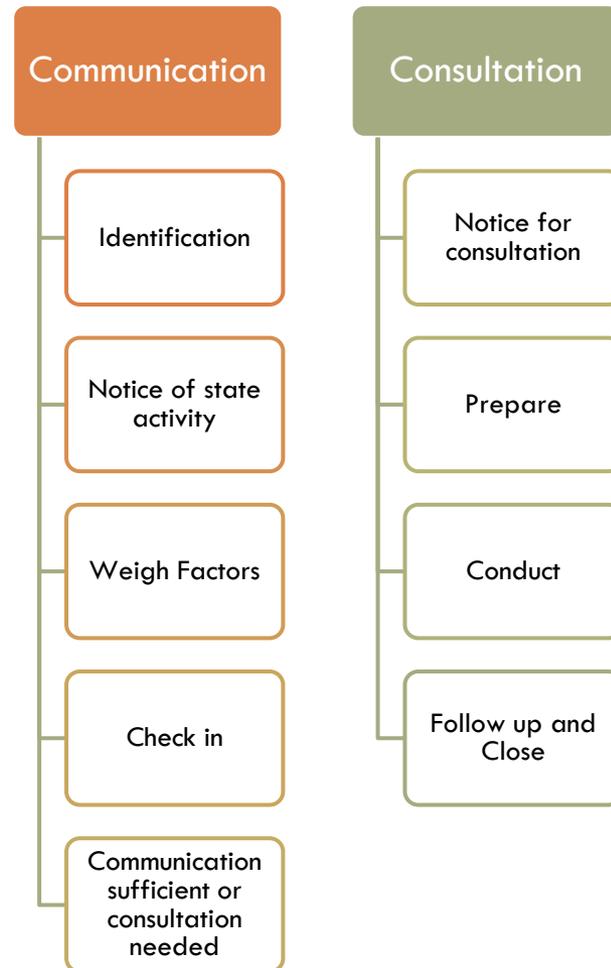
- Certain activities on their own will trigger consultation
- Others will require a weighing of factors
- Communication may be sufficient when significant factors are absent

The Road from Communication to Consultation

- Weigh factors
- Check in with Tribal Liaison
- Consider NAHC response



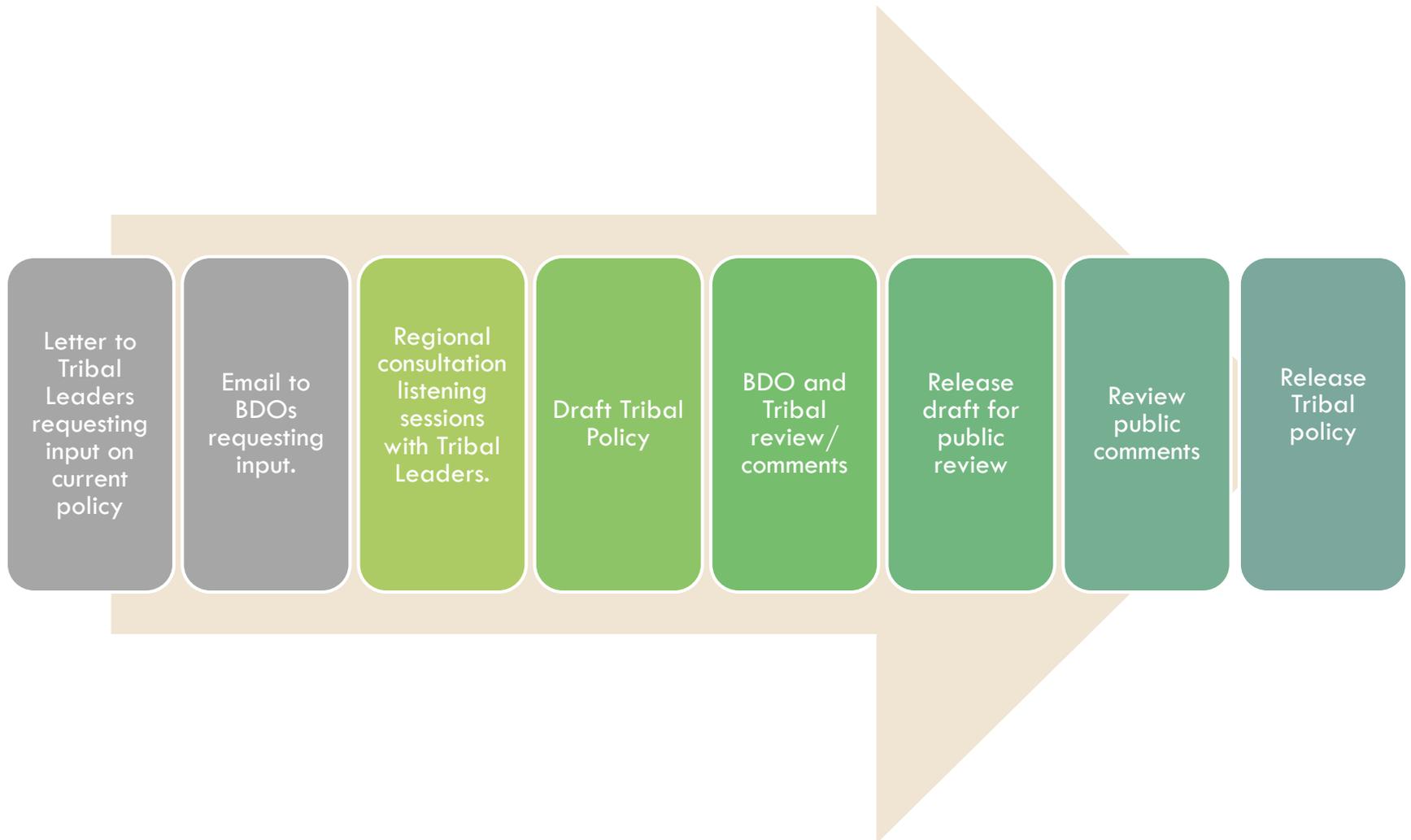
The Road from Communication to Consultation





Revision Process Moving Forward

Revision Process Moving Forward





Implementation



Implementation

- Training to BDO staff
- Develop FAQs supplement
- Collect data
- Identify and address gaps
- Support

Questions and Contact Information

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