Deputy Directive

Number:	DD-74-R2
Refer to Director's Policy:	DP-19 Working with Native American Communities
Effective Date:	December 15, 2010
Supersedes:	DD-74-R1 (04-29-03)

TITLE Tribal Employment Rights Ordinances (TERO)

POLICY

The California Department of Transportation (Department) desires to work cooperatively with California Tribal Governments to increase Native American employment opportunities on transportation projects. The Department encourages Native American employment opportunities on transportation projects and supports Tribal Employment Rights Ordinances (TEROs) adopted by federally recognized California Native American Tribes (Tribal Governments) on Department projects (construction and contracted maintenance) that take place on tribal lands.

State law expressly encourages and authorizes the Department "to cooperate with federally recognized California Indian tribes on matters of economic development and improvement for the tribes" (Gov. Code §11019.8(a)). Tribal employment policies and programs pursuant to a TERO create job opportunities for Native Americans, especially in communities with high unemployment rates. TERO fees are used to support job development and employment programs.

Tribal Governments, as domestic dependent nations, may exercise their sovereign rights to establish and enforce their own laws on tribal lands. The Department honors tribal ordinances pursuant to the law, and as a result, follows the TERO provisions on hiring preferences for contracted State highway work conducted on tribal lands or on any State highway included in a TERO tribe's Indian Reservation Road (IRR) Inventory when a portion of the project is on tribal lands. The Department also pays TERO fees for the portions of projects on tribal lands. These fees will be based on the portion of the project that is on tribal lands.

BACKGROUND/DEFINITIONS

The Director's Policy on Working with Native American Communities (DP-19) states that the Department acts consistently, respectfully, and sensitively when working on issues that affect Native American communities and that when regulatory or statutory impediments limit the Department's

ability to do this, the Department seeks to resolve such impediments. This policy also affirms that tribes are acknowledged as "unique and separate governments within the United States," and that the Department "consults with Tribal Governments prior to making decisions, taking actions, or implementing programs that may impact their communities."

In the past, by honoring TEROs on a case-by-case basis, the Department and California Tribal Governments worked collaboratively to bring jobs to Reservations, Rancherias, and more broadly to many rural areas in the state. California Government Code §11019.8 (a) encourages the Department to cooperate with tribes on matters related to economic development. Since TEROs, and the fees used to support these programs, affect the economic vitality of tribal communities where unemployment rates can be higher than 50%, supporting TEROs advances this policy. The Department also demonstrates its values of commitment and integrity when honoring TEROs which improves its relationships with the Native American tribes in California and positively impacts project delivery.

Tribal Employment Rights Ordinance (TERO) - A legislative act adopted by the governing body of a federally recognized tribe. TEROs typically delegate certain duties and authority to a TERO Commission and/or a Tribal Employment Rights Office, establish TERO fees that support tribal government infrastructure, and establish related enforcement and due process dispute resolution mechanisms. Examples of such policies typically include hiring preference and compliance plan criteria; programs may include job skills banks and training.

Goals of a TERO include:

- Addressing high Native American unemployment rates
- Protecting unique Indian employment rights based on political status
- Supporting economic development policies and programs that benefit Indians as defined within the TERO and within the federally recognized California Indian tribe's jurisdiction.

Hiring Preferences - With regard to federally supported highway projects, Congress has expressly authorized states to implement Indian hiring preferences for highway work conducted on tribal lands. Implementation of Indian hiring preferences is in recognition of, and with reference to, Congress' fiduciary responsibility to advance tribal economic development and self-sufficiency.

Hiring preferences are predicated upon membership in a federally recognized tribe, so the term "federally recognized Indian" is a political classification for the purposes of this directive. TERO hiring preferences are only available to enrolled members of federally recognized tribes, and the Department cannot favor one tribe over another in implementing a hiring preference. Qualified

job applicants will be provided to Department contractors by the tribe's designated TERO representative.

Federally Recognized Tribe - A tribal government and members of any tribe, band, pueblo, nation or other organized group that is acknowledged by the Federal Government to constitute a tribe with a government-to-government relationship with the U.S. and eligible for the programs, services, and other relationships established by the U.S. for Indians because of their status as Indians (U.S. Department of Transportation Order DOT 5301.1 dated November 16, 1999), or community including any Alaska Native village or region pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

TERO Fee - A fee used to support tribal government infrastructure necessary to create job opportunities for Native Americans. TERO fee revenues are used to provide services such as funding employment development programs; offering skills assessments, training, job referrals, and job placement assistance; and promoting employment opportunities for tribal members. This fee helps develop the larger transportation workforce and assists the Department in project delivery.

Indian Reservation Road (IRR) - A public road that is located within or provides access to an Indian reservation, Indian trust land, or restricted Indian land (23 U.S.C. §101(a)(12)). These roads are important to the overall public transportation needs of the reservation, and are recommended to the Bureau of Indian Affairs (BIA) for inclusion in the IRR Inventory by the Tribal Government. Approval for inclusion of these routes must be given by BIA, and revised route sheets and updated documents are submitted to the Federal Lands Highway Program Administrator so the Inventory can be updated.

Tribal Lands - Lands within a reservation, lands held in trust by BIA, or lands otherwise under the direct ownership of a tribe. Most tribal lands are in trust status and within a reservation, but these lands can also be outside of a reservation.

RESPONSIBILITIES

Deputy Director, Office of Business and Economic Opportunity:

- Develops, implements, and oversees departmental policy on issues regarding Civil Rights as that policy relates to Native Americans and Tribal Governments on such issues as:

  - Equal Employment Opportunity (EEO) obligations of contractors.
  - Administering the Disadvantaged Business Enterprise (DBE) program.

- Encouraging participation of certified small businesses, including Disabled Veteran-owned Business Enterprises (DVBE), on State funded contracts.
- Identifying Tribal Governments as potential resources for contractors recruiting employees living on or near tribal lands.
- Conducting outreach programs to certify as DBEs eligible firms owned and controlled by Native Americans to increase participation on federal-aid projects.
- Conducting general outreach efforts to increase participation of certified small businesses and DVBEs on State funded projects, including outreach to certify eligible firms owned and controlled by Native Americans.

Deputy Directors:

- Develop procedures to ensure the effective implementation of this policy in their respective Programs.

Chief, Division of Transportation Planning:

- Develops, implements, and oversees departmental policy on issues regarding TERO as that policy relates to Native Americans and Tribal Governments in California.

Native American Liaison Branch, Division of Transportation Planning:

- Serves as the primary point of contact for divisions and districts on TERO issues.
- Coordinates the presentation of TERO issues before the Department's Native American Advisory Committee.
- Provides analysis, procedural guidance, technical assistance, and training to support the effective implementation of this Deputy Directive and the offering of transportation related employment opportunities for Native Americans.
- Provides guidance for contractors and projects involving TERO provisions.

Chief, Division of Engineering Services:

- Ensures special notices on TERO provisions are included in project specifications for projects taking place on tribal lands so contract bidders are made aware of TEROs that may be in effect.

Chief, Division of Local Assistance:

- Notifies local governments of the existence of TEROs related to local agency services and projects on tribal lands as a courtesy.

Chief, Division of Procurement and Contracts:

- Notifies contractors of TERO provisions related to State funded construction and contracted maintenance projects on tribal lands.

District Directors:

- Are aware of TEROs within their respective districts.
- Enter into a Memorandum of Understanding (MOU) with each TERO tribe in their district for non-emergency work in their district. Appropriate TERO provisions pertaining to the contracted State highway work done within that TERO tribe's jurisdiction will be included in the MOU.
- Support employment opportunities for Native Americans on State and federally funded transportation projects (construction and contracted maintenance) on tribal lands.
- Hold at least biannual meetings with the tribes in their district to share a list of upcoming projects and discuss upcoming priorities. All the tribes in the district can be invited to this meeting so they remain informed.
- Acknowledge that eligible Native American-owned firms can be certified as DBEs and look for ways to assist the tribes apart from the TEROs.
- Make tribes aware of Department employment opportunities.

District Native American Liaisons:

- Work with the District Directors and Tribal Governments to negotiate MOUs that acknowledge the existence of TERO related to State and federally funded transportation projects on tribal lands.

Project Engineers, Project Managers, and Contract Managers:

- Assure that transportation project Plans, Specifications, and Estimates (PS&E) and contracts include notification of TEROs that may be in effect.

Resident Engineers, Project Managers, and Contract Managers:

- Notify contractors of the existence of TEROs that may affect their projects.

APPLICABILITY

All employees involved in transportation projects (construction and contracted maintenance) on tribal lands.

MALCOLM DOUGHERTY
Chief Deputy Director (Interim)

12/15/10
Date Signed