



SHERWOOD VALLEY BAND OF POMO INDIANS

March 23, 2016

The CTP Project Team
Office of State Planning
Division of Transportation Planning
California Department of Transportation
P.O. Box 942874, MS-32
Sacramento, CA 94274-0001

RE: Comment on final draft of the California Transportation Plan 2040

Dear CTP Project Team:

By this letter, Sherwood Valley Band of Pomo (SVBP), a federally-recognized Indian Tribe located in Mendocino County, California, is providing the results of its review and comment on the final draft of the California Transportation Plan 2040 (CTP). Firstly, SVBP applauds Caltrans for recognizing that issues surrounding transportation need to be studied and solved in a more holistic and sustainable manner than the current planning processes promote and permit. SVBP also appreciates and supports the CTP 2040's stated goals to provide for the State's transportation needs in a manner that is (1) environmentally responsible and practices environmental stewardship and (2) enhances quality of life and promotes social equity. Sherwood Valley further supports the CTP 2040's stated policies regarding (1) the integration of environmental considerations in all stages of planning and implementation; (2) the integration of health and social equity in transportation planning and decision-making; and (3) the conservation and enhancement of natural and cultural resources. Finally, SVBP was encouraged to see, for the first time, a portion of a CTP being dedicated to Tribal issues and recognition of the need for and importance of positive partnerships between our communities and Caltrans, as well as other regional and local transportation agencies.

Unfortunately, however, the Tribal section of the CTP leaves much to be desired. Specifically, while the CTP states that "it is critical that State and local government agencies collaborate with tribal agencies during the transportation planning process", that "partnerships between tribes and the State are vital", and that "the CTP 2040 seeks to coordinate, consult, and cooperate with Native American tribes", the plan does not include any policies or recommendations for ensuring that consultation, collaboration, and partnership actually occur. Instead the CTP merely states that, in accordance with Governor Brown's EO B-10-11, the state is required to engage in government-to-government consultation with federally recognized tribes on state actions that may impact tribes and that the state is indeed undertaking this required consultation. The CTP goes on to make the blithe generalizations that the State of California conducts its transportation planning in a way that respects Tribes' sovereignty, recognizes the U.S. government's fiduciary obligations to Tribes, and upholds federal and state laws, as well as State Transportation Authority Policy and Caltrans Director's Policy with regard to good faith and respectful Tribal consultation. These cavalier mischaracterizations of Caltrans relationship, not only with SVBP, but many other Tribal communities across the state are particularly troubling in light of the comments received by the CTP Planning Team at Tribal Listening Sessions held across the state in 2013-2014.

Specifically, during CTP 2040-based Tribal Listening Sessions, the CTP Planning team was informed of the following troubling issues with respect to consultation, collaboration, and partnerships between Native California communities and Caltrans:

- Caltrans often does not acknowledge or take responsibility for the past mistreatment of Tribes. Both currently and in the past, Tribes have been excluded from the Caltrans planning process and have been party to negative interactions when they have been included. Many Tribes have found Caltrans to be less than straightforward and honest during the planning process, as well. A mistrust of Caltrans exists based on this past treatment and institutional behavior.
- There is little to no consistency in the way in which various CT Districts and divisions, regional and local transportation-related agencies, and individual staff consult with Tribes. Some Caltrans Districts and staff work well with Tribes, while others are apathetic and/or antagonistic towards Tribes and consultation requirements. Consistency is needed to optimize consultation and partnerships between Caltrans, regional and local transportation authorities/agencies, and Tribes.
- Caltrans needs to do more to ensure that all Tribal communities' needs and concerns are represented during transportation planning, recognizing that many Tribes do not have the human or financial resources to travel to regionally-based meetings or meetings held in Sacramento.
- Tribes (1) need and request to have more direct and frequent access to the Caltrans Director, Deputy Director, and District Directors for consultation-based concerns; (2) prefer more frequent face-to-face meetings between Caltrans and individual Tribes; and (3) recommend a three-tiered approach to consultation (executive, management, and field) to better ensure that all necessary parties are included in decision-making and able to fully participate in planning.
- Tribes often do not have any relationship with their Regional Transportation Planning Agencies (RTPAs), which makes it difficult for some Tribes to incorporate their plans into Statewide modal plans. More guidance regarding coordination between Caltrans, RTPAs, and Tribes is needed. It is also important that RTPAs understand the benefits of partnering with Tribal Governments and refrain from considering them as a source of competition for funding.
- Consultation and coordination with Tribal Governments needs to be initiated at the beginning of the planning process, not when project design is complete and most certainly not when the project is under construction, in order to best protect cultural resources within a project area. Furthermore, Caltrans needs to be more receptive to the Tribes when they indicate there is a cultural resource present, even when a Tribal government cannot divulge details about the exact location or nature of a resource or when the revelation of such is delayed due to cultural sensitivity and concerns about community health and safety.
- Caltrans and regional and local transportation authorities/agencies need to be more attentive to and respectful of all Tribal cultural resources (which include not only archaeological sites, traditional cultural properties, sacred sites, burial sites, and cultural landscapes, but also

gathering areas for flora, fauna, as well as water, air, viewsheds, etc.) and be more proactive in implementing and maintaining Environmentally Sensitive Areas (ESAs) for these resources in the same way that endangered and state-listed species plants and animals are protected. Cultural sites are continuously disturbed and destroyed because Caltrans' existing consultation efforts and processes purportedly designed to protect resources are either not employed or are ineffective.

- Caltrans policies and procedures regarding cultural resources pose a challenge for Tribes because existing guidelines often do not reflect our cultural values. Specifically, the level of significance a cultural resource possesses is often debated by Caltrans and, in many instances, rejected. This leads important cultural resources to be disregarded during planning and damaged, if not destroyed, during construction. Tribes need to be the ultimate delineator about the significance of their important cultural places and resources, not contractors or Caltrans staff.

Based on these past and current experiences with Caltrans and regional and local transportation agencies, ultimately, Tribes requested that the CTP 2040 (1) clearly define what true and effective consultation is and what is most certainly is not (e.g., notification); (2) set forth policies to address how troublesome issues pertaining to consultation, coordination, and partnerships with Tribes could begin to be remedied; and (3) provide recommendations for ways in which Caltrans and other transportation agencies in the state can be held accountable for failures to uphold or maintain compliance with federal, state, local, and intra-agency guidance with regard to Tribal consultation and cultural resources management and protection. What the Tribes clearly stated they did not want the CTP 2040 to do is merely pay lip-service to the topic of Tribal consultation without acknowledging the problems that currently exist or neglect to provide a way forward to improve Tribes' involvement in the State's transportation planning and projects.

Despite these entreaties and solid, specific recommendations from the Tribes on these subjects, the CTP 2040 does not include any of the aforementioned information or implore transportation agencies within the state to create and consistently implement a truly meaningful, respectful, and culturally-appropriate Tribal consultation plan. SVBP is deeply troubled by the CTP Team's choice to discard Tribal insights which were provided in good faith and with the understanding that the concerns and suggestions would not be offered in vain. That said, Sherwood Valley cannot claim to be surprised by this behavior.

Over the last three years, our community has been treated in much the same way by Caltrans Districts 1 and 3, the North Region Environmental Office, Cultural Studies Office, and CT's Native American Advisory Committee during the construction of the Willits Bypass Project (WBP) in Mendocino County. Furthermore, as the attached summary of SVBP's experiences on the WBP illustrates, our experiences as a consulting party on this undertaking mirror and confirm the validity of the Tribal comments provided at the CTP-based listening sessions. The attached document also challenges, if not discredits, the CTP 2040 narrative on the subject of Tribal consultation and cultural resources management and protection.

In closing, as this letter and its attachment clearly indicate, there is much improvement needed with regard to how transportation authorities/agencies across the state interact with and include Tribal governments and communities in their project planning and implementation. The CTP 2040 provides the State with the perfect opportunity to acknowledge this need for institutional correction and advancement.

Fortunately, as the document is still in draft form, it is not too late to revise the Tribal sections of the document to more honestly, thoughtfully, and comprehensively address the topics of Tribal consultation and cultural resources management. It is also not too late to revise the sections of the CTP 2040 dealing with the topics of social equity, community health, and environmental resources and their mitigation to incorporate the fact that Tribes across California need to be intimately involved in these discussions, as well. For too long, Tribal concerns have been viewed as synonymous with “archaeology” or “history.” But, we are living communities who care just as deeply about what agencies often refer to as “natural resources” and who concern ourselves with the protection and proper management of the entirety of our aboriginal territory and all the resources contained therein. Moreover, it is both the State’s and the Tribes’ successful stewardship of these resources that is critical to the health of California Native people and their ability to experience and expand social equity, environmental justice, and sovereignty.

For these reasons, SVBP strongly encourages the Project Team to revisit the CTP 2040 and make the necessary adjustments to the Plan to reflect not only the issues outlined in this letter, but the totality of the content of the Tribal Listening Sessions held during 2013-2014, before the document is finalized. In making these improvements to the CTP, should you have any questions or wish to discuss the content of this communication in more detail, please feel free to contact me at svrchairman@yahoo.com or call (707) 459-9690.

Sincerely,



Mike Knight
Tribal Chairman

Attachment 1: *Sherwood Valley Band of Pomo’s Issues with Consultation and Compliance on the Willits Bypass Project*

Cc:
Governor Jerry Brown
Cynthia Gomez, Tribal Advisor to Governor Brown
Brian P. Kelly, Secretary, CalSTA
Malcolm Dougherty, Director, Caltrans
Chris Ratekin, Chief, Office of State Planning, Caltrans
Carol Farris, Tribal Liaison, CalSTA
Lonora Graves, Tribal Liaison, Caltrans

ATTACHMENT 1

SHERWOOD VALLEY BAND OF POMO'S ISSUES WITH CONSULTATION AND COMPLIANCE ON THE WILLITS BYPASS PROJECT

April 2013 - January 2014

In April 2013, Sherwood Valley's (SVBP) leadership noticed machinery mobilization at the south end of Hwy 101 near the Willits city limits and contacted Caltrans (CT). CT apprised SVBP that the long-delayed Willits Bypass Project (WBP) had commenced. During initial conversations, it became clear that CT had failed to provide the Tribe with several archaeological reports authored after NEPA-based documentation was finalized for the Project in 2006—a violation of CT's 2003 MOU with the Tribe. SVBP requested to be provided with all relevant historic properties studies and subsequently reviewed them. In doing so, the Tribe discovered that (1) consultation with Tribal peoples affiliated with the Little Lake Valley had not been conducted in good faith; (2) previous archaeological studies were often grossly inadequate; and (3) construction commenced prior to the conclusion of Section 106-based consultation. Many issues related to NHPA, NEPA and CEQA non-compliance arose and include the following:

- Despite the identification of **an additional 13 archaeological sites** within the WBP APE, and significant changes to the APE affecting cultural resources **after** EIS approval in 2006, CT claimed there were no new impacts to cultural resources in its 2010 and 2011 internal NEPA re-evaluations which resulted in CT's calculated avoidance of the development of a Supplemental EIS;
- State- and federal-level wetlands and biological resources mitigation and monitoring plans (MMPs) were developed without any consultation with the State Historic Preservation Office or those Tribes culturally affiliated with the Project area; moreover, the documents did not contain any mention of the numerous cultural resources that exist across the near 2,000 acres of wetland mitigation lands;
- Prior to beginning construction, CT knew of 10 archaeological sites existing within the APE that were to be protected via the creation of buffered areas referred to as Environmentally Sensitive Areas (ESAs) prior to the commencement of construction. However, CT did not establish these ESAs until **7 months after construction began**, thus leading to numerous ESA breaches and damage to (if not the complete destruction of) a known archaeological site—CA-MEN-3571; and
- Despite the fact that CT's own internal studies indicated the entire APE exists within an area of moderate to high probability for buried archaeological sites, no APE Map or Post-Review Discovery Plan were created and no archaeological or Tribal monitoring was budgeted into the Project. SVBP demanded the placement of at least one archaeological and two Tribal monitors as of May 2013 and, as a direct result of the monitoring effort, **5 new archaeological sites were identified during the first construction season** (CA-MEN-3635, -3636, -3637, -3638, and Taylor-1PL).

Due to active and habitual non-compliance with Section 106 of the NHPA and adverse effects to several archaeological sites, the Advisory Council on Historic Preservation (ACHP) agreed, as requested by SVBP, to become a consulting party. The ACHP also strongly encouraged CT to create a Programmatic Agreement (PA) with the consulting Tribes to (1) set forth ways to mitigate adverse effects to historic properties and (2) create protocols for how all future post-review discovery situations would be handled.

February 2014 - November 2014

From February 2014 - November 2014, the focus of consultation between SVBP and CT consisted of:

- PA language creation and development of post-review discovery guidelines and an ESA Action Plan;
- Contentious and unfulfilling negotiations about mitigation obligations, including:
 - CT's rejection of the Tribe's request to include a monetary amount in the mitigation stipulation language about the required museum exhibit to ensure that the agency does not spend all of its monies on simply boxing and storing the forever displaced remains of the Little Lake Valley Pomo presence, thus resulting in the creation of a small, uninspired, didactic artifact display with little to no real educational value for the community or point of pride for the LLV descendants;
 - CT's unwillingness to assist the Tribe in securing long-term access to and/or co-management of some of wetland mitigation parcels for the gathering of plants, hunting and fishing, ceremonial activities, and archaeological site stewardship; and
 - CT's denial of SVBP's request to have the agency provide GIS-based cultural resources data to help build capacity and research capabilities within the THP and Environmental offices.
- SVBP's constant entreaty, and CT's unwavering refusal, to make all due effort to avoid or minimize adverse effects to CA-MEN-3638, an archaeological site of special Tribal significance related to the village of *Yami* and the practice of the Ghost Dance (which included repeated, failed attempts by SVBP to convince CT to re-design the Northern Interchange and fish weirs to lessen site impacts);
- Co-development of plans to conduct additional archaeological investigations across areas of the APE where buried archaeological sites might be discovered during construction and wetland mitigation;
- Decisions regarding the appropriate and responsible treatment of **15 new archaeological sites, discovered during the second construction season**; and
- CT's constant dismissal of SVBP's abiding concerns about the application of herbicides across hundreds of acres of wetland mitigation lands and the feared resulting impacts to water, plants, fish, range animals, and the members of Tribe (and local community) that interact with those resources.

Contemporary Issues (January-December 2015)

As of January 2015, all activities associated with cultural resources on the WBP shifted from District 1 to District 3 of CT. As a result, the philosophy and attitude toward, and conduct of, archaeology and archaeological/tribal monitoring efforts on the WBP changed dramatically. For the last 7 months, SVBP has had to battle weekly to maintain and enforce their government-to-government consultation rights and protect their ancestral sites and resources against a District 3 staff that:

- Refuses to conduct any additional proactive resource identification efforts; choosing instead to simply monitor the destruction of archaeological sites as construction moves unyieldingly forward;
- Denounces the conduct of proper consultation about post-review discoveries, as required under 36 CFR 800.13, choosing instead to make unilateral determinations regarding NRHP-eligibility, assessments of effect, and mitigation obligations;
- Unilaterally rewrote the PA three times in 6 months, in an effort to:

- substantially diminish and degrade government-to-government consultation between CT and SVBP by delegating CT's consultation responsibilities to an archaeological contractor and abrogating SVBP's consultation rights by shifting those entitlements to Tribal monitors;
 - severely restrict the number and type of archaeological sites that will be found to meet the definition of an historic property under the NHPA, thus avoiding any future costs or delays that might occur due to site avoidance or mitigation; and
 - prolong the creation of an executable PA, especially one that protects Tribal rights.
- Limits the number of Tribal monitors permitted to work on the WBP, while also (1) refusing existing Tribal monitors unrestricted entry to certain areas of the project; (2) banning Tribal monitors from attending weekly construction meetings; (3) relegating Tribal monitors to 8 hours pay per day regardless of monitoring needs; (4) diminishing the existing roles of the Tribal monitors; and (5) creating a hostile environment that stifles Tribal monitor-to-CT communication and trust; and
 - Purposefully neglects to submit various plan documents and project updates and/or schedule meetings with the Tribes that were promised to SVBP over 6-9 months ago and routinely ignores numerous reminders from the Tribe to fulfill their prior consultation-based commitments.

Thus, SVBP, in its third year of WBP construction and entering its fourth year of the Project, is forced to work with a CT staff that (1) deems notification to be consultation and dictate as dialog; (2) regards monitoring as a substitute for adequate archaeological investigation and mitigation; (3) views construction's schedule, budgets, and wetland mitigation as far more important than even the feeblest attempt to responsibly manage cultural resources; and (4) treats SVBP's Tribal Council and representatives with unmasked and enduring disdain and disrespect.

SVBP's Desired Outcomes

The Tribe's attempts in 2015 to reconcile with CT and re-instate the positive advances the parties had made from 2013-2014 failed due to an implacable and recalcitrant District 3 and North Region Environmental staff. In order to now undertake the good faith and respectful government-to-government consultation that must still occur related to the WBP in the future, the Tribe needs to see fundamental changes within Caltrans. Specifically, the following institutional obstructions need to be addressed and overcome: (1) the absence of sound internal application of existing Tribal consultation and cultural resources policy and procedure; (2) the lack of external oversight and internal enforcement/discipline when current executive directives, agency guidelines, and state and federal laws and regulations are violated and; (3) the nonexistence of an individual or group whose role it is to advocate for and facilitate a mutually-respectful and mutually-beneficial working relationship between SVBP and CT on the WBP.

Moving forward, SVBP's desired outcomes include:

1. The assignment of Project-based Tribal POCs with extensive experience in tribal consultation, familiarity with Tribal cultural resource concerns, and the willingness, time, and internal agency support to make relationships with Tribes and the responsible management of cultural resources a priority;
2. The creation of directives or protocols by which Native American Liaisons assigned to a Project have the ability and authority to provide timely and effective oversight, guidance, and assistance to other Caltrans staff in the realms of government-to-government consultation, culturally appropriate handling of cultural resources, and respectful and fair treatment of Tribal monitors;
3. The creation of agreement documents (MOAs and PAs) that uphold, protect, and promote federal and state law, as well as Gubernatorial and agency guidance regarding tribal consultation and federally-recognized Indian Tribes' rightful role in the Section 106 process instead of attempting to subvert, misappropriate, and/or diminish it;

4. The assignment of Project Archaeologists with extensive histories of positive interactions with Tribal governments and monitors who are not only permitted, but encouraged, to responsibly and ethically manage archaeological resources without being co-opted by other staff or interests within CT;
5. The creation of protocols by which CT staff are held accountable for violations of policy and law regarding consultation, cultural resources, and Tribal monitoring with a clear line of authority identified within CT by which the Tribe can report concerns and expect violations to be handled in a timely and appropriate manner; and
6. The creation of policy and protocols that guard against conflicts of interest arising within the CT Cultural Studies Office (CSO) and Office of Historic Preservation (OHP) with regard to individual Section 106-, NEPA-, and/or CEQA-based project oversight.