

California Public Utilities Commission
Tribal Land Transfer Policy 2.0

Investor-Owned Utility Real Property- Land Disposition –Right of First Offer for Disposition of Real Property Within the Ancestral Territories of California Native American Tribes

1. General Provisions

1.1. Introduction

This policy sets forth the rules for application of the Tribal Land Transfer Policy and guidance as to the application of the Commission’s Tribal Consultation Policy to future applications and advice letters submitted by investor-owned utilities (IOU) requesting permission to dispose of real property¹ under Section 851 of the Public Utilities Code (Pub. Util. Code). As set forth in this policy, the Commission encourages IOU transfers of real property to California Native American tribes and, where possible, will facilitate those transfers. This policy creates an expectation that, for any future IOU dispositions of real property, the IOU will first offer applicable tribes the right to take or purchase the property before otherwise disposing of it.

This policy works as an overlay over the existing Section 851 process for disposition of real property subject to Section 851 and sets forth the IOU obligations for a right of first offer as to the disposition of surplus property by IOUs as set forth in this policy. It does not determine the outcome of any disposition submission. Instead, it expresses a preference for the types of dispositions the Commission would like to see, by requiring that IOUs provide tribes notice of real property intended for disposition and an opportunity to consult with the IOU to negotiate obtaining that property before the property is offered to other entities.

1.2. Background

¹ This includes disposition of real property contained within the hydro watershed lands retained by Pacific Gas and Electric Company (PG&E) through implementation of its Land Conservation Commitment (LCC), established and implemented in accordance with Commission Decisions (D.) 03-12-035 and D.08-11-043.

California is home to the largest number of tribes in the contiguous United States. Executive Order B-10-11 declares that “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.” It directs state executive agencies and departments to “encourage communication and consultation with California Indian Tribes.” It further directs state agencies and departments “to 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.”

The Commission first adopted a Tribal Land Transfer Policy in December 2019. Following adoption of the policy, the Commission held stakeholder workshops on how best to implement the policy and, through its resolution process, adopted formal implementation guidelines in January 2021. The policy and guidelines were reviewed for efficacy under Rulemaking (R.) 22-02-002 to review the Commission’s tribal policies. As part of that rulemaking and comments received, this policy combines the earlier versions of the policy and guidelines to create just one document and further modify the policy.

This policy is intended to be consistent with the Commission’s Tribal Consultation Policy, which requires that the Commission provide notification of Commission proceedings to tribes, encourage tribal participation in Commission proceedings, respect tribal sovereignty and meaningfully consider tribal interests and the protection of tribal sacred places and cultural resources.

The Commission’s decisions have the potential to perpetuate and exacerbate existing disparities in Environmental and Social Justice (ESJ) communities. The Commission’s ESJ Action Plan serves as an ongoing commitment to mitigate and eliminate harms to ESJ communities. This policy is also intended to be consistent with the Commission’s ESJ Action Plan.

1.3. Policy Justification and Goals to Fulfill Need

The Commission, in adopting this policy, recognizes that:

- a. The IOUs own real property located within the ancestral territories of California Native American tribes.
- b. California law and policy encourage consultation and cooperation with tribal governments, particularly concerning the protection of tribal sacred places and cultural resources.
- c. Real property may hold historical, spiritual, and other significance for California Native American tribes: some of these lands include the remains of California Native Americans; others are places of spiritual and cultural importance where California Native Americans have prayed, held ceremonies, and gathered traditional and medicinal plants. Some lands may be beneficial for furthering tribal economic and infrastructure development, including but not limited to energy and communications advancement. Providing a right of first offer to return land to California Native American tribes is intended to demonstrate respect for tribal sovereignty, tribal heritage values connected with ancestral lands, and a willingness to cooperate on matters of economic development and improvement for tribes.
- d. Executive Orders, federal and state laws, policies, and regulations acknowledge legal rights of access to certain lands and require state consultation with affected California Native American tribes prior to taking actions impacting such lands.
- e. The Commission's review of an IOU's request to dispose of real property may affect California Native American tribes in several ways. For example, the transfer of property may affect land use activities on or near tribal communities, may affect the ability to protect and access tribal sacred places and cultural resources, and may provide opportunities to return land to California Native American tribes that are within their tribal ancestral territories.
- f. Effective administration of this policy is part of the responsibility of the IOUs to meet their obligations under Pub. Util. Code Section 451 to provide services that promote the safety, health, comfort, and convenience

of their patrons, employees, and the public.

The goals of this policy are to:

- a. Recognize and respect tribal sovereignty.
- b. Protect tribal sacred places and cultural resources.
- c. Enhance tribal energy and communications infrastructure
- d. Ensure meaningful consideration of tribal sovereignty and economic, social and political interests that are furthered through the return of lands within tribal ancestral territories.
- e. Encourage and facilitate notice and tribal participation in matters before the Commission that involve real property transfers.

1.4. Definitions

For purposes of this policy:

- a. “Ancestral territory” for purposes of this policy means the territory designated by a California Native American tribe and submitted to the Native American Heritage Commission (NAHC) to provide to state agencies and local government for notice of projects under Assembly Bill (AB) 52 (Gatto), Stats. 2014, ch. 532. Not all California Native American tribes may have designated their self-identified territories with the NAHC. For purposes of this policy, the Commission recognizes that California Native American tribes are the primary source of for self-identification for ancestral territory. In implementing this policy, the Commission Tribal Advisor’s Office will work with the IOUs and California Native American tribes to refer any conflicts as to tribal ancestral territory designations to the Commission’s Administrative Law Judge Division for mediation. The Tribal Advisor will provide support to the Administrative Law Judge Division as appropriate.
- b. “California Native American tribe” or “California tribe” or “tribe” means a Native American tribe that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of the Statutes of 2004 (pursuant to

Public Resources Code Section 21073).

- c. "Chairperson" means a tribe's highest elected, appointed, or designated decision-making official, whether that person is called chairperson, or president, or some other title.
- d. "Disposition" or "dispose of" means the transfer, sale, donation, or conveyance by any other means of a fee interest in real property. Conveyances of easements, licenses, and leases are not considered "dispositions" subject to the Tribal Land Transfer Policy for purpose of transfer.
- e. "Investor-owned utility" (IOU) means any:
 - i. Electrical corporation. (Pub. Util. Code Section 218);
 - ii. Gas corporation (Pub. Util. Code Section 222) but excluding corporations that only operate independent gas storage facilities or common carrier pipeline corporations; or
 - iii. Water corporations (Pub. Util. Code Section 241) but excluding those with fewer than 2,000 service connections.
- g. "Meaningful consultation" means 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 shall be conducted in a way that respects the tribe's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural significance. (Government Code Section 65352.4).
- h. "Person" includes an individual, a firm, and a co-partnership as defined in Pub. Util. Code Section 205.
- i. "Real property" means any IOU property owned in fee whose disposition is subject to approval by the Commission, including but not limited to under Pub. Util. Code Section 851. Real property includes any surplus or other property to be disposed of by an IOU regardless of whether the sale is subject to Pub. Util. Code Section 851.
- j. "Request for approval" means an IOU's submission, whether under the

formal application process or the informal advice letter process, requesting Commission approval of the transfer of fee interest in real property under Publ. Util. Code Section 851.

- k. “Right of first offer” means that the IOU disposing of real property must contact the tribe or tribes whose ancestral territory is on or abutting the real property and must provide the tribe or tribes the opportunity to negotiate the acquisition of real property, before the IOU can seek third-party purchasers for the real property.
- l. “Surplus property” means any IOU real property that has been removed from rate base because the IOU has determined the property is not necessary or useful in the performance of its duties to the public, and that the IOU proposes to dispose of.

1.5. IOU Tribal Website

Each IOU shall create and maintain a readily accessible public website that will serve as a repository for the documentation described in these guidelines. Each IOU’s public website shall use a common format provided by Commission staff to ensure uniformity among IOUs.

1.6. Tribal Participation in Proceedings

The Commission encourages interested tribes to participate in Section 851 or other proceedings or Commission action where the tribe has an interest in the subject real property at issue in the proceeding or action to be taken by the Commission. Should a tribal government request to become a party in such proceedings, the Commission will consider the tribe’s comments or protest of the IOU’s request for Commission approval of the transaction.² If appropriate tribes do not receive notice before the IOU begins the disposition process, the Commission will provide those tribes reasonable additional time to participate in the proceeding or action, and will require meaningful consultation with their

² This will include requests made either through the Commission’s formal application process, which is resolved via decision, or through the Commission’s less formal advice letter process, which is resolved via resolution or Commission staff disposition.

tribal governments to determine whether they are interested in acquiring the real property.

2. Notification

2.1. Notification Generally

Before an IOU submits a request for approval for disposition of real property to the Commission or openly markets surplus real property, the IOU shall request and receive a list of relevant affiliated tribes from the Commission Tribal Advisor's Office. The IOU shall notify any relevant tribes of the proposed disposition. This includes but is not limited to dispositions of real property to an affiliate or as part of internal reorganization. For property within the coastal zone, the IOU shall also notify the Coastal Commission and any relevant local governments, relevant being local governments where the property is located or adjacent thereto.

For dispositions of real property that the IOU believes are needed to achieve IOU operational requirements, or to comply with any law, rule, or regulation under Section 3.2(c), the IOU shall still conduct the notification required in Sections 2.2 through 2.5 but shall include a statement in the notification regarding the IOU's rationale for why Section 3.2(c) applies to the transaction, and provide the California Native American Tribes noticed with information on how to become a party to a proceeding, provide comment on an action and contact information for the Commission's Tribal Advisor and the Commission's Public Advisor's Office.

2.2. Process to Identify and Notify Relevant Tribes

IOUs shall identify, notify, and negotiate with relevant tribes per the following process:

- a. The IOU shall submit a written request to the Commission's Tribal Advisor with a copy provided the NAHC containing a list and a map of all parcels involved in the proposed disposition to obtain the list of tribes relevant to the territory on which the real property lies and relevant to the territory adjacent to the real property. A copy of this

- written request to the Commission's Office of the Tribal Advisor and the NAHC along with the response, provided within 15 business days of receipt of request, shall be posted to the IOU's TLTP Tribal website.
- b. Prior to requesting approval by the Commission for disposition of real property or placing surplus property on the market, the IOU shall provide written notice to each tribe on the Commission's list in compliance with Sections 2.3, 2.4, and 2.5. The notice shall be delivered by U.S. Postal Service (USPS) certified mail requiring a signature and return receipt. A copy of each notification shall also be posted to the IOU's TLTP Tribal website.
 - c. Following notification, a tribe shall have 60 days to express initial interest in acquiring the real property. If a tribe does not respond in 60 days, the IOU shall send a second notice, again by USPS certified mail requiring a signature and return receipt. If a tribe does not respond to the second notice within an additional 30 days, the IOU has satisfied its noticing responsibility.
 - d. If a tribe responds to either of the IOU notices and indicates interest in acquiring the real property, within 15 business days of receiving the tribe's notification of interest, the IOU shall establish a virtual data room that contains the data package pertaining to the property proposed for disposition and shall provide each interested tribe with private access to the data room. The information provided by the IOU is provided solely to facilitate an interested tribe's evaluation of a property and shall not be construed as a representation that the existing information provided from IOU records is complete, current, or accurate. The IOU is not required to independently verify the contents of those materials, create any new analyses except for the appraisal, conduct supplemental investigations, update historical reports, or provide materials that are privileged, protected or otherwise restricted from disclosure.
 - e. The virtual data room shall contain, at minimum, the following information for the parcels involved in the disposition (to the extent readily available in the IOU's existing records and within its

possession or control), with the exception of Controlled Unclassified Information/Critical Energy Infrastructure Information (CUI/CEII). The IOU shall identify any information requiring execution of a nondisclosure agreement and/or requiring the viewer to have certain qualifications.:

- i. Copies of title to the real property proposed for disposition.
 - ii. Existing environmental assessments, infrastructure evaluations, and hazardous waste investigations.
 - iii. Existing environmental reports, including but not limited to, biological; non-confidential ethnographic and archaeological; historic; paleontological; geological; geotechnical; hydrologic; hydrogeologic; and water quality reports.
 - iv. All existing permits governing the parcels and equipment, and infrastructure involved and copies of any existing unresolved notices of violation for such permits.
 - v. Identification of recorded easements over the property, the purpose of the recorded easements, and a statement of whether the easements are necessary for IOU operational requirements.
 - vi. The current appraised value of the property by a California licensed appraiser, or a "Broker Opinion of Value" in the virtual data room until they can obtain and include the current appraised value of the property.
- f. The tribe(s) shall have 90 days from establishment of the data room to gather additional details and for the tribe(s) and IOU to consult and negotiate in good faith regarding the tribal acquisition of the real property.
- g. At the conclusion of 90-day period, if the IOU and the tribe(s) have not reached an agreement in principle and if such an agreement does not seem reasonably imminent despite good-faith negotiation, the noticing IOU may seek third-party purchasers for the real property.

2.3. To Whom Notice Is Directed

The IOU shall notify the tribal chairperson of any relevant tribes, or the chairperson's designee, as identified by authorized tribal leadership. A copy of each notification shall be provided to the Commission's Energy Division's CEQA and FERC Branch Manager or their designee with carbon copy provided to the Commission Tribal Advisor's Office.

2.4. Contents of Notice

The notice shall include, in plain language:

- a. Identification of the parcel(s) proposed for disposition by Assessor's Parcel Number (APN) and a detailed map showing the boundary of these parcels
- b. A location and vicinity map indicating in which counties the parcels proposed for disposition are located.
- c. A brief description of the real property proposed for disposition including the size of each parcel and a description of any facilities on the property.
- d. The reason the IOU is disposing of the real property.
- e. A statement informing the tribe that they have a right of first offer on the real property before the IOU may otherwise dispose of the property.
- f. An offer of initial terms of sale/transfer of the real property.
- g. An offer to negotiate with the tribe regarding the tribe's interest in acquiring the real property.
- h. Contact information of an IOU representative who is sufficiently knowledgeable about the real property to answer questions the tribe might have to assist the tribe in determining whether it is interested in acquiring the real property.

2.5. Notice to Be Publicly Available

When the IOU sends written notice to a relevant tribe, the IOU shall also post the notice to its TLTP Tribal website.

3. Requirements for IOU Requests for Approval to Dispose of Real Property

3.1. Filing

If an IOU requests the Commission approve the IOU's disposition of real property,

the request must provide documentation that the IOU provided notice to tribes in compliance with Section 2 and conducted good-faith consultation and negotiation with all tribes that expressed interest in acquiring the real property. The required documentation includes:

- a. A copy of the IOU's written request to the Commission's Office of the Tribal Advisor and NAHC to identify interested tribes.
- b. A copy of the IOU's written notice to any interested tribal chairperson or their designee with USPS return receipt.
- c. Documentation of any consultation and negotiation (under confidential cover) conducted between the IOU and the tribe(s), including a written record of whether any tribes were interested in acquiring the real property, the initial terms of sale offered to tribe(s), and any subsequent terms offered to a third party more favorable than the terms offered to the tribe(s).

If the IOU does not provide this documentation, and if it is unable to cure those deficiencies, the Commission may, in its discretion:

- a. Identify any tribe(s) that have designated the area where the property is located as ancestral territory, provide them with notice of the proceeding and an opportunity to acquire the real property in accordance with terms of this policy;
- b. Direct the IOU to identify, notice, and consult with any tribes identified in subsection (a) of this section; or
- c. Reject the request for approval without prejudice.

3.2. Presumption in Favor of Tribes

When an IOU requests approval to dispose of real property lying in a tribe's ancestral territory, the Commission will presume that the tribe is the preferred transferee, and that the transfer to the tribe is in the public interest, absent a finding supported by evidence that:

- a. The tribe is not interested in acquiring the real property (e.g., that the

tribe declined consultation with the IOU or confirmed that it is not interested);

- b. The IOU acted in good faith and, after reasonable effort, could not agree with the tribe on reasonable terms for the tribe's acquisition of the real property;
- c. The transfer of the real property to another entity is necessary to achieve IOU operational requirements or to comply with a law, rule, or regulation; or
- d. The transfer of the real property to another entity would be in the greater public interest. If this applies, to seek approval for the disposition of the real property the IOU must file a formal application with the Commission.

3.3. Impacts on Natural and Cultural Resources

As part of its review of any requests for approval, the Commission will carefully consider any comments regarding potential impacts to natural and tribal cultural resources and suggesting measures that would mitigate potential impacts. This applies whether the proposed transfer is to a tribe or to a third party.

4. Dispute Resolution

4.1. Preference for Informal Dispute Resolution

If possible, IOUs and tribes should resolve disputes informally by discussion between the IOU and interested tribes and, if necessary, with assistance by the Commission's Alternative Dispute Resolution Program and the Tribal Advisor's Office.

4.2. Disputes About Notice

If there is a dispute about which tribes that an IOU must notice or about the designation of any tribe's ancestral territory, the IOU shall provide notice to all tribes who claim the property as within their ancestral territory.

4.3. Multiple Interested Tribes

If more than one tribe seeks ownership of available real property, there is a dispute as to which tribe should take ownership of the property that cannot be resolved among the tribes, the IOU, cognizant of the assistance suggested in sections 4.1 and 4.2 above, shall document dispute and any steps taken to resolve the dispute and shall include such documentation in its request for approval of transferring the land, which may include a recommendation to refer the matter to the Commission's Alternative Dispute Resolution Program.

The Commission shall ultimately resolve how the land is disposed of as part of its approval process. In doing so, the Commission:

- a. Will consider each tribe's connection to the property at issue including whether the property is within a tribe's ancestral territory, historical use, cultural affiliation, or other meaningful connections to the property; the current use of the property; the proposed use after the transfer; and any other relevant considerations raised by the IOU, tribes, and other parties to the proceeding.
- b. Will give priority to tribes that have jurisdiction over trust lands that are contiguous to the proposed transferred lands.
- c. Recognizes that tribes are the primary source for identifying ancestral territory.
- a. Will use the IOU's documentation of its negotiations with the tribes.
- b. If requested by the tribes, may refer tribes to the Commission's Alternative Dispute Resolution Program.

The IOU remains responsible for identifying a buyer for real property and presenting a proposed transaction to the Commission for its review.

5. Reporting

Every quarter, each electrical and gas IOU shall attend a meeting with the Commission's Tribal Advisor's Office and Energy Division staff, to discuss the status of compliance with this policy. Water IOUs shall meet annually with the

Tribal Advisor's Office and the Water Division staff. Before the meeting, the IOU shall provide the Commission with a report that includes:

- a. A list of proposed dispositions of deeds to real property that have been noticed to tribes.
- b. An updated list of recent real property dispositions.
- c. A list of in-process real property dispositions.
- d. A summary of tribal contacts, consultations, and negotiations, (including the outcome of any consultations and negotiations) the IOU has undertaken over the previous quarter.

Small and multi-jurisdictional utilities shall submit quarterly reports but shall meet with Commission staff only during quarters in which a property disposition is taking place.

The reports for electrical and gas IOUs shall be due within 15 days after the end of each quarter (i.e., January 15, April 15, July 15, and October 15). The annual reports for water IOUs shall be due on March 31 of the following year in accordance with General Order 104-A. If the due date falls on a weekend or holiday, the meeting and report shall be due the next business day. The IOU and the Tribal Advisor's Office will be jointly responsible for scheduling the meeting to occur shortly after the report due date.

Each IOU shall post the reports to its TLTP Tribal website.

6. Tribal Advisor's Office

Consistent with the Commission's Tribal Consultation Policy, the Commission's Tribal Advisor's Office and assigned division tribal liaisons will assist in implementing this policy. Tribal governments may contact the Commission's Office of the Tribal Advisor at: TribalAdvisor@cpuc.ca.gov

7. Mapping

The Commission will develop a map that includes identification and boundaries for each county within the exterior boundaries of the state of California with an overlay identifying the geographic area for each IOU. This map will be posted on the Commission's website.