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GUIDELINES TO IMPLEMENT THE CPUC TRIBAL LAND POLICY

1. GENERAL PROVISIONS

1.1. Purpose and Intent

- a. The purpose of these Guidelines is to implement the Commission's Tribal Land Policy, which it adopted on December 5, 2019.
- b. The goals of the Tribal Land Policy are:
 - i. To recognize and respect Tribal sovereignty;
 - ii. To protect Tribal sacred places and cultural resources;
 - iii. To Ensure meaningful consideration of Tribal interests and the return of lands within the ancestral territory of the appropriate Tribe; and
 - iv. To encourage and facilitate notice and Tribal participation in matters before the Commission that involve transfers of real property subject to California Public Utilities Code Section 851.
- c. The intent of these Guidelines is therefore to further those goals.

1.2. Construction

- a. These Guidelines shall be liberally construed to further the goals of the Tribal Land Policy. See Rule 1.1(b).
- b. Unless otherwise noted, all statutory references are to the laws of the State of California.
- c. These guidelines do not address whether an Investor Owned Utility should place an easement on utility-owned land before disposing of that land. The Commissioner will consider whether an easement should be placed on any particular land on a case-by-case basis when the Utility asks for authority to dispose of the land.

1.3. Definitions

For purposes of these Guidelines, unless the context otherwise requires—

- a. "Ancestral territory" means the territory designated by a 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. (2013-2014 Reg. Sess.) Tribes are the primary source for identification of a tribe's ancestral territory. If a tribe has not designated territory under AB 52, "ancestral territory" for that tribe

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means territory identified in Vols. 8, 10 & 11 Sturtevant ed., Handbook of North American Indians (1978).¹

- b.** “California Native American tribe” or “tribe” means a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of the Statutes of 2004. (See Pub. Res. Code, § 21073.) This includes both federally-recognized tribes and tribes that are not recognized by the federal government. Nothing in the policy prevents tribes from consulting with other Native American groups that demonstrate an ongoing connection to a specific place or cultural resource, or issue falling under the jurisdiction of the Commission.
- c.** “Chairperson” means a tribe’s highest elected or appointed decision-making official, whether that person is called chairperson, or president, or some other title.
- d.** “Disposition” means the transfer, sale, donation, encumbrance, or disposition by any other means of an estate in real property.
- e.** “Indian country” means “(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.” (18 U.S.C. § 1151.)
- f.** “Investor-owned utility” (IOU) means “private corporations or persons that own, operate, control, or manage a line, plant, or system for the transportation of people or property, the transmission of telephone and telegraph messages, or the production, generation, transmission, or furnishing of heat, light, water, power, storage, or wharfage directly or indirectly to or for the public, and common carriers.” (Cal. Const., art. XII, § 3.)
- g.** “Real property” means any IOU real property whose disposition is subject to approval under Section 851 of the Public Utilities Code.
- h.** “Request for approval” means an IOU’s submission, whether under the formal application process or the informal advice letter process,

¹ The Sturtevant books are a 15-volume reference work in Native American studies, edited by William C. Sturtevant, and published by the Smithsonian Institution. Volumes 8, 10, and 11 cover “California,” “the Southwest,” and “the Great Basin,” respectively.

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requesting Commission approval of the disposition of real property under Section 851 of the Public Utilities Code.

- i. "Right of first refusal" means that the IOU disposing of real property must contact the tribe or tribes whose ancestral territory is on or adjacent to the real property, and must provide the tribe or tribes the right to take or refuse the real property, before the IOU can seek third-party purchasers for the real property.

1.4. IOU Tribal Website

Each IOU shall create and maintain a website that will serve as a repository for the documentation described in these guidelines.

2. NOTIFICATION

2.1. Notification Generally

When an IOU decides to dispose of real property, before it submits a request for approval to the Commission, the IOU shall notify any relevant tribe or tribes that it intends to dispose of the property.

2.2. IOU to Identify Relevant Tribe or Tribes

- a. The IOU shall submit a written request to the NAHC to identify tribes relevant to the territory on which the real property lies.
- b. If the NAHC fails to respond within 90 days, or if the NAHC's response is inconclusive:
 - i. If the real property is located within or adjacent to a federally-recognized tribe's Indian country, the IOU shall provide notice to that tribe.
 - ii. If the real property is not located within or adjacent to a federally-recognized tribe's Indian country, the IOU shall provide notice to any tribe or tribes on whose ancestral territory the real property lies.

2.2. To Whom Notice Directed

The IOU shall notify the tribal chairperson of any relevant tribes, or the chairperson's designee.

2.3. Contents of Notice

The notice shall include, in plain language:

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- a. The location and a brief description of the real property at issue;
- b. The reason the IOU is disposing of the real property;
- c. A statement telling the tribe that they have a right of first refusal on the real property before the IOU may put the real property on the market;
- d. An offer to consult with the tribe regarding the tribe's interest in acquiring the real property; and
- e. Contact information of an IOU representative who is sufficiently knowledgeable about the real property to answer any questions the tribe might have, so that the tribe can decide whether it is interested in acquiring the real property.

Notice shall be delivered by USPS certified mail, return receipt.

2.4. Notice to be Publicly Available

When the IOU sends notice to a relevant tribe, the IOU shall also post the notice on its tribal website.

3. REQUESTS FOR APPROVAL

3.1. Filing

- a. If an IOU submits a request for approval under Section 851, the request must show that the IOU provided notice and consultation to the interested tribe or tribes. The required showing includes:
 - i. A copy of the IOU's written request to the NAHC to identify interested tribes;
 - ii. A copy of the IOU's written notice to any interested tribal chairperson or their designee with USPS receipt;
 - iii. Documentation of any consultation between the IOU and the tribe or tribes.
- b. If the IOU does not meet that showing, and if it is unable to cure those deficiencies, the Commission may, in its discretion:
 - i. Identify any interested tribes, provide them with notice of the proceeding and an opportunity to comment;
 - ii. Direct the IOU to identify, notice, and consult with any interested tribes; or
 - iii. Reject the request for approval without prejudice.

3.2. Tribal Participation

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- a. The Commission will encourage interested tribes to participate in these proceedings.
- b. Commissioner staff and Administrative Law Judges will ensure that any comment provided by a tribe is submitted into the record of the proceeding, consistent with the confidentiality provisions set forth in the Commission's Tribal Consultation Policy.
- c. If the request for approval is an advice letter filing, any comment submitted by the tribe shall be appended to the draft Resolution disposing of the advice letter filing.

3.3. Presumption in Favor of Tribe

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:

- a. That 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. That the IOU acted in good faith and, after reasonable effort, was unable to agree with the tribe on reasonable terms for the transfer of the real property;
- c. That transfer of the real property to another entity is necessary to achieve IOU operational requirements, or to comply with any law, rule, or regulation; or
- d. That transfer of the real property to another entity would be in the public interest.

3.4. Impacts on Cultural Resources

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

4. DISPUTE RESOLUTION

4.1. Disputes Generally

It is the Commission's intent that, where possible, disputes be resolved informally, by discussion between the IOU and any interested tribes.

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4.2. Disputes About Notice

If there is a dispute about the tribe or tribes that the IOU must notice, or about the extent of any tribe's ancestral territory, the IOU shall attempt to resolve the dispute through discussion with the tribe or tribes raising the dispute. If discussion is unable to resolve the dispute, the IOU shall use its best judgment to determine how to proceed with the required notification. The IOU shall document any steps it takes to resolve such a dispute, and the reasons for any determination that it makes.

4.3. Multiple Interested Tribes

If more than one tribe seeks ownership of available real property, and if the tribes are unable to resolve the dispute themselves, the IOU shall engage in meaningful consultation with the tribes to attempt to resolve the dispute. If that fails to resolve the dispute, the IOU, in consultation with the tribes, shall propose a reasonable resolution to the dispute as part of its request for approval. The IOU will take into consideration each tribe's connection to the surplus property at issue; the current use of the property; the proposed use after transfer; and any other relevant considerations raised by the IOU, tribes, and any other stakeholder to the disposition of the real property

5. QUARTERLY REPORTS

5.1. Quarterly Reports

- a.** The IOUs shall, every quarter, provide the Commission with 1) an updated list of recent real property dispositions; 2) a list of upcoming anticipated real property dispositions; and 3) a summary of tribal contacts and consultations (including the outcome of those consultations) they have undertaken over the previous quarter.
- b.** These reports shall be due on January 1, April 1, July 1, and October 1. If the due date falls on a weekend or holiday, the report shall be due the following business day.
- c.** The utilities shall post these reports to their tribal website. The Commission will also post the reports on its own website.