



**AGENDA REQUEST FORM**  
BOARD OF SUPERVISORS  
COUNTY OF INYO

For Clerk's Use Only:  
**AGENDA NUMBER**

- Consent     Departmental     Correspondence Action     Public Hearing  
 Scheduled Time for 1:30 p.m.     Closed Session     Informational

**FROM:** County Administrative Officer/County Counsel/Planning Department

**FOR THE BOARD MEETING OF:** September 15, 2015

**SUBJECT:** Tribal Consultation Policy Workshop

**DEPARTMENTAL RECOMMENDATION:** Conduct a workshop regarding the Draft Tribal Consultation Policy.

**SUMMARY DISCUSSION:** Intergovernmental consultation between the County and recognized local tribes is governed by Senate Bill (SB) 18 (Burton, 2004) and Assembly Bill (AB) 52 (Gatto, 2014) and codified with respect to General Plans in Government Code Section 65562.5 and 65352.3 et seq., Specific Plans in Government Code in Section 65453, and the California Environmental Quality Act (CEQA) in Public Resources Code Section 21080.3.1 et seq. Additionally, Inyo County Code Chapter 9.52 addresses disturbances of archaeological, paleontological and/or historical features. The County has been consulting with local Tribes for many years pursuant to SB18 and, since July 1, 2015, has consulted with local tribes pursuant to AB52.

### **Background**

SB18 requires that the County consult with local Tribes when adopting or amending its General Plan and/or Specific Plans. The process is as follows: (1) the County requests a contact list from the Native American Heritage Commission, (2) the County sends consultation requests to those contacts provided in response at least 90 days prior to any action, and (3) the County consults with any tribes that may request consultation within 30 days. Consultation is defined as follows:

...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 between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural significance.

AB52 is new legislation that incorporates consultation into the CEQA process. The procedure is that the County must notify local tribes and request consultation for Environmental Impact Reports and (Mitigated) Negative Declarations within geographic areas that may be identified by local tribes. Within 14 days of determining a project complete or deciding to undertake a project,

the lead agency shall notify tribes that have requested to be notified of projects within a geographic area that includes the project, and the tribes have 30 days to request consultation. The definition of consultation is the same as for SB18.

### **Draft Policy**

Partly through its efforts to consult with local tribes pursuant to SB18, County staff has been working to develop a Policy to guide consultation and other intergovernmental discussions with local tribes. Through an iterative process, a draft Policy has been crafted (attached) that includes the following:

1. Purpose
2. Defining consultation
3. Notification
4. Designates members of the Board of Supervisors and Tribal Council to consult
5. Procedures (including number, duration, location, and timing of meetings, participants, agendas, and note-taking)
6. Responsibilities
7. Protecting cultural resources
8. Confidentiality
9. Information exchange
10. Conferring regarding additional topics not required by SB18 and/or AB52

By design, and in an effort to further Tribal/County relations, the proposed policy has been drafted to exceed the requirements SB 18 and AB 52.

### **Next Steps**

In conducting today's workshop, staff is seeking input from your Board, Tribes, and the general public. Prior to considering approval of the Policy as it may be revised, your Board may want to direct staff to provide public notice of its intent to consider the proposed Policy well in advance of the Board of Supervisors meeting at which the Policy will be agendized.

Also, if your Board ultimately adopts a policy, and if the Tribes please, the County and Tribes could use the policy as the basis for developing Tribe-specific Memorandums of Understanding (MOU) – or other similar instruments – regarding consultation, which would be presented to the Board for consideration. In the absence of such MOUs, the Policy (if adopted) would guide the County's consultation with the Tribes in compliance with, and exceeding current State law.

**ALTERNATIVES:** The Board could recommend modifications to the proposed Policy or direct staff to cease working on the effort.

**OTHER AGENCY INVOLVEMENT:** Tribal governments and other agencies working with the County and local tribes.

**FINANCING:** General fund resources are being utilized to develop the Policy. Staff believes that implementation may result in reduced costs to the County and/or applicants relative to the status quo.

**APPROVALS**

COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by county counsel prior to submission to the board clerk.) <i>Margaret Kemp Williams</i>
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)

**DEPARTMENT HEAD SIGNATURE:**

(Not to be signed until all approvals are received)

*[Handwritten Signature]*

Date: 09-09-2015

*[Handwritten Signature]*

Date: 9/9/15

Attachment: Draft Policy

## COUNTY OF INYO

### POLICY & PROTOCOL FOR TRIBAL CONSULTATION

#### **BACKGROUND**

INYO COUNTY (County) is required by State law to engage in intergovernmental consultation with sovereign California Native American Indian Tribes with tribal members and /or lands located in the jurisdiction of the County (Local Tribes). Intergovernmental consultation is governed by SB 18 (Burton, 2004) and AB 52 (Gatto, 2014) and specifically codified with respect to General Plans [Government Code section 65300, et. seq.], Specific Plans [Government Code section 65453], potential impacts on tribal cultural resources as a consequence of a CEQA project [Public Resources Code section 21074], and designation of land as open spaces containing traditional tribal cultural places. Additionally, Inyo County Chapter 9.52 addresses disturbances of archaeological, paleontological and/or historical features.

#### **I. PURPOSE**

In adopting this policy, the Inyo County Board of Supervisors desires to establish a consistent and efficient protocol for how the County will conduct intergovernmental consultation under existing State and local laws.

In addition, the Inyo County Board of Supervisors desires to establish parameters for creating a framework for creating memorandums of understanding (MOU) or other instruments for consulting on matters that, although not legally required by SB 18 and AB 52, may be of concern to a Local Tribes and/or the County. Such an MOU framework can be used to cover a wide range of topics including, but not limited to biology, environment, aesthetics, public safety, and socioeconomics issues.

The County is committed to open, candid, respectful, constructive, timely and effective communication required by State laws governing consultation, and necessary to foster understanding of issues and positive relations between elected leaders of the County and Local Tribes, as well as providing a framework for discussing mutually agreed upon Topics not subject to state laws governing consultation.

#### **II. CONSULTATION PROCESS**

- i. **Consultation Defined.** The County adheres to the definition of “consultation” found in SB 18 and Government Code section 65352.4 and Public Resources Code section 21080.3.1:

“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 between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party’s sovereignty. Consultation shall also recognize the tribes’ potential needs for confidentiality with respect to places that have traditional tribal cultural significance”

- ii. **Possible Actions Subject to Consultation.** The County will engage in intergovernmental consultation, as required by law, whenever it plans to amend the County’s General Plan, and Specific Plans, and prior to the release of any Negative Declarations or Environmental Impact Reports (EIRs) for which the County is the Lead Agency under the California Environmental Quality Act (“CEQA”).
- iii. **Notices.** The County will initiate consultation by notifying each Local Tribe of the opportunity to consult on these potential actions by sending written Notice to the tribal representative [job title and address] provided by each Local Tribe to the County Planning Director. If a Local Tribe has not notified the County of the position and address to which consultation notices should be sent, the County will send the Notice to the attention of the Tribal Secretary at the street address where the Tribal administrative offices are located.

Local Tribes are asked keep the County provided with up-to-date contact information consisting of names, mailing addresses, telephone numbers, and electronic mail addresses for the position or positions to which consultation notices should be sent. In communicating with the County regarding consultation, the Local Tribe should send all correspondence to:

Planning Director  
County of Inyo  
P.O. Drawer L  
Independence, California 93526

The Planning Director is responsible for transmitting all communications received from a Local Tribe regarding consultation to the Board of Supervisors, the County Administrator, and County Counsel.

For General Plan Amendments, Specific Plans, and Negative Declarations and EIRs **initiated by the County, in the absence of an application from a third party**, the County will provide each Local Tribe with Notice of the opportunity to consult on matters

affecting the Tribe. The law requires a minimum notice period, however, the County has determined that additional time may provide more meaningful consultation opportunities between a Local Tribe and the County representatives. The County will designate in its discretion based on the facts, the following time periods, which meet or exceed state minimum requirements or a longer period:

- a. 30-days prior to the release of any Draft General Plan Amendment or Draft Specific Plan for public review; this extended period over what is required by law provides time for the Local Tribe and the County to engage in more meaningful consultation in the event no EIR or Negative Declaration is required; or,
- b. Within fourteen (14) days of a decision by the County to proceed with CEQA compliance to undertake a project on its own as required by AB52; or,
- c. 120 days prior to the County's consideration of final action on a County project; this extended period over what is required by law provides time for the Local Tribe and the County to engage in more meaningful input for projects than AB 52 and SB 18 criteria.

For General Plan Amendments, Specific Plans, and Negative Declarations and EIRs **based on an application from a third party**, the County will provide each Local Tribe with Notice upon deeming the application complete. Such notification will not be less than:

- a. 30-days prior to the release of any Draft General Plan Amendment or Draft Specific Plan for public review; this extended period over what is required by law provides time for the Local Tribe and the County to engage in more meaningful consultation in the event no EIR or Negative Declaration is required; or,
- b. Within fourteen (14) days of determining that an application for a project is complete as required by AB52; or,
- c. 120 days prior to the County's consideration of final action on a project; this extended period over what is required by law provides time for the Local Tribe and the County to engage in more meaningful input for projects than AB 52 and SB 18 criteria.

Upon receiving Notice from the County, any Local Tribe that desires to proceed with consultation needs to provide written Notice to the County within the 30-day timeframe set by law and identified in the Notice.

- iv. **Consultation.** Once a Local Tribe notifies the County of its desire to proceed with consultation on a specific potential action for which the County has provided Notice, the County and the Local Tribe will consult on or otherwise discuss the matter in face-to-

face meetings at a mutually agreeable time and location to the extent possible. To accomplish this, the County Policy is:

- a. **Number of Meetings.** Consultation with a Local Tribe on a specific potential action for which the County has provided Notice, and for which the Tribe has provided written timely Notice to the County that it desires to proceed with consultation, will consist of up to three (3) meetings unless both the County and the Local Tribe agree in writing that consultation has been completed in a fewer number of meetings, or that additional meetings are desirable and practicable.
- b. **Duration of Meetings.** Consultation meetings will conclude within 45-days of the County receiving Notice of a Local Tribe's desire to engage in consultation, unless a longer term is agreed to in writing.
- c. **Timing of Meetings.** Recognizing that scheduling meetings can be difficult and the need to conclude the consultation process within a reasonable timeframe, at the time the County annually designates its Consultation Committee representatives (see below) for each Local Tribe, it shall also establish the days of the week the County's Consultation Committee representatives for each Tribe shall meet; specifying whether the meeting will be held in the morning, afternoon, or evening. This pre-established schedule is intended to ensure County officials are available to participate in and conclude the consultation process, but does not preclude establishing other meeting times and days that are mutually convenient for all Consultation Committee members from the Local Tribe and the County. The County's representatives will endeavor to make themselves available to meet at reasonable times requested by the elected representatives of the Local Tribe.
- d. **Location.** Except in special circumstances, unless otherwise requested and agreed to by the County and the Local Tribe, the meetings will be held at Tribal offices. The Local Tribe is responsible for determining if the meeting is open to the public and how, or if it is noticed. Anytime a meeting is held at a location other than an office of the Local Tribe, the meeting shall be a public meeting and noticed with an agenda posted, in accordance with the Brown Act.
- e. **Participants.** The County's Preference is that consultation meetings occur between elected officials. To accomplish this, each year the Board of Supervisors will designate two (2) of its members to serve as the Consultation Committee representatives assigned to each Local Tribe. Each Local Tribe is asked to appoint two members of its Tribal Council to serve as its representatives to the consultation meetings.

If a Local Tribe does not identify two elected representatives to participate in consultation meetings with the County, or the Tribe's identified elected officials are unavailable to meet, the consultation meetings can occur between staff designated by the County and staff designated by the Local Tribe. The three (3) consultation meetings may be accomplished through a combination of elected-to-elected official meetings and/or staff-to-staff meetings.

When Consultation Committee representatives from the County and Local Tribe meet, the representatives may be supported by staff from both the County and the Tribe, and staff may meet and work together as desirable or necessary outside of the Consultation Committee to facilitate Consultation Committee meetings.

- f. **Staff Participation.** Tribal and County staff, identified by their respective Consultation Committee members, may attend Consultation Committee meetings. However, the staff present at the meetings is expected to be mindful of the Decision Maker to Decision Maker nature of the meetings, and limit their participation to listening, answering questions, and supporting their respective elected officials, including convening follow-up meetings between Tribal and County staff between Consultation Committee meetings.
- g. **Agenda & Note Taking.** County staff will be responsible for preparing consultation meeting agendas, and taking notes.

When the Tribe provides Notice to the County of its desire to consult on a potential action for which the County has provided Notice, the Tribe is asked to identify the specific issues relative to the action that it wishes to discuss consistent with this policy. Providing the issues on which the Tribe wishes to consult are consistent with the provisions of state law and this policy for consultation, the County will include the issues on the meeting agenda. If there is disagreement over what issues are subject to consultation and should be included on the meeting agenda, they will be noted as such and discussed by the representatives of the County and the Tribe at the meeting.

The meeting notes shall be reviewed and approved by the Consultation Committee prior to the meeting adjourning and, at a minimum, agreement is expected to be made upon Action Items taken by the County's and Tribe's Consultation Committee representatives, or their staff designees, prior to the next meeting. A copy of the notes will be transmitted to the Tribe within five (5) business days of the meeting. If agreement cannot be reached regarding the notes or the Action Items, the disagreement shall be noted.



- h. **Cultural Resources.** The County will seek to consult and work cooperatively with the Local Tribe to protect, preserve, enhance, mitigate, and manage archaeological sites, traditional cultural properties, and traditional cultural resources, identified within the jurisdiction of the County. To the extent feasible, reasonable, and allowed by law, the County will work with the Tribe to facilitate enabling the Tribe to access and steward its traditional tribal cultural resources.
- i. **Confidentiality.** The County recognizes and supports the Tribe's need to maintain confidentiality to protect archaeological sites, traditional cultural properties, and traditional cultural resources to the extent allowed by law, including but not limited to, exemption from public disclosure as set forth in SB 18 and California Government Code section 65352.4.
- j. **Exchange of Information.** Information will be freely shared between both the County and the Local Tribe except when constrained by factors such as the need to protect confidentiality. When information needs to be kept confidential, the entity providing the information shall indicate the need for confidentiality when conveying the information. Any confidential information exchanged by the Tribe will not be released by the County unless authorized by the Tribe in writing, subject to the County's right to describe generally the information in an environmental document so as to inform the general public of the basis of the County's decision. This provision regarding confidentiality does not apply to information already publicly known or in the lawful possession of a project applicant or its agents or otherwise lawfully obtained from a third party before the provision of the information by the Tribe.
1. To the extent practicable, the County's and Local Tribe's Consultation Committee representative will be responsible for facilitating the information exchange. The representatives will be responsible to disseminate the information amongst staff and consultants. Copies of the data are to be made and distributed only to those staff and consultants directly involved with the topics being discussed, unless otherwise agreed to in writing by the County and the Tribe. Files are to be maintained of said data for the required document retention period based on applicable law. Any shared data is intended to be used exclusively for the specific project being considered.
  2. Information may be exchanged in-person, via mail, or email, or any other means deemed applicable. Information provided by either the County or the Tribe shall be accompanied by a summary of the

information in order to clarify what is being provided and to identify any confidentiality issues related to the information being provided.

3. The County and the Tribe will keep confidential and protect from public disclosure any and all documents exchanged or developed as a part of an MOU prior to a determination by the applicable party of the releasability. Neither party will disclose documents exchanged or developed as a part of an MOU without providing notice to the other party. Each party will protect, to the extent allowed by applicable state and federal laws, the confidentiality of the other party's documents. Both parties agree to impose the requirement of this Section upon their consultants, and the release of documents to those consultants shall not be deemed public disclosure.
- k. **Resources.** The County will work with the Tribe to mutually provide the resources necessary for investigation, evaluation, monitoring, mitigation and ongoing protection of traditional cultural properties and tribal cultural resources, as well as for the potential disposition of artifacts as is feasible.

The County's Planning Director or his designee will be available to provide appropriate requested technical information to the degree possible to the Tribe.

### III. CONSULTING ON ADDITIONAL TOPICS

It is the County's desire and intent to provide a framework to go beyond the minimum requirements of the law and engage in earnest dialogue on issues that have impacts on our communities. In doing so, the Board of Supervisors hopes that leaders of both the Local Tribe and the County can address issues of genuine concern to their constituents, agencies, and respective governing bodies – not just those prescribed by law.

To accomplish this, the County will endeavor to develop and execute an MOU with each Local Tribe as a means of developing an agreed process for engaging in intergovernmental consultation on tribal concerns regarding a wide range of topics extending beyond those topics subject to consultation as required by State Law. Such additional topics may include, but are not limited to, considering each other's views on economic, environmental, cultural, social and technological factors.

Any MOU developed between the County and a Local Tribe shall:

1. Be consistent with and not contradict the County's Policy & Protocol for Tribal Consultation; and,

2. Identify the specific Topics the County and Tribe mutually agree to discuss which are not already subject to state laws governing consultation, as described above. In addition to identifying the additional Topics the County and the Tribe wish to consult upon, the MOU will also describe the timing of any Notices to be provided by or to the County and the Tribe on specific Topics, and the timing of the commencement of consultation following Notice; and,
3. Identify the geographic areas traditionally and culturally affiliated with the Local Tribe in which the additional Topics that the County and Tribe wish to consult about (in addition to those matters subject to state laws governing consultation) are applicable.

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