



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: March 8, 2016

SUBJECT: Tribal Consultation Policy Workshop

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

SUMMARY DISCUSSION: The Board of Supervisors has been conducting workshops regarding its draft Tribal Consultation Policy pursuant to Senate Bill (SB) 18 (Burton, 2004) and Assembly Bill (AB) 52 (Gatto, 2014) since September; the most recent Workshop was held on January 12, 2016.¹ Representatives of the Lone Pine, Death Valley Shoshone, and Big Pine Tribes attended and participated. At the conclusion, the Board directed staff to update the draft Policy and work with the tribes to schedule another Workshop.

County staff updated the draft Policy per the discussions on January 12, and sent the updated draft Policy in an electronic format to tribal representatives on January 27. To date, no input has been received. Staff also polled tribal representatives regarding potential upcoming meeting dates, and agreed to March 8. Staff emailed tribal representatives to remind them the week before the Workshop.

Exhibit A includes the updated draft Tribal Consultation Policy.² Exhibit B includes the January 12, 2016 Agenda Request Form. Below is a summary of the comments received on January 12, with responses. Correspondence was received from the Big Pine Tribe on January 12, which is included in Exhibit C.

Next Steps

Staff anticipates receiving input from the Tribes and other interested parties, updating the Policy appropriately, and providing additional opportunities for input and/or noticing a meeting for final consideration. If the Board adopts the Policy, individual agreements with the Tribes may be negotiated based upon the Policy.

¹ Refer also to <http://inyoplanning.org/projects/Tribal%20Consultation/InyoCountyTribalConsultationPolicy.htm>.

² Modifications made prior to January 12 are illustrated in strikethrough/underline. Additions made after January 12 are illustrated additionally with highlight.

Input Summary and Responses

The following summarizes comments provided at the January 12 Workshop and provides responses. Previous input and responses are detailed in Exhibit B.

Summarized Comment – should the Policy be expanded to include the Open Space General Plan Element?

Response – the first paragraph references designating lands as open space. Specific reference could be added to Government Code Section 65562.5 – which addresses SB18's open space consultation requirements – if desired.

Summarized Comment – this is a State-mandated local program.

Response – staff concurs.

Summarized Comment – an agreement should be pursued with the Lone Pine Tribe.

Response – staff concurs. Once the Policy has been adopted, it is the County's intention to negotiate individual agreements with each local Tribe if the Tribe so wishes.

Summarized Comment – the County should meet with individual Tribes and all the Tribes annually.

Response – staff believes that this would be a worthy goal. The draft Policy has been updated to incorporate this concept.

Summarized Comment – consultation meetings with the entire Tribal Council could be problematic.

Response – staff concurs and believes that the draft Policy allows for a subset of the Tribal Council to participate. Staff recommends that at least two members of the Tribal Council be involved in the meetings for institutional memory.

Summarized Comment – confidentiality should be maintained.

Response – the County is committed to working to protect cultural resource confidentiality, and the draft Policy has been crafted to do so. Any specific suggestions to improve the approach would be appreciated.

Summarized Comment – the supervisors appointed to each committee should represent the Tribes in the committee.

Response – staff generally concurs. However, staff recommends that the Policy be open-ended in this regard to be adaptable to unusual circumstances and to reflect supervisorial districts that traditionally accommodated multiple tribal communities.

Summarized Comment – AB52 training should be undertaken.

Response – staff concurs and recommends participating in training resources permitting.

Summarized Comment – Subsections a-k in Section III(iii)³ should be deleted.

Response – staff recommends that the topics in Subsections a-k be addressed in the County's Consultation Policy to provide guidance if there are not agreements with the individual Tribes. Modifications to Subsections a-k may be specified in individual agreements with the Tribes; the draft Policy has been updated to emphasize this concept.

Summarized Comment – the third paragraph and three numbered statements in Subsection IV⁴ should be deleted.

Response – staff believes that these concepts are important to guide consultation regarding additional topics to be discussed, and recommends that they be included. Per the Board's direction, staff has included clarification to indicate that individual agreements can modify procedural guidance.

Summarized Comment – the agreements with the individual Tribes should provide for modifications to the Policy's procedural guidance.

Response – staff has added language to clarify this point in the updated draft Policy.


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.

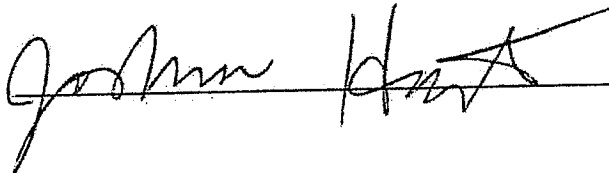
FINANCING: General fund resources are being utilized to develop the Policy. Staff believes that implementation may result in reduced costs to the County and/or applicants relative to the status quo.

³ In the previous version of the draft Policy this reference was in Section II(iv).

⁴ In the previous version of the draft Policy this reference was in Section III.

APPROVALS	
COUNTY COUNSEL: <i>yes</i>	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.)  2/22/16
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)

 _____ Date: 3/2/16

Exhibits:

- A. Updated Draft Tribal Consultation Policy
- B. January 12, 2016 Agenda Request Form
- C. Correspondence

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 Senate Bill (SB) 18 (Burton, 2004) and Assembly Bill (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 California Environmental Quality Act (CEQA) project [Public Resources Code section 21074], and designation of land as open spaces containing traditional tribal cultural places. Additionally, Inyo County Code 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. DEFINITIONS AND ACRONYMS

The following definitions apply to this Policy:

- i. Consultation. 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. Consultation Committee. Two representatives of the Inyo County Board of Supervisors designated by the Board and Tribal Council members of each individual Tribe designated by the Council.
- iii. Cultural Resources. Tribal cultural resources as defined by Public Resources Code Section 21074.
- iv. Environmental Impact Report. An environmental document prepared and processed pursuant to CEQA (Public Resources Code Section 21000 et seq.) and the CEQA Guidelines (California Code of Regulations, Title 14, Chapter 3, Section 15000 et seq.).
- v. General Plan. A comprehensive, long-term general plan for the County as described in Government Code Section 65300 et seq.
- vi. Negative Declaration. An environmental document prepared and processed pursuant to CEQA (Public Resources Code Section 21000 et seq.) and the CEQA Guidelines (California Code of Regulations, Title 14, Chapter 3, Section 15000 et seq.).
- vii. Specific Plan. A Plan prepared to Government Code Section 65450 et seq.

The following acronyms are utilized in this Policy.

- i. AB. Assembly Bill
- ii. CEQA. California Environmental Quality Act
- iii. EIR. Environmental Impact Report
- iv. MOU. Memorandum of Understanding
- v. SB. Senate Bill

II.III. 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.i. **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").~~

~~ii.ii. **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-iii. 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. The County will follow the following protocol with local tribes absent an agreement with the specific Tribe, and will consider substantive modifications to the protocol in any such agreement. To accomplish this, unless otherwise specified in an agreement with a particular Tribe, 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 at least two members of its Tribal Council to serve as its representatives to the consultation meetings; alternatively, the full Tribal Council may serve on the Consultation Committee.

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

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-IV. 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 shouldall:

1. Be consistent with and not contradict this County's Policy & Protocol for Tribal Consultation, although minor modifications to specific timing, noticing, and other procedural requirements may be considered; 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.

V. Regular Meetings between the County and the Tribes

The County will endeavor to schedule yearly, quarterly, or other periodic meetings with all local tribes, subgroups of the tribes, or individual local tribes to discuss general topics and implementation of this Policy and Protocol. Confidential information should not be shared at these meetings unless the County can maintain confidentiality and withhold the information from the general public pursuant to relevant laws.

1. The County Board of Supervisors may conduct such meetings at regular or special Board meetings, or designate two Supervisors to conduct such meetings.
2. The Chairperson of the County Board of Supervisors (or the two designated Supervisors) shall coordinate with each individual Tribal Chairperson to determine the appropriate frequency of the meetings, timing, location, and agenda.
3. Staff may attend these meetings to assist with meeting logistics and information sharing, if requested by its governing body in consultation with the other participants.
4. If desired, County representatives shall be responsible for preparing meeting minutes, which would be provided for review to each participating Tribe prior to the next meeting.