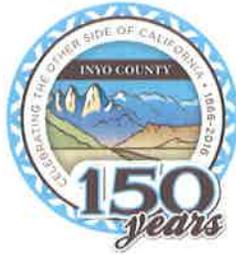


Agenda



County of Inyo Board of Supervisors

Board of Supervisors Room
County Administrative Center
224 North Edwards
Independence, California

All members of the public are encouraged to participate in the discussion of any items on the Agenda. Anyone wishing to speak, please obtain a card from the Board Clerk and indicate each item you would like to discuss. Return the completed card to the Board Clerk before the Board considers the item (s) upon which you wish to speak. You will be allowed to speak about each item before the Board takes action on it.

Any member of the public may also make comments during the scheduled "Public Comment" period on this agenda concerning any subject related to the Board of Supervisors or County Government. No card needs to be submitted in order to speak during the "Public Comment" period.

Public Notices: (1) In Compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting please contact the Clerk of the Board at (760) 878-0373. (28 CFR 35.102-35.104 ADA Title II). Notification 48 hours prior to the meeting will enable the County to make reasonable arrangements to ensure accessibility to this meeting. Should you because of a disability require appropriate alternative formatting of this agenda, please notify the Clerk of the Board 72 hours prior to the meeting to enable the County to make the agenda available in a reasonable alternative format. (Government Code Section 54954.2). (2) If a writing, that is a public record relating to an agenda item for an open session of a regular meeting of the Board of Supervisors, is distributed less than 72 hours prior to the meeting, the writing shall be available for public inspection at the Office of the Clerk of the Board of Supervisors, 224 N. Edwards, Independence, California and is available per Government Code § 54957.5(b)(1).

Note: Historically the Board does break for lunch; the timing of a lunch break is made at the discretion of the Chairperson and at the Board's convenience.

October 11, 2016

9:30 a.m. 1. **PUBLIC COMMENT**

CLOSED SESSION

2. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION.** (Paragraph (1) of subdivision (d) of Government Code Section 54956.9). *Native American Heritage Commission v. Inyo County Planning Department and Inyo County Board of Supervisors*, Inyo County Superior Court Case No. SICVPT1557557 (Munro Petition for Writ of Mandate)
3. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION.** Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Government Code Section 54956.9 (one case).
4. **CONFERENCE WITH LABOR NEGOTIATORS [Pursuant to Government Code §54957.6]** – Employee Organizations: Deputy Sheriff's Association (DSA); Elected Officials Assistant Association (EOAA); Inyo County Correctional Officers Association (ICCOA); Inyo County Employees Association (ICEA); Inyo County Probation Peace Officers Association (ICPPOA); Law Enforcement Administrators' Association (LEAA). Unrepresented employees: all. Agency designated representatives: County Administrative Officer Kevin Carunchio, Assistant County Administrator Rick Benson, Deputy Personnel Director Sue Dishion, Senior Deputy County Administrator Brandon Shults, County Counsel Marshall Rudolph, and Assistant County Counsel John Vallejo.

OPEN SESSION

10 a.m. **PLEDGE OF ALLEGIANCE**

5. **REPORT ON CLOSED SESSION**

6. **PUBLIC COMMENT**

7. **COUNTY DEPARTMENT REPORTS** (*Reports limited to two minutes*)

8. **INTRODUCTIONS** – The following new employees will be introduced to the Board: Cameron J. Aubrey, Mechanic, Road Department; Tyson D. Sparrow, Building Inspector, Public Works; and Martin Orozco, Building and Maintenance Worker, Public Works.

CONSENT AGENDA (Approval recommended by the County Administrator)

9. **PUBLIC WORKS**

Request Board appoint Mr. Geoff Pope to complete one unexpired four-year term ending October 31, 2019, and appoint Ms. Eileen Burger, Mr. Dave Patterson, and Mr. Peter Tracy to the Northern Inyo Airport Advisory Committee to serve three, four-year terms ending October 31, 2020. (*Notice of Vacancies resulted in requests for appointment being received from Mr. Pope, Ms. Burger, Mr. Patterson, and Mr. Tracy.*)

10. Request Board appoint Mr. Martin Powell to the Southern Inyo Airport Advisory Committee to complete an unexpired four-year term ending June 1, 2020. (*A Notice of Vacancies resulted in one request for appointment being received from Mr. Powell.*)

WATER DEPARTMENT

11. **Saltcedar Project** – Request Board approve the purchase of 100 gallons of Garlon 4 herbicide and 300 gallons of Improved JLB Oil Plus, with dye, from Crop Production Services for a total of \$11,869.20 plus tax for use in the control of saltcedar.

DEPARTMENTAL (To be considered at the Board's convenience)

12. **PUBLIC WORKS – Road Department** – Request Board change the authorized strength in the Road Department by deleting one (1) Equipment Operator/Mechanic I/II position at Range 58 (\$3,310 - \$4,027 plus 2.5% tool allowance) to Range 60 (\$3,471 - \$4,216 plus 2.5% tool allowance), and **adding** one (1) Equipment Operator I/II position at Range 58 (\$3,310 - \$4,027) to Range 60 (\$3,471 - \$4,216); **and** request Board find that, consistent with the adopted Authorized Position Review Policy: A) the availability of funding for the Equipment Operator I/II position exists in the Road Budget, as certified by the Public Works Director and concurred with by the County Administrator and Auditor-Controller; B) where internal candidates meet the qualifications for the position, the vacancy could be filled through an internal recruitment, however there exists a list of qualified applicants from the recent joint Road/Solid Waste recruitment; and C) approve the hiring of one (1) full-time Equipment Operator I/II at Range 58 (\$3,310 - \$4,027) to Range 60 (\$3,471 - \$4,216).
13. **SHERIFF** – Request Board find that, consistent with the adopted Authorized Position Review Policy: A) the availability of funding for the requested positions comes from the General Fund, as certified by the Sheriff and concurred with by the County Administrator and Auditor-Controller; B) where internal candidates may meet the qualifications for the positions and the positions could possibly be filled by an internal recruitment, an open recruitment is more appropriate to ensure the positions are filled with the most qualified candidates; C) approve the hiring of one (1) Investigator position, Range 71SA-SD (\$4,799 - \$6,595); D) approve the hiring of one (1) Corporal position, Range 70SA-SD (\$4,556-\$6,262); and E) approve the open recruitment and hiring of one (1) Deputy Sheriff's position, Range 67SA-SD (\$4,149-\$5,705), and authorize up to the E step for a qualified lateral applicant.
14. **SUPERVISORS GRIFFITHS AND KINGSLEY/COUNTY ADMINISTRATOR/PLANNING** – Request Board receive a presentation from staff regarding the status of public lands in Inyo County, and direct staff to develop a draft scope of work to investigate these issues more broadly and return for further discussion.

TIMED ITEMS (Items will not be considered before scheduled time)

- 1 p.m. 15. **COUNTY ADMINISTRATOR/COUNTY COUNSEL/PLANNING – Public Hearing** – Request Board conduct a public hearing and adopt the Draft Tribal Consultation Policy.
- 2 p.m. 16. **WATER DEPARTMENT – Workshop** – Request Board conduct a workshop on a Stakeholder Situation Assessment prepared to support efforts to form a groundwater sustainability agency in the Owens Valley Groundwater Basin.

COMMENT (Portion of the Agenda when the Board takes comment from the public and County staff)

17. **PUBLIC COMMENT**

BOARD MEMBERS AND STAFF REPORTS

CORRESPONDENCE – INFORMATIONAL

18. ***Auditor-Controller*** – An actual count of money in the hands of the Treasurer.
19. ***Big Pine Paiute Tribe of the Owens Valley*** – Letter to Los Angeles Board of Water and Power Commissioners regarding “Ongoing Irrigation Water Crisis at Big Pine Indian Reservation.”
20. ***Department of California Highway Patrol*** – Prop 65 report on recent hazmat spill on Whitney Portal Road.



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:

AGENDA NUMBER

9

- Consent Departmental Correspondence Action Public Hearing
 Schedule time for Closed Session Informational

FROM: Public Works Department

FOR THE BOARD MEETING OF: October 11, 2016

SUBJECT: Appointment(s) to Northern Inyo Airport Advisory Committee

DEPARTMENTAL RECOMMENDATIONS:

Request the Board appoint Mr. Geoff Pope to complete one unexpired four-year term ending October 31, 2019, and appoint Ms. Eileen Burger, Mr. Dave Patterson and Mr. Peter Tracy to the Northern Inyo Airport Advisory Committee to serve three, four-year terms ending October 31, 2020. (Notice of Vacancy resulted in requests for appointment being received from Mr. Geoff Pope, Ms. Eileen Burger, Mr. Dave Patterson and Mr. Peter Tracy.)

CAO RECOMMENDATIONS:

SUMMARY DISCUSSION:

The Northern Inyo Airport Advisory Committee is comprised of a maximum of five members and one alternate with voting privileges. Mr. Geoff Pope and Mr. Dennis Nikolaus' terms on the committee expired on October 31, 2015, at which time the County advertised the vacancies and received no applications for appointment. The County also advertised a vacant alternate position that expired on October 31, 2015 and received no response. Mr. Pope continued to serve on the committee under the "serve until filled" provision. Three additional terms will expire on October 31, 2016. In September, the County advertised these upcoming vacancies as well as the terms that expired in 2015. Mr. Pope, Mr. Patterson and Ms. Burger have requested reappointment; Mr. Tracy has applied for one of the vacant seats.

ALTERNATIVES:

The Board could elect not to fill the positions. This is not recommended as all the applicants have expressed interest in serving on the committee.

FINANCING:

The Airport Advisory Committee members are volunteers and receive no monetary compensation. There are no other costs to the County associated with filling the vacant position.

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.) Approved: <u>N/A</u> Date _____
AUDITOR/CONTROLLER	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor/controller prior to submission to the board clerk.) Approved: <u>N/A</u> Date _____
PERSONNEL DIRECTOR	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.) Approved: <u>N/A</u> Date _____

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)

[Handwritten Signature]

Date: 10/5/16

BLACK MOUNTAIN AIR SERVICE

FAA Cert. # K8XA511L
37 Ocean View
Bishop, CA 93514
760-937-1300

Geoff Pope
Owner – Pilot

September 5, 2016

Board of Supervisors
County of Inyo
P.O. Box N
Independence, CA 93526

Dear Sirs:

I am hereby submitting my request to be re-appointed to the Northern Inyo
Airport Advisory Committee.

Thank you,



Geoff Pope

RECEIVED
2016 SEP -9 PM 1:04

RECEIVED

2016 SEP -9 PM 1:04

11/11/16

EILEEN Burger

~~PO Box 1118~~

BIG PINE, CA 93513

September 6, 2016

Inyo County Board of Supervisors
PO Box N
Independence, CA 93526

Dear Sirs;

I would like to be considered for reappointment to the Northern Inyo Airport Advisory Committee, to complete another four-year term ending October 31, 2020.

Sincerely,



David L. Patterson

~~1000 Main Street~~
Bishop, CA 93514

~~Phone: (760) 898-3344 FAX: (760) 872-5596 Cell: (760) 937-5596~~
~~E-mail: dave@dlpatterson.com~~

September 5, 2016

Darcy Ellis
Assistant Clerk of The Board
County of Inyo Board of supervisors
P.O. Box N
Independence, CA 93526

Dear Darcy:

I would like to be reappointed to serve on the Northern Inyo Airport Advisory Committee.

I have been interested in the airport and particularly air service to the Eastern Sierra since moving here 22 years ago.

Best regards,

Dave Patterson



dav|nlac ap 2016

2016 SEP -9 PM 1:04
RECEIVED

Cindy Truelsen

From: Darcy Ellis
Sent: Wednesday, September 07, 2016 3:29 PM
To: Cindy Truelsen
Subject: FW: Northern Inyo County Airport Advisory Committee

FYI

From: Peter Tracy [mailto:~~tracy.peter@starc.com~~]
Sent: Wednesday, September 07, 2016 3:11 PM
To: Darcy Ellis
Subject: Northern Inyo County Airport Advisory Committee

Good afternoon Darci-

In our telephone conversation of earlier today, you asked me to send you an email confirming that I am interested in being appointed to the Northern Inyo County Airport Advisory Committee. Hence this email.

I outline my general aviation background:

- FAA Airline Transport Pilots License with the following ratings:
 - Airplane Single and Multi-Engine Land
 - Airplane Single Engine Sea
 - Instrument Airplane
 - Glider
 - Remote Pilot: Small Unmanned Aerial Systems
- FAA Certified Flight Instructors License with the following ratings:
 - Airplane Single and Multi-Engine
 - Instrument Airplane

Have owned five different airplanes based at the Bishop Airport beginning in the late 1970s. Presently have a Beechcraft Bonanza hangered at the Bishop Airport. Have 7000+ hours of flying time.

On the Board of Trustees of the Beechcraft Heritage Museum in Tullahoma, Tennessee. Have been actively involved with the Bishop Airport since the mid-1970s.

I outline my general non-aviation background:

- Married to my wife, Sue, since 1981.
- Raised three children in Bishop.

- Private practice of law in Bishop since 1977.
- City Attorney for the City of Bishop from 1981-2014.
- Town Attorney (City Attorney) for the Town of Mammoth Lakes from 1987-2010.

You indicated that it was not necessary to send a formal resume, so I have not; but if you would like me to send one, it is not a problem. Just let me know if anything else

Is needed.

Best,
Peter Tracy
106 South Main St. #200
P. O. Box 485
Bishop, California 93515
(760) 872-1101



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:

AGENDA NUMBER

10

- Consent
 Departmental
 Correspondence Action
 Public Hearing
 Schedule time for
 Closed Session
 Informational

FROM: Public Works Department

FOR THE BOARD MEETING OF: October 11, 2016

SUBJECT: Appointment to Southern Inyo Airport Advisory Committee

DEPARTMENTAL RECOMMENDATIONS:

Request the Board appoint Mr. Martin Powell to the Southern Inyo Airport Advisory Committee to complete an unexpired four-year term ending June 1, 2020. (Notice of Vacancy resulted in one request for appointment being received from Mr. Martin Powell.)

CAO RECOMMENDATIONS:

SUMMARY DISCUSSION:

The Southern Inyo Airport Advisory Committee is comprised of eight members appointed by the Board of Supervisors. Two of the seats are currently vacant, and four of the remaining six terms expired on June 1, 2016. A Notice of Vacancy published in September resulted in only one response: a request for reappointment from Mr. Martin Powell (attached).

ALTERNATIVES:

The Board could elect not to fill the positions. This is not recommended as the applicant has expressed interest in serving on the committee.

FINANCING:

The Airport Advisory Committee members are volunteers and receive no monetary compensation. There are no other costs to the County associated with filling the vacant position.

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.) Approved: <u>N/A</u> Date _____
AUDITOR/CONTROLLER	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor/controller prior to submission to the board clerk.) Approved: <u>N/A</u> Date _____
PERSONNEL DIRECTOR	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.) Approved: <u>N/A</u> Date _____

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)

Williams

Date: 10/5/16

Untitled

RECEIVED
2016 SEP -8 PM 12: 25

September 6, 2016

Board of Supervisors
P.O. Box N
Independence, CA 93526

Dear Board Members.

It has been my pleasure to serve on the Inyo Airport Advisory
Committee.

I would like to continue to do so. Please re-appoint me to the
Committee.

Sincerely,

Martin R. Powell



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

11

XX Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: WATER DEPARTMENT/SALT CEDAR PROJECT

FOR THE BOARD MEETING OF: October 11, 2016

SUBJECT: PURCHASE OF HERBICIDE AND OIL DILUENT

DEPARTMENTAL RECOMMENDATION:

It is requested that your Board approve the purchase of:

- One hundred (100) gallons of Garlon 4 herbicide and three hundred (300) gallons of Improved JLB Oil Plus, with dye, from Crop Production Services.

The total amount of the purchase orders will be \$11,869.20 including tax; this purchase will be for use in the control of saltcedar.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

The Salt Cedar Control Program has the need to purchase herbicide and diluent for the ongoing control of saltcedar. The Water Department advertised for bids and the following were received:

Vendor	Garlon 4 Per Gallon	Improved JLB Oil Plus Per Gallon
Crop Production Services	68.80	13.70
Stanislaus Farm Supply	76.00	15.25

ALTERNATIVES:

Not authorize the purchase order and require re-bidding of the chemicals.

OTHER AGENCY INVOLVEMENT:

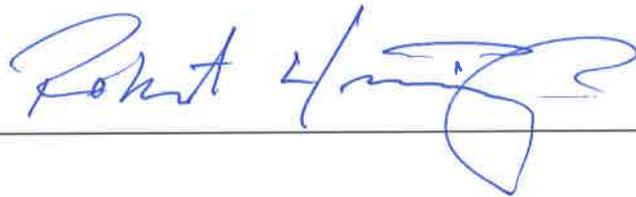
Purchasing and Auditor-Controller

FINANCING:

There are sufficient funds in the Saltcedar Budget (024502) General Operating (5311) to cover these purchases.

COUNTY COUNSEL: N/A	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS <i>(Must be reviewed and approved by county counsel prior to submission to the board clerk.)</i> Approved: _____ Date _____
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS <i>(Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)</i>  Approved: <u>yes</u> Date <u>9/20/16</u>
PERSONNEL DIRECTOR: N/A	PERSONNEL AND RELATED ITEMS <i>(Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)</i> Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received)



Date: 9/20/16



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
12

- Consent Departmental Correspondence Action
 Public Hearing Schedule time for Closed Session Informational

FROM: Road Department

FOR THE BOARD MEETING OF: October 11, 2016

SUBJECT: Authorize the deletion of one Equipment Operator/Mechanic I/II position, and the addition of one Equipment Operator I/II position; Request to fill vacant Equipment Operator position.

DEPARTMENTAL RECOMMENDATIONS:

Request Board to change the authorized strength in the Road department by deleting one Equipment Operator/Mechanic I/II position at Range 58 (\$3,310-\$4,027 plus 2.5% tool allowance) to Range 60 (\$3,471 - \$4,216 plus 2.5% tool allowance), **and** adding one Equipment Operator I/II position at Range 58 (\$3,310 - \$4,027) to Range 60 (\$3,471 - \$4,216).

Request Board find that consistent with the adopted Authorized Position Review Policy: (a) the availability of funding for the Equipment Operator I/II position exists in the Road Budget, as certified by the Public Works Director and concurred with by the County Administrator and Auditor/Controller; (b) where internal candidates meet the qualifications of the position, the vacancy could be filled through an internal recruitment, however there exists a list of qualified applicants from the recent joint Road /Solid Waste recruitment; (c) approve the hiring of one full time Equipment Operator I/II position at Range 58 (\$3,310 - \$4,027) to Range 60 (\$3,471 - \$4,216).

CAO RECOMMENDATIONS:

SUMMARY DISCUSSION:

In May of 2014 the Road Department asked your Board to convert a Mechanic I/II position from the Mazourka Shop to an Equipment Operator/Mechanic I/II position that was stationed in the District 4, Lone Pine Road Yard and surrounding area. This was a position that was modeled off of one we currently have in District 5, Tecopa/Shoshone, where the closest County Mechanic is in Independence at the Mazourka Road Shop, over four hours away. However, in the Lone Pine area, District 4, the Mazourka shop and the Mechanics are much more accessible for repairs. Having an Equipment Operator/Mechanic was a good idea that has proven to not be as efficient or functional as was hoped, so we are requesting to convert it to an Operator position. After a recent review and reevaluation of the Operator job description, Operators are required to do minor mechanical repairs that were previously being performed by the combination position. This change also allows for a broader candidate pool in the future and to take advantage of the existing recruitment list from the joint Road/Solid Waste Operator recruitment.

ALTERNATIVES:

To not allow the change in Authorized strength, this is not recommended as this change will allow for a more efficient recruitment consistent with the other Road Yards in the valley, and allow the Lone Pine road crew to be at full staffing in a timelier manner without an unnecessary specialized recruitment.

OTHER AGENCY INVOLVEMENT:

Auditors Office
Personnel Department

FINANCING:

The requested position to be deleted was included in the Road Department Budget (034600) Salaries and Benefits, Authorized Strength manpower report for FY 16/17, the requested position to be added is the same salary range as the one to be deleted so there will be no change in salary and benefit costs, there will be a savings with the elimination of the 2.5 % tool allowance.

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.)

Approved: N/A Date _____

AUDITOR/CONTROLLER ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor/controller prior to submission to the board clerk.)

Approved: [Signature] Date 9/26/2016

PERSONNEL DIRECTOR PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)

Approved: [Signature] Date 9/23/16

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)

[Signature] Date: 9/28/16



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerks Use Only

AGENDA NUMBER

13

Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: Sheriff's Department

FOR THE BOARD MEETING OF: October 11, 2016

SUBJECT: Request to fill vacant Investigator, and Corporal positions; and request to fill (1) one vacant Deputy Sheriff position.

DEPARTMENTAL RECOMMENDATION:

Request Board find that consistent with the adopted Authorized Position Review Policy:

- A. The availability of funding for the requested positions comes from the General Fund, as certified by the Sheriff and concurred by the County Administrator and the Auditor-Controller; and
- B. Where internal candidates may meet the qualifications for the positions and the positions could possibly be filled by an internal recruitment, but an open recruitment is more appropriate to ensure the positions are filled with the most qualified applicants; and
- C. Approve the filling of (1) Investigator position (Range 71 SA-SD \$4799-\$6,595)
- D. Approve the filling of (1) Corporal position (Range 70SA-SD \$4556-\$6262)
- E. Approve the open recruitment and hiring of (1) one Deputy Sheriff's position (Range 67SA-SD \$4,149 – \$5,705) and authorize up to the E step for a qualified lateral applicant; and

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

An Investigator in the Sheriff's Office has retired. With the retirement of that Investigator's position, we anticipate a Corporal vacancy as a result of internal promotion. The Sheriff's Office has established internal promotional lists for Investigator and Corporal to fill these positions. The Sheriff's Office requests that your Board authorizes, pursuant to the candidate's qualifications and experience, the hiring of qualified candidates for Investigator and Corporal positions. The promotion of the vacated positions falls within the Sheriff's Office current authorized strength. Due to promotions, this will result in 1 Deputy vacancy. We also request that your board authorize, pursuant to the candidate qualifications and experience, the hiring of (1) one qualified lateral/certificated Sheriff Deputy candidate up to the E step, or an internal and open recruitment for an entry level applicant. Hiring of this (1) one Deputy position falls within the Sheriff's current authorized strength.

ALTERNATIVES:

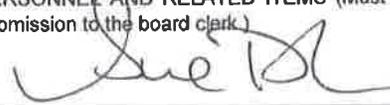
Deny the internal promotions and hiring of vacant position.

OTHER AGENCY INVOLVEMENT:

Personnel
Auditor's

FINANCING:

The Investigator, Corporal and Deputy Sheriff positions are in the Board approved 2016-2017 Sheriff Safety budget, 022710.

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.) Approved: _____ Date _____
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)  Approved: <u>eps</u> Date <u>9/29/2016</u>
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)  Approved: <u>J</u> Date <u>9/29/16</u>

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received)



Date: 9/29/16



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only: AGENDA NUMBER
14

- Consent Departmental Correspondence Action Public Hearing
 Scheduled Time for Closed Session Informational

FROM: Supervisors Griffiths and Kingsley, Administrative Officer, and Planning Department

FOR THE BOARD MEETING OF: October 11, 2016

SUBJECT: Public Lands in Inyo County

RECOMMENDATION: Receive a presentation from staff regarding the status of public lands in Inyo County, and direct staff to develop a draft scope of work to investigate these issues more broadly and return for further direction.

SUMMARY DISCUSSION: Senator Feinstein has periodically proposed myriad actions addressing public land use in Inyo County through previous iterations of the Desert Protection Act. More recently, in 2015 Congressman Cook introduced the California Minerals, Off-Road Recreation and Conservation Act (CMORCA), which updated a previous version he worked on in 2014. On October 27, 2015 the Board of Supervisors reviewed the CMORCA and took no action regarding it. Since then, Supervisors Griffiths and Kingsley, the County Administrative Officer, and Planning Department staff have been reviewing major outstanding public land use issues to evaluate the County's potential position regarding their resolution. These include, but are not limited to, the following:

1. The County's gravel pits along Saline Valley Road
2. Wilderness Study Areas (WSA)
3. Surprise Canyon and the Amargosa River
4. Death Valley National Park Land Adjustments
5. Land Releases
6. Inyo County Roads Rights-of-Way on Federally Managed Public Lands
7. Federally Managed Lands Designations

One of the County's long-standing goals is to work to release public lands for economic development purposes in the vicinity of its towns and other ideal areas, particularly in the Owens Valley. The County also has supported economic development opportunities on public lands to benefit its citizens, such as broadband facilities and off-highway vehicle opportunities. These and related concepts are intertwined with public land management policy.

Presenting unified policy direction regarding public lands would benefit the County by offering clarity about the County's position to federal, State, and other public land managers. It is envisioned that in order to best achieve these goals, an extensive iterative public outreach process would be needed, including potentially the following tasks:

1. ***Develop Baseline Information*** – inventory existing data and begin investigating potential lands that could be addressed, including interviewing key stakeholders, reviewing relevant documents, building Geographic Information Systems (GIS) data, and undertaking preliminary public outreach.
2. ***Opportunities and Constraints*** – analyzing baseline data quantitatively and qualitatively to present opportunities and constraints to stakeholders and affected communities.

3. **Visioning** – envision approaches to best address issues, opportunities, and constraints, including significant public outreach.
4. **Consensus Building** – working with the stakeholders and public to develop solutions the issues identified previously.

It would be ideal to memorialize this process at sequential stages and at its conclusion in a document format for presentation to other public land managers, the public, and private interests. Given the complexity of the issues, a highly skilled facilitator would be best suited to lead the effort with the assistance of experts in public land management policy, GIS, and public outreach.

OTHER AGENCY INVOLVEMENT: Congressional Delegation, Bureau of Land Management, Death Valley National Park, US Forest Service, City of Los Angeles Department of Water and Power, and others.

FINANCING: Resources from the General Fund are utilized to monitor public land management activities. Alternative funding sources may be required for this work effort.

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

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received)



Date: 9/27/18



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

15

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

FROM: County Administrative Officer/County Counsel/Planning Department

FOR THE BOARD MEETING OF: October 11, 2016

SUBJECT: Tribal Consultation Policy

DEPARTMENTAL RECOMMENDATION: Conduct a public hearing and adopt 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 18 (Burton, 2004) and Assembly Bill 52 (Gatto, 2014) since September 2015; the most recent Workshop was held on June 7, 2016.¹ Since the first workshop, representatives of the Lone Pine, Timbisha Shoshone, Bishop, and Big Pine Tribes and the Native American Heritage Commission (NAHC) as well as members of the public attended and participated. During their presentation at the June 7, 2016 workshop, NAHC representatives summarized correspondence from the NAHC to the County dated May 23, 2016 (refer to Exhibit C). Other tribal representatives generally concurred with the NAHC's input. At the conclusion of the discussion, the Board directed staff to address the NAHC's input.

Since then, the County has been working with the NAHC to refine the Policy; the draft Policy in Exhibit A reflects that work. As the process has been iterative, it is not possible to discretely describe the rationale for all of the edits. However, the modifications are illustrated in redline in Exhibit B, and in general respond to the topics identified by the NAHC in its May 23 correspondence.²

County staff sent the updated draft Policy in an electronic format to local tribal representatives on September 20, 2016. To date, no direct input has been received. Staff emailed tribal representatives to remind them prior to the Workshop.

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

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

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

² Note that the County's previous analyses regarding the Policy may no longer be valid.

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

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received)



Date: 9/27/16

Exhibits:

- A. Updated Draft Tribal Consultation Policy
- B. Updated Draft Tribal Consultation Policy – Redline
- C. June 7, 2016 Agenda Request Form

COUNTY OF INYO

POLICY & PROTOCOL FOR TRIBAL CONSULTATION

(9-20-16 Draft)

BACKGROUND

INYO COUNTY (County) is required by State law to engage in Tribal/County intergovernmental consultation with sovereign California Native American Indian Tribes that are traditionally and culturally affiliated with lands located in the jurisdiction of the County (Tribes). Tribal consultation is governed by Senate Bill (SB) 18 (Burton, 2004, Chapter 905, Statutes of 2004) and Assembly Bill (AB) 52 (Gatto, 2014, Chapter 532, Statutes of 2014) and specifically codified with respect to the adoption and amendment of General Plans [Government Code section 65300, et. seq.], Specific Plans [Government Code Section 65352.3], Open Space Designations (Government Code Section 65562.5), and to potential impacts on tribal cultural resources as a consequence of a California Environmental Quality Act (CEQA) project [Public Resources Code Section 21080.3.1.]. 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, efficient, and culturally suitable protocol for how the County will conduct Tribal/County intergovernmental consultation under existing State and local laws. The County recognizes that California Native American prehistoric, historic, archaeological, cultural and sacred places are essential elements in tribal cultural traditions, heritage, and identities. California Native American tribes have expertise with regard to their tribal history and practices that concern the tribal cultural resources with which they are traditionally and culturally affiliated. The County's intent and purpose in adopting this policy is, among other things, to establish a Tribal/County consultation process that recognizes the Tribes' governmental status, respects the interests and roles of the Tribes and project proponents, and ensures the level of confidentiality required for tribal cultural resources.

The main purposes of this consultation process are to gather information to assist the County in identifying tribal cultural resources, potentially significant impacts to those resources, and appropriate mitigation, and ensuring that the CEQA environmental assessments include relevant tribal information. The County intends that this consultation process be initiated at the earliest possible point in the CEQA environmental review process so that tribal cultural resources can be identified and culturally appropriate mitigation and mitigation monitoring and reporting programs can be considered by the County before project decisions are made. As provided by Public Resources Code section 21080.3.2(a), consultation may include discussion concerning the type of environmental review necessary.

The County is committed to open, candid, meaningful, respectful, constructive, timely and effective communication, as required by State laws governing Tribal consultation. Such communication also fosters understanding of issues, ensures that tribal expertise is included in environmental assessments for projects that may have a significant impact on tribal cultural resources, and promotes positive relations between elected leaders of the County and Tribes. Therefore, in addition to consultation topics required by SB 18 or AB 52, the County is also committed to providing a framework for discussing other mutually agreed upon topics. The County desires to establish through this policy parameters for project- or tribe-specific memoranda of understanding (MOU) or other instruments to govern consultation on matters that, although not legally required by SB 18 or AB 52, may be of concern to Local Tribes (as defined below) and/or the County. Such an MOU framework can be used to cover a wide range of topics, including, but not limited to, public safety, socioeconomic matters, traditional ecological knowledge, traditional community intellectual property, and other matters of mutual concern.

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 representatives of each individual Tribe designated by the Tribe’s governing body, or staff of the Tribe and County if designated as provided in section III.iii.e.
- iii. Cultural Resources. Tribal cultural resources as defined by Public Resources Code Section 21074; Native American sanctified cemeteries, places of worship, religious or ceremonial sites, or sacred shrines located on public property as identified in Public Resources Code sections 5097.9 and 5097.97; sacred places, places of special religious or social significance to Native Americans as well as known graves and cemeteries of Native Americans on private land as identified in Public Resources Code section 5097.94, subdivisions (a) and (b); Native American remains and associated grave artifacts as identified in Public Resources Code section 5097.991; and Native American historic, cultural, or sacred sites listed or eligible for listing in the California Register of Historic Resources identified in Public Resources Code section 5024.1, including any historic or prehistoric ruins, any burial ground, any archaeological or historic site, any inscriptions made by Native Americans at such a site, any

- archaeological or historic Native American rock art, or any archaeological or historic feature of a Native American historic, cultural or sacred site as identified in Public Resources Code section 5097.993.
- iv. Environmental Impact Report. An environmental document as defined in Public Resources Code Section 21061.
 - v. General Plan. A comprehensive, long-term general plan for the County as described in Government Code Section 65300 et seq.
 - vi. Local Tribe. Tribes having lands within Inyo County under their sovereign jurisdiction: specifically, the Bishop Paiute Tribe, the Big Pine Paiute Tribe of the Owens Valley, the Fort Independence Indian Community of Paiute, the Lone Pine Paiute Shoshone Reservation and the Timbisha Shoshone Tribe.
 - vii. Mitigated Negative Declaration. A negative declaration as defined in Public Resources Code Section 21064.5.
 - viii. Non-Local Tribe: Any Tribe that does not have lands within Inyo County under its sovereign jurisdiction but is traditionally and culturally affiliated with lands within Inyo County.
 - ix. Negative Declaration. An environmental document as defined in Public Resources Code Section 21064.
 - x. Open Space. Land designated for open space use as defined in Government Code Section 65560(b).
 - xi. Project. A project as defined in Public Resources Code section 21065 and CEQA Guidelines section 15378(a). Unless otherwise required by law, agreed upon in a MOU between the County and a Tribe, or otherwise agreed to by the County and a Tribe, consultation shall not occur or be required on: (a) projects that are not subject to CEQA pursuant to CEQA Guidelines Section 15061(b) (unless consultation is required by Government Code Sections 65352.3, 65453 and/or 65562.5) and (b) projects for which a notice of preparation of an EIR or a notice of intent to adopt an negative declaration or mitigated negative declaration was filed on or before June 30, 2015.
 - xii. Specific Plan. A Plan prepared to Government Code Section 65450 et seq.
 - xiii. Tribe(s): Any California Native American Indian Tribe or Tribes that are traditionally and culturally affiliated with lands located in the jurisdiction of the County, including both Local Tribes and Non-Local Tribes.

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

III. CONSULTATION PROCESS

- i. **Possible Actions Subject to Consultation.** The County will engage in Tribal/County intergovernmental consultation, as required by law, whenever it plans to amend the County's General Plan, amend or adopt Specific Plans, or designate areas as open space, and will engage in Tribal/County intergovernmental consultation prior to the release of any Negative Declarations, Mitigated Negative Declarations, or Environmental Impact Reports (EIRs) that address projects for which the County is the Lead Agency under CEQA.
- ii. **Notices.** In accordance with State law, the County will initiate consultation by notifying all Tribes that have requested to be notified of projects within the County located within their areas of traditionally and cultural affiliation of the opportunity to consult on these potential actions consistent with the timeframes required by State law by sending written Notice to the tribal representative [job title and address] provided by each Tribe to the County Planning Director. If a Local Tribe has not notified the County of the tribal representative or representatives to whom 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 and will send the Notice to the individual listed on the contact list for the Local Tribe maintained by the Native American Heritage Commission. The Notice will describe the project, its location, the County's contact information, and the amount of time that the Tribe has to request consultation. (Such time for a Tribe to request consultation shall not be less than the time limits prescribed by Public Resources Code section 21080.3.1(b) and Government Code section 65352.3(a)(2).)

In addition to the requirements of State law, Local Tribes shall be notified of projects within the County, and the opportunity to consult on these potential actions, without having to request notification if the Local Tribe has provided current contact information. Local Tribes are asked to provide the County current contact information

consisting of names, mailing addresses, telephone numbers, and electronic mail addresses for the tribal representative or representatives to whom consultation notices should be sent.

In communicating with the County regarding consultation, all Tribes 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 Tribe regarding consultation to the Board of Supervisors, the County Administrator, and County Counsel, in compliance with the confidentiality requirements of State and federal laws.

The law establishes minimum periods for providing Notices, which vary depending on the nature of the project; however, the County has determined that additional time may provide more meaningful consultation opportunities between a Tribe and the County representatives. The County designates, in its discretion based on the facts, the following time periods for providing Notices, which meet or exceed state minimum requirements.

For General Plans and General Plan Amendments, adoption or amendments of Specific Plans, Open Space Designations, Mitigated Negative Declarations, Negative Declarations and EIRs, the County will provide each Local Tribe and all other Tribes that have requested to be notified of projects located within its traditionally and culturally affiliated area with Notice of the opportunity to consult on matters affecting the Tribe as follows:

- a. Not later than fourteen (14) days after a determination that an application is complete that seeks the adoption or amendment of a general plan or specific plan or the designation of land as open space that contains a place, feature or object described in Public Resources Code sections 5097.9 and 5097.993; ,
- b. Consistent with Public Resources Code section 21080.3.1, subdivision (d), within fourteen (14) days of the County determining that an application for a project is complete or a decision by the County to undertake a project; and

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

- iii. **Consultation.** Once a 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 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. As required by Public Resources Section 21080.3.1(e), consultation pursuant to Public Resources Code section 21080.3.1 consultation pursuant to Government Code sections 65352.3 and 65562.5, and consultation on projects for which consultation is not required by statute, will commence within 30 days of receipt of written notice from a Tribe requesting consultation. The County will use the following protocol for Tribal/County consultation unless otherwise specified in an agreement with a particular Tribe.
- a. **Proposed Number of Meetings.** The County understands that there is no legal limit on the number of consultation meetings and that the number of meetings and duration of the consultation process ultimately depend on whether and when one of the grounds for conclusion discussed below in Section III(l) exists. However, the County hopes that, in good faith and with reasonable effort, Consultation with a Tribe on a specific potential action for which the County has provided Notice, and for which the Tribe has timely requested consultation, can generally be concluded before or during a third consultation meeting and that such meeting(s) can generally be conducted within 45 days from the date of the first consultation meeting.
 - b. **Timing of Meetings.** To minimize difficulties in scheduling meetings and to expedite the consultation process, when the County annually designates its Consultation Committee representatives (see below) for each Local Tribe, Further, the County will identify the days of the week and the times of day the County's Consultation Committee representatives will be available to meet. This availability schedule 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 representatives of the Local Tribe.
 - c. **Location.** Consultation will take place at a location mutually agreed upon by the parties. The County agrees meet at tribal offices of Local Tribes if requested; however the County prefers to meet with Non-Local Tribes at a location within the County.
 - d. **Participants.** The County's Preference is that consultation meetings occur between elected officials. To accomplish this, for each Local Tribe, every year, the Board of Supervisors will designate two (2) of its members to serve as the Consultation Committee representatives assigned to consult with the Local

Tribe. When a non-Local Tribe requests consultation, the Board of Supervisors will designate two (2) of its members to serve as Consultation Committee representatives. The County's preference is that each consulting Tribe appoint at least two members of its Tribal Council to serve as its representatives to the consultation meetings. However, each Tribe that has requested to consult on a project may designate its own tribal representatives. Pursuant to Public Resources Code section 21080.3.1(b), if a Tribe has requested to consult on a project, but does not designate a lead contact person or designates multiple lead contact people, the County shall contact the individual listed on the contact list maintained by the Native American Heritage Commission to schedule a consultation meeting with the Tribe's designated representative or representatives.

If a Tribe does not designate a member or members of its Tribal Council or other elected representatives to serve as its representatives in consultation meetings with the County, or if the Tribe's designated elected representatives are unable to attend a meeting, a consultation meeting can occur between non-elected representatives (which can be County staff) designated by the County and non-elected representatives designated by the Tribe. Unless otherwise agreed by the consulting parties, the County will consider a consultation meeting attended solely by designated non-elected representatives a consultation meeting.

When Consultation Committee representatives from the County and a 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. The County will follow this process to identify the County's Consultation Committee representatives who will be available to consult with a non-Local Tribe that has notified the County that it desires to consult on a project.

- e. **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.
- f. **Project Proponent Participation.** Pursuant to Public Resources Code Section 21080.3.2(d), project proponents may participate in the consultation only if the Consultation Committee agrees to such participation. If project proponents

participate, they shall respect all applicable laws, this policy and protocol, and the confidentiality of the information exchanged.

- g. **Agenda & Note Taking.** The goal is to have a mutually acceptable agenda for each consultation meeting. Therefore, prior to each consultation meeting, County staff will be responsible for preparing a draft consultation meeting agenda and for providing it to the Tribe for review, comment and suggested revision. As provided by Public Resources Code section 21080.3.2, if a Tribe requests consultation regarding alternatives to the project, recommended mitigation measures, significant effects, the type of environmental review necessary, the significance of tribal cultural resources, or the significance of the project's impacts on the tribal cultural resources or project alternatives, the consultation meeting agenda shall include those topics as part of the consultation. Consultation on other topics may be agreed upon by the Consultation Committee.

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, if known, relative to the action that it wishes to discuss consistent with this policy. If the issues on which the Tribe wishes to consult are consistent with the provisions of state law and this policy, 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, the disagreement will be noted.

Notes of each consultation meeting shall be taken as agreed upon by the Consultation Committee. If the Consultation Committee cannot agree upon a note taker, each party to the consultation meeting may take notes of the meeting.

Prior to the conclusion of a consultation meeting, the representatives should attempt to agree upon the "Action Items" to be addressed by each party, or its staff designees, prior to or at the next meeting. If there is an agreed upon note taker, a draft copy of the notes taken by the designated note taker or by each party will be transmitted to the parties within five (5) business days of the meeting. If agreement cannot be reached regarding the content of the notes or the Action Items, the disagreement shall be noted

As stated in Subsection III.iii.i below, information provided by the Tribe during and in support of consultation, including the contents of meeting agendas and/or meeting notes, shall remain confidential to the full extent of the law. However, as provided in Public Resources Code section 21082.3(c)(4), the County may describe consultation meetings in general terms in the

environmental document so as to inform the public of the basis of a decision by the County.

- h. **Cultural Resources.** As required by Public Resources Code section 21084.3(a), as a public agency, the County shall, when feasible, avoid damaging effects to any tribal cultural resource. Further, if the County determines that a project may cause a substantial adverse change to a tribal cultural resource and measures have not been agreed upon during the consultation process, the measures identified in Public Resources Code section 21084.3(b), will be considered by the County to avoid or minimize the significant adverse impacts and will be adopted and implemented if the measure or measures are found to be feasible. If it is found that there are no feasible measures that would avoid damaging a tribal cultural resource, the County shall work cooperatively with the affected Tribe to preserve in place, otherwise preserve, protect, enhance, mitigate, and manage archaeological sites, traditional cultural properties, tribal cultural resources, and traditional cultural resources, identified within the jurisdiction of the County pursuant to Public Resources Code Section 21082.3(a), (b), and (e), and 21084.3. Also, to the extent feasible and allowed by law, the County shall 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 Tribes' need to maintain confidentiality to protect archaeological sites, traditional cultural properties, traditional ecological knowledge, traditional community intellectual property, tribal cultural resources as defined in Section II, part III above, and traditional cultural resources to the extent allowed by law. Information provided by the Tribe during and in support of consultation shall remain confidential to the full extent of the law, consistent with, among other laws, Public Resources Code section 21080.3.2(b), and Government code sections 6254 (r), 6254.10, and 65352.4.
- j. **Exchange of Information.** When information provided by the County needs to be kept confidential, the County shall indicate the need for confidentiality when conveying the information. Pursuant to Public Resources Code Section 21082.3 and other applicable statutes, all information exchanged by a Tribe will not be released by the County to the public 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 or to otherwise provide the information in a confidential appendix. For purposes of consultation pursuant to AB 52, in particular Public Resources Code sections 21080.3.1 and 21080.3.2, 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 Tribe's Consultation Committee representatives will be responsible for facilitating the information exchange. The representatives will be responsible to disseminate the information amongst staff and others authorized by law to receive the information. Copies of the data exchanged are to be made and distributed only to those staff and others who are directly involved with the topics being discussed and authorized by law to receive it, 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 acceptable to the Consultation Committee members. Information provided by the County shall include a summary that clarifies what is being provided and to identify any confidentiality issues related to the material. As provided in this section, all information exchanged by a Tribe shall not be released by the County to the public unless authorized by the Tribe in writing.
 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 of the documents, unless otherwise agreed upon in the MOU. Neither party will disclose documents exchanged or developed as a part of an MOU without providing notice to the other party, unless otherwise agreed upon in the MOU. The County will protect, to the extent allowed by applicable state and federal laws, the confidentiality of the other party's documents, and the Tribes may be asked to do so voluntarily as well. The County will impose the requirement of this Section upon its consultants, and the release of documents to those consultants shall not be deemed public disclosure. As provided in Section III.iii.j, all information exchanged by a Tribe will not be released by the County to the public unless authorized by the Tribe in writing.
- k. **Resources.** As required by law, the County will provide existing materials and information to the Local Tribes as early in the process as possible to enable a meaningful consultation, including materials for discussions on avoidance,

preservation in place, alternatives, mitigation, and long-term management of resources. For example, such documents may include maps, records search results, survey reports, information on alternatives, design proposals, mitigation proposals and other documents relevant to the project details.

The County's Planning Director or his designee will be available to provide a Tribe with any additional technical information the Tribe requests to the degree that such information is available.

- I. **Conclusion of Consultation.** Pursuant to Public Resources Code section 21080.3.2 (b) and/or the Governor's Office of Planning and Research's Tribal Consultation Guidelines, Supplement to General Plan Guidelines, p.18 (November 14, 2005), consultation shall be considered concluded when either of the following occurs:

1. The County and the Tribe agree to measures to mitigate or avoid a significant effect on a tribal cultural resource. Any mitigation measures the Consultation Committee agrees to shall be recommended for inclusion in the project environmental document. Such mitigation measures shall also be recommended for inclusion in a Draft General Plan Amendment, Draft Open Space Designation, Draft Specific Plan or Draft Specific Plan Amendment if no EIR, Negative Declaration or Mitigated Negative Declaration is required for such projects, and in any mitigation monitoring and reporting program adopted for any project. Any such mitigation measures that are adopted shall be fully enforceable.
2. Either the County or the Tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.

If the County concludes that mutual agreement cannot be reached, the County shall provide the Local Tribe with written notice of that conclusion and reasons supporting it.

If at the conclusion of consultation there are no agreed upon mitigation measures or if mitigation measures agreed upon by the Consultation Committee are not included in the environmental document or if consultation does not occur, and substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the County will consider feasible mitigation and alternatives pursuant to Public Resources Code Sections 21082.3(b) and 21084.3(b).

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, as provided in Section I, the parties may consult on topics on which the law does not require consultation. In addition, the County will work with any Local Tribe that expresses interest to develop and execute an MOU with each Local Tribe that provides for 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, economic, environmental, cultural, social and technological factors.

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

1. Be consistent with applicable law and unless otherwise agreed by the County and Local Tribe, be consistent with this Policy and Protocol, although minor modifications to specific timing, noticing, and other procedural requirements may be considered as long as such modifications do not shorten the timing requirements or diminish the other procedural requirements of this Policy and Protocol; and,
2. Identify the specific topics the County and Tribe mutually agree to discuss that 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. Subject to confidentiality requirements, 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.

Interim Projects: In the event an MOU identifies a different process than the consultation process described in previous sections, it is the intent of the County to utilize the consultation process identified in previous sections to guide consultation for projects in situations where consultation has already commenced at the time of execution of any MOU. The County and the Tribe may mutually agree otherwise in the MOU consistent with applicable law.

V. Regular Meetings between the County and Local Tribes

The County will endeavor to schedule yearly, quarterly, or other periodic meetings with all Local Tribes, tribally designated official tribal entities, subgroups of the tribes, or individual Local Tribes to discuss general topics and implementation of this Policy and Protocol and the potential development of a MOU as described above. 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. These meetings do not constitute tribal consultation and the County will identify them as non-consultation meetings.

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) will 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.

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COUNTY OF INYO
POLICY & PROTOCOL FOR TRIBAL CONSULTATION

(9-20-16 Draft)

BACKGROUND

INYO COUNTY (County) is required by State law to engage in Tribal/County intergovernmental consultation with sovereign California Native American Indian Tribes that are traditionally and culturally affiliated with lands located in the jurisdiction of the County (~~Local~~-Tribes). ~~Intergovernmental Tribal~~ consultation is governed by Senate Bill (SB) 18 (Burton, 2004, Chapter 905, Statutes of 2004) and Assembly Bill (AB) 52 (Gatto, 2014, Chapter 532, Statutes of 2014) and specifically codified with respect to the adoption and amendment of General Plans [Government Code section 65300, et. seq.], Specific Plans [Government Code ~~section 65453~~, Section 65352.3], Open Space Designations (Government Code Section 65562.5), and to 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-Section 21080.3.1.]. 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, and culturally suitable protocol for how the County will conduct Tribal/County intergovernmental consultation under existing State and local laws. The County recognizes that California Native American prehistoric, historic, archaeological, cultural and sacred places are essential elements in tribal cultural traditions, heritage, and identities. California Native American tribes have expertise with regard to their tribal history and practices that concern the tribal cultural resources with which they are traditionally and culturally affiliated. The County's intent and purpose in adopting this policy is, among other things, to establish a Tribal/County consultation process that recognizes the Tribes' governmental status, respects the interests and roles of the Tribes and project proponents, and ensures the level of confidentiality required for tribal cultural resources.

~~The main purposes of this consultation process are to gather information to assist the County in identifying tribal cultural resources, potentially significant impacts to those resources, and appropriate mitigation, and ensuring that the CEQA environmental assessments include relevant tribal information. The County intends that this consultation process be initiated at the earliest possible point in the CEQA environmental review process so that tribal cultural resources can be identified and culturally appropriate mitigation and mitigation monitoring and reporting programs~~

can be considered by the County before project decisions are made. As provided by Public Resources Code section 21080.3.2(a), consultation may include discussion concerning the type of environmental review necessary.

The County is committed to open, candid, meaningful, respectful, constructive, timely and effective communication, as required by State laws governing Tribal consultation. Such communication also fosters understanding of issues, ensures that tribal expertise is included in environmental assessments for projects that may have a significant impact on tribal cultural resources, and promotes positive relations between elected leaders of the County and Tribes. Therefore, in addition, the Inyo County Board of Supervisors to consultation topics required by SB 18 or AB 52, the County is also committed to providing a framework for discussing other mutually agreed upon topics. The County desires to establish through this policy parameters for creating a framework for creating memorandums project- or tribe-specific memoranda of understanding (MOU) or other instruments for consulting to govern consultation on matters that, although not legally required by SB 18 and/or AB 52, may be of concern to a Local Tribes (as defined below) 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, socioeconomic matters, traditional ecological knowledge, traditional community intellectual property, public safety, and socioeconomic issues, and other matters of mutual concern.

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~~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~~representatives of each individual Tribe

designated by the ~~Council~~Tribe's governing body, or staff of the Tribe and County if designated as provided in section III.iii.e.

- ~~iii. Cultural Resources. Tribal cultural resources as defined by Public Resources Code Section 21074.~~
- iii. Cultural Resources. Tribal cultural resources as defined by Public Resources Code Section 21074; Native American sanctified cemeteries, places of worship, religious or ceremonial sites, or sacred shrines located on public property as identified in Public Resources Code sections 5097.9 and 5097.97; sacred places, places of special religious or social significance to Native Americans as well as known graves and cemeteries of Native Americans on private land as identified in Public Resources Code section 5097.94, subdivisions (a) and (b); Native American remains and associated grave artifacts as identified in Public Resources Code section 5097.991; and Native American historic, cultural, or sacred sites listed or eligible for listing in the California Register of Historic Resources identified in Public Resources Code section 5024.1, including any historic or prehistoric ruins, any burial ground, any archaeological or historic site, any inscriptions made by Native Americans at such a site, any archaeological or historic Native American rock art, or any archaeological or historic feature of a Native American historic, cultural or sacred site as identified in Public Resources Code section 5097.993.
- ~~iv. Environmental Impact Report. An environmental document prepared and processed pursuant to CEQA (as defined in Public Resources Code Section 21000 et seq.) and the CEQA Guidelines (California Code of Regulations, Title 14, Chapter 3, Section 15000 et seq.).~~21061.
- ~~v. General Plan. A comprehensive, long-term general plan for the County as described in Government Code Section 65300 et seq.~~
- ~~vi. Local Tribe. Tribes having lands within Inyo County under their sovereign jurisdiction; specifically, the Bishop Paiute Tribe, the Big Pine Paiute Tribe of the Owens Valley, the Fort Independence Indian Community of Paiute, the Lone Pine Paiute Shoshone Reservation and the Timbisha Shoshone Tribe.~~
- ~~vii. Mitigated Negative Declaration. An environmental document prepared and processed pursuant to CEQA (A negative declaration as defined in Public Resources Code Section 21000 et seq.)~~21064.5.
- ~~viii. Non-Local Tribe: Any Tribe that does not have lands within Inyo County under its sovereign jurisdiction but is traditionally and the culturally affiliated with lands within Inyo County.~~
- ~~ix. Negative Declaration. An environmental document as defined in Public Resources Code Section 21064.~~

x. Open Space. Land designated for open space use as defined in Government Code Section 65560(b).

vi-xi. Project. A project as defined in Public Resources Code section 21065 and CEQA Guidelines (California Code of Regulations, Title 14, Chapter section 15378(a). Unless otherwise required by law, agreed upon in a MOU between the County and a Tribe, or otherwise agreed to by the County and a Tribe, consultation shall not occur or be required on: (a) projects that are not subject to CEQA pursuant to CEQA Guidelines Section 15061(b) (unless consultation is required by Government Code Sections 65352.3, Section 15000 et seq., 65453 and/or 65562.5) and (b) projects for which a notice of preparation of an EIR or a notice of intent to adopt an negative declaration or mitigated negative declaration was filed on or before June 30, 2015.

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iiii-xii. Specific Plan. A Plan prepared to Government Code Section 65450 et seq.

xiii. Tribe(s): Any California Native American Indian Tribe or Tribes that are traditionally and culturally affiliated with lands located in the jurisdiction of the County, including both Local Tribes and Non-Local Tribes.

The following acronyms are utilized in this Policy.

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

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III. CONSULTATION PROCESS

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- i. Possible Actions Subject to Consultation. The County will engage in Tribal/County intergovernmental consultation, as required by law, whenever it plans to amend the County's General Plan, ~~and amend or adopt~~ Specific Plans, ~~and/or designate areas as open space, and will engage in Tribal/County intergovernmental consultation~~ prior to the release of any Negative Declarations, Mitigated Negative Declarations, or Environmental Impact Reports (EIRs) that address projects for which the County is the Lead Agency under ~~the~~ CEQA.

ii. **Notices.** ~~The~~ In accordance with State law, the County will initiate consultation by notifying ~~each Local Tribe~~ all Tribes that have requested to be notified of projects within the County located within their areas of traditionally and cultural affiliation of the opportunity to consult on these potential actions consistent with the timeframes required by State law 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 tribal representative or representatives to whom~~ 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, ~~and will send the Notice to the individual listed on the contact list for the Local Tribe maintained by the Native American Heritage Commission.~~ The Notice will describe the project, its location, the County's contact information, and the amount of time that the Tribe has to request consultation. (Such time for a Tribe to request consultation shall not be less than the time limits prescribed by Public Resources Code section 21080.3.1(b) and Government Code section 65352.3(a)(2).)

~~Local Tribes are asked keep the County provided with up-to-date~~

In addition to the requirements of State law, Local Tribes shall be notified of projects within the County, and the opportunity to consult on these potential actions, without having to request notification if the Local Tribe has provided current contact information. Local Tribes are asked to provide the County current contact information consisting of names, mailing addresses, telephone numbers, and electronic mail addresses for the ~~position tribal representative~~ or ~~positions representatives~~ to ~~which~~ whom consultation notices should be sent.

In communicating with the County regarding consultation, the Local Tribe ~~all Tribes~~ 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, in compliance with the confidentiality requirements of State and federal laws.

~~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~~

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~~affecting the Tribe. The law requires a minimum notice period. The law establishes minimum periods for providing Notices, which vary depending on the nature of the project; 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~~ designates, in its discretion based on the facts, the following time periods for providing Notices, 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 a 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 Plans and General Plan Amendments, adoption or amendments of Specific Plans, and Open Space Designations, Mitigated Negative Declarations, Negative Declarations and EIRs based on an application from a third party, the County will provide each Local Tribe and all other Tribes that have requested to be notified of projects located within its traditionally and culturally affiliated area with Notice upon deeming of the opportunity to consult on matters affecting the Tribe as follows:

- ~~a. Not later than fourteen (14) days after a determination that an application is complete. Such notification will not be less than: that seeks the adoption or amendment of a general plan or specific plan or the designation of land as open space that contains a place, feature or object described in Public Resources Code sections 5097.9 and 5097.993; ,~~
- ~~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 Consistent with Public Resources Code section 21080.3.1, subdivision (d), within fourteen (14) days of the County determining that an application for a project is complete as required by AB52; or, or a decision by the County to undertake a project; and~~

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e. ~~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.~~

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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.

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. As required by Public Resources Section 21080.3.1(e), consultation pursuant to Public Resources Code section 21080.3.1 consultation pursuant to Government Code sections 65352.3 and 65562.5, and consultation on projects for which consultation is not required by statute, will commence within 30 days of receipt of written notice from a Tribe requesting consultation. The County will use 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, for Tribal/County consultation unless otherwise specified in an agreement with a particular Tribe, the County Policy is:~~

a. **Proposed Number of Meetings.** The County understands that there is no legal limit on the number of consultation meetings and that the number of meetings and duration of the consultation process ultimately depend on whether and when one of the grounds for conclusion discussed below in Section III(I) exists. However, the County hopes that, in good faith and with reasonable effort, 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, timely requested consultation, can generally be concluded before or that additional meetings are desirable and practicable.

b.a. **Duration of Meetings.** Consultation meetings will ~~concluded~~ during a third consultation meeting and that such meeting(s) can generally be conducted within 45 days ~~off~~ from the County receiving Notice ~~date~~ of a Local Tribe's desire to engage in consultation, unless a longer term is agreed to in writing, the first consultation meeting.

e.b. **Timing of Meetings.** Recognizing that ~~To minimize difficulties in scheduling meetings can be difficult and the need to conclude~~ expedite the consultation

process ~~within a reasonable timeframe, at the time, when~~ the County annually designates its Consultation Committee representatives (see below) for each Local Tribe, ~~it shall also establish~~ Further, the County will identify the days of the week and the times of day the County's Consultation Committee representatives ~~for each Tribe shall meet; specifying whether the meeting will be held in the morning, afternoon, or evening available to meet.~~ This ~~pre-established availability~~ 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.
- ~~c. Location.~~ Consultation will take place at a location mutually agreed upon by the parties. The County agrees meet at tribal offices of Local Tribes if requested; however the County prefers to meet with Non-Local Tribes at a location within the County.

- ~~e.d. Participants.~~ The County's Preference is that consultation meetings occur between elected officials. To accomplish this, for each Local Tribe, every 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 consult with the Local Tribe. When a non-Local Tribe requests consultation, the Board of Supervisors will designate two (2) of its members to the serve as Consultation Committee representatives. The County's preference is that each consulting Tribe appoint at least two members of its Tribal Council to serve as its representatives to the consultation meetings; alternatively, the full Tribal Council (or other elected representatives authorized to make decisions for the Tribe) may serve on the Consultation Committee. However, each Tribe that has requested to consult on a project may designate its own tribal representatives. Pursuant to Public Resources Code section 21080.3.1(b), if a Tribe has requested to consult on a project, but does not designate a lead contact person or designates multiple lead contact people, the County shall contact the individual listed on the contact list maintained by the

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Native American Heritage Commission to schedule a consultation meeting with the Tribe's designated representative or representatives.

If a Local Tribe does not identify two designate a member or members of its Tribal Council or other elected representatives to participate-serve as its representatives in consultation meetings with the County, or if the Tribe's identified/designated elected officials/representatives are unavailable/unable to meet, the attend a meeting, a consultation meetings can occur between non-elected representatives (which can be County staff) designated by the County and staff/non-elected representatives designated by the Tribe. Unless otherwise agreed by the Local Tribe. The three (3) consulting parties, the County will consider a consultation meetings may be accomplished through a combination of elected-to-elected official meetings and/or staff-to-staff meetings. meeting attended solely by designated non-elected representatives a consultation meeting.

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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. The County will follow this process to identify the County's Consultation Committee representatives who will be available to consult with a non-Local Tribe that has notified the County that it desires to consult on a project.

f.e. **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.~~

f. **Project Proponent Participation.** Pursuant to Public Resources Code Section 21080.3.2(d), project proponents may participate in the consultation only if the Consultation Committee agrees to such participation. If project proponents participate, they shall respect all applicable laws, this policy and protocol, and the confidentiality of the information exchanged.

g. **Agenda & Note Taking.** The goal is to have a mutually acceptable agenda for each consultation meeting. Therefore, prior to each consultation meeting,

County staff will be responsible for preparing a draft consultation meeting agenda and for providing it to the Tribe for review, comment and suggested revision. As provided by Public Resources Code section 21080.3.2, if a Tribe requests consultation regarding alternatives to the project, recommended mitigation measures, significant effects, the type of environmental review necessary, the significance of tribal cultural resources, or the significance of the project's impacts on the tribal cultural resources or project alternatives, the consultation meeting agenda shall include those topics as part of the consultation. Consultation on other topics may be agreed upon by the Consultation Committee.

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, if known, relative to the action that it wishes to discuss consistent with this policy. Providing if 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 disagreement will be noted.

~~The Notes of each consultation meeting notes shall be reviewed and approved taken as agreed upon 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. If the Consultation Committee cannot agree upon a note taker, each party to the consultation meeting may take notes of the meeting.~~

Prior to the conclusion of a consultation meeting, the representatives should attempt to agree upon the "Action Items" to be addressed by each party, or their staff designees, prior to or at the next meeting. ~~If there is an agreed upon note taker, a draft copy of the notes taken by the designated note taker or by each party will be transmitted to the Tribeparties within five (5) business days of the meeting. If agreement cannot be reached regarding the content of the notes or the Action Items, the disagreement shall be noted.~~

As stated in Subsection III.iii.i below, information provided by the Tribe during and in support of consultation, including the contents of meeting agendas and/or meeting notes, shall remain confidential to the full extent of the law. However, as provided in Public Resources Code section 21082.3(c)(4), the County may describe consultation meetings in general terms in the

environmental document so as to inform the public of the basis of a decision by the County.

h. **Cultural Resources.** ~~The County As~~ required by Public Resources Code section 21084.3(a), as a public agency, the County shall, when feasible, avoid damaging effects to any tribal cultural resource. Further, if the County determines that a project may cause a substantial adverse change to a tribal cultural resource and measures have not been agreed upon during the consultation process, the measures identified in Public Resources Code section 21084.3(b), will seek to ~~consult~~ be considered by the County to avoid or minimize the significant adverse impacts and will be adopted and implemented if the measure or measures are found to be feasible. If it is found that there are no feasible measures that would avoid damaging a tribal cultural resource, the County shall work cooperatively with the ~~Local~~ affected Tribe to ~~preserve in place, otherwise preserve,~~ protect, preserve, ~~enhance, mitigate, and manage archaeological sites, traditional cultural properties, tribal cultural resources, and traditional cultural resources, identified within the jurisdiction of the County.~~ To pursuant to Public Resources Code Section 21082.3(a), (b), and (e), and 21084.3. Also, to ~~the extent feasible, reasonable, and allowed by law, the County will~~ shall ~~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 Tribes' need to maintain confidentiality to protect archaeological sites, traditional cultural properties, traditional ecological knowledge, traditional community intellectual property, tribal cultural resources as defined in Section II, part III above, and traditional cultural resources to the extent allowed by law. Information provided by the Tribe during and in support of consultation shall remain confidential to the full extent of the law, consistent with, among other laws, Public Resources Code section 21080.3.2(b), and Government code sections 6254 (r), 6254.10, and 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 provided by the County needs to be kept confidential, the entity providing the information~~ County shall indicate the need for confidentiality when conveying the information. Any confidential ~~Pursuant to Public Resources Code Section 21082.3 and other applicable statutes, all information exchanged by the~~ Tribe will not be released by the County to the public 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

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decision. ~~This or to otherwise provide the information in a confidential appendix. For purposes of consultation pursuant to AB 52, in particular Public Resources Code sections 21080.3.1 and 21080.3.2, 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~~representatives will be responsible for facilitating the information exchange. The representatives will be responsible to disseminate the information amongst staff and ~~consultants~~others authorized by law to receive the information. Copies of the data exchanged are to be made and distributed only to those staff and ~~consultants~~others who are directly involved with the topics being discussed and authorized by law to receive it, 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~~acceptable to the Consultation Committee members. Information provided by ~~either the County or the Tribe shall be accompanied by~~include a summary of the information in order to clarify ~~that clarifies~~ what is being provided and to identify any confidentiality issues related to the ~~information being~~material. As provided in this section, all information exchanged by a Tribe shall not be released by the County to the public unless authorized by the Tribe in writing.
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 ~~of the documents, unless otherwise agreed upon in the MOU~~. Neither party will disclose documents exchanged or developed as a part of an MOU without providing notice to the other party. ~~Each party, unless otherwise agreed upon in the MOU. The County will protect, to the extent allowed by applicable state and federal laws, the confidentiality of the other party's documents. Both parties agree to, and the Tribes may be asked to do so voluntarily as well. The County will~~ impose the requirement of this Section upon ~~their~~its consultants,

and the release of documents to those consultants shall not be deemed public disclosure. As provided in Section III.iii.j, all information exchanged by a Tribe will not be released by the County to the public unless authorized by the Tribe in writing.

~~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.~~

k. **Resources.** As required by law, the County will provide existing materials and information to the Local Tribes as early in the process as possible to enable a meaningful consultation, including materials for discussions on avoidance, preservation in place, alternatives, mitigation, and long-term management of resources. For example, such documents may include maps, records search results, survey reports, information on alternatives, design proposals, mitigation proposals and other documents relevant to the project details.

The County's Planning Director or his designee will be available to provide ~~appropriate requested~~ a Tribe with any additional technical information the Tribe requests to the degree possible to the Tribe that such information is available.

l. **Conclusion of Consultation.** Pursuant to Public Resources Code section 21080.3.2 (b) and/or the Governor's Office of Planning and Research's Tribal Consultation Guidelines, Supplement to General Plan Guidelines, p.18 (November 14, 2005), consultation shall be considered concluded when either of the following occurs:

1. The County and the Tribe agree to measures to mitigate or avoid a significant effect on a tribal cultural resource. Any mitigation measures the Consultation Committee agrees to shall be recommended for inclusion in the project environmental document. Such mitigation measures shall also be recommended for inclusion in a Draft General Plan Amendment, Draft Open Space Designation, Draft Specific Plan or Draft Specific Plan Amendment if no EIR, Negative Declaration or Mitigated Negative Declaration is required for such projects, and in any mitigation monitoring and reporting program adopted for any project. Any such mitigation measures that are adopted shall be fully enforceable.

2. Either the County or the Tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.

If the County concludes that mutual agreement cannot be reached, the County shall provide the Local Tribe with written notice of that conclusion and reasons supporting it.

If at the conclusion of consultation there are no agreed upon mitigation measures or if mitigation measures agreed upon by the Consultation Committee are not included in the environmental document or if consultation does not occur, and substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the County will consider feasible mitigation and alternatives pursuant to Public Resources Code Sections 21082.3(b) and 21084.3(b).

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, as provided in Section I, the parties may consult on topics on which the law does not require consultation. In addition, the County will endeavor work with any Local Tribe that expresses interest to develop and execute an MOU with each Local Tribe as a means of developing an agreed process that provides 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 Lawstate 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 ~~should~~shall:

1. Be consistent with applicable law and ~~not contradict unless otherwise agreed by the County and Local Tribe, be consistent with~~ this Policy &and Protocol, although minor modifications to specific timing, noticing, and other procedural requirements may be considered as long as such modifications do not shorten the timing requirements or diminish the other procedural requirements of this Policy and Protocol; and,
2. Identify the specific ~~Topic~~topics the County and Tribe mutually agree to discuss ~~which that~~ 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~~Subject to confidentiality requirements, 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.

Interim Projects: ~~in~~the event ~~the~~an MOU identifies a different process than the consultation process described in previous sections, it is the intent of the County to utilize the consultation process identified in previous sections to guide consultation for projects ~~that are in situations where consultation has already commenced at the~~middletime of ~~entitling upon~~ execution of any MOU. The County and the Tribe may mutually agree otherwise in the MOU consistent with applicable law.

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V. Regular Meetings between the County and ~~the~~Local Tribes

The County will endeavor to schedule yearly, quarterly, or other periodic meetings with all ~~local tribes~~Local Tribes, tribally designated official tribal entities, ~~sub~~groups of the tribes, or individual ~~local tribes~~Local Tribes to discuss general topics and implementation of this Policy and Protocol and the potential development of a MOU as described above. 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. These meetings do not constitute tribal consultation and the County will identify them as non-consultation meetings.

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) will 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.

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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 11 a.m. Closed Session Informational

FROM: Planning Department/County Counsel/County Administrative Officer

FOR THE BOARD MEETING OF: June 7, 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 March 8, 2016.¹ Representatives of the Lone Pine, Bishop, 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 a hearing for action. Subsequently, the Native American Heritage Commission (NAHC) expressed interest in providing input; therefore, the hearing was postponed and a workshop was scheduled for today to allow a representative of the NAHC to present its comments.

County staff updated the draft Policy per the discussions at the March 8 workshop, and sent the updated draft Policy in an electronic format to local tribal representatives on March 25 (Exhibit A). The updated draft considers comments provided at the March 8 meeting, including a redline provided by Raymond Naylor-Hunt (Exhibit C). Since then, no direct additional input has been received from the local Tribes; however, written comments were received from the NAHC on May 23rd. Staff has emailed tribal representatives to remind them about today's workshop, and of the opportunity to provide additional comments prior to or during today's workshop.

Exhibit A is the updated draft Tribal Consultation Policy (note: Exhibit A only highlights revisions to the draft Policy that were made after March 8th, and it does not highlight revisions to the draft Policy that were made prior to March 8th). Exhibit B is the March 8, 2016 Agenda Request Form. Exhibit C is a redline of the draft Policy submitted by Raymond Naylor-Hunt on March 8. Exhibit D is a copy of the comments, including cover letter, received from the NAHC dated May 23.

Below is a summary of the comments received on March 8. It is anticipated that the Board will consider the NAHC's cover letter and comments, along with additional comments received in conjunction with today's workshop, and provide possible additional direction to staff to modify the draft Policy.

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

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

consideration. If the Board adopts the Policy, individual agreements with the Tribes may be negotiated in the future based upon the Policy.

Input Summary and Responses

The following summarizes comments provided at the March 8 Workshop and provides responses. Previous input and responses are detailed in Exhibit B.

Summarized Comment – Subsections a-k in Section III(iii)² 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 agreements with the individual Tribes are not agreed upon in the future. Modifications to Subsections a-k may be specified in individual agreements with the Tribes.

Summarized Comment – the Tribes should be able to appoint members, including staff and unelected members, to the Consultation Committee on an ad hoc basis.

Response – the Policy was developed in part to accommodate requests from Tribal representatives for direct consultation between elected officials. The draft Policy permits consultation to occur between non-elected officials if the Tribe's elected officials are not available or wish to do so. Based on input from the Tribes that some decision-makers may not be members of the Tribal Council, the draft Policy has been updated to permit such elected decision-makers to participate in direct consultation with the appointed County Supervisors.

Summarized Comment – what is the staff's role in consultation?

Response – the draft Policy permits appointed staff to participate in consultation at the elected officials' preference. Staff's role is intended to be supportive of the elected officials' consultation efforts. The elected Tribal officials may delegate consultation responsibilities to staff if they are not available or wish to do so; however, the intent of the Policy is to facilitate consultation directly between elected officials.

Summarized Comment – the number of meetings should not be set.

Response – staff suggests that a general guideline for the number of meetings be specified to afford some consistency and direction for the Tribes, the County, applicants, or other parties that could be involved in consultation. In the past, the Tribes have in some cases not requested any meetings in response to consultation requests, and in other instances have requested many meetings. Staff believes that three meetings would be an appropriate general rule, and that fewer or more meetings could be mutually agreed to as a component of the consultative process.

Summarized Comment – the Lone Pine Tribe has a general counsel.

Response – under the proposed Policy, the Tribe would appoint two elected leaders to the consultation committee, or delegate that authority.

² In the previous version of the draft Policy this reference was in Section II(iv).

Summarized Comment – a process for projects that are in process when individual agreements with the Tribes are executed should be identified.

Response – staff concurs and has updated the draft Policy accordingly.

Raymond Naylor-Hunt submitted a redline of the draft Policy on March 8 (refer to Exhibit C); the following summarizes and responds to the comment provided that are not addressed above.

Summarized Comment – incorporate Local Tribes, resources, and property into the Background section.

Response – staff recommends updating the language to refer instead to traditional and cultural affiliation as specified by AB52.

Summarized Comment – incorporate traditional ecological knowledge into the Purpose section.

Response – staff concurs and has updated the draft Policy accordingly.

Summarized Comment – incorporate the concept of traditional ecological knowledge and traditional community intellectual property in the Cultural Resources subsection.

Response – staff believes that these topics are not specifically addressed by SB18 or AB52, and recommends that they instead be included as topics that could be included in specific agreements with the individual tribes.

Summarized Comment – incorporate the concept of traditional ecological knowledge and traditional community intellectual property in the Confidentiality subsection.

Response – staff concurs and has updated the draft Policy accordingly. As these topics may not be properly addressed by the subsequently referenced Government Code section, staff recommends deleting it.

Summarized Comment – insert the term “tribally designated official tribal entities” in the Regular Meetings between the County and the Tribes section.

Response – staff concurs and has updated the draft Policy accordingly.

ALTERNATIVES: The Board could recommend modifications to the proposed Policy or direct staff to cease working on the effort. There is no requirement that the County have a Tribal Consultation Policy.

OTHER AGENCY INVOLVEMENT: Tribal governments, NAHC, 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: <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.)
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: *5-27-16*

Exhibits:

- A. Updated Draft Tribal Consultation Policy
- B. March 8, 2016 Agenda Request Form
- C. Redline from Raymond Naylor-Hunter Dated March 8, 2016
- D. NAHC 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~~ that are traditionally and culturally affiliated with 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, traditional ecological knowledge, traditional community intellectual property, 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

III. CONSULTATION PROCESS

- 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 CEQA.
- 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 ~~at~~ 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.

- 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 ~~use 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 (or other elected representatives authorized to make decisions for the Tribe) 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 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, traditional ecological knowledge, traditional community intellectual property, 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.

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 should:

1. Be consistent with and not contradict this Policy & Protocol, 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.

Interim Projects: in the event the MOU identifies a different process than the consultation process described in previous sections, it is the intent of the County to utilize the consultation process identified in previous sections to guide consultation for projects that are in the middle of entitling upon execution of any MOU. The County and the Tribe may mutually agree otherwise.

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, tribally designated official tribal entities, 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) ~~will~~ 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.

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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.) <i>_____ 2/20/16</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)

Joshua Hunt _____ 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.).
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- 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. **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,
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- 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

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-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 should all:

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.



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 10:30 a.m. Closed Session Informational

FROM: County Administrative Officer/County Counsel/Planning Department

FOR THE BOARD MEETING OF: January 12, 2016

SUBJECT: Tribal Consultation Policy Workshop

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

SUMMARY DISCUSSION: At its September 15, 2015 meeting, the Board conducted a Workshop regarding a draft Tribal Consultation Policy. County staff distributed the Agenda Request Form (ARF) and draft Policy to Tribal representatives a week before the Workshop and issued a Press Release. Numerous Tribal representatives attended the workshop, several provided preliminary input, and many generally expressed a preference for additional time to review the draft Policy; accordingly, at the conclusion of the Workshop the Board scheduled a follow-up Workshop on October 20, 2015.

County staff distributed copies of the October 20 ARF to Tribal representatives and called each Tribe the week before the Workshop to remind them of the Workshop. On October 20, the Board held the follow-up workshop, and two Tribal representatives attended. The Board of Supervisors conducted the Workshop, received input from the Tribes, and scheduled a follow-up Workshop for December 15, 2015. On November 18, the Board Chair sent correspondence to each Tribe reminding them of the Workshop. On December 9, the Board Chair sent additional correspondence to each Tribe reminding them of the Workshop. County staff provided the draft Policy to Tribal representatives in an electronic format to facilitate their review. County staff also called each Tribe during the week before the meeting to remind them of the Workshop and transmitted a copy of the ARF to Tribal representatives.

On December 15, the Board conducted the Workshop, and two Tribal representatives and one member of the public attended. Input was provided regarding the draft Policy, and staff was directed to update the Policy with the input received to date for further review at a follow-up Workshop in January. The Board asked staff to poll the tribes regarding a date for a follow-up Workshop. Based on the poll, the follow-up Workshop was scheduled for January 12, 2016. County representatives distributed copies of the January 12 ARF to Tribal representatives and called each Tribe the week before the Workshop to remind them of the Workshop. County staff also distributed the draft updated draft Policy to the Tribes in an electronic format on January 5 to facilitate their review.

Exhibit A includes the updated draft Tribal Consultation Policy. Exhibit B includes the December 15 ARF. Below is a summary of the comments received on December 15, with responses.

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.

Input Summary and Responses

The following summarizes comments provided at the December 15 Workshop and provides responses. Previous input and response are detailed in Exhibit B.

Summarized Comment – consultation takes time, and the number of meetings should be specified.

Response – staff recommends that a general rule for the number of meeting should be specified, as described in Exhibit B.

Summarized Comment – a liaison between the County and the tribes is unnecessary.

Response – as described in Exhibit B, staff believes that a liaison may be desirable, but could be precluded by financial constraints.

Summarized Comment – the Consultation Committee should include the entire Tribal Council.

Response – staff believes that it would be appropriate to include more than two members of the Tribal Council on the Consultation Committee, if desired by the Tribes, and has updated the draft Policy to incorporate this concept.

Summarized Comment – Subsections a-k in Section III(iii)¹ 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.

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.

¹ In the previous version of the draft Policy this reference was in Section II(iv).

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 <i>(Must be reviewed and approved by county counsel prior to submission to the board clerk.)</i>
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS <i>(Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)</i>
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS <i>(Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)</i>

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received)

 _____ Date: 1/6/16

Exhibits:

- A. Updated Draft Tribal Consultation Policy
- B. December 15, 2015 Agenda Request Form

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. ~~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:

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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:

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- 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,
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- 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.
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- 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.

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- g. **Agenda & Note Taking.** County staff will be responsible for preparing consultation meeting agendas, and taking notes.

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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.

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- 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.
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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 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.

DRAFT



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: December 15, 2015

SUBJECT: Tribal Consultation Policy Workshop

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

SUMMARY DISCUSSION: At its September 15, 2015 meeting, the Board conducted a Workshop regarding a draft Tribal Consultation Policy. County staff distributed the Agenda Request Form (ARF) and draft Policy to Tribal representatives a week before the Workshop and issued a Press Release. Numerous Tribal representatives attended the workshop, several provided preliminary input, and many generally expressed a preference for additional time to review the draft Policy; accordingly, at the conclusion of the Workshop the Board scheduled a follow-up Workshop on October 20, 2015.

County staff distributed copies of the October 20 ARF to Tribal representatives and called each Tribe the week before the Workshop to remind them of the Workshop. On October 20, the Board held the follow-up workshop, and two Tribal representatives attended. The Board of Supervisors conducted the Workshop, received input from the Tribes, and scheduled a follow-up Workshop for December 15, 2015. On November 18, the Board Chair sent correspondence to each Tribe reminding them of the Workshop. County staff provided the draft Policy to Tribal representatives in an electronic format to facilitate their review. County staff also called each Tribe during the week before the meeting to remind them of the Workshop and transmitted a copy of the ARF to Tribal representatives.

Attachment 1 includes the ARF from September 15. Staff has developed a flow chart and summary matrix, which are included in Attachment 2. Below are preliminary responses to several of the issues that have been raised to date.

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.

Input Summary and Responses

County staff has been tracking input received to date and had planned to incorporate that feedback appropriately into the next iteration of the Policy. However, due to requests received at the October 20 Workshop, the following has been prepared to summarize comments received and describe staff's intended approach to address that input.

Summarized Comment – the individual Supervisors appointed to consult with each Tribe should be rotated, as is practiced elsewhere in the State.

Response – staff has been unable to confirm that such mechanism is practiced elsewhere in the State. County Counsel has reached out and learned of no other County operating in the way reported. Rather, she has been advised this method was not advisable and could create Brown Act issues. Although individual Supervisors could be rotated as described on a periodic or ad hoc basis, the Supervisors would need to comply with the Brown Act's provisions regarding serial meetings; this would most likely result in significant complexity and uncertainty, limit meaningful dialog, and expose the Supervisors to substantial risk. Therefore, staff recommends that only two specific Supervisors be appointed to consult with each Tribe, as described in the draft Policy. Although the full Board of Supervisors subject to the Brown Act could publicly consult with various permutations of Tribal representation, this would make it more difficult to meaningfully discuss sensitive cultural information.

Summarized Comment – a working group should be established to facilitate dialog.

Response – a staff working group could be established, and staff welcomes the opportunity to participate. We have been provided a copy of an Ordinance adopted in Monterey County before the passage of AB-52 dealing with matters involving tribal consultation. Staff has communicated with Monterey County and learned the County's designated chief negotiator on behalf of the County is the Planning Manager. As discussed above, staff recommends that if members of the Board serve as negotiators, only two specific Supervisors be appointed to consult with each Tribe; counsel recommends only two Board Members period for all tribes.

Summarized Comment – there should be more consultation meetings specified, or no limit to the number of meetings.

Response – staff suggests that a general guideline for the number of meetings be specified to afford some consistency and direction for the Tribes, the County, applicants, or other parties that could be involved in consultation. In the past, the Tribes have in some cases not requested any meetings in response to consultation requests, and in other instances have requested many meetings. Staff believes that three meetings would be an appropriate general rule, and that fewer or more meetings could be mutually agreed to as a component of the consultative process.

Summarized Comment – additional notice time should be provided.

Response – staff developed the notice periods to exceed State law (refer to Attachment 2). Additional notice periods could be specified, if consistent with State law. For private applications, Permit Streamlining Act time periods also apply (refer to Government Code Section 65950 et seq.).

Summarized Comment – confidentiality should be emphasized.

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 – a liaison should be appointed to facilitate dialog between the County and the Tribes.

Response – such an appointment is technically possible and may be desirable. However, given the limited resources of the Tribes and the County, it could be difficult to finance such a position. Given previous Tribal requests for direct consultation with the Board of Supervisors, staff believes that the process outlined in the draft Policy is the most prudent fiscal approach.

Summarized Comment – definitions and acronyms should be included.

Response – staff concurs and plans to include definitions and acronyms in the next iteration of the Policy.

Summarized Comment – tribal representatives should have been included in drafting the draft Policy.

Response – the County utilized templates provided by Big Pine Tribal representatives to develop the draft Policy, and worked with them iteratively to update the Policy into its present form. The County welcomes additional input, including suggestions for wholesale redrafting. County staff has provided the document in an electronic format to facilitate such work, and continues to be available to assist.

Summarized Comment – the draft Policy should have been updated prior to the Workshops subsequent to September 15.

Response – the County deliberately did not update the draft Policy because of the request for additional time to review it and to ensure that all interested parties were reviewing the same document.

Summarized Comment – contacts should be specified.

Response – staff believes that the draft Policy includes appropriate contacts for the Policy given its umbrella purpose, and any specific suggestions would be appreciated. More detailed contacts can be developed in subsequent agreements with the individual Tribes or the County can rely exclusively on the names provided statutorily to it by the NAHC

Summarized Comment – other agencies should be included in the Policy.

Response – staff believes that the Policy should be oriented towards consultation with the Tribes. Under specific circumstances (e.g., a joint environmental document be prepared with a federal

agency, etc.), a more project-specific agreement could be an appropriate means to facilitate consultation between multiple agencies.

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>Approved - Williams 12/15</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)

Joshua Hart

Date: 12/9/15

Attachments:

1. September 15, 2015 Agenda Request Form
2. Process Flow Chart and Comparison Matrix



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

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- 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 agendaized.

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)

[Signature] _____ Date: 09-09-2015

[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 socioeconomic 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

1. 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 63352.4.
- 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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Draft Inyo County Tribal Consultation Policy Comparison Table
December 15, 2015

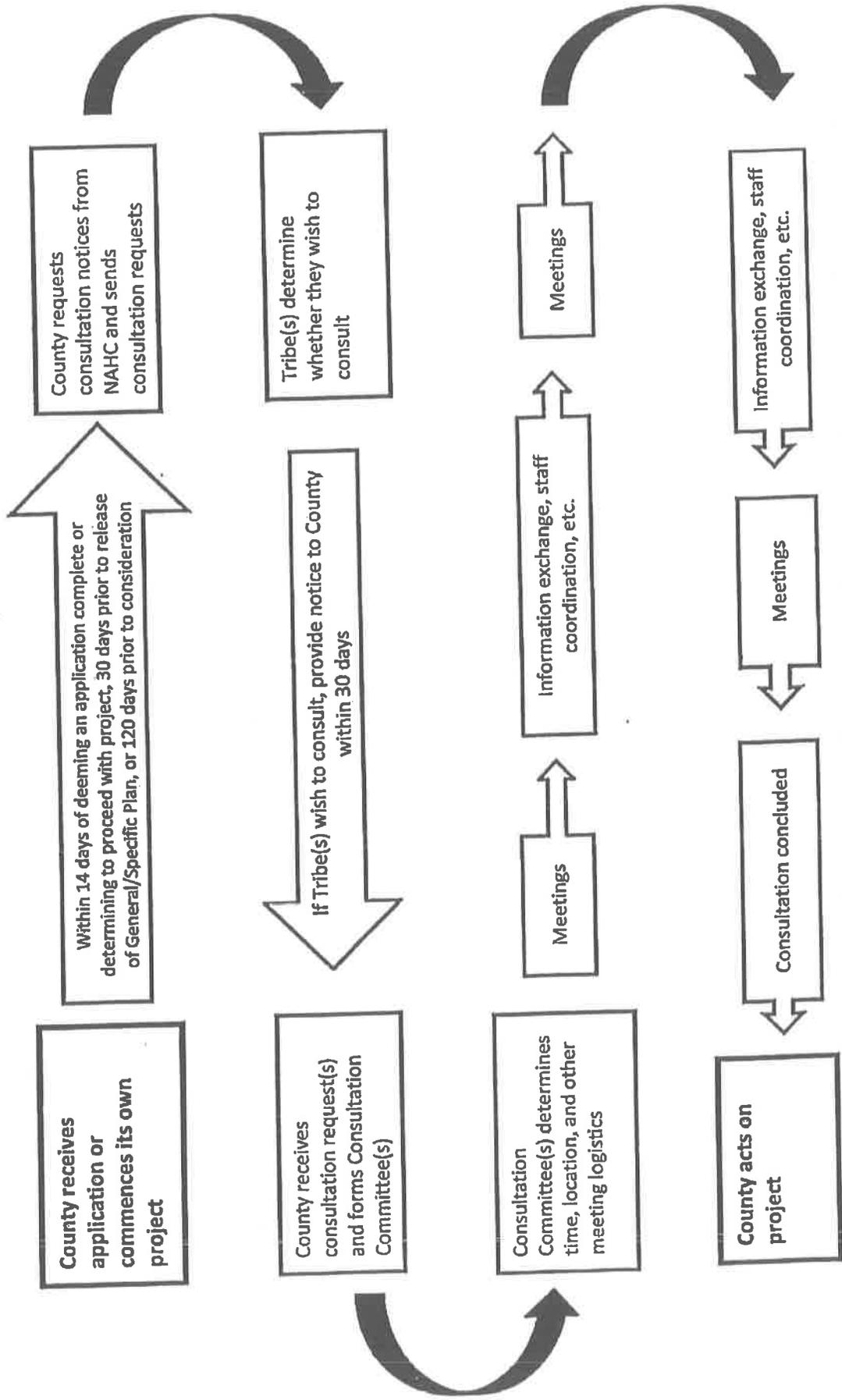
The following table summarizes how Inyo County's proposed draft Tribal Consultation Policy exceeds State requirements.

State Law Requirement	Draft Policy's Additional Requirements
None	Consistent Consultation Policy
Notice sent to list provided by Native American Heritage Commission	Notice sent to contact list provided by Tribes
Notice sent at least 90 days prior to consideration	Notice sent 30 prior to release of General Plan or Specific Plan
Notice sent at least 90 days prior to consideration	Notice sent 120 days prior to consideration
No number of meetings specified	Up to three meetings, unless more or fewer are agreed upon by the Consultation Committee
No timing of meetings specified	Timing of meetings shall be set by Consultation Committee
No location of meetings specified	Meetings shall generally be held at the Tribal offices
Consultation participants are not specified	Consultation shall be between elected officials, unless otherwise determined by the Consultation Committee
Meeting logistics not specified	The County shall be responsible for preparing the agenda and note-taking, disagreements about the agenda shall be discussed, notes shall be approved by the Consultation Committee
Process of Information exchange not specified	Information exchange is detailed
No technical assistance allocated to Tribes	Planning Director provides technical information to the degree possible
Requires consultation only for tribal cultural resources	Specifies that additional topics not required by State law may be discussed, including, but not limited to, economic, environmental, cultural, social, and technological factors

Draft Inyo County Tribal Consultation Policy Flowchart

December 15, 2015

The following flowchart summarizes the process the County would follow under the Draft Tribal Consultation Policy.





BIG PINE PAIUTE TRIBE OF THE OWENS VALLEY

Big Pine Paiute Indian Reservation

P.O. Box 700 · 825 South Main Street · Big Pine, CA 93513
(760) 938-2003 · fax (760) 938-2942

www.bigpinepaiute.org

January 12, 2016

Inyo County Board of Supervisors
P. O. Drawer N
224 N. Edwards Street
Independence, CA 93526

Subject: Inyo County Policy on Tribal Consultation

Dear Inyo County Supervisors:

The Big Pine Tribe of the Owens Valley (Tribe) appreciates your Board's recognition of the importance of tribal consultation as demonstrated in the Board's recent drafting of a County of Inyo Policy and Protocol for Tribal Consultation. As you are aware, I and other representatives of the Tribe have participated in Board meetings when this policy has been discussed and have offered verbal comments.

The Tribe recognizes the county policy as an effort to guide county leaders and staff in their future interactions with all local tribes in a manner consistent with state law and other consultation requirements. The Tribe also recognizes that each local tribe is a separate sovereign nation. Therefore, if the county desires a written policy that would inform and guide *both* county and tribal participants, the Tribe respectfully requests Inyo County officials meet with the Tribe to discuss the merits and possible content of a tribal-specific policy and protocol.

Regarding the January 4, 2016, revised draft of the county's tribal consultation policy, the Tribe recommends the following edits:

- The first paragraph in Section iii is generally acceptable, but the paragraph should end with a period following the word "Tribes" in the second sentence. The final phrase before the colon ("the County Policy is:") and the remainder of the section (all language in a. through k.) should be deleted.
- The first two paragraphs in Section iv are acceptable, but omit the third paragraph along with the 3 numbered statements.

The Tribe welcomes further consideration of a tribal specific consultation policy with Inyo County, and the Tribe suggests that, for further discussions to be productive, designated county representatives should meet with Tribal representatives to work on its contents. Please contact Tribal Administrator at the address and phone number listed above) if the county desires to discuss a consultation with the Big Pine Paiute Tribe.

Very Truly Yours,

Shannon Romero
Tribal Chairwoman

C: Yolanda Cortez, Interim Tribal Administrator
Sally Manning, Tribal Environmental Director

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 (Local Tribes) with tribal members and/or regarding lands, resources, and property 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 Tribe(s) 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, traditional ecological knowledge, public safety, and socioeconomic 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. 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 a 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.

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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,

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- 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.

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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

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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.

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- 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.

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- 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 or a tribal council official designate 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 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, ~~traditional ecological knowledge, traditional community intellectual property,~~ 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 Tribes to facilitate enabling the Tribes 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, ~~traditional ecological knowledge, traditional community intellectual property,~~ 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 Tribes 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 Tribes will not be released by the County unless authorized by the said 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 Tribes. 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 Tribes 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 Tribes 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 Tribes 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 should:

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 and tribally designated official tribal entities, 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 will 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.

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DRAFT

NATIVE AMERICAN HERITAGE COMMISSION

1550 Harbor Blvd., Suite 100
West Sacramento, CA 95691
(916) 373-3710
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James Ramos, Chairman
(916) 373-3710
nahc@nahc.ca.gov



May 23, 2016

County of Inyo
Board of Supervisors
168 N. Edwards Street
P.O. Box N
Independence, CA 93526

Dear Chairman and Supervisors,

The State of California Native American Heritage Commission would like to thank the Inyo County Board of Supervisors for the invitation to submit public comments on your draft Policy & Protocol for Tribal Consultation ("Policy").

As you know the Commission has the task of preserving and ensuring accessibility of Native Americans to Native American human remains and sacred places. In addition, the Commission has a statutory role in the facilitation of tribal consultation under AB 52 (Gatto) (Chapter 532 of Statutes of 2014), which significantly amended the California Environmental Quality Act.¹

The Commission also plays a vital role in providing information and capacity-building tools to tribes and local governments concerning compliance with AB

¹ AB 52 amended Public Resources Code section 5097.94 to add subdivision (m), which provides as one of the Commission's duties:

(m) To provide each California Native American tribe, as defined in [Public Resources Code] [s]ection 21073, on or before July 1, 2016, with a list of all public agencies that may be a lead agency pursuant to Division 13 (commencing with [Public Resources Code] [s]ection 21000) within the geographic area with which the tribe is traditionally and culturally affiliated, the contact information of those public agencies, and information on how the tribe may request the public agency to notify the tribe of projects within the jurisdiction of those public agencies for purposes of requesting consultation pursuant to [Public Resources Code] [s]ection 21080.3.1.

AB 52 also added Section 21080.3.1 to CEQA. Subdivision (c) of that section requires that, for purposes of facilitating consultation under AB 52, "the Native American Heritage Commission shall assist the lead agency in identifying the California Native American tribes that are traditionally and culturally affiliated with the project area."

52 and other State laws concerning Native American human remains, sacred places, and tribal cultural resources.

We are interested not only in ensuring compliance with the laws protecting Native American human remains, sacred places, and tribal cultural resources, but also in fostering productive government-to-government relationships between lead agencies and tribes for the protection of the resources themselves, the role they serve in tribal sovereignty, as well as the role they play in the lives of all the citizens of the State of California.

The Commission commends Inyo County for deciding to create and adopt a County Policy for Tribal Consultation. It is no small task. It is our understanding that significant amounts of time and resources have been dedicated to this undertaking. We believe a policy like this, if crafted equitably, can help create an open and inclusive process for tribal governments as well as for all those interested in the protection and proper treatment of tribal cultural resources. The Commission also believes this can be key to the County fostering positive relationships with its tribal communities.

We offer the following comments, information and best practices for your consideration. We are also attaching a redlined document containing our comments and suggestions for specific language for the draft Policy.

I. Time Frames and Notification Requirements

The Commission agrees that inclusion of time frames in a policy such as this is important. Notification requirements are also crucial for a cohesive tribal consultation process. However, the time frames and the notification requirements in the draft Policy conflict with the statutory requirements of applicable law. In particular, the number of meetings, duration of meetings, timing for notices and for tribal requests for consultation do not comply with statutorily required and permitted time frames set forth in AB 52 and SB 18 (Government Code sections 65352.3 and 65562.5). The draft Policy language as indicated throughout the document should be amended so it is consistent with the legal requirements.

The draft Policy's language regarding the conclusion of consultation should also follow the statutory requirements of AB 52 and SB 18, but the language in this draft Policy does not comply. The state Legislature expended much time and energy achieving a fair and equitable balance when it finalized the statutory language and associated policies addressing the conclusion of consultation. In particular, the Legislature rejected language that set forth a limited number of days or meetings that would comprise consultation. It was understood by the approving State committees and the Legislature that, similar to other CEQA provisions that provide a framework but allow the latitude necessary to fulfill mandates, consultation is a fluid, fact-specific undertaking

that will vary from project-to-project and with the parties involved. It was also understood that in order to facilitate an open, meaningful discussion on the intricate subjects that are part of the consultation, including real consideration of design/development alternatives and culturally appropriate mitigation, that limited constraints would not be conducive to the type of collaborative discussions and consultation this law was enacted to carry out. Since AB 52 contains specific language about when consultation is completed, this language applies to all CEQA projects. AB 52's requirements for the conclusion of consultation should be followed as written.

II. Substantive Consultation Elements

While it may be desirable to have sections on agenda setting and note taking, the sections within the draft Policy are not reflective of the fact that the tribal consultation process is part of the compilation of the record of decision for CEQA. According to AB 52, tribal governments are entities with potential expertise on the matters subject to consultation. This expertise, expressed in the form of comments, suggested mitigation measures, and tribal analysis of the nature and severity of environmental impacts, must be accurately reflected in the record when provided. This means the write-ups and summaries of consultation should be drafted by either the tribal government itself or by another party, with the language being approved by the tribe, to ensure tribal comments are accurately and comprehensively included in the record of decision. This is to safeguard tribal expertise from being interpreted or translated through a different lens that may result in misstatements or alter the tribe's intended comments and concerns. This also aids the agency in the compilation of an accurate record for CEQA purposes and for purposes of fulfillment and completion of consultation.

The sections on exchange of information and transmitting of communications do not incorporate the mandated confidentiality provisions in the law. Confidentiality provisions are a cornerstone of both SB 18 and AB 52. They help foster an open and trustworthy environment for consultation. Subjects explored during a consultation are sensitive because they involve potential harms and impacts to the very nature of tribal identity, spirituality, custom and tradition. In addition, confidentiality is of paramount importance as it ensures the actual physical protection of the places at issue, helping to prevent deliberate disturbance and destruction of the resources. All sections in the Policy that implicate confidentiality must be brought into compliance with the statutory requirements.

The sections of the draft Policy that address the dissemination, sharing, and distribution of information about proposed projects, including reports, survey results and other materials, should include a commitment on behalf of the County to provide this information and documentation early in the planning process. Early and open discussions, with all information necessary to engage

in meaningful consultation, are another key component of AB 52.² The goal is for all the information, including tribal information, to be factored into the decision-making process before a decision is reached, not as an afterthought once decisions and commitments have already been determined. The tribes will be unable to provide fully formed opinions, expertise and contributions without having all of available information concerning the project details, including all relevant technical studies, soils tests, grade plans and other pertinent documents. In addition, the draft Policy is currently worded to include only the provision of materials limited to the investigations and mitigation measures. This is only one step of the consultation process, and is in fact the last step. This language should be broadened to include for the provision of all the materials necessary for the full range of consultation discussions, which include not just mitigation measures, but also assessing the feasibility of avoidance, the severity and type of impacts, the type of environmental document appropriate for the project, and project alternatives.

The purpose and goal of the Consultation Committee that has been included in the draft Policy is unclear. We urge that this concept be reviewed and worked through with the stakeholder tribes. The Commission sees potential confusion and conflict with the tasks and duties the draft Policy seems to assign to the Consultation Committee. For example, it is unclear why a consultation committee would need to review the notes from a tribal consultation. The information and opinions shared by the tribe, for example, belong to the tribe and should not be altered or interpreted through a third party, like a committee. The tribe must either document their contributions themselves or have the final authority over any interpretation or write-up of this information. Each consultation is unique because each project is unique, and the Policy should allow for enough latitude to adjust to each circumstance.

In addition, it is unclear how a Consultation Committee will be able to observe the confidentiality provisions in the law. If the Consultation Committee refers to the parties that participate in each individual consultation, the terminology is confusing because it suggests some third party besides the tribal government and the County government will be participating.³ Another crucial element of

² Public Resources Code section 21080.3.1, subdivision (b) provides that a lead agency shall begin consultation prior to the release of a negative declaration, mitigated negative declaration or environmental impact report with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of a proposed project if the tribe has timely requested notification of projects in the tribe's area of traditional and cultural affiliation and consultation for that particular project. Public Resources Code section 21080.3.2, subdivision (a) provides that if a California Native American tribe requests consultation regarding alternatives to the projected, recommended mitigation measures, or significant effects, the consultation shall include those topics.

³ Although Public Resources Code section 21082.3, subdivision(c)(2)(A) does not prohibit the confidential exchange of information regarding tribal cultural resources submitted by a California Native American tribe during consultation or the environmental review process

AB 52, SB 18 and federal law is respect for the participation of a tribe as a tribal governmental entity, not as a member of the public or an interest group. Usage of a Consultation Committee seems to dilute or eliminate the tribal government role in this process. It is important that that role and authority is preserved. As indicated above, it is the tribal government itself that is participating in consultation through its representatives, just as the County is participating in consultation through its representatives, and any committee or working group must preserve and respect these roles and authorities.

It is also improper to limit the number of tribal representatives in any consultation, as there is a commitment to respect each party's sovereignty with respect to how their governments are organized and how governmental decisions are made. Just as tribes must respect the County's governmental processes, including the Brown Act constraints, the County must also be respectful and agreeable to work with the tribes' governmental processes.

In addition, we have offered an "Intent and Purpose of Consultation" section, as we believe this sets the framework for consultation, manages expectations, and informs all of the legal definition of consultation. We believe this also helps address any issues regarding meeting the requirements for the conduct and completion of consultation. If followed, this section will help the County complete consultation in a manner that is transparent to all.

III. Scope of the Consultation Policy

Upon review of the draft Policy it is not completely clear which circumstances and projects this Policy applies to. Tribal consultation processes and requirements exist not only in different areas of State law, like SB 18, AB 52, and in other sections of the Public Resources Code, but also in federal laws such as the National Environmental Policy Act (NEPA)⁴ and the National Historic Preservation Act of 1966.⁵ Also, environmental issues and cultural resources protection issues are not the only issues affecting tribal communities. If the intent of the draft Policy is to provide latitude to build other types of consultation opportunities, additional sections may need to be added to address this. We suggested citations throughout the document to

among the lead agency, the California Native American tribe, the project applicant, or the project applicant's agent, subdivision (d)(1) speaks in terms of a consultation process between a California Native American tribe and a lead agency. See Public Resources Code section 21082.3, subdivision (d)(1) (stating that a lead agency may certify an environmental impact report or mitigated negative declaration for a project with a significant effect on an identified tribal cultural resource only if, among other possibilities, "the consultation process **between a California Native American tribe and a lead agency** has occurred" (Emphasis added).

⁴ 42 U.S.C. 4321 et seq.

⁵ 54 U.S.C. 300101 et seq.

clarify the processes to which this Policy applies, but also suggest that this list of processes be inclusive rather than exclusive.

IV. MOU or MOA Component

It is our understanding that the option of executing an MOU or MOA is the desire of both the County and many of the culturally affiliated tribes in Inyo County. There is great value in executing individual agreements with customized processes and protocols unique to each government. Certain elements of the consultation process may not be appropriate for a blanket policy because each tribal government has different capacities in terms of resources and staffing. However, we do not support agreements that would limit or curtail the legal rights of the affected tribe.

V. Encourage a Joint Process to Create the Tribal Consultation Policy

This policy has the potential to affect tribal government sovereignty and legal rights. As such, we understand that Inyo County has invited the tribes to participate in public meetings or workshops concerning this Policy. However, we have heard from a number of tribes that they are not sure how to participate in the process concerning this proposed Policy. We have been informed that when tribes have offered comments and requested specific language or edits, those offerings have not been answered with detailed responses. In addition, it appears there have not been meetings between the tribes and the County to resolve the voiced concerns of the tribes. It seems that tribal comments are not being fully considered by the County in collaboration with the tribes. As an agency that has policies in place affecting tribes in the entire State of California, we understand that putting together a Policy such as this with the meaningful input of all stakeholders is a complex undertaking. We remain optimistic that the County is interested in a joint shaping of this Policy. We encourage collaboration on the substantive terms set forth in this document as well as on the specific language.

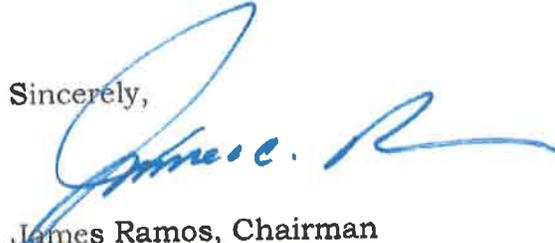
In addition, although it is the County that is charged with deciding what is best for its jurisdiction and sphere of influence, when it comes to putting together a policy that affects other sovereigns, such as tribes, the language and tone utilized to convey the process and the parameters under which multiple sovereigns shall work together should be mutually respectful. Much of the language in the draft Policy reads with a tone that Inyo County is dictating the rules without providing any deference to the tribes. The draft Policy, for example, readily takes into account the perspective and organization of Inyo County, but neglects to incorporate tribal government perspective, structure and capacity. The Policy should reflect governments working together respectfully and collaboratively.

As you know, the Commission held a public meeting in Bishop on May 15, 2016, and received public comment from tribes on the County's Policy. With

the presence of a County representative at this meeting we are hopeful the County heard and received the offered public comments and is working towards meaningful consideration of such comments.

Thank you for this opportunity to submit our comments. We are available to provide resources and assistance towards the finalization of this Policy. We also welcome the opportunity to participate in future workshops and public meetings on this Policy.

Sincerely,



James Ramos, Chairman
Native American Heritage Commission

COUNTY OF INYO

POLICY & PROTOCOL FOR TRIBAL CONSULTATION

BACKGROUND

INYO COUNTY (County) is required by State law to engage in intergovernmental tribal/county consultation with sovereign California Native American Indian Tribes with tribal member cultural affiliations and/or lands located in the jurisdiction of the County (Local Tribes). intergovernmental Tribal consultation is governed by Senate Bill (SB) 18 (Burton, 2004, Chapter 905, Statutes of 2004) and Assembly Bill (AB) 52 (Gatto, 2014, Chapter 532, Statutes of 2014) and specifically codified with respect to the adoption or amendment of General Plans and Government Code section 65300, et seq., Specific Plans Government Code § section 65352.3, subd. (a)(1453)), Open Space Designations (Gov. Code § 65562.5), and potential impacts on tribal cultural resources as a consequence of a California Environmental Quality Act (CEQA) project Public Resources Code § section 21080.3.174), 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 and culturally suitable protocol for how the County will conducting tribal/county intergovernmental consultation under existing State and local laws.

Comment [TR1]: This word needs to stay in.

~~In addition, the Inyo County Board of Supervisors desires to establish parameters for creating a framework for creating memoranda 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 socioeconomic issues.~~

The County is committed to open, candid, respectful, meaningful, constructive, timely and effective communication that is required by State laws governing tribal consultation, and necessary to foster understanding of issues, inclusion of tribal expertise in environmental assessments for projects that may have a significant impact on tribal cultural resources, and positive relations between elected leaders of the County and Local Tribes. The County is also committed to, as well as providing a framework for discussing mutually agreed upon Topics not subject to state laws governing consultation.

Comment [LM2]: This is from legislative intent of AB 52

Besides the consultation topics included for a development project subject to Tribal Consultation, the Inyo County Board of Supervisors is also committed to providing a framework for discussing mutually agreed upon topics outside this scope. The County desires to establish parameters for creating a framework for memoranda of understanding (MOU) or other instruments for consulting

on matters that, although not legally required by SB 18 or AB 52, may be of concern to 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, public safety, socioeconomic matters and other matters of mutual concern.

Comment [LM3]: Deleted some of the topics (environment, biology, aesthetics) because they are covered under AB 52, i.e. environment and biology as it relates to cultural landscapes. Concern that listing of topics in a paragraph that speaks to topics beyond the scope of AB 52 mis-states the legal scope of AB 52. Left those topics in Section IV.

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, subdivision (b), and State of California Tribal Consultation Guidelines – Supplement to General Plan Guidelines, Nov 14, 2005. "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 Tribe's Governing Body Council.
- iii. Cultural Resources. Tribal cultural resources as defined by Public Resources Code sSection 21074.
- iv. Environmental Impact Report. An environmental document-document as defined in Public Resources Code section 21061, 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 sSection 65300 et seq.
- vi. Mitigated Negative Declaration. A negative declaration as defined in Public Resources Code section 21064.5.
- vii. Negative Declaration. An environmental document as defined in Public Resources Code section 21064.

~~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.);~~

viii. Open Space. Land designated for open space use as defined in Government Code section 65560, subdivision (b).

ix. _____

x. Specific Plan. A Plan prepared pursuant to Government Code ~~s~~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~~ Environmental Impact Report

iv. MOU. Memorandum of Understanding

v. SB. Senate Bill

II. CONSULTATION PROCESS

iii.

~~The County adheres to the required processes of consultation found in Government Code section 65352.4, Public Resources Code section 21080.3.1, 21080.3.2, 21082.3, and State of California Tribal Consultation Guidelines – Supplement to General Plan Guidelines, Nov 14, 2005; 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 tribal/county intergovernmental consultation, as required by law, whenever it plans to amend the County's General Plan, and/or amend or adopt Specific Plans, designate areas as open space, and for projects subject to CEQA for which the County is Lead Agency. Such consultation will take place before the County prior to the release of any Mitigated Negative Declarations, 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. Notices shall meet the requirements pursuant to 21080.3.1(d) and will following the State of California Tribal Consultation Guidelines – Supplement to General Plan Guidelines, Nov 14, 2005. Your proposed language

Local Tribes are asked keep provide the County provided with current up-to-date contact information and to update that information whenever necessary. The County requests that the contact information include 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 I
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, Open Space Designation, Mitigated Negative Declarations, 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

Comment [TR4]: [Note: Your proposed language is not consistent with AB 52. Public Resources Code section 21080.3.1, subd. (b) provides in relevant part: "If the California Native American tribe does not designate a lead contact person, or designates multiple lead contact people, the lead agency shall defer to the individual listed on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004." Chapter 905 of the Statutes of 2004 is SB 18.]

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Comment [TR5]: [Note: Do you mean all communications regarding the scheduling of consultation? If not, the confidentiality requirements of AB 52, specifically the affirmative duty of the lead agency NOT to disclose information provided by a tribe during the environmental review process, needs to be made clear in this document and to the Board of Supervisors, the County Administrator, and the County Counsel. See Public Resources Code section 21080.3.1, subd (c) (1), which provides in relevant part: "Any information, including, but not limited to, the location, description, and use of the tribal cultural resources, that is submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or public agency to the public, consistent with subdivision (f) of Section 6254 of, and Section 6254.10 of, the Government Code, and subdivision (d) of Section 15120 of Title 14 of the California Code of Regulations, without the prior consent of the tribe that provided the information." AB 52 does not require a tribe to maintain as confidential its own information provide during the environmental review process. See id.]

facts, the following time periods, which meet or exceed state minimum requirements or a longer period: Why 2 separate noticing processes?

- a. 30-days prior to the release of any Draft General Plan Amendment, Draft Open Space Designation, or ~~or~~ Draft Specific Plan ~~for public~~ for public review; this extended period over what is required by law provides time for the Local Tribe and the County ~~to engage 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. [Note: This is potentially inconsistent with AB 52, depending on how "final action" is defined. AB 52 prohibits the certification of an EIR or the adoption of an MND for a project that has a significant impact on an identified tribal cultural resource unless consultation, if initiated, has concluded in compliance with AB 52. See Public Resources Code section 21082.3, subd. (d), which provides: "In addition to other provisions of this division, a lead agency may certify an environmental impact report or adopt a mitigated negative declaration for a project with a significant impact on an identified tribal cultural resources only if one of the following occurs: (1) The consultation process between the California Native American tribe and the lead agency has occurred as provided in Sections 21080.3.1 and 21080.3.2 and concluded pursuant to subdivision (b) of Section 21080.3.2; (2) The California Native American tribe has requested consultation pursuant to Section 21080.3.1 and has failed to provide comments to the lead agency, or otherwise failed to engage, in the consultation process; (3) The lead agency has complied with subdivision (d) of Section 21080.3.1 and the California Native American tribe has failed to request consultation within 30 days." Since it cannot be determined in advance when consultation, if initiated, will conclude, it may not be possible to determine when a County can certify an EIR or adopt an MND subject to AB 52 such that a 120-day period can be determined]

For General Plan Amendments, Specific Plans, Open Space Designations, Mitigated Negative Declarations, 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,

Comment [TR6]: [Note: This is potentially inconsistent with AB 52, depending on how "final action" is defined. AB 52 prohibits the certification of an EIR or the adoption of an MND for a project that has a significant impact on an identified tribal cultural resource unless consultation, if initiated, has concluded in compliance with AB 52. See Public Resources Code section 21082.3, subd. (d), which provides: "In addition to other provisions of this division, a lead agency may certify an environmental impact report or adopt a mitigated negative declaration for a project with a significant impact on an identified tribal cultural resources only if one of the following occurs: (1) The consultation process between the California Native American tribe and the lead agency has occurred as provided in Sections 21080.3.1 and 21080.3.2 and concluded pursuant to subdivision (b) of Section 21080.3.2; (2) The California Native American tribe has requested consultation pursuant to Section 21080.3.1 and has failed to provide comments to the lead agency, or otherwise failed to engage, in the consultation process; (3) The lead agency has complied with subdivision (d) of Section 21080.3.1 and the California Native American tribe has failed to request consultation within 30 days." Since it cannot be determined in advance when consultation, if initiated, will conclude, it may not be possible to determine when a County can certify an EIR or adopt an MND subject to AB 52 such that a 120-day period can be determined].

- 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. [Note: This is inconsistent with SB 18. See Gov. Code section 65352.3, subd. (a) (2): "From the date on which a California Native American tribe is contacted pursuant to this subdivision, the tribe has 90 days in which to request consultation, unless a shorter timeframe has been agreed to by that tribe."]

ii. **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. **Intent and Purpose of Consultation.** In recognition of their governmental status, to establish a meaningful consultation process between California Native American tribal governments and the County of Inyo, respecting the interests and roles of the tribes and project proponents, and the level of required confidentiality concerning tribal cultural resources, at the earliest possible point in the CEQA environmental review process, so that tribal cultural resources can be identified and culturally appropriate mitigation and mitigation monitoring programs can be considered by Inyo County decision makers.

Since California Native American prehistoric, historic, archaeological, cultural, and sacred places are essential elements in tribal cultural traditions, heritages, and identities and California Native American tribes may have expertise with regard to their tribal history and practices, which concern the tribal cultural resources with which they are traditionally and culturally affiliated, main purposes of this consultation process are to identify tribal cultural resources and information concerning the resources for purposes of determining significant impacts and appropriate mitigation, to gather information to aid in decisions concerning the type of environmental document to prepare, and to ensure that the CEQA assessments are inclusive of relevant tribal information.

Comment [TR7]: [Note: This is inconsistent with SB 18. See Gov. Code section 65352.3, subd. (a) (2): "From the date on which a California Native American tribe is contacted pursuant to this subdivision, the tribe has 90 days in which to request consultation, unless a shorter timeframe has been agreed to by that tribe."]

Comment [LM8]: From AB 52 legislative intent section

b. California Native American prehistoric, historic, archaeological, cultural, and sacred places are essential elements in tribal cultural traditions, heritage, and identities and California Native American tribes may have expertise with regard to their tribal history and practices that concern the tribal cultural resources with which they are traditionally and culturally affiliated. Therefore, the main purposes of this consultation process are to identify tribal cultural resources and information concerning the resources for purposes of determining significant impacts and appropriate mitigation, to gather information to aid in decisions concerning the type of environmental document to prepare, and to ensure that the CEQA assessments are inclusive of relevant tribal information.

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. This section is contrary to the requirements and legislative intent of AB 52

a. **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. [.....]

b.c.

e. **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 does not relieve any party of its obligation to work with other parties to find a meeting date 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 that is mutually acceptable to 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. Also, would be best to default that each consultation meeting is closed to the public and, as such, organizers will abide by any applicable legal constraints to ensure the confidentiality of the meeting, i.e. the County will be limited to only two elected representatives, but unlimited on the number of

Comment [TR9]: a. [Note: This is inconsistent with AB 52 for the same reasons as provided for subdivision (a) above. Additionally SB 18 does not place a statutory time limit for the end of consultation. See Governor's Office of Planning and Research, *Tribal Consultation Guidelines, Supplement to General Plan Guidelines* (November 14, 2005) at p. 18: "Consultation, pursuant to Government Code § 65352.3 and § 65352.4, should be considered concluded at the point in which:

•The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning appropriate measures of preservation or mitigation."

Comment [LM10]: Recommended this come with enough latitude for parties to make adjustments as needed in terms of representatives and consultants on a project by project basis

~~staff resources it may allocate.~~ 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. ~~This suggests~~

~~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.~~

Comment [TR11]: [Note: It really isn't for the County to tell the tribe who should and can represent it, as long as the representatives are designated to speak on behalf of the tribe. Again, limiting consultation to three meetings conflict with AB 52 and SB 18, since consultation may be concluded only as provided by the provisions of AB 52 and the SB 18 guidelines. This also suggests bad faith *ab initio*

- 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.

Comment [TR12]: [Note: Although it isn't stated, it should be made clear that consultation will be conducted with each tribe individually.]

- f.g. **Project Proponent Participation:** Project proponents shall participate only upon the mutual consent of the County's Consultation Committee representatives and the tribe's Consultation Committee representatives and shall respect all applicable laws and this policy and protocol. (See Public Resources Code section 21080.3.2, subd. (d): "If the project proponent or its

consultants participate in the consultation, those parties shall respect the principles set forth in this section.”)

g-h. Agenda & Note Taking. County staff will be responsible for preparing consultation meeting agendas with the agreement of the local tribe, and taking notes. [Note: The note taker should be someone mutually agreed upon.] This topic bleeds into documentation of the record for CEQA purposes and should be redrafted to reflect this important aspect of the consultation process.

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, if known, 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.

Comment [LM13]: The agenda should be created together by all parties. Also, this does not square with the intention to include topics beyond the required topics and to facilitate open dialogue?

Topics for consultation may be alternatives to the project, recommended mitigation measures, significant effects, the type of environmental review necessary, the significance of tribal cultural resources, the significance of the project's impacts on the tribal cultural resources.

The meeting notes shall be reviewed and approved by the parties to the consultation 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.

J. Conclusion of Consultation. The intergovernmental tribal/county consultation shall be considered concluded when either of the following occurs: (1) The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource. (2) A party, acting in good faith and after reasonable effort, concludes that a mutual agreement cannot be reached.

k. Cultural Resources. The County shall, when feasible, avoid damaging effects to any tribal cultural resource. When avoidance is not feasible, it 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 pursuant to 21082.3 (a), (b), (e), and 21084.3. To the extent feasible, as reasonable, and allowed by law, the County will work with the Tribe to facilitate enabling the Tribe to access and stewardship of its traditional tribal cultural resources. [Note: AB 52 provides that public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. See Pub. Resources Code § 21084.3, subd. (a). Avoidance and preservation in place should be the first considered options before mitigation. See Pub. Resources Code § 21084.3, subd. (b)(1).]

l. 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 sections 6254, subd. (r), 6254.10, and 65352.4; Public Resources Code section 21082.3, subd. (c)(1), and Section 15120 of Title 14 of the California Code of Regulations.

m. 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. [Note: This conflicts with AB 52. AB 52 does not require the designation of information provided by a tribe during the environmental review process as being confidential; the information is already considered confidential and cannot be released without the prior consent of the tribe. Public Resources Code section 21082.3, subdivision (c) (1) provides:

(c)(1) Any information, including, but not limited to, the location, description, and use of the tribal cultural resources, that is submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with subdivision (r) of Section 6254 and Section 6254.10 of the Government Code, and subdivision (d) of Section 15120 of Title 14 of the California Code of Regulations. If the lead agency publishes any information submitted by a California Native American tribe during the consultation or environmental review process, that information shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. This subdivision does not prohibit the confidential exchange of the submitted information

between public agencies that have lawful jurisdiction over the preparation of the environmental document.

Please note that there is no requirement in either SB 18 or AB 52 that a tribe must maintain as confidential the information it provides during consultation. Please amend accordingly.]

- a. 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. [Note: To the extent that this section requires a tribe to designate as confidential information it has provided during consultation, it conflicts with AB 52. Please see notes to subdivision (h) above.]
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, the project applicant, or the project applicant's agent. [Note: AB 52 does not prohibit the confidential exchange of information regarding tribal cultural resources submitted by a California Native American tribe during the consultation or environmental review process among the lead agency, the California Native American tribe, the project applicant, or the project applicant's agent. See Pub. Resources Code § 21080.3.2, subd. (c) (1)] and consultants. Copies of the data are to be made and distributed only to those staff, the project applicant, or the project applicant's agent ~~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. [Again,~~

this is inconsistent with Public Resources Code section 21080.3.2, subd. (c)(1).]

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 ~~tribe~~ applicable party of the releasability. ~~The County~~ Neither party will not disclose documents exchanged or developed as a part of an MOU without providing notice to the ~~tribe~~ other party. ~~The County~~ Each party will protect, to the extent allowed by applicable state and federal laws, the confidentiality of the ~~tribe's~~ 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.~~ [Note: Again, there is no state statutory requirement that a tribe maintain as confidential its own information.]

- o. Resources. The County commits to provision of materials and information to the Local Tribes as early in the process as possible to enable a meaningful consultation, including materials for discussions on avoidance, preservation in place, alternatives, mitigation, and long-term management of resources. For example such documents may include maps, records search results, survey reports, information on alternatives, design proposals, mitigation proposals and other documents relevant to the project details. The County will work with the Tribe to mutually provide the resources necessary for consultation, avoidance, preservation in place, 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.

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

Comment [TR14]: Perhaps you should not require an MOU to consult on additional topics. AB 52 does not limit consultation on other topics; it merely states what are mandatory (if requested) and permissive topics of consultation without limitation.

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 should#:

1. Be consistent with and not contradict the 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. [Note: Will the geographic areas be kept confidential pursuant to Gov. Code section 6254, subd. (r) and/or Gov. Code section 6254.10? If so, this should be stated.]

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 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 withhold the information 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 provided for review to each participating Tribe prior to the next meeting.



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

16

- Consent
 Departmental
 Correspondence Action
 Public Hearing
 Scheduled Time for 2:00
 Closed Session
 Informational

FROM: Water Department

FOR THE BOARD MEETING OF: October 11, 2016

SUBJECT: Sustainable Groundwater Management – Stakeholder Situation Assessment.

DEPARTMENTAL RECOMMENDATION:

Staff requests your Board conduct a workshop on a stakeholder situation assessment prepared to support efforts to form a groundwater sustainability agency in the Owens Valley Groundwater Basin.

SUMMARY DISCUSSION:

The Sustainable Groundwater Management Act of 2014 (SGMA) requires that local agencies form groundwater sustainability agencies (GSAs) in all medium and high priority groundwater basins by June 30, 2017, or be subject to state intervention into local groundwater management. In support of local agencies efforts, the California Department of Water Resources (DWR) offers facilitation services to local agencies at no charge. The Water Department sought and received such support from DWR, and has been working with a facilitator, Lisa Beutler of MWH Global, to prepare an assessment of stakeholder views and concerns related to groundwater management in the Owens Valley Groundwater Basin. Over the past few months, Ms. Beutler has researched conditions in the groundwater basin and conducted interviews with a number of individuals representing various stakeholders and agencies. Ms. Beutler will present the results of her efforts.

Attachments:

Facilitator's scope of work

OTHER AGENCY INVOLVEMENT:

Local agencies in Inyo and Mono counties; federal, tribal, state, local, and private water stakeholders.

FINANCING:

N/A

APPROVALS

COUNTY COUNSEL: <p align="center">N/A</p>	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS <i>(Must be reviewed and approved by county counsel prior to submission to the board clerk.)</i> <p align="right">Approved: _____ Date: _____</p>
AUDITOR/CONTROLLER: <p align="center">N/A</p>	ACCOUNTING/FINANCE AND RELATED ITEMS <i>(Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)</i> <p align="right">Approved: _____ Date: _____</p>

PERSONNEL DIRECTOR: N/A	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.) Approved: _____ Date: _____
---------------------------------------	--

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received)



Date: 9/26/16

Project No. 005
INYO COUNTY
DWR Facilitation Services Request
Project Management and Program Coordination
Coordination and Subcontract Management

Date: May 23, 2016

DESCRIPTION OF SERVICES

Under DWR Contract No. 4600010401, Work Order SGMP-01, MWH Americas (MWH) provides the bundle of professional services listed below to support a number of the DWR's mission-critical water resources programs.

1. Project Management
2. Strategic Planning
3. Facilitation/Mediation
4. Public Outreach
5. Program Coordination

PROJECT NO. 005 authorizes MWH to deliver to the Sustainable Groundwater Management Program (SGMA) one or more of the services listed above.

WORK PLAN

The purpose of this Work Order is to support DWR with providing Inyo County and Mono County stakeholders with facilitation services to assist in implementation of SGMA in the Owens Valley Groundwater Basin (6-12). The task also includes general program management, quality control and transfer of knowledge.

Tasks

The Owens Valley Groundwater Basin has a complex history and multiple governance arrangements including those created through litigation and those existing because of jurisdictional boundaries. There are additional considerations related to multiple tribal governments having a direct interest in the GSA formation process. Because of the anticipated complexity of this task, this task order anticipates two phases of work, the first being a formal situation assessment to determine options for GSA formation and potential GSP development approaches. The second phase of work will focus on facilitation of the GSA formation process and be based on the results of the first phase of work.

Consistent with the scope of Work Order SGMP-01, MWH will conduct the following tasks under this Project.

B. KEY FACILITATION TASKS, PHASE I – Situation Assessment

Task 1 – Situation Assessment

Phase I includes three core tasks: Organizing, Interviews, and Reporting/Recommendations. Key activities for each task are summarized below, along with deliverables and preliminary timeframes.

a. Organizing

Preliminary Timeframe: May-June 2016

This task includes the following activities:

- Continued discussion with Inyo County on approach and stakeholders
- Outreach to Mono County and the Mono County Tri Valley Groundwater Management District to discuss participation in the assessment
- Development of a stakeholder list reflective of both GSA and GSP considerations
- Issuance of an invitation to participate in the assessment from Inyo County and the Mono County Tri Valley Groundwater Management District to stakeholders
- Development of an interview and/or survey “script” organized in the form of key questions related to GSA formation and governance

Interview questions will:

- Identify overarching perspectives from each key stakeholder on GSA governance; subbasin management and associated SGMA compliance; and methods to achieve groundwater sustainability consistent with SGMA requirements.
- Define the level of agreement/conflict around groundwater governance across the range of stakeholder perspectives in the subbasin.
- Evaluate experience with facilitated processes and the goals for facilitation support
- Evaluate and the potential configurations of governance and formations of GSAs and GSP development.

Key Assumptions

- Scheduling is dependent on confirmation of and availability of interviewees.

Deliverables

1. Stakeholder contact directory
2. Interview Script & Assessment Questions

LEVEL OF EFFORT (LOE):

Class	1 – Managing Senior Mediator	7 - Associate
Hours	10	4

b. Assessment Interviews

Preliminary Timeframe: June-July 2016 (subject to availability of stakeholders, holidays)
This task anticipates up to 30 non-attributed interviews with key stakeholders, and assumes that approximately 75% of interviews will be conducted in-person. Additional input may also be obtained from surveys.

This task also provides for specialized coordination on Tribal interactions with the DWR Tribal liaison.

Deliverables:

1. Up to 20 interviews
2. Survey

LEVEL OF EFFORT (LOE):

Class	1
Hours	90

c. Recap and Recommendation Development

Preliminary Timeframe: July 2016 (depending on holidays, etc.)
This task involves synthesis and analysis of information gathered during assessment interviews. The purpose is to develop specific options and recommendations for GSA formation and governance for consideration by Inyo County and the other stakeholders. The report-back will be in the form of a presentation using PowerPoint (or equivalent), in two steps:

- a. Pre-briefing and dry run of a draft presentation with Inyo County to test for clarity and identify any gaps or likely questions
- b. In person presentation of PowerPoint to Inyo County, DWR and other appropriate stakeholders, with invitation issued by Inyo County.

Deliverables:

1. PowerPoint Presentation (draft)
2. PowerPoint Presentation (final)

LEVEL OF EFFORT (LOE):

Class	1
Hours	20

Task 2. Project Team Coordination and Management

This task includes:

- Initial Scoping Session with Inyo County
- Weekly Coordination and team meetings with Inyo, Mono and other agency leaders.

LEVEL OF EFFORT (LOE):

Class	1
Hours	10

C. ASSUMPTIONS

Due to the short project timeframe and travel considerations, in-person activities will be minimal. Situation assessment interviews will be scheduled in a one-week timeframe, otherwise interaction will primarily be via web meetings, email and phone.

D. MEASURES OF SUCCESS

- Meeting all scheduled deadlines
- Confidence by non-GSA agency stakeholders that a transparent, understandable, fair and equitable approach is being utilized and that concerns and issues can be heard.

E. BUDGET ASSUMPTIONS

This budget assumes:

1. Photocopies, meeting rooms and related items, will be provided by Inyo County
2. All requested materials will be delivered via electronic format.
3. Three driving trips plus overnight stays, including an extended visit the week of June 14.

F. CONTRACTOR STAFFING

MWH will assign the individuals listed below to perform the professional-level services required in this Project. If for some reason anyone listed is unable or unavailable to perform as planned, any replacements or substitutes will be subject to prior approval by DWR.

<u>Job Classification</u>	<u>Assigned Staff (MWH)</u>
Executive Mediator/Facilitator	Lisa Beutler
SME Project Manager	Paula Butcher
Administrative Staff	Multiple, as assigned
Associate Facilitator	Multiple, as assigned

#18

Amy Shepherd
Auditor- Controller
ashepherd@inyocounty.us

(760) 878-0343
(760) 872-2700
(760) 876-5559
FAX: (760) 878-0391



COUNTY OF INYO
OFFICE OF THE AUDITOR-CONTROLLER
P. O. Drawer R
Independence, California 93526

CHRISTIE MARTINDALE
Assistant Auditor
cmartindale@inyocounty.us

KORNI GIRARDIN
Payroll Tech I
kgirardin@inyocounty.us

TINA TILLEMANS
Administrative Analyst
ttillemans@inyocounty.us

IVONNE BUNN
Account Tech III
ibunn@inyocounty.us

JESSICA ALLMON
Account Tech III
jallmon@inyocounty.us

September 28, 2016

Honorable Board of Supervisors
County of Inyo
Independence, Calif. 93526

Honorable Board Members:

In Accordance with Section 26905 and 26921 of the Government Code and your orders of February 5, 1950 and January 3, 1956, an actual count of money in the hands of the Treasurer was made on this date. The count showed the funds to be in balance, pending written verification of inactive accounts.

Very Truly Yours,

Amy Shepherd
Auditor-Controller

By:  _____, Deputy
Jessica Allmon

STATEMENT

MONEY IN COUNTY TREASURY

FOR July-September 2016

STATE OF CALIFORNIA
COUNTY OF INYO

The undersigned, County Auditor, having counted the money in the County Treasury of said County, as required by Section 26921 of the Government Code, and being duly sworn on oath, makes the following report for the period ending September 28, 2016.

Amount of money that should be in the treasury on September 28, 2016

is	\$119,508,616.40	
Receipts from 07/01/16-09/28/16	\$37,758,996.69	
(Less paid warrants) Amount actually therein is	(\$40,162,439.62)	
Active Balance		\$3,011,609.31
Silver		\$11.18
Currency		\$7,200.00
Certificates of Deposit		\$80,277,842.42
CD		\$28,618,812.86
Local Agency Debt		\$537,257.59
Deposits on Hand		
Corp Obligation		\$4,652,203.11
	117,104,936.47	\$117,104,936.47

Difference:

SHORT:Remote Deposit Cor-Sup Crt Canadian Ck (\$237.00)

Amy Shepherd

County Auditor

Subscribed and sworn to before me this 3rd day of October, 2016



[Signature]

Clerk of the Board of Supervisors
INYO COUNTY

RECEIVED
2016 OCT -3 PM 1:02



BIG PINE PAIUTE TRIBE OF THE OWENS VALLEY

Big Pine Paiute Indian Reservation

P.O. Box 700 · 825 South Main Street · Big Pine, CA 93513

(760) 938-2003 · fax (760) 938-2942

www.bigpinepaiute.org

September 16, 2016

Los Angeles Board of Water and Power Commissioners
Los Angeles Department of Water and Power
Room 1555-H
111 North Hope St.
Los Angeles, CA 90012

Subject: Ongoing Irrigation Water Crisis at Big Pine Indian Reservation

Dear Board of Water and Power Commissioners:

This letter is to update your Commission on the ongoing irrigation water crisis on the Big Pine Indian Reservation. Earlier this year, the Big Pine Paiute Tribe of the Owens Valley (Tribe) held out hope that your agency would work with the Tribe expeditiously to repair the irrigation trunk line so that Los Angeles Department of Water and Power (LADWP) could fulfill its obligation to deliver water as required by the 1939 land exchange agreement. Unfortunately, very little has transpired between LADWP and the Tribe throughout the irrigation season resulting in the delivery of very little water to the Tribal community by LADWP. The Tribal community has been negatively impacted by the huge reduction in water which LADWP has delivered and as a result vegetable gardens have dried up and trees are dying throughout the Big Pine Indian Reservation.

The Tribe respectfully requests that the Los Angeles Department of Water and Power (LADWP) fully comply with its obligation to annually deliver four acre feet of water per acre to the 279.08-acre Big Pine Indian Reservation, as called for in the 1939 land exchange agreement between the City of Los Angeles Department of Water and Power and the United States of America (hereafter referred to as the 1939 agreement).

The 1939 agreement, section 32, clearly states, *"The City hereby agrees at all times to bear all operation, maintenance, and betterment charges entailed in the due performance of its obligations."* The Tribe interprets this and other language in the 1939 agreement to mean that LADWP is responsible for delivery of the required water until it comes into the system located on Tribal land. If, as time goes by, the LADWP conveyance facilities require repairs, maintenance, or even updating, then LADWP is obligated to address these needs so there is no lapse in the City's ability to meet its water delivery requirement to the Reservation "in perpetuity."

The attached Letter of Permission which has been revised numerous times over the course of the irrigation season does not provide for water to flow to the Tribal lands, but allows tribal staff to do routine operations of turning valves and removing leaves or debris prior to water entering the trunk line from the holding pond. LADWP staff indicated that they would not do those routine activities and desired to have a Letter of Permission in place to approve of the activities since they were being done on City of Los Angeles land. This Letter of Permission will do nothing to alter the dilapidated condition of the trunk line which is in desperate need of repair in order for water to be able to move freely through it and onto Tribal lands. The dilapidated trunk line has created a water loss to the Reservation lands of approximately 1,259 acre-feet of water in 2015

and 2016 which has a monetary value of \$1.26 million dollars. As a result, the Tribe will be invoicing LADWP the monetary value of the water not delivered to Tribal lands.

The Tribe and the Tribe's ancestors diverted and used water from Big Pine Creek since time immemorial. The 1939 land exchange allowed the Tribe to continue to access a small quantity of the creek water in perpetuity. The Tribe is entitled to the creek water and objects to using groundwater or canal water for its outdoor irrigation needs. Therefore, the Tribe demands that LADWP fix the trunk line using modern, durable piping as soon as possible so that water can flow to Tribal lands in 2017. It is imperative that the Reservation continue to receive its irrigation water allotment and that LADWP meet its obligation to supply this much-needed water to the Tribal community. After the trunk line has been repaired, the Tribe requests that LADWP consider conveying the land and the trunk line to the Tribe for responsibility of all future operation and maintenance activities.

The Tribe would like to meet with the LADWP Board of Commissioners to discuss this matter in hopes of determining a prompt resolution. Should you have any questions about this matter, please contact Jill Paydon, Tribal Administrator, j.paydon@bigpinepaiute.org, or (760) 938-2003 ext. 223.

Sincerely,



Shannon Romero
Tribal Chairwoman

Attachment

CC (w/o attachment): Mayor Eric Garcetti, City of Los Angeles
David Wright, LADWP General Manager
Inyo County Board of Supervisors
Cynthia Gomez, Tribal Advisor, Office of Governor Edmund G. Brown Jr.
Amy Dutschke, Pacific Regional Director, Bureau of Indian Affairs
U. S. Congressman Col. Paul Cook (Ret.)
California Assemblyman Devon Mathis
California Senator Tom Berryhill
U. S. Congresswoman Maxine Waters
California Senator Kevin DeLeón
U. S. Senator Barbara Boxer
U. S. Senator Dianne Feinstein

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

469 South Main Street
Bishop, CA 93514
(760) 872-5960
(800) 735-2929 (TT/TDD)
(800) 735-2922 (Voice)

#20



September 7, 2016

File No.: 825.12347.14437

Inyo County Board of Supervisors
P O Drawer N
Independence, CA 93526

Dear Board of Supervisors:

The enclosed report is submitted pursuant to Health and Safety Code Section 25180.7 (Proposition 65). The report documents information regarding the illegal discharge (or threatened illegal discharge) of hazardous waste, which could cause substantial injury to the public health or safety. The report is submitted on behalf of all designated employees of the Department of California Highway Patrol.

Sincerely,

T. P. Noyes
T. P. NOYES, Captain
Commander
Bishop Area

Enclosure

cc: Caltrans

RECEIVED
2016 SEP -9 AM 1:03
CALTRANS



HAZARDOUS MATERIALS INCIDENT REPORT

CHP 407E (Rev. 3-15) OPI 062 Refer to HPM 84.2, Chapter 2

OES CONTROL NUMBER 16-5456	COLLISION REPORT <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No NUMBER
--------------------------------------	---

HAZMAT CASUALTIES	NO. EXPOSED/ DECONNED	NO. INJURED	NO. KILLED	CITY Lone Pine	JUDICIAL DISTRICT Inyo County Superior	PHOTOGRAPHS BY <input type="checkbox"/> NONE ICSO SGT Carter ID 647
AGENCY PERSONNEL	0	0	0	COUNTY Inyo	NCIC 9825	HAZMAT PLACARDS DISPLAYED <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
OTHERS	0	0	0	TIME CALTRANS/COUNTY ROADS NOTIFIED 1716 HOURS	TIME O.E.S. NOTIFIED 1716 HOURS	STATE HIGHWAY RELATED <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
INCIDENT DATE (MM/DD/YYYY) 09/07/2016		INCIDENT TIME 1647 HOURS		TIME CALTRANS/COUNTY ROADS NOTIFIED 1716 HOURS		STATE HIGHWAY RELATED <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

INCIDENT OCCURRED ON
Whitney Portal Road

AT INTERSECTION WITH
 OR **East of Horseshoe Meadow Road**

MILEPOST INFORMATION

GPS COORDINATES
LATITUDE **36.118000°** LONGITUDE **-118.111420°**

NAME (FIRST, MIDDLE, LAST) Steven, Paul, Gallardo	DRIVER'S LICENSE NUMBER C5055379	STATE CA	VEH. YEAR 2007	MAKE Mack End Dump	LICENSE NUMBER 9E08600	STATE CA
---	--	--------------------	--------------------------	------------------------------	----------------------------------	--------------------

STREET ADDRESS 429 1ST St.	VEH. YEAR	MAKE	LICENSE NUMBER	STATE
--------------------------------------	-----------	------	----------------	-------

CITY/STATE/ZIP CODE Bakersfield/CA/93304	VEH. YEAR	MAKE	LICENSE NUMBER	STATE
--	-----------	------	----------------	-------

HOME PHONE (661)377-5194	BUSINESS PHONE (661)703-4610	CARRIER NAME Kelly Trucking LLC
------------------------------------	--	---

HAZMAT IDENTIFICATION SOURCES (CHECK ALL THAT APPLY)

On-site fire services Chemtrec

Private info source Poison Control Center

Off-site fire services Safety Data Sheet

On-site non-fire services Placards/Signs

Off-site non-fire services Shipping papers

Computer software Emergency Response Guidebook

Chemist No reference material used

Other

REGISTERED OWNER <input type="checkbox"/> SAME AS DRIVER Kelly Trucking LLC

OWNER'S ADDRESS <input type="checkbox"/> SAME AS DRIVER 3351 Fairhaven Dr Bakersfield, CA 93308

VEHICLE IDENTIFICATION NUMBER 1M2AK06C37N019313

VEHICLE TYPE 27	CA NUMBER 462772	DOT NUMBER
---------------------------	----------------------------	------------

CHEMICAL/TRADE NAME Diesel Fuel	UN NUMBER 1993	DOT HAZARD CLASS 3	QUANTITY RELEASED (LBS., GAL., ETC.) 5 gallons	EXTENT OF RELEASE Outside vehicle	PHYSICAL STATE STORED Liquid	PHYSICAL STATE RELEASED Liquid
---	--------------------------	------------------------------	--	---	--	--

CONTAINER TYPE Vehicular fuel tank	CONTAINER CAPACITY (LBS., GAL., ETC.) 40 gallons	CONTAINER MATERIAL Aluminum/Aluminum alloys	LEVEL OF CONTAINER Above ground
--	--	---	---

CHEMICAL/TRADE NAME Petroleum oil (engine)	UN NUMBER 1270	DOT HAZARD CLASS 3	QUANTITY RELEASED (LBS., GAL., ETC.) 2 gallons	EXTENT OF RELEASE Outside vehicle	PHYSICAL STATE STORED Liquid	PHYSICAL STATE RELEASED Liquid
--	--------------------------	------------------------------	--	---	--	--

CONTAINER TYPE Other (explain in Comments)	CONTAINER CAPACITY (LBS., GAL., ETC.) 12 gallons	CONTAINER MATERIAL Iron/Iron alloys	LEVEL OF CONTAINER Above ground
--	--	---	---

PROPERTY USE County/City road	SURROUNDING AREA Open land	PROPERTY MANAGEMENT County
---	--------------------------------------	--------------------------------------

RELEASE FACTORS Collision/Overturn Mechanical failure	EQUIPMENT TYPE INVOLVED Vehicle fuel system	HAZMAT CONFIRMED <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
---	---	---

CITATION ISSUED OR COMPLAINT TO BE FILED <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Not determined	PRIMARY CAUSE OF INCIDENT <input checked="" type="checkbox"/> Violation 21662	OTHER HAZARDOUS MATERIALS VIOLATIONS (NON-CAUSATIVE) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
---	--	---

<input type="checkbox"/> Other Code violation	DID WEATHER CONTRIBUTE TO CAUSE OR SEVERITY OF INCIDENT? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No WEATHER Clear
---	--

ELEMENTS (OUTLINE THE FOLLOWING ON A CHP 556. INCLUDE ADDITIONAL INFORMATION AS NECESSARY)

Sequence of events Evacuation details Cleanup actions CHP On-scene Personnel (name, rank, ID number, function, exposure, hours)

Road closures Environmental impact Actions of other agencies

COMPLETE THE FOLLOWING

Incident Action Plan Site Safety Plan Proposition 65 Letters: County Health/County Board of Supervisors

DATE AND TIME SCENE DECLARED SAFE 09/08/2016 1630 HOURS	BY WHOM (NAME, TITLE AND AGENCY) Joseph, A. Francone II / Sergeant / California Highway Patrol
---	--

PREPARER'S NAME, RANK, AND ID NUMBER Joseph A. Francone II, Sergeant, 12347	DATE 09/12/2016	REVIEWER'S NAME, RANK, AND ID NUMBER TIMOTHY P. NOYES, CAPTAIN, 14737	DATE 9/15/16
---	---------------------------	---	------------------------

Destroy Previous Editions

An Internationally Accredited Agency

Chp407E_0515.pdf

DATE OF INCIDENT/OCCURRENCE 09/07/16	TIME (2400) 1647	NCIC NUMBER 9825	OFFICER I.D. NUMBER 12347	NUMBER
"X" ONE <input checked="" type="checkbox"/> Narrative <input type="checkbox"/> Supplemental		"X" ONE <input type="checkbox"/> Collision Report <input checked="" type="checkbox"/> Other: 407E		TYPE SUPPLEMENTAL ("X" APPLICABLE) <input type="checkbox"/> BA Update <input checked="" type="checkbox"/> Hazardous Materials <input type="checkbox"/> Fatal <input type="checkbox"/> School Bus <input type="checkbox"/> Hit and Run Update <input type="checkbox"/> Other:
CITY/COUNTY/JUDICIAL DISTRICT Inyo County Superior Court			REPORTING DISTRICT/BEAT 022	CITATION NUMBER
LOCATION/SUBJECT			STATE HIGHWAY RELATED <input type="checkbox"/> Yes <input type="checkbox"/> No	

1. **SEQUENCE OF EVENTS:**

2. On Wednesday, September 7, 2016 at approximately 1647 hours, a Mack 3 axle end dump truck was traveling east

3. bound in the east bound lane of Whitney Portal Road east of Horseshoe Meadow Road at approximately 90 MPH

4. in an unincorporated portion of Inyo County. The driver (Gallardo) was experiencing a run-away condition as he

5. descended east bound on Whitney Portal Road in a construction zone, while transporting approximately 12 yards of

6. asphalt aggregate material in an end dump 3 axle truck. Due to Mr. Gallardos uncontrolled speed, he was unable to

7. negotiate a left hand curve in the roadway and he lost control of the truck. Mr. Gallardo's truck overturned onto its

8. left side and impacted with the dirt and rock embankment located south of the south roadway edge of Whitney

9. Portal Road and east of Horseshoe Meadow Road. As a result of the collision, the right side saddle fuel tank on the

10. truck developed a small leak and approximately 5 gallons of diesel fuel leaked out onto the south dirt shoulder.

11. The truck came to rest on its right side on the south dirt shoulder and approximately 2 gallons of engine oil leaked

12. out of the crank case onto the south dirt shoulder.

13.

14. Upon arrival, CHP Sergeant Francone, contacted members of the Lone Pine Volunteer Fire Department and had

15. them plug the leak on the saddle fuel tank. The spill of diesel fuel and engine oil was contained to an area

16. approximately 5 feet in diameter under the right side of the vehicle on the south dirt shoulder. Inyo County

17. Environmental Health and Inyo County Road Department were notified of the hazardous material spill at 1716

18. hours. The California Department of Fish and Wildlife was notified at 1722 hours due to the spill being located in

19. the watershed above Lone Pine Creek. No representatives from Environmental Health or Fish and Wildlife

20. responded to the scene. Kelly Trucking LLC contracted with Hat Creek Construction to perform clean-up

21. operations. Kurt Emerald, Superintendent/ Hazardous Material Specialist, Hat Creek Construction oversaw the

22. clean-up of the spill. The scene was declared stable at 2000 hours, on 09/07/2016. Clean-up continued on

23. 09/08/2016, and the scene was declared safe at 1630 hours by CHP Sergeant, Joseph A. Francone.

24.

25. **ROAD CLOSURE:**

26. Whitney Portal Road was closed to traffic from Horseshoe Meadow Road to Movie Flat Road for approximately 3

27. hours and 15 minutes on 09/07/2016, to facilitate vehicle recovery and removal of spilled asphalt aggregate. The

28. roadway was opened at 2000 hours. On 09/08/2016, the roadway was open to through traffic with piloted escort

29. from 0630 until 1630 to facilitate final clean-up of the spilled asphalt aggregate.

30.

31.

PREPARER'S NAME and I.D. NUMBER Joseph A. Francone, #12347	DATE 09/12/16	REVIEWER'S NAME TIMOTHY P. NOYES	DATE 9/15/16
---	------------------	-------------------------------------	-----------------

DATE OF INCIDENT/OCCURRENCE 09/07/16	TIME (2400) 1647	NCIC NUMBER 9825	OFFICER I.D. NUMBER 12347	NUMBER
"X" ONE <input checked="" type="checkbox"/> Narrative <input type="checkbox"/> Supplemental		"X" ONE <input type="checkbox"/> Collision Report <input checked="" type="checkbox"/> Other: 407E		TYPE SUPPLEMENTAL ("X" APPLICABLE) <input type="checkbox"/> BA Update <input checked="" type="checkbox"/> Hazardous Materials <input type="checkbox"/> Fatal <input type="checkbox"/> School Bus <input type="checkbox"/> Hit and Run Update <input type="checkbox"/> Other:
CITY/COUNTY/JUDICIAL DISTRICT Inyo County Superior Court			REPORTING DISTRICT/BEAT 022	CITATION NUMBER
LOCATION/SUBJECT			STATE HIGHWAY RELATED <input type="checkbox"/> Yes <input type="checkbox"/> No	

1. **EVACUATION DETAILS:**

2. No evacuation was required.

3. _____

4. **ENVIRONMENTAL IMPACT:**

5. Approximately 5 gallons of diesel fuel and 2 gallons of engine oil was spilled onto the dirt shoulder of the
 6. roadway. Due to the location and condition of the incident, the spill was contained in place.

7. . Surface Water Pollution: None

8. . Air Pollution: None

9. . Soil Contamination: An area of approximately 5 feet in diameter sustained contamination to a depth of
 10. approximately 2 feet.

11. _____

12. **CLEAN UP ACTIONS:**

13. Hat Creek Construction Inc. facilitated the cleanup efforts. They were supervised by their Superintendent, Kurt
 14. Emerald and Project Manager Sharon Armstrong, RockSol Consulting Group Inc.

15. _____

16. **ACTIONS OF OTHER AGENCIES:**

17. Inyo County Road Department: Provided fixed post traffic control.

18. _____

19. Lone Pine Fire Department: Provided on scene medical care, scene stability oversight, diesel fuel leak mitigation.

20. _____

21. **CHP PERSONNEL INVOLVED:**

22. _____

Name	Rank/ID	Function	Exposed	Injured	Total Hours
------	---------	----------	---------	---------	-------------

J. A. Francone	Sgt., #12347	Incident Comm.	No	No	10
----------------	--------------	----------------	----	----	----

J. Patch	Off., #20335	Collision Inv.	No	No	3
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26. _____

27. The scene was declared safe on September 08, 2016, at 1630 hours, by Sergeant J. Francone, #12347, Bishop Area
 28. California Highway Patrol.

29. _____

30. _____

31. _____

PREPARER'S NAME and I.D. NUMBER Joseph A. Francone, #12347	DATE 09/12/16	REVIEWER'S NAME	DATE
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