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# COUNTY OF EL DORADO, CALIFORNIA

## BOARD OF SUPERVISORS POLICY

Subject:  <b>PAYMENT OR REIMBURSEMENT TO CONSULTING PARTIES ON COUNTY PROJECTS</b>	Policy Number:  <b>A-8</b>	Page Number:  <b>1 of 3</b>
	Date Adopted: <b>XX/XX/2022</b>	Effective Date: <b>XX/XX/2022</b>

### I. PURPOSE

The purpose of this policy is to:

- A. Formalize the position of El Dorado County (County) on providing payment or reimbursement to interested third parties requesting consultation prior to and during review under the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) for projects in the County.

### II. POLICY

- A. While the County welcomes consultation with responsible and trustee agencies and interested third parties, including federal agencies and California Native American tribes (tribes), it is not the policy of the County to compensate individuals, organizations, or governments for participating in the consultation process or for providing information or comments during the administrative environmental review process.
- B. Unless expressly required by state or federal law, the County will not pay for or reimburse any consulting party for costs, expenses, or time incurred by the third party in order to review or evaluate environmental documents or consult with the County about the impacts, potential mitigation, or any other aspect of a project as permitted or required under state or federal law.
- C. In cases when the County requests tribes, organizations, or individual members of the public to perform services that the County would normally pay a professional contractor or consultant to provide, it is appropriate to provide financial compensation. The County will follow Exhibit 3.3 and Exhibit 3.4 of Volume 2 of Chapter 3 of the Caltrans Standard Environmental Reference to determine whether to provide compensation to Tribal Experts. In such situations, the necessary contracts shall be prepared and approved by the County Board of Supervisors or Department Director, as appropriate, and County Counsel prior to performance of the services or issuance of payment.

### III. REFERENCES

- A. Pursuant to Section 21080.3 of CEQA, lead agencies are required to initiate consultation with tribes that are traditionally and culturally affiliated with the geographic area of the proposed project. While CEQA, through inclusion of Assembly Bill 52 (AB 52), now requires consultation with tribes who request to consult, it does not require local agencies to pay a tribe’s consultation costs.
- B. ~~As it relates to Section 106 of the National Historic Preservation Act (NHPA) on tribal consultation, t~~The Advisory



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~~Council on Historic Preservation (ACHP) provides guidance<sup>1</sup> on when to provide assistance, including financial compensation, to a consulting party such as an Indian tribe, as part of the review process under Section 106 of the National Historic Preservation Act (NHPA). That guidance addresses the issue of compensation dependent upon what activities are being carried out by a consulting party and when the party should or should not expect payment for their activities. Guidance on the topic of paying fees to tribes for consultation, and can be found at the following link: <https://www.achp.gov/>. In a summary statement, the ACHP states the following:~~

~~While ACHP's regulations encourage the active participation of Indian tribes, they do not obligate Federal agencies or applicants to pay for consultation. If an agency or applicant attempts to consult with an Indian tribe and the tribe demands payment, the agency or applicant may refuse and move forward.~~

~~If, on the other hand, the agency or applicant seeks information or documentation that it would normally obtain from a professional contractor or consultant, they should expect to pay for the work product.~~

~~When the line between the two is unclear, the agency or applicant is encouraged to act in a manner that facilitates, rather than impedes, effective tribal participation in the Section 106 process.~~

- C. ~~Caltrans has adopted guidance on Tribal Consultation in Volume 2, Chapter 3, of the Standard Environmental Reference (SER). Under Exhibit 3.3 to the SER, Caltrans has stated that Caltrans is unable to provide compensation to tribal governments for engagement in consultation. This includes providing comments in review of documents, expressing views about findings or determination, or providing views and advice in the in the context of Caltrans fulfilling its legal obligation to consult with tribal governments and the identification and treatment of historic properties. Caltrans will, however, provide compensation to Tribal Experts in the same manner it would procure expert opinions or services. Caltrans Division of Local Assistance has notified the County that similarly federal funds cannot be used to pay consulting parties for state of federally funded transportation projects for costs related to consultation, but can be used to provide compensation for Tribal Experts. Caltrans Division of Local Assistance has notified the County that federal funds cannot be used to pay consulting parties for state of federally funded transportation projects. The only exception pertains to payment for Native American project site monitoring. In such cases, it is Caltrans' practice to compensate Native American monitors for their assistance on Caltrans archaeological investigations and construction projects unless it is agreed upon by both parties that payment is not necessary.~~

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<sup>1</sup> The guidance can be found at <https://www.achp.gov/digital-library-section-106-landing/guidance-assistance-consulting-parties-section-106-review>.



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D. While the County strongly supports consultation as the cornerstone of AB 52, Section 106, and other similar processes, there is no legal basis from which to conclude that consulting parties must be reimbursed for expenses incurred during or comments or information provided as part of routine consultation. Reimbursing for consultation also raises concerns regarding neutrality and potential conflict of interests.

**IV. RESPONSIBLE DEPARTMENT**

Department of Transportation

**VI. DATES ISSUED AND REVISED; SUNSET DATES:**

<b>Originally Adopted:</b>	06/05/2018	<b>Sunset Review Date:</b>	06/05/2022
<b>Revision Date:</b>	06/13/2022	<b>Sunset Review Date:</b>	06/XX/2026

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