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MAIDU

United Auburn Indian Community
of the Auburn Rancheria

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Vice Chairman

Calvin Moman
Secretary

Jason Camp
Treasurer

Gabe Cayton
Council Member

June 4, 2018

Shiva Frentzen, Chairperson
El Dorado County Board of Supervisors
330 Fair Lane
Placerville, CA 95667

Re: Board of Supervisors June 5, 2018, Meeting, Item 23, Payment or Reimbursement to Consulting Parties on County Projects

Request to Pull from Consent Calendar for Consultation

Dear Chairperson Frentzen:

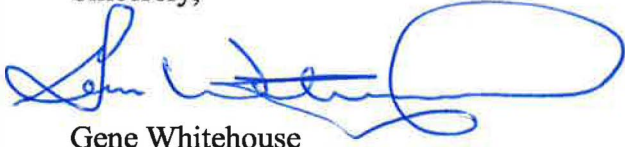
It has come to the attention of the United Auburn Indian Community Tribal Council that the El Dorado County Board of Supervisors is considering a policy on the *Payment or Reimbursement to Consulting Parties on County Projects* at its next Board Meeting on June 5, 2018. We received notice less than a week ago that the policy was being considered, and we have not been given an opportunity to consult with the County on the policy's content. We believe that the policy would benefit from consultation between the County and our Tribe.

The policy is currently listed as Agenda Item 23 on the Land Use and Development – Consent Calendar. After reviewing the policy, we believe it creates some ambiguities regarding AB 52 consultations between the County and our Tribe that we would like an opportunity to discuss. While not entirely clear, it appears that the policy could have an impact on our Tribe and the work we do to protect burials and other sacred places in El Dorado County, depending on the policy's intent and how the policy is interpreted.

For that reason, on behalf of the Tribal Council, I respectfully request an opportunity for Tribal representatives to discuss the policy with you or your staff before it is approved. We make this request so that we can better understand the policy's intent and ensure that any concerns we may have can be shared with you and your staff, and potentially addressed, before the policy is approved. Enclosed is a redlined version of the policy that illustrates some of the clarifying revisions we would like to discuss. We believe that our concerns can be addressed in a relatively short period of time, so that consideration of the policy is not unreasonably delayed.

We therefore request that the item be removed from the consent calendar and that the policy's approval be delayed until we have had an opportunity to consult with you on its terms. Please let me know how the County intends to proceed, so that we may have the appropriate personnel attend your meeting, if necessary.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gene Whitehouse", with a large, stylized flourish at the end.

Gene Whitehouse
Chairman

Enclosure

cc: Terrie Robinson, General Counsel, Native American Heritage Commission



**COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

Subject: PAYMENT OR REIMBURSEMENT TO CONSULTING PARTIES ON COUNTY PROJECTS	Policy Number: A-8	Page Number: 1 of 2
	Date Adopted: XX/XX/XXXX	Effective Date: XX/XX/XXXX

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, and otherwise related to review under the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) for projects in the County.

Commented [BG1]: Comment: additional consultation can be necessary during project implementation ("post" CEQA) related to discoveries, implementation of mitigation measures, etc.

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. Examples of appropriate services for compensation include producing summaries of archaeological, anthropological, or ethnographic work; sensitivity and GIS analysis and mapping; Tribal Historic Preservation Office records searches; literature reviews; archival research; reburial coordination (as an alternative to curation); Tribal Cultural Resources (TCR) or National, California, or local historic register evaluations; and tribal monitoring. 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.

Commented [BG2]: Comment: the policy should include a section stating whether the policy was developed in consultation with, and whether it reflects the input of, affected tribes.



**COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

B. As it relates to Section 106 of the National Historic Preservation Act (NHPA) on tribal consultation, the Advisory Council on Historic Preservation (ACHP) provides guidance on the topic of paying fees to tribes for consultation. Details may be found on the ACHP's website: <http://www.achp.gov/>, however, in a summary statement, the ACHP states the following:



**COUNTY OF EL DORADO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

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	Date Adopted: XX/XX/XXXX	Effective Date: XX/XX/XXXX

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 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.
- 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 to provide comments or information provided as part of during consultation. Reimbursing for consultation also may raises concerns regarding neutrality and potential conflict of interests.

Commented [BG3]: Comment: this section should include a citation to the authority for CalTrans’ statement, and whether that authority was developed in consultation with tribes.

IV. RESPONSIBLE DEPARTMENT

Department of Transportation

VI. DATES ISSUED AND REVISED; SUNSET DATES:

Issue Date:	XX/XX/XXXX	Sunset Review Date:	XX/XX/XXXX
Revision Date:	XX/XX/XXXX	Sunset Review Date:	XX/XX/XXXX