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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: 11/08/2022	Effective Date: 11/08/2022

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.



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- B. The Advisory Council on Historic Preservation (ACHP) has adopted guidance¹ 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.

- 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 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 or federally funded transportation projects for costs related to consultation, but can be used to provide compensation for Tribal Experts.

- 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:

Originally Adopted:	06/05/2018	Sunset Review Date:	06/05/2022
Revision Date:	08/10/2022	Sunset Review Date:	08/10/2026

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