

# MINUTES



# County of Inyo Board of Supervisors

**March 7, 2017**

The Board of Supervisors of the County of Inyo, State of California, met in special session at the hour of 2:10 p.m. on March 7, 2017, in the Water Department Conference Room, 135 S. Jackson St., Independence, with the following Supervisors present: Chairperson Mark Tillemans, presiding, Dan Totheroh, Rick Pucci, Jeff Griffiths and Matt Kingsley.

*PLEDGE* Supervisor Dan Totheroh led the pledge of allegiance.

*PUBLIC COMMENT* Chairperson Tillemans asked for public comment and there was none.

*BOS – TRIBAL CONSULTATION TRAINING* Representatives of the Native American Heritage Commission were in attendance to provide training to elected and staff representatives of the County (including members of the Board of Supervisors) who will be participating in Tribal consultations pursuant to the County's "Policy and Protocol for Tribal Consultation," which was adopted by the Board of Supervisors on October 11, 2016. Chairperson Tillemans said the Board was proud to have arrived at this point in the process, although it did take a while to get here. Introductions were made around the room. Laura Miranda, NAHC Vice Chair, asked if a Tribal elder or Tribal member could open the meeting with a blessing, and David Andrews, Tribal Historic Preservation Officer for the Bishop Paiute Tribe, obliged. Terrie L. Robinson, NAHC General Counsel, began a PowerPoint presentation on "Tribal Consultation Under AB 52: Requirements and Best Practices." The presentation lasted for approximately an hour and a half, and included the goals of Tribal Consultation (via AB 52 or otherwise) for planning (to get information needed to avoid or preserve cultural resources in place, build working relationships with Tribes, and avoid inadvertent discoveries of Native American burials); AB 52 Tribal Consultation Procedural Requirements; AB 52 Consultation Substantive Requirements; NAHC's Proposed AB 52 Tribal Consultation Best Practices; and the five most important things agencies should know about AB 52. Tribal representatives noted they are used to working closely with Federal agency representatives on various projects in the area and are accustomed to being included in the process very early on. Sally Manning, Big Pine Paiute Tribe Environmental Director, mentioned the benefits of archaeology work being done by federal agencies upfront. Miranda said she could appreciate that, but it's important to remember archaeologists perform a different analysis than Tribes would. Through the AB 52 consultation process, Tribes don't have to only be represented by an agency's archaeologists and can address their own cultural resources, going beyond the archaeological record. Kathy Bancroft, THPO for the Lone Pine Paiute Shoshone Tribe, said archaeologists are helpful in conveying the importance of cultural resources on behalf of Tribes to agency staffs. Andrews said Tribes are able to sit at the table with Federal agencies when projects are being made and everyone is looking at the big picture. He said with the County, consultation is not possible because of tight schedules dictated by funding sources. Supervisor Totheroh, commenting as a former federal employee, said the big difference between what the Federal government and the County are doing is the Federal government is implementing its own projects while the County is usually overseeing other entities' projects and timelines. Supervisor Kingsley said it's not fair to compare the County to the Federal government for those reasons but also because those agencies are not governed by an elected Board of Supervisors that represents a broad range of interests. Miranda said she agreed. She also said Tribes have a much better shot at getting cultural resources protected under CEQA than the Federal government. CAO Carunchio said consultation can provide an opportunity to start creating a repository of knowledge from the cultural information Tribes provide about local cultural resources. This repository could benefit all agencies as they attempt to proceed with projects, in that they wouldn't have to be independently assembling the same information. Miranda said he hit the nail on the head, noting a major purpose of AB 52 was to get Tribes talking about ways to identify their cultural regions in general. Supervisor Totheroh noted there are understandable trust issues in the

Tribal community about divulging the locations of sensitive sites. Robinson said trust is a huge issue when dealing with Tribes. Bancroft said County employees will offer their personal assurance that they will not leak sensitive cultural information, but cannot guarantee what happens after they are gone because no policy is in place to protect sensitive cultural information. Robinson said both sides of the consultation need to look at the information they share as confidential, and noted that AB 52 requires cultural information be kept from public disclosure. Laura Miranda followed with another hour-and-a-half-long presentation that highlighted the differences between the County's Policy and Protocol (P&P) and AB 52 and SB 18. She explained how the County's P&P provides greater rights to Tribe's under the consultation process than are afforded by either piece of legislation. The P&P seeks to initiate consultation with Tribe's at the earliest point in the CEQA review process, does not require Tribe's to request notice of projects before providing it, includes a broader definition of "Tribal cultural resources," clearly defines the role of staff in the consultation process, and in general provides for broader protections of cultural resources than AB 52 or SB 18. Robinson noted the P&P is intended to be the jumping off point for individual MOUs with each of the Tribes, but the MOUs can in no way undermine the State consultation laws, nor will they take away any of the rights extended in the P&P. She said the P&P will stand regardless of what happens with the MOUs. Andrews said he didn't think the County really understands how often the Tribes deal with Federal agencies in the early stages of their projects – sometimes two years in advance. He said it's good to know the County's P&P is kind of going in that direction but it falls short of true consultation. He said he applauded the County for attempting to do this but unless the Brown Act is repealed, it's not really consultation because not all policymakers will be participating in the consultation. Robinson told Andrews that the County is limited in how many supervisors can participate in Tribal consultations because of the Brown Act, but said if everyone is participating like he is used to, it's not real consultation anyway. She pointed out that he wouldn't want all five Supervisors participating in consultation at the same time because that would make consultation subject to the Brown Act (although AB 52 consultation is exempt) and any information exchanged therein becomes public record. Andrews said he worries the County will streamline and fast track projects and then not have time to speak with Tribes and Tribal members as they push developers' projects through. Miranda told him the County of Inyo is responsible for CEQA compliance and cannot simply check a box on consultation, but must make a true good faith effort. She said the Federal and State processes are never going to be the same, but urged Andrews and local Tribes to give the County's consultation policy a chance. She said both the County and the Tribes have the same end goal, after all, and that it to protect the resources, which she said are important to everyone. Robinson said even though they should give the consultation policy a chance, Tribes can also consult with the County on the policy itself if they wish. Supervisor Tillemans concluded the meeting by noting it is the Board's intent to build stronger, better relationships and to find commonalities with the Tribes. He noted that a tremendous amount of work went into the P&P by many staff members. Miranda offered to return for future training, noting that the NAHC is committed to helping strengthen the relationships between local agencies and Tribes in the Owens Valley.

**ADJOURN**

Chairperson Tillemans adjourned the meeting at 5:01 p.m. to 8:30 a.m. Tuesday, March 14, 2017 in the Board of Supervisors Room at the County Administrative Center in Independence.

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Chairperson, Inyo County Board of Supervisors

Attest: *KEVIN D. CARUNCHIO*  
*Clerk of the Board*

by: \_\_\_\_\_  
*Darcy Ellis, Assistant*

