



County of Santa Cruz Board of Supervisors

Agenda Item Submittal

From: Board of Supervisors - Third District

Subject: Tribal Consultation Compensation

Meeting Date: August 19, 2025

Formal Title: Approve a pilot program that compensates local California Native American Tribes for their consultation on County permitted projects for the purpose of protecting and preserving Tribal Cultural Resources, and take related actions

Recommended Actions

1. Approve, as a three-year pilot program, the process outlined below for compensating local California Native American tribes for the consultation, required by the California Environmental Quality Act and general plan law, on County permitted projects for the purpose of protecting and preserving Tribal Cultural Resources; and
2. Direct Community Development and Infrastructure staff to develop protocols to implement the program and modify the Unified Fee Schedule to address associated fees.

Executive Summary

Under both the California Environmental Quality Act (CEQA) and general plan law, as well as County Code Chapter 16.40, the County is required to notify Native American tribes to provide consultation opportunities in the identification and mitigation of potential impacts on Tribal Cultural Resources. With limited resources, providing this important role has proven to be a significant challenge, often limiting local tribes' ability to engage meaningfully and comprehensively. This pilot is an attempt to provide reasonable compensation to ensure that effective tribal consultation occurs.

Discussion

Before local jurisdictions can approve projects subject to CEQA as well as general plan amendments, State law (e.g., AB 52, AB 130, SB 18, etc.) requires public agencies to consult with Native American tribes that are traditionally and culturally affiliated with lands that are within a locality's jurisdiction and who are on the contact list maintained by the Native American Heritage Commission (Attachment A). Consultation is not required on projects that are exempt from CEQA.

County staff are currently meeting State law requirements for consultation and following the required process. The first step in this process is for the public agency to contact local tribes to request consultation. The law specifies the number of days for the tribe to respond, indicating whether they wish to engage in consultation. If a tribe wishes to consult, the nature of the consultation will depend on the particular project and the potential issues it raises.

Similarly, sections of the County Code in Chapter 16.40 also provide for Tribal consultation in the event of the discovery of a Tribal Cultural Resource during the review of a proposed project and the subsequent determination of appropriate mitigation.

The Native American tribes in our area have limited financial resources and are relatively small having been decimated by abuses of the Mission era and early California State extermination policies and incentives. Without adequate financial resources and capacity to respond, the Lead Agency requests to consult risks becoming a meaningless illusory exercise. Tribes are constrained in their ability to adequately research whether a particular project might impact an important cultural resource. Even when Tribal Cultural Resources are identified, the financial cost of engaging in meaningful consultation can be overwhelming resulting in impacts that could be avoided or mitigated.

Other expert consultants and County staff participating in CEQA review and general plan amendment processes are paid. For example, if biological and/or traffic consultants are required, they receive compensation for their work. With compensation, tribes will have adequate resources to complete consultation expeditiously avoiding potential project delays. It is neither fair nor reasonable to expect our local Native American tribes to provide effective consultation on County projects with their limited resources.

Protecting and preserving Native American cultural and sacred sites and other physical and cultural resources is an important value for the County which this Board has consistently supported in the past. Meaningful tribal consultation provides significant benefits to the County as a multicultural community. Therefore, providing tribes with financial compensation to encourage their active participation in the consultation process is important, fair, and justified.

Because each project is different and involves different issues, the proposed compensation process needs to be flexible. In light of this, the proposed approach would involve three steps:

1) Initial contact

- Tribes would be notified of a project in the County that might require tribal consultation. Tribes interested in engaging in the consultation process would notify the County of their interest, which would initiate the process.

2) Is consultation requested by the tribe

- Since the determination as to whether consultation is necessary involves research, minimum compensation at a flat rate of \$200 should be paid to tribes that respond to the County's notification regarding consultation under the following conditions:
 - If tribes provide written documentation that they have researched the project and do not want to consult on a particular project.
 - If a tribe notifies the County that they wish to participate in the consultation process, they would be required to indicate their concerns using the template from the Native American Heritage Commission (NAHC) identifying their issues (Attachment B).
 - If the tribe fails to provide the necessary documentation within the specified time they will receive no compensation.

- The initial consultation fees will be added to the Unified Fee Schedule, no later than the December 2025 update and earlier, if feasible.

3) Consultation compensation. If a tribe wishes to consult, the County shall engage in an agreement with the consulting Tribe to provide identified services.

- To receive compensation for participating in the consultation process, the Tribal representative must present an anticipated timeline, scope and requested pay rate at the first consultation meeting for negotiation with the County.
- Then, the County and Tribal representative shall enter into an agreement establishing the amount and structure for compensation, with a financial cap provided, however, that if the initial investigations reveal that additional study and investigations are necessary for comprehensive identification of Tribal Cultural Resources and appropriate mitigation of project impacts, County staff may amend the agreement to cover associated costs.
- The costs of such services shall be paid by the project applicant and will vary depending on the scope, scale, and location of the project.
- The agreement shall clarify that even if compensation is fully expended, consultation may continue.

The goal of the recommended actions is to assist Native American tribes protect their cultural resources by providing them with the financial resources to do so. However, since the County has no experience with this approach, it is prudent to initiate the program as a three-year pilot so that the effectiveness of this approach can be evaluated before it becomes permanent.

Financial Impact

There is no immediate financial impact from approving the recommendation. For private and non-County public projects, tribal compensation would be included in the fees paid by the applicant for project review. For County CEQA projects, the cost of tribal compensation would be included in the budget for project review.

Strategic Initiatives

Equity Framework - Community Voices & Partnership
Operational Plan - Sustainable Environment

Submitted By:

Justin Cummings, Third District Supervisor

Recommended By:

Carlos J. Palacios, County Executive Officer

Artificial Intelligence Acknowledgment:

Artificial Intelligence (AI) did not significantly contribute to the development of this agenda item.

Attachment A. Tribal Consultation Process

CEQA (AB52) and General Plan & Open Space (SB18) AB52 and SB18 each require lead agencies and local governments to consult with tribes to identify and mitigate impacts on Tribal Cultural Resources. This side-by-side description lays out the process for each. See also County Code Chapter 16.40 for additional local requirements.

TRIBAL CONSULTATION PROCESS AND TIMELINES

With whom should lead agencies or local governments consult?

SB 18: With federally recognized California Native American tribes, or non-federally recognized California Native American tribes, that are within the local government's jurisdiction, are on the contact list maintained by the Native American Heritage Commission (NAHC), and are affected by the proposed plan adoption or amendment. Gov. Code §65352.3.

AB 52: A tribe that is traditionally and culturally affiliated to the geographic area where a project is located and requested that the lead agency in question provide, in writing, notification to the tribe of projects in the tribe's area of traditional and cultural affiliation. Pub. Res. Code § 21080.3.1(b)(1).

How is tribal consultation initiated? When?

SB 18: First, the local government should contact tribes about the opportunity to consult. Then, tribes have 90 days to request consultation. Gov. Code § 65352.3(a)(2).

AB 52: First, the lead agency should contact tribes that have requested notification of projects within 14 days of a completed application or of the lead agency's decision to undertake a project. Then, tribes have 30 days to request consultation. Pub. Res. Code § 21080.3.1(d).

What actions does each law apply to?

SB 18: The adoption or amendment of general plans or specific plans, or designation of open space. Gov. Code § 65352.3(a)(1).

AB 52: All CEQA projects for which a Notice of Preparation, Notice of Mitigated Negative Declaration, or Notice of Negative Declaration is filed or issued. Pub. Res. Code § 21080.3.1.

What triggers SB 18 or AB 52?

SB 18: Proposed amendment or adoption of a general plan or a specific plan, or the designation of open space. The local government sends proposal information to the NAHC and requests contact information for tribes with traditional lands or places located in geographic area affected by proposed changes. Gov. Code § 65352.3(a)(1).

AB 52: Written request for notification of projects in their areas of traditional or cultural affiliation. Pub. Res. Code § 21080.3.1(b).

How long does tribal consultation last?

Under SB 18 and AB 52, consultation ends when (1) the parties reach mutual agreement concerning appropriate measures for preservation or mitigation; or (2) either party, acting in good faith or after reasonable effort, concludes that mutual agreement cannot be reached concerning appropriate measures of preservation or mitigation. Pub. Res. Code § 21082.3(a)-(b)(1).

Attachment B: NAHC template response to request for consultation

Sample letter from a California Indian tribe, as defined in Chapter 905 of the Statutes of 2004, to a lead agency requesting consultation pursuant to Assembly Bill 52 (Gatto, 2014), Public Resources Code Section 21080.3.1, subds. (b), (d) and (e).

[Tribe Letterhead]

<Date>

<Lead Agency Address>

RE: Formal Request for Tribal Consultation Pursuant to the California Environmental Quality Act (CEQA), Public Resources Code section 21080.3.1, subds. (b), (d) and (e) for <Project Name>, <City and/or County>.

Dear < >:

This letter constitutes a formal request for tribal consultation under the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21080.3.1 subdivisions (b), (d) and (e)) for the mitigation of potential project impacts to tribal cultural resource for the above referenced project. <Tribe name> requested formal notice and information for all projects within your agency's geographical jurisdiction on <date of letter> and received notification on < date of lead agency response> regarding the above referenced project. Attached please find copies of those letters. <Tribe name> requests consultation on the following topics checked below, which shall be included in consultation if requested (Public Resources Code section 21080.3.2, subd. (a)):

- Alternatives to the project
- Recommended mitigation measures
- Significant effects of the project

<Tribe name> also requests consultation on the following discretionary topics checked below (Public Resources Code section 21080.3.2, subd. (a)):

- Type of environmental review necessary

- Significance of tribal cultural resources, including any regulations, policies or standards used by your agency to determine significance of tribal cultural resources

- Significance of the project's impacts on tribal cultural resources

- Project alternatives and/or appropriate measures for preservation or mitigation that we may recommend, including, but not limited to:

(1) Avoidance and preservation of the resources in place, pursuant to Public Resources Code section 21084.3, including, but not limited to, planning and construction to avoid the resources and protect the cultural and natural context, or planning green space, parks or other open space, to incorporate the resources with culturally appropriate protection and management criteria;

(2) Treating the resources with culturally appropriate dignity taking into account the tribal cultural values and meaning of the resources, including but not limited to the following:

- a. Protecting the cultural character and integrity of the resource;
- b. Protection the traditional use of the resource; and
- c. Protecting the confidentiality of the resource.

(3) Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.

(4) Protecting the resource.

Additionally, <Tribe name> would like to receive any cultural resources assessments or other assessments that have been completed on all or part of the project's potential "area of project effect" (APE), including, but not limited to:

1. The results of any record search that may have been conducted at an Information Center of the California Historical Resources Information System (CHRIS), including, but not limited to:

- A listing of any and all known cultural resources have already been recorded on or adjacent to the APE;
- Copies of any and all cultural resource records and study reports that may have been provided by the Information Center as part of the records search response;
- If the probability is low, moderate, or high that cultural resources are located in the APE.
- Whether the records search indicates a low, moderate or high probability that unrecorded cultural resources are located in the potential APE; and
- If a survey is recommended by the Information Center to determine whether previously unrecorded cultural resources are present.

2. The results of any archaeological inventory survey that was conducted, including:

- Any report that may contain site forms, site significance, and suggested mitigation measures.
- Significance of the project's impacts on tribal cultural resources.
- All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum, and not be made available for public disclosure in accordance with Government Code Section 6254.10.

3. The results of any Sacred Lands File (SFL) check conducted through Native American Heritage Commission. The request form can be found at http://www.nahc.ca.gov/slf_request.html. USGS 7.5-minute quadrangle name, township, range, and section required for the search.

4. Any ethnographic studies conducted for any area including all or part of the potential APE; and

5. Any geotechnical reports regarding all or part of the potential APE.

We would like to remind your agency that CEQA Guidelines section 15126.4, subdivision (b)(3) states that preservation in place is the preferred manner of mitigating impacts to archaeological sites. Section 15126.4, subd. (b)(3) of the CEQA Guidelines has been interpreted by the California Court of Appeal to mean that "feasible preservation in place must be adopted to mitigate impacts to historical resources of an archaeological nature unless the lead agency determines that another form of mitigation is available and provides superior mitigation of impacts." *Madera Oversight Coalition v. County of Madera* (2011) 199 Cal.App.4th 48, disapproved on other grounds, *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439. <Tribe name> expects to begin consultation within 30 days of your receipt of this letter.

Please contact <Tribe name> 's lead contact person identified in the attached request for notification.

<Name

<Title>

<Address>

<Telephone number>

<Email address>

Sincerely,

From: [Caitlin Smith](#)
To: [Agenda Management Support](#)
Subject: Item 35 comment_Sempervirens
Date: Monday, August 18, 2025 1:41:31 PM
Attachments: [image001.png](#)

From: Rachel Dann <rdann@sempervirens.org>
Sent: Sunday, August 17, 2025 10:34 AM
To: Justin Cummings <Justin.Cummings@santacruzcountyca.gov>
Cc: kanderton@baymoon.com; Caitlin Smith <Caitlin.Smith@santacruzcountyca.gov>; Andy Schiffrin <Andy.Schiffrin@santacruzcountyca.gov>; Sandy Brown <Sandy.Brown@santacruzcountyca.gov>; Trina Barton <Trina.Barton@santacruzcountyca.gov>
Subject: Support for Item # 35 Tribal Compensation

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Dear Supervisor Cummings and Members of the Board,
On behalf of Sempervirens Fund, I am writing to express my organization's support for item #35 on your agenda, Tribal Consultation Compensation, scheduled for Tuesday August 19.

Sempervirens Fund is a conservation organization that has been working to conserve and restore the redwood forests of the Santa Cruz Mountains for 125 years. We recognize and honor the stewardship of these lands by Native tribes for millennia before European contact. Today, our organization is proud to partner with local tribes to preserve cultural sites and restore the landscapes that once provided food, medicine, and materials sustaining civilizations on the Central Coast for thousands of years.

Although CEQA provides opportunity for tribal consult in statue, in practice smaller tribes have not had the ability to take advantage of the consultation process because of a serious lack of resources. Without resources to consult, as the staff report correctly notes, the request to consult risks becoming "meaningless and illusory". In short, a right to consultation without the ability to exercise it is no right at all.

By approving this three-year pilot program, Santa Cruz County has an opportunity to lead statewide in ensuring that tribal voices are heard in planning processes. This effort will provide tribes with the capacity to engage in consultation and help shape decisions that affect their ancestral lands.

We thank Supervisor Cummings for bringing this item forward and urge the Board to vote

yes on item #35.

Kind Regards,
Rachel Dann

Rachel Dann
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Preserving redwood forests since 1900

sempervirens.org

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