



**Blue Lake City Council Agenda**  
**Tuesday, September 22, 2015**  
**Regular Council Meeting @ 7:00 p.m. to 9:30 p.m.**  
**Community Center – 111 Greenwood**  
**(Skinner Store Building behind City Hall)**

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*All City Council Meetings end at 9:30 p.m. unless extended by majority vote of City Council.*

1. Flag Salute/Establish a Quorum of the Council
2. Motion to Approve Agenda
3. Public Input – *The Public is invited to present petitions, make announcements, or provide other information to the City Council that is relevant to the scope of authority of the City of Blue Lake that is not on the Agenda. The Council may provide up to 15 minutes for this public input session. To assure that each individual presentation is heard, the Council may uniformly impose time limitations of 3 minutes to each individual presentation. The public will be given the opportunity to address items that are on the agenda at the time the Council takes up each specific agenda item.*
4. Proclamation: Freedom from Workplace Bullies Week (Action)
5. Resolution No. 1063: A Resolution of the City Council of the City of Blue Lake Providing for the Approval Process of Fundraising for a Public Purpose By Community Members (Action)
6. Logger Bar Departmental Reports (Discussion/Possible Action)
7. City Manager Recruitment: Council Application Review Process and Scoring Sheets (Discussion/Possible Action)
8. Appoint a Committee to Look at Budget Revision in Regards to Loss of Revenue (Action)
9. Consent Agenda (Approve)
  - a. Minutes from September 8, 2015
  - b. Staff Report on Rose Bush for Lana Manzanita Memorial Destination
  - c. Agreement for Bus Transportation Services
  - d. Acceptance of AB52 Information from Blue Lake Rancheria
  - e. National Rural Water Association (NRWA) Revolving Loan to Fund SCADA
10. Reports of Council and Staff
11. Future Agenda Items
12. Correspondence
13. Motion to Adjourn

A request for disability-related modification or accommodation, including auxiliary aid or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting, by contacting City Manager John Berchtold, 668-5655, at least 24 hours prior to the commencement of the meeting.

Proclamation  
Freedom from Workplace Bullies Week

WHEREAS, the City of Blue Lake has an interest in promoting the social and economic well-being of its citizens, employees and employers; and,

WHEREAS, that well-being depends upon the existence of healthy and productive employees working in safe and abuse-free work environments; and,

WHEREAS, research has documented the stress-related health consequences for individuals caused by exposure to abusive work environments; and,

WHEREAS, abusive work environments are costly for employers, with consequences including reduced productivity, absenteeism, turnover, and injuries; and,

WHEREAS, protection from abusive work environments should apply to every worker, and not be limited to legally protected class status based only on race, color, gender, national origin, age, or disability.

NOW, THEREFORE, we, the City Council of the City of Blue Lake, do hereby proclaim October 18-24, 2015 as **FREEDOM FROM WORKEPLACE BULLIES WEEK** and commends the California Healthy Workplace Advocates and the Workplace Bullying Institute, which raise awareness of the impacts of, and solutions for, workplace bullying in the US; and encourages all citizens to recognize this special observance.

\_\_\_\_\_  
Mayor, City of Blue Lake

\_\_\_\_\_  
Date

# A WEEK FOR SUPPORT, INSPIRATION, PEACE & HEALTH



## FREEDOM FROM WORKPLACE BULLIES WEEK OCT 18-24, 2015 WORKPLACEBULLYING.ORG

Bullying is a systematic campaign of interpersonal destruction that jeopardizes employee health, shatters careers, and strains families.

Bullying is non-physical, non-lethal workplace violence. It is abusive, causing psychological injuries and stress-related diseases.

It is costly to businesses. Bullies are too expensive to keep.

The destructive power of workplace bullying comes from secrecy.

The Workplace Bullying Institute celebrates its 7th annual FREEDOM FROM WORKPLACE BULLIES WEEK.

The week is a chance to break through the silence and secrecy. It is a week to be daring and bold. To take courageous action. To do the right thing.

Everyone deserves a safe, healthy, and dignified workplace.

Find advice, tips and activities at [freedomfrombullies.org](http://freedomfrombullies.org) for:

WORKPLACE  
**BULLYING**  
INSTITUTE™

- Employers
- Family
- Coworkers
- Friends
- Unions
- Mental Health Professionals
- School Administrators
- Public Policy Makers
- Community Leaders
- Medical Professionals

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RESOLUTION No. 1063

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BLUE LAKE  
PROVIDING FOR THE APPROVAL PROCESS OF FUNDRAISING FOR A  
PUBLIC PURPOSE BY COMMUNITY MEMBERS

WHEREAS, from time to time, Community Members desire to raise funds for a public purpose; and,

WHEREAS, City Council desires to establish a clear approval process.

NOW, THEREFORE, BE IT RESOLVED that the following process is hereby established:

1. Community member(s) must submit a written request, through the City Manager's office, which shall be submitted to the City Council for approval.
2. At a regular meeting, City Council shall entertain the request and consider staff recommendation(s).
3. City Council may approve or deny the request. If approved, City Council may attach reasonable conditions of approval which shall be in writing.
4. Funds donated to the City for the pre-designated public purpose shall be deposited into the City Treasury.
5. Funds will be earmarked by a project code and will be released by City Council for the pre-designated public purpose through the City's regular purchasing process.
6. The City Manager shall keep the City Council informed of fundraising projects.

INTRODUCED, PASSED, AND ADOPTED this 22nd day of September, 2015, by the following vote:

AYES:

NAYS:

ABSENT:

ATTEST:

\_\_\_\_\_  
City Clerk, City of Blue Lake

\_\_\_\_\_  
Mayor, City of Blue Lake

#### CITY CLERK'S CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of Resolution No. 1063 passed and adopted at a regular meeting of the City Council of the City of Blue Lake held on the 22nd day of September 2015, by the following vote:

AYES:

NAYS:

ABSENT:

\_\_\_\_\_  
City Clerk



# CITY OF BLUE LAKE

Post Office Box 458, 111 Greenwood Road,  
Phone 707.668.5655

Blue Lake, CA 95525  
Fax 707.668.5916



To: Mayor and City Council  
From: John Berchtold, City Manager  
Date: September 22, 2015  
Subject: Logger Bar Operations - Comments from Departments

Listed below is a summary:

## City Planner

City Planner Garry Rees reports of the Logger Bar being an existing non-conforming use, thus not subject to current standards (the need for a conditional use permit which would address operational issues including noise limitations). City Zoning came into effect on November 13, 1956, long after the Logger was in existence. The historical use(s) of the property can continue, but cannot be expanded without approval of the Planning Commission.

## Sheriff Office

Sheriff has the option of forwarding written complaints to the District Attorney or the Alcohol Beverage Control (ABC) staff. Complaints sent to the District Attorney could be based upon the following State codes:

Business Code – 25601 – Keeping a Disorderly House

Penal Code – 415 – Disturbing the Peace

Penal Code – 370 – Creating a Public Nuisance

Note that these complaints must be signed by individuals who are prepared to support law enforcement in a court setting. Relative to ABC, that agency is interested in receiving verified law enforcement reports. This would include law enforcement response to complaints where the officer believes the noise violates one of the standards above. This again would require the cooperation of citizens willing to testify in an ABC hearing.

## City Manager

City Ordinance No. 457, being the Nuisance Ordinance, is an enforcement tool to abate nuisances. Irrespective of the non-conforming zoning use, this could be employed if a public nuisance exists. This would require a qualified technician taking decibel readings during band operations. This would be a contracted service. It is a long process, but is an option.

### Fire Chief

Relative to overcrowding, the Fire Chief conducted 2 spot inspections in August, and found the Logger Bar to be in compliance with the occupancy load. He also mentioned that the owner is monitoring occupancy especially when events are occurring.

### Mediation as an Option

Mediation, through the Humboldt Mediation Services, is also an option. This would require voluntary efforts on part of the Logger Ownership and representatives of the complainants. The goal of mediation is to resolve the dispute before it escalates to irreconcilable status. This may be the most expeditious means of resolving the matter between the parties. Either private party could request mediation. If mediation is scheduled the City would likely be asked to provide background information such as the zoning status.

### Recent History with Law Enforcement

Over the past two weekends, law enforcement was not contacted as the music was apparently tolerable. Also find enclosed the warning letter sent to Kate Martin by ABC. Law enforcement has been directed to continue monitoring the situation at hand. Any and all these tools are available if and when necessary.

I hope this information proves helpful.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
EUREKA DISTRICT OFFICE  
1105 6TH STREET, STE C  
EUREKA, CA 95501  
(707) 445-7229



September 4, 2015

LOGGER BAR INC  
PO BOX 1183  
BLUE LAKE, CA 95525-1183

48-526415  
LOGGER BAR  
510 RAILROAD AVE  
BLUE LAKE, CA 95525

Dear Licensee(s):

Over the past couple of weeks, this office has received numerous complaints from various sources of excessively loud late night disturbances and noise emanating from the above licensed premises. The causes are from outside patron activity as well as live music and entertainment.

As you were made aware during our phone conversation of September 1, 2015, this amounts to a violation of the law and of the Rules and Regulations of the Department. You as a licensee are under a continuing duty to properly supervise your premises and prevent such occurrences.

Considering all the facts in this matter, we do not intend in this instance to file an accusation. You are cautioned, however, that subsequent violations of this nature may subject your license to disciplinary proceedings leading to a suspension of your license privileges.

This letter should be considered an official warning notice, a copy of which will be maintained in your permanent file.

We ask that you acknowledge receipt of this letter and inform the Department, in writing, of the steps you have taken to prevent a recurrence of the above violations.

Sincerely,

TONY CARRANCHO  
Supervising Agent In Charge

By: \_\_\_\_\_  
K. K. Locken  
Branch Office Manager.

Cc: Humboldt County Sheriff's Department  
Blue Lake City Manager



# CITY OF BLUE LAKE

Post Office Box 458, 111 Greenwood Road, Blue Lake, CA 95525  
Phone 707.668.5655 Fax 707.668.5916

DATE: September 15, 2015

FROM: Garry Rees, City Planner

TO: Blue Lake City Council

**RE: Logger Bar – Non-Conforming Use Status (510 Railroad Ave/025-091-020)**

The Logger Bar is located at 510 Railroad Ave in the City's Downtown on property that is zoned Retail Commercial (RC). Since the Logger Bar has been at this location for over 100 years, it pre-dates the City's original Zoning Ordinance (Ord. No 143) which was adopted on November 13, 1956. As such the business is considered a nonconforming use (i.e. grandfathered) which is defined in Section 201.82 of the Zoning Ordinance as:

*“NONCONFORMING USE means a use of a structure or land which was lawfully established and maintained, but which does not conform with the use regulations or required conditions for the district in which it is located, by reason of adoption or amendment of this chapter, or by reason of annexation of territory to the City.”*

If a similar use were proposed today, the applicant would be required to obtain a Use Permit from the Planning Commission under the “Bars, including clubs for dancing and entertainment, and restaurants in conjunction with a bar” use type.

The nonconforming use status of the Logger Bar means that the business is not subject to the current standards in the RC Zone including the performance standard regulating noise. Upon initial review, City Staff was not able to identify a City noise ordinance or standard that existed prior to the establishment of the Logger Bar that the business would be required to meet.

If it was proposed to increase the intensity of music events at the Logger Bar beyond the historically established nonconforming use, a Use Permit would need to be obtained from the Planning Commission. As stated in the Nonconforming Use section of the Zoning Ordinance (Section 770(F)): “No such use shall be enlarged, increased or extended to occupy a greater area, nor shall the intensity of such use be increased.”



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## Agenda Item - City Manager Recruitment Discussion/Action(s)

- Assembling packages of applications for individual Council Member review
- Creation of a scoring or ranking sheet for individual Council Member review
- Distribution of applications for Council Member review in Special Meeting/Closed Session meeting packets (Tuesday 10/6 or 10/7)
- Set date for Special Meeting/Closed Session (Monday 10/12 or Tuesday 10/13)
  - For full Council review and discussion of applications
  - Council selection of semi-finalists from applicants.
  - Review, revise and accept semi-finalist phone interview questions.

*Reminder of additional upcoming events - Phone interviews as Special Meeting/Closed Session on Friday 10/23 or Saturday 10/24*



# CITY OF BLUE LAKE

Post Office Box 458, 111 Greenwood Road, Blue Lake, CA 95525  
Phone 707.668.5655 Fax 707.668.5916



To: City Council  
From: Mayor McCall-Wallace  
Date: September 22, 2015  
Subject: Appoint a Committee to Look at Budget Revision in Regards to Loss of Revenue

In light of potential \$100,000 shortfall, I would like to discuss the formation of a Council subcommittee to look at possible budget revisions/reduction to help the Council.

DRAFT

City of Blue Lake  
City Council Regular Meeting  
Skinner Store – 111 Greenwood Ave., Blue Lake, CA  
September 8, 2015  
MINUTES

9a

The Meeting called to order at 7:00 p.m.

Councilmembers Present: Jean Lynch, John Sawatzky, Adelene Jones, Michele McCall-Wallace, Stephen Kullmann

Councilmembers Absent: None

Staff Present: City Clerk April Sousa, Assistant City Manager Vicki Hutton

**Motion to Approve the Agenda**

Councilmember Kullmann *motioned to approve the agenda as presented.* Councilmember Sawatzky seconded. The motion carried unanimously.

**Public Input**

none

**Community Choice Aggregation Presentation**

Matthew Marshall, executive director of Redwood Coast Energy Authority (RCEA) gave a presentation on Community Choice Aggregation (CCA) in Humboldt County.

**Earmarking Fundraising Efforts by Community Groups**

Mayor McCall-Wallace discussed the staff report by City Manager Berchtold. Clarification was made that this would be a policy for all community groups seeking to fundraise for the City.

Darcy Lima, Blue Lake resident, spoke on the issue.

After discussion, Council consensus was to direct staff to draft a resolution for this policy including a process for collecting the money, requirement of approval by council with conditions, if any, to be made during the time of approval, staff recommendation of project as well as staff presence at the time the project is presented to the council for approval, a note that donations of items become City property, and a provision that the donation is reflected in the budget.

**Noise Complaints at the Logger Bar**

Mayor McCall-Wallace gave an overview of the item. She also reminded the public that the 3-minute rule applied to public input on discussion items as well. Councilmember Kullmann asked the public to be civil during this agenda item. Councilmember Lynch noted that the Logger Bar was grandfathered during the time the zoning ordinance was created, and that may affect noise regulations

Mayor McCall-Wallace opened the discussion up to the Public, asking for Blue Lake residents to speak first, followed by those who are not residents but work in Blue Lake and last being those who do not live or work in Blue Lake, including any public officials that may be present. There were comments made by thirty eight (38) members of the public.

After public comment, Council commented on the issue. It was noted that Alcohol Beverage Control (ABC) was involved in the situation, and that Council has no control over ABC. Clarification was made on decibel limits and what grandfathering of the use of the Logger means.

Council appreciated the outpouring input of the community.

Council consensus was to direct the City Manager to obtain a comprehensive report from all departments involved as well as check in with the Sheriff and Fire Department and the City Attorney, if necessary.

Council discussed the idea of writing a letter to ABC to notify them that this issue had been brought to the attention of the City Council and there is a desire to find a resolution locally. Council gave input on the content of the letter.

Councilmember Sawatzky *motioned to authorize the Mayor to send a letter to ABC letting them know Council is working on a peaceful resolution to this issue and to have the letter be reviewed by the City Manager and Assistant City Manager before being sent.* Councilmember Kullmann seconded. The motion carried unanimously.

#### **Memorial for Former Councilmember Lana Manzanita**

It was noted that the time for the community memorial service for Lana Manzanita that was presented to Council in the packet was wrong. It will be at 1 p.m. on October 4, 2015, not 11 a.m.

It was noted that it would be appropriate for someone on Council to speak. Mayor McCall-Wallace stated she would do this.

Ideas for a memorial object were discussed. It was noted that either a plant or a bench had been mentioned before.

A rose in the park was suggested.

Councilmember Jones *motioned to authorize a limit of \$60 to purchase of a yellow rose and a small plaque stating "In Memory of Councilmember Lana Manzanita" and asking for a suggestion from the Parks and Recreation Director as to where to place it.* Mayor McCall Wallace asked for an amendment to state "... asking the City Manager to seek staff direction for where it will be placed." (Mayor McCall-Wallace noted that the location suggestion may be in the scope of Public Works instead of Parks and Recreation and it was more appropriate to consult with the City

Manager). Councilmember Jones accepted the amendment. Mayor McCall-Wallace seconded the amended motion. The motion carried unanimously.

It was asked that the City Manager through the Assistant City Manager bring this information back at the next meeting.

### **City Manager Recruitment Process for Applications Received**

There was Council consensus to authorize staff to designate a spot in the office for resumes/applications for the City Manager position, and ask staff to send a response letter when these are received.

### **Consent Agenda**

Items 9a: Minutes from August 25, 2015 – Regular Meeting, and 9d: Amendment No. 5 to Lease: The City of Blue Lake and Jacques Holten (100 & 110 Monda Way) were pulled from the Consent Agenda.

Councilmember Sawatzky *motioned to accept the remaining items on the Consent Agenda:*

- *item 9b: Minutes from August 25, 2015 – Special Meeting*
- *item 9c: Warrants and Disbursements August 2015*
- *item 9e: Award of Perigot Park Improvements Bid*
- *item 9f: Blue Lake/Fieldbrook Little League Lease*

Councilmember Kullmann seconded. The motion carried unanimously.

### **Minutes from August 25, 2015 – Regular Meeting**

City Clerk Sousa mentioned a typo in the minutes.

Councilmember Sawatzky *motioned to approve the Minutes from August 25, 2015 – Regular Meeting with the changes presented by the City Clerk.* Councilmember Kullmann seconded. The motion carried unanimously.

### **Amendment No. 5 to Lease: The City of Blue Lake and Jacques Holten (100 & 110 Monda Way)**

Councilmember Lynch wanted clarification on the increase in rent. Assistant City Manager Hutton went to City Hall to get this information.

As Assistant City Manager Hutton left to retrieve the information, council took a break.

During the break, Council asked for a reminder on the Party Room dedication date and information.

Assistant City Manager Hutton returned noting an increase of rent in the amount of \$22.48/month from the last Amendment to Lease.

Councilmember Kullmann *motioned to approve Amendment No. 5 to Lease: The City of Blue Lake and Jacues Holten (100 & 110 Mondu Way)*. Councilmember Sawatzky seconded. The motion carried unanimously.

### **Reports of Council and Staff**

Councilmember Jones reported that she has a Humboldt Waste Management Authority (HWMA) meeting coming up. She also mentioned Blue Lake Arts Night on Saturday, September 12, 2015 and a special talk at the Blue Lake School with Jerry Rohde on Friday, September 11, 2015.

Councilmember Lynch reported on CCA information from RCEA. She passed out a copy on the weighted voting that is being proposed by RCEA for the CCA. She also mentioned a recent special meeting of the Parks and Recreation Commission and passed out a list of items that the Parks and Recreation Commission will look at during their prioritization process during the next meeting. She mentioned she has a Matthew's Dam report from the Blue Lake Fire Department that she will send to the City Manager who can then pass it on when needed to the rest of council.

Councilmember Sawatzky had nothing to report.

Councilmember Kullmann reported that on September 19, 2015 the annual beach clean-up would take place, and the Mad River Alliance would be doing a River Clean-up in conjunction with this. The group will meet at Stardoughs at 9:00 a.m.

Mayor McCall-Wallace reported on the recent Humboldt County Association of Governments (HCAOG) meeting regarding a possible special county-wide tax to support road repair. The Public Safety Commission did not have their regularly scheduled meeting due to the holiday and would be meeting on September 14, 2015 to continue working on the informational brochure.

Assistant City Manager Hutton noted she would not be available at the Party Room celebration due to a prior commitment. Parks and Recreation Director Mull will coordinate the event.

Mayor McCall-Wallace read a report from City Manager Berchtold.

### **Future Agenda Items**

Mayor McCall-Wallace mentioned the information from the Protocol Manual that was placed in the packet as a reminder to council of how to set future agenda items.

Future items are as follows:

- Appoint a Committee to look at Budget Revisions in Regards to Loss of Revenue
- City Manager Recruitment: Looking at Council Application Review of Packets and Scoring Sheets
- Logger Bar Departmental Reports
- Information Brought Back in Regards to Rose Bush Location for Lana Manzanita

**Correspondence**

A letter from the Greenwood Neighborhood Watch was included in the packet. Councilmember Jones would like to see the item on a future agenda. Councilmember Lynch stated that she noticed the Sheriff already meeting the requests in the letter. Councilmember Jones retracted the desire for this to be on a future agenda.

**Motion to Adjourn**

Councilmember Jones *motioned to adjourn*. Councilmember Sawatzky seconded. The motion carried unanimously. Meeting adjourned at 9:45 p.m.

April Sousa,  
City Clerk



# CITY OF BLUE LAKE

Post Office Box 458, 111 Greenwood Road, Blue Lake, CA 95525  
Phone 707.668.5655 Fax 707.668.5916



To: Mayor and City Council  
From: John Berchtold, City Manager  
Date: September 22, 2015  
Subject: Memorial Rose for Lana Manzanita

I believe that most suitable place for a Memorial Rose is in the front of Skinner Store (in the landscape bed). There are several points that make this is a favorable location:

1. It is the place closest to where City Council conducts its business (sentimental tie)
2. The railing lends itself to placement of memorial plaque(s)
3. Ample room for further memorials
4. This site is maintained on a regular basis by the Resource Center volunteers
5. It is very visible

An alternate location is the green adjacent to entrance to green area adjacent to entrance to Perigot Park (behind the westerly entrance).

Staff recommends the Skinner Store location.



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To: Mayor and City Council  
From: John Berchtold, City Manager  
Date: September 22, 2015  
Subject: Annual Bus Transit Agreement with Rancheria

I recommend the 2015-16 transit agreement with the Rancheria. The cost has remained the same at \$125/month.

## AGREEMENT FOR BUS TRANSPORTATION SERVICES

(Effective July 1, 2015 - June 30, 2016)

THIS AGREEMENT, made this \_\_\_\_\_ and between the City of Blue Lake, a municipal corporation of the State of California, hereafter called "City", and the Blue Lake Rancheria Tribe, a federally recognized Indian tribe, hereinafter called "Tribe".

### WITNESSETH:

WHEREAS, City wishes to provide by contract for bus transportation services between City and Arcata, California; and,

WHEREAS, Tribe is willing and able to provide such transportation services;

NOW, THEREFORE, IT IS MUTUALLY AGREED:

1. Term. The term of this Agreement shall commence on **July 1, 2015**, and shall end on **June 30, 2016**, unless earlier terminated as provided herein.
2. Services, Equipment and Management. Tribe will provide, administer, and manage round trip bus transportation from City to Arcata, California, and return, making appropriate stops along the route. The location of the stops in the City of Blue Lake shall be as agreed from time to time by the Tribal Administrator of Tribe and the City Manager in conjunction with the City Council. Tribe will meet all federal, state, and local requirements, including obtaining permits for providing such services.
3. Level of Service. Tribe shall provide at least four (4) and up to eight (8) round trips per day of service between Blue Lake and Arcata. In the event of a reduction of service to less than four (4) round trips per day, notice will be made in writing to City no less than 30 days prior to change.
4. Days and Hours of Service. Tribe shall provide such transportation services a minimum of 6 hours per day, Monday through Friday, except for those holidays on which the Blue Lake Rancheria Transit System does not operate. Said transportation will be scheduled a minimum of 3 hours in the morning and a minimum of 3 hours in the afternoon. The exact time of arrival and departure at and from Blue Lake and Arcata may be adjusted within such hours as agreed by the Tribal Administrator of Tribe and the City Manager of City.
5. Personnel. Tribe will provide sufficient personnel to render the services provided for herein and shall hire, supervise, discipline, and discharge such personnel. Tribe will compensate such personnel, withhold and pay income and employment taxes as required by law, maintain Worker's Compensation Insurance for and pay any other benefits or compensation due such personnel by virtue of their employment. All vehicle operators shall have a valid vehicle operator's license issued by the State of California of the class required by California law and meet all applicable local, state, and federal requirements for operation of transit vehicles. Tribe will make all reasonable efforts to ensure that

vehicle operators are thoroughly qualified in the operation of the vehicles, present a neat appearance, and conduct themselves in a courteous and efficient manner. Tribe's drivers shall have exclusive control of all vehicles while performing service under this agreement. The drivers may, in their discretion, refuse transportation to any disorderly person or to any person who fails to abide by the rules and regulations of Tribe or City while riding on said vehicle or violates any local, state, or federal law.

6. Fares. Tribe will charge no more than \$ 1.65 as the regular fare, \$1.50 as the student fare, and \$ 1.25 as the fare for senior citizens and disabled persons, for one way travel between Blue Lake and Arcata and vice versa. Tribe will retain all fares received. Tribe reserves the right to increase fares upon thirty (30) days written notice to City. Student and disabled passengers are required to prove status to the Blue Lake Rancheria Tribal Office before submission of fare. This is a one-time certification.

7. Equal Services. The services provided hereunder will be of equal quality to those provided by Tribe to Tribe's other customers.

8. Payment to Tribe. The total and only compensation shall be \$125.00 per day of service; however, the City's total obligation shall not exceed the amount of HCAOG- TDA Funding for purchased transportation which shall be \$31,125 covering the period of July 1, 2015 through June 30, 2016. In the event of early termination of this Agreement pursuant to Section 16, said Funding shall be prorated for the month in which service is terminated such that the Tribe is compensated for each day of service actually provided and any excess Funding shall be returned to the City.

9. Vehicles. Tribe will provide at Tribe's expense a vehicle to render the services provided for herein. All transit vehicles shall be equipped to conform to all applicable laws, rules and regulations, and the cost of any alteration or modifications that may be necessitated by a change in any law, rule, or regulation shall be assumed by Tribe.

10. Maintenance of Vehicles. Tribe will service and maintain all vehicles used to provide services under this Agreement in accordance with the maintenance specifications of the vehicles' manufacturers and to the satisfaction of City and the California Highway Patrol. Tribe will at all times keep such vehicles neat and clean, lubricate them periodically, and provide gas, oil, tires, and other parts as needed. All other repairs shall be made by Tribe.

11. Records, Accounts, Data. Tribe will keep records of its operations as required herein, including, but not limited to, records and expenditures, evidence of indebtedness and credit, and transactions relating to its administration and management of the transit system. The Tribe shall submit the following information so that the City is able to complete the Annual Transportation Report required by the State Controller's Office:

- (1) Number of passengers
- (2) Vehicle revenue hours
- (3) Vehicle revenue miles
- (4) Number of validated complaints

The Tribe shall provide additional records related to transit operations as part of the City's application and receipt of TDA funds. The Tribe will allow the City and/or the Humboldt County Association of Governments (HCAOG) and/or the State of California to inspect such records, upon request for at least three (3) years after the term of this agreement.

The Tribe agrees to undergo a Review Engagement by a professional accountant (funded and coordinated by HCAOG) who will review the financial statements of the transit operations.

12. Relationship of Parties. Each party hereto is an independent contractor. The relationship of employer and employee exists only between Tribe and its personnel.

13. Non-Discrimination. In providing services under this Agreement, Tribe shall not discriminate against any employee or applicant for employment because of race, color, age, creed, sex or national origin and shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to such factors. Such affirmative action shall include, but not be limited to, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Tribe shall post in conspicuous places, available to employees and applicants for employment notices to be provided by the State of California setting forth the provisions of this Fair Employment and Housing section. Tribe will permit access to its records of employment, employment advertisements, and application forms and other pertinent data and records by the California Fair Employment and Housing Commission or any other agency of the State of California for the purposes of investigation to ascertain compliance with this paragraph.

14. State and Federal Requirements. The Congress of the United States, the Legislature of the State of California, and the Governor of the State of California, each within their respective jurisdictions, have prescribed certain employment practices with respect to contract and other work financed with federal or state funds. Tribe shall ensure that work performed under this agreement is done in conformance with rules and regulations embodying such requirements where they are applicable.

15. Inability to Perform. The parties will be excused from performing their respective obligations hereunder if they are prevented from doing so by reason of fire, flood, earthquake, storm, other acts of God, explosion, strike, war, insurrection, riot, acts of any government, and/or any other cause similar to the foregoing which is beyond the control of and not the fault of the party claiming excuse from performance. However, the party claiming excuse from performance shall, within five (5) days after such party has notice of such cause or causes, present to the other party written notice of the facts constituting such cause and claiming excuse from performance under this paragraph.

16. Termination without Cause. Either party hereto may terminate this agreement without cause on ten (10) day's written notice to the other party, stating the effective date of termination.

17. Insurance. Throughout the term of this agreement, Tribe shall maintain in full force and affect the following policies of insurance:

a. Vehicle insurance covering all bodily injury, including death, and all property damage arising out of Tribe's use of motor vehicles in the performance of this agreement, in the minimum amount of \$5,000,000 combined single limit.

b. Commercial general liability insurance in the minimum amount of \$5,000,000

combined single limit, covering all bodily injury, including death, and all property damage arising out of Tribe's performance of this agreement.

Such policies of insurance shall name City and their governing boards, officers, agents and employees, as additional insured's and shall constitute primary insurance as to said additional insured's so that any other policies held by them shall not contribute to any loss under said insurance.

Such insurance shall be provided by policies issued by an insurer acceptable to City. Concurrently with the execution of this agreement, Tribe shall furnish City with a certificate or certificates evidencing issuance of all insurance policies required herein or copies of the policies themselves. Each such policy shall bear the following endorsements:

- a. Endorsement precluding cancellation or reduction in coverage before the expiration of thirty (30) days after City shall have received written notification by registered mail from the insurance carrier; and,
- b. A standard cross-liability endorsement.

Tribe agrees to waive subrogation against the City regardless of the applicability of any insurance proceeds, and to require that any subcontractors do likewise.

18. Hold Harmless. Tribe shall hold City and their governing boards, officers, agents and employees harmless from any liability for damages or claims for damages resulting or alleged to have resulted from personal injury, including death, as well as from liability for claims for property damages, including loss of the use thereof, which may arise or are claimed to arise or be occasioned in any way, in whole or in part, from Tribe's performance of the duties and obligations of this agreement, including Tribe's operation, administration, and management of transportation services hereunder. Tribe shall further, at Tribe's expense, defend City and the State of California and their governing boards, officers, agents and employees from any claims, actions or suits for any damages or loss whatsoever, caused or alleged to have been caused by reason of Tribe's performance of its duties under this agreement, and shall pay or satisfy any judgment rendered against any such entity as a result of such claims, actions, or suits.

19. Waiver of Tribal Sovereign Immunity. The Tribe does not waive its sovereign immunity or consent to suit in any court, except as expressly stated in this section and subject to the limitations and conditions stated in this section.

A. The Tribe waives its sovereign immunity and consents to suit as to claims by the City that the Tribe has violated any provision of this Agreement or that seeks to resolve a dispute concerning the interpretation, implementation or enforcement of the Agreement ("Covered Claims").

B. This waiver and consent is subject to the following conditions and limitations.

1. **COVERED CLAIMS**. This waiver and consent only applies to Covered Claims. It does not include tort claims, claims for exemplary or punitive

damages, or any other claims not sounding in contract.

2. **COVERED CLAIMANTS.** This waiver and consent only applies to the City, and not to any other person, entity, including any commercial or governmental entity, or group.

3. **COVERED COURTS.** The consent to suit only applies to the California State Courts in Humboldt County, and any appellate courts. The Tribe does not consent to suit in any other court.

4. **REMEDIES.** This waiver and consent only applies to actions for declaratory and injunctive relief, including specific performance, and for damages.

C. The Tribal Council of Tribe shall ratify by resolution duly passed and adopted the waiver of Tribal sovereign immunity contained in this Paragraph 19, and such ratification shall be a condition precedent to all obligations of City under this Agreement.

20. No Assignment. Tribe shall not assign, transfer, or otherwise substitute its interest in this agreement or its obligations hereunder without the written consent of City.

21. Representatives and Notices. The parties appoint the following persons to represent their respective interests herein. Written notices provided for herein will be deemed given on posting in the United States mail, postage prepaid, addressed to such representatives as follows:

BLRTS: Tribal Administrator  
Blue Lake Rancheria  
P.O. Box 428  
Blue Lake, CA 95525

CITY: City Manager  
City of Blue Lake  
111 Greenwood  
P.O. Box 458  
Blue Lake, CA 95525

22. No Third Party Beneficiaries. This is not a third party beneficiary contract and does not create any rights in any persons not parties hereto.

23. Provisions Required by Law. Each and every provision of law and clause required to be inserted in this agreement shall be deemed to be inserted herein, and the agreement shall be read and enforced as though it were included herein; and if for any reason any such provision is not inserted, or is not correctly stated, then on application of either party, the agreement shall be physically amended to make such insertion or correction.

24. Paragraph Headings. Underlined paragraph headings in this agreement are used only for convenience and shall not be construed to be part or to affect the meaning of the paragraph headed thereby

25. Funding Information. Tribe shall post in a prominent place on Tribe's transit vehicle or vehicle Sign or signs informing the general public that the bus service is funded in part by City.

CITY OF BLUE LAKE

BLUE LAKE RANCHERIA

BY \_\_\_\_\_  
Mayor

BY \_\_\_\_\_  
Tribal Administrator

ATTEST:

BY: \_\_\_\_\_  
City Clerk

BY: \_\_\_\_\_  
Tribal Secretary



**Discussion Draft Technical Advisory:  
AB 52 and Tribal Cultural Resources in CEQA  
(May 2015)**

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## I. Purpose

The purpose of this advisory is to provide guidance to lead agencies regarding recent changes to the California Environmental Quality Act requiring consultation with California Native American tribes and consideration of tribal cultural resources. It summarizes the reasons for the legislative changes, and explains the substantive and procedural requirements that go into effect on July 1, 2015. Finally, it summarizes relevant case law, and provides a list of additional resources.

## II. Legislative Intent

The legislature added the new requirements regarding tribal cultural resources in Assembly Bill 52 (Gatto, 2014). By including tribal cultural resources early in the CEQA process, the legislature intended to ensure that local and Tribal governments, public agencies, and project proponents would have information available, early in the project planning process, to identify and address potential adverse impacts to tribal cultural resources. By taking this proactive approach, the legislature also intended to reduce the potential for delay and conflicts in the environmental review process. ((AB 52 § 1 (b)(7).)<sup>1</sup>

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<sup>1</sup> Assembly Bill 52 (Gatto, 2014). Section 1 of the bill states the legislature's intent as follows: In recognition of California Native American tribal sovereignty and the unique relationship of California local governments and public agencies with California Native American tribal governments, and respecting the interests and roles of project proponents, it is the intent of the Legislature, in enacting this act, to accomplish all of the following: (1) Recognize that California Native American prehistoric, historic, archaeological, cultural, and sacred places are essential elements in tribal cultural traditions, heritages, and identities. (2) Establish a new category of resources in the California Environmental Quality Act called "tribal cultural resources" that considers the tribal cultural values in addition to the scientific and archaeological values when determining impacts and mitigation. (3) Establish examples of mitigation measures for tribal cultural resources that uphold the existing mitigation preference for historical and archaeological resources of preservation in place, if feasible. (4) Recognize that California Native American tribes may have expertise with regard to their tribal history and practices, which concern the tribal cultural resources with which they are traditionally and culturally affiliated. Because the California Environmental Quality Act calls for a sufficient degree of analysis, tribal knowledge about the land and tribal cultural resources at issue should be included in environmental assessments for projects that may have a significant impact on those resources. (5) In recognition of their governmental status, establish a meaningful consultation process between California Native American tribal governments and lead agencies, respecting the interests and roles of all California Native American tribes and project proponents, and the level of required confidentiality concerning tribal cultural resources, at the earliest possible point in the California Environmental Quality Act environmental review process, so that tribal cultural resources can be

(AB 52, § 1(b).) To accomplish those goals, the legislature added or amended the following sections in the Public Resources Code: 21073, 21074, 21080.3.1, 21080.3.2, 21082.3, 21083.09, 21084.2, and 5097.94. These changes are summarized below.

### **III. Summary of New Requirements for Consultation and Tribal Cultural Resources**

The Public Resources Code now establishes that “[a] project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment.” (Pub. Resources Code, § 21084.2.)

To help determine whether a project may have such an effect, the Public Resources Code requires a lead agency to consult with any California Native American tribe that requests consultation and is traditionally and culturally affiliated with the geographic area of a proposed project. That consultation must take place prior to the determination of whether a negative declaration, mitigated negative declaration, or environmental impact report is required for a project. (Pub. Resources Code, § 21080.3.1.)

If a lead agency determines that a project may cause a substantial adverse change to tribal cultural resources, the lead agency must consider measures to mitigate that impact. Public Resources Code §20184.3 (b)(2) provides examples of mitigation measures that lead agencies may consider to avoid or minimize impacts to tribal cultural resources.

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identified, and culturally appropriate mitigation and mitigation monitoring programs can be considered by the decisionmaking body of the lead agency.(6) Recognize the unique history of California Native American tribes and uphold existing rights of all California Native American tribes to participate in, and contribute their knowledge to, the environmental review process pursuant to the California Environmental Quality Act (Division 13 (commencing with § 21000) of the Public Resources Code).(7) Ensure that local and tribal governments, public agencies, and project proponents have information available, early in the California Environmental Quality Act environmental review process, for purposes of identifying and addressing potential adverse impacts to tribal cultural resources and to reduce the potential for delay and conflicts in the environmental review process.(8) Enable California Native American tribes to manage and accept conveyances of, and act as caretakers of, tribal cultural resources.(9) Establish that a substantial adverse change to a tribal cultural resource has a significant effect on the environment.

These new rules apply to projects that have a notice of preparation for an environmental impact report or negative declaration or mitigated negative declaration filed on or after July 1, 2015. Specific provisions of the new law are described in more detail below.

### **A. Definition of Tribal Cultural Resources**

New § 21074 of the Public Resources Code defines “tribal cultural resources.” In brief, in order to be considered a “tribal cultural resource,” a resource must be either:

- (1) listed, or determined to be eligible for listing, on the national, state, or local register of historic resources, or
- (2) a resource that the lead agency chooses, in its discretion, to treat as a tribal cultural resource.<sup>2</sup>

In the latter instance, the lead agency must determine that the resource meets the criteria for listing in the state register of historic resources<sup>3</sup>. In applying those criteria, a lead agency must

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<sup>2</sup> Pub. Resources Code, § 21074

(a) “Tribal cultural resources” are either of the following:

(1) Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either of the following:

(A) Included or determined to be eligible for inclusion in the California Register of Historical Resources.

(B) Included in a local register of historical resources as defined in subdivision (k) of §5020.1.

(2) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of §5024.1. In applying the criteria set forth in subdivision (c) of §5024.1 for the purposes of this paragraph, the lead agency shall consider the significance of the resource to a California Native American tribe.

(b) A cultural landscape that meets the criteria of subdivision (a) is a tribal cultural resource to the extent that the landscape is geographically defined in terms of the size and scope of the landscape.

(c) A historical resource described in §21084.1, a unique archaeological resource as defined in subdivision (g) of §21083.2, or a “nonunique archaeological resource” as defined in subdivision (h) of §21083.2 may also be a tribal cultural resource if it conforms with the criteria of subdivision (a).

<sup>3</sup> Pub. Resources Code § 5024.1 (c): A resource may be listed as an historical resources in the California Register if it meets any of the following National Register of Historic Places criteria:

- (1) Is associated with events that have made a significant contribution to the broad patterns of California’s history and cultural heritage.
- (2) Is associated with the lives of persons important in our past.

consider the value of the resource to the tribe. For example, in considering the criterion that a resource is “associated with the lives of persons important in our past,” a lead agency would ask whether the resource is associated with the lives of persons important to the *relevant tribe*’s past. That determination must be supported with substantial evidence.<sup>4</sup> Note that because the statute gives lead agencies discretion regarding how to treat non-listed resources, evidence of a fair argument is insufficient by itself to compel a lead agency to treat it as a tribal cultural resource if the lead agency determines otherwise. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal. 4th 1086, 1117 (“the fair argument standard does not govern ...’ an agency’s determination of whether a building qualifies as a ‘historical resource’”) (quoting *Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039, 1072).)

## B. Consultation

Public Resources Code § 21080.3.1(a) defines “consultation” with a cross-reference to Government Code § 65352.4, which applies when local governments consult with tribes on certain planning documents. That section states:

“consultation” means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties’ cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party’s sovereignty. Consultation shall also recognize the tribes’ potential needs for confidentiality with respect to places that have traditional tribal cultural significance. (Gov. Code, § 65352.4.)

OPR’s *Tribal Consultation Guidelines* provide further explanation of what “consultation” means.<sup>5</sup> For example, the *Guidelines* explain that consultation “is a process in which both the

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- (3) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual or possesses high artistic values.
  - (4) Has yielded, or may be likely to yield, information important in prehistory or history.

<sup>4</sup> Public Resources Code § 21080 (c) defines “substantial evidence” to mean “fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.” Notably, new § 21080.3.1(a) states: “The Legislature finds and declares that California Native American tribes traditionally and culturally affiliated with a geographic area may have expertise concerning their tribal cultural resources.”

<sup>5</sup> Since 2004, cities and counties have had to consult with California Native American Tribes before adoption or amendment of a general plan, specific plan or designation of open space. (Gov. Code, § 65352.4., “Senate Bill 18” (Burton, Chapter 905, Statutes of 2004).) The Tribal Consultation Guidelines explain those requirements in detail. The new requirements in the Public Resources Code do not change those ongoing responsibilities. In instances in which the

tribe and local government invest time and effort into seeking a mutually agreeable resolution for the purpose of preserving or mitigating impacts to a cultural place, where feasible.” (At p. 15.) It further states:

Effective consultation is an ongoing process, not a single event. The process should focus on identifying issues of concern to tribes pertinent to the cultural place(s) at issue – including cultural values, religious beliefs, traditional practices, and laws protecting California Native American cultural sites – and on defining the full range of acceptable ways in which a local government can accommodate tribal concerns. (At p. 16.)

The new provisions in the Public Resources Code enumerate topics that may be addressed during consultation, including tribal cultural resources, the potential significance of project impacts, the type of environmental document that should be prepared, possible mitigation measures and project alternatives. (Pub. Resources Code, § 21080.3.2(a).)

### **C. Timing in the CEQA Process and Consultation Steps**

The new provisions in the Public Resources Code proscribe specific steps and timelines governing the notice and consultation process.

Those steps are summarized below and in the graphic entitled Compliance Timeline and Consultation Process Flowchart in Section V.

1) The Native American Heritage Commission will provide each tribe with a list of all public agencies that may be lead agencies under CEQA within the geographic area with which the tribe is traditionally and culturally affiliated, the contact information of those public agencies, and information on how the Tribe may request consultation. This list must be provided on or before July 1, 2016. (Pub. Resources Code, § 5097.94 (m).)

2) If a tribe wishes to be notified of projects within its traditionally and culturally affiliated area, the tribe must submit a written request to the relevant lead agency. (Pub. Resources Code, § 21080.3.1 (b).)

3) Within 14 days of determining that a project application is complete, or to undertake a project, the lead agency must provide formal notification, in writing, to the tribes that have requested notification of proposed projects as described in step 2, above. That notice must include a

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requirements of both the Government Code and the Public Resources Code apply to a project, while there may be substantial overlap, the lead agency must ensure that it complies with the requirements of both statutes.

description of the project, its location, and must state that the tribe has 30 days to request consultation.

4) If it wishes to engage in consultation on the project, the tribe must respond to the lead agency within 30 days of receipt of the formal notification described in step 3, above. The tribe's response must designate a lead contact person. If the tribe does not designate a lead contact person, or designates multiple people, the lead agency shall defer to the individual listed on the contact list maintained by the Native American Heritage Commission.

5) The lead agency must *begin* the consultation process with the tribes that have requested consultation within 30 days of receiving the request for consultation.

6) Consultation concludes when either: 1) the parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource, or 2) a party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code, § 21080.3.2 (b)(1) & (2).) Note that consultation can also be ongoing throughout the CEQA process.

#### **D. Confidentiality**

Under existing law, environmental documents must not include information about the location of an archeological site or sacred lands or any other information that is exempt from public disclosure pursuant to the Public Records Act. (Cal. Code Regs. § 15120(d); *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 220).<sup>6</sup> Native American graves, cemeteries, and sacred places and records of Native American places, features, and objects are also exempt from disclosure. (Pub. Resources Code, §§ 5097.9, 5097.993.) This exclusion reflects California's strong policy in favor of protecting Native American artifacts. Confidential cultural resource inventories or reports generated for environmental documents should be maintained by the lead agency under separate cover and shall not be available to the public. (*Clover Valley* at 221, citing Governor's Office of Planning and Research, Cal. Tribal Consultation Guidelines, (Nov. 14, 2005 supp. p. 27).)

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<sup>6</sup> In *Clover Valley*, the trial court denied petitions for writ of mandate challenging a city's approval of a subdivision project. Revisions to the project included transferring prehistoric Native American artifacts for preservation. The city prepared a recirculated draft environmental impact report to analyze the revised project. The locations and specific characteristics of the cultural resources were not described. The city provided additional information briefly describing the characteristics of the cultural resources, the project's effects on them, and planned mitigation measures. The Court of Appeal affirmed the trial court's ruling, holding that the additional information did not require recirculation because the changes were not significant in light of disclosure restrictions pertaining to cultural resources. (Gov. Code, § 6254(r); Pub. Resources Code, §§ 5097.9, 5097.993; Cal. Code Regs., (d)).

The new provisions in the Public Resources Code include additional rules governing confidentiality during tribal consultation. (Pub. Resources Code, §21082.3(c).)

First, information submitted by a California Native American tribe during the environmental review process may not be included in the environmental document or disclosed to the public without the prior written consent of the tribe. Consistent with current practice, confidential information may be included in a confidential appendix. A lead agency may exchange information confidentially with other public agencies that have jurisdiction over the environmental document. (Pub. Resources Code, § 21082.3 (c)(1).) This confidentiality protection extends to a tribe's comment letter on an environmental document. A lead agency can summarize tribal comment letters in general way, while still maintaining confidentiality consistent with the holding in *Clover Valley*.

Second, an exception to the general rule prohibiting disclosure is that the lead agency and the tribe may share confidential information regarding tribal cultural resources with the project applicant and its agents. In that case, the project applicant is responsible for keeping the information confidential, unless the tribe consents to disclosure in writing, in order to prevent looting, vandalism, or damage to the cultural resource. The project applicant must use a reasonable degree of care to protect the information. Additionally, information that is already publically available, developed by the project applicant, or lawfully obtained from a third party that is not the tribe, lead agency, or another public agency may be disclosed during the environmental review process. (Pub. Resources Code, § 21082.3(c)(2).)

Third, the new law does not affect any existing cultural resource or confidentiality protections. (Pub. Resources Code, § 21082.3 (c)(3).)

Fourth and finally, the lead agency or another public agency may describe the information in general terms in the environmental document. This is so that the public is informed about the basis of the decision, while confidentiality is maintained. (Pub. Resources Code, § 21082.3(c)(4).) The decision in *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200 provides a useful description of how a lead agency may balance the need for confidentiality with disclosure obligations under CEQA.

### **E. Mitigation**

Public agencies shall, when feasible, avoid damaging effects to any Tribal cultural resource. (Pub. Resources Code, §21084.3 (a).)

If the lead agency determines that a project may cause a substantial adverse change to a tribal cultural resource, and measures are not otherwise identified in the consultation process, new provisions in the Public Resources Code describe mitigation measures that, if determined by the lead agency to be feasible, may avoid or minimize the significant adverse impacts. (Pub. Resources Code, § 21084.3 (b).) Examples include:

- (1) Avoidance and preservation of the resources in place, including, but not limited to, planning and construction to avoid the resources and protect the cultural and natural context, or planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
- (2) Treating the resource with culturally appropriate dignity taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
  - (A) Protecting the cultural character and integrity of the resource
  - (B) Protecting the traditional use of the resource
  - (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 (*Ibid.*)

#### **IV. Updating Appendix G**

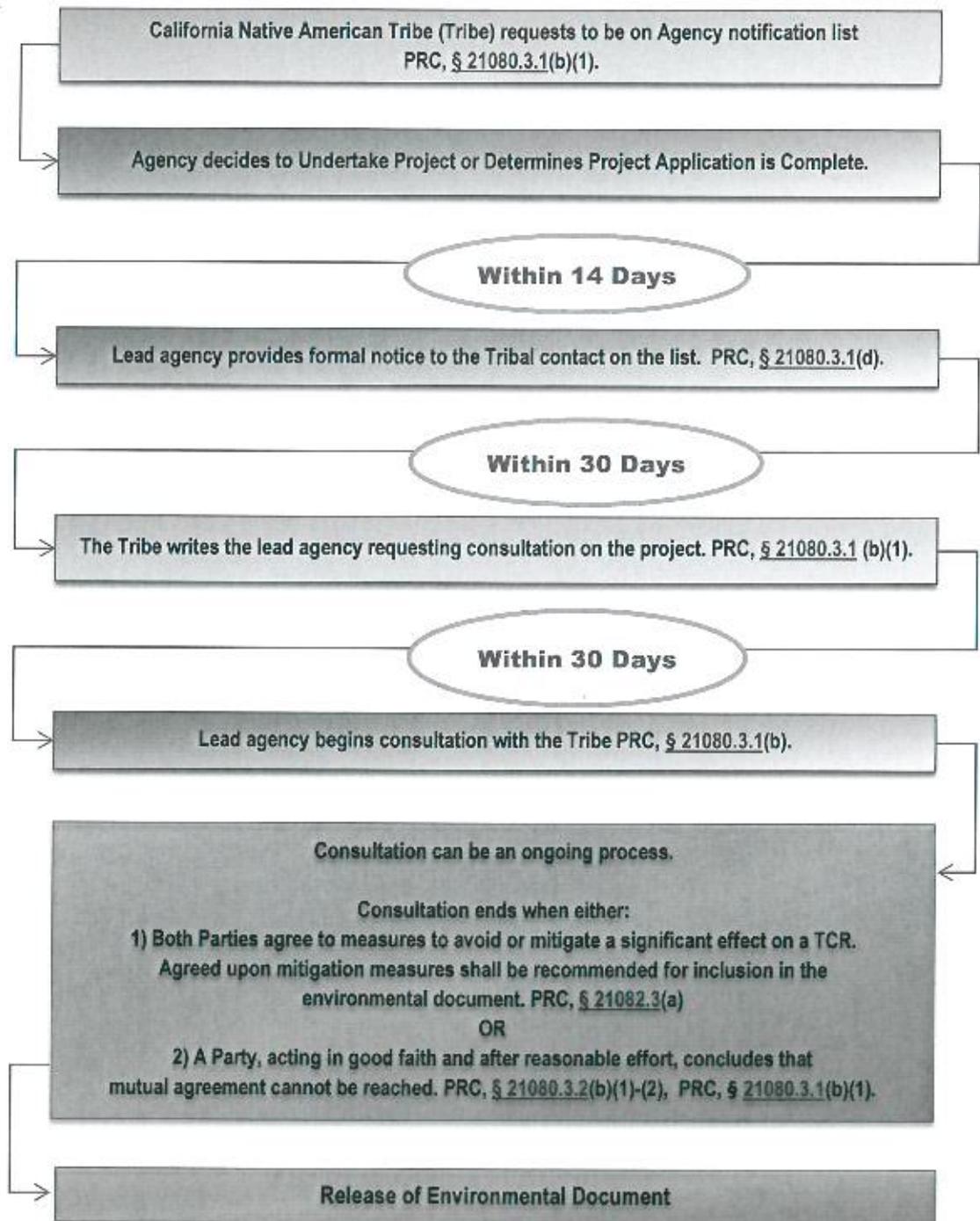
The statute directs OPR to develop proposed updates to the sample initial study checklist in Appendix G of the CEQA Guidelines to do both of the following: (a) separate the consideration of paleontological resources from tribal cultural resources and update the relevant sample questions, and (b) add consideration of tribal cultural resources with relevant sample questions. The Natural Resources Agency must complete its regulatory process for adoption of updates on or before July 1, 2016.

As noted above, the substantive and procedural requirements added in AB 52 go into effect on July 1, 2015. Because the environmental checklist in Appendix G is a *sample* and not mandatory, lead agencies need not wait for the Appendix G update before updating their own procedures.

In this interim period, OPR suggests that lead agencies consider asking the following question in their environmental documents:

*Would the project cause a substantial adverse change in the significance of a tribal cultural resource as defined in Public Resources Code 21074?*

## V. Compliance Timeline and Consultation Process Flowchart



## **VI. Bibliography of Resources**

### **A. California Government Resources**

Assembly Bill No. 52 (2013- 2014 Reg. Sess.)

<[http://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140AB52](http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB52)> (as of Feb. 17, 2015).

Senate Bill No. 18 (2003-2004 Reg. Sess.) <[http://www.leginfo.ca.gov/pub/03-](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0001-0050/sb_18_bill_20040930_chaptered.html)

[04/bill/sen/sb\\_0001-0050/sb\\_18\\_bill\\_20040930\\_chaptered.html](http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0001-0050/sb_18_bill_20040930_chaptered.html)> (as of Feb. 17, 2015).

Governor's Exec. Order No. B-10-11 (Sept. 19, 2011) <<http://gov.ca.gov/news.php?id=17223>> (as of Feb. 17, 2015).

Governor's Office of Planning and Research, Tribal Consultation Guidelines: Supplement to General Plan Guidelines (Nov. 14, 2005)

<[http://www.opr.ca.gov/docs/011414\\_Updated\\_Guidelines\\_922.pdf](http://www.opr.ca.gov/docs/011414_Updated_Guidelines_922.pdf)> (as of Feb. 17, 2015).

California Energy Commission, Tribal Consultation Policy (Nov. 2014)

<[http://www.energy.ca.gov/Tribal/documents/2014-11-12\\_Draft\\_Tribal\\_Consultation\\_Policy.pdf](http://www.energy.ca.gov/Tribal/documents/2014-11-12_Draft_Tribal_Consultation_Policy.pdf)> (as of Feb. 17, 2015).

California Department of Transportation, Native American Liaison Web Site (2007)

<<http://dot.ca.gov/hq/tpp/offices/ocp/nalb/>> (as of Feb. 17, 2015).

California Office of Historic Preservation, California Office of Historic Preservation Web Site (2015) <[www.ohp.parks.ca.gov](http://www.ohp.parks.ca.gov)> (as of Feb. 17, 2015).

California Office of Historic Preservation, California Historical Resources Information System (2015) <[http://ohp.parks.ca.gov/?page\\_id=1068](http://ohp.parks.ca.gov/?page_id=1068)> (as of Feb. 17, 2015).

California Native American Heritage Commission, California Native American Heritage Commission Web Site (2015) <<http://www.nahc.ca.gov>> (as of Feb. 17, 2015).

### **B. Federal Government Resources**

Executive Order 13007, 61 Federal Register 26771 (May 24, 1996), regarding Tribal Sacred Sites <<http://www.achp.gov/EO13007.html>> (as of Feb. 17, 2015).

Executive Order 13175, 65 Federal Register 67249 (Nov. 9, 2009) regarding Consultation and Coordination with Indian Tribal Governments <<http://www.whitehouse.gov/the-press-office/memorandum-Tribal-consultation-signed-president>> (as of Feb. 17, 2015).

Advisory Council on Historic Preservation, Working With §106 Web Site (Feb. 13, 2015)

<<http://www.achp.gov/work106.html>> (as of Feb. 17, 2015).

U.S. Department of the Interior, National Parks Service, Guidelines for Evaluating and Registering Archeological Properties (2000) (“Bulletin 36”)

<<http://www.nps.gov/nr/publications/bulletins/pdfs/nrb36.pdf>> (as of Feb. 17, 2015).

U.S. Department of the Interior, National Parks Service, Guidelines for Evaluating and Documenting Traditional Cultural Properties (1990, revised 1998) (“Bulletin 38”)

<<http://www.nps.gov/nr/publications/bulletins/pdfs/nrb38.pdf>> (as of Feb. 17, 2015).

### **C. Cases Interpreting Provisions in the Public Resources Code Governing Analysis of Historic Resources**

*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200 [holding that CEQA does not require a lead agency to disclose confidential information regarding the location and nature of cultural resources sites and that a lead agency need only provide a general description of those resources and mitigation measures in an EIR]

*Citizens for the Restoration of L Street v. City of Fresno* (2014) 229 Cal.App.4th 340 (holding that the fair argument standard does not apply to a lead agency’s discretionary determination of whether a non-listed building or district is an historical resource for purposes of CEQA) (see also *Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039)]

## Assembly Bill No. 52

### CHAPTER 532

An act to amend Section 5097.94 of, and to add Sections 21073, 21074, 21080.3.1, 21080.3.2, 21082.3, 21083.09, 21084.2, and 21084.3 to, the Public Resources Code, relating to Native Americans.

[Approved by Governor September 25, 2014. Filed with  
Secretary of State September 25, 2014.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 52, Gatto. Native Americans: California Environmental Quality Act. Existing law, the Native American Historic Resource Protection Act, establishes a misdemeanor for unlawfully and maliciously excavating upon, removing, destroying, injuring, or defacing a Native American historic, cultural, or sacred site, that is listed or may be eligible for listing in the California Register of Historic Resources.

The California Environmental Quality Act, referred to as CEQA, requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA requires the lead agency to provide a responsible agency with specified notice and opportunities to comment on a proposed project. CEQA requires the Office of Planning and Research to prepare and develop, and the Secretary of the Natural Resources Agency to certify and adopt, guidelines for the implementation of CEQA that include, among other things, criteria for public agencies to following in determining whether or not a proposed project may have a significant effect on the environment.

This bill would specify that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource, as defined, is a project that may have a significant effect on the environment. The bill would require a lead agency to begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project, if the tribe requested to the lead agency, in writing, to be informed by the lead agency of proposed projects in that geographic area and the tribe requests consultation, prior to determining whether a negative declaration, mitigated negative declaration, or environmental impact report is required for a project. The bill would

specify examples of mitigation measures that may be considered to avoid or minimize impacts on tribal cultural resources. The bill would make the above provisions applicable to projects that have a notice of preparation or a notice of negative declaration filed or mitigated negative declaration on or after July 1, 2015. The bill would require the Office of Planning and Research to revise on or before July 1, 2016, the guidelines to separate the consideration of tribal cultural resources from that for paleontological resources and add consideration of tribal cultural resources. By requiring the lead agency to consider these effects relative to tribal cultural resources and to conduct consultation with California Native American tribes, this bill would impose a state-mandated local program.

Existing law establishes the Native American Heritage Commission and vests the commission with specified powers and duties.

This bill would additionally require the commission to provide each California Native American tribe, as defined, on or before July 1, 2016, with a list of all public agencies that may be a lead agency within the geographic area in which the tribe is traditionally and culturally affiliated, the contact information of those agencies, and information on how the tribe may request those public agencies to notify the tribe of projects within the jurisdiction of those public agencies for the purposes of requesting consultation.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Current state law provides a limited measure of protection for sites, features, places, objects, and landscapes with cultural value to California Native American tribes.

(2) Existing law provides limited protection for Native American sacred places, including, but not limited to, places of worship, religious or ceremonial sites, and sacred shrines.

(3) The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) does not readily or directly include California Native American tribes' knowledge and concerns. This has resulted in significant environmental impacts to tribal cultural resources and sacred places, including cumulative impacts, to the detriment of California Native American tribes and California's environment.

(4) As California Native Americans have used, and continue to use, natural settings in the conduct of religious observances, ceremonies, and cultural practices and beliefs, these resources reflect the tribes' continuing cultural ties to the land and their traditional heritages.

(5) Many of these archaeological, historical, cultural, and sacred sites are not located within the current boundaries of California Native American reservations and rancherias, and therefore are not covered by the protectionist policies of tribal governments.

(b) In recognition of California Native American tribal sovereignty and the unique relationship of California local governments and public agencies with California Native American tribal governments, and respecting the interests and roles of project proponents, it is the intent of the Legislature, in enacting this act, to accomplish all of the following:

(1) Recognize that California Native American prehistoric, historic, archaeological, cultural, and sacred places are essential elements in tribal cultural traditions, heritages, and identities.

(2) Establish a new category of resources in the California Environmental Quality Act called "tribal cultural resources" that considers the tribal cultural values in addition to the scientific and archaeological values when determining impacts and mitigation.

(3) Establish examples of mitigation measures for tribal cultural resources that uphold the existing mitigation preference for historical and archaeological resources of preservation in place, if feasible.

(4) Recognize that California Native American tribes may have expertise with regard to their tribal history and practices, which concern the tribal cultural resources with which they are traditionally and culturally affiliated. Because the California Environmental Quality Act calls for a sufficient degree of analysis, tribal knowledge about the land and tribal cultural resources at issue should be included in environmental assessments for projects that may have a significant impact on those resources.

(5) In recognition of their governmental status, establish a meaningful consultation process between California Native American tribal governments and lead agencies, respecting the interests and roles of all California Native American tribes and project proponents, and the level of required confidentiality concerning tribal cultural resources, at the earliest possible point in the California Environmental Quality Act environmental review process, so that tribal cultural resources can be identified, and culturally appropriate mitigation and mitigation monitoring programs can be considered by the decisionmaking body of the lead agency.

(6) Recognize the unique history of California Native American tribes and uphold existing rights of all California Native American tribes to participate in, and contribute their knowledge to, the environmental review process pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(7) Ensure that local and tribal governments, public agencies, and project proponents have information available, early in the California Environmental Quality Act environmental review process, for purposes of identifying and addressing potential adverse impacts to tribal cultural resources and to reduce the potential for delay and conflicts in the environmental review process.

(8) Enable California Native American tribes to manage and accept conveyances of, and act as caretakers of, tribal cultural resources.

(9) Establish that a substantial adverse change to a tribal cultural resource has a significant effect on the environment.

SEC. 2. Section 5097.94 of the Public Resources Code is amended to read:

5097.94. The commission shall have the following powers and duties:

(a) To identify and catalog places of special religious or social significance to Native Americans, and known graves and cemeteries of Native Americans on private lands. The identification and cataloging of known graves and cemeteries shall be completed on or before January 1, 1984. The commission shall notify landowners on whose property such graves and cemeteries are determined to exist, and shall identify the Native American group most likely descended from those Native Americans who may be interred on the property.

(b) To make recommendations relative to Native American sacred places that are located on private lands, are inaccessible to Native Americans, and have cultural significance to Native Americans for acquisition by the state or other public agencies for the purpose of facilitating or assuring access thereto by Native Americans.

(c) To make recommendations to the Legislature relative to procedures which will voluntarily encourage private property owners to preserve and protect sacred places in a natural state and to allow appropriate access to Native American religionists for ceremonial or spiritual activities.

(d) To appoint necessary clerical staff.

(e) To accept grants or donations, real or in kind, to carry out the purposes of this chapter.

(f) To make recommendations to the Director of Parks and Recreation and the California Arts Council relative to the California State Indian Museum and other Indian matters touched upon by department programs.

(g) To bring an action to prevent severe and irreparable damage to, or assure appropriate access for Native Americans to, a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, pursuant to Section 5097.97. If the court finds that severe and irreparable damage will occur or that appropriate access will be denied, and appropriate mitigation measures are not available, it shall issue an injunction, unless it finds, on clear and convincing evidence, that the public interest and necessity require otherwise. The Attorney General shall represent the commission and the state in litigation concerning affairs of the commission, unless the Attorney General has determined to represent the agency against whom the commission's action is directed, in which case the commission shall be authorized to employ other counsel. In any action to enforce the provisions of this subdivision the commission shall introduce evidence showing that such cemetery, place, site, or shrine has been historically regarded as a sacred or sanctified place by Native American people and represents a place of unique historical and cultural significance to an Indian tribe or community.

(h) To request and utilize the advice and service of all federal, state, local, and regional agencies.

(i) To assist Native Americans in obtaining appropriate access to sacred places that are located on public lands for ceremonial or spiritual activities.

(j) To assist state agencies in any negotiations with agencies of the federal government for the protection of Native American sacred places that are located on federal lands.

(k) To mediate, upon application of either of the parties, disputes arising between landowners and known descendants relating to the treatment and disposition of Native American human burials, skeletal remains, and items associated with Native American burials.

The agreements shall provide protection to Native American human burials and skeletal remains from vandalism and inadvertent destruction and provide for sensitive treatment and disposition of Native American burials, skeletal remains, and associated grave goods consistent with the planned use of, or the approved project on, the land.

(l) To assist interested landowners in developing agreements with appropriate Native American groups for treating or disposing, with appropriate dignity, of the human remains and any items associated with Native American burials.

(m) To provide each California Native American tribe, as defined in Section 21073, on or before July 1, 2016, with a list of all public agencies that may be a lead agency pursuant to Division 13 (commencing with Section 21000) within the geographic area with which the tribe is traditionally and culturally affiliated, the contact information of those public agencies, and information on how the tribe may request the public agency to notify the tribe of projects within the jurisdiction of those public agencies for the purposes of requesting consultation pursuant to Section 21080.3.1.

SEC. 3. Section 21073 is added to the Public Resources Code, to read:  
21073. "California Native American tribe" means a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004.

SEC. 4. Section 21074 is added to the Public Resources Code, to read:  
21074. (a) "Tribal cultural resources" are either of the following:

(1) Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either of the following:

(A) Included or determined to be eligible for inclusion in the California Register of Historical Resources.

(B) Included in a local register of historical resources as defined in subdivision (k) of Section 5020.1.

(2) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Section 5024.1. In applying the criteria set forth in subdivision (c) of Section 5024.1 for the purposes of this paragraph, the

lead agency shall consider the significance of the resource to a California Native American tribe.

(b) A cultural landscape that meets the criteria of subdivision (a) is a tribal cultural resource to the extent that the landscape is geographically defined in terms of the size and scope of the landscape.

(c) A historical resource described in Section 21084.1, a unique archaeological resource as defined in subdivision (g) of Section 21083.2, or a “nonunique archaeological resource” as defined in subdivision (h) of Section 21083.2 may also be a tribal cultural resource if it conforms with the criteria of subdivision (a).

SEC. 5. Section 21080.3.1 is added to the Public Resources Code, to read:

21080.3.1. (a) The Legislature finds and declares that California Native American tribes traditionally and culturally affiliated with a geographic area may have expertise concerning their tribal cultural resources.

(b) Prior to the release of a negative declaration, mitigated negative declaration, or environmental impact report for a project, the lead agency shall begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project if: (1) the California Native American tribe requested to the lead agency, in writing, to be informed by the lead agency through formal notification of proposed projects in the geographic area that is traditionally and culturally affiliated with the tribe, and (2) the California Native American tribe responds, in writing, within 30 days of receipt of the formal notification, and requests the consultation. When responding to the lead agency, the California Native American tribe shall designate a lead contact person. If the California Native American tribe does not designate a lead contact person, or designates multiple lead contact people, the lead agency shall defer to the individual listed on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004. For purposes of this section and Section 21080.3.2, “consultation” shall have the same meaning as provided in Section 65352.4 of the Government Code.

(c) To expedite the requirements of this section, the Native American Heritage Commission shall assist the lead agency in identifying the California Native American tribes that are traditionally and culturally affiliated with the project area.

(d) Within 14 days of determining that an application for a project is complete or a decision by a public agency to undertake a project, the lead agency shall provide formal notification to the designated contact of, or a tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, which shall be accomplished by means of at least one written notification that includes a brief description of the proposed project and its location, the lead agency contact information, and a notification that the California Native American tribe has 30 days to request consultation pursuant to this section.

(e) The lead agency shall begin the consultation process within 30 days of receiving a California Native American tribe's request for consultation.

SEC. 6. Section 21080.3.2 is added to the Public Resources Code, to read:

21080.3.2. (a) As a part of the consultation pursuant to Section 21080.3.1, the parties may propose mitigation measures, including, but not limited to, those recommended in Section 21084.3, capable of avoiding or substantially lessening potential significant impacts to a tribal cultural resource or alternatives that would avoid significant impacts to a tribal cultural resource. If the California Native American tribe requests consultation regarding alternatives to the project, recommended mitigation measures, or significant effects, the consultation shall include those topics. The consultation may include discussion concerning the type of environmental review necessary, the significance of tribal cultural resources, the significance of the project's impacts on the tribal cultural resources, and, if necessary, project alternatives or the appropriate measures for preservation or mitigation that the California Native American tribe may recommend to the lead agency.

(b) The consultation shall be considered concluded when either of the following occurs:

(1) The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource.

(2) A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.

(c) (1) This section does not limit the ability of a California Native American tribe or the public to submit information to the lead agency regarding the significance of the tribal cultural resources, the significance of the project's impact on tribal cultural resources, or any appropriate measures to mitigate the impact.

(2) This section does not limit the ability of the lead agency or project proponent to incorporate changes and additions to the project as a result of the consultation, even if not legally required.

(d) If the project proponent or its consultants participate in the consultation, those parties shall respect the principles set forth in this section.

SEC. 7. Section 21082.3 is added to the Public Resources Code, to read:

21082.3. (a) Any mitigation measures agreed upon in the consultation conducted pursuant to Section 21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to paragraph (2) of subdivision (b), and shall be fully enforceable.

(b) If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:

(1) Whether the proposed project has a significant impact on an identified tribal cultural resource.

(2) Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource.

(c) (1) Any information, including, but not limited to, the location, description, and use of the tribal cultural resources, that is submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with subdivision (r) of Section 6254 of, and Section 6254.10 of, the Government Code, and subdivision (d) of Section 15120 of Title 14 of the California Code of Regulations, without the prior consent of the tribe that provided the information. If the lead agency publishes any information submitted by a California Native American tribe during the consultation or environmental review process, that information shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. This subdivision does not prohibit the confidential exchange of the submitted information between public agencies that have lawful jurisdiction over the preparation of the environmental document.

(2) (A) This subdivision does not prohibit the confidential exchange of information regarding tribal cultural resources submitted by a California Native American tribe during the consultation or environmental review process among the lead agency, the California Native American tribe, the project applicant, or the project applicant's agent. Except as provided in subparagraph (B) or unless the California Native American tribe providing the information consents, in writing, to public disclosure, the project applicant or the project applicant's legal advisers, using a reasonable degree of care, shall maintain the confidentiality of the information exchanged for the purposes of preventing looting, vandalism, or damage to a tribal cultural resources and shall not disclose to a third party confidential information regarding tribal cultural resources.

(B) This paragraph does not apply to data or information that are or become publicly available, are already in the lawful possession of the project applicant before the provision of the information by the California Native American tribe, are independently developed by the project applicant or the project applicant's agents, or are lawfully obtained by the project applicant from a third party that is not the lead agency, a California Native American tribe, or another public agency.

(3) This subdivision does not affect or alter the application of subdivision (r) of Section 6254 of the Government Code, Section 6254.10 of the Government Code, or subdivision (d) of Section 15120 of Title 14 of the California Code of Regulations.

(4) This subdivision does not prevent a lead agency or other public agency from describing the information in general terms in the environmental document so as to inform the public of the basis of the lead agency's or other public agency's decision without breaching the confidentiality required by this subdivision.

(d) In addition to other provisions of this division, the lead agency may certify an environmental impact report or adopt a mitigated negative declaration for a project with a significant impact on an identified tribal cultural resource only if one of the following occurs:

(1) The consultation process between the California Native American tribe and the lead agency has occurred as provided in Sections 21080.3.1 and 21080.3.2 and concluded pursuant to subdivision (b) of Section 21080.3.2.

(2) The California Native American tribe has requested consultation pursuant to Section 21080.3.1 and has failed to provide comments to the lead agency, or otherwise failed to engage, in the consultation process.

(3) The lead agency has complied with subdivision (d) of Section 21080.3.1 and the California Native American tribe has failed to request consultation within 30 days.

(e) If the mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of the consultation or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to subdivision (b) of Section 21084.3.

(f) Consistent with subdivision (c), the lead agency shall publish confidential information obtained from a California Native American tribe during the consultation process in a confidential appendix to the environmental document and shall include a general description of the information, as provided in paragraph (4) of subdivision (c) in the environmental document for public review during the public comment period provided pursuant to this division.

(g) This section is not intended, and may not be construed, to limit consultation between the state and tribal governments, existing confidentiality provisions, or the protection of religious exercise to the fullest extent permitted under state and federal law.

SEC. 8. Section 21083.09 is added to the Public Resources Code, to read:

21083.09. On or before July 1, 2016, the Office of Planning and Research shall prepare and develop, and the Secretary of the Natural Resources Agency shall certify and adopt, revisions to the guidelines that update Appendix G of Chapter 3 (commencing with Section 15000) of Division 6 of Title 4 of the California Code of Regulations to do both of the following:

(a) Separate the consideration of paleontological resources from tribal cultural resources and update the relevant sample questions.

(b) Add consideration of tribal cultural resources with relevant sample questions.

SEC. 9. Section 21084.2 is added to the Public Resources Code, to read:

21084.2. A project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment.

SEC. 10. Section 21084.3 is added to the Public Resources Code, to read:

21084.3. (a) Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource.

(b) If the lead agency determines that a project may cause a substantial adverse change to a tribal cultural resource, and measures are not otherwise identified in the consultation process provided in Section 21080.3.2, the following are examples of mitigation measures that, if feasible, may be considered to avoid or minimize the significant adverse impacts:

(1) Avoidance and preservation of the resources in place, including, but not limited to, planning and construction to avoid the resources and protect the cultural and natural context, or planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.

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

(A) Protecting the cultural character and integrity of the resource.

(B) Protecting the traditional use of the resource.

(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.

SEC. 11. (a) This act does not alter or expand the applicability of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) concerning projects occurring on Native American tribal reservations or rancherias.

(b) This act does not prohibit any California Native American tribe or individual from participating in the California Environmental Quality Act on any issue of concern as an interested California Native American tribe, person, citizen, or member of the public.

(c) This act shall apply only to a project that has a notice of preparation or a notice of negative declaration or mitigated negative declaration filed on or after July 1, 2015.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.



# CITY OF BLUE LAKE

Post Office Box 458, 111 Greenwood Road,  
Phone 707.668.5655

Blue Lake, CA 95525  
Fax 707.668.5916



To: Mayor and City Council  
From: John Berchtold, City Manager  
Date: September 22, 2015  
Subject: National Rural Water Associations (NRWA) Loan for SCADA System

I recommend that the Mayor be authorized to execute any documents pertaining to the NRWA Loan. The term of the loan is ten years at 3 % interest with equal monthly payments for 120 months.

Our accountant has confirmed the accuracy of the debt schedule.

Funding for repayments is from the Capital Reserve Fund (62) and not the Operating Fund (60).



## National Rural Water Association

2915 South 13<sup>th</sup> Street, Duncan, OK 73533  
580-252-0629 phone 580-255-4476 fax

September 15, 2015

Ms. Michele McCall-Wallace, Mayor  
City of Blue Lake  
PO Box 458  
111 Greenwood  
Blue Lake, CA 95525-0458

Dear Ms. McCall-Wallace,

The application from the City of Blue Lake for a loan from the NRWA Revolving Loan Fund has been approved in the amount of \$ 99,937.00. The total principal plus accrued interest will be due and payable at the end of 10 years. The interest rate for this loan will be 3%.

Attached you will find the Promissory Note, Loan and Security Agreement (known as the Agreement) related to this loan. This loan offer and Agreement is valid for a period of 60 days from the date of this letter.

The loan will be released upon our receipt of the signed Agreement. Monthly principal and interest payments in the amount of \$965.00 will be due on the 1<sup>st</sup> day of each month starting on November 1, 2015. Loan payments should be sent to my office, the address is listed on this letter. A delinquency will occur after (10) ten days of nonpayment. We do not provide monthly statements or a payment book. An amortization schedule is enclosed for your convenience.

The loan check will be sent to the address listed on this letter and will be payable to the City of Blue Lake.

If you have any questions, please don't hesitate to call.

Sincerely,

*Claudette Atwood*

Claudette Atwood, CFO  
National Rural Water Association

Enclosures

## **PROMISSORY NOTE, LOAN AND SECURITY AGREEMENT**

*FOR VALUE RECEIVED*, City of Blue Lake (hereinafter called the Borrower) promises to pay the National Rural Water Association (NRWA), an Oklahoma corporation (hereinafter called the Lender) address, 2915 South 13th Street, Duncan, Oklahoma 73533, the principal sum of \$99,937.00 with interest thereon at a rate equal to 3.00% payable as follows:

Commencing on November 1, 2015 and thereafter on the 1<sup>st</sup> day of each month, the Borrower agrees to pay to the Lender \$965.00 in monthly principal and interest payments. The total loan principal plus accrued interest will be due and payable at the end of ten years.

This note may be prepaid, in whole or in part, at any time without penalty or premium, plus accrued interest to the prepayment date.

Any sum not paid within 15 days of the due date shall be assessed a fee of \$25.00 plus bear interest at a rate equal to 6.375% per annum and any additional interest which has accrued shall be paid at the time of and as a condition precedent to curing any default. During the existence of any such default, the Lender may apply payments received on any amount due hereunder or under the terms of any instrument now or hereafter evidencing or securing any said indebtedness as the Lender may determine. In addition, any returned checks for insufficient funds shall be assessed a \$25.00 collection fee.

Upon default in any of the terms or conditions of this Note at the option of the holder hereof the entire indebtedness hereby evidenced shall become due, payable and collectible then or thereafter as the holder may elect, regardless of the date of maturity hereof. Written notice of the exercise of such option shall be given to the Borrower by the Lender.

The Borrower agrees that if, and as often as this Note is placed in the hands of an attorney for collection or to defend or enforce any of the Lender's rights hereunder, the Borrower will pay to the Lender hereof its reasonable attorney's fees, together with all court costs and other expenses paid by the Lender.

The Borrower, endorsers, sureties, guarantors and all other persons who may become liable for all or any part of this obligation shall be entitled to presentment for payment, protest and notice of nonpayment as set forth herein.

The Borrower agrees to maintain appropriate Employee Fidelity Bond coverage also known as a Dishonesty Bond, throughout the term of the loan. Upon request by the Lender the Borrower will provide the Lender with a copy of the Employee Fidelity Bond.

### **LENDING AGREEMENT**

Subject to the terms hereinafter set forth, Lender agrees to lend to Borrower, and the Borrower agrees to borrow from the Lender, a sum of \$99,937.00 to be used by the Borrower for the purpose of paying costs and expenses necessary to fulfill the intended purpose of the loan according to the loan application as approved. The Lender will give the Borrower 30 days notice if said sum cannot be advanced.

The Borrower will provide periodic annual financial statements upon request by the Lender which fully and accurately present the financial condition of the Borrower. Requested financial statements will be provided to the Lender in a timely manner.

**SECURITY AGREEMENT**

To secure this obligation, Borrower grants to the Lender a secured interest in the assets of the City of Blue Lake in the amount of the principal amount owed.

The payment record of the Lender of this Note shall be prima facie evidence for the amount owing on this Note.

IN WITNESS WHEREOF, City of Blue Lake has executed this instrument as of the

\_\_\_\_\_ Day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Michele McCall-Wallace, Mayor  
City of Blue Lake  
Authorized Representative

# Amortization Table City of Blue Lake

A simple amortization table covering 24 payment periods of a loan.

1) To use the table, simply change any of the values in the "initial data" area of the worksheet.

2) To print the table, just choose "Print" from the "File" menu. The print area is already defined.

## Initial Data

LOAN DATA		TABLE DATA	
Loan amount:	\$99,937.00	Table starts at date:	
Annual interest rate:	3.00%	or at payment number:	1
Term in years:	10		
Payments per year:	12		
First payment due:	11/1/2015		
<b>PERIODIC PAYMENT</b>		222.6921033	
Entered payment:		<i>The table uses the calculated periodic payment amount</i>	
Calculated payment:	\$965.00	<i>unless you enter a value for "Entered payment".</i>	
<b>CALCULATIONS</b>			
Use payment of:	\$965.00	Beginning balance at payment 1:	99,937.00
1st payment in table: 1		Cumulative interest prior to payment 1:	0.00

## Table

No.	Payment Date	Beginning Balance	Interest	Principal	Ending Balance	Cumulative Interest
1	11/1/2015	99,937.00	249.84	715.16	99,221.84	249.84
2	12/1/2015	99,221.84	248.05	716.94	98,504.90	497.90
3	1/1/2016	98,504.90	246.26	718.74	97,786.16	744.16
4	2/1/2016	97,786.16	244.47	720.53	97,065.63	988.62
5	3/1/2016	97,065.63	242.66	722.34	96,343.29	1,231.29
6	4/1/2016	96,343.29	240.86	724.14	95,619.15	1,472.15
7	5/1/2016	95,619.15	239.05	725.95	94,893.20	1,711.19
8	6/1/2016	94,893.20	237.23	727.77	94,165.44	1,948.43
9	7/1/2016	94,165.44	235.41	729.59	93,435.85	2,183.84
10	8/1/2016	93,435.85	233.59	731.41	92,704.44	2,417.43
11	9/1/2016	92,704.44	231.76	733.24	91,971.20	2,649.19
12	10/1/2016	91,971.20	229.93	735.07	91,236.13	2,879.12
13	11/1/2016	91,236.13	228.09	736.91	90,499.22	3,107.21
14	12/1/2016	90,499.22	226.25	738.75	89,760.47	3,333.46
15	1/1/2017	89,760.47	224.40	740.60	89,019.87	3,557.86
16	2/1/2017	89,019.87	222.55	742.45	88,277.42	3,780.41
17	3/1/2017	88,277.42	220.69	744.31	87,533.12	4,001.10
18	4/1/2017	87,533.12	218.83	746.17	86,786.95	4,219.94
19	5/1/2017	86,786.95	216.97	748.03	86,038.92	4,436.90
20	6/1/2017	86,038.92	215.10	749.90	85,289.02	4,652.00
21	7/1/2017	85,289.02	213.22	751.78	84,537.24	4,865.22
22	8/1/2017	84,537.24	211.34	753.66	83,783.59	5,076.57
23	9/1/2017	83,783.59	209.46	755.54	83,028.05	5,286.03
24	10/1/2017	83,028.05	207.57	757.43	82,270.62	5,493.60
25	11/1/2017	82,270.62	205.68	759.32	81,511.29	5,699.27
26	12/1/2017	81,511.29	203.78	761.22	80,750.07	5,903.05
27	1/1/2018	80,750.07	201.88	763.12	79,986.95	6,104.93
28	2/1/2018	79,986.95	199.97	765.03	79,221.92	6,304.89
29	3/1/2018	79,221.92	198.05	766.94	78,454.97	6,502.95
30	4/1/2018	78,454.97	196.14	768.86	77,686.11	6,699.08
31	5/1/2018	77,686.11	194.22	770.78	76,915.33	6,893.30
32	6/1/2018	76,915.33	192.29	772.71	76,142.62	7,085.59
33	7/1/2018	76,142.62	190.36	774.64	75,367.97	7,275.94
34	8/1/2018	75,367.97	188.42	776.58	74,591.40	7,464.36
35	9/1/2018	74,591.40	186.48	778.52	73,812.87	7,650.84
36	10/1/2018	73,812.87	184.53	780.47	73,032.41	7,835.38
37	11/1/2018	73,032.41	182.58	782.42	72,249.99	8,017.96
38	12/1/2018	72,249.99	180.62	784.37	71,465.62	8,198.58

# Amortization Table City of Blue Lake

A simple amortization table covering 24 payment periods of a loan.

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## Initial Data

### LOAN DATA

Loan amount: **\$99,937.00**  
 Annual interest rate: 3.00%  
 Term in years: 10  
 Payments per year: 12  
 First payment due: 11/1/2015

### TABLE DATA

Table starts at date:  
 or at payment number: 1

### PERIODIC PAYMENT

222.6921033

Entered payment:  
 Calculated payment: **\$965.00** *The table uses the calculated periodic payment amount unless you enter a value for "Entered payment".*

### CALCULATIONS

Use payment of: \$965.00  
 1st payment in table: 1  
 Beginning balance at payment 1: 99,937.00  
 Cumulative interest prior to payment 1: 0.00

## Table

No.	Payment Date	Beginning Balance	Interest	Principal	Ending Balance	Cumulative Interest
39	1/1/2019	71,465.62	178.66	786.34	70,679.28	8,377.25
40	2/1/2019	70,679.28	176.70	788.30	69,890.98	8,553.94
41	3/1/2019	69,890.98	174.73	790.27	69,100.71	8,728.67
42	4/1/2019	69,100.71	172.75	792.25	68,308.46	8,901.42
43	5/1/2019	68,308.46	170.77	794.23	67,514.23	9,072.19
44	6/1/2019	67,514.23	168.79	796.21	66,718.02	9,240.98
45	7/1/2019	66,718.02	166.80	798.20	65,919.81	9,407.77
46	8/1/2019	65,919.81	164.80	800.20	65,119.62	9,572.57
47	9/1/2019	65,119.62	162.80	802.20	64,317.42	9,735.37
48	10/1/2019	64,317.42	160.79	804.21	63,513.21	9,896.17
49	11/1/2019	63,513.21	158.78	806.22	62,706.99	10,054.95
50	12/1/2019	62,706.99	156.77	808.23	61,898.76	10,211.72
51	1/1/2020	61,898.76	154.75	810.25	61,088.51	10,366.46
52	2/1/2020	61,088.51	152.72	812.28	60,276.23	10,519.19
53	3/1/2020	60,276.23	150.69	814.31	59,461.92	10,669.88
54	4/1/2020	59,461.92	148.65	816.34	58,645.58	10,818.53
55	5/1/2020	58,645.58	146.61	818.39	57,827.19	10,965.14
56	6/1/2020	57,827.19	144.57	820.43	57,006.76	11,109.71
57	7/1/2020	57,006.76	142.52	822.48	56,184.28	11,252.23
58	8/1/2020	56,184.28	140.46	824.54	55,359.74	11,392.69
59	9/1/2020	55,359.74	138.40	826.60	54,533.14	11,531.09
60	10/1/2020	54,533.14	136.33	828.67	53,704.48	11,667.42
61	11/1/2020	53,704.48	134.26	830.74	52,873.74	11,801.68
62	12/1/2020	52,873.74	132.18	832.81	52,040.92	11,933.87
63	1/1/2021	52,040.92	130.10	834.90	51,206.03	12,063.97
64	2/1/2021	51,206.03	128.02	836.98	50,369.04	12,191.99
65	3/1/2021	50,369.04	125.92	839.08	49,529.97	12,317.91
66	4/1/2021	49,529.97	123.82	841.17	48,688.79	12,441.73
67	5/1/2021	48,688.79	121.72	843.28	47,845.51	12,563.46
68	6/1/2021	47,845.51	119.61	845.39	47,000.13	12,683.07
69	7/1/2021	47,000.13	117.50	847.50	46,152.63	12,800.57
70	8/1/2021	46,152.63	115.38	849.62	45,303.01	12,915.95
71	9/1/2021	45,303.01	113.26	851.74	44,451.27	13,029.21
72	10/1/2021	44,451.27	111.13	853.87	43,597.40	13,140.34
73	11/1/2021	43,597.40	108.99	856.01	42,741.39	13,249.33
74	12/1/2021	42,741.39	106.85	858.15	41,883.25	13,356.18
75	1/1/2022	41,883.25	104.71	860.29	41,022.96	13,460.89
76	2/1/2022	41,022.96	102.56	862.44	40,160.52	13,563.45

# Amortization Table City of Blue Lake

A simple amortization table covering 24 payment periods of a loan.

- 1) To use the table, simply change any of the values in the "initial data" area of the worksheet.
- 2) To print the table, just choose "Print" from the "File" menu. The print area is already defined.

## Initial Data

LOAN DATA		TABLE DATA	
Loan amount:	\$99,937.00	Table starts at date:	
Annual interest rate:	3.00%	or at payment number:	1
Term in years:	10		
Payments per year:	12		
First payment due:	11/1/2015		
<b>PERIODIC PAYMENT</b>		222.6921033	
Entered payment:		<i>The table uses the calculated periodic payment amount</i>	
Calculated payment:	\$965.00	<i>unless you enter a value for "Entered payment".</i>	
<b>CALCULATIONS</b>			
Use payment of:	\$965.00	Beginning balance at payment 1:	99,937.00
1st payment in table: 1		Cumulative interest prior to payment 1:	0.00

## Table

No.	Payment Date	Beginning Balance	Interest	Principal	Ending Balance	Cumulative Interest
77	3/1/2022	40,160.52	100.40	864.60	39,295.92	13,663.85
78	4/1/2022	39,295.92	98.24	866.76	38,429.16	13,762.09
79	5/1/2022	38,429.16	96.07	868.93	37,560.23	13,858.16
80	6/1/2022	37,560.23	93.90	871.10	36,689.13	13,952.06
81	7/1/2022	36,689.13	91.72	873.28	35,815.86	14,043.79
82	8/1/2022	35,815.86	89.54	875.46	34,940.40	14,133.33
83	9/1/2022	34,940.40	87.35	877.65	34,062.75	14,220.68
84	10/1/2022	34,062.75	85.16	879.84	33,182.91	14,305.83
85	11/1/2022	33,182.91	82.96	882.04	32,300.87	14,388.79
86	12/1/2022	32,300.87	80.75	884.25	31,416.62	14,469.54
87	1/1/2023	31,416.62	78.54	886.46	30,530.16	14,548.08
88	2/1/2023	30,530.16	76.33	888.67	29,641.49	14,624.41
89	3/1/2023	29,641.49	74.10	890.90	28,750.59	14,698.51
90	4/1/2023	28,750.59	71.88	893.12	27,857.47	14,770.39
91	5/1/2023	27,857.47	69.64	895.36	26,962.11	14,840.03
92	6/1/2023	26,962.11	67.41	897.59	26,064.52	14,907.44
93	7/1/2023	26,064.52	65.16	899.84	25,164.68	14,972.60
94	8/1/2023	25,164.68	62.91	902.09	24,262.60	15,035.51
95	9/1/2023	24,262.60	60.66	904.34	23,358.25	15,096.17
96	10/1/2023	23,358.25	58.40	906.60	22,451.65	15,154.56
97	11/1/2023	22,451.65	56.13	908.87	21,542.78	15,210.69
98	12/1/2023	21,542.78	53.86	911.14	20,631.64	15,264.55
99	1/1/2024	20,631.64	51.58	913.42	19,718.22	15,316.13
100	2/1/2024	19,718.22	49.30	915.70	18,802.51	15,365.43
101	3/1/2024	18,802.51	47.01	917.99	17,884.52	15,412.43
102	4/1/2024	17,884.52	44.71	920.29	16,964.23	15,457.14
103	5/1/2024	16,964.23	42.41	922.59	16,041.64	15,499.55
104	6/1/2024	16,041.64	40.10	924.90	15,116.75	15,539.66
105	7/1/2024	15,116.75	37.79	927.21	14,189.54	15,577.45
106	8/1/2024	14,189.54	35.47	929.53	13,260.02	15,612.92
107	9/1/2024	13,260.02	33.15	931.85	12,328.17	15,646.07
108	10/1/2024	12,328.17	30.82	934.18	11,393.99	15,676.89
109	11/1/2024	11,393.99	28.48	936.51	10,457.48	15,705.38
110	12/1/2024	10,457.48	26.14	938.86	9,518.62	15,731.52
111	1/1/2025	9,518.62	23.80	941.20	8,577.42	15,755.32
112	2/1/2025	8,577.42	21.44	943.56	7,633.86	15,776.76
113	3/1/2025	7,633.86	19.08	945.91	6,687.95	15,795.85
114	4/1/2025	6,687.95	16.72	948.28	5,739.67	15,812.57

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Entered payment:		<i>The table uses the calculated periodic payment amount unless you enter a value for "Entered payment".</i>	
Calculated payment:	<b>\$965.00</b>		
<b>CALCULATIONS</b>			
Use payment of:	\$965.00	Beginning balance at payment 1:	99,937.00
1st payment in table:	1	Cumulative interest prior to payment 1:	0.00

## Table

No.	Payment Date	Beginning Balance	Interest	Principal	Ending Balance	Cumulative Interest
115	5/1/2025	5,739.67	14.35	950.65	4,789.02	15,826.92
116	6/1/2025	4,789.02	11.97	953.03	3,835.99	15,838.89
117	7/1/2025	3,835.99	9.59	955.41	2,880.58	15,848.48
118	8/1/2025	2,880.58	7.20	957.80	1,922.78	15,855.68
119	9/1/2025	1,922.78	4.81	960.19	962.59	15,860.49
120	10/1/2025	962.59	2.41	962.59	0.00	15,862.89



# CITY OF BLUE LAKE

Post Office Box 458, 111 Greenwood Road, Blue Lake, CA 95525  
Phone 707.668.5655 Fax 707.668.5916



## City Manager's Report

Blue Lake Power has not made its lease payment of \$28,491.26 due July 1, 2015, or the outstanding Water & Sewer bill of \$38,245.35.

Humboldt Bay Water District Board is holding a special meeting on September 29 at 2 p.m. to discuss the impacts of marijuana on the Mad River they have become a leading agency in the State towards monitoring enforcement. A Council representative should be present.