

EXHIBIT 3.3: CONSULTATION AND INTEGRATION OF TRIBAL EXPERTISE

This Exhibit presents guidance for the participation and contributions of culturally affiliated Tribal Experts in Caltrans activities, as well as the consultative process by which tribal traditional knowledge/expertise is integrated into Caltrans' environmental studies and findings.

Guidance for the Participation of Tribal Experts in Caltrans Activities

- “Tribal Expert” is defined in Caltrans’ [Standard Environmental Reference](#) (SER) in Volume 2, [Chapter 3](#), Section 3.3.4.6, as a tribal representative who possesses Tribal Traditional Knowledge (TTK). TTK is recognized and defined in the [California Health and Safety Code under 8012\(p\)](#) and is considered “Expert Opinion.”
- As an outcome of diplomatic or regulatory consultation between Caltrans and a tribal government, one or more Tribal Experts may be designated by a consulting tribal government’s leadership to contribute TTK or Expert Opinion and/or to conduct stewardship activities, on behalf of the tribe, to assist Caltrans’ investigations of tribal heritage resources and/or for stewardship monitoring of Caltrans’ activities in areas of tribal sensitivity.
- When tribal expertise beyond consultation is necessary to assist Caltrans in meeting compliance with its regulatory responsibilities, Caltrans seeks to provide reimbursements to Tribal Experts in the same manner it may compensate other specialized expert services, while also observing tribal sovereignty and the diplomatic responsibilities it has with tribal governments (see [Exhibit 3.4](#) for guidance on reimbursements for Tribal Expertise).
- The Caltrans PQS is responsible for managing the participation of Tribal Experts and for clearly communicating official project decisions and information to tribes. Contractors may assist and advise Caltrans in working with Tribal Experts; however, the contractor must take direction from the Caltrans PQS with regard to coordination and/or communication with Tribal Experts or other tribal representatives or officials involved in Caltrans’ projects.
- Caltrans staff and consultants are advised to maintain familiarity with the Department’s tribal government diplomatic responsibilities in [Director’s Policy 19](#) (*Working with Native American Communities*), which applies to everyone who works for the Department, including contractors, consultants, and sub-consultants.

Activities that may be conducted by a Tribal Expert

The following are reimbursable activities that may be conducted by a designated Tribal Expert:

- Contributions of TTK/expertise to the identification, evaluation, or treatment of tribal heritage resources during Caltrans cultural studies, including:
 - Field activities (e.g., pedestrian archaeological survey, site recordation, site testing/excavation, construction/maintenance monitoring)
 - Laboratory activities (e.g., processing and analysis/interpretation of material culture items)

- Research activities (e.g., conferring with tribal elders/oral history, conducting tribal ethnographic/ethnohistoric research related to a project)
- Documentation (e.g. preparation of written contributions to cultural resources documents and products)
- Attendance and participation at project specific meetings, beyond consultation, that are necessary for carrying out the other activities identified above, and the sharing of tribal expertise/tribal traditional knowledge
- Travel expenses associated with carrying out Tribal Expert participation activities.

Distinctions between Consultation and Tribal Expert Services

Consultation activities are distinguished from the contributions of tribal expertise/TTK described above. Consultation is defined as the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the cultural resources investigation process. Caltrans is unable to provide compensation to tribal governments for engagement in consultation. Compensation also cannot be provided for information that is readily available or not needed to fulfill the requirements of the cultural resources investigation. Consultation activities include:

- Providing comments in a review of documents.
- Expressing views about findings or determinations.
- Providing views and advice in the context of Caltrans fulfilling its legal obligation to consult with tribes and seek agreement on the identification and treatment of historic properties.

Key references regarding compensation to tribes in the context of cultural resources studies:

- [Guidance on Assistance to Consulting Parties in the Section 106 Review Process](#) from the Advisory Council on Historic Preservation, which administers the National Historic Preservation Act.
- [FHWA's Guidance on Tribal Consultation](#) from the Federal Highway Administration's guidance for those responsible for carrying out the Section 106 review process.