



Native American Consultation and Consideration of Tribal Traditional Knowledge

FREQUENTLY ASKED QUESTIONS

1. **How does Caltrans determine which California Native American Tribes to consult as part of the department’s cultural resources investigations?**

Caltrans conducts outreach to all culturally-affiliated [California Native American Tribes](#) to invite them to consult about the identification, significance, and potential effects of transportation projects on environmental and cultural heritage resources within their tribal ancestral territories.

Caltrans relies on the list of California Native American Tribes maintained by the California Native American Heritage Commission (NAHC) to identify all appropriate culturally-affiliated, federally and/or non-federally recognized tribal governments and/or organizations with whom Caltrans may consult concerning potential effects to tribal heritage resources.

[Chapter 3, Section 3.4.4](#) in [Volume 2](#), of [Caltrans’ Standard Environmental Reference \(SER\)](#) provides greater detail on how Caltrans identifies and engages with tribal consulting parties for environmental reviews and cultural resources investigations.

2. **When does Caltrans initiate consultation with California Native American Tribes for transportation projects?**

As part of project-level environmental compliance processes, Caltrans’ Cultural Resources staff initiate outreach and consultation with culturally affiliated Native American tribes when a project has been *programmed and funded* by the California Transportation Commission (CTC) *and* when Caltrans’ staff have been directed to begin environmental technical studies for the project. This is commonly referred to as the “*Begin Environmental*” milestone for Caltrans and is a key trigger for the initiation of consultation with tribes under federal and state historic preservation and environmental protection laws. Consultation with tribal consulting parties continues throughout the life of a project when important tribal heritage resources are, or may be, affected by a project. [Chapter 3, Section 3.4.2](#) discusses in greater detail the timing and initiation of project-specific tribal consultation, including Caltrans’ responsibilities for ongoing consultation with tribes during transportation project delivery.

Consultations between tribes and Caltrans during the project-level environmental review process is only one aspect of the Department’s broader tribal government diplomatic responsibilities under Caltrans’ [Director’s Policy 19](#) , [CalSTA’s Tribal Consultation Policy](#), and the [Governor’s Executive Order B-10-11](#).

[Chapter 3, Exhibit 3.2](#) presents a timeline of the transportation planning and delivery processes and identifies opportunities in which tribes and Caltrans can engage on a wide range of transportation, land use, environmental, and/or cultural heritage issues of interest to tribal communities. [Chapter 3, Section 3.6](#) provides further discussion about Caltrans’ tribal government diplomatic responsibilities and early engagement and coordination efforts.



3. How can tribes ensure that their cultural and natural heritage interests are adequately considered as part of Caltrans' project decisions and outcomes? How can tribal traditional knowledge (TTK) be better considered during Caltrans' cultural resources and environmental studies?

Tribal government leaders are encouraged to clearly identify and designate their tribe's cultural representatives and tribal heritage experts who they deem are best suited to represent their tribe's cultural/natural stewardship interests and concerns during Caltrans' transportation planning and development processes. [Chapter 3, Section 3.4](#), describes in detail Caltrans' responsibilities for communicating and consulting with culturally-affiliated tribes throughout the project delivery process. Given the central importance of the NAHC as the State's source of contact information for culturally affiliated tribes, tribal governments and organizations are encouraged to ensure that their contact information is maintained on the NAHC's Tribal Contact List.

As an outcome of diplomatic and/or project-level consultation between Caltrans and tribal governments, the parties may agree that it is necessary and appropriate for one or more designated tribal cultural representatives to participate in and/or contribute to Caltrans' cultural resources studies (e.g., tribal monitoring, field surveys, special studies, etc.) to support the consideration of Tribal Traditional Knowledge (TTK). TTK is defined in detail in the [California Health and Safety Code 8012 \(p\)](#). According to this definition, TTK is "Expert Opinion." Caltrans welcomes collaborations with tribal cultural leaders and/or 'Tribal Experts' in the context of the department's cultural resources studies to help promote the acknowledgement and protection of tribal ancestral lands and cultural heritage resources.

The role of a '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 is deemed by the tribe to possess special expertise or Tribal Traditional Knowledge (TTK). When agreed upon by the parties, Tribal Experts are designated by their tribal leadership to participate in Caltrans' cultural studies and may include such representatives as Tribal Cultural Resources/Environmental Managers, Tribal Historic Preservation Officers (THPOs), Elders, Culture Keepers, and/or Traditional Leaders, etc.

Each tribe, project, and cultural resource investigation is unique, and the nature and type of Tribal Expert participation may vary widely. Monitoring of Caltrans' project activities and/or cultural studies is one of the more common activities performed by tribal cultural experts and is an important opportunity for culturally affiliated Native American tribes to oversee and steward their ancestral lands and heritage resources. [Chapter 3, Section 3.4.7](#), as well as [Exhibit 3.3](#), provide a more detailed discussion on the types of activities that may be conducted by Tribal Experts to support the consideration of TTK during Caltrans' cultural resources and environmental studies.



4. Does Caltrans provide reimbursements to Tribal Cultural Experts? What methods and rates of reimbursement are available?

Yes, Caltrans reimburses designated Tribal Experts for time and expenses incurred as a result of their participation in Caltrans' cultural resources investigations and/or other related activities for which stewardship or the integration of TTK is necessary.

Methods for reimbursing Tribal Experts are dictated by state and federal fiscal and procurement authorities and may vary among the Districts due to the differing needs and capacities of both the tribes and the Districts. The most common method of reimbursement involves providing compensation to tribal representatives, as specialized experts via the District's Prime On-Call Cultural Resources Management (CRM) Contract. In establishing an appropriate rate of reimbursements for tribal expertise and activities, Caltrans complies with the Code of Federal Regulations Title 23, Chapter I, Subchapter B, Part 172, which requires that the established pay rates be "fair and reasonable." [Chapter 3, Exhibit 3.4](#) provides more detailed guidance methods and rates of reimbursements for Tribal Expert participants.

5. Can a tribally-owned monitoring company be hired to do monitoring work on Caltrans projects?

The need for tribal monitoring, or any other activity that may be conducted by a Tribal Expert, is an outcome of consultation between Caltrans and the culturally affiliated Native American Tribe(s). The use of an unaffiliated, for-profit, competitive, commercial business for tribal monitoring activities is not consistent with the diplomatic and consultative basis for the integration of TTK and the participation of culturally affiliated tribal people.

The culturally affiliated tribe with whom Caltrans consults on a given project may designate the Tribal Cultural Expert they wish to represent their tribe's cultural heritage interests. If a tribe chooses to designate an unaffiliated tribally-owned monitoring company as their tribe's representative, Caltrans will not object. Otherwise, unless expressly designated by a consulting tribe, the use of an unaffiliated, commercial tribal monitoring company would not be appropriate.

6. Can tribes enter into contracts directly with Caltrans for Tribal Cultural Expert reimbursements?

Under the [California Streets and Highways Code 94](#), Caltrans is authorized to make and enter into contracts with Native American Tribes for activities related to cultural resources management and environmental studies. Such contracts would require the inclusion of a *limited* waiver of sovereign immunity. The limited waiver would identify the specific conditions under which the tribe would agree that Caltrans can pursue legal remedies. Likewise, a tribe would reserve all rights to enforce terms and conditions of an agreement with Caltrans. Making and entering into time-intensive contractual arrangements on a project-by-project basis has thus far not proven to be an effective approach for the reimbursement of tribal monitoring/expertise.



Quick Reference Links to Caltrans Statewide Native American Consultation Guidance

([Chapter 3/Volume 2](#) of the department's [Standard Environmental Reference](#))

Chapter 3 Sections

- 3.1 – Intro/Overview
- 3.2 – Legal/Regulatory Context
- 3.3 – Organizational Roles and Responsibilities
- 3.4 – Procedures for Native American Consultation During Project Delivery
- 3.5 – Tribal Coordination on Maintenance and Encroachment Activities
- 3.6 – Tribal Government Diplomacy and Early Coordination

Chapter 3 Exhibits

- [Exhibit 3.1 – Key Policies, Directives, Guidance, & Laws for Tribal Diplomacy and Consultation](#)
- [Exhibit 3.2 – Transportation Development / Tribal Engagement Timeline](#)
- [Exhibit 3.3 – Consultation and Integration of Tribal Expertise](#)
- [Exhibit 3.4 – Guidance on Reimbursements for Tribal Expertise](#)
- [Exhibit 3.5 – Tribal Outreach and Consultation Log](#)
- [Exhibit 3.6 – Director’s Policy 19: Working with Native American Communities](#)

Questions and/or Comments? We welcome and encourage feedback on our policies and procedures. Please contact the Cultural Studies Office at CSO.Info@dot.ca.gov, and/or the Native American Cultural Studies Branch at NACS.Info@dot.ca.gov, in the Caltrans Headquarters Division of Environmental Analysis at CSO.