



June 2014

Tribal Monitoring Questions and Answers

I. What are the statutory requirements for tribal monitoring?

There are no state or federal regulations requiring tribal monitoring; however, the California High-Speed Rail Authority (Authority) has agreed to make provisions for tribal monitors during archaeological testing and data recovery excavations and/or during construction in culturally sensitive areas to enable tribes to have representation and provide input during activities that may have the potential to disturb sensitive tribal cultural resources. As such, requirements for tribal monitoring have been included in the Archaeological Treatment Plan (ATP) for the Merced to Fresno project section (and may also be included in future sections) of the high-speed rail program.

II. Where will tribal monitoring occur?

Provisions for tribal monitoring have been made for areas that contain, or are sensitive to contain, prehistoric archaeological resources. Prehistoric sensitivity will be determined based on professional archaeological investigation of the project areas and may include, but is not necessarily limited to, the following:

1. Areas within close proximity to natural water courses known to be suitable for prehistoric habitation;
2. Areas in close proximity to previously-identified prehistoric archaeological resources;
3. Areas identified as having potential for buried/subsurface archaeological deposits based on a professional geoarchaeological analysis; and/or
4. Areas identified through consultation with tribal representatives or with the Native American Heritage Commission as having sensitivity for tribal cultural resources.

Cultural Resource Sensitivity Map: Data pertaining to cultural resources sensitivity will be managed in a geospatial database (GIS) along with project alignment and parcel data, all of which will serve as a communication tool for the coordination of archaeological and tribal monitoring during construction. Culturally sensitive areas are *always* required to have a professional archaeological monitor present during ground disturbing construction activities. In addition, tribal monitors must be given advance notice of construction in culturally sensitive areas and afforded the opportunity to participate as a monitor along with the archaeological monitor.

III. Under what circumstances will provisions be made for a tribal monitor?

The Authority will ensure that provisions for tribal monitoring are made for the following activities:

1. During pre-construction ground disturbing activities, such as *geotechnical investigations*, in areas identified as sensitive for prehistoric cultural resources and for which an archaeological monitor is required;
2. During prehistoric *archaeological testing and data recovery* excavations conducted for the assessment and treatment of archaeological resources affected by the project;
3. During all ground disturbing activities associated with *project construction* in areas identified as sensitive for prehistoric cultural resources.

The Authority does not provide for tribal monitors during pedestrian archaeological surveys. A professional archaeologist (archaeological monitor) must be onsite anytime a tribal monitor is present for the above-listed activities. If a tribal monitor is scheduled to be present during either archaeological

excavation or during construction and does not appear onsite at the scheduled time, the work may proceed as long as a professional archaeologist is onsite.

IV. How will tribal monitors be identified and selected?

The Authority will give priority for tribal monitoring to those tribes who: (1) are culturally affiliated with the project area, as determined by the California Native American Heritage Commission (NAHC); (2) have demonstrated an interest and have participated in the high-speed rail project cultural resource investigation process (i.e., those who have attended tribal information meetings hosted by the Authority, responded to Authority/Federal Railroad Administration (FRA) correspondence, and/or commented or contributed to cultural resources technical documentation during the environmental review process); and (3) have accepted the Authority's/FRA's invitation to be a Consulting Party for the development of the Memorandum of Agreement (MOA) for individual high-speed rail project sections, as defined in the Section 106 Programmatic Agreement (the PA)¹. The Authority will work with each of the Consulting Party tribes to identify the individual monitors and points of contact for monitoring work. The Authority has and continues to work closely with the NAHC to identify local tribes and tribal representatives who are culturally affiliated with the various high-speed rail project sections. The Authority relies on the expertise and recommendations of the NAHC in this regard.

V. What qualifications will be required of tribal monitors?

While the Authority recommends that tribal monitors possess the desired knowledge, skills, abilities, and experience established by the California Native American Heritage Commission's *Guidelines for Native American Monitors*², tribal officials are ultimately responsible for vetting the qualifications of the tribal monitors whom they choose to represent their tribe.

Tribal monitors will be required to participate in environmental awareness training and construction site safety orientation prior to working on a construction site.

VI. How many monitors will be hired from each tribe?

The Authority will request that Consulting Party tribes identify and designate one individual to represent their tribe as a **primary tribal monitor** and one individual to serve as an **alternate tribal monitor**. Depending on the number of Consulting Party tribes and the amount of tribal monitoring needed in a given circumstance, additional monitors may be invited if warranted by workload demands. To ensure that all participating tribes have an equal opportunity for representation, tribal monitors from each participating tribe will be systematically rotated on a schedule established by the Authority and/or the construction contractor; however, negotiations with participating tribes may also occur to identify alternative means by which to rotate or share the monitoring effort, such as the designation of specific geographic areas along the project alignment for each tribe. The Authority will work with the participating tribes regarding potential geographic preferences. Tribes should contact the Authority's Tribal Liaison to identify their geographic preferences.

VII. Will tribal monitors be reimbursed for time and expenses?

Tribal monitors will be reimbursed for time. Per Diem may be provided if travel to the project site exceeds 90 miles one-way. The mechanism for reimbursing tribal monitors may vary from section to section and may include: tribes serving as sub-contractors under a professional services agreement; monitors being temporarily employed through a staffing agency; or monitors being hired by the contractor as temporary/on-call workers.

¹ *Programmatic Agreement Among the Federal Railroad Administration, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and the California High-Speed Rail Authority Regarding Compliance with Section 106 of the National Historic Preservation Act, as it Pertains to the California High-Speed Train Project.*

² Native American Heritage Commission Guidelines for Native American Monitors/Consultants (2005): <http://www.nahc.ca.gov/guidelines4mon.html>

VIII. How will tribes be notified of monitoring opportunities?

The Authority will request that consulting party tribes complete a *Tribal Monitor Contact Form* to identify the individual(s) designated to represent their tribe as monitors in the field. The form must be signed by the tribal chairperson. Upon completion of all necessary forms and employment paperwork, the designated tribal monitors will then be contacted directly to receive advance notification of the schedule and location of monitoring, based on the contractor's work schedule and type of work to be conducted. Notifications of the schedule for monitoring will typically come from the contractor(s) conducting work on behalf of the Authority. To ensure proper notification, it is important that tribes and/or monitors ensure that their contact information remains up-to-date by notifying the Authority if there are any changes in the designated monitors or their contact information.

IX. Who should tribes or their tribal monitors contact if they have questions or concerns?

Tribal monitors should convey questions or concerns to the onsite archaeologist in the field during monitoring activities. Tribal monitors do not have the authority to halt construction work, but may convey concerns to the onsite archaeologist who may halt construction to further inspect areas of concern. If questions or concerns are not able to be addressed in the field by the onsite archaeologist or lead archaeologist, tribal monitors and/or tribal officials should contact the Authority's Cultural Resources/Environmental Planning Personnel:

Sarah Allred,
Cultural Resources Specialist/Tribal Liaison
(916) 403-0061
sarah.allred@hsr.ca.gov

John Sharp,
Cultural Resources Specialist
(916) 403-2689
john.sharp@hsr.ca.gov

Mark McLoughlin,
Director of Environmental Planning
(916) 403-6934
mark.mcloughlin@hsr.ca.gov

California High-Speed Rail Authority Office
770 L Street, Suite 800
Sacramento, CA 95814
(916) 324-1541 main phone
(916) 322-0827 fax
Authority website:
http://www.hsr.ca.gov/Programs/Tribal_Relations/index.html