Tribal Cultural Landscape Approach

I. Guidelines for Tribal Pre-Consultation and Engagement

The recommendations below represent a review of best practices for agency representatives and project proponents that begin with pre-consultation preparation and engagement. Synthesized and adapted from existing federal agency consultation guidelines (NRCS 2009; USFWS 2011; NOAA 2013), they are included here and should be followed by agencies and potential project proponents. These recommendations are critical and necessary for meaningful and effective engagement, consultation, and collaboration even when they are not required by policy or law.

DO YOUR HOMEWORK¹:

1. **Research the tribe’s culture.** “Culture” comprises how a group’s worldview influences their behavior. This includes a tribe’s governance structure, food preferences, spiritual practices, natural resource values, wealth, family structure, education system, etc.

2. **Research the history of the tribe and its current and historical relationship to the federal government.** Books, tribal newspapers, websites, and other documents can provide information on the tribe’s historical relationship with the Federal government. It is important to be aware of any relevant conflicts, wars, treaties, executive orders, case law, and statutes, and how these have evolved over the years.

3. **Understand what is and what is not appropriate within tribal culture.** Observation, reading, and discussions with designated tribal officials can provide pertinent information about the tribal culture and help minimize cultural missteps. An initial phone call to a tribal point of contact (such as THPO, Executive Director, etc.) can provide a better opportunity for introductions and can help lay the groundwork for an initial formal meeting. Be aware of the tribe’s decision-making process: not all tribes use the same process to make decisions. In meetings, be aware of protocols related to prayer, food, and gift-giving, and be prepared to act accordingly.

4. **Understand the tribal perceptions of time and allow enough time to form an ongoing relationship.** Perceptions of time vary across cultures. The agency time rhythm is typically based on Western culture which may differ from a tribe’s time rhythm. Agency staff should be aware of differences and work to accommodate tribal schedules when time horizons seem to be out of sync. Likewise, agency staff should be clear with tribal contacts about any exigent circumstances driving the agency’s timing for action. It may also be important to consider subsistence schedules and preparation times before consultation begins.

PROJECT PLANNING:

5. **Budget resources and time for building relationships before decisions are made.** Establish the formal and informal preliminary contacts and the appropriate authorities needed for proceeding. In many federal-tribal interactions, this phase is typically overlooked in sets of procedures guiding the formation of working relationships. Take time to assess and define roles, organizational attributes, and explicit procedures.

6. **Work toward building tribal capacity.** Building institutional capacity should be a fundamental goal of the project within not only the office of the THPO and the tribal government, but also among the entire tribal

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¹ As much as possible, information about a tribe should come from that tribe.
community and the tribe’s cultural and natural resource departments, and other partners. With this in mind, funding for the TCL project accounted for necessary staffing, logistics, and supplies, as well as ongoing technical assistance necessary for the completion of the project. Each tribe determined its own needs, negotiated the terms of its contract, and managed its allocated funds.

7. **Construct flexible protocols.** The protocols should allow tribes to implement their own contributions with due consideration of project resources and procedural fairness, as well as consider tribes’ distinct treaty arrangements, varied formal and informal tribal governance structures, and unique views of their cultural legacies and methods for protecting them. A method to accomplish this is to begin to construct ground rules for the process and any associated meetings. (see Appendix II “Procedural Specifics to Consider”)

8. **Establish procedural neutrality when conducting meetings and workshops.** Independent facilitators, personally and professionally qualified by their experience with tribes, non-tribal governments and indigenous cultures, should be included as members of the project team in order to guide the process and facilitate meetings and workshops.

**CONSULTATION AND COLLABORATION:**

9. **Understand tribal authority and representation.** In any situation, understanding both formal and informal authority is profoundly important. Representation and authority can be nested in many layers: Who speaks for “culture”? Who speaks with the legitimate authority of government? Who possesses culturally-appropriate credentials, whether from the culture of academe or the culture of an oral tradition? Who speaks for the past or the future?

10. **Respect tribal sovereignty, self-determination, and protocols.** Tribes must have discretionary control over their means of reaching the project outcomes according to their own cultural values and norms.

11. **Respect tribal representation of tribal interests and practices.** Tribal governments, tribally-recognized experts, and a tribe’s view of itself as well as of its past, present and future, all legitimately represent a tribe’s interests. Tribes and their THPOs, or a tribally appointed cultural officer, can best identify and define the authority of information sources from among elders, community members, oral histories, primary and secondary literature sources, academically-trained tribal staff, consultants and other sources. Accordingly, each tribe has the discretion to collect and manage its data according to its own standards and appropriate practices. Of the three tribes that make up the TCL project team for example, the Yurok Tribe, as a cultural practice, conducts archaeological surveys but does not conduct archaeological excavations. By contrast, the Grand Ronde Tribe has an active survey and excavation program, and the Makah Tribe utilizes survey and excavation when necessary. All of these approaches are equally valid.

12. **Keep agency leadership (or funding organization) apprised of developments.** Agency representatives, often severely limited in their personal discretionary authority, need immediate and frequent access to managers, legal personnel, policy experts and signatory authorities. Decision-makers should be regularly briefed on project status, progress, and potential concerns.

13. **Adapt current information in light of new information from tribes.** The engagement process should be refined when tribal members and affiliates present information not typically used by agencies in decision-making. When tribal members and affiliates present divergent information to agencies, agency representatives should seek to clarify the divergent information with the governing body of the tribe.
II. Template for Indigenous Data Collection and Retention. This process provides a method for tribes to collect and hold information that can be queried internally, with the ability to provide summary results to external parties.
II. Template for Indigenous Data Collection and Retention

In the TCL Project, each of the three participating tribal communities conducted case studies to demonstrate how this process could be used to identify tribal cultural landscapes. The target study areas focused on the landscapes within the ceded and aboriginal homelands of each of the representative tribes and incorporated coastal and marine areas that could be impacted by offshore renewable energy development. The case studies focused on areas that include coastal land-based, as well as offshore, areas of tribal significance.

Data collected and analyzed by each tribe is retained by each tribe. Case study information that tribes convey to agencies and project proponents is at the discretion of each tribe, and represents the minimum amount of information needed by agencies and project proponents. This template provides a method for tribes to collect and hold information that can be queried internally, with the ability to provide summary results to external parties. These broad steps outline the general activities undertaken by each TCL project team tribe during their case studies. Additional discussion of successes and challenges encountered is included in the Final Report.

The steps for indigenous data collection are as follows:

1. **Conceptualization:** Tribe determines types of information to be collected and analyzed, formats for recording and processing, and ways to ensure security and access. Tribe may also identify format for presentation and discuss future applicability of data.

2. **Data Acquisition:** This can be an ongoing process; tribe determines data standards and attributes, and gathers and stores information.

3. **Geo-reference:** This analysis step includes boundaries (if applicable), data layer development, data linkage and cleaning, and document verification.

4. **Synthesis:** This analysis step can include information on—and illuminate linkages between—place, activities, traditional knowledge (TK), context, and ultimately cultural understanding.

5. **Presentation:** At the sole discretion of tribe; tribe may choose to present any of the above findings via public presentations including non-sensitive data, maps and GIS data layers, field visits, and written and oral reports.
**III. Process for application of TCL approach**, showing how it can be feasibly implemented under existing federal policy. The steps for conducting NEPA and NHPA Section 106 analyses are also included for comparison, to illustrate how the steps in the TCL approach align, and at what points they could be implemented.

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<th>NHPA</th>
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<td>Identify proposed action</td>
<td>1. Identify clear management objectives</td>
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<td>Begin scoping process/government-to-government consultation</td>
<td>2. Engage tribes †</td>
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<td>Stage 2</td>
<td>Draft Environmental Assessment/Environmental Impact Statement</td>
<td>3. Identify places, landscapes, and values ‡</td>
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<td>Public review and comment*</td>
<td>4. Plan for managing cultural values</td>
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<td>Stage 3</td>
<td>Final Environmental Assessment/Environmental Impact Statement</td>
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<td>Categorical Exclusion/ Finding Of No Significant Impact/Record Of Decision</td>
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<td>6. Feedback Dialogue</td>
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<td>7. Monitor and review</td>
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*The public review step of NEPA does not distinguish between tribes and other interested groups, but this step should include a separate government-to-government review and comment period. † To be conducted by agencies: see steps for Tribal Pre-Consultation and Engagement. ‡ To be conducted by tribes: see steps for Tribal Data Collection and Retention.
III. Process for Application of TCL Approach

1. **Identify clear management objectives:** Agency determines the proposed action/undertaking through its NEPA/NHPA process. This includes identifying potential tribes for government-to-government consultation as well as non-government-to-government engagement, identifying the initial area of potential effect (APE), and potential impacts to resources.

2. **Engage tribes:** Agency should follow the steps outlined above in *Guidelines for Tribal Pre-Consultation and Engagement*. Agency sends formal letter to tribal leaders requesting government-to-government consultation, including NEPA/NHPA requirements. First consultation meeting begins by identifying protocols for consultation during proposed action/undertaking and clearly describes how sensitive information will be handled. The initial APE and known resources may be identified by the agency, but neither of these should be presented as final information. *Definition of the final APE and potential resource impacts must be developed through the consultation process.*

3. **Identify places/landscapes/values:** This step is conducted by tribes, following the steps outlined above in *Template for Indigenous Data Collection and Retention*. This process is not dependent on a proposed undertaking, and may ideally be completed by tribes in advance of any proposed undertakings. During the TCL process, the tribe reviews project information, identifies landscapes that could be affected by the proposed action/undertaking, determines what information will be shared with the agency, and reviews/refines protocols for sharing sensitive information.

4. **Plan for managing cultural values:** Tribe and agency meet to develop a plan to incorporate TCL information into the decision process, protect sensitive information, and determine how agency will provide feedback under Step 6. Under the NEPA process as it is typically conducted, the public review and comment step does not distinguish between tribes and other interested groups, but this step should include a separate government-to-government review and comment period (CEQ...1978). Under the NHPA Section 106 process, the agency would assess, evaluate, and resolve any potential adverse effects as needed in consultation with tribes. The TCL approach shifts the focus to managing resources based on cultural values, in a truly collaborative manner where tribal input is integral to decision-making—being both incorporated earlier in the process and verified by tribes as appropriately represented in outcomes.

5. **Integrate into existing management framework:** Tribes outline steps to ensure that agencies incorporate tribal input into NEPA and NHPA documents, and memorialize through Finding of No Significant Impact/Record of Decision (FONSI/ROD) and, if needed to resolve adverse effects, Memorandum of Understanding/Agreement or Programmatic Agreement (MOU/MOA or PA).

6. **Feedback Dialogue:** Agency reports back to tribe informing them how their input was used in the decision-making process, and facilitates tribal review to ensure appropriateness of use.

7. **Monitor and Review:** Agency and tribes review the process to ensure that all parties are satisfied with outcomes. Project proponent provides opportunities for agency and tribes to monitor activities related to the undertaking. If necessary, loop back to Step 4 and repeat. *When consensus is not reached:* When the parties acknowledge that agreement is not being reached, adopt the positive view that areas of disagreement are problems to be solved together. Assess the process used, clearly describe the areas of disagreement, and discuss among appointed representatives in order to clarify as well as to deepen understanding of any barriers. Based on mutual understanding, formulate a plan for working together in the future.