DRAFT 3.10.2022

A picture containing text, clipart

Description automatically generatedUAIC TRIBAL GOALS FOR

SECTION 106

A tree next to a body of water

Description automatically generatedCONSULTATION:

*prevention, preservation, and restoration*

**T**he United Auburn Indian Community (UAIC) is a federally recognized Native American Tribe, composed of Nisenan (Southern Maidu) and Miwok people indigenous to the greater Sacramento Valley region. United Auburn’s traditional territory includes all of Amador, El Dorado, Nevada, Placer, Sacramento, Sutter, and Yuba counties as well as portions of Butte, Plumas, San Joaquin, Solano, and Yolo counties. UAIC prepared this document to assist federal agencies, or agencies receiving federal funds, with “best practices” for Tribal Consultation with UAIC pursuant to Section 106 and other applicable laws and regulations. This document is intended to inform those conducting consultation with UAIC the importance of including Tribes, Tribal values, and knowledge into the decision-making process. It is not intended to be an exhaustive resource or listing of all the applicable laws, treaties, statutes, and court decisions pertaining to the protection of Native American resources. UAIC hopes that a collaborative understanding will result in improved consideration for remaining significant cultural sites in California as worthy of preservation.

**DID YOU KNOW?**

IN 36 CFR PART 800 THERE ARE 161 INSTANCES OF THE WORDS TRIBAL/TRIBE (EXCLUDING THPO). THERE ARE ZERO FOR ARCHAEOLOGY, TWO FOR ARCHAEOLOGICAL AND THREE FOR THE ARCHAEOLOGICAL RESOURCES PROTECTION ACT (ARPA).

**WHAT DOES THIS MEAN?**

THE SECTION 106 PROCESS STRONGLY EMPHASISES TRIBES AND TRIBAL VALUES. THESE VALUES **MUST** BE WEIGHED APPROPRIATELY ALONG WITH ARCHAEOLOGICAL VALUES IN THE DECISION-MAKING PROCESS. ONLY TRIBAL MEMBERS AND REPRESENTATIVES CAN IDENTIFY TRIBAL VALUES AND RESOURCES.

## **Key Concepts of Tribal Consultation**

36 CFR Part 800.16(f) defines consultation 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 section 106 process. Tribes are sovereign nations and should be respected and recognized as such during consultations. Sovereignty involves the power to govern. As a sovereign nation, UAIC has the rights of self-government and self-determination. Consultation must constitute more than a notification. Tribes must be able to have an impact on the final decision as to whether and how a project will move forward. Meaningful consultation must take place in advance of any decision making. Such consultation should include UAIC representatives and lead agency representatives with the authority to make determinations regarding the project.  Consultation is a mechanism for understanding the historical context for Tribal interests and can provide a foundation for effective communication and meaningful understanding of a Tribe’s concerns.

## **Before you Begin**

* Notices should be sent sufficiently in advance of a consultation session to allow time for Tribes to review and develop recommendations.
* Consultation should be initiated as early as possible in an honest, open, and meaningful way. Make a good-faith effort to obtain a response from Tribes and be cognizant of the limits of Tribal staff time and availability.
* Tribal Consultation is a two-way dialog and opportunity for joint decision making on a government-to-government level, not a procedural or “check the box” exercise.
* Consultation is a mechanism for understanding the historical and contemporary context for Tribal interests and can provide a foundation for effective communication and meaningful understanding of a Tribe’s concerns.
* Notices should contain all the necessary background information on the topic to be consulted on, the timeline, and consultation plan if one is drafted.
* Understand that UAIC expects to be respectfully engaged with and have their recommendations be thoughtfully considered, even if those recommendations are not expressed in technical language.
* Understand that the discussion of confidential sacred site locations, burial locations, and Tribal practices touches on spiritual matters. These discussions do not occur unless it is deemed necessary by Tribes to support the protection of Tribal resources.
* Please think of how you would want your spiritual beliefs and traditional practices respected and act accordingly.
* Understand that UAIC does not want to be persuaded to accept preconceived plans; we wish to be involved in the planning.
* Under no circumstances should an agency representative issue an ultimatum to UAIC.
* Tribal consultation is not an “accommodation” to the Tribe; it’s the law.
* Request Sacred Lands Inventory and CHRIS searches to find out the cultural resources in your proposed project area.
* **Understand that the UAIC’s value or interpretation of these resource records may differ from agency and archaeological perspectives.**

## **UAIC’s Online Submission Form**

We now have an online submission form for all notifications and information requests. This form is UAIC’s preferred method to receive these notifications and can be found at [auburnrancheria.com/programs-services/tribal-preservation/submit-agency-notification](https://auburnrancheria.com/programs-services/tribal-preservation/submit-agency-notification). Using this online form ensures both UAIC and the lead agency that the notification has been received and will be processed in a timely manner.

## **What to include in project Notifications**

* Draft cultural, biological, and arborist reports, if available
* Lead agency contact information
* Maximum depth and horizontal extent of soil disturbance
* Project description and location inclusive of staging areas and utility improvements or modifications
* Shapefiles of project footprint
* Offsite improvements
* Environmental document timeline
* Construction timeline

Be sure to contact us THPO@auburnrancheria.com if you have any questions about what to include!

## **Tribal Resources and Tribal ValuES**

**TRIBAL MONITORS AND PAYMENT**

AS WITH BIOLOGICAL AND ARCHAEOLOGICAL MONITORS, TRIBAL MONITORS ARE A REQUIREMENT OF THE PERMIT AND COMPENSATION SHOULD BE INCORPORATED INTO PROJECT BUDGETS. TRIBAL MONITORS ARE PROFESSIONALS WITH EXPERTISE ON TRIBAL RESOURCES AND SHOULD BE RESPECTED AND COMPENSATED AS SUCH. AN ARCHAEOLOGICAL MONITOR IS **NOT** A REPLACEMENT FOR A TRIBAL MONITOR IF UAIC HAS IDENTIFIED THE PROJECT AREA AS SENSITIVE FOR TRIBAL RESOURCES AND VALUES.

THE ADVISORY COUNCIL FOR HISTORIC PRESERVATION (ACHP) RECENTLY UPDATED THEIR HANDBOOK FOR CONSULTATION WITH INDIAN TRIBES IN THE SECTION 106 REVIEW PROCESS. THE ACHP STRONGLY ENCOURAGES AGENCIES TO TAKE THE STEPS NECESSARY TO FACILITATE TRIBAL PARTICIPATION IN THE SECTION 106 PROCESS. REIMBURSABLE COSTS MAY INCLUDE THOSE COSTS ASSOCIATED WITH EXPERT CONSULTANTS (TRIBES) TO IDENTIFY AND EVALUATE HISTORIC PROPERTIES. THIS MAY INCLUDE FIELD VISITS TO PROVIDE INFORMATION ABOUT SPECIFIC PLACES OR SITES, MONITORING ACTIVITIES, RESEARCH ASSOCIATED WITH HISTORICAL INVESTIGATION, DOCUMENTATION PRODUCTION COSTS, AND RELATED TRAVEL EXPENSES.

The interest of UAIC in heritage resources flows from Tribal members’ inherent connection to their ancestors, their traditional lands, and origin areas. Place or territory is a fundamental component of Indigenous peoplehood interconnected with language, ceremonial cycles, sacred history, lifeways, and religious expression. UAIC ascribes religious and cultural significance to many cultural and ecological resources, such as:

* Indigenous archaeological sites
* Sacred lands or sites
* Traditional Cultural Properties
* Midden/anthropogenic soils, including disturbed soils
* Burials, cremations, and all related burial or ceremonial items
* Burial soils
* Isolated indigenous objects, including artifacts
* Cultural landscapes and topographic features
* Indigenous trails
* Significant native plants/gathering areas
* Traditional hunting and fishing areas
* Waterways and associated landscapes

The significance and integrity of materials at a cultural site is of paramount importance to UAIC. Because of this significance, any removal of Tribal ancestors, cultural objects, or cultural soils is an adverse effect. Conversely, the return and reburial of cultural items and soils at a cultural site is treated by UAIC as mitigation or restoration of Tribal significance to a historic property. Recovery and restoration are forms of traditional stewardship, and part of the professional skillset of Tribal Monitors.

Tribal Monitors are trained in the appropriate traditional identification, treatment, and reinterment of materials so that the integrity of feeling and association that the Tribe ascribes to these historic properties is restored.

## **During Consultation with UAIC**

When a lead agency submits a project notification to UAIC, the Tribal Historic Preservation Department conducts a search and desktop review for cultural sensitivity in our Tribal Historic Resources Information System (THRIS). Then we contact the lead agency if the Tribe wishes to consult on the project. UAIC may request specific or additional information that has not already been provided (see “What to Include in the Project Notifications”).

The Preservation Department will determine if the project area is sensitive, potentially sensitive, or not sensitive. We may request to conduct an in-person site visit or survey to identify resources of religious and cultural significance to UAIC in the project boundary, or to confirm the boundaries and constituents of previously documented cultural sites. We strive to use non-ground disturbing methods to identify resources and site boundaries such as oral history, ground penetrating radar, LIDAR, and careful study of historic maps and current and past topography. In cases where we suspect human burials, we often recommend canine forensic surveys.

CANINE FORENSIC SURVEYS

UAIC HIGHLY RECOMMENDS THE USE OF CANINE FORENSIC SURVEYS IN AREAS WHERE BURIALS OR POTENTIAL BURIALS HAVE BEEN IDENTIFIED. THIS INFORMATION IS INVALUABLE IN THE IDENTIFICATION, AVOIDANCE, AND PROTECTION OF THESE SACRED SITES AND CAN GREATLY HELP WITH PROJECT PLANNING. ACTIVELY CONSULT WITH THE UAIC PRESERVATION DEPARTMENT **BEFORE** UNDERTAKING ANY CANINE SURVEY. WE MAINTAIN A LIST OF APPROVED PROVIDERS OF THIS SERVICE.

During this time, it is important to keep an open dialog and to keep all records of communication. As part of the identification process, the agency official shall acknowledge that UAIC *possess[es] special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them* (36 CFR Part 800.4 (c)(1)).

Goals of consultation should be to:

* Seek to understand Tribal concerns, reach a consensus where possible, and when necessary, explain clearly why Tribal concerns could not be addressed, or suggest an alternative solution.
* Create a feedback loop and accountability system to ensure Tribes’ concerns are addressed.
* Ensure all sensitive information provided by UAIC is kept confidential.

During the consultation process, UAIC staff are committed to developing reasonable and feasible recommendations such as:

* Avoidance and Preservation in Place
* Environmental Exclusion Area/Protective Fencing
* Workers Cultural Awareness Training
* Vegetation Management
* Non-Ground-Invasive Identification Methods
* Canine Forensic Survey
* Tribal Monitoring
* Reburial and Site Restoration

## **TRIBAL Goals of Preservation, EVAluation, and Restoration**

36 CFR Part 800.2 states that Tribes shall be provided the opportunity to identify their concerns about historic properties and advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance. Archaeologists may assist with the evaluation of an indigenous historic property, but this must be in coordination with Tribes and Tribal values. The Secretary of the Interior's Standards and Guidelines state that evaluation must be performed by persons qualified by education, training, and experience in the application of the criteria. It follows that Tribal perspectives must be used to identify Tribal values during the identification and evaluation process.

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| --- | --- |
| Tribal Processes & Goals | Archaeological Processes & Goals |
| identification | **identification** |
| preservation AND EVALUTION | **evaluation** |
| restoration | **information and data potential** |

Agencies must recognize that there are different lines of identification for Tribal sites. Oral history, published history, primary sources, and physical field surveys are all part of the Tribal identification process. Tribal identifications can and should inform archaeological surveys. Lack of archaeological evidence for a site or place does not constitute proof that a Tribally identified historic property of religious and cultural significance is not present. It simply means that one line of evidence is not present. Archaeological methods and Tribal methods of identification must not be conflated, as doing so can lead to the undermining of Tribal knowledge and the preservation and protection of Tribally identified historic properties.

From UAIC’s perspective, preservation is always the preferred outcome. UAIC privileges preservation efforts over evaluation. It is only when preservation in place is clearly not an option, and potential avenues for preservation have been thoroughly considered, that UAIC will engage in discussions of evaluation. Evaluations should always encompass discussions of restoration, potentially as part of mitigation.

Tribal application of the National Register of Historic Places evaluation criteria also differs from archaeological and agency perspectives. Tribal considerations appear in italics below the statement of National Register criteria (criteria published at <https://www.nps.gov/subjects/nationalregister/upload/NRB-15_web508.pdf>).

The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

1. That are associated with events that have made a significant contribution to the broad patterns of our history.

*Tribal considerations include information from oral history, as well as published maps, histories, and other references. Events and time periods associated with ancestors are generally important to Tribal identity.*

1. That are associated with the lives of persons significant in our past.

*UAIC notes that Criterion B should be applied in a way that encompasses Tribal views of what defines an important person. Association of places with Tribal leaders, doctors, healers, spiritual practitioners, and spiritual beings makes these places important, even if the names and individual histories of these people cannot be stated for a non-native audience. From a Tribal perspective, the spirit and power of ancestors can remain at the site and give it significance.*

1. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction.

*Native methods of construction and Native forms of architecture are one of the most understudied sources of information. As an example, village mounds were built on high ground and were a prominent architectural feature of riverine, flood plains, and valley landscapes. For UAIC, mounds - both the visible (above ground) and not visible (buried) structures - represent thousands of years of planned and intentional building to construct areas of high ground for the benefit of their People. Tribal people created mounds to be durable places of safety, refuge, and home. As constructed areas of high ground, they were constantly being built up, vertically and horizontally, and maintained. While Criterion C is infrequently applied during archaeological evaluation, Tribal considerations and knowledge often suggest that Criterion C is applicable in many cases.*

1. That have yielded, or may be likely to yield, information important in prehistory or history.

*UAIC emphasizes that the value of information is as a mechanism for teaching Tribal members (as well as the general public) about Tribal culture and heritage. In this way, information is viewed as part of the site’s restoration. This contrasts with the archaeological interpretation of Criterion D as data potential to be mined.*

Archaeologists often treat the excavation, removal, and curation of cultural items as mitigation. Because Tribal significance considers this type of archaeological treatment to be itself an adverse effect to significant historic properties, the default or un-critical application of archaeological mitigation to Nisenan and Miwok cultural sites has been and continues to function as an act of systemic erasure and trauma.

UAIC Tribal values focus on restoring the integrity of the historic property, leading to the preferred outcome of restoration. Often this means reestablishing the integrity of materials, location, and setting by recovering and then reburying the physical components of sites, inclusive of and especially site soils. Tribal Monitors and other Tribal Representatives are tasked with retaining the integrity of feeling and association to ensure that all culturally modified or significant soils and objects are treated appropriately and then returned to the site. By restoring the integrity of these places, the integrity of the Tribe’s culture is restored, as well as Tribal values and sovereignty. Although this view of integrity is within the Tribal values described in Section 106, this view of integrity is often at odds with archaeological considerations which frequently mention “disturbance” and lack of *in situ* soils. With careful consultation and discussion, the two views can be integrated.

Tribal consultation and stewardship are robust and culturally distinct processes that change and adapt to ensure that the Tribe’s core values of relationship between cultural sites, people and the landscape are maintained, despite substantial barriers to this relationship. Tribal stewardship has been and continues to be a testament to the cultural strength and resilience of UAIC and to be a foundation for the continued sovereignty and indigenization of cultural sites and landscapes. From UAIC’s perspective, the end goal is to avoid adverse effects to Tribal resources. If adverse effects must occur, then a process of restoration can ameliorate the effects but not entirely resolve them. Restoration is a means of bringing back balance in the cultural (inclusive of ecological) and spiritual world.

From an archaeological perspective, the end goal is to resolve adverse effects to historic properties. Both actual and implicit bias is prevalent in the practice of cultural resource management (CRM) in California, particularly within the community of prehistoric archaeological professionals that serve as a consulting arm to provide expertise for project applicants seeking clearance of land for development purposes. In contemporary practice, the discipline of archaeology is built around and relies upon western knowledge systems and methodologies; its practice has a strongly colonial history, privileging the material, scientific, observable world over the spiritual, experiential, and unquantifiable aspects of sites, peoples, and artifacts.

Archaeological studies rarely address Tribal values during the Section 106 evaluation process of cultural resources. These studies typically focus on the potential of archaeological sites to contain data and information. Why is it that Tribes have not actively participated in evaluation of historic properties? Often it has to do with availability of time, staffing, and other factors. But more so, that archaeological values and the academic system are currently privileged over Tribal values and have set the precedents for these evaluations. Additionally, the criteria for evaluation are not framed for Tribal resources. The Advisory Council on Historic Preservation has written several documents that may assist in overcoming this bias (achp.gov) but these practices and viewpoints are not yet widely adopted in California.

UAIC welcomes the opportunity to collaborate with archaeologists, ecological specialists, and project managers in developing appropriate inventories, context, and criteria for evaluation of properties, sites, landscapes, or objects of cultural and religious significance for each project. REMEMBER THAT TRIBAL EXPERTISE CONSTITUTES SUBSTANTIAL EVIDENCE ([California Health and Safety Code § 8012 (k)(p)).](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=HSC&division=7.&title=&part=2.&chapter=5.&article=2.)

## **Incorporate Traditional Ecological Knowledge into Decision Making**

Tribal identification and understanding of cultural values *always* considers the local environment. From a Tribal perspective, ecological resources are cultural resources, particularly when those resources are an integral part of the Tribal landscape. Traditional Ecological Knowledge (TEK) can be defined as an evolving form of knowledge acquired by indigenous peoples over hundreds or thousands of years of actively managing and being in contact with the environment. This knowledge is expressed through oral and written knowledge, practices, beliefs, and active stewardship.

**PRESIDENTIAL MEMO ON TEK**

THE NOVEMBER 2021 [PRESIDENTIAL MEMO ON INDIGENOUS TRADITIONAL ECOLOGICAL KNOWLEDGE AND FEDERAL DECISION MAKING](https://www.whitehouse.gov/wp-content/uploads/2021/11/111521-OSTP-CEQ-ITEK-Memo.pdf) ACKNOWLEDGES THE IMPORTANCE OF INDIGENOUS TRADITIONAL ECOLOGICAL KNOWLEDGE AND HAS COMMITTED TO “ENSURING THAT FEDERAL AGENCIES CONDUCT REGULAR, MEANINGFUL, AND ROBUST CONSULTATION WITH TRIBAL OFFICIALS IN THE DEVELOPMENT OF FEDERAL RESEARCH, POLICIES, AND DECISIONS, ESPECIALLY DECISIONS THAT MAY AFFECT TRIBAL NATIONS AND THE PEOPLE THEY REPRESENT.

## **Continued Consultation and Post-Review Discoveries**

When avoidance of a resource is not possible, consultation with UAIC is important to come to agreement on the mechanism for recovery, and to establish protocols for the kinds and extent of materials to be recovered. Discussions should also be held to determine secure storage of items during investigation. UAIC strongly believes that reburial of cultural items when avoidance is not possible is critical to the process of site restoration. In consultation and participation with the Tribe, in special cases limited laboratory analysis may occur prior to reburial. Details of laboratory study will be a continued part of the consultation process.

For post-review discoveries without prior planning, UAIC must be contacted to consult within 48 hours and a reasonable effort to avoid, minimize or mitigate adverse effects must be taken (36 CRF Part 800.13).

## **SUMMARY: A Section 106 Tribal CONSULTATION Flow Chart**

