

# Memorandum

To: Region Chiefs and Deputy Directors

Date: May 20, 2015

Telephone: (916) 653-4995

Website: [www.fire.ca.gov](http://www.fire.ca.gov)

From: Helge Eng, Assistant Deputy Director, Resource Protection

## **California Department of Forestry and Fire Protection (CAL FIRE)**

Subject: Assembly Bill 52 Archaeology Procedures and Environmental Document Considerations

This memorandum provides information regarding the implementation of the requirements of Assembly Bill 52 and is intended for Region Chiefs, Deputy Directors, Assistant Region Chiefs, Unit Chiefs, Regional Environmental Coordinators, Unit Environmental Coordinators, Unit Foresters, State Archaeologists, and Program Environmental Coordinators.

### **Archaeological Procedures**

Assembly Bill 52 amended the California Environmental Quality Act to require specific consultation with California Native American tribes<sup>1</sup> that are traditionally and culturally affiliated with the geographic area of a proposed project. The consultation is required when the lead agency prepares a negative declaration, mitigated negative declaration or environmental impact report. This does not apply to timber harvesting plans or other documents subject to the functional equivalent Forest Practice Program. However, it may apply to environmental documents associated with timberland conversions. Assembly Bill 52 takes effect July 1, 2015. The following describes a recommended process that CAL FIRE project managers may use to address these new requirements.

CAL FIRE's archaeological procedures require the project manager to initiate (in consultation with a state archaeologist) a preliminary cultural survey to determine if the project's activities could affect cultural resources. If there could be an effect on cultural resources, and, if the project will require the preparation of a negative declaration, mitigated negative declaration or environmental impact report, the CAL FIRE project manager should take the following steps to ensure compliance with Assembly Bill 52. The following is based on the information presented under the section entitled, "Procedures for

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<sup>1</sup> Public Resources Code §21073: "California Native American tribe" means a Native American tribe located in California that is on the contact list maintained by the Native American Heritage Commission for the purposes of Chapter 905 of the Statutes of 2004.

Archaeological Reviews of CAL FIRE Projects,” contained in *Archaeological Review Procedures for CAL FIRE Projects* (Foster and Pollack 2010). Where a step has been modified, a description of the new procedure is provided; otherwise, “no change” is indicated.

**Cultural Resource Survey Procedures:** Archaeological surveys for CAL FIRE projects must include the following tasks (these match the attached flow chart):

Records Check: No change

California Native American Tribe Project Notification and Information Gathering: The CAL FIRE project manager shall send written notification of the proposed project to the appropriate California Native American tribes listed on the most current version of the Native American Heritage Commission’s Assembly Bill 52 list<sup>2</sup>. The purpose of this notification is to inform California Native American tribes about the proposed project, to invite their views and comments, to gather information about the location of any tribal cultural resources<sup>3</sup> that may be known within the project area, and to notify the tribes that they may request consultation about the project’s effects, alternatives and mitigations. This step should be completed early in the process of developing a project (such as the same time as the archaeological records check) in order to avoid delays, allow time for California Native American tribes to respond and to schedule any necessary consultation meetings<sup>4</sup>. CAL FIRE shall follow up and investigate any potential positive result revealed through this request for information. The notification letter must include the following items:

- A statement that the California Native American tribe may request consultation with CAL FIRE concerning environmental review, cultural resources on the project area, potential impacts, project alternatives and mitigations.
- A statement that the tribe’s request for consultation must be made in writing within 30 days of the CAL FIRE notice.

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<sup>2</sup> Until such a list becomes available, the CAL FIRE project manager should contact the local CAL FIRE archaeologist to determine which tribes to contact.

<sup>3</sup> Public Resources Code §21074:

(a) “Tribal cultural resources” are either of the following:

(1) Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either of the following:

(A) Included or determined to be eligible for inclusion in the California Register of Historical Resources.

(B) Included in a local register of historical resources as defined in subdivision (k) of Section 5020.1.

(2) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Section 5024.1. In applying the criteria set forth in subdivision (c) of Section 5024.1 for the purposes of this paragraph, the lead agency shall consider the significance of the resource to a California Native American tribe.

(b) A cultural landscape that meets the criteria of subdivision (a) is a tribal cultural resource to the extent that the landscape is geographically defined in terms of the size and scope of the landscape.

(c) A historical resource described in Section 21084.1, a unique archaeological resource as defined in subdivision (g) of Section 21083.2, or a “nonunique archaeological resource” as defined in subdivision (h) of Section 21083.2 may also be a tribal cultural resource if it conforms with the criteria of subdivision (a).

<sup>4</sup> According to Assembly Bill 52, this notification must occur within 14 days of a decision to undertake a project and prior to the release of the associated environmental document.

- A statement that the California Native American tribe should designate a lead contact person if requesting consultation.
- A statement that the consultation does not limit the ability of the tribe to submit information to CAL FIRE regarding the significance of the tribal cultural resources, the significance of the project's impact on tribal cultural resources, or any appropriate measures to mitigate the potential impacts.
- A description of the project location including the county, section, township, range, baseline and meridian, and the approximate direction and distance from the nearest community or well-known landmark.
- Two maps-- a general location map, such as a Thomas Brothers Map, that shows the travel route from the nearest community or well-known landmark to the project area and a copy of the relevant portion of the USGS topographic quadrangle map clearly depicting the location of the project boundaries, as well as a map legend and scale.
- A statement that all replies, comments, questions or other information should be directed to CAL FIRE in writing.
- A statement that questions and comments can be made by phone, but should be followed by an email or letter.
- The name, address, and telephone number of the CAL FIRE project manager.
- A statement that locations of sites disclosed will be kept confidential.
- A statement that maps displaying locations of cultural sites should include a note or stamp indicating the map is confidential.

A sample letter is attached to this memorandum (1<sup>st</sup> CNAT Letter AB 52).

Prefield Research: No change.

Consultation with a CAL FIRE Archaeologist: No change.

Survey: No change.

Develop Protection Measures: No change.

Consultation with California Native American Tribes: If a California Native American tribe responds to CAL FIRE requesting consultation<sup>5</sup> and/or if CAL FIRE identifies tribal cultural resources on a project area, CAL FIRE will notify the California Native American tribe regarding such consultation and/or the existence of such sites. Any notification meant to initiate consultation must occur within 30 days of receiving the California Native American tribe's request for consultation.

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<sup>5</sup> Per Public Resources Code §21080.3.1(b), "consultation" means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural significance [GC §65352.4].

If the notification concerns only the consultation request, then the notification letter must contain the following:

- An acknowledgment of receipt of the consultation request.
- A brief description of the project.
- A statement that the consultation may be done by email, by letter, by phone or in person with the CAL FIRE project manager, the CAL FIRE cultural resource manager, and/or the appropriate unit, program or regional manager.
- A statement that the consultation may cover potential significant adverse effects to tribal cultural resources within the geographic area traditionally and culturally affiliated with the tribe, including the type of environmental document necessary, the significance of tribal cultural resources, and, if necessary, project alternatives or the appropriate measures for preservation or mitigation that the tribe may recommend.
- A statement that the consultation does not limit the ability of the tribe to submit information to CAL FIRE regarding the significance of the tribal cultural resources, the significance of the project's impact on tribal cultural resources, or any appropriate measures to mitigate the potential impacts.
- A statement that all replies, comments, questions or other information should be directed to CAL FIRE.
- The CAL FIRE project manager's contact information.
- A statement that locations of sites disclosed will be kept confidential.

A sample letter is attached to this memorandum (2<sup>nd</sup> CNAT Letter & No Site Notification AB 52).

If the notification concerns both the consultation request and identified tribal cultural resources, then the notification letter must contain all of the above, as well as the following:

- A description of the tribal cultural resources identified in the project area.
- A description of the proposed protection measures.

A sample letter is attached to this memorandum (2<sup>nd</sup> CNAT Letter & Site Notification AB 52).

The consultation is considered concluded when CAL FIRE and the California Native American tribe agrees to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource, or one of the parties, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached [Public Resources Code §21080.3.2(b)].

If CAL FIRE identifies cultural resources on a project area and no one has requested consultation, CAL FIRE will notify the appropriate entity (California Native American tribe or Native Americans) regarding the existence of cultural resources. This should be done per the instructions contained under Consultation with Native Americans in "Procedures

for Archaeological Reviews of CAL FIRE Projects” contained in *Archaeological Review Procedures for CAL FIRE Projects* (Foster and Pollack 2010). The Site Notification (CAL FIRE Project) letter at [http://calfire.ca.gov/resource\\_mgmt/archaeology-sample\\_letters.php](http://calfire.ca.gov/resource_mgmt/archaeology-sample_letters.php) may be used for this purpose.

Record Sites: No change.

Complete Archaeological Survey Report: No change.

CAL FIRE Archaeologist Provides Approval Signature Following Satisfactory Completion of Investigation and Report: No change.

Archaeological Clearance: No change.

### **Environmental Document Considerations**

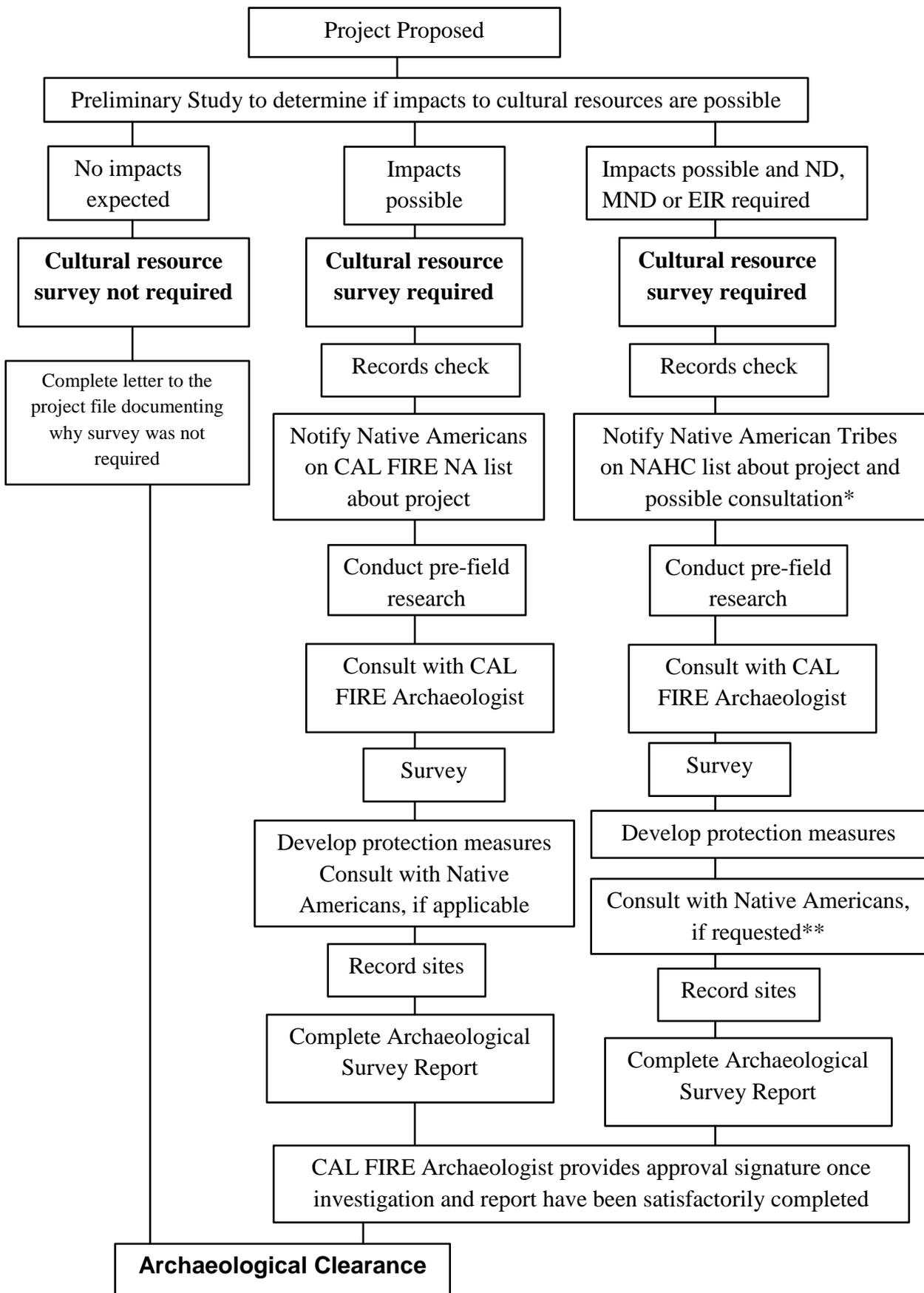
Please consider the following when preparing or reviewing the environmental document for the project:

- Mitigation measures agreed upon in the consultation must be included in the environmental document and the mitigation monitoring and reporting program [Public Resources Code §21082.3(a)].
- Such mitigations must be fully enforceable [Public Resources Code §21082.3(b)].
- The environmental document should discuss significant effects to identified tribal cultural resources, and whether alternatives or mitigation measures avoid or substantially lessen the impact on the identified tribal cultural resource [Public Resources Code §21082.3(b)].
- Information related to the location, description and use of tribal cultural resources submitted by California Native American tribes as a result of consultation is confidential [Public Resources Code §21082.3(c)].
- CAL FIRE can adopt a negative declaration or certify an environmental impact report once the consultation is completed, the California Native American tribe has failed to engage in the consultation process, or the California Native American tribe has failed to request consultation in a timely manner [Public Resources Code §21082.3(d)].
- If there are outstanding significant effects to tribal cultural resources at the conclusion of the consultation, or if no consultation occurs, CAL FIRE will need to incorporate mitigation that lessens those effects [Public Resources Code §21082.3(e)].
- Environmental document preparers should refer to the applicable sections of the California Environmental Quality Act when preparing negative declarations, mitigated negative declarations and environmental impact reports, which are subject to consultations with California Native American tribes. Those sections are: Public Resources Code §§21073, 21074, 21080.3.1, 21080.3.2, 21082.3, 21084.2, and 21084.3.
- Environmental document preparers should include specific information about cultural resources in a confidential appendix and not in the main body of the environmental document. Information about cultural sites should be described using general terms so as to inform the public of the basis of CAL FIRE’s decision without breaching confidentiality.

- Environmental documents prepared by contractors will need to be reviewed for conformance with the requirements of Assembly Bill 52. This may require coordination between the applicant, contractor and CAL FIRE staff to ensure the contractor is aware of any of CAL FIRE's consultation requirements in the project area.

If you have any questions regarding this matter, please contact your local State Archaeologist or Chris Browder at (916) 653-4995 or [chris.browder@fire.ca.gov](mailto:chris.browder@fire.ca.gov).

# Cultural Resource Review Procedures



\* Notification must occur within 14 days of a decision to undertake a project and prior to the release of a negative declaration, mitigated negative declaration, or environmental impact report (PRC § 21080.3.1(d)).

\*\*Consultation must begin within 30 days of receiving a tribe's written request (PRC § 21080.3.1(e)).

## 1st CNAT Letter AB 52

**Note:** The language presented below in **bold** text within this sample letter must be addressed by the CAL FIRE Project Manager by including project-specific information prior to sending the written notification to the applicable California Native American Tribe on the NAHC list.

**CAL FIRE Project Manager's Name**  
**Mail Address, Phone Number, and Email address**

Cultural Resources Representative  
**Name of California Native American Tribe**  
**Mailing Address provided on the most current NAHC California Native American Tribe Contact List**

**Date**

**RE: Project Name and Number**

Dear Cultural Resources Representative:

CAL FIRE hereby notifies you that it is proposing to conduct a project located in the geographic area traditionally and culturally affiliated with the **provide California Native American Tribe** (see description below and attached map). Under California state law, the project is subject to the California Environmental Quality Act, and CAL FIRE may have to prepare an environmental document consisting of 1) a negative declaration, 2) a mitigated negative declaration, or 3) an environmental impact report. State law under Assembly Bill 52 (Public Resources Code Section 21080.3.1) now allows California Native American tribes 30 days to request consultation regarding possible significant effects that implementation of the proposed project may have on tribal cultural resources. The request must be in writing to CAL FIRE and must identify a lead contact person. CAL FIRE will begin the consultation process within 30 days of receiving the tribe's request for consultation. The consultation may include a discussion concerning the type of environmental review necessary for the project, the significance of tribal cultural resources discovered, the significance of the project's impacts on tribal cultural resources, and, if necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend.

The consultation does not limit the ability of the tribe to submit information to CAL FIRE regarding the significance of the tribal cultural resources, the significance of the project's impact on tribal cultural resources, or any appropriate measures to mitigate the potential impacts. If you wish to informally submit information, written comments may be sent to CAL FIRE at **address, phone number of the appropriate CAL FIRE office**. General comments may also be submitted to CAL FIRE via e-mail at **CAL FIRE e-mail address** though transmittal of confidential information, such as the specific location of a cultural resource, is not recommended. In such instances you should notify CAL FIRE via formal letter, in person, or over the phone as the confidentiality of information transmitted via email cannot be ensured.

Project Information:

County:

Legal Location:

Distance and Direction to Nearest Community or Landmark:

Project Description:

Please feel free to contact me if you have any questions concerning this proposed project or what is being requested in this letter.

Sincerely,  
**Your Name**

Cc: Project File, archeologist

Enclosure: Project Location Map

## 2nd CNAT Letter & No Site Notification AB 52

**Note:** The language presented below in **bold** text within this sample letter must be addressed by the CAL FIRE Project Manager by including project-specific information prior to sending the written notification to the applicable California Native American Tribes on the NAHC list.

**CAL FIRE Unit Chief or equivalent Name**  
**Mail Address, Phone Number, and Email address**

Cultural Resources Representative

**Name of California Native American Tribe**

**Mailing Address provided on the most current NAHC California Native American Tribe Contact List**

**Date**

**RE: Project Name and Number**

Dear Cultural Resources Representative:

I have received your request to consult on the proposed CAL FIRE project in \_\_\_\_\_ County in the area shown on the enclosed maps. As mentioned in my initial letter dated **date of information and consultation request letter**, this project will include **provide a brief project description**. The consultation may be done by email, by letter, by phone or in person with me, the CAL FIRE Project Manager and/or cultural representative. It may cover potential significant adverse effects to tribal cultural resources within the geographic area traditionally and culturally affiliated with the tribe. This may include discussion concerning the type of environmental review necessary, the significance of tribal cultural resources, the significance of the project's impacts on the tribal cultural resources, and, if necessary, project alternatives or the appropriate measures for preservation or mitigation that the tribe may recommend. Please contact me at your earliest convenience in order to arrange a date, time and location for the consultation. I may be reached at **address, phone number and email**.

The consultation does not limit the ability of the tribe to informally submit information to CAL FIRE regarding the significance of tribal cultural resources, the significance of the project's impact on tribal cultural resources, or any appropriate measures to mitigate the potential impacts. If you wish to informally submit information, written comments may be sent to CAL FIRE at **address, phone number of the appropriate CAL FIRE office**. General comments may also be submitted to CAL FIRE via e-mail at **CAL FIRE e-mail address** though transmittal of confidential information, such as the specific location of a cultural resource, is not recommended. In such instances you should notify CAL FIRE via formal letter, in person, or over the phone as the confidentiality of information transmitted via email cannot be ensured.

Please feel free to contact me if you have any questions concerning this proposed project or what is being requested in this letter.

Sincerely,

**Your Name**

Enclosure: Project Location Map

cc: CAL FIRE Project File, project manager, archeologist.

## 2nd CNAT Letter & Site Notification AB 52

**Note:** The language presented below in **bold** text within this sample letter must be addressed by the CAL FIRE Project Manager by including project-specific information prior to sending the written notification to the applicable California Native American Tribe on the NAHC list.

**CAL FIRE Unit Chief or equivalent Name  
Mail Address, Phone Number, and Email address**

Cultural Resources Representative

**Name of California Native American Tribe**

**Mailing Address provided on the most current NAHC California Native American Tribe Contact List**

**Date**

**RE: Project Name and Number**

Dear Cultural Resources Representative:

I have received your letter requesting consultation per the requirements of Assembly Bill 52 on the proposed CAL FIRE project in \_\_\_\_\_ County in the area shown on the enclosed maps. As mentioned in my initial letter dated **date of information and consultation request letter**, this project will include **provide a brief project description**. The consultation may be done by email, by letter, by phone or in person with me, the CAL FIRE Project Manager and/or cultural representative. It may cover potential significant adverse effects to tribal cultural resources within the geographic area traditionally and culturally affiliated with the tribe. This may include discussion concerning the type of environmental review necessary, the significance of tribal cultural resources, the significance of the project's impacts on tribal cultural resources, and, if necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend. Please contact me at your earliest convenience in order to arrange a date, time and location for the consultation. I may be reached at **address, phone number and email**.

The consultation does not limit the ability of the tribe to informally submit information to CAL FIRE regarding the significance of tribal cultural resources, the significance of the project's impact on tribal cultural resources, or any appropriate measures to mitigate the potential impacts. If you wish to informally submit information, written comments may be sent to CAL FIRE at **address, phone number of the appropriate CAL FIRE office**. General comments may also be submitted to CAL FIRE via e-mail at **CAL FIRE e-mail address** though transmittal of confidential information, such as the specific location of a cultural resource, is not recommended. In such instances you should notify CAL FIRE via formal letter, in person, or over the phone as the confidentiality of information transmitted via email cannot be ensured.

In addition, please note that Native American archaeological or tribal cultural resources have been identified within the proposed CAL FIRE project area. A description of the

resources and how such resources will be protected or avoided during project operations are as follows:

**(Note: This can be copied from Part 7 and Part 9 of your archaeological survey report)**

**Name, number, or other designator of the site.** This site is **brief description of site.**  
The protection measures afforded this site are **brief discussion of how site shall be protected or avoided.**

Please feel free to contact me if you have any questions concerning this proposed project or what is being requested in this letter.

Sincerely,  
**Your Name**

Enclosure: Project Location Map  
cc: CAL FIRE Project File, project manager, archeologist.