

COMMENTS ON THE DRAFT EIR (p. 1/46)

This document contains comments received during the public review period for the Capitol Annex Draft EIR, which concluded on October 24, 2019. Oral comments from the October 15, 2019 Public Hearing are transcribed and included in Section 1.3, "Public Hearing Oral Comments." Written comments provided within comment letters have also been transcribed into Microsoft Word format to meet the requirements of California Government Code Section 11546.7.

Letter A6 United Auburn Indian Community (p 9/46 et seq.)

Matthew Moore, UAIC Tribal Historic Preservation Officer

October 24, 2019

Thank you for providing the notice to comment on the Capitol Annex Project Draft Environmental Impact Report (DEIR). We have reviewed this information and believe the proposed project has a high likelihood of impacting Tribal Cultural Resources (TCRs) of importance to the United Auburn Indian Community (UAIC) and that revisions and additions to the DEIR and proposed mitigation measures must be made to lessen adverse effects to TCRs. The project site is within UAIC's traditional territory, and we are culturally affiliated with it.

As AB 52 consultation was not completed prior to release of the DEIR, we intend to continue to participate in discussions between the lead agency DGS and UAIC regarding the adequacy of mitigation measures and other specific concerns with language in the DEIR. We are hopeful that those discussions will be productive. For the benefit of the project record and to request clarifying revisions to the DEIR, we offer the following comments at this time that we would like to supplement through the ongoing AB 52 consultation process. UAIC does expect to receive written responses to its comments.

UAIC is very concerned that we have not yet been afforded the opportunity to review the cultural resource documents associated with this proposed project, despite our prior requests. We assume that a Phase I identification report has been prepared, as reference to a survey is made in the DEIR at page 4.12-14. UAIC also understands that no geoarchaeological assessment or testing program has occurred to date. Typically, cultural resources identification efforts are completed prior to issuing a determination of impacts and issuance of a DEIR. From UAIC's perspective, after review of the materials made available with the DEIR, a reasonable effort to identify TCRs still must occur.

The second phase of investigation for historic properties requires agencies to determine if cultural resources are significant. Evaluations consider resources with regard to their status as TCRs as well as archaeological resources. Lead agencies generally complete the evaluation of cultural resources prior to the issuance of the DEIR. This sequence is followed as identification of significant resources is critical to the CEQA and Tribal-preferred alternative of preservation in place. This preference is likewise not analyzed in the DEIR.

In a consultation meeting of April 17, 2019, UAIC staff asked to be consulted on the identification and evaluation process. We further suggested that if identification resulted in the creation of version of what is often called an Archaeological and Tribal Cultural Resource Research Design and Treatment Plan (Treatment Plan). UAIC asked that we be consulted prior to preparation of such a Treatment Plan, to discuss our concerns and recommendations regarding field methods, evaluation methods and findings, and the overall research design. From a June 2019 meeting between DGS, UAIC, Ione Band of Miwok Indians, and Wilton Rancheria, we understood that such a Treatment Plan would be prepared. The Treatment Plan, however, was not referenced in, or part of the circulated DEIR, nor was UAIC or the other tribes invited to develop such a Plan. To date, we have not engaged in consultation on that document, although a draft of what is titled a “Research Design for Evaluation and Treatment of Unanticipated Archaeological Discoveries” was just provided to us the evening of October 21, 2019.

During the June 12, 2019 meeting, the Tribes identified two known TCRs in within or in close proximity to the project area. The DEIR does not acknowledge the resources, nor discuss protections for these resources from currently planned or potential construction activities, including construction staging. We have requested this omission be corrected in the Final EIR in both the ethnohistory and treatment sections. TCRs can be noted in a general way, without specifying their locale within the Capitol grounds.

Directly addressing text within the DEIR, we have the following comments and concerns. Additional comments on the development of a Treatment Plan are noted below our specific comments on the DEIR.

- **Project Description and Utilities, Pages 3-11 to 3-12:** UAIC is concerned about the project’s existing and proposed utility lines. We could not find a diagram in the DEIR depicting the locations of existing lines or analysis of the potential location and diameter of lines sized for the increase in project square footage. Please provide the Ground Penetrating Radar map for utilities as referenced and promised by DGS at our October 2019 meeting.

The DEIR must be more clear about what the project area encompasses (i.e. compare: DEIR, Figure 2-3 (Project Annex Component) and Figure 3-3 (Project Components) with Figure 2-1 (Site Location) and 3-2 (Site Location): Is the CEQA project disturbance area the footprints for the new structures (as could be implied by the first two figures), the entire west end of the Capitol Park (as could be implied by the latter two figures), or something in between? What are the expected depths for all project features, including utilities? Larger diameter pipes and new locations for pipes could cause impacts to TCRs outside of existing line disturbances. The DEIR admits it is unknown if new water and sewer utility lines would follow the alignments of existing ones (DEIR, pages 3-11 to 3-12). Trenching, including for telecommunication components, and relocation of transformers, could also pose similar additional, unexamined increases in magnitude of potential impacts to TCRs and other cultural resources, including the cultural landscape.

The DEIR provides no mechanism for consideration of these effects or consultation on them once they become known, and there is no DEIR-specific mitigation.

- **Native American Consultation, Pages 4.12-20 to 21:** The Consultation Efforts section is incomplete. The AB 52 consultation, and agreement on mitigation measures, should have been completed prior to the publishing of the DEIR. A meeting to introduce the project, and a single meeting with several tribes at once, is not sufficient consultation under AB 52, especially for such a complicated and important project. UAIC is also concerned that few if any of the topics discussed in the meeting between DGS and UAIC on April 2019, and in the joint meeting with Ione and Wilton in June 2019, were integrated into the DEIR, even in a general way. UAIC recommends DGS develop a mutually agreeable Consultation Plan without further delay, as envisioned by updated CEQA Guidelines Appendix G. The Consultation Plan should include memorialization of consultation to date, confidentiality protocols, and schedule milestones.
- **Mitigation Measure 4.12-2, Page 4.12-24:** Tribal monitoring and a cultural awareness training are not compensatory mitigation measures from UAIC's perspective, as they do not lessen the effects of physical impacts to TCRs. Rather, Tribal monitoring and awareness training are methods used to try and avoid additional effects to TCRs that are discovered, usually in an adverse or destructive manner during construction.

From UAIC's view, monitoring is better characterized as a field method that is used to avoid and minimize adverse effects that occur during construction. This methodology is typically best outlined in a Treatment Plan (further discussed below), which itself can be characterized as a mitigation measure. Similarly, cultural awareness and sensitivity training is also a field method used to inform construction workers about what to do when resources are encountered. This is particularly important for the project area, as the DEIR identifies that there is a high probability for the presence of TCRs. Both monitoring and awareness training can and should be part of the Treatment Plan. As noted above, Treatment Plans are generally prepared after additional efforts have been made to identify potential Comments on the Draft EIR resources within the project area and prior to issuance of the DEIR, and summarized in that document. These methods should not be called out as specific and exclusive mitigation measures as was done in the DEIR, and as explained by UAIC at the October 2019 meeting.

- **Mitigation Measure 4.12-2, Page 4.12-25:** The buffer distance between an inadvertent discovery and construction activities is typically at least 100 feet. Determinations made in the field lead to confusion. The DEIR should be more specific and protective.
- **Mitigation Measure 4.12-2, Page 4.12-25:** The proposed measure appropriately cites to Public Resources Code section 21084.3, but then, without explanation, lays out mitigation and treatment options related to archaeological resources – not TCRs. Data recovery, for example, is an archaeological approach and should be a last resort. This measure must be revised to track the specific mitigation and treatment

options for TCRs as laid out in 20184.3 (i.e., avoid and preserve in place, protect cultural and natural context, plan parks, greenspace, and open space around it, with appropriate management, etc.). The draft Research Design for Evaluation and Treatment of Unanticipated Archaeological Discoveries document has the same analytical flaw, see page 48. This measure does not reduce impacts to TCRs and Native American human remains to less than significant. From a Tribal perspective, data recovery itself is a significant effect to TCRs as it typically causes an irreversible adverse effect to the resource (removal from location and setting, partial destruction, salvaging only a sample, etc.).

Avoidance and preservation in place is the preferred alternative under CEQA and UAIC protocols. It should be highlighted and discussed further in the DEIR. The simple, parenthetical reference to preservation in place on pages 4.12-25 to 26 is not appropriate or sufficient.

- Mitigation Measure 4.12-2, Page 4.12-25: Imported soils brought to the project site should be certified clean fill, and not come from an area or site with artifacts within the fill. They therefore should not need Tribal monitoring.
- Mitigation Measure 4.12-2, Page 4.12-25: Interested Native American tribes shall be provided at least a 10 business-day-notice prior to the initiation of ground-disturbing activities and/or concrete slab removal, not 7 days as stated in the DEIR.
- Mitigation Measure 4.12-2, Page 4.12-25: Tribal Monitors must have the authority to stop work to inspect soils. They must also have the authority to designate artifacts as TCRs, as appropriate. Protocol for examining removed fill soils can and should be addressed in a Treatment Plan.
- Mitigation Measure 4.12-3, Page 4.12-26 (Significance after Mitigation): The removal of a TCR and/or human remains is a significant effect. From the Tribal perspective, effects to TCRs and Native American remains are always considered by UAIC to be significant. They cannot be reduced to less than significant, as the DEIR states, even after mitigation and treatment measures are required and implemented, and often contribute to cumulative effects.
- Mitigation Measure 4.12-2, Page 4.12-26: Consulting tribes must be allowed to contribute to the report that evaluates the nature and significance of any unanticipated find, as well as the interpretation of the resources. This includes being provided a sufficient period of time to review drafts of the report and provide comments.
- Mitigation Measure 4.12-4c., Page 4.12-30: This mitigation measure is inadequate, as it only addresses only the history of the Capitol building. An interpretive program must also be developed in consultation with affiliated tribes to commemorate the Native American tribes that occupied the area for thousands of years and continue to be affiliated with it. The installation of a permanent exhibit in recognition of tribes and their TCRs related to the area, should be located on-site, in a public space, which is viewable and accessible to the public. Efforts should also be made for temporary installations

during construction. Educational materials and exhibit content should be developed in consultation with affiliated tribes.

- Environmental Impacts, Page 7-2: Disturbed soils may also contain TCRs. While artifacts found in disturbed context may not be archaeologically significant, they frequently retain value as TCRs. These soils should not be summarily dismissed as having no potential to contain a TCR. For this reason, a Tribal Monitor must be present for all ground-disturbing activities, even in previously disturbed soils.

General Comments for Topics to be Included in the Treatment Plan

The DEIR acknowledges there is a high probability of encountering Native American sites and TCRs. Leaving archaeological and Tribal investigation of these sites to a construction monitoring phase, as the DEIR does, will guarantee project delays. Complicated sites and meaningful consultation take careful planning. A well-developed Treatment Plan and enacting that plan prior to construction activities will avoid costly project delays and unnecessary rapid recovery approaches which often result in harm to TCRs and Tribal Monitors. From the Tribal perspective, TCRs must be treated with dignity and respect. Rapid recovery and rushed measures when resources are found during monitoring is all too often not respectful, and causes harm to the Tribal community.

UAIC received a copy of a draft Research Design for Evaluation and Treatment of Unanticipated Archaeological Discoveries on October 21. From our initial review, we feel that this document is not adequate to the complexity of the project. The DEIR states that there is a high probability of encountering archaeological sites and TCRs. To prepare an Unanticipated Archaeological Discovery document is unintuitive at best. UAIC intends to provide extensive comments on this document on or before the DGS-set-deadline of November 15, 2019.

UAIC strongly recommends that DGS engage consultants that are more familiar with treatment of TCRs. In a project area such as the Capitol, with a high probability of encountering sensitive Native American sites, UAIC recommends that DGS and their consultants prepare and enact a Treatment Plan with well-planned identification, testing, and evaluation programs, a well-developed research design, and a proposed treatment/reburial plan for Native American human remains prior to any construction-related ground-disturbing activities. Such testing and plans are typically developed prior to the release of the DEIR, especially when identification efforts have resulted in the high probability of encountering TCRs that UAIC prefers to protect in place.

As noted above, consulting Tribes should contribute to the content and extent of the testing program, research design, and the treatment/reburial plan. The Treatment Plan should contain or reference a preconstruction testing program similar to that outlined by UAIC at its October 2019, meeting with DGS, and a robust Tribal Monitoring Plan, both developed in consultation with affected Tribes. UAIC understands that construction of the buildings and related utility placement and landscaping would occur in phases. We recommend that treatment of archaeological and TCRs also occur in phases, that will better allow for adequate identification of resources, and preservation in place whenever possible. DGS should consider the consultant

names recommended at our October 2019 meeting to develop an adequate Treatment Plan, and to perform the preconstruction testing and follow-on tasks. During

construction, monitors designated by UAIC or other consulting tribes, and paid for by the project proponent, must be present during ground disturbing activities. If cultural resources are unearthed, Tribal Monitors must have the authority to temporarily stop construction while the extent and significance of the resources are determined.

When identifying and evaluating if the project will have an adverse effect on a Native American site, the project proponent should prioritize the use of non-invasive, non-destructive methods and techniques, such as the use of forensic canines and ground penetrating radar to help protect any burials. UAIC strongly believes that such efforts should occur without further delay.

In the event that Native American human remains are unearthed, the California Native American Heritage Commission (NAHC) will appoint the most likely descendent(s) (MLD). The MLD has the right to determine whether an item recovered from the burial is an associated grave good or related sacred object. The MLD can also make the choice as to whether related artifacts and the human remains with which they are associated should be preserved in place or reburied. Native American human remains and associated grave goods are not required to be analyzed or studied (contrary to the Research Design for Evaluation and Treatment of Unanticipated Archaeological Discoveries document, page 49) and/or curated. They can and frequently are reinterred according to the preferred treatment alternatives of the MLD. If this includes reburial, the project proponent will pay the associated costs.

All Native American artifacts, if either archaeological, cultural, or TCRs, should be preserved or reburied on site with some form of recordation to ensure no future disturbance. Protocols for recovery and reburial at the project site should be agreed upon prior to project implementation and any ground-disturbing activities. This discussion should also occur prior to the commencement of a testing and treatment program and be integrated into the research design.

Reburial areas must also be included in the project area CEQA analysis as reburial is a ground disturbance in itself and may cause additional impacts to TCRs if not carefully selected. UAIC may be amenable to photographing some Native American artifacts, or having three-dimensional scans taken of them, but this requires consultation to determine.

Information provided by a Tribe on the character and location of its sacred sites during consultation will be withheld from disclosure to other consulting parties, including other tribes, as well as the public.

Finally, the DEIR does not state how the Native American Commemorative Seal (DEIR, page 4.14-6) would be treated during construction. It is within the project site. Would it be removed? Would ceremony be appropriate for that? If removed, where would it be stored? Is there a way to emplace it temporarily on the Capitol grounds in an accessible area outside of the construction exclusion areas? Is DGS consulting with the NAHC or some other appropriate entity on the treatment of this resource?

Preferred and Recommended Mitigation Measures

UAIC has several recommendations for additional Mitigation Measures that we would prefer and recommend to be included in the DEIR. The basis for these measures is that even with mitigation and treatment, potential impacts to TCRs (including cultural landscape) and Ancestral burials within the project area, would remain significant and unmitigable on both a project and cumulative basis, from UAIC's perspective. UAIC requests that it be further consulted regarding the development of the specific wording of all mitigation measures that may lessen adverse impacts and effects to TCRs, including the cultural landscape. These include, but are not limited to, the following measures. Further consultation may identify additional measures.

- **Archaeological and Tribal Cultural Resource Research Design and Treatment Plan.** As discussed at length above, such a plan is an appropriate mitigation assuming it involves Tribal input and consultation.
- **Land Acknowledgment Statement.** Many state-funded institutions, particularly universities and community colleges, have adopted and make regularized land statements that recognize they are operating within the traditional homelands of Native peoples. We recommend that such a statement be developed through consultation and prominently displayed within the Capitol Annex. We also recommend that a program be developed for integration of such statements into legislative session commencements and other ceremonial events at the Capitol.
- **Prominent Native Participation in Ground-Breaking and Ribbon-Cutting Ceremonies.** In acknowledgment of the potential significant effect to TCRs, UAIC recommends the participation of affiliated tribes, and a Native American blessing, for any public or closed ceremonies associated with the Annex construction (i.e., (preconstruction, construction, post construction, dedication). In recognition of the importance of the Capitol to all Natives in California, public ceremonies should strive for inclusivity.
- **Temporary Displays during Construction.** During ongoing construction efforts, we recommend that DGS place interpretive panels or displays that discuss the program to protect and treat archaeological and Tribal resources, and acknowledges that the Capitol is operating within the traditional homelands of Native peoples.
- **Representation of Native Americans in the Permanent Public Interpretative Display.** As noted above, the interpretive display noted in the existing mitigation measures for architectural history must be expanded. Public interpretive display(s) should also highlight the survival and persistence of Native peoples, the importance of TCRs to the Native community, as well as highlight the symbolism of the Capitol building to all Native groups in California. Actions at the Capitol have affected the daily life and survival of Native American groups since the very establishment of the state and Capitol. In 2002, installation of the Native American Commemorative Seal on the west Capitol steps highlighted some of these ideals. Such a display could be included

in the Visitor Center or given its own locale within Capitol Park. Further consultation with local Tribes would help to determine the appropriate extent and location.

- **Update and Expansion of Sacramento Area Ethnography and Ethnohistory.** In 1984, a report entitled “American Indians in the Sacramento Area” was completed for the Sacramento Ethnic Communities Survey, Sacramento Museum and History Division. This document encompassed a study of Native groups originating from the Sacramento area, as well as the 20th-century influx of others of Native American ancestry from other regions. UAIC suggests the scope of this ethnography/ethnohistory be expanded and updated, and that the ethnohistory particularly document post-1950s events that have been critical in Native identity and cultural awareness.

As examples, the establishment of Native American civil rights, the founding and funding of the NAHC, the history and development of California Indian Day, revisions to California school curriculum, and the promulgation of SB 18 and AB 52 among other pieces of important legislation, have all influenced local area Tribal identity, as well as the history that has recently occurred in and around the Capitol building. Funding for such an effort should include events that emanate from the Capitol and have statewide effect, as well funding to each tribe to supervise a chapter of this contemporary ethnography to highlight the survival, development, persistence, and renewal of the Sacramento-area Tribes and pan-Indian community.

- **Protection in Place.** If the identification process and treatment result in documentation of TCRs, UAIC would prefer to consult with the lead agency to determine if preservation in place of these resources is possible. In areas where protection in place is not feasible, additional, specific mitigation measures developed through consultation may be appropriate for each affected resource.

- **Cumulative Effects.** The DEIR does not find any cumulative impacts to TCRs. This is not surprising, as the cumulative impacts section of the DEIR only considers the built environment. (DEIR, section 5.2.4 Related Projects). UAIC disagrees and finds that prior work done at the Los Gobernadoras Project (the old California Governor’s mansion and related Native American site and burial ground), other development projects in the Sacramento area (see discussion within Research Design for Evaluation and Treatment of Unanticipated Archaeological Discoveries, pages 26 to 27), as well as past and future work on local levees, among other projects, have caused adverse effects to resources of Tribal concern. In many of these cases, such impacts were poorly mitigated, if mitigated at all. With further consultation, UAIC can add details of cumulative effects caused by such projects. Overall, the proposed project contributes to a potentially significant cumulative effect to TCRs (including cultural landscapes) with the proposed action. Mitigation, developed through consultation, for cumulative effects should occur.

Finally, DEIR Appendix B contains information regarding judicial review of the proposed project. Public Resources Code section 21189.55(c) states that within five days following the

close of the public comment period, a commenter on the DEIR may submit to DGS, as lead agency, a written request for nonbinding mediation. At our meeting with DGS in October 2019, DGS did not know whether such request was required to exhaust administrative remedies. Accordingly, while UAIC is hopeful that the AB 52 consultative process will reach mutually agreeable solutions, UAIC feels compelled to make a timely, written request for voluntary mediation on a protective basis, as part of this comment letter. UAIC is open to consider a tolling agreement or other mechanism for the mediation that could allow the parties instead to focus on the immediate AB 52 consultations unless and until impasse occurs, without waiving any of UAIC's rights or remedies.

Should you have any questions concerning the content or intent of these comments and recommendations, please contact Dr. Rebecca Allen, Tribal Historic Preservation Director, rallen@auburnrancheria.com, or Anna Starkey, Cultural Regulatory Specialist, astarkey@auburnrancheria.com.

1.3 PUBLIC HEARING ORAL COMMENTS [p. 42]

PH1 United Auburn Indian Community

Matthew Moore

October 15, 2019

MR. MOORE: Okay. So -- first of all, thank you. My name is Matthew Moore. I'm the tribal historic preservation officer for the United Auburn Indian Community. I'm here today to express our opposition to draft EIR for the Capitol Annex Project. The United Auburn Indian Community --

THE COURT REPORTER: Could you move closer to the microphone, please.

MR. MOORE: So I'm here today to express our opposition to the Draft EIR for the Capitol Annex Project. The United Auburn Indian Community is disappointed because the Draft EIR was published before AB 52 consultation, before the project was complete.

We were told that this project was to set the gold standard for consultation and for how tribal cultural resources are treated and respected. As it stands, we do not believe that the Draft EIR incorporates sufficient protections for tribal cultural resources. We have very strong concerns about the Draft EIR and will be forced to oppose the project if those concerns are not addressed.

Thank you.

I have written comments too.