

SACRED SITES, SOVEREIGN TOOLS

Developing Cultural Protections for Your Tribe



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2-4PM EST

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Agenda for Our Time Together Today

- I. Tribal Sovereignty, Tribal Lands, and Trespass**
- II. Developing Proactive Tribal Protection: Natural Resource Code**
- III. Developing Proactive Tribal Protections: Cultural Resource Codes**
- IV. Damages Calculations for Cultural Resource Codes**
- V. Leases and Rights-of-Way on Tribal Lands**
- VI. Tribal Enforcement-First Playbook**
- VII. Proactive Tribal Capacity Building**

Live Poll 1: What keeps you up at night?

Code Gaps or Outdated Ordinances?

Trespass or Expired Leases/ROW?

Lease/ROW Negotiations & HEARTH?

Funding & Capacity?

Valuation for Damages?

Other?

Why This Matters

“Sovereignty is **living** — every action strengthens it.”

“Expired means **opportunity** — a moment to reset terms and reassert control.”

“Protect what is **irreplaceable**.”

“Don’t wait for federal timelines to catch up — *lead with Tribal ones.*”

Tribal Sovereignty, Tribal Lands, & Trespass

Tribal Sovereignty

Tribal Nations retain **Inherent Sovereign Powers** unless Congress *explicitly* limits them:

1. Regulate Membership and Citizenship

Power to define who belongs to the Nation

2. Create Civil Regulation

Power to enact codes; administer programs; adjudicate disputes

3. Courts & Policing

Power to operate civil and criminal justice systems

4. Control Access to Indian Country

Power to exclude, permit, and condition entry on Tribal lands

5. Regulate Conduct in Indian Country

Power to tax and license activities in Indian country

6. Sovereign Immunity

Power to protect sovereign powers

7. Enact Emergency Management Powers

Powers to swiftly protect people, places, and resources in crises

Overview of Tribal Land

Tribal Trust

Held by U.S. for Tribe
Strong Control Over Entry & Use

Restricted Fee

Tribal and/or Individual Title
Fed. Restrictions, Protections

Tribal Fee

Tribe Owns In Fee (Not Trust)
Jurisdiction/Tax Exposure Varies

Allotments

Individual Trust/Restricted
Coordinate With Owners & Agency

Not = The Map

Reservation ≠ All Tribal Land
Non-Indian Fee Exists Inside

Overlays

Rights-Of-Way/Easements
Follow Underlying Status & Terms

Why It Matters

Land Status Dictates Process
Regulation & Enforcement Vary

What Counts as a Trespass?

RULE OF THUMB: Tribal Nations control exclusive possession of their land, water, and airspace

The crime of “trespass” happens when someone enters (*or causes something to enter*) lands *without permission or beyond the permission given*

Note that trespass is not restricted to footsteps!

It applies to substances or even energy that crosses the boundary sans permission:

- Fumes/smoke/particulates that settle or intrude into airspace
- Leaks/discharges that migrate through soil or groundwater (plumes)
- Vibration, noise, intense light that cause material harm (often pled with nuisance)

Keys to Liability:

1. a voluntary act,
2. lack of consent or over-scope, and
3. proof it got onto/into Tribal land

Available Remedies:

1. stop it (injunction)
2. restore it (restoration)
3. pay for it (damages & civil penalties under Tribal code)

Trespass Is Common Across Tribal Lands

Trespass can happen on ANY Tribal Land:

Trust • Restricted Fee • Reservation • Allotments • Treaty Lands

Expired Leases or Rights of Way often quietly continue operating past their end date, turning their use into trespass when there isn't proper renewal

Unauthorized Resource Use where people take timber, plants, game or artifacts without Tribal permission

Projects Overstepping Boundaries of permitted areas or permitted terms with construction work or other onsite operations

Fire Trespass from wildfires (or even intentional burns) damage Tribal timber, habitat, or sacred areas without consent

Aren't The Feds Supposed to Enforce Trespass on Tribal Lands?

Yes, the Federal Trust duty legally obligates agencies to protect Tribal lands and resources from harm, granting them statutory and regulatory authority to act on trespass and resource injury

That authority is wielded by:

➤ **BIA Administrators**

- notice, cure, civil trespass assessments, removal (e.g., forestry & range regulations)

➤ **BIA Law Enforcement / U.S. Attorneys**

- injunctions, damages, criminal cases (e.g., archaeological & timber crimes)

➤ **Federal Courts / Permitting Agencies**

- TROs / injunctions, pause/condition federally tied work; FOIA unlocks records

Federal Enforcement in Practice

Unfortunately, trespass **is rarely prioritized** by the BIA as the action is discretionary and resource-constrained



Structural Gaps: staffing shortages, data gaps, backlogs in leases/ROWs

Current climate: shutdown-driven stays & court furloughs; agencies pausing civil cases

This creates a net effect of inconsistent, slow protection for Tribal interests

Tribal Solutions: Enforce Tribal Rights

Tribal Land, Tribal Law

On Tribal lands, don't have to wait for federal law; you can pass Tribal codes to define and punish trespass

Assert Sovereignty

Use Tribal courts and enforcement so that trespassers answer to Tribe's authority

Proactive Monitoring

Identify issues early (e.g. find expired leases/rights of way that are now trespassing) and *take action* before things get worse

Leverage Tribal Agreements

If a lease is ending, tribes can refuse renewal or renegotiate on our terms (no more rubber-stamping renewals)

Tribal Penalties & Fees

Tribal laws can impose fines, damages, or permit for unauthorized use – making trespass *actually* cost offenders

NIFRMA – Enforce Timber Trespass

- **Statutory basis:**
 - *Forest resources* as “means all the benefits derived from Indian forest lands, including forest products, soil productivity, water, fisheries, wildlife, recreation, and aesthetic or other traditional values of Indian forest lands”
 - “Indian Forest land” means “Indian lands, including commercial and non-commercial timberland and woodland, that are considered chiefly valuable for the production of forest products or to maintain watershed or other land values enhanced by a forest cover, regardless whether a formal inspection and land classification action has been taken”
- **Trespass:** Includes “removal of forest products from, or damaging forest products on, Indian forest land...Trespass can include any damage to forest resources on Indian forest land resulting from activities under contracts or permits or from fire.”
- **Trespass damages:** Authorize recovery for “costs associated with damage to the Indian forest land,” including *other forest resources*, costs, and treble damages!
- **Adoption of regulations (§3106(c)):** Grants Tribes concurrent civil jurisdiction—**not** a limitation to commercial timber value!
- **Trust responsibility (§3120):** Ensures adoption of regulations does not waive or narrow the United States’ obligation to protect tribal resources.
- **Full faith and credit:** Tribal damage determinations made under properly adopted regulations should receive full faith and credit in federal or state forums, reinforcing tribal sovereignty and ensuring enforceability of judgments.

Adoption of federal trespass regulations empowers tribes to recover for losses to cultural and natural resources, consistent with statutory language, tribal law, and the federal trust responsibility.

Tribal Enforcement Is the Engine

Use *Tribal* codes, permits, leases, rights of way and forums as the **primary path of enforcement**

Build a Strong Record to support any *Montana* arguments pointing towards *consensual ties* and/or *integrity, economic, health, and welfare impacts*

Federal tools can be used to escalate & amplify pressure on stubborn offenders:

- **Preliminary Injunctions** and **Temporary Restraining Orders** from Federal Courts can halt ongoing harm
- **Criminal Exposure to Federal Charges** where elements fit (ARPA, NAGPRA) can powerfully change behavior
- **Statutory Breaks** can be slammed on Federal Projects when possible (NHPA §106; NEPA 40 C.F.R. § 1506.1)
- **HEARTH Act** and/or **Timber Trespass Framework** adoption by your Nation's Tribal law allows for:
 - 1) Tribal Courts to pursue **treble damages**, and
 - 2) Tribal judgments to receive federally analogous **full faith & credit** in other courts

Federal duty and tools exist, but reliable protections come from Tribal-led enforcement

Federal action can be brought in to support existing Tribal action if it moves the needle

Developing Proactive Tribal Protections: Natural Resource Codes

Live Poll 2: Which Natural Resource Is Most At Risk?

Air Quality

Water

Forests & Timber

Wildlife & Habitat

Soils & Erosion

Traditional Foods & Gathering Areas

Infrastructure & Access

Other?

Vulnerability of Tribal Natural Resources

50+ Million Acres
Of Indian Trust
Lands in the
United States

Disproportionate Siting & Impact

Energy Corridors

Mineral
Extraction

Pollution

Why Harms Hit Harder

Subsistence

Ceremony

Identity

Place-Based
Economies

Legacy Pressures

Expired/Defective
Leases & Rows

Cumulative
Impacts

Weak Monitoring

Inherent Authority

Regulate
Property Within
Tribal
Jurisdiction

Administer
Justice

Implication

Vulnerability Is
Real

Tribal Codes are
the Frontline
Defense

Inherent Authority to Enact Tribal Law

Tribes are sovereign governments with inherent powers of self-government. Therefore, on Tribal land, **tribal authority over nonmembers is at its strongest** (remember **Inherent Sovereign Powers**: to exclude/condition entry, tax, regulate, and enforce).

Montana applies to nonmember conduct on non-Indian fee land inside the reservation **with two major exceptions**: 1) consensual ties and 2) threats to integrity/economic security/health-welfare.

Foundations in law:

| | |
|-------------------------------|--|
| <i>Worcester v. Georgia</i> : | Tribes are “distinct, independent political communities” |
| <i>Williams v. Lee</i> : | Tribes have the right “to make their own laws and be ruled by them” |
| <i>Merrion</i> : | Tribes have the inherent power to tax non-Indians on Tribal land |
| <i>Bracker/Mescalero</i> : | Tribal-federal schemes can preempt state regulation; power to exclude |
| IRA §§ 16–17 | Tribes have authority over their own constitutions & charters (organize, legislate, own/manage property) |

USE this authority to adopt trespass & damages codes that proactively guard natural and cultural resources on Tribal lands.

Why Enact Natural & Cultural Resource Codes?

1. Affirm and reinforce Tribal sovereignty.
2. Build reliable, consistent protections outside the uncertainties of federal systems.
3. Adapt law to align with evolving science, climate resilience, rights-of-nature, and Indigenous values.
4. Gain practical leverage and unlock federal tools.
5. Keep disputes in Tribal Court.
6. Wield more bargaining Power.

Common Types of Natural Resource Codes

Trapping, Fishing, Hunting

Water Quality & Use

Forest & Timber Management

Solid Waste Disposal

Conservation & Wildlife

Mining: Mineral, Oil, Gas Development

Treatment-as-State (TAS)

Project Development & Leasing: HEARTH Act

Natural Resources Codes: Common & Effective Provisions

Scope & Definitions:

Protected Resources
Activities
Jurisdiction
Include Cultural Sites/Items

NEPA-like Review:

Clear Thresholds & Tiers
(Checklist → EA → EIS)
Cumulative Impacts
Indigenous Knowledge

Permit Triggers:

Work Affecting Land, Water, or
Air
Ground-Disturbance
Renewal Thresholds

Monitoring & Inadvertent Discoveries:

Inspection Access
Stop-Work
Notify, Protect, Consult Protocol

Stop-Work & Emergency Orders:

Field-Issuable to Halt Imminent
Harm

Natural Resources Codes: Common & Effective Provisions (Continued)

Enforcement Suite:

All Penalties
Per-day Fines, Injunctive Relief
Appeals Process

Water Standards:

Reference Tribal WQS (TAS)
Require Compliance in
Permits/Conditions

Trespass & Damages:

Restoration
Loss-of-Use Harm Multipliers
(e.g., Treble for Timber)

Financial Assurance & Collections:

Bonds/Locs
Liens & Setoff
Seizure of Wrongfully Taken
Resources

Intergovernmental Tools:

MOUs
Cross-Deputization
Preemption Posture for
On-Reservation Regimes

Plain Language + Forms:

Standardize All Permit Forms,
Notices, & Checklists
Clear & Non-Ambiguous

Natural Resources Codes: Damages and Enforcement

I. Authorities

- CERCLA
- Oil Pollution Act

II. Trusteeship

- Joint Tribe-Federal agency NRD trustee

III. Quantifying

- HEA/REA “nature math”

IV. Bottom line

- Use federal tools where they help, but ...

ALWAYS center Tribal authority and science-based restoration.

Developing Proactive Tribal Protections: Cultural Resource Codes

Live Poll 3: Which Cultural Resource is Most at Risk in Your Community Right Now?

Burial Grounds & Sacred Sites

Traditional Cultural Properties (TCPs)

Archaeological Sites

Historic Buildings, Structures, Districts

Cultural Landscapes & Viewsheds

Languages, Songs, & Dances
Sometimes Called "Intangible Heritage"

Archives, Oral Histories, Knowledge-holders

Access To Ceremonial Places

Other (Type In Q&A)

Common Functions of Cultural Resources Codes

- Set out **cultural protection values** and **priorities of the Tribe**
- Characterize the **structure** of cultural resources department, assign roles and responsibilities for to staff, clarify input of tribal council
- **Establish policies** regarding artifact donations, cultural data protection, and decision-making for cultural sites and repatriation
- **Enact protections** for archaeological sites, architectural resources, landscapes, sacred sites, and burial sites within Tribal law
- Establish **cultural resources review processes** under Tribal law
- **Replace Federal defaults** (like ARPA) with a law tailored for your Tribe

How Can Cultural Resources Codes *Strengthen* Tribal Sovereignty?

Historic
Preservation
Review Process
(Tribal 106)

Archaeological
Permits and
Licenses

Tribal Landmarks
Register, Nomination
and Listing Process

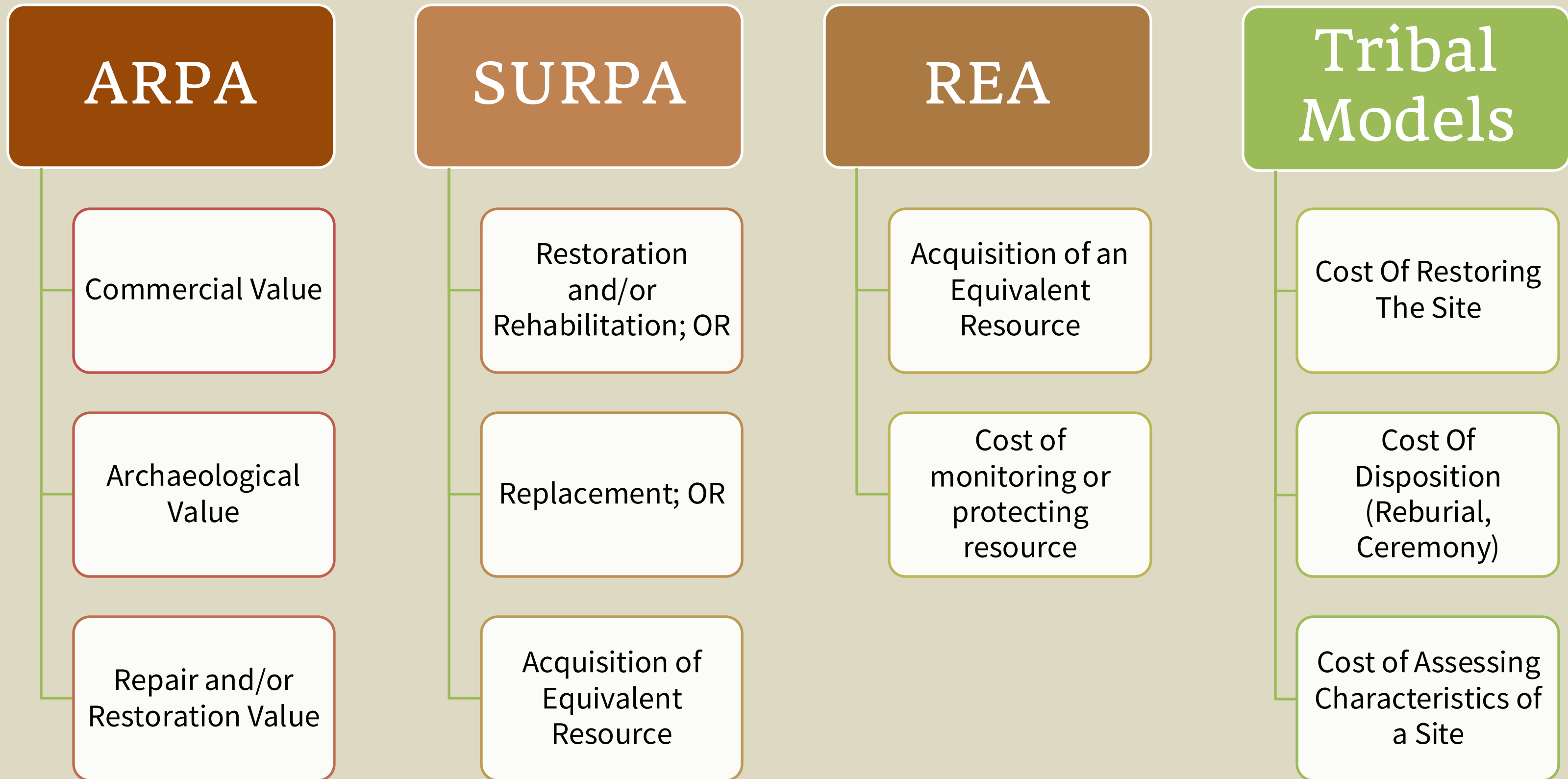
Address
Weaknesses in
Federal Laws

Enforcement
Mechanisms for
Violations of
Cultural Sites

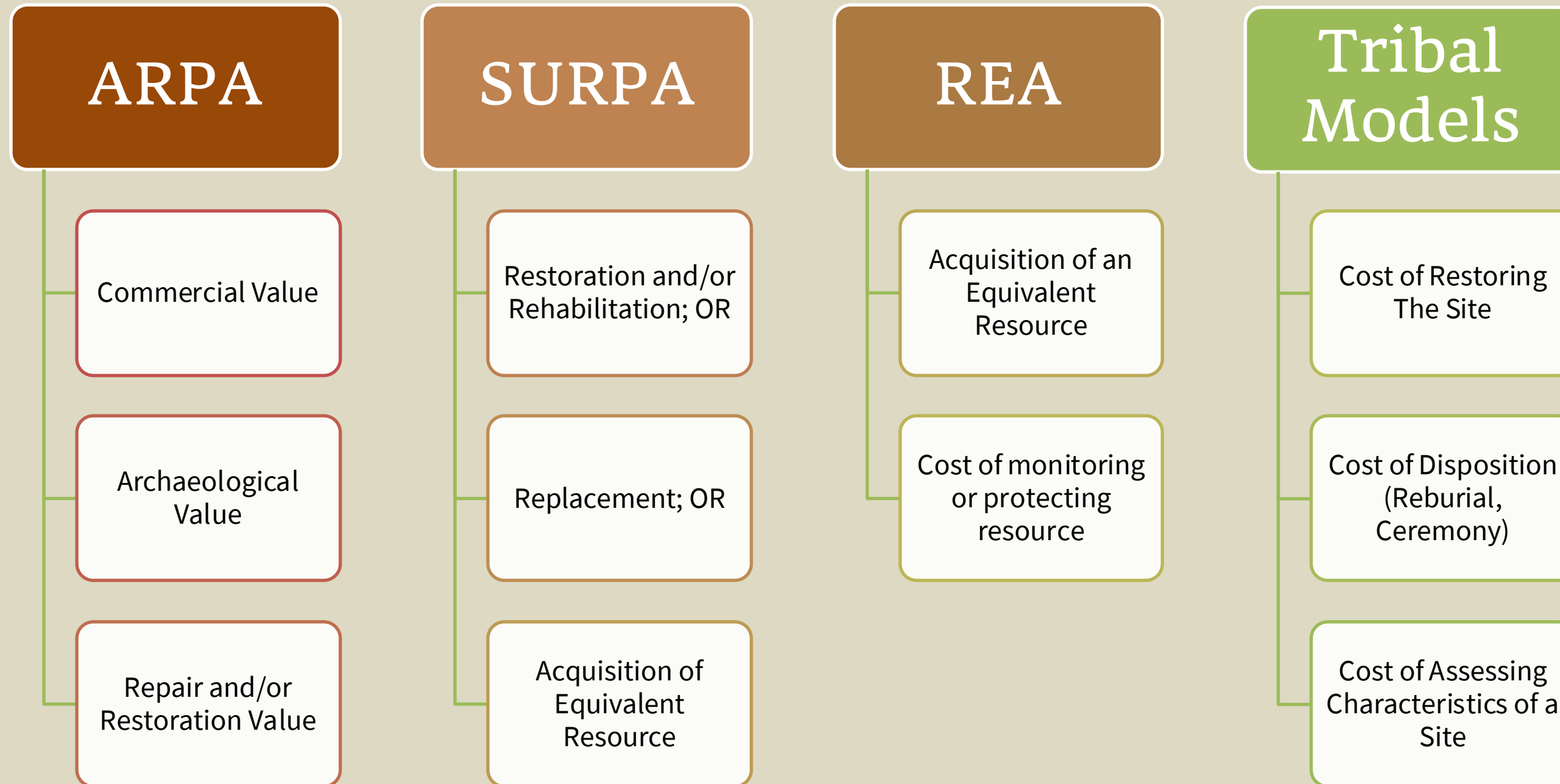
Tribal Cultural
Protection Fund

Damages Calculations for Cultural Resource Codes

Archaeological Damage Valuation Models



Archaeological Damage Valuation Models



Or, from the Yurok Code:

“all costs and actions associated with or necessary to abate and/or mitigate effects to the cultural integrity of the Tribe...”

How ARPA's Approach to Archaeological Value Works in Practice:

5 23. To conduct professional archaeological excavation, data recovery, and laboratory
6 analysis for the same areal extent within the Poor Boy site as the extent of the unauthorized excavation,
7 the cost would be \$92,500.00. This cost is based on the typical expenses for a local contract firm to
8 excavate this type of site. In the damage assessment report, I adjusted this figure because archaeologists
9 do not usually excavate all of a site. Using scientific excavation of 30% of the total unauthorized
10 excavation area, the final Archaeological Value was assessed as \$27,750.00. This was then added to the
11 “Cost of Restoration and Repair” (as defined at 43 C.F.R. 7.14(c)) of \$2,208.00, for a total of
12 \$29,958.00.

Advantages to Creating Your Own Cultural Enforcement and Damage Assessment Mechanisms

- **Decisions about prosecution** are in the Tribal Nation's hand – not the Secretary of Interior or DOJ
- **Definitions of cultural sites** protected are driven by Tribal values (not limited to ARPA's "archaeological interest" definition)
- Assessment of cultural damage can be driven by the **Tribal Nation's concept of harms**, not limited to ARPA and archaeological evaluations of the value of scientific information or the financial value of objects

Quechan Tribe v. US: Calculating the Value of Cultural Damage

Judge awarded Tribe \$8.2 million in damages for impacts to ten archaeological/cultural sites

- Government power authority found guilty of trespass, negligence and negligence per se, and nuisance for interfering with the Tribe's ability to enjoy cultural areas
- Defendant's use of **ARPA damages calculation was rejected** because:
 - a) Judge agreed that the **cultural resources had no market value** and a damage valuation on fair market value was inappropriate
 - b) ARPA does not have a private right of action and the Tribe's claims were not being brought under ARPA
- Judge supported the Tribe using a modified **Resource Equivalency Analysis**
- The case illustrates the **impact of state laws**, even when the incident happens on a Tribe's reservation and the claims are brought under federal law

REA Analysis in *Quechan Tribe v. US*

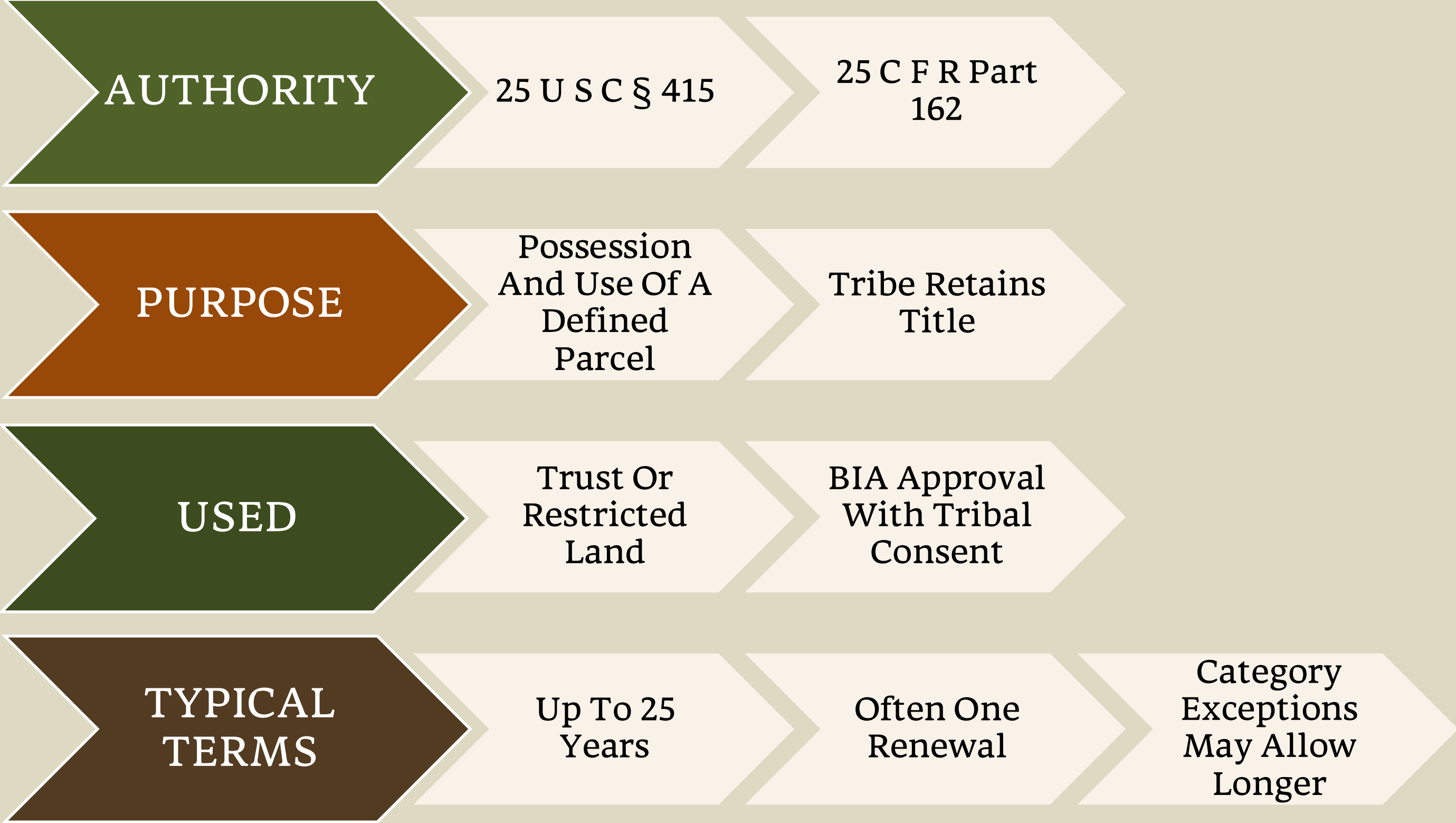
The Tribe's damage assessment expert was a natural resources economist who interviewed the Quechan Tribe to determine what an equivalent resource would be – and Tribal members requested a cultural center as well as an ongoing tribal cultural sites monitor.

The natural resources economist's modified REA evaluation had three parts:

- 1. Identify** the impacted cultural resources and how the damage affects use for the Quechan (the physical destruction of ten cultural resource sites)
- 2. Consult** the Quechan Cultural Committee and the Tribal Council to determine equivalent resources to the destroyed sites. Considerations included similar “active uses” (recreation, spiritual purpose, physical use of a site) and “passive uses” (Quechan self-conceptualization in relation to the damaged areas, including for future Tribal self-understanding).
 - Multiple members of the Cultural Committee and the Tribal Council mentioned a cultural center as a resource capable of replicating the values of the lost sites
- 3. Calculate** the cost of the equivalent resource (construction costs for a cultural center plus 50 years of a cultural sites monitor)

Leases and Rights-of-Way on Tribal Lands

What Are Leases?



Lease Expirations = Leverage

What Counts As Expired

- Term End Passed
- No Executed Renewal Or Extension
- Missing Required Approvals

Confirm The Facts

- Approved Lease; LTRO Record
- Payment History

On-The-Ground Check

- Still In Possession
- Within Footprint
- Conditions Met (Inspection • Insurance • Bonds)

Use The Leverage

- Notice Of Unauthorized Use
- Temporary Access Agreement
- Renegotiate Economics And Protections
- Restoration Plan

Protect The Record

- “No Waiver” Language
- Reserve Rights
- Back Rent And Trespass Remedies

Renegotiating Leases: FMV Is The Floor

Price Full Trespass:

Back Rent Penalties Restoration Treble Where Authorized

Don't Cap To Agency Windows:

BIA Often ~ 6 Years + 90 Days

FMV Is The Floor:

Corridor Scarcity Risk/Impact Adders

Economic Upside:

CPI/Appraisal Resets Capacity/Throughput Adders Profit Or Revenue Share

Community Benefits:

First-Source Hiring Apprenticeships/Scholarships Local Procurement

Stewardship & Compliance:

**Monitors Real-Time Data/Telemetry Daily LDs Insurance/Bonds
Removal/Restoration Decommissioning Fund**

Renegotiating Leases: BIA v. HEARTH

| | BIA Leases (25 C.F.R. Part 162) | HEARTH Approvals (Tribal Regulations) |
|-------------------------------|---|---|
| Approval/Review | Secretary of the Interior through BIA | Tribe's approved leasing regulations; no further Secretarial lease review |
| Typical Timeline | Variable; subject to federal processes | More streamlined; Tribe controls timeline |
| Term Limits | Up to 25 yrs base + renewals (per Part 162) | Business/agricultural: up to 25 yrs + 2 × 25-yr renewals (to 75 yrs) |
| Land Status | Trust/restricted land; allotments still under BIA | Trust/restricted land under Tribe's regs; allotments not covered |
| Tribal/Local Standards | Federal standards apply via Part 162 | Tribe sets standards in regs (consistency with Part 162 required) |
| Environmental Review | BIA/DOI review under NEPA if triggered | Tribe conducts review under regs; no automatic BIA review required |
| Benefits to Tribe | Established process but slower | More control, speed, tailored protections, investment friendly |

Helping Expedite and Advance Responsible Tribal Homeownership Act (2012)

- **Provides authority** for Indian tribes to lease tribal trust lands directly pursuant to tribal law
- Stipulates that tribal regulations **include an environmental review process** “consistent with” NEPA
- Before leases are finalized, many regulations require a **consideration of effects on cultural or historic resources** and a **Tribal Historic Preservation Officer’s approval**
- Empowers Tribes to **react quickly**, preventing developers from walking away due to burdensome and slow processes and/or federal staffing issues

HEARTH Act Pathways Offer:

1. Greater speed and efficiency in executing leases—supporting urgent economic development needs
2. Cultural accountability in leasing terms and review processes, including adopting NEPA requirements
3. Negotiating leverage when state, local, or private developers propose projects impacting Tribal lands
4. A governance framework that tribes can enforce independently, reinforcing sovereignty when federal oversight falters

Rights-Of-Ways

Authority

Indian Right-of-Way Act
25 U.S.C. §§ 323–328
25 C.F.R. Part 169

BIA grants ROWs on
trust/restricted land
with Tribal consent
(recorded with LTRO)

HEARTH covers surface
leases; it **does not**
authorize ROW
approvals

Why It's Slow

Multi-step federal review

- Realty
- Valuation/Appraisal
- Environmental/NEPA Solicitor

Capacity limits, vacancies,
shutdowns → timelines
often stretch from
months to years

What To Use Now

(Don't Create ROWs)

- Revocable access permits
- temporary work authorizations
- encroachment/construction permits
- traffic/haul-route approvals
- short-term staging permits
- temporary access during cure/negotiation

Short term; mapped
footprint; revocable; no
assignment/holdover;
permit **fees (not rent)**;
insurance/indemnity/bo
nd; monitoring;
restoration; Tribal forum

Leverage and Enforcement

- Audit recorded ROWs;
- **expired, over-scope, or unrecorded use = trespass** → notice
 - temporary access only if needed for safety
 - renegotiate price
 - protections
 - restoration
 - bonds

If Federal ROW Is Truly Needed

Start early
require term and renewal
windows
inspection/data access,
cultural resource
protections, restoration
and a decommissioning
fund, emergency shut-
off and cure timelines,
rate/throughput
escalators, and
liquidated damages

Live Poll 3: Biggest ROW/Leasing Challenge

**Finding All The
Leases & Rights-
of-way?**

**Developing
HEARTH
Regulations?**

**Negotiating
With Big
Developers?**

**Monitoring
Compliance?**

**Collecting
Payments?**

**Other
Challenges?**

Tribal Enforcement-First Playbook

Step 1 — Put It in Law and Policy

- **Adopt or update** a comprehensive Tribal trespass code that covers trespass on the reservation and trespass that begins off the reservation and continues onto the reservation
- **Include** cultural and natural resource damages, stop-work authority, and injunctive relief
- **Enact** National Indian Forest Resources Management Act timber trespass provisions, including treble damages
- **Prepare** for full faith and credit in state and federal courts; **Require consent** to Tribal law and Tribal court, and include service and recognition provisions in every access agreement
- **Define** approval authority and timelines so process delays do not erode leverage
- **Standardize** templates: revocable permits, temporary access agreements, inspection rights, restoration bonds, and an evidence chain-of-custody standard operating procedure

Step 2 — Begin the HEARTH Act Process

- **Initiate** regulations under the Helping Expedite and Advance Responsible Tribal Homeownership Act for surface leasing and align Tribal environmental review and cultural review
- **Submit** the regulatory package to the Bureau of Indian Affairs and prepare a public-facing timeline
- **Establish** standard lease terms: Consumer Price Index adjustments or periodic appraisals, restoration and decommissioning funds, telemetry and audit rights
- **Identify** which surface leases can transition under HEARTH authority and map the sequence
- **Notify** counterparties, require consent to Tribal law and forum, and confirm insurance and indemnity
- **Use** HEARTH authority at renewal so approvals occur on Tribal timelines

Step 3 — Audit Rights-of-Way and Leases

- **Collect** every land document: Land Titles and Records Office records, rights-of-way, leases, easements, permits, amendments, and maps
- **Build** a living ledger: key dates, payment status, Consumer Price Index or appraisal triggers, and surrender or restoration obligations; mark each item as valid or expired
- **Verify** on the ground: visit the site, record location coordinates and photographs, confirm signage and access control, and follow Archaeological Resources Protection Act protocols for discoveries
- **Define** action triggers: expiration within twelve months, nonpayment, unauthorized use or scope creep, damage, or discovery
- **Prepare** notices and a negotiation position for each asset, including minimum economics, milestones, and remedies

Step 4 — Enforce and Assess Damages

- **Issue** a Notice of Unauthorized Use, begin daily liquidated damages, and narrow any permissions to prevent ongoing harm
- **File** in Tribal court for holdovers or injury and seek a temporary restraining order or a preliminary injunction when appropriate; preserve claims for back rent and trespass
- **Add** federal tools when useful: Clean Water Act sections 401, 402, and 404; agency referrals; citizen suits; use National Indian Forest Resources Management Act provisions for timber harms
- **Maintain** courtroom-ready evidence with a clean chain of custody and complete cultural and natural resource damage assessments that are proportional to the injury
- **Resolve** with enforceable orders or settlements that include a restoration plan, decommissioning obligations, community benefits, and training for Tribal monitors

Step 5 — Restore, Monitor, and Improve

- **Adopt** a restoration plan with clear closure criteria, including cultural access, resource repair, and long-term stewardship commitments
- **Create** a Protection Fund that dedicates settlement and penalty dollars to cultural and natural resource work
- **Monitor** and report results on near-term and long-term timelines using independent monitors and transparent data access
- **Report** key performance indicators to Council: expired items resolved, dollars improved at renewal, inspections completed, and incidents resolved
- **Continuously** improve templates, update the ledger, and train staff so the process is sustainable

Proactive Tribal Capacity Building

Increasing Tribal Capacity Through Negotiated Agreements

Tribal law and enforcement are only one route to resolving concerns with developers over projects

Sometimes, proactive negotiation can be just as or more effective

Standard Section 106 Mitigation: Financial mitigation, research projects, land acquisition, data agreements, and other commitments made within the S106 process

Private Agreements with Developers: Tribe negotiates directly with a proponent to resolve legal, permitting, consultation, and/or cultural resource management errors

Tribal/Community Benefit Agreements: When impacts are significant and affect both natural and cultural resources, exact impacts and needs are unclear, and if there are several major stakeholders whose interests are affected

Profit Sharing Agreements: For projects on Tribal land or involving Tribal rights or resources, negotiate ongoing compensation linked with project success

Standard Section 106 Agreements

Negotiation is essential, even (especially?) when federal agencies are at the table.

Agreements in 106 can:

Reduce impacts with design changes:

- Can include project footprint, but also artifact donations, data sharing agreements, changes to lighting, visibility, noise

Include financial mitigation and land donation:

- For especially significant and/or landscape impacts, standard Section 106 data recovery does not sufficiently address impacts to Tribe's cultural resources

Impose permit conditions:

- Stipulations in MOA and underlying Treatment Plans and Unanticipated Discoveries create binding obligations to developers under Federal law

Case Study: Skiffes Creek MOA (2017)



Don't Leave Money on the Table!!

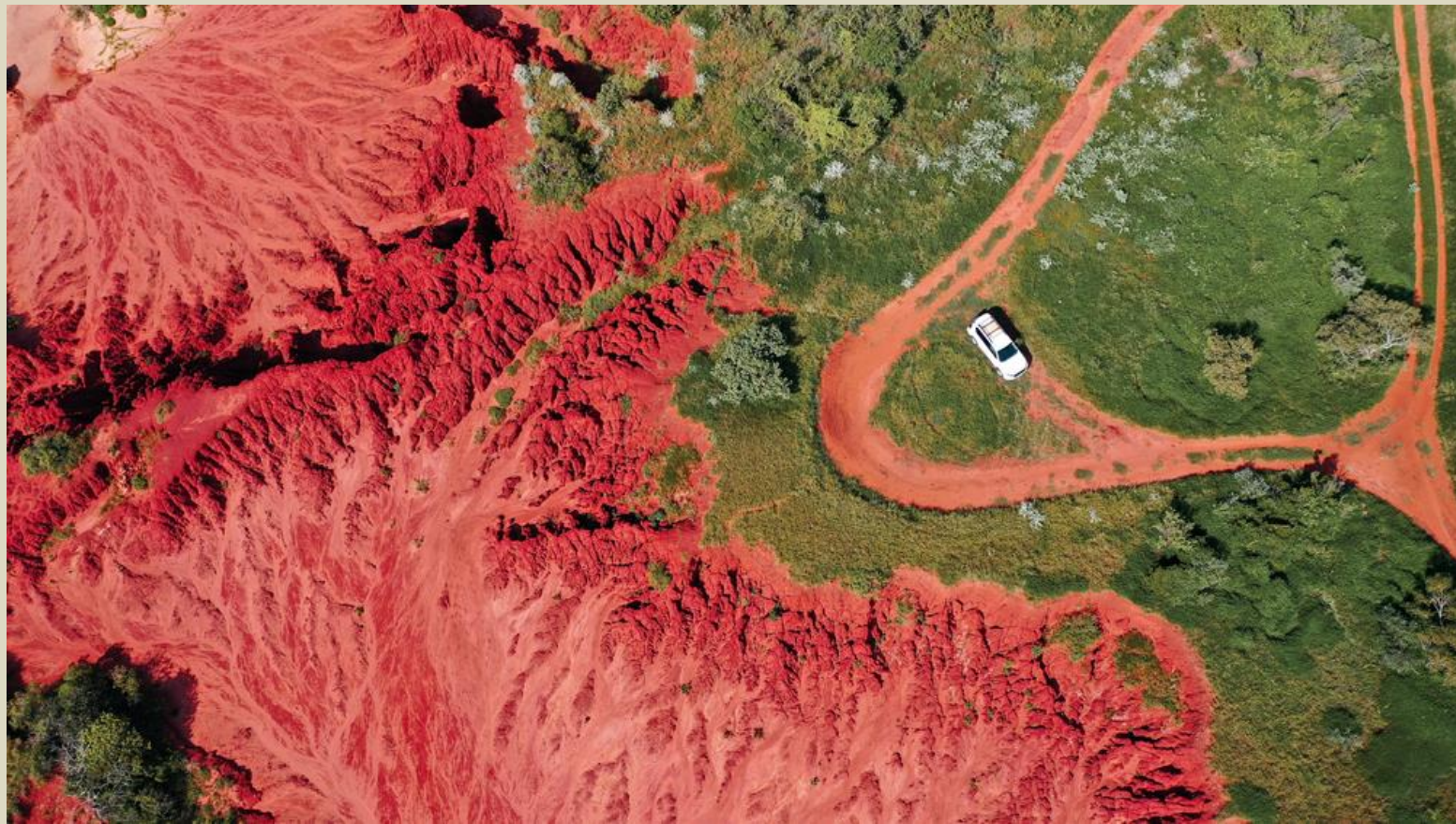


Private Agreements with Developers

Direct negotiated agreements don't rely on federal approval and can address a wider variety of Tribal priorities, resolve longer-term impacts, and create incentives for corporate change and accountability.



Tribal Benefit Agreements & Profit Sharing



Tribal Benefit Agreements are often public but still provide Tribes with a critical mechanism to hold developers accountable, address design changes and environmental impacts, and receive financial compensation for ongoing impacts, sometimes over the course of several years.

Profit sharing agreements can also be made with developers, equipping tribes with a powerful economic development tool and various forms of partnership and ownership stakes in the project.

TELL US WHAT YOU'RE SEEING!

We want to know when you experience these things:

- Damage to tribal cultural resources
- Damage to natural resources important to your Tribal Nation
- Damage to significant sites such as burial grounds or Traditional Cultural Properties

Tell us when consultation fails and when you feel like your Tribal Nation is being pressured into a bad deal!

SERIOUSLY. CALL US!

CONCLUSION

Tribal law, Tribal forums, and tribal law turn sovereignty into action.

Every Nation's path is unique—but the tools are ready: codes, HEARTH, and enforcement that work!

**CHP wants to learn and partner with Nations on these issues;
over time we will build and share free resources for Tribes!**

Open Floor: Ask Us Anything



CULTURAL
HERITAGE
PARTNERS

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Thank you for your time today!



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