

## Why Consult?

**FRANCIS P. McMANAMON**

**F**or over a decade, federal laws, regulations, and executive orders have required the involvement of Indian tribes when federal agencies make decisions concerning historic properties and archeological sites.

Of course, compliance with these laws is a means, not an end. The desired outcomes are better decisions and broader perspectives in the management of America's cultural heritage. This is to be accomplished by providing American Indians with opportunities to express their opinions about important public decisions before they are made.

Archeological investigations on federal land must be preceded by consultation with Indian tribes that are likely to have a cultural affiliation with the sites that will be investigated. Furthermore, after the excavation or analysis is completed, any Native American human remains and cultural items (as defined by NAGPRA) must be repatriated to the appropriate tribe, if requested.

The laws and regulations require consultation with Indian tribes. Except on tribal land, the consent of the tribe is not required. This is an important, although sometimes overlooked, point. Except on their own lands, Native Americans cannot dictate how archeological excavations or reporting are carried out. Existing laws, regulations, and standards require careful, systematic reporting. These requirements ensure that the information is obtained for public benefit. In many cases, careful excavation and analysis also are necessary to establish the cultural affiliation of remains and other items covered by NAGPRA.

In the past, notification of a project was often via certified letter, rather than through personal contact between the agency and representatives of Indian tribes. More recently, with the consultation required under NAGPRA, the importance of person-to-person meetings has been recognized and recommended strongly whenever possible.

In consultation, effective communication is crucial, and both sides should commit to working together for the long term. Relationships must extend beyond any particular situation and not be overcome by one disagreement.

Archeologists and Native Americans must clearly and calmly articulate the value of their different approaches to understanding the past. They each should consider how one way of understanding might inform the other. Archeologists should seek the benefits of the archeological perspective, with an

awareness that other ways of knowing about the past are likely to be espoused by Native Americans.

Archeologists should learn how to incorporate information from Native American oral histories into their interpretations. Native Americans ought to consider how these interpretations support their traditional histories. Perhaps more challenging is describing archeological interpretations in ways meaningful to Indians. Another challenge is that many Native Americans are outspoken about archeology's irrelevance to them and their histories. Sometimes these statements are made for effect. However, the shorthand of archeological jargon and densely written professional material makes poor fare for reaching out to anyone, including Native Americans.

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Cooperation of this sort would bring a fuller understanding of ancient America. The complimentary combination of Indian knowledge based upon oral histories and tradition with scientific interpretations holds the promise of rich stories about the ancient past. There will be disagreements to be sure, but more exploration of complementary interpretations is likely to be fruitful. Native Americans might benefit from a greater public appreciation of their peoples' histories through legitimization in terms of "Western" understanding of ancient Indian history in the Americas. The key word in this paragraph, however, is promise, for there are few examples of this kind of combined ancient history to point to.

Archeologists and Indians both would benefit from enhanced public understanding of the great temporal depth of human history in America: thousands of years, not hundreds, and millions of archeological sites, not only those associated with Africans, Europeans, and subsequent immigrants.

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# STRATEGIES FOR INDIAN PARTICIPATION IN CULTURAL RESOURCE MANAGEMENT



BRUCE LOVE

**N**ative American participation in cultural resource management is often nonexistent or woefully inadequate. (Cultural resource management, or contract archaeology, is the archaeology done for housing developments, commercial projects, new golf courses, pipelines and power lines, and any other ground-disturbing activities that require permits.) The California Environmental Quality Act (CEQA) and the National Historic Preservation Act (NHPA) mandate that archaeological sites must be considered in the planning process prior to issuing construction permits. Since the passage of NHPA and CEQA in the 1960s and 1970s, professional archaeology has grown into a thriving industry in California. I have been part of this business, in one form or another, as a professional archaeologist for the last fifteen years, and in the last four years or so I have worked on developing strategies for tribal participation in cultural resource management. Through trial and error, controversy

and struggle, three steps forward and two steps back, I have begun to recognize certain steps that seem to work. For the benefit of tribal or group members who are looking to take a more active role in protecting archaeological sites, I offer these suggestions.

## BACKGROUND INFORMATION

### 1. Know the difference between CEQA projects and federal projects.

CEQA (California Environmental Quality Act) regulates state, county, and city projects, while NHPA or Section 106 deals with projects on federal lands such as National Forest Service, Bureau of Land Management (BLM), military property, or projects which receive federal funding or require federal permits such as HUD projects and some highway projects. CEQA covers non-federal projects, like housing tracts, new schools, county flood control, or water district projects. The main difference in regards to

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ARCHEOLOGY AND ETHNOGRAPHY IN THE PUBLIC INTEREST

## Speaking Nation to Nation

FULFILLING OUR PROMISE  
TO NATIVE AMERICANS

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# NATIVE AMERICANS AND ARCHAEOLOGY



ANTHONY J. ANDREAS

When I was a young boy my grandmother told me the history of my grandfather's people. She showed me where my great-grandfather's village was and where my grandfather was raised. It was near Andreas Canyon and called the Rincon Village. Near that village she showed me the cemetery where my people had been buried, cremation burial grounds, and where my great-grandfather had an adobe house ... Andreas Canyon. In the Rincon Village there was evidence of stone-lined ditches,

and irrigated fields could still be seen. There were also cultural remains of several rectangular houses, pottery shards, broken cast-iron pots and stoves, old bed springs, tin cans, and broken bottles. Some tin cans had been used for rattles.

Through the years I often thought how this area and other areas such as these could be preserved or documented and recorded. I knew someday these lands would be developed and not recorded, but I really had no idea how to go about doing this. In 1969

I approached Pat Patencio, then the tribal chairman of the Agua Caliente Band of Cahuilla Indians, to see what or if anything could be done to preserve this area. I also showed him other sites in Tahquitz Canyon which I had discovered when I was hiking in the canyons. It was about this same time that a flood-control project was to be built in Tahquitz Canyon by the Army Corps of Engineers. Most, if not all, of the cultural remains there would be destroyed by this project, leaving no record of their historical value that would benefit future generations of the Agua Caliente Band. The Army Corps of Engineers claimed that there was no historical significance in the canyon other than two sites that had been previously recorded.

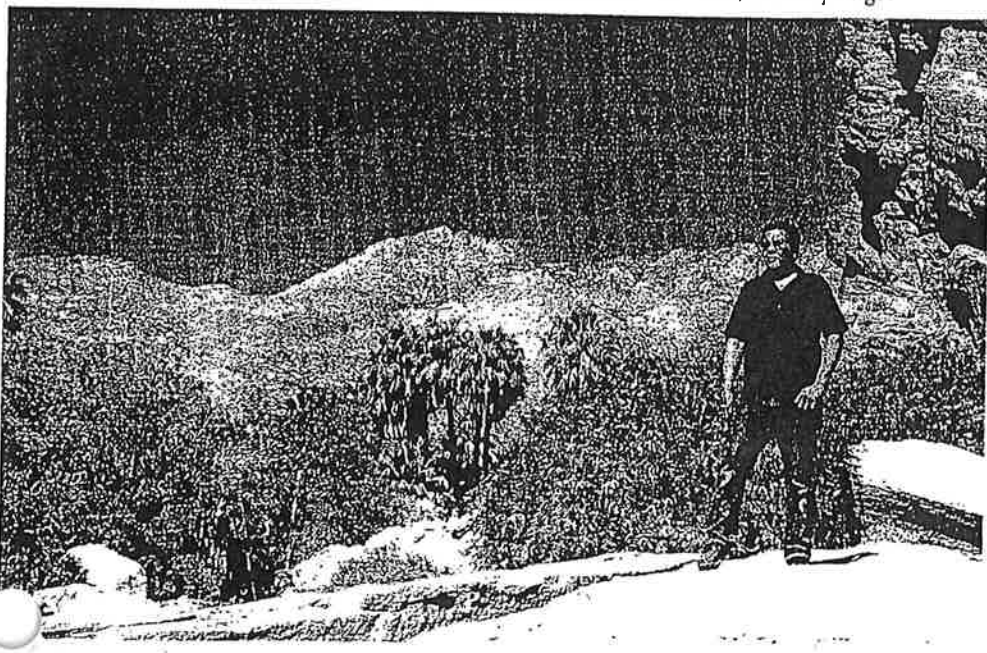
At that time the tribal council decided to preserve the area and agreed to hire archaeologist Tom King from the UC Riverside Archaeological Unit. They had read in the newspapers about his sensitivity toward Native American cultural remains. For the next twenty years extensive archaeological and anthropological studies were done. In 1973 Andreas and Tahquitz Canyons were put on the National Register of Historical Places, and the flood-control dam proposed by the Army Corps of Engineers was dropped. In 1990 a smaller flood-control project was built after an extensive and thorough archaeological study was performed.

In 1993 a proposed country club development was stopped near Andreas Canyon as a result of the efforts of Native Americans, archaeologists, and friends of the Indian canyons and the site is now a tribal park. I have great admiration for Tom King, Phillip Wilkie, and especially for Dr. Lowell J. Bean for their tireless effort to help preserve our Indian heritage. All this would not have been possible without the desire of Native Americans to know their history and without the help of the scientific community to write it!

Unfortunately, due to lack of funds the historic Rincon Village site was not included in the park and is now earmarked for development. But efforts are now underway to try to save and preserve this valuable historic asset.

But more important, I believe, is recording and documenting these historic sites properly for the benefit of future generations, so that they will understand their heritage and know that our ancestors were not a figment of someone's imagination.

*Anthony Andreas has been a consultant on various archaeological projects in the Coachella Valley for almost twenty-five years. He is a birdsinger and a Desert Cahuilla historian.*



*Anthony Andreas in Andreas Canyon, Agua Caliente Indian Reservation, Palm Springs.*

situation arises, it does not make a difference in which area the problem occurs, the people will stand in unity, because the outcome will have an affect on all of us.

Our most recent achievement has been a year-plus successful working relationship on the proposed Greenhorn Gulch Golf and Country Club Project in Angels Camp, California. The project proponent, Barden Stevenot, wanted to build his project around the remnants of a village site. He invited Native participation at the very beginning of the project. We walked the land together and discussed where proposed development would take place and where open space would be mandated.

I cannot stress how important this type of early involvement proves to be. First of all, it saves the project proponent dollars on engineer drawings and wasted time on resolving issues that could possibly arise if no consultation had taken place. The committee had other concerns such as proper establishment of boundary definitions and buffers, treatment measures, and the significance of a long term monitoring plan after the project is completed.

This has been our first successful experience in true consultation. Everyone came out a winner. We wish that all projects had this type of working relationship, in which everyone listens to what is said, discusses

the concerns, and works toward a reasonable goal. In the spring of 1995, we participated in blessing this project at the groundbreaking ceremonies which moved the general public and the project proponent, because they realized the significance of the area to the people. To our knowledge, this is the first golf course in California that will have cultural and traditional interpretation in a natural setting.

The best part of my work has been the academic and professional people from whom I have learned so much. Those individuals are: Dr. Michael Moratto, Dr. Dorothea Theodoratus, Dr. Nancy Evans, Shelly Davis-King, Larry Myers, and Dwight Dutschke. Without their tutelage and dedicated commitment, I do not believe that our committee could have attained the degree of cultural resource management expertise we now possess. We are most thankful to them for their continuing support.

Another rewarding part of my work has been the Committee's ability to provide training classes which taught the processes of historic preservation law compliance and basic Native American monitoring skills. These classes have been taught by academics and professionally trained experts to all interested California Natives free of charge. The Central Sierra Me-Wuk Committee has an ongoing commitment to assist other na-

tive people who need specialized training on cultural resource issues. It is our hope that many more California Natives will gain the expertise necessary to allow them to expand their own community preservation efforts. All it takes is education, training, and lots and lots of perseverance.

As I look back at the factors that have led to my involvement in cultural preservation issues on behalf of the committee, I can't help but think of my childhood years on the rancheria. My fondest memories of this revolve around the time spent with my elders. They took the time to teach us the stories, songs, dances, ceremonies, gathering and hunting traditions of our people. The Big Times and Festival Gatherings were very special times. To me the preparation for these events was one of the most busy and exciting times. I believe these formative years have been among the most influential for me and prepared me for my dedication to the issues of preservation.

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## EDUCATING OURSELVES ABOUT ARCHAEOLOGY



My interest in preserving our cultural heritage goes back to before the beginnings of our tribal council a few years ago. Since I was a kid, I've been interested in our family history and in particular, about the "Jolon" Indians, as my father referred to our ancestors and family that he grew up with. His stories of being raised in the area and what he knew of the Salinan heritage piqued an interest that has turned into a life commitment.

Our tribal boundaries are in central coastal California, roughly south from Big Sur to the Morro Bay area, and extending east to the Diablo range between us and the Central Valley. In the northern part of our area, in central Monterey County, lies Fort Hunter Liggett, a U.S. Army base. The base is in the "heart" of our tribal area and contains most of the known Salinan tribal village sites and artifact finds. San Antonio Mission, where many of the Salinan People were located after the arrival of the Europeans, is situated in the middle of the base. The Army, as required by various laws, put together an Historic Preservation Plan (HPP). These same laws require participation by the Native Americans impacted as part of the process. Many of the Salinan families still live in the

area or were raised on this land, so we are very familiar with the terrain. The Army and its cultural resource management (CRM) consultants had contacted some of us as individuals. We decided we would have more influence in the plan as a group, so we formalized our tribal leadership as the Council.

What we found out very quickly was that giving us input was one thing, but without the knowledge of what our input would mean, it was a shot in the dark. We had the opportunity to ask, but we didn't know what to ask. So that was the impetus for us to find out what archaeology, anthropology, and CRM were all about. We began to educate ourselves to know what our rights were. Some of our people had been and continue to be monitors on archaeological sites. Our people have now formed our own cultural resource consulting firm to handle monitoring, but at the beginning, we needed more in-depth knowledge about what we were doing in regards to our legal rights.

My personal knowledge of archaeology was limited, and I had little field monitoring experience because I don't live near the base. So I approached it as a chance to gain knowledge as a tribal council member in order for

# RESPECT FOR THE DEAD

WALT LARA, SR.

The ancestral lands of the Coast Yurok people extend from Damnation Creek in Del Norte County south to Little River in Humboldt County. That is the Coast Yurok area, and I can say, without a shadow of a doubt, I know more about this coast than any other Yurok Indians who's living today—whether they are a hundred years old or sixty years old. Ever since I was a young child between the ages of five and twelve years old, I used to walk with the elders along the coast. You see, in those days, what happened when someone drowned in the Eel River, we would go look for them along the coast. And that is how I got to know the whole coastline. From the Oregon border to the Eel River is pretty much what I know about.

The experience that I have with archaeologists and anthropologists is I was chairman of the Northwest Indian Cemetery Protective Association (NICPA). Milton Marks, the founder of that organization, passed away and I took his position as commissioner for the California Heritage Commission under Governors Brown and Deukmejian.

The main thing is that by just being Indian, we have more experiences with archaeologists and anthropologists because they only dig up Indians and study the Indian things. Being raised by my grandparents and a working mother, I can understand the hurt when a site is destroyed. I was there and I saw what it did to my grandparents when these excavations occurred.

I am going to tell you about the way archaeologists treat Indian people. The archaeologists we have dealt with all these years, they're just like winos with a jug of when they come to an Indian grave. They just don't understand the word "no."

When the Indians around here buried their dead, they buried them right. They bury the person with those type of things

that he had been in the ceremonies with, and there was a certain way that they did it. They would destroy it and do something to it so that it couldn't be used again on this earth. So that when he got to where he was going, he would have some of his things with him, to show that he or she was someone of distinction here on earth.

The Indians believe that when you dig these things up and remove them from the grave, you're actually ripping them off of their inherited right with the Creator.

What happens is that the archaeologists infiltrate the Indian community, and they get information from the elders. They get information from the elders that are around eighty years old and when we say something different, the archaeologists say, "No, the elder said something else."

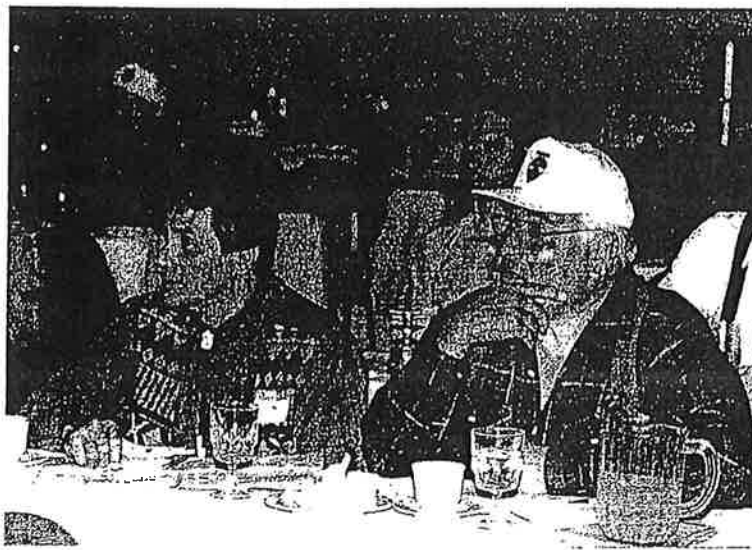
And the archaeologist in effect is degrading our testimony, or contradicting what we

say, and none of the Indians want to contradict the elder.

What I would like to tell the younger Indian people is this: it's not disrespectful to ask your elders why they are saying, "Yes, go ahead and dig up the graves"—you can say to them, "No, it's not right." Because those people who are buried are a lot older than the elders who are giving permission to dig them up. We have to pay respect to those who are dead. The graves that you're protecting are a lot older than any people who are here, so it's not disrespectful to tell elders, "No, don't let them dig it up."

We are taught to be respectful of our elders, but not every person over seventy or eighty is an elder with respect to their culture. They're old because they're old, and the system picks them to be elders because they're old.

In the 1930s and 1940s, some Indians were



Walt Lara (right).



# THE SCA'S NATIVE AMERICAN PROGRAMS COMMITTEE: IMPROVING COMMUNICATION AND COOPERATION BETWEEN NATIVE AMERICANS AND ARCHAEOLOGISTS

PHIL DE BARROS

**H**istorically, many (but not all) California archaeologists have viewed archaeological sites, artifacts, and human skeletal remains primarily as scientific data resources and have ignored their vital link to living Native American peoples. This failure to communicate with and understand the perspective of Native Americans reached its peak over the issue of repatriation. Initial positions by the SCA created a great deal of acrimony and distrust, and communications between Native Americans and archaeologists reached an all-time low. Having spent years in West Africa conducting combined archaeological, ethnohistorical, and ethnographic research, I was disturbed by these developments. I wrote an article entitled "Letter from a Concerned Archaeologist," first published in the *Native American Heritage Newsletter* (Winter 1990), in which I stressed the following points:

1. Archaeologists are also anthropologists and the holistic perspective and ethics of our mother discipline require that we work together with the descendants of the people who once occupied the sites we study.

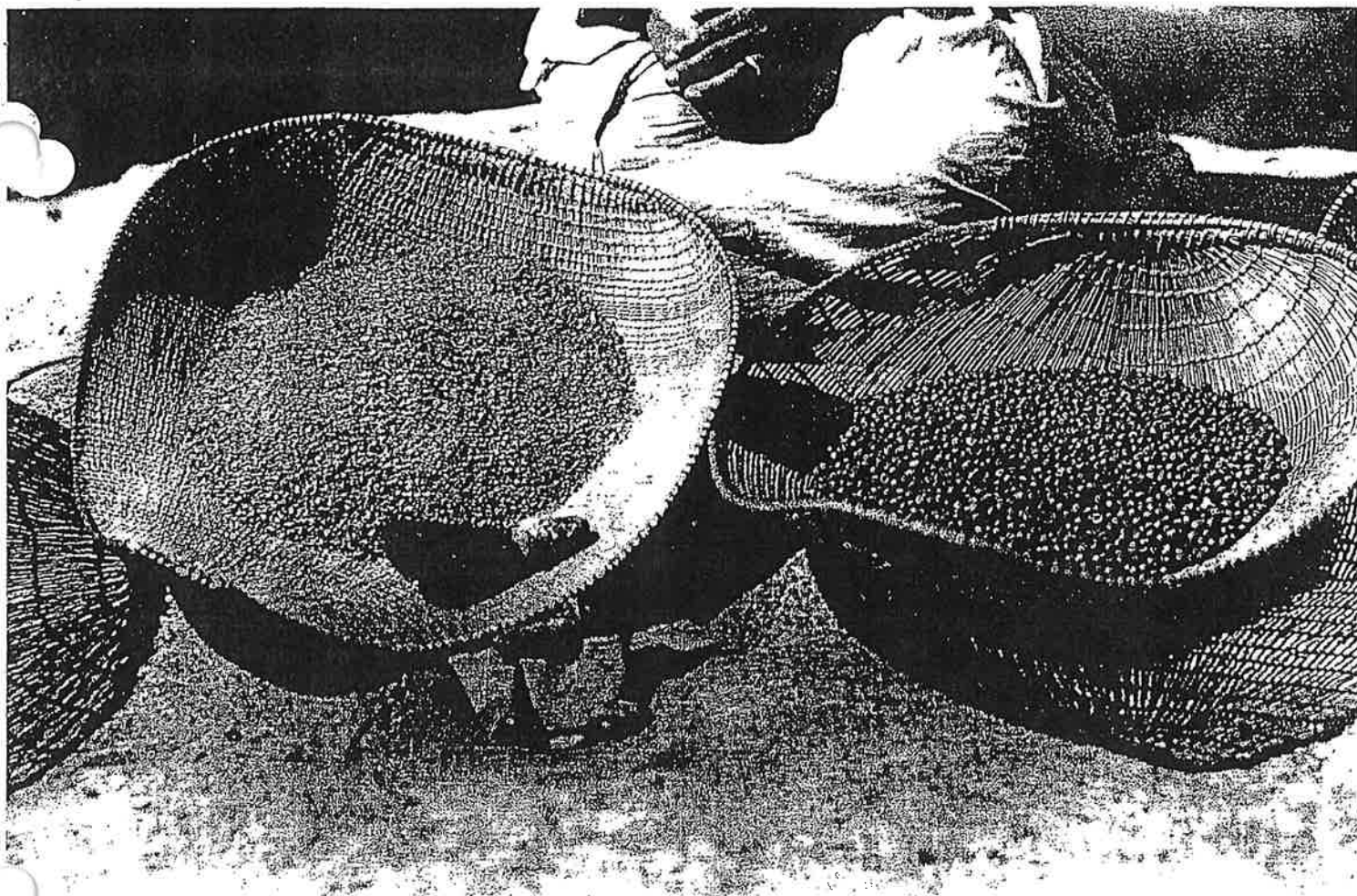
2. The study of human remains can provide important information about the Native American past not available from oral traditions and many archaeologists feel torn between their scientific and anthropological values.

3. Yet, there is a basic human rights issue at stake here, i.e., the right of Native Americans to determine the disposition of their ancestral remains.

4. I argued for a flexible policy regarding the disposition of human remains focused on case-by-case negotiations.

*Later I wrote about ways to develop communication and cooperation between Native Americans and archaeologists:*





...mortar site in use, 1918. The winnowing baskets are filled with manzanita berries. Photo by E. Gifford, courtesy of the Phoebe Apperson Hearst Museum of Anthropology, Berkeley.

burial policy, and a monitor contract. If necessary build your monitor into your burial agreement. Most repositories are finding a one time curation fee is not sufficient, ten to fifteen years later. The average curation cost statewide is \$500 to \$1000 per box.

#### E. Reconnaissance.

1. *The major role of the monitor on field surveys is to keep the archaeologists on task.* All major projects have prescribed field methodologies such as how the ground will be traversed: in what meter increments will each survey party member be; will the ground be covered by direction transects, in contours around the hills, or by outright sections; and so on.

The monitor cannot and should not try to make the archaeologist follow the said guidelines, but the employing agency can and will make the archaeologist resurvey said area if properly covered. Some circumstances may constitute non-survey such as a very steep slope or drainage where the proposed

project will not affect or impact the area. But anything not surveyed needs to be so noted. A monitor needs to be realistic and reasonable in his/her relationship with the project.

When recording sites, make sure the boundaries are accurate. Go off the site 50 meters, checking every 10 meters or so for any additional site evidence. Some sites have been re-recorded two or three or four times because the site keeps growing. Sites are easy to miss.

Moving artifacts on a site or collecting artifacts from a site is a major controversy. This practice has been done by both the Indian and archaeologist, especially with pristine artifacts. While the "pot hunter" has felt the sting of laws covering this issue, Indians and archaeologists have not. Indians claim they own the sites and have the right to pick up the artifacts. It was the traditional practice of our ancestors to leave the tools and an offering to the next occupants; that is why many sites had all these artifacts left there. Little did they know the next visitors were collectors and not users. The archae-

ologist, while passing through a site and finding a pristine artifact, collects the precious find and says in the name of posterity they will keep the artifact and will be sure to plot its location on some map back at the office.

Yet neither formally records the artifact. So I have found myself describing to the Native American the scientific value of leaving the artifact(s) there at the site, explaining to the archaeologist why the Native American left them there in the first place, all the while knowing that even though both the scientist and the Native American were going to leave the site intact, the pot hunter wasn't. So what is right? Do a good deed: record the artifact(s) properly and take the time to curate it properly.

2. *The philosophical view taken by the Native American when site recording or during site visitation: reference to an Indian site or "arc" site immediately conjures an image of a particular area.* This area could be an acre, as big as 500 acres, or even much larger. Once you specifi-

## SOME OF THE KEY LAWS AFFECTING NATIVE ARCHAEOLOGICAL, RELIGIOUS, AND HISTORIC SITES

**American Indian Religious Freedom Act of 1978 (AIRFA):** States that the policy of the United States is to protect and preserve for American Indians their inherent rights of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiian. These rights include, but are not limited to, access to sites, use and possession of sacred objects, and the freedom to worship through ceremony and traditional rites.

**Antiquities Act of 1906:** Provides for the protection of historic and prehistoric ruins and objects of antiquity on federal lands and authorizes scientific investigation of antiquities on federal lands, subject to permits and other regulatory requirements. Paleontological resources are covered by this act.

**Archaeological Resources Protection Act of 1979 (ARPA):** Prohibits the removal, sale, receipt, and interstate transportation of archaeological resources obtained illegally (without permits) from public or Indian lands and authorizes agency permit procedures for investigations of archaeological resources on public lands under the agency's control. Amendments to ARPA state that the Secretaries of the Interior, Agriculture, and Defense shall develop plans surveying the lands under their control to determine the nature and extent of archaeological re-

sources, prepare a schedule for surveying those lands that are likely to contain the most scientifically valuable archaeological resources, and develop documents for reporting suspected violations.

**California Environmental Quality Act (CEQA):** State legislation that requires all state and local agencies and governments to evaluate proposed activities which may significantly affect the environment, including cultural resources. Compliance may include preparation of Negative Declarations or Environmental Impact Reports (EIR).

**National Environmental Policy Act of 1969 (NEPA):** States the policy of the federal government is to preserve important historic, cultural, and natural aspects of our national heritage and requires consideration of environmental concerns during project planning and execution. Requires federal agencies to prepare an Environmental Impact Statement for every major federal action that affects quality of the human environment, including both natural and cultural resources.

**National Historic Preservation Act of 1966 (NHPA):** Establishes historic preservation as a national policy and defines it as the protection, rehabilitation, resto-

ration, and reconstruction of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture. Significance is determined by specific criteria. Register is maintained by the National Park Service for the Department of Interior.

**Native American Graves Protection and Repatriation Act of 1990 (NAGPRA):** Requires federal agencies and federally sponsored museums to establish procedures for identifying Native American groups associated with cultural items on federal lands, to inventory human remains and associated funerary objects in federal possession, and to repatriate (return) such items upon request to affiliated groups. Also requires that any discoveries of cultural items covered by the act shall be reported to the head of the federal entity who shall notify the appropriate Native American tribe or organization.

—From a glossary of archaeological terms compiled by Ann King Smith, archaeologist with Redwood National Park

## NATIONAL HISTORIC PRESERVATION ACT

Passed in 1966, the National Historic Preservation Act gave a measure of protection to, among other things, sites significant in American history and archaeology. It also established the National Register of Historic Places, outlining the criteria by which sites can be included. Section 106 of this act [codified as Section 470f of Title 16 of the United States Code Annotated] reads:

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Reg-

ister. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under part B of this subchapter a reasonable opportunity to comment with regard to such undertaking.

In 1994 the act was further amended to provide for an increased role for Indian tribes in the efforts and procedures for protection and preservation of "their particular historic properties." The amendments read in part:

(1)(A) The Secretary shall foster communication and cooperation between Indian tribes and State Historic Preservation Officers in the administration of the national historic preservation program to ensure that all types of historic properties and all public interests in such properties are given due consideration, and to encourage coordination among Indian tribes, State Historic Preservation Officers, and Federal agencies in historic pres-

ervation planning and in the identification, evaluation, protection, and interpretation of historic properties.

Also included among the amendments is a provision that states: "Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register."

The National Historic Preservation Act and its amendments are of great importance to native people. They form the basis of challenges to different types of "undertakings" on federal lands that threaten sacred sites, such as logging road construction within the Six Rivers National Forest authorized by the U.S. Forest Service (the G-O Road case) and geothermal drilling on the China Lake Naval Weapons Center authorized by the United States Navy (Coso Hot Springs), to mention just a couple.

Thanks to Stephen Quesenberry of California Indian Legal Services for providing the information from which this was drawn.