

**From:** Cassandra Hensher (hensher@mail.com)  
**To:** ARC White Papers  
**Date:** Friday, October 31, 2008 3:47:17 PM  
**Cc:** 'Trish Fernandez'; 'Donn Grenda'; jpeidsness@yahoo.com  
**Subject:** FW: Schedule for review of White Papers

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I am forwarding another email received regarding the White Papers...

--Cassandra

**Re: FW: Schedule for review of White Papers**

From: Junie Mattice <jeffersonstate@yahoo.com>  
To: Cassandra Hensher <hensher@mail.com>  
Reply-To: jeffersonstate@yahoo.com  
Date: Oct 30 2008 - 11:41am

Dear Cassandra, The only other thought is that 90,000 plus Calif. Indians have no input or human rights concerning sacred sites, cemeteries, ancient village sites...a congressional study completely ignored to date, somehow they should be included in this for future recognition...the lack of Honor and Common Sense has to be addressed...love and peace, Junie Mattice

A

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**From:** Cassandra Hensher [mailto:hensher@mail.com]  
**Sent:** Wednesday, October 29, 2008 11:24 PM  
**To:** 'hensher@mail.com'  
**Cc:** 'jpeidsness@yahoo.com'  
**Subject:** FW: Schedule for review of White Papers

Greetings to the attendees of the White Papers Workshops: I don't know how many of you are on the Native American Programs Committee (NAPC) email lists, so I'm sending this information to you directly.

Keep the comments coming in, and hope to see you soon,  
Cassandra

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**From:** Cassandra Hensher [mailto:hensher@mail.com ]  
**Sent:** Sunday, October 26, 2008 11:00 PM  
**To:** NAPC Members; NAPC friends  
**Cc:** 'jpeidsness@yahoo.com '; 'Anthony Madrigal'  
**Subject:** Schedule for review of White Papers

Ayukii. I'm forwarding the schedule for the State Historic Resource Commission's White Papers review process. A number of Tribes have requested that the deadline be extended for comments on the White Papers beyond Oct 31, 2008. The "bad news" is that the deadline will not be extended, but the "good news" is that any comments received after Oct. 31 will still be included in the review process, although in a slightly different manner than comments received before the deadline. Please read the information in the attached document (also copied below), and forward to others who may be interested:

"Proposed White Papers Schedule

Oct 31, 2008: Public comment period ends.



**From:** Buffy McQuillen (buffy@yuroktribe.nsn.us)  
**To:** SHRC\_ARC@YAHOO.COM  
**Date:** Friday, October 31, 2008 12:59:11 PM  
**Subject:** Yurok Tribe Comments

12 & 13

Aiy-yu-kwee' SHRC,  
The Yurok Tribe submits the attached letters as comments on the White Papers.

Wok-hlaw'

Buffy McQuillen, Repatriation/Collections Manager  
Yurok Tribe  
P.O. Box 1027  
Klamath, CA 95548  
(707) 482-1350 ext. 312  
(707) 483-1377



# YUROK TRIBE

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190 Klamath Boulevard • Post Office Box 1027 • Klamath, CA 95548

October 28, 2008

State Historical Resources Commission  
Attn: Trish Fernandez, Chairperson  
State Archaeological Resources Committee  
Department of Parks and Recreation  
P.O. Box 942896  
Sacramento, CA 94296-0001

Dear Ms. Fernandez:

The Yurok Tribe reviewed the five position papers (also known as White Papers), presented by the Archaeological Resources Committee. In general the Tribe was extremely dissatisfied with the path that the Committee took to get comments and respectfully submitted a separate letter outlining those concerns.

As the Archaeological Resource Committee moves forward with this initiative, it is our sincere hope that the Committee will consider the following comments provided by the Tribe and integrate them into any action plans or legislative action. The following are comments on the five sections.

**1). Conservation:** The Conservation paper identifies the issue as conservation versus public use and a lack of recognition for cultural landscapes. In general the Tribe agrees with the problems outlined by the author of this paper. However, we urge the Committee to go further in depth with regard to the issue of conservation and consider that this problem is deeper and the term public use must be defined. In California there are many cultural landscapes threatened because of the need for additional water resources, electricity, etc. Because these are considered essential needs of the general public, the cultural resource ends up being compromised and often times destroyed.

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Also, important to this topic is the need for a policy on tribal consultation. The position paper mentions tribal consultation and the need to follow through with commitments on tribal recommendations, but this is not strong enough. Tribes across California have made several attempts to enact legislation, but faced opposition because it held the public to a new standard. Furthermore, the Tribe supports protection in place options and urges the Committee to consider strategies making this a norm when conducting archaeology in California.

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**2). Curation:** The Curation paper identifies the problem as a space problem when in fact the problem is that the State is unwilling to deaccession archaeological material that has been long forgotten and untouched by archaeologist, scientists and public agencies. California Indians often question what will be gained by keeping archaeological material locked in storage units. Some archaeologists also question this because once the items are accessioned they forever become a part of the storage system, which is seriously overcrowded and under funded.

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The author of the Curation Paper offers solutions that are unrealistic and contrary to what many tribal groups have requested for years. This is an important paper that needs more thought and input from a variety of groups, not just archaeologists.

D

**3). Interpretation:** The Interpretation paper identifies the problem as the Office of Historic Preservations inability to implement outreach and quality interpretation activities. There is certainly more to offer the citizens of California in this particular area, but the paper falls short in that it doesn't offer as a solution actual coordination with tribal governments. California Indians, cultural sites and their local resources are typically the subject of interpretative exhibits, yet very few agencies coordinate with Indian people or tribal governments when they plan exhibits.

E

The Paper also does not specifically identify the type of material that would be included in an interpretive program. It is important to have tribal governments involved in the interpretive activity because they are the most likely body to determine what is appropriate for interpretation, and also how to accurately interpret a cultural site.

F

**4). Archaeological Resources Protection:** The Archaeological Resources Protection paper accurately addresses the many problems with archaeology, the limitations that exist in the field and the number of uneducated and sometimes unethical archaeological professionals.

Existing state and federal laws protect the disclosure of archeological information to protect these sites from illegal looting and vandalism. The stated purpose of the White Papers is to make archeological sites and information more available to the general public. How do these White Papers address the issue of promoting a change in archeological protection and interpretation that will diminish existing protections by making more information available to the public on these irreplaceable resources?

G

Tribes in California were not successful in their legislative attempt to have their sites protected and left unexcavated. This issue still needs to be addressed through the legislative process. In order to be successful, though, archaeologist and tribes must join together to create legislation that addresses the problems and provides remedies that work for everyone.

H

**5). Standards and Guidelines:** The Standards and Guidelines paper accurately identifies the problem, which is that many projects move forward without qualified archaeologists, without proper plans and of course lacking meaningful consultation and implementation

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of tribal recommendations. The Tribe urges the Committee to create consultation requirements.

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In closing, the Tribe urges the Committee to strategize and bring forward a new approach that integrates tribal government professionals and cultural practitioners into this process. It will only be successful if we coordinate, communicate and work together on this important initiative.

Sincerely,



Maria Tripp, Chairperson  
Yurok Tribal Council

letters to tribal governments explaining this effort. It is absolutely essential that the State of California conduct meaningful government-to-government consultation.

The opportunity for Tribes to be engaged is often at the latter end of the decision making process. Because the White Papers were not distributed consistently to every tribe in California, some tribes may not be aware of this initiative. The White Papers address a very complex problem and review and processing of solutions takes time and consultation should not be cast aside because it is a cumbersome or an unaffordable process for a state commission.

It has become apparent that there is a fear (by some professionals in the archaeological community) that Tribes will change archaeology. Some feel that Tribes will work towards eliminating archaeological practices altogether. This is the same fear tactic used by archaeologists, scientists and museum professionals when the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 passed. The reality is that this is just a tactic to continue to exclude California Indians from this process, which is really a loss to the archeological field as a whole.

The Yurok Tribe is also very concerned with the lack of tribal representation on the State Historic Resources Commission and the Commissions Archaeological Committee. The addition of a member from the Society for California Archaeology to the Committee who happens to be a tribal member does not substitute true tribal representation. We urge the Commission to begin the process of seeking nomination(s) to the Commission and the Archaeological Committee.

As the first Tribe in California to establish a Tribal Historic Preservation Office, the Yurok Tribe has had many years to identify and solve problems associated with archaeology and we are willing to work with the State and any other willing partners in California. With that, the Yurok Tribe can only offer as a solution, a complete redevelopment of the White Papers and initiate a proper consultation process with tribal governments before this initiative moves farther along.

With Respect,

*Maria Tripp*  
Maria Tripp, Chairperson  
Yurok Tribal Council

cc: Native American Heritage Commission  
State of California Governor's Office  
State Assembly Member Patty Berg  
State Senator Pat Wiggins

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**From:** Laura Miranda (lmiranda@pechanga-nsn.gov)  
**To:** SHRC\_ARC@YAHOO.COM  
**Date:** Friday, October 31, 2008 11:39:18 AM  
**Cc:** Tina Johnson; Laura Miranda  
**Subject:** Comments on ARC Position Papers

October 31, 2008

Chairperson Trish Fernandez  
Archaeological Resources Committee  
State Historical Resources Commission (SHRC)  
Office of Historic Preservation (OHP)  
California Department of Parks and Recreation

**RE: Pechanga Band of Luiseno Indians Comments on Archaeological Resources Committee Position papers**

Ms. Fernandez:

I am submitting these comments on behalf of the Pechanga Band of Luiseño Indians (hereinafter, "the Tribe"), a federally recognized Indian tribe and sovereign government, in response to the Archaeological Resources Committee Position Papers. The Tribe is formally requesting to be notified and involved in the entire process to affect change in the Sate's policies on the aspects of archaeology discussed in the Position Papers. The Tribe further requests that these comments be part of the official administrative record.

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Over the past 20-30 years, the Pechanga Tribe has a history of formal involvement and participation in cultural resources protection at federal, state and local levels. Recently, the Tribe has been instrumental in assisting with formulation of recent State law, policies, and legislation concerning cultural resources protection, including drafting language for the State repatriation law, SB 1828 (sacred places), SB 18 (tribal traditional cultural places) and AB 2641 (multiple human remains). The Tribe has testified as an expert on cultural resources protection issues at federal, state and local government hearings. The Tribe has negotiated numerous agreements and settlements with developers and local governments concerning protections for Native American cultural resources. The Tribe has been instrumental in fostering government-to-government relationships concerning issues of Native American cultural resources protection with local and state agencies and elected officials, which have resulted in improved cultural resources management policies. In addition, the Tribe has been a leader in advancing positive and productive relationships between tribes and non-tribal entities, including land developers, local agencies, state/federal agencies and archeologists, which have resulted in mutually beneficial solutions concerning cultural resources protection.

B

**Tribes must be included in the CEQA as governments, acknowledging the specific legal rights and knowledge they possess concerning cultural resources protection**

As in SB 18, the government status of tribes must be recognized in the CEQA process. Currently tribes get little more than advisory role. This is not representative of their interests, legal rights and expertise concerning cultural resources protection.

The Tribe would like to see an amendment to CEQA that requires tribal consultation and tribal involvement in the entire CEQA process, including the assessment of impacts to cultural resources and the determination of appropriate mitigation to address such impacts.

The State law and policy should establish tribes as experts in cultural resources identification and protection

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equivalent to the expertise an archaeologist may offer. The cultural and ethnological information concerning resources must be given the same weight as the archaeological and scientific assessments and recommendations.

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**State standards for CEQA archaeological assessments and surveys are needed**

Presently there are no standards, criteria or guidelines as to how exactly an assessment for cultural resources impacts is to be conducted. There are accepted practices in the field of contract archaeology and cultural resources management, but the details and goals vary with the lead agency, the consultant and the applicant. We are not requesting a regimented system that would tie the parties hands in complying with CEQA, but rather we are simply requesting some basic standards to achieve consistency and accuracy in the assessment process. All too often assessments are done haphazardly missing important issues which materially contribute to the conclusions and ultimate decisions of the lead agencies concerning the resources at issue. For example, if an archaeological survey is incomplete or inadequate vital information is often missed and not discovered until after the project is approved. This forces a situation of figuring out how to manage previously unknown resources to a late stage in the project, when it should have been addressed at the earliest possible point.

Such standards must address how to conduct archaeological assessment surveys and studies and the minimum work that must be completed to achieve an adequate survey. For example, any project that involves earth-disturbing activities should require an evaluation of the project area by a qualified archaeologist, which would include at minimum a records search, a Phase I walkover survey, and preparation of an archeological report containing the results of this evaluation and recommendations for further assessments (Phase II) or treatment of resources. If Phase II archeological evaluations are to be conducted, all such surveys, with results, shall be completed prior to Project approval. There should be established definitions of a Phase I walk-over survey, a Phase II survey and data recovery surveys. Standards concerning the goals and purposes of the surveys, how they will physically be conducted, and who will conduct them should also be established. All archaeological surveys must include a requirement that they be culturally sensitive to tribal customs and practices. For example, to some tribes it is not appropriate to photograph or conduct invasive scientific testing on ceremonial items. The methodology for surveys and assessments must take such tribal practices into account. Another suggestion is to employ a methodology for assessments that takes into account tribal mitigation preferences. For example, studies should not be conducted in a manner that would unnecessarily disturb or destroy cultural resources sites in case the tribe wants such sites to be preserved and protected as the end result.

D

Tribes should be allowed to participate in all archaeological surveys to witness and assess the resources first hand. Tribes should be given the ability to provide their independent assessment of the Project area and be allowed to participate on an equal level to the Project archaeologist in providing their recommendations and suggestions concerning the Project's impacts to cultural resources and what would constitute appropriate treatment or mitigation.

Further there should be requirements as to the contents of the archaeological reports. All too often, reports are prepared that contain little more than conclusions and recommendations, with no evidence or justification as to how those conclusions were reached. There must be an established list of issues and facts that must be addressed and provided in the reports, and a requirement that the conclusions and recommendations have adequate basis.

**There must be requirements and standards concerning the determination of whether a cultural resource is significant or unique**

Resource significance determinations are of utmost importance to the Tribe. How a resource is described, categorized, discussed, documented and ultimately defined is a determining factor as to whether mitigation will be required and what that mitigation will be. In fact, the determination of whether a resource is significant or unique is probably the single most important step when it comes to the fate of cultural resources. Presently, a large amount of deference is given to consultants and contract archaeologists to make determinations of significance with little to no guidance concerning how to apply the law. Basic standards for how to make the determinations must be implemented because the consultants and contract archaeologists often times do not have the best interest of the resources as a priority because of conflicting obligations to their clients. We do understand that there is language in the law which defines what a significant/unique/eligible resource is, but, even if there were no changes to the law itself, there has been too much latitude in the way the law is interpreted. One prime example as to how this discretion is abused is the practice of recording cultural complexes in the form of multiple individual sites, ignoring the fact that all of the sites together actually comprise one large complex. This is an issue because significance or uniqueness is often times usually attributable to the entire complex, but not to the individual sites. Therefore, this technique has been used in contract archaeology to "write-off" individual sites as non-significant resulting in the loss of entire complexes by chipping them away one site at a time. Recently, we have seen an increase in this trend resulting in the loss of more and more sites. This sort of methodological practice could be curbed if there were standards concerning the process for making significance determinations.

In addition to clarifications in the present guidelines, the Tribe would like to see additions and amendments to the law concerning the criteria needed for a resource to be defined as unique. The tribe would like to see the following items added to the criteria: cultural importance, contribution to cultural landscape, and cumulative impacts.

As currently written the definition misses an entire factor that contributes to resource significance – the cultural importance. The current law assesses the value and significance of archaeological resources in terms of its scientific value or contribution to scientific knowledge. The law completely ignores the value and importance of the resources to the living descendants of the resources. Under a previous version of the CEQA (Appendix K) there was a reference to the cultural importance, but that has since been removed. Presently, the cultural importance is not required to be included as a factor when deciding a resource's fate. This is completely counter-intuitive to the practice of archaeology and the purposes of CEQA.

The Tribe would also like to see amendments to CEQA that set forth required baseline mitigation for significant/unique sites. For example, that preservation and conservation be the preferred and encouraged treatment for ceremonial and sacred sites.

#### **There must be standards and guidelines which address how mitigation measures should be determined**

Pursuant to CEQA, once a lead agency has all the information about a project's impacts to significant/unique cultural resources, it is the task of the lead agency to create and approve mitigation measures for the purposes of addressing those impacts. Presently, each lead agency may or may not have standard mitigation measures for their jurisdiction with no statewide consistency in the application of the CEQA. Suggested state standards for mitigation to address cultural resources should be created so they are applied uniformly.

Of paramount importance is tribal involvement in setting appropriate treatment/mitigation for cultural resources. It should be noted that more often than not, lead agencies simply take the recommended mitigation measures of the project archaeologist (which often times is retained by the project applicant), and simply plug them into the environmental document. This necessarily gives project archaeologists a vast amount of liberty in determining the mitigation to address cultural resources impacts, while the tribes are given no role at all in

suggesting mitigation to the lead agency. For example, what is adequate protection/preservation may have many different meanings. The tribe assisted the lead agency in the preservation of a culturally significant feature which consisted of a rock art panel. When discussions began concerning the appropriate mitigation, the project applicant and the lead agency were willing to preserve it, but they did not know what the rock art meant or what it was, so the initial plan was to put a small buffer area around the rock and allow the building of homes, including 2-story homes on all sides of the rock. Once the tribe pointed out that the rock art was actually a calendar system which denoted certain seasonal activities by the sun hitting certain marks on the rock, it was finally decided among all parties that appropriate mitigation would include a prohibition from constructing the 2-story homes immediately adjacent to the front side of the calendar. Without the tribe's involvement this calendar rock would not have been given appropriate mitigation. No other party involved knew what the feature was, its significance, or how to appropriately mitigate for it. This is one of many examples the Pechanga Tribe has where the direct contribution of the Tribe has resulted in the superior and more appropriate mitigation for resources protection.

The Tribe also suggests that statewide standard mitigation measures be established that allow tribes to repatriate resources and collections. All too often, if sites and resources cannot be preserved, lead agencies require landowners to curate the resources in a non-tribal facility. Curation is not required by state law, and we agree with the current status of the law in that regard. Curation should be only one of the options for ultimate disposition of the resources. Tribal repatriation should be included on that list of options for ultimate disposition of resources that cannot be preserved, and it should be part of any standard mitigation program.

Another form of mitigation that should be established as state policy is the option for reburial of resources on the project property in an area to be preserved in perpetuity. This process would be akin to the standards for reburial of human remains. Many tribes hold the position that ceremonial and sacred resources should be preserved in place, and if they can't remain exactly where they exist, they should stay in the vicinity, rather than being removed from the property.

Probably one of the most urgently needed standard mitigation measures is one to address inadvertent discoveries. We cannot count the number of projects the Tribe has been involved in where inadvertent discoveries of cultural resources are uncovered during the final steps of the project development. Some of these situations could arguably have been prevented by more thorough archaeological assessments, but some of these situations were just discoveries that were not anticipated. The Tribe has created a mitigation measure to address inadvertent discoveries that sets forth a process of what is to be done in such situations. This mitigation measure has been adopted by various lead agencies in our area as standard practice for addressing inadvertent discoveries. We would welcome the opportunity to share such language with you, and believe that a similar sort of process should be codified into State law or the CEQA Guidelines.

Tribal monitoring should also be a type of mitigation required anytime there are resources or a high probability of inadvertent discoveries of resources. We must caution that tribal monitoring is not a solution or substitute for tribal involvement and consultation on all aspects of cultural resources protection. The monitors are extensions and representatives of the tribe during the on-site investigations or grading for the purposes of gathering information to better assist in determining site significance and appropriate mitigation. Monitoring just to be present to watch what everybody is doing and watch all the decisions being made is not what tribal monitoring is about.

The Tribe would also like to see a prohibition of scientific studies on ceremonial, burial related, religious resources.

**There must be statewide standards and qualifications for archaeologists to practice in the area of CEQA**

compliance

The County of Riverside has its own certification program in place that is a good example of a system that could be applied statewide.

There must be a cultural sensitivity training requirement for archaeologists who practice contract archaeology along with accountability for when archaeologists don't follow the standards.

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Other ideas for cultural resources preservation

As much as is culturally appropriate, and taking into account confidentiality, proactively identify existing places to conserve.

Give incentives to landowners for conservation.

Tie conservation of cultural resources to other resource conservation processes which mandate conservation, like habitat preservation laws and species preservation laws.

Require cities and counties to have conservation plans in place that take into account cultural resources.

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Thank you for the opportunity to submit these comments. The Tribe requests to be involved in future discussions and the drafting of state policies and standards. Please contact me with any questions.

--  
Laura Miranda  
Deputy General Counsel  
Pechanga Band of Luiseno Indians  
P.O. Box 1477  
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**From:** Bridget Nash (b.nash@quechantribe.com)  
**To:** SHRC\_ARC@yahoo.com  
**Date:** Friday, October 31, 2008 10:40:35 AM  
**Subject:** comments on White papers

Trish,

Most of my comments are going to be general and may be applicable in several of the papers. The Tribe generally likes to see everything left in place as it is part of a larger cultural landscape, as noted in the papers. However, there are more specific concerns for the Interpretation and Resource Protection papers due to the lack of Tribal involvement.

Interpretation

There is discussion of contacting federal, state, and local agencies, museums, universities, CRM firms, etc. but no mention of contacting the Tribes. How can one adequately interpret an artifact, a site, or a landscape without talking with those that both created and utilized the items/areas? The Tribes should be involved in the creation of education materials and the decision as to whether something should be made public.

A

Archaeological Resources Protection

This is a discussion that the Cultural Committee and I have been engaged in for quite some time now. Rarely do I see evaluations consider the area around the site. Rarely are Tribal members involved in the evaluation of the site. The question I am often asked is how can people who are not of the area, not familiar with the history of the area, or are not affiliated with the landscape and the resources contained therein decide what is important and what is not? No longer can we as archaeologists continue to evaluate sites on an individual basis. We must consider the site 50 feet away, the mountains that are just north of the site, or the river adjacent to it. This is not being done and numerous sites have been destroyed because of it. Why not eliminate the discussion of eligibility entirely? At least this would bring everyone to the table, allow the Tribes to discuss all sites and their connections.

B

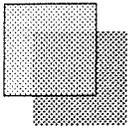
Archaeological Standards and Guidelines

We have seen one site be determined eligible by one agency and non-eligible by another. The same site. This is of great concern to the Tribe and should be to anyone in the archaeological community. The system is currently flawed and needs to be fixed. The determination of eligibility is subjective and needs to be changed. The manner in which consultation takes place also needs to be looked at. Often Tribes are not consulted with until the plans have been developed and everything is moving ahead. This runs counter to what consultation is supposed to be. It is not a letter. It is sitting down with the appropriate members within the Tribe to discuss the project, resources in the area, and possible mitigation strategies. This can include moving the project to the left 5 ft. However, when everything has been designed and the agency is in the last stages, they are not open to these discussions.

C

I could go on all day about the aforementioned topic areas and would be more than happy to expand if needed. Please let me know.

**Bridget R. Nash-Chrabascz**  
Quechan Tribe Historic Preservation Officer  
Quechan Indian Tribe  
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**Kathryn A. Ogas**  
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BTOMARAS@MTOWLAW.COM

October 31, 2008

**VIA U.S. MAIL AND E-MAIL**

Trish Fernandez, Chair  
SHRC Archaeological Resources Committee  
1416 9<sup>th</sup> Street, Room 1442-7  
Sacramento, CA 95814

Re: Comments of the Lytton Rancheria of California on the Archaeological Resources Committee Position Papers

Dear Ms. Fernandez:

Our firm represents the Lytton Rancheria of California (“Lytton Rancheria” or “Tribe”) with respect to matters concerning cultural resources and we are submitting the following comments on the Committee’s “White Papers” on behalf of the Lytton Rancheria.

The Tribe appreciates the opportunity to comment on these concept papers and believes that the ideas behind the process are worthwhile and necessary for those trying to protect cultural resources in the State of California. The Tribe also hopes that the comments of the California tribes are heeded and taken into account when developing the policies and procedures which are expected to result from these position papers. As on overarching principle, the Lytton Rancheria believes that there should be more coordination, discussion<sup>1</sup> with, and participation by tribes at all levels so that the lead agencies, project applicants, and consultants have adequate input by the tribes.

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These comments will follow the headings of the various position papers, but it should be noted that it is very difficult to discuss some of these issues in isolated topics since they are all so interconnected – if there is not appropriate standards and guidelines for the initial investigation of sites and resources, then it is unlikely that an adequate evaluation will be done in order to properly identify sites and resources which need to be preserved.

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<sup>1</sup> While this phrase does not completely reflect the level of participation which tribes should have in the process, often the term “consultation” has been utilized so much that it carries very little substantive meaning anymore.

### Archaeological Standards and Guidelines

The Lytton Rancheria is in agreement that there is a great need for standards and guidelines for both the qualifications of the "professionals" working in the field of cultural resources identification and management in California, as well as the product which those professionals produce as a result of those investigations or studies. While preservation and conservation are important issues and topics to discuss for cultural resources, we must first have adequate investigation and evaluation of an area<sup>2</sup> to determine whether there are sites present which could and should be preserved. If inadequate professionals perform the work, or the work is slipshod, then many resources will not be identified in the first place, or the resources may not be properly evaluated without tribal participation, and thus the discussion of preservation and conservation never arises.

B-1

### Qualifications of Consultants

The Tribe believes that the requirement for licensing of consultants would be a good step towards weeding out those who do not have sufficient qualifications to work in California archaeology. Thus, a part of those licensing requirements should include a requirement for experience performing archaeology in California, as well as a sufficient working knowledge of the tribe(s) and culture which inhabited the area in question. Many times, archaeologists come to California from other states or regions thinking that they know how to do archaeology in the area. However, resources in California are different than many of the resources found throughout the United States. In fact, even across the state the resources vary greatly. Therefore, a requirement that the consultant has had experience within that particular region of California, and with the culturally affiliated tribe(s) in the region, would ensure that the lead consultant is sufficiently familiar with the unique resources of the area. This experience should also include a good working relationship with the culturally affiliated tribe(s), and not merely consist of some kind of academic knowledge.

B-2

Further, within the concept of licensing is the idea that there is also some kind of disciplinary process. There are countless horror stories from tribes who have been disregarded, callously treated or even outright insulted by the so-called professionals. These tribal people therefore need to have recourse to assure that the professional is appropriately disciplined, and, if necessary, banned from working in the area any further.

B-3

Finally, the licensing process should not impact the ability for the tribes to have their representatives or monitors involved in the process. It is important to have tribal monitors or representatives in the field with the consultants because of the unique knowledge and experience these representatives have about their own culture. While the consultants have an academic background with which to accomplish the necessary "scientific" evaluations of a site or particular resources, the tribes possess unique cultural and traditional knowledge which the consultant may not. Further, this knowledge must at least be given equal weight to the "scientific" information and evaluation. In addition, tribes are also typically better able to identify the cultural landscapes, traditional cultural properties, sacred sites and potential burial

B-4

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<sup>2</sup> That area should not necessarily stop at the project boundaries, but must take into account a regional view as well.

areas because tribes look at the resources in a regional context, rather than being focused on a particular site or area. In this way, tribes have a meaningful opportunity to participate, and all available information is appropriately and adequately used for identifying and evaluating resources.

B-4

### Guidelines for Consultation

A part of any sufficient archaeological study is adequate consultation with the culturally affiliated tribe(s) in the area. This does not mean the typical scoping letter sent out by the archaeologist asking if the tribe has any information. Rather, the consultation should be early and meaningful and should occur both prior to, and throughout the CEQA or Section 106 process.

B-5

Because tribes are sovereign nations, a unique obligation exists to engage in meaningful consultation with tribes on areas of import to or which would affect tribes. The United States and the State of California have a unique political and legal relationship with Indian tribal governments. This means that the tribes' status in this process is more than that of an interested party or mere stakeholder; tribes should be considered as partners in the process. Moreover, meaningful consultation is not a one time meeting or occurrence, but is a continuing obligation on the part of a government or government agency to assure adequate participation by tribes such that the tribes' information and view points are not only heard, but are incorporated into the entire process. This is true for both the guidelines governing the practice of archaeology/cultural resources management in the State of California that is the subject of these position papers, but also for the process creating these position papers and the policies and guidelines which result from them.

B-6

### Requirements for Archaeological Research and Investigation

Too often archaeological or CRM specialists ("consultants") approach a project with the idea of performing the minimal amount of work necessary (either because of time or monetary constraints) and the product that is then developed is of little use to anyone.

B-7

### *Scoping*

In California, tribes are used to receiving "scoping" letters from a consultant requesting information about a particular project area from the tribe. Many times, these letters are received by the Tribe after a field survey has already been completed. Further, many archaeologists or CRM specialists consider these letters to be their only requirement in order to obtain tribal input on a particular project, and if a tribe chooses not to respond to the consultant, that is taken as a lack of interest in the project. It is important to set forth specific guidelines for scoping letters, including submission of such letters prior to any field work being completed, inclusion of tribes in the site walkover, and continued consultation and discussion with tribes. It is important that a tribe's lack of initial response not be taken as either a lack of interest in the project, or a concurrence that there are no resources which may be impacted by the project. This is because there are many reasons why tribes may not respond to the consultant scoping letters, including lack of resources or lack of adequate information at that point for proper assessment. Therefore,

B-8

it is imperative that standards be set acknowledging that scoping letters are only one tool by which a consultant or lead agency can obtain tribal input.

B-8

*Research*

As a preliminary matter, there should be a set requirement for completion and submission of reports to the Information Centers. The Tribe is aware of instances where an investigation is done for a project, significant resources are encountered, but the report is never completed – whether for time or monetary considerations. This means that those resources are never flagged for persons doing research on nearby properties, and adequate and accurate reports cannot be produced.

B-9

In addition, while most consultants check with the local Information Center to determine whether the project area has been surveyed and what sites might be located nearby, there is no standard rule of thumb for how far out from a project site information is gathered – ¼ mile, ½ mile, 1 mile. Further, there should be a standardized template for how those results are discussed. Some reports are thorough and will discuss the respective sites, the distance from the project location and what was found at the sites. Others merely state that X number of sites were found within a half-mile radius. The archaeological or CRM report should not be thought of as an end product in itself, but as a diagnostic tool for the lead agency and other parties to adequately assess the project impacts to cultural resources. If adequate information about nearby sites is not provided, adequate assessment cannot be accomplished. For instance, if a habitation or village site is found within a ¼ mile from a project site, that would result in different analysis than a site where isolated scatter was found. Therefore, providing complete and accurate information in a report is vital.

B-10

*Investigation*

In the same vein, it is important to have some minimal requirements as to how the investigation and analysis is conducted and what is taken in to account. For the consultant, their world is that project site and what is located on the site. Too often this leads to under assessment of the significance of a site or resources because the cultural landscape itself, or the regional context, which likely covers an area larger than a project site, is not taken into account. Thus, a project might have an isolated slick within the project boundaries and the consultant might therefore find that it was not significant. However, that slick might be part of a larger complex of multiple slicks which, taken as a whole, would be considered a processing area associated with a nearby habitation site, and therefore would be significant. Tribes are constantly fighting the “piecemealing” of sites by consultants – even within the same project area. Some consultants set arbitrary boundaries by which to designate a site. Thus, a slick which is more than 15 meters from another slick is designated as a separate site, despite the logical fact that they were part of a larger habitation area. This piecemealing also allows consultants to disregard the cumulative impacts a project may have on cultural resources. Tribes often hear that a certain site is not significant because it is merely a grinding slick of which there are hundreds of others around the region. However, by that criterion, almost all slicks around the region would not be considered significant and thus could be destroyed by respective projects – leaving essentially no slicks within that region. This is, in fact, what is happening throughout the State and has resulted in the loss of innumerable cultural resources.

B-11

Further, while tribes understand that they do not have the final determination on an investigation plan or methodology, they should be involved in the process of devising the plans and determining how the plans are carried out. Many tribes have specific traditional and cultural preferences for how certain sites are treated, and may request that testing not be done in areas which are sacred/ceremonial, contain burials, or are to be avoided. Further, certain forms of testing of artifacts or the testing of certain types of artifacts is offensive to many tribes, and these cultural mores should be taken into account when devising a testing and evaluation plan.

B-12

#### *Evaluation*

With regard to evaluation, while the tribes are cognizant of site evaluation criteria under CEQA and the NHPA, it is crucial to tribes that the consultant and lead agency also take into account the cultural significance of a site or resource. The point of adequate tribal consultation is to get the tribe's perspective on what the site or resource means culturally. The intent behind both CEQA and the NHPA is not to rigidly follow a set of criteria, but to preserve culturally significant resources. Consultants thus should not be so quick to write something off as possessing no data potential, but rather should also look to the tribe's interpretation of the site or area. Again, the site may be a component in a significant regional complex and the interconnection with that complex is what is significant to the tribe.

B-13

Finally, any report needs to also specify how each conclusion was reached, and the basis for that conclusion. It is not unlikely for a cultural report to simply state the conclusion that a site is significant/eligible or non-significant/ineligible without further explanation. Once again, the report should be able to be utilized as a diagnostic tool, and thus the conclusions should be supported. Certainly if the consultant were writing for an academic setting, they would not dream of merely throwing out unsupported conclusions. This standard must be followed for those investigations performed within the project development process as well.

B-14

#### **Preservation (subsumes both Archaeological Resources Conservation and Archaeological Resources Protection)**

In the Tribe's view, conservation and protection of resources are really both components of preservation of resources. Ideally, all resources would be avoided and preserved in place. This is of course the preferred method of mitigation under CEQA. Further, it takes into account the cultural preferences of most tribes. However, the Tribe understands that such a result is not always possible. This, again, is why proper investigation and evaluation is so crucial. It is also why early participation by tribes is crucial - so that a tribe's opportunity to request avoidance of a site, or perhaps a specific preservation option for a resource, not be foreclosed. Many times, when these important sites and areas are identified early in the process, much can be done to devise a site plan which avoids and preserves the site. Further, it is crucial to develop methods and resources which assure that a site is not merely avoided, but also adequately protected, preserved and maintained.

C-1

#### Inadvertent Discoveries

Because of the nature of Native American cultural resources and sites, most will be found subsurface. Because of the way the State has developed, it is not surprising that very little (if

C-2

anything) remains on the surface to identify such sites. That does not, however, mean that the subsurface sites do not exist. In addition to their traditional cultural knowledge about their ancestors and the way they lived, many tribes have experience in working with various types of construction projects throughout their territories. The combination of this knowledge and experience is what the tribes rely on to make fairly accurate predictions regarding the likelihood of subsurface resources in a particular location. Thus when a tribe informs the lead agency or a consultant that it believes there is a high likelihood of subsurface resources on a particular project, it is done based upon an evaluative process and should be heeded.

C-2

The Tribe also believes that, in large part, adequate cultural resources assessment and management must always include a component which addresses inadvertent discoveries. It is not only the Tribe that believes this since every major State and Federal law dealing with cultural resources includes provisions addressing inadvertent discoveries. [See e.g.: CEQA (Cal. Pub. Resources Code §21083.2(i); 14 CCR §15064.5(f)); Section 106 (36 CFR §800.13); NAGPRA (43 CFR §10.4)]. Moreover, most state and federal agencies have guidelines or provisions for addressing inadvertent discoveries. [See e.g.: FHWA, Section 4(f) Regulations – 771.135(g); CALTRANS, Standard Environmental Reference – 5-10.2 and 5-10.3]. Thus appropriate guidelines requiring adequate planning and mitigation for inadvertent discoveries is important.

C-3

#### Coordination of Lead Agency Departments

Another area which needs to be addressed in order to develop appropriate conservation/preservation plans and guidelines is the need to have adequate coordination among the lead agencies' various departments. It is not unusual for a project to have very specific mitigation measures put in place for site protection at the planning level, only to have that mitigation completely ignored at the grade check or building permit level because no one in those departments bothered to review the mitigation measures or conditions of approval. Lead agencies need to develop procedures by which recorded sites, known resources or areas of sensitivity can be flagged such that the information is available to any department at any time; and further, to put into place procedures to require review or checks of this information at certain specific points in the process. In this way, if a resource was identified for a project under one department, and a later project which also has the ability to impact that site goes through a separate department, there is a way for that information to be transferred between departments.

C-4

#### **Interpretation**

With respect to accessibility of information regarding archaeological and cultural resources, it is important to remember that there are confidentiality laws which must be followed. Too often tribes find exhibits or maps of culturally sensitive areas have been released in documents available to the general public. The flip side of that is that there should be some component which allows for a researcher to also obtain the perspective of the tribes, and for the tribes to obtain the reports regarding their traditional territory or regarding projects on which they have or will consult.

D-1

Further, with respect to any potential public interpretation of Native American cultural resources, it is imperative that the culturally affiliated tribe(s) be involved in the process of both

D-2

determining whether any interpretation of a site will be done and if so, in what manner. Again, the tribes consider these to be their resources and many are of such a sacred or significant nature that they would prefer any information about the resource to be strictly confidential. Thus, interpretative displays are not necessarily appropriate for all resources.

D-2

**Curation**

As the Committee is aware, curation is a highly sensitive and controversial topic. Many, if not most, tribes believe that the ultimate determinations regarding the disposition of the archaeological and cultural resources of their ancestors should be left to the appropriately affiliated tribe. In this manner, if a tribe is not opposed to curation, then it can work with the property owner or lead agency to determine the most appropriate facility in which the artifacts can be retained. However, should a tribe find possession of any of its artifacts or resources by an institution to be offensive, or should the tribe hold the belief that all such resources should be reburied, those cultural preferences and mores can be honored.

A-1

**Conclusion**

The Tribe appreciates the opportunity to provide input into these position papers and believes that this is an important first step in the process of improving the practice of cultural resources management within the State of California. The Tribe looks forward to continuing to work with the Committee on future drafts of the position papers, as well as any proposed policies, standards and guidelines which result from the position papers. Further, the Tribe would suggest that a working group of tribal people be put together to assist in the drafting of the documents and would volunteer to participate in such a group.

F

Should you have any questions or concerns, please do not hesitate to contact me at (858) 554-0550, ext. 1.

Very Truly Yours,

TOMARAS & OGAS, LLP



Brenda L. Tomaras  
Attorneys for the Lytton Rancheria of California

cc:  
Margie Mejia, Chairwoman, Lytton Band



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01 NOV 08 PM 7 T



Trish Fernandez, Chair  
SHRC Archaeological Resources Committee  
1416 9<sup>th</sup> Street, Room 1442-7  
Sacramento, CA 95814

3221442510



Unknown

From: Cassandra Hensher [hensher@mail.com]
Sent: Thursday, March 15, 2007 7:59 PM
To: triskie@comcast.net; 'Janet Eidsness'
Subject: FW: Opportunity for comment on archaeological standards and practices

I obtained Frank's permission to forward his response to my email about the White Papers.

Best,
Cassandra

-----Original Message-----

From: frankie ross [mailto:miwokone@yahoo.com]
Sent: Tuesday, March 13, 2007 11:22 AM
To: Cassandra Hensher
Subject: Re: Opportunity for comment on archaeological standards and practices

Thank you, I don't know how to speak to the issue not being a member at this time and also me being a member of The Graton Rancheria Tribe. I have my personal opinion of what needs to be changed and it doesn't hold well with Archaeologist. It calls for a switch of rolls. The Tribes being elevated to a step above if a ladder method of process was to be used. By this I mean that no body knows better than the Tribe of any given area of what is sacred or how tribal lands have been used and are continued to be used. There is a major conflict of interest within the Society of Archeology from my view point because it is by using our lands as a field of education. It would be of interest to me to know what is going to be done to stop the destruction of mounds that have not been impacted as of yet. Are we going to go in and study them for what interest. It is the study that will take from them and inevitably give to their development. I am a tribal monitor and as such I have very little power in the field. It would be better if the tribe was to have the roll of governing it's resources and there lands. That is what is needed in order to stop distroying what has been laid to rest since when. You may ask what has been done with the information accumulated in the last 200 years. It lays in a box or on shelves or has been lost or stollen. In the name of preservation nothing or not much. Is there better methods of curation for future educational purposes. Slowly. Anyway I won't take up any more of your time. Thanks for letting me vent.



A

--- Cassandra Hensher <hensher@mail.com> wrote:

- > Ayukii (Hello). I have some important information
> that we would like to
> share with the California Indian community
> (apologies in advance for
> duplications). This information pertains to the
> development of new
> standards and guidelines for archaeology work in
> California. This is an
> excellent opportunity for Indians to have input into
> the future of
> California archaeology, so please keep reading.
>
> The Archaeological Resources Committee (Committee)
> of the State Historical
> Resources Commission (SHRC) is exploring
> recommendations that might lead to
> the adoption of best practices standards for
> archaeological investigations



> (916) 813-8468  
> hensher@mail.com  
>  
>

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**Resource Committee, SHR Archaeological**

**From:** Don Laylander [dlaylander@jps.net] **Sent:** Mon 3/19/2007 5:04 PM  
**To:** Resource Committee, SHR Archaeological  
**Cc:**  
**Subject:** White paper comments  
**Attachments:**  white\_paper.pdf(37KB)

Thanks for the opportunity to comment. Attached is some feedback on the "Archaeological Resources Conservation" white paper. Please let me know if I can help by clarifying or elaborating on any of these comments

Don Laylander

**Paper Title:** Archaeological Resources Conservation

**Name and Affiliation:** Don Laylander, ASM Affiliates, Inc.

**Date:** March 17, 2007

**Contact Information:** [dlaylander@jps.net](mailto:dlaylander@jps.net)

**Comments:**

This white paper raises several issues that are problematic and that may call for some reconsideration or at least for a more rigorous formulation and justification.

The paper's main theme seems to be to advocate the consideration of cultural resources within the context of "cultural landscapes" or "archaeological districts," rather than as isolated archaeological sites. This injunction may be directed primarily toward the management policies of parks and other areas where either public interpretation is an important function or else the long-term preservation of extensive, publicly-owned tracts is a plausible management option. However, in some places the paper seems to imply a more general applicability. If the restricted scope is intended, this should be made more explicit. If a general applicability is intended, it's implications will need to be explained and justified.

A

Archaeologists are and always have been aware of the larger geographical, cultural, and functional contexts within which particular sites exist. Sometimes they may not devote enough attention to those contexts when they evaluate and interpret the sites. But given the truisms that time and energy are finite resources and that everything is ultimately connected to everything else, we have to start somewhere. Choices have to be made, and I don't think the case has been made that the "landscape approach" to archaeology is necessarily always (or even usually) a better investment of archaeologists' limited time and energy than other approaches. Sometimes, to focus on a single site or to employ alternative interpretive strategies is the only practical approach, and it may not be a bad thing. In some cases, the preservation of two data-rich but unrelated sites may be a more important goal than the preservation of a dozen sites that are interrelated to each other within a landscape but that individually or collectively lack any substantial, demonstrated potential for either research or public interpretation. Sometimes the designation of an archaeological "district" can be an efficient tool for evaluating or managing cultural resources, but in many other cases it's not.

B

The white paper seems to advocate the concept of "cultural landscapes" as an umbrella category for management that would embrace archaeological sites, resource gathering areas, sacred or religious places, and possibly some other features. Under some circumstances, the grouping together of these diverse kinds of land values for management or interpretation may be very appropriate, while in other cases (probably the majority) it probably isn't. When an important management goal is the public interpretation of cultural resources (particularly in park settings), an integrated treatment of prehistoric archaeological sites together with modern local Native American gathering practices and local Native American religious observations may make a lot

C

of sense. In other cases, the various land use claims that are made on behalf of archaeological resources, gathering practices, and sacred concerns ought each to be considered separately and to stand or fall on its own merits, rather than trying to piggyback them together under a vague rubric of a "cultural landscape."

C

The white paper recommends ensuring "that archaeological sites, traditional cultural properties, and other cultural properties are given priority in land management decisions." This assertion of the primacy of cultural resources is not backed by any legal mandate, and it isn't likely to be persuasive to a skeptical land manager, much less to the proponents of competing land uses. Cultural resource preservation will probably be given significant consideration only to the extent that it's able to demonstrate the value of its contributions, for instance in scientific advances or in successful public interpretation. We need to recognize that cultural resource values are one among several competing sets of land use values and that our claims are going to have to be justified on a case-by-case basis. It would be more realistic to say "appropriate consideration" rather than "priority."

D

The white paper recommends discouraging "excavation of preserved, non-threatened cultural resources." There seems to be a contradiction, or at least a tension, between this advocacy and the landscape/district approach promoted elsewhere in the paper. It's true that many archaeological sites have more than purely scientific values, but it's probably also true that in the case of the majority of sites their main or exclusive value lies in their present or future scientific research potential. It's also true that sites' scientific values aren't realized exclusively through excavation. (Other methods include surface recording and surface collection; presumably the latter also ought to be "discouraged," according the perspective on conservation that's implied in the paper.) Still, it seems likely that, in most cases, the sites' future scientific value lies primarily in their excavation potential. A rigorously landscape/district-oriented approach to archaeological research would seek to realize this potential by means of a program of excavations at related sites throughout a "landscape" or "district," rather than by focusing work only on some arbitrary site that happens currently to be threatened. We could probably agree, under the present conditions in which so many cultural resources are actively threatened, that in situ preservation of non-threatened significant sites should be a high priority, and that, at least for now, scientific studies can advance through work done primarily or perhaps even exclusively at threatened sites (as well as through the analysis of existing collections). However, this shouldn't be elevated into a universal principle, and it should be recognized that this opportunistic, site-specific approach to archaeological research stands in contrast to a landscape/district approach to such research.

E

The white paper recommends encouraging "the establishment of conservation programs in colleges and universities that instill a conservation ethos." Arguably, the proper function of colleges and universities isn't to brainwash or indoctrinate their students with a particular value system; it's to help those students acquire the knowledge and skills they need in order to choose intelligently and pursue effectively their own values.

F

**From:** CourtCoyle@aol.com (CourtCoyle@aol.com)  
**To:** shrcarchaeologicalresourcescommittee@parks.ca.gov; SHRC\_ARC@yahoo.com  
**Date:** Friday, October 31, 2008 4:25:17 PM  
**Subject:** Comment Letter on Archaeological Resources Committee Position Papers

For your consideration.  
Thank you.

Courtney Coyle

Courtney Ann Coyle  
Attorney at Law  
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SHRC ARC – White Papers  
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October 31, 2008

**Re: Comment on Archaeological Resources Committee Position Papers (White Papers)**

Dear Committee Chair Fernandez, Committee Members and Other Readers:

Thank you for the opportunity to comment on the five "White Papers" that were distributed for tribal and public comment. This letter includes and adds to an email comment letter previously submitted on March 19, 2007, in anticipation of that year's SCAs.

As way of background for the SHRC Committee, I am an attorney in private practice in the San Diego region. I started working mostly with the environmental protection community in the 90's but over the last decade much of my practice has been representing tribal entities in protecting their sacred places and in protecting park resources. On behalf of tribal clients, my office also helped, with some of those copied here, to craft and successfully gain legislative passage of SB 18 (sacred places and planning), SB 22 (mining reclamation and sacred places), SB 922 (confidentiality), SB 1395 (notices of exemptions) and AB 2641 (ancestral burial grounds). I have also worked with the San Diego Archaeological Center, including amending CEQA to include curation and have been involved in the successful nomination of several historic properties, including those of concern to tribal peoples, to the National Register of Historic Places. I was not invited to participate in the drafting of the subject papers, but I am an SCA member.

These comments are not necessarily reflective of any particular client or group; but rather, an attempt to summarize the areas that from my active practice in California cultural resource management need attention in this review process.

**General Comments:**

Much of what is in these five papers is laudable, appropriate and supportable. However, while I understand this is an iterative process, I was hoping to see more specific detail on the precise amendments to law and policy that could be sought. I appreciate that additional direct outreach was made by the SCA NAPC, and others, to native communities on those aspects that interface with prehistoric archaeology. However, since I understand that much of that input was verbal, it is unclear how those ideas have been captured and will be integrated into the final papers and recommendations.

Some of the comments below identify gaps in the current situation, propose steps for a better situation and identify additional solutions. Some comments may be applicable to more than one paper even if just referenced under one paper. I would also be happy to discuss specific examples of real world cases with the Committee or authors that illustrate the need for the changes noted below.

Finally, I truly endorse the concept of "preservation archaeology" (as compared with salvage archaeology and scientific archaeology) but feel the papers lack an overall sense of detail and strategy towards creating and maintaining of a culture of preservation. I hope this can be accomplished in the next year.

## **I. Archaeological Standards and Guidelines:**

### Current Situation:

1. "Inadequate consultation" also includes late consultation and a prevalent misunderstanding by agencies that sending a letter inviting consultation, satisfies consultation: It does not.
2. Missing is the problem of Funding Deficiencies and how this plagues California's ability, across the board, to perform true cultural resource management from the private sector CRM firms to colleges and agencies.

### Ideal Situation:

1. Must include reference to adequately staffed and funded public agencies, benefits to affected communities, and synthesis of reports. Finally create and sustain a grant source, funded by state projects, developers and CRM firms to supplement (truly) unexpected finds and costs.
2. Add bullet, "Retain confidentiality of Native American sacred places, tribal uses and site/consultation records from public disclosure, pursuant to the Public Records Act and Public Resources Code, as amended."

### How to Bridge the Gap:

1. Require Native American consultants during initial surveys through to project completion. Particularly for the identification of cultural landscapes, traditional cultural properties, likely burial areas and sacred places, often missed by "traditional" surveys that are typically focused on identifying discrete archaeological sites to the exclusion of anything else.
2. Require consultation with Native peoples in an early and meaningful way, prior to and continuing through the CEQA process. This is necessary to allow for project changes prior to significant project investment and for appropriate alternatives and design changes to be made in a successful manner. Consultation should also be required by all State Agencies.
3. Require reports to be completed within a time certain. There are cases where reports are done twenty years after the survey - if done at all. This is critical to our understanding of cumulative impacts and because in cases of excavation, the gray literature may be all that remains of a site.

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4. Require that investigations be fully funded. There must be funds to adequately understand the resource such as funds for dating, curation, proper research, etc. If we don't require this, we cannot say that cultural resource management is being done at all but rather just salvage archaeology.

5. Under the "Develop Professional Qualifications Standards" bullet, add reference to NAHC, NTHP, ACHP, CPF and local/regional preservation/historical groups to the list of sponsoring groups to more fully reflect the breadth of cultural resource management.

6. Require sensitivity training in tribal cultural resource concerns for State employees and contractors. Some agencies, such as DTSC, have insufficient understanding of the laws, policies and best practices and how their activities have been adversely impacting areas of tribal concern. These trainings should be developed in partnership with California tribal peoples.

7. The NAHC and/or tribal communities should take the lead in establishing training of Indians in CRM and encourage young Indian people to take the lead.

## II. Archaeological Resources Conservation

### Current Situation:

1. The second paragraph should make it clear that public lands refers to local, regional, state and federal properties.

### How to Bridge the Gap:

1. First bullet should refer to preparing management plans in a "timely manner." There are too many cases where management plans are very old and outdated and where newly acquired properties languish without management plans being prepared. Both can result in irreparable damage to our investments in open space.

2. Stop underestimating the cumulative impacts of projects, including those with landscape or viewscape components or contexts, in environmental documents. This illegal practice contributes to the degradation of the association and integrity of historic properties and is particularly rampant in the California desert.

3. More California and National Register nominations for archaeological sites and their landscapes. We need the understanding and active support of the Office of Historic Preservation and SHRC to successfully pursue these endeavors.

4. A requirement to pursue better technology and noninvasive techniques in assessing sites for ancestral burials. This could include more use of appropriate testing, ground penetrating radar, forensic dogs, etc., to identify burial areas, in consultation with descendent groups.

5. Enforce requirement that burials will be avoided wherever possible and left in situ. What has apparently become the operating standard in some jurisdictions is for burials to be "discovered" by the bulldozer, damaged, then salvaged by archaeologists, even in known sites. This illegal practice must stop in favor of avoidance of burials at the front end of project planning.

6. Support of timely and meaningful consultation with tribes and affected communities to help determine what may be of cultural value. This should include before issuing Notices of Exemptions. Without such input, we will continue to lose properties.

B

### III. Archaeological Resources Protection

#### Current Situation:

1. Should add that recreation and historic investigations have also damaged many sites and that these resources are nonrenewable.
2. Is it true that there is no clear consensus about what constitutes a reasonable effort to protect sites? Or is it simply that no one has synthesized the approaches that have worked. Once that is done, there is a tool to generate more political will for protection. Also, discussing protection of sites can be difficult because of both inadequate recordation and lack of data about what has already been destroyed without being recorded in the first place. This strongly implicates the cumulative impacts process as practiced in California, noted above.
3. Fifth bullet should recognize that some agencies lack Secretary of the Interior Standard-qualified archaeologists to perform significance determinations, instead allowing planners to render determinations.

C

#### Ideal Situation:

1. I was heartened to see "increased Native American in the CEQA process" as a method to protect more sites. However, the SCA and the archaeological and planning communities must truly be willing to allow for change for that to happen. I reflect on many iterations of SB 18 and how the archaeological and planning communities came to late, and only heavily qualified, support for involving tribes in CEQA. I can only hope that the times and SCA's and other planning groups (such as AEP's) own internal processes for tracking and supporting legislation have changed to be more transparent and inclusive.

#### How to Bridge the Gap:

1. Amend first bullet to fill the staff positions with "appropriate, trained and credentialed individuals."
2. Add reference in second bullet to increased use of funded conservation easements to protect and better manage sites.
3. Add reference in fifth bullet, work with private and state colleges (including junior colleges) and universities when students become serious about archaeology to train them in the field as to what to look for on surveys, etc. Raise standards of training, possibly with the involvement of SHPO.
4. Seventh bullet, related to SB 18, should include reference to all the aspects of the legislation: not just consultation on general and specific plans, but also conservation easements held by tribes and tribal involvement in multi-species and open space plans. That consultation, again, is more than just sending a letter inviting to consult, but actually establishing at the planning stage (in advance of projects) areas of sensitivity, cultural preserves or areas of critical environmental concern. Consider integrating land trusts into the discussion.

5. Eleventh bullet: Archaeologists cannot hope to successfully amend CEQA without educating the planning community on the current deficiencies and need for reform. Tribes and the archaeological community must insert themselves into CEQA reform – CEQA does not just belong to planners.

6. Require agencies to implement – not just adopt - a meaningful mitigation and monitoring program. Ensure that conditions of project approval are actually being followed in the field by mitigation monitoring staff. This includes presence of monitors, fencing or marking off of areas of nondisturbance, following through on curation or testing or repatriation of collections, etc., and imposing meaningful penalties on contractors, CRM firms and/or owners when conditions are not followed. This could be part of both agency codes and permit conditions.

7. The exporting off site of "fill" dirt with human remains in it must be prevented. Investigate how to better manage the presently unregulated fill dirt market that has resulted in major disturbances of Native American burials in San Diego and probably elsewhere.

8. That significant archeological resources are being severely damaged should reference both direct and indirect impacts. The typical environmental document focuses almost exclusively on direct impacts, to the detriment of the resources and those affiliated with the site or place.

9. Require that each land use jurisdiction has a Preservation Officer, as is done in parts of Arizona. This would help to ensure that cultural resource issues have a seat at the planning and permitting tables versus it being dominated by planners and engineers and the points of view they generally advance.

10. Require each State Agency or Department have a Tribal Liaison. This would help ensure that impacts to tribes would be considered at each step of the Agency's activities and would help to establish and maintain a valuable communication path between state government and tribal governments/entities.

11. A requirement that each jurisdiction have the ability to "red flag" recorded sites or areas of sensitivity when it issues permits through its development services departments. Too many recorded or known sites have been adversely impacted because the computer system was inadequate or did not exist for integrating/updating site information into the jurisdiction's database.

#### **IV. Archaeological Resources Interpretation**

##### Ideal Situation:

1. The requirement to protect the confidentiality of site locations and information about the sacred uses of such places should be clearly referenced in this paper. There are some places that should not be part of a public interpretation program because they contain burials, are sacred or pose certain management concerns to tribal peoples.

2. An ideal situation would also place focus on local jurisdictions and developers to get creative in education and interpretation.

How to Bridge the Gap:

1. We need more technical, agency and landowner support for local, state and National Register nominations for tribally significant properties. Scientific archaeology (Criterion D/4) is not the only measure of archaeological value. Tribes' oral histories, views and science must be considered as at least one line of credible evidence supporting tribal properties under Criterion A/1. This approach is consistent with federal NAGPRA, for example, which does not prioritize one line of evidence over another.

} B

**V. Curation of Archaeological Collections and Information**

Current Situation:

1. Revise the last paragraph to state that, "Few CRM-generated collections are curated in spite of the 2004 amendment specifically referencing curation as a mitigation measure in CEQA Guidelines section 15126.4(b)(C)."

Ideal Situation:

- 1. Second bullet: Add collections generated from testing to the list of curated collections. Those materials may prove important in the future.
- 2. Third bullet: Add that every effort should be made to keep collections near their community of origin and the affected communities.
- 3. Federal and State NAGPRA should be clearly referenced here and the obligation for State Agency compliance, to see that appropriate material be timely repatriated to tribes. Repatriation, including that performed by the UC System, should be done through a fair process in which affected tribes are invited to participate. Autonomy of UC campus in NAGPRA processing should be evaluated.

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E  
10-3

How to Bridge the Gap:

- 1. When a new project proposes to impact a site that was previously surveyed or excavated, the best practice should be that the new project locate and curate related/prior orphan or test collections.
- 2. Make it a reasonable option to coordinate with Native American-operated museums and cultural centers to curate or exhibit appropriate collections. This could have many benefits including potential for cost savings and will help keep Indian people involved.
- 3. The State must finally seat, fund and staff the State NAGPRA Commission.

**Two Specific Areas of Concern/Omission**

One, the papers are all about archaeology - nothing in them seriously considers how to improve protection of Native American ancestral human remains, including cremated remains. Here, projects routinely are not following CEQA and instead are excavating in known sites with known burials without treatment plans or first exploring avoidance. There are other aspects of CEQA that need updating in this regard, including those related to financing of mitigation and improved technology such as ground penetrating radar and forensic dogs.

} F

Second, the CEQA framework for archaeological resources was written at a time when archaeological sites of importance to archaeologists were the primary, if not sole, resource of concern. This approach is overly limited and does not reflect the full range of archaeology of concern to CRM today that properly includes landscapes, traditional cultural properties, sacred places, etc. It is long past time for CEQA to better reflect the full-range of archaeological and tribal resources of concern, some of which cannot be mitigated. This may require a new CEQA framework and not just surgical amendments to the Public Resources Code or Guidelines.

G

Specific revisions to CEQA:

Inclusive and, perhaps, facilitated discussion should occur around specific revisions/updates to CEQA to strengthen the protection of cultural resources. A starting point could include:

1. Making CEQA (i.e., CEQA Guidelines section 15064.5(d) and (e)) consistent with Public Resources Code ("PRC") sections 5097.993 - 5097.994, the Native American Historic Resource Protection Act, including the spirit of the Act. Other updates may also be appropriate for the Act to reflect best practices and interpretations.

2. Make the UC System publicly release its FEIR within a reasonable period, i.e., 10 days, prior to public hearings for approval, as do most local jurisdictions.

3. Revise PRC section 21083.2(i) and Guidelines section 15064.5(e), so that work would be halted on the entirety of small (i.e., individual single family residence) parcels when human remains or significant resources are unexpectedly encountered. In some cases, when a burial was encountered in a known site, the archaeological team has allowed development to continue just a few feet away and in spite of the discovery of other human burials. Cremated human remains and bone fragments were also allowed by the Team to be exported during this period. Also, unexpected encounters should not be happening in known sites or areas with the potential for human remains – these should already be handled with avoidance and treatment plans.

H

4. The concept of "unique" and "nonunique" archaeology resources should be revisited as perhaps being unclear and dated, focusing more on scientific archaeology (PRC sections 21083.2(a), 21083.2(g) and (h)). Significant resources may not necessarily be unique or historic, if a narrow interpretation of existing language is made. In any case, can such determinations be appropriately made without the involvement of affected communities as is so often the case?

5. Revisit the funding aspects of PRC sections 21083.2(c), 21083.2(e) to reflect that the project applicant is responsible for the reasonable costs of its project, as is the case with other impacts under CEQA. What is the justification for treating archaeological resources differently? It is NOT a best practice for the applicant to determine the level of funding of the mitigation measure. Perhaps related to this, revisit the issue and adequacy of "project sampling" as currently practiced.

6. Is it reasonable to have a deadline for completion of the field excavation phase? (PRC section 21083.2(f)). How does this result in quality CRM?

7. Revise section to more clearly reflect that scientific archaeological value is not the only measure of significance for a resources. (PRC section 21083.2(d)).

8. Add section requiring notification and consultation when a lead agency determines that project is exempt from CEQA, especially in areas of traditional tribal concern. This was the intent of SB 1395 (2006, Ducheny), which was in reaction to the needless impact to a sacred area during interim measures in the Topock remediation. ] H

**Conclusion:**

The establishment of best practice standards, enhanced professionalization of the CRM practice and updating of policies and laws is badly needed. I hope that many of the ideas presented in the papers and this comment letter will be followed through with to completion. Let me know what I might be able to do to help. Thank you for the opportunity to comment.

Very truly yours,

/S/

Courtney Ann Coyle  
Attorney at Law

Cc: Tribal Clients  
Senator Denise Ducheny  
Senator Christine Kehoe  
Assemblywoman Lori Saldana  
Interested Parties

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## Resource Committee, SHR Archaeological

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**From:** Cjlinton73@aol.com [Cjlinton73@aol.com]  
**To:** Resource Committee, SHR Archaeological  
**Cc:**  
**Subject:** (no subject)  
**Attachments:**

**Sent:** Tue 3/20/2007 10:27 AM

To Whom It may Concern,

I have reviewed Ms. Coyle's comments and am in full agreement with her and her ideas. I could not have written it better myself. Please accept Ms. Coyle's comment as the standing comments from the Santa Ysabel Band of Diegueno Indians. Thanks you,

Clint Linton  
Santa Ysabel Band of Diegueno Indians  
P.O. Box 507  
Santa Ysabel, CA 92070  
(760) 803-5694

"As way of background for the SHRC Committee, I am an attorney in private practice in the San Diego region. I started working mostly with the environmental protection community in the 90's but over the last decade much of my practice has been representing tribal entities in protecting their sacred places and in protecting park resources. On behalf of tribal clients, I also helped, with some of those cc'd here, to craft and successfully gain legislative passage of SB 18 (sacred places and planning), SB 22 (mining reclamation and sacred places), SB 922 (confidentiality), SB 1395 (notices of exemptions) and AB 2641 (ancestral burial grounds) over the last five years. I also worked with the San Diego Archaeological Center to amend CEQA to include curation. I was not invited to participate in the drafting of the subject papers, but I am an SCA member.

While I understand this is an iterative process, I was hoping to see more specific detail on the precise amendments to law and policy to be sought as well as specific language. I also believe that additional direct outreach needs to be made to the native communities on those aspects that interface with prehistoric archaeology.

A few important aspects were missing from the papers. It is not clear to me where these issues should be placed, but I make suggestions below. The professionalization of the CRM practice and updating of policies and laws is badly needed. I hope that many of the ideas presented in the papers and this email will be followed through with to completion. Let me know what I might be able to do to help.

### Archaeological Standards and Guidelines:

1. A requirement for Native American monitors during initial surveys through to project completion is needed. Particularly for the identification of cultural landscapes, traditional cultural properties, likely burial areas and sacred places, often missed by "traditional" surveys that are typically focused on identifying archaeological sites.
2. A requirement for consultation with Native peoples in an early and meaningful way, prior to and continuing through the CEQA process. This is necessary to allow for project changes prior to significant project investment and for appropriate alternatives and design changes to be made in a successful manner.
3. A requirement for reports to be completed within a time certain. There are cases where reports are done twenty years after the survey - if done at all. This is critical to our understanding of cumulative impacts and because in cases of excavation, the gray literature may be all that remains of a site.

### Archaeological Resources Conservation

1. Without the concept of the overall cultural landscape we risk underestimating the cumulative impacts of projects.

2. Another tool would be more California and National Register nominations for archaeological sites and their landscapes. We are already trying to implement this in a few cases. We need the understanding and active support of the Office of Historic Preservation to pursue these endeavors.

3. A requirement to pursue better technology and noninvasive techniques in assessing sites for ancestral burials. This could include more use of appropriate testing, ground penetrating radar, forensic dogs, etc., to identify burial areas, in consultation with descendent groups.

4. A requirement that burials will be avoided wherever possible and left in situ. What has apparently become the operating standard in some jurisdictions where burials are "discovered" by the bulldozer, damaged, then salvaged by archaeologists and monitors must stop in favor of avoidance of burials at the front end of project planning.

### **Archaeological Resource Protection**

1. Discussing protection of sites is difficult because of both lack of data re existence of recorded sites but also because of lack of data about what has been destroyed without being recorded in the first place. This again implicates the cumulative impacts process.

2. A requirement for agencies to implement a meaningful mitigation and monitoring program to ensure that conditions of project approval are actually being followed in the field. This includes presence of monitors, fencing or marking off of areas of nondisturbance, following through on curation or repatriation of collections, etc., and imposing meaningful penalties on contractors, CRM firms and/or owners when conditions are not followed.

3. The exporting off site of "fill" dirt with human remains in it must be prevented.

4. That significant archeological resources are being severely damaged should reference both direct and indirect impacts. The typical environmental document focusses almost exclusively on direct impacts, to the detriment of the resources and those affiliated with the site or place.

5. A requirement that each land use jurisdiction has a Preservation Officer, as is done in parts of Arizona. This would help to ensure that cultural resource issues have a seat at the planning and permitting tables versus it being dominated by planners and engineers and the points of view they generally advance.

6. A requirement that each State Agency or Department have a Tribal Liaison. This would help ensure that impacts to tribes would be considered at each step of the Agency's activities and would help to establish and maintain a valuable communication path between state government and tribal governments/entities.

7. A requirement that each jurisdiction have the ability to "red flag" recorded sites or areas of sensitivity when it issues permits through its development services departments. Too many recorded or known sites have been adversely impacted because the system was inadequate or did not exist for integrating/updating site information into the jurisdiction's database.

### **Archaeological Resources Interpretation**

1. The requirement to protect the confidentiality of site locations and information about the sacred uses of such places should be clearly referenced in this paper.

### **Curation of Archaeological Collections and Information**

1. Federal and State NAGPRA should be clearly reference here and the obligation for State Agency compliance, to see that appropriate material be repatriated to tribes.

2. When a new project proposes to impact a site that was previously surveys or excavated, that the best practice be that the new project locate and curate related/prior orphan collections.

I hope that these comments are useful to you."

Best regards,  
CAC

Courtney Ann Coyle  
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*"Protecting and Preserving Tribal, Cultural, Biological and Park Resource Landscapes"*

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