A CIRCLE OF INFLUENCE:
PEOPLE INFLUENCING LAWS AND LAWS INFLUENCING PEOPLE
IN CALIFORNIA CULTURAL RESOURCE MANAGEMENT

By

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Theodora Fuertstenberg
ABSTRACT

Purpose of the Study:
The purpose of this study is to identify the relationship of consultation between archaeologists and Native American groups with respect to cultural resources that exists because of consultation procedures that began being required by legislation in the 1960s, and continued to progress over time. Legally required consultation procedures led to increased interaction and communication between Native Americans groups and archaeologists working in cultural resource management (CRM) in California, and this interaction led to changes and amendments to CRM legislation which made the laws more cognizant of the interests of archaeologists and Native Americans.

Procedure:
This study explores the changing ways in which Native American groups and archaeologists in California work together under CRM legislation. Using literature about the subjects of CRM legislation, and archaeological and Native American relationships, coupled with legislative history, legislative statutes and regulations that relate to CRM, and case law, an overview of CRM laws and how they have changed over time is presented. Four people were interviewed, two members of the Federated Indians of Graton Rancheria (FIGR) and two CRM archaeologists in northern California, to provide current perceptions and opinions about the relationship between the two groups and how it had changed over time under legislation.

Findings:
Native American groups and archaeologists have different interests when it comes to CRM. Legislatures have worked to cover the concerns of both groups when drafting legislation about CRM. Scholars and subjects believe legislation has worked to balance scientific and cultural interests when drafting such legislation.

Conclusion:
There is an identifiable progression of communication and consultation between archaeologists and Native American groups under cultural resource management law from the mid-1960s to the present. Laws requiring some consultation between the two groups led to more progressive CRM laws, changes in existing CRM laws, and more cooperation between people to
change them. Members of FIGR and California CRM practitioners are satisfied with the current consultation situation, and are optimistic about the future of consultation under CRM legislation.

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TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. A Circle of Influence ..................................................................</td>
<td>1</td>
</tr>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>My Goals</td>
<td>3</td>
</tr>
<tr>
<td>Archaeologists, Native American Tribes, and CRM</td>
<td>5</td>
</tr>
<tr>
<td>HISTORY OF ARCHAEOLOGY IN THE UNITED STATES</td>
<td>6</td>
</tr>
<tr>
<td>CULTURAL RESOURCE MANAGEMENT: HISTORY AND STRUCTURE</td>
<td>14</td>
</tr>
<tr>
<td>NATIVE AMERICANS AND ARCHAEOLOGISTS IN THE U.S.</td>
<td>16</td>
</tr>
<tr>
<td>II. Methods and Literature Review</td>
<td>20</td>
</tr>
<tr>
<td>Methods</td>
<td>20</td>
</tr>
<tr>
<td>The Research</td>
<td>20</td>
</tr>
<tr>
<td>The Ethnographic Interviews</td>
<td>23</td>
</tr>
<tr>
<td>Literature Review</td>
<td>25</td>
</tr>
<tr>
<td>CULTURAL RESOURCE MANAGEMENT LEGISLATION</td>
<td>26</td>
</tr>
<tr>
<td>ARCHAEOLOGY AND THE LAW</td>
<td>27</td>
</tr>
<tr>
<td>NATIVE AMERICANS AND THE LAW</td>
<td>31</td>
</tr>
<tr>
<td>ARCHAEOLOGICAL AND NATIVE AMERICAN RELATIONS</td>
<td>37</td>
</tr>
<tr>
<td>CALIFORNIA LAWS</td>
<td>41</td>
</tr>
<tr>
<td>III. Federated Indians of Graton Rancheria</td>
<td>43</td>
</tr>
<tr>
<td>Introduction</td>
<td>43</td>
</tr>
<tr>
<td>Prehistory of the Southern Pomo and Coast Miwok Language Groups</td>
<td>45</td>
</tr>
<tr>
<td>The Southern Pomo</td>
<td>47</td>
</tr>
<tr>
<td>Section</td>
<td>Page</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>HABITATION AND SUBSISTANCE</td>
<td>49</td>
</tr>
<tr>
<td>MATERIAL CULTURE</td>
<td>51</td>
</tr>
<tr>
<td>LIFE AND DEATH</td>
<td>53</td>
</tr>
<tr>
<td>The Coast Miwok</td>
<td>58</td>
</tr>
<tr>
<td>HABITATION AND SUBSISTANCE</td>
<td>60</td>
</tr>
<tr>
<td>MATERIAL CULTURE</td>
<td>61</td>
</tr>
<tr>
<td>LIFE AND DEATH</td>
<td>63</td>
</tr>
<tr>
<td>Contact Period</td>
<td>66</td>
</tr>
<tr>
<td>THE MISSIONS</td>
<td>66</td>
</tr>
<tr>
<td>CHANGES AFTER SECULARIZATION</td>
<td>74</td>
</tr>
<tr>
<td>GRATON RANCHERIA BEGINS</td>
<td>77</td>
</tr>
<tr>
<td>TERMINATION OF FEDERAL TRUST</td>
<td>79</td>
</tr>
<tr>
<td>REVERSAL OF TERMINATION</td>
<td>81</td>
</tr>
<tr>
<td>Federated Indians of Graton Rancheria Today</td>
<td>84</td>
</tr>
<tr>
<td>IV. Federal CRM Laws: The National Historic Preservation Act and Archaeological Resources Protection Act</td>
<td>87</td>
</tr>
<tr>
<td>Introduction</td>
<td>87</td>
</tr>
<tr>
<td>Background</td>
<td>87</td>
</tr>
<tr>
<td>National Historic Preservation Act: What it Is and What it Requires</td>
<td>90</td>
</tr>
<tr>
<td>NHPA: FINDINGS AND PURPOSE</td>
<td>91</td>
</tr>
<tr>
<td>NHPA: OFFICIAL ESTABLISHMENTS AND CHARGES</td>
<td>92</td>
</tr>
<tr>
<td>National Register of Historic Places</td>
<td>92</td>
</tr>
<tr>
<td>The Advisory Council on Historic Preservation</td>
<td>93</td>
</tr>
</tbody>
</table>
# Table of Contents

1. **DEFINITIONS** ................................................................. 122
2. **REGULATION PROCEDURES RELATING TO CRM** .......... 123
3. **NAGPRA: How it Came About** ...................................... 125
4. **NAGPRA: How it has Changed** ..................................... 132
5. **EFFORTS FOR ADDITIONS AND CHANGE** .................. 132
6. **PROBLEMS AND CONTENTION** .................................... 136
7. **NAGPRA and the Kennewick/Out.pa.ma.na.titi case** ......... 138
8. **OVERVIEW** ................................................................. 138
9. **PROCEEDINGS AND CONCEPTS** ................................. 140
10. **IMPLICATIONS OF KENNEWICK: THE SCIENTIFIC PARADOX** .... 144
11. **OTHER POSITIONS ON NAGPRA** ................................. 145
12. **NAGPRA, FIGR, and CRM in California** ....................... 149
13. **CAL NAGPRA** ............................................................ 149
14. **CALIFORNIA CRM AND FIGR** ................................... 150
15. **VI. Environmental Protection and Planning Laws** .......... 152
16. **Introduction** .............................................................. 152
17. **National Environmental Policy Act** .............................. 153
18. **Introduction** .............................................................. 153
19. **What it Is and What it Requires** .................................. 153
20. **How it has Changed** .................................................. 156
21. **NEPA VERSUS NHPA SECTION 106** ............................ 158
22. **California Environmental Quality Act** .......................... 161
23. **Introduction** .............................................................. 161
Chapter I

A Circle of Influence

Introduction

Since the beginning of what is now the United States, many people have experienced a feeling of injustice when facing laws that belie their idea of fair and equal consideration. Conflicts with the promulgations of legislation have stirred the motivations of those who are affected by it.

Cultural resource management (CRM) legislation has had a young life legally, however, it mandates the cooperation of many different parties. My research is focused particularly upon archaeologists who deal physically and directly with the history and prehistory of the land now under U.S. sovereignty, and Native American groups whose ancestral artifacts are uncovered physically by the archaeologists.

My goal is to demonstrate how two different groups of people with different motivations and cultural ideologies, when forced to work together under the law, influence each other’s thoughts about how they view the past which with they are dealing, and precipitate changes by communicating their separate concerns and better understanding each other. This leads to a greater awareness about the motivations of both the Native Americans and archaeologists involved in CRM.

This goal was achieved by researching the two parties’ involvement in CRM and the legislation governing CRM over CRM's history in the United States. Its focus is from the time period in which historic preservation began to appear in the law to the present. I have correlated changes in the legislation that governs CRM to the involvement of both
archeologists and Native American groups in CRM. I then lead from the history of archaeologists and Native Americans relationship to CRM into the present concerns of both groups about these laws and how they are working together. This is done by relaying present day accounts from archaeologists and tribal members who have witnessed the changing environment of CRM over time.

This research is important because it will demonstrate how two culturally different groups can look at the same laws and see different things, and how these differences can create conflicts and generate solutions. This research will contribute to the overall understanding of the effect of cultural resource management (CRM) legislation on cultural groups and on the archeologists that follow it. The combination of two different groups dealing with the same things in different ways helps further our understanding of the often unequal considerations afforded to different cultures by the legal process in California. The legally mandated cooperation between the two groups shows how the law is flexible and can change to be more all-encompassing with respect to culture.

I will focus on a specific tribe of Native Americans, the Federated Indians of Graton Rancheria; made up of people of the Coast Miwok and Southern Pomo tribes, who were grouped by the Graton Rancheria property in 1920 and recognized by the federal government as one tribal entity in 2000 (Federated Indians of Graton Rancheria 2008). I am focusing on this group because not only are they highly influential in the process to conserve and to mitigate the effects to their cultural resources, but they also have strong, influential tribal members who are experienced in CRM legislation and the processes this legislation mandates. Further, their plight to obtain federal recognition is
representative of many tribes in California.

I have focused on the archaeologists who practice CRM primarily in northern California because they work within the same land in which the Federated Indians of Graton Rancheria work. Many of them have worked along side these tribal members. This will present a representative group of both parties working in CRM in the same area.

I have conducted ethnographic interviews to help demonstrate each group’s thoughts and ideas about CRM in California and how it has changed over time. The results of these interviews represent only a small part of the vast network of tribes and archaeologists working in CRM, but are important because they exemplify a specific situation of consultation and exchange of ideas between archaeologists and Native Americans in California CRM.

In addition to interviews, I have reviewed many publications about the motivations of archaeologists and Native American tribes that work in CRM, the laws and changes involved in CRM as opposed to archaeology done in an academic setting, and how the relationship between Native Americans and archaeologists has changed.

This research will lead to a clearer understanding of the place of the Federated Indians of Graton Rancheria (FIGR) and the archaeologists who work in their ancestral lands within the larger context of CRM legislation. It will help illustrate how different cultural ideologies can interpret, react to, and cope with the same laws in different ways.

My Goals

My goal is to identify the relationship between archaeologists and Native American groups as it is defined under legislation and as it plays out according to the
mandates of legislation that requires consultation between the two groups in California. I will identify a paradigm shift in the late 1960s and early 1970s that created an atmosphere in which new laws were passed that recognized the sensitive cultural issues that were being actively brought to light and debated during this era.

It was mandated through these laws that Native American tribes and archaeologists would work together in dealing with the past of this great land. This begun much communication between the two groups, whom I have heard some academics call natural enemies. My goal is to show that this legally required communication eventually facilitated a better understanding between the groups of each other’s motivations and ideas. This in turn led to a clearer idea of what each group wanted out of their access to the material remains of the past. With a few years of motivated communication and work within CRM, the laws became even more inclusive with respect to different cultural motivations.

I plan to reveal through my research and interviews that the better the relationship between the two groups gets, the more each group is willing to negotiate and work with one another, and that certain legislation helped initiate this interaction. I will demonstrate, through examining the zeitgeist of the 1960s and the way laws and people were changing, that legislation began expanding its scope and including more groups in negotiating the fate of resources with which historic preservation law deals. This caused a snowball effect, and within the next 20 years even more laws were passed concerning indigenous rights to the lands that they deem sacred and to rights to control their material past.

I hope that this research will lead to awareness that the relationship between archaeologists and Native American tribes in CRM, although burgeoning, is not perfect
and there are still many conflicts. However, I plan to offer evidence of the working and growing relationship, and how perseverance in the past of negotiation and working together was very rewarding, and this sentiment can continue into the future.

Archaeologists, Native American tribes, and CRM

Archaeology is the study of people through their material remains (Renfrew and Bahn 2000:11). The goals of archaeology in the United States have been largely to scientifically study the people of the past through what they left behind, and contribute to the larger body of academic literature about the prehistory of the land. This is done by surveying areas to locate archaeological sites, excavating sites to obtain information, and analyzing the information collected to interpret the past (Renfrew and Bahn 2000:13).

Archaeology in the United States has traditionally (until the mid-21st century) been done in an academic setting though universities or scientific organizations, and funded through research grants.

Cultural resource management is trying to take care of physical places or things that are important to people for cultural reasons, in the context of modern laws concerning preservation of environments (King 2005:7). These physical things largely include archaeological sites, but also include things such as old buildings, old neighborhoods, or places where people have traditionally practiced religious or spiritual beliefs or rituals (King 2005:7). Archaeological studies conducted through cultural resource management are funded by federal or state organizations, or by developers, who want to make some change to the land where environmental legislation requires the mitigation of adverse effects to cultural resources. Since CRM archaeology is performed
in direct response to statutory mandates, it has been called the latest stage in the evolution of the relationship between archaeology and the U.S. government (Newmann and Stanford 2001:5).

In the U.S. today, 80 percent of archaeologists are employed either in private industry or in government agencies that oversee private industry (Newmann and Stanford 2001:1). Nearly 94 percent of anthropologists that work outside an academic setting are archaeologists (Newmann and Stanford 2001:1). This is because archaeology has grown exponentially in the private sector since the late 1970s, having been made possible by historic preservation laws and mandates that sometimes require archaeology to be done as part of development and construction processes (Newman and Stanford 2001).

The following sections will give a brief overview of the history of archaeology in the Untied States, the history of CRM in the United States, and the relationship of each to Native Americans. This is to create a basic context in which the rest of the thesis can be viewed.

HISTORY OF ARCHAEOLOGY IN THE UNITED STATES

In the 16th and 17th centuries, European exploration and colonization of what is now the United States began. Not only were Europeans encountering new people, they brought their ideas about how to study the people and the past histories of the land. Ideology and theories about archaeology in these early times came from Europe. In the 17th century, Europe was the hub of the new world economy, and this economic boom fostered the view that humans had ability to excel and develop culturally and economically (Trigger 2006:97). This ideology came to be called the Enlightenment, and
it was marked by the notion that progress was inherent in the human condition, and
equated modernity and progress with human worth (Trigger 2006:97). This idea
continued through the 18\textsuperscript{th} and early 19\textsuperscript{th} centuries, and shaped early archaeologists' theories and methods when encountering the New World.

When explorers in the New World finally set off west over the Appalachians in the 19\textsuperscript{th} century, they encountered large, elaborately constructed mounds in the Ohio and Mississippi Valleys (Willey and Sabloff 1993). These elaborate earthworks were a clear indication to them of a progressive enlightened society (Trigger 2006:101). The only people there however, were Indians, and they were viewed as a savage and barbarous race by the explorers, since the explorer's ideology had been influenced by Enlightenment. The idea was therefore that an extinct race of moundbuilders had once existed, and had been driven out by the existing Indian population (Renfrew and Bahn 2000, Trigger 2006, Willey and Sabloff 1993). These mounds were the first places field archaeology took place in the U.S.

The presence of these mounds fostered curiosity in people who wanted to describe, document, excavate and collect artifacts from them, such as Thomas Jefferson (Trigger 2006). Thomas Jefferson was one of the first Americans to scientifically and systematically excavate mounds, and make speculations about what sort of people made the artifacts he recovered (Renfrew and Bahn 2000:24, Trigger 2006:103). Jefferson dug trenches in burial mounds in Virginia, and tested his ideas against hard evidence. He compared the artifacts with ones found in Europe to help decide who the Moundbuilders were (Trigger 2006:104). These were likely some of the first scientific excavations done in the U.S. (Renfrew and Bahn 2000:34).
In the late 18th and early 19th centuries, Thomas Jefferson was president of the American Philosophical Society and the American Antiquarian Society (Trigger 2006:111). Both of these societies had in their records descriptions and drawings of these mounds, many of which had been level early in the 19th century. Even at these early times, archaeologists were collecting information that contributed to the overall archaeological record in the country. Early archaeological information about these mounds were documented by researchers such as Manasseh Culter, who did early dendrochronology by counting tree rings on tree stumps atop mounds before they were cleared for development, or H.H. Brackenridge who in 1813 distinguished between burial mounds and temple mounds (Trigger 2006:161). Archaeological work during this era has been called the speculative phase of North American archaeology, due to the researchers speculating about moundbuilders in the absence of hard evidence (Trigger 2006:161). Archaeological research on the mounds that had been done in the speculative phase were compiled in the 1840s in Ancient Monuments of the Mississippi Valley (Squier and Davis 1848). This research project was actually the first to be federally funded by congressional mandates in the U.S. (Newmann and Stanford 2001:7).

The 1840s and 1850s were decades in which endeavors in scientific inquiry were gaining national clout, and the Smithsonian was established (Trigger 2006:366). The Smithsonian’s first secretary was Joseph Henry, who was influential in changing archeological motives in the U.S.; he wanted archaeology to be more scientific and less speculative (Renfrew and Bahn 2000:29). Henry commissioned Samuel Haven to write a review of American archaeology, which was published in 1856 (Haven 1856). In this review, the many speculations of American archaeologists were exposed as being unable
to stand when systematically examined against available information, and the idea of the Moundbuilders was one of these untenable theories (Trigger 2006:172).

Henry further influenced American archaeology by publishing information about change and developments in European archaeology. He encouraged American archaeologists to be more like Europeans, such as the Danish, whose excavations of kitchen middens were producing valuable information. This encouragement led archaeologists in America to begin excavating shell middens along the coasts (Renfrew and Bahn 2000:29). This led to the change in archaeology that occurred around the 1860s. It became more fact based and less speculation based (Renfrew and Bahn 2000:29).

Along with more fact based theory in archaeology, the decade of the 1860s also was influenced by Charles Darwin, whose *Origin of the Species* was published in 1859 (Darwin 1859). In Europe, John Lubbock used a version of Darwinian explanation in his views about cultural change. He believed Euro-Americans were on the forefront of human advancement, and thus the most evolved (Trigger 2006:368). Lewis Henry Morgan’s *Ancient Society* (1877) exemplified this view, categorizing human societies into different tiers depending on how advanced they were perceived to be. He used classifications such as “savagery” and “barbarism” to describe cultural groups that in different stages of evolution (Morgan 1877). Similar to Enlightenment ideals, this view gave archaeologists a new way to view Native Americans as less evolved and therefore less human, validating destruction and looting of Native American monuments, graves and artifacts in the name of science (Trigger 2006:189).
This view was important in the light of archaeological discoveries in the late 19th century. John Wesley Powell was head of the Bureau of American Ethnology in 1881 (Renfrew and Bahn 2000:28). He recruited archaeologist Cyrus Thomas to research the moundbuilders theory on behalf of the Bureau. After seven years of fieldwork, Thomas essentially proved the race of moundbuilders did not exist, and the people who built the mounds were ancestors of existing Native American tribes (Renfrew and Bahn 2000:28, Willey and Sabloff 1993:10).

Thomas employed a newly favored ideal of archaeological inquiry of using logic as opposed to speculation when researching the mounds (Trigger 2006:183). Another one of Powell’s recruits, William Henry Holmes, was largely in favor of logically interpreting facts, not speculating on theories (Renfrew and Bahn 2000:29). Holmes did extensive work on lithic debitage in North America. By comparing lithic objects from the U.S. to very old Paleolithic tools from England, Homes discovered that stone tools were used by Native Americans until the present day (Renfrew and Bahn 2000:29). This was unlike Europeans, who had used stone tools only in very early times, according to their system of chronologising tools based on material: Stone Age, Bronze Age, and Iron Age (Renfrew and Bahn 2000:25).

At the end of the 19th century, the swing in American archaeology shifted from broad generalizations and speculations to a more detailed, descriptive approach (Trigger 2006: 389). This was the era in which British archaeologists General Pitt-Rivers began artifact typology, and the idea of arranging artifacts sequentially was soon being adopted by American archaeologists. The idea of chronological and sequential based
interpretations began in the early 20th century and is marked by the work of archaeologists such as Nels Nelson and Alfred Kidder (Trigger 2006:280).

Kidder did extensive archaeology in the southwest region at Pecos Ruin, New Mexico. He published *An Introduction to Southwest Archaeology* (Kidder 1924). In it, he relayed his system for regional archaeological strategies: he selected criteria for chronologically ranking the remains of a site, using evidence that indicated periods of time, such as stratigraphy. He then put them into a distribution indicating frequency over time, or seriation, which led him to infer probable distribution (Kidder 1924). This was essentially the beginning of the cultural historical approach in archaeological theory, and led to a preoccupation with chronology (Trigger 2006:278).

During this cultural historical era, Nels Nelson noted that pottery types changed from top to bottom of excavation pits, thus, chronology manifested in stratigraphic layers (Nelson 1916). Archaeologists started to excavate in arbitrary levels during this era (Willey and Sabloff 1993:28). This era was also marked by hierarchical classification systems, such as the Midwestern Taxonomic System, in which archaeologists classified finds on the basis of a formalized set of criterion (Trigger 2006:288). From using these geographically specific models of seriation and chronology, it became clear to archaeologists that there had been vastly different cultures throughout the different geographic regions in the Untied States (Trigger 2006:286). Archaeologists attributed these differences largely to diffusion: the idea that cultures started in one place and diffused outwards, changing little by little as they went (Trigger 2006:129). During the cultural historical era, major changes in the archaeological record being attributed to
migration and diffusion discouraged archaeologists to explore the idea of internal change (Trigger 2006:217).

The cultural historical era was confronted by a major change in the 1950s. Phillips and Willey's article "Methods and Theory in American Archaeology" (1953) was published in American Anthropologist, and unintentionally brought to light the limitations of the cultural historical approach, such as the idea of culture being imitative rather than creative (Trigger 2006:308). These ideas led into processualism, the next theoretical era in archaeology. It was largely an attack on the cultural historical approach (Renfrew and Bahn 2000:39, Trigger 2006:308). Processualism dealt with analyzing artifacts on the basis of functional categories, and encouraged thinking about the ideas behind how artifacts were manufactured and what exactly they were used for (Trigger 2006:308).

During this era, which lasted from the 1960s through the 1980s, archaeologists became more concerned with human behavior, artifacts being a function of that behavior. The research of people such as Lewis Binford, Michael Schiffer, and newer work from Leslie White marked this era. They looked at how to interpret behavior archaeologically, and emphasized the idea of cultural evolution. Binford thought that archaeology, like anthropology, should be able to explain the full range of human behavior (Binford 1962), and White and Schiffer made generalizations about cultures as evolving entities, and began using archaeological data to study long term change (Schiffer 1976, White 1975).

In addition to explaining past change and focusing on the process of culture rather than the history, processual archaeology focused on developing hypotheses to be tested. Emphasis was on constructing models and research designs prior to archaeological
testing, to answer more questions as opposed to simply gathering more information (Renfrew and Bahn 2000).

In the late 1970s and 1980s, processual theories began to bifurcate and scholars started to disagree about subsystems of ecology and sustainability. Scholars such as David Clark also started adding psychology to archaeological theories (Clark 1979). This was known as the post-processual era, and was characterized by a variety of approaches in response and reaction to processual approaches (Trigger 2006:444). It was sometimes called "interpretive" archaeology, because it was partially marked by using archaeological insights to change the modern world (Renfrew and Bahn 2000:42). Approaches can be generalized into post-positivist, phenomenological, praxis, and hermeneutic (Renfrew and Bahn 2000:42).

Post-positivist approaches rejected the systematic approach marked by the scientific method, and viewed modern science as a political construction which clouded the interpretation of the individual (Renfrew and Bahn 2000:42). Phenomenological approaches focus on how the prehistoric material world shaped the world view of the individual. This approach led to landscape archaeology, an approach in which archaeologists seek to experience how the landscape was shaped by human activity (Renfrew and Bahn 2000:42). The praxis approach put emphasis on the individual human agent's actions that shaped all social experience, and hence shaped society. It significantly emphasized the role of the individual (Renfrew and Bahn 2000:43). Hermeneutic, also called interpretive, approaches rejected generalizations being attributed over different cultures, and viewed each culture as unique and diverse within itself, without being compared to any other human culture (Renfrew and Bahn 2000:43).
Archaeological investigations and publications today are in some form or another shaped out of these different approaches and interpretations. However, with each year, an increasing number of archaeological investigations are conducted in the arena of CRM. When working within the budget and time constraints of CRM, the goals become less about in-depth research and interpretations and more about finishing archaeological investigations within the time and budgetary constraints of the client’s contract. This does not mean that valuable research and publications do not come from CRM-based research; it simply means that although the means are the same, the CRM archaeologist and the academic researcher are working for slightly different ends.

CULTURAL RESOURCE MANAGEMENT: HISTORY AND STRUCTURE

CRM archaeologists must work within the constraints of laws which define and manage cultural resources. These laws have a long history. Federal involvement in historic preservation began formally in 1906 with the Antiquities Act, protecting any historic or prehistoric monument on government land (16 U.S.C. 431-433). Active federal involvement in archeology began in 1935 with the Historic Sites Act, which gave the Secretary of the Interior a role in protecting cultural resources and starting efforts for their preservation (16 U.S.C. 461-467).

In 1966, the National Historic Preservation Act (NHPA) was passed, and at the time was the most important piece of legislation when it came to protecting cultural resources such as archaeological sites. NHPA essentially mandated that any agency must “take into account” the potential effects of any “undertaking,” to “historic resources.” An undertaking is “a project or program funded in whole or in part under the direct or
indirect jurisdiction of a federal agency...carried out with federal financial assistance, and those requiring a federal permit, license or approval” (36 C.F.R. 800.16(y) 2004). For archaeologists, this eventually came to mean that before an agency wanted to do anything to an area of land, such as build something, demolish something, or change ownership, cultural resource consultants (often archaeological consultants) would evaluate whether or not the undertaking would impact something of cultural importance. This Act is discussed in detail in Chapter V.

The year 1969 marked the initiation of the important National Environmental Policy Act (NEPA), which set guidelines for government decision making with respect to land planning and CRM (42 U.S.C. 101 et seq). This Act is discussed in detail in Chapter VII.

Other than moving archaeology into an arena that was mandated by federal compliance, all of these laws also mandated some form of funding these archaeological investigations (McManamon 2001:12). With archaeology being funded through contracts with federal or state agencies, or developers working under federal or state permits, many archaeologists in the academic arena began to set up CRM consulting firms. Theoretically, one could get their research funded through such contracts, if their firm obtained contracts for jobs in the locality they wanted to research. As an increasing number of CRM consulting firms were created, an increasing amount of research was being funded through the CRM arena. During the present day, many academic publications are written using CRM based research.

The laws and practice of CRM and the Native American involvement are the nexus of this thesis and are discussed at length in the following chapters. A general
history of the relationship between archaeologists and Native Americans in the U.S. will be discussed forthwith to provide further context of how Native Americans fit into archaeology before CRM came about.

NATIVE AMERICANS AND ARCHAEOLOGISTS IN THE U.S.

Traditionally, California Indians have been portrayed in history as a docile primitive people, who openly embraced the invading Spaniards and were rapidly subdued. This simplistic contention adds little to a realistic understanding of native history in California and undoubtedly is derived from crude feelings of racial superiority on the part of its advocates. - Heizer 1978:99

Archaeologist Robert Hiezer (1978) summed up the dominant view of Native Americans throughout California history very succinctly in this quote. Ideologies that shaped how archaeology was conducted similarly influenced how Native Americans were viewed by archaeologists. Religious colonization in the early times of European contact with the new world had been looking at indigenous groups as inferior; ungodly and therefore doomed according to canons of Christianity (Trigger 2006:160). Enlightenment ideas led early archaeologists to focus on rational, non religious explanations for the inferiority of indigenous groups. The popular idea in the early 19th century was that Indians could not withstand civilization because they were biologically inferior and could not adjust (Trigger 2006:161). Therefore, it was condoned to look at Indians and their material culture as specimens to be studied (Trigger 2006:161).

These ideas were present during the speculative phase of archeological theory, and were exemplified with the notion that elaborate earthworks west of the Appalachians - the mounds of the Hopewell, Adena and Mississippian cultures - were too advanced to
have been a product of existing indigenous groups (Trigger 2006). Archaeologists speculated that the moundbuilders had been chased out by the barbarous Indians, which led to the idea that the native populations posed a menace to the colonizers. The very archaeology the Indians created was being used by European scholars as evidence that they were destroying civilizations (Trigger 2006:160).

Ideology changed about the agency of the Native American during the cultural historical phase of archaeological theory. Franz Boas, a cultural anthropologist, tried to encourage the view that Indians were capable of change and development (Boas 1887). At the time, however, indigenous groups were dying off in large numbers due to foreign disease, and this was popularly thought to be because they were incapable of adjusting to the influx of civilization (Trigger 2006:161). Boas’s ideas were thus unsubstantiated until archaeologists began focusing on chronology in their studies.

In the early 20th century, the Folsom Paleo-Indian finds in New Mexico were discovered, and archaeologists realized that Native American groups had been in the U.S. for a long time, and that their cultures had changed significantly over that time (Trigger 2006:279). During the same era, when archaeologists began creating geographical distinctions for marking cultural change, such as the Midwest Taxonomic System, it was bringing to light the notions that different geographical locations had different manifestations of culture (Trigger 2006:285). The archaeological use of diffusion models were further documented evidence that archaeologists recognized Indians ability for change (Trigger 2006:286).

Despite these seemingly progressive changes in the way the archaeologists viewed Native Americans, they were still belittled by the ideology of archaeologists in
the cultural historical era (Trigger 2006:278). When archaeologists assigned origins to
cultural traits, they began to paint the Indian as an imitator rather than a creator. These
ideas of diffusion and migration being responsible for indigenous cultural change
remained unchallenged by cultural historians into the 1950s (Trigger 2006:288).

Although their role as static, civilization destroyers had been changed, American
archaeologists still stereotyped Native Americans as uncivilized people into the mid 20th
century. Archaeologists simply changed their idea of how Native Americans evolved to
fit the framework of the new archaeological theories (Trigger 2006:362). The new
archaeology of the processual era was much more concerned with looking at culture as
system than looking at the human agent within the system. Instead of focusing on the
artifact behind the Indian, or the Indian behind the artifact, processual theorists were said
to have been concerned with system behind both the Indian AND the artifact (Flannery
1967). This left little room for looking at the innate abilities of the Native Americans
themselves.

The post-processual theoretical approach to archaeology in the U.S. was much
more concerned with the human agent. The responses to the “systematic” focus of
archaeology as anthropology such as the post-positivist approach were more focused on
the individual (Renfrew and Bahn 2000:42). This post-processual era coincided with
that of the civil rights movement, when groups such as the American Indian Movement
(AIM) began forming and publicly voicing the need for society to recognize their innate
rights as human beings (Atalay 2005:6). These ideologies likely influenced the post-
processual archaeologists to focus on individual human agency and innate creativity of
the Native American groups. This was also the era when CRM began, and laws such as
NHPA and NEPA began to call for the involvement of indigenous communities in the preservation of their culture (McManamon 2001). Native Americans gaining increased control over their cultural resources was in part brought about by Native American response to archaeologists ignoring their concerns in the past (Ferguson 1996:65).

In the 1960s and 1970s, processual archaeology’s paradigm gave consideration to Native American cultures as being as creative as western cultures (Ferguson 1996:65). The development of CRM that came out of the NHPA allocated government money for archaeological investigations to fulfill Sec. 106 processes, and this greatly increased the knowledge of Native American sites in the United States (Ferguson 1996:66). Moving archaeology into the political realm through CRM took it out of the academic arena with which Native American relations had been characterized by ineffective communication and a mutual lack of respect (Ferguson 1996:65).

In the forthcoming chapters, the history of archaeological and Native American involvement in archaeology, specifically CRM archaeology after 1960, will be discussed in greater detail. A literature review section about Native American and archaeological relations is presented in the second chapter, and a pre-historical and historical overview of the Federated Indians of Graton Rancheria (FIGR) is presented in the third chapter. Each chapter after that presents the history and analysis of legislation that concerns Native American cultural heritage and archaeological investigations.
Methods and Literature Review

Methods

My methods are broken up into two categories: The research that I have done on published literature, case law, and through the internet, and my own human subject research which I gathered from ethnographic interviews.

The Research

I have reviewed literature already written on the subjects of cultural resource management, historic preservation legislation, and archaeological and Native American relations. This will be discussed in the literature review section of this chapter. In addition, I have reviewed case law concerning issues of historic preservation and cultural resource management that were relevant and set precedent for larger changes.

I began at the turn of the 20th century with the first historic preservation legislation, the Antiquities Act. I then researched the points in time when the precedent set by this Act was realized in the form of more recent laws about historic preservation, such as the Historic Sites Act of 1935. I then move to the point in time when legislation was most concerned and active about CRM, historic preservation, and Native American involvement in dealing with remains of the past.

I researched the relevant laws of today and their history, and present them in the following order: National Historic Preservation Act of 1969 as amended, Archaeological Resources Protection Act of 1979 as amended, Native American Graves Protection and

I have also reviewed the ethnographic material available about the Coast Miwok and Southern Pomo. In addition, I reviewed archaeological reports and evidence to glean more information about these tribes' prehistory. I reviewed and presented general information about the history of tribes in California, and focus specifically on the Coast Miwok and Southern Pomo where information was available. Much of the information came from the Federated Indians of Graton Rancheria and their tribal chairperson Greg Sarris. The archaeological research was done at the Northwest Information Center in Rohnert Park, California.

The Coast Miwok and Southern Pomo make up the Federated Indians of Graton Rancheria. This was not always the case. The history of these two tribes and how they came together was obtained from a variety of sources. The congressional restoration of the tribe is listed in the federal register and the Congressional records. A recent account by Greg Sarris at the 150th anniversary of the Mission San Rafael presented the history of the tribe from the time of the Mission to the present (Sarris 2008). There is also current literature by tribal members, such as Greg Sarris, in tribal newsletters such as News from Native California, and The Acorn, which were also consulted.

One of the most widely recognized sources about California Native Americans is Handbook of North American Indians Volume 8 (edited by Robert Hiezer). This volume deals with the central California culture area. It presents information about both the Southern Pomo and Coast Miwok. This volume has information about the tribes on things
such as religion, location, history, language, and cultural practices (Kelly 1978, McLendon and Oswalt 1978).


Another resource is *California Indians: A Sourcebook* (Whipple and Heizer 1971). This book is a collection of archaeology papers, general surveys, historical accounts, and ethnology in material and social culture. It is a wealth of information about California Indian tribes throughout history. It includes Gifford (1936) and his archeological assessment of Miwok houses, and Kroeber's (1939) article about Porno basketry.

In addition to these and countless archaeological reports in the gray literature on the subject of Coast Miwok and Southern Porno sites in Sonoma and Marin counties, there are published ethnographic materials. Isabelle Kelly conducted extensive ethnographic material about the Coast Miwok, which provides eye opening personal accounts of culture and tradition before and during contact with the Europeans (Collier and Thalamen 1996).

Randall Milliken is one of the experts on how California Indians were affected by the Mission system. His book *A Time of Little Choice* (1995) was consulted for its depth in research about the mission system in California.
A review by Richard Beardsly (1954a, 1954b) provides one of the most extensive analyses of the archaeological sites in the Point Reyes and Tomales Bay area. Charles Slaymaker’s dissertation (1982) has a chapter on Coast Miwok archaeology. Robert Edwards, Michael Moratto, Tom King and W. Upson all contributed copious information interpreting the archaeology in the Coast Miwok culture area in a volume dedicated to Adan Treganza for his extensive archeological investigations in the area (Treganza Museum Papers, VI, 1970). Lynn Compas’s Sonoma State Master’s Thesis (1998) was consulted for its wealth of information about the settlement patterns and resource procurement strategies of the Coast Miwok in the Point Reyes and Tomales Bay areas.

The Ethnographic Interviews

I have conducted ethnographic interviews with four human subjects: two archaeologists of Northern California and two members of FIGR who will remain anonymous. Each human subject has been working in CRM for a long time. I used the methods of ethnographic interviews as illustrated by James Spradley in his books detailing how to perform ethnographic interviews (Spradley 1979). I used these methods because they were suggested by my advisor and provided a comprehensive framework to follow when conducting ethnographic interviews. These methods include interviewing an informant, making an ethnographic record, asking descriptive questions, and analyzing the interviews (Spradley 1979). I used written records to record the interviews.

I set up the interviews by contacting people that I already knew on a personal and/or professional level via e-mail. I showed each e-mail to my advisor, accomplished ethnographer John Wingard, before they were sent. I chose my subjects based on their
involvement in CRM and experience with working under CRM legislative mandates. I let my subjects choose a place and time to meet in order to make them feel comfortable. I had anticipated each interview would last an hour, and told this to my subjects. However, the interviews lasted between fifteen and forty-five minutes.

I used these interviews to reveal how these people think CRM and its practices have changed with the legislation, and how their relationship with each other has changed as well. I asked them how significantly they believe the influence between the two groups has been, and if they believed that influence to have had an effect on changes in CRM legislation. I have integrated the interview results into the text of this paper rather than putting them in a separate section. I did this because the interview results were pertinent to completing the thoughts discussed in each chapter.

These interviews provide a small single example of a very large group of people who work in CRM in California. However, the group of Native Americans and archaeologists that I interviewed is representative of many other groups that work in CRM in California. It is important to provide a representative example of people's views to bolster the other evidence lending to the thesis that there has been a history of influence between archaeologists and Native Americans that has led to changes in CRM legislation.

I have used these interviews as a way to help realize the other evidence (case law, Department of Interior bulletins, scholarly papers and articles from scholarly journals) that, in some respects, the laws have changed in part because of the influence between two groups that were originally mandated by the law to work together. Because of this, the influence has been circular: people would not have the opportunity to influence each
others ideas without the decree of the law, and the arm of the law may not have reached that point as quickly as it has without the influence between people.

_Literature Review_

There is a lot of overlap in the literature concerning Native Americans, archaeologists, and the legislation that applies to each of them and under which they work. Each of the forthcoming chapters include reviews of literature pertaining directly to the subject discussed in those chapters.

Because there is no body of literature that discusses the circle of influence between archaeologists and Native Americans because of legislation specifically, I have written cursory literature reviews on five areas in which I organized the larger bodies of literature that directly contribute information about the issues of Native American and archaeological relations under the law in U.S. and California, respectively. I have grouped them into _Cultural Resource Management Legislation_, an overview the group of literature that deals with the history of CRM legislation; _Archaeologists and the Law_, which illustrates the body of literature about archeologists and the laws under which they must work. I also reviewed literature about _Native Americans and the Law_. In the next section is the body of literature concerning _Native American and Archeologists Relations_. The concluding section will deal with literature on legislation specific to California, and transition into the chapter about the Federated Indians of Graton Rancheria and literature about their history.
CULTURAL RESOURCE MANAGEMENT LEGISLATION

The area of law under which cultural resources are dealt is historic preservation legislation and environmental legislation. Many authors have written about historic preservation legislation and how it has progressed over time. Since the 1980s, works have been published by authors such as James Glass and Charles Homser that track the history of historic preservation. Their works present a chronology of historic preservation history in America from 1926-1949, and from 1957 to 1969 (Glass 1990, Hosmer 1965). They discussed how historic preservation has gone from being relevant largely to only private individuals and organizations, and written into legislation only after many efforts to explain their relevance (Glass 1990, Hosmer 1965). Bruce Trigger has also written extensively about archaeology and its underlying theory and practices over its history around the world, and how and why these have changed (Trigger 2006). More recent publications deal specifically with the cultural resource management aspect of the historic preservation laws, such as Tom King (1998, 2002, 2004), Michael Schiffer (1977), and Lynn Sebastian (2004). These works give the history and reasons behind legislation that works to protect cultural resources. They also present discussions about problems people perceive the laws have, and proposals of ways to make the laws work better.

In the mid 1970s, a change took place within archaeology when federal agencies became sources of economic support for archaeological projects. This differed from private funding because with legislation concerning property rights and the management thereof, federal funding followed (Schiffer and Gumerman 1977:8). This was the beginning of cultural resource management, in which the archeologist’s primary task was
to provide managers of federal agencies with understandable information and recommendations based on sound scientific excavation” (Schiffer and Gunerman 1977:2).

These laws have a vast and interesting history. Michael Schiffer, George Gumerman, and Tom King have each given comprehensive histories about CRM in the United States. Schiffer and Gumerman published the edited volume Conservation Archaeology: A Guide for Cultural Resource Management Studies (1977), in which many authors contributed to the young yet burgeoning field of what was known at the time as conservation archaeology, salvage archaeology, or cultural resource management. More recently, in his book Cultural Resource Laws and Practice (2004), King outlined the history and implications of legislation that deal with historic preservation and cultural resources. King discussed the same things that Schiffer and Gumerman had written about in the late 1970s, such as history of historic preservation law and historic preservation authority. However, King’s book is more recent and therefore deals with amendments to many laws such as the National Historic Preservation Act (NHPA) and the Archaeological Resource Protection Act (ARPA) (King 2004). King also detailed how the laws concerning cultural resource management have changed, and attributes this to the experience people have gained by dealing with these laws again and again (King 2004:26). This is a good point to discuss literature about archaeology and legislation.

ARCHAEOLOGY AND THE LAW

Many scholars and authors have contributed literature about the body of legislation that governs how archaeology is practiced in the United States. Archaeologists
write about themselves and their practices often, and even acknowledge that they do so (Trigger 2006:i, Watkins 2005:429).

Tom King is one of the most prolific authors lending to the field of literature concerning cultural resource consultants and the legislation with which they deal. Along with Schiffer and Gumerman (1977), King has written books for people working as archaeologists or consultants in the CRM field, as previously discussed. He wrote *Cultural Resources Law and Practice* in 1998 and issued an updated second edition in 2004. This book details the history of CRM law and how it has changed (King 2004). King wrote about each piece of legislation with which CRM practitioners are involved and fully walks the reader through the ways in which certain historic preservation statues are interpreted in CRM practice. He gave examples of how the law works by using specific case studies to illustrate how the laws have been applied to real life situations (King 2004).

Tom King also authored *Thinking about Cultural Resource Management: Essays from the Edge* (2002), in which he compiled essays he had written over the years about archaeology and CRM law. The essays included touch on issues such as differing views about reviews done under Sec. 106 of the NHPA (King 2002), and issues with the way preservation is treated by the legal process (King 2002). He also discussed the problems he perceived some CRM laws pose for both archaeologists and Native Americans, and touched upon the integrity of archaeologists as they follow legal process when working in CRM (King 2002).
King also co-authored a 1990 bulletin for the National Park Service (NPS) to help guide cultural resource consultants through identifying and recording traditional cultural properties (Parker and King 1998).

Stine (1992) presented a case study that detailed the trials and errors of dealing with historic preservation law early in CRM's history in order to identify and mitigate adverse effects to archaeological resources within a very large area of land. In this case of the Tennessee-Tombigby Waterway, Stine illustrated how cultural resource managers dealt with many important historic and prehistoric sites that were in the path of the construction of a water resource, and how they created solutions that were unprecedented by any previous models or guidelines to follow about how to undertake such a task. It is a good example of how CRM has evolved through experience, by viewing the CRM process through the scope of the waterway project (Stine 1992).

In Richman and Forsyth's edited volume *Legal Perspectives on Cultural Resource Management*, many more authors lent their experience and erudition on different issues involving cultural resource legislation (Richman and Forsyth, eds. 2004). Many CRM subjects in the United States are covered, such as archaeology and its place in the law (Sebastian 2004), how theory, both archaeological and legal, controls the assessment of cultural property laws (Hutt 2004), issues about how finders law and theories of property affect historic resources in certain unorthodox situations, such as shipwrecks and underwater resources (Bederman, 2004, Cunningham 2004, Phelan and Forsyth 2004), and legislation surrounding the case laws and history about how people who violate certain historic preservation laws should be punished (Desio 2004).
There is also a group of essays in Richman in Forsyth’s book that deal with archaeological materials and the laws that govern the antiquities market, such as trade laws and frauds issues (Brodie 2004), and how protection of archaeological sites can be bolstered by certain antiquity laws that penalize trade and trafficking of certain objects of antiquities (Gerstenblith 2004).

The President’s Advisory Council on Historic Preservation (ACHP) is charged with the regulation and oversight of the processes mandated by the historic preservation legislation the NHPA. They issue bulletins intermittently for practitioners that deal with historic preservation law. Some of them speak specifically to archaeologists, such as “Recommended Approach for Recovery of Significant Information from Archaeological Sites” (2001), which provides guidelines to help archaeologists recover scientific data from sites and help archaeologists maintain a protocol that is consistent with the processes mandated by the federal statutes in the NHPA. Another useful bulletin is “Consulting with Indian Tribes in the Sec. 106 Review” (2003), which goes through the preferred protocol of consultation that is consistent with federal regulations. These have helped archaeologists, most of whom aren’t lawyers, to interpret the often cryptic statutory regulations. The ACHP also has a website, which makes available for viewing all of the case law involving historic preservation that has been heard. It is easy to search for specific cases that can provide a clearer context for how the present regulations were reached.
NATIVE AMERICANS AND THE LAW

There have been many laws passed since the turn of the twentieth century that deal with the cultural heritage of land in the United States. However, many of them deal with the cultural legacy of the populations that have settled here only in the last few hundred years. The Native American people, whose ancestors have existed on this land for centuries before European mass settlement, have been given surprisingly little consideration by earlier laws that mandated protection of cultural heritage. Relative to pre-European contact with the Americas, Native Americans have only a small fraction of their people left today. Very little remains of what was left behind after contact because of the vast amounts of development. I reviewed literature by authors who have written about this subject as well as constitutional documents and case law.

Many authors have written about how legislation in the not so distant past has largely disregarded considering the concerns of smaller cultural groups. Sonja Atlay postulated that the dominant culture and cultural values upon which the United States was founded continue to dominate in the leanings of the legislature (Atlay 2006:282).

Early in U.S. history, the Constitution gave the feeling that tribes are foreign nations living within U.S. lands. In article 1 sec. 8 of the U.S. Constitution, it states that Congress has the power to regulate commerce with foreign nations and the tribes.

The Congress shall have power...to regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes... - Article 1, Sec. 8, U.S. Constitution 1787.

Cohen interpreted this as giving Congress the power to rescind and/or restore federal recognition at their will (Cohen 2005: sec. 3.02[2]). Native Americans and their
perceived status were thus being written into the U.S. law very early in U.S. history, without their knowledge.

The passage of the 14th amendment mandated fair and equal protection for all. “No state shall make or enforce any law which shall...deny any person within its jurisdiction the equal protection of the laws” (U.S. Constitution, Amendment 14, 1868). However, the U.S. Supreme Court held in 1884 that the 14th amendment did not automatically make Indians citizens (Elk v. Wilkins, 112 US 949 (1884)).

The earliest mention of Native American groups in case law echoes the sentiments the U.S. had at the time. It could be interpreted to mean that the government did not want to deal with the tribes that much. The U.S. Supreme Court recognized that the U.S. government had a unique relationship with the Native Americans in 1831, in Cherokee Nation v. Georgia, (30 U.S. 5 Pet. 1 (1831)). The U.S. stated that although a tribe is not analogous to a foreign nation, it is “a distinct political society, separated from others, capable of managing its own affairs and governing itself” (Cherokee Nation v. Georgia, 30 U.S. 5 Pet. 1 (1831)).

For a long time, federal statutes that dealt with historic preservation largely excluded Native American interests. Even now, laws pertaining to Native Americans only apply to Native Americans who are members of a federally recognized tribe (Richman 2004:222).

Many authors attribute the addition of Native American interests in legislation to years of influence from many Native groups that have banded together to get their voices heard (Atlay 2006, Deloria 1969, Dongoske 2000, Echo Hawk and Echo Hawk 1994, Mihesusa 2000, Thomas 2008). Beginning in the 1960s at the same time as the civil
rights movement, alongside other minority groups, Native Americans began publicly voicing criticism over the archaeological excavation, collection, and display of their ancestral and cultural remains (Atlay 2006:3).

The American Indian Religious Freedom Act (AIRFA) was passed in 1978, and made it the policy of the United States to respect and protect the inherent rights of exercising their right to practice their traditional religion on federal land (42 U.S.C. 1996). This was a large step in bringing the issues of culture to the forefront of legislative policy. This was important to many Native peoples because they were still suffering from policies that prohibited their freedom and ignored their rights (Harjo 2004:130).

The drafting and passage of AIRFA grew out of a Native American national coalition in 1967 to gain protection of their sacred places, objects, and ceremonies, and was passed in 1978 after perseverance from these people and their lobbyists (Harjo 2004:130). It was later amended in the 1990s to offer even more protection to increase protection of sacred sites and requiring consultation with tribal and religious leaders (Harjo 2004:131).

Laws were becoming more open to Native American sentiments, and being signed into law more quickly than they had in the past. Cultural consideration in the law was burgeoning. Harjo (2004:133) postulated that AIRFA laid the groundwork for legislation mandating the return of sacred items and human remains to the tribes, such as the 1996 Indian Sacred Sites Executive Order and the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA).

Before the 1960s, the Antiquities Act of 1906 and the Archaeological Resource Protection Act (ARPA) (16 U.S.C. 470) allowed certain protections of some Native
American objects, such as graves or objects of antiquity. However, these considerations only gave certain professionals the right to systematically excavate or analyze such objects if they were on federal land (Richman 2004:223). The National Historic Preservation Act (NHPA) of 1966 (16 U.S.C. 470) and its regulations allowed Native Americans to gain a foothold as a potential party to be consulted in a process mandated by federal legislation (36 C.F.R. 800). King has discussed the NHPA and Sec. 106 of the Act and the regulations in depth (to be discussed in chapter IV). He gave a comprehensive overview of how to interpret and follow the Sec. 106 process set for the in the regulations. In addition, he depicted hypothetical examples of situations that CRM practitioners may have to deal with, and gave informed suggestions on how these situations can be ameliorated and simultaneously compliant with legislation (King 2004). He has not only discussed the process mandated by CRM laws, but also the history of the laws, their regulations, and how they have changed over time (King 2004).

Charles Carrol (1993) also discussed the NHPA and how this and other federal laws were administered to Native American groups (Carrol 1993). He focused on the 1992 revisions to the law, because the points of contention that were revised directly affected indigenous archaeology (Carrol 1993). The changes that mandate consultation with tribes when archaeology is conducted on tribal land gave tribes more responsibility and control over their own resources (Carrol 1993). These revisions also included references to Traditional Cultural Properties (TCPs) being eligible for the National Register of Historic Places, an official list of historic objects, places, sites, buildings and districts that are important to the history and culture of the United States (Parker 1992). In addition, the ACHP issued bulletins with guidelines to help CRM practitioners engage
in consultation with Native Americans, such as *Consulting with Tribes in the Section 106 Process* (ACHP 2005).

After the 1992 amendments to the NHPA were passed, they provided an incredible learning experience for CRM practitioners and Native American tribes in the next few years as consultation between the two groups burgeoned. Some scholars suggested that this "new archaeology," which included consultation between the two groups with the most vested interest in prehistory, would be a positive beginning to a positive new era in CRM (Zimmerman 1995:297).

Case studies highlight achievements for which the new legislation was the catalyst. Ferguson et al. (1993) wrote how archaeologists and ethnohistorians worked together with the Hopi tribe to enhance the cultural preservation of their past (Ferguson et al. 1993). However, they still noted that the Hopi had to acquiesce to a legally implemented form of government in order to be recognized federally. They had to structure their group in a way similar to the structure of the U.S. government, by recognizing one main leader to make all of their descisions, and assigning certain posts to other tribal members. This structured form of government is not necessarily conducive to most native epistomology (Fergusen et al. 1996:29). Charles Carrol also lent his thoughts on the fact that making Native American groups work within the confines of a federally mandated government structure is often very different from the way that Native Americans have traditionally structured their tribes, which is more holistic and less hierarchical. The federal recognition process forces them to acquiesce to a standard of law which with they are unfamiliar, and which was drafted without their involvement or input (Carrol 1993:6).
Greiser and Greiser (1993) and Parker (1993) expanded upon the basic differences between the laws and the way traditional cultures who deal with the laws think. Although many were optimistic that 1992 legislative changes were revolutionary because of their recognition of a property that is significant for its intrinsic traditional value (such as hedge fields where basketmakers gathered their materials or the oak groves where people traditionally gathered acorns for generations) (Parker 1993:1). Others highlighted specific disadvantages of consultation processes most tribes find irritating at the very least, such as set time frames for sending responses to certain requests for information (Othone and Anyon 1993:44).

Many authors have taken the position that although certain laws have been gaining momentum in the sense of being more considerate to certain cultural concerns, Congress is, for the most part, still inactive in many areas of cultural consideration (Harjo 1994:136), and many of the laws still have problems when it comes to enforcement and consultation procedures (Amato 2004, King 2004, Lovis et al. 2004, Richman 2004).

Native Americans’ concerns about laws that govern their cultural heritage have been discussed by many authors in the present decade. King discussed certain ways in which laws have changed to include these properties, as many traditional societies do not need a physical feature for a place to be significant (King 2003).

Many other authors have discussed how cultural minority groups have a vested interest in the way that the government protects certain properties. Rothstien (2004) conducted research concerning how museums and tribes are conflicted over how history is represented. Many authors, reporters, and columnists lent their opinions about the court case Native American Heritage Commision v Board of Trustees (51 Cal.App.4th
In this case, the Gabriellino Indians had practiced their traditional Chingishchish religion on a certain property for many years. This property was on the campus of Cal State Longbeach, who tried to develop the area of land, called Puvvunga by the tribe (Dixon 1993, Jacobs 1993, Ruyle 1995). It caused a lot of conflict between the tribe and the campus, and brought to light the question of what qualities a certain property had to possess to legally be considered important (*Native American Heritage Commission v Board of Trustees* 51 Cal.App.4th 675, 59 Cal.Rptr.2d 402 1996).

When the government has tried to make laws or programs according to or about the Native Americans, they have mostly limited such laws and programs to only those tribes with federal recognition (Richman 2004:222). This means none of the actual laws that speak precisely of a Native American tribe apply to any tribe that has no federal recognition. This is another hurdle in certain Native American groups’ struggle to be included in or considered by legislation, because even the process of federal recognition involves acquiescing to laws that often belie their ideas about how to govern themselves.

**ARCHAEOLOGICAL AND NATIVE AMERICAN RELATIONS**

Because archaeologists in the U.S. primarily study Native American prehistory, there is copious literature about the relationship between the present day tribes and archaeologists with respect to prehistory. Bruce Trigger (1986) was very productive in writing about the changing ways that archaeologists view Native Americans. In the 1700s and 1800s the dominant viewpoint among settlers in the Americas was that Native Americans were inferior to Europeans, who considered themselves more civilized groups because of vast differences in culture, society, and lifeways. This sentiment was used to
justify the breaking of treaties and the usurping of land (Trigger 1986:206). European settlers then turned from using Native American’s perceived inferiority to rationalize their prejudices, and archaeologists went to simply ignoring their existence in their work and research (Trigger 1986: 206). Fowler (1987) follows this sentiment that archaeology in the United States early on may have been partially to blame for the separation of Native Americans from the history of the United States, thus making it easier for the government to justify moving them out to make way for “civilization” (Fowler 1987:203).

Joe Watkins compiled a comprehensive history of Native American viewpoints in his paper discussing indigenous perspectives in archaeology (2005). He noted that archaeologists have been prolific in writing about their relationships with Native Americans, and the history and laws pertaining to such things, while Native American groups have been largely silent on the subject by comparison (Watkins 2005:433).

However, in North America in 1990, many Native Americans from various groups got together and had discussions and presentations about the archaeological enterprise. These were published in *Preservation on the Reservation* (Klesert and Downer, eds. 1990). This was only one of many more Native American publications that were proliferating at the end of the 20th century.

One of the most influential laws bringing Native American interest into archaeological realm was the Native American Graves Protection and Repatriation Act (NAGPRA) of 1991 (discussed in Chapter V). This was an important law because it was a big step for consideration of Native American cultural concerns under federal law. This law had come about by communication between tribal representatives, archaeologists and museum representatives (Lovis et al. 2004:178). Since this crucial step took a long time to reach, NAGPRA has been touted as a very progressive law in that it considers cultural concerns of Native Americans (Atlay 2006, Carrol 1993, Harjo 2004).

Lovis et al. (2004) gave a comprehensive overview of the history of NAGPRA and the issues underlying it. They reviewed the ethical principles of the Society for American Archaeology (SAA) to decide if the process of NAGPRA was being projected into law fairly and with respect of both cultural and scientific considerations. They concluded that although Native American groups and archaeologists who want to study the past in the U.S. may not always agree, that they will do their best to understand positions and work together to compromise a law that considers both the interests of science and culture (Lovis et al. 2004:181).

Despite indications of forward movements, things are still far from perfect when archaeologists and Native groups work together in the opinion of some authors. Sonya Atlay believes that archaeologists need to be open to a more indigenous mindset (Atlay 2006). She joins George Nicholas (2006, 2007), in citing a growing body of literature describing the critical role that Native Americans have played in bringing about dramatic shifts in the legislative changes that govern archaeological practices, such as Bray's

Some academic Native American historians have views that are less positive about the inclusion and consultation of Native Americans in archaeology in the U.S. James Riding In (1997) and Devon Miheasuah (1996) are pessimistic about working under the auspices of legally mandated research and science. However, not all perspectives have been anti-archaeology (Miheasuah 1996, Riding In 1997). Sampson (2008) asserts the Board of Confederated Tribes of Umatilla Indian Reservation of which he is Chairman said that he does not reject science, but believes that it is not the answer to all questions, and should not trump religious rights and beliefs. However, he said the Umatilla use scientists and science to learn about the history of their own tribe through material remains (Sampson 2008:40).

Most archaeologists working in CRM in the U.S. have been consulting and working together with tribes for at least a few decades. Some are very good at communicating and working together amicably. The NHPA of 1966 as amended, ARPA of 1979 as amended, and NAGPRA of 1990 have all required some level of interaction. Many people are now, after interacting by virtue of these laws for decades, finding the easier ways to compromise.

Today there are many Native American groups who operate their own CRM firms, taking on the role of CRM consultants themselves. In the book Tribal Cultural Resource Management, it is revealed that many tribes have felt the power of legal influence behind them in the history of their interaction with archaeologists, and now
many tribes work alongside archaeologists managing their own resources (Stapp and Burney 2002).

CALIFORNIA LAWS

California has been a leader in laws concerning environmental and historic preservation. The California Environmental Quality Act (CEQA), applied mitigation of effects efforts to private property if it affects the public good, which it almost always finds a way of doing. Senate Bill 18, passed in 2004, helped create a dialogue between the tribes (whether or not they are federally recognized), and the people who are involved in land development, such as the city planning commission, the city council and certain city developers (California Civil Code 815.3). It does this by mandating contact with Native American groups, both federally recognized and not, every time there is an edit to a city’s general plan.

The Governor’s Office of Planning and Research (OPR) has the most written information about California environmental consideration laws. It has an extensive website from which all laws and statutes concerning planning are listed (www.opr.ca.gov). The links on the site are informative about planning laws and the regulations. The information provided simplifies certain regulations that citizens need to follow when thinking about planning in their community. OPR breaks down the CEQA regulations into a format that is easy to understand. This has helped many common citizens be more aware and law abiding when it comes to concerns about cultural resources in the community.

At the early part of the 19th century, Franciscan missionaries were trying to
convert all the Native populations to Christianity by way of setting up missions in California, mostly near the coast, from Baja California to midway north across the state. After 1834, the missions were secularized and the Indians were not considered legally because California was not yet a state. After California became a state, the first piece of legislation involving Native Americans was the Act for the Government and Protection of Indians (Chapter 133, Statutes of California, April 22, 1850). The implications of this act essentially made Indians property of the person whose land they were on (Sarris 2008:5). Greg Sarris discussed older laws in California that concerned Native Americans.

In 1908, Congress authorized the Secretary of Interior to purchase certain lands for and mark the boundaries of certain lands to be reserved for Native Americans (35 U.S. statute 70-76, 1908). Following the federal lead, from 1912 to 1924, California developed the Rancheria or Reservation system for homeless Indians after years of what had essentially been indentured servitude (Sarris 2008:42). Since Native Americans were considered a separate government entity by the U.S. federal government, the laws that affected their status and land rights came largely from the federal government. These changes in Native American status via federal programs, laws, and mandates are discussed in more detail in Chapter III.

Native American groups, F IG R in particular, and their dealing and interactions with laws of California and more broadly arching federal laws will be discussed in the following chapter.
Chapter III
Federated Indians of Graton Rancheria

Introduction
This chapter is about the history of the Federated Indians of Graton Rancheria (FIGR). It begins with the prehistory of the two tribes that make up FIGR, the Coast Miwok and Southern Pomo. The two groups will be discussed separately throughout their prehistory, and be discussed together in tracing their history through contact period, such as the similar ways both tribes experienced the mission systems, secularization, and the Rancheria system. Lastly, this chapter will discuss how the two tribes together went through the federal recognition process.

To be a tribe means different things to different people. This chapter will touch on both what it means to be a tribe from the perspective of the Coast Miwok and Southern Pomo groups through their traditional cultures and tribal practices, and the government of the Untied States’ legal definition of a tribe. The major difference in these two definitions is that the Native American’s idea of their tribe has remained the same, and the government, over time, has changed what they define as a tribe.

Historical linguistics is a field of anthropology that compares lexical indicators of root words (words for things like local flora and fauna) to decide how and if different languages are related and if and when they split. Linguistic analysis of present day Sonoma and Marin counties, the land areas of the Coast Miwok and Southern Pomo, were researched by anthropologists such as Barrett (1908), Gifford (1922), and Kroeber (1925), and solidified through the work of archaeologists such as Basgall and Bouy (1991), Heizer (1942, 1971), and King and Upson (1973). Ethnographers have also
contributed to the research about the boundaries of certain tribal groups (Kelly 1931, 1978, McLendon and Oswalt 1981, Theodoratus et al. 1979). Ethnographers themselves give slightly conflicting information on the actual boundaries of these groups (McCarthy 1991:37). Despite the research of ethnographers and archaeologists, boundaries around which anthropologists have drawn for the Southern Pomo and Coast Miwok are based on language families.

To many Native Americans being a tribe has to do with shared languages, rituals, kinship and clan ties, and a spiritual relationship to certain lands. In contrast, the federal government uses the term Native tribe to designate a group as having a political relationship or recognition with the federal government (Cohen 2005:42). Through the eyes of most tribal people, they have always been and will always be a tribe. Legally, a tribe has to be recognized by Congress to be eligible to have any standing under or consideration from the government. However, as California tribes were forcibly split apart and fragmented throughout history, survival, not governance, became the tribe’s primary goal (Sarris 2008).

Still, genealogical records from the mission registries show that there is clear continuity between the present day members of the Federated Indians of Graton Rancheria and their Coast Miwok and Southern Pomo ancestors that were forced into the missions, and for whom the original Rancheria was established in 1920 (Georke 2007, Sarris 2008). The process by which this occurred is discussed henceforth.
Prehistory of the Southern Pomo and Coast Miwok Language Groups

Introduction

The land and its environment that California’s indigenous peoples inhabited from prehistory to the present are linked in a holistic way to their traditional cultural ideology and practices. A holistic epistemology contrasts with a compartmentalized epistemology in the sense that every aspect of knowledge is connected; whereas in a more compartmentalized view, aspects of knowledge and one’s surrounding environment are put into categories (Agrawal 1995). Compartmentalized epistemologies are usually equated with western cultures, and holistic epistemologies are most often the worldviews of indigenous cultural groups (Agrawal 1995:413).

Within a holistic worldview, an indigenous groups’ religious or spiritual ideology is directly related to the land and the resources they get from the land. The geography, flora, and fauna of the area in which people live have more than simply utilitarian connections to their culture. Many aspects of their spirituality came from the holistic link between local environments and daily life (Agrawal 1995:414).

The ethnographic information collected in the early part of the 20th century, coupled with the archeological record, help provide copious information about the Coast Miwok and Southern Pomo’s religion, ceremonies, health care, food, language, oral histories, and spiritual ideology before European contact. However, ethnographic sources are difficult to substantiate for various reasons. Most ethnographic interviews were conducted hundreds of years after European contact, after indigenous cultures and practices had suffered massive changes. Therefore, changes had occurred in their culture, so the interviews may not give an accurate picture of indigenous culture before contact.
However, when coupled with evidence from the archaeological record, such as placement of physical objects and artifacts left in place on humanly modified land areas, the ethnographic material can be substantiated to some extent. Viewing both ethnographic and archaeological evidence together can in fact help substantiate the authenticity of them both, by the value of comparing physical evidence with oral tradition.

In California, the many different groups of people who have lived here for at least the past 10,000 years have lived as stewards of their environment. They not only used the land as a resource, but also maintained a spiritually integral link with the land and its resources (Borgerhoff Mulder and Coppolillo 2005:19-20). The result of these generations of mutually beneficial human and environment interactions was an anthropogenic landscape. When encountered by some of the first explorers, it was noted as being “park-like” (Borgerhoff Mulder and Coppolillo 2005:19-20).

The local flora and fauna that were utilized by indigenous tribes in California are constantly referred to in their folklore (Anderson 2005:43). Rituals were performed in honor of harvests that coincide with the circadian rhythms of nature, of which the indigenous folks had extensive understanding and knowledge (Anderson 2005:51). Authors have explained that many of California’s indigenous people have a “kincentric” view of nature, meaning humans are related to all non human entities, including plants, animals, and rocks by kinship ties, such as one is related to a brother or cousin (Anderson 2005:57). This is vastly different from the way Western knowledge puts non-human entities into categories which are effectively separate from human autonomy.

Kroeber was one of the first American anthropologists to recognize how vastly different the Native American epistemology was from that of the western world. He
remarked that little is known about the culture of California before Spanish contact, but that it was clear that rules of custom and concepts of land ownership were very different than those of Europeans. He recognized that an important facet of why the Indian’s relationships to the land differs from his own was because their population size was less dense (Kroeber 1954:91). He attributed this to differences in culture, saying “civilized” societies are based on control over living animals and plants as food, which allows for accommodation of a larger population (Kroeber 1954:90-92).

Half a century later, we now have copious information from archaeological studies that can be compared to and coupled with the ethnographic evidence concerning the Coast Miwok and Southern Pomo to give us at least a window from which information about these tribes, pre-contact, can be gleaned. These examples will be discussed forthwith.

The Southern Pomo

The Southern Pomo are delineated from other groups because Pomo is a language family. Southern Pomo is one of seven language groups in which the languages are very related, but the cultural practices between each group differs (McCarthy 1991:36). Pomo languages all descend from the same ancestor language (McCarthy 1991:36). The people that speak these “Pomoan” languages are designated by anthropologists such as Barrett (1908), Kroeber (1925), and McLendon and Oswalt (1978) as Pomo. Barrett (1908) gave these language groups geographical names, hence “Southern” Pomo. Kroeber (1962:30) defined the actual political entity within that language group as a Triblet: a basic, politically independent land holding group.
The ethnographic material on the Pomo is extensive, and archaeologists have also been studying the prehistory of the area for a long time. The results of archaeological studies, surveys, excavations, testing and analysis are very often similar to the pictures of Southern Pomo life that are painted by the ethnographic material, and as such can help bolster the validity of the ethnographic material.

Basgall and Bouey (1991) did a study of the Warm Springs Dam / Lake Sonoma Locality. In it, they acknowledged their predecessor, Baumhoff (1978), who was responsible for many of the previous studies in this area, including archaeologically identifying the occupation phases and projectile point typology of the North Coast Ranges. Basgall and Bouey amalgamated the evidence published by many archaeologists who had studied in the Southern Pomo culture area since the mid 1960s, and made an extensive report on archaeological sites in the area. They brought together archaeological data from many sites in the Southern Pomo culture area, recorded by archaeologists such as Jackson (1981), Schultz (1982) and Slaymaker (1983) (as cited in Basgall and Bouey 1991). Treganza identified 11 sites in this area (Basgall and Bouey 1991). In 1979 Baumhoff excavated CA-SON-600 and decided it may be a village that was identified ethnographically as the village of Takoton (Basgall and Bouey 1991). Since this study comprises the results of so many archaeological investigations in the Southern Pomo culture area, it has copious information archaeologically to compare to the ethnographic information. Both of these lines of anthropological evidence will give us a better idea of the Southern Pomo life-ways prior to contact.
HABITATION AND SUBSISTANCE

The Southern Pomo culture area lies in modern day Sonoma County. It extends for forty miles north of Santa Rosa, and extends from the eastern Russian River drainage westward to the coast. It is between the Kashaya culture area to the south and the Boya culture area to the north (McLendon and Oswalt 1978:279).

This area is known in the present day as the Russian River Valley. At the turn of the century, it was a lush, fecund valley, half timbered with conifers and oaks trees surrounding water sources such as streams and drainages (Kroeber 1925:225). Food was abundant in this area. There were fish and crustaceans on the coast, and small game, acorns, and buckeye in the valley (Barrett 1952:47). The Southern Pomo utilized almost every type of nut or berry in the area, along with birds, mammals, and fish. It is said that there was rarely any drought or any period of food shortage (Barrett 1952:48).

The majority of sites discussed in Basgall and Bouey are located on Smith Creek, Dry Creek, and Warm Springs Creek. Florally, this area has oak, evergreen, redwood, and such a variety of water and land resources it has been deemed ideal for non-agricultural societies (Baumhoff 1978:16). The land was generally managed by controlled fire, and pruning and coppicing of arboreal areas (McCarthy 1991:43). These are normal practices for indigenous living and land management. The results of the archaeological excavations reflect the living practices of the Southern Pomo during the time they inhabited the area before contact.

Faunal bones found at the majority of Southern Pomo sites represent a variety of animals, including fish, deer, elk, rabbit, and squirrel. Faunal bone was found at high
concentration in earth oven features on sites such as CA-SON-593-II, indicating the cooking of animals (Basgall and Bouey 1991:132).

Acorn was the most prevalent of the harvested subsistence materials (McCarthy 1991:31). Many groundstone tools were found at the Southern Pomo sites, such as pestals, milling slabs, handstones, hammerstones, abrading stones, mauls and anvils. These are tools and instruments that are used for shelling and grinding acorn (Basgall and Bouey 1991:135). This archaeological evidence is congruent to the ethnographic record which indicates that acorns were important for subsistence (Barrett 1952:51). However, one thing indicated ethnographically that is not made blatant by archaeological evidence is the spiritual importance of the acorn and the acorn collecting (Barrett 1952, Kroeber 1925, McCarthy 1991). This reifies the importance of viewing both lines of evidence together to get a more accurate picture of prehistoric life.

Near modern day Cloveradale is CA-SON-593-II, surrounded by oak, buckeye and bay. This site has significant midden deposits, which indicates a possible village site. This indicates possible village because midden indicates a lasting occupation, as it is greasy soil comprised of a significant amount of organic material decomposing over a long period of time. Although no ethnographers identified a village at this location, it was thought to perhaps be affiliated with a trible ethnographically defined as Shahkowwe (Merriam and Talbot 1974).

When village sites are identified archaeology, but are not indicated by ethnographies as having been a Pomo habitation village, such as CA-SON-593-II, this can be explained in a variety of ways. Either the ethnographers did not hear about them, the informants did not know about them, or the informants did not tell the ethnographers
about them. It is also feasible that village sites such as CA-SON-593-II were abandoned of habitation years before the ethnographers did their research. Archaeologically, however, physical evidence of habitation, such as midden, can lead researchers to the logical supposition that sites like this were villages. That ethnography does not indicate villages in certain locations that archaeology does can be supposed by the archaeological evidence itself. For instance, the lack of any historic or proto-historic artifacts on certain sites such as CA-SON-593-II may mean that the villagers left this area before contact.

MATERIAL CULTURE

Material culture is connected with subsistence in the sense that many of the things the Southern Porno people made were for food processing, storage, and transportation. This connection between different aspects of life is consistent with a holistic epistemology, as discussed above. However, material culture as a category within itself can be identified archaeologically in addition to ethnographic evidence of it, just as the aforementioned evidence of habitation and subsistence.

There is archeological evidence that the Southern Pomo were using grinding implements to process food from the presence of mortars and pestals, making beads from the presence of drills, making projectile points from copious lithic debitage from the presence of obsidian and chert, and weaving baskets from the presence of awls in the aforementioned culture area for thousands of years (Basgall and Bouey 1991).

Ethnographically, the Southern Pomo were said to have ground acorns using mortars and pestals (Kroeber 1925:245). Mortars and pestals were material evidence of food processing. Although these items are just as connected to subsistence, the food
processed was carried in baskets. Basketry was also a very elaborate and important part of Southern Pomo material culture. Baskets are made out of organic materials that deteriorate quickly, so are rarely found, therefore difficult to substantiate archaeologically. However, ethnographically we know that the Southern Pomo cooked in baskets, as well as in earth ovens (Barrett 1908:135).

Basketry of the Southern Pomo and the Pomo in general was studied and written about extensively by archaeologists and ethnographers because of its unique intricacy and workmanship, and the importance of aspects of baskets and their construction to the Pomo culture. The process of gathering the materials, the constructing of the basket, and the uses the baskets had in the end were all very important (Allen 1972, Kroeber 1925, Shanks 2006). Gathering materials for baskets was a fun but sometimes difficult endeavor. The materials usually sought after for basket making were bulrush (*scripus pacificus*), wolly sedge (*carex lanuginosa*), and redbud (*cercis occidentalis*) (Allen 1972:17).

Not only the Southern Pomo but all Pomo tribes used baskets for cooking, storage, gifts and symbols (Barrett 1908, Kroeber 1925, Shanks 2006). Every element on the basket; feathers, beads, color patterns, was a material representation of something important to the Southern Pomo culture (Allen 1972:3). Archaeological evidence that supports basketry making would be the presence of awls for tightly weaving grasses into baskets. Archaeological investigations have uncovered artifacts such as bone awls for weaving baskets, and drills for making shell beads (with which some baskets are decorated), all at archaeological sites in the Southern Pomo culture area (Basgall and Bouey 1991).
Early ethnographic evidence suggests that the Southern Pomo used beads for decoration, ceremonial purposes, and also as currency (Kroeber 1925:249). This may not always have been the case. According to archaeological evidence, a higher concentration of beads and awls were found on sites with later occupation, and in later phases of occupation on multi-phase sites (Basgall and Bouey 1991). This archaeological evidence supports the idea that beads being used for money did not come about until after first European contact, as some ethnographers have hypothesized (Basgall and Bouey 1991:97).

LIFE AND DEATH

Ethnographer Kroeber indicated the Southern Pomo lived in small communities which were around 100 people (Krober 1925:229). They built their circular houses using wooden poles for framework and thatched them with grasses (Kroeber 1925:241). Villages also had a sweathouse and a dance house; these are distinguished from each other by the sweathouse being earth covered (Krober 1925:242).

Village life likely mirrored small village communities of today. People likely went about daily activities such as flint napping obsidian and chert, processing acorns with grinding implements such as mortars and pestals, and interacting with each other. They spent time gathering and processing food, making baskets, and fishing. They did not wear much, men mostly a deerskin loincloth, with women using a double apron of deerskin, or of split tules (Krober 1925:240). Ethnographic evidence indicates the Southern Pomo villages traded with each other and with other Pomo tribes (Krober 1925:257). Analysis of many archaeological investigations at sites in the Southern Pomo
culture area indicate trade through clam shell disk beads, present throughout many Southern Pomo sites, mostly in the later periods. These were extensively traded (Basgall and Bouey 1991). Obsidian was also traded, and must have been valuable as a utilitarian commodity (Basgall and Bouey 1991:39). This value is most likely due to the limited availability of different kinds of obsidian in different areas.

Archaeological evidence suggests the Pomo lived in such villages for long periods of time. For example, CA-SON-593-I, is a large village site that exemplifies the material culture of the Southern Pomo over a long period of time. Baumhoff and Orlins originally located it in 1979 and it is 150 meters southwest of CA-SON 593-II, another village site (Baumhoff and Orlins 1979:7). Most likely these were two parts of the same site, separated by a road (Basgall and Bouy 1991).

The site was presumed to have been a village, with 13 depressions, most likely representing past house pits, sweat houses and/or a dance house (Bouey 1983:13). The archaeological investigations focused specifically on excavation of the house pits. The chronology of this site was decided from time sensitive artifact typology including projectile points and beads (Bouey 1983:11).

Stratigraphic evidence coupled with radiocarbon dating indicated CA-SON-593-I was occupied in three phases from around 2770 BC to around AD1280 (Bouey 1983:8). Archaeologists found projectiles from each phase of occupation. These projectiles were analyzed using a previous study done by Baumhoff in 1982, in which he developed the North Coast Range Point Typology (Baumhoff 1982). This site had 23 obsidian and 12 chert points (Bouey 1983:8). Although no drills were found at this location, CA-SON 593-II had 140 drills that varied in size and shape just meters away across road (Bouey
1983:8). In general, archaeological sites in the area show good examples of obsidian and chert exchange and industry, such as CA-SON-553, CA-SON-556, CA-SON-571, CA-SON-593 II, CA-SON-597, CA-SON-544 and CA-SON-554 (Basgall and Bouey 1991).

Evidence of village organization can be found thorough the analysis of CA-SON-596, a site with 14 house pits, along with CA-SON-593-II with 13 house pits, as discussed above. Excavation indicated there were possible dance house floors at CA-SON-593-I and at CA-SON-599, both construed as village sites (Bouey 1983). This archaeological evidence bolsters ethnographic indications of the ways that villages were organized and the activities that took place in them, such as the location and use of a dance house. Although the ceremonial use attributed to dance houses ethnographically can never be proven, the physical evidence of its very presence gives credence to at least general reliability of ethnographic information on such subjects.

Religion and ceremony are the most difficult things to substantiate archaeologically due their ideological basis and lack of physical manifestation. But there are certain spiritual beliefs that do have physical objects attached to them that can be looked for archaeologically, such as markings on boulders or bedrock called petroglyphs. Certain petroglyphs in the Southern Pomo culture area remained important after the initial markings were carved, and ethnographies indicate that these rocks remained spiritually charged to help with fertility (McCarthy 1991:36).

Archaeological sites at which petroglyphs are present include CA-SON-568, CA-SON-570, and CA-SON-593-I. Each have thousands of petroglyphs, most in the form of cupule rocks (Basgall and Bouey 1991:17-18). These cupule and curvilinear designs were dubbed “pit and groove” by Heizer and Baumhoff (1962:30). The curvilinear design is
important evidence for archaeological substantiation of ethnographic notes that indicate these were called "baby rocks" for fertility. Women believed that the spiritual power of the baby rocks would make them fertile if they scratched them (Barrett 1952:118, Loeb 1926:228).

Sites such as CA-SON-585, CA-SON-579, CA-SON-576, CA-SON-593-I, CA-SON-1319, CA-SON-1318, and CA-SON-609 are all specifically petroglyph cites within the Southern Porno culture area (Basgall and Bouey 1991). These sites were indicated as cultural sites not because of flake scatter or midden such as occupation sites would be, but due primarily to the presence of petroglyphs, which ethnographically indicate ritual or spiritual places, and are usually set apart from the main village area (Barrett 1952, Loeb 1926). An especially interesting example of spiritually charged areas represented archaeologically is at CA-SON-568, which has a serpentine rock with 250 pits carved into it (Basgall and Bouey 1991:18). Areas such as the aforementioned sites exemplify how religious or spiritual beliefs cited ethnographically can be identified archaeologically through the physical remains of spiritual places.

Ethnographic information about death and the cultural practices surrounding death, dying, and the dead are often congruent with archaeological excavations of burials. Provided here is a cursory look at the copious ethnographic material about death and dying for brevity purposes in this section. During death, mourning for the Southern Pomo began with cremation of the deceased. Shells beads were placed upon the body, and other valuable pieces of material culture were placed around it (McCarthy 1991:36). Bones that remained from the cremation process were buried in a cemetery near the village. A year
after the death, mourners returned to the gravesite and burned valuables in mourning (Patterson and McMurray 1985).

The aforementioned rituals surrounding death cited ethnographically could be seen in archaeological excavations in the form of shells present in burial excavations, as well as the obvious condition of a cremation burial as opposed to inhumation. Theoretically, if shell beads were found in cremated burials, this would indicate congruence with ethnographic sources. Basgall and Bouey (1991) used evidence from referencing many archaeological sites in the Southern Pomo culture area to postulate that large concentrations of shell beads were used only for burial association in the period of time before European contact. After initial contact that they began to use shell beads as currency, as previously discussed. This slightly runs counter to some ethnographies, but since ethnographers conducted their interviews after contact, it is feasible that they interviewed people that used shell beads for both burial rituals and currency at the time, when in fact the use of it as currency was a response to contact with their currency based economy (Basgall and Bouey 1991:97).

Although ethnographic information for the Southern Pomo and archaeological evidence in the Southern Pomo culture area are sometimes incongruous, with both these sources, as well as oral histories that have been passed down to the members of the Southern Pomo that are alive today, we can at least glean an informed picture of what life was probably like for them before contact. This holds true for not only the Southern Pomo people, but for the other tribe that currently makes up the Federated Indians of Graton Rancheria, the Coast Miwok.
The Coast Miwok

As is true with the Southern Pomo and other indigenous cultural groups, the Coast Miwok have holistic epistemology. Anthropologists recognized a holistic connection between tribal spirituality and the land and resources they inhabited. In the midst of mid 20th century anthropological work in California, Kroeber (1954) wrote a paper entitled “The Nature of Land Holding Groups in Aboriginal California.” In it, he described the area of land inhabited by the Coast Miwok, along with food that they ate and resources that they utilized.

Kroeber indicated that Indians had a constant consciousness of the natural patterns and yearly cycles of the area in which they lived. They lived on what nature provided for them, following a regular yearly routine that was dictated by natural cycles of the land, to which they were very in tune (Kroeber 1954:120). Kroeber reiterated at the end of his paper that because of the intrinsic connection between land and culture, that with the loss of much of their land, the culture and way of life of the Indians had been lost as well (1954:120). Even at such an early time, anthropologists were aware of the unambiguous link between land and culture; spirituality being a huge part of that culture.

The Coast Miwok culture area of Marin County, as identified by Barrett (1908), was centered in present day Marin County and the portion of Sonoma County contiguous to Marin, specifically the areas currently known as Point Reyes and Tomales Bay. Barrett (1908) indicated two dialect groups of Coast Miwok: the western, or Bodega dialect group, and the southern or Marin dialect. These areas have been extensively studied archaeologically for almost one hundred years. There is wealth of information that was obtained from archeological investigations. There is also ethnographic information about
the Coast Miwok. Ethnography coupled with archaeological evidence can help paint a more concise picture of the prehistory of the Coast Miwok than either line of evidence viewed alone.

Early archaeological work done in the area was by Nels Nelson in 1909 (Nelson 1909). The first publications of archaeological evidence in the area were done by Heizer (1941). Heizer aimed at finding evidence that Sir Francis Drake had landed in the area presently known as Drake’s Bay (Heizer 1942). Beardsley (1954) also did extensive analysis of excavations in Marin County. Gifford (1916) published the information that Nelson had compiled concerning the many archaeological excavations of shell mounds in the area. Alfred Kroeber (1925) contributed artifactual data concerning the sites CA-MRN-3, CA-MRN-76, and CA-MRN-85, which are also in the Coast Miwok culture area. Charles Slaymaker’s (1982) dissertation provides an overview of Coast Miwok archaeological investigations. Each of the aforementioned archaeologists contributed to shaping a picture of the prehistory by publishing results or analyzing and compiling published results of archaeological investigations.

Ethnographic information about the Coast Miwok was done extensively by Isabel Kelly in 1931 and 1932, and her interviews with Tom Smith and Maria Copa were published by Mary Collier and Sylvia Baker Thalamen (1991). Other ethnographies about the Coast Miwok include Barrett (1908), Kroeber (1925), and Merriam (1907). Most ethnographic material concerning California can be unreliable due in part to the often double male bias. However, in the case of Kelly, she was a female and interviewed one female and one male subject (Collier and Thalamen 1991). Also, ethnographic interviews with the Coast Miwok were conducted hundreds of years after first contact, and when
viewed in absence of archaeological data, their authenticity as pertains to prehistoric societies can be questionable. For instance, Kroeber (1925:452) said in his ethnographic notes on the Miwok that cremation was the main form of burial practice, although we know from the archaeological record that inhumations were more largely represented (Slaymaker 1982).

As in the case of the Southern Pomo, ethnographic and archaeological data were consulted and used together to paint a picture of the prehistoric life of the Coast Miwok.

HABITATION AND SUBSISTANCE

By the 1970s, around 500 sites had been located around the present day Marin County coastal area (Slaymaker 1982:81), with emphasis on the Tomales Bay shoreline (Beardsley 1954b:20, Slaymaker 1982:81). We know from archaeological evidence of sites recorded along the Point Reyes seashore area that the Coast Miwok lived in areas along the beach. Almost all sites were along a spring or drainage for the availability of fresh water, and in low lying valleys between cliffs for protection from prevailing winds (Edwards 1970). We know why the Coast Miwok probably settled in the areas that they did; they chose them to access resources in a comfortable setting. Between 1940 and 1970, intensive excavation was undertaken in the Marin County coastal area. Therefore, we know more about the Coast Miwok territories on the coast than in any other area of the land they inhabited (Slaymaker 1982:83).

Habitation was concentrated along river banks, where natural levees and raised areas made for a flood free environment, and along stretches of broad beach with shallow water that alternated with rocky peninsulas (Beardsley 1954a: 165). This area provided
many resources, such as fish and shellfish in and around the ocean water. Many grasses and acorn bearing oak trees on the hills surrounding present day Tomales and Drake’s bay could be used for food and materials (Beardsley 1954a:165).

Archaeological material that is often associated with subsistence, such as clam and abalone shells, were not solely for food. Reviewing such material in the archeological record offers a more hidden correlation. For instance, we know from numerous excavations that clam shell, clam disk beads, abalone shells, and carved abalone objects were present in many of the excavation reports as well as land surveys (Beardsley 1954a, Kroeber 1954, CA-MRN-242, CA-MRN-280, CA-MRN-266, CA-MRN-265). This indicates that the shellfish were more important than as simply subsistence material. This lends credence to the constantly discussed notion, expressed ethnographically and through oral tradition, that subsistence and material culture are holistically connected.

MATERIAL CULTURE

As previously mentioned, the shells of the shellfish used for subsistence were also an important piece of material culture. Shells were used to make beads that were worn on the body, and also found in graves. There are also extremely intricate artifacts such as large blankets made of shells. These were probably used for trade, and as decoration.

Another important aspect of prehistoric Coast Miwok material culture was their utilization of the geologic materials in their area. We know from the archaeological record that the prehistoric Coast Miwok made large projectile points out of obsidian for spiritual or show purposes instead of simply to get food (Beardsley 1954a:167, Kroeber
Archaeologists can tell whether or not large projectiles were used for butchering or hunting by identifying use wear patterns. Large projectiles such as these were found on sites CA-MRN-266, CA-MRN-265, CA-MRN-396 and others. It was also noted by Beardsley (1954a) that many of these display projectiles were found in association with burials. The presence of non utilitarian projectiles on sites and especially in burials indicates their purposes went beyond subsistence, and into the realm of spirituality.

Another example of material culture that is a manifestation of spirituality are charmstones, which are found archaeologically and discussed ethnographically. Charmstones are made out of local geologic material like alabaster or blue schist, and are present on many sites in the Point Reyes and Tomales Bay area; village sites as well as burial sites, such as CA-MRN-232, CA-MRN-260, CA-MRN-307, CA-MRN-377, and CA-MRN-280. These objects are likely to be interpreted archeologically as amulets, because they are pendant like, and some have a hole similar to that of a bead, perhaps for wearing as a pendant. Also, charmstones with fishtails were discovered on sites discussed by Beardsley in the Tomalas Bay/Drakes Bay area (1954a:174). This provides very strong evidence archaeologically of the spiritual connection the Coast Miwok had to their land that is discussed ethnographically. Since fish were a large part of their diet in prehistory (Compas 1998:20), anthropomorphizing a fish in the form of a spiritual object infers a direct spiritual connection to that resource. The further fact that they put time and effort to make the rocks around them into shapes that do not necessarily serve a utilitarian purpose leads to the inference of the ethnographically obvious: that the geologic rocks
were more important than simply for manufacturing subsistence related objects, such as a mortar or a pestle would have been.

Like the Southern Pomo, the Coast Miwok were, and still are, a basket weaving culture (Krober 1925, Kelly 1978). The presence of bone awls at many habitation sites such as CA-MRN-207, CA-MRN-212, CA-MRN-266, CA-MRN-307, and CA-MRN-398 archaeologically substantiates what ethnographers such as Kroeber and Kelly indicated: that the Coast Miwok were weaving baskets throughout their history, which they still do today.

Kroeber (1925) noted that elite members of the Coast Miwok culture were exalted after death through the making of small clay figurines. These figurines purportedly represented the person, and were burned when the person the represented died (Kroeber 1925:452). The clay may have represented the earth, from which Coast Miwok creation stories indicate all human beings were made (Kelly 1978), thus spiritually personifying the dead. The baked clay figurines would survive and be present in the archeological record. One such item was found at CA-MRN-365 in 2007. These findings not only serve to partially legitimize the ethnographic record concerning moieties, it would also show direct aspects of their spirituality, in that their creation stories involve people being created out of mud (Kelly 1978:418).

LIFE AND DEATH

According to ethnographic materials, Coast Miwok people lived in small villages in groups called tribelets. A tribelet was defined by Kroeber (1962:30) to mean groups of about one hundred people on average, living in several settlements which were not
necessarily simultaneously occupied, with family groups acting as homogenous units in matters of land holding, trespassing, or war.

Coast Miwok village settlements were usually made up of small family dwellings, conical shaped, constructed of a wooden frame with large pieces of bark leaning against it (Barrett and Gifford 1971:333). The villages also had a dance or assemble house, which was usually semi-subterranean, and a sweathouse that was all earth covered, often with Tule on top (Kelly 1978:417). These were special structures, Kelly (1978:417) noted Coast Miwok religious specialists used for ceremonies, such as a dance ceremony or a sweat. These dwellings were likely of special spiritual significance because they were dwellings in which ritual ceremonies took place.

Archaeologically, village sites often mirror the ethnographic descriptions. Village sites located on a survey of the Point Reyes National Seashore indicate the villages were between four and twelve families (Edwards 1970:108). Many village sites with house pits are consistent with ethnographic descriptions as well. CA-MRN-216 for instance, had about six house pits in a 200 x 200 feet area, with other habitation indications such as copious bird and fish bones. Most excavations in the Coast Miwok culture area undertaken from the 1950s to the 1970s were primarily focused on finding evidence of 16th century contact (Slaymaker 1982:79). Thus, village organization was often glossed over in reports from that era, but site maps crossed referenced with ethnographic material are generally consistent with ethnographic evidence.

Ethnographic and archaeological evidence are the least congruent concerning death. According to Kroeber (1925:253), Coast Miwok buried their dead instead of cremating. But according to Kelly (1978:419) the Coast Miwok dead were tied to three
long poles and taken to a special area where they were cremated. The inconsistencies between ethnographies could be cleared up by archaeological evidence.

Prehistoric burials in the Coast Miwok culture area span the Early, Middle, and Late horizons. These horizons were redefined for the Bay Area by Beardsley, and are based on early, middle, and later stratigraphic sequences, in which cultural indicators changes significantly (Beardsley 1954a). Interments were characteristic of the Early horizon, while more cremations and flexed inhumations, as well as the burying of more than one individual together, showed up in the Middle horizon (Beardsley 1954a). One thing that spans all horizons is the presence of grave goods associated with the burials (Slaymaker 1982). This is consistent with ethnographic indications that personal items and shell beads were interred and/or burned with the deceased individual (Kelly 1978:419).

There is little or no evidence of habitation on many burial sites (Beardsley 1954a:167). Sites with house pits and utilitarian artifacts such as heating stones, obsidian projectile points, and worked bone that were clearly interpreted as habitation sites have no indication of human remains, although they are often in close proximity to those that do. CA-MRN-298E, a non-burial habitation site, is close to CA-MRN-216, a site with 12 burials (archaeologists were originally going to group them together under the same trinomial (King and Upson 1973:160, Morratto 1970:99). This leads the interpretation that areas for the dead may have been special and set apart from the living community. Further reinforcement of this notion comes from reviewing sites that have shell mounds verses habitation sites that do not occupy areas atop shell mounds. Most burials were found within a shell midden matrix, such as CA-MRN-227, CA-MRN-242, CA-MRN-
249/H, CA-MRN-260, and CA-MRN-266 (Beardsley 1954a). This leads to the inference that a certain area of land was meant for things that are no longer living: the fact that one is buried in a pile of discarded or "dead" shells, shells which could have had a kin-like relationship to the people culturally.

The separation of areas for the dead and the living is anthropologically axiomatic, but beyond the obvious, the aforementioned archaeological evidence is also consistent with ethnographic evidence that areas were reserved for death outside of the village areas for the living (Kelly 1978:418).

As in the case of the Southern Pomo, ethnographic and archaeological evidence help us today, at least to some extent, picture what life may have been like before contact. After contact, however, the Southern Pomo and Coast Miwok will be discussed together. This is not only because they had similar experiences during this era, but because, for the most part, the entities with whom they came in contact viewed and treated them, and all other tribes with which they came in contact, as the same people.

Contact Period

THE MISSIONS

The Spanish were one of the first outsiders in history to have set foot on the western coast of the Americas. The Spanish colonists greatly shaped the history of California at contact period. Through a mixture of religious aspirations and military considerations, the Spanish proliferated over what is now California in the 17th and 18th and 19th centuries.
As early as 1519, Spanish explorer Hernan Cortez led an expedition to parts of what is now South America and northern Mexico (Jackson 2005:45). The Spanish explorers began colonizing these parts of the world, despite the presence of already proliferate indigenous groups inhabiting them. In 1535, Cortez discovered precious pearls in the Gulf of California (Jackson 2005:49). He established a colony on the peninsula west of the gulf, which at the time was known as Baja (lower) California. This religious colony, called La Paz, was established for economic reasons as well as religious (Jackson 2005). At this time, as long as the indigenous communities delivered labor and did not challenge the authority of the Spanish, they could remain governing their own people (Jackson 2005:26).

Throughout the 1530s, the Spanish became more aggressive in realizing their aspirations of conquering the California frontier. From the initiation of La Paz in the south, different orders of missionaries, including Jesuit, Dominican, Franciscan, and Augustinians, began to set up missions to the north along the western American coast (Jackson 2005). The missionaries’ plan for the native populations inhabiting the lands on which their missions were burgeoning was to teach them to live a sedentary agricultural lifestyle, convert them to Catholicism, and make them become loyal subjects of the Spanish king (Jackson 2005:26, Milliken 1995:12).

The Spanish, however, were not the only explores out to conquer the California coast. There was competition between the Spanish, Great Britain, and eventually Russian explores to try and gain hegemonic control over the Alta (upper) California coast of the new world (Jackson 2005, Lightfoot 2005, Milliken 1995). This competition led
explorers, mercantile entrepreneurs, and missionaries into the territories inhabited by the Coast Miwok and Southern Pomo.

The first alleged contact near the vicinity of present day Marin and Sonoma County was in 1579 by British explorer Sir Francis Drake, of Great Britain, who is believed to have landed at what is known today Marin County’s Drake’s Bay (Engstrand 1998, Heizer 1947, Jackson 2005).

The supposition that the landing occurred at this location is based on Drake’s own account of a ceremony in which the local indigenous people were loudly crying and covered in ash (Heizer 1947:126). The description of the ritual, material culture, and the vocabulary words that Drake noted led many scholars to believe that where he landed was the Marin coast, and that the ceremony was one of the Coast Miwok, in which they were mourning the deaths of their ancestors (Heizer 1947:126). However, Krober, who did lots of extensive ethnography around the area, noted that the feathers on the baskets are more indicative of the encountered tribe having been one of the Pomo (Kroeber 1925:278).

Whichever location at which Drake actually landed, he dubbed Nova Albion and claimed it for Great Britain (Engstrand 1998:88). This act was a threat to the Spanish, whose colonization of Baja California was not going as well as planned. They faced hostility from the indigenous population at their original colony of La Paz (Jackson 2005). This prompted Spanish pioneer Sebastian Rodreguies Cermen to lead Spanish ships in voyages north beginning in 1595; he and his ships charted the land of Alta California like prospectors (Engstrand 1998:85, Jackson 2005:48). They paid special
attention to the Monterey Coast. This was to be the site of the first spot to begin colonizing California by the launching of Jesuit missions (Jackson 2005:48).

As Jesuits expanded their missions in Baja California through the 1700s, their agenda as prospectors and missionaries had an egregiously detrimental effect on the indigenous populations. The indigenous groups commandeered by the mission system were called neophytes. These individuals were forbade from practicing their traditional cultural and religious beliefs, and were essentially forced into religious conversion, agricultural labor, or derelicts whose only choice was to flee into lands unfamiliar to them (Milliken 1995). Often times, based on conditions, the original sites of missions were moved, and the associated Native populations were moved with the missions (Jackson 2005:54). This was common practice, and it caused further fragmentation of tribal groups and massive displacement of original native populations (Jackson 2005, Milliken 1995). This is one of the main reasons why it is difficult today to accurately tie modern tribal groups to their prehistoric ancestors in California, from even ethnographic accounts.

The living conditions in the Jesuit missions were filthy, overcrowded, and spreading deadly diseases. The Jesuits had their main mission village in Baja, but there were too many neophytes to fit in the mission itself (Jackson 2005:58). The neophytes who did not get space in the overcrowded missions lived on the outskirts in satellite villages called Ranchos. The natives that lived there made an attempt to continue their traditional life ways in their new environment despite the hostile conditions, furtively practicing their religion and speaking their own languages (Jackson 2005:58).
The Jesuits were also facing problems of hostility. They clearly did not treat the Native populations in ways conducive to their traditional culture. In at least one documented incident, neophytes rebelled and killed missionaries at Mission Santiago in 1734 (Jackson 2005:57).

The Spanish saw the overcrowding and neophyte rebellion as logistical problems, and expelled the Jesuits from the missions in 1767 (Jackson 2005:60). This led to the Franciscans and Dominicans inheriting the system by 1773 (Jackson 2005:60). Dominicans started beginning erecting missions in the northern part of Baja California in the last two decades of the 17th century. In 1769, a high ranking Spanish official, on behalf of the King Carlos III, Jose de Galves was sent to repair the mission system, and commence with an expedition to Alta California (Jackson 2005:65).

The decision to expand the Spanish mission system northward was as much religious as it was political. The missions not only facilitated the spread of Spanish rule and Christian faith, but furthered the Spanish in political competition for new territory. Great Britain, having already established Nova Albion as far north as present day Marin County, posed a threat to Spain’s empire (Jackson 2005, Lake 2006). The patterns of mission establishment in Alta California were therefore strategic. Between 1769 and 1779 the Spanish government authorized establishing eight missions along the pacific coast, and three military garrisons (Jackson 2005:73, Milliken 1995:13). The first Franciscan mission was Mission San Diego, founded by Father Junipero Serra. Serra has been called the father of California missions (Monroy 2008:154).

The missions system was egregiously detrimental to the health, welfare, and integrity of native populations of California. The missionaries believed that in order to
further establish their political hold on their new land, they had to convert the neophytes to be subjects of their God and of the Spanish king (Jackson 2005:74). Conversion of neophytes was part of their tactic to increase Spanish colonial rule. The neophytes were treated unspeakably and essentially forced to live and work for the missionaries (Milliken 1995:10). The missionaries began to aggressively pursue new neophyte recruits in the 1770's, and in 1774 relocated missions to be closer to native villages and put the neophytes to work in fields (Jackson 2005:74). The mission world was so different from what the indigenous tribes knew and lived; it uprooted, fragmented, and all but destroyed many tribal families and cultures (Milliken 1995:11).

During this late 18th century in the area presently known as the Sonoma and Marin County coasts, the colonization was slightly unique due to all the competition between the Spanish, Russian, and British colonists. The Russians had begun encounters with the Americas in 1741 to facilitate their fur trade, settled largely in Alaska, but began coming down to the San Francisco area to trade, and in 1812 they had established a Fort on the mouth of the Russian River as Ross (Lightfoot 2005:5). Both Southern Pomo and Coast Miwok language groups were said to have been at Ross (Lightfoot 2005:9). This gave rise to two different colonial programs: those of the missionaries and those of the merchants (Lightfoot 2005).

The motivations of the Russian colonists were those of a merchant society. They were focused on raising cattle and trading fur, and their operations were profit driven. They employed the local tribal populations as laborers (Lightfoot 2005:10). This was contrary to the missionaries' motivation, which was to convert Indians into the peasant class of neophytes. Thus, the tribal populations in this area, largely the Coast Miwok and
Southern Pomo, were encountered with vast changes from either the mission system, converting them for religious and political gain, or from the Russian merchant system at Fort Ross, which relegated the tribes to a class of poorly treated laborers (Lightfoot 2005). When comparing and contrasting the lives of Indians at Fort Ross and those at the missions in the area, some historians and scholars have speculated that the Indians at Ross were better off than those in the missions, because they were allegedly paid for their labor and were not forced into religion like the mission Indians (Sandos 1998:215). However, these systems had equally detrimental effect on the integrity of Indian populations; they were just played out in different forms (Lightfoot 2005).

The missions into which the Coast Miwok and Southern Pomo tribes were incorporated were Mission San Rafael, San Francisco, and Sonoma (Lake 2006:3). Mission life, as with life at Fort Ross, undermined cultural distinctions among tribes, and essentially treated all the native tribes all the same (Lake 2006, Milliken 1995). Groups from different tribes were thrown together, to eat, sleep, and live with each other. Diseases spread and killed large numbers of tribal peoples quickly due to such conditions, coupled with no immunity to new viruses and no medicine for unknown bacteria (Milliken 1995). Even if the Indians did have medicine, they would not have been allowed to administer it traditionally because their traditions were strictly discouraged (Lake 2006:4). All of these things happened to the Coast Miwok and Southern Pomo.

Mission San Rafael was established in 1817 by the Spanish as a satellite to San Francisco de Assisi as an *assistencia*, to block Russian expansion (Jackson 2005:85). It also served as a sanatorium for sick neophytes from the San Francisco missions (Jackson 2005, Milliken 1995). This is where the majority of the Coast Miwok people were sent,
and where the majority of them died (Milliken 1995, Sarris 2008). Fort Ross was a little further north, and closer to the territory of the Southern Pomo. The majority of the agricultural laborers and servants were said to be Pomo, and is where many of them died (Sandos 2008:215).

Trade between the Spanish and Russians were a further detriment to native populations. In 1837, General Guadalupe Vallejo brought some goods from Fort Ross to Sonoma, and they were contaminated with smallpox (Sandos 1998:215). This started a smallpox epidemic that spread through present day Sonoma valley, Russian River Valley, Petaluma, Santa Rosa, and Sacramento (Milliken 1995:50). This single event reduced the remaining tribal population by half (Sandos 1998:215).

In 1821, Mexico gained independence from Spain (Lake 2006:157). At this time, Mexico included the territories of modern day California, Texas, and New Mexico, and the independence made a huge change in the way these lands were governed. Mexico started to allow more liberal land grants, prompting people to flock to California to buy large plots of land (Lake 2006). The Mexican government noticed the lands that the missions were on were fecund and had profit potential. They wanted this land to belong to Mexican citizens as well as the Indians (Gonzales 1998, Lake 2006). Both the missionaries and the Mexican government claimed to have the best interest of the Indians in mind when it came to decide how to free up the fertile mission lands, which was inhabited by what natives were left. Both the missionaries and the government, then, purported they would take on what they saw as the noble task of converting the neophyte into a civilized being (Lake 2006:159).
There was question as to what the status of the Indians would be under the new government. Both the government and the missionaries each claimed that they could take better care of the Neophytes. This led to a point of contention between the government and the Franciscans (Gonzales 1998:148). As the new government grew, the Franciscans decreased in popularity. To free up the land, the government had to free the neophytes (Gonzalez 1998:148).

CHANGES AFTER SECULARIZATION

The new Mexican government was expanding, the lands that the missions were on were being blocked from use by the neophyte population, and the Franciscans were losing popularity (Gonzales 2008:148). These were all the reasons the Mexican government secularized the missions. This opened all mission lands to settlers in 1834 (Lake 2006:161). Although the new government purported to have established programs to help Indians make the transition to freedom, after the act of secularization it seems they were all forgotten (Gonzales 2008:150). Some neophytes received housing at the missions when they were converted to pueblos, but only for a little while (Lake 2006:163). By 1839, most of the previous mission lands were abandoned and derelict, with very few Indians left (Lake 2006:163). The government did, however, enforce the removal of the Franciscans (Lake 2006:163).

San Rafael was the first mission to be secularized, by General Guadalupe Vallejo (Hackel 1998:130). He commandeered all of the land and the livestock, and also commissioned the mission Indians to destroy the mission in which they had been housed (Federated Indians of Graton Rancheria 2008). By 1840, the Rancho had replaced the
Mission as the social and economic institution of California, with no room for consideration of the again displaced and forgotten Indian population (Hackel 1998: 134). The fragments of tribes that were left worked on Ranchos in a peonage role (Hackel 1998: 134). They received a daily ration of food, but no monetary compensation. Some were captured on raids and enslaved by settlers (Hackel 1998: 135).

The Coast Miwok people, still thriving through the dark times, managed to hold on to traditions and languages. Most of them went to Nicassio Reservoir, North of San Rafael, where they reorganized on a 500 acre parcel given to them by the Mexican government after secularization (Sarris 2008: 43). The members of the different Pomo tribes were also vastly affected. Ethnographies tell of the Pomo “death march,” when people of Dry Creek were rounded up and forced to march with little food or water to one of several reservations in the 1850s (McCarthy 1991: 33).

In 1848 California became part of the United States, and the status of the Indian was to change again. General Vallejo, still a prominent political figure at the time, was working with the state legislature. He and other members of the legislature helped create the Act for the Government Protection of Indians 1850. They purportedly took this action on behalf of the Indians, but it actually had long term detrimental effects for the surviving tribes (Federated Indians of Graton Rancheria 2008, Georke 2007).

Any person wishing to hire an Indian...shall make such contract as the Justice may approve...but no contract between a white man and an Indian shall be obligatory on the part of the Indian...complaints may be made by white persons or Indians, but in no case shall a white man be convicted on any offense upon the testimony of an Indian. - Chapter 133, Statutes of California, April 22nd 1850.
This act dealt with labor control for the Indians. It allowed for Indians who were arrested for vagrancy to be bought for labor by any white man who could pay their bail. Whites could legally claim Indian children as servants, and adults as indentured servants (Sandos 1998:221). This act was essentially legalizing Indian slavery, and was written under the auspices of a labor control action.

Any person having or hereafter obtaining a minor Indian, male or female... and wishing to keep it, such person shall go before Justice of the Peace in his township... The Justice of the Peace... shall give to such person a certificate, authorizing him or her to have the care, custody, control and earnings of such minor... - Chapter 133, Statutes of California, April 22nd 1850.

California was unique because of the gold rush in 1849 which led to massive influx of settlers from all over the world in just a few years time. Indians in other states were able to ratify certain treaties and obtain at least some federal protection. In California, however, treaties were signed in 1851 that would have set aside land for Indians for protection against gold seeking settlers (Federated Indians of Graton Rancheria 2008). Because of the failure of the government to ratify these treaties, the California Indians were rendered landless and homeless, and many went into hiding to survive (Federated Indians of Graton Rancheria 2008).

Despite what seemed like insurmountable obstacles, the California tribes on the Sonoma and Marin coasts managed to survive for years, furtively practicing their traditional life ways in places like Olompali and the Petaluma valley (Sarris 2008). It was not until the early 1900s that Congress eventually authorized the purchase of Rancherias for the homeless and landless Indians on which to live. The Congressional Acts of 1906 (34 Stat. 325-328) and 1908 (35 Stat. 70-76) were Appropriation Acts that provided money to purchase land for residential and agricultural use for homeless and landless
Indians who had no known specific tribal affiliation. The Secretary of Interior was authorized by these Congressional statutes to spend 100,000 dollars to purchase land for Indians that lived on reservations that were not fecund, and to mark the boundaries of these Indian reservations (34 Stat. 325-328 1906 and 35 Stat. 70-76 1908). The purchase of the original Graton Rancheria eventually resulted from these appropriations, but not until 1920 (Federated Indians of Graton Rancheria 2008, Georke 2007:192).

This was essentially the beginning of the Rancheria system. The Rancheria system often combined tribes, much like the mission system had. This is another part of the reason that the Federated Indians of Graton Rancheria are comprised of two tribes. They were amalgamated by the Rancheria system and formed a collective tribal sovereignty (Federated Indians of Graton Rancheria 2008).

GRATON RANCHERIA BEGINS

As a result of the Appropriation Acts, the Bureau of Indian Affairs (BIA) inspector was charged with finding areas to accommodate the homeless Indians in California. At the early part of the 20th century the BIA inspector was John C. Terrel (Goerke 2007:192). Terrel was authorized by the government to purchase a plot for the homeless Indians of Bodega, Tomales, Marshal, and Sebastopol vicinities (Goerke 2007:192). These people were largely the Coast Miwok and Southern Pomo (Federated Indians of Graton Rancheria 2008, Goerke 2007). Although many of the Coat Miwok and Southern Pomo villages had traditionally been on the coast, it was too costly to purchase a plot of land there (Goerke 2007:192). Terrel found a 15.5 acre parcel inland from the coast, but in an area still reasonably familiar to the now amalgamated and waning tribe.
Through the purchase of this land, in federal trust, these neighboring and interacting
groups were put into a consolidated entity and recognized as “Graton Rancheria”

However, 15.5 acres was still too small to accommodate all the homeless Coast
Miwok and Southern Pomo people in the area comfortably. Not only was it unreasonably
small, but the water supply was inadequate, and the terrain was too steep on which to
build any dwellings (Goerke 2007:192). Furthermore, these tribes, whose ancestors have
lived by the ocean for centuries, were now far inland. This prevented them from re-
initiating their traditional cultural practices of gathering shellfish or fishing for
subsistence (Federated Indians of Graton Rancheria 2008). This made it even more
difficult for the tribe to figuratively rebuild.

The inhospitable conditions and the BIA’s failure to respond to requests for more
and hospitable lands led to the discouraging of many tribal people from settling down
there (Pete 1921 as cited by Federated Indians of Graton Rancheria 2008). However,
there were still as many as 75 residing there in 1923 (BIA census 1923 as cited in Goerke
2007:195). Despite the derelict conditions of the land, many tribal members still wanted
to live at Graton Rancheria. It was likely because they had no other place to legitimately
claim in the social and political climate at the time (Federated Indians of Graton
Rancheria 2008). After over 200 years of effective displacement, the tribe finally had an
area, however small, to call their own.
TERMINATION OF FEDERAL TRUST

In 1958, Congress terminated the federal trust status with many tribes, and Graton Rancheria was one of 23 California tribes to loose their government recognized status as a tribe (Goerke 2007:194). The California Rancheria Act (aka California Rancheria Termination Act) of 1958 (Public Law 85-671) was a federal law passed along with other termination acts. The act essentially took away the status of the “Indian” as a sovereign people, leaving the government with no obligation to give Indians any special benefits simply because they were Indian.

That the lands, including minerals, water rights, and improvements located on the lands, and other assets of...rancherias and reservations in the State of California shall be distributed...-Public Law 85-671, Sec.1, 1858.

The Indians who hold formal or informal assignments on each reservation or Rancheria...shall prepare a plan for distributing to individual Indians the assets of the reservation or rancheria... or for selling such assets and distributing the proceeds of sale, or for conveying such assets to a corporation or other legal entity organized or designated by the group.... The Secretary shall provide such assistance to the Indians as is necessary to organize a corporation or other legal entity for the purposes of this Act. - Public Law 85-671, Sec. 2, 1858.

Prior to the termination of the Federal trust relationship in accordance with the provisions of this Act, the Secretary of the Interior is authorized to undertake...a special program...designed to help the Indians to earn a livelihood, to conduct their own affairs, and to assume their responsibilities as citizens without special services because of their status as Indians. - Public Law 85-671, Sec. 9, 1858.

This was a furtive attempt by the government to essentially try to assimilate Indians into burgeoning American societies by terminating their legal status as tribes. With the initiation of the Rancheria Act, the tribes no longer had a government to government relationship with the United States (Cohen 2005:52). Although their
governmental status had been terminated, this did not terminate their intrinsic status as a tribe (Federated Indians of Graton Rancheria 2008).

In the case of the Graton Rancheria, the legislature tried to make it appear as though the tribe approved of this measure. The legislature alleged that the tribe gave consent for the passage of the California Rancheria Act. The alleged consent from the Graton Rancheria Indians for the Rancheria Act consisted of obtaining only three signatures from a group that was at least 75 people or more (Federated Indians of Graton Rancheria 2008, Goerke 2007: 195). Their constitutional rights were also violated (Federated Indians of Graton Rancheria 2008), in the sense that the people of Graton Rancheria received no compensation for the termination of their land area, which is a violation of the 5th amendment to the constitution:

No person shall be...deprived of life, liberty, or property...nor shall private property be taken for public use, without just compensation. - United States Constitution Amendment V, 1787.

By 1966, the tribal members that managed to hold on to small parts of Graton Rancheria through fee title had even lost those, due to foreclosure. The tribe was then landless in the eyes of the legislature (Federated Indians of Graton Rancheria 2008).

Loosing their collective land disturbed the continuity of the already fragmented tribe. Despite this, the members strived to remain cohesive. It would not be long, however, until the people who had suffered through adversity used the hope and cohesiveness they maintained throughout it to facilitate action and make a change.
REVERSAL OF TERMINATION

Because the federal government provided little if any consideration for tribes in the past, such as housing, law enforcement, health care, or education, the fact that their government benefits were lost by the 1958 termination of federal trust was hardly noticed by the tribes (Federated Indians of Graton Rancheria 2008).

However, the termination occurred during the same time in history that many tribes began publicly voicing their protests to the unfair treatment afforded them by the government. In fact, minority groups all around the country were facilitating a sense of empowerment and gaining the clout to make changes through formal legal proceedings. Native American groups in particular were publicly voicing their outrage. They were particularly upset with the unauthorized and unconscionable display of their ancestral artifacts by federal institutions, and the usurping of their ancestral lands for development by the government with little regard for the people of the tribes, nor for the material culture that made up their history (Atlay 2006, Deloria 1969, Dongoske 2000, Echo Hawk and Echo Hawk 1994, Mihesuah 2000).

Despite the questionable constitutional legitimacy of the 1958 California Rancheria Act, it was still in effect and uprooted the Indians once again. It displaced and forcibly directed the Native Americans into the urban mainstream in an effort to assimilate them into the American culture (Federated Indians of Graton Rancheria 2008, Sarris 2008:42). However, the influence of minority groups gaining awareness in the 1960s and the initiation of groups such as American Indian Movement (AIM) in the 1970s helped facilitate a change in the way the government treated Native Americans.
In the 1970s, President Nixon officially repudiated the termination policy, putting a halt to the unwelcome assimilation attempt (Federated Indians of Graton Rancheria 2008). Many tribes in California then filed lawsuits in California courts to challenge the legality of the California Rancheria Act. After litigation on many cases, the United States ultimately admitted in every single case that the terminations were illegal (*Duncan v. Andrus*, 517 F. Supp. 1 (N.D. Calif. 1977); *Smith v. United States*, 515 F. Supp. 56 (N.D. Calif. 1978); *Upper Lake Pomo Association v. Andrus*, No. C-75-0181-SW (N.D. Calif. 1979); *Table Bluff Band v. Watt*, 532 F. Supp. 255 (N.D. Calif. 1981); *Hardwick v. United States*, No. C-79-1710-SW (N.D. Calif. 1979); *Big Sandy Band v. Watt*, No. C-80-3787-MHP (N.D. Calif. 1984); *Table Mountain v. Watt*, No. C-80-3783-MHP (N.D. Calif. 1983); and *Table Bluff Band v. Lujan*, No. C-75-2525 RHS (FJW)(N.D. Calif. 1991)).

One of the biggest and most important court cases in terms of setting precedent of the aforementioned cases was *Hardwick v. United States* (No. C-79-1710 SW (N.D. Cal. Filed 1979)). It was a class action in which Indian residents from various Rancherias came together in an effort to restore the reservation status of their land. The plaintiffs were seeking relief on the grounds that the California Rancheria Act illegally terminated tribes. The case was between the Rancheria Tribes and the United States. The Secretary of Interior held that the United States shall recognize the tribes that were terminated through the Racheria Act as “Indian Entities” with the same status they possessed prior to the Rancheria Act, and they would be henceforth eligible for benefits or services provided by the United States for Indian Tribes (*Hardwick v. United States*, No. C-79-1710 SW (N.D. Cal. Filed 1979)).
These 17 Rancherias (Big Valley, Blue Lake, Buena Vista, Chicken Ranch, Cloverdale, Elk Valley, Greenville, Moontown, North Fork, Picayune, Pinoleville, Quartz Valley, Potter Valley, Redding, Redwood Valley, Rhoneville, and Smith River) got back the rights that were taken by the Rancheria Act by pursuing litigation. This was a big step for all California Tribes. Unfortunately, although the circumstances of Graton Rancheria were the same as the 17 tribes in the lawsuit, Graton did not participate in the litigation and therefore did not receive their status reinstated like the tribes who participated in the Hardwick lawsuit (Federated Indians of Graton Rancheria 2008). However, the precedent set by the Hardwick ruling would likely make it easier for tribes in the future to obtain status.

In 1992, Congress established the Advisory Council on California Indian Policy (Prucha 2000:336). This council was meant to address the status of tribes who remained terminated in California. In 1997, this Council’s report to Congress indicated that the Council had determined that the Federated Indians of Graton Rancheria met the criteria for restoration and should be restored (Federated Indians of Graton Rancheria 2008, Goerke 2007:196). California Congresswoman Lynn Woosley introduced legislation in 1999 to restore the tribe. By 2000, the House Resources Committee reported that the Federated Indians of Graton Rancheria had maintained their status as a distinct tribal group, and had proven their lineage through census records and birth certificates, connecting the current tribal members to their past Miwok and Pomo ancestry (Goerke 2007:196). Their mission records and birth certificates obtained from such records provided proof for the legislature to legitimize their ancestry, and so Congress supported the restoration of their tribal status.
The Graton Restoration Act was finally legitimized under Public Law 106-58 in December of 2000. This awarded the tribe recognition by the legislature as having uninterrupted existence as a historic political entity (Federated Indians of Graton Rancheria 2008). The legal process to be labeled as a legitimate tribe was necessary to gain rights in the United States, but it was not necessary or relevant intrinsically, because the Coast Miwok and Southern Pomo had always known that they always have been tribes.

Federated Indians of Graton Rancheria Today

The people of the tribe are still here, as even now descendants of people that were mentioned by many ethno-historical sources (such as brothers William Smith and Tom Smith, or Joseph Pete) are still very active in the tribal government to day. Greg Sarris, the tribe’s current Chairperson, is the great grandson of Tom Smith, whose interviews with Isabel Kelly (Collier and Thalmen 1991) are widely referenced by archaeologists studying in their tribal area. Another tribal council member, Gene Bouvelot, is the great grandson of William Smith, the brother of Tom Smith (Federated Indians of Graton Rancheria 2008).

The tribe continues to be an active participant in their own cultural resource management. The members of FIGR I interviewed indicated that things progressed forward after many hardships, but after the late sixties and early seventies there were more progressive laws, without which it would have taken much longer for the tribe to have the control over their spiritual homeland as they do now.
Tribal members today feel it does not matter from a historical perspective if they are now one tribe made up of two once separate tribes, as indicated by their tribal Chairman and the tribal members I have interviewed. They are happy to have their sovereignty, and have a magnanimous attitude towards the past and an optimistic one towards the future. The interviews also revealed that tribal members began noticing very significant changes in the way they were included in governmental processes concerning their cultural resources after 2000 when they officially received recognition. The state and federal agencies now have to consider their views, and they have noticed a huge change since. FIGR members are optimistic that if things continue in the direction they are going, with more interaction with and consideration from government agencies and archaeologists, that the future looks bright for the FIGR and their ancestral homeland.

The Indian Nations had always been considered as distinct, independent, political communities retaining their original natural rights, as the undisputed possessors of the soil, from times immemorial... - Chief Justice Marshall, Worcherster v. Georgia, 31 U.S. 6 Pet. 515, 559, 1832.

Chief Justice Marshal wrote these powerful words at a time in history that was extremely trying for Native people in California. It is rare and interesting that although a U.S. Supreme Court Justice could recognize the inalienable connection to the land and inherent sovereignty that the Native American tribes posses, the spirit of the statement belied the treatment that the "Indian Nations" he referred to were actually afforded. As discussed in this chapter, indigenous groups such as the Coast Miwok and Southern Pomo come from an epistemology vastly different from the one which controls the society and legal structure of the United States of America, under which the tribes are forced to operate. The tribal members I interviewed feel that despite the past
disagreements and differences in worldview, FIGR used the system into which they were all but forcibly assimilated to regain the acknowledgement of independence and sovereignty that very system took away in the first place.

A difference in epistemology causes people to look at the same issues through a vastly different lens. Despite this, people can still collaborate and compromises can be reached. This is specifically evident in the arena of cultural resource management legislation, with both archaeologists and Native Americans having been involved in the initiation, drafting and codification of such legislation. Throughout the next chapters, pieces of legislation that deal with historical and archaeological resources will be discussed, and the thesis will focus on how archaeologists and Native American groups, particularly FIGR, played a role in influencing these legal initiatives.
Chapter IV

Federal CRM Laws:
The National Historic Preservation Act
And
The Archaeological Resources Protection Act

Introduction

This chapter details two of the most all encompassing pieces of federal legislations that have to do with cultural resources, The Archaeological Resources Protection Act of 1979 as amended and the National Historic Preservation Act of 1966, as amended. The chapter will begin with a background of federal involvement in cultural resource management to illustrate the process that led up to the passage of these two pieces of legislation. Next, each law will be talked about individually with respect to what the law is, what it mandates, and how it has changed. Finally, each law will be discussed in relation to the Federated Indians of Graton Rancheria, how the laws apply to their land and resources in California, and how their interaction with archaeologists has changed with these laws. This final section will be where the views of the individuals I interviewed are discussed.

Background

Since very early in U.S. history, there has always been federal interest in protecting archaeological sites from looters and vandalism. The first archaeological reservation set aside was the Casa Grande Ruin in 1892 (McManamon 2001:7, Newmann and Stanford 2001:7). As explores and the railroad had increased access to these mostly out of the way antiquities, people began to seek after them (McManamon 2001:9). In the
early 20th century, the Progressive Movement largely influenced the federal government policy. This movement was marked by politicians developing new ways of protecting the public good by having civil servants providing technical assistance and support for public resources (McManomon 2001:11). It constituted recognition of archaeological resources in particular as valuable sources of scientific information about the past, and approached them not as having value commercially, but as having value intrinsically (McManamon 2001:11).

These circumstances led to the 1906 Antiquities Act, which protected any historic or prehistoric monument on government land (16 U.S.C. 431-433). The Antiquities Act started the basic policies for archaeological and historic preservation in the United States by providing a precedent for protection of such resources. The Antiquities Act was a realization of Progressive policy: antiquity resources are special, and afford special consideration and protection (McManomon 1991:10). The Antiquities Act was partially in response to archaeologists urging the government to protect rapidly decaying archaeological sites in the American southwest (Schiffer and Gumerman 1977:12). It also made it easy for the President to set aside land for National Parks, landmarks, or other objects of historic importance (McManamon 2001:10).

With the precedent set by the Antiquities Act, the 1935 Historic Sites Act added “sites, buildings and objects and antiquities,” which more clearly illustrated which resources were important (16 U.S.C. 461-467). It also gave the Secretary of Interior authority to identify and maintain a list of National Historic Landmarks, which are properties of national historic significance (16 U.S.C. 461-467). More importantly, it expanded preservation law to extend to historic properties without regard to federal
ownership and control of them (McManamon 2001:13). The Historic Sites Act increased the Secretary of Interior’s ability to act in three ways: to establish an information base for preservation by conducting research and surveys, to restore and maintain historic properties and cooperate with organizations with similar goals, and to interpret heritage through education (McManamon 2001:13). This law was a catalyst for more laws in the vast tree of cultural resource legislation, most branches leading to the NHPA, but the Historic Sites Act provided strong precedent for ARPA as well.

The 1935 policies received help to expand in 1949 with the government recognition of the National Trust for Historic Preservation. This is a non profit membership organization that maintains and helps others maintain properties of historic significance. They proved to be instrumental in helping to pass future historic preservation laws (King 2004:21).

The 1960s and 1970s were years in which environmental concern and awareness was at the forefront of policy making and citizen interest. Post - war developments covered the Untied States, and industries and made headway in communications, economic development, transportation, and public health (McManomon 2001:13). This increase in development caused destruction of many areas that contained cultural resources. These decades also saw Native American groups beginning to actively protest archaeological investigations, especially burial excavations (Ferguson 1996). One of my ethnographic informants, a practitioner of archeology in California, thinks there was what he called a “lost generation” of in Native American culture before the 1960s due to the termination of federal trust, and with new legal arenas their voice became stronger in the proceeding generation, with the rise if agencies such as AIM.
Congress recognized during this era that previous laws were inadequate to encompass the barrage of new development facing the nation (McManomon 2001:14). Congress was also concerned with maintaining and protecting the cultural environment as an important reflection of American heritage. The 1966 National Historic Preservation Act (NHPA) was to provide a much wider range of protection than the aforementioned Antiquities Act and Historic Sites Act, and it considered properties of local and state significance (McManamon 2001:14). The Antiquities Act and Historic Sites Act provided a good precedent for the ARPA enactment as well. Beyond recognizing that archaeological sites and artifacts are valuable sources of scientific information about the past for their intrinsic and non-commercial value, ARPA was to place special regulations on who may excavate sites and how the excavations will be accomplished, thus acknowledging that archaeological sites are of special importance and deserve special consideration (McManamon 2001:17).

National Historic Preservation Act: What it Is and What it Requires

The National Historic Preservation Act was drafted in 1966, and its statute and regulations have been amended over twenty times, as recently as 2006. It is the most influential and widely reaching law with respect to CRM and Native American consultation. It is also largely responsible for the beginning of the CRM industry in the U.S.

The statute itself is codified at the United States Code (U.S.C.) chapter 16 section 470 (16 U.S.C. 470). The regulations for the statute were issued in 1979. NHPA mandates and requires many things. First, the important sections of the NHPA will be relayed in
basic and general form, followed by the most important requirements respect to CRM being discussed in separate sections. Then, changes and amendments to the NHPA will be discussed, along with how both Native American and archaeological groups have each influenced changes in the law, and how these groups have worked together to influence changes. The concluding section will relay how FIGR has used the NHPA, and what they do to comply with the guidelines it sets forth.

NHPA: FINDINGS AND PURPOSE

Congress found that the spirit of the nation is founded upon its historic heritage, and thus, this heritage should be preserved for the American people (16 U.S.C. 470(b)(1)-(2)). Significant historic properties were being lost and altered with increased frequency (16 U.S.C. 470(b)(3)). Congress found it within the public interest to preserve this irreplaceable heritage for future generations (16 U.S.C. 470(b)(4)). However, in the face of increasing industrial development and urban expansion, previous preservation efforts have been inadequate (16 U.S.C. 470(b)(5)). The federal government aims to accelerate better means of understanding and identifying these resources, and supports efforts to encourage their preservation (16 U.S.C. 470(b)(6)-(7)).

Therefore, the federal government will act in partnership with local governments, Indian tribes, and private organizations, and use measures to assure modern society exists in harmony with historic and prehistoric resources (16 U.S.C. 470(1)-(2)). The federal government will also provide leadership in preservation programs for both federally and privately owned prehistoric and historic resources (16 U.S.C. 470(3)-(4)), and assist local
governments, private organizations, and Indian tribes in their own preservation efforts (16 U.S.C. 470(6)).

NHPA: OFFICIAL ESTABLISHMENTS AND CHARGES

The NHPA assigns duties to specific agents, and establishes official councils and programs. For instance, it gives the National Trust for Historic Preservation (NTHP) an official role in helping to write regulations for the NHPA (16 U.S.C. 470(b)(1)(A)). It also assigns many duties to the Secretary of Interior, such as establishing programs and regulations to assist Indian tribes in preserving their historic properties, and to consult with them in planning tribal historic preservation programs (16 U.S.C. 470(b)(3)(A)-(C)). The NHPA also gives the Secretary the power to allocate federal money to help with programs such as these (16 U.S.C. 470(b)(a)(1)-(6)). The more in depth programs and councils will be discussed individually forthwith.

National Register of Historic Places

The NHPA established the National Register of Historic Places (NRHP). This is a list of historic districts, buildings, structures, objects, and sites that are significant in American history, architecture, archaeology, engineering, and culture (16 U.S.C. 470(a)(1)(A)). The NHPA charges the Secretary of the Interior with establishing criteria for inclusion of properties within the NRHP, and also mandated notification of the owner of a property when that property is being considered for inclusion in the NRHP (16 U.S.C. 470(a)(2)(F)). The NRHP is maintained and expanded by the National Park Service (NPS) on behalf of the Secretary of the Interior (Parker and King 1998:2). The
NPS used the Secretary of the Interior’s existing list of National Historic Landmarks to assemble their initial list (King 2004:82).

The NPS assisted in writing the NHPA regulations which included the Secretary’s criteria for eligibility (King 2004:82). This is important, because items on this list establish what an historic property actually is for purposes of the statute. They are districts, buildings, structures, objects, and sites that are eligible for the NRHP under one of four criteria:

(a) that are associated with events that have made a significant contribution to American history,
(b) that are associated with the lives a person significant to America’s past,
(c) that embody characteristics of a specific type, period, or method of construction, or that represent the work of a master, or that possess highly artistic values or represent a significant and distinguishable entity, or
(d) that have yielded or are likely to yield, information important to history or prehistory (36 C.F.R. 60.4).

These historic properties also must maintain their integrity of location, design, setting, materials, workmanship, feeling, and association to be eligible for the aforementioned criterion.

The Advisory Council on Historic Preservation

The NHPA also established an Advisory Council on Historic Preservation (ACHP)(16 U.S.C. 470(i)(a)). The ACHP is an independent U.S. government agency
comprised of, among others, the Secretary of Interior, the chairman of the National Trust for Historic Preservation, one U.S. governor, one U.S. mayor, and one member of a Native American Tribe or Native Hawaiian Organization. All of these positions are appointed by the President (16 U.S.C. 470(i)(a)).

The duties of the ACHP are to advise the President and Congress of issues relating to historic preservation (16 U.S.C. 470(j)(a)(1)), to encourage participation in historic preservation (16 U.S.C. 470(j)(a)(3)), to help state and local government draft historic preservation legislation (16 U.S.C. 470(j)(a)(5)), to encourage training and education in historic preservation (16 U.S.C. 470(j)(a)(6)), and to inform the federal government, local governments, and Indian Tribes of their activities (16 U.S.C. 470(j)(a)(7)). They are also required to submit annual reports of their activities to Congress and the President (16 U.S.C. 470(j)(b)).

The State Historic Preservation Officer

The NHPA mandates that every state must appoint a State Historic Preservation Officer (SHPO) (16 U.S.C. 470(b)(1)(B)), to evaluate state historic preservation programs and to make sure they are in compliance with the statute and regulations (16 U.S.C. 470(b)(3)(A)). The SHPO is charged with nominating properties for the NRHP, providing a state run preservation plan, and providing education and technical assistance in historic preservation (16 U.S.C. 470(b)(3)(B)-(I)). It is also the SHPO’s responsibility to make sure that historic resources are taken into consideration at all stages of planning and development (16 U.S.C. 470(b)(3)(J)). This last point is important to cultural resource consultants because they are most often contracted to evaluate historic resources
before and during development and planning. The other parts of the NHPA that have had the most influence on CRM are discussed forthwith.

Section 106

The part of NHPA with which cultural resource managers frequently deal is Sec. 106 and its regulations at 36 C.F.R. 800. The Sec. 106 statute itself says:

The head of any federal agency having...jurisdiction...over a proposed federal or federally assisted undertaking...shall...take into account the effect of the undertaking on any district, site, building, structure or object that is included or eligible for inclusion in the National Register of Historic Places. The head of any such federal agency shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment with regard to such undertaking - 16 U.S.C. 470(f).

The regulations that go along with this law outline the purpose and detail the process of how to fulfill the statute. The purpose of Sec.106 is to have agencies take into account their effects on historic properties. It also seeks to begin a process to accommodate the historic preservation concerns of involved or interested parties through consultation that is to begin in the early stages of project planning. The goal of consultation is to identify potential effects and seek ways to avoid, minimize, or mitigate the adverse effects on historic properties. The agency must complete the Sec.106 process before the issuance of any federal funds or a federal license. They must start Sec.106 consultation early in the project’s life (36 C.F.R. 800.1 (a)-(c)).

It is the responsibility of the lead federal agency (hereafter, the agency) to see that the agency in charge of an undertaking takes legal and financial responsibility for complying with Sec.106. For purposes of Sec.106, a ‘lead agency’ “means each
authority of the Government of the United States, whether or not it is within or subject to review by another agency…" (5 U.S.C. 551), and an ‘undertaking’ is “a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency; those carried out with federal financial assistance, and those requiring a federal permit, license, or approval” (36 C.F.R. 800.16(y)). It is the agency’s responsibility to make sure their employees’ and contractors’ actions meet the Secretary of Interior’s professional standards. If there is more than one federal agency involved and they do not together identify one to be the lead agency, then all of the agencies are individually responsible for compliance. Even if the agency uses contractors, the lead federal agency is still legally responsible for Sec.106 compliance (36 C.F.R. 800.2(a)(1)-(4)).

The regulations are very respectful in consideration of concerns of Native American as well as concerns of the general public. The regulations mandate that when an agency consults with an Indian Tribe or Native Hawaiian organization, the consultation must be done on a government to government basis with respect to the tribe’s or organization’s sovereignty. This is true even if the undertaking is done off tribal lands but still has the potential to impact a property that the Indian Tribe or Native Hawaiian organization considers important (36 C.F.R. 800.2(c)(2)(ii)(A)-(F)). The regulations also state that the views of the public are essential to the Sec.106 process, and when one is involved in an undertaking the public must be notified so they can comment on the undertaking (except when it is appropriate to respect the confidentiality concern of affected parties), and have their views considered (36 C.F.R. 800.2 (d)(1)-(2)).
Section 110

Section 110 mandates all federal agencies to be responsible for historic properties in lands of their control. It made identifying, evaluating, and nominating historic resources to the NRHP federal responsibility (16 U.SC. 470(h)(a)(1)). These federal agencies have to establish a program to protect and preserve historic properties within their jurisdiction in consultation with other interested parties (16 U.SC. 470(h)(a)(2)(A)). They have to make sure that historic properties are given full consideration in planning, and if those properties are going to be affected, the federal agency must make timely efforts to document and record any historic properties or items before they are destroyed (16 U.SC. 470(h)(b)(1)), and provide disposition of all Native American items to the applicable Native American group (16 U.SC. 470(h)(a)(E)(iii)).

Significance of these Sections

Section 106 became more significant after it was clarified in the mid-1970s. At its inception in 1966, Sec.106 of the NHPA required a federal agency take into account their actions on historic properties already included in the National Register, and give the ACHP an opportunity to comment on these actions (16 U.S.C. 470(f)). At that time, the National Register was very young, and only had on it an ephemeral list of properties. To clarify the ACHP’s role, President Regan issued Executive Order 11593. This mandated that properties unlisted but eligible to be listed be considered in the Sec. 106 process. This means that agencies had to consider their actions upon any property that may be eligible to the NRHP as well as those properties already listed, affording much more breadth and depth to the Sec. 106 process.
Along with the provisions of this act originally catalyzing archaeological and
cultural resource consultants into the private sector, Sec. 106 is the most important part of
the NHPA with respect to archaeological and Native American relations. It starts a
process that mandates at least some interaction between interested groups, which often
include archaeologists and Native American groups. This original mandate has become
more finessed over time, and catalyzed cooperation between both groups. This is
different than academic archaeological endeavors because laws such as these that
mandate consultation processes do not usually apply to academic investigations funded
by grants. In this respect, CRM is special. The consultation procedures set forth by the
Sec. 106 regulations have led to allocation of tens of thousands of dollars in government
funds for archaeological investigations (McManamon 2001:11). This also created a flood
of new jobs in archaeological consulting in order for organizations comply with the new
regulations (McManamon 2001:11).

Section 110 puts responsibility in the federal government to preserve and protect
historic resources important to all cultural groups in the country. Thus, more money
allocated by the Act itself was delegated to federal programs to fulfill the mandates.
Along with the influx of cultural resource consultants in the private sector contracting
their skills in response to the NHPA as a whole, Sec. 110 in particular led to federal
agencies creating positions for cultural resource and archaeological specialists to fulfill
these mandates (McManamon 2001:11).
The sentiments in the language of the NHPA and the considerations that it gave to different players in the Sec. 106 process led to a snowballing paradigm shift in historic preservation and archaeology. The Sec. 106 procedures were formally issued as regulation in 1979, and revised in 1986, significantly amended in 1992, revised again in 1999/2000, and amended into their current version in 2004 (King 2004:84). These amendments and how they were affected and influenced by members of both the archaeological and Native American communities are discussed in this section.

During the same era as the regulations for Sec. 106 were being drafted, there was movement by the archaeologists who sympathized and recognized Native Americans concerns about prehistory as valid. In the 1970s the Society for American Archaeology (SAA) recognized that there was need for improvement in relationships between archaeologists and Native Americans. The SAA viewed Native American concerns as legitimate, and recommended increased communication and interaction on the part of archaeologists to find ways for Native Americans to participate in their research (Ferguson 1996:68).

Years later, the SAA’s efforts were thriving. In the early 1990s, the SAA established a task force to advise the Society on how to develop a better relationship with Native Americans, because the SAA had been getting criticism from some Native American groups (Ferguson 1996:68). By 1995, the task force had grown into a standing committee, which worked to establish a liaison with Native American organizations (Ferguson 1996:68). The task force defined the responsibility archaeologists had to the Native American community, and had developed means for archaeologists and Native
American groups to cooperate with each other in cultural resource protection. These included such things as improving communication through public outreach and education and preparing guidelines for dealing with issues of repatriation amongst tribes without federal recognition (Ferguson 1996:69).

Some archaeologists attributed the fundamental change in the structure of Native American and archaeological relationships in the mid-1990s as having resulted from consultation mandated by laws such as the NHPA (Ferguson 1996, Colwell-Chanthaphonh and Ferguson 2008). T.J. Ferguson thought that criticism of archaeologists by Native Americans had led to the passage of laws that encompassed Native American concerns (Ferguson 1996:63).

In addition to laws being influenced by efforts on behalf of Native American and archaeological groups, group efforts are influenced by laws. This exemplifies why the influence is, in a sense, circular. The SAA's aforementioned efforts of the 1990s may have partially been a response to the previous decade's amendments to the NHPA. Among other things, the 1980 amendments directed the Secretary of Interior to work with the American folk life center to study how to preserve elements of innate cultural heritage, and to preserve and continue the diverse traditional expressions that make up American heritage (NHPA 16 U.S.C. 470(a), Parker and King 1998:2).

The Secretary of Interior was in charge of the report that came out of this mandate, entitled Cultural Conservation, and it was submitted to Congress and the President in 1983 (Parker and King 1998:2). The report called for cultural properties and resources to be addressed more systematically when implementing the requirements of the NHPA. Further, the Secretary of Interior directed the NPS to prepare guidelines for
documenting *intangible* cultural resources, which would include areas of land or water important to a culture for what it represents to them, without being marked by tangible objects (Parker and King 1998:2). The NPS was to incorporate provisions for the consideration of intangible cultural resources into departmental planning documents, and to encourage state and federal agencies to identify and document them (Parker and King 1998:2). This led to NPS developing an official bulletin, Bulletin 38 in 1990, *Guidelines for Evaluating and Documenting Traditional Cultural Properties*, as a response to this *Cultural Conservation* report (Parker and King 1998:2). The bulletin was drafted to help people follow the guidelines of Sec. 106 regulations. The 1980 amendments were the catalyst for the consideration of eligibility of traditional cultural properties (TCPs) to the NRHP, because the law recognized the difference in epistemological notions of tangibility, not just from Native Americans but any ethnic origin in America that ascribes traditional cultural values to a property.

Bulletin 38 was likely influenced by legislation that specifically responded to Native American concerns. The American Indian Religious Freedom Act (AIRFA) of 1979 required federal agencies like the NPS to evaluate policies with the aim of protecting religious freedoms of Native American groups (42 U.S.C. 1996). National Register policies could have been interpreted in a way that excludes Native American’s traditional religious properties from eligibility (Parker and King 2008:3). The idea that such properties were eligible belies western epistemological ideas that something needs to be tangible to be protected. Therefore, the Bulletin 38 worked to minimizes interpretations of Sec. 106 that excluded intangible properties such as TCPs that are significant to Native American groups (Parker and King 1998:3).
Formally, the NHPA was amended in 1992 (King 2004:84). These amendments enhanced the role of Native Americans. Section 101 was amended to require that Native American values be considered in managing archaeological sites and historic properties (16 U.S.C. (a)(d)(1)(A)-(C)). It also established that Native American sites of traditional and religious importance may be eligible for the National Register. These are the TCPs preceded by the 1980 amendments referenced above. This is an excellent example of how laws that gave consideration to Native Americans helped influence changes in the NHPA’s Sec.106 guidelines, and thus changed the things that CRM practitioners are required to consider when evaluating a potentially eligible property.

The 1992 amendments also allowed Native American tribes to appoint Tribal Historic Preservation Officer (THPO) in lieu of the SHPO to decide if undertakings were being exercised on Native American land, and how to deal with them. This gave them the opportunity to regulate archeological investigations on their land (36 C.F.R. 800.2(c)(ii)(A-F)(1-5)). The amendments specifically designate this agency head as the person responsible for direct response to ACHP comment (36 C.F.R. 800.2(a)(2) and 800.2(b)(1)). This increased Native American control over their lands.

The 1992 updates let to the revision of Bulletin 38 after the official mandate that TCPs may be considered eligible for the NRHP. Beyond simply identification and documentation of TCPs, they had to add an entire section on determining eligibility (Parker and King 1998). The bulletin defines a TCP as:

...eligible for inclusion in the register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community’s history and (b) are important in maintaining the continuing cultural identity of the community. - Parker and King 1998:1
The way the bulletin instructs how to identify TCPs is based primarily on using ethnographic research and interviews to locate places of importance (Parker and King 1998:2). This was significant because of the dialogue in the 1990s about epistemological differences between Native Americans and archaeologists that was sparked by TCPs.

TCPs were a new idea in the early 1990s. The initiation of the eligibility of TCPs as cultural resources sparked many arguments among cultural resource practitioners. Archaeologists and Native Americans argued about TCPs and regulations, highlighting some of the cultural differences not addressed by the law, especially issues concerning the time limits on federally mandated responses pursuant to the Sec. 106 process, oral traditions being a substantial basis for evidence of significance, and the religious significance versus the scientific significance of properties (Dongoske et al. 1995:13, Sebastian 1995:14). Ultimately, with the addition of TCPs, the law was trying to flex to meet the main concerns of interested parties (Sebastian 1995:14).

Due to the statute's allocation of federal money to aid in archaeological investigations, the NHPA was responsible for most of the investigations archaeologically on Native American sites in the United States (Ferguson 1996:67, McManamon 2001:10). In the mid 1990s many authors thought that most archaeologists respected the concerns Native Americans had for their ancestral remains, although there were still problems with certain epistemological differences in the language of the NHPA statute (Anyon 1991, Ferguson 1996, Zimmerman 1995). Namely, the different ways in which time is perceived by Native American epistemology and Western epistemology, the different ways in which their respective epistemologies allow them to view and label the
past, and the concept of land ownership (Ferguson 1996). In 1990, Klesert and Holt said that archaeologists perceive there is a bigger rift between the groups than there really is (Klesert and Holt 1990:249). However, others thought that Native Americans resented archaeologists because they perceived archaeologists as thinking they have a privileged view of the past (Deloria 1992:2). The addition of the TCP to the NHPA may have been a response in order to demonstrate that those concerns were recognized by the lawmakers.

In 1999, more changes to the Sec. 106 regulations were issued that enhanced the consideration of cultural values. The regulations were revised at sections 800.5 and 800.6 to detail identification and resolution of adverse effects to historic properties (36 C.F.R. 800.5, 800.6). For purposes of the statute, an “adverse effect” is “…when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that that qualify the property for inclusion in the National Register” (36 C.F.R. 800.5(a)(1)). The new regulations put more emphasis on considering views of all interested parties concerning any adverse effect that may occur to a historic property (36 C.F.R. 800.5(a)). They also mandate continuation of consultation with interested parties to resolve adverse effects (36 C.F.R. 800.6(a)) and go into detail about the proper steps of consultation (36 C.F.R. 800.6(a)-(c)).

The ACHP then issued *Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites* to be in accordance with the revised regulations (ACHP 1999). This document aimed to increase needed consultation and gives examples of hypothetical situations in which consultation should occur, outlining the appropriate steps to take. It made it clear that different parties’ cultural values were
being more widely considered because of depth and breadth that the 1999 updates gave to
the resolution and consultation process under Sec.106.

The new millennium saw the ACHP becoming even more aware of the concerns
difference parties had about cultural heritage. This is evidenced by the publications they
issued. In 2002, the ACHP developed a guide for the average citizen who cares about
cultural resources but may not know what they are officially. It was aimed at people not
formally trained in CRM or familiar with the CRM laws but still concerned about their
community’s heritage (ACHP 2002). This guide simplifies the formal language of the
NHPA and Sec.106 review and makes it available to people not in CRM.

The next year, the ACHP published a revised guide to consulting with Indian
Tribes in the Sec. 106 process (ACHP 2003). It was partially revised to address the 1992
amendments which incorporated TCPs into the category of things that can be eligible for
the National Register, and which required federal agencies to consult with Indian tribes to
fulfill their Sec. 106 responsibilities about any properties to which they attach religious
and or cultural significance that may be affected by an undertaking (16 U.S.C.
470(d)(6)(A), 16 U.S.C.(d)(6)(B)). This was an added attempt on behalf of the ACHP at
building a more cohesive relationship between Native American groups and CRM
practitioners by detailing the expected amount of interaction expected to happen between
the groups. This is further evidence of the law evolving to become more all
encompassing with respect to cultural differences.
**NHPA, FIGR, and CRM in California**

My informants did not indicate noticing a significant change in the area of archaeology and the tribe with the initial passage of the NHPA, because FIGR was granted recognition years after the passage of the statutes. However, in the larger arena of relations initiated by the NHPA came more cooperation. When the NHPA was passed, FIGR was not federally recognized. However, today FIGR fulfills the requirements of the NHPA in a very cohesive and organized way. For example, Point Reyes National Seashore (PORE) is the biggest area of public land in FIGR territory. It is a National Seashore and therefore federal land, and it is currently owned by the NPS. This means it falls under the NHPA umbrella.

The interviews I conducted with members of FIGR revealed that pursuant to Sec. 106 regulations, FIGR has set up quarterly meetings to discuss a variety of programs, issues, and concerns from both parties- i.e., the tribe and the NPS. They jointly set the agenda and frequently switch their meetings between the tribal office and PORE offices. Some of the topics include repatriation of human remains, park policies affecting the tribe, interpretive materials, protection of cultural resources, museum policies, inadvertent discoveries of human remains and artifacts, security, environmental protection, collection of native plants and dozens of other items (recently, they have both been meeting with Army Corps regarding a project). The informants from the CRM practitioners and from the tribe both indicated that there is a mutually respectful, cohesive, and cooperative relationship between FIGR and the CRM practitioners with whom they deal.
The members of FIGR and the CRM consultants I interviewed both agree that communication between them in the current time is good and productive. They each have mutual respect for each other’s concerns, and feel that future will see a definite end to the sentiment that archaeology in California is done by westerners for the scientific benefit of westerners. They also agree that the catalyst for increased communication was likely laws such as the NHPA that mandated consultation, and without these laws it would have taken much longer to come to the level of agreement and mutual respect at which we now stand.

Archaeological Resource Protection Act: What it is and What it Requires

APRA became law on October 31, 1979. The law itself can be broken down into five parts: the findings and purpose, the definitions, the requirements, the prohibitions, and the penalties.

ARPA: FINDINGS AND PURPOSE

Congress found that archaeological resources are irreplaceable and important to the nation’s heritage (16 U.S.C. 470aa(a)(1)). They are accessible and becoming more endangered with increased commercial attractiveness (16 U.S.C. 470aa(a)(2)). Existing laws cannot provide protection against destruction and loss of such resources (16 U.S.C. 470aa(a)(3)), and there are copious archaeological resources in private hands that could be volunteered to professional archaeologists and institutions (16 U.S.C. 470aa(a)(4)). The purpose of APRA was thus to preserve the protection of archaeological resources on public and Indian lands, and to foster increased cooperation and exchange of information
between the government, archaeological professionals, and people with private collections, for the present and future benefit of American people (16 U.S.C. 470aa(b)).

DEFINITIONS

Under APRA, “archaeological resource” means “any material remains of past human life or activities which are of archaeological interest...at least 100 years of age” (16 U.S.C. 470bb(1)). “Public lands” means

...lands that are owned and administered by the United States as part of (i) the national park system, (ii) the national wildlife refuge system, or (iii) the national forest system; and all other lands the fee title to which is owned by the Unites States... - 16 U.S.C. 470bb(3).

Finally, “Indian lands” means “lands of Indian tribes...which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States...”(16 U.S.C. 470bb(4)).

REQUIREMENTS

APRA mandates the following things: One must apply for a permit in order to do any activities associated with archaeological resource exaction or removal. The application has to indicate the time, scope and location of such activity (16 U.S.C. 470cc(a)). Applications will only be granted if the applicant is qualified (16 U.S.C. 470cc(b)(1)), and if the purpose of the activity is to further archaeological knowledge in the public interest (16 U.S.C. 470cc(b)(2)). Any archaeological resources removed will remain in U.S. property and be preserved, along with copies of associated records and data, at a scientific or educational institution (16 U.S.C. 470cc(b)(3)). Lastly, the activity
pursuant of the permit cannot be inconsistent with any management plan on the public lands concerned (16 U.S.C. 470cc(b)(4)).

If an archaeological investigation for which one is applying for a permit may result in any harm to any Indian cultural or religious areas or items, one must notify the applicable Indian tribe before the permit is received (16 U.S.C. 470cc(c)). If one is applying for a permit on Indian lands, a permit will not be granted until consent from the tribe is obtained (16 U.S.C. 470cc(g)(1)-(2)). Finally, ARPA renders any previous need for a permit under the Antiquities Act nugatory (16 U.S.C. 470cc(h)(1)).

PROHIBITIONS

ARPA prohibits any person from excavating, removing, damaging, altering or defacing any archaeological resource, or from attempting to do any of these without a permit (16 U.S.C. 470ee(a)). It also prohibits the selling, purchase, exchange, transport or receipt, or offer to do any of these things, of archaeological resources obtained unlawfully (16 U.S.C. 470ee(b)). Further, APRA prohibits any interstate or foreign commerce of archaeological resources obtained in violation to any law (16 U.S.C. 470ee(c)).

PENALTIES

If any party violates, or solicits another party to violate any of the aforementioned prohibitions, then upon conviction they will be fined up to $10,000 or receive up to one year in jail or both. However, if the archaeological resource involved in any party's conviction exceeds the value of $500, or the repair or respiration of an archaeological
resource involved exceeds $500, the penalty increases to up to $20,000 or up to two years in prison or both. Furthermore, if an offender is cited for subsequent violations of APRA prohibitions, than can be fined up to $100,000 or receive up to five years in prison, or both (16 U.S.C. 470ee(d)).

ARPA: How it Came About

Industry and commerce rapidly increased in the 1970s, providing more access to remote areas containing archaeological sites. The result was more professional looting and sales of archeological antiquities on the black market (McManamon 2001:14). ARPA grew out of recognized inadequacies and constitutional problems with the Antiquities Act of 1906, and its inability to effectively deal with such crimes (McManamon 2001:14). Although it prohibited individuals from digging haphazardly into sites of historic significance and called for the scientific excavation of U.S. antiquities (16 U.S.C.431-433), the Antiquities Act did not give a clear definition of what an object of antiquity actually was (King 2002:147).

In United States v. Diaz, Ben Diaz was convicted under the Antiquities Act of taking ‘objects of antiquity’ from a cave on an apache reservation in Arizona (United States v. Diaz, 499 F.2d 113, 9th Circuit, 1974). Upon the first appeal, it came to light that the masks had been made within the past ten years, and therefore could not have been objects of antiquity (United States v. Diaz, 499 F.2d 113, 9th Circuit, 1974). Since the Antiquities Act does not define an object of antiquity by age, testimony from a University of Arizona anthropology professor was accepted into evidence, and the court held that the socio-religious significance of an object determines its status as an antiquity
just as much as its age would (*United States v. Diaz*, 499 F.2d 113, 9th Circuit, 1974).

The 9th Circuit Court of Appeal reversed the decision, finding the Antiquities Act unconstitutionally vague, stating “Nowhere do we find any definition of...object of antiquity” (*United States v. Diaz*, 499 F.2d 113, 9th Circuit, 1974).

Clearly, a more effective law was needed to protect archaeological resources. Since archaeological sites are not dealt with specifically under the NHPA umbrella, and they warranted protection all their own, APRA was drafted. ARPA, with its clear definitions, mandates, prohibitions and penalties, was more all encompassing.

ARPA is more concerned with the scientific and historical value of archaeological resources rather than their value to contemporary Native Americans. However, Native Americans have been active in efforts to increase protections under ARPA.

**ARPA: How it has Changed**

ARPA was amended in four times in 1988 (Desio 2004:64). APRA’s criminal penalties were revised in 2002 (King 2004:252). Since regulations for ARPA were not completely enacted until 1984, the 1988 amendments were put in place for clarification of questions that came up during the regulations drafting (Desio 2004).

The first amendments added the word “deface” to Sec. 6 in the sentence “...in attempt to excavate, remove, damage, or otherwise alter or deface” (16 U.S.C. ee(a)).

Section 10 of the Act was also amended to mandate that each federal land manager must establish a program to increase public awareness of archaeological materials’ significance. In addition, each such manager is to submit a report annually about the actions they have taken under such program, and submit it to the Committee of
Interior and Insular Affairs of the U.S. House of Representatives and to the Committee on Energy and Natural Resources (16 U.S.C. ii(a)-(c)).

Another significant amendment to ARPA which strengthened recognition of cultural resources in the U.S. was the addition of Sec. 14. This mandated that the Secretary of Interior, the Secretary of Agriculture, the Secretary of Defense, and the Chairman of the Board of the Tennessee Valley Authority all develop plans for the survey and evaluation of the nature and extent of archaeological resources, and schedule surveys for those lands that contain the most scientifically valuable archaeological resources, and develop documents for reporting violations (16 U.S.C. 470mm).

Lastly, the amendment of ARPA most important from a protection standpoint was the reduction of the Act's felony versus misdemeanor threshold. Before 1988 the minimum monetary damage to an archaeological resource that warranted a felony conviction was $5,000. The 1988 amendments reduced it to $500 (16 U.S.C. 470ee(d)). This has allowed more felony prosecutions for archaeological violations.

Despite the action of the amendments, many felt there were still a lot of problems with ARPA at the later part of the 1990s.

When ARPA was passed, archaeologists expected that the rate of looting and destruction of our country's archaeological heritage would subside. Unfortunately, this has not proven to be the case. While casual looting may be on the decline, clearly commercial looting is not, and archaeological resources on public lands continue to be seriously endangered. - Cheek 1991:6.

Some scholars believe ARPA may not have been clear enough in the beginning to live up to expectations of solving the problem of commercial looting of archaeological sites. ARPA has been called ineffective in helping prosecute looters on public lands (Sebastian 2004:5). It has been written about as not as adequate as the lawmakers had in
mind when they drafted it (Cheek 1991:6). It is also known to be ineffective in protecting certain historic sites, due to the age of an object warranting protection is at least 100 years (16 U.S.C. 470bb(1)).

There are cases which some people believe to exemplify the effectiveness of APRA, despite criticism. The successful prosecution of Indiana Art dealer Arthur Gerber was based on ARPA violations. He was convicted of transporting and selling artifacts that he obtained on private lands, but then proceeded to traffic across state lines, violating 16 U.S.C. 470ee(c). The case was important because it showed how APRA could be successful in prosecuting dealers even if they obtain their material originally from private land (McManamon 2001).

Whether the APRA statute and its guidelines are working well or not, it is clear that archaeological resources provide insight into our continent’s prehistory and simultaneously encompass certain elements that are sacred to today’s tribal members. Although ARPA is primarily concerned with archaeological resources for their scientific and historic value, it does mandate interaction between an archaeologist seeking a permit and the Native American groups upon whose traditional land areas the permit is sought (16 U.S.C. 470cc(b)(4)). Native Americans, archaeologists, and their constituents were influential in amending sentencing guidelines to increase penalties for violators of ARPA.

In 2002, the United States Sentencing Commission (hereafter Sentencing Commission) issued specific guidelines for sentencing perpetrators of federal cultural resource crimes (Desio 2004:61). This act increased the harshness of penalties for criminals who break guidelines such as ARPA’s, thus deterring people from committing such crimes (Desio 2004:62). The drafting of these new guidelines partially had to do
with the Sentencing Commission Reform Act of 1984, in which the federal government seriously altered the methods of how sentences were established for perpetrators of federal crimes, creating umbrella guidelines for sentencing as opposed to sentences being imposed by individual judges (Desio 2004:67). When writing these guidelines for cultural resource crime sentences, the Sentencing Commission was influenced from constituents of archaeological and Native American communities, such as the Society for American Archaeology and the Bureau of Indian Affairs.

In 2001, the Sentencing Commission was bombarded with letters urging them to draft a separate set of sentencing guidelines for perpetrators of cultural resource and cultural heritage crimes (Desio 2004:66). These letters came from places private and public, such as the Secretary of the Interior, the National Park Service, the Forest Service, the American Association for Museums, the National Congress for American Indians, and the Archaeological Institute of the Americas (Desio 2004:66).

Paul Warner and John Fryer testified to the Sentencing Commission regarding the drafting of sentencing guidelines for perpetrators of cultural resource crimes such as ARPA (Desio 2004:68). Warner was the U.S. Attorney for the District of Utah and his position was endorsed by the Society for American Archaeology (SAA), and testified before the Sentencing Commission about the value of archaeological resources to the scientific community and to the greater history of our nation (Desio 2004). Fryer, a criminal investigator for the Bureau of Indian Affairs as well as a specialist in ARPA cases, testified to the fact that Native American graves were being looted and their funerary items being stolen. He drew attention to the fact that many tribes have already written the Sentencing Commission urging them to draft separate guidelines for
perpetrators of these egregious crimes. Fryers explained that certain material culture, such as items of patrimony, are more than simply physical items, but derive their importance throughout their life, in stages, analogous to a birthing process (Desio 2004:67). His testimony is heralded as one of the most influential in convincing the Sentencing Commission to draft a separate set of guidelines for sentences involving cultural resources crimes (Desio 2004:67-68).

The Sentencing Commission took the testimony and letters into account when drafting their guidelines. Their vice chairmen at the time, Rueban Costillo, proudly said that the decision to make the guidelines more inclusive is part of their prolonged effort to continue to be responsive to Native American concerns (Desio 2004:68).

As a result of these proceedings, APRA was changed in a number of ways. The Sentencing Commission decided that an archaeological resource does not have to be 100 years to be important when weighing sentencing. Also, the past offenses of cultural resources crimes would be taken into consideration when weighing the sentence of a perpetrator. The guidelines further increased punishment for offenders whose crimes involved certain Native American spiritual items, since they were also protected under Native American Graves Protection and Repatriation Act (discussed in Chapter V). The guidelines officially went onto effect on November 1, 2002 (Desio 2004:76).

The Sentencing Commission utilized the opinions of a broad base of constituents when drafting these guidelines. This is a great example of the inclusiveness of both archaeological and Native American interest and involvement when it comes to changing the provisions of cultural resource laws. Christopher Kearny, Deputy Assistant Secretary to the Department of Interior, believed that they key interpreting ARPA is in
communication between agencies, and education of law enforcement (Kearny 2002). It was clear to Kearny that the government was talking an interest in such change, he said:

Because individuals, communities and nations identify themselves through intellectual, emotional, and spiritual connections to places and objects, the effect of cultural resource crimes sometimes transcends mere monetary considerations. - Kearny 2002:1.

He believes that the reason the commission proposed the guideline amendments in 2002 was in order to demonstrate that the law understands these values. He also thinks that increased communication would be more help than adding amendments (Kearny 2002).

ARPA, FIGR and CRM in California

The members of FIGR I interviewed did not notice any obvious changes in the consideration of their cultural resources from agencies or CRM consultants after the enactment of ARPA. The practitioners of archaeology that I interviewed in the California area also did not indicate any change in the relationship between their CRM agencies and Native American groups with the passage of ARPA. As previously mentioned, FIGR was not federally recognized until 2000, so any federal agency or an archaeologists applying for a permit would not have been required to notify FIGR at the time ARPA was passed.

The 1988 amendment to APRA that required the Secretaries to find the extent of archaeological resources would theoretically apply to PORE, since it is a national park (16 U.S.C. 470ii(a)). FIGR has never had to be involved in the prosecution of anyone under ARPA. Since PORE and Golden Gate National Recreation Area (GGRA) are the largest areas of federal land in FIGR territory, the NPS have to work with only one tribe.
Since there have been very few projects there, issues have been very uncommon. The law enforcement arm and other staff of PORE and GGRA are very good at spotting problems before they occur. The tribe receives copies of all ARPA requests from PORE. PORE always asks if FIGR has any objections or concerns before projects are approved. FIGR indicated that NPS has never pressured FIGR to agree to any proposed project.

Today, ARPA works in the arena of archaeology and is dealt with every day, because archaeologists need to apply for ARPA permits before they can do any investigation for scientific evaluation of past human beings, as mandated by the statute. ARPA was not drafted nor were its regulations mandated with the primary concern to protect Native American cultural or patrimonial items, however, ARPA and its statutory guidelines has helped protect these things. In many ways, APRA also set precedent for newer laws that consider the Native American side of the archaeological resource spectrum, such as Native American Graves Protection and Repatriation Act of 1990.

LAWS CHANGING PEOPLE, PEOPLE CHANGING LAWS

Statutes such as ARPA and the NHPA and its regulations led to a federally mandated cooperation between archaeologists and Native Americans in the U.S. This in turn led to changes in the law to help improve cooperation, which then led to more cohesive cooperation between the groups. More cooperation between groups with different epistemologies such as archaeologists and Native Americans led to changes within archaeology; archaeology is no longer by and for Westerners (Atlay 2006:289). Also, predictions for the future of relationships between the two are bright. Sonya Atlay thinks that we need an approach that
...blends the strength of western archaeological science with the knowledge and epistemologies of indigenous peoples to create a set of theories and practices for an ethically informed study of the past, history and heritage. - Atalay 2006:301.

This would be utopian, but just the sentiment and the acknowledgement that we may be able to achieve this utopian place speaks volumes about the progress of the relationship between the indigenous and the Western. However, Watkins purports that relationships between archaeologists and Native Americans in the U.S. are “generally cool,” but he acknowledges that tribal groups use archaeology and archaeological methods to meet legal standards concerning CRM (Watkins 2005:441). He also said stewardship of the past should be shared, echoing Atalay’s sentiments, and that more communication will help the two groups learn from each other (Watkins 2005:442).

This increased communication and mutual understanding brought about by the evolution of laws such as the NHPA clearly had an effect on the legislature when they were considering Native American rights. Increased awareness likely led to laws that are directly drafted to address Native American cultural concerns, such as the Native American Graves Protection and Repatriation Act of 1990.
Chapter V

Native American Graves Protection and Repatriation Act

Introduction

Some very important laws that affect archaeologists and Native Americans alike were not drafted in the same vein as historic preservation laws such as the Antiquities Act, the Archaeological Resources Protection Act, and the National Historic Preservation Act. The Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) is a law drafted specifically with Native American concerns about their cultural history in mind. NAGPRA protects Native American graves and cultural items and facilitates communication between tribes and federally funded museums and educational institutions in the context of repatriating (giving back) Native American human remains and sacred items. Executions of NAGPRA provisions are overseen by the Secretary of the Interior, and by the NAGPRA Review Committee which was established by the statute (25 U.S.C. 3008).

In this chapter, the law and what it mandates will be discussed and important terms defined for purposes of the Act. Then, NAGPRA's regulations concerning how it is relevant with respect to CRM will be discussed, after which the history of how the law came about is overviewed and the changes that happened to the regulations will be relayed. Since NAGPRA has been so controversial in some of its special terms and mandates, various import concepts and cases and the controversy surrounding them will be discussed, including a case study that exemplifies some aspects of such controversy.
Finally, NAGPRA will be discussed in the context of California and FIGR, and it is in this section that the results of my interviews will be discussed.

**NAGPRA: What it Is and What it Requires**

**GENERAL PROVISIONS**

NAGPRA became law on November 16, 1990 (25 U.S.C. 3001). NAGPRA’s regulations were codified in December of 1995 (60 C.F.R. 62158). NAGPRA’s main purpose is to promulgate that ownership and control of Native American cultural items excavated from or discovered on federal or tribal lands shall be given to, in order of priority, the lineal descendants of the people associated with the cultural items, if they are human remains or associate funerary objects (25 U.S.C. 3001(a)(1)).

If the lineal descendants cannot be found, and in the case where cultural items consist of non-associated funerary objects, sacred objects, and/or objects of cultural patrimony, then ownership goes to the Indian tribe or Native Hawaiian organization whose land the objects were found upon (25 U.S.C. 3001(a)(2)(A)), or the Indian tribe or Native Hawaiian organization with the closest cultural affiliation with such remains or objects who states a claim for them (25 U.S.C. 3001(a)(2)(B)).

If the cultural affiliation cannot be reasonably ascertained, then ownership of remains or objects goes to the Indian tribe who is recognized to have aboriginally occupied the area of federal or tribal land on which the objects or remains were discovered (25 U.S.C. 3001(a)(2)(C)(1)). However, if by a preponderance of evidence it is shown that another tribe has a stronger cultural relationship with the remains or
objects, then ownership goes to that tribe if they state a claim for the remains or objects (25 U.S.C. 3001(a)(2)(C)(2)).

NAGPRA also mandates that each federally owned or funded museum or institution (such as a college or research facility) with collections of Native American human remains and associated funerary objects shall compile an inventory of these items and identify the geographic area they came from, and identify the cultural affiliation of such items (25 U.S.C. 3003(a)). They have to do this in consultation with tribal government officials and traditional religious leaders (25 U.S.C. 3003(b)(1)(A)). The lists are meant to be completed five years from November 16, 1990 (25 U.S.C. 3003(b)(1)(B)). After such lists are compiled, and if objects on it can be shown to be culturally affiliated with an Indian tribe or Native Hawaiian organization, the items will be expeditiously returned to them, and the return should be coordinated with consultation of the applicable tribe or organization (25 U.S.C. 3005(a)(1)-(3)).

PERMITTING

NAGPRA permits professional archaeological excavations and removal of Native American cultural items, human remains and associated or unassociated funerary objects, if the archaeologists do it after getting an ARPA permit pursuant to 16 U.S.C. 470cc, and only after they show proof of consultation with and consent from the Indian tribe or Native Hawaiian organization on whose lands they are getting the permit for, or the tribe or organization that aboriginally occupied the area of federal land for which the APRA permit is being issued (25 U.S.C. 3002(c)(1)-(4)). They show this proof to the head of the agency in ownership of the land (25 U.S.C. 3002(d)).
VIOLATIONS AND CONSEQUENCES

If anyone knowingly sells, purchases, uses for profit, or transports for sale or profit any Native American human remains or cultural items without right of possession to such objects, as defined by NAGPRA, that person shall be fined and imprisoned for up to 12 months, or in the case of a subsequent violation, up to five years (18 U.S.C. 1170(a)).

DEFINITIONS

For purposes of NAGPRA, *cultural affiliation* means

There is a relationship of shared group identity that can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group. - 25 U.S.C. 3001(2).

*Cultural items* means “human remains and associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony” (25 U.S.C. 3001(3)).

*Associated funerary objects* are

Objects that, as part of a death rite or ceremony of a culture, are reasonably believed to have been placed with human remains either at the time of death or later...[or] items exclusively made for burial purposes or to contain human remains...where the remains are presently in the possession or control of a Federal agency or museum. - 25 U.S.C. 3001(3)(A).

*Unassociated funerary objects* are

Objects that, as part of a death rite or ceremony of a culture, are reasonably believed to have been placed with human remains...
either at the time of death or later...where the remains are not in the
possession or control of a federal agency or museum, but can be
identified...as related to ...or having been removed from a specific
burial site of an individual culturally affiliated with a particular Indian

*Sacred object* means "specific ceremonial objects which are needed by traditional
Native American religious leaders for practice of traditional religions by their present day
adherents" (25 U.S.C. 3001(3)(C)). An item of *cultural patrimony* means

An object having ongoing historical, traditional, or cultural
importance central to the Native American group or culture
itself...such object shall have been considered inalienable by such
Native American group at the time it was separated from the group. -

REGULATION PROCEEDURES RELATING TO CRM

NAGPRA has had a profound effect on Native American groups, their material
culture, and on archaeological CRM consultants and institutions that deal with human
burials and associated items. NAGPRA is connected to other cultural resource laws such
as ARPA, in the sense that one could not excavate remains without a permit pursuant to
ARPA, or without coordinating with tribes or groups known to have aboriginally
inhabited the land. This furthered the notion that a CRM consultant dealing with items
mentioned under NAGPRA had to be a professional with professional archaeological
qualifications. The regulations also mandated procedures for federal land managers
which gave the NAGPRA process better organization and cohesiveness.

Federal agencies in charge of areas of federal land must take steps to determine if
a planned activity may result in the excavation of human remains or cultural items.
Before the agency can issue permits for activities, the agency official must notify, in
writing, the Indian tribe or Native Hawaiian organization likely to be culturally affiliated
with such items, and give them details of the planned activity. The written notice must also propose meeting times and places for further consideration of the activity and proposed actions for the disposition of human remains and cultural items (25 C.F.R. 62158.3(c)). After consultation, the agency official must write and carry out a plan of action (25 C.F.R. 62158.3(d)).

Also, if the planned activity is also subject to review under Sec. 106 of the NHPA, the federal agency should coordinate consultation and any subsequent agreements with this act as well (25 C.F.R. 62158.3(c)(3)). However, this coordination under NAGPRA does not relieve an agency official of NHPA Sec. 106 compliance (25 C.F.R. 62158.3(c)(3)).

If Native American human remains are discovered inadvertently (which sometimes happens when CRM archaeologists are executing a survey or a dig to mitigate adverse effects by an undertaking pursuant to NHPA, for example), NAGPRA sets up procedures for all groups to negotiate a Plan of Action specifically detailing what will happen to the remains (60 C.F.R. 62158(d)).

Therefore, NAGPRA sets up the consultation and communication process between archaeologists and Native American groups on a level which is more inclusive than previous preservation laws, in the sense that it involves the giving back, or repatriating, of items discovered archeologically. The level of interaction between these two groups achieved by this law was preceded by their interaction and cooperation during efforts to pass a law such as NAGPRA that gave back items to Native American groups.
NAGPRA: How it Came About

NAGPRA was finally passed after a long line of bills concerned with repatriation made their way through Congress, with participants from both archaeological and Native American interest groups promoting compromises between interested parties. The value that the legislature puts into this country's cultural resources was apparent from the initiation of the Antiquities Act and subsequent preservation laws. Drafting bills that became laws such as NAGPRA shows U.S. legislature recognizes many cultural groups, and through the passage of these laws legitimize these groups' concerns and ideas about their own cultural past. NAGPRA gave the Native Americans consideration over museums and educational institutions that deal with items from their cultural past, thus changing the relationship between these institutions, archaeologists and their curation facilities, and the tribes, forever.

As previously discussed, the 1960s and 1970s were a time when a lot of Native American voices being raised about their concerns about the material culture of their ancestors (McManamon 2001:10). Archaeologists in California and the Southwest were still teaching their students that it was best to avoid contact with Native American groups because they had different ideas about the past (Thomas 2008: viii). Although many archaeologists believed that they empathized with Native American concerns at the time, many Native Americans did not think so. An example of Native American concerns at the time was illustrated in Vine DeLoria's 1969 book *Custer Died for your Sins: An Indian Manifesto*. DeLoria vilified American anthropologists and expressed disdain for the practice of excavating burials. His point was that archaeologists did not consider the concerns of the Native American communities during this practice (DeLoria 1969).
Although laws such as the NHPA were including Native American concerns ephemerally, no laws about repatriation were yet being drafted or considered.

It was in the 1970s that the federal trust with Native American tribes was restored (discussed in Chapter III). The American Indian Religious Freedom Act (AIRFA) was also passed in the 1970s, making it U.S. policy to respect and protect the inherent rights if Indian Tribes to freely exercise their religions (42 U.S.C. 1996). This law inevitably led to more consultation, as the courts have held under AIRFA that agencies may consult with tribes about anything that might affect their religious practices or religious areas, such as plant gathering areas or areas meant for worship (King 2004:26). Despite not actually mandating agency action on this subject, it was still a step in the direction of increased cooperation.

By the 1980s, Native American groups were advancing the process of getting their concerns about aspects of their culture considered through many media, such as the courts, news media and political processes (McManamon 2001:11). At the same time, the SAA was involving Native Americans in its discussions to come up with sound principals for dealing with issues such as human remains and repatriation. It was the first scientific organization to openly consider these issues (Lovis et al. 2004:170).

The legislative path to NAGPRA was paved with bills introduced by teams of authors trying to compromise concerns of Native Americans and research scientists in drafting a bill allowing Native Americans to regain ownership of remains and objects they deem sacred. As learned authors have done before (Lovis et al. 2004), these bills will be discussed in four groups for clarity.
The first bill, The Native American Cultural Preservation Act, was introduced twice in slightly different versions to the 99th and 100th Congress (S.2952, 1986; S.187, 1987). This bill called for the initiation of a commission to resolve disputes between Native American groups and museums about culturally spiritual items including human remains. SAA representatives testified at hearings, voicing opposition to this bill, on the grounds that it did not balance equally the concerns of Native American and scholarly groups (Lovis et al. 2004:171). Senator John Melcher introduced this bill. Melcher was a congressman from Montana who served as chairman for the Select Committee on Indian Affairs in the 96th Congress (United States Congress 2009). Based on his past work with Indian groups, it could be speculated that Senator Melcher was probably influenced by Native American interest; however, these bills were not written into law.

The next groups of bills were aimed at reorganizing the federal system concerning historic preservation (Lovis et al. 2004:171). These were the Comprehensive Preservation Act of 1988 (S. 2912); the Historic Preservation Administration Act of 1989 (S.1578), and the National Historic Preservation Policy Act of 1989 (H.R.3412). They would give the Federal government responsibility of coming up with guidelines and rules for the disposition of human remains and funerary objects. These bills were introduced by Wyche Fowler, a democratic Senator from Georgia, and Charles Bennett, a Florida Senator who was heralded for championing ethical causes (United States Congress 2009).

The SAA contributed greatly to the language of these bills with respect to provisions involving repatriation (Lovis et al. 2004:171). Although the SAA was conscious of Native American concerns and worked to compromise between scientific and cultural interests, the three aforementioned bills that made the issue of repatriation
federal responsibility probably had less Native American backing than the first group. However, the point remains moot due to the fact that none of these bills were signed into law.

The next bill was introduced in 1989 by Senator Daniel Inouye to the 100th Congress. Inouye was a representative from Hawaii who is a second generation Japanese American with many awards for diplomacy and public service (Inouye 2009). He served as the chairman for the Committee on Indian Affairs from 1987 to 1994, and is accredited with pushing landmark legislation in the arena of Native American issues (Inouye 2009). The bill he introduced specifically targeted the Smithsonian Institution: the National American Indian Museum and Memorial Act of 1989 (S.1722). This bill called for constructing a memorial in a Native American Museum, to be connected to the Smithsonian where all the human remains would be collected and interred (S.1722). It was soon amended to have a commission decide what to do with the remains instead of interring them, but it was not signed into law (Lovis et al. 2004:171).

More bills in the same vein with Native American interest on the forefront of policy considerations were introduced subsequently in the 101st Congress of 1989, and Senator Inouye drafted some of these bills with Ben Nighthorse Campbell, a senator from Colorado who is of Portuguese and Cheyenne descent, and is the first Native American to serve in the Senate in over 60 years (United States Congress 2009). He belongs to the Historic Preservation and Recreation Committee along with serving on the Committee of Indian Affairs.

With the aim of reuniting and repatriating the Smithsonian’s human remains collection, Inouye and Campbell introduced the Native American Indian Museums Act in
1989 (S.978). Many lobbyists rallied on behalf of Native American groups and interests to get this bill passed. It became Public Law 101-185, The National Museum of the American Indian Act. Along with mandating a National Museum of the American Indian be established (20 U.S.C. 80(1)-(5)(A)), this law requires that the Smithsonian Institution inventory and determine the “tribal origin” of all human remains and funerary objects housed therein. These items could then be reclaimed by tribes affiliated with such remains (20 U.S.C. 80(5)(B)).

This bill was a huge victory for Native American groups, and a sign that Congress was willing to widen its consideration of Native American claims and rights to their material past. Despite the law’s breadth being only as far reaching as the Smithsonian, the language of the Act led directly to the drafting of NAGPRA. This was just another step in a step by step process to full blown repatriation legislation.

The fourth group of bills was introduced soon after in 1989 to the 101st Congress and took a similar approach to museum collections. The bills introduced to the House were the Native American Burial Site Preservation Act of 1989 (H.R.1381), introduced by Representative Bennett; the Native American Graves and Burial Protection Act (H.R.1646), introduced by Representative Morris Udall. Udall was a democrat from Arizona known for his concerns for Native Americans and the environment (United States Congress 2009). Udall also sponsored the Native American Graves Protection and Repatriation Act (H.R.5237). The bills targeted federally funded museums, calling for repatriation provisions for Native American human remains and materials that were excavated from federal or tribal lands. This fourth wave of introduced legislation saw the bill that would eventually pass as NAGPRA (Lovis et al. 2004:172).
At the same time, the Senate considered two bills concerning repatriation: the Native American Grave and Burial Protection Act (S.1021), introduced by John McCain; and the Native American Repatriation of Cultural Patrimony Act (S.1980) introduced by Senator Inouye. Although these two bills were not written into law, pieces of them became part of the Udall bill, NAGPRA, which did pass in 1990 (Lovis et al. 2004:172).

The bill S.1980 was especially important in contributing to the NAGPRA statute because it was drafted in response to a repost from a diverse panel of players, and was largely viewed as a sound compromise from all sides (Lovis et al. 2004:172).

This special panel was organized in 1989 by the American Association of Museums and Native Americans with the encouragement of Congress. It was called the Panel for a National Dialogue on Museum/Native American Relations, and it met for over two months in Phoenix (Lovis et al. 2004:173). The twelve panel members consisted of six Native American representatives, three museum representatives, and three representatives from scientific organizations: the SAA, the American Association of Physical Anthropology, and the Society of Professional Archaeologists. It was a discussion of ground breaking inclusiveness that had been held in precedent by the previous drafted legislation burgeoning on all these issues of repatriation, Native American material culture and rights (Lovis et al. 2004:173).

The SAA highly influenced some of the bills mentioned above. It was in favor of NAGPRA because it fairly balanced the Native American’s cultural concerns with the importance of scientific study (Lovis et al 2004:172). Although committed to archaeological and scientific interest, the SAA still adheres to strict ethical guidelines
when it comes to dealing with human remains (SAA 1986). They outlined four basic principles to which to adhere when dealing with the issue of human remains:

1. Native American and scientific interest in human remains and funerary objects are both legitimate, and there needs to be a fair balance between these interests in each repatriation case.

2. Scientific interest must be weighted according to the strength of the relationship between the Native American groups and the objects or remains in question.

3. Each instance of repatriation should be evaluated separately, in which the scientific interest and cultural concerns are considered in depth to account for variability in belief systems of modern native groups.

4. Said case by case evaluation is to be made in the context of direct communication between all interested groups (SAA 1986).

The recognition by the SAA to consider repatriation issues before NAGPRA was even drafted speaks to the willingness of archaeological groups to consider the concerns of Native American groups. Native American influence had begun in the 1960s with the Indian Civil Rights movement, and in the 1970s their voices became louder about injustices they had suffered at the hands of the federal government (King 2004:192). The SAA responding to these voices, legislators with Native American interest such as Morris Udahl and Senator Inouye, and the communication facilitated between parties by the aforementioned groups all led to the drafting and passage of NAGPRA. Despite this
forward progress by the legislature about cultural and scientific concerns, NAGPRA has also led to conflicts and contentions through its application.

*NAGPRA: How it has Changed*

Many conflicts and issues arose from the language of the NAGPRA statute. Despite this, over the years NAGPRA has changed and progressed, with influence coming from those trying to resolve the conflicts and issues. Archaeologists and Native Americans were primary ingredients in the recipe for change.

**EFFORTS FOR ADDITIONS AND CHANGES**

In December of 1990, the Department of Interior contacted Morris Udall about the Department's views on NAGPRA. The Department detailed how they would support NAGPRA pending certain amendments (Sewell 1990). The Department of Interior, represented by Scott Sewell, recognized the legitimate interest of Native American cultural groups. He voiced support for NAGPRA's efforts to stop looting and trafficking of cultural items (Sewell 1990:1). However, The Department of Interior thought that in cases where human remains or funerary objects cannot be linked to a modern tribe, the federal government should retain stewardship, but provide opportunity for evaluation if future claims were made (25 U.S.C. 3003(a)(2)(B)). They also thought that it would be improper for aboriginal occupation to be the sole criterion establishing affinity of cultural items to modern groups when cultural affiliation cannot be established, which would omit Section 3003(a)(2)(C) altogether.
The Department of Interior also deemed it necessary to expand the inventory requirements to allow extra studies to determine cultural affiliation (25 U.S.C. 3005(b)(2)). It supported the requirements for initiating a review committee, but felt the committee should be purely advisory in nature, and strike out the clause at Section 3007(c)(4) that mandated the committee compile an inventory of all human remains under control of every federal museum or agency (Sewell 1990:2). Finally, The Department of Interior wanted to strengthen the sentencing guidelines, allowing a second time offender to receive up to five years in jail (Sewell 1990:2).

Although none of the Department of Interior's concerns were addressed in the statute and initial regulations, it became clear their concerns were not unfounded as the future unfolded. They foresaw problems and inadequacies in the statute such as weak sentences for offenders and ambiguities in establishing cultural affiliation. Soon, others were calling for stronger sentencing guidelines for cultural resource crimes.

In 1997, changes not only came with the addition of civil penalties (43 C.F.R. 10.2), but also came from a report on the 104th Congress Senate hearing to discuss S.1983. This was a bill that was introduced by Senator Inouye in July 1996 to clarify certain provisions of NAGPRA as they pertained to Native Hawaiian organizations (McCain 1996). Native Hawaiian organizations had to deal with such a large number of their ancestral remains under inadvertent discovery, due in part to their limited land mass and the thousands of years of native occupation there. Most Hawaiian military bases and national parks are set up along the shoreline, which a traditional burial place for the Native Hawaiians. As a result, they have experienced difficulty with compliance of the provisions under inadvertent discovery (McCain 1996).
The bill was introduced to deal with the lack of written consent where Native Hawaiian remains are removed and used for study; the lack of notification to Native Hawaiian organization in the event of inadvertent discovery; and, following inadvertent discoveries, the lack of assurances the removal will adhere to the same requirements as intentional excavation (McCain 1996). The Committee on Indian Affairs responded favorably to the provisions of the bill and recommended that the bill pass (McCain 1996).

The bill passed, and effectively added to Sec. 3002(c), adding Sec. 3002(c)(5), which stipulates that any intentional excavation of remains for the purpose of study must only be done after written consent is obtained from lineal descendants of each appropriate tribal or Native Hawaiian organization. In 3002(d), involving inadvertent discovery, the provision that they would notify the appropriate tribe “with respect to tribal lands, if known or readily ascertainable” was struck out and replaced it with “with respect to tribal lands, such notification shall be provided to each appropriate Indian tribe or Native Hawaiian organization” (25 U.S.C. 3002(d)). The Native Hawaiian organizations felt NAGPRA was inadequate to ameliorate their problems, and through the legal process worked to make it better.

Another example of change in NAGPRA happened after the U.S. Sentencing Commission revamped its guidelines and decided to increase penalties for cultural resource crimes. This was the same action that led to more severe sentences for violators of ARPA (discussed in Chapter IV). This was important because it demonstrated that the U.S. Sentencing Commission views cultural resource crimes as serious enough to warrant stronger penalties.
The cycle of change to the sentencing guidelines for NAGPRA, facilitated by the
Sentencing Commission reform (discussed in Chapter IV), began in 2000 when the
District Attorney for Utah, Paul Warner, wrote a letter to the Sentencing Commission
urging specialized treatment for criminal violators of cultural heritage crimes (Desio
2004:63). Warner was backed by endorsements from the SAA to get the Sentencing
Commission to address their inadequate provisions for criminal violators of NAGPRA
(Desio 2004:65). This was the catalyst for the 2002 additions to NAGPRA’s sentencing
guidelines.

After a two year review of cultural heritage resource crimes, hearing testimony
from representatives backed by Native American organizations and archaeological
organizations alike, lawmakers made statements that followed the sentiment that offenses
to cultural resources are mores serious because of the nature of the irreplaceable priceless
material involved (Bingaman 2002). New provisions were added to NAGPRA as a result.
The criminal penalty for violators was increased from one to five years imprisonment to
imprisonment for up to ten years (18 U.S.C. 1170(a)). Its also added a provision for
weighing the commercial and archaeological value of the cultural items involved to fine
the violator and violators will be eligible for up to ten years (18 U.S.C. 1170(b)). The
Sentencing Commission was commended by members of the archaeological community
for having considered the broadest base of constituents to address public concerns (Desio
2004:76).

These early changes demonstrated that although not perfect in realizing its
original intentions, as more people experienced applying NAGPRA, they could more
easily pinpoint ways in which it was lacking and try to make it work better for people.
PROBLEMS AND CONTENTION

At the turn of the millennium, NAGPRA was still a law that created conflicts in both the Native American and archaeological community. As more cases came up, these groups found that applying NAGPRA to real life situations created rifts between people with opposing viewpoints. Issues such as problems establishing cultural affiliation, and establishing connections to very old materials led Native American groups to try and expand the provisions of the law, while authors who sympathized with the SAA have viewed NAGPRA as a good compromise, because it has led to SAA members to work openly and facilitate communications with tribes (Lovis et al. 2004:181).

CRM scholar King expressed what he finds as some of the glaring deficiencies of NAGPRA, saying that the law is highly technical, and its concepts are subject to varying interpretations (King 2002:104). NAGPRA contains loaded terms such as ‘lineal descendant’ and ‘cultural affiliation,’ interpretations of which have caused widely publicized conflicts in certain cases, but sometimes, the law works in spite of itself (King 2004:193).

Ferguson, an archaeologist who has written a lot on the subject of consultation between Native American and archaeological groups, thought that although NAGPRA was drafted largely in response to criticism of archaeologists by Native Americans, the laws have given Native American groups new opportunity to express their views and force archaeologists to think about things in new ways (Ferguson 1996:66). He joined others in thinking that criticism of archaeologists from Native Americans has led archaeologists to examine the epistemological basis of their discipline and opened them
to examine different ways of viewing the past (Reid 1992:38). He optimistically agreed with Leone and Percel that conflicts resulting from opposing worldviews can be reconciled with negotiation (Leone and Percel 1992:12). Ferguson also cited a study in which more than half of respondents to a survey of 64 Indian tribes considered archaeology to be beneficial in helping preserve Native American culture (Klesert and Holt 1990 as cited in Ferguson 1996:71).

A year before Ferguson published these optimistic words, however, the SAA submitted testimony at a NAGPRA Committee Oversight hearing about the progress of NAGPRA. The SAA recognized the importance of the oversight hearings and was overall optimistic about the progress of institutional compliance. However, the SAA voiced its disappointment in that many of the regulations were not yet adopted after five years, and the drafts of regulations so far did not provide “adequate direction,” and there was a lack of funding for statutory operations (Lovis 1995). The SAA mainly focused on its displeasure with the NAGPRA Review Committee for spending too much time attempting to invent protocols for culturally unaffiliated remains, which took time away from their legislative charge to properly address procedures for culturally affiliated remains (Lovis 1995). The SAA even suggested a separate law be drafted to deal with the issue of culturally unaffiliated remains. “The treatment of unaffiliated remains must be rooted in the knowledge gained by the treatment of affiliated remains” (Lovis 1995).

It was not until 2002 that the Secretary of Interior drafted guidelines concerning remains that are culturally unidentifiable (40 C.F.R. 10.11). Culturally unidentifiable human remains are those of people who cannot be shown to be culturally affiliated with any modern tribe (40 C.F.R. 10.11). These needed to be defined and addressed because of
the controversy brought to light by an important court case, to be discussed forthwith, that brought the problem of cultural affiliation about which the SAA had just voiced its concerns.

**NAGPRA and the Kennewick/Out.pa.ma.na.titi case**

The Kennewick Case was an important court case that was highly contested (*Bonnichen v. United States*, 217 F. Supp. 2d at 1156, 2002). This was the case of a 9,000 year old skeleton. The archaeologists called this skeleton ‘Kennewick Man’ because of the location of where he was found near Kennewick, Washington. However, the tribal people of that area, the Umatilla, pronounced the ancient skeleton as one of their own ancestors and called him *Oyt.pa.ma.na.titi*, which mean “the ancient one” (Thomas 2008:11). For brevity purposes, the skeleton will be referred to as Kennewick.

It underlined a problem that had not been dealt with before on such a publicized level: the ambiguity of the statutory definitions of cultural affiliation and Native American, and the difficulty of applying these concepts to certain cases. This was a case in which archaeological and Native American interest butted heads, even in the wake of such a seemingly progressive piece or legislation. It was evidence that there were still tensions and disagreements between the two groups.

**OVERVIEW**

In 1996 on the bank of the Columbia River, a skeleton was found that was approximately 9,000 years old on land owned by the Army Corps of Engineers. The Department of the Interior took up the task of determining whether the remains were
Native American and whether they bear cultural affiliation to the tribal claimants for purposes of NAGPRA (McLaughlin 2004:194). There were in this case, five tribal claimants, all from different tribes, and one from a tribe with no federal recognition. In September of 2000, the Secretary of the Interior issued a final decision that affiliated the remains with the tribal claimants (McLaughlin 2004:194).

As NAGPRA defines it, "cultural affiliation" means "a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian Tribe or Native Hawaiian Organization and an identifiable earlier group" (25 U.S.C. 3001(2)). A determination of cultural affiliation is reliant upon "a preponderance of evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral tradition, historical or other relevant information or expert opinion" (25 U.S.C. 3005(a)(4)).

Archaeologists denied access to the remains by the Corps were displeased with the decision, and sought redress in federal court. On Aug. 30, 2002, the federal district court of Oregon under Judge John Jelderks held that there was insufficient evidence to tie the remains to the five present day tribal claimants as required by the statute (Bonnichen v. United States, 217 F. Supp. 2d at 1156, 2002). Judge Jelderks said that the Secretary of Interior did not sufficiently explain his inference that the remains were culturally affiliated with the modern tribes.

Native American claimants wanted to repatriate the remains, and archaeologists and their constituents in the scientific community wanted to have access to the remains for study. Both groups used NAGPRA and its regulations and definitions of cultural affiliation and Native American to make the case outcome in their favor.
PROCEEDINGS AND CONCEPTS

NAGPRA was drafted in the spirit of balancing cultural interests of Native Americans, whose main motivation is to reclaim and repatriate all human remains, with the scientific interests of anthropologists, whose motivation is largely to study the remains to learn more about them, thus contributing to the larger body of scientific literature about prehistoric human beings in the United States. The SAA endorsed NAGPRA because of this balance (Lovis et al. 2004:173).

The original determination about whether the Kennewick remains were Native American fell upon the Secretary of the Interior. To be repatriated, for purposes of the statute, the remains had to bear a cultural affiliation to a modern tribe (25 U.S.C. 3002(a)). On Sept 21st 2000, the Secretary determined the remains were Native American and that they had a cultural affiliation with the five modern tribal claimants. However, the only evidence the Secretary used to ascertain cultural affiliation was obtained from Oral Tradition, only one of ten possible lines of evidence to be consulted under NAGPRA regulations (43 C.F.R. 10.14). The statute states the determination should be made upon a “preponderance of evidence” (25 U.S.C. 3002(a)(2)(B)(2)).

The SAA endorsed the Secretary’s decision to classify the remains as Native American. However, the definition of Native American that the Department of Interior used to draw this conclusion was NOT the statutory definition, but the Department’s interpretation of the statutory definition of Native American.

As defined in NAGPRA, “Native American” refers to human remains and cultural items relating to tribes, people or cultures that resided within the area now encompassed by the United States....irrespective of when a particular group may have begun to reside in this area, and, irrespective of whether some or all of these
groups were or were not culturally affiliated or biologically related to present-day Indian tribes. -McManamon 1997:13-14.

The above definition is not the statutory definition, and it is further so all encompassing that it would lead to classifying every bone older than 500 years as Native American. This definition could lead to unbalanced consideration of cultural versus scientific interest, which would belie the principals of equal consideration on which the SAA originally based their approval of NAGPRA. The statutory definition of Native American is: “‘Native American’ means of, or relating to, a tribe, people or culture that is indigenous to the United States” (25 U.S.C. 3001(9)).

The SAA agreed with the Department’s determination of the remains being Native American, but it also said that the determination of cultural affiliation arrived at by this definition belies the idea of balancing scientific and cultural interests (SAA 2001:1). The SAA further stated that if the Secretary’s determination of cultural affiliation stands, it would “…have devastating implications for accommodating scientific and diverse public interest in the past along with those of Native Americans” (SAA 2001:1).

Because of the lack of preponderance of evidence to determine cultural affiliation, and the use of the non statutory definition of Native American, Judge Jelderks reversed the original decision and the remains went to the Army Corps for study (Bonnichen v. United States, 217 F. Supp. 2d at 1156, 2002).

The Jelderks decision was unpopular with Native American groups, and led to appeals by the tribal claimants. The 9th Circuit Court of Appeals upheld Jelderk’s decision in 2004, which prompted the Committee on Indian Affairs to propose an amendment to change the definition of Native American. The proposed amendment,
submitted in 2004 to the 108th Congress, would change that definition to read, "Native American means of, or relating to, a tribe, people, or culture, that is, or was, indigenous to the United States" (S.2843). This would mean that perhaps, even the oldest remains could be affiliated with a group that "was" indigenous, including the Kennewick skeleton.

The SAA released a statement about S.2483, saying it does not disagree with the proposed change in definition, but it opposed the process by which the bill was being introduced, because the SAA and other stakeholders were not consulted or informed, and that no hearings or discussions were held prior to the Senate considering the bill (SAA 2004:2). The SAA maintained a full hearing is appropriate because NAGPRA was meant to be a compromise law (SAA 2004:3).

The bill S. 2843 was not written into the statute that year. Senator McCain tried again in 2005, submitting a report to the 109th Congress from the Committee on Indian Affairs, to pass S.536, which would amend 25 U.S.C. 3001(9) to read "Native American mean of, or relating to, a tribe, people or culture that is, or was, indigenous to any geographic area that is now located within the boundaries of the United States" (S.536). This change would have set the same or similar precedent that the original Kennewick decision would have set, which would mean giving the Kennewick remains and any other remains that old to claimant tribes.

Many archaeologists thought this definition would be too all encompassing and belie the original intentions of the statute to balance interests. Some anthropology professors even passed on messages that urged students to write their Congressmen to stop this bill from passing (Purser 2007).
In response to the proposed changes that swung the pendulum of consideration towards the largely Native Americans interest, Senator Hastings submitted H.R. 6043 to the 109th Congress. This bill called for amending NAGPRA so it would be more in tune with what many thought to be the original intentions of Congress, having repatriation

...apply only to remains and other cultural items that have a significant genetic or cultural relationship to presently existing Native American tribes, and to protect the ability for scientific study of ancient human remains or cultural items discovered on Federal lands that are not substantially related to presently existing tribes. - H.R. 6043, 2006.

All of the aforementioned bills died in committee or were referred to other departments for review. No further actions were cited on these bills.

However, in October, 2007, Congress approved a bill to change NAGPRA and add the words “or was” to the definition of Native American in the regulations (Burke et al. 2008:37). Although this bill has not yet been codified, its existence would theoretically ensure that federally recognized tribal claimants could gain access to remains even if a direct link could not be proven (Burke et al. 2008:37).

Despite Congressional approval of this bill, personal communication with the National NAGPRA Committee indicated no significant change to the NAGPRA program due to the Kennewick decision and subsequent controversy. When the question of what affect the Kennewick Case had on the NAGPRA program was posed to the National NAGPRA Committee, the answer was none (Hutt 2008). The assistant Secretary said the same thing when he came to a NAGPRA Review Committee meeting in 2005 (National NAGPRA database, 2005). Although it could have a profound effect in theory, they saw no change for a legal standpoint. Whether or not it had a legal effect, the controversy
sparked so much debate about archaeologists and Native Americans and the legal process.

IMPLICATINS OF KENNEWICK: THE SCIENTIFIC PARADOX

Many archaeologists were actually not even on the side of the scientists who wanted to win access to the Kennewick remains in court, because essentially, the arguing scientists had to ignore the scientific evidence that Kennewick man’s ancestry was Native American in order to fight for access to the remains in the name of scientific interest (Stapp 2008). In a sense, some archaeologists had problems with the fact that all the anthropological scientific evidence points to Kennewick being Native American. However, when arguing for access to the remains, the scientists and judge had ignored this because the scientific evidence did not matter for establishing whether the remains were Native American for purposes of the statute (Stapp 2008:45). The judge was so concerned with trying to decipher what Congress intended in the statutory language that he did not see the laws were in disagreement with the anthropological views and evidence (Stapp 2008:51).

And the law often is in disagreement with people’s views. The debate centered on whether Kennewick was determined Native American statutorily. The scientific viewpoint did not want the remains to be repatriated because they want to study them. Therefore, statutorily, they had to argue that the remains were not Native American in order to gain access to them. If Kennewick was found, legally, to have been Native American, the law would then put him back under the jurisdiction of the tribe. It is paradoxical that scientific evidence must be ignored legally to further scientific interest,
and that the law itself is more concerned with the spirit of the statutorily intentions then about solid scientific evidence. This illustrates problems with writing scientific and cultural concepts into a legal arena.

OTHER POSITIONS ON NAGPRA

Beyond the problems illustrated by the Kennewick case, many authors contributed their views on NAGPRA in 2004 in *Legal Perspectives on Cultural Resource Management* (Richman and Forsyth eds. 2004). Among the problems cited, The Department of Interior was criticized for not finishing drafting regulations concerning culturally unidentifiable human remains (CUI). These are remains that cannot be reasonably culturally affiliated with a modern tribe. Without the regulations, problems with the establishing the disposition of CUI could not be legally resolved. Similarly, the issues it begot about CUI by the Kennewick case had not been properly addressed by the regulatory committee (McLaughlin 2004:189).

In the same volume, NAGPRA was accused of having “fatal” constitutional problems (Richman 2004:216). Richman explored how NAGPRA could be constitutionally disabled under the potential takings and equal protection clauses of the Constitution. For instance, NAGPRA involves the taking of items from institutions, which poses problems with just takings under the fifth amendment: “..nor shall private property be taken for public use without just compensation” (U.S. Constitution Amendment V). NAGPRA also provides special consideration to certain individuals or groups (i.e. Native Americans). This goes against the 14th amendment “no state shall deny any person…the equal protection of laws” (U.S. Constitution Amendment XIV).
This has been interpreted to mean that people cannot be treated differently because of their race or ethnicity (Richman 2004:221). Despite these potential Constitutional issues, NAGPRA was recently called a human rights law that provides basic constitutional guarantees of property by the National NAGPRA Program’s current manager (Hutt 2007:1).

King published his views about NAGPRA around the same time. He thinks NAGPRA is an example of what happens when many interest groups get together to consult about a law, but then let the lawyers write the law (King 2002:104, 2004:192). He feels strongly that because the law itself is grounded in western American property law, it is primarily aims to establish ownership of remains. He feels that reducing human remains to an object than can be owned (property) according to the law is antithetical to the law’s purported intention of increasing the respect of human remains (King 2002:106). Since the spirit of the law is meant to be about respect and cooperation, he believes the legislators should be more concerned about how to deal with remains respectively rather than trying to establish ownership, which can retard the process (King 2002:106).

Anthropologists have written entire books about NAGPRA and its issues in which perspectives vary. Grave Injustice (Fine-Dare 2002) is a book heavily influenced by Native American perspectives and considered the views of many tribes. In this book, Fine-Dare postulates that NAGPRA creates just as many issues and problems as it purports to solve, being “as much of a nightmare as a remedy” (Fine-Dare 2002:9).

As recently as 2008, authors have published opinions on the status and efficiency of NAGPRA and the cooperation it was intended to facilitate. Archaeologists such as
Alder and Bruning discussed collaborative research in determining cultural affiliation, which involves perspectives from both Native Americans and archaeologists (2008). They focused on the importance of integrating archaeological research into the arena of evidence to be considered in determining cultural affiliation under NAGPRA, and agreed that this collaboration resulted in more shared knowledge and understanding between groups (Alder and Bruning 2008:52). Lippert believes that NAGPRA's passage was the beginning of a new paradigm in archaeology by giving rise to the Native American voice, and that coupled with the 1992 amendments to the NHPA, has led to more Native Americans being involved and recognized in the archaeological arena, which further validates the Native American perspective in the legal arena (Lippert 2008:119).

Others have gone even further in their optimism and touted NAGPRA as being invaluable. Since its passage, indigenous skeletal material and objects are treated with noticeably more respect in the archaeological profession (Sheehan and Lilley 2008:88). Sherri Hutt, the National NAGPRA Program's manager, discussed NAGPRA with optimism in her report to the NAGPRA Review Committee in 2007. She said that the initial NAGPRA compliance obligations have been mostly accomplished by Federal agencies and museums, and that the Review Committee had been very successful in its dispute resolutions (Hutt 2007:10-11). She also thinks that as federal agencies continue to build meaningful consulting and communicative relationships with Native American groups under NHPA and NEPA activities, more NAGPRA compliance will be achieved (Hutt 2007:8). This positive endorsement of laws working for communication and change between cultural groups reinforces the notion that influence between different
cultural groups leads to new laws, which leads to new influence, which leads to more cohesive relationships between them.

The report further relayed Hutt's optimism that NAGPRA in the future seems secure and well-functioning. She felt that fears that NAGPRA would lead to the clearing of museum shelves and archives have been assuaged by NAGPRA actually enhancing the information available to museums, and enriching their knowledge through consultation with tribes (Hutt 2007:22).

Concerning the previously discussed issue of CUI, the National NAGPRA Program's manager's report had many optimistic ideas for the future. It reported that although the law is not yet mature enough to draft regulations concerning the CUI, they allude that the cases where CUI can be reasonably culturally affiliated with non-federally recognized tribes may soon be resolved by new regulations (Hutt 2007:3).

This was significant because the National NAGPRA Program released this report one day after a NAGPRA dialogue between Indian Tribal representatives and representatives of museums and institutions took place, concerning the consultation and dialogue regarding the disposition of unclaimed human remains, funerary objects, or objects of cultural patrimony (Pinto 2007). The dialogue session was comprised of 22 Native American representatives from 13 tribes, and five people from the Society for American Archaeology, the Colorado State Historical Society, and the University of Colorado Museum at Boulder (Pinto 2007).

The Native American representatives wanted to legally mandate that CUI be treated with the utmost respect, and objected to proposing regulations that let CUI go to
scientific or educational study purposes, to protect and preserve the dignity of the spirit (Pinto 2007).

The results of the aforementioned dialogue, along with all the publications from legal representatives and academics alike, illustrates that the original bifurcation of views from Native American and archaeological groups felt before NAGPRA was drafted is still present in issues around it, despite the progress many people feel NAGPRA has made.

**NAGPRA, FIGR, and CRM in California**

**CAL NAGPRA**

California has its own NAGPRA (Cal NAGPRA) that was introduced by Assemblyman Darrel Steinberg and passed in 2001. It added chapter five to Division 7 of the California Health and Safety Code (H.S.C.). Cal NAGPRA is almost identical to NAGPRA except it is on a state level. Its only major difference is that California tribes without federal recognition can make claims under it, as long as they have taken steps to become federally recognized (7 H.S.C. 8010). It has been called feel-good legislation that is superfluous with the federal statute by the CRM practitioners and Native Americans that I interviewed.

Despite Cal NAGPRA proving to be almost nugatory since its inception, the SAA wrote to Darrel Steinberg of the California assembly vehemently opposing the Cal NAGPRA bill (AB 978), saying that it would create more controversy than has ever existed before between groups and would do more harm than good (Kelly 2001:1). The SAA’s reasons included that the bill creates a very unbalanced review commission, that
was comprised of seven representatives from the Native American organizations and only three from each the archeological community and the museum community (Kelly 2001:2). Cal NAGPRA also authorizes repatriation to non-federally recognized tribes and establishes unrealistic deadlines for compliance. Both of these flaws would create “an unnecessarily adversarial relationship between the Native American community and museums, agencies and academic institutions” (Kelly 2001:2). However, the SAA’s concerns have thus far been unfounded. No regulations were ever written for the statute, and I have found no one that has ever had to deal with it.

CALIFORNIA CRM AND FIGR

The informants I interviewed did not indicate recognizing a huge change with the passage of NAGPRA, only one noted more inventorying. FIGR did not indicate seeing changes at all, but they were not federally recognized at the time, so they would not have been eligible for repatriation agreements under NAGPRA.

My interviews did reveal that since its recognition in 2000, FIGR has a very cohesive program under NAGPRA at PORE and GGRA, the two largest areas of federal land in its territory. For FIGR, NAGPRA issues fall into two types: repatriation of current holdings, and inadvertent discoveries which are funded individually and thus move slowly. FIGR did not see the need for formal Memoranda of Understanding (MOUs) since its relationship with the park has been so open and respectful. The NPS follow all laws carefully and go well beyond in listening to FIGR’s requests and needs. When the NPS at PORE or GGRA needs support for a particular project, it always asks if
FIGR is willing to write a letter of support. FIGR and NPS have even talked about joint projects, but have not yet had the time to follow through.

Now, FIGR has a very organized office and staff well versed in the repatriation laws and procedures. The members I interviewed feel that most archaeologists are sympathetic to these concerns. The CRM practitioners in this area think that cooperation between Native Americans and archaeologists would be at 100% in northern California if some archaeologists who still subscribe to older schools of thought about archaeological theory were to retire. These older schools of thought have a tendency to treat Native Americans as though they have little to no expertise about their past material culture, and are less likely to take Native American opinion into consideration when working in CRM.

My interviews with CRM practitioners echoed these sentiments. They think that there has always been a respectful relationship with regard to repatriating items that the tribe may deem sacred, and also spoke about the older school of thought retiring and giving way to full cooperation between the archaeologists and FIGR in FIGR territory.

This being said, sentiments for the future of Native American and archaeological relations in CRM were optimistic on all fronts, especially if things such as consultation and cooperation continue to progress the way they have been.
Chapter VI

Environmental Protection and Planning Laws:

National Environmental Policy Act, California Environmental Quality Act, and Senate Bill 18

Introduction

These three laws, the National Environmental Quality Act (NEPA) the California Environmental Quality Act (CEQA), and California Senate Bill 18 (SB18), will be discussed together in this chapter because these laws are more in the arena of environmental planning laws, as opposed to historic preservation or cultural preservation. Thus, their relationship with CRM and Native Americans has to do with how consideration of cultural resources fit into planning and the environment.

First, the federal law NEPA will be discussed, followed by the California state version of NEPA, CEQA. These laws are very far reaching and loaded with terms and regulations having to do with protecting the environment, and processes for environmental consideration during planning procedures. Therefore, a more general overview of these laws will be relayed than the here than other laws have in previous chapters. NEPA and CEQA provisions and mandates will be discussed only as they relate to CRM and cultural consultation.

Finally, SB18 will be discussed. It in the most recently enacted of all three laws, and it is unique in the sense that as an environmental planning law, it gives Native Americans consideration beyond what other laws have done. SB18 is largely viewed by
FIGR as the most progressive and groundbreaking law with respect to Native American consideration.

**National Environmental Policy Act**

*Introduction*

The National Environmental Policy Act was passed by Congress in 1969. President Nixon proudly signed it into law in 1970, as a general outline for our nation’s environmental goals which articulated national policy on environmental protection (King 2004). NEPA requires agencies to consider the effects of their action on the quality of the human environment (King 2004:23).

*What it Is and What it Requires*

NEPA has two parts. The first part sets out a national policy for environmental protection. This section requires the federal government “...to use all practical means and measures...to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans” (42 U.S.C. 101(a)).

The second part outlines how the government will carry out this policy and meet these goals. It promulgates that the federal government “consider the likely environmental effects of their activities” (42 U.S.C. 102(C)). To do this, “all agencies of the federal government shall...utilize a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man’s
environment” (42 U.S.C. 102). NEPA, when codified, also mandated the creation of the Council on Environmental Quality (CEQ) to write the regulations that govern how agencies are to carry out the statutory requirements. These are codified at 40 C.F.R. 1500-1508.

NEPA regulations define the human environment as “the natural and physical environment and the relationship of people with that environment” (40 C.F.R. 1508.1). NEPA and NEPA regulations essentially require any federal agency that wants to embark on a project do an Environmental Assessment (EA) to determine whether or not their project is a “major federal action affecting the quality of the human environment” (King 2004:60). It is set forth in the regulations that an EA is

...a concise public document for which a Federal agency is responsible that serves to...provide sufficient evidence and analysis for determining whether to prepare an Environmental Impact Statement (EIS) or and finding of no significant impact... [and] facilitate preparation of a statement when one is necessary. - 43 C.F.R. 1508.9.

It mainly requires is that the EA discusses the need for the proposal, the alternatives, the environmental impacts on the proposed action and alternatives, and a list of people consulted (43 C.F.R. 1508.9). If a member of the public comments on the proposed action, those concerns must be included in the EA.

The purpose of the EA is to find whether or not an action will have a significant impact on the environment. NEPA regulations go into great detail about what constitutes a significant impact, but a cursory overview of the regulations is provided here. To decide significance, NEPA requires the consideration of both context and intensity. The significance of an action must be analyzed in contexts such as significance to society as a whole, and significance the regions, interests, and locality affected by the action (40
The intensity of an action refers to how severely an impact would affect public health or safety, how close in proximity an action is to historic or cultural resources, the degree to which an action may affect the quality of a human environment, whether the action is related to other actions with individually insignificant but cumulatively significant impacts, and the degree to which an action will adversely affect properties eligible for the National Register of Historic Places (40 C.F.R. 1508.27(b)).

If the EA finds that there is a “significant impact,” an Environmental Impact Statement (EIS) must then be prepared. An EIS is a way to comply with regulations by considering the effects of federal actions in a detailed statement assessing impacts to all aspects of the environment, including the natural environment such as flora, fauna and air quality, but also includes the physical living environments such as communities, neighborhoods, and old buildings (40 C.F.R. 1508.27(c)-(d)). A cultural resource is an aspect of the human environment (King 2004:74).

The affected socio-cultural environment section of EAs and EISs are typically divided into “cultural resources” and “social impacts.” However, these terms are rarely defined, and if they are, they most often associate their definitions with those of “historic properties” as defined by NHPA (King 2004:75).

When NEPA regulations were drafted, it was required that federal agencies have employees to help these agencies become compliant with the new regulations protecting the environment (McManamon 2001:20). Every major federal agency had to develop a staff that viewed all of its actions through environmentally sensitive eyes. Since NEPA calls for interdisciplinary analysis involving the social sciences, these new staff people examined more closely the relationship between human socio-cultural systems and the
natural environment. This socio-cultural arena is where the CRM related work is considered (King 2004:73).

This led to the social impact assessment (SIA) becoming a regular part of the NEPA analysis (King 2004:23). It became a part of the EIS, but is not always common. SIAs evaluated the impacts of agency actions on social aspects of the environment such as traditional life ways and value systems (King 2004:24). This obviously includes things such as traditional cultural properties, historic properties, and archaeological sites. However, evaluating social impacts legally is complicated because social impacts can only be considered if they are connected to a physical impact. For instance, if a highway is being proposed that is going to divide a community, the social environment can only be considered with respect to the physical impact of the highway (Jones 2009). Even when mitigation procedures are put in place, many people still see problems.

**How it has Changed**

NEPA is a very extensive law that deals with many aspects of the environment, and the regulations are very extensive and specific. The SIA is only a small part of NEPA compliance, but is important to CRM practitioners because they deal with resources of a socio-cultural nature. Therefore, changes to this part of the law were relevant to the field of CRM.

A big change to NEPA implementation happened in response to the PANE decision, a Supreme Court case that had a huge effect on the SIA. The court case was *Metropolitan Edison Co. v. People Against Nuclear Energy* (460 U.S. 766, 103 S.Ct. 1556, 1983) It involved a Pennsylvania community in which one of Metropolitan Edison
Co.'s two nuclear power plants suffered an accident that damaged the nuclear reactor. As a result, community members claimed that if the power plants were to remain, the community would suffer irreparable psychological harm. When Metropolitan Edison did not heed their concerns, the People Against Nuclear Energy (PANE) filed a petition in the federal court of appeals, saying that Metropolitan Edison had to consider PANE's concerns under NEPA. The court held that Metropolitan Edison did not need to heed the PANE's contentions, because social and psychological effects alone were not enough to warrant preparation of an Environmental Impact Statement (460 U.S. 766, 103 S.Ct. 1556, 1983). This decision led to CEQ putting similar language into their regulations about social and economic effects. People sometimes misinterpret these regulations to mean that social impacts do not need to be considered at all in the NEPA analysis. This is a misinterpretation of the regulations and the court's decision (King 2004:27). The regulations and the court decision say that if the only effects of an action are on psychological, social or economic factors, then an agency does not have to consider them in an EIS (King 2004:27). They do, however, have to consider them in an EA (King 2004:27).

Another court decision that demonstrates one of the most frustrating problems with NEPA is Stryker's Bay Neighborhood Council, Inc. v. Karlen (444 U.S. 223, 1980). In this decision, the court reiterated that the basic purpose of NEPA was simply to ensure that a decision was well informed and broadly considerate, by holding that “the only role for the courts is to ensure that the agency has considered the environmental consequences; it cannot interject itself within the area of discretion of the executive as to the choice of the action to be taken” (444 U.S. 223, 1980).
The court was saying they are not responsible for enforcement if an agency does not actually mitigate the effects of an action on the environment; the only thing required by NEPA is that an agency goes through the process mandated by regulations. The fact that they require process but do not require an outcome is a commonly noted limitation of not only NEPA but other cultural resource laws (Sebastian 2004:12). The same is true with the NHPA. The process of identification is what is required by the law, and there are no enforcement provisions if an agency does nothing to save the resources after they have legally complied with act. Unlike ARPA and NAGPRA, NEPA and NHPA have no criminal provisions for non compliance.

NEPA VERSUS NHPA SECTION 106

Archaeologists were using the NEPA statute to begin CRM practice until Executive Order 11593 expanded the NHPA Sec.106 provisions to include properties eligible for the National Register as well as already on it. This led archaeologists to begin using the Sec. 106 procedures to advance the field CRM (Sebastian 2004:12). Although this made NEPA slightly less important to CRM practitioners, NEPA and its regulation are still used in the arena of cultural resource protection. Sec. 106 however, is stronger in the protection it offers. This is partly because archaeologists switched to using Sec.106 to comply with federal law to do CRM, which led to the Sec. 106 process becoming more refined as more CRM practitioners used it over the years.

The ACHP issued revised regulations in 2000 mandating close coordination with NEPA under the Sec. 106 process (36 C.F.R. 800.8). However, this basically led to the cultural resource sections of EA and EISs being overlooked, by evaluators stating in
those sections that the cultural resources will be dealt with under Sec. 106 evaluations (Sebastian 2004:12). Agencies often reserve the Sec. 106 review until after they select an alternative that mitigates the potential effects. This essentially means the alternative was decided without any consideration of cultural resources under NEPA, because their mitigation procedures were decided before they found out if cultural resources would be affected (Sebastian 2004:12).

However, some people believe that NEPA offers innovative solutions in its consideration of cultural resource protection that Sec. 106 does not. Sebastian believes that since NEPA is an environmental consideration law brought about by grassroots organization’s efforts in response to destruction of neighborhoods by increased construction, NEPA itself was an innovative solution (Sebastian 2004:11). The NHPA’s Sec. 106 had a very narrow focus at its inception, and therefore the spirit in which each law was drafted leaves NEPA as the more environmentally authoritative statute for federal agencies (Sebastian 2004:11). If agencies were to develop new techniques for NEPA implementation, federal agencies would view NEPA as an authority for mitigating effects to cultural resources such as archaeological sites (Sebastian 2004:12).

King thinks that NEPA lacks the internal contradictions that afflict Sec. 106. Sec. 106 is flawed because it is inextricably linked to the National Register. Once a property is eligible, the National Register seeks to commemorate as well as consider properties. These two ends contradict because commemoration is long term, and consideration is just in the short term context of a specific undertaking (King 2002:56). NEPA, however, seeks only to consider and makes no claim for long term protection. Therefore it does not conflict with agencies’ ends to complete an action or undertaking (King 2004:60). King
also thinks that blending the strengths of the two statutes, NEPA being focused on objective analysis and agency responsibility, and Sec.106's consultation procedures' end being to reach binding agreements, would be a better way to deal with cultural resources under the federal government (King 2002:62).

Despite feelings about how the laws would work better, in reality NEPA is only ephemerally dealt with in California CRM. It is simply there to make agencies consider the effects of their work on the environment, and to work out an agreement to mitigate potential effects to the environment. However, there is nothing in the law that says the agency can't go ahead without mitigating the effects of an action. An agency has to consider environmental impacts, but their action can still have such impacts. However, an agency is required to explain their reasoning if they do not do an EIS. If they do an EIS and then decide to destroy the environment anyway, the agency has to justify that in its Record of Decision (ROD) (40 C.F.R. 1505.2(c)). If one thinks that an agency's finding of no significant impact (in which case they would not have to do an EIS) was wrong, it can be challenged through legal redress (King 2004:79).

Many states have their own version of environmental acts such as NEPA. If and when NEPA analysis does little in the protection of cultural resources in California, the state has their own law, the California Environmental Quality Act. This is further reaching than NEPA for California agency actions. Also, CEQA and the processes it mandates have been reviewed from both archaeological and Native American perspectives from the initiation of CEQA to the present. This will be discussed forthwith.
California Environmental Quality Act (CEQA)

Introduction

The California Environmental Quality Act of 1970 as amended was an indication that California was at the forefront of adopting environmental policy in those eye opening times of the late 1960s and early 1970s. CEQA statute is codified at Public Resources Code (P.R.C.) 21000-21177, and its regulations are at California Code of Regulations (C.C.R.), Title 14, Division 6, Chapter 3, in Sections 15000-15387.

In California, mitigation of effects to cultural resources by CRM practitioners is undertaken primarily in one of two arenas: projects mandated by CEQA evaluation, and federal projects mandated under Sec. 106 and NEPA evaluations.

What it Is and What it Requires

FINDINGS AND PURPOSE

The State legislature found it necessary to provide a high quality environment at all times for the people of the state of California. All agencies of the State government that regulate activities that effect the quality of the environment shall regulate such activities with major consideration of preventing environmental damage while providing a satisfying environment for Californians (P.R.C. 21000(d)-(g)). State agencies should take all action necessary to provide Californians with clean air and water, and enjoyment of aesthetic, natural, scenic, and historic environmental qualities (P.R.C. 21001(b)). Private projects that require approval from public agencies are subject to the same level of environmental review (P.R.C. 21001.1). State agencies should not approve projects if there are alternatives or mitigation measures that if taken would lessen environmental
effects, but if specific economic or social conditions make it infeasible for alternatives or mitigation measures, individual projects may be approved in spite of these effects (P.R.C. 21002). CEQA emphasizes that disclosure to the public and opportunity for public comment on potential environmental effects of a project is state policy (P.R.C. 21003.1(a)).

In essence, CEQA’s four main functions are to inform the public about potential effects to the environment, to identify ways to avoid environmental damage, to prevent avoidable environmental damage, and to disclose to the public why a project goes forward even if it damages the environment (P.R.C. 21000-21003).

THE CEQA PROCESS

CEQA establishes a process on a state level of considering environmental impacts. A significant impact under CEQA is “a substantial, or potentially substantial, adverse change in any physical conditions within an area affected by the proposed project...including objects of historic or aesthetic significance” (C.C.R. 15382). The Governor’s Office of Planning and Research (OPR) was charged with writing the guidelines for determining the threshold of how substantial an impact can be to make it significant (P.R.C. 21083). The P.R.C. directed the guidelines to indicate that a project would have a “significant effect on the environment” if:

1. The project has potential to degrade the quality or curtail the range of the environment, or if the project achieves short term environmental goals to the disadvantage of long term ones (P.R.C. 21083(b)(1)),
2. the possible effects are limited individually, but “cumulatively considerable,” meaning the incremental effects of an individual project are considerable when viewed in connection with the effects of other past, current, or future projects (P.R.C. 21083(b)(2)), or

3. the environmental effects of a project will directly or indirectly cause substantial adverse effects on human beings (P.R.C. 21083(b)(3)).

The CEQA process involves three steps. The first step is to decide whether or not the action is considered a project under CEQA. Generally, any action involving the physical environment is a project under CEQA because such actions are discretionary, such as the approval of a city’s general plan or the issuing of permits for grading (Fulton and Shigley 2005). Ministerial actions are actions that do not involve discretion, such as issuing a building permit, are exempt from further CEQA analysis (Fulton and Shigley 2005).

If an action is a non-exempt project and it is discretionary, the next step is the initial study. This involves an assessment by the local government to determine whether the project will produce significant environmental effects (discussed above). The interpretation of the significant by the guidelines is usually up to the professional judgment of the consultant or federal agency staff member doing the CEQA analysis (Fulton and Shigley 2005). If the initial study reveals the project will have no significant effect, the local government prepares a “negative declaration.” If, however, the party in charge of the project can eliminate all significant environmental effects by changing the scope of the project or adopting mitigation measures, this is called a “mitigated negative
declaration” (Fulton and Shigley 2005:157). If either of these documents are issued, further environmental review is not necessary under CEQA (Fulton and Shigley 2005:157).

If the initial study finds the project will have a significant environmental impact, then an Environmental Impact Report (EIR) must be prepared. The EIR is the most important part of CEQA because it satisfies CEQA’s requirements to inform the public (Fulton and Shigley 2005). There are different types of EIRs, depending upon how big or specific a project is. CEQA and CEQA guidelines give instructions about what each kind of EIR should contain (P.R.C. 21156-21159.4, C.C.R. 15084). In general, and EIRs must contain a project description, project objectives, a table of contents or index (P.R.C. 21157). Then it must discuss environmental impact of a project, detailing significant, unavoidable, and/or irreversible environmental effects (P.R.C. 21157). Then it must discuss alternatives to the proposed project, and mitigation measures that will mitigate environmental effects (P.R.C. 21157).

The initial EIR is called a draft EIR (DEIR), often prepared by a consultant or a local government agency. The DEIR is circulated to the public, including citizen groups, lobbying organizations, and state and federal agencies, for comment (Fulton and Shigley 2005:159). The comments and responses are incorporated into the final EIR (FEIR).

Finally, if the FEIR prepared under CEQA identifies significant environmental effects, the agency reviewing the project has four options:

1. deny the project,
2. approve an environmentally preferable alternative,
3. approve the project, but only if mitigation measures are put in place to lessen the environmental effect, or

4. approve the project in spite of environmental effects and adopt a statement of overriding considerations, which usually indicates that the project’s economic benefit outweighs the negative effect (Fulton and Shigley 2005:175-176).

Usually, mitigation and overriding considerations occur in most instances (Fulton and Shigley 2005:176).

CEQA AND CULTURAL RESOURCES

One of CEQA’s goals is “to preserve, for future generations...examples of the major periods in California history (P.R.C. 21084.1). CEQA gives broad consideration to historical and archaeological resources in its statute and regulations. CEQA broadly defines a historical resource. The definition includes “A resource listed or eligible for listing in the California Register of Historical Resources” (P.R.C. 5024.1, 14 C.C.R. 4850 et seq.)(C.C.R. 15064.5 (a)(1)). “A resource included in a local register of historic resources...”(C.C.R. 15064.5 (a)(2)), or

Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines...to be significant in the architectural engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California. - C.C.R. 15064.5 (a)(3).

The CEQA statute also mandates that EIRs specifically consider effects on unique archaeological resources (P.R.C. 210832(a)). CEQA defines a unique archaeological resource as
An archaeological artifact, object, or site [that] ... contains information needed to answer important scientific research questions ... is the oldest of its type or best available example of its type ... [or] is directly associated with a scientifically recognized important prehistoric or historic event or person. - P.R.C. 21083.2(g)(1)-(3).

This is significant because the crux of CEQA is the evaluation of environmental resources in the form of an EIR.

Although CEQA does not define “cultural resource,” the definitions that CEQA provides for historical and unique archaeological resources are all encompassing of the cultural resources with which CRM practitioners are familiar. CRM consultants who write EIRs often write a cultural section, which varies in length. Some EIRs involve only considerations of a cultural and social nature (focused EIRs). A focused EIR contains the same evaluation of environmental effects and other EIRs, but only with respect to a specific resource, such as an archaeological or historical resource (P.R.C. 21158). The EIR must overview the project and indicate the project's potential to harm cultural resources, and present mitigation measures to lessen effects.

Cultural resource practitioners in California have spoken to me about the fact that they rarely deal with NEPA and the EIS, but have to deal with writing the cultural section of the EIRs all the time (Jones 2009). The thoroughness of the cultural resources section usually depends on the oversight of the lead agency’s planning or community development department. It is more likely to be well documented and thorough if the agency has departmental cultural resource staff in house, but this is unfortunately rare (Jones 2009).

Native American consideration under CEQA is tied to the California Native American Heritage Commission (NAHC). CEQA guidelines require that the lead agency
work with the Native American groups identified by the NAHC if the initial study identifies the presence or likely presence of human remains (C.C.R. 15064(e)). The guidelines provide for agreements with these Native American groups to assure appropriate treatment of Native American human remains and burial items. Guidelines also mandate procedures to be followed in that case of accidental discovery of any human remains during a CEQA project. These including stopping all work until the coroner can identify whether the remains are Native American (C.C.R. 15064.5(d)). Public agencies should seek to avoid damaging effects to cultural resources.

CEQA provides further reaching protection than federal laws do for cultural resources in California. Laws such as ARPA, NAGPRA, and NHPA only apply to federal land or actions requiring federal money or oversight. This is because CEQA has the ability to extend protection of the environment to projects on private property (as long as the effects of such projects infringe upon the greater public). However, CEQA has not always had the far reaching protection that is does today.

*How it has Changed*

CEQA is a self-executing statute, which means its provisions are enforced by the public through litigation. Litigation (or the threat of it) is the only redress for people who think the process was not carried out with integrity (King 2004:193). Thus, court cases are a part of the legal process that we see facilitating the growth of laws such as CEQA.

*The Friends of Mammoth v. Board of Supervisors of Mono County* court case is what gave CEQA is far reaching extent (8 Cal. 3d 247, 1972). The case was important because it examined the extent to which CEQA analysis applies. In this case, a recreation
company got a conditional use permit from the Mono County planning commission to build condos on 5.5 acres of private land, but the residents of Mono County appealed the decision for the permit to the County Board of Supervisors, because it would cause water and sewage problems and diminish open space in the entire community. The Board denied their appeal, so the citizens of Mono County took the Board of Supervisors to court. The court held that an EIR must be completed before an agency can issue a building or conditional use permit for any building on public or private lands, because the effects caused by building on private land still affect the public welfare (8 Cal. 3d 247, 1972).

This court ruling in 1972 was in the same generation that laws such as NHPA and ARPA increased protection for cultural resources. For archaeologists and Native Americans, this led to more cultural resource management projects, and thus more opportunities for practicing cooperative solutions to mitigate effects to cultural resources. Since the *Friends of Mammoth* case, even private developers need to evaluate their proposed projects for environmental effects under CEQA. The individuals I interviewed indicated that California is unique in the sense that it was a leader in environmental policy making, and laws such as CEQA have resulted in more CRM jobs in California throughout the decades.

Another important court case that directly affected archaeologists was *Society for California Archaeology v. County of Butte* (65 Cal.App.3d 832, 1977). The Society for California Archaeology (SCA) petitioned the Butte county trial court for a writ of mandate to order the county to revoke its approval of a residential development. The DEIR for the project contained the results of an archaeological survey that identified six
prehistoric archaeological sites, attributed to Maidu occupation. The survey concluded that three of the sites may have the potential to make a significant contribution to the prehistory of the entire region, and that further test excavation was needed to determine the true effect that the project would have on the archaeological resources (65 Cal.App.3d 832, 1977). However, the EIR was approved without the test excavations having been done, so the SCA contended that the EIR was inadequate as a matter of law because the true impact of the project could not be determined without further test excavation and thus the true environmental effects were not covered in the EIR. The trial court denied the SCA’s petition, and the SCA appealed (65 Cal.App.3d 832, 1977).

The SCA contended to the appellate court that the EIR was inadequate in not having all the evidence the test pits would uncover, and that the County Board of Supervisors had not adequately responded to adverse environmental changes, as it required by CEQA’s EIR process (P.R.C. 21000(a)-(g)). The appellate court held that while it is not necessary for an agency to conduct every test to determine the full environmental impact before it approves a project, it is required to respond to the adverse environmental changes presented in the EIR. The court found that the board did not respond to these adverse environmental changes at all (65 Cal.App.3d 832, 1977). The judgment of the trial court was reversed, and the trial court was instructed to vacate its order denying the writ (65 Cal.App.3d 832, 1977). This case was an important example of how archaeologists in California have used the law, in this case CEQA, to further protection of important prehistoric archaeological resources.
CEQA AND ARCHAEOLOGY

Besides landmark court cases such as the *SCA v. Butte*, archaeological consideration under CEQA has sparked many debates. The Governor's Office of Planning and Research (GOPR) issued an appendix to its guidelines for applying CEQA to archeological sites in the early 1980s. This was in response to problems applying CEQA to archaeological sites. It found that too many sites being excavated under CEQA were not important enough to warrant so much consideration, time, and money under federal law. There for the GOPR did not see why these sites should be excavated pursuant to CEQA guidelines either (GOPR 1982:2).

The GOPR went on to give suggestions on how to better go about avoidance procedures for sites, and created detailed guidelines on the mandated content of excavation plans. It reiterated that under CEQA, excavation should only be conducted in areas that are going to be destroyed by the project (GOPR 1982:4). The GOPR also discussed how the unnecessarily large amount of excavations led to an unnecessary conflict with Native American values. The GOPR found that Native American groups are largely against archaeological especially if they are not really necessary (GOPR 1982:5).

Despite the GOPR's recognition of Native American concerns in its guidelines, some groups at the time felt that CEQA was ignorant of Native American rights in its policy making and process. CEQA's establishment thus led to and increase in concerns and efforts for Native American rights (Field et al. 1992:419).
The Ohlone tribe of the San Francisco Bay area touched on this issue in a perspective paper written in partnership with archaeologists (Field et al. 1992). Tribal members felt that although in recent years public agencies have increased their sensitivity to Native American concerns, the consideration rarely goes beyond mere acknowledgement of the participation of specific people (Field et al. 1992:414). In the article, the tribal members and archaeologists discussed the fact that although CEQA provided umbrella protection against destruction of archaeological sites, Native Americans, who were descendants of the people responsible for the existence of prehistoric archaeological sites, were largely left out of the CEQA process (Field et al. 1992). The concerns of Native American groups about issues raised by laws such as CEQA were in part responsible for the creation of the Native American Heritage Commission (NAHC) in 1976 (Field et al. 1992:419).

However, Native Americans groups were still marginalized with respect to the archaeological process in the seventies. Even after the NAHC started to develop a “sacred lands file” formative American traditional ancestral lands, they were still largely left out of the emerging CRM arena (Field et al. 1992:419). As discussed in previous chapters about other CRM laws, this was the boom era of cultural resource legislations, and spawned a huge surge of Native American activism at the time (Field et al. 1992:420).

The authors of this article went on to cite instances of cooperation between archaeologists and Native Americans throughout the 1970s and 1980s, and led up to the early 1990s when concerned archaeologists and Native American groups banded together to protect resources in the San Jose Tamein Lightrail Station construction (Field et al. 1992). This project was an example of different groups with different motivations
working together so that each group was cognizant of the other groups concerns when
dealing with cultural resources under CRM legislation in California.

Recent Thoughts on CEQA

As CEQA progressed into its fourth decade on the books, ideas about CEQA and
archaeologists, and CEQA and Native Americans relations are still being actively
debated. CEQA has been called the most "hotly debated planning law in California"
(Fulton and Shigley 2005:156).

At the SCA’s annual meeting in 2007, scholars gave their views CRM laws such
as CEQA from an archaeological standpoint, as well as views on how these laws effect
and deal with Native American concerns and archaeological sites. The State Historical
Resource Commission Archaeology Committee explored recommendation from learned
CRM practitioners in the hopes of eventually adopting best practices standards for
California archaeological investigations, especially archaeological work done to comply
with state and federal laws (Mikesell et al. 2007).

Praetzellis indicated deficiencies in CRM archaeology in California, postulating
that CRM’s project by project structure has undermined archaeology’s scholarly basis
(Praetzellis 2007:21). He cited specific deficiencies and offered solutions to ameliorate
those deficiencies (Praetzellis 2007). Not only is CRM done in a very competitive
business arena, but there is no enforcement of standards, nor oversight by qualified
professionals, and no criteria for levels of professionalism required (Praetzellis 2007:21).
Praetzellis went on to note that in absentia of professional qualification standards, CRM
contracts are left open to unethical business practices. These include such things
archaeological consultants underbidding the cost to mitigate the effects of a proposed project just to get contracts, or developers holding the archaeologist in their pocket with deals in which they work together to keep from elevating mitigation costs by ignoring archeological resources. Further, there is inadequate consultation between stakeholders such as Native American and other descendant groups during all stages of archaeological work (Praetzellis 2007:21).

Praetzellis noted that CEQA projects in particular are often undertaken with inadequate documentation, including deficient planning, research designs and site recoding (Praetzellis 2007:21). He gave suggestions to remedy the situation, positing that CEQA could be beneficial if they developed things like professional qualification standards for consultants, developed a permitting system, and to measures to assure that descendant communities and other stakeholders are involved in the process (Praetzellis 2007:21-22).

During the same conference, two representatives from the Office of Historic Preservation (OHP) presented their views on how Native American sites are currently addressed by CEQA, and what roles the NAHC and the OHP have in the CEQA review. The OHP representatives then offered suggestions on how CEQA standards and guidelines can be improved to include consideration of Native American values when addressing resources under CEQA (Dutschke and Messinger 2007). The OHP representatives postulated that CEQA would work better if more people would simply follow the environmental review process by doing things such as developing neighborhood awareness of projects. They urged more people to participate in public
hearings, and also suggested having comment letters be part of administrative record 
(Dutschke and Messinger 2007).

The OHP took the position that CEQA requires new legislation to broaden certain 
concepts in its statute and guidelines. The OHP representatives suggested that CEQA’s 
definition of the environment be more inclusive of Native American values. They also 
wanted to broaden the concept of consultation by integrating other pieces of legislation, 
such as SB 18, into the CEQA guidelines (Dutschke and Messinger 2007).

CEQA, FIGR, and CRM in California

The CRM practitioners I interviewed generally feel that CEQA’s role in 
California CRM has the theoretical potential to be helpful in protecting sites of historic or 
aesthetic significance. However, the lack of oversight, lack of professional qualification 
standards, and the fact that the only arena for redress is the often lengthy process of 
litigation have led to CEQA being perceived as less important by both the CRM 
practitioners and members of FIGR whom I interviewed.

The members of FIGR I interviewed did not indicate extensive dealings with 
CEQA or CEQA regulations in the context of CRM and consultation. Members of FIGR 
do agree that during the era CEQA was enacted, there was more widespread concern for 
Native American rights. However, they did not see any changes within their own tribe, 
because, as previously discussed, FIGR did not gain recognition until 2000. FIGR is more 
excited about newer laws, laws that were passed after it gained the legal and official 
ability to become legally active in the CRM arena. FIGR is particularly excited about
California SB 18, passed in 2002, and what it perceives this law has the potential to do for its people.

**Senate Bill 18**

*Introduction*

SB 18 is a bill that was passed by the legislature in 2004, became law, and took effect in March 2005. Because the bill amended multiple sections of California Government Codes, the law is referred to by its bill number, SB 18. The forthcoming section uses language taken directly from sections of the bill itself.

*What it Is and What it Requires*

**FINDINGS AND PURPOSE**

The State Legislature found that current state law provides a limited amount of protection for California Native American prehistoric, archaeological, cultural spiritual and ceremonial places, such as religious sites sacred shrines, ruins, burial grounds, archaeological or historic Native American rock art (SB 18 1(a)(1)-(2)). Native American places of spiritual and ceremonial importance reflect the tribes’ continuing cultural ties to the land and their traditional heritage, but the legislature recognizes that many of these sites are not located on land under the jurisdiction of tribal governments, and are therefore not protected by the policies of tribal governments (SB 18 1(a)(3)).

The California legislature recognizes Native American tribal sovereignty and the unique relationships between local and tribal governments (SB 18 1(b)). It was therefore their intent to recognize that Native American cultural, spiritual and ceremonial places...
are essential elements in tribal heritage and identities, to establish meaningful consultation between local and tribal governments at the earliest possible point in land use planning processes so these places can be identified and considered, and discuss potential means to preserve these places and develop proper management plans (SB 18 l(b)(1)-(3)).

MANDATES

SB 18 amended the California Civil Code (C.C.C.) to let a Native American tribe on the contact list of the NAHC, whether they are federally recognized tribe or not, acquire and hold a conservation easement to protect a California Native American cultural, spiritual, or ceremonial place (C.C.C. 815.3(c)).

SB 18 also amended California Government Codes (C.G.C.) in reference to a city’s general plan. A general plan is a large document that determining the intensity and geographical arrangements of various land uses in a community, or a “master plan for a city’s future” (Fulton and Shigley 2007:104). It is the document from which all local land use decisions must arise, and contains a plan for seven elements of a community: land use, circulation, housing, conservation, open space, noise, and safety (Fulton and Shigley 2007:107). The general plan details a communities plan for how each of these elements will be worked out in the next ten years of a community.

SB 18 changed the Government Code to mandate that the office that develops the city’s general plan must develop guidelines in consultation with the NAHC. These guidelines contain advice for consulting with Native American tribes about the procedures for identifying appropriate Native American tribes with whom to consult
about preservation or mitigation of impacts to Native American traditional cultural and
places, and procedures for protecting the confidentiality of information regarding the
identity, location, and use of such places (C.G.C. 65040.2(a)-(g)(1)-(3)).

During the preparation or amendment of a city’s general plan, the planning
agency is required to provide opportunities for involvement of California Native
American Indian Tribes (C.G.C. 65351(2)). Prior to legislative action to adopt or amend a
city’s general plan, the planning agency must refer the proposed action to a California
Native American tribe who is on the NAHC contact list with traditional lands located in
the city’s boundaries (C.G.C. 65352(a)(8)).

For purposes of the amended sections, “consultation” means “the meaningful and
timely process of seeking, discussing and considering carefully the views of others, in a
manner that is cognizant of all parties’ cultural values, and, where feasible, seeking an
agreement” (C.G.C. 65352.4).

How it Stands Out

SB 18 stands out from other CRM legislation in the progressive way it deals with
considerations of a cultural nature. SB 18 mandates consultation about the status of
resources that are important from a purely cultural standpoint, such as spiritual,
traditional and sacred places. It also recognizes that confidentiality of the location these
places are part of what makes them special. Further, it defines Native American tribes as
any tribe on the NAHC contact list. The NAHC’s contact list includes tribes that do not
have federal recognition. The passage of the law gave California tribes with no federal
recognition opportunity to participate in consultation regarding their traditional spiritual
places. However, these tribes must meet minimum requirements before they can be considered. These criteria include things such as the tribe has to have petitioned for federal recognition, and they have to function cohesively as a government body (GOPR 2009).

I have found through my interviews and personal communication with tribal members that the point of SB 18 Native American groups find important is to create a face to face, mutually compatible and agreeable relationship between Native American governments and the people involved in the land use planning of California. Such far reaching and culturally considerate laws in their intent and language exemplify the progress that legislation has made with respect to other non-dominant cultural groups ideals in California.

*SB 18, FIGR, and CRM in California*

My interviews with members of FIGR revealed that SB18 is the law that FIGR considers the most valuable in its scope and potential to increase positive communication and dialogue between Native American descendant groups with the city and state planners and developers. The politically active members of FIGR recognized this potential, and have thus been active in utilizing the new requirements. The members of FIGR have become so familiar with SB 18 that they now run meetings about SB 18 compliance. For instance, when SB 18 was first passed, the tribe sponsored an SB 18 overview meeting for local public agencies. On March 16th 2009, Nick Tipon, the Chairman of FIGR’s Sacred Sites Committee, gave a speech from the tribal perspective about SB 18 for the Association of Environmental Professionals in San Francisco.
Members of FIGR have great optimism about how SB 18 is working. My interviews with members of FIGR revealed that FIGR is also impressed with the response and cooperation from public agencies about the tribe’s suggestions and recommendations. They feel that agencies have been very respectful of FIGR’s concerns.

The interviews also revealed that this current situation may not have become so beneficial to FIGR had certain circumstances not occurred within the structure of the tribe during the early 2000s. Grant Smith had been a cultural attaché for the Coast Miwok tribe to public agencies from the 1970s through when FIGR gained recognition. Smith was the grandson of Tom Smith, who was the informant of ethnographer Isabelle Kelly. Tom Smith relayed copious information about Coast Miwok traditional cultural practices to Kelly, who documented them. The result is information about very old traditions being available for future generations. Grant Smith had been very politically active in the management of Coast Miwok cultural resources throughout the decades.

In the early part of the millennium, Grant Smith passed away. In 2000, the tribe gained federal recognition as FIGR. That same year, Nick Tipon retired from his career as a teacher, which gave time to devote to the tribe. Tipon became the current cultural liaison and Chairman of the Sacred Sites Committee. With federal recognition allowing the tribe legitimate legal claims under laws such as NHPA, NAGPRA, NEPA and CEQA, the tribal government restructured with a new generation of tribal members devoted to proliferating and protecting the cultural traditions of the Coast Miwok and Southern Pomo people.

Members of the archaeological community that I interviewed recalled that FIGR members have always been active in the protection of their cultural resources, even
before the Coast Miwok and Southern Pomo were recognized as FIGR in 2000. Tribal members, such as Frank Ross, have been monitoring the digging associated with construction projects pro bono for over a decade. This monitoring was done in hopes of salvaging important cultural resources (such as human remains) before they were destroyed by construction equipment. An older tribal member I interviewed recalled being allowed to collect ancestral items from construction sites between backhoe scoops during projects as early as the 1950s.

It is simply easier for tribes to have their views considered when they have federal recognition, because laws such as SB 18 mandate meaningful consultation between local governments and tribal governments. The effort FIGR has put forth thus far have helped it gain experience to be very active in the overall planning process to protect ancestral resources through an organized and cohesive tribal government operating through the legal process.
Chapter VII

Conclusion

The 1960s were an important and exiting time. The zeitgeist of environmental protection awareness was coupled with the crescendo of voices from different cultural groups that had been historically marginalized. Academic archaeologists were in the processual era, an era in which archaeologists such as Binford and Schiffer theorized that archaeological evidence could be used to explain every facet of human past and behavior. As the 1970s progressed, Native Americans were being noticed by the courts as they began to seek redress for having been denied federal recognition. Historic preservationists were also recognizing that antiquated laws were not sufficient enough to carry out their intended spirit of protection, and this was being recognized by legislation such as ARPA.

With the NHPA requiring consideration of effects to historic properties, NEPA and CEQA requiring documentation of adverse effects to environmental resources, and APRA mandating criminal penalties for people who violate valuable scientific and historic resources, archaeological work began to move into both the private and legal sectors. With NEPA originally mandating some consideration and consultation with Native American tribes, archaeological consultants began to wade into the pool of CRM, beginning nascent communication with tribes. When E.O. 11593 expanded the provisions of the NHPA statute to mandate that agencies must take into consideration effects on properties eligible for the NRHP, the cultural resource consultants began working with the Sec. 106 process more and more often. This experience led to refined consultation procedures between archaeologists and Native Americans. During the same era of the
1970s and 1980s, the passage of AIRFA exemplified that Congress was willing to mandate government consideration of Native American religious places and religions. This congressional recognition of cultural places gave hope to Native American groups, who backed bills in the 1980s to receive more congressional consideration concerning claims for traditional ancestral items and Native American skeletons housed in museums. This led to the passage of NAGPRA which finally gave Native American groups a bona fide claim to sacred, traditional and ceremonial objects and ancestral remains from which they had been separated.

All the laws discussed in this thesis are connected in the sense that they each had effects on the precipitation of CRM in California and were the impetus for legally mandated consultation between Native American groups and archaeologists. The initiation of consultation between the groups of archaeologists and Native Americans, after years of experience and practice with the consultation mandates in the law, ultimately led to more recognition on behalf of each culture group of the differences and concerns of the other. This then led to legislation slowly evolving to become more all encompassing with respect to different cultural concerns in the United States.

California was especially liberal and a leader in not only environmental considerations but also consideration of minority groups that were fighting to climb out of their marginalized statuses. The passage of CEQA and the meaningful consultation work that happened under it led the California legislature to adopt not only its own NAGPRA, which extended to tribes without federal recognition, but also to develop new laws such as SB 18 which mandates local government and tribal government engage in meaningful consultation with respect to city planning.
I found that where some laws are deficient, others laws fill in the gaps. For instance, where the NHPA cannot protect a Native American cemetery on federal or tribal land, NAGPRA applies and offers protection. While NAGPRA does not have specifically defined consultation provisions, NHPA has very detailed guidelines for consultation process under Sec. 106. While NHPA, and NEPA, and CEQA simply require the initiation and completion of a process but do not have provisions for requiring an outcome that protects cultural resources, APRA and NAGPRA have criminal penalties for violators, and can be applied for the violations of the sanctity of archaeological, historic, and Native American resources.

However, cultural resource legislation does not provide blanket protection for all cultural resources on all areas of land. On private property, for instance, everything legally belongs to the landowner, regardless of the cultural importance of the land or the items therein. There are obvious constitutional reasons for this. The government cannot make laws that take away private property (U.S. Constitution, Amendment V). I have learned it is important for the law to maintain balance between interests of different groups, such as landowners who have a legitimate right to their property, or Native American groups that have a legitimate right to the remains of their ancestors. The law can never fully appease the requests of one interest over another.

*FIGR and CRM in California*

The interviews I conducted with members of FIGR and members of the archaeological community in northern California gave an example of the feelings of these specific people working within the CRM arena. Although the results of my interviews
with these individuals are not representative of every tribe or every CRM archaeologists in California, they are important because they exemplify that tribes and archaeologists can have a collaborative relationship. They further exemplify my thesis that this relationship has progressed over time and that legislation that mandated interaction between the two groups has helped their relationship grow.

As mentioned before, members of FIGR believe the tribe gained foothold in the legal arena and began to see major changes within the tribal framework after federal recognition was granted at the turn of the millennium. One tribal member feels that although one cannot write culture into the law, by following the consultation mandates drafted in the spirit of the law, one can consider cultural differences through this consultation. This informant feels this has happened to get increasingly easy over time, and with experience.

The people I interviewed from the tribe were very optimistic about how legally mandated consultation processes were carried out and were progressing. They felt that they were being considered wholeheartedly and not being marginalized. I have found that because FIGR operates on a highly organized level, its experience with consultation processes mandated by CRM laws has made FIGR more knowledgeable about these processes than some of the cities and county representatives with whom it works. Tribal members I interviewed recalled taking charge at a meeting to discuss SB 18 provisions with city planners and developers, because the FIGR members were the ones with the greatest knowledge of the law and its provisions.

FIGR also has a magnanimous view of the path from the past to the future. FIGR members are gracious in accepting that previous limitations are of no consequence when
the only thing CRM archaeologists and FIGR members can do now is try to work together the best we can, and look forward to making relationships between archaeologists and Native American groups more cohesive while learning from the past. FIGR members also agree that such change, in the laws and the considerations that CRM archaeologists and Native Americans achieved from the laws, led to the success in being regarded with respect by federal and local agencies and developers. FIGR representatives said that consultation may have eventually reached the balanced state it is at now without the laws discussed in this thesis, but it is anyone's guess as to how long it would have taken. They also seemed to feel that but for only a few exceptions, FIGR members have always been considered stake holders in the CRM process by most California CRM practitioners since the 1970s.

Similarly, the CRM practitioners in California that I interviewed feel that there was not much a change in the consultation and communication between the archaeologists and Native American tribes with the passage of the aforementioned CRM laws, because they cited having always worked together with tribal representatives on some level, regardless of whether or not it was legally required. One CRM archaeologist noticed some changes with the passage of NAGPRA, in the sense that collection and curation facilities gave certain items to the tribe, but the archaeologist thought the relationship had been primarily amicable all along. Another informant thought CRM archaeology really began in the early 1990s because that is when the informant noticed a large increase in the amount of CRM contracts and Native American involvement. Since NAGPRA was passed in 1990, the archaeologist informant's noted experience could mean that NAGPRA had an effect on CRM's proliferation in California.
However, when asked if the relationship between tribes and archaeologists could have become so mutually respectful without the passage of legislation, the CRM practitioners I interviewed agreed that it is possible, but would probably have taken longer.

What I Learned

Things are not as happy and cohesive for every tribal group as they are for FIGR and CRM in northern California. Depending on whom one reads or to whom one talks, the relationship between archaeologists and Native Americans concerning consultation vary between good and progressive, and bad and antithetical to cooperation. Even today, fundamental differences between two different epistemologies that are the archaeological and Native American arenas exist. These are most clearly exemplified in the case of Kennewick Man/Out.pa.ma.na.tit.tite conflict and the meetings under NAGPRA that still illustrate these facts: for the most part, Native American groups want to decide for themselves when, how, and if the remains of their ancestors are scientifically studied. There are still many Native American groups that are against any and all scientific studies of their ancestors’ remains. Most archaeologists will always want to negotiate a way they can study these remains. I do not believe this will ever change.

This is not the point of this thesis, however. The point is that meaningful negotiation and cooperation has been proliferating between the two groups since the 1960s. There is an identifiable progression of communication and consultation between archaeologists and Native American groups under cultural resource management law from the mid 1960s to the present. Laws requiring some consultation between the two
groups led to more laws and changes in existing laws, and more people cooperating to change them. In my interviews with members of FIGR and California archaeologists, there was not one ounce of pessimism in answers to my questions about how my subjects view the future of negotiations between archaeologist and Native American groups in California cultural resource management. That is the point.
References Cited

Agrawal, Arun

Alder, Michael and Susan Bruning

Alan, Elsie

Advisory Council on Historic Preservation

Amato, Christopher A.

Anderson, Kat

Anyon, Robert, T.J. Ferguson, L. Jackson, L. Lane, and P. Vincenti

Atalay, Sonya
Basso, Keith
1996 *Wisdom Sits In Places: Landscape and Language Among the Western Apache.* University of New Mexico Press, Albuquerque.

Barrett, Samuel E.
1908a *Pomo Indian Basketry.* *University of California Publications in American Archaeology and Ethnology,* 7: 133-308.

Barrett, S.A. and E.W. Gifford

Basgall, Mark E. and Paul D. Bouey

Baumhoff, Martin A.

Baumhoff, Martin A. and Robert Orlins
1979 An Archaeological Assay on Dry Creek, Sonoma County, CA. *University of California Archaeological Research Facility Contributions* 40. Berkeley.

Beardsley, R.K.
Begay, Daryl R.

Bettinger, Robert L., Phillip L. Walker, Michael J. Moratto

Bederman, David J.

*Big Sandy Band v. Watt, No. C-80-3787-MHP (N.D. Calif. 1984)*

Binford, Lewis R.

Bingaman

Boas, Franz

*Bonnichen et al. v. United States*, 357 F.3d 962 (9th Cir. 2004).


Borgerhoff Mulder, M. and P. Coppolillo

Bouey, Paul D.
1983 *Archaeological Investigations at CA-SON-593-I (Treganza 4), Sonoma County, California*. U.S. Army Corps of Engineers, Sacramento District, Sacramento, California.

Bradley, James W., and John Bryant
Bray, Tamara L.

Brodie, Neil

Burke, Heather, Clair Smith, Dorothy Lippert, Joe Watkins, and Larry Zimmerman, editors.
2008  *Kennewick Man: Perspectives on the Ancient One.* Left Coast Press, Walnut Creek, California.

Burke, Heather and Clair Smith

California Office of Planning and Research

California Office of Historic Preservation

CA-MRN-207
1965  Recorded by R. Edwards and Bryant for San Francisco State College. On file at Northwest Information Center.

CA-MRN-212

CA-MRN-216
CA-MRN-227
1941 Recorded by Beardsley for the University of California Archaeological Survey;

CA-MRN-232
1939 Recorded by Heizer for University of California Archaeological Survey;

CA-MRN-242
1946 Recorded by Beardsley for University of California Archaeological Survey;
1967 Recorded by B. Childers for San Francisco State College;

CA-MRN-249

CA-MRN-260
1934 Recorded by Bryant for the University of California Archaeological Survey. On file at the Northwest Information Center, Rohnert Park.

CA-MRN-265
1934 Recorded by Bryant for the University of California Archaeological Survey;

CA-MRN-266
1934 Recorded by Bryant in for the University of California Archaeological Survey
1967 Recorded by R.L. Edwards for San Francisco State College,
1994 Recorded by Lynn Compas for the ASC at Sonoma State. On file at the Northwest Information Center, Rohnert Park.

CA-MRN-280
1945 Recorded by Gifford Loud for the University of California Archaeological Survey. On file at the Northwest Information Center, Rohnert Park.
CA-MRN-307
1949  Recorded by C. Meighan for the University of California Archaeological Survey. On file at the Northwest Information Center, Rohnert Park.

CA-MRN-377

CA-MRN-396
1975  Recorded by Ward F. Upson, for the ASC at Sonoma State University. On file at the Northwest Information Center, Rohnert Park.

Campbell, L.

Carrol, Charles

Cheek, Annette L.

Clark, David

Clark, G.A.

Cohen, Felix S. and Nell Jessup Newton

Colwell-Chanthaphonh, Chip and T.J Ferguson, editors.
2008  Collaboration in Archaeological Practice: Engaging Descendant Communities. Alta Mira Press, a division of Rowman and Littlefield Publishing Group, Inc. Lanham, Maryland.

Collier, Mary E.T., and Sylvia Barker Thalman, editors.
1991  Interviews with Tom Smith and Maria Copa: Isabel Kelly's Ethnographic Notes on the Coast Miwok Indians of Marin and Southern Sonoma Counties. Miwok Archaeological Preserve of Marin, Occasional Paper No.6, San Rafael, California.
Compas, Lynn

Cunningham, Richard B.

Darwin, Charles

DeLoria, Vine Jr.

Desio, Paula J.

Dongoske, Kurt E.

Dongoske, Kurt, Leigh Jenkins, and T.J. Ferguson

Dongoske, Kurt, Michael Yeatts, T.J. Ferguson, and Leigh Jenkins

Downer, Alan
2000 The Navajo Nation Model: Tribal Consultation Under the National Historic Preservation Act. CRM, 23(9): 54-56.

Dutschke, Dwight and Michelle Messinger

Ecko Hawk, Robert and Walter C. Ecko Hawk

Edwards, R.L.

Engstrand, Iris


Federated Indian of Graton Rancheria

Ferguson, T.J.

Ferguson, T.J., Kurt Dongoske, Leigh Jenkins, Mike Yeatts, and Eric Polingyouma

Field, Les, Alan Leventhal, Dolores Sanchez, Rosemary Cambra

Fine-Dare, Kathleen Sue
2002 Grave Injustice: The American Indian Repatriation Movement and NAGPRA. Board of Regents, University of Nebraska.
Flannery, Kent

Fowler, John M.

*Friends of Mammoth v. Board of Supervisors of Mono County* 8 Cal. 3d 247; 502 P.2d 1049, 104 Cal. Rptr. 761; 4 ERC (1972).

Fulton, William and Paul Shigley

Gerstenblith, Patty

Gifford, E.W.

Gifford, E.W. and A.L. Kroeber

Glass, James

Goerke, Betty

Governor's Office of Planning and Research
Gonzalez, Michael J.

Greiser, Sally Thompson and T. Weber Greiser

Gulliford, Andrew

Hackel, Steven W.


Harjo, Susan Shown

Haven, Samuel
1856 Archaeology of the United States. *Smithsonian Contributions to Knowledge*, No. 8(2). Washington D.C.

Heizer, R.F.
Heizer, R.F. and Albert B. Elsasser

Heizer, R.F. and Martin A. Baumhoff

Hodder, Ian

Hosmer, Charles B.

Hutt, Sherry.

Inouye, Daniel

Jackson, Robert H.

Jones, E. Timothy
2009 Personal communication, 08-25-2009.

Kakos, Peter J.

Kanefield, Adina A.

Kearney, Christopher
Kelly, Isabel

Kelly, Robert L.
2001  Letter to Assembly Member Darrel Steinberg, California State Assembly. Society for American Archaeology.

Kerber, Jordan E. (Editor)

Kidder, Alfred

King, Thomas F.
2003  *Places That Count: Traditional Cultural properties in cultural Resource Management.* Alta Mira Press, Walnut Creek, CA
2002  *Cultural resource Management: Essays From the Edge.* Alta Mira Press, Walnut Creek, CA
2004  *Cultural Resource Laws and Practice.* Alta Mira Press, Walnut Creek, CA

King, T.F. and W. Upson

Klesert, A. and Alan Downer, editors.

Klesert, A. and H. Holt
Kroeber, Alfred L.


Kroeber, Theodora and Robert F. Heizer

Lake, Allison.

Leone, Meredith and Robert Pruecel

Lightfoot, Kent G.


Loeb, E. M.

Lovis, Willaim A.
1995 Testimony to Oversight Hearing on NAGPRA Implementation to United States Senate Committee on Indian Affairs.

Marshall, Yvonne

Mason, Ronald J.

McCain, John
1994 To Amend the Native American Graves Protection and Repatriation Act to Include Native Hawaiian Organizations and for Other Purposes. Senate Report 104-356.

McCarthy, Helen

McLaughlin, Robert H.

McGuire, Randall H.

McLendon, Sally and Robert L. Oswalt

McManamon, Francis P.
Merriam, C. H.

Merriam, C. H. and Robert F. Heizer
1979 *Indian Names for Plants and Animals Among Californian and Other Western North American Tribes*. Ballena Press, Socorro, New Mexico.


Mihesuah, Devon A.

Mikesell, Stephen, Michael McGuirt, and Trish Fernandez

Milliken, Randall

Minthorn, Armand
Monroy, Douglas.  

Morgan, Lewis Henry  

Morratto, Michael J.  

National NAGPRA Program  
2009 National NAGPRA Program Home Page <www.nps.gov/nagpra>  

National Park Service  

Native American Heritage Commission.  
2008 Letter to Dr. Ralph Appy.  
<www.portoflosangeles.org/EIR/chinashipping/DEIR/Comments/NAHC>  


Nelson, Nels  
1909 Site Location Map for Nelson's San Francisco Bay Region. Manuscript map in University of California Archaeological Survey Files (as cited in University of California Archaeological Survey Reports 75: 83).  
1916 Chronology of the Tano Ruins, New Mexico. *American Anthropologist,* 18: 159-180
Newmann, Thomas W. and Robert M. Stanford

Nicholas, George P.

Othole, Andrew L., and Roger Anyon

Oswalt, Robert L.

Owsley, Douglas W., and Richard L. Jantz

Patterson, Thomas

Parker, Patricia L.

Parker, Patricia L., Thomas F. King

Pensley, D.S.
Peri, D., S. Patterson and S. McMurray

Phelan, Marilyn and Marion P. Forsyth

Phillips, P. and G. R. Willey

Pinto, Manual F.

Praetzellis, Adrian

Prucha, Francis P., editor
2000 Documents of Untied States Indian Policy. University of Nebraska Press, Lincoln.

Purser, Margaret
2008 Personal Communication, 10-10-2008

Reid, J.

Renfrew, Collin and Paul Bahn

Richman, Jennifer R.
Riding In, James

Riding In, James, Cal Seciwa, Suzan Shown Harjo, and Walter Echo-Hawk

Rothstein, E.

Ruyle, Eugene E.

Sandos, James A.

Sampson, Donald
2008 Ancient One/Kennewick: (Former) Tribal Chair Questions Scientists’ Motives and Credibility. *Kennewick Man: Perspectives on the Ancient One* Burke, Heather; Smith, Clair; Lippert, Dorothy; Watkins, Joe; and Zimmerman, Larry eds. Left Coast Press, Walnut Creek, California. Pp. 40-41.

Sarris, Greg

Schiffer, Michael B.

Schiffer, Michael B. And George J. Gumerman

Sebastian, Lynne

Sewell, Scott

Shanks, Ralph

Simmons, William S.

Skeates, Robin

Slaymaker, Charles M.

Smith, Laurajane

Smith v. United States, 515 F. Supp. 56 (N.D. Calif. 1978)

Society for American Archaeology


Squier, Ephraim and Edwin Davis
1848 Ancient Monuments of the Mississippi Valley. Smithsonian Contributions to Knowledge, No. 1. Washington, D.C.
Stapp, Darby C., and Michael S. Burney
2002 *Tribal Cultural Resource Management: The Full Circle to Stewardship.* Alta Mira Press, Walnut Creek, California.

Stapp, Darby C.

State Historical Resources Commission Archaeology Committee

Stoffle, Richard W., David B. Halmo, and Diane E. Austin


Swidler, Nina, Kurt Dongoske, Roger Anyon, and Alan Downer, editors.
1997 *Native Americans and Archaeologists: Stepping Stones to Common Ground.* Alta Mira Press, Walnut Creek, California.

*Table Bluff Band v. Lujan,* No. C-75-2525 RHS FJW (N.D. Calif. 1991)


*Table Mountain v. Watt,* No. C-80-3783-MHP (N.D. Calif. 1983)

Theodoratus, D., D. Peri, C. Blount and S. Patterson
1979 *An Ethnographic Survey of the Mihilkaune (Dry Creek) Pomo.* U.S. Army Corps of Engineers, Sacramento District, Sacramento, California.

Thomas, David Hurst

Trigger, Bruce
Turner, Nancy J., M. Ignace Boelscher and R. Ignace Boelscher  

Udall, Morris K.  

United States Congress  

United States Senate  
2009 United States Senate Senators Information Page  
<http://www.senate.gov/general/contact_information/senators_cfm.cfm>  
Accessed 08-24-09

*Upper Lake Pomo Association v. Andrus*, No. C-75-0181-SW (N.D. Calif. 1979)

Watkins, Joe  
2000 *Indigenous Archaeology: American Indian Values and Scientific Practice*. Alta Mira Press, Walnut Creek, California.  

Willey, Gordon R. and Jeremy A. Sabloff  

Weaver, Jace  

Welch, John R., and Ramon Riley  

White, Leslie  

Zimmerman, Larry J.