

Appendix J:

Harbor District Protocol for Inadvertent Archaeological Discoveries for Ground Disturbing Project Permits, Leases and Franchises

**PROTOCOLS FOR INADVERTENT ARCHAEOLOGICAL DISCOVERIES
FOR GROUND DISTURBING PROJECT PERMITS, LEASES AND FRANCHISES
ISSUED BY THE HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION
DISTRICT, HUMBOLDT BAY, CALIFORNIA**

April 22, 2015

Background

Humboldt Bay is the ancestral heartland of the Wiyot Indians, whose native language is affiliated with the Algonquian language family and who had occupied the bay area for at least 2000 years by the time the first recorded European maritime explorers entered the Bay in 1806 and the first American towns were established in 1850. There are hundreds of known and undiscovered archaeological sites around Humboldt Bay that evidence Wiyot history and prehistory. Today, citizens of Wiyot ancestry are affiliated with three federally-recognized tribes located in the ancestral homeland: Blue Lake Rancheria; Bear River Band of the Rohnerville Rancheria; and the Wiyot Tribe at Table Bluff Reservation.

Applicable Laws

A number of State and Federal historic preservation laws, regulations and policies address the need to manage potentially significant and/or sensitive (e.g., human remains) archaeological and Native American resources identified during advance project or permit review or discovered inadvertently.

- California Environmental Quality Act (CEQA) – Requires analysis by the Lead Agency under CEQA, to determine if a proposed project will cause a significant impact to “historical resources” including archaeological and Native American sites. Project approval may be conditional, for example, avoidance or mitigation (data recovery) of known archaeological resources, monitoring of ground disturbing activities in identified sensitive areas by local Tribal Representatives and/or professional archaeologists, and implementation of protocols for inadvertent archaeological discoveries.

- Section 106 of the National Historic Preservation Act (NHPA) – Requires analysis by the Lead Federal Agency and consultation with the California State Historic Preservation Officer (SHPO), Advisory Council on Historic Preservation (ACHP), culturally affiliated Native American Tribes, and others, as appropriate, to “resolve adverse effects” on “historic properties” including archaeological and Native American sites. Section 106 is the key Federal historic preservation law, and final approval of the undertaking may be conditional as specified in a legally binding Agreement among the parties.

Several laws and their implementing regulations spell out evaluation criteria to determine what constitutes a significant ‘site’ or a significant ‘discovery’:

- California Register of Historical Resources criteria (California Code of Regulations, Title 14, Chapter 3, Section 15064.5), for archaeological and Native American resources qualifying for consideration under CEQA;
- National Register of Historic Places criteria (36 CFR 63), qualifying for consideration under Section 106 review and NEPA;

State laws call for specific procedures and timelines to be followed in cases when human remains are discovered on private or non-Federal public land in California. It includes penalties (felony) for violating the rules for reporting discoveries, or for possessing or receiving Native American remains or grave goods:

- Section 7050.5 of the California Health and Safety Code and Section 5097.98 of the Public Resources Code (PRC) outline requirements for handling inadvertent discoveries of human remains, including those determined to be Native American with or without associated grave goods, found on private or non-Federal public lands. PRC 5097.99 (as amended by SB 447) specifies penalties for illegally possessing or obtaining Native American remains or associated grave goods.

Another California law imposes strong civil penalties for maliciously digging, destroying or defacing a California Indian cultural or sacred site:

- California Native American Historic Resource Protection Act of 2002 (SB 1816, adding Chapter 1.76 to Division 5 of the PRC), imposes civil penalties including imprisonment and fines up to \$50,000 per violation, for persons who unlawfully and maliciously excavate upon, remove, destroy, injure, or deface a Native American historic, cultural, or sacred site that is listed or may be listed in the California Register of Historic Resources.

Standard Mitigation Language for CEQA Initial Studies

The following language may be employed by the Humboldt Bay Harbor, Recreation and Conservation District (Harbor District) when cultural resources screening (e.g., comment by Wiyot area Tribal Historic Preservation Officers (THPOs), formal record searches, current cultural resources studies) indicates a particular permit, leasehold or franchise area under its jurisdiction does not have known archaeological sites, however, unknown buried artifacts and archaeological deposits may exist and be impacted by the proposed action.

CR-1 Should an archaeological resource be inadvertently discovered during ground-disturbing activities, the Tribal Historic Preservation Officers (THPO) appointed by the Blue Lake Rancheria, Bear River Band of Rohnerville Rancheria and Wiyot Tribe shall be immediately notified and a qualified archaeologist with local experience retained to consult with the Harbor District, the three THPOs, the Permittee and other applicable regulatory agencies to employ best practices for assessing the significance of the find, developing and implementing a mitigation plan if avoidance is not feasible, and reporting in accordance with the Harbor District's Standard Operating Procedures (SOP, below).

CR-2 Should human remains be inadvertently discovered during ground-disturbing activities, work at the discovery locale shall be halted immediately, the Harbor District and County Coroner contacted, and the Harbor District's SOP shall be followed, consistent with state law.

Standard Operating Procedures

The following standard operating procedures for addressing inadvertent archaeological discoveries shall apply to all phases and aspects of work carried out under the authority of the Harbor District for those parties that obtain a permit, lease or franchise for projects that involve ground-disturbing activities within its jurisdiction. It shall apply as well to the Harbor District's activities involving ground disturbances. In all cases, these SOPs shall apply to their respective employees, officers and agents, including contractors whose activities may potentially expose and impact significant or sensitive resources.

The intent is to avoid or minimize direct or indirect impacts to significant archaeological or Native American discoveries that may qualify for inclusion in the California Register of Historical Resources and/or the National Register of Historic Places.

These Protocols are intended to serve as standard guidelines to the Harbor District for compliance with CEQA and NHPA Section 106 requirements for considering inadvertent archaeological discoveries.

Responsibility for Retaining Services of As-Needed Professional Archaeologist

If an inadvertent discovery of archeological resources, human remains and/or grave goods occurs, the Harbor District or those parties that obtain a permit, lease or franchise shall be responsible for retaining as-needed services of a qualified Archaeologist, meaning the individual meets the Secretary of the Interior's Professional Standards for an Archaeological Principal Investigator and/or is listed as Registered Professional Archaeologist (see website at www.rpanet.org). The professional will provide as-needed services to conduct rapid assessments of potentially significant archaeological finds discovered during the Project implementation.

Designated Points of Contact (POC) for Notification of Discoveries

The Harbor District, those entities that obtain a permit, lease or franchise from the Harbor District, their construction contractor(s), and other applicable local, state or federal agencies shall each designate a representative who shall act as its official Point of Contact (POC) and who shall be notified immediately upon the inadvertent discovery of an archaeological find or the inadvertent discovery of human remains and /or grave goods during Project implementation.

The federally-recognized Blue Lake Rancheria, Bear River Band of the Rohnerville Rancheria and Wiyot Tribe each has citizens that recognize Wiyot ancestry. Each Tribe's appointed Tribal Historic Preservation Officer (THPO) is designated as the POC (below) and shall be immediately notified by the Harbor District's POC should an archaeological site (with or without human remains) be inadvertently discovered. The Harbor District POC is also listed below.

Designated Tribal and Harbor District Points-of-Contact (*as of 4/15/15)

Tribe	Address	Office Telephone	Cultural Staff*
Blue Lake Rancheria	428 Chartin Road P.O. Box 428 Blue Lake, CA 95525	(707) 668-5101 x1037 Fax (707) 688-4272 Cell (530) 623-0663	Janet Eidsness, THPO
Bear River Band of the Rohnerville Rancheria	266 Keisner Road Loleta, CA 95551	(707) 733-1900 x233 Fax (707) 733-1972 Cell (707) 502-5233	Erika Cooper, THPO
Wiyot Tribe	1000 Wiyot Drive Loleta, CA 95551	(707) 733-5055 Fax (707) 733-5601 Cell (406) 850-2220	Tom Torma, THPO
Harbor District	601 Startare Drive, Eureka, CA 95501	(707) 443-0801 Fax (707) 443-0800 Cell (707) 496-2088	Adam Wagschal, Deputy Director

Interested Tribal Representatives shall be invited to inspect a discovery site and meet with the Harbor District’s and other applicable delegated POCs and Consulting Professional Archaeologist, as appropriate, to make a rapid assessment of the potential significance of a find and participate in the development and implementation of a Treatment Plan, as appropriate.

Note: In the event that Native American skeletal remains are discovered, State law specifies that the “Most Likely Descendent (MLD)” appointed by the NAHC has the authority to make recommendations for the final treatment and disposition of said remains and associated grave goods – see below.

A. SOP for Inadvertent Archaeological Discovery (General)

1. Ground-disturbing activities shall be immediately stopped if potentially significant historic or archaeological materials are discovered. Examples include, but are not limited to, concentrations of historic artifacts (e.g., bottles, ceramics) or prehistoric artifacts (chipped chert or obsidian, arrow points, groundstone mortars and pestles), culturally altered ash-stained midden soils associated with pre-contact Native American habitation sites, concentrations of fire-altered rock and/or burned or charred organic materials, and historic structure remains such as stone-lined building foundations, wells or privy pits. Ground-disturbing project activities may continue in other areas that are outside the discovery locale.
2. An “exclusion zone” where unauthorized equipment and personnel are not permitted shall be established (e.g., taped off) around the discovery area plus a reasonable buffer zone by the Contractor Foreman or authorized representative, or party who made the discovery and initiated these SOP.
3. The discovery locale shall be secured (e.g., 24-hour surveillance) as directed by the Harbor District if considered prudent to avoid further disturbances.

4. The Contractor Foreman or authorized representative, or party who made the discovery and initiated these SOP, shall be responsible for immediately contacting by telephone the parties listed below to report the find:
 - (a) the Harbor District's authorized POC and
 - (b) the Applicant's (District's permittee, lease or franchise holder) authorized POC, and it's General Contractor's POC if applicable.

5. Upon learning about a discovery, the Harbor District's POC shall be responsible for immediately contacting by telephone the POCs listed below to initiate the consultation process for its treatment and disposition:
 - (a) THPOs with Blue Lake Rancheria, Bear River Band and Wiyot Tribe; and Other applicable agencies involved in Project permitting (e.g., US Army Corps of Engineers, US Fish & Wildlife Service, California Department of Fish & Wildlife, etc.).

6. Ground-disturbing project work at the find locality shall be suspended temporarily while Harbor District, the three THPOs, consulting archaeologist and other applicable parties consult about appropriate treatment and disposition of the find. Ideally, a Treatment Plan will be developed within three working days of discovery notification. Where the project can be modified to avoid disturbing the find (e.g., through project redesign), this may be the preferred option. Should Native American remains be encountered, the provisions of State laws shall apply (see below). The Treatment Plan shall reference appropriate laws and include provisions for analyses, reporting, and final disposition of data recovery documentation and any collected artifacts or other archaeological constituents. Ideally, the field phase of the Treatment Plan may be accomplished within five (5) days after its approval, however, circumstances may require longer periods for data recovery.

7. The Harbor District's officers, employees and agents, including contractors, permittees, holders of leases or franchises, and applicable property owners shall be obligated to protect significant cultural resource discoveries and may be subject to prosecution if applicable State or Federal laws are violated. In no event shall unauthorized persons collect artifacts.

8. Any and all inadvertent discoveries shall be considered strictly confidential, with information about their location and nature being disclosed only to those with a need to know. The Harbor District's authorized representative shall be responsible for coordinating with any requests by or contacts to the media about a discovery.

9. These SOPs shall be communicated to the field work force (including contractors, employees, officers and agents) of those entities that obtain a permit, lease or franchise from the Harbor District, and such communications may be made and documented at weekly tailgate safety briefings.

10. Ground-disturbing work at a discovery locale may not be resumed until authorized in writing by the Harbor District.

11. In cases where a known or suspected Native American burial or human remains are uncovered:
 - (a) The following contacts shall be notified immediately: Humboldt County Coroner (707-445-7242) and the property owner of the discovery site, and
 - (b) The SOP for Inadvertent Discovery of Native American Remains and Grave Goods (B below) shall be followed.

B. SOP for Inadvertent Discovery of Native American Remains and Grave Goods

In the event that known or suspected Native American remains are encountered, the above procedures of SOP paragraph A for Inadvertent Archaeological Discovery (General) shall be followed, as well as:

1. If human remains are encountered, they shall be treated with dignity and respect. Discovery of Native American remains is a very sensitive issue and serious concern of affiliated Native Americans. Information about such a discovery shall be held in confidence by all project personnel on a need-to-know basis. The rights of Native Americans to practice ceremonial observances on sites, in labs and around artifacts shall be upheld.
2. Violators of Section 7050.5 of the California Health and Safety Code may be subject to prosecution to the full extent of applicable law (felony offense).

In addition, the provisions of California law (Section 7050.5 of the California Health and Safety Code and Section 5097.98 of the California Public Resources Code) will be followed:

1. The Coroner has two working days to examine the remains after being notified of the discovery. If the remains are Native American, the Coroner has 24 hours to notify the Native American Heritage Commission (NAHC) in Sacramento at (916) 653-4082.
2. The NAHC is responsible for identifying and immediately notifying the Most Likely Descendant (MLD) of the deceased Native American. (Note: NAHC policy holds that the Native American Monitor will not be designated the MLD.)
3. Within 48 hours of their notification by the NAHC, the MLD will be granted permission by the property owner of the discovery locale to inspect the discovery site if they so choose.
4. Within 48 hours of their notification by the NAHC, the MLD may recommend to the owner of the property (discovery site) the means for treating or disposing, with appropriate dignity, the human remains and any associated grave goods. The recommendation may include the scientific removal and non-destructive or destructive analysis of human remains and items associated with Native American burials. Only those osteological analyses (if any) recommended by the MLD may be considered and carried out.

5. Whenever the NAHC is unable to identify a MLD, or the MLD identified fails to make a recommendation, or the property owner rejects the recommendation of the MLD and mediation between the parties by NAHC fails to provide measures acceptable to the property owner, he/she shall cause the re-burial of the human remains and associated grave offerings with appropriate dignity on the property in a location not subject to further subsurface disturbance.

C. SOP for Documenting Inadvertent Archaeological Discoveries

1. The Contractor Foreman or authorized representative, or party who made the discovery and initiated these SOP, shall make written notes available to the Harbor District describing: the circumstances, date, time, location and nature of the discovery; date and time each POC was informed about the discovery; and when and how security measures were implemented.
2. The Harbor District POC shall prepare or authorize the preparation of a summary report which shall include: the time and nature of the discovery; who and when parties were notified; outcome of consultations with appropriate agencies and Native American representatives; how, when and by whom the approved Treatment Plan was carried out; and final disposition of any collected archaeological specimens.
3. The Contractor Foreman or authorized representative shall record how the discovery downtime affected the immediate and near-term contracted work schedule, for purposes of negotiating contract changes where applicable.
4. If applicable, Monitoring Archaeologists and Tribal Representatives shall maintain daily fieldnotes, and upon completion, submit a written report to the Harbor District and the three Wiyot area THPOs.
5. Treatment Plans and corresponding Data Recovery Reports shall be authored by professionals who meet the Federal criteria for Principal Investigator Archaeologist and reference the *Secretary of the Interior's Standards and Guidelines for Archaeological Documentation* (48 FR 44734-44737).
6. Final disposition of all collected archaeological materials shall be documented in the final Data Recovery Report and its disposition decided in consultation with Tribal representatives.
7. Final Data Recovery Reports along with updated confidential, standard California site record forms (DPR 523 series) shall be filed at the Northwest Information Center of the California Historical Resources Information System and the Harbor District, with report copies provided to the three Wiyot area THPOs.
8. Confidential information concerning the discovery location, treatment and final disposition of Native American remains shall be prepared by the THPOs and forwarded to the Sacred Sites Inventory maintained by the NAHC.