

**ARCHAEOLOGICAL DAILY PROJECT NOTES
FOR ELEM MINE WASTE CLEANUP PROJECT**

By John Parker, Ph.D. RPA
current as of 1-31-07

** Days where excavation protocol was violated, causing unmitigated damage to
cultural resources (12 days total).

7-26-2006 Received a call from Jim Brown III (Tribal Administrator and Tribal Historian) of the Elem Indian Colony indicating that Eagle Brown found bone while monitoring EPA excavations on the Reservation. He asked me what to do and I told him to have the project archaeologist identify the bones. I explained that if they are human, the county coroner would need to be called. Jim indicated that there was no project archaeologist. I found this to be strange since the project was located within an area known to contain the prehistoric remains of the mainland Elem Village and since the project is a federally funded EPA Superfund cleanup.

Jim had a local Caltrans archaeologist identify the bones and they were cow.

I emailed Dwight Dutschke (State Office of Historic Preservation) explaining the situation and that the contractor did not have an archaeologist monitoring the work. I asked him if it was possible that the EPA had skipped the Section 106 process. I also asked who I should contact within SHPO and the EPA to look into this problem. He replied that the SHPO database had no entries that the EPA had initiated Section 106 consultation concerning this project.

7-27 Jim Brown indicated that the EPA excavation work on the reservation had already been in full swing for two months and that he has brought this subject up at two different meetings with EPA and CH2MHILL. He indicated that he feels the tribal representatives need to get more assertive with lack of compliance with Section 106.

7-28 Jim Brown emailed me to give him a call. He indicated that the tribe finally got EPA to stop work. He indicated that the EPA wants the Tribe to develop a tribal action plan to resolve the issue. The tribe has demanded that the EPA contract with an archaeologist that the Tribe approves for the job. He indicated that the Tribe wants me. In the mean time, CH2MHILL contacted John Holson of Pacific Legacy to visit the project site and make some recommendations (Pacific Legacy has worked with CH2MHILL in the past).

7-30 I put together a preliminary proposal.

8-1 John Holson of Pacific Legacy makes site visit.

8-2 Received copy of memo from John Holson (Pacific Legacy) to Jim Brown (Elem Tribal Administrator), Elem Tribe, Rick Sugarek (EPA) and Mike Umbrello (Elem environ. coord.) discussing the results of his site visit conducted 8-1.

He indicated that the project area needed to be surveyed and that a mitigation plan needed to be developed. That plan was to include provisions for work stoppage, give authority to the archaeologist to halt work in case of discoveries, each piece of equipment should have a cultural resource monitor, that the monitors have the authority to request a more cautious approach if cultural soils encountered. His memo also included lot-by-lot recommendations.

8-4 I met on Site with EPA and CH2MHILL. Inspected previously excavated areas and agreed that backfilling and compaction could occur on lots 14, 29, and road west of roundhouse. Also agreed that backfilling and compaction could occur on lots 20-24 once the flagged artifact locations have been mapped in.

8-5 Cheyanne and I spent day measuring and photographing archaeological site damage caused during Phase 1A work.

8-9 Second group meeting with representatives of EPA, BIA, CH2MHILL, and Tribal Representatives. We were told by EPA that they didn't need to follow the NHPA Section 106 process.

8-10 Worked on formal monitoring proposal.

Dwight Dutschke (SHPO) emailed me indicating that a court decision appeared to indicate that the CERCLA process appears to exempt the EPA from National Environmental Policy Act, but not from the Section 106 Process of the National Historic Preservation Act.

8-11 Worked on Monitoring Proposal

8-12 Worked on Monitoring Proposal

8-13 Worked on Monitoring Proposal

8-14 Prepared project paperwork

8-15 Had pre-construction medical exam

8-16 Prepared project paperwork and began HAZMAT training at Elem Office.

8-17 HAZMAT training

8-18 HAZMAT training

8-19 HAZMAT training

Took photos and UTM readings at waste disposal site near main mine pit

(528553E/4317336N). Took photos of LAK-1806H P4 (528737E/4317333N) immediately adjacent to waste disposal site.

8-19 Did initial Phase I archaeological survey of reservation property.

Took photos trying to reproduce 1906 shots of village. Major oaks missing, however, it appears that historic structures were mainly on lots 22 through 25 and 12 through 14, also closer to the lake.

HS-1 (Historic Site 1) measured 12 meters NS by 7.2 meters EW. This site area contained blown glass, cast iron stove parts, horseshoe, EuroAmerican ceramics, Washington clamshell and abalone shell. UTM 528390E/4317726N

HS-2 measured 1.6 meters EW by 10 meters NS and contained hand wrought metal pieces, blown glass, EuroAmerican ceramics, brick and mussel shell. UTM 528420E/4317704N

Began writing preliminary archaeological Phase I survey report of reservation.

8-21 Had safety training, walked with new crew and pointed out archaeological site areas, went over soil core samples. Decided there is a need to excavate a unit in the water-truck road to the lake somewhere between the 1st and 2nd soil core samples to recover cultural sample and get a better handle on the location of the contaminated area.

Directed mechanical pot-holing of eastern road to check soil under fill where storm drains need to go.

8-22 Contractor began excavation of mine waste at cul-de-sac. I trained Eagle Brown on monitoring process and then had him monitor silt fence placement and repair of broken water line near Lot 2. Surface of natural soil has obsidian and one Chinese Ng-Ga-Pi jar wall frag. Beneath this soil is 40-50cm of mine waste then natural soil (light chocolate brown in color with fist-size angular rock).

8-23 Eagle monitoring main dig at cul-de-sac, Sandy and I monitoring removal of waste in front of lots 29-30 (storm drain trench areas). I took a 5 gal. Bucket sample for ¼" analysis and 2,000cc 1/8" sample from driveway soil on cul-de-sac. This topsoil reportedly came from an archaeological deposit on Buckeye Island.

9:58am, got a call from Dan Hall (BIA archeologist) upset about project and asked me to stop work on arch sites. I halted work at the lot 29-30 road location and gave Rick Sugarek's phone number to Dan Hall. He called back later to say that they could use the "newly discovered sites" clause to allow work to continue even though Sec. 106 laws and the Archaeological Resource Protection Act had been violated. I was scolded by John Spitsley (CH2MHILL), Mike Umbrello (Elem Tribal Environmental Officer) and Rick Sugarek (EPA) big time, for letting Dan Hall know about the project. I was told again by EPA's Rick Sugarek that they didn't need to follow Section 106 procedures. If it

weren't for the value of the resources and my commitment that the tribe's history be protected, I'd pack up and go home.

3:35pm, Ruben found owl pendant (unbroken)

Worked on mitigation proposal for Storm Drain (SD) trenching.

8-24 ** Eagle monitored the cul-de-sac dig and I monitored the excavation in the proposed storm drain area. Excavation Contractor's safety officer (Mark) needing to train Native American monitors kept me from using all the monitors. I explained that I needed Sandy Thomas with me for a day for monitoring training when he was finished. He sent Sandy to stand in for Eagle who he had reading health and safety stuff at the first-aid trailer (instead of monitoring). I arrived at the cul-de-sac excavation and found no monitor, and that excavation had occurred to a depth of 2 feet below the level of the mine waste. I stopped the shovel and words were had all around. A basically screwed day... most days here have been.

BIA archeologist indicated that I should have a letter from the tribe that indicates that I have permission to work on the property, that I be allowed to recover NAGPRA related materials, and that I can have temporary custody of the materials for analysis purposes. He wanted me to add a NAGPRA section to the proposal as well as notification procedure to include the BIA if burials are encountered.

HT-1 (historic site) "trash" encountered during excavation just north of the cul-de-sac intersection. A black soil area 3 X 3 meters in diameter with metal, blown glass, ceramics, etc. A 5-gal bucket sample and 2,000cc sample were recovered for screening and analysis. I collected exposed materials and flagged the area to keep construction out.

Had a long 2.5 hour meeting with Ray Brown (Tribal Chairman)

12:45pm, within the historic feature area, the 450 excavator (Josh and Tom) violated the excavation protocol by digging without a monitor present. I confronted Josh and got my head bit off. I took the problem to Jim Hanvey (foreman for contractors) and got no response. Josh is a real problem!!!

Jim H. was quick to "write up" the Native American monitor for returning from lunch late, but never wrote up Josh for violating protocol.

HT-2 (10.4m EW X 12.8m NS). This area contains bricks, blown glass, Euroamerican ceramics, and sq. nails. A 5 gal bucket sample and 2,000cc sample were recovered for screening and analysis.

HT-3 (9.6m EW X 16m NS). UTM 528422E/4317618N. This area contains burned soil, bricks, rusty metal, blown glass, Euroamerican ceramics, and sq. nails. A 5 gal bucket sample and 2,000cc sample were recovered for screening

and analysis.

Spent evening printing up excavation protocol sheets for all crew to sign so the problem with Josh never having seen or not understanding the protocol would not happen again.

8-25 6:55am, asked to see Jim Hanvey about getting all employees to read and sign a copy of the excavation protocol to make sure that all understood it and could be held accountable if violated. I was told by Josh that Jim and all other bosses were off for the weekend. I asked Josh (currently in command) to approve the idea and he wouldn't. I called Jim Hanvey to get permission and he indicated that he'd try to get a hold of Jim Spitsley to see about it. I was later told that they would have their attorney look it over and the subject was never brought up again.

The 450 excavator is working in front of lots 12 and 23 with Ruben monitoring. Sandy is off and I have Elton monitoring the placement of silt fences. Eagle is not here.

HT-4 hit in front of lot 13. The feature is 10.4m in diameter and the center point is at UTM 528403E/4317650N. The feature contains blown glass, Euroamerican ceramics, rusty metal and burned ash.

8:44am, excavator moved to road in front of lot 18. I spent the afternoon by Lot #2. Found metate in fill soil above mine waste across from Lot #2. Ruben indicated that the fill soil above the mine waste most likely came from the archaeological deposit on Buckeye Island when they leveled the top of the Island for a house.

8-26 On site archaeological training for monitors.

8-27 Organized 3 hr. archaeological training session for Native American monitors. Only Eagle showed up so he got the training. Gave a tour of the project area to BIA representatives. Also bought supplies and prepared for mitigation work in Storm Drain (SD) trench areas.

8-28 8:30am, Sandy Thomas discovered a human toe at the base of the telephone pole across from Lot #2 (in the Buckeye Island fill soil). At 10:15am, I called the sheriff coroner. The coroner took my word that the bone was prehistoric in origin and decided not to send out a deputy. Over the phone, Sheriff John Rynhart gave me custody of the bone and assigned a case #060828032. Ruben also discovered a fragment of skull in the same area and had bagged it not realizing that it was human. Both bones came from UTM 528438E/4317848N.

A second metate was recovered from the fill soil atop mine waste across the road from Lot #3

I called to get a cargo container delivered on Wednesday to house recovered artifacts and field equipment.

8-29 **Only 1 NA monitor (Sandy). Eagle was here but CH2MHILL won't allow him to work until he has taken the physical... they are scheduling the other Native American monitors for physicals the rest of the week, effectively doing away with monitors for most of the week.

Continued monitoring the 450 excavator in front of Lots #3, 4, and 5. The smaller excavator is not working until the water trucks are fixed. The constant pressure by CH2MHILL staff to go deeper and deeper into intact cultural soils below the mine waste finally got to me so I had to leave the area at 2:00pm (too depressing). Not only mine waste being removed, but all of cultural soil as well. The CH2MHILL staff in charge will not listen to or follow my direction once cultural soils are encountered.

Surveyors staked area for storm drain dig. I spent the afternoon figuring out the centerline and Unit layout.

Evening call to Ray Brown and John Kennedy (EPA) – to express my frustration and desire to walk away from this mess. Figuring I'd go home, I called and cancelled the cargo container delivery.

8-30 ** Long stressful confrontation with Rick Sugarek (EPA) and John Spitsley (Contractor). I finally decided to stay on the project – but am VERY worried about not being right by the excavator when they go through the 1906 historic area and near the cemetery.

We set up and started digging archaeological data recovery units SD-1 and SD-2 in the storm drain trench alignment – but half the day was spent running back and forth between excavators. Cheyanne managed to get two levels dug. I returned the Elem office key to Mike Umbrello.

Waste removal excavation near the 1906 historic features went 1 foot below the 1906 ground surface.

8-31 Continued excavating SD-1 and 2, started SD-3 and 4. Cargo container arrived.

HT-5 exposed and contained horseshoes, embossed firebrick, glass, and ceramic as well as more recent 1930's-60's stuff. Feature is 17.6m EW X 20+m NS and has a center point UTM of 528386E/4317622N.

9-1 Continued SD units, finished SD-2 and started SD-3 and 4. Ruben and Sandy monitoring excavators. 10:25am review of project area with John Spitzley, Jalal (BIA road engineer), Ray Brown, Josh (contractor), and John Kennedy in an attempt to organize where water trenches should go to minimize damage to archaeological resources. Jalal and I discuss ideas for filling in low spots along west road to meet compaction specs while preserving cultural soils. He just needs a map so he can justify changes in the specs for those areas.

West road: east side of road clear of cultural soils and water line should go

through there with no problems.

South road: West of entrance, clear with no cultural soils in roadbed.

9-2 SD-3 down to 40cm, SD-4 almost done to 60cm.

9-3 Record and collect from HT-5 and HT-6.

HT-5 16m NS X 20m EW contains brick, ceramics, glass, and metal (inc. horseshoes, ax head, fire brick, etc.). Center point UTM is 528386E/4317657N.

HT-6 18.4+m NS X 19.2+m EW contains brick, glass, metal, ceramics (Asian and Euro) 1800's through 1950's. A brick pile was discovered (13-15 bricks) at UTM 528363E/4317670N.

9-4 Spent day doing paperwork (ARPA permit, rewrite mitigation plan, BIA letters, curation agreement, and permission letter).

Sent letter to Dan Hall (BIA) outlining the discovery of human remains (as required by NAGPRA 43 CFR 10.4).

9-5 Gave John Holson and Kevin (Pacific Legacy) a tour of the project area and then set them to work finishing SD-3 and 4. Set up SD-5. Spent day monitoring along cemetery road and occasionally in front of Ray's house where lots of historic and prehistoric stuff exists just under the mine waste. (shell, bead, point, bennington marble, picnic flask, bricks and ceramics found).

At end of day Rick Sugarek and John Spitsley discussed removing mine waste that extends through fence into cemetery. They (Rick) then told me that I didn't need an ARPA permit to do the EPA work, "as they were exempt from all permits".

Jim Brown visited the site today but was quickly hustled off by John Spitsley.

9-6 To get ready to leave for the family reunion, I need to do profiles of units SD-1, 2, 3 and get a 1/8" sample from SD-3 10-20cm. Get 4X8 sheets of plywood for the cargo container, give container key, radios and charger to one of NA monitors. Set up Units SD-6 and 7.

Morning not good, Sandy sent home due to medical problem that showed up on her exam. No-one to give container key and radios to for Thurs-Sat.

Horseshoes (horse 6) recovered across from lot #24 in HT-6 area (UTM 528375E/4317681N). Chinese rice bowl recovered under road front of Ray Brown's house (UTM 528362E/4317695N). Cast iron stove lid recovered 2 meters north of rice bowl.

10:00 started using backhoe loader end to follow trace (2" thick) of mine waste

that had trickled into cemetery. EPA chemist wants all soil removed to grade, regardless of whether it is mine waste or not. It is a constant fight to limit them to taking mine waste only and not cultural or native soil.

2:00 Dave Burroughs found head of right femur near where isolated bones were found on 8-25-06. Due to its location, it is assumed that this is another bone of the same disturbed burial, so it has been bagged with the rest.

Sandy was told that she can't work for CH2MHILL due to a problem with the results on her physical exam. I asked Mark (health guy) and Jim Hanvey if there were any problems with me hiring her to work for me. They indicated that there was no problem, so I hired her as a subcontractor and she began working for me at 2:00.

John Holson and Kevin working on Units SD-5 and 6. I am monitoring waste removal along edge of cemetery. Ruben and Elton are monitoring in front of lots 25 through 28 (historic site area). A mano was found at UTM 528374E/4317732N. It was bagged with HT-6 materials. Other items recovered in this area included lots of purple glass and a ginger beer bottle frag. Also a KT&K stoneware frag. At UTM 528361E/4317716N.

9-7 Morning checkup on crew before heading for Morro Bay family reunion. Delivered plywood for container, GPS'd unit corners and took Unit photos.

SD-5 NW corner UTM 528438E/4317845N
SD-6 NW corner UTM 528522E/4317847N
SD-7 NW corner UTM 528596E/4317843N

9-8 No entry: Family Reunion, Sandy monitoring

9-9 ** (see 9-11 entry) No entry: Family Reunion, Sandy monitoring

9-10 No entry: Family Reunion, Sandy monitoring

9-11 **Larry (Contractor's grader operator) asked if he could grade the east road to allow fill trucks to drive on it. I explained that he could not grade the east road due to cultural soils. Within 20 minutes he was in the process of grading the east road (with no monitor) and hit a pestle.

I immediately met with Rick S., Jim H., and Jalal to discuss treatment for east road after Larry on the grader failed to follow my direction. Jalal asked for maps from me depicting areas of cultural soil so he and others can give guidance to the contractor. Jalal also wants a letter from me stipulating that he was not involved during Phase 1A soils remediation portion of the project.

I recorded historical material on west road and was VERY dismayed to discover grading that had taken place 9-9 under John Holson's direction. It appears that ~1.5 feet of historic cultural soil had been stripped off the area where the Historic Sites had been flagged.

Sandy reported that during historic area grading (under Holson's direction on 9-9) Larry used the ripper teeth on the back of his grader to rip the entire length of the road to a depth of 1 foot (16m wide by 80m long) before blading it flat. It was the ripper teeth that pulled up and broke a mortar. Where was John Holson???

Had to redraw all sidewall soil profiles of Units 1 through 6. Profiles drawn by Pacific Legacy people had no bearing on reality. John Holson had repositioned SD-7 five meters north of my staked location and way outside the storm drain alignment, so I can't use the data as part of the statistical sample from the trench. I re-set SD-7 back to the original location and renamed it SD-8. Completed 1½ levels before day was over.

Sandy and Ruben left at 10:30am.

- 9-12 Sandy at jury duty, Eagle out taking pregnant girlfriend to hospital, Ruben took day off. Only 1 Native American monitor.

Continued work on SD-8 until pulled away at 8:15 to monitor trenching for sewer laterals. Sewer lateral monitoring took all day (till 2:45). MGW bottle found in lateral trench under road front of Lot 27 at UTM 528362E/4317724N. Chinese 4 Season's small plate frag. found in lateral at UTM 528363E/4317726N (photo of trench sidewall).

Did another walk-around with all the big wigs to review road construction plans vis-à-vis archaeological site areas (for John Spitzley's benefit).

Spent another ½ hour on SD-8 and got it down to 30cm.

- 9-13 John Spitzley indicated that he needs something special regarding receipts from me for fed. govt. contracting. I have been saving and zexing all receipts and supplying him with the copies. Rick S. asked about the arch. monitor schedule down the road and what was needed for artifact processing at the cargo container. I indicated that we needed water for wet screening. He suggested getting a water truck.
- 9-14 Ruben and Elton watching 450 Excavator as they finish road near entrance. Sandy monitoring water line trench. I am watching cleanup of hot spots along west road. Waterline guys done at 4:00 and Sandy went home. I walked east road edge and picked up artifacts. Walked to water truck lake access to watch and photo the placement of geo textile fabric and fill to protect archaeological site from damage by water truck travel (I had asked for this treatment 4 weeks previously). Four weeks of water truck traffic later and the area is finally protected. During that 4 weeks a hole in the cultural soil had been created by the truck tires 5 meters in diameter and ~1 foot deep.

I monitored water line excavation, helped Elton pick apples from tree scheduled for demolition. Walked area of scraped roadway through historic site area

(done while I was at family reunion). Took pictures and noted obsidian throughout the area.

- 9-15 Re-aligned geo-textile fabric in water truck road area as it had blown out of place during the night. Sandy monitoring waterline trench (through safe area). Ruben and Elton monitoring 450 excavator. Need Cheyanne to bring 4-runner, as the pickup is useless.

Watched Randy (backhoe operator) remove hot spots, watched water line trenching, delineated depth of mine waste at Ray Brown's driveway. Copied 1906 photos and other project photos to John Kennedy's disk. Monitored Randy's removal of waste from Ray Brown driveway.

- 9-16 ******(Saturday) Ruben and Sandy monitoring 450 excavator removing road and mine waste near entrance. I watched Randy remove piled up soil and hot spots along historic sites area.

Set up wet screen, Randy scraped area for wet screen and geotextile laid down and then a layer of red rock fill. This will keep cultural material falling through wet screens from being deposited back on natural ground.

Hoping to start archaeological data recovery unit JK-1 before end of day, as we must finish it before work starts on Monday.

Cheyanne arrived at noon to help with JK-1 unit, but can't start till trucks finished using road.

At the north end of Elem Drive, Larry is on big dozer completely ignoring my instructions to him to not disturb soils north of the line between the oak tree on Lot 1A and the telephone pole on Lot 1B. He has cut back into both sides of the bank and at least 1½ foot deep.

Started JK-1 a 1x2m unit along water truck road.

- 9-17 Spent 12 hours excavating JK-1 and setting up wet screen area.

- 9-18 ******Cheyanne, Dave Burroughs, and James Wright wet screening. Ruben.

Although I had indicated that no excavation should take place into native soils in front of Lot #2. I was ignored and was forced to monitor a 3 to 5 inch excavation in front of Lot #2. I instructed the workers to stockpile the cultural soil at back of lot 1B for later screening for artifacts as partial salvage/mitigation of damage done to site.

Sandy and I watched water trenching through historic site area. Sandy reported that during historic area grading (under Holson's direction on 9-9) Larry used the ripper teeth on the back of his grader to rip the entire length of the road to a depth of 1 foot (16m wide by 80m long) before blading it flat. It was the ripper teeth that pulled up and broke a mortar. Where was John

Holson???

A pestle was found in the water trench (in the same general area as the mortar hit by the grader) UTM 528407E/4317655N. Obsidian flakes were observed in the water trench to a depth of 50cm, from this location northward.

As a partial salvage treatment for the water line trench, I started recovering 5-gal bucket samples of topsoil every 10 meters along the water line trench beginning ~2 meters north of the telephone pole at lot #13.

Sample #1 528383E/4317675N
Sample #2 528374E/4317681N
Sample #3 528366E/4317687N
Sample #4 528363E/4317695N
90 degree angle in front of Ray's house
Sample #5 528358E/4317698N
Sample #6 528360E/4317708N
Sample #7 528362E/4317718N
Sample #8 528373E/4317735N
Sample #9 no topsoil, no sample taken

9-19 **450 excavator digging into cultural soil in front of Lot #30 to a depth of 2 feet below the mine waste. No mitigation work done before this disturbance (photos taken). I talked to Rick S. and Jim Hanvey about it. Also walked to the end of road 31 and pointed out that cultural soil scheduled to be removed as mine waste was detected along the edge (appears to have been pushed into this area by previous removal process along this road before I arrived on the project). Moss covered boulders in the area indicate that there has been no disturbance in this area for several hundred years, therefore no mine waste could possibly exist here.

Continued monitoring water trench through LAK-76 and taking 5 gal bucket samples for ¼" screening every 10 meters. Charcoal sample recovered from immediately above point in sidewall of trench 1.4 meters north of sample #4 location.

11:00 After 4 hours of work in 100-degree heat and no drinking water has yet been supplied for the screening crew.

Spent most of afternoon monitoring waste removal at Ray's driveway.

9-20 Ran wet screen operation and spot checked monitors on Geary house removal and water line trench along lots 1, 2, 3. Took 5 gal bucket samples every 10 meters in front of lot 2. Cultural soil is 40cm thick in this area

Sample #10 528428E/4317826N
Sample #11 528435E/4317834N

Sample #12 528443E/4317840N

Sample #13 528450E/4317845N

9-21 Wet screening with Dave and James. Ruben and Sandy monitoring. 9:00am I monitored waste removal at road to water well and old dump. Other spot areas also watched, but most of day wet screening.

9-22 **Wet screening. Ruben and Sandy monitoring cul-de-sac waste removal. James left at 9:00 to attend Calif. Indian Days. Got a call from John Eddins (Advisory Council on Historic Preservation) asking about project and if he should shut it down based on the violations and damage that has occurred 9-18 and 9-19. I explained that today was likely the last day of excavation and that stopping the project at this point would not accomplish anything. It should have been stopped 7 months ago.

1:00 Monitored tree removal in cultural soil at Ray Brown's house (an area 40x40cm and 50cm deep was disturbed). Monitored surface trash cleanup at lot 1A (2 points found)

4:30 grader used to scrape water truck road. I printed out and showed everyone photos of our excavation unit sidewalls (JK-1) so they could see the extent of the mine waste (2 to 6 inches). I provided suggestions to the grader and all present on how the mine waste could be removed while causing the least amount of damage to the underlying intact cultural soils. I was ignored. The grader was instructed to take out soils a few inches at a time. Josh checked contamination levels. Pockets of mine waste had filled in old wheel ruts and in order to remove them the grader took off all soils to a depth of 10 to 20cm below the mine waste layer. Josh and others wanted to scrape the whole road to the depth of the deepest filled rut and pretty much did, taking out a swath of cultural soil to a depth of 20-30cm covering an area 48m long by 3 meters wide. The eastern ½ of the road scrape went as deep as the volcanic rock presumably the remnant of the 5,000 B.P. eruption.

Since I had been told over and over during the project that I had no "legal" authority to stop the work, all I could do was watch and record the damage. I suspect that my small 1x2 meter unit didn't come close to mitigating the damage caused. It was more like a "salvage" operation.

Rick S. spotted the cultural soil I had stockpiled for artifact screening on Lot 1B and asked why it was there (see 9-18 and 9-19). I explained the plan for artifact screening (which would have partly mitigated the damage done to the cultural deposit in front of Lots 1B and 2). He had the pile moved to the mine waste repository area (where it will never be screened for artifacts and where the screeners would have to wear Tyvek in order to work on it). The pile of cultural soil represented ½ of the intact cultural soil removed from the roadbed (below the mine waste zone) in that area. This area of destroyed cultural deposit was originally 60cm thick and 24m EW by 14.4m NS. No mitigation was completed before this damage was done (photos taken).

9-23 Sandy left after 1 hour (not needed). Rubin watched water trench excavation along the east road. I worked at the wet screen area documenting artifacts and doing computer work in the office.

At 9:00, Thomas Leon Brown called to tell me to fire Sandy. He indicated that Ray Brown had told him to relay the message to me. I told him that I would need a letter documenting this decision so Sandy would know that I had nothing to do with it.

9-24 No work

9-25 No Rubin, just James and me. I monitored Randy on the backhoe removing the rest of the mine waste layer along water truck road. This added another meter to the width of the disturbed area along this road.

I called in Cheyanne to work with James on wet-screening so I could monitor.

Both John Spitzley and Rick Sugarek questioned me about letting Sandy go. I explained the call from Thomas Brown and that I requested a letter from Ray Brown outlining the reasons the tribe wanted me to let her go. Rick said he'd talk to Ray Brown about it and that the tribe had no authority over who I hire or fire and that I should pay her for 10 hours today.

Water Line Sample #14, 5 gal bucket for ¼" screening. UTM 528580E/4317846N

Trench began to cut into intact cultural soil ~2 meters north of sample #14 location (10-20cm into cultural soil at this point) Photos taken.

Sample #15 5gal. ¼" screening UTM 528589E/4317843N

Jalal's boss from the BIA toured project and I showed them some of the historic and prehistoric artifacts.

3:30 Richard Sugarek came back from talking to Ray Brown. The outcome was that Sandy was not let go. I am to pay her for 10 hours today and she can come back to work if she wants to. I called and left a message for her.

Ray Brown arrived at the site and handed me a letter signed by him indicating that I "must end Sandy Thomas' employment on the Elem Indian Colony Land Site immediately..." We talked and he indicated that I should write a response explaining why she should be allowed to remain working...

9-26 **Sandy back monitoring, James, David, and Cheyanne on wet-screen. Water trench guys placing fire hydrants.

Hydrant #1 (H1) prompted taking a 5 gal. Bucket sample. The hole was 50cm wide, 1.4m deep, and 1.5m long. UTM 528402E/4317662N

H2 no sample taken (no cultural soil)
H3 no sample taken (in fill)
H4 no sample taken (no cultural soil)

Sample 16 (water trench) 5 gal sample for ¼” screening. Trench 10cm into cultural soil. UTM 528602E/4317840N

Sample 17 (30cm into cultural soil) UTM 528604E/4317832N
Sample 18 (30cm into cultural soil) UTM 528600E/4317822N
Sample 19 (50cm into cultural soil) UTM 528596E/4317817N
Sample 20 (40cm into cultural soil) UTM 528593E/4317807N
Sample 21 (50cm into cultural soil) UTM 528591E/4317797N
Sample 22 (60cm into cultural soil) UTM 528587E/4317785N
Sample 23 (60cm into cultural soil) UTM 528585E/4317779N
Sample 24 (30cm into cultural soil over 50cm yellow clay) UTM 528851E/4317770N
Sample 25 (30-40cm into cultural soil) UTM 528579E/4317760N
Sample 26 (20cm into cultural soil) UTM 528574E/4317750N
Sample 27 (10cm into cultural soil) UTM 528571E/4317742N

Storm drain trench monitoring. Possible fire hearth samples in trench (2000cc for 1/8” screening) at UTM 528440E/4317843N.

Actual storm drain trench is 85cm south of the alignment given to me for our data recovery mitigation units. Only 25cm of units are in the trench area (Units SD-4 and 5).

9-27 Dave, James and Cheyanne wet-screen. Sandy watches water line trenching and I am on Storm Drain trenching.

7:30am Stockpiled cultural soil for arch screening was removed and taken to mine waste area before any archaeological screening could take place (soil from under road in front of Lot #2). Photos taken. Center-point UTM for pile in mine area is 528780E/4317291N [THIS IS NOT TOXIC SOIL] full of cultural material from LAK-76.

Monitored cleanup of loose soil on historic road. Spent most of morning wet-screening. Dave left about 9:30.

Had confrontation with Mike Umbrello (Tribal Environmental Officer) at lunch. He, Ray Brown Jr. (son of Tribal Chairman) and several others from tribal office had arrived for tour of project. Mike was apparently unaware that my BIA and tribal permit gave temporary custody of the cultural material to me during the analysis process. He was of the impression that all the stuff would be moved to the tribal office directly from the project site. He heard nothing I said when I explained my ARPA permit, the permission letter from Ray Brown, or the fact that I would lose my registration as an arch if I ever kept artifacts for myself.

Umbrello spoke of “chain-of-custody” as if this were a court case with evidence. I told him, Ray Jr. and anyone listening that they are free to take pictures of everything if that will ease their “fears” that I may take or keep something. Mike walked away (not wanting to hear anymore or not wanting to slug me). I turned to Ray Jr. and asked point-blank “do you trust me?” Ray said he did and that I have never done anything to make him not trust me... plus his whole family and the elders support me.

Later in the afternoon, Spitzley asked if I would photo the known artifacts that we had so the tribe (Mike) would have something. Sandy and I began laying out and photo-ing the material. Of the unsorted unit level soils, I will lay out and photo one level and make a list of all the levels, Units, and soil samples we have collected.

Finished screening all but three 5-gal ¼” buckets. Water pump broke. Cheyanne left at 4:30. This is James’ last day.

Delbert Thomas came by and we talked for a while. He said when he was tribal chair he assumed that the EPA had done all the proper archaeological work (Sec. 106). He suspects that Ray Brown assumed the same.

End of day a few more feet of the storm drain trench excavated. Sandy watched water trench excavation till they stopped at 3:00. I left at 5:00.

9-28 More work on storm drain trench. Sandy and I here at 7:00am. Manhole box for storm drain required hole 3 x 4 meters 1.4m deep (but only 70cm into cultural soil).

John Kennedy showed up at 11:00. He had talked to Mike Umbrello. He wants to talk to Ray Brown about the archaeology. I explained the curation center idea to him, he wasn’t aware of the possibility that the tribe could form a curation center for the area and turn it into a business. He indicated that Mike U. seems to be concerned that the artifacts may end up somewhere else other than Elem. When I first arrived on the project, I indicated that I wanted everything to be curated at Elem, but for that to happen, Elem needs to have a curation policy in place. I provided a copy of the San Luis Obispo County Archaeological Society collection policy as an example.

At noon, Jalal gave me a sample letter to put on my letterhead indicating that he was not responsible for anything done during the first phase of the mine waste cleanup (a get-out-of-jail-free pass).

After lunch, storm drain trenching continued. Rick Sugarek pointed out that my ARPA permit requires a prelim. report within 6 weeks of completion of fieldwork (on 9-5 he told me I didn’t need this permit, because the EPA was exempt from ARPA requirements). I spent ½ day taking photos of artifacts to satisfy Mike U. In the evening, I created a disk with PDF’s and artifact photos for the tribe.

9-29 Sandy and I monitoring waterline and storm drain trenches. I spent some time in the office working on proposal for water line trench mitigation.

At lunch, Bob Geary (ceremonial leader) and friend came to roundhouse to prepare ceremonial regalia (heads) for upcoming call dance. Jim Hanvey confronted him but Bob already had proper permission. Bob told me that one of us (Sandy or I) needed to stay with them as long as they were here. I sat in the roundhouse with them while Bob got the heads ready. We talked about cultural stuff, archaeology, and ethnography, etc. He did a ceremony with the head feathers, carried them around the fire pit 4 times each way, then we left and I escorted them to the front gate. Rest of day watched Storm Drain

9-30 Sandy, me and Lemont Brown working. Sandy watching water trenching. I got Randy to move excavator to Storm Drain cross trench areas to get them dug today (before I had to leave). When we began work on the cross trenches it was discovered that the re-routed water main blocked their path. Jalal said that he pointed this out to everyone a couple weeks ago, but no one listened. No new excavation occurred till 1:00. I spent time packing truck, loading and cleaning the cargo container. Sandy left at noon (I paid her for all her hours to date). Cheyanne arrived at 1:30 and helped finish loading materials. I worked with Lemont to make sure he knew how to monitor trenching. Cheyanne and I left at 2:15.

I talked to Jim Hanvey about the problem with the Storm Drain purchase order and that the water main mitigation proposal is still unwritten.

I returned to Morro Bay and begin lab work on the recovered materials.... Sandy to finish final monitoring at the site.

10-2 **2:45 Sandy called indicating that she had been monitoring the Storm Drain trenching starting at 7:00am.

She called to report a PROTOCOL VIOLATION. At 11:30 an excavator moved to the street area in front of Jim Brown's lot and excavated a "soft spot" to a depth of 2-3 feet into cultural soil with no monitor and no mitigation. When Sandy finally became aware of the work the damage had been done. She recovered shell, glass, and metal from the hole. She indicated that the pit was 10 to 15 feet in diameter. She was monitoring the cemetery storm drain trench so she didn't know when the violation had started.

As I had experienced several occasions where protocol violations had occurred as soon as I left the area, I immediately called to report the incident to Dan Hall (BIA) and John Eddins (ACHP); left messages. I then contacted John Kennedy (EPA), Nancy Riveland (EPA Sugarek's boss), and Ray Brown.

I called John Holson (Pacific Legacy) to warn him that CH2MHILL would probably be calling him to request his services. John Kennedy called to ask if I wanted to join in a conference call with Rick Sugarek and Nancy Riveland. I

said no as there is no point in talking with any of these people. I had already spent 2 months trying to talk to them with no results.

- 10-3 The National Advisory Council and others must have instructed the project to stop until the archaeological protocol could be reinstated. John Holson called and said that CH2MHILL had contacted him and asked him to come out. I told him when he calls them back to let them know that I could be there in the morning (though I was in bed with a cold and a fever of 103).

I called Jim Hanvey (CH2MHILL) and talked over the situation with him. He had found a pestle and gave it to Sandy. I told him I could be there in the morning if needed.

I called Sandy and she said that things were going much better today. She was watching the Storm Drain trenching which was almost done and Lemont was monitoring water line trenching.

This evening John Holson called. He said they told him they didn't want me back, but he would make a site visit. He said the hole excavated was 16 to 20 feet in size.

5:30pm Rick Sugarek called to let me know he was not happy with the calls I had made (to his boss, BIA and ACHP). I explained my perspective and he explained his. There was no resolution and no admission of guilt.

- 10-4 **8:20am I got a call from Eagle Brown. He was calling because Rick S. and Jim H. told Sandy not to call me. She got word to him to call me about this PROTOCOL VIOLATION. He called to report that bone (possibly human) was found in the water trench in front of Ray Brown's house. I called Sandy to tell her what the law requires. I told her to document everything that is done. There is no archaeologist on site.

9:00am CH2MHILL and EPA wouldn't let Jim Brown on the site, even though he is next in line to Chairman Ray Brown.

9:15am Ray Jr. and Mike Umbrello on their way to the site.

9:15am received call from Nancy Riveland telling me to "communicate with Rick Sugarek when something happens". I told her that communication with Rick has no effect and described the episodes where I was ignored and when work happened while I was gone.... Which is why I contacted her rather than Rick.

9:45am Realizing that John Holson has no ARPA permit or tribe authorization to conduct archaeology on the reservation, I called John to let him know he wasn't operating under my ARPA permit. He asked if he had my permission to photograph the bones and send me the pictures. I told him OK. I also told him that they had turned Jim Brown away at the gate and that they had told Sandy not to call me.

10:00 Called Jennifer Thomas (BIA archaeologist) to let her know that John Holson is not operating under my ARPA permit.

10:10 I called Jim Brown to let him know that John H. doesn't have an ARPA permit.

12:00 John H. called and he and I went over the photos he sent via email. One looks possibly human, the rest don't. He gave them to Sandy.

10-5 10:30am John H. called to let me know that things were fine, the digging was done and the bone wasn't human. He said Kevin (Pacific Legacy) was going to be on site today. He indicated that Ray Brown and Rick Sugarek had a major disagreement yesterday.

10-6 E-mailed proposal to mitigate the damage caused by the Water Main excavation to John Spitzley (CH2MHILL). Also sent Spitzley the Storm Drain cost proposal because the CH2MHILL Purchase order was for \$40,000 and my cost proposal was for \$54,120. I also included expense reports for Invoices 06-25 A, B, and C and sent him hard copies of all receipts dealing with those expense reports.

10-16 Blown brandy neck bottle frag. and pestle recovered by Sandy Thomas at UTM 528445E/4317688N

Also square nail, porcelain doorknob, axe head, and button recovered from UTM 528433E/4317683N.

10-18 Received copy of letter from John Eddins (National Advisory Council on Historic Preservation) to Keith Takata (EPA Superfund Division Director) indicating that Mr. Eddins had received complaints from the tribe that historic and prehistoric archaeological sites and places of traditional and religious importance have been adversely effected by the EPA project. He indicated that the ACHP had not received any notification of adverse effect for the undertaking as required by Section 106 of the National Historic Preservation Act. Mr. Eddins requested that Mr. Takata provide information on the current status of the project including steps that the EPA has taken to comply with Section 106.

10-19 Sandy Thomas reported that she had monitored a storm-drain box area excavated in front of Lot 4 and that several driveways were excavated as well as ditches for drainage.

10-20 Sent an email to John Spitzley indicating that two weeks had passed since I sent hard copy of the proposals and invoices to him care of the Elem Tribal Office. In the email I indicated that Parker & Assoc. had provided 86 person-days of emergency archaeological work for CH2MHILL during Aug., Sept, and Oct. but had only been reimbursed for 21 person-days. I reported in the email that "to avoid financial loss, we will not begin processing cultural materials recovered, nor provide any further support or generate any documentation concerning the project until we have been reimbursed for work already

completed.”

Spitzley replied by sending me a copy of CH2MHILL’s requirements for reporting time and expenses and indicated that my invoices didn’t provide the required information or backup.

I responded that “I have supplied you with hard copy of expense reports for each invoice. Those expense reports that contain expenses over \$25 have included hard copies of those receipts. All of our invoices have included a copy of our time sheets with each worker's hours as well as the activity performed for each day. If you would like me to resubmit each of these sheets with my signature on them, I will be happy to.”

I emailed Larry Helphand (CH2MHILL accounts person) asking if he had received the invoices, expense statements and receipts I had sent him. Also asked if he had any reservations concerning them, and to “advise me if there is something that I need to correct to make these invoices and/or expense reports acceptable.” I also asked if he had received authorization to issue purchase orders for the Storm Drain work and Water Main work yet.

10-22 Received email from Spitzley asking me to resubmit all past invoices.

10-23 Larry Helphand emailed me indicating that a revised purchase order for the Storm Drain had been mailed to me 10-19. I asked him if I should send all invoices and supporting documents to him directly. He also indicated that I should email or send hard copy of invoices and supportive documentation directly to him.

I sent hard copies of all invoices and supporting documentation to Larry Helphand certified mail.

11-12 I thanked Larry Helphand for sending the updated purchase orders for the general monitoring and the storm drain and asked again if my invoices and documentation were sufficient to allow processing. I also asked him if he had received authorization to issue a Purchase Order for the Water Main project.

11-20 Sent letter to Larry Helphand (CH2MHILL accounts) indicating that I had only been paid for 21 of the 92.7 person-days worked during August, Sept, and Oct. I also pointed out to him that I only had signed purchase orders for 2 of the 3 different projects Parker & Assoc. had been requested to do.

11-29 Received email from Jim Brown asking if I wanted the Tribe to talk to CH2MHILL on my behalf concerning the non-payment of my invoices. I explained to him that there was no point in the tribe getting involved. I explained to him “the key phrase from CH2MHILL is "valid invoice". If they don't like the way my invoice looks, they will call it invalid and I won't get paid.” I explained to Jim Brown that “Spitzley stopped responding to my inquires about invoices and getting paid when I was still up there. For a while, I was at least getting responses from the CH2MHILL contract manager in

Sacramento, but haven't heard from him in a month now. In another month, I start charging them interest on any unpaid invoices. Then, after a couple more months, I get my attorney involved.”

- 12-5 Larry Helphand emailed me indicating that he had only two purchase orders for my work (one covering general monitoring and one covering the Storm Drain mitigation). He also indicated that a check had been processed for Invoice 06-26A. I responded that the check has not arrived and that there should be 3 purchase orders... one that deals with the Water Main mitigation work. He indicated that the check was in the mail. I Thanked him for the communication and again asked “if there is anything I can do to my submissions that will make it easier for you to process.”

I explained the difference between the Storm Drain mitigation work and the Water Main mitigation work and asked him how to go about getting a purchase order for the Water Main mitigation work.

Larry asked me to send him copies of Invoices 06-25 B, C, and D.

I had already sent hard copies of all these to Spitzley on 10-6, Spitzley asked me to send another hard copy on 10-22, I had sent another set of hard copies to Larry Helphand on 10-23 (certified). I sent them again to Larry by email.

I called Larry H. and he assured me that he was processing invoices 06-25 B, C, and D.

- 1-25-2007 Received an email from Larry H. indicating that invoices 06-25 B (revised), C, and D “are held in suspense - no back up (time cards for hours worked)? Please advise”. He also FINALLY sent me a purchase order for the Water Main mitigation work.

I emailed Larry telling him that when I called him 12-5 he assured me that he was processing those invoices that day. I told him “I DID send copies of my filled out time sheets with each of the invoices. The time sheets listed the date, worker's name, hours worked, and the chore completed. The timesheet lines appropriate for each invoice were highlighted. DID YOU LOOSE THESE TIME SHEETS? If you did I will be happy to resend them (for the 3rd time).”

- 1-27 I scanned in all supporting documentation and emailed Larry copies of all the requested invoices and documentation (for the 3rd time). I explained to him that “as they are now 3 and 4 months old. I will be charging my standard late fee of 1.5%/month beginning 30 days after the date on the invoices.” He thanked me for my time.
- 1-29 I alerted the Origer Obsidian Lab that we would be sending in 100+ samples for hydration in the next couple of months.
- 1-31 Larry Helphand emailed me saying that he would be deleting the Water Main purchase order because it appeared to him to be a duplicate of the Storm drain

PO. I called him immediately and emailed him immediately explaining that they were completely separate projects and not to delete any of the three purchase orders. He told me that he was ordered to delete the PO by Dave Bunte (his boss). I CC'd my email to everyone so everyone would know that I was still being jerked around by CH2MHILL.