

**PARKER & ASSOCIATES ARCHEOLOGY**  
**PO Box 462**  
**Cayucos, CA 93430**

May 1, 2007

Mr. John Eddins  
Advisory Council on Historic Preservation  
1100 Pennsylvania Ave NW, Suite 809  
Washington, D.C. 20004

RE: EPA Section 106 Violations at the Elem Indian Colony, California.  
Response to EPA's Keith Takata letter of 3-13-07.

Dear Mr. Eddins,

We just received a copy of Mr. Takata's letter to you explaining the EPA's lack of compliance with Section 106 of the National Historic Preservation Act. We found several miss-representations in his response. As this project may require legal and/or legislative action, we felt we should comment on its content.

***Background***

Mr. Takata's letter was in response to your October 18<sup>th</sup>, 2006 request for an explanation of the steps the EPA had taken to comply with Section 106 of the National Historic Preservation Act (NHPA). Your request was based on a call to you from Jim Brown III (Elem Tribal Administrator) expressing concern over the lack of Section 106 compliance by the EPA during their recent "Non-Time-Critical Removal Action" at the Elem Indian Colony Reservation.

It should be noted that Jim Brown III did not make his call without first discussing it with current Tribal Chairman Raymond Brown, Sr. It should also be noted that Jim Brown spearheaded the Mercury Task Force that nominated Sulphur Bank Mine as an EPA Superfund Site. He served 6 terms on the Tribal Council, 15 years as Tribal Administrator and was Tribal Chairman between 1998 and 2000. As Tribal Chairman, Jim Brown III worked with 3 previous EPA Superfund representatives during the planning stages for the cleanup project.

As Tribal Chairman, Jim Brown provided the EPA with documentation of the Tribe's concerns regarding the protection of historic and prehistoric archaeological sites. His November 8, 2000 letter to EPA's Ellen Manges calls for a Phase I field and archival archaeological study of Elem's traditional lands. In this letter he states,

"Until this study is accomplished the entire area should be deemed an archaeological sensitivity zone and until a comprehensive and adequate cultural resources assessment has been completed no earthmoving activities should occur within this zone." (J. Brown 2000).

*FIELD AND RESEARCH ARCHAEOLOGICAL STUDIES*

*Registered Professional Archaeologist*

*www.tcsn.net/sloarchaeology*

Jim Brown III explained to us that he had assumed the EPA had followed the requirements of the NHPA. The next Tribal Chairman (Delbert Thomas) served between 2000 and 2004. In an interview with us, Mr. Thomas indicated that he had also assumed the EPA had taken the steps necessary to comply with the NHPA (D. Thomas 2006). Raymond Brown was elected in 2004 and currently serves as Tribal Chairman. In an interview with us, Raymond Brown also indicated that, prior to the start of construction, he had also assumed the EPA had taken the steps necessary to comply with the NHPA (R. Brown 2006).

Each of these Tribal representatives expressed dismay when they learned that the EPA had not complied with Section 106 of the NHPA.

Bureau of Indian Affairs (BIA) Archaeologists Jennifer Thomas and Dan Hall also assumed the EPA (being the lead agency on this project) had taken the steps necessary to comply with Section 106 of the NHPA. As they are both responsible for the protection of cultural resources on BIA managed lands, they expressed dismay and anger when they discovered that the EPA had not complied with the NHPA (J. Thomas 2006, Hall 2006).

As this review deals with specific statements in the EPA response, it is best to read this review side-by-side with a copy of the EPA letter (provided as Attachment 1).

### ***Review of Mr. Takata's Letter***

The **second paragraph first sentence on pg. 2** of the EPA letter states that,

“EPA had no expectation that cultural resources would be encountered“

within their project area due to the fact that these areas had been previously developed with roads and house pads.

In 1949 (46 years before EPA's project), A.R. Pilling recorded archaeological site CA-LAK-76 as existing within the EPA's project area. This site record, along with several recent updates, was on file at the California Historic Resource Information Center office long before the EPA began planning the waste removal project. That state office also houses archaeological reports that deal with the Elem Reservation. In 1975, Dr. Fredrickson recorded portions of LAK-76 that existed within the EPA's project area (Fredrickson 1975). In 1988, Nelson Thompson also recorded archaeological resources within the EPA's project area (Thompson 1988).

In 2000, Tribal Chairman Jim Brown sent a letter to EPA's Ellen Manges also providing evidence of the Tribe's concern for the protection of these resources (see text on previous page).

Months before the EPA project began, Jim Brown III and his wife Gayle gave Rick Sugarek (Current EPA Project Director) a tour of their house, showing him a wide range of artifacts they had discovered on their property and throughout the reservation (J. Brown 2007).

LAK-76 was the state assigned number for the site that the Elem community called Xunadai (Barrett 1908). Xunadai was the mainland sister-village of Elem. The Village of Elem, located on Rattlesnake Island (immediately adjacent to the mainland) was deemed eligible for inclusion on the National Register of Historic Places by the California Historical Resources Commission on May 5<sup>th</sup>, 2006 (one month before EPA construction began on the Elem Project).

Mr. Takata's assertion that the EPA had no "expectation" that cultural resources would be encountered flies in the face of this evidence.

The NHPA does not allow a Federal Agency to be exempt from the 106 process based on "expectations" concerning cultural resources. The Section 106 process was developed to provide conclusive evidence of whether significant cultural resources exist within a Federal agency's project area.

When EPA excavation began on the project, it was immediately discovered that extensive and undisturbed historic and prehistoric cultural sites existed directly beneath the previously deposited road and house-pad fill (E. Brown 2007).

This 4-year pre-construction planning period is when the Section 106 requirements should have been implemented. As described in its title ("Non-Time-Critical Removal Action"), this was not an emergency action and there was plenty of time for the Section 106 process to be carried out. If the 106 process had been initiated, the EPA would have known that intact cultural resources existed and could have designed and planned the project accordingly.

The **second paragraph on pg. 2** of the EPA letter also states that the EPA proposed to hire,

"a trained Elem cultural monitor to identify and protect any artifacts that might inadvertently be discovered"<sup>1</sup> and that,

"EPA agreed to bring in an archaeologist if significant artifacts or remains were inadvertently discovered."

The EPA letter indicates that both the Tribal Chairman and Elem Executive Committee agreed with this "monitoring" approach.

Eagle Brown (current Tribal Vice-Chairman) was hired along with 3 other Elem representatives to monitor the construction work.

Eagle Brown reports that stone tool manufacturing materials and the first "significant" artifacts were encountered as soon as excavation began on the project

---

<sup>1</sup> Although many of the Elem cultural monitors have extensive archaeological field experience, it should be noted that none of them meet the Secretary of the Interior Standards as Professionals under History or Archaeology.

(E. Brown 2007). Although he was told by EPA's Richard Sugarek that he had the authority to stop work when "significant artifacts" were discovered, Eric Rickson (TN&A contractor for EPA) told Mr. Brown that he had no authority to stop construction. Mr. Brown also reports that because he was never shown project plans, he had no idea where excavation might occur that would damage cultural resources. During construction meetings, he repeatedly asked construction people to slow down to enable him to do the necessary archaeological monitoring. They refused to slow their operations.

As we are currently cleaning, cataloging, and analyzing the materials recovered, we were given the artifacts in the original zip-lock bags where they had been stored since the day each was collected. Each bag has the collection date written on it. The earliest dated bag we received has the date "6-21-06". Eagle Brown indicates that Eric Rickson (TN&A) discovered the obsidian knives and brought them to Eagle Brown's attention (see photo). They then notified Jim Hanvey (CH2MHILL) and Richard Sugarek (EPA Project Manager) of the findings (E. Brown 2007).

According to the EPA's agreement with the Tribe, this "inadvertent discovery" should have triggered an immediate stop of construction and calling in of a professional archaeologist to evaluate the resource. Eagle Brown reports that work did not stop and no archaeologist was brought in to assess the discovery. In fact, Eagle Brown reports that the other three Tribal "monitors" were reassigned to other tasks such as working as road crew or cleaning construction trucks. That left only him with the task of monitoring the work of several pieces of excavation equipment.



Not only is it clear that the EPA failed to substantively follow the requirements of the National Historic Preservation Act, but they also failed to follow their own inadequate agreement with the Tribe concerning the discovery and treatment of cultural resources.

Parker & Associates was not on the project site during the first half of the construction process, therefore we do not have first-hand experience of when “significant artifacts” were unearthed. However, a review of the dates on artifact collection bags indicate that other significant artifacts were unearthed and collected on July 11<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup>, and 25<sup>th</sup> (see photos).

None of these discoveries resulted in work stoppage or the calling in of a professional archaeologist as was the requirement outlined in Mr. Takata’s letter.

The **third paragraph on pg. 2** indicates that on July 26<sup>th</sup>, 2006, EPA excavations unearthed bones that could not be identified by the Elem cultural monitor. Jim Brown called us to ask advise on what to do. We told him to have the project archaeologist identify the bones, to which Jim Brown replied, “there is no project archaeologist” (J. Brown 2006).

This is when we became aware that the EPA had failed to comply with the NHPA requirements.

Finally, two months into the project and more than 1 month after the first “significant artifacts” were unearthed, the project is stopped and a professional archaeologist brought in.

The **fourth paragraph on pg. 2** of the EPA letter indicates that,



“EPA also initiated consultation with the State Office of Historic Preservation, and provided project information for their review.”

This is not true. The EPA did not initiate anything. After State Office of Historic Preservation staff discovered there was no record of EPA consultation as required by the NHPA, the State Office staff went out of their way to track down and contact EPA representatives to find out what was happening (Dutschke 2006).

The **final paragraph on pg. 2** of the EPA letter states,

“EPA agreed to perform the remaining mine waste excavation and clean soil backfill activities in accordance with a set of “Earth Moving Protocols” developed by Dr. Parker.”

Although the EPA may have made this agreement to satisfy the Tribe, they only followed it when it would not inconvenience their subcontractors or slow down the project. Our daily project notes (see attached) indicate that on at least 12 separate days the “Excavation Protocol” was violated causing unmitigated damage to significant cultural resources (Parker 2007a).

The **first paragraph on pg. 3** gives the impression that the State Historic Preservation Officer agreed with the EPA’s handling of the Elem project and that the artifacts discovered had been “inadvertent discoveries”. This SHPO determination was not a statement that the State Office agreed with the EPA’s actions, it was made as a way of avoiding a permanent stop-work-order that would have been required due to the EPA’s non-compliance with the NHPA. Such a permanent stop-work-order would have meant that Elem Tribal members, who had been displaced into rental housing during the EPA project, would have to spend even more time away from their homes on the reservation.



The **second paragraph on pg. 3** indicates,

“All of the remaining excavation work that was performed in culturally sensitive areas at the Elem Indian Colony was conducted in accordance with the “Earth Moving Protocols” and guided either by Dr. Parker himself, an Elem cultural monitor designated by Dr. Parker, or on occasion by the additional archaeologist hired by EPA, Mr. Holson of Pacific Legacy.”

As noted above there were at least 12 days during-which EPA excavations ignored the “Earth Moving Protocols” causing unmitigated damage to significant cultural resources.

On several occasions throughout the course of the project, Dr. Parker and his staff were told by Mr. Sugarek and EPA contractors that the EPA was “exempt” from the National Historic Preservation Act and that, as archaeologists, they had no legal authority to stop or redirect any construction activities.

This lack of legal authority was made clear to us every day on the job. Here is one example: During the first week on the project, we noted a hole being dug into site LAK-76 by water truck tires traveling to the lakeshore to be filled. The first week, we requested that geotextile fabric be laid over the traveled area and covered with fill to stop this impact. This request was ignored for 4 weeks. Finally, 13 days before the end of the project, the fabric and fill was applied. By then the hole in the archaeological site was 16 feet in diameter and 1 foot deep.

### ***Review of Attachment 1 of the EPA Document (3-13-07)***

Although Mr. Takata’s letter refers to 11 Attachments, we only have access to attachments 1, 5, 7, 8, and 10. In the first paragraph on pg. 1 of Mr. Takata’s letter he refers to his “attachment 1” *Summary of EPA Actions to Comply with the Requirements of Section 106 of the National Historic Preservation Act and its Implementing Regulations (36 CFR art 800) to Assure the Protection of Elem Cultural Resources While Carrying Out the Contaminated Mine Waste Removal Action.*

We will review this document, as it appears to be a time-line of EPA’s efforts to comply with the NHPA.

**Page 1 paragraph #3 of the EPA Attachment 1** (last sentence) states,

“The design also required that the construction subcontractor stop work at the location of an archaeological or paleontological find and notify the EIC (Elem Indian Colony) Tribal monitor and Engineer.”

This suggests that the subcontractors were responsible for observing and recognizing historic and prehistoric archaeological materials and, when discovered, they were to stop work and report these finds to the Tribal Monitor and Engineer.

The NHPA Section 106 process refers to specific Federal standards that professional historians and archaeologists must meet in order to be qualified to conduct archaeological monitoring. It is unlikely that any of the EPA's subcontractors met the Secretary of the Interior Standards as "professionals" in these fields. Therefore, this "EPA design requirement" cannot be considered an "EPA Action to Comply with the Requirements of Section 106..."

Eagle Brown indicates that there was never an instance when a subcontractor stopped work when historic, prehistoric, or paleontological finds were encountered (E. Brown 2007).

**Page 1 paragraph #4 of Attachment 1**, indicates that in May 2006 (prior to construction), Chairman Brown signed an agreement with the EPA that included the statement that the EPA agreed to,

"monitor construction activities with qualified personnel to address any Native American artifacts or graves that may be unexpectedly encountered during the construction."

Federal law lists specific standards that professional historians and archaeologists must meet in order to be qualified to conduct archaeological monitoring. As none of the "qualified personnel" met these standards, this signed agreement between the Tribe and the EPA cannot be considered an "EPA Action to Comply with the Requirements of Section 106..."

The **final paragraph on pg. 1 of Attachment 1** indicates that contractors mobilized on site in June and that their first job was to "cordon off certain culturally sensitive areas" to be off-limits to construction contractors. Tribal cultural facilities were cordoned off, however, no historic or prehistoric archaeological sites had been identified or cordoned off as would have been required by Section 106 of the NHPA.

**Page 2 paragraph #1 of Attachment 1**, indicates that Elem Tribal monitors had difficulty monitoring within the construction area due to excessive watering causing muddy conditions.

**Page 2 paragraph #2 of Attachment 1**, talks about a July 19<sup>th</sup> meeting between Mr. Takata and Tribal members. By July 19<sup>th</sup>, several "significant cultural artifacts" had already been exposed although the EPA never stopped work or brought in an archaeologist. The paragraph indicates that Chairman Brown expressed concerns that the excavation areas were being kept too wet for the Tribal monitors to identify artifacts. Apparently Jim Brown III asked if the EPA had considered bringing in an archaeologist. The paragraph then states;

"EPA project manager, Rick Sugarek, reminded Jim Brown III that although EPA's plan ... called for EPA to rely on Elem cultural monitors to observe the excavation activities, EPA's plan also agreed to call in an archaeologist in the case of a significant find."

The paragraph suggests that Mr. Sugarek asked Jim Brown if he felt that the discovery warranted an archaeologist's presence. It states,

“Neither Chairman Brown nor Jim Brown III responded to this question at the meeting”.

If such a question was even asked, it is likely they never heard it. This is not a question that either Chairman Brown or Jim Brown would be hesitant to answer, had they heard it.

Regardless of whether or not such a question was asked, it has already been established that the EPA had failed to substantively comply with the NHPA and that they had additionally failed to follow their own inadequate agreement with the Tribe concerning the discovery and treatment of cultural resources.

Although significant artifacts were again found on July 19<sup>th</sup>, the EPA again failed to stop the project or bring in an archaeologist.

**The last paragraph on page 2 of Attachment 1** indicates that bones were discovered on July 26<sup>th</sup>.

**Page 3 paragraph #3 of Attachment 1**, indicates that Tribal Chairman Ray Brown sent a letter to Mr. Takata on July 29<sup>th</sup>, asking that the project be stopped until an archaeologist can be brought in.

From the EPA's perspective, this was a more “convenient” time for the project to stop than at any earlier time (such as when artifacts were discovered 6-21, 7-11, 7-19, 7-20, or 7-25). The end of July was a scheduled change-over between two different subcontractors. TN&A Associates had been retained to remove the mine waste in the house pad areas (now finishing up), and EnviroCon (not yet on-site) was just getting ready to start work on removing the existing roads and road fill.

**Page 4 paragraph #2 of Attachment 1**, stipulates that,

“On August 6, 2006 EPA sent a letter to the State Office of Historic Preservation to initiate consultation regarding EPA's Elem Indian Colony Mine Waste Removal Action.”

This consultation finally occurs 4 years after project planning had begun and two months after the start of construction. In order for EPA to have “substantively” complied with the NHPA, the consultation with the State Office of Historic Preservation would have had to occur at least before construction excavation and preferably before project design plans had been finalized. This would have allowed those plans to be adjusted in order to preserve significant cultural resources. The statements in the rest of that paragraph have already been discussed above.

**Page 4 paragraph #3 of Attachment 1**, indicates,

“EPA performed a surface recovery effort to protect artifacts identified in the existing open excavated areas, and mapped the recovered artifacts.”

Surface recovery was performed by Elem tribal monitors (not the EPA), however, the EPA did instruct their surveyors to use GPS to plot the locations of the finds.

“EPA re-designed two major elements of the project, the water supply system and the roadbed foundation preparation methodology to minimize potential impacts on cultural resources identified by Dr. Parker.”

The EPA did redesign the water supply system to lessen (but not avoid) damage to cultural resources. However, they did not stop the project long enough to allow archaeological data recovery in those areas where trenching could not avoid damaging cultural soils. Such data recovery would have been required under the NHPA.

After significant historic archaeological sites were discovered within the roadbed alignment, the EPA told Dr. Parker that they would re-design roadbed foundation preparation methodology to avoid impacts to those resources. However, while Dr. Parker was away from the site during the weekend, roadway foundation preparation took place as originally planned, destroying the historic resources and causing additional damage to the prehistoric site (Parker 2007a :9-10).

“EPA also directed Dr. Parker to develop data recovery and mitigation plans for several elements of the project for which a re-design was not possible...”

EPA did not direct Dr. Parker to develop these data recovery plans. Dr. Parker developed these plans on his own to lessen the damage that was going to occur to cultural resources during trenching for a new water line, storm drain, and Lot #28 road grading. EPA planned on damaging resources in these areas whether Dr. Parker was on site or not. As the EPA failed to recognize Dr. Parker’s legal authority under the NHPA, and refused to stop excavation long enough to allow proper data recovery in these areas, the archaeological work conducted for the water trench and Lot #28 grading cannot be considered legally adequate to mitigate the damage done to cultural resources in these areas. At best, archaeological work conducted in these areas would be classified as “salvage” archaeology.

**The last paragraph on page 4 of Attachment 1** indicates that,

“On August 17<sup>th</sup>, 2006 Chairman Brown authorized EPA to “perform all activities necessary... provided that EPA follows the Earth Moving Protocols... that have been developed by Dr. Parker for the protection of our important cultural and historic resources””

As was noted previously, between August 22 and October 4, there were at least 12 field-days during which EPA’s contractors violated the “Earth Moving Protocols”

causing unmitigated damage to significant cultural resources. Although these violations caused hundreds of thousands of dollars damage to Elem cultural resources, none of these contractors were removed from their positions or reprimanded for their actions.

All protocol violations were equally obvious and damaging to resources. As one example, on September 19<sup>th</sup>, the grader operator (Larry) asked Dr. Parker if he could grade a pathway through the north-road area before fill trucks began bringing in clean fill. All mine waste had been removed from this area and undisturbed prehistoric site soils were exposed on the surface. Dr. Parker indicated to Larry that the area was a significant cultural site and that the grader cannot be used. Within 20 minutes, Larry was grading through the area without any monitor and had dislodged a pestle before Dr. Parker could stop his progress.

This particular contractor was involved in several other protocol violations including the violation that destroyed 6 historic sites within the western roadbed. Although he personally caused more than \$100,000 in damage to Elem cultural sites, he was never reprimanded or removed from his position.



**Page 5 paragraph #2 of Attachment 1** states,

“On August 23, 2006, after a phone conversation with Dr. Parker, ... Dan Hall, the BIA Regional Archaeologist, directed EPA to shut down activities at the Elem Indian Colony because EPA didn’t have an Archaeological Resource Protection Act (ARPA) permit for these activities.”

The way this is written suggests that Dr. Parker had something to do with the BIA’s request for the EPA to shut down work at the site. The call that Dr. Parker received from Mr. Hall instructed him to stop work at the site due to that fact that no ARPA permit had been issued allowing him to conduct archaeological work on the Reservation (Hall 2006, Parker 2007a).

BIA Regional Archaeologist Dan Hall made this call when he learned that archaeological work was taking place on Federal land under his jurisdiction without the benefit of an ARPA permit. After Dr. Parker explained the situation to Mr. Hall, the BIA Regional Archaeologist then called the EPA directing them to shut down excavation activities due to their lack of a permit.

Clearly this indicates that the EPA had taken no steps to “substantively” comply with either the NHPA or the ARPA.

**Page 5 paragraph #3 of Attachment 1** indicates that

“The last of the mine waste was excavated from Lot 3 on September 27, 2006.”

It would have been nice if this date were also the end of EPA damage to cultural resources at the Reservation. We had returned to our office in Morro Bay when we received a call on October 2<sup>nd</sup>, that an excavator began excavation into undisturbed cultural soils in front of Lot 26. By the time a Tribal monitor was aware of the damage, a hole had been excavated 15 feet in diameter and 2 to 3 feet deep. Disturbed shell, historic glass, metal, etc. was recovered from the hole (S. Thomas 2006).

Again on October 4<sup>th</sup>, we received a call that water trenching through undisturbed cultural soils had encountered bone in front of Lot 25. Both Rick Sugarek (EPA) and Jim Hanvey (CH2MHILL) told the tribal monitor not to call us about this discovery (E. Brown 2006).

**The last paragraph on page 5 of Attachment 1** summarizes the attachment and does not make any suggestions that the EPA did anything to “substantively” comply with Section 106 of the National Historic Preservation Act.

## ***Conclusions***

As the archaeologist called in by the Elem Indian Colony to assist with Section 106 compliance, we were dismayed to find out that the EPA had taken no project planning steps to comply with Section 106 of the National Historic Preservation Act (either literally or substantively). It was also made clear to us that the EPA had no intention of complying with Section 106 of the NHPA. We were shocked by the amount of damage to cultural resources that had occurred prior to our arrival. Field measurements suggest that ~7,000 cubic meters of cultural soils had been destroyed prior to our arrival at the site (Parker 2007b). We are currently processing artifacts and will prepare a monitoring report, which will detail cultural soils destroyed after our arrival on site.

We were also appalled by the treatment that both Tribal monitors and archaeologists received during our 2 months on site. Our recommendations to protect resources were either ignored completely, or only grudgingly followed. Where NHPA regulations would have required data recovery prior to resource destruction, we were only allowed to perform such recovery if it was convenient to the EPA and their contractors. Our crew worked 10 to 18 hours a day, every day (weekends included) in an effort to recover at least a small sample of information from cultural resource areas that the EPA planned to destroy but would not stop long enough to allow for proper data recovery to take place.

We saw Tribal monitors pulled from archaeological monitoring duties and required to make trips to Sacramento for doctor’s physicals, work as on-site safety crew, road crew, gate security detail, and even fired. These actions prevented us from being

able to predict from day-to-day how many and who we would have as monitors. On several occasions we were left with no Tribal monitors.

Many times we were told by Rick Sugarek that the EPA was “exempt” from the NHPA. At one point, we were told by Mr. Sugarek that the EPA General Council had instructed him not to comply with any NHPA requirements because “it would set a precedent requiring compliance on all such projects in the future.”

We were never shown any documentation indicating the EPA was “exempt” from the NHPA. It was not until returning to our office, and reviewing the EPA’s CERCLA requirements, that we discovered that they ARE NOT exempt from compliance with "Relevant and Appropriate Requirements", including.

"Those cleanup standards, standards of control, and other substantive requirements, criteria, or limitations promulgated under federal environmental or state environmental or facility siting laws (40 CFR 300.5)."

In addition, Federal regulations specify that the EPA representative,

"shall consult with the affected trustees on the appropriate removal action to be taken. The trustees will provide timely advice concerning recommended actions with regard to trustee resources potentially affected." (40 CFR 300..310)

These Federal regulations require that the EPA comply with the NHPA and also consult with BIA archaeologists, the State Office of Historic Preservation, and the Advisory Council before initiating the Elem Cleanup Project.

In addition to the non-compliance with the NHPA, the EPA also failed to conduct a “Resource Damage Assessment” and restoration plan for cultural resources damaged by their action as required by Title 43 Code of Federal Regulations Part 300.165

I hope that this information will assist you in your evaluation of Mr. Takata’s response to your request for EPA information on what steps they had taken to comply with Section 106 of the National Historic Preservation Act.

Feel free to contact us if you have any questions or concerns regarding this review.

Sincerely,

John Parker, Ph.D.

PS: Although Mr. Takata’s letter, and his attachments were produced on salaried staff time, this response took 30 hours of our volunteer time. No taxpayer’s money was used to produce this response.

CC: Keith Takata (Director Superfund Division, EPA Region IX)  
Dan Hall (BIA Western Region)  
Elem Tribal Council  
Raymond Brown (Elem Tribal Chairman)  
Eagle Brown (Elem Vice-Chair)  
Delbert Thomas (Elem Past Chairman)  
Jim Brown III (Elem Past Chairman)  
Dwight Dutschke (State Office of Historic Preservation)  
Susan Stratton (State Office of Historic Preservation)  
Stephen Horne (President, Society for California Archaeology)  
Dr. Dean Snow (President, Society for American Archaeology)  
David Lindsay (Government Affairs, Society for American Archaeology)  
Barbara Boxer (Chair, Senate Environment/Public Works Committee)  
Dianne Feinstein (Chair Senate Appropriations Subcommittee on  
Interior, Environment, and Related Agencies)

## **References Cited**

Barrett, S.A.

1908 ***The Ethnogeography of the Pomo and Neighboring Indians***, University of California Publications in American Archeology and Ethnology, 6:1 Berkeley, Calif.

Brown, Eagle

2006 Phone call from Eagle Brown, Elem Tribal monitor concerning the discovery of bones during the EPA project, received 10-4-06.

2007 Phone interview with Elem Tribal monitor and current Vice-Chairman, conducted 4-29-07

Brown, Jim III

2000 *Letter to Ellen Manges (EPA Superfund Coordinator), concerning Phase I Cultural Resource Evaluation of Elem Prehistoric and Historical Lands*, Unpublished document on file at the Elem Tribal Office.

2006 Phone call from Jim Brown III, Elem Tribal Administrator concerning the discovery of bones during the EPA project, received 7-26-06.

2007 Phone interview with Jim Brown III, Elem Tribal Administrator, conducted 4-30-07

Brown, Raymond

2006 Interview with current Tribal Chairman 8-24-06 concerning the EPA's compliance with Section 106 of the National Historic Preservation Act.

Dutschke, Dwight

2006 Emails from Mr. Dutschke dated July 26 and July 31, 2006 concerning State Historic Preservation Office communications with the EPA.

Fredrickson, David A.

1975 1975 *An archaeological Survey of Proposed Development Areas at El-em Indian Colony*, Unpublished report on file at the Anthropological Studies Center, Sonoma State University Academic Foundation, Inc.

Hall, Dan

2006 Phone conversation with BIA Regional Archaeologist 8-23-06.

Parker, John

2007a *Archaeological Daily Project Notes for Elem Mine Waste Cleanup Project*, Unpublished report on file with EPA.

2007b *Cultural Resource Inspection of the Elem Indian Colony*, Unpublished report on file at the Anthropological Studies Center, Sonoma State University Academic Foundation, Inc.

Takata, Keith

2007 *Letter to John Eddins of the Advisory Council on Historic Preservation concerning Sulphur Bank Mercury Mine; Elem Indian Colony Mine Waste Removal Action, near Clearlake Oaks, California*, Unpublished document provided by EPA.

Thomas, Delbert

2006 Interview with Past Tribal Chairman concerning the EPA's compliance with Section 106 of the National Historic Preservation Act.

Thomas, Jennifer

2006 Discussions at a mid-construction meeting 8-9-06 with BIA Assistant Regional Archaeologist.

Thomas, Sandra

2006 Phone call from Sandy Thomas, Elem Tribal monitor concerning excavation protocol violation, received 10-2-06.

Thompson, Nelson B.

1988 *An Archaeological Survey for a Proposed Bingo Enterprise at the Elem Indian Colony*, Unpublished report on file at the Anthropological Studies Center, Sonoma State University Academic Foundation, Inc.