

### III. POLICY DEVELOPMENT

Agencies of the State of California are directed to manage heritage resources under their jurisdiction in accordance with several state laws, regulations, and directives. The primary legal mandates that require CDF to identify, evaluate, manage, and protect archaeological, historical, and other cultural resources are found in the following statutes:

- California Environmental Quality Act Statutes (PRC Sections 21083.2, 21084.1)
- California Environmental Quality Act Guidelines (14 CCR Sections 15064.5 and 15331)
- Native American Sacred Sites Act (PRC Section 5097.9)
- Native American Historical Resource Protection Act (PRC Sections 5097.995-996)
- California Native American Graves Protection and Repatriation Act (HSC 8010-8030)
- State Historic Building Code (HSC Sections 18950 - 18961)
- Forest Practice Regulations (14 CCR Sections 895.1, 929, 949, 969, 1035, 1037.5, 1038(b)(10), 1052, 1092.14, and 1104.1(a)(3) )
- California Executive Order W-26-92
- California Register of Historical Resources (PRC 5020-5024).

The inception of the CDF Archaeology Program can be said to emanate from the passage in 1970 of the California Environmental Quality Act (CEQA). This is the principal legislation requiring state agencies to consider the environmental consequences of their actions. It also establishes a legal mandate for the protection of archaeological and historical resources. The Native American Sacred Sites Act authorized the creation of the Native American Heritage Commission (NAHC), established its powers and duties, requires state agencies to consult with the NAHC, prohibits impacts to Native American cemeteries, and sacred or religious sites, and establishes procedures following discovery of Native American human remains. Enacted in 2002, the Native American Historical Resource Protection Act provides stiffer penalties for malicious destruction, looting, and other forms of damage to archaeological sites. The California Native American Graves Protection and Repatriation Act requires state agencies to conduct inventories of its artifact collections for sensitive items subject to provisions of the act, and to consult with local tribes to provide them with an opportunity to request repatriation. State agencies are required to use the State Historic Building Code providing alternative standards for the repair, restoration, and management of significant historic buildings. The Forest Practice Regulations specify archaeological and historical resource protection procedures within the scope of CDF regulation of forest management and timber harvesting. Executive Order W-26-92 directs state agencies to inventory properties under their jurisdiction for heritage resources and to manage these resources for the benefit and inspiration of the people of California. The intent of this directive goes beyond the project-specific impact assessments that are required by CEQA. The California Register of Historical Resources (CRHR) is a list of the state's historical resources that have been found to be significant and are, therefore, to be afforded protection. It also specifies the criteria against which historical resources are evaluated to determine if they should be considered significant.

The policies used to implement the protection of heritage resources under the jurisdiction of CDF have gradually evolved. The archaeological and historical resource protection requirements of CEQA were not uniformly recognized or agreed upon in the early years following its enactment.

Several court rulings were necessary to clarify the applicability of CEQA to archaeological and historical resources and to forest practices. It would take time for state agency officials to recognize their responsibilities towards heritage resources and to establish policies and procedures to fulfill these obligations. It would also take time for the regulatory authority of CDF to be accepted by industry and private landowners. The development of archaeological and historical protection policies has often entailed intensive internal discussions within the Department. These policies have also been shaped by public pressure that has resulted in legislation intended to protect of the environment, including heritage resources.

### **The California Environmental Quality Act**

The California Environmental Quality Act was passed by the state legislature in 1970. This legislation is the state equivalent of NEPA and requires state and local government agencies to formally consider the effects of projects they propose or regulate on the environment. Agencies must evaluate potential environmental impacts, devise effective measures to mitigate those impacts, disclose that information to the public, and respond to public comment so that decisions are not made strictly between agencies and those whom they regulate. CEQA is not a resource protection law in that it does not specify penalties for resource damages. It is a public disclosure law and public recourse is the lawsuit. Before the passage of CEQA, there was no legal authority for the protection of archaeological and historical resources on private lands in California.

The goal of CEQA is the long-term preservation of a high quality environment for the citizens of California. CEQA states that it is state policy to "take all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise" (Hata 1992:121). The intent of this legislation is to ensure that all state agencies which regulate private projects that may affect the quality of the environment shall give major consideration to preventing environmental damage, while sustaining a high-quality living environment for every Californian. The public has a basic right to a quality environment and lead agencies bear responsibility for its protection.

When first enacted, CEQA was thought to apply only to projects proposed and implemented by state or local government agencies. In 1972, the *Friends of Mammoth v. Mono County* decision by the State Supreme Court expanded the application of CEQA to include private projects that were regulated by state or local governments or received funding from state or local governments. This ruling stated that the act of issuing a building permit constituted a state action, extending CEQA coverage to virtually all development in the state. The ruling was also important because it did not restrict CEQA consideration to cultural properties listed on the NRHP (Hata 1992:210-211).

In the early 1970s, State Archaeologist Francis A. Riddell recognized that CEQA could have important implications for the protection of archaeological resources (King 2001). When first adopted, however, it was unclear to many whether or not CEQA applied to archaeological resources because the focus was on the "physical" environment. That uncertainty was settled in 1977 when the State Supreme Court ruled in *Society for California Archaeology v. Butte County* that CEQA did indeed apply to archaeological resource impacts. The term "environment" as

used in this act was defined to include "objects of historic or aesthetic significance" including archaeological sites. Implementing regulations were created for the purpose of protecting important archaeological resources because they are included within the CEQA definition of the environment (Foster 1992:1-5).

The CEQA environmental review process can be described as a series of five elements.

- Definition of the scope of the project.
- Identification of the potentially significant adverse impacts from a project.
- Consultation with the public and other agencies concerning the potential significant effects of a project.
- Assessment of the significant environmental impacts of the proposed project.
- Incorporation of feasible alternatives and mitigation measures to lessen project impacts.

The following discussion illustrates how these elements might relate to the protection of archaeological and historical resources.

Under CEQA, the lead agency is required to conduct an initial study to identify any significant adverse effects that the project may have on the environment. In some cases, CDF delegates certain tasks to the project proponent but ultimately these are responsibilities of the lead agency. The identification and documentation of archaeological and historical resources located within a project area is one component of this study. Lead agencies are then required to either prepare a detailed analysis of the environmental impacts of the proposed project in an Environmental Impact Report (EIR) or to file a "Negative Declaration" that describes why the proposed project would not significantly affect the environment (Foster 1992:2-3).

The next element in the CEQA process is consultation and public comment which is accomplished through public notification and interdisciplinary review. The CEQA Guidelines require agencies to use an interdisciplinary approach in impact analysis and decision making in order to ensure the integrated use of the natural and social sciences. Agencies evaluating a project's environmental impacts must consult with other agencies having jurisdiction over the affected resources. If a project has the potential to impact archaeological resources, professional archaeological review must be part of the review process (Foster 1992:4). When archaeological resources are known to be present within a proposed project, the lead agency must consult with the Native American Heritage Commission (NAHC), which has jurisdiction to identify sites of special religious and spiritual significance to Native Americans. Other provisions of CEQA reflect a strong legislative policy choice in favor of the preservation of archaeological sites, cemeteries, traditional cultural properties, and other sacred grounds.

CEQA also requires public disclosure and comment on environmental documents during the review process. A critical component of CEQA is the requirement that lead agencies must provide adequate notification about proposed projects to the public and allow a reasonable amount of time for public comment. After public review of project proposals, the lead agency reviewing the project must develop a good faith, reasoned analysis in response to the major environmental issues raised by the public and other agencies. Written comments received from the public by the lead agency are to be incorporated into the decision-making process. Comments can be addressed by changing the project design or mitigating potential impacts.

Other state policies must also be considered in the consultation process such as the release of confidential archaeological information that could expose sites to vandalism (Foster 1992:6).

Lead agencies must provide an assessment of the potential impacts a project would have upon the environment, which includes archaeological and historical resources. Significant effect on the environment means "a substantial, or potentially substantial, adverse change in any physical conditions within the area affected by the project." For evaluation of archaeological or historical resources, the lead agency must first determine if the resource itself is significant. This is predicated by the criteria specified in the CRHR. Then a determination must be made as to the extent of the impacts on the resource. CEQA provides for the evaluation of proposed project effects on archaeological and historical resources and provides for mitigation of damages that may be caused by the project (Foster 1992:8-9).

CEQA requires lead agencies not to approve projects as proposed if there are feasible alternatives or mitigation measures available which would substantially lessen the significant environmental effects of such projects. Should there be a potential effect, the lead agency is required to indicate the manner in which these effects can be avoided or mitigated. Under CEQA, lead agencies have a great deal of authority to require feasible mitigation of impacts or exploration of alternatives to the project which would lessen significant environmental impacts. Agencies may use their discretionary authority for purposes of mitigation or avoidance of significant effects on the environment subject to the expressed or implied constraints or limitations that may be provided in the law. A lead agency for a project has the authority to require changes in any or all activities involved in the project in order to lessen or avoid significant effects on the environment (Foster 1992:9).

### **Forest Practice Regulations**

Working alongside, but not always in accordance with CEQA, are the Forest Practice Regulations. The Forest Practice Act (FPA) of 1973 provided California with the most stringent logging regulations in the nation. The rules and regulations that stem from this legislation have been constantly changing since their inception (Arvola 1976:1). The early history of the Forest Practice Act was briefly reviewed in the preceding chapter. This section is focused upon the actual function of the regulations, their application to archaeological and historical resources, and some of the important events that have shaped their development.

The FPA requires that a Timber Harvesting Plan (THP) must be prepared, filed, and approved for commercial timber operations. This plan must be prepared by a Registered Professional Forester (RPF) who is responsible for filing the plan with CDF. CDF is responsible for the administration of the regulations through project review and inspections during operations. The primary goal of the Forest Practice Act is to achieve the "maximum sustained production of high-quality timber products" while giving adequate consideration to environmental concerns and other resource values.

One component of the FPA is the establishment of the State Board of Forestry (now the State Board of Forestry and Fire Protection). Although composition of the Board is set by law, it has evolved over the years. It currently consists of nine members including three from the forest

products industry, one from the range and livestock industry, and five from the general public. The Board members are appointed by the governor to four-year terms with confirmation by the State Senate. The Board adopts and approves rules and regulations controlling forest practices as specified in the FPA, hears appeals of decisions by the director of CDF to deny THPs and certain law enforcement actions, conducts the licensing and registration of RPFs, and sets policy for the management of state forests (Martin 1989:44-46).

The Board of Forestry and CDF have a broad range of responsibilities with regard to forest management and fire protection including forestry services, fire prevention and control, range improvement, pest control, urban forestry, state forest management, forest practice enforcement, and numerous other functions. The FPA grants specific authority and duties to the Board of Forestry and to CDF. The Board of Forestry has a very limited staff and depends on CDF to implement the Forest Practice Regulations (Martin 1989:45).

CDF reviews THPs to determine if they are in conformance with the Forest Practice Rules and other regulations. These regulations are administered and enforced through project review and inspections during operations. Aspects of timber operations that are covered by the regulations include silviculture methods, stocking, timber felling, yarding, erosion control, watercourse protection, road construction, snag and slash hazards, fire prevention, insect and disease control, and other resource protection measures. CDF must conduct inspections of timber harvest operations to ascertain compliance and carry out any needed enforcement actions. Despite a high level of compliance, occasional unannounced inspections are necessary to insure that regulations are being followed (Martin 1989:228). The duty to conduct inspections also requires the authority to take law enforcement action (1989:210). Law enforcement options include criminal, civil, and administrative actions. Penalties for violation of the law and regulations can include misdemeanor citations, revocation or suspension of licenses, injunctions to stop operations, and the levying of charges to pay for corrective action (Arvola 1978:55). The fines and penalties that can be imposed are often small in comparison with the cost of compliance or the value of the timber that is at stake. A repeated pattern of abuse is usually necessary to justify licensing action (Martin 1989:219). CDF also issues Timber Operator Licenses and approves timberland conversion permits (1989:46).

Another responsibility of CDF is making rule recommendations to the Board of Forestry. The rule proposals that CDF has submitted to the Board have sometimes been met with hostility, and it has taken considerable persistence to see them adopted. The Board has long held the position that forestry practices cannot be bound by a rigid set of rules and that maximum flexibility is in the best interest of environmental protection and resource production (Martin 1989:10-11).

Under the FPA, a logging operation on privately owned timberlands cannot begin without the preparation and submission of a THP. The THP must be approved by the CDF Director, our agency's representative, or his/her designee.

The THP is a document that serves multiple purposes. It is an information document designed to be functionally equivalent to, but more abbreviated than an EIR, setting forth proposed measures to mitigate the potential adverse impact on the environment of the logging operation. It also provides the licensed timber operator (LTO), crew members, and others with specific operational

guidance on how the plan must be carried out. Once proposed, the THP is subject to review by an interdisciplinary review team and the results of that review made available for public inspection. The review and public comment process before THP approval is intended to ensure that adverse environmental effects are substantially reduced, particularly through the consideration of feasible, less damaging alternatives to the proposed project. The public's input to the THP approval process is mandated by law and supported by strong public policy.

When initially passed, the 1973 FPA was provided an explicit exemption from CEQA. This exemption expired on January 1, 1976. During this period it was widely believed that CEQA did not apply to timber harvesting. This perception was changed by the previously mentioned court decision in *NRDC v. Arcata National Corporation*. On January 14, 1975, Judge Broaddus ruled that the provisions and procedures of the Forest Practice Act came under the requirements of CEQA and that EIRs would be needed for timber harvesting (Arvola 1976:80-81). This ruling would have far-reaching implications for the application of CEQA to forest practices.

In 1975, the incoming administration of Governor Edmund G. Brown Jr. demonstrated greater concern for environmental protection than ever before. The Broaddus decision had put the timber industry in turmoil and set off a storm of public controversy with loggers demonstrating in Sacramento. The application of the full requirements of CEQA to timber harvesting met with stiff resistance from both industry and labor representatives. On February 16, 1975, Governor Brown issued Executive Order No. B-3-75 directing the Resources Agency to institute a streamlined process of THP review that would be the functional equivalent of a complete EIR (Arvola 1976:79-82). SB 707 added a new section to CEQA authorizing the approval of a review process that would be the functional equivalent of the EIR required by CEQA. This section required the Secretary for Resources to make a number of technical findings that the review process would provide a review of environmental impacts essentially equivalent to an EIR. These findings were duly made following extensive rule changes made by the Board of Forestry. Amended Forest Practice Rules were developed by three Technical Advisory Committees and approved by the Board of Forestry to provide for more environmental protection (Hastings 1985:29). On January 6, 1976, Secretary for Resources Claire Dedrick certified the THP review process as the functional equivalent of an EIR. The 1973 FPA became a Certified Regulatory Program that is considered equivalent to the EIR process. Under this certification a THP must meet the CEQA criteria for an EIR.



Tobe Arvola (front center) at the 1975 demonstrations regarding functional equivalency, State Capitol, Sacramento.

Contrary to widely held opinion, certification did not exempt the FPA from the full requirements of CEQA. Certification only precluded certain parts of the environmental impact reporting process. The fundamentals of CEQA continued to be fully applicable to timber harvest operations (Martin 1989:3). Industry, however, believed that the legal terms implied a lack of authority to approve or deny, making THPs immune from CEQA (1989:55). The timber industry initially opposed the certification of functional equivalency because they believed that they

would be granted a permanent and total exemption from CEQA either through the courts or through legislation. Several timber industry sponsored bills introduced in the late 1970s and early 1980s would have exempted the FPA from CEQA, but none of these bills were successful (1989:1-2).

For a regulatory program to be considered functionally equivalent to an EIR, the agency must use an interdisciplinary approach to ensure the integration of natural and social sciences in decision making (Foster 1992:5). This interdisciplinary review process is an important provision of CEQA. For THPs this review is accomplished by a multiagency review team headed by CDF. These review teams were established by executive order in 1975 but not formally recognized until 1983 (Martin 1989:3-5).

Multiagency review teams are composed of at least one CDF representative and include representatives of the Department of Fish and Game, the Regional Water Quality Control Board, and the California Geological Survey. Under certain circumstances, members of other government agencies and commissions may also be invited by CDF to serve on review teams. The NAHC is consulted by the RPF during preparation of every THP. Specialists such as geologists, hydrologists, or archaeologists participate in review team meetings, but only as advisors, not as official team members. Review teams meet initially to determine if a preharvest inspection is necessary and to identify possible problems in need of field examination. A second meeting is convened to analyze the results of the preharvest inspection. A preharvest inspection must be completed within ten days after a THP has been filed and the plan review must be completed within 15 days after the preharvest inspection (Martin 1989:5). Recent changes in the Forest Practice Rules extended the review period to within 30 days following the PHI.

A strong incentive for the expansion of the Forest Practice Rules has been the threat of decertification of functional equivalency. Many of the decisions of the Board of Forestry have been motivated by this threat (Martin 1989). If decertification was to occur, timber operators would be compelled to prepare a complete EIR for all timber operations, a costly and time-consuming process. In August 1979, Attorney Joseph Brecher, on behalf of the Sierra Club, petitioned the Secretary for Resources to decertify the functional equivalency of the THP preparation and review process. Some of the justifications for decertification were the lack of cumulative impact analysis, inadequate alternative proposals, inadequate interdisciplinary review, lack of public appeal of THPs, and inadequate public notice or opportunity for participation in the THP review process (1989:21).

The FPA allows certain timber operations to occur without a THP. Emergencies and certain other minor harvest operations are considered to be exempt. Timber harvesting can be conducted under a "Notice of Emergency" which must be certified by an RPF and can include timber damaged by fire or insects and the need for road repairs. Environmental critics have claimed that emergency notices are subject to abuse (Martin 1989:160-161) and some unfortunate archaeological resource damage has occurred as a result of such operations.

The FPA places considerable importance on the protection of resource values other than timber production, such as water quality, fish and wildlife, range and forage, recreation, and aesthetic enjoyment (Martin 1989:148). The regulations require the protection of resources such as

archaeological sites and endangered species. The protection of archaeological and historical resources under the FPA has undergone a slow transformation. The FPA originally contained no specific protection for archaeological and historical resources. Authority for the protection of these resources emanated entirely from CEQA. The FPA did provide for the protection of Special Treatment Areas, which by definition could include recorded archaeological sites. Unrecorded sites were given no formal protection in the act or the rules until 1991 (1989:39).

The first THP forms issued in 1974 were only two sides of one sheet with an attached map. Rule amendments in 1975 expanded the form to six pages with the necessary maps to show all required information. Questions on the form were designed to elicit information regarding the environmental consequences of certain actions, in direct compliance with CEQA provisions. The form expanded to ten pages by 1981 as the need to protect archaeological resources began to be recognized. A new form approved for use in 1986 included additional questions concerning the existence of recorded archaeological sites (Martin 1989:14-15). Archaeological and historical resources gradually received more consideration in the THP review and approval process, but it would take a series of events to bring about the establishment of comprehensive regulations for their protection.

### **THP Task Force (1975-1976)**

In 1975, concerns over the effectiveness of the Forest Practice Rules resulted in the Resources Agency establishing a Timber Harvesting Plan Task Force. The implementation of the 1973 FPA resulted in changes in the Forest Practice Rules and changes in procedures such as the establishment of multiagency review teams. During discussions before the Board of Forestry, a point frequently discussed was the need to evaluate the effectiveness of the various operations and procedures. Therefore, Governor Brown requested that these practices and procedures be evaluated to determine the effectiveness of the THP Review Team process.

The objectives of this evaluation were to determine if the THP review procedures had provided adequate environmental protection pursuant to the statement of intent in the Forest Practice Act, and to determine what mitigation or protection measures might be needed to achieve the necessary protection. The Resources Agency established a Task Force with members from CDF, the Department of Mines and Geology, the Water Quality Control Board, the Department of Fish and Game (DFG), and the Department of Parks and Recreation (DPR). The chairman of the group was Frank Goodson, Projects Coordinator for the Resources Agency. CDF Forester III Brian Barrette served as the assistant chairman and directed much of the actual investigations.

Of the 2,152 THPs submitted to CDF during 1975, a one percent sample was randomly selected for review. An additional nine plans were chosen for examination based on extensive public comment during the initial plan review process. Controversial projects with significant environmental concerns were located in the Redwood Creek drainage surrounding Redwood National Park and at Hoxie Crossing on the Eel River in Trinity County. Of the 30 plans selected for review by the Task Force, 19 were in the North Coast District, 6 in the Northern Sierra District, 4 in the Southern Sierra District, and 1 in the Central Coast District. Following the field review of each plan, group members were to submit a written report detailing their assessment of the plan on aspects relevant to their particular discipline. These analyses were

considered confidential and not released to the foresters or timber operators while the study was underway. "The reasons for this are that we do not want industry to be tearing this study apart prior to its release, and that's exactly what will happen if it is given to them at this time" (State Forester L.E. Richey to All Regional Deputy State Foresters, Memorandum, November 25, 1975, CDF, Sacramento). One of the criteria used to evaluate the environmental effects of these plans was impacts to archaeological and historical areas. Archaeological expertise on the Task Force was provided by DPR. Ken Pierce, James Michael Doyle, John Foster, and Paul Nesbitt represented DPR during the inspection of at least 17 plans.

The first plan reviewed by the Task Force on October 30, 1975, was THP 2-75-330 in Nevada County. Ken Pierce represented DPR on this inspection and noted only that "No cultural sites are known to exist here but without an archeologist inspection of the pre-harvest condition, the non existence of a site cannot be assumed" (Ken Pierce to Brian Barrette, letter, December 18, 1975, CDF, Sacramento). Since this plan was located only one-half mile from the Red Dog-You Bet Diggings, it was difficult to imagine that no trace of historic activity would be located there.

The only plan included in the Task Force review that had been subjected to an archaeological survey was THP 5-75-22 in Santa Cruz County. Due to the more stringent timber harvest review required by certain counties at that time, a complete EIR was prepared for this plan. As part of this EIR, Joseph W. Morris conducted an archaeological reconnaissance of the property prior to timber harvest operations. Nothing of archaeological significance was found as a result of this investigation.

James Michael Doyle participated in three Task Force inspections, THP 4-75-114 in Calaveras County, THP 4-75-148 in Amador County, and THP 4-75-824, the Hoxie Crossing plan in Trinity County. Doyle noted that the Amador County plan may have included cultural resources but they were not impacted by the operations. The Hoxie Crossing THP along the Middle Fork of the Eel River was one of the most controversial plans of 1975 due to concerns over erosion and water quality issues. Doyle only seems to have been able to identify relatively recent historic items during his review. The report from DPR on his inspection includes the following statement: "There are no legally designated archeological sites on the project. However, there may be sites on or near this area that have not been identified. The Bureau of Land Management identified several sites in their Big Butte timber sale which is across the river to the west of this area" (James P. Tryner to Brian Barrette, Memorandum, July 26, 1976, CDF, Sacramento).

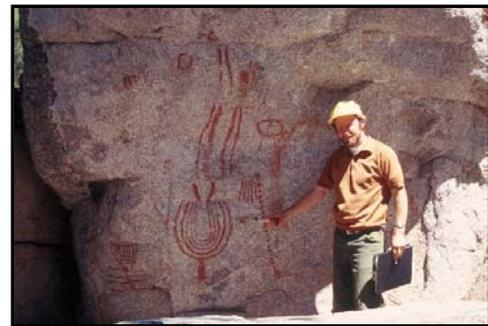
The Blue Ledge Mine property (THP 2-75-339) in Siskiyou County was examined by the Task Force on June 9, 1976. This plan was plagued by violations and landownership changes. Ken Pierce represented DPR and the following observations were provided: "The Blue Ledge Mine probably has historic interest, although it is not on the National Register of Historic Places or a California Historical Landmark. No archeological sites are recorded in that area and none are registered. A further investigation could reveal archeological finds. The previous mining activities could easily have destroyed any existing sites" (James P. Tryner to L. Frank Goodson, Memorandum, June 25, 1976, CDF, Sacramento).

On December 16-17, 1975, and January 7-8, 1976, John Foster of DPR participated in a series of Task Force inspections in Humboldt and Trinity Counties. At least eight plans were examined

during these four days. Four of the plans were adjacent to Redwood National Park and were selected because of extensive public protest against these operations. Foster's review consisted of "searching for artifactual remains within the operating area and by asking the landowner or operator who accompanied us for information regarding archeological sites in the vicinity." Although the results of these investigations were negative on all eight plans, Foster pointed out that "The surface disturbance, however, was so extensive as a result of tree felling, yarding, and road construction that all archeological evidence was probably erased" (John W. Foster to L. Frank Goodson, Memorandum, February 4, 1976, CDF, Sacramento).

A timber sale within Mountain Home State Forest (THP 4-75-115) was examined by the Task Force on May 18, 1976, but had no DPR participation. No archaeological issues were addressed during this review but subsequent surveys have indicated that at least one of the enigmatic "Indian Bathtub" sites (CA-TUL-1063) was probably located within this plan.

The only plan investigated by the Task Force with a significant archaeological finding was THP 4-75-121/T-3 located at Cannell Meadows, then a private in-holding within the Sequoia National Forest northeast of Kernville, but now acquired by the USFS. The Cannell Meadows plan was selected by DPR due to the discovery of an archaeological site after the plan was approved by CDF. During an inspection in 1975, CDF Forest Practice Inspector Ken Delfino was shown a prehistoric site that contained an elaborate panel of prehistoric pictographs. Because of this finding, the plan was selected for review by the Task Force who visited the plan area on May 19, 1976. In his report on this review, Brian Barrette felt that no serious damage had occurred at the site and makes the following recommendations: "From a Forest Practice standpoint this was an excellent THP. The archaeological find might have been discovered prior to the THP being approved if Parks and Recreation had a larger staff to review the THPs before they are approved. A program by Parks and Recreation to educate the timber operators might also have some merit" (Brian Barrette to Frank Goodson, Memorandum, May 27, 1976, CDF, Sacramento).



Pictographs (rock paintings) found on the Cannell Meadows THP.

Also present on this inspection was Dan Smith representing the Department of Fish and Game. He provided the following observations:

The Indian rock paintings found in the area were not damaged by logging operations. Some archeological values adjacent to this site may have been lost as a result of heavy equipment operation and road construction. Several artifacts were found around the painting site where equipment had been operated... Guidelines for protection of archeological resources should be developed and made available to regional review teams (Eldon D. Smith to Dick Forester, Memorandum, June 24, 1976, CDF, Sacramento).

The DPR representative on the team, State Park Historian III Paul Nesbitt, observed what he considered to be significant damage to the archaeological site surrounding the pictograph panel. Two inspections of the site by a CDF archaeologist in later years confirmed Nesbitt's and

Smith's observations that destructive site impacts had indeed occurred during the 1975 timber operations, in spite of only limited soil disturbance in the area adjacent to the pictographs. The movement of grousers to propel a bulldozer, with repeated crossings over an archaeological site, can cause significant impacts to shallow midden deposits of this type, although these impacts may not be readily apparent. The shallow, dark midden near the painted rockshelter had been mixed with the surrounding tan-colored natural soil making the midden difficult to recognize. Determination of site boundaries, usually marked by an abrupt and distinctive change in soil color, was impossible to record with any accuracy. Artifacts had been displaced, scattered, crushed and buried with logging debris, and surface features such as possible housepits, if present before logging began, were erased. The area looked "clean" to the Task Force foresters because deep scouring did not take place here.



Foresters inspecting pictograph boulder in Cannell Meadows. A shallow cultural deposit surrounding it was damaged by logging and road grading in 1975.

Another plan with disturbing implications for archaeology was the "Papoose Timber Sale" (THP 2-75-250) in Shasta and Trinity Counties. This plan, which included 2,565 acres and the construction of 28 miles of new roads, was inspected by the Task Force on December 15, 1975, with no DPR participation. No cultural resource issues were addressed in the review of this plan. By today's standards of archaeological investigation, it is unlikely that a parcel of 2,565 acres or 28 miles of roads anywhere in California would not include some form of cultural resource.

Unfortunately, the lack of findings by DPR personnel on all but one of the plans they reviewed indicated to CDF that they did not have any archaeological problems to worry about. The actual comments and recommendations provided by the DPR reviewers suggested a different situation. Ken Pierce noted that archaeological investigations should be made previous to operations, but rules in place at that time did not require this. DPR's Chief of Resource Preservation and Interpretation recommended that "archeological inspection take place prior to timber harvesting in order to identify and prevent possible sites from accidentally becoming damaged or destroyed" (James P. Tryner to L. Frank Goodson, Memorandum, June 25, 1976, CDF, Sacramento). As a result of his participation in the Cannell Meadows inspection, Nesbitt offered the following recommendations:

Although timber harvest plans may work well for other resources, they do not for cultural resources. What is necessary is a complete survey of the timber harvest area to identify cultural resources, a document showing where to avoid sites, and a check to make sure that the operators have avoided sites. I see this as being expedited on an individual basis: big business concerns can afford to fund such surveys, while small operators may have to rely on the State and universities for their surveys. In any case, inventories by field survey and regulation to avoid negative impacts are required to avoid the destruction of irreplaceable, non-renewable, cultural resources (Paul E. Nesbitt to L.F. Goodson, Memorandum, May

26, 1976, CDF, Sacramento).

A report prepared for the Task Force by John Foster included the following statement:

If there was no damage or destruction of archeological resources, this was in spite of, not because of, the review procedures and rules concerning them. The system does not deal adequately with archeological and historical resources. The central problem is that only "legally designated" historical and archeological sites are considered. No provisions are made for the identification and evaluation of sites through the conduct of archeological surveys during the preparation of THPs. Because so little of California has been systematically studied, the proper management of cultural resources requires an active effort to identify those sites which may be present within any timber harvesting area (John W. Foster to L. Frank Goodson, Memorandum, February 4, 1976, CDF, Sacramento).

Foster went on to enumerate a set of recommendations for additional measures to be included in the Forest Practice Rules to ensure the adequate protection of archaeological resources. These recommendations were derived from an earlier communication from archaeologist Thomas King to CDF Secretary for the Coast Forest District, George Grogan. These recommendations specified that THPs include an archaeological field reconnaissance conducted by a qualified archaeologist to identify all observable archaeological phenomena subject to possible disturbance; archaeological findings and specified protection measures; and if archaeological protection was impossible, provisions for salvage excavations prior to site destruction. Foster closed his recommendations to the Task Force with the following observation:

The Department of Parks and Recreation is the "conscience" of state government in relation to the identification, description, protection, preservation, and interpretation of significant archeological sites, deposits, and remains throughout California (Chapter 1.7, Public Resources Code). Our conscience is bothering us (John W. Foster to L. Frank Goodson, Memorandum, February 4, 1976, CDF, Sacramento).

The attitude of some state officials was demonstrated in a reply to Foster's report from a CDF Forest Practice Officer:

If the Department of Parks and Recreation have a conscience that is bothering them, I suggest they release some of their "guarded" information on known archeological sites to concerned and qualified field personnel. The attitude that a landowner should pay for an archeological field reconnaissance to find something he views as insignificant and then make plans and take measures to protect the same from direct and indirect damage is strictly "ivory tower".

The relative need for additional measures to the Forest Practice Act to protect archeological resources is summed up by Mr. Foster when he stated, "as far as I was able to determine, no archeological or historical sites were lost due to the timber operations conducted under the above plans" (Harold J. Johnson to C.L. Wagener, Memorandum, February 25, 1976, CDF, Sacramento).

The activities and findings of the Task Force are documented in a set of six notebooks on file at CDF Headquarters. The preliminary findings of the group suggested that on most of the plans reviewed there were no major environmental problems. The problems that were encountered were primarily concerned with erosion control measures such as ineffective waterbars. Loss of wildlife habitat due to the cutting of snags was also noted. These preliminary findings made a point of indicating that on several plans the landowner or forester had voluntarily taken steps beyond the requirements of the regulations to prevent potential problems. According to Barrette, "the problems aren't as serious as previously thought, and only in the actual carrying out of the installation practices for waterbars are there any serious problems" (Brian Barrette to L.E. Richey, Memorandum, June 3, 1976, CDF, Sacramento). Another revealing observation was that two large clear-cuts approved as "Negative Declarations" should have required EIRs. Barrette suggested that a longer review period of perhaps 30 days might be a solution to most of the problems identified by DPR. In a different location, however, he recommends that there should be provisions for a shorter review period for THPs with no streams, old growth, or low erosion hazard ratings such as flat plans. His perception that plans with a low erosion hazard rating should be subject to less stringent review was a common misperception throughout CDF at this time. It demonstrates a complete lack of understanding of potential archaeological sensitivity, because flat plans with watercourses are usually the ones containing more significant archaeological resources. Years of policies that allowed CDF to conduct abbreviated review of flat plans (such as skipping any preharvest inspection) doomed many archaeological sites before these flawed policies were changed. Barrette also advocated a screening process to prevent nuisance appeals with no basis other than an anti-logging attitude.

What may be more revealing than the actual findings of the Task Force (or lack thereof) are the comments made by some CDF personnel in response to this investigation. The extensive communications between participants in these investigations reflect the attitudes of some CDF staff members. One CDF forester made the observation that "The persons involved in this review process (other than CDF) have a poor knowledge of the current Forest Practice Rules, but a good knowledge of what they feel they should be" (Don Perkins to Gary Harlow, Memorandum, February 25, 1976, CDF, Sacramento). In a response to comments by one of the Task Force members, another CDF forester stated "If these reports are a representation of the entire project, I can see no greater way to waste money and time than to continue this project" (B.G. Richards to R.N. Withrow, Jr., Memorandum, February 23, 1976, CDF, Sacramento).

During the course of these investigations, the Board of Forestry also expressed concerns about the activities of the Task Force. These concerns included the perception that the Board was being left out of the loop, trespass on private property, and a strong concern expressed by industry that some members of the team were prejudiced and unable to be objective in their reviews. A report from the Resources Agency Task Force to evaluate the effectiveness of Timber Harvesting Plan Review Team procedures was slated to be discussed at the Board of Forestry meeting on January 14, 1976, but an examination of the Board minutes for this date do not indicate that this discussion ever took place. Curiously, no final report of the Task Force could be located in the Board's files. A final report may never have been prepared. After a review of the Board of Forestry minutes for the years 1976-1978, no references to the Task Force or its findings could be found. The attitudes and opinions of CDF staff members are demonstrated by the correspondence of the Task Force participants, and many of these

perceptions did influence CDF policies.

In hindsight, a number of problems can be identified with the methods used during the Task Force investigations as they applied to archaeology. The initial selection of plans was heavily represented by operations in the North Coast District because of the more extensive logging activity in that region, issues regarding Redwood National Park, and general public concern over logging old-growth redwoods. This was a very unfortunate selection, however, for the evaluation of archaeological protection issues. The dense forests of the North Coast region are notoriously difficult areas in which to identify archaeological sites, especially when Task Force review was attempted only after timber operations had already been conducted. Foster was unable to find any sites in the eight plans he reviewed. Only 17 of the 30 reviewed plans had the participation of DPR personnel and only 9 with an actual archaeologist. Eight plans were attended by DPR staff that were not archaeologists. Only one plan was selected on the basis of a known archaeological issue. Several of the plans with no DPR participation would have offered greater potential for archaeological findings than many of those that were actually inspected.

Of the THPs reviewed by the Task Force, only one plan was subjected to an archaeological survey before plan approval. None of the remaining 29 plans received a complete or systematic archaeological survey either before or after timber harvest operations. The archaeological reviews conducted as part of the Task Force evaluation consisted of brief inspections conducted over the course of a few hours and questioning of project personnel, hardly what could be considered even the most perfunctory archaeological survey. Several of the Task Force team members commented on the "hurried" or "cursory" nature of their investigations. Foster also observed that the fact that operations had already occurred most likely erased sites. A systematic archaeological survey prior to operations would have been the only means of determining if cultural resources were even located within these plans, much less if they had received any protection.

In spite of Barrette's recollections (See Voices) that "Overall the Task Force made only minor recommendations related to protection of the archaeological resources," because "the results showed that the current rules were working pretty well with no significant damage," subsequent events would suggest otherwise. It would take CDF nearly twenty years to recognize this misconception and take corrective action. In the years following the Task Force investigations, numerous instances involving destruction of archaeological sites on plans were brought to CDF's attention, but four specific THPs in particular would have a critical role in changing CDF policies on archaeology. These four plans all had a high degree of public visibility which drew attention to the inadequacy of existing rules for the protection of archaeological sites.

**Georgia-Pacific THP# 1-79-224 M.** A plan was submitted to CDF on March 26, 1979, by Georgia-Pacific Corporation (GP) covering 305 acres in northern Mendocino County near the Sinkyone Wilderness State Park. There were no questions on the THP form at that time directly addressing archaeological protection, but if sites were known to exist on a plan, they were considered a "Special Treatment Area." No "Special Treatment Areas" were identified in the original THP. During the public review period, CDF received several letters from concerned citizens urging them not to approve this plan. Their concerns included the environmental uniqueness of the area, watercourse protection, erosion control, wildlife, and cultural resource

protection. One of the persons submitting a comment letter to CDF was a graduate student at the University of California, Davis, Valerie Levulett, an acknowledged expert on the archaeology of this region. Her letter included the following recommendations:

I urge you and pertinent members of California Department of Forestry, as representatives of the people of the state and conservators and managers of its natural and cultural resources, to initiate a more thorough examination of your review procedure. Specifically, I request that prior to approval of Timber Harvest Plan # 1-79-224-M that a field examination of the proposed area, by a qualified archaeologist be conducted. If cultural resources are identified, measures should be initiated to preserve them or develop adequate mitigation measures.

Secondly, it is suggested that an archaeologist be appointed to Board of Forestry review team. This action would help to eliminate senseless and oftentimes unknowing destruction of archaeological sites in the future. To aid in the review procedure for the north coast range counties, the Cultural Resource Facility at Sonoma State University is a valuable resource. I urge you to submit Timber Harvest Plans to their office. They will provide you with a record search for the area of all known sites and a sensitivity map indicating the likelihood of sites occurring within the area under question (Valerie Levulett to John Teie, letter, received April 19, 1979, CDF, Santa Rosa).

During a preharvest inspection (PHI), CDF Forester Jim Anderson observed a substantial deposit of marine shell fragments on a ridge approximately 3/4 to one mile from the coast, which he believed could be a significant archaeological site. As a result of the public comment letters and the observations during the PHI, an archaeological survey of the area was requested before plan approval. Working under contract to CDF, DPR Archaeologist John Foster conducted an archaeological field reconnaissance on May 15 and 16, 1979. He recorded two prehistoric archaeological sites, one consisting of a small lithic scatter, the other, discovered during the PHI, consisting of a large concentration of artifacts and shell remains. Both sites were determined to be highly significant and recommendations were made for the protection of the sites by establishing two "Special Treatment Areas." No excavation or tracked equipment operation was to occur within these areas. Two old-growth trees were located within the first site, but these were to be removed by rubber-tired vehicles. The GP forester, Jere Melo, insisted that the sites not be included on the THP map, and took full responsibility for insuring their protection. His professed rationale was that if the site locations were disclosed in the plan they would be subject to looting. The provisions for site protection were incorporated into the plan through a letter to CDF dated May 17.

During a follow-up inspection on August 8, Jim Anderson observed that company loggers had constructed layouts for the old-growth trees on the small lithic scatter site. This activity was considered a substantial deviation from the approved THP. On August 13, GP was issued a Notice to Appear in Long Valley Justice Court in Leggett. Foster returned to the project area to assess the damage and observed that the construction of the layouts had completely destroyed site CA-MEN-1631. Foster and Levulett testified for the state in the court proceedings. Foster recommended that remedial action for the destruction of this site should consist of a comprehensive ethnographic and archaeological study of GP lands in the Sinkyone area. This

recommendation was supported by the Native American Heritage Commission. Judge Joseph A. Orr found GP guilty of criminal charges and imposed a sentence of three years probation in which GP was required to conduct a professional archaeological survey on their property in the area prior to filing any additional THPs. This may have been the first criminal law enforcement case carried out by CDF as a result of damage to an archaeological site. The public comment letter from Valerie Levulett generated considerable interest at Sacramento Headquarters with its suggestion that CDF was not in compliance with the obligation to protect cultural resources. This case triggered a strong response from CDF and was instrumental in changing attitudes about the importance of archaeology within the Department.

**Georgia-Pacific THP# 1-83-464 M.** Controversy over GP logging operations in the Sinkyone area did not end with their conviction in the above case. In order to comply with Judge Orr's sentence, GP hired the archaeological consulting firm of Ann Peak and Associates to conduct an archaeological survey of their properties in northwestern Mendocino County. One of the resources identified during this survey has been called the Sally Bell Grove site. On August 1, 1983, GP submitted THP 1-83-464 M for a portion of the same ground involved in the previous court case. Under this new plan, GP proposed to clear-cut a 75-acre grove of old-growth redwoods, some of

which were over 1,000 years old. This plan included the Sally Bell Grove site which was subjected to an archaeological excavation by Peak and Associates. This excavation, analysis, and detailed technical study was intended to capture information before damaging effects were to occur, and was offered as mitigation for these anticipated impacts.



Location of archaeological site on THP #1-83-464M along the Sinkyone Wilderness Coast.

A review of the THP by an interdisciplinary review team made a preliminary determination that the archaeological study did mitigate the site impacts that would follow, and found that the plan was in conformation with Forest Practice Rules. Concerned members of the public submitted at least 28 comment letters requesting that CDF not approve this plan. Issues expressed in the comment letters included the removal of one of the last remaining old-growth redwood stands in the area, damage to the aesthetic backdrop for the coastal hiking trail and the Sinkyone Wilderness State Park, ongoing negotiations for public acquisition of the property, the protection of the archaeological site, the high erosion hazard on the steep coastal slopes, and impacts to water quality, wildlife, and other resource values. The International Indian Treaty Council indicated their concern that the THP did not adequately protect the Native American

archaeological site from damage. CDF approved the plan on September 2, and then sent out the responses to environmental concerns on September 16, 1983.

On September 30, a group of environmental activists organized as the Environmental Protection Information Center (EPIC), filed a lawsuit to challenge the approval of the THP in court. EPIC sued for a Writ of Mandate against CDF, naming Ross Johnson in his official capacity as Resource Manager for CDF, and Georgia-Pacific Corporation. On December 6, 1983, the Superior Court ruled against the plaintiffs, refusing the Writ of Mandate. EPIC appealed the ruling and the case went to the First District Court of Appeals. On July 25, 1985, the Appeals Court ruled in favor of EPIC, finding that CDF was in error approving the THP and that its actions constituted a prejudicial abuse of discretion. The THP was voided and EPIC was entitled to an award of attorney fees. The court ruled in favor of the plaintiffs on five points, two of which were directly related to archaeology:

- Provisions of CEQA apply to the FPA.
- CDF did not provide written response to significant environmental objections within ten days of THP approval.
- CDF failed to send notification of the plan to the Native American Heritage Commission (NAHC).
- CDF did not provide an adequate response to public concerns for the protection of archaeological resources.
- CDF had failed to adequately address cumulative impacts.

The court provided extensive clarification on the application of CEQA to the FPA and Forest Practice Rules governing the timber harvesting industry. The defense attorney in the case had suggested that a section of the FPA rendered CEQA inapplicable. The court clearly stated that the section in question did not preclude CDF from compliance with CEQA and that CDF is not always limited to the Forest Practice Rules when reviewing THPs (Martin 1989:33-34). Once the application of CEQA had been established, several procedures became necessary. Under CEQA, the presence of an archaeological site within a project requires the lead agency to consult with the NAHC. The court ruled that CDF had failed to comply with the law by not consulting with the NAHC when it was known that the project included Native American cultural resources.

The two points regarding public response and NAHC notification were relatively easy to correct. The issue of response to public concerns over archaeology was more problematic. This results from the general policy of keeping all archaeological site information confidential. The court recognized a need to resolve the conflict between confidentiality and public information. The court observed that the public is entitled to be informed on potential environmental impacts and therefore must receive enough information to understand the basis for decision making. Public objection was prompted by dissatisfaction with the description of the efforts to mitigate damage to the archaeological site as specified in the THP. The Official Response of the Director of Forestry to Significant Environmental Points Raised During the Timber Harvesting Plan

Evaluation Process stated that: "The archaeological site has been addressed. A private archaeologist was hired by Georgia-Pacific. The site has been excavated and a report is forthcoming. The Department of Forestry's archaeologist has reviewed a draft of the report and has visited the site and concurs with the protection measures imposed by Georgia-Pacific."

EPIC was unable to obtain a copy of the draft archaeological report during the evaluation process, and was unable to assess the mitigation efforts of GP, or the precise vulnerability of the site to logging operations. Neither the draft or final report was ever released to EPIC or, evidently, to any member of the public. CEQA provides for evaluation of proposed project effects on archaeological resources and provides for mitigation of damages that may be caused by the project, but neither CEQA nor the FPA expressly requires the preparation of a written report. The CDF response to the objection to the proposed THP, addressing sufficiency of measures to mitigate damages to the Native American archaeological site, was found to be inadequate. The official response contained no analysis of the issues of protection of the archaeological site and contained no specific information to communicate the basis for the rejection of the objection. The court ruled that although a report is not specifically required, neither the logging company nor CDF can simply cite a report and fail to provide substantive, detailed responses to environmental objections regarding the report's subject matter. CEQA states that lead agencies must specifically respond to the most significant environmental questions raised in opposition to projects. The purpose of this requirement is to provide the public with a good faith, reasoned analysis why a specific comment or objection was not accepted. Responses that are unsupported by empirical information, scientific authorities, or explanatory information have been held insufficient to satisfy the requirement of a meaningful response.

The *EPIC v. Johnson* decision had two important consequences for archaeology. One informed CDF that in response to public comment it must not refer entirely on protection measures described in a report not available to the public. The public has a right to receive justification and explanation for decision made by the lead agency. This finding resulted from CDF's reference to a confidential report prepared by an archaeologist under contract with the landowner. This problem could be corrected by quoting the site protection measures portion of the report while withholding the sensitive site location information. The other important point was related to CEQA compliance. Up to this time, only sites that had been formally recorded were given protection. According to CEQA, however, there is no distinction between recorded and unrecorded sites. In order to comply with CEQA, it became necessary to establish a program where unrecorded sites would be identified and protection measures specified prior to plan approval (Martin 1989:40-41).

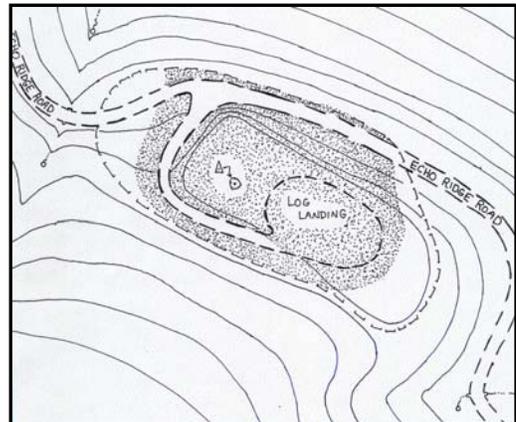
The final point in the court ruling was that CDF had failed to adequately address cumulative effects. The impact of the cumulative effects from past logging activities combined with the proposed timber harvesting on the ecology of the grove was inadequate, or the consideration of such effects was based on an erroneous conception of cumulative impacts. This issue has yet to be resolved and according to Martin (1989:39): "The final chapter on cumulative impacts may never be written."

The *EPIC v. Johnson* decision had significant repercussions on the practice of forestry in

California and on archaeological policy in particular. This decision is considered precedent-setting case law and several subsequent court decisions have upheld the ruling. This may have been one of the first environmentally based lawsuits resulting in a ruling against CDF and provides an example of public concerns shaping state policy. Officials at CDF were shocked to lose a major lawsuit on these issues. After this decision, CDF quickly began to develop procedures to correct these problems and adhere to the court's ruling. Additional archaeological training sessions were implemented to enhance archaeological awareness. RPFs were encouraged to conduct record searches to obtain information on recorded sites and the Information Centers were induced to provide this information to nonarchaeologists (Martin 1989:40-41). In 1986, the Board of Forestry approved questions on the THP form concerning review of cumulative impacts and archaeology (1989:14-15). This case provided considerable incentive for the development of an archaeology rules package that was approved by the Board in 1991.

In 1985, GP submitted yet another THP for the area involved in the *EPIC v. Johnson* case. CDF approved the new plan on December 20, 1985. On January 17, 1986, EPIC filed suit again, but this time the suit never went to trial. The property was purchased by the Trust for Public Lands on December 30, 1986, with the intent of turning portions over to the Department of Parks and Recreation (Martin 1989).

***Westbrook Land and Timber Company THP# 5-83-64M.*** Timber operations conducted in the early 1980s damaged a small prehistoric village site within the headwaters of Williams Canyon, located some 10 miles inland from Carmel in Monterey County. The site, named "Two Springs" by the CDF archaeologists who later recorded it, consists of a dark, rich, and deep shell midden containing abundant shell, bone, and stone artifacts. Since the Forest Practice Rules did not, at that time, require an archaeological survey, the site was not identified in the plan or afforded any protection. A haul road was cut into the edge of the hillslope which passed through the northern portion of the site. More extensive damage resulted during the construction of a short road segment through the heart of the midden providing truck access to the top of the knoll, where a log landing was constructed. Curiously, although this plan received intensive public review which demanded consideration for impacts to the watercourses, the possibility that damage to archaeological sites was not considered during plan review.



Construction of log landing and access road damaged the Two Springs Site on THP # 5-83-64M.

From 1979 to 1990, the timber and land on this property was owned by Westbrook Land and Timber Company (WLT) of Smith River, California. In 1979, WLT was denied a permit to log redwoods in Williams Canyon by the Monterey County Planning Commission. In 1983, AB 865 was passed. This bill gave the state sole permitting authority for timber operations in Monterey County. In 1983, RPF Charles Barber, a company forester for WLT, submitted a new THP for CDF's review. This was THP#5-83-63M. Public review of the proposed plan invoked many

comments and concerns, and after considerable review by CDF, the public and Monterey County, many additional protection measures were incorporated into the plan. CDF approved the THP on January 25, 1984. The area was logged in 1984 and 1985. The only information in the plan pertaining to archaeological site protection indicated that there were no recorded archaeological sites located in the area to be harvested, and that no archaeological survey was made.

This property was purchased in 1990 by Big Sur Land Trust (BSLT) from WLT utilizing funds donated by Harriott Mittedorf. The parcel, encompassing 1057 acres in the Williams Canyon watershed, is named the Mittedorf Preserve. The Two Springs Site was discovered by BSLT Property Manager Steve Bachman who notified CDF, and participated in an archaeological survey to visit the site, assess the damages, and prepare a detailed record. CDF's review



CDF archaeological survey crew assessing site damage and preparing a detailed record of the Two Springs Site.

indicated this unique site would easily have been found if an archaeological survey was conducted prior to logging or if the plan review by CDF included careful consideration for archaeological resources. Tremendous damage occurred during timber operations when a log landing and access road were built directly upon the site. CDF also determined this to be a significant site. The considerable depth of shell midden at the Two Springs Site suggests considerable time depth, possible extending from Archaic to Protohistoric times. The abundant cultural remains, wide range of materials, and environmental setting suggest this is a permanent village, associated with a major trending ridge that served as a primary transportation corridor from interior valleys to the coast.

***Bowen Ranch THP# 4-87-120/TUL-3.*** Another plan that resulted in a significant impact on the development of CDF archaeology policy was the Bowen Ranch THP of 1987, located at Tobias Meadow in the southern Sierra Nevada of Tulare County. A significant archaeological site was located within the THP area but was not identified prior to plan approval. A record search by the CDF Archaeology Office did not find any recorded archaeological sites in the area, but indicated that the area was highly sensitive for archaeological resources and recommended a careful inspection by the RPF before logging operations. An archaeological site had been recorded on adjacent Forest Service land, and the focus of CDF's review centered on making sure that this known site was entirely outside the THP area. Unfortunately, another site – a small village or campsite with bedrock mortars and black midden – existed on the private parcel. Since the site was not identified prior to operations, no protection measures were implemented and it got hammered. Following the logging operation, the CDF Archaeology Office was notified by the USFS district archaeologist that archaeological resources may have been impacted by this THP.

On July 13, 1989, the CDF archaeologist conducted an investigation of the area to determine if any archaeological resources were present within the project area. The archaeological site that was encountered consisted of three bedrock milling stations, an obsidian flake scatter, and a

midden deposit. Three large rock basins, the so-called "Indian Bathtubs" that occur in this portion of the Sierra Nevada, were also observed. The site was heavily damaged by heavy equipment operation resulting in extensive ground disturbance in the form of skid trails, excavations, earthen mounds, and large piles of slash and logging debris. It was apparent that in this case, CDF procedures had not been adequate to identify the archaeological resources within the plan area.

Archaeologist Mark Q. Sutton of California State University (CSU), Bakersfield was hired by CDF to conduct an evaluation of the site damage, prepare a record of the site, and make recommendations concerning possible restoration activities. Sutton observed that most of the information potential of the site was lost and that data recovery work would not be profitable. He did recommend that CDF strengthen the requirements for archaeological inventory prior to timber harvesting, pointing out that "It is apparent that the present system of inventory and monitoring by semi-trained nonarchaeologists is sometimes inadequate to identify and protect archaeological sites that may be impacted by CDF projects" (Mark Q. Sutton to Ken Delfino, letter, August 22, 1989, CDF, Sacramento).

The Tobias Meadow incident caused considerable concern for CDF officials regarding archaeological resource protection responsibilities. The importance of this incident was not that a site was overlooked prior to plan approval or damaged by operations. These types of incidents were fairly commonplace during this period. In this case, however, the message that there were major problems with the procedures was carried to the highest levels of decision making. An internal CDF memorandum pointed out the difficulties that were being encountered in trying to protect archaeological sites without any changes in the Forest Practice Rules (Norman W. Cook to Ross Johnson, Memorandum, August 29, 1989, CDF, Sacramento). This memorandum proved to be a powerful supporting influence leading to an increase in archaeology staff and changes in the Forest Practice Rules. Although this incident resulted in the destruction of a significant unrecorded archaeological site, it brought about important policy changes within the Board of Forestry and CDF.

***Forest Practice Archaeology Rules*** In 1988, CDF and the Board of Forestry began working on a package of rules to improve the identification and protection of archaeological, historical, and cultural sites. This rule package was developed by Dean Cromwell, the Executive Officer of the Board of Forestry, Doug Wickizer of CDF, and CDF Archaeologist Dan Foster. The archaeology rules package was slated to be adopted in 1990 but met with opposition from the Native American Heritage Commission. After a series of meetings with the NAHC, additional rules were incorporated to include consultation with local Native American tribal groups. The Board of Forestry approved the archaeology rules package for inclusion in the Forest Practice Regulations in 1991. These rules went into effect on December 25 of that year, causing some RPFs to jokingly refer to them as the Christmas Day rules. These were the first comprehensive archaeology rules included in the Forest Practice Regulations. In order to ensure archaeological and historical resource identification and protection prior to plan approval, these rules require that all THP applicants complete a number of tasks including the following:

- Conduct a current archaeological records check at the appropriate CHRIS Information Center.

- Provide written notification to Native Americans of the THP location with a request for information concerning the existence of any archaeological or cultural sites within the THP boundaries.
- Perform a field survey for archaeological and historical sites within the THP area by a professional archaeologist or a person with Board-certified archaeological training.
- Report the results of archaeological investigations in a Confidential Archaeological Addendum (CAA) that is not available to members of the general public. This document is required even if there are no archaeological findings.

The authority for site identification and protection was increased and clarified as a result of these rules, but there was room for flexibility. The rules did not require that all sites be protected, but gave CDF the authority to develop mitigation measures to lessen the severity of impacts to a threshold below significant. The NAHC was charged with developing a list of local Native American contacts who must be notified in writing to determine if they know of any sites of concern.

The sections of the Forest Practice Rules that identify the procedures for protecting cultural resources were revised in 1994, 1997, and 2003. Initially, site recording was a controversial issue because the Board of Forestry was not convinced that it was necessary to insure site protection. The rules on site recording were vague to begin with, but have been strengthened in later revisions. Provisions approved in 2003 require that research be conducted prior to the field survey including a review of appropriate literature and contact with knowledgeable individuals. Additional Native American notification was also required if Native American archaeological or cultural sites were identified within the plan. This change provided local Native American tribes with notice of each plan that could affect archaeological or cultural resources and afforded them the opportunity to provide comments during plan review. The adoption of the comprehensive archaeological rules package in 1991 marked a major milestone in the development of the CDF Archaeology Program, but it was just one stage in the efforts to enhance the protection of archaeological and historical resources.

***Appurtenant Roads*** There has been a long-standing debate, both within CDF and the forestry community at large, regarding whether CEQA or the FPA takes precedence. Even though several court rulings have been handed down on this subject, it continues to be a topic of discussion. An issue that serves as an example of the disparity between the two statutes results from the question of archaeological surveys along appurtenant roads. Appurtenant roads are roads that are maintained and used in the course of timber harvesting operations but that are not located directly within the timber harvest boundary. One of the most important components of a timber harvest is the road system, but no other part of logging operations can cause as much ground disturbance as the construction and maintenance of roads. These construction activities can result in up to 90 percent of the erosion and watershed damage associated with timber operations (Arvola 1978:149-150).

A problem has been recognized on numerous THPs where archaeological sites have sustained significant damage along appurtenant roads, and other plans where damage would have occurred

if CDF staff had not identified sites during preharvest inspections. On some THPs, extensive road reconstruction can be necessary to facilitate the proposed operations such as road widening, stream crossing repairs, and other types of ground disturbance needed to improve roads for use by haul trucks and logging equipment. Archaeological oversight of these construction activities has been inconsistent. On some plans, the RPF has not included these roads in the area covered by the records check, Native American notification, or the archaeological survey conducted for the plan. The Forest Practice Rules explicitly state that only those segments of appurtenant roads that will have trees removed must be covered by the archaeological survey.



Construction and maintenance of logging roads can cause significant impacts to archaeological sites.

In its role as lead agency, CDF is required by CEQA to consider the full range of project activities and make sure that significant environmental impacts do not occur before permitting a THP. This results in a conflict of legal requirements. Although the Forest Practice Rules seem to allow the exclusion of areas where excavation will occur along appurtenant roads from their archaeological survey, this practice is not supported by CEQA statute or regulation. State law defines a project as "the whole of an action" which has a potential for resulting in either a direct physical change or a reasonably foreseeable indirect physical change in the environment. There is no question that operations along roads which are initiated to facilitate the transport of logs are part of the project that lead agencies are required to review. Timber operations that include construction and maintenance of roads requiring the disturbance of soil have the potential to affect the environment, particularly with regard to archaeological sites. The exception to conduct archaeological survey on appurtenant roads unless commercial wood products are proposed for harvesting along those roads, can result in nonconsideration of activities associated with project operations. Consequently, a THP that does not take into account the full scope of timber operations, such as the reconstruction of roads, could result in a significant effect on the environment. CDF is required to evaluate potentially significant impacts to cultural resources that might occur as a result of project approval (Grantham et al. 2003). On this particular issue at least, CDF has adopted the position that the general authority of CEQA to address potentially significant effects of a project supersedes the Forest Practice Rules.

### **Executive Order W-26-92**

CEQA and the FPA are not the only state mandates directing the heritage resource protection efforts of CDF. In recognition of the importance of heritage resources to the people of California, in 1992, Governor Pete Wilson issued California Executive Order W-26-92. This order directs state agencies to administer the cultural and historic properties under their control in a spirit of stewardship and trusteeship for future generations; to initiate measures necessary to direct their policies, plans, and programs in such a way that state-owned sites, structures, and objects of historical, architectural, or archaeological significance are preserved, restored, and maintained for the inspiration and benefit of the people; to ensure that the protection of significant heritage resources are given full consideration in all land use and capital outlay decisions; and in consultation with the OHP, to institute procedures to ensure that state plans and

programs contribute to the preservation and enhancement of significant non-state owned heritage resources.

In addition to these general considerations, specific directives were also stipulated in the Executive Order. Each state agency was to designate an Agency Preservation Officer responsible for ensuring that state policies regarding the protection of heritage resources were carried out. Each agency was directed to develop and institute a management plan to preserve and maintain its significant heritage resources. Inventories were to be completed that would take into account the kind, quantity, location, and development risk to properties within the ownership and control of the agency, and each agency was directed to report annually to the OHP on their progress towards the completion of inventories, management plans, and policies (Pete Wilson, Executive Order W-26-92, April 8, 1992, Executive Department, State of California, Sacramento).

As a result of these directives, several major actions were accomplished by the CDF Archaeology Program. CDF Archaeologist Dan Foster was appointed Agency Preservation Officer in 1992. Inventories of historic buildings and fire lookout stations were completed (Thornton 1993; 1994). Inventories were conducted on seven state forests (Betts 1995a; 1995b; Dillon 1992a; 1995; Gary and Hines 1993; Hamilton and Neri 1997; Jablonowki, Martin, and Toriello 1995). These inventory efforts were incorporated into a comprehensive Management Plan for CDF's historic buildings and archaeological sites (Foster and Thornton 2001). These accomplishments will be described in more detail in a subsequent chapter. An important component of this Executive Order, and most other heritage resource protection statutes, is the concept of significance. The criteria for determining significance are codified in the final statute discussed in this chapter.

### **California Register of Historical Resources**

The California Register of Historical Resources (CRHR) is an authoritative guide used by state and local agencies, organizations, and citizens to identify the state's historical resources and to indicate what properties are to be protected, to the extent prudent and feasible, from substantial adverse change. On January 1, 1993, AB 2881 went into effect creating the CRHR, which is administered by the SHPO under the oversight of the State Historical Resources Commission. Properties listed on the CRHR include State Historic Landmarks, Points of Historical Interest, and properties in California that are listed on or eligible for listing on the National Register of Historic Places (NRHP). Additional resources can be nominated to the CRHR by individuals, organizations, and government agencies through an application and public hearing process. Before historical resources can be added to the CRHR, property owners, the local government where the resource is located, local agencies, and members of the general public must be notified to allow for comment on the nomination. Historical resources cannot be listed on the CRHR without the approval of the property owner (OHP 1999:16-17).

In order for historical resources to be included in the CRHR they must be determined to be significant by meeting any one of the following criteria:

- Association with events that have made a significant contribution to the broad patterns of

local or regional history, or the cultural heritage of California or the United States.

- Association with the lives of persons important to local, California, or national history.
- Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values.
- Has yielded, or has the potential to yield, information important to the prehistory or history of the local area, California, or the nation.

These criteria were adapted from the NRHP with modifications to include a range of historical resources which better reflect the history of California. The categories of properties eligible for nomination include buildings, sites, structures, objects, and districts, all of which have been defined in detail. Historical resources must also retain a level of integrity to be eligible for listing. Integrity is determined by the authenticity of characteristics that have been retained by a property from the period of its significance. Integrity is evaluated on the basis of location, design, setting, material, workmanship, feeling, and association (OHP 1999:69-71).

The primary relevance of the CRHR to the historical resource identification and protection activities of CDF is the establishment of legal criteria for the determination of significance. These criteria have broader applications than simply determining if properties are eligible for listing on the CRHR. They are used to make a preliminary evaluation of all historical resources identified during project planning and implementation to determine the level of protection that will be afforded to these resources. The sustained effort on the part of CDF to develop and implement successful protection measures for historical resources will be the subject of the next chapter.