Information Sheet
History of the Presence of Native American Monitors
on the California Department of Transportation (Department) Projects

The Department attempts to identify culturally significant resources during project planning stages through archaeological surveys and consultation, before construction is underway. The details concerning monitoring on a particular project are developed during consultation with Native Americans. Native American monitors observe archaeological excavations or construction activity in areas that have been mutually agreed upon to be sensitive. If cultural resources or human remains are exposed during Department activities, Department policy and state and federal law require that activity in that area is stopped until appropriate action can be taken to address the discovery.

The policy to involve Native Americans on cultural resources issues dates back to the 1970s. Since then, Native Americans have worked with the Department as monitors on archaeological excavations or during construction activity adjacent to archaeological or cultural sites or in areas with a high potential for buried cultural deposits. Monitors participated as a way to involve Native Americans in cultural resource studies conducted in compliance with environmental law, as well as to assist in the reburial of human remains unearthed by the Department's activities. The monitors were to represent the Native American heritage area applicable to the specific project, and for the purposes of Public Resources Code 5097.98, to represent the "most likely descendent" in the event that human remains were discovered.

When the process for involving "most likely descendents" was first inserted into California law in 1983, the Department initiated an Interagency Agreement with the Native American Heritage Commission (NAHC). By this agreement, the Department could request an "Advisor" for (1) archaeological excavations, (2) for construction adjacent to environmentally sensitive areas, and (3) for consultation pertaining to California Native American spiritual, religious, or sacred sites or materials within or adjacent to a project area. The agreement also formalized the expectation that the Advisor represented the heritage area involved, and for the purposes of the (then) new law, would act as the "most likely descendent." The Department at this time used the term "Advisor" to cover the three roles identified in the Interagency Agreement, but in the current lexicon, the term monitor refers to the first two roles alone.

In June 1987, the NAHC reconsidered the appropriateness of the Interagency Agreement and their involvement in selecting Advisors for the Department. The NAHC decided not to renew. The Chief of the Office of Environmental Analysis acknowledged, however, that the Department wanted to continue to work in close collaboration with the NAHC in the interest of safeguarding Native American cultural values which might be subject to endangerment in the course of the Department's activities.

Consequently, the Department continues the practice of engaging Native Americans for archaeological and construction monitoring, and distinguishes the monitoring role from consulting with Native Americans on project concerns. The monitoring role is also distinct from the "most likely descendent" designated by the NAHC in the event that human remains are discovered. The NAHC, by policy, will not designate the monitor as the "most likely descendent," except in situations where the monitor is the sole "most likely descendent" listed with the NAHC for the particular area of concern.