



**Building Boom**

Construction in Larkspur, Calif., unearthed treasures like the bone awl (opposite) carved by ancient Bay Area natives.

# The Bones of Rose Lane

A major archaeological find in Northern California creates tension between Native Americans and scientists and raises a question: Who owns history?  
*By Per Skovkjaer Sand*

In January 2015 the last house in a new \$55 million development in the city of Larkspur, north of San Francisco, was sold. The neighborhood is called Rose Lane, and some of its new houses cost more than \$2 million. The homes have oak floors, chrome-finished mirrors on the walls and, deep underground, a secret.

Buried beneath the sewer pipes on the 16.8-acre Rose Lane property is a Native American treasure trove—the remains of 587 prehistoric people and thousands of important artifacts, some dating back to when the Great Pyramid of Giza was built in Egypt.

Native American artifacts are found frequently in California, but archaeologists were especially excited by what they say was one of the most significant discoveries ever in the state. Eric Strother, a consulting archaeologist, described the Larkspur field as “extremely valuable” because it “had a very large early period component to it”—meaning bones and other objects that were between 3,000 and 4,500 years old. “Those kinds of sites have never been excavated and [extensively] studied in the San Francisco Bay Area before,” he says.

The find provided some insight into the habits and culture of the Coast Miwoks, who have lived in the northern California bay region for centuries. But owing to the views of the Native American group with authority over the dig, not to mention the prerogatives of the land owner and the city of Larkspur, archaeologists got only the equivalent of a passing glance at the human and animal bones, weapons, tools and other material found at the site before the developer secretly reburied them. The Native American tribe venerates its ancestral settlements, so it restricted the work the scientists could do—what tests they could conduct and the amount of time they had to perform those analyses. No DNA testing was allowed and no photographs could be taken. In the end, not a single artifact was kept out of the ground for further research. Archaeologists say the barriers set a disturbing new standard for excavations in California.

The constraints also raise a vital question: Who owns history? States and municipalities have debated the question in the past and will certainly have to revisit it. Laws can be vague, and archaeological research opportunities vary widely. But experts say the power balance has shifted in recent years. When it comes to archaeological finds, archaeologists and historians are losing influence. They’ve long worked at the discretion of municipalities and developers, but increasingly they also work at the pleasure of Native American tribes who have been given more authority over dig sites and who often don’t want their ancestral sites disturbed.

Worried about this trend, archaeologists assert that without a thorough analysis of major discoveries, invaluable insight into earlier societies and cultures will be lost. Jelmer W. Eerkens, a professor of anthropology at the University of California, Davis, was one of a handful of experts who criticized the handling of the Larkspur dig. “It was not the right approach,” he told *American History*. “The opinion of archaeologists, generally, is that we all own the past and have an interest in the archaeological record. It doesn’t matter what our particular background is, we are all very interested in people who lived before us, and we want to learn from them. So for one very small special interest group to say that we are not going to learn from them—at the expense of everybody else—is to me really a shame.”

The Federated Indians of Graton Rancheria, who had authority over the dig, disagrees. The tribe comprises some 1,300 people of Coast Miwok and Southern Pomo descent who live in the region; in 2000 FIGR became a federally recognized nation within the United States. Tribal officials refused requests from *American History* to discuss the archaeological project. But they did present the group’s viewpoint in interviews with the *San Francisco Chronicle*. “The philosophy of the tribe, in general, is that we would like to protect our cultural resources and leave them as is,” FIGR’s Nick Tipon told the *Chronicle*. He objected to the idea that history, or historical experts, had a claim on ancestral artifacts: “The notion that these cultural artifacts belong to the public is a colonial view.”



Settlers started arriving in what would later become the city of Larkspur in 1849, when the gold rush hit California. Larkspur was a lumber town and provided building materials for new houses in booming San Francisco. Dairy farms took over where the loggers had laid open the land. The population grew after the 1906 San Francisco earthquake forced thousands of people to leave the city and search for shelter elsewhere.

In 1907 Danish-born anthropologist Nels Christian



### **Buried Treasures**

*A cache of obsidian stone artifacts (right) was one of the few finds archaeologists photographed at the Rose Lane dig site.*



### **Prehistoric Progeny**

*A modern-day Coast Miwok dancer wears a traditional flicker-feather headdress.*



Nelson, from the University of California, Berkeley, conducted a research project in the San Francisco Bay Area. He discovered 425 “shell mounds”—waste sites, or middens, indicating past human settlements. Walking through marshland in Larkspur, he found a shell mound and a Native American burial site. Nelson noted the presence of human bone at the site, but nothing more came of his discovery.

In 1921 a family named Niven bought the marshland. They started a nursery and used the shell mound as fill for the marshes. Several generations of the Niven family ran the nursery until 1983. In 1995 Irving Group LLC, managed by a member of the Niven family, became owner of the nursery. Later, Irving Group, working with the developer Larkspur Housing Partners, asked the Larkspur city council for permission to build residential housing on the property. In 2006 the city agreed. Knowing of the existence of the shell mound, the city later drew up a Tribal Treatment Plan between Larkspur Housing Partners and FIGR.

The Tribal Treatment Plan is a legal document that, while not mandatory, is becoming a standard and increasingly controversial component of land-development protocol in California. For most of the 20th century, federal legislation practically excluded Native Americans from taking part in archaeological excavations. In 1970 California passed the Environmental Quality Act to protect Native American burial sites on public land. Subsequent amendments to the act required municipalities to “identify feasible measures to mitigate significant adverse changes [to]...historical resources”—roughly meaning they must protect any artifacts uncovered by land clearing and construction. But the law offered no specific instructions on how to do so.

Municipal agencies are supposed to take the lead in managing excavations and en-

sure that developers follow the law on public projects. There is no legal requirement that any archaeological work be done on private land. Unintentionally or otherwise, developers can destroy valuable artifacts during construction—something that has happened frequently, all over the country.

The Environmental Quality Act now gives descendants of early societies more influence over excavations, which had been the sole responsibility of archaeologists. When a site is thought to contain significant artifacts or when a find is made, the state Native American Heritage Commission, based in Sacramento, identifies the “most likely descendant” of the prehistoric settlers associated with the artifacts—typically, a representative from a native tribe that lives in the area—and that representative then works with the developer and municipal agencies to formulate the Tribal Treatment Plan for a site. The treatment plan gives the tribe the power to determine how human remains and cultural artifacts should be handled. In the Larkspur case, the plan stipulated that the tribe’s “highest priority is to avoid disturbing human remains” during the development. When Irving Group later sold its property rights to another developer, Larkspur Land 8 Owner LLC, the builders inherited the original artifact-handling plan.

**When Larkspur Land 8 Owner** began work on Rose Lane in December 2011, two outsiders were present at the site to keep an eye out for artifacts. One was archaeologist Eric Strother, who at the time was working for Holman & Associates, a consultancy hired by the developer. The other was Kenneth Tipon, an official from FIGR, which by virtue of the treatment plan had authority over any artifacts found at the site.

Though they had conflicting interests,



**Discoveries Lost**  
Archaeologists Al Schwitalla (far left) and Eric Strother were disappointed that information was lost because of restrictions on the Larkspur dig.

Strother says he and Tipon were cordial; they had lunches together and talked about their families. Both were present on December 29, when an excavator operator scraped the ground and a bone came into view. Strother signaled to the operator to stop. He dug away the dirt around the bone, picked it up and cleaned it with a brush. It was a femur. Strother called the county coroner, who then called the Native American Heritage Commission in Sacramento. Kenneth Tipon called an official at FIGR.

The first intact human grave was found at Larkspur on January 19, 2012. After that more graves and artifacts were rapidly uncovered. It soon became clear that here was a major historical find. Strother called in more archaeologists, and within a few months more than 40 were laboring at the Larkspur site. By May they had found 94 Native American burials and scores of artifacts. The more they dug, the more they found. By the end of the summer they had discovered 176 burials and thousands of artifacts—arrowheads, stones, shells and bones from many animal species. It was overwhelming. On average, two new burials were discovered every day.

Through carbon dating and other techniques, Holman & Associates would determine that much of the material was more than 4,000 years old—and that the human remains were of a people who likely had lived in the marshland from about 2526 BC until AD 1010. In one of the burial sites, experts made a rare find: four charred atlatl spurs. Atlatls are throwing sticks that prehistoric hunters carved to help them hurl small spears or darts at their prey, long before the bow and arrow was introduced to the coastal region. The archaeologists also found condor and bear bones that appeared to have been used ceremonially—an indication that animals may have played a symbolic and religious role in the Coast Miwok society—along with 533 charm stones, many made of greenschist. Greenschist shimmers in the light and is softer and easier to shape than other materials from which charm stones were often made. The stones—some fish shaped, some oval, some phallic—were items of trade and used by medicine men.

Shipping containers were hauled to the site. Human remains were stored in one, animal bones in another and arrowheads, hand tools and other sundry artifacts in a third. Two trailers were brought in to serve as laboratories, where specialists could analyze the material.

For all their excitement and activity, the researchers had to comply with certain FIGR constraints. For one thing, the tribe limited carbon dating to only 40 samples and refused to allow DNA testing of bones, which, among other things, would have determined whether FIGR tribes were in fact related to the humans buried at the site.

In June 2012 FIGR treasurer Gene Buvelot visited the dig site and gave the developer and Strother six new tribal stipulations, including the reburial of all human remains by December 1. The group also requested that no human bones be exposed for more than two days and that they be brushed and not washed. Strother says that he did not fully understand all the FIGR demands, but he did his best to comply with them. Meanwhile, he created a research plan for the site and sent it to FIGR. “We bent over backwards to make them happy,” he says.

The tribe was not satisfied with Strother’s plan, citing “an absence of detailed, meaningful and scientifically acceptable” information. Strother, archaeologist Al Schwitalla and a third colleague wrote a new research plan and sent it to FIGR in October 2012. It emphasized that the Larkspur dig was “a huge salvage archaeological project”—too big and too significant to be carried out on the tribe’s tight schedule. The archaeologists couldn’t possibly meet the December 1 deadline for reburial of all human remains. New remains were still being found, and specialists were keen to conduct additional tests. Principal geoarchaeologist Jack Meyer, from Far Western Anthropological Research Group, was called in to analyze soil layers in late 2012. He found huge numbers of marine shells—“good evidence,” he says, of feasts at which large quantities of crustaceans were consumed. He had never seen that before. Meyer and his colleagues named the excavation “Grandfathers’ Midden.”

The archaeologists got no response to their revised plan from FIGR, and the dig continued. By spring 2013, 587 individual human remains had been found. Buvelot, Kenneth Tipon and his brother, Nick, from FIGR’s Sacred Sites Protection Committee, met with the developer to formulate a new plan. FIGR objected to most of the proposed research work, allowing only 50 sediment samples to be studied and rejecting further study of canid bones from carnivorous mammals such as wolves, coyotes and dogs. Domesticated dogs were known to later



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Greg Sarris,  
chairman of  
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Indians of Graton  
Rancheria.

Bay Area inhabitants says Jelmer Eerkens of UC, Davis. “We wanted to learn about the varieties of domesticated dogs and how the people were provisioning them....It would have been especially interesting to trace the evolution of genetics and diets of dogs.”

The tribe also refused to allow analysis of obsidian stones, volcanic glass that was prized for its sharpness and widely traded by prehistoric peoples, noting, “The Committee is not convinced that this testing will be of benefit to, or add to, the knowledge of the tribe, and, therefore, [it] is not approved.”

Finally, the tribe set new deadlines: May 14 to return all human remains and associated grave goods for reburial and June 12 to hand over animal bones, stones and other artifacts—54 days to finish their work. The archaeologists objected but there was little they could do. “Suddenly, we were under a lot of pressure,” says Strother.

Strother’s relationship with Kenneth Tipon, with whom he’d spotted the first human bone at the site, had by then become strained. They’d long since stopped having lunch together. “The tribe was frustrated and wanted us to hurry up,” he says. The archaeologists, for their part, did not like having their hands tied. Because the tribe prohibited any photos of the artifacts, Strother had to hire illustrators to depict the found objects. The archaeologists say that they worked long days to obtain as much information as possible. “We ran around like chickens with our heads cut off,” says Al Schwitalla.

The developers, like the Native American tribe, wanted to expedite the excavation. That is not to say that the builders were insensitive to the historical value of the site. But history is not their business—and having invested more than \$1 million in the excavation, and delayed construction by more than a year, the developers seemed happy with any plan that would allow them to resume construction. Officials at Larkspur Land 8 Owner refused to answer questions related to the archaeological excavation, referring all queries to the city of Larkspur. The company did issue a statement: “Out of respect for the privacy of the tribe, and to legally abide by their agreement, the developer is not at liberty to discuss specificities surrounding the on-site cultural resource activities. However, all work has been completed to the total satisfaction of all parties involved.”

Greg Sarris, chairman of the tribe, was equally terse. He told the *San Francisco*

*Chronicle* it is nobody’s business how the tribe handles the remains and belongings of its ancestors. “Let us worry about our own preservation,” he said. “If we determine that they are sacred objects, we will rebury them because in our tradition many of those artifacts, be they beads, charm stones or whatever, go with the person who died....How would Jewish or Christian people feel if we wanted to dig up skeletal remains in a cemetery and study them? Nobody has that right.”

On May 14, 2013, Strother and Kenneth Tipon signed a document that transferred all the skeletons and associated grave goods from the archaeologists to the tribe. Strother gave Tipon the key to the shipping container’s padlock. The rest of the artifacts were handed over a couple of weeks later. Strother and the archaeologists then left the site, and the developer buried all the material—the human remains, animal bones and cultural artifacts, along with thousands of cubic feet of midden—in an undisclosed location on the property, soon to become Larkspur’s new Rose Lane luxury neighborhood.

**So who owns history?** When it comes to historical objects found on private land, the issue is complex. There are legal and philosophical factors, and much depends on what the artifacts are and how negotiations unfold among the parties interested in them. In his 2000 book *Skull Wars*, David Hurst Thomas, curator of anthropology at the American Museum of Natural History, notes that there was no federal protection for Native American graves until 1990, when the Native American Graves Protection and Repatriation Act was passed. Still, most of the decisions related to archaeological digs on private land remain local—and that is where archaeologists focus their criticism of the Larkspur plan. Al Schwitalla asserts that after creating a Tribal Treatment Plan and persuading the developer to donate a parcel of land for a public library, the city of Larkspur abdicated its role as lead manager of the project. “It simply washed its hands of its oversight responsibilities and said to the Indians: ‘You guys are in charge now.’” In his view, “the city went wrong” when it gave FIGR authority over cultural artifacts not related to human remains. Miley Holman, an archaeological consultant who worked on the project, is likewise perturbed. “I will work with the tribe again,” he said, “but I

will not work under a Tribal Treatment Plan that restricts the archaeologists' work."

Neal Toft, director of planning for the city of Larkspur, acknowledges that the city "got caught in the middle" of a conflict between archaeologists and the tribe. But, he says, "the archaeology issue was just one of many issues that the city was grappling with. We secured senior housing and affordable housing [as part of the development]; we followed the state law; we respected the confidentiality of the tribe; and there was an archaeological report provided to the regional archaeological clearinghouse."

More conflicts may arise, partly because in August 2014 California passed Assembly Bill 52, which could enhance the power of the tribes by making their involvement in archaeological digs mandatory. "Until now, tribal consultation has been inconsistent," says Terrie Robinson, general counsel at the Native American Heritage Commission, "but AB52 changes that." John D. Ferrera, chief of staff for Assemblyman Mike Gatto, who drafted the bill, agrees: "The expectation is that tribes will have more influence with the new law."

That is not good news for scientists. Eerkens cites an excavation north of Sacramento in 2014 in which the local tribe, United Auburn, emboldened by the Larkspur restrictions, prohibited all research. That is a chilling development for people who believe that significant finds must be thoroughly analyzed, especially because there can't be many left. Archaeologist Dwight Simons, who worked the Larkspur dig, says that he does not expect to see anything like it again. "A hundred years ago there were 400 to 500 sites like this in the San Francisco Bay area, but today most of them have been destroyed because of development. The likelihood of anybody encountering another site like this one is pretty slim."

Eerkens says that the tribes themselves may come to regret their hands-off approach. "I worry that even people within the tribe in three, four, five generations may feel differently about archaeology, and that they will want to learn about their past. But they won't have the opportunity because everything was destroyed." ★

*Per Skovkjaer Sand, a former Danish newspaper reporter, now writes stories about history, labor, refugees and environmental issues in California and in Denmark.*

## REMAINS OF THE DAY

Native American human remains have not always been treated very respectfully. "Indian skeleton and burial sites have been dug up and displayed as tourist attractions," says Melissa Tatum, research professor of law at the University of Arizona and faculty associate for the Indigenous Peoples Law and Policy Program. "It is unthinkable that this would be done with the bones of white settlers."

In 1990 the federal Native American Graves Protection and Repatriation Act aimed to set things right. Under NAGPRA, agencies and museums receiving federal aid must return Indian human remains and cultural objects to lineal descendants of the deceased. The act also mandates that Indian and Native Hawaiian organizations be consulted when archaeologists encounter human remains and cultural artifacts.

When NAGPRA was first enacted, says Tatum, "there seemed to be a generalized fear that museums would lose all their Indian artifacts." That hasn't happened. Only human remains and associated funerary objects have "an automatic right of repatriation" — and even then a descendant tribe must make a claim for their return. Tatum describes the law as "a success" because "it has opened up dialogue between museums and tribes and also helped to ensure equal treatment of the dead for all Americans."

—Richard Ernsberger Jr.

**Home Again**  
Under NAGPRA, Eyak Indian remains are buried in Alaska (left) and a bear totem is packed for return to the Tlingit Nation.

