

Letters to The Midden

Dear Editors of *The Midden*:

Thank you for asking me to respond to Julie Hollowell and George Nicholas' article: **Intellectual Property Issues in Archaeology, A Case from *The Midden* (39[4])**. Since the case study involves my work, it certainly caught my attention. Probably I'd better describe some of my initial reactions and feelings upon seeing this article, since it no doubt impacts my response here. First, I was angry, especially since I saw questions being asked of the principles (seemed like mostly myself and the Grand Ronde Tribe) and I was never contacted to respond before the publication—and then found out from the Grand Ronde Cultural Resources Department that they were also never contacted to clear up the questions posed. I personally consider this a major issue of consultation, whether it is the Tribe or the academic professional and it is expected (and ethical) to contact your sources to get their answers to questions you pose before publishing your report.

Next I was afraid of how my academic colleagues in Canada would view my professionalism by the way this was presented (possibly an unfounded fear, but not an unexpected one). And I was hurt, since I know at least one of the authors fairly well, George Nicholas, who has attended an International conferences I have coordinated (WARP 2003), asked me for reviews for the *Journal of Canadian Archaeology*, and is someone I admire for his work. I also was sorry to see this whole situation unfolding as it has—but I am sure it was done in the name of providing lessons, so hopefully we all learn something from it. However, I would say, that the review almost follows an on-going Western approach of "why ask [the principles], we know it's for their own good." Certainly Tribes have been a victim of this Western philosophy (e.g., extreme cases are relocation, allotments, boarding schools, and termination).

Finally, when I take into account the totality of these diverse personal feelings, I also realize that they *all*, in fact, result from caring about the work we have been doing and what we are trying to do. So the bottom line is that we all care deeply about

this work—or I would not have reacted so emotionally with all these thoughts.

Now that I have explored (and vented!) my full range of personal responses, I want to join Eirik Thorsgard, Cultural Protection Coordinator, Confederated Tribes of the Grand Ronde Community of Oregon in answering the questions posed to us in the article. I would point out that I am in consensus with what Mr. Thorsgard presented, so do not have to reiterate many of his professional opinions. Hollowell and Nicholas indicated that:

These queries are complicated by two outstanding questions, whose answers are not clear from information in the article, the letter, or the response to the letter, namely:

(1) Whose land is the site on? Croes notes that the site is on "ceded lands" but it is unclear what this actually means; and

(2) What was the relationship between Dale Croes's (sic) team and the development corporation, the U.S. Army Corps of Engineers, and the Confederated Tribes of the Grand Ronde? Who had jurisdiction, and who was employed by whom? Croes mentions that the Confederated Tribes "share co-management" of the site, but the nature of the collaboration and shared governance is still unclear (*The Midden* 39-4:11).

(1) As well addressed by Eirik Thorsgard, "these last two questions posited by the authors are ones that are much more important in this situation, and detail the author's lack of knowledge regarding indigenous communities" at least in the U.S., and further "... the authors are committing the same error that Dr. Croes committed by not initiating an open dialogue with the Indigenous communities."

The site is on private property. Ceded lands through treaty contracts in the U.S. Northwest provided for occupation without hostility on these lands to non-Indians. However it did not, as indicated by Eirik Thorsgard, give up access to and responsibilities for these traditional territories by

the Tribes. In Treaty contracts here, many of the Tribes reserved the rights to *usual and accustomed* (U & A) territories for hunting and fishing and other rights—and also reserving thereby management rights and easement to these territories, both inside and sometimes outside traditional territories ceded. This is interpreted in terms of how the Tribes understood this contractual right—both management and easement—and has been increasingly expanded to management of cultural heritage sites (a.k.a., archaeological sites) and material culture at these sites. Sites are recognized as important by the Tribes to their futures, and that they must be protected (and they know how the agencies have a poor track record in protecting these sites). A revolutionary movement in the U.S. is the establishment of Tribal Historic Preservation Offices that take over responsibilities for site management from the States where these sovereign Tribal nations reside—and especially on their reservations lands, but often expanded and recognized responsibilities in their ceded lands/traditional territories. I would strongly recommend that everyone carefully look at how Eirik Thorsgard defines this too—these are concepts the non-Indian has trouble fully understanding.

(2) The development corporation was the Sauvie Island Drainage Improvement Company (SIDIC), which, as Mr. Thorsgard indicated, wanted to re-enforce the failing dike along this National Historic Landmark Site and needed a federal permit from the U.S. Corps of Engineers, since this channel is considered navigable waters. Following a U.S. Section 106 (NEPA) review requirement, a call for proposals to evaluate any potential adverse effects was issued and consultation with the three Tribes immediately was initiated, with all Tribes reviewing and commenting on the competitive applications, field work, and preliminary and final report drafts. South Puget Sound Community College (SPSCC) Department of Anthropology, with the Archaeological Investigations Northwest (AINW), were the winning proposal and we were employed by the SIDIC, which had matching funds from

an Oregon State heritage grant (all this, and the results, are reported in-depth in our final 2006 field report in this web site under *Sunken Village Articles*: <http://www.library.spscc.ctc.edu/crm/crm.htm>).

The concept of “shared co-management” is an approach I have learned to take with Tribes following graduate work at the Ozette Wet Site, and later while directing the Hoko River Wet and Rockshelter sites, where we worked with the Makah Tribe in an informal partnership through the 1970s and 1980s. I have since been involved in formalizing this 50/50 co-management with the Squaxin Island Tribe Cultural Resources Department (CRD), with the Director and Tribal Historic Preservation Officer, Rhonda Foster. This formal, Cooperative Agreement, spells out exactly how we will coordinate our Anthropology Department at SPSCC with their CRD at the Squaxin Island Tribe as a sovereign Nation. This Cooperative Agreement is signed by their head of state, their Chair, and by the President of our state institution, SPSCC.

Why formalize? Both Rhonda and I can point to this agreement if either of our immediate supervisors question what we were doing together and remind them it is signed by the heads of their government and our state institution, so we have to do this work together. I believe this is one of the only such formal signed agreements between a Tribe and an Anthropology Department in the U.S. and forms the basis of our archaeological training at the Qwu?gwe wet site (featured in *American Archaeology Magazine*, Winter 2007-8 — an article we allowed with complete editorial input from the Tribe and archaeologists). The agreement stipulates these goals as well: (a) our college CRM online training of Native and non-Native students (the *Cultural Resources Certification Online* is the direct result of the agreement), (b) Squaxin Museum coordination, (c) language programs assistance through our Linguistic Anthropologist (Dr. Deborah Teed, Dean), and/or (d) forensic assistance, through our Forensic Anthropologists (Dr. Patrick Chapman and Ms. Donna Ricca). These programs, and also a PDF publication of our Cooperative Agreement can be found on our web site at: <http://www.library.spscc.ctc.edu/crm/crm.htm>, as well as articles by Rhonda Foster and I

on the need for Native American Expertise at sites. Recognize that this published Cooperative Agreement was the first one (2000) and we re-visit the agreement every two years to update it and sign it — so we are now into our 3rd agreement.

Also note, as suggested by Hollowell and Nicholas, these articles and a recent synthesis of our work at *Qwu?gwe* are co-authored, with Rhonda as principle author on the Cooperative Agreement (it was her idea) and the need for Native cultural expertise in archaeology articles. We fully intend to co-author and have co-authored articles on Sunken Village — especially as we go into publication of our final results.

I would also say that the concept of our co-management with all Oregon tribes involved with the Sunken Village site is relatively recent, as Eirik Thorsgard explained, and includes The Confederated Tribes of Grand Ronde, the Confederated Tribes of Siletz Indians, and the Confederated Tribes of the Warm Springs Indians, with a strong supportive relationship growing with the first two, and very active consultation occurring with the Warm Springs. Probably of particular significance to this discussion, and certainly noticed by the Tribes involved, we were directed by Federal reviewers of the report covering fieldwork in 2006 to remove the term “co-management with” from our final report—they preferred “consultation with.” Therefore it remains a slow process of moving this understanding of 50/50 partnership and management into all areas of CRM. In our final reports for 2007, a project not under jurisdiction of the Federal permitting process, and in fact sponsored by an international grant through Japanese archaeologists (see Eirik Thorsgard’s *Forward* to our updated article on 2007 work at Sunken Village [pages 11-16]), you can be sure we plan to use the term “shared co-management” as queried by Hollowell and Nicholas.

I am ending as I ended in the letter of response last time, with a statement made at our 2007 regional presentation of this work at the WSU Northwest Anthropological Conference, where this issue of “Intellectual Property” was first publicly and critically addressed by panelist Mr. Thorsgard (before the letters were published by *The Midden*):

I must add that Eirik Thorsgard also emphasized on the panel that the project represented a ‘great deal of collaborative efforts between Tribal Cultural Resources Specialists and Archaeologists and this speed bump in our relationship should not reflect our overall team efforts to properly protect and evaluate one of the most significant Heritage Sites in our ceded lands.’

Again we all have these various perspectives and concerns because the bottom line is that we deeply care about what we are doing, and that is really what matters. We all have to work together to facilitate protection of cultural resources, including cultural “intellectual properties.” There are too few of us working on these goals to work against each other. I applaud Hollowell and Nicholas in the support they are getting, as reflected in their *Acknowledgement*, and their many accomplishments in forwarding our mutual goals of protecting cultural resources for all our futures.

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**FROM THE
DEPARTMENT OF
CORRECTIONS**

Chris Springer should have been listed as a co-author with Morgan Ritchie for the article, “SFU Excavates in Chehalis Territory, Summer 2007,” from the last issue. Springer lead the pithouse excavation discussed in the second half of the article and also had taken the photograph of the pithouse excavation.