

Chapter 4: Repatriation

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Chapter 4: Repatriation

Preamble

The Caltrans Standard Environmental Reference (SER), and thus this chapter as an interlocking part of SER Volume 2, provides guidance to Caltrans environmental managers, supervisors, and staff across the twelve Caltrans districts. It is not meant to provide direction to external partners beyond communicating Caltrans' environmental compliance procedures and contextualizing district actions. The SER is a publicly available document that is periodically updated in accordance with new or updated environmental federal, state, and local laws and regulations and is often referenced by other agencies and institutions for use in environmental compliance. As a publicly available document, SER Volume 2, which covers cultural resources compliance, including Native American consultation, is open to public and tribal comment at any time.

All guidance within this chapter is in direct alignment with Native American Graves Protection and Repatriation Act (NAGPRA) and the California Native American Graves Protection and Repatriation Act (CalNAGPRA), as well as all other relevant environmental regulations. It was subject to tribal review and input before it was finalized as tribal comments and feedback are invaluable in shaping this type of guidance.

Acknowledgement Caltrans is not a repository; Caltrans-controlled collections are housed with repositories throughout California and Nevada. Caltrans does not create any new tribally associated collections as part of new projects unless either a tribe requests it and plans are put in place well ahead of project construction, or if the requirement exists because the project is taking place on federal land. If active projects have existing agreements with a curation plan in place, and a tribe would like to discuss alternate approaches to that plan that do not include curation, they can be discussed at any time with the District Professionally Qualified Staff (PQS) and District Environmental Branch Chief (DEBC), or the Statewide Collections Coordinator and District Native American Coordinator at Caltrans Headquarters.

NAGPRA and CalNAGPRA Compliance Given the sensitive, unique, and often personal nature of repatriation to tribes, it is important that the guidance presented in this chapter is implemented by Caltrans PQS using the following principles:

- Though this guidance provides requirements and directions regarding Caltrans' regulatory compliance, it does not prioritize, direct, or prescribe specific outcomes in repatriation consultation.
- The terminology in this chapter is used for consistency within NAGPRA and CalNAGPRA, as well as other relevant environmental regulations. However, the terms and language may not be used or preferred by tribes. District PQS are encouraged to use preferred terms, specific to each tribe, when possible and appropriate.
- Tribes:
 - Retain traditional and cultural knowledge that is expert opinion and does not need to be explained or justified; and
 - Have a fundamental right to obtain information, records, and data concerning their heritage and associated archaeological collections.
- Each tribe holds individual perspectives and cultural practices, and it is Caltrans' responsibility to provide space during consultation for individual values, views, and requests to be shared throughout the repatriation process and to conduct consultation with care, respect, and meaning.

4.1 Introduction

Archaeological collections are generated when cultural materials are recovered and curated from the Caltrans right-of-way, as well as from federal, local, or private lands, as a part of the project delivery process. Collections are then curated when consultation in support of project delivery did not lead to immediate reburial, other project circumstances resulted in curation as an outcome, or the nature of the recovered materials lead to curation. Best practices, guidance, and regulatory compliance are overseen by the Statewide Collections Coordinator, as described in Section 1.3.2.2 (Headquarters Roles) in Chapter 1 of SER Volume II.

4.1.1 Terms and Definitions

As appropriate, Caltrans uses the legal terms or terms of art found in the federal and state laws and guidelines listed in Section 4.1.2 (Repatriation Legal and Regulatory Context). These sources sometimes use outdated terms that are confusing, inaccurate, or offensive. To ensure clarity, below is a list of such terms and their meaning as they pertain to Chapter 4 of SER Volume II.

“Accession” refers to a collection that has been curated at a repository, and, in most cases, has been given a unique identifying number known as an “accession number,” the format of which is specific to the repository (also see the definition of “Collection”).

“Ancestor(s)” is an alternative term for Native American “human remains” as defined at 43 CFR § 10.2. When otherwise not legally defined, this is the preferred and recommended term for Native American human remains.

“Caltrans collection” is curated archaeological material(s) recovered in support of a Caltrans activity but not necessarily from Caltrans right-of-way. This includes collections recovered from federal, local, or private lands during archaeological recovery (i.e., Extended Phase I testing, Phase II testing, Phase III data recovery, or construction monitoring) by Caltrans or Caltrans’ consultants. In these situations, the collection is controlled by the landowner, so a federal agency, local agency, or private landowner.

“Caltrans-controlled collection” is curated archaeological material(s) recovered as part of a Caltrans activity from Caltrans right-of-way and is thus “controlled” by Caltrans as defined at 43 CFR § 10.2 and H&SC 8012(f). This term can also refer to a collection for which Caltrans has been given control through a transfer or is assuming control when control cannot be determined.

“Collection” is defined at 36 CFR § 79.4, 43 CFR § 10.2, and in “OHP’s Guidance for the Curation of Archaeological Collections.” Caltrans utilizes these definitions and further classifies a collection as representing curated archaeological material from one archaeological site and from one recovery event, and a collection may consist of a single find or item, also known in archaeological terms as an “isolate.” When referring to a collection, Caltrans defines it as one site with one accession number; archaeological material recovered from the same site during a different event is identified as another collection with a separate accession number. Conversely, if an accession number contains archaeological material from multiple sites, each site will have a separate collection.

“Cultural Items” very specifically refers to items that meet the definition at 43 CFR § 10.2, which is, “a funerary object, sacred object, or object of cultural patrimony according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization.”

“Museums” are institutions that meet the definition at 43 CFR § 10.2, which identifies any entity that has “possession or control of human remains or cultural items and receives federal funds” as a museum.

“Recovery” or “Recovered” is a replacement for “excavation,” “testing,” or “archaeological excavation” within the context of this chapter.

“Repository” broadly refers to institutions, museums, universities, and curation facilities that house Caltrans collections, whether or not they receive federal funds.

“Request for Repatriation (RFR)/Claim” is the phrase Caltrans uses to refer to a tribe formally requesting the repatriation of ancestors or cultural items. Under NAGPRA, tribes are required to submit “requests for repatriation,” while under Assembly Bill 275 (i.e. CalNAGPRA), “repatriation request,” “request for repatriation,” “repatriation claims,” and “claim” are used interchangeably. To avoid confusion or additional steps in the repatriation process, Caltrans uses RFR/Claim.

“Tribal traditional knowledge” (TTK) is identified and defined in CalNAGPRA at H&SC 8012(p). Similarly, “Native American traditional knowledge” is identified and defined in NAGPRA at 43 CFR § 10.2. Though the terms are different in name, their definitions are almost identical, and both clearly state that “traditional knowledge is expert opinion.” To reduce redundancy, and to

ensure consistency with Chapter 3 of SER Volume II, this chapter uses “tribal traditional knowledge” or TTK interchangeably with “Native American traditional knowledge.”

4.1.2 Repatriation Legal and Regulatory Context

As Caltrans is a state agency that receives federal funds, it is required to comply with the following laws, guidance, and regulations.

[Native American Graves Protection and Repatriation Act \[25 USC 3001-3013\]](#). Enacted in 1990, NAGPRA, as amended, requires federal agencies and entities (museums) receiving federal funds to inventory and repatriate human remains and associated funerary objects, as well as unassociated funerary objects, sacred objects, and objects of cultural patrimony. The agencies and museums must offer to return human remains and cultural items to lineal descendants or the culturally affiliated federally recognized tribe(s). The law also protects Native American graves and other cultural items located within archeological sites on federal and tribal land. The NAGPRA regulations are found at **[43 CFR § 10](#)**.

[California Native American Graves Protection and Repatriation Act \[Health and Safety Code \(H&SC\) 8010 et seq\]](#). CalNAGPRA, signed into law in 2001 and amended in 2020 through **[Assembly Bill No. 275 \(AB 275\)](#)**, requires that entities in receipt of state funds repatriate Native American human remains and associated funerary objects, as well as unassociated funerary objects, sacred objects, and objects of cultural patrimony to California Indian Tribes.

4.1.3 Dispute Resolution

Throughout the implementation of this chapter, disputes may arise between Caltrans and consulting tribes. In the event of a dispute between Caltrans and a consulting tribe, or between more than one consulting tribe, the District Repatriation Point of Contact (POC) will notify and involve the District Native American Coordinator (DNAC) and District Environmental Branch Chief (DEBC).

If the dispute is between Caltrans and a consulting tribe, the District Repatriation POC will continue consultation with the tribe to resolve the dispute with the support of the DNAC and DEBC. If a resolution cannot be reached regarding duty of care, cultural affiliation, identification of cultural items, or repatriation under NAGPRA or CalNAGPRA, the District POC will elevate the dispute to the Statewide Collections Coordinator. With support of the District POC, the Statewide Collections Coordinator will consult with the tribe, as well as with the Statewide

Native American Cultural Studies Coordinator and the Cultural Studies Office Chief. If the dispute cannot be resolved, the Division of Environmental Analysis Chief will make a final decision. Decisions regarding repatriation will be made in accordance with NAGPRA or CalNAGPRA, as applicable. Information about external dispute resolution under the federal and state repatriation laws can be found in Section 4.3.2.7 (Disputes and Competing Claims).

If the dispute is between two or more consulting tribes, the District Repatriation POC will continue consultation individually with the tribes to determine if the tribes would seek resolution independent of Caltrans involvement or if Caltrans is able to assist the tribes in reaching a resolution. If the dispute does not involve Caltrans and cannot be resolved, the District Repatriation POC will refer the tribes to the dispute resolution processes under NAGPRA or CalNAGPRA, as applicable. If there is a decision to be made by Caltrans regarding duty of care, cultural affiliation, identification of cultural items, or repatriation under NAGPRA or CalNAGPRA the District POC will elevate the dispute to the Statewide Collections Coordinator. With support of the District POC, the Statewide Collections Coordinator will consult with the tribes, as well as with the Statewide Native American Cultural Studies Coordinator and the Cultural Studies Office Chief. If the dispute cannot be resolved, the Division of Environmental Analysis Chief will make a final decision. Decisions regarding repatriation will be made in accordance with NAGPRA or CalNAGPRA, as applicable. Information about external dispute resolution under the federal and state repatriation laws can be found in Section 4.3.2.7 (Disputes and Competing Claims).

4.2 Collection Documentation and Record Keeping

For the purposes of future environmental review in support of project delivery, and in alignment with environmental regulations, Caltrans maintains all records pertaining to a collection and the generation of that collection (e.g., field notes, reporting, photographs, tapes/recordings, catalogs, curation agreements, consultation documentation). This information is kept confidential, as described in Section 4.2.2 (CCRD Collections Module) and Section 5.3.6 (Confidentiality of Information) in Chapter 5 of SER Volume II. It is the responsibility of the district project PQS and DEBC to ensure that all such records are entered into the Caltrans Cultural Resources Database (CCRD) and kept on file in perpetuity. Exhibit 4.1 (Roles and Responsibilities) provides more information on collections and repatriation roles and responsibilities. Upon request, Caltrans provides digital and hard copies of all records relating to archaeological collections to the affiliated tribes.

4.2.1 Efforts to Track Caltrans-controlled Collections

The state's first transportation-related archaeological collections date back to the 1930s, when excavations were conducted by the Division of Highways, the precursor to Caltrans. With the passage of the Native American Graves Protection and Repatriation (NAGPRA) in 1990, Caltrans undertook multiple statewide efforts to identify all the collections it had recovered and curated by coordinating with repositories, such as universities, museums, and other curation facilities. This included surveying repositories, gathering information on repository conditions and practices, and conducting catalog verifications for identified collections.

Since the passage of NAGPRA, the Caltrans Cultural Studies Office (CSO) and individual districts have continued efforts to identify and document Caltrans collections through ongoing coordination with repositories, including tracking collections generated after the passing of NAGPRA. Caltrans maintains confidential records for more than 1,200 archaeological collections, both from Caltrans right-of-way and adjacent lands, within the CCRD. It is the responsibility of Caltrans districts to ensure collection entries in the CCRD are current and accurate.

4.2.2 CCRD Collections Module

As mentioned in Sections 1.3.1.2 (District Roles) and Sections 1.3.2.2 (Headquarters Roles) of Chapter 1 of SER Volume II, the CSO CCRD Manager and the District Data Stewards maintain the CCRD. The CCRD is a confidential, internal, cross-referenced digital archive that retains records and documents regarding individual projects, cultural resources, reference documents, and collections information used for the purposes of future environmental review in support of project delivery. It can only be accessed by Caltrans cultural staff, who have been individually approved by the CSO CCRD Manager and meet the qualification of PQS (see Sections 1.3.5 and 1.3.6 in Chapter 1 of SER Volume II), from Caltrans secure devices connected to the Caltrans internal network. If PQS status or cultural staff positions change, access is removed from that individual. Each Caltrans collection must have an entry created in the CCRD Collections Module using CSO's internal guidance for CCRD data entry. The following documents, with responsible staff identified, must be uploaded to the CCRD:

Table 4.1. Documents Required to be Uploaded to the CCRD for all Collections.

Document Type	Responsible Party
Excavation Proposals and Excavation Reports	Project PQS or District Data Steward (DS)
Curation Agreement and/or Disposition Plan	Project PQS or District DS
Collection Catalog	Project PQS or District DS
Research Proposal, Approval, Final Documents	District Repatriation POC or District DS
Collection Transfer Documents	District Repatriation POC or District DS
Catalog Verification Report	District Repatriation POC or District DS
RFR/Claim Letters	District Repatriation POC or District DS
NAGPRA Summary or Inventory	District Repatriation POC or District DS
NAGPRA Notice of Intended Repatriation (NIR) or Notice of Inventory Completion (NIC)	District Repatriation POC or District DS
Document Type	Responsible Party
NAGPRA Summary of Evidence	District Repatriation POC or District DS
NAGPRA Repatriation Statement	District Repatriation POC or District DS
Transfer of Control	District Repatriation POC or District DS
Finalized Caltrans Repatriation Reporting Form	District Repatriation POC or District DS

4.3 NAGPRA and CalNAGPRA Compliance

4.3.1 Caltrans Repatriation Program

Caltrans is a state department that receives federal funds and thus is required to comply with NAGPRA and CalNAGPRA. Caltrans meets the definition of a “museum” under 43 CFR § 10.2 and the definition of a “state agency” under H&SC 8318(a). All Caltrans-controlled collections are made available for repatriation consultation with culturally affiliated tribes under both NAGPRA and CalNAGPRA. The Caltrans process for tribes placing repatriation RFR/claims is outlined in Exhibit 4.2 and described in Exhibit 4.3. The Caltrans RFR/Claims Process can also be found on the [Caltrans NAGPRA-CalNAGPRA website](#).

In alignment with the “Supremacy Clause” of the United States Constitution, NAGPRA consultation and compliance takes precedence over CalNAGPRA consultation and repatriation. Caltrans will move CalNAGPRA repatriation forward after the conclusion of consultation and/or repatriation under NAGPRA. Additionally, aspects of NAGPRA, such as the Duty of Care requirements at 43 CFR § 10.1(d) (see Section 4.3.1.7), specify that the preferences and requests of culturally affiliated lineal descendants or Indian Tribes, as defined at 43 CFR § 10.2, also known as federally recognized tribes, will take precedence over the preferences and requests of culturally affiliated, non-federally recognized California Indian Tribes, as defined at H&SC 8012(c). Requests regarding the treatment of cultural items made by non-federally recognized tribes will be honored to the extent possible if permitted by culturally affiliated lineal descendant(s) or federally recognized tribe(s). In instances where reasonable requests cannot be honored, Caltrans will continue consultation with the requesting culturally affiliated lineal descendant or tribe, federally recognized or non-federally recognized, to seek an amenable solution.

When a federally recognized tribe offers support to a non-federally recognized tribe seeking repatriation under NAGPRA, Caltrans will honor requests for joint consultation meetings or claims, provided both tribes are in agreement.

4.3.1.1 Repatriation Authority

Caltrans has the authority and responsibility to repatriate ancestors and cultural items from Caltrans-controlled collections to culturally affiliated federally recognized tribes under NAGPRA and culturally affiliated California Indian Tribes under CalNAGPRA.

4.3.1.2 District Repatriation Points of Contact (POC)

Per Section 1.3.1.2 (District Roles) of Chapter 1 of SER Volume II, the role of the District POC is to lead the district’s repatriation efforts in compliance with NAGPRA and CalNAGPRA for Caltrans-controlled collections. The current POC for each district is listed on the Caltrans NAGPRA-CalNAGPRA website. District Repatriation POCs initiate and engage in consultation with California Indian Tribes regarding the identification of cultural items and the repatriation of ancestral remains and cultural items through either the NAGPRA and/or CalNAGPRA processes. The District Repatriation POC works directly with the Statewide Collections Coordinator and may coordinate with repositories housing Caltrans-controlled archaeological collections. Exhibit

4.1 (Roles and Responsibilities) provides more information on collections and repatriation roles and responsibilities.

4.3.1.3 NAHC CalNAGPRA Database

The District Repatriation POCs are responsible for creating and managing district summary and inventory entries in the NAHC CalNAGPRA Database. All Caltrans-controlled collections must be entered in compliance with H&SC 8013(d) and (i). In even numbered years (2026, 2028, 2030, etc.), the Statewide Collections Coordinator will request that the District Repatriation POCs verify that their collection entries in the NAHC CalNAGPRA Database are accurate and current.

4.3.1.4 The National NAGPRA Program

The Statewide Collections Coordinator is responsible for notifications and communication with the National NAGPRA Program. All Caltrans-controlled collections must have summaries, and inventories as appropriate, on file with the National NAGPRA Program in compliance with 43 CFR §§ 10.9(a)(2) and 10.10(d)(2). If requested, the District Repatriation POCs will assist the Statewide Collections Coordinator with this effort.

4.3.1.5 Identification of Ancestors and Cultural Items

Under NAGPRA and CalNAGPRA, Caltrans is required to repatriate ancestors and cultural items, which are defined at 43 CFR § 10.2 and H&SC 8012(g). As noted in Section 4.1.1 (Terms and Definitions), “cultural items” is an all-encompassing term for funerary objects, sacred objects, and objects of cultural patrimony. Caltrans acknowledges that culturally affiliated tribes retain traditional and cultural knowledge that is expert opinion, and as a valid line of evidence, it does not need to be explained or justified in the identification of cultural items subject to repatriation under NAGPRA or CalNAGPRA. Furthermore, this is enforced by the definitions of “Native American Traditional Knowledge” found at 43 CFR § 10.2 and the definition of “Tribal Traditional Knowledge” found at H&SC 8012(p). If a dispute arises regarding the identification of cultural items, the District Repatriation POC will follow the dispute resolution process in Sections 4.1.3 (Dispute Resolution) and 4.3.2.7 (Disputes and Competing Claims), as appropriate.

Ancestors and Associated Funerary Objects

Ancestors and associated funerary objects are identified through coroner determination, archaeological context, oral tradition, folklore, historic and ethnographic information, and/or

TTK through tribal consultation. When identified, they are documented in an inventory filed with the National NAGPRA Program and an inventory uploaded to the NAHC CalNAGPRA Database. In addition, consultation invitation letters must be sent to potentially culturally affiliated tribes providing the itemized list or draft inventory and soliciting repatriation consultation (see Section 4.3.2.2). NAGPRA and CalNAGPRA inventories must include the required information as described at 43 CFR § 10.10(a) and H&SC 8013(b), respectively.

Unassociated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony

Unassociated funerary objects, sacred objects, and objects of cultural patrimony are identified through archaeological context, oral tradition, folklore, historic and ethnographic information, and/or TTK through tribal consultation. When identified, they are documented in a summary filed with the National NAGPRA Program and a summary uploaded to the NAHC CalNAGPRA Database. In addition, consultation invitation letters must be sent to potentially culturally affiliated tribes and provide the summary and solicit repatriation consultation (see Section 4.3.2.2). NAGPRA and CalNAGPRA summaries must include the required information as described at 43 CFR § 10.9(a) and H&SC 8013(c), respectively.

4.3.1.6 Cultural Affiliation

The determination of cultural affiliation identifies which lineal descendant, tribe, or tribes have the right to request the repatriation of ancestors and/or cultural items from a specific collection under NAGPRA and/or CalNAGPRA. Culturally affiliation is determined in compliance with 43 CFR § 10.3 and H&SC 8012(n). Per H&SC 8013(a), the NAHC has also developed a “list of all California Indian tribes and their respective state aboriginal territories.” In addition to the consultation process with potentially culturally affiliated tribes, for each individual collection, Caltrans utilizes the following lines of evidence to determine cultural affiliation: the most current version of the NAHC list, the [Indigenous Digital Archive \(IDA\) Treaties Explorer](#), geography, archaeology, ethnographies, anthropological and historic documentation, folklore, oral history, biological data, kinship, linguistics, and TTK.

Approximately 98% of Caltrans controlled collections can be traced to a recorded archaeological site with an exact geographic location. The remaining estimated 2% can be connected to a specific region of California, and in most cases, to a county.

All Caltrans-controlled collections housing tribal ancestors and cultural items can be culturally affiliated to a federally recognized tribe, a California Indian Tribe, and/or a regional group of tribes.

In instances when multiple tribes are determined to be culturally affiliated with a collection, the District Repatriation POC will follow the consultation process described in Section 4.3.1.7 (Tribal Consultation) for all culturally affiliated tribes and consult with all responding tribes. If multiple tribes express interest in repatriating the same ancestors or cultural items, the District Repatriation POC will continue consultation, and if requested, offer resolutions such as joint repatriation, as described at 43 CFR § 10.3 (d). More information can be found on dispute resolution in Sections 4.1.3 (Dispute Resolution) and 4.3.2.7 (Disputes and Competing Claims).

In compliance with 43 CFR § 10.3(c), Caltrans documents the cultural affiliation of collections in a standalone Summary of Evidence document or as a part of the Caltrans Repatriation Reporting Form (see Section 4.3.2.10). This information can be requested by culturally affiliated tribes, or any tribe that is later determined to be culturally affiliated but was not originally identified as culturally affiliated in the Summary of Evidence or Caltrans Repatriation Reporting Form. If a dispute arises regarding Caltrans' cultural affiliation determination, the District Repatriation POC will follow the dispute resolution process in Sections 4.1.3 (Dispute Resolution) and 4.3.2.7 (Disputes and Competing Claims), as appropriate.

4.3.1.7 Tribal Consultation

It is the District Repatriation POC's responsibility to engage in repatriation tribal consultation. District Repatriation POCs must keep detailed consultation logs regarding repatriation outreach and consultation. In accordance with 43 CFR § 10.1(d), 43 CFR §§ 10.9 and 10.10(c), H&SC 8013(b)(1)(C)(ii) and (c)(2), consultation logs should include the tribes' preferences on proposed timelines and methods for repatriation consultation, as well as the contact information for all authorized tribal representatives, traditional religious leaders, and any known lineal descendants who may participate in consultation. Logs should also include tribal identification of cultural items subject to repatriation and tribes' preferences for treatment and handling of cultural items and ancestors.

Since 1990, Caltrans has engaged in tribal outreach regarding specific collections or repatriation efforts. Throughout 2021, 2022 and 2023, all districts provided CalNAGPRA tribal consultation initiation letters to potentially culturally affiliated tribes, both federally recognized and non-

federally recognized, for all Caltrans-controlled collections in compliance with H&SC 8013(b)(2) and (c)(2).

In July 2024, all districts provided NAGPRA consultation initiation letters, including NAGPRA summaries and itemized lists, to all potentially culturally affiliated tribes, both federally recognized and non-federally recognized, for all Caltrans-controlled collections in compliance with 43 §§ CFR 10.9(b) and 10.10(b) with proof of receipt in accordance with 43 § CFR 10.1(e).

Caltrans will renew these invitations to engage in NAGPRA and CalNAGPRA repatriation consultation with non-responsive tribes in even numbered years (2026, 2028, 2030, etc.). All letters must meet the requirements at 43 § CFR 10.1(e), as well as at 43 §§ CFR 10.9(b) and 10.10(b). The District Repatriation POCs must ensure that they are consulting with tribally authorized government officials and tribally authorized traditional religious leaders and document all consultation efforts and outcomes in a Tribal Consultation Log (see Section 4.2.3). The authorized tribal representatives may have been previously established with the District via long standing consultation relationships and documented using the Caltrans Tribal Communications Preferences Sheet template, or they may be established during the initial repatriation consultation communications. As needed, the District Repatriation POC may request the tribal chairperson or tribal council provide the authorized representatives and their contact information.

Through the consultation process, all Caltrans documentation regarding collections, including site records, reporting, and catalogs, is available to culturally affiliated tribes and must be provided to tribes upon request. Letters and emails, as well as meeting agendas and notes, must be retained on file with the district. Consultation logs can, and should be, shared with consulting tribes for their review and input to ensure accuracy.

Duty of Care

NAGPRA's Duty of Care at 43 § CFR 10.1(d), as interpreted by the NAGPRA Program's "[Guidance on NAGPRA – Duty of Care FAQ](#)," requires that Caltrans "care for, safeguard, and preserve" all ancestors or cultural items within its control, possession, or custody.

In alignment with the Duty of Care requirements, through the consultation process with each culturally affiliated tribe, Caltrans must obtain the free, prior, and informed consent from a culturally affiliated federally recognized tribe, tribes, or lineal descendant before allowing

handling, access, research, or exhibition of ancestors or any items that may be identified as cultural items. Where possible, in collaboration with the repository, Caltrans must seek to meet all reasonable tribal preferences for treatment and storage. Preferences and requests expressed by California Indian Tribes that are not federally recognized must be deferred where there is a culturally affiliated federally recognized tribe until the federally recognized tribe consents. If reasonable requests cannot be honored, the District Repatriation POC will continue consultation with the requesting culturally affiliated tribe, federally recognized or non-federally recognized, to seek an amenable solution.

Confidentiality

Section 3.4.13 (Confidentiality and Data Sharing Responsibilities) of Chapter 3 and Section 5.3.6 (Confidentiality of Information) of Chapter 5 of SER Volume II address the sensitive nature of cultural resources information, laws that protect such sensitive information, and Caltrans' guidance on ensuring tribal confidentiality in the consultation and project delivery processes.

Both NAGPRA and CalNAGPRA at 43 § CFR 10.2 and H&SC 8012(e), respectively, cite that tribes may have a potential need to keep information shared in the consultation process confidential. Caltrans assumes all information provided during repatriation consultation is confidential unless otherwise specified by authorized tribal representatives. Caltrans shall not disclose to consulting tribes another tribe's interest in repatriation unless given express permission.

Under NAGPRA, tribal RFR/Claims are kept confidential until and unless a NIR is published in the Federal Register, as Caltrans is required to disclose the requesting tribe in the notice, or if the tribe provides permission.

Under CalNAGPRA, tribal RFR/Claims remain confidential until the tribe submits a formal claim letter to Caltrans and the NAHC. At that time, the NAHC is required to post the RFR/Claim on their website in compliance with H&SC 8015(a). Caltrans has no authority over the confidentiality of an RFR/Claim following submittal of a formal claim letter and publication in the NAHC CalNAGPRA Database.

Tribal Reimbursement

Both NAGPRA and CalNAGPRA recognize the importance of TTK in the repatriation process and clearly state that TTK is expert opinion. Section 3.4.7.1 (Participation of Tribal Experts) of Chapter 3 of SER Volume II describes the importance of Tribal Expertise. Caltrans and the

federally recognized and/or non-federally recognized tribe determine the participation of Tribal Experts in visiting repositories for the purposes of viewing/documenting the condition of collections, identifying cultural items, as well as in advising on and participating in catalog verifications (see Section 4.3.2.5), overseeing transfers or reunifications (see Section 4.3.1.8), reburials (see Section 4.3.2.9), and other repatriation activities, during the repatriation consultation process.

Per applicable fiscal and acquisition authorities, Caltrans may provide compensation to Tribal Experts in the same manner it would procure expert opinions or services from other specialized sources. Though not required by NAGPRA or CalNAGPRA, Caltrans has determined tribal reimbursement appropriate to ensure that tribal expertise is integrated into the repatriation process. Exhibit 3.4 (Guidance on Reimbursement for Tribal Expertise) of SER Volume II provides additional guidance on compensation methods for Tribal Expertise.

4.3.1.8 Collaboration with Other Institutions

Caltrans takes every opportunity to collaborate and partner with other institutions which may have similar or overlapping repatriation goals to reduce redundancy and burdens on consulting tribes and ensure efficient repatriation. At the request and with the consent of culturally affiliated federally recognized tribes, this may include access to collections, reunification of materials from the same collection/recovery event, joint or coordinated tribal consultation, transfer of collection control to another institution, repository visits, NAGPRA notices, or reburial efforts.

Caltrans Collections from Non-Caltrans Lands

Though Caltrans does not have any responsibility or authority over collections recovered from outside of Caltrans right-of-way under NAGPRA or CalNAGPRA, the Statewide Collections Coordinator and District Repatriation POCs are available to assist federal and local agencies with the repatriation of Caltrans collections.

Collections with Split Ownership/Control

Caltrans supports the treatment of archaeological sites as a single resource regardless of landownership or collection control. Archaeological sites may span multiple property owners, and thus a single collection can be controlled by multiple agencies or multiple collections from the site may be controlled by different agencies. In instances where the control of collections is

split between multiple agencies, the District Repatriation POC should coordinate with the other agencies and repositories, as well as the Statewide Collections Coordinator, to ensure that ancestors and/or cultural items in the collections are repatriated together whenever possible.

Research Requests for Collections Potentially Housing Tribal Ancestors or Cultural Items

No research requests will be approved for tribally associated collections without the consent of the culturally affiliated tribe(s). DNACs, as identified in Section 1.3.1.1 (District Roles) of Chapter 1 of SER Volume II, and consulting tribes should discuss research request preferences as a part of the overarching coordination described in Section 3.6 (Tribal Government Diplomacy and Early Coordination) of Chapter 1 of SER Volume II. Tribes' preferred protocols should be documented by the DNAC, and updated as appropriate, using the Caltrans Tribal Communications Preferences Sheet template. Protocols may include a range of actions, such as a blanket rejection of all research requests, requirements for Caltrans to address in reviewing research requests before they are submitted to the tribe, Caltrans submitting all research requests to the tribe without prior review, or full deferral to Caltrans or other culturally affiliated tribes to approve or reject research proposals.

Research requests for curated Caltrans-controlled collections should be jointly submitted to the DEBC and the Statewide Collections Coordinator. The research request proposal must include the overall need and purpose of the project, the research questions, the data requirements needed to address the research questions, the data being sought from the collection, the types of analysis proposed, as well as identifying all personnel that will be involved in the research effort, the research funding source(s), any need to transfer or loan artifacts, and an anticipated timeline.

If a research request may contain potential tribal ancestors or cultural items, and a culturally affiliated tribe has not provided preferred protocols for research proposals as described above, Caltrans will implement the following process. The DEBC and Statewide Collections Coordinator must consult with PQS certified as a Prehistoric Archaeological Co-Principal Investigator, Prehistoric Archaeological Principal Investigator, Historical Archaeological Co-Principal Investigator, or Historical Archaeological Principal Investigator, as appropriate, when reviewing a research proposal (see Section 1.3.4 of Chapter 1 of SER Volume II). Once the PQS' assessment is complete, the district must initiate consultation with all culturally affiliated tribes, both federally recognized and non-federally recognized, providing the research proposal, the PQS' assessment, and any other pertinent information. Pursuant to 43 CFR § 10.1(d), a research

proposal for tribally associated collections cannot be approved without the free, prior, and informed consent from a lineal descendant or tribe that meets the definition of Indian Tribe at 43 CFR § 10.2. If a non-federally recognized tribe would like to approve a research proposal, Caltrans must still obtain consent from a lineal descendant or Indian Tribe. Caltrans will follow through with these requests with both parties.

4.3.2 Caltrans Repatriation Process

4.3.2.1 Identification of Current Caltrans-controlled Collections

Caltrans' ongoing efforts to identify, locate, and track Caltrans-controlled collections has resulted in the identification of approximately 1000 Caltrans-controlled collections housed at over 30 repositories in California and Nevada, as well as at district offices. Information about collections is retained and tracked in the CCRD (see Section 4.2.2).

Through continued contact with repositories throughout California, as well as ongoing review of past Caltrans project reports, the Statewide Collections Coordinator and District Repatriation POCs may identify new Caltrans-controlled collections that were not previously known. When a new Caltrans-controlled collection is identified, the District Repatriation POC must:

- Immediately notify the State Collections Coordinator;
- As soon as possible, create a new entry in the CCRD Collections Module;
- Within 90 days, in compliance with H&SC 8013(i), create a new summary (and inventory, if applicable) entry in the NAHC CalNAGPRA Database; and
- For collections that may house cultural items, within 7 months, in compliance with at 43 CFR § 10.9(b), initiate tribal consultation with all potentially culturally affiliated tribes; or
- For collections that house ancestors and associated funerary objects, as soon as possible, in compliance with at 43 CFR § 10.10(b), initiate tribal consultation with all potentially culturally affiliated tribes.

The Statewide Collections Coordinator must:

- For collections that may house cultural items, within 6 months, provide the National NAGPRA Program a summary in compliance with 43 CFR § 10.9(a)(2).
- For collections that house ancestors and associated funerary objects, within in 2 years, provide the National NAGPRA Program an inventory in compliance with 43 CFR § 10.10(d)(2).

4.3.2.2 Invitations to Consult

Under NAGPRA, per 43 §§ CFR 10.9(c) and 10.10(c), Caltrans invitations to consult must request the following from tribes:

- “Preferences on the proposed timeline and method for consultation; and
- The name, phone number, email address, or mailing address for any authorized representative, traditional religious leader, and known lineal descendant who may participate in consultation.”

Consultation must seek to address the identification of lineal descendants, culturally affiliated tribes, and cultural items, as well as the tribe’s Duty of Care preferences (see Section 4.3.1.7).

Under CalNAGPRA, Caltrans must consult with tribes on the handling and treatment of ancestors and cultural material per H&SC 8013(b)(1) and (c)(2) and solicit the tribes’ concurrence on preliminary and final inventories and summaries per H&SC 8013(j)(1) and (2). Caltrans must also determine the cultural affiliation through consultation, pursuant to H&SC 8013(b)(1)(C)(ii) and (c)(2).

4.3.2.3 Who May Request Information and Eligible Claimants

NAGPRA and CalNAGPRA both identify different categories of individuals and tribes who are eligible to request information and place RFR/Claims for the return of ancestors and cultural items. An individual or tribe must meet the requirements under the applicable law to engage in the repatriation process.

Lineal descendants

Under both NAGPRA and CalNAGPRA, a lineal descendant is defined at 43 CFR § 10.2. If a lineal descendant seeks to place a NAGPRA and/or CalNAGPRA RFR/Claim, this is a special circumstance addressed on a case-by-case basis by the District Repatriation POC in close coordination with the Statewide Collections Coordinator.

Indian Tribes

Indian Tribes are defined under NAGPRA at 43 CFR § 10.2. These are federally recognized tribes, the names of which are published nearly annually in the Federal Register, and the Bureau of

Indian Affairs' Office of Indian Services, maintains a [Tribal Leaders Directory](#) on its webpage. Federally recognized tribes may place RFR/Claims under NAGPRA and CalNAGPRA.

California Indian Tribes

California Indian Tribes are defined under CalNAGPRA at H&SC 8012(c). In accordance with H&SC 8013(a), the NAHC has developed a "list of all California Indian tribes and their respective state aboriginal territories." Such tribes can place RFR/Claims under CalNAGPRA. Tribes that are not federally recognized can only place a direct RFR/Claim under CalNAGPRA. However, non-federally recognized tribes may partner with culturally affiliated federally recognized tribes to place an RFR/Claim under NAGPRA. The District Repatriation POCs and the Statewide Collections Coordinator must seek to identify and support these opportunities.

4.3.2.4 Repository Visits

Caltrans is not a repository; Caltrans-controlled collections are housed with repositories throughout California and Nevada. Caltrans encourages and supports tribal representatives visiting and viewing collections as a part of repatriation consultation and the identification of cultural items. However, as described in Section 4.3.1.7 (Tribal Consultation), the NAGPRA Duty of Care requirements mean that Caltrans cannot allow access to, or handling of, ancestors or collections that may house cultural items by, or at the request of, non-federally recognized tribes if there is a culturally affiliated federally recognized tribe until the federally recognized tribe consents.

Coordinating and scheduling tribal visits with repository staff is the responsibility of the District Repatriation POC. Timing of visits is dependent on repository staff availability. All repository visits, whether virtual or in-person, should have a qualified Caltrans representative present.

Virtual Visits

In instances where tribal representatives wish to view collections or specific items but are unable to travel to the repository, the District Repatriation POC coordinates a video meeting with the tribe and the repository. When a tribe requests a virtual visit, the District Repatriation POC must consult with the tribe on their goals for the visit and identify any treatment protocols. The District Repatriation POC then works with the repository to ensure that all reasonable requirements can be met. Virtual visits may include repository staff handling and showing tribal

representatives specific items, providing a tour of the facility, or performing other tasks within reason at the request of the tribe.

In-person Visits

When a tribe requests a repository visit, the District Repatriation POC must consult with the tribe on their goals for the visit and identify any treatment requirements, such as the need to perform ceremony (which may require a designated area to burn sage or other medicines), and handling protocols, such as having cloth gloves available. The District Repatriation POC should consult directly with the culturally affiliated tribe(s) to obtain accommodation requests or preferences ahead of in-person visits, including the disclosure of repository conditions the tribe(s) may need to make such requests, such as if ancestors are known to be present in the building or if there are Americans with Disability Act (ADA) concerns in accessing the physical collections without moving them. The District Repatriation POC then works with the repository to ensure that all reasonable requirements can be met, such as the availability of water or a quiet, private, environmentally controlled room to view the collection and identify cultural items. Where necessary and possible, Caltrans will supply needed materials. After the District Repatriation POC has confirmed all of the tribe's needs and ensured that they will be reasonably met, they coordinate and schedule the visit.

4.3.2.5 Special Repatriation Considerations

District Repatriation POCs must take into account the following considerations . While tribes are able to submit an RFR/Claim at any time (see Section 4.3.2.6), both NAGPRA and CalNAGPRA have firm deadlines once an RFR/Claim is placed that Caltrans must comply with. District Repatriation POCs should create opportunities for the following items to be discussed early on during tribal repatriation consultation. As described in Section 4.3.1.7 (Tribal Consultation), the NAGPRA Duty of Care requirements mean Caltrans cannot handle or treat collections that may house ancestors or cultural items without the consent of a culturally affiliated federally recognized tribes.

Catalog Verification

Through the repatriation consultation process, the District Repatriation POC will work with tribes on a collection-by-collection basis to assess if a catalog verification or catalog creation is needed and, if so, the tribe(s) preferred process and protocols. Because collections are not

static and over time cultural items may have been removed or lost without documentation, it may be important to identify any missing cultural items so that Caltrans and the repository can look for them in earnest and ensure they are returned. In other circumstances, cultural items that were not part of the original collection may have been mistakenly included, do not belong and need to be removed before the collection is repatriated. For cultural items that are identified as not belonging to the collection, there must be diligent search for the origin of the cultural items, and if possible, they must be returned to the appropriate collection.

If culturally affiliated tribes seeking repatriation decline a catalog verification, the District Repatriation POC will notify the tribe of Caltrans' concerns and ask the tribe to acknowledge that they understand cultural items may be missing or mistakenly included in the collection. Even if a culturally affiliated tribe declines a catalog verification, Caltrans and the repository will provide notification if any missing, mislabeled, misplaced, or miscategorized cultural items are later identified.

It is the District Repatriation POC's responsibility to ensure that a catalog verification or catalog creation is carried out in accordance with the culturally affiliated tribe's request and guidance. All tribal treatment and handling protocols must be reasonably followed. Below are examples of varying levels of catalog verifications that might be requested by the tribe(s):

- Low Level (Basic) – Only check catalog numbers; do not open artifact bags.
- Medium Level (Moderate) – Check catalog numbers; check material/object type.
- High Level (Intensive) – Check catalog numbers; check material/object type; weigh and count items.

All catalog verifications or catalog creations must be documented in the Catalog Verification Reporting Form, which is attached to the Caltrans Repatriation Reporting Form (see Section 4.3.2.10) along with the catalog. The Catalog Verification Reporting Form, catalog(s), and completed Caltrans Repatriation Reporting Form will be shared with the consulting tribe(s). For cultural items that are identified as missing, it is the District Repatriation POC's responsibility to ensure that they are searched for in earnest. Missing cultural items that cannot be located before repatriation must be documented in the NAGPRA Federal Register notice and/or the NAHC CalNAGPRA Database, as appropriate, and the Transfer of Control. For cultural items that are identified as not belonging to the collection being verified, there must be diligent search for the origin of the cultural items, and if possible, they must be returned to that collection.

Osteological Analysis of Faunal Material

Consulting tribes may request to have the faunal remains reanalyzed by a qualified osteologist, osteoarchaeologist, or forensic anthropologist, if they do not agree with the original osteological analysis or if they want to be certain that no ancestors were mistakenly identified as faunal remains. It is the District Repatriation POC's responsibility to work with the tribe and repository to arrange for this analysis. To the extent possible, Caltrans will ensure that the tribe(s) approves of the qualified professional (PQS or consultant) selected to complete the faunal analysis.

Reunification of Special Study Samples

During the original recovery and reporting effort, or in support of additional research, items or fragments of items may have been sent for special studies, such as obsidian hydration, obsidian sourcing, starch or protein residue analysis, DNA or isotope testing, flotation, or radiocarbon dating. It is the District Repatriation POC's responsibility to identify if items might have been sent for special studies. If they were not returned to the collection, the laboratory that did the testing must be contacted to locate the samples. Should the laboratory still have possession of the items, the District Repatriation POC must work with the laboratory and the repository, and continue consultation with the tribe(s), to have the items returned to the collection before repatriation.

Hazardous Substances at Repositories

NAGPRA, at 43 CFR §§ 10.9(a)(1)(v) and 10.10(a)(6), requires that museums disclose to tribes the potential presence of hazardous substances on ancestors or cultural items. Caltrans does not have a history of treating recovered archaeological material with hazardous substances, such as arsenic used for the preservation of organic materials. However, the repositories that house Caltrans collections may have utilized such substances or the facilities storing collections may have contaminated the archaeological collections with mold, lead dust, rodent droppings, or other hazardous substances. In other circumstances, hazardous substances may also be identified within the Caltrans right-of-way which may have impacted collections, which is further discussed below.

Before repatriation, the District Repatriation POC must work with the repository to understand if the collection is contaminated with hazardous substances. With consent from the culturally

affiliated tribe(s), the repository, and Caltrans hazardous waste specialists, chemical testing may be conducted to identify the presence and levels of such substances. All testing results and remediation recommendations will be reviewed by Caltrans hazardous waste specialists. If hazardous substances above a safe level are present on ancestors or cultural items, Caltrans will work with the repository and consulting tribes to remediate the hazard with tribal consent.

Aerially Deposited Lead (ADL)

Though Caltrans has not traditionally treated archaeological collections with hazardous substances, aerially deposited lead (ADL) may be present in the soils from which items were removed. Soils along the right-of-way may have elevated concentrations of ADL resulting from the use of leaded gasoline between approximately 1920 and 1992. In these circumstances, it is possible that unsafe levels of ADL may have contaminated the archaeological material. The District Repatriation POC must follow the ADL Contamination Risk Assessment and Testing for Archaeological Material Standard Operating Procedure (Exhibit 4.4) if concerns regarding ADL arise in consultation with the tribe(s).

4.3.2.6 Repatriation RFR/Claims Process

Caltrans' RFR/Claims process is outlined in Exhibit 4.2 Repatriation Process Flowchart and described in detail in Exhibit 4.3 Repatriation Claims Process.

Tribes are able to submit an RFR/Claim at any time, and Caltrans seeks repatriation consultation as early as possible to ensure that all concerns are identified and addressed, as previously described in Section 4.3.2.5 (Special Repatriation Considerations). NAGPRA and CalNAGPRA both have firm deadlines once an RFR/Claim is placed, so Caltrans seeks to address all considerations during the tribal consultation process before the RFR/Claim.

Once cultural items have been identified by the culturally affiliated tribe(s) through TTK (see Section 4.3.1.5), Caltrans may provide support and assistance to tribe(s) in preparing the formal RFR/Claim letter if requested. Per the Caltrans RFR/Claims Process, the letter must contain key information required by NAGPRA and CalNAGPRA. However, the details of the letter should not be a barrier that prevents tribes from repatriation.

Once Caltrans receives the RFR/Claim letter, the District Repatriation POC, the DEBC, and CSO, will review the letter, and the District Repatriation POC must respond in writing within 30 days. If there are no concerns or objections to the RFR/Claim, the District Repatriation POC, with the

support of the Statewide Collections Coordinator, will continue repatriation following the Caltrans RFR/Claims Process to ensure compliance with NAGPRA and/or CalNAGPRA. Under NAGPRA, a NIR is submitted to the National NAGPRA Program for posting in the Federal Register in compliance with 43 CFR §10.9(f). Under CalNAGPRA, within the NAHC CalNAGPRA Database, the inventory and/or summary is moved from draft to preliminary, and then preliminary to final by the District Repatriation POC, in compliance with H&SC 8013(j).

For the return of ancestors and associated funerary objects under NAGPRA, once a federally recognized culturally affiliated tribe indicates that consultation on an itemized list is complete, Caltrans will consider this a complete inventory and provide it to the National NAGPRA Program in accordance with 43 CFR § 10.10(d). Within six months, Caltrans will then submit an NIC to the National NAGPRA Program for posting in the Federal Register and receive and consider RFR/Claim letters per 43 CFR §§ 10.10(e) and 10.10(f) as described above.

4.3.2.7 Disputes and Competing RFR/Claims

NAGPRA and CalNAGPRA have separate processes for managing disputes and/or competing claims, found at 43 CFR §§ 10.9(h), 10.10(h), and 10.12(c), as well as H&SC 8016(d). As described in Section 4.1.4, should a dispute arise, the District Repatriation POC should work with the Statewide Collections Coordinator to resolve the issue, or support the tribes in resolving the issue, through continued consultation. If a resolution cannot be reached through the process in Section 4.1.4 (Dispute Resolution), of the dispute will be referred to the NAGPRA Review Committee or the NAHC, if appropriate. For competing RFR/Claims under NAGPRA that cannot be resolved through further consultation, Caltrans will follow the processes found at 43 CFR §§ 10.9(h) or 10.10(i).

4.3.2.8 Transfer of Control and Repatriation Statement

Under NAGPRA, once an RFR/Claim has been received and NIR or NIC has been published in the Federal Register for 30 days, Caltrans must provide a repatriation statement to the National NAGPRA Program to conclude the repatriation process pursuant to 43 CFR §§ 10.9(g) and 10.10(h). Under CalNAGPRA, once an RFR/Claim has been received and the summary or inventory has been moved to final in the NAHC CalNAGPRA Database, Caltrans must repatriate the ancestors and/or cultural items.

The District Repatriation POC documents all transfers of legal control to a tribe through a Transfer of Control that is signed by the DEBC and the tribe's authorized official. In addition to documenting what is being legally transferred, the document must also note what items are missing, unless the culturally affiliated tribe(s) declined to verify the contents of the collection(s) being repatriated.

After the legal transfer is complete, as needed, Caltrans will assist the tribe and repository in coordinating the physical transfer of the ancestors and cultural items.

4.3.2.9 Final Disposition of Repatriated Ancestors and Cultural Items

To the extent possible, upon tribal request, Caltrans supports tribes with the final disposition of ancestors and cultural items after control and/or possession have been transferred to the tribe. If the tribe prefers that the ancestors and/or cultural items remain at the repository for a period of time or in perpetuity, Caltrans can assist in establishing a Held-in-Trust Agreement (HTA) if the repository is amenable. If the tribe prefers that the ancestors and/or cultural items be curated with a different repository, Caltrans can assist in working with that repository to facilitate the Held-in-Trust Agreement and physical transfer. If tribes prefer that the ancestors and/or cultural items are reburied, Caltrans can assist, to the extent possible, in finding suitable land and physically performing the reburial, which may or may not be within Caltrans right-of-way. At the request of the tribe, Caltrans can assist in the preparation of a Sacred Lands File (SLF) submission for the reburial location, which the tribe can then review, revise as needed, and submit to the NAHC.

4.3.2.10 Caltrans Repatriation Reporting Form

Within 30 days of a completed repatriation, for each collection, the District Repatriation POC must document the entire repatriation process in the Caltrans Repatriation Reporting Form. This form serves as a cover document to the full repatriation package of recordation:

- Collection-specific tribal consultation log
- Catalog verification report with verified catalog
- Tribal RFR/Claim letter and Caltrans response letter
- Federal Register notice (NIC and/or NIR, as applicable)
- NAHC CalNAGPRA Database PDF of final summary and/or inventory
- Transfer of Control from Caltrans to tribe

- NAGPRA repatriation statement (as applicable)
- Map of the reburial location (as applicable/appropriate)

The Caltrans Repatriation Reporting Form is also where the Summary of Evidence can be captured in compliance with 43 CFR § 10.3 and H&SC 8012(n) (see Section 4.4.1.6).

Completed Caltrans Repatriation Reporting Forms must be shared with the receiving tribe(s), submitted to CSO, uploaded to the collection's CCRD Collection Module entry, and maintained on file with the district (see Section 4.2.2).