

# Chapter 4: Archaeological Collections Management and Repatriation

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## Chapter 4: Archaeological Collections Management and Repatriation

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### Preamble – Guiding Principles

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.

The chapter has two distinct parts. The first addresses the generation of new archaeological collections during the project delivery process, while the second addresses repatriation of existing archaeological collections. All guidance within this chapter is in direct alignment with NAGPRA and CalNAGPRA, as well as all other relevant environmental regulations. The intent is to outline Caltrans' compliance procedures and best practices for the treatment of archaeological collections and to support and uphold tribes' and other descendant communities' ability to access, benefit from, and make decisions about archaeological collections that are representative of their heritage. 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.

Given the sensitive, unique, and often personal nature of the archaeological collections to the tribes and other descendant communities, it is important that the guidance presented in this chapter is implemented by Caltrans Professionally Qualified Staff (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 project delivery and repatriation consultation.

- Compliance with all relevant environmental regulations requires consultation with tribes and other descendant communities. Decisions regarding archaeological collections, such as treatment and final disposition, can most effectively and respectfully be made through that consultation process.
- The terminology in this chapter is used for consistency within NAGPRA and CalNAGPRA, as well as other relevant environmental regulations. However, the terminologies and language may not be used or preferred by tribes and other descendent communities. 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 and descendant community has 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 project delivery and repatriation processes regarding archaeological collections and to conduct consultation with care, respect, and meaning.

## **4.1 Introduction**

Caltrans generates archaeological collections when cultural materials are recovered from the Caltrans right-of-way, as well as from federal, local, or private lands. These collections are curated in accordance with [36 CFR Part 79](#), "Curation of Federally Owned and Administered Archaeological Collections," and OHP's "[Guidance for the Curation of Archaeological Collections](#)." Caltrans' curation and consultation requirements are captured in Stipulation XIV of

the Caltrans Section 106 Programmatic Agreement<sup>1</sup> (106 PA) and PRC 5024 Memorandum of Understanding<sup>2</sup> (5024 MOU) and elaborated upon in this chapter.

Caltrans' collection 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.

#### **4.1.2 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 4.1.3 (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 a collection that was recovered in support of a Caltrans activity but is **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.

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<sup>1</sup> Programmatic Agreement Among the Federal Highway Administration, the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, the United States Army Corps of Engineers, and the California Department of Transportation Regarding Compliance with Section 106 of the National Historic Preservation Act as it Pertains to the Administration of the Federal-Aid High-way Program in California (2024).

<sup>2</sup> Memorandum of Understanding between the California Department of Transportation and the California State Historic Preservation Officer Regarding Compliance with Public Resources Code Section 5024 and Governor's Executive Order W-26-92 (2024).

**“Caltrans-controlled collection”** is a collection that was 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 archaeological material from one archaeological site and from one recovery event. 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.

**“Descendant communities”** refers to individuals, families, and communities with ties to a location, place, or community in California that inform their cultural identity through time, such as Chinese, Japanese, Azorean, Mexican, Polish, or Irish.

**“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.”**

#### **4.1.3 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.

##### **4.1.3.1 Curation Laws and Guidance**

**“Curation of Federally Owned and Administered Archeological Collections”** [36 CFR 79].

Issued in 1990 and revised in 2022, these regulations are authorized by the National Historic Preservation Act (NHPA) (1966), the Archaeological Resources Protection Act (ARPA) (1979), and the Reservoir Salvage Act (1960). They provide requirements and guidelines for the preservation of archaeological collections and data. Though these regulations only apply to archaeological collections recovered as a part of the compliance process under the aforementioned laws and the Antiquities Act, they are often referenced for best practices for treatment of archaeological collections even if 36 CFR 79 is not applicable.

**“OHP’s Guidance for the Curation of Archeological Collections”**. These guidelines were established by the State Historical Resources Commission in 1993 pursuant to PRC 5020.5(b). They provide procedures for managing and curating archaeological collections recovered in compliance with the California Environmental Quality Act (CEQA) and act as a supplement to 36 CFR 79.

##### **4.1.3.2 Repatriation Laws 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.

#### **4.1.4 Dispute Resolution**

Throughout the implementation of Sections 4.3 (Curating Archaeological Collections) and 4.4 (NAGPRA and CalNAGPRA Compliance), 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 project Professionally Qualified Staff (PQS) or 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:

- Under Section 4.3 (Curating Archaeological Collections), the District PQS will continue consultation with the tribe to resolve the dispute with the support of the DNAC and DEBC. Dispute resolution and decisions regarding the curation archaeological collections will be made in accordance with the applicable environmental laws and regulations described in Section 1.2 (Historic Preservation Laws and Regulations) of Chapter 1 of SER Volume II and any project-specific agreements.
- Under Section 4.4 (NAGPRA and CalNAGPRA Compliance), 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 4.4.2.7 (Disputes and Competing Claims).

If the dispute is between two or more consulting tribes:

- Under Section 4.3 (Curating Archaeological Collections), the District PQS, with the support of the DNAC and DEBC, will continue consultation individually with the tribes to determine if the tribes would prefer to seek resolution independent of Caltrans involvement or if Caltrans is able to assist the tribes in reaching a resolution. Decisions regarding the curation archaeological collections will be made in accordance with the applicable environmental laws and regulations described in Section 1.2 (Historic Preservation Laws and Regulations) of Chapter 1 of SER Volume II and any project-specific agreements.
- Under Section 4.4 (NAGPRA and CalNAGPRA Compliance), 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 4.4.2.7 (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 or other descendant communities.

### **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.**

| <b>Document Type</b>                                                                    | <b>Responsible Party</b>                  |
|-----------------------------------------------------------------------------------------|-------------------------------------------|
| 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)<br>or Notice of Inventory Completion (NIC) | District Repatriation POC or District DS  |
| <b>Document Type</b>                                                                    | <b>Responsible Party</b>                  |
| 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  |

#### **4.2.3 Tribal or Interested Parties Consultation Logs**

Cultural resources technical reports and environmental compliance documents must include, as a report attachment, a detailed log of key communications with tribal consulting parties and

descendant communities as interested parties concerning cultural resources compliance for a project, including decisions regarding the identification, evaluation, and treatment of historic properties (Section 3.4.12 of Chapter 3 of SER Volume II, Appendix 7 of the 106 PA, and Appendix 6 of the 5024 MOU). This also includes consultation and decisions regarding the excavation and recovery of archaeological material, artifact analysis and special studies, and collection disposition. Consultation logs should minimally capture the names, dates, roles/titles, communication methods, and subjects discussed, as well as any resolutions or decisions reached (See Exhibit 3.5 – Sample Consultation Log).

Additionally, 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.

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 and interested parties for their review and input to ensure accuracy.

### **4.3 Curating Archaeological Collections**

All proposed recovery and analysis of archaeological collections, as described in the following sections, should be planned and implemented in consultation with the culturally affiliated tribe(s) or other affiliated descendant communities. That consultation should include decisions on the final disposition of collections, including whether or not to curate, as outlined in Section XIV of the 106 PA/5024 MOU. Native American archaeological collections will never be curated without the express request and consent by culturally affiliated tribes (see Section 4.3.1.5).

The District PQS or the Repatriation POC is responsible for tracking and documenting when cultural material is relocated using transfer forms developed by CSO and available from the Statewide Collections Coordinator. Transfers should be documented anytime collections change custody (physical possession) or control (ownership). This includes, but is not limited to,

transfers from the consultant to Caltrans, from Caltrans to a tribe, from Caltrans to the landowner, or from the consultant to a repository.

If, as the result of consultation with the culturally affiliated tribe(s) or other affiliated descendant communities, a proposed archaeological field investigation involves the collection and curation of artifacts and materials from the site (including soil samples, faunal materials, etc.), the district must acquire a signed curation agreement with an appropriate repository before fieldwork begins. This ensures that there is a repository willing and able to accept the collection and that any repository-specific requirements can be met. Note that cultural material is not collected or curated during Extended Phase I testing, as outlined in Sections 5.4.6.6 (Collection of Artifacts) and 5.4.7 (Extended Phase I) of Chapter 5 of SER Volume II.

The DEBC must review, approve, and sign the curation agreement. Additionally, the district must notify CSO (either the Section 106 Coordinator or the Statewide Collections Coordinator) of the curation agreement or any other agreement regarding the final disposition of the collection, as required by Stipulation XIV of the 106 PA/5024 MOU.

#### **4.3.1 Curation Requirements**

Additional information about artifact analysis, collections processing, documentation, and curation can be found in Chapter 5 of SER Volume II. As described in Section 4.3.1.5 (Curating Native American Archaeological Material), Native American archaeological collections will never be curated without the express request and consent by culturally affiliated tribes.

##### **4.3.1.1 Repository Selection**

Collections should be curated with repositories that meet the standards described in 36 CFR Part 79, “Curation of Federally Owned and Administered Archaeological Collections,” and OHP’s “Guidance for the Curation of Archaeological Collections.” As often as is feasible, collections should be curated within close geographic proximity to the archaeological site from which they were recovered. If curation is being arranged on behalf of a landowner other than Caltrans, such as a local or federal agency, the curation methods and repository must adhere to that agency’s policies. Archaeological material belongs to the owner of the land from which it is recovered, so materials from private lands are legally the landowner’s property and may be retained by the landowner. Caltrans must obtain written permission from the property owner to curate the

recovered material or receive a transfer of control from the property owner giving Caltrans legal ownership.

#### **4.3.1.2 Cataloging, Housing, and Treatment**

As stated above, all proposed analysis of archaeological collections should be planned and implemented in consultation with the culturally affiliated tribe(s) or other affiliated descendant communities. The following describes best practices that may be modified as appropriate.

Before curation, most items coming from the field should be washed to properly analyze their macroscopic and microscopic attributes. Some delicate items such as faunal bone or shell may require dry-brush-only cleaning. Special consideration may be given to certain classes of artifacts that require different handling methods. For instance, residue analyses, including starch and protein, require artifacts to remain unwashed to extract the necessary samples. All special studies carried out on these materials should follow guidelines and practices consistent with the most current research within the respective field, and the decision to conduct such analysis should be made in consultation with the culturally affiliated tribe(s) or other descendant communities.

The removal and return of materials, as well as any samples entirely destroyed by special study testing, should be documented through correspondence or receipts from the laboratory, as well as in the catalog. Any remaining material from artifacts sent for special studies, such as flotation, starch or protein residue analysis, obsidian sourcing, obsidian hydration testing, and radiocarbon dating must be clearly noted in the catalog and returned to the collection with the laboratory analysis report. This is to ensure that these materials are not separated from the collection and are curated appropriately.

Cataloging artifacts should be conducted in a manner consistent with current standards and generally requires the creation of a sortable and searchable electronic database (e.g., Microsoft Access or Excel). Database formatting and terminology used are sometimes proprietary to each consulting firm and require a glossary or key to be made available as part of the report. Completed catalogs generally assign item-specific catalog numbers and, at a minimum, record the item count, description/identification, weight, material type, and provenience (unit and depth). Accession numbers provided by the repository where the collections will be housed should be included in the final catalog.

Artifacts from pre-contact sites are cataloged by morphological classification, although functional inferences can be made for certain items. Specific methods may vary between consultants, but typically, formal tools are counted individually. Smaller items that are encountered in mass quantities, such as flakes (debitage), shell and animal bone, and fire-affected rock, are counted as a lot specific to the level of the unit they came from, and in some cases, the weight of the material is documented.

Methods and viewpoints can differ between researchers; therefore, terminology can vary for certain classes of data. The categories used, however, should derive from existing and widely cited sources. If a certain tool type or data class within a collection exhibits unique characteristics that would require distinction from similar types (e.g., use wear, manufacture method), it should be explicitly discussed in the report. Otherwise, tools of the same class can exhibit morphological variation as a subclass. Any methods and justifications used to classify materials should be replicable and applicable by future researchers.

Post-contact artifacts may require different washing techniques. Alternate methods may be necessary for fragile artifacts, including, but not limited to, leather, wood, textiles, other organic materials, paper labels, applied color labels on glass, and stencils or other unglazed design elements on ceramics. Artifacts from post-contact sites are cataloged using functional classifications. This method of cataloging is also the first step of analysis. Rather than counting the artifacts, minimum number of vessels (MNV) or minimum number of individuals (MNI) is calculated. Chapter 5 of SER Volume II Exhibit 5.14 (Post-contact Archaeological Resources) provides more information of methods for cataloging post-contact collections.

Catalog numbers or other text should not be applied to items directly. This includes the use of lacquers or other labeling applications that contain potentially harmful chemicals and/or cannot be removed in the future. Items must be placed in archival quality bags with archival paper tags providing the catalog information. Note that historic plastics can off-gas and dissolve paper labels. To prevent this, place paper labels inside its own plastic bag within the artifact bag. All relevant reporting and associated documents should be printed on archival paper to be stored with the collection. Field records and notes that accompany the collection should also be curated with the repository.

#### **4.3.1.3 Discard Policies**

No Native American materials will be discarded without the consent of the culturally affiliated tribe(s). In the context of an archaeological collection, “discard” refers to materials that are recorded but not collected or collected but disposed of because retention of the material has no future value, either culturally or as data. Such materials may include unidentifiable rusted metal, non-diagnostic glass or ceramic fragments, or building materials such as window glass or bricks.

Discard policies must clearly define items to be discarded and how they will be recorded (e.g., quantified count and/or weight) and must be decided upon in consultation with the culturally affiliated tribe(s) or other descendant communities. Discarding must be consistent within each recovery effort, and the rationale for the discard policy should be described in detail in the Archaeology Evaluation Proposal (Exhibit 5.4), Data Recovery Plan (Exhibit 5.7), or Post-Review Discovery Plan (Exhibit 5.11).

Thorough consideration should be given to what materials will be collected during field excavation and retained or discarded during laboratory analysis. During fieldwork, record discarded materials by fully explaining and documenting the reasons for discard, with reference to the discard policy that was approved for the project in consultation with the culturally affiliated tribes(s) or other descendant communities. Once artifacts and ecofacts have been thoroughly catalogued for the purposes of data analysis, materials identified for discard in the discard policy may be appropriately discarded.

#### **4.3.1.4 Human Remains**

Human remains, or ancestors, and associated funerary objects are never curated. Detailed information on managing the discovery of human remains and associated funerary objects can be found in Section 3.4.10 (Discovery and Treatment of Human Remains and Associated Funerary Objects) of Chapter 3 of SER Volume II.

#### **4.3.1.5 Curating Native American Archaeological Material**

In alignment with the intent of NAGPRA and CalNAGPRA, Native American archaeological collections must never be curated under Caltrans’ control. As described below, curated Caltrans-controlled collections must be made available for repatriation consultation under both federal and state repatriation laws. If, through the project delivery consultation process under

applicable environmental laws and regulations, the consulting culturally affiliated tribe(s) request curation, Caltrans transfers control of the collections to the tribe(s) before the collection is curated using the Transfer of Control template. In alignment with NAGPRA's Duty of Care requirements at 43 CFR § 10.1(d), when curating Native American archaeological collections, Caltrans must ensure that the consulting culturally affiliated tribe(s) preferences for treatment, handling, and storage are understood and reasonably met (see Section 4.4.1.7). Additionally, the receiving repository may have specific requirements for the curation of Native American archaeological collections that must also be met.

#### **4.3.2 Research Requests**

No research requests will be approved for tribally associated collections without the consent of the culturally affiliated tribe(s). 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, as well as 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. In the unique instances where a transfer or loan is approved, the researcher will only be allowed to retain the items for one year from the date the temporary transfer form is signed, at which time an extension can be requested of the DEBC and the Statewide Collections Coordinator. Requestors must also provide a copy of their resume and information about any consultation they have conducted with the culturally affiliated tribe(s) or other descendant communities.

Caltrans does not always have the authority to reject or approve proposed research on Caltrans-controlled collections; that is dependent on the terms of the signed curation agreement. When Caltrans has the authority, or is afforded the opportunity, the DEBC consults with the Statewide Collections Coordinator and uses the following guidance to reject or approve the proposed research.

##### **4.3.2.1 Post-Contact Collections with No Tribal Association**

For research requests related to post-contact collections, the DEBC and Statewide Collections Coordinator must consult with PQS certified as Co-Principal Investigator or Principal Investigator in historical archaeology (see Section 1.3.4 of Chapter 1 of SER Volume II). The PQS' assessment

will be taken into consideration when making the final decision to reject or approve the research proposal. Additional information or actions may be requested of the prospective researcher, including consultation with the non-tribal descendant community. Final approval of a research request must be given by both the DEBC and the Statewide Collections Coordinator. If the research proposal is approved, it will be overseen by the DEBC with assistance from the Statewide Collections Coordinator if needed.

#### **4.3.2.2 Collections Potentially Housing Tribal Ancestors or Cultural Items**

DNACs, as identified in Section 1.3.1.1 (District Roles) of Chapter 1 of SER Volume II, and consulting tribes are encouraged to 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 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.

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, consent will still need to be obtained from a lineal descendant or Indian Tribe.

## **4.4 NAGPRA and CalNAGPRA Compliance**

### **4.4.1 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 claims is outlined in Exhibit 4.2 and described in Exhibit 4.3. The Caltrans 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 claims. 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 4.4.1.7), 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 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.

#### **4.4.1.1 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.

#### **4.4.1.2 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 Repatriation Point of Contact (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.

#### **4.4.1.3 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.

#### **4.4.1.4 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.

#### **4.4.1.5 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 4.1.2 (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 4.1.4 (Dispute Resolution) and 4.4.2.7 (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 4.4.2.2). 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 4.4.2.2). NAGPRA and CalNAGPRA summaries must include the required information as described at 43 CFR § 10.9(a) and H&SC 8013(c), respectively.

#### **4.4.1.6 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. Cultural 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 4.4.1.7 (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 4.1.4 (Dispute Resolution) and 4.4.2.7 (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 4.4.2.10). This information can be requested by culturally affiliated tribes, or any tribe that asserts cultural affiliation but was not 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 4.1.4 (Dispute Resolution) and 4.4.2.7 (Disputes and Competing Claims), as appropriate.

#### **4.4.1.7 Tribal Consultation**

As described in Section 4.4.1.2 (District Repatriation POC), it is the District Repatriation POC's responsibility to engage in repatriation tribal consultation. 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.

### **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 tribe determine the participation of Tribal Experts in visiting repositories for the purposes of identifying cultural items, as well as in advising on catalog verifications (see Section 4.4.2.5), overseeing transfers or reunifications (see Section 4.4.1.8), reburials (see Section 4.4.2.9), 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.

#### **4.4.1.8 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.

#### **4.4.2 Caltrans Repatriation Process**

##### **4.4.2.1 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).

##### **4.4.2.2 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 4.4.1.7).

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).

#### **4.4.2.3 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.

#### **4.4.2.4 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 4.4.1.7 (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.

#### **4.4.2.5 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 4.4.2.6), 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 4.4.1.7 (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. **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 items may have been removed or lost without documentation, it may be important to identify any missing items so that Caltrans and the repository can look for them in earnest and ensure they are returned. In other circumstances, 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 items that are identified as not belonging to the

collection, there must be diligent search for the origin of the items, and if possible, they must be returned.

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 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 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 4.4.2.10) along with the catalog. For items that are identified as missing, it is the District Repatriation POC's responsibility to ensure that they are searched for in earnest. Missing 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 items that are identified as not belonging to the collection being verified, there must be diligent search for the origin of the 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 in 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).

### **4.4.2.6 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, however, repatriation consultation is encouraged as early as possible to ensure that all concerns are identified and addressed, as previously described in Section 4.4.2.5 (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 4.4.1.5), 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.

#### **4.4.2.7 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).

#### **4.4.2.8 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.

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.

#### **4.4.2.9 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.

#### **4.4.2.10 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 submitted to CSO, uploaded to the collection's CCRD Collection Module entry, and maintained on file with the district (see Section 4.2.2).

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