

Standard Environmental Reference Volume 2 Chapter 4

Tribal Consultation - Comments and Responses

Caltrans Cultural Studies Office
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Background

As a part of the California Department of Transportation (Caltrans) Cultural Studies Office's (CSO) development of a new chapter for the [Standard Environmental Reference \(SER\) Volume 2: Cultural Resources](#), Chapter 4: *Archaeological Collections Management and Repatriation* (Chapter 4), CSO submitted the draft chapter to over 500 tribal representatives from 190 California Indian Tribes (Tribes) with a formal consultation and review request per the Tribal Consultation Plan that outlined CSO's process for tribal engagement for the Chapter 4 draft. The consultation plan also included four virtual engagement sessions hosted by CSO with tribal representatives in addition to individual meetings upon request and opportunities for written comments. The consultation period was from January 5, 2026, to April 3, 2026.

The new chapter addresses Caltrans' compliance with environmental and cultural laws and regulations and provides direct guidance to Caltrans cultural Professionally Qualified Staff (PQS) by outlining the procedures and best practices for managing archaeological materials recovered during Caltrans projects and the necessary and significant tribal consultation as part of the process, as well as the repatriation processes under the Native American Graves Protection and Repatriation Act (NAGPRA) and the California Native American Graves Protection and Repatriation Act (CalNAGPRA). The SER is Caltrans' statewide guidance to the [12 Caltrans Districts](#). The goal of this tribal consultation and review process is to ensure that tribal perspectives are appropriately incorporated into Caltrans' guidance on the management of archaeological collections and the respectful return of ancestors and cultural items in compliance with NAGPRA and CalNAGPRA.

Summary of Tribal Comments and Caltrans Responses

In accordance with the Tribal Consultation Plan, Caltrans reviewed and considered all tribal comments received before revising the Chapter 4 draft. Over seventy comments were received from representatives from eleven Tribes. Some Tribes requested that their comments remain confidential, and Caltrans is honoring those requests per the Tribal Consultation Plan by not including them in this summary.

Overall, Tribal comments received were primarily focused on the chapter clarifying Caltrans' decision-making process regarding the management of new archaeological collections, the repatriation process, and, specifically, Tribe's ability to elevate issues or concerns within the Department. The following provides a summary of all non-confidential comments received and Caltrans' responses. The comments, responses, and revisions made to draft Chapter 4 based on comments received are grouped by topic (e.g., Chapter 4 development or definitions included within the chapter).

Chapter 4 Development

Comments During discussion of the draft Chapter 4 at the March 5, 2026, Caltrans Cultural Studies Subcommittee (CSS) Meeting, tribal representatives expressed concern that draft Chapter 4 was developed without tribal input prior to its circulation to tribes on January 5, 2026. It was recommended that Caltrans utilize the previously scheduled March 19, 2026, engagement session as an opportunity to see if the attendees of that session would prefer to use it as a workshop to redevelop Chapter 4 or as a comment forum on the existing Chapter 4 draft.

Response The development of draft Chapter 4 was first discussed and tribal input on its preparation was requested at Caltrans CSS meetings held on March 7, 2025, and July 24, 2025, prior to its circulation to tribes on January 5, 2026; however, no tribal feedback was received. To address the concerns expressed at the March 5, 2026, meeting, as recommended by the tribal representatives, the March 19, 2026, engagement session was opened by offering attendees the option to use the session as a workshop opportunity to redevelop Chapter 4 or have the session act as a comment forum on the existing Chapter 4 draft. The tribal representatives opted to use the engagement session as a comment forum and provided feedback on the existing draft. Chapter 4 should be revised to include more tribal perspectives.

Draft Chapter 4 Revisions A new *Preamble – Guiding Principles* section has been added to the beginning of the chapter. This section clarifies the purpose and intent of Chapter 4 and incorporates feedback received from tribal representatives on the importance of including tribal perspectives in agency guidance.

Definitions

Comments Tribal representatives provided comments regarding the definitions in Section 4.2 Terms and Definitions, as well as in other places in the document, asking for clarification on the definition of “other descendant communities.”

Response The phrase 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.” Caltrans acknowledges that tribes are not considered “other descendent communities” and has included this phrase to refer to and differentiate non-tribal communities whose heritage is also represented in California archaeological collections.

Draft Chapter 4 Revisions The definition above for “other descendant communities” has been added to Section 4.2 Terms and Definitions.

Data Confidentiality and Records

Comments Several comments were received concerning the confidentiality of data provided to Caltrans, the Caltrans Cultural Resources Database (CCRD), and culturally affiliated tribes’ ability to obtain records. One comment noted that some tribes may want all records of repatriated collections to be deleted and all hard copies provided to the tribe.

Response Caltrans maintains strict confidential protocols for the storage and access of cultural records. Only Caltrans district cultural staff, who have been individually approved by the CSO CCRD Manager and meet the qualification of Professionally Qualified Staff (PQS) from Caltrans secure devices connected to the Caltrans internal network. This should be captured in the revised Chapter 4. Tribes are also provided with all available records and documents for collections to which they are affiliated. Caltrans considers all requests from tribes to delete or destroy data from archaeological collections on a case-by-case basis. However, such requests cannot conflict with Caltrans compliance with existing environmental laws and regulations. Previous studies and information about Caltrans-controlled collections recovered from Caltrans right-of-way provide essential background regarding the nature of state-owned resources subject to the environmental review process for future Caltrans projects to keep roadways operational, maintained, and improved. It also guides and supports efforts for the avoidance and minimization of potential impacts to those resources. These details should be added to the revised Chapter 4.

Draft Chapter 4 Revisions Clarification on the confidentiality of Caltrans data has been added throughout the document. Specifically, in Section 4.2.2 CCRD Collections Module, the following information has been added:

“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.”

The following statement has also been added to Section 4.2 Collection Documentation and Record Keeping: *“Upon request, Caltrans provides digital and hard copies of all records relating to archaeological collections to the affiliated tribes or other descendant communities.”* Additional text has been added to specific sections where records are generated that may be of interest to the culturally affiliated tribe(s).

NAGPRA and CalNAGPRA Compliance Accountability

Comments This topic received the highest volume of comments from responding tribal representatives. Although the comments varied, they largely focused on concerns about transparency in Caltrans’ decision-making process and dispute resolution, the identification of cultural items and cultural affiliation determinations, and ensuring Caltrans does not create requirements beyond those required under federal or state law, particularly with procedures outlined in draft Chapter 4 under “Pre-Repatriation Considerations” that explains Caltrans’ catalog verification process. One comment also expressly requested that Caltrans create a Repatriation Plan for all Caltrans collections that provides a schedule and timeline for repatriation.

Response An entirely new section that outlines the dispute resolution process Caltrans will follow if disputes arise during consultation or repatriation should be added to the revised Chapter 4. This will include the elevation process and explicitly identify Caltrans decision makers.

Caltrans relies on the expert opinion of culturally affiliated tribes as a valid line of evidence in the identification of cultural items subject to repatriation and acknowledges tribes’ traditional and

cultural knowledge that Caltrans PQS should not ask for further explanation or justification of during repatriation consultation.

Chapter 4 must align with existing environmental laws and regulations and must not create unnecessary requirements in the repatriation process. Caltrans acknowledges that sections of draft Chapter 4 outlining the catalog verification process can be interpreted as additional steps for tribes not prescribed in NAGPRA and CalNAGPRA and must be revised.

The request for Caltrans to develop a Repatriation Plan is being taken under advisement; however, an implementable and achievable Repatriation Plan is not feasible at this time. Because Caltrans is not a repository, does not have physical custody of Caltrans-controlled archaeological collections, and relies on tribal engagement to advance repatriation, the Department does not control the primary factors that move repatriation forward. However, Caltrans supports repatriation by regularly engaging with tribes, providing resourcing and direct contracting for resourcing available to culturally affiliated tribes, and maintaining dedicated repatriation staff at both the district and headquarter levels.

Draft Chapter 4 Revisions Language has been added throughout the document to specifically address the comments received on this topic. Section 4.1.4 Dispute Resolution has been added to detail Caltrans' dispute resolution processes for all possible disputes that may arise during archaeological collection management or the repatriation process.

The identification of cultural items has been addressed in the newly added *Preamble – Guiding Principles* at the beginning of the document, as well as in Section 4.4.1.5 Identification of Ancestors and Cultural items. Both sections now clearly state:

“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.”

Section 4.4.1.6 Cultural Affiliation has been substantially revised to address the comments received, including adding a paragraph on how Caltrans approaches consultation when multiple tribes are culturally affiliated to a collection. Clarifying language was also added to this section to capture dispute resolution.

Section 4.4.2.5 has been retitled from “Pre-Repatriation Considerations” to “Special Repatriation Considerations” and the introduction and Catalog Verification procedures have been re-written to clarify the intent of these considerations, benefits of such considerations to tribes, and how they align with NAGPRA and CalNAGPRA. It further acknowledges that District Repatriation Points of Contact (POC) must review all options for catalog verification available to tribes who must be afforded flexibility during repatriation consultation.

Generation of New Archaeological Collections

Comments These comments centered on Caltrans providing clarity in the chapter about culturally affiliated tribes' role in how newly recovered archaeological materials are treated under Section 4.3 Curating Archaeological Collections and Section 4.3.1.3 Discard Policies. Tribal

representatives emphasized the need to ensure that decisions about tribally associated archaeological collections are not made without consulting the appropriate tribe(s).

Response Caltrans acknowledges that consultation with culturally affiliated tribes is a significant and necessary part of the treatment and management of Native American cultural materials recovered as part of Caltrans projects, including any decisions made regarding discard policies. This needs to be emphasized in the revised Chapter 4 to clearly acknowledge tribal roles in consultation and decisions made about the treatment of Native American cultural material.

Draft Chapter 4 Revisions All sections of Section 4.3 Curating Archaeological Collections have been revised to emphasize consultation with culturally affiliated tribes at every step. Additionally, Section 4.3.1.3 Discard Policies has been revised to include a more thorough description of what is meant by “discard,” and to clearly state that, *“No Native American materials will be discarded without the consent of the culturally affiliated tribe(s).”*

Archaeological Collection Research Requests

Comments A variety of comments were received regarding Section 4.3.2 Research Requests, and in some cases the comments were conflicting. In most cases, the comments requested that all research requests concerning tribally associated collection are sent directly to the culturally affiliated tribe, not just the proposals that Caltrans deems viable. Overall, the comments highlighted the need for flexibility in the research request process so that each tribe has the ability to consult on research requests per individual tribal preferences.

Response Caltrans understands the need for flexibility in the research request process to support the individual preferences of each tribe and that unnecessary burdens should not be placed on tribes during this process. Tribal preferences for handling research requests should be captured and documented by Caltrans District Repatriation POCs early on so that they may be followed for future research requests. This should be more explicitly outlined in the revised Chapter 4, specifically in Section 4.3.2.2 Collections Potentially Housing Tribal Ancestors or Cultural Items under Section 4.3.2 Research Requests.

Draft Chapter 4 Revisions Section 4.3.2 Research Requests has been substantially revised, particularly Section 4.3.2.2 Collections Potentially Housing Tribal Ancestors or Cultural Items. This section directs Caltrans District Repatriation POCs to ensure that culturally affiliated tribes receive *all* research requests proposed to Caltrans and that they provide tribes opportunities to establish their own notification and communications preferences when Caltrans receives research requests. Additionally, language has been added to emphasize that research requests will not be approved for tribally associated collections without consent from culturally affiliated tribe(s).

Hazardous Substances

Comments Concern was expressed that Caltrans ensure culturally affiliated tribes are consulted and provide consent before any hazardous substance testing or remediation is conducted on cultural items.

Response Caltrans understands this concern and acknowledges that consent from the culturally affiliated tribe is required before any hazardous substance testing or remediation on cultural items

is performed. Further, Caltrans District Repatriation POCs must provide all available information regarding the potential exposure to hazardous materials, purpose of the testing, and proposed remediation options during consultation with the culturally affiliated tribe. This should be explicitly stated in the revised Chapter 4 in places where hazardous substances are discussed.

Draft Chapter 4 Revisions The unnumbered section titled Hazardous Substances at Repositories has been revised to include clear language that the culturally affiliated tribes must be consulted and that no hazardous substance testing or remediation on cultural items can be performed without tribal consent.

Repository Visits

Comments Tribal representatives noted that this section did not explicitly include a consideration for tribes to have a space to burn medicine.

Response Caltrans acknowledges the importance of individual and sacred cultural practices each tribe maintains, and that modern repository buildings, regulations, and codes may not align with these practices. District Repatriation POC must consult with tribes ahead of repository visits to capture specific tribal requests so that accommodation may be made, if possible, at the repository ahead of the visit, such as to designate a safe area to burn sage or other medicines. Further, tribal representatives should be informed of possible accommodations available and existing conditions for in-person repository visits by District Repatriation POCs. This should be better outlined in the revised Chapter 4.

Draft Chapter 4 Revisions The unnumbered section for In-person Visits was revised to explicitly state that a designated area to burn sage or other medicines may be required and District Repatriation POC must consult on these requests ahead of scheduled visits should a tribe make the request. Additionally, this section was bolstered by new language that more clearly captures tribal representatives' ability to request accommodations or preferences for in-person repository visits and the need for District Repatriation POCs to fully inform tribes of repository conditions.

Reburial of Ancestors and Cultural Items

Comments Section 4.4.2.9 Final Disposition of Repatriated Ancestors and Cultural Items does not state if reburials will take place on Caltrans-owned lands.

Response NAGPRA and CalNAGPRA do not dictate the final disposition of repatriated ancestors and cultural items. However, Caltrans continues consultation with culturally affiliated tribes that would like assistance to identify potential reburial locations that both meet individual tribal cultural practices and preferences and likely will not be impacted by future proposed work. Some tribes request reburial to occur within, or as close as feasible to, the location they were unearthed within Caltrans-owned land. However, Caltrans right-of-way is not ideal for reburial as it is subject to continued use and impacts from projects to maintain the travel way and other infrastructure. For these reasons, nearby locations outside of the Caltrans right-of-way are often the primary consideration, though the right-of-way is not excluded from consideration. This consideration should be included in the revised Chapter 4.

Draft Chapter 4 Revisions To address this comment, a statement has been added to this Section 4.4.2.9 Final Disposition of Repatriated Ancestors and Cultural Items to clarify that reburials may or may not be within Caltrans right-of-way.

Tribal Reimbursement

Comments It was noted that the unnumbered section for Tribal Reimbursement did not expressly include language that, in the repatriation process, tribes may be reimbursed for costs incurred during the transfer of materials or support of reburials.

Response Reimbursement to tribes for costs incurred during the physical transfer of materials or support of reburials is a standard practice at Caltrans and this should be explicitly stated in the revised chapter.

Draft Chapter 4 Revisions Language was added to the unnumbered section for Tribal Reimbursement that explicitly states that tribes may be reimbursed for the cost of Tribal Experts' participation in the transfer of materials, reunifications, and reburials.

Non-federally Recognized California Indian Tribes

Comments Several comments were received regarding the inclusion of non-federally recognized California Indian Tribes in the NAGPRA and CalNAGPRA repatriation processes. All comments emphasized the need to ensure such tribes are consulted and opportunities for their inclusion and participation should be actively identified and supported by Caltrans.

Response In compliance with NAGPRA and CalNAGPRA, Caltrans has been inviting non-federally recognized California Indian Tribes to participate in repatriation consultation and be included to the extent possible. Section 4.4 NAGPRA and CalNAGPRA Compliance, specifically Sections 4.4.1.7 Tribal Consultation and 4.4.2.3 Who May Request Information and Eligible Claimants should be revised to include clearer guidance for District Repatriation POCs to include non-federally recognized California Indian Tribes.

Draft Chapter 4 Revisions Language was added throughout Section 4.4 NAGPRA and CalNAGPRA Compliance to clarify that non-federally recognized California Indian Tribes must be invited to participate in repatriation consultation and included to the extent possible. Specifically, Sections 4.4.1.7 Tribal Consultation and 4.4.2.3 Who May Request Information and Eligible Claimants were revised with instructions on the inclusion of non-federally recognized California Indian Tribes.

Future Review Opportunities

Comment Questions were asked about future review opportunities for SER exhibits relating to Chapter 4, the final version of Chapter 4, and other SER Volume 2 chapters.

Response After Chapter 4 is finalized, the document will again be formally revised and submitted for tribal consultation in 2029. Other chapters of SER Volume 2 may be formally revised in the future, but Caltrans is always accepting feedback on the guidance provided in all chapters and

exhibits. Tribal representatives are welcome to provide comments at any time without waiting for a formal consultation period.

Draft Chapter 4 Revisions No revisions made based on these comments/questions.

Regionally Specific Questions

Comments During the tribal comment period on draft Chapter 4, Caltrans also received regionally specific questions relating to archaeological collections, repatriation, and compliance with environmental regulations.

Response As these questions could not be addressed through revision to draft Chapter 4, Caltrans reached out to each tribal representative and coordinated separate meetings to respond to individual questions.

Draft Chapter 4 Revisions No revisions made based on these comments/questions.