

PART 1:

**KEY LAWS ADDRESSING
NATIVE MARICAN CULTURAL RESOURCES**

PREFACE TO PART 1

Knowing the law is essential. *To be most effective in protecting those heritage resources important to you, knowing which law applies (and related regulations or guidelines) is important when speaking with planners, developers, agency officials, property owners, archaeologists, and others. Part 1 identifies the key Federal and State laws commonly referred to as “historic preservation laws.” The Introduction to CRM (Item 1-1) defines what types of cultural resources are addressed by these laws (sites, buildings, structures, objects, districts, landscapes, traditional cultural properties). It summarizes the steps commonly used to figure out if cultural resources are present on a given piece of property, evaluate their significance, assess potential project impacts, and develop an appropriate management plan. Opportunities and the mandates for Native American consultation and input are built into all these steps, and have become increasingly important under the law.*

Determine which law applies. *The most important first step is to determine if the proposed development or action is covered by State law, Federal law, or some combination). If a proposed development (subdivision, power plant, highway) or activity (mining, logging) threatens to impact a cultural resource, first ask the question: “Is there Federal involvement?” (funding? permitting? Is a Federal agency such as the US Forest Service or US Bureau of Reclamation initiating the project?) If the answer is YES, then it is likely that Section 106 of the National Historic Preservation Act applies (Items 1-4 through 1-9). NEPA, the National Environmental Quality Act also may apply where there is Federal involvement, and the Section 106 and NEPA reviews will be coordinated (Items 1-13 through 1-16). If the answer is NO, then CEQA, the California Environmental Quality Act (Item 1-22) probably applies.*

Identify the impact evaluation process. Each project starts with some internal planning, then moves to hearings, studies, approval, permits, and activity. Different agencies and offices within the agencies, will be engaged at different stages. Section 106, NEPA and CEQA establish “processes” for the lead Government agency, with public input and oversight, to make informed decisions about what can be done to avoid, minimize or mitigate expected impacts from a proposed project or undertaking on significant cultural resources.

Added to this edition are the **revised regulations (36 CFR 800) for Section 106** (Item 1-5), which respond to amendments of the National Historic Preservation Act. Note that the Act and especially Section 106 have and continue to be “under attack” by interest groups that want reduce the level of protection afforded to significant cultural resources on public (and private) lands.

Only significant cultural resources matter under these environmental reviews; if the resource does not meet the legal criteria for “significance,” then it is not considered. Significance criteria are essentially the same under the Federal and State laws (Items 1-7, 1-8 and 1-22). Just because a cultural resource is determined eligible for or listed on the official National or State registers does not guarantee that it will be preserved forever—however, under Section 106 and CEQA, managing those values that make the resource significant will be addressed.

Are Native American cemeteries and graves at risk? Protecting Native American burials has always been of central concern to Indian people. Laws protecting unmarked Indian graves were passed in 1988 for private and public lands in California and in 1990 for Federal lands across the Nation. *Determining who owns the land where a Native American burial is found is key to knowing which law applies: the California Codes (Item 1-23) for private and non-Federally controlled public*

lands in California (State, City or County Parks, etc.); or National NAGPRA (Items 1-19 and 1-20) for Federal lands in the State (lands administered by US Forest Service, BLM, National Park Service, etc.) Each law sets forth a process for consulting with the appropriate Native Americans to decide and implement a final disposition plan for handling the discovery in a respectful and timely manner.

Is repatriation an issue? Repatriation of human remains, grave goods, sacred objects and objects of culturally patrimony housed in various museums and depositories is addressed by a California State NAGPRA law (Item 1-25) and a Federal NAGPRA law (Items 1-19 and 1-20). Regulations for Federal NAGPRA are also included (Item 1-20).

Is ongoing activity affecting the integrity of an important resource? Strong penalties for robbing Indian burial grounds, maliciously defacing rock art, or digging up artifacts for personal profit also depend on where the illegal activity took place. If such activities took place on Federal lands, then ARPA, the Archaeological Resources Protection Act and its regulations (43 CFR 7) apply (Items 1-17 and 1-18). If a person is caught desecrating Indian graves on private, State or other non-Federal public lands, then the California Codes apply (see Items 1-23 and 1-24). If Native American heritage sites are illegally excavated or disturbed on State or other non-Federal public lands, then the new California Senate Bill 1816, which passed in 2004, applies (see 1-26). Your working with and educating local law enforcement officials is crucial to making these laws work as deterrents to inappropriate behavior. Educating our youth and others is also a way to promote respect for the feelings of contemporary Indian people and appreciation of Native American cultural resources.

Consultation with Native Americans has become more important and integral to planning and site protection, and has been codified by recent laws and amendments (see Items 1-4, 1-9, 1-10, 1-12, 1-26). Consultation guidelines from various sources are provided herein (Items 1-27, Items 1-35 through 1-38).

California's so-called "Sacred Sites Act" passed in 2004 (Senate Bill 18), providing basis for local governments (Counties, Cities, etc.) to consult with local Native American tribes when amending their General Plans, among other directives. Of interest, this law offers the opportunity for California Indian tribes to receive 'Conservation Easements' as a way to protect culturally sensitive places (for related information, see Items 1-28 through 1-33).

Concerned about the status and confidentiality of information on cultural resources? State and Federal agency representatives are required by law and policy to protect cultural resources by ensuring the confidentiality of information about location and content. Historic preservation laws recognize the need to protect the confidentiality of certain information—locations of places that may be subject to looting or desecration, testimony of traditional Indian religious leaders (see Item 1-8), knowledge only tribal members should have, etc.

Want to take an active role in helping develop or pass new laws? This compilation will give you a good overview of what laws are in place at the State and Federal levels. It's up to you to decide if these laws are adequate or need changing, or if new laws are needed.