

CONSIDERING EFFECTS OF PROPOSED PROJECTS ON CULTURAL RESOURCES: Which law applies?

TIPS: Ask the following key questions to figure out which law applies:

(1) *Who owns or has direct jurisdiction (control) over the property where the proposed project will occur? Is the property privately owned, or Federal or Tribal (Reservation) lands?*

→ If the property is Federal or Tribal, then Section 106 applies.

→ If the property is not Federal or Tribal (i.e., it is privately owned, or is owned by the State or a City), then CEQA may apply – but you must ask the second question to be sure if that is the only law that applies.

(2) *If the project is located on non-Federal or non-Tribal land, will it involve Federal funding, permitting or oversight by a Federal agency?*

→ If the answer is yes, then Section 106 will apply.

→ If the answer is no, then only CEQA will apply.

SCENARIOS:

A cultural resources study is required by the County for a proposed housing subdivision...

WHICH LAW APPLIES? CEQA. WHY? A County (“local government”) is the Lead Agency for CEQA (State Law). Tip: Verify that the property is privately owned and not located within the exterior boundaries of an Indian Reservation.

The above proposed housing subdivision requires a permit from the US Army Corps of Engineers (USCOE) before it can proceed ...

WHICH LAWS APPLY? CEQA and Section 106. WHY? CEQA applies because the County is the Lead Agency for considering effects on private properties in California. Section 106 applies because issuance of the permit by USCOE, a Federal agency, constitutes a Federal “undertaking”.

The National Park Service (NPS) proposes to close a campground and restore the land at a popular National Park ...

WHICH LAW APPLIES? Section 106. WHY? The proposed project involves Federal (NPS) land, funding and oversight.

Caltrans with some funding from the Federal Highways Administration (FHWA) proposes to widen the highway through a rural area of California to improve traffic safety ...

WHICH LAW APPLIES? Section 106. WHY? Funding from a Federal agency (FHWA) constitutes an “undertaking” subject to Section 106 review.

DISCOVERY OF NATIVE AMERICAN REMAINS AND BURIAL PROTECTION: Which law applies?

TIPS: Ask the following key question to figure out which burial protection law applies:

(1) *Who owns or has direct control and jurisdiction over the property where the discovery was made?*

→ If the answer is *Federal or Tribal (Reservation) lands*, then Federal NAGPRA applies.

→ If the answer is *private property, or state or city (local government) owned*, then the answer is the California Burial Protection Codes.

Note: Even if the remains are discovered on private or local government land during a project that requires Section 106 review (because it meets the definition of a Federal “undertaking”), the California Burial Protection Codes apply and not Federal NAGPRA.

SCENARIOS: A Native American burial is discovered ...

-- on private property.

WHICH LAW APPLIES? California Burial Protection Codes.

-- on a construction site for a new major retail store.

WHICH LAW APPLIES? California Burial Protection Codes, assuming that the property is privately owned (even by a major corporation).

-- in Point Lobos State Park.

WHICH LAW APPLIES? California Burial Protection Codes.

-- in Eureka City Park.

WHICH LAW APPLIES? California Burial Protection Codes.

-- in downtown Los Angeles.

WHICH LAW APPLIES? It depends: Who owns the land? Some Federal buildings and properties are located in major urban areas. If the discovery site is private or controlled by a local government (State or City), then California Burial Protection Codes apply. If the discovery site is Federal land, then Federal NAGPRA applies.

--on Six Rivers National Forest.

WHICH LAW APPLIES? Federal NAGPRA.

--on the Hoopa Valley Indian Reservation.

WHICH LAW APPLIES? Federal NAGPRA.

--along a State Highway in the Caltrans right-of-way (ROW).

WHICH LAW APPLIES? It depends: Who owns the land where the ROW is located? A ROW does not mean ‘ownership,’ but a legal right to access a particular property. That property may be private land, or controlled by a Local Government, or Federal land such as a National Forest or Bureau of Land Management (BLM).