

**NATIVE AMERICAN GRAVES PROTECTION:
A Resource Guide For Coroners, Native American Most Likely
Descendants, Tribal Governments, Tribal Organizations,
Archaeologists, Law Enforcement Officials, City and County
Planners, Property Owners, and Developers**

(downloaded 9/19/03 from website: <http://www.nahc.ca.gov>)

The following excerpts from California law concerning Native American human remains are provided for your reference:

From **Chapter 1492, Statutes of 1982**, which added Section 7050.5 to the Health and Safety Code, amended Section 5097.94 of the Public Resources Code and added Sections 5097.98 and 5097.99 to the Public Resources Code:

(a) The Legislature finds as follows:

- (1) Native American human burials and skeletal remains are subject to vandalism and inadvertent destruction at an increasing rate.
- (2) State laws do not provide for the, protection of these burials and remains from vandalism and destruction.
- (3) There is no regular means at this time by which Native American descendents can make known their concerns regarding the treatment and disposition of Native American burials, skeletal remains, and items associated with Native American burials.

(b) The purpose of this act is:

- (1) To provide protection to Native American human burials and skeletal remains from vandalism and inadvertent destruction.
- (2) To provide a regular means by which Native American descendents can make known their concerns regarding the need for sensitive treatment and disposition of Native American burials, skeletal remains, and items associated with Native American burials.

From **Section 7050.5 of the Health and Safety Code**:

(b) In the event of discovery or recognition of any human remains in any location other than a dedicated cemetery, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains until the coroner of the county in which the human remains are discovered has determined, in accordance with Chapter 10 (commencing with Section 27460) of Part 3 of Division 2 of Title 3 of the Government Code, that the remains are not subject to the provisions of Section 27491 of the Government Code or any other related provisions of law concerning investigation of the circumstances, manner and cause of any death, and the recommendations concerning the treatment and disposition of the human remains have

been made to the person responsible for the excavation, or to his or her authorized representative, in the manner provided in Section 5097.98 of the Public Resources Code. The coroner shall make his or her determination within two working days from the time the person responsible for the excavation, or his or her authorized representative, notifies the coroner of the discovery or recognition of the human remains.

(c) If the coroner determines that the remains are not subject to his or her authority and if the coroner recognizes the human remains to be those of a Native American, or has reason to believe that they are those of a Native American, he or she shall contact, by telephone within 24 hours, the Native American Heritage Commission.

From **Section 5097.94 of the Public Resources Code:**

The Commission shall have the following powers and duties:

(k) To mediate, upon application of either of the parties, disputes arising between landowners and known descendents relating to the treatment and disposition of Native American human burials, skeletal remains, and items associated with Native American burials.

The agreements shall provide protection to Native American human burials and skeletal remains from vandalism and inadvertent destruction and provide for sensitive treatment and disposition of Native American burials, skeletal remains, and associated grave goods consistent with the planned use of, or the approved project on, the land.

(l) To assist interested landowners in developing agreements with appropriate Native American groups for treating or disposing, with appropriate dignity, of the human remains and any items associated with Native American burials.

From **Section 5097.98 of the Public Resources Code:**

(a) Whenever the Commission receives notification of a discovery of Native American human remains from a county coroner pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, it shall immediately notify those persons it believes to be most likely descended from the deceased Native American. The descendents may, with the permission of the owner of the land, or his or her authorized representative, inspect the site of the discovery of the Native American remains and may recommend to the owner or the person responsible for the excavation work means for treating or disposing, with appropriate dignity, the human remains and any associated grave goods. The descendents shall complete their inspection and make their recommendations within 24 hours of their notification by the Native American Heritage Commission. The recommendation may include the scientific removal and nondestructive analysis of human remains and items associated with Native American burials.

(b) Whenever the Commission is unable to identify a descendent, or the descendent identified fails to make a recommendation, or the landowner or his or her authorized representative rejects the recommendation of the descendent and the mediation provided for in subdivision (k) of Section 5097.94 fails to provide measures acceptable to the landowner, the landowner or his or

her authorized representative shall reinter the human remains and items associated with Native American burials with appropriate dignity on the property in a location not subject to further subsurface disturbance.

SB 447 (Chapter 404, Statutes of 1987):

On January 1, 1988, Senate Bill 447 went into effect. This legislation amended Section 5097.99 of the Public Resources Code, making it a felony to obtain or possess Native American remains or associated grave goods:

- (a) No person shall obtain or possess any Native American artifacts or human remains which are taken from a Native American grave or cairn on or after January 1, 1984, except as otherwise provided by law or in accordance with an agreement reached pursuant to subdivision (1) of Section 5097.94 or pursuant to Section 5097.98.
- (b) Any person who knowingly or willfully obtains or possesses any Native American artifacts or human remains which are taken from a Native American grave or cairn after January 1, 1988, except as otherwise provided by law or in accordance with an agreement reached pursuant to subdivision (1) of Section 5097.94 or pursuant to Section 5097.98, is guilty of a felony which is punishable by imprisonment in the state prison.
- (c) Any person who removes, without authority of law, any Native American artifacts or human remains from a Native American grave or cairn with an intent to sell or dissect or with malice or wantonness is guilty of a felony which is punishable by imprisonment in the state prison.

WHAT TO DO

The following actions must be taken immediately upon the discovery of human remains:

Stop immediately and contact the County Coroner.

The coroner has two working days to examine human remains after being notified by the responsible person. If the remains are Native American, the Coroner has 24 hours to notify the Native American Heritage Commission.

The Native American Heritage Commission will immediately notify the person it believes to be the most likely descendent of the deceased Native American.

The most likely descendent has 24 hours to make recommendations to the owner, or representative, for the treatment or disposition, with proper dignity, of the human remains and grave goods.

If the descendent does not make recommendations within 24 hours the owner shall reinter the remains in an area of the property secure from further disturbance,

or;

If the owner does not accept the descendant's recommendations, the owner or the descendent may request mediation by the Native American Heritage Commission.

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