



CALIFORNIA INDIAN LEGAL SERVICES

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What Should I Do if I Find Native American Human Remains, Artifacts, or Other Cultural Resources on My Private Property?

What are cultural resources?

“Cultural resources” are the items, places, and beliefs that have religious, spiritual, historic, and/or artistic value to a certain group of people. Various Federal and State laws protect Native American cultural resources.

The California Native American Heritage Commission defines “cultural resources” as “remains and sites associated with human activities,” including:

*Prehistoric and ethnohistoric Native American archaeological sites; historic archaeological sites; historic buildings; elements or areas of the natural landscape which have traditional cultural significance.*¹

What should I do if I find cultural resources on my private property?

❖ What should I do if I find (Native American) human remains?

First, you should immediately stop the activity that exposed the remains. Secure the location of the remains to ensure that they are not further disturbed or damaged.² Then, contact the County Coroner.

The Coroner will examine the remains within 2 working days of this notice. If the Coroner determines that the remains are Native American, s/he will notify the Native American Heritage Commission within 24 hours. The Native American Heritage Commission will immediately notify the most likely descendant of the deceased Native American.

The most likely descendant then has 48 hours to make a recommendation to you regarding the treatment or disposition of the remains. You must “discuss and confer with the descendants all reasonable options regarding the descendants' preferences for treatment.”³

If the most likely descendant does not make a recommendation within this time, you must reinter the remains in a part of your property that is secure from further disturbance. If the most likely descendant makes a recommendation that you do not accept, you can request a mediation by the Native American Heritage Commission.

It is illegal to possess Native American human remains which are taken from a Native American grave or cairn after January 1, 1988, unless the possession is either in accordance with an agreement between the landowner and appropriate Native American groups,⁴ or pursuant to a

¹ See *Understanding Cultural Resources*, NATIVE AMERICAN HERITAGE COMMISSION, <http://www.nahc.ca.gov/understandingcr.html#penaas>.

² See Cal. Pub. Res. Code § 5097.98.

³ Cal. Pub. Res. Code § 5097.94

⁴ Cal. Pub. Res. Code § 5097.94, subd.(1).

recommendation by the descendants of the deceased Native American.⁵ It is a felony to remove human remains from a Native American grave or cairn with the intent to sell them.⁶

❖ **What should I do if I find Native American cultural resources (other than human remains) on my own private property, not during the planning or process of development?**

The answer to this depends in part of what type of cultural resource is found. Artifacts that are placed or buried with Native American human remains must be treated in the same way as the remains themselves. It is illegal to possess such artifacts, unless the possession is either in accordance with an agreement between the landowner and appropriate Native American groups,⁷ or pursuant to a recommendation by the descendants of the deceased Native American.⁸ It is a felony to remove such artifacts from a Native American grave or cairn with the intent to sell them.⁹

Other cultural resources found on your own private property are subject to fewer regulations. However, it is illegal to willfully “injure[], disfigure[], deface[], or destroy[] any object or thing of archeological or historical interest or value”¹⁰ on private property that is not your own property.

❖ **How does the presence of Native American artifacts affect my ability to develop my property?**

Cultural resources are considered a part of the environment. Therefore, whenever a project requires environmental review, the impacts of the project on cultural resources will also be assessed. Impacts of development to cultural resources usually need to be avoided or mitigated by the project proponent.

The Native American Heritage Commission maintains an inventory of sites in California that are important to Native Americans, and reviews environmental review documents to ensure that these sites are not impacted.

❖ **What should I do if I find Native American artifacts while I am developing my property?**

You should avoid this whenever possible by conducting proper planning and environmental review. If you do accidentally discover artifacts during development, however, you should stop and consult with your local planning agency regarding what you must do.

State law does not address what must be done when artifacts are accidentally discovered during development. Instead, the California Environmental Quality Act encourages local government planning agencies to make provisions for how to handle archeological resources that are accidentally discovered during development. The law encourages local governments to require immediate evaluation by a qualified archaeologist, followed by implementation of avoidance and/or mitigation measures.¹¹

Artifacts that are associated with human remains or graves must be treated in the same way as the remains themselves.

⁵ See *People v. Van Horn*, 267 Cal. Rptr. 804, 812 (Cal. App. 4th Dist. 1990); Cal. Pub. Res. Code § 5097.98.

⁶ Cal. Pub. Res. Code § 5097.94, subd.(1).

⁷ Cal. Pub. Res. Code § 5097.94, subd.(1).

⁸ See *People v. Van Horn*, 267 Cal. Rptr. 804, 812 (Cal. App. 4th Dist. 1990); Cal. Pub. Res. Code § 5097.98.

⁹ Cal. Pub. Res. Code Ann. § 5097.99.

¹⁰ See Cal. Penal Code Ann. § 622 ½.

¹¹ See Cal. Code Regs. tit. 14, § 15064.5.

❖ Local Ordinances

Several cities and counties in California have enacted ordinances related to cultural resources. You should check to see if any such ordinances exist in your area.

Additional Resources

The Native American Heritage Commission: www.nahc.ca.gov/

The California Office of Historic Preservation: <http://ohp.parks.ca.gov/>

California County Planning Directors Association: <http://www.ccpda.org/>

Disclaimer

This information is intended to assist you with your legal problem. Each area of the law is complex and changing. Your case may have special factors that could affect the applicability of this information. CILS does not guarantee that this information is sufficient to resolve your legal problem. If you have any questions, you should seek the advice and counsel of an attorney.

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