



**NATIVE AMERICAN HERITAGE COMMISSION**  
**MEMORANDUM**  
January 10, 2023

---

**To: NAHC Commissioners**

**From: Raymond C Hitchcock, Executive Secretary**

**Re: Internal MLD Designation Procedures**

---

Under Public Resources Code section 5097.98, it is the responsibility of the Native American Heritage Commission to make Most Likely Descendant Determinations when Native American ancestral remains or funerary objects are inadvertently discovered by ground disturbance. Below are the current step by step Internal MLD Designation Procedures all staff utilize when making an MLD determination.

1. The County Coroner contacts the NAHC upon determining human remains discovered are Native American.
2. The following information is obtained from the coroner using the Request for Assistance form:
  - The date of the call
  - The location of the discovery including the County
  - The date of the discovery
  - The coroner case number
  - The name address, phone number and/or email and organization of the notifying individual (Coroner, police, sheriff, archaeologist...?)
  - The description of the remains discovered is recorded
  - If there are any associated grave goods that information is recorded
  - If the discovery was the result of ground-disturbing project activity, the project name, lead agency, site #, and project location is recorded.
  - The nature of the property (private, state, county, or school district, etc.?) is recorded
  - The name, address, and phone number and/or email of the property owner, or the property owner's authorized representative is recorded
  - If there was a Native American archeological monitor present, their name and phone number is recorded
  - Where the remains are being held is recorded
  - In the *Comments* section of the form any additional information is recorded such as: The circumstances of the discovery, how the remains and grave items are being protected from

additional project activity, whether the remains and associated grave goods were avoided and preserved in place

3. Establish the Cultural Affiliation of the remains
  - Consult the Most likely Descendant List for the county in which the remains were discovered.
  - Consult maps of the traditional California tribal cultural areas.
  - Consult multiple reference materials in the office, including but not limited to Volume 8, Kroeber, UC Berkely Report, Ethnographic Studies, various maps, and any additional resources available.
  - Consult tribal files.
4. Is there a traditional village site within the project vicinity?
  - Check database for any listed traditional village sites.
  - Check the Sacred Lands File for tribal traditional village sites.
  - Check the tribal files to refine the traditional cultural area and to see if there are any traditional village sites in the area of the discovery.
  - A 12-mile radius is used if an inadvertent find falls within 12 mile of a specific village site.
5. Is there a pre-burial agreement in place in accordance with PRC 5097.94 (I)?
  - The NAHC has defined a pre-burial agreement as consultation and agreement with all the potential MLD's for the treatment and disposition of Native American human remains found on project site.
  - The property owner/developer would request a list of potential MLD's for their project site from the NAHC.
  - Staff would provide a list of potential MLD's based on the criteria outlined in this procedure.
  - All the potential MLD's must come to an agreement, not a majority, on treatment and disposition of the inadvertent discovery.
  - All the potential MLD's agree and submit one recommendation for treatment and disposition for the remains for the project.
  - Property owner/Developer would provide NAHC a copy of the agreement for our files.
  - If the potential MLD's do not agree, there would not be a pre-burial agreement and PRC 5097.98(a) would apply.
6. Is this a project for which a MLD has been previously designated (MLDs remain with projects until their conclusion) or is this a new project?
  - MLD's are based on projects, not finds within a project.
  - Check the *Request for Assistance database and paper record File*.
7. Is there a pre-established MLD rotation list for the cultural area where the remains were discovered?
  - Rotation lists are established for tribes with the same specific village sites of the same cultural affiliation.
  - Rotation lists are in alpha order.
  - If there is a pre-existing MLD rotation list for this traditional cultural area, select the next tribe or individual on the list is designated.
  - If there is no rotation list, the tribe or coalition that is Most likely Descendant or Culturally Affiliated to the Native American human remains is designated.
8. If the remains were discovered near of the Trust Boundaries of a Culturally Affiliated Reservation or Rancheria, it may be appropriate to designate that Reservation or Rancheria as MLD. What constitutes

near is at the discretion of the NAHC staff member making the MLD Determination, based on the circumstances of the discovery.

9. Co-MLD's may be required in the event of overlapping territories and/or same specific village sites of different Cultural Affiliations.
  - Provide multiple sources of documentation to support your conclusion.
  - Identify all sources used.
10. Recommend a MLD for approval by submitting the *MLD Justification* form to your supervisor
  - The form must be submitted to the supervisor for approval before a call to the MLD can be made.
  - All documentation must be submitted, with the form, to the approver.
11. Contact the Tribal Contact authorized by the Tribe listed in our database to ask if they would like to serve as the MLD.
  - Upon the Tribe accepting the MLD designation, provide the Tribe with the site information, including the Property Owner's contact info.
  - Follow-up the next day via phone if you have heard no response.
  - Follow-up the following day via phone if you have heard no response.
  - Follow-up via email after two telephone attempts if you have not received a response via telephone. Let the Tribe know that if they do not contact staff that within 24-hours, we will have to move forward on contacting a different MLD.
  - Document all of your attempts on the *Request for Assistance* form.
12. Call the Property Owner
  - Provide the Property Owner the name and contact information of the designated MLD.
  - Inform the Property Owner of the roles and responsibilities under the law of the MLD and property owner.
13. Provide a confirmation letter to the Landowner and/or Lead Agency or Tribe confirming the MLD Designation, if requested.
14. Input into the Request for Assistance Database
15. Follow-up with the MLD to complete *Request for Assistance* form reporting the final disposition of the remains and any associated grave goods
  - Recorded in the *Request for Assistance* database.
  - Additional follow-up may be required due to final disposition of the remains may not occur after the conclusion of the project, which may not be for several months or even years.
  - Native American human remains, and burial sites are considered sacred, pursuant to PRC 5097.94 (a). Request MLDs to submit a *Sacred Lands File Inventory Request* form to record into the Sacred Lands file. However, there is no specific legal requirement to do so.
16. File hard copy in the Request for Assistance binders
  - File is by year and month of find
  - Include copy of MLD Justification