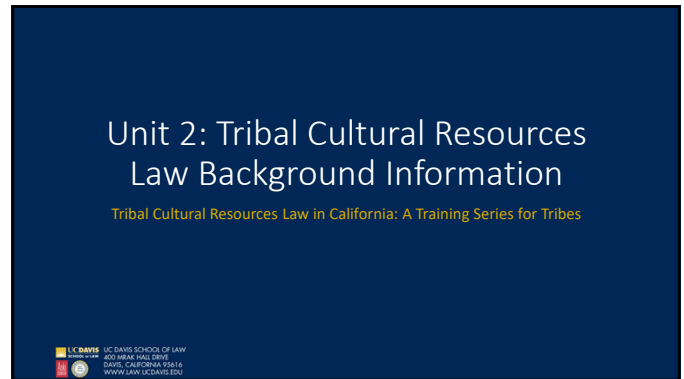




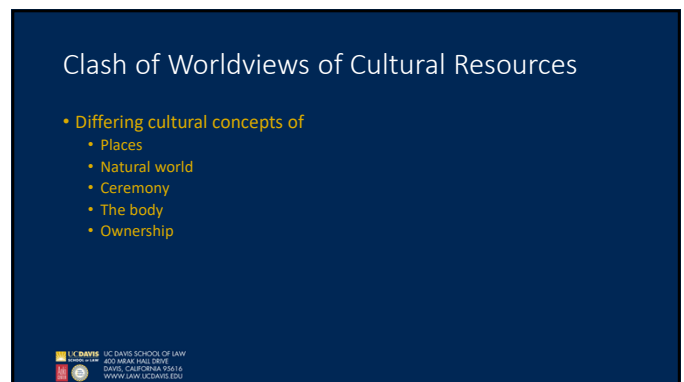
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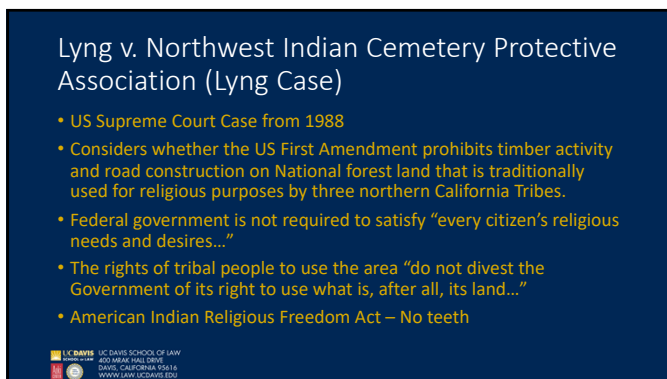
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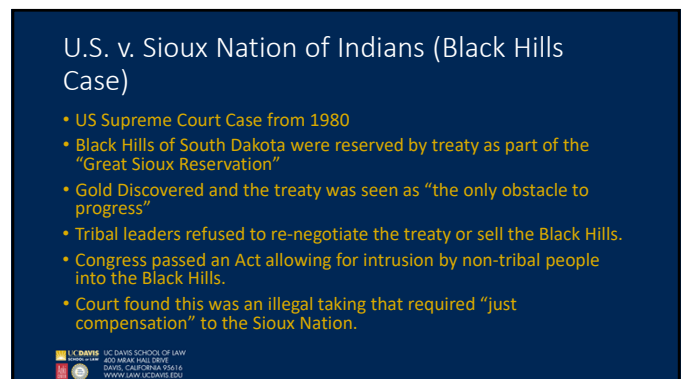
3



4



5



6

Archaeological Fieldwork versus Grave Robbing

- Bieder, Robert E. "The Return of the Ancestors." 1990
- "Expropriation of Indian bodies for science"
- Scientists – Pre-historic and Pre-Tribal
- Native Americans – Ancestors
- Scientists – Archeological sites
- Native Americans – Grave sites and cemeteries

7

California Law Basics

Things I did not know before law school

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Federal Law: NAGPRA

- Native American Graves Protection and Repatriation Act (NAGPRA) of 1990
- Applies to all "museums" with control over Native American cultural items that receive federal funding.
- This law is significant in the field of tribal cultural resources law
- California has incorporated all the requirements and responsibilities of NAGPRA into the California Codes through CalNAGPRA and other codes focused on environmental review and protection
- Generally, these California laws apply to all state agencies and institutions.
- This training will therefore focus on the state of the California laws surrounding tribal cultural resources.

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CA Legislative Terminology – AB and SB

- Two houses of California Legislature
 - The Assembly
 - The Senate
- AB = Assembly Bill, is a proposed law originating from an author in the Assembly
- SB = Senate Bill, is a proposed law originating from an author in the Senate
- Examples: AB 52 and SB 18

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CA Legislative Bills Numbering and Function

- The number on each proposed law or draft law is used for all the proposals in any given legislative cycle from year to year
- These numbers will repeat each year
- For example, SB 18 in 2004 was a cultural resources bill, in 2020 SB 18 was relating to "green electronic hydrogen"
- Each year "SB 18" is not "a law", SB 18 is the bill that adds or amends various California Codes which are laws
- Important to be familiar with the actual codes and the relevant sections of the codes that have been amended

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California Codes

- The legislation that is adopted, adds, amends or repeals California laws organized into the "California codes"
- These are all maintained online by the Legislative Counsel see: leginfo.legislature.ca.gov
- Note: "leg" in this context is an abbreviation for legislation or legislature pronounced "ledge"
- There is a uniform system used in academic and legal writing to cite to these codes found in the California Style Manual (CSM)
- If interested, it is available free online see: <http://www.sdap.org/downloads/Style-Manual.pdf>

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Codes Relevant to Tribal Cultural Resources

- California has 29 “codes”
- They are not numbered
- Listed online in alphabetical order
- These are the codes where most of the protections for tribal cultural resources are found:
 - Government Code
 - Health and Safety Code
 - Public Resources Code

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Code Abbreviations for Citations - Official

- This is how these codes are abbreviated for citations (p. 51 of the CSM):
 - Government Code: Gov. Code
 - Health and Safety Code: Health & Saf. Code
 - Public Resources Code: Pub. Resources Code
- Note: You do not need to add California, Cal., or CA in front of the code citation. These simple abbreviations will work

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Code Abbreviations - Unofficial

- You may also see these codes abbreviated using only three letters:
 - Government Code: GOV
 - Health and Safety Code: HSC
 - Public Resources Code: PRC
- This is an informal way of referencing these codes
- Good to be familiar with both
- Example: if you do any work in child welfare you will hear “wick” said by people about the informal abbreviation, WIC, for the Welfare and Institutions Code. The official abbreviation is Welf. & Inst. Code

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Code Organization

- California’s codes contain multiple sections, these sections are grouped into “divisions” or in some cases “titles” or even “parts”
- Example:
 - The Public Resources Code has Divisions 1 – 46
 - The California Environmental Quality Act (CEQA) is found in Division 13
- You do not need to know what division to search or cite to
- Focus on the section number for the law you want to look up or cite to
- In the index or table of contents for each code online, next to the division number and title will be the numbers for all the sections in that division

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Example of online Code Organization

- Public Resources Code - PRC
- GENERAL PROVISIONS
- DIVISION 1. ADMINISTRATION [500 - 830]
- DIVISION 2. GEOLOGY, MINES AND MINING [2001 - 2815]
- DIVISION 3. OIL AND GAS [3000 - 3865]
- DIVISION 3.5. MINES AND MINING [3900 - 3985]
- DIVISION 4. FORESTS, FORESTRY AND RANGE AND FORAGE LANDS [4001 - 4958]

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Code Sections Citations

- The term section indicates the part of the code that has the law you want to find or cite to
- Section is abbreviated using this symbol: §
- In legal writing code sections are cited two ways
- Outside of parenthesis, spelled out with no abbreviations, usually inside a sentence
 - Example: Government Code section 5097.9
- Inside of parenthesis, with abbreviations, usually at the end of a sentence
 - Example: (Gov. Code, § 5097.9)

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Subdivision Citations

- Many Sections have subsections called “subdivisions”
- These usually start with a lowercase letter in parenthesis
- A citation to a specific subdivision in a code sections looks like this:
Example: Public Resources Code section 5097.94, subdivision (a) or (Pub. Resources Code, § 5097.94 subd. (a))
- An informal citation may leave out the word or abbreviation for “subdivision”
Example: (Pub. Resources Code, § 5097.94 (a))

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Et Seq. Meaning

- “et seq.” this is an abbreviation of a Latin term = et sequentes
- Means and those that follow
- In code citations means and the sections that follow
- Two examples
 - NAGPRA: 25 U.S.C. § 3001 et seq.
 - CalNAGPRA: Health & Saf. Code, § 8010 et seq.

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History of Tribal Cultural Resources Laws in California

(The legislative bills that became laws)

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Timeline of CA Cultural Resource Bills

Year	Bill Number	Topic or Title
1976	AB 4239	Created Native American Heritage Commission
1982	SB 297	Native American human burial and skeletal remains
1991	AB 12	Repatriation Policy Statement
2001	AB 978	California Native American Graves Protection and Repatriation Act (Cal NAGPRA)
2002	SB 1816	Native American Historic Resources Protection Act
2004	SB 18	General Planning Tribal Consultation
2014	AB 52	Improved Consultation in California Environmental Quality Act (CEQA) process
2018	AB 2836	UC Systemwide Policy for Repatriation
2020	AB 275	Strengthens repatriation under Cal NAGPRA
2020	AB 168	Cultural Resources Exempt from SB 35 Fast Track (2017)

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AB 4239 Native American Heritage Commission (NAHC)

- Enacted in 1976
- Repealed and added Sections of the CA Public Resources Code (§§ 5097.9 – 5097.97)
- Created the Native American Heritage Commission (NAHC)
- Preserve and ensure accessibility of cultural sites and burials
- Prevention of irreparable harm to cultural sites
- Maintain an inventory of Native American sacred sites located on public lands (Sacred Lands file)
- Duties have changed and expanded over the years

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SB 297 – Felony to Obtain or Possess Remains

- Enacted in 1982
- Amended a section of the CA Public Resources Code (§ 5097.99)
- Made it a felony to obtain or possess Native American remains or associated grave goods

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AB 12 – Repatriation Policy

- Enacted in 1991
- Added a section to the CA Public Resources Code (§ 5097.991)
- “It is the policy of the state that Native American remains and associated grave artifacts shall be repatriated.”
- This policy statement remains in the law today, unamended

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AB 978 – Cal NAGPRA

- Enacted in 2001
- Added Sections to the CA Health and Safety Code (§§ 8010-8021, 8025-8030)
- California Native American Graves Protection and Repatriation Act of 2001 (Cal NAGPRA)
- Repatriation Oversight Committee (§ 8025)
 - Was never active or funded
 - Since then, decommissioned, duties transferred to NAHC by AB 2836 in 2018

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SB 1816 – Native American Historic Resources Protection Act

- Enacted in 2002
- Added Chapter 1.76 (commencing with Section 5097.995) to Public Resources Code
- Now renumbered to § 5097.993 – 5097.994
- Adds a criminal violation and a civil action for the unlawful and malicious excavation, removal or destruction of a CA Native American Tribal historic, cultural, or sacred site, that is listed or may be eligible for listing in the California Register of Historic Resources, on public lands or on private lands
- Exempts certain legal acts by landowners.

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SB 18 – General Plans Tribal Consultation

- Enacted in 2004
- Amended a section of the CA Civil Code (§ 815.3)
- Amended sections of the CA Government Code (§§ 65040.2, 65092, 65351, 65352, 65560) and added sections to Government Code (§§ 65352.3 – 65352.4, 65562.5)
- Requires Consultation with Native Americans regarding city and county general plan preparation or amendments
- Adds Tribal Cultural Sites to open-space plan protections
- Tribes can hold conservation easements, includes unrecognized tribes

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AB 52 – Adds Cultural Resources to CEQA

- Enacted in 2014
- Amended (§ 5097.94) and added several sections of the CA Public Resources Code (§§ 21073, 21074, 21080.3.1, 21080.3.2, 21080.3.3, 21084.2, 21084.3)
- Added a new class of resources (tribal cultural resources) as having potential environmental impact under California Environmental Quality Act (CEQA)
- Modified NAHC powers and duties to include assistance with negotiated agreements for treatment of discoveries of cultural resources

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California Environmental Quality Act (CEQA)

- Enacted in 1970
- CA Public Resources Code Sections 21000 – 21189.70.10,
- CEQA Guidelines, CA Code of Regulations Sections 15000 – 15387
- Responding to National Environmental Policy Act
- Establishes a statewide policy of environmental protection
- Applies to all discretionary projects proposed to be conducted or approved by a California public agency, including private projects requiring discretionary government approval

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AB 2836 – UC Repatriation Policy

- Enacted in 2018
- Amended a section of the CA Health and Safety Code (§ 8014) and added several sections to the CA Health and Safety Code (§§ 8025 – 8028.5)
- Amended a section of the Public Resources Code (§ 5097.94)
- Requires the University of California (UC) system to adopt a systemwide and campus wide policy and process for repatriation of cultural resources.
- Focuses on items labeled as culturally unidentifiable and requires tribal consultation
- ROC, decommissioned, duties transferred to NAHC

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AB 275 – Strengthens Repatriation for Tribes

- Enacted in 2020
- Added a section the CA Government Code (§ 8318)
- Repealed and added sections to the CA Health and Safety Code (§§ 8011 – 8017, 8025, 8026)
- Redefines “State Agency” in the Government Code to specifically include the University of California and requires state agency liaisons for consultation with tribes
- Modifies almost all sections of Cal NAGPRA to improve repatriation process for tribes

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AB 168 – SB 35 Fast Track

- Enacted in 2020
- Amends sections of the Government Code (§§ 65400, 65913.4, 65941.1)
- In 2017, SB 35 created a “streamlined” approval process for affordable housing plans making them exempt from the CEQA process
- Modifies the language to exclude a project from SB 35 fast track if Cultural Resources affected

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Status of Laws Today

- The most recent changes to the relevant CA code sections as of today were made to those codes concerned with repatriation of tribal cultural resources (AB 275)
- Consultation in land use planning has been stable in the codes since it was added
- The powers and duties of the NAHC are ever changing and expanding
- We have seen bills focused on amending a specific topic like CEQA consultation for example but also with a change in a code governing the NAHC

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Native American Heritage Commission

(NAHC)

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Department of Parks and Recreation

- NAHC is a state government commission established in the law:
- Public Resources Code
- Division 5 “Parks and Monuments”
- Chapter 1.75. Native American Historical, Cultural, and Sacred Sites
- Sections 5097.9 - 5097.991
- Note: Section 5001 subdivision (b) states: The Department of Parks and Recreation has control of the state parks system

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State Parks System

- Why is the NAHC established here in this code, in this division?
- State Parks System not only open space and public recreation...
- This division is where most laws related to historic preservation are found
- This is where "historic resource" is defined
- Many of the protections for tribal cultural resources relate back to the framework found here for protection of historic resources

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Establishment

- (Pub. Resources Code, § 5097.91)
- NAHC is a state government commission with 9 members
- Appointed by the Governor

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Composition

- (Pub. Resources Code, § 5097.92)
- At least five of the nine members shall be elders, traditional people, or spiritual leaders of California Native American tribes, nominated by Native American organizations, tribes, or groups within the state
- An Executive Secretary (staff member)
- All appointed by the governor

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Commission Members Volunteers

- (Pub. Resources Code, § 5097.93)
- The commission members are not paid for their time
- Are reimbursed for actual expenses

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Powers and Duties (1/7)

- (Pub. Resources Code, § 5097.94, subds. (a) – (p))
- Note: initially when NAHC established in 1976, only (a) – (j)
- a) Identify and catalog places of tribal cultural significance specifically known grave sites and cemeteries into an inventory – notify landowners and most likely Native American descendants
- b) Recommend that the state acquire tribal culturally significant places that are on private lands and are inaccessible to Native Americans to improve access
- c) Recommend to the Legislature procedures to encourage private property owners to voluntarily preserve and protect cultural resources and allow access to Native Americans

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Powers and Duties (2/7)

- (Pub. Resources Code, § 5097.94, subds. (a) – (p))
- d) Appoint necessary clerical staff
- e) Accept grants and donations
- f) Make recommendations to the Director of Parks and Recreation and the California Arts Council relative to the California State Indian Museum and other Indian matters touched on by other department of Parks and Recreation programs

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Powers and Duties (3/7)

- (Pub. Resources Code, § 5097.94, subs. (a) – (p))
- g) Bring a legal action (lawsuit) against a public agency to prevent severe and irreparable damage to or assure appropriate access for Native Americans to an area of tribal cultural significance
 - If the court finds damage will occur or access denied and mitigation measures are not available, it shall issue an injunction (order stopping the public agency action) unless the court makes a finding that public interest and necessity require otherwise
 - NAHC shall have legal representation by the Attorney General or other counsel
 - NAHC shall introduce evidence that the place has tribal cultural significance

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Powers and Duties (4/7)

- (Pub. Resources Code, § 5097.94, subs. (a) – (p))
- h) Request and use service of all federal, state, local and regional agencies including for the purposes of carrying out the Native American Graves Protection and Repatriation Act
- i) Assist Native Americans in obtaining appropriate access to sacred places on public lands
- j) Assist state agencies in protecting sacred places on federal lands

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Powers and Duties (5/7)

- (Pub. Resources Code, § 5097.94, subs. (a) – (p))
- k) Mediate disputes and reach agreements between landowners and known descendants relating to Native American human burials and associated items
- l) Assist interested landowners in developing agreements with Native Americans for treating and disposing of human remains and associated burial items

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Powers and Duties (6/7)

- (Pub. Resources Code, § 5097.94, subs. (a) – (p))
- m) Provide CA Native American tribe with a list of public agencies that may be lead agencies for purposes of CEQA within the tribe's cultural and traditional geographic area
 - The contact information of these public agencies
 - Information on how the tribe may request the public agency to notify the tribe of projects withing the jurisdiction of those agencies to request consultation

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Powers and Duties (7/7)

- (Pub. Resources Code, § 5097.94, subs. (a) – (p))
- n) To assume the powers and duties of the former Repatriation Oversight Commission (ROC) – Order repatriations, mediate disputes, issue fines
 - Note: ROC Created in 2001, never funded or functioned, decommissioned, duties transferred to NAHC by AB 2836 in 2018,
- o) Establish a fee for a person or public or private entity to cover the cost of a search of the inventory in (a) or the Native American Contact List
- p) Review and provide comment and guidance on all the Regents of the University of California NAGPRA policies and procedures proposed through section 8025 of Health and Safety Code (CalNAGPRA)

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Additional Powers

- (Pub. Resources Code, § 5097.98)
- Notification to most likely descendants when a discovery of Native American human remains is made
- (Pub. Resources Code § 5097.94 subd. (a))
- Most likely descendants' determinations for discoveries listed above
- (Health & Saf. Code § 8013)
- Maintain a list of Federally recognized and Non-Federally Recognized Native American Tribes in California and their corresponding aboriginal territories

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