



## Caltrans CalNAGPRA-NAGPRA Claims

May 26, 2023

The processes and information presented here is provided by the Caltrans Cultural Studies Office (CSO) at Caltrans Headquarters. These processes and requirements are specific to Caltrans and are based on those put forward by the National NAGPRA Program and the Native American Heritage Commission (NAHC). This information on the claims process may be updated when: CalNAGPRA regulations or revised NAGPRA regulations are published; the NAHC or the National NAGPRA Program issues new guidance; and/or AB 275 is further interpreted by case law.

For the purposes of compliance with CalNAGPRA and NAGPRA, Caltrans does not assert *right of possession*, as defined at 43 CFR § 10.10 (a)(2). For NAGPRA claims, tribes are not expected to present evidence supporting a finding that Caltrans does not have the *right of possession*, which is ordinarily required by 43 CFR § 10.10 (a)(2). For CalNAGPRA claims, the criterion found at Health and Safety Code § 8016(a)(3) has been satisfied, meaning that Caltrans will not object to a claim by asserting the *right of possession*.

For more information about Caltrans CalNAGPRA-NAGPRA repatriations and for a listing of the Caltrans District Points of Contact (POC), visit the [Caltrans CalNAGPRA-NAGPRA Website](#).

### Caltrans Claims Process for Tribes

Caltrans encourages all Indian Tribes and California Indian Tribes (tribes), as well as lineal descendants, to actively engage in consultation with the Caltrans District POC regarding specific collections prior to placing a claim so that all parties have clarity, correct and current information, and that the subsequent claim and repatriation process can proceed quickly and smoothly. As possible, or if specifically requested by the potential claimant, CSO will participate in the consultation ahead of a claim being placed.

If a lineal descendant seeks to place a CalNAGPRA and/or NAGPRA claim, this special circumstance will be addressed on a case-by-case basis.

If a tribe seeks to place a CalNAGPRA and/or NAGPRA claim with Caltrans, they must:

- Mail or email a formal letter to the Caltrans District POC; for CalNAGPRA claims, also email the letter to the NAHC at [CalNAGPRA@nahc.ca.gov](mailto:CalNAGPRA@nahc.ca.gov)
- Letter must be on tribal letterhead and signed by the Tribal Chairperson or Tribal Leadership (i.e. the Indian Tribe Official, as defined in NAGPRA)
- State if the tribe is placing the claim under NAGPRA, CalNAGPRA, or both
- State the tribe's cultural affiliation to the collection(s)
- Provide a description or listing of the items the tribe is claiming for repatriation (bulk listing/identification is ok, e.g. "all shell beads")
  - State which CalNAGPRA/NAGPRA definition(s) the tribe is citing
  - Include the archaeology site trinomial, the repository name, and the accession number. If this information is not readily available, please contact the appropriate District POC to obtain it prior to submitting a claim
- Indicate if the tribe is working with any neighboring tribes to coordinate claims (*if applicable*)

If a tribe is unable to meet these requirements, the tribe should contact the District POC to continue consultation so that Caltrans can understand the challenges and seek alternatives where possible and appropriate.

Caltrans will respond to all claim letters within 30 calendar days. If Caltrans is unable to accept a claim as presented and must file an objection with the NAHC, pursuant to Health and Safety Code § 8016(c), the Caltrans District POC will continue consultation with the tribe to resolve the outstanding questions or issues. The goal is the submittal of a revised claim that is acceptable to both the tribe and Caltrans. Claim items that cannot be resolved through additional consultation will be remediated through the dispute resolution process described in 43 CFR § 10.17 or Health and Safety Code § 8016(d), as appropriate.

## **Caltrans Internal Claims Review Process**

Caltrans is committed to transparency throughout the process and will work in good faith to move repatriation forward. The claim review process must be completed within 30 calendar days of receiving a claim that meets the criteria outlined above. The Caltrans internal claims review process is not connected to National NAGPRA's inventory, summary, or notice processes, or the NAHC's processes for establishing a preliminary inventory or summary or finalizing an inventory or summary.

Subsequent to receipt of a CalNAGPRA or NAGPRA claim, Caltrans will follow the steps below:

1. Claim letter from a tribe, which meets all of the requirements above, is received by District POC
2. District POC submits the claim to CSO for review
  - Claim must be submitted to CSO within five calendar days of the District receiving it
  - Email claims directly to Emily Castano (Emily.Castano@dot.ca.gov) and copy the CSO Office Chief
  - Email Subject: CalNAGPRA-NAGPRA Claim [District #] and [Tribe]
  - Email must include:
    - Name of tribe and type of recognition (federal/state)
    - Attached claim letter
    - Attached collection(s) inventory/summary
    - Attached tribal consultation log for the collection(s), including all communication between the claiming tribe and all other potentially culturally affiliated tribes
    - District POC's assessment of the claim – is there any outstanding issues or information?
    - Any other relevant information CSO should be aware of in reviewing the claim
  - Concurrent to submitting the claim to CSO for review, District POC will send an email to the repository to notify them that Caltrans is reviewing a tribal claim for a collection housed at their facility. The notification will include a request that the repository respond with any concerns or potential issues within 15 calendar days and notification that Caltrans will follow-up with the outcome of the review. For current repository contact information, email Emily Castano (Emily.Castano@dot.ca.gov).
3. CSO will respond to the District POC within 15 calendar days with either:
  - Questions or requests for more information
  - Recommendation to object (CSO will provide a draft response letter)
    - There is outstanding information regarding the collection or the tribe's claim
    - The collection catalog is not current and is likely inaccurate

- Guidance will be provided as to why/how an objection is recommended
    - District POC will be directed to continue consultation with the tribe
  - Recommendation to not object (CSO will provide a draft response letter)
    - There is no outstanding information regarding the collection or the tribe's claim
    - Confidence in the collection catalog as being accurate and current
    - Tribe is culturally affiliated
    - Tribe has clearly identified items for repatriation
4. District POC will respond to the tribe's claim within 30 calendar days of receiving the claim
- For objections – All objections to CalNAGPRA claims will be filed with the NAHC in accordance with Health and Safety Code § 8016(c). If the District POC is responding to the tribe with a letter informing them that Caltrans is objecting to the claim, they will also continue consultation with the tribe to resolve the outstanding questions or issues. The goal is the submittal of a revised claim that is acceptable to both the tribe and Caltrans. Issues that cannot be resolved through additional consultation will be remediated through the dispute resolution process described in Health and Safety Code § 8016(d).
  - For no objection – If the District POC is responding to a tribe with a letter that Caltrans has no objection to their claim, they will then move forward with the CalNAGPRA and NAGPRA processes as provided by the National NAGPRA Program and the NAHC.
  - Concurrent to responding to the tribe, also send an email to the repository to notify them of the outcome of Caltrans' review and the anticipated next steps.

CSO will maintain a master list of claims and the resulting actions (objection, repatriation, dispute resolution), however, Districts are expected to keep all records and documentation relating to claims.