Caltrans NAGPRA-CalNAGPRA Requests for Repatriation & Claims

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Introduction

The processes and information presented here are 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 requests for repatriation and claims process may be updated when: CalNAGPRA regulations are published; the National NAGPRA Program or the NAHC issue new guidance; and/or NAGPRA regulations or AB 275 are further interpreted by case law.

Caltrans is making all archaeological collections owned/controlled by the department available for repatriation consultation with culturally affiliated California Indian Tribes under both NAGPRA and CalNAGPRA. Caltrans has posted summaries and inventories to the NAHC's Database, is providing summaries for all collections to National NAGPRA for posting on their Summaries Database, and is seeking tribal consultation on the development of inventories for posting in the National NAGPRA Inventories Database.

In compliance with 43 CFR 10 §§ 10.9(b) and 10.10(b), Caltrans has provided NAGPRA Summaries and itemized lists (draft Inventories) to all potentially culturally affiliated California Indian Tribes, as well as draft NAHC Summaries and Inventories per Health and Safety Code §§ 8013(b)(2) and 8016(c)(2). The department will renew these invitations to engage in repatriation consultation with non-responsive tribes in even numbered year (2024, 2026, 2028, etc.), so once every two years. Through the tribal consultation process, Caltrans will move repatriation forward through the Preliminary and Final stages of CalNAGPRA and through the posting of notices to the Federal Register for NAGPRA, as described below.

Under NAGPRA, tribes are required to submit *requests for repatriation*, while under AB 275, *repatriation request*, *request for repatriation*, *repatriation claims*, and *claim* are used interchangeably. To avoid confusion or additional steps in the repatriation process, this document uses RFR/Claim. Caltrans will accept a formal letter that uses any of those above listed phrases and meets the requirements described below.

For tribes that are not federally recognized, please be advised that NAGPRA repatriation must take place with lineal descendants or federally recognized tribes [43 CFR § 10.1(b)] before Caltrans can proceed with repatriation under CalNAGPRA alone. Caltrans encourages, and is willing to assist with, partnerships between federally recognized tribes and non-federally recognized tribes seeking. repatriation under NAGPRA. Caltrans will proceed with CalNAGPRA claims after having concluded

NAGPRA consultation with lineal descendants and federally recognized tribes. More information can be found on the NAHC CalNAGPRA Resources and Frequently Asked Questions website.

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

Caltrans RFR/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 RFR/Claim so that all parties have clarity, correct and current information, and that the subsequent RFR/Claim and repatriation process can proceed quickly and smoothy.

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

In accordance with 43 CFR §§ 10.9(d) and 10.10(f) and Health and Safety Code §§ 8014(a) and 8016(a), if a tribe seeks to place a NAGPRA and/or CalNAGPRA RFR/Claim with Caltrans, they must:

- Mail or email a formal letter to the Caltrans District POC; for CalNAGPRA RFR/Claims, also email the letter to the NAHC at CalNAGPRA@nahc.ca.gov
- Letter must be on tribal letterhead and signed by the Tribal Historic Preservation Officer (THPO), Tribal Chairperson, or Tribal Leadership
- State if the tribe is placing the RFR/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 requesting/claiming for repatriation (bulk listing/identification is ok, e.g., "all shell beads")
    - State which NAGPRA/CalNAGPRA 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 RFR/Claim
- Indicate if the tribe is working with neighboring tribes to coordinate RFR/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 in writing to all RFR/Claim letters within 30 calendar days. If Caltrans is unable to accept a RFR/Claim as presented because it does not meet the requirements listed above, the District POC will continue consultation with the tribe to resolve the outstanding questions or issues. The goal is the submittal of a revised RFR/Claim that is acceptable to both the tribe and Caltrans. RFR/Claim items that cannot be resolved through additional consultation will be remediated through the dispute resolution process described in 43 CFR § 10.12(c) or Health and Safety Code § 8016(d), as appropriate.

Caltrans Internal RFR/Claims Review Process

Caltrans is committed to transparency throughout the process and will work in good faith to move repatriation forward. The RFR/Claim review process must be completed within 30 calendar days of receiving a formal RFR/Claim. The Caltrans internal 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 NAGPRA and/or CalNAGPRA RFR/Claim, Caltrans will follow the steps below:

1. A RFR/Claim letter, is received by District POC from a tribe, which meets all of the requirements above.

2. District POC submits the RFR/Claim to CSO for review
    - RFR/Claim must be submitted to CSO within five calendar days of the District receiving it
    - Email RFR/Claim directly to Emily Castano (Emily.Castano@dot.ca.gov) and copy the CSO Office Chief
    - Email Subject: NAGPRA-CalNAGPRA RFR/Claim [District #] and [Tribe]
    - Email must include:
        - Name of tribe and type of recognition (federal/state)
        - Attached RFR/Claim letter
        - Attached collection(s) itemized list (draft inventory) or summary
        - Attached tribal consultation log for the collection(s), including all communication between the requesting/claiming tribe and all other potentially culturally affiliated tribes
        - District POC's assessment of the RFR/Claim: are there any outstanding issues or information?
        - Any other relevant information CSO should be aware of in reviewing the RFR/Claim
    - Concurrent to submitting the RFR/Claim to CSO for review, the District POC will send an email to the repository to notify them that Caltrans is reviewing a tribal RFR/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. Caltrans will follow-up with the outcome of the review and continue coordination with the repository. 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 RFR/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 RFR/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 RFR/Claim within 30 calendar days of receiving the RFR/Claim
    - For objections – All objections to CalNAGPRA RFR/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 NAGPRA or CalNAGPRA RFR/Claim, they will also continue consultation with the tribe to resolve the

outstanding questions or issues. The goal is the submittal of a revised RFR/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 processes described in 43 CFR § 10.17 12(c) or Health and Safety Code § 8016(d), as appropriate.
- For no objection – If the District POC is responding to a tribe with a letter that Caltrans has no objection to their RFR/Claim, they will then move forward with the NAGPRA and/or CalNAGPRA 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 RFR/Claims and the resulting actions (objection, repatriation, dispute resolution). However, Districts are expected to keep all records and documentation relating to RFR/Claims.

Repatriation Steps Following a Successful RFR/Claim

Following the District POC formally responding that Caltrans does not object a tribal RFR/Claim, Caltrans will earnestly move repatriation forward, in close consultation with the tribe, by completing the required NAGPRA and/or CalNAGPRA documents and steps below. *All documents will be provided to the requesting/claiming tribe for review and approval before final versions are sent to National NAGPRA and/or the NAHC*.

While moving through the NAGPRA and/or CalNAGRPA steps, Caltrans will work with the requesting/claiming tribe to develop case-by-case specific Transfers of Control and Repatriation Statements that are approved by the tribe and satisfy all NAGPRA/CalNAGPRA requirements, as appropriate (see following section).

NAGPRA RFR/Claims

Summaries

- Prepare a Cultural Affiliation Summary of Evidence
  - Utilize existing research material and information provided by the tribe
  - To be kept on file at Caltrans in accordance with 43 CFR § 10.3
- Prepare a Summary (if not already prepared)
  - Utilize the National NAGPRA templates
  - Submit it to National NAGRPA if a Summary has not already been submitted in compliance with 43 CFR § 10.9(a)
- Prepare a Notice of Intent to Repatriate (NIR)
  - Within 30 calendar days of responding to a tribal RFR/Claim, submit NIR to National NAGPRA for publication in the Federal Register per 43 CFR § 10.9(f)
  - NIR will also be sent to all other potentially culturally affiliated tribes as required by 43 CFR § 10.9(f)(1)
- No less than 30 and no more than 90 calendar days after the NIR has been published, Caltrans will provide a signed Transfer of Control and Repatriation Statement to the requesting/claiming tribe (see next section).

Inventories

- Prepare a Cultural Affiliation Summary of Evidence
    - Utilize existing research material and information provided by the tribe
    - To be kept on file at Caltrans in accordance with 43 CFR § 10.3
- Prepare an Inventory from Itemized List
    - Utilize the National NAGPRA templates
    - Submit it to National NAGRPA in compliance with 43 CFR § 10.10(d)
- Prepare a Notice of Inventory Completion (NIC)
    - Within 6 months of submitting the Inventory, submit NIC to National NAGPRA for publication in the Federal Register per 43 CFR § 10.10(e)
    - NIC will also be sent to all other potentially culturally affiliated tribes as required by 43 CFR § 10.10(e)(1) and all parties identified in the NIC will be informed of the active RFR/Claim per 43 CFR § 10.10(g)
- No less than 30 and no more than 90 calendar days after the NIC has been published, Caltrans will provide a signed Repatriation Statement/Transfer of Control to the requesting/claiming tribe (see next section). Note that Caltrans considers the RFR/Claim as satisfying the requirements of 43 CFR § 10.10(f).
- For Itemized Lists (draft Inventories) for which Caltrans receives no RFR/Claim by July 10, 2028, Caltrans will prepare to provide Inventories to National NAGPRA, notify all potentially culturally affiliated tribes of the department's intentions, and re-new the invitation to engage in repatriation consultation under 43 CFR § 10(b). These actions will be taken to ensure that Caltrans provides all inventories to National NAGPRA by January 10, 2029, as required by 43 CFR § 10(d)(2).

Though the RFR/Claim was placed solely under NAGPRA, Caltrans still has a responsibility to comply with CalNAGPRA. To ensure that the department's CalNAGPRA obligations have been met, once the NAGPRA process is complete, the District POC will update the Inventories and/or Summaries as Final and list the responses from the culturally affiliated tribes in the NAHC Database, as well as checking the appropriate box for "Does this CalNAGRPA inventory/summary need it's status changed pursuant to federal NAGPRA." This approach is meant to simplify the reparation process and is in alignment with the intent of AB 275 as described in Health and Safety Code §§ 8011(a), 8013(e), 8013(f), and 8016(a)(5).

CalNAGPRA RFR/Claims

Caltrans will proceed with CalNAGPRA claims placed by non-federally recognized tribes after concluding NAGPRA consultation with lineal descendants and federally recognized tribes. The following process is in compliance with the most current direction the NAHC provided in a statewide email dated December 20, 2023. More information can be found on the NAHC CalNAGPRA Resources and Frequently Asked Questions website.

Preliminary Status: In the NAHC Database, the District POC will certify the current status of the NAHC Inventories and/or Summaries as Preliminary and identify which culturally affiliated tribes reviewed the Inventories and/or Summaries prior to the entry being moved to Preliminary to satisfy Health and Safety Code § 8013(d).

Final Status: Once Inventories and/or Summaries have been at Preliminary for 30 days, completing the 30-day tribal review period, the District POC will use the NAHC Database to certify the status of the Inventories and/or Summaries as Final and list the responses from the culturally affiliated tribes

(concurrence, non-response, or disputed) in the notes field to satisfy Health and Safety Code §§ 8013(j)(1) and 8013(j)(2).

NAGPRA and CalNAGPRA RFR/Claims

For RFR/Claims that are placed under both NAGPRA and CalNAGPRA, Caltrans will follow the NAGPRA process described above and provide copies of the NIR and/or NIC to the NAHC when they are posted to the Federal Register. At that time, the District POC will update the Inventories and/or Summaries as Final and list the responses from the culturally affiliated tribes in the NAHC Database, as well as checking the appropriate box for "Does this CalNAGRPA inventory/summary need it's status changed pursuant to federal NAGPRA." This approach is meant to simplify the reparation process and is in alignment with the intent of AB 275 as described in Health and Safety Code §§ 8011(a), 8013(e), 8013(f), and 8016(a)(5).

Transfer of Control, NAGRPA Repatriation Statement, and Reinterment Assistance

To complete the legal repatriation process:

- Under NAGPRA:
    - Caltrans and the requesting/claiming tribe develop and sign a Transfer of Control
    - Caltrans signs a NAGPRA Repatriation Statement and provides it to National NAGPRA and the requesting/claiming tribe per43 CFR §§ 10.9(g) and 10.10(h)
- Under CalNAGRPA:
    - Caltrans and the requesting/claiming tribe develop and sign a Transfer of Control
    - If a Repatriation Agreement is developed through consultation between Caltrans and the requesting/claiming tribe, a signed copy will be provided to the NAHC per Health and Safety Code § 8015(b)

No less than 30 and no more than 90 calendar days after the NIC or NIR has been published and/or the NAHC Inventory or Summary has been moved to final status, Caltrans will provide a signed Transfer of Control to the requesting/claiming tribe, National NAGPRA, and the NAHC in compliance with 43 CFR §§ 10.9(g) and 10.10(h) and Health and Safety Code § 8016(b). Consultation between Caltrans and the requesting/claiming tribe on the drafting of the Transfer of Control will take place concurrent to posting NIRs or NICs under NAGPRA or while the Inventory or Summary is in Preliminary status under CalNAGPRA. For repatriation under NAGPRA, Caltrans will also prepare a Statement of Repatriation utilizing National NAGPRA's templates.

After providing the signed Transfer of Control, Caltrans will continue consultation with the receiving tribe and the repository to coordinate and assist with the physical transfer or the establishment of a Held in Trust Agreement. This includes identifying needed support from Caltrans to ensure appropriate reinternment or other disposition of ancestors or cultural items.