

How to Complete CalNAGPRA and NAGPRA Together Just do it!

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Ultimately, the goal of both laws is the same – expeditious repatriation.

Repatriation work that occurs in compliance with CalNAGPRA generally requires compliance with Federal NAGPRA before repatriation can occur. In some ways, the interactions between Federal and state law is like building a house: Federal NAGPRA is the floor, but states can build on top of that floor with other law, such as CalNAGPRA. And, just like building a house, certain additions require adhering to national standards (like Federal NAGPRA) while other additions may not but could still be subject to state or local rules (like CalNAGPRA).

CalNAGPRA expands upon Federal NAGPRA's requirements, similar to local building codes refining national standards. For example, Federal NAGPRA requires museums and state agencies to consult prior to repatriation or transfer, but CalNAGPRA goes further to define consultation and require it be respectful of tribal sovereignty and confidentiality. Similarly, Federal NAGPRA does not prevent additional research or handling of collections prior to repatriation or transfer, but CalNAGPRA requires minimizing handling and defers to tribal recommendations on handling and treatment. In another example, Federal NAGPRA requires museums and state agencies to respond to requests for consultation, but CalNAGPRA requires proactive outreach and consultation on all collections. In these instances, as well as others, the differences between CalNAGPRA and Federal NAGPRA build upon each other and are not in conflict.

Many of the definitions under CalNAGPRA and Federal NAGPRA are exactly the same. There is no difference in the definitions of "burial site," "control," "cultural items," "inventory," "possession," or "summary."

CalNAGPRA provides new complementary definitions for some terms used in Federal NAGPRA, which help to clarify the requirements under CalNAGPRA but do not conflict with Federal NAGPRA. Those new terms are "consultation," "preponderance of the evidence," "reasonable," and "tribal traditional knowledge."

CalNAGPRA expands upon Federal NAGPRA's definitions of "Indian Tribes," "museums," "aboriginal territory," and "cultural affiliation." Under Federal NAGPRA, "museum" includes only institutions that receive Federal funds, but CalNAGPRA includes all institutions that receive state funds. Under Federal NAGPRA, "Indian Tribe" includes only federally recognized Indian Tribes, but CalNAGPRA defines "California Indian tribe" to also include tribes in California who are not recognized by the Federal government. The expanded definition of Indian Tribe results in an expansion of the definition of [state] aboriginal territory and [state] cultural affiliation

under CalNAGPRA. As a result of these expanded definitions, not all instances of repatriation required under CalNAGPRA are required under Federal NAGPRA, but there is frequently overlap.

A difference between CalNAGPRA and Federal NAGPRA arises when working directly with California Indian tribes who are not recognized by the Federal government. Human remains and other cultural items are often subject to both Federal NAGPRA and CalNAGPRA. Because Federal NAGPRA requires the involvement of federally recognized tribes, the quickest way to repatriation of human remains and associated funerary objects to a California Indian tribe that is not recognized by the Federal government may be through a relationship with a federally recognized Indian Tribe.

For example, under CalNAGPRA, a California Indian tribe that is not recognized by the Federal government might request repatriation of human remains and associated funerary objects. If the museum or state agency receiving the request for repatriation determines state cultural affiliation is established, repatriation under CalNAGPRA can only proceed after completing the applicable requirements of Federal NAGPRA, which requires obtaining concurrence of the U.S. Department of the Interior. CalNAGPRA references this requirement in Section 8016(a)(5). Recent examples of this in California and elsewhere can be found here:

<https://www.federalregister.gov/d/2021-24313>

<https://www.federalregister.gov/d/2019-25734>

However, depending on the circumstances of the human remains and funerary objects, repatriation or disposition could occur to a federally recognized Indian Tribe. If a federally recognized Indian Tribe is culturally affiliated with the human remains and funerary objects, a California Indian tribe that is not federally recognized can join the request for repatriation. Recent examples of this in California can be found here:

<https://www.federalregister.gov/d/2021-08399>

<https://www.federalregister.gov/d/2021-08397>

<https://www.federalregister.gov/d/2019-16683>

For other objects, like unassociated funerary objects, sacred objects, or objects of cultural patrimony, repatriation under Federal NAGPRA is only required when there is a cultural affiliation to a federally recognized Indian Tribe. For those other objects, repatriation to a California Indian tribe that is not recognized by the Federal government might occur under CalNAGPRA, provided the museum or state agency first determines that Federal NAGPRA does not apply.

For example, under CalNAGPRA, a California Indian tribe that is not recognized by the Federal government might request repatriation of an unassociated funerary object. If the museum or state agency receiving the request for repatriation determines state cultural affiliation is established, repatriation could proceed under CalNAGPRA. Under Federal NAGPRA, cultural affiliation is limited to federally recognized Indian Tribes. Therefore, it is possible that an unassociated funerary object might be repatriated under CalNAGPRA but not subject to Federal

NAGPRA, if, for example, the object is not culturally affiliated with a federally recognized Indian Tribe. The museum or state agency must perform independent analyses of cultural affiliation and state cultural affiliation. In doing so, a museum or state agency must ensure that it complies with both Federal and state laws (even if compliance with one is just confirming that it need not comply).

Ultimately, a museum or state agency is responsible for decision making under Federal NAGPRA. It is up to the museum or state agency to decide if repatriation is subject to the Federal regulatory process. Under CalNAGPRA, a museum or state agency is responsible for decision making, with oversight from the California Native American Heritage Commission. Unlike complying with CalNAGPRA, there is no final review from the Federal NAGPRA office of decision making, similar to how when building a house, a final inspection is more often a local requirement than a national one.

Lastly, there is never additional risk in ensuring compliance with Federal NAGPRA (even if compliance is just confirming that it need not comply) while also complying with CalNAGPRA; whereas there is potential risk in not complying with Federal NAGPRA if you were, in fact, required to do so (e.g., liability, civil penalties). However, under both statutes, repatriation is to be expeditious; compliance with either law should not be used to delay repatriation.

To assist with limited resources and staffing, the National NAGPRA Program is happy to work with documents prepared for CalNAGPRA as documents needed for Federal NAGPRA. We do have specific requirements for notices published in the *Federal Register* under Federal NAGPRA that must be met. We have prepared [new notice templates](#) to make that process easier. We can also use a notice to update the related inventory if the notice provides us with the necessary information to do so.

The National NAGPRA Program stands ready to assist any museum or state agency in California with making it as easy as possible to satisfy the requirements of both CalNAGPRA and Federal NAGPRA, as ultimately, the goal of both laws is the same – expeditious repatriation.