



Native American Graves Protection and Repatriation Act (NAGPRA) A Quick Guide for Preserving Native American Cultural Resources

What is NAGPRA?

The Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001-3013, 43 CFR Part 10 was passed on November 16, 1990, to resolve the disposition of Native American cultural items and human remains under the control of Federal agencies and institutions that receive Federal funding ("museums"), as well as the ownership or control of cultural items and human remains discovered on Federal or tribal lands after November 16, 1990. The statute and regulations outline the rights and responsibilities of lineal descendants, Indian tribes (to include Alaska Native villages), Native Hawaiian organizations, Federal agencies, and museums under the Act, and provide procedures for complying with NAGPRA. Depending on the category of cultural item in question and its cultural affiliation, NAGPRA provides lineal descendants (regardless of whether or not they are Native American), Indian tribes, and Native Hawaiian organizations (NHOs) a process for transfer to them of cultural items.

What is meant by the terms Native American, tribal land, and aboriginal land?

As defined in NAGPRA, "Native American" means of, or relating to, a tribe, people, or culture that is indigenous to the United States. "Tribal land" means all lands within the exterior boundaries of any Indian reservation, all dependent Indian communities, or any lands administered for the benefit of Native Hawaiians. "Aboriginal land" means Federal land that is recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims as the aboriginal land of an Indian tribe.

Who must comply with NAGPRA?

Those entities having control of NAGPRA cultural items:

Federal agencies (excluding the Smithsonian Institution, which operates under a parallel law)

Institutions that receive Federal funds (including, but not limited to, museums, colleges and universities, state or local agencies and their subdivisions)

What are cultural items?

As defined in NAGPRA [25 USC 3001 (3)], cultural items are:

Human remains: physical remains of a Native American

Funerary objects: placed near individual human remains as part of a death rite or ceremony

Sacred objects: needed for the modern-day practice of traditional Native American religions

Cultural patrimony: group-owned objects having ongoing importance to the group

What is cultural affiliation?

Cultural affiliation, as defined in NAGPRA [25 USC 3001 (2)], is a relationship of shared group identity that may be reasonably traced historically or prehistorically between a present-day Indian tribe or NHO and an identifiable earlier group.

When is cultural affiliation determined to exist?

When, after following the requirements of NAGPRA, including consultation with Indian tribes and NHOs, there is a reasonable belief that the totality of information shared permits a relationship of shared group identity to be traced between a present-day Indian tribe or NHO and an earlier group, based on biological, archeological or anthropological information, geographical location, kinship ties, linguistic connection, folkloric references, oral traditions, historical data, other relevant information or expert opinion.



When are human remains determined to be culturally unidentifiable (CUI)?

When, after following the requirements of the NAGPRA, including consultation with Indian tribes and NHOs, the totality of information shared does not reasonably permit a relationship of shared group identity to be traced.

There is a mandatory process in NAGPRA for resolution of the disposition of human remains of a culturally unidentifiable Native American individual with either a "tribal land" provenience, an "aboriginal land" provenience. In addition, NAGPRA provides a discretionary process for the disposition of CUI without a "tribal land" or "aboriginal land" provenience.

Who owns/controls NAGPRA cultural items discovered on tribal or Federal lands after November 16, 1990?

On tribal land, human remains and associated funerary objects belong to the lineal descendant(s) of the deceased Native American. If no lineal descendant can be ascertained, the human remains and associated funerary objects belong to the "tribal land" Indian tribe or NHO. Unassociated funerary objects, sacred objects, and objects of cultural patrimony belong to the "tribal land" Indian tribe or NHO.

On Federal land, human remains and associated funerary objects belong to the lineal descendant(s) of the deceased Native American. If no lineal descendant can be ascertained, control is with the closest culturally affiliated Indian tribe or NHO that states a claim. In the case of unassociated funerary objects, sacred objects, and objects of cultural patrimony, control is with the closest culturally affiliated Indian tribe or NHO that states a claim. If cultural affiliation cannot be determined, control of a NAGPRA cultural item is with the Indian tribe that is recognized as the "aboriginal land" tribe and states a claim, unless the claim is preempted by the claim of an Indian tribe or whose cultural relationship to the item is stronger than that of the "aboriginal land" tribe.

What is the process for resolution of ownership of NAGPRA cultural items discovered on tribal or Federal lands after November 16, 1990?

Intentional Excavation= Discovery with a Plan:

1. Prior to any discovery, and through consultation, develop a **Plan of Action** or an agreement for disposition upon discovery and removal.
2. If cultural items are discovered, immediately put the plan or agreement into action.
3. Publish any Notice of Intended Disposition (NID) in newspaper twice, as required.
4. Transfer control of cultural items after 30 days.
5. Send copy of NID to National NAGPRA.

Inadvertent Discovery= Discovery without a Plan:

1. Discovery of cultural items without a plan for disposition.
2. Stop work for 30 days, protect site, consult, and develop a plan.



What are NAGPRA Collections?

Cultural items that are in the possession of or under the control of a museum or Federal agency. These organizations are required to compile a summary or inventory of the cultural items in their collections and consult with Indian tribes and NHOs to identify the geographical and cultural affiliation of the items.

What are the NAGPRA Collections summary and inventory processes?

Summaries for unassociated funerary objects, sacred objects & objects of cultural patrimony:

1. **Institution or Federal agency** produces a summary description of objects in its collection that fit, or might fit, one of the categories of cultural item (**NAGPRA Summary**) and distributes it to all potential culturally affiliated Indian tribes or NHOs.
2. **Institution or Federal agency** consults with Indian tribes or NHOs, upon request, to identify NAGPRA cultural items.
3. **Indian Tribe or NHO** submits a written request, and if the request satisfies the required criteria, the **institution or Federal agency** publishes a Notice of Intent to Repatriate in the Federal Register.

Inventories for human remains and associated funerary objects:

1. **Institution or Federal agency** consults with Indian tribes or NHOs to determine if human remains and associated funerary objects in its collection are culturally affiliated or culturally unidentifiable.
2. Based on the totality of the information in its possession, **institution or Federal agency** creates an item-by-item Culturally Affiliated Inventory or Culturally Unidentifiable Inventory.
3. Within 6 months of completing either type of inventory, **institution or Federal agency** sends copies to appropriate Indian tribe(s) or NHO(s) and publishes a Notice of Inventory Completion in the Federal Register. Notices are not claim dependent.

4. **Institution or Federal agency** waits 30 days following publication of a Federal Register notice before transferring control of cultural items, human remains, or associated funerary objects, in case there are competing claims that satisfy the required criteria. During the 30 days, there can be consultation on transfer of possession.
5. **Institution or Federal agency** must transfer *control* of item(s) to **Indian tribe(s) or NHO(s)** **within 90 days of receipt of a claim that satisfies the required criteria** if no exceptions apply (such as to resolve competing claims), and transfers *possession* of item(s) based on mutual agreement of all parties.



What funding is available to help with the NAGPRA process?

Section 10 of NAGPRA authorizes competitively selected grants to museums, Indian tribes, and Native Hawaiian organizations to assist in consultation, documentation, and repatriation of Native American human remains and cultural items. The National Park Service's National NAGPRA Program administers the grants. There are two types of NAGPRA grants available: Consultation/ Documentation Grants and Repatriation Grants (see *Quick Guide – NPS Grants*).

What does the National NAGPRA Program do?

Supports the Review Committee established to monitor NAGPRA compliance, makes findings of fact, facilitates the resolution of disputes, consults on regulations, and reports to Congress

Drafts regulations to implement NAGPRA, in consultation with the Review Committee

Publishes notices in the Federal Register

Maintains databases for NAGPRA inventories and summaries, and to identify consulting parties

Administers grants to Indian tribes, Native Hawaiian organizations, and museums

Provides training and outreach programs to tribes, institutions, Federal agencies, and the public

Staffs the Secretary of the Interior on civil penalties imposed on institutions that fail to comply with NAGPRA

More information

For more information about the statute and regulations, visit the National NAGPRA Program on the National Park Service website at: <http://www.nps.gov/nagpra/>

For more information about the NAGPRA Grants go to: www.nps.gov/history/nagpra/grants