

# Intentional Excavation on Federal and Tribal Lands after November 16, 1990

## Federal Lands: Initiating Consultation

The Federal agency official must take reasonable steps to determine whether a planned activity may result in the excavation of Native American human remains and other cultural items. The Federal agency official must **notify in writing** and **initiate consultation** with **any known lineal descendant** and the **Indian tribes and Native Hawaiian organizations** –

- **who are or are likely to be culturally affiliated with the human remains and other cultural items that are expected to be found;**
- **on whose aboriginal lands the planned activity will take place; and**
- **who the Federal official reasonably believes to have a cultural relationship to the human remains and other cultural items that are expected to be found.**

The written notification must –

- describe the planned activity, its general location, and the basis on which it was determined that human remains and other cultural items may be excavated;
- describe the basis for determining likely custody under 43 CFR 10.6, "Priority of Custody;" and
- propose a time and place for meetings or consultations.

## Tribal Lands: Obtaining Consent

NAGPRA allows the intentional excavation of Native American human remains and other cultural items on tribal lands **only with the consent of the appropriate Indian tribe or Native Hawaiian organization.**

Prior to excavation or removal, an ARPA permit must be obtained as follows –

- for private lands within the exterior boundaries of any Indian reservation, the Bureau of Indian Affairs will serve as the permit issuing agency; or
- for lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, the Department of Hawaiian Home Lands will serve as the permit issuing agency, with the Hawaii State Historic Preservation Division of the Department of Land and Natural Resources acting in an advisory capacity.

Final custody and disposition must be consistent with 25 USC 3002 (a), "Priority of Ownership," and 43 CFR 10.6, "Priority of Custody."

## During Consultation

The **purpose** of consultation is to **help the Federal agency determine who is entitled to custody** of the human remains and other cultural items under NAGPRA so that the disposition process can occur smoothly during the project, and **to discuss the Federal agency's proposed treatment** of the human remains and other cultural items.

The Federal agency official must **provide in writing to the parties to consultation** –

- a list of all lineal descendants, Indian tribes, or Native Hawaiian organizations that are being, or have been, consulted; and
- provide additional documentation on the project as needed and requested to facilitate consultation.

The Federal agency official **must request, as appropriate** –

- names and addresses of the Indian tribe official who will act as the tribe's representative in consultation;
- names and appropriate methods to contact lineal descendants;
- recommendations on how consultation should be conducted; and
- the kinds of cultural items that are considered to be unassociated funerary objects, sacred objects, or objects of cultural patrimony.

If the planned activity also requires consultation under section 106 of the National Historic Preservation Act (NHPA), **the Federal agency should coordinate any consultation and agreements under NHPA with the requirements of NAGPRA.**

## After Consultation – Written Plan of Action

The Federal agency official must prepare, approve, and sign a written plan of action. The plan of action must document the kinds of objects to be considered as cultural items; the planned treatment, care, and handling, including traditional treatment, of human remains and other cultural items; the planned archeological recording of the human remains and other cultural items; the kinds of analysis planned for each kind of object; and the nature of reports to be prepared. It will include—

- the **specific information used to determine custody** of the human remains and other cultural items; and
- the **planned disposition** of the human remains and other cultural items.

**Custody must determined in accordance with 25 USC 3002 (a), "Priority of Ownership," and 43 CFR 10.6, "Priority of Custody."**

**When Native American human remains and cultural items are discovered during a project in the absence of a Plan of Action, all work must cease for 30 days while the above consultation process is initiated. Stoppages repeat as necessary.**

→(over)

## Prior to Disposition – Notice of Intended Disposition

At least 30 days prior to transferring the human remains and other cultural items to the claimant entitled to custody, the responsible Federal agency must first publish a **Notice of Intended Disposition**. The Notice must –

- be published two times (at least a week apart) in a newspaper of general circulation in the area in which the human remains and other cultural items were discovered;
- be published two times (at least a week apart) in a newspaper of general circulation in the area or areas in which the affiliated Indian tribes or Native Hawaiian organization members now reside;
- provide information as to the nature and affiliation of the human remains and other cultural items; and
- solicit further claims to custody to be received within the 30 day period.

The Federal agency official must send a copy of the notice and information on when and where it was published to the National NAGPRA program.



## Disposition

Disposition is the transfer of Native American human remains and other cultural items excavated or removed on Federal or tribal lands after November 16, 1990, to the lineal descendants, Indian Tribes, or Native Hawaiian organizations that have been determined as claimants in the priority of custody.

In completing the disposition, the claimant accepts custody (ownership). Disposition should be documented, must be consistent with 25 USC 3002 (a), "Priority of Ownership," and 43 CFR 10.6, "Priority of Custody." The claimant having custody has the authority to direct further disposition.



## Further Disposition Options

**Take Physical Custody--** The claimant takes physical possession of the human remains and other cultural items. Where allowable, and upon agreement with the claimant, the Federal agency may provide temporary care until the claimant is able to take physical custody.

**Reburial on Federal Land--** The human remains and other cultural items may be reburied on Federal land, if the agency's policies and procedures permit such activities.

**Relinquishment--** Under NAGPRA [25 USC 3002(e)], the governing body of an Indian tribe or Native Hawaiian organization may expressly relinquish control over any Native American human remains, or title to or control over any funerary object or sacred object.