

National NAGPRA Program
Slide Text from Consultation Under NAGPRA video
Original text May 2010; Revised text May 2024

1. Explain how the term “consultation” is defined under NAGPRA
Review NAGPRA’s requirements for consultation
Provide you with guidelines and suggestions toward successful consultation
2. Why consultation is such a critical component of NAGPRA
What to expect from consultation
When to schedule a consultation
How to make the most of consultation
3. Consultation is a discussion, conference or forum in which information and advice are provided and exchanged. Consultation means the exchange of information, open discussion, and joint deliberations made between all parties in good-faith and in order to 1) Seek, discuss, and consider the views of all parties; 2) strive for consensus, agreement, or mutually acceptable alternatives; and 3) enable meaningful consideration of the Native American traditional knowledge of lineal descendants, Indian Tribes, and Native Hawaiian organizations.
4. Communication,
~~public participation,~~
consensus building,
collaborative decision-making
exchange of information, knowledge and ideas
5. Result in decisions that all parties can support
6. *American Indian Religious Freedom Act and the NAGPRA (visual)*
7. When consultations are to occur,
what information is to be shared
Which topics are to be discussed
8. Under NAGPRA, consultation is considered either face-to-face contact or phone contact. Consultation can also include email or videoconferencing.
9. Museums
federal agencies
Indian tribes
Native Hawaiian organizations (or NHOs)
Lineal descendant of or next of kin to the individuals and cultural items covered under the Act
10. **During** the inventory process
After the summary process
Upon discovering human remains and/or cultural items during an excavation on federal or tribal land.
11. Inventories and Summaries
12. Museums and federal agencies are required to consult with lineal descendants, next of kin, tribes or NHOs who are, ~~or are likely to be,~~ potentially culturally affiliated with the human remains or cultural items in their collection.
13. The museum or federal agency must contact a tribe, regardless of where they are located today, as long as they are potentially or are likely to be culturally affiliated with the human remains or associated funerary objects.

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14. A letter to an individual, tribe or NHO regarding potentially affiliated human remains or cultural items does not constitute a consultation. Consultation requires interpersonal communication.
15. Identifying the tribe or tribes and Native Hawaiian organizations to include in consultation is the first task. To do this, start by consulting with tribes and NHOs you do know and ask them about other tribes or NHOs that should be included.
16. NAGPRA website <https://www.nps.gov/subjects/nagpra/consultation-resources.htm>
Bureau of Indian Affairs <https://biamaps.geoplatform.gov/Tribal-Leaders-Directory/>
Tribal Historic Preservation Offices https://grantsdev.cr.nps.gov/THPO_Review/index.cfm
Administration for Native Americans
Native Hawaiian Organizations <https://www.doi.gov/hawaiian/nholist>
National Museum of the American Indian
State Historic Preservation Offices <https://ncshpo.org/directory/>
17. For Inventories, consultation starts at the beginning of the process ([Step 2-initiate consultation](#)), when a museum or federal agency begins to look at affiliating individuals or associated funerary objects in their collection.
18. A list of all Indian tribes and NHOs that are, or have been, consulted regarding the particular human remains and associated funerary objects;
A [copy of the itemized list-general description of the inventory](#) that includes information such as where the individuals or objects came from, their age, how they came into their collections, etc.
The projected timeframe [and method](#) for conducting the inventory; and
An indication that additional documentation used to identify cultural affiliation will be supplied upon request.
19. With summaries, the consultation process begins after the museum or federal agency completes the summary process ([Step 2-initiate consultation](#)). Museums or federal agencies must send potentially affiliated individuals, tribes and NHOs their summaries. It is then the individual, tribe or NHOs decision to initiate consultation by notifying the museum or federal agency that they are interested in an item in the summary.
20. Museum and federal agency officials must provide copies of the summary. In addition, they must provide, when requested, access to records, catalogues, relevant studies or other pertinent data for the limited purposes of determining the geographic origin, cultural affiliation and basic facts surrounding the summary objects.
21. The name and address of the tribe or NHO's representative to the consultation
Suggestions for ways to ensure a successful consultation including:
 - The names and appropriate methods for contacting affiliated lineal descendants and/or
 - Religious leaders who are to be consulted; and
 - If it is a summary consultation, the kinds of cultural items that the tribe or NHO considers to be funerary objects, sacred objects or objects of cultural patrimony, or
 - If it is an inventory consultation, the kinds of objects that the tribe or NHO reasonably believes to have been made exclusively for the funerary process or to contain the human remains of their ancestors.
22. Intentional excavations. In this case, the federal agency consults with the tribe prior to doing any activity on the land and determines how to handle the disposition of human remains or cultural items should they be encountered during an activity. A plan is then developed.

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23. Inadvertent discovery and the federal agency must stop all activity for 30 days, protect the areas and immediately initiate consultation with the appropriate tribes or NHOs.
24. Federal agency officials must consult with the following groups:
 - Known lineal descendants tribes or NHOs who are currently located or once were located where the human remains or cultural items were found.
 - Indian tribes and NHOs which are, ~~or are likely to be,~~ potentially culturally affiliated with the human remains or cultural items, and
 - Indian tribes and NHOs which established a cultural relationship with the human remains or cultural items in prior consultations
 - The tribe or NHO also may identify others for consultation, including traditional religious leaders, who have consultation rights under the AIRFA.
25. Federal agency official must notify the tribal or NHO representative in writing, and include the following information:
 - A proposed time and place for consultation
 - The federal agency's proposed treatment of the human remains or cultural items that may be discovered, and
 - The proposed disposition, or transfer, of any intentionally excavated or inadvertently discovered human remains or cultural items upon exhumation.
26. Federal agency official must provide the following information in writing:
 - A list of all lineal descendants, tribes or NHOs who are being, or have been, consulted regarding the disposition and
 - An indication that additional documentation used to identify affiliation will be supplied upon request.
27. Federal agency officials must request, as appropriate, the following information from consulting tribes or NHOs:
 - The name and address of the representative(s) in consultations
 - The names and appropriate methods to contact lineal descendants or next of kin who should be contacted to participate in the consultation process;
 - Recommendations on how the consultation process should be conducted; and
 - **The kinds of cultural items that the tribe or NHO considers likely to be unassociated funerary objects, sacred objects or objects of cultural patrimony.**
28. Comprehensive agreements with tribes or NHOs , which have claimed, or are likely to claim, affiliated human remains or cultural items. These agreements guide how federal agencies will manage the disposition of human remains or cultural items found during land management activities covered under the agreement thereby avoiding the need to continually consult with tribes. The correspondence related to the agreements will constitute proof of consultation under NAGPRA.
29. Please refer to 43.CFR.10 for complete details of NAGPRA's consultation requirements.

Now that we have reviewed the legal requirements of NAGPRA, let's spend some time discussing the goals of consultation. Why did proponents of NAGPRA emphasize the need for consultation? NAGPRA was passed in 1990 because of the need to correct historical injustice regarding the treatment of Native American human remains and cultural items. Prior to the passage of NAGPRA, tribes and NHOs had little legal recourse to repatriate ancestors or cultural items. The fundamental basis of required consultation is an acknowledgement of tribal sovereignty. It is

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the recognition that the federal-tribal relationship is a nation-to-nation relationship, and that, while landowners or repositories may have possession of human remains and cultural items, the tribes, NHOs and descendants have a personal and communal interest that is prior and paramount and must be respected.

30. Museums and federal agencies should consider asking the following:
 - Who will participate in the consultation? Do they have any special needs?
 - What would they like to do while they are at the museum?
 - What are the tribe's or NHO's goals for the meeting?
 - Would they like to use photography in the collections?
 - Would they like to conduct any special ceremonies? If so, is there anything the museum should be aware of, such as the need to use fire or water or natural products?
 - Are there any barriers to the tribe or NHO coming to the consultation, such as cost, transportation or housing? Is there a way that the museum can help?

31. Tribes should ask questions and inform the museum or federal agency of any special requests prior to the consultation, in order to allow staff to properly prepare for the visit:
 - Requests for time to view and discuss the collection
 - Any special requirements for ceremonies
 - Any special requirements for Elders or other people travelling to the consultation
 - Requests for additional information regarding the human remains or cultural items to be discussed in the consultation
 - Suggestions for ensuring a successful consultation visit

32. A typical meeting will have the following elements:
 - Special ceremonies
 - Introductions
 - Food and drink (especially if Elders have come)
 - Explanation of the museum's protocols around the collections
 - Explanations of the Native traditional protocols around human remains and cultural items
 - Time to view the collections
 - Time to discuss cultural affiliation
 - A discussion regarding next steps