

**Guidance for the Native American Graves Protection and Repatriation Act (NAGPRA)
43 CFR part 10**

Repatriation of human remains or associated funerary objects. 43 CFR 10.10

Step 3-Consult on human remains or associated funerary objects. [43 CFR 10.10\(c\)](#)

A museum or Federal agency must respond to any consulting party, regardless of whether the party has received an invitation to consult. Consultation on human remains or associated funerary objects may continue until the museum or Federal agency sends a repatriation statement for those human remains or associated funerary objects to a requestor under [43 CFR 10.10\(h\)](#).

- (1) In the response to a consulting party, a museum or Federal agency must ask for the following information, if not already provided:
 - (i) Preferences on the proposed timeline and method for consultation; and
 - (ii) The name, phone number, email address, or mailing address for any authorized representative, traditional religious leader, and known lineal descendant who may participate in consultation.
- (2) Consultation must address identification of:
 - (i) Lineal descendants;
 - (ii) Indian Tribes or Native Hawaiian organizations with cultural affiliation;
 - (iii) The types of objects that might be associated funerary objects, including any objects that were made exclusively for burial purposes or to contain human remains; and
 - (iv) The duty of care under [43 CFR 10.1\(d\)](#) for human remains or associated funerary objects.
- (3) The museum or Federal agency must prepare a record of consultation that describes the concurrence, disagreement, or nonresponse of the consulting parties to the identifications in (2) above.
- (4) At any time before the museum or Federal agency sends a repatriation statement for human remains or associated funerary objects to a requestor under [43 CFR 10.10\(h\)](#), a museum or Federal agency may receive a request from a consulting party for access to records, catalogues, relevant studies, or other pertinent data related to those human remains or associated funerary objects. A museum or Federal agency must provide access to the additional information in a reasonable manner and for the limited purpose of determining cultural affiliation, including the geographical location or acquisition history, of the human remains or associated funerary objects.

Definitions for this part. [43 CFR 10.2](#)

Consultation or consult 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.

Template for Record of consultation: <https://www.nps.gov/subjects/nagpra/templates.htm>

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Frequently asked questions about Step 3: Consult on human remains or associated funerary objects.

1. Where did the definition of consultation come from?
2. What is the goal of consultation?
3. What if consultation does not result in consensus, agreement, or mutually agreeable alternatives?
4. Are decision makers required to attend consultation?
5. Is this all that is required for consultation?
6. How should sensitive information be shared during consultation?
7. What are some best practices for ensuring effective and efficient consultation?
8. What is the timeline for completing consultation on human remains or associated funerary objects?
9. Should consultation also address joint requests or competing requests for repatriation? Is consensus or agreement on repatriation and physical transfer a part of consultation on human remains and associated funerary objects?
10. We need more time to consult before we can complete or update our inventory. What should we do?

1. Where did the definition of consultation come from?

Consultation is a critical, central, and continual part of the systematic processes for disposition or repatriation provided by the Act and these regulations. However, neither the Act nor the existing regulations define consultation. Congressional report language includes that “consultation” under NAGPRA means “the open discussion and joint deliberations with respect to potential issues, changes, or actions by all interested parties” (H. Rpt. 101–877, at 16). Specific to the inventory, Congress emphasized the need for “cooperative exchange of information between Indian [T]ribes or Native Hawaiian organizations and museums regarding objects in museum collections” (S. Rpt. 101–473, at 8). The definition in the regulations also draws language from other definitions for consultation found in 36 CFR part 800, Executive Order 13175, and draft guidance and language that became the November 2022 White House memorandum on Uniform Standards for Tribal Consultation. (See Final Rule [paragraph 190](#).)

2. What is the goal of consultation?

The goal of consultation is to strive for consensus, agreement, or mutually agreeable alternatives. “Consensus” does NOT imply museums or Federal agencies are required to mediate potential or even actual disagreements among lineal descendants, Indian Tribes, or NHOs. Likewise, “consensus” does not require that a museum or Federal agency receive a response from every invited consulting party before it can proceed. The consultation record should include efforts to invite consulting parties. When consultation does not result in consensus, agreement, or mutually agreeable alternatives, the consultation record must describe the concurrence, disagreement, or nonresponse of the consulting parties. (See Final Rule [paragraph 191](#).)

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3. What if consultation does not result in consensus, agreement, or mutually agreeable alternatives?

The consultation record must describe the concurrence, disagreement, or nonresponse of the consulting parties. (See Final Rule [paragraph 193](#).)

4. Are decision makers required to attend consultation?

No. Such a requirement may not fit every situation and might end up delaying or eliminating the efficiencies of the regulations. When consultation does not result in consensus, agreement, or mutually acceptable alternatives, consulting parties may wish to involve decision makers from all parties to see if a resolution can be found. (See Final Rule [paragraph 193](#).)

5. Is this all that is required for consultation?

Consultation as defined here is different than consultation defined in other contexts, especially consultation between a Federal agency and an Indian Tribe or NHO. For purposes of disposition or repatriation, Federal agencies are required to comply with this definition of consultation, as well as any applicable policy on government-to-government/sovereign consultation that would apply in all contexts. For purposes of repatriation, we cannot require museums to conduct the same level of consultation that would be required for a Federal agency. We feel this definition of consultation provides requirements that can be met by both museums and Federal agencies, fills in a missing piece of the Act and the existing regulations, and ensures consultation remains a critical, central, and continual part of the systematic processes for disposition or repatriation. (See Final Rule [paragraph 194](#).)

6. How should sensitive information be shared during consultation?

We cannot dictate how a museum or Federal agency requests or records sensitive information it receives during consultation. We can, and have, specifically limited the information needed to comply with these regulations, and we encourage lineal descendants, Indian Tribes, and NHOs to request that museums and Federal agencies ensure that information of a particularly sensitive nature is not made available to the public, pursuant to otherwise applicable law. Since 1995, the Department has recommended that museum or Federal officials ensure that sensitive information does not become part of the public record by not collecting, or writing down, such information in the first place (1995 Final Rule, 60 FR 62154). We recommend that in a response to an invitation to consult, lineal descendants, Indian Tribes, and NHOs stipulate their requirements for protecting sensitive information shared during consultation, such as prohibiting any audio or video recording of consultation, requiring use of a specific note-taker or transcriptionist, or conducting consultation in a separate facility with limited attendance. (See Final Rule [paragraph 332](#).)

7. What are some best practices for ensuring effective and efficient consultation?

We recommend including in the invitation to consult in Step 2 a preliminary assessment of cultural affiliation. We have seen that Step 3 can proceed more quickly if all parties are clear on the museum's or Federal agency's position on cultural affiliation from the beginning. For example, if in Step 2, for human remains or associated funerary objects from a given state, the itemized list indicates cultural affiliation is

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reasonably identified with certain Indian Tribes, then the response in Step 3 may be as simple as the Indian Tribes stating their agreement, disagreement, or requesting additional information on the preliminary assessment. The earlier that consulting parties can identify their points of agreement and points of disagreement, the more effective and efficient consultation will be.

8. What is the timeline for completing consultation on human remains or associated funerary objects?

The timeline for Step 3 really depends on when Indian Tribes respond to Step 2. In Step 2, a museum or Federal agency should lay out a timeline and method for consultation. It would be appropriate for a museum or Federal agency to create an overall estimated timeline for completing Step 4 within the required timeframe for each collection.

9. Should consultation also address joint requests or competing requests for repatriation? Is consensus or agreement on repatriation and physical transfer a part of consultation on human remains and associated funerary objects?

The purpose of consultation in Step 3 is to identify lineal descendants, cultural affiliation, associated funerary objects, and the appropriate duty of care. The purpose of consultation is NOT to determine who will request repatriation or who will make competing requests for repatriation. Lineal descendants, Indian Tribes, and NHOs are not required to provide information about future requests for repatriation during consultation on human remains and associated funerary objects. Consultation may naturally include discussion of plans for making requests for repatriation, but this is not a required outcome of consultation. If the consulting parties all agree and wish to make a request for repatriation during consultation on human remains and associated funerary objects, they may do so.

For example, if 20 Indian Tribes agree to a joint repatriation request during consultation and before an inventory is updated or complete, the Indian Tribes could ask the museum to include that request for repatriation in writing in the record of consultation. The record of consultation then doubles as the required written request for repatriation.

Alternatively, if consulting parties discuss making competing requests for repatriation during consultation, a museum may include that in a record of consultation. To ensure accuracy and confirmation of the competing requests, the museum may request that each Indian Tribe submit a separate written request for repatriation during consultation.

In either case, after updating or completing the inventory and publishing a notice of inventory completion, the museum must act on the written request(s) for repatriation and respond within the required timeframe. Note: a request received before publication of a notice is dated the same date the notice was published under 43 CFR 10.10(f)(1).

10. We need more time to consult before we can complete or update our inventory. What should we do?

Most of the timelines and deadlines under these regulations are triggered by a request for repatriation from a lineal descendant, Indian Tribe, or NHO. If a museum or Federal agency is involved in meaningful and effective consultation with lineal descendants, Indian Tribes, and NHOs, pressure to complete repatriation within a set timeframe may be significantly alleviated. The one exception to the request requirement is the timeline for a museum or Federal agency to complete or update an inventory of human

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remains and associated funerary objects. We further stress that an extension of this deadline may be requested by any museum that has made a good faith effort to update its inventory. We have added the written agreement of consulting parties to the request to the requirements for an extension. If a museum will need an additional time to complete its inventory, it can only do so by first engaging in meaningful and effective consultation with lineal descendants, Indian Tribes, and NHOs. (See Final Rule [paragraph 429](#).)