

# NAGPRA 101

What Are The Basics Under the Native American Graves Protection and Repatriation Act

- The Native American Graves Protection and Repatriation Act (NAGPRA) is a federal law that was passed in 1990. This law focuses on the return of Native American human remains, cultural items and protection of Native American burial sites. This module will cover the basics of the law, who the law applies to and background into why the law was created.

- **Learning Objectives:**

- What is NAGPRA and who does it apply to
- Why are some of the basics under the law
- Why was NAGPRA created

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# What Is NAGPRA

- The Native American Graves Protection and Repatriation Act (NAGPRA), Public Law 101-601; 25 U.S.C. 3001 et seq, is a federal law. NAGPRA was passed on November 16, 1990.
- NAGPRA only applies to institutions, governments, museums, agencies, native Hawaiian organizations and tribes within the United States. It is not an international law.
- The Smithsonian museums are not under the jurisdiction of NAGPRA. The Smithsonian has its own repatriation law, <https://americanindian.si.edu/sites/1/files/pdf/about/NMAIAct.pdf>.
- NAGPRA is multi-faceted legislation that is: property, civil rights, human rights and Indian law.
- NAGPRA address tribes, native Hawaiian organizations, religion, science, land, history and the relationship of native communities with the federal government, all under one piece of legislation.

# Who Does NAGRPA Apply To

- The following are under the jurisdiction of NAGRPA-
- All federal agencies within the government of the United States.
- Museums- Any museum, government or institution that has received federal funding is a museum under NAGPRA. This includes private and public museums, states and their departments, local municipalities, towns, cities and universities/colleges. Local sheriff departments and state police are also under NAGPRA.
- Indian tribes- As defined under the law, “Any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians”. [25 USC 3001 (7)].
- Lineal descendant-“ An individual tracing his or her ancestry directly and without interruption by means of the traditional kinship system of the appropriate Indian tribe or Native Hawaiian organization or by the common law system of descentance [sic] to a known Native American individual whose remains, funerary objects, or sacred objects are being claimed under these regulations.” [43 CFR 10.2 (b)(1)]

# Land and NAGPRA

- NAGPRA applies to all federal and tribal lands. Tribal lands includes all areas within the exterior boundaries of a reservation, even if the tribe does not own the lands within the boundaries of the reservation. This includes lands that are not held in federal trust for the tribe.
- Not every tribe has a defined reservation. The establishment of reservation boundaries is an ongoing affair in Indian country. Check to see what each tribe's land status currently is that you are working with. Not all tribes have reservations. Removed tribes, primarily in Oklahoma and Kansas, have allotment lands, which are similar to reservations in a legal sense but cover much smaller areas. Hawaii has no reservations or allotments but has lands held in trust for the use of its native populations. Alaska has only one reservation but has numerous Native Alaskan corporations and villages where NAGRPA is applicable.
- Each state has its own burial and antiquities laws for discoveries outside of federal and tribal lands. It is advisable to know your state's burial laws, as in many cases states will enter into MOUs or MOAs with tribes regarding the discovery of human remains and/or cultural items within that state.

# Control and Possession

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- **Slide # 5 Control and Possession**
- Under the law, control and possession are two very distinct terms for an agencies and museums, as well as tribes. It is very important for an agency or museum to know which category they fall under in terms of their NAGRPA collections.
- A museum may have remains or cultural items in their possession that are not theirs. Some museums will act as a repository for other museums or federal agencies, holding items and remains for the other agency for an indefinite amount of time. When a museum is merely holding the remains or items for another institution or a federal agency, it has possession.
- Having control is different; it is the entity that has the final legal say on the disposition of human remains and items. An agency or museum may have control over some remains, but it may not have possession. The museum or agency with control is the entity that makes final decisions under NAGPRA. Such final decisions include but are not limited to: honoring a repatriation claim, denying a claim, in the case of a competing claim deciding which tribe or individual has the strongest claim and returning remains under 43 C.F.R 10.11.
- Federal agencies are more likely to have collections on loan to other institutions. Some large universities and museums will have collections on loan. Always check to make sure who has control of collections and if items or remains are out on loan.



# Key Terms

- These are key terms used by tribes, museums and agencies when working under NAGRPA. Some terms have a unique application under NAGRPA, such as “museum” and “dispute”. Terms such as “inventory” and “summary” have different implications, as do “control” and “possession”. Knowing these terms will help accelerate repatriations, foster clear consultation and streamline work in general for museums, agencies and tribes. A full description of each term can be found at <https://www.nps.gov/nagpra/>
- Museum-
- Tribe-
- Federal Agency-
- Lineal descendant-
- Native Hawaiian Organization/NHO
- Sacred Object-
- Object of Cultural Patrimony-
- Unassociated Funerary Object/UFO
- Associated Funerary Object/AFO
- Dispute-
- NAGPRA Grant-
- Indian Country
- Indian law
- Civil Penalty
- Cultural Affiliation-
- Culturally Unidentifiable Individual/CUI
- 43 C.F.R 10.11-
- Federal Register-
- Notice of Intended Disposition/NID
- Notice of Inventory Completion/NIC
- Notice of Intent to Repatriate/NIR
- Preponderance of Evidence
- Repatriation Claim
- Right of Possession
- Traditional Religious Leader
- Tribal Historic Preservation Officer/THPO
- State Historic Preservation Officer/SHPO
- Inventory-
- Summary-
- Designated Federal Officer/DFO
- NAGRA Review Committee-
- National NAGRPA Program-

# Grants

- The National NAGPRA Program offers two types of grants: Repatriation and Documentation/Consultation. These grants are available to both museums and tribes. Museums and tribes can partner on these grants. Federal agencies are not eligible for these grants.
- Repatriation grants are non-competitive and are awarded on a first come, first serve basis. The max award for repatriation grants is \$15,000. Documentation grants are competitive and the max is \$ 90,000. The funding sources for both these grants correspond with the federal fiscal year, meaning that by May or June, the funds for these are often depleted. It's best to apply for these grants in October or November.
- Repatriation grants can be utilized to help complete the return of human remains and/or cultural items back to a tribe. Tribes and museums are both eligible but the majority of the time tribes apply for this grant. These grants are ideal for cross country repatriations or returning remains to Alaska or Hawaii. The requirements needed for this grant is a notice published in the federal register and a letter transferring control of the remains or items to the tribe.
- Documentation/Consultation grants are very helpful for museums looking to get their collections in compliance with the law. This grant can be used to bring tribal consultants in to review materials in the museum's collections, helping to identify provenance, cultural application of items and possible affiliation of remains and items. Many museums use this grant to create their summaries and/or inventories. Consultants can be hired through this grant to help fulfill this mandatory task of completing summaries and inventories.

# The NAGPRA Review Committee

- The NAGPRA Review Committee, an advisory body appointed by the Secretary of the Interior, follows the guidelines under the Federal Advisory Committee Act (FACA). The NAGPRA Review Committee is a commission composed of seven individuals representing tribes and the scientific community. The seventh consensus member is decided upon by the Review Committee. The Review Committee duties include monitoring and reviewing the implementation of the inventor process and repatriation activities. They request information on compliance with the law and make annual reports to Congress. They hear disputes on factual matters to resolve repatriation issues between Indian tribes, Alaska Native villages and Corporations, and Native Hawaiian Organizations (NHO) with museums and Federal agencies. The rulings of the committee are advisory and not legally binding.
- In addition, the Review Committee may make findings of fact pertaining to cultural affiliation and the return of items. The Review Committee helps develop regulations to help carry out NAGPRA. The National NAGPRA Program coordinates two meetings per year for the Review Committee. The meetings, when feasible, are held at various locations across the United States, providing opportunity for attendance for various constituents. Dates and locations are posted on the National NAGPRA website.

# Federal Register

- Publishing a notice in the federal register is a mandatory requirement for any remains or items being repatriated. The museum or agency returning the items or remains is charged with the duty of writing the notice, coordinating with the National NAGPRA Program on having the notice published and notifying the appropriate tribes that the notice is being published. Tribes can assist in providing factual information that is needed for the notice. The federal register is a summary of the repatriation, giving basic details on what is being repatriated, the collection history regarding the repatriated remains and/or items, what NAGPRA category they fall under, which tribes have been consulted, the number of individuals or items and when applicable, which tribe is being affiliated. The contact information for the museum or agency is also included.
- Certain federal register notices apply to certain categories under NAGPRA. Please refer to Key Terms in this module for a list of NAGPRA specific notices.
- No individual or tribe can retrieve the remains or items until that notice has been published in the federal register for 30 days. Upon the 31st day, if there were no competing claims, the tribe or individual can retrieve the remains or items. The National NAGPRA Program has staff, a notice coordinator, that assists with publishing federal register notices.

# Finding Contacts at Tribes

- Each tribe has its own government structure, in which NAGRPA is carried out. The amount of resources and capacity varies from tribe to tribe. Here are some guidelines in helping to find NAGRPA representatives at tribes.
- Tribal government websites are a good place to start. The list of federally recognized tribes can be found at <https://www.bia.gov/> <https://www.nps.gov/nagpra/>. Ideal places to look within a tribal government for a NAGRPA representative are-
- Tribal Historic Preservation Officer (THPO). Not every tribe has a THPO. If a tribe has a THPO, there is a likelihood the THPO carries out NAGRPA for the tribe or knows who does that responsibility for the tribe. Tribal websites often have their THPO listed as a standalone department or under the category of History, Culture or Historic Preservation. The National Association of Tribal Historic Preservation Officers (NATHPO) is also a good resource for locating a THPO <http://nathpo.org/wp/thpos/find-a-thpo/>
- A tribal museum is an ideal location for a NAGRPA program.
- A tribe's historic and/or culture department is another place to find a NAGRPA designee.
- In the event a tribe has no THPO, museum or historic/culture department, it is advisable to contact a tribe's tribal chair/president, tribal council or tribal administrator. Some tribal governments are at different phases in their growth and development, thus not at a point to have established offices for NAGRPA. In some scenarios, a tribe will have an independent contractor handle the tribe's NAGRPA duties.
- It is advised to get a letter from the tribe authorizing the selected individual has the authority to act on behalf of the tribe. It is also advisable to keep tribal NAGRPA contacts up to date, as turnover at tribes does occur.

# Human Remains and 43 C.F.R 10.11

- Under NAGPRA, all federal agencies and any institution, organization or government that qualifies as a museum under the law, must repatriate all of the Native American human remains it has in under their control. This mandatory return is for both remains deemed culturally affiliated and culturally unidentifiable.
- Culturally affiliated remains have a shared group identity with a present day tribe. Remains can be culturally affiliated and returned through consultation on the inventory process with a tribe/tribes or a tribe or group of tribes can submit a repatriation claim for a set of remains. An agency or museum must have a federal register notice called a Notice of Inventory Completion submitted before the repatriation can occur.
- Remains classified as Culturally Unidentifiable Individuals (CUI) have a different mechanism for their return: 43 C.F.R. 10.11. <https://www.govinfo.gov/content/pkg/FR-2010-03-15/pdf/2010-5283.pdf>
- An important aspect of 10.11 is the relationship between tribes and the areas of origin for CUI:
  - **(i)** From whose tribal lands, at the time of the removal, the [human remains](#) and [associated funerary objects](#) were removed; and
  - **(ii)** From whose aboriginal lands the [human remains](#) and [associated funerary objects](#) were removed. Aboriginal occupation for purposes of this section may be recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims, or by a treaty, Act of Congress, or Executive Order.
- 10.11 goes further, allowing federally unrecognized tribes to repatriate CUI and permitting museums and agencies to rebury CUI when no tribal claims have come forward. These CUI often have very little collection history. It is unknown where the remains are from and thus nearly impossible to locate a tribe that has a connection to the remains.

# History of Indian Law

- In order to better understand NAGPRA, it's important to see how it fits into a continuation of efforts of tribes to obtain equality in the United States. Tribes have numerous federal laws in relation to their civil rights, children, land access and religion, as well as having a unique relationship with the United States: a trust relationship based on historical agreements and interactions with the federal government. Here are some of the specific laws tribes had to have passed to have more equality in America.
- 1924 Indian Citizenship Act. Native people were the last population to be granted American citizenship.
- 1934 Indian Reorganization Act. Often called the "Indian New Deal" this legislation was created to give tribes more economic development, preserve culture and promote tribal governments.
- 1946 Indian Claims Commission. Due to the egregious under compensation tribes received for ceding their lands under hundreds of treaties with the United States, the United States allowed tribes to sue the nation to receive equitable payment.
- 1968 Indian Civil Rights Act. Until this law, many natives were denied freedom of assembly, press and speech, especially on federal and tribal lands.
- 1978 Indian Child Welfare Act. Due to the large amount of native children being alienated from their families, either through social services or boarding schools, this law was created to keep native communities intact.
- 1978 Indian Religious Freedom Act. This law gives Native Americans to full right to practice their native religion, use their sacred objects and access sacred sites. NAGPRA is closely related to this law.
- 1990 Native American Graves Protection and Repatriation Act.

# Helpful Hints

- Here are some helpful hints when working under law.
- Have a copy of the law and regulations readily available at all times. Understand the basics of what your organization must do in order to be in compliance with the law.
- Have current, up to date contacts for all tribes, museums and federal agencies that apply to you. Have paperwork from each organization authorizing an individual to perform the work.
- Consult as much as possible and face to face whenever feasible. You can't consult too much!
- Solid organization and accessibility of records and information.
- Understanding each tribe is a unique and independent sovereign that operates as it sees best, based on the resources available and priorities within its tribal government
- Recognizing tribal oral histories and traditional knowledge are an equal line of evidence under the law.
- Tribes are not a homogenous population with the same customs, culture and religious practices
- Do not rely on public perception, sports or media to make determinations on tribes
- Attend trainings, NAGPRA Review Committee meetings and network with others in the field of repatriation.
- Pursue NAGRPA grants whenever and as often as possible.
- Contact the National NAGPRA Program and it frequent its website
- NAGPRA goes beyond a law for many tribes. Its reconciliation, its recognition of denied beliefs and the exercising of tribal sovereignty.
- The return of sacred items and reburial of human remains is something a tribe is not always ready for. Tribes may take extra time to prepare for the actual repatriation.
- Some tribes may not repatriate human remains or certain items, based on their cultural protocols.