

**Guidance for National Park Service Compliance with
the Native American Graves Protection and Repatriation Act
(NAGPRA)**

NPS Cultural Resource Management Guideline, Appendix R

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1. INTRODUCTION

Compliance with the Native American Graves Protection and Repatriation Act (NAGPRA) is achieved by implementation of the law [25 U.S.C. 3001 et seq.] and the applicable regulations [43 CFR 10]. This appendix provides guidelines for NPS park, center, and regional compliance with the statute and regulations. These guidelines were updated in 2003-2004 to reflect the National Park System Advisory Board recommendations regarding how NPS makes determinations of cultural affiliation under NAGPRA.

On November 16, 1990, President George H.W. Bush approved the Native American Graves Protection and Repatriation Act [P.L. 101-601; 25 USC 3001-3013; 104 Stat. 3048-3058] (NAGPRA). Final regulations were published on December 4, 1995 [43 CFR 10]. The law and regulations address the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony. They require Federal agencies and institutions that receive Federal funds to provide information about Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony to lineal descendants, Indian tribes, and Native Hawaiian organizations and, upon presentation of a valid request, return these cultural items to them.

The National Park Service—like all Federal agencies except the Smithsonian Institution—is required to comply with the regulations. (Repatriation at the Smithsonian is governed by the National Museum of the American Indian Act of 1989, 20 U.S.C. 80q et seq.) Park superintendents are responsible for notifying and consulting with lineal descendants, Indian tribes, and Native Hawaiian organizations regarding intentional excavations and inadvertent discoveries on NPS lands. If, as part of an excavation or inadvertent discovery, Native American human remains or NAGPRA-related items are disinterred, scientific archeological methods, techniques, analyses, and reports are conducted as required by the Archaeological Resources Protection Act (16 U.S.C. 470aa et seq.) and Section 3 of NAGPRA (25 U.S.C. 3002).

Superintendents also were responsible for the completion of (1) summaries of Native American collections in their control that might include unassociated funerary objects, sacred objects, and objects of cultural patrimony and (2) inventories of Native American human remains and associated funerary objects. The summaries and inventories included both objects in park collections and those from NPS lands that are currently held in other repositories. Superintendents are responsible for evaluating requests for repatriation and making decisions about the disposition or repatriation of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony under NPS control. The trafficking provisions of the statute may also require cooperation with officials of the Department of Justice regarding illegal excavations on NPS lands.

2. SOURCES OF INFORMATION AND ASSISTANCE

This appendix is meant as general guidance. Additional information and technical assistance in implementing NAGPRA are available from NPS regional offices; NPS centers; the Park NAGPRA program; and the National NAGPRA program.

The National NAGPRA program is distinct from Park NAGPRA. National NAGPRA focuses on NAGPRA implementation *outside of the National Park System* by developing regulations and guidance; providing support for the NAGPRA Review Committee; and assisting Indian tribes, Native Alaskan villages and corporations, Native Hawaiian organizations, museums, and Federal agencies with the NAGPRA process.

Park NAGPRA, a servicewide program located in the Intermountain Region Office of Indian Affairs & American Culture, focuses on NAGPRA implementation and provides information and technical assistance *within the National Park System*.

To request assistance, parks should contact either their regional NAGPRA coordinators (see contact information on Inside NPS) or the Park NAGPRA program lead (see below). The Park NAGPRA program lead is the liaison between the parks and National NAGPRA for publishing the required *Federal Register* notices. See Section 8 below for information on developing notices.

Contact Information

Park NAGPRA Program Lead	Mary S. Carroll, mary_carroll@nps.gov
National Parks Repatriation	http://www.cr.nps.gov/aad/SITES/repatriation.htm
Inside NPS – Park NAGPRA	http://classicinside.nps.gov/programs/parknagpra
Lotus Notes Groups	NPS NAGPRA Regional Coordinators
National NAGPRA Program	http://www.cr.nps.gov/nagpra

3. WHEN DOES NAGPRA APPLY?

NAGPRA applies to Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony as defined in the statute and regulations (see glossary) that are –

- in Federal possession or control; or
- in the possession or control of any institution or State or local government receiving Federal funds; or
- excavated intentionally or discovered inadvertently on Federal or tribal lands.

The statute and regulations describe two sets of procedures and requirements – one for intentional excavations and inadvertent discoveries (25 USC 3002 [Section 3]; 43 CFR Subpart B) and one for collections (25 USC 3003-3005 [Sections 5-7]; 43 CFR Subpart C) – to ensure proper treatment and repatriation of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony. See Figure 1 for an overview of the differences between the requirements for inadvertent discoveries and intentional excavations and the requirements for collections. Consultation with Indian tribes or Native Hawaiian organizations is required in all circumstances [43 CFR 10.5 and 10.9(6)]. See Section 6 below for more information about consultation.

a. Identification of Human Remains as Native American

When human remains are found on park lands, whether by inadvertent discovery or intentional excavations—or when human remains are found in NPS collections—the critical first step is to determine whether or not the remains are Native American. Analysis of the human remains by an osteologist, forensic anthropologist, physical anthropologist, or medical examiner may be required and, under some circumstances, the remains may need to be moved in order to make that determination and to provide for their safety. If the remains are Native American, NAGPRA must be followed. If the remains are not Native American, NAGPRA does not apply. In that case, confer with law enforcement officials, the county or State coroner, and/or the medical examiner to determine the appropriate course of action.

b. Inadvertent Discoveries and Intentional Excavations

Provisions regarding inadvertent discoveries [43 CFR 10.4] and intentional excavations [43 CFR 10.3] are designed to facilitate the proper disposition of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony that might be intentionally excavated or inadvertently discovered on park lands after November 16, 1990.

Comprehensive Agreements

Whenever possible, parks should enter into comprehensive agreements with culturally affiliated Indian tribes or Native Hawaiian organizations that have claimed, or are likely to claim, Native American human

Figure 1. Overview of Parameters for Discoveries/Excavations vs. Collections

Inadvertent Discoveries and Excavations	Collections
25 USC 3002 (Section 3) 43 CFR 10 Subpart B (§10.3-10.7)	25 USC 3003-3005 (Sections 5-7) 43 CFR 10 Subpart C (§10.8-10.13)
Requirements for Investigations and Documentation	
<ul style="list-style-type: none"> • Identification of human remains as Native American • Consultation • Scientific methods and techniques if removed. • Descriptive/interpretive report if removed. • Curation of items not subject to NAGPRA 	<ul style="list-style-type: none"> • Identification of human remains as Native American • Consultation • Summaries: general descriptions of unassociated funerary objects, sacred objects, objects of cultural patrimony • Inventories: item-by-item descriptions of human remains and associated funerary objects
Priority of Custody (See Section 7.c. below)	
<p>1st – Lineal descendant*. If no lineal descendant can be identified, then</p> <p>2nd – Indian tribe on whose tribal land cultural items were found.** If items were not discovered on tribal land, then</p> <p>3rd – Culturally affiliated Indian tribe. If cultural affiliation cannot be determined, then</p> <p>4th – Indian tribe that occupied the land aboriginally, as determined by the Indian Claims Commission – unless there is another tribe that has a stronger cultural relationship other than cultural affiliation as defined under NAGPRA.</p> <p>Note: If custody cannot be determined or no claim is received, the remains and objects are considered unclaimed and the park retains them until custody is resolved or regulations are finalized. (See Section 11.e. below)</p>	<p>1st – Lineal descendant*. If no lineal descendant can be identified, then</p> <p>2nd – Culturally affiliated Indian tribe.</p> <p>Note: If no lineal descendant can be identified and cultural affiliation cannot be determined, the remains and objects are considered culturally unidentifiable and the park retains them until custody is resolved or regulations are finalized. (See Section 11.d. below)</p>
Required Public Notice	
Local newspaper(s) – Notice of Intended Disposition	<i>Federal Register</i> – Notice of Inventory Completion, Notice of Intent to Repatriate

*Lineal descendants have first priority for human remains or associated funerary objects only.

**This will rarely apply in NPS.

remains and other cultural items excavated intentionally or discovered inadvertently on Federal lands [43 CFR 10.5 (f)]. Although comprehensive agreements are optional, they can be useful in streamlining and managing the consultation process over the long-term. Agreements should address all land management activities that could result in the intentional excavation or inadvertent discovery of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony and should establish a process for effectively carrying out NAGPRA regulations regarding consultation [43 CFR 10.5], the determination of custody [43 CFR 10.5 and 10.6], and the treatment and disposition of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony.

If a park has a comprehensive agreement in place with culturally affiliated tribes, the provisions of that agreement should be followed when Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony are inadvertently discovered or are found during a planned excavation. Such agreements help maintain good relationships with affiliated tribes, reduce the likelihood of argument or legal conflict, and improve management flexibility.

Inadvertent Discoveries

Inadvertent discovery means the unanticipated encounter or detection of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony found under or on park lands [43 CFR 10.2(g)(4)]. See Figure 2 for a model of the inadvertent discovery process.

Any person who has inadvertently discovered Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony in park units must immediately notify the superintendent by telephone and confirm in writing. If the inadvertent discovery occurred in connection with an ongoing activity, the person must stop the activity in the area of the inadvertent discovery and make a reasonable effort to protect the remains and objects from further disturbance.

As soon as possible, but not later than three working days after receipt of the written confirmation of notification, the superintendent must certify receipt of the written notification, further secure and protect the remains and/or items, and notify lineal descendants, Indian tribes and Native Hawaiian organizations of the inadvertent discovery. If appropriate, the cultural items may be stabilized or covered to ensure their protection. The superintendent must initiate consultation about the cultural affiliation and disposition of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony.

The activity that resulted in the inadvertent discovery may resume 30 days after the superintendent certifies receipt of the written confirmation of notification. The activity may resume in less than 30 days if a written agreement is executed between the NPS and the affiliated Indian tribe or Native Hawaiian organization that allows the Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony to remain safely *in situ* or that adopts a recovery plan for the excavation or removal of the remains and objects.

The disposition of all Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony must be carried out according to the priority listing in the regulations [43 CFR 10.6]. See Section 7.c. below for detailed information about priority of ownership/custody.

Intentional Excavations

Intentional excavation means the planned archeological removal of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony found under or on park lands after November 16, 1990 [43 CFR 10.2(g)(3)]. Superintendents must take reasonable steps to determine whether a planned activity may result in the excavation of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony.

If it appears that such items may be uncovered, potentially affiliated Indian tribes or Native Hawaiian organizations must be notified in writing. In addition, any present-day Indian tribe which aboriginally occupied the area of the planned activity and any other Indian tribes or Native Hawaiian organizations that are likely to have a cultural relationship to the cultural items must be notified. The notice must describe the planned activity, its general location, the basis upon which it was determined that Native

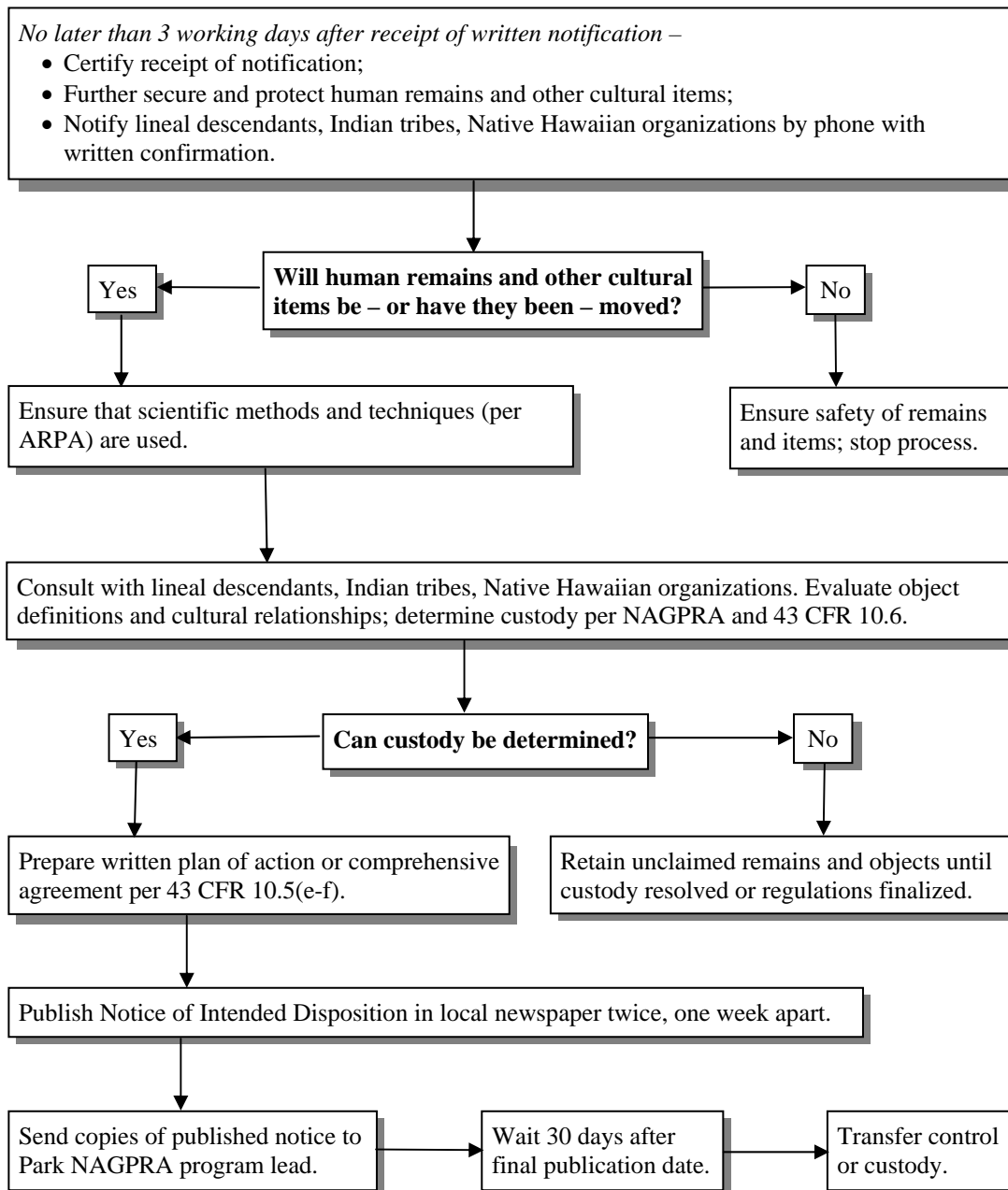
Figure 2. Inadvertent Discovery Process Model

NOTE: The first step is to determine whether discovered human remains are Native American. If the remains are not Native American or if it is unclear whether the remains are Native American, law enforcement should be notified. If the remains are Native American, follow the process below.

Actions Required of Discoverer

- Notify park superintendent immediately by phone with written confirmation.
- Cease ongoing activity. (May resume after 30 days or when binding agreement executed.)
- Make reasonable effort to protect human remains and other cultural items.

Actions Required of Park Superintendent



American human remains, funerary objects, sacred objects, or objects of cultural patrimony may be excavated, and the basis for determining likely custody pursuant to § 10.6. The notice must also propose a time and place for consultations to further consider the activity, the proposed treatment of human remains or objects that may be excavated, and the proposed disposition of any excavated Native American human remains or objects.

If the planned activity is also subject to review under section 106 of the National Historic Preservation Act (16 U.S.C. 470 et seq.), consultation and any subsequent agreement for compliance conducted under that Act should be coordinated with the requirements of § 10.3 (c)(2) and § 10.5.

Intentional excavation of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony can only proceed after consultation with the appropriate Indian tribes and Native Hawaiian organizations. Proof of consultation must be shown to the superintendent or other official responsible for the issuance of the required permit. Regulatory requirements for intentional excavations [43 CFR 10.3] include excavation of items according to scientific standards per ARPA; consultation with Indian tribes or Native Hawaiian organizations; disposition of objects in accordance with priority of custody as described in 43 CFR 10.6; and proof of consultation. See Figure 3 for a model of the intentional excavation process.

Written Plans of Action

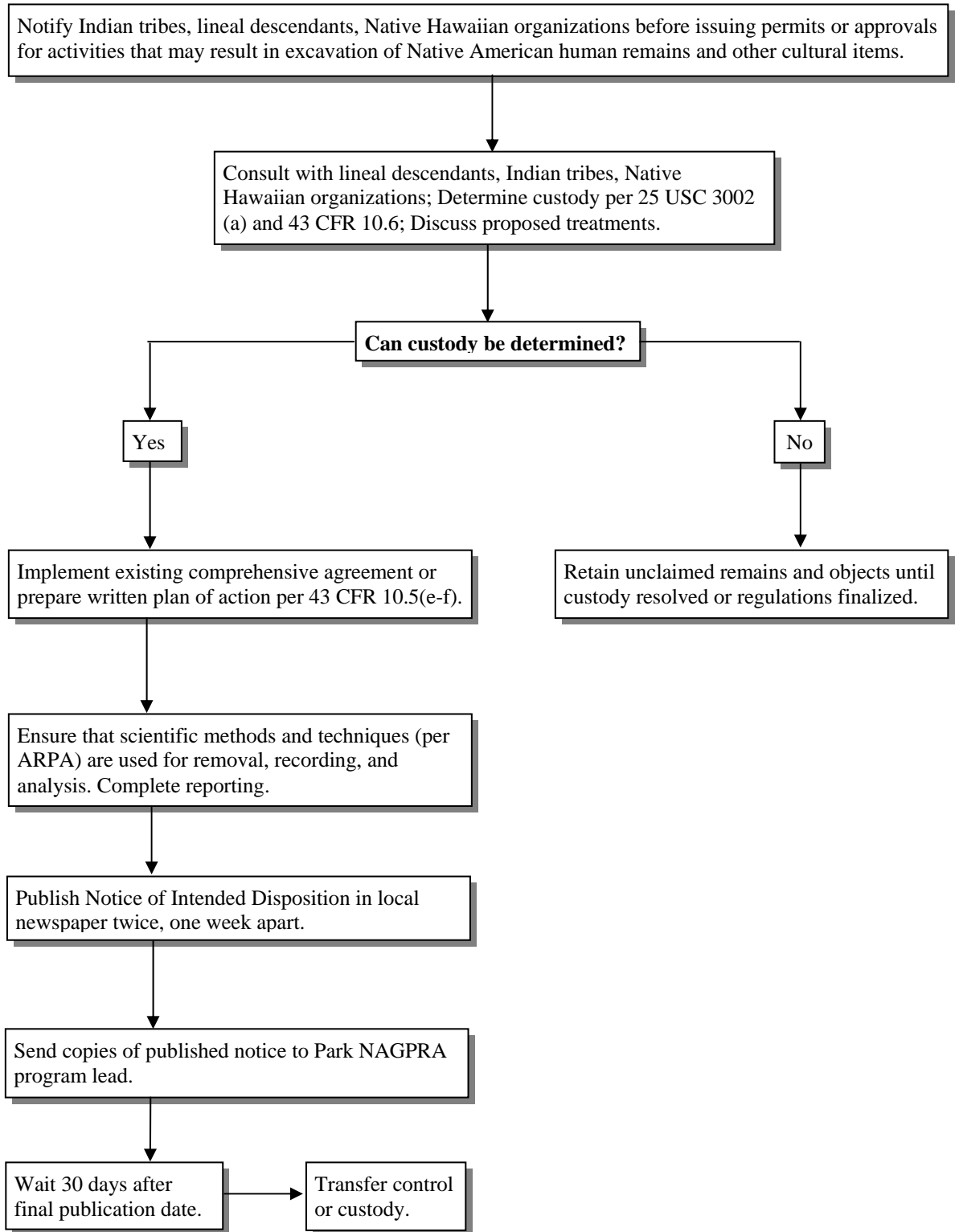
A written plan of action is required for both inadvertent discoveries and intentional excavations [43 CFR 10.5(e)]. Following consultation the plan of action must be approved and signed by the superintendent. A copy of the plan must be provided to the lineal descendants, Indian tribes and Native Hawaiian organizations. Lineal descendants and Indian tribe official(s) may sign the written plan of action as appropriate. The plan of action must at least comply with 43 CFR 10.3(b) (1) [ARPA requirements] and must document:

1. The kinds of objects to be considered as cultural items;
2. The specific information used to determine custody;
3. The planned treatment, care, and handling of human remains and other cultural items;
4. The planned archeological recording of the human remains and other cultural items;
5. The kinds of analysis planned for each kind of object;
6. Any steps to be followed to contact Indian tribe officials at the time of excavation or inadvertent discovery of specific human remains and other cultural items;
7. The kind of traditional treatment, if any, to be afforded the human remains and other cultural items by members of the Indian tribe or Native Hawaiian organization;
8. The nature of reports to be prepared; and
9. The planned disposition of human remains and other cultural items.

Excavation or Removal

Excavation or removal of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony discovered inadvertently or excavated intentionally as part of a planned activity must be undertaken in accordance with the requirements of the Archaeological Resources Protection Act (ARPA) (16 USC 470aa et seq.) and its implementing regulations. Superintendents must ensure that scientific methods and techniques are used for the physical removal, recording, and analysis of cultural items and that a descriptive and interpretive report of the excavation is produced. While analysis is not required, and would be inappropriate in cases where readily identifiable lineal descendants or culturally affiliated tribe(s) object, if undertaken it must be done according to ARPA. Any Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony collected as a result of intentional excavation or inadvertent discovery should **not** be accessioned into NPS collections. Excavation records and items not covered by NAGPRA should be accessioned and curated in NPS collections [43 CFR 10.3(b), 43 CFR 10.4(d)(v)].

Figure 3. Intentional Excavation Process Model



Notification

Before the disposition of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony excavated or discovered inadvertently on park lands after November 16, 1990, a notice must be published in local newspapers [43 CFR 10.6(c)]. If the Native American human remains and other cultural items will not be moved, a notice is not required. Notification provides information about a pending agency action to potentially affected parties, providing them with an opportunity to respond. Notification is not a primary means of communication with potential claimants but is a last chance to notify any claimants that may have been overlooked.

Notice of Intended Disposition

A Notice of Intended Disposition must be published two times, at least one week apart, in a newspaper of general circulation in the area in which the Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony were excavated or discovered inadvertently and, if applicable, in a newspaper of general circulation in the area(s) in which potentially affiliated Indian tribes or Native Hawaiian organizations are geographically located. Disposition of Native American human remains or cultural items may not occur until at least 30 days after publication of the second notice. Copies of the newspaper notice with information on when and in what newspaper it was published must be sent to the Park NAGPRA program lead.

The Notice of Intended Disposition should minimally include the following information –

- circumstances of the excavation or inadvertent discovery
- minimum number of individuals represented by Native American human remains
- number and types of funerary objects
- a brief description (including number) of sacred objects and objects of cultural patrimony
- evidence that supports determinations of lineal descent, cultural affiliation, or aboriginal territory

c. Collections

The regulations also require Federal agencies and museums to inform Indian tribes and Native Hawaiian organizations of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony in their collections prior to November 16, 1990 [43 CFR Subpart C]. This information was made available in summaries and inventories.

Superintendents should periodically review their Park NAGPRA inventory and summary to make sure they are accurate and updated to reflect new information that may have changed identification of items as covered by NAGPRA, new information that may have changed determinations of cultural affiliation, new acquisitions, or newly recognized Indian tribes. A NAGPRA module in the NPS collections management database system, ANCS+, is available to facilitate the update process.

When new information is received that may affect cultural affiliation determinations, modifications to the original summaries or inventories may be necessary. When items are found that were not on the original summaries or inventories, the process of consultation, evaluation, and notification – as outlined in Figures 4 and 5 – will again take place.

Summaries

Summaries are written descriptions of collections that may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony [43 CFR 10.8]. Summary information for all park units was distributed to nearly 800 Indian tribes, Native Hawaiian organizations, and non-federally recognized Indian groups in November 1993. This served as a simple notification to each Indian tribe and Native Hawaiian organization of the nature of the collections held by NPS. The summary was an initial step to bring Indian tribes and Native Hawaiian organizations into consultation with NPS. Consultation between NPS and an Indian tribe or Native Hawaiian organization was required no later than the completion of the summary process.

If a claim is made for unassociated funerary objects, sacred objects, or objects of cultural patrimony, the superintendent must determine that the object claimed fits the definition of the specified NAGPRA category. Identification of specific unassociated funerary objects, sacred objects, or objects of cultural patrimony must be done in consultation with Indian tribe representatives and traditional religious leaders who may have special knowledge regarding these categories of objects. Superintendents also must ensure that claimants meet the definition either of lineal descendants or culturally affiliated Indian tribes.

Inventories

Inventories are item-by-item descriptions of Native American human remains and associated funerary objects. Unlike the summaries, inventories must have been completed in consultation with Indian tribes and Native Hawaiian organizations and represent a decision by the superintendent as to the cultural affiliation of particular Native American human remains or associated funerary objects [43 CFR 10.9].

Notification

Before the repatriation of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony in NPS collections, a notice must be published in the *Federal Register* [43 CFR 10.8(f) and 10.9(e)]. Notification provides information to potentially affected parties of a pending agency action, providing them with an opportunity to respond. Notification is not a primary means of communication with potential claimants but is a last chance for claimants that may have been overlooked to voice their concerns.

Notice of Inventory Completion

A Notice of Inventory Completion summarizes the contents of an inventory of Native American human remains and associated funerary objects and their geographical and cultural affiliation in sufficient detail to enable other individuals, Indian tribes, and Native Hawaiian organizations to determine their interest in claiming the inventoried items. The notice is published in the *Federal Register* when a park has made a determination of cultural affiliation or lineal descent for Native American human remains and associated funerary objects in its possession or control. Repatriation may not occur until at least 30 days after publication in the *Federal Register*. See Figure 4 for a model of the notice development process.

The Notice of Inventory Completion should minimally include the following information –

- names of all participating Indian tribes, specifically noting any agreements among groups regarding which group will lead in a repatriation, which groups have withdrawn from a repatriation, and any other pertinent information;
- name of site, county, State from which the cultural items originated;
- minimum number of individuals represented by the Native American human remains;
- number and types of associated funerary objects;
- the circumstances surrounding the removal and all subsequent transfers until the remains and other cultural items came into the park's possession;
- dates and additional information about the Native American human remains, or any known earlier group/phase and how/why these individuals have been determined to be Native American;
- evidence for present-day cultural affiliation with the earlier identifiable group, for example, any historical records, continuity of occupation, continuity of ethnographic materials;
- tribal evidence of cultural affiliation, for example, oral history, manner of interment, known/named village/camp, etc.

Notice of Intent to Repatriate

A Notice of Intent to Repatriate is published when a park receives, reviews, and accepts a claim by a tribe for sacred objects, unassociated funerary objects, or objects of cultural patrimony. The notice describes unassociated funerary objects, sacred objects, or objects of cultural patrimony being claimed in sufficient detail to enable other individuals, Indian tribes, and Native Hawaiian organizations to determine their interest in the claimed objects. Repatriation may not occur until at least 30 days after publication in the *Federal Register*. See Figure 5 for a model of the notice development process.

Figure 4. Notice of Inventory Completion Development Process Model

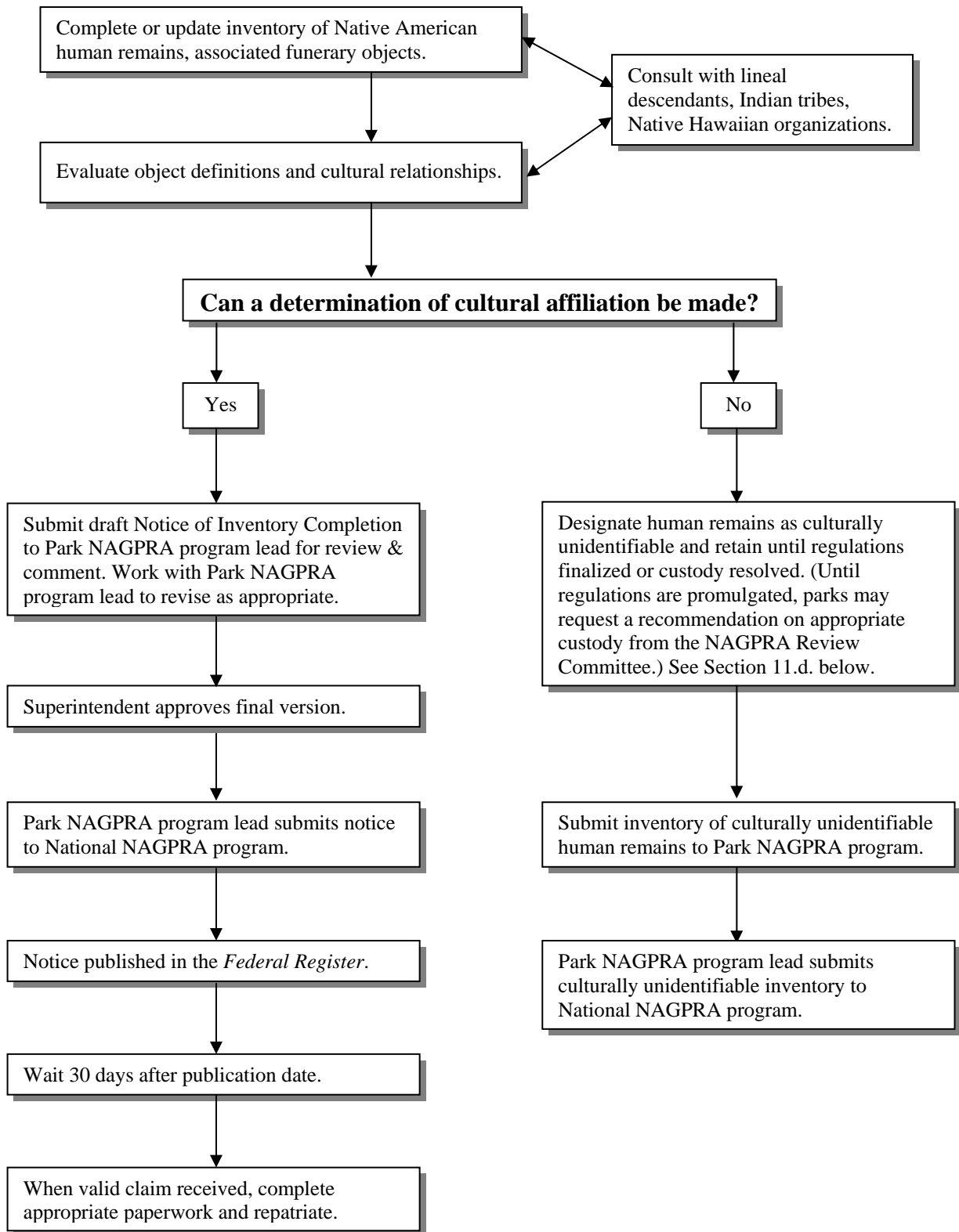
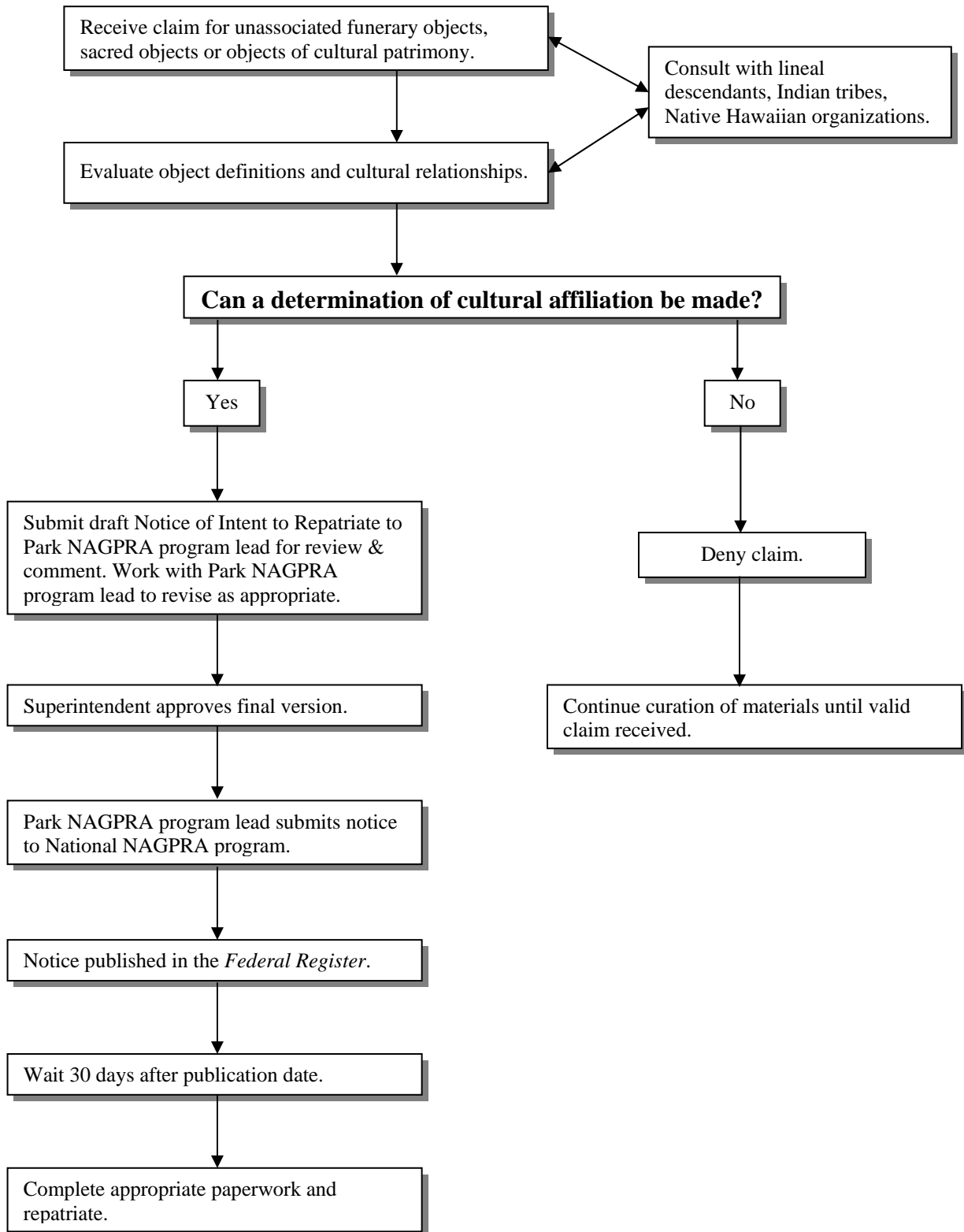


Figure 5. Notice of Intent to Repatriate Development Process Model



The Notice of Intent to Repatriate should minimally include the following information –

- a brief description (including number) of the object(s)
- the dates and circumstances of acquisition
- the evidence for cultural affiliation
- evidence from consultation with the tribe supporting the definition of these cultural items as unassociated funerary objects, sacred objects, or objects of cultural patrimony as defined under NAGPRA

NOTE: The Notice of Inventory Completion and the Notice of Intent to Repatriate are distinct and unrelated. Notices of Inventory Completion include only Native American human remains and associated funerary objects and must be published whether or not a claim has been received. Notices of Intent to Repatriate include only unassociated funerary objects, sacred objects, or objects of cultural patrimony and are published after a claim has been received, evaluated, and accepted. A Notice of Intent to Repatriate is not intended as notification of the repatriation of Native American human remains and/or associated funerary objects that may occur after the publication of a Notice of Inventory Completion. Both types of notices must be developed in cooperation with the Park NAGPRA program lead.

4. WHO HAS STANDING TO CLAIM NAGPRA ITEMS?

Lineal descendants, Indian tribes, and Native Hawaiian organizations may request cultural items covered by NAGPRA [43 CFR 10.2(b)]. See Section 7 below for more detailed information regarding priority of custody and which cultural items may be claimed by which group.

a. Lineal Descendants

The regulations implementing NAGPRA [43 CFR 10.2(b)(1)] define lineal descendant as 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 to a known Native American individual whose remains, funerary objects, or sacred objects are being claimed.

b. Indian Tribes

The regulations implementing NAGPRA [43 CFR 10.2(b)(2)] define Indian tribe as any tribe, band, nation, or other organized Indian group or community of Indians, including any Alaska Native village or corporation as defined in or established by the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

c. Native Hawaiian Organizations

The regulations implementing NAGPRA [43 CFR 10.2(b)(3)] define Native Hawaiian organization as any organization that serves and represents the interests of Native Hawaiians, has as a primary and stated purpose the provision of services to Native Hawaiians, and has expertise in Native Hawaiian affairs. The regulations specifically identify the Office of Hawaiian Affairs and Hui Malama I Na Kupuna 'O Hawai'i Nei as being Native Hawaiian organizations, but give neither organization special status. Native Hawaiian organizations need not comprise mostly Native Hawaiian members.

5. WHO DOES NOT HAVE STANDING TO CLAIM NAGPRA ITEMS?

Individuals, except in the case of lineal descendants, cannot make claims for Native American human remains or other cultural items. Non-federally recognized Indian groups *do not* have standing to claim cultural items under the statute. Native American human remains in NPS collections for which a relationship of shared group identity can be shown with a particular non-federally recognized Indian group are considered culturally unidentifiable for NAGPRA purposes and may be brought before the NAGPRA

Review Committee for a recommendation of disposition. See Section 11 d. below for more information about culturally unidentifiable remains.

Even though non-federally recognized tribes do not have standing to make claims under NAGPRA, NPS personnel may communicate with them for the purposes of gathering information, but cannot include them in NAGPRA consultations unless the participation of such groups is requested by a federally recognized tribe.

6. CONSULTATION

The regulations require consultation throughout the process: before intentional excavations, before the completion of inventories, upon the completion of summaries, and immediately after inadvertent discoveries. The statute and regulations require consultation to be initiated through a formal written request [43 CFR 10.5(b)]. The formal request should be followed by personal contact and interaction.

a. Identifying Consulting Groups

The first step in any consultation effort is to identify the appropriate consulting groups. This step is particularly critical when an inadvertent discovery occurs on park land. Upon notification of the inadvertent discovery, the superintendent has only three working days to contact the appropriate lineal descendants, Indian tribes, or Native Hawaiian organizations [43 CFR 10.4(d)(1)]. It is therefore helpful to have an existing list of contacts. Many parks have established relationships with tribes either as a result of NAGPRA or the requirements of other statutes and regulations.

Federally recognized tribes that are traditionally associated with the park should be among the initial contacts in beginning the consultation process. See Section 7 below for a discussion of the distinction between traditional association and cultural affiliation. In addition, the implementing regulations [43 CFR 10.5(a), 10.8(d), and 10.9(b)] stipulate that all of the following individuals, Indian tribes, and Native Hawaiian organizations must be consulted:

- Potential lineal descendants. These individuals may have already contacted the park or been identified by the Indian tribe or Native Hawaiian organization. In cases where the identity of the individual whose remains or other cultural items are being discussed is known, it may be appropriate to publish a notice in a newspaper of general circulation in the area in which the affiliated Indian tribes or Native Hawaiian organizations now reside to ensure that all potential lineal descendants have been identified. See Section 7 below for more information about lineal descendants.
- Indian tribes and Native Hawaiian organizations that are or are likely to be culturally affiliated with the Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony. See Section 7 below for more information about cultural affiliation.
- Indian tribes on whose aboriginal lands the Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony were or are expected to be found. Determinations of tribal aboriginal lands have been made by the Indian Claims Commission and the U.S. Court of Claims. See Section 7 below for more information about aboriginal lands.

Some online resources for assistance in identifying federally recognized tribes, official tribal contacts, and aboriginal lands include:

- BIA list of federally recognized tribes <http://www.cr.nps.gov/nagpra/mandates/BIA_list.pdf>
- Native American Consultation Database <<http://www.cast.uark.edu/other/nps/nacd>>, and
- map of aboriginal lands as established by the Indian Claims Commission <<http://www.cr.nps.gov/nagpra/DOCUMENTS/ClaimsMAP.htm>>.

b. Initiating Consultation

Initial contact with lineal descendants, Indian tribes, and Native Hawaiian organizations can take several forms. Written correspondence is essential to document the consultation process for the administrative record. However, initiating consultation with a telephone call, with written confirmation, is an effective way to avoid misunderstandings that could result from exclusive use of written communication. Inadvertent discoveries require telephone notification with written confirmation. Fax transmission of written correspondence also expedites the consultation process. No matter what form is used, initial contact should outline the nature of the situation to be discussed, identify who will represent the NPS, request information on the appropriate tribal representatives to contact, and propose a time for consultation. The most effective initial contact is short and to the point. In light of the government-to-government relationship between Indian tribes and the United States, initial contact by NPS units should originate with the superintendent and be directed to the head of tribal government. Subsequent consultation may be delegated to professional staff if appropriate.

Each Indian tribe or Native Hawaiian organization has authority to select a representative. Care should be taken to ensure that an individual claiming to represent these entities is authorized by the Indian tribe or Native Hawaiian organization. If there is any doubt, call the tribal chair, governor, or president to verify that the individual is acting on behalf of the Indian tribe or Native Hawaiian organization.

Follow-up is critical to successful consultation. Indian tribe and Native Hawaiian organization officials may be busy and not respond to the initial letter or telephone call in a timely fashion. If a response to the initial communication is not received within two weeks, the superintendent or other staff should call the Indian tribe or Native Hawaiian organization official directly to verify that they received the communication.

c. Consultation Meetings

Face-to-face consultation meetings are one of the most effective forums for obtaining the advice or opinion of Indian tribes and Native Hawaiian organizations. A number of factors need to be considered when planning consultation meetings.

The complex and sensitive issues that are dealt with during consultation make it unlikely that discussions will be completed with a single meeting. Initial meetings provide an opportunity for the participants to get acquainted and review legal requirements. Subsequent meetings build on this foundation to address more substantive issues. Initial meetings often accommodate larger numbers of people representing various Indian tribes, Native Hawaiian organizations, and the NPS. Later meetings focusing on particular Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony are best limited to a small number of representatives of the NPS and an Indian tribe or Native Hawaiian organization. It is vital that the NPS offer to meet one-on-one with individual tribes since some issues may be too sensitive to discuss in a group setting.

Initial meetings should be convened in a location that is mutually convenient to participants. Subsequent meetings may be held at or near the location of the site or repository where the objects under discussion were found or are currently held. Care should be taken to ensure that the meeting place is culturally appropriate to the Indian tribe representatives.

Some Indian tribes and Native Hawaiian organizations have their own meeting protocol that should be taken into account when planning consultation meetings. Tribal representatives may wish to open the meetings with a prayer. Some topics may require comment from more than one individual; discussions of other topics may be limited to specific individuals; and some information may only be communicated at certain times of the year. Tribal representatives may need to relate the details of the meetings to their governing officials, traditional religious leaders, and other community members before decisions are made. Such factors make it essential that all participants discuss and agree on the form and content of consultation meetings, as well as on the time needed for reaching decisions.

d. Maintaining Consultation

Parks may find that once consultation has been initiated, a regular pattern of communication is beneficial. The compliance requirements of other statutes and regulations, such as the National Historic Preservation Act, also will have resulted in extensive networking and relationship building among parks and tribes that can be utilized and enhanced when specific NAGPRA issues arise.

e. Documenting Consultation

All consultation should be documented and include copies of all written correspondence between the parties involved, a log of all telephone conversations, and summaries or transcripts of all consultation meetings.

f. Cost of Consultation

The NPS is required to consult with lineal descendants and the representatives of Indian tribes and Native Hawaiian organizations before reaching decisions regarding the repatriation or disposition of Native American human remains and objects covered by NAGPRA under agency control. In order to facilitate consultation, the NPS may pay the travel and per diem expenses of lineal descendants and Indian tribe and Native Hawaiian organization representatives. Consultation fees may also be appropriate for individuals with special expertise, such as traditional religious leaders and translators. Park and support office administrative personnel can suggest ways of paying for consultation services, including invited travel procedures (when no consultation fees are involved) and purchase orders that pay for professional services.

7. EVALUATING REPATRIATION REQUESTS

Upon the request of a lineal descendant, Indian tribe, or Native Hawaiian organization, NPS must expeditiously return Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony if **all** of the following criteria apply:

- the claimant has standing,
- the claimed item conforms to a class of cultural items covered by the statute, and
- a relationship conforming to those recognized in the law can be demonstrated between the claimant and the cultural item(s).

a. Standing

Lineal descendants, federally recognized Indian tribes (including any Alaska Native village or corporation), and Native Hawaiian organizations have standing to request Native American human remains, funerary objects, and sacred objects in NPS collections or excavated or discovered inadvertently on park lands after November 16 1990 [43 CFR 10.2(b)]. Only Indian tribes and Native Hawaiian organizations have standing to claim objects of cultural patrimony. Lineal descendants cannot claim objects of cultural patrimony, since by definition objects of cultural patrimony are the communal property of a tribe.

b. Object Categories

In addition to Native American human remains, three types of objects can be claimed under provisions of the statute: funerary objects, sacred objects, and objects of cultural patrimony. Claimed objects must conform to the object categories as defined in the statute and the regulations (25 USC 3001; 43 CFR 10.2).

Funerary Objects

Funerary objects are items that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed intentionally at the time of death or later with or near individual Native

American human remains [43 CFR 10.2(d)(2)]. Funerary objects must be identified by a preponderance of the evidence as having been removed from a specific burial site of an individual affiliated with a particular Indian tribe or Native Hawaiian organization or as being related to specific individuals or families or to known Native American human remains. Funerary objects may be either “associated” or “unassociated.”

Associated Funerary Objects

A funerary object is associated if the human remains from the same burial are in the possession or control of any museum or Federal agency. The human remains and the funerary objects do not need to be held by the same museum or Federal agency. For example, if the objects removed from a burial are in a park’s collections but the human remains from that burial are in the collections of another agency or museum, those objects are associated. In addition, the law states that objects that we know were made exclusively for burial purposes or to contain human remains are also associated funerary objects.

Unassociated Funerary Objects

A funerary object is unassociated if the human remains from the same burial are not in the possession or control of any museum or Federal agency. Some examples of when this situation may occur include: the human remains were left in the ground, the human remains are missing, or the human remains have already been repatriated.

NOTE: Because repatriation at the Smithsonian Institution is governed by the National Museum of the American Indian Act of 1989, the Smithsonian is not considered a Federal agency or museum as defined by NAGPRA. Where Native American human remains are held by the Smithsonian and funerary objects are held by NPS, the funerary objects are considered unassociated and should be repatriated through the summary process rather than the inventory process. See Section 3.c. above.

Sacred Objects

Sacred objects are specific ceremonial items needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents [43 CFR 10.2 (d)(3)]. While many items, from ancient pottery sherds to arrowheads, might be imbued with sacredness in the eyes of an individual, these regulations limit this category to objects that were devoted to a traditional Native American religious ceremony or ritual and which have religious significance or function in the continued observance or renewal of such ceremony.

Objects of Cultural Patrimony

Objects of cultural patrimony are items having ongoing historical, traditional, or cultural importance central to an Indian tribe or Native Hawaiian organization as a whole, rather than being property owned by an individual tribal or organization member [43 CFR 10.2 (d)(4)]. These objects are of such central importance that they may not be alienated, appropriated, or conveyed by any individual tribal or organization member. Such objects must have been considered inalienable by the culturally affiliated Indian tribe or Native Hawaiian organization at the time the object was separated from the group. Objects of cultural patrimony include items such as Zuni War Gods, the Confederacy Wampum Belts of the Iroquois, and other objects of similar character and significance.

c. Priority of Custody

An individual or group with standing must demonstrate a relationship with the Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony being claimed. Potential relationships are –

- lineal descent,
- tribal lands,
- cultural affiliation,
- aboriginal lands, and
- stronger cultural relationship than the tribe determined to have occupied the land aboriginally.

Which type of relationship has priority differs depending on whether the items are part of a park collection or are excavated or discovered inadvertently on park land after November 16, 1990.

Collections

Only relationships of lineal descent or cultural affiliation apply to Native American human remains and items in NPS collections. Individuals who can show lineal descent have priority of custody over Indian tribes that have been determined to be culturally affiliated.

Inadvertent Discoveries and Intentional Excavations

Relationships of lineal descent, tribal land (which will rarely apply in NPS), cultural affiliation, aboriginal territory, or stronger cultural relationship than aboriginal territory apply in situations of intentional excavations or inadvertent discoveries.

Priority of custody is in the order listed here [43 CFR 10.6(a)] –

Lineal Descent

The standard for determining a relationship of lineal descent is very strict. The individual must be able to trace ancestry directly and without interruption to a known Native American individual whose remains, funerary objects, or sacred objects are being claimed. Documentation is needed to demonstrate a relationship of lineal descent. The line of descent must be direct and without interruption according to the traditional kinship system of the Indian tribe or Native Hawaiian organization or by the common law system of descent [43 CFR 10.14(b)]. An Indian tribe or Native Hawaiian organization can often provide information on its traditional kinship system to assist in verifying claims of lineal descent.

Tribal Lands

Tribal lands are all lands within the exterior boundaries of any Indian reservation; all dependent Indian communities; any lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920, and section 4 of Public Law 86-3. [25 USC 3001 (15)] Indian tribes on whose tribal lands the cultural items were excavated or discovered inadvertently would have priority of custody if there are no lineal descendants.

Cultural Affiliation

Cultural affiliation is a relationship of shared group identity that can reasonably be traced historically or prehistorically between members of a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group. Many different types of evidence may be evaluated to document such a relationship, including geographical, kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical, and other information or expert opinion [43 CFR 10.14(e)]. There are three elements that must be considered when investigating whether or not a relationship of cultural affiliation can be determined. There must be a present day Indian tribe or Native Hawaiian organization, an identifiable earlier group, and a relationship of shared group identity between these two groups.

Unlike claims of lineal descent in which the relationship between the claimant and the individual whose remains or items are claimed must be direct and without interruption, determination of cultural affiliation is based on an overall evaluation of the totality of the circumstances and evidence and should not be precluded because of some gaps in the record. Determinations of cultural affiliation should be as precise as possible, and should result from the critical evaluation and careful weighing of all available evidence. Parks should avoid affiliating all cultural items in park collections with all traditionally associated Native American groups unless the evidence supports that determination. See Section 7.d. below for a discussion about evaluating lines of evidence.

Traditional Association and Cultural Affiliation: In making determinations about cultural affiliation under NAGPRA, park managers must recognize the difference between traditional association and cultural affiliation. Under NPS management policies, "Traditionally associated peoples" are groups with special cultural interests in a National Park that precede the establishment of the park unit and that have endured for at least two generations (40 years). These may include park neighbors, traditional residents, and former residents who remain attached to the park area

despite having relocated. Not all traditionally associated peoples are Native American, though many Native American groups are considered traditionally associated. Traditionally associated peoples regard park resources as essential to their development and identity as a culturally distinct group. For traditionally associated peoples, specific places or resources within parks, such as sites, structures, objects and landscapes hold significance, as they may be closely associated with the peoples' sense of purpose, existence as a community, heritage, and development as an ethnically or spiritually distinctive group. These places may, for example, have supported subsistence or ceremonial activities, represent birthplaces, or mark migration routes.

Whereas traditionally associated peoples have a relationship connecting contemporary people to **places** with which they have ancestral ties, cultural affiliation is a demonstrated relationship between contemporary Native American tribes and the **earlier group** from which the Native American human remains or cultural items originated or were acquired. Prior geographic association of a tribe to park lands may not, in itself, be enough for a determination of cultural affiliation.

Traditional association and cultural affiliation are not mutually exclusive. Sometimes an Indian tribe can be both traditionally associated through an ongoing cultural connection to a park and culturally affiliated with an earlier group that lived on or used park lands.

Aboriginal Lands

For situations of intentional excavations and inadvertent discoveries when lineal descent and cultural affiliation cannot be demonstrated, disposition may be made to an Indian tribe that – according to a final judgment of the Indian Claims Commission or the U.S. Court of Claims – aboriginally occupied the Federal land from which the Native American human remains or objects were removed. An online map of Indian land areas established by the Commission is available at the National NAGPRA program's website <<http://www.cr.nps.gov/nagpra/DOCUMENTS/ClaimsMAP.htm>>.

Stronger Cultural Relationship

This term is not defined in the statute or regulations, but clearly constitutes a weaker relationship than lineal descent or cultural affiliation. The concept of "stronger cultural relationship" is considered **only** in those cases where lineal descent and cultural affiliation cannot be demonstrated **and** where an Indian tribe has been identified – according to a final judgment of the Indian Claims Commission or the U.S. Court of Claims – as having aboriginally occupied the land from which the Native American human remains or objects were removed. If it can be demonstrated that a different Indian tribe has a stronger cultural relationship with the Native American human remains and other cultural items than the tribe designated as the aboriginal occupant, the former has priority of custody. Situations where the concept of "stronger cultural relationship" comes into play are rare. Contact the Park NAGPRA program lead for additional information.

d. Evaluation of Evidence

NAGPRA requires careful consideration of evidence when assessing if human remains are Native American, whether objects fit into the categories defined by NAGPRA, and if relationships of lineal descent or cultural affiliation can be determined. NAGPRA requires that cultural affiliation of an Indian tribe or Native Hawaiian organization be determined by a preponderance of evidence. This evidence may include any or all of the following types: geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion. Each academic discipline has its own standards of reliability. Information from non-academic sources is also permissible.

The law does not privilege any one type of evidence over another in determining cultural affiliation. It requires that the determination be made based on the preponderance of the evidence [43 CFR 10.14(f)]. 'Preponderance of the evidence' is a legal term, defined in Black's Law Dictionary as:

Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. With respect to the burden of proof in civil action, means greater weight of evidence, or evidence which is more credible and convincing to the mind. That which best accords with reason and probability. (1991, abridged 6th edition, p. 819)

The preponderance of the evidence is the standard of proof needed to evaluate claims made under the statute. Claimants do not have to establish their claims with scientific certainty. It is the superintendent's responsibility to determine whether the evidence satisfactorily substantiates the claim. In evaluating claims the park should seek information from the claimants and from as many other sources as are available, including academic disciplines and other expert opinion. The park should hold each type of evidence to the standards of the particular discipline or source. In the case of scholarly and scientific disciplines, the assistance and/or review of subject matter experts should be sought. In the case of non-academic sources of information, such as expert opinion from a tribal religious leader, the park should verify the person's authority and standing.

Once the evidence is compiled and evaluated, the superintendent must decide whether a preponderance of the evidence supports the claim for Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony. The reliability and relevance of evidence should be evaluated for each case. A reasonable determination that a relationship of shared group identity exists is required.

"Reasonable" according to Black's Law Dictionary (1991, abridged 6th edition, p. 874), means: "fair, proper, just, moderate, [and] suitable under the circumstances." Regional NAGPRA coordinators, the Park NAGPRA program lead, support office or center archeologists, ethnographers, curators, and Native American liaisons can assist in the decision-making process. Superintendents must document their evidence evaluation and decision-making processes as completely as possible.

8. DISPUTES

In some cases, it may not be possible for NPS and the interested individuals, Indian tribes, and Native Hawaiian organizations to agree on the disposition or repatriation of particular Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony.

NAGPRA does not have a formal administrative appeals process. A lineal descendant, Indian tribe, or Native Hawaiian organization may decide to present more evidence following a superintendent's decision not to return particular objects. Such additional evidence should be given full consideration by the superintendent and the decision revised if necessary. Superintendents' decisions are subject to standard administrative review procedures.

Disputes may be brought to the attention of the NAGPRA Review Committee. The Review Committee is charged with facilitating the resolution of disputes among lineal descendants, Indian tribes, Native Hawaiian organizations, museums, and Federal agencies relating to the return of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony. The Review Committee will consider requests to facilitate the resolution of a dispute from any of the involved parties. If the Review Committee decides to attempt to facilitate the dispute, it will initially request written documentation regarding the dispute from all involved parties. This information will be reviewed and, if appropriate, the disputing parties will be invited to appear before the committee. Review Committee recommendations and findings are not binding.

9. TRANSFER OF CONTROL OR CUSTODY

Transfer of control or custody can only occur after the required public notice has been published and the designated notice period has elapsed. See Section 3 above for a more detailed discussion of notification requirements. Preparation for transfer must involve additional consultation with the appropriate lineal descendant, Indian tribe, or Native Hawaiian organization to determine the place and manner of delivery [25USC 3005(a)(3)]. Following the close of the notice comment period the superintendent or the designated NAGPRA coordinator should contact the lineal descendant or appropriate tribal official(s) to discuss the transfer. During this consultation, if possible, parks and the recipient should establish a specific timeline for the transfer. Arrangements should take into consideration the sensitive nature of the transfer and any particular cultural or religious proscriptions.

When transferring control or custody of cultural items in collections, the superintendent must ensure that the Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony are deaccessioned according to NPS procedures, including assigning deaccession numbers, updating accession and catalog records, completing a deaccession form, and filing all documentation in the accession or optional deaccession file. (For further guidance on deaccessioning, consult Part II of the *NPS Museum Handbook*) In addition, the park may create and maintain a transfer document for its records. This document could outline the conditions (timeframe, place and manner) of the transfer, be signed by the NPS and the lineal descendant or tribal representative, and serve as part of the permanent record for the park files. See Figure 6 for a sample repatriation agreement for cultural items in collections from the *NPS Museum Handbook*.

NOTE: Under Section 3 of the statute (25 USC 3002) and Subpart B of the regulations (43 CFR 10.3-10.7), which cover inadvertent discoveries and intentional excavations, "transfer of control or custody" does not mean that parks should accession the cultural items or that tribes must physically take possession of the items before they can be reburied. In fact, parks should not accession Native American human remains, funerary objects, sacred objects or objects of cultural patrimony inadvertently discovered or intentionally excavated after November 16, 1990 into collections.

10. REBURIAL ON PARK LANDS

Reinterment of Native American human remains in the same park unit from which they were removed is permitted under current NPS policy (*Management Policies 2001*, 5.3.4 and 6.3.8).

Issues that should be considered and agreed upon by the park and the tribe(s) before reburial include –

- the exact nature of the reinterment (e.g., number of remains, manner of reburial, etc.),
- the way in which the reinterment will be conducted,
- the place of reburial (e.g., the location should be selected to prevent the disturbance of additional archeological resources),
- future uses of the same or adjacent areas,
- special access to the reburial location,
- security,
- long term care and maintenance, and
- tribal concerns that the remains not be disturbed in perpetuity.

If the Native American human remains and funerary objects to be reburied on park land are from the park's collections, a NAGPRA inventory must be completed and a Notice of Inventory Completion must be published in the *Federal Register*. If the Native American human remains and funerary objects were discovered inadvertently or intentionally excavated after November 16, 1990 a Notice of Intended Disposition must be published in local newspapers.

Transfer of custody to the affiliated Indian tribe of the Native American human remains and associated funerary objects must occur prior to reburial.

Repatriation Agreement

The Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) provides definitions and procedures for the repatriation of certain Native American human remains and cultural items, as defined in 25 U.S.C. 3001-3013, in the possession of federal agencies and museums that receive federal funds to lineal descendants, Indian tribes, and native Hawaiian organizations; and

The representatives of the National Park Service _____ [NPS unit] have engaged in consultation with representatives of _____ [The TRIBE] and have determined the applicability of these definitions and procedures to objects currently in the possession of the National Park Service _____ [NPS unit].

The National Park Service _____ [NPS unit] and _____ [The TRIBE] do hereby agree to the following:

1. That _____ [The TRIBE] is recognized as eligible for the special programs and service provided by the United States to Indians because of their status as Indians, and thus has status to make a claim for repatriation under NAGPRA;
2. That all cultural items described on the attached list meet the criteria outlined in the Native American Graves Protection and Repatriation Act of 1990 (25 USC 3001-3013) and 43 CFR 10.2 (b), such that:
 - a. all *human remains* are of Native American ancestry and do not include remains or portions of remains freely given by the individual from whose body they were obtained;
 - b. all *funerary objects* are known or reasonably believed to have been placed intentionally at the time of death or later with or near individual human remains;
 - c. all *sacred objects* are specific objects needed by traditional Native American religious leaders for the current practice of traditional Native American religions by their present-day adherents;
 - d. all *objects of cultural patrimony* have ongoing historical, traditional, or cultural importance central to _____ [The TRIBE], rather than to an individual tribal member and, as such, may not be alienated, appropriated, or conveyed by an individual Tribal member; and such object shall have been considered inalienable at the time the object was separated from _____ [The TRIBE];
3. That all cultural items described on the attached inventory were produced or used by an identifiable earlier group;
4. That evidence exists of a shared group identity that can be reasonably traced between _____ [The TRIBE] and the earlier group;
5. That a Notice of Inventory Completion concerning the human remains or associated funerary objects, or a Notice of Intent to Repatriate concerning unidentified funerary objects, sacred objects or objects of cultural patrimony described on the attached list has been published in the *Federal Register*. In the time since that publication [at least thirty days] neither the National Park Service _____ [NPS unit] nor _____ [The TRIBE] has become aware of any competing claim;
6. That, effective on the date of execution of this Repatriation Agreement, the National Park Service _____ [NPS unit] transfers to _____ [The TRIBE] all responsibility associated with the items described on the attached inventory.
7. That this Repatriation Agreement releases the National Park Service from any future claims by _____ [The TRIBE] regarding the objects described on the attached inventory.

Figure 6. Sample Repatriation Agreement – page 1 (from NPS Museum Handbook).

Repatriation Agreement (Continued)

Signatures

This agreement shall become binding upon its execution by the authorized representative of each party. Each party warrants that it has the requisite authority to execute, deliver, and consummate the transactions contemplated by this agreement.

For the NATIONAL PARK SERVICE:

Recommended: _____
Curator Signature Date

S0 Curator [Please print] Signature Date

S0 Archeologist [Please print] Signature Date

S0 Ethnographer [Please print] Signature Date

Approved: _____
Superintendent [Please print] Signature Date

NPS Unit: _____

Address: _____

Telephone: _____ FAX: _____

For the TRIBE:

Approved: _____
Official Representative or Lineal Descendant [Please print] Signature Date

_____ Title Tribe/Organization

Address: _____

Telephone: _____ FAX: _____

Follow-up Contact: _____ Telephone: _____
Name [Please print] FAX: _____

Figure 6 (continued). Sample Repatriation Agreement – page 2.

11. SPECIAL CIRCUMSTANCES

NPS may retain control of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony that would otherwise be returned to a lineal descendant, Indian tribe, or Native Hawaiian organization if any of five conditions apply:

- there are multiple disputing claimants [43 CFR10.10(c)(2)];
- the NPS has right of possession to the item [43 CFR10.10(a)(2)];
- the item is part of an NPS collection and is indispensable to the completion of a specific scientific study, the outcome of which is of major benefit to the United States [43 CFR10.10(c)(1)];
- the Native American human remains are culturally unidentifiable [43 CFR10.9(e)(6)]; or
- custody cannot be determined or no claim has been received for the Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony [43 CFR10.10(7)].

NOTE: While NPS may retain control of Native American human remains and other cultural items under these circumstances, any Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony inadvertently discovered or intentionally excavated after November 16, 1990 should not be accessioned into park collections.

a. Multiple Disputing Claimants

If there are multiple disputing claims and NPS cannot determine by a preponderance of the evidence which requesting party is the most appropriate recipient, then the agency may retain control of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony until the requesting parties mutually agree on the appropriate recipient or the dispute is otherwise resolved. There is no set time during which multiple claims must be resolved.

b. Right of Possession

If NPS has right of possession to Native American cultural objects, then NPS may retain control of the items. Right of possession as defined in the statute [25 U.S.C. 3001 (13)] means possession obtained with the voluntary consent of an individual or group that had authority of alienation.

c. Scientific Study of Major Benefit to U.S.

If Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony that are part of a collection are indispensable to the completion of a specific study, the outcome of which is of major benefit to the United States, then NPS may temporarily retain control of the items. In such circumstances, the items must be returned to the appropriate lineal descendant, Indian tribe, or Native Hawaiian organization no later than 90 days after completion of the study.

d. Culturally Unidentifiable

Native American human remains that are part of NPS collections and for which no culturally affiliated present-day Indian tribe or Native Hawaiian organization can be determined, including remains that can be shown to have a cultural relationship with non-federally recognized Indian groups, are considered culturally unidentifiable. NPS must retain possession of culturally unidentifiable Native American human remains until regulations governing their disposition [43 CFR 10.11] have been finalized unless legally required to do otherwise or recommended to do otherwise by the Secretary of the Interior. The process for requesting recommendations from the Secretary regarding the disposition of culturally unidentifiable Native American human remains is to take each case to the NAGPRA Review Committee, which advises the Secretary. In most cases, the recommendations from the Committee will serve as recommendations from the Secretary.

e. Unclaimed

Unclaimed Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony are those that are discovered inadvertently or excavated from park lands after November 16, 1990 for which either no claimant has been identified in accordance with the priority of custody as described in the regulations [43 CFR 10.6] or for which no claim has been received. NPS may retain possession of unclaimed Native American human remains and other cultural items until custody has been resolved or until regulations governing disposition of unclaimed Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony [43 CFR 10.7] have been finalized.

12. DOCUMENTATION

a. The Administrative Record

The administrative record must document all disposition or repatriation actions. It must include documentation of the Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony under consideration and copies of all written correspondence, a log of all telephone conversations, documentation of all consultation meetings, and copies of all agreements between the relevant parties. The original file should be retained by the park as part of the museum archive collection and, if appropriate, the archeological site file. A copy should be sent to the regional office or center that maintains records concerning park archeology or museum collections. These files should be retained even after the disposition or repatriation of the relevant Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony.

b. Confidentiality

In some situations, the information needed by the superintendent to make a decision regarding applicability of the statutory terms to particular objects may be considered extremely sensitive by Indian tribe and Native Hawaiian organization representatives. The NPS has a limited ability to protect sensitive information from public disclosure.

The Freedom of Information Act gives any person the right to access Federal agency records, except to the extent that such records are protected from disclosure by one of nine exemptions or three special law enforcement record exclusions. There is no specific provision in NAGPRA that protects sensitive information from public disclosure. Other disclosure limitations, such as those in the Archaeological Resources Protection Act, the National Historic Preservation Act, and the National Parks Omnibus Act may provide some flexibility in protecting sensitive information from public disclosure. ARPA requires that information concerning the nature and location of any archeological resource whose excavation or removal requires a permit is not made available to the public without the consent of the appropriate Federal land manager pursuant to the conditions outlined at 16 USC 470hh. The National Historic Preservation Act requires the head of a Federal agency or other public official to withhold from disclosure to the public information about the location, character, or ownership of a historic resource if the Secretary of the Interior and the agency determine that disclosure would cause a significant invasion of privacy, risk harm to the resource, or impede the use of a traditional religious site by practitioners [16 USC 470w-3]. The National Parks Omnibus Act authorizes withholding information on the nature and location of objects of cultural patrimony in National Park System units [16 USC 5937]. See also Management Policies 5.2.3.

It is important to be candid with Indian tribe and Native Hawaiian organization representatives about the limited protection that can be given to sensitive information. During consultation, NPS officials should not request more information than is needed to decide whether remains or objects fit into NAGPRA categories, to make determinations of cultural affiliation, or to support other decisions regarding the disposition or repatriation of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony.

13. GLOSSARY

Aboriginal land – The regulations [43 CFR 10.6(a)(2)(iii)] refer to aboriginal land as 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.

Associated funerary objects – See Funerary Objects.

Control – The regulations [43 CFR 10.2(a)(3)(ii)] define control as having a legal interest in human remains, funerary objects, sacred objects, or objects of cultural patrimony sufficient to lawfully permit the museum or Federal agency to treat the objects as part of its collection for purposes of NAGPRA whether or not the human remains or objects are in the physical custody of the museum or Federal agency. Generally, a museum or Federal agency that has loaned human remains or objects to another individual, museum, or Federal agency is considered to retain control of those human remains or objects.

Cultural affiliation – The regulations [43 CFR 10.2(e)] define cultural affiliation as a relationship of shared group identity which can reasonably be traced historically or prehistorically between members of a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group. Cultural affiliation is established when the preponderance of the evidence—based on geographical, kinship, biological, archeological, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion—reasonably leads to such a conclusion.

Culturally unidentifiable – Culturally unidentifiable is not defined in the statute or regulations. The National NAGPRA program defines culturally unidentifiable in its online glossary as cultural items for which no culturally affiliated present-day Indian tribe or Native Hawaiian organization can be determined. <<http://www.cr.nps.gov/nagpra/TRAINING/GLOSSARY.HTM>>

Custody – As used in the regulations [43 CFR 10.6(a)], custody means ownership of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal or tribal lands after November 16, 1990. The term custody is used when determining the rightful recipient of human remains or other cultural items found, either inadvertently or through planned excavations, after NAGPRA was enacted (November 16, 1990). Custody means final ownership. This usage does not apply to human remains or other cultural items that were in collections prior to November 16, 1990.

Disposition – Disposition is not defined in the statute or regulations. As used in this document, disposition refers to the transfer of cultural items inadvertently discovered or intentionally excavated on park lands after November 16, 1990 – based on the priority of custody as described in the regulations [43 CFR 10.6] and assuming appropriate claimants have been identified and custody can be determined – to lineal descendants, Indian tribes, or Native Hawaiian organizations. If no claimant is identified or custody cannot be determined, disposition may be to an appropriate NPS repository.

Funerary objects – The regulations [43 CFR 10.2(d)(2)] define funerary objects as items that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed intentionally at the time of death or later with or near individual Native American human remains. Funerary objects must be identified by a preponderance of the evidence as having been removed from a specific burial site of an individual affiliated with a particular Indian tribe or Native Hawaiian organization or as being related to specific individuals or families or to known Native American human remains. The term burial site means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which, as part of the death rite or ceremony of a culture, individual Native American human remains were deposited, and includes rock cairns or pyres which do not fall within the ordinary definition of gravesite.

Associated funerary objects – The regulations [43 CFR 10.2(d)(2)(i)] define associated funerary objects as those funerary objects for which the Native American human remains with which they were placed intentionally are also in the possession or control of a museum or Federal agency. Associated

funerary objects also means those funerary objects that were made exclusively for burial purposes or to contain Native American human remains.

Unassociated funerary objects – The regulations [43 CFR 10.2(d)(2)(ii)] define unassociated funerary objects as those funerary objects for which the Native American human remains with which they were placed intentionally are not in the possession or control of a museum or Federal agency. Objects that were displayed with individual Native American human remains as part of a death rite or ceremony of a culture and subsequently returned or distributed according to traditional custom to living descendants or other individuals are not considered unassociated funerary objects.

Human remains – The regulations [43 CFR 10.2(d)(1)] define Native American human remains as the physical remains of a body of a person of Native American ancestry. The term does not include remains or portions of remains that may reasonably be determined to have been freely given or naturally shed by the individual from whose body they were obtained, such as hair made into ropes or nets. For the purposes of determining cultural affiliation, Native American human remains incorporated into a funerary object, sacred object, or object of cultural patrimony, as defined below, must be considered as part of that item.

Indian tribe – The regulations [43 CFR 10.2(b)(2)] define Indian tribe as any tribe, band, nation, or other organized Indian group or community of Indians, including any Alaska Native village or corporation as defined in or established by the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Lineal descendant – The regulations [43 CFR 10.2(b)(1)] define lineal descendant as 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 to a known Native American individual whose remains, funerary objects, or sacred objects are being claimed.

Native Hawaiian organization – The regulations [43 CFR 10.2(b)(3)] define Native Hawaiian organization as any organization that serves and represents the interests of Native Hawaiians, has as a primary and stated purpose the provision of services to Native Hawaiians, and has expertise in Native Hawaiian affairs. The statute specifically identifies the Office of Hawaiian Affairs and Hui Malama I Na Kupuna 'O Hawai'i Nei as being Native Hawaiian organizations. Native Hawaiian organizations need not comprise mostly Native Hawaiian members.

Notice of Intended Disposition – A notice of the proposed disposition that is published in newspapers by the Federal agency official responsible for cultural items excavated or removed from Federal lands.

Notice of Intent to Repatriate – A notice that is published in the *Federal Register* when a museum or Federal agency receives, reviews, and accepts a claim by a tribe for sacred objects, unassociated funerary objects, or objects of cultural patrimony.

Notice of Inventory Completion – A notice that is published in the *Federal Register* when a museum or Federal agency has made a determination of cultural affiliation for Native American human remains and associated funerary objects in its possession or control.

Objects of cultural patrimony – The regulations [43 CFR 10.2(d)(4)] define objects of cultural patrimony as items having ongoing historical, traditional, or cultural importance central to the Indian tribe or Native Hawaiian organization itself, rather than property owned by an individual tribal or organization member. These objects are of such central importance that they may not be alienated, appropriated, or conveyed by any individual tribal or organization member. Such objects must have been considered inalienable by the culturally affiliated Indian tribe or Native Hawaiian organization at the time the object was separated

from the group. Objects of cultural patrimony include items such as Zuni War Gods, the Confederacy Wampum Belts of the Iroquois, and other objects of similar character and significance to the Indian tribe or Native Hawaiian organization as a whole.

Preponderance of evidence – *Black's Law Dictionary* (1991, abridged 6th edition, p. 819) defines preponderance of evidence as "...evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is evidence which as a whole shows that the fact sought to be proved is more probable than not. ...greater weight of evidence, or evidence which is more credible and convincing to the mind. That which best accords with reason and probability. ...'preponderance' means something more than 'weight'; it denotes a superiority of weight, or outweighing." (p. 819)

Possession – The regulations [43 CFR 10.2(a)(3)(i)] define possession as having physical custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony with a sufficient legal interest to lawfully treat the objects as part of its collection for purposes of NAGPRA. Generally, a museum or Federal agency would not be considered to have possession of human remains or objects on loan from another individual, museum, or Federal agency.

Repatriation – Repatriation is not defined in the statute or regulations. The National NAGPRA program, in its online glossary <<http://www.cr.nps.gov/nagpra/TRAINING/GLOSSARY.HTM>> defines repatriation as the transfer of physical custody of and legal interest in Native American cultural items to lineal descendants, culturally affiliated Indian tribes, and Native Hawaiian organizations.

Sacred objects – The regulations [43 CFR 10.2(d)(3)] define sacred objects as items that are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. While many items, from ancient pottery sherds to arrowheads, might be imbued with sacredness in the eyes of an individual, these regulations are specifically limited to objects that were devoted to a traditional Native American religious ceremony or ritual and which have religious significance or function in the continued observance or renewal of such ceremony. The term traditional religious leader means a person who is recognized by members of an Indian tribe or Native Hawaiian organization as being responsible for performing cultural duties relating to the ceremonial or religious traditions of that Indian tribe or Native Hawaiian organization, or exercising a leadership role in an Indian tribe or Native Hawaiian organization based on the tribe or organization's cultural, ceremonial, or religious practices.

Traditionally associated peoples – *NPS Management Policies 2001* defines traditionally associated peoples as "...park neighbors, traditional residents, and former residents who remain attached to a park area despite having relocated. ...social/cultural entities such as tribes, communities, and kinship units are 'traditionally associated' with a particular park when (1) the entity regards park resources as essential to its development and continued identity as a culturally distinct people; (2) the association has endured for at least two generations (40 years); and (3) the association began prior to establishment of the park." (p. 130)

Unassociated funerary objects – See Funerary Objects.

14. FREQUENTLY ASKED QUESTIONS

May Native American human remains or other cultural items be reburied without transfer of control or custody?

No. Control and/or custody of Native American human remains and other cultural items must be transferred to the appropriate lineal descendant, Indian tribe or Native Hawaiian organization before reburial may take place. See Section 9 above.

May Native American human remains or other cultural items be reburied on park land?

Current NPS policy (*NPS Management Policies 2001*, section 5.3.4) allows the reburial of Native American human remains recovered from park property in the same park from which they were removed. Reburial may include remains that may have been removed from lands now within the park. Issues that must be considered include the nature of the reinterment, how the reinterment will be conducted, the place of reburial, future use of the area, and future protection of the area. See Section 10 above.

Must a Notice of Intended Disposition be published in local newspapers if the Native American human remains or other cultural items discovered inadvertently are left in situ (not moved from their place of discovery)?

No. A Notice of Intended Disposition need not be published in local newspapers if, after consultation and preparation of a written plan of action, it has been determined that the Native American human remains or other cultural items will be left *in situ*. However, the safety of the Native American human remains and other cultural items must be ensured. See Figure 2.

Must a Notice of Intended Disposition be published in local newspapers if the Native American human remains or other cultural items discovered inadvertently are moved and reburied only a short distance from their place of discovery?

Yes. A Notice of Intended Disposition is required anytime Native American human remains or other cultural items are moved from their place of discovery, no matter how close the reburial location is to the original site of discovery.

Must a Notice of Intended Disposition be published in local newspapers in situations where the Native American human remains or other cultural items discovered inadvertently cannot be left in situ, for example remains washed up on a beach?

Yes. A Notice of Intended Disposition is required anytime Native American human remains or other cultural items are moved from their place of discovery.

Must a Notice of Intent to Repatriate be published in the Federal Register prior to repatriating Native American human remains and/or associated funerary objects?

No. A Notice of Intent to Repatriate is not intended as notification of the repatriation of Native American human remains and/or associated funerary objects. Notices of Intent to Repatriate cover only sacred objects, unassociated funerary objects, or objects of cultural patrimony and are published after a claim has been received, evaluated, and accepted. As long as a Notice of Inventory Completion has been published; thirty days has passed since its publication; a claim has been received, and no other claimants have come forward, repatriation of Native American human remains and/or associated funerary objects may proceed.

Must potential or identified lineal descendants be members of a federally recognized tribe?

No. Lineal descendants as defined under NAGPRA need not be members of a federally recognized tribe [43 CFR 10.14(b)].

Must a request for repatriation (claim) be in writing?

According to NAGPRA regulations [43 CFR 10.15(1)], a “timely claim” is required. For these purposes, a “timely claim” means the filing of a written claim with a responsible museum or Federal agency official. The claim must be from a recognized lineal descendant or an authorized tribal official. See Section 4 above and 43 CFR 10.2(b) for more information about parties with standing to claim NAGPRA items.

How should Native American human remains and other cultural items that have been seized as a result of an ARPA investigation be handled?

For most situations, because NPS will likely have possession and control of the items, the processes outlined in the statute [25 USC 3003-3005] and regulations [43 CFR 10.8 – 10.10] for collections will likely work best even if the materials have not been accessioned. See also Sections 3.c. and 7 above. Contact regional NAGPRA coordinators or the Park NAGPRA office if additional assistance is required (see page 2 for contact information).

What’s the difference between possession, control, physical custody, and custody?

- 'Physical custody' simply refers to actual location.
- 'Control' means that the remains or objects are part of a museum's or agency's collections, whether or not the institution has physical custody.
- 'Possession' means that the remains or objects are part of a museum's or agency's collections and in its physical custody.
- The term 'custody' is used only in the particular instance of deciding who should receive remains or objects discovered or excavated after Nov. 16, 1990.

The terms possession and/or control are used when determining which museum or Federal agency is responsible for NAGPRA compliance for Native American human remains or other cultural items held in collections prior to the enactment of NAGPRA (November 16, 1990). Control means having legal interest in the remains or objects such that they are considered part of a museum's or agency's collections, with or without physical custody. Possession means that a museum or agency has both physical custody and legal control. Museums and Federal agencies with possession and/or control are responsible for NAGPRA compliance. For example:

Agency A loans human remains, funerary objects, sacred objects or objects of cultural patrimony to Museum B. Agency A has neither physical custody nor possession but does have control. Museum B has physical custody but neither possession nor control. Agency A is therefore legally responsible for NAGPRA compliance,

Museum B has human remains, funerary objects, sacred objects or objects of cultural patrimony in its collections that are not on loan from any other museum or Federal agency. Museum B has physical custody, possession, and control and is therefore legally responsible for NAGPRA compliance,

The term custody is used when determining the rightful recipient of human remains or other cultural items found, either inadvertently or through planned excavations, after NAGPRA was enacted (November 16, 1990). Custody means final ownership. This usage does not apply to human remains or other cultural items that were in collections prior to November 16, 1990.