

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

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

**Step 2-Initiate consultation. [43 CFR 10.10\(b\)](#)**

As soon as possible after compiling an itemized list, a museum or Federal agency must identify consulting parties based on information available and invite the parties to consult.

- (1) Consulting parties are any lineal descendant and any Indian Tribe or Native Hawaiian organization with potential cultural affiliation.
- (2) An invitation to consult must be in writing and must include:
  - (i) The itemized list described in [43 CFR 10.10\(a\)](#);
  - (ii) The names of all consulting parties; and
  - (iii) A proposed timeline and method for consultation.
- (3) When a museum or Federal agency identifies a new consulting party under (1) above, the museum or Federal agency must invite the party to consult. An invitation to consult under (2) above must be sent:
  - (i) No later than 30 days after identifying a new consulting party based on new information; or
  - (ii) No later than two years after the addition of a Tribal entity to the list of federally recognized Indian Tribes published in the Federal Register pursuant to the Act of November 2, 1994 (25 U.S.C. 5131).

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

*Cultural affiliation* means there is a reasonable connection between human remains or cultural items and an Indian Tribe or Native Hawaiian organization based on a relationship of shared group identity. Cultural affiliation may be identified clearly by the information available or reasonably by the geographical location or acquisition history of the human remains or cultural items.

*Lineal descendant* means:

- (1) A living person tracing ancestry, either by means of traditional Native American kinship systems, or by the common-law system of descent, to a known individual whose human remains, funerary objects, or sacred objects are subject to this part; or
- (2) A living person tracing ancestry, either by means of traditional Native American kinship systems, or by the common-law system of descent, to all the known individuals represented by comingled human remains (example: the human remains of two individuals have been comingled, and a living person can trace ancestry directly to both of the deceased individuals).

*Indian Tribe* means any Tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), recognized as eligible for the special programs and services provided by the United States Government to Indians because of their status as Indians by its inclusion on the list of recognized Indian Tribes published by the Secretary of the Interior under the Act of November 2, 1994 (25 U.S.C. 5131).

*Native Hawaiian organization* means any organization that:

- (1) Serves and represents the interests of Native Hawaiians, who are descendants of the indigenous people who, before 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawai'i;

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- (2) Has as a primary and stated purpose the provision of services to Native Hawaiians; and
- (3) Has expertise in Native Hawaiian affairs, and includes but is not limited to:
  - (i) The Office of Hawaiian Affairs established by the constitution of the State of Hawai'i;
  - (ii) Native Hawaiian organizations (including 'ohana) who are registered with the Secretary of the Interior's Office of Native Hawaiian Relations; and
  - (iii) Hawaiian Homes Commission Act (HHCA) Beneficiary Associations and Homestead Associations as defined under 43 CFR 47.10.

**Template to Initiate consultation:** <https://www.nps.gov/subjects/nagpra/templates.htm>

### **Frequently asked questions about Step 2: Initiate consultation.**

1. Must a museum or Federal agency confirm the identity of a lineal descendant with an Indian Tribe with cultural affiliation or does the presence of a lineal descendant mean consultation with an Indian Tribe is not required?
2. How does deference to Indian Tribes or NHOs impact the timelines and methods for consultation?
3. Can lineal descendants, Indian Tribes, or NHOs request or require an upfront fee payment for consultation, like with consultation under the Federal Communications Commission?
4. Does a response from a consulting party need to be in writing?
5. How does a museum or Federal agency identify consulting parties?
6. Who is responsible for identifying new consulting parties?
7. If consultation is ongoing as of January 2024, do we have to start over?
8. Do Indian Tribes or NHOs have to respond to an invitation to consult by a date certain?
9. What if I don't have enough information to identify any consulting parties? Do I need to initiate consultation with all 574 Indian Tribes and all NHOs?
10. If I am updating a previously submitted inventory, is additional research required to identify consulting parties?

#### **1. Must a museum or Federal agency confirm the identity of a lineal descendant with an Indian Tribe with cultural affiliation or does the presence of a lineal descendant mean consultation with an Indian Tribe is not required?**

The regulations require museums and Federal agencies to initiate consultation with both lineal descendants and Indian Tribes or NHOs with potential cultural affiliation and to provide the names of all identified consulting parties. We cannot require a museum or Federal agency to verify the identity of a lineal descendant with an Indian Tribe or NHO. The Act gives lineal descendants priority over Indian Tribes or NHOs. Establishing a system in which verification of lineal descendants is through Indian Tribes or NHOs could be detrimental to the rights of lineal descendants, particularly those that are not members of an Indian Tribe or NHO. (See Final Rule [paragraph 257.](#))

#### **2. How does deference to Indian Tribes or NHOs impact the timelines and methods for consultation?**

We cannot require deference in the timelines or methods for consultation because other requirements and limitations may dictate the timeline or methods. Just as in all areas of consultation, all parties should strive for consensus, agreement, or mutually acceptable alternatives on the timelines and methods for consultation.

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**3. Can lineal descendants, Indian Tribes, or NHOs request or require an upfront fee payment for consultation, like with consultation under the Federal Communications Commission?**

No. We have not added a requirement for payment of an upfront fee in the initiation of consultation. We recommend that in a response to an invitation to consult, lineal descendants, Indian Tribes, and NHOs stipulate their requirements for conducting consultation, including any required financial support.

**4. Does a response from a consulting party need to be in writing?**

No. We would recommend a consulting party submit a written request to consult to ensure there is a clear record in case the museum or Federal agency does not respond.

**5. How does a museum or Federal agency identify consulting parties?**

Depending on the provenience and provenance of the human remains and associated funerary objects, identifying Indian Tribes or NHOs with potential cultural affiliation is not complex and a museum or Federal agency must make a good faith effort to identify consulting parties within the timeframe provided. There are several resources that can assist museums and Federal agencies with identifying consulting parties, including previously prepared summaries or inventories and published notices.

**6. Who is responsible for identifying new consulting parties?**

Museums and Federal agencies are responsible for determining if a new consulting party can be identified.

**7. If consultation is ongoing as of January 2024, do we have to start over?**

When consultation is ongoing as of the effective date of these regulations, there is no requirement to re-initiate consultation, provided the ongoing consultation included all consulting parties.

**8. Do Indian Tribes or NHOs have to respond to an invitation to consult by a date certain?**

No. Museums and Federal agencies are required to act under 43 CFR 10.10 within certain timelines, and those timelines are required even if there is no response from a lineal descendant, Indian Tribe, or NHO to an invitation to consult. A museum or Federal agency must initiate consultation prior to completing or updating an inventory under 43 CFR 10.10, but if there is no response to the invitation to consult, the museum or Federal agency must complete or update the inventory by the deadlines required under 43 CFR 10.10(d) and submit a notice of inventory completion under 43 CFR 10.10(e). As the Department noted in 1995 for the first deadline to complete an inventory if there is no response after repeated attempts to contact Tribal officials by telephone, fax, and mail, the museum or Federal agency official may be required to complete the inventory without consultation to meet the regulatory deadline. The Department suggested museum and Federal agency officials document attempts to contact Tribal officials to demonstrate good faith compliance with these regulations and the Act. (1995 Final Rule, [60 FR 62151](#)). Although the methods to contact an Indian Tribe or NHO have changed since 1995, this advice continues to be applicable. Museums and Federal agencies must document attempts to contact lineal descendants, Indian Tribes, or NHOs to demonstrate a good-faith effort to consult prior to the deadlines in these regulations. (See Final Rule [paragraph 445](#)).

**9. What if I don't have enough information to identify any consulting parties? Do I need to initiate consultation with all 574 Indian Tribes and all NHOs?**

No. Broad consultation with all 574 Indian Tribes and all NHOs is not a requirement of either the previous regulations or the new revised regulations. Consultation that leads to expeditious repatriation is the goal, and in some cases, broad consultation can help alleviate the potential for competing requests or disagreements. A museum or Federal agency is responsible for identifying consulting parties and

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initiating consultation based on the information available. Museums and Federal agencies can choose to consult broadly or more narrowly, keeping in mind the required timeframes for completing or updating an inventory of human remains and associated funerary objects.

For example, based only on acquisition history and the current location of the museum, a museum could decide its preference is to only invite Indian Tribes who currently reside in the county and State where the museum is located. Alternately, a museum could decide to invite all Indian Tribes who previously occupied the State where the museum is located to participate in consultation. Or a museum could decide to invite all Indian Tribes who reside in the wider geographic region (northeast or southwest, for example) or all 574 Indian Tribes and all NHOs to participate in consultation. Provided the museum is acting in good faith, any of these options are sufficient, but a museum or Federal agency should keep in mind the deadline for completing or updating an inventory and publishing a notice of inventory completion. (See Final Rule [paragraph 502](#)).

### **10. If I am updating a previously submitted inventory, is additional research required to identify consulting parties?**

No. Just as in 1990, museums and Federal agencies must initiate consultation, consult on human remains and associated funerary objects, and make determinations about cultural affiliation. In updating an inventory, the museums or Federal agencies already have a significant amount of information available in the previously prepared and submitted inventories. No additional research or analysis is required by these regulations. To fulfill this requirement, a museum could send its original inventory from 1995 along with the other required information to initiate consultation. In response, a consulting party might identify those human remains and associated funerary objects that it wishes to consult on and assert it has cultural affiliation to the human remains and associated funerary objects. (See Final Rule [paragraph 514](#)).