

Inadvertent Discoveries on Federal Lands After November 16, 1990

An *inadvertent* discovery is one for which no plan of action was developed prior to the discovery.

Notification

The person who makes the discovery must **immediately notify the responsible Federal official** by telephone and provide written confirmation to the responsible Federal official.

Stop Work

If the inadvertent discovery occurred in connection with an on-going activity, the person must **cease the activity** in the area of the inadvertent discovery and **make a reasonable effort to protect the human remains and other cultural items**.



Initiating Consultation

No later than three working days after receiving written confirmation of the notification, the responsible Federal agency official must **certify receipt of the notification**, and take immediate steps, if necessary, to **further secure and protect the human remains and other cultural items**. **NOTE:** activity that resulted in the discovery may resume thirty days after the Federal agency official certifies receipt of the notification.

The responsible Federal agency official must also **notify by telephone** (with written confirmation) and **initiate consultation** with **any known lineal descendant** and the **Indian tribes and Native Hawaiian organizations** –

- **who are or are likely to be culturally affiliated with the human remains and other cultural items;**
- **on whose aboriginal lands the remains and cultural items were discovered; and**
- **who are reasonably known to have a cultural relationship to the human remains and other cultural items.**

Consultation is initiated with a written notification. The written notification must propose a time and place for meetings or consultation.



During Consultation

The **purpose** of consultation is to **help the Federal agency determine who is entitled to custody** of the human remains and other cultural items under NAGPRA so that the disposition process can be completed, and **to discuss the Federal agency's proposed treatment** of the human remains and other cultural items pending disposition.

The Federal agency official must **provide in writing** –

- a list of all lineal descendants, Indian tribes, or Native Hawaiian organizations that are being, or have been, consulted; and
- an indication that additional documentation will be provided on request.

The Federal agency official **must request, as appropriate** –

- names and addresses of the Indian tribe official who will act as the tribe's representative in consultation;
- names and appropriate methods to contact lineal descendants;
- recommendations on how consultation should be conducted; and
- the kinds of cultural items that are considered to be unassociated funerary objects, sacred objects, or objects of cultural patrimony.



After Consultation – Written Plan of Action

The Federal agency official must prepare, approve, and sign a written plan of action. The plan of action must document the kinds of objects to be considered as cultural items; the planned treatment, care, and handling, including traditional treatment, of human remains and other cultural items; the planned archeological recording of the human remains and other cultural items; the kinds of analysis planned for each kind of object; and the nature of reports to be prepared.

The written plan of action must also include --

- the **specific information used to determine custody** of the human remains and other cultural items; and
- the **planned disposition** of the human remains and other cultural items.

Custody must be determined in accordance with 25 USC 3002 (a), "Priority of Ownership," and 43 CFR 10.6, "Priority of Custody."



(over)

Will the human remains and other cultural items be left in place?

Yes

The Federal agency secures the site of discovery, and the disposition process does not continue further.

OR

No

Excavation or removal of the human remains and other cultural items must take place following the requirements of the Archeological Resources Protection Act (ARPA) (16 U.S.C. 470aa et seq.) and its implementation regulations. This includes issuance of an excavation permit by the cognizant Federal agency where required by ARPA.

Prior to Disposition – Notice of Intended Disposition

At least 30 days prior to transferring the human remains and other cultural items to the claimant entitled to custody, the responsible Federal agency must first publish a **Notice of Intended Disposition**. The Notice must –

- be published two times (at least a week apart) in a newspaper of general circulation in the area in which the human remains and other cultural items were discovered;
- be published two times (at least a week apart) in a newspaper of general circulation in the area or areas in which the affiliated Indian tribes or Native Hawaiian organization members now reside;
- provide information as to the nature and affiliation of the human remains and other cultural items; and
- solicit further claims to custody.

The Federal agency official must send a copy of the notice and information on when and where it was published to the National NAGPRA program.

Disposition

Disposition is the formal transfer of Native American human remains and other cultural items excavated or inadvertently discovered on Federal or tribal lands after November 16, 1990, to the lineal descendants, Indian Tribes, or Native Hawaiian organizations that have been determined to be the legitimate claimants.

In completing the disposition, the claimant formally accepts custody (ownership). Disposition should be documented, must be consistent with 25 USC 3002 (a), "Priority of Ownership," and 43 CFR 10.6, "Priority of Custody." Physical transfer may take place 30 days after the publication of the second Notice of Intended Disposition, as agreed upon by the claimant and the Federal agency official.

Some Disposition Options

Claimant Takes Physical Custody

The legitimate claimant takes physical possession of the human remains and other cultural items. Where allowable, and upon agreement with the claimant, the Federal agency may provide temporary care until the claimant is able to take physical custody.

Reburial on Federal Land

The human remains and other cultural items may be reburied on Federal land, if the agency's policies and procedures permit such activities.

Relinquishment

Under NAGPRA [25 USC 3002(e)], the governing body of an Indian tribe or Native Hawaiian organization may expressly relinquish control over any Native American human remains, or title to or control over any funerary object or sacred object.