

**APPENDIX G**  
**NAGPRA Regulations**

## TITLE 43--PUBLIC LANDS: INTERIOR

### PART 10--NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REGULATIONS

#### Subpart B--Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony From Federal or Tribal Lands

##### Sec. 10.3 Intentional archaeological excavations.

###### (a) General.

This section carries out section 3 (c) of the Act regarding the custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony that are excavated intentionally from Federal or tribal lands after November 16, 1990.

###### (b) Specific Requirements.

These regulations permit the intentional excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony from Federal or tribal lands only if:

(1) The objects are excavated or removed following the requirements of the Archaeological Resources Protection Act (ARPA) (16 U.S.C. 470aa et seq.) and its implementing regulations. Regarding private lands within the exterior boundaries of any Indian reservation, the Bureau of Indian Affairs (BIA) will serve as the issuing agency for any permits required under the Act. For BIA procedures for obtaining such permits, see 25 CFR part 262 or contact the Deputy Commissioner of Indian Affairs, Department of the Interior, Washington, DC 20240. Regarding lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920, and section 4 of Pub. L. 86-3, the Department of Hawaiian Home Lands will serve as the issuing agency for any permits required under the Act, with the Hawaii State Historic Preservation Division of the Department of Land and Natural Resources acting in an advisory capacity for such issuance. Procedures and requirements for issuing permits will be consistent with those required by the ARPA and its implementing regulations;

(2) The objects are excavated after consultation with or, in the case of tribal lands, consent of, the appropriate Indian tribe or Native Hawaiian organization pursuant to Sec. 10.5;

(3) The disposition of the objects is consistent with their custody as described in Sec. 10.6; and

(4) Proof of the consultation or consent is shown to the Federal agency official or other agency official responsible for the issuance of the required permit.

###### (c) Procedures.

(1) The Federal agency official must take reasonable steps to determine whether a planned activity may result in the excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony from Federal lands. Prior to issuing any approvals or permits for activities, the Federal agency official must notify in writing the Indian tribes or Native Hawaiian organizations that are likely to be culturally affiliated with any human remains, funerary objects, sacred objects, or objects of cultural patrimony that may be excavated. The Federal agency official must also notify any present-day Indian tribe which aboriginally occupied the area of the planned activity and any other Indian tribes or Native Hawaiian organizations that the Federal agency official reasonably believes are likely to have a cultural relationship to the human remains, funerary objects, sacred objects, or objects of cultural patrimony that are expected to be found. The notice must be in writing and describe the planned activity, its general location, the basis upon which it was determined that human remains, funerary objects, sacred objects, or objects of cultural patrimony maybe excavated, and, the basis for determining likely custody pursuant to Sec. 10.6. The notice must also propose a time and place for meetings or consultations to further consider the activity, the Federal agency's proposed treatment of any human remains, funerary objects, sacred objects, or objects of cultural patrimony that may be excavated, and the proposed disposition of any excavated human remains, funerary objects, sacred objects, or objects of cultural patrimony. Written notification should be followed up by telephone contact if there is no response in 15days. Consultation must be conducted pursuant to Sec. 10.5.

(2) Following consultation, the Federal agency official must complete a written plan of action (described in Sec. 10.5(e)) and execute the actions called for in it.

(3) If the planned activity is also subject to review under section106 of the National Historic Preservation Act (16 U.S.C. 470 et seq.),the Federal agency official should coordinate consultation and any subsequent agreement for compliance conducted under that Act with the requirements of Sec. 10.3 (c) (2) and Sec. 10.5. Compliance with these regulations does not relieve Federal agency officials of requirements to comply with section 106 of the National Historic Preservation Act (16U.S.C. 470 et seq.).

(4) If an Indian tribe or Native Hawaiian organization receives notice of a planned activity or otherwise becomes aware of a planned activity that may result in the excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony on tribal lands, the Indian tribe or Native Hawaiian organization may take appropriate steps to: (i) Ensure that the human remains, funerary objects, sacred objects, or objects of cultural patrimony are excavated or removed following Sec. 10.3 (b), and (ii) Make certain that the disposition of any human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently as a result of the planned activity are carried out following Sec. 10.6.

Sec. 10.4 Inadvertent discoveries.

(a) General.

This section carries out section 3 (d) of the Act regarding the custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony that are discovered inadvertently on Federal or tribal lands after November 16, 1990.

(b) Discovery.

Any person who knows or has reason to know that he or she has discovered inadvertently human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal or tribal lands after November 16, 1990, must provide immediate telephone notification of the inadvertent discovery, with written confirmation, to the responsible Federal agency official with respect to Federal lands, and, with respect to tribal lands, to the responsible Indian tribe official. The requirements of these regulations regarding inadvertent discoveries apply whether or not an inadvertent discovery is duly reported. If written confirmation is provided by certified mail, the return receipt constitutes evidence of the receipt of the written notification by the Federal agency official or Indian tribe official.

(c) Ceasing activity.

If the inadvertent discovery occurred in connection with an on-going activity on Federal or tribal lands, the person, in addition to providing the notice described above, must stop the activity in the area of the inadvertent discovery and make a reasonable effort to protect the human remains, funerary objects, sacred objects, or objects of cultural patrimony discovered inadvertently.

(d) Federal lands.

(1) As soon as possible, but no later than three(3) working days after receipt of the written confirmation of notification with respect to Federal lands described in Sec. 10.4 (b), the responsible Federal agency official must:(i) Certify receipt of the notification; (ii) Take immediate steps, if necessary, to further secure and protect inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony, including, as appropriate, stabilization or covering;(iii) Notify by telephone, with written confirmation, the Indian tribes or Native Hawaiian organizations likely to be culturally affiliated with the inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony, the Indian tribe or Native Hawaiian organization which aboriginally occupied the area, and any other Indian tribe or Native Hawaiian organization that is reasonably known to have a cultural relationship to the human remains, funerary objects, sacred objects, or objects of cultural patrimony. This notification must include pertinent information as to kinds of human remains, funerary objects, sacred objects, or objects of cultural patrimony discovered inadvertently, their condition, and the circumstances of their inadvertent discovery;(iv) Initiate consultation on the inadvertent discovery pursuant to Sec. 10.5;(v) If the human remains, funerary objects, sacred objects, or objects of cultural patrimony must be excavated or removed, follow the requirements and procedures in Sec. 10.3 (b) of these regulations; and(vi) Ensure that disposition of all inadvertently discovered human

remains, funerary objects, sacred objects, or objects of cultural patrimony is carried out following Sec. 10.6.

(2) Resumption of activity.

The activity that resulted in the inadvertent discovery may resume thirty (30) days after certification by the notified Federal agency of receipt of the written confirmation of notification of inadvertent discovery if the resumption of the activity is otherwise lawful. The activity may also resume, if otherwise lawful, at any time that a written, binding agreement is executed between the Federal agency and the affiliated Indian tribes or Native Hawaiian organizations that adopt a recovery plan for the excavation or removal of the human remains, funerary objects, sacred objects, or objects of cultural patrimony following Sec. 10.3 (b)(1) of these regulations. The disposition of all human remains, funerary objects, sacred objects, or objects of cultural patrimony must be carried out following Sec. 10.6.

(e) Tribal lands.

(1) As soon as possible, but no later than three(3) working days after receipt of the written confirmation of notification with respect to Tribal lands described in Sec. 10.4 (b), the responsible Indian tribe official may:(i) Certify receipt of the notification;(ii) Take immediate steps, if necessary, to further secure and protect inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony, including, as appropriate, stabilization or covering;(iii) If the human remains, funerary objects, sacred objects, or objects of cultural patrimony must be excavated or removed, follow the requirements and procedures in Sec. 10.3 (b) of these regulations; and(iv) Ensure that disposition of all inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony is carried out following Sec. 10.6.

(2) Resumption of Activity.

The activity that resulted in the inadvertent discovery may resume if otherwise lawful after thirty (30)days of the certification of the receipt of notification by the Indian tribe or Native Hawaiian organization.

(f) Federal agency officials.

Federal agency officials should coordinate their responsibilities under this section with their emergency discovery responsibilities under section 106 of the National Historical Preservation Act (16 U.S.C. 470 (f) et seq.), 36 CFR 800.11 or section 3 (a) of the Archeological and Historic Preservation Act (16U.S.C. 469 (a-c)). Compliance with these regulations does not relieve Federal agency officials of the requirement to comply with section 106of the National Historical Preservation Act (16 U.S.C. 470 (f) et seq.),36 CFR 800.11 or section 3 (a) of the Archeological and Historic Preservation Act (16 U.S.C. 469 (a-c)).

(g) Notification requirement in authorizations.

All Federal authorizations to carry out land use activities on Federal lands or tribal lands, including all leases and permits, must include a requirement for the holder of the authorization to notify the appropriate Federal or tribal official immediately upon the discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony pursuant to Sec. 10.4(b) of these regulations.

[60 FR 62158, Dec. 4, 1995, as amended at 62 FR 41293, Aug. 1, 1997]

Sec. 10.5 Consultation.

Consultation as part of the intentional excavation or inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal lands must be conducted in accordance with the following requirements.

(a) Consulting parties.

Federal agency officials must consult with known lineal descendants and Indian tribe officials: (1) From Indian tribes on whose aboriginal lands the planned activity will occur or where the inadvertent discovery has been made; and (2) From Indian tribes and Native Hawaiian organizations that are, or are likely to be, culturally affiliated with the human remains, funerary objects, sacred objects, or objects of cultural patrimony; and (3) From Indian tribes and Native Hawaiian organizations that have a demonstrated cultural relationship with the human remains, funerary objects, sacred objects, or objects of cultural patrimony.

(b) Initiation of consultation.

(1) Upon receiving notice of, or otherwise becoming aware of, an inadvertent discovery or planned activity that has resulted or may result in the intentional excavation or inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal lands, the responsible Federal agency official must, as part of the procedures described in Sec. Sec. 10.3 and 10.4, take appropriate steps to identify the lineal descendant, Indian tribe, or Native Hawaiian organization entitled to custody of the human remains, funerary objects, sacred objects, or objects of cultural patrimony pursuant to Sec. 10.6 and Sec. 10.14. The Federal agency official shall notify in writing: (i) Any known lineal descendants of the individual whose remains, funerary objects, sacred objects, or objects of cultural patrimony have been or are likely to be excavated intentionally or discovered inadvertently; and (ii) The Indian tribes or Native Hawaiian organizations that are likely to be culturally affiliated with the human remains, funerary objects, sacred objects, or objects of cultural patrimony that have been or are likely to be excavated intentionally or discovered inadvertently; and (iii) The Indian tribes which aboriginally occupied the area in which the human remains, funerary objects, sacred objects, or objects of cultural patrimony have been or are likely to be excavated intentionally or discovered inadvertently; and (iv) The Indian tribes

or Native Hawaiian organizations that have a demonstrated cultural relationship with the human remains, funerary objects, sacred objects, or objects of cultural patrimony that have been or are likely to be excavated intentionally or discovered inadvertently.

(2) The notice must propose a time and place for meetings or consultation to further consider the intentional excavation or inadvertent discovery, the Federal agency's proposed treatment of the human remains, funerary objects, sacred objects, or objects of cultural patrimony that may be excavated, and the proposed disposition of any intentionally excavated or inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony.

(3) The consultation must seek to identify traditional religious leaders who should also be consulted and seek to identify, where applicable, lineal descendants and Indian tribes or Native Hawaiian organizations affiliated with the human remains, funerary objects, sacred objects, or objects of cultural patrimony.

(c) Provision of information.

During the consultation process, as appropriate, the Federal agency official must provide the following information in writing to the lineal descendants and the officials of Indian tribes or Native Hawaiian organizations that are or are likely to be affiliated with the human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands:

(1) A list of all lineal descendants and Indian tribes or Native Hawaiian organizations that are being, or have been, consulted regarding the particular human remains, funerary objects, sacred objects, or objects of cultural patrimony;

(2) An indication that additional documentation used to identify affiliation will be supplied upon request.

(d) Requests for information.

During the consultation process, Federal agency officials must request, as appropriate, the following information from Indian tribes or Native Hawaiian organizations that are, or are likely to be, affiliated pursuant to Sec. 10.6 (a) with intentionally excavated or inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony:

(1) Name and address of the Indian tribe official to act as representative in consultations related to particular human remains, funerary objects, sacred objects, or objects of cultural patrimony;(2) Names and appropriate methods to contact lineal descendants who should be contacted to participate in the consultation process;(3) Recommendations on how the consultation process should be conducted; and (4) Kinds of cultural items that the Indian tribe or Native Hawaiian organization considers likely to be unassociated funerary objects, sacred objects, or objects of cultural patrimony.(e) Written plan of action. Following consultation, the Federal agency official must prepare, approve, and sign a written plan of action. A copy of

this plan of action must be provided to the lineal descendants, Indian tribes and Native Hawaiian organizations involved. Lineal descendants and Indian tribe official(s) may sign the written plan of action as appropriate. At a minimum, the plan of action must comply with Sec. 10.3 (b)(1) and document the following:(1) The kinds of objects to be considered as cultural items as defined in Sec. 10.2 (b);(2) The specific information used to determine custody pursuant to Sec. 10.6;(3) The planned treatment, care, and handling of human remains, funerary objects, sacred objects, or objects of cultural patrimony recovered;(4) The planned archeological recording of the human remains, funerary objects, sacred objects, or objects of cultural patrimony recovered;(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 intentional excavation or inadvertent discovery of specific human remains, funerary objects, sacred objects, or objects of cultural patrimony;(7) The kind of traditional treatment, if any, to be afforded the human remains, funerary objects, sacred objects, or objects of cultural patrimony 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, funerary objects, sacred objects, or objects of cultural patrimony following Sec. 10.6.(f) Comprehensive agreements. Whenever possible, Federal Agencies should enter into comprehensive agreements with Indian tribes or Native Hawaiian organizations that are affiliated with human remains, funerary objects, sacred objects, or objects of cultural patrimony and have claimed, or are likely to claim, those human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands. These agreements should address all Federal agency land management activities that could result in the intentional excavation or inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony. Consultation should lead to the establishment of a process for effectively carrying out the requirements of these regulations regarding standard consultation procedures, the determination of custody consistent with procedures in this section and Sec. 10.6, and the treatment and disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony. The signed agreements, or the correspondence related to the effort to reach agreements, must constitute proof of consultation as required by these regulations.

(g) Traditional religious leaders.

The Federal agency official must be cognizant that Indian tribe officials may need to confer with traditional religious leaders prior to making recommendations. Indian tribe officials are under no obligation to reveal the identity of traditional religious leaders.

[60 FR 62158, Dec. 4, 1995, as amended at 62 FR 41293, Aug. 1, 1997]

Sec. 10.6 Custody.

(a) Priority of custody.

This section carries out section 3 (a) of the Act, subject to the limitations of Sec. 10.15, regarding the custody of human remains, funerary objects, sacred objects, or objects of

cultural patrimony excavated intentionally or discovered inadvertently in Federal or tribal lands after November 16, 1990. For the purposes of this section, custody means ownership or control of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently in Federal or tribal lands after November 16, 1990. Custody of these human remains, funerary objects, sacred objects, or objects of cultural patrimony is, with priority given in the order listed:(1) In the case of human remains and associated funerary objects, in the lineal descendant of the deceased individual as determined pursuant to Sec. 10.14 (b);(2) In cases where a lineal descendant cannot be ascertained or no claim is made, and with respect to unassociated funerary objects, sacred objects, and objects of cultural patrimony:(i) In the Indian tribe on whose tribal land the human remains, funerary objects, sacred objects, or objects of cultural patrimony were excavated intentionally or discovered inadvertently;(ii) In the Indian tribe or Native Hawaiian organization that has the closest cultural affiliation with the human remains, funerary objects, sacred objects, or objects of cultural patrimony as determined pursuant to Sec. 10.14 (c); or(iii) In circumstances in which the cultural affiliation of the human remains, funerary objects, sacred objects, or objects of cultural patrimony cannot be ascertained and the objects were excavated intentionally or discovered inadvertently on 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:(A) In the Indian tribe aboriginally occupying the Federal land on which the human remains, funerary objects, sacred objects, or objects of cultural patrimony were excavated intentionally or discovered inadvertently, or(B) If it can be shown by a preponderance of the evidence that a different Indian tribe or Native Hawaiian organization has a stronger cultural relationship with the human remains, funerary objects, sacred objects, or objects of cultural patrimony, in the Indian tribe or Native Hawaiian organization that has the strongest demonstrated relationship with the objects.

(b) Custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony and other provisions of the Act apply to all intentional excavations and inadvertent discoveries made after November 16, 1990, including those made before the effective date of these regulations.

(c) Final notice, claims and disposition with respect to Federal lands. Upon determination of the lineal descendant, Indian tribe, or Native Hawaiian organization that under these regulations appears to be entitled to custody of particular human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands, the responsible Federal agency official must, subject to the notice required herein and the limitations of Sec. 10.15, transfer custody of the objects to the lineal descendant, Indian tribe, or Native Hawaiian organization following appropriate procedures, which must respect traditional customs and practices of the affiliated Indian tribes or Native Hawaiian organizations in each instance. Prior to any such disposition by a Federal agency official, the Federal agency official must publish general notices of the proposed disposition in a newspaper of general circulation in the area in which the human remains, funerary objects, sacred objects, or objects of cultural patrimony were excavated intentionally or discovered inadvertently and, if applicable, in a newspaper of general circulation in the

area(s) in which affiliated Indian tribes or Native Hawaiian organizations members now reside. The notice must provide information as to the nature and affiliation of the human remains, funerary objects, sacred objects, or objects of cultural patrimony and solicit further claims to custody. The notice must be published at least two (2) times at least a week apart, and the transfer must not take place until at least thirty (30) days after the publication of the second notice to allow time for any additional claimants to come forward. If additional claimants do come forward and the Federal agency official cannot clearly determine which claimant is entitled to custody, the Federal agency must not transfer custody of the objects until such time as the proper recipient is determined pursuant to these regulations. The Federal agency official must send a copy of the notice and information on when and in what newspaper(s) the notice was published to the Departmental Consulting Archeologist.

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**California Health and Safety Code Section 7050.5: Disturbance of Human Remains**

Establishes intentional disturbance, mutilation or removal of interred human remains as a misdemeanor. Requires that further excavation or disturbance of land, upon discovery of human remains outside of a dedicated cemetery, cease until a county coroner makes a report. Requires a county coroner to contact the Native American Heritage Commission within 24 hours if the coroner determines that the remains are not subject to his or her authority and if the coroner recognizes the remains to be those of a Native American.

**California Health and Safety Code Section 8010-8011: California Native American Graves Protection and Repatriation Act**

Establishes a state repatriation policy intent that is consistent with and facilitates implementation of the federal Native American Graves Protection and Repatriation Act. Strives to ensure that all California Indian human remains and cultural items are treated with dignity and respect. Encourages voluntary disclosure and return of remains and cultural items by publicly funded agencies and museums in California. States an intent for the state to provide mechanisms for aiding California Indian tribes, including non-federally recognized tribes, in filing repatriation claims and getting responses to those claims.