



NAGPRA Section 3 (Ownership) and ARPA

How does the Native American Graves Protection and Repatriation Act (NAGPRA) relate to the Archaeological Resources Protection Act (ARPA)?

Planned excavations for scientific data recovery require an ARPA permit. Section 3 of NAGPRA stipulates that “The intentional removal from or excavation of Native American cultural items from Federal or tribal lands for purposes of discovery, study, or removal of such items is permitted only if such items are excavated or removed pursuant to a permit issued under section 4 of the Archaeological Resources Protection Act of 1979 (93 Stat. 721; 16 U.S.C. 470aa et seq.) which shall be consistent with this Act.” [25 U.S.C. 3002 (c)(1)]

Under the NAGPRA regulations, 43 CFR 10, the intentional excavation of Native American cultural items is permitted “only if 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” [43 CFR 10.3 (b)(1)], and after consultation with Indian tribes and Native Hawaiian organizations.

What are some of the ARPA requirements that must be addressed when excavating or removing Native American cultural items under NAGPRA?

43 CFR 7.8 –

- The permit applicant (or person carrying out their official agency duties) must be appropriately qualified;
- The proposed work will further archaeological knowledge in the public interest and is not inconsistent with public land management;
- For proposed work on Indian lands, written consent must be obtained from the Indian landowner and the Indian tribe having jurisdiction over the land;
- The proposed repository for the excavated items must have adequate curatorial capability for preserving both the items and all associated records;
- For work carried out on public lands, all artifacts, samples, collections, and copies of records, data, photographs, and other documents resulting from the work will be delivered to the appropriate repository official; and
- For work carried out on Indian lands, all artifacts, samples and collections for which the custody or disposition is not undertaken by the Indian owners remain the responsibility of the Federal government.

43 CFR 7.9 –

- The Federal land manager shall specify –
 - The nature and extent of the work allowed;
 - The name of the individual responsible for conducting the work;
 - The name of the repository that will receive the collected items and associated data;
 - Reporting requirements; and
 - Time limits for completion of the work.
- For work on Indian lands, the Federal land manager shall include terms and conditions as requested by the Indian landowner and the Indian tribe having jurisdiction over the lands.
- For work on public lands that may result in harm to, or destruction of, any Indian tribal religious or cultural site, the Federal land manager shall include terms and conditions that have been developed pursuant to 43 CFR 7.7.

Is a permit always required under ARPA?

No. Government contractors and government employees operate pursuant to the terms of the contract and the scope work. However, ARPA standards for recovery and curation still apply.

Does ARPA address the disposition of NAGPRA cultural items?

Yes. ARPA requires that the disposition of NAGPRA cultural items be carried out in accordance with NAGPRA and its implementing regulations.

What is a “site of religious or cultural importance?”

While definitions of this term may vary across Departments, the Department of the Interior defines a site of religious or cultural importance as “a location which has traditionally been considered important by an Indian tribe because of a religious event which happened there; because it contains specific natural products which are of religious or cultural importance; because it is believed to be the dwelling place of, the embodiment of, or a place conducive to communication with spiritual beings; because it contains elements of life-cycle rituals, such as burials and associated materials; or because it has other specific and continuing significance in Indian religion or culture.” [43 CFR 7.32 (a)]

How are sites of religious or cultural importance identified?

“In order to identify sites of religious or cultural importance, the Federal land manager shall seek to identify all Indian tribes having aboriginal or historic ties to the lands under the Federal land manager's jurisdiction and seek to determine, from the chief executive officer or other designated official of any such tribe, the location and nature of specific sites of religious or cultural importance so that such information may be on file for land management purposes. Information on sites eligible for or included in the National Register of Historic Places may be withheld from public disclosure pursuant to section 304 of the Act of October 15, 1966, as amended (16 U.S.C. 470w-3).” [43 CFR 7.7 (b)(1)]

What are some of the special requirements for Indian tribal religious or cultural sites on public lands under 43 CFR 7.7?

If the Federal land manager determines that an ARPA permitted activity may result in harm to, or destruction of, any Indian tribal religious or cultural site on public lands –

- 30 days before issuing an ARPA permit, the Federal land manager shall notify the chief executive officer or other designated official of any Indian tribe that may consider the site to have religious or cultural importance. This notice is not a prohibited disclosure of information under Section 9 of ARPA.
- During the 30-day period, the Federal land manager may meet with official representatives of any Indian tribe or group to discuss their interests, including ways to avoid or mitigate potential harm or destruction. Any mitigation measures shall be incorporated into the terms and conditions of the ARPA permit or otherwise documented under 43 CFR 7.9.
- When the Federal land manager determines that an ARPA permit must be issued immediately because of an imminent threat of loss or destruction of an archaeological resource, the Federal land manager shall so notify the appropriate tribe.
- In order to identify sites of religious or cultural importance, the Federal land manager shall seek to identify all Indian tribes having aboriginal or historic ties to the lands under the Federal land manager's jurisdiction and seek to determine, from the chief executive officer or other designated official of any such tribe, the location and nature of specific sites of religious or cultural importance so that such information may be on file for land management planning and consultation purposes. Information on sites eligible for or included in the National Register of Historic Places may be withheld from public disclosure pursuant to section 304 of the National Historic Preservation Act (16 U.S.C. 470w-3).

Where can I learn more about ARPA?

- The complete text of the Archaeological Resources Protection Act is available online at http://www.cr.nps.gov/local-law/FHPL_ArchRsrcsProt.pdf.
- The complete text of 43 CFR 7 is available online at <http://www.cr.nps.gov/local-law/43cfr7.htm>.