

U.S. Department of the Interior
National NAGPRA Program and Office of Native Hawaiian Relations
Summary of Native Hawaiian Community Input on 2009 Draft NAGPRA Updates and Responses

From 2009 through 2010, the Department of the Interior conducted consultation with the Native Hawaiian Community (NHC) through Native Hawaiian organizations and Native Hawaiian individuals on a Departmental Manual section whose purpose is to describe the policies and responsibilities of the Department for managing, preserving, and protecting Native Hawaiian cultural items covered under the Native American Graves Protection and Repatriation Act. The following is a high-level summary of the suggested changes to NAGPRA's implementing regulations the Department received during those meetings along with responses.

Comment 1: Clarify that a Federal agency's final denial of a request for repatriation or disposition under Subparts B or C of these regulations constitutes final agency action on the part of the Federal agency and the exhaustion of administrative remedies on the part of the requestor.

Response 1: The new draft incorporates this suggestion in §10.1(h) by identifying all of the Federal agency actions under Part 10 that constitute a "final agency action" for purposes of the Administrative Procedure Act (5 U.S.C. 704), including the exhaustion of administrative remedies on the part of the claimant or requestor.

Comment 2: Emphasize that the responsibilities owed to Indian Tribes and Native Hawaiian organizations affiliated with human remains and associated funerary objects that might be, or have been, removed from Federal or Tribal lands after November 16, 1990 also extend to known lineal descendants, and also provide that, with respect to Hawaiian home lands, such responsibilities, which are owed to Native Hawaiian organizations and known lineal descendants alike, reside in DHHL.

Response 2: The new draft incorporates this suggestion in Subpart B by reaffirming the priority order in the existing regulations, which is consistent with the Act, in §10.7(a), and establishing a clear set of instructions for disposition of cultural items to a lineal descendant in §10.7(b). Throughout the new draft in Subpart B, the Department of Hawaiian Home Lands (DHHL) has responsibilities for complying with these regulations.

Comment 3: Ensure the definition of "lineal descendant" includes that, under certain circumstances, a group of individuals, jointly, may be deemed to be a "lineal descendant" for purposes of these regulations.

Response 3: The new draft incorporates this suggestion in §10.2, Definitions for this part. The definition of "lineal descendant" includes provisions for an admixture of human remains and associated funerary objects representing more than one known Native American individual. Similarly, §10.3(c)(1) addresses the circumstances under which more than one lineal descendant may make a joint claim for disposition or a joint request for repatriation, which must be considered a single claim or request.

Comment 4: Establish a priority order for the disposition and repatriation of cultural items that are claimed by more than one culturally affiliated Native Hawaiian organization.

Response 4: The new draft incorporates this suggestion in §10.3(d)(2). The draft proposes a priority order in which the closest culturally affiliated Native Hawaiian organization can be determined when there are competing claims for disposition or competing requests for repatriation of a cultural item.

Comment 5: Consistent with the authority the United States vested in the State of Hawaii under the Hawaii Statehood Admission Act, the State of Hawaii's Department of Hawaiian Home Lands (DHHL) serves as the land manager for any permits or plans of action concerning Hawaiian home lands under Subpart B of these regulations.

Response 5: The new draft incorporates this suggestion in §10.4(d), *Appropriate official*. This term is used to clearly and explicitly provide that the State of Hawaii's Department of Hawaiian Home Lands (DHHL) is responsible for cultural items discovered on, excavated from, or removed from Tribal lands in Hawaii. As shown in the new draft Table 1 to §10.4, the appropriate official for Tribal lands in Hawaii is either the appropriate Native Hawaiian organization or DHHL. Under §§10.5 and 10.6, an NHO must consent in writing to be responsible for discoveries or excavations on its Tribal lands. Otherwise, DHHL is the appropriate official on Tribal lands controlled by an NHO as well as Tribal lands controlled by DHHL.

Comment 6: Include that the steps a museum or Federal agency may take to protect from disclosure particularly sensitive information at the request of an Indian tribal official also may be triggered by such a request from a lineal descendant.

Response 6: The new draft incorporates this suggestion by requiring the protection of sensitive information, as identified by a lineal descendant, Indian Tribe, or Native Hawaiian organization, after sending a disposition statement for cultural items under Subpart B (see §10.7 paragraphs (b), (d), and (e)), or repatriation statement for cultural items under Subpart C (see §§10.9(g) and 10.10(h) and (k)).