

NATHPO NAGPRA Webinar
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Q&A from Chat Box

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Question: Tribes are required to ensure the discovery requirement is included IN a permit, but they are not required to actually write it themselves; is this correct?

Answer from Tim in discussion: Yes, that is correct. While they do not have to write it themselves, they must make sure it is included.

Question: "Tribal lands" - Is this specific to within the exterior boundaries of a reservation (if applicable) or beyond those borders?

Answer from Wes -- NARF: Tribal Lands means (1) all lands within the exterior boundary of a reservation and (2) dependent Indian communities. Dependent Indian Communities would technically be outside a reservation boundary, but this is a very limited category of lands

Answer from Shannon O'Loughlin, Association on American Indian Affairs (AAIA): Tribal lands - all lands within the exterior boundaries including private lands: NAGPRA does NOT give jurisdiction to state and local authorities over "Tribal lands" to issue permits! Tribes get to decide whether state/local authorities can do so.

Question: Are grave markers considered a "funerary item?"

Answer from Shannon -- AAIA: If the Tribe says it is so, as deference is given to Native Nations on definitions of cultural items.

Question: Who is the Tribe required to provide written authorization to? The excavator? or is the Tribe getting authorization from someone else?

Answer: In the webinar

Question: Is it possible to charge a permit review/processing fee by Tribes for these purposes?

Answer: In the webinar

Question: Are there regulations within 25 CFR that coincide with 43 CFR 10.5 that would require the BIA to comply with Tribal requests on allotted lands?

Answer: Wes -- NARF: 25 USC 3001(15) and 43 CFR 10.2(f)(2)

Question: How are technologies like drones and 3D technologies addressed in the new regulations or have they been considered? Also database?

Answer: In the webinar

Question: Are there any draft contract/lease/ROW clauses available for sharing to Tribes containing what the regulations mandate?

Answer: UAIC shared a repatriation checklist that could easily be adapted to include duty of care clauses (attached)

Question: Does this apply to college curriculum?

Question: And teaching collections?

Question: Does this include sharing detailed information on museum websites about what is within a collection?

Answer from Shannon -- AAIA: Or - use a museum's failure to ask for consent in a civil penalty complaint submission - especially where Tribes have had harmful relations with institution.

Answer from Shannon -- AAIA: Yes.

Follow-up Question: Indirect access, perhaps?

Answer from Shannon -- AAIA: Yes.

Question: Does that open Tribes up for lawsuits for failure to comply? The permitting requirements will be very hard for us to comply with.

Answer from Shannon -- AAIA: Yes, Tribes must provide a request for repatriation. This comes after a notice - after affiliation has been determined. This is an added requirement because institutions were "finalizing" inventories and then no repatriation would occur.

Answer from Wes -- NARF: Tribes' sovereign immunity should shield Tribes from any lawsuits alleging that a Tribe has failed to comply with NAGPRA. There have been a number of cases where Tribes have been sued for violating/failing to comply with NAGPRA, and these cases have been dismissed based on the Tribe's sovereign immunity.

Follow-up Question: What if we send that statement but it is a joint repatriation?

Answer from Shannon -- AAIA: Same thing - the affiliation determination would have been made in the notice. And, the joint parties I am assuming are involved in the consultation to finalize the inventory.

Question: The issue is, if our Tribe makes a repatriation request, the museums are saying they will send a Repatriation Statement for just us (but we want all the jointly affiliated Tribes included). The museums don't know the process for doing that, and so we are stuck.

Answer from Shannon -- AAIA: Then they should call National NAGPRA and get technical assistance. They simply name the joint affiliated Tribes. Or you can always just move it forward and your Nation can work with the other joint parties regardless of what the museum does or what the notice says.

Answer from Shannon -- AAIA: Because of the new extra step of the request for repatriation, it seems like museums do not feel they can include the joint affiliated Tribes on the Repatriation Statement if they don't receive a written request from them...

Answer from Shannon -- AAIA: If they are not affiliating with joint affiliated Tribes, call Melanie, or have the museum call. This should not be a hold-up.

Statement: Some Tribes will not allow State issued permits on their Reservations.

Statement: Some Tribes have an Excavation AND Extraction Policy. There may be cause to do a resolution as an acknowledgement to ancestral lands and that you still hold your policy on ancestral lands. It is Tribal backing of sovereignty. This also was to protect ancestors, sacred places, mineral rights, any ground disturbance, all of it. this Resolution and policy would be mailed out to anyone who it pertained to.

01:25:25 Stacy Laravie - NATHPO: I suggest tribes start beefing up policies and resolutions.

01:27:00 Valerie Grussing - NATHPO: To reiterate, if you may have anything or plan to create something on these, we would be grateful if you could share with us, as appropriate.