



Overview of the Native American Graves Protection and Repatriation Act

Indian Affairs Committee, November 13, 2025



Historical Context

- For centuries, Native graves and sacred sites were stripped of their contents
- Ancestral remains and their belongings and/or sacred items were routinely excavated, collected, and displayed without consent
- Many remained stored and/or on display in museums, universities and federal agencies
- Antiquated academic and museum practices caused intergenerational harm through cultural loss, and spiritual offense of Native communities
- Indigenous rights movements brought awareness and policy shifts toward tribal sovereignty and reframed heritage as a human rights issues
- Advocacy culminated in NAGPRA (1990) —codifying tribal rights to reclaim human remains, funerary, sacred, and patrimonial objects



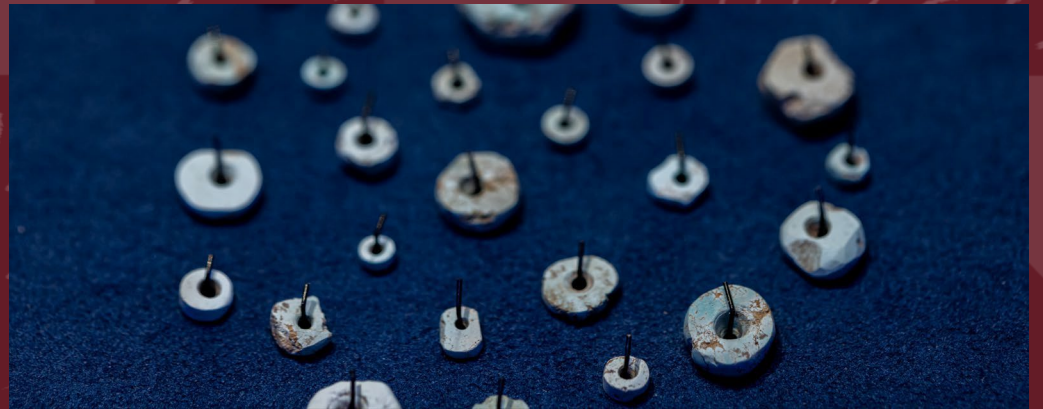
What is NAGPRA?



- NAGPRA is a Federal Law passed in 1990 (25 U.S.C. §§ 3001–3013) and updated in 2024. It provides a process for the return of Native American ancestors and certain cultural items, to culturally affiliated Native Tribes and Native Hawaiian Organizations.
- It also protects Native graves on Federal and Tribal lands by establishing a procedure for the treatment of accidentally discovered ancestral remains or cultural items during construction or other activities.
- Fundamentally, it is a human and civil rights law.

Cultural Item Categories

1. Ancestral Remains, physical remains of the body of a person of Native American ancestry
2. Belongings of ancestors, items intentionally placed with ancestral remains at the time of death
3. Sacred Objects, specific ceremonial objects needed for the practice of traditional ceremonies
4. Objects of Cultural Patrimony, objects having ongoing historical, traditional, or cultural importance central to a Native community, rather than owned by an individual



Repatriation Process Part 1: Documentation and Initial Consultation

Compile Itemized List

Institutions prepare an itemized list that includes all Native ancestors and their belongings in its possession or control.

Initiate Consultation

Institutions must initiate consultation with known lineal descendants who are likely to be culturally affiliated or from whose aboriginal lands the items originated.

Inventory Completion

Institutions must consult with the identified parties to review the itemized lists, address the duty of care, and incorporate Native traditional knowledge. The institution then completes or updates the formal inventory based on all available information

Determine Cultural Affiliation

Using all available evidence, including geographical, historical, archaeological, linguistic data, and traditional knowledge, the institutions must make a formal written record of its cultural affiliation determination

Repatriation Process Part 2: Notification, Claim, and Transfer

Public Notice

After completing the inventory and cultural affiliation determination, the institutions must submit a “Notice of Inventory Completion” for publication in the *Federal Register*.

Consider Repatriation Requests

Institutions must await the publication of the notice, typically 30 days, and then receive and consider all formal request for repatriation from lineal descendants or cultural affiliated communities.

Respond to Requests

A written response must be sent to the claimant and all other consulting parties named in the notice, either affirming the claim, requesting more information, or notifying parties of competing claims.

Repatriation/Transfer of Control

If a claim meets the criteria and there are no competing claims the institutions must arrange for the transfer of the ancestors and associated funerary objects to the lineal descendant, Native Tribe, or Native Hawaiian Organization.



For Tribes, NAGPRA allows for the proper and respectful return of ancestors and sacred objects necessary for cultural continuity. It also gives tribes a voice in the interpretation of their items still in museums.

For institutions, it mandates a necessary reckoning with past collection practices and promotes ethical stewardship and meaningful consultation with Native communities.

Significance



- Federal Agencies such as NPS, BLM, BOR, etc.
- State and local government agencies, museums and institutions that receive Federal funding, including universities
- To be compliant, entities must compile inventories and summaries of their collections and work toward consultation and repatriation

Who Must Comply?

Penalties for Noncompliance

- Both civil and criminal penalties apply
- Civil penalties assessed by the Secretary of the Interior are financial and include initial and continuing fines as well as federal grant ineligibility
- Criminal penalties apply for knowingly participating in illegal trafficking

Jurisdiction	Law	Prohibited Acts	Enforcement & Penalties
Federal	18 U.S.C. § 1170	Trafficking in Native American remains or cultural items.	DOJ/FBI – Criminal fines & imprisonment.
Federal	25 U.S.C. § 3007; 43 C.F.R. § 10.12	Museum non-compliance with NAGPRA duties.	NPS – Civil fines, possible funding loss.
State (NM)	§ 18-6-11.2 NMSA; 4.10.11 NMAC	Unpermitted disturbance of unmarked burials.	HPD / Law enforcement – Felony.
State (NM)	§ 18-6-13 NMSA	Unauthorized excavation or destruction of cultural property.	HPD – Misdemeanor.



In New Mexico

Pre-NAGPRA state protections: New Mexico adopted the Cultural Properties Act (1969) to regulate archaeological excavations and protect cultural sites. Amendments in the 1980s–1990s (notably § 18-6-11.2 NMSA) created a permitting system for unmarked burials, anticipating NAGPRA’s principles of respect and consultation.

1990—Federal NAGPRA enacted: New Mexico’s museums and agencies became early implementers because of archaeological collections and extensive tribal presence. Department of Cultural Affairs (DCA) began inventories and consultations soon after passage.

1990s–2000s—State–tribal partnerships: DCA worked with Tribal governments on the return of ancestral remain repositories. The Historic Preservation Division (HPD) integrated NAGPRA consultation into its burial-permit process on state and private lands.

Establishment of the Center for New Mexico Archaeology: Consolidated the state’s archaeological curation and research functions, providing a centralized and secure facility for NAGPRA-related collections and documentation.

Recent progress and coordination (2020s): New Mexico tribes play leading roles in repatriation ceremonies, consultation protocols, and policy review. The state’s legal framework (CPA + NAGPRA) is now seen as a model of dual compliance—state law for field discoveries, federal law for museum collections.

What Changed in 2024?



Strengthened Tribal Authority and Consent

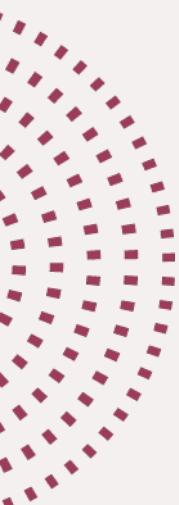
- Introduced new compliance category of duty of care which is the ethical stewardship of ancestors and all cultural items.
- Required to obtain free, prior, and informed consent from Native communities before any exhibition of, access to, or research on ancestors or cultural items. Directly impacts museum display and collection management practices.
- Defer to Native traditional knowledge when determining cultural affiliation. This strengthens the voice of Native communities over scientific evidence alone.

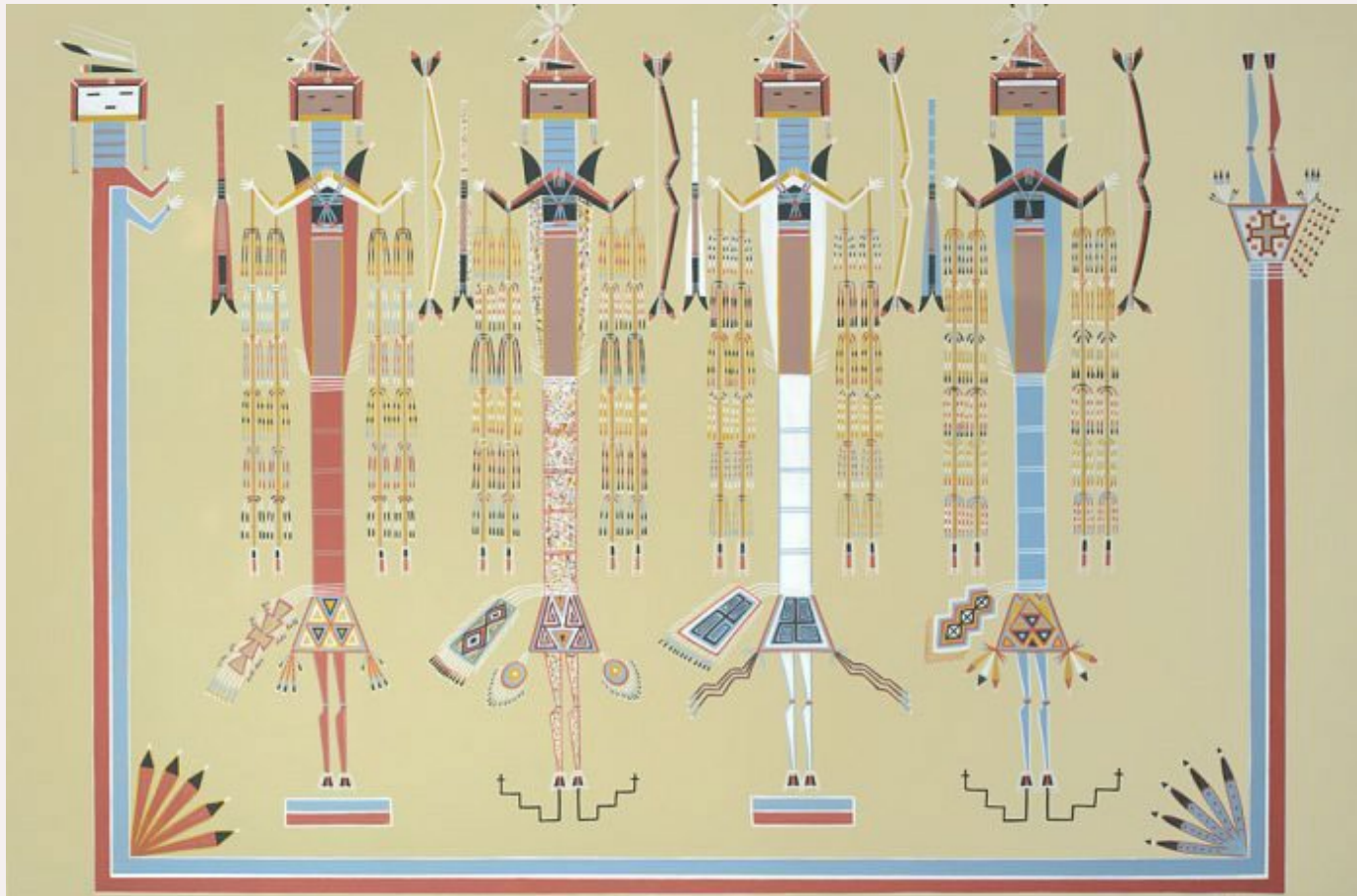
Eliminated Loopholes and Ambiguity

- Eliminated the "Culturally Unidentifiable Human Remains" category. Affiliation of previously "unidentified" ancestors and objects must be determined, typically with the Tribe on whose land the remains were found.
- Standard of evidence for cultural affiliation made more flexible and clearer. A single line of evidence considered sufficient to establish relationship between present-day Tribes and the ancestors or items.
- For ;loans/leases control resides with the original Federal agency or museum that loaned the item.

Stricter Deadlines and Enforcement

- Must consult and update their inventories ancestors and associated funerary objects by January 10, 2029.
- Must report holdings or collections that were previously unreported under the older regulations.
- Civil penalties were strengthened and clarified to apply to a broader range of compliance failures, which is intended to increase accountability.





Department of Cultural Affairs and NAGRPA Compliance

Applicability

- As a recipient of Federal funding, DCA must comply with NAGPRA
- The spirit of New Mexico's State Tribal Collaboration Act demands proactive dialog with Native communities
- Museum best practice is to center Native voices in the consensual presentation of Native content
- DCA has a long history of compliance and best practices, but more work is necessary, especially with new timelines



Scope of Holdings

- Collections at all 8 museums
- Archaeological Research Collections (ARC) maintained at Center for New Mexico Archaeology
- Unmarked Graves duty through the Historic Preservation Division
- ARC also holds on behalf of other agencies such as BIA, BLM, BOR, etc. Museum staff work directly with these agencies to facilitate the repatriation of items back to tribal communities.



- \$2.5 million special appropriated for FY26
- Utilizing to support expert consultation, create practices and procedures, staffing for review of holdings, and tribal consultation
- Three consultants onboard with specialized expertise
- Temporary staff working on the consultation process
- Hosted convening of Tribal Historical Preservation Officers from 35 Tribes on November 5-7, 2025
- Including other State agencies in the conversations and trainings
- Additional \$1.5 million special request for FY27

DCA NAGPRA Compliance and Implementation



NAGPRA is not simply an archaeological or museum law; it is a law about human dignity and respect for ancestors. Compliance is the minimum requirement for creating an ethical path forward. Please support our State museums and repositories in their repatriation efforts.

Thank you

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