

**First Edition**

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS

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Repatriation, Archives and Records Department

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# Finding Our Way Home

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A handbook for Tribes, Universities, Museums and individuals  
working toward reparation under NAGPRA

REPATRIATION, ARCHIVES AND RECORDS DEPARTMENT

# **NAGPRA Handbook 2012**

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We would like to thank all the tribes, Museums, National NAGPRA staff, elders, and historians who helped makes this manual possible and all those who have provided us with wonderful insight.

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## Introduction to NAGPRA

*How do I use this handbook? What is NAGPRA? Why is it so important? Where do I start? Help with basics.*

**W**ith most introductions in Indian country, I have to first state a few things. My name is Eric Hemenway; I am an Anishnaabe/Odawa from Cross Village, Michigan. I am the director of the Repatriation, Archives and Records Department for the Little Traverse Bay Bands of Odawa Indians (LTBB Odawa) in Harbor Springs, MI. I have worked on over thirty successful repatriations under NAGPRA and over a dozen other repatriations outside the jurisdiction of NAGPRA. Traditional Anishnaabek beliefs concerning the dead have been the cornerstone of my work.

### What is NAGPRA? Why is it important?

The Native American Graves Protection and Repatriation Act (NAGPRA) was a landmark piece of legislation for Native American tribes in the United States. Passed in 1990, this law recognizes many of the injustices Native Americans have experienced in regard to human rights, freedom of religion and caretaking of the dead. NAGPRA has the ability to bring some healing to tribal communities, with ancestral remains being brought back for reburial, protection of burials and sacred items used in ceremony again. However, getting to the point of having repatriation actually occurring is not always that straightforward.

Doing this work has been one of the most profound and meaningful experiences of my life. In doing repatriation, I felt I had a real opportunity to positively contribute to my tribe and the greater community as well. In compiling this manual I could see I was not alone, as other tribes and museums felt the same way. This manual was not only created to help tribal and museum staff understand the basics of doing work under NAGPRA, but to help people see the reasons why this work is priority for many tribes. NAGPRA is so important to tribes because it brings recognition to their unique beliefs, revitalizes ceremonies and helps reconstruct tribal identities, as well as bring healing on multiple levels.

## How will this help me? How do I use this handbook?

This manual is intended to be used as a practical guide for any tribe or individual interested in repatriation under NAGPRA and for museums and federal agencies to have a better understanding of the tribal aspect of NAGPRA. All the information gathered for this project is based on the first hand experiences of people who have had success in NAGPRA.

The Tachi Yokut are located in the San Joaquin Valley, in central California.

Sealaska Corporation of Alaska is located Juneau, Alaska

To make this manual as comprehensive as possible, tribes and museums from across the country were asked to lend their advice. The Tachi Yokut of California, Sealaska Corporation of Alaska, Confederated Tribes of the Colville Reservation in Oregon and the Stockbridge Munsee of Wisconsin, all took time to share their experiences and advice. I wish to thank all the people that contributed to this effort. We are all from different nations and hold different beliefs, but we share the same passion, concern and desire to see our ancestors respected and brought back to the earth, as well as having our sacred items back home. Thousands of miles of mountains, deserts, forests and lakes separate each tribe, as well as different languages and customs. Regardless of the vast distances apart and differences in beliefs, it was truly amazing to see a universal concern for the ancestors and ceremonial items returned. Despite all the efforts of assimilation, relocation and attacks on tribal beliefs, the indigenous people of the United States still have retained their identity and sense of community. NAGPRA has given the tribes the opportunity to reassert their beliefs of who they are, revitalizing age old traditions and customs. In addition, I would also like to thank the Grand Rapids Public Museum, the Peabody Museum at Harvard University and the National NAGPRA Program for their help in making this manual as well-rounded as possible.

The task of deciding which tribes to work with and which areas to choose was difficult. A tribe had to have a successful repatriation program. The goal was to show diversity among the tribes, but amidst the diversity was a common goal of repatriation. How each tribe achieved successful repatriations became the foundation for this manual. Having an understanding of the law, the work ethic to carry out the necessary duties, cultural knowledge, and the fortitude of dealing with adversity and attention to detail are some of the common threads shared among all the people whom have had success under NAGPRA.

The intent was to make this manual user friendly, with an emphasis on the human aspect of NAGPRA; to look beyond the law itself and draw from the guidance of those who implement NAGPRA on a daily basis. What better way to show something works then by providing proven examples? I know from personal experience the difficulties of being new to NAGPRA. What are all these acronyms? What do UFOs have to do with NAGPRA? Who do I contact? How do I write a claim? What do I do when a claim is denied? I asked myself these

questions and countless others when I first started my job here at LTBB. Through trial and error (and many phone calls to National NAGPRA) I got a grasp on what works and what doesn't.

When there is a greater sense of awareness regarding different beliefs associated with the work, it tends to shed a different light on NAGPRA. No longer are you dealing with a "collection of skeletal material", you are dealing with someone's ancestors. Objects are not merely ethnographic items, but sacred objects to help ensure the prosperity and well-being of an indigenous community. When museums open themselves up to work with tribes under NAGPRA, they can see how deeply the issue of repatriation affects these communities. Many times the experience of repatriating remains and items is rewarding to all parties involved, including museums and federal agencies.

I have found when discussing NAGPRA with the various tribes interviewed, each repatriation program started out with humble beginnings, usually one individual with a computer and a phone. The greatest tools in the world of NAGPRA are desire, persistence and knowledge. Thousands of individuals and hundreds of items have been returned when these three elements are at work with one another.

Some repatriations have taken years, some merely months. No two repatriations are the same, even if they are from the same museum. Work under NAGPRA is extremely fluid and emotions can range from one extreme to the next. Prepare to be angry, disappointed, overwhelmed and bitter, and then feel happiness, relief, fulfillment and a sense of purpose. And mind you, this could easily be in the same week. NAGPRA work is emotionally taxing. Managing these emotions is critical to success. While one museum is denying a claim, you may have to retrieve human remains from another. A thought shared by all involved in this manual is that it is important to keep going forward and focus on what can be achieved to get to the next step. Building momentum and sustaining that momentum is paramount. If that means phone calls and emails every single week, with the occasional face-to-face consultation, then so be it.

## **Where do I start, advice on the basics.**



### **Utilize training opportunities**

Training is something anybody new to NAGPRA should utilize. The National NAGPRA Program usually offers a one day training session before each Review Committee meeting. These meetings and trainings are held twice a year at various locations across the United States. Something more recent in National NAGPRA's training is the use of webinars. New webinars are posted on the National NAGPRA's website. You can also get on an email list to be notified of upcoming training

opportunities. In addition, various trainings separate of those before the Review Committee are held throughout the country, ranging from managing a grant to determining cultural affiliation. These trainings are also posted on the National NAGPRA website.

If at all possible, attending a Review Committee is advisable. This is a great opportunity to see different facets of NAGPRA play out, as well as meet staff members of the National NAGPRA Program. Many museums and tribal staff attend these meetings, creating a great opportunity to network. Review Committee meeting dates and locations are posted on the National NAGPRA website, <http://www.nps.gov/history/nagpra/>

**Know where Graves Protection applies**

Grave Protection under NAGPRA only applies to federal and tribal lands. Tribal lands are the same as reservation lands. Tribal land accounts for only a very small portion of lands in the United States. Many burial sites fall outside of the jurisdiction of NAGPRA, such as private, county and state owned lands. Tribes can seek information about state burial laws to help protect grave sites.

A resource easy to navigate for this is a state burial law project created by the American University Washington College of Law. The website is [www.wcl.american.edu/burial](http://www.wcl.american.edu/burial). A state's website will also have information regarding burial laws and penalties for disturbing graves and historic sites.

**Use solid information for claims**

The best tool in securing remains and items under NAGPRA is having solid information to utilize. Oral history and traditional knowledge is, for many tribes, the basis for repatriation claims, requests or disputes. Written records can be used to supplement the tribe's beliefs and vice versa.

Traditional knowledge can extend beyond a tribe's oral history: rivers, mountains, rock paintings, trees and other landscapes can be part of the culture and identity of a tribe. Video, audio and written evidence are all great ways to strengthen a claim or request. Recording oral tradition is not only beneficial for the purposes of NAGPRA, but overall cultural preservation as well. Letters from tribal elders, as well as recordings, can be used as additional information in a claim. It is plainly stated in the law that oral history is a line of evidence when evaluating a claim or request. How that oral history is presented is determined by the tribe.

Requests for human remains deemed culturally unidentifiable are under the new amendment to NAGPRA, 43 C.F.R 10.11. Requests under 10.11 require some records, such as treaties, acts of congress or an executive order to demonstrate a tribe's aboriginal occupation to a specific area. Written records can be a strong asset to any claim or request. Written records proven to be helpful are: credible books, site reports, archeological reports and notes, catalog cards, treaties, historical documents, newspaper articles, government reports, historical letters,



dissertations, church records, birth certificates, death announcements, cemetery records, previous repatriation claims and of course, inventories and summaries from museums and federal agencies.

Obtaining the above mentioned records is a time consuming and ongoing task. Places to start are: tribal and state archives, county courthouses, state historic preservation offices, libraries (universities are an excellent resource), anthropology and archeology departments at universities, churches, national archives and personal communications from within the community. Finding credible books can be difficult. Asking librarians, anthropology and archeology professors and other researchers is a good way to find credible resources. Once reputable books are secured, the bibliographies in those books are another source to track down other publications.

**National NAGPRA Website**

The National NAGPRA website is an excellent source of information. The statute and regulations, as well as 43 C.F.R 10.11, can be viewed. Updates to the law are posted when they occur. Templates for federal register notices can be accessed and downloaded. Locations and dates for Review Committee meetings are on the NAGPRA website along with events pertaining to NAGPRA including training dates and locations.

The following databases are accessible by visiting the National NAGPRA website:

- Notices of Inventory Completion. (List of what museums and agencies have published notices for human remains and associated funerary objects)
- Notices of Intent to Repatriate. (List of museums and agencies who have published notices repatriating sacred objects, objects of cultural patrimony and unassociated funerary objects)
- Culturally Affiliated Native American Inventories. (Database of human remains that have been affiliated, from both federal agencies and museums)
- Native American Consultation Database. (List of current tribal contact. Due to turnover at tribal governments, it is advisable to contact the tribes directly to find out who is the current NAGPRA designee)
- Culturally Unidentifiable Native American Inventories Database. (The most widely used and most important inventory in the daily use of NAGPRA work. This inventory lists which museums and federal agencies have Native American human remains that have been deemed culturally unidentifiable, from within the United States. A search can be performed either by museum or by state to locate remains. This inventory is part of the foundation for any repatriation program that pursues human remains.)

**Know the difference between possession and control**

A museum may have remains or items in their possession that are not their's. Some museums will act as a repository for other museums or federal agencies, holding items and remains for the other agency for an indefinite amount of time. When a museum is merely holding the remains or items for another institution, it has possession.

Having control is different; it is the entity that has the final legal say on the disposition of human remains and items. An agency or museum may have control over some remains, but it may not have possession. The museum or agency with control is the group that makes all decisions under NAGPRA. Federal agencies are more likely to have collections in other institutions. At the time of publication of this manual, the Bureau of Indian Affairs has its collection in over 60 separate repositories. In dealing with large federal agencies, make sure all the collections are accounted for.

## **Community involvement**

One of the foundations for a successful repatriation program is community support. Consensus among community members builds momentum to pursue repatriations. When a community declares that bringing the dead and sacred objects back home is important, it is much easier for an individual or department to carry out these duties for a tribe. If a community does not know about NAGPRA, educate them; let them know there is a law enabling tribes to have people and items returned. Another part of community support is tribal administration. To fully carry out work under NAGPRA, resources are going to be needed, jobs created and time invested. By having the tribal government support NAGPRA work, these requirements can be met.

A person hired to do NAGPRA can be a big step for many tribes. Creating a position or assigning NAGPRA- related tasks to an existing position may require authorization from a tribal council or a tribal chairman's office. Land may also be needed for the reburial of human remains and specific items. Seek administrative support from the tribe to carry these functions out, if they haven't already been met. Having the correct authorization from a tribal government, appointing an individual as a NAGPRA designee for a tribe, is mandatory. Museums and agencies will only work with individuals officially authorized by the tribe and any persons appointed by the NAGPRA designee to help carry out the work.

Last but not least, keep open lines of communication with other tribes whom might have an interest in the repatriation of human remains, especially remains under 43 C.F.R. 10.11. Multiple problems across Indian country have arisen while doing NAGPRA work amongst tribe in regard to lack of communication. Though it may take more time to make contact with other tribes, it is much more effective

to have tribes in agreement from the beginning of repatriation, rather than going through the ups and downs of creating cohesiveness during the course of consulting with a museum or agency. Simple phone calls and emails can make a lasting impression. There will be times when diplomacy skills will be needed, such as when dealing with over a dozen independent tribes, as well as multiple levels of administration at a museum or federal agency. The various personalities involved might clash at times, but that does not have to translate into lack of progress.

## **The Review Committee**

The Review Committee, an advisory body appointed by the Secretary of the Interior, follows the guidelines under the Federal Advisory Committee Act (FACA). The NAGPRA Review Committee is a commission composed of seven individuals representing tribes and the scientific community. The seventh consensus member is decided upon by the Review Committee. The Review Committee duties include monitoring and reviewing the implementation of the inventory and identification process and repatriation activities." They request information on compliance with the law and make annual reports to Congress. They hear disputes on factual matters to resolve repatriation issues between Indian tribes, Alaska Native villages and Corporations, and Native Hawaiian Organizations (NHO) with museums and Federal agencies. In addition, the Review Committee may make findings of fact pertaining to cultural affiliation and the return of items. The Review Committee helps develop regulations to help carry out NAGPRA.

The National NAGPRA Program coordinates two meetings per year for the Review Committee. The meetings are held at various locations across the United States, providing opportunity for attendance for various constituents. Dates and locations are posted on the National NAGPRA website.

### **Tribal Protocols**

Proper handling methods, which may include reburial, should be decided prior to remains and items being brought back to a tribal community. Some tribes, according to their cultural protocols, will not pursue human remains under NAGPRA. Finding out your tribe's cultural and traditional protocols regarding human remains and sacred objects is a vital preliminary step in starting a repatriation program. Certain items may need special storage or only handled by certain people. The original use of an item may not be transmitted in records or books, but only in the collective knowledge of elders. Some tribes feel that spirits inhabit items and must be handled accordingly. Seeking approval for the return of items is a critical step for a tribal program.

## Implementation must haves

Make sure you have a tribal resolution or executive order, designating an individual as an official NAGPRA designee for the tribe. Any assistants to the NAGPRA designee must have proper authorization as well. Museums and federal agencies need official designation from an individual working on behalf of a tribe.

Read the NAGPRA law and regulations and keep a copy of both readily accessible. When disagreements or questions arise during consultation, it is advisable to go back to the law and regulations first. Keep up-to-date on any amendments to the regulations. Be proactive in obtaining the right information and sharing that information. Learning as much as possible about the law will enable faster and smoother repatriations.

Good record keeping goes a long way. All the tribes interviewed for this manual had very organized and detailed filing that was easily accessible to staff. Once a repatriation program starts making progress, dozens of museums and federal agencies will develop files. These files tend to grow larger over time with the addition of summaries, notes, letters, books, photos and inventories. Sometimes repatriations will take years to finish and good records help keep the process moving forward. Having organized records helps tremendously if new staff takes over a NAGPRA program.

## Process of a successful repatriation

- Find the appropriate museums and agencies that fall under NAGPRA
- Make contact with those museums' NAGPRA designees
- Consultation
- Request an inventory and summary
- Identify what can be repatriated
- Consultation
- Construct a claim or request
- Submit request or claim
- Consultation
- Help with notice, if necessary

## **H A N D B O O K**

- Retrieve remains and/or items
- Handle appropriately

Please note this is an outline and the various chapters in this manual will be used to fill in each step.

## Definitions, Templates and Contacts

*What do all these acronyms stand for? Are there templates I can follow? Who do I contact if I need assistance understanding NAGPRA?*

**T**he NAGPRA statute has precise wording and knowing the definitions of the many words, phrases and acronyms used in NAGPRA will help eliminate misunderstanding and ultimately accelerate the repatriation process.

The NAGPRA statute is the law itself, while the regulations act as the means to implement the law.

### Acronyms & Definitions

NAGPRA is full of jargon, acronyms and language that can be quite confusing at first, but it's necessary to have a basic grasp of what is used on a daily basis in the world of NAGPRA. Knowing the lingo is critical in facilitating repatriations quickly and understanding what is going on.

\*Definitions set forth in the regulations.

**NAGPRA-** Native American Grave Protection and Repatriation Act

**AFO-** Associated Funerary Objects. "Objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a Federal agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects." It is mandated under the law that any affiliated remains that are repatriated have any AFOs returned as well. All tribes interviewed believed that AFOs should be included in the repatriation and reburial.

**Consultation-** Consultation is written into the law. It is a requirement mandated by museums and federal agencies to follow in order to be in compliance with the law. Under 10.9 (a) of the law, it states how consultation is to be carried out. Tribes, possible lineal descendants, religious leaders from “whose aboriginal lands the human remains and associated funerary objects originated” are the tribal groups to be consulted with. Affiliation of remains, whether an item is an object of cultural patrimony or sacred item, right of possession of certain items, location of burials and proper handling procedure of remains and cultural items are some of the issues requiring consultation.

Consultation is one of the most critical components for any success under NAGPRA. While it is mandatory for museums and federal agencies to initiate consultation, for practical purposes, a tribe may have to be the first party to begin the process in order for it to occur.

**Control and Possession-** It’s crucial to know the difference. Control is when a museum has legal “right” to the items and/or remains. A museum may have another institution curate or hold the items, but they still retain control.

**Control-** “having a legal interest in human remains, funerary objects, sacred objects or object of cultural patrimony sufficient to lawfully permit the museum or Federal agency to treat the objects as part of its collection for purposes of these regulations whether or not the human remains, funerary objects, sacred objects or objects of cultural patrimony are in the physical custody of the museum or Federal agency. Generally, museum or Federal agency that has loaned human remains, funerary objects, sacred objects or object of cultural patrimony to another individual, museum, or Federal agency is considered to retain control of those human remains, funerary objects, sacred objects, or objects of cultural patrimony for purposes of these regulations.” The museum or agency that has control of any NAGPRA-related items or remains has the final say as to the disposition of those remains or items and makes all decisions regarding that collection. All consultation should be carried out primarily with the entity that has control.

**Possession** –“Having physical custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony with a sufficient legal interest to lawfully treat the objects as part of its collection for purposes of these regulations. Generally, a museum or Federal agency would not be considered to have possession of human remains, funerary objects, sacred objects, or objects of cultural patrimony on loan from another individual, museum, or Federal agency.” Larger federal agencies have a high likelihood of having their collections spread out in multiple museums, archives or other repositories. When consulting with a federal agency on its collection, make sure to locate all known locations that have possession of agency collections.

Make sure the museum who has control actually knows where the remains are. Many times museums change staff multiple times and NAGPRA is the last thing on the agenda. Remains get moved and moved again. Don't be afraid to ask a museum, "Do you know where these remains are located?" There have been instances where the museum had to locate remains in their possession and control within their own museum.

**CUI-** Culturally Unidentifiable Individuals. Native American remains that have been deemed to not be culturally affiliated to a present day Indian tribe.

**Cultural Affiliation-** "Cultural affiliation means that there is a relationship of shared group identity which can reasonably be traced historically or prehistorically between members of a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group. Cultural affiliation is established when the preponderance of the evidence -- based on geographical, kinship, biological, archeological, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion -- reasonably leads to such a conclusion." This is the definition from the law. Notice all the different lines of evidence used in determining affiliation; all of these are equal under the law. All of these lines of evidence are to be weighed equally in determining affiliation.

**DFO-** Designated Federal Officer "The Federal Advisory Committee Act (Section 10 (3) requires that a designated officer or employee of the Federal Government chair or attend each meeting of each advisory committee. The designated officer or employee is authorized, whenever she or he determines it to be in the public interest, to adjourn any such meeting. No advisory committee shall conduct any meeting in the absence of that officer or employee. Per the charter of the Native American Graves Protection and Repatriation Review Committee, the Designated Federal Officer for Review Committee is the National NAGPRA program manager."

Any disputes, dispositions, request for findings of fact and presentations before the review committee is handled by the DFO. The DFO also coordinates the Review Committee meetings, between National NAGPRA staff, Committee members and member of the public.

**Disposition-** "The term disposition is also used at 25 USC 3006 (c)(5) with respect to the Review Committee's charge to recommend specific actions for developing a process for the disposition of culturally unidentifiable human remains." Certain CUI may need requests for Disposition from the Review Committee, in particular, CUI that have no information regarding provenance.

**Dispute-** "Any person who wishes to contest actions taken by museum, Federal agencies, Indian tribes, or Native Hawaiian organizations with respect to the repatriation and disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony is encouraged to do so through informal negotiations



to achieve a fair resolution of the matter. The Review Committee may aid in this regard as described below.” Review Committee Role. “The Review Committee may facilitate the informal resolution of disputes relating to these regulations among interested parties that are not resolved by good faith negotiations. Review Committee actions may include convening meetings between parties to disputes, making advisory findings as to contested facts, and making recommendations to the disputing parties or to the Secretary as to the proper resolution of disputes consistent with these regulations and the Act.”

When a tribe feels strongly enough in their disagreement with a museum’s decision to not honor a repatriation claim, there is an avenue that is available to resolve the issue. Disputes are taken before the Review Committee, with both the museum and tribe, giving evidence and testimony as to why each think their argument is the correct decision. The Review Committee hears the evidence, weighs the facts and makes a recommendation to the Secretary of the Interior on whether the tribe’s request is legitimate or the museum decision should be upheld. The Review Committee’s recommendation is not legally binding.

**Federal Register-** Daily notices posted by federal agencies. All repatriated items, remains, Review Committee meetings, amendments to the law and dispositions under NAGPRA must have a Federal Register notice published.

**Inventory-** “The item-by-item description of human remains and associated funerary objects [43 CFR 10.2 (g)(2)] as required at 25 USC 3003. The term inventory sometimes appears in the statute in the phrase "inventory and identification," which refers to the identification of the cultural affiliation of Native American human remains and associated funerary objects as a required part of the inventory. The inventory has two parts: 1) a listing of all human remains and associated funerary objects that are identified as being culturally affiliated with one or more present-day Indian tribes or Native Hawaiian organizations, and 2) a listing of all culturally unidentifiable human remains for which no culturally affiliated present-day Indian tribe or Native Hawaiian organization can be determined [43 CFR 10.9 (d)]. Museums and Federal agencies were required to complete their inventories by November 16, 1995.” Possibly the most important piece of information for any repatriation to occur: Without knowing what a museum or agency has or doesn’t have, it is impossible to submit a repatriation claim or request.

**Museum-** “means any institution or State or local government agency (including any institution of higher learning) that has possession of, or control over, human remains, funerary objects, sacred objects, or objects of cultural patrimony and receives Federal funds.”

**NAGPRA Review Committee or Review Committee** -“The Review Committee will advise Congress and the Secretary on matters relating to these regulations and the Act, including, but not limited to, monitoring the performance

of museums and Federal agencies in carrying out their responsibilities, facilitating and making recommendations on the resolution of disputes as described further in 10.17, and compiling a record of culturally unidentifiable human remains that are in the possession or control of museums and Federal agencies and recommending actions for their disposition.”

**National NAGPRA Program-** Federal program that helps facilitate NAGPRA. National NAGPRA is in the Interior Department, under the National Park Service.

**NIC-** Notice of Inventory Completion. The NIC is a federal register notice that always applies to human remains and any associated funerary objects, either from repatriation or a disposition.

**NID-**Notice of Intended Disposition. This federal register notice is strictly for Federal Agencies who are returning human remains and any cultural items, discovered on Federal lands, to a tribe or group of tribes. This notice is intended to be posted in the local newspaper of the area where the remains are from. This is a lesser used notice.

**NIR-** Notice of Intent to Repatriate. This federal register notice only applies to items, never human remains. These items could be sacred objects, unassociated funerary objects or objects of cultural patrimony.

**NHO-**Native Hawaiian Organization.

**Preponderance of Evidence-** The amount of evidence to show the probability is in favor of one side of an argument. This evidence does not have to be conclusive, 51% vs. 49%.

**Possession-** “The term possession mean having physical control of human remains, funerary objects, sacred objects or objects of cultural patrimony with a sufficient legal interest to lawfully treat the objects as part of its collection for purposes of these regulations. Generally, a museum or Federal agency would not be considered to have possession of human remains, funerary objects, sacred objects or objects of cultural patrimony on loan from another individual, museum or Federal agency.”

**Object of Cultural Patrimony-** “Items having ongoing historical, traditional, or cultural importance central to the Indian tribe or Native Hawaiian organization itself, rather than property owned by an individual tribal or organization member. These objects are of such central importance that they may not be alienated, appropriated, or conveyed by any individual tribal or organization member. Such objects must have been considered inalienable by the culturally affiliated Indian tribe or Native Hawaiian organization at the time the object was separated from the group.”\*

To us and many other tribes, certain items are both sacred and objects of cultural patrimony. It's completely feasible to list an item as both in a repatriation claim. Just remember, in doing so, you must demonstrate how the item fits both categories.

**UFO**-“Those funerary objects for which the human remains with which they were placed intentionally are not in the possession or control of a museum or federal agency. Objects that were displayed with individual human remains as part of a death rite or ceremony of a culture and subsequently returned or distributed according to traditional custom to living descendants or other individuals are not considered unassociated funerary objects.”\*

It's possible to claim these items without the remains as a separate repatriation claim.

**Repatriation Claim**- An official claim submitted by a federally recognized tribe to a museum or agency for any items that fall under the jurisdiction of NAGPRA.

**Right of Possession** - “Possession obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of a Native American unassociated funerary object, sacred object, or object of cultural patrimony from an Indian tribe or NHO with the voluntary consent of an individual or group with authority to alienate such objects is deemed to give right of possession to that object.”

**Sacred Object**- “Items that are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. While many items, from ancient pottery shards to arrowheads, might be imbued with sacredness in the eyes of an individual, these regulations are specifically limited to objects that were devoted to a traditional Native American religious ceremony or ritual and which have religious significance or function in the continued observance or renewal of such ceremony. The term traditional religious leader means a person who is recognized by members of an Indian tribe or Native Hawaiian organization.”

**Summary**- “The written description of collections that may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony [43 CFR 10.2 (g)(1)]. The summary serves in lieu of an object-by-object inventory of these collections, although, if an inventory is available, it may be substituted. The summary must include: an estimate of the number of objects in the collection or portion of the collection; a description of the kinds of objects included; reference to the means, date(s), and location(s) in which the collection or portion of the collection was acquired, where readily ascertainable; and information relevant to identifying lineal descendants, if available, and cultural affiliation. [43 CFR 10.8 (b)] Museums and Federal agencies were required to complete their summaries by

November 16, 1993.” Summaries only apply to sacred items, unassociated funerary objects and objects of cultural patrimony. Never do they apply to human remains or associated funerary objects.

**Template Correction-** Many times after a notice is published, additional remains or objects will be found that are associated with the original claim. This notice addresses any corrections to the number of remains/objects being returned.

**Traditional Religious Leader-** “person who is recognized by members of an Indian tribe or NHO as being responsible for performing cultural duties relating to the ceremonial or religious traditions of that Indian tribe or NHO or exercising a leadership role in an Indian tribe or NHO based on the tribe or organization’s cultural, ceremonial, or religious practices.”

The tribe or NHO determines who the traditional religious leader is. The museum or agency must recognize this individual is recognized by his/ her tribe and their testimony is in and of its self a line of evidence as to why the tribe needs certain objects returned.

**SHPO-**State Historic Preservation Officer.

**THPO-** Tribal Historic Preservation Officer.

## **Contacts**

Listed below is a list of useful contacts who work either with a museum, Federal Agency, a tribe or at the National NAGPRA Program. All of these individuals have worked in the NAGPRA field in some capacity. They have offered their assistance to answer questions and/or provide advice.

### **National NAGPRA Program**

National NAGPRA Program  
National Park Service  
1201 Eye Street, NW (8th floor)  
Washington, D.C. 20005  
Fax: 202-371-5197

Sherry Hutt-Program Manager, Designated Federal Officer  
202-354-1479, Sherry\_Hutt@nps.gov

Robin Coates- Program Secretary  
202-354-2201, Robin\_Coates@nps.gov

## H A N D B O O K

Melanie O'Brien - Federal Register notices  
202-354-2204, [Melanie\\_O'Brien@nps.gov](mailto:Melanie_O'Brien@nps.gov)

Mariah Soriano - Database and Website Coordinator (CUI, NACD, NIC, and  
NIR) 202-354-2205, [Mariah\\_Soriano@nps.gov](mailto:Mariah_Soriano@nps.gov)

David Tarler - Regulations  
202-354-2108, [David\\_Tarler@nps.gov](mailto:David_Tarler@nps.gov)

### **Tribes**

Little Traverse Bay Bands of Odawa Indians  
Eric Hemenway, Director of Repatriation, Archives and Records  
7500 Odawa Circle  
Harbor Springs, Michigan 49740  
Phone: 231-242-1527  
[ehemenway@ltbbodawa-nsn.gov](mailto:ehemenway@ltbbodawa-nsn.gov)

Sherry White  
Tribal Historic Preservation Officer  
Stockbridge-Munsee Tribe  
WI 3447 14Rd  
P.O. Box 70  
Bowler, Wisconsin 54416  
[Sherry.White@mohican-nsn.gov](mailto:Sherry.White@mohican-nsn.gov)

**Museums**

Grand Rapids Public Museum  
Marilyn Merdzinski  
Director of Collections & Preservation  
Public Museum  
272 Pearl St NW  
Grand Rapids MI 49504  
616-456-3521  
616-456-3926 fax  
[mmerdzinski@grmuseum.org](mailto:mmerdzinski@grmuseum.org)

Harvard University  
Peabody Museum of Archaeology & Ethnology  
Sandra Dong  
11 Divinity Avenue  
Cambridge, Massachusetts 02138-2019  
617-495-9588  
[sdong@fas.harvard.edu](mailto:sdong@fas.harvard.edu)

## Rules & Regulations

*What organizations are considered museums under NAGPRA? What is preponderance? Are there timelines for claims? Is consultation really mandatory? Can we use “blanket claims”? Do tribes have special protocol with certain items?*

**N**AGPRA itself is not that large a law compared to others. It’s relatively a quick read but ambiguous in many regards. Many topics fall into that “gray area”, especially the rules surrounding NAGPRA. This chapter is to provide the very basics of what a museum must comply with when working with a tribe on NAGPRA issues, statute and regulations. This chapter will address some of the basic rules that apply in the day to day operations of repatriation.

### **Rules- What is a museum under NAGPRA?**

If an institution, or government entity, such as a state, town or city, has received federal monies in the past, and has Native American remains and cultural items, it falls under the jurisdiction of NAGPRA. Most museums have at some time received federal funds, especially colleges and universities. The same is to be said of cities and towns. If remains are found on property that is under state or city jurisdiction and the remains are legally under the control of the state or city, than that state or city technically becomes a museum under NAGPRA.

Funds can be loans, grants or other financial aid. All federal agencies are mandated to comply with NAGPRA. Some of the larger federal agencies with NAGPRA collections are: Bureau of Land Management (BLM), Bureau of Indian Affairs (BIA), Forest Service, Army Corps of Engineers, National Park Service (NPS), Bureau of Reclamation (BOR) and the U.S. Fish and Wildlife Service (FWS).

In order for a repatriation to occur under NAGPRA, items must fall into one of these categories: human remains, associated funerary object, unassociated funerary object, sacred item or object of cultural patrimony.

## Preponderance? What is that?

The preponderance of evidence is the standard by which repatriations occur under NAGPRA. This is when enough evidence is presented by the tribe, to show more likely than not, that the tribe is affiliated with an item or set of remains. Think 51% yes, 49% no; this standard is used throughout NAGPRA. It is very important to know this when compiling a claim. Various museums may want more information than necessary under the law to establish affiliation, sometimes asking for culturally sensitive information. Please be aware only enough information needs to be provided to meet the preponderance of evidence standard. Consultation helps in determining what that level is.

## 90 Day Rule

So much of NAGPRA depends on the interpretation of the law itself. This can lead to confusion and inevitably, a lack of progress. The 90-day rule tends to have a large discrepancy of interpretation between museums and tribes. From many tribes' understanding, the 90 day process is for a museum to determine if a claim is valid or not and if the claims is valid, to initiate the Federal Register process. Museums tend to see the 90 days solely as the period to determine if the claim is valid, and if it is, the Federal Register process falls outside of the 90 days. Understanding that a museum has to comply with the 90-day rule is critical; this forces the museum to AT LEAST make a decision on a claim. It should not take a museum longer than 90 days to tell a tribe yes, no, or if more information is needed. Compliance with the 90-day rule can become an issue. If a museum does not respond to repeated efforts by the tribe to procure an answer, then no reply at all is the equivalent to a rejection of a claim. It's good to keep track of all emails requesting information, as this is a documentation of a tribe's effort to seek an answer to their claim, in the case of a possible dispute or submitting an allegation a museum is out of compliance by not adhering to the 90-day rule.

The 90 days starts from the date the museum receives an official claim, signed by the authorized tribal NAGPRA designee, for items designated under NAGPRA terms, such as sacred item, unassociated funerary object, etc. The point being, if the claim is not legally valid, the 90 day clock will not start.

- It's good to mark the date when the 90 days start.
- Always confirm a museum has received a claim in an email.
- Periodically throughout the 90 days, email the museum to check on the status of the claim, if it needs more information and generally let the museum know the tribe is mindful there is a time frame on a decision.

At the time of publication of this manual, some rules were still being promulgated, such as the 90-day rule and the future applicability rule.

While preparing this manual in 2010, the new CUI regulations were passed. The CUI process and regulations will be discussed in a separate chapter, but first the 90-day rule will be looked at closely.



## **Potential issue with meeting the 90-day rule**

There are many similarities between tribes and museums under NAGPRA, one of which is the lack of staff and funds. Many times museums staff, like tribal workers, are multi-tasking to keep their department up and running. If a museum is making a good faith effort, replying to messages and keeping in contact, but doesn't have the time to fully commit to a claim, good faith efforts usually have positive results. This isn't an excuse to let a museum "off the hook" because they are too busy, but it was found if the right amount of patience is allotted, the process runs much smoother. On the other hand, if a museum does not respond and the 90 days expires without any response, it's time to notify the museum they are obligated to respond and technically, are out of compliance with the law.

LTBB Odawa had to remind a museum of this with three claims in 2009; it took 170 days to get a response. LTBB Odawa was on the verge of submitting a formal complaint against the museum, but the museum responded and we were able to work on having the claims honored.

### **Multiple People involved**

One issue that seems to be experienced by other tribes interviewed for this manual is that of museums having multiple committees to make a final determination on a repatriation claim. The issue is not the committees themselves, but the time it takes for a final decision to be rendered by the museum. This is something to ask a museum when consulting about a claim and the 90-day period.

Let it be known from the beginning that the tribe knows about the 90-day rule and if a museum has to answer to many different levels of administration, the museum must make sure to do this in a timely manner to be in compliance with the law. It's a decision that can be somewhat tricky for a tribe: To be too pushy or be a push-over? Either one will not produce results, so middle ground must be found, according to each museum. One of the best measures to use to ensure compliance is consultation.

### **Consultation is mandatory**

Consultation is written into the law as a requirement that museums and agencies must carry out with appropriate tribes and individuals (possible lineal descendants and authorized tribal designees). It is a mandatory requirement for both museums and agencies. In NAGPRA, it is specifically spelled out that a museum and federal agency **MUST** consult with any tribes that may have a potential affiliation to a certain set of remains or items. A museum or agency simply sending out a letter to a tribe does not qualify as consultation.

Shortly after NAGPRA was enacted in 1990, museums had to submit inventories and summaries of their collections to tribes of potential interest. This is not consultation. If a museum states they fulfilled their obligations to consult with the submittal of inventories, that museum is incorrect.

Sometimes a tribe will have to take the initiative and make contact with the museum to arrange for some type of consultation to begin. The most successful repatriation claims have the following: multiple phone calls, numerous emails and if possible, face-to-face meetings with the museum. The majority of the time, tribes have to make first contact with a museum. If a museum refuses to respond or talk with a tribe, they are not consulting and therefore, are out of compliance with the law. Museums and agencies must consult with possible lineal descendants and tribal officials who request consultation.

Tribes who have been removed from their ancestral homelands also need to be included in consultations. After speaking with some tribes from Oklahoma, it became very apparent the Oklahoma tribes were excluded from multiple repatriation consultations for remains from areas the Oklahoma tribes have historic and cultural ties to. Any state, museum or city is out of compliance if they do not consult with displaced tribes having a possible affiliation to possible NAGPRA items and remains in their collections

### **Trafficking**

Any agency or museum under NAGPRA cannot deal in the trafficking of human remains and cultural items. Cultural items are a broad term that applies to sacred items and objects of cultural patrimony. If a museum has items that are potentially affiliated to a tribe, they can't sell them but it is permissible for the museum to loan them to another museum. This is a pretty straight forward rule, but the sale of items by privately owned individuals is a different matter. Many times auctions will have items that are indeed sacred but NAGPRA does not apply to the private sector or international collections.

### **Blanket Claims**

Tribes cannot make "blanket claims" for items at museums. Blanket claims are when tribes request every single thing associated to their tribe or area. Claims can be for individual items or groups of items. Multiple items can be requested in the same claim, if it can be demonstrated all the items are needed for a particular ceremony or need to be kept together. Items that need to be together are commonly referred to in Indian country as a "medicine bundle". The information pertaining to that group of items must be very specific.

For example, if a museum has a pipe, drum and eagle feather associated to a tribe, the tribe must put in a claim for each item, if the items are all used in separate ceremonial capacities. Tribes must claim items under one of the NAGPRA categories: sacred item, object of cultural patrimony, unassociated funerary object, human remains or associated funerary objects. A tribe cannot simply request something as a "cultural item". Furthermore, all claims from a tribe must come from the official NAGPRA designee for that tribe.

## **Is someone breaking compliance?**

Look for the following and know-

In order for a repatriation to occur under NAGPRA, items must fall into one of these categories: human remains, associated funerary object, unassociated funerary object, sacred item or object of cultural patrimony.

A museum changes information on its inventory, without amending the inventory with National NAGPRA. For example, an item is originally deemed an AFO and the museum changes the status to a UFO. If the museum does this, it must amend its inventory to National NAGPRA and tell the reason as to why the status changed.

When any type of archeological work that may encounter human remains or cultural items is being conducted on federal lands, the appropriate tribes must be notified such work will be taking place. If any remains or possible cultural items are inadvertently discovered, the appropriate tribes must be notified. Remains or items discovered, inadvertently or intentionally, on federal or tribal lands, fall under NAGPRA.

Any remains or items being repatriated must first have a federal register notice published. No individual or tribe can retrieve the remains or items until that notice has been published in the federal register for 30 days. Upon the 31<sup>st</sup> day, if there were not any competing claims, the tribe or individual can pick up the remains or items.

Federal Register notices are mandatory for a successful repatriation and/or disposition. The museum returning the items is charged with the duty of writing the notice, coordinating with the National NAGPRA Program on having the notice published and notifying the appropriate tribes that the notice is published.

## **Hierarchy of tribal claims under NAGPRA**

A lineal descendant's claim will trump all other claim, even that of a federally recognized tribe. This applies to both remains and items. The lineal descendant must demonstrate an unbroken family line to the remains or items being requested. Such a claim requires stringent requirements, including strong documentation.

After lineal descendant claims, the next strongest claim is that of a federally recognized tribe or Native Hawaiian Organization. These claims are to be submitted by the official NAGPRA designee of that tribe or NHO. It is feasible for multiple tribes to join together on a joint repatriation claim.

Non-federally recognized tribes may also submit repatriation claims under NAGPRA, but they require official backing from federally recognized tribes that have possible affiliation to the requested remains or items. Many times when a non-federally recognized tribe requests remains, they must appear before the NAGPRA Review Committee to seek approval for such requests.

## **What to know about Tribal Protocol with items**

The first half of this chapter focused on the “letter of the law”. Just as important to the NAGPRA law are the individual tribal protocols unique to each tribe. Tribes across the country share the same desire to have ancestral remains and sacred items returned, but how each tribe handles these remains and items varies. Many museums LTBB Odawa has worked with have been open minded and adhered to our requests on how remains and items should be handled until we pick them up. A simple request to museum staff usually accomplished this. Again, consultation was implemented. If a museum is working toward repatriation, more than likely it will honor such requests. It is not written into NAGPRA that a museum has to handle anything in its collection in a certain manner, but in the spirit of the law, these respectful acts are permitted. Many tribes have elders or appointed individuals assigned to carry out the cultural and traditional responsibilities of handling the dead and sacred items. Permitting these individuals access to remains and items, for tribes, is seen as a necessary protocol before the transfer from museum to tribe occurs.

Here are some general requests by tribes:

- Human remains are off limits to the general public and have strict access.
- Human remains are stored in appropriate containers (special boxes, certain colored cloth, special medicines included).
- Human remains handled only by certain individuals.
- Some tribes conduct special ceremonies for remains and items while at museums.
- Sacred items stored in an appropriate manner.
- Sacred items handled only by select individuals.
- Requested items and remains are to not be on display.
- Videotaping and photographs are not permitted (but some tribes allow sketches of funerary and sacred items, to use as future reference for reviewing inventories and summaries from different museums).

The above mentioned requests all fit into many tribes own rules that exclusively apply to their spiritual and cultural beliefs. It is important to know these proceedings have been with tribes for many generations and precede European contact. Successful repatriations conducted in a smooth manner have been with

museums that were mindful of the tribes' principles about certain items and remains.

In accordance with tribes' protocols, many tribes will work together on certain repatriations, usually those for human remains. Tribes, under the right circumstances, will band together. For example, here in Michigan, the Odawa, Ojibwa and Potawatomi all recognize themselves as being from the same group: the Anishnaabek. Some museum officials don't recognize the Anishnaabek as a tribe, while some do. Other tribes have similar beliefs of belonging to a greater tribe, one that encompasses a greater land-base and population. Self-recognition and working with others in the greater tribe is a key element in many joint requests and is a tribal protocol as well. Many museums have commented on how much easier it was to work with tribes when they work together on certain repatriations, especially the repatriation of CUI.

Time sensitivity is a major concern for all tribes interviewed for this manual, and has multiple reasons for being an issue needing to be immediately addressed. The first major reason is that remains need to be buried as soon as possible, due to the simple fact they have waited for years to be returned to the earth. Second, weather plays an important factor for many tribes who will conduct reburials. There is a "reburial" season, when the ground is unfrozen. Tribes, at areas where weather is a concern, will try and plan to have a repatriation occur when the weather is agreeable. The federal register notice also coincides with the time factor. If a notice is not published in a timely manner, a tribe may have to wait longer, thus missing the opportunity to take advantage of the ground being unfrozen. One can see how the 90-day rule fits into a tribe's own time sensitivity.

One last instruction was prevalent among all tribes interviewed for this manual. This work is the inherent responsibility of the living decedents of the deceased, to take care of those who have walked on. This has been in place with tribes for an untold number of years, many believing since time in memorial. NAGPRA is only a very recent way in which some tribes are implementing this age-old tradition.

**Please Note**

This is a brief summary of some of the most common rules encountered while implementing NAGPRA and a tribal perspective on what dictates them on their side of the law. It is very advisable to read the law and regulations thoroughly and if questions arise, do not hesitate to contact the National NAGPRA Program or seek out other individuals who have more experience working under the law. In addition, some tribes feel there is an unseen risk taken when dealing with certain ceremonial items and remains. Long removed items and people still hold a certain amount of energy and if that energy is not handled properly, harm may come to individuals or communities as a whole. If one is not sure, seek out tribal elders, traditional religious leaders or other persons who could provide assistance in such matters.

## Inventories and Summaries

*Where do items come from? Why are inventories and summaries important? What is the difference between them? What is an inventory? What is a summary?*

**W**ithout knowing what a museum or agency has or doesn't have, a repatriation claim or request can never be submitted. Inventories and summaries are the foundation for any successful repatriation. This is one of the first, and most critical, pieces of information a tribe must request from a museum or agency. Once a museum is established under the jurisdiction of NAGPRA, the very next step is to ask for an inventory and summary. All federal agencies are mandated to comply with NAGPRA and provide you with these requests.

### **Collections- How museums acquire items**

Museums acquire items by all sorts of means: a donation, gifts, purchases, archeological digs or it's completely unknown how the museum acquired some things. Many objects and remains were acquired during the turn of the 20th century, when many "amateur" archeologists were very active across America.

It was a dark period in Indian history, as many tribes were helpless as people looted graves and acquired items under duress. Due to the lack of enforcement to protect graves and the pressure to acquire Indian items, collectors amassed huge numbers of items and remains. Some of the collectors eventually sold their collections, donated them or their heirs moved the collections into museum custody.

Inventories were to be completed by 1995 and summaries by 1993. Most museums had to fulfill these requirements at the time but what if a museum didn't have to comply with NAGPRA in the early 1990s?

If a museum received federal funds after NAGPRA's passage this "new" museum must complete an inventory within three years from the date its received federal funds, per the NAGPRA law.

Collections have a history of being transferred from one party to another. It was typical that with each change of hands, the collections lost information pertaining to the items. Or worse yet, items themselves would disappear without any account of their departure. An item may very well be on an original inventory but the items are nowhere to be found in the museum. Collectors at times kept decent records, but many times did not. Having the original records accompany a present day collection is not a given.

The reality of collections can be somewhat frustrating. Having remains unaccounted for or items listed on summaries but "lost" in a museum happens. Some items haven't been seen by museum staff for years, if ever. One of the first tasks a tribe and museum may work on is physically locating an item on a summary. Many museum staff typically inherit the problem of untidy collections and record keeping with vague information and must comply with a tribe's demands as best they can. It is easy to become irritated when this occurs but finding that "middle ground" of patience and persistence can help. This dilemma of unknown and untidy collections is frustrating for a tribe but it's a reality; however, this is no excuse for a museum to not provide an inventory in a timely manner if they don't already have one.

## **What is the difference between an inventory and summary?**

First and foremost, there is a major difference between an inventory and summary. Inventories are for human remains and the associated funerary objects. Summaries are for sacred objects, objects of cultural patrimony and unassociated funerary objects. If one simply asks for an inventory of NAGPRA-related material, it's very likely the museum will only provide a list of remains. Be sure to ask for both, an inventory and a summary.

## **Acquiring an Inventory and Summary**

Here are some steps to follow when requesting an inventory and summary. The first and foremost inventory to access is the Culturally Unidentifiable Native American Human Remains Database on the National NAGPRA website.

1. Find all the museums in your state, then branch out to neighboring states. Don't forget to include the state itself, the state archeologist office, coroner's office, department of transportation, state parks, etc. Remember, the definition of a museum under NAGPRA is different than the conventional meaning. Any museum that has received federal funds is under the jurisdiction of NAGPRA. Most universities, colleges and larger museums fall under NAGPRA, as well as state governments.
2. Once potential museums have been identified, find the appropriate NAGPRA contact at the institution. Finding the correct person can be a

chore in itself. Start with the museum's website. With any luck, the museum will have a NAGPRA representative listed on the site.

Most museums will have some functioning summary and inventory. The more organized museums will actually have their summary collections on a disk or online.

Many times museums will not have an "official" NAGPRA rep, but rather somebody who handles NAGPRA tasks as part of their other duties. Large universities more often than not will have a NAGPRA department. If no NAGPRA department can be found, start contacting curators, head of collections (usually art or native collections), anthropology and archeology departments, museum directors (smaller museums) or registrars. Keep calling and emailing until you reach the correct contact. Be assertive and consistent in contacting museums' staff. One call and an email will not suffice. Keep a contact log of when you call and email and when they respond. Don't worry about upsetting or being rude with consistent calls or emails. Make sure the museum has your correct contact information.

3. Request the most updated version of an inventory and summary. CDs are good if the museum has them. It is at the discretion of the requesting tribe to have additional photos taken of objects, but if pre-existing photos are available, it is an option to utilize them.
4. Some museums will have their summaries and inventories online.

Inventories and summaries start with a museum's collections and that can be a complicated scenario. A brief history and examination of museum's collections is helpful to prepare for the possible problems that may be encountered when requesting inventories and summaries.

Our tribe, Little Traverse Bay Bands of Odawa Indians, is located in Northern Michigan. Location is very important when requesting information pertaining to an inventory and summary. Examples of things we ask a museum to look for when we request an inventory and summary:

- We assume the museum knows very little or nothing at all about our tribe, especially museums outside of Michigan, so we include as much information as possible to help facilitate an understanding of our tribe.
- We spell out our tribe's name as Odawa but the more common historical spelling and pronunciation is Ottawa. Try to include as many variants of your tribe's name as possible. Mispronunciation and misspelling are all very common mistakes by non-natives documenting Indian tribes.
- Location is critical. We ask everything in relation to location. We ask the museum to look for geographic information to possibly identify items to our tribe: Michigan, Great Lakes, woodlands, eastern woodlands, the counties of our reservation, Lake Michigan, important towns and villages, rivers near our home, islands and other significant geographical locations.

One museum we worked with on repatriation had collection cards which identified the items, the tribe, the area, the date of acquisition, the item and if the items were used in a ceremonial fashion.

This plethora of information made repatriating the items very easy.



Disks are nice; it has photos, easier to mail, saves space and allows for more information to be shared.

Online summaries are also very convenient, and all of the online summaries we have researched have restricted access, requiring passwords from the museum.

We always request a hard copy or disk of the summary, for our files and future reference.

We at LTBB have utilized CUI in over a dozen repatriations. By going over the CUI listed from Michigan, we were able to find information that ultimately led to affiliation of previously unidentifiable remains to our tribe.

- We request an inventory of all the Native American human remains the museum has from Michigan and match it against the CUI database, looking for discrepancies.
- We review each and every single item and look to identify sacred objects, objects of cultural patrimony and funerary objects. If additional information for the items is available, this is a bonus, but many times there is none.
- Always ask the museum to include all information pertaining to a collection (articles, reports, catalog cards and books.) The simple information of knowing the provenance of an item may result in the successful repatriation of that item.
- We confirm the summary arrived and let the museum know if any of the items potentially fall under one of the NAGPRA categories. Many times we simply call to say we have the summary and nothing pertains to our tribe. But when something does pertain to our tribe, consultation helps aid in repatriation.
  - The museum should send a summary as soon as possible. As with so many other tasks in NAGPRA, consultation is a critical component of identifying certain items. For every single summary we have had sent to us, at least one phone call was made back to the museum.
- Always ask for the most up-to-date version of a summary. Remember, just because an item is not noted on a summary as being used in a ceremonial fashion, does not mean that item is not a sacred item or object of cultural patrimony.

The museum not having its collections in an inventory is a worst case scenario. Sometimes the opposite happens; when remains are found at a museum that is not part of the museum's original inventory, the museum is to notify any tribes with potential affiliation and amend its inventory with National NAGPRA.

### **CUI- Culturally Unidentifiable Inventories**

One inventory that warrants special attention is the Culturally Unidentifiable Native American Inventories Database on the National NAGPRA website. This inventory is a mandatory inventory for any tribe. All the CUI from the across the country are broken down state by state or by museum and federal agency.

Museums during the early 1990s had to have their inventories into National NAGPRA in order to comply with the law. Many museums simply classified a majority of their Native American human remains as CUI. Careful re-examination of the CUI database reveals many of the remains have the potential to be affiliated

to a modern day tribe. With 43 C.F.R 10.11 now in effect, this inventory becomes even more prominent.

### **Summaries**

Summaries vary in the amount of information from museum to museum, from collection to collection. The truth of the matter is, not all museums have good records of their collections. It's very common for museums to have absolutely no information about certain items.

A basic summary should include the tribe the item is associated with and where the item is from. Additional information such as who donated the item, sold the item, the date of accession into the museum, what the item was used for, how old the item is, which family or individual sold or donated the item, what the item is made of and pictures of the item are very helpful. Ideally each item will have a catalogue or accession number, which will help in locating the item at the museum. The key pieces of information are where the item is from and what tribe the item associated with. With these two pieces of information established, affiliation is much easier.

Summaries sometimes have only estimations of where the items come from: a question mark on the purpose of the item or will simply give a very generic title, such as "Algonquin" or "Plains". These generic titles have a chance of being incorrect due to the collectors or museums limited knowledge of the items and the methods in which the items were collected. Consultation can help correctly identify the proper use of an item, affiliation and if it applies to NAGPRA.

### **Importance of Consultation**

At certain times, a museum will simply not have any information on a certain item or remains. The museum will list the item on its summary and send it off to the requesting tribe. This is where consultation is of the utmost importance. Tribes have repatriated numerous items that had little or no information attached to them. Through meaningful consultation with the museum, the tribes were able to have items repatriated back to them by providing the information to fill in the gaps of what the item was used for.

When this is encountered with remains, it's imperative to make sure the remains are accounted for by determining who has possession and control. It is possible a different museum will act as a repository for another museum, or more commonly, a federal agency. The museum or federal agency will not have the facilities to hold remains or items and will work out an agreement with a museum that does have the means to store them. In such cases, the federal agency will have legal control; and therefore, the final say in the disposition of the remains or items, but the museum that is housing the remains or items will have possession.

In the case of human remains with no provenance information, it is much more difficult to repatriate them. It may be needed to extract other pieces of information to help solve the puzzle of such remains. Who has the museum gotten remains from in the past? What other known locations does the museum have remains from? Is the museum storing remains for another entity? Do ledgers, notes or other records account for the remains? These are some questions to ask when dealing with unknown collections. It may be possible to gather enough information to make a reasonable determination of where the remains came from.

## **Case Example**

We at LTBB had a case where a university had one of its staff take the remains off campus and study them at his private lab. This individual was not held accountable for his actions for years and had free reign to work as he pleased. Once 43 C.F.R 10.11 passed we contacted the university about the remains, tracking the remains down and getting them back into the possession of the university was an immediate task carried out by the proper university staff. Before any civil action was taken (it was a real possibility that a complaint would be filed) the professor realized he had no legal right to the remains and returned them. Always make sure the remains or items are in the proper hands of the institution or individual qualified to make NAGPRA-related decisions on them.

## Repatriation of items in summaries

*Can items fall into more than one category? What sources can I use to make my claim stronger? How can I prove a UFO is affiliated to our tribe?*

The repatriation of summary items is examined in this chapter. There are three categories: unassociated funerary objects, sacred objects or objects of cultural patrimony. Items can fall under multiple categories, such as one item being both a sacred item and an object of cultural patrimony. This is at the discretion of the requesting tribe. In order to have a legitimate repatriation claim under NAGPRA, a tribe has to establish cultural affiliation to the object and prove the item fits one of the above mentioned categories. As with other claims under NAGPRA, if a lineal descendant can demonstrate unbroken families tie to an item, that claim is stronger than a tribe's.

The fact items must fall under these categories is imperative. A tribe cannot submit a “blanket” claim for items, or, simply request items under broader terms, such as “tribal items” or “cultural items”. While they may be cultural items, under the law, an item must fit into one of the NAGPRA definitions, in order to be returned under NAGPRA.

Museums will not honor a claim that does not fit a NAGPRA definition. Blanket claims are very vague and include many items. For example, a tribe “requests all pipes, eagle feathers associated with said tribe”. Claims need supporting information to validate them. Such information would include where the item comes from, what it was used for, why the tribe needs the item back and if possible, a small summary of the ceremony the item is need for. Some museums may ask for extra information, such as who will be using the items, is that individual qualified by your tribe, where will the item be used, etc. These extra questions tend to be unneeded. Establishing how an item is deemed sacred or an object of cultural patrimony is set by the tribe and the museum must decide if the claim presented meets the standard under NAGRPA. The preponderance of evidence standard is applied here as well.

### **Information needed**

Information is going to be needed for each specific item. Many times, separate claims will be needed for each item if each item is used in different ceremonial capacities. The claims can all be similar, but each claim must address each individual item, including the item's accession or catalog number, description of the item and how that item is an item of cultural patrimony or sacred item.

However, there is an exception for multiple items in one claim. If items are exactly identical, they can be included in one claim. Eagle feathers are a good example of multiple items being included in one claim. Or if multiple items are components for one particular ceremony, all those items can be included in one claim.

### **Right of Possession**

A key concept in the repatriation of summary items is the right of possession. An object of cultural patrimony shows no one person had the right to alienate the said object from the community, since the object is community property. The right of possession is with the tribe, not with any entity outside of the tribe or even an individual within the tribe. Evidence will be needed to substantiate the item as community property.

If a museum rejects a claim for an object of cultural patrimony, it is asserting its right of possession of the item or not agreeing the requested item falls under the appropriate category. If an item was acquired under duress, the right of possession can be questioned. Did an individual have the right to alienate a specific object from the tribe, regardless of sale receipts proving the transaction took place? Is the object needed for ongoing ceremonies, or, needed to revitalize certain ceremonies? These are questions that frequently come up when preparing a claim for objects of cultural patrimony and sacred items. Another important factor to include in such a claim is that of tribal law and protocols. A tribe's unique cultural protocol may prohibit certain items from being taken from the tribe and state such items are to be passed from one tribal member to another. Again, this information can be obtained from tribal elders and is encouraged to be included in any such claims.

The repatriation of sacred objects and objects of cultural patrimony differ from that of remains and associated funerary objects. It's much easier to classify remains than it is to categorize unassociated funerary objects, sacred objects and objects of cultural patrimony. The official NAGPRA definitions of these items are can be found in the Notices, Definitions and Templates Chapter.

When a museum or agency repatriates sacred objects, it publishes a federal register notice that is called a Notice of Intent to Repatriate (NIR). When a museum returns remains under NAGPRA, the federal register notice is a Notice of Inventory Completion (NIC). Like any repatriation, a tribe cannot take control of any item until the Federal Register notice has been published and that notice runs for 30 days. A tribe must submit a claim to have items returned.

### **Sacred Object and Objects of Cultural Patrimony**

Sacred Objects: “Specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents” [25 USC 3001 (3)(C)]. This is the official definition, as stated in the law. How an item is determined to be sacred relies on the traditional and cultural knowledge within the requesting tribe. Sources tribes can utilize are tribal religious leaders, elders, cultural events, landscapes and the continuing practice of such ceremonies in the community. How in-depth of an explanation is decided by the requesting tribe.

Object of Cultural Patrimony: “which shall mean an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group” [25 USC 3001 (3)(C)]. This is the definition, again, from the law itself.

Sacred Objects and Objects of cultural patrimony often overlap with each other. For many tribes an object will fit under both definitions and it is completely feasible to submit a claim for an item as both a sacred object and object of cultural patrimony. When constructing the claim, it has to be demonstrated how the item fits both categories. Keep in mind it may be easier to request an item under one category, rather than both.

Upon receiving a summary from a museum and identifying potential items for repatriation, ask the museum for more information on the items of interest. Inquire about field notes, reports, note cards, books, etc., anything giving more information as to what the item was used for. Many times, older catalog cards from the original collector will note if the item was used in a ceremonial fashion. For early collectors, the rarer the items, the more monetary value the items had. Sacred items, unassociated funerary objects and objects of cultural patrimony were often the rarest items in a tribe, thus attracting the attention of non-native collectors. Such rare items will often have notes, from the collectors themselves, citing them as ceremonial or sacred in nature.

The collector of the item could help shed light on an item with little or no information. If an individual was known to operate in specific areas, with specific tribes, that could be used as evidence to help affiliate an item. Successful claims from other museums for similar items can also be utilized.

A face-to-face meeting is always the preferred method of consultation. It may be difficult to do this with museums far away, but if at all possible, it is advised. Meeting in person, telling them why items are sacred and need to come back is more meaningful and powerful than any email or phone call. It should be noted there is a high possibility the museum staff currently at the museum handling the claim has never talked with the

appropriate tribe regarding traditions and the ceremonial context in relation to certain items. Take the opportunity to educate and work with the museum staff to help create better understanding of the tribe's perspective.

Some items will need more oral testimony from a tribe to help affiliate the item, or more commonly, oral history from a tribe to prove the item is a sacred item or object of cultural patrimony. Many items will not have the scholarly work done on them and this is fine. A tribe telling how that item fits one of the categories holds equal standing under the law.

### **Unassociated Funerary Objects**

Identifying unassociated funerary objects (UFO) in a summary is a major part of the work. If a museum's records are good, it's obvious. It's hard to dispute card catalogs or notes that state an item came from an Indian grave. But what if there is no documentation stating such, but a tribe feels an item is a UFO?

Cross referencing with other known UFOs can help. Find other documented UFOs, or AFOs, from other museum inventories and summaries and check to see if any match. For example, we had a garden hoe identified as a UFO in one museum's summary. A different museum had another "Ottawa garden hoe" in its collection. At first glance, such an item did not warrant attention. But other records we were able to show this item had the possibility of being a UFO.

Collectors are another piece of evidence that can be used. If an individual was known to collect Indian grave goods, and a museum has in its control items associated with that collector, it can be reasonably determined, that it's quite possible the items are UFOs.

Once it's been established an item is a UFO, and cultural affiliation determined, the question of whether a museum has right of possession decides if the item is to be retained by the museum or control transferred to the requesting tribe. All the tribes interviewed in this project agreed no one person has the right to alienate the dead from the goods placed with them at the time of their burial.

#### *Information helpful in affiliating UFOs*

Where are they from? What is the item? How many? Where they found in a grave or close to a grave? Are they items from a known area of Indian burials? Do other summaries having the same items as UFOs? These are questions to ask to help determine affiliation.

When unassociated funerary objects are returned, tribes utilize them as educational tools. The Tachi Yokut Tribe in California is one of these. When UFOs are repatriated, the entire cultural program staff is brought in to examine and study them before reburial. LTBB Odawa makes sketches of the UFOs before burying them. The purpose of both of these practices is to familiarize staff and new repatriation workers

on how to identify funerary objects. This will help locate funerary objects in other museums' collections. Photographs of funerary objects, many times, violate a tribe's cultural protocol. The above mentioned methods help honor beliefs while at the same time provide educational opportunities to further promote future repatriations.

### **How do I categorize an item?**

Establishing whether an item meets the criteria to be a sacred objects, object of cultural patrimony or unassociated funerary objects, can be determined through several avenues. The tribe's oral traditions are a great source. Consultation can help accelerate a museum's understanding on how customs and traditions tie into an object, thus placing it in the proper category. Remember, only the preponderance of the evidence has to be met. Providing a museum with an excessive amount of culturally sensitive information is not mandatory.

If at all possible, finding documentation on how an item was used is very helpful. Finding these sources and strategically citing them in a claim has proven to be very effective. Anthropological books and dissertations are a good source. Information pertaining to a tribe's cultural practices varies widely. One source that has provided helpful is art books. These books usually state where the items are currently held and what the items are used for. Again, ceremonial items were more significant for collectors and were usually highlighted; this is true for art museums and collections as well.

It is important to note documented sources are not the only viable source. A tribe's oral history is an equally valid source of information. When documentation is coupled with oral history, it makes for a very strong argument. Recorded interviews with tribal elders or spiritual leaders are an option, or using quotes from them in the repatriation claim.

As with other repatriations under NAGPRA, the greater amount of both written and oral information builds the strongest claim. In the end, a museum can either accept or deny a tribe's claim on whether an item is sacred or not. Having enough information can help bring an item back home.

### **Affiliation**

Establishing where the item is from is critical. Where an item comes from will tell which tribe is the most likely candidate for repatriation. Once it is determined where the item originates from, establishing the tribe's history to that area is the next step. Having specific dates helps tremendously. For example, if it's known an item was collected from a certain location, on a specific date, and if possible, by whom. The next step would be placing the tribe at that area the same time the item alienated. The longer a tribe can demonstrate as having occupied the area where the item is from, the greater chance the item can be affiliated.



If the provenance of an item is limited to only which state the item comes from, or no known location at all, affiliation can still occur. When less information is present, there is a greater need for consultation. If a tribe asserts an item is indeed a sacred item affiliated to their tribe, and the tribe is determining this solely on an image or notes from a summary, the museum will have to rely more on oral testimony from the tribe.

## **Example of claim construction**

### **Basics**

The first step is the cover letter, which should be on tribal letterhead, dated and signed by the NAGPRA representative for the tribe, or any other appropriate individual, such as a tribal council member or tribal chairperson. The cover letter should serve as official notice to the museum that the tribe is making a request for repatriation under NAGPRA.

What is being requested and what category it falls under should be on the cover letter also. A cover letter could serve as a claim itself, but additional information is often needed.

A repatriation claim should include the accession number of the item, what the item is, what museum has the item, what tribe is making the claim and what category the item is being requested under.

Additional information could be included in the form of a report. A report can give the history of a tribe, its relation to an area, how long the tribe has been there and information pertaining to cultural practices surrounding the use of items, thus demonstrating how they fall under the appropriate category. It's at the discretion of the tribe on how much information will be made available in the report or claim.

### **Traditional Knowledge**

Traditional knowledge that can be utilized in a claim varies. Some tribes include tape recordings of elders relaying information. Parts of a tribe's oral history can be written in a claim as well. Letters from traditional religious practitioners of the tribe can be used as evidence. Phone consultations with museums relaying information about a claim can be counted as part of the claim. A good idea is to send a follow-up email after phone calls, to document consultation took place and what was discussed.

### **Written Information**

A well rounded repatriation claim will include some written sources cited. How many are included is at the discretion of the requesting tribe. In addition, written works prove to be effective as well. All of the above mentioned lines of information can be used to supplement each other to construct the strongest claim possible. Relying on one piece of information exclusively may not be as successful as utilizing several in conjunction with each other.

The Umatilla tribe and Sealska Corporation, both, whom have successful repatriation programs, utilize written sources in every claim. The Umatilla tribe has had forty notices published! That is an incredible amount of notices, totaling hundreds of remains and many items. Part of their recipe for success is having strong documentation, when applicable, included in their claims.

## Repatriation of Human Remains

*How can remains be returned to tribes? How can we tell if remains are really Indian? What sources are appropriate for affiliation?*

**T**he repatriation of human remains is a high priority for many tribes across the United States. All the tribes that have collaborated on this project jointly expressed that repatriating Native American human remains is a sensitive matter, one that transcends written laws or regulations.

As one tribe expressed its view on retrieving ancestral human remains “it is our inherit duty to repatriate our ancestors. Nobody else will do it for us.” A straight forward, powerful statement like this explains why many tribes not only repatriate human remains, but feel so passionately while doing the work.

“These are OUR ancestors” is another quote heard over and over while interviewing all the tribes for this manual. It became apparent that no matter the differences in locations, beliefs, traditions or languages, the indigenous people of the United States today believe the Native American ancestral remains in the control of museums and federal agencies across the country, are their ancestors. This belief is the foundation for many tribal repatriation programs and having these beliefs help act as the catalyst for tribes’ submitting claims.

### **How groups view remains**

One of the major differences between some tribes and museums is how remains are viewed. A tribe may feel remains are connected to the community and the land, thus needing to be reburied to follow cultural and traditional beliefs. On the other hand, a museum may see the remains as specimens or scientific material, where the real value lies in the research of the remains themselves. How can such a gap be bridged? NAGRPA was created to help bring these two ideologies together. The success of this bridging hinges on open dialogue and meaningful consultation.

### **Humanity of Repatriation**

The aspect of humanity of repatriating human remains is prevalent throughout the entire process. From researching inventories, to putting together a claim and if all goes well, the retrieval of the remains themselves, the whole process involves working with people, in one way or another. Reading inventories, you see all these people, taken from their final resting places. In trying to repatriate them, you must work with the people at the museum or federal agency. In having the remains returned to your tribe, the community is involved to some extent and finally, those old ancestors are laid to rest.

It's a very emotional and difficult journey, one that is rewarding, but at the same time sad. The people who have contributed to this manual all attest to the difficulty in getting remains returned, but, also, the emotional hardship in dealing with ancestral remains, when they are back home.

The vast majority of tribes and Indians I have worked with and discussed repatriation issues on, all agree these are our ancestors. There is little or no hesitation in setting forth to claim ancestral remains, because the feeling is, the tribes today are the descendants of these individuals held in museum and agencies. Without the ancestors, the tribes would not be who they are today. To honor this gift of being indigenous to North America, the tribes feel respect and dignity must be bestowed upon the ones who have walked before us.

It can be very difficult for a tribe working with remains; learning how museums acquired them, seeing the condition of remains at museums and managing the emotions that accompany repatriating individuals. Tribes will sometimes appoint certain individuals to carry out the transportation and reburial of remains. This may be the NAGPRA designee for the tribe or another individual. The fact is that once remains actually come back to tribes, the responsibility of taking the final steps of reinterring the individuals back to the earth is not taken lightly.

Any tribe beginning a repatriation program should address the cultural and ceremonial context of having remains returned to their community before repatriation claims are submitted. Some tribes opt to not have remains returned according to their cultural protocols. Each tribe has developed its own, unique procedures when they do have remains returned. The community members, other tribes and elders are the ideal place to seek information on how best to handle the final stages of repatriation.

### **How Human Remains can be returned**

Human remains can be returned in three ways under NAGPRA. One, a museum or federal agency affiliates a certain set of remains to a tribe or tribes; when a museum is compiling its inventory or reexamining its inventory. This type of repatriation is usually accomplished through extensive consultation. Two, a tribe

can put in a repatriation claim, seeking to affiliate the remains. Or three, a tribe or tribes, can make a request for remains deemed culturally unaffiliated, under the NAGPRA regulation 43 C.F.R. 10.11. In all scenarios, consultation plays a big factor is how quickly and efficiently the repatriation occurs.

#### **Museums and federal agencies determining affiliation**

When a museum or agency faithfully carries out its duties under NAGPRA, consultation is supposed to occur regarding the status of Native American remains. As museums were compiling their inventories of human remains, this consultation was to occur when the inventories were first being worked on. Many times, this task of consultation to determine affiliation was not carried out and tens of thousands of remains got designated as culturally unidentifiable.

However, many museums did carry out this duty with sincerity and the result was museums contacting tribes about their collections of remains. Through consultation with the appropriate tribes, information is gathered about locations and tribes' histories, leading to affiliations. If affiliation can be determined, the museum or agency goes on to publish a federal register notice. This method is initiated by the museums or agencies, but tribes play a vital part, providing information, once the process is started.

#### **Tribes submitting repatriation claims**

The first step begins with the inventories- the list of remains and associated funerary objects. An inventory can be requested from the museum or it can be accessed on the National NAGPRA's website. When requesting an inventory from a museum, make sure to ask for the most up-to-date version. Some museums or agencies will not have updated their inventories with National NAGPRA, or worse yet, haven't submitted an inventory at all. If that is the case, the museum or agency is out of compliance with the law and should be reminded of such.

In asking for an inventory, ask to include all the remains from the pertinent state, or states, along with all the known associated funerary objects that accompany the remains. In addition to the inventory itself, request any additional information, such as; books, field notes, maps, reports on the remains. Field notes or inventory sheets can be extremely helpful in aiding to affiliation. Larger museums, usually at universities, at times publish books about significant burial sites. These books, although offensive to many tribes, can be very helpful in a repatriation claim. These types of books can give enormous amounts of details, such as what funerary objects were found, exact locations of burials and the approximate age of remains.

A repatriation claim under NAGPRA has to meet two requirements. One, does the item being requested fit one of the NAGPRA categories eligible for repatriation: human remains, associated funerary object, unassociated funerary object, sacred item or object or cultural patrimony. Two, can affiliation be established to the requesting tribe. In the case of human remains, it is self-

explanatory what category they fall under. On the other hand, the affiliation aspect requires more attention to detail. Information that is helpful to have is: where do the remains originate from, what evidence is needed to show they are Indian and what evidence ties these remains to a present day tribe. Examining each line of evidence will demonstrate what is needed to show affiliation to a modern day tribe.

Location needs to be clarified. A museum will not affiliate to a tribe if the area is unknown where the remains originate from. Specifics are needed. An exact location is always best; a village, town, battle site, geographical areas related to a tribe or archeological site. Counties are also a good reference point, as are the mouths of rivers, caves, mountains, shorelines, lakes and bays. But lakes, mountains and rivers can cover a lot of territory, so specific locations along these areas may be needed, especially if a large lake is shared by more than one tribe, such as any of the Great Lakes, or the Mississippi river. It would be next to impossible for LTBB Odawa to affiliate remains, without AFOS, that simply stated they are Indian from Michigan.

## **Are the Remains really Native American?**

The issue of remains being of Native American origin is the prerequisite for any repatriation. Just because a museum has remains on their inventory does not automatically mean the remains are Native American. Before investing time and energy into repatriation, make sure the remains are indeed Indian.

How the remains were buried will often tell if they are Indian. Remains from mounds, caves or other locations associated with pre-European burials, are a strong indicator. The traditional areas tribes bury their dead is a good piece of evidence. The items found with the remains are one of the strongest lines of evidence. Anything pre- European contact is Indian. Indians, normally, had specific items interred with them for ceremonial purposes. Where the remains were in the soil at the time of their excavation can tell their age also. In this case, a qualified archeologist may have to examine notes from the site to help make a determination.

Information in inventories plays a critical role in understanding if the remains are Indian or not. Museum records many times specifically state if the remains come from an Indian grave or burial, what items were found with the remains and who acquired the remains. It is not uncommon for funerary objects to be listed accompanying remains but the items are not physically with the remains. In one such case here in Michigan, museum records noted that a copper kettle was originally with the remains, but at present, the kettle was missing. The tribe was able to affiliate the remains, based on European goods originally listed in the inventory, with the remains. The museum notified the tribe, that if the kettle ever

reappears, it will be automatically transferred to the tribe, since it was originally listed in the repatriation claim and in the federal register notice.

Collectors can be another indicator. If a collector was known for acquiring Indian remains and items, any remains associated with that collector have a fairly high chance of being Indian. Collectors often traded, donated or sold their items to multiple museums. Cross referencing museum inventories and summaries is helpful in determining if a questionable set of remains is Indian.

The remains themselves show their identity. Trained individuals can determine if remains are Indian or not by the certain physical attributes. Usually the teeth and skull are needed for this. Larger museums with access to forensic anthropologist often have this work performed. But even if a museum does not have the full set of remains (which the vast majority don't have), archeological clues can shed light on the identity of the remains.

Once it's been established the remains are Indian, evidence is needed to affiliate the remains. First, location of where the remains are from had to be established. If the remains are from within a tribe's reservation boundaries or aboriginal territory, half of the work is done. But making the connection between the remains and the present day tribe is the other half of the battle.

## **Affiliation**

It's easier to establish cultural affiliation with remains from a later time period. Historic documentation is a great aid in making the connection between groups of people that spans hundreds of years. All of the tribes that worked on this manual shared a very important perspective: they try to utilize as much documentation as possible. We don't always agree that written record is the most accurate and strongest line of evidence, but it is effective. When we are able to couple strong written accounts with our oral histories, it makes for a very effective argument the remains are affiliated to our tribe. The written source is a great tool, and it's just that, a tool, used to help bring back ancestors to the earth.

The Colville tribe and Sealaska Corporation, both of whom have very successful repatriation programs, use the same approach of combining valid, written records with strong oral traditions. LTBB Odawa has had 28 notices published, Colville 40 and Sealaska has had many successful claims as well. Combining the two lines of evidence is a proven method.

To establish the same group of people inhabiting the same area over many years is the focal point of repatriating human remains. Finding similarities between the remains and the living can be done in many ways, for example; where were the dead buried? Do the older burials coincide with the traditional locations of the tribe? How were the dead buried? Are these traditional burial methods associated with a specific tribe? The items with the dead can tell which tribe they are. Historic

trade items found with remains, from which the location is certain, is a powerful link to a present day tribe. This, in conjunction with written sources, is one of the strongest arguments a claim can have.

If our tribe discovers a museum has remains from Emmet County (our reservation), and these remains are indeed Indian and have a few metal objects; a knife, flint lock and metal jewelry, it's almost certain these individuals are Odawa. Our oral history places us in Emmet county pre-contact to the present day. Multiple priests, Indian agents, traders, explorers and other Indians have written about the Odawa at Emmet County since 1742. When all three facts are put together, it shows the very strong possibility the remains are affiliated to our tribe. In any repatriation, the standard that must be met is the chance is greater than not the items/remains are affiliated to a specific tribe. The preponderance of evidence, when more than 50% of the evidence is in a certain side's favor, is the standard. "Claimants do not have to establish cultural affiliation with scientific certainty," this is directly from the regulations and it plainly states museums must take into account the "overall evaluation of the totality of the circumstances and evidence."

## **Diverse Sources are important**

### **Written Sources**

The utilization of diverse written sources tends to be the most productive. Relying on one or two sources can be redundant. Accurate, credible works can be hard to find but once they are obtained, they can be used in multiple areas. Reputable books regarding a tribe's history are usually available, with some searching. Newspaper articles are a good source for later time periods. Showing a tribe's occupation of an area through the different time periods is easily done with newspapers. For our tribe in the Great Lakes, the earliest recorded accounts were in the early 1600s by the French Jesuit priests. Many of their writings were transcribed and are standard reference today. When it comes to books, this is where we start. From there, it's a path winding through history, trying to find evidence of us at our homelands through the ages. For each century, each decade, we try to find some account of the Odawa in and around northern Michigan, right up to the present date. The early French explorers and priests were first to write down what they saw in Michigan, then the English and finally the Americans. All of these groups left written details of the Odawa in specific areas in Michigan; a cultural continuity of the Odawa, that leads to a cultural affiliation of remains to our tribe.

### **Oral Testimony**

The opposite of written evidence is that of a tribe's oral testimony. Oral tradition will often take affiliation to an earlier time period, that of pre-European contact. As stated before, under the law, cultural affiliation can be determined by using, "linguistic, folklore, oral tradition, historical and other relevant information or expert opinion," These are all valid and equal lines of evidence. Presenting oral history can be written into the repatriation claim or added to the claim through



recorded interviews on audio or video cds. Consultation is needed more when oral histories are presented. Many times a few phone calls will help a museum better understand a tribe's history from their own perspective. Call the museum, make sure they understand what is being presented and that oral tradition is legitimate. Consultation may seem to be the reoccurring theme, but it works when it's applied. Museums have to take into consideration a tribe's belief, under the law. Not utilizing this fact only hinders a tribe's claim.

There are other things that have helped in the affiliation of remains. If a family name is associated with the remains, it's much easier to affiliate and a possible lineal descendant can make a claim for the remains. One claim we had honored was a different scenario; the remains were deemed to be mixed, half European and half Indian. Obviously if the remains were mixed, they are from the historic period and demonstrating our tribe occupied the area of interest was not a problem, resulting in affiliation and repatriation.

## CUI- Culturally Unidentifiable Individuals

*How do I prepare for a CUI claim? Are the inventories up-to-date? What are my options with making a CUI claim?*

**T**he topic of Native American remains that are categorized as Culturally Unidentifiable Individuals (CUI) has been one of the most emotional and controversial issues related to NAGPRA. If a museum or federal agency did not affiliate remains through consultation, or by receiving a repatriation claim from a tribe, the museum or agency could simply categorize the remains as CUI. Once they were in this category, a museum or federal agency did not have many obligations to fulfill from that point.

Many tribes went beyond waiting for a museum to initiate consultation regarding CUI and reviewed the inventories containing CUI themselves. Through reviewing the CUI inventories, tribes have found remains that could be affiliated and submitted repatriation claims. Many museums have honored these claims.

Under the law, a museum is supposed to initiate consultation with tribes regarding their NAGPRA collections, especially human remains. This is not always the case and many times, a tribe will have to start the process and keep it going. These are our ancestors, our responsibility. A museum or federal agency's decision is not the final determination if certain remains remain in the CUI category.

### CUI- Disposition Process

If a tribe could not affiliate certain remains from a CUI inventory, the other option for having them returned was the disposition process. This allowed for museums and federal agencies to return CUI to requesting tribes, if the museums or agencies so choose. This course of action entailed the museum or federal agency to submit a request for a recommendation for disposition to the National NAGPRA program. This request would be heard by the NAGPRA Review

Committee at one of their meetings. The museum/fed agency would partner with a group of tribes on the disposition, with all parties in agreement that the remains should return to the tribes. The Review Committee would hear testimony from both the museums/agencies and the tribes, along with reviewing information previously received pertaining to the remains. Upon completion of the presentations, the Review Committee would give a recommendation for disposition or not. If the Review Committee granted a recommendation, it would go to the Secretary of the Interior. If the Secretary concurred with the Review Committee's decision, the official paper work could commence to return the remains. This method took time, sometimes years (due to the museums/agencies coming to an agreement and arranging all the necessary steps). The most critical component of the disposition was having the museum/agency agree to return the remains. A museum/agency was not obligated under the law to do so; they only did this because they felt it was the ethical and moral thing to do. Over the years, dozens of museums/agencies have stepped forward and collaborated with tribes from across the country to return hundreds of ancestral remains. But the mechanisms for which CUI are handled drastically changed on March 15, 2010.

During the time I was writing this chapter for CUI, my emphasis was on the above mentioned disposition method. It has worked and was proven, with examples of many museums and tribes working together. But, as many in Indian country were told by multiple museums, nothing officially could be done until the final regulations regarding CUI were promulgated and published. That day of publication was March 15, 2010, with a comment period of 60 days, and on May 14, 2010, the final rule went into effect.

Instead of waiting for a museum to volunteer to work with a tribe on a disposition or re-evaluating inventories for possible affiliations (something that is still recommended, as affiliation is still the quickest and easiest method of having remains returned), tribes now can request for CUI to be returned to them, by law. The process is rather straightforward and a copy of these regulations, 43 C.F.R 10.11, is included in this chapter.

## **CUI- Museum Initiated Consultation Option**

Under 43 CFR 10.11, the mechanism for which CUI are returned can happen in two ways. One, the museum or federal agency with Native American CUI in their collections can initiate consultation with the tribes whom have ties to the aboriginal lands from which the remains come from. Determining which tribes have those aboriginal ties can be determined, but not limited to: acts of congress, treaties and executive orders.

Treaties are good to work from, due to being very accessible. A few locations treaties can be found are on line, at libraries, tribal, state and federal archives.

“Indian Treaties 1778-1883” by John J. Kappler is a great resource for treaties. Again, The National NAGPRA website can help with aiding in finding such information.

A tribe can encourage museums to start the consultation process and aid in the process by providing:

- A list of tribes whom have aboriginal ties to a specific area.
- A copy of the pertinent treaty, executive order or other line of evidence demonstrating which tribes have aboriginal ties to an area.
- Maps- Maps are a great resource for museum staff unfamiliar with certain states and the tribes within those states. One set of maps in particular, the Charles Royce series, are particularly helpful. The Royce maps coincide with specific treaties.

## **CUI- Tribal Submittal of Request**

If a museum does not initiate consultation, the other means by which the process can be enacted is when a tribe or tribes submit a request under 43 C.F.R. 10.11.

The basic requirements for such a request are:

- the request be on a tribe’s letterhead and signed by the designated NAGPRA representative for that tribe (a copy of the tribal resolution or executive order designating the appropriate official is very helpful),
- The accession number for the collection being requested
- Where the remains are from
- The number of remains
- That the request is an official request under NAGPRA 43 C.F.R 10.11
- Make sure to request any associated funerary objects. While associated funerary objects are not covered under the law, the museum or federal agency can include them in the repatriation, if they choose to.
- Include a copy of the treaty, executive order, etc. demonstrating the tribe’s aboriginal occupation to the area the remains are from

Please note, a single tribe, or group of tribes, can submit a request. These requests, like repatriation claims, are to be sent to the official NAGPRA representative for the museum or federal agency.

Once a request is sent out, it is good practice to follow-up with an email to verify when the request arrived. Unlike repatriations, there is no time limit for the disposition of remains to occur under 43 C.F.R. 10.11. It is sometimes useful to remind museums and federal agencies that it is mandatory the remains be returned. This may help speed the process along. And speeding the process along is where tribes can really help.

The inventory is once again one of the focal points for repatriation. Museums and federal agencies have their inventories for CUI accessible on the National NAGPRA Website. One can either search by state or museum or agency. Many tribes already have lists of all the museums who have CUI that pertain to them,

but if a tribe does not a comprehensive list of museums, the best place to go is to the National NAGPRA website.

Find the tribal list go online to the National NAGPRA website, online databases, go the Culturally Unidentifiable Native American Inventories Database. Once there, access by either museums/agency or by state. This inventory is what we use on a continual basis, but it's not always accurate. Many of these inventories were submitted in the mid-90s, and collections change, sometimes without the original inventories being updated.

Once the CUI inventory has been accessed, the first step is to start calling and emailing each and every museum on that inventory that has CUI from an area of interest. Request an up-to-date CUI inventory. Most museums will know C.F.R. 43 10.11 has been published and is part of the law. If they don't, initial contact is a perfect opportunity to bring to the museum's awareness of the current situation regarding CUI. Some museums will state their CUI collections haven't changed since their original inventory was submitted to National NAGPRA, but some will have amendments that never got added to the National NAGPRA database. Request an up-to-date inventory. Double checking new inventories against older ones is always a sound idea.

## **Establishing Native American Remains**

The remains themselves have to be established to be Native American from the United States. Museums will sometimes not just have remains from all over the country, but all over the world. As touched upon in the inventory/summary chapter, records are not always the best, even with human remains. It's essential to know what is being requested falls under NAGPRA. Many museums have remains that are early settlers, slaves, etc. It's rare these remains are part of the same collections that are Native American, but it does occur.

Another concern among certain museums is if the remains are close to known European burials and/or from areas of co-habitation during historic times. It may be impossible to determine, without absolute certainty, if remains are indeed Indian. But under NAGPRA, 100% verification is not needed, only that a preponderance of the evidence is met. That is, it is more likely than not remains are Indian. Even if the evidence is 51% in favor of the remains being Indian, 49% not, the preponderance of the evidence has been met.

One museum LTBB Odawa is currently working with contested that it's impossible to determine if the remains are Indian or not, and it's impossible to meet any preponderance of evidence. But originally, these remains at this museum were submitted to National NAGPRA to be included on the CUI inventory. If a museum is very keen on not categorizing remains as Native American, it is

advisable to inform the museum it must amend its NAGPRA CUI inventory with National NAGPRA and give detailed reasons why it is doing so.

### **Evidence to help determine if remains are Native American**

Here is some of the evidence that can be used to help determine if remains are Native American or not. It is an obvious point, but many times the fact has to be re-established if what a tribe is requesting are actually Indian remains. Also, many of these collections of CUI have not had any attention given to them for many years, resulting in mistakes in record keeping.

#### **Archeological evidence**

Archeological evidence can be a great benefit in determining if remains are native. The method of burial is a tell-tale sign in itself. Was the burial in a mound? From a location that was recognized as Indian burial grounds? How deep in the earth were the remains when they were excavated? Burials from certain areas within the soil indicate a specific time period.

Associated funerary objects are one of the strongest lines of evidence. Indian burials are known to include very specific, unique items. Any items that are pre-contact signify an Indian burial. Each tribe has its own history of burial items; therefore a museum must consult with local tribes to ascertain if affiliation is appropriate. Again, consultation with the museum or agency can help in determining if such items are related to a specific tribe.

#### **Forensic evidence**

The forensic evidence of the remains themselves is another strong piece of information. Native American remains have specific details that identify them as being native. Having a qualified individual can help determine the number of individuals. It's rare to have complete skeletons; usually collections are hundreds of pieces of bone. A trained person, such as a forensic anthropologist or someone trained in osteology, can be a great help to gather hard facts, such as number of individuals, sex and age. Many CUI collections were simply labeled as such in the early 90s and have not had any additional work performed since that time. With 10.11 being a final rule, museums and Federal agencies are now being forced to re-examine their CUI collections. Some of the above mentioned work could be very beneficial now, since inventories are being re-examined.

## **What to do next**

After the inventories are in hand and it has been determined the remains most likely fall under NAGPRA, the next critical piece of information a tribe and a museum will consult on regarding the disposition of CUI is the location of the tribe or tribes' aboriginal land base.

This is not an affiliation, so precise information is not going to be needed. The acknowledgement of where a tribe had aboriginal occupation is the crucial point to be made; aboriginal occupation is much broader than where reservations are today. It may cover multiple states or only a certain number of counties within a state. This is one of the many instances where consultation will be needed.

Excellent maps for demonstrating aboriginal territory are the Indian Claims Commission maps, or also known as the Royce maps, named after their creator, Charles Royce. These maps show what areas, often huge tracts of lands covering millions of acres, tribes negotiated with the United States Federal Government for their current reservation tracts. The Royce maps coincide with treaties that tribes signed with the U.S. Government. Certain tribes signed off on certain areas. Multiple tribes were party to treaty negotiations, recognizing each other's presence in these areas. These maps provide an excellent visual for museums not familiar with tribal territories and even tribes themselves. These maps are not the end all, be all for identifying aboriginal territory, but they are a great resource from which to start.

The whole process of finding which tribe is the best suited tribe for disposition of remains will rely heavily on the consultation that is to occur between tribes and museums. Inter-tribal consulting is also going to be very important. If multiple tribes have ties to an area, a museum will need to consult with all tribes with possible interests. It is advisable tribes meet and talk among themselves before contacting a museum or shortly thereafter. A joint request is feasible, as is a request from an individual tribe. But a lone tribe may need support letters from other tribe who have shared that territory.

Joint requests by tribes under 10.11 would be a very efficient and feasible means to having remains returned. It is necessary to remember that some tribes have been removed from their aboriginal land base and relocated, usually to Oklahoma or Kansas. It is imperative to consult with these tribes as well, if their aboriginal land base is shared with other tribes.

## **The official request is out, now what?**

Now that a museum or agency has an official request from a tribe and consultation has begun, what next? The end goal of the consultation is to find which tribe or tribes are the most appropriate to list on the federal register notice. This is why knowing which tribes have aboriginal ties to an area is important. The official list of tribes per state can be quite long. For example, in Michigan, the list is over 40 tribes, the vast majority of them being out of Michigan. Each state is unique, with some tribes being removed and others being able to retain their lands. Some tribes come into different states at later time periods due to removal and some states have no tribes currently present. If tribes are still present in the state, it is advisable the museum start consulting with those tribes first and work

its way out to the neighboring states and the tribes there. The museum or agency is to send letters to all pertinent tribes, notifying them that an official request under 43 C.F.R 10.11 has been received and consultation is underway concerning the disposition of human remains. This letter should include what tribe submitted the request and what remains are being sought.

The museum must determine the appropriate tribes to include in the federal register and the requesting tribe can aid in this. Obviously the requesting tribe feels strongly enough to make a claim, but the requesting tribe has to be mindful that this is not an affiliation claim and other tribes can be listed on the notice. If no other tribes show an interest or do not provide any information demonstrating they have an aboriginal presence in the area the remains derive from, then only the requesting tribe or tribes are listed on the notice. But, if through consultation, other tribes are able to provide information, they too are part of the notice.

## **How long do I wait?**

The Repatriation, Archives and Records Department for LTBB Odawa has submitted several requests under 43 C.F.R. 10.11. Once the request was in, the question of how long do we wait for responses from other tribes came up. There is no time frame under 10.11, but we advised the museum, that after the initial letters were sent out to the appropriate tribes, we wait 30 days for a response. After 30 days, the museum sends one more letter, inviting the tribes to consult. Again, we wait 30 days, and after that second 30 days is up, we go with the tribes who responded. The 30 days comes from the amount of time tribes are given to respond to Section 106 requests for information. If a tribe doesn't respond in 30 days to a Sec. 106 project, the project starts. If a tribe does not respond in 60 days, the drafting of a notice can start. Please bear in mind, a tribe not responding can be seen as its concurring with the requesting tribe's claim. This is an agreement that was worked out after consulting with museums.

## **Inter-tribal coalitions**

Inter-tribal coalitions can be a great aid in repatriating CUI. Cooperation and communication amongst the tribes is one of the most helpful elements in having CUI returned. The group of tribes can decide who will be the tribe "officially" requesting the remains and other tribes can send support letters to the museum, endorsing the request. The tribes may act as equally interested parties in the request, while designating which tribe will be the ones to handle the physical transfer of the remains. This is something that has to be worked out, if a joint request is filed. A museum may not transfer control of a set of remains from a joint request if one of the tribes that are party to the request objects to the remains being picked up by a certain tribe. Or, tribes may simply know about the request, not submit anything and let the requesting tribe handle the repatriation from start



to finish. This is usually true when a tribe is requesting remains near its homelands.

Communication is paramount in ensuring a smooth repatriation takes place under 10.11. Tribes need to communicate with each other, even tribes out of state. We have found a simple phone call notifying a tribe that a request under 10.11 is being submitted goes a long way in creating a positive situation. A tribe or tribes interested in pursuing remains under 10.11 should consider reaching out to other tribes, as a sign of respect and common courtesy. Drafts of the request should be sent to tribes wanting to review them, and this should be done before a final request is submitted to the museum. While many tribes will not protest another tribe's pursuit of remains, tribes want to know what is going on. This is especially true under 10.11, with the aboriginal land basis. In many instances, many tribes can lay claim to a territory. Multiple tribes are signatories to a treaty, or series of treaties, for a specific area. It is true certain tribes will have a stronger claim to remains from that area, but none the less, other tribes have an interest as well. Being inclusive and mindful of this will ensure respect is maintained and difficulties are less likely to be encountered amongst tribes.

## **Hierarchy of returning CUI to tribes**

The basic hierarchy of returning CUI to tribes is as follows:

1. During consultation, it is found that the remains are linked to a living decedent or affiliated to a modern day tribe and an affiliation repatriation can occur.
2. A tribe whose tribal lands had remains removed from their area after 1990, thus enacting the future applicability regulations under NAGPRA.
3. If the remains were not removed from tribal lands, then the emphasis shifts to aboriginal territory of a tribe or group of tribes. A large number of repatriations have the potential to be repatriated under this manner under 10.11.
4. If no tribes claim remains from aboriginal lands, a non-federally recognized tribe, or group, may submit a request, but only with the recommendation from the Secretary of Interior and consent from any neighboring federally recognized tribes. Non-federally recognized tribes may also need to present before the NAGPRA Review Committee for such cases.
5. If no tribes or groups come forward, then the museum can reinter the remains according to state or local laws.

It's fairly straight forward, starting with possible affiliation. Meaningful consultation could result in many CUI going back through repatriations. Then we go from tribal lands, or present day reservation lands, to the much more broad recognition of aboriginal lands. It would be very hard pressed to not find the aboriginal territory of any tribe today.

## **Tribes working together**

Cohesiveness among tribes can make the process go smoothly or indefinitely hold up repatriations under 10.11. If tribes are in agreement and are working together, things will move along smoothly and at a much quicker pace. If there is conflict among the tribes, chances are high the museums and federal agencies will wait until that conflict is resolved within the tribes.

If multiple tribes are requesting the same set of remains under 10.11, and are not in agreement on whom should get the remains, the museum can make the determination which tribe will receive the remains. It is an uncomfortable position for all parties involved and the better solution is to have the tribes decide beforehand on who is the appropriate party taking control of the remains.

A tribe or group of tribes decides to make a request for remains under 10.11. Remains are located at museum or federal agency, identified as being Native American and are from the tribes' aboriginal territory; based on a treaty, as an example (other lines of evidence can be used to show aboriginal territory, treaties are one of the easiest). The tribes decide to submit an official request to the museum but before doing so, make contact with all other tribes listed on the treaty and those known to be from that area based on traditional knowledge. A simple phone call and email will suffice. The majority of tribes will not respond to a legit request, but giving those tribes the courtesy of including them shows respect and that respect will help ensure no objections.

Museums are mandated to contact all tribes with aboriginal 10.11 requests to an area once they receive a claim. But having the added notification from the tribes themselves shows more inclusiveness. A tribe may be contemplating submitting a request without knowing another tribe is submitting a request for the same remains. If both tribes knew of each other's plans, this will eliminate confusion on behalf of the museum and speed up the process. If the museum receives two requests for one set remains, it may be seen as two competing claims. If the tribes are not in agreement they are working together on the same repatriation, it is a competing claim, and under 10.11, can only be resolved by the tribes.

If a museum receives two separate 10.11 requests for the same set of remains, it is not necessarily competing claims. If the two tribes agree to work together on the same repatriation, these claims are seen as complementing one another.

From our experience thus far with operating under 10.11, we have seen an even greater emphasis on consultation. With no time limits in place, as of now, constant contact helps ensure the process moves forward. Agreements on how long to wait for other tribes to respond, who picks up the remains, when they pick them up, questions regarding the federal register notice and the issue of which tribes are to be consulted are some of the more pressing issues that have been discussed.

## What role does NAGPRA play in your community?

*How does repatriation heal? What should our community consider when we receive items or remains back to our tribe? Are there certain considerations we should address for reparation before we submit claims?*

**H**aving ancestral remains, funerary objects, sacred items and objects of cultural patrimony returned to a community recognizes and reaffirms a tribe's right to its own beliefs, one of the fundamental human rights all people have the right to express.

For many Native Americans, NAGPRA goes beyond the typical confines of regular laws, not just because it's Indian law, but because it transcends religion, culture and faith. A tribe may believe its prosperity partially hinges on having its ancestors returned, as well as having sacred items back in their community. The belief that thousands of sacred items and objects of cultural patrimony currently being housed in museums across the country (and the world) are alive is a prevalent belief among many tribes. When it is believed they are alive, it is in the sense that a spirit resides in that item. Having that spiritual item in the community, being used in ceremony, can help heal and bring balance to the community.

### Healing

Repatriation has the potential to mend in a plethora of ways. The tribes that helped collaborate on this manual all felt caretaking for the dead is a paramount duty to be carried out by the modern day descendants. Reinterring ancestral remains and their funerary objects from museums is something new to tribes but it fits into the responsibility of caring for the dead. Overall, the reburial of human remains is a task that various tribes and communities come together on. This coming together is a healing process in itself. Tribes may not agree on other issues, but the majority of times, tribes work together on reburying the dead.

Tribes, in many ways, have been fragmented. Land, language, children, beliefs, sacred items and the dead being taken are all part of the recent history of Indian people in the

United States. Having some of these fragmented pieces put back together helps heal a people who have endured so much to exist. It relates back to what NAGPRA is: human rights legislation.

There is a balance that is reestablished when remains are returned to the earth. This balance helps promote prosperity for a tribal community. But this prosperity is not limited to a tribe. Museums also have also experienced the positive effects of repatriating human remains. Relationships between tribes and museums are built on the positive experience of repatriation, resulting in tribes having more input for events, displays and educational opportunities at museums. This can also be said at universities, who include native presenters and seek information from the tribes with whom they have worked with on NAGPRA.

### **Remains and reburial**

If a tribe has never had remains returned before, there are some points to consider.

Reburying ancestral remains is something new to tribes across the United States. Many tribes are developing the best practices to handle this issue of having remains reintroduced into their community. The reburial ceremonies differ from tribe to tribe. Consultation with tribal elders would be a logical place to begin on developing the correct protocols for reburial. In addition to reaching out to community elders, asking neighboring tribes on how they perform reburials is also an option. Having input from traditional religious leaders is a key element in ensuring appropriate actions are being taken.

Once the best method for reburial has been determined, the next question is “where do we rebury?” And where to rebury is a major issue. Tribes have to think about security and availability of lands. Here are some options to consider.

Tribal lands are the preference for many tribes. This allows for the greatest control of the burial lands and offers a great deal of security. Tribal police and tribal members can access the grounds at any time, keeping an eye on things. Reburials can be performed at the discretion of the tribe, without needing to seek permission or approval for certain elements of a reburial, such as building structures or having fires. While the reburial on tribal lands may take place miles away from the original burial site, the security offered by tribal lands is of equal importance. Also, many original sites are not available for reburials, due to construction development.

Some tribes have collaborated with federal and state parks to rebury on lands where the remains were originally excavated from. Federal and state lands are a good option, in the regard that it allows for the re-interment of remains to their original location, or very close to the original location. Many tribes feel it's important to try and rebury as close as possible to where the remains originally came from. In working with Federal and State parks, permission is needed to rebury on those lands. Coordinating a reburial on federal or state land takes more time, which can be a drawback, and it is not a guarantee. Individual parks have their own policy on reburials and consultation is

needed to work out an agreement. Many federal parks are becoming more open to reburials, especially ones that have worked with tribes on repatriations of human remains. The Farm Bill of 2008 specifically states Indian tribes can reinter remains and cultural items that originated from National Forest Service Lands.

Private lands are a possibility, but allow for the least amount of protection. In many states, whatever is on or in private lands is the property of the land owners, including human remains. While the intentions of a land owner may be good, once that owner passes on and the land falls into someone else's hands, the new land owner may not be sympathetic to protecting remains.

Who performs reburials and how they are performed is completely up to the tribe. Once the remains are legally transferred to the requesting tribe, the museum or agency has no control on what becomes of the remains. Reburials can be a community event, or something carried out by a few individuals, at a secret location or a known cemetery. Again, this is all at the decision of the tribe.

### **Items returned**

One of the paramount concerns for any tribe receiving items back from a museum or agency is the possibility of the items being contaminated with harmful chemicals. Dangerous chemicals such as lead, mercury, chromium and arsenic were used to preserve items. Items that were of organic materials are more suspect to contamination. Leather, wood and feathers are typical materials that were treated with chemicals. Items made of stone and bone are less likely to have been treated with chemicals, but there is a possibility that such items may have become cross contaminated by being in close proximity to contaminated items. All items should be tested before extensive handling is done. All items should be treated as if they are contaminated, until tests prove otherwise. Wearing gloves is recommended for handling items. Until testing is performed, items should be stored in an area where staff will have limited exposure to the items. Items can be stored in a sealed box, with plastic wrapped around the box as an extra precautionary measure. Be careful when opening any container storing items, as chemical gases build-up they can cause a "blast" of harmful fumes upon opening.

### **Testing options**

Before items are returned, request any history of chemical treatment for items. Some museums may have had its own testing done to determine if an item is contaminated. Testing for contamination can be done in several ways. What methods of testing are performed are at the discretion of the tribe, once the items have been transferred. Some methods are more intrusive than others. Two relatively non-intrusive methods are testing done by swabbing and the XRF machine.

Testing using a swab is generally an easier way to test. Bio-chemical companies around the country test for certain chemicals. One such company is Bio-Chem Laboratories INC. in Grand Rapids, Michigan. We at LTBB Odawa had several items tested

through this company. We contacted Bio-Chem on what chemicals we were interested in testing for and on what type of items. Bio-Chem sent us several small test tubes, with swabs for each tube. We saturated each swab in the appropriate solution, swabbed the item, and placed the swab in the appropriate vial. When all the items were swabbed, we sent the swabs back within the vials. The lab ran the tests and gave us the results. This is a relatively easy way to test. It eliminates travel of staff and has a fairly quick turnaround. Prices vary from company to company.

The other method is use of the XRF machine. The XRF machine is a hand held device that detects the levels of certain chemical compounds. The XRF machine utilizes technology that is able to read the fluorescent X-Rays on an object. These X-Rays are read on the machine. It takes a trained individual to read the results of testing and to run the machine. The XRF machines and trained personnel vary from state to state. Prices for testing also vary, but are generally more expensive than the swab method.

Finding out what is contaminated and to what degree influences if an item will be brought back into a community. There have been cases of tribes repatriating items, not knowing if the item was contaminated with chemicals, and using the items in cultural functions. Tribal members became very ill due to exposure of the chemicals on the items. Some tribes opt to not have items returned because of contamination. Also, different tribes choose to not have certain items returned, as a safety precaution in regards to ceremonial beliefs. This is a concern exclusive to tribes. While many items are seen as possibly helping a community, there are occasions when an item will not be sought after, because it is believed the item will have a negative impact on the community in a spiritual and cultural manner. Again, the tribe determines this, not museums. These are dilemmas for every tribe that actively seeks items from museums.

### **Storage**

Having an adequate storage facility is something that makes repatriation work easier. Remains and funerary objects may have to be stored somewhere until the reburial is ready. Items may also be needed to be stored in a special area. Items waiting to be tested and items deemed safe will need space. Sacred items, at times, need special storage as well. Arranging the best possible locations depends on resources. Some tribes have wonderful rooms, which are spacious, secure and have plenty of storage and work area. On the other hand, other tribes have limited space and must make due with what is available.

Will an item be displayed in a tribe's museum? Will it be reburied? Will it be reintroduced in a ceremonial function? Will it be destroyed? All of these questions can only be answered by the tribe whom performed the repatriation. Cultural protocols dictate the final outcome of items, once they are returned to their appropriate tribe. The vast range of diversity regarding tribes and their beliefs is too great to address in this manual.

## **Attention as a tool to healing and education**

Work under NAGPRA is unique and, at times, draws attention. This attention can benefit a tribe in the form of educating the general public. Newspaper articles, television interviews and presentations about repatriation under NAGPRA, can help educate the communities surrounding a tribe. Greater awareness to a tribe's concerns and rights can be a result of repatriation.

Identity is a cornerstone of repatriation. When remains are returned, it's recognizing a tribe's self-identity. When sacred items and objects of cultural patrimony are given back, it's the tribe asserting its cultural and spiritual identity. The protection of graves also solidifies the identity of a tribal community. When outside groups define a tribe's identity for so long, it weakens the tribe. Successful repatriations effectively say "This is who we are as a tribe and this is OUR history".

Having a well-known repatriation and historical program can help with repatriation with groups and individuals not subject to NAGPRA as well. Families literally have "skeletons in their closets" all over the United States. Grandparents, parents and other family members collected inappropriate items and remains over time. One day, the family inherits these collections and decides to give them back to their rightful owners. If a tribe is known to handle remains and reburials, these individuals with collections have a resource to utilize.

The youth see how important it is bring back ancestors, sometimes these ancestors will be thousands of years old. A sense of pride is instilled in the youth, knowing their roots go so deep. This pride is also seen in the elders, many of whom fought to keep the beliefs alive during less sympathetic times.

## **Honoring our ancestors**

Repatriation holds different meanings for each individual tribe, but from working with tribes across the country on this project, the consensus was the obligation to honor the ancestors, keep the traditions alive and pass those traditions onto the next generation. NAGPRA can help accomplish all of these, which in turn, help strengthen and build stronger communities. All tribal communities deal with economic, social and political issues. The survival of tribes often depends on its ability to develop jobs, housing and resources to meet the demands of its membership. The fact that tribes create departments, expend energy and resources toward repatriation is a testament to the strong belief that having the ancestors and sacred items returned will add to the overall prosperity of the community.

NAGPRA was created to address historical injustices committed against the tribes in the United States. These grievances committed against the many tribes in America are not far removed from today's generation. Many remains and items were removed from tribal lands and communities in the last hundred years. To see some of these wrongs



righted within a generation or two is a major step towards greater healing and reconciliation.

### **Example Claim**

#### Little Traverse Bay Band of Odawa Repatriation Claim

We respectfully request to repatriate, per the NAGPRA, one complete skull and mandible representing one individual, Accession #: 1234. This skull and mandible was purchased by the Public Museum from John Crane in 1917. How Mr. Crane acquired the skull and mandible is unknown.

We do not know the circumstances surrounding Mr. Crane's acquisition of the remains. However, it is believed that neither he nor anyone else had the right to be in possession of the remains and sell them. This great act of disturbance is seen as highly disrespectful to our beliefs as Odawa. When individuals are buried, they are not intended to be unearthed and sold. The LTBBOI take multiple measures and conduct many ceremonies to ensure our ancestors who have passed on are taken care of in the spirit world. These practices include ghost suppers and the placing of wreaths on graves. To successfully reconcile with and take proper care of the spirits of our ancestors, whom we believe help shape our prosperity and well-being as Odawa now, the remains must be brought back home to us, given the proper ceremonies and reburied. These ceremonies and caretaking of our deceased are important to the cultural continuity of the Little Traverse Bay Band of Odawa Indians (LTBBOI).

Based on this cultural context, we submit our claim to repatriate through the NAGPRA category of Native American Human Remains. Please note that the above statement regarding our traditions and beliefs concerning this matter is an abbreviated version that was compiled to facilitate your understanding of our perspective. It does not contain culturally sensitive information that would be deemed inappropriate. Based on the information in this repatriation claim, LTBBOI believes the requested remains are affiliated to LTBBOI.

The NAGPRA inventory sheet for items #:1234 provided by the Public Museum states the remains were acquired by John Crane under unknown circumstances. The remains are from the Mackinac area of northern Michigan.

We base our claim of affiliation on the location of where these remains were originally discovered, the Mackinac area, the age of the remains, which is from the Historic Period and the history of the Odawa at Mackinac. An Odawa family name was written on the skull, thus placing it in the Historic Period. Due to the close relations of the Ojibway/Chippewa to the Odawa, they will be included in the history of the area.

The two locations from which these remains derive are Mackinac Island, Mackinac County, Michigan and Mackinac City, Emmet County,

Michigan. These locations are part of the area known as Michilmackinac or the Straits of Mackinac. The term Michilmackinac is a French variation of the Odawa/Ottawa and Ojibway/Chippewa term for the area, which translates into “great turtle”. The Odawa/Ottawa and Ojibway/Chippewa tribes’ oral histories place themselves at Mackinac for countless generations preceding French and English arrival. The Odawa/Ottawa and Ojibway/Chippewa have lived in close proximity to Michilmackinac and intermarried within each other’s respective tribes for many years. (White, 147).

The first Europeans to settle the Michilmackinac area were the French. Seeking to capitalize on the lucrative fur industry, the French established a post on the north side of the Straits of Mackinac, at St. Ignace. The Jesuits were quick to follow and in 1671 established a mission at St. Ignace. At St. Ignace the French were in direct contact with both the Odawa/Ottawa and Ojibway/Chippewa tribes. The tribes traded furs for the much sought after European trade goods, such as metal utensils, guns and powder and cloth. The French abandoned St. Ignace, from 1701-1714 (Williams, 27) to establish a fort at Detroit. In doing so, many Odawa followed but some remained at Mackinac. But in 1712, Governor-General Vaudreuil sent orders to re-establish the Fort at Mackinac, only this time it would be constructed on the south side of the straits, near modern day Mackinac City (Thwaites, 10). During this entire time of French occupation of the Michilmackinac area, the Odawa/Ottawa and Ojibway/Chippewa people continued to carry on their traditional means of survival there.

Even with the onset of French traders and missionaries, Odawa and Ojibway people continued to hunt, fish and plant crops at their traditional homeland of Michilmackinac. Odawa/Ottawa men continued to harvest the all-important whitefish, which were in great abundance at the time, thus providing a major source of food for the tribes, near the Michilmackinac shores (Williams, 28). Other crops that were crucial to the sustenance of the Odawa/Ottawa, corn, squash, melons and peas (Kinietz, 236) which were cultivated during the time of early French occupation of the Strait of Mackinac. The French priest Cadillac, while visiting an Odawa village at Mackinac in 1695, gives a vivid account of the preparation of various kinds of food, ranging from fish to bread to a combination of fish and corn meal called “sagamity” or “all things eaten together”. These accounts of everyday living demonstrate that Mackinac was not a place of simple traversing for the Odawa and Ojibway, but of steadfast home. While many Odawa settled Mackinac, Ojibway also shared villages with them there (White, 203). These early records of hunting and farming clearly demonstrate that the Odawa and Ojibway utilized Michilmackinac as their homeland, like they did the many generations prior to European encroachment.

Mackinac Island is located approximately located two miles from Mackinac City (Map 1). At the time of early French contact, Mackinac was also a place of habitation by both the Odawa and Ojibway tribes. The Ojibway, at the time of French contact, are more documented to have occupied Mackinac Island (Armour, 15). Odawa have been recorded staying at Mackinac Island also for interval periods of time throughout the French period (Cleland, 93).

When Mackinac Island was ceded to the American Government, it was the Ojibway who were signatories to that treaty and who were living there at the time (Blackbird, 20). As well as being a location for villages, Mackinac Island was also a place of significant ceremonial practices for the Odawa and Ojibway. Burials were very common on the island due to the belief held by both the Odawa and Ojibway that certain Manidok or Spirits dwelled on the island. The Odawa and Ojibway made offerings of various natures to the Manidok on or around Mackinaw Island to ensure safe travels and prosperity.

In 1714, the fort at Mackinac was reestablished. The area grew in importance as the fur trade increased. Control of the straits translated into control of the large amount of commerce that passed through there. It became a central station of trade and business for neighboring tribes wishing to barter with the French and their Indian allies. This hub of commerce and social activity became vital to the Odawa and Ojibway. The Odawa, through the fur trade, became “affluent by Indian standards of the day” (McClurken, 4). This prosperity, along with the Iroquois, who were no longer a threat to relocate them by means of war, made it possible to reestablish themselves at Mackinac more securely.

Following years of prosperity at Mackinac, the Odawa people moved because the soil became exhausted. The Odawa relocated their principal village from Mackinac to Middle Village (L’Abre Croch) or Waganaksing, which is located some twenty miles south along the shore of Lake Michigan. Waganaksing became the principal Odawa village in 1742. But, as before, with the majority of the Odawa population moving, a few families remained at Mackinac. Ojibway families continued to live in the Straits area, while “others were with the Ottawa at Mackinac in 1729, and when the major part of the latter removed to L’Abre Croche in 1740 the Chippewa expanded even more in that neighborhood” (Kinietz, 319).

The control of the straits area from non-native forces became an obvious influence to the Odawa and Ojibway residing there. The French relinquished control of Fort Michilmackinac (along with their hold onto all territory in the Great Lakes region) to the hands of the English after the Treaty of Paris was signed in 1763. After years of interaction with the French, Indian tribes throughout the entire Great Lakes area had grown accustomed to dealings with the French in manners of coexisting and trade. While many tribes did not

like the French, they detested the English more. Many tribes saw the Treaty of Paris as the French abandoning their Indians allies. Fearing English domination of their homelands, plans were made among certain tribes, Odawa and Ojibway among them, to take measures against this.

In May 1763 an Odawa named Pontiac led one of the most successful Indian attacks against European intrusion on North American soil. With careful planning and various ruses, Pontiac and his coalition of warriors, representing tribes from all the Great Lakes captured an amazing nine British forts in the states of Wisconsin, Michigan, Indiana, Illinois, Pennsylvania and New York. All of this was accomplished from May through October, 1763. The most renowned of these attacks occurred at Fort Michilmackinac on June 2, 1763 (Dowd, 126). That morning Ojibway and visiting Sauk men played what may be the most famous game of lacrosse on record. The men from both tribes played just outside the walls of the fort. Ojibway and Sauk women watched on as did the English soldiers atop the fort posts. During the game, the ball was launched over the walls of the fort. The unsuspecting soldiers opened the gates to the fort to allow the game to continue, but as they did, the Indian women, who hid knives and short spears under their garments, passed these weapons to the warriors as they rushed in. By the time the English knew what was happening, it was too late. Sixteen Britons were killed. The Ojibway and Sauk managed to sack a well-armed garrison with no firearms. The two most important forts in Pontiac's rebellion, Fort Detroit and Fort Pitt, never fell under Indian attacks. Unfortunately, Michilmackinac continued to play host to warfare after the uprising inspired by Pontiac.

During the war of 1812, Mackinac Island was taken by British forces with the aid of a host of Indian warriors, Ojibway and Odawa included (Tanner, 108). The War of 1812 between British and American forces directly coincided with the Indian opposition to American encroachment, and many tribes participated in this campaign. Odawa and Ojibway were no exception, as they fought for their homeland, from the Ohio valley to Detroit to Mackinac. Once the war ended and American forces were victorious, the Ojibway and Odawa had to look towards other means of securing their homeland. Without French or British aid, they could not stand against the ever and rapidly advancing American force and population. Thus, began the treaty era with the American Government.

Not only did these two tribes coexist during peace time by intermarrying and sharing the same territory and cultural beliefs, they also fought together to protect the land they both called home from a multitude of invaders and shared in the hardships that accompanied occupation. And like their ancestors countless centuries before them, the Ojibway and Odawa still refer to themselves as the Anishnaabek, which means "real people" or "good people". This shared identity has forged a strong bond which exists to this day.

During the 1830s, after the warfare that embroiled their homeland, only two tribes occupied the Straits of Mackinac, the Odawa and Ojibway (Tanner, 130-131). Many tribes in the Great Lakes were relocated, absorbed into other tribes or completely annihilated as a result of Iroquois, British and American aggression. After hundreds of years of conflict, the Ojibway and Odawa were able to maintain their homeland and occupy Michilmackinac into the early 19<sup>th</sup> century.

To secure their homeland, both the Odawa and Ojibway signed a series of treaties, spanning from 1817 to 1855. The most significant of these were the treaties of 1836 and 1855. The Treaty of 1836 established both the tribes with federal recognition, reservation boundaries, financial assistance, hunting and fishing rights. The Superintendent of Indian Affairs at Michilmackinac writes, in his report dated September 15, 1837, of the continued presence of Odawa and Ojibway at Mackinac, their farming, fishing and hunting of the surrounding Michilmackinac area and their participation in the Treaty signing (Wyckoff, 1). But soon after terms were established under the 1836 Treaty, American settlers began to infringe on Odawa and Ojibway rights and homeland. Pressure from the Jackson Administration's Removal Policy almost forced the Odawa and Ojibway from their territory. In order to maintain their homeland, the Odawa and Ojibway renegotiated the terms under the 1836 Treaty. The result was the 1855 Treaty. This drastically reduced reservation lands for both tribes, but it meant that did not have to leave Michigan. The reservation boundaries of the 1855 Treaty (though contested still) are what constitute the land base for both tribes today (Tanner, 164-165, Map 4). The population of Odawa and Ojibway in Michilmackinac was still large, as the Annuity payroll for the Odawa and Ojibway of 1855-1868 shows (RG 75).

Once reservation lands were secured, Odawa and Ojibway of the Michilmackinac area did not need to fear removal. Many men of both tribes cut lumber, fished, performed odd jobs and farmed to keep their homes and land. Women also made contributions by rearing children, maintaining households, making goods to sell and working as nannies and maids for the ever increasing non-native resort community that was spreading throughout both reservations. Even though the many natural resources the Odawa and Ojibway traditionally depended on dwindled due to over harvest, exploitation, increased development and increased population, they managed to adapt to survive in their homeland. Rapid changes to working habits, their roles in society, population, land use and even human rights directly confronted the Odawa and Ojibway and challenged them to keep a hold in Michilmackinac. Even with all these new and challenging obstacles, the Anishnaabek persevered. They adapted as much as possible to keep what was originally their homeland.

Throughout the twentieth century both the Odawa and Ojibway lived and worked in the Michilmackinac area. The Odawa that moved to L'Abre Croche or Middle Village in 1742 managed to maintain a steady Odawa population there to this present day. They became known as the Little Traverse Bay Band of Odawa Indians (LTBBOI) and in 1994 they won a legal battle that spanned over 100 years for reaffirmation as a federally recognized Indian tribe by the United States Government. Today, the Little Traverse Bay Band of Odawa Indians have tribally owned and operated businesses in Mackinac City and tribal members living there as well (Map 2).

The Ojibway who lived at Mackinac later became known as the Sault Ste. Marie Tribe of Chippewa Indians (SSMTCI) and Bay Mills Indian Community (BMIC). Unlike LTBBOI, they never lost their status as a federally recognized Indian tribe. The SSMTCI reservation includes lands at St. Ignace where they have tribally owned and operated business as well tribal members residing at St. Ignace (Map 3). Present day reservation boundaries for both tribes border one another at the Straits of Mackinac. For centuries these two tribes have shared the Straits of Mackinac, as they do today.

This is a brief history of the Mackinac area and the two tribes who have historically been the predominant tribes there, the Odawa and Ojibway. The LTBBOI make this repatriation claim due to the fact of where their present day reservation boundaries are, which include Mackinac City, and their history to that area. The LTBBOI work closely with the modern day successors of the Mackinac Ojibway, the Sault Ste. Marie Tribe of Chippewa Indians (SSMTCHI) and Bay Mills Indian Community (BMIC) on all NAGPRA-related tasks. They have been notified of this repatriation.

If you require anything further regarding this matter, please contact us without hesitation and we will try to provide you with additional information. We greatly appreciate your ongoing efforts and assistance in this important matter.

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Map 1. Michigan.gov. Michigan Department of Transportation. [www.michigan.gov/documents/MDOT-Map-Michigan3\\_61628\\_7.pdf](http://www.michigan.gov/documents/MDOT-Map-Michigan3_61628_7.pdf)

Maps.2 Little Traverse Bay Band of Odawa homepage, Offices, GIS Department. [www.ltbbodawa-nsn.gov/GIS/pdf/member\\_location.pdf](http://www.ltbbodawa-nsn.gov/GIS/pdf/member_location.pdf)

Map 3. State of Michigan CGI, LTBB NRD, LTBB GIS. Sault Tribe Land Ownership-Mackinac County.

Map 4. Little Traverse Bay Band of Odawa homepage, Offices, GIS Department [www.ltbbodawa-nsn.gov/GIS/pdf/1855\\_LTBB\\_res.pdf](http://www.ltbbodawa-nsn.gov/GIS/pdf/1855_LTBB_res.pdf)

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