

POLICIES AND PROCEDURES ON ACCESSION, CURATION, DISPOSITION AND REPATRIATION OF HUMAN REMAINS AND CULTURAL ITEMS AT THE WILLIAM S. WEBB MUSEUM OF ANTHROPOLOGY, UNIVERSITY OF KENTUCKY

TITLE: Native American Graves Protection and Repatriation Act Policy

EFFECTIVE DATE:

CONTACT: Celise Fricker

CONTACT INFORMATION: [celise.fricker@uky.edu](mailto:celise.fricker@uky.edu) (859) 323-9864

**OVERVIEW:**

These policies and procedures have been created to ensure that all Native American and Native Hawaiian human remains and Cultural Items curated by the William S. Webb Museum of Anthropology at the University of Kentucky are repatriated in a transparent, respectful and legal manner as directed by the Native American Graves Protection and Repatriation Act of 1990 commonly referred to as “NAGPRA”. ‘Cultural Items’, as used throughout this policy, refers to associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony, as defined by the federal Native American Graves Protection and Repatriation Act. This policy is intended to ensure both adherence to the above statement of principles and compliance with NAGPRA.

**POLICY SUMMARY:**

It is the policy of the William S. Webb Museum of the University of Kentucky to assure the respectful and dignified treatment of human remains and the consideration of living descendants. The Webb Museum recognizes that individuals and communities have cultural and religious concerns that must be taken into consideration when determining the treatment and disposition of human remains and cultural items in its collections and is committed to collaborating with lineal descendants or appropriate tribal officials of Native American and Native Hawaiian Organizations. Determinations of cultural affiliation, and decisions on repatriation and disposition of NAGPRA-eligible human remains and Cultural Items will be the result of transparent communication, consultation, collaboration, evaluation and review between the Museum’s NAGPRA Advisory Committee and the consulted parties.

The Webb Museum is committed to ensuring that all Native American or Native Hawaiian human remains and Cultural Items curated in its collections are appropriately identified and treated with respect during the repatriation process. NAGPRA requires that the museum follow a specific process for reporting information relating to Native American and Native Hawaiian human remains and Cultural Items including notifications and consultations with lineal descendants and official tribal representatives.

The Dean of the College of Arts and Sciences has designated the NAGPRA Coordinator of the Webb Museum to administer the museum’s compliance obligations under NAGPRA as well as ensuring the appropriate curation of Native human remains and Cultural Items held at the museum under custodial agreements after the transfer of control (repatriation) has taken place. No one at the University is authorized to acquire for the Webb Museum or accept on the museum’s behalf any Native American and Native Hawaiian human remains, funerary objects,

sacred objects, or objects of cultural patrimony without the prior written approval of the Dean of the College of Arts and Sciences or his or her authorized designee (NAGPRA Coordinator). This includes any acquisition of such items by donation, loan or gift, as well as any acquisition of such items in connection with any teaching, research or other University-related activities.

**DEFINITIONS:**

*The language of the Native American Graves Protection and Repatriation Act (NAGPRA) and its regulations require the use of terms such as “culturally unidentifiable,” “human remains” and “cultural items.” The William S. Webb Museum recognizes and respects that the people to whom such terms refer are the ancestors of many with whom we are working on these issues and intends no disrespect from the necessary use of legal language. Definitions of key terms used in the museum’s policies and procedures according to NAGPRA legislation can be found below:*

**Aboriginal Lands:**

Land that is recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims as the aboriginal land of an Indian tribe [43 CFR 10.6 (a)(2)(iii)] or by a treaty, Act of Congress, or Executive Order [43 CFR 10.11(c)(1)(ii)]. Other credible evidence for proving aboriginal lands includes the Royce Maps of Cessions and any treaties between a tribe and another country outside of the United States of America.

**Associated Funerary Objects:**

Objects that, as 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 museum or Federal agency, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects. [25 USC 3001 (3)(A)]

**Consultation:**

A process involving the exchange of information, open discussion, and joint deliberations with respect to potential issues, changes, or actions by all interested parties (HR 101-877).

**Cultural Affiliation:**

A relationship of shared group identity which may be reasonably traced historically or prehistorically between a present-day Indian tribe or Native Hawaiian Organization and an identifiable earlier group [25 USC 3001 (2)]. 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. [43 CFR 10.2 (e)]

**Cultural Items:**

Human remains, associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony [25 USC 3001 (3)].

**Culturally Unidentifiable:**

Cultural items for which no culturally affiliated present-day Indian tribe or Native Hawaiian Organization can be determined. [43 CFR 10.9 (d)(2)]

**Disposition:**

The transfer of control over Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony by a museum or Federal Agency.

**Human Remains:**

The physical remains of the body of a person of Native American ancestry. The term does not include remains or portions of remains that may reasonably be determined to have been freely given or naturally shed by the individual from whose body they were obtained, such as hair made into ropes or nets. For the purposes of determining cultural affiliation, human remains incorporated into a funerary object, sacred object, or object of cultural patrimony must be considered as part of that item. [43 CFR 10.2 (d)(1)]

**Indian Tribe:**

Any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. [25 USC 3001 (7)]. This is the same as the Bureau of Indian Affairs list of Federally-recognized Indian Tribes.

**Indian Tribe Official:**

The principal leader of an Indian tribe or Native Hawaiian Organization or the individual officially designated by the governing body of an Indian tribe or Native Hawaiian Organization or as otherwise provided by tribal code, policy, or established procedure as responsible for matters relating to these regulations [43 CFR 10.2 (b)(4)]

**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 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)].

**Lineal Descendent:**

An individual tracing his or her ancestry directly and without interruption by means of the traditional kinship system of the appropriate Indian tribe or Native Hawaiian Organization or by the common law system of descentance [sic] to a known Native American individual whose remains, funerary objects, or sacred objects are being claimed under these regulations [43 CFR

10.2 (b)(1)]. This standard requires that the earlier person be identified as an individual whose descendants can be traced [43 CFR 10.14 (b)].

**Native American:**

Of, or relating to, a tribe, people, or culture indigenous to the United States, including Alaska and Hawaii. [43 CFR 10.2 (d)]

**Native Hawaiian Organization:**

Any organization which serves and represents the interests of Native Hawaiians, has as a primary and stated purpose the provision of services to Native Hawaiians, and has expertise in Native Hawaiian affairs, including the Office of Hawaiian Affairs and *Hui Malama I NaKupuna 'O Hawai'i Nei*. [43 CFR 10.2 (b)(3)].

**Objects of Cultural Patrimony:**

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)(D)]

**Repatriation:**

In NAGPRA (25 USC 3005 and 43 CFR 10.10), the term repatriation means return of possession or control of Native American cultural items to lineal descendants, culturally affiliated Indian tribes, and Native Hawaiian Organizations.

**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)].

**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)].

**Tribal Land:**

All lands which are within the exterior boundaries of any Indian reservation including, but not limited to, allotments held in trust or subject to a restriction on alienation by the United States;

or comprise dependent Indian communities as recognized pursuant to 18 U.S.C. 1151; or are administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act of 1920 and section 4 of the Hawaiian Statehood Admission Act (Pub.L. 86-3; 73 Stat. 6). Actions authorized or required under these regulations [43 CFR 10] will not apply to tribal lands to the extent that any action would result in a taking of property without compensation within the meaning of the Fifth Amendment of the United States Constitution. [43 CFR 10.2 (f)(2)]

**Unassociated 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, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe. [25 USC 3001 (3)(B)] 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. [43 CFR 10.2 (d)(2)(ii)]

**PROCEDURES:**

This section details the William S. Webb Museum of Anthropology of the University of Kentucky’s procedures, with respect to its legal and ethical responsibilities under NAGPRA to Native American and Native Hawaiian human remains and Cultural Items held in its collections.

**A. UPDATING NAGPRA INVENTORIES AND SUMMARIES:**

Since the original passing of NAGPRA, many human remains and Cultural Items at the Webb Museum have been identified/become eligible for NAGPRA under regulation amendments. Due to these policy changes, the Museum is currently re-examining and re-inventorying all human remains and Cultural Items that fall within the scope of NAGPRA. In instances where there is a discrepancy between the Museum’s original NAGPRA inventories/summaries and the new ones, an amended inventory/summary will be submitted to the National NAGPRA Office, which will publish it in the Federal Register. Repatriation may not occur until at least 30 days after the amended notice has been published pursuant to regulation [43 CFR 10.13 (e)(2)].

**B. FILING A CLAIM:**

The Webb Museum is committed to a proactive approach in repatriating all NAGPRA-eligible human remains and Cultural Items. Given the vast holdings of the museum, however, we urge all claimants with federal standing under regulation [43 CFR 10.2 (b)] to review the published inventories available at: <https://www.nps.gov/subjects/nagpra/inventories-database.htm> and summaries available at: <https://grantsdev.cr.nps.gov/Nagpra/Summaries/default.cfm>, and to reach out to the Webb Museum’s NAGPRA Coordinator for all human remains and Cultural Items they may have a rightful claim to. A form to start the process of making a request for information or for making a claim can be found on the Webb Museum’s website.

Please follow the directions at the top of the form for the appropriate submission process. After receiving the form, the Webb Museum's NAGPRA Advisory Committee will determine the validity of the claim; with the Advisory Committee's approval the NAGPRA Coordinator will begin consultation arrangements. If a claim is found to contain insufficient evidence, then the NAGPRA Coordinator will return the claim to the appropriate individual with a request for additional information.

C. CONSULTATION:

Consultation will begin no later than the time at which investigation into the cultural affiliation of human remains and associated funerary objects is being conducted as required by regulation [43 CFR 10.9 (b)(2)]. The Webb Museum will initiate consultation with any potential lineal descendants and any tribal officials from whose tribal lands the human remains and Cultural Items may have originated, that are likely to be culturally affiliated with the human remains and Cultural Items or from whose aboriginal tribal lands the human remains and Cultural Items originated, pursuant to [43 CFR 10.9 (b)(1)]. A list of all parties who have been invited to consult on any particular case or who have filed a claim to any human remains or Cultural Items or collection(s) will be shared with all other invited parties. During consultation, the Webb Museum will provide access to all records (including those of acquisition and accession), catalogues, relevant studies or other pertinent data for the purpose of determining the geographic origin or cultural affiliation of the human remains and Cultural Items at hand. In making final determinations on cultural affiliation, the NAGPRA Advisory Committee will take into consideration all information that the museum has provided as well as any evidence (including oral histories) that the consulting tribal members feel is pertinent to the decision process with the understanding that some information is too sensitive to be shared or included in final reports.

D. DETERMINATIONS OF CULTURAL AFFILIATION

1) Criteria for Determining Cultural Affiliation [43 CFR 10.14 (c)]:

A relationship of shared group identity which may be reasonably traced historically or prehistorically between a present-day Indian tribe or Native Hawaiian Organization and an identifiable earlier group. **All** of the following requirements **must** be met to determine cultural affiliation between a present-day Indian tribe or Native Hawaiian Organization and the human remains or Cultural Items of an earlier group:

- i. Existence of an identifiable present-day Indian tribe or Native Hawaiian Organization with federal recognition under NAGPRA legislation.
- ii. Evidence of the existence of an identifiable earlier group which may be supported by (but is not limited to) establishing the identity and characteristics of the earlier group, documenting distinct patterns of material culture manufacture and distribution methods of the earlier group, or establishing the existence of the earlier group as a biologically distinct population.

- iii. Evidence of the existence of a shared group identity that can be reasonably traced between the present-day Indian tribe or Native Hawaiian Organization and the earlier group.
  - 2) Tribal authorities will be permitted reasonable access to examine items listed in the Webb Museum's inventories as culturally unidentifiable. They shall also be given the opportunity to present their views to the NAGPRA Advisory Committee who will consider the perspectives of the tribal authorities in determinations of cultural affiliation.
  - 3) A determination of cultural affiliation will be based upon an overall evaluation of the totality of the circumstances and evidence pertaining to the connection between the claimant and the material being claimed and will not be precluded solely because of some gaps in the record [43 CFR 10.14 (d)]. Determinations of lineal descent and cultural affiliation will be established according to a preponderance of evidence; claimants do not have to establish cultural affiliation with scientific certainty [43 CFR 10.14 (f)].

#### E. COMPETING CLAIMS

If the Webb Museum receives competing/concurrent claims or requests for repatriation or disposition the NAGPRA Advisory Committee will review all claims. If multiple claims are found to be valid then the Webb Museum will ask for additional evidence in support of each claim. If there is still no clear resolution then the Webb Museum will work with each of the claimants to try to arrive at a mutually agreeable decision and if no such decision can be achieved then the NAGPRA Advisory Committee will forward the dispute to the National NAGPRA Review Committee to facilitate the decision process [43 CFR 10.17].

#### F. NOTIFICATION

If the updated inventory/summary and ensuing consultation results in the likely identification of cultural affiliation then an amended notice of inventory completion will be sent to the appropriate tribal official or Native Hawaiian Organization and the manager of the National NAGPRA Program, who will review and publish it in the Federal Register as stated in regulation [43 CFR 10.9 (e)].

#### G. REPATRIATION

Requests for repatriation of culturally affiliated human remains and associated funerary objects will take place within 90 days of a receipt of a written request, provided that the repatriation may not occur until at least 30 days after the notice of inventory completion has been published in the Federal Register [43 CFR 10.10 (b)(2)].

Repatriation of culturally affiliated unassociated funerary objects, sacred objects and objects of cultural patrimony will only proceed 30 days after a notice of intent to repatriate has been published in the Federal Register and no contesting claims have been brought to the Webb Museum's NAGPRA Coordinator during that time period [43 CFR 10.8 (f)].

#### H. CUSTODY

In any situation where a lineal descendent, tribe or Native Hawaiian Organization will not be taking immediate custody of repatriated human remains and Cultural Items, then a legally binding 'Trust-in-Care' curation agreement must be established. This contract will establish the length of time, terms and any special guidelines or arrangements (including tribal visitation privileges and ceremonial/religious activities) needed for the Webb Museum to appropriately curate and care for the human remains and Cultural Items.

#### I. DISPOSITION OF CULTURALLY UNIDENTIFIABLE HUMAN REMAINS

If consultations with tribal representatives do not result in a determination of cultural affiliation for human remains and associated funerary objects, they will be classified as culturally unidentifiable and listed as such in the NAGPRA inventory. The Webb Museum will initiate consultation within 90 days of receiving a request to transfer control of culturally unidentifiable human remains and associated funerary objects or, if no request is received then before any offer to transfer control is made. The Webb Museum will initiate consultation with all tribal officials from whose tribal lands at the time of the removal, the human remains and associated funerary objects were removed from, or from whose aboriginal tribal lands the human remains and associated funerary objects were removed [43 CFR 10.11 (b)]. A list of all parties who have been invited to consult on any particular case or who have filed a claim to any particular human remains, Cultural Items or collection(s) will be shared with all other invited parties. During consultation, the Webb Museum will seek to develop a proposed disposition for culturally unidentifiable human remains and associated funerary objects that is mutually agreeable to the parties specified above. Transfer of control of human remains and associated funerary objects will be offered in the following priority order pursuant to [43 CFR 10.11 (c)]:

- 1.) The Indian tribe or Native Hawaiian Organization from whose tribal land, at the time of excavation or removal, the human remains were removed.
- 2.) The Indian tribe or tribes that are recognized as aboriginal to the area from which the human remains and associated funerary objects were removed. (See definitions above for acceptable proof of aboriginal land occupation).

If neither of the above parties agree to accept control, then the museum will consult with the Secretary of National NAGPRA and the NAGPRA Review Committee for further recommendations on disposition.

#### **ENFORCEMENT:**

Violations of this policy may result in appropriate disciplinary measures in accordance with University By-Laws, General Rules of Conduct for All University Employees, applicable collective bargaining agreements, and other applicable University Policies.

#### **RELATED INFORMATION:**

For any questions regarding NAGPRA, please contact the Webb Museum's NAGPRA Coordinator: Celise Fricker (859) 323-9864 or [celise.fricker@uky.edu](mailto:celise.fricker@uky.edu)



For information and resources on NAGPRA including links to the most current versions of the law and regulations please visit NPS National NAGPRA website: <https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=d4fd4d814eea2f9d17305014927b0d1e&mc=true&n=pt43.1.10&r=PART&ty=HTML>