

# Native American Graves Protection and Repatriation Review Committee

## Interim Dispute and Findings of Fact Procedures

March 2014

**I. Authority.** Pursuant to 25 U.S.C. 3006(c)(4), the Native American Graves Protection and Repatriation Review Committee (Review Committee) is responsible for facilitating the resolution of disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of human remains and other cultural items in holdings or collections, including convening the parties to the dispute if deemed desirable. In addition, pursuant to 25 U.S.C. 3006(c)(3), any affected party may ask that the Review Committee make findings of fact relating to the identity, cultural affiliation, or return of cultural items. (Findings of fact may aid the resolution of questions before a dispute arises.)

### **II. Definitions.**

A. For the purpose of these procedures, the definitions in the Native American Graves Protection and Repatriation Act (NAGPRA) and its implementing regulations apply (see 25 U.S.C. 3001 and 43 CFR 10.2).

B. Interested party. An interested party (43 CFR 10.17 (b)):

1. Is the Federal agency or museum that has disputed human remains or other cultural item(s) in its possession or control; and
2. Is any lineal descendant, Indian tribe, or Native Hawaiian organization that is, or is likely to be, geographically or culturally affiliated with the disputed human remains or other cultural item(s).
3. For purposes of these procedures, affected parties are considered interested parties.

**III. Questions for Consideration.** The following matters are appropriate for consideration by the Review Committee –

- A. Whether items are “cultural items” under 25 U.S.C. 3001 and 43 CFR 10.2;
- B. Determination of the geographical or cultural affiliation of human remains or other cultural items; and
- C. Appropriate disposition of human remains or other cultural items, including circumstances where there are competing claims by two or more claimants. (Joint claims are not matters of dispute.)

### **IV. Procedures.**

**A. Alternative Dispute Resolution.** The Review Committee believes that disputes among interested parties should be resolved through consultation, at the lowest organizational level and

earliest time possible, and it strongly encourages the use of alternative methods of dispute resolution. Interested parties involved in potential disputes may write to the Designated Federal Officer (DFO), [NAGPRA\\_info@nps.gov](mailto:NAGPRA_info@nps.gov), to discuss the possible application of alternative methods of dispute resolution. Requests to consider alternative methods of dispute resolution should include a brief outline of the nature of the dispute, identification of all interested parties, and a brief history of attempts to resolve the dispute. The DFO may contact the other interested parties and provide a list of suggested dispute resolution professionals to facilitate the resolution of disputes. The interested parties may also ask to have a teleconference with the DFO to discuss any possible resolutions prior to a formal request to bring the dispute to the Review Committee. The decision to use an alternative method of dispute resolution will be made by the interested parties themselves.

**B. Asking the Review Committee to facilitate the resolution of a dispute or for findings of fact.** Written requests (electronic submissions preferred) for the Review Committee to facilitate the resolution of a dispute or to make findings of fact should be directed to the DFO, NAGPRA Review Committee, [NAGPRA\\_info@nps.gov](mailto:NAGPRA_info@nps.gov), at least three months prior to the date of the scheduled Review Committee meeting or by the deadline for submission of 25 U.S.C. 3006 (c)(3) & (4) items that is provided in the Federal Register notice of the meeting.

1. The written request (electronic submission preferred) should include the following documentation:
  - a. Identifying information for each individual who will represent the interested party before the Review Committee; provide name, title, organizational affiliation, and contact information (email address and telephone number);
  - b. Statement of the issues that comprise the basis for the request, including a statement of the questions to be resolved by the Review Committee for each of the issues. Examples of issue questions include, but are not limited to, the following: Are the human remains Native American? Are the human remains geographically/culturally affiliated to a tribe or tribes? Do the items meet a NAGPRA cultural item category? Does the museum have a right of possession to the cultural items?
  - c. Outline of the relevant facts;
  - d. Statement of the requesting party's conclusions, as supported by the relevant facts, and a statement of the requesting party's understanding of the position of any other interested or affected party;
  - e. Relevant parts of the shared record made by the parties for each issue. Only information that was disclosed and exchanged in consultation between the parties is to be provided. As the Review Committee supports consultation in the NAGPRA process, it will not accept new information in considering a dispute or request for findings of fact. Relevant documents in the record may include, but are not limited to, the following: field notes, catalogue records, consultation documents, relevant studies, and other pertinent data. As materials submitted to the DFO become public records, sensitive materials not suitable for public disclosure should not be submitted;
  - f. Summary of the consultation record;
  - g. Statement of previous efforts to resolve the dispute, including the results of alternative dispute resolution efforts, if applicable and appropriate; and
  - h. If applicable, notice that the presentation to the Review Committee will begin with a ceremonial activity or that a presenter will be addressing the Review Committee in their Native language. If a presenter will be addressing the Review Committee in their Native

language on behalf of any party, that party should provide a written translation for use by the Review Committee and for the record.

2. The DFO will reply to the requesting party acknowledging receipt of the request for consideration of a dispute or for findings of fact within 14 days. The acknowledgment may include a request for additional, relevant information or clarification of the information provided.

**C. Review Committee chair and DFO consultation.** The DFO will forward the documentation provided under IV.B.1 (above) to the Review Committee chair. The DFO will then consult with the chair to determine the appropriate response to the written request for review of the dispute or request for findings of fact.

1. Following consultation with the chair, if the DFO decides that additional information is needed to determine whether the matter is appropriate for the Review Committee to consider, the DFO will contact the interested or affected parties. The parties will be given fourteen days to supply additional information. 2. Following consultation with the chair, if the DFO determines that Review Committee consideration of the matter is not appropriate, then the DFO will correspond with the parties and explain why the Review Committee will not consider the matter.
3. Following consultation with the chair, if the DFO decides that Review Committee consideration of the matter is appropriate, the DFO will notify the parties of the date and time of the presentation and place the dispute or request for findings of fact on the Review Committee meeting agenda.
4. The DFO will make every effort to:
  - a. Provide relevant documentation described under IV.B.1 (above) to the Review Committee at least 30 days prior to the meeting.
  - b. Post these materials, together with the meeting agenda and the Federal Register notice of the meeting, on the National NAGPRA website 30 days prior to the meeting

**D. DFO contact with other interested parties.** Following consultation with the chair, the DFO will send the following to the other interested or affected parties named in the requesting party's request:

1. A copy of the requesting party's documentation provided under IV.B.1 (above); and
2. A request for additional, relevant information as described under IV.B.1 (above). The other parties will have 30 days from receipt of the DFO's request to provide such information. Those documents will be given to the requesting party and the requesting party will have fourteen days to provide additional materials. The DFO will ensure that all interested parties have previously shared all the materials provided under IV.B.1.e (above) to the DFO.
3. No materials may be submitted by any party directly to the Review Committee.
4. The DFO may ask that a party summarize any materials that the DFO considers to be voluminous.

**E. Consideration of a Dispute or Request for Findings of Fact.** The Review Committee must be fair and impartial in its consideration of disputes, and aim to be transparent in all its activities.

1. The Review Committee will consider only one dispute per meeting day. The Review Committee will consider the facts of the dispute, listen to presentations by representatives of

the interested parties, and question the interested parties' representatives. The Review Committee may make advisory findings as to contested facts, and may make recommendations to the interested parties or to the Secretary of the Interior to facilitate resolution of disputes, consistent with NAGPRA and its implementing regulations (43 CFR 10.17(b)).

2. The Review Committee recognizes that a disputing party may conduct a ceremonial activity. The Review Committee will request that attendees at the Review Committee meeting be respectful of the ceremonial activity and of any objects that may be brought to the meeting.
3. As all the parties have already provided their written documentation to the Review Committee (through the DFO), each of the sides will have no more than 60 minutes to present information relevant to the dispute or request for findings of fact. The scope of the presentation should be limited to the issues and the materials submitted. An additional 30 minutes will be allocated equitably among all the sides that have notified the DFO under IV.B.1.h (above) that they will begin their presentations with a ceremonial activity.
4. Consensus remains the goal for Review Committee decision making. When consensus is not possible, majority and minority reports may be part of any Review Committee findings and recommendations.
5. The Review Committee may decide to:
  - a. Recommend actions to the parties to resolve the dispute or inform the findings of fact;
  - b. Make findings of fact on questions presented;
  - c. Vote, seek consensus, or otherwise provide guidance on the issue questions submitted;
  - d. Take no action, decide to postpone action; or
  - e. Act in any combination of the above on the issue questions submitted.
6. The minutes of the Review Committee meeting will clearly indicate any findings and recommendations of the Review Committee concerning the questions presented, the basis for any findings and recommendations, and any items of note requested by the Review Committee. The DFO will obtain the signature of the chair on the minutes within 90 days of the meeting. The minutes will be posted on the National NAGPRA Program website. Public notice on the website shall constitute publication.
7. The Review Committee's recommendations, guidance and findings are advisory and not binding on any party.
8. While the Review Committee understands that there may be cultural protocols involved in presentations, in accordance with the Federal Advisory Committee Act (FACA) and its implementing regulations, and applicable Federal ethics rules regarding gifts to Federal officials and employees, Review Committee members will not accept gifts from any party.

**F. If the interested parties fail to reach a resolution.** If the interested or affected parties fail to reach a resolution subsequent to the Review Committee's findings and recommendations, any interested or affected party may resubmit the dispute or request for findings of fact to the Review Committee, but only if the interested or affected party has substantial new information to offer for the Review Committee's reconsideration. The procedure for requesting reconsideration is the same as the procedure for the original request.

### **G. Contact.**

1. The interested or affected parties are encouraged to continue discussions after a dispute or request for findings of fact is proposed for Review Committee consideration. Interested or affected parties should inform the DFO of any resolution reached prior to the Review Committee's consideration.
2. Once a dispute or request for findings of fact has been proposed for Review Committee consideration, interested or affected parties or their representatives may not contact Review Committee members directly. Contact concerning the dispute or request for findings of fact shall only be through the DFO or directly to the Review Committee during a Review Committee meeting. If a party attempts to contact a Review Committee member, the Review Committee member will refer them to the DFO. The Review Committee member will then inform the DFO of the attempted contact.
3. Review Committee members may not contact the interested or affected parties directly.

### **H. Representation.**

Parties may authorize an agent (individual or organization) to represent its interests before the Review Committee. The agent is bound by the same rules as the party they represent.

### **V. Conflict of Interest.**

- A. Situations may arise in which individual Review Committee members or the DFO have, or may appear to have, a conflict of interest regarding a dispute or request for findings of fact. In such circumstances, the Review Committee member or the DFO will recuse himself/herself from the Review Committee's consideration of the dispute or the request for finding of fact. Recusal means that the person takes no part in the presentation, discussion, or Review Committee action.
- B. If the DFO must recuse himself/herself, the DFO will delegate his/her responsibilities to another Federal employee who does not have, and does not appear to have, a conflict of interest.

**VI. Public Access to this Document.** This document will be posted on the National NAGPRA Program website.

**Submitted for use pending Review Committee action and concurrence by the DFO:**

/s/ Sherry Hutt, Designated Federal Officer