

THE CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION

POLICY AND PROCEDURE MANUAL

FOR

THE REPATRIATION OF ANCESTRAL HUMAN REMAINS

AND FUNERARY OBJECTS

**May 19, 1993
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INTRODUCTION

On November 16, 1990, President George Bush signed into law P.L. 101-601, the *Native American Graves Protection and Repatriation Act* (NAGPRA).

The NAGPRA requires all Federal agencies, all Museums which receive Federal funding and Universities to conduct summaries and inventories for the purpose of identifying all Native American human remains, associated and unassociated funerary objects, sacred objects and objects of cultural patrimony, for the ultimate purpose of returning such remains and objects to Indian Tribes for repatriation.

The NAGPRA also requires that these summaries and inventories be conducted in consultation with Indian Tribes. The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) have conducted previous repatriation activities. Since the passage of the NAGPRA, the CTUIR have developed an understanding that the NAGPRA has the potential to create a multitude of social, financial, legal and administrative threats to the CTUIR.

The historical fact that the CTUIR have never had a tradition of un-earthing ancestral human remains, and due to the social, legal and political chronicles surrounding the passage of the NAGPRA, have both compelled the CTUIR to develop fundamental policies and procedures to guide the Board of Trustees in the decision-making process regarding the NAGPRA and repatriation activities. In response to the NAGPRA and the potential threats to the CTUIR, the following policies have been adopted by the Board of Trustees for use in the decision-making process for the NAGPRA and all repatriation activities involving the CTUIR.

1. TRIBAL POLICY - AMERICAN INDIAN RELIGIOUS FREEDOM ACT

On August 11, 1978, the Congress of the United States enacted **Public Law 95-41 (92 Stat. 469)**, known as the “**American Indian Religious Freedom Act**”, which provides “on or after August 11, 1978, it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonial and traditional rites.” It is the policy of the CTUIR to support this act.

2. TRIBAL POLICY - ACCESS TO SACRED SITES

The Board of Trustees shall take such actions as it deems necessary to ensure that Tribal members are granted access to sacred sites.

3. TRIBAL POLICY - PROTECTION OF INDIAN GRAVES

Oregon Revised Statutes 97.740 through 97.760 provide for the protection of Indian graves. It is

the policy of the CTUIR to support enforcement of this statute. ORS 97.750 provides:

- (a) If such action is necessary to protect the burial from imminent destruction, and upon prior notification to the State Historic Preservation Office and to the appropriate Indian tribe in the vicinity of the intended action, a professional archaeologist may excavate a Native Indian cairn or grave and remove resource objects and human remains for subsequent re-interment under the supervision of the Indian tribes.
- (b) Except as provided in subsection (1) of this section, any proposed excavation by a professional archaeologist of a Native Indian cairn or grave shall be initiated only after prior written notification to the State Historic Preservation Office and with the prior written consent of the appropriate Indian tribe in the vicinity of the intended action. Failure of a tribe to respond to a request for permission within 30 days of its mailing shall be deemed consent. All resource objects and human remains removed during such an excavation shall, following scientific study, be re-interred at the archaeologist's expense under the supervision of the Indian tribe.
- (c) In order to determine the appropriate Indian tribe under this section and ORS 97.745, a professional archaeologist or other person shall consult with the Commission on Indian Services which shall designate the appropriate tribe.”
- (d) It is the intent of this Policy and Procedure Manual to provide a mechanism for expeditiously determining whether or not written consent for an excavation shall be given pursuant to ORS 97.750(2).

4. PROCEDURES FOR OBTAINING CONSENT

A request for consent to excavate pursuant to ORS 97.750 shall be presented to the Cultural Resources Protection Program (CRPP) of the Department of Natural Resources (DNR) for the CTUIR. The CRPP shall direct and coordinate appropriate representatives, employees and, or professionals under contract of the CTUIR to conduct an investigation of the matter and make a formal written report to the CTUIR's Cultural Resources Commission within 20 days recommending whether or not to grant consent to the excavation, and if consent is granted, what if any conditions should be imposed on the excavation. Such conditions shall include the option of the CTUIR to perform the excavation in full or in part and any other survey or preliminary work in full or in part, under contract with the requesting party.

5. TRIBAL POLICY - NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT

The Native American Graves Protection and Repatriation Act (NAGPRA) provides for the protection of Native American graves and for the return and repatriation of human remains, associated and unassociated funerary objects, sacred objects and objects of cultural patrimony. It is the policy of the CTUIR to support the enforcement, implementation and administration of the

NAGPRA. Specific CTUIR policies regarding the NAGPRA are as follows:

- (a) The Cultural Resources Commission of the CTUIR is vested with the authority to administer the provisions of the NAGPRA. The Cultural Resources Commission shall administer NAGPRA related issues using the NAGPRA and the regulations developed by the National Park Service as the planning instrument for the CTUIR on all NAGPRA related activities. The Cultural Resources Commission shall coordinate all repatriation activities with the Board of Trustees, the Office of General Council and the CRPP for the CTUIR.
- (b) The CRPP shall assist the Cultural Resources Commission in developing administrative strategies regarding Tribal consultation with federal agencies and others, regarding the proper handling and disposition of human remains, associated and unassociated funerary objects, sacred objects and objects of cultural patrimony.
- (c) The Cultural Resources Commission shall in consultation with the Board of Trustees, and the Tribal attorney, initiate administrative and or legal action to enforce the provisions of the NAGPRA.
- (d) The Cultural Resources Commission with the assistance of the CRPP, shall identify Tribal and non-Tribal lands suitable for repatriation activities. Any lands so acquired shall be administered by the DNR.
- (e) The Cultural Resources Commission is authorized and encouraged to negotiate memoranda of agreement with other tribes regarding protocol on repatriation activities. The Cultural Resources Commission is also authorized to negotiate memoranda of agreement with private landowners, local, state and federal agencies regarding the availability and suitability of setting-aside lands suitable for repatriation activities. The final authority to sign any such agreement rests with the Board of Trustees.
- (f) It is a policy of the CTUIR to repatriate and reinter all human remains, associated and unassociated funerary objects which have been identified to have originated from ancestral burial sites within the CTUIR's ceded lands.
- (g) It is a policy of the CTUIR to require all federal agencies, museums, universities and colleges, and or any other entity, public or private, to comply with the provisions of the NAGPRA. All human remains, sacred objects, associated and unassociated funerary objects and objects or cultural patrimony must be documented in a summary or in an inventory in conjunction with the repatriation of any such human remains or objects. The CTUIR will not accept any human remains or objects for repatriation without documentation.
- (h) It is a policy of the CTUIR to solicit full participation of the General Council in all

NAGPRA related issues.

6. STANDARDS AND PROCEDURES FOR THE DISCOVERY AND HANDLING OF ANCESTRAL HUMAN REMAINS

(a) Applicability:

The procedures describe the necessary steps to be followed in the discovery and subsequent handling of ancestral human remains found within the CTUIR's ceded lands or lands within the possessory and usage area of the Cayuse, Walla Walla and Umatilla Tribes. The intent of these procedures is to ensure that such remains are treated with dignity at all times and, when applicable, are accorded appropriate handling as specified by a Tribal representative.

As a guiding principle, the CTUIR recognize and reaffirm the belief that Native American ancestral human remains hold paramount religious significance to many contemporary Sahaptin speaking peoples of the Columbia Plateau. To better protect and enhance our traditional cultural values, the CTUIR establish the following policies:

- (1) All encountered human remains are to be treated as Native American until available evidence indicates otherwise.
- (2) Preference shall be given to the preservation of ancestral human remains “in-situ” if feasible.
- (3) The repatriation of ancestral remains will occur as expeditiously as possible and in the same location whence the remains came, if practical.
- (4) In the event of an inadvertent discovery of ancestral human remains during the course of construction of a project developed by and on behalf of the CTUIR, its governmental departments, tribal corporations and tribal enterprises, projects constructed on CTUIR trust land, and CTUIR members within the boundaries of the Umatilla Indian Reservation; CTUIR Board of Trustees Resolution 04-071 shall apply.

Preservation in situ is not always feasible, therefore alternative protective measures must be implemented and carried out in a manner consistent with the recommendations of the CTUIR. Given the complexity of each potential discovery, ample opportunity must be given to the CTUIR to participate in or oversee any identification or removal procedure immediately thereafter from the time of discovery.

(b) Procedures regarding the Discovery of Human Remains:

- (1) All suspected in-situ human remains and or burials that have been exposed as a

result of adverse impact or disturbance, must be reported immediately to the Cultural Resources Commission, the Board of Trustees, the Umatilla Tribal Police Department, the Oregon State Police and the appropriate Medical Examiners Office by the CRPP. If the discovery occurs on state or federal lands, a detailed letter or report from the agency with administrative jurisdiction over such lands shall be requested.

- (2) In the event that suspected remains are endangered due to adverse impacts or other occurrences, then interim protective measures shall be developed and implemented.
- (3) The Cultural Resources Commission and the Board of Trustees shall be notified by the CRPP regarding opportunities to inspect any burial site and ancestral human remains.
- (4) Coordinated efforts to inspect burial sites and or ancestral human remains, should include members of the Board of Trustees, members of the Cultural Resources Commission, appropriate law enforcement personnel, land managers, archaeologist, and or anthropologist, and CTUIR cultural resources staff. The CRPP shall ensure that all law enforcement agencies with jurisdiction and the appropriate Medical Examiner are informed of any planned inspection of a burial site.
- (5) Burial inspections shall determine if the skeletal remains are human, and if human, if the remains are modern or ancient. Burial inspection procedures shall be limited to non-destructive observational analysis by a qualified physical anthropologist. The inspection procedure will terminate if the remains are determined to be of modern origin, and possibly under the jurisdiction of a law enforcement agency. The inspection team shall also determine evidence of desecration or violations of applicable statutes such as the NAGPRA or the Archeological Resources Protection Act (ARPA). If there is evidence of NAGPRA or ARPA violations, the team shall thoroughly document the violation using the best available investigative techniques.
- (6) If the discovery is determined not to be within the jurisdiction of law enforcement, then the inspection team shall determine, using the best available evidence, if the human remains are Native American or non-Native American in origin. The inspection procedure will terminate if the inspection team determines that the remains are non-Native American. If the inspection team determines that the remains are of Native American origin, the inspection team shall initiate interim measures to secure the site until a formal plan is developed by the Cultural Resources Commission and the CRPP.
- (7) No parts of human remains, including associated (or unassociated) funerary objects or artifacts, shall be handled, removed, collected or photographed without direct supervision and approval of the CRPP or as otherwise authorized in writing by the

Cultural Resources Commission or the Board of Trustees.

- (8) If human remains and or burials are discovered in-situ during the course of any ground disturbing activity, the activity is to be halted until an on-site inspection is completed.
- (9) If planned construction and or ground disturbing activities is such that destruction of the exposed remains is imminent, emergency removal and exhumation procedures shall be developed and implemented immediately.
- (10) If ancestral human remains and or burials are discovered in-situ during the course of an archeological excavation, excavation activities shall cease and the Cultural Resources Commission shall be notified. Once the inspection team has concluded its inspection, and if conditions favor preservation in-situ, the Cultural Resources Commission shall develop a plan for reinterment. If conditions do not favor preservation in-situ, then the remains may be exhumed pursuant to a plan developed by the Cultural Resources Commission.

(c) Procedures for the Analysis of Human Remains:

- (1) Once any human remains are determined to be Native American, in all cases, the CTUIR reserve the right to reburial without scientific study, however when deemed appropriate, the CTUIR will allow human remains to undergo limited non-destructive observational analysis by a qualified physical anthropologist.
- (2) In all cases, the CTUIR reserve the right to the re-burial of associated funerary objects without scientific study.
- (3) In all cases, prior permission for scientific study shall be obtained in writing from the Cultural Resources Commission or the Board of Trustees.
- (4) No methods of study shall be employed that diminishes the integrity of the remains or associated funerary objects.
- (5) A reasonable effort shall be made to retain all organic materials contained in, or on the surface of any human bone or associated funerary object for the purposes of reburial.

(d) Procedures for the Reinterment of Human Remains:

- (1) The CTUIR reserve the right to reburial of any ancestral remains and or funerary objects without prior notification.

- (2) The Cultural Resources Commission in conjunction with the CRPP shall upon notification that ancestral human remains have been discovered, develop the appropriate plan to reinter the human remains.
- (3) The Cultural Resources Commission shall determine if there are any known relatives to the ancestral remains. If there are no known relatives, the Cultural Resources Commission shall promulgate a summary of the discovery, seeking participation of the General Council. The Cultural Resources Commission shall post the summary at the Tribal Office, the Longhouse, and the General Council Office. The summary shall include a brief description of the discovery and also invite members of the Board of Trustees, the General Council and traditional leaders from the community to meet with the Cultural Resources Commission in a worksession. The worksession shall focus on the details of the reinterment. A plan shall be drafted by the CRPP at the conclusion of the worksession.
- (4) Whenever possible, reinterment shall occur at the original location of discovery. All information regarding the existence of known burials, should be safeguarded and not announced publicly.
- (5) The CRPP shall provide the administrative support for Cultural Resources Commission activities.

7. DEFINITIONS

- (1) “Adverse effect” means a reasonable likelihood of more than moderate adverse consequences for cultural resources in any given site or area, the determination of which is based on (1) the context of a proposed action or development; (2) the intensity of a proposed action, including the magnitude and duration of an impact and the likelihood of its occurrence; (3) the relationship between a proposed action and other similar actions which are individually insignificant but which may have a cumulatively significant impacts; and (4) proven mitigation measures which the proponent of an action will implement as part of the proposal to reduce otherwise significant affects to an insignificant level.
- (2) “Ancestral burial site” or “Burial Site” means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which there was intentionally deposited, as part of the death rites or ceremonies of a culture, the remains of a deceased individual or individuals. All Ancestral burial sites shall also be considered sacred sites and be defined as a “Protected site”.
- (3) “Ancestral human remains” or “Human Remains” means the physical remains, articulated or unarticulated bones and bone fragments, artifacts, and the surrounding soil matrix where decomposition has occurred of any deceased human remains that are reasonably believed to be of Native American, or any deceased human individual of historic or prehistoric origin

that is known, or has been identified, through available evidence, as Native American.

- (4) “Board of Trustees” means the Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation or their successors.
- (5) “Ceded area” means that area ceded to the United States by the Umatilla, Cayuse and Walla Walla Tribes in the Treaty of June 9, 1855.
- (6) “Consultation” unless used otherwise in this Manual, means the formal, direct face-to-face contact with the CTUIR by any governmental agency or private entity. Such contact or “consultation” is for the specific purpose of seeking Tribal participation as required by Federal or State Statutes.
- (7) “Cultural Resources Protection Program (CRPP)” means the program and staff of the Department of Natural Resources created to protect, preserve and enhance cultural resources important to the membership of the Confederated Tribes of the Umatilla Indian Reservation.
- (8) “DNR” means the Department of Natural Resources for the Confederated Tribes of the Umatilla Indian Reservation.
- (9) “Cultural Resources Studies” means actions conducted to determine if cultural resources are present in an area that would be affected by a proposed uses or development. Cultural Resources Studies may include but not limited to; archival research, surface surveys, subsurface testing, mitigation/data recovery and ethnographical/ethnohistoric research.
- (10) “Cumulative Effects” means the combined effects of two or more activities. The effects may be related to the number of individual activities, or to the number of repeated activities on the same piece of ground. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.
- (11) “Funerary objects” means any artifact or material -
 - (a) which was intentionally placed with a deceased individual, either at the time of burial or at some subsequent time thereafter, as part of the death rites or ceremonies of a culture, and
 - (b) which has been identified, through available evidence, as having been removed from a burial site.
- (12) “General Council” means the entire membership of the Confederated Tribes of the Umatilla Indian Reservation over the age of 18 years, or as otherwise defined by the Confederated Tribes Constitution and By-Laws.

- (13) “Genetic descendent” means any person or persons known, or reliably assumed to have a relationship to a specified human individual or group of individuals.
- (14) “Ground Disturbing Activity” means any activity that disturbs the surface of the ground, such as construction, digging, logging, farm practices on uncultivated soil, dredging, drilling, filling and mining.
- (15) “Human remains” means the physical remains of any deceased human individual.
- (16) “Indian” means, unless otherwise specified, a member of The Confederated Tribes of the Umatilla Indian Reservation, or any other person of Indian blood who is a member of a federally recognized Indian tribe or any other person on the Reservation who is recognized by the community as an Indian, including a Canadian Indian or an Alaska native.
- (17) “In situ” means any undisturbed intact human remains or portions thereof, including burial sites, in their original depositional setting at the time of burial. In situ shall also mean the undisturbed intact artifacts which form a part of an archaeological site.
- (18) “Lineal Descendant” means any person(s), that can demonstrate lineal and/or familial descentance of a person or human remains, or objects which are subject to the NAGPRA. A lineal descendant may use charts, records, archival materials, documented oral histories, documented ethnographic information, and any other documentation which aids in establishing descentance.
- (19) “Mitigation” means the use of any or all of the following actions: (1) Avoiding the impact altogether; (2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation; (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected cultural resources and or environment; or (4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (20) “Museum collections” means any private, local, state, or federal agency, including institutions of higher education which has control or possession of Tribal cultural resources.
- (21) “Native American” has that same meaning given for “Indian”.
- (22) “Native American Graves Protection and Repatriation Act” or NAGPRA has the same meaning as that within P.L. 101-601 (25 U.S.C. 3001-3013)
- (23) “Objects of Cultural Patrimony” means an object having ongoing historical, traditional, or cultural importance central to the Tribal people who currently comprise the Umatilla, Cayuse and Walla Walla cultures, rather than property owned by an individual Tribal member, and which therefore, cannot be alienated, appropriated, or conveyed by any

individual regardless of whether or not the individual is a member of the Umatilla, Cayuse, Walla Walla or any other tribe and such object shall have been considered inalienable by the Umatilla Cayuse or Walla Walla tribes at the time the object was separated from the Confederated Tribes.

- (24) “Post-depositional disturbance” means any disturbance by natural or man-made processes that alters or degrades the integrity of a known or potential site.
- (25) “Reburial” means the physical replacement of disinterred human remains and or funerary objects into the ground at its original location, or at other specified locations deemed appropriate by the Confederated Tribes.
- (26) “Reinterment” means the ritual aspect of reburial that is conducted under strict cultural rules of practice by a traditional religious practitioner.
- (27) “Repatriation” means the physical return of any cultural item or artifact, including human remains, to its place of origin.
- (28) “Reservation” means all lands within the external boundaries of the Umatilla Indian Reservation of Oregon as defined by the Treaty of June 9, 1855.
- (29) “Sacred Objects” means specific ceremonial objects which are needed by Tribal members for the practice of traditional Indian religions by present day adherents.
- (30) “Undertaking” means any project, activity, program or development or change in land use that can result in changes in the character or use of a cultural resource, if any such cultural resource(s) is located in the area of potential effects. For federal undertakings, the project, activity or program must be under the direct or indirect jurisdiction of a federal agency or licensed or assisted by a federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements (36 CFR 800.2(o)).