

Standard Operating Procedure #8

NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT COMPLIANCE

OVERVIEW

This procedure implements the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA); Public Law 101-601 (25 U.S.C. Sections 3001-3013); *U.S. Army Guidelines for Consultation with Native Americans, Native Alaskans, and Native Hawaiians*; and as amended 43 CFR Part 10, Native American Graves Protection and Repatriation Regulations. NAGPRA mandates that federal land managers must consult with federally recognized Indian tribes regarding planned excavations on federal lands, and establishes procedures that federal agencies must follow in the event of inadvertent discovery of Native American human remains and cultural items. It is important to note that NAGPRA only applies to human remains that can be culturally associated with a modern Native American tribe, and that are not identified as the remains of a historic settler, murder victim, etc. The statute provides a mechanism for determining the disposition for such human remains or cultural items. NAGPRA also forbids the sale of Native American human remains or of cultural items obtained in violations of the statute.

YPG has an active and ongoing consultation relationship with federally recognized Native American tribes who are traditionally affiliated with the lands now occupied by YPG. Draft Comprehensive Agreements (CAs) were prepared for seven of the tribes in 2002 to facilitate consultation with NAGPRA issues; however, the CAs have not been finalized due to concerns expressed by YPG Command personnel and some tribes. As a result, the process for consultation under NAGPRA described within this SOP continues to be conducted on a case-by-case basis.

Yuma Proving Ground provided a Summary Report, as required by NAGPRA, to each of the following tribes on April 23, 1996:

- Ak Chin Indian Community
- Cocopah Indian Tribe
- Colorado River Indian Tribes (CRIT)
- Ft McDowell Yavapai Nation
- Fort Mojave Tribe
- Gila River Indian Community
- Hopi Tribe
- Quechan Tribe of the Fort Yuma Indian Reservation
- Salt River Pima-Maricopa Indian Community
- San Carlos Apache Tribe
- Tohono O'odham Nation
- Yavapai Apache
- Yavapai-Prescott Indian Tribe

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The purpose of consultation is to establish YPG's NAGPRA responsibilities and address installation land management activities that could result in the inadvertent discovery and disinterment of Native American human remains or cultural items, to establish standard consultation procedures, and provide for the determination of custody, treatment, and disposition of cultural items. YPG is addressing NAGPRA-related issues on the installation on a case-by-case basis since no human remains have been found to date. The sections of this SOP describe procedures to be followed in the event of inadvertent discovery of Native American human remains or associated cultural items.

POLICIES

AR 200-1 states that the Garrison Manager must ensure that intentional excavation and response to any inadvertent discovery of NAGPRA-related cultural items are carried out in compliance with all applicable statutory and regulatory requirements of NAGPRA, ARPA, and the NHPA. Compliance with one statutory requirement, therefore, may not satisfy other applicable requirements. All YPG activities will strictly avoid the disturbance of human burials, whether marked or unmarked. In all instances where avoidance is not possible, YPG shall consult, as outlined by NAGPRA, with the Native American tribes that may be culturally affiliated with the remains or items, on a case-by-case basis. Under no circumstances will any YPG activity be allowed to proceed if it will intentionally disturb a known burial site until such time as consultation between YPG and the Native American tribes is completed in accordance with 25 U.S.C. Section 3002(d) Sec. 3. The YPG CJA will vigorously enforce NAGPRA where illegal trafficking in Native American human remains, associated funerary objects, unassociated funerary objects, sacred objects, or objects of cultural patrimony can be proven.

In accordance with 43 CFR Part 10.3 and AR 200-1, the Garrison Manager shall take reasonable steps to determine whether a planned activity may result in the intentional excavation or inadvertent discovery of cultural items from YPG. When it is determined that these cultural items, which are covered under NAGPRA as determined by YPG in consultation with Native American representatives, may be encountered and, prior to issuing approval to proceed with the activity, the Garrison Manager shall carry out the consultation procedures and planning requirements at 43 CFR Parts 10.3, 10.4, and 10.5 as part of the intentional excavation or inadvertent discovery of cultural items, a written Plan of Action must be prepared in accordance with 43 CFR Part 10.5(e).

If there is no Comprehensive Agreement (CA) in effect that sets forth agreed upon procedure for inadvertent discovery, then the installation must comply with 43 CFR Part 10.4(a-d). Such compliance measures include but are not limited to notifications as described below, cessation of the on-going activity for 30 days in the area of discovery, protection of the discovery, consultation with Native American tribes culturally affiliated with the discovery in accordance with 43 CFR Part 10.5 and preparation of a written Plan of Action. The Garrison Manager must ensure that all authorizations to carry out activities on installation lands include a requirement for the holder of the authorization to notify the Cultural Resources Manager immediately upon the inadvertent discovery of cultural items and to protect such discoveries until applicable compliance procedures are satisfied.

For all activities undertaken on lands managed by YPG, the general policy shall be strict avoidance of all human burials, whether marked or unmarked. For all instances where avoidance is not possible, YPG shall consult, as outlined by NAGPRA, with the Native American tribes that may be culturally affiliated with the remains or items, on a case-by-case basis. Under no circumstances will any activity proceed until consultation between YPG, the Native American tribes, and any other interested parties is undertaken.

INTENTIONAL ARCHAEOLOGICAL EXCAVATIONS

In accordance with 43 CFR Part 10.3(b) the intentional excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony from federal or tribal lands (after November 16, 1990) is permitted only if:

- The objects are excavated or removed following the requirements of the ARPA and its implementing regulations
- The objects are excavated after consultation with or, in the case of tribal lands, consent of, the appropriate Native American tribe or Native Hawaiian organization pursuant to Part 10.5
- The disposition of the objects is consistent with their custody as described in Part 10.6
- Proof of the consultation or consent is shown to the federal agency official (i.e. Garrison Manager) or other official (Cultural Resources Manager) responsible for the issuance of the required permit.

As stated previously in accordance with 43 CFR Part 10.3(c), the Garrison Manager must take reasonable steps to determine whether a planned activity may result in the excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony from federal lands. Any Native American tribe likely to be culturally affiliated with the expected or inadvertently discovered human remains or associated cultural items must be notified.

INADVERTENT DISCOVERY NOTIFICATION PROCEDURES

The YPG employee or contractor who inadvertently discovers human remains must notify the responsible federal official (i.e. the Garrison Manager or Cultural Resources Manager, in accordance with 43 CFR Part 10.4[b]). Certification of receipt of notification by the Garrison Manager or his/her designated representative (Cultural Resources Manager) initiates the 30-day waiting period that must be observed unless a pre-existing CA is in force with the federally recognized Native American tribe(s) who have cultural affiliation with YPG as established by the U.S. Indian Claim Commission final report-1978.

If the inadvertent discovery occurred in connection with an on-going activity on YPG, the person providing the initial notice described above must stop the activity in the area of the inadvertent discovery and make a reasonable effort to protect the human remains, funerary objects, or objects of cultural patrimony discovered inadvertently.

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Upon having received notification of the actual or potential disturbance or the discovery of a human burial site, human remains, or burial goods, YPG shall, as soon as possible, but no later than 3 working days after receipt of the notification with respect to federal lands described in 43 CFR Part 10.4(b-d):

Take immediate steps, if necessary, to further secure and protect inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony, including, as appropriate, stabilization or covering.

Report the receipt of such notification by telephone, with written confirmation, to the appropriate Native American tribe contacts, and the proper Arizona state agencies (Arizona State Museum, Arizona Division of Indian Affairs), as deemed necessary by the YPG Cultural Resources Manager. The notification shall include pertinent information as to kinds of human remains, funerary objects, sacred objects, or objects of cultural patrimony discovered inadvertently, their condition, and the circumstances of their inadvertent discovery. If written notification is provided by certified mail, the return receipt constitutes evidence of the receipt of the written notification by the Native American tribes.

Based upon the information received from the person providing initial notification of the burial discovery, YPG shall additionally inform the appropriate Arizona state agencies as to the exact location and state (condition) of the human burial site, human remains, or burial goods of which notification was received, for the purpose of obtaining their assistance (through a records search) in the possible identification of the deceased.

In the event that YPG, or an appropriate state of Arizona agency (Medical Examiner) duly designated representative, has reason to suspect that the burial contains a victim of a recent prosecutable crime or accidental death, the proper military authorities and YPG CJA office will be notified.

INADVERTENT DISINTERMENT PROCEDURES

The human burial site or its exposed contents must be initially examined by the YPG Cultural Resources Manager (or designee [e.g., professional contract archaeologist]) to attempt to determine the lineal descendants (next-of-kin) or to determine race and age of the remains, if possible, using relevant available and solicited information (e.g., plat, maps, records, interviews with tribal members and landowners knowledgeable of the site in question, associated funerary objects). This initial examination must be conducted in consultation with the Native American tribes.

If a presumption as to Native American lineal descendancy (next-of-kin), or a determination of race and age can be ascertained based upon location, historical data and any associated funerary objects, this information must be used to determine disposition of the human burial site, human remains, or burial goods by YPG and the Native American tribes. The human remains and associated burial goods may be further examined within a scope of study developed in consultation with the duly designated Native American tribe

representative. Disposition must be in accordance with NAGPRA and the procedures described herein.

Within a period designated by NAGPRA from the time YPG has provided notification to the Native American tribes of the actual or potential disturbance or the discovery of a human burial site, human remains, or burial goods, the YPG Cultural Resources Manager and the Native American tribe representative(s) shall commence initial examination of any culturally affiliated human remains not associated or suspected of a crime or accidental death, as determined above, which are the subject of the notification, and shall undertake exclusively the following activities:

- If it cannot be determined by means of such initial examination that the human remains are either Native American or non-Native American, the proper measures as stated in NAGPRA will be used to determine cultural affiliation.
- If it is determined by initial examination that the human remains are non-Native American and non-tribal, the remains will be further examined by the YPG Cultural Resources Manager and the YPG law enforcement personnel. Further study and final disposition of these remains will be at the discretion of YPG. The remains will be turned over to the proper legal authorities if it is determined that a recent crime was committed or suspected. Law enforcement and health officials will recover any remains resulting from a recent prosecutable crime or accidental death (i.e., dehydration/heat stroke).

REPATRIATION

In accordance with NAGPRA Section 7:

- If, pursuant to Section 5 (of NAGPRA), the cultural affiliation of Native American human remains and associated funerary objects with a particular Native American tribe is established, then YPG, upon the request of a known lineal descendant of the Native American or of the tribe or organization shall expeditiously return such remains and associated funerary objects.
- If, pursuant to Section 6, the cultural affiliation with a particular Native American tribe is shown with respect to unassociated funerary objects, sacred objects or objects of cultural patrimony, then YPG, upon the request of the Native American tribe shall expeditiously return such objects.

The return of cultural items shall be in consultation with the requesting lineal descendant or tribe or organization to determine the place and manner of delivery of such items.

Where cultural affiliation of Native American human remains and funerary objects has not been established in an inventory, then, upon request, such remains and cultural objects shall be expeditiously returned where the requesting Indian tribe can show cultural affiliation by a preponderance of the evidence based upon *geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral tradition, historical, or other relevant information or expert opinion.*

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Sacred objects and objects of cultural patrimony shall be expeditiously returned when:

- The requesting party is the direct lineal descendant of an individual who owned the sacred object.
- The requesting Native American tribe can show that the object was owned or controlled by the tribe or organization.
- The requesting Native American tribe can show that the sacred object was owned or controlled by a member thereof, if there are no identifiable lineal descendants.

In addition, according to NAGPRA Section 7, the return of culturally affiliated Native American cultural items to the lineal descendant or Native American tribe will be done so expeditiously unless the items are indispensable for completion of a specific scientific study, the outcome of which would be of major benefit to the United States. The cultural items shall be returned no later than 90 days after the completion date of the scientific study. Also, YPG shall share what information it does possess regarding the object in question with the known lineal descendant or Indian tribe to assist in making a claim.

Where there are multiple requests for repatriation of any cultural item and, after complying with the requirements of this Act, YPG cannot clearly determine which requesting party is the most appropriate claimant, YPG may retain such item until the requesting parties agree upon its disposition or the dispute is resolved pursuant to this Act's provisions or a court of competent jurisdiction.

Any person who fails to make a timely claim prior to the repatriation or transfer of human remains, funerary objects, sacred objects, or objects of cultural patrimony is deemed to have irrevocably waived any right to claim such items pursuant to the regulations or the Act. A "timely claim" means the filing of a written claim with YPG prior to the time the particular human remains, funerary objects, sacred objects, or objects of cultural patrimony at issue are duly repatriated or disposed of to a claimant by YPG in accordance with 43 CFR Part 10.

Any person who wishes to contest actions taken by YPG, 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 by facilitating the informal resolution of disputes relating to 43 CFR Part 10. Any recommendation, finding, report, or other action of the Review Committee is advisory only and not binding on any person.

INADVERTENT DISINTERMENT- RECOVERY, RESTORATION, AND REINTERMENT PROCEDURES

When human remains are not associated with a recent crime and are determined to be culturally affiliated with the Native American tribes, the tribal representative, in consultation with the YPG Cultural Resources Manager, shall make a determination as to whether the burial can be adequately and safely restored and protected in situ or whether, in the alternative, the contents of the burial should be disinterred completely and

reinterred in another location. Each restoration and re-interment, as such, shall provide an opportunity for appropriate tribal religious ceremony or ceremonies.

If it is determined, in consultation with the Indian tribe's duly designated representative, that the disturbed burial can be adequately and safely restored and protected in situ, the YPG Cultural Resources Manager shall, as soon as practicable, ensure the burial to be backfilled, stabilized, and protected from further disturbance by the human activities or natural processes that caused the disturbance in the first instance. If feasible, culturally affiliated Native American tribes will be encouraged to participate.

If, on the other hand, it is determined that the in situ restoration of the burial is not feasible, the Native American tribes shall, as soon as practicable and subsequent to the completion of any study conducted on the contents of the burial at the direction of the Cultural Resources Manager and pursuant to any existing CA or the law and its governing regulation, cause the disinterred human remains and any and all burial goods to be interred on Native American lands within the boundaries of the appropriate Native American reservation or lands, as determined by the Native American tribes.

YPG shall reroute construction, to the extent feasible, to leave human remains in place and unharmed. For the purposes of this SOP, a standard avoidance distance of 200 feet around any burial site will be recognized and complied with by YPG.

Where construction rerouting is not feasible, the Cultural Resources Manager, in consultation with the Native American tribes duly designated representative and the Arizona State Museum, shall remove the remains and associated funerary objects to a safe location for study and preparation for reburial and repatriation, employing standard archaeological field study and recording procedures and techniques. YPG may resume construction in the vicinity as soon as the Cultural Resources Manager certifies that the remains and burial goods have been properly and safely removed.

CONSULTATION

YPG will not provide details of any burial disturbance to any public, private, or government media. Upon invitation, YPG will attend Native American tribal meetings for the purposes of discussing NAGPRA-related issues.

Native American tribes and lineal descendants may oppose the display of human remains and cultural items and the publication of information through photographs, informational brochures, or scientific studies. Such concerns may also extend to documentation associated with the human remains and cultural items, as well as excavation records, site maps, and reports.

The manner in which human remains and cultural items are curated and transported for repatriation purposes is an important issue that may require consultation with Native Americans. Consultation is particularly important in repatriation cases to ensure respect of cultural traditions and sensitivities. It is important to note that some Native American tribes did not practice reburial of human remains, which has caused a dilemma concerning how to repatriate human remains. However, some Native American tribes

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have developed policy and procedures for handling repatriation and reburial. The Garrison Manager should request information on these policies and procedures before the need for consultation arises.

Reburial of human remains and other cultural items is often the form of treatment for repatriated items that is preferred by Native American tribes, and often reburial is preferred to occur at or near the location (i.e., usually the archaeological site) where the remains were originally excavated. This is an issue for the Garrison Manager's decision. Allowing reburial of cultural items repatriated under NAGPRA on the installation would generate a requirement to protect the reburial area from damage in perpetuity. Reburial is not specifically required under NAGPRA; however, it is a means of treatment for repatriated remains that many tribes prefer and the Garrison Manager may be faced with such requests upon repatriation.

Chapter 7.0 of this document discusses a Native American Consultation Plan that was completed for YPG in 2001. The Plan should be consulted for additional Native American consultation guidance.

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