

ADMINISTRATIVE PROCEDURE

ADMIN-11

Procedures for Processing NAGPRA Repatriation/~~Disposition~~ Requests/~~Claims~~

Number: ADMIN-11	Name: Procedures for Processing NAGPRA Repatriation/ Disposition Req_uests/ Claims
Purpose: These procedures will provide for the repatriation/ disposition of Native American human remains and specified objects <u>cultural items</u> in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA or the Act). These procedures will be applied whenever Marshall University receives a repatriation claim request or guidance for care of unassociated funerary objects, sacred objects, and objects of cultural patrimony; repatriation request for culturally affiliated Native American human remains <u>and cultural items and associated funerary objects</u> ; and claim or disposition request for culturally unidentifiable human remains and associated funerary objects as the terms are defined by the Act. Refer to the Act (and the regulations (43 CFR Part 10) for definitions, details, and further guidance.	
Approved by: <hr/>	Approval Date: <hr/>

Marshall University will proceed as follows:

I. Policy

- A. It is Marshall University's intent and policy to comply with NAGPRA and all its regulations as well as relevant state laws and regulations regarding Native American human remains and cultural objects.
- B. Marshall University (hereafter Marshall) is a "museum" as defined by NAGPRA.
- C. Marshall's NAGPRA policy is precisely that of NAGPRA and of the regulations for its implementation.
- D. Marshall will not intentionally collect Native American human remains or cultural items specified under NAGPRA without full documentation of compliance with the Act and with relevant state laws.
- E. Native American human remains and cultural items specified under the Act that are included in gifts, donations, or bequests; acquired as federally confiscated property; or obtained in any other legal manner, will be accessioned and held in trust by Marshall, and their ~~disposition repatriation~~ will be determined by procedures and processes specified in NAGPRA, relevant state laws and regulations, and these Procedures. Human remains and cultural objects will be deaccessioned in accordance with these Procedures.
- F. Any items potentially covered by NAGPRA that are acquired by Marshall after the date that this policy revision is accepted will be reported to the appropriate lineal descendants, Indian Tribe(s) and Native Hawaiian organizations.

F.G. Marshall will follow duty of care procedures as defined under NAGPRA to care for, safeguard and preserve any human remains or cultural items in its custody, possession, or control. This includes consulting with lineal descendants, Indian Tribes, or Native Hawaiian organizations on the appropriate storage, treatment, and handling of human remains or cultural items; making a good faith effort for incorporating and accommodating the traditional knowledge of descendants in the storage, treatment, and handling of human remains and cultural items; and obtaining free, prior, and informed consent from lineal descendants, Indian Tribes, or Native Hawaiian organizations prior to any exhibition of, access to, or research on human remains or cultural items.

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II. Guidelines for Requests and Claims

A. In the case of ~~Culturally Affiliated Human Remains and Associated Funerary Cultural items objects~~ under 43 CFR 10.10¹

1. If Marshall hasn't already done so, comply with the Inventory provision of NAGPRA for the claimed culturally affiliated human remains and associated funerary objects:
 - a) Submit an ~~an Culturally Affiliated~~²-Inventory that was developed in consultation with lineal descendants, Indian Tribes, and Native Hawaiian organization to the National NAGPRA Program and consulted Tribes and
 - b) Publish a Notice of Inventory Completion in the *Federal Register*.
2. ~~Determine if the repatriation request is valid. Receive and consider requests for repatriation.~~
 - a) For Native American human remains or associated funerary objects, and
 - b) From one of the following:
 - (1) Lineal descendant, or
 - (2) ~~Culturally affiliated federally recognized~~ Indian Tribe, or
 - (3) ~~Culturally affiliated federally recognized~~ Native Hawaiian organization.
3. ~~Respond to a request for repatriation no later than 90 days after receiving the request. Marshall must inform all parties listed in the notice of inventory completion of the other culturally affiliated Indian Tribes³, in writing, of the repatriation request and state whether the request meets the criteria¹ for repatriation. The other culturally affiliated Indian Tribes will then be given (30) days to respond and/or notify Marshall they need additional time to respond.~~
4. ~~After the deadline has passed~~No more than 90 days after responding to a request for repatriation that meets the criteria, the museum must formally, in writing, transfer control (repatriate) to the lineal descendant(s), ~~culturally affiliated federally recognized~~ Indian Tribe(s), or Native Hawaiian organization(s) that requested repatriation.
5. Physical transfer may proceed as agreed by ~~all of the lineal descendants~~, Indian Tribes, or Hawaiian organizations to which control was transferred.
 - a) If a formal written agreement was not developed during consultation concerning physical transfer, one should be developed.
 - b) The physical transfer should be scheduled for a time that is mutually agreeable to Marshall and the individual(s) authorized by all of the repatriating lineal descendants or Indian Tribes to which the ~~culturally affiliated~~ human remains and associated funerary objects were repatriated.
 - c) If Marshall is aware of the presence of pesticides or other contaminants, that information must be provided to the Indian Tribes if the information was not previously provided.
6. Document the repatriation for the files, which must be maintained in perpetuity as per the Act.

¹For the human remains and associated funerary objects to have been culturally affiliated, Marshall would have made the determination in consultation with Indian Tribes during development of the Inventory. During the cultural affiliation consultations, Tribal representatives likely decided which Tribe(s) would request repatriation, take physical possession, and facilitate reburial.

²43 CFR 10.14-10 paragraph (f) establishes the criteria standard of proof, which must be satisfied for requests for repatriation. Paragraph (i) provides guidance for evaluating competing requests for repatriation, determining cultural affiliation of human remains and associated funerary objects

³The term Indian Tribes, as used herein, includes Native Hawaiian organizations.

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~~6.1. Document the repatriation for the files, which must be maintained in perpetuity as per the Act.~~

~~B. **In the case of requested/claimed Culturally Unidentifiable Human Remains and Associated Funerary Objects under 43 CFR 10.11 (Disposition⁴ of culturally**~~
~~unidentifiable human remains)~~

- ~~1. Marshall MUST:~~
 - ~~a) Within 90 days of receiving a request to transfer control, initiate consultation, or~~
 - ~~b) If no request is received, offer disposition, jointly, to the Indian Tribes whose aboriginal lands include the location from which the human remains were removed, or~~
 - ~~c) If none of the Indian Tribes whose aboriginal lands include the location from which the human remains were removed agree to accept control~~
- ~~2. Marshall MAY:~~
 - ~~a) Transfer control of culturally unidentifiable human remains to other Indian Tribes or Native Hawaiian organizations without aboriginal land claims; or~~
 - ~~b) Upon receiving a recommendation from the Secretary or authorized representative:
 - ~~(1) Transfer control of culturally unidentifiable human remains to an Indian group that is not federally recognized; or~~
 - ~~(2) Reinter culturally unidentifiable human remains according to State or other laws.~~~~
- ~~3. After offering disposition to the aboriginal land Tribes, Marshall will transfer control.~~
- ~~4. If a Notice of Inventory Completion was not previously published, transfer of control will occur no sooner than 30 days after publication.~~
- ~~5. Physical transfer may proceed as agreed by all of the Indian Tribes to which control was transferred:~~
 - ~~a) If a formal written agreement was not developed during consultation concerning physical transfer or included in the disposition offer, a written agreement should be developed.~~
 - ~~b) The physical transfer should be scheduled for a time that is mutually agreeable to Marshall and the individual(s) authorized by all of the Tribes that requested disposition to take physical possession.~~
 - ~~c) If Marshall has not already done so and is aware of the presence of pesticides or other contaminants, that information must be provided to the Tribes.~~
- ~~6. Document the disposition for the files, which must be maintained in perpetuity as per the Act.~~

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⁴The term "disposition" rather than "repatriation" is used for culturally unidentifiable human remains and associated funerary objects.

C.B. In the case of claimed Sacred Objects, Unassociated Funerary Objects, and Objects of Cultural Patrimony (43 CFR 10.10)

1. The repatriation claim must
 - a) Meet the preponderance standard, and
 - b) Be
 - (1) For an item that meets at least one of the definitions in the Act
 - (2) From a lineal descendant (with the exception of cultural patrimony) or federally recognized Indian Tribe, and
 - (3) For an item that is culturally affiliated with the claimant.
2. After verifying that the claim is valid, download a Notice of Intent to Repatriate (NIR) template from the National NAGPRA Program's website.
3. Submit the draft NIR via email to the Program, which will edit it and, after written approval by Marshall, publish it in the *Federal Register*.
4. The published NIR will establish the end of a 30-day waiting period. If no counter-claim results from the publication during the 30-day waiting period, immediately proceed with repatriation by transferring control, in writing, to the claimant.
5. Document the repatriation for the files, which must be maintained in perpetuity as per the Act.
6. Ensure that arrangements for physical transfer have been made.
7. Ensure, to the extent Marshall is aware, that the presence of pesticides or other contaminants has been provided to the claimant.

D.C. Document Retention

1. Documentation of the NAGPRA implementation process must be maintained in perpetuity. Records will include:
 - a) Evidence of consultation such as consultation meeting materials.
 - b) Consultation meeting minutes, summarizations or notes.
 - c) Correspondence.
 - d) Inventories prepared and submitted in compliance with 43 CFR 10.9.
 - e) Inventory preparation notes including a report on the basis for the cultural affiliation/~~culturally unidentifiable~~ determination.
 - f) Summaries prepared and submitted in compliance with 43 CFR 10.8.
 - g) Repatriation claims and requests.
 - h) Repatriation claim/request evaluation notes.
 - i) Published Notices of inventory Completion and Notices of intent and proof of distribution of notice publication announcements.
 - j) Transfer of control documents including deaccession documents.
 - k) Transfer of physical custody receipts.
2. New photographs of NAGPRA-related items, especially human remains, should not be taken without the express consent of the Indian Tribe(s) to which control will be transferred.

NAGPRA Claim & Request Form

1. Is this a claim or request? (Please select one.)

- ☐ Claim
☐ Request

"Claims"

- *Seek the repatriation of unassociated funerary objects, sacred objects, and cultural patrimony under 43 CFR § 10.10 OR.*
- *Seek to establish kin or cultural affiliation to human remains and associated funerary objects under 43 CFR § 10.10 using the criteria established in § 10.14*

"Requests":

- *Seek the repatriation of human remains and associated funerary objects by a lineal descendant or Indian Tribes identified as culturally affiliated by Marshall University in a culturally affiliated inventory and notice of inventory completion OR*

2. On what basis do you have standing to make a claim or request? (Please select one.)

- ☐ Lineal Descendant
☐ Culturally Affiliated Federally Recognized Indian Tribe
☐ Aboriginal Land

"Aboriginal Land" can only be used in requesting the disposition of human remains and associated funerary objects that have been included in Marshall's culturally

3. What is being claimed or requested? (Please select as many as applicable.)

- ☐ Human Remains
☐ Associated Funerary Objects
☐ Unassociated Funerary Objects
☐ Sacred Objects
☐ Cultural Patrimony

4. What type of claim or request is this? (Please select one.)

- ☐ Individual
☐ Joint

"Individual" — submitted by lineal descendant(s) or a single federally recognized Indian tribe or Native Hawaiian organization.

*"Joint" — submitted by multiple federally recognized Indian tribes or Native Hawaiian organizations that are acting co-equally within a claim or request. Tribes involved in a joint claim or request must also complete and append a copy of the **Supplemental Signature Page for Jointly Submitted Claims and Requests.***

5. What specifically are you claiming or requesting?

Your list should include specific reference data. Any combination of the following would be acceptable: Site Names, State/County of Origin, Site ID Numbers, Catalogue Numbers, Accession Numbers, etc. You may attach a document if the space provided is insufficient.

If you are seeking dispositions of human remains and associated funerary objects classified as "culturally unidentified," you can indicate more generally that you are seeking the disposition of "any and all" human remains and associated funerary objects" from states/counties where you have aboriginal land, as the term "aboriginal land" is defined in 43 CFR 10.11, then list those states and counties.

6. Who is making the claim or request?

For claim/request from lineal descendant(s), provide the name(s) and contact information. Also identify one person who will serve as a point-of-contact.

For claim/request from federally recognized Indian Tribe(s)/Native Hawaiian organization(s), provide the name(s) and contact

This form should be signed by the Governing Authority or a duly authorized NAGPRA Designee of the federally recognized Indian tribe(s)/Native Hawaiian organization(s) submitting the claim/request.

Name of Claimant/Requestor

Signature of NAGPRA Designee

Date

Printed Name

You may complete, scan, and submit this form by email as an attachment, or you may print it out and mail it to the address below. Please be sure to send all necessary attachments as applicable. Please also include paperwork from the tribe's Governing Authority that confirms you have the authority to oversee NAGPRA-related issues for the tribe; or indicate that this paperwork is already on file with the University of Michigan and it is still current.

PLEASE NOTE: This form is not required to submit a claim or request. However, all claims or requests must be made in writing, contain specific information, and be signed by the lineal descendant(s) submitting the claim/request, or the Governing Authority or authorized NAGPRA Designee of the federally recognized Indian tribe or Native Hawaiian organization submitting the claim/request.

The University reserves the right to verify all data included as part of a claim or request before accepting it.

Please return this form by email to **houdyschell2@marshall.edu**

or by mail to:

Jendonnae Houdyschell
Associate General Counsel
Old Main 216¹¹_{SEP}
Marshall University
One John Marshall Drive
Huntington, WV 25755

For questions, please contact Jendonnae Houdyschell at 304-696-6704 or houdyschell2@marshall.edu