

MINUTES

**NATIVE AMERICAN GRAVES PROTECTION AND
REPATRIATION REVIEW COMMITTEE**

THIRTY-SEVENTH MEETING

MAY 15-16, 2008

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Background

The Native American Graves Protection and Repatriation Review Committee was established under the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001 et seq., which was signed into law by President George Bush on November 16, 1990.

Pursuant to 25 U.S.C. 3006 (c) and (h), the Review Committee is responsible for –

1. Designating one of the members of the committee as chairman;
2. Monitoring the inventory and identification process conducted under sections 5 and 6 to ensure a fair, objective consideration and assessment of all available relevant information and evidence;
3. Upon the request of any affected party, reviewing and making findings related to-
 - A. The identity or cultural affiliation of cultural items, or
 - B. The return of such items;
4. Facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such items including convening the parties to the dispute if deemed desirable;
5. Compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains;
6. Consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the committee affecting such tribes or organizations;
7. Consulting with the Secretary in the development of regulations to carry out this Act;
8. Performing such other related functions as the Secretary -may assign to the committee;
9. Making recommendations, if appropriate, regarding future care of cultural items which are to be repatriated; and
10. Submitting an annual report to the Congress on the progress made, and any barriers encountered, in implementing this section during the previous year.

The Review Committee is organized and administered according to the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1994).

Review Committee members are appointed by the Secretary of the Interior from nominations by Indian tribes, Native Hawaiian organizations, traditional Native American religious leaders, national museum organizations, and scientific organizations.

The Review Committee reports to the Secretary of the Interior. Under the Review Committee's charter, the Manager, National NAGPRA Program, National Park Service (NPS) or a designee serves as the Designated Federal Officer (DFO), who oversees the activities of the Review Committee and with whom the National Park Service provides administrative and staff support to the Review Committee on behalf of the Secretary of the Interior.

Additional information about the Review Committee – including the Review Committee's charter, membership, meeting protocol, and dispute procedures – is available at the National NAGPRA Website, <http://www.cr.nps.gov/nagpra/> (click on "Review Committee").

Notice of this Review Committee meeting was published in the Federal Register on February 13, 2008 (Vol. 73, No. 30, page 8360-8361).

The 37th Meeting of the Review Committee

The 37th meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Ms. Rosita Worl at 8:43 a.m., Thursday, May 15, 2008.

Review Committee members –

Ms. Rosita Worl – Chair
Ms. Donna Augustine
Mr. Alan Goodman
Mr. Willie Jones
Mr. Colin Kippen
Mr. Dan Monroe
Mr. Vincas Steponaitis

Designated Federal Officer –

Mr. Timothy McKeown, Program Officer, National NAGPRA Program

National Park Service/Department of the Interior staff in attendance –

Ms. Sherry Hutt, Program Manager, National NAGPRA Program, National Park Service
Ms. Sangita Chari, Grants Coordinator, National NAGPRA Program, National Park Service
Ms. Lesa Koscielski, Contractor, National NAGPRA Program, National Park Service
Ms. Carla Mattix, Division of Parks and Wildlife, Office of the Solicitor
Mr. Stephen Simpson, Division of Indian Affairs, Office of the Solicitor

Persons in attendance during part or all of the meeting (names and affiliations as provided by attendees).

Ms. Bridget Ambler, Colorado Historical Society, Denver, CO
Mr. Gordon Ambrosino, Field Museum, Chicago, IL
Mr. Shane Anton, Salt River Pima-Maricopa Indian Community, Scottsdale, AZ
Ms. Marie Archambeault, Texas Military Forces, Austin, TX
Mr. James Barnes, US Army Corps of Engineers, St. Louis, MO
Ms. Danielle Benden, University of Wisconsin, Madison, WI
Ms. Jan Bernstein, Bernstein & Associates, Pioneer Historical Society of Bent County, Denver, CO
Mr. Ernie Boszhardt, Mississippi Valley Archaeology Center, La Crosse, WI
Ms. Lori Breslauer, Field Museum, Chicago, IL
Ms. Susan Bruning, Society for American Archaeology, Southlake, TX
Ms. Christina Carron, Public Museum, Grand Rapids, MI
Ms. Patricia Capone, Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA
Mr. Samuel Cata, New Mexico Historic Preservation Department, Santa Fe, NM
Ms. Glenna Dean, Historic Preservation Division, Department of Cultural Affairs, Santa Fe, NM
Ms. Sandra Dong, Peabody Museum of Archaeology and Ethnology, Cambridge, MA
Ms. Stacey O. Espenlaub, University of Pennsylvania, Museum of Archaeology and Anthropology, Philadelphia, PA
Ms. Cara Fama, National Museum of the American Indian, Suitland, MD
Ms. Kathryn Finau, Pioneer Historical Society of Bent County, Las Animas, CO
Ms. Heidi Fuller, Fort Hood Cultural Resources, Fort Hood, TX
Mr. Anthony Garcia, Hearst Museum of Anthropology, Berkeley, CA
Ms. Angela Garcia-Lewis, Salt River Pima-Maricopa Indian Community, Scottsdale, AZ
Ms. Sheila Goff, Colorado Historical Society, Denver, CO
Ms. Victoria Graves, Osage Tribe, Tulsa, OK
Mr. William Green, Logan Museum of Anthropology, Beloit College, Beloit, WI
Ms. Erin Gredell, Wisconsin Historical Society, Madison, WI
Ms. Samantha Greendeer, Whyte, Hirschboeck, Dudek, SC, Madison, WI
Mr. David Grignon, Tribal Historic Preservation Office, Menominee Tribe, Keshena, WI
Ms. Sandra Harris, Hearst Museum of Anthropology, Berkeley, CA
Mr. Joseph Haynes, Putnam County Commission, Winfield, WV
Ms. Roberta Hayworth, US Army Corps of Engineers, St. Louis District, St. Louis, MO
Mr. Eric Hemenway, Little Traverse Bay Bands of Odawa Indians, Harbor Springs, MI

Mr. R. Eric Hollinger, Smithsonian Institution, National Museum of Natural History, Washington, DC
 Mr. Ernest House, Colorado Commission of Indian Affairs, Denver, CO
 Ms. Kelly Jackson-Golly, Tribal Historic Preservation Office, Lac du Flambeau Band of Lake Superior Indians, Lac du Flambeau, WI
 Mr. Jordan Jacobs, American Museum of Natural History, New York, NY
 Mr. Brian Jaeschke, Mackinac State Historic Parks, Mackinaw City, MI
 Mr. Chris Jenkins, US Forest Service, Winchester, KY
 Mr. Joseph T. Joaquin, Tohono O'odham Nation, Sells, AZ
 Mr. Greg Johnson, University of Colorado, Boulder, CO
 Mr. Terry Knight, Ute Mountain Ute Tribe, Towaoc, CO
 Ms. Jennifer Kolb, Wisconsin Historical Society and Museum, Madison, WI
 Ms. D. Bambi Kraus, National Association of Tribal Historic Preservation Officers, Washington, DC
 Ms. Francis Kraus, Tlingit, Kake, AK
 Ms. Teresa Kreutzer-Hodson, Hastings Museum of Natural and Cultural History, Hastings, NE
 Ms. Cyd Martin, National Park Service, Flagstaff, AZ
 Mr. Bob Mascowski, Council for West Virginia Archaeology, Milton, WV
 Mr. James Mayotte, Bad River Band of Chippewa Indians, Odanah, WI
 Mr. Patrick Mayotte, Bad River Band of Chippewa Indians, Ashland, WI
 Mr. John McCleary, Muskegon County Museum, Muskegon, MI
 Mr. John McGarry, III, Muskegon County Museum, Muskegon, MI
 Ms. Nicolette Meister, Logan Museum of Anthropology, Beloit College, Beloit, IL
 Ms. Marilyn Merdzinski, Public Museum, Grand Rapids, MI
 Mr. Richard Monette, Madison, WI
 Mr. Michael Moore, Tennessee Division of Archaeology, Nashville, TN
 Ms. Nell Murphy, American Museum of Natural History, New York, NY
 Ms. Carmen Narcu, Ak-Chin Community, Maricopa, AZ
 Ms. Angela Neller, Wanapum Heritage Center, Ellensburg, WA
 Ms. Katie Nelson, Kingman Museum, Battle Creek, MI
 Mr. Cecil Pavlat, Sault Ste. Marie Tribe of Chippewa, Sault Ste. Marie, MI
 Mr. Kirk Perry, The Chickasaw Nation, Ada, OK
 Ms. Cheryl Podsiki, Field Museum, Chicago, IL
 Mr. William Quackenbush, Ho-Chunk Nation, Black River Falls, WI
 Ms. Gail Ravnitzky Silberglied, American Association of Museums, Washington, DC
 Ms. Helen Robbins, Field Museum, Chicago, IL
 Ms. Alice M. Sahmie, Tohono O'odham Nation, Sells, AZ
 Ms. Lauren Sieg, Washington, DC
 Mr. Chuck Smythe, National Park Service, Northeast Region, Boston, MA
 Ms. Lisa Stopp, United Keetoowah Band of Cherokee, Tahlequah, OK
 Ms. Sarah Thompson, Lac du Flambeau Tribal Historic Preservation Officer, Lac du Flambeau, WI
 Ms. Fran Wallis, attorney, Tennessee Division of Archaeologist, Nashville, TN
 Mr. Gary Walton, Putnam County Development Authority, Winfield, WV
 Ms. Jennifer White, Spurlock Museum, Urbana, IL
 Mr. Michael Whitecloud, Cheyenne/Arapaho Tribes, Concho, OK
 Mr. Richard Williams, Cheyenne/Arapaho Tribe, Concho, OK
 Mr. Frank Wozniak, USDA Forest Service, Albuquerque, NM
 Mr. Fred York, National Park Service, Pacific West Region, Seattle, WA

Introduction/Welcome

Ms. Worl called the meeting to order and thanked the Indian tribes of Wisconsin for their invitation and warm welcome. Mr. McKeown called the roll of members and confirmed that the Review Committee had quorum for the meeting. Mr. Jones offered an invocation the first day of the meeting. Mr. McKeown introduced the National NAGPRA Program staff members present at the meeting. Ms. Augustine offered an invocation the second day of the meeting.

Ms. Worl thanked the Oneida Nation of Wisconsin for providing morning refreshments. Ms. Worl thanked the sponsors of the evening reception: Lac du Flambeau Band of Lake Superior Chippewa Indians; Oneida Nation of Wisconsin; Ho-Chunk Nation; Michigan Anishinabek Cultural Protection and Repatriation Alliance (MACPRA); Forest County Potawatomi; Lac Vieux Desert Band of Lake Superior Chippewa Indians; Sokaogon Chippewa Community of Wisconsin; Wisconsin Historical Society; Beloit College, Logan Museum of Anthropology; Red Cliff Band of Lake Superior Chippewa Indians; and Menominee Nation of Wisconsin.

Review of Agenda

Ms. Worl gave a brief review of the meeting agenda.

Request for a Recommendation Regarding the Disposition of Culturally Unidentifiable Human Remains in the Possession of Kingman Museum, MI

Presentation of Issue

Ms. Katie Nelson, Kingman Museum, Inc., Battle Creek, MI, stated that the Kingman Museum, Inc., along with the Little Traverse Bay Bands of Odawa Indians, the Saginaw Chippewa Indian Tribe, the Little River Band of Ottawa Indians, and the Grand Traverse Band of Ottawa and Chippewa Indians request a recommendation from the Review Committee for the disposition of human remains in the possession of the Kingman Museum, Inc. In 1918, the human remains of four individuals were recovered from a sand mound near Muskegon, MI. Prior to 1997, the human remains were donated to the Battle Creek Public Schools. In 2006, Battle Creek Public Schools transferred the human remains to the newly formed Kingman Museum, Inc., which were then examined in 2007 by Dr. Janet Gardner and Dr. Robert Anemone, Department of Anthropology, Western Michigan University. Dr. Gardner and Dr. Anemone concluded that the physical characteristics of the human remains and the details of the burial context were indicative of a Native American population, but could not reasonably determine a relationship of shared group identity between the human remains and a present-day Indian tribe. Based on the context, Kingman Museum believes that the human remains were buried during the Early Woodland or Middle Woodland periods, approximately 1000 B.C. to 300 B.C., with a high possibility that the human remains were Anishnaabek due to the fact that the human remains were found in a burial mound with no European trade goods. The Anishnaabek, comprised of the Odawa, Ottawa, Ojibwe, Chippewa, and Potawatomi, have called the area of Muskegon, MI home since long before European encroachment in the early 17th Century.

Mr. Eric Hemenway, research and repatriation assistant for the Little Traverse Bay Bands of Odawa Indians, thanked the Review Committee for hearing the disposition and the National NAGPRA Program for providing guidance and information. Mr. Hemenway stated that both the Odawa, commonly referred to as Ottawa, and Ojibwe, commonly referred to as Chippewa, were part of the Anishnaabek, which is the traditional term used for the aboriginal peoples of the Great Lakes Region. The Little Traverse Bay Bands of Odawa Indians, the Saginaw Chippewa Indian Tribe, the Little River Band of Ottawa Indians, and the Grand Traverse Band of Ottawa and Chippewa Indians, along with the Kingman Museum, respectfully request a recommendation for the disposition of one set of Native American human remains, accession number HSR #10, in the possession of Kingman Museum. The Kingman Museum made the determination these human remains were of Native origin based on notes associated with the human remains and analysis performed by the staff of the Anthropology Department of Western Michigan University in 2007. Anishnaabek oral traditions include the Muskegon area in their aboriginal homeland, and this oral history was supported through archaeological evidence and documented history.

Review Committee Discussion

Mr. Steponaitis asked for clarification of which accession numbers were being requested. Ms. Nelson stated that the request was for HSR #10.

Review Committee Motion

Mr. Monroe made a motion for the disposition of culturally unidentifiable human remains in the possession of Kingman Museum, MI, to the Little Traverse Bay Bands of Odawa Indians, the Grand Traverse Band of Ottawa and

Chippewa Indians, the Saginaw Indian Chippewa Tribe, and the Little River Band of Ottawa Indians. Mr. Kippen seconded the motion. The motion was adopted unanimously.

Request for a Recommendation Regarding the Disposition of Culturally Unidentifiable Human Remains in the Possession of Mackinac State Historic Park, MI

Presentation of Issue

Mr. Brian Jaeschke, registrar for Mackinac State Historic Parks, stated that Mackinac State Historic Parks is a system of parks and museums at the Straits of Mackinac in northern Michigan. The organization is operated by the Mackinac Island State Park Commission and is an agency of the State of Michigan. Mackinac Island State Park Commission requests a recommendation regarding the disposition of culturally unidentifiable human remains in their possession to the Little Traverse Bay Bands of Odawa Indians, the Sault Ste. Marie Tribe of Chippewa Indians, and the Bay Mills Indian Community. Mr. Jaeschke described the collections in the request.

The first three collections were from the Mackinaw City area at the south side of the Straits of Mackinac in the Lower Peninsula of Michigan. One individual was recovered as part of excavations conducted by the Mackinac Island State Park Commission within the Fort Michilimackinac palisade in 1966, in a residential section with no connection to known European burials. The individual was dated to the Early/Late Woodland period of 700 to 900 A.D. and was determined to be Native American by staff archaeologist Lyle Stone. One individual was recovered in 1973 as part of excavations conducted by the Mackinac Island State Park Commission outside the Fort Michilimackinac palisade along the shoreline of Lake Michigan. The burial was recorded as a bundle burial and contained affiliated funeral objects that would not typically be found with a European burial. The human remains were determined to be Native American by archaeologist W. L. Minorly (phonetic). Two individuals were recovered by a private construction company at the Jamet Street School, located a short distance from the shoreline of Lake Huron, and were given to the Mackinac State Historic Parks at an undetermined date. The burials do not correspond with any known European cemeteries.

The last three collections were from locations on Mackinac Island, located in Lake Huron and the Straits of Mackinac. Over 80 percent of Mackinac Island is part of Mackinac Island State Parks. One individual was recovered on park leased land currently occupied by the Island House Hotel, on October 27, 1994 by contract archaeologist Richard Klug (phonetic). The Island House Hotel is located on the shoreline of the island, and the site does not correspond with any known European burials. The individual was identified as a young adult female dating to Precontact and was determined to be Native American by archaeologist Richard Klug. Three adults and two juveniles were recovered in 1981 by contract archaeologist Dr. Roger Grange after being located by a visitor to the island who contacted park staff. Dr. Grange determined that the site was a Precontact Native American rock shelter burial, located along the east shore of the island, and identified the human remains as Native American. The last collection consists of surface finds from private property on the island donated to the park by Ms. Katherine Curran, with very little documentation about the human remains. The island has Post-Contact cemeteries and it is unlikely the human remains were associated with a European burial. In 1996 the park concluded that while the human remains were Native American, a relationship of shared group identity between the human remains and a present-day Indian tribe cannot be reasonably determined.

Mr. Jaeschke stated that in 2007 the Little Traverse Band of Odawa Indians, the Sault Tribe of Chippewa Indians, and the Bay Mills Indian Community requested the disposition of the human remains. These three tribes have historically occupied the Straits of Mackinac region. Mackinac Island was originally aboriginal land, serving as a gathering place, burial ground, and area of great spirituality. The land in Mackinaw City was originally aboriginal land and later became trust land when the military took over. The burial context, near shorelines and not associated with European cemeteries, gives strong evidence that the burials were of Native American origin.

Mr. Eric Hemenway, repatriation and research specialist for the Little Traverse Bay Bands of Odawa Indians, stated that the Little Traverse Bay Bands of Odawa Indians, the Bay Mills Indian Community, the Sault Ste. Marie Tribe of Chippewa Indians, along with the Mackinac State Historic Parks, respectfully request a recommendation from the Review Committee for disposition of Native American human remains currently in the possession of Mackinac State Historic Parks. Mackinac State Historic Parks made a determination that the human remains were Native American

due to fact that they were from an area aboriginally occupied by the Odawa and Ojibwe, the antiquity of the human remains, the manner in which the human remains were discovered, and that no European trade goods were found with the human remains. The shoreline of Lake Michigan is a very well-known area of burials for the Anishnaabek, and these discoveries indicate pre-European contact burials. Anishnaabek oral history includes the Straits of Mackinac or Michilimackinac in their aboriginal homeland, which is supported by the documented history of the first Europeans to the area in the early 1600s. Mr. Hemenway stated that evidence presented adequately shows a preponderance of evidence that these human remains have a high possibility of being Odawa and Ojibwe.

Mr. Cecil Pavlat, NAGPRA Committee for the Sault Ste. Marie Tribe of Chippewa Indians, commended Mr. Hemenway for his research work in preparing the submitted information necessary for a request.

Mr. Pavlat stated this repatriation was very similar to the last time his Indian tribe appeared before the Review Committee in October 2007 in which the Review Committee granted the disposition request for human remains discovered across the straits from Mackinaw City. Mr. Pavlat stated he attended the NAGPRA training the previous day and was impressed with the information that was presented. Mr. Pavlat stated he was concerned by the term culturally unidentifiable and the reality that some institutions may classify human remains as culturally unidentifiable if they are unable to complete adequate research and consultation necessary for affiliation. Mr. Pavlat suggested revising the idea of culturally unidentifiable human remains with additional consultation to try to shed more light on that definition. Ms. Worl apologized for the use of the technical term culturally unidentifiable and explained that regulations were in process to address the issue.

Review Committee Discussion

Mr. Goodman asked about the geographic relationship between the accessions and if a physical anthropologist was involved in any of the work. Mr. Jaeschke stated that the accessions were discovered in a radius of approximately seven miles and the work was done by archaeologists. Mr. Steponaitis stated this request differed from the previous request because there was no evidence provided that the forensic work was done by someone trained in that area and that the materials presented were a bit confusing. Mr. Steponaitis stated his big concern was he was not convinced the human remains were Native American based on his experience as an archaeologist in the eastern U.S., including the state of Michigan. European burials occurred all the time outside of known cemeteries, and the simple fact that these human remains were found outside of known European cemeteries was virtually no evidence one way or the other. Mr. Steponaitis stated in past cases evidence presented of forensic work was pretty persuasive that human remains were Native American and thus covered by NAGPRA, and the material presented in this case did not rise to that standard. Mr. Steponaitis stated he would be comfortable voting in favor of some of the human remains covered in the request but had serious concerns regarding others. Mr. Jaeschke stated Fort Michilimackinac was a very culturally diverse site with the possibility that the human remains were not Native American, but Mackinac State Historic Park felt the evidence was enough to show the human remains were at least probably Native American.

Ms. Augustine stated that many of the human remains in the request were Precontact and therefore Native American. The human remains that cannot be proven to be Native American will remain on shelves and should all be returned to the earth. Mr. Pavlat agreed, stating that it was possible some of the human remains were both French and Native American, in which case it was very appropriate that they be considered Native American and reburied. Mr. Jones agreed stating his spiritual belief that human remains with the possibility of being Native American should be reburied. Mr. Steponaitis stated that while he understood the position of Ms. Augustine and Mr. Jones, he felt bound as a member of the Review Committee to follow the law and based on the materials presented there was no evidence that some of the human remains were Native American. Mr. Steponaitis stated it was important for the Review Committee to take their work seriously and set a standard for the kinds of evidence presented. Mr. Monroe stated that the issue of evidence and probability actually slices both directions, which brings the question of what was the probability that these human remains were not Native American.

Review Committee Motion

Mr. Monroe made a motion to approve disposition of culturally unidentifiable human remains in the possession of Mackinac State Historic Parks to the Little Traverse Bay Bands of Odawa Indians, the Sault Ste. Marie Tribe of Chippewa Indians, and the Bay Mills Indian Community. Ms. Augustine seconded the motion.

Ms. Augustine stated she felt the evidence was sufficient to demonstrate the human remains were Native American and would support the motion. Mr. Kippen stated that the evidence presented in this request, for at least two of the sets of human remains, was not as clear as that presented in the previous request, and thus presents a much closer

case, however he would vote in favor of the request. Mr. Kippen stated that the Review Committee tries to stay within the fence lines of the law, which was not always easy, and he commended the parties for their work on this request. Mr. Goodman stated he felt the preponderance of the evidence suggested that the human remains were Native American and he would be voting in favor of the request. Mr. Goodman stated that although physical anthropological evidence was not necessary in every single case it could be useful in cases with little cultural and archaeological context.

The motion was adopted with six votes in favor of the motion with Mr. Steponaitis abstaining from the vote.

Request for a Recommendation Regarding the Disposition of Culturally Unidentifiable Human Remains in the Possession of Muskegon County Museum, MI

Presentation of Issue

Mr. John McGarry, executive director, Muskegon County Museum, stated that Muskegon County Museum requests a recommendation regarding the disposition of culturally unidentifiable human remains in their possession to the Little Traverse Bay Bands of Odawa Indians, the Grand Traverse Band of Ottawa and Chippewa Indians, the Saginaw Chippewa Indian Tribes, and the Little River Band of Ottawa Indians. This request has the full support of the Board of Trustees of the Muskegon County Museum. The Muskegon County Museum is not a research facility and out of respect for the human remains would never display them and would like to repatriate the human remains. Muskegon County Museum was formed following the 1937 celebration of the 100th anniversary of the first sawmill in the City of Muskegon. The first few years were spent actively collecting material culture to preserve the history of the area. The museum was a volunteer organization for approximately the first 45 years and thus record keeping was nowhere near the professional standards kept today.

For the collections referenced by accession numbers 697, 699, and 766, Mr. McGarry stated that the records were not clear on acquisition and provenance. The director of the museum at that time was Mr. George Quimby. Mr. Quimby was part-time and mostly volunteer in his service to the museum, and he would later go on to become a well-recognized anthropologist. Mr. Quimby, while not taking detailed notes, would have been able to identify the age and other information and did identify the inventories as "Indian skeleton."

For the remainder of the collections in the request, Mr. McGarry stated the human remains all came from mound burials in and around the Muskegon area and many were excavations done by Mr. Quimby and other volunteers active in archaeology, such as Mr. Richard Freye. Records describe either flex burials or bundle burials, and many records have notations of the presence of red ochre. Although the Muskegon County Museum cannot ascertain a specific cultural identity with the Native American human remains, Mr. McGarry stated a strong case can be made from the historic record that the most likely cultural affinity of the human remains would be with the Chippewa and Ottawa Tribes. Mr. McGarry thanked the Review Committee for the opportunity to speak.

Mr. Eric Hemenway, repatriation and research specialist for the Little Traverse Bay Bands of Odawa Indians, stated that as with the information presented in the earlier request from the Kingman Museum, the Anishnaabek have the best documented history in the area. The Little Traverse Bay Bands of Odawa Indians, the Grand Traverse Band of Ottawa and Chippewa Indians, the Saginaw Chippewa Indian Tribes, and the Little River Band of Ottawa Indians respectfully request the disposition of culturally unidentifiable human remains in the possession of the Muskegon County Museum.

Review Committee Discussion

Mr. Kippen asked about the role of Ms. Pearly Broome, who was mentioned in the information provided to the Review Committee. Mr. McGarry stated that she was a consultant who worked on NAGPRA issues with the museum and other institutions. Mr. Steponaitis asked about the pathologist referenced in the information. Mr. McGarry stated in that letter he was referring to Ms. Broome, whom he had mistakenly identified as a pathologist. Mr. Steponaitis stated that with this request, as in earlier cases, he was impressed with the very fine work submitted by Mr. Hemenway, which was an important line of evidence. However NAGPRA requires multiple lines of evidence, and the forensic evidence presented in this case was weak at best. Mr. Steponaitis stated that

sometimes museum records and attributions were made in error, and especially in cases of culturally unidentifiable human remains it was important to make every effort to gather forensic and other kinds of information.

Mr. Goodman asked for clarification of which collections were being requested, whether there was any known relationship between accession numbers 699 and 766, and for an explanation of how some records read “Indian skeleton.” Mr. McGarry stated that the material specifically being requested was located on the document titled “Inventory of Culturally Unidentifiable Human Remains, Muskegon County Museum,” and that he had no information on the relationship, if any, between accession numbers 699 and 766. Mr. McGarry stated that Mr. Quimby, the director of the museum at the time, had the qualifications and capability to identify Native American archaeological material culture and that such determinations of “Indian skeleton” by Mr. Quimby were fairly made.

Ms. Worl stated that she was persuaded by the evidence in this request. Ms. Worl stated she was perplexed and frustrated that sometimes the assertion was made that museum collections were infallible and at other times they are questionable.

Review Committee Motion

Mr. Goodman made a motion to approve disposition of culturally unidentifiable human remains in the possession of Muskegon County Museum to the Little Traverse Bay Bands of Odawa Indians, the Grand Traverse Band of Ottawa and Chippewa Indians, the Saginaw Chippewa Indian Tribe, and the Little River Band of Ottawa Indians. Mr. Monroe seconded the motion. The motion was adopted with six votes in favor of the motion with Mr. Steponaitis abstaining from the vote.

Mr. Jones pointed out for the record that all participating Indian tribes submitted a letter in support of the request. Mr. Monroe stated that Ms. Worl’s frustration was understandable but suggested that they need to consider situations on a case-by-case basis because there was tremendous diversity in records due to the institutional history of museums. Mr. Goodman stated that mistakes were made and therefore it is important to interrogate the origins of the information. Mr. Monroe stated he concurred with Mr. Steponaitis of the importance of doing additional research where the opportunity exists to clarify information. Mr. Steponaitis stated his abstention was due to the fact that he felt he did not have enough information to make a decision, however he believed in all likelihood that most of the human remains in the request were Native and he was comfortable with the resolution. Ms. Mattix stated that the legal requirements of the Review Committee’s recommendation would be carefully considered before the Secretary of Interior issued a recommendation on this request.

Request for a Recommendation Regarding the Disposition of Culturally Unidentifiable Human Remains in the Possession of Hastings Museum, NE

Presentation of Issue

Ms. Teresa Kreutzer-Hodson (appearing telephonically), curator of the Hastings Museum, stated the Hastings Museum was a natural and cultural museum with a fairly large collection of Native American human remains and artifacts. The collections being requested for disposition came from the area of Hart, MI. Accession number 12811 includes human remains of at least four people, collected from a grave near Hart, MI. The records state the human remains were Native American and were collected and purchased by the museum from Carl Strumf in 1934. Accession number 12812 includes human remains for one individual collected from a mound near Hart, MI. Records indicate the remains are Native American and were collected by Mr. Carl Strumf and purchased by the museum in 1934. There were no funerary objects associated with the human remains in either accession number.

Ms. Kreutzer-Hodson stated that the Hastings Museum talked with forensic anthropologists Peer Moore-Jansen of Wichita State University in Wichita, Kansas, and Doug Owsley. Each looked at the human remains and indicated that the cranial features were characteristic of Native American traits and they would attribute the human remains to be Native American. The documented occupation histories indicate the Odawa, Ottawa and Chippewa have been the primary groups in the area of Hart, MI. The Hastings Museum was making a joint request with the Little Traverse Band of Odawa Indians, the Grand Traverse Band of Ottawa and Chippewa Indians, the Little River Band of Odawa

Indians, and the Saginaw Chippewa Indian Tribe for disposition of culturally unidentifiable human remains in the possession of the Hastings Museum jointly to the four tribes.

Mr. Eric Hemenway, repatriation and research specialist for the Little Traverse Bay Bands of Odawa Indians, stated the Little Traverse Bay Bands of Odawa Indians, the Saginaw Chippewa Indian Tribe, the Little River Band of Odawa Indians, the Grand Traverse Band of Ottawa and Chippewa Indians, and the Hastings Museum of Cultural and Natural History respectfully request the Review Committee for a recommendation for disposition of culturally unidentifiable Native American human remains currently in the possession of the Hastings Museum. The request included two sets of human remains totaling five individuals from Hart, MI. Hart, MI, is approximately 50 miles north of Muskegon, an area described in two earlier requests at the meeting. The Hastings Museum determined that the human remains were Native American based on forensic anthropological examination and analysis, the human remains were recovered from a mound burial, and no European trade goods were found with the human remains. In addition, the human remains were collected and sold by the same individual, Mr. Carl Strumpf, in 1934, at a time in which Native American human remains were commonly dug up and sold, but non-Native human remains were not usually treated in such a manner. The oral traditions of the Anishnaabek include Hart, MI, in their aboriginal homelands with a long history of occupation, and the supporting information would be the same as that presented in the earlier requests regarding the Muskegon area.

Review Committee Discussion

Mr. Steponaitis stated that his concern, as with earlier cases, was the level of documentation was not what the Review Committee has come to expect in making these types of determinations. In its request packet, the Hastings Museum did not include a list of the human remains under consideration and asserted that the human remains were physically consistent with American Indian traits but provided no evidence. During the presentation, information was provided on forensic analysis, but that information would have been very valuable to have been included with the request packet up front. Mr. Steponaitis asked for further clarification on the type of forensic study and the nature of the findings. Ms. Kreutzer-Hodson stated both forensic anthropologists did cranial measurements and based on the physical features, dental characteristics, and visual observations determined that the human remains had characteristics consistent with Native American traits. No intrusive research was conducted on the human remains.

Mr. Kippen asked if the collections from both accession numbers were from burial mounds. Ms. Kreutzer-Hodson stated that records indicated accession 12812 was from a burial mound and accession 12811 was from a grave, both from Hart, MI. Ms. Augustine pointed out sections of written documentation that confirmed the information presented by Mr. Hemenway regarding the history and customs of the Anishnaabek. Mr. Jones stated he had also noted that information.

Review Committee Motion

Mr. Goodman made a motion to approve disposition of culturally unidentifiable human remains in the possession of Hastings Museum to the Little Traverse Bay Bands of Odawa Indians, the Grand Traverse Band of Ottawa and Chippewa Indians, the Saginaw Chippewa Indian Tribes, and the Little River Band of Ottawa Indians. Mr. Jones seconded the motion. The motion was adopted unanimously.

Request for a Recommendation Regarding the Disposition of Culturally Unidentifiable Human Remains in the Possession of Daniel Boone National Forest, KY

Presentation of Issue

Mr. Chris Jenkins, tribal liaison and forest archaeologist, Daniel Boone National Forest, thanked the USDA Forest Service, the Review Committee, and the NPS for allowing him to make this presentation, and the tribes involved in this process that has been ongoing for 20 years. Daniel Boone National Forest, located in eastern Kentucky, contains hundreds of miles of cliff lines with hundreds, if not thousands, of Prehistoric rock shelter sites. Unfortunately most of the rock shelters are subject to looting on a regular basis. The collections being requested came from three looted sites believed to be from Daniel Boone National Forest. Daniel Boone National Forest plans to reinter the human remains at the Indian Resting Place Cemetery located on Daniel Boone National Forest.

The first collection of human remains representing one individual was recovered from the Cane Creek locality in Powell County, KY, and was later donated to Daniel Boone National Forest. In addition, a nonhuman femur was recovered and commingled with the human remains. Based on the Prehistoric context of the rock shelters, Daniel Boone National Forest believes the human remains probably predate 1700. The second collection of human remains representing at least six individuals was donated to Daniel Boone National Forest by an anonymous donor who claimed to have acquired them from another individual, which were reportedly dug up by a road construction crew from a rock shelter on Forest Service lands in the 1960s. Additional information from another informant led Daniel Boone National Forest to believe the collection was from site 15McY1066 in McCreary County, KY. One diagnostic artifact was recovered with the remains, a single shell-tempered sherd from the Late Prehistoric period dating probably between 900 and 1700 A.D. Daniel Boone National Forest believed the collection was recovered from a looter's back dirt pile. The third collection of human remains representing one individual was recovered from a looter's back dirt pile at site 15LL86 in Laurel County, KY. Subsequent visits to the site date the site to the Middle Woodland period, 6000 B.C. to 300 A.D.

The human remains from these collections were analyzed by staff of University of Kentucky and Kentucky Archaeological Survey. Based on the context and analysis, Daniel Boone National Forest believed the human remains were Native American but no specific cultural affiliation was known. The skeletal materials currently reside in a cedar chest, with sage and other materials, provided to Daniel Boone National Forest by the Cherokee Nation. Other than physical identification of the human remains, no physical testing was done.

Mr. Jenkins reviewed the consultation history. In 1994, representatives of Daniel Boone National Forest met with the Cherokee, the Choctaw, the Chickasaw, the Creek, the Seminole Tribe, the Shawnee, and the Caddo Tribes in Oklahoma. It was agreed that the tribes preferred the human remains to be reburied at their original locations. However, given that the sites were subject to looting on a continuous basis, it was agreed to rebury the human remains at the Indian Resting Place Cemetery on Daniel Boone National Forest. In 2005, Daniel Boone National Forest initiated additional consultation with the Absentee Shawnee, the Cherokee Nation, the Eastern Band of Cherokee, the Eastern Shawnee, the Shawnee Tribe, and the United Keetoowah Band of Cherokee. In 2006, Daniel Boone National Forest offered consultation to the Delaware Nation, the Absentee Delaware Tribe of Oklahoma, the Miami Tribe of Indiana, the Peoria Tribe of Indians of Oklahoma, and the Chickasaw Nation. The tribe that responded to the request deferred the resolution of the request to the three Shawnee Tribes and the three Cherokee Tribes. A summary of the tribal responses was provided to the Review Committee, along with the reburial stipulations. The United Keetoowah Band of Cherokee will be participating in the reburial ceremony and reburial, with the other tribes requesting notification and the opportunity to attend but deferring the physical reburial to the United Keetoowah Band of Cherokee.

Ms. Lisa Stopp (appearing telephonically) director of language, history and culture and Acting Tribal Historic Preservation Officer, United Keetoowah Band of Cherokee, stated the Daniel Boone National Forest has been extremely diligent in working with the tribes and has held several conferences with Keetoowah spiritual leaders. The United Keetoowah Band was extremely happy that Daniel Boone National Forest offered the Indian Resting Place Cemetery for reburial, and the United Keetoowah Band of Cherokee was ready to proceed as soon as possible.

Review Committee Discussion

Mr. Steponaitis thanked Mr. Jenkins and Ms. Stopp for their presentations and stated that this request was a model for the kinds of materials the Review Committee likes to see. Ms. Augustine stated the materials indicate the United Keetoowah Band of Cherokee Indians will have representatives present to witness and direct the burial and other tribes may have representatives present. Ms. Augustine stated reburial was more than putting human remains back in the ground. A lot of times spiritual leaders were present because they have a gift, the ancestors have chosen to speak through them and sometimes deliver a message. Ms. Augustine stated she has that gift and was happy the tribe would be present. Mr. Jones asked if tribal leaders were involved in establishing the Indian Resting Place Cemetery. Mr. Jenkins stated he did not know, because the cemetery was established by his predecessor at Daniel Boone National Forest. Human remains have been repatriated in the cemetery with the Native American groups having their discretion as to ceremony. Mr. Goodman asked for clarification of the burial context of site 15LL86. Mr. Jenkins stated Daniel Boone National Forest discovered the site while doing other activities and determined the site had been looted. They recovered the fragmentary remains from a looter's back dirt pile at that time and additional artifactual objects at a subsequent reevaluation of the site in the 1990s.

Review Committee Motion

Mr. Goodman made a motion for the disposition of culturally unidentifiable human remains in the possession of Daniel Boone National Forest. Mr. Monroe seconded the motion. Mr. Kippen called the question. The motion was adopted unanimously.

Request for a Recommendation Regarding the Disposition of Culturally Unidentifiable Human Remains in the Possession of the State of Tennessee

Presentation of Issue

Mr. Michael Moore, Tennessee state archaeologist and director of the Tennessee Division of Archaeology, stated that the Division of Archaeology was part of the Department of Environment and Conservation, for which Ms. Fran Wallas (appearing telephonically) was an attorney. Mr. Kirk Perry (appearing telephonically) was with Chickasaw Nation. The State of Tennessee Division of Archaeology was requesting a recommendation from the Review Committee to rebury culturally unidentifiable human remains and associated burial objects removed from Fewkes site 40WM1 representing 19 individuals from 18 graves, plus 1 individual from surface contexts. Among the recovered artifacts were shell-tempered pottery jars, bowls, bottles, and pans. The recorded earthworks, stone-box graves, and shell-tempered ceramic vessels provide unequivocal evidence that this site dates to the Mississippian period, roughly 900 to 1500 A.D. The Fewkes site was a Late Prehistoric, Mississippian period mound center located in Brentwood, Williamson County, TN. Extensive archaeological research within the middle Cumberland River Valley identified a virtual abandonment of this area by Native residents around 1450 to 1550 A.D. This drastic population reduction has been studied as supporting evidence for what has been called the Vacant Quarter hypothesis, which notes the general abandonment of Mississippian period mound sites within portions of the Ohio, Mississippi, Tennessee, and Cumberland River drainages around 1450 to 1550 A.D. As a result of the current level of archaeological knowledge and the fact that there were no tribal lands in Tennessee, all Prehistoric cultural skeletal remains and associated burial objects held by the Division of Archaeology were designated as culturally unidentifiable.

The Tennessee Department of Transportation removed the human remains and associated objects that were the subject of this request during a 1998 data recovery excavation for a state-funded road improvement project. Current Tennessee state law, T.C.A. 11-6-10, mandates the reburial of Native American human remains and artifacts within six months to one year of removal. The removed individuals were transferred from the Department of Transportation contractor to the Division of Archaeology in August of 1999 and should have been reburied at that time. An administrative oversight kept these individuals out of the ground and the Division of Archaeology was seeking to correct the oversight. The Tennessee Division of Archaeology proposes to rebury the human remains and associated burial objects removed from the Fewkes site in 1998 as required by T.C.A. 11-6-119. The Chickasaw Nation agreed to lead the reburial of the removed individuals and associated burial objects. The human remains will be reburied on the Fewkes site property, which was now a Brentwood City park, very well protected, in a location selected by the Division of Archaeology and approved by the City of Brentwood. The Chickasaw Nation performed previous reburials of Mississippian period human remains and objects from the Nashville area, including the Brentwood library site and Kelly's Battery site. This proposal was not a repatriation to the Chickasaw Nation, as they were not accepting control or possession of the human remains and objects. Responses from other federally recognized tribes contacted for their opinion were contained in the information packet, including the Chickasaw Nation, the United Keetoowah Band of Cherokee, and the Muscogee (Creek) Nation. In the letter from the Muscogee (Creek) Nation, a request was made for this collection and those from another site in Tennessee, also removed under the state burial law, which were currently under analysis. Mr. Moore stated that although no response had been made, the Muscogee (Creek) Nation's claim that the human remains from the Fewkes site were Yuchi would be rejected because Yuchi was a eastern Tennessee cultural manifestation, and there were no known Yuchi occupations in the middle Cumberland River Valley. Ms. Wallas and Mr. Perry stated that Mr. Moore accurately presented the information and they had nothing to add.

Review Committee Discussion

Mr. Kippen stated that the letter from the Muscogee (Creek) Nation did not appear to support the position of the State of Tennessee and asked whether additional consultation was planned. Mr. Moore stated that the Muscogee (Creek) Nation was consulted initially and he spoke with Ms. Joyce Bear, Tribal Historic Preservation Officer for the

Muscogee (Creek) Nation, a number of times to discuss any questions about the agreement. Mr. Moore stated the urgency of the letter appeared to be because the Muscogee (Creek) Nation felt the human remains and objects were being repatriated to the Chickasaw Nation, however, the Chickasaw Nation was going to lead the reburial and not repatriate the items. Mr. Perry stated that the Chickasaw Nation and members of the Five Civilized Tribes in Oklahoma, including the Muscogee (Creek) Nation, consult a lot and have discussed this agreement. The tribes have a protocol whereby if one of the tribes wants to take the lead, usually the other tribes agree. If that were the situation in this case, the Chickasaw Nation would not have a problem.

Ms. Augustine read part of the letter from the Muscogee (Creek) Nation that states the State of Tennessee has failed to properly review the evidence regarding 11,000 human remains in their custody from the Mouse Creek, Dallas, and prior related cultures whose descendants were enrolled members of the Muscogee (Creek) Nation and labeled them as unidentifiable without proper review and consultation. Mr. Moore stated that the 11,000 human remains were not all held by the Division of Archaeology, which has approximately 500 human remains in its NAGPRA inventory. That number would include collections at the Tennessee Valley Authority, University of Tennessee, and other groups. Ms. Augustine stated she went to Tennessee to help protect a burial site at a Wal-Mart building site, the State of Tennessee has no federally recognized tribes and the tribal groups that came could do nothing. Mr. Moore stated that the Chickasaw Nation led the reburial of the human remains removed from the Wal-Mart site. Mr. Steponaitis thanked the parties for appearing and commended the complete packet that was submitted.

Mr. Kippen stated he was concerned that an essential party to this conversation was being left out and it appeared that there was some work remaining to be done. Mr. Kippen stated he was not comfortable with this situation where there was such an emphatic and clear statement from the Muscogee (Creek) Nation indicating their disagreement, and the answer outlined in the process was continued consultation. Mr. Steponaitis agreed with Mr. Kippen's statement, and stated as an observation that Ms. Bear was the person to generally consult with for the Muscogee (Creek) Nation and the letter comes from another person in the Muscogee (Creek) Nation. Mr. McKeown stated that Ms. Bear was scheduled to appear telephonically but did not, and so the situation was unclear. Mr. Steponaitis stated that it appears the Division of Archaeology has gone down a very reasonable path in this process, but he felt it may be a bad idea to proceed with the reburial of the human remains until the issues raised in the letter were addressed. Ms. Worl asked about the possibility of a conditional recommendation. Mr. McKeown stated that the Review Committee has had contingent recommendations in the past. Mr. Simpson stated that the Muscogee (Creek) Nation letter was submitted by their Second Chief, essentially their equivalent of the United States Vice-President, and added that consultation would be absolutely appropriate, either as a condition of the recommendation or as a reason to defer recommendation. Ms. Augustine stated that as a traditional spiritual leader she has done ceremonies and reburials for over 30 years, and sometimes people have to put aside their personal differences for the greater good.

Review Committee Motion

Mr. Monroe made a motion to defer disposition pending a more extended and direct consultation with the Muscogee (Creek) Nation. Mr. Kippen seconded the motion. The motion passed by unanimous vote.

Request for a Recommendation Regarding the Disposition of Culturally Unidentifiable Human Remains in the Possession of Pioneer Historical Society, CO

Presentation of Issue

Ms. Jan Bernstein, Bernstein and Associates, stated she was a NAGPRA consultant representing the Pioneer Historical Society of Bent County, CO. The Pioneer Historical Society of Bent County requests a recommendation regarding the disposition of a minimum of two individuals identified by catalog numbers O 1298 and O 1299 to the Cheyenne-Arapaho Tribe. Catalog number O 1298 represents one set of human remains, a partial skeleton, with no provenience information. Catalog number O 1299 represents a minimum of one individual, very fragmentary remains, collected by the donor from anthills in Kansas, Illinois, and Colorado, as well as 200 feet of beads collected and strung by the donor. On September 28, 2007, a letter was sent to 56 Indian tribes in compliance with 43 CFR 10.13, the future applicability rule. The letter contained an inventory of the human remains and an invitation to consult about cultural affiliation. The responses to the letter were outlined in the information to the Review Committee, along with the total list of tribes and tribal recipients.

Following the consultations, the Southern Ute Indian Tribe submitted a claim for repatriation of the human remains. Upon receipt of the claim, the Pioneer Historical Society sent a letter to the other 55 Indian tribes announcing the receipt of the claim and asking for support. In response to that letter, the Pioneer Historical Society received 12 letters of support for the claim and one letter from the Cheyenne-Arapaho Tribe with a counterclaim in opposition of the Southern Ute Indian Tribe's claim. A meeting was held on March 20, 2008 with representatives from the Cheyenne-Arapaho Tribe to discuss the two claims, and after discussing the options the Cheyenne-Arapaho Tribe handed Ms. Bernstein a letter dated March 18, 2008 that reasserted the claim. Ms. Bernstein discussed the situation regarding the two claims with the Southern Ute Tribe, who immediately withdrew their claim verbally, followed by a formal letter, in favor of the Cheyenne-Arapaho Tribe's claim.

The Pioneer Historical Society sent a letter to the 55 tribes announcing the withdrawal of the Southern Ute Tribe's claim and the new claim from the Cheyenne-Arapaho Tribe and asking for support for the new claim. To date, 24 tribes have responded with verbal and written support for the Cheyenne-Arapaho Tribe's claim and no tribes were in opposition to the claim. The number was larger than that provided to the Review Committee as the Pioneer Historical Society continues to receive support.

Mr. Richard Williams, Cheyenne-Arapaho Tribe of Oklahoma, stated he was raised with his people in a small community. Oklahoma has individual allotted land, not reservations. Mr. Williams stated he was raised around old people, grandfolds, who taught about right and wrong and inspired him in all he has done. Ceremonies were important and taken seriously, and children were taught respect for cemeteries and graves. Today, Mr. Williams stated out of respect for the old people and their teachings, he would like to see the human remains go home, as they have been held captive long enough. Mr. Williams thanked the Review Committee for listening.

Mr. Michael Whitecloud, Cheyenne-Arapaho Tribe Cultural Heritage Program, asked his Elders and relatives to overlook him. Mr. Whitecloud stated that at home when NAGPRA was discussed the first three words, Native American Graves, implied a spirit, and during discussions with Ms. Bernstein they reached the conclusion that they were there to represent the spirits of those people. Mr. Whitecloud stated he was trying to encourage and give support to the working relationship of the Review Committee members, and also as a tribe applying tribal ways to take care of Native American graves and the process. Mr. Whitecloud thanked the Review Committee.

Ms. Kathryn Finau (appearing telephonically), project coordinator for the Pioneer Historical Society, was available for questions.

Review Committee Discussion

Mr. Steponaitis stated that this was clearly a model of consultation and a model proposal. The one missing piece was that it was hard to see any evidence that either of the human remains was Native American. Mr. Steponaitis stated he certainly has no objection to seeing the human remains reburied, but wondered why the human remains weren't handled under state law. Mr. Steponaitis stated that with catalog number O 1299 the case could be made that some of the human remains were Native people because perhaps the beads were found together and were beads that would be the kind of things that would be found in Native graves. With catalog number O 1298 there was really no evidence that the individual was Native American. Ms. Bernstein stated that the determination was based on the collecting history of the museum and what the donor said. Mr. Steponaitis stated that in his experience many people, both Native and non-Native, were buried in unmarked graves. Mr. Steponaitis stated that he did not want to stand in the way of this request, although he may abstain from the vote, and he commended the parties for their efforts in bringing together the information and coming together before the Review Committee.

Mr. Monroe asked about the collecting history of the museum that led to the conclusion that the human remains were probably Native American. Ms. Finau stated that the records were from the 1960s, with notes that the human remains would be part of, and always have been displayed or stored with, the Native American collection for the museum. Mr. Monroe stated he would applaud the parties for the exemplary way in which consultation was done and for the resolution of the potential dispute between the Cheyenne-Arapaho Tribe and the Southern Ute Tribe. Mr. Monroe stated the difficulty in this case lies in the fact, as pointed out by Mr. Steponaitis, that there really was not any evidence to support one way or the other the determination that these human remains were Native American. So the Review Committee members were in a real conundrum; on the one hand strongly approving the manner in which this request has been handled and on the other hand wondering whether or not the Review Committee can in good conscious act on this under the aegis of NAGPRA.

Mr. Kippen stated he agreed with Mr. Monroe and asked if they could provide any information that would help with the determination that the human remains were Native American, such as collecting practices of the museum, the objects, and collecting preferences of the people. Ms. Bernstein stated the Pioneer Historical Society made their determination based on the fact that the people who donated the human remains were from the area, knew the area, and past practices were to collect Native American human remains and then donate them to the Pioneer Historical Society. The shell and glass beads indicate that these were Native American associated funerary objects based on other burials that had beads with them from the same area. In response to questions, Ms. Finau stated that Mr. Kaufman, who originally collected and donated the items, actually donated a great deal of Native American artifacts to the museum, which was kind of his hobby for lack of a better term. Ms. Finau was not aware of any donations from Mr. Kaufman that were not Native American. The information on the beads was that Mr. Kaufman collected them from anthills in Kansas, Illinois, and Colorado, and then strung them together in a display with no indication of exactly which bead was from which state or whether the beads were collected in association with the human remains. Mr. Monroe asked if any forensic analysis was done. Ms. Bernstein stated that none had been done, although that was not out of the question, and added that the human remains were very fragmentary fitting into a vial approximately two inches long.

Review Committee Recommendation

In order for the parties to proceed with this situation under state or other law, Mr. Steponaitis made a recommendation that the Review Committee find that there was not strong evidence that the human remains and associated funerary objects were Native American. Mr. Steponaitis stated that would formally absolve the parties from having to worry about violating NAGPRA and they would be able to move forward. Mr. Simpson stated that such a finding has been made previously by the Review Committee. The Review Committee members unanimously agreed to the recommendation.

Request for a Recommendation Regarding the Disposition of Culturally Unidentifiable Human Remains in the Possession of Putnam Historical Society, CO

Presentation of Issue

Mr. Joseph Haynes (appearing telephonically), Putnam County Commission, stated the Putnam County Commission was requesting a recommendation on the disposition of culturally unidentifiable human remains in their possession. From 1963 to 1965 at the request of Union Carbide, the West Virginia Geological Society excavated the human remains of approximately 600 individuals from a site in Putnam County, WV. The human remains were eventually acquired by Ohio State University, who completed an inventory in 2001 of the human remains, with no artifacts. The human remains of 664 individuals were identified as Native American dating from 1000 to 1700 A.D. Ohio State University experts concluded that no present-day Indian tribe could reasonably be culturally affiliated with the human remains. In 2001 a grassroots movement started to begin the effort to return these human remains to Putnam County with the hopes of reburying them. All federally recognized Indian tribes who might have had an interest were contacted and asked if they might claim the human remains and the local group pledged assistance. Due to the possibility of disturbing other burials at the original location a decision was made to seek an alternative site for burial. The Putnam County Development Authority, with approval of their Board of Directors, offered a protected location geographically close to the original location. The effort languished for lack of federally recognized Indian tribes stepping forward.

Mr. Haynes stated he was a member of the citizen group and remained interested in the subject. Later as a Putnam County Commissioner, Mr. Haynes stated the idea developed that the Putnam County Commission could act as a conduit to get the project back on track. The Putnam County Commission approached Ohio State University, who transferred control of the human remains to the Putnam County Commission in March 2008. The Putnam County Commission has contacted federally recognized Indian tribes who might be associated with the area and have had a great deal of cooperation from the Indian tribes to date. Mr. Haynes stated that the day following transfer of control he was contacted by Mr. Robert Maslowski from the Council for West Virginia Archaeology, who requested that the Putnam County Commission turn the human remains over to his group for display in a museum in Moundsville, WV. When Mr. Haynes denied the request, Mr. Maslowski stated that the human remains belonged to the State of West Virginia. Mr. Haynes stated that the Putnam County Commission has control over the human remains but does not

feel that anyone owns them because they are people. Mr. Maslowski's request to the West Virginia Division of Culture and History to step in was denied.

Mr. Gary Walton, Putnam County Development Authority, (appearing telephonically) was present to address comments.

Ms. Lisa Stopp (appearing telephonically), United Keetoowah Band of Cherokee, stated that the six Indian tribes involved in the discussions have all been working together and keeping up-to-date through Mr. Haynes on this situation. The United Keetoowah Band of Cherokee would like to see this progress and result in reburial of these human remains with one stipulation of a period of time allowed for a Memorandum of Understanding to be developed and signed between Putnam County and the six Indian tribes. Mr. Haynes stated Putnam County would have no objection to that.

Mr. Robert Maslowski, president of the Council for West Virginia Archaeology and West Virginia Archaeological Society, stated that some of the statements made by Mr. Haynes were not true. Mr. Maslowski stated that these human remains were not previously claimed because the State of West Virginia did not have an appropriate place for them. However, the State of West Virginia recently dedicated a curation facility with a special NAGPRA room where the human remains from Buffalo and other archaeological sites would be placed and cared for by professional curators and would not be displayed. Current archaeological, ethnographic, and historic research indicates that the Buffalo people most likely represent Eastern Siouan or Yuchi populations that moved south or west during the Beaver Wars during the 1660s. No attempt was made by the Putnam County Commission to determine the cultural affiliation of the Buffalo people and contact Indian tribes that may be culturally affiliated. This request was originally made by a group called the American Indian Council of West Virginia, which has federally recognized members but no standing and was created especially for this request in February 2008.

The Council for West Virginia Archaeology and the West Virginia Archaeological Society does not oppose reburial of human remains and grave goods if it can be done according to state and federal law, which both stipulate that human remains and grave goods be turned over to the lineal descendants or culturally affiliated tribes. Mr. Maslowski stated there were several problems with the Putnam County Commission request. According to NAGPRA, Ohio State University did not have control of the Buffalo site human remains, which were accessioned in the West Virginia Curation Facility and were never on loan or returned. There was no attempt made by Ohio State University or the Putnam County Commission to consult with the State of West Virginia about the human remains or their disposition and no real consultation with federally recognized tribes. The customary consultation process in West Virginia, adopted by the West Virginia State Highway Commission and other organizations, was to consult with all 17 federally recognized Iroquois, Cherokee, Delaware, and Shawnee tribes with interest in West Virginia. In the case of the Buffalo people, the eastern Siouan speaking and Yuchi tribes should also be consulted. Mr. Maslowski presented verbal and written evidence supporting the position that West Virginia Fort Ancient sites were Eastern Siouan or Yuchi, with no relationship to Cherokee, Iroquois, or Algonquin populations.

Mr. Joseph Haynes stated in response that the Putnam County Commission contacted the Absentee-Shawnee, the Eastern Band of Cherokee, the Eastern Shawnee, the Shawnee, the Cherokee Nation, United Keetoowah Band, Delaware Nation, Wyandot Nation, Tuscarora Nation, Seneca-Cayuga, and the Moneton Nation, and have had encouragement from everyone with whom they have had contact. The Putnam County Commission would like to bury these people with no ceremony, no marker and no publicity, and let them be simply put back to rest.

Review Committee Discussion

Mr. Steponaitis stated he wanted to start with an observation that he felt everyone involved in this situation wanted to do the right thing. However, this request quickly raised many red flags. A lot of information was provided at the meeting, and he was looking for documentation, with evidence that stakeholders were consulted, that serious research was done, and what the relationships were of these human remains. Mr. Steponaitis stated that in reviewing the material, several things stood out. First, most of the people who would be considered experts in this disposition were not consulted, including several Indian tribes. Second, there was no evidence that the Putnam County Commission consulted any of the scholarly experts on the cultural history of the area. Mr. Steponaitis stated that there was no evidence that Ohio State University had control of the collection, which needs to be verified given the conflicting statement of Mr. Maslowski that the collection was accessioned by the West Virginia State Curation Facility. Mr. Steponaitis stated that NAGPRA was ultimately about process and this request should be remanded

back to whoever actually controls the collection and for that party to go through the process as it was meant to be done.

Ms. Worl stated she was concerned that the inventory was incomplete because in a listing of over 600 human remains there were no associated funerary objects, and she was concerned whether the transfers of the collection were legal. Ms. Worl stated she would like to add those questions of the inventory and the legal transfer to the list outlined by Mr. Steponaitis. Mr. Monroe stated he would like to recognize the fact that everyone was acting in good faith from the heart, and the issue here pertained to the requirements of NAGPRA which dictate certain actions. Mr. Monroe expressed appreciation for the efforts and hoped that there was understanding and appreciation that the recommendations of the Review Committee were aimed at assuring the requirements of NAGPRA were fulfilled which allowed requests to proceed in compliance with the law.

Review Committee Motion

Mr. Kippen made a motion to defer the request for disposition of culturally unidentifiable human remains in the possession of Putnam County, WV, until the issues of control and consultation with the appropriate tribes could be addressed, an attempt was made at full consultation with all Indian tribes that may be involved, additional historical evidence could be developed, and an attempt was made to further develop the record with historical and cultural information. Mr. Monroe seconded the motion. Mr. Goodman added one clarification that two types of historical information should be included, ethnohistoric and the history of the collection. The motion passed by unanimous vote.

Request for a Recommendation Regarding the Prospective Disposition of Culturally Unidentifiable Human Remains in the Possession of State of New Mexico

Presentation of Issue

Mr. Sam Cata, member of Ohkay Owingeh, San Juan Pueblo, stated he and Ms. Dean were presenting this proposal to the Review Committee at the direction of the New Mexico Indian tribes, the State Indian Affairs Department, the Department of Cultural Affairs, and the Historic Preservation Division of New Mexico. Their mission was to provide a process whereby Native communities were afforded the appropriate and respectful option to reburial and protect the spirits of their ancestors. Mr. Cata stated that in 2003, an effort began to host the conference titled "Protecting the Spirit of Our Ancestors," which was an historic gathering of Native American Elders and leaders and cultural rights specialists. The conference allowed Indian tribes to voice comments and frustrations about the reburial process to state agencies, to create a dialogue between the Indian tribes and state agencies on issues of reburial and sacred sites, to disseminate information regarding state and federal statutes and related issues in the reburial process, and finally to begin to gather tribal input for the creation of a state reburial act. The conference involved all Indian tribes with homelands in New Mexico and state agencies. The Indian tribes stated the title of the conference guided them as they do the work needed to protect the spirits of their ancestors.

Ms. Glenna Dean, New Mexico state archaeologist, stated that in 1989 New Mexico passed a statute called the Unmarked Burial Statute that provides legal protection and the appropriate and respectful disposition of unmarked human remains discovered inadvertently and during planned excavations on state and private land. The Unmarked Burial Statute sets a required process for when human remains are found, to be followed by the Historic Preservation Division and the New Mexico Department of Indian Affairs. Following a determination by the police and medical investigator's office that a burial was not a crime scene, the identification and appropriate disposition of the human remains falls to the Historic Preservation Division. The Unmarked Burial Statute requires that the human remains be studied to generate information useful to Indian tribes in determining affiliation. Ms. Dean, as state archaeologist, then sends letters with information regarding each discovery to the Department of Indian Affairs, which then distributes the information to all tribal people with whom they consult. The Department of Indian Affairs then receives letters of recommendation or statements of affiliation back from those tribes, and those letters are forwarded to the Historic Preservation Division for a final determination to be made by the State Historic Preservation Officer. Often Indian tribes will recommend reburial even if they are not affiliated, and the common thread among the recommendations was the desire for reburial as opposed to curation.

In the spring of 2007, a law was passed that specifically directs the Historic Preservation Division and the Department of Indian Affairs to develop regulations to outline the process of reburial of unclaimed human remains, as well as locations for reburial. The reburial grounds were envisioned as unmarked, with no fences, signs, or individual markers on the reinterments, and the location information would be kept in confidential archaeological files, not available to the general public. Ms. Dean stated they were about halfway through writing the regulations. Ms. Dean stated the Review Committee had a list of Indian tribal representatives who have been meeting on the drafting of the regulations. The next step was to take the regulations to public informational meetings for nontribal people for comment, incorporate the comments, and then go to a public hearing for all parties to make the regulations final. The State of New Mexico wants the regulations to mesh with NAGPRA and were requesting a recommendation for prospective disposition by reburial of unmarked, unclaimed human remains.

Review Committee Discussion

Mr. Kippen asked for a description of the federal connection between the State of New Mexico and NAGPRA. Ms. Dean stated that since the State of New Mexico receives federal funds and has control of Native American cultural items then the State would be considered a museum under NAGPRA. Mr. Steponaitis asked if the regulation treats human remains determined to be culturally affiliated differently from human remains determined to be culturally unidentifiable. Ms. Dean stated that Indian tribes sometimes state affiliation with human remains but do not wish to claim the remains and ask that the human remains be reburied rather than be curated. The proposed regulations would make it possible for all parties to agree that the best place for those human remains was in the ground, regardless of affiliation. Mr. Steponaitis stated that this state request differed from prior requests, which were targeted toward human remains that were not affiliated. So in a sense this regulation takes the place of the NAGPRA process not only for culturally unaffiliated human remains but also for human remains that would be considered affiliated and have a process stipulated for their disposition under NAGPRA.

Ms. Augustine stated many Indian tribes have cultural reasons for not doing reburials and stated that she was happy to see this work to help those that cannot be claimed for whatever reason. Mr. Jones stated that his Indian tribe had difficulty dealing with conflicts between federal, state, and county laws when dealing with the desecration of a local burial ground. Mr. Jones asked if there was any problem between NAGPRA and the proposed regulation. Ms. Mattix stated that this request relates only to New Mexico, as each state has different laws. In looking at the proposed regulation, Ms. Mattix stated that the specific request was to allow the State of New Mexico to proceed with disposition of culturally unidentifiable Native American human remains currently subject to the restrictions of 43 CFR 10.9, which would proceed according to the provisions of the New Mexico Reburial Grounds Act of 2007. For determinations of cultural affiliation made under NAGPRA, the Indian tribe would have the opportunity to direct disposition in accordance with the reburial law even with no physical acceptance of custody. The proposed regulations address culturally unidentifiable human remains with a process that would be followed. Mr. Kippen asked about the participants in the proposed regulations, which was a different list than that in NAGPRA. Ms. Mattix stated that the list in the proposed regulations from the State of New Mexico was inclusive of the groups listed in the proposed regulation for nations, bands, tribes, or pueblos in New Mexico, but it did not exclude other groups.

Mr. Goodman thanked the parties for their presentation and work on this issue and hoped the proposed regulations could become a model for other states. Mr. Goodman asked what type of study was envisioned with the requirement in the regulations and how the process would work. Ms. Dean stated that the Unmarked Burial Statute passed in 1989 does not distinguish between Native American and other human remains. The statute requires the protection of law and appropriate and respectful disposition for unmarked human remains in the state of New Mexico. The study includes determination of gender, of pathologies, photo documentation, and two other similar items. Neither the 1989 statute nor the 2007 statute addresses degree of intrusion for studies, which allows for some flexibility.

Review Committee Motion

Mr. Kippen made a motion to defer consideration of this request until receipt of the solicitors' review of how the legislation from the State of New Mexico would interface with NAGPRA. This deferral was to ensure that the Review Committee was able to more fully assist in making this process work. Mr. Jones seconded the motion. The motion passed by unanimous vote.

Ms. Worl thanked the parties for their work and commented that this law may be a great model for NAGPRA. Mr. Steponaitis stated that a record of support from the Indian tribes consulted in this process would be helpful.

Mr. Cata thanked the Review Committee for the opportunity to present the information and assured the Review Committee that the Indian tribes that have directed the progress of this issue would be presenting this issue to the Review Committee at its October 2008 meeting.

Request for a Recommendation Regarding the Prospective Disposition of Culturally Unidentifiable Human Remains in the Possession of Colorado Historical Society

Presentation of Issue

Mr. Terry Knight, spiritual leader and NAGPRA coordinator for the Ute Mountain Ute Tribe, stated he has been involved with the reinterment of unaffiliated unidentified human remains since 1977. The original law passed in Colorado in 1977-1978 was not adequate, as it allowed destructive analysis and was open-ended as to how long the human remains could be kept. Mr. Knight stated he was a traditional spiritual person, raised by Elders. He listened to their concerns about human remains not being properly buried, and he was told he was the one to handle this. The process to address this issue was reached through consultation and agreement between the Ute Mountain Ute Tribe, the Southern Ute Indian Tribe, the Colorado Commission of Indian Affairs, and the Colorado Historical Society. Mr. Knight stated they have fulfilled the request of the Review Committee and hope to be able to move forward with the process.

Ms. Bridget Ambler, curator of material culture at the Colorado Historical Society, read a letter from Ms. Susan Collins, Colorado state archaeologist, thanking the Review Committee for considering this issue and expressing Ms. Collins's commitment to implementing the process. In the early 1980s, the Colorado Historical Society, through the Office of the State Archaeologist, and the Colorado Commission of Indian Affairs came together to manage inadvertent discoveries. By the late 1980s, a written procedure was in place and reinterment ceremonies occurred regularly. The procedure was codified in Colorado state law a few months prior to the passage of NAGPRA, following which the agency realized it was vulnerable in regard to the transfer of culturally unidentifiable Native American human remains and regular reinterments were suspended. Since that time, through great effort and consultation with all affected tribes, a process was developed to address this issue, guided by the Review Committee's draft principles.

Ms. Ambler stated efforts to begin this process began in 1997 when Mr. Knight expressed concern about human remains recovered from inadvertent discoveries that were held indefinitely by the Colorado Historical Society. Since that time, the Ute Mountain Ute Tribe, the Southern Ute Indian Tribe, the Colorado Commission of Indian Affairs, and the Colorado Historical Society worked to develop a process for disposition of inadvertently discovered culturally unidentifiable Native American human remains and associated funerary objects, aided in 2004 with a documentation grant to consult with Indian tribes having ancestral ties in the state. From the start, the process was a tribally led initiative. The group considered the Review Committee's recommendations regarding the disposition of culturally unidentifiable Native American human remains and developed a regional solution for consultation and disposition. The process was developed in consultation with 47 Indian tribes, during which the Indian tribes authorized the two residing state tribes, the Ute Mountain Ute Tribe and the Southern Ute Indian Tribe to take the lead in accomplishing disposition. Ms. Ambler stated that the process was introduced to the Review Committee in November 2006. In a letter dated January 8, 2007, the Review Committee stated that the State of Colorado may proceed with the disposition of culturally unidentifiable Native American cultural items in accordance with the terms of the process upon receipt of formal response from the Jicarilla Apache Tribe, Apache Tribe of Oklahoma, and the Kiowa Indian Tribe of Oklahoma, and subject to the forthcoming conditions imposed by the Secretary. After receiving formal responses from the Indian tribes, the final version of the process was being presented to the Review Committee for consideration. Ms. Ambler thanked the Review Committee for their assistance.

Mr. Ernest House, Jr., Executive Secretary for the Colorado Commission of Indian Affairs, stated he was also representing Lieutenant Governor Barbara O'Brien as Chairman for the Colorado Commission of Indian Affairs. Mr. House, Jr., read a letter from Chairman Clement Frost of the Southern Ute Indian Tribe and Chairman Ernest House, Sr., of the Ute Mountain Ute Tribe. The letter stated that the two Ute tribes of Colorado have a strong interest in seeing that culturally unidentifiable Native American human remains were handled respectfully and in accordance with the wishes of the likely descendants of those individuals. The two Ute tribes collaborated with the Colorado Commission of Indian Affairs and the Colorado Historical Society to develop a NAGPRA grant and create

a repatriation process for culturally unidentifiable Native American human remains inadvertently discovered on state and privately owned lands in Colorado. Colorado's two Ute tribes now ask the Review Committee once again to honor their request to approve the process, since the Review Committee's requirements from the November 2006 meeting have been fulfilled.

Mr. Ernest House, Jr., stated that since the November 2006 Review Committee meeting, the Colorado Historical Society and the Colorado Commission of Indian Affairs have worked side by side to provide further awareness to the public of the proper protocol upon discovering human remains in the state of Colorado. In the protocol, the Colorado Commission of Indian Affairs works to notify tribes of discovery, is part of the decision-making process with the state archaeologist and the Ute tribes of Colorado, and works with the Ute tribes throughout the reburial process. This protocol serves an important role of shaping the state's guidelines in a respectful, yet timely, manner. On behalf of Lieutenant Governor Barbara O'Brien, the Colorado Commission of Indian Affairs, and the State of Colorado, Mr. House, Jr., thanked the Review Committee for their consideration of the protocol process and expressed appreciation for the Review Committee's commitment and dedication.

Ms. Sheila Goff, NAGPRA liaison at the Colorado Historical Society, stated she would like to provide an update on the implementation of the process for consultation, transfer, and reburial of culturally unidentifiable Native American human remains and associated funerary objects originating from inadvertent discoveries on Colorado state and private lands. The formal responses requested by the Review Committee in November 2006 were received, in addition to four letters of support from the Cheyenne River Sioux Tribe, the Pueblo of San Ildefonso, the Pueblo of Tesuque, and the Shoshone-Bannock Tribe. The two Ute tribes, the Colorado Historical Society, and Colorado Commission of Indian Affairs have worked together to define the roles and responsibilities of each for the implementation of the process. In addition, working through the Colorado Commission of Indian Affairs, the groups collaborated with the Colorado Department of Natural Resources to identify state lands where reinterments can take place. Upon approval of the process, consulting tribes will be contacted to verify contact information and communication and consultation preferences, and this verification will be done on an annual basis. With the warmer weather, construction projects will begin and typically inadvertent discoveries occur. The state archaeologist has indicated a large number of gas and oil projects are planned, which could indicate an increased number of inadvertent discoveries. The implementation of this process is very important and the groups are respectfully asking for the authorization to move forward with the implementation of this process.

Review Committee Discussion

Mr. Steponaitis stated that his recollection of the discussions and recommendation at the Denver, CO meeting, which he confirmed through the transcript and minutes, was that the Review Committee recommended that the parties proceed with the proposal contingent upon formal responses from the three Indian tribes. Mr. Steponaitis stated that his recollection of the discussion was that the Review Committee was really seeking not only a formal response but an indication that the tribes were on board with the proposal. From the responses, the Apache Tribe of Oklahoma was on board, the Jicarilla Apache Nation submitted a formal response that they were working on the issue, and the Kiowa Indian Tribe of Oklahoma was clearly opposed to the process. Mr. Steponaitis stated he understood the frustration of the parties with delays in the process but it was important to properly follow the process. Ms. Ambler stated for purposes of clarification that formal responses were requested because each of the three Indian tribes had adjudicated lands in the state of Colorado. Mr. Knight stated that they clearly misunderstood the intent of the Review Committee, but fulfilled the request for formal responses from each of the three Indian tribes. Mr. Knight stated that during consultations each of the three Indian tribes expressed verbal support for the proposal. Mr. Steponaitis felt the Review Committee had the option to vote on this proposal again or to ask the parties to do further work on the issue. Mr. Knight stated that this communication problem highlighted a serious problem with consultation between parties and expressed concern that Mr. Steponaitis was speaking for the entire Review Committee. Mr. Steponaitis stated that he was expressing his personal views for consideration by the other Review Committee members. Mr. Monroe asked when the consultation occurred. Mr. House, Jr., stated the consultation was on February 2, 2008, and that they were surprised when they received the letter from the Kiowa Indian Tribe after discussions at the consultation. Ms. Augustine stated she could feel the frustration of the parties and she felt that the work of the parties fulfilled the Review Committee's request.

Mr. Monroe stated the Review Committee has a responsibility to adhere to the communications that it issues, and cannot ask those trying to respond to directions given by the Review Committee to ascertain hidden intent. Mr. Monroe stated he and Mr. Steponaitis probably look at this issue in a different way. Mr. Monroe stated that he

does not remember from discussions at the time that the Review Committee was requiring concurrence of the three Indian tribes. Mr. Monroe stated that in his opinion setting a requirement that all parties have full concurrence on an issue was too high of a standard. Mr. Jones stated this illustrates the point he has made repeatedly about the importance of consultation. Mr. Jones stated he felt the Review Committee needed to accept the information provided by the parties and make changes within the Review Committee's procedures for communications and consultation.

Ms. Mattix stated that the letter from the Review Committee to the Colorado Historical Society did say the recommendation was based on the receipt of formal responses and also was subject to any forthcoming conditions by the Secretary of Interior. A similar proposal for the State of Iowa was approved by the Secretary of the Interior and the letter from the Secretary to the Office of the State Archaeologist of Iowa included the following stipulation, "any interested party may petition the Secretary of the Interior to recommend an alternative disposition of culturally unidentifiable Native American human remains subject to the terms of the process." Ms. Mattix stated that a similar condition would be placed on this proposed process, which would give two opportunities for any Indian tribe to raise concerns. Ms. Worl stated she respects and honors the sovereign rights of Indian tribes and would not want to do anything to circumvent their rights, but she would be comfortable moving forward with this recommendation with the inclusion of a provision as described by Ms. Mattix.

Review Committee Motion

Mr. Monroe made a motion to approve the prospective disposition of culturally unidentifiable human remains from the State of Colorado with the inclusion of the provision as outlined by Ms. Mattix. Mr. Steponaitis stated it was possible that the parties were actually very close to resolving their differences, and asked if the proposed protocol was the same version as the Review Committee received in 2006. Mr. Steponaitis stated the Review Committee recommended that the protocol have some wiggle room for unusual circumstances. Ms. Ambler stated that the version was the same as in 2006, and in response to the Review Committee's concerns the Colorado State Archaeologist addressed those concerns under Section 2.D.2 of the protocol, and in addition the protocol does express tribal concerns to prohibit destructive testing. Mr. Kippen asked for clarification of provision 1.A. and 1.B. regarding which human remains were affected by this protocol. Ms. Ambler stated that this could be the source of the confusion stated in the letter from the Kiowa Indian Tribe and clarified that the protocol applies to all American Indian human remains inadvertently discovered on state and private lands. Cultural affiliation would be determined later. Ms. Goff stated that this issue was addressed in the response to the Kiowa Indian Tribe's letter.

The motion passed by unanimous vote.

Report on the Implementation of NAGPRA for the First Half of FY2008

Grants

Ms. Worl introduced Ms. Sangita Chari, the new Grants Coordinator for the National NAGPRA Program. Ms. Chari stated she joined the National NAGPRA Program in January 2008, worked with the grant panel for the 2008 grants cycle, and had worked to assess the grant program. Ms. Chari summarized three primary areas of focus. First, Ms. Chari would like to complete a thorough assessment of the program to determine what has and has not worked, where grants were or were not successful, and who was and was not accessing the grants program, and why. Using that information, Ms. Chari plans to develop a targeted outreach strategy for tribes and museums that were not fully accessing NAGPRA grants, to include website updates which would improve accessibility and include NAGPRA grant success stories. Finally, Ms. Chari plans to collaborate with other people funding programs for the same audience to join forces and spread the word about NAGPRA and the grants program. Ms. Chari stated that administratively, she intends to update the application and improve the distribution of information about the grants program.

Mr. Kippen asked about the implementation of Ms. Chari's intended assessment of the grants program. Ms. Chari stated that she would take a lead role in making the assessment happen, but would definitely be working with the Review Committee and the National NAGPRA Program staff. Ms. Hutt stated that Ms. Chari has experience in working with museums and grant programs, and the National NAGPRA Program intended the review to consider the entire grants program since 1994, to develop a comprehensive picture of the results of the grant program as a whole, what it has meant to the museums and tribal communities who have benefited from the grants, and what the grants

program has done to advance the National NAGPRA Program in a general sense. Mr. Kippen recommended that the targeted outreach efforts include a set of data to help understand not only a geographic representation of the grant recipients but also their relative sophistication and capacity, which would be helpful to understand how to serve the tribal communities and museums who are struggling with NAGPRA. Mr. Kippen asked for clarification of Ms. Chari's plan to increase collaboration with other entities. Ms. Chari stated that she plans to speak to those who were funding the same pool of fundable applicants, to consult on similar issues involving improving outreach, increasing the number of grant submissions, and increasing the pool of fundable applicants. In addition, Ms. Chari stated the collaboration could take advantage of the opportunity to combine technology, combine outreach efforts at conferences, and spread information through referrals.

Ms. Worl stated there was a need to assess the grants amount available per applicant, which had remained at \$70,000 since the inception of the program, and also a recommendation that the types of activities funded under repatriation grants should be expanded to include human remains. Ms. Hutt and Ms. Chari stated that human remains were included in repatriation grants. Ms. Worl stated that was a common misunderstanding and should be addressed with better communication. Ms. Worl stated that another area to consider while gathering information for targeted outreach would be the collections, how large, where they were located, and any current efforts. Ms. Hutt explained that Ms. Chari would be taking maternity leave later in the summer and would be conducting an evaluation of the website and other tasks during a work-at-home period.

Ms. Hutt stated that she was aware that one of the Review Committee's recommendations has been to consider an increase in the amount of individual grants, as well as an increase in total grants funding. Ms. Hutt stated that for the 2008 grant cycle, the National NAGPRA Program received a decreased number of museum applications and the total amount of grants funded was less than the total apportioned. Ms. Hutt stated that the grants panel commented on the fact that there were grants they could not recommend for funding where the applicants did not seem to have the capacity to understand NAGPRA, do NAGPRA, or make a meaningful, successful, focused project. The grants panel implored upon the National NAGPRA Program to do a better job of outreach in terms of program-wide training in order to facilitate better understanding of the concept of NAGPRA. The grants panel encouraged the National NAGPRA Program to use the shortfall of grants funding in a training modality to build grants capacity and in turn have an increase in successful grants applications next year. Ms. Worl stated that sounds like a deep-seated problem that may warrant discussion and collaboration with the Bureau of Indian Affairs or other agencies to develop institutional capacity. Mr. Kippen asked for a report on what the grants panel finds in their review, including general information, trends, and comments. Mr. Kippen stated he was interested in information in general, not specific names of submitting parties. Ms. Hutt stated that Ms. Chari takes extensive notes on the discussion of the grants panel and writes a detailed letter to the submitter of each grant application with feedback from the grants panel, and those comments can be summarized for the Review Committee.

Civil Penalties

Ms. Hutt stated that the midyear report provided in the Review Committee binders contains a summary of the civil penalty numbers to date. Ms. Hutt stated that the National NAGPRA Program was migrating from an old software system to a more stable, updated IT system. The National NAGPRA Program will be hiring a programmer who would do specific report capability programming functions for each task, including civil penalties. Ms. Hutt stated that when this project was complete, a snapshot summary of the status of civil penalties would be available at any time for the Review Committee. Ms. Hutt stated that a lot of allegations that were determined to be unsubstantiated were cases where the future applicability rule applied; the museum was put on notice that they would not be in compliance and information was provided on the time parameters contained in the rule to come into compliance. Ms. Hutt stated that at the training session prior to the meeting, the issue arose of conflict of interest between the civil penalty aspect and the running of the National NAGPRA Program. Ms. Hutt stated that the civil penalties investigator maintains those files outside of the National NAGPRA Program office and coordinates efforts with the civil penalty coordinator in the DC office. The investigator or coordinator may suggest that parties call the National NAGPRA Program to get technical assistance, but the National NAGPRA Program does not have information on institutions under investigation. Ms. Hutt stated that the good news with civil penalties was that in most situations for which civil penalties were assessed, the institutions worked so successfully to come into compliance that the penalties were highly mitigated and the civil penalties were quickly paid.

Mr. Kippen stated that prior to the meeting he sent a request for information on civil penalties to Ms. Hutt, and the information contained in the binders was not as detailed as what he requested. Mr. Kippen stated that information on

specific museums, findings that have been made, and penalties that have been levied could help make the Review Committee more effective. It could also make the work of the Review Committee more transparent and affect how others view the work of the Review Committee. Ms. Worl stated that she favored summary reports. The Review Committee has worked in the past to develop summary reports that meet their needs, such as the summary dispute chart, and she would like the Review Committee to develop a similar report for civil penalties. Mr. Kippen stated that a matrix of information would be very useful. Ms. Hutt stated the National NAGPRA Program could provide detailed information on closed cases, but did not have and could not provide information on ongoing cases beyond basic numbers and status. Mr. Steponaitis seconded the comments of Ms. Worl and Mr. Kippen. Mr. Steponaitis stated that oftentimes issues such as this were raised for discussion at a meeting and not resolved due to lack of time, and he asked about the possibility of working on these ongoing issues outside of the meetings. Mr. McKeown stated that subcommittees of the Review Committee could meet to discuss that type of issue without notice as long as the subcommittee brought information back to the full Review Committee for any final recommendations.

Ms. Hutt stated that work on civil penalties began in 2005 and the National NAGPRA Program was currently working to develop an infrastructure to provide the type of reporting that was being requested by the Review Committee. Ms. Hutt stated she was working directly with Mr. Tarler and Mr. Palmer to develop civil penalty reports with the assistance of an IT contractor. Ms. Hutt asked if she could come back to the Review Committee at the next meeting with the reports, and in the meantime the Review Committee members could submit any ideas through the Chair. Mr. Monroe suggested including the following information on the closed case reports: type of institution, classification of institution, estimated annual budget, geographic region of the institution, nature of the violation, and action taken in response to notice of noncompliance. Ms. Hutt stated that was very reasonable and doable. Ms. Augustine stated she agreed with Mr. Kippen that having transparency would develop a sense of trust.

Website/Database

Ms. Hutt stated that not only was the National NAGPRA Program updating the technical capacity of the system, there was a notice out for a web and database coordinator for the program, which would be a GS-11 position. The position was being advertised a second time because the first round did not have a diverse applicant pool. Ms. Hutt stated applications would be accepted through June 20, 2008, and encouraged all people interested in NAGPRA who were experienced in database and computer work to consider applying to the program.

Notices

Ms. Hutt stated that page 5 of the midyear report contains an update of published notices. At the Phoenix, AZ meeting, the Review Committee considered the issue of aging draft notices, received by the National NAGPRA Program from 5 to 12 years ago, and strongly commented that such draft notices were to be moved forward or withdrawn. The National NAGPRA Program has a process to follow to ensure technically complete notices, but the final authorization to publish a notice rests with the submitting institution. When Ms. Lavallee started as notice coordinator, the National NAGPRA Program had an inventory of 300 such aging draft notices. Through the efforts of Ms. Lavallee and staff at the National NAGPRA Program, the inventory of aging draft notices was down to 40 at the time of the meeting, with the hope that the number would be zero by the October 2008 Review Committee meeting.

Ms. Hutt stated the May 12, 2008 memo to the Review Committee was in response to information requested by the Review Committee regarding notices. Ms. Hutt summarized the information contained in the memo.

- The notice snapshot report, prepared by Ms. Lavallee on a regular basis, which showed the status of notices, including total number of notices in the queue and their status, total number of notices received for the fiscal year with a comparison to the previous year, and total number of notices published for the fiscal year with a comparison to the previous year. By the end of May 2008, Ms. Lavallee will have published 100 notices, thus matching the total number of notices published in FY2007 in the first nine months of FY2008.
- A list of the six aging notices published since the Phoenix, AZ meeting, and copies of the notices.
- A copy of a chart listing the 62 aging draft notices still in progress (not withdrawn or published) with notes on their current status. Ms. Hutt stated that many were close to being published.
- Templates of letters that are sent to institutions regarding aging draft notices.

Ms. Hutt stated that an additional ongoing project at the National NAGPRA Program was to determine how many Native American individuals have been culturally affiliated as a decision by a museum or federal agency but are not yet represented in a published notice.

Regulations for 43 CFR 10.11

Ms. Hutt stated that the regulations for 43 CFR 10.11, culturally unidentifiable, were being developed. Ms. Hutt stated that Ms. Mattix, Mr. Simpson, and Mr. McKeown were working diligently to complete a final regulation. Comments submitted in response to the draft regulations have been read and organized. The next step would be to determine the salient points contained in the comments in order to develop a concise summary for the development of the final regulations. Ms. Hutt stated that she would provide an update on the progress of the regulations at the October 2008 Review Committee meeting.

Mr. Steponaitis stated that at their January 2008 teleconference the Review Committee made some very specific requests about either extending the comment period or in some way being able to revisit the issue and extend the discussion to the May 2008 meeting. He indicated that these requests were not fulfilled and asked if there were legal constraints against those requests. Mr. Simpson stated that there was no legal prohibition to extending the comment period, which was an action that was at the discretion of the Assistant Secretary. The Review Committee's requests were considered very carefully, and the decision that was made was a policy decision. The Review Committee was welcome to continue discussions on the regulation, but the DOI was legally prohibited from taking any substantive comments or having substantive discussions at this point, with one exception of seeking clarification from a commenter on a particular point if necessary. The request of the Review Committee that the DOI consider publishing a revised proposed rule for further comment was again at the discretion of the Secretary of the DOI and no decision could be made until full review and organization of all comments was complete. Ms. Hutt stated that the Assistant Secretary was fully engaged in this process, as was the Office of Management and Budget. Mr. McKeown summarized the comments received prior to the deadline, which were posted at www.regulations.gov. A total of over 950 individual comments contained in 140 unique submissions were received from over 50 Indian tribes, 18 Native American organizations, 37 museums, 14 museum and scientific organizations, 3 federal agencies, the Review Committee, and 25 members of the public.

Review Committee Motion

Mr. Monroe made a motion that the Under Secretary and the National NAGPRA Program seriously consider the Review Committee's recommendation, following the current process, to issue another set of proposed rules which would provide the opportunity for the Review Committee and all parties affected by the rule to review the proposed rule, make further suggestions and refinements for consideration, and thereby help assure that the rule best reflects the recommendations, ideas, and advice of all affected museums, federal agencies, and federally recognized tribes regarding the disposition of culturally unidentified human remains. Mr. Goodman seconded the motion.

Mr. Monroe stated that the proposed rule as published received commentary pointing to significant problems. If the DOI issued a new set of proposed rules, that would give everyone affected by the regulations the opportunity to provide input on the new proposed rule. The alternative would be for the DOI to proceed on its current track and issue final regulations. Mr. Kippen asked what the mechanics of the process would be if the Review Committee approved this motion. Mr. Simpson stated that the motion would be a recommendation to the Assistant Secretary of Fish and Wildlife and Parks. The recommendation would not have the force of law, but the Assistant Secretary would certainly respect and seriously consider a recommendation from the Review Committee. Mr. Jones stated this issue was very important and that consultation was vital so that Indians have as much say as the agency does as far as the regulations.

Ms. Hutt stated she would like to clarify that the regulation would not change the law but adds to the steps in the process where there were gaps. In terms of the motion before the Review Committee, Ms. Hutt stated she was very comfortable having such a discussion with the Assistant Secretary. Ms. Hutt stated that during this period of time the culturally unidentifiable population was diminishing in two ways, through requests to the Review Committee for disposition and amended inventories when human remains were affiliated. Mr. Monroe stated that would be another good reason to argue in favor of adopting the recommendation as no material harm was being done during the rulemaking process.

Mr. Steponaitis stated he supports this recommendation and stated that the Review Committee had already gone on record with this recommendation at their January 2008 teleconference, which speaks to how strongly the Review Committee feels about this issue. Mr. Steponaitis stated that the reason NAGPRA works so well was that in the end when NAGPRA was passed by Congress all the major stakeholders supported it. Mr. Steponaitis stated that the

proposed rule under development was perhaps the most important thing that happened in the NAGPRA process since the statute was passed, and it was important that this rule also be a rule that everyone can support.

Mr. McKeown stated that counsel advised that the Review Committee might consider authorizing the Chair to send the recommendation to the Assistant Secretary for Fish and Wildlife and Parks. Mr. Monroe amended his motion that the recommendation would be forwarded by the Chair to the Assistant Secretary for Fish and Wildlife and Parks. Mr. Kippen seconded the amendment. Mr. Kippen called the question. The motion passed by unanimous vote.

Presentation of Makah Indian Tribe/NATHPO Report on Federal Agency Implementation of NAGPRA

Ms. Bambi Kraus, National Association of Tribal Historic Preservation Officers (NATHPO), stated she would like to present information on the final report of the Makah Indian Tribe/NATHPO Overview on federal agency implementation of NAGPRA, and provided a copy of her presentation to the Review Committee members. The report was in the final editing stage and would be completed by the end of May 2008. Ms. Kraus provided a status summary of the project for the Review Committee in October 2007 at the meeting in Phoenix, AZ. The research writing team consisted of Ms. Cindy Darcy, Ms. Maria Elena Frias, Ms. Amy Kolakowsky, Mr. James Riding In, Ms. Pemina Yellow Bird, Ms. Patricia Zell, and Ms. Bambi Kraus. In addition, nine people reviewed the report, including representatives of Native American tribes, NAGPRA experts, and federal officials. Ms. Kraus thanked Ms. Sherry Hutt and Mr. Timothy McKeown of the National NAGPRA Office and the tribal historic preservation officers who comprise NATHPO for their assistance, and made special mention of THPOs in Wisconsin present at the meeting, including Mr. Dave Grignon from the Menominee Indian Tribe of Wisconsin, Ms. Kelly Jackson-Golly from the Lac du Flambeau Band of Lake Superior Chippewa Indians, and Mr. William Quackenbush from the Ho-Chunk Nation of Wisconsin.

Ms. Kraus stated that the Makah Indian Tribe received a NAGPRA grant and entered into an agreement with NATHPO to perform most of the work on the project. The research methodology consisted of a review of information from federal agency Notices of Inventory Completion, two national surveys, the Culturally Unidentifiable Native American Inventories Pilot Database (CUNAIP), Congressional funding, court records, and literature search. Project limitations included time and money, with a budget of \$66,000.

Ms. Kraus summarized the research findings based on responses to the surveys and databases. Of 36 distinct federal agencies, 18 responded to the survey, which was twice the number of responses reported in the October 2007 update. In addition, a total of 67 Native American Indian tribes, Native Hawaiian organizations, and Native Alaskan corporations responded.

- Inventories, Summaries, Notification:
 - Consulting with Native entities and publishing a Notice of Inventory Completion was a tribal concern.
 - Four federal agencies reported up to 20 percent of their collections were in nonfederal repositories, and two federal agencies reported that 61 to 80 percent of their collections were in nonfederal repositories.
 - Tribal concern about pesticide treatment and scientific testing.
- Native American Graves Protection and Repatriation Review Committee:
 - About 50 percent of the tribal respondents had used the Review Committee's CUNAIP Database operated by the National NAGPRA Program.
 - About 50 percent of the tribal respondents had attended a Review Committee meeting; distance was a factor for their attendance.
- NAGPRA Grants:
 - 45 percent of tribal respondents had applied for a consultation/documentation grant; 53 percent of those were awarded a grant.
 - One grant per Native American community was overwhelming response; few received 3 or 4 grants.
 - Grant funding history was examined; in the past two years \$936,830 not awarded for grants and was used for administrative costs. In 2005, \$680,000 of the grant allocation was used for administrative costs, as well as legal costs for the Kennewick case.
- Resources and Training for NAGPRA:

- No indication that Federal agency representatives work fulltime on NAGPRA; 97 percent who work to implement NAGPRA estimate their work involves 20 percent or less of their time.
 - 44 percent federal officials receive no training upon assignment.
 - If training offered, most relied on National NAGPRA Program.
 - Both Native Americans and Federal officials shared a lack of resources, no Federal grants.
- Federal officials recommendations to improve compliance:
 - More training.
 - Resources to coordinate tribal consultation with other cultural resource laws.
 - Resources to support partnerships with Native Americans.

Ms. Kraus summarized the research findings based on Notice of Inventory Completion review. Two researchers worked in the Washington DC office to review the original submissions and subsequent information. The researchers counted the minimum number of individuals (MNI) and associated funerary objects (AFO) for each of approximately 500 unique files and Notices of Inventory Completion. A chart was developed listing each federal agency with MNI and AFO for both the original inventory and any published Notice of Inventory Completion.

- Findings:
 - Inconsistencies in numbers from the original information to published Notice of Inventory Completion. Possible reasons for this include inconsistencies between people interpreting information, Notices of Inventory Completion not yet published (possibly pending), additional inventory located that was not included in the previously published notice, and individuals affiliated from the culturally unidentifiable inventory but the inventory records with the National NAGPRA Program were not updated.
 - Many federal agencies that had originally culturally affiliated but not in published Notice of Inventory Completion.
- Related Notice of Inventory Completion issue, pending draft Notice of Inventory Completion Review:
 - Came to light in late 2007, backlog of unpublished draft Notices of Inventory Completion to either approve draft Federal Register notice or withdraw effort and restart cultural affiliation process. Ms. Kraus showed an example of a letter from the National NAGPRA Program to the Grand Canyon National Park superintendent regarding the withdrawal of a notice submitted on November 16, 1995, and the letter was copied to the Hopi Tribe.
 - As of October 31, 2006, Federal agencies had culturally affiliated 1,652 Native Americans for which no Notice of Inventory Completion had been published.

Ms. Kraus summarized the research findings on the Culturally Unidentifiable Native American Inventories Pilot (CUNAIP) Database. The database has a total of over 15,000 records containing over 118,000 MNI, of which 13,785 MNI were in the possession or control of federal agencies along with 66,407 AFO. One researcher examined each record for federal agencies. This review highlighted areas of concern, such as certain transfers between federal agencies, the issue of enforcement of consultation was unclear, lack of an apparent oversight system for tracking scientific study, loans without sufficient information, known MNI and AFO but unknown location, and an unclear method of standardization throughout the database. Ms. Kraus stated that one federal agency was of note for having a far greater number of entries than others, and that was the Tennessee Valley Authority (TVA) which had 8,031 MNI listed in the inventory and no published Notices of Inventory Completion. Ms. Kraus stated that the inventory was cumbersome and time-consuming, allowing the review of only one open record at a time.

Ms. Kraus stated the research team developed six general themes and then specific recommendations, which she summarized.

- General Themes:
 1. Knowledge of process and responsibilities: Need for more training and better understanding.
 2. Access to Information: Clarification that Native Americans are brought into the process when required.
 3. Consultation: With whom to consult and when.
 4. Available Resources: Insufficient resources for both Native Americans and federal agencies.
 5. Standards: What constitutes correct information, evidence, tribal consultation, and cultural affiliation?
 6. Training and Technology: More training and more use of technology to share information.
- Recommendations: Specific Statutory
 - Amend definitions section of NAGPRA to clarify application to human remains.
- Recommendations: Specific Regulatory

- Establish Interagency NAGPRA Implementation Council within Executive Branch:
 - Assure compliance within each agency.
 - Coordinate compliance across all agencies.
- Oversight and Enforcement:
 - Establish a program to train federal agency personnel.
 - Issue and publish NAGPRA contacts and policies within each federal agency.
 - Demonstrate consultation with Native Americans.
 - Improve the CUNAIP database.
- Recommendations: Specific Program, General NAGPRA Program
 - Inventory of repatriation process data (measure of actual repatriations).
 - Review Committee develop database of cases.
 - National NAGPRA Program maintain updated list of upcoming publications of Notices of Inventory Completion, along with list of pending.
 - National NAGPRA Program maintain database of federal agency collections: location, possession and control of all Native American remains, funerary objects, and other cultural items.
 - Adequate funding.
 - Compliance audit by GAO.
- Recommendations: Future areas of research.
 - Evaluate museum compliance.
 - Examine unassociated funerary objects process.
 - Examine CUNAIP database process and process used for how/why remains and objects.

Mr. Jones stated he was very glad to hear the recommendations put forth by Ms. Kraus, which relate what he has encountered through the years dealing with the inconsistency of consultation. Consultation should be consistent and handled on a government-to-government basis. Consultation needs to be strengthened and maybe a statement could be added that encourages the blending of scientists and tribal leaders and representatives. Mr. Jones stated he appreciated their hard work. Mr. Kippen thanked Ms. Kraus and the team for their hard work. Mr. Kippen stated that the information contained in this report may be very useful for the Review Committee to use in its report to Congress. Mr. Kippen stated he had a lot of questions but would defer them until a later time in the meeting or after receipt of the final report due to time constraints at the meeting. Ms. Worl asked what would be done with the final report. Ms. Kraus stated it would be distributed to all Indian tribes, posted on the NATHPO website, and sent to federal agencies.

Report on the Implementation of NAGPRA for the First Half of FY2008 – Continued

Grants - Review Committee Discussion

Mr. Kippen asked for clarification of the slide titled “NAGPRA Grants History” discussed by Ms. Kraus during her presentation. Mr. Kippen stated he would like an explanation of the difference in grant money allocated by Congress and awarded in grants and an estimated idea of the numbers for 2008. Ms. Hutt stated the allocation of funds apportioned by Congress between the operating budget and grants disbursement was made at the Department level. Ms. Hutt stated that the 2008 grants apportionments were not yet signed by the Assistant Secretary and she could not discuss specifically which grants were funded, but the total request of funds and total number of applications this year was less than in prior years, which was surprising given the knowledge that 43 CFR 10.11 was progressing toward the final rule. Ms. Chari and the National NAGPRA Program were working to address the decline in museum applications. In addition, the grants panel had difficulty suggesting grants to fund to utilize the available amount of money. The grants panel recommended that the money not directly used for grants would be utilized in a training modality to increase training and capacity for Indian tribes and museums. Mr. Kippen stated he would like a budget breakdown of the funds for the National NAGPRA Program to use in formulating the Review Committee’s report to Congress for 2007. Ms. Hutt stated she would get that information for the Review Committee at the first available break and would be willing to answer any questions. Mr. Goodman asked if potentially fundable projects remained unfunded. Ms. Hutt stated that for 2005, when part of the grants allocation was taken out of the program as the result of the Kennewick case settlement, there were definitely fundable grants that were not funded. Ms. Hutt stated she could not say whether otherwise fundable grants were not funded in 2006 and 2007. Ms. Hutt stated there was definitely a shortfall of fundable grants in 2008.

Ms. Hutt stated that at a previous meeting the Review Committee recommended that more outreach be done, which was accomplished this past fiscal year in the grants program for museum outreach with Ms. Chari attending the American Association of Museums meeting and for federal agency outreach with the organization of a federal consultation week where federal agency representatives could meet with representatives from museums, archaeologists, and the National NAGPRA Program. In addition the National NAGPRA Program was working with Ms. Bambi Kraus to have a session on grants at the upcoming NATHPO meeting in Washington, DC.

Notices – Review Committee Discussion

Mr. Kippen asked for more information on the intent of withdrawing aging notices and asked if Indian tribes were being left out of the process or were being supplied with only partial information. Mr. Kippen cited the letter highlighted during Ms. Kraus's presentation the prior day as an example of Indian tribes not receiving full information. Ms. Hutt stated that the National NAGPRA Program does not act arbitrarily. The position of the National NAGPRA Program working with older notices (submitted 5 to 12 years earlier) has been to either move them forward or withdraw them. As a result of work on aging notices, consultation grants have been submitted that would be dynamic in terms of moving the process forward. In addition, the notice coordinator was now able to spend 90 percent of her time on viable notices, resulting in a record number of notices being published in the first nine months of FY2008. When the process progresses to the point that a notice was withdrawn, the notice coordinator sends a letter to the institution fully identifying the notice and acknowledging the institution's desire to withdraw the notice. That letter was copied to all consulting Indian tribes listed in the notice, so that everyone in the process was specifically knowledgeable of the status of the notice. The letter also states that the National NAGPRA Program hopes the institution would consult with the Indian tribes to develop a notice that can move forward in the process. Ms. Hutt stated that the information presented by Ms. Kraus was a copy of part of the letter referencing the withdrawal, and the remainder of the letter specifically identified the notice.

Ms. Hutt stated that the decision to publish a notice was the responsibility of the institution, and the National NAGPRA Program could only publish notices with the authorization of the institution. At prior meetings the Review Committee members were clear in their desire to address the issue of draft notices that have been housed at the National NAGPRA Program pending publication for many years. Ms. Hutt stated that the notice coordinator reviews draft notices for technical completeness, as well as a comparison of the draft notice with the institution's inventory to ensure that the individuals represented in the inventory have been accommodated in the notice. The notice coordinator works very closely with the institution to process the draft notices. Ms. Hutt stated that the National NAGPRA Program does not evaluate the decisions of the institutions, beyond ensuring that the explanations required in the notice were present. While the National NAGPRA Program facilitates the publication of notices, the notice belongs to the originating institution and was published only with their authorization. Ms. Hutt stated, as a personal reflection, that focusing on the number of draft notices at the National NAGPRA Program office, which institution submitted them and the length of time they have been pending, could have a chilling effect for institutions submitting notices. Ms. Hutt stated the focus should be on comparing the number of individuals listed as culturally affiliated in an inventory with the number of individuals listed in notices.

Mr. Steponaitis stated that working with Ms. Lavallee, as notice coordinator, has been terrific, but despite the best efforts of all involved the notice publication process could be very frustrating. Mr. Steponaitis recommended that a focus group meet to try to streamline the publication process in a way that could decrease the workload and the costs for the National NAGPRA Program and decrease the frustration of the institutions. Mr. Monroe seconded the recommendation.

Recommendations Regarding Disposition of Unclaimed Cultural Items (43 CFR 10.7)

Mr. McKeown stated that the Review Committee considered this regulation at several meetings in the past. At the last meeting, the Review Committee put forward a recommendation as a personal set of thoughts. At this time, the National NAGPRA Program was soliciting a set of recommendations from the Review Committee as a whole on how to proceed with 43 CFR 10.7, which deals with the disposition of unclaimed cultural items recovered from federal or tribal land after November 16, 1990. Ms. Worl stated her sense was that the Review Committee would not be able to develop a set of recommendations at the meeting, but could review the recommendations discussed at the Phoenix, AZ meeting for additional comments. Ms. Worl recommended that the Review Committee appoint a subcommittee

to develop a draft position for the full committee's consideration at the following meeting, and recommended that Mr. Goodman, Mr. Kippen, Mr. Steponaitis, and Ms. Worl be appointed to the subcommittee.

The Review Committee discussed the recommendations. Recommendation one, in consultation with Indian tribes, human remains and funerary objects should remain separate from other cultural objects and be subject to special care and handling, to the extent possible. The Review Committee agreed with this recommendation.

Recommendation two, study or documentation of the unclaimed human remains and cultural items should proceed only with the consent of lineal descendants or Indian tribes on whose land the cultural items were excavated or discovered or after consultation with the culturally affiliated or culturally related tribes. Baseline documentation, such as number of individuals, age, sex, should be recorded of the unclaimed human remains and cultural items. Ms. Worl stated there could be two categories, those for which cultural affiliation was established but the human remains and cultural items were unclaimed due to cultural values of the Indian tribe or other reasons and those for which cultural affiliation cannot be established. Ms. Worl stated that a process could be developed to identify Indian tribes who were unable to make a claim due to cultural values and identify affiliated Indian tribes who could agree to file for disposition, and the concept of regional consultation might be useful. Mr. McKeown stated he had a terminological clarification that under Section 3 of the Act and Section 10.7 of the regulations, the term "cultural affiliation" was one of the four categories to determine whether a cultural item is affiliated.

Ms. Mattix stated that the way the regulation would be developed, the unclaimed provision of Section 3 would apply to cultural items determined to be Native American that are unclaimed because they do not fit a category, as well as cultural items that do fit one of the categories but cannot be claimed by a lineal descendant or Indian tribe. The determinations that items are Native American and cultural items would have been made in consultation with any possible lineal descendant, any Indian tribe that owned land upon which the objects were found, any possible culturally affiliated Indian tribe, and any Indian tribe with aboriginal occupation of the land. Mr. Monroe stated there may be situations where a cultural item was affiliated with a group that chooses not to affect disposition and would prefer no other group affect disposition. After discussion, the Review Committee agreed to the concept of different categories and that the subcommittee could consider the issue and develop more specific details.

Mr. Monroe stated that given the history of this issue and the voluminous written record, he would recommend that the National NAGPRA Program develop an executive summary. The executive summary would contain a concise summary of the key concepts, public comment, Review Committee discussions, and a clarification of legal issues if necessary, with additional space for Review Committee member notes. The Review Committee members agreed, and Ms. Worl stated that would be an appropriate suggestion for all substantial matters under consideration by the Review Committee.

Recommendation six, federal agencies should be guided by 36 CFR 79, with a reference to including the protocol presented by the Colorado Historical Society in consultation with Indian tribes. Mr. Steponaitis stated after reviewing each document, he felt the protocol presented by the Colorado Historical Society and the regulations at 36 CFR 79 were rather different and the regulations at 36 CFR 79 would be the principle model for how collections should be maintained. Ms. Worl recommended that the subcommittee consider both documents in their discussions.

Mr. Steponaitis raised another issue for consideration by the subcommittee, the possibility of including some type of language that would encourage affiliated Indian tribes or lineal descendants to make a claim, for example, language that explicitly acknowledged the possibility of co-curation. Mr. Steponaitis stated it was possible that some tribes or groups might be reluctant to submit a claim if they were unable to immediately act upon the claim. Ms. Mattix stated that could be something that was worked out through the parties and not necessarily in the regulations. Ms. Worl stated that point raised the issue of Indian tribes and their capacity to implement NAGPRA, which could possibly be addressed within the grant program following the assessment discussed earlier in the meeting. Mr. Jones stated that these discussions reiterate the importance of consultation. A large problem with consultation was the difficulty of consulting using two different languages, cultural law and NAGPRA law, which were at times difficult to blend. In order for this process to be successful, true consultation has to occur. Ms. Worl thanked Mr. Jones for consistently raising this issue and asked the National NAGPRA Program to compile information on best practices for consultation that the Review Committee can consider at a future meeting.

NAGPRA in the Parks

Ms. Cyd Martin, director for Indian Affairs and American Culture for the NPS Intermountain Office and program manager for the Park NAGPRA Program, provided an update on the Park NAGPRA Program. The Park NAGPRA Program is a national program providing technical and compliance assistance to all units of the NPS, centrally located in the Denver, CO office of Indian Affairs and American Culture. In addition, the Park NAGPRA Program acts as a liaison between each of the seven NPS regions and the National NAGPRA Program in Washington, DC, and administers the NPS funds that assist parks with NAGPRA compliance. This year, the Park NAGPRA Program revamped its funding program and instituted a national competition for funds, working with regions to develop well-defined criteria. Ms. Martin stated that she and Ms. Mary Carroll, full-time program lead for the Parks NAGPRA Program, work closely with the regional coordinators for each region of the NPS, two of whom were in attendance at the meeting, Mr. Fred York and Mr. Chuck Smythe.

The Park NAGPRA Program works to actively address the contaminated objects issue. The Intermountain NAGPRA Program, the Western Archaeological and Conservation Center in Tucson, and the Park NAGPRA Program have joined together to purchase a portable X-ray fluorescence (XRF) machine to test for contaminants. At the request of parks, professional trained staff will test cultural items subject to NAGPRA for arsenic, mercury, and lead. Tribal consultation was encouraged prior to testing to identify sensitive issues such as handling of items, appropriate participants, ceremonial preparations, and other issues. Requests for testing from Indian tribes, museums, and other agencies will be accommodated as possible on a case-by-case basis. Ms. Martin provided the Review Committee with a picture showing a consultation between the Intermountain Region and local Indian tribes on the use of the XRF machine.

The Park NAGPRA Program has an internship program that provides opportunities for students to work in park centers and offices nationwide on NAGPRA projects and to provide hands-on help to parks with immediate NAGPRA needs. Projects may include working with archaeological and ethnographic collections, assisting with consultation meetings, assisting with the repatriation of Native American human remains, and other administrative tasks. In FY2007 four students worked on five park projects, and in FY2008 three students will work on four park projects.

In 2006, the Park NAGPRA Program updated its NAGPRA Guidance for Parks, also known as Appendix R, in an easy-to-use binder format, which included additional reference materials as follows: a copy of the NAGPRA statute and regulations, the Bureau of Indian Affairs list of federally recognized tribes, notice templates with sample published notices, plans of action, and comprehensive agreements. Subsequently, two addenda were produced, the recommended care of NAGPRA items recovered from inadvertent discoveries and intentional excavations and the newly promulgated future applicability rule. Over 200 copies of the guidance binders have been distributed to date.

The Park NAGPRA Program initiated a NPS project in 2007 to track when and to whom human remains and cultural objects published in notices were repatriated. As a result, the Park NAGPRA Program now has a nearly complete record of repatriations by the NPS to date. Ms. Martin has copies of the report for the Review Committee members.

The Park NAGPRA Program focuses on ensuring that all NPS units were cognizant of and complying with the law and its regulations. The highest priority of the Park NAGPRA Program was assisting parks with the process of publishing Notices of Inventory Completion. The Park NAGPRA Program was working to hold a training program to deal with inadvertent discoveries and intentional excavations, with the assistance of Mr. Fred York at the Pacific West Region, and was also working to convert the 1993 service-wide summary of unassociated funerary objects, sacred objects, and objects of cultural patrimony from a paper format to a more useful database.

Mr. Steponaitis stated he appreciated both the work of the Park NAGPRA Program and the updates provided to the Review Committee. Mr. Steponaitis stated he found the guidance binder very useful and would appreciate copies of the updates. Mr. Steponaitis asked Ms. Martin to comment on the reorganization and relocation of the Park NAGPRA Program and its separation from the National NAGPRA Program office approximately four years prior. Ms. Martin stated from her perspective the reorganization has worked very well to help clarify the separation of the Park NAGPRA Program and the National NAGPRA Program. Mr. Goodman asked for more details on the XRF machine and its usage. Ms. Martin stated that they had been working with the XRF machine for about a year and the Intermountain Region Office was taking the lead to develop a specific protocol for its use, in consultation with

Indian tribes. One collection in the Intermountain Region was tested, working with the Indian tribes, and that collection was still in the repatriation process. Ms. Augustine asked if the internship program was for Native American students. Ms. Martin stated that the original intent of the internship program was to work solely with Native American students, but the program was expanded to include any interested students when insufficient numbers of Native American students apply. Ms. Augustine recommended having a spiritual Native person speak on cultural sensitivity for students, as well as staff. Ms. Martin stated that was a great idea.

Review Committee's Report to Congress for 2007

Ms. Worl asked Mr. Goodman to join the subcommittee for drafting the Review Committee's report to Congress for 2007, along with Mr. Kippen and Mr. Steponaitis. Ms. Worl asked Mr. Steponaitis to Chair the discussion on the Report to Congress for 2007.

Discussion of Draft Report to Congress for 2007

Mr. Steponaitis stated that the subcommittee would like to present a draft report to Congress for 2007 for the Review Committee members' consideration. Mr. Steponaitis stated that the binders contained a copy of the report to Congress for 2006 and a partial draft report to Congress for 2007.

The subcommittee proposed adopting the Introduction, Review Committee Activities, and Progress Made sections of the draft report to Congress for 2007 with the following changes:

- Under Review Committee activities, correct one typographical error, "...and the expired term held by Garrick Bailey was filled [changed from 'filling'] by Alan Goodman."

The subcommittee recommended that the Barriers Encountered section from the report to Congress from 2006 be adopted with the following changes:

- Replace the fifth sentence of the first paragraph with the following, "The National NAGPRA Program anticipates awarding grants in FY2008 totaling approximately \$1.8 million."
- Delete the sixth sentence of the first paragraph which reads, "This amount is only about 54 percent of what applicants requested this year."
- Replace the ninth sentence of the first paragraph with the following, "This shortfall totaled \$464,000 in FY2007."
- Replace the second sentence of the second paragraph with the following, "Currently, a proposed rule for disposition of culturally unidentifiable human remains (43 CFR 10.11) has been published and public comment has been received."
- Replace the last sentence of the second paragraph with the following, "The Review Committee considered the proposed rule for 43 CFR 10.11 at its meeting of January 8, 2008, and unanimously passed a resolution recommending that a new proposed rule be published for public comment before a final rule is enacted."

The subcommittee recommended that the Recommendations section from the report to Congress from 2006 be adopted with the following changes:

- In the second sentence of the first paragraph, replace "At its April 19-20, 2007 meeting" with "At its May 15-16, 2008 meeting."
- Under number 1, Costs to Comply with NAGPRA, replace "FY2008" with "FY2009" in the first sentence, replace "FY2009" with "FY2010" in the last sentence, and correct one typographical error in the second bullet section changing "amounts" to "amount."
- Add the following sentence to the end of number 1, Costs to Comply with NAGPRA, "With the recent promulgation of 43 CFR 10.13 and the pending promulgation of 43 CFR 10.7 and 43 CFR 10.11, we expect consultation activity to increase in coming years which will generate an increasing volume of NAGPRA grant requests."

Review Committee Motion

Ms. Augustine made a motion to adopt the changes to the draft report to Congress for 2007 as put forth by the subcommittee. Mr. Jones seconded the motion. The motion passed by unanimous vote.

Administrivia

Upcoming Meetings

After discussion, the Review Committee members agreed to meet in Seattle, WA, in the spring of 2009, and raised the possibility of meeting in the fall of 2009 in Maine. For the Seattle, WA meeting, the National NAGPRA Program will help determine a location and timing, with the assistance of Mr. Jones. As a reminder to the members of the public, Ms. Hutt stated that the next meeting of the Review Committee would be October 15-16, 2008, at the Sheraton Suites San Diego at Symphony Hall, San Diego, CA.

Review and Findings Procedures

Ms. Worl stated that one of the agenda items was a review and discussion of improvements to the Review Committee's Review and Findings Procedures for the disposition of culturally unidentifiable human remains. The Review Committee could receive increased requests following their recommendation to the Secretary of the Interior to publish another proposed rule on culturally unidentifiable human remains. Mr. Monroe recommended developing a matrix to help facilitate the process. The first column of the matrix would outline the types of evidence that must be considered in making determinations regarding disposition of culturally unidentified Native American human remains, the second column would be a space for parties to concisely summarize the information being presented in support of each type of evidence, and then a final column allowing space for Review Committee members to jot notes as they consider the requests. The form would be a summary, with the parties to submit narrative and supporting documentation.

Mr. Steponaitis stated that at the Phoenix, AZ meeting the Review Committee developed some changes for the Review and Findings Procedures, which underwent review and refinement by the DOI before being adopted. Mr. Steponaitis stated that he strongly felt one change was not good. Mr. Steponaitis stated that bullet point number 5 approved by the Review Committee at the meeting was to read as follows, "a concise description of the forensic work, if any, that has been conducted on the remains stating when and by whom the work was conducted." The final version read, "all associated studies stating when and by whom this work was conducted." Mr. Steponaitis stated that he felt strongly about using the word "forensic" because there was a great deal of misunderstanding, not only about the importance of having that sort of work completed but also the misconception about NAGPRA that that type of study was prohibited or not allowed by NAGPRA. In fact that sort of study was not prohibited and was in many cases critical information in making determinations of cultural affiliation or whether human remains are Native American and thus fall under the Act. Mr. Steponaitis asked counsel for clarification of whether the use of the word "forensic" was illegal. Mr. Simpson stated that the use of that word was not illegal but the decision was made to change the language after counsel determined that the language initially proposed by the Review Committee could constrict what was allowed under the law.

After discussion, Mr. Steponaitis stated he would yield on the use of the word "forensic" and that his main objective was to make clear the point that the Review Committee would like the kind of baseline information that was missing in many of the requests presented earlier at the meeting. The Review Committee agreed not to change the wording of the Review and Findings Procedures and instead use the matrix proposed by Mr. Monroe as a tool to highlight the types of information necessary in disposition requests. Ms. Hutt proposed utilizing the matrix at the next Review Committee meeting and then having the Review Committee provide feedback. The DFO would review requests to ensure submissions contain the necessary information and were suitable for consideration by the Review Committee. Ms. Hutt stated that prior to the current meeting the National NAGPRA Program implemented a pre-review by counsel of all materials provided to the Review Committee, including requests for disposition. The Review Committee members agreed that review was necessary and helpful. Mr. Steponaitis stated it would be helpful to have information broken out by accession number in the matrix in order to be clear what was requested and what information was present in each instance. Mr. Simpson stated that the Review Committee could make different recommendations for accessions contained in one request.

Subcommittee Budget

Ms. Worl asked if the budget would include funds to aid the work of the Review Committee subcommittee on 43 CFR 10.7. Ms. Hutt stated the subcommittee should feel free to present what they would like to do and when to the National NAGPRA Program.

Teleconference Format

The Review Committee members discussed the teleconference format and agreed that to the extent possible they would like teleconference meetings to be of an organizational/business nature and not convened to deal with substantive issues.

Public Comment

Ms. Patricia Capone

Ms. Patricia Capone, Peabody Museum of Archaeology and Ethnology, Harvard University, thanked the Review Committee for their efforts and for the privilege of providing an update on NAGPRA implementation. Ms. Capone thanked the Native nations and institutions for their welcome to the area. The Peabody Museum of Archaeology and Ethnology implements NAGPRA for one of the largest collections subject to the Act. As a university museum, the Peabody Museum of Archaeology and Ethnology regularly works with students and with Indigenous initiatives across the university. The Peabody Museum of Archaeology and Ethnology works with local neighboring Indian tribes to envision new approaches to integrating repatriation, ethics, and civic engagement. Student interest continually increases and brings new perspectives for raising awareness of sovereignty, cultural diversity, and common humanity.

The Peabody Museum of Archaeology and Ethnology has implemented requirements to enable the repatriation of over 3,000 human remains and over 10,000 funerary objects, approximately 10 percent of the human remains and funerary objects nationally that have been available for repatriation. NAGPRA represents about 25 percent of the Peabody Museum of Archaeology and Ethnology's overall collections interactions and conversations, totaling over 500 per year. Of the culturally affiliated collections, physical repatriation has been completed for approximately 2,700 individual human remains, 3,600 funerary objects, 1 sacred object, 57 objects of cultural patrimony, and 18 objects that are both sacred objects and objects of cultural patrimony. During the past year there have been six consultation visits, six physical repatriation events, and numerous ongoing consultations that involve virtual information. Ms. Capone stated she had information available to anyone who was interested in accessing information online. Over the past fiscal year, 6 new Federal Register notices were published which enabled the repatriation of 2 human remains, 5 associated funerary objects, 2 unassociated funerary objects, and 17 objects of cultural patrimony.

Ms. Capone stated that these wide-ranging efforts have given the Peabody Museum of Archaeology and Ethnology experience with some of the Act's successes and challenges. Based on this experience, the Peabody Museum of Archaeology and Ethnology believes that clear standards are essential and contribute to a collaborative process. The Peabody Museum of Archaeology and Ethnology commented on the draft regulations for culturally unidentifiable human remains, both individually as a university museum and together with members of the Wampanoag Repatriation Confederation. With its commitment to the letter and spirit of NAGPRA, the Peabody Museum of Archaeology and Ethnology was glad to continue this process and looks forward to more collaborative work under the Act.

Mr. Kippen asked for clarification of what Ms. Capone meant by clear standards. Ms. Capone stated she meant a process that could be followed in the same way across the country that anyone could utilize in a step-by-step manner, without vagueness which would allow different interpretations of how the process should proceed. Mr. Monroe stated he would like to recognize and applaud the efforts of the Peabody Museum of Archaeology and Ethnology, which has been an extraordinary and consistent job engaging in both the spirit and the letter of the law and in carrying out consultations with respect. Ms. Worl thanked Ms. Capone and the Peabody Museum of Archaeology and Ethnology for consistently attending the Review Committee meetings. Ms. Worl stated she was personally involved in a repatriation claim with the Peabody Museum of Archaeology and Ethnology and she has appreciated their openness and willingness to consult. Ms. Capone thanked Ms. Worl and Mr. Monroe and stated that both she and her colleague Ms. Sandra Dong were available throughout the meeting.

Ms. Francis Kraus

Ms. Francis Kraus, Tlingit from Kake, AK, stated that before she was born the missionaries came to Kake and decided that the Tlingit were worshiping the dead who were buried and that totem poles were evil. Totem poles were actually a history of a family with carvings representing the family houses, such as Eagle, Killer Whale, and

Brown Bear or Raven and Frog. The missionaries made the Tlingit exhume the bodies and move them by boat to an island half mile out to sea, which was still done to this day. Ms. Francis Kraus stated after listening to NAGPRA stories if her body was found she would have to be identified culturally and tribally and find out who owned it and then registered and published to verify that she was truly dead and had cultural identity.

Mr. William Quackenbush/Mr. Reno Franklin

Mr. William Quackenbush, Tribal Historic Preservation Officer for the Ho-Chunk Nation, stated he was present at the request of several tribes in California to make a recommendation to the Secretary of the Interior to formally review the University of California system, specifically the University of California Berkeley, regarding their noncompliance towards NAGPRA, based under Section 10.2 (b), civil penalties. The first day of the meeting, Mr. Quackenbush provided the Review Committee members with a number of documents from tribes in support of this request, outlining their concerns and recommendations, including a copy of a resolution passed by the Ho-Chunk Nation that Mr. Quackenbush read to the Review Committee.

Mr. Reno Franklin (appearing telephonically), tribal council member for the Kashia Pomo Tribe, thanked the Review Committee for allowing them time to speak. Mr. Franklin stated that problems encountered with NAGPRA compliance at the University of California system have affected Indian tribes nationwide. These problems include serious failures to comply, and include one institution, the University of California at San Diego, that has failed to submit an inventory, and the Phoebe Hearst Museum which has issues surrounding their consultation and documentation on the inventories. Mr. Franklin stated the concerns are specifically listed in the information submitted to the Review Committee and could be backed up with documentation. Mr. Franklin stated those were the reasons the tribes were requesting that the National NAGPRA Program send its compliance officer to the University of California system to review compliance with NAGPRA.

Ms. Worl asked for comment by counsel of the Review Committee's purview in this instance. Mr. Simpson stated that the Review Committee can make a recommendation to the Secretary and can make recommendations to universities or Indian tribes. The National NAGPRA Program's jurisdiction and authority in this situation would be limited, largely to investigating allegations of problems that may result in civil penalty, as laid out in the regulations and statute as allegations of civil penalty, and not a broad-ranging audit of university operations. Ms. Worl stated that the Review Committee could urge consultation. Mr. Steponaitis stated that he has been following the matter of the University of California, Berkeley, through material submitted to the Review Committee and contained on the web. Mr. Steponaitis stated as a general observation that he was saddened by the tones of much of what has been said. Mr. Steponaitis stated he hoped the parties in this instance could find a way to work together productively, as other Indian tribes and institutions have done across the country with a tone of mutual respect. The Review Committee agreed to move forward with the recommendation to urge the University of California to move ahead with good faith consultation with all affected Indian tribes in a timely manner. Mr. Quackenbush thanked the Review Committee for their efforts.

Ms. Sandra Harris/Mr. Anthony Garcia

Ms. Sandra Harris, University of California at Berkeley, stated that she has worked at the University of California for three years, and the employees acknowledge the incredibly complex history of the university and at the Berkeley campus in particular. They have been working to address this in the reorganizations to expand the staff understanding, the staff work, and the integration of multiple voices, multiple perspectives, and to look for best practices. Since the update provided to the Review Committee at the October 2007 meeting, the following open positions have been filled: repatriation coordinator, Dr. Anthony Garcia; a Native American education specialist; tribal outreach coordinator; and an archaeologist. Three of those four individuals were Native, as well as being incredibly well-versed and educated in their specialties. A major record reorganization was completed; handwritten records were computerized and database information and functions were upgraded. Programmatic functions that were previously separated have been integrated throughout the staff.

External relations have been improved, beginning with five regional meetings with representatives from approximately 50 federally recognized tribes. Extensive notes were taken at each meeting, and from those notes a list of action items was developed including: documentation of the repatriation process at the museum, which was available at the museum website; digitization of catalog cards and ledgers, which improved access to records previously held in separate locations on campus; development of an online database so Indian tribes can access information online, which was currently under tribal review; improved communication and meetings with the

chancellor; ongoing development of a campus Native American advisory board; ongoing development of a model for culturally sensitive care of collections; ongoing development of a loan process for Native California artifacts to improve tribal access; and renewed efforts to address ongoing claims. Ms. Harris stated that they will continue to address the action items and develop a strategic plan for NAGPRA compliance.

Mr. Anthony Garcia, repatriation coordinator for the Phoebe Hearst Museum of Anthropology and member of the University of California Berkeley NAGPRA Review Committee, stated that prior to obtaining his position as repatriation coordinator this spring he worked on NAGPRA issues with the Phoebe Hearst Museum of Anthropology for 3 years and taught in the University of California system for 12 years. The University has a very large, but poorly documented, collection which dates back to the turn of the century. Mr. Garcia stated his first priority as repatriation coordinator was to review the status of all claims, and reported that the Phoebe Hearst Museum of Anthropology had seven active claims. Mr. Garcia stated he receives a large number of questions from tribal people regarding the NAGPRA process and plans to develop a University of California NAGPRA instruction kit. In addition the increased staff would hopefully present more opportunities for outreach in the communities. Another area Mr. Garcia stated he would like to address was the complicated process of showing collections to visiting Indian tribes, due to the small gallery and current collection organization.

Mr. Garcia stated the current staff was excellent and will work to help integrate the functions of the different departments of the museum to help fulfill the museum's responsibility in the NAGPRA repatriation process. In addition, Native American staff members campus-wide were working with the staff on events and to highlight the Native American presence on campus. The chancellor, who was of American Indian descent from Canada, has embraced the issue.

Ms. Worl thanked Ms. Harris and Mr. Garcia for their thorough report and stated she has worked with the Phoebe Hearst museum on a successful repatriation. Ms. Worl stated that it sounds as if the Phoebe Hearst Museum was well on its way to fulfilling the Review Committee's recommendation, and the Review Committee looked forward to hearing of their continued progress. Mr. Kippen thanked Ms. Harris and Mr. Garcia for their report and asked how people would be made aware of these activities. Ms. Harris stated that they have begun addressing that issue and plan to update their website, as well as distribute a newsletter designed by their tribal liaison. Ms. Augustine asked how many human remains were in their collection. Mr. Harris stated that they had 9,600 catalog records of human remains, an additional 118,000 catalog records of objects, and 198,000 ethnographic and archaeological catalog records. Mr. Harris stated that those numbers may change slightly as new evidence surfaces. Ms. Augustine stated that Native Americans were pushing this issue because of the large number of Native American human remains that were still located in museums. Mr. Garcia stated that he regularly has Native Americans tell him that human remains in the museum were from their tribe but they did not want them to come back to the tribe. Ms. Augustine stated that when human remains have been disturbed there was a fear that individuals would carry that sadness and feeling back to their families and homes. Ms. Augustine stated that there were Native Americans who have been chosen by the spirits to do reburials and Indian tribes who were willing to do reburials for others who could not due to their spiritual beliefs.

Ms. Lori Breslauer

Ms. Lori Breslauer, assistant general counsel for the Field Museum of Natural History, stated she would like to comment on several earlier discussion points from the meeting. In response to Mr. Steponaitis's point regarding the rigidity of the notice process, Ms. Breslauer stated that in the past that was definitely true, but more recently working with Ms. Lavallee the process has been very positive, with Ms. Lavallee's recommended changes being very appropriate and appreciated. Improvements may be due in part to institutions becoming educated in terms of notice submission and also to the National NAGPRA Program being more willing to publish a notice as submitted. Ms. Breslauer stated that one reason for delay in publication after a notice was submitted to the National NAGPRA Program was that some notices were returned for additional information, which in some cases was very difficult to obtain and required additional research and consultation. Ms. Breslauer stated that the Field Museum of Natural History has reduced their list to five outstanding old notices, which they have been working diligently to complete, hopefully by the October 2008 Review Committee meeting. In response to Ms. Bambi Kraus's comments regarding the discrepancy between the number of human remains in an inventory compared to notices, Ms. Breslauer stated that additional consultation and information during the time between publishing the inventory and submitting the notice may result in multiple notices being published for human remains referenced in one inventory with not necessarily a one-to-one relationship. The Review Committee thanked Ms. Breslauer for her comments.

Ms. Kelly Jackson-Golly

Ms. Kelly Jackson-Golly, Tribal Historic Preservation Officer for the Lac du Flambeau Band of Lake Superior Chippewa Indians, stated she appreciated the opportunity to address the Review Committee. The Lac du Flambeau Band, with 11 other Wisconsin Indian tribes, has been working with the Logan Museum of Anthropology and the Wisconsin Historical Society on the repatriation of culturally unidentifiable Native American human remains, utilizing a NAGPRA grant which will end in July 2008. Ms. Jackson-Golly stated that after attending the meeting, she felt the group was not quite ready to present their issue to the Review Committee. This was unfortunate because their grant would expire in July 2008 but the next grant cycle would not begin until 2009, which could potentially delay the process for another year and a half to two years. Ms. Jackson-Golly stated that one recommendation to enhance the grant program would be to provide annual awards at two different times in the year, which could help keep the momentum going between museums and Indian tribes. Ms. Jackson-Golly stated that just as many institutions have large collections and need to deal with many Indian tribes, Indian tribes often have one person who needs to deal with many institutions and many inventories. As a result, many Indian tribes were behind institutions as far as progress in the process of dealing with NAGPRA. Ms. Jackson-Golly stated the idea of developing a training program for museums, Indian tribes, and federal agencies was phenomenal, and recommended including Indian tribes in the development of those training programs.

Regarding the proposed processes for dealing with the intersection of state laws and NAGPRA, Ms. Jackson-Golly recommended that the Review Committee consider developing guidance on an approach for different groups to start negotiating provisions for such agreements. Ms. Jackson-Golly asked how long it takes for a response after the Review Committee makes a recommendation to the Secretary. Mr. McKeown stated that some recommendations go to the Secretary in a matter of days, while more complicated recommendations may need verification with the transcript and could take up to a few weeks. Ms. Jackson-Golly thanked the Review Committee for visiting their part of the country and expressed respect for the Review Committee's level of responsibility in making these decisions. Ms. Worl thanked Ms. Jackson-Golly for her comments and recommendations. Mr. Kippen stated that he really liked Ms. Jackson-Golly's suggestion to incorporate the use of information gained through past successful grants as training materials.

Ms. Jan Bernstein

Ms. Jan Bernstein, Bernstein and Associates, thanked the Review Committee for her second opportunity to speak at the meeting. Ms. Bernstein thanked the Review Committee for recommending at a previous meeting the preparation of procedures for presenting documentation for a disposition request, which she used in preparing the presentation she made to the Review Committee the first day of the meeting regarding the request for disposition by the Pioneer Historical Society. Ms. Bernstein asked the following questions:

- What level of proof is used when determining if human remains are Native American? Is it the same level of proof as determining cultural affiliation?
- What types of evidence are considered when making a Native American determination? Is it the same type of evidence used for cultural affiliation?
- Would new oral tradition, such as spirits speaking or guiding a tribe to make a determination that human remains are those of a Native American, be used as valid lines of evidence?
- Is the Review Committee concerned that the Pioneer Historical Society finding made earlier at the meeting would encourage other museums to make determinations on their own that poorly documented human remains are not covered by NAGPRA?

Ms. Worl thanked Ms. Bernstein and stated that her questions would be considered and a response given.

Closing Comments

Mr. Monroe stated that this meeting would likely be his last as his term was ending. Mr. Monroe thanked the museums, federal agencies, and Indian tribes who work very hard to make the law a reality. NAGPRA was designed and intended to help correct and deal with some very basic and unfortunate kinds of mistakes and errors of tragic proportion in the past, and NAGPRA requires true consultation, working together to understand the world we occupy individually or as groups and most of all as human beings. If NAGPRA was helpful in making us all remember that

we are human beings and striving to achieve that in the fullest sense of the term it will be successful. Ms. Worl thanked Mr. Monroe and stated that his contributions to NAGPRA were immeasurable.

Ms. Hutt stated terms were expiring for three members of the Review Committee, Mr. Monroe, Mr. Jones, and Mr. Steponaitis. Ms. Hutt stated that NAGPRA could not function without the time, attention, and effort of each member of the Review Committee. On behalf of the National NAGPRA Program, Ms. Hutt gave her deepest thanks for all of their work.

Ms. Worl thanked Mr. Jones and Mr. Steponaitis for their great contributions on the Review Committee. Ms. Worl stated that Mr. Jones has strengthened the Review Committee with his reminders of heart and spirit and making the law fit by integrating those things. Mr. Steponaitis has been a strong force on the Review Committee, showing that the Review Committee members can have different viewpoints and still work with this law.

Mr. Steponaitis thanked Ms. Worl for her kind words and stated it has been an honor to serve on the Review Committee and a pleasure to serve with his fellow Review Committee members. Mr. Steponaitis thanked the National NAGPRA Program staff for their work and the audience for their participation and very important role in this process. Mr. Jones thanked the audience members for their dedication and stated that his work on the Review Committee has helped him grow and has renewed his dedication toward this very important work.

Meeting Adjournment

The meeting was adjourned at 5:30 p.m., Friday, May 16, 2008.

Certified –

Mr. Timothy McKeown,
Program Officer, National NAGPRA Program
Designated Federal Officer, Native American Graves Protection
and Repatriation Review Committee

Date

Approved on behalf of the Review Committee –

Ms. Rosita Worl
Chair, Native American Graves Protection
and Repatriation Review Committee

Date