

**MINUTES**

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

**FIFTY-FIFTH MEETING**

**MARCH 3-4, 2015**

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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 of the Interior 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 (2006).

Six 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. At least two of the members must be traditional Indian religious leaders. One Review Committee member is appointed by the Secretary from a list of persons developed and unanimously approved by the other members.

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) serves as the Designated Federal Officer (DFO) to the Review Committee. The DFO oversees the activities of the Review Committee and coordinates NPS 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.nps.gov/nagpra> (click on "Review Committee").

Notice of this Review Committee meeting was published in the *Federal Register* on November 20, 2014 (79 FR 69125-69126).

## **The 55th Meeting of the Review Committee**

The 55th meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Ms. Melanie O'Brien, DFO, at 10:00 a.m., on Tuesday, March 3, 2015. Ms. LindaLee (Cissy) Farm, Chair, welcomed those present. Ms. O'Brien confirmed the attendance of the Review Committee members, and stated that the Federal Advisory Committee Act (FACA) requirements were met regarding the publication of the meeting notice and agenda prior to the meeting. Mr. Armand Minthorn offered an opening prayer each day. Ms. O'Brien introduced the National NAGPRA Program staff present at the meeting. Ms. O'Brien thanked the University of Massachusetts – Amherst for hosting the meeting.

Review Committee members present –

Ms. LindaLee (Cissy) Kuuleilani Farm – Chair  
Ms. Sonya Atalay  
Mr. Alexander (Alec) Barker  
Mr. Armand Minthorn  
Ms. Shannon Keller O'Loughlin  
Mr. Dennis O'Rourke  
Mr. Steve Titla

Designated Federal Officer present –

Ms. Melanie O'Brien, Acting Program Manager, National NAGPRA Program, National Park Service

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

Mr. David Tarler, Training and Civil Penalties Coordinator, and Regulations, National NAGPRA Program, National Park Service  
Ms. Lesa Koscielski, Contractor, National NAGPRA Program, National Park Service  
Ms. Carla Mattix, Attorney-Advisor, Division of Parks and Wildlife, Office of the Solicitor, Department of the Interior  
Mr. Stephen Simpson, Senior Attorney, Division of Indian Affairs, Office of the Solicitor, Department of the Interior

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

Ms. Christine Abrams, Tonawanda Band of Seneca, Haudenosaunee Standing Committee, Basom, NY  
Mr. Luis Aguilar, Miakan-Garza Band of the Coahuiltecan Indians, San Antonio, TX  
Mr. Todd Ahlman, Texas State University, Center for Archaeological Studies, San Marcos, TX  
Mr. Ken Alves, Assonet Band of the Wampanoag Nation, Acushnet, MA  
Ms. Imogen Atkinson, University of Massachusetts – Amherst, Amherst, MA  
Ms. Heidi Bauer-Clapp, University of Massachusetts – Amherst, Amherst, MA  
Ms. Carolyn Black, University of Massachusetts – Amherst, Amherst, MA  
Mr. Samuel Bloom, Hampshire College, Amherst, MA  
Ms. Patricia Capone, Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA  
Ms. Sarah Chichetti, Hampshire College, Amherst, MA  
Ms. Elizabeth Chilton, University of Massachusetts – Amherst, Amherst, MA  
N.C. Couch, University of Massachusetts – Amherst, Amherst, MA  
Ms. Emiliana Cruz, no affiliation listed  
Mr. Phil Deloria, University of Michigan, Ann Arbor, MI  
Ms. Christie Delucia, Mount Holyoke College  
Ms. Sandra Dong, Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA  
Ms. Kirsten Falck, University of Massachusetts – Amherst, Amherst, MA  
Mr. Ryan Frisby, University of Massachusetts – Amherst, Amherst, MA  
Mr. Mario Garza, Miakan-Garza Band of the Coahuiltecan Indians, San Marcos, TX  
Ms. Sheila Goff, History Colorado, Denver, CO  
Mr. Anthony Gonyea, Onondaga Nation, Haudenosaunee Standing Committee, Nedrow, NY  
Ms. Erin Gredell, Yale Peabody Museum of Natural History, New Haven, CT  
Ms. Jennifer Hamilton, Hampshire College, Amherst, MA  
Ms. Chloe Hanelt, no affiliation listed

Ms. Tekla Harms, Amherst College, Beneski Museum, Amherst, MA  
 Ms. Olivia Herschensohn, Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA  
 Mr. Conner Hodney, University of Massachusetts – Amherst, Amherst, MA  
 Ms. Deanna Homer, Onondaga Nation, Onondaga, NY  
 Ms. Ajmal Jackson-Brown, Hampshire College, Amherst, MA  
 Mr. Eric Johnson, University of Massachusetts – Amherst, Archaeological Services, Amherst, MA  
 Ms. Kristen Kaines, Hampshire College, Amherst, MA  
 Ms. Honor Keeler, Association on American Indian Affairs  
 Mr. Jim Kendrick, U.S. Dept. of the Interior, National Park Service, Lowell, MA  
 Mr. Matthew Kilroe, University of Massachusetts – Amherst, Amherst, MA  
 Mr. Erik Kreusch, U.S. Dept. of the Interior, National Park Service, Lowell, MA  
 Ms. Christine Landrum, U.S. Dept. of the Interior, National Park Service, Intermountain Region, Lakewood, CO  
 Ms. Karina Larsen, University of Massachusetts – Amherst, Amherst, MA  
 Mr. Bryan Lausten, U.S. Dept. of the Interior, Bureau of Land Management, Washington, DC  
 Mr. George Martin, Hopkins, MI  
 Ms. Shannon Martin, Zibiwing Center, Saginaw Chippewa Indian Tribe of Michigan, Mt. Pleasant, MI  
 Ms. Sydney Martin, Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan, Gun Lake Tribe, Hopkins, MI  
 Ms. Jena McLaurin, University of Massachusetts – Amherst, Amherst, MA  
 Ms. Aliza Micelotta, University of Massachusetts – Amherst, Amherst, MA  
 Mr. Aaron Miller, Mount Holyoke College, Art Museum, South Hadley, MA  
 Ms. Darlene Miller, Smithsonian Review Committee, Salamanca, NY  
 Ms. Katy Mollerud, Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA  
 Ms. Michele Morgan, Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA  
 Ms. Christen Mucher, Smith College, Northampton, MA  
 Ms. Cassandra Naranjo, Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado, Ignacio, CO  
 Ms. Alice Nash, University of Massachusetts – Amherst, Amherst, MA  
 Ms. Angela Neller, Wanapum Heritage Center, Columbia Plateau Inter-Tribal Repatriation Group, Ephrata, WA  
 Ms. Bonnie Newsom, Smithsonian Institution, Penobscot Nation, Eddington, ME  
 Ms. Megon Noble, University of California – Davis, Davis, CA  
 Mr. Aaron Norman, Hampshire College, Amherst, MA  
 Ms. Emily Palus, U.S. Dept. of the Interior, Bureau of Land Management, Washington, DC  
 Ms. Nay Pang, Hampshire College, Amherst, MA  
 Ms. Annie Pardo, U.S. Dept. of the Interior, Bureau of Indian Affairs, Washington, DC  
 Ms. Jishava Patel, University of Massachusetts – Amherst, Amherst, MA  
 Mr. Robert Paynter, University of Massachusetts – Amherst, Amherst, MA  
 Mr. Zac Pelleriti, Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA  
 Mr. Jim Peters, Mashpee Wampanoag Tribe, MA  
 Ms. Ramona Peters, Wampanoag Confederation, Mashpee Wampanoag Tribe, Mashpee, MA  
 Ms. Julie Peterson, University of Massachusetts – Amherst, Amherst, MA  
 Ms. Lydia Plakias, Smith College, Northampton, MA  
 Ms. Denise Pouliot, Cowasuck Band of the Pennacook and Abenaki People, Alton, NH  
 Mr. Paul W. Pouliot, Cowasuck Band of the Pennacook and Abenaki People, Alton, NH  
 Mr. Bryan Printup, Tuscarora Nation, Tuscarora, NY  
 Ms. Cassidy Rappart, Hampshire College, Amherst, MA  
 Ms. Alexandra Reardon, University of Massachusetts – Amherst, Amherst, MA  
 Ms. Helen Robbins, Field Museum of Natural History, Chicago, IL  
 Ms. Nicole Roczey, Hampshire College, Amherst, MA  
 Mr. Danny Rosenberg, University of Massachusetts – Amherst, Amherst, MA  
 Ms. Jane Rousseau, Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA  
 Mr. Kenny Shea, University of Massachusetts – Amherst, Amherst, MA  
 Ms. Natalie Sherif, University of Massachusetts – Amherst, Amherst, MA  
 Ms. Bonnie Sousa, Robert S. Peabody Museum of Archaeology, Andover, MA  
 Ms. Erika Tai, Hampshire College, Amherst, MA  
 Mr. Steve Thomas, Onondaga Nation  
 Ms. Elena Uoerp, Mount Holyoke College, South Hadley, MA  
 Ms. Bettina Washington, Wampanoag Tribe of Gay Head (Aquinnah), Aquinnah, MA

Mr. Ryan Wheeler, Robert S. Peabody Museum of Archaeology, Andover, MA  
Ms. Brittany Wheeler, Field Museum of Natural History, Chicago, IL  
Ms. Julie Woods, University of Massachusetts – Amherst, Amherst, MA

Written Comments received –  
Indiana University – Bloomington, Glenn A. Black Laboratory of Archaeology

## **Welcome**

Ms. Elizabeth Chilton, Associate Vice Chancellor for Research and Engagement and Professor of Anthropology, University of Massachusetts – Amherst (UMass Amherst), welcomed the Review Committee, National NAGPRA Program staff and all present. Ms. Chilton provided a brief summary of individuals responsible for NAGPRA implementation at the university and thanked them for their dedicated work. She was joined by Ms. Alice Nash, Director, Certificate Program in Native American Studies and Associate Professor of History, UMass Amherst. Ms. Nash welcomed the Review Committee and those present and thanked them for their work on NAGPRA implementation.

## **Report: National NAGPRA Program Report on NAGPRA Implementation in FY 2015**

Ms. O'Brien provided a brief update on NAGPRA implementation in the National NAGPRA Program for FY 2015. The program manager position was announced on January 22, 2015, and closed on February 12, 2015. The hiring process is in progress. Ms. O'Brien stated that a March 4, 2015 notice was published seeking nominations from national scientific and museum organizations to fill vacancies on the Review Committee. The terms of Ms. Atalay, Mr. Barker and Ms. Farm expire in April 2015. Ms. O'Brien stated that the Review Committee's Report to Congress will be forwarded to the appropriate members of Congress, following signature of the cover letter by the Director of the NPS. The President's proposed budget for FY 2016 includes level funding for NAGPRA and an increase of one million dollars for the Tribal Historic Preservation Office (THPO) budget.

## **Grants and Notices**

Ms. O'Brien stated that the first apportionment for FY 2015 NAGPRA repatriation grants, covering eight grants, has been signed by the Assistant Secretary for Fish and Wildlife and Parks, DOI, and will be announced soon. The deadline for consultation and documentation grants is March 11, 2015, and they will be announced in June 2015. Ms. O'Brien stated that the National NAGPRA Program has published 67 notices thus far in FY 2015. The program has been keeping pace with notice submissions, despite reduced staffing, and is on target to reach its annual goal of publishing 150 notices. Ms. O'Brien noted that the program has seen a recent increase in the number, size and complexity of notices.

## **Information Collection**

Ms. O'Brien stated that the Office of Management and Budget (OMB) requires a three-year renewal of any regulations that involve collecting information from nonfederal entities, a process that takes nine months. The OMB approval on the current NAGPRA regulations will expire in November 2015, and the National NAGPRA Program has started its nine-month renewal process. On February 17, 2015, a proposed information collection was published in the Federal Register, with a 60-day comment period. A second comment period will follow, along with outreach by the National NAGPRA Program.

## **Training**

Mr. Tarler stated that in the first five months of FY 2015, the National NAGPRA Program has provided almost one thousand instances of NAGPRA training, including in-person training and online views of the eight-part video series, recorded webinars, and the recorded NAGPRA Basics training from November 2014. Mr. Tarler stated that, when possible, future trainings and webinars would be recorded and posted to the National NAGPRA Program YouTube channel. The National NAGPRA Program has worked in collaboration with the National Preservation Institute (NPI) to offer trainings through a three-year agreement. Funding is available to help offset attendee costs, with ten scholarships awarded to date. Additional information can be found through links on the website training page, and the National NAGPRA Program welcomes questions or suggestions about training topics.

Mr. Minthorn stated that some groups have limited technological capacity but still need training opportunities. Mr. Tarler stated the National NAGPRA Program would be happy to hear from any entities seeking financial or technological assistance. The National NAGPRA Program will look at additional ways to spread the word about training opportunities, including direct mailings and through newspaper and radio announcements. The program would be happy to consider additional alternatives. Ms. Keller O'Loughlin recommended gathering information about past participants in the NPI trainings to help evaluate the effectiveness of spreading information about the trainings and to identify how many individuals have been helped through scholarships and tuition waivers.

### **Civil Penalties**

Mr. Tarler stated that NAGPRA allows for the Secretary of the Interior to assess civil penalties against a museum that fails to comply with the requirements of NAGPRA. The process and list of different ways that a museum might fail to comply with the requirements of NAGPRA are set out in section 10.12 of the NAGPRA regulations. The responsibility for civil penalties and civil enforcement has been delegated by the Secretary to the Assistant Secretary of the Interior for Fish and Wildlife and Parks. Mr. Bob Palmer, Civil Penalties Investigator, has worked since November 2014 in a time share agreement with the National Park Service Midwest Region. In the first five months of FY 2015, three written allegations of museum failure to comply were received and one Notice of Museum Failure to Comply was signed by the Assistant Secretary. The museum has 45 days following receipt of the notice to decide whether or not to take action. Responding to questions from the Review Committee, Ms. Mattix stated that details about the issue would not be public information until final agency action is taken. The Review Committee requested updates on the issue when possible, in order to ensure a transparent process.

### **CA and CUI Reports**

Ms. O'Brien provided an update on the two reports prepared by the program in April 2014, in response to the Review Committee's request from its 52nd meeting, and sent via email to the federal agencies and museums listed in the reports. The reports are posted on the National NAGPRA Program website. One of the reports identifies the museums and federal agency units that have culturally affiliated human remains not yet listed in Notices of Inventory Completion (CA report). The other report identifies the museums and federal agency units whose culturally unidentifiable inventories appear to indicate that consultation was never initiated with respect to human remains in the culturally unidentifiable inventories (CUI report). The National NAGPRA Program provided updated reports, dated February 2015, that utilize information included in submitted notices, identified by the affected institutions in correspondence, or identified by the National NAGPRA Program through data review. The number of individuals listed on the updated CUI report is 19,357, a reduction of 4,858 (20 percent). The number of individuals listed on the updated CA report is 12,658, a reduction of 2,224 (16 percent). Ms. O'Brien noted that the reduction in numbers in the CA report appears large, as the April 2014 report contained all culturally affiliated human remains, including those published in notices.

Ms. O'Brien stated that the National NAGPRA Program would continue to update the information in the reports and provide regular status updates to the Review Committee at their meetings. In addition, the National NAGPRA Program intends to analyze the correspondence received in response to the emails in order to summarize barriers faced and progress made by the institutions regarding the individuals listed in the reports. In response to discussion by the Review Committee members, Ms. O'Brien stated that the National NAGPRA Program would try to provide a qualitative analysis to identify which individuals were resolved through data cleanup compared to those resolved through notice publication as a direct result of the reports. Mr. Minthorn stressed the importance of resolving the reasons why individuals appear on these two reports, in order to maintain healthy working relationships between Indian tribes and institutions.

### **Action Items**

Ms. O'Brien summarized the progress on action items from past meetings.

- The National NAGPRA Program has worked to update the Native American Consultation Database, information related to Alaska Native villages, and aboriginal land data on its website, incorporating additional information volunteered by several individuals at past meetings.
- The National NAGPRA Program is working to compile information from past meetings on the issue of federal agency collections in nonfederal repositories.
- At past meetings, the Review Committee asked for additional information on a subset of the CUI inventories that the National NAGPRA Program reported was recorded as culturally unidentifiable by default due to lack of determination by the institution. Through further examination of the submitted information, Ms. O'Brien was able to confirm that the "culturally unidentifiable" determination was made

by the institution and was not a default determination of the program. Ms. O'Brien stated that it is the policy of the National NAGPRA Program to review submitted inventories and not accept inventories that do not contain the necessary determinations. The program will continue to review the inventories in the CUI database to ensure that all determinations listed are those of the institution. Following a question by Mr. Minthorn, Ms. O'Brien stated that the program reviews inventories to make sure that the inventory contains information that the museum made a determination regarding cultural affiliation and provided information on consultation. The information is recorded, but the program does not evaluate the submitted information.

- At the November 2014 meeting, the Review Committee asked the National NAGPRA Program to review consultation information submitted in the culturally unidentifiable inventories. The program has worked on data cleanup and verification of the information in the CUI report, including reviewing the physical inventory records. Ms. O'Brien stated that she hopes that when staffing levels are increased, more comprehensive work on this project can proceed. Ms. Keller O'Loughlin stressed the importance of this issue, and asked if the report would be amended to account for this additional information on consultations. Ms. O'Brien stated that the information gathered through the report would not change, but that the program would assemble additional information on consultation from review of the inventories and through information submitted by institutions listed in these reports. Ms. Keller O'Loughlin recommended that the National NAGPRA Program record the types of evidence submitted for each institution in the electronic database and develop a clear standard that is to be met when inventories are reviewed. Ms. Mattix stated that the regulations require institutions to provide the "results of consultation" and do not further elaborate. While the National NAGPRA Program does review each inventory to ensure that results of consultation are indicated, the program is not in a position to evaluate the consultation efforts of museums and federal agencies. Ms. Mattix stated that this is an area where the Review Committee could provide additional guidance in developing a more specific interpretation of "results of consultation" that are to be provided in inventories. The Review Committee discussed a subcommittee assignment to consider developing this guidance.
- Ms. O'Brien acknowledged a previous offer from the National Association of Tribal Historic Preservation Officers (NATHPO) to assist with extra meetings or hearings in order to promote tribal participation.

## **Presentation: Wampanoag Confederation**

### **Presentation**

Ms. Ramona Peters, Mashpee Wampanoag Tribe, stated she was present also in her capacity as coordinator for the Wampanoag Confederation. Ms. Peters stated that the Wampanoag Confederation was formed in 1996 and has repatriated 522 ancestors to date. Wampanoag Confederation members were first-contact people who have stayed in their homelands and worked on repatriation issues for many years. Ms. Peters stated that one of their main barriers to NAGPRA implementation has been museum resistance. The resistance is due, in part, to lack of resources and education and conflicting worldviews. In addition, many Indian tribes do not have sufficient resources to adequately implement NAGPRA. Another barrier is the exclusion of nonfederally recognized tribal groups, which do not receive federal funds and are not included in the NAGPRA compliance process. Ms. Peters described a long and frustrating process of working with one museum to receive ancestral human remains, which took over 18 years. Ms. Peters stated that the Wampanoag Confederation submitted an allegation that the museum had failed to comply with the requirements of NAGPRA, but they have not received any information following submission. Ms. Peters stated that museums that act in a shameful manner need to be exposed so Indian tribes can be prepared for potential obstructions. This problem highlights the importance of the civil penalties process and imposing deterrents on museums that are resistant to the NAGPRA implementation process. Ms. Peters stated that NAGPRA needs to be better supported by the federal government, through support of the civil penalty process and providing sufficient funds to the National NAGPRA Program to adequately fulfill its duties. The Wampanoag Confederation has heard of delays in the grant and notice processes due to lack of adequate staff. Ms. Peters asked the Review Committee to consider sending a letter to the Assistant Secretary supporting reburial on National Park Services lands in order to ensure safe, protected sites. Ms. Peters thanked the Review Committee for their work on this vital human rights law.

### **Review Committee Questions and Discussion**

Ms. Atalay thanked Ms. Peters for her presentation. The Review Committee has been actively discussing several of the issues noted by Ms. Peters – the issue of use of federal lands for reburial, requests for Congress to provide additional funding for NAGPRA implementation, and ensuring adequate National NAGPRA Program staff to fulfill

implementation duties – and appreciates this input. Ms. Atalay asked for additional information regarding the civil penalties issue raised by Ms. Peters and for any suggestions. Ms. Peters stated that the Wampanoag Confederation followed the process of NAGPRA implementation, and were fortunate that they were able to resolve their conflict with the institution through a conference call with Mr. Tarler. Ms. Peters stated that they have not heard any updates on their civil penalty allegation since it was submitted. A clear process and updates would be very helpful. Ms. Mattix stated that clear guidance on the civil penalty process could be found in the regulations on the National NAGPRA Program website. Because the process is akin to a law enforcement process, the investigations are not transparent. Allegations of failure to comply for which the process has resulted in a civil penalty assessment are summarized in a report on the National NAGPRA Program website. Mr. Tarler added that part of the process includes notification of change of status to any party that alleges a failure to comply, and no determinations have yet been made in the allegation described by Ms. Peters.

Ms. Keller O'Loughlin stated that, although the Review Committee does not oversee the civil penalties process, it can hear from the public about issues with the civil penalty process and could propose potential revisions to the Act or regulations. Ms. Mattix stated that she agreed that the Review Committee could consider how civil penalties play into the entire NAGPRA process, but that the Review Committee would be limited in providing specific instructions to the National NAGPRA Program regarding civil penalty issues. Ms. Peters stated that the dispute resolution assistance of the National NAGPRA Program was of valuable assistance. Mr. Tarler stated that the National NAGPRA Program is happy to provide information and assistance to any NAGPRA constituents with disagreements that impede the progress of NAGPRA compliance. Ms. Farm thanked Ms. Peters for her presentation.

## **Presentation: University of Massachusetts – Amherst, Repatriation Committee**

### **Presentation**

Mr. Robert Paynter, Professor, Department of Anthropology, and Chair, Repatriation Committee, University of Massachusetts – Amherst (UMass Amherst), welcomed the Review Committee and thanked them for their work on NAGPRA implementation. Mr. Paynter stated that UMass Amherst works closely on repatriation issues with, and he acknowledged the efforts of, both Amherst College and Smith College. Mr. Paynter provided a detailed history of Native Americans in the region and a summary of the NAGPRA implementation efforts of UMass Amherst. Mr. Paynter stated that the history of the local region resulted in a number of peoples moving away from the area. At present, the region has only two local federally recognized Indian tribes, the Wampanoag Tribe of Gay Head (Aquinnah) and the Mashpee Wampanoag Tribe. The Mashpee Wampanoag Tribe gained federal recognition in 2008, and was included in early consultations as a nonfederally recognized Indian group. Others participating in the early consultation process were two nonfederally recognized groups, the Nipmuc people and the Western Abenaki people, as well as the Massachusetts Commission on Indian Affairs. After this early consultation, the Native American human remains in the collection were determined to be culturally unidentifiable due to their affiliation with nonfederally recognized Indian groups. This highlights the reality that human remains can be considered culturally unidentifiable for two distinct reasons, lack of information or cultural affiliation with nonfederally recognized Indian groups.

Mr. Paynter stated that UMass Amherst published a Notice of Inventory Completion in May 2014. This was possible due to the extensive consultation efforts and work of individuals from each of the Indian tribes, nonfederally recognized Indian groups, and institutions. The Notice of Inventory Completion includes the Mashpee Wampanoag Tribe, the Nipmuc community, the Western Abenaki community, the Stockbridge-Munsee Community Band of Mohican Indians, the Narragansett Indian Tribe, and the Wampanoag Tribe of Gay Head (Aquinnah). Mr. Paynter thanked all those who participated in the process. Mr. Paynter stated that UMass Amherst's collection included individuals from other regions, mainly through early field schools and donations. To date, UMass Amherst has published nine notices and is in active consultation on two groups of individuals. In addition, UMass Amherst is actively working on its summary obligations and will devote additional time to this effort upon the conclusion of the disposition of Native American human remains in its collection.

### **Review Committee Questions and Discussion**

Mr. Minthorn commended all involved for their efforts in NAGPRA implementation, and asked whether there were any federal lands available for reburial sites in the region. Mr. Paynter stated that there were not, although a local town donated land for a small cemetery for reburial of Native American human remains. Mr. Paynter stated that discussions were underway regarding the individuals in the May 2014 Notice of Inventory Completion. Mr.

Minthorn stated that both federal and state lands have been used for reburials near his tribal lands and stressed the importance of cooperation and relationship building between Indian tribes, institutions, and federal agencies.

### **Action Item: CUI Disposition Request – Texas State University**

#### **Presentation**

Mr. Todd Ahlman, Director of the Center for Archaeological Studies, Texas State University, summarized the CUI disposition request of the Center for Archaeological Studies, Texas State University. Mr. Ahlman was joined by Mr. Mario Garza, Miakan-Garza Band of the Coahuiltecan Indians, a state-recognized tribe in Texas. Mr. Ahlman stated that the request is for the disposition of the culturally unidentifiable Native American human remains of one individual from the San Marco Springs, in San Marcos, Hays County, Texas. The human remains were discovered in September 2011. Following Texas State law, the human remains were disinterred in December 2011 and came to the Center for Archaeological Studies, Texas State University, which holds the human remains in trust as a certified curation facility for the Texas Historical Commission. The Center for Archaeological Studies, Texas State University is considered a museum under NAGPRA regulations. In May 2012, consultation was initiated with federally recognized tribes. In Hays County, TX, there are no federally recognized Indian tribes with aboriginal or tribal land claims. Mr. Ahlman stated that they received no responses to the initial contacts with federally recognized Indian tribes. An osteological analysis was performed and the human remains were determined to be Native American. In December 2013, contact was again initiated with 27 Indian tribes and the Miakan-Garza Band. Several Indian tribes deferred. The Coshatta Tribe of Louisiana responded affirmatively and requested disposition if no other Indian tribe stepped forward. In July 2014, the Miakan-Garza Band of the Coahuiltecan Indians requested disposition, and consultation was conducted with both groups. In November 2014, the Coshatta Tribe of Louisiana deferred to the Miakan-Garza Band of the Coahuiltecan Indians for disposition of the Native American human remains.

Mr. Mario Garza, Miakan-Garza Band of the Coahuiltecan Indians, provided significant evidence as to the sacred nature of the San Marco Springs to the Miakan-Garza Band of the Coahuiltecan Indians. As noted in oral history and local rock art, the San Marco Springs have been considered a sacred site going back to creation. Mr. Garza noted they are working with the City of San Marcos to establish a protected burial site on city parkland. San Marcos is one of the fast growing cities in the nation, and further discoveries are anticipated. Mr. Garza noted several concerns. As many federally recognized Indian tribes historically moved through Texas and do not have aboriginal land ties, requests for consultation with federally recognized Indian tribes frequently receive no response. In addition, as a nonfederally recognized Indian group, the Miakan-Garza Band of the Coahuiltecan Indians is not notified of or allowed to participate in consultation with many institutions. The band's involvement in this situation was due to local knowledge of the discovery. Mr. Garza noted that the band's preference is to reinter Native American human remains close to the original location from which they were removed, which is not always possible when partnering with federally recognized tribes located outside of the State of Texas. Mr. Garza added that 92 percent of Texas is privately owned, and any discoveries on private lands are returned to Indian groups solely at the discretion of the private landowners and outside the scope of NAGPRA.

#### **Review Committee Questions and Discussion**

Mr. Minthorn stated that consultation is more than receiving a letter or being invited to consult. Consultation requires an active conversation and never ends. Adequate and consistent consultation can bring results. Federal agencies have written requirements to follow for proper consultation. Mr. Minthorn stated that museums and universities need to understand that consultation is vital to this process. In response to a question by Ms. Atalay, Mr. Ahlman stated that the artifacts found near the human remains were later determined not to be associated with the human remains due to differences in age. Ms. Farm asked Mr. Ahlman if any Indian tribes opposed this disposition and how he determined which tribes he would solicit for a response. Mr. Ahlman stated that 45 days prior to the meeting he sent a letter describing the proposed disposition and received no responses, other than the response in support of the disposition from the Coshatta Tribe of Louisiana. Mr. Ahlman stated that he used a list published by the Texas Historical Commission of Indian tribes that have expressed interest in consultation for repatriation in the State of Texas, as well as those found on the National NAGPRA Program website.

#### **Review Committee Motion**

Mr. O'Rourke made a motion that the Review Committee recommend to the Secretary that the proposed disposition of the human remains to the Miakan-Garza Band of the Coahuiltecan Indians proceed under the agreement. Ms.

Farm seconded the motion. The motion was passed by unanimous vote. Ms. O'Brien stated the program would proceed with the process required in order for the disposition to occur. Ms. Farm stated that future requests could follow the same format and possibly be done by telephone in order to help contain costs.

### **Action Item: Initial Discussion of the Review Committee 2015 Report to Congress**

The members of the subcommittee on the Review Committee 2015 Report to Congress were Ms. Keller O'Loughlin and Mr. O'Rourke. Mr. O'Rourke and Ms. Keller O'Loughlin will work on a draft report to Congress prior to the November 2015 meeting, and would be happy to receive suggestions or concerns in the interim.

### **Presentation: Bureau of Land Management and Bureau of Indian Affairs, Department of the Interior**

#### **Bureau of Indian Affairs, DOI**

Ms. Annie Pardo, NAGPRA Coordinator and Acting Chief, Division of Environmental and Cultural Resources Management, Bureau of Indian Affairs, DOI, summarized NAGPRA implementation within the Bureau of Indian Affairs (BIA). The BIA asserts control over archeological items, including those subject to NAGPRA, removed from tribal lands under the authority of the Antiquities Act between June 8, 1906 and October 31, 1979, and items removed from tribal lands without authority. To date, the BIA has published notices accounting for 1,902 individuals and 21,048 associated funerary objects. Of these, the BIA has repatriated 1,874 individuals and 20,736 associated funerary objects.

The BIA has collections containing NAGPRA items in 37 repositories. Of these, ten repositories continue to house NAGPRA items for which notices have been published but the affiliated Indian tribes have not yet made arrangements to repatriate the items. Five repositories continue to work under contract to review their collections and determine which items fall under the BIA. One repository received a set of human remains by mail, and the BIA is awaiting the final report from the physical anthropologist's assessment before sending a letter to potentially affiliated Indian tribes. One repository just completed a contract and has a pending funding proposal. Ms. Pardo hopes to secure funding for two additional repositories. The remaining 17 repositories have identified NAGPRA items that were reported to the National NAGPRA Program and are listed in the CUI database. Potentially affiliated Indian tribes have been notified by mail, with additional contact planned. Ms. Pardo listed several current projects funded by the BIA. Ms. Pardo stated that the BIA has enjoyed wonderful working relationships with museums that have led to successful tribal consultations, publication of notices, and repatriations, including Arizona State Museum, which is the repository with the largest collections of BIA NAGPRA items.

Ms. Pardo described several challenges to NAGPRA implementation faced by the BIA. These challenges include communication hurdles, and staffing and resource shortages. In some cases, the BIA does not have access to the repository's accession, site and catalogue records, or knowledge about the transfer of collections from one repository to another. In addition, with no requirement for nonfederal repositories to advise a federal agency about housed federal collections, BIA collections may be unknown to, and unidentified by, the BIA. Federal agencies are limited by law, specifically the Paperwork Reduction Act, on the amount of information they request of nonfederal entities. The DOI recently published a Federal Register notice for information collection that would allow DOI bureaus to seek information about federal collections from nonfederal repositories. In addition, the DOI has worked with the Army Corps of Engineers on an interagency agreement that, with adequate funding, could help identify collections in repositories. Ms. Pardo noted that once the inquiries are sent to nonfederal repositories, there is nothing to compel a response. Ms. Pardo stated that another challenge to NAGPRA implementation has been the increase in indirect costs from some institutions – sometimes it is greater than 50 percent – which ultimately results in less funding for NAGPRA implementation. Ms. Pardo stated the BIA is grateful to the dedicated staff at the repositories housing BIA's NAGPRA items. Despite the challenges, Ms. Pardo stated that steady progress is being made on implementation of NAGPRA within the BIA.

#### **Bureau of Land Management, DOI**

Ms. Emily Palus, Deputy Division Chief, Division of Cultural, Paleontological Resources, and Tribal Consultation, Bureau of Land Management (BLM), DOI, was joined by Mr. Bryan Lausten, Acting NAGPRA Coordinator, BLM. Ms. Palus had provided a detailed update of BLM's NAGPRA implementation in November 2014, and, at this

meeting, provided a detailed overview of the issue of BLM collections in nonfederal repositories. Ms. Palus summarized the historical context of BLM's collections. As a result of institutional practices for archeological expeditions and statutory and regulation requirements, most of the BLM collections, those from BLM or General Land Office (GLO) lands, are held in nonfederal repositories. Due to limited resources, the BLM tends to focus its work on efforts that will yield results, particularly on those institutions with which the BLM has a collaborative relationship. The BLM is dedicated to fulfill the intent of NAGPRA, which is the disposition of Native American ancestors, funerary objects, sacred objects and objects of cultural patrimony. BIA collections in nonfederal repositories are most often the result of researchers and institutions who conducted work under the Antiquities Act of 1906 and the Archaeological Resources Protection Act of 1979. These collections were not placed under loans or service contracts with the Federal Government, but were placed for the benefit of the researchers and institutions. Until the 1990s, when 36 CFR Part 79, Curation of Federally Owned and Administered Archaeological Collections, and NAGPRA were passed, there were no requirements or resources for federal agencies to track, monitor, oversee or coordinate with repositories regarding curation. In addition, the varied history of permitting regulations has resulted in incomplete permit records. This complex history has resulted in three categories of federal collections: those for which a permit was issued and the collection resides with the institution identified in the permit; those for which a permit was issued but through transfers and loans the collection resides with a different institution(s); and those for which no permit was issued. For purposes of NAGPRA, BLM has control of any collections removed from GLO or BLM lands after 1906. The complex permit history and land status changes both contribute to BLM collections that are unknown, on the part of the institution(s) and/or the BLM.

To date, the BLM has published 70 notices accounting for more than 2,000 sets of Native American human remains and nearly 20,000 funerary objects. Work with some institutions has proceeded in a cooperative manner. Other institutions have prioritized collections within the control of the institution. A critical issue to NAGPRA implementation is lack of understanding of the terms "control," "possession" and "physical custody." Misunderstanding of these terms complicates the NAGPRA implementation process. While the BLM is committed to fulfilling its responsibilities when BLM has control, the BLM is wholly reliant on repository personnel to provide information regarding, and physical access to, collections. Possible solutions to this issue would be the clarification of roles and responsibilities for museums holding federal collections and a requirement that museums with possession or physical custody of federally controlled NAGPRA collections report them to the federal agency. In February 2014, the Department published a proposed new information collection for documenting, managing and preserving DOI museum collections in nonfederal repositories, which may help address this situation. Limited federal funding and increased repository fees have been additional obstacles in NAGPRA implementation. Further, a change in NAGPRA grant guidelines has disallowed the use of NAGPRA grant monies for federally controlled collections. Ms. Palus stated that while the BLM has been successful in resolving many collections leading to published notices and repatriation, much work remains to be done. This can be accomplished by willing parties through clarification of roles and responsibilities, ensuring open provision of information, and addressing funding issues.

#### **Review Committee Questions and Discussion**

Mr. Minthorn asked about civil penalties or other consequences for noncompliant federal agencies. Ms. Mattix stated that federal agencies are responsible for complying with NAGPRA but are not subject to civil penalties. The only enforcement avenue to address noncompliant federal agencies is the court system. Mr. Minthorn asked for a copy of the BIA and BLM statements, as well as information on BIA and BLM NAGPRA budgets. Ms. Pardo stated that the BIA funds its museum program as a whole, and does not have a separate line item for NAGPRA. Ms. Pardo stated she seeks additional funding through Department proposals and by utilizing carryover funds. Ms. Palus indicated that the BLM does not have a separate line item budget for NAGPRA. NAGPRA falls under the project portion of the BLM's general cultural resource management fund. Funding is prioritized for projects to the amount available, an average of \$260,000 yearly. Ms. Palus stated that the BLM has made several requests for increased funding, and the President's proposed FY 2016 budget includes an increase for the cultural program of two million dollars, a portion of which would be dedicated to NAGPRA compliance efforts. In response to the GAO report, in 2012, the BLM, BIA, Bureau of Reclamation, Fish and Wildlife and Parks, and the National Park Service each completed a needs assessment to address NAGPRA compliance. This is available on the National NAGPRA Program website.

Mr. Minthorn commended Ms. Pardo and Ms. Palus for the work that has been accomplished, noting that much remains to be done to bring the BIA and BLM into NAGPRA compliance with the requirements of NAGPRA. Mr. Minthorn asked if either agency was listed on the reports discussed earlier. Neither the BIA nor the BLM was on

the CUI report. Ms. Palus stated that the BLM was listed on the CA report regarding human remains and cultural items recovered through a law enforcement investigation; work is underway to address that situation. Ms. Pardo stated that the BIA was not listed on the CA report. Mr. Minthorn stated that the Review Committee can note and express the concerns summarized by the BIA and BLM to the Secretary. In addition, the Senate Committee on Indian Affairs holds hearings, which would be a useful forum for airing these concerns. Mr. Minthorn encouraged both the BIA and BLM to update the Review Committee on progress made at upcoming meetings.

Ms. Keller O'Loughlin asked what force or "sword" the federal agencies have to compel cooperation of nonfederal repositories. Ms. Pardo and Ms. Palus stated that there is no "sword," and federal agencies rely upon the cooperation of nonfederal repositories to fulfill the intent of NAGPRA. Clarification of roles and responsibilities for museums holding federal collections and understanding of the roles and responsibilities of NAGPRA are key to NAGPRA implementation.

Mr. O'Rourke asked for clarification of the grant issue raised by Ms. Palus. Ms. Palus stated that the guidelines were changed in the 2011 grant cycle to disallow use of NAGPRA grants for projects containing federal collections. Ms. Palus stated that allowing NAGPRA grants to be used for comingled collections, i.e., federal collections and museum collections together in a museum, would be helpful.

Ms. Atalay thanked Ms. Pardo and Ms. Palus for their hard work and their presentations. The Review Committee has heard many examples of large institutions with unidentified numbers of federal collections. Ms. Atalay stated she was frustrated by the complicated and unresolved issue of federal collections in nonfederal repositories. Ms. Atalay summarized the suggested solutions – clarifying definitions in the regulations, requiring museums to report federal collections to the federal agency, and giving federal agencies full authority to request information. Ms. Atalay stated that these suggestions sound like solid solutions to help address this issue. Mr. Atalay stated it would be useful for the Review Committee to hear from repositories with federal collections concerning their successes and barriers to NAGPRA implementation.

Ms. Farm asked for an update on the draft proposed regulations. Ms. O'Brien stated that the National NAGPRA Program was working to draft the proposed regulations in plain language, in accordance with the Plain Language Writing Act of 2010 and Executive Orders. Then the draft proposed regulations would be reviewed within the Department. Ms. Farm thanked Ms. Pardo and Ms. Palus for their presentations and encouraged them to continue to update the Review Committee on NAGPRA implementation.

## **Presentation: Peabody Museum of Archaeology and Ethnology, Harvard University**

### **Presentation**

Ms. Patricia Capone, Museum Curator, Peabody Museum of Archaeology and Ethnology, Harvard University, was joined by Ms. Sonya Dong, NAGPRA Coordinator, Ms. Michele Morgan, Ms. Olivia Herschensohn, Ms. Jane Rousseau, Ms. Katy Mollerud, and Mr. Zac Pelleriti. Ms. Capone provided a brief update on NAGPRA implementation at the Peabody Museum of Archaeology and Ethnology. The Peabody Museum of Archaeology and Ethnology has committed significant resources and attention over many years to implement NAGPRA and cultivate necessary relationships. The process has benefited each of the museum's missions of education, research, and developing relationships with indigenous communities and scholars. The Peabody Museum of Archaeology and Ethnology is responsible for NAGPRA implementation for one of the largest and broadest collections subject to the Act. Consultation with Native American Indian tribes and Native Hawaiian organizations takes several forms – visits to the museum, correspondence, web consultation through the museum's online collections database, and arrangements for physical repatriations. Over the past year, the museum welcomed six in-person NAGPRA consultation visits and hundreds of other phone and email exchanges. The Peabody Museum of Archaeology and Ethnology continues to facilitate NAGPRA activities for federal agency-controlled collections. Ms. Capone stated that the Peabody Museum of Archaeology and Ethnology will feature a new NAGPRA display in spring 2015 in the North American Exhibit Hall. The display will complement the existing exhibits discussing specific repatriations and will feature an online component.

### **Review Committee Questions and Discussion**

Ms. Atalay thanked Ms. Capone for her presentation and asked if she could share some of the museum's experience as a nonfederal repository holding federal collections. Ms. Capone stated that the Peabody Museum of Archaeology

and Ethnology has worked with federal agencies to establish what collections might be under federal agency control. Many of these collaborations have resulted in repatriations or dispositions; several discussions are ongoing. Prior to the meeting, representatives of the BIA and BLM visited the Peabody Museum of Archaeology and Ethnology to examine federal collections, which is a valuable step in helping to clarify the roles and responsibilities of all. Ms. Farm thanked Ms. Capone for her presentation and acknowledged the staff attending the meeting. Ms. Keller O'Loughlin commented on the number of Peabody Museum of Archaeology and Ethnology staff in attendance and asked if Ms. Capone could speak to the NAGPRA budget for the museum. Ms. Capone stated that, in general, NAGPRA implementation efforts are spread throughout the Peabody Museum of Archaeology and Ethnology and integrated into the regular activities of multiple museum departments.

### **Discussion: Upcoming Meeting Dates and Locations**

Ms. O'Brien stated that the National NAGPRA Program prepared an updated map of past meeting locations, which was provided to the Review Committee and made available on the National NAGPRA Program website. Ms. O'Brien asked the Review Committee to consider possible dates and locations for the fall 2015 and spring 2016 meetings.

Ms. Keller O'Loughlin chaired the subcommittee on upcoming meetings. In response to discussions at previous meetings, Ms. Keller O'Loughlin presented information on possible fall meeting locations in Oklahoma. Based on venue and location, the Review Committee was in favor of moving forward with a meeting in coordination with The Chickasaw Nation, The Choctaw Nation of Oklahoma or The Quapaw Tribe of Indians. The Review Committee supported Ms. Keller O'Loughlin's idea to hold a panel discussion in honor of the twenty-fifth anniversary of NAGPRA, which falls on November 16, 2015. Ms. O'Brien stated the National NAGPRA Program would work to coordinate dates and locations for the November meeting, to include recognition of NAGPRA's anniversary. Following discussion, Ms. O'Brien agreed to look into the following possible locations/invitations for the spring 2016 meeting: Juneau, AK; Salt Lake City, UT; Denver, CO; and Missoula, MT or the upper Midwest states.

The Review Committee suggested that local federal agencies, nonfederal repositories, and museums be invited to give presentations on their NAGPRA implementation efforts, including those institutions listed on the CA and CUI reports discussed earlier during the meeting.

### **Report: Report to the National NAGPRA Program and the Review Committee Regarding Lands for Reburial**

#### **Presentation**

Ms. Christine Landrum, Director, Office of Indian Affairs and American Culture, Intermountain Region, NPS, Ms. Sheila Goff, NAGPRA Liaison/Curator of Archaeology, History Colorado, and Ms. Cassandra Naranjo, NAGPRA Apprentice, Southern Ute Indian Tribe, presented a draft report titled, "Lands for Reburial: A Preliminary Report to the Native American Graves Protection and Repatriation Review Committee Regarding the Legal and Policy Framework for Reburial of Native American Human Remains Following Repatriation under the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA)." In addition, Ms. Lynn Hartman, Cultural Resource Contract Administrator, Ute Mountain Ute Indian Tribe, and Ms. Kim Greenwood, Cultural Anthropologist, National Park Service, Intermountain Region participated in the project team. A copy of the draft report was provided to the Review Committee members. Ms. Cassandra Naranjo read a statement from Ms. Lynn Hartman on the significance of this important work and how it affected every individual involved in the process.

Ms. Landrum and Ms. Goff summarized the history, methodology and results of the work. NAGPRA provides a process for museums and federal agencies to return certain Native American cultural items – human remains, funerary objects, sacred objects and objects of cultural patrimony – to lineal descendants, culturally affiliated Indian tribes and Native Hawaiian organizations. NAGPRA does not explicitly address reinterment or reburial of Native American human remains repatriated under the Act. From a traditional cultural perspective, many tribal communities do not consider the NAGPRA process complete until reinterment has occurred. One impediment to full NAGPRA implementation has been the lack of suitable reburial locations. The Review Committee has acknowledged this issue at its meetings and through its reports to Congress. In 2012, the Review Committee asked the National NAGPRA Program to compile information on existing legal and policy framework related to the

reburial of Native American human remains. In response, in 2013, the Ute Mountain Ute Tribe of the Ute Mountain Reservation, Colorado, New Mexico and Utah, History Colorado, and the National Park Service Intermountain Region, Office of Indian Affairs and American Culture agreed to partner on a report compiling existing information about laws and policies addressing reburial following repatriation under NAGPRA.

The goal of the project team was to provide information gathered through informal research to assist the Review Committee in addressing this issue. The submitted draft report compiles basic information and does not contain any legal or policy analysis or make recommendations. The final report will contain citations and/or copies of each existing policy and statute. The report seeks to answer the following key questions related to lands for reburial:

1. Is there an issue or problem regarding the availability of lands for reburial of Native American human remains following repatriation or disposition under NAGPRA?
2. What is the scope and nature of the issue or problem?
3. Does the issue or problem lend itself to an agency policy or legislative solution?

Each of the three project partners contacted its counterparts with informal requests to voluntarily share information about existing policies and case studies relevant to the “lands for reburial” issue. Of the 38 federal agencies contacted, 21 responded. Of the 51 state archeologists (including the District of Columbia) contacted, 49 responded. Of the 137 Indian tribes and THPOs contacted, 27 responded. Responses from these informal requests are summarized in the report.

The report indicates there is a clear problem regarding the availability of lands for reburial of Native American human remains following disposition under NAGPRA. While the problem may not be common to all tribes, some tribes, and particularly those tribes with significant NAGPRA experience, identify it as a barrier to full NAGPRA implementation. Some states and most federal agencies have discretion under their management policies to reinter human remains that originated from lands they manage, and this information is provided in the report. Several factors can complicate the reburial process, such as lack of information on collection origin, lack of policies within agencies, or collections originating from land not under the control of state or federal agencies. According to information in National NAGPRA Program databases on inventories and voluntarily reported repatriations, an estimated 130,000 Native American individuals will ultimately need a place to be reburied. Consideration of the information submitted through this process highlights the variability and complexity of policies and practices regarding the reburial of repatriated or dispositioned Native American human remains across the United States. This variability results in numerous challenges and barriers.

The project team requested that the Review Committee review the report and provide feedback. The project team hoped that this report will help identify the key factors necessary to understanding and addressing the lands for reburial issue, and that the report will provide useful information for all NAGPRA practitioners. Ms. Landrum stated that she would be leaving her position with the NPS and that Ms. Goff would act as project lead.

### **Review Committee Questions and Discussion**

Mr. Barker thanked the project team for the report, which provides very helpful and necessary information. Although not part of the report, Mr. Barker asked if the project team could provide an indication of policy that does work or suggest any recommendations. Ms. Landrum offered her personal opinion that there is not a single solution, given the complexity and variability of the issue and the differences between tribes across the country. This leaves regional level types of solutions, such as those used in Colorado, which have led to benefits extending beyond NAGPRA. Ms. Goff stated she agreed that a regional or statewide approach seems to be the most logical, given the variety of tribes, federal and state agencies, and lands available. Ms. Naranjo stated that, in her experience, collaboration was a key factor in the continued success in Colorado. From a tribal perspective, it is important to return the ancestors as close as possible to where they originally were buried. The project team hoped that sharing this information will help tribal communities understand existing federal and state agency policies and thereby enable tribal representatives to talk to the appropriate agencies about this issue. Mr. Barker asked if it would be helpful for the Review Committee to recommend that legislative and policy solutions emphasize flexibility to meet differing demands and tribal needs. Ms. Landrum stated that may be helpful, but that she would defer to counsel as to specific policy solutions. Ms. Atalay thanked the project team for their work, and asked about the possibility of Memoranda of Understanding (MOU) and Memoranda of Agreement (MOA) as a partial solution. Ms. Landrum stated that MOUs and MOAs are a great solution to document a common understanding, but do not provide authority or discretion that does not already exist in policy. Ms. Landrum stated that the Colorado Lands

Repatriation Work Group started by reviewing the various policies in place and then developed their MOU. In the absence of policy, the development of an MOU would be one approach. Mr. O'Rourke thanked the project team for the report, and suggested that collaboration might be very useful in resolving these issues, particularly at the local and regional levels.

Mr. Minthorn stated that in his experience, federal agencies do not have a consistent understanding of this issue across the country. Indian tribes in the Northwest have general rules that they try to follow for reburial of ancestral human remains, such as reburial at or near the original burial site. Indian people need to take care of Indian remains, whether they are culturally affiliated or culturally unidentifiable. Mr. Minthorn stated that the tribes in Oregon are close to agreeing on a burial site for culturally unidentifiable human remains from all over the State of Oregon. Mr. Minthorn suggested that the Review Committee present this issue to the Secretary and also invite comment on this issue from the different local agencies and tribes at future meetings. Mr. Minthorn offered the assistance of the Columbia Plateau Inter-Tribal Repatriation Group in addressing this issue. Mr. Titla stated that the Western Apache NAGPRA Working Group is a good example of collaboration on a regional level. Mr. Titla agreed that this is an important issue that the Review Committee should work to resolve. Ms. Farm acknowledged Ms. Landrum's work and wished her well in her future endeavors.

### **Report: Non-Destructive Ancient DNA Extraction and Sequencing**

Mr. Dennis O'Rourke, Review Committee member and Interim Chair, Department of Anthropology, University of Utah, provided an update on new developments in molecular biology and genetics. Mr. O'Rourke explained developments in accessing DNA in ancient remains through new nondestructive methods. Mr. O'Rourke described the process, which involves extraction of DNA from dental material through a nondestructive wash process. In one instance, both mitochondrial and nuclear genomes were obtained from dental material up to 2,300 years old. Mitochondrial DNA is maternally inherited and thus reflects only maternal lineages, whereas consideration of the nuclear DNA opens the genetic history to a much greater ancestral picture. Mr. O'Rourke stated that the information gained from analyzing DNA helps to characterize populations through biological ancestry, but does not reflect cultural affiliation or cultural identity. With that understanding, this process allows for consideration of DNA material through nondestructive analysis.

### **Presentation: Columbia Plateau Inter-Tribal Repatriation Group**

#### **Presentation**

Ms. Angela Neller, Curator, Wanapum Heritage Center, stated she works with the Wanapum Band of Priest Rapids on repatriation issues. The Columbia Plateau Inter-Tribal Repatriation Group (CPITRG) consists of the Confederated Tribes and Bands of the Yakama Nation, Confederated Tribes of the Colville Reservation, Confederated Tribes of the Umatilla Indian Reservation, Nez Perce Tribe, and Wanapum Band of Priest Rapids. A copy of the presentation was provided to the Review Committee members prior to the meeting and made available on the National NAGPRA Program website. At past meetings, the CPITRG summarized its progress made and barriers encountered in NAGPRA implementation. Ms. Neller stated that her presentation would include testimony on NAGPRA compliance and best practices for consultation, curation and repatriation. The National NAGPRA Program has provided numerous reports with information submitted on summaries, inventories, and through notices and other data calls. What is missing is an analysis that considers whether all parties who are required to comply with the law have done so.

The CPITRG considers best practices with regard to consultation to include the following:

- Federal agency and museum staff know with whom to consult, researching updated contact lists for key tribal personnel, such as current tribal chairmen and pertinent program staff. Agencies and museums should understand they cannot dictate who can participate in the consultation process.
- The federal agency and museum acknowledges consultation may include more than one tribe and may include nonfederally recognized Indian groups, and all are treated equally during the consultation process.

- Tribes appreciate agencies and museums being direct and honest during consultation. Direct and honest should not be confused with strict and unbending. Policy makers should be at the table so that answers can be given and assurances can be made.
- Consultation should begin early in the relationship and may not have an end. Meetings should be held as often as needed. Consultation takes as long as it takes. Consultation should be programmed into the planning process; it affects timelines, staff time, and budgets. Effective consultation should build relationships which continue after a project or repatriation is completed.
- Cultural differences between tribes in approaches to consultation and preservation of cultural resources should be expected, recognized and respected.
- Agencies and museums should be aware and understand meetings may be canceled or rescheduled on very short notice due to a need in the community. Due to traditional practices, there may be better times of the year to schedule meetings.

The care and management of Native American human remains and NAGPRA objects is important to the CPITRG. Curation should be respectful for both the ancestors and their living descendants. The CPITRG considers best practices with regard to curation of Native American human remains and NAGPRA objects to include the following:

- Handling human remains in a manner that is respectful to the practices of potentially affiliated tribes. This may mean storing the remains in specific ways, in isolated locations, conducting ceremonies, feeding, ceremonial room treatments, keeping funerary objects and associated human remains together, and limited handling.
- Being sensitive to the tribal beliefs and concerns of individuals being in the presence of human remains and NAGPRA cultural items and taking steps to protect all individuals from potential harm.
- Developing policies and procedures that involve potentially affiliated tribes in the care of and access to human remains, including requests for information and research. These policies and procedures should extend to all collections potentially affiliated with those tribes.

The CPITRG considers best practices with regard to repatriation to include the following:

- Open communication with everyone involved.
- Working to provide support for repatriation on both the agency/museum side and the tribal side to accomplish the goal of final disposition.
- Working for the best interest of the ancestors and objects in disposition planning including location and protection.
- Working for the best care of those involved with handling and preparing for the disposition.

The CPITRG made the following recommendations.

- The NAGPRA Review Committee should direct the National NAGPRA Program to undertake a study of museums that are required to comply with the law and assess their compliance.
- On their website, the National NAGPRA Program should provide best practices for consultation, curation and repatriation.

On behalf of the CPITRG, Ms. Neller thanked the Review Committee for the opportunity to provide testimony.

### **Review Committee Questions and Discussion**

The Review Committee thanked Ms. Neller for her presentation, including the lists of best practices and for the specific questions and recommendations. Ms. Farm stated that the Review Committee would incorporate this information into their discussions.

### **Action Item: Discussion and Review of the Review Committee's Dispute Procedures**

The members of the subcommittee on dispute procedures were Ms. Atalay, Mr. Barker and Ms. Keller O'Loughlin. Draft procedures were provided to the Review Committee and posted on the National NAGPRA Program website prior to the meeting. Ms. Atalay stated that the subcommittee has worked to incorporate prior discussions and

public comments into the current draft, and she summarized several changes for which there was agreement. The Review Committee discussed two specific substantive parts of the draft procedures, and agreed on wording to be incorporated into the final version of the procedures.

Under the section “Resolving Disputes Early,” the Review Committee discussed the most effective way to encourage parties to work together toward resolution of material issues while demonstrating that the Review Committee is committed to providing assistance to disputing parties when necessary. After consideration, the Review Committee agreed upon the following wording for section II, Resolving Disputes Early, “The Review Committee believes that disputes among Indian tribes, Native Hawaiian organizations or lineal descendants and federal agencies or museums should be resolved as early as possible through appropriate consultation or other available methods and at the appropriate staff level. The regulations require parties to engage in good faith negotiations before bringing a dispute to the Review Committee. National NAGPRA is available to provide technical assistance to support good faith negotiations. Anyone interested in such assistance can contact the National NAGPRA Designated Federal Officer.” In order to fully inform the Review Committee of the thorough history of an issue, section V.A.2.f was changed to the following: “The Review Committee goal is to facilitate the resolution of disputes. In order to effectively make recommendations for resolution to the disputing parties, it is important that the committee understands any alternative resolution efforts already taken by the disputing parties. To this end, providing the committee with a statement of previous efforts to resolve the dispute, including the results of alternative dispute resolution efforts, if applicable, is highly recommended.”

The Review Committee discussed the timelines outlined in the process, in an effort to ensure sufficient time for all parties to act on the issue while, at the same time, allowing for the process to proceed in a timely fashion.

#### **Review Committee Motion**

Ms. Atalay made a motion to provisionally adopt the draft dispute procedures with the agreed-upon changes, reserving the final decision on timelines for a teleconference. Mr. O’Rourke seconded the motion. The motion passed with a vote of six in favor (Atalay, Barker, Farm, Minthorn, O’Loughlin, and O’Rourke) and one opposed (Titla). The draft dispute procedures will be reviewed by counsel and the National NAGPRA Program staff prior to the teleconference.

### **Action Item: Subcommittee Discussions**

Ms. O’Brien stated that under the Review Committee’s charter, subcommittee membership can include individuals not currently serving on the Review Committee. The purpose of subcommittees is to compile information and/or conduct research. Any action taken would require the Review Committee to act as a whole.

#### **Subcommittee on the 2015 report to Congress**

Subcommittee members: Ms. Keller O’Loughlin, Mr. O’Rourke

Mr. O’Rourke stated that the subcommittee will continue to compile information from discussion and public comments for incorporation into the report, subject to Review Committee approval at the end of the calendar year.

#### **Subcommittee on the dispute procedures**

Subcommittee members: Ms. Atalay, Mr. Barker, Ms. Keller O’Loughlin

Ms. Farm stated that the Review Committee will hold a teleconference meeting, prior to the expiration of three member terms, in order to finalize the changes discussed to the dispute procedures during the meeting.

#### **Subcommittee on the CA/CUI reports**

Subcommittee members: Ms. Keller O’Loughlin, Mr. O’Rourke, Mr. Minthorn

In response to a question by the subcommittee, Ms. O’Brien stated that the National NAGPRA Program sent letters to all appropriate museums and federal agencies concerning the reports. The program has been collecting responses, and will be happy to provide an update to the Review Committee. After discussion, the Review Committee agreed that the subcommittee on the CA/CUI reports would also explore the idea of providing some guidance on consultation. Mr. Minthorn agreed to serve on the subcommittee. Mr. Barker stated that often consultation is considered as a specific set of questions or steps. Varied situations arise, and Mr. Barker hoped the guidance would allow consultations that vary in nature, scope and character to accommodate situational differences and consider matters of time and resources.

**Subcommittee on the issue of “balance”**

Subcommittee members: Committee of the whole

Ms. Keller O’Loughlin recommended that this subcommittee (previously consisting of Ms. Keller O’Loughlin and Mr. Barker) be a subcommittee of the whole, and that some type of panel or interactive discussion considers this issue at the November 2015 meeting. The Review Committee agreed.

**Subcommittee on lands for reburial**

Subcommittee members: Ms. Atalay, Mr. Barker, Mr. O’Rourke

Ms. O’Brien noted that this has been a long-standing subcommittee, and previous members include Eric Hemenway and Mervin Wright, Jr. Mr. Barker acknowledged the Report on Reburial Lands presented at the meeting, and stated that the subcommittee will carefully consider the draft information and provide feedback. Mr. O’Rourke agreed to serve on the subcommittee.

**Subcommittee to consider ambiguities in the statute**

Subcommittee members: Ms. Keller O’Loughlin

Ms. Keller O’Loughlin agreed to serve on the subcommittee, which was proposed at a previous meeting.

**Subcommittee to arrange a meeting with the Assistant Secretary for Indian Affairs**

Subcommittee members: Ms. Keller O’Loughlin

Ms. O’Loughlin agreed to serve on the subcommittee. Ms. O’Loughlin stated it was her hope that the Assistant Secretary of Indian Affairs, Mr. Kevin Washburn, would be able to attend the November 2015 meeting, which would be held in his homelands. Mr. Minthorn stated that this would be a good opportunity for the Review Committee to share concerns about the BIA and NAGPRA. The Review Committee agreed that Ms. O’Loughlin would extend an invitation to the Assistant Secretary of Indian Affairs.

**Public Comment****Mr. Aaron Miller**

Mr. Aaron Miller, Mount Holyoke College, stated that Mount Holyoke College is a small liberal arts college with a collection that contains approximately 700 Native American objects, but no human remains. Mr. Miller stated that as museum curator, he has taken the lead for NAGPRA implementation, along with his other duties. The college has recently increased its staff and committed attention toward NAGPRA implementation.

Ms. Farm asked if the museum has completed NAGPRA summaries. Mr. Miller stated that the summary process has been started, but the summaries have not yet been sent to Indian tribes. The region has a very complex history, and Mr. Miller has been reaching out to tribes before sending documents. Ms. Farm encouraged Mr. Miller to work with other museum professionals and to contact the National NAGPRA Program with questions or requests for technical assistance.

**Ms. Ramona Peters**

Ms. Ramona Peters, Mashpee Wampanoag Tribe, stated she would like to ask Ms. Capone, Peabody Museum of Archaeology and Ethnology, Harvard University, if DNA testing is being performed on human remains related to NAGPRA at the museum. Ms. Farm stated that the Review Committee could not compel a response on the record, however, Ms. Capone was welcome to speak if she so desired. Ms. Capone stated that she would be happy to have a conversation with Ms. Peters about the museum’s activities. Ms. Keller O’Loughlin asked if there was any situation under NAGPRA in which a museum would be required to do scientific research in order to facilitate repatriation. Ms. Mattix stated that the Department’s position has been that the statute does not preclude gathering evidence that might be necessary to make a determination deemed necessary by the federal agency or museum, and this issue is typically associated with ancient remains. This opinion was expressed at a hearing before the Indian Affairs Committee, but not in writing to Ms. Mattix’s knowledge. Ms. Keller O’Loughlin noted that this interpretation is an executive agency pronouncement and not a reading of the statute by an executive agency.

**Mr. Paul Pouliot**

Mr. Paul Pouliot, Cowasuck Band of the Pennacook and Abenaki People, Wabanaki Confederation, stated that he did not know of any DNA database, ancient or otherwise, that would allow any museum to test DNA of human

remains in order to determine cultural or tribal affiliation. Historically, the Wabanaki Confederation is made up of numerous Native groups throughout New England. Mr. Pouliot stated that the Cowasuck Band of the Pennacook and Abenaki People has petitioned for federal recognition but the acknowledgement process can be long. His personal history is documented through thirteen generations dating back to first contact in the 1600s. Mr. Pouliot thanked the Review Committee for their work. Ms. Farm thanked Mr. Pouliot for his comments.

**Ms. Bonnie Newsom**

Ms. Bonnie Newsom, Penobscot Nation, Wabanaki Intertribal Repatriation Committee, stated that the Wabanaki Intertribal Repatriation Committee is appointed by tribal leadership in Maine to work on repatriation issues, both in the United States and Canada. The group includes representatives from the Aroostook Band of Micmacs, the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe, and the Penobscot Nation. Ms. Newsom stated she has been a Maine archeologist for 20 years and served as the THPO for the Penobscot Nation for 10 years.

Ms. Newsom summarized repatriation activity in Maine. Ms. Newsom stated that as part of her Ph.D. studies at UMass Amherst, she conducted research on various lines of cultural affiliation evidence that could be used by the tribes in the Wabanaki Intertribal Repatriation Committee to support repatriation claims. In September 2011, the committee mailed letters to eight institutions identified in the National NAGPRA Program database as holding ancestral remains and associated funerary objects from Maine with the following results: two institutions repatriated four individuals; three institutions offered no response; one small institution supports the request, but lacks capacity to fulfill the request; one state institution sent the claim to the state attorney general's office where it is pending legal review; and one institution denied the claim with no explanation. In one instance, the claim for ancestral remains at Peabody Museum of Archaeology and Ethnology, Harvard University, was denied, while the claim for funerary objects at the Robert S. Peabody Museum of Archaeology was affirmed and is moving forward. Ms. Newsom stated that the committee has attempted to follow the process outlined in the law and has had a multitude of experiences. The committee is frustrated that the decision making authority relative to cultural affiliation determinations rests with the individuals in positions of power in these institutions. Although legal recourse is available, this process should not be so difficult for tribes.

Ms. Newsom stated that the Wabanaki Intertribal Repatriation Committee submitted a claim to the Peabody Museum of Archaeology and Ethnology, Harvard University, for ancient human remains originally from Maine. The claim was denied with no explanation as to why the evidence was not accepted as valid. Ms. Newsom expressed concern that, without their knowledge, these human remains may be subjected to DNA testing, and stated that if an Indian tribe has made a claim, even if denied, they should have a role in determining what happens to the human remains until the issue is resolved. At this point, the Wabanaki Intertribal Repatriation Committee does not know the status of the remains or what steps they should take. Mr. Titla asked that Ms. Newsom receive assistance on this issue. Ms. Mattix agreed to discuss the matter with Ms. Newsom. Ms. Farm encouraged any parties with questions to contact the National NAGPRA Program for technical assistance.

**Review Committee Questions and Discussion**

Mr. Minthorn asked for additional information on the Wabanaki Intertribal Repatriation Committee's international repatriation efforts in Canada. Ms. Newsom stated that several tribes have communities on both sides of the U.S.-Canada border and work closely with all groups to meet repatriation needs. Mr. Titla stated he agreed with the comments expressing concern about non-Native people making decisions regarding NAGPRA cultural items. Mr. Titla stated that museums and federal agencies could address this concern by placing Native people in decision-making and community-outreach positions. Ms. Atalay described a similar situation with tribes in Michigan and the University of Michigan, which ultimately ended in repatriation through the efforts of tribal members and an activist campaign. Since then, the University of Michigan has become a leader in NAGPRA implementation, providing written policy on their website. Ms. Atalay thanked Ms. Newsom for sharing the committee's experience and encouraged their continued efforts. Ms. Keller O'Loughlin stated frustration that institutions do not understand the law or the harm that their actions cause, and asked about the committee's planned action. Ms. Newsom stated that her Ph.D. credentials, which she is close to attaining, may help the process. The committee has good relations with the Robert S. Peabody Museum of Archaeology and is working with the museum toward repatriations. As a confederacy, geography complicates the process, but the committee is committed to working together and move forward.

**Ms. Emily Palus**

Ms. Emily Palus, Deputy Division Chief, Bureau of Land Management's Division of Cultural, Paleontological Resources, and Tribal Consultation, DOI, spoke about the BLM's experiences regarding lands for reburial. In 2006, the BLM reversed its prior prohibition and started to allow reburial, recognizing this as a discretionary authority which is reviewed on a case-by-case basis. Since that time, every formal request for reburial has been approved. Due to the sensitive nature of these issues, information on the reburials is maintained at the national level. The issue of reburial is complicated by the varied nature of policies within and among the various agencies. The BLM sees a regional approach as the most viable solution, due to unique needs in certain geographic areas, although there may be some opportunity for a national framework or umbrella authorities and guidelines.

The BLM policy was issued as an Instructional Memorandum, and is renewed each year. The BLM is working to codify the policy within its new tribal consultation and coordination manual and handbook, building upon its experiences over the past several years. Ms. Palus stated she would update the Review Committee on progress with the policy. The BLM recognizes that lack of lands for reburial remains one of the barriers to full and complete repatriation, and the BLM is willing to collaborate on the issue. Ms. Palus stated that Mr. Bryan Lausten would be working on NAGPRA issues while she is on maternity leave.

Mr. Minthorn asked whether the human remains have to originate from BLM lands in order to be allowed reinterment on BLM lands. Ms. Palus stated that they do, with two exceptions – lands adjacent to BLM lands or lands that have changed status from private or state lands to BLM lands. Mr. Minthorn asked for a copy of the BLM reburial policy, which Ms. Palus stated was publically available to any interested parties. Mr. Minthorn asked about the discretionary component of the policy. Ms. Palus stated that the BLM is mandated to manage lands for multiple uses, including oil and gas development, renewable energy, grazing, and so forth. The BLM wants to be cautious and ensure that reburial locations are not likely to be impacted in the future, that the BLM will be able to provide physical and legal protections to the site, and that reburials carefully consider budget and compliance issues. Mr. Minthorn cited an example for the proposition that different offices of the BLM have different levels of information on reburial policy. Ms. Palus stated that she was aware of this disparity, and that the BLM will do whatever is necessary to further educate all sectors of the agency.

Mr. Titla raised a boundary dispute between the San Carlos Apache Tribe and the BLM, and asked how the reburial policy would apply to disputed territory areas. Ms. Palus stated that she would be pleased to see to it that Mr. Titla's question was answered. Ms. Farm thanked Ms. Palus for speaking and offered her congratulations.

**Mr. Ryan Wheeler**

Mr. Ryan Wheeler, Director, Robert S. Peabody Museum of Archaeology, Andover, MA, provided an update on NAGPRA implementation at the Robert S. Peabody Museum of Archaeology. In the 1990s, Director Jim Bradley and NAGPRA Coordinator Leah Rosenmeier took a progressive approach to the Act, and worked diligently to determine cultural affiliations and repatriate ancestral human remains and funerary objects. Consultations with Indian tribes and descendants resulted in lasting positive relationships. To date, 59 out of 110 NAGPRA collections at the Robert S. Peabody Museum of Archaeology have been affiliated to one or more Indian tribes and 35 collections have been repatriated. One of the challenges faced by the museum is split collections, a historical phenomenon in which the Robert S. Peabody Museum of Archaeology kept funerary objects but sent the associated ancestral remains to other institutions. In some cases, the museum and the other institution have differed over the cultural affiliation of their respective collections. Since May 2010, one claim has been made for disposition of culturally unidentifiable human remains under section 10.11. Mr. Wheeler stated that the language used in the notices for disposition under section 10.11 can be hurtful to Indian tribes as it categorically renounces any connection between the human remains and funerary objects and contemporary tribes. Mr. Wheeler stated that additional research on the practice of NAGPRA could be valuable in helping to understand NAGPRA from an empirical point of view, and may help identify ways in which the Act or rules could be improved. Mr. Wheeler stated that consultation is clearly at the core of NAGPRA, and institutions are responsible to ensure that Native voices are heard regarding disposition of ancestral human remains and funerary objects.

**Review Committee Questions and Discussion**

Mr. Minthorn stated that any disposition of associated or unassociated funerary objects or items of cultural patrimony has to be done in consultation with all parties. Institutions housing these collections, including split collections, are responsible for maintaining relationships with those who have an affiliation or connection to the items. Ms. Atalay stated that split collections can also encompass situations where human remains from one site are

held in the collections of multiple institutions, which can potentially result in differing decisions regarding cultural affiliation. Ms. Atalay agreed that the issue of split collections warranted careful consideration. Ms. Keller O'Loughlin encouraged Mr. Wheeler to seek the assistance of the National NAGPRA Program to help clarify any outstanding issues and assist in working with other institutions.

#### **Ms. Megon Noble**

Ms. Megon Noble, NAGPRA Project Manager, University of California – Davis, provided an update on NAGPRA implementation at the University of California – Davis (UC Davis). Ms. Noble stated that she has been in her position for just less than a year, and that she is the university's first full-time staff dedicated exclusively to NAGPRA compliance. The campus has made a conscious decision to embrace both the letter and spirit of the law with the development of its NAGPRA program. The UC Davis Museum of Anthropology curates archeological and ethnographic collections with a primary focus on central California, and has two full-time staff and a faculty museum committee chair. The museum houses approximately 300 sets of human remains and 12,000 funerary objects. UC Davis submitted NAGPRA summaries and inventories as required; incoming collections are reported under the future applicability regulations. For the most part, early attempts at NAGPRA compliance did not result in consultation, and cultural affiliation determinations were made primarily on the basis of archeological, linguistic and other available information. Approximately 10 percent of the human remains in UC Davis's collection (28 individuals from 9 sites) were determined to be culturally affiliated, and Notices of Inventory Completion were published for them. One repatriation and physical transfer occurred in 2012, and involved 15 individuals and 84 funerary objects from 2 sites. Thirteen culturally affiliated individuals from seven sites are currently eligible for immediate repatriation. Ms. Noble summarized a variety of reasons tribes have not yet made requests for repatriation. They include: potential development near the original burial site, coordinating repatriations with collections from other institutions, lack of tribal resources, and conflicting determinations for split collections.

Two Notices of Inventory Completion were published in 2012 pursuant to a claim under 43 CFR 10.11. The claimant tribes are awaiting finalization of a repatriation grant to proceed. Ms. Noble summarized UC Davis's plan to systematically reevaluate its affiliation determinations in response to concerns that previous determinations of cultural affiliation did not take tribal information and beliefs into account. Ms. Noble stated that since her tenure at UC Davis, the university has had 14 consultations with 9 different groups; no new claims have been submitted. Ms. Noble stated that UC Davis has been systematically conducting a campus-wide search of collections to locate previously unidentified human remains. UC Davis holds human remains and funerary objects for the Bureau of Reclamation, Army Corps of Engineers and the Bureau of Land Management, and is actively working with these agencies to support NAGPRA implementation. Ms. Noble stated that the issue of federal collections in nonfederal repositories is complicated by several factors, and formal legal clarification of definitions of which party has NAGPRA responsibilities would be helpful. Ms. Noble stated that NAGPRA compliance in California is complex, and several obstacles need to be addressed; however, UC Davis is committed to moving forward in a proactive and transparent manner.

#### **Review Committee Questions and Discussion**

Ms. Atalay thanked Ms. Noble for her presentation and asked for clarification of the NAGPRA process within the University of California system as a whole and within UC Davis. Ms. Noble stated that the Office of the President has centralized decision making authority with a system-wide committee, and each campus has a faculty representative on the committee. The UC Davis campus has a NAGPRA advisory group, comprised of faculty, tribal representatives, administrators and local groups. The advisory group makes recommendations to the provost, who decides whether to move issues forward to the system-wide committee. Ms. Noble stated she does not know the specific details of the committee's actions, as they have not met since she began working at UC Davis. Ms. Atalay thanked Ms. Noble for her presentation and asked her to consider providing additional details in the future regarding UC Davis's experience as a repository for federal collections. Ms. Keller O'Loughlin asked how long the process from request to transfer of control takes within the University of California, adding that the regulations require repatriation within a 90-day period. Ms. Noble stated the time frame varies, as the committee meets when needed and not on a fixed schedule. Ms. Noble added that the committee was not required to meet in person, which can help expedite the process.

#### **Ms. Sydney Martin**

Ms. Sydney Martin, Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan, stated she was a great-grandmother from the Pottawatomi Tribe in southwest Michigan, and she is honored to be present to witness the final meeting for her adopted daughter, Ms. Sonya Atalay.

**Ms. Shannon Martin**

Ms. Shannon Martin, Director of the Ziibiwing Center of Anishinabe Culture and Lifeways, and NAGPRA designee for the Saginaw Chippewa Indian Tribe of Michigan, stated that both the Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan and the Saginaw Chippewa Indian Tribe of Michigan have aboriginal land claims, and claim ancestors currently held at Indiana University – Bloomington. Ms. Shannon Martin stated that, in 2014, Indiana University received a National Science Foundation grant, and she expressed concern that an institution that continues to be noncompliant with federal laws has received federal funds. Ms. Shannon Martin provided a summary of the grant, as well as examples of experiences with Indiana University – Bloomington, wherein the tribes have struggled to make progress with NAGPRA implementation. She stated she has been unsuccessful in getting a copy of the full grant. Ms. Shannon Martin asked for information on how and why institutions that are noncompliant with federal law are eligible to receive federal grants, and stated she hoped the Review Committee could establish consultation criteria that institutions need to meet in the process of submitting, or resubmitting, inventories.

**Review Committee Questions and Discussion**

Ms. Keller O'Loughlin asked what action the tribes are taking. Ms. Shannon Martin stated that the Michigan tribes have started to discuss a strategy, such as writing letters to elected officials and reaching out to the National Science Foundation after they receive full information on the grant, which may require them making a FOIA request. Mr. Minthorn emphasized the importance of institutional compliance with NAGPRA, and encouraged the Review Committee to consider taking some type of action, such as writing a letter to express concern and offer assistance. Ms. Farm thanked Ms. Martin for the presentation and asked that the Review Committee be kept informed of the issue.

**Ms. Bettina Washington**

Ms. Bettina Washington, Tribal Historic Preservation Officer, Wampanoag Tribe of Gay Head (Aquinnah) expressed concern with scientific study of Native American human remains held by museums and federal agencies. Ms. Washington stated that her oral history supports her tribe's assertions concerning aboriginal occupation, and asked what information scientific study could prove that living people could not provide. Ms. Washington described the local history of the Wampanoag Tribe of Gay Head (Aquinnah), and added that they are the stewards of their land, going back through time. They are responsible to care for their ancestors and return them to Mother Earth. Ms. Washington spoke to her tribe's deep need to uphold their responsibility to work for the return of all ancestors and sacred items held in institutions. Ms. Washington stated she was the Vice Chair of the Culture and Heritage Committee for the United South and Eastern Tribes (USET). She stated that in that capacity, she will work to support the Review Committee. Ms. Washington thanked the Review Committee and all present at the meeting for their hard work in NAGPRA implementation. Ms. Farm thanked Ms. Washington for her presentation.

**Acknowledgement of Service**

Ms. O'Brien stated that a Notice for Nomination Solicitations was published in the Federal Register on March 4, 2015, for three new members of the Review Committee. Nominations may be submitted by national scientific and museum organizations. Ms. O'Brien acknowledged the service of Ms. Atalay, whose term expires April 17, 2015, and Mr. Barker and Ms. Farm, whose terms expire April 28, 2015. Ms. Atalay was nominated by the World Archaeological Congress and served a six-year term. Mr. Barker was nominated by the American Anthropological Association, the American Association of Museums, and the Society for American Archaeology and served a four-year term. Ms. Farm was nominated by the Natural Science Collections Alliance and served a four-year term. Ms. O'Brien acknowledged the efforts of all three individuals, on behalf of the National Park Service, the Department of the Interior, and all NAGPRA constituents.

**Closing Comments**

Ms. O'Brien stated that this might be her final meeting as DFO, and she thanked the Review Committee members, National NAGPRA program staff and counsel, and those in the NAGPRA community for all of their hard work. Ms. O'Brien stated that serving as Acting Program Manager and DFO for the Review Committee has truly been one

of the most rewarding experiences of her life. The Review Committee thanked Ms. O'Brien and commended her for her efforts in supporting both the work of the National NAGPRA Program and of the Review Committee. Ms. O'Brien received a standing ovation from the Review Committee, National NAGPRA Program staff and all present.

Ms. Farm thanked the presenters and public for attending the meeting and for their work in implementing NAGPRA, as well as the National NAGPRA staff. The Review Committee thanked UMass Amherst for hosting the meeting.

Mr. Barker stated that, as he concludes his service on the Review Committee, he would like to thank the National NAGPRA Program staff for their continued work and dedication, the past and present Review Committee members for sharing their passion, energy and wisdom, and all NAGPRA constituents for their committed daily work on implementation of the Act.

Ms. Atalay stated that several of her students attending this meeting commented on the intensity of this work. Despite the challenges and difficulty, Ms. Atalay stated that her son, at age three, summed up the importance of NAGPRA when he said "You're finding a better home for our ancestors." Ms. Atalay thanked everyone for working to find better homes for the ancestors.

### **Traditional Closing**

Ms. Bonnie Newsom, Penobscot Nation, offered the traditional closing.

### **Meeting Adjournment**

The meeting was adjourned at 5:25 p.m., Wednesday, March 4, 2015, by Ms. O'Brien.

Certified –



\_\_\_\_\_  
Ms. Melanie O'Brien  
Acting Manager, National NAGPRA Program  
Designated Federal Officer, Native American Graves Protection  
and Repatriation Review Committee

\_\_\_\_\_  
June 2, 2015  
Date

Approved on behalf of the Review Committee –



\_\_\_\_\_  
Ms. LindaLee Kuuleilani Farm  
Chair, Native American Graves Protection  
and Repatriation Review Committee

\_\_\_\_\_  
June 2, 2015  
Date