

MINUTES

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

THIRTY-SIXTH MEETING

JANUARY 8, 2008

TELECONFERENCE

TABLE OF CONTENTS

The 36th Meeting of the Review Committee	4
Introduction/Welcome	8
Comments By Chair	8
Presentation of Issue	8
Individual Comments of Review Committee Members	8
Mr. Colin Kippen	8
Mr. Alan Goodman	9
Mr. Vincas Steponaitis	9
Ms. Rosita Worl	10
Mr. Dan Monroe	11
Open Discussion	11
Individual Comments of Review Committee Members	12
Ms. Donna Augustine	12
Open Discussion	13
Review Committee Motion	13
Closing Comments	14
Meeting Adjournment	15

Background

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

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

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

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

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

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

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

Notice of this Review Committee meeting was published in the Federal Register on December 12, 2007 (Vol. 72, No. 238, page 70607-70608).

The 36th Meeting of the Review Committee

The 36th meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Ms. Rosita Worl at 2:05 p.m. e.s.t., Tuesday, January 8, 2008. Members of the public accessed the meeting through a teleconference center.

Review Committee members –

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

Designated Federal Officer –

Mr. Timothy McKeown, Program Officer, National NAGPRA Program

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

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

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

Ms. Megan Alvanna-Stimpfle, Senate Committee on Indian Affairs, Washington, DC
Mr. Kenneth Alves, Assonet Band of the Wampanoag Nation, MA
Ms. Lara Anderson, U.S. Army Corps of Engineers, St. Louis District, St. Louis, MO
Ms. Edith Andrews, Wampanoag Tribe of Gay Head (Aquinnah), MA
Mr. Shane Anton, Salt River Pima-Maricopa Indian Community, Scottsdale, AZ
Jaime Arsenault, University of Massachusetts Amherst, Department of Anthropology Repatriation Committee, Amherst, MA
Ms. Sonya Atalay, Indiana University Anthropology Department, Bloomington, IN
Ms. Ellen Aurity, Research Policy & Development, Office of Research, University of California Office of the President, Oakland, CA
Ms. Sara Bagheri, Cowlitz Indian Tribe, Longview, WA
Mr. Alex Barker, University of Missouri, Museum of Art & Archaeology, Columbia, MO
Mr. James Barnes, U.S. Army Corps of Engineers, St. Louis District, St. Louis, MO
Ms. Amy Bartell, City of Palo Alto, Palo Alto, CA
Ms. Gillian Bears, Robinson and Cole LLP, Hartford, CT
Ms. Yvonne Becka, Archaeological Collections Research Center of West Virginia, Moundsville, WV
Mr. Jesse Bergevin, Oneida Indian Nation, Verona, NY
Ms. Jan Bernstein, Bernstein & Associates, Denver, CO
Mr. Bill Billeck, Repatriation Office, National Museum of Natural History, Smithsonian Institution, Washington, DC
Ms. Michelle Blackwater-Leos, Gila River Indian Community, Sacaton, AZ
Ms. Malinda Blustain, Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA
Ms. Cheri Botic, Repatriation Office, National Museum of Natural History, Smithsonian Institution, Washington, DC
Mr. Cameron Brannan
Mr. Joe Brennan, Field Museum, Chicago, IL
Ms. Tamra Brennan, Protect Sacred Sites Indigenous People
Ms. Lori Breslauer, Field Museum, Chicago, IL

Mr. Jim Brown, Robinson Rancheria, Nice, CA
Ms. Susan Bruning, Society for American Archaeology, Irving, TX
Ms. Kimberly Cajete, Southwest Museum of the American Indian, Los Angeles, CA
Ms. Melissa Campobasso
Ms. Patricia Capone, Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA
Ms. Kari Carlisle, Fremont Indian State Park and Museum, Sevier, UT
Mr. Thomas Carr, Colorado Historical Society, Denver, CO
Ms. Mary Carroll, National Park Service, Lakewood, CO
Mr. David Carter, Indiana University, Indigenous Archaeology class, Bloomington, IN
Mr. Brian Chestnut, Zions, Chestnut, Varnell, Berley & Slonim, Seattle, WA
Ms. Rebecca Cole-Will, Acadia National Park, Bar Harbor, ME
Mr. Corbin Collins, Native American NAGPRA Coalition
Ms. Mary Collins, Washington State University, Museum of Anthropology, Pullman, WA
Ms. Susan Collins, Colorado Historical Society, Denver, CO
Mr. Roger Colten
Ms. Deborah Confer, University of Colorado, Museum of Natural History, Boulder, CO
Mr. Michael Cook
Mr. Jon Daehnke, IHUM Post-Doctoral Fellow, Stanford University, Stanford, CA
Ms. Janie Davis, South Carolina Commission for Minority Affairs, Columbia, SC
Ms. Suzanne Day, Harvard University, Cambridge, MA
Ms. Glenna Dean, New Mexico State Archaeologist, Historic Preservation Division, Santa Fe, NM
Ms. Anita Difanis, Association of Art Museum Directors, Washington, DC
Mr. Gordon E. Domingo, Gila River Indian Community, Sacaton, AZ
Ms. Sandra Dong, Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA
Mr. Chris Dudar, Repatriation Office, National Museum of Natural History, Smithsonian Institution, Washington, DC
Ms. Julie Droke, Sam Noble Oklahoma Museum of Natural History, Norman, OK
Ms. Alison Edwards, Newark Museum, Newark, NJ
Ms. Marguerite Edwards, Puyallup Tribe of Indians, Tacoma, WA
Mr. Richard Edwards, University of Toledo College of Law, Toledo, OH
Ms. Leslie Eisenberg, Wisconsin Historical Society, Division of Historic Preservation & Public History, Madison, WI
Mr. Daniel Elliot, Indiana University, Indigenous Archaeology class, Bloomington, IN
Ms. Stacey Espenlaub, University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA
Ms. Ginger Ewing, Northwest Museum of Arts and Culture, Spokane, WA
Ms. Elizabeth Fahey, San Diego Museum of Man, San Diego, CA
Ms. Cindy Farr, Washington State Parks and Recreation Commission, Olympia, WA
Mr. Teara Farrow, Confederated Tribes of the Umatilla Indian Reservation, Department of Natural Resources Cultural Resources Protection Program, Pendleton, OR
Mr. T.J. Ferguson, University of Arizona, Department of Anthropology, Tucson, AZ
Mr. Maurice Foxx, Mashpee Wampanoag Tribe, MA
Mr. Reno Franklin, Kashia Pomo Tribe, Santa Rosa, CA
Ms. Jerilyn Freeman, Euchee Tribe of Indians, Sapulpa, OK
Mr. William Fry, Rendigs, Fry, Keily and Dennis, LLP, Cincinnati, OH
Mr. W. Roger Fry, Rendigs, Fry, Keily and Dennis, LLP, Cincinnati, OH
Ms. Angela D. Garcia-Lewis, Salt River Pima-Maricopa Indian Community, Scottsdale, AZ
Ms. Lana Gendlin, Repatriation Office, National Museum of Natural History, Smithsonian Institution, Washington, DC
Mr. Carlos Germann, Saskatchewan Tourism, Parks, Culture and Sport, Regina, SK
Mr. Gary Gilbert, Ak-Chin Indian Community, Maricopa, AZ
Ms. Sheila Goff, Colorado Historical Society, Denver, CO
Ms. Lauryn Guttenplan, Repatriation Office, National Museum of Natural History, Smithsonian Institution, Washington, DC
Ms. Kara Haas, Yale University, New Haven, CT
Ms. Siobhan Hart, University of Massachusetts Amherst, Department of Anthropology Repatriation Committee, Amherst, MA

Mr. Bill Helmer, Big Pine Paiute Tribe of the Owens Valley, Tribal Historic Preservation Officer, Big Pine, CA
Ms. Tammy Herron, Savannah River Archaeological Research Program, New Ellenton, SC
Mr. Dan Higginbottom, State Historical Preservation Office, State Historical Society of Iowa, Des Moines, IA
Mr. Eric Hollinger, Repatriation Office, National Museum of Natural History, Smithsonian Institution, Washington, DC
Mr. Philip Hoog, San Diego Museum of Man, San Diego, CA
Mr. Audie Huber, Confederated Tribes of the Umatilla Indian Reservation, Department of Natural Resources Administration, Pendleton, OR
Ms. Cinda Hughes
Mr. Jordan Jacobs
Mr. Peter Jemison
Mr. Joseph Joaquin, Tohono O'odham Nation, Sells, AZ
Mr. Greg Johnson, University of Colorado at Boulder, Department of Religious Studies, Boulder, CO
Ms. Melany Johnson, Susanville Indian Reservation, Susanville, CA
Ms. Rebecca Johnson, Zions, Chestnut, Varnell, Berley & Slonim, Seattle, WA
Mr. Douglas W. Jones, State Historical Preservation Office, State Historical Society of Iowa, Des Moines, IA
Ms. Erica Jones, Repatriation Office, National Museum of Natural History, Smithsonian Institution, Washington, DC
Mr. Michael Kaczor
Ms. Lisa Kaplan, Lepena Law Corporation, Sacramento, CA
Mr. William Kennedy, Dayton Society of Natural History, Dayton, OH
Mr. Javier Kinney, San Manuel Band of Serrano Mission Indians, Office of Public Affairs, Highland, CA
Ms. Jessica Kinsey, student, Masters of Public Anthropology, American University, Washington, DC
Ms. Michelle Knoll, Utah Museum of Natural History, Salt Lake City, UT
Ms. Bambi Kraus, National Association of Tribal Historic Preservation Officers, Washington, DC
Ms. Angela Labrador, University of Massachusetts Amherst, Department of Anthropology Repatriation Committee, Amherst, MA
Ms. Rebecca Landes, Research Policy & Development, Office of Research, University of California Office of the President, Oakland, CA
Ms. Diana LaSarge, Confederated Tribes of the Umatilla Indian Reservation, Department of Natural Resources Cultural Resources Protection Program, Pendleton, OR
Mr. Jonathan Leader, Office of the State Archaeologist, SC Institute of Archaeology & Anthropology, Columbia, SC
Mr. Mark Lebeau, Illimani Band of the Pit River Tribe, Burney, CA
Ms. Gina Lemon, Leech Lake Band of Ojibwe, Tribal Historic Preservation Office, Cass Lake, MN
Mr. Ricardo Leonard, Salt River Pima-Maricopa Indian Community, Scottsdale, AZ
Mr. Barnaby V. Lewis, Gila River Indian Community, Sacaton, AZ
Mr. David Lindsay, Society for American Archaeology, Washington, DC
Ms. Dorothy Lippert, Repatriation Office, National Museum of Natural History, Smithsonian Institution, Washington, DC
Ms. Diana Loren, Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA
Ms. Amy Lonetree, University of California, Santa Cruz, CA
Mr. John Low, Pokagon Band of Potawatomi Indians, Dowagiac, MI
Ms. Jessica Ludwig, San Diego Museum of Man, San Diego, CA
Mr. Vernon Lujan, Pueblo of Pojoaque, Poeh Arts and Poeh Museum, Pojoaque, NM
Ms. Cynthia Lyman, Puyallup Tribe of Indians, Tacoma, WA
Mr. Anthony Madrigal
Mr. John Madsen, Arizona State Museum, Tucson, AZ
Ms. Adrienne Marks, Bureau of Reclamation, Native American and International Affairs Office, Washington, DC
Ms. Cyd Martin, National Park Service, Lakewood, CO
Mr. Terrance Martin, Illinois State Museum, Springfield, IL
Ms. Darryl Martinez, Pueblo of San Ildefonso, Department of Environmental & Cultural Preservation, Santa Fe, NM
Ms. Patricia McClary
Ms. Carolyn McClellan, Bureau of Land Management, Washington, DC
Mr. John McClelland, Arizona State Museum, Tucson, AZ

Ms. Karen McDonald-McCoy, Chemehuevi Cultural Center, Chemehuevi Valley, CA
Mr. Robert McLaughlin, Northern California Cancer Center, Legal and Regulatory Affairs Office, Union City, CA
Ms. Buffy McQuillen, Yurok Tribe, Klamath, CA
Ms. Marilyn Merdzinski, Public Museum, Grand Rapids, MI
Ms. Elizabeth Merritt, American Association of Museums, Museum Advancement & Excellence, Washington, DC
Ms. Anne Metcalf, Field Museum Washington Representative, Metcalf Federal Relations, Alexandria, VA
Ms. Terri Miles, Indiana University, Indigenous Archaeology class, Bloomington, IN
Ms. Lynette Miller, Washington State History Research Center, Washington State Historical Society, Tacoma, WA
Ms. Leslie Mouriquand, Riverside County Transportation & Land Management Agency, Palm Desert, CA
Mr. Mitchell T. Mulholland, University of Massachusetts Amherst, Department of Anthropology Repatriation Committee, Amherst Archaeological Services, Amherst, MA
Mr. Douglas Mullen, Greenville Rancheria Northern California, Sacramento, CA
Ms. Cynthia Munoz, Center for Archaeological Research, San Antonio, TX
Ms. Hope Murphy, East Carolina University, Greenville, NC
Ms. Angela Neller, Wanapum Heritage Center, Beverly, WA
Ms. Anita Nez, Confederated Tribes and Bands of the Yakama Nation, Toppenish, WA
Ms. Katie Nold, Indiana University, Indigenous Archaeology class, Bloomington, IN
Ms. Amanda Nurse, Indiana University, Indigenous Archaeology class, Bloomington, IN
Ms. Monica Obregon, Pascua Yaqui Tribe, Tucson, AZ
Ms. Shannon O'Loughlin, Attorney, Onondaga Nation, Haudenosaunee Standing Committee on Burial Rules and Regulations, Albany, NY
Ms. Sarah Palmer, U.S. Institute for Environmental Conflict Resolution, Tucson, AZ
Ms. Emily Palus, Bureau of Land Management, Division of Cultural and Paleontological Resources and Tribal Consultation, Washington, DC
Mr. Robert Paynter, University of Massachusetts Amherst, Department of Anthropology Repatriation Committee, Amherst, MA
Mr. Jim Peters, Mashpee Wampanoag Tribe, MA
Mr. David Posthumus, Indiana University, Indigenous Archaeology class, Bloomington, IN
Ms. Mary Prondzinski, Fairbanks Museum & Planetarium, St. Johnsbury, VT
Mr. Chris Pulliam, US Army Corps of Engineers, St. Louis District, St. Louis, MO
Ms. Jennifer Richman, U.S. Army Corps of Engineers, Office of the Chief Counsel, Portland, OR
Ms. Lori Riddle, Gila River Indian Community, Sacaton, AZ
Ms. Jennifer Riordan, U.S. Army Corps of Engineers, St. Louis District, St. Louis, MO
Ms. Helen Robbins, Field Museum, Chicago, IL
Ms. Brenda L. Robertson, Gila River Indian Community, Sacaton, AZ
Mr. Leland Rogers, Indiana University, Indigenous Archaeology class, Bloomington, IN
Ms. Mary Rossi, Applied Preservation Technologies, Bellingham, WA
Mr. David Ruppert, National Park Service, Lakewood, CO
Mr. Clark Sage, Indiana University, Indigenous Archaeology class, Bloomington, IN
Ms. Mari Lyn Salvador, San Diego Museum of Man, San Diego, CA
Mr. David Sanborn, U.S. Department of Defense, Office of the Deputy Under Secretary of Defense, Arlington, VA
Mr. Andrew Sawyer, Dayton Society of Natural History, SunWatch Indian Village/Archaeological Park, Dayton, OH
Ms. Shirley Schermer, Office of the State Archaeologist, Burials Program, Iowa City, IA
Mr. Patrick Schlesinger, Office of Research, University of California Office of the President, Oakland, CA
Mr. Ryan Seidemann, Louisiana Department of Justice, Civil Division, Baton Rouge, LA
Ms. Lynn Simonelli, Dayton Society of Natural History, Dayton, OH
Ms. Nancy Smith, Allegheny Portage Railroad National Historic Site, Gallitzin, PA
Mr. Charles Smythe, National Park Service, Northeast Region, Boston, MA
Mr. Dean Snow, Society for American Archaeology, Penn State, Department of Anthropology, University Park, PA
Mr. Lowell Soike, State Historical Preservation Office, State Historical Society of Iowa, Des Moines, IA
Ms. Bonnie Sousa, Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA
Mr. Scott Speedy, Archaeological Collections Research Center of West Virginia, Moundsville, WV
Ms. Suntayea Steinruck, Smith River Rancheria, Smith River, CA
Ms. Wendy Teeter, Fowler Museum, University of California, Los Angeles, CA
Mr. Jerome Thompson, State Historical Preservation Office, State Historical Society of Iowa, Des Moines, IA

Ms. Brenda Todd, National Park Service, Park NAGPRA, Lakewood, CO
Mr. Tom Topash, Pokagon Band of Potawatomi, Traditions and Repatriation Committee, Dowagiac, MI
Mr. Jack Trope
Ms. Cathy Van Arsdale, U.S. Army Corps of Engineers, St. Louis District, St. Louis, MO
Ms. Leslie Vollnogle, Stuhr Museum of the Prairie Pioneer, Grand Island, NE
Mr. Robert Warren, Illinois State Museum, Springfield, IL
Mr. Rick Weathermon, University of Wyoming, Anthropology Department, Laramie, WY
Ms. Susan Wells
Ms. Amy Wilkinson, New York State Museum, Albany, NY
Ms. Joanna Wilson, Virginia Department of Historic Resources, Richmond, VA
Mr. H. Martin Wobst, University of Massachusetts Amherst, Department of Anthropology Repatriation Committee,
Amherst, MA
Ms. Nicole Wright, Yurok Tribe, Klamath, CA
Mr. Frank Wozniak, USDA Forest Service, Albuquerque, NM

Introduction/Welcome

Ms. Rosita Worl offered an invocation for the meeting. Mr. McKeown called the roll of members and confirmed that the Review Committee had quorum for the meeting. Ms. Worl asked for forgiveness by her ancestors and brothers and sisters across the nation for the use of technical and legal terms such as culturally unidentifiable human remains.

Comments By Chair

Ms. Worl appointed Mr. Monroe as Chair for the Review Committee's discussion to develop comments on the proposed rule regarding disposition of culturally unidentifiable human remains [43 C.F.R. 10.11]. Ms. Worl stated that Mr. Monroe acted as Chair of the subcommittee appointed at the Review Committee meeting in Phoenix, AZ, and led the preliminary work for this discussion prior to the teleconference.

Presentation of Issue

Mr. Monroe thanked the members of the Review Committee, the NPS staff, and all individuals monitoring the teleconference meeting for their participation. Mr. Monroe stated that the purpose of the teleconference was for the Review Committee to provide input on the proposed rule regarding disposition of culturally unidentifiable human remains. The Review Committee considered this vitally important issue on several occasions and submitted its last complete set of recommendations in 2002. Mr. Monroe stated that a great deal of public testimony had been gathered and recorded from Indian tribes, museums, Federal agencies, and individuals. Mr. Monroe stated that while Congress did not spell out procedures for disposition of human remains, Congress did dictate that the Review Committee would recommend specific action for developing a process for disposition of such remains in the NAGPRA statute. Mr. Monroe stated that he would like the Review Committee members to give individual assessments on the proposed rule and then have a discussion as a full committee to develop recommendations regarding the next steps that should be taken by the Secretary in promulgating regulations.

Individual Comments of Review Committee Members

Mr. Colin Kippen

Mr. Kippen stated that, like Ms. Worl, he would like to apologize in advance for the way human beings were discussed. Mr. Kippen stated he agreed with Mr. Monroe that the regulations were complex and difficult to understand. Mr. Kippen stated, first, the proposed rule was clearly within the scope of NAGPRA and that the Department of the Interior (DOI) clearly had authority to promulgate the rule in this situation. Second, Mr. Kippen supports the rule as written with some areas that could be improved, including lack of a definition for the term

cultural relationship which has significance because it triggers duties and responsibilities relating to consultation. Mr. Kippen stated that the situation in Hawaii is difficult, and while the rule does provide considerable flexibility for the Native Hawaiian situation it could be improved by the inclusion of a consultation process specifically directed at defining cultural relationship. Third, Mr. Kippen stated he supports the application of this rule to nonfederally recognized Indian groups and that the rule provides a mechanism by which federally recognized Indian tribes may participate. Mr. Kippen stated that the rule should include an acknowledgement that federally recognized Indian tribes may choose not to participate. Fourth, Mr. Kippen stated that he believes associated funerary objects should not be treated differently from human remains, which was another aspect of the proposed rule that should be changed. Fifth, Mr. Kippen stated that the NPS needs to initiate a process through tribal consultation to define cultural affiliation, which was not defined in the proposed rule or the NAGPRA statute or regulations. Mr. Kippen stated that this was a very important rule and that he thinks the Review Committee would be united in their view that it was crucial that these ancestral remains and associated funerary objects were returned as soon as possible.

Mr. Alan Goodman

Mr. Goodman stated that he agreed with Mr. Kippen that the Review Committee needs to move as expeditiously as possible. Mr. Goodman stated he had some concern with moving forward with the rule given the vagueness of certain key terms, including cultural affiliation, cultural relationship, and region. Mr. Goodman stated he agreed with Mr. Kippen that there would be no reason for associated funerary objects to be handled differently and they should be considered and potentially repatriated with the individual human remains.

Mr. Vincas Steponaitis

Mr. Steponaitis thanked his colleagues for their thoughtful comments and stated that this was one of the most difficult issues the Review Committee has faced. Mr. Steponaitis stated that when NAGPRA was passed, Congress decided not to resolve this issue in the statute. Mr. Steponaitis stated that there were differences of opinion as to Congress's intentions, including those who believe, himself included, that Congress did not intend for the DOI to issue regulations on this issue. Mr. Steponaitis stated, however, that as a member of the Review Committee he sees his role as being one of advising the Secretary of the DOI based on the DOI's view that these regulations were appropriate. Mr. Steponaitis stated as a general observation that the regulations need to be consistent with the statute.

Mr. Steponaitis stated that he felt the proposed rule as written was unworkable for three major reasons. One, the proposed rule was not consistent with the statute in that the balance between the interests of Native communities and the interests of scientific, educational, and museum organizations present in the statute was not present in the proposed rule. For example, it was clear that NAGPRA never intended that human remains be returned to Indian tribes or Native Hawaiian organizations regardless of cultural affiliation, and the proposed rule requires that museums and Federal agencies do things that were not consistent with what Congress intended or the law states.

Two, the proposed rule does not conform to the Review Committee's draft recommendations regarding the disposition of culturally unidentifiable human remains published in the Federal Register in 2000 and discussed with minor changes at the Tulsa, OK meeting in 2002. Mr. Steponaitis stated that it was clear from the minutes of the Tulsa, OK meeting that the Review Committee expected the NPS to incorporate the suggestions made at the meeting and publish the draft rule. Instead, the proposed rule was published in 2007 and radically departed from the Review Committee's recommendations. Mr. Steponaitis stated that the current proposed rule diverges from the Review Committee's recommendations in that the recommendations strongly stressed a regional consultation approach to determining the ultimate disposition of the unidentifiable human remains, without setting time limits or specifying disposition. The feeling was that the right thing would happen as a result of those consultations, and Mr. Steponaitis stated that he believes that remains the right approach. A second way the proposed rule diverges was that the recommendations made it clear that culturally unidentifiable human remains may become affiliated as additional information becomes available and there should be no time limits on determining disposition. The proposed rule puts pressure on museums to offer human remains to a group or face civil penalties, and the proposed rule states that if a group with a close cultural affiliation cannot be identified, the museum should offer the human remains to a group that happens to live close to the museum. Once such disposition occurs there would be no possibility of identifying the correct group, which in effect creates a time limit.

Three, the proposed rule was unworkable due to the introduction of undefined terms such as cultural relationship and region. In addition, the proposed rule places museums in an untenable position of having to potentially consult with hundreds of groups regarding human remains for which there was no real connection, placing huge cost and time burdens on museums and potentially tribes to meet consultation requirements, which could result in unintended consequences.

Mr. Steponaitis stated that since the passage of NAGPRA, enormous strides have been made in building relationships between museums and Native communities, with many positive outcomes happening every day. Mr. Steponaitis stated that in his opinion the promulgation of the proposed rule would immediately invite lawsuits, which would sow bitterness and undo progress that has been made.

Ms. Rosita Worl

Ms. Worl stated she would like to apologize again to her ancestors and Native American brothers and sisters for the use of the legal term culturally unidentifiable rather than humans and deceased. Ms. Worl stated that on a broad level she supports the proposed rule as being consistent with NAGPRA. The proposed rule complies with other federal and state laws and policies, as well as society's general mores and Native American beliefs and practices relating to the burial and reburial of ancestors. In the adoption of NAGPRA, Congress recognized that Native Americans have the same rights as other deceased to dignified burials. By authorizing the Review Committee to recommend specific actions for developing a process for the disposition of culturally unidentifiable human remains and in consulting with the Secretary of the DOI in the development of regulations, Congress held that Native Americans should not be subjected to discriminatory practices preventing their burial. Guided by the legislative language and mandate, Ms. Worl stated she could not accept the proposition that distinguishes between ancient and recent deceased and would respectfully recommend that the Review Committee not adopt that distinction in dealing with ancestors identified as culturally unidentified human remains.

Ms. Worl stated her position that the DOI's authority to issue the proposed rule was consistent with NAGPRA and that the DOI and Review Committee have the legal authority to act on the proposed rule as NAGPRA directs the Review Committee to develop recommendations for the disposition of culturally unidentifiable human remains. Ms. Worl stated that the report on the panel for a National Dialogue on Museum/Native American Relations contains the agreements and disagreements between the interest groups conducted under the auspices of the Senate Select Committee on Indian Affairs and was submitted to Congress in 1990. Ms. Worl stated her understanding was that Congress was aware of the disagreements among the interest groups and established a statutory process to address the disposition of culturally unidentifiable human remains.

Ms. Worl stated she was opposed to the proposed rule because associated funerary objects were treated differently from the dead with which they were originally interred and repatriation of associated funerary objects was discretionary. Ms. Worl stated that associated funerary objects were interred and associated with a deceased and should be returned with requests for disposition. Ms. Worl stated that the inclusion of nonfederally recognized Indian groups in the proposed rule was not a concern because disposition would occur with the knowledge and consent of federally recognized Indian tribes. However, given the difficulty of obtaining written consent of federally recognized Indian tribes, Ms. Worl recommended that the proposed rule be amended to accept written notification by museums or federal agencies to the federally recognized Indian tribes. As the term cultural relationship was not defined in NAGPRA, Ms. Worl recommended that consultation be held to formulate a definition.

Ms. Worl stated she believed a majority of the Review Committee members support the underlying principles embodied in the proposed rule and the major differences derived from the proposed procedural approach. Ms. Worl made a recommendation that the Review Committee and the DOI reconsider the recommendations published in the Federal Register in 2000 and further discussed by the Review Committee in 2002, with particular reference to the two models for the disposition of culturally unidentifiable human remains. The first model involved the joint recommendations by federal agencies, museums, and claimants, and the second model involved the joint recommendations of regional consortia, an approach previously adopted by different regions. Ms. Worl stated she recognized the significant burden the proposed rules would place on Indian tribes, museums, and federal agencies and the need for increased funding to implement the proposed rule.

Mr. Dan Monroe

Mr. Monroe stated that the issue of culturally unidentifiable human remains was an incredibly important, compelling issue. Many of the fundamental and core issues balanced in the creation of NAGPRA were at play with respect to this issue. Mr. Monroe stated that he believes that the DOI has full statutory authority to promulgate regulations and that NAGPRA was based on and at the core rests on the notion of dialogue and consultation. Mr. Monroe stated he strongly opposes the current draft and he believes the imprecise definitions and procedures will create a tremendous and unreasonable burden on Indian tribes, museums, and federal agencies. The proposed rule varies dramatically from the 2000 recommendations and subsequent comments made by the Review Committee.

Mr. Monroe stated the provision requiring consultation with Indian tribes living in the area of a museum or federal repository with no reason to assume cultural affiliation or relationship would result in the Indian tribes being inundated and place an undue and unreasonable burden on museums and federal agencies. The proposed rule used the term "region," which can mean almost any area geographically. The absence of a definition of region leaves museums and federal agencies without any guidance or direction regarding the scope of the area or Indian tribes with whom they are required to consult. Mr. Monroe stated the issue of cultural relationship to a region was interesting but did not appear anywhere in the context of NAGPRA statutes. The notion of cultural relationship to a region leaves both Indian tribes and museums without guidance and does nothing to protect their interests.

Mr. Monroe stated that the basic notion of NAGPRA involves consultation between and amongst Indian tribes, museums, and federal agencies. The proposed rule essentially places unilateral authority for significant portions of disposition activities with one party, which fundamentally falls outside the notion of consultation, shared dialogue, and a joint effort to resolve issues. Mr. Monroe described further problems with the proposed rule with the unclear notion of an Indian tribe aboriginally occupying an area and the criteria for determining stronger cultural relationships. Mr. Monroe stated that the impact of the technical problems with the proposed rule would be the production of a morass of confusion, which would impose very substantial burdens on all parties. Mr. Monroe stated it was his very strong position that the current proposed rule needs very substantial work, which should proceed on a faster schedule and with the input of the Review Committee in a manner that conforms to statutory requirements that the Review Committee outline actions that the Secretary should take to resolve the issue.

Open Discussion

Mr. Monroe opened the discussion for general comment. Ms. Worl asked, in light of the limitations of the teleconference and two members being absent, if the Review Committee could have another meeting to discuss recommendations regarding the proposed rule. Ms. Mattix stated that once the comment period ended on January 14, 2008, the DOI could not take any additional comments from the Review Committee or public without extending the comment period under the Administrative Procedures Act (APA) rules. Mr. Simpson stated that the decision to extend the comment period would be up to the Secretary of the DOI as delegated to the National NAGPRA Program.

Mr. Simpson described the process set out in the APA. The comment period for the proposed rule would end on January 14, 2008, and all comments received by the National NAGPRA Program by that time would be considered in the promulgation of the final rule. At some future point, the National NAGPRA Program would publish a package in the Federal Register that includes a preamble, which would discuss the contents of the rule and respond to comments, and the text of the final regulations. The final regulations would be effective 30 days after publication in the Federal Register.

Mr. Steponaitis stated that the tone of the discussion regarding the proposed rule was radically different from the discussion of the initial draft circulated in 2002. Mr. Steponaitis stated that even though minor suggestions were made to tweak the recommendations, there was a sense among the Review Committee members that the draft really reflected the recommendations. Mr. Steponaitis stated that in his opinion the proposed rule bears almost no relationship with earlier versions. Mr. Steponaitis asked counsel if it would be possible to go through a second period of publication and comment on a revised draft prior to publication of the final rule. Ms. Mattix stated that was possible and would be a discretionary determination made by the federal agency based on the level of comments and how much the final rule would differ from the proposed rule. Mr. Steponaitis asked counsel if it would be possible to extend the public comment period on the proposed rule. Mr. Simpson stated there may be

enough time to extend the comment period or the comment period could be reopened, and the amount of time for any extension would be at the discretion of the federal agency.

Mr. Monroe stated he would underscore the fact that, while some Review Committee members voiced broad consent or support for the proposed regulations, virtually all members present at the teleconference voiced serious concerns about the proposed regulations in their current form. Mr. Steponaitis stated that the whole tenor of the comments he has heard outside of the meetings regarding the proposed rule was radically different from any other rule previously promulgated on NAGPRA. Mr. Steponaitis stated that among the people who were the most upset were those in the museum and scientific communities most committed to making NAGPRA work. Mr. Steponaitis stated he felt this proposed rule has to be done right, finding a middle ground that allows people to work together in a positive way. The proposed rule, if promulgated in its current form, could undermine the positive efforts of NAGPRA and sow bitterness and confusion. Mr. Steponaitis stated he hoped whatever rule comes out of this process will facilitate the ultimate goal of Indian tribes and museums working together, treating human remains with respect, and finding the right solution.

Ms. Hutt stated she appreciated Mr. Steponaitis's comments about how everyone has worked through this and how he sees dissent at this time. Ms. Hutt stated the number of comments received in response to the proposed rule had been robust, with a large number of comments for review. Ms. Hutt stated that many listening to the teleconference would agree that there was broad diversity of opinion in how things should occur. The changes from the 2000 draft recommendations to the current proposed rule were in part due to the Review Committee's comments in 2002 and in part due to changes made by counsel following their rigorous review. Ms. Hutt stated the Review Committee was being asked to provide comments on the proposed rule, which would be considered in moving the proposed rule forward under the APA process. Ms. Hutt stated the rulemaking process was very deliberative and considered all input, and the substantive comments made by the Review Committee would be very much appreciated.

Ms. Worl stated that she supported the underlying principles of the proposed rule and would suggest that there was general support from the Native American and Native Hawaiian communities. Ms. Worl recommended, first, that the Review Committee submit a request to the Secretary of the DOI to extend the rulemaking process, and second, express the concerns as outlined by the Review Committee members and resubmit the recommendations made by the Review Committee in 2000, specifically the two models for disposition of culturally unidentifiable human remains. Mr. Monroe stated a third recommendation for consideration that the DOI go through another iteration of this process to take into account all of the input provided through an extended rulemaking period and to reformulate and republish the draft regulations for one more round of public comment.

Individual Comments of Review Committee Members

Ms. Donna Augustine

Ms. Augustine stated she has been present at the teleconference since it began but was unable to speak. After reentering the conference center, Ms. Augustine was able to communicate and asked to make her individual comment. Mr. Monroe welcomed Ms. Augustine and apologized for the confusion. Ms. Augustine introduced herself as Thunderbird Turtle Woman of the Micmac Tribe. Ms. Augustine stated a reminder that NAGPRA was Indian law passed at the insistence of Indian tribes to restore Native people to the self-evident human right to rest in peace. NAGPRA was not science or museum industry law. Ms. Augustine stated her position that if human remains, termed culturally unidentifiable, were Indian and come from the combined aboriginal homeland of the United States, then the human remains must be available for repatriation by joint claims of intertribal reburial coalitions, as previously recommended by the NAGPRA Review Committee.

Ms. Augustine stated that comments regarding the fear of excessive costs to implement the proposed rule were nothing but scare tactics. Prior to the passage of NAGPRA, scientific and museum industries made threats of litigation, comments about excessive costs to implement the law, and predictions of dire outcomes if NAGPRA was passed. Ms. Augustine stated that institutions and museums have since acknowledged that NAGPRA was working and had created wonderful relationships with Indian tribes that did not exist before NAGPRA. Ms. Augustine stated she questioned why museums and institutions now anticipate full system failure if NAGPRA's mandates were implemented, including providing reburial for human remains termed culturally unidentifiable. Ms. Augustine

stated the scare tactics would restage the public debate the scientific community lost when NAGPRA was passed in 1990. Another scare tactic was the discussion of loss to science and all humankind if analysis was not allowed on the culturally unidentifiable human remains. Ms. Augustine stated that NAGPRA was Indian law and not scientific law. Information learned through scientific analysis could also be learned through consultation with living individuals, and there were no test method currently available that would establish cultural affiliation to any Indian tribe. Ms. Augustine stated that if human remains were Native and come from a combined aboriginal homeland then they must be reburied.

Mr. Steponaitis welcomed Ms. Augustine to the meeting. Mr. Steponaitis stated that what happened when NAGPRA was passed and what was currently happening were very different. The process that led to NAGPRA was a long process of discussions that eventually led to a compromise law that everyone could support. Mr. Steponaitis reviewed a letter dated November 2, 1990, addressed to President George Bush and signed by presidents and CEOs of the major scientific organizations and by representatives of all major Indian organizations involved in the legislation that evidenced this spirit of compromise. Mr. Steponaitis stated that the proposed rule just was not something everyone would be able to work with and live with, nor was it the middle road that the Review Committee found in its recommendations in 2000 and in the draft rule circulated in 2002. Mr. Steponaitis stated he was scared, and he believed that if this rule was promulgated there would be problems. Mr. Steponaitis stated that for the past 17 years everyone has been working well with the middle ground found in NAGPRA.

Mr. Monroe stated that while there may be many different perspectives and in some cases different values, everyone was acting in good faith, and speaking for himself the serious difficulties he sees on a pragmatic level with the proposed rule were not based in any way on an intent to refer to scare tactics. Mr. Monroe stated that he understood Ms. Augustine to say in her comments that human remains should be repatriated through regional consortiums, which goes back to the 2000 recommendations. Ms. Augustine stated that was correct and she was in support of the earlier recommendations of the Review Committee.

Open Discussion

Mr. Kippen stated he would support a recommendation to request an extension in order to capture the information being generated regarding the proposed rule and define some of the terminology to develop a workable system.

Mr. Monroe summarized the recommendations being discussed by the Review Committee: one, recommend that the DOI extend the comment period for the proposed rule; two, emphasize the 2000 recommendations to the DOI and underscore the fact that the proposed rule varies substantially from the 2000 recommendations; and three, recommend that the DOI consider the input on the draft rules, amend the draft rule as the DOI sees fit, and reissue the proposed rule for public comment.

Review Committee Motion

Mr. Steponaitis stated he would strongly support the recommendations summarized by Mr. Monroe. Mr. Steponaitis made a motion that the Review Committee adopt the three points summarized by Mr. Monroe as its recommendations. Ms. Worl seconded the motion. Ms. Worl asked for two clarifications: one, that if the third option was adopted then the time extension for comment would not require a face-to-face meeting of the Review Committee, and two, that the comments considered by the DOI would include the individual comments of the Review Committee members. Mr. Simpson asked for clarification from the Review Committee on the length of the requested extension and stated that the DOI would probably not make a determination about amending or reissuing the proposed rule under after all comments were reviewed. Mr. Monroe asked counsel about the possibility of having a revised rule, if the DOI undertook the third recommendation, by the next Review Committee meeting. Ms. Mattix stated that reviewing the comments and drafting a revised rule would probably not be possible by the next Review Committee meeting in May, although it might be possible by the following meeting.

Mr. Steponaitis stated in light of that he would suggest a friendly amendment to the first recommendation that the current comment period be extended through the upcoming Review Committee meeting scheduled for May 15 and 16, 2008 in De Pere, WI. Mr. Kippen seconded the motion. Ms. Worl stated she would like to add a statement that

the Review Committee would urge the DOI to seek special appropriations for the implementation of the final rule. The Review Committee members agreed with the addition.

Ms. Worl called the question. Mr. Monroe reviewed the recommendations: one, that the DOI extend the comment period past the date of the next Review Committee meeting; two, urge the DOI to fully consider the 2000 recommendations made by the Review Committee in their assessment of comments regarding the proposed rule; three, that there be an amendment to the current proposed rules either now or through an extension; and a separate statement urging the DOI to recognize that there would be a need to seek special Congressional appropriation to support the process of disposition of Native American human remains regardless of the process.

Mr. Goodman stated the wording in recommendation two was a little vague and asked if the Review Committee would like to make it more specific. Mr. Steponaitis stated he felt the Review Committee was actually reiterating or underscoring the importance of the proposed rule following closely with the recommendations discussed in 2002. Ms. Worl stated her impression was the Review Committee would like the Secretary to reconsider and adopt the 2000 recommendations in the proposed rule. The Review Committee agreed with Ms. Worl's wording change.

A vote was taken. The motion was adopted by unanimous vote.

Mr. Simpson asked for clarification of the comments submitted by the Review Committee. Mr. Monroe stated that the DOI should consider the comments submitted by the members of the Review Committee in the sum total of comments received and as separate from the very clear-cut recommendations of the Review Committee regarding actions in the motion adopted during the teleconference.

Ms. Hutt stated that the comment period on the proposed rule would end January 14, 2008, and comments received prior to the deadline would be considered. Ms. Hutt asked the members of the public to please send an email to the National NAGPRA Program with a list of names and affiliations of each person attending the meeting via the teleconference center, as attendees would be noted in the meeting minutes. Mr. Monroe stated that he received a fax from Ms. Worl that stated the motion carried at the teleconference, which would be forwarded for clarity purposes to the DOI.

Ms. Worl stated she would like to include a discussion of the issue of Native Hawaiian organizations as an agenda item at a future meeting. Mr. Monroe stated he feels one of the issues with respect to the proposed rule pertains to the fact that consultation with Native Hawaiian organizations would raise questions as far as what that precisely means. Mr. Kippen stated that two Native Hawaiian organizations were specifically defined in the Act, Hui Malama and the Office of Hawaiian Affairs. However, many organizations have defined themselves as Native Hawaiian organizations and were involved in various consultations on various issues. Mr. Kippen stated that he supports the idea that Native Hawaiian organizations were varied, with different perspectives, and with different opinions. Mr. Kippen stated it would be very fruitful to have consultations, as well as technical assistance, to help Native Hawaiian organizations be better informed. Mr. Kippen stated he supported Ms. Worl's and Mr. Monroe's concerns because this was an important issue which was in the spirit of trying to make the process as clear and effective as possible.

Closing Comments

Ms. Hutt stated she would like to sincerely thank the Review Committee members for the time and attention they have given to this issue. Mr. Monroe stated he would like to thank the Review Committee members for their work, the DOI staff for their work, and all who listened for their interest, commitment, and participation in this critically important process.

Ms. Augustine stated she would like to acknowledge all of the people listening, as well as the Review Committee members. Ms. Augustine stated she would like to remind everyone to remember the old ones, the ancestors that were being discussed. Ms. Augustine stated she was at the home of an elder with a pipe filled before the meeting to represent the ancestors, and following the meeting they would smoke the pipe to remember that balance was the natural law and to acknowledge the ancestors.

Mr. Monroe turned the meeting over to Ms. Worl as Chair. Ms. Worl thanked Mr. Monroe and acknowledged his efforts in Chairing the subcommittee and meeting. Ms. Worl thanked the Review Committee members for the successful meeting, even with differences of opinion the Review Committee held to a good standard and could be proud of the conduct of the Review Committee members. Ms. Worl stated she would like to acknowledge Mr. Jones, who had surgery the day of the teleconference and could not be present. Ms. Worl thanked the listeners and apologized that time constraints did not allow for public comment. Ms. Worl thanked those who had submitted comments, which demonstrated a commitment to making sure NAGPRA works for everyone.

Mr. McKeown stated the next Review Committee meeting was scheduled for May 15 and 16, 2008, in De Pere, WI.

Meeting Adjournment

Mr. Monroe made a motion to adjourn the meeting. With no objections, the meeting was adjourned at 4:26 p.m. e.s.t.

Certified –

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

04/30/2008
Date

Approved on behalf of the Review Committee –

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

04/30/2008
Date