



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)

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Executive Summary

The Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), 25 U.S.C. 3001 et seq. and its implementing regulations at 43 C.F.R. 10, provide a process for museums and Federal agencies to return certain Native American cultural items -- human remains, funerary objects, sacred objects, or objects of cultural patrimony -- to lineal descendants, and culturally affiliated Indian tribes and Native Hawaiian organizations.

NAGPRA does not explicitly address reinterment (or “reburial”) of Native American human remains repatriated under NAGPRA. However, from a traditional cultural perspective, many tribes and pueblos do not consider the NAGPRA process complete until reinterment has occurred.

In recent years, the lack of availability for suitable reburial locations has been identified as an impediment to full NAGPRA implementation. The issue has been brought to the attention of the Native American Graves Protection and Repatriation Review Committee (“Review Committee”) multiple times and has been included in the Review Committee’s annual Report to Congress. In 2012, the Review Committee asked the National NAGPRA program to compile information regarding the existing legal and policy framework related to the reburial of Native American human remains following repatriation under NAGPRA to better understand the complexities surrounding the issue.

In response, 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 & American Culture (Project Partners) partnered to prepare a report compiling the existence of laws and policies addressing reburial following repatriation under NAGPRA. The information gathered also highlights several other barriers related to NAGPRA implementation when the interplay between policy and practice is considered. By design, this preliminary report does not include legal or policy analysis, and Federal, state, or tribal employees’ or representatives’ comments are summarized.

The Project Partners defer to the Review Committee for any recommendations or actions to be taken in response to the information contained within this preliminary report.

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Overview

While thousands of Native American human remains have been repatriated and reburied, following compliance with the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), it is estimated that the human remains of thousands of Native American individuals are awaiting reburial throughout the United States – in part, due to lack of suitable lands available for reinterment. This estimate is based upon information provided by tribes, museums, states, and Federal agencies – including data readily available via on-line databases managed by the National NAGPRA program.

While NAGPRA provides a process for museums and Federal agencies to return certain Native American cultural items -- human remains, funerary objects, sacred objects, or objects of cultural patrimony -- to lineal descendants, and culturally affiliated Indian tribes and Native Hawaiian organizations, NAGPRA does not explicitly address reinterment (or “reburial”) of Native American human remains repatriated under NAGPRA. However, from a traditional cultural perspective, many tribes and pueblos do not consider the NAGPRA process complete until reinterment has occurred and Native American human remains are returned to the earth.

The provenance and provenience of Native American human remains are critical information during the NAGPRA compliance process and can help museums and agencies determine which tribes should be consulted, which tribes have standing, based upon aboriginal lands, and which tribes are culturally affiliated. Information about the geographic location of the original burial site and contextual information can also be very important to repatriating tribes when identifying an appropriate site for reburial and can directly inform ceremonial considerations. Similarly, for those state and Federal agencies with policies in place, the application of the policy discretion is typically based upon whether or not the remains were removed from what are now agency-managed lands.

The circumstances surrounding why Native American human remains were disinterred from their original burial locations vary greatly. In some instances, remains were excavated during planned, well-documented scientific, archeological investigations conducted in the late 19th century and first half of the 20th century. In other situations, illegal disturbances, such as looting, resulted in Native American human remains being removed from their original interment locations and stored in attics, basements,

and, in many instances, even on display. Proper recordkeeping and maintenance of museum documentation is often lacking even for professionally conducted archeological investigations. Poor documentation results in difficulties with not only the NAGPRA process itself, but with cultural activities that take place following repatriation, such as identifying a reburial location and even the reburial ceremony itself.

Across the country, a significant number of Native American human remains awaiting repatriation and reburial are in museum collections and not under the control of state and Federal land-managing agencies. These institutions generally do not have access to lands suitable for reburials, although they may have an assumed or shared responsibility to secure suitable and appropriate location for reburials.

The inconsistent and/or non-existent policies between Federal and state agencies, coupled with the frequent problem of lacking provenance, have resulted in a barrier to full NAGPRA implementation. The unintended consequences of these complicated scenarios include Native American human remains that have been repatriated but remain on loan to museums, state, and Federal agencies awaiting identification of reburial locations. In other instances, tribes are reluctant to request repatriation because they are unable to accept physical custody following transfer of legal custody due to lack of a tribal storage area and no identified reburial locations. In other scenarios, the remains are being repatriated by museums without lands for reburial consideration.

It is important to note there is a lack of consensus, particularly within the archeological community, about the need for reburial sites on state and Federal land. Concerns about creating cemeteries, limitations to future land use, and potential impacts to archeological sites are but a few of the reasons brought forward by archeologists and land managers. Questions on the authority of the Review Committee and the Secretary of the Interior to make recommendations regarding the management policies of states and Federal agencies outside of the Department of the Interior related to the lands-for-reburial issue have been raised.

At present, it is difficult to know exactly how many repatriated or dispositioned sets of remains have been reburied following repatriation or disposition because the NAGPRA technically ends with repatriation, and with the exception of Federal agency reporting requirements, there is no mandate reporting for reburials or reinterments. However, some institutions and tribes have voluntarily provided

the information. Data reported for the period October 1, 2013 to September 30, 2014 indicate that there are 180,184 minimum number of individuals (MNI) reported on NAGPRA inventories, with almost two thirds of those identified as culturally unidentifiable. Only 50,518 MNI, about 28 percent, are resolved in Notices of Inventory Completion, of which 16,884 were voluntarily reported as transferred. At a minimum, once the remaining MNI are resolved on Notices, reburial locations for over 130,000 individuals will be needed.

While some of these reburials may be straightforward due to provenance and repatriation from land-managing agencies with reburial policies in place, many are expected to fall within the scenarios described above--these remains essentially have no home and nowhere to go.

Summary of Study

On May 9, 2012, representatives from the Colorado Commission of Indian Affairs, the Ute Mountain Ute Tribe of the Ute Mountain Reservation, Colorado, New Mexico and Utah, and the Southern Ute Indian Tribe of the Southern Ute Reservation announced the formation of a diverse workgroup that includes museum staff, Federal, state and tribal representatives to address the problem of finding suitable land for reburials in the State of Colorado. They then asked for the support of the Review Committee in a request to Federal agencies to make changes in policies and procedures, so that Federal lands could be more broadly used for reburials (Native American Graves Protection and Repatriation Act Review Committee Meeting, May 9, 2012, Volume 1: 45-76.). They informed the Review Committee that a similar request would be made to Colorado land-managing agencies. The Review Committee formed a subcommittee to research the problem and its breadth for the purpose of making recommendations to Congress to resolve the problem.

Following multiple presentations about the issue by the Colorado Lands Repatriation & Reinterment Workgroup, the Review Committee asked the National NAGPRA program at the November, 2012 meeting to fund a report compiling existing information in order to provide the Review Committee with background on the national context for the lands-for-reburial issue. Thus, the intended audience for this report is the Review Committee subcommittee and the National NAGPRA Program, although it is hoped that NAGPRA practitioners, in general, may benefit from the information contained herein.

This report is not intended to be an exhaustive review of data; it was not conducted by formal survey per the Office of Management and Budget requirements, and it does not offer recommendations for policy changes. Because the information gathered for this report was gathered informally and is primarily a compilation of existing state and Federal policy information coupled with qualitative information from tribes about the lands-for-reburial issue, it should be considered a preliminary report about a highly complex and possibly controversial issue.

By inferring from the answers received from tribes, states, and Federal agencies, this 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 change or legislative solution?

As the information compiled for this preliminary report demonstrates, some states and most Federal agencies have the management policy discretion to reinter remains that originated from lands they manage. When origin information is lacking and there are no straightforward reburial location options, most Federal and state agencies require a policy waiver to reinter remains, or have no policy in place. Only two Federal agencies have statutory authority governing the reburial of Native American human remains on lands managed by the agency.

As indicated by the information compiled for this preliminary report, the availability of lands for reburial was identified as an issue for many, but not all or even a majority, of the respondent tribes. The responses show that most repatriating tribes prefer state and Federal lands for reinterment to better preserve and protect reburial sites and the confidentiality of the locations in perpetuity. Contemporary tribal reservation lands do not necessarily reflect aboriginal occupation and, as such, are not the preferred reburial location option for most repatriating tribes. In addition, tribes do not have the personnel available to provide long-term monitoring of reburial sites. Cultural practices and tribal government policies may also limit reburial options on tribal lands, depending upon the tribal community and government.

This report provides information about which state and Federal land-managing agencies have reburial policies or statutes in place. Tables listing which states and Federal agencies have policies and/or statutes, can be found in the appendices.

The information compiled also sheds light on the successes and difficulties tribes have had in their efforts to rebury Native American human remains and funerary objects repatriated or dispositioned to them under NAGPRA. These challenges range from lack of a dedicated tribal staff member or committee familiar with NAGPRA to represent the tribe during NAGPRA consultations, to a concern about bringing the remains of unknown individuals to the reservation who died of unknown causes, to

the potential long-term effects of working with NAGPRA on the physical and spiritual health of individuals who work with NAGPRA and tribal communities.

Methodology

The National NAGPRA program did not have FY13 funds to support the development of the report requested by the Review Committee during the November 2012 meeting. The National Park Service, Intermountain Region, Office of Indian Affairs & American Culture (IAAC) agreed to partner with History Colorado, an agency within the State of Colorado (History Colorado), and Ute Mountain Ute Tribe of the Ute Mountain Ute Reservation, Colorado, New Mexico & Utah (UMU) (Project Partners) to compile the information for the Review Committee on behalf of the National NAGPRA program.

Although the compilation of existing state and Federal agency policy information, coupled with additional information from tribal government representatives is informative, this report is preliminary in its design, methodology, data collection, and analysis. The National NAGPRA program or Review Committee may choose to further explore the lands-for-reburial issue and build upon this preliminary report if the issue requires more in-depth study to fully resolve the issue.

Each of the three Project Partners contacted its counterparts with informal requests to voluntarily share information about existing policies and case studies, if any, relevant to the lands-for-reburial issue to inform the report. Each of the Project Partners developed the questions for their counterparts (Federal agencies, state agencies, and tribes) to highlight known challenges to full NAGPRA implementation, based upon feedback previously received that led to the Colorado Lands Repatriation & Reinterment Workgroup efforts to-date. For example, while inquiries to Federal agencies were limited to the presence or absence of applicable statutory or policy authorities, the inquiries to tribes sought a deeper understanding about the internal and external challenges faced by tribes related to the lands-for-reburial issue. IAAC staff contacted other Federal land managing agencies; History Colorado staff contacted other states; and UMU contacted tribes, including those with Tribal Historic Preservation Officers (THPOs), with an invitation to share information. The informal requests for information were distributed during 2013 – 2014 at government-to-government tribal consultation meetings, by e-mail, and through telephone calls. These requests for information were not considered mandatory reporting.

Information provided in this report was gathered through a variety of methods in an attempt to secure the most comprehensive collection of relevant information with the least amount of staff time required. Similarly, because the information collected did not delve into the philosophical reasons surrounding why or why not certain agencies have policies, or what the respondent thought or felt about the policies, the partners in the project focused on the factual aspects of the issue and not on the moral or ethical perspectives of the respondents or the efficacy of the policies in place.

To compile information about the policies and practices applicable to states' lands for reburials, History Colorado staff contacted the state archaeologist of all 50 states and the District of Columbia by telephone or e-mail. In cases where the state archaeologist could not provide information, s/he referred the investigator to the appropriate person in the state who could. History Colorado staff received responses from 49 states to two basic questions: Does the state have a formal policy in place? If yes, the agency respondent was asked to summarize the policy. If not, the agency was asked about the status of policy-related discussions within the state (see Tables 1 and 2, and Appendix A).

To learn about the policies and practices regarding use of Federal land for reburials, NPS, IAAC staff requested a list of Federal agencies who had contacted the National NAGPRA program about NAGPRA compliance. The 38 agencies on the list were contacted by e-mail, requesting response to two questions: Does your agency have a policy for use of Federal land for reburials? Do regional policies vary from national policies? If so, how? (See Tables 3 and 4, and Appendix B).

To solicit and compile information from tribes and Tribal Historic Preservation Officers (THPOs), Ute Mountain Ute staff contacted all THPOs by e-mail and distributed a questionnaire. The same questionnaire was distributed in-person at numerous government-to-government tribal consultation meetings in the Southwest where the lands-for-reburial issue has become increasingly urgent. Of the 137 tribes and THPOs contacted, 27 tribes responded (see Table 5).

Policy and Practice Results

Introduction

The information gathered about whether or not states and Federal agencies have policies or statutory authorities in place is important because the legal and policy framework provides or limits the discretion state and Federal agencies have when tribes request reburial on lands they manage. From a practice standpoint, however, tribal perspectives about the effectiveness of the policy or statutory authority implementation are perhaps even more critical. As such, this section includes information about which states and Federal agencies have a formal (written) policy or statute in place and additional information about the context or status of the discussions related to the issue if no formal policy or statute exists.

Information about whether or not a tribe has had difficulty finding land to rebury the remains of Native American individuals following repatriation or disposition is also included, as well as data about whether or not the repatriating tribe has been able to reinter on state, Federal or tribal land, if desired. The volume of NAGPRA compliance activity in certain geographic areas also appears to be a factor in the responses from tribes. More tribes responded from areas with high rates of NAGPRA compliance activities. An in-depth analysis of this apparent relationship is recommended using the databases managed by the National NAGPRA program.

Similarly, there appears to be a correlation between the tribes with more NAGPRA experience responding and those with less NAGPRA experience not responding to the inquiries used to inform this report. It might also be instructive to investigate if the tribes with more NAGPRA repatriations to-date and, thus, more experience, have a different perspective about the lands-for-reburial issue than those tribes who have had very few repatriations and reburials. The data collected for this preliminary report suggests that trend.

Some anecdotal information about cultural considerations that have been shared during consultation with the Project Partners and during Colorado Lands Repatriation and Reinterment Workgroup meetings is provided for context in this section as it relates to practice, knowing that these perspectives may not be common to all tribes. As a result, the Project Partners have identified the need for an in-depth research project focusing on tribal perspectives related to reburials following repatriation or disposition under NAGPRA as a follow-up to this report. Given the highly sensitive nature of such research and the

cultural complexity of the topic, a separate study designed and conducted by tribal communities themselves is warranted.

Table 1: States with formal policies allowing use of state land for reburials

Summary of Information Regarding State Policies for Use of State Lands for Reburial of Native American Human Remains Repatriated/Dispositioned Under NAGPRA (date as of summer 2014). State archaeologists and/or other appropriate persons in 49 states and the District of Columbia responded. A summary of the information received is provided in the tables below.

State	State land set aside for reburials
Arkansas	X
California (within various state agencies)	
Colorado	X
Connecticut	X
Delaware	X
Iowa	X
Kansas	X
Missouri	X
New Hampshire	X
New Mexico	In process
Vermont	X
Totals: 11	9

Table 2: States with no formal policy governing use of state land for reburials

State	No use of state land up to this time	No information available on use of state land	Use of state land allowed on case-by-case/limited basis	Requests for use of state land have not been made	Policy has been discussed, but no action taken
Alabama		X			X
Alaska			X		
Arizona	X				X
District of Columbia				X	
Florida			X		
Georgia		X			
Hawaii		X			
Idaho				X	
Illinois		X			
Indiana		X			
Louisiana			X		
Maine		X			
Maryland		X			
Massachusetts				X	
Michigan			X		X
Minnesota			X		
Montana			X		
Nebraska	X			X	
Nevada		X		X	
New Jersey			X		
New York			X		
North Carolina	X				
North Dakota	X				
Ohio		X			
Oklahoma	X				
Oregon			X		
Pennsylvania			X		
Rhode Island				X	
South Carolina	X				
South Dakota	X				
Tennessee			X		
Texas	X				
Utah	X				X
Virginia	X				
Washington			X		
West Virginia		X			
Wisconsin	X				
Wyoming			X		

Discussion

Tables 1 and 2 demonstrate that states across the nation take a variety of policy approaches in collaboration with tribes to find lands for reburials. See Appendix A for summaries of states' policies and practices. Of the states responding, only eleven states have formal policies allowing the use of state land for reburials and most have set aside land for this purpose if tribes desire. These policies are formalized in statutes in four of the eleven states. Among these eleven states, Colorado is one that places limitations on the use of state land, whereby state land is used only for culturally unidentifiable remains that come under the purview of the state archaeologist. Thirty-eight states do not have formal policies governing the use of state land for reburials, although in some states, certain state agencies do. About one half of the states responding do not allow reburial on state land or have no information about use of state land for this purpose. About one third allow it on a case-by-case or limited basis, regardless of having no statewide policy. About one sixth indicated that such requests have never been made or they are not aware of any being made. Approaches to the reburial of repatriated remains are often conditioned by the situation of tribes in the each state, the relationship between tribes and state governments, and the existence and effectiveness of Indian Affairs Commissions in states.

Tribal presence in states varies tremendously and is complex. Several states do not have Federally- or state-recognized tribes within their borders. When remains are repatriated to tribes residing outside the state, often state or Federal land is sought if repatriating tribes wish to rebury remains within the state in which the remains were recovered. Likewise, some states have only state-recognized tribes who often request the use of state land under repatriations conducted per state law. Some states have a combination of state- and Federally-recognized tribes. Some states have Federally-recognized tribes with reservations in their states, but those tribes' ancestral lands are in other states. Anecdotal evidence indicates that the tribes wish to use that land, which may be state or Federally owned, for reburials. Anecdotal evidence also indicates that many tribes do not want to rebury culturally unidentifiable remains on their reservations' lands. Finally, some tribes do not want cemeteries established, while others have purchased land for cemeteries (anecdotal).

State laws concerning reburials, cemeteries and unmarked graves discoveries vary. Some states, which have no formal policy governing use of state land for reburials, allow the use of state land for reburials on a case-by-case basis, often governed by agreements (MOUs or MOAs). One state, Louisiana, has set

aside state land for this purpose. Many states that do not use state land for reburials indicated that Federal land or tribal land is used. Many states have state laws, allowing reburial of inadvertent discoveries close to where the remains were disinterred. If the discovery occurs on state land, the reburial may, therefore, be on state land. States vary widely as to which agency or agencies are involved with repatriation and the use of state land for reburials.

A key factor in the use of state land for reburials seems to be dependent on the relationship between an active Indian Affairs Commission and resident tribes. Some states have Indian Commissions while others do not, and those that do not have Indian Affairs Commissions appear to have used less or no state land for reburials. The powers and duties of the Indian Commissions in existence vary. For those respondent tribes that reported active commissions working closely with states, there was more success with using state land for reburials.

Table 3: Federal Agencies with formal policies allowing use of Federal agency land for reburials

Summary of Information Regarding Federal Agencies' Policies for Use of Federal Lands for Reburial of Native American Human Remains Repatriated/Dispositioned Under NAGPRA. Twenty of the 38 agencies contacted responded to this request for information. A summary of the information received in the fall of 2013 is provided in the tables below.

Department or Agency/Bureau (Department)	Has a National Policy or Law	May have Regional or Local Policies	Considering a Policy	Land set aside
Bureau of Land Management (Department of Interior)	X			
Forest Service (Department of Agriculture)	X			
National Park Service (Department of Interior)	X			
U.S. Army Corps of Engineers (Department of Defense)	X			X
Department of Defense		X		
Department of Army			X	X
U.S. Navy				X
Totals:	4	1	1	3

Table 4: Federal Agencies' use of Federal Lands for Reburials

(data as of fall 2013)

Agency	Federal Land is not used or No Land	Federal Land is/could be used
Armed Forces Institute of Pathology	1	
Bureau of Indian Affairs, Department of the Interior	1	
Bureau of Land Management		1
Bureau of Reclamation, Commissioner's Office	1	
Department of Homeland Security		1
Department of the Army, Installation Management		1
Department of the Interior		1
Federal Highway Administration	1	
NASA, Environmental Management Division		1
National Museum of Health and Medicine	1	
National Park Service, Intermountain Region, Washington Office		1
U.S. Air Force		1
U.S. Army Corps of Engineers		1
U.S. Coast Guard, Department of Homeland Security		1
U.S. Department of Defense		1
U.S. Fish and Wildlife Service		1
U.S. Forest Service, Regional Offices 3 and 8, national office		1
U.S. Geological Survey	1	
U.S. Marine Corps		1
U.S. Navy		1
Totals	6	14

Discussion:

Twenty Federal departments and agencies/bureaus responded to the data request. The data show two respondents have reburial policies in place. Two Federal agencies have statutory authorities governing reburials. One respondent, Department of the Army, Installation Management, reported that a policy is being prepared to address reburials on agency-managed lands. A single, departmental-level respondent, Department of Defense, shared that while individual installations may have policies, no department-wide policy exists.

Six Federal agencies reported that they do not own land or do not have land available for reburials. One of those six, Bureau of Reclamation, is prohibited by regulation from reburying on its project lands.

Fourteen agencies could or do rebury on their lands. One agency, NASA, has not had a request but hypothesized about how a reburial request would be handled.

While the Federal responses illustrate variability across the government and even within departments with regard to the presence or absence of departmental or agency policies, there appear to be some commonalities amongst the policies themselves, specifically that under most agencies' policies, there is discretion to reinter – provided the Native American human remains were removed from those agencies' lands. Two-thirds of Federal respondents indicated that they either have a policy in place or address requests for reburial on a case-by-case basis. Anecdotal information suggests that Federal departments and agencies/bureaus consider potential for future disturbance, the ability to monitor reburial sites, and other factors when evaluating requests for reburial on Federally-managed lands, as well as the mission of the agency and implications of other laws and policies. The Project Partners recommend additional research to identify criteria considered during the evaluation of such case-by-case requests, and the number of approvals in relation to the number of requests received. However, there is no requirement for reporting this data, and it may be a highly political and sensitive undertaking.

Table 5: Tribal Framework Regarding Lands for Reburial

Summary of Information Regarding Tribal Frameworks informing the Use of Federal, State, and Tribal Lands for Reburial of Native American Human Remains Repatriated/Dispositioned Under NAGPRA. Twenty-seven of the 137 Tribes and Tribal Historic Preservation Officers contacted responded to this request for information. When the surveys were distributed, respondents were informed that tribes' or individuals' names would remain confidential; thus, they are not included in the report. A summary of the information received is provided in the tables below.

Tribal (coded)	State where tribal headquarters is currently located	Q4. Has your tribe had difficulty finding land to rebury individuals repatriated or dispositioned to you?	Q5. Has your tribe been able to use Federal lands for reburials, if desired?	Q6. Has your tribe been able to use state lands for reburials, if desired?	Q7. Has your tribe been able to use tribal lands for reburials, if desired?
1.	NM	Yes	Yes	No	Yes
2.	N/A	Yes	Yes	Yes	Yes
3.	OR	No	Yes	Yes	Yes
4.	SD	No	N/A	N/A	Yes
5.	TX	No	Yes	Yes	Yes
6.	N/A	Yes	Yes	No	No
7.	AZ, NM, UT	No	No	No	Yes
8.	CA	No	No	No	Yes
9.	ND	No	Yes	No	Yes
10.	NB	No	Yes	No	Yes
11.	NC	Yes	Yes	No	Yes
12.	CA	No	No	No	No
13.	OK	Yes	Yes	No	Yes
14.	ID	No	Yes	No	Yes
15.	CA	Yes	No	N/A	No
16.	NM	Yes	No	N/A	No
17.	CA	No	N/A	N/A	Yes
18.	CA	No	Yes	No	Yes
19.	N/A	Yes	Yes	No	No
20.	NC	Yes	Yes	No	Yes
21.	CO	No	Yes	Yes	Yes
22.	OK	No	No	No	Yes
23.	OK	No	Yes	N/A	N/A
24.	CA	No	Yes	Yes	Yes
25.	CA	Yes	No	Yes	No
26.	CA	No	Yes	No	Yes
27.	CA	No	Yes	N/A	N/A
TOTALS		10=YES 17=NO	18=YES 7=NO 2=N/A	5=YES 15=NO 7=N/A	19=YES 6=NO 2=N/A

Discussion

At first glance, it appears from the data shown in Table 5 that the majority of tribal respondents have not had difficulty finding reburial locations for repatriated or dispositioned remains. The data also show that tribes have looked predominantly to Federal or tribal lands for reinterment locations. As previously stated, the tribal questionnaire included more questions to allow tribes to more fully describe their experiences. Some tribes mention that they have set aside tribal land for reburial to avoid the problem after experiencing frustration with state or Federal agencies (anecdotal). Responses from tribes also demonstrate that some tribes have only repatriated a small number of individuals thus far, which may be why they have had fewer problems finding reburial locations. Still others mention that they had problems until MOUs or MOAs were established. In addition, many tribes mention that when they use Federal or state land, it is for remains that originated on such land, which appears consistent with state and Federal policies discussed in the previous sections.

As documented in the tribal responses, tribal governments vary greatly in their uses of tribal lands for reburials. Anecdotal information shared during consultations highlights the complex interplay between tribal governments and traditional cultural practices regarding whether or not tribes are able to reinter on tribal lands. Some tribes restrict reburials to remains that originated within the boundaries of their existing reservations. Some tribes prohibit reburial of remains with unknown origins on tribal lands. Still, other tribes have no restrictions on use of tribal lands or have designated cemeteries for the sole purpose of reburying Native American human remains repatriated following compliance with NAGPRA.

The desired and/or necessary characteristics tribes require in a reburial location vary from tribe-to-tribe as widely as the ceremonial practices employed by tribes for the purpose of reburials. Anecdotal information shared during consultations and during the Colorado Lands Repatriation and Reinterment Workgroup meetings indicate most tribes prefer to rebury remains as close as possible to where they were removed, although some tribes prefer to reinter within tribal cemeteries to better ensure the remains won't be disturbed again. In some instances, disagreements among the tribes about the reburial locations and ceremonial activities related to the reburial processes have resulted in an impasse. Tribes may request long-term protection of a reburial site to ensure the remains are not re-disturbed due to future activities in the area. Tribal religious leaders may desire significant geographic features or

culturally significant sites in the reburial area, proximity to water, and viewshed, among other things. Practical considerations may include the topography, physical access, directional orientation, and the subsurface rock, water, or soil depth.

Analysis of the information gathered from the respondent states, Federal agencies, and tribes demonstrates a nexus between applications of policies, governing reburials of Native American human remains repatriated or dispositioned following compliance with NAGPRA, and practice –how the policies or statutory authorities are applied, including the influence of traditional cultural protocols and procedures, and physical or practical considerations.

Conclusion

The upcoming 25th anniversary of the passage of NAGPRA provides an opportunity for reflection and increased efforts to address barriers that continue to impede full NAGPRA compliance across the United States. In recent years, the lack of availability for suitable reburial locations has been identified as an impediment to NAGPRA implementation.

Because the issue has been brought to the attention of the Native American Graves Protection and Repatriation Review Committee (“Review Committee”) multiple times and has been included in the Review Committee’s annual Report to Congress, the Review Committee asked the National NAGPRA program in 2012 to compile information regarding the existing legal and policy framework related to the reburial of Native American human remains following repatriation under NAGPRA to better understand the complexities surrounding the issue.

In response, 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 & American Culture partnered to prepare a report, compiling existing state and Federal policy information addressing reburial following repatriation under NAGPRA. The information gathered also highlights several other barriers related to NAGPRA implementation when the interplay between policy and practice is considered.

The goal of the Project Partners was to provide information gathered through informal research to the Review Committee through the National NAGPRA program so that the Review Committee can take the contents of the preliminary report into consideration in case the Review Committee wants to address the issue. The Project Partners worked diligently to avoid conducting legal or policy analysis and no policy recommendations based upon the contents of this preliminary report are made. The Project Partners defer to the Review Committee for any recommendations or actions to be taken in response to the information contained within this preliminary report.

By inferring from the answers received from tribes, states, and Federal agencies, this report sought 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?

Yes, there is a clear problem regarding the availability of lands for reburial of Native American human remains following repatriation or disposition under NAGPRA. While the problem may not be common to all tribes, for those tribes experiencing this issue, they have identified it as a barrier to full NAGPRA implementation. Those tribes with significant NAGPRA experience are more likely to identify the lands-for-reburial issue as a problem. Awareness of the problem is increasing, and it is more widely recognized by tribes in the West and Southwest who have more NAGPRA experience as illustrated in Table 5 (page 20).

As NAGPRA is written, the burden of finding lands to rebury repatriated or dispositioned Native American human remains falls on the tribes, yet the tribes were not responsible for disinterring the remains in the first place and have not traditionally had to bury and rebury the same individuals. Based upon the information collected, finding suitable land for reburial locations is most easily accomplished when the precise location of origin is known, and it is on tribal, state or Federal lands. In other words, if the remains originated from a known location on tribal, state or Federal lands, they can usually be reburied on said tribal, state or Federal lands, respectively, as demonstrated by the information shared about existing agencies' policies or statutory authorities. A serious challenge arises when a tribe has been removed from its ancestral land and wishes to rebury on ancestral land that may be now Federal or state lands or when the origin of the remains is unknown and probably cannot be known. The latter is the situation with large numbers (estimated in the tens of thousands) of individuals, particularly those currently reported as culturally unidentifiable or affiliated individuals in museums with long histories where location of origin is vague (Example: the state of Arizona), without the possibility of precise information able to be acquired. Data indicating there are tens of thousands of Native American individuals with little to no provenience or provenance associated and listed as "culturally unidentifiable" under NAGPRA are a clear indication that the problem will worsen as museums and Federal agencies work through the NAGPRA process. The lands-for-reburial issue may only affect a

few tribes today, but many more tribes are becoming aware of the implications as more culturally unidentifiable Native American human remains are the subject of notices.

The question about the scope or nature of the problem is difficult to define. Many culturally unidentifiable individuals are reported on inventories as such because their origins are unclear or unknown. Once the more than 130,000 culturally unidentifiable individuals waiting to be reported on Notices of Inventory Completion are resolved, the problem of finding locations to rebury them will dramatically increase. While the problem is national in scope, it appears to be focused at this time to areas with more NAGPRA compliance activities underway. As of September 30, 2014, 50,518 Native American human remains have been repatriated (not necessarily reburied), since the passage of NAGPRA 25 years ago. Thus, the number of culturally unidentifiable individuals waiting to be reported on notices followed by repatriation and reburial is more than two and a half times the number of individuals published in notices over the past 25 years.

This preliminary report clearly shows that the number of culturally unidentifiable individuals waiting to be reported on Notices of Inventory Completion is nothing short of staggering. However, the number does not point to the nature of the issue and, as demonstrated by the information gathered for this informal report shows, the number in and of itself isn't the problem. The nature of the issue appears to be a combination of the lack of available origin information about these Native American human remains and the critical role of origin information for state and Federal agencies to exercise discretion in the application of reburial policies or statutory authorities. The lack of origin location information was clearly highlighted during the study process, and consistent with information exchanged during previous Colorado Lands Repatriation and Repatriation Workgroup meetings as a significant constraint.

The question about whether the issue lends itself to individual agency policy or an overarching legislative solution is complex as well. A variety of approaches might be taken. First, state and Federal land managers need to know about the issue – the state and Federal agency responses indicate that there is a knowledge gap about who is responsible for NAGPRA compliance and/or that an issue exists related to lands available for reburials. Another highly sensitive and controversial question is apparent when the totality of responses are considered – that is, because NAGPRA is silent on reburial, do state and Federal agencies have an obligation to resolve the issue in collaboration with repatriating tribes? Do tribes bear the sole responsibility of finding reburial locations for ancestors whom they did not disinter in the first place, and whose disturbance may have been permitted by a state or Federal agency?

Additionally, do concerns that arise from the archeological community about potential impacts to the integrity of the archeological context of an area outweigh the needs of repatriating tribes desiring reburial locations as close as possible to the original site of removal? These complex, highly sensitive questions may help frame the approach to resolving the lands-for-reburial issue as a barrier to full NAGPRA compliance and point to the critical need for an effective solution to be developed collaboratively with tribes, states, and Federal agencies to ensure unilateral support.

State and Federal agencies could be asked to review their policies in hopes of making them more flexible, or in the absence of formal policies, agencies could create policies and procedures to allow reburials within agency constraints. State or regional collaborations may be another way to work on the issue. The creation of a Memorandum of Understanding such as the one forged by the Colorado Lands Reinterment and Repatriation Workgroup (December 2013) is example of a mechanism to resolve the issue in Colorado. Signatories from tribes, Federal agencies and the state agree to meet regularly and hear tribal requests for land to rebury repatriated remains. Signatories understand that they must work within their established policies and procedures and many have carefully reexamined their policies to better understand where discretion can be exercised and where it cannot. As of the submission of this report, five repatriated individuals have been reburied as a result of the Colorado Lands Reinterment and Repatriation Workgroup with two more in progress. Similar collaborative structures may exist elsewhere in the country, but the Project Partners are unaware of any, and no one volunteered such information during the queries for this preliminary report. In spite of many successes, the Colorado Lands Reinterment and Repatriation Workgroup has been unable to completely resolve situations where Native American human remains are completely lacking critical origin location information.

The past and present disturbance of Native American graves is of great concern to tribes. NAGPRA provides an effective process to return Native American human remains and cultural objects to the appropriate parties. NAGPRA does not, however, explicitly address reburial. It is with the utmost respect and gratitude to the respondent tribes, state, and Federal agencies that the Project Partners representing the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico and Utah; History Colorado; and the National Park Service, Intermountain Region, Office of Indian Affairs & American Culture provide the information contained within this preliminary 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)” to the Review Committee through the National NAGPRA program. While the research is far from exhaustive, it is the Project Partners’ hope the contents of the report meets the needs of the Review Committee and contribute to the development of solutions to resolve the lands-for-reburial issue. The Project Partners also hope that subsequent, more in-depth research will be undertaken to better understand some of the highly complex issues raised.

Appendix A

State Policy and Practices for Reburial of Repatriated/Dispositioned Native American Human Remains under the Native American Graves Protection and Repatriation Act

State	Does a formal state policy exist?	Have state lands ever been used for reburial?	Short synopsis of policy and practice
Alabama	No	n/a (no available information)	No state policy on use of state land for reburials.
Alaska	No	Yes	In Alaska, there is no state policy for use of state land for reburials. Most reburials occur on federal land, particularly Forest Service, or on Native Corporation or Village Corporation lands. The issue is not addressed in state statute (AS 41.35). Previously, there has been one reburial on state land, facilitated by an MOU or MOA.
Arizona	No	No	In Arizona, there is no state policy for use of state land for reburials. There are no restrictions but reburial on state land has not been done. Arizona State Museum is specifically mandated to oversee human remains from state and private land, but also has NAGPRA responsibilities because of its collections. Remains repatriated to most Arizona tribes are reinterred on their reservations. For tribes that do not wish to use reservation land, in some instances, the state has collaborated with federal agencies to use Forest Service land.

Arkansas	Yes	Yes	In Arkansas, tracts of land in two state parks have been designated for reburials of repatriated or dispositioned individuals under NAGPRA. There is a formal process by which any federally recognized tribe can make a request for use of the land. The request begins with the Director of State Parks.
California	Yes, not statewide but within various state agencies	Yes	In California, several statutes relate to reburials. §7054 (California Health and Safety Code) allows for the reburial of Native American remains outside of an established cemetery. The California Native American Heritage Commission (§5097.94 and. 98) has related powers and duties. There is no statewide policy addressing reburial on state land and various agencies across the state handle the issue differently. California State Parks has a policy (Chapter 0404.2.2) which states that reinterment at the same park where the remains were removed is permitted, at the discretion of the District Superintendent and in consultation with the most likely descendants.

Colorado	Yes	Yes	<p>In Colorado, MOUs are in place between state land managing agencies, Colorado Commission of Indian Affairs and History Colorado that permit use of designated state land for the reburial of culturally unidentifiable Native American human remains that come under the purview of the State Archaeologist through inadvertent discoveries on Colorado state and private lands or through county coroners with reasonable evidence of remains originating in Colorado. The NAGPRA process must be completed. Lands were selected in consultation with Ute Mountain Ute Tribe and Southern Ute Indian Tribe. The MOUs spell out the responsibilities of the parties involved. Permits from the Colorado Department of Public Health and Environment are required for reburial. Reburial locations are kept confidential. Additional use of state land is possible on a case-by-case basis by submitting a request through the Colorado Lands for Repatriation and Reburial Workgroup.</p>
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Connecticut	Yes	Yes	<p>Connecticut has specific legislation for the reburial of Native American and all human skeletal remains. CT General Statutes, Sec. 10-388 et seq. provides for in situ preservation or archeological excavation and reburial of human remains encountered during construction, agricultural, archeological or other ground disturbances. It also defines the roles and responsibilities of the State Medical Examiner, State Archaeologist, State Historic Preservation Office and the Native American Heritage Advisory Council.</p> <p>Since reburial is legislated, the state has provided a parcel of land that is part of the state forest system managed by the Department of Energy and Environmental Preservation. The parcel was historically adjacent to the 17th century Tunxis Indian Reservation, so it already has a precedent as an ancient burying ground. The Tunxis location is used as a reburial site for Native American skeletal remains from the state that have no extant tribal representation.</p> <p>Affiliated human remains repatriated to either of the two federally-recognized tribes in the state, returned through NAGPRA, are handled by the respective tribes and reburied on their tribal reservations. Likewise, the three other extant tribes having a legislative history with the state for hundreds of years, but not federally recognized, will also rebury on their respective reservation burying grounds if the remains can be specifically associated with them.</p>
Delaware	Yes	Yes	<p>In Delaware, tribes may use an archeological cemetery which is located on state land.</p>

District of Columbia	No	No	There is no formal policy for use of District land for reburials. The situation has not come up.
Florida	No	Yes	Florida allows use of state land for reburials on a case-by-case basis, if tribes make a request. The state's tribes do not want a formal cemetery established for unprovenienced remains.
Georgia	No	n/a	Georgia has no arrangements with tribes for use of state land for reburials under NAGPRA. There is nothing in state statutes regarding use of state land for this purpose.
Hawaii	No	n/a	In Hawaii, no state lands are being used as a repository for human skeletal remains. It is the Hawaiian cultural practice that native Hawaiian human skeletal remains are to be reinterred within the same land division (ahupua'a) that they were found. Burials are rarely relocated. In cases where remains originate from a museum, the institution normally has location records and landowners in the same ahupua'a are sought out to seek permission for reburials. There may have been cases where the land is owned by the state, in the past.
Idaho	No	No	Idaho does not have a formal policy governing the use of state land for reburials. No requests have been made. If they were, they would be directed to Department for Lands for permitting.
Illinois	No	n/a	In Illinois, there is no policy or practice regarding use of state land for reburials.

Indiana	No, although various state agencies with land may have	n/a	Many different state agencies in Indiana own land. Each agency most likely has its own policy for use of state properties. There is no overall policy governing use of state lands for reburial.
Iowa	Yes	Yes	In Iowa, state statute 263B.8 mandates that the state archaeologist shall establish, with the approval of the executive council [governor, Secretary of State, State Auditor, State Treasurer, Secretary of Agriculture] a cemetery on existing state lands for the reburial of ancient human remains found in the state. The cemetery shall not be open to the public. The state archaeologist in cooperation with the Department of Natural Resources shall be responsible for coordinating interment in the cemetery.
Kansas	Yes	Yes	In Kansas, the secretary of the state historical society shall establish, with the approval of the board, a cemetery on existing state lands for the reinterment of human skeletal remains from unmarked burial sites in this state, and goods interred with such remains. Such cemetery shall not be open to the public (Kansas State Statute 75-2753. Cemetery for reburial of remains)
Kentucky			no response
Louisiana	No	Yes	In Louisiana, there is no formal policy of using state land for reburials; however, some state land has been set aside for reburials if tribes wish to use it. Tribes in the past have used this land for unaffiliated remains.

Maine	No	n/a	In Maine, there is no formal policy of using state land for reburials. When remains are transferred to tribes for reburial, the state does not receive information about the location of the reburial.
Maryland	No	n/a	In Maryland, there is no formal policy regarding use of state land for reburials.
Massachusetts	No	No	In Massachusetts, there is no formal policy or practice regarding the use of state land for reburials. The situation has not come up. Tribes receive repatriated remains and take care of reburial on tribal land.
Michigan	No	Yes	In Michigan, there is no formal policy regarding use of state land for reburial; however, discussions are underway that may lead to one. Two requests have been received and were decided on a case-by-case basis.
Minnesota	No	Yes	In Minnesota, state land was made available as an option for tribes to use in the past. Currently, any request for use of other state land would be considered on a case-by-case basis so as to not disturb any archeological site. Reburials are handled by the Minnesota Indian Affairs Council.
Mississippi			no response

Missouri	Yes	Yes	In Missouri, land in 2 state parks has been set aside as options for reburials. It has not been used yet. Often times, remains are repatriated to tribes, who no longer have land in Missouri. Identification of land was in collaboration with tribes. To use the land, contact SHPO. SHPO and DNR are the same unit. There is an internal process in draft for handling requests to use state land. It does not matter if remains are CA or CUI, as long as the NAGPRA process has been completed. Most repatriated remains have been reburied on tribal lands.
Montana	No	Yes	In Montana, there is no formal policy for reburial on state land. However, there have been a few cases in which arrangements have been made by the State Burial Board, in collaboration with the State Archaeologist and the Fish, Wildlife and Parks to use state park land, or county coroners have assisted in getting county controlled cemetery plots.
Nebraska	No	No	In Nebraska, there is no formal policy regarding use of state land for reburials. The issue has not come up. Tribes have taken remains back to their reservation or worked with local cemeteries or private landowners to acquire land for reburial.
Nevada	No	n/a	In Nevada, there is no formal policy for the reburial on state land, nor has a request been made by any Native American representative or tribal government for this. The state statutes are silent on the reburial of Native American human remains on state land. However, if such remains were uncovered on state Land, there isn't a statute that would prohibit reburial in a protected location on state land with the appropriate authorization from the Division of State Lands and the local health department.

New Hampshire	Yes	Yes	In New Hampshire, there is a dedicated location for the reburial of Native American remains and this has been used on several occasions where either the origin of the original grave is not known, or repatriation at the original grave site is not possible. This is a decommissioned rest stop on a major highway. The tribal groups are free to use this space for reburial if they think it is the best option. The exact location is not publicized.
New Jersey	No	Yes	In New Jersey, there is no formal policy for reburial on state land. There have been requests and they have been handled on a case-by-case basis, whereby state and federal land has been used for reburial.
New Mexico	Yes	Yes	New Mexico state law allows the use of state land for reburials. It provides for a reburial ground. However, land for that has not yet been designated. The plan for a State cemetery in New Mexico was developed to provide an acceptable location for reburial of remains that for one or more reasons could not be reburied at either the site of their excavation or on Native American-controlled lands. Examples of these types of cases include human remains that are identifiable as Native American, but which are culturally unidentifiable; or human remains for which cultural affiliation can be determined, but the claimant tribe does not have the proper ceremonies for reburial on their tribal lands. A State cemetery will allow these remains to be removed from museum custody in order to be re-interred.

New York	No	Yes	In New York, there is no formal policy for reburial on state land. However, under Education Law 233, which permits archeological investigations, if remains are found, following consultation with tribes and the land owner, which may be the state, remains may be reinterred close by. Also, some tribes, currently residing outside of New York, but with aboriginal territory in New York, have purchased land for reburials.
North Carolina	No	No	In North Carolina, reburials of individuals repatriated under NAGPRA thus far have occurred on tribal land. There is only one federally recognized tribe with land in NC-the Eastern Band of Cherokee. They sometimes act on behalf of Catawba and Tuscarora, who were in NC but do not have land there. State law can also lead to reburials, but not under NAGPRA. There is nothing in state law that would prohibit use of state land for reburials. There are no reports of state land managers being approached with this request, other than one more than 2 decades ago. The agency was not receptive.
North Dakota	No	No	In accord with the North Dakota Administrative Code (NDAC) 40-02-03-08, reinterment of disinterred remains from state and private lands in North Dakota takes place on Indian lands within the boundaries of the appropriate Indian reservation. One exclusion was developed in a federal agency programmatic agreement.
Ohio	No	n/a	There is no formal policy for use of state lands for reburials. By statute (149.53), the director of the [Ohio Historical] Society shall determine the disposition of artifacts and skeletal remains discovered on state lands.

Oklahoma	No	No	State land is not used for reburials.
Oregon	No	Yes	There is no formal agreement for use of state lands for reburials. Oregon State Parks and Recreation Department (OPRD) has offered state lands for reburial. 1) There is an MOA with the Confederated Tribes of the Umatilla Indian Reservation, allowing for reburial on OPRD lands. 2) OPRD Cultural Resources Policy; Section 2 allows for reburial on OPRD lands.
Pennsylvania	No	Yes	In Pennsylvania, there is no formal policy regarding use of state land for reburials. At one time, a state historic property was made available, but it was sold. Tribes have not disclosed the location of the small number of reburials that have occurred in the state.
Rhode Island	No	No	The issue of using state land for reburials has never come up.
South Carolina	No	No	In South Carolina, state lands are not used for reburial of Native American human remains repatriated under NAGPRA. A historic cemetery on federal land has been identified for such reburials. Currently, the final details for its use are being worked out.
South Dakota	No	No	South Dakota has no policy regarding use of state land for reburials. Repatriated remains have been transferred directly to tribes.

Tennessee	No	Yes	Tennessee has no statute or policy regarding reburial of Native American human remains on state-owned or controlled lands. State law requires a court order to remove any remains and the order includes reburial plans. Attempts are made to rebury as close as possible to where remains were removed. In practice, it has been on private or public land, especially since there are no tribal lands in the state.
Texas	No	No	Texas has no state policy that addresses use of state property for reburial purposes. One cemetery has been established on federal property.
Utah	No	No	At present Utah does not have state land available for use for reburials. Utah has neither a policy allowing nor prohibiting use of state land for reburial. The state is working on an agreement to identify land for reburials. Currently, there is an underground burial vault for unclaimed remains or when tribes request that remains be stored there.
Vermont	Yes	Yes	Vermont has 4 state recognized tribes. No federally recognized tribes are in VT at this point. So far, remains have been repatriated only to state recognized tribes. The state purchased land for use as reburial grounds.
Virginia	No	No	Virginia does not have a policy regarding use of lands for reburials of individuals repatriated under NAGPRA. There is one federally recognized tribe in VA today, the Eastern Band of Cherokees. Thus far, they have worked with USFS to rebury on federal land. There are numerous state recognized tribes in VA. Thus far, no reburials of individuals repatriated to them have occurred on state land. Mostly tribal land has been used.

Washington	No	Yes	Washington has no specifically designated lands for general reburial of remains. If remains originated from state or private lands, they can be reburied there. An archaeologist working for the tribe(s) or the State Physical Anthropologist, tribes and state agency involved work with the Department of Archaeology and Historic Preservation.
West Virginia	No	n/a	West Virginia does not have a state policy regarding use of state land for reburials.
Wisconsin	No	No	Wisconsin has not used state land for reburials. Most recent reburials have been completed through WI burial statutes, Wis. Stat. 157.70. In most cases, tribes who choose to receive remains reburial on reservation land or private land they have purchased.
Wyoming	No	Yes	Typically reburials have taken place on federal land or even cemeteries, depending upon the ownership status of the discovery site. There is no parcel of state land designated for such purpose but if a reburial of a state land discovery was pending, the Office of State Lands and Investments will provide guidance on how to proceed.

Appendix B

Agencies Contacted regarding NAGPRA Reburial Policies

Agency	Yes, Policy	No, Policy	No Resp.	Law	Excerpts of Response
Advisory Council on Historic Preservation			1		No Response
Air National Guard			1		No Response
Armed Forces Institute of Pathology		1			The agency has no policy and does not anticipate participating in reburials.
Association of Village Council Presidents			1		No Response
Bureau of Indian Affairs, Department of the Interior		1			Indian Affairs does not have a policy for reburial on federal lands, since Indian Affairs does not have federal lands.
Bureau of Land Management	1				Policy is hosted at: http://www.blm.gov/wo/st/en/info/regulation/s/Instruction_Memos_and_Bulletins/national_instruction/2007/im_2007-002_.html
Bureau of Reclamation, Commissioner's Office		1			Reclamation does not have a policy in place on the use of Reclamation lands for reburials. The regulation at 43 CFR 423.28 expressly prohibits the burial of human remains on Reclamation facilities, lands, and waterbodies.
Department of Energy			1		No Response
Department of Homeland Security		1			Across the department, DHS has had a very small number of situations related to reburying repatriated individuals under NAGPRA. Thus far, the DHS agencies have been successful dealing with these situations on a case-by-case basis and have not found the need for a policy on the use of federal land for reburials.
Department of Justice			1		No Response

Department of the Army, Installation Management		1		Reburial on Federal property of repatriated NAGPRA remains is not a requirement under NAGPRA and at present is not addressed in Army policy or guidance. However, Army has begun the process of revising policies to address reburial of repatriated NAGPRA remains. Under our present policy, these decisions are left to each Garrison Commander. Several Army installations have allowed reburial of NAGPRA remains on a case-by-case basis as determined through consultation with the affiliated tribes, and some Garrisons have even set aside designated reburial areas within the fence line of the installation. It is Army's intent to have a uniform policy and guidance in place in the near future.
Department of the Interior		1		The Department includes the National Park Service, Bureau of Land Management, Bureau of Indian Affairs, Bureau of Reclamation, and Fish and Wildlife Service. These are the Department's land-managing bureaus, so they would be the ones that might allow reburials for the purposes of NAGPRA on their lands. The Department does not have a DOI-wide policy on reburial for NAGPRA.
Department of the Treasury			1	No Response
Environmental Protection Agency			1	No Response
Federal Communications Commission			1	No Response
Federal Highway Administration		1		FHWA does not maintain a NAGPRA burial policy; it does not have federal lands.
Health and Human Services			1	No Response
Housing and Urban Development			1	No Response
NASA, Environmental Management Division		1		To date, NASA has had no NAGPRA remains. However, while NASA does recognize the risk of discovering burials, it has no specific policies in place to prevent reburial on its land or vice versa. Preference would be to rebury near the original location if an agreement is reached with relevant Tribes and can be protected from disturbance.
National Guard Bureau, Army National Guard Directorate			1	No Response
National Institute of Health			1	No Response
National Museum of Health and Medicine		1		The Museum has not had nor does it expect to be party to any burial discussions.

National Park Service, Intermountain Region, Washington Office	1			<i>Management Policies 2006</i> affirms that remains removed from park lands may be reburied on park lands . It does not include any reference to remains repatriated by NPS but not removed from park lands. A memo to regional directors from the AD, Cultural Resources, Partnerships, and Science in December 2012 did, however, address remains repatriated by NPS but not from park lands. That memo included the possibility that it might be OK to allow reburial of such remains. It states, "...current NPS policies do not permit the reburial within a park of Native American human remains that were not removed from that park's land. However, if NPS has control or possession of human remains that were not recovered from a park and is responsible for their repatriation, allowing reburial at a park may be appropriate if requested by the culturally affiliated tribe or tribes. The regional NAGPRA coordinator and the regional director should be consulted prior to approving such reinterments." This is more interpretation of policy than actual policy and is subject to case-by-case evaluation.
Natural Resource Conservation Service			1	No Response
Office of Hawaiian Relations, Dept. of the Interior			1	No Response
Office of Surface Mining Reclamation and Enforcement			1	No Response
Small Business Association			1	No Response
Tennessee Valley Authority			1	No Response
U.S. Air Force		1		The Air Force has no official NAGPRA policy. No document addresses using AF lands for reburial. Individual installations follow their own SOPs. A few Air Force installations have allowed nearly immediate reburial of NAGPRA remains at the point of discovery.

U.S. Army Corps of Engineers			1	USACE is unique within the Federal community as it has received directive, statutory language, concerning reburial and conveyance of land for use as a " cemetery " for "Native American remains." The full statutory reference can be found in Section 208 of the Water Resources Development Act (WRDA) of 2000, Public Law 106-541 . The full text of section 208 can be found at: http://www.fws.gov/habitatconservation/Omnibus/WRDA2000.pdf Headquarters, USACE, has issued agency-wide implementation guidance for Section 208 of WRDA 2000. We have defined "reburial areas" as being lands held in fee title at operating USACE projects and "Native American remains" as being all cultural items subject to the terms and provisions of NAGPRA. Please note the statutory language directs reburial areas can be used for: 1. items that are or were discovered on lands now held in fee title by USACE; and, 2. have "been rightfully claimed by a lineal descendant or Indian tribe." USACE is authorized to "recover and rebury, at Federal expense" remains that meet these two tests. Section 208 authorizes USACE to convey project (fee owned) land to an Indian tribe "for use as a cemetery."
U.S. Coast Guard, Department of Homeland Security		1		USCG does not have any established policy on NAGPRA.
U.S. Department of Agriculture			1	No Response
U.S. Department of Defense		1		There is nothing specifically within the DoD Native American Policy that has a protocol for reinternment on Federal land. However, the military components may have their own internal policy for such a process.
U.S. Fish and Wildlife Service		1		FWS does not currently have reburial in its National cultural resources policy, however, we have reburied individuals on National Wildlife Refuges under special circumstances and only after a complete NAGPRA review has been completed. FWS has only done this on a few occasions and mainly at the request of the affiliated tribe.

U.S. Forest Service, Regional Offices 3 and 8, national office				1	The Southwestern Region (Region 3) and the Southern Region (Region 8) have had regional policies permitting reburials on National Forest System lands since 1993. The Forest Service as a whole had an interim policy permitting reburials on National Forest System lands from 1999 to 2004 and a formal policy since 2004. Since 2008, the Forest Service has permitted reburials on National Forest System lands under the reburial provisions of the 2008 Farm Bill [25 U.S.C. 32A] .
U.S. Geological Survey		1			The USGS is not a land managing agency; USGS does not have a NAGPRA re-burial policy .
U.S. Marine Corps		1			The U.S. Marine Corps does not have a written policy , regarding reburials on USMC property. USMC has accommodated reburial (or have at least agreed to reburial) on at least one installation, but it treats reburial requests on a case-by-case basis where it balances the desires of the claimants with existing and emerging land use constraints on its installations.
U.S. Navy		1			The Navy doesn't have a specific policy , regarding reburials, and at this point in time, it handles requests on a case-by-case basis . The Navy considers the request of the tribe(s) involved, including any locations they suggest as well as the ability of the Navy to meet security and other responsibilities. Finally, the Navy considers the potential impact of the proposed location may have on activities that support its military mission. If there is an impact, the Navy works with the tribe(s) to develop alternatives. The Navy has a special circumstance in Hawaii where it has designated a location and built a burial vault in consultation with Native Hawaiian groups . Native Hawaiian remains are then interred upon consultation.
Totals	2	16	18	2	