

Memorandum of Agreement

For Consultations, Treatment and Disposition of Human Remains and Cultural Items That May Be Discovered Inadvertently During Planned Activities at Statue of Liberty National Monument

May 1, 2003

This Agreement is entered into by and between the U.S. Department of Interior, National Park Service, and the following parties: the Delaware Nation, the Delaware Tribe of Indians, and the Stockbridge-Munsee Community of Wisconsin.

Purpose

The purpose of this Memorandum of Agreement is to describe the procedures that will be followed by the National Park Service, Statue of Liberty National Monument, in the event there is an inadvertent discovery of human remains, funerary objects, sacred objects and objects of cultural patrimony within the Park. These procedures carry out the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001 et seq.) and its implementing regulations (43 CFR Part 10) regarding consultation, treatment and disposition of human remains and cultural items that are inadvertently discovered in the course of planned activities in the Park.

During 2003, the Statue of Liberty National Monument plans to conduct maintenance and stabilization activities that will involve ground disturbances within the Park. In addition, the Park plans to conduct preliminary archeological investigations at specified localities within the Park. This Agreement has been written to comply with the requirements of NAGPRA and the Archeological Resources Protection Act (ARPA) in the case that inadvertent discovery does occur.

Definitions

All definitions in NAGPRA are incorporated into and apply to the terms used in this Agreement. The term 'cultural items' shall refer to funerary objects, sacred objects and objects of cultural patrimony as defined in NAGPRA. National Park Service policy states, "Inadvertent discovery means the unanticipated encounter or detection of human remains, funerary objects, sacred objects, or objects of cultural patrimony found under or on federal or tribal lands" (Cultural Resource Management Guideline (DO 28), Appendix R: NAGPRA Compliance, p. 325).

Cultural Affiliation

The preponderance of geographical, archeological, linguistic, folklore, oral tradition and historical evidence identifies the following tribes as most likely to have a shared group identity with (be culturally affiliated with) an earlier group who occupied and used this unit of the national park system in past centuries: the Delaware Nation, the Delaware Tribe of Indians, and the Stockbridge-Munsee Community of Wisconsin.

Identification of Human Remains as Native American

In the event that human remains are encountered, all work will cease pending notification of the Superintendent, U.S. Park Police, Chief of Museum Services Division, Park Archeologist, Criminal Investigator, local law enforcement official, the County Medical Examiner/Coroner, and a forensic anthropologist. These officials will make an on-site determination whether the location is a crime scene or an archeological discovery. Upon notification that law enforcement has no further interest in the matter and the remains are determined to be Native American, the procedures outlined below shall be implemented.

Notification and Consultation in the Case of an Inadvertent Discovery

If Native American human remains or cultural items are inadvertently discovered, the NPS will cease activity in the immediate area of the human remains and objects, protect the remains and cultural items from further disturbance, and consult with the Tribes in keeping with 43 CFR Sections 10.4 – 10.6 and as outlined below.

1. Notification of NPS: The person who has identified the Native American human remains or cultural items shall provide immediate verbal or telephone notification of the discovery to the Superintendent of the Park. This notification shall be followed by formal written notification.
2. Cease Activity: The NPS shall immediately stop the activity in the area of the inadvertently discovered Native American human remains and cultural items and take action to secure and protect the human remains and cultural items. The action shall be directed at stabilizing and covering the discovered objects, as well as maintaining the sanctity of the site. The appropriate actions shall include covering the human remains and cultural items with a natural fiber cloth such as cotton or muslin and placing tobacco near the remains. No photographs will be taken.
3. Notification of Tribes: The Superintendent, as soon as possible but no later than three days after receiving notification of the discovery, shall notify the Tribes by telephone. Each Tribe's officially designated NAGPRA Representative shall be notified, or in the case the tribe has no NAGPRA Representative, notification shall be given to the Tribal Chief. This notification shall include information about the kinds and condition of human remains and cultural items, the circumstances under which they were discovered, and the measures taken to secure the area and protect the objects. Written notification shall follow the telephone notification.
4. Consultation with Tribes: The Superintendent shall initiate consultations with the Tribes. He or she shall provide written notice that proposes a time and place for meetings or consultations to further consider the inadvertent discovery, the Park's proposed treatment of the human remains and cultural items that may be excavated, and the proposed disposition of such remains and items.

Treatment and Disposition of Human Remains and Cultural Items

The Park and the Tribes agree that the preferred treatment of inadvertently discovered human remains and cultural items is to leave the human remains and cultural items in-situ and protect

them from further disturbance. Non-destructive "in-field" documentation of the remains and cultural items will be carried out in consultation with the Tribes, who may stipulate the appropriateness of certain methods of documentation. If the remains and cultural items are left in-situ, no disposition takes place and the requirements of 43 CFR 10 Sections 10.3-10.6 will have been fulfilled. The specific locations of discovery shall be withheld from disclosure (with the exception of local law enforcement officials and tribal officials as described above) and protected to the fullest extent allowed by federal law.

Written Plan of Action

If the human remains and cultural items cannot otherwise be left in place, the Superintendent shall, following consultations with the Tribes, prepare, approve and sign a written Plan of Action as described in 43 CFR Section 10.5(e) prior to excavation and removal. He or she will provide a copy to each of the Tribes. The NPS will remove them for disposition to the culturally affiliated Tribes (which may include reburial elsewhere within the Park). A determination of cultural affiliation will be required prior to disposition in keeping with 43 CFR Section 10.6, Custody. The preponderance of geographical, archeological, linguistic, folklore, oral tradition and historical evidence will be used for the determination of custody of the discovered items.

Public Notice

Following a determination of cultural affiliation, if the culturally affiliated Tribes request the disposition of cultural items to tribal custody, upon receipt of a written request by the Tribes the NPS, in compliance with Section 10.6(c), shall publish a general notice of the proposed disposition in the New York Times, the Anadarko Daily News, the Bartlesville Examiner Enterprise, and the Shawano Evening Leader. The notice will provide information as to the nature and affiliation of the cultural items and solicit further claims to custody. The notice will be published at least two times at least a week apart and final disposition will not take place until at least 30 days after publication of the second notice to allow additional claimants to come forward. A copy of the newspaper notices along with information on when and in what newspaper it was published will be sent by the Park to the Departmental Consulting Archeologist.

If no other claimants come forward, the Park will prepare transfer of custody papers and obtain signatures from the culturally affiliated Tribes prior to final disposition.

Term and Amendment

From the date of the last signature, this MOA shall remain in effect for one year and may be amended only with the written consent of all parties hereto at the time of such amendment. Any signatory party may terminate their participation in this MOA upon 60 days written notice to the other signatories.

Signatures

National Park Service

By: _____

Date: _____

Title: _____

Delaware Tribe

By: _____

Date: _____

Title: _____

Delaware Tribe of Indians

By: _____

Date: _____

Title: _____

Stockbridge-Munsee Community of Wisconsin

By: _____

Date: _____

Title: _____