



December 7, 2017

Ms. Melanie O'Brien  
Manager, National NAGPRA Program  
National Park Service  
1849 C Street NW  
Mail Stop 7360  
Washington, D.C. 20240

Dear Ms. O'Brien:

The Society for American Archaeology (SAA) is compelled to offer the following comments to the National NAGPRA Program regarding the NAGPRA Review Committee's *2016 Report to Congress*. The *Barriers Encountered* and *Requests and Action Items* sections contained in that report provide clear examples of the following two issues that SAA has raised with the National NAGPRA Program previously:

1. "Moving goalposts" for the work expected of museums and Federal agencies
2. Lack of balance and fairness

We would like to preface our remarks by clarifying that SAA Repatriation Committee member Jordan Jacobs, who is the subject of Review Committee remarks in the 2016 Report, did not participate in any manner in drafting this letter.

### **Moving Goalposts**

In its Report, the NAGPRA Review Committee claims that the failure to properly report the scope of consultation activities regarding culturally unidentifiable human remains is a barrier to NAGPRA implementation. The full section of the report reads:

The number of culturally unidentifiable human remains and associated funerary objects is of considerable concern. There are thousands of sets of human remains and associated funerary objects housed in various repositories and institutions, and the National NAGPRA Program databases indicate that, when submitting inventories of culturally unidentifiable human remains, many museums and federal agency units did not provide evidence to show that consultation with potentially affiliated Indian tribes and Native Hawaiian organizations had occurred with respect to any of those remains. This, in part, may be the result of these human remains and associated funerary objects under the control of federal agencies being held in non-federal repositories. Whatever the reasons, results of consultation are required to be included in an inventory according to NAGPRA regulations, 43 CFR 10.9(c)(4).

This passage fails to acknowledge that consultation was not required for all, or even many, of the human remains found to be culturally unidentifiable. For example, NAGPRA's regulations identify *consulting parties* as lineal descendants and those tribes from whose tribal or aboriginal lands the remains originated and those tribes that are, or are likely to be, culturally affiliated with the remains. Consultation may not have occurred for those individuals for which little or no information exists (an all too common

occurrence) or in those instances when a likely affiliated tribe was not evident. Additionally, many of the individuals that were found to be culturally unidentifiable originate from areas where there are no tribal or aboriginal lands of a federally recognized tribe. The section appears to be based, in part, on the faulty assumption that there was always a consulting party.

Moreover, this report assumes that museums were required to provide documentation of their consultations; demonstrate that these occurred prior to the finding of cultural affiliation; and to notify the National NAGPRA Program that no consulting party could be identified for certain cases, none of which is required by the statute or regulations.

It is also worth noting that the passage cites NAGPRA's regulations (43 CFR 10.9(c)(4)) as requiring the results of consultation, yet these regulations were published in December of 1995—one month *after* the deadline for the completion of NAGPRA inventories.

In its February 2, 2016, letter to Ms. O'Brien, SAA noted that these same faulty assumptions appeared to form the basis of the *Museums' and Federal Agencies' Culturally Unidentifiable Inventories with No Indication of Mailing to Tribes* 2014 report, which the National NAGPRA Program compiled at the Review Committee's request. In its letter, SAA argued that the report appeared to question the good faith and legal efforts of those institutions that had complied with NAGPRA's requirement.

In the *2016 Report to Congress*, we see the same “moving goalposts” for the work expected of museums and federal agencies and fear that it may destroy a mutually trusting relationship between the NAGPRA Review Committee and museums. More importantly, perhaps, such misinformation has the potential to erode the trust that Tribes have in museums by creating expectations for requirements that do not exist.

### **Lack of Balance and Fairness**

In its August 2015 letter to Melanie O'Brien, SAA noted that perceptions of bias, documented in the 2010 GAO report, present a real impediment to proper implementation of the Act. The *Requests and Action Items* section of the 2016 Report appears to be an example of such bias, as it uses unprecedented language and editorializing to summarize a dispute between a museum and a tribe. This assertion is supported with the following examples:

- The Wiyot Tribe's testimony is summarized without comment, whereas that of the museum is summarized with negative editorial comments.
- The discussion of the Review Committee's comments only presents the questions that challenge the museum's position, although there were also questions during the meeting that challenged the tribe's position.
- The use of “consultation” in quotation marks seemingly implies that the Hearst Museum did not meet its legal obligations for consultation under the law.
- The manner in which the museum presented its testimony is described as “rather excited” and “intemperate.”

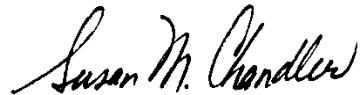
This last point is particularly noteworthy. A review of all previous Reports to Congress did not find a single instance of a presenter's behavior being characterized in any way. We understand that disputes are likely to invoke strong emotions. Indeed, many people have delivered presentations with obvious emotion, yet they have never been characterized as such in a Report to Congress. We question why it was done in the 2016 Report and what relevance it might have for Congress.

In keeping with the SAA's recommendations for the Review Committee meetings, we strongly recommend that future Reports to Congress uphold a high standard for fairness, balance, and accuracy, to the benefit of all parties involved.

SAA appreciates that the National NAGPRA Program has taken seriously the comments and suggestions it has received over the last two years. We would like to reiterate that you should consider SAA to be a useful resource in re-engaging with museum communities. Please let us know how we might be of assistance to you.

With my best wishes and thanks for your attention.

Sincerely,

A handwritten signature in cursive script that reads "Susan M. Chandler".

Susan M. Chandler, RPA  
SAA President