



SOCIETY FOR AMERICAN ARCHAEOLOGY

March 15, 2022

Dr. Francis P. McManamon
Chairman
National NAGPRA Review Committee
c/o Arizona State University
PO Box 872402
Tempe, AZ 85287-2402

Dear Dr. McManamon:

The Society for American Archaeology (SAA) submits the following comments regarding the draft proposed changes (as published in July 2021 on the NAGPRA Program [NNP] website) to the regulations implementing the Native American Graves Protection and Repatriation Act (NAGPRA). Specifically, the SAA wishes to take this opportunity to not only express its serious concerns with the draft but also with the process that has led to the current situation.

The SAA is an international organization that, since its founding in 1934, has been dedicated to research about and interpretation and protection of the archaeological heritage of the Americas. With nearly 7,000 members, the SAA represents professional and avocational archaeologists, archaeology students in colleges and universities, and archaeologists working at tribal agencies, museums, government agencies, and the private sector. The SAA has members throughout the United States, as well as in many nations around the world.

Changes to the NAGPRA implementing regulations constitute a long-standing concern, and the SAA is pleased that Secretary Haaland has prioritized this issue. For some time, Native American tribes, and others such as museums and national scientific organizations, have called for various alterations to the rules. These appeals have been made in congressional testimony and National NAGPRA Review Committee (RC) hearings. The RC has itself urged the National Park Service and the Department of the Interior to adopt modifications to the rules on a number of occasions and reiterated its insistence that it be consulted on the matter by the Department as those changes were being drafted. As for the Department, updates to the regulations have long been listed on its portion of the Unified Regulatory Agenda.

In formulating the draft changes, the Department did not engage in sufficient consultation or information gathering. It drafted a proposed rule before holding tribal consultations to identify the current challenges posed by the existing regulations. Despite the RC's repeated requests to be included in the process, the Secretary did not consult with the panel, even though the RC's statutory duties include "consulting with the Secretary in the development of regulations to carry out" NAGPRA. Only after the draft was posted on the NNP website did the Department send out

consultation letters via mail to the tribal leaders in the middle of the pandemic. The plan apparently was to consider tribal opinions, make appropriate changes made to the draft, and then publish the proposed rule in the Federal Register. Non-tribal input on the proposed rule, including that of the RC, would not be considered until the official public comment period. The museum and scientific communities complied, out of respect for the tribal consultation period, and the NPS's government to government relationship with the tribes, as well as thinking it better to comment on an official proposed rule rather than on a draft that would potentially see major revisions before appearing in the Register. Last month, however, the Designated Federal Officer announced that the Secretary was interested in the advice of the RC, and members of the RC requested feedback from museum and scientific organizations as well as tribes. On the other hand, recent testimony from the Associate Director of Cultural Resources before the Senate Committee on Indian Affairs indicated that the Department intends to proceed with publication of the proposed rule early this year without further consultation.

From all of this, it is not clear to the SAA where and how things stand with regard to the draft rule changes, whether or not the Department is seeking input from non-tribal sources at this time, and if so, whether or not this input—even that of the RC—would have any impact on the language of the eventual proposed rule. While delays resulting from the change of administration must be taken into account, the lack of clarity with regard to process is troubling and counterproductive to the effective and efficient carrying out of NAGPRA.

Everyone can agree that changes can be made to the NAGPRA regulations—and perhaps to the statute itself—to accomplish the goals of NAGPRA. The SAA supports improvements in process and outcomes and applauds the Department for prioritizing the long-awaited revisions to NAGPRA. The SAA strongly believes that the regulations will be most effective when they have been drafted after meaningful and robust consultation with tribes, soliciting advice from the RC, and hearing insights from a wide range of the museums and agencies who have over 30 years of experience in NAGPRA implementation. We note that, to date, less than 15% of the tribes in the United States have provided comments.

The SAA calls on the Department to engage in a new round of consultations on the posted draft with sovereign tribal nations as well as to seek the comments of other interested parties—including the RC and the museum and scientific organizations who are responsible for implementing the regulations—and to take those opinions into account before publishing the proposed rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah L. Nichols".

Deborah L. Nichols, Ph.D., RPA
President