



## SOCIETY FOR AMERICAN ARCHAEOLOGY

August 15, 2019

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

Dear Ms. O'Brien:

As we have in the past, the Society for American Archaeology (SAA) offers the following comments to the National NAGPRA Program (NNP) regarding the most recent NAGPRA Review Committee meeting. As we prepare for the upcoming meeting, we hope that the issues mentioned—some of which are longstanding—can be addressed later this month in Alaska.

SAA is an international organization that, since its founding in 1934, has been dedicated to the research about and interpretation and protection of the archaeological heritage of the Americas. With more than 7,500 members, SAA represents professional archaeologists in colleges and universities, museums, government agencies, and the private sector. SAA has members in all 50 states as well as many other nations around the world.

### **1) Moving goalposts**

The SAA has frequently commented on the problem of “moving goalposts” with the NNP, and this continues to be an issue in several areas. First, at the 2018 meeting, the NNP's examples of success stories included only examples of reburial. While the efforts of tribes and museums to rebury should be acknowledged, they must be balanced with other types of successes, as the law allows. There must also be an acknowledgement by the NNP that NAGPRA provides the framework for tribes to determine disposition, but it does not mandate or promote any particular form of disposition. Second, the Designated Federal Officer (DFO) advocated the publication of all Native American human remains in Notices, and considers the NNP's work incomplete until that happens. The requirement to publish all human remains in notices is not in either the statute or regulations, nor does it reflect the reality of the museums and tribes who have valid reasons for not seeking to publish in notices for the foreseeable future. Third, the NNP chose to include language in its report that is not in the statute, such as referring to culturally unidentifiable human remains as “ancestral human remains” and to human remains as “ancestors.” While we understand why such language is preferred, it is imperative that the official reports and activities of the NNP utilize the categories, terms, and definitions of the statute. Finally, the Review Committee continues to promote in-person consultation as the “best” type of consultation, even though there were numerous occasions when tribes and museums have indicated that oftentimes other forms of consultation are preferred. The SAA encourages the NNP and RC to remain faithful to the statutory and regulatory parameters of the law and to make it clear when they advocate for something that is beyond the requirements of them.

### **2) Fairness and balance**

The overall tone of the 2018 meeting was much better than some of the previous ones in terms of equanimity. Nonetheless, there continues to be concern about fairness. The DFO, for example, characterized the delay in processing notices as the result of museum inexperience and failure to follow the templates provided by the NNP. While this may be true in some cases, it is the experience of many museums that the delays in the publication of notices are caused by the editorial process at NNP, even if the museum has followed the template. To publicly lay the blame with museums reflects a bias against museums. This prejudice is also on display in other professional settings, such as recent conferences. The NNP-led session at the AAM meeting was “9 ways your museum can fail to comply with NAGPRA and what you can do about it,” while at a tribal conference, the sessions were “Your

NAGPRA project" and "The nuts and bolts of NAGPRA grants." As the SAA has stated previously, a perception that there is bias can diminish full engagement with the NAGPRA process, to the detriment of everyone. The SAA requests that the NNP be careful that their public statements do not cause any NAGPRA practitioners to feel unduly and unfairly treated.

### **3) The role of the National NAGPRA Program**

The SAA has long encouraged the NNP to return to its core functions, but it continues to accept and even encourage "homework" assignments from the RC, even though fundamental tasks go uncompleted. Currently, the NNP has a backlog of notices to publish, no longer offers training, and has been forced to hire a contractor to act at the RC Coordinator. Nonetheless, it agreed to assist the RC by conducting research on collections from the same site that are split between museums. Again, the SAA recommends that the NNP focus on its essential functions.

### **4) The role of the Review Committee**

At multiple points during the previous meeting, the RC asked questions to presenters and discussed issues that were outside its purview, including ARPA violations/looting and international auctions. While these are of interest to committee members, the NNP, and meeting attendees, they surpass the committee's statutory authority. The RC was not reminded of its role and responsibility in these instances, which leads to confusion to attendees and RC members alike about the RC's authority and the scope of NAGPRA. It also makes for a much longer meeting. The SAA recommends that the DFO or representatives of the Solicitor's Office remind the RC members of their role when the discussion turns to topics that are outside their statutory authority.

### **5) Training**

The NNP did not offer training in conjunction with the meeting; it must resume the responsibility for training. We all benefit from the NNP providing this vital function and RC meetings represent a crucial audience.

### **6) Meeting format**

The resumption of RC activities after the indefinite hiatus imposed by the administration is very welcome. In addition, the webcasting of the proceedings greatly increases accessibility. The DFO's review of the statutory authorities granted to the RC at the start of the meeting was also positive. Nevertheless, speakers are too often exceeding their designated time slots and we encourage a well-moderated meeting to be able to hear all participants.

SAA knows that the National NAGPRA Program has had to operate under difficult conditions for two years. We look forward to working with your office in the weeks ahead on work of critical importance.

Sincerely,



Joe E. Watkins, Ph.D., RPA  
President