

June 28, 2022

Mr. Austin Mudd
Office of Management and Budget
725 17th Street, NW
Washington DC 20503
via email upload

Dear Mr. Mudd,

Thank you for facilitating yesterday's 12866 meeting regarding the proposed rule revising Native American Graves Protection and Repatriation Act (NAGPRA) regulations (RIN 1024-AE19). We appreciated the opportunity to speak with you and the other executive branch attendees and regret there wasn't more time to discuss further the Field Museum's NAGPRA compliance experience as well as possible changes to the revisions that might help make the proposed rule less onerous on museums, universities and tribes.

Toward that end, we wanted to provide a few more "real NAGPRA" examples of the extreme variability and unique circumstances that arise in different implementation scenarios. The parties involved have been anonymized for this letter but their identifying information can be provided if needed:

Tribe A – Tribe A and the Field Museum began preliminary consultation about affiliated human remains and funerary objects in around 2006. These discussions began to take shape in 2010 when we began to consult in greater detail about paths to repatriation and reburial. A key impediment to physical return was that the Tribe needed to identify a reburial location that both could be used by the Tribe and was removed from the villages and homes of tribal members in order to safeguard tribal members from spiritual harm. They also needed to find a secure location that would be protected from looters. These discussions required extensive consultation between the Tribe and the Museum as well as within the Tribe among the different religious, traditional, and secular leaders. After a burial location was identified, the Museum and Tribe then engaged in extensive consultation about how to respectfully pack and return the ancestral remains and funerary objects. This included the requirements that the human remains be separated according to age, sex, and completeness and that associated funerary objects be placed with or near the human remains.

The repatriation process and the actual physical repatriation have been delayed by more than a decade due to the sensitivities surrounding selection of an appropriate grave site and which human remains to bury.

Tribe B – Consultation with Tribe B began in 2012 regarding human remains and funerary objects at the Field Museum listed as cultural unidentifiable. We exchanged information through phone calls and numerous emails. Their representative visited the Museum on several occasions to view the collections and to try to locate more information. We participated in a large two-day joint consultation that included several museums with collections from the same locations and tribal representatives from several different tribes. After this meeting, discussions with the tribe's

representative continued and we published Notices of Inventory Completion in 2019. The physical repatriation took place in June 2022.

This consultation took thousands of hours for all the institutions and tribes involved. Two key elements contributed to the long-time frame. First, the Tribe wanted to complete the repatriation from all the institutions at the same time. Second, because Tribe B did not want to repatriate the human remains as culturally unidentifiable under the NAGPRA regulations 10.11, they conducted more research and engaged in more extensive consultation. The result, in our case, was that we were able to change the status for some of the human remains to affiliated.

It has been our experience that most tribes prefer that human remains be affiliated when possible rather than to repatriate them as culturally unaffiliated. This takes significantly more research and consultation.

Tribe C – The Field Museum is currently engaged in two separate consortium-based consultations regarding split collections from two large pre-colonial sites. These consultations include numerous tribes and museums from disparate parts of the Midwest and Southeast. While collective consultation is generally a more efficient way to approach these types of repatriations, they require a significant amount of time and resources. Further, in two recent, separate, discussions with a Tribal Historic Preservation Officer and a Tribal Council member from two of the consulting tribes, they made it clear their tribe and many of the others will require further research regarding the history of the collections at each institution including information about past research on the human remains, use of items in exhibits, loans of items to other institutions, as well as deaccession histories.

While this research is not required by NAGPRA, it is increasingly what is requested from tribes during consultation and it is the type of information that is not readily available in museum databases or even paper files. When considering the proposed rule's possibly shortened timelines and deadlines, one should consider that meaningful and respectful consultation includes more than a repatriation or disposition determination by the museum. It also includes sharing a wide range of information and building relationships with the tribes to meet their goals over the long term.

Further, the Field Museum substantively agrees with the Confederated Tribes of the Colville Reservation (CTCR) statement on page 5 of their September 29, 2021 letter that:

“It is our experience that on the best days, most museums or agencies do not know who to consult with and need to be inclusive in their communications. There is no expectation that a museum or Agency could figure this out in 30 days. These redrafted regulations are putting a tremendous burden on museums and agencies to identify ‘geographically affiliated’ Indian tribe and have great potential for exclusion of affiliated tribes... The 30 day timelines are problematic for museums, Agencies, and tribes to conduct meaningful consultation.”

These are just a few illustrations of how a compressed timeline – i.e., two years to provide updated inventories, following consultation, and six months following an inventory update to file a notice – is, based on the Field Museum's repatriation experience, untenable if not impossible to

achieve for most tribes and museums, due to context complexities alone. More paperwork, reporting requirements and unrealistically short deadlines will not be achieved any faster and could actually stymie the repatriation process not to mention the hard-sought goodwill between those working day-to-day on NAGPRA compliance. For this reason, we believe that a longer timeline is both more realistic and more achievable and offer the suggestion of eight years (minimum) to comply with the proposed new regulations.

Furthermore, replacing the category of "culturally unidentifiable human remains" with classification based on geographic affiliation for human remains and associated items will require museums to reassess individuals previously listed as "culturally unidentifiable." Museums will need to initiate consultations and undertake repatriations with more tribes potentially laying claims to these items based on geography rather than cultural affiliation. This broadened scope of NAGPRA will necessitate greater resources and more time for museums, tribes, and federal and state agencies involved with repatriation efforts.

During our call and in our submitted presentation, we also spoke about the costs of compliance, our belief that this is not an economically insignificant rule, and our hope that it will be returned to the Review Committee and the National Park Service for a more thorough cost benefit analysis. Based on the Field Museum's own staff costs for 3,490 items repatriated over the past 20 years, we estimate a minimum cost of \$1,390 per item. When extrapolated to cover all 846,092 culturally unidentifiable human remains (CUIs) and associated funerary objects (AFOs) in the National Park Service database, the minimum cost to repatriate is \$1,176,067,880, or \$117,606,788 per year over ten years. This estimate, plus others from the Society for American Archaeology and other sources, seems to underscore the major financial repercussions these revisions could have on museums, universities and tribes, sectors of the U.S. economy that are still reeling from the effects of the pandemic.

Thank you again for hosting yesterday's meeting and for your and your colleagues' time and consideration. We appreciate the opportunity to share our views with you and hope that this information will improve the proposed rule for all of us working to implement NAGPRA in the spirit in which it was originally crafted.

Sincerely,

Anne Metcalf
Field Museum Washington Representative