

**Forest Service Handbook
National Headquarters - Washington Office
Washington, DC**

**Forest Service Handbook 1509.13 – American Indian and Alaska Native Relations Handbook
Chapter 20 - Repatriation and Reburial Documentation**

Amendment: 1509.13-2004-1

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Duration: This amendment is effective until superseded or removed.

Approved by: Joel D. Holtrop, Deputy Chief

Date approved: February 20, 2004

Responsible Staff:

Last Change:

Superseded Document(s):

Digest: Following is an explanation of the changes throughout the directive by section.

01 - 04: Sets out codes and captions for Authority (sec. 01), Objectives (sec. 02), Policy (sec. 03), and Responsibility (sec. 04) related to the Tribal Relations Program and provides cross-references to additional direction at FSM 1563.01 - 1563.04.

10: Establishes the chapter for direction regarding consultation with Tribes.

10.1: Provides a cross-reference to the full listing of laws, regulations, and Executive orders at FSM 1563-1563.01i. Exhibit 01 sets out the full text of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments.

11: Provides direction on the steps to follow in consulting with Tribes.

12: In this section regarding compensation, encourages agency officials to facilitate tribal participation in agency decision making and provides guidelines for the agency to consider compensation to Tribes or tribal representatives for extraordinary circumstances or specialized expertise when it may be in the agency's interest.

20: Establishes a chapter for direction on repatriation and reburial documentation.

21: Sets out samples of documentation for repatriation and reburial in exhibits 01 through 05.

30: Establishes a chapter to provide direction on voluntary closures of National Forest System lands for tribal activities.

31: Provides direction on needs to be considered when Tribes request voluntary closures of areas because of traditional tribal activities.

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20.1 - Authority

Refer to FSM 1563.3 for more details regarding the authorities for the direction in this chapter.

21 - Samples of Documentation for Repatriation and Reburial

The exhibits in this section provide samples of the types of documentation that are either required or recommended by section 3(c) of the Native American Graves Protection and Repatriation Act (NAGPRA)(25 U.S.C. 3001 *et seq.*) and implementing regulations at sections 10.3 and 10.5(e) of Title 43 of the Code of Federal Regulations (43 CFR 10.3 and 10.5(e)), which establishes conditions, direction, and requirements for the treatment and disposition of Native American human remains, associated funerary objects, sacred objects, and objects of cultural patrimony (FSM 1563.01e).

Exhibit 01. Sample Treatment and Disposition Plan for Entire Forests and All Activities. This exhibit provides a sample of a plan prepared by a National Forest to address the treatment and disposition of human remains and other cultural items pursuant to NAGPRA.

Exhibit 02. Sample Action Plan for Burial Recovery. This exhibit includes a sample action plan prepared pursuant to NAGPRA regulations (43 CFR 10.5(e)) for archeological excavations related to a highway reconstruction project.

Exhibit 03. Sample Repatriation Agreement. This exhibit sets out a sample repatriation agreement between a Forest Service Region and a Tribe.

Exhibit 04. Sample Memorandum of Understanding for Reburial of Human Remains and Associated Funerary Items. This exhibit provides a sample of a memorandum of understanding between a National Forest and Tribes regarding cooperative work to rebury remains and associated funerary items repatriated to the Tribes and to provide protection for the site after reburial.

Exhibit 05. Sample Transfer of Custody Letter for Human Remains and Associated Funerary Objects. This exhibit sets out a sample of a letter addressed to a Forest Supervisor from a Tribal Chairman to document the transfer of custody of human remains and associated funerary objects excavated during an archeological project.

21 - Exhibit 01

Sample Treatment and Disposition Plan for Entire Forests and All Activities

Plan for the Treatment and Disposition
of
Human Remains and Other Cultural Items
from the Tonto National Forest
pursuant to the
Native American Graves Protection and Repatriation Act
(revised 2001)

Introduction

Inhumation and/or cremation burials of Native Americans, including both primary and secondary burials, primary and secondary cremations, and crematoria may be expected to be located within the prehistoric and historic archeological sites to be impacted by any project requiring archeological testing or excavation data recovery as a mitigation treatment. Burials and cremations may also become exposed or otherwise impacted by erosion, vandalism, or other circumstances. Such areas may contain both human remains and associated funerary objects in the form of pottery, jewelry, tools, and other objects, some of which may also be identified as sacred objects or objects of cultural patrimony, as defined in Section 2 of the Native American Graves Protection and Repatriation Act (NAGPRA). Objects of cultural patrimony and other sacred objects may also be located outside of any burial context.

In accordance with Section 3(c) of NAGPRA and its implementing regulations at 43 CFR 10.3 and 10.5(e), the following Plan establishes conditions and directions for the treatment and disposition of Native American human remains, associated funerary objects, sacred objects, and objects of cultural patrimony.

Definitions

The following definitions for terms used in this plan are taken from NAGPRA.

Cultural Items include but are not limited to the following:

Human Remains are any physical remains of a human being.

Associated Funerary Objects are objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later; other items made exclusively for burial purposes or to contain human remains can also be considered as associated funerary objects.

Unassociated Funerary Objects are those which may have become separated from their original context but which can be reasonably assumed to have come from a burial.

21 - Exhibit 01--Continued

Sample Treatment and Disposition Plan for Entire Forests and All Activities

Sacred Objects are specific ceremonial objects that are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents.

Cultural Patrimony is an object having ongoing historical, traditional, or cultural importance central to a Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Native American group, and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.

Cultural Affiliation means a relationship of shared group identity that can reasonably be traced historically or prehistorically between a present day Indian Tribe and an identifiable earlier group. Cultural affiliation is determined by the Forest Service based on a review of evidence, including geographical, kinship, biological, archeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion.

Identification means the intentional location of human remains and other cultural items under the archeological investigation procedures established in the research design and plan of work approved for projects requiring data recovery as part of their mitigation treatment.

Removal means the intentional and scientific excavation or other method of recovery of identified or discovered human remains and other cultural items from within the project area under the archeological investigation procedures established in the research design and plan of work approved for projects requiring data recovery as part of their mitigation treatment.

Discovery means the inadvertent location of human remains and other cultural items within the project area in circumstances that fall outside the archeological investigation procedures established in the research design and plan of work approved for projects requiring data recovery as part of their mitigation treatment.

Cultural Affiliation

Utilizing the definition specified in 43 CFR 10.2(e) and pursuant to Sections 3 and 5 of NAGPRA, the Forest Service recognizes the claims of cultural affiliation to the Hohokam, Salado, Payson, Central Arizona, Anchan, and other related archeological traditions of the Tonto National Forest by the O'odham, Hopi, and Zuni people, represented by the Four Southern Tribes of Arizona (the Salt River Pima-Maricopa Indian Community, Gila River Indian Community, Ak Chin Indian Community, and the Tohono O'odham Nation), the Hopi Tribe, and the Pueblo of Zuni. All three groups can be reasonably assumed to include members who are descended from the archaeological cultures once present on the Tonto National Forest and to share various aspects of a common cultural heritage. Therefore, the Forest Service has determined that all three groups shall be recognized as affiliated Tribes for the purposes of repatriation under NAGPRA.

21 - Exhibit 01--Continued

Sample Treatment and Disposition Plan for Entire Forests and All Activities

The Forest Service further recognizes that the affiliated Tribes have agreed to defer to the Salt River Pima-Maricopa Indian Community (SRPMIC) for the execution of repatriations conducted under the terms of this plan. SRPMIC has agreed to act as agent for all affiliated Tribes and to take physical custody, and all associated responsibilities as that may entail, of such of these cultural items as may be removed from any lands administered by the Tonto National Forest, either intentionally or as a result of discovery or emergency. By acting as custodial agent for all affiliated Tribes, SRPMIC has further agreed to ensure that all claimants have access to both the disposition process and the location of reburial for the free conduct of such ceremonies and other activities as each claimant deems necessary to the process of repatriation, disposition, or reburial.

Cultural items that are associated with or related to other archeological traditions may also be affiliated with these same claimant Tribes. Specific determinations of affiliation and custody of these items will be made on a case-by-case basis.

Other Native American human remains and cultural items from the Forest may be determined to be affiliated with the Yavapai Tribes or Apache Tribes. Specific determinations of affiliation and custody for Yavapai or Apache cultural items will be made on a case by case basis with the Ft. McDowell Indian Community, the Yavapai-Prescott Tribe, the Yavapai-Apache Nation, the San Carlos Apache Tribe, the White Mountain Apache Tribe, and the Tonto Apache Tribe or in accordance with any subsequent disposition plan developed by the Forest Service in consultation with these Tribes.

Intentional Removal, Analysis, and Storage

All burials encountered during the course of archeological testing or data recovery excavations undertaken for projects conducted on the Tonto National Forest pursuant to approved testing and/or data recovery plan(s) will be removed to prevent their destruction by project related impacts. Prior to approving clearance for the project to proceed with activities that will impact these sites, the Forest Supervisor must be assured that a thorough and sufficient search for burials has been made at all sites to be impacted and that there is a reasonable certainty that no human remains or other cultural items will be left behind unprotected. This may require additional surface observation or testing to identify likely locations as well as broad area stripping and other forms of excavation and subsurface investigation, the nature and extent of which will be determined by the Forest Archeologist based on an inspection of individual sites.

If there are sites within the project area that have been archeologically investigated for scientific purposes but which can be avoided by both direct and indirect project impacts, burials encountered at such sites will be left in place.

Excavation, analysis, documentation, and reporting of Native American human remains and other cultural items will be conducted in a respectful and professional manner, taking all feasible care to prevent their loss or damage and to avoid any unnecessary disturbance, physical modification, or separation of human remains and associated funerary objects. Such analyses and documentation to be conducted during removal will be limited to making measurements and observations of skeletal structure and configuration, including the use of scale drawings, maps, and sketches.

21 - Exhibit 01--Continued

Sample Treatment and Disposition Plan for Entire Forests and All Activities

During excavation, all fill associated with burial pits will be screened for artifactual and osteological material. Fill immediately associated with Native American human remains will be screened with a maximum mesh size of 1/8 inch to ensure complete recovery of all human remains and associated funerary objects, including small fragments. Once all overlying fill has been removed, the human remains and their associated funerary objects will be exposed *in situ* for measurement, mapping, and documentation, both for scientific purposes and to provide information that may be necessary for their disposition. Detailed descriptive records, including both standardized forms and field notes, will also be made. In order to provide information necessary for reburial, this information must include the position of the skeletal remains, degree of articulation, orientation by compass azimuth, and relationship between the skeletal remains and any associated funerary objects. To the extent feasible, exposure and documentation of human remains will be accomplished within the same day. Where this is not possible, no exposed human remains will be left unattended overnight.

Cremations will either be removed in bulk (especially if they are still contained within a mortuary vessel) or by such means as necessary to ensure complete recovery of all material.

Where burials are to be left in place, no human remains or associated funerary objects will be removed. When identified during excavation they will be exposed and documented in the field and back filled immediately thereafter.

Soil samples from burial pits may not be taken from the cranial, abdominal, or sacral cavities of the deceased. After the human remains have been removed, samples may be taken from the bottom of the pit, including that portion of the pit floor immediately below the human remains, for later analysis of pollen and other materials relating to diet and health.

Upon completion of all field studies, the human remains and associated funerary objects removed from the project area will be carefully prepared for maximum protection during transport to the laboratory for further study and documentation and to await repatriation and disposition. They will remain in secure storage at the same location as they are analyzed until disposition in order to minimize potential damage from excessive transportation. No laboratory facility used for the analysis of Native American human remains will be located outside the State of Arizona.

At no time will any destructive analyses be performed on the Native American human remains without the written permission of all claimant Tribes. This includes the removal of samples for use in consumptive chemical analyses and any physical or chemical treatments that might be applied to human remains that would result in the modification, removal, separation, or destruction of any part of the human remains or that would either accelerate or delay the natural process of decomposition.

Representatives of all claimant Tribes will be afforded the opportunity to inspect and review all artifact collections and records from the project for the purpose of identifying sacred objects and objects of cultural patrimony. Tribal representatives will also be afforded the opportunity to inspect the excavations while in progress for the same purpose and to conduct such ceremonies as are deemed appropriate.

21 - Exhibit 01--Continued

Sample Treatment and Disposition Plan for Entire Forests and All Activities

However, the presence on site of a Tribal representative will not be necessary to remove any identified Native American human remains or other cultural items, provided that the removal falls within the guidelines of the approved research design and data recovery plan and is conducted under the terms of a current Archeological Resources Protection Act (ARPA) permit issued by the Forest.

Inadvertent Discovery Subsequent to Intentional Removal

If, after completion of the approved data recovery and other mitigative programs for projects conducted on the Tonto National Forest, additional Native American human remains and other cultural items are identified in the project area as a result of project-related activities, the Forest Service, immediately upon notification of this situation will suspend all project related activities in the vicinity of the discovery. As soon as possible, the Forest Archeologist will inspect the situation and determine appropriate mitigation measures in accordance with 43 CFR 10.4(d). This may include project redesign for avoidance, excavation for data recovery, or other forms of treatment. All claimant Tribes will be notified by telephone as soon as the Forest Archeologist has confirmed the discovery and determined the appropriate response. If the selected treatment is to avoid the location, project activities may resume 30 days after the confirmation. If excavation data recovery is selected, the same procedures already applied to the project will be implemented such that any additional work will conform to the standards already established as part of the approved data recovery plan and this plan.

Representatives of all claimant Tribes will be afforded the opportunity to inspect and review all artifact collections and records from the removal of discovered cultural items at any time for the purpose of identifying sacred objects and objects of cultural patrimony. Tribal representatives will also be afforded the opportunity to inspect the excavations while in progress for the same purpose and to conduct such ceremonies as are deemed appropriate. However, the presence on site of a Tribal representative will not be necessary to remove any discovered Native American human remains and other cultural items, provided that the claimant Tribes have been notified and consulted, the removal falls within the guidelines of the approved research design and data recovery plan, and is conducted under the terms of a current ARPA permit issued by the Forest.

Removal as a Result of Discovery

Emergency removals, where Native American human remains are at risk of imminent loss, destruction, or damage, as determined by the Forest Archeologist, will be accomplished within the guidelines of this Plan. Such removals do not require on-site representation by tribal representatives, but do require telephone notification of the Tribes by the Forest Archeologist as soon as possible, to be followed by a written notice.

21 - Exhibit 01--Continued

Sample Treatment and Disposition Plan for Entire Forests and All Activities

Disposition of Intentionally Removed Cultural Items Associated with the Hohokam, Salado, Payson, Central Arizona, Anchan, and Other Related Archeological Traditions

Within 120 days of the completion of permitted fieldwork or emergency removal (unless otherwise agreed to by the Forest Service and SRPMIC) ownership and custody of all Native American human remains and other cultural items associated with the Hohokam, Salado, Payson, Central Arizona, Anchan, and Other Related archeological traditions that have been intentionally removed from the Tonto National Forest will be transferred to the SRPMIC as custodial agent for the affiliated Tribes, subject to the notification procedures contained in 43 CFR 10.6.

Transfer of ownership and custody will be documented by means of USDA Form AD-107 Report of Transfer or Other Disposition or Construction of Property, signed copies of which will be retained by both the Forest and SRPMIC. Copies of this document will be distributed to all interested Tribes.

Following transfer of custody, all such human remains and other cultural items will be transported directly from the laboratory where they were analyzed to SRPMIC for disposition according to a schedule to be arranged between SRPMIC and the permitted institution holding the remains.

Upon taking possession of these Native American human remains and other cultural items, SRPMIC will undertake their reburial at a secure location within the boundaries of the SRPMIC Reservation. Orientation and placement of the human remains and associated funerary objects during reburial will be as close as possible to their original condition as recorded during removal, grouped according to the sites from which they were removed. In recognition of the ancestry and affiliation of other Tribes, those Tribes will be afforded the opportunity to attend the reburial and to conduct such rites and ceremonies as may be deemed appropriate.

Treatment and Disposition of Cultural items from Other Archeological Traditions

Upon establishment of affiliation and custodial authority among any claimant Tribes, treatment and disposition of these cultural items will follow the same basic procedures outlined above, with final disposition to be determined on a case by case basis in consultation with the custodial affiliate or in accordance with any subsequent disposition plan developed by the Forest Service in consultation with the Tribes.

Disposition of Discovered Cultural Items

Where appropriate and feasible, discovered cultural items will be immediately reinterred. Where such reinterment is not possible or would result in subsequent damage or loss due to erosion, recreational impacts, or additional risk of discovery by the public or by vandals, they will be removed and turned over to the custodial affiliate. Otherwise, disposition of Native American human remains and other cultural items from discovered contexts and emergency removals will follow the same procedures outlined above for the disposition of intentionally removed cultural items.

21 - Exhibit 01--Continued

Sample Treatment and Disposition Plan for Entire Forests and All Activities

Disposition of Apache and Yavapai Cultural Items

Upon determination of affiliation, disposition of these cultural items will be decided in consultation with the affiliated Tribes. Basic procedures for removal, analysis, storage, transport and transfer of ownership and custody will be the same as outlined above. Final disposition by reburial or other means will be determined on a case-by-case basis in consultation with the custodial affiliate.

Disposition of Apache and Yavapai Sacred Objects and Objects of Cultural Patrimony

Disposition of Apache or Yavapai sacred objects and objects of cultural patrimony from other than funerary contexts that have been removed from or discovered upon lands of the Tonto National Forest will follow the procedures in 43 CFR part 10.

Reporting

No Native American human remains will be put on public display in any manner nor photographed except for the purpose of scientific documentation, defined here as the descriptive and analytical recordation of human remains and other cultural items and the activities involved in their recovery. Any and all reports, articles, or other publicly available accounts of the human remains and other cultural items recovered from the Tonto National Forest shall treat them with respect and concern for the traditional values of the affiliated Tribes. Line drawings of Native American human remains will be allowed for illustration in publicly available documents, but no photographs shall be published in such accounts, the sole exception being detailed close-up depictions of specific pathologies deemed necessary for the presentation of the analyses. Photographs of associated funerary objects will be allowed except in those cases where the specific object has been identified as a sacred object or object of cultural patrimony. Prior to such time as the affiliated Tribes take ownership and custody of the Native American human remains and associated funerary objects, the use of such photographs and any other use of scientific documentation regarding Native American human remains must be approved in writing by the Forest Supervisor. After the transfer of ownership and custody, written permission to utilize such photographs and documentation must be obtained from the affiliated Tribe having custody of the material to be illustrated.

Likewise, any published description of ceremonial activities involving specifically identified sacred objects or objects of cultural patrimony will require the permission of the Tribe having identified said objects.

The above restrictions do not apply to any working documents created for research purposes or in order to prepare public documents, nor do they apply to internal working documents of the Forest Service, nor do they apply to any documents prepared specifically for the affiliated Tribes, so long as these documents are not distributed or in any way made public. All research and working documents containing such information and all photographs of cultural items removed from Forest lands are considered the property of the Forest Service and as such are protected from public disclosure under Section 304(a) of the National Historic Preservation Act (NHPA), as amended.

21 - Exhibit 01--Continued

Sample Treatment and Disposition Plan for Entire Forests and All Activities

Compensation

It is the responsibility of the Forest Service to ensure the safe transportation of Native American human remains and other cultural items to the custodial affiliate for repatriation and disposition. Such costs as may be incurred by this operation are the responsibility of the project proponent as a part of their data recovery and mitigation obligations under NHPA and NEPA.

It is also the responsibility of the Forest Service to ensure that reasonable costs for subsequent reburial or other disposition treatment(s), including reasonable costs associated with the participation of Tribal cultural specialists required for preparation of the cultural items for such treatment, are paid by the project proponent, again, as part of their data recovery and mitigation obligations under NHPA and NEPA. It is not a Forest Service responsibility, however, to provide or to authorize the project proponent to provide compensation for any costs incurred by conducting rites or ceremonies associated with reburial or any other form of disposition.

Unclaimed Native American Human Remains and Other Cultural Items

Disposition of Native American human remains and other cultural items from the Tonto National Forest for which no cultural affiliation can be reasonably determined and which have not been claimed by any Tribe will be determined by the Forest Service in accordance with 43 CFR 10.7.

Review and Updating

This Plan shall be reviewed annually by the Forest Archeologist and updated as necessary to ensure that it continues to meet both Forest and Tribal objectives. It will also be updated as necessary to comply with any changes in NAGPRA or its implementing regulations at 43 CFR part 10. Issues and concerns regarding the adequacy and effectiveness of the Plan may be brought to the attention of the Forest Supervisor by any interested Tribe at any time and will be promptly addressed. Substantive changes will only be made in consultation with the affected Tribes.

21 - Exhibit 02

Sample Action Plan for Burial Recovery

**NAGPRA PLAN OF ACTION FOR BURIAL RECOVERY
Pursuant to 43 CFR 10.5 (e)
For Intentional Archaeological Excavations Related to
U.S. HIGHWAY 89**

I. Project Information

A. Project: Archaeological testing and data recovery associated with the reconstruction of U.S. Highway 89, Coconino County, Arizona.

B. Project Sponsor: Federal Highways Administration, as represented by Arizona Department of Transportation.

C. Land Managing Agency: Coconino National Forest

D. Description of Intentional Excavations: The data recovery will involve excavations at approximately 37 prehistoric Sinagua and Cohonina sites, ranging in age from A.D. 700 to 1250. The presence of remains or objects from other cultures and time periods is considered unlikely. The excavations will be conducted in accordance with the Treatment and Data Recovery Plans developed pursuant to the August 22, 1996 Programmatic Agreement among the Federal Highway Administration, the USDA Forest Service, the Arizona Department of Transportation, the Arizona State Historic Preservation Officer, and the Advisory Council on Historic Preservation. The data recovery will be conducted by Desert Archaeology of Tucson, Arizona.

E. Planned Dates of Project: Excavations are scheduled to begin July 21, 1997 and will continue, weather permitting, through 1998 or early 1999. Analysis and report preparation will continue through the year 2000.

F. ARPA Permit: The excavations will be conducted in accordance with the requirements of an ARPA permit issued by the Coconino National Forest to Desert Archaeology pursuant to the Archaeological Resources Protection Act and its implementing regulations.

G. Record of Tribal Consultation: The following Tribes were notified and consulted in accordance with 43 CFR 10.3(c):

21 - Exhibit 02--Continued

Sample Action Plan for Burial Recovery

Hopi Tribe

March 10, 1994. Letter to Chairman Ferrell Secakuku
March 24, 1994. Presentation at Cultural Preservation Office, Cultural Resources Advisory Team meeting
March 7, 1995. Letter to Chairman Ferrell Secakuku
Jan. 17, 1996. Letter to Chairman Ferrell Secakuku
March 6, 1996. Telephone call to Clay Hamilton, Cultural Preservation Office, NAGPRA Coordinator
June 12, 1996. Letter to Chairman Ferrell Secakuku
July 3, 1996. Letter to Chairman Ferrell Secakuku
Dec. 9, 1996. Letter to Chairman Ferrell Secakuku
Feb. 26, 1997. Telephone call to Leigh Jenkins, Director, Cultural Preservation Office
March 21, 1997. Letter to Chairman Ferrell Secakuku
May 21, 1997. Meeting with Hopi Cultural Resources Advisory Team
June 4, 1997. Letter to Peter Pilles from Leigh Kuwanwisiwma
June 10, 1997. Meeting with Hopi Cultural Resources Advisory Team
June 12, 1997. Letter to Leigh Kuwanwisiwma
August 20, 1997. Letter from Linda Farnsworthy to Leigh Kuwanwisiwma
August 26, 1997. Telephone call from Linda Farnsworthy to Larryn Carver
August 26, 1997. Letter from Linda Farnsworthy to Leigh Kuwanwisiwma
September 10, 1997. Letter from Linda Farnsworthy to Leigh Kuwanwisiwma
September 18, 1997. Letter from Linda Farnsworthy to Leigh Kuwanwisiwma
September 24, 1997. Letter from Linda Farnsworthy to Leigh Kuwanwisiwma
October 2, 1997. Letter from Linda Farnsworthy to Leigh Kuwanwisiwma
October 20, 1997. Letter from Linda Farnsworthy to Leigh Kuwanwisiwma
Nov. 14, 1997. Letter from Fred Trevey to Leigh Kuwanwisiwma
Feb. 19, 1998. Meeting with Hopi Cultural Resources Advisory Team
March 23, 1998. Field meeting with members of Hopi Cultural Resources Advisory Team
May 28, 1998. Letter from Linda Farnsworthy to Leigh Kuwanwisiwma
June 8, 1998. Letter from Linda Farnsworthy to Leigh Kuwanwisiwma
July 29, 1998. Letter from Linda Farnsworthy to Leigh Kuwanwisiwma, Hopi Cultural Preservation Office
Aug. 6, 1998. Letter from Linda Farnsworthy to Leigh Kuwanwisiwma
Aug. 10, 1998. Letter from Leigh Kuwanwisiwma to Linda Farnsworthy
Aug. 13, 1998. Letter from Linda Farnsworthy to Leigh Kuwanwisiwma
Dec. 17, 1998. Meeting with Hopi Cultural Resources Advisory Team
Feb. 18, 1999. Meeting with Hopi Cultural Resources Advisory Team

21 - Exhibit 02--Continued

Sample Action Plan for Burial Recovery

Navajo Nation

March 7, 1995. Letter to President Albert Hale
Same letter sent to: Tolani Lake Chapter
Cameron Chapter
Leupp Chapter
Navajo Historic Preservation Department
June 12, 1996. Letter to President Albert Hale
March 19, 1997. Telephone call to Delbert Bighorse, Cameron Chapter
March 21, 1997. Letter to President Albert Hale
Same letter sent to: Cameron Chapter, Delbert Bighorse
Leupp Chapter, Louise Walker
Tolani Lake Chapter, Bessie McCabe
Oct. 3, 1997. Telephone conversation with Peter Noyes, Navajo Historic Preservation
Department
Oct. 8, 1997. Letter to Peter Noyes, Navajo Historic Preservation Department
Oct. 24, 1997. Telephone conversation with Peter Noyes, Navajo Historic Preservation
Department
Oct. 24, 1997. Letter to Peter Noyes, Navajo Historic Preservation Department
Nov. 3, 1997. Telephone conversation with Peter Noyes, Navajo Historic Preservation
Department
Nov. 10, 1997. Telephone conversation with Peter Noyes, Navajo Historic Preservation
Department
Dec. 9, 1997. Letter to Peter Noyes, Navajo Historic Preservation Department
Jan 14, 1998. Letter from Rena Martin, Navajo Historic Preservation Department

Yavapai-Apache Nation

April 7, 1995. Letter to Chairman Theodore Smith
May 1, 1996. Letter to Chairman David Kwail
March 21, 1997. Letter to Chairman David Kwail

Yavapai-Prescott Tribe

May 7, 1995. Letter to President Stan Rice, May 7, 1995
May 1, 1996. Letter to President Stan Rice
March 21, 1997. Letter to President Stan Rice

21 - Exhibit 02--Continued

Sample Action Plan for Burial Recovery

Pueblo of Zuni

March 21, 1997. Letter to Governor Donald F. Eriacho

July 18, 1997. Letter to Governor Donald F. Eriacho

Sept. 15, 1997. Meeting with Zuni Cultural Resources Advisory Team

Oct. 1, 1997. Letter from Joseph Dishta, Zuni Heritage and Historic Preservation Office

Oct. 6, 1997. Field meeting with Zuni Cultural Resources Advisory Team

Nov. 4, 1997. Letter to Mr. Joseph Dishta, Zuni Heritage and Historic Preservation Office

Nov. 14, 1997. Letter to Mr. Joseph Dishta, Zuni Heritage and Historic Preservation Office

June 28, 1998. Letter to Mr. Joseph Dishta, Zuni Heritage and Historic Preservation Office

Oct. 28, 1998. Meeting with Zuni Cultural Resources Advisory Team

Nov. 9, 1998. Field meeting with members of Zuni Cultural Resources Advisory Team

H. Disposition of Human Remains and Associated Funerary Objects: In accordance with NAGPRA, Sec. 3(a) and 43 CFR 10.6(a)(ii), custody of excavated prehistoric human remains and associated funerary objects that may be recovered by the project shall be with The Hopi Tribe. Pursuant to 43 CFR 10.14(c), and as documented for the Sinagua and Cohonina traditions in *Cultural Affiliations: Prehistoric Cultural Affiliations of Southwestern Indian Tribes* (USDA Forest Service, Southwestern Region, April 1996, pp. 108-118, 189-197), the Hopi Tribe has been determined to have the closest cultural affiliation to these remains and objects, although affiliation with the Pueblo of Zuni is also recognized.

II. Plan of Action

A. Human remains, associated funerary objects, sacred objects, and objects of cultural patrimony are defined as set forth in NAGPRA, section 2 (3) and 43 CFR 10.2 (d).

B. Planned treatment, care, and handling of prehistoric human remains and associated funerary objects.

Based on 60 years of archaeological excavations in the Sinagua region, human remains and associated funerary objects are expected to be found in some of the archaeological sites in the project area. It is also possible that human remains and associated funerary objects will occur in areas between sites. Given this potential, the following procedures will be followed whenever human remains are encountered during the U.S. Highway 89 project:

21 - Exhibit 02--Continued

Sample Action Plan for Burial Recovery

1. All human remains encountered on the project will be treated with dignity, care, and respect.
2. When human burials are found, Desert Archaeology will notify the Coconino National Forest who will notify the Hopi Cultural Preservation Office within 24 hours. This will be followed-up by written notification with 48 hours. The Hopi are encouraged to inform other interested tribes, such as the Zuni, of such notification.
3. Human remains will not be displayed to the public or media.
4. Burials will not be discussed before the public or the press. Burial discussions by project personnel will only be conducted within a professional setting.
5. If found inside the right-of-way, human remains and associated funerary objects will be excavated.
 - a. Excavation will be done by hand with all fill from the burial pit screened through 1/4 and/or 1/8 in. mesh screen to ensure recovery of all associated objects.
 - b. Documentation will consist of completing standardized documentation forms, scale drawings, and photographs. This documentation will be curated with other project records, but with a restriction that they may not be published without permission of the Hopi Tribe.
 - c. Soil samples may be taken from the burial for flotation, pollen, and/or chemical analysis.
6. If encountered while excavating with a backhoe or other heavy equipment, the backdirt will be examined and sifted for human remains and associated funerary objects so they may be re-associated with the burial.
7. In order to ensure all human remains are removed prior to construction activities, those areas inside the right-of-way believed to possibly contain burials will be stripped by using heavy equipment under the supervision of an archaeologist who will monitor this work.
8. If encountered during construction activities, work will be halted in the area adjacent to the human burials, and the procedures outlined above will be followed.

21 - Exhibit 02--Continued

Sample Action Plan for Burial Recovery

9. Human remains will be exposed for the minimum amount of time possible while still ensuring proper excavation. Desert Archaeology, in cooperation with the Arizona Department of Transportation and Coconino National Forest will take appropriate security measures to ensure no human remains will be left unattended or exposed without proper protection. No human remains will be left exposed over a weekend.

C. Analysis and Temporary Curation of Prehistoric Human Remains and Associated Funerary Objects

1. Burials and associated funerary objects will be temporarily housed at the Museum of Northern Arizona until reburial can be arranged. They will be kept together during their temporary housing at the Museum and will not be removed from the Flagstaff area.

2. Non-destructive analysis of human remains and associated funerary objects will be done at the Museum of Northern Arizona in Flagstaff.

3. All analysis will be performed by qualified, experienced archaeologists and physical anthropologists.

4. Human remains will be handled as little as possible.

5. Analysis will be non-destructive, and will consist of identifying individual bones, measuring them, recording dental morphology, and noting any anomalies and pathologies.

a. In order for analysis to be done, bones and associated funerary objects may be cleaned by dry brushing or washed with water. Funerary objects, such as pottery, with heavy encrustations of caliche may be treated with a dilute acid solution so designs, surface treatment, and paste constituents can be identified.

b. Affinity of prehistoric remains to other prehistoric populations and modern groups, including the Hopi and Zuni, will be addressed by the analysis.

c. Broken bones may be rejoined in a non-permanent manner if needed to accomplish measurements and documentation.

d. X-rays of human remains may be taken as part of documentation upon further consultation with the Hopi Cultural Preservation Office and the Zuni Cultural Resources Advisory Team. Such consultation will discuss the reason why X-ray documentation is desired. Should X-rays be taken, they will be curated at the Museum of Northern Arizona.

21 - Exhibit 02--Continued

Sample Action Plan for Burial Recovery

e. Dental casts may be taken as part of documentation upon further consultation with the Hopi Cultural Preservation Office and the Zuni Cultural Resources Advisory Team. Such consultation will discuss the reason why documentation by dental casts is desired. Should casts be taken, they will be curated at the Museum of Northern Arizona.

6. Photographs, descriptions, and measurements of human remains and associated funerary objects may be taken. Such records will be curated with the project records with the restriction that they will not be published without the permission of the Hopi Tribe.

7. Representatives of the Hopi and Zuni Tribes as identified by the Hopi Cultural Preservation Office and the Zuni Cultural Heritage and Historic Preservation Office will be afforded an opportunity to view human remains and associated funerary objects and to provide information and interpretation as they determine appropriate. Any documentation of this information and interpretation will be curated with the project records with the restriction that no tribal information will be published without the permission of the Hopi and Zuni Tribes, as appropriate.

8. The Hopi and Zuni Tribes will be afforded an opportunity to examine other artifacts recovered from excavations to identify potential sacred objects and objects of cultural patrimony.

9. Copies of burial documentation will be provided to the Hopi Cultural Preservation Office and Zuni Heritage and Historic Preservation Office upon request.

D. Reports

1. A draft of the final report, as well as a draft of those sections of the final report concerned with prehistoric human remains and associated funerary objects, will be provided to the Hopi Cultural Preservation Office and Zuni Heritage and Historic Preservation Office for review and comment and to further solicit Hopi and Zuni perspectives on the prehistoric people who lived at the sites investigated by the project.

E. Disposition of Prehistoric Sinagua and Cohonina Human Remains and Associated Funerary Objects

Custody of human remains and associated funerary objects will be transferred to the Hopi Tribe following completion of the notification requirements contained in 43 CFR 10.6. The following disposition procedures have been determined in consultation with the Hopi and Zuni Tribes.

21 - Exhibit 02--Continued

Sample Action Plan for Burial Recovery

Due to cultural beliefs, the Zuni Cultural Resources Advisory Team does not condone the physical transport of human remains onto the Zuni Reservation lands. However, they see no problems with the Hopi Tribe receiving the remains for reburial.

1. Human remains and associated funerary objects will be reinterred on National Forest land, outside the right-of-way, as close to the original burial location as possible, in a place specifically excavated for this purpose.

2. The reburial location will be plotted on a site map, referenced by distance and direction from permanent reference points, and located by GPS. This information will be curated with the project records and at the Coconino National Forest with the restriction that it may not be published or provided to anyone other than a Forest Service official without the permission of the Hopi Tribe, as consistent with the Archaeological Resources Protection Act, 16 U.S.C. 470 hh, and The National Historic Preservation Act, Section 304 (16 U.S.C. 470 w-3).

3. Reburial will be undertaken by archaeologists authorized by Desert Archaeology and the Coconino National Forest as directed by Hopi traditional religious leaders, the Hopi Cultural Preservation Office, Hopi traditional religious leaders and representatives of the Hopi Cultural Preservation Office will be provided an opportunity to be present during reburial and to conduct religious observances, if they desire. The Hopi are encouraged to invite Zuni traditional religious leaders and representatives of the Zuni Heritage and Historic Preservation Office to be present and to conduct appropriate religious observances as well.

4. The date and time for reburials will be agreed to by Desert Archaeology, the Coconino National Forest, and the Hopi Cultural Preservation Office, subject to the notification requirements of 43 CFR 10.6(c). In the absence of such agreements, the Hopi Cultural

Preservation Office will be notified and Desert Archaeology and/or the Coconino National Forest will reinter the remains and associated funerary objects in a dignified and respectful manner as described above within 30 days of completing the notification requirements of 43 CFR 10.6(C).

F. Treatment and Disposition of Other NAGPRA Human Remains and Cultural Items

1. Should protohistoric or historic Native American human remains and associated funerary objects be recovered, the Coconino National Forest will consult with appropriate Tribes to determine lineal descendants or cultural affiliation pursuant to NAGPRA, Section 3 (a) and 43 CFR 10.6. Disposition will be in accordance with the custody so determined subject to the notification requirements contained in 43 CFR 10.6.

21 - Exhibit 02--Continued

Sample Action Plan for Burial Recovery

2. Should potential sacred objects or objects of cultural patrimony be recovered, the Coconino National Forest will consult with appropriate Tribes to identify the nature of the items and to determine custody if they are determined to be NAGPRA cultural items. Disposition will be carried out in accordance with the custody so determined subject to the notification requirements contained in 43 CFR 10.6.

Approved:

JIM GOLDEN
Forest Supervisor
Coconino National Forest

Date:

21 - Exhibit 03

Sample Repatriation Agreement

REPATRIATION AGREEMENT
between the Southwestern Region, USDA Forest Service
and the Hopi Tribe

The Native American Graves Protection and Repatriation Act (NAGPRA) and its implementing regulations [43 CFR part 10 Subpart A & C] provide definitions and procedures for the repatriation to culturally affiliated Indian tribes of certain Native American human remains and associated funerary objects in the possession of federal agencies; and

Representatives of the Southwestern Region of the USDA Forest Service have engaged in consultations with representatives of the Hopi Tribe regarding the place and manner of the repatriation of certain Native American human remains and associated funerary objects originating from lands within the Prescott National Forest.

The Southwestern Region of the USDA Forest Service and the Hopi Tribe do hereby agree to the following:

1. That the Hopi Tribe is an Indian tribe which is recognized as eligible for the special programs and services provided by the United States because of their status as Indians, and thus have status to make a claim for repatriation under NAGPRA;
2. That all cultural items described on the attached inventory meet the criteria outlined in section 2(3)(A) of NAGPRA and 10.2 (d)(1)(2)(i) of 43 CFR part 10, such that:
 - a. all human remains are of Native American ancestry;
 - b. all funerary objects are known or reasonably believed to have been placed intentionally, at the time of death or later, with or near the individual remains;
3. That all cultural items described in the attached inventory were produced by an identifiable earlier group.
4. That pursuant to 43 CFR 10.2 (e), officials of the USDA Forest Service have determined that there is evidence of a relationship of shared group identity between the Hopi Tribe of Arizona and the human remains and associated funerary objects of this identifiable earlier group;

21 - Exhibit 03--Continued

Sample Repatriation Agreement

5. That a Notice of Inventory Completion concerning the human remains and associated funerary objects described on the attached inventory was published in the Federal Register on February 23, 1999. In the time since that publication (at least 30 days), the Southwestern Region of the USDA Forest Service has not received any competing claims.

6. That, effective on the date of the execution of this Repatriation Agreement, the Southwestern Region of the USDA Forest Service repatriates to the Hopi Tribe certain Native American human remains and associated funerary objects described in the attached inventory under the terms of Section 7 of NAGPRA and 43 CFR 10.10(b) of its implementing regulations;

7. That this Repatriation Agreement releases the USDA Forest Service from any claims under the terms of NAGPRA and its implementing regulations by the Hopi Tribe regarding the human remains and cultural items described in the attached inventory.

This agreement shall become binding upon its execution by the authorized representative of each party. Each party warrants that it has the requisite authority to execute, deliver and consummate the transactions contained in this agreement.

For the Southwestern Region of the USDA Forest Service:

ELEANOR S. TOWNS
Regional Forester

Date

For the Hopi Tribe:

LEIGH KUWANWISIWMA
Director, Cultural Preservation Office

Date

21 - Exhibit 04

**Sample Memorandum of Understanding for Reburial of Human Remains and Associated
Funerary Items**

**MEMORANDUM OF UNDERSTANDING
for
the Reburial of Human Remains and
Associated Funerary Items
Repatriated to the Pueblo of Acoma,
the Hopi Tribe and the Pueblo of Zuni**

OBJECTIVE AND PURPOSE:

This Memorandum of Understanding and attached Scope of Work, which is made a part of this Memorandum of Understanding by reference, defines: (1) the roles and responsibilities of the signatory parties; (2) the process whereby the Pueblo of Acoma, the Hopi Tribe, the Pueblo of Zuni, hereinafter the Tribes, and the Cibola National Forest will work in cooperation to rebury the human remains and associated funerary items that have been repatriated to the Tribes as identified in the Repatriation Agreement and; (3) the subsequent protection measures that will be afforded the reburial site following completion of the reburial.

SITE SPECIFIC PROVISIONS:

It Is Agreed By All Parties:

- A. That the Pueblo of Acoma is identified as the lead entity with respect to all activities associated in the reburial. The Pueblo of Zuni and the Hopi Tribe will, at their discretion, attend the reburial as observers and shall concur with the conduct of activities prior to their execution by their approval of the Repatriation Agreement and this Memorandum of Understanding.
- B. That the Scope of Work is made a part of this Memorandum of Understanding by reference and is provided as an attachment to this Memorandum of Understanding. The Scope of Work and reburial site are specific only to this Memorandum of Understanding.
- C. That only those representatives and workers specifically designated by the Tribes and the Cibola National Forest will be allowed to be present and to participate in the reburial. All parties shall assure appropriate privacy and confidentiality of those performing the reburial.

21 - Exhibit 04--Continued

**Sample Memorandum of Understanding for Reburial of Human Remains and Associated
Funerary Items**

- D. That the Cibola National Forest and the Tribes have provided input for this Memorandum of Understanding. Any issues regarding this Memorandum of Understanding raised by tribes other than those to whom cultural items have been repatriated, or any other entities, may be considered and decided upon in consultation with the Tribes.
- E. That the tribes consider the reburial site to be a sacred site and to be of traditional, religious and cultural importance to them. The Cibola National Forest agrees, to the extent authorized by law, to consider the reburied human remains and associated funerary items reburied under this Memorandum of Understanding when activities are proposed on lands under its jurisdiction, with the goal of avoiding further disturbance of the reburied human remains and associated funerary items. It is further agreed that the reburial site will be protected through all applicable laws and regulations, including but not limited to the Archaeological Resources Protection Act and Executive Order 13007.
- F. That the Cibola National Forest agrees to perform periodic visits to the site, to assess and document site conditions. If site disturbance or deterioration is detected, appropriate measures will be taken to prevent further deterioration or disturbance. Site visitation may be more frequent, as needed, but will consist of a minimum of one visit per year. The Tribes will be invited to participate and a report will be provided to the Tribes of each visit.
- G. That the Tribes shall have access to the reburial site for the purpose of religious and ceremonial uses, subject to any motorized vehicle use restrictions and existing rights of way or easements to the site. The site is not accessible by vehicle over National Forest System lands and the USDA Forest Service holds no rights of way through contiguous surrounding private lands.

GENERAL PROVISIONS:

It Is Further Agreed By All Parties:

- A. That each and every provision of this Memorandum of Understanding is subject to the laws of the United States.
- B. That nothing in this Memorandum of Understanding shall be construed as obligating the USDA Forest Service or the United States Government in the expenditure of funds or for future payment of money in excess of appropriation authorized by law.

21 - Exhibit 04--Continued

**Sample Memorandum of Understanding for Reburial of Human Remains and Associated
Funerary Items**

- C. That each party to this Memorandum of Understanding will assume the costs associated with their agreed upon responsibilities, as detailed in this Memorandum of Understanding, and their level of participation.
- D. That this Memorandum of Understanding shall become effective as soon as it is signed by the parties hereto and shall continue in force until terminated by any party upon sixty (60) days notice in writing to the other parties indicating a termination date.
- E. That no Member of or Delegate to Congress shall be admitted to any share or part of this Memorandum of Understanding, or any benefit that may arise there from; but this provision shall not be construed to extend to the Memorandum of Understanding if made for a corporation for its general benefit.
- F. That new supplements or amendments to this Memorandum of Understanding may be proposed in writing by any party and shall become effective upon signature by all parties.

IN WITNESS WHEREOF, The parties hereto have executed this Memorandum of Understanding as of the date below:

USDA, FOREST SERVICE

LIZ AGPAOA

Date:

Forest Supervisor
Cibola National Forest

PUEBLO OF ACOMA

LLOYD TORTALITA

Date:

Governor

21 - Exhibit 04--Continued

**Sample Memorandum of Understanding for Reburial of Human Remains and Associated
Funerary Items**

HOPÍ TRIBE

LEIGH KUWANWISIWMA

Date:

Director, Hopi Tribe
Cultural Preservation Office

PUEBLO OF ZUNI

MALCOLM BOWEKATY

Date:

Governor

SCOPE OF WORK
for
the Reburial of Human Remains and
Associated Funerary Items
Repatriated to the Pueblo of Acoma,
The Hopi Tribe and the Pueblo of Zuni

PROVISIONS:

1. This Scope of Work is incorporated by reference and thereby made a part of the Memorandum of Understanding.
2. The Cibola National Forest will retrieve the human remains and associated funerary items, which are to be repatriated from their present location at the Museum of Northern Arizona in Flagstaff, Arizona, transport them to the Mt.

Taylor Ranger District in Grants, NM, for storage prior to reburial, and transport them to the site location for the actual reburial.

21 - Exhibit 04--Continued

**Sample Memorandum of Understanding for Reburial of Human Remains and Associated
Funerary Items**

3. The Cibola National Forest will provide for the reburial location in the immediate vicinity of the original locations of the human remains and associated funerary items. This location has been determined and agreed upon through an on-site visit by representatives of the Tribes and the Cibola National Forest.
4. The Cibola National Forest will prepare the reburial site by constructing reburial trenches prior to the reburial, under the direction of the Pueblo of Acoma. The dimensions of the reburial trenches will be at least 6 feet in depth unless ground conditions prevent excavation to this depth, but no less than 5 feet in depth. The width shall be determined by soil stability, consistent with the OSHA Construction Standard for Excavations, to provide for safe entry and placement of the human remains and funerary items.
5. Human remains will be placed in a relative anatomically correct position with their associated funerary items. There will be a minimum of six inches between individual sets of remains. A minimum of six inches of earth will be placed over the remains by hand shoveling before a backhoe or other equipment will be used to cover the remains. Tamping will not begin until items are covered by a minimum of two feet of soil.
6. The Pueblo of Acoma will perform reburial with assistance, as necessary, from Cibola National Forest personnel. The Pueblo of Acoma representatives will provide the overall directions and instructions as to the actual physical handling and placing of the human remains and associated funerary objects for reburial. Should the need arise; Acoma representatives will consult with other tribal representatives present regarding specific questions.

21 - Exhibit 05

**Sample Transfer of Custody Letter for
Human Remains and Associated Funerary Objects**

Date:

Mr. Jim Golden
Forest Supervisor
Coconino National Forest
2323 E. Greenlaw Lane
Flagstaff, Arizona 86004

Dear Mr. Golden:

On _____ the Hopi Tribe acknowledged receipt from the Coconino National Forest of human remains and associated funerary objects that were excavated during the U.S. Highway 89 North archaeological project. Custody of these remains and objects was given to the Tribe by the Forest Service under the authority of the Native American Graves Protection and Repatriation Act (NAGPRA) and its implementing regulations (43 CFR 10.1-10.17):

The Hopi Tribe hereby transfers the following remains and objects back to the Coconino National Forest:

(List of human remains and associated objects)

These remains and objects will be reburied on National Forest land within an archaeological site agreed to by the Hopi Tribe and the Forest so that these archaeological resources may continue to be protected by the U.S. Forest Service under the authority of the Archaeological Resources Protection Act 16 U.S.C. 470aa-mm. and its Implementing Regulations (36 CFR part 296).

WAYNE TAYLOR, JR.
Hopi Tribal Chairman