

PROCESS for CONSULTATION, TRANSFER, and REBURIAL of CULTURALLY UNIDENTIFIABLE NATIVE AMERICAN HUMAN REMAINS AND ASSOCIATED FUNERARY OBJECTS ORIGINATING FROM INADVERTENT DISCOVERIES on COLORADO STATE and PRIVATE LANDS

1. Scope

- A. This protocol establishes a process for consultation, repatriation, and reburial of culturally unidentifiable Native American human remains and associated funerary objects (The Native American Graves Protection and Repatriation Act, 24 USC 3001 et seq.) inadvertently discovered on private and state lands in Colorado.
- B. This protocol shall apply to inadvertent discoveries of culturally identifiable Native American human remains and associated funerary objects as well as Native American remains and associated funerary objects that are classified as culturally unidentifiable which are under the purview of the Colorado State Archaeologist.
- C. Tribes with a history of use and occupation in Colorado have consulted with the Colorado Commission of Indian Affairs (CCIA) and the Colorado Historical Society (CHS), and this protocol represents a process to repatriate and rebury culturally unidentifiable Native American remains and associated funerary objects in each region. For purposes of consultation on culturally unidentifiable human remains and associated funerary objects, the State of Colorado has been divided into three regions. (Attachment 1: Consultation regions map with list of tribes with interests in each region.)

2. Inadvertent discoveries and decision-making process regarding the disinterment of human remains and associated funerary objects

- A. State law pertaining to the discovery of unmarked human graves (24-80-1302) requires examination of the remains within 48 hours of notification to determine if the remains are of forensic value. If the coroner determines that the remains are of no forensic value, then the coroner notifies the State Archaeologist, who makes an examination as soon as possible to determine if the remains are over one hundred years old and if they are Native American. If the remains are determined to be Native American, s/he notifies the Secretary of the CCIA, who in turn notifies interested tribes in the region, via email or mail (by their choice) before removal. A Federal Register Notice shall be submitted as soon as possible according to the provisions of this protocol.
- B. The preferred treatment option for all inadvertent discoveries of human remains and associated funerary objects is in situ preservation, if the remains are not under imminent or anticipated threat of disturbance. If the safety of the remains is threatened or if the remains are discovered on private land and the landowner

requests that the remains be moved, then the State Archaeologist, the Executive Secretary of CCIA, and the Chairman or a designated representative of at least one of the two Colorado Ute Tribes will by a consensus, develop a plan of action for the removal of the human remains and any associated funerary objects.

- C. If the human remains and any associated funerary objects require disinterment, then the order of preference for the disposition of the human remains and any associated funerary objects is:
 - 1. Prompt reburial as near in place as possible or at a greater depth in the same place, where possible and if agreed to by all parties; or
 - 2. removal and initiation of the repatriation process.

- D. Any burial investigation shall be conducted respectfully, carefully, and promptly (within 10 days of notification from the coroner) by a qualified archaeologist under a state permit.
 - 1. If reburial in place is agreed to by all parties, then the reburial will be conducted in cooperation with at least one of the two Colorado Ute tribes.
 - 2. If the human remains and any associated funerary objects must be removed, then the archaeologist in charge of the disinterment will assume temporary custody of the remains for limited study. Analysis, documentation, and a written report of the findings, along with the human remains and any associated objects will be delivered to the State Archaeologist within 45 days of the exhumation. The report shall include a basic archaeological description of the site and any associated objects, as well as a physical anthropological study of the remains. This study will minimally consist of basic measurement of the skeleton to determine age, sex, pathologies, and cause of death. The State Archaeologist will accept or request revisions to the report within 15 days. If revisions to the report are required or if other delays are encountered, then the State Archaeologist, the Executive Secretary of CCIA, and the Chairman or a designated representative of at least one of the two Colorado Ute Tribes will consult on a prompt solution and an appropriate schedule.
 - 3. The cost of the disinterment, archaeological analysis, and physical anthropological study shall be borne by the State Archaeologist except when the remains are recovered from private lands or are discovered and excavated pursuant to a development project. If no party can be identified to bear the cost of such studies, the State Archaeologist shall bear such costs.

- E. Analytical studies of human remains or associated funerary objects from inadvertent discoveries will be non-destructive. Human remains and associated funerary objects will not be marked or altered in any way.

- F. At all times after disinterment, the human remains and any associated funerary objects will be kept in secure facilities. Upon transfer to the CHS, the remains and

any associated objects will be held in a high security area with access only to authorized CHS staff, CCIA representatives, and tribal delegates upon request.

3. Determinations of Cultural Affiliation

- A. Based on available information and according to procedures established under NAGPRA, CHS will identify potential cultural affiliation of any inadvertently discovered remains and associated funerary objects within 75 days after the notification of the State Archaeologist.
- B. If there is insufficient evidence to identify cultural affiliation, then the remains and any associated funerary objects will be administered as specified in Section 4 of this document.

4. Publishing a Notice

- A. Within 30 days after accepting the remains, funerary objects, and approved documentation, CHS will submit a Notice of Inventory Completion to the National Park Service. The Notice will reference the three regional consultations and the resulting agreement(s). CHS will send copies of the Notice of Inventory Completion to the appropriate tribes identified in Attachment 1 of this document for the region in which the discovery was made.
- B. The Southern Ute and Ute Mountain Ute shall act as lead tribes in all repatriations/transfers of culturally unidentifiable Native remains and any associated funerary objects. The consulting tribes authorize the Southern Ute and Ute Mountain Ute Tribes to carry out the terms of this protocol. In the event that either of the Ute Tribes is unable to serve in this capacity, the consulting Tribes authorize them to delegate these activities to the Northern Arapaho and Eastern Shoshone Tribes of Wyoming for the Great Plains region, and the Ute Indian Tribe of Utah for the Southwest region and the Northwest region. In the event that any of these designated tribes are unable to participate, the Southern Ute and Ute Mountain Ute Tribes are authorized to contact the next closest regional tribe.

5. Transfer and reburial of culturally unidentifiable Native American human remains and associated funerary objects

A. Native American remains and associated funerary objects will be available for transfer and reburial 31 days after the publication of the Notice of Inventory Completion in the *Federal Register*, barring any disputes or counter-claims.

B. Reburial (in order of preference) will either be on Ute tribal lands or on parcels of state land set aside for this purpose for each region. The location of the reburial will depend upon the number of remains and associated funerary objects to be re-interred and the proximity of the discovery to the potential burial sites. Efforts will be made to rebury the remains and associated funerary objects as geographically close to

where they were discovered as possible. The Southern Ute Indian and Ute Mountain Ute tribes, in consultation with CCIA, will decide the location of reburial.

C. There will be no set timeline for reburials to allow for variables such as inclement weather and seasonal access.

D. Efforts will be made to ensure that the reburial location is relatively devoid of cultural materials and that the probability of disturbing additional archaeological materials during site preparation is low. Reburials will occur in areas in which there are no actions currently pending or planned that would compromise the quality of the natural setting or its security, and where topographic relief of the location is minimal and uncovering the remains by soil erosion is unlikely.

E. Lead tribes will identify burial location, date, and logistical information. Parties to a reburial will not knowingly or intentionally disclose the location of the reburial sites. Other tribes wanting to attend reburials may make arrangements by contacting the lead tribes. Reburials will be conducted in accordance with the cultural traditions of the Southern Ute and Ute Mountain Ute Tribes of Colorado.

F. Reburial sites will be kept secure by tribal personnel for reinterments on tribal lands, or by the land managing authority for sites located on state lands. Reburial location information will be kept confidential and maintained by a designated tribal official for reinterments on tribal lands, and by the State Historic Preservation Office for sites located on state lands.

G. When applicable, human remains will be reburied with any associated funerary objects, soil matrix, and any other materials collected from the burial feature.