

# Native American Graves Protection and Repatriation Act (NAGPRA)

**T**HIS SOP implements the provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), Public Law 101-601 (25 USC § 3001-3013), and 43 CFR § 10 Native American Graves Protection and Repatriation Regulations. NAGPRA mandates that federal land managers must consult with federally recognized Indian tribes regarding planned excavations on federal lands, and establishes procedures that federal agencies must follow in the event of inadvertent disinterment of Native American human remains and cultural items. The statute provides a mechanism for determining the disposition for such human remains or cultural items. NAGPRA also forbids sale of Native American human remains or of cultural items obtained in violation of the statute.

Fort Bragg has initiated consultation with the Native American Tribes who are recognized as the aboriginal people culturally affiliated with the lands now occupied by Fort Bragg. The purpose of this consultation is to develop a draft Comprehensive Agreement (CA) to establish NAGPRA responsibilities and address all installation land management activities that could result in the inadvertent disinterment of human remains or cultural items, to establish standard consultation procedures, and provide for the determination of custody, treatment, and disposition of cultural items. The sections of this SOP describing procedures to be followed in the event of inadvertent disinterment of human remains or associated cultural items address similar sections from the CA and are presented here in greater detail for the purpose of ensuring compliance. In the event of inadvertent disinterment of Native American human remains or cultural items, the procedures as stated in the CA will take precedence to this SOP.

## Standing Operating Procedure #4a

### **Inadvertent Discovery of Native American Human Remains and Associated Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony**

[Reference: Native American Graves Protection and Repatriation Act 25 USC 3002, Sec. 3(d), 43 CFR 10.4]

#### Introduction

Fort Bragg is engaged in a continuing inventory of the cultural resources within its boundaries. Every ground disturbing activity has the potential for uncovering unreported archeological deposits or affecting potential TCPs. Given the high probability of Native American use of the Fort Bragg area, these deposits may contain Native American human remains and cultural objects. In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), such human remains and cultural objects must be identified, if possible, as to lineal descendants or culturally affiliated contemporary tribes, treated in a manner deemed appropriate by the lineal descendants or culturally affiliated tribes, and repatriated if claims are justified by a preponderance of evidence. SOP #4A-B outline procedures to be followed in the event of an inadvertent discovery of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony; in planning an excavation that has the high potential to result in the discovery of Native American human remains and cultural objects; and in dealing with the treatment and disposition of Native American human remains and cultural objects. Appended to these SOPs are a list of the referenced legislation, executive orders, and presidential memoranda; sample memoranda for notification of the Installation Commander and Indian tribes; and a list of official tribal contacts.

This SOP is intended solely to improve the internal workings of the Fort Bragg staff and does not in any way create any right or cause of action to any party.

#### Definitions

[Reference: Native American Graves Protection and Repatriation Act 25 USC 3001, Sec. 2, unless indicated otherwise]

1. Burial site means “any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture, individual human remains are deposited.”
2. Cultural affiliation means “that there is a relationship of shared group identity that may be reasonably traced historically or prehistorically between a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group [43 CFR 10.14(c)].”
3. Associated funerary objects means "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, and both the human remains and associated funerary objects are presently in the possession or control of a federal agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects."
4. Sacred objects means "specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents."
5. Cultural patrimony means "an object having ongoing historical, traditional, or cultural importance central to the 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 Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group."
6. Indian tribe means “any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians."
7. For the purposes of this SOP, the term "planned excavation" refers to excavations that have been determined to have a high probability for recovery of Native American human remains and/or cultural objects.

## Part 2: Standing Operating Procedures

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8. For the purposes of this SOP, the term "cultural objects" specifically refers to associated funerary objects, sacred objects, and objects of cultural patrimony.
9. For the purposes of this SOP, "tribal contacts" means the tribes that are listed in Appendix C.

### Policy

The intent of NAGPRA is to protect, identify proper ownership, and to ensure the rightful disposition of Native American human remains and cultural objects that are discovered on federal or tribal lands. NAGPRA requires that certain procedures be followed when there is an intentional excavation or inadvertent discovery of Native American human remains and cultural objects. In the event of a discovery of Native American human remains or cultural objects, the Installation Commander will ensure compliance with NAGPRA [25 USC 3001-3013, 43 CFR 10] and any applicable statutory and regulatory requirements of the American Indian Religious Freedom Act [42 USC 1996-1996a], Religious Freedom Restoration Act [42 USC 2000bb], Archeological Resources Protection Act [16 USC 470aa-470ll], National Environmental Policy Act [42 USC 4321-4370c], and National Historic Preservation Act [16 USC 470-470w] as well as White House Memorandum, 29 April 1994. Each statute mandates compliance with independent requirements. Compliance with one statutory requirement therefore may not satisfy other applicable requirements.

The installation Cultural Resources Manager will coordinate with the Staff Judge Advocate (SJA), Criminal Investigation Directorate (CID), Provost Marshal's Office (PMO), Operations and Training, Master Planning, and Public Works Business Center (PWBC) to ensure that the Cultural Resources Manager (1) is incorporated in the planning of training and construction to assess the potential for the discovery of Native American burials and archeological sites, and (2) is identified as the point-of-contact to be notified immediately if a Native American burial or archeological site is inadvertently discovered on installation property.

In addition to ground disturbing activities such as training operations, construction, and archeological excavations, erosion by wind or water may result in the discovery of human remains and cultural objects. If Native American remains and cultural objects are discovered, any work within a 100 foot radius of the site shall be halted and the Cultural Resources Manager (396-6680) shall be notified immediately. The site will be protected and stabilized. Any removal of material is prohibited and

constitutes a violation of NAGPRA and ARPA. The Cultural Resources Manager, in consultation with qualified professionals as necessary, will initially evaluate the site and report the finding to the Installation Commander and the potentially culturally affiliated Indian tribes. Any subsequent treatment of the remains and objects or stabilization of the site will be carried out only after consultation with the potentially affiliated tribes.

#### Procedure

[Reference: NAGPRA 25 USC 3002 Sec. 3(d), 43 CFR 10]

#### Preliminary Assessment, Protection, and Verification

1. When notified of the possible inadvertent discovery of buried human remains or cultural objects, the Cultural Resources Manager will arrange to visit the site as soon as practical, always within twenty-four (24) hours of the discovery, to determine if the remains are (1) associated with a recent crime scene and (2) if not, whether the remains are of Native American descent.
2. If, upon examination, the remains are identified as non-human, the Cultural Resources Manager will determine if archeological contexts are present that need to be evaluated pursuant to the NHPA [16 USC 470-470w] and Section 106 [36 CFR 800].
3. If, upon examination, the remains appear to be human and associated with a crime scene of 50 years old or less, the Cultural Resources Manager will notify the PMO and the CID, all activities will cease within a 100 foot radius of the site, and the site will be protected and declared off limits to everyone except authorized personnel. The CID and PMO will assume control of the crime scene and custody of the remains.
4. If the remains are determined by the installation federal officials to be non-Native American (e.g. Caucasian, African American, or Asian American) and not associated with a crime, the Cultural Resources Manager will notify the State Archeologist and follow procedures outlined in North Carolina General Statute 70-1, Indian Antiquities Archeological Resources and Unmarked Human Skeletal Remains Protection for identifying next of kin and determining treatment and disposition of remains.
5. If the remains are determined to be Native American and not associated with a crime, the Cultural Resources Manager must make a

written field evaluation of the circumstances of the discovery, the condition and contents of the burial, including any artifacts, the primary context of the remains and any artifacts, and their antiquity and significance. The human remains and cultural objects will be evaluated in situ. Destructive analysis is prohibited. The Cultural Resources Manager may consult with the CID or a qualified physical or forensic anthropologist if necessary. The site will be protected according to standard installation practice for archeological discoveries. Stabilization or covering may be employed if necessary.

6. Note that a preliminary assessment of whether NAGPRA applies to a discovery of human remains may take considerable time and coordination with qualified professionals. Therefore, the Cultural Resources Manager should make arrangements with qualified professionals, such as physical or forensic anthropologists, who are willing to aid in situ identifications before an inadvertent discovery of human remains occurs.

Notification of the Responsible Federal Agency Official (Installation Commander) [43 CFR 10.4]

1. When the Cultural Resources Manager receives notification of an inadvertent discovery of Native American human remains and cultural objects, immediate telephone notification must be provided to the Installation Commander or his/her official designee. This telephone notification will be followed immediately by written notification that contains the results of the field evaluation and a plan of action to inform the commander of the intended consultation tasks and disposition of the discovered objects.

2. No later than 48 hours after receipt of written confirmation from the Cultural Resources Manager, the Installation Commander or his/her official designee will forward to the Cultural Resources Manager the certification that the Memorandum of Notification has been received.

3. A Template for Memorandum of Notification of the Installation Commander is appended to this SOP. [Appendix B]

4. Dig permits and contracts for archeological investigations or major construction on installation lands will include the requirement to notify the Cultural Resources Manager immediately upon discovery of human remains or cultural objects.

#### Notification of Native Americans

1. Within three (3) working days after receipt of written notification by the Installation Commander of the discovery of Native American human remains and /or cultural objects, the Cultural Resources Manager shall notify possible lineal descendants or culturally affiliated Indian tribes of their discovery by telephone and by forwarding the Memorandum of Notification of the Installation Commander signed by the Installation Commander. Notification must include the field evaluation described in SOP #4A, Preliminary Assessment, Protection, and Verification, number 4. Notices shall be sent to the tribal chairpersons and copy furnished to the designated NAGPRA coordinators.
2. Decisions on which tribes to notify will be based on the order of priority of ownership described in 25 USC 3002, Sec. 3(2) and 43 CFR 10.6, information in the Native American contacts file kept by the Cultural Resources Manager, and the List of Tribal Contacts appended to this SOP. [Appendix C]
3. Priority of ownership or control of Native American human remains and cultural objects is briefly: [For details, see 25 USC 3002, Sec. 3(a)(1)-(2), 43 CFR 10.6]
  - 1). Lineal descendants
  - 2). Indian tribe land owner
  - 3). Culturally affiliated Indian tribe as defined in 43 CFR 10.14
  - 4). Indian tribe recognized as the aboriginal owners of the land by a final judgment of the Indian Claims Commission or the United States Court of Claims
  - 5). Indian tribe aboriginally occupying the land
  - 6). Indian tribe with the strongest demonstrated cultural relationship
  - 7). Unclaimed
4. The List of Tribal Contacts will be kept by the Cultural Resources Manager and will be verified and/or updated annually in coordination with tribal election schedules. The list accompanies this SOP [Appendix C] and kept in the Native American contacts file.

#### Identification of Native American Human Remains

1. Identification of Native American human remains and cultural objects will be made in situ unless they have already eroded from their

original location or have been removed from their original resting place by accident or as a result of looting. If an in situ identification of the remains cannot be made, the potential culturally affiliated tribes will be consulted pursuant to 43 CFR 10.3(b) and further identification procedures will be discussed.

2. If necessary, the Fort Bragg Cultural Resources Manager will coordinate the identification of Native American human remains and cultural objects with qualified archeologists, forensic or physical anthropologists, or cultural anthropologists who will record their recommendations and all data necessary to make the identification, including any additional information that can contribute to the determination of lineal descendants or cultural affiliation. The Fort Bragg Cultural Resources Manager may use recommendations of experts along with any additional comparative physical anthropological data and archeological, ethnographic, and historical information to determine lineal descendants or Indian tribes that have the closest affiliation according to priority of ownership as defined in 25 USC 3002, Sec. 3(a) and 43 CFR 10.6.

3. Cultural affiliation is determined by a preponderance of evidence based on geographical, kinship, biological, archeological, anthropological, linguistic, folkloric, oral tradition, historical, or other relevant information or expert opinion [25 USC 3005, Sec. 7(a)(5), 43 CFR 10.14]. Criteria for determining cultural affiliation are listed in 43 CFR 10.14(c). Regulations caution that a finding of cultural affiliation based on a preponderance of evidence should take into consideration "the totality of the circumstances and evidence pertaining to the connection between the claimant and the material being claimed and should not be precluded solely because of some gaps in the record" [43 CFR 10.14(d)]. Cultural affiliation does not have to be established by the claimants with scientific certainty [43 CFR 10.14(f)].

4. Preliminary determination of lineal descendants or closest affiliation will be sent to the previously notified tribes to review. A time and place for consultations will be proposed. Traditional religious leaders should also be identified and consulted. The tribes may have additional information to contribute to the identification of lineal descendants or cultural affiliation. Representatives of tribes may decide to visit the site to verify the identification. A list of all Indian tribes consulted regarding the particular human remains and cultural items will also be provided to each consulting tribe.

5. Consultation must result in a written plan of action in accordance with 43 CFR 10.5(e)] or Comprehensive Agreement (CA) in accordance with 43 CFR 10.5(f) between the appropriate tribes and the Installation Commander. Development, review, and signature of the CA follow Army protocol specified in AR 200-4. The Fort Bragg Cultural Resources Manager, acting on behalf of the Installation Commander, may prepare the written plan of action or CA. The Installation Commander approves and signs all NAGPRA documents. Copies of the written plan of action are provided to the consulting lineal descendants and Indian tribes. Parties covered in a CA must agree to be signatories.
6. Information to be gained during the consultation that should be included in the written plan of action or CA:
  - a. Kinds of material to be considered as cultural objects as defined in Standing Operating Procedure #4A and 43 CFR 10.2(b);
  - b. Specific information used to determine custody pursuant to 43 C.F.R 10.6;
  - c. Treatment, care, and handling of human remains and cultural objects;
  - d. Archeological recording of the human remains and cultural objects;
  - e. Kinds of analysis for identification of human remains and cultural objects;
  - f. Steps to be followed to contact Indian Tribe officials at the time of an inadvertent discovery or before any excavation of human remains or cultural objects;
  - g. Kind of traditional treatment to be afforded the human remains or cultural objects;
  - h. Nature of the reports to be prepared; and
  - i. Disposition of human remains and cultural objects in accordance with 43 CFR 10.6.

#### Resumption of Activity

43 CFR 10.4(d)(2) specifies:

- a. The activity that resulted in the inadvertent discovery of Native American human remains or cultural objects may resume thirty (30) days after certification by the Installation Commander of the receipt of the notification sent by the Cultural Resources Manager, if otherwise lawful. Any impacts to the site must be evaluated pursuant to Section 106 [36 CFR 800] of the National Historic Preservation Act [16 USC 470-470w].

**Part 2: Standing Operating Procedures** \_\_\_\_\_

**Removal or excavation of Native American human remains and cultural objects must also be carried out in accordance with 43 CFR 10.3.**

**b. Or, activity may resume if the treatment is documented in a written binding agreement between the installation and the affiliated Indian tribes that adopts a plan for stabilization and protection of the site with no removal of human remains and cultural objects, excavation or removal of the human remains or cultural objects in accordance with 43 CFR 10.3, or their disposition to lineal descendants or Indian tribe/s with priority of custody as defined in 25 USC 3002, Sec. 3(a) and 43 CFR 10.6.**

## Standing Operating Procedure #4b

### **Intentional Archeological Excavation That May Result in the Discovery of Native American Human Remains, Associated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony**

[Reference: Native American Graves Protection and Repatriation Act 25 USC 3002, Sec. 3(c), 43 CFR 10.3]

#### Introduction

Fort Bragg is engaged in a continuing inventory of the cultural resources within its boundaries. Archeological activities include survey for sites to be included on the inventory required under Section 110 of the National Historic Preservation Act [16 USC 470-470w], evaluation of sites by testing their eligibility for the National Register of Historic Places [36 CFR 60, 36 CFR 63], further testing of sites to evaluate their significance, and the mitigation of adverse effects on sites eligible for the National Register that cannot be protected from destruction.

The definitions provided in the Introduction of Standing Operating Procedure (SOP) #4A apply.

#### Policy

Fort Bragg must comply with NAGPRA [25 USC 3002, Sec. 3(c), 43 CFR 10.3], which requires that Native American human remains, associated funerary objects, sacred objects, and objects of cultural patrimony be excavated or removed only after consultation with the appropriate Indian tribes that have priority of custody over these items. All notification and consultation shall be carried out with tribal governments in compliance with White House Memorandum, 29 April 1994, Government-to-Government Relations with Native American Tribal Governments. Excavation of Native American human remains and cultural objects is also subject to review under Section 106 [36 CFR 800] of the National Historic Preservation Act [16 USC 470-470w].

#### Procedure

1. Archeological excavations that have a high potential to result in the discovery or removal of Native American human remains, associated funerary objects, sacred objects, or objects of cultural patrimony are permitted only after (1) issuance of a permit pursuant to the Archeological

Resources Protection Act [16 USC 470aa-470ll], if applicable, and (2) consultation establishes provisions for the identification, treatment, and disposition of Native American human remains and cultural objects and meets the requirements of 43 CFR 10.5.

2. Before issuing any approvals or permits for excavations that may result in the discovery of Native American human remains or cultural objects, the Cultural Resources Manager must provide written notification signed by the Installation Commander to the Indian tribes that are likely to be culturally affiliated, any present-day Indian tribes who aboriginally occupied the area, and any tribes who are likely to have a cultural relationship with the human remains and cultural objects that may be excavated.

3. When notifying Indian tribes, refer to the List of Tribal Contacts in Appendix C, which is based on criteria discussed in SOP #4A, Notification of Native Americans, numbers 2-4.

4. The notice to the tribes of planned excavations must describe the planned activity, its general location, the basis for the determination that human remains and cultural objects may be encountered during excavation, and the basis for the determination of likely custody pursuant to 43 CFR 10.6. In addition, the notice must propose a time and place for meetings or consultations and the federal agency's treatment and disposition of the human remains and cultural objects.

5. If no response is received from a written notification in fifteen (15) days, a follow-up telephone call should be made by the Cultural Resources Manager.

6. In making determinations of priority of ownership and right of control of Native American human remains and cultural objects, refer to SOP #4A, Notification of Native Americans, numbers 2-4.

7. Consultation must be documented by (1) a written plan of action in accordance with 43 CFR 10.5(e) signed by the Installation Commander or his designee, which the consulting tribes have the option to sign, or (2) a Comprehensive Agreement (CA) in accordance with 43 CFR 10.5(f), signed by the Installation Commander or his designee and official tribal representatives.

8. Information to be gained during the consultation that should be included in the written plan or CA:

- a. Kinds of material to be considered as cultural objects as defined in Standing Operating Procedure #A and 43 CFR 10.2(b);
- b. Specific information used to determine custody pursuant to 43 CFR 10.6;
- c. Treatment, care, and handling of human remains and cultural objects;
- d. Archeological recording of the human remains and cultural objects;
- e. Kinds of analysis planned for identification of human remains and cultural objects;
- f. Steps to be followed to contact Indian Tribe officials before any excavation of human remains or cultural objects;
- g. Kind of traditional treatment to be afforded the human remains or cultural objects;
- h. Nature of the reports to be prepared; and
- i. Disposition of human remains and cultural objects in accordance with 43 CFR 10.6.

## Standing Operating Procedure #4c

**Treatment and Disposition of Native American Human Remains, Associated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony Discovered Inadvertently**

[Reference: Native American Graves Protection and Repatriation Act 25 USC 3002, Sec. 3, 43 CFR 10]

### Introduction

Specifying treatment and disposition of Native American human remains, associated funerary objects, sacred objects, and objects of cultural patrimony discovered on Army lands rests with lineal descendants or Indian tribes that can demonstrate priority of ownership as outlined in NAGPRA [25 USC 3002 Sec. 3(a), 43 CFR 10.6].

The definitions provided in the Introduction of Standing Operating Procedure (SOP) #4A apply.

### Policy

Identification of Native American human remains and cultural objects occurs first in consultation with potential lineal descendants or Indian tribes that can demonstrate the closest affiliation according to priority of ownership. All notification and consultation shall be carried out with tribal governments in compliance with White House Memorandum, 29 April 1994, Government-to-Government Relations with Native American Tribal Governments.

If the Army, in consultation with lineal descendants or federally-recognized tribes, determines that an asserted claim is legitimate, the lineal descendants or tribe(s) may consult with Fort Bragg in specifying treatment and disposition of remains. If ownership cannot be assigned to one tribe due to lack of a preponderance of evidence, then the responsibility of treatment and disposition may lie with multiple tribes. If there are no legitimate claimants, the NPS Departmental Consulting Archeologist will be notified and the human remains and cultural objects will be protected in situ, or if that is not possible, will be removed and stored in a facility agreeable to the consulting parties, pending the appearance of legitimate claimants.

In instances where there is a dispute as to the ownership of human remains and cultural objects, the installation shall safeguard them until the dispute is resolved in accordance with 43 CFR 10.5(a)(2). The Installation Commander shall notify the Major Command (MACOM) in the event of a dispute regarding custody of human remains and cultural objects. All activities carried out to comply with NAGPRA and 43 CFR 10 shall only occur with federally-recognized Indian tribes and lineal descendants as defined and provided for by NAGPRA.

#### Procedure

1. The treatment and disposition of any Native American human remains and cultural objects recovered inadvertently from Fort Bragg lands shall be determined in consultation with lineal descendants or closest affiliated Indian tribe(s) as required by 25 USC 3002 Sec. 3(a), 43 CFR 10.3(2), and 10.4(d)(iv).
2. A tribe that wishes to make a claim of ownership of human remains or cultural objects must be able to demonstrate an affiliation by a preponderance of evidence according to the criteria for the priority of custody specified in 25 USC 3002, Sec.3(a) and 43 CFR 10.6.
3. If a single, legitimate claimant cannot be identified, continue consultation with the previously consulted tribes to consider possible alternatives for affiliation, treatment, and disposition. Notify the NPS Departmental Consulting Archeologist and FORSCOM regarding the details of the case. Fort Bragg must retain the material in a safe and secure manner agreeable to the consulting parties as required by 43 CFR 10.6(c), or 10.15 until a plan for the treatment and disposition of the Native American human remains and cultural objects pursuant to 43 CFR 10 can be specified.
4. If no agreement can be reached, refer to dispute resolution.
5. For inadvertent discoveries of Native American human remains and cultural objects, endeavor to specify treatment within thirty (30) days after the certification of notification has been issued.
7. If it is determined by the consulting parties that the in situ restoration of a burial site is not feasible, the contents of the burial shall, upon the identification of the lineal descendants or cultural affiliation, be repatriated to the lineal descendants or appropriate tribe/s, if a legitimate claim is made. Procedures for repatriation will be made in consultation with the appropriate descendants and/or tribes pursuant to 43 CFR 10.6.

8. Each restoration and reinterment shall require that Fort Bragg provide an opportunity for appropriate tribal religious ceremony or ceremonies pursuant to the American Indian Religious Freedom Act (AIRFA) [42 USC 1996-1996a].
9. Upon request, sacred objects and objects of cultural patrimony shall be returned where [25 USC 3005, Sec. 7(a)(5)]:
  - a. the requesting party is the direct lineal descendant of an individual who owned the sacred object;
  - b. the requesting Indian tribe can show that the object was owned or controlled by the tribe;
  - c. the requesting Indian tribe can show that the sacred object was owned or controlled by a member thereof, provided that in the case where a sacred object was owned by a member thereof, there are no identifiable lineal descendants of said member or the lineal descendants, upon notice, have failed to make a claim for the object under NAGPRA.
10. Following 43 CFR 10.6(b), prior to the disposition of human remains and cultural objects to the lineal descendants or the apparent most closely affiliated Indian tribes, the Installation Commander or his/her official designee must publish notices of the proposed disposition in a newspaper of general circulation in the area in which the human remains and cultural objects were discovered and in which the lineal descendants or affiliated Indian tribes currently reside.
  - a. The notice must provide information as to the nature and affiliation of the human remains, funerary objects, sacred objects, or objects of cultural patrimony and solicit further claims to custody. The consulting tribes may review the content of the notice before its publication. Privileged information should not be included in the notice.
  - b. The notices must be published twice at least a week apart. A copy of the notice and information on when and in what newspapers the notice was published must be sent to the NPS Departmental Consulting Archeologist, Department of Interior.
  - c. The return of human remains and cultural objects must not take place until at least thirty days after the publication of the second notice to allow time for any additional claimants to come forward. If additional claimants do come forward and the Installation Commander or his/her designee cannot clearly determine which claimant is entitled to custody,

the federal agency must not transfer custody of the human remains and cultural objects until the proper recipient is determined pursuant to 43 CFR 10.

11. If a claim is made for human remains and cultural objects, all of the tribes that were involved in the consultations regarding their disposition will be notified.

12. Unclaimed Native American human remains and cultural objects shall be returned in accordance with the regulations developed by the NAGPRA Review Committee.

13. The resolution of treatment and disposition issues must be documented in a written plan of action or Comprehensive Agreement (CA), as specified in SOP #4A and #4B pursuant to 43 CFR 10.3, 10.4, 10.5, 10.6, and 10.15.

#### Time Conflicts

1. On those rare occasions when Fort Bragg or the tribe(s) is unable to meet its commitments pertaining to time schedules for any activity specified herein, the party that is unable to meet the schedule will notify the other party as soon as physically possible to reschedule the activities to the mutual satisfaction of both parties. Emergency actions will be coordinated by telephone or FAX.

#### Dispute Resolution

1. All disputes regarding the cultural affiliation of discovered human remains and/or cultural objects shall be resolved in accordance with Sections 3 and 7(e) of NAGPRA and the implementing regulations 43 CFR 10.

2. Fort Bragg shall follow the procedures set forth in this document regarding consultation with the interested tribes. Should any interested tribe make a conflicting claim of cultural affiliation or dispute the methods of treatment or disposition of human remains and/or cultural objects as delineated herein, the Installation Commander shall notify the MACOM.

3. Fort Bragg will continue consultation with the disputing parties, suggest that the disputing parties seek resolution among themselves, and, if the disputing parties concur, go before the NAGPRA Review Committee which is given the authority under 25 U.S.C 3006, Sec. 8(c)(4)

## Part 2: Standing Operating Procedures \_\_\_\_\_

and 43 CFR 10.16 and 10.17 to make recommendations on the resolution of disputes.

4. If, upon receipt of the recommendations of the Review Committee, the most appropriate claimant still cannot be determined, Fort Bragg shall retain the disputed remains or cultural objects until the question of custody is resolved, as stated in 43 CFR 10.15(a)(2).

### Additional Parties

1. Interested tribes claiming lineal descent or cultural affiliation may join these procedures at any time should they express a desire to do so.

2. However, in accordance with 43 CFR 10.15 (a)(1), if an interested party fails to make a written claim prior to the time human remains and cultural objects are duly repatriated or disposed of to a claimant in accordance with 43 CFR 10, the interested party is deemed to have irrevocably waived any right to claim such items pursuant to these regulations.

## SOP #4 Appendix A: References

### Federal Statutes

1. American Indian Religious Freedom Act of 1978, as amended, 42 USC 1996-1996a
2. Archeological Resources Protection Act of 1979, 16 USC 470aa-470ll
3. Native American Graves Protection and Repatriation Act of 1990, 25 USC 3001-3013
4. National Environmental Policy Act of 1969, as amended, 42 USC 4321-4370c
5. National Historic Preservation Act of 1966, as amended, 16 USC 470-470w
6. Religious Freedom Restoration Act of 1993, 42 USC 2000bb

### Federal Regulations

1. 32 CFR 229, Protection of Archeological Resources
2. 36 CFR 60, National Register of Historic Places
3. 36 CFR 63, Determinations of Eligibility for Inclusion in the National Register of Historic Places
4. 36 CFR 78, Waiver of federal Agency Responsibility under Section 110 of the National Historic Preservation Act
5. 36 CFR 800, Protection of Historic Properties
6. 40 CFR 1500-1508, Regulations Implementing the National Environmental Policy Act
7. 43 CFR 7, Protection of Archeological Resources
8. 43 CFR 10, Native American Graves Protection and Repatriation Act Regulations

### Executive Orders

1. E.O. 13007, Indian Sacred Sites

### Presidential Memoranda

1. White House Memorandum, Government-to-Government Relations with Native American Tribal Governments, April 29, 1994

## SOP #4 Appendix B : Template for Memorandum Of Notification of the Installation Commander

1. Purpose:
  - a. To notify the Installation Commander that Native American human remains and/or cultural objects have been inadvertently discovered on Fort Bragg.
  - b. Recommend an action plan that implements requirements of the Native American Graves Protection and Repatriation Act (NAGPRA) [25 USC 3001-3013, 43 CFR 10], outlined in the NAGPRA Standing Operating Procedures (SOP), #4A-4C.
  - c. Request certification of this notification by the Commander to be directly forwarded to the Cultural Resources Manager.
  
2. Situation:
  - a. Describe circumstances of discovery: By whom, where, and how were Native American human remains and/or cultural objects discovered on the installation.
  - b. Describe discovered items: condition and contents of the burial, including any grave goods; the primary context of the remains and any artifacts, including site location described according to standard Fort Bragg archeological practice; probable antiquity and significance of the remains and/or cultural objects.
  
3. Action Plan
  - a. Continue to protect the site.
  - b. Receive certification of notification from the Commander by the Cultural Resources Manger within forty-eight (48) hours of receipt of this notification by his office.
  - c. Notify the Cherokee and Catawba contacts listed in Appendix C of the discovery by telephone and written report within three working days after receipt of certification of notification from the Commander.
  - d. Inform each notified tribe of the names of the other tribes being consulted.
  - e. Consult with the Cherokee and Catawba tribal entities about the cultural affiliation, treatment, and disposition of the remains and/or objects.

- f. Document the decisions made as a result of consultation in a written plan of action or implement a prior Comprehensive Agreement (CA) as specified in NAGPRA SOP #4A, Identification of Native American Remains, numbers 5 and 6.
- g. Carry out treatment and disposition of remains and/or objects as agreed upon in consultations according to the process outlined in NAGPRA SOP #4C.

## Appendix C: List Of Tribal Contacts

### Federally Recognized Indian Tribes

Cherokee Nation of Oklahoma

**Mr. Richard L. Allen**  
**Principal Chief**  
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