

University of Michigan

**Policies and Procedures
for the University of Michigan's NAGPRA Collections**

**NAGPRA Office
Office of the Vice President for Research**

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Text in red is verbatim language taken from the Federal regulations, 43 C.F.R. § Part 10, and *Federal Register* commentary related thereto.

NAGPRA Policies and Procedures—Approved and Issued April 6, 2026

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Preamble

The University of Michigan is committed to full compliance with the Native American Graves Protection and Repatriation Act (NAGPRA) and the return of all Native American Ancestors, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony in accordance with the law. As the University honors its legal requirements, it is equally committed to completing this work in a careful and respectful manner with Native Nation partners. In so doing, the University trusts that its efforts are not only complying with the requirements of the law, but also helping to restore and renew the close relationships that are integral to the University's history and purpose. The University aims to contribute to meaningful collaborations with Native Nations, communities, and individuals in the future.

Though precision and the language of NAGPRA and its concurrent Federal regulations require the use of terms that carry specific legal definitions, the University recognizes and respects that the people to whom such terms refer are the Ancestors of many with whom we are working on these issues. The University intends no disrespect from the necessary use of legal language or the format of this document.

General Principles and Policy Statement of the University

The University endeavors to be respectful of lineal descendants, Indian Tribes, and Native Hawaiian organizations¹ whose Ancestral human remains and Associated Funerary Objects, Unassociated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony (the latter four groups of objects will be hereafter referred to as "cultural items"²) may be in the possession of its Collections-Holding Units (hereafter referred to as "CHU" or "CHUs"). Moreover, the University strives to assure all interested parties that all holdings and collections currently in the custody of the University are cared for and treated in a dignified and respectful manner. It is the University's intent and policy to comply fully with the NAGPRA (Public Law 25 U.S.C. § 3001 et seq. (1990), 104 Stat. 3042, P.L. 101-106), its concurrent Federal regulations (43 C.F.R. § 10), and all subsequent amendments.

CHUs at the University maintain holdings and collections from a range of cultures as a public trust for the University and the people of the State of Michigan. These CHUs are responsible for preserving all holdings and collections according to professional museum standards, while fulfilling the University's mission to provide education and understanding about humanity's past and present.

The University also recognizes that lineal descendants, Indian Tribes, and Native Hawaiian organizations have legal, ethical, cultural, and religious interests that must be acknowledged and considered in determining what is proper and respectful care, treatment, handling, exhibition, use, and disposition of Native American holdings and collections in its custody.

¹ This document uses the regulatory definitions for the terms "lineal descendants," "Indian Tribes," and "Native Hawaiian organizations." (See the "NAGPRA Definitions" section of this document.)

² The term "cultural items" is defined in the Federal law (Public Law 25 U.S.C. § 3001) and regulations (43 C.F.R. § 10.2).

Text in red is verbatim language taken from the Federal regulations, 43 C.F.R. § Part 10, and *Federal Register* commentary related thereto.

The University acknowledges and respects the rights of lineal descendants, Indian Tribes, and Native Hawaiian organizations. It will strive to maintain the confidentiality of all details related to consultations and repatriations to the extent possible under all applicable law (43 C.F.R. § 10). This includes the exchange of any information related to communications and assessments required within the NAGPRA process, until the repatriation action is finalized, unless the release of this information is legally required or approved through written permission of the pertinent lineal descendant(s), Indian Tribe(s), or Native Hawaiian organization(s) (hereafter referred to as the “Consulting Parties”).

This document presents the University’s policies and procedures for the implementation of, and compliance with, NAGPRA as it pertains to Native American Ancestral human remains and cultural items as defined in the Federal law and regulations.

Governance and Authorizations

The President and Regents of the University of Michigan have delegated authority concerning NAGPRA-related issues to the Vice President for Research and Innovation (VPRI). The Office of the Vice President for Research (OVPR) has established the University of Michigan NAGPRA Office (UMNO), organized within OVPR, to operate with the authority of the VPRI on all NAGPRA-related matters at the University of Michigan in Ann Arbor, as well as the two branch campuses, University of Michigan–Dearborn and University of Michigan–Flint.

CHUs at the University have distinct roles and responsibilities. The CHUs function as stewards of Native American holdings and collections. Some of these holdings and collections may, through review and consultation, be determined to be subject to the requirements of NAGPRA, while they are in the custody of the University. Holdings or collections that, in consultation with the UMNO, have been identified as NAGPRA-related or potentially NAGPRA-related, in whole or in part, will be subject to the requirements of the Federal law and regulations, as well as the University’s NAGPRA policies and procedures, until a final determination of their NAGPRA status has been made through consultation with the Consulting Parties.

Each CHU is organized under the general administrative authority—including control over the CHU’s finances, facilities, policies and procedures—of either the Office of the Provost (Provost’s Office); College of Literature, Science, and the Arts (College of LSA); or Office of the Executive Vice President of Medical Affairs (Medical Affairs Office). All CHUs and their administrative authorities are responsible for communicating and coordinating with the VPRI, OVPR, and the UMNO on all potentially NAGPRA-related matters.

Office of the Vice President for Research (OVPR)

The VPRI has the authority to establish institutional policies and procedures, as well as the authority over all final decisions concerning NAGPRA-related matters, as part of NAGPRA compliance. This includes requiring the deaccessioning of holdings and collections from the University that are determined to be subject to the requirements of NAGPRA.

Text in red is verbatim language taken from the Federal regulations, 43 C.F.R. § Part 10, and *Federal Register* commentary related thereto.

All communications from the University, and on behalf of the University, relating to NAGPRA are made through the OVPR or under its direction through the UMNO. Similarly, all questions concerning NAGPRA-related matters involving the University, including requests for information, consultation, and repatriation, are to be directed to OVPR—specifically, to the UMNO, whose staff are in charge of managing NAGPRA-related affairs for the University.

NAGPRA Advisory Committee

The VPRI has established the University’s NAGPRA Advisory Committee to recommend operating policies and procedures, and otherwise advise on specific NAGPRA-related matters as needed or specifically requested by the VPRI.

- The Committee consists of individuals with broad perspectives on University and NAGPRA-related matters.
 - The Associate Vice President for Research: Social Sciences, Humanities, and the Arts, serves as Chair of the Committee.
 - The Director of University of Michigan Museum of Anthropological Archaeology, where most NAGPRA-related or potentially NAGPRA-related holdings and collections are housed, is an *ex officio* member with a vote.
 - The NAGPRA Office Managing Director is an *ex officio* member without a vote.
- The VPRI appoints other members of the Committee to renewable, fixed terms of three years in length. Terms of service will be staggered to ensure a reasonable continuity of membership from year-to-year. Efforts will be made to ensure a range of relevant backgrounds and perspectives.
 - At least one member of the Committee will be selected from outside the University and will be a Tribal Representative, chosen so as to enhance Committee deliberations by including Tribal perspective and expertise on matters brought before the Committee from the perspective of potential lineal descendants and Indian Tribes/Native Hawaiian organizations who engage with the University.
- The NAGPRA Advisory Committee may establish subcommittees or *ad hoc* committees as needed to fulfill its charge.
- The VPRI has the authority to make interim or alternate appointments to these roles as needed.

Office of the General Counsel (OGC)

The OGC provides timely and responsible legal advice about the broad array of legal issues facing a modern public research university. This advice includes analysis of requirements under Federal and

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state law (including NAGPRA and its implementing regulations), as well as counsel regarding legal risks.

Collections-Holding Units (CHUs)

NAGPRA's requirements apply to the University as a whole. This includes administrative units and CHUs at the University of Michigan–Dearborn and University of Michigan–Flint as well as at the University of Michigan–Ann Arbor.

The Provost's Office, College of LSA, and Medical Affairs Office are responsible for all functional and academic aspects of the CHUs under their oversight, including the stewardship, care, and treatment of holdings and collections in their custody; appointment of curators; and curriculum. All CHUs and their administrative authorities are responsible for communicating and coordinating with the VPRI, OVPR, and the UMNO on all potentially NAGPRA-related matters.

University of Michigan NAGPRA Office (UMNO)

The UMNO resides within OVPR and it operates with the authority of the VPRI. The Associate Vice President for Research for Social Sciences, Humanities, and the Arts is responsible for supervising all UMNO staff as members of OVPR. The UMNO Managing Director is responsible for supervising NAGPRA staff members in their day-to-day NAGPRA-related work and guiding the overall direction of NAGPRA compliance efforts for the University. The NAGPRA Office Associate Manager, Collections, is responsible for assuming the UMNO Managing Director's supervisory duties if the UMNO Managing Director is absent.

General responsibilities of the UMNO include

- Stay informed on NAGPRA and its supporting regulations to advise the University on matters of compliance.
- Account for and review all NAGPRA-related or potentially NAGPRA-related holdings and collections at the University.
- Direct, guide, coordinate, and assist in amassing records and information at the University, including all relevant CHUs and branch campuses, concerning NAGPRA-related or potentially NAGPRA-related holdings and collections.
- Oversee access to, and direct and advise on the stewardship, care, and treatment of, NAGPRA-related or potentially NAGPRA-related holdings and collections at the University, including all relevant CHUs and branch campuses.
- Prepare and complete NAGPRA consultations and repatriations.

- Address questions concerning NAGPRA policies and procedures, as well as NAGPRA-related or potentially NAGPRA-related holdings and collections at the University, including all relevant CHUs and branch campuses.
- Serve as liaisons for building and maintaining relationships between lineal descendants, Indian Tribes, Native Hawaiian organizations, OVPR, CHUs (including related administrative units, offices, departments, and programs), the National NAGPRA Program, and other stakeholders as needed or required.
- Address matters arising that concern NAGPRA at the University.
- Provide education and information, both internally to the University and externally to the wider public, on NAGPRA, and how NAGPRA compliance and related efforts are conducted at the University.

UMNO Staff

- NAGPRA Office Managing Director
- NAGPRA Office Associate Manager, Collections
- NAGPRA Associate, Registrar and Records
- NAGPRA Associate, Communications and Coordination
- NAGPRA Interns

University of Michigan Museum of Anthropological Archaeology (UMMAA)

- The UMMAA is the primary CHU at the University with NAGPRA-related or potentially NAGPRA-related holdings and collections. The Director, Associate Director, and Collections Managers (which currently includes two General Collections Managers and one NAGPRA Compliance Specialist) communicate and coordinate directly with UMNO staff.
- The UMMAA's NAGPRA Compliance Specialist will serve as the main Point-of-Contact between the UMMAA and UMNO on NAGPRA-related matters. The UMMAA's NAGPRA Compliance Specialist communicates, coordinates, and assists the UMNO with NAGPRA-related responsibilities and related work. This includes the proper and respectful care and treatment of NAGPRA-related or potentially NAGPRA-related holdings and collections in the UMMAA's custody in accordance with the requirements of NAGPRA and its concurrent regulations, as well the University's *NAGPRA Policies and Procedures*.
- The UMMAA's General Collections Managers and Interns may also be asked by the UMNO to assist with NAGPRA-related responsibilities and related work as needed.
- UMMAA staff are also expected to fulfill the duties and responsibilities described for CHUs.

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CHU Points-of-Contact and Staff

- CHU Points-of-Contact – Each CHU that has, or may have, NAGPRA-related or potentially NAGPRA-related holdings and collections, as well as any related records or information, is responsible for designating at least one Point-of-Contact for communication and coordination purposes. A CHU Point-of-Contact will:
 - Serve as a point-of-contact with the UMNO on all NAGPRA-related matters in their Unit.
 - Facilitate communication and coordination between the UMNO and their CHU regarding the implementation of the guidance and direction provided by the UMNO concerning the University’s NAGPRA compliance efforts.
 - Oversee the management of NAGPRA-related or potentially NAGPRA-related holdings and collections, as well as all related records and information, in their CHU in accordance with NAGPRA and its concurrent regulations, as well as the University’s *NAGPRA Policies and Procedures*.
 - Participate in NAGPRA-related consultations and repatriations as needed and requested by the UMNO.
- CHU Staff – CHUs typically have directors, curators, collections managers, interns, and other staff members who help carry out the daily operations of the CHU and fulfill its larger mission at the University. All members of the CHU staff are expected to communicate and coordinate with the CHU Point-of-Contact for their CHU who will, in turn, communicate and coordinate with the UMNO on all NAGPRA-related matters. This includes the proper and respectful care and treatment of NAGPRA-related or potentially NAGPRA-related holdings and collections in the CHU’s custody in accordance with the requirements of NAGPRA and its concurrent regulations, as well the University’s *NAGPRA Policies and Procedures*.
- **Note:** *CHU Points-of-Contact and CHU staff should contact the UMNO staff directly if they have any questions or concerns related to NAGPRA compliance.*

NAGPRA Definitions

The University adheres to the definition of terms provided in the NAGPRA regulations (43 C.F.R. § 10.2). ***Please note that the definition of some terms have changed under the revised regulations.*** The current definitions are as follows:³

Act means the Native American Graves Protection and Repatriation Act.

Ahupua’a (singular and plural) means a traditional land division in Hawai’i usually extending from the uplands to the sea.

³ Language quoted verbatim from the Federal regulations is noted in red text throughout the University’s *NAGPRA Policies and Procedures* document.

Text in red is verbatim language taken from the Federal regulations, 43 C.F.R. § Part 10, and *Federal Register* commentary related thereto.

Appropriate official means any representative authorized by a delegation of authority within an Indian Tribe, Native Hawaiian organization, Federal agency, or Department of Hawaiian Home Lands (DHHL) that has responsibility for human remains or cultural items on Federal or Tribal lands.

ARPA means the Archaeological Resources Protection Act of 1979, as amended (16 U.S.C. 470aa-mm) and the relevant Federal agency regulations implementing that statute.

ARPA Indian lands means lands of Indian Tribes, or individual Indians, which are either held in trust by the United States Government or subject to a restriction against alienation imposed by the United States Government, except for any subsurface interests in lands not owned or controlled by an Indian Tribe or an individual Indian.

ARPA Public lands means lands owned and administered by the United States Government as part of:

- (1) The national park system,
- (2) The national wildlife refuge system,
- (3) The national forest system, and
- (4) All other lands the fee title to which is held by the United States Government, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution.

Assistant Secretary means the official of the Department of the Interior designated by the Secretary of the Interior as responsible for exercising the Secretary of the Interior's authority under the Act.

Consultation or consult means the exchange of information, open discussion, and joint deliberations made between all parties in good-faith and in order to:

- (1) seek, discuss, and consider the views of all parties;
- (2) strive for consensus, agreement, or mutually acceptable alternatives; and
- (3) enable meaningful consideration of the Native American traditional knowledge of lineal descendants, Indian Tribes, and Native Hawaiian organizations.

Cultural affiliation means there is a reasonable connection between human remains or cultural items and an Indian Tribe or Native Hawaiian organization based on a relationship of shared group identity. Cultural affiliation may be identified clearly by the information available or reasonably by the geographical location or acquisition history of the human remains or cultural items.

Cultural items means a funerary object, sacred object, or object of cultural patrimony according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization.

Custody means having an obligation to care for the object or item but not a sufficient interest in the object or item to constitute possession or control. In general, custody through a loan, lease, license, bailment, or other similar arrangement is not a sufficient interest to constitute possession or control, which resides with the loaning, leasing, licensing, bailing, or otherwise transferring museum or Federal agency.

Discovery means exposing, finding, or removing human remains or cultural items whether intentionally or inadvertently on Federal or Tribal lands without a written authorization for an excavation under §10.6 of this part.

Disposition means an appropriate official recognizes a lineal descendant, Indian Tribe, or Native Hawaiian organization has ownership or control of human remains or cultural items removed from Federal or Tribal lands.

Excavation means intentionally exposing, finding, or removing human remains or cultural items on Federal or Tribal lands with a written authorization under §10.6 of this part.

Federal agency means any department, agency, or instrumentality of the United States Government. This term does not include the Smithsonian Institution.

Federal lands means any lands other than Tribal lands that are controlled or owned by the United States Government. For purposes of this definition, control refers to lands not owned by the United States Government, but in which the United States Government has a sufficient legal interest to permit it to apply these regulations without abrogating a person's existing legal rights. Whether the United States Government has a sufficient legal interest to control lands it does not own is a legal determination that a Federal agency must make on a case-by-case basis. Federal lands include:

- (1) Any lands selected by, but not yet conveyed to, an Alaska Native Corporation organized under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);
- (2) Any lands other than Tribal lands that are held by the United States Government in trust for an individual Indian or lands owned by an individual Indian and subject to a restriction on alienation by the United States Government; and
- (3) Any lands subject to a statutory restriction, lease, easement, agreement, or similar arrangement containing terms that grant to the United States Government indicia of control over those lands.

Funerary object means any object reasonably believed to have been placed intentionally with or near human remains. A funerary object is any object connected, either at the time of death or later, to a death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. This term does not include any object returned or distributed to living persons according to traditional custom after a death rite or ceremony. Funerary objects are either associated funerary objects or unassociated funerary objects.

(1) *Associated funerary object* means any funerary object related to human remains that were removed and the location of the human remains is known. Any object made exclusively for burial purposes or to contain human remains is always an associated funerary object regardless of the physical location or existence of any related human remains.

(2) *Unassociated funerary object* means any funerary object that is not an associated funerary object and is identified by a preponderance of the evidence as one or more of the following:

(i) Related to human remains but the human remains were not removed, or the location of the human remains is unknown,

(ii) Related to specific individuals or families,

(iii) Removed from a specific burial site of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization, or

(iv) Removed from a specific area where a burial site of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization is known to have existed, but the burial site is no longer extant.

Holding or collection means an accumulation of one or more objects, items, or human remains for any temporary or permanent purpose, including:

- (1) Academic interest,
- (2) Accession,
- (3) Catalog,
- (4) Comparison,
- (5) Conservation,
- (6) Education,
- (7) Examination,
- (8) Exhibition,
- (9) Forensic purposes,
- (10) Interpretation,
- (11) Preservation,
- (12) Public benefit,

- (13) Research,
- (14) Scientific interest, or
- (15) Study.

Human remains means any physical part of the body of a Native American individual. This term does not include human remains to which a museum or Federal agency can prove it has a right of possession.

- (1) Human remains reasonably believed to be comingled with other materials (such as soil or faunal remains) may be treated as human remains.
- (2) Human remains incorporated into a funerary object, sacred object, or object of cultural patrimony are considered part of the cultural items rather than human remains.
- (3) Human remains incorporated into an object or item that is not a funerary object, sacred object, or object of cultural patrimony are considered human remains.

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 (43 U.S.C. 1601 et seq.)), recognized as eligible for the special programs and services provided by the United States Government to Indians because of their status as Indians by its inclusion on the list of recognized Indian Tribes published by the Secretary of the Interior under the Act of November 2, 1994 (25 U.S.C. 5131).

Inventory means a simple itemized list of any human remains and associated funerary objects in a holding or collection that incorporates the results of consultation and makes determinations about cultural affiliation.

Lineal descendant means:

- (1) A living person tracing ancestry, either by means of traditional Native American kinship systems, or by the common-law system of descent, to a known individual whose human remains, funerary objects, or sacred objects are subject to this part; or
- (2) A living person tracing ancestry, either by means of traditional Native American kinship systems, or by the common-law system of descent, to all the known individuals represented by comingled human remains (example: the human remains of two individuals have been comingled, and a living person can trace ancestry directly to both of the deceased individuals).

Manager, National NAGPRA Program, means the official of the Department of the Interior designated by the Secretary of the Interior as responsible for administration of the Act and this part.

Museum means any institution or State or local government agency (including any institution of higher learning) that has possession or control of human remains or cultural items and receives Federal funds. The term does not include the Smithsonian Institution.

Native American means of, or relating to, a Tribe, people, or culture that is indigenous to the United States. To be considered Native American under this part, human remains or cultural items must bear some relationship to a Tribe, people, or culture indigenous to the United States.

(1) A Tribe is an Indian Tribe.

(2) A people comprise the entire body of persons who constitute a community, Tribe, nation, or other group by virtue of a common culture, history, religion, language, race, ethnicity, or similar feature. The Native Hawaiian Community is a “people.”

(3) A culture comprises the characteristic features of everyday existence shared by people in a place or time.

Native American traditional knowledge means knowledge, philosophies, beliefs, traditions, skills, and practices that are developed, embedded, and often safeguarded by or confidential to individual Native Americans, Indian Tribes, or the Native Hawaiian Community. Native American traditional knowledge contextualizes relationships between and among people, the places they inhabit, and the broader world around them, covering a wide variety of information, including, but not limited to, cultural, ecological, linguistic, religious, scientific, societal, spiritual, and technical knowledge. Native American traditional knowledge may be, but is not required to be, developed, sustained, and passed through time, often forming part of a cultural or spiritual identity. Native American traditional knowledge is expert opinion.

Native Hawaiian organization means any organization that:

(1) Serves and represents the interests of Native Hawaiians, who are descendants of the indigenous people who, before 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawai‘i;

(2) Has as a primary and stated purpose the provision of services to Native Hawaiians; and

(3) Has expertise in Native Hawaiian affairs, and includes but is not limited to:

(i) The Office of Hawaiian Affairs established by the constitution of the State of Hawai‘i,

(ii) Native Hawaiian organizations (including ‘ohana) who are registered with the Secretary of the Interior’s Office of Native Hawaiian Relations, and

(iii) Hawaiian Homes Commission Act (HHCA) Beneficiary Associations and Homestead Associations as defined under 43 C.F.R. § 47.10.

Object of cultural patrimony means an object that has ongoing historical, traditional, or cultural importance central to a Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization. An object of cultural patrimony may have been entrusted to a caretaker, along with the authority to confer that responsibility to another caretaker. The object must be reasonably identified as being of such importance central to the group that it:

- (1) Cannot or could not be alienated, appropriated, or conveyed by any person, including its caretaker, regardless of whether the person is a member of the group, and
- (2) Must have been considered inalienable by the group at the time the object was separated from the group.

'Ohana (singular and plural) means a group of people who are not asserting that they are lineal descendants but comprise a Native Hawaiian organization whose members have a familial or kinship relationship with each other.

Person means:

- (1) An individual, partnership, corporation, trust, institution, association, or any other private entity; or
- (2) Any representative, official, employee, agent, department, or instrumentality of the United States Government or of any Indian Tribe or Native Hawaiian organization, or of any State or subdivision of a State.

Possession or control means having a sufficient interest in an object or item to independently direct, manage, oversee, or restrict the use of the object or item. A museum or Federal agency may have possession or control regardless of the physical location of the object or item. In general, custody through a loan, lease, license, bailment, or other similar arrangement is not a sufficient interest to constitute possession or control, which resides with the loaning, leasing, licensing, bailing, or otherwise transferring museum or Federal agency.

Receives Federal funds means an institution or State or local government agency (including an institution of higher learning) directly or indirectly receives Federal financial assistance after November 16, 1990, including any grant; cooperative agreement; loan; contract; use of Federal facilities, property, or services; or other arrangement involving the transfer of anything of value for a public purpose authorized by a law of the United States Government. This term includes Federal financial assistance provided for any purpose that is received by a larger entity of which the institution or agency is a part. For example, if an institution or agency is a part of a State or local government or a private university, and the State or local government or private university receives Federal financial assistance for any purpose, then the institution or agency receives Federal funds for the purpose of these regulations. This term does not include procurement of

property or services by and for the direct benefit or use of the United States Government or Federal payments that are compensatory.

Repatriation means a museum or Federal agency relinquishes possession or control of human remains or cultural items in a holding or collection to a lineal descendant, Indian Tribe, or Native Hawaiian organization.

Review Committee means the advisory committee established under the Act.

Right of possession means possession or control obtained with the voluntary consent of a person or group that had authority of alienation. Right of possession is given through the original acquisition of:

- (1) An unassociated funerary object, a sacred object, or an object of cultural patrimony from an Indian Tribe or Native Hawaiian organization with the voluntary consent of a person or group with authority to alienate the object; or
- (2) Human remains or associated funerary objects which were exhumed, removed, or otherwise obtained with full knowledge and consent of the next of kin or, when no next of kin is ascertainable, the official governing body of the appropriate Indian Tribe or Native Hawaiian organization.

Sacred object means a specific ceremonial object needed by a traditional religious leader for present-day adherents to practice traditional Native American religion, according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. While many items might be imbued with sacredness in a culture, this term is specifically limited to an object needed for the observance or renewal of a Native American religious ceremony.

Summary means a written description of a holding or collection that may contain an unassociated funerary object, sacred object, or object of cultural patrimony.

Traditional religious leader means a person needed to practice traditional Native American religion, according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization.

Tribal lands means:

- (1) All lands that are within the exterior boundaries of any Indian reservation,
- (2) All lands that are dependent Indian communities, and
- (3) All lands administered by the Department of Hawaiian Home Lands (DHHL) under the Hawaiian Homes Commission Act of 1920 (HHCA, 42 Stat. 108) and Section 4 of the Act to

Provide for the Admission of the State of Hawai'i into the Union (73 Stat. 4), including "available lands" and "Hawaiian home lands."

Tribal lands of an NHO means Tribal lands in Hawai'i that are under the stewardship of a Native Hawaiian organization through a lease or license issued under HHCA section 204(a)(2), second paragraph, second proviso, or section 207(c)(1)(B).

Unclaimed human remains or cultural items means human remains or cultural items removed from Federal or Tribal lands whose disposition has not occurred under this part.

United States means the 50 States and the District of Columbia.

University Compliance Efforts and Organization

NAGPRA's implementing regulations have been periodically revised since NAGPRA first became law on November 16, 1990. Similarly, the University has developed and revised its policies and procedures to comport with the regulatory requirements as they evolve and with guidance from the National NAGPRA Program as it is provided. The University's approach strives to blend high professional standards and respectful cooperation with its Native Nation partners. What follows is a detailed description of the University's approach to ongoing NAGPRA compliance work in light of the revised Federal regulations that went into effect on January 12, 2024.

Duty of Care (43 C.F.R. § 10.1(d)(1)-(3))

The revised NAGPRA regulations include Duty of Care wherein the University must:

1. Consult with lineal descendants, Indian Tribes, or Native Hawaiian organizations on the appropriate storage, treatment, or handling of human remains or cultural items;
2. Make a reasonable and good-faith effort to incorporate and accommodate the Native American traditional knowledge of lineal descendants, Indian Tribes, or Native Hawaiian organizations in the storage, treatment, or handling of human remains or cultural items; and
3. Obtain free, prior, and informed consent from lineal descendants, Indian Tribes, or Native Hawaiian organizations prior to allowing any exhibition of, access to, or research on human remains or cultural items. Research includes, but is not limited to, any study, analysis, examination, or other means of acquiring or preserving information about human remains or cultural items.

All Native American holdings and collections at the University from the U.S. or North America, including related records and information, are subject to review, as advised or requested, by the UMNO as well as Consulting Parties to determine if particular holdings and collections are subject to the requirements of NAGPRA. Both NAGPRA eligibility and Duty of Care are determined during the consultative process. CHUs should contact the UMNO for clarification or confirmation of the

NAGPRA-related or potentially NAGPRA-related status of particular holdings and collections as needed.

Note: *Before granting access to holdings and collections for consultation, the University may request:*

- *Genealogical documentation of lineal descent status to ensure that the requestors match the criteria by which the University determines lineal descent. (See Comment 41, 43 C.F.R. Part 10, Final Rule, December 13, 2023.) See also “Determining Lineal Descent” section of this document below.*
- *Formal authorization of Tribal NAGPRA Representatives to ensure that the individual(s) the University is speaking with are acting at the direction, or with the consent, of the Indian Tribe or Native Hawaiian organization, as sovereign entities, making a request.*

Duty of Care serves as a baseline for the University’s NAGPRA compliance activities. As informed and guided by the legal requirements of Duty of Care, as well as by commentary and additional guidance provided by the National NAGPRA Program, the University and its CHUs have developed and will observe the policies and procedures described in this document.

Facilities and Security⁴

Care and Treatment of NAGPRA-related and Potentially NAGPRA-related Holdings and Collections

The UMNO will coordinate with CHUs regarding facilities, or spaces within facilities, where NAGPRA-related or potentially NAGPRA-related holdings and collections are held and how they are stored to ensure the locations are respectful, safe, and secure. As NAGPRA-related holdings and collections are identified through consultations and Duty of Care is discussed, UMNO staff will also coordinate with CHUs to develop or update storage, housing, and access protocols accordingly.

As a baseline for care and treatment of NAGPRA-related or potentially NAGPRA-related holdings and collections, the UMNO and CHUs will observe the following policies and procedures:

- Access to facilities, or spaces (e.g., rooms, cabinets, shelves, etc.) within those facilities, where NAGPRA-related or potentially NAGPRA-related holdings and collections are stored and housed will be limited to the UMNO staff and designated CHU staff that have been identified to the UMNO in advance.

⁴ The following terms, as used in this document, are generally understood to mean the following: “*Facilities:*” Building(s) in which holdings and collections are stored, along with associated systems of building management (security, HVAC, climate control, etc). “*Storage:*” Room(s) within buildings in which holdings and collections are stored, including systems of organization (shelves, cabinets, etc). “*Housing:*” Box or container in which holdings and collections are held and stored, including systems of packing (acid free tissue, plastic bags, fabric wrapping, etc.).

Text in red is verbatim language taken from the Federal regulations, 43 C.F.R. § Part 10, and *Federal Register* commentary related thereto.

UMNO staff will coordinate with the CHUs that store NAGPRA-related or potentially NAGPRA-related holdings and collections to ensure that access to the holdings and collections themselves, as well as the locations where they are stored and materials in which they are housed, are controlled and monitored in accordance with the University's *NAGPRA Policies and Procedures* (which incorporate Federally mandated Duty of Care , University policies described in its Standard Practice Guide (www.spg.umich.edu), other applicable laws, and best museum practices.

- Ideally, most NAGPRA-related or potentially NAGPRA-related holdings and collections should be stored in rooms designated solely for this purpose. The University has provided, and will continue to provide as needed, dedicated work and storage spaces that are for NAGPRA-related or potentially NAGPRA-related holdings and collections. These dedicated spaces, and access thereto, will be directly overseen/managed by the UMNO.

However, due to spatial or climate control requirements, some NAGPRA-related or potentially NAGPRA-related holdings and collections may need to be stored in rooms and spaces (e.g., cabinets, shelves, etc.) within CHUs that also store or house non-NAGPRA-related holdings and collections. In those instances, arrangements will be coordinated between the UMNO and the CHU to control and monitor access.

- In UMNO-controlled spaces, a “Visitor’s Log” is maintained to keep track of access to rooms where NAGPRA-related or potentially NAGPRA-related holdings and collections are stored. An “Access Log” is also maintained on boxes to keep track of access to NAGPRA-related or potentially NAGPRA-related holdings and collections themselves. Rooms where NAGPRA-related or potentially NAGPRA-related holdings and collections are stored are secured with door locks and monitored using available University security systems under the auspices of the University’s Department of Public Safety. Housing for NAGPRA-related or potentially NAGPRA-related holdings and collections are generally sealed when in NAGPRA collections storage. The Access Log is updated to note when holdings and collections are accessed, then resealed after access has been completed.

CHUs where NAGPRA-related or potentially NAGPRA-related holdings and collections are stored are required to use the same or similar access procedures described above. CHUs must consult with the UMNO to approve access and security protocols, adapt them to the CHU’s facilities and spaces, or develop alternative procedures that may be needed to accommodate any issues or concerns specific to the CHU.

- Pursuant to regulatory requirements, Duty of Care is discussed with Consulting Parties, and will be honored to the best of the University’s abilities and within the limitations of the existing spaces. Specific requests under Duty of Care that may be difficult for the University to accommodate will be discussed with the Consulting Party(ies) in an effort to arrive at a mutually acceptable solution or arrangement.

- If NAGPRA-related or potentially NAGPRA-related holdings or collections are identified as being stored in a place or manner that may be considered inappropriate by the UMNO or Consulting Parties, the UMNO will coordinate with the CHU and any other pertinent University administrative units, offices, departments, or programs to determine where, and how, the NAGPRA-related or potentially NAGPRA-related holdings or collections should be secured within their current facilities, moved to new spaces within their current facilities, or moved to new facilities.
- The UMNO may need to coordinate with CHUs or others to change initial or existing arrangements if Consulting Party(ies) provide a new or update an existing Duty of Care.

Accessing and Re-inventorying NAGPRA-related and Potentially NAGPRA-related Holdings and Collections

Except in limited circumstances, Federal regulations, as well as guidance provided by the National NAGPRA Program, prohibit physically accessing holdings or collections that may be subject to the requirements of NAGPRA unless or until the relevant Consulting Parties have provided permission in accordance with Duty of Care (43 C.F.R. § 10.1(d)). The University is aware of only a few, specific exceptions provided in guidance by the National NAGPRA Program. (See the “Exceptions” section of this document.)

Accordingly, when completing NAGPRA compliance work, UMNO and CHU staff will rely solely on institutional records and information regarding NAGPRA-related or potentially NAGPRA-related holdings and collections unless or until Duty of Care has been obtained from Consulting Parties.

However, the University does recommend that Consulting Parties allow UMNO and CHU staff to physically access NAGPRA-related or potentially NAGPRA-related holdings and collections to confirm that what is present matches the informational labels, records, documentation, and reports on file. (This process will, hereafter, be referred to as “re-inventory.”) Re-inventories will be conducted on a strictly visual basis unless Consulting Parties request or consent to something more detailed as part of Duty of Care.

The purposes of completing the recommended re-inventories include:

- Update records by confirming that information is accurate, correcting information that is inaccurate, or adding information that is missing.
- Review and note information that may help Consulting Parties determine or confirm their Cultural Affiliation.
- Address any concerns over damaged, deteriorating, or inadequate storage that may pose a threat of potential loss or damage to the holdings and collections, or that otherwise may be seen as inappropriate by the UMNO or Consulting Parties.

- Identify/locate any potentially missing holdings or collections.
- Visually identify and physically separate unrecorded or unexpected holdings and collections that are intentionally or inadvertently commingled or housed together, but that are unrelated to each other, and may thereafter be transferred to separate Consulting Parties.

***Note:** Due to the history and nature of CHU holdings and collections, the University cannot guarantee that CHU records and housing labels are consistent with what is actually present in the holdings and collections without a re-inventory. Housing (e.g., boxes, bags, etc.) may hold additional and/or different collections and holdings that are not identified on box labels or that are not consistent with CHU informational labels, records, documentation, and reports.*

Consenting to authorizing a re-inventory helps ensure that NAGPRA-related or potentially NAGPRA-related holdings and collections are properly and respectfully placed in separate housing to help facilitate consultation and repatriation to the appropriate Consulting Parties.

UMNO or CHU staff will exercise their best, respectful discretion in determining which holdings and collections are replaced into original housing and which are placed into new housing when NAGPRA-related or potentially NAGPRA-related collections and holdings are separated following a re-inventory.

If inaccurate or incomplete labeling and/or records results in the unknowing or inadvertent access of a particular holding or collection that is then identified as being NAGPRA-related or potentially NAGPRA-related, that holding or collection will be set aside in a secure location, and UMNO Staff notified.

The UMNO staff will make a good-faith effort to request and obtain, in writing,⁵ Duty of Care as part of the consultation process. Once Duty of Care has been obtained, UMNO and CHU staff are permitted, pursuant to those arrangements, to physically access the particular NAGPRA-related or potentially NAGPRA-related holdings or collections for re-inventorying or other purposes that may have been specified or permitted within those arrangements (See “Duty of Care” section of this document.)

- Duty of Care protocols will be requested and obtained either before the initial consultation meeting or as part of the initial consultation meeting, unless otherwise instructed by the Consulting Parties. Duty of Care will be viewed as already obtained if a Tribe has made their requests known to the University via prior communications, consultations, or the like, even if those communications or consultations predate the new regulations. Consulting Parties can revise and update their Duty of Care at any time.

⁵ All references to “written” communications or communications made “in writing” throughout this document should be understood to include email, hard copy, or both depending on how intended recipients can be reached.

Text in red is verbatim language taken from the Federal regulations, 43 C.F.R. § Part 10, and *Federal Register* commentary related thereto.

- **Note:** *The University, and its UMNO and CHU staff, may not be able to undo specific actions that may have been taken either prior to the adoption of the new regulations, prior agreed upon Duty of Care being subsequently revised or updated, or prior to a Consulting Party's joining an ongoing consultation and raising specific requests for incorporation into the existing Duty of Care. However, the revisions, updates, and additions to the existing Duty of Care will be incorporated going forward from the time they are received and adopted.*
- If consultation is initiated with multiple Consulting Parties, the UMNO will attempt to reconcile or clarify Duty of Care, if it was obtained prior to the initial consultation meeting. Otherwise, the University typically encourages the Consulting Parties to discuss and approve Duty of Care together during the initial consultation meeting.
- If, after making a good-faith effort to request and obtain Duty of Care from all relevant Consulting Parties, at least one Consulting Party consents to allowing UMNO and CHU staff to physically access the NAGPRA-related or potentially NAGPRA-related holdings and collections, the UMNO and CHU staff will proceed with a re-inventory in accordance with the specified Duty of Care of the Consulting Party or Consulting Parties who have consented, even if there are others who have not yet responded or who do not have Duty of Care on file.
- If a Consulting Party has not yet established Duty of Care, and joins a consultation process after it has started, or otherwise engages in an ongoing consultation process, the UMNO will request and obtain Duty of Care from them at the time of their engagement to try to ensure there is consensus among the Consulting Parties.
- The UMNO and CHU staff will incorporate any new or updates to existing Duty of Care into ongoing re-inventories and general NAGPRA compliance work undertaken after the date of receipt of such new or updated arrangements.
- If the UMNO determines that there is no consensus on a particular aspect of Duty of Care it receives from multiple Consulting Parties, the UMNO and CHU staff will follow the most conservative approach until the Consulting Parties can reach a consensus, except in those cases where an approved re-inventory has already begun or has been completed.

Note: *UMNO staff may, as needed or requested, coordinate and facilitate communications between Consulting Parties in order to reach a consensus or otherwise clarify Duty of Care that will allow UMNO and CHU staff to complete a re-inventory or otherwise carry out their NAGPRA compliance work in a manner that best accords with the wishes of the Consulting Parties.*

- The UMNO will file the Duty of Care obtained from Consulting Parties for future use and reference going forward. If the UMNO initiates consultation with, or receives a consultation

request from, a Consulting Party whose Duty of Care is already on file, UMNO and CHU staff will proceed according to the Duty of Care already on file (i.e., passive consent) unless/until the Consulting Party changes, updates, or revokes that existing Duty of Care

- Consulting Parties can change, update, or revoke Duty of Care that the UMNO keeps on file at any time, for any reason, including on a case-by-case basis. The UMNO requests, however, that any such changes, updates, or revocations be confirmed in writing.
- If Duty of Care permits re-inventory, copies of all Human Remains Review Forms and Object Inventory Forms completed will be provided digitally to the Consulting Parties and future Consulting Parties.
- Hard copies of all Human Remains Re-inventory Forms and Object Inventory Forms completed will be kept in the UMNO's NAGPRA Site Files. These records will be scanned, and digital copies will be stored in a secure, non-public-facing manner. Copies of the scanned records may also be shared with the CHU where the holding or collections was held, for their records, with the understanding that the CHU should store these records in a secure, non-public-facing manner. U-M will retain these documents for recordkeeping purposes only, and the resulting information will not be made available for scholarly research. However these records may be used for future general and NAGPRA-related recordkeeping. U-M will do its best to protect sensitive information, but is required to comply with applicable laws, such as FOIA.

***Note:** Any access to⁶, or use of, collections or holdings that have been identified as NAGPRA-related or potentially NAGPRA-related for exhibition, teaching, or research analysis, whether destructive⁷ and non-destructive⁸, will not be permitted without the express written consent of the relevant Consulting Parties.*

Exceptions

The University strives to store and care for NAGPRA-related or potentially NAGPRA-related holdings and collections in facilities, in a manner that is respectful, professional, and secure. There may be instances, however, where NAGPRA-related or potentially NAGPRA-related holdings and collections need to be accessed to fulfill regulatory requirements or in response to a threat or emergency. In such instances and circumstances, UMNO and designated CHU staff will adhere to the following policies and procedures that have been informed by guidance from the National NAGPRA Program:

⁶ There may be rare cases where access to holdings or collections may be necessary when permission has not yet been obtained. (See the "Exceptions" section of this document.)

⁷ Destructive Analysis refers to types of analysis that utilize techniques in which a part of the holdings or collections are necessarily transformed or destroyed. For example, radiocarbon dating of a small piece of carbonized material (usually charcoal) is vaporized to record radioactive emissions. A variety of destructive techniques are used for such purposes of estimating age, determining physical and chemical composition, and genetic or molecular analysis.

⁸ Non-Destructive Analysis refers to types of analysis that utilize techniques in which no portion of the original holdings or collections are materially altered or damaged.

Text in red is verbatim language taken from the Federal regulations, 43 C.F.R. § Part 10, and *Federal Register* commentary related thereto.

Replace Damaged or Deteriorating Housing

- There may be instances where NAGPRA-related or potentially NAGPRA-related holdings and collections are identified as being stored in boxes, bags, jars, acid-free tissue paper, etc. that are damaged or deteriorating or otherwise inappropriate and, thus, pose a threat to their preservation and integrity due to a risk of damage or loss. In these instances, to ensure proper and respectful care, the UMNO, or designated CHU staff in coordination with the UMNO, may have to rehouse the NAGPRA-related or potentially NAGPRA-related holdings and collections using new storage materials. Decisions will be made by the UMNO, or designated CHU staff in coordination with the UMNO, on a case-by-case basis.

If time and circumstances permit, a good-faith effort will be made to contact the Consulting Parties to determine their preferences regarding replacement storage and housing, and preferred means and methods of disposal of the used packing materials before rehousing occurs. However, the UMNO staff, or CHU staff in coordination with the UMNO, may need to make interim decisions until Consulting Parties respond, or to make immediate decisions, without first contacting the Consulting Parties, in urgent or emergency circumstances. Wherever possible, the UMNO, or designated CHU staff in coordination with the UMNO, will, to the best of their ability, rely on specific requests, guidance, or instructions on file, or what may have been learned from prior consultations with Consulting Parties, to inform any urgent or interim decisions they make and actions they take in these situations.

Used packing material that is replaced due to damaged or deteriorating housing will be retained in accordance with University NAGPRA policy and procedure (see the “Transferring Used Storage and Packing Materials, and Tags and Cards” section of this document) unless its retention poses a potential threat to other holdings and collections at the University, a threat to the wider University storage spaces and facilities themselves, or a potential health or safety hazard to University personnel or guests.

Identify Contents If Unknown or Unclear

- Any storage or packing materials that house holdings and collections where the contents are unknown because the containers are unlabeled, the label is illegible, the label does not match records, or the label is crossed-out can be accessed for the limited purposes of identifying contents.

Additionally, because holdings and collections are often stored together in smaller packaging, or in boxes inside larger boxes that contain holdings and collections from multiple places of origin, physical access and visual identification may be required.

In these instances, only the following information will be noted:

- What is the holding or collection?

- What is the quantity? (If more than one.)
- Where is the holding or collection from? (This is applicable to those cases where this information can be determined from any labeling, tags, etc. that are directly on, affixed/attached to, or had been placed with an item that was not visually apparent or readable prior to accessing a container.)
- Is the holding or collection known to be NAGPRA-related or potentially NAGPRA-related (e.g., is it from a known NAGPRA-related or potentially NAGPRA-related site, is it a type of item known to be considered NAGPRA-related or potentially NAGPRA-related, etc.)?
 - If NAGPRA-relatedness or potential NAGPRA-relatedness of a holding or collection is identified under these circumstances, the holding or collection should be set aside in a secure location, and the UMNO notified as soon as possible.

Physically Separate and Rehouse Unrelated/Commingled Holdings and Collections

- In the course of completing a re-inventory, UMNO and CHU staff may identify NAGPRA-related holdings and collections from multiple sites that were intentionally housed together, or unexpectedly commingled together. In these instances, staff members will attempt to visually identify each holding or collection in an effort to confirm its origin and correct association for recordkeeping and collections management purposes. Holdings and collections that are not related to the ongoing re-inventory will then be physically separated and rehoused. If NAGPRA-related or potentially NAGPRA-related, this will help facilitate future consultation with the appropriate Consulting Parties.

***Note:** As of 2013, boxes previously used to house other holdings or collections have not been and will not be repurposed to hold human remains or cultural items. However, this may have occurred prior to that date, as may be apparent from old markings and labels on boxes.*

Imaging of NAGPRA-related and Potentially NAGPRA-related Holdings and Collections

Photographs, drawings, and other images catalog the presence, type, and condition of holdings and collections in the custody of the University over time. Images can also assist in the identification and review of holdings and collections, and in long-distance consultations with Consulting Parties or other experts who are unable to travel to the University.

At the same time, the University recognizes that the imaging of NAGPRA-related or potentially NAGPRA-related holdings and collections may be a sensitive matter to Consulting Parties. This concern is made more complicated by the fact that images can become objects of research in their own right, and can find their way into a circulation broader than record keepers had intended or envisioned.

The National NAGPRA Program has provided the following guidance on sensitive information (which the University believes would include images of NAGPRA-related or potentially NAGPRA-related holdings and collections):

In the proposed regulations and in these final regulations, the Department [of Interior] has taken steps to remove requirements for museums or Federal agencies to disclose sensitive information in an inventory, summary, or notice. While we cannot dictate how a museum or Federal agency responds to a request for disclosure of sensitive information, we encourage a museum or Federal agency, at the request of a lineal descendant, Indian Tribe, or NHO [Native Hawaiian organization], to ensure that information of a particularly sensitive nature is not made available to the public. Since 1995, the Department has recommended museum or Federal officials ensure that sensitive information does not become part of the public record by not collecting, or writing down, such information in the first place (1995 Final Rule, 60 FR 62154). (See *Comment 5*, 43 C.F.R. § Part 10, Final Rule, Wednesday, December 13, 2023.)

In light of the Federal regulations, National NAGPRA Program guidance, and the aforementioned considerations, the University will observe the following policies regarding imaging:

- **New Images:** Consistent with NAGPRA regulations 43 C.F.R. §§ 10.1(d)(3), 10.9(g)(1)(iii), 10.10(h)(1)(iii), the University will observe a general policy that prohibits the creation of *new images* of holdings and collections that have been identified as NAGPRA-related or potentially NAGPRA-related, unless such new images are requested by Consulting Parties or UMNO Staff for the purposes of identification and consultation, as set forth below.

Consulting Parties can request or consent to new images being created under Duty of Care. The circumstances under which UMNO and CHU staff can create new images, and the processes for doing so, include the following:

- A Consulting Party submits a written request for photographs, recorded video, or live video teleconferencing as a means of facilitating a requested consultation remotely.
- A Consulting Party submits a written request (an email is sufficient) to request photographs, recorded video, or live video teleconferencing to allow an expert to help consult on or identify a NAGPRA-related or potentially NAGPRA-related holding or collection.
- On rare occasions, UMNO or CHU staff may wish to request, in advance, permission to take digital photos of NAGPRA-related or potentially NAGPRA-related holdings or collections for a specified purpose such as reconciliation of multiple inventories/databases, accurate identification, prompt processing, or professional management. Such requests will be sent, in writing, to the Consulting Party(ies) that are actively consulting on the particular holdings or collections under consideration.

Note: *The University takes seriously the need to ensure that any new images created for the aforementioned purposes remain under strict control. In an effort to satisfy concerns over the control of images, UMNO and CHU staff will take the following precautions:*

- *Any newly created photographs or video recordings authorized pursuant to this policy will be made only in digital format unless a Consulting Party requests otherwise. Alternative formats will be discussed and mutual agreements made on a case-by-case basis.*
- *The University will consult with the Consulting Party on a case-by-case basis regarding the appropriateness and preferred strategies for using digital photographs, live/recorded video, or other media as part of a consultation.*
- *The University will use a range of strategies and techniques in any instances where the reproduction and/or dissemination of secure images are a concern. Such strategies and techniques can include: External storage devices (e.g., flash drives, external hard drives, compact discs), password-protected websites, “copy-protected” digital files, or other options agreeable to the Consulting Parties.*
 - *If a Consulting Party makes a request for the creation of new images, and an external storage device is used to store those new images, the University will give the external storage device to the Consulting Party making the request. The University will only retain digital copies of the new images created if the Consulting Party consents.*
 - *If a Consulting Party makes a request for new images, and they request an alternate means of delivery to an external storage device, the University will store the newly created digital images in a secure, non-public manner while conducting NAGPRA-related compliance activities. This will help limit access to these images until such time as they are filed, deleted/destroyed, or turned over to the Consulting Party, depending on the desire of the Consulting Party making the request, as part of the repatriation process.*
- *Typically, the University will not prohibit a Consulting Party from taking new photographs of their own during consultation. The University cannot, however, control any potential use of, or access to, these particular images, and therefore, the University is not responsible for any potential instances of their reproduction or dissemination.*
- *The University will use its best judgment when encountering any instances not addressed herein, keeping central the goal of adhering to Duty of Care in the Federal regulations and preventing the unauthorized creation, dissemination, and use of sensitive information or images (See Comment 5, 43 C.F.R. § Part 10, Final Rule, Wednesday, December 13, 2023.)*

Text in red is verbatim language taken from the Federal regulations, 43 C.F.R. § Part 10, and *Federal Register* commentary related thereto.

- *Pre-existing Images: CHUs may have, in their files or archives, existing images of NAGPRA-related or potentially NAGPRA-related collections. These images may have been included in publications or other contexts. These images could also still, potentially, be requested for use or publication.*

As a public institution, the University cannot legally prohibit access to, or prohibit the use or distribution of, pre-existing images if the request satisfies standard legal and professional protocols by which the University and its CHUs abide. See the University of Michigan’s FOIA Office [Procedures and Guidelines Document](#).

The University, through its UMNO staff working in coordination with CHU staff, will make a good-faith effort to ensure requests for access to, and the use or distribution of, pre-existing images are carefully reviewed, and respectful limitations are observed to the extent possible under all applicable laws, consistent with the Duty of Care in the Federal regulations and the aim of preventing the unauthorized creation, dissemination, and use of sensitive information or images 43 C.F.R. § 10.1(d).

Note: *If images were made prior to the passage of NAGPRA as Federal law or prior to a particular holding or collection being identified as NAGPRA-related or potentially NAGPRA-related, those images will generally be considered pre-existing. Any requests concerning these images will be reviewed on a case-by-case basis.*

Reviews will be made by each CHU, in consultation with other relevant offices at the University such as OVPR, UMNO, U-M FOIA Office, and OGC, as well as the University’s NAGPRA Advisory Committee and National NAGPRA Office as needed. The review process will take into account such factors as the specific action(s) being requested, the particular image(s) under consideration, the circumstances surrounding the creation of the particular image(s), as well as all applicable laws and legal responsibilities of the University.

Transferring Used Storage and Packing Materials, and Tags and Cards

Used Storage and Packing Materials: *If Duty of Care permits re-inventory, UMNO and CHU staff will, in good-faith and to the best of their ability, honor the requests, guidance, and instructions of the relevant Consulting Parties with respect to the storage and rehousing of holdings and collections. (See “Care and Treatment of NAGPRA-related or potentially NAGPRA-related Holdings and Collections (Including Storage, Housing, and Access)” section of this document for additional information.)*

- *If Duty of Care does not specify, and UMNO staff cannot clarify with Consulting Parties prior to the start of a permitted re-inventory, UMNO staff will exercise their best judgment as to whether any materials need to be placed underneath holdings and collections during re-inventory as a respectful and practical measure (i.e., ensuring against potential damage or loss). If materials are placed under holdings and collections, UMNO staff will use natural materials (e.g., paper, muslin, etc.). These materials will be retained and treated like used storage and packing materials.*

Text in red is verbatim language taken from the Federal regulations, 43 C.F.R. § Part 10, and *Federal Register* commentary related thereto.

- Once re-inventory has been completed, holdings and collections will be returned to their previously used storage and packing materials unless doing so would pose a threat of damage or loss (see “Exceptions” section of this document).
- Used storage and packing materials will generally be retained and offered to the Consulting Parties as part of the physical transfer of the holdings or collections.

Note: *The re-inventory of some holdings and collections may have already been initiated or completed prior to the adoption of the requirement to obtain Duty of Care prior to such a re-inventory under the revised NAGPRA regulations. Prior to these regulatory revisions, the University routinely replaced packing materials such as acid-free tissue, plastic bags, etc. with non-synthetic cloth. (Muslin was used as the default material unless Consulting Parties had specified otherwise.) Used packing materials were typically retained (unless they were deteriorated to the point of posing a threat to safety or of loss or damage) so that they could be offered to the Consulting Parties as part of the physical transfer of the holdings and collections with which they were associated.*

In light of the above, Consulting Parties should be aware that some holdings and collections may have already been wrapped in non-synthetic cloth or other accommodations made to provide for the respectful care of holdings and collections prior to, and in anticipation of, their repatriation.

- If the Consulting Parties decline the offer of any previously used storage or packing materials, the UMNO or CHU staff will seek guidance from the Consulting Parties about appropriate retention or disposal. If no guidance is provided, the UMNO or CHU may retain or dispose of them as they deem most appropriate.
- If a CHU cannot retain used storage and packing materials due to inadequate space in its facilities, UMNO will coordinate with the CHU and any other pertinent University offices, departments, or programs to find an alternative storage location that the CHU can utilize.

Note: *Any used storage or packing materials that may require immediate disposal due to a potential threat posed to other holdings and collections at the University, threat to the wider University storage spaces and facilities themselves, or a potential health or safety hazard to University personnel or guests will be addressed on a case-by-case basis in a manner consistent with the process described in the “Replace Damaged or Deteriorating Housing” section of this document.*

Tags and Cards: Tags and cards containing basic identification or background information are sometimes found attached to, or stored with, holdings and collections. Given the fact that these tags and cards were attached to, or stored with, human remains or cultural items that Consulting Parties might deem sacred, the University will offer the tags and cards to Consulting Parties as part of the Transfer of Physical Custody.

- Due to the existence of vital notes and records written on many of the boxes and bags, the UMNO or CHU staff may transcribe, scan, or digitally photograph these notes, records, markings, or labels before they are offered for transfer.

- If scans or digital photos are made, the UMNO and CHU will make sure that these images are focused and confined to the notes, records, markings, tags, or labels alone. They will take precautions and care to avoid any inadvertent imaging of human remains or cultural items.
- Consulting Parties will be offered copies of these transcriptions, scans, or digital photographs for any holdings or collections on which they consult.
 - A new label or tag may be affixed or attached to storage or packing materials to identify the holding or collection contained therein.
 - The items themselves will not be written on directly. That being said, such labeling practices were often used in the past, and so some items may have been previously labeled in that manner. In such cases, those markings will not be removed unless specifically requested by Consulting Parties, and only if the marking can be successfully removed without damaging the item.
 - New labels or tags will generally be affixed or attached to the outside of the containers, or placed securely with the item(s) (e.g., in a box or bag with the item(s) so that they cannot be separated from the item(s) unintentionally.

Inadvertent Access to NAGPRA-related and Potentially NAGPRA-related Holdings and Collections

University employees will make a good-faith effort to be mindful and respectful of NAGPRA-related facilities, spaces, and storage, as well as holdings and collections, in the course of their daily work. They will also make a good-faith effort to adhere to the requirements of the Federal regulations and the University’s NAGPRA policies and procedures limiting access to NAGPRA-related or potentially NAGPRA-related holdings or collections. However, it is possible that inadvertent or unknowing access to NAGPRA-related or potentially NAGPRA-related holdings and collections may occur.

Should CHU curators, staff, researchers, or other workers realize that they have inadvertently or unknowingly accessed NAGPRA-related or potentially NAGPRA-related holdings or collections, the access should be stopped (if it is ongoing), and the holdings or collections flagged and placed in a safe, secure location consistent with what is described in the “Facilities and Security” section of this document.

UMNO staff should then be notified as soon as possible to help provide further guidance.

Leaving Offerings With NAGPRA-related and Potentially NAGPRA-related Holdings and Collections in NAGPRA Storage Areas

Under Duty of Care, the University must “Consult with lineal descendants, Indian Tribes, or Native Hawaiian organizations on the appropriate storage, treatment, or handling of human remains or cultural items” and “[m]ake a reasonable and good-faith effort to incorporate and accommodate the

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Native American traditional knowledge of lineal descendants, Indian Tribes, or Native Hawaiian organizations in the storage, treatment, or handling of human remains or cultural items” (43 C.F.R. § 10.1(d)(1)-(2)).

- Advance written notice of three weeks (or at least as much time as possible) should typically be provided to UMNO staff so that proper arrangements can be made (e.g. deactivation of smoke detectors). Smudging ceremonies are typically not allowed in collection storage areas, but may take place in designated locations agreed upon by Consulting Parties and the University. Further discussions regarding smudging requests can be handled on a case-by-case basis as part of Duty of Care.
- Pursuant to Duty of Care, the University will try to accommodate all requests to leave offerings that can be reasonably met. However, the University also has a responsibility and obligation to protect all holdings and collections from the potential harm of pest infestations or other damage that may be introduced into facilities and storage areas where NAGPRA-related, potentially NAGPRA-related, and non-NAGPRA-related collections may be housed.
- With these concerns in mind, the University has summarized some basic practices and procedures related to leaving offerings with NAGPRA-related or potentially NAGPRA-related holdings and collections:
 - Consulting Parties desiring to leave an offering should consult with UMNO and CHU staff about the type of offering(s) they are requesting to leave and what types of arrangements (e.g., suitable containers, prior freezing for potential pest control, etc.) might be needed and mutually acceptable before any offerings are placed.
 - If offerings are left in an area where holdings and collections are stored, they must be placed in plastic bags or other sealed containers prior to being placed with holdings and collections. This is to facilitate the tracking of offerings, and to protect the holdings and collections, as well as the general storage area, from damage that could result from the possible infestation of rodents or insects.
 - The types of containers can vary depending on the type of offering and can include plastic bags, or sealable glass or plastic vessels, or jars.
 - This requirement applies to both liquids and perishable organic matter (such as food, seeds, corn, wood, animal skin, grasses, leaves, etc.), and non-perishable materials (such as beads, metals, shells, glass, stones, etc.).
 - Quickly perishable food offerings (such as fruit, spirit plate food, etc) will be removed at the end of the day in which they are placed, and disposed of in the manner indicated by the requestor/requestors.

- The responsibilities of leaving offerings, including any costs associated with offerings, rest solely with the Consulting Parties making the request. However, UMNO or CHU staff:
 - May need to assist the Consulting Parties at the time offerings are made for reasons of proper care, safety, and/or security.
 - May offer to assist with a request if, in their assessment, the request is something they believe they can fulfill (e.g., placing medicines with Ancestors, etc.) and the Consulting Parties consent to their assistance. The University reserves the right to document the consent.
- The University, UMNO, and CHUs will consider other arrangements or offering-related requests not addressed herein on a case-by-case basis. The UMNO will facilitate these discussions.
- For all offerings, the UMNO staff will assist the Consulting Parties in completing a copy of the University's Record of Offering Form.
 - The Consulting Parties will be asked to provide specific written information when completing the form. The form will record instructions for UMNO and CHU staff that have been discussed and mutually agreed to by the Consulting Parties and the UMNO and CHU staff, related to the placement location, duration, care, handling, and disposal of the offering(s). This will ensure that each offering is properly treated and tracked in a respectful and professional manner.
 - A temporary tracking number will be assigned to each offering and secured to the bag/container housing the offering.
 - The Consulting Parties leaving the offering will be given a copy of the completed Record of Offerings Form. The original copy of the completed form will be placed on file in the UMNO's and/or CHU's records. The offering(s) may also be logged into the UMNO's and/or CHU's databases for tracking purposes.
 - **Note:** *The University, UMNO, and CHUs appreciate that some requesting parties may consider some details or instructions related to the offerings to be of a sensitive nature. Therefore, they may wish to share these details or instructions orally and not have them recorded in specific detail on the Record of Offerings Form. In these instances, the UMNO and CHU staff will consult with the requesting party/parties to arrive at a mutually agreeable level of detail and instruction to record on the form.*
- UMNO and CHU staff will monitor all offerings at least weekly to ensure that insects, mold, leaking, or other concerns do not arise.

- If problems are noted during monitoring, UMNO or CHU staff may dispose of offerings based on protocols and procedures set forth in signed agreements with the Consulting Parties leaving the offering.
- UMNO and CHU staff should inform the Consulting Party that left the offering if/when an offering needs to be, or has been, removed.
- These instructions will be followed as recorded unless a problem arises (e.g., insects, mold, leaking, etc.), then the instructions will be reevaluated by the Consulting Parties and the UMNO and CHU staff.

Disaster Plans and Emergency Responses Requiring Access

- Nothing in these policies or procedures should be construed to preclude any University personnel or First Responders (e.g., police, firefighters, etc.) access to NAGPRA-related or potentially NAGPRA-related holdings and collections if there is an emergency (e.g., fire, flood, etc.) that places NAGPRA-related or potentially NAGPRA-related holdings and collections and/or associated records at risk of serious harm. In emergency situations, University personnel will follow the recommendations of First Responders.
- UMNO staff, led by the NAGPRA Associate Manager, Collections, will direct and coordinate a designated disaster response team as laid out in the PReP plan, and act as the point-of-contact with First Responders.
- UMNO and CHU staff will provide mutual support for disaster response as needed.
- UMNO and CHU staff will continue to have physical access to NAGPRA-related facilities, spaces, and storage, as well as holdings and collections, for the purpose of emergency response as best as they are able.

Accounting and Review of Native American Holdings and Collections

Reviewing and Updating Summaries and Inventories

The University has worked, and will continue to work, to make a thorough, accurate, and complete account of all Native American holdings and collections in its custody, as well as records and information related to those holdings and collections. However, some of the University's CHUs are old and large. Their holdings and collections have been acquired through a wide variety of means, over many years. CHU records and information for holdings and collections in their custody may be vague, minimal, incomplete, unreliable, missing, or nonexistent. Therefore, the UMNO may need to update the University's Summaries and Inventories that were previously submitted to the National NAGPRA Program.

Procedures for Creating Summaries and Itemized Lists

- *Summary* means a written description of a holding or collection that may contain an unassociated funerary object, sacred object, or object of cultural patrimony (43 C.F.R. § 10.2).
- *Inventory* means a simple itemized list of any human remains and associated funerary objects in a holding or collection that incorporates the results of consultation and makes determinations about cultural affiliation (43 C.F.R. § 10.2).

Whether particular Native American holdings and collections were previously reported or newly identified as NAGPRA-related or potentially NAGPRA-related, the University is committed to continuing the collaborative, transparent, and thorough process it has been actively engaged in with Consulting Parties. As the University adapts its ongoing compliance work to the revised NAGPRA regulations, the process of creating and updating Summaries and Inventories will proceed as follows:

- When preparing and updating Summaries and Itemized Lists, the University will rely solely on institutional records and information regarding NAGPRA-related or potentially NAGPRA-related holdings and collections unless or until the UMNO requests and obtains Duty of Care from at least one Consulting Party that includes their consent to a re-inventory of the particular holdings and collections under consultation. (See the “Accessing and Re-inventorying NAGPRA-related and Potentially NAGPRA-related Holdings and Collections” section of this document.)
- **Note:** *The University will use the term “Itemized List” to describe the list shared under Step 1 of the consultation process. A good-faith effort will be made to make Itemized Lists as comprehensive as possible. However, it is possible that additional holdings or collections may be identified that are currently unknown, not located, or that otherwise had not been previously identified as NAGPRA-related or potentially NAGPRA-related. These instances will be handled on a case-by-case basis in light of whether a Notice of Inventory Completion has already been published. (See also the “Accessing and Re-inventorying NAGPRA-related and Potentially NAGPRA-related Holdings and Collections” of this document.)*
- As part of this process, UMNO and (as needed) CHU staff will:
 - Preliminarily assess and classify (i.e., Associated/Unassociated Funerary Object, Sacred Object, or Object of Cultural Patrimony) NAGPRA’s potential applicability to holdings and collections, including any newly identified/previously unreported holdings and collections.
 - **Note:** *Assessments and classifications will be reviewed and confirmed for those particular holdings and collections that were identified and reported to the National NAGPRA Office during the University’s original NAGPRA compliance work following the passage of the law in 1990.*
 - Confirm or provide the bases for these preliminary assessments and classifications.

Text in red is verbatim language taken from the Federal regulations, 43 C.F.R. § Part 10, and *Federal Register* commentary related thereto.

- Determine Consulting Parties with whom to initiate consultation for particular holdings and collections.

Note: *Throughout this process, it is likely that the University will need to update its NAGPRA records and information previously reported to the National NAGPRA Program to ensure they are accurate, complete, and align with current Federal regulations.*

The University will adhere to the assessment and classification of any holdings or collections previously recorded and reported to the National NAGPRA Program unless consultations with Consulting Parties result in a mutually agreed upon reassessment of a particular holding or collection as not being NAGPRA-related, or a reclassification of a NAGPRA-related holding or collection as falling under a different NAGPRA regulatory classification.

Going forward, because of the number and diverse organizational structures of the various CHUs, and the scope and scale of the University's holdings and collections, it is possible that Native American holdings and collections may be newly identified during the course of daily work and future activities (e.g., collection moves, cataloging projects, etc.). CHUs must report newly identified Native American holdings and collections to the UMNO as soon as possible after they are identified so that they can be reviewed for their potential NAGPRA-relatedness.

Pursuant to deadlines noted in the NAGPRA regulations for Summaries (43 C.F.R. § 10.9(a)(2)) and Inventories/Itemized Lists (43 C.F.R. § 10.10(d)(2)), for any new holdings and collections that may be identified as NAGPRA-related or potentially NAGPRA-related, the University will report any required updates to relevant Consulting Parties and the Manager of the National NAGPRA Program.

Procedures for Consultations

As preliminary Summaries and Itemized Lists are prepared, the UMNO will Initiate Consultation on the NAGPRA-related or potentially NAGPRA-related holdings and collections with the relevant Consulting Parties.

- The UMNO typically conducts consultations in-person, virtually, or by telephone. Hybrid consultations, using some combination of these means, are also feasible. The UMNO and Consulting Parties will discuss mutually acceptable means of conducting consultations, and the UMNO will, to the best of their ability, accommodate all reasonable requests.
- Consultations on a given holding or collection will usually be organized with all relevant Consulting Parties collectively for efficiency. However, the University will also offer and honor requests for separate consultations from Consulting Parties:
 - To accommodate the needs and schedules of individual Consulting Parties.

- As an acknowledgment of the rights of lineal descendants and sovereignty of Indian Tribes and Native Hawaiian organizations.

Pursuant to 43 C.F.R. §§ 10.9(c)(2) and 10.10(c)(2), and to frame the consultative process, the UMNO and CHU staff will generally propose two consultation meetings with Consulting Parties about particular NAGPRA-related or potentially NAGPRA-related holdings and collections—an initial consultation meeting and a closing consultation meeting.

Initial Consultation Meeting

- UMNO and CHU staff will seek to:
 - *(If not obtained prior to the initial consultation meeting)* Confirm a complete list of contact information of individuals or Tribal Consultants who will be participating in the consultation for each Consulting Party. (This may include confirming Points-of-Contact if there are multiple consultants representing a particular Consulting Party.)
 - Discuss preferences on a proposed timeline and method for consultation. (This may need to be done as a follow-up to the initial consultation depending on what Consulting Parties request under Duty of Care).
 - *(If not obtained prior to the initial consultation meeting)* Confirm Duty of Care for those particular NAGPRA-related or potentially NAGPRA-related holdings and collections.
 - Review and discuss preliminary Itemized Lists and/or Summaries, as well as related information and records regarding the background and acquisition history of the particular holdings and collections under consultation.
 - As required in the Federal regulations (43 C.F.R. §§ 10.9(c)(3) and 10.10(c)(3)), the UMNO staff will make a Record of Consultation, noting agreement, disagreement, or deferral on matters discussed. The routine matters to be discussed will include the following:
 - Determine if the Consulting Parties concur with the preliminary assessments and classifications related to the Summaries and Itemized Lists;
 - Pursuant to 43 C.F.R. §§ 10.9(c)(2)(iii) and 10.10(c)(2)(iii), ask Consulting Parties the types of objects that might be Associated/Unassociated Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony; and
 - Ask if Consulting Parties have any additional information they would like to provide that may either change or confirm the preliminary assessments and classifications.

- Pursuant to 43 C.F.R. §§ 10.9(c)(2)(i-ii) and 10.10(c)(2)(i-ii), identify and confirm lineal descendant(s) and/or the Indian Tribe/Native Hawaiian organizations with cultural affiliation. (This may need to be done as a follow-up to the initial consultation.)
- Start a discussion about completing the repatriation process, including:
 - If a Request for Repatriation is being made.
 - Which Consulting Parties are making the Request for Repatriation.
 - Who should be listed in the Repatriation Statement.
 - Who will be authorized to serve as the transfer recipient(s).
 - **Note:** *In the interest of preserving an amicable and efficient process, Consulting Parties are encouraged to discuss and decide among themselves who they are authorizing to accept the Transfer of Physical Custody. Consulting Parties can authorize specific individuals by name or Indian Tribes/Native Hawaiian organizations more generally. If the UMNO staff cannot confirm who will be serving as the authorized transfer recipients for a particular holding or collection, they will confer with the University's Office of General Counsel, NAGPRA Advisory Committee, and/or the National NAGPRA Program for further guidance.*

Closing Consultation Meeting

- A closing consultation meeting will be held if needed or requested by any Consulting Party, UMNO staff, or CHU staff. The closing consultation can be waived if there are no questions or concerns coming out of the initial consultation meeting or a completed re-inventory if a re-inventory was approved under Duty of Care, except in those cases where an approved re-inventory has already begun or has been completed.

If a closing consultation is needed or requested, some anticipated topics may include the following:

- Review and discuss final determinations and address any questions or concerns. (This may differ between Summaries and Itemized Lists being converted into Inventories.)
- *If not already confirmed:*
 - Identify and confirm transfer recipients and plans for submitting a Repatriation Request.
 - Identify and confirm lineal descendant(s) and/or the Indian Tribe/Native Hawaiian organizations with cultural affiliation.

- Pursuant to 43 C.F.R. §§ 10.9(g)(1)(iii) and 10.10(h)(1)(iii), discuss records that may include information determined to be of a potentially sensitive nature and what, if any, access restrictions the University can place on them consistent with all applicable laws.
- *If necessary:*
 - Discuss the respectful care, handling, display, and use of any non-NAGPRA-related holdings and collections.
 - Discuss any competing requests that may have been received, and the process and timeline for their resolution. (*This may also be done by email or standard mail.*)

Note:

UMNO staff are empowered by the University to lead, conduct, facilitate, and mediate discussions to achieve a consensus among all parties participating in a consultation. In general, most NAGPRA-related decisions are resolved in the course of consultation. There may be, however, some instances where, during the course of consultations, mutual agreement cannot be resolved on determinations of eligibility or classification. There may also be matters, questions, or circumstances where clarity or guidance is needed, or decisions need to be made on behalf of the University. UMNO staff will provide preliminary recommendations based on their knowledge, training, and experience implementing NAGPRA and consulting with Native Nations. However, they do not make final decisions for the University on NAGPRA-related matters.

On these occasions, or simply if requested, Consulting Parties, UMNO staff, or CHU staff may ask that the University's NAGPRA Advisory Committee be consulted. The Advisory Committee will review the matter(s) placed before them and make a recommendation to the VPRI. The VPRI is empowered by the Regents to make all final determinations on any NAGPRA-related matters for the University.

The UMNO Managing Director and UMNO staff will coordinate with the Associate Vice President for Research and Innovation, as Chair of the University's NAGPRA Advisory Committee, to determine the most advisable and efficient way of addressing the matter(s) arising on a case-by-case basis, then proceed accordingly. This process may entail seeking further guidance or opinion from the University's Office of General Counsel, National NAGPRA Program, or National NAGPRA Review Committee.

Action Items Following Consultations

The UMNO will complete specific action items, in accordance with the Federal regulations, to complete the transfer of holdings and collections once consultations have been completed. These action items typically include the following:

Text in red is verbatim language taken from the Federal regulations, 43 C.F.R. § Part 10, and *Federal Register* commentary related thereto.

For Holdings and Collections in Summaries

- If a Consulting Party wishes to request repatriation of a particular holding or collection they must do so before the UMNO can draft and submit the Notice of Intended Repatriation. Therefore, the Consulting Party must either:
 - Submit a Repatriation Request to the UMNO on their own.
 - Have their Repatriation Request confirmed by the UMNO staff during consultation on the particular holdings and collections that they would like to have repatriated.

Note: *Repatriation Requests can be submitted at any time for holdings and collections in Summaries.*

- In accordance with (43 C.F.R. § 10.9(d)(3)(i)-(iii)), the University will receive and review Repatriation Requests for particular holdings and collections in Summaries using the following criteria:
 - Each unassociated funerary object, sacred object, or object of cultural patrimony being requested meets the definition of an unassociated funerary object, a sacred object, or an object of cultural patrimony;
 - The request is from a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation; and
 - The request includes information to support a finding that the University does not have right of possession to the unassociated funerary object, sacred object, or object of cultural patrimony.
- A Draft Notice of Intended Repatriation will be circulated for a 7 business-day review period once consultations have concluded.

For Holdings and Collections in Inventories

- A Draft Notice of Inventory Completion will be circulated for a 7 business-day review period once consultations have concluded.
 - **Note:** *Itemized Lists become Inventories once consultations have been completed and final determinations made with Consulting Parties.*
- In accordance with 43 C.F.R. § 10.10(f)(3)(i)-(ii), the University will receive, review, and respond to Repatriation Requests using the following criteria:
 - The requestor is identified in the notice of inventory completion, or

- The requestor is not identified in the notice of inventory completion, and the request shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.
- Repatriation Requests can be submitted at any time for holdings and collection in a Notice of Inventory Completion. However, the University cannot respond to a Repatriation Request any earlier than 30 days, and no later than 90 days, after the Notice of Inventory Completion has been published in the *Federal Register* (43 C.F.R. § 10.10(g)).
- If a Consulting Party wishes to have a particular holding or collection repatriated to them, the Consulting Party must either:
 - Submit a Repatriation Request on their own.
 - Have their Repatriation Request confirmed by the UMNO staff during consultation on the particular holdings and collections that they would like to have repatriated.

University response to Repatriation Requests

- In accordance with (43 C.F.R. § 10.9(e)), the University has 90 days to respond to the Consulting Party who submitted the Repatriation Request unless it receives a competing claim.
- Although the University has 90 days to respond to a Repatriation Request, in the interest of promoting the timely restoration of a collection or holding to the appropriate Tribe or lineal descendant, the UMNO generally will not wait that long to respond unless it determines there is reason to do so, and will endeavor, to the extent possible, to respond within 10 business days after receiving the first Repatriation Request.
 - **Note:** *Additional time can be granted if a Consulting Party requests it before the 10 business-day period has expired. However, the University cannot extend the deadline to respond to a Repatriation Request beyond the 90-day limit. Therefore, the University will respond within 90 days maximum unless a competing request is received, in which case the University will proceed with an evaluation of the competing request in accordance with 43 C.F.R. § 10.10(h).*
- Within the timeframe the University allots, other Consulting Parties may either:
 - Submit their own Repatriation Request (to be combined with any others received), or
 - Submit a competing request (if a Consulting Party does not want their Repatriation Request combined with others received).

Note: The UMNO reserves the right to update internally created timelines in a manner consistent with federal regulatory requirements if needed. All Consulting Parties will be notified of the change as needed.

- If a Repatriation Request has been determined to meet the regulatory criteria for repatriation, the UMNO will draft a Notice of Intended Repatriation or Notice of Inventory Completion and circulate it to the Consulting Parties for a 7 business-day review period.
- **Note:** Notices of Intended Repatriation and Notices of Inventory Completion will list only those Consulting Parties who requested or participated in consultation, not all parties initially invited to consult.

Failure to submit a Repatriation or Competing Request before the Repatriation Statement is issued

- Once the University sets a timeframe or date for a Repatriation Statement, any other Consulting Party that intends to submit Repatriation Requests or a competing request must do so before the University issues the Repatriation Statement in order for such a request to be considered.
- In accordance with 43 C.F.R. § 10.10(c)(4), (g)(2), and (h), the University must honor all requests for consultation and Repatriation Requests for NAGPRA holdings and collections until the date it issues a Repatriation Statement for those particular holdings and collections.
- Once the University issues a Repatriation Statement for particular holdings and collections, it will not consider any subsequent requests for those holdings and collections.

Transfer of Physical Custody or Alternative Arrangements

- Once the University has issued the Repatriation Statement for a particular holding or collection, the UMNO will typically contact the Transfer Recipient(s) and arrange a Pre-transfer Meeting if it has not already done so.
- UMNO staff will review and complete the University's Pre-Transfer Planning Form with the Transfer Recipient(s). Completion of this form helps ensure the date, place, manner, and other transfer-related arrangements are accommodated to the best of the UMNO and CHU staffs' ability. This will help ensure a smooth and respectful transfer of Physical Custody.
- If a prolonged delay between the issuing of the Repatriation Statement and the Transfer of Physical Custody is anticipated, a more formal agreement or understanding may need to be arranged in the interim between the University and the relevant Consulting Parties. These instances will be determined and discussed on a case-by-case basis.
- In accordance with 43 C.F.R. §§ 10.9(g)(2) and 10.10(h)(2), if Consulting Parties wish to make alternative arrangements to a Transfer of Physical Custody, UMNO staff will organize those discussions with all relevant parties.

Text in red is verbatim language taken from the Federal regulations, 43 C.F.R. § Part 10, and *Federal Register* commentary related thereto.

Notification of the Possible Exposure of NAGPRA-related and Potentially NAGPRA-related Holdings and Collections to Potentially Hazardous Substances

In accordance with the Federal regulations for *Summaries* (43 C.F.R. § 10.9(a)(1)(v)) and *Itemized Lists* (43 C.F.R. § 10.10(a)(6)), the University must notify Consulting Parties of the presence of any potentially hazardous substances used to treat holdings or collections, if known.

- If the University learns that a NAGPRA-related or potentially NAGPRA-related holding or collection was exposed to potentially hazardous substances, it will include this information within the relevant Summary or Itemized List, and also inform Consulting Parties as part of consultation and repatriation.
- As part of consultation, or prior to repatriation, a Consulting Party can request that the University and relevant CHU test a holding or collection to attempt to identify if there was exposure to any potentially hazardous substances and identify potential associated risks. Since testing techniques can vary, some involving non-destructive analysis and others involving destructive analysis, any requests for testing will be resolved on a case-by-case basis, including via discussion with the Consulting Parties who have requested consultation or repatriation.

Holdings and Collections in University Custody, but Not Possession or Control

- If the University believes it does not have sufficient legal interest in a particular holding or collection to assert possession or control, the UMNO will contact the entity that it determines likely to have possession or control (hereafter referred to as the “Legal Controller”).
- If a Federal agency is determined likely to have possession or control, the University will proceed pursuant to 43 C.F.R. § 10.8(c).
 - The UMNO will send the relevant agency identified as likely to have possession or control of particular holdings and collections at the University an email or letter notifying them of this determination and asking for their direction regarding how they wish to proceed.
 - The Federal agency has 180 days to respond under the NAGPRA regulations. If it does not, the regulations dictate that possession and control for those particular holdings and collections will, by default, transfer to that agency. Thus, that agency will be responsible for fulfilling all NAGPRA-related requirements with respect to that holding or collection (43 C.F.R. § 10.8(c)(2)).
- If a Legal Controller (Federal or otherwise) concurs and confirms that they do have possession or control, UMNO staff will coordinate with the representative(s) of that Legal Controller regarding how they wish to proceed. Options include:

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- The Legal Controller may request that the particular holdings and collections be returned to their physical custody.
- The Legal Controller may request assistance from the UMNO in completing the NAGPRA compliance work. The nature and extent of the University's assistance with NAGPRA compliance work will be determined on a case-by-case basis and documented with the Legal Controller entity having possession or control of the particular holding(s) or collection(s) under consideration.
- If a Legal Controller does not concur that they have possession or control, the University will re-evaluate its position and obligations under NAGPRA and its concurrent regulations, and proceed accordingly. Such re-evaluations will be made on a case-by-case basis.
- For holdings and collections that are in the University's custody but not under the University's legal possession or control, the University will typically follow protocols and practices described in the University's *NAGPRA Policies and Procedures* document unless specifically directed otherwise by the Legal Controller. Additionally, the University will observe NAGPRA and its concurrent regulations with respect to these holdings and collections until the Legal Controller is determined and contacted directly.
- Once contacted, UMNO staff will share with the Legal Controller the University's *NAGPRA Policies and Procedures* document. This will ensure that the Legal Controller is aware of the University's policies and procedures concerning NAGPRA-related or potentially NAGPRA-related holdings and collections in its custody. Should the entity request that UMNO follow different protocols than those outlined in the University's *NAGPRA Policies and Procedures* document, the UMNO will make a good-faith effort to honor the protocols as provided by the Legal Controller.
- The Legal Controller of holdings and collections in the University's custody is responsible for all NAGPRA-related determinations concerning those holdings and collections. Where the University believes it has shared responsibilities under Duty of Care (43 C.F.R. § 10.1(d)), UMNO staff, in coordination with the relevant CHU and Legal Controller, will confer on mutually agreed upon protocols and practices. Any areas of disagreement may need further discussion.

***Note:** The University reserves the right to confirm and document any determinations, directions, understandings, or arrangements made with respect to protocols, practices, or longer-term custody requests between the University and the Legal Controller.*

- If the University possesses any holdings or collections from Legal Controllers that do not have to comply with the requirements of NAGPRA (e.g., museums that do not receive Federal funding and thus do not have to comply with NAGPRA, etc.), they will be considered on a case-by-case basis to determine how best to proceed.

Frauds, Replicas, and Unprovenanced Holdings and Collections

- Frauds, by definition, are not Native American cultural items.⁹ Therefore, they would not be considered subject to the requirements of NAGPRA.
- Replicas may be determined to contain or convey sensitive information by Consulting Parties. As such, they will be considered and treated as NAGPRA-related or potentially NAGPRA-related until the Consulting Parties have been asked whether they wish to request their repatriation.
- All Native American Unprovenanced holdings and collections from the U.S. and North America will be reviewed by the UMNO staff, on a case-by-case basis, to determine if there is any information that can help identify Consulting Parties. If their review does not help identify potential Consulting Parties, UMNO staff will seek further guidance or opinion from the University's Office of General Counsel, National NAGPRA Program, or National NAGPRA Review Board.
- **Note:** Pursuant to the requirements of the Duty of Care provision in the regulations, anyone requesting the opportunity to exhibit, access, or research an unprovenanced holding or collection from the U.S. or North America must contact the UMNO or appropriate CHU. If contacted directly, CHU staff should contact the UMNO about the request. UMNO staff will review the request and determine how best to proceed.

Initiation of Consultation

Solicited Consultation Requests

- Pursuant to NAGPRA regulations 43 C.F.R. §§ 10.9(b) and 10.10(b) the University must identify Consulting Parties and initiate consultation for particular holdings and collections on which consultation is needed.
- According to guidance provided by the National NAGPRA Program (See *Comment 41*, 43 C.F.R. Part 10, Final Rule, December 13, 2023), lineal descendants do not need to be associated with a Federally recognized Indian Tribe or Native Hawaiian organization to submit a request for consultation or repatriation, nor do they need to submit either request through, or in coordination with, a Federally recognized Indian Tribe or Native Hawaiian organization.

⁹ The term “cultural items” as used in the University’s *NAGPRA Policies and Procedures* refers to any NAGPRA-related or potentially NAGPRA-related holdings or collections that are, or may be, considered Associated Funerary Objects, Unassociated Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony “according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization” in the NAGPRA regulations (see 43 C.F.R. § 10.2 *Cultural items*).

Text in red is verbatim language taken from the Federal regulations, 43 C.F.R. § Part 10, and *Federal Register* commentary related thereto.

- UMNO staff will engage and consult with potential lineal descendants on an individual basis (i.e., with the specific individual who submitted the consultation or repatriation request) unless otherwise instructed by the lineal descendant(s).
- **Note:** *The UMNO may request genealogical or other documentation related to establishing lineal descendency.*
- Criteria used to establish Cultural Affiliation to Federally recognized Indian Tribes and Native Hawaiian organizations are outlined in this document below (see “Determining Cultural Affiliation”) as quoted from 43 C.F.R. § 10.3(a)-(c) of the Federal regulations.

Consulting Parties are typically identified and/or confirmed during the preparations for, or completion of, consultations. The UMNO will send these parties a letter, either by email, standard mail, or both, to initiate consultation.

- Pursuant to 43 C.F.R. § 10.1(e)(1)(i)-(iv), **written documents must be sent by one of the following:**
 - **Email, with proof of receipt,¹⁰**
 - **Personal delivery with proof of delivery date,**
 - **Private delivery service with proof of date sent, or**
 - **Certified mail.**
- An email with a scan of the letter attached will be the preferred method of delivery.
- In cases where an email is returned as undeliverable, standard mail will be used with Confirmation of Delivery service.
- If the letter is still undeliverable or there is no way to contact the Consulting Party by email or letter, the UMNO may consult the University’s Office of General Counsel and, if necessary, the National NAGPRA Program for guidance.

¹⁰ According to Department of Interior guidance, “Regarding ‘proof of receipt’ for email, many email systems include an option to request a read receipt automatically. While these systems may not constitute legal proof, use of such systems is sufficient for the purposes of these regulations. If an email system does not provide this option, other software or services can provide proof of receipt for little to no cost. However, we do not expect or require additional software or services to meet this requirement. The minimum requirement to satisfy ‘proof of receipt’ would be to request that the recipient acknowledge receipt of the email. If no acknowledgment is received, the sender may follow up with a phone call to ensure the email was received. A call log or note to the file would be sufficient ‘proof of receipt.’” (See *Comment 18*, 43 C.F.R. Part 10, Final Rule, December 13, 2023.)

Text in red is verbatim language taken from the Federal regulations, 43 C.F.R. § Part 10, and *Federal Register* commentary related thereto.

- **Note:** *In accordance with Comment 94, “When consultation is ongoing as of the effective date of these regulations [January 12, 2024], there is no requirement to re-initiate consultation, provided the ongoing consultation included all consulting parties.”*

Unsolicited Consultation Requests

- Consulting Parties who have not been contacted by the UMNO may also submit requests for consultation unsolicited.
- Consulting Parties submitting unsolicited requests for consultation should be prepared to substantiate their claim of lineal descent or Cultural Affiliation to the particular holdings or collections about which they wish to consult. They must provide evidence, including research and sources, to support their claim.
- All evidence provided must comport with the requirements of NAGPRA and its concurrent regulations. The UMNO will review all unsolicited claims in accordance with its policies and procedures, as well as NAGPRA its concurrent and regulations, on a case-by-case basis.

All Requests, Solicited or Unsolicited

- All requests, whether solicited or unsolicited, must be submitted by the requestor(s) and confirmed by UMNO in writing (an email is sufficient).
- The UMNO has developed forms for submitting claims (available upon request). These forms provide clarity and convenience, but their use is not required to submit a request. Requests for repatriation must be submitted in writing (an email is sufficient) as required in the Federal regulations (43 C.F.R. § 10.10(f)).
- **Note:** *Additional Consulting Parties may be identified during the course of consultations and invited to consult. They may also submit consultation requests unsolicited. As per the Federal regulations and guidance from the National NAGPRA Program, all valid requests will be honored until the Repatriation Statement is issued (43 C.F.R. § 10.10(c)).*

Regarding Non-Federally Recognized Tribes

The University has previously worked and associated with Non-Federally Recognized Indian Groups (NFRIG) on projects that have not been directly related to NAGPRA. These activities have resulted in positive relations and given the University an appreciation of their identities and histories. The University will continue to cultivate these relationships when and where appropriate.

Under NAGPRA, NFRIGs are explicitly distinguished from Federally recognized Indian Tribes and Native Hawaiian organizations. While the University is required to consult with Federally recognized Indian Tribes and Native Hawaiian organizations for purposes of repatriation, nothing in the regulations either requires, or prevents the University from, consulting with NFRIGs. However, the

particulars and extent of consultation, including whether consultation with a NFRIG will occur at all, will be determined on a case-by-case basis.

Currently, Federal regulations do not allow the University to repatriate to an NFRIG any holdings or collections determined to be subject to the requirements of NAGPRA. However, NFRIGs can partner with a Federally recognized Indian Tribe or Native Hawaiian organization to submit a repatriation request. The University can then work with the Federally recognized Indian Tribe(s) or Native Hawaiian organization(s) to resolve the repatriation request.

If such partnerships occur, the University will work with the Federally recognized Indian Tribe(s) or Native Hawaiian organization(s) to resolve the repatriation request. The University defers to the Federally recognized Indian Tribe(s) or Native Hawaiian organization(s), and the NFRIGs with whom they have partnered, regarding any arrangements or understandings they have made among themselves relating to the repatriation request they are pursuing, as well as any details concerning their partnership more generally.

NAGPRA's Applicability to Holdings and Collections Originating from Outside of the United States

NAGPRA is a United States Federal law. As such, it does not apply to human remains or cultural items that originated from outside of the United States.

However, the University and its CHUs have and will review repatriation requests concerning holdings and collections that originated from outside the United States on a case-by-case basis. The University or relevant CHU will make a good-faith effort to make at least an initial response, in writing, to these requests within 45 days of receipt.

Regarding Canadian First Nations

Given the University's geographic proximity to Canada, its administrators, faculty, staff, employees, and students have previously worked and associated with Canadian First Nations with respect to collections not subject to NAGPRA. This includes completing requested repatriations that were determined to be Culturally Affiliated to them. This has resulted in positive relationships and an appreciation of the often-shared history between in-state Native Nations whose familial, community, and geographic ties sometimes span the U.S.-Canada border. The University will continue to cultivate these relationships when and where appropriate.

While not subject to the requirements of NAGPRA, the University will continue to accept and review repatriation requests for particular holdings and collections that originated from sites and communities located in Canada, thus making them potentially culturally affiliated to Canadian First Nations. These requests will be received and reviewed by the University on a case-by-case basis.

NAGPRA does not allow the University to repatriate to Canadian First Nations any holdings or collections determined to be subject to the requirements of NAGPRA. Therefore, the University will

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not pro-actively solicit consultations with Canadian First Nations for holdings and collections that originated from sites and communities located in the U.S. However, it will consider requests from Canadian First Nations, or from U.S. Native Nations on behalf of particular Canadian First Nations, to participate in consultations. The particulars and extent of consultation, including whether consultation with a Canadian First Nation will occur at all, will be determined on a case-by-case basis. Consent from the U.S.-based, Federally recognized Indian Tribe(s) or Native Hawaiian organization(s) participating in the consultation would be a prerequisite.

Canadian First Nations who wish to be included in consultations regarding sites located in the U.S. are encouraged to partner with U.S.-based, Federal recognized Indian Tribes. This is the most efficient way for them to be included in NAGPRA-related consultations and discussions.

General Policies and Procedures for Consultation and Repatriation Requests

Individual and Joint Consultation Requests

- Consulting Parties can submit requests collectively or cooperatively if they wish. Collective or cooperative requests can be submitted in one of two ways:
 - Jointly, wherein no one Consulting Party assumes a lead role.
 - For requests submitted jointly, the UMNO will communicate and coordinate with joint requestors collectively. Every member of the group will receive the same information and communications.
 - Supportively, wherein one Consulting Party is expressly identified in the request as assuming a lead role.
 - For requests submitted supportively, the UMNO will generally communicate and coordinate with the lead party alone. The lead party is presumed to bear the responsibility of sharing all information related to the requested consultation with the other members of the group. However, the UMNO is free to share any information related to an ongoing consultation with any party of a consulting group upon written request (an email is sufficient).

Note: *The University reserves the right to verify the participation of any Consulting Party noted as participating collectively or cooperatively in any request.*

According to guidance provided by the National NAGPRA Program, inter-Tribal consortia can submit joint or supportive requests for consultation, and complete those consultations, on behalf of their members. However, the University cannot accept Repatriation Requests, nor issue Repatriation Statements to consortia or other such collective or cooperative entities, because they are not considered sovereign entities under NAGPRA (75 FR 12382-12383, March 15, 2010). Therefore, an inter-tribal consortium will need to designate a specific Tribe or Tribes, or authorize

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a specific individual or individuals, to serve as transfer recipients to accept the transfer of physical custody.

Deferring On Consultations

Consulting Parties can defer on consultations in two ways:

- Active deferral, wherein a Consulting Party expressly defers in writing or orally (which the UMNO will document in writing, generally through an email).
- Passive deferral, wherein a Consulting Party simply does not respond to the University's solicitation of consultation or does not submit such a request prior to the University's issuing a Repatriation Statement.

Note: *The University is not required to consult with a Consulting Party that has deferred consultation as set forth above, even if the University had initially sought consultation with that Consulting Party. Rather, pursuant to 43 C.F.R. §§ 10.9(c)(3) and 10.10(c)(3), responses and non-responses to consultation requests will be noted by the UMNO in a Record of Consultation, and the University will then move forward with the publication of a Notice.*

Disaggregating Requests Submitted Jointly or Supportively

The University recognizes the right of Consulting Parties to join or withdraw from a joint or supportive request. If a Consulting Party wishes to withdraw from a joint or supportive request for either consultation or repatriation, the individual Consulting Party must notify the UMNO in writing (an email is sufficient) before the following occurs:

- For consultations, before the Notice is submitted to the National NAGPRA Program for review and publication.
- For repatriations, before the University issues the Repatriation Statement (which the University generally prefers to issue the next business day after the 30-day public notification period listed in the published Notice expires (i.e., "day 31")).

Note: *The University reserves the right to verify the withdrawal of any party noted as participating in a joint or supportive request.*

Consulting Parties that have withdrawn from a joint or supportive request:

- Will be asked to verify, in writing (an email is sufficient), whether they are still requesting consultation or repatriation independently.
- Will also be expected to conduct their own communications, consultations, and repatriations should their requests remain active.

- Will no longer receive communications from the University regarding the joint or supportive request from which they have withdrawn and the University will not share any information related to the ongoing consultations that would be considered specific to the joint or supportive request.

Note: The University will consider any joint or supportive requests from which a party or parties may withdraw as remaining active unless or until all parties withdraw their support.

The Consultation and Repatriation Step-by-Step Process

Determining Lineal Descent

Regarding how lineal descent is determined, the National NAGPRA Program has commented:

The existing regulations refer to the “common law system of descentance” and “known Native American individual” in the definition for lineal descendant. The regulatory text adds “This standard requires that the earlier person be identified as an individual whose descendants can be traced.” The common law system of descent means the customary practice of tracing ancestry to a person’s parents, grandparents, great-grandparents, and so on. It does not indicate any kind of precedent is set by previous repatriations. There is a requirement for the deceased individual to be known, but that does not mean a named individual is the only way a person could be known. Rather, it indicates that the deceased individual must be identified in some way to trace ancestry between that individual and the living individual. We have removed the limiting gendered language from the definition as requested by one comment.

Both the existing regulations and this final rule require museums and Federal agencies to initiate consultation with both lineal descendants and Indian Tribes or [Native Hawaiian organizations] (NHOs) with potential cultural affiliation and to provide the names of all identified consulting parties. The existing regulations require a museum or Federal agency convey information to both a lineal descendant, if known, and to the Indian Tribe or NHO with cultural affiliation, when the inventory results in a determination that the human remains are of an identifiable individual. In the proposed regulations and this final rule, this requirement is a part of the information shared and requested during the consultation process. We cannot require a museum or Federal agency to verify the identity of a lineal descendant with an Indian Tribe or NHO. The statute gives lineal descendants priority over Indian Tribes or NHOs. Establishing a system in which verification of lineal descendants is through Indian [T]ribes or NHOs could be detrimental to the rights of lineal descendants, particularly those that are not members of an Indian [T]ribe or NHO. Given the diversity of ways in which a lineal descendant may be traced, we cannot require certain types of documentation or evidence needed to establish lineal descent. Museums and Federal agencies must determine if a request from a lineal descendant provides sufficient information and respond to the request accordingly.

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Throughout these final regulations, the term “lineal descendant” is used in the singular form, but it is expected that multiple lineal descendants may meet the criteria under this part for disposition or repatriation of the same human remains, funerary objects, or sacred objects. Any lineal descendant may submit a claim for disposition or a request for repatriation for human remains, funerary objects, or sacred objects. Two or more lineal descendants may agree to joint disposition or joint repatriation of human remains, funerary objects, or sacred objects. Claims or requests for joint disposition or joint repatriation should be considered a single claim or request and not competing claims or requests. (See *Comment 41*, 43 C.F.R. Part 10, Final Rule, December 13, 2023.)

In light of this guidance, the University may request genealogical documentation to assist in establishing lineal descent before making any determinations regarding if and how to proceed.

- If any questions arise concerning the genealogical documentation, or if genealogical documentation is unavailable, UMNO staff may request assistance from the University NAGPRA Advisory Committee and/or Office of General Counsel and/or the National NAGPRA Program on how to proceed.
- If any competing claims or requests arise involving potential lineal descendants, the University will resolve them on a case-by-case basis. As needed, UMNO staff may request assistance from the University NAGPRA Advisory Committee, Office of General Counsel, and/or the National NAGPRA Program on how to proceed.

Determining Cultural Affiliation¹¹

Pursuant to 43 C.F.R. § 10.3(a)-(d), the UMNO and CHUs will amass information available about potentially NAGPRA-related human remains or cultural items, including, but not limited to, records, catalogs, relevant studies, and other pertinent data. Additional information may be provided by Consulting Parties. The University will then use the following criteria to determine Cultural Affiliation:

Pursuant to 43 C.F.R. § 10.3(a):

- (1) One or more of the following equally relevant types of information about human remains or cultural items may be available:
 - (i) Anthropological,
 - (ii) Archaeological,
 - (iii) Biological,
 - (iv) Folkloric,
 - (v) Geographical,
 - (vi) Historical,

¹¹ The 2024 Final Rule eliminated the category of “culturally unidentifiable,” which had been an explicit category under the prior regulations. Any previous determinations concerning holdings and collections being “culturally unidentifiable” will be reevaluated using the current regulations.

Text in red is verbatim language taken from the Federal regulations, 43 C.F.R. § Part 10, and *Federal Register* commentary related thereto.

- (vii) Kinship,
 - (viii) Linguistic,
 - (ix) Oral Traditional, or
 - (x) Other relevant information or expert opinion, including Native American traditional knowledge.
- (2) A lack of any type of information does not preclude a determination of Cultural Affiliation. One type of information may be used to determine Cultural Affiliation when no other relevant information is available.

Pursuant to 43 C.F.R. § 10.3(b):

- (1) Each of the following criteria must be identified using the information available:
- (A) One or more earlier groups connected to the human remains or cultural items,
 - (B) One or more Indian Tribes or Native Hawaiian organizations, and
 - (C) A relationship of shared group identity between the earlier group and the Indian Tribe or Native Hawaiian organization that can be reasonably traced through time.
- (2) One type of information may be sufficient to reasonably identify the required criteria when no other relevant information is available. For example, geographical information about human remains or cultural items may identify:
- (i) The earlier groups of people connected to a geographical location,
 - (ii) The Indian Tribe or Native Hawaiian organization connected to a geographical location, and
 - (iii) A relationship of shared group identity between the two traced through time.

Pursuant to 43 C.F.R. § 10.3(c), the University will record its determination of Cultural Affiliation following consultation. This determination will briefly describe the information available (43 C.F.R. § 10.3(a)) and criteria identified to make a determination (43 C.F.R. § 10.3(b)):

- (1) The determination must be one of the following:
- (i) Cultural affiliation is identified clearly by the information available,
 - (ii) Cultural affiliation is identified reasonably by the geographical location or acquisition history, or
 - (iii) Cultural affiliation cannot be clearly or reasonably identified.
- (2) Cultural affiliation of human remains or cultural items may be with more than one Indian Tribe or Native Hawaiian organization. For example, an identifiable earlier group may have a relationship to more than one Indian Tribe or Native Hawaiian organization, or two or more earlier groups may be connected to human remains or cultural items and a relationship may be reasonably traced to two or more Indian Tribes or Native Hawaiian organizations that do not themselves have a shared group identity. In Hawaii, two or more Native Hawaiian

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organizations may be part of the same Native Hawaiian Community, but may have distinct beliefs, protocols, and other cultural practices passed down through different familial, cultural, and geographical lineages.

Pursuant to 43 C.F.R. § 10.3(d), once the University determines Cultural Affiliation of human remains or cultural items with two or more Indian Tribes or Native Hawaiian organizations, any of these culturally affiliated Indian Tribes or Native Hawaiian organizations may submit a request for repatriation. Any Indian Tribe or Native Hawaiian organization with cultural affiliation may agree to joint disposition or joint repatriation of the human remains or cultural items. Claims or requests for joint disposition or joint repatriation of human remains or cultural items are considered a single claim or request and not competing claims or requests. A single claim or request may be on behalf of multiple Indian Tribes or Native Hawaiian organizations. Disposition or repatriation statements required under this part must identify all joint claimants or requestors.

Pursuant to 43 C.F.R. § 10.3(e), when there are competing Requests for Repatriation of human remains or cultural items, the University must determine the Indian Tribe or Native Hawaiian organization with the closest cultural affiliation. In support of a competing request, each requestor may provide information to show by a preponderance of the evidence that it has a stronger relationship of shared group identity to the human remains or cultural items than does the other requestor(s).

(1) The Indian Tribe with the closest cultural affiliation, in the following order, is:

- (i) The Indian Tribe whose cultural affiliation is clearly identified by the information available.
- (ii) The Indian Tribe whose cultural affiliation is reasonably identified by the geographical location and acquisition history of the human remains or cultural items.
- (iii) The Indian Tribe whose cultural affiliation is reasonably identified by only the geographical location of the human remains or cultural items.
- (iv) The Indian Tribe whose cultural affiliation is reasonably identified by only the acquisition history of the human remains or cultural items.

(2) The Native Hawaiian organization with the closest cultural affiliation, in the following order, is:

- (i) The 'ohana that can trace an unbroken connection of named individuals to one or more of the human remains or cultural items, but not necessarily to all the human remains or cultural items from a specific site.
- (ii) The 'ohana that can trace a relationship to the ahupua'a where the human remains or cultural items were removed and a direct kinship to one or more of the human remains or cultural items, but not necessarily an unbroken connection of named individuals.
- (iii) The Native Hawaiian organization with cultural affiliation only to the earlier occupants of the ahupua'a where the human remains or cultural items were removed, and not to the earlier occupants of any other ahupua'a.
- (iv) The Native Hawaiian organization with cultural affiliation to either:

- (A) The earlier occupants of the ahupua‘a where the human remains or cultural items were removed, as well as to the earlier occupants of other ahupua‘a on the same island, but not to the earlier occupants of all ahupua‘a on that island, or to the earlier occupants of any other island of the Hawaiian archipelago, or
 - (B) The earlier occupants of another island who accessed the ahupua‘a where the human remains or cultural items were removed for traditional or customary practices and were buried there.
- (v) The Native Hawaiian organization with cultural affiliation to the earlier occupants of all ahupua‘a on the island where the human remains or cultural items were removed, but not to the earlier occupants of any other island of the Hawaiian archipelago.
 - (vi) The Native Hawaiian organization with cultural affiliation to the earlier occupants of more than one island in the Hawaiian archipelago that has been in continuous existence from a date prior to 1893.
 - (vii) Any other Native Hawaiian organization with cultural affiliation.

Unassociated Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony

Pursuant to 43 C.F.R. § 10.9, the UMNO and relevant CHU will:

(a) Step 1 – Compile a Summary of Holdings or Collections

Based on the information available, the University will compile a Summary describing any holding or collection that may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony. Depending on the scope of the holding or collection, the University may organize the Summaries into sections based on geographical area, accession or catalog name or number, or other defining attributes.

(1) A summary will include:

- (i) The estimated number and a general description of the holding or collection, including any potential cultural items;
- (ii) The geographical location (provenience) by county or State where the potential cultural items;
- (iii) The acquisition history (provenance) of the potential cultural items;
- (iv) Other information relevant for identifying:
 - (A) A lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation, and
 - (B) Any object as an unassociated funerary object, sacred object, or object of cultural patrimony; and
- (v) The presence of any potentially hazardous substances used to treat any of the unassociated funerary objects, sacred objects, or objects of cultural patrimony, if known.

(b) Step 2 – Initiate Consultation

Text in red is verbatim language taken from the Federal regulations, 43 C.F.R. § Part 10, and *Federal Register* commentary related thereto.

No later than 30 days after compiling a Summary, the University will identify consulting parties based on information available and invite the parties to consult.

- February 12, 2024, the University has invited Consulting Parties for all previously reported NAGPRA-related or potentially NAGPRA-related Cultural Items that have been identified to date. If additional Cultural Items are identified during the process of further review, consultations, or daily work, UMNO staff will proceed in accordance with the regulatory requirements regarding newly located holdings or collections (43 C.F.R. §10.9(a)(4)(iv)).

(1) Consulting parties are any lineal descendant and any Indian Tribe or Native Hawaiian organization with potential cultural affiliation.

- The UMNO will create and maintain contact directories for all known Consulting Parties to help facilitate communication.

(2) An invitation to consult must be in writing and must include:

- (i) The summary described in paragraph (a)(1) of this section,
- (ii) The names of all consulting parties, and
- (iii) A proposed method for consultation.

- This information will be kept on file with UMNO and can be shared and kept on file within the relevant CHUs as warranted.
- As appropriate, and before granting access to holdings or collections, the University will request that potential consultants provide written confirmation that they are either members of the Governing Authority, are duly authorized NAGPRA designees/consultants, or have been otherwise authorized or permitted by the Indian Tribe or Native Hawaiian organization to act on its behalf in making the request for consultation or consent to access.
- In those instances where an Indian Tribe or Native Hawaiian organization does not have authorized NAGPRA designee(s), or the authorization for the NAGPRA designee(s) has been determined to be outdated, the University will solicit decisions and signatures from the Indian Tribe's or Native Hawaiian organization's Governing Authority (e.g., Chair, Tribal Council, etc.).

(3) When the University identifies a new consulting party under paragraph (b)(1) of this section, the University will invite the party to consult. An invitation to consult under paragraph (b)(2) of this section will be sent:

- (i) No later than 30 days after identifying a new consulting party based on new information; or
- (ii) No later than six months after the addition of a Tribal entity to the list of Federally recognized Indian Tribes published in the *Federal Register* pursuant to the Act of November 2, 1994 (25 U.S.C. 5131).

(c) *Step 3 – Consult on Cultural Items*

Text in red is verbatim language taken from the Federal regulations, 43 C.F.R. § Part 10, and *Federal Register* commentary related thereto.

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The University will respond to any consulting party, regardless of whether the party has received an invitation to consult. Consultation on an unassociated funerary object, sacred object, or object of cultural patrimony may continue until the University sends a repatriation statement for that object to a requestor under paragraph (g) of this section.

(1) In response to a consulting party, the University will ask for the following information, if not already provided:

- (i) Preferences on the proposed timeline and method for consultation; and
- (ii) The name, phone number, email address, or mailing address for any authorized representative, traditional religious leader, and known lineal descendant who may participate in consultation.

(2) Consultation must address identification of:

- (i) Lineal descendants,
- (ii) Indian Tribes or Native Hawaiian organizations with cultural affiliation,
- (iii) The types of objects that might be unassociated funerary objects, sacred objects, or objects of cultural patrimony, and
- (iv) The duty of care under 43 C.F.R. § 10.1(d) for unassociated funerary objects, sacred objects, or objects of cultural patrimony.

(3) The University will prepare a record of consultation that describes the concurrence, disagreement, or nonresponse of the consulting parties to the identifications in paragraph (c)(2) of this section.

- UMNO staff will prepare and keep the required Record of Consultation for holdings and collections under consultation. Consistent with *Comment 5*, 43 C.F.R. § Part 10, Final Rule, Wednesday, December 13, 2023, UMNO staff will be sensitive and respectful of the wishes of Consulting Parties and will consider, consistent with all applicable law, requests not to record information a Consulting Party deems to be of a sensitive nature.
- The UMNO and CHU staff will provide access to records and information concerning the particular holdings and collections involved in a given consultation. Scanned records and information can be shared in advance when feasible and appropriate. Additional records may be shared if any are discovered after consultation begins.
 - Out of respect and as a precaution, the UMNO may seek written confirmation (an email is sufficient) from Consulting Parties concerning some information and records that may be considered to be of a sensitive nature (e.g., existing photos of holdings and collections, etc.) before reproducing and sharing them.
- UMNO staff will oversee the entire consultation process. Consultations may be carried out exclusively by UMNO staff or may also include representatives from the relevant CHU. The consultation visit may also include introductory and informational meetings with other University representatives such as the Vice President for Research, Associate Vice President for Research, head of the relevant CHU, etc.
- Following a consultation visit, UMNO staff will review and prepare the Record of

Text in red is verbatim language taken from the Federal regulations, 43 C.F.R. § Part 10, and *Federal Register* commentary related thereto.

Consultation for the University's records. Upon request, a copy can be provided to the relevant CHU and/or a Consulting Party.

- (4) At any time before the University sends a repatriation statement for an unassociated funerary object, sacred object, or object of cultural patrimony to a requestor under paragraph (g) of this section, the University may receive a request from a consulting party for access to records, catalogues, relevant studies, or other pertinent data related to the holding or collection. The University will provide access to the additional information in a reasonable manner and for the limited purpose of determining cultural affiliation, including the geographical location or acquisition history, of the unassociated funerary object, sacred object, or object of cultural patrimony.

(d) Step 4 – Receive and Consider a Request for Repatriation

After a summary is compiled, any lineal descendant, Indian Tribe, or Native Hawaiian organization may submit to the University a written request for repatriation of an unassociated funerary object, sacred object, or object of cultural patrimony.

- (1) A request for repatriation of an unassociated funerary object, sacred object, or object of cultural patrimony must be received by the University before the University sends a repatriation statement for that unassociated funerary object, sacred object, or object of cultural patrimony to a requestor under paragraph (g) of this section. A request for repatriation received by the University before the deadline for compiling a summary in Table 1 to paragraph (a)(2) of this section is dated the same date as the deadline for compiling the summary.
- (2) Requests from two or more lineal descendants, Indian Tribes, or Native Hawaiian organizations who agree to joint repatriation of the unassociated funerary object, sacred object, or object of cultural patrimony will be considered a single request and not competing requests.

A request for repatriation must satisfy the following criteria:

- (i) Each unassociated funerary object, sacred object, or object of cultural patrimony being requested meets the definition of an unassociated funerary object, a sacred object, or an object of cultural patrimony;
- (ii) The request is from a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation; and
- (iii) The request includes information to support a finding that the University does not have right of possession to the unassociated funerary object, sacred object, or object of cultural patrimony.

(e) Step 5 – Respond to a Request for Repatriation

No later than 90 days after receiving a request for repatriation, the University will send a written response to the requestor with a copy to any other consulting party. Using the information available, including relevant records, catalogs, existing studies, and the results of consultation,

the University will determine if the request for repatriation satisfies the criteria under paragraph (d) of this section. In the written response, the University will state one of the following:

- (1) The request meets the criteria under paragraph (d) of this section. The University will submit a notice of intended repatriation under paragraph (f) of this section.
- (2) The request does not meet the criteria under paragraph (d) of this section. The University will provide a detailed explanation why the request does not meet the criteria and an opportunity for the requestor to provide additional information to meet the criteria.
- (3) The request meets the criteria under paragraph (d)(3)(i) and (ii) of this section, but the University asserts a right of possession to the unassociated funerary object, sacred object, or object of cultural patrimony and refuses repatriation of the requested object to the requestor. The University will provide information to prove that the University has a right of possession to the unassociated funerary object, sacred object, or object of cultural patrimony.
- (4) The University has received competing requests for repatriation of the unassociated funerary object, sacred object, or object of cultural patrimony that meet the criteria and must determine the most appropriate requestor using the procedures and deadlines under paragraph (h) of this section.

(f) *Step 6 – Submit a Notice of Intended Repatriation*

No later than 30 days after responding to a request for repatriation that meets the criteria, the University will submit a notice of intended repatriation. In cases where multiple repatriations are being made to the same requestor(s) the University, the University will typically include in a single notice all the unassociated funerary objects, sacred objects, or objects of cultural patrimony be repatriated simultaneously to those requestor(s).

- (1) A notice of intended repatriation must be sent to all requestors, any consulting parties, and to the Manager, National NAGPRA Program, for publication in the *Federal Register*.
- (2) A notice of intended repatriation must conform to the mandatory format of the *Federal Register* and include:
 - (i) An abstract of the information compiled under paragraph (a) of this section;
 - (ii) The total number and brief description of the unassociated funerary objects, sacred objects, or objects of cultural patrimony (counted separately or by lot);
 - (iii) The lineal descendant (whose name may be withheld), Indian Tribe, or Native Hawaiian organization requesting repatriation of the unassociated funerary objects, sacred objects, or objects of cultural patrimony;
 - (iv) The name, phone number, email address, and mailing address for the authorized representative of the museum or Federal agency who is responsible for receiving requests for repatriation; and
 - (v) The date (to be calculated by the *Federal Register* 30 days from the date of publication) after which the museum or Federal agency may send a repatriation statement to the requestor.

- (3) No later than 21 days after receiving a notice of intended repatriation, the Manager, National NAGPRA Program, must:
- (i) Approve for publication in the *Federal Register* any submission that conforms to the requirements under paragraph (f)(2) of this section; or
 - (ii) Return to the University any submission that does not conform to the requirements under paragraph (f)(2) of this section. No later than 14 days after the submission is returned, the University must resubmit the notice of intended repatriation.
- (4) At any time before sending a repatriation statement for an unassociated funerary object, sacred object, or object of cultural patrimony under paragraph (g) of this section, the University may receive additional, competing requests for repatriation of that object that meet the criteria under paragraph (d) of this section. The University will determine the most appropriate requestor using the procedures and deadlines under paragraph (h) of this section.

(g) Step 7 – Repatriation of the Unassociated Funerary Object, Sacred Object, or Object of Cultural Patrimony

No earlier than 30 days and no later than 90 days after publication of a notice of intended repatriation, the University will send a written repatriation statement to the requestor and a copy to the Manager, National NAGPRA Program. In a repatriation statement, the University will relinquish possession or control of the unassociated funerary object, sacred object, or object of cultural patrimony to the lineal descendant, Indian Tribe, or Native Hawaiian organization. In the case of joint requests for repatriation, a repatriation statement must identify and be sent to all requestors.

- (1) After sending a repatriation statement, the University will:
- (i) Consult with the requestor on custody and physical transfer,
 - (ii) Document any physical transfer, and
 - (iii) Protect sensitive information, as identified by the requestor, from disclosure to the general public to the extent consistent with applicable law.
- (2) After a repatriation statement is issued, nothing in the Act or this part limits the authority of the University to enter into any agreement with the requestor concerning the unassociated funerary object, sacred object, or object of cultural patrimony.

(h) Evaluating Competing Requests for Repatriation

At any time before sending a repatriation statement for an unassociated funerary object, sacred object, or object of cultural patrimony under paragraph (g) of this section, the University may receive additional, competing requests for repatriation of that object that meet the criteria under paragraph (d) of this section. The University will determine the most appropriate requestor using this paragraph.

- (1) For an unassociated funerary object or sacred object, in the following priority order, the most appropriate requestor is:
 - (i) The lineal descendant, if any, or
 - (ii) The Indian Tribe or Native Hawaiian organization with the closest cultural affiliation according to the priority order at §10.3(e) of this part.
- (2) For an object of cultural patrimony, the most appropriate requestor is the Indian Tribe or Native Hawaiian organization with the closest cultural affiliation according to the priority order at §10.3(e) of this part.
- (3) No later than 14 days after receiving a competing request, the University will send a written letter to each requestor identifying all requestors and the date each request was received. In response, the requestors may provide additional information to show by a preponderance of the evidence that the requestor has a stronger relationship of shared group identity to the cultural items.
- (4) No later than 180 days after informing the requestors of competing requests, the University will send a written determination to each requestor and the Manager, National NAGPRA Program. The determination must be one of the following:
 - (i) The most appropriate requestor has been determined and the competing requests were received before the publication of a notice of intended repatriation. The University must:
 - (A) Identify the most appropriate requestor and explain how the determination was made,
 - (B) Submit a notice of intended repatriation in accordance with paragraph (f) of this section no later than 30 days after sending the determination, and
 - (C) No earlier than 30 days and no later than 90 days after publication of the notice of intended repatriation, the University must send a repatriation statement to the most appropriate requestor under paragraph (g) of this section;
 - (ii) The most appropriate requestor has been determined and a notice of intended repatriation was previously published. The University will:
 - (A) Identify the most appropriate requestor and explain how the determination was made, and
 - (B) No earlier than 30 days and no later than 90 days after sending a determination of the most appropriate requestor, the University will send a repatriation statement to the most appropriate requestor under paragraph (g) of this section; or
 - (iii) The most appropriate requestor cannot be determined, and repatriation is stayed under paragraph (i)(2) of this section. The University will briefly describe the information considered and explain how the determination was made.

(i) *Stay of Repatriation*

Text in red is verbatim language taken from the Federal regulations, 43 C.F.R. § Part 10, and *Federal Register* commentary related thereto.

Repatriation under paragraph (g) of this section is stayed if:

- (1) A court of competent jurisdiction has enjoined the repatriation. When there is a final resolution of the legal case or controversy in favor of a requestor, the University will:
 - (i) No later than 14 days after a resolution, send a written statement of the resolution to each requestor and the Manager, National NAGPRA Program,
 - (ii) No earlier than 30 days and no later than 90 days after sending the written statement, the University will send a repatriation statement to the requestor under paragraph (g) of this section, unless a court of competent jurisdiction directs otherwise.

- (2) The University has received competing requests for repatriation and, after complying with paragraph (h) of this section, cannot determine the most appropriate requestor. When a most appropriate requestor is determined by an agreement between the parties, binding arbitration, or means of resolution other than through a court of competent jurisdiction, the University will:
 - (i) No later than 14 days after a resolution, send a written determination to each requestor and the Manager, National NAGPRA Program,
 - (ii) No earlier than 30 days and no later than 90 days after sending the determination, the University will send a repatriation statement to the requestor under paragraph (g) of this section.

- (3) Before the publication of a notice of intended repatriation under paragraph (f) of this section, the University has both requested and received the Assistant Secretary's written concurrence that the unassociated funerary object, sacred object, or object of cultural patrimony is indispensable for completion of a specific scientific study, the outcome of which is of major benefit to the people of the United States.
 - (i) To request the Assistant Secretary's concurrence, the University will send to the Manager, National NAGPRA Program, a written request of no more than 10 double-spaced pages. The written request must:
 - (A) Be on the letterhead of the University and be signed by an authorized representative;
 - (B) Describe the specific scientific study, the date on which the study commenced, and how the study is of major benefit to the people of the United States;
 - (C) Explain why retention of the unassociated funerary object, sacred object, or object of cultural patrimony is indispensable for completion of the study;
 - (D) Describe the steps required to complete the study, including any destructive analysis, and provide a completion schedule and completion date;
 - (E) Provide the position titles of the persons responsible for each step in the schedule;
 - (F) Affirm that the study has in place the requisite funding; and
 - (G) Provide written documentation showing free, prior, and informed consent from lineal descendants, Indian Tribes, or Native Hawaiian organizations to the study.

- (ii) In response to the request, the Assistant Secretary must:
 - (A) Consult with lineal descendants, Indian Tribes, or Native Hawaiian organizations that consented to the study,
 - (B) Send a written determination of concurrence or denial to the University with a copy to the consulting parties, and
 - (C) If the Assistant Secretary concurs, specify in the written determination the date by which the scientific study must be completed.
- (iii) No later than 30 days after the completion date in the Assistant Secretary's determination, the University will submit a notice of intended repatriation in accordance with paragraph (f) of this section.
- (iv) No earlier than 30 days and no later than 90 days after publication of the notice of intended repatriation, the University will send a repatriation statement to the requestor under paragraph (g) of this section.

Human Remains and Associated Funerary Objects¹²

Pursuant to 43 C.F.R. § 10.10, UMNO staff, in coordination with CHUs, will:

(a) Step 1 – Compile an itemized list of any human remains and associated funerary objects

Based on information available, the University will compile a simple itemized list of any human remains and associated funerary objects in a holding or collection. Depending on the scope of the holding or collection, the University may organize its itemized list into sections based on geographical area, accession or catalog name or number, or other defining attributes. The University will ensure the itemized list is comprehensive and covers all holdings or collections relevant to this section.

The simple itemized list must include:

- (1) The number of individuals identified in a reasonable manner based on the information available. No additional study or analysis is required to identify the number of individuals. If human remains are in a holding or collection, the number of individuals is at least one;
- (2) The number of associated funerary objects and types of objects (counted separately or by lot);
- (3) The geographical location (provenience) by county or State where the human remains or associated funerary objects were removed;
- (4) The acquisition history (provenance) of the human remains or associated funerary objects;
- (5) Other information available for identifying a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation; and

¹² For this section of the document, text in red is presented verbatim from the NAGPRA regulations, text in black is added to further clarify or describe how the University will implement particular regulatory requirements.

Text in red is verbatim language taken from the Federal regulations, 43 C.F.R. § Part 10, and *Federal Register* commentary related thereto.

- (6) The presence of any potentially hazardous substances used to treat any of the human remains or associated funerary objects, if known.

(b) Step 2 – Initiate Consultation

As soon as possible after compiling an itemized list, the University will identify consulting parties based on information available and invite the parties to consult.

- (1) Consulting parties are any lineal descendant and any Indian Tribe or Native Hawaiian organization with potential cultural affiliation.
- (2) An invitation to consult must be in writing and must include:
 - (i) The itemized list described in paragraph (a) of this section;
 - (ii) The names of all consulting parties; and
 - (iii) A proposed timeline and method for consultation
- (3) When the University identifies a new consulting party under paragraph (b)(1) of this section, the University will invite the party to consult. An invitation to consult under paragraph (b)(2) of this section must be sent:
 - (i) No later than 30 days after identifying a new consulting party based on new information; or
 - (ii) No later than two years after the addition of a Tribal entity to the list of federally recognized Indian Tribes published in the *Federal Register* pursuant to the Act of November 2, 1994 (25 U.S.C. 5131).

(c) Step 3 – Consult on Human Remains or Associated Funerary Objects

The University will respond to any consulting party, regardless of whether the party has received an invitation to consult. Consultation on human remains or associated funerary objects may continue until the University sends a repatriation statement for those human remains or associated funerary objects to a requestor under paragraph (h) of this section.

- (1) In the response to a consulting party, the University will ask for the following information, if not already provided:
 - (i) Indian Preferences on the proposed timeline and method for consultation; and
 - (ii) The name, phone number, email address, or mailing address for any authorized representative, traditional religious leader, and known lineal descendant who may participate in consultation.
- (2) Consultation must address identification of:
 - (i) Lineal descendants;
 - (ii) Indian Tribes or Native Hawaiian organizations with cultural affiliation;

- (iii) The types of objects that might be associated funerary objects, including any objects that were made exclusively for burial purposes or to contain human remains; and
 - (iv) The duty of care under §10.1(d) for human remains or associated funerary objects.
- (3) The University will prepare a Record of Consultation that describes the concurrence, disagreement, or nonresponse of the consulting parties to the identifications in paragraph (c)(2) of this section.
- (4) At any time before the University sends a repatriation statement for human remains or associated funerary objects to a requestor under paragraph (h) of this section, a museum or Federal agency may receive a request from a consulting party for access to records, catalogues, relevant studies, or other pertinent data related to those human remains or associated funerary objects. The University will provide access to the additional information in a reasonable manner and for the limited purpose of determining cultural affiliation, including the geographical location or acquisition history, of the human remains or associated funerary objects.

(d) Step 4 – Complete an Inventory of Human Remains or Associated Funerary Objects

Based on information available and the results of consultation, the University will submit to all consulting parties and the Manager, National NAGPRA Program, an inventory of any human remains and associated funerary objects in the holding or collection.

- (1) An inventory must include:
- (i) The names of all consulting parties and dates of consultation;
 - (ii) The information, updated as appropriate, from the itemized list compiled under paragraph (a) of this section;
 - (iii) For each entry in the itemized list, a determination identifying one of the following:
 - (A) A known lineal descendant (whose name may be withheld);
 - (B) The Indian Tribe or Native Hawaiian organization with cultural affiliation that is clearly identified by the information available about the human remains or associated funerary objects;
 - (C) The Indian Tribe or Native Hawaiian organization with cultural affiliation that is reasonably identified by the geographical location or acquisition history of the human remains or associated funerary objects; or
 - (D) No lineal descendant or any Indian Tribe or Native Hawaiian organization with cultural affiliation can be clearly or reasonably identified. The inventory must briefly describe the information considered under §10.3(a) of this part and the criteria identified under §10.3(b) of this part to explain how the determination was made.

Note on Repatriation of DNA Extractions

Within NAGPRA regulations, human remains are defined as follows (43 C.F.R. § 10.2 *Definitions* for this part):

Human remains means any physical part of the body of a Native American individual. This term does not include human remains to which a museum or Federal agency can prove it has a right of possession.

- Human remains reasonably believed to be comingled with other materials (such as soil or faunal remains) may be treated as human remains.
- Human remains incorporated into a funerary object, sacred object, or object of cultural patrimony are considered part of the cultural items rather than human remains.
- Human remains incorporated into an object or item that is not a funerary object, sacred object, or object of cultural patrimony are considered human remains.

After reviewing the regulatory definition of human remains, the University has concluded that all DNA materials derived from human remains be considered as human remains, and repatriated to the appropriate Consulting Parties. This includes all DNA extractions, derivatives, or portions thereof.

(e) Step 5 – Submit a Notice of Inventory Completion

No later than six months after completing or updating an inventory under paragraph (d) of this section, the University will submit a notice of inventory completion for all human remains or associated funerary objects in the inventory. The University may include in a single notice any human remains or associated funerary objects having the same determination under paragraph (d)(1)(iii) of this section.

- (1) A notice of inventory completion must be sent to any consulting parties and to the Manager, National NAGPRA Program, for publication in the *Federal Register*.
- (2) A notice of inventory completion must conform to the mandatory format of the *Federal Register* and include the following for all human remains or associated funerary objects in the notice:
 - (i) An abstract of the information compiled under paragraph (d)(1)(ii) of this section;
 - (ii) The determination under paragraph (d)(1)(iii) of this section;
 - (iii) The total number of individuals and associated funerary objects (counted separately or by lot);
 - (iv) The name, phone number, email address, and mailing address for the authorized representative of the University who is responsible for receiving requests for repatriation; and

- (v) The date (to be calculated by the *Federal Register* 30 days from the date of publication) after which the University may send a repatriation statement to a requestor.
- (3) No later than 21 days after receiving a notice of inventory completion, the Manager, National NAGPRA Program, must:
 - (i) Approve for publication in the *Federal Register* any submission that conforms to the requirements under paragraph (e)(2) of this section; or
 - (ii) Return to the University any submission that does not conform to the requirements under paragraph (e)(2) of this section. No later than 14 days after the submission is returned, the University will resubmit the notice of inventory completion.

(f) Step 6 – Receive and Consider a Request for Repatriation

After publication of a notice of inventory completion in the *Federal Register*, any lineal descendant, Indian Tribe, or Native Hawaiian organization may submit to the University a written request for repatriation of human remains or associated funerary objects.

- (1) A request for repatriation of human remains or associated funerary objects must be received by the University before the University sends a repatriation statement for those human remains or associated funerary objects under paragraph (h) of this section. A request for repatriation received by the University before the publication of the notice of inventory completion is dated the same date the notice was published.
- (2) Requests from two or more lineal descendants, Indian Tribes, or Native Hawaiian organizations who agree to joint repatriation of the human remains or associated funerary objects are considered a single request and not competing requests.
- (3) A request for repatriation must satisfy one of the following criteria:
 - (i) The requestor is identified in the notice of inventory completion, or
 - (ii) The requestor is not identified in the notice of inventory completion, and the request shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

(g) Step 7 – Respond to a Request for Repatriation

No earlier than 30 days after publication of a notice of inventory completion but no later than 90 days after receiving a request for repatriation, the University will send a written response to the requestor with a copy to any other party identified in the notice of inventory completion. Using the information available, including relevant records, catalogs, existing studies, and the results of consultation, the University will determine if the request satisfies the criteria under paragraph (f) of this section.

- (1) In the written response, the University must state one of the following:

- (i) The request meets the criteria under paragraph (f) of this section. The University will send a repatriation statement to the requestor under paragraph (h) of this section, unless the University receives additional, competing requests for repatriation.
 - (ii) The request does not meet the criteria under paragraph (f) of this section. The University will provide a detailed explanation why the request does not meet the criteria, and an opportunity for the requestor to provide additional information to meet the criteria.
 - (iii) The University has received competing requests for repatriation that meet the criteria and must determine the most appropriate requestor using the procedures and deadlines under paragraph (i) of this section.
- (2) At any time before sending a repatriation statement for human remains or associated funerary objects under paragraph (h) of this section, the University may receive additional, competing requests for repatriation of those human remains or associated funerary objects that meet the criteria under paragraph (f) of this section. The University will determine the most appropriate requestor using the procedures and deadlines under paragraph (i) of this section.

(h) Step 8 – Repatriation of the Human Remains or Associated Funerary Objects

No later than 90 days after responding to a request for repatriation that meets the criteria, the University will send a written repatriation statement to the requestor and a copy to the Manager, National NAGPRA Program. In a repatriation statement, the University must relinquish possession or control of the human remains or associated funerary objects to a lineal descendant, Indian Tribe, or Native Hawaiian organization. In the case of joint requests for repatriation, a repatriation statement must identify and be sent to all requestors.

- (1) After sending a repatriation statement, the University must:
- (i) Consult with the requestor on custody and physical transfer,
 - (ii) Document any physical transfer, and
 - (iii) Protect sensitive information, as identified by the requestor, from disclosure to the general public to the extent consistent with applicable law.
- (2) After a repatriation statement is sent, nothing in the Act or this part limits the authority of the University from entering into any agreement with the requestor concerning the human remains or associated funerary objects.

(i) Evaluating Competing Requests for Repatriation

At any time before sending a repatriation statement for human remains or associated funerary objects under paragraph (h) of this section, the University may receive additional, competing requests for repatriation of those human remains or associated funerary objects that meets the criteria under paragraph (f) of this section. The University must determine the most appropriate requestor using this paragraph.

- (1) In the following priority order, the most appropriate requestor is:

- (i) The known lineal descendant, if any; or
 - (ii) The Indian Tribe or Native Hawaiian organization with the closest cultural affiliation according to the priority order at §10.3(e) of this part.
- (2) No later than 14 days after receiving a competing request, the University must send a written letter to each requestor identifying all requestors and the date each request for repatriation was received. In response, requestors may provide additional information to show by a preponderance of the evidence that the requestor has a stronger relationship of shared group identity to the human remains or associated funerary objects.
- (3) No later than 180 days after informing the requestors of competing requests, the University must send a written determination to each requestor and the Manager, National NAGPRA Program. The determination must be one of the following:
- (i) The most appropriate requestor has been determined. The University must:
 - (A) Identify the most appropriate requestor and explain how the determination was made,
 - (B) No earlier than 30 days and no later than 90 days after sending a determination of the most appropriate requestor, the University must send a repatriation statement to the most appropriate requestor under paragraph (h) of this section.
 - (ii) The most appropriate requestor cannot be determined, and repatriation is stayed under paragraph (j)(2) of this section. The University must briefly describe the information considered and explain how the determination was made.

(j) Stay of Repatriation

Repatriation under paragraph (h) of this section is stayed if:

- (1) A court of competent jurisdiction has enjoined the repatriation. When there is a final resolution of the legal case or controversy in favor of a requestor, the University must:
- (i) No later than 14 days after a resolution, send a written statement of the resolution to each requestor and the Manager, National NAGPRA Program,
 - (ii) No earlier than 30 days and no later than 90 days after sending the written statement, the University must send a repatriation statement to the requestor under paragraph (h) of this section, unless a court of competent jurisdiction directs otherwise.
- (2) The University has received competing requests for repatriation and, after complying with paragraph (i) of this section, cannot determine the most appropriate requestor. When a most appropriate requestor is determined by an agreement between the parties, binding arbitration, or means of resolution other than through a court of competent jurisdiction, the University must:

- (i) No later than 14 days after a resolution, send a written determination to each requestor and the Manager, National NAGPRA Program,
 - (ii) No earlier than 30 days and no later than 90 days after sending the determination, the University must send a repatriation statement to the requestor under paragraph (h) of this section.
- (3) Before the publication of a notice of inventory completion under paragraph (e) of this section, the University has both requested and received the Assistant Secretary's written concurrence that the human remains or associated funerary objects are indispensable for completion of a specific scientific study, the outcome of which is of major benefit to the people of the United States.
- (i) To request the Assistant Secretary's concurrence, the University must send to the Manager, National NAGPRA Program, a written request of no more than 10 double-spaced pages. The written request must:
 - (A) Be on the letterhead of the University and be signed by an authorized representative;
 - (B) Describe the specific scientific study, the date on which the study commenced, and how the study is of major benefit to the people of the United States;
 - (C) Explain why retention of the human remains or associated funerary objects is indispensable for completion of the study;
 - (D) Describe the steps required to complete the study, including any destructive analysis, and provide a completion schedule and completion date;
 - (E) Provide the position titles of the persons responsible for each step in the schedule;
 - (F) Affirm that the study has in place the requisite funding; and
 - (G) Provide written documentation showing free, prior, and informed consent from lineal descendants, Indian Tribes, or Native Hawaiian organizations to the study.
 - (ii) In response to the request, the Assistant Secretary must:
 - (A) Consult with lineal descendants, Indian Tribes, or Native Hawaiian organizations that consented to the study,
 - (B) Send a written determination of concurrence or denial to the University with a copy to the consulting parties, and
 - (C) If the Assistant Secretary concurs, specify in the written determination the date by which the scientific study must be completed.
 - (iii) No later than 30 days after the completion date in the Assistant Secretary's concurrence, the University must submit a notice of inventory completion in accordance with paragraph (e) of this section.
 - (iv) No earlier than 30 days after publication of the notice of inventory completion and no later than 90 days after responding to a request for repatriation, the University must send a repatriation statement to the requestor under paragraph (h) of this section.

(k) Transfer or Reinter Human Remains or Associated Funerary Objects

Text in red is verbatim language taken from the Federal regulations, 43 C.F.R. § Part 10, and *Federal Register* commentary related thereto.

For human remains or associated funerary objects with no lineal descendant or no Indian Tribe or Native Hawaiian organization with cultural affiliation, the University, at its discretion, may agree to transfer or decide to reinter the human remains or associated funerary objects. The University must ensure it has initiated consultation under paragraph (b) of this section before taking any of the following steps.

(1) Step 1 – Agree to transfer or decide to reinter. The University may:

- (i) Agree in writing to transfer the human remains or associated funerary objects to an Indian Tribe or Native Hawaiian organization;
- (ii) Decide in writing to reinter the human remains or associated funerary objects according to applicable laws and policies; or
- (iii) Receive a request for repatriation of the human remains or associated funerary objects at any time before transfer or reinterment and must evaluate whether the request meets the criteria under paragraph (f) of this section.
 - (A) If the request for repatriation meets the criteria under paragraph (f) of this section, the University must respond in writing under paragraph (g) of this section and proceed with repatriation under paragraph (h) of this section.
 - (B) If the request does not meet the criteria under paragraph (f) of this section, the University must respond in writing under paragraph (g) of this section and may proceed with transfer or reinterment after publication of a notice.

(2) Step 2 – Submit a Notice of Proposed Transfer or Reinterment

No later than 30 days after agreeing to transfer or deciding to reinter the human remains or associated funerary objects, the University must submit a notice of proposed transfer or reinterment.

- (i) A notice of proposed transfer or reinterment must be sent to all consulting parties and to the Manager, National NAGPRA Program, for publication in the *Federal Register*.
- (ii) A notice of proposed transfer or reinterment must conform to the mandatory format of the *Federal Register* and include:
 - (A) An abstract of the information compiled under paragraph (d)(1)(ii) of this section;
 - (B) The total number of individuals and associated funerary objects (counted separately or by lot);
 - (C) The determination under paragraph (d)(1)(iii)(D) of this section that no lineal descendant or any Indian Tribe or Native Hawaiian organization with cultural affiliation can be clearly or reasonably identified. The notice must briefly describe the information considered and explain how the determination was made.
 - (D) The names of all consulting parties identified under paragraph (b) of this section;

- (E) The Indian Tribe or Native Hawaiian organization requesting the human remains or associated funerary objects or a statement that the museum or Federal agency agrees to reinter the human remains or associated funerary objects;
 - (F) The name, phone number, email address, and mailing address for the authorized representative of the University who is responsible for receiving requests for repatriation; and
 - (G) The date (to be calculated by the *Federal Register* 30 days from the date of publication) after which the University may proceed with the transfer or reinterment of the human remains or associated funerary objects.
- (iii) No later than 21 days after receiving a notice of proposed transfer or reinterment, the Manager, National NAGPRA Program, must:
- (A) Approve for publication in the *Federal Register* any submission that conforms to the requirements under paragraph (k)(2)(ii) of this section; or
 - (B) Return to the University any submission that does not conform to the requirements under paragraph (k)(2)(ii) of this section. No later than 14 days after the submission is returned, the University must resubmit the notice of proposed transfer or reinterment.

(3) Step 3 – Transfer or Reinter the Human Remains or Associated Funerary Objects

No earlier than 30 days and no later than 90 days after publication of a notice of proposed transfer or reinterment, the University must transfer or reinter the human remains or associated funerary objects and send a written statement to the Manager, National NAGPRA Program, that the transfer or reinterment is complete.

- (i) After transferring or reinterring, the museum or Federal agency must:
 - (A) Document the transfer or reinterment of the human remains or associated funerary objects, and
 - (B) Protect sensitive information from disclosure to the general public to the extent consistent with applicable law.
- (ii) After transfer or reinterment occurs, nothing in the Act or this part limits the authority of the University to enter into any agreement with the requestor concerning the human remains or associated funerary objects.

Note on Regulatory Deadline

The University acknowledges the 2024 Final Rule that requires museums and Federal agencies to consult and update Inventories of human remains and associated funerary objects within five years of the rule's effective date (January 12, 2029), barring any extensions that may be granted with the written support of the Consulting Parties. Failure to meet this deadline could result in civil penalties and enforcement action (43 C.F.R. § 10.7).

General Policies Concerning Native American Holdings and Collections

Text in red is verbatim language taken from the Federal regulations, 43 C.F.R. § Part 10, and *Federal Register* commentary related thereto.

Acceptance of New Holdings and Collections That Are NAGPRA-related or Potentially NAGPRA-related

- As a general stance, the University encourages potential donors to contact relevant Consulting Parties for assistance, if they are known, or the National NAGPRA Program for guidance, if it is an entity that may need to comply with the requirements of NAGPRA itself.

As a general practice, the University will not accept holdings and collections from institutions or private donors if they consist exclusively or predominantly of holdings and collections that have the clear potential to be NAGPRA-related or potentially NAGPRA-related. If any instances do arise where an institution or private donor wishes to make a donation that includes some holdings or collections that may be NAGPRA-related or potentially NAGPRA-related and will otherwise be disposed of, the University may choose to review them on a case-by-case basis.

- Holdings and collections obtained on loan from non-Consulting Parties or generated by faculty, staff, or student fieldwork must adhere to all pertinent policies, procedures, laws, and regulations governing archaeological investigations and investigators. The University may review holdings and collections on an as needed, case-by-case basis to assess whether any NAGPRA obligations pertain. CHU staff should contact the UMNO for further guidance as needed.

Curation of Holdings and Collections Determined Not to Be NAGPRA-related or Potentially NAGPRA-related

As a part of professional curation, CHU faculty and staff conduct periodic cleanings and carry out preventive conservation measures (i.e., making mounts, completing simple repairs, etc.) when necessary to ensure the stability and preservation of all the CHU's holdings and collections.

In light of these concerns for the proper care and conservation of holdings and collections, and consistent with Duty of Care, CHUs may wish to learn more about the proper and respectful care, handling, and exhibition of any Native American and Native Hawaiian holdings and collections that are ultimately determined to not be NAGPRA-related or that are co-curated with the consent of the Consulting Parties. The UMNO can help CHUs contact the appropriate representatives among the University's Native Nation partners in an effort to assist.

The University believes that NAGPRA is more than a compliance effort. It is also an opportunity to develop collegial relationships with the University's Native Nation partners. Therefore, CHUs are encouraged to develop their own relationships to learn proper and respectful practices and protocols associated with Native American and Native Hawaiian holdings and collections, as well as how best to convey or record them to other current and future staff members and students.

Co-Curation Agreements, Memos of Agreement, and Loan Agreements with Consulting Parties

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Within the context of the University's compliance with NAGPRA, circumstances may develop wherein Consulting Parties may permit or even desire that a University CHU possess, display, and/or study holdings and collections that may be NAGPRA-related or potentially NAGPRA-related. This may include instances where Consulting Parties are open to alternatives to repatriation or explicitly state that they have no intention of requesting the holdings or collections. Instead, they prefer that the University and CHU retain custody.

In these instances, the University and its CHUs will seek to enter into formal Co-Curation Agreements, Memos of Agreement, or Loan Agreements with Consulting Parties. These agreements will ensure that Consulting Parties continue to have access to the holdings and collections. These agreements will also develop specific procedures and protocols that will ensure that those holdings or collections in the University's custody are handled, displayed, and cared for according to mutually acceptable standards of respect and professionalism.

Co-Curation Agreements and Memos of Agreement

- The University will draft and enter into Co-Curation Agreements and Memos of Agreement on a case-by-case basis with Consulting Parties. These Co-Curation Agreements will be made for any NAGPRA-related or potentially NAGPRA-related holdings and collections a CHU has in its custody acknowledging the on-going rights and interests of all parties entering into the agreement.

In addition to guaranteeing access to these holdings or collections, and recording any specific instructions concerning proper care, handling, and display, Co-Curation Agreements and Memos of Agreement may contain explicit instructions, guidelines, specifications, or limitations developed in concert with Consulting Parties concerning particular holdings or collections.

Loan Agreements

- The University will consider all Loan Agreements on a case-by-case basis, being mindful of the requirements of Duty of Care in the NAGPRA regulations.
- In cases where the University cannot accommodate specific requests, or a mutually agreeable level of accommodation cannot be reached with the Consulting Parties, the University will not enter into any agreement. Instead, the University will either not accept the holding or collection if it is being donated or loaned, or encourage and pursue a formal repatriation of the holding or collection in the timeliest manner possible if it is already at the University.

Review of NAGPRA Policies and Procedures

The UMNO, in coordination with University's NAGPRA Advisory Committee and Office of General Counsel, will review these NAGPRA policies and procedures at least once every three years from the

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date of last review, or as needed and required. Proposed and interim changes or amendments will be brought to the attention of the VPRI and CHUs. The VPRI will provide a final review of all NAGPRA policies and procedures, and render any final decisions that need to be made with respect to proposed and interim changes or amendments.

Note On Forms

Upon request, the UMNO can provide samples of all forms and templates referenced in this document. Any forms provided should be seen as general sample documents. The UMNO may revise the content of any form or template as needed or required. The UMNO assumes no responsibility for any errors, omissions, or inaccuracies as these documents are used, adapted, and revised over time.

Please contact the UMNO at NAGPRAOffice@umich.edu if you are interested in using any of these forms or templates. Staff members will provide further information and assistance, including access to editable versions of these documents, as well as the text of any acknowledgment or copyright notice that the University may request be used.

In all cases, the University advises other entities who may consider adopting or adapting any of these documents for their own use to always consult their own legal counsel before doing so.