

BYLAWS OF THE SMITHSONIAN INSTITUTION NATIVE AMERICAN REPATRIATION REVIEW COMMITTEE

December 13, 2012

I. LEGAL AUTHORITY

In enacting The National Museum of the American Indian Act (Public Law 101-185) (hereinafter “NMAI Act”), and its Amendments of 1996 (Public Law 104-278) (hereinafter “Amendments”), Congress directed the Secretary of the Smithsonian Institution (hereinafter the “Secretary” and the “Smithsonian”) to appoint a special committee to monitor and review the inventory, identification, and return of Indian human remains, Indian funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony. The official title of the special committee so appointed by the Secretary is the Native American Repatriation Review Committee (hereinafter the “Committee.”)

These bylaws provide the rules of conduct of the Committee in carrying out its mandate set forth in the NMAI Act and its Amendments to:

- (1) with respect to the inventory and identification, ensure fair and objective consideration and assessment of all relevant evidence;
- (2) upon the request of any affected party or otherwise, review any finding relating to the origin or the return of such remains or objects:
- (3) facilitate the resolution of any dispute that may arise between Indian tribes with respect to the return of such remains or objects; and
- (4) perform such other related functions as the Secretary may assign.

The Committee advises the Secretary through his or her delegate, the Director of the National Museum of Natural History (NMNH) (hereinafter “Director”). The Committee will submit yearly written reports to the Secretary through the Director, summarizing its activities during the year, including a statement of case reports reviewed, findings reviewed and recommendations made, and any other matter it wishes to bring to the attention of the Secretary. The report shall be submitted not later than three months after the end of the calendar year.

The Committee shall cease to exist 120 days from the day the Secretary certifies, in a report submitted to Congress, that the work of the Committee has been completed.

II. MEMBERSHIP, TERMS, and OFFICERS

The Committee shall consist of seven (7) members appointed by the Secretary as follows:

- (1) four (4) members shall be appointed from among nominations submitted by Indian tribes and Native American organizations;
- (2) three (3) members shall be appointed from among nominations by museums and scientific organizations; and
- (3) at least two (2) members shall be traditional Indian religious leaders.

The Secretary may not appoint to the Committee any individual who is an officer or employee of the Government (including the Smithsonian Institution) or any individual who is otherwise affiliated with the Smithsonian Institution.

The term of appointment for Committee members shall be four (4) years, renewable by the Secretary once (although exceptions that would serve the mandate of the Committee may be considered), but all appointments shall terminate upon the termination of the Committee. Any vacancy on the Committee will be filled in the same manner as the original appointment. The term of appointment for officers normally shall be two years, renewable. Members and officers serve at the pleasure of the Secretary and may be dismissed prior to the expiration of their terms.

After receiving the nomination of the Committee, the Secretary shall designate one member as Chair of the Committee. The responsibilities of the Chair include:

- (1) presiding at Committee meetings;
- (2) scheduling regular and special Committee meetings, in cooperation with the Smithsonian;
- (3) setting the agenda of Committee meetings, in cooperation with the Smithsonian;
- (4) overseeing the preparation and review of the minutes of the Committee's meetings, in cooperation with the Smithsonian;
- (5) overseeing the Committee's expenditures, in cooperation with the Smithsonian;
- (6) transmitting Committee reports, annual or other, and Committee recommendations based on its review of findings;

- (7) acting as liaison and spokesperson for the Committee in its relations with the Secretary, the Under Secretary for Science, the Director, the NMAI Board of Trustees, the Smithsonian's repatriation offices, Committee support personnel, Native American groups, consultants and other outside groups and individuals.

After receiving the nomination of the Committee, the Secretary shall designate one member as Vice-Chair of the Committee. In the absence of the Chair, or in the event of the Chair's death or incapacitation, the Vice-Chair automatically shall become Chair until a successor is appointed.

III. MEETINGS

The Committee should meet at least biannually at the Smithsonian to conduct activities associated with the Committee's mandate ("regular meetings"). Additional special meetings may be scheduled during the year, if necessary. All meetings shall be convened by the Secretary or his delegate in close consultation with the Chair and at times of mutual convenience to the Smithsonian and the Committee.

Meetings may be held at locations other than the Smithsonian or by teleconference or videoconference if the Committee decides that such meetings are appropriate to carry out its mandate.

A quorum for meetings and other business consists of five (5) members of the Committee, except that a quorum is not required for performance of the Committee's monitoring role in advance of meetings. Meetings shall include attendance by at least one representative of the Smithsonian. If requested by any member, the Committee shall operate under Robert's Rules of Order.

Minutes shall be kept of all official regular and special meetings, and these minutes shall be available to the Committee and to the Smithsonian. Minutes may be disclosed to the public in accordance with Smithsonian Directive 807 (Requests for Smithsonian Institution Information).

IV. VOTING PROCEDURES

A simple majority vote of those members present at a meeting (at least a quorum) is required for approval of an action or recommendation by the Committee. All members of the Committee have the right to vote, except as limited by Section V (Conflicts of Interest). A member may move to reconsider an action or recommendation, and such reconsideration requires approval by a simple majority vote.

During the actual voting, a member may not explain his or her vote. The Committee shall designate a non-Committee member as the teller of the vote. The teller shall consult with the Committee in all questions regarding voting procedures. The method of voting on an action or recommendation is by show of hands. With the consent of a simple majority of the Committee, voting may be conducted by mail, e-mail, or by teleconference or videoconference.

V. CONFLICTS OF INTEREST

Members of the Committee are expected to adhere to the highest ethical standards of the Smithsonian (Statement of Values and Code of Ethics) and their professions, including standards regarding conflicts of interest. The Smithsonian, Native Americans, Native Hawaiians, parties requesting review, parties to disputes, and the public should have confidence in the impartiality of the actions and recommendations of the Committee.

Circumstances that may precipitate a conflict of interest, or a potential or perceived conflict, for a member include:

- (1) the Committee member or a member of his or her immediate family is the individual or a member of the specific Indian tribe or Native Hawaiian organization directly making the claim for repatriation;
- (2) the Committee member or a member of his or her immediate family is being paid by the individual, Indian tribe, or Native Hawaiian organization directly or indirectly making the claim for repatriation, or in any way has a financial interest in the outcome of the claim. (Pay received from the Smithsonian for serving as a member of the Committee is not considered payment or a financial interest for purposes of this Section.)
- (3) the Committee member or a member of his or her immediate family has a direct and current academic or research association with the collection at issue in the repatriation claim.

Each Committee member is responsible for examining each claim for repatriation for any conflict of interest, or any potential or perceived conflict, he or she may have and for declaring that conflict to the Committee. The member declaring the conflict may recuse himself or herself from participation in consideration of the claim. Alternatively, the member may request that the Committee determine whether, because of the declared

conflict, the member should not participate in consideration of the claim. The determination shall be made on the basis of a simple majority vote.

If a member of the Committee is aware of a conflict of interest, or a potential or perceived conflict, in another member who has not declared such conflict, that member may inform the Committee and the Committee will determine whether, because of the conflict, the member should not participate in consideration of the claim. The determination shall be made on the basis of a simple majority vote.

Any member with a conflict of interest may not participate in any way in the review of a finding and the recommendation based on that review, or in facilitation of resolution of a dispute. However, if the testimony of a member who has a conflict is necessary or helpful to the Committee's review of a finding and recommendation, that member may be allowed to testify before the Committee, on the basis of a simple majority vote.

When a member does not participate in the review of a finding and recommendation or facilitation of dispute resolution because of a conflict of interest, a written statement of the reason for the member's nonparticipation must be appended to the Committee's report on the particular dispute or review and included in the Committee's yearly report.

VI. RECORDS RETENTION

The Committee shall retain records, including at least: (1) minutes of its official regular and special meetings; (2) transcripts of any hearings it conducts as part of its review of findings; (3) its recommendations to the Under Secretary for Science based on its review of findings; and (4) its annual reports to the Secretary through the Director. These records shall be available to the Committee and to the Smithsonian and may be disclosed to the public in accordance with Smithsonian Directive 807 (Requests for Smithsonian Institution Information).

VII. SUPPORT OF THE COMMITTEE

Funding for the work of the Committee is provided by federal appropriation to the NMNH.

Members shall be paid at a rate equal to the daily rate for GS-18, or its equivalent, for each day the member is actually engaged in official Committee business, including travel time.

While away from their homes or regular places of business in the performance of authorized services for the Committee, members shall be allowed to claim authorized travel expenses, including *per diem* in lieu of subsistence, according to official rates for federal employees, provided required receipts and documentation are presented in a timely manner and such expenses have not already been paid by the Smithsonian. All travel, *per diem*, and expenses, must be authorized and paid in accordance with the Smithsonian's official travel policies. Written authorization from the Secretary or his or her delegate must be obtained in advance of a member incurring travel or other expenses.

Members also shall be paid at the daily rate for GS-18, or its equivalent, but without reimbursement of expenses, for time spent reading and otherwise preparing for official meetings, on the basis of one preparation day for each official meeting. Allowance for more advance preparation time will be at the discretion of the Secretary or his or her delegate.

Administrative and secretarial staff support for the Committee shall be provided by the Smithsonian, consistently with the Committee's defined duties and available funds.

VIII. AMENDMENTS TO THE BYLAWS

Any amendment to the above bylaws can be made by unanimous consent of the Committee and with approval by the Secretary or his or her delegate.

APPENDIX TO THE BYLAWS OF THE SMITHSONIAN INSTITUTION NATIVE AMERICAN REPATRIATION REVIEW COMMITTEE

December 2012

The Committee's statutory mandate is set forth in the Bylaws at Section I. This appendix explains the procedures the Committee shall follow in fulfilling its mandate.

I. MONITORING ROLE

At least annually, the Committee shall review Repatriation Office Case Reports for the purpose of ensuring that all relevant evidence has been fairly and objectively considered and assessed during the inventory and identification of Indian human remains, Indian

funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony. The Committee may also assess the timeliness of inventory, identification, notification to tribes, and return of remains and objects.

At least two weeks prior to regular Committee meetings, the Repatriation Office shall provide members brief statements on all active cases, any indications of outside concern regarding the progress of specific cases, and a summary report for all cases.

In conducting its review of the Case Reports, the Committee shall examine:

- (1) the general inventory and summary of remains and objects;
- (2) the evidence used to determine cultural affiliation of remains and/or objects;
- (3) the methods and criteria used to determine cultural affiliation of remains and/or objects; and
- (4) the qualifications of, and methods and criteria used by, any outside experts who consulted on the case.

The Repatriation Office shall provide completed case reports and all associated decisions to the Committee. After the return of remains and/or objects, the Committee may contact tribal representatives for their opinions regarding the return arrangements, timeliness and resolution of the case.

II. REVIEW OF FINDINGS

Upon the request of any affected party or otherwise, the Committee shall review any finding relating to the origin or the return of human remains, funerary objects, sacred objects, and objects of cultural patrimony.

The party making the request for review of a finding should make the request in writing to the Under Secretary for Science including the basis for the request. The Under Secretary for Science shall forward copies of the request to each Committee member, the Director of NMNH, and the Repatriation Office.

The Committee shall discuss the request for review no later than the next regularly scheduled meeting. If the Committee grants the request, it, at a minimum, may decide to base its review on:

- (1) the original findings, as well as the case report and associated documentation; and
- (2) documentation, evidence, or statements presented by the party that requested review.

If the Committee decides that the above provide insufficient basis for its review, it may request any or all of the following:

- (1) that affected parties on any or all sides come before the Committee to answer questions about the case;
- (2) that experts be hired as consultants to prepare additional reports addressing key issues;
- (3) that expert consultants be invited to come before the Committee to answer questions;
- (4) that affected parties prepare additional materials based on questions posed by the Committee.

Hiring of consultants is subject to approval of the Secretary or his delegate. Any three Committee members may recommend that a consultant be hired. The Committee may provide a list of possible consultant.

In conducting its review and making recommendations, the Committee shall subscribe to:

- (1) the definition of cultural affiliation provided in the Native American Graves Protection and Repatriation Act (NAGPRA) (Public Law 101-601) at Section 2(2): “Cultural affiliation” means that there is a relationship of shared group identity, which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group; and
- (2) the evidentiary standard for establishing cultural affiliation provided in the regulations promulgated pursuant to NAGPRA (43 CFR Part 10, § 10.2(e)): “Cultural affiliation” is established when the preponderance of the evidence – based on geographical, kinship, biological, archaeological, anthropological, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion – reasonably leads to such a conclusion.

The members of the Committee shall have full and free access to the Indian human remains, funerary objects, sacred objects, and objects of cultural patrimony in possession of the Smithsonian and to any related evidence, including scientific and historical documents.

At the conclusion of its review, the Committee shall submit a written recommendation to the Under Secretary for Science that is based on a majority vote. If the Committee’s vote is not unanimous, a written statement of the minority opinion(s) should be included with the recommendation. The decision of the Under Secretary for Science may be appealed to

the Secretary for review and final decision. There will be no further appeals from the final decision of the Secretary.

III. FACILITATION OF DISPUTE RESOLUTION

When requested by the Secretary, the Committee shall facilitate the resolution of any dispute that may arise between Indian tribes with respect to the return of human remains, funerary objects, sacred objects, and objects of cultural patrimony – in the following circumstances:

- (1) when the Smithsonian is deciding a repatriation case in which more than one Indian tribe is a claimant;
- (2) a repatriation finding is disputed by one or more Native American groups or lineal descendants; and/or
- (3) whenever necessary to facilitate the resolution of disputes among Native American groups or lineal descendants relating to the return of such remains and objects.