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## 8-205 Duty to Report Discoveries

### Discovery of Human Remains, Sacred Ceremonial Objects, Objects of National and Tribal Patrimony

#### A. Definitions. The following definitions shall apply in this Article:

1. "Coordinator" is the member of the Museum's Archaeology Division who has been identified by the Director as being responsible for coordinating the Museum's response to the provisions of A.R.S. §41-844.
2. "Funerary Objects" means any objects discovered in proximity to Human Remains and thought to have been deposited with the Human Remains at the time of interment.
3. "Group" is a group with a cultural or religious affinity and means any of the following:
  - a. In the case of Human Remains or Funerary Objects, any Tribe that has submitted a written claim of affinity or any other Group or Tribe that has cultural affinity in light of all the relevant evidence;
  - b. In the case of a Sacred Ceremonial Object, a Group whose religious observances traditionally have utilized such an object;
  - c. In the case of an Object of National or Tribal Patrimony, a Group whose past or present government or traditional cultural organization was or is associated with the object.
4. "Group Representative" means the agent of any Group designated by the governing body of the Group to act on its behalf with respect to the provisions of A.R.S. §41-844.
5. "Human Remains" are the physical remains of individuals deceased in excess of 50 years, in contexts indicative of interment or other deposition during funerary processes or in other contexts exhibiting depositional integrity. These include the following cases:

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- a. More than one substantially intact bone or, alternatively, accumulations of fragmented bones that are likely to be human, in close association with one another;
  - b. Any other instance of Human Remains in contexts consistent with known prehistoric or historic patterns of disposition of Human Remains after death.
6. "Objects of National or Tribal Patrimony" means inalienable items of historical or cultural significance to tribal groups.
  7. "Person in Charge" means any person in charge of any survey, excavation, construction or other like activity on any lands owned or controlled by this state, by a public agency or institution of the state, or by any county or municipal corporation within the state.
  8. "Relative" is a person with a direct kinship relationship to the Remains.
  9. "Remains" include Human Remains, any Remains thought to be Human Remains, associated Funerary Objects, Sacred Ceremonial Objects and Objects of National or Tribal Patrimony.
  10. "Report of Remains" means a written report describing the following:
    - a. "Removal of Remains": Identification of the names and Group or institutional affiliations of individuals participating in removal; date(s) of activity and the site. Context and identification of Remains including the location from which Remains were removed, specifically identified by county and legal description and including ASM site number if available; cultural identification of the Remains and descriptions of features or materials used in making that determination; map showing geographic location from which Remains were removed; specific context of Remains, type of feature; photograph or, alternatively, detailed drawings showing all Remains identified and removed; inventory of Remains, including number of human bones and bone fragments and

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inventory of any associated objects, identified as specifically as possible.

- b. "Disposition of Remains": Identification of names and Group or institutional affiliations of individuals participating in disposition; date(s) of disposition; and type of disposition (reburial, curation, or other). Identification of Remains including the confirmation that Remains were received as listed in the removal inventory; or a complete list of Remains received for disposition. If the location of disposition is reburial on tribal lands where permanent protection is feasible or if the final disposition is curation in a repository, the reservation or repository should be identified; and if disposition is reburial on state or private lands, specific location of the reburial with a legal description and a map showing the reburial location should be provided.

11. "Respect and Dignity" include the following aspects of treatment:

- a. Avoidance of any unnecessary disturbance of Remains and Objects;
- b. Avoidance of alienation of Remains and Objects;
- c. Avoidance of physical modification of Remains and Objects;
- d. Avoidance of any attempt to receive monetary benefit from Remains and Objects;
- e. Consultation and cooperation with Groups regarding treatment and disposition of Remains and Objects, and return of Remains and Objects to such Groups when requested.

12. "Sacred Ceremonial Object" means an object traditionally utilized in religious observances.

13. "Significant Scholarly Interest" means research within the past ten years under permit of the State of Arizona for archaeological or historical investigations or application for such permit.

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14. "Tribe" means any federally recognized tribal government.

B. Duty to Report Discoveries

1. Any Person in Charge shall report to the Director within three working days, except as provided in B below, any archaeological, paleontological or historical site or object that is at least 50 years old and that is discovered in the course of survey, excavation, construction or other like activity.
  - a. The Person in Charge shall immediately take all reasonable steps to secure the preservation of the site by immediately stopping all activity destructive to the site and by securing the site from vandalism, theft, erosion and other harmful disturbance.
  - b. If Remains are not involved, then the Director shall evaluate the site and make recommendations for preservation. If the discovery is made by a permittee or any individual acting on behalf of the permittee while engaged in work at a site covered by an unexpired permit issued to the permittee, permitted work at the site may proceed without delay or further evaluation by the Director.
  - c. If the objects discovered appear to be Remains, the Person in Charge shall identify the proposed activity, the location of the proposed activity, the observed characteristics of the Remains, and shall make a written request to the Director for permission to disturb such Remains.
2. Where Person in Charge is operating pursuant to a valid permit issued under these Regulations, and Remains are not involved, the regular reporting requirements for the permit shall constitute adequate notification to the Director.

C. Initial Response to Notices of Discovery of Remains

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1. Upon receipt of notification of discovery of Remains, the Coordinator will make an initial assessment about the existence of Remains and the applicability of these procedures.
  - a. If the Coordinator concludes that Remains are not involved, or that A.R.S.§41-844 does not apply to the discovery, the Person in Charge shall be so advised.
  - b. If the Coordinator concludes that Remains are or may be involved, and that A.R.S.§41-844 is applicable to the discovery, the Person in Charge shall be advised that the following procedures are applicable.
2. The Coordinator, to the best of her/his ability, shall give notice of the discovery to the following:
  - a. All individuals that may have a direct kinship relationship to the Remains;
  - b. All Groups that have claimed affinity under subsection C below;
  - c. All other Groups that it is reasonable to believe may have a cultural or religious affinity to the Remains;
  - d. Appropriate members of the curatorial staff of the Arizona State Museum;
  - e. Individuals who have a significant scholarly interest in the Remains;
  - f. The State Historic Preservation Officer;
  - g. If American Indian Remains are involved, the Tribes that occupy or have occupied the land on which the discovery is made, as well as the Arizona Commission on Indian Affairs, and the Intertribal Council of Arizona.

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3. Tribes that wish to be notified pursuant to this section shall keep on file with the Director lists of the cultural groups and geographical area with which they claim affinity.

D. Removal of Remains

1. The Remains shall be left undisturbed unless it is necessary to remove Remains in order to permit continuation of work on a construction project or similar project.
2. The authority to determine the disposition and treatment of Remains shall not be exercised in a manner that would unreasonably delay completion of a construction project or other project.
3. If it is necessary to remove Remains pursuant to subsections A and B above, Arizona State Museum personnel or their agents may remove Remains and transport them to the Arizona State Museum where they will be inventoried and stored for safekeeping.
4. A Report of Remains documenting removal of Remains shall be prepared and filed with the Coordinator within two months from the date of removal of the Remains.

E. Disposition After Removal

1. Within six months of notification to the Coordinator of a discovery of Remains, and if there is no prior agreement regarding treatment, the Coordinator shall convene a meeting of notified persons and Group Representatives to discuss the most appropriate disposition of the Remains.
2. At the meeting, the Coordinator shall encourage agreement among all participants regarding the most appropriate disposition and treatment of the Remains.
  - a. An agreement may include a decision to curate or rebury materials subject to conditions or limitations, a decision to engage in scientific analysis before repatriation or reburial, or any other appropriate disposition.

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- b. Any agreement reached shall determine the disposition and treatment of the materials, and the Coordinator shall oversee its implementation.
- 3. If no agreement is reached within six months of the meeting described above, the following procedures shall apply.
  - a. If Human Remains or Funerary Objects are involved, they shall be disposed of and treated in accordance with the wishes of the nearest Relative or Group if no Relative is identified.
  - b. If Sacred Ceremonial Objects or Objects of National or Tribal Patrimony are involved, disposition and treatment shall be in accordance with the wishes of the governing body of the Group.
- 4. If no Relative or Group is identified, the Remains shall be reburied in a place as similar and close as possible to their original burial site.
  - a. If the Remains have scientific value, they may be curated by the Arizona State Museum or other authorized repository for a period of one year, after which they shall be reburied.
  - b. If Human Remains or Funerary Objects of American Indians are involved, reburial shall be undertaken in cooperation with the Tribe located nearest the place where the Remains were discovered.
    - 1. Reburial may, with the Tribe's consent, take place on that Tribe's reservation.
    - 2. The one year period for scientific curation may be extended with the Tribe's consent.
  - c. If Sacred Ceremonial Objects or Objects of National or Tribal Patrimony are involved, the Director shall decide on the most appropriate disposition and treatment.

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1. Where American Indian materials are involved, the determination shall be made in consultation with Group Representatives of appropriate Tribes.

5. Where a Group takes responsibility for Remains prior to removal, the Group shall submit a Report of Remains to the Coordinator within two months from the date of the removal of the Remains.

6. Where a Group takes responsibility for Remains after removal of Remains, the Group shall submit a Report of Remains documenting disposition of Remains within two months from the date it is given possession of the Remains.

F. Curation

1. Any repository charged with the care of Remains shall maintain them with appropriate Dignity and Respect and with consideration for the specific cultural religious traditions applicable to the Remains.

2. Relatives or Groups to whom any Remains are given shall be responsible for insuring that they are treated with Dignity and Respect.

G. Dispute Resolution

1. Persons who believe that the provisions of A.R.S. § 41-844 have not been properly applied, and Groups or Tribes with conflicting claims of affinity to the same Remains that are not able to agree on the disposition or treatment of such Remains, shall give written notice of their claims to the Coordinator and to all other parties entitled to notice under these procedures.

a. The parties shall meet within 15 days of receiving the notice and attempt to agree on the designation of a third party to assist in the resolution of the dispute.

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- b. If the parties cannot agree within 15 days on a third party, the State Historic Preservation Officer shall serve in that capacity.
- c. The adverse parties shall attempt to reach a resolution with the assistance of the third party.
- d. If a resolution cannot be reached within 90 days of the designation of the third party, the third party shall resolve the dispute. In making determinations concerning claims of affinity, consideration shall be given to all the relevant evidence of affinity.
- e. Any party may appeal a decision within 30 days to the Superior Court in the county in which the subject of the dispute is located.

H. Remains and Objects in the Possession of the State

If a written request is made by a Tribe for the reburial or repatriation of Remains in the possession and ownership or control of an agency of this State as of the effective date of this statute, the requirements of these procedures apply as if the Remains had been discovered after the effective date of this statute.

I. Funding of Associated Costs

- 1. The expense of any removal, curation or reburial pursuant to this article that is required as the result of a construction project or similar project shall be borne by that project.
- 2. Reburials made in order to satisfy the wishes of a Relative or Group shall be by and at the expense of the Relative or Group.
- 3. The Director shall have discretion to determine reasonable expenses associated with reburial and to allocate such expenses between the parties in subsections A and B above.

J. Arizona State Museum Assistance

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1. The Person in Charge may request assistance of Arizona State Museum personnel, or consultants qualified to produce a Report of Remains, in prior evaluation of the potential for disturbance of Human Remains. The construction project or similar project shall bear the costs of such assistance, including field examinations, if necessary.
2. Parties other than the Person in Charge reporting disturbance of Remains to the Museum will be referred to the Person in Charge and to the appropriate authorities.

K. Development of Prior Agreements

1. The Director may enter into agreements with Groups or Tribes for the efficient implementation of these procedures.
  - a. The Coordinator will attempt to promptly identify and contact Groups in the State that might wish to claim affinity and accept responsibility for Remains discovered within designated geographic areas in the State.
  - b. Such agreements may include designation of a Group Representative capable of acting on behalf of the Group in taking action with respect to the treatment of Remains.
  - c. Such agreements will provide for the disposition of the Remains with Respect and Dignity.
  - d. All parties entitled to notice under this article shall be consulted prior to execution of an agreement pursuant to this section.
  - e. Such agreements may be terminated by either party.
2. The Director may enter into agreements with public and private entities for the efficient implementation of these procedures.
  - a. Such agreements may be made before discovery of individual Remains when such Remains can reasonably be expected to be found.

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- b. Such agreements may delegate administrative aspects of compliance with these Procedures, subject to the decision-making authority of the Director.
- c. Agreements shall specify requirements for reporting to the Coordinator implementation of delegated aspects of compliance.
- d. Such agreements will provide for the disposition of the Remains with Respect and Dignity.
- e. Such agreements may be terminated by either party.
- f. Tribes that have requested notice pursuant to subsection III(C) above shall be notified of the existence of such agreements at the time they are executed.