

Policy Number: 8-101	Policy Name: Rules Implementing A.R.S. §41-865 Disturbing Human Remains or Funerary Objects on Lands Other than State Lands - Definitions
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ARIZONA STATE MUSEUM

A. RULES IMPLEMENTING A.R.S. §41-865 DISTURBING HUMAN REMAINS  
OR FUNERARY OBJECTS ON LANDS OTHER THAN STATE LANDS

8-101 Definitions

- A. "Director" is the Director of the Arizona State Museum.
- B. "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. § 41-865.
- C. "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.
- D. "Group" is a group with a cultural or religious affinity to the Human Remains or Funerary Objects and includes any Tribe that has submitted a written claim of affinity or any other group that has cultural affinity in light of all the relevant evidence.
- E. "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:
  - 1. More than one substantially intact bone or, alternatively, accumulations of fragmented bones that are likely to be human, in close association with one another;
  - 2. Any other instance of Human Remains in contexts consistent with known prehistoric or historic patterns of disposition of Human Remains after death.
- F. "Landowner" is the individual, partnership, or corporation having legal title to the property on which Human Remains are reported to be present; or a

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lessee, or an agent designated to act on behalf of the landowner or lessee with respect to actions that might disturb Remains as defined here and with respect to compliance with the provisions of A.R.S. § 41-865 and these rules.

- G. "Notice of Intent to Disturb" is the required report by the Landowner to the Coordinator of the unintentional disturbance of Remains or the intent to disturb Remains. Such report must be in writing and is effective upon receipt by the Coordinator.
- H. "Remains" include Human Remains and associated Funerary Objects.
- I. "Report of Remains" means a written report describing the following:
  - 1. "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 inventory of any associated objects, identified as specifically as possible.
  - 2. "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

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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.

- J. "Respect and Dignity" include the following aspects of treatment:
1. Avoidance of any unnecessary disturbance of Remains and Objects;
  2. Avoidance of alienation of Remains and Objects;
  3. Avoidance of physical modification of Remains and Objects;
  4. Avoidance of any attempt to receive monetary benefit from Remains and Objects;
  5. Consultation and cooperation with Groups with Religious or Cultural Affinity regarding treatment and disposition of Remains and Objects, and return of Remains and Objects to such Groups when requested.
- K. "State Lands" means lands owned or controlled by this state, any agency or institution of this state or any county or municipal corporations within this state.
- L. "Tribe" means any federally recognized tribal government.

Policy Number: 8-102	Policy Name: General Rights and Obligations with Respect to Remains
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#### 8-102 General Rights and Obligations with Respect to Remains

- A. Remains are to be treated at all times with Respect and Dignity.
- B. No individual shall sell or otherwise benefit financially from the sale of any Remains.
- C. Any person who has reason to believe that Remains are likely to exist in an area to be excavated or otherwise disturbed is under a duty to proceed with due care in any activities that might disturb such Remains.

Policy Number: 8-103	Policy Name: Landowner Duty to Report
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## 8-103 Landowner Duty to Report

- A. Any Landowner having intention to disturb Remains on lands other than State Lands or federal lands, or having unintentionally disturbed such Remains, shall immediately cease any disturbance of Remains and shall promptly notify the Coordinator in writing of such disturbance or intent to disturb.
  - 1. In the Notice of Intent to Disturb, the Landowner shall identify the proposed action, the location of the proposed action, the observed characteristics of the Remains, and shall request permission to disturb such Remains.
  - 2. Such notification shall serve as permission for access by Coordinator or her/his agents to the lands in question for purposes of implementing these procedures.
- B. Parties other than the Landowner reporting disturbance of Remains to the Museum will be referred to the Landowner and/or to the appropriate law enforcement authorities.

Policy Number: 8-104	Policy Name: Museum Response to Landowner Notice
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#### 8-104 Museum Response to Landowner Notice

- A. Upon receipt of a Notice of Intent to Disturb, the Coordinator will make an initial assessment about the existence of Remains and the applicability of these procedures.
  - 1. If the Coordinator concludes that Remains are not involved, or that A.R.S. §41-865 does not apply to the disturbance, the Landowner shall be so advised. If Human Remains less than 50 years old are involved, the Coordinator may refer the Landowner to appropriate civil authorities, such as the county medical examiner.
  - 2. If the Coordinator concludes that Remains are or may be involved, and that A.R.S. §41-865 is applicable, the Landowner shall be advised that the statute and these procedures are applicable.
- B. The Coordinator will attempt to obtain from the Landowner a written agreement to avoid further disturbance to the Remains.
- C. If such agreement is not possible, the Landowner and the Coordinator may enter into an agreement to extend the time available for recovery of Remains.
- D. If the Landowner is unwilling or unable to agree to such an extension, the Landowner shall take no action for ten working days from the Coordinator's receipt of the Notice of Intent to Disturb without the prior written permission of the Coordinator.
- E. If the Landowner is unwilling or unable to avoid disturbance of the Remains, the Coordinator shall notify any Groups that have filed with the Director a claim of affinity as to the cultural group or geographic area in question or that have a prior agreement with the Director regarding responsibility for Remains.
- F. The Landowner may proceed with activities having the potential to disturb Remains following termination of any agreement with Coordinator to extend the time for recovery of Remains, or if no such agreement exists, after ten working days from the Coordinator's receipt of the Notice of Intent to Disturb, but Landowner continues to be obligated to treat the Remains with Respect and Dignity.

Policy Number: 8-105	Policy Name: Groups Taking Responsibility for Remains Prior to Removal
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## 8-105 Groups Taking Responsibility for Remains Prior to Removal

- A. A Group wishing to take responsibility for the Remains prior to removal must contact the Coordinator within two working days of receipt of notification from the Coordinator, confirming its intention to accept responsibility. Notification by facsimile or notification by telephone to be followed within two working days by written notification is permitted.
- B. Upon taking responsibility for Remains, the Group shall proceed to insure the removal of those Remains within ten working days of Coordinator's receipt of the Notice of Intent to Disturb from the Landowner.
  - 1. The Group taking responsibility for Remains shall notify the Landowner of the approximate time and circumstances that the property will be entered for purposes of implementing A.R.S. § 41-865.
  - 2. The Group taking responsibility for Remains shall submit a Report of Remains to the Coordinator within two months of the date of the removal of the Remains.

Policy Number: 8-106	Policy Name: Removal of Remains in Absence of Group Taking Responsibility
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#### 8-106 Removal of Remains In Absence of Group Taking Responsibility

- A. If it is necessary to remove the Remains before a Group has taken responsibility for the Remains, and if there are appropriate financial resources available, the Coordinator may make arrangements for Museum staff to remove the Remains using standard scientific procedures and to inventory and store for safekeeping the Remains at Arizona State Museum pending determination whether a Group wishes to take responsibility for the Remains.
- B. 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.

Policy Number: 8-107	Policy Name: Disposition of Remains after Removal
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## 8-107 Disposition of Remains after Removal

- A. Following removal of Remains pursuant to section V above, and within six months of receipt of the Notice of Intent to Disturb, the Coordinator shall notify all potential Groups and researchers who are known to have a research interest in the specific Remains.
- B. A Group wishing to take responsibility for the Remains shall notify the Coordinator within six months of its intention to take responsibility for reburial of the Remains.
- C. If more than one Group notifies Coordinator that it wishes to take responsibility for the Remains, or if a researcher notified pursuant to subsection A above expresses an interest in the Remains, the Coordinator shall consult with such parties for the purpose of encouraging agreement as to the disposition of the Remains. If the competing Groups are not able to decide on a mutually acceptable disposition of the Remains, the Director may determine the Group with the closest affinity to the Remains in light of all the relevant evidence.
- D. The Group given responsibility for the Remains shall submit a Report of Remains documenting disposition of Remains within two months of the date such Group is given possession of the Remains.
- E. If no Group notifies Coordinator that it wishes to take responsibility for the Remains within one year of the Notice of Intent to Disturb, the Director may arrange for reburial at an appropriate site or may provide for their permanent safekeeping at the Museum, subject to later requests for repatriation under state or federal law.

Policy Number: 8-108	Policy Name: Funding of Associated Costs
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## 8-108 Funding of Associated Costs

- A. Landowners may, but are not required to, accept all or part of the financial responsibility for removal and disposition of the Remains.
- B. The Acquisition and Preservation Fund may bear the cost of removal, preservation, or reburial of Remains when the Landowner is unable or unwilling to do so and when no Group has accepted responsibility for the Remains, if funds permit.
  - 1. No payment or reimbursement from the Fund will be made without prior written authorization from the Coordinator.
  - 2. Any payments from the Fund to those providing assistance in implementing the terms of these procedures are at the discretion of the Director.
- C. A Group taking responsibility for Remains assumes full financial responsibility for preservation or reburial of the Remains. The Group may also reimburse the Arizona State Museum or the Acquisition and Preservation Fund for the costs of removal prior to such Group taking responsibility for the Remains.

Policy Number: 8-109	Policy Name: Arizona State Museum Assistance
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#### 8-109 Arizona State Museum Assistance

- A. Upon request by Landowners and to the extent resources are available, Arizona State Museum personnel, or consultants qualified to produce a Report of Remains, may provide assistance in prior evaluation of the potential for disturbance of Remains. If field investigations are necessary as part of such evaluations, the Landowner must reimburse the Arizona State Museum for all expenses incurred.
- B. Groups claiming responsibility for Remains prior to removal may request assistance by Arizona State Museum personnel or consultants qualified to produce a Report of Remains, in the removal, documentation or preservation of Remains according to standard archaeological procedures. Such assistance must be fully reimbursed.
- C. When no Group accepts responsibility for the Remains, the costs incurred by the Museum will be reimbursed by the Landowner, if the Landowner is willing and able to do so, or by the Fund for Acquisition and Preservation.

Policy Number: 8-110	Policy Name: Development of Prior Agreements
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## 8-110 Development of Prior Agreements

- A. The Director may enter into agreements with Groups or Tribes for the efficient implementation of these procedures.
1. 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.
  2. 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.
  3. Such agreements will provide for the disposition of the Remains with Respect and Dignity.
  4. All parties entitled to notice under this article shall be consulted prior to execution of an agreement pursuant to this section.
  5. Such agreements may be terminated by either party.
- B. The Director may enter into agreements with public and private entities for the efficient implementation of these procedures.
1. Such agreements may be made before discovery of individual Remains when such Remains can reasonably be expected to be found.
  2. Such agreements may delegate administrative aspects of compliance with these Procedures, subject to the decision-making authority of the Director.
  3. Agreements shall specify requirements for reporting to the Coordinator implementation of delegated aspects of compliance.
  4. Such agreements will provide for the disposition of the Remains with Respect and Dignity.
  5. Such agreements may be terminated by either party.

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6. Tribes that may be affected by an agreement shall be notified of the existence of the agreement at the time it is executed.