

**Dry Creek Rancheria
Band of Pomo Indians**

Cultural Preservation Code

TITLE 2. REPATRIATION OF CULTURAL ITEMS

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CHAPTER 1. REPATRIATION OF CULTURAL ITEMS

SECTION 1. Processing of Notices

The Dry Creek Rancheria Band of Pomo Indians (“Tribe”), through its officers and employees, shall forward any notice that concerns cultural items to the Cultural Preservation Committee in order for the Committee to review and process as follows:

- (A) The Tribal administration may designate an employee to monitor the Federal Register and forward any notices of possible tribal cultural affiliation to the Committee.
- (B) If notice is received pursuant to NAGPRA and/or from the National Museum of the American Indian or other entities that the Tribe has a cultural affiliation with a cultural item listed on any inventory or summary, the Committee shall call a meeting within thirty (30) days to determine whether the Tribe shall request repatriation of the cultural item.
 - (1) A vote of four (4) Committee members shall constitute the decision of the Committee.
 - (2) The Committee may negotiate with any entity the terms of repatriation, including the place and manner of delivery.
 - (3) The Committee may designate a person to act as an agent for the Committee to research the entity’s records, studies, data, inventories, documents, catalogues, or other relevant information.

(4) The Committee may request the assistance of any organizations and federal, state, or local agencies to coordinate repatriation.

(5) The Committee may employ persons to assist in the review of inventories and/or summaries and make recommendations to the Committee; provided that funds have been designated by the Tribe for this purpose.

(6) The Committee may consult Native American communities.

(C) Committee’s Authorized Statement. The Committee shall issue a written statement regarding its decision to all interested parties within five (5) days of the decision. The statement shall include any tribal rights asserted, cultural items to be repatriated, negotiating necessary agreements, manner of return, and placement of the cultural item, and any evidence of cultural affiliation with the cultural items or rights of possession.

SECTION 2. Consultation with Entities with Possession of Cultural Items

Upon notice received from any entity that possesses cultural items possibly belonging to the Tribe, the Committee shall designate the Chair or one (1) Committee member to be the contact person with the entity.

(A) The designated committee member shall correspond, consult, and coordinate all repatriation efforts with the entity.

(1) The designated committee member shall provide the federal agency or museum officials with the following:

- (a) Name and address of the individual officially designate by the Tribe as its representative in consultations on matters related to the cultural items;
- (b) Names and address of traditional religious leaders who should be consulted;
- (c) How the Tribe would like the consultation to proceed;
- (d) List of individuals or other tribes who should be contacted to participate in the consultation process;
- (e) List of the categories of cultural items that the Tribe considers to be sacred or objects of cultural patrimony;
- (f) For inventories, the names and addresses of potential lineal descendants of the human remains and associated funerary objects.

(2) The designated committee member shall report to the Committee any offers for settlement or negotiation and any information pertinent to the repatriation of cultural items.

(B) The Committee shall determine the proper course of action for each cultural item or by group of cultural items.

(1) The vote of four (4) Committee members shall constitute the decision of the Committee.

(C) The Committee may assist the entity in completing its inventory and/or summary.

(D) The Committee may consult with the NAGPRA Review Committee to facilitate a claim for cultural items.

(E) Request for Entity Documentation. The Committee may request from an entity access to the cultural items or to records, catalogues, relevant studies, or other documentation to determine the geographic origin, cultural affiliation, and basic facts surrounding the acquisition and accession of cultural items currently in the collection.

(F) Review of Inventories and Summaries. The Committee shall review all inventories and/or summaries of cultural items prepared by any entity.

(1) The Committee has the discretion to schedule meetings of combined inventories and/or summaries as necessary to meet this time frame.

SECTION 3. Establishing Cultural Affiliation

(A) Evidence of Cultural Affiliation. The Committee will collect evidence in such areas as, including but not limited to, geography, kinship, biology, archaeology, anthropology, linguistics, folklore, oral traditions, history, expert opinion, and other relevant information to establish cultural affiliation with a cultural item that has not been previously identified with the Tribe.

(1) The Committee may enforce 25 U.S.C. § 3006 to prompt the sharing of information by federal agencies or museums to assist in the implementations of this Section.

(B) Standard of Proof. The Tribe bears the burden of proof to establish cultural affiliation by proving the existence of a “reasonable connection” with the cultural items by a preponderance of the evidence. In proving cultural affiliation, the Committee shall look at the totality of the circumstance and not focus on any gap periods.

(C) Cultural Affiliation Established. If the Committee determines there is enough evidence to establish cultural affiliation with a cultural item and the Committee decides to request its return, then the Committee shall request the entity to return the cultural item.

(1) If the entity refuses to return the cultural item, the Committee may recommend that the Tribe file a lawsuit in a court of competent jurisdiction or that the Tribe pursue alternate types of dispute resolution, such as mediation.

(2) The Committee may negotiate the terms of any return and placement of the cultural item.

SECTION 4. Right of Possession

Any cultural item that was obtained by an entity without voluntary consent of one who had the authorization to alienate the specific cultural item is conclusively deemed to give the Tribe right of possession to that object, subject to the individual claim of ownership pursuant to Section 2 of this Ordinance.

(A) Evidence of Right of Possession. The Committee shall collect evidence if necessary in area including but not limited to, geography, kinship, biology, archaeology, anthropology, linguistics, folklore, oral traditions, history, and expert opinion to establish that the Tribe had the legitimate prior possession.

(1) The Committee may enforce 25 U.S.C. § 3006 to prompt the sharing of information by federal agencies or museums to assist in the implementation of this section.

(B) Standard of Proof. Subject to subsection (D), the Tribe bears the burden of proof to establish by a preponderance of evidence that the cultural item is:

(1) Affiliated with the Tribe, and

(2) Used for a tribal purpose and is tribally owned.

(C) Presumption of Right of Possession. Upon the showing of the standard of proof in (B)(1) and (B)(2) of this Section, there shall be a presumption of non-alienability.

(D) Good Faith Requirement. If the Tribe can show that an entity was grossly negligent, acted in bad faith, or omitted to identify the cultural affiliation to avoid repatriation, and the cultural affiliation can be justly and reasonably identified with the Tribe, the burden of proof shifts to the entity to show the right of possession.

(E) Right of Possession Established. The Committee determines there is enough evidence to establish that the entity has no right of possession of a cultural item and

the Committee decides to request its return, then the Committee shall request the entity to return the cultural item.

(1) If the entity refuses to return the cultural item, the Committee may recommend that the Tribe file a lawsuit in a court of competent jurisdiction or that the Tribe pursue alternate types of dispute resolution, such as mediation.

(2) The Committee may negotiate the terms of any return and placement of the cultural item.

SECTION 5. Repatriation

If the Committee determines that a cultural item should be requested for repatriation, the Committee shall request the return of the cultural item from the entity possession the cultural item.

(A) Request. The Committee shall request the expeditious return of the cultural item from the entity that has possession of the cultural item.

(B) Manner of Return. The Committee shall consult with the entity returning the object the place and manner of the delivery cultural item.

(1) Whenever necessary, the Committee may arrange to assist in the return of a cultural item.

SECTION 6. Scientific Study

The Committee shall investigate any repatriation request for a culturally affiliated item that is refused because of a scientific study.

(A) Proof of Scientific Study. The entity bears the burden of proof by clear and convincing evidence to show a major, beneficial scientific study, and that the cultural items are indispensable to the completion of the study.

(B) Evidence of Scientific Study. The entity must present and produce evidence that clearly shows the type of scientific study conducted and that the study was not initiated after the implementation of NAGPRA to avoid returning cultural items.

For any on all future studies which do not have as a stated objective the determination of cultural affiliation, consent from the lineal descendant or the culturally affiliated Tribe is required. Such consent will derive only through consultation and the development of a well-written plan.

(C) Time Schedules for Return of Cultural Items Used for Scientific Study. After the Committee determines that the requested cultural items are indispensable to a

scientific study, the entity shall provide to the Committee a time schedule including the time of completion of the project and date of return of the cultural items, not to exceed ninety (90) days after the completion of the scientific study.

(D) Bad Faith Claims of Scientific Studies. Any entity that refuses to return cultural items that has a frivolous claim under this section is subject to civil and criminal penalties pursuant to the Tribal Criminal Code.