

INTRODUCING RESPECT IN NAGPRA REPATRIATION EFFORTS

by

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Preface

While reading this thesis please note that the terminology used to identify tribes changes depending on the context where it is used. The term Native American is used due to the focus in this thesis on the Native American Graves Protection and Repatriation Act (NAGPRA). NAGPRA uses the term Native American in the language of the law and many of the sources utilized for this thesis also use the term. However, I recognize the term Native American is not preferred by all the tribes; therefore, the term tribes is used throughout most of the thesis to refer to the 29 Federally-Recognized tribes with ancestral and current lands in Texas. Some tribes with ancestral lands in Texas also expressed preference for the term tribes during the monthly calls with the Texas Historical Commission (THC). In addition to the language, please note that some information gathered in my research was redacted to protect individual privacy and other sensitive information.

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List of Abbreviations

ACT: Antiquities Code of Texas

Atlas: Texas Archeological Sites Atlas

BLM: Bureau of Land Management

CFAR: Curatorial Facility for Artifact Research

CPHRSO: Committee for the Protection of Human Remains and Sacred Objects

CRM: Cultural Resource Management

MCIA: Massachusetts Commission on Indian Affairs

MNI: Minimum Number of Individuals

NAGPRA: Native American Graves Protection and Repatriation Act

NRHP: National Register of Historic Places

NSM: Nevada State Museum

PPE: Personal Protection Equipment

SAA: Society for American Archaeology

SHPO: State Historic Preservation Office

TAMU: Texas A&M University

TARL: Texas Archeological Research Laboratory

THC: Texas Historical Commission (Texas SHPO)

THPO: Tribal Historic Preservation Officer

TIC: Texas Indian Commission

UMD: University of Maryland

USC: United States Code

USFWS: U.S. Fish and Wildlife Service

Chapter 1: Introduction

Throughout the United States, the popular perspective behind the Native American Graves Protection and Repatriation Act (NAGPRA) in the archaeological community has changed from seeing Native American remains as scientific artifacts to recognizing that the remains are ancestors of living individuals. This shift in perspective leads me to ask the question: how is that shift in perspective reflected in the best practice methodology developed by the Texas Historical Commission (THC) in preparing a collection for repatriation prior to the notice of inventory? NAGPRA (25 United States Code [USC] 3001) was passed in 1990 in order to restore the rights of lineal descendants, Native American tribes, and Native Hawaiians to control what happens to human remains, funerary objects, sacred objects, or objects of cultural patrimony with which they are affiliated. At the date of this thesis, the law has yet to undergo any amendments; instead, small revisions and hearings were held that consist mainly of clarifying language and updating the policy on culturally unidentified remains. However, the archaeological perspective behind NAGPRA has changed during the years since NAGPRA's passing.

At the passage of NAGPRA, a split in opinion in the archaeological community between science and ethics created much controversy within the community. Some pushed for the case-by-case repatriation of human remains with the deciding factor being the scientific importance of the material, the cultural and religious values of the interested individuals or groups, and their association to the remains of the case (McKeown 2013:14, SAA 1986). However, others have pushed the idea that remains are not subjects of study, or archaeological resources, but people that were once alive (Hill Sr. 2006:15). The latter opinion has been gaining traction and has become more prominent today (Callaway 2016, Fine-Dare 2002, Little and Shackel 2014, McKeown 2013, Middler 2011). Although the shift

in opinion appears to occur throughout the United States, I live and work primarily in Texas, which is where I focused my research.

Specifically, I reviewed the legacy collections that contained human remains housed at the Texas Historical Commission's (THC) Curatorial Facility for Artifact Research (CFAR). By legacy collections I am referring to the older collections that, due to time or resources, were not able to be processed at the time they came into the THC's possession and needed to be brought up to modern curation standards (Macfarland and Vokes 2016). The THC serves as the State Historic Preservation Office (SHPO) for Texas under Section 106 of the National Historic Preservation Act (NHPA), and additionally serves as the regulatory agency that oversees the Antiquities Code of Texas and issues the permits required to work on state lands (Title 13 Part II of the Texas Administrative Code Chapter 26). In addition, the THC works closely with the Council of Texas Archeologists (CTA), who is responsible for establishing and revising survey and reporting standards for archaeological projects in Texas. CFAR serves as the repository for the THC and holds collections from field work conducted by the THC or collections from other agencies that were transferred to the THC. It would stand to reason then, that any changes in methodology endorsed by the THC would have implications to all Cultural Resource Management (CRM) activities throughout the state of Texas, as they are the gatekeepers of CRM standards in Texas. After NAGPRA was enacted, the THC went through their collections and completed inventories for all collections with a federal trigger in compliance with the law (Archambeault 2022). Although there were still collections that contained human remains at CFAR, under the law the THC was in compliance with NAGPRA. Being in compliance with NAGPRA does not mean all collections with human remains were repatriated, particularly in the case of collections from private land where control had not been formally transferred to the THC. The THC has been attempting to extend repatriation to all individuals housed at CFAR (Archambeault 2022).

The defining terminology in the law established that although the THC had the collections with human remains in their possession at CFAR, they did not have control of the collections for the purposes of NAGPRA. Basically, since the legacy collections had been from private land, temporarily housed for another agency, or loaned to the THC, the THC did not have legal responsibility under NAGPRA to attempt repatriation as no formal transfer of control was completed. As all of the legacy collections have been in the possession of the THC for over 20 years, the THC has assumed control of the collections in order to begin the repatriation process.

During my internship with the THC, I compiled internal digital and physical records at the THC, compiled digital records from the Texas Archeological Sites Atlas (Atlas), helped create site summaries for each collection, and rehoused the individuals in curation-appropriate materials. The site summaries detailed the minimum number of individuals, the history of the individual(s), which agencies had control or possession of materials, if any chemicals were observed, and if the collections were divided between multiple locations. The collections were in various states of packaging and all collections needed updated records and rehousing. None of the collections were in a state that could be submitted with intent to repatriate today, even though five of the collections had been rehoused with curation level tissue paper, bags, and artifact tags in 2002 and 2003. Materials from site 41CF8 serves as an example. Before present rehousing efforts began, the collection was packed into one single box with the artifacts and remains stacked one on top of the other. The remains were wrapped in curation level tissue paper and placed in curation bags with the tags nested between an inner and outer bag. In this case, the curation paper and bags did not need to be updated; therefore, during the rehousing efforts, a larger curation container was obtained, so the individual could be laid out in supine position. The artifacts associated with the individual were placed at their feet and no artifacts or remains were stacked. In addition, all changes

were cataloged and any chemical treatments that were observed during rehousing efforts were noted and added to the site summaries for the tribes to review during the inventory process. Once the rehousing efforts were completed so that an appropriate standard was met and prior to tribal visitation, the collection was placed directly on a shelf in a temperature-controlled vault, and nothing was placed on top of the individual.

Although consultation is required prior to the notice of inventory by NAGPRA, the point in time that consultation is conducted, and the intensity of the consultation is not stated explicitly. The THC introduced the tribes to the repatriation efforts as soon as my internship began and invited the tribes to consult on the process, with detailed summaries to follow as soon as records were in order and the collections were rehoused. Once those processes were complete, the THC invited the tribes to CFAR to assess the collections and to share the records associated with the individuals. Holly Houghten, the Mescalero Apache Tribal Historic Preservation Officer (THPO), is currently the only member to volunteer to visit and reviewed the collections and conducted the visit on February 2, 2022.

Overall, the methodology has changed in regard to the legacy collections housed at the THC; shifting from housing the ancestors like artifacts, to housing them like one would a burial occurring in the present day instead of housing them as specimens. The shift in the methodology from the THC relates to this changing mindset that the individuals housed were people and should be treated as such. Although I recognize that supine burial practices may be different from what the tribes conducted, and that each tribe has their own traditions, these steps were taken to treat the individuals respectfully as humans rather than data. Notably, none of the collections that are the focus of this thesis were required by NAGPRA to be repatriated due to the issue of undetermined control of the collections. However, the new methods and consultation process the THC is following reflects the THC's movement to follow the spirit of the law, instead of only complying to the letter of the law. My thesis

provides a model with new methods and supporting information for starting repatriation of legacy collections where control is ambiguous in other institutions housing collections subject to NAGPRA. Although the research for this thesis occurred in Texas, the same issues with legacy collections occur across the United States. The model and perspectives in this thesis applied by the THC could be used by all agencies that have legacy collections subject to NAGPRA. In the following chapter, I will provide more information on the background of NAGPRA as legislation before linking the law to the passage of the unmarked burial law in Texas, which provides further protection for all unmarked graves and burials in Texas regardless of ethnicity. Furthermore, I will introduce the legacy collections at the THC and provide brief backgrounds for each collection and how the individual came to be housed at the THC.

Chapter Three will introduce the different perspectives surrounding the passage of NAGPRA and present the “Spirit Cave Man” case study. Then I will expand on the topic of the spirit versus the letter of law.

Chapter Four will cover the methods that were utilized while working on rehousing the collections and updating the records. I will also cover consultation practices, and the complications and considerations that arose during the process.

Chapter Five will include the results of my thesis. I will describe in detail all the steps that were taken during the process of updating the records and collections for the intent to repatriate and cover the results of the initial consultation efforts. The chapter will include everything that occurred during my six-month internship (June 2021 through December 2021) and the consultation efforts that have been shared with me after my internship concluded. Please note this is still an ongoing process.

Chapter Six will cover my analysis of the data and discuss how the methods and consultation have changed since the passage of NAGPRA. I will link the efforts and practices covered in the previous chapters to the THC's ambition to follow the spirit of NAGPRA and to promote more collaboration with the tribes.

In Chapter Seven, I will synthesize the thesis in a conclusion chapter.

Chapter 2: History of NAGPRA

NAGPRA was passed by Congress and signed into law on November 16, 1990. The intent of Congress in passing the law was to not only protect Native American burial sites, but to treat ancestors and ancestral materials in a culturally appropriate manner (Stoffle and Evans 1994:29, 30). Specifically, NAGPRA was passed in order to achieve two primary objectives. The first objective consists of regulating the purposeful and incidental excavation of Native American and Native Hawaiian human remains, funerary objects, sacred objects, and objects of cultural patrimony on Federal or Tribal lands (House Report [HR] 101-877:8, 9).

NAGPRA included penalties in the form of fines and penalties for the violation of the law and for selling or profiting from any Native American remains, funerary objects, sacred objects or objects of cultural patrimony that were acquired in violation of NAGPRA. The second objective of NAGPRA was to address the collections held or controlled by Federal agencies and museums (HR 101-877:9). NAGPRA required all Federal agencies and museums which receive federal funds and had possession or, or control over, any human remains or associated funerary object to compile an inventory of the objects and attempt to identify the geographic and cultural affiliation within five years of the passage of the law (25 USC 3003). The definition of a museum is unique to NAGPRA and refers to any institution, state or local government agency, which receives Federal funds and has possession of, or control over Native American cultural items (25 USC 3001). The definition applies to organizations that would not ordinarily call themselves museums such as a county sheriff's office.

In order to monitor and review the implementation of NAGPRA, a Federal Advisory Review Committee was established (National Park Service [NPS] 2022). The NAGPRA Review Committee is responsible for monitoring the NAGPRA inventory and identification process,

for compiling an inventory of culturally unidentifiable human remains that are in the possession or control of museums or Federal agencies, resolving disputes, consultation, and works with the Secretary of the Interior on the development of regulations to carry out NAGPRA (NPS 2022). These meetings are available for the public to view, although the public can not participate in the meetings. The topics and issues discussed during the NAGPRA Review Committee meetings helped to form the site summaries addressed in the Results chapter of this thesis.

Since the passage of NAGPRA and while this thesis is being written, there have been no amendments to the law, however, the Office of the Secretary of the Interior has made rulings on sections of NAGPRA that have clarified the language or regulations of the law. Please note that while this thesis is being written, NAGPRA is currently in the process of being amended and sections of the law referred to in this thesis may be subject to change. The most influential of the rulings for the purpose of this thesis was the ruling over culturally unidentifiable human remains passed on May 14, 2010. The ruling provides procedures on the disposition of human remains, in collections, determined to be Native American, but are not tied to an identifiable group (75 Final Rule [FR] 12377). In the event that the human remains could not be tied to a Federally-Recognized identifiable group, the Federal agency or museum must consult, with the tribes and Native Hawaiian organizations from the location the remains were removed (75 Final Rule [FR] 12377). After consultation, if the cultural affiliation of the human remains cannot be determined, then the tribe or Native Hawaiian organization may request disposition of the human remains which would then result in the museum or Federal agency to publish a notice and transfer control to the tribe while bypassing a meeting with the Review Committee and approval from the Secretary of the Interior (75 FR 12377). This ruling was remarkable in that it put the responsibility on the museums and Federal agencies to reach out to the tribes, as opposed to having the tribes reach

out to the agencies for information on collections subject to NAGPRA. Some states passed their own local NAGPRA legislation, such as CalNAGPRA in California. Although Texas is not included in the list of states that have local NAGPRA legislation, Texas used the momentum of NAGPRA to pass the unmarked burial law which addresses the inadvertent discovery of human remains (Fine-Dare 2002).

Texas Unmarked Burial Law

Over 90 percent of Texas consists of private lands, thus many existing federal and state laws, such as NHPA, NAGPRA, and the Antiquities Code of Texas (ACT) do not protect the majority of unmarked graves in Texas (Mercado-Allinger 1998:35). The fight to protect unmarked burials in Texas began prior to the passing of NAGPRA, when in 1983, a burial dating between 10,000 and 9,500 years ago was discovered in Williamson County, Texas. Public interest in the remains led to the plan to exhibit the individual in the Capitol Rotunda. However, Ray Apodaca, the Executive Director of the Texas Indian Commission (TIC) at the time, opposed the arrangement calling the display “dehumanizing” (Hastings 1984:25A). This even kickstarted discussions between Apodaca and Robert J. Mallouf, the then-State Archaeologist with the THC, over the treatment of Native American burial remains in Texas (Mercado-Allinger 1998:36). In 1984, they formed the Committee for the Protection of Human Remains and Sacred Objects (CPHRSO), which was comprised of tribal and non-tribal organization, representatives of Texas museums, physical anthropologists, and archaeologists. The goal of the committee was to discuss the protection and treatment of Native American remains in Texas, try to reach a consensus on key issues and compile articles for publication in professional newsletters or presentation at conferences to establish at the very least an awareness of the issues (Mercado-Allinger 1998:36).

Although the CPHRSO was disbanded in 1986, Mallouf and Apodaca continued to work on introducing legislation for the protection of human remains until 1989, when the Texas Sunset Advisory Commission recommended to the Texas Legislature that the TIC was redundant as an agency and dissolved the TIC (Mercado-Allinger 1998:37). However, Representative Bob Hunter of Abilene and Senator Gonzalo Barrientos of Austin continued introducing various bills which introduced legislations for protection for all unmarked graves, creating criminal penalties for improper treatment of human burials and prohibiting buying, selling, or bartering of human remains and funerary objects, and establishing a process for the unanticipated discovery of human remains (Mercado-Allinger 1998:36-38). The bills faced opposition from many angles, such as advocates for private property rights and private collections, concerns over the lack of repatriation in the legislation, and utilities interests.

Finally, in 2011, an unmarked burial provision was established under the Texas Health and Safety Code Section 711 (Section 711) and Title 13, Part 2, Chapter 22 of the Texas Administrative Code was amended to include THC's role under Section 711 in General Provisions Relating to Cemeteries. Section 711 stated that any person who discovers an unknown or abandoned cemetery needed to file a notice of discovery with the county clerk and mail notice to the landowner on records within 10 days of discovery (Section 711.010a). The county clerk must then provide a copy of the notice to the Commission within 15 days of receiving the notice (Section 711.010a). If the landowner would like the human remains moved, then a district court of the county the cemetery is located in may order the removal of the cemetery, only after the human remains are dedicated to a perpetual care cemetery or a municipal or county cemetery (Section 711.010). The THC may assist with the filing of the Notice of Unverified Cemetery form, propose alternatives to the removal of human remains (i.e., preservation of the remains in place), and ensure a reasonable effort has been made to identify the human remains and notify the next of kin. If the human remains were discovered

during a project permitted under the Antiquities Code of Texas, then the THC has more say on how the removal is conducted. Removal has to be done by the procedures outlined in Section 711.0105 with the approval of the THC:

- A. The human remains must be exhumed by a professional archeologist, and, when appropriate, with the assistance of a physical anthropologist. Additionally, casket morphology, casket hardware, and any funerary objects must be identified in a report.
- B. Unless otherwise approved by the THC, all physical anthropological investigations of human remains will use noninvasive techniques.
- C. Funerary objects will be reburied with the human remains.
- D. Decisions regarding the appropriateness of the reburial of human remains will be made in consultation with the THC.
- E. A reasonable, good faith effort should be made to define the boundaries of the cemetery within all accessible portions of land on which a previously unknown or abandoned cemetery exists (Section 711).

It is important to note that none of the exhumations go to the THC. Another important provision of Section 711 is the protection of descendant access to cemeteries, both marked and unmarked. Any landowner of the land surrounding the cemetery may designate specific routes for access but must allow reasonable access to the cemetery. Refusal to do so results in a Class C misdemeanor (Section 711.041, Section 711.0521). The most notable distinction of the Texas unmarked burial law is that it tries to protect the burial in place, and if that is not an option, then to move the burial to a location nearby where it would be protected, while keeping all funerary items with the burial and protecting the right of descendants to visit their

ancestors. It compliments NAGPRA that aims to restore human remains, funerary items, objects of cultural patrimony and sacred objects to the descendants.

Legacy Collections at the Texas Historical Commission

The THC has a total of 12 legacy collections that house human remains that will be repatriated. Many of these legacy collections were collected and housed prior to the passing of NAGPRA or the state burial law. All the collections were either found on private land, temporarily housed for another agency who had control of the collection, or on loan to the THC. No formal transfer of control was made to the THC for these 12 individuals, and the agency is operating within the letter of the law. As shown in Table 1, the THC did attempt to repatriate eight of the 12 collections during repatriation efforts in 1995, 2002 and 2003. What the table does not show is that other collections that were repatriated during the same efforts were successful and were returned to the tribes. The collections that did not get repatriated during those efforts consisted of culturally unidentifiable human remains, which were not claimed once the notice of inventory was posted.

These collections are in various states of curation, which will be addressed in the results chapter of this thesis. For now, a brief history of the collections highlights how diverse the recent history of these ancestors is and how the issue of lack of documentation can make it difficult to determine legal disposition, as well as appropriate measures for curation and repatriation. The history of the collections is presented by Texas County first, then in order of trinomial (if available) (Figures 1 and 2). It is important to realize that records for each collection vary in completeness depending on the personal history of the collection. If the history of the collection appears to have gaps or be fragmented, it accurately reflects the information available in the records. Table 1 provides general information over the collections.

It is also important to note that all the sites, with the possible exception of 41ED235, came into the THC's possession prior to the passage of the Texas unmarked burial law. If human remains had been found on private land after the passage of the law, the landowner would have been required to either leave the remains in place (rebury the remains if needed) and go through a legal process to have the burial recognized as a cemetery. If the landowner wanted to exhume the human remains, permission must be received from the county judge prior to removal. The human remains would not have been removed without following extensive legal procedures that would have resulted in more extensive physical records at the very least.

Table 1. Summary of collections housed at CFAR.

Collection	Co.	Date of THC possession	Artifacts associated	Previous NAGPRA inventory	Private or Federal	Site Condition
41CF8	CF	1969?	Yes	2002	Private	Destroyed
41CF111	CF	1976	Yes	2002	Federal	Unknown
41CR19	CR	1989	No	1995	Private	Unknown
41ED235	ED	2011	No	N	Private	Unknown
41ER27	ER	1991	Yes	1995	Private	Unknown
Hood County	HD	2000	No	2003	Private	Unknown
41JS15, 41JS16	JS	1985	Yes	N	Private	Unknown
Navarro County	NV	1991	Yes, stolen from museum	1995	Private	Unknown
41RR16	RR	1992	Yes	N	Private	Excavated during Texas Archeological Society field school
Tarrant County	TR	1987	No	2003	Private	Unknown
41VV342	VV	1985	No	2002	Private	Unknown
41VV589	VV	1983	No	N	Private	Unknown

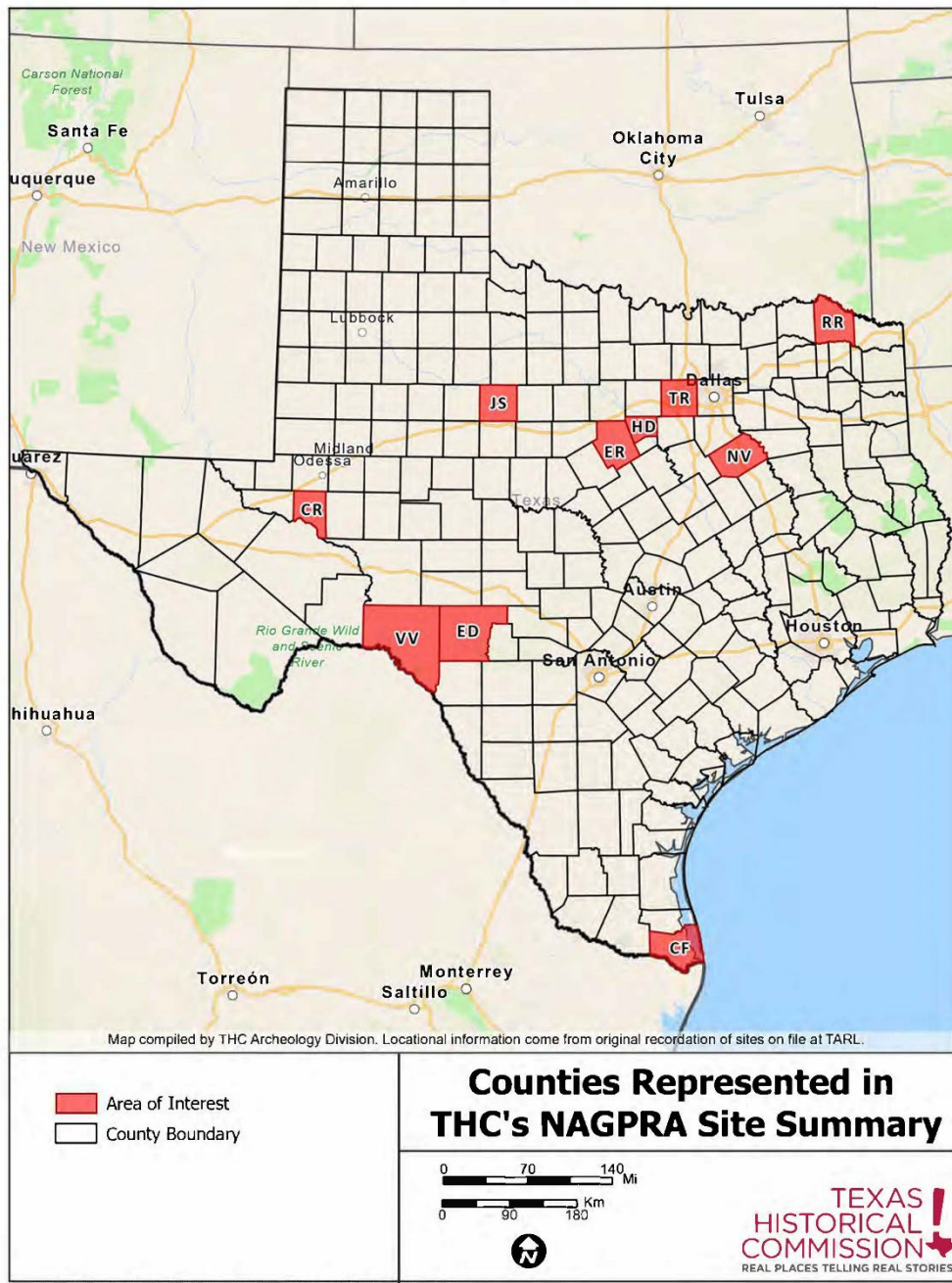


Figure 1. Counties Represented in the THC's NAGPRA Site Summary (Used with permission of the THC)

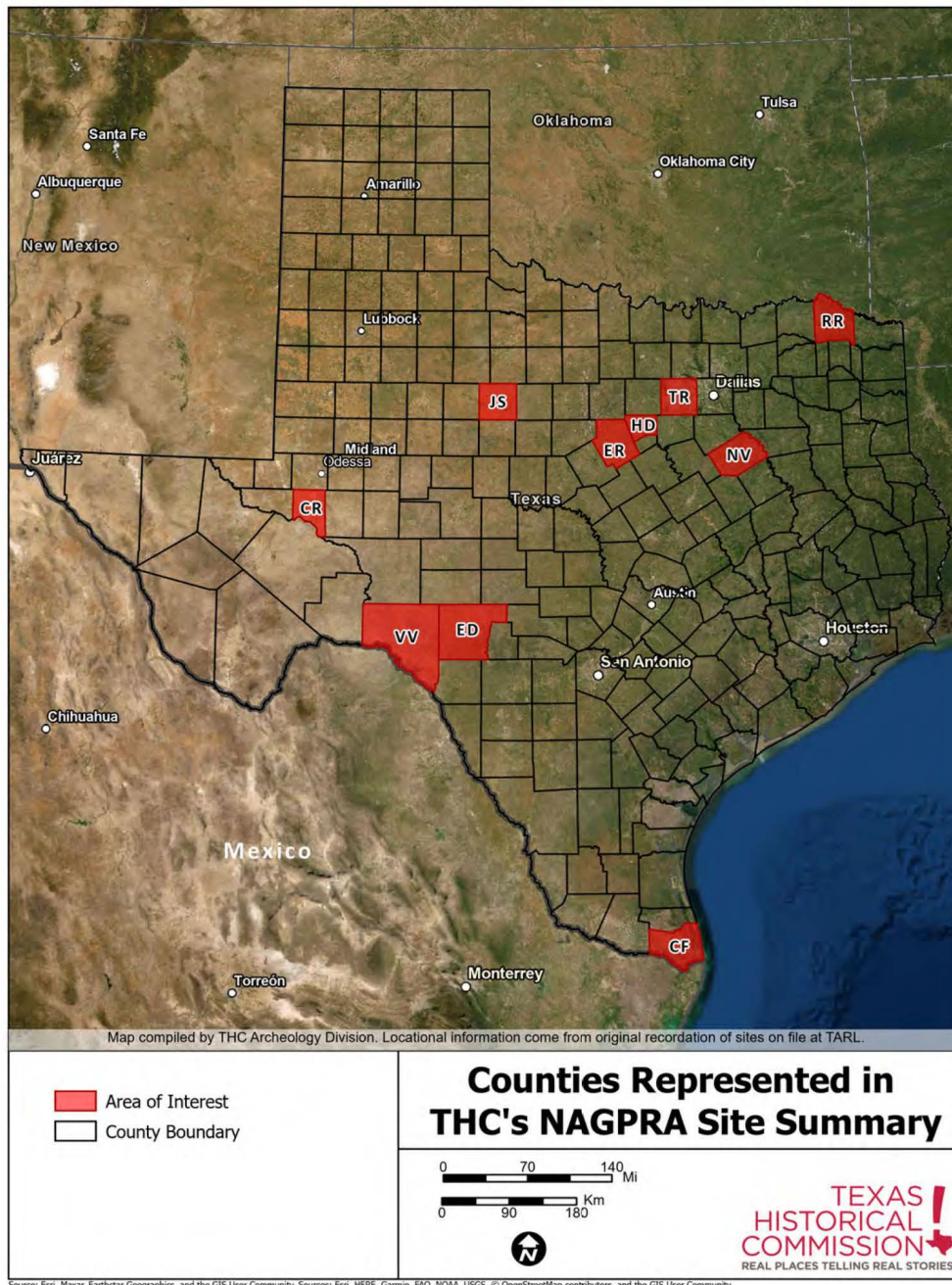


Figure 2. Aerial of Counties Represented in THC's NAGPRA Site Summary (Used with permission of the THC).

41CF8, Cameron County

Investigations at the 41CF8 located in Cameron County in southeast Texas, may have occurred during 1917-1935 during surveys conducted by an avocational archaeologist. However, the site was officially recorded in 1969 by two THC archaeologists as an open, Native American campsite and burial located on a loma. The site form states that the burials were eroding, and bone, shell, lithics, beads, tools and projectile points associated with the burials were observed and collected (THC 2022a). It is assumed that during the collection the site came to be housed at the THC's repository, the Curatorial Facility for Artifact Research (CFAR); however, there is no documentation to corroborate this. The site was also listed in the National Register of Historic Places in 1972. In 1991, a concerned citizen wrote a letter to the THC to inform them that local landowner had removed three glass projectile points from the site. The citizen also contacted an independent researcher, who was conducting research on glass projectile points in the region of the removal. In 2002, a NAGPRA inventory was conducted which determined that the human remains were culturally unidentifiable, and no lineal descendants had been identified. Portions of the site were revisited in 2015, by SWCA Environmental Consultants. During the site revisit only marine shell fragments and one heat-spalled cobble fragment were observed within the southern portions of the site that were surveyed.

41CF111, Cameron County

Site 41CF111 is located in Cameron County in southeast Texas. In August 1976, THC staff were surveying near a refuge, when the U.S. Fish and Wildlife Service (USFWS) requested assistance on a salvage excavation of an exposed feature. Although previous excavation was conducted by USFWS, the materials collected during THC's salvage excavation were housed at CFAR. The collection has now been transferred to USFWS, as technically USFWS has

control of the collection. The THC urged USFWS to take possession and responsibility for the human remains on several occasions. During my internship, the THC renewed their request and finally received a response. In September 2021, the USFWS began organizing the physical transfer of the human remains back to the USFWS. They have since taken possession and are planning consultation and repatriation efforts.

41CR19, Crane County

Site 41CR19 is also known as site 41CR881 and is located in Crane County in west Texas. In 1988, human remains were spotted eroding out of a dune and the Crane County Sheriff was called to the scene (THC 2022a). The human remains were determined not to be recent, and a member of the Texas Rangers retrieved the human remains from the site under permission of the sheriff and transferred them to Texas Tech University for temporary housing and to determine if the human remains were Native American. An associate professor examined the individual and determined they were a Native American female in her early 40's. The human remains were then transferred to the THC, and the site was officially recorded in 1989, by the University of Texas at San Antonio, Center of Archaeological Research (UTSA-CAR) as a burial. In 1996, a researcher requested and received temporary control of the human remains for analysis with the intention to return the human remains to the landowner, or appropriate authorities. However, transfer to the landowner did not occur, and in 2004, the human remains were returned to the THC, Archeology Division. Plans were made to house the human remains at the Texas Archaeological Research Laboratory (TARL); however, there is no further mention of the potential transfer in the site files and the human remains are housed currently at CFAR.

41ED235, Edwards County

Site 41ED235 is located in Edwards County in southwest Texas. In 2006, a THC archaeologist and several THC representatives conducted a site visit at the request of a private landowner of a rock shelter identified on private property. The landowners were concerned with human remains that had been uncovered by erosion. A shovel test was excavated in the rock shelter to determine if intact deposits remained at the site. At approximately 40 to 45 centimeters (cm) below surface, a cranial fragment and small rib were encountered, and the shovel test was terminated. A small fragment broke off from the larger cranial fragment during excavation. The human remains were taken by THC representatives to the University of Texas (UT) for identification and were identified by a TARL representative as infant human remains. Although the THC archaeologist was in discussions with TARL and the landowners regarding additional excavation of the site and potential curation of the human remains at TARL, no documentation has been found of any agreement or additional work having been conducted. On April 27, 2011, a THC representative brought the human remains to the THC Archeology Division. It was listed on the May 2011, NAGPRA list; however, the collection is still housed at CFAR. No formal transfer paperwork exists.

41ER27, Erath County

Site 41ER27 is located in Erath County in central Texas. An independent avocational archaeologist, first excavated site 41ER27 in 1990, with the permission of the landowner, and the site was revisited in December of 1990, by THC representatives and the avocational archaeologist. The site consists of a rock shelter with a burial. The site form states that the burial was in the collapsed section of the rock shelter, about three feet below the surface and the individual appeared to be an infant (THC 2022a). Five to six phlanges were removed

during excavation and housed at the amateur archaeologist's house. Skeletal analysis was conducted on the human remains and analysis was conducted on the artifacts recovered during excavation. In subsequent years, excavation was conducted at the site by THC archaeologists. Recovered artifacts were analyzed and sent to CFAR for housing, while the infant burial was sent to Texas A&M University (TAMU) for analysis. To our current knowledge the remains of the infant burial are at TAMU, and the THC has the artifacts and faunal remains associated with the burial. Assuming that the infant is still housed at TAMU then either TAMU or the THC will have to agree to acquire the entire collection. The THC will consult with the tribes regarding possible reuniting the collection with the individual at TAMU (Archambeault 2022).

Vicinity of Lake Granbury, Hood County

The collection from Hood County in central Texas near Lake Granbury is not associated with any archaeological site. In January of 2000, the Hood County Sheriff's office submitted the human remains to the THC via a THC representative. The human remains were then submitted to the Department of Anthropology at Southwest Texas State University (now Texas State University) for reconstruction and analysis. Fire-cracked rock and lithic debitage were observed near the burial, and the THC had planned on investigating the site further; however, no records exist indicating that any additional investigation was carried out. According to the report from Texas State University the human remains were subjected to morphological and osteometric analyses. The analysis determined that the individual was female and Native American. The exact origin of these human remains is unknown; however, the files indicate they are from private property. Additional information on this site can be found in Appendix B.

41JS15 and 41JS16, Jones County

Site 41JS15 and 41JS16 are part of a larger private collection that was loaned or unofficially donated to the THC and consists of cultural materials from multiple sites across Texas and New Mexico. The materials from Jones County are the only part of the collection discussed in this thesis. Sites 41JS15 and 41JS16 are located in Jones County in north-central Texas. It is unclear from the original documentation and from information listed on the Atlas which of the two sites the human remains are associated with, only that one of the sites was the original location of the human remains (THC 2022a). The site was first observed in 1930, by an avocational archaeologist. He revisited the site in October of 1939, with another avocational archaeologist in order to determine if there was an associated burial. The individual was excavated along with an associated dog mandible and two projectile points. Notes from the excavation indicate that additional artifacts associated with the site had been removed in 1930; however, there is no current documentation on where these artifacts were housed. Eventually, the human remains, dog mandible, projectile points, and an indeterminate amount of the additional artifacts from the site became part of a landowner's personal collection, but no records are present to indicate when the transfer occurred. The entire personal collection was loaned to the Texas Historical Commission in 1985. The inventory of the loaned collection stated that bag 107, which contained the human remains, were from a site in New Mexico. However, correspondence from the avocational archaeologist in 1939 indicates that this is not the case, and the burial was found in Jones County. On April 2, 1987, the artifacts associated with the site were officially transferred to TARL. The human remains, dog mandible, and projectile points remained with the THC housed at CFAR.

Navarro County

The collection from Navarro County in northeast Texas is not associated with any inventoried archaeological site. In the 1940's, a local landowner noticed the burial eroding in the ruts of a dirt road in a pasture. An Egyptologist and an avocational archaeologist excavated the burial and an associated projectile point that was stuck in the human remains. The human remains and projectile point were then placed on display at a museum in Corsicana, Texas. The projectile point was stolen at some point during the housing of the human remains. The collection includes a display plaque with a note by the Egyptologist who stated that the human remains may have been loaned to the Historical Society in April of 1964. However, it is unclear as to which historical society the note refers to. In 1990, a THC representative noticed the human remains on display and convinced the curator of the museum to take the human remains off display and transfer the human remains to the THC for temporary housing. By 1991, the human remains had been transferred, although correspondence indicates that there was an attempt to transfer the human remains to the TARL or to Texas A&M University. However, the human remains are still housed at CFAR, and no official records of transfer have been observed indicating a transfer to TARL or Texas A&M University.

41RR16, Red River County

Site 41RR16 is located in Red River County in northeast Texas. The site is unique in that control of the human remains has already been transferred from the Texas Archaeological Society to the Caddo Nation. Interestingly, this does not mean the human remains were repatriated, just the control was transferred to the tribe. The rest of the collection is currently housed at TAMU, with the exception of the items housed at CFAR. However, there is no

documentation as to why the collection is housed at CFAR instead of being kept with the rest of the collection at TAMU.

Tarrant County

The human remains of the individual that was located in Tarrant County in northeastern Texas is not associated with any current archaeological site. The individual was discovered in 1987 in a load of dirt delivered to a private residence in Fort Worth, Texas. They were turned over to the Tarrant County Medical Examiner and temporarily housed until examination could occur in 2001. After the examination identified them as Native American, they were delivered to the THC for temporary housing. Records indicate the City refuses to acknowledge they have control or that they have a legal obligation. Unfortunately, there is no additional information available for this individual.

41VV342, Val Verde County

Site 41VV342 is located in Val Verde County in southeastern Texas. The human remains were likely collected during the course of a pictograph survey conducted in 1967, by Mark Parsons and his crew for the Texas Memorial Museum. The site is described in Parsons' field notes, but there is no mention of removing the human remains. The site was revisited in 1985 by L. Bement and S. Turpin. They reconfirmed that the individual was buried at the base of the sinkhole; however, there was no mention of if the individual was moved at this time. No additional information is available on how the human remains came to be housed at CFAR with the THC.

41VV589, Val Verde County

Site 41VV589 is located in Val Verde County in southeastern Texas. In 1983, concerned citizens informed the THC about a sinkhole that contained a burial. The citizens accessed the

private property with a hunting lease, and the sinkhole is not on their personal property. However, the citizens would periodically check the site to deter looters. The ranch decided not to renew hunting licenses in 1983, and the citizens lost access to the site, which prompted them to push the THC to visit. THC representatives performed a site visit in order to assess the site. They observed the burial at the base of the sinkhole, with a scatter of debitage around the ground surface at the opening of the sinkhole. This collection was never added to the THC inventory although it is unclear why this was the case. Whatever the reason, no additional documentation on when the collection came to be housed at CFAR could be found.

Summary

Despite the collections originating from multiple regions of Texas that intersect varying ancestral lands of 29 Federally-Recognized tribes, the methods utilized to rehouse the collections and compile the records were the same for all collections (THC 2022b). Not all tribes have the same burial practices; however, the steps used and described in the Methods Chapter were formulated to provide a respectful baseline that could then be modified with any additional requests individual tribes presented, while the collections were still in possession at CFAR. The next chapter will introduce the perspectives behind NAGPRA and why the THC is determined to repatriate the legacy collections with human remains even though the THC is in compliance with NAGPRA.

Chapter 3: Archaeological Perspectives on NAGPRA

NAGPRA was passed over thirty years ago to divisive opinions in the archaeological community and with great relief to Native American tribes. The law was hailed as human rights legislation that corrects historical wrongs and as a process that humanizes Native Americans (Harjo 1996:3, Hutt 1994:2). Despite the exploitation utilized by repositories and museums of having possession, but not control of collections with human remains which has delayed repatriation efforts, NAGPRA finally provided a formal foothold on the federal level for the tribes to be more involved in reclaiming their heritage and forced archaeologists to change their colonial mindset involving human remains and items of cultural patrimony. Of course, over the course of thirty years, the perspectives surrounding NAGPRA, and the view of the rights involved have slowly begun to evolve.

The Passage of NAGPRA

The Society for American Archaeology (SAA) drafted a statement in 1986 at a conference on reburial issues that the organization opposed uniform standards for the repatriation of human remains, and instead pushed for a case-by-case basis dependent on the scientific importance of the material, the cultural and religious values of the interested individuals or groups, and their associated to the remains of the case (McKeown 2013:14, SAA 1986). This view was reflected when NAGPRA was passed, and many archaeologists protested that reburial of the remains would result in data being lost forever (McKeown 2013:9). Another extreme view provided by an anonymous physical anthropologist, according to McKeown, was that no living culture, religion, interest group, or biological population had any moral or legal rights to the exclusive use or regulation of ancient skeletons (McKeown 2013:9). This particular view appeared to be skewed, however, as it is worth pointing out that the physical

anthropologist did not distinguish that Native American remains were not treated the same as remains of non-Native Americans.

This discrepancy is illustrated in the reburial of soldiers of the War of 1812 on June 30, 1988. The soldiers had been found in Fort Erie, Ontario and were returned by Canada to the United States once their identity had been established after discovery (Dopp 1988, Hill Sr. 2006:3). American soldiers were given a military funeral during their reburial at a national cemetery in Bath, New York; however, their Native American counterparts, who were also soldiers, were simply shipped to an unspecified museum (Hill Sr. 2006:3-4). Even remains from soldiers that are not considered prehistoric in nature were seen as data and curiosities, instead of humans that deserve to be reburied according to their customs. Furthermore, since the Native Americans were soldiers, it should have been possible through records to determine who the direct descendants were or at the very least determine which tribes should be informed that the soldiers were being reburied (Hill Sr. 2006:3-4). However, no attempt was made to determine if it was possible to contact the descendants of the Native American soldiers (Hill Sr. 2006:3-4). Furthermore, the attitude of the museums at the time mirrored that of archaeologists and anthropologists. The common idea of the museums was that they own the collections, despite the tribes disagreeing, believing that one cannot own human remains (McKeown 2013:4-5). Once again, the descendants of the ancestors, or at least the general community's opinions and cultural values were disregarded in favor of the scientific approach. By treating the tribe's ancestors as objects of study or specimens, archeologists and museums sparked anger and resentment towards themselves (Hill Sr. 2006:6).

Furthermore, the archaeologists and museums appeared to have willingly forgotten that the tribes are not only living humans with rights to decide the disposition of their dead, but also sovereign nations. The passage of NAGPRA was only a small part of the issues of Native American sovereignty, traditional cultural practices and struggle for recognition in their

journey for basic human rights (Versaggi 2006:20). Although the U.S. federal government recognized each nation as a sovereign entity with its own tribal representatives, there is a distinct lack of respect for the rights of the tribes to their dead (Versaggi 2006:23). It took years of the tribes calling out the abusive treatment of their ancestors and working towards repatriation before NAGPRA was finally passed and even then there are loopholes in the law that allows museums and federal agencies to ignore repatriation (Riding In 2005:53).

Although the issue of culturally unidentifiable human remains was addressed, the issues of having possession, but not control is another way museums and federal agencies dodge the responsibility of respectful treatment of human remains. Imagine another nation refusing to return the remains of American soldiers, instead using them as objects to study the United States. The international fallout would be tremendous. However, that is precisely the case of refusing to repatriate Native American remains. These are sovereign nations, and although they are located within the United States, there is still the consideration that this issue should be approached with the respect one would for international relations. Considering that consultation is (and was) required under numerous laws, such as Section 106 of the National Historic Preservation Act of 1966 (NHPA; 54 USC 30601), it would be counterproductive to alienate the tribes. It is also important to note that the cultures being studied by archaeologists, anthropologists, and museum specialists are frequently affiliated with those tribes being consulted with.

However, not all opinions glorified the scientific study of human remains. During the initial NAGPRA hearings, Senator Daniel Inouye (Hawaii) noted that by only displaying Native American human remains and not those of white soldiers in museums from the reburial of the soldiers in Buffalo, New York, the message sent to the rest of the world was that Native Americans were culturally and physically different from, and thus inferior to non-Native Americans (Koehler 2007:113). The senator went even further and pressed an anthropologist

into admitting during the hearings that although he believed Native American human remains should be held at the museums, he did not think the same of non-Native American remains (Koehler 2007:113). The lack of equality played a large part in the passage of NAGPRA. However, it is not a surprise that the theft and destruction of cultural property has also been used as a means to oppress minorities or to assert the dominance of a new regime over an old one (Koehler 2007:106). The desecration of burials and theft of items of cultural patrimony were undoubtedly used as a tool during the expansion of the United States, and later were simply carried out due to ignorance and lack of respect for the people who were laid to rest.

The Spirit Cave Man Case

This split in perspective can be seen in the Spirit Cave Man case. The human remains of the Spirit Cave Man were originally discovered by Georgia and Sydney Wheeler in 1940 on land that was managed by the Bureau of Land Management (BLM) in Nevada during salvage excavations for the Nevada State Parks Commission (Hockett and Palus 2018:1). The human remains were then briefly displayed at the Nevada State Fair in Fallon for the summer before they were stored in curation at the Nevada State Museum (NSM) for over 50 years. The human remains were then forgotten in storage until 1994, when researchers at the NSM rediscovered the human remains of the so-called Spirit Cave Man (Hockett and Palus 2018:1-2). Radiocarbon dating from textiles and hair from the cave dated the individual to 10,000 years of age (Hockett and Palus 2018:2). In 1996, the NSM requested that the BLM authorize DNA analysis on the Spirit Cave Man. However, the BLM consulted with the local tribes, which resulted in a unanimous opposition. Sequentially, the NSM made the claim in 1996 that the human remains lacked cultural affiliation with any tribe (Hockett and Palus 2018:2, Midler 2011:1349).

In 1997, the Fallon Paiute-Shoshone Tribe (FPST) requested repatriation of the human remains stating that they had provided sufficient information for the BLM to determine the FPST were culturally affiliated with the human remains; however, in 1998 evidence countering the claim of the FPST caused the BLM to reach out for additional consultation (Barker et al. 2000:3). The consultation did not result in more evidence to support the tribe's claim or produce any additional information and the BLM reached the preliminary conclusion that the human remains were not culturally affiliated with any living group (Barker et al. 2000:3). The evidence for this determination was reviewed in January 1999 and the consensus was the BLM had complied with NAGPRA and its implementing regulations (Barker et al. 2000:3). The FPST were informed of the preliminary decision that the human remains were not culturally affiliated with a living group and asked the BLM for an extension to present evidence of affiliation, which was granted until December 1999 (Barker et al. 2000:3). New evidence was not presented during the consultation which stalled the repatriation process (Barker et al. 2000:4).

In 2000, the tribe went to the NAGPRA Review Committee to dispute the BLM's determinations (Hockett and Palus 2018:4). Although the Committee stated that the BLM had "failed to fairly and objectively consider all the available and relevant information" (NPS 2001), the BLM did not change the determination (Hockett and Palus 2018:4). The tribe continued to challenge the determination of the BLM without success and sued the BLM in Federal court in 2004. The Federal District Court of Nevada found in reviewing the case that the BLM had been arbitrary and capricious under the Administrative Procedure Act, and did not consider new materials presented to the NAGPRA Review Committee or consider the findings of the Committee (Hockett and Palus 2018:4, Midler 2011:1350). Although, it is important to note that the Court did not find the initial determination to be wrong or suggest

that the BLM change the determination, just that the BLM should consider all evidence (Hockett and Palus 2018:4).

At this point it is significant that 43 CF 10.11, the Final Rule on culturally unidentifiable human remains had not been promulgated. The BLM did not have a legal set of procedures to follow for this conflict and had to utilize their best judgement depending on the letter of NAGPRA. However, after the Court ruling perspective in the BLM began to shift. After the Court's remand in 2006, the BLM contracted independent researchers to conduct a "fresh" review of all the evidence submitted (Hockett and Palus 2018:4, NPS 2017:39). After reviewing the case, in 2010 all three researchers agreed with the BLM determination that the Spirit Cave Man is not affiliated with a specific tribe (NPS 2017). However, at this point the Final Rule on culturally unidentifiable human remains came into play and the BLM now had procedures for this case.

Although the BLM was concerned with the high risk of another lawsuit challenging repatriation or return of very ancient human remains, they were determined to move forward and seek resolution on the case (Hockett and Palus 2018:4). The case had become even more critical due to the realization that multiple burials and associated funerary objects were determined to have the same affiliation as the Spirit Cave Man and the collections were combined as the "Spirit Cave Assemblage" (NPS 2017:40-41). There was more at stake in the case than had been originally assumed. First, Bryan Hockett realized that part of the issue was the legal definition of "Native American" under NAGPRA and there was controversy on whether the case was subject to NAGPRA (NPS 2017:41). Second, the Court had determined the BLM should have considered all evidence available for their determination of culturally unidentifiable, the BLM lacked the DNA evidence to make a final determination (Hockett and Palus 2018:4, NPS 2017:41). The BLM consulted with the tribe in 2015 and after initially opposing the DNA testing, the FPST signed a "Terms of Agreement" with the BLM

stating the FPST was still against DNA testing, but would not file suit if BLM Nevada agreed to expedite the resolution of the case (Hockett and Palus 2018:5, NPS 2017:42-43). The agreement to not pursue legal action after vehemently disagreeing multiple times to DNA testing shows how far relations between the BLM and FPST had come since the BLM began their pursuit to repatriate or transfer control of the Spirit Cave Assemblage. The agreement would not have occurred without effective consultation between BLM staff and FPST, which shows how this perspective of recognizing the human descendants improves relations with the tribes.

The results of the DNA testing determined that the Spirit Cave Man was more closely related to Native Americans than any other population and the BLM published the determination in the Federal Register in 2016 (Hockett and Palus 2018:5, Willerslev 2016). Finally, in 2016, the BLM was able to proceed with the final determinations of “Native American” and “culturally unidentifiable” by publishing a Notice of Inventory Completion in the Federal Register (Hockett and Palus:5). On the day after the required 30-day period for challenges to the inventory published to the Federal Register, the BLM signed the transfer of control of the Spirit Cave Assemblage to the FPST and laid the case to rest (Hockett and Palus:5).

The Spirit Cave Man case is remarkable in how the perspective of the BLM shifted from science above humanity, to empathizing with the tribe and relentlessly pursuing a path towards returning the ancestor to the tribe. Richard Jantz, an anthropologist involved in the study of the human remains in the early 2000’s, stated that it was “a sad day for science” when the transfer of control occurred (Callaway 2016:NP). In contrast, Bryan Hockett and Emily Palus expressed empathy for the tribe and persisted towards resolving the status of the Spirit Cave Assemblage to the FPST (NPS 2017:47). This case shows the THC is not alone in their determination to “do the right thing” (Archambeault 2022). The case also highlights how complex the issue of repatriation can be. A model of best practices can help smooth part

of the process and demonstrate respect to the tribes. The BLM clearly had no easy path, but a way forward when the Final Rule on culturally unidentifiable human remains gave more direction on how they could comply with the law and repatriate or transfer control of the Spirit Cave Assemblage.

Current Thoughts

Despite the mentioned case study that highlights how some favor science over the human connection, the general view is slowly changing in favor of the tribes throughout the scientific community. After news of contentious case studies became public, a wave of Notices of Inventory Completion and Notices of Intent to Repatriate were published on the Federal Register and made public online (Fine-Dare 2002:175). The Notices of Inventory Completion were also sent to tribes determined by the museum or federal agency to possibly have an affiliation with the collections, so that the tribes could file a repatriation claim, if they desired (Fine-Dare 2002:175).

The idea that human remains are not subjects of study, or archaeological resources, but people that were once alive has slowly gained some traction (Hill Sr. 2006:15). Human remains that were previously viewed as just bones to study were finally linked to living people in the present. It was the slow personal realization that perhaps archaeologists did not want their own grandparents studied without permission, so perhaps they should stop studying other people's ancestors without their permission, or if archaeologists do not mind the study of their grandparents, at the very least permission should still be sought before beginning the study. Part of the changes in this mindset can be attributed to the increased activism for Native rights, self-determination, and self-governance over the past decades, which has also led to a growth in tribal archives, libraries, and museums (Joffrion and

Fernández 2015:195). However, part of the changes also occurred as a result of increased consultation through the NAGPRA process.

It is easy for the public to dismiss Native American human remains and items of cultural patrimony as relics of the past and their oral history as stories, simply due to the ignorance resulting from not interacting with the tribes on a regular basis. The new collaborative relationship born from NAGPRA forced more reluctant archaeologists to be reflexive, to recognize the political nature of archaeology, to acknowledge and incorporate the Native American perceptions of the past, and to acknowledge that oral history has a place in history that is not necessarily inferior to science (Ferguson 1996, Little and Shackel 2014:74). Many archaeologists are starting to realize how much value there is in collaboration with Native Americans in regard to cultural sites and items. Why guess as to the reasons behind the migrations of the tribes or the purpose of an event when references to the knowledge is available in the oral history of the affiliated tribe? By including the oral history and tribal knowledge, the empirical data derived from archaeology can be enriched and embrace the realization that there are multiple perspectives to history (Colwell-Chanthaphonh and Ferguson 2006:150). Little and Shackel propose that archaeologists and others who work with cultural heritage start thinking of themselves as members of the public and come to the table not as experts that should be deferred to, but as members of a community with skills and knowledge along with the realization that there are big gaps in their knowledge that they will rely on others to fill (2014:145-146). Following this idea, archaeologists and the tribes have a lot to offer each other. Scientific analysis done within the framework of respect for the wishes of the tribe can help fill gaps that may exist in oral history during the periods when it was actively repressed. Furthermore, by having the tribes communicate their own cultural image, a clearer picture of Native American history and culture can be obtained and shared. Some museums have embraced this ideology and have attempted to incorporate tribal perspectives

into their broader mission, and some universities have started to support the tribal communities by strengthening and developing the diversity of their library collections and teaching different perspectives on the importance of community engagement and consultation (Joffrion and Fernández 2015:204).

The benefits of collaboration are not limited to the expansion of knowledge. The trust gained through respecting another community can provide an ally in times of hardship. For example, the Massachusetts Commission on Indian Affairs (MCIA) reburied over 100 individuals from 34 sites from 1983 to 1994 and had cultivated a strong sense of trust between the local tribes (i.e., Wampanoag peoples of Aquinnah, Mashpee, Assonet, Herring Pong, Seekonk, Pocasset, the Nipmuc, and the Nipmuc groups) and the Massachusetts SHPO (Simon 2006:51). When a bill was presented at the State House that would have eliminated the office of the Massachusetts Historical Commission (Massachusetts SHPO) and the state archaeologist, a large contingent of tribes went to the hearing to protest and were instrumental in the bill failing (Simon 2006:52). The cultivation of trust between the two communities is what ultimately saved the state regulating agency of CRM. If the bill had gone through, there would have been confusion on who would be responsible for regulating cultural resources in the state. Considering that the SHPOs are required under the NHPA, how would cultural resource management in the state function? The scientists would have probably lost more data through the bulldozing of the projects, then they would have from pursuing consultation in the spirit of NAGPRA.

In regard to the inventory of human remains and items of cultural patrimony, archaeologists began to realize again, that collaboration did not equate loss of data. It is true that, despite the amount of care used during the inventory or the curation process, some tribes view even the exposure of human bones or handling the human remains and burial objects in any capacity as a theft or desecration (Hill Sr. 2006:17). Some tribes support using nondestructive

techniques for analysis, taking complete sets of osteometric measurements, describing the morphological characteristics and pathologies, or taking photographs (Simon 2006:49). If consent is given, radiocarbon dating and isotope analysis could be performed, and a few small samples of hair, bone, or teeth may be retained for future study (Simon 2006:49). The important phrase here is: if consent is given. The United Nations Declaration on the Rights of Indigenous Peoples that was adopted in 2007, establishes the right to free, prior and informed consent as part of the existing human rights standards (A/RES/61/295). If archaeologists wish to possibly use some of the human remains for analysis, consent should be at the forefront of their minds in order to retain positive connections with the tribe.

Since the inception of the law, NAGPRA has jumpstarted a change in the view of Native American human remains and processes involved in repatriation. Although the hierarchical view of science over cultural history and tradition is still present in cases such as Spirit Cave Man, there is an obvious shift towards removal of the hierarchical structure in favor of the acknowledgement that not only are Native American remains people, instead of objects, but also the realization that their descendants are very much alive.

Spirit vs. Letter of the Law

Following the letter of the law is exactly as the phrase suggests, federal agencies and museums would complete their obligations to the exact statement of the law and not go beyond what is minimally required. The spirit of the law would be complying with the letter of the law, then going above and beyond to make sure the intent of the law is also taken into account. In the case of NAGPRA, following the letter of the law would be to file notices of inventory and complete repatriation of collections the agencies are in control of or that were found on federal lands. Following the spirit of the law would be to take the intent of the law and go above and beyond what is required in the letter of the law to fulfill the intentions

behind the legislation, which were to right the wrongs against Native Americans and establish policies that respect the ancestors (Midler 2011:1340). Many agencies will do only what is necessary for compliance with legislation, whether due to financial restrictions, time constraints or confusion on the legislation from obscure terminology, jargon and acronyms (King 2009:75). To go above and beyond the letter of the law, federal agencies and museums would establish procedures to incorporate tribal voices and concerns into the decision-making processes regarding the disposition of human remains, funerary objects, and items of cultural patrimony; provide ample opportunities for tribes to inventory collections; and regularly consult with Federally-Recognized tribes regarding the agency's or museum's policies. They would treat consultation as ongoing dialogue instead of a task to be checked on the to-do list (King 1998:116). In addition, the federal agency or museum would strive to repatriate all human remains regardless of the confusion surrounding control.

For the THC, which supports the perspective of treating human remains as people, following the spirit of NAGPRA, as opposed to the letter of the law, has set the agency apart from other repositories. The THC is already following the letter of the law regarding the collections subject to NAGPRA. All collections that the THC had control of had been inventoried or repatriated according to NAGPRA standards. However, this left the legacy collections with ambiguous control still housed at CFAR, and the THC only in compliance with the letter of the law. Although the collections were in THC possession, since the human remains had all been from private lands and no formal transfer of control had been made, none of the collections were considered controlled by the THC. The intention of NAGPRA was not only to protect Native American and Native Hawaiian human remains, funerary objects, sacred objects and objects of cultural patrimony, but also to ensure that disposition decisions would be governed by respect for and in consideration of Native rights (SR 101-473:1-2).

Furthermore, it was passed to address the historical inequities created by past research and

collection practices and helped restore the constitutionally guaranteed right to religious freedom, which includes the right to burial practices for the tribes (Daehnke and Lonetree 2011:87). It could easily be argued that having human remains stacked in a box on a shelf, stored with individuals from different locations and housed in brown paper bags and non-curatorial materials is not meeting the intention for respect for Native religious rights as guaranteed in the U.S. Bill of Rights.

I would propose the idea that the spirit of law for NAGPRA would be the universal attempt to repatriate all Native American and Native Hawaiian human remains, funerary objects, sacred objects, and objects of cultural patrimony held by an agency or museum, regardless of whether the collections were located on public or private land, and regardless of any confusion surrounding possession versus control of human remains. Currently, if the human remains are housed with the agency or museum, then the agency or museum has possession, but to have control the federal agency or museum had to have been the ones to excavate or discover the human remains on Federal or tribal lands, be the agency or museum in charge of Federal lands or have a formal document transferring the control (25 USC 3001-3013). If the museum is requested to assist with an excavation of human remains on private property, the control of the human remains and associated artifacts remains with the private landowner. For the agencies or museums that have possession, but not control of the human remains, it would require the agencies or museums to either take control of the collections or identify if another agency or museum has control of the collection and contact that agency or museum to negotiate transfer of the collection. Following the spirit of NAGPRA has broader connotations than just control and initiating repatriation. For example, 75 FR 12377 was passed to add procedures for the disposition of culturally unidentifiable Native American human remains to keep repatriation from being delayed or being avoided by not linking

human remains to living descendants. I will introduce more on the final rule in the beginning of the next chapter.

Chapter 4: Methods

In order to determine how the change in perspective surrounding NAGPRA since its passage have affected the methods and consultation during the repatriation process today, I interned with the THC to update their legacy collections now subject to NAGPRA from June 2021 to December 2021. Specifically, I was tasked with getting the collections ready for consultation and collaboration with the tribes prior to the publication of a Notice of Inventory and recording the methods used to help the THC compose a model of best practices. The process included a review of the records and the state of the collections, as well as compiling the records data and updating the housing of the collections. Each task was completed keeping in mind that the deceased deserved respect and that the THC would be in constant consultation with the living ancestors. The methods utilized were the attempt to not only be transparent with the tribes on how their ancestors have been treated, but to show the tribes that the THC recognizes the importance of repatriating the ancestors to their homes and their determination to accomplish repatriation efforts.

The process allowed me access to data that is restricted from the general public and to attend the monthly video conferencing the THC conducted with the tribes with ancestral and modern lands in Texas. These monthly calls are informal and covered a range of topics over current legislation, preferred word choice in reports, and feedback on the NAGPRA process. The data in the results section is a result of firsthand experience from the internship and monthly consultation calls. Finally, I conducted interviews of professionals who have worked with various stages of the repatriation process to further answer my research question.

Records

A copy of all information pertaining to the collections subject to NAGPRA (collections) was assembled to submit to the tribes. First, the records needed to be consolidated. To accomplish this, all documents saved to the THC database for the collections were printed and sorted into their respective folders. The county archives at the THC office was then visited to check against the digital files and any documents missing from the digital files were scanned, then printed and added to the collection record folders. Specifically, the county archive file contains site records, slides, microfilm, and a few county records from before the creation of the online Atlas. In addition, photo negatives, slide and microfilm archives were searched, scanned, and printed for the records. All documents stored at the THC are offline and not available to the public. All scanned files were uploaded to the THC private database and were not posted online for the public. Lastly, the archaeological site records, documentation of eligibility for the National Register of Historic Places (NRHP), a topographic map and an aerial map of all sites associated with the collections were located on the Texas Archeological Sites Atlas (Atlas) online database and a copy was added to the county file with each individual (THC 2022a). All folders are housed with the associated individual. In addition, although all records were included in the information sent to the tribes, some information has been redacted for this thesis to protect archaeological site location and individual privacy and confidentiality.

Once all the documents were located and consolidated, the THC took the common questions asked by the tribes over the collections and common questions asked during NAGPRA Review Board Meeting to create a one-page summary sheet for each collection. The site summaries consisted of a summary of the ancestor's history, the minimum number of individuals, where they are currently housed, if there are associated or unassociated artifacts

with the ancestor and where those are located, and who has current control of the individual. This summary information was compiled and printed to include with the individual folders. Although artifacts were associated with the collections housed at CFAR, there was no clear determination if the artifacts were burial objects, sacred objects or unassociated artifacts that were at the site. The THC made the decision to treat all artifacts as associated and to repatriate the artifacts with the ancestors. Upon completion, a catalog of all human remains and artifacts housed within the collections was printed and included with the folders. In addition, any folders containing sensitive photos of the human remains will be labeled with warnings for sensitive material. All summaries and documents will be available during consultation with the tribes until repatriation has been completed for the individual.

Rehousing and Cataloging

Prior to beginning rehousing efforts, the THC reflected on past conversations with the tribes to establish the following methods for rehousing. The state of some of the collections was distressing to the staff at the THC and since in-person consultation would occur, it was determined that rehousing should be conducted prior to the visit to show respect for the tribes. It is important to note, that it was only after the rehousing efforts were completed and in-person consultation had been completed that the THC realized the best practice would have been to consult on the process from the beginning. Consultation could have been done and then the rehousing conducted prior to an in-person visit. However, this was an effort to compile a model for best practices for repatriation efforts and it would have been extremely unlikely to get all the steps right on the first try.

Therefore, the following methods were utilized after referring to past conversations with the tribes. All individuals are housed in a locked, temperature-controlled vault, with no public access at the THC's Curatorial Facility for Artifact Research (CFAR). In addition, each

collection is placed on a shelf and not stacked during housing. During the initial catalog of housed collections, any container with multiple collections were split into their own containers. In addition, individuals in small containers were rehoused in containers large enough to lay the individual in an anatomically correct position and that no bones or artifacts were stacked. All artifacts associated with the individual were kept with them and placed near the foot of the container. As no catalog of the individual and the artifacts were located within the THC records, a basic catalog was created during the rehousing of the individuals. The catalog contained the human remains, if artifacts were associated with the individual, the minimum number of individuals in each collection, field provenience (if available), and what updates were made during the rehousing efforts. No new research or samples were taken during the process. The catalog was created to for the tribes, to compile existing data and record the condition the ancestors were in, not to create new data or research.

During rehousing and cataloging, human remains were only handled with nitrile gloves and were placed on clean sheets of acid-free paper when weighed. Gloves and paper were changed before handling the next collection. The individuals were in various states, however, the individuals who had been housed in less-than-curation-worthy standards were given priority. In order to form a comprehensive catalog, a table was made containing the county, site trinomial (if applicable), provenience, contents of the bag, approximately weight, field date, catalog date, whether the human remains were treated chemically prior to current repatriation efforts and with what substance, minimum number of individuals, probable number of individuals and additional notes or comments. To clarify no human remains were chemically treated or cleaned during rehousing efforts. In addition, the human remains were identified as to skeletal elements represented of the individual, to the greatest extent possible, by Maggie Moore, THC reviewer and trained bioarchaeologist. Items or human remains were assigned a bag number and given an identifying tag to correspond with the catalog line.

During the cataloging process, human remains and artifacts were repackaged (if necessary) into curation bags and all delicate human remains were padded with foam. Faunal remains were noted to possibly be mixed with human remains in some collections, however, all analysis or further identification will not be conducted unless at the behest of the tribes during consultation. No photos, samples or additional analysis were conducted during cataloging.

Consultation

Frequent and ongoing communication has been stressed by Native American tribes as essential to effective consultation and for reaching consensus decisions (e.g. White Deer 2000:13). In the spirit of this idea, the THC began holding informal monthly video conferences in February 2021, prior to the work completed for this thesis, for all of the 29 Federally-Recognized tribes with connections to Texas (THC 2022b). Details of the intent to update and repatriate the legacy collections were first introduced in these meetings. The THC shared that they are assuming control of these collections in order to begin the repatriation process. The THC then collaborated with the tribes to formulate the following methods for the process prior to publishing an intent to repatriate. I was able to attend the monthly calls during my internship with the THC, which is where I obtained data in the consultation and collaboration sections of this thesis.

Due to the ongoing pandemic of COVID-19 at the time of this thesis, consultation and collaboration was conducted in two parts. First, a virtual meeting was offered to all interested Federally-Recognized tribes that would include a virtual tour of the facility and housed individuals prior to the publication of intent to repatriate. In addition, all summaries were made available to the tribes at the time of consultation. If requested, digital copies of the records for each individual could be sent to the tribes. Once the virtual meeting had been conducted, in-person meetings at the CFAR facility were offered at any time requested by the

tribes. In-person meetings would be conducted with the proper personal protection equipment (PPE) and procedures recommended by state guidelines for COVID. The consultation would include a tour of the facility, access to the human remains and all records associated with the collections. Following consultation with the tribe, any suggestions, or requests with regards to how the individuals are housed were followed to the best of the THC's abilities before completing the NAGPRA process. In addition, the completed, defense-ready draft of this thesis was sent to all interested tribal representatives for feedback and concerns. All the comments received are addressed in the final thesis deposited at the University of Maryland.

Interviews

Interviews were conducted with individuals that had prior experience with the NAGPRA process in order to supplement the data from the THC collections with data out of the state of Texas and with data from other collections. Prior to conducting interviews, a Human Subjects Determination form was submitted to the University of Maryland's (UMD) Institutional Review Board in accordance with UMD's policy for interviews. A determination of "not research" was received before the interviewees were contacted (Appendix A).

Interviews were conducted using Zoom, Microsoft Teams, or similar video conferencing programs as some interviewees were located out of state, and due to the ongoing COVID-19 pandemic. Although the interviews were recorded with consent for the sake of writing this thesis, the recordings were not transcribed or released in any manner and will be deleted once the thesis has been written and defended as agreed upon in the interviews. Any files were stored offline and not made available to the public. Once chapters of the thesis corresponding to the interviewee were written, the corresponding chapter was sent to the interviewee for review and editing. In addition, all interviewees were asked if they wish to remain anonymous in the thesis. If the interviewees chose not to remain anonymous all information

regarding them will only be publicly available information such as their name and the repository they work for (which is posted on public websites).

Although no quotations are used from the interviews in my thesis, the interviews helped form my foundations on the federal legislation of NAGPRA and the challenges faced encouraging agencies and museums to comply with the law. The interviews also helped develop my understanding of the perspectives surrounding NAGPRA. Lastly, as previously mentioned no direct quotes from the interviews are located in my thesis; however, quotations from publications by the interviewees (i.e., Palus and Daehnke) are used in this thesis.

Complications and Considerations

As stated above previously, the ongoing pandemic means that plans had to change depending on the number of cases of COVID in Travis County, where THC's main office is located, and the recommendations for public health and safety. Ongoing procedures and processes may need more time allotted to complete as well. For example, if a case of COVID were to occur within the THC faculty or within one of the consulting tribes, consultation had to be extended until all interested parties could safely conduct any activities associated with consultation. In addition, all slides and negatives that needed to be scanned and uploaded had to be processed outside of the THC offices. In order to maintain confidentiality and to assure sensitive information is not open to the public, all scans were kept offline, and all copies were handed over to the THC once scans had been made.

Records associated with the collections are in multiple locations and were not always well-organized. In addition, some collections had more extensive documentation than others, depending on whether the collection came to the THC through a data recovery investigation, or through county sheriffs's offices. Likewise, some of the collections were dropped off at the THC without any warning and documentation for these individuals was sparse. Once the

documentation was consolidated, the records were then organized by information printed from the Atlas, site forms from the field, correspondence, field data and forms, reports or analysis conducted and additional documents such as news articles. There was correspondence and in the case of one collection (i.e., Pioneer Village), a museum plaque that will possibly be triggering for some members of the consultation parties. In addition, during preparation of the records, photos and analysis of human remains were identified that may have been conducted without permission from the tribes. However, as per NAGPRA regulations and in the spirit of transparency all records housed at the THC will be given to the tribes upon completion of the NAGPRA process. Please note that many of the individuals were collected prior to the passing of NAGPRA and the collection of these records does not reflect the current opinion and values of the THC.

As previously mentioned above, while cataloging human remains and the associated artifacts, multiple issues hindered the process. Only one collection had an inventory included in the records (i.e., Trinque), and the remains were consolidated and packaged in an arrangement not apparently clear during rehousing efforts. This issue was solved by rehousing the human remains in an anatomically correct manner and noting on the catalog if there appeared to be any bags containing both faunal and human remains. At the request of the tribes, the human remains were only handled minimally, so as to not disturb the ancestors more than necessary. Another issue was the problem of non-curatorial materials used to house the individuals such as bathroom tissue and brown paper bags. All observed cases were immediately rehoused in curation bags and all delicate remains were padded with foam.

Chapter 5: Results

This chapter contains the model of best practices for starting repatriation developed by the THC. The methods utilized were formed by using past discussions with the tribes, discussions held during the NAGPRA Review Committee meetings and consultation with the tribes. I assisted the Archeology Division of the THC with a complete review of the collections now subject to NAGPRA housed with the agency. The main objective was to gather the history of each individual, compile the history into a more accessible format for the tribes and to rehouse each individual into more respectable curatorial appropriate materials. The histories included the origin, removal process, land ownership, agencies involved, locational information of the collections, the site trinomials, the minimum number of individuals and if any chemical treatments had been conducted on the collections. My internship concluded before the notice of inventory could be posted, and the results presented in this thesis are partial.

Records

One of the first steps in the process of consultation for repatriation is to compile all the records available for the collections in order to determine what is housed at the facility, versus what may be housed elsewhere. Historically, collections were regularly split between museums and other facilities. Exactly as the phrase implies, all records include all forms of communication regarding the records (emails, letters, notes, etc.), site records if applicable, analysis conducted, slides, photos, reports, field notes, volunteer work, and any other type of record created. In the case of the THC, the records were stored in various locations separate from the human remains. The slides and county files were stored in a locked archive room at the THC office. Correspondence and notes were saved to the THC's internal network files. Additional site-specific files were located on the Atlas (THC 2022). Each of these records

provides insight into the history of the individuals and how they came to be under the care of the THC.

One significant observation during the process was the variation in quality and quantity of records between the collections. As stated previously in the history of the collections, the quantity, and types of records available for a collection directly affected the quality of the records. The available records varied largely by the acquisition of each collection. Collections that were dropped off by a sheriff's office or abandoned by a private landowner who requested the THC stewards to record the sites on their property had vastly fewer records than the collections that were donated after some form of archaeological efforts. For example, usually collections associated with inventoried archaeological sites contain site documentation, correspondence between agencies, maps of the site locations, photos, slides, burial records, field inventories, test unit forms, sketch maps, and field notes. The collections are well documented and, although the records are scattered between the online and offline THC records, the online Atlas database and at CFAR, once the data was together, it was simple to piece together the story of each individual in the collections, how they came to be at THC and where they were housed. In contrast, the collections that came to the THC through a county sheriff's department or through a concerned citizen consist of far less documentation. One of these collections only had a single two-page letter as the extent of the documentation. This made it exponentially more difficult to determine how the ancestor came to be housed at the THC and to recreate the chain of custody. During the compilation of records, it came to our attention that site 41CF111 was under the legal control of USFWS. The records showed the THC attempted several times over a few decades to get USFWS to take possession of the individual but with no resolution. The efforts undertaken during my internship resulted in the THC Executive Director once again contacting USFWS, and this time the letter had results. USFWS law enforcement representative took custody of the portion of the collection housed

at CFAR in November of 2021(Archambeault 2022). The THC also provided contact information to the tribes for the representative of USFWS who took possession.

After compiling and organizing all the records, there was still the issue of having to go through all the documents to understand the history of the individual. As the THC wanted to collaborate with the tribes, we decided to create single page site summaries, so the tribes could get a better understanding of both the history of the individual and the available information without having to comb through hundreds of sheets of paper (see Appendix B). The reams of paper would still be made available to any tribe requesting it, but the data presented in the summaries consisted of the more frequently asked questions from the tribes and some important data on the control and housing of the collections that the tribes would want without having to dig through all the records. The site summaries were distributed via email and included the following information:

- A. Current Location (where materials or human remains are currently housed)
- B. Site Protection (if applicable)
- C. History of how they came to be under our care (who found them, why they were gathered, and why they are currently with us), any archeological investigation information, site form information (associated artifacts, site condition, etc.)
- D. Control (landowner history and accessioning records, if any)
- E. Catalog of ancestors, associated objects, and records under the care of the THC
- F. Chemical treatments (if applicable)
- G. Other possible locations of ancestors, associated objects, and/or site information or sources of additional information related to the site.

In Texas, information on collections that are associated with a site could be pulled from the Atlas, such as the location of the site, the condition of the site during the last archaeological visit, and if the site was listed under the National Register of Historic Places (NRHP) or designated as a State Archaeological Landmark (SAL). The landowner history and agency control were determined by internal correspondence and public records, such as the County Appraiser District website, for the current landowner information. The history of the individual and possible locations of portions of the collections were also determined through internal THC records, published works, and donated records from private collections. The catalog and chemical treatments utilized were compiled and recorded during the rehousing efforts conducted during my internship. Additionally, warnings were added in the summaries for the tribes, if the records contained photos of the human remains, as well as an aerial photo and topographic photo of any collection associated with a site. These were not included in the site summary attached in Appendix B due to site protection and privacy concerns.

The last column added to the site summaries consists of a visitor's log for the collection. As previously mentioned, the THC has put more emphasis on collaboration with the tribes, which has led to the formation of monthly calls with the tribes over Zoom to discuss current issues and other future plans.

Collections

Similar to the records, the collections were housed in various conditions prior to arrival at the THC. Although all of the collections subject to NAGPRA were housed in a temperature-controlled room with limited access for staff and no access for the public, not all the collections had been kept in curation-standard housing. Two of the collections were still in brown paper field bags, one collection was wrapped with bathroom tissue, and two collections from different counties were housed in the same box. The boxes that housed the

human remains were on individual shelves that were dedicated to the collection now subject to NAGPRA. In early conversations with the tribes, it was determined that the preferred housing for these boxes would be inside a locked cabinet and covered in unbleached muslin or canvas. The THC is accommodating those temporary housing requests.

Rehabilitation of Collection

Due to the varied state of housing, a base standard was set to bring all the collections to current curation standards prior to consultation with the tribes. THC anticipated individual tribes would have specific requests for temporary housing and transfer conditions, among other requests, for individuals claimed by their tribe. The base standard was built upon the question of what would be considered a respectful temporary housing, today? Essentially, our current answer consisted of the following:

1. Each individual was housed in their own curatorial box.
2. All housing materials were brought up to the current curation standards.
3. All original housing materials were kept within the box with the individual.
4. Each individual was laid out in anatomical order with associated artifacts placed at their feet.
5. Gloves were worn at all times while rehousing the ancestors.
6. All rehousing efforts were conducted in a temperature-controlled vault.
7. All boxes housing the individuals were placed directly on the shelf, nothing was stacked on the boxes.
8. All chemical treatments noticed during rehousing were recorded.

To begin with, each ancestor was housed in their own box meeting current curation standards large enough to lay the ancestor in anatomical order. All housing materials were inspected and were updated to curation standards that would not cause damage to the ancestors. Tissues were replaced with curatorial tissue paper, paper sacks and Ziploc bags were replaced with curatorial bags, the housing containers were replaced with the appropriately sized curatorial housing to hold the ancestor and the associated artifacts, and any tags from previous curatorial efforts were properly nested between an inner and outer curatorial bag for all organics. During the updates to wrappings, each ancestor was carefully inspected to identify if any chemicals had been used to treat the human remains. If chemicals were noted, the site summary was updated with the information. No chemicals were removed or added during the inventory process. Again, it is anticipated that each tribe will have a different guidance on how to prepare the individual for reburial. Some will request removal of all chemicals, or avoidance of sealed plastic bags and containers, while others will opt for no further interventions. Gloves were worn while inspecting the ancestors for any chemical residue and at no times were the ancestors touched with bare hands. In addition, all work was conducted within a temperature-controlled vault with restricted access to minimize disturbance. Great care was taken to limit handling and ensure that no further damage occurred to the ancestors during the rehousing efforts.

During the process of rehousing a basic catalog was created to determine if the collection contained an ancestor, if there were artifacts associated with the ancestor, what the original state of the housing was in, what updates were made to the housing, the minimum number of individuals in the collection, and the basic field provenience information. The catalog was less for scientific purposes and intended to provide basic information of everything from the collection that the THC was aware of and housed at CFAR. Additionally, cataloguing efforts were limited to respect the tribes' requests to minimally disturb the human remains. After the

cataloging and rehousing, all original wrappings were kept with the ancestor, so no trace amounts of bone would be lost. Any tags were nested between curation bags, and all associated artifacts were placed at the ancestor's feet.

Consultation

During the process of gathering the records and rehousing the ancestors, the THC shared the intent to review our NAGPRA inventory and begin the consultation process anew with the 29 Federally-Recognized tribes during their monthly call. The monthly calls between the THC Archeology Division and the 29 Federally-Recognized tribes with a connection to Texas started in February 2021 as an effort to improve communication among preservation partners. During these calls, the THC and the tribes share information on legislation, educational programs, regulatory changes, and other topics of interest. Through these monthly calls the THC offered personal or virtual tours of CFAR to the tribes, and digital copies of the records. Holly Houghten (Houghten), the Mescalero Apache Tribal Historic Preservation Officer (THPO), volunteered to visit CFAR on February 2, 2022, as she would already be in Austin, TX, presenting at the THC's Real Places Conference. During the visit, Houghten expressed support of the site summaries and requested the addition of an overview map of Texas to aid tribal review of locational data (Houghten 2022). In regard to housing of the collections, Houghten requested specific housing accommodations. Specifically, she requested the individuals be housed in unbleached muslin bags, with an unbleached canvas or curtain draped over the shelves (Houghten 2022). Houghten also requested wooden shelving, instead of metal for future repatriation endeavors. Houghten concluded stating that while these requests were ideal, none of them should get in the way of expedition repatriation efforts (Houghten 2022).

Chapter 6: Analysis

This chapter will tie the results and methods to the current perspective of the THC on NAGPRA and consultation with the tribes. The chapter will cover the impressions that I gained from working closely with the THC during my internship and while attending the monthly consultation meetings with the tribes.

What I wanted to emphasize through the results and methods chapter, is that I could not find literature on the methods of NAGPRA. Perhaps it seems silly to write about methods when all agencies and repositories tend to have their own way of doing things, but for my research it meant that the THC and I had to formulate our own methods and checklists. Even checking the curation guidelines of major repositories in Texas such as TARL and UTSA-CAR did not provide any insight on how to prepare these collections for repatriation, just how bones should be stored (CAR 2022, TARL 2018). While this may be taken as an acknowledgement that human remains should not be stored in perpetuity, it also means that there is no guide of best practices to follow for repatriation efforts. This did bring about the freedom to utilize methods that followed the THC's stance of adhering to the spirit of NAGPRA and to following the individual requests of the tribes and through the entirety of my internship while rehousing and compiling records, the constant need to treat the individuals and the collections with respect was emphasized. All the checklists and methods were formed with the idea that these individuals were once people and they have living descendants that will want to know the story of how their ancestors came to rest at CFAR. The chemical treatment column in the site summaries, for example, was added to inform the tribes of unnatural processes that had been conducted on the ancestor that may interfere with traditional tribal burial practices. Furthermore, some chemical treatments can damage the remains or others can be removed by tribal request. No matter what the tribes decide to do with the information, the chemical

process needed to be included to give the tribes all the information they need to make a determination on how to proceed with repatriation and the reburial of the ancestor.

Although the tribes have different traditions for burial practices, constant communication with the tribes was essential during the process to keep the methods utilized as respectful as possible and without further damage to the ancestors. The informal monthly calls between the Federally-Recognized tribes and the THC helped establish the policy of handling the individuals as little as possible to prevent further disturbance and to include all original packaging with the rehoused individuals. Although we recognized that Indigenous and archaeological practices vary, we reasoned that we could take some basic practices to treat the individuals as human rather than data and that the tribes could make requests once the individuals were rehoused in more respectful conditions (Smith and Jackson 2008:177). The informal calls also helped to form the site summaries. As previously mentioned in the Results chapter, the data presented in the summaries consisted of the more frequently asked questions from the tribes as well as control and housing of the collections.

Spirit of the Law Revisited

Previously I made a distinction between the spirit of the law versus the letter of the law and indicated that the THC has followed the spirit of NAGPRA in the efforts to repatriate the legacy collections housed at CFAR. One of the defining points of this process is when consultation with the tribes occurred. The THC involved the tribes from the beginning of the process. At the very start on my internship, before we had even ordered all the curation materials needed or compiled all the records, the process and intention was introduced to the tribes in the monthly calls. Although NAGPRA does require consultation during the inventory process, the lack of rules on when and how the consultation occurs allows agencies to not only delay consultation to the end of the process, but also allow the agencies to

determine how much consultation will occur. The THC began the process as early as possible and continued to consult with the tribes monthly throughout my entire internship and after my internship concluded in December 2021. The continual inclusion of the tribal perspective allowed the THC to act in a culturally appropriate manner according to the values of the tribes and the ethics of the THC (Riding In 2005:61). Furthermore, the THC did not have control of the collections housed at CFAR. Due to all but one of the collections having been in possession of the THC for over 20 years, the THC determined that control would be assumed by the THC unless it could be determined that another agency did have control of the collection.

Although it may seem a simple process to declare control over legacy collections, complications can bring up legal concerns. As previously mentioned, site 41CF111 was in possession of the THC, but under control of USFWS. There are decades of internal records that illustrate the efforts of the THC to encourage USFWS to take possession of the portion of the collection housed at CFAR. Finally, doing the current repatriation efforts, the THC determined that if USFWS would not take possession of 41CF111, the THC would assume control of the portions of 41CF111 housed at CFAR and repatriate those parts of the collection. This stance ties back to the efforts of the THC to follow the spirit of NAGPRA. The THC wants to repatriate all human remains in their possession or transfer possession to the agencies that have control of the collection (Archambeault 2022). However, since USFWS had definitive control under NAGPRA of 41CF111, the THC could have been vulnerable to a lawsuit. I could not find a case where two agencies had fought publicly for control over a collection subject to NAGPRA, but the fact remains that there is a clear distinction in NAGPRA over which agency or museum has control over the collections. I would argue that a state agency that would risk the legal repercussions for assuming control to complete repatriation indicates a commitment to adhering to intention of the law. In this

particular case, USFWS responded positively to the current correspondence over site 41CF111 and USFWS has taken possession of the collection.

Previously I introduced the idea that another way to adhere to the spirit of NAGPRA was for federal agencies and museums to establish procedures to incorporate tribal voices and concerns into the decision-making processes regarding the disposition of human remains, funerary objects, and items of cultural patrimony; provide ample opportunities for tribes to inventory collections; and regularly consult with Federally-Recognized tribes regarding the agency or museum's policies. In this regard, I believe the THC accomplished this goal with room for improvement. From the very beginning of the process, the 29 Federally-Recognized tribes included in the discussions surrounding the process. In my results chapter I mentioned consultation began from the start. However, even though the methods for rehousing were based on past conversations with the tribes, once the tribes came for the in-person site visit, they requested the human remains be housed in unbleached muslin cloth and a muslin cloth to be draped over the human remains. This request could have been implemented as part of the rehousing process instead of after the rehousing had taken place if the tribes had been consulted on the methods of rehousing. I would argue that this case highlights how important it is to adhere to the spirit of NAGPRA and include the tribes from the very beginning on all aspects of the repatriation process. Only by including the tribes can the agency or museum guarantee that best practices are being followed.

Putting The Human Back in Human Remains

The decision to follow the spirit of NAGPRA and incorporate respectful methodology did not form on a sudden whim. The THC had adopted the opinion that human remains should be treated with the respect to their living descendants and their cultural customs. Indeed, the tribes are not only American citizens, but sovereign nations, and if another country were to

withhold the human remains of American citizens it would cause a national outrage, so why should the THC not respect the rights of sovereign nations within the United States (Dumont 2003:113, Thornton 1998:394)? One tribal reviewer commented that I should use the word “human” when referencing human remains. This highlights a seemingly small detail that amounts to a huge perspective shift (Archambeault 2022). The simple use of the adjective “human” provides a constant reminder to museums and federal agency that they are in control of deceased people (Archambeault 2022). Conversely, it is interesting that the entire American public is not considered as specimens, mere data upon passing, but the deceased of the tribes are referred to as part of a collection (Owsley 2000, Russell 1998:5-6). It would be reasonable to assume that by respecting the tradition and history of the tribes, relations would improve between the tribes and agency. Having started the informal monthly calls and during the topics discussed within the monthly calls I was able to participate in, I got the impression that the THC not only wanted to improve relations with the tribes with ancestral lands in Texas, but to also support the tribes politically and in their efforts to spread awareness of their culture and history. The agency was focused not just on NAGPRA issues, but tribal issues on a larger scale, such as improving representation at their historic sites, publications, and conferences.

Informal Monthly Calls and Collaboration

The repatriation efforts were only a short portion of the agenda on the monthly calls, and the topics discussed varied greatly per call. One constant was upcoming state or federal legislation and the opinions and legal stances the tribes were presenting. The THC would take care to not contradict tribal efforts and would publicly support the voices of the tribes. Another important constant was the continued efforts of the THC to encourage and develop tribal participation in programs and websites sponsored or supported by the THC. Although Texas has a rich and diverse history regarding tribes and immigrants, the programs and

websites available lack the perspective of the tribes and their oral history and traditions. By sharing the programs in the monthly calls, the THC also received feedback on issues or improvements that could be fixed or implemented in their endeavors. Basically, the calls were the opening and continued efforts by the THC to collaborate with the tribes on the history of Texas. The legacy collections are part of the tribe's history and the THC determined that all collections with human remains should be repatriated with the upmost respect.

Coming back full circle, respect and humanity was the theme while forming the methodology and consultation plans for efforts to compile and rehouse the legacy collections at CFAR with the intent of repatriation. The consistent question that was asked during the rehousing of the ancestors and compiling the records was what would I want someone to do for my relative?

Overall, the efforts during my internship with the THC would be considered to value the individuals as people. In addition, the results of my internship can be used for other interested parties in similar circumstances that are looking for a baseline to form their own methodologies.

Chapter 7: Conclusion

The passage of NAGPRA was one of numerous attempts to restore the rights of Native Americans and Native Hawaiians, with a focus on the protection and repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony. At the time of this thesis, NAGPRA has yet to undergo any amendments; instead, revisions have been made to clarify the language and update the policy on culturally unidentified remains. However, passage of NAGPRA has caused a shift in the general mindset towards human remains from scientific data to the realization that they are the remains of people who have living descendants. This shift led to the question addressed in this thesis of how is that shift in perspective reflected in the best practice methodology developed by the THC in preparing a collection for repatriation prior to the notice of inventory.

Specifically, I looked at the legacy collections subject to NAGPRA housed at THC's repository CFAR. I work and live in Texas and the THC serves as the SHPO for Texas and oversees archaeological investigations that fall under the Texas Antiquities Code. The THC's role as the reviewing agency for CRM in Texas puts them in the position to set or enforce standards in Texas. Their actions under the spirit of the law of NAGPRA should be an example for other federal agencies and museums, not just in Texas, but around the country. Considering the THC continued to support and fight for further protection of burials in Texas for over 20 years, until the unmarked burial provision was finally established in 2011, it is likely the THC will not abandon their new methodology.

I also had to constrain myself to a limited collection review as Texas is a large state with 17 state certified repositories and countless more uncertified repositories. A larger study with no time constraints may result in additional data to consider.

As mentioned earlier, the methodologies applied in this project and described in this paper are the result of a shift in the perspective of Native American human remains. At the passage of NAGPRA the split in perspectives between science and humanity was apparent in cases of repatriation. While some people argued human remains were important scientific materials, others have pushed the idea that human remains are not objects of study, or archaeological resources, but people that were once alive (Hill Sr. 2006:15, McKeown 2013:14, Riding In 2005:53, SAA 1986). The latter opinion has been gaining traction and has become more popular today, which has spurred the THC to commit to following the spirit of the law in regard to NAGPRA, as opposed to the letter of the law. The nebulous terminology in NAGPRA established that although the THC had the collections with human remains in their possession at CFAR, they did not possess control of the collections. Basically, since the legacy collections had been from private land, temporarily housed for another agency, or loaned to the THC, the THC did not have legal responsibility under NAGPRA to attempt repatriation. One example of the THC following the spirit and letter of the law was in regard to site 41CF111. The site was under the legal control of USFWS. The records showed the THC attempted several times over a few decades to get USFWS to take possession of the individual, as USFWS had control of the collection but with no resolution. During current efforts, the THC stated that if USFWS refused to take possession of the rest of the collection housed at CFAR, then the THC would assume control and repatriate the collection. Although, this path could have made the THC vulnerable to lawsuits, the THC remained firm on the decision to repatriate all human remains at CFAR regardless of the challenges it would take. Finally, a resolution was reached and USFWS took possession the collection housed at CFAR.

Despite the technical lack of legal responsibility, the THC decided that all the legacy collections had been at CFAR for long enough that the THC could assume control of these

collections as an agency and begin the repatriation process. The twelve collections came from numerous regions across Texas; however, the methodology utilized was the same for all of them. Although the work was conducted in a single state, the best practices and methodology could be applied across the nation. The creation of the site summaries, which detailed the story, condition, associated artifacts and agency information for the tribes, was based on common questions from not only the 29 Federally-Recognized tribes with ties to Texas, but also the federal NAGPRA Review Committee meetings. The information in the summaries are knowledge that any tribe would need to know for repatriation to occur as well as important information, such as chemical treatments, that could affect the materials or practices of burial customs. Although I recognize that many tribes have their own burial practices, in my personal experience the request for rehousing in unbleached muslin cloth is a common request across the United States, and the care to lay out human remains in the supine position with all associated artifacts at their feet was favorably received. Even if burial practices differ, it is the show of respect and the acknowledgement that the museum or federal agency understand they are treating human remains not as data, but as deceased individuals.

Perhaps the most important best practice is to start consultation immediately and continue to consult regularly throughout the entire process. NAGPRA does not require consultation with the tribes prior to posting an inventory and intent to repatriate. However, the THC respected the rights of the tribes as not only sovereign nations, but as lineal descendants with the rights to their deceased and began consultation when the process started. Even though the consultation started so early, the THC learned a lesson in not consulting the tribes on rehousing methods until after the rehousing efforts were complete. The THC should have ordered unbleached muslin cloth instead of curation boxes and foam.

Best practices are a process and can be altered with new information. Through these repatriation efforts, the THC has provided a model for best practices and methodology to follow which can be applied throughout the United States. The determination to assume control of collections that had no clear agency or museum with control under NAGPRA showed the THC not only understood the spirit of NAGPRA, but was determined to adhere to the intent of the law. The tribes of the United States are not only sovereign nations, but humans with basic rights and there is no clear reasoning as to why the rights of their dead should not be respected when the rights of the dead of Euro-Americans are respected without question. It is even more disheartening when the United States is quick to demand the rights to their deceased in international conflicts but refuse to provide the same basic rights to the tribes. The hope for this thesis is that there is now a model of best practices that can be utilized across the United States to encourage other federal agencies and museums to assume control of legacy collections and do their best to return the dead to their living descendants.

Appendices

Appendix A: IRB Determination

Appendix B: Sample Site Summary

Appendix A

IRB DETERMINATION



1204 Marie Mount Hall
College Park, MD 20742-5125
TEL 301.405.4212
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irb@umd.edu
www.umresearch.umd.edu/IRB

DATE: December 9, 2021
TO: Jessica Ulmer
FROM: University of Maryland College Park (UMCP) IRB
PROJECT TITLE: [1839602-1] Changes in Methods and Collaboration for Legacy Collections
Subject to NAGPRA
SUBMISSION TYPE: New Project
ACTION: DETERMINATION OF NOT RESEARCH
DECISION DATE: December 9, 2021

Thank you for your submission of New Project materials for this project. The University of Maryland College Park (UMCP) IRB has determined this project does not meet the definition of human subject research under the purview of the IRB according to federal regulations.

We will retain a copy of this correspondence within our records.

If you have any questions, please contact the IRB Office at 301-405-4212 or irb@umd.edu. Please include your project title and reference number in all correspondence with this committee.

This letter has been electronically signed in accordance with all applicable regulations, and a copy is retained within University of Maryland College Park (UMCP) IRB's records.

Appendix B

SAMPLE SITE SUMMARY

Site Summary

County: Hood

Site: Vicinity of Lake Granbury

MNI: 1

Location: Texas Historical Commission (THC) Archeology Division (AD), housed at THC's Curatorial Facility for Artifact Research (CFAR)

Site Protection: None

History: WARNING: Limited documentation includes photos of human remains in the report. In January of 2000, the Hood County Sheriff's office submitted the remains under case number [REDACTED] to the THC via an unnamed Steward from the Texas Archeological Stewardship Network. The remains were then submitted to the Department of Anthropology at Southwest Texas State University (now Texas State University) for reconstruction and analysis, which indicated a female aged 28-43 of probable Native American ancestry. Fire-cracked rock and lithic debitage were observed near the burial, and the THC had planned on investigating the site further; however, there are no records indicating if the investigation went through.

Control: Presumed THC control. The collection was taken from private property by Hood County Sheriff's office and submitted to the THC.

2021 Catalog of Ancestors and their associated objects & records under the care of THC: Remains of a single individual.

Chemical treatment: During reconstruction, Duco Cement and wooden toothpicks were used to reinforce the fragments.

Other possible locations of Ancestors, associated objects, and/or site information: Unknown

Date compiled: 05/03/2022

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