



**HISTORICAL DEVELOPMENTS OF
REINTERMENT INITIATIVES BY THE
STATE HISTORICAL SOCIETY OF NORTH
DAKOTA BEFORE AND AFTER NAGPRA
IMPLEMENTATION**

**STATE HISTORICAL SOCIETY OF NORTH DAKOTA
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**STATE HISTORICAL SOCIETY
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HISTORY FOR *everyone.*

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Abstract

The State Historical Society of North Dakota (SHSND) has demonstrated an unwavering dedication to handling Native American human remains, associated, and unassociated artifacts, both before and after the implementation of the Native American Graves Protection and Repatriation Act (NAGPRA). This article explores the initiatives, strategies, and notable achievements of the SHSND concerning repatriation endeavors, both pre and post the enactment of NAGPRA. During the pre-NAGPRA era (1980s to November 1990), the SHSND underwent significant changes. It established committees, conducted public hearings, and collaborated with Native American entities and state officials to develop policies addressing legal, cultural, and scientific aspects of repatriation. Public hearings in various towns and exploration of other states' reinterment policies culminated in the SHSND's decision to reinter human remains and grave goods, despite facing opposition from certain scientific communities and legal challenges. The significant process of deaccessioning and repatriation involving Native American human remains and associated artifacts took place in January 1990. Following NAGPRA's enactment (from November 1990 onwards), the SHSND adapted swiftly, amending administrative codes to protect burial sites and burial goods. The agency promptly repatriated federally-owned NAGPRA items in 1992 and subsequent repatriations between 2017 and 2022 underscored the ongoing commitment to return culturally significant items to appropriate tribes after thorough consultations and federal notifications. The timeline of events, encompassing deaccessions and repatriations from 1987 to 2022, illustrates the SHSND's proactive approach to acknowledging and returning ancestral remains and cultural artifacts to Native American tribes. These efforts highlight an enduring commitment to honoring tribal heritage, adhering to NAGPRA regulations, and nurturing collaborative relationships with indigenous communities. In essence, the comprehensive summary underscores the SHSND's continued dedication, outlining key milestones and engagements with various tribes in the respectful return of human remains, grave goods, and cultural patrimony.

HISTORICAL DEVELOPMENTS OF REINTERMENT INITIATIVES BY THE STATE HISTORICAL SOCIETY OF NORTH DAKOTA BEFORE AND AFTER NAGPRA IMPLEMENTATION

I. Introduction

The Native American Graves Protection and Repatriation Act (NAGPRA) was enacted in 1990 as a federal law mandating federal agencies, museums, and universities receiving federal funding to inventory their collections. This law requires consultation with Native American tribes to determine affiliation and identification of cultural items. Moreover, it stipulates the repatriation of human remains, grave goods, sacred objects, and objects of cultural patrimony to their lineal descendants and culturally affiliated Indian tribes. Since its enactment in 1990, NAGPRA has facilitated the return of human remains and sacred objects to tribes.

The State Historical Society of North Dakota (SHSND) completed inventories of all known human remains and associated funerary objects before the passing of NAGPRA. The following section presents a summary of historical developments and repatriation efforts by the SHSND before NAGPRA became law.

II. Pre-NAGPRA Era Efforts (1980s to November 1990)

This section details key historical developments and efforts made by the SHSND in deaccessioning and repatriating Native American human remains and associated grave goods that were collected, curated, and controlled by the Society before the enactment of NAGPRA on November 16, 1990.

During this period, the North Dakota State Historical Board (NDSHB or the Board) took significant steps by establishing the reinterment committee, organizing public hearings to discuss the disposition of human remains, and proposing new administrative codes. These codes aimed to facilitate the deaccessioning and repatriation of human remains and associated grave goods for reinterment. Additionally, they sought to protect prehistoric and historic human burial sites, human remains, and burial goods. In its comprehensive evaluation of the reinterment issue, the Board considered legal, cultural, religious, scientific, and public policy aspects. Finally, after two and a half years of discussion and debate, the Board adopted the policy of reinterment in 1988.

Apart from conducting public hearings across six towns in the state, the Board worked closely with entities such as the North Dakota Indian Affairs Commission (NDIAC), the North

Dakota State Attorney General, and the North Dakota Governor's Offices. Before NAGPRA became law, the Society repatriated all known human remains and associated grave goods it held or controlled, **except** for those portions held under contract with or curation agreement for federal agencies.

While the North Dakota State Historical Board began discussing reinterment issues in 1985 and the SHSND initiated its first repatriation in 1987, the summary commences by highlighting key historical developments from 1982.

1982

- **March 18, 1982:** The NDIAC resolved to support the SHSND excavation of endangered burial mound sites (32SN22 and 32SN207) in Jamestown and to repatriate recovered human remains from these sites to appropriate tribal groups. The SHSND conducted salvage excavations on these sites following disruptions caused by a housing project and road construction, which significantly impacted and destroyed a substantial portion of these sites. The project was directed by a staff archaeologist Signe Snortland-Coles. The 1982 salvage excavations of two woodland period burial mounds are discussed in “The Jamestown Mounds Project” report, edited by J. Signe Snortland-Coles and Gregory L. Fox. This comprehensive report is identified by AHP Manuscript Number 6200.

1984-1985

- The SHSND contracted with Gregory L. Fox, University of Missouri-Columbia, to reorganize the archaeology collections. He was tasked with developing a distinct subcollection dedicated to human remains and associated grave goods, later referred to as the Physical Anthropology Collections (PAC).

1985

- **February 19, 1985:** The NDIAC passed a resolution encouraging and requesting the SHSND to release all human remains to the appropriate tribal groups for reburial once their cultural affiliation is established. When the affiliation of the remains is not established, the NDIAC asked the SHSND to arrange memorial services involving tribal groups in both North and South Dakota.
- **September 1985:** Governor George Sinner appointed a committee to provide the NDIAC with recommendations regarding reinterment.

- **November 1, 1985:** The Board directed the SHSND staff to explore the issue of reinterment of human remains collected by the agency. They were tasked to produce a discussion paper that would consolidate the findings and outcomes of this exploration. Subsequently, a discussion paper on Reinterment was later produced by Chris Dill in 1986.
- Chris Dill's discussion paper researched the historical background of reinterment requests and explored the concept of reinterment. Within this exploration, Dill highlighted primary and secondary issues necessitating attention before commencing repatriations. Additionally, Dill advocated to the board the importance of considering diverse perspectives, including viewpoints from both the scientific community and the general public, regarding reinterment. The paper also examined reinterment policies and procedures adopted by other states during that period and highlighted the necessity for policy adjustments and clarifications before executing reinterment. Additionally, it presented suggestions and recommendations encompassing various aspects, such as funding strategies, public education initiatives, managing media relations, and addressing diverse concerns associated with the reinterment process.

1986

- **August 1, 1986:** The NDSHB determined to move towards a policy of reinterment for Native American human remains and associated grave goods within the SHSND collections. To facilitate this, the board established a five-member reinterment committee, comprising Pemina Yellow Bird, Lowell Johnson, Larry Loendorf, Sharon Wermedahl, and Bob Carlson. The committee's duties included conducting a series of hearings to collect public input on the reinterment matter and presenting recommendations to the Board for the formulation and adoption of agency policy.

1987

- **May 4, 1987:** The SHSND announced in a press release its plan for public hearings concerning dispositions of human remains within the agency's collections.
- **June to September 1987:** In June the reinterment committee held public hearings at New Town, Belcourt, Fort Yates, and Fort Totten. Then, in September, additional hearings were held in Grand Forks and Bismarck. Committee member Pemina Yellow Bird chaired the public hearings. The majority of testimonies during these hearings expressed support for reburial without further analysis. Transcriptions of the public

hearings are available in the AHP Archaeology Records, 101 3G 1. During this time, the Board received several letters from North Dakota citizens as well as from around the country. Opinions varied, with some opposing reinterment before analysis, while others advocated for reinterment without further study.

- **September 18, 1987:** The Board **deaccessioned and returned** human remains and associated artifacts that were curated at the SHSND under the U.S. Army Corps of Engineers (USACE) curation agreement. The agreement served as a formal document of collaborative efforts between the USACE and the SHSND in preserving and managing archaeological collections and associated records recovered by the USACE. The Corps gave the remains to representatives of North Dakota's Indian tribes. The remains were all reburied in North Dakota.
- **October 23, 1987:** Fern Swenson and Signe Snortland-Coles prepared a preliminary inventory of the Physical Anthropology Collections (PAC) curated at the SHSND. The inventory encompassed a comprehensive range of topics, including the type of site, cultural affiliation, method of acquisition, documentation of ownership, count of human elements, determination of the minimum number of individuals, and the status of analysis, among other pertinent details.
- **November 6, 1987:** The Board members received transcripts from the six public hearings and other material received by the reinterment committee from the public.

1988

- **January 26, 1988:** Governor Sinner and Lieutenant Governor Omdahl sent a letter to the SHB members urging them to return the human remains to North Dakota Indians.
- **February 5, 1988:** The SHB unanimously adopted a resolution stating that “until final policy adopted, there be **no further analysis or acceptance** of offers for analysis of human remains and associated grave goods”. Moreover, they requested the immediate return of outstanding loans of human remains in its collection. The Board also unanimously decided to request the return of all the human remains that had been loaned for analysis.
- **February 19, 1988:** The NDIAC passed another resolution in support of the immediate reburial of human remains held by the SHSND. On the same day, the SHSND Superintendent James Sperry sent a letter to the ND State Attorney General, Mr. Nick Spaeth, seeking a formal opinion on eleven questions posed by the Board. These

inquiries encompassed topics such as the legality of reinterment, ownership of human remains, laws governing reburial, and related matters.

- **April-May 1988:** The SHSND proposed a draft policy regarding reinterment of human remains held in its collections. In the document, the SHSND stated that it “**shall discontinue its practice of curation of human remains and associated grave goods** with the ultimate goal of reinterment of those items under its control”. On May 6, 1988, the Board voted 6 to 5 in favor of conducting limited analysis before reinterment. Subsequently, the Board decided to release to the **North Dakota Intertribal Reinterment Committee (NDIRC)** the human remains and grave goods that the state had analyzed, as well as those lacking provenience information. However, donated items deaccessioned on that day were not immediately repatriated as donors needed to be contacted. These donated items were deaccessioned again on December 19, 1989, and subsequently released to the NDIRC on January 10, 1990.
- The **North Dakota Intertribal Reinterment Committee** was comprised of representatives appointed by each tribal government to represent their respective tribe in matters related to the deaccession and reinterment of human remains and burial goods. The year 1988 is potentially the starting point for intertribal reinterment initiatives in the state. In May of that year, the Spirit Lake Sioux Tribe formally acknowledged and extended its support to the Intertribal Reinterment Committee. Likewise, in June 1988, the Turtle Mountain Band of Chippewa also recognized the committee's existence and appointed Denise Peitler as its representative within the committee.
- **May 19, 1988:** The Board repatriated 29 boxes containing human remains and associated grave goods—comprising those analyzed by the state and those lacking provenience information—to the NDIRC, which subsequently reburied these items. The story was covered by the Bismarck Tribune in its May 20, 1988, publication.
- **June 30, 1988:** The Board reviewed its draft reinterment policy and adopted it after making changes. Throughout the extensive review process, the Board weighed legal, cultural, religious, scientific, and public policy considerations. The Board adopted the policy after two and half years of debate and consideration.
- The next day on **July 1, 1988**, Timothy Bratton, a professor at Jamestown College, filed an injunctive to prevent the SHSND from implementing its policy of returning the human remains and associated grave goods to appropriate parties for reinterment. Acting upon

the plaintiff's (Timothy Bratton's) application, Stutsman County District Court Judge Gorden Hoberg issued an alternative writ of prohibition. This writ restrained the SHSND from releasing any additional human skeletal remains. The court directed the Board to halt any further actions in implementing its June 30, 1988, reinterment policy until a subsequent court order was issued.

- **July 25, 1988:** The ND State Attorney General submitted a motion response to the court's restriction, requesting "the alternative writ of prohibition should be withdrawn, and no preemptory writ of prohibition should be issued".
- **October 3, 1988:** The ND Attorney General provided first-round responses to the questions requested by Superintendent James Sperry of the SHSND on February 19, 1988.
- **December 13, 1988:** The ND Attorney General provided second-round responses to the questions requested by Superintendent James Sperry of the SHSND on February 19, 1988.
- **December 21, 1988:** Judge Gorden Hoberg ordered the Board to adopt administrative rules to implement the Board's reinterment policy.

1989

- **May 3, 1989:** Governor George Sinner sent another letter to the SHSND requesting the agency to return the Native American Indian remains to tribes for reburial.
- Effective **September 1, 1989.** The North Dakota Administrative Code 40-01-03-04 publication states: "Human skeletal remains and associated grave goods ... must be deaccessioned and permanently removed from the state historical society's collections and disposed of in accordance with sections 40-01-03-06 and 40-01-03-07, at the direction of the state historical board". The NDAC 40-01-03-06 states the release of human remains and associated grave goods to the appropriate tribal entity for reinterment.
- **October 1989:** Judge Hoberg ruled the Board could proceed with returning the human remains and associated grave goods (Source NDAA newsletter December 11, 1989).
- **December 19, 1989:** The Board deaccessioned about 145 boxes of human remains and associated grave goods for reinterment.

- **December 28, 1989:** The United States Senate Select Committee on Indian Affairs sent the result of an analysis by the Congressional Research Service to the SHSND regarding possible conflict between proposed state and federal provisions relating to the study and disposition of human remains.
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1990

- **January 4, 1990:** The Board deaccessioned an additional 24 boxes of human remains and associated grave goods for reinterment.
 - **January 10, 1990:** The SHSND repatriated all the NAGPRA items, consisting of approximately **169 boxes** deaccessioned on December 19, 1989, and January 4, 1990, to the Intertribal Reinterment Committee.
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III. Post-NAGPRA Era Efforts (November 16, 1990, to Present)

Following the enactment of NAGPRA on **November 16, 1990**, the SHSND amended its 1984 Administrative Code 40-02-03 to protect prehistoric and historic human burial sites, human remains, and burial goods. In 1992, the agency deaccessioned and repatriated Federal agencies' NAGPRA items. This section summarizes the main historical events after November 1990.

- **December 1, 1990.** The SHSND amended its 1984 Administrative Code 40-02-03 to protect prehistoric and historic human burial sites, human remains, and burial goods.
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1991

- **July 17, 1991:** Chris Dill, Museum Division Director, letter to James Sperry, SHSND superintendent, regarding NAGPRA Inventories and Deadlines noted: “all human remains and associated grave goods held or controlled by the society were repatriated EXCEPT for those portions held under contract with or curation agreement for federal agencies”. The federal agencies' NAGPRA items were later repatriated in 1992.
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1992

- **October 14, 1992:** The Board deaccessioned 20 boxes and one bag of NAGPRA materials owned by federal entities (the U.S. Army Corps of Engineers and the Smithsonian Institution) to return the materials to their respective original owners.
- **October 16, 1992:** In a letter to the SHSND, the U. S. Bureau of Reclamation (USBOR) requested the inclusion of their collection of human remains from Greenwood Site 32SN58 in the ongoing repatriation documentation. The letter clarified that although the Greenwood site was situated on public land under the U.S. Fish and Wildlife Service (USFWS) administration, the collection was made during a BOR-sponsored project. Both the BOR and FWS consented to incorporate this material in the forthcoming repatriation process.
- **October 16/17, 1992:** Exit inventory of Federal agencies NAGPRA items was conducted by Douglas Owsley of the Smithsonian Institution.
- **October 19, 1992:** The SHSND returned 20 boxes and two bags of human remains (including the BOR 32SN58 collections) and associated grave goods items to the U.S. Army Corps of Engineers and the Smithsonian Institution.

IV. Summary of Pre-and Post-NAGPRA Repatriations from 1987 to 2022

Between 1987 and 2022, the State Historical Society of North Dakota (SHSND) coordinated a sequence of significant repatriations and transfers. Beginning with the initial deaccessions prompted by the U.S. Corps of Engineers, the process unfolded through consultations leading to subsequent repatriations to various tribes, including the Three Affiliated Tribes, Standing Rock Sioux Tribe, Upper Sioux Community, Spirit Lake Tribe, and Muscogee (Creek) Nation. The following segment provides an overview of the key repatriations carried out by the SHSND during this period.

1987 Deaccession and Repatriation

Per the request of the U.S. Corps of Engineers, on September 18, 1987, the State Historical Board deaccessioned 16 individual remains and associated artifacts that were curated at the SHSND under the USACE curation agreement. The NAGPRA items were immediately turned over to the Corps of Engineers who repatriated these items— together with 30+ individuals and

associated artifacts that were stored at the Department of Anthropology at the UND— to the Three Affiliated Tribes on September 25, 1987.

1988 Repatriation

On May 19, 1988, the State Historical Society of North Dakota (SHSND) transferred 29 boxes containing human remains and associated grave goods to the North Dakota Intertribal Reinterment Committee.

1989-1990 Deaccession and Repatriation

On January 10, 1990, the SHSND completed the repatriation of all NAGPRA items, totaling approximately 169 boxes deaccessioned on December 19, 1989, and January 4, 1990, to the Intertribal Reinterment Committee.

1992 Deaccession and Transfer

On October 14, 1992, the SHSND deaccessioned 20 boxes and one bag comprising human remains and associated grave goods, subsequently returning these items to the U.S. Army Corps of Engineers and the Smithsonian Institution on October 19, 1992.

2017 Repatriation to Standing Rock Sioux Tribe

In 2016, fragments of a bison skull were discovered in museum collections storage with a note that said the skull pieces were found on the site of the final Sun Dance held by the Teton Sioux. Notification letters were sent to all of the Sioux Tribe Tribal Historic Preservation Offices (THPO). The Notice of Intent to Repatriate was published by the National Park Service in 2017. On October 26, 2017, Kelly Morgan from the THPO at Standing Rock collected the bison skull fragments.

2018 Repatriation to Upper Sioux Community

In 2016, museum collections staff discovered a wooden anthropomorphic figure identified as a Cha-o-tina, or Can Otina. The object is one of cultural patrimony. Notification letters were sent out to all of the Sioux Tribal THPO. During a consultation, a Dakota spiritual leader identified it as belonging to the Sisitunwan (Dwellers by the Fish Camp-Ground) fire of the Oceti Sakowin (Seven Council Fires) that makes up what is often referred to as the Sioux Nation. The Upper Sioux is one of the few Oceti Sakowin reservations where a distinct segment of the population specifically identifies as Sisitunwan. The Notice of Intent to Repatriate was published by the

National Park Service in 2017. On February 23, 2018, Tim Mentz Junior, a representative for the Upper Sioux Community picked up the Can Otina.

2019 Repatriation to the Spirit Lake Tribe

While reviewing paper and archival records linked to our collections, staff at the Archaeology and Historic Preservation Division of the State Historical Society of North Dakota (SHSND) discovered a human ulna and a human toe bone. Following consultations involving multiple tribes, the NAGPRA items were repatriated to the Spirit Lake Tribe on August 8, 2019.

2021 Repatriation to the MHA Nation

On April 4, 2021, the Mandan, Hidatsa, and Arikara Nation confirmed receiving six boxes containing human remains and associated funerary objects (MHA File number 1 to 26) from the State Historical Society of North Dakota (SHSND). These items were temporarily held within the SHSND's archaeological collections for the MHA Nation. Most of these artifacts were discovered during researchers' analysis of archaeological collections in the laboratory and were subsequently transferred to fulfill NAGPRA requirements for the MHA Nation.

2022 Repatriation to The Muscogee (Creek) Nation

While conducting a review of paper and archival records associated with our collections, the collections staff at the Archaeology and Historic Preservation Division of the State Historical Society of North Dakota (SHSND) discovered unassociated funerary objects. Following consultations with multiple tribes and the necessary publications in the Federal Register, custody of the unassociated funerary object was transferred to the Muscogee (Creek) Nation by the SHSND. On February 15, 2022, the Muscogee (Creek) Nation officially acknowledged the receipt of one pipe bowl fragment, recovered from a gravesite in Lincoln County, SHSND #3682, from the State Historical Society of North Dakota.

V. Conclusions

In sum, the SHSND stands as a testament to commitment and adaptability in the realm of repatriation efforts concerning Native American human remains and associated artifacts. Spanning the pre-NAGPRA era to present-day endeavors, the SHSND's proactive approach, policy evolution, and unwavering dedication are evident. The comprehensive timeline of significant events underscores the SHSND's journey, encompassing legal challenges, policy formation, extensive deaccessioning, and multiple repatriations to various tribes over the years. These efforts underscore a continuous commitment to honor tribal heritage, adhere to regulatory frameworks, and nurture collaborative relationships with indigenous communities.

Ultimately, the SHSND's enduring dedication to acknowledging, respecting, and returning ancestral remains and cultural artifacts to Native American tribes exemplifies a profound commitment to cultural preservation, compliance with NAGPRA regulations, and the cultivation of mutual respect and collaboration between the Society and indigenous communities.