

Maryland Historical Trust – Maryland Commission on Indian Affairs
Working Group on Native American Human Remains
Minutes of the Seventh Meeting
August 6, 2009

The Seventh Maryland Historical Trust (MHT) – Maryland Commission on Indian Affairs (MCIA) Working Group (Working Group) on Native American Human Remains Meeting was held at Attman-Glazer Building, 45 Calvert St., Annapolis, MD 21401, on August 6, 2009.

Working Group Members Present: Claude Bowen, Virginia Busby, Chief Sewell Fitzhugh, Bob Gajdys, Gina Hamlin, Richard Hughes, Maureen Kavanagh, Rico Newman, Bob Wall.

Working Group Members Absent: Tom Bodor.

Staff Present: Charlie Hall (MHT, State Terrestrial Archeologist).

Members of the Public Present: Kate Dinnel, Carol A. Ebright, Kathryn E. Fitzhugh, Bobbyjo Tenderheart Lacey, Chief Joseph Crow Neale, Guy Wells.

1. Call to order, Introductions, and Minutes of the Sixth Meeting.

Co-chair Maureen Kavanagh called the meeting to order at 7:02 PM. Working Group members and meeting observers introduced themselves.

The minutes of the sixth meeting, held on July 16, 2009, were distributed to all Working Group members, and time was given for their consideration. Minor corrections to the minutes of both the June 25, 2009 and July 16, 2009 were noted. Claude Bowen made a motion to accept the minutes with changes. The motion was seconded by Richard Hughes, and was approved unanimously.

2. Review of consensus items, discuss of overall consensus plan.

Co-chair Maureen Kavanagh noted that at the last Working Group meeting a request was made for a table of Native American human remains in the State's collections be produced that included the age of the remains. Such a table was distributed to the group. Kavanagh explained that "Not Available", which appears in the "Dates" column for seven of the eighteen sites listed, means that not enough information was available to determine the age of the remains. She noted that the dating of the remains has been accomplished through association with archeologically defined and dated cultures. The Nassawango site remains are associated with the Early Woodland Adena archeological culture, and are the most ancient of the remains in the collection (800 – 200 BC). The Oxford site remains, next oldest in the collection (AD 300 – 900), are associated with the Middle Woodland Webb Phase. Three Late Woodland archeological cultures are represented among the collection. The remains from the Shepard site, Selden Island, and Rosenstock sites, all representing the Montgomery Complex, are dated to between AD 900 – 1400. The remains from the Cresaptown and Nolands Ferry sites are associated with the similarly dated Mason Island Complex (AD 900 – 1400), characterized by a distinct pottery type and different – although overlapping - distribution across the state (more western as opposed to the Montgomery central distribution). The remains from the Biggs Ford site are associated with a later archeological culture, the Luray Complex (AD 1250 – 1450), distinguished by a different pottery type and a distribution that is similar to the Montgomery Complex. The remains from the Accokeek Creek site are the youngest (AD 1300 – 1650), in the collection, and are associated with the

historic Piscataway Indians. Kavanagh also notes that a map of the sites from which remains in the State's collection were derived was also requested at the last meeting, and drew the attention of the group to the provided map. She emphasized the fact that the remains of thirteen individuals in the State's collection are from unknown locations.

Kavanagh asked staff Charlie Hall to read consensus statements to the group. There were three. The first two were accepted by the group on June 25, 2009, in which the group agreed that all Native American human remains in the State's collection would be placed in the ground in contact with the earth, and that burial would take place on "protected" lands in the four cardinal directions within the State. The third consensus statement was accepted by the group on July 16, 2009, in which it was agreed that the Thomas site remains in the State's collection would be buried with the other remains from that site, as stipulated in the Memorandum of Understanding between the MHT and the MCIA (dated November 1989).

3. Identification of all issues, proposed actions and implications

The list of outstanding issues was distributed to the group, and Kavanagh noted that the first issue (State Control) had been addressed in prior meetings that resulted in the second consensus statement. Ensuing discussion centered on the issue of Associated Funerary Objects (number five on the list), where two actions are possible; they are either included in the reburial with the remains, or they are not. Several MCIA designees expressed their strong feelings that if remains were recovered from the earth with objects, those objects should be returned to the earth with them. It was noted that the Appropriate Place of Repose is defined in both State statute and regulations as exclusively for human remains, and that a change to both statute and regulations would be required in order to include the objects with the remains. The rationale for the separation was discussed, and it was noted that the State statute was written to reflect the treatment of objects in NAGPRA. One MCIA designee asked the group if it could be agreed that if it weren't for the state law being as it is, the Working Group would unanimously agree that the remains and objects should be returned to the earth together, and that the Working Group was resolved that the law must be changed to allow this. No action was taken on this statement. Another MCIA designee offered that the burial of the remains and objects could occur separately; the remains being buried as soon as possible, and the objects placed with them as soon as the law is changed. Co-chair Busby asked if an inventory of the objects was available. Staff Hall noted that NAGPRA is silent regarding those objects associated with culturally unidentifiable human remains, and as a result the inventory prepared for NAGPRA did not include a detailed or complete accounting of the associated funerary objects in the collection. Hall stated that MHT staff had anticipated the need to complete an inventory of the associated funerary objects, and that the process was underway.

Co-chair Kavanagh recalled the group to the task of discussing all the issues yet to be resolved, and suggested that it be noted when no consensus could be reached regarding any issue. In this way, the "sticking points" in the process could be identified.

Issue 1 - State Control. Kavanagh asked if the group was in agreement that with the possibility of leases and easements, we could find land that could be either State, Federal, or

private, where reburial could occur and State control could be preserved? All were in agreement that this could be done.

Issue 2 – Retrieval for Repatriation. The group was asked if it would be possible to preserve the possibility of retrieval for repatriation, should a recognized Tribe make a legitimate claim under NAGPRA. It was noted that under the current state regulations the MCIA has a review and comment authority over any repatriation requests. While the MCIA designees felt that even if such a claim could be made it was inconceivable that it would be made, all were in agreement that the possibility of retrieval for repatriation could be preserved.

Issue 3 – Retrieval for Study. The group was asked if it was possible to preserve the possibility of retrieval for study, as provided for in State statute and regulations. Some MCIA designees, and one member of the public, objected to the possibility of recovery of reburied remains for the purpose of study. Co-chair Kavanagh reminded the group of earlier discussions where it had been agreed to change regulations to redefine the review process for study proposals giving the Maryland Indian Community and the archeological community equal voice. While the details of such a regulatory rewrite would be worked out later, the possibility of redefining the Burial Sites and Objects Review Committee's duties to include this review was discussed. All were in agreement that, under the circumstances outlined above, retaining the possibility of retrieval for study was possible.

Issue 4 – Environment Conducive to Long Term Preservation. This issue involves the environment of reburial, and the State statute and regulatory requirement that the Appropriate Place of Repose be conducive to long term preservation. Staff Hall noted that this requirement is important if the remains are to be considered available for repatriation and study. Co-chair Kavanagh reminded the group that the MHT designees felt that the original interment sites had characteristics of soil Ph and drainage that rendered them conducive to long term preservation, and that if the reburial sites had similar characteristics they would be also conducive to long term preservation. While the details have not been worked out, all were in agreement that it was possible to bury the remains in the ground in an environment conducive to long term preservation. Hall noted that the NAGPRA Review Committee's duties (25 U.S.C. § 3006(C)(9)) include "making recommendations, if appropriate, regarding future care of cultural items which are to be repatriated." ("Cultural items" in NAGPRA means human remains and objects.) As a result, Hall believes that the Review Committee might have an interest in a plan that called for the retention of human remains in the ground. Hall recommends that the group notify the Review Committee should such a plan be adopted. The Working Group agreed that the Co-chairs contact National NAGPRA staff and test Hall's interpretation of the Review Committee's potential interest in in-ground retention of human remains that preserves the possibility of repatriation.

Issue 5 – Associated Funerary Objects. Co-chair Kavanagh felt that this issue should be deferred until the inventory was completed, or that the statement offered earlier by an MCIA designee be adopted: While immediate re-association of the remains and objects was impossible due to the current law, this must be changed. No action was taken on this issue.

Issue 6 – Future Discoveries. The final outstanding issue was whether or not to include future discoveries of Native American human remains in the discussion. An MHT designee offered that future discoveries could be handled by a redefined Burial Sites and Objects Committee, in the same manner as discussed for review of proposals for study. All were in agreement that this was possible.

4. Scheduling of public meetings/next working meetings.

The group recalled Secretary Hall's desire that the comments of the public be solicited and seriously considered during this process. The need for a general or conceptual agreement on all issues prior to holding public input meetings was agreed to, and an eighth Working Group meeting was scheduled for August 27, 2009. Prior to this meeting the group charged the Co-chairs with receiving an answer from the National NAGPRA staff regarding the need to present to the Review Committee, and charged staff with completing the inventory of objects. The goal of the eighth meeting will be to craft a general statement for public comment.

The first public input meeting was scheduled for October 3, 2009. The desire of holding this meeting on the Eastern Shore was expressed by several designees.

Bob Gajdys moved to adjourn, Rico Newman seconded, and the motion carried unanimously.

The meeting is adjourned at 9:16 PM.