



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

DEC 06 2013

Allen Patterson  
Director  
Hamilton County Parks and Recreation Department  
15513 S. Union Street  
Carmel, Indiana 46033

Dear Mr. Patterson:

Pursuant to 25 U.S.C. 3007 and 43 C.F.R. 10.12(e), this letter serves as notice to the Hamilton County Parks and Recreation Department (Hamilton County Parks) that a six-count allegation concerning Hamilton County Parks' failure to comply with the requirements of the Native American Graves Protection and Repatriation Act (NAGPRA) was filed with the Department of the Interior. Based on an investigation conducted during 2012-2013, I have determined that two of the alleged counts of failure to comply are substantiated and four of the alleged counts are unsubstantiated. Additionally, the Department of the Interior wishes to advise you that the National NAGPRA Program is ready to assist Hamilton County Parks in achieving NAGPRA compliance.

In a letter from the Miami Tribe of Oklahoma dated August 10, 2012, a letter from the Shawnee Tribe dated August 31, 2012, and a letter from the Eastern Shawnee Tribe of Oklahoma dated November 2, 2012, each Indian tribe alleged that:

1. Hamilton County Parks receives Federal funds;
2. Hamilton County Parks has possession or control of Native American human remains and associated funerary objects that were removed from Strawtown Koteewi Park;
3. Strawtown Koteewi Park is located in and owned by Hamilton County, Indiana, and managed by Hamilton County Parks, a subdivision of Hamilton County, Indiana;
4. Hamilton County Parks has failed to complete an inventory of the human remains and associated funerary objects in question, which omission constitutes failure to comply with the requirements of NAGPRA, as set forth at 43 C.F.R. 10.12(b)(1)(iii);
5. Hamilton County Parks has possession or control of an item described as a shell-tempered Taylor Village-style vessel that was removed from Strawtown Koteewi Park;
6. The shell-tempered Taylor Village-style vessel is an unassociated funerary object;
7. Hamilton County Parks has failed to complete a summary that includes the shell-tempered Taylor Village-style vessel, which omission constitutes a failure to comply with the requirements of NAGPRA, as set forth at C.F.R. 10.12(b)(1)(ii);
8. Hamilton County Parks repatriated the shell-tempered Taylor Village-style vessel before publishing the required notice in the Federal Register, which action constitutes a failure to comply with the requirements of NAGPRA, as set forth at C.F.R. 10.12(b)(1)(vi); and

9. Hamilton County Parks has failed to consult with the Miami Tribe of Oklahoma, the Shawnee Tribe, and the Eastern Shawnee Tribe of Oklahoma on the human remains and associated funerary objects, and unassociated funerary object in question, which omission constitutes a failure to comply with the requirements of NAGPRA with respect to each of the three tribes, as set forth at 43 C.F.R. 10.12(b)(1)(vii).

The investigation found that:

1. Hamilton County Parks is a subdivision of the government of Hamilton County, Indiana;
2. Between November 16, 1990 and 2001, Hamilton County, Indiana received Federal funds, as the term "receives Federal funds" is defined under 43 C.F.R. 102(a)(3)(iii). Federal funds made available to the State of Indiana, in turn, were made available by the State of Indiana to Hamilton County, Indiana in an arrangement by which a Federal agency made available to Hamilton County, Indiana aid in the form of funds;
3. Between 2001 and 2011, Hamilton County Parks had possession or control of Native American human remains and associated funerary objects that had been removed from Strawtown Koteewi Park, as the terms "possession", "control", "human remains", and "associated funerary objects" are defined under 43 C.F.R. 10.2(a)(3)(1)-(2) and 10.2(d)(1)-(2)(i);
4. Following the requirements under 43 C.F.R. 10.9, Hamilton County Parks was required to complete an inventory of the human remains and associated funerary objects that were removed from Strawtown Koteewi Park, as the term "inventory" is defined under 43 C.F.R. 10.2(g)(2);
5. By April 20, 2009, Hamilton County Parks was required to complete an inventory for the human remains and associated funerary objects that were removed from Strawtown Koteewi Park between 2001 and April 20, 2007, as required under 43 C.F.R. 10.13(b)(1)(ii);
6. Within two years of their removal, Hamilton County Parks was required to complete an inventory for the human remains and associated funerary objects that were removed from Strawtown Koteewi Park after April 20, 2007, as required under 43 C.F.R. 10.13(b)(1)(ii);
7. By August 10, 2012, all the human remains and associated funerary objects removed from Strawtown Koteewi Park between April 21, 2007 and August 10, 2010, were required to be included in an inventory, as required under 43 C.F.R. 10.13(b)(1)(ii);
8. Hamilton County Parks did not complete any inventory of the human remains and associated funerary objects in question by August 10, 2012 (the date on which the Miami Tribe of Oklahoma alleged that Hamilton County Parks had failed to complete an inventory);
9. In 2007, Hamilton County Parks had possession or control of an item described as a shell-tempered Taylor Village-style vessel that was removed from Strawtown Koteewi Park;
10. A "List of Artifacts from Strawtown Koteewi Park Burials," dated June 14, 2012, which was provided to the Miami Tribe of Oklahoma, the Shawnee Tribe, and the Eastern Shawnee Tribe of Oklahoma by the Indiana University Purdue University Fort Wayne-Archaeological Survey, which surveyed Strawtown Koteewi Park, lists the vessel in question as an "associated funerary object";

11. Hamilton County Parks reburied the vessel in Strawtown Koteewi Park;
12. Hamilton County Parks did not consult with the Miami Tribe of Oklahoma, the Shawnee Tribe, or the Eastern Shawnee Tribe of Oklahoma on the geographical and cultural affiliation of the human remains and associated funerary objects in question, following 43 C.F.R. 10.9, by any deadline for completing or amending an inventory of the human remains and associated funerary objects;
13. According to final judgments of the Indian Claims Commission or the United States Court of Claims, and treaties, Acts of Congress, or Executive Orders, the land from which the human remains and associated funerary objects in question were removed is the aboriginal land of the Miami Tribe of Oklahoma;
14. The land from which the human remains and associated funerary objects in question were removed cannot be shown to be the aboriginal land of the Shawnee Tribe based on final judgments of the Indian Claims Commission or the United States Court of Claims, or treaties, Acts of Congress, or Executive Orders;
15. The land from which the human remains and associated funerary objects in question were removed cannot be shown to be the aboriginal land of the Eastern Shawnee Tribe of Oklahoma based on final judgments of the Indian Claims Commission or the United States Court of Claims, or treaties, Acts of Congress, or Executive Orders;
16. In May 2013, Hamilton County Parks completed an inventory that included the human remains of 34 individuals and 151 funerary objects associated with those individuals that had been removed from Strawtown Koteewi Park between 2001 and 2011;
17. On July 30, 2013, Hamilton County Parks published a Notice of Inventory Completion in the Federal Register (78 Fed. Reg. 45956-45957) for the human remains of the 34 individuals and the 151 funerary objects associated with them, in which Hamilton County Parks reported that the human remains and associated funerary objects in question had been removed from Strawtown Koteewi Park between 2001 and 2011; stated that it had consulted on the inventory with representatives of Indian tribes that included the Miami Tribe of Oklahoma, the Shawnee Tribe, and the Eastern Shawnee Tribe of Oklahoma; determined the human remains and associated funerary objects in question to be culturally unidentifiable; and, following 43 C.F.R. 10.11(c)(2), identified the land from which the culturally unidentifiable human remains and associated funerary objects were removed as the aboriginal land of the Miami Tribe of Oklahoma and the Delaware Nation, Oklahoma; and
18. The Shawnee Tribe and the Eastern Shawnee Tribe of Oklahoma did not claim the human remains and associated funerary objects reported in the July 30, 2013 Notice of Inventory Completion as culturally affiliated with them.

Based on the above findings of fact, I have made the following determinations with respect to the six-count allegation of failure to comply:

**1307\_HAMILTON COUNTY PARKS.** Hamilton County Parks is a museum, as the term "museum" is defined under 43 C.F.R. 10.2(a)(3). Hamilton County Parks receives Federal funds, as the term "receives Federal funds" is defined under 43 C.F.R. 10.2(a)(3)(iii). Hamilton County Parks is a subdivision of Hamilton County, Indiana. Hamilton County, Indiana has received Federal funds through the State of Indiana since November 16, 1990. Consequently, Hamilton County Parks is deemed to have received Federal funds since

November 16, 1990. Beginning in 2001, Hamilton County Parks also had possession or control of Native American human remains and associated funerary objects. The receipt of Federal funds coupled with possession or control of Native American human remains and associated funerary objects made Hamilton County Parks a museum under NAGPRA. As a museum, Hamilton County Parks was responsible for complying with the requirements of NAGPRA, including the completion of an inventory of the Native American human remains and associated funerary objects in its possession or control. Hamilton County Parks did not complete an inventory by the deadlines under 43 C.F.R. 10.13(b)(1), i.e., by April 20, 2009 with respect to the human remains and associated funerary objects that were removed from Strawtown Koteewi Park between 2001 and April 20, 2007, and by August 10, 2012, with respect to all the human remains and associated funerary objects removed from Strawtown Koteewi Park between April 21, 2007 and August 10, 2010, and this omission constitutes one count of failure to comply with the requirements of NAGPRA, as set forth at 43 C.F.R. 10.12(b)(1)(iii).

**1308\_HAMILTON COUNTY PARKS.** In order to complete an inventory, a museum must consult on the geographical and cultural affiliation of human remains and associated funerary objects, following the requirements under 43 C.F.R. 10.9. Under 43 C.F.R. 10.9(b)(1)(ii)(C), the museum must consult with Indian tribe and religious leaders from whose aboriginal lands the human remains and associated funerary objects originated. Under 25 U.S.C. 3002(a)(2)(C) and 43 C.F.R. 10.11(b)(2)(ii), aboriginal occupation may be recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims, or by a treaty, Act of Congress, or Executive Order. According to final judgments of the Indian Claims Commission or the United States Court of Claims, and treaties, Acts of Congress, or Executive Orders, the land from which the human remains and associated funerary objects in question were removed, Strawtown Koteewi Park, is the aboriginal land of the Miami Tribe of Oklahoma. Consequently, Hamilton County Parks was required to consult with the Miami Tribe of Oklahoma on the geographical and cultural affiliation of the human remains and associated funerary objects removed from Strawtown Koteewi Park within the required timeframe for completing an inventory. Hamilton County Parks did not consult with the Miami Tribe of Oklahoma under 43 C.F.R. 10.9 within the required timeframe for completing an inventory, and this omission constitutes one count of failure to comply with the requirements of NAGPRA, as set forth at 43 C.F.R. 10.12(b)(1)(vii).

**1309-1310\_HAMILTON COUNTY PARKS.** In order to complete an inventory, a museum must consult on the geographical and cultural affiliation of human remains and associated funerary objects, following the requirements under 43 C.F.R. 10.9. Under 43 C.F.R. 10.9(b)(1)(ii)(B), the museum must consult with Indian tribe and religious leaders that are, or are likely to be, culturally affiliated with the human remains and funerary objects. As the Shawnee Tribe and the Eastern Shawnee Tribe of Oklahoma did not claim the human remains and associated funerary objects reported in the July 30, 2013 Notice of Inventory Completion as culturally affiliated with them, I cannot determine that these two tribes are, or are likely to be, culturally affiliated with the human remains and associated funerary objects removed from Strawtown Koteewi Park. Consequently, I have determined that, at this time, the Shawnee Tribe and the Eastern Shawnee Tribe of Oklahoma were not affected by the

absence of consultation between Hamilton County Parks and themselves, and that the two alleged counts of failure to consult with them under 43 C.F.R. 10.9 are unsubstantiated.

**1311\_HAMILTON COUNTY PARKS.** Under 25 U.S.C. 3004 and 43 C.F.R. 10.8, a museum that has possession or control of items that may be unassociated funerary objects, sacred objects, or objects of cultural patrimony is required to complete a summary of those items. If the item removed from Strawtown Koteewi Park and described as a shell-tempered Taylor Village-style vessel were an unassociated funerary object, Hamilton County Parks would have been required to include the vessel in a summary. A June 14, 2012 document entitled "List of Artifacts from Strawtown Koteewi Park Burials" lists the vessel in question as an "associated funerary object." This vessel must, therefore, be included in an inventory rather than a summary. Consequently, I have determined that the one alleged count of failure to complete a summary under 43 C.F.R. 10.8 is unsubstantiated.

**1312\_HAMILTON COUNTY PARKS.** Under 43 C.F.R. 10.10(b)(2), a museum may not repatriate an associated funerary object without first publishing a Notice of Inventory Completion in the Federal Register. Hamilton County Parks reburied the associated funerary object described as a shell-tempered Taylor Village-style vessel in Strawtown Koteewi Park. As Strawtown Koteewi Park is owned by Hamilton County, Indiana, Hamilton County Parks still has control of this associated funerary object. Hamilton County Parks must include this associated funerary object in an inventory; the vessel is subject to the requirements of NAGPRA. As Hamilton County Parks still has control of the associated funerary object in question, I have determined that the one alleged count of failure to repatriate an associated funerary object before publishing the required notice in the Federal Register is unsubstantiated.

Pursuant to 43 C.F.R. 10.12(f), upon receipt of this notice of failure to comply, you may:

1. Within 45 days of the date of service, seek informal discussion with the Secretary of the Interior's designee by contacting NAGPRA Enforcement Coordinator David Tarler (david\_tarler@nps.gov); and/or
2. Within 45 days of the date of service, request a hearing to contest this finding; or
3. Within 45 days of the date of service, contact NAGPRA Enforcement Coordinator David Tarler (david\_tarler@nps.gov) and waive your right to a hearing.

Procedures for requesting a hearing are set forth at 43 C.F.R. 10.12(j). Failure to file a written request for a hearing within 45 days of the date of service waives your right to a hearing. After 45 days from the date of service, and if no hearing is requested, I am authorized under 43 C.F.R. 10.12(h) to assess a civil penalty against the Hamilton County Parks and Recreation Department for failure to comply with the requirements of NAGPRA. Hamilton County Parks has the right to seek judicial review of any final administrative decision assessing a civil penalty.

More information on NAGPRA, as well as the civil penalty hearing and appeal process, can be found in the enclosed copies of 25 U.S.C. 3001-3013 and 43 C.F.R. Part 10. If you have any questions, or would like to initiate an informal discussion of this matter, you may contact NAGPRA Enforcement Coordinator David Tarler. Alternatively, if you take no action, you will

hear from this office in approximately eight weeks. If you seek technical assistance on NAGPRA compliance, you may contact National NAGPRA Program Manager Sherry Hutt, at (202) 354-1479.

Sincerely,



Rachel Jacobson  
Principal Deputy Assistant Secretary for Fish  
and Wildlife and Parks

cc: Douglas Lankford, Chief, Miami Tribe of Oklahoma  
Ron Sparkman, Chief, Shawnee Tribe  
Glenna J. Wallace, Chief, Eastern Shawnee Tribe of Oklahoma  
George Strack, Tribal Historic Preservation Officer, Miami Tribe of Oklahoma  
Robin Dushane, Tribal Historic Preservation Officer, Eastern Shawnee Tribe of Oklahoma  
Stephen K. Andrews, Senior Partner, Attorney at Law, Andrews & Cox, P.C. d/b/a Bleeker Brodey & Andrews  
Andrew T. Prather, President of the Board, Hamilton County Parks and Recreation Department

Enclosures: 25 U.S.C. 3001-3013  
43 C.F.R. Part 10